

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - BERGEN COUNTY  
DOCKET NO. BER-L-7134-18

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LINDA B. BREHME,

Plaintiff,

-v-

THOMAS IRWIN; NEW JERSEY  
MANUFACTURERS INSURANCE COMPANY;  
JOHN DOES 1-5; ABC CORPORATIONS  
1-5,

Defendants.  
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VIDEOTAPED DE BENE ESSE  
DEPOSITION OF: LOUIS RIZIO, M.D.

DATE: WEDNESDAY, JUNE 22, 2022

METROPOLITAN COURT REPORTING SERVICES, INC.

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Maywood, New Jersey 07607

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5           TRANSCRIPT of the Videotaped De Bene  
6   Esse deposition of LOUIS RIZIO, M.D., called for  
7   Oral Examination in the above-entitled matter,  
8   said deposition being taken pursuant to Superior  
9   Court Rules of Civil Practice and Procedure, by  
10   and before MARIBEL SYPNIEWSKI, a Certified Court  
11   Reporter and Notary Public of the State of New  
12   Jersey, VIA ZOOM on Wednesday, June 22, 2022,  
13   commencing at 6:36 in the evening.  
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Page 4

1           I N D E X  
2   WITNESS   DIRECT VOIR CROSS REDIRECT RECROSS  
3           DIRE  
4   LOUIS RIZIO,  
5   M.D.  
6   By Mr. Mazzie 6,13           129  
7  
8   By Mr. Clark   10   56  
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Page 3

1   A P P E A R A N C E S:  
2  
3           CLARK LAW FIRM, PC  
4           BY: GERALD CLARK, ESQ.  
5           811 16th Avenue  
6           Belmar, New Jersey 07719  
7           Attorney for Plaintiff.  
8           FOSTER & MAZZIE, LLC  
9           BY: CARL MAZZIE, ESQ.  
10           10 Furler Street  
11           Totowa, New Jersey 07512  
12           Attorneys for Defendant, Estate of  
13           Thomas Irwin.  
14  
15   A L S O P R E S E N T:  
16           LAZARO BERENGUER, ESQ.  
17           GERALD SHARPE, Intern  
18           MARK STIEVE, Videographer  
19           LINDA B. BREHME, Plaintiff  
20  
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Page 5

1           VIDEOGRAPHER: Good evening.  
2   Today's date is June 22nd, 2022. Approximate  
3   time is 6:36 p.m. in the matter of Brehme verse  
4   Irwin, et al. Docket number BER-L-7134-18.  
5   This is the video deposition of Dr. Louis Rizio.  
6   Would all attorneys present and remotely state  
7   the parties that they represent and after which  
8   the court reporter will please swear in the  
9   witness.  
10           MR. CLARK: Hi, everyone. It's  
11   Gerald Clark from the Clark Law Firm for Linda  
12   Brehme. Thank you.  
13           MR. MAZZIE: Carl Mazzie on behalf  
14   of defendant, Thomas Irwin.  
15           L O U I S R I Z I O, having been  
16   duly sworn by the Notary, was examined and  
17   testified as follows:  
18           THE WITNESS: Sure. It's Louis  
19   Rizio, R-i-z-i-o. For the purpose of these  
20   evaluations, my business address is 277  
21   Fairfield Road, Fairfield, New Jersey.  
22           MR. CLARK: Can we go off the video  
23   for a second?  
24           VIDEOGRAPHER: The time is 6:38.  
25   We're not off video record.

1 (Whereupon we're off the video and  
 2 written record at this time.)  
 3 VIDEOGRAPHER: The time is 6:40.  
 4 We're back on video record.  
 5 DIRECT EXAMINATION BY MR. MAZZIE:  
 6 Q Good evening, Dr. Rizio.  
 7 A Good evening.  
 8 Q Dr. Rizio, could you please give  
 9 the jury the benefit of your education?  
 10 A Sure. I did my undergraduate work  
 11 at Rutgers University in New Brunswick. This was  
 12 followed by medical school at Rutgers University,  
 13 the former UMDNJ of New Jersey in Newark. After  
 14 I finished my medical school training, I did a  
 15 residency in orthopedics at the Tufts University  
 16 Medical Center. That was followed by a  
 17 fellowship in sports medicine at the University  
 18 of Miami.  
 19 Q And, Doctor, are you licensed?  
 20 A Yes.  
 21 Q And what states are you licensed  
 22 in?  
 23 A New Jersey and New York.  
 24 Q Do you maintain a practice in both  
 25 states?

1 A No. I haven't in practiced in New  
 2 York for a while. I just keep my license going.  
 3 Q And, Doctor, are you Board  
 4 certified?  
 5 A Yes.  
 6 Q Just briefly explain to the jury  
 7 what Board certification is.  
 8 A Sure. So it's a little different  
 9 for each medical specialty, but orthopedic has a  
 10 two step process where, upon completion of your  
 11 residency, you can sit for a written examination.  
 12 If you pass that examination, you're allowed to  
 13 sit for an oral examination given by the academy,  
 14 peers or, you know, administration. And you  
 15 could do that after being in practice for two  
 16 years. If you pass that, you become Board  
 17 certified by the Board of orthopedic surgery.  
 18 Q And you said you are Board  
 19 certified?  
 20 A Yes.  
 21 Q And how long is Board  
 22 certification good?  
 23 A So in our specialty, we -- we're  
 24 good for 10 years. We have to recertify -- we  
 25 don't have to recertify, but they suggest that

1 you recertify every 10 years.  
 2 Q Okay. And your current  
 3 certification is good through what?  
 4 A So I just recertified and I'm good  
 5 now 'til -- should be 2032.  
 6 Q Okay. Doctor, do you have  
 7 admitting privileges at any hospital?  
 8 A Yes.  
 9 Q What hospitals do you have  
 10 admitting privileges?  
 11 A So St. Barnabas is currently the  
 12 only hospital that I admit to. And I also work  
 13 at a surgery center in Short Hills called Short  
 14 Hills Surgery Center. So I do outpatient surgery  
 15 there.  
 16 Q And, Doctor, could you briefly  
 17 tell the jury what orthopedic surgery is?  
 18 A So, orthopedic surgery deals with  
 19 disorders, chronic and traumatic, of the entire  
 20 musculoskeletal system from the neck down to the  
 21 feet, bone issues, muscle issues, ligament  
 22 issues, joint issues, you know, chronic  
 23 degenerative conditions, acute conditions, and  
 24 all of those things.  
 25 Q You indicated that you currently

1 maintain a private practice?  
 2 A Yes.  
 3 Q And, what is the primarily focus  
 4 of your practice?  
 5 A Right. So I have a full-time  
 6 orthopedic practice. I am a subspecialist in  
 7 sports medicine, which I spend, I would say,  
 8 probably about 70 percent of my time doing mostly  
 9 sports medicine or sports medicine type things.  
 10 But I see general orthopedics, I see fractures, I  
 11 see orthopedic problems of multiple types.  
 12 Q And do you conduct surgery?  
 13 A Yes.  
 14 Q And do you do spinal surgery?  
 15 A I don't.  
 16 Q Do you treat patients with spinal  
 17 conditions?  
 18 A Yes.  
 19 Q And if one of your patients needs  
 20 surgery, what would you do?  
 21 A I usually refer them to one of my  
 22 colleagues who's a spine surgeon.  
 23 Q Okay. Doctor, we're here today  
 24 for a lawsuit that was filed by a Linda Brehme.  
 25 Did you conduct a physical exam of Ms. Brehme at

1 my office?  
 2 MR. CLARK: I'm sorry, I have voir  
 3 dire questions on the qualifications.  
 4 MR. MAZZIE: Go ahead.  
 5 VOIR DIRE EXAMINATION BY MR. CLARK:  
 6 Q Dr. Rizio, you said you're Board  
 7 certified in orthopedics, correct?  
 8 A Yes.  
 9 Q With a subspecialty in sports  
 10 medicine?  
 11 A Yes.  
 12 Q Okay. And you do not have  
 13 advanced training in spine surgery, correct?  
 14 A If you mean by fellowship  
 15 training, I don't.  
 16 Q And you do not have any admitting  
 17 privileges at any hospitals that would permit you  
 18 to do spine surgery; is that correct?  
 19 A Well, I have admitting privileges  
 20 at hospitals that would allow me to do spine  
 21 surgery if I chose, but I don't do that.  
 22 Q To get hospital privileges in  
 23 spine surgery, don't hospitals in the area, such  
 24 as St. Barnabas, Hudson Regional, Bayonne, for  
 25 example, require you to fill out an application

1 and detail the amount of spine surgeries that an  
 2 applicant has completed, the type of spine  
 3 surgeries and special training they've had in  
 4 spine surgeries, isn't that the kind of thing  
 5 required?  
 6 A I'm not exactly sure about the  
 7 details of that. I do know that when I fill out  
 8 my credentialing packages, I ask for privileges  
 9 to do certain procedures. Since I don't do  
 10 spine, I check -- I don't check that off. So if  
 11 there's additional qualifications required, I  
 12 never get that information, because I don't ask  
 13 for it.  
 14 Q And with regard to Board  
 15 certification, that includes an oral examination,  
 16 correct?  
 17 A Initially, yes. I mean, you could  
 18 still do an oral exam. There's different  
 19 pathways to maintain your certification. That's  
 20 one of them. But the initial certification  
 21 requires an oral examination.  
 22 Q And you could do a general test or  
 23 you can have a certain percentage, maybe 90  
 24 percent of your cases in a certain area, for  
 25 example, shoulders, knees, that kind of thing.

1 And then you could do down a pathway in which  
 2 you're asked more specific questions in the  
 3 specific areas; is that right?  
 4 A Not exactly what you're -- what  
 5 you're saying. You can't -- not -- to my  
 6 knowledge, there's no pathway to say I only want  
 7 to be tested 90 percent on shoulders. There is a  
 8 possibility to do a hand subspecialty  
 9 examination, there's a sports medicine, I think,  
 10 subspecialty examination, but that began sometime  
 11 after I was in practice. I took the general  
 12 examination. I don't do a subspecialty pathway.  
 13 Q And there is a subspecialty  
 14 pathway for specialty in spine, are you aware of  
 15 that?  
 16 A I believe so.  
 17 Q But you did not go down that  
 18 pathway; is that right?  
 19 A No.  
 20 Q Okay. That is right, yes? No,  
 21 you, didn't go down the pathway?  
 22 A I did not go down that pathway.  
 23 Q Sometimes when someone answers yes  
 24 or no, it could be ambiguous, but you cleared it  
 25 up. Thank you. It's -- so -- and so if you have

1 a patient that needs spine surgery, you would --  
 2 you refer that to a colleague, you would not do  
 3 that yourself, right?  
 4 A Right, as I said before.  
 5 Q I don't know. I wrote down you  
 6 said you usually refer to colleagues. Are there  
 7 -- are there times when you would actually do a  
 8 spine surgery and not refer to a colleague if  
 9 that was what was needed?  
 10 A I don't know why you wrote that  
 11 down. But, no, I don't perform spine surgery.  
 12 Q Okay. Well, I just wrote down  
 13 usually. I was just taking notes, that's all.  
 14 Okay. Thank you. I don't have any other voir  
 15 dire questions there on the qualifications.  
 16 Thanks.  
 17 MR. MAZZIE: For purpose of the  
 18 record, I offer Dr. Rizio as a board certified  
 19 orthopedic surgeon.  
 20 CONTINUED DIRECT EXAMINATION BY MR. MAZZIE:  
 21 Q Doctor, going back, I had asked  
 22 you, did you conduct a physical exam of the  
 23 plaintiff in this matter, Linda Brehme at my  
 24 office's request?  
 25 A Yes.

1 MR. CLARK: I apologize. Just  
 2 with respect to the offer of him as an expert, as  
 3 long as he's not being offered as an expert in  
 4 spine -- spine. Thank you.  
 5 MR. MAZZIE: You mean -- you mean,  
 6 expert in spine, Counsel?  
 7 MR. CLARK: Yes. As a specialist  
 8 in spine, yes. As long as he's not being offered  
 9 as that, I don't have any objection to him  
 10 testifying and giving opinions. That doesn't  
 11 seem you're offering him as that. It was just as  
 12 an orthopedist, Board certified orthopedic. Just  
 13 a routine aside.  
 14 Q So, Doctor, again, you did examine  
 15 Ms. Brehme at my office's request, the plaintiff  
 16 in this matter?  
 17 A Yes.  
 18 Q Do you know the date of the  
 19 examination?  
 20 A Off the top of my head, I don't  
 21 recall.  
 22 Q I guess I should ask that. Do you  
 23 have an independent recollection of your  
 24 evaluation of Ms. Brehme?  
 25 A I remember some general details,

1 but not every exact detail of the meeting.  
 2 Q All right. I'm going to show you  
 3 your report that you provided to my office.  
 4 A Okay.  
 5 Q Before we get into the actual --  
 6 your actual report, Doctor, can you give a  
 7 general description of how these exams occur,  
 8 what happens?  
 9 A At the time of the examination and  
 10 how I perform it?  
 11 Q Well, my office's request that you  
 12 schedule an appointment.  
 13 A Right. Okay. Right. So I would  
 14 get a request from your office to perform an  
 15 examination, review records and give my thoughts  
 16 or opinions on the -- on the matter. The  
 17 difference really with this type of an  
 18 examination is, I don't -- I don't provide  
 19 counseling. I don't provide a treatment plan.  
 20 So that aspect of the -- an orthopedic visit is  
 21 not in that evaluation, which is, you know, whole  
 22 separate portion of a typical office visit.  
 23 Q And you typically get medical  
 24 records for these exams?  
 25 A Yes. So I get medical records. I

1 get -- usually I get records through the entire  
 2 treatment course. Sometimes I get records that  
 3 predate the accident. But, yes, I get a lot of  
 4 different records and films.  
 5 Q You say films, are you referring  
 6 to, what, when you say films?  
 7 A X-rays, MRIs, CAT scans, tests  
 8 that were done, you know, related to the -- to  
 9 the injuries or to -- or tests that were done on  
 10 the person at anytime that relate to the matter.  
 11 Q Now. Looking at your report, can  
 12 you tell the jury when you conducted the exam of  
 13 Ms. Brehme?  
 14 A Sure. January 14, 2020.  
 15 Q So that would be a little over  
 16 two-and-a-half years ago?  
 17 A That's right.  
 18 Q Can you briefly tell the jury,  
 19 although it's not brief in this case, the medical  
 20 records that you reviewed?  
 21 A Sure. So, you know, just looking  
 22 back at this report, there was some fifty  
 23 something different records. They included legal  
 24 -- legal documents, like interrogatories,  
 25 accident reports, insurance and billing

1 documents, reports and evaluations by other  
 2 physicians, emergency room records, radiology  
 3 reports, nerve conduction studies, if done. Yes,  
 4 we also reviewed physical therapy records,  
 5 doctors' treatments records. You know, pretty  
 6 much any -- anything that relates to the care.  
 7 Q And, Doctor, did you review these  
 8 records before or after?  
 9 A I usually try to review them  
 10 before. I try to get a look at them before so I  
 11 have an idea what's going on. If I need to go  
 12 back or if there's, you know, just a tremendous  
 13 amount of records, I may have to review some  
 14 after the exam as well.  
 15 Q In this case or in every case, how  
 16 does the exam get conducted? What do you do?  
 17 Just walk us through the process.  
 18 A Right. So standard, what I would  
 19 do in my office is, basically, I take a history.  
 20 I ask the patients some questions. I ask them  
 21 about what's going on. Get a general sense of  
 22 what happened, what was done, where they're at  
 23 now. And then I perform a physical exam which  
 24 includes a typical musculoskeletal exam based on  
 25 the body part that's being evaluated. And I

1 would look at their films or X-rays, MRIs that I  
2 have available at the time. And then, you know,  
3 write my conclusions, but not counsel the  
4 patient.

5 Q In this case, you took a history  
6 from plaintiff?

7 A Yes.

8 Q And what did that history reveal?

9 A So looking back at my report, she  
10 -- she was a 67-year-old woman when I had seen  
11 her that had been in a car accident in 2016. She  
12 was rear-ended. She reports going to the  
13 emergency room following the accident. Reports  
14 injuring her neck, low back, both wrists, left  
15 knee and ribs.

16 Working as a salesperson or  
17 scheduling person for a water company that -- and  
18 she never returned to work. She reported having  
19 prior injuries to her neck and thoracic spine,  
20 her midback, and thought that she did not have  
21 any treatment or studies of her lumbar spine  
22 prior to the accident. She denied any lumbar  
23 complaints, although she did have surgery of the  
24 neck and midback prior to this.

25 Then she went on to have some

1 physical therapy and ultimately had surgery on  
2 her lumbar spine. Didn't have surgery anywhere  
3 else in her treatment. And I don't believe she  
4 had any epidural injections is what she reported  
5 to me. She was still having back pain, having  
6 numbness in multiple locations in the left lower  
7 extremity and she said it felt weak. She feels  
8 that -- she felt that she was tripping and  
9 falling frequently due to weakness in the leg.  
10 Difficulty with bending, lifting, pain at night.  
11 But she thought that her pain was constant,  
12 although worse at night. Difficulty with  
13 household chores, walking, standing, sitting for  
14 long periods of time.

15 Her neck was back to her baseline  
16 from her prior surgery. Not an issue, or not a  
17 new issue. The left knee was fine, was no longer  
18 an issue, and the ribs were no longer an issue.  
19 And she felt that her wrists were still --  
20 continued to cause her some discomfort. I  
21 believe there's a typo in my report. And that  
22 she felt stiff, difficulty with gripping and  
23 grasping more on the right. She felt that she --  
24 she thought that she would likely have surgery,  
25 but hasn't done it at that point.

1 Q Is it likely to have surgery on  
2 her wrists?

3 A Yeah. And that she had some pins  
4 and needles in both hands. She takes Percocet  
5 four times a day and had only been taking it once  
6 a day previously. And she continues to take  
7 Flexeril as needed, but didn't say that she took  
8 it everyday. And that she was taking it more  
9 frequently since the accident, but was also  
10 taking Flexeril prior to the accident. And  
11 Gabapentin was a new medication that she was on  
12 now that she wasn't on previously.

13 Q Percocet, what kind of medication  
14 is that?

15 A That's a narcotic pain medication.

16 Q And Flexeril, what kind of  
17 medication is that?

18 A Muscle relaxer.

19 Q And Gabapentin?

20 A Gabapentin is a kind of like a  
21 neurologic -- a drug that affects the neurologic  
22 system. It's often -- it could be used for -- I  
23 believe it could be used for seizures. It could  
24 be -- maybe originally it was used for some  
25 depression, some other things, but often it's

1 used as an adjunct for pain management.

2 Q After you took the history, did  
3 you conduct a physical exam of the plaintiff?

4 A Yes.

5 Q And what did your exam reveal?

6 A So, in general, she was ambulating  
7 a little slowly in the office. Her exam of the  
8 cervical spine showed a near full range of  
9 motion. She had some lack of flexion and  
10 extension most likely due to her prior fusion.  
11 No tenderness on exam, no muscular spasm. And  
12 her upper extremities had good or normal strength  
13 and sensation, motor and sensory exam, and the  
14 deep tendon reflexes were appropriate and -- in  
15 both arms.

16 Q When you say motory (Phonetic) and  
17 sensory exams, what does that consist of?

18 A So, you look for -- so, you know,  
19 basically, you look for strength. You do  
20 resisted strength testing in different muscle  
21 groups to try to elicit any weakness or asymmetry  
22 in her strength. Sensation typically, you know,  
23 can you feel this, can you feel that. It  
24 requires a response from the person, you know. I  
25 can't -- you know, I can't judge sensation like I

1 can judge strength. It's a little different.  
 2 Q You also do -- did deep tendon  
 3 reflexes --  
 4 A Yes.  
 5 Q -- as well?  
 6 A Yes.  
 7 Q And what is the purpose of that?  
 8 A So, deep tendon reflexes are a  
 9 sign of an intact loop between the peripheral and  
 10 central nervous system. It's not something that  
 11 usually can be, you know, altered in any  
 12 significant way. It's an involuntary response or  
 13 -- to testing.  
 14 Q So it's like the proverbial tap on  
 15 the knee with a hammer and your leg moves?  
 16 A Yes. Absolutely.  
 17 Q And that's to test the nerves are  
 18 working?  
 19 A Right. So, I mean, in basic --  
 20 you know, basic way of looking at it is you're  
 21 providing -- you're providing a stimulus to the  
 22 person externally. That has to be registered by  
 23 the central nervous system, the spinal cord and  
 24 brain, and then it has to come back and provide a  
 25 response. So, it kind of indicates a complete

1 loop of intact neurologic function from external  
 2 to internal.  
 3 Q And her upper extremity and neck  
 4 exam, that was normal except for the limited  
 5 range of motion?  
 6 A That's right.  
 7 Q All right. Did you evaluate her  
 8 lumbar spine?  
 9 A I did.  
 10 Q And what did that reveal?  
 11 A So, it was hard for me to get a  
 12 good range of motion exam on her, because she  
 13 felt that she was too unsteady and too painful.  
 14 And, you know, kind of was afraid or didn't want  
 15 to do certain things. I didn't feel it was  
 16 appropriate for me to push her into doing  
 17 something. So, you know, I was kind of unable to  
 18 get a really good motion examination on her.  
 19 Normally, I would have a person  
 20 try to reach their toes and see how far they  
 21 could go, bend side-to-side and rotate, but this  
 22 seemed a little bit difficult because of her, you  
 23 know, apprehension or concerns. She had  
 24 tenderness about the spine, although kind of  
 25 diffusely in the lumbar spine. She was tender

1 with almost no palpation pressure. So when you  
 2 press on it and, you know, you provide different  
 3 levels of force, there was almost no force  
 4 involved with, you know, her. She complained of  
 5 pain.  
 6 The incision that she had was  
 7 healed. You know, when I palpated the muscles  
 8 around the spinal column, there was no spasm that  
 9 I could detect. Did straight leg test, which was  
 10 negative in both legs.  
 11 Q What is a straight leg test?  
 12 A So straight leg test is a test  
 13 that we do. Basically, we lift their legs up to  
 14 elicit a stretch on the sciatic nerve. And if  
 15 there's compression on the sciatic nerve at any,  
 16 you know -- or, you know, the nerve roots in the  
 17 leg on any course throughout the spine and down  
 18 to the lower extremities, it would elicit pain.  
 19 Sometimes it would elicit some temporary numbness  
 20 or feelings of shocks or lightening in certain  
 21 patients. But it's a way of sort of  
 22 provocatively stressing or stretching the nerve  
 23 to see if there's some irritation to it.  
 24 Q And when you do that, what  
 25 position is the plaintiff in?

1 A You could do it either lying or  
 2 sitting in -- in this instance. So you could do  
 3 it in both ways and --  
 4 Q How would you do it sitting?  
 5 A So, what you do is, a person is  
 6 sitting, their knees are bent over the side of  
 7 the bed and you would, basically, straighten  
 8 their knee. And the thing is, is that, you know,  
 9 if you think about it, your back is flexed 90  
 10 degrees when you're sitting down and you  
 11 straighten the leg, it's almost as if you're  
 12 lifting the leg straight up, you know, above  
 13 their body if they were lying flat. So it can be  
 14 done either way.  
 15 Q Okay. And hers was negative?  
 16 A That's right.  
 17 Q And negative means that it was  
 18 normal?  
 19 A Correct.  
 20 Q What else did you do?  
 21 A I tested her -- I tested her  
 22 strength in her lower extremity, muscle groups,  
 23 sensation to light touch. I didn't find any  
 24 weakness in any extremity muscle group. There  
 25 was complaints of decreased sensation in multiple

1 areas of the -- of the left leg. And, again,  
 2 reflexes were good and normal, or intact.  
 3 Q Did you examine anything else?  
 4 A Right. So, ribs were not tender.  
 5 She stated that they had gotten better. Her left  
 6 knee, you know, for the sake of time was all the  
 7 test that I would do for motion, swelling,  
 8 tenderness and ligament testing were all  
 9 negative. And then I examined her wrist and her  
 10 hands. There were no -- no signs of muscle  
 11 atrophy, no swelling, no redness, no tenderness.  
 12 I failed to identify a Phalen's or a Tinel's test  
 13 in the wrist.  
 14 Q Could you tell the jury what a  
 15 Tinel's -- or explain to the jury what a Tinel  
 16 and a Phalen's test is?  
 17 A Yes. So a Tinel is just where you  
 18 would tap on the wrist over the course of the  
 19 median nerve or carpal tunnel. And usually when  
 20 you percuss a nerve that has clinical signs of  
 21 compression, it would either elicit pain, it  
 22 could elicit numbness and tingling in the nerve  
 23 distribution. It would show an irritated nerve  
 24 from clinical compression. A Phalen's is similar  
 25 in the sense that you try to compress the nerve

1 by flexing the wrist or -- and seeing if it  
 2 reproduces the symptoms after, you know, a  
 3 certain amount of time, usually like 20 or 30  
 4 seconds.  
 5 Q And both those were negative?  
 6 A That's right.  
 7 Q And you also indicated that you  
 8 did motor and sensory exam as well?  
 9 A Yes.  
 10 Q And they were normally say grossly  
 11 intact. What does that mean?  
 12 A That's right. So I found no -- I  
 13 found no deficits on strength of the different  
 14 muscle groups in her hand in the forearm region.  
 15 Q All right. And when you say you  
 16 found no deficit. They were both equal?  
 17 A Well, they were both equal, you  
 18 know. And even if they were not equal, there was  
 19 no muscle group that showed, you know, a lower  
 20 grading of strength than what would be expected.  
 21 Q Doctor, you made a note that  
 22 showed no atrophy. What's atrophy?  
 23 A So atrophy occurs with lack of use  
 24 or lack of innervation of a muscle group. So if  
 25 you, you know -- if you want me to elaborate a

1 little bit. So if you have chronic nerve  
 2 compression, you have chronic nerve irritation,  
 3 or if you sever a nerve, the muscle will atrophy  
 4 from lack of electrical impulse and firing and is  
 5 use, and, you know, you could see that visually.  
 6 Q So, the muscles actually fade  
 7 away, so-to-speak?  
 8 A That's right. They actually --  
 9 you know, they shrink.  
 10 Q Okay. Doctor, what films did you  
 11 -- was that all you did in your exam?  
 12 A Those were the -- those were the  
 13 areas that I examined, yes.  
 14 Q Did you review imaging studies?  
 15 A A lot.  
 16 Q Okay. What imaging studies did  
 17 you review?  
 18 A CAT scan of the lumbar spine from  
 19 2016, thoracic spine MRI 2013, thoracic spine  
 20 2017, MRI -- MRI of the lumbar spine 2013, MRI of  
 21 the cervical spine 2013, MRI of the cervical  
 22 spine 2017, MRI of the pelvis 2017, MRI of both  
 23 wrists 2017, another CAT scan of the lumbar spine  
 24 in 2017, and an MRI in the lumbar spine of 2017.  
 25 Q Doctor, the CAT scan of the first

1 image that you list is a CAT scan December 16,  
 2 2016.  
 3 A Right.  
 4 Q You're aware that the motor  
 5 vehicle accident in this case occurred on  
 6 December 16, 2016?  
 7 A Yes.  
 8 Q What did that CAT scan show?  
 9 A So, I didn't see any fractures. I  
 10 didn't see any dislocations. There were  
 11 degenerative changes at multiple levels in the  
 12 lumbar spine.  
 13 Q The degenerative changes in the  
 14 lumbar spine you saw on December 16, 2016, could  
 15 they occur as a result of a trauma on that day?  
 16 A No.  
 17 Q How long does degeneration  
 18 typically take?  
 19 A You know, it's hard to put an  
 20 exact number. But, I mean, you know, typically  
 21 degeneration occurs over many months to many  
 22 years. You know, the -- I think that you would  
 23 say that the process is occurring well before  
 24 radiologic evidence of degeneration occurs. So,  
 25 you know, a lot of times the X-rays and things



1 like that would lag behind what's actually  
 2 happening in the body. So when you see changes  
 3 or pre-advanced changes, I mean, you could assume  
 4 they've been there for quite some time.  
 5 Q Doctor, with regard to the  
 6 thoracic spine, what were your findings?  
 7 A So the 2013 study showed, again,  
 8 multiple areas of degenerative disc disease. It  
 9 looked like there was a compression deformity, an  
 10 old one at T7, which could have been an old  
 11 traumatic deformity. It could have been an  
 12 osteoporotic compression. It could be a  
 13 degenerative wedging of the vertebral body.  
 14 There was, you know, a bunch of disc herniations  
 15 and bulges at different levels in the cervical  
 16 and thoracic and upper lumbar spine. You know,  
 17 disc bulging also where you could view the upper  
 18 midportion of the lumbar spine, you know, from  
 19 the thoracic study. Looked like there was some  
 20 disc bulging at L1-2 and L2 -- L3-4, although it  
 21 wasn't, you know -- it was not dedicated to those  
 22 areas.  
 23 Q And this was on films taken in  
 24 April of 2013?  
 25 A That's right.

1 Q And you also reviewed an MRI of  
 2 the thoracic spine of February 1st, 2017?  
 3 A Yes.  
 4 Q And what did that show?  
 5 A Again, degenerative changes  
 6 throughout the thoracic spine. Degenerative  
 7 changes in the lower cervical, upper lumbar  
 8 segments that are visualized. Again, multiple  
 9 disc abnormalities throughout the thoracic spine  
 10 that really looked very similar in appearance, if  
 11 not the same, as they did in 2013.  
 12 Q And you saw a lumbar spine MRI of  
 13 April 14th, 2013 as well?  
 14 A Yes.  
 15 Q What did that reveal?  
 16 A So, again, degenerative disc  
 17 disease at, basically, every level of the lumbar  
 18 spine. More -- even more advanced changes were  
 19 noted at L3-4 and L4-5 to include more  
 20 significant disc space narrowing. Disc  
 21 herniation at L4-5, disc bulging at L2-3, L3-4,  
 22 L5-S1. And, again, some disc herniations that  
 23 looked like they were there in the lower  
 24 thoracic, upper lumbar spine at T11-12, T12-L1  
 25 and L1-2.

1 Q And when we say lumbar spine, we  
 2 refer to L1, L2, L3, where is that in the body?  
 3 A So that's the lower portion of  
 4 your spine extending from the bottom, like, five  
 5 vertebral bodies to your pelvis and then sacrum.  
 6 Q And when you say thoracic spine,  
 7 are you referring to T11, T12, where is that?  
 8 A That's the midportion of your  
 9 spine that, you know, several, you know,  
 10 vertebral bodies through the midportion of the  
 11 spine. It's sort of the chest region.  
 12 Q And when we refer to cervical --  
 13 A Your neck. You know, the base of  
 14 your head down to the upper chest area.  
 15 Q Did you review an MRI of the  
 16 cervical spine of April 14, 2013 as well?  
 17 A Yes.  
 18 Q What did that reveal?  
 19 A So there was a fusion -- previous  
 20 fusion was evident at C5-6.  
 21 Q When you say a previous fusion,  
 22 what does that mean?  
 23 A Well, you could see -- so the  
 24 vertebral bodies at C5 and 6 have been fused  
 25 together with, like, hardware, bone grafting, the

1 disc had been removed and they try to create,  
 2 basically, a fusion at that motion segment so it  
 3 doesn't move anymore.  
 4 Q That was an operative?  
 5 A Yeah. Yes. That's a surgical  
 6 procedure.  
 7 Q And then you saw an MRI of the  
 8 cervical spine from February 1st, 2017 as well?  
 9 A Yes.  
 10 Q And what did that entail?  
 11 A Again, so, the disc fusion was  
 12 still there, obviously. A lot of degenerative  
 13 disc disease at C4-5 and C6-7. There was a  
 14 retrolisthesis of C7 on T1. Some disc  
 15 herniations were noted at C4-5 and C6-7. Disc  
 16 bulging at C3-4 was seen. The big difference in  
 17 my opinion between the 2017 and 2013 MRIs was  
 18 that the degenerative findings had worsened at  
 19 the C4-5 and C6-7 region and a disc bulge at  
 20 C3-4.  
 21 Q Doctor, I'm going to skip down to  
 22 you also looked at MRIs of March 23rd, 2017 of  
 23 the plaintiff's wrist?  
 24 A Yes.  
 25 Q What did they reveal?

1 A So there was signal abnormalities  
2 in the -- what we call the TFCC complex, which is  
3 a -- kind of like a soft tissue meniscus-type  
4 structure that adjoins the two bones of the  
5 wrist. And when I say degenerative signal,  
6 usually what you see is, you see signal change in  
7 the normal structure of the ligament which occurs  
8 from collagen breakdown and degeneration with  
9 age. But no tears that I could see, no  
10 fractures.

11 Q And the degeneration that you saw  
12 in these films of March 23rd, 2017, would that  
13 have occurred from the motor vehicle accident of  
14 December 16, 2016 to March 23rd, approximately,  
15 three months?

16 A I don't think so, no. I don't  
17 believe so.

18 Q You also saw an MRI film of the  
19 lumbar spine of February 1st, 2017; is that  
20 correct?

21 A Yes.

22 Q And what did that MRI show?

23 A Again, degenerative disc findings  
24 at all levels. Disc herniations, again, were  
25 noted in the lower thoracic and upper lumbar

1 spine, disc herniation at L4-5, disc bulging at  
2 multiple levels. And the MRI looked pretty much  
3 the same as the one in 2013. I didn't see any  
4 difference.

5 Q Was there any indication on the  
6 lumbar MRI of February 1st, 2017 taken,  
7 approximately, a month-and-a-half after the  
8 accident of any type of acute trauma to the  
9 spine?

10 A I did not see any.

11 Q Okay. And, again, you reviewed  
12 the CAT scan film taken on the day of the  
13 accident.

14 A Correct.

15 Q And did you see any acute evidence  
16 of an injury or trauma to the lumbar spine in  
17 that film?

18 A No.

19 Q Okay. Doctor, after reviewing the  
20 medical records -- you know, I'm going to ask you  
21 a couple questions about some medical records.  
22 Doctor, I'm going to show you the records of  
23 Prestige Medical and Rehabilitation's Dr. Gellis'  
24 records.

25 A Okay.

1 Q Take a -- I believe it's a  
2 December 21st, 2017, if you could find that in  
3 your records.

4 A That's January. January, February  
5 15, and I have -- they're in order.

6 Q Full chronological order. See if  
7 it's here.

8 A I'm sorry, what date?

9 Q I believe it's December 21st.

10 A Oh, I have December 21st, I have  
11 here. I thought you said February 21st.  
12 December 21st.

13 Q In those records, did the doctor  
14 take a history from the plaintiff?

15 A Yes.

16 Q And is there any kind of notation  
17 about the plaintiff's prior condition?

18 A Yes. So the -- you know, the  
19 first thing they mention that she was in a motor  
20 vehicle accident. She was hit from behind. And  
21 following the accident, she had some neck and  
22 back pain and had developed a different low back  
23 pain above the tailbone.

24 Q So it indicates that there's a  
25 different low back pain?

1 A Right.

2 Q Doctor, I'd also ask you to look  
3 in those records. Is there a listing of  
4 medication that the plaintiff was taking as of  
5 December 21st, 2016?

6 A Yes.

7 Q Are one of those medications  
8 Percocet?

9 A Yes.

10 Q And what is the -- what is the  
11 indication for the medication?

12 A So, the notation here, the  
13 recording of her Percocet usage is one tablet  
14 every 12 hours or twice a day and as needed. And  
15 this has been going on since December of 2013.  
16 So it would appear that she's taking two pills a  
17 day, everyday, and then on certain days she may  
18 be taking extra.

19 Q Is there any other medication that  
20 she's taking as of December 21st that would  
21 address pain or discomfort?

22 A Yes. So she's -- she also takes  
23 Cyclobenzaprine or Flexeril, which is a muscle  
24 relaxer and is taking that twice a day as needed.

25 Q And when did that start?

1 A March of 2014.  
 2 Q So prior to this accident she was  
 3 taking pain medication?  
 4 A Yes.  
 5 Q Based on the records that you saw?  
 6 A Yes.  
 7 Q Did the plaintiff -- did you ask  
 8 the plaintiff at her exam if she had previously  
 9 been taking pain medication?  
 10 A Yes.  
 11 Q And did she tell you she had  
 12 previously been taking pain medication?  
 13 A Yes.  
 14 Q And did she indicate the  
 15 frequency?  
 16 A Yeah. Let me just look back at my  
 17 record for -- so, according to her, at the time  
 18 of the exam, she had been -- she had been taking  
 19 Percocet once a day before the accident and had  
 20 been taking Flexeril as needed before the  
 21 accident.  
 22 Q I'm also going to ask you to take  
 23 a look at the records of the neurologist. Dr.  
 24 Van Slooten, D-6.  
 25 A Okay.

1 Q Look at the first date of  
 2 treatment by Dr. Van Slooten. I believe it is  
 3 May 10th, 2017.  
 4 A Yes.  
 5 Q Did he take a history of the  
 6 plaintiff -- from the plaintiff?  
 7 A He did.  
 8 Q And what did his history reveal?  
 9 A So, again, notes that she was in a  
 10 motor vehicle accident, had injury to her neck,  
 11 her left knee and left wrist. Wrists also.  
 12 Looks like she had low back pain as well, had  
 13 gone to the emergency room, had some studies,  
 14 went back to her medical doctor for treatment.  
 15 And he saw her because there was a question of  
 16 maybe having a concussion, but sought out some  
 17 physical therapy. Notes say complex past medical  
 18 history.  
 19 Q What is the past history?  
 20 A Well, past medical history, she  
 21 had similar symptoms. She -- so after -- so it's  
 22 a little -- so the complex past medical history  
 23 in her complaints related to the accident  
 24 included right foot numbness or the entire right  
 25 leg with a footdrop, notes, never having those

1 symptoms on the left leg with numbness going from  
 2 the groin down both legs, it says, at times. And  
 3 she reports having had bilateral footdrop and  
 4 constant low back pain and had started to walk a  
 5 bit better and had less numbness, but the  
 6 symptoms recurred. Was contemplating surgery.  
 7 Therapy for the wrists. And was recommended she  
 8 do a carpal tunnel release, but don't believe she  
 9 had that done. Was having numbness in both  
 10 hands, looks like trouble writing with one hand,  
 11 and had injections as well.  
 12 And then there's some problems  
 13 related to her head, having headaches, having  
 14 some balance and ringing in her ear problems,  
 15 confusion, she's forgetful, difficulty  
 16 concentrating, sleep problems.  
 17 Q Outside of your specialty?  
 18 A Correct.  
 19 Q Doctor, did the doctor conduct --  
 20 MR. CLARK: I'm sorry. I  
 21 apologize. What is the date of that note from  
 22 Van Slooten?  
 23 MR. MAZZIE: The first day, May  
 24 10, 2017.  
 25 MR. CLARK: Thank you. Sorry to

1 interrupt.  
 2 Q Doctor, did he go on to conduct a  
 3 physical exam of the plaintiff?  
 4 A Yes.  
 5 Q And what did he find on his exam?  
 6 A So, examination -- so from a  
 7 neurologic perspective, noted a mild reduced  
 8 range of motion of her neck, negative straight  
 9 leg raise of the lumbar spine bilaterally, no  
 10 tenderness around the sciatic nerve.  
 11 Q What -- is there any significance  
 12 to those findings?  
 13 A So, yes. I mean, you know,  
 14 similar to what I saw, she had a decreased range  
 15 of motion of her neck to some degree related to  
 16 her previous spinal fusion. And that the back  
 17 examination showed -- excuse me, no signs of  
 18 nerve tension or stretch or compression in the  
 19 sciatic nerve or any other nerve in the lower  
 20 extremities.  
 21 Q Doctor, I note that he also did a  
 22 motor strength evaluation.  
 23 A Yes.  
 24 Q And what was his finding on the  
 25 motor sense?

1 A Again, there's five over five  
2 strengths.  
3 MR. CLARK: I'm sorry to interrupt  
4 here. It's -- I guess it's somewhat of an  
5 objection, but not really an objection. He's  
6 reading in other medical records from other  
7 doctors which is selected from the thousands of  
8 pages here. We have numerous records that we'll  
9 want to use on redirect and I just don't want --  
10 I think in fairness, we should be able to do the  
11 same thing on the other records, which -- because  
12 I just -- I just -- like I don't think there  
13 should be an objection, "Well, you can't do  
14 that", because it's being done right now.  
15 MR. MAZZIE: Are we off the record  
16 or on the record, Counsel.  
17 MR. CLARK: So I'm either asking  
18 --  
19 MR. MAZZIE: Counsel, let's go off  
20 the video record if you're going to make a  
21 speech.  
22 VIDEOGRAPHER: The time is 7:24.  
23 We're off video record.  
24 MR. MAZZIE: All right. We're off  
25 the video record now.

1 MR. CLARK: Yeah, so, it's like --  
2 it's like back -- whatever. Like, what is the  
3 case? I forget the case, but you know what I'm  
4 talking about. So, like, I want to do -- I'm  
5 going to want to do the same thing on cross, and  
6 I don't think it would be fair for the defense to  
7 object and say, "You can't read and factor in  
8 other expert's findings", because that's exactly  
9 what's being done here.  
10 MR. MAZZIE: No, no.  
11 MR. CLARK: My position would be  
12 to either stop this or we're going to do the same  
13 thing, because there's numerous positive findings  
14 in the records. Thank you.  
15 MR. MAZZIE: Well, the difference  
16 is, unlike what happened today, Counsel, without  
17 getting into that, the doctor's actually  
18 explaining what the significance of these  
19 findings are in terms of his ultimate  
20 conclusions. So in that regard, it is permitted.  
21 You can't just ask him to read without having it  
22 related to his findings. But, we'll go on and  
23 we'll do what we have to do.  
24 MR. CLARK: Okay. So, if I just  
25 real quick -- so, basically, what you're saying

1 is, "Well, this gives a basis for his opinion."  
2 So what I want to do on cross is go through the  
3 contrary records to demonstrate that he didn't  
4 review and that it contradicts his basis. So,  
5 like you say, "No. It's a negative test, so,  
6 therefore, it supports my opinion. So I'm going  
7 to go through all the positive tests in the case  
8 and to cross-examine him to say that, "Well, you  
9 didn't consider that", or "That goes the other  
10 way", on what you're saying. So that's it.  
11 Thank you.  
12 MR. MAZZIE: You could ask him and  
13 I'll object or not object, depending on its  
14 appropriateness. Okay. We can go back on the  
15 record.  
16 VIDEOGRAPHER: The time is 7:26.  
17 We'll go back on video record.  
18 Q Again, Doctor, I might have asked  
19 you this before we went off the record there  
20 briefly, but what's the significance of the  
21 findings on the neurological and motor tests?  
22 A So the significance is, is that at  
23 time of this evaluation that this doctor  
24 performed, strength was normal and there were no  
25 atrophy on his exam.

1 Q Going to ask you to look at the  
2 medical records of D-8 and they're the medical  
3 records from the Hackensack neurology. Plaintiff  
4 was first seen, it appears from review of the  
5 records, on March 9, 2017?  
6 A Yes.  
7 Q And did the doctor conduct  
8 evaluation? Again, I'm going to stick to the  
9 areas that are relevant to your specialty of  
10 orthopedics. It appears on Page 4 of 26, the  
11 doctor conducted evaluation as well.  
12 A Yes.  
13 Q And in there he again conducted a  
14 motor examination?  
15 A Yes.  
16 MR. CLARK: Sorry, the date,  
17 what's the date? I said March 9, '17, but I have  
18 1/04 in that section.  
19 MR. MAZZIE: Yeah. March 9 -- the  
20 field at the bottom, Counsel, it indicates one of  
21 26, two of 26. And I'm on Page 4 of 26. Do you  
22 see what we're looking at?  
23 MR. CLARK: No. Could we go off  
24 record so -- just so we don't have to --  
25 VIDEOGRAPHER: The time is 7:28.

1 We're now off video record.  
 2 (Whereupon we're off the video and  
 3 written record.)  
 4 VIDEOGRAPHER: Time is 7:32.  
 5 We're back on video record.  
 6 Q I was asking you to look at the  
 7 evaluation conducted by the doctor at Hackensack  
 8 Neurology Group. One of the exams was a motor  
 9 examination.  
 10 A Yes.  
 11 Q And what did that exam reveal in  
 12 terms of the motor exam?  
 13 A So in the motor exam portion of  
 14 his exam, upper extremity five over five  
 15 strength, normal tone, no atrophy, left upper  
 16 extremity the same, right lower extremity  
 17 everything was normal except for a half grade or  
 18 a five minus out of five strength in the right  
 19 foot, no atrophy, normal tone. In the left lower  
 20 extremity, everything was normal.  
 21 Q And did he do a reflex test as  
 22 well?  
 23 A Yes.  
 24 Q And were the results of the reflex  
 25 test?

1 A Looks like the reflexes were of a  
 2 normal grade in all upper and lower extremities.  
 3 Q And how about the sensation test,  
 4 was that done?  
 5 A Yes.  
 6 Q And what did that reveal?  
 7 A He found normal sensation on light  
 8 touch in all extremities.  
 9 Q What's the significance of that  
 10 evaluation which occurred three-and-a-half months  
 11 post accident?  
 12 A The significance would be that  
 13 most -- most, if not all findings, are within a  
 14 normal range.  
 15 Q Ask you to look at one other  
 16 record in the case with -- these records have  
 17 been marked previously as P-14. Records are from  
 18 the Hackensack Medical Center.  
 19 A Okay.  
 20 Q And these were records that you  
 21 reviewed in conjunction with your examination of  
 22 the plaintiff, correct?  
 23 A Yes.  
 24 Q Now, in the hospital records, do  
 25 they do an evaluation, take a history?

1 A Yes.  
 2 Q And can you -- starts on Page 4.  
 3 Doctor, on the page that you just have in your  
 4 hands --  
 5 A Uh-huh.  
 6 Q -- there are some finding by Dr.  
 7 Bear (Phonetic) at the upper part of the page,  
 8 smaller print?  
 9 A Okay.  
 10 Q And what are those findings?  
 11 A So I think you're referring to --  
 12 MR. CLARK: I'm sorry, could we go  
 13 off the record for a second, please?  
 14 VIDEOGRAPHER: The time is 7:35.  
 15 We're now off video record.  
 16 (Whereupon we're off the video and  
 17 written record at this time.)  
 18 VIDEOGRAPHER: The time is 7:37.  
 19 We're back on video record.  
 20 Q Doctor, I'm giving you the  
 21 Hackensack Medical -- Hackensack University  
 22 Medical Center records and you had reviewed those  
 23 in connection with your evaluation of the  
 24 plaintiff, correct?  
 25 A Yes.

1 Q And are there any notations about  
 2 what the findings were in these records?  
 3 A Right. So there's -- there's the  
 4 history noting low back pain with no paresthesias  
 5 and the history of bulging discs. And she had  
 6 been in a car accident and had low back pain, but  
 7 no neck pain to palpation.  
 8 Q Did a doctor make any findings as  
 9 to what her injuries were?  
 10 A Well, there's a diagnosis section  
 11 where he --  
 12 MR. CLARK: Just same thing. I'm  
 13 going to do the same thing on cross, so I hope  
 14 there's not an objection saying I'm getting into  
 15 some other doctor's diagnosis, that's all.  
 16 MR. MAZZIE: Jerry, you already --  
 17 you already. Off the record.  
 18 VIDEOGRAPHER: The time is 7:38.  
 19 We're now off video record.  
 20 (Whereupon we're off the video  
 21 record at this time.)  
 22 MR. MAZZIE: This is the exact  
 23 record that you had Dr. Landa read into the  
 24 record and showed in his video. So I don't know  
 25 what your objection is.

1 MR. CLARK: I'm not sure of that.  
2 I'm just saying he's now going to read a  
3 diagnosis of another doctor, which I'm assuming  
4 is complex, which would seem to go against your  
5 position that you can't do that. So I'm going to  
6 do the same thing on cross and I just think in  
7 fairness there shouldn't be an objection to that.  
8 Like you can't say, "Now you're back to the  
9 opinion of another doctor", because that's what  
10 he's --

11 MR. MAZZIE: Jerry, Jerry, I'm  
12 reading -- he's looking at the same document that  
13 you had put up and had Dr. Landa read. So I  
14 don't know what your objection is.

15 MR. CLARK: My objection is -- you  
16 know the name of the case, whatever it is. The  
17 complex diagnosis case. And I tried to move this  
18 document into evidence today, but you didn't  
19 agree. So it's not in at this point. You may  
20 ultimately agree, but you haven't yet. So, I  
21 don't know.

22 MR. MAZZIE: Correct. Correct.  
23 But your objection is noted.

24 MR. CLARK: Thanks.

25 VIDEOGRAPHER: The time is 7:39.

1 We're back on video record.

2 Q Doctor, was there a diagnosis made  
3 in the emergency room?

4 A Yeah. I mean, according to this  
5 diagnosis there was, yes.

6 Q Okay. And you indicated that  
7 there were other findings in the emergency room  
8 records?

9 A Yes.

10 Q And you indicated a history of  
11 bulging discs?

12 A Yes.

13 Q Is there anything else significant  
14 in those records that informs your opinions I'll  
15 be asking you about in a few minutes?

16 A So just, you know -- just in the  
17 -- you know, there's according to, you know,  
18 additional history performed by people in the  
19 emergency room. Again, she did have the car  
20 accident, she had back pain, that was her  
21 complaint. She was able to ambulate afterwards.  
22 She had no other complaints. She, specifically,  
23 denied chest pain, shortness of breath, numbness,  
24 weakness, head trauma, neck pain, bleeding, you  
25 know, things of that nature.

1 Q Okay. Well, Doctor, in your  
2 report, you ultimately come to a -- conclusions  
3 as to the injuries, if any, that the plaintiff  
4 sustained in this case.

5 A Yes.

6 Q And what were your conclusions?

7 A So with regards to the cervical  
8 spine, I thought that she had a sprain or strain  
9 that had -- had healed. There was no evidence  
10 that she had a permanent injury as a result of  
11 the accident. There was significant -- obviously  
12 significant preexisting problems with her spine  
13 that required surgery. I didn't see any  
14 difference between the pre and post accident MRIs  
15 to indicate a change related to the accident,  
16 other than worsening arthritic changes.

17 She reported to me that she was  
18 back to her baseline. So, you know, would seem  
19 that she was back to where she was, so there  
20 wasn't a permanent exacerbation of an injury.  
21 And the lost of motion was, you know, likely due  
22 to her prior fusion.

23 Q And that was all as to the  
24 cervical spine?

25 A Right.

1 Q What else did you conclude?

2 A Similarly, the thoracic and lumbar  
3 spine, I felt that she had a sprain or strain  
4 related to the accident. Again, had healed  
5 without permanent injury related to the accident.  
6 You know, fortunately we had pre and post  
7 accident MRIs to look at. I don't see any  
8 difference in the -- in the findings on those  
9 studies. She's got significant arthritic changes  
10 from the thoracic to the lumbar spine and, you  
11 know, obviously also of her neck and not related  
12 to the accident. Those findings, arthritic  
13 change are not related to the accident. And I  
14 couldn't find any convincing evidence or  
15 objective studies to indicate that she suffered a  
16 new injury or permanent exacerbation of her prior  
17 complaints. And, you know, she had surgery. And  
18 I don't doubt that the surgery might have been  
19 helpful or useful. But it, in my opinion, it was  
20 related to her underlying arthritis and, you  
21 know, in the lack of any other changes in her MRI  
22 from prior to post accident.

23 Q How about with regard to her  
24 wrist?

25 A So contusions to the wrist. The,

1 you know, EMG and nerve conduction study findings  
2 of carpal tunnel syndrome bilaterally or  
3 unilaterally are often found incidentally on EMGs  
4 performed for other reasons. The absence of  
5 acute complaints of carpal tunnel pain in the  
6 emergency room speaks against a traumatic carpal  
7 tunnel syndrome and --

8 Q For a moment, just going back to  
9 the emergency, is there any complaint of a wrist  
10 injury in the hospital records?

11 A I don't recall that. No. And,  
12 you know, in my exam at the time, you know,  
13 didn't find any clinical evidence of nerve  
14 compression on exam. So, you know, I would say  
15 she had a contusion to the wrist to give her the  
16 benefit of the doubt, but there's really no  
17 complaints related to the wrist at all in the  
18 emergency room.

19 Q And, Doctor, these conclusions  
20 that you've come to, these were all within a  
21 reasonable degree of medical probability?

22 A Yes.

23 Q Doctor, a couple of questions  
24 about the term that you used, sprain and strain.  
25 What is a sprain and strain?

1 A So, typically, sprains and strains  
2 refer to injuries to muscle and ligaments.

3 Q Does a sprain always indicate that  
4 there was a tearing of the ligaments or the  
5 muscles?

6 A So, I mean, you know, you could  
7 have a stretch, doesn't necessarily mean you have  
8 to have a tear of the -- of the ligament or the  
9 or the muscle itself. I mean, it could stretch,  
10 it could, you know, cause some soreness, of  
11 course, but you don't have to have a tear of  
12 those structures.

13 Q So, for example, if I sprained my  
14 ankle and it swells up, does that mean that I  
15 tore a ligament?

16 A Well, so in the ankle, I mean, it  
17 can be a little bit different, right? But, I  
18 mean, even with an ankle sprain, I mean, there's  
19 grading of ankle sprains of, you know, one, two,  
20 three, four, whatever. The different ones you  
21 want to use. But, you know, the most minor  
22 injury would just be a little bit of a stretch of  
23 the ligament. It's not completely or partially  
24 torn, but certainly they can be in a sprain.

25 Q And can you see a tear or partial

1 tears of ligaments on an MRI?

2 A Yes.

3 Q In this case, did you see any  
4 tears of any ligaments in this case?

5 A No.

6 Q I believe that's all I have,  
7 Doctor, thank you.

8 A Thank you.

9 MR. CLARK: Can we just go off the  
10 video?

11 VIDEOGRAPHER: The time is 7:46.  
12 We're now off video record.

13 (Whereupon we're off the video and  
14 written record at this time.)

15 VIDEOGRAPHER: The time is 7:55.  
16 We're back on video record.

17 CROSS EXAMINATION BY MR. CLARK:

18 Q Dr. Rizio, I just have some, go  
19 through there. Let me get my stuff organized.  
20 You were hired here by the defense, correct?

21 A Yes.

22 Q And this would be -- you consider  
23 this like a forensic exam for litigation; is that  
24 right?

25 A Yes.

1 Q And at this point in your career,  
2 or at least as of the deposition you gave in the  
3 Faduz (Phonetic) case on June 8th of 2021, doing  
4 these defense medical exams was about 10 percent  
5 of your professional time, correct?

6 A Yes, I believe so.

7 Q And as of that deposition in the  
8 Faduz case from June of 2021, you were doing  
9 about 200 of these exams a year, correct?

10 A Yes.

11 Q And to do the exams, you get --  
12 you charge and get paid about 750 to \$1,000; is  
13 that right?

14 A Yes.

15 Q And if there are more voluminous  
16 records you'll charge even more?

17 A I can, yes.

18 Q And you testified in the Faduz  
19 case in 2021 that for court appearances you  
20 charged 3500 to \$4,000 for a half day; is that  
21 correct?

22 A Yes. But could you just tell me  
23 which case you're referring to? The last name, I  
24 don't recall ever -- the name of that and  
25 testifying. Was that with you?

1 Q The name of the case is Heather  
 2 Fiducia, Essex County, Docket Number L1977-19.  
 3 It took place on June 8th, 2021 commencing at 10  
 4 a.m.  
 5 A You said -- never mind, I'm sorry.  
 6 You said Fiducia this time. You were saying  
 7 Faduz. I didn't know what you were -- I didn't  
 8 understand what you were saying. I understand  
 9 now.  
 10 Q All right. You see it, I'm  
 11 holding it up to the camera.  
 12 A Yeah, yeah, yeah. You pronounced  
 13 it differently this time, so I understood you  
 14 better.  
 15 Q Okay.  
 16 A Thank you.  
 17 Q All right. And the vast majority  
 18 of these exams you do are on behalf of defense  
 19 attorneys or defense companies, right?  
 20 A So, like, I have both defense and  
 21 plaintiff work, but the majority, the higher  
 22 percentage is on defense side, yes.  
 23 Q Okay. And you used to do these  
 24 defense medical exams for a defense medical exam  
 25 company called Exam Works, correct?

1 A I did a long time ago, yes.  
 2 Q All right. And when you did the  
 3 defense medical exams for Exam Works, the  
 4 percentage of defense exams was even higher than  
 5 your exams now, correct?  
 6 A Well, so at that time I was doing  
 7 exams for them which, yes, was a higher  
 8 percentage. But don't forget, I also have a  
 9 practice where I would testify if my patients  
 10 needed me to and they got injured and I was able  
 11 to do independent work. I wasn't bound to only  
 12 doing work for Exam Works. So for Exam Works  
 13 specifically you're absolutely right, but the  
 14 percentages overall I would say were very  
 15 similar.  
 16 Q Okay. And the vast majority now  
 17 according to your testimony in the Fiducia case,  
 18 it's -- the vast majority is for the defense,  
 19 right?  
 20 A I would say it's about 80 percent  
 21 to 85 percent defense, 15 to 20 percent  
 22 plaintiff.  
 23 Q And the plaintiff exams would  
 24 generally be if it's one of your own patients,  
 25 correct?

1 A Back then more so, but I also get  
 2 requests for evaluations from attorneys like  
 3 yourself.  
 4 Q Okay. So if you do about 200  
 5 exams a year, that comes out to -- at the price  
 6 we said, that comes out to charging about  
 7 \$135,000 a year for exams; is that about right?  
 8 A That's right.  
 9 Q But that doesn't include  
 10 testifying in court. So of the 200 people, the  
 11 200 exams like this that you do, if you testify  
 12 in court, say, a half day court or two hour dep,  
 13 deposition, you could potentially make well in  
 14 the millions a year doing these, correct, if we  
 15 do the math?  
 16 A No.  
 17 MR. MAZZIE: Objection.  
 18 Objection.  
 19 VIDEOGRAPHER: The time is 7:59.  
 20 We're now off video record.  
 21 (Whereupon we're off the video  
 22 record at this time.)  
 23 MR. MAZZIE: Counsel, in order to  
 24 make in the millions as you suggest, would  
 25 require him to appear about 200 times a year in

1 court. So, that's, you know, an absurd  
 2 statement. We can go back on the record.  
 3 VIDEOGRAPHER: The time is 8  
 4 o'clock. We are back on video record.  
 5 Q Dr. Rizio, after you left the  
 6 defense exam company Exam Works, you started your  
 7 own company called Expert Exam Services, correct?  
 8 A Many years later, but, yes.  
 9 Q And that's still an operating  
 10 company, correct?  
 11 A Yes.  
 12 Q And you have a website for that  
 13 company, right?  
 14 A Yes.  
 15 Q And the website advertises that  
 16 expert exam services better serve attorneys and  
 17 defense companies in need of these medical exams,  
 18 you, basically, have to that effect on the  
 19 website, correct?  
 20 MR. MAZZIE: Counsel, is that --  
 21 object to the form. Off the record.  
 22 VIDEOGRAPHER: The time is 8  
 23 o'clock. We're now off video record.  
 24 MR. MAZZIE: You act as if you're  
 25 reading the web page. And that's what you're



1 doing, it's fine, but to say your web page  
 2 suggests X is inappropriate. It says what it  
 3 says.  
 4 VIDEOGRAPHER: Time is 8:01.  
 5 We're back on video record.  
 6 Q Doctor, do you need the question  
 7 read back?  
 8 A Yes.  
 9 MR. CLARK: Could the court  
 10 reporter please read back the question.  
 11 (Whereupon the previous question  
 12 was read back.)  
 13 ("Question: And the website  
 14 advertises that expert exam services better serve  
 15 attorneys and defense companies in need of these  
 16 medical exams, you, basically, have to that  
 17 effect on the website, correct?")  
 18 A So I don't think that's the exact  
 19 language, but I don't recall. But I would say  
 20 that my web page says that I assist attorneys,  
 21 insurance companies or parties involved in this  
 22 type of work resolve their matters. I don't  
 23 think that I say that I only represent one group.  
 24 Q And do you -- you also -- do you  
 25 remember you gave testimony in the Peruchi

1 (Phonetic) case which was Morris County Docket  
 2 Number 1177-19 on May 25th, 2021?  
 3 A Peruchi?  
 4 Q Peruchi. Maryann Peruchi, where  
 5 you were hired by the defense in that case.  
 6 A I think you mean Petrucci, but I  
 7 think I gave -- I believe I gave a deposition on  
 8 a Petrucci.  
 9 Q And you got into this type of work  
 10 -- you're doing this work for the money,  
 11 basically, right?  
 12 A You know, we all work for  
 13 compensation and for our expertise. So, yes,  
 14 this -- this helps me earn extra income, yes.  
 15 Q Okay. In fact, you testified, "I  
 16 did it for the revenue to keep working. Yes, I  
 17 understand revenue is money, though, right?" And  
 18 answer, "Exactly." Does that sound --  
 19 A So I see what you're doing.  
 20 Right. So you're paraphrasing a conversation I  
 21 had with, I think -- I can't remember -- Capozzi  
 22 or something like that, that attorney, is that  
 23 who you're talking about?  
 24 Q That's the sworn deposition  
 25 testimony.

1 A That's not what I asked you. I  
 2 asked if you're asking me about the deposition I  
 3 gave with Capozzi. And you're paraphrasing it.  
 4 And I was trying to explain it better. Can you  
 5 tell me if that's what I'm referring to or you're  
 6 referring to?  
 7 Q Well, what we could do is we could  
 8 go off the record. We'll get you a copy of the  
 9 deposition transcript. And if you'd like, you  
 10 could just read the question and answer exactly.  
 11 So why don't we go off the record and we'll do  
 12 that.  
 13 A Sure.  
 14 VIDEOGRAPHER: The time is 8:04.  
 15 We're now off video record.  
 16 (Whereupon we're off the video and  
 17 written record at this time.)  
 18 (Whereupon we're back on the  
 19 written record at this time.)  
 20 MR. CLARK: He's on cross, so I  
 21 just want to make sure that there's no  
 22 consultation with the person during cross, that's  
 23 correct?  
 24 MR. MAZZIE: Right. I don't know  
 25 how he would be consulting with me when I'm on a

1 different floor and he's in a different room, but  
 2 that's okay.  
 3 MR. CLARK: No, that's fine. I  
 4 don't know -- you know, I want to make sure that  
 5 the doctor knows that too. So, he's in the room,  
 6 the record will reflect. So he heard it. So he  
 7 knows. Okay. So -- also, Mr. Mazzie, you know,  
 8 the doctor started asking me questions and you  
 9 know it doesn't work that way. I don't know if  
 10 you want to talk to him or anything, because -- I  
 11 mean, he's going to ask me questions, so I'm just  
 12 going to ignore him and go on.  
 13 MR. MAZZIE: Well, if he's --  
 14 MR. CLARK: Unless it's  
 15 clarification or something, but --  
 16 MR. MAZZIE: He doesn't understand  
 17 something, I think it was really an effort to  
 18 clarify what you're asking about, but he  
 19 understands. He's here. He's a very pretty --  
 20 fairly intelligent guy.  
 21 MR. CLARK: All right. So we can  
 22 go back on. I'm going to be on Page 15 of the  
 23 Petrucci deposition starting at line 25.  
 24 VIDEOGRAPHER: The time is 8:23.  
 25 We're back on video record.

1 Q Doctor, I'm going to read to you  
2 from the Petrucci deposition on Page 15 line 25  
3 and I just want to make sure I read it correctly,  
4 because you have that -- you were concerned about  
5 that:

6 "Question: And why did you get  
7 into that type of work?

8 Answer: So at the time, you know,  
9 I was starting my own practice. I was carrying a  
10 lot of expenses. I was looking to supplement the  
11 revenue to help keep my practice going until I  
12 built a patient base.

13 Question: So you -- so you, yes.  
14 So you did it for the money, basically, right?

15 Answer: I did it for revenue to  
16 keep working. I had a family.

17 Question: Yes, I understand.  
18 Revenue is money, though, right?

19 Answer: Exactly."  
20 Did I read that correctly?

21 A This time, yes.

22 Q And also, just in terms of the  
23 math briefly, if you do about 200 exams a year  
24 and you charge between 750 and 1,000 just for the  
25 exam, and you take the middle of that, that would

1 We're back on video record.

2 Q All right, Doctor. And you would  
3 also charge a separate fee for doing addendum  
4 reports, that is additional reports on the same  
5 case; is that right?

6 A Yes.

7 Q Okay. All right. Let's go to --

8 MR. CLARK: Let's go off the video  
9 for a second?

10 VIDEOGRAPHER: The time is 8:29.

11 We're off video record.

12 (Whereupon we're off the video and  
13 written record at this time.)

14 VIDEOGRAPHER: The time is 8:29.

15 We're back on video record.

16 Q Doctor, I want to take a look at  
17 your report and talk about that. First of all,  
18 do you recall that our office sent a nurse to the  
19 defense medical exam in this case with you and  
20 Linda, do you recall that?

21 A Yes, I do.

22 Q And do you understand that she was  
23 there observing and recording what was happening?

24 A Yes.

25 Q Okay. Now, first of all, the exam

1 be about 875, right?

2 A Yes.

3 Q Okay. And 875 times 200 comes out  
4 to 175,000, correct?

5 A Yes.

6 Q But you also charge for a -- to  
7 film -- to review films you charge separately for  
8 that, correct?

9 A No. I mean, I charge -- I review  
10 the films as a part of the exam. If I get extra  
11 films later, yes, I charge extra.

12 Q I thought from the depositions  
13 that you charge \$100 for a film review.

14 A No. If it's a supplemental I  
15 charge extra. So a lot of times -- many times  
16 the films will come in separately. So in that  
17 case I charge separately.

18 Q Okay.

19 MR. CLARK: Could we just go off  
20 for a second, the video.

21 VIDEOGRAPHER: The time is 8:24.

22 We're now off video record.

23 (Whereupon we're off the video  
24 record at this time.)

25 VIDEOGRAPHER: The time is 8:28.

1 was scheduled to start at 2:30, do you remember  
2 that?

3 A I don't remember the exact time.  
4 I'll take your word for it.

5 Q And isn't it true that Linda and  
6 the nurse were waiting in the exam room for over  
7 a half hour when you came in?

8 A I don't recall how long they were  
9 waiting, but they may have been waiting, yes.

10 Q And when you went in the room,  
11 didn't you say, "And there's about 5,000 pages of  
12 records and sometimes it takes a little bit  
13 longer", do you remember saying that?

14 A I don't remember exactly, but I  
15 know there were very large amount of records, so  
16 I may have said that.

17 Q And do you typically review the  
18 records before the exam? Like, how does that  
19 work? Do you review it days before or before the  
20 exam starts or how does that work for you?

21 A As I said earlier in Mr. Mazzie's  
22 question, I try to review as much as I can before  
23 the examination. Sometimes some of these records  
24 are reviewed before -- immediately before the  
25 exam, sometimes the night before, and sometimes I

1 have to re-review after the exam. I believe I  
2 had to do a little bit of everything here with  
3 this one because there was a lot of records.

4 Q All right. Now, you wrote in your  
5 report that she was 67 when you examined her,  
6 right?

7 A Yes.

8 Q I'm on it looks like the history  
9 section of your report. But she was 64 at the  
10 time of the crash, right?

11 A I have to do the math, but let's  
12 see. I guess -- I guess that's probably  
13 accurate, 64.

14 Q Okay. Now, you wrote in your  
15 report that -- in the history section, "She does  
16 report having prior injuries to her neck and  
17 thoracic spine." And then it says, "The feels",  
18 but I think we'll say she feels. "She feels that  
19 she never had any treatment or studies of her  
20 lumbar spine prior to the accident." Do you see  
21 that there in your report?

22 A Yes.

23 Q But isn't it true that she told  
24 you that she did, in fact, have a prior study,  
25 which included an MRI of her low back?

1 they did my entire spine. But complaints of pain  
2 in my low back, no."

3 Isn't that what the exchange was  
4 during that exam?

5 A If that's what your nurse  
6 recorded, that's -- but she remembers -- I don't  
7 remember that specifically, but I'll take your  
8 word for it.

9 Q Well, you don't have to take my  
10 word, we could play an audio recording of that.  
11 Would you like us to play it?

12 A You don't have to. Look, if  
13 that's what was said, that's what was said.

14 Q Okay. So, again, Linda said,  
15 quote, "I had MRIs of it because they did my  
16 entire spine. But complaints of pain in my low  
17 back, no." So you're not disputing that she told  
18 you that at the exam?

19 A No.

20 Q Okay. But you wrote in your  
21 report, "She feels that she never had any  
22 treatment or studies of her lumbar spine prior to  
23 the accident." I read that correctly from  
24 report, correct.

25 A That's right.

1 A I recorded what she told me. And  
2 if she told me that she had a prior study or she  
3 was certain of it, that's not what I recall and I  
4 recorded. But there was confusion on her part  
5 and that's what I recorded.

6 Q Isn't it true that the exchange  
7 went like this:

8 "Dr. Louis Rizio: So you deny --  
9 so you deny ever having a low back problem before  
10 this accident?" Question.

11 Linda Brehme: I had no pain in my  
12 low back, no.

13 Dr. Rizio: That's not quite the  
14 same as what I'm asking. I'm asking if you ever  
15 had a problem with it before, even if it was fine  
16 up until the accident.

17 Linda: A problem with it? No.

18 Dr. Rizio: Okay. So never? The  
19 low back was completely fine, you never had an  
20 issue?

21 Linda: It did not bother me.

22 Dr. Rizio: Right. And you never  
23 had any workup for your low back because of pain,  
24 you never had an accident for low back.

25 Linda: I had MRIs of it, because

1 Q And she freely told you that she  
2 had cervical surgery in 1992, right, that's not  
3 something that she hid from you?

4 A I believe that's true, yes.

5 Q And she also told you that she had  
6 thoracic surgery around the same time. And she  
7 might have gotten wrong, it might have been the  
8 neck in '92 and the midback in '93 or vice versa,  
9 but she as honest with you about those two  
10 things, correct?

11 A Yes.

12 Q And she also told you that she had  
13 a problem with her knee, but that her knee is now  
14 fine, correct? As of the time of your exam. She  
15 didn't say, "Oh, my knee -- you know, my knee is  
16 still a problem." She didn't do that, right?

17 A No.

18 Q Okay. Now, in the history section  
19 of your report, I'm looking at that and I'm  
20 comparing it to what she told you at the defense  
21 medical exam. And isn't it true that you asked  
22 her, quote, "Did you lose any time from work?"  
23 And Linda says, "Yes." And you then ask, "How  
24 long?" And Linda says, "Since the accident, I  
25 was -- I worked two weeks after that and the rest

1 of the time I have not worked." And then Dr.  
 2 Rizio, "So you haven't worked since the  
 3 accident?" And Linda says, "No." Do you dispute  
 4 that's what the exchange was at the defense  
 5 medical exam?  
 6 A No.  
 7 Q But I didn't see anything in your  
 8 report in the history section or otherwise where  
 9 you noted that. Did I miss something? I could  
 10 have missed it, but I'm not --  
 11 A I have to go through the record.  
 12 I thought I put in the record that she never went  
 13 back to work, but I don't recall. I have to go  
 14 through it.  
 15 MR. MAZZIE: Look through your  
 16 report, Doctor.  
 17 A Says that she was working as a  
 18 salesperson for a company and never returned to  
 19 work.  
 20 Q Okay.  
 21 A Is that what you were asking?  
 22 Q Yes. So thanks for finding it for  
 23 me, because I didn't find it. Now, she also told  
 24 you that, "I wear braces" -- "I wear wrist braces  
 25 at night. I have them with me if you want to see

1 them." Do you dispute that she told you that at  
 2 the exam?  
 3 A No.  
 4 Q Okay. You didn't note anything in  
 5 your report about her needing wrist braces, did  
 6 you?  
 7 A I can look through it again for  
 8 you if you want. I don't recall.  
 9 MR. MAZZIE: Note my objection to  
 10 the form of the question.  
 11 MR. CLARK: Let's go off the  
 12 video, please, while the doctor is looking.  
 13 VIDEOGRAPHER: The time is 8:37.  
 14 We're now off video record.  
 15 A We're good.  
 16 MR. CLARK: We can go back on?  
 17 THE WITNESS: Sure.  
 18 MR. MAZZIE: Go on the record.  
 19 VIDEOGRAPHER: Time is 8:38.  
 20 We're back on video record.  
 21 MR. MAZZIE: Note my objection to  
 22 the form of the question. You indicated that the  
 23 report doesn't indicate that she needed wrist  
 24 braces. There's no indication that just because  
 25 your client brought them, that there's a need for

1 wrist braces. So if you want to ask the question  
 2 in a different form, I'm fine with that.  
 3 Q Doctor, I'll ask the question  
 4 basically the same way as before. She told you  
 5 at the exam, quote -- or you asked her -- strike  
 6 that. I went to the next page. She told you at  
 7 the exam, quote, "I wear wrist braces at night.  
 8 I have them with me if you want to see them."  
 9 You didn't write that anywhere in your report,  
 10 did you?  
 11 A I don't see it in my report.  
 12 Q Okay. And she also told you -- or  
 13 strike that. Now, in your history section going  
 14 back to the exam or the history section, you also  
 15 left out the following exchange that occurred at  
 16 the defense medical exam. Linda, "Maintenance"  
 17 -- strike that.  
 18 "Dr. Rizio: What, since you had  
 19 the back problem after the accident and the  
 20 surgery, what can't you do now that you did  
 21 before of the low back.  
 22 Linda: Maintenance around the  
 23 house. Maintenance inside my house. I had brand  
 24 new snowblower delivered two days before he hit  
 25 me. It's still never being started, because I

1 can't do that. I can't walk my dog. Mostly it's  
 2 pain 24/7. It's pain.  
 3 Dr. Rizio: Right."  
 4 And then that is not in your  
 5 report, is it? And if it's going to take any  
 6 time, we'll go off the record so the jury doesn't  
 7 have to sit while you're looking.  
 8 A It doesn't have to take any time,  
 9 because I said in the statement that she has  
 10 difficulty with household chores. All of those  
 11 things are considered household chores in my  
 12 opinion. I think that adequately covers it.  
 13 Q Okay. And she also said to you,  
 14 "It affects standing, walking." Dr. Rizio,  
 15 "Sitting for long periods?" Linda, "Sitting. I  
 16 mean, there isn't any part of my leg that's not  
 17 affected by this, physically, emotionally,  
 18 financially. The biggest thing is I live alone.  
 19 And maintaining my home -- we've owned that home  
 20 for 100 years. I don't want to have to give it  
 21 up because of this. But right now, I'm  
 22 struggling, which is extremely upsetting." You  
 23 didn't write that in your report.  
 24 MR. MAZZIE: Note my objection,  
 25 Counsel.

1 VIDEOGRAPHER: The time is 8:40.  
 2 We're now off video record.  
 3 (Whereupon we're off the video  
 4 record at this time.)  
 5 MR. MAZZIE: He's not going to --  
 6 I'm not going to permit it, because I'll stop the  
 7 dep. We'll do whatever we have to do. You're  
 8 not just going to read a purported transcript and  
 9 then ask the doctor if he wrote verbatim what the  
 10 plaintiff said. It's not appropriate. It's not  
 11 anything that's been provided in discovery. And  
 12 I'm not going to let you continue to repeat what  
 13 your plaintiff alleges are her problems from  
 14 three years ago, and then ask the doctor if he  
 15 wrote verbatim what the plaintiff said, because  
 16 there is no quotations in the report.  
 17 MR. CLARK: Okay. Well, I'm going  
 18 to respond to that. The doctor spent a lot of  
 19 time on direct examination talking about how he  
 20 took a complete history of the plaintiff, and  
 21 what she told him and what she didn't tell him.  
 22 And the doctor left out significant issues in  
 23 that and we're cross-examining him on that.  
 24 Now --  
 25 MR. MAZZIE: Counsel --

1 MR. CLARK: I'm sorry. I didn't  
 2 interrupt when you gave your presentation. So, I  
 3 believe it's fair cross-examination. And I asked  
 4 the doctor if he disputes that's what happened  
 5 there. If he disputes it, we can deal with it.  
 6 But so far he has not disputed what occurred,  
 7 what the exchange was. And it's relevant and  
 8 fair cross-examination. And that's our position.  
 9 MR. MAZZIE: It's not relevant to  
 10 repeat everything that your client may have  
 11 voluntarily said, about it's creating a financial  
 12 hardship. That has nothing to do with the  
 13 doctor's evaluation. So, I'll ask the court  
 14 reporter to please mark this part of the  
 15 transcript. And since we're doing this on an  
 16 expedited basis, I'll have the motion filed prior  
 17 to playing the video.  
 18 MR. CLARK: And --  
 19 MR. CLARK: I think that if the  
 20 defendant -- defense wanted to redirect the  
 21 doctor on that and have him explain whether or  
 22 not it's relevant and why he didn't include it, I  
 23 think that would probably be appropriate. But to  
 24 bar the jury from knowing that things were said  
 25 and were not included in his report, would not be

1 fair to the jury. It's fact-finding function in  
 2 this case and getting to the truth of the matter.  
 3 That's my --  
 4 MR. MAZZIE: We'll let the judge  
 5 decide that.  
 6 MR. CLARK: So -- Maribel, could  
 7 you please just make sure you have the question  
 8 cued up so that there can be -- so we're not  
 9 waiting to have it read back? I'm assuming the  
 10 doctor is going to need it read back.  
 11 THE WITNESS: I honestly don't  
 12 need you to read it back.  
 13 MR. CLARK: All right. If you  
 14 don't need it read back, that's fine.  
 15 VIDEOGRAPHER: The time is 8:44.  
 16 We're back on video record.  
 17 Q Doctor, do you dispute that that  
 18 is what the exchange was during that portion of  
 19 the defense medical exam of you and Linda, do you  
 20 dispute that?  
 21 A No.  
 22 Q And that is not in your report;  
 23 isn't that correct?  
 24 A What's in my report is that she  
 25 has difficulty with household chores, walking,

1 standing and sitting. Relevant to the orthopedic  
 2 evaluation, it would be very difficult to write  
 3 every single thing down verbatim. So I have the  
 4 things that I noted which she also complained of.  
 5 Q Now, with respect to the test of  
 6 the neck that you did, you said on -- in your  
 7 report that cervical spine shows no tenderness to  
 8 palpation about the cervical spine and it showed  
 9 a near full range of motion, you wrote that?  
 10 A Yes.  
 11 Q Okay. And isn't one of the tests  
 12 when you do that when you have -- where you had  
 13 Linda bend -- bend her neck up to the ceiling,  
 14 like, to look up, isn't that what that test is?  
 15 A That's one of the ranges of  
 16 motion, yes.  
 17 Q Okay. And isn't it true that when  
 18 she did that test that there was pain; isn't that  
 19 true?  
 20 A I don't recall.  
 21 Q Okay. Now, you also talked about  
 22 the -- just going back here in my notes, the  
 23 lumbar physical exam. I wrote here that you said  
 24 was afraid or did not want to do things. And in  
 25 terms of bending and touching her toes, that she

1 was apprehensive and would not do it. Do you  
 2 recall that you testified to that on direct  
 3 examination?  
 4 A My recollection was that she was  
 5 unsteady and was concerned about doing it and it  
 6 hurt too much, so I didn't force her to do more  
 7 than she could.  
 8 Q Okay. I just wrote down on direct  
 9 you said she was afraid or -- but that's all  
 10 right. I'm not going to repeat it. Isn't it  
 11 true that when you had her perform that test and  
 12 isn't it true that you said to her, "Now, I want  
 13 you to go to the side and the other side, okay?"  
 14 And then she proceeded to do that and said, "I'm  
 15 losing my balance." And then you said, "Yup, you  
 16 can sit. Is that better?" And Linda said,  
 17 "Yeah." Isn't that what happened when you did  
 18 the lumbar test?  
 19 A I believe so. But, like I said,  
 20 she was unsteady, so I didn't push her. I think  
 21 I testified to that already.  
 22 Q All right.  
 23 MR. CLARK: Let's just go off the  
 24 video for a second.  
 25 VIDEOGRAPHER: The time is 8:47.

1 We're now off video record.  
 2 (Whereupon we're off the video and  
 3 written record at this time.)  
 4 MR. CLARK: Let's go back on.  
 5 VIDEOGRAPHER: The time is 8:48.  
 6 We're back on video record.  
 7 Q Doctor --  
 8 MR. CLARK: Let's go off. I'm  
 9 sorry.  
 10 VIDEOGRAPHER: The time is 8:48.  
 11 We're now off video record.  
 12 (Whereupon we're off the video and  
 13 written record at this time.)  
 14 MR. CLARK: All right.  
 15 VIDEOGRAPHER: The time is 8:50.  
 16 We're back on video record.  
 17 Q Doctor, do you remember there was  
 18 direct examination about Dr. Gellis' records?  
 19 A This evening?  
 20 Q Yes. Direct examination from  
 21 defense counsel, yes.  
 22 A Yes.  
 23 Q Okay. We're now at the 12/26 --  
 24 the record from 12/21/2016. The same record you  
 25 were asked about on direct examination. Now, do

1 you see the objective section on the page there,  
 2 it begins, "None" --  
 3 A I do. I do.  
 4 Q Okay. Right. And it says, "None  
 5 motor tensive with evident neck and back  
 6 stiffness", do you see that?  
 7 A How many lines down?  
 8 Q It's right under the objective  
 9 testing section or the objective section, the  
 10 first sentence.  
 11 A Okay. So that's on the next page.  
 12 Q Yes. Could you read that first  
 13 sentence into the record, please?  
 14 MR. MAZZIE: Let me see the  
 15 record.  
 16 MR. CLARK: Let's just go off the  
 17 video record while defense counsel is looking at  
 18 it.  
 19 VIDEOGRAPHER: It's 8:51. We're  
 20 now off video record.  
 21 (Whereupon we're off the video and  
 22 written record at this time.)  
 23 Q Okay. Would you please read that  
 24 first sentence into the record?  
 25 VIDEOGRAPHER: Let me get us back

1 on. The time is 8:52. We're back on video  
 2 record. I'm sorry, I don't mean to interrupt,  
 3 but we're back on record. So I'm ready when you  
 4 are.  
 5 MR. CLARK: Are we on the video  
 6 record?  
 7 MR. MAZZIE: Yes.  
 8 VIDEOGRAPHER: Yes.  
 9 Q Okay. Can you please read that  
 10 sentence into the record under objective?  
 11 A Yes.  
 12 Q First sentence.  
 13 A Yes. "Normal tensive with evident  
 14 neck and back stiffness."  
 15 Q And the neck range of motion says  
 16 flexion was 20 degrees and normal is 45 degrees,  
 17 right?  
 18 A Oh, I'm sorry, you're going  
 19 further down. On this record it says, yes,  
 20 normal 45 degrees. This is 20 degrees.  
 21 Q Okay. And then with the neck it  
 22 goes down to extension, left leg rotation. It  
 23 goes down to several different things and all  
 24 those ranges of motion are deficient, correct,  
 25 they're both significantly below the normal

1 range?  
 2 A Well, the normal range that he  
 3 lists, yes.  
 4 Q Okay. And when we go to the  
 5 lumbosacral section, which that would be the low  
 6 back and the midback, right, lumbosacral?  
 7 A No. It would not be the midback.  
 8 It would be the low back.  
 9 Q All right. And there's range of  
 10 motion there as well, right?  
 11 A Yes.  
 12 Q And those are -- appear to all be  
 13 deficient as well. For example, flexion is 30  
 14 degrees, normal is 90 degrees, extension is 10  
 15 degrees, normal is 25; is that correct?  
 16 A Yes.  
 17 Q Okay. And if we continue down in  
 18 the plan section from Dr. Gellis' records from  
 19 this note, do you see the plan section?  
 20 A Yes.  
 21 Q And can you -- it says -- if you  
 22 read it, it says, "Referral to orthopedist or  
 23 neurosurgeon due to seriousness of injury --  
 24 MR. MAZZIE: Note my objection.  
 25 Off the record.

1 VIDEOGRAPHER: The time is 8:54.  
 2 We're now off the video record.  
 3 (Whereupon we're off the video  
 4 record at this time.)  
 5 MR. MAZZIE: It's not a finding,  
 6 Counsel. I'm not going to let him answer a  
 7 question that has to do with a non-finding  
 8 recommendation, that's not evidence of anything.  
 9 MR. CLARK: We disagree and it's  
 10 cross-examination, and he can be redirected on  
 11 that.  
 12 MR. MAZZIE: No, Counsel.  
 13 Counsel, you're not -- when you asked about  
 14 objective findings, that's fine. I let you ask  
 15 the question. I'm not going to let you ask  
 16 questions about referrals or recommendations that  
 17 has nothing to do with the case and you're not  
 18 going to get it in through the back door.  
 19 MR. CLARK: Can you let us know  
 20 when we're back on?  
 21 MR. MAZZIE: Okay.  
 22 VIDEOGRAPHER: Time is 8:55.  
 23 We're back on video record.  
 24 Q Okay. Doctor, he wrote there the  
 25 plan was referral to orthopedist or neurosurgeon

1 due to seriousness of injury superimposed on  
 2 prior injury status postsurgeries, correct?  
 3 A That's what he wrote.  
 4 Q Okay. Now, there is another note  
 5 here from January 20 of 2017 from Dr. Gellis as  
 6 well, do you have that?  
 7 A Yes.  
 8 Q Okay. And that has essentially  
 9 the same objective findings, including the neck  
 10 back and stiffness and the limited range of  
 11 motion similar to what we talked about earlier,  
 12 correct?  
 13 A I mean, I don't know if you want  
 14 me to go over each and every comparison between  
 15 those, but they're broadly. There are still  
 16 limitations. A lot of it looks like she just  
 17 copied and pasted her last note. But, yes.  
 18 Q Okay. By the way, do you -- do  
 19 you even know Linda? Like, if you bumped into  
 20 her in the street, would you recognize her or  
 21 anything?  
 22 A I don't know.  
 23 Q I mean --  
 24 A I don't know her, personally. If  
 25 I knew her, personally, I wouldn't have done her

1 evaluation.  
 2 Q Do you see her anywhere on the  
 3 screen here with all these people that are -- do  
 4 you recognize her or anything or recognize --  
 5 MR. MAZZIE: Note my objection,  
 6 Counsel.  
 7 VIDEOGRAPHER: The time is 8:57.  
 8 We're now off video record.  
 9 MR. MAZZIE: I don't understand  
 10 what the question is, Counsel. You're saying  
 11 she's in the room, not in the room. This is not  
 12 a criminal prosecution. I don't understand the  
 13 question. So note my objection and the witness  
 14 can answer it. Court reporter, just please make  
 15 a list of all objections when the transcript is  
 16 made. We can go back on the record.  
 17 VIDEOGRAPHER: The time is 8:57.  
 18 We're back on video record.  
 19 Q Okay. Do you need the question  
 20 read back, Doctor?  
 21 A I don't think so. I think you're  
 22 asking me if I would recognize Ms. Brehme out in  
 23 public. I'm not sure that I would. I note that  
 24 there's a person sitting in your office way in  
 25 the background. I don't know if you are trying

1 to bring her into the room, if that's her. I  
2 can't tell. So I don't know what you're -- I  
3 don't know what you're doing, but I don't know  
4 her socially. I don't know her, personally, or  
5 any of those thing. If I've ever run into her  
6 out of the office that day, I have no idea.

7 Q So if you bumped into her in the  
8 street, would you recognize her or not?

9 A I doubt it.

10 Q Okay. Thank you.

11 MR. CLARK: Let's go off the while  
12 we pull up the next record.

13 VIDEOGRAPHER: Time is 8:58.  
14 We're off video record.

15 (Whereupon we're off the video and  
16 written record at this time.)

17 MR. CLARK: Okay. We can go back  
18 on. So we're at the Van Slooten record, if you  
19 want to have that in front of you.

20 VIDEOGRAPHER: The time is 8:59.  
21 We're back on video record.

22 Q Okay. Doctor, do you have those  
23 Van Slooten records in front of you?

24 A I do.

25 Q Do you recall you were asked

1 o'clock. We're back on video record.

2 Q That's in there, correct?

3 A Say it again, the question.

4 Q A few sentences down beyond that,  
5 it also states that she hyperextended her wrists  
6 on the steering wheel, correct?

7 A History section. Yes, in the  
8 history, that's what's recorded.

9 Q Okay. And do you remember on  
10 direct examination that you said that the back  
11 exam showed no deficits in the back and there was  
12 -- do you recall that?

13 A Are you talking about this note  
14 from Dr. Van Slooten?

15 Q Yeah, we're still on the same  
16 note. And I'm just referring to your direct  
17 examination testimony where I wrote down that you  
18 essentially said the back exam showed no deficits  
19 in the back.

20 A I would have to go through the  
21 exam again, but I can do that for you if you'd  
22 like.

23 Q No. I'm just asking whether or  
24 not you recall that you testified on direct  
25 examination that the record indicated that the

1 questions on direct examination about the Van  
2 Slooten records?

3 A Yes.

4 Q All right. So we're at the note  
5 from May 10 of 2017.

6 A Okay.

7 Q And if you could read in the first  
8 two sentences of the history of present illness  
9 on there?

10 A Sure. "Patient is a 64-year-old  
11 female who was involved in a motor vehicle  
12 accident on 12/16/16. She was the driver of her  
13 vehicle with her seat belt on and she was stopped  
14 at a light."

15 Q It also indicates down a few  
16 sentences more that she hyperextended her wrist  
17 on the steering wheel, correct?

18 MR. MAZZIE: Note my objection.

19 VIDEOGRAPHER: The time is 9  
20 o'clock. We're now off video record.

21 MR. MAZZIE: This has nothing to  
22 do with an examination. It's purely history.  
23 It's inappropriate questioning. We can go back  
24 on the record. I'll move to strike.

25 VIDEOGRAPHER: The time is 9

1 back exam showed no deficits in the back, do you  
2 recall testifying to that?

3 A I recall testifying that her motor  
4 function and -- was normal and there was no  
5 atrophy and that -- that's what I recall  
6 commenting on. I don't think I recall like every  
7 part of the physical exam. So if there's  
8 something else you'd like me to comment on, I'm  
9 happy to do so.

10 Q Well, I just -- we're just going  
11 to ask the question. And if you could just  
12 listen to the question and answer it, because it  
13 would go a little more quicker.

14 A They're ambiguous.

15 Q Just so -- the question is very  
16 simple. Do you recall testifying in direct  
17 examination that you said the back exam showed no  
18 deficits, do you recall testifying to that?  
19 That's a yes or no question.

20 A Well, my recollection is that I  
21 recall the things I commented on, whereas not  
22 every part of this examination. So what I  
23 commented on, I recall it not being a deficit.

24 Q Okay. So that's a no or that you  
25 -- that's a yes, you do recall saying that?



1 A I just think the question is  
 2 confusing and I should be able to clarify. But,  
 3 I'll make -- you know, from what I remember, what  
 4 I looked at, that's what I said, yes.  
 5 Q In any event you did not say on  
 6 direct examination or note to us that the gait --  
 7 stated that she was unable to tandem walk or walk  
 8 on her heels, you didn't say that on direct  
 9 examination, correct?  
 10 A No, because we didn't cover -- I  
 11 don't recall covering her gait portion of this  
 12 exam.  
 13 Q Well, the heel-to-toe test, that's  
 14 a test for problems in the low back, isn't it?  
 15 A It's a gait and it has many  
 16 different potential causes, but we didn't cover  
 17 the gait part of this exam in the original  
 18 questioning. So that's -- that's my point.  
 19 Q But --  
 20 A I'd be happy to go over it.  
 21 Q The gait exam does say that she  
 22 was unable to tandem walk or walk on her heels,  
 23 correct, it says that?  
 24 A Yes. Now that I'm looking at it  
 25 and you're asking me specifically about the gait,

1 I totally agree with you.  
 2 Q Okay. Thank you. Now, moving  
 3 down -- and by the way, this exam was in May 10  
 4 of 2017, correct?  
 5 A Yes, it was.  
 6 Q And that's -- and with regard to  
 7 that exam, you testified there were no deficits,  
 8 you remember that testimony on direct?  
 9 A No, I remember testifying that on  
 10 the motor exam there were no deficits and there  
 11 was no atrophy. I didn't say there were no  
 12 deficits in every part of the exam, because I  
 13 don't believe I was questioned on every part of  
 14 the exam.  
 15 Q Right. And that exam was in May  
 16 of 2017 and the lumbar surgery that Dr. Landa  
 17 talked about and we're speaking about in this  
 18 case took place several months later in November  
 19 of 2017, correct?  
 20 A I believe so, yes.  
 21 Q Okay. Thank. Let's just go off  
 22 the exam or go off the record while we pull up  
 23 the next record.  
 24 VIDEOGRAPHER: The time is 9:04.  
 25 We're off video record.

1 (Whereupon we're off the video  
 2 record at this time.)  
 3 MR. CLARK: So the next one is the  
 4 records from Noguiera.  
 5 MR. MAZZIE: One second. Got the  
 6 records, Jerry.  
 7 VIDEOGRAPHER: The time is 9:05.  
 8 We're back on video record.  
 9 Q So, Doctor, just looking at your  
 10 deposition in the Petrucci case. And in that  
 11 case you testified that -- do you recall  
 12 testifying that because it was a low velocity or  
 13 low speed impact, that you don't think it could  
 14 have caused the claimed injuries to the woman's  
 15 spine, do you remember testifying to that?  
 16 A Not specifically, but if it's in  
 17 the record, I believe you. I have no question to  
 18 doubt you.  
 19 Q And you recognize the common sense  
 20 that, generally speaking, the greater the impact  
 21 or the greater the velocity, the more damage it  
 22 could potentially do to a person, you recognize  
 23 that, right?  
 24 A Yes. But as orthopedist for 20  
 25 years, I can tell you I've seen some incredible

1 crashes with no injuries. So, you know, lots of  
 2 things are possible.  
 3 Q In the Petrucci case you took into  
 4 account what you said was a low velocity or low  
 5 speed impact and said that, therefore, she  
 6 probably suffered a sprain/strain, do you recall  
 7 that?  
 8 A Yes.  
 9 Q Did you take into account the  
 10 velocity -- and, by the way, just stepping back,  
 11 you got the velocity from the -- in that case  
 12 from the medical records, right, where she  
 13 reports in the emergency room?  
 14 A On which are we talking about now?  
 15 Q This is the Petrucci case, your  
 16 deposition on Page 31, which you have, if you  
 17 want to take a look at.  
 18 A I just want to know which case  
 19 you're referring to. So, yes, I agree.  
 20 Q Okay. So did you take into  
 21 consideration in this case the notations in the  
 22 records about the speed of the crash and the  
 23 crash damage photos in your opinions and  
 24 conclusions in this case, did you take that into  
 25 account?

1 MR. MAZZIE: Make note of my  
 2 objection. Just note it on the record. We can  
 3 continue to proceed.  
 4 A If they were in the records and I  
 5 saw them, that's a part of the things that I  
 6 would look at, yes.  
 7 Q Okay. So, the records indicate --  
 8 the Noguiera records indicate the speed and the  
 9 impact of the crash, don't they?  
 10 A He does. I don't know where he  
 11 got that information from, though.  
 12 Q Well, it's in the history of  
 13 present illness. Do you see that in the note of  
 14 March 9 of 2017, that's the same note that you  
 15 were asked about on direct?  
 16 MR. MAZZIE: Note my objection to  
 17 the form of the question. You can go proceed  
 18 with the questioning.  
 19 A It is in the PI, but my point is  
 20 how is that information obtained? Was that by  
 21 the person's recollection? Was there a analysis  
 22 and a speed radar gun? That's all I'm saying. I  
 23 don't know 40, 20. I don't know. It's in there,  
 24 I agree.  
 25 Q Okay. Well, when you took into

1 account the reference to the low velocity, low  
 2 speed impact in the emergency room medical  
 3 records in the Petrucci case, did you have the  
 4 same concerns or you were totally fine with,  
 5 "Hey, it's low impact and, therefore, that was"  
 6 -- like, did you do the radar gun thing in that  
 7 case or did you just said, "Oh, it says low  
 8 speed, low velocity, therefore, that's what it  
 9 is", is that what you did there?  
 10 A No. It's always a consideration  
 11 that, you know, unless you have the accurate  
 12 number. But it is what it is. It was in the  
 13 report. It's in the record. It's considered.  
 14 Q So in the Petrucci -- in the  
 15 Noguiera record from March 9 of 2017, how did you  
 16 incorporate into your opinions and conclusions  
 17 where she was hit from behind -- where it says  
 18 she was hit from behind with stop red light. She  
 19 approximates that the vehicle that struck her was  
 20 going 40 miles an hour. She heard a loud bang  
 21 and got out of the car. As soon as she got out  
 22 of the car, she felt a sharp pain in her low  
 23 back. How did you incorporate that into your  
 24 opinions and conclusions that she only sustained  
 25 a sprain/strain in this crash? How did you --

1 MR. MAZZIE: Note my objection to  
 2 the form of the question. You can answer.  
 3 A Okay. So when I formulate my  
 4 opinions, I look at the totality of the things  
 5 that are involved. The major issue here is  
 6 regardless of her recollection of speed,  
 7 regardless of her recollection of noises and  
 8 things like that, all of which I do not doubt,  
 9 all of which I don't question, the reality is,  
 10 that pre and post accident MRIs are identical.  
 11 There's no change in the films. I don't see the  
 12 injury. I don't see a new injury. That's the  
 13 major issue here. And all of the questioning,  
 14 the subjectives, all of that stuff, I understand  
 15 that they're real. But at the end of the day,  
 16 it's as if you look at a bone, it's broken or  
 17 it's not, something changed or it didn't, and in  
 18 a significant way that you can account based on  
 19 the trauma. And those MRIs are the same.  
 20 Q We've just had two days of  
 21 testimony in this case. And by the time the jury  
 22 hears this, it should be Monday, and the jury has  
 23 heard from multiple witnesses that testified how  
 24 dramatically Linda's life has changed since this  
 25 crash.

1 MR. MAZZIE: Counsel, are you  
 2 kidding me? Are you kidding me? This witness is  
 3 not going to respond to questions about lay  
 4 witnesses' alleged observations. It's unheard of  
 5 what you're doing, Counsel. Note my objection.  
 6 You can answer the question.  
 7 Q Did you --  
 8 A Ask the question. I haven't heard  
 9 a question yet.  
 10 Q Did you speak to -- well, the way  
 11 this works is, you can call the attorney and ask  
 12 for information about the case and they send you  
 13 information; is that correct?  
 14 A I believe so. I mean, if I need  
 15 records and I wrote it in my report that I need  
 16 something, then, yes, I can do that.  
 17 Q And part of the records that you  
 18 looked at were the records of Patricia Castle,  
 19 the physical therapist, do you recall looking at  
 20 those records? They're on your list, right?  
 21 A I believe so, yes.  
 22 Q Do you recall the numerous  
 23 notations in there which document how  
 24 dramatically Linda's life has changed since this  
 25 crash, do you remember reading that?

1 MR. MAZZIE: Note my objection to  
 2 the form of the question. You can answer the  
 3 question.  
 4 A I don't recall that specifically,  
 5 but I believe if they were in there, I agree with  
 6 you. I don't doubt it.  
 7 Q Now, when you do a diagnosis in a  
 8 case or a diagnosis of a patient, aren't there  
 9 four elements to that? And I may not get them  
 10 exactly and you can -- you can -- you can correct  
 11 it if they're wrong. But aren't there four  
 12 elements which are, one, the history, two, the  
 13 symptoms or the complaints of the patient, three,  
 14 diagnostic testing, and four, physical exam?  
 15 Aren't those essentially the four parts of the --  
 16 of the pie that go into a diagnosis?  
 17 A So, I'll just clean it up for you.  
 18 So, the history is the same as the complaints.  
 19 So the one and two in your pie is the same. It's  
 20 the history, it's the physical exam, diagnostic  
 21 tests and then a plan or an assessment. So those  
 22 would be my four. Or at least part of the pie,  
 23 if you will.  
 24 Q All right. So I'm going to pop up  
 25 here, demonstrative exhibit which we prepared.

1 We marked it as P-21. And this is a  
 2 demonstrative exhibit. Instead of drawing it on  
 3 a board in court, we kind of did it in advance.  
 4 Do you see this P-21 here?  
 5 A I see it.  
 6 Q Okay. So you see there's four  
 7 parts to the pie that's drawn here?  
 8 A I see it.  
 9 Q But what you're saying is, you  
 10 would just make it three parts of the pie and put  
 11 symptoms or complaints into the history piece; is  
 12 that right?  
 13 A What I'm saying is, what we're  
 14 used to describing as a patient visit, there's a  
 15 soap note, subjective, objective, assessment and  
 16 planning. In your pie, I assume you draw this  
 17 history, symptoms or complaints seem to me the  
 18 same things. It's just a -- you know, semantics  
 19 but all of those things are part of the  
 20 diagnosis, yes.  
 21 Q Okay. Thank you.  
 22 A Does it matter? I don't know.  
 23 Q Okay. So when you say there's no  
 24 change on the MRIs, which you've talked about,  
 25 that's just the diagnosis -- that's the

1 diagnostic testing part of the diagnosis pie,  
 2 right?  
 3 A That is the diagnostic part, yes.  
 4 Q Okay. And when you look at an MRI  
 5 or you're just looking at the MRI, that doesn't  
 6 include history, it doesn't include symptoms or  
 7 complaints and it doesn't include a physical  
 8 exam. It's its own part of the pie, correct, the  
 9 MRI film?  
 10 A Its own item, yes.  
 11 Q Thank you.  
 12 MR. CLARK: Let's just go off the  
 13 video for a moment.  
 14 VIDEOGRAPHER: The time is 9:14.  
 15 We're now off video record.  
 16 (Whereupon we're off the video and  
 17 written record at this time.)  
 18 MR. CLARK: I'm just trying to  
 19 pull up the Noguiera record. Okay.  
 20 VIDEOGRAPHER: The time is 9:16.  
 21 We're back on video record.  
 22 Q Do you -- the -- you recall  
 23 testifying -- or strike that. The records from  
 24 Dr. Noguiera that you referenced were dated March  
 25 9 of 2017, that's the date of the record on

1 direct examination, correct?  
 2 A Yes.  
 3 Q And that was, again, many months  
 4 before the lumbar surgery that we're talking  
 5 about in this case which happened in November of  
 6 2017, right?  
 7 A Yes.  
 8 Q Okay.  
 9 MR. CLARK: Let's just go off the  
 10 video while I pull up the next --  
 11 VIDEOGRAPHER: The time is 9:17.  
 12 We're now off video record.  
 13 (Whereupon we're off the video and  
 14 written record at this time.)  
 15 VIDEOGRAPHER: The time is 9:19.  
 16 We're back on video record.  
 17 Q Doctor, you also testified on  
 18 direct that some of the medicine that Linda was  
 19 prescribed in taking after this incident was  
 20 Flexeril; is that right?  
 21 A Yes.  
 22 Q And that's a muscle relaxer,  
 23 right?  
 24 A Yes.  
 25 MR. MAZZIE: Objection.

1 VIDEOGRAPHER: The time is 9:19.  
 2 We're now off video record.  
 3 (Whereupon we're off the video  
 4 record at this time.)  
 5 MR. MAZZIE: You indicated that  
 6 medicine that she was prescribed after the  
 7 accident was Flexeril. That, in fact, was  
 8 prescribed before the accident, Counsel.  
 9 MR. CLARK: Well, that would be a  
 10 speaking objection. I asked the question. The  
 11 witness answered it. And it was definitely after  
 12 the incident, but -- by the way.  
 13 MR. MAZZIE: It wasn't definitely  
 14 after the incident. The records are clear that  
 15 the medications were all prescribed before the  
 16 accident.  
 17 MR. CLARK: No, that's not true.  
 18 She had -- I have a whole medication chart here.  
 19 The doctor correctly testified it was after.  
 20 MR. MAZZIE: No, he didn't,  
 21 Counsel, but the record will reflect what it  
 22 reflects.  
 23 MR. CLARK: Yeah. January 30 --  
 24 we're off the video, right? January 31 of '18,  
 25 Gabapentin, Neurontin 600 milligram tablets by

1 Dr. Finger, 1/31/18.  
 2 MR. MAZZIE: That's not what you  
 3 asked, Counsel. That's not what you asked. So  
 4 let's just get on the record. Let's move this  
 5 along, because, quiet frankly, the judge would  
 6 have cut you off a long time ago, Counsel. I am  
 7 getting aggravated. This is nonsense.  
 8 MR. CLARK: Your objection. You  
 9 just said it was before. First of all, it's an  
 10 improper objection.  
 11 MR. MAZZIE: First of all,  
 12 Counsel, you misrepresented what it was. You  
 13 said Flexeril and you said it was after the  
 14 accident. That's not what -- that's not what he  
 15 testified to.  
 16 MR. CLARK: It was prescribed on  
 17 1/31/2018 by Dr. Cammisa, 10 milligrams twice  
 18 daily. So --  
 19 MR. MAZZIE: Fine, Counsel. Let's  
 20 move the circus along at this point.  
 21 MR. CLARK: Okay. Well, I'm going  
 22 to pull up Cammisa's records. Hold on.  
 23 MR. CLARK: Maribel, could you  
 24 please read back the question and answer, the  
 25 previous question and answer?

1 (Whereupon the previous question  
 2 and answer was read back at this time.)  
 3 "Question: Doctor, you also  
 4 testified on direct that some of the medicine  
 5 that Linda was prescribed in taking after this  
 6 incident was Flexeril; is that right?  
 7 Answer: Yes.  
 8 Question: And that's a muscle  
 9 relaxer, right?  
 10 Answer: Yes.")  
 11 VIDEOGRAPHER: The time is 9:22.  
 12 We're back on the video record.  
 13 Q And it's a muscle relaxer to treat  
 14 spasm, correct?  
 15 A That's what muscle relaxers are  
 16 for, yes.  
 17 Q And spasm is objective evidence of  
 18 spinal injury, correct?  
 19 A It's subjective evidence of a lot  
 20 of things. But, yes, that's one thing. It's  
 21 also objective evidence of muscle injury. So,  
 22 yes.  
 23 MR. CLARK: Let's just go off,  
 24 please, of the video.  
 25 VIDEOGRAPHER: It's 9:23. We're

1 now off video record.  
 2 (Whereupon we're off the video and  
 3 written record at this time.)  
 4 MR. CLARK: Okay. We can go back.  
 5 VIDEOGRAPHER: Time is 9:24.  
 6 We're back on video record.  
 7 Q Doctor, again, do you remember at  
 8 the defense medical exam that you said you  
 9 reviewed about 5,000 pages of records or at least  
 10 thousands of pages, do you remember that?  
 11 A Yes.  
 12 Q Okay. And you understand that she  
 13 had a -- the surgery -- the fall down and then  
 14 the surgery in 1992/1993, right?  
 15 A There was -- there was surgery,  
 16 yes.  
 17 Q Okay. And in the thousands of  
 18 pages of records, other than that full spinal MRI  
 19 in 2013, you didn't see any records of any  
 20 treatment for those 23 years from 1993 until  
 21 December 16 of 2016; isn't that correct?  
 22 A I don't recall.  
 23 Q Well, if you look at the first  
 24 couple of pages of your report where you go  
 25 through the list, there's no record --

1 A I'm saying -- I'm saying I don't  
 2 recall she received treatment, that's what I'm  
 3 saying.  
 4 Q Okay. Let me just ask the  
 5 question again and --  
 6 A Please.  
 7 Q -- if I interrupt you, I apologize  
 8 but let me --  
 9 A Please ask it.  
 10 Q Try not to interrupt, just that  
 11 way it's more clear. In the thousands of pages  
 12 that you reviewed, other than a full body MRI,  
 13 full spine MRI in 2013 that we've all been  
 14 speaking about, from 1993 until 2016, you didn't  
 15 see any records of any ongoing or continued  
 16 treatment for those twenty -- approximate, 23  
 17 years, did you?  
 18 A That's what I said, I don't recall  
 19 seeing that.  
 20 Q Okay. And if you look at the 10  
 21 items in your report, the list of the items that  
 22 you reviewed, there are no such records in there;  
 23 isn't that true?  
 24 A Which 10 items? I think I  
 25 reviewed a lot more than 10. I'm not sure which

1 -- 10, what, films or 10 documents.  
 2 Q In your report -- in your report  
 3 you list --you are right, it's actually -- it's  
 4 like 29, 52 -- I mean, there's a whole -- there's  
 5 a whole paragraph and listing of medical records.  
 6 It goes up to 52. And then paragraph 52 has like  
 7 A through I items that you reviewed, that's  
 8 correct, what I just said?  
 9 A That's what I reviewed, yes.  
 10 Q Yes. And in all those records,  
 11 did you -- other than the 2013 film of the full  
 12 spine, did you see any records of any ongoing or  
 13 continued treatment for those 23 years from the  
 14 fall down with the -- on the ice to the crash of  
 15 December 16 of 2016, there's no such records in  
 16 that list, correct?  
 17 A Like I said before, I don't recall  
 18 seeing any.  
 19 Q All right. So what we're going to  
 20 do, we're going off the video and you could take  
 21 a look at the list again and try to see if we  
 22 could answer it more definitely instead of, "I  
 23 don't recall whether or not there are any such  
 24 records in there."  
 25 A I'll answer it. I don't -- I

1 don't remember seeing any records like that. We  
 2 don't have to go off the record if it's okay with  
 3 you.  
 4 Q Okay. Well, will you accept my  
 5 representation or would you just state that there  
 6 are no such records in there or do you insist on  
 7 it being, "I don't recall?"  
 8 A I don't -- I don't remember seeing  
 9 any of those records. I don't think that there  
 10 are. If there are, I'm sure someone will show  
 11 them to me.  
 12 Q All right. Let's go off the video  
 13 so that we can be certain of that.  
 14 VIDEOGRAPHER: The time is 9:28.  
 15 We're now off video record.  
 16 MR. CLARK: All right, Doctor, if  
 17 you would please take a look at the list, because  
 18 you're answering the question, "I don't recall",  
 19 I'm looking for a yes or no answer to the  
 20 question?  
 21 THE WITNESS: I'll give you what  
 22 you want. Let's just go back on the record,  
 23 please.  
 24 VIDEOGRAPHER: The time is 9:28.  
 25 We're back on the video record.

1 Q Okay. And so you were ready to  
 2 give a yes or no answer, Doctor?  
 3 A Yes.  
 4 Q There are no such records in  
 5 there, correct?  
 6 A No.  
 7 Q No, they're not or no, correct?  
 8 A No, there is not.  
 9 Q Okay. Great.  
 10 A No, there is not.  
 11 Q Thank you.  
 12 MR. CLARK: Let's just go off the  
 13 video, please.  
 14 VIDEOGRAPHER: The time is 9:29.  
 15 We're now off video record.  
 16 (Whereupon we're off the video and  
 17 written record at this time.)  
 18 MR. CLARK: Let's go back on.  
 19 VIDEOGRAPHER: The time is 9:29.  
 20 We're back on video record.  
 21 Q All right, Doctor. And do you  
 22 have any reason to dispute that in the thousands  
 23 of pages of records that you reviewed after the  
 24 crash of 2016, that the totals are something like  
 25 12 MRIs, 13 X-rays, 10 CT scans for a total of 35

1 diagnostic tests. Two EMGs, 20 hospital stays --  
 2 20 days in the hospital --  
 3 MR. MAZZIE: Objection.  
 4 Q -- 57 doctor appointments, a total  
 5 of 77 medical appointments and over 100 physical  
 6 therapy appointments. Do you have any reason to  
 7 dispute that those are approximations of those  
 8 totals numbers of treatment after this crash of  
 9 December of 2016?  
 10 A No.  
 11 Q Okay. And you're -- you're --  
 12 you're -- what you're saying or what you're  
 13 telling this jury is that all that treatment and  
 14 the surgery she had is from the degenerative  
 15 condition or the normal part of the aging of the  
 16 spine, is that what you're saying? Like, you're  
 17 saying the treat -- like, you're not disputing  
 18 that this treatment was reasonable and necessary.  
 19 You're just saying it wasn't from that crash; is  
 20 that right?  
 21 A Yes. I'm saying that there were  
 22 no changes in her MRIs, there was no obvious new  
 23 finding or traumatic injuries and I don't dispute  
 24 that she had a lot of treatment.  
 25 Q Okay. And there's no changing in

1 the MRIs, but if we go back up to the diagnostic  
 2 chart, that is only one piece of the pie in terms  
 3 of arriving at a diagnosis; isn't that correct,  
 4 you recall testifying to that earlier?  
 5 A Yes, I do.  
 6 Q Okay. Great. So -- so what  
 7 you're telling this jury is that the despite the  
 8 almost complete lack of ongoing medical treatment  
 9 for 23 years in her life, and then this  
 10 substantial crash occurs, and we have the photos  
 11 of the crash --  
 12 MR. MAZZIE: Counsel. Counsel,  
 13 you want to ask a question without giving a  
 14 narrative?  
 15 MR. CLARK: I'm sorry. I'll --  
 16 I'll repeat --  
 17 MR. MAZZIE: Ask a question. You  
 18 can't give a narrative, Counsel.  
 19 Q So, Doctor, what you're telling  
 20 this jury is that despite the complete lack of --  
 21 or virtual complete lack of records of ongoing  
 22 treatment for 23 years after that fall, and  
 23 entirely new problems with the low back, and all  
 24 that treatment, including that surgery taking  
 25 place, what you're telling this jury is that all

1 that treatment is just a big coincidence. It  
 2 just happened to have happened starting after  
 3 this crash, is that what you're telling this  
 4 jury?  
 5 MR. MAZZIE: Note my objection.  
 6 Form of the question. You can answer it.  
 7 A I don't think I said that  
 8 specifically. I said that I believe her surgery  
 9 was for maybe degenerative causes or something  
 10 else. I believe her initial treatment was for a  
 11 sprain or a strain. I believe that's what I  
 12 said.  
 13 Q All right. So you agree that she  
 14 had at least a sprain/strain in the spine from  
 15 this crash?  
 16 A Yes.  
 17 Q And you agree that she had pain  
 18 and some limitations from this crash at least to  
 19 -- at least at a certain point?  
 20 A At least initially, yes.  
 21 Q Okay. So then she's going on for  
 22 days or weeks -- do you -- so she's going on for  
 23 days or weeks or perhaps months after the crash  
 24 with pain that you at least -- you agree that at  
 25 least for some portion of time was from the

1 crash; is that right?  
 2 A Yes.  
 3 Q But then she woke up one day and  
 4 still had the same pain and the same limitations,  
 5 but now that pain and limitations was from  
 6 something else, not the crash, is that what  
 7 you're telling this jury?  
 8 A I'm just telling the jury that her  
 9 findings on her MRI appear to be degenerative and  
 10 not traumatic.  
 11 Q Now, what are you charging for  
 12 this deposition, again, for this deposition?  
 13 A \$2500.  
 14 Q Okay. And --  
 15 MR. MAZZIE: Not a deposition.  
 16 It's trial testimony, Counsel.  
 17 Q Yeah. Deposition. I don't know.  
 18 I think the French word they call it de bene esse  
 19 deposition. I'm not sure. Maybe that's a Latin  
 20 word. But in any event, you give that same  
 21 testimony a lot, don't you, where you say that a  
 22 person get in a crash, a car crash, there is a  
 23 claim spine injury and you frequently say that,  
 24 "Oh, that's just from a degenerative condition  
 25 unrelated to the incident", isn't that a common

1 thing that you say?  
 2 MR. MAZZIE: Note my objection to  
 3 the form of the question. You can answer it.  
 4 A I believe that that's a common  
 5 occurrence, yes.  
 6 Q Okay. And are you aware of case  
 7 reports that kind of report and give the sum and  
 8 substance of cases? Are you aware that these  
 9 things exist? That kind of talk about what the  
 10 case is, what the claims were and what the  
 11 defense doctor says? Are you aware that they're  
 12 out there?  
 13 A I believe so, yes.  
 14 Q All right. Do you recall a case  
 15 Pope from Bergen County, Docket Number 1643-17  
 16 where there was a rear-ended passenger in a motor  
 17 vehicle accident and the defense expert, Dr.  
 18 Rizio, concluded in his report that the Pope's  
 19 treatment was solely due to preexisting  
 20 degenerative condition, and at most you said they  
 21 suffered soft tissue injuries or sprain/strain  
 22 that later resolved, do you remember that case?  
 23 MR. MAZZIE: Note my objection.  
 24 You're reading something as if it's an  
 25 authoritative document. You can ask him,

1 specifically, about the case, Counsel, but you're  
 2 not going to, like, read narratives like you're  
 3 doing and have him answer. Try to move this  
 4 along, Counsel. Just note my objection to the  
 5 record. I'll let him answer, but I'm going to  
 6 move to strike. Just --  
 7 MR. CLARK: Okay. Well, I could  
 8 ask him about the case. We can also send him the  
 9 reports to see if he needs it to refresh his  
 10 recollection or if he'll take the representation  
 11 about what it says. We can e-mail them over.  
 12 MR. MAZZIE: The reports have  
 13 nothing to do with the doctor, nothing to do with  
 14 the testimony. It's a summary by somebody else.  
 15 You're not going to do anything of that nature.  
 16 You could ask him questions. Just note my  
 17 continuing objection.  
 18 MR. CLARK: Well, I want to see if  
 19 he remembers the case, because there's testimony  
 20 --  
 21 MR. MAZZIE: Counsel, you read a  
 22 whole diatribe of nonsense. You didn't ask him,  
 23 "Do you remember case such versus such? Do you  
 24 remember" -- you didn't ask him anything to  
 25 refresh his recollection. You read a narrative.

1 I'm -- I'm just beyond annoyed at this point, but  
 2 you could ask him questions.  
 3 Q Do you remember the Pope case,  
 4 Docket Number 1643-17 where you testified in the  
 5 in the -- this courthouse in the Bergen County  
 6 Courthouse in 2018, do you remember that case?  
 7 A I don't recall the case,  
 8 specifically, but I could say broadly that any  
 9 legal documents that you're going to read to me  
 10 that I said something, I will not dispute.  
 11 MR. MAZZIE: No. No. I object.  
 12 Q Okay.  
 13 MR. MAZZIE: It's not a legal  
 14 document he's reading.  
 15 MR. CLARK: I'm going to send him  
 16 the case report and see if it refreshes his  
 17 recollection.  
 18 MR. MAZZIE: No, you're not,  
 19 Counsel. We're at trial. No, you're not. Pull  
 20 it up on the screen, do something. We're not  
 21 wasting more time. It's near 10 o'clock. We've  
 22 been at cross-examination for more than two  
 23 hours.  
 24 MR. CLARK: Okay. I can -- I can  
 25 pull it up on the screen, if that's what you want

1 me to do. I could pull it up on the screen or I  
 2 could send it to him, whatever your pleasure is.  
 3 If we were in court, I would hand it to him.  
 4 MR. MAZZIE: Pull it up on the  
 5 screen, Counsel.  
 6 MR. CLARK: Okay. Let's go off  
 7 the video for a moment.  
 8 VIDEOGRAPHER: The time is 9:37.  
 9 We're off video record.  
 10 (Whereupon we're off the video  
 11 record at this time.)  
 12 MR. MAZZIE: No, you know what,  
 13 I'm tired of going off the record. I want to be  
 14 on the record at this point. Leave it on the  
 15 record.  
 16 MR. CLARK: We're off the record.  
 17 MR. MAZZIE: No. I want to go on  
 18 the record.  
 19 MR. CLARK: We're off the record.  
 20 We're on the record. The both parties have to  
 21 agree. The court rules are very clear on that.  
 22 The court reporter doesn't -- the court reporter  
 23 has sworn to give un-bias testimony. So we --  
 24 un-bias court reporting stuff. Let's go off the  
 25 record, please.

1 MR. MAZZIE: We're about to go off  
 2 the deposition.  
 3 MR. CLARK: Okay. We're going to  
 4 go back on the video record now that we have it  
 5 up.  
 6 VIDEOGRAPHER: The time is 9:38.  
 7 We're going back on video record.  
 8 Q All right, Doctor. Does this help  
 9 to refresh your recollection, this Pope case,  
 10 Bergen, two thousand -- this docket number? And  
 11 if we go down to here where it indicates you're  
 12 the defense expert and address of Livingston?  
 13 A Yes.  
 14 Q Okay. And do you recall  
 15 testifying that Pope's treatment was solely due  
 16 to preexisting degenerative condition and at  
 17 most the expert says they suffered soft tissue  
 18 injuries that later resolved, do you recall that?  
 19 A So I just have to ask. So this  
 20 isn't my summary, right, this is someone else's  
 21 summary of what I said? I agree that that  
 22 summary exists, yes, and I agree that I probably  
 23 said that in this case.  
 24 Q Thank you.  
 25 A But this isn't my document.

1 Q Correct. It's being used to  
 2 refresh your recollection.  
 3 A Okay. I think I didn't understand  
 4 you.  
 5 Q Thank you. Now, do you recall the  
 6 Bratcher case, Morris 3387-05 from 2008 where you  
 7 were also the defense expert and gave the same  
 8 kind of testimony you're giving here, do you  
 9 recall that case?  
 10 A No. Can you put it up on the  
 11 screen, please?  
 12 Q Sure. We can put it on the screen  
 13 or we could send it to you, but if you want to  
 14 put it up on the screen, we'll do that. This is  
 15 the Bratcher case. Do you see this here?  
 16 MR. MAZZIE: Counsel, I want to  
 17 see the entire document.  
 18 MR. CLARK: I could e-mail it to  
 19 you if you'd like.  
 20 MR. MAZZIE: No. You could scroll  
 21 up the page. I want to see the entire document.  
 22 Q Here we go. See if this refreshes  
 23 your recollection about the case. You could see  
 24 you're listed as the defense expert there. And  
 25 it says -- do you recall this case? Does this

1 help to refresh your recollection?  
 2 A This just makes me recall that I  
 3 was there and I gave an opinion. And, again,  
 4 this is somebody else's summary of things that I  
 5 said. And I don't deny what anybody -- I don't  
 6 deny that this document exists. I don't deny  
 7 that I was there. So, yes, as far as that  
 8 enhances my recollection, yes, thank you.  
 9 Q Okay.  
 10 A Very helpful.  
 11 Q Great. And do you remember the  
 12 Grecco case, or the Montero case, or the Skidmore  
 13 case? And I'm not going review them all, but do  
 14 you dispute that those are out there as well with  
 15 the same kind of thing?  
 16 MR. MAZZIE: Objection.  
 17 VIDEOGRAPHER: The time is 9:41.  
 18 We're now off video record.  
 19 MR. MAZZIE: Are you asking if he  
 20 disputes the reports that were prepared by  
 21 somebody else? Are you asking about his specific  
 22 testimony?  
 23 MR. CLARK: I'm going to ask him  
 24 about the cases and his testimony. And if he  
 25 doesn't remember, we can go through it to refresh

1 his recollection, but that would take a bit  
 2 longer. So I'm asking it in a more combined way.  
 3 I think the doctor already conceded it or doesn't  
 4 dispute that. So I can do it the long way, but  
 5 you're the one --  
 6 MR. MAZZIE: You can do it the  
 7 long way, Counsel, because I want to see the  
 8 documents. I want to see what you're  
 9 referencing. You're making broad sweeping  
 10 statements.  
 11 MR. CLARK: Okay. So we'll do it  
 12 that way then. Let us know when we're back on  
 13 the video.  
 14 VIDEOGRAPHER: The time is 9:42.  
 15 We're back on video record.  
 16 Q All right, Doctor. At Defense  
 17 counsel's request, we're putting the Grecco  
 18 report -- do you remember this case, Kathleen  
 19 Grecco, docket number -- it's Middlesex, 8606  
 20 from 2011 docket number on February 18, 2018, was  
 21 a drunk driver case.  
 22 MR. MAZZIE: Note my objection,  
 23 Counsel. That has nothing to do -- off the  
 24 record.  
 25 VIDEOGRAPHER: The time is 9:42.



1 We're off video record.  
 2 (Whereupon we're off the video  
 3 record at this time.)  
 4 MR. MAZZIE: Has nothing to do  
 5 with anything the facts of the case. You can ask  
 6 him if he remembers his testimony.  
 7 MR. CLARK: Okay. Well, we can go  
 8 down to the testimony. We can go back on.  
 9 VIDEOGRAPHER: The time is 9:43.  
 10 We're back on video record.  
 11 Q Doctor, do you recall being called  
 12 as a defense orthopedic expert in that case?  
 13 A I do now. Thank you.  
 14 Q Okay. And do you recall  
 15 testifying that the defense expert orthopedic  
 16 surgery said Grecco had no residual medical  
 17 issues, do you recall that?  
 18 A Like I said, this document says  
 19 that I said it, someone else recorded it. I  
 20 agree with you. It's there. So that -- that's  
 21 the extent of the recollection and I appreciate  
 22 you showing me the document.  
 23 Q Okay. Thank you.  
 24 MR. CLARK: Go off the video,  
 25 please.

1 VIDEOGRAPHER: Time is 9:44.  
 2 We're off video record.  
 3 (Whereupon we're off the video  
 4 record at this time.)  
 5 MR. CLARK: Well, I now have  
 6 actual reports from the doctor. Same kind of  
 7 theme, sprain/strain, spinal, auto. So do we  
 8 want to pop them up or do you want me to send  
 9 them to you or how --  
 10 MR. MAZZIE: Put them up on the  
 11 screen.  
 12 MR. CLARK: Okay. Hold on. We  
 13 can go back on.  
 14 VIDEOGRAPHER: The time is 9:46.  
 15 We're back on video record.  
 16 Q Doctor, do you recall issuing a  
 17 report in the Petrucci case from November 26 of  
 18 2019, do you recall that case?  
 19 A Yes.  
 20 Q Do you recall writing in your  
 21 report that Maryann Petruccio (Phonetic) suffered  
 22 a cervical sprain/strain as a result of the  
 23 accident that has gone on to heal without  
 24 evidence of permanent injury. And that the MRI  
 25 indicates a degenerative process rather than

1 acute injury suffered at the time of the  
 2 accident, do you recall that case?  
 3 A Yes.  
 4 Q Okay. Do you recall the Shivitz  
 5 case and the report you wrote dated September 17,  
 6 2019 which involved a 33 -- 33-year-old male  
 7 where you said the person in the crash who's  
 8 claiming a spinal injury only suffered a  
 9 sprain/strain that has gone to heal without  
 10 evidence of permanent injury, do you recall that  
 11 case as well?  
 12 A I believe so, yes, I recall.  
 13 Q All right. Thanks.  
 14 MR. CLARK: Let's please go off  
 15 the video for a moment.  
 16 VIDEOGRAPHER: The time is 9:47.  
 17 We're off video record.  
 18 (Whereupon we're off the video  
 19 record at this time.)  
 20 MR. CLARK: I don't think I have  
 21 more questions. I'm just going through my notes.  
 22 Sorry. Okay. That's all I have, but we'll go  
 23 back on and say that.  
 24 VIDEOGRAPHER: The time 9:49.  
 25 We're back on video record.

1 Q That's all the questions I have  
 2 right now. Thank you for your time tonight,  
 3 Doctor, and your patience. Thank you.  
 4 REDIRECT EXAMINATION BY MR. MAZZIE:  
 5 Q Doctor, on cross-examination you  
 6 were asked about when the plaintiff was first  
 7 prescribed Flexeril.  
 8 A Yes.  
 9 Q And you had been asked on direct  
 10 and you looked at Dr. Gellis' records.  
 11 A Yes.  
 12 Q When was the plaintiff first  
 13 prescribed Flexeril, was it before or after the  
 14 accident?  
 15 A Before in 2014. March of 2014.  
 16 Q So before the accident?  
 17 A Yes.  
 18 Q And when was she first prescribed  
 19 Percocet?  
 20 A This record states December of  
 21 2013.  
 22 Q That was by Dr. Gellis?  
 23 A I believe so. The start date  
 24 could be from another physician, but it's in this  
 25 record and that's what it records.

1 Q Okay. And would you be surprised  
 2 if she was continued to be prescribed Flexeril  
 3 after the accident?  
 4 A No. You don't get one  
 5 prescription for these medications in perpetuity.  
 6 You have to keep renewing them when they run out.  
 7 So, no, I'm not surprised at all.  
 8 Q Now, Doctor, you were asked about  
 9 certain comments made at the time of the  
 10 plaintiff's IME?  
 11 A Yes.  
 12 Q And it was noted that you didn't  
 13 have everything in the report verbatim.  
 14 A That's right.  
 15 Q Do you ever put in your report  
 16 everything that a party you're examining says  
 17 verbatim?  
 18 A I don't. And I don't know anyone  
 19 that does.  
 20 Q And would putting verbatim  
 21 comments about things that the plaintiff claims  
 22 they can't do, such as, they can't work, or they  
 23 can't fly off building, would that have anything  
 24 to do with your evaluation as an orthopedic  
 25 surgeon?

1 A No.  
 2 Q I have nothing further.  
 3 MR. CLARK: No more questions here  
 4 too either. Thank you very much.  
 5 MR. MAZZIE: That's it. Off the  
 6 record.  
 7 VIDEOGRAPHER: This concludes  
 8 today's video deposition with Dr. Rizio. The  
 9 time is, approximately, 9:51. We're now off  
 10 video record.  
 11 (Concluded at 9:51 p.m.)  
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CERTIFICATE

1  
 2  
 3 I, MARIBEL SYPNIEWSKI, a  
 4 Certified Court Reporter and Notary Public of the  
 5 State of New Jersey, do hereby certify that prior  
 6 to the commencement of the examination, the  
 7 witness was duly sworn by me to testify the  
 8 truth, the whole truth and nothing but the truth.  
 9 I DO FURTHER CERTIFY that the  
 10 foregoing is a true and accurate transcript of  
 11 the testimony as taken stenographically by and  
 12 before me at the time, place and on the date  
 13 hereinbefore set forth, to the best of my  
 14 ability.  
 15 I DO FURTHER CERTIFY that I am  
 16 neither a relative nor employee nor attorney nor  
 17 counsel of any of the parties to this action, and  
 18 that I am neither a relative nor employee of such  
 19 attorney or counsel, and that I am not  
 20 financially interested in the action.  
 21  
 22  
 23  
 24  
 25

MARIBEL SYPNIEWSKI, C  
 LICENSE NO. 30XI0020320



*Maribel Sypniewski*

<b>A</b>				
<b>a.m</b> 58:4	<b>addendum</b> 68:3	<b>ankle</b> 55:14,16	<b>appropriateness</b>	21:21
<b>ABC</b> 1:9	<b>additional</b> 11:11	55:18,19	44:14	<b>atrophy</b> 26:11
<b>ability</b> 132:14	51:18 68:4	<b>annoyed</b> 120:1	<b>approximate</b> 5:2	27:22,22,23
<b>able</b> 42:10 51:21	<b>address</b> 5:20	<b>answer</b> 63:18	110:16	28:3 44:25
59:10 94:2	37:21 122:12	64:10 66:8,15	<b>approximately</b>	46:15,19 93:5
<b>abnormalities</b>	<b>adequately</b>	66:19 87:6	34:14 35:7	95:11
31:9 34:1	77:12	89:14 93:12	131:9	<b>attorney</b> 3:5
<b>above-entitled</b>	<b>adjoins</b> 34:4	100:2 101:6	<b>approximates</b>	63:22 101:11
2:7	<b>adjunct</b> 21:1	102:2 107:24	99:19	132:16,19
<b>absence</b> 54:4	<b>administration</b>	107:25 108:2,7	<b>approximations</b>	<b>attorneys</b> 3:8
<b>absolutely</b> 22:16	7:14	108:10 111:22	114:7	5:6 58:19 60:2
59:13	<b>admit</b> 8:12	111:25 112:19	<b>April</b> 30:24	61:16 62:15,20
<b>absurd</b> 61:1	<b>admitting</b> 8:7,10	113:2 116:6	31:13 32:16	<b>audio</b> 72:10
<b>academy</b> 7:13	10:16,19	118:3 119:3,5	<b>area</b> 10:23 11:24	<b>authoritative</b>
<b>accept</b> 112:4	<b>advance</b> 103:3	<b>answered</b>	32:14	118:25
<b>accident</b> 16:3,25	<b>advanced</b> 10:13	106:11	<b>areas</b> 12:3 26:1	<b>auto</b> 127:7
18:11,13,22	31:18	<b>answering</b>	28:13 30:8,22	<b>available</b> 18:2
20:9,10 29:5	<b>advertises</b> 61:15	112:18	45:9	<b>Avenue</b> 3:4
34:13 35:8,13	62:14	<b>answers</b> 12:23	<b>arms</b> 21:15	<b>aware</b> 12:14
36:20,21 38:2	<b>afraid</b> 23:14	<b>anybody</b> 124:5	<b>arriving</b> 115:3	29:4 118:6,8
38:19,21 39:10	81:24 82:9	<b>anymore</b> 33:3	<b>arthritic</b> 52:16	118:11
39:23 47:11	<b>age</b> 34:9	<b>anytime</b> 16:10	53:9,12	
49:6 51:20	<b>aggravated</b>	<b>apologize</b> 14:1	<b>arthritis</b> 53:20	<b>B</b>
52:11,14,15	107:7	40:21 110:7	<b>aside</b> 14:13	<b>B</b> 1:5 3:14 4:9
53:4,5,7,12,13	<b>aging</b> 114:15	<b>appear</b> 37:16	<b>asked</b> 12:2	<b>back</b> 6:4 13:21
53:22 70:20	<b>ago</b> 16:16 59:1	60:25 86:12	13:21 44:18	16:22 17:12
71:10,16,24	78:14 107:6	117:9	64:1,2 73:21	18:9,14 19:5
72:23 73:24	<b>agree</b> 50:19,20	<b>appearance</b>	76:5 79:3	19:15 22:24
74:3 76:19	95:1 97:19	31:10	83:25 87:13	25:9 36:22,22
91:12 100:10	98:24 102:5	<b>appearances</b>	90:25 98:15	36:25 38:16
106:7,8,16	116:13,17,24	57:19	106:10 107:3,3	39:12,14 40:4
107:14 118:17	121:21 122:21	<b>appears</b> 45:4,10	129:6,9 130:8	41:16 43:2
127:23 128:2	122:22 126:20	<b>applicant</b> 11:2	<b>asking</b> 42:17	44:14,17 46:5
129:14,16	<b>ahead</b> 10:4	<b>application</b>	46:6 51:15	48:19 49:4,6
130:3	<b>al</b> 5:4	10:25	64:2 65:8,18	50:8 51:1,20
<b>account</b> 97:4,9	<b>alleged</b> 101:4	<b>appointment</b>	71:14,14 74:21	52:18,19 54:8
97:25 99:1	<b>alleges</b> 78:13	15:12	89:22 92:23	56:16 60:1
100:18	<b>allow</b> 10:20	<b>appointments</b>	94:25 124:19	61:2,4 62:5,7
<b>accurate</b> 70:13	<b>allowed</b> 7:12	114:4,5,6	124:21 125:2	62:10,12 64:18
99:11 132:10	<b>altered</b> 22:11	<b>appreciate</b>	<b>aspect</b> 15:20	65:22,25 68:1
<b>act</b> 61:24	<b>ambiguous</b>	126:21	<b>assessment</b>	68:15 70:25
<b>action</b> 132:17,20	12:24 93:14	<b>apprehension</b>	102:21 103:15	71:9,12,19,23
<b>actual</b> 15:5,6	<b>ambulate</b> 51:21	23:23	<b>assist</b> 62:20	71:24 72:2,17
127:6	<b>ambulating</b> 21:6	<b>apprehensive</b>	103:16	74:13 75:16,20
<b>acute</b> 8:23 35:8	<b>amount</b> 11:1	82:1	<b>assume</b> 30:3	76:14,19,21
35:15 54:5	17:13 27:3	<b>appropriate</b>	80:9	80:9,10,12,14
128:1	69:15	21:14 23:16	<b>asymmetry</b>	80:16 81:22
	<b>analysis</b> 98:21	78:10 79:23		83:4,6,16 84:5

84:25 85:1,3	<b>begins</b> 84:2	69:12 70:2	<b>bulging</b> 30:17	57:19,23 58:1
85:14 86:6,8	<b>behalf</b> 5:13	125:1	30:20 31:21	59:17 63:1,5
87:18,20,23	58:18	<b>bleeding</b> 51:24	33:16 35:1	67:17 68:5,19
88:10 89:16,18	<b>believe</b> 12:16	<b>board</b> 7:3,7,16	49:5 51:11	80:2 87:17
89:20 90:17,21	19:3,21 20:23	7:17,18,21	<b>bumped</b> 88:19	95:18 96:10,11
91:23 92:1,10	34:17 36:1,9	10:6 11:14	90:7	97:3,11,15,18
92:11,18,19	39:2 40:8 56:6	13:18 14:12	<b>bunch</b> 30:14	97:21,24 99:3
93:1,1,17	57:6 63:7 70:1	103:3	<b>business</b> 5:20	99:7 100:21
94:14 96:8	73:4 79:3	<b>bodies</b> 32:5,10		101:12 102:8
97:10 99:23	82:19 95:13,20	32:24	<b>C</b>	105:5 118:6,10
104:21 105:16	96:17 101:14	<b>body</b> 17:25	<b>C</b> 3:1 132:1,1	118:14,22
107:24 108:2	101:21 102:5	25:13 30:2,13	<b>C.C.R</b> 132:23	119:1,8,19,23
108:12 109:4,6	116:8,10,11	32:2 110:12	<b>C3-4</b> 33:16,20	120:3,6,7,16
112:22,25	118:4,13	<b>bone</b> 8:21 32:25	<b>C4-5</b> 33:13,15	122:9,23 123:6
113:18,20	128:12 129:23	100:16	33:19	123:9,15,23,25
115:1,23 122:4	<b>Belmar</b> 3:4	<b>bones</b> 34:4	<b>C5</b> 32:24	124:12,12,13
122:7 125:12	<b>belt</b> 91:13	<b>bother</b> 71:21	<b>C5-6</b> 32:20	125:18,21
125:15 126:8	<b>bend</b> 23:21	<b>bottom</b> 32:4	<b>C6-7</b> 33:13,15	126:5,12
126:10 127:13	81:13,13	45:20	33:19	127:17,18
127:15 128:23	<b>bending</b> 19:10	<b>bound</b> 59:11	<b>C7</b> 33:14	128:2,5,11
128:25	81:25	<b>braces</b> 74:24,24	<b>call</b> 34:2 101:11	<b>cases</b> 11:24
<b>background</b>	<b>bene</b> 1:14 2:5	75:5,24 76:1,7	117:18	118:8 124:24
89:25	117:18	<b>brain</b> 22:24	<b>called</b> 2:6 8:13	<b>Castle</b> 101:18
<b>balance</b> 40:14	<b>benefit</b> 6:9	<b>brand</b> 76:23	58:25 61:7	<b>CAT</b> 16:7 28:18
82:15	54:16	<b>Bratcher</b> 123:6	126:11	28:23,25 29:1
<b>bang</b> 99:20	<b>bent</b> 25:6	123:15	<b>camera</b> 58:11	29:8 35:12
<b>bar</b> 79:24	<b>BER-L-7134-18</b>	<b>breakdown</b> 34:8	<b>Cammissa</b>	<b>cause</b> 19:20
<b>Barnabas</b> 8:11	1:3 5:4	<b>breath</b> 51:23	107:17	55:10
10:24	<b>BERENGUER</b>	<b>Brehme</b> 1:5 3:14	<b>Cammissa's</b>	<b>caused</b> 96:14
<b>base</b> 32:13 66:12	3:11	5:3,12 9:24,25	107:22	<b>causes</b> 94:16
<b>based</b> 17:24	<b>Bergen</b> 1:2	13:23 14:15,24	<b>Capozzi</b> 63:21	116:9
38:5 100:18	118:15 120:5	16:13 71:11	64:3	<b>ceiling</b> 81:13
<b>baseline</b> 19:15	122:10	89:22	<b>car</b> 18:11 49:6	<b>center</b> 6:16 8:13
52:18	<b>best</b> 132:13	<b>brief</b> 16:19	51:19 99:21,22	8:14 47:18
<b>basic</b> 22:19,20	<b>better</b> 26:5 40:5	<b>briefly</b> 7:6 8:16	117:22	48:22
<b>basically</b> 17:19	58:14 61:16	16:18 44:20	<b>care</b> 17:6	<b>central</b> 22:10,23
21:19 24:13	62:14 64:4	66:23	<b>career</b> 57:1	<b>certain</b> 11:9,23
25:7 31:17	82:16	<b>bring</b> 90:1	<b>Carl</b> 3:6 5:13	11:24 23:15
33:2 43:25	<b>beyond</b> 92:4	<b>broad</b> 125:9	<b>carpal</b> 26:19	24:20 27:3
61:18 62:16	120:1	<b>broadly</b> 88:15	54:2,5,6	37:17 71:3
63:11 66:14	<b>big</b> 33:16 116:1	120:8	<b>carpel</b> 40:8	112:13 116:19
76:4	<b>biggest</b> 77:18	<b>broken</b> 100:16	<b>carrying</b> 66:9	130:9
<b>basis</b> 44:1,4	<b>bilateral</b> 40:3	<b>brought</b> 75:25	<b>case</b> 16:19 17:15	<b>certainly</b> 55:24
79:16	<b>bilaterally</b> 41:9	<b>Brunswick</b> 6:11	17:15 18:5	<b>certification</b> 7:7
<b>Bayonne</b> 10:24	54:2	<b>building</b> 130:23	29:5 43:3,3	7:22 8:3 11:15
<b>Bear</b> 48:7	<b>billing</b> 16:25	<b>built</b> 66:12	44:7 47:16	11:19,20
<b>bed</b> 25:7	<b>bit</b> 23:22 28:1	<b>bulge</b> 33:19	50:16,17 52:4	<b>certified</b> 2:10
<b>began</b> 12:10	40:5 55:17,22	<b>bulges</b> 30:15	56:3,4 57:3,8	7:4,17,19 10:7

13:18 14:12 132:4 <b>certify</b> 132:5,9 132:15 <b>cervical</b> 21:8 28:21,21 30:15 31:7 32:12,16 33:8 52:7,24 73:2 81:7,8 127:22 <b>change</b> 34:6 52:15 53:13 100:11 103:24 <b>changed</b> 100:17 100:24 101:24 <b>changes</b> 29:11 29:13 30:2,3 31:5,7,18 52:16 53:9,21 114:22 <b>changing</b> 114:25 <b>charge</b> 57:12,16 66:24 67:6,7,9 67:11,13,15,17 68:3 <b>charged</b> 57:20 <b>charging</b> 60:6 117:11 <b>chart</b> 106:18 115:2 <b>check</b> 11:10,10 <b>chest</b> 32:11,14 51:23 <b>chores</b> 19:13 77:10,11 80:25 <b>chose</b> 10:21 <b>chronic</b> 8:19,22 28:1,2 <b>chronological</b> 36:6 <b>circus</b> 107:20 <b>Civil</b> 2:9 <b>claim</b> 117:23 <b>claimed</b> 96:14 <b>claims</b> 118:10 130:21 <b>claming</b> 128:8 <b>clarification</b>	65:15 <b>clarify</b> 65:18 94:2 <b>Clark</b> 3:3,3 4:6 5:10,11,11,22 10:2,5 14:1,7 40:20,25 42:3 42:17 43:1,11 43:24 45:16,23 48:12 49:12 50:1,15,24 56:9,17 62:9 64:20 65:3,14 65:21 67:19 68:8 75:11,16 78:17 79:1,18 79:19 80:6,13 82:23 83:4,8 83:14 84:16 85:5 87:9,19 90:11,17 96:3 104:12,18 105:9 106:9,17 106:23 107:8 107:16,21,23 108:23 109:4 112:16 113:12 113:18 115:15 119:7,18 120:15,24 121:6,16,19 122:3 123:18 124:23 125:11 126:7,24 127:5 127:12 128:14 128:20 131:3 <b>clean</b> 102:17 <b>clear</b> 106:14 110:11 121:21 <b>cleared</b> 12:24 <b>client</b> 75:25 79:10 <b>clinical</b> 26:20,24 54:13 <b>coincidence</b> 116:1 <b>collagen</b> 34:8 <b>colleague</b> 13:2,8	<b>colleagues</b> 9:22 13:6 <b>column</b> 24:8 <b>combined</b> 125:2 <b>come</b> 22:24 52:2 54:20 67:16 <b>comes</b> 60:5,6 67:3 <b>commencement</b> 132:6 <b>commencing</b> 2:13 58:3 <b>comment</b> 93:8 <b>commented</b> 93:21,23 <b>commenting</b> 93:6 <b>comments</b> 130:9 130:21 <b>common</b> 96:19 117:25 118:4 <b>companies</b> 58:19 61:17 62:15,21 <b>company</b> 1:9 18:17 58:25 61:6,7,10,13 74:18 <b>comparing</b> 73:20 <b>comparison</b> 88:14 <b>compensation</b> 63:13 <b>complained</b> 24:4 81:4 <b>complaint</b> 51:21 54:9 <b>complaints</b> 18:23 25:25 39:23 51:22 53:17 54:5,17 72:1,16 102:13 102:18 103:11 103:17 104:7 <b>complete</b> 22:25 78:20 115:8,20 115:21	<b>completed</b> 11:2 <b>completely</b> 55:23 71:19 <b>completion</b> 7:10 <b>complex</b> 34:2 39:17,22 50:4 50:17 <b>compress</b> 26:25 <b>compression</b> 24:15 26:21,24 28:2 30:9,12 41:18 54:14 <b>conceded</b> 125:3 <b>concentrating</b> 40:16 <b>concerned</b> 66:4 82:5 <b>concerns</b> 23:23 99:4 <b>conclude</b> 53:1 <b>concluded</b> 118:18 131:11 <b>concludes</b> 131:7 <b>conclusions</b> 18:3 43:20 52:2,6 54:19 97:24 99:16,24 <b>concussion</b> 39:16 <b>condition</b> 36:17 114:15 117:24 118:20 122:16 <b>conditions</b> 8:23 8:23 9:17 <b>conduct</b> 9:12,25 13:22 21:3 40:19 41:2 45:7 <b>conducted</b> 16:12 17:16 45:11,13 46:7 <b>conduction</b> 17:3 54:1 <b>confusing</b> 94:2 <b>confusion</b> 40:15 71:4 <b>conjunction</b> 47:21	<b>connection</b> 48:23 <b>consider</b> 44:9 56:22 <b>consideration</b> 97:21 99:10 <b>considered</b> 77:11 99:13 <b>consist</b> 21:17 <b>constant</b> 19:11 40:4 <b>consultation</b> 64:22 <b>consulting</b> 64:25 <b>contemplating</b> 40:6 <b>continue</b> 78:12 86:17 98:3 <b>continued</b> 13:20 19:20 110:15 111:13 130:2 <b>continues</b> 20:6 <b>continuing</b> 119:17 <b>contradicts</b> 44:4 <b>contrary</b> 44:3 <b>contusion</b> 54:15 <b>contusions</b> 53:25 <b>conversation</b> 63:20 <b>convincing</b> 53:14 <b>copied</b> 88:17 <b>copy</b> 64:8 <b>cord</b> 22:23 <b>CORPORATI...</b> 1:9 <b>correct</b> 10:7,13 10:18 11:16 25:19 34:20 35:14 40:18 47:22 48:24 50:22,22 56:20 57:5,9,21 58:25 59:5,25 60:14 61:7,10 61:19 62:17
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64:23 67:4,8 72:24 73:10,14 80:23 85:24 86:15 88:2,12 91:17 92:2,6 94:9,23 95:4 95:19 101:13 102:10 104:8 105:1 108:14 108:18 109:21 111:8,16 113:5 113:7 115:3 123:1 <b>correctly</b> 66:3 66:20 72:23 106:19 <b>counsel</b> 14:6 18:3 42:16,19 43:16 45:20 60:23 61:20 77:25 78:25 83:21 84:17 87:6,12,13 89:6,10 101:1 101:5 106:8,21 107:3,6,12,19 115:12,12,18 117:16 119:1,4 119:21 120:19 121:5 123:16 125:7,23 132:17,19 <b>counsel's</b> 125:17 <b>counseling</b> 15:19 <b>County</b> 1:2 58:2 63:1 118:15 120:5 <b>couple</b> 35:21 54:23 109:24 <b>course</b> 16:2 24:17 26:18 55:11 <b>court</b> 1:1,22 2:9 2:10 5:8 57:19 60:10,12,12 61:1 62:9 79:13 89:14	103:3 121:3,21 121:22,22,24 132:4 <b>courthouse</b> 120:5,6 <b>cover</b> 94:10,16 <b>covering</b> 94:11 <b>covers</b> 77:12 <b>crash</b> 70:10 97:22,23 98:9 99:25 100:25 101:25 111:14 113:24 114:8 114:19 115:10 115:11 116:3 116:15,18,23 117:1,6,22,22 128:7 <b>crashes</b> 97:1 <b>create</b> 33:1 <b>creating</b> 79:11 <b>credentialing</b> 11:8 <b>criminal</b> 89:12 <b>cross</b> 4:2 43:5 44:2 49:13 50:6 56:17 64:20,22 <b>cross-examina...</b> 79:3,8 87:10 120:22 129:5 <b>cross-examine</b> 44:8 <b>cross-examini...</b> 78:23 <b>CT</b> 113:25 <b>cued</b> 80:8 <b>current</b> 8:2 <b>currently</b> 8:11 8:25 <b>cut</b> 107:6 <b>Cyclobenzapr...</b> 37:23 <hr/> <b>D</b> <hr/> <b>D</b> 4:1 <b>D-6</b> 38:24 <b>D-8</b> 45:2	<b>daily</b> 107:18 <b>damage</b> 96:21 97:23 <b>date</b> 1:15 5:2 14:18 36:8 39:1 40:21 45:16,17 104:25 129:23 132:12 <b>dated</b> 104:24 128:5 <b>day</b> 20:5,6 29:15 35:12 37:14,17 37:24 38:19 40:23 57:20 60:12 90:6 100:15 117:3 <b>days</b> 37:17 69:19 76:24 100:20 114:2 116:22,23 <b>de</b> 1:14 2:5 117:18 <b>deal</b> 79:5 <b>deals</b> 8:18 <b>December</b> 29:1 29:6,14 34:14 36:2,9,10,12 37:5,15,20 109:21 111:15 114:9 129:20 <b>decide</b> 80:5 <b>decreased</b> 25:25 41:14 <b>dedicated</b> 30:21 <b>deep</b> 21:14 22:2 22:8 <b>defendant</b> 3:8 5:14 79:20 <b>Defendants</b> 1:11 <b>defense</b> 43:6 56:20 57:4 58:18,19,20,22 58:24,24 59:3 59:4,18,21 61:6,17 62:15 63:5 68:19 73:20 74:4	76:16 79:20 80:19 83:21 84:17 109:8 118:11,17 122:12 123:7 123:24 125:16 126:12,15 <b>deficient</b> 85:24 86:13 <b>deficit</b> 27:16 93:23 <b>deficits</b> 27:13 92:11,18 93:1 93:18 95:7,10 95:12 <b>definitely</b> 106:11,13 111:22 <b>deformity</b> 30:9 30:11 <b>degeneration</b> 29:17,21,24 34:8,11 <b>degenerative</b> 8:23 29:11,13 30:8,13 31:5,6 31:16 33:12,18 34:5,23 114:14 116:9 117:9,24 118:20 122:16 127:25 <b>degree</b> 41:15 54:21 <b>degrees</b> 25:10 85:16,16,20,20 86:14,14,15 <b>delivered</b> 76:24 <b>demonstrate</b> 44:3 <b>demonstrative</b> 102:25 103:2 <b>denied</b> 18:22 51:23 <b>deny</b> 71:8,9 124:5,6,6 <b>dep</b> 60:12 78:7 <b>depending</b> 44:13	<b>deposition</b> 1:14 2:6,8 5:5 57:2 57:7 60:13 63:7,24 64:2,9 65:23 66:2 96:10 97:16 117:12,12,15 117:17,19 122:2 131:8 <b>depositions</b> 67:12 <b>depression</b> 20:25 <b>describing</b> 103:14 <b>description</b> 4:10 15:7 <b>despite</b> 115:7,20 <b>detail</b> 11:1 15:1 <b>details</b> 11:7 14:25 <b>detect</b> 24:9 <b>developed</b> 36:22 <b>diagnosis</b> 49:10 49:15 50:3,17 51:2,5 102:7,8 102:16 103:20 103:25 104:1 115:3 <b>diagnostic</b> 102:14,20 104:1,3 114:1 115:1 <b>diatribe</b> 119:22 <b>difference</b> 15:17 33:16 35:4 43:15 52:14 53:8 <b>different</b> 7:8 11:18 16:4,23 21:20 22:1 24:2 27:13 30:15 36:22,25 55:17,20 65:1 65:1 76:2 85:23 94:16 <b>differently</b> 58:13
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



59:12,12 61:6 61:6,7,16 62:14 66:25 67:10 68:19,25 69:6,18,20,25 70:1 72:4,18 73:14,21 74:5 75:2 76:5,7,14 76:16 80:19 81:23 92:11,18 92:21 93:1,7 93:17 94:12,17 94:21 95:3,7 95:10,12,14,15 95:22 102:14 102:20 104:8 109:8 <b>examination</b> 2:7 6:5 7:11,12,13 10:5 11:15,21 12:9,10,12 13:20 14:19 15:9,15,18 23:18 41:6,17 45:14 46:9 47:21 56:17 69:23 78:19 82:3 83:18,20 83:25 91:1,22 92:10,17,25 93:17,22 94:6 94:9 105:1 129:4 132:6 <b>examine</b> 14:14 26:3 <b>examined</b> 5:16 26:9 28:13 70:5 <b>examining</b> 130:16 <b>example</b> 10:25 11:25 55:13 86:13 <b>exams</b> 15:7,24 21:17 46:8 57:4,9,11 58:18,24 59:3 59:4,5,7,23	60:5,7,11 61:17 62:16 66:23 <b>exchange</b> 71:6 72:3 74:4 76:15 79:7 80:18 <b>excuse</b> 41:17 <b>exhibit</b> 102:25 103:2 <b>exist</b> 118:9 <b>exists</b> 122:22 124:6 <b>expected</b> 27:20 <b>expedited</b> 79:16 <b>expenses</b> 66:10 <b>expert</b> 14:2,3,6 61:7,16 62:14 118:17 122:12 122:17 123:7 123:24 126:12 126:15 <b>expert's</b> 43:8 <b>expertise</b> 63:13 <b>explain</b> 7:6 26:15 64:4 79:21 <b>explaining</b> 43:18 <b>extending</b> 32:4 <b>extension</b> 21:10 85:22 86:14 <b>extent</b> 126:21 <b>external</b> 23:1 <b>externally</b> 22:22 <b>extra</b> 37:18 63:14 67:10,11 67:15 <b>extremely</b> 77:22 <b>extremities</b> 21:12 24:18 41:20 47:2,8 <b>extremity</b> 19:7 23:3 25:22,24 46:14,16,16,20	<b>fact</b> 63:15 70:24 106:7 <b>fact-finding</b> 80:1 <b>factor</b> 43:7 <b>facts</b> 126:5 <b>fade</b> 28:6 <b>Faduz</b> 57:3,8,18 58:7 <b>failed</b> 26:12 <b>fair</b> 43:6 79:3,8 80:1 <b>Fairfield</b> 5:21 5:21 <b>fairly</b> 65:20 <b>fairness</b> 42:10 50:7 <b>fall</b> 109:13 111:14 115:22 <b>falling</b> 19:9 <b>family</b> 66:16 <b>far</b> 23:20 79:6 124:7 <b>February</b> 31:2 33:8 34:19 35:6 36:4,11 125:20 <b>fee</b> 68:3 <b>feel</b> 21:23,23 23:15 <b>feelings</b> 24:20 <b>feels</b> 19:7 70:17 70:18,18 72:21 <b>feet</b> 8:21 <b>fellowship</b> 6:17 10:14 <b>felt</b> 19:7,8,19,22 19:23 23:13 53:3 99:22 <b>female</b> 91:11 <b>Fiducia</b> 58:2,6 59:17 <b>field</b> 45:20 <b>fifty</b> 16:22 <b>filed</b> 9:24 79:16 <b>fill</b> 10:25 11:7 <b>film</b> 34:18 35:12 35:17 67:7,13	104:9 111:11 <b>films</b> 16:4,5,6 18:1 28:10 30:23 34:12 67:7,10,11,16 100:11 111:1 <b>financial</b> 79:11 <b>financially</b> 77:18 132:20 <b>find</b> 25:23 36:2 41:5 53:14 54:13 74:23 <b>finding</b> 41:24 48:6 74:22 87:5 114:23 <b>findings</b> 30:6 33:18 34:23 41:12 43:8,13 43:19,22 44:21 47:13 48:10 49:2,8 51:7 53:8,12 54:1 87:14 88:9 117:9 <b>fine</b> 19:17 62:1 65:3 71:15,19 73:14 76:2 80:14 87:14 99:4 107:19 <b>Finger</b> 107:1 <b>finished</b> 6:14 <b>firing</b> 28:4 <b>Firm</b> 3:3 5:11 <b>first</b> 28:25 36:19 39:1 40:23 45:4 68:17,25 84:10,12,24 85:12 91:7 107:9,11 109:23 129:6 129:12,18 <b>five</b> 32:4 42:1,1 46:14,14,18,18 <b>flat</b> 25:13 <b>flexed</b> 25:9 <b>Flexeril</b> 20:7,10 20:16 37:23 38:20 105:20	106:7 107:13 108:6 129:7,13 130:2 <b>flexing</b> 27:1 <b>flexion</b> 21:9 85:16 86:13 <b>floor</b> 65:1 <b>fly</b> 130:23 <b>focus</b> 9:3 <b>followed</b> 6:12,16 <b>following</b> 18:13 36:21 76:15 <b>follows</b> 5:17 <b>foot</b> 39:24 46:19 <b>footdrop</b> 39:25 40:3 <b>force</b> 24:3,3 82:6 <b>forearm</b> 27:14 <b>foregoing</b> 132:10 <b>forensic</b> 56:23 <b>forget</b> 43:3 59:8 <b>forgetful</b> 40:15 <b>form</b> 61:21 75:10,22 76:2 98:17 100:2 102:2 116:6 118:3 <b>former</b> 6:13 <b>formulate</b> 100:3 <b>forth</b> 132:13 <b>fortunately</b> 53:6 <b>FOSTER</b> 3:6 <b>found</b> 27:12,13 27:16 47:7 54:3 <b>four</b> 20:5 55:20 102:9,11,14,15 102:22 103:6 <b>fractures</b> 9:10 29:9 34:10 <b>frankly</b> 107:5 <b>freely</b> 73:1 <b>French</b> 117:18 <b>frequency</b> 38:15 <b>frequently</b> 19:9 20:9 117:23 <b>front</b> 90:19,23
	<b>F</b>			
	<b>F</b> 132:1			



<b>full</b> 21:8 36:6 81:9 109:18 110:12,13 111:11 <b>full-time</b> 9:5 <b>function</b> 23:1 80:1 93:4 <b>Furler</b> 3:7 <b>further</b> 85:19 131:2 132:9,15 <b>fused</b> 32:24 <b>fusion</b> 21:10 32:19,20,21 33:2,11 41:16 52:22	<b>go</b> 5:22 10:4 12:17,21,22 17:11 23:21 41:2 42:19 43:22 44:2,7 44:14,17 45:23 48:12 50:4 56:9,18 61:2 64:8,11 65:12 65:22 67:19 68:7,8 74:11 74:13 75:11,16 75:18 77:6 82:13,23 83:4 83:8 84:16 86:4 88:14 89:16 90:11,17 91:23 92:20 93:13 94:20 95:21,22 98:17 102:16 104:12 105:9 108:23 109:4,24 112:2 112:12,22 113:12,18 115:1 121:6,17 121:24 122:1,4 122:11 123:22 124:25 126:7,8 126:24 127:13 128:14,22 <b>goes</b> 44:9 85:22 85:23 111:6 <b>going</b> 7:2 13:21 15:2 17:11,21 18:12 33:21 35:20,22 37:15 38:22 40:1 42:20 43:5,12 44:6 45:1,8 49:13 50:2,5 54:8 65:11,12 65:22 66:1,11 76:13 77:5 78:5,6,8,12,17 80:10 81:22 82:10 85:18 87:6,15,18	93:10 99:20 101:3 102:24 107:21 111:19 111:20 116:21 116:22 119:2,5 119:15 120:9 120:15 121:13 122:3,7 124:13 124:23 128:21 <b>good</b> 5:1 6:6,7 7:22,24 8:3,4 21:12 23:12,18 26:2 75:15 <b>gotten</b> 26:5 73:7 <b>grade</b> 46:17 47:2 <b>grading</b> 27:20 55:19 <b>grafting</b> 32:25 <b>grasping</b> 19:23 <b>Great</b> 113:9 115:6 124:11 <b>greater</b> 96:20,21 <b>Grecco</b> 124:12 125:17,19 126:16 <b>gripping</b> 19:22 <b>groin</b> 40:2 <b>grossly</b> 27:10 <b>group</b> 25:24 27:19,24 46:8 62:23 <b>groups</b> 21:21 25:22 27:14 <b>guess</b> 14:22 42:4 70:12,12 <b>gun</b> 98:22 99:6 <b>guy</b> 65:20	40:10 121:3 <b>hands</b> 20:4 26:10 40:10 48:4 <b>happened</b> 17:22 43:16 79:4 82:17 105:5 116:2,2 <b>happening</b> 30:2 68:23 <b>happens</b> 15:8 <b>happy</b> 93:9 94:20 <b>hard</b> 23:11 29:19 <b>hardship</b> 79:12 <b>hardware</b> 32:25 <b>he'll</b> 119:10 <b>head</b> 14:20 32:14 40:13 51:24 <b>headaches</b> 40:13 <b>heal</b> 127:23 128:9 <b>healed</b> 24:7 52:9 53:4 <b>heard</b> 65:6 99:20 100:23 101:8 <b>hears</b> 100:22 <b>Heather</b> 58:1 <b>heel-to-toe</b> 94:13 <b>heels</b> 94:8,22 <b>help</b> 66:11 122:8 124:1 <b>helpful</b> 53:19 124:10 <b>helps</b> 63:14 <b>hereinbefore</b> 132:13 <b>herniation</b> 31:21 35:1 <b>herniations</b> 30:14 31:22 33:15 34:24 <b>Hey</b> 99:5 <b>Hi</b> 5:10	<b>hid</b> 73:3 <b>higher</b> 58:21 59:4,7 <b>Hills</b> 8:13,14 <b>hired</b> 56:20 63:5 <b>history</b> 17:19 18:5,8 21:2 36:14 39:5,8 39:18,19,20,22 47:25 49:4,5 51:10,18 70:8 70:15 73:18 74:8 76:13,14 78:20 91:8,22 92:7,8 98:12 102:12,18,20 103:11,17 104:6 <b>hit</b> 36:20 76:24 99:17,18 <b>Hold</b> 107:22 127:12 <b>holding</b> 58:11 <b>home</b> 77:19,19 <b>honest</b> 73:9 <b>honestly</b> 80:11 <b>hope</b> 49:13 <b>hospital</b> 8:7,12 10:22 47:24 54:10 114:1,2 <b>hospitals</b> 8:9 10:17,20,23 <b>hour</b> 60:12 69:7 99:20 <b>hours</b> 37:14 120:23 <b>house</b> 76:23,23 <b>household</b> 19:13 77:10,11 80:25 <b>Hudson</b> 10:24 <b>hurt</b> 82:6 <b>hyperextended</b> 91:16 92:5
<b>G</b>				
<b>Gabapentin</b> 20:11,19,20 106:25 <b>gait</b> 94:6,11,15 94:17,21,25 <b>Gellis</b> 88:5 129:22 <b>Gellis'</b> 35:23 83:18 86:18 129:10 <b>general</b> 9:10 11:22 12:11 14:25 15:7 17:21 21:6 <b>generally</b> 59:24 96:20 <b>Gerald</b> 3:3,12 5:11 <b>getting</b> 43:17 49:14 80:2 107:7 <b>give</b> 6:8 15:6,15 54:15 77:20 112:21 113:2 115:18 117:20 118:7 121:23 <b>given</b> 7:13 <b>gives</b> 44:1 <b>giving</b> 14:10 48:20 115:13 123:8				
<b>H</b>				
<b>H</b> 4:9 <b>Hackensack</b> 45:3 46:7 47:18 48:21,21 <b>half</b> 46:17 57:20 60:12 69:7 <b>hammer</b> 22:15 <b>hand</b> 12:8 27:14				
<b>I</b>				
<b>ice</b> 111:14 <b>idea</b> 17:11 90:6 <b>identical</b> 100:10				

<b>identify</b> 26:12	<b>indicates</b> 22:25 36:24 45:20 91:15 122:11 127:25	16:24	<b>K</b>	88:13,19,22,24 89:25 90:2,3,3 90:4 94:3 97:1 97:18 98:10,23 98:23 99:11 103:18,22 117:17 121:12 125:12 130:18
<b>ignore</b> 65:12	<b>indication</b> 35:5 37:11 75:24	<b>interrupt</b> 41:1 42:3 79:2 85:2 110:7,10	<b>Kathleen</b> 125:18	<b>knowing</b> 79:24
<b>illness</b> 91:8 98:13	<b>information</b> 11:12 98:11,20 101:12,13	<b>involuntary</b> 22:12	<b>keep</b> 7:2 63:16 66:11,16 130:6	<b>knowledge</b> 12:6
<b>image</b> 29:1	<b>informs</b> 51:14	<b>involved</b> 24:4 62:21 91:11 100:5 128:6	<b>kidding</b> 101:2,2	<b>knows</b> 65:5,7
<b>imaging</b> 28:14 28:16	<b>initial</b> 11:20 116:10	<b>irritated</b> 26:23	<b>kind</b> 11:4,25 20:13,16,20 22:25 23:14,17 23:24 34:3 36:16 103:3 118:7,9 123:8 124:15 127:6	<hr/> <b>L</b> <hr/>
<b>IME</b> 130:10	<b>initially</b> 11:17 116:20	<b>irritation</b> 24:23 28:2	<b>knee</b> 18:15 19:17 22:15 25:8 26:6 39:11 73:13,13 73:15,15	<b>L</b> 3:10 5:15
<b>immediately</b> 69:24	<b>injections</b> 19:4 40:11	<b>Irwin</b> 1:8 3:8 5:4,14	<b>knees</b> 11:25 25:6	<b>L1</b> 32:2
<b>impact</b> 96:13,20 97:5 98:9 99:2 99:5	<b>injured</b> 59:10	<b>issue</b> 19:16,17 19:18,18 71:20 100:5,13	<b>knew</b> 88:25	<b>L1-2</b> 30:20 31:25
<b>improper</b> 107:10	<b>injuries</b> 16:9 18:19 49:9 52:3 55:2 70:16 96:14 97:1 114:23 118:21 122:18	<b>issues</b> 8:21,21,22 8:22 78:22 126:17	<b>know</b> 7:14 8:22 11:7 13:5,10 14:18 15:21 16:8,21 17:5 17:12 18:2 21:18,22,24,25 22:11,20 23:14 23:17,23 24:2 24:4,7,16,16 25:8,12 26:6 27:2,18,19,25 28:5,9 29:19 29:20,22,25 30:14,16,18,21 32:9,9,13 35:20 36:18 41:13 43:3 49:24 50:14,16 50:21 51:16,17 51:17,25 52:18 52:21 53:6,11 53:17,21 54:1 54:12,12,14 55:6,10,19,21 58:7 61:1 63:12 64:24 65:4,4,7,9,9 66:8 69:15 73:15 87:19	<b>L1977-19</b> 58:2
<b>impulse</b> 28:4	<b>injuring</b> 18:14	<b>issuing</b> 127:16	<b>Irwin</b> 1:8 3:8 5:4,14	<b>L2</b> 30:20 32:2
<b>inappropriate</b> 62:2 91:23	<b>injury</b> 35:16 39:10 52:10,20 53:5,16 54:10 55:22 86:23 88:1,2 100:12 100:12 108:18 108:21 117:23 127:24 128:1,8 128:10	<b>item</b> 104:10	<b>Irwin</b> 1:8 3:8 5:4,14	<b>L2-3</b> 31:21
<b>incident</b> 105:19 106:12,14 108:6 117:25	<b>innervation</b> 27:24	<b>items</b> 110:21,21 110:24 111:7	<b>Irwin</b> 1:8 3:8 5:4,14	<b>L3</b> 32:2
<b>incidentally</b> 54:3	<b>inside</b> 76:23	<b>January</b> 16:14 36:4,4 88:5 106:23,24	<b>Irwin</b> 1:8 3:8 5:4,14	<b>L3-4</b> 30:20 31:19,21
<b>incision</b> 24:6	<b>insist</b> 112:6	<b>Jerry</b> 49:16 50:11,11 96:6	<b>Irwin</b> 1:8 3:8 5:4,14	<b>L4-5</b> 31:19,21 35:1
<b>include</b> 31:19 60:9 79:22 104:6,6,7	<b>instance</b> 25:2	<b>Jersey</b> 1:1,8,24 2:12 3:4,7 5:21 6:13,23 132:5	<b>Irwin</b> 1:8 3:8 5:4,14	<b>L5-S1</b> 31:22
<b>included</b> 16:23 39:24 70:25 79:25	<b>insurance</b> 1:9 16:25 62:21	<b>JOHN</b> 1:9	<b>Irwin</b> 1:8 3:8 5:4,14	<b>lack</b> 21:9 27:23 27:24 28:4 53:21 115:8,20 115:21
<b>incident</b> 105:19 106:12,14 108:6 117:25	<b>intact</b> 22:9 23:1 26:2 27:11	<b>joint</b> 8:22	<b>Irwin</b> 1:8 3:8 5:4,14	<b>lag</b> 30:1
<b>incidentally</b> 54:3	<b>intelligent</b> 65:20	<b>judge</b> 21:25 22:1 80:4 107:5	<b>Irwin</b> 1:8 3:8 5:4,14	<b>Landa</b> 49:23 50:13 95:16
<b>incision</b> 24:6	<b>interested</b> 132:20	<b>June</b> 1:15 2:12 5:2 57:3,8 58:3	<b>Irwin</b> 1:8 3:8 5:4,14	<b>language</b> 62:19
<b>include</b> 31:19 60:9 79:22 104:6,6,7	<b>Intern</b> 3:12	<b>jury</b> 6:9 7:6 8:17 16:12,18 26:14 26:15 77:6 79:24 80:1 100:21,22 114:13 115:7 115:20,25 116:4 117:7,8	<b>Irwin</b> 1:8 3:8 5:4,14	<b>large</b> 69:15
<b>included</b> 16:23 39:24 70:25 79:25	<b>internal</b> 23:2		<b>Irwin</b> 1:8 3:8 5:4,14	<b>Latin</b> 117:19
<b>incident</b> 105:19 106:12,14 108:6 117:25	<b>interrogatories</b>		<b>Irwin</b> 1:8 3:8 5:4,14	<b>Law</b> 1:2 3:3 5:11
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	<b>lawsuit</b> 9:24
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	<b>lay</b> 101:3
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	<b>LAZARO</b> 3:11
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	<b>Leave</b> 121:14
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	<b>left</b> 18:14 19:6 19:17 26:1,5 39:11,11 40:1 46:15,19 61:5 76:15 78:22 85:22
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incidentally</b> 54:3			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incision</b> 24:6			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>include</b> 31:19 60:9 79:22 104:6,6,7			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>included</b> 16:23 39:24 70:25 79:25			<b>Irwin</b> 1:8 3:8 5:4,14	
<b>incident</b> 105:19 106:12,14 108:6 117:25			<b>Irwin</b> 1:8 3:8 5:4,14	

<b>leg</b> 19:9 22:15 24:9,11,12,17 25:11,12 26:1 39:25 40:1 41:9 77:16 85:22	13:23 68:20 69:5 71:11,17 71:21,25 72:14 73:23,24 74:3 76:16,22 77:15 80:19 81:13 82:16 88:19 105:18 108:5	81:14 97:17 98:6 100:4,16 104:4 109:23 110:20 111:21 112:17	34:25 41:19 46:16,19 47:2	127:21
<b>legal</b> 16:23,24 120:9,13	<b>Linda's</b> 100:24 101:24	<b>looked</b> 30:9,19 31:10,23 33:22 35:2 94:4 101:18 129:10	<b>lumbar</b> 18:21,22 19:2 23:8,25 28:18,20,23,24 29:12,14 30:16 30:18 31:7,12 31:17,24 32:1 34:19,25 35:6 35:16 41:9 53:2,10 70:20 72:22 81:23 82:18 95:16 105:4	<b>math</b> 60:15 66:23 70:11
<b>legs</b> 24:10,13 40:2	<b>line</b> 65:23 66:2	<b>looking</b> 16:11,21 18:9 22:20 45:22 50:12 66:10 73:19 75:12 77:7 84:17 94:24 96:9 101:19 104:5 112:19	<b>lying</b> 25:1,13	<b>matter</b> 2:7 5:3 13:23 14:16 15:16 16:10 80:2 103:22
<b>let's</b> 42:19 68:7 68:8 70:11 75:11 82:23 83:4,8 84:16 90:11 95:21 104:12 105:9 107:4,4,19 108:23 112:12 112:22 113:12 113:18 121:6 121:24 128:14	<b>lines</b> 84:7 <b>list</b> 29:1 89:15 101:20 109:25 110:21 111:3 111:16,21 112:17	<b>looks</b> 39:12 40:10 47:1 70:8 88:16	<b>lumbosacral</b> 86:5,6	<b>matters</b> 62:22
<b>level</b> 31:17	<b>listed</b> 123:24	<b>loop</b> 22:9 23:1	<b>lying</b> 25:1,13	<b>Maywood</b> 1:24
<b>levels</b> 24:3 29:11 30:15 34:24 35:2	<b>listen</b> 93:12	<b>lose</b> 73:22	<b>M</b>	<b>Mazie</b> 3:6,6 4:5 5:13,13 6:5 10:4 13:17,20 14:5 40:23 42:15,19,24 43:10,15 44:12 45:19 49:16,22 50:11,22 60:17 60:23 61:20,24 64:24 65:7,13 65:16 74:15 75:9,18,21 77:24 78:5,25 79:9 80:4
<b>license</b> 7:2 132:23	<b>listing</b> 37:3 111:5	<b>losing</b> 82:15	<b>M.D</b> 1:14 2:6 4:4	<b>maintain</b> 6:24 9:1 11:19
<b>licensed</b> 6:19,21	<b>lists</b> 86:3	<b>lost</b> 52:21	<b>maintaining</b> 77:19	<b>Maintenance</b> 76:16,22,23
<b>life</b> 100:24 101:24 115:9	<b>litigation</b> 56:23	<b>lot</b> 16:3 28:15 29:25 33:12 66:10 67:15 70:3 78:18 88:16 108:19 110:25 114:24 117:21	<b>major</b> 100:5,13	<b>majority</b> 58:17 58:21 59:16,18
<b>lift</b> 24:13	<b>little</b> 7:8 16:15 21:7 22:1 23:22 28:1 39:22 55:17,22 69:12 70:2 93:13	<b>lots</b> 97:1	<b>making</b> 125:9	<b>major</b> 100:5,13
<b>lifting</b> 19:10 25:12	<b>live</b> 77:18	<b>loud</b> 99:20	<b>male</b> 128:6	<b>majority</b> 58:17 58:21 59:16,18
<b>ligament</b> 8:21 26:8 34:7 55:8 55:15,23	<b>Livingston</b> 122:12	<b>Louis</b> 1:14 2:6 4:4 5:5,18 71:8	<b>management</b> 21:1	<b>making</b> 125:9
<b>ligaments</b> 55:2,4 56:1,4	<b>LLC</b> 3:6	<b>low</b> 18:14 36:22 36:25 39:12 40:4 49:4,6 70:25 71:9,12 71:19,23,24 72:2,16 76:21 86:5,8 94:14 96:12,13 97:4 97:4 99:1,1,5,7 99:8,22 115:23	<b>MANUFACT...</b> 1:9	<b>management</b> 114:3 115:12 115:17 116:5 117:15 118:2 118:23 119:12 119:21 120:11 120:13,18 121:4,12,17 122:1 123:16 123:20 124:16 124:19 125:6 125:22 126:4 127:10 129:4 131:5
<b>light</b> 25:23 47:7 91:14 99:18	<b>locations</b> 19:6	<b>lower</b> 19:6 24:18 25:22 27:19 31:7,23 32:3	<b>March</b> 33:22 34:12,14 38:1 45:5,17,19 98:14 99:15 104:24 129:15	<b>marked</b> 47:17 103:1
<b>lightening</b> 24:20	<b>long</b> 7:21 14:3,8 19:14 29:17 59:1 69:8 73:24 77:15 107:6 125:4,7		<b>Maribel</b> 2:10 80:6 107:23 132:3,23	<b>Maryann</b> 63:4
<b>limitations</b> 88:16 116:18 117:4,5	<b>longer</b> 19:17,18 69:13 125:2		<b>mark</b> 3:13 79:14	<b>Mazie's</b> 69:21
<b>limited</b> 23:4 88:10	<b>look</b> 17:10 18:1 21:18,19 37:2 38:16,23 39:1 45:1 46:6 47:15 53:7 68:16 72:12 74:15 75:7		<b>marked</b> 47:17 103:1	<b>mean</b> 10:14 11:17 14:5,5
<b>Linda</b> 1:5 3:14 5:11 9:24				

22:19 27:11	86:6,7	46:8,12,13	<b>name</b> 50:16	41:10,18,19,19
29:20 30:3	<b>middle</b> 66:25	84:5 91:11	57:23,24 58:1	54:1,13
32:22 41:13	<b>Middlesex</b>	93:3 95:10	<b>narcotic</b> 20:15	<b>nerves</b> 22:17
51:4 55:6,7,9	125:19	118:16	<b>narrative</b>	<b>nervous</b> 22:10
55:14,16,18,18	<b>midportion</b>	<b>motory</b> 21:16	115:14,18	22:23
63:6 65:11	30:18 32:8,10	<b>move</b> 33:3 50:17	119:25	<b>neurologic</b>
67:9 77:16	<b>mild</b> 41:7	91:24 107:4,20	<b>narratives</b> 119:2	20:21,21 23:1
85:2 88:13,23	<b>miles</b> 99:20	119:3,6	<b>narrowing</b>	41:7
101:14 111:4	<b>milligram</b>	<b>moves</b> 22:15	31:20	<b>neurological</b>
<b>means</b> 25:17	106:25	<b>moving</b> 95:2	<b>nature</b> 51:25	44:21
<b>median</b> 26:19	<b>milligrams</b>	<b>MRI</b> 28:19,20	119:15	<b>neurologist</b>
<b>medical</b> 6:12,14	107:17	28:20,20,21,22	<b>near</b> 21:8 81:9	38:23
6:16 7:9 15:23	<b>millions</b> 60:14	28:22,24 31:1	120:21	<b>neurology</b> 45:3
15:25 16:19	60:24	31:12 32:15	<b>necessarily</b> 55:7	46:8
35:20,21,23	<b>mind</b> 58:5	33:7 34:18,22	<b>necessary</b>	<b>Neurontin</b>
39:14,17,20,22	<b>minor</b> 55:21	35:2,6 53:21	114:18	106:25
42:6 45:2,2	<b>minus</b> 46:18	56:1 70:25	<b>neck</b> 8:20 18:14	<b>neurosurgeon</b>
47:18 48:21,22	<b>minutes</b> 51:15	104:4,5,9	18:19,24 19:15	86:23 87:25
54:21 57:4	<b>misrepresented</b>	109:18 110:12	23:3 32:13	<b>never</b> 11:12
58:24,24 59:3	107:12	110:13 117:9	36:21 39:10	18:18 39:25
61:17 62:16	<b>missed</b> 74:10	127:24	41:8,15 49:7	58:5 70:19
68:19 73:21	<b>moment</b> 54:8	<b>MRIs</b> 16:7 18:1	51:24 53:11	71:18,19,22,24
74:5 76:16	104:13 121:7	33:17,22 52:14	70:16 73:8	72:21 74:12,18
80:19 97:12	128:15	53:7 71:25	81:6,13 84:5	76:25
99:2 109:8	<b>Monday</b> 100:22	72:15 100:10	85:14,15,21	<b>new</b> 1:1,8,24
111:5 114:5	<b>money</b> 63:10,17	100:19 103:24	88:9	2:11 3:4,7 5:21
115:8 126:16	66:14,18	113:25 114:22	<b>need</b> 17:11	6:11,13,23,23
<b>medication</b>	<b>Montero</b> 124:12	115:1	61:17 62:6,15	7:1 19:17
20:11,13,15,17	<b>month-and-a...</b>	<b>multiple</b> 9:11	75:25 80:10,12	20:11 53:16
37:4,11,19	35:7	19:6 25:25	80:14 89:19	76:24 100:12
38:3,9,12	<b>months</b> 29:21	29:11 30:8	101:14,15	114:22 115:23
106:18	34:15 47:10	31:8 35:2	<b>needed</b> 13:9	132:5
<b>medications</b>	95:18 105:3	100:23	20:7 37:14,24	<b>Newark</b> 6:13
37:7 106:15	116:23	<b>muscle</b> 8:21	38:20 59:10	<b>night</b> 19:10,12
130:5	<b>Morris</b> 63:1	20:18 21:20	75:23	69:25 74:25
<b>medicine</b> 6:17	123:6	25:22,24 26:10	<b>needing</b> 75:5	76:7
9:7,9,9 10:10	<b>motion</b> 21:9	27:14,19,24	<b>needles</b> 20:4	<b>Noguiera</b> 96:4
12:9 105:18	23:5,12,18	28:3 37:23	<b>needs</b> 9:19 13:1	98:8 99:15
106:6 108:4	26:7 33:2 41:8	55:2,9 105:22	119:9	104:19,24
<b>meeting</b> 15:1	41:15 52:21	108:8,13,15,21	<b>negative</b> 24:10	<b>noises</b> 100:7
<b>meniscus-type</b>	79:16 81:9,16	<b>muscles</b> 24:7	25:15,17 26:9	<b>non-finding</b>
34:3	85:15,24 86:10	28:6 55:5	27:5 41:8 44:5	87:7
<b>mention</b> 36:19	88:11	<b>muscular</b> 21:11	<b>neither</b> 132:16	<b>nonsense</b> 107:7
<b>METROPOL...</b>	<b>motor</b> 21:13	<b>musculoskeletal</b>	132:18	119:22
1:22	27:8 29:4	8:20 17:24	<b>nerve</b> 17:3 24:14	<b>normal</b> 21:12
<b>Miami</b> 6:18	34:13 36:19		24:15,16,22	23:4 25:18
<b>midback</b> 18:20	39:10 41:22,25	N	26:19,20,22,23	26:2 34:7
18:24 73:8	44:21 45:14	N 3:1,10 4:1	26:25 28:1,2,3	44:24 46:15,17

46:19,20 47:2 47:7,14 85:13 85:16,20,25 86:2,14,15 93:4 114:15 <b>normally</b> 23:19 27:10 <b>Notary</b> 2:11 5:16 132:4 <b>notation</b> 36:16 37:12 <b>notations</b> 49:1 97:21 101:23 <b>note</b> 27:21 40:21 41:21 75:4,9 75:21 77:24 86:19,24 88:4 88:17 89:5,13 89:23 91:4,18 92:13,16 94:6 98:1,2,13,14 98:16 100:1 101:5 102:1 103:15 116:5 118:2,23 119:4 119:16 125:22 <b>noted</b> 31:19 33:15 34:25 41:7 50:23 74:9 81:4 130:12 <b>notes</b> 13:13 39:9 39:17,25 81:22 128:21 <b>noting</b> 49:4 <b>November</b> 95:18 105:5 127:17 <b>number</b> 4:10 5:4 29:20 58:2 63:2 99:12 118:15 120:4 122:10 125:19 125:20 <b>numbers</b> 114:8 <b>numbness</b> 19:6 24:19 26:22 39:24 40:1,5,9 51:23	<b>numerous</b> 42:8 43:13 101:22 <b>nurse</b> 68:18 69:6 72:5 <hr/> <b>O</b> <b>O</b> 3:10 5:15,15 <b>o'clock</b> 61:4,23 91:20 92:1 120:21 <b>object</b> 43:7 44:13,13 61:21 120:11 <b>objection</b> 14:9 42:5,5,13 49:14,25 50:7 50:14,15,23 60:17,18 75:9 75:21 77:24 86:24 89:5,13 91:18 98:2,16 100:1 101:5 102:1 105:25 106:10 107:8 107:10 114:3 116:5 118:2,23 119:4,17 124:16 125:22 <b>objections</b> 89:15 <b>objective</b> 53:15 84:1,8,9 85:10 87:14 88:9 103:15 108:17 108:21 <b>observations</b> 101:4 <b>observing</b> 68:23 <b>obtained</b> 98:20 <b>obvious</b> 114:22 <b>obviously</b> 33:12 52:11 53:11 <b>occur</b> 15:7 29:15 <b>occurred</b> 29:5 34:13 47:10 76:15 79:6 <b>occurrence</b> 118:5 <b>occurring</b> 29:23	<b>occurs</b> 27:23 29:21,24 34:7 115:10 <b>offer</b> 13:18 14:2 <b>offered</b> 14:3,8 <b>offering</b> 14:11 <b>office</b> 10:1 15:3 15:14,22 17:19 21:7 68:18 89:24 90:6 <b>office's</b> 13:24 14:15 15:11 <b>Oh</b> 36:10 73:15 85:18 99:7 117:24 <b>okay</b> 8:2,6 9:23 10:12 12:20 13:12,14 15:4 15:13 25:15 28:10,16 35:11 35:19,25 38:25 43:24 44:14 47:19 48:9 51:6 52:1 58:15,23 59:16 60:4 63:15 65:2,7 67:3,18 68:7,25 70:14 71:18 72:14,20 73:18 74:20 75:4 76:12 77:13 78:17 81:11,17,21 82:8,13 83:23 84:4,11,23 85:9,21 86:4 86:17 87:21,24 88:4,8,18 89:19 90:10,17 90:22 91:6 92:9 93:24 95:2,21 97:20 98:7,25 100:3 103:6,21,23 104:4,19 105:8 107:21 109:4 109:12,17 110:4,20 112:2	112:4 113:1,9 114:11,25 115:6 116:21 117:14 118:6 119:7 120:12 120:24 121:6 122:3,14 123:3 124:9 125:11 126:7,14,23 127:12 128:4 128:22 130:1 <b>old</b> 30:10,10 <b>once</b> 20:5 38:19 <b>ones</b> 55:20 <b>ongoing</b> 110:15 111:12 115:8 115:21 <b>operating</b> 61:9 <b>operative</b> 33:4 <b>opinion</b> 33:17 44:1,6 50:9 53:19 77:12 124:3 <b>opinions</b> 14:10 15:16 51:14 97:23 99:16,24 100:4 <b>oral</b> 2:7 7:13 11:15,18,21 <b>order</b> 36:5,6 60:23 <b>organized</b> 56:19 <b>original</b> 94:17 <b>originally</b> 20:24 <b>orthopedic</b> 7:9 7:17 8:17,18 9:6,11 13:19 14:12 15:20 81:1 126:12,15 130:24 <b>orthopedics</b> 6:15 9:10 10:7 45:10 <b>orthopedist</b> 14:12 86:22 87:25 96:24 <b>osteoporotic</b> 30:12	<b>outpatient</b> 8:14 <b>Outside</b> 40:17 <b>overall</b> 59:14 <b>owned</b> 77:19 <hr/> <b>P</b> <b>P</b> 3:1,1,10 <b>P-14</b> 47:17 <b>P-21</b> 103:1,4 <b>p.m</b> 5:3 131:11 <b>packages</b> 11:8 <b>page</b> 4:10 45:10 45:21 48:2,3,7 61:25 62:1,20 65:22 66:2 76:6 84:1,11 97:16 123:21 <b>pages</b> 42:8 69:11 109:9,10,18,24 110:11 113:23 <b>paid</b> 57:12 <b>pain</b> 19:5,10,11 20:15 21:1 24:5,18 26:21 36:22,23,25 37:21 38:3,9 38:12 39:12 40:4 49:4,6,7 51:20,23,24 54:5 71:11,23 72:1,16 77:2,2 81:18 99:22 116:17,24 117:4,5 <b>painful</b> 23:13 <b>palpated</b> 24:7 <b>palpation</b> 24:1 49:7 81:8 <b>paragraph</b> 111:5,6 <b>paraphrasing</b> 63:20 64:3 <b>paresthesias</b> 49:4 <b>part</b> 17:25 48:7 67:10 71:4 77:16 79:14 93:7,22 94:17
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

95:12,13 98:5 101:17 102:22 103:19 104:1,3 104:8 114:15 <b>partial</b> 55:25 <b>partially</b> 55:23 <b>parties</b> 5:7 62:21 121:20 132:17 <b>parts</b> 102:15 103:7,10 <b>party</b> 130:16 <b>pass</b> 7:12,16 <b>Passaic</b> 1:23 <b>passenger</b> 118:16 <b>pasted</b> 88:17 <b>pathway</b> 12:1,6 12:12,14,18,21 12:22 <b>pathways</b> 11:19 <b>patience</b> 129:3 <b>patient</b> 13:1 18:4 66:12 91:10 102:8,13 103:14 <b>patients</b> 9:16,19 17:20 24:21 59:9,24 <b>Patricia</b> 101:18 <b>PC</b> 3:3 <b>peers</b> 7:14 <b>pelvis</b> 28:22 32:5 <b>people</b> 51:18 60:10 89:3 <b>percent</b> 9:8 11:24 12:7 57:4 59:20,21 59:21 <b>percentage</b> 11:23 58:22 59:4,8 <b>percentages</b> 59:14 <b>Percocet</b> 20:4,13 37:8,13 38:19 129:19	<b>percuss</b> 26:20 <b>perform</b> 13:11 15:10,14 17:23 82:11 <b>performed</b> 44:24 51:18 54:4 <b>periods</b> 19:14 77:15 <b>peripheral</b> 22:9 <b>permanent</b> 52:10,20 53:5 53:16 127:24 128:10 <b>permit</b> 10:17 78:6 <b>permitted</b> 43:20 <b>perpetuity</b> 130:5 <b>person</b> 16:10 18:17 21:24 22:22 23:19 25:5 64:22 89:24 96:22 117:22 128:7 <b>person's</b> 98:21 <b>personally</b> 88:24 88:25 90:4 <b>perspective</b> 41:7 <b>Peruchi</b> 62:25 63:3,4,4 <b>Petrucci</b> 63:6,8 65:23 66:2 96:10 97:3,15 99:3,14 127:17 <b>Petrucchio</b> 127:21 <b>Phalen's</b> 26:12 26:16,24 <b>Phonetic</b> 21:16 48:7 57:3 63:1 127:21 <b>photos</b> 97:23 115:10 <b>physical</b> 9:25 13:22 17:4,23 19:1 21:3 39:17 41:3 81:23 93:7	101:19 102:14 102:20 104:7 114:5 <b>physically</b> 77:17 <b>physician</b> 129:24 <b>physicians</b> 17:2 <b>PI</b> 98:19 <b>pie</b> 102:16,19,22 103:7,10,16 104:1,8 115:2 <b>piece</b> 103:11 115:2 <b>pills</b> 37:16 <b>pins</b> 20:3 <b>place</b> 58:3 95:18 115:25 132:12 <b>plaintiff</b> 1:6 3:5 3:14 13:23 14:15 18:6 21:3 24:25 36:14 37:4 38:7,8 39:6,6 41:3 45:3 47:22 48:24 52:3 58:21 59:22,23 78:10 78:13,15,20 129:6,12 130:21 <b>plaintiff's</b> 33:23 36:17 130:10 <b>plan</b> 15:19 86:18 86:19 87:25 102:21 <b>planning</b> 103:16 <b>play</b> 72:10,11 <b>playing</b> 79:17 <b>please</b> 5:8 6:8 48:13 62:10 75:12 79:14 80:7 84:13,23 85:9 89:14 107:24 108:24 110:6,9 112:17 112:23 113:13 121:25 123:11 126:25 128:14	<b>pleasure</b> 121:2 <b>point</b> 19:25 50:19 57:1 94:18 98:19 107:20 116:19 120:1 121:14 <b>pop</b> 102:24 127:8 <b>Pope</b> 118:15 120:3 122:9 <b>Pope's</b> 118:18 122:15 <b>portion</b> 15:22 32:3 46:13 80:18 94:11 116:25 <b>position</b> 24:25 43:11 50:5 79:8 <b>positive</b> 43:13 44:7 <b>possibility</b> 12:8 <b>possible</b> 97:2 <b>post</b> 47:11 52:14 53:6,22 100:10 <b>postsurgeries</b> 88:2 <b>potential</b> 94:16 <b>potentially</b> 60:13 96:22 <b>practice</b> 2:9 6:24 7:15 9:1,4 9:6 12:11 59:9 66:9,11 <b>practiced</b> 7:1 <b>pre</b> 52:14 53:6 100:10 <b>pre-advanced</b> 30:3 <b>predate</b> 16:3 <b>preexisting</b> 52:12 118:19 122:16 <b>prepared</b> 102:25 124:20 <b>prescribed</b> 105:19 106:6,8 106:15 107:16	108:5 129:7,13 129:18 130:2 <b>prescription</b> 130:5 <b>present</b> 5:6 91:8 98:13 <b>presentation</b> 79:2 <b>press</b> 24:2 <b>pressure</b> 24:1 <b>Prestige</b> 35:23 <b>pretty</b> 17:5 35:2 65:19 <b>previous</b> 32:19 32:21 41:16 62:11 107:25 108:1 <b>previously</b> 20:6 20:12 38:8,12 47:17 <b>price</b> 60:5 <b>primarily</b> 9:3 <b>print</b> 48:8 <b>prior</b> 18:19,22 18:24 19:16 20:10 21:10 36:17 38:2 52:22 53:16,22 70:16,20,24 71:2 72:22 79:16 88:2 132:5 <b>private</b> 9:1 <b>privileges</b> 8:7,10 10:17,19,22 11:8 <b>probability</b> 54:21 <b>probably</b> 9:8 70:12 79:23 97:6 122:22 <b>problem</b> 71:9,15 71:17 73:13,16 76:19 <b>problems</b> 9:11 40:12,14,16 52:12 78:13 94:14 115:23
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>procedure</b> 2:9 33:6	13:15	<b>radiologic</b> 29:24	74:13 75:8	49:19,21,23,24
<b>procedures</b> 11:9	<b>question</b> 39:15	<b>radiology</b> 17:2	81:20 82:2	51:1 56:12,14
<b>proceed</b> 98:3,17	62:6,10,11,13	<b>raise</b> 41:9	90:25 92:12,24	56:16 60:20,22
<b>proceeded</b> 82:14	64:10 66:6,13	<b>range</b> 21:8 23:5	93:2,3,5,6,16	61:2,4,21,23
<b>process</b> 7:10	66:17 69:22	23:12 41:8,14	93:18,21,23,25	62:5 64:8,11
17:17 29:23	71:10 75:10,22	47:14 81:9	94:11 96:11	64:15,17,19
127:25	76:1,3 80:7	85:15 86:1,2,9	97:6 101:19,22	65:6,25 67:22
<b>professional</b>	87:7,15 89:10	88:10	102:4 104:22	67:24 68:1,11
57:5	89:13,19 92:3	<b>ranges</b> 81:15	109:22 110:2	68:13,15 74:11
<b>pronounced</b>	93:11,12,15,19	85:24	110:18 111:17	74:12 75:14,18
58:12	94:1 96:17	<b>re-review</b> 70:1	111:23 112:7	75:20 77:6
<b>prosecution</b>	98:17 100:2,9	<b>reach</b> 23:20	112:18 115:4	78:2,4 80:16
89:12	101:6,8,9	<b>read</b> 43:7,21	118:14 120:7	83:1,3,6,11,13
<b>proverbial</b>	102:2,3 106:10	49:23 50:2,13	122:14,18	83:16,24,24
22:14	107:24,25	62:7,10,12	123:5,9,25	84:13,15,17,20
<b>provide</b> 15:18	108:1,3,8	64:10 66:1,3	124:2 126:11	84:22,24 85:2
15:19 22:24	110:5 112:18	66:20 72:23	126:14,17	85:3,6,10,19
24:2	112:20 115:13	78:8 80:9,10	127:16,18,20	86:25 87:2,4
<b>provided</b> 15:3	115:17 116:6	80:12,14 84:12	128:2,4,10,12	87:23 89:8,16
78:11	118:3	84:23 85:9	<b>received</b> 110:2	89:18 90:12,14
<b>providing</b> 22:21	<b>questioned</b>	86:22 89:20	<b>recertified</b> 8:4	90:16,18,21
22:21	95:13	91:7 107:24	<b>recertify</b> 7:24,25	91:20,24 92:1
<b>provocatively</b>	<b>questioning</b>	108:2 119:2,21	8:1	92:25 95:22,23
24:22	91:23 94:18	119:25 120:9	<b>recognize</b> 88:20	95:25 96:2,8
<b>public</b> 2:11	98:18 100:13	<b>reading</b> 42:6	89:4,4,22 90:8	96:17 98:2
89:23 132:4	<b>questions</b> 10:3	50:12 61:25	96:19,22	99:13,15
<b>pull</b> 90:12 95:22	12:2 13:15	101:25 118:24	<b>recollection</b>	104:15,17,19
104:19 105:10	17:20 35:21	120:14	14:23 82:4	104:21,25
107:22 120:19	54:23 65:8,11	<b>ready</b> 85:3	93:20 98:21	105:12,14,16
120:25 121:1,4	87:16 91:1	113:1	100:6,7 119:10	106:2,4,21
<b>purely</b> 91:22	101:3 119:16	<b>real</b> 43:25	119:25 120:17	107:4 108:12
<b>purported</b> 78:8	120:2 128:21	100:15	122:9 123:2,23	109:1,3,6,25
<b>purpose</b> 5:19	129:1 131:3	<b>reality</b> 100:9	124:1,8 125:1	112:2,15,22,25
13:17 22:7	<b>quick</b> 43:25	<b>really</b> 15:17	126:21	113:15,17,20
<b>pursuant</b> 2:8	<b>quicker</b> 93:13	23:18 31:10	<b>recommendati...</b>	119:5 121:9,11
<b>push</b> 23:16	<b>quiet</b> 107:5	42:5 54:16	87:8	121:13,14,15
82:20	<b>quite</b> 30:4 71:13	65:17	<b>recommendati...</b>	121:16,18,19
<b>put</b> 29:19 50:13	<b>quotations</b>	<b>rear-ended</b>	87:16	121:20,25
74:12 103:10	78:16	18:12 118:16	<b>recommended</b>	122:4,7 124:18
123:10,12,14	<b>quote</b> 72:15	<b>reason</b> 113:22	40:7	125:15,24
127:10 130:15	73:22 76:5,7	114:6	<b>record</b> 5:25 6:2	126:1,3,10
<b>putting</b> 125:17	<hr/>	<b>reasonable</b>	6:4 13:18	127:2,4,15
130:20	<b>R</b>	54:21 114:18	38:17 42:15,16	128:17,19,25
<hr/>	<b>R</b> 3:1,10 5:15	<b>reasons</b> 54:4	42:20,23,25	129:20,25
<b>Q</b>	132:1	<b>recall</b> 14:21	44:15,17,19	131:6,10
<b>qualifications</b>	<b>R-i-z-i-o</b> 5:19	54:11 57:24	45:24 46:1,3,5	<b>recorded</b> 71:1,4
10:3 11:11	<b>radar</b> 98:22	62:19 68:18,20	47:16 48:13,15	71:5 72:6 92:8
	99:6	69:8 71:3	48:17,19 49:17	126:19

<b>recording</b> 37:13 68:23 72:10	87:25	62:25 63:21	18:13 40:3	<b>review</b> 15:15
<b>records</b> 15:15	<b>referrals</b> 87:16	69:1,3,13,14	68:4,4 97:13	17:7,9,13
15:24,25 16:1	<b>referring</b> 16:5	72:7 83:17	118:7 119:9,12	28:14,17 32:15
16:2,4,20,23	32:7 48:11	92:9 94:3 95:8	124:20 127:6	44:4 45:4 67:7
17:2,4,5,8,13	57:23 64:5,6	95:9 96:15	<b>represent</b> 5:7	67:9,13 69:17
35:20,21,22,24	92:16 97:19	101:25 109:7	62:23	69:19,22
36:3,13 37:3	<b>reflect</b> 65:6	109:10 112:1,8	<b>representation</b>	124:13
38:5,23 42:6,8	106:21	118:22 119:23	112:5 119:10	<b>reviewed</b> 16:20
42:11 43:14	<b>reflects</b> 106:22	119:24 120:3,6	<b>reproduces</b> 27:2	17:4 31:1
44:3 45:2,3,5	<b>reflex</b> 46:21,24	124:11,25	<b>request</b> 13:24	35:11 47:21
47:16,17,20,24	<b>reflexes</b> 21:14	125:18	14:15 15:11,14	48:22 69:24
48:22 49:2	22:3,8 26:2	<b>remembers</b> 72:6	125:17	109:9 110:12
51:8,14 54:10	47:1	119:19 126:6	<b>requests</b> 60:2	110:22,25
57:16 69:12,15	<b>refresh</b> 119:9,25	<b>remotely</b> 5:6	<b>require</b> 10:25	111:7,9 113:23
69:18,23 70:3	122:9 123:2	<b>removed</b> 33:1	60:25	<b>reviewing</b> 35:19
83:18 86:18	124:1,25	<b>renewing</b> 130:6	<b>required</b> 11:5	<b>ribs</b> 18:15 19:18
90:23 91:2	<b>refreshes</b> 120:16	<b>repeat</b> 78:12	11:11 52:13	26:4
96:4,6 97:12	123:22	79:10 82:10	<b>requires</b> 11:21	<b>right</b> 9:5 12:3,18
97:22 98:4,7,8	<b>regard</b> 11:14	115:16	21:24	12:20 13:3,4
99:3 101:15,17	30:5 43:20	<b>report</b> 15:3,6	<b>residency</b> 6:15	15:2,13,13
101:18,20	53:23 95:6	16:11,22 18:9	7:11	16:17 17:18
104:23 106:14	<b>regardless</b> 100:6	19:21 52:2	<b>residual</b> 126:16	19:23 22:19
107:22 109:9	100:7	68:17 70:5,9	<b>resisted</b> 21:20	23:6,7 25:16
109:18,19	<b>regards</b> 52:7	70:15,16,21	<b>resolve</b> 62:22	26:4 27:6,12
110:15,22	<b>region</b> 27:14	72:21,24 73:19	<b>resolved</b> 118:22	27:15 28:8
111:5,10,12,15	32:11 33:19	74:8,16 75:5	122:18	29:3 30:25
111:24 112:1,6	<b>Regional</b> 10:24	75:23 76:9,11	<b>respect</b> 14:2	37:1 39:24,24
112:9 113:4,23	<b>registered</b> 22:22	77:5,23 78:16	81:5	42:14,24 46:16
115:21 129:10	<b>Rehabilitation's</b>	79:25 80:22,24	<b>respond</b> 78:18	46:18 49:3
129:25	35:23	81:7 99:13	101:3	52:25 55:17
<b>RECROSS</b> 4:2	<b>relate</b> 16:10	101:15 109:24	<b>response</b> 21:24	56:24 57:13
<b>recurred</b> 40:6	<b>related</b> 16:8	110:21 111:2,2	22:12,25	58:10,17,19
<b>red</b> 99:18	39:23 40:13	118:7,18	<b>rest</b> 73:25	59:2,13,19
<b>redirect</b> 4:2 42:9	41:15 43:22	120:16 125:18	<b>result</b> 29:15	60:7,8 61:13
79:20 129:4	52:15 53:4,5	127:17,21	52:10 127:22	63:11,17,20
<b>redirected</b> 87:10	53:11,13,20	128:5 130:13	<b>results</b> 46:24	64:24 65:21
<b>redness</b> 26:11	54:17	130:15	<b>retrolithesis</b>	66:14,18 67:1
<b>reduced</b> 41:7	<b>relates</b> 17:6	<b>reported</b> 18:18	33:14	68:2,5,7 70:4,6
<b>refer</b> 9:21 13:2,6	<b>relative</b> 132:16	19:4 52:17	<b>returned</b> 18:18	70:10 71:22
13:8 32:2,12	132:18	<b>reporter</b> 2:11	74:18	72:25 73:2,16
55:2	<b>relaxer</b> 20:18	5:8 62:10	<b>reveal</b> 18:8 21:5	77:3,21 80:13
<b>reference</b> 99:1	37:24 105:22	79:14 89:14	23:10 31:15	82:10,22 83:14
<b>referenced</b>	108:9,13	121:22,22	32:18 33:25	84:4,8 85:17
104:24	<b>relaxers</b> 108:15	132:4	39:8 46:11	86:6,9,10 91:4
<b>referencing</b>	<b>release</b> 40:8	<b>reporting</b> 1:22	47:6	95:15 96:23
125:9	<b>relevant</b> 45:9	121:24	<b>revenue</b> 63:16	97:12 101:20
<b>referral</b> 86:22	79:7,9,22 81:1	<b>reports</b> 16:25	63:17 66:11,15	102:24 103:12
	<b>remember</b> 14:25	17:1,3 18:12	66:18	104:2 105:6,20



105:23 106:24	58:6,8 69:13	30:2 32:23	<b>separate</b> 15:22	100:18
108:6,9 109:14	89:10 93:25	34:6,6,9 35:3	68:3	<b>significantly</b>
111:3,19	98:22 103:9,13	35:10,15 36:6	<b>separately</b> 67:7	85:25
112:12,16	110:1,1,3	45:22 52:13	67:16,17	<b>signs</b> 26:10,20
113:21 114:20	114:12,16,17	53:7 55:25	<b>September</b>	41:17
116:13 117:1	114:19,21	56:3 58:10	128:5	<b>similar</b> 26:24
118:14 122:8	<b>says</b> 40:2 62:2,3	63:19 70:12,20	<b>seriousness</b>	31:10 39:21
122:20 125:16	62:20 70:17	74:7,25 76:8	86:23 88:1	41:14 59:15
128:13 129:2	73:23,24 74:3	76:11 84:1,6	<b>serve</b> 61:16	88:11
130:14	74:17 84:4	84:14 86:19	62:14	<b>Similarly</b> 53:2
<b>ringing</b> 40:14	85:15,19 86:21	89:2 98:13	<b>services</b> 1:22	<b>simple</b> 93:16
<b>Rizio</b> 1:14 2:6	86:22 94:23	100:11,12	61:7,16 62:14	<b>single</b> 81:3
4:4 5:5,19 6:6	99:7,17 118:11	103:4,5,6,8	<b>set</b> 132:13	<b>sit</b> 7:11,13 77:7
6:8 10:6 13:18	119:11 122:17	109:19 110:15	<b>sever</b> 28:3	82:16
56:18 61:5	123:25 126:18	111:12,21	<b>sharp</b> 99:22	<b>sitting</b> 19:13
71:8,13,18,22	130:16	119:9,18	<b>SHARPE</b> 3:12	25:2,4,6,10
74:2 76:18	<b>scan</b> 28:18,23,25	120:16 123:15	<b>Shivitz</b> 128:4	77:15,15 81:1
77:3,14 118:18	29:1,8 35:12	123:17,21,22	<b>shocks</b> 24:20	89:24
131:8	<b>scans</b> 16:7	123:23 125:7,8	<b>Short</b> 8:13,13	<b>Skidmore</b>
<b>Road</b> 5:21	113:25	<b>seeing</b> 27:1	<b>shortness</b> 51:23	124:12
<b>room</b> 17:2 18:13	<b>schedule</b> 15:12	110:19 111:18	<b>shoulders</b> 11:25	<b>skip</b> 33:21
39:13 51:3,7	<b>scheduled</b> 69:1	112:1,8	12:7	<b>sleep</b> 40:16
51:19 54:6,18	<b>scheduling</b>	<b>seen</b> 18:10 33:16	<b>show</b> 15:2 26:23	<b>Slooten</b> 38:24
65:1,5 69:6,10	18:17	45:4 96:25	29:8 31:4	39:2 40:22
89:11,11 90:1	<b>school</b> 6:12,14	<b>segment</b> 33:2	34:22 35:22	90:18,23 91:2
97:13 99:2	<b>sciatic</b> 24:14,15	<b>segments</b> 31:8	112:10	92:14
<b>roots</b> 24:16	41:10,19	<b>seizures</b> 20:23	<b>showed</b> 21:8	<b>slowly</b> 21:7
<b>rotate</b> 23:21	<b>screen</b> 89:3	<b>selected</b> 42:7	27:19,22 30:7	<b>smaller</b> 48:8
<b>rotation</b> 85:22	120:20,25	<b>semantics</b>	41:17 49:24	<b>snowblower</b>
<b>routine</b> 14:13	121:1,5 123:11	103:18	81:8 92:11,18	76:24
<b>rules</b> 2:9 121:21	123:12,14	<b>send</b> 101:12	93:1,17	<b>so-to-speak</b> 28:7
<b>run</b> 90:5 130:6	127:11	119:8 120:15	<b>showing</b> 126:22	<b>soap</b> 103:15
<b>Rutgers</b> 6:11,12	<b>scroll</b> 123:20	121:2 123:13	<b>shows</b> 81:7	<b>socially</b> 90:4
	<b>seat</b> 91:13	127:8	<b>shrink</b> 28:9	<b>soft</b> 34:3 118:21
	<b>second</b> 5:23	<b>sensation</b> 21:13	<b>side</b> 25:6 58:22	122:17
<b>S</b>	48:13 67:20	21:22,25 25:23	82:13,13	<b>solely</b> 118:19
<b>S</b> 3:1,10,10 4:9	68:9 82:24	25:25 47:3,7	<b>side-to-side</b>	122:15
5:15	96:5	<b>sense</b> 17:21	23:21	<b>somebody</b>
<b>sacrum</b> 32:5	<b>seconds</b> 27:4	26:25 41:25	<b>sign</b> 22:9	119:14 124:4
<b>sake</b> 26:6	<b>section</b> 45:18	96:19	<b>signal</b> 34:1,5,6	124:21
<b>salesperson</b>	49:10 70:9,15	<b>sensory</b> 21:13	<b>significance</b>	<b>somewhat</b> 42:4
18:16 74:18	73:18 74:8	21:17 27:8	41:11 43:18	<b>soon</b> 99:21
<b>saw</b> 29:14 31:12	76:13,14 84:1	<b>sent</b> 68:18	44:20,22 47:9	<b>soreness</b> 55:10
33:7 34:11,18	84:9,9 86:5,18	<b>sentence</b> 84:10	47:12	<b>sorry</b> 10:2 36:8
38:5 39:15	86:19 92:7	84:13,24 85:10	<b>significant</b>	40:20,25 42:3
41:14 98:5	<b>see</b> 9:10,10,11	85:12	22:12 31:20	45:16 48:12
<b>saying</b> 12:5	23:20 24:23	<b>sentences</b> 91:8	51:13 52:11,12	58:5 79:1 83:9
43:25 44:10	28:5 29:9,10	91:16 92:4	53:9 78:22	85:2,18 115:15
49:14 50:2				

128:22	31:6,9,12,18	92:6	54:1 70:24	<b>surgery</b> 7:17
<b>sort</b> 24:21 32:11	31:24 32:1,4,6	<b>stenographica...</b>	71:2	8:13,14,14,17
<b>sought</b> 39:16	32:9,11,16	132:11	<b>stuff</b> 56:19	8:18 9:12,14
<b>sound</b> 63:18	33:8 34:19	<b>step</b> 7:10	100:14 121:24	9:20 10:13,18
<b>space</b> 31:20	35:1,9,16 41:9	<b>stepping</b> 97:10	<b>subjective</b>	10:21,23 13:1
<b>spasm</b> 21:11	52:8,12,24	<b>stick</b> 45:8	103:15 108:19	13:8,11 18:23
24:8 108:14,17	53:3,10 70:17	<b>STIEVE</b> 3:13	<b>subjectives</b>	19:1,2,16,24
<b>speak</b> 101:10	70:20 72:1,16	<b>stiff</b> 19:22	100:14	20:1 40:6
<b>speaking</b> 95:17	72:22 81:7,8	<b>stiffness</b> 84:6	<b>subspecialist</b> 9:6	52:13 53:17,18
96:20 106:10	96:15 110:13	85:14 88:10	<b>subspecialty</b>	73:2,6 76:20
110:14	111:12 114:16	<b>stimulus</b> 22:21	10:9 12:8,10	95:16 105:4
<b>speaks</b> 54:6	116:14 117:23	<b>stop</b> 43:12 78:6	12:12,13	109:13,14,15
<b>special</b> 11:3	<b>sports</b> 6:17 9:7,9	99:18	<b>substance</b> 118:8	114:14 115:24
<b>specialist</b> 14:7	9:9 10:9 12:9	<b>stopped</b> 91:13	<b>substantial</b>	116:8 126:16
<b>specialty</b> 7:9,23	<b>sprain</b> 52:8 53:3	<b>straight</b> 24:9,11	115:10	<b>surgical</b> 33:5
12:14 40:17	54:24,25 55:3	24:12 25:12	<b>suffered</b> 53:15	<b>surprised</b> 130:1
45:9	55:18,24	41:8	97:6 118:21	130:7
<b>specific</b> 12:2,3	116:11	<b>straighten</b> 25:7	122:17 127:21	<b>sustained</b> 52:4
124:21	<b>sprain/strain</b>	25:11	128:1,8	99:24
<b>specifically</b>	97:6 99:25	<b>strain</b> 52:8 53:3	<b>suggest</b> 7:25	<b>swear</b> 5:8
51:22 59:13	116:14 118:21	54:24,25	60:24	<b>sweeping</b> 125:9
72:7 94:25	127:7,22 128:9	116:11	<b>suggests</b> 62:2	<b>swelling</b> 26:7,11
96:16 102:4	<b>sprained</b> 55:13	<b>strains</b> 55:1	<b>sum</b> 118:7	<b>swells</b> 55:14
116:8 119:1	<b>sprains</b> 55:1,19	<b>street</b> 1:23 3:7	<b>summary</b>	<b>sworn</b> 5:16
120:8	<b>St</b> 8:11 10:24	88:20 90:8	119:14 122:20	63:24 121:23
<b>speech</b> 42:21	<b>standard</b> 17:18	<b>strength</b> 21:12	122:21,22	132:7
<b>speed</b> 96:13 97:5	<b>standing</b> 19:13	21:19,20,22	124:4	<b>symptoms</b> 27:2
97:22 98:8,22	77:14 81:1	22:1 25:22	<b>superimposed</b>	39:21 40:1,6
99:2,8 100:6	<b>start</b> 37:25 69:1	27:13,20 41:22	88:1	102:13 103:11
<b>spend</b> 9:7	129:23	44:24 46:15,18	<b>Superior</b> 1:1 2:8	103:17 104:6
<b>spent</b> 78:18	<b>started</b> 40:4	<b>strengths</b> 42:2	<b>supplement</b>	<b>syndrome</b> 54:2
<b>spinal</b> 9:14,16	61:6 65:8	<b>stressing</b> 24:22	66:10	54:7
22:23 24:8	76:25	<b>stretch</b> 24:14	<b>supplemental</b>	<b>SYPNIEWSKI</b>
41:16 108:18	<b>starting</b> 65:23	41:18 55:7,9	67:14	2:10 132:3,23
109:18 127:7	66:9 116:2	55:22	<b>supports</b> 44:6	<b>system</b> 8:20
128:8	<b>starts</b> 48:2 69:20	<b>stretching</b> 24:22	<b>sure</b> 5:18 6:10	20:22 22:10,23
<b>spine</b> 9:22 10:13	<b>state</b> 2:11 5:6	<b>strike</b> 76:5,13,17	7:8 11:6 16:14	
10:18,20,23	112:5 132:5	91:24 104:23	16:21 50:1	<b>T</b>
11:1,2,4,10	<b>stated</b> 26:5 94:7	119:6	64:13,21 65:4	<b>T</b> 3:10 4:9 132:1
12:14 13:1,8	<b>statement</b> 61:2	<b>struck</b> 99:19	66:3 75:17	132:1
13:11 14:4,4,6	77:9	<b>structure</b> 34:4,7	80:7 89:23	<b>T1</b> 33:14
14:8 18:19,21	<b>statements</b>	<b>structures</b> 55:12	91:10 110:25	<b>T11</b> 32:7
19:2 21:8 23:8	125:10	<b>struggling</b> 77:22	112:10 117:19	<b>T11-12</b> 31:24
23:24,25 24:17	<b>states</b> 6:21,25	<b>studies</b> 17:3	123:12	<b>T12</b> 32:7
28:18,19,19,20	92:5 129:20	18:21 28:14,16	<b>surgeon</b> 9:22	<b>T12-L1</b> 31:24
28:21,22,23,24	<b>status</b> 88:2	39:13 53:9,15	13:19 130:25	<b>T7</b> 30:10
29:12,14 30:6	<b>stays</b> 114:1	70:19 72:22	<b>surgeries</b> 11:1,3	<b>tablet</b> 37:13
30:16,18 31:2	<b>steering</b> 91:17	<b>study</b> 30:7,19	11:4	<b>tablets</b> 106:25

<b>tailbone</b> 36:23	<b>tensive</b> 84:5	12:25 13:14	116:7 117:18	80:15 82:25
<b>take</b> 17:19 20:6	85:13	14:4 40:25	123:3 125:3	83:3,5,10,13
29:18 36:1,14	<b>term</b> 54:24	43:14 44:11	128:20	83:15 84:22
38:22 39:5	<b>terms</b> 43:19	56:7,8 58:16	<b>Thomas</b> 1:8 3:8	85:1 87:1,4,22
47:25 66:25	46:12 66:22	90:10 95:2,21	5:14	89:7,17 90:13
68:16 69:4	81:25 115:2	103:21 104:11	<b>thoracic</b> 18:19	90:16,20 91:19
72:7,9 77:5,8	<b>test</b> 11:22 22:17	113:11 122:24	28:19,19 30:6	91:25 95:24
97:9,17,20,24	24:9,11,12,12	123:5 124:8	30:16,19 31:2	96:2,7 100:21
111:20 112:17	26:7,12,16	126:13,23	31:6,9,24 32:6	104:14,17,20
119:10 125:1	44:5 46:21,25	129:2,3 131:4	34:25 53:2,10	105:11,14,15
<b>taken</b> 2:8 30:23	47:3 81:5,14	<b>thanks</b> 13:16	70:17 73:6	106:1,4 107:6
35:6,12 132:11	81:18 82:11,18	50:24 74:22	<b>thought</b> 18:20	108:2,11 109:3
<b>takes</b> 20:4 37:22	94:13,14	128:13	19:11,24 36:11	109:5 112:14
69:12	<b>tested</b> 12:7	<b>theme</b> 127:7	52:8 67:12	112:24 113:14
<b>talk</b> 65:10 68:17	25:21,21	<b>therapist</b> 101:19	74:12	113:17,19
118:9	<b>testified</b> 5:17	<b>therapy</b> 17:4	<b>thoughts</b> 15:15	116:25 120:21
<b>talked</b> 81:21	57:18 63:15	19:1 39:17	<b>thousand</b>	121:8,11 122:6
88:11 95:17	82:2,21 92:24	40:7 114:6	122:10	124:17 125:14
103:24	95:7 96:11	<b>thing</b> 11:4,25	<b>thousands</b> 42:7	125:25 126:3,9
<b>talking</b> 43:4	100:23 105:17	25:8 36:19	109:10,17	127:1,4 128:1
63:23 78:19	106:19 107:15	42:11 43:5,13	110:11 113:22	128:16,19,24
92:13 97:14	108:4 120:4	49:12,13 50:6	<b>three</b> 34:15	129:2 130:9
105:4	<b>testify</b> 59:9	77:18 81:3	55:20 78:14	131:9 132:12
<b>tandem</b> 94:7,22	60:11 132:7	90:5 99:6	102:13 103:10	<b>times</b> 13:7 20:5
<b>tap</b> 22:14 26:18	<b>testifying</b> 14:10	108:20 118:1	<b>three-and-a-h...</b>	29:25 40:2
<b>team</b> 127:14	57:25 60:10	124:15	47:10	60:25 67:3,15
<b>tear</b> 55:8,11,25	93:2,3,16,18	<b>things</b> 8:24 9:9	<b>time</b> 5:3,24 6:2,3	67:15
<b>tearing</b> 55:4	95:9 96:12,15	20:25 23:15	9:8 15:9 18:2	<b>Tinel</b> 26:15,17
<b>tears</b> 34:9 56:1,4	104:23 115:4	29:25 51:25	19:14 26:6	<b>Tinel's</b> 26:12,15
<b>tell</b> 8:17 16:12	122:15 126:15	73:10 77:11	27:3 30:4	<b>tingling</b> 26:22
16:18 26:14	<b>testimony</b> 59:17	79:24 81:4,24	38:17 42:22	<b>tired</b> 121:13
38:11 57:22	62:25 63:25	85:23 93:21	44:16,23 45:25	<b>tissue</b> 34:3
64:5 78:21	92:17 95:8	97:2 98:5	46:4 48:14,17	118:21 122:17
90:2 96:25	100:21 117:16	100:4,8 103:18	48:18 49:18,21	<b>today</b> 9:23 43:16
<b>telling</b> 114:13	117:21 119:14	103:19 108:20	50:25 54:12	50:18
115:7,19,25	119:19 121:23	118:9 124:4	56:11,14,15	<b>today's</b> 5:2
116:3 117:7,8	123:8 124:22	130:21	57:5 58:6,13	131:8
<b>temporary</b>	124:24 126:6,8	<b>think</b> 12:9 25:9	59:1,6 60:19	<b>toes</b> 23:20 81:25
24:19	132:11	29:22 34:16	60:22 61:3,22	<b>told</b> 70:23 71:1,2
<b>tender</b> 23:25	<b>testing</b> 21:20	42:10,12 43:6	62:4 64:14,17	72:17 73:1,5
26:4	22:13 26:8	48:11 50:6	64:19 65:24	73:12,20 74:23
<b>tenderness</b>	84:9 102:14	62:18,23 63:6	66:8,21 67:21	75:1 76:4,6,12
21:11 23:24	104:1	63:7,21 65:17	67:24,25 68:10	78:21
26:8,11 41:10	<b>tests</b> 16:7,9 44:7	70:18 77:12	68:13,14 69:3	<b>tone</b> 46:15,19
81:7	44:21 81:11	79:19,23 82:20	70:10 73:6,14	<b>tonight</b> 129:2
<b>tendon</b> 21:14	102:21 114:1	89:21,21 93:6	73:22 74:1	<b>top</b> 14:20
22:2,8	<b>TFCC</b> 34:2	94:1 96:13	75:13,19 77:6	<b>tore</b> 55:15
<b>tension</b> 41:18	<b>thank</b> 5:12	110:24 112:9	77:8 78:1,4,19	<b>torn</b> 55:24

<b>total</b> 113:25 114:4	<b>try</b> 17:9,10 21:21 23:20	<b>underlying</b> 53:20	<b>velocity</b> 96:12 96:21 97:4,10	126:10,24
<b>totality</b> 100:4	26:25 33:1	<b>understand</b> 58:8	97:11 99:1,8	127:2,3,15
<b>totally</b> 95:1 99:4	69:22 110:10	58:8 63:17	<b>verbatim</b> 78:9	128:15,17,18
<b>totals</b> 113:24 114:8	111:21 119:3	65:16 66:17	78:15 81:3	128:25 131:8
<b>Totowa</b> 3:7	<b>trying</b> 64:4 89:25 104:18	68:22 89:9,12	130:13,17,20	131:10
<b>touch</b> 25:23 47:8	<b>Tufts</b> 6:15	100:14 109:12	<b>versa</b> 73:8	<b>Videographer</b>
<b>touching</b> 81:25	<b>tunnel</b> 26:19	123:3	<b>verse</b> 5:3	3:13 5:1,24 6:3
<b>training</b> 6:14 10:13,15 11:3	40:8 54:2,5,7	<b>understands</b>	<b>versus</b> 119:23	42:22 44:16
<b>transcript</b> 2:5 64:9 78:8	<b>twenty</b> 110:16	65:19	<b>vertebral</b> 30:13	45:25 46:4
79:15 89:15	<b>twice</b> 37:14,24	<b>understood</b>	32:5,10,24	48:14,18 49:18
132:10	107:17	58:13	<b>vice</b> 73:8	50:25 56:11,15
<b>trauma</b> 29:15	<b>two</b> 7:10,15 34:4	<b>unheard</b> 101:4	<b>video</b> 5:5,22,25	60:19 61:3,22
35:8,16 51:24	37:16 45:21	<b>unilaterally</b> 54:3	6:1,4 42:20,23	62:4 64:14
100:19	55:19 60:12	<b>University</b> 6:11	42:25 44:17	65:24 67:21,25
<b>traumatic</b> 8:19	73:9,25 76:24	6:12,15,17	46:1,2,5 48:15	68:10,14 75:13
30:11 54:6	91:8 100:20	48:21	48:16,19 49:19	75:19 78:1
114:23 117:10	102:12,19	<b>unrelated</b>	49:20,24 51:1	80:15 82:25
<b>treat</b> 9:16	114:1 120:22	117:25	56:10,12,13,16	83:5,10,15
108:13 114:17	122:10	<b>unsteady</b> 23:13	60:20,21 61:4	84:19,25 85:8
<b>treatment</b> 15:19	<b>two-and-a-half</b>	82:5,20	61:23 62:5	87:1,22 89:7
16:2 18:21	16:16	<b>upper</b> 21:12	64:15,16 65:25	89:17 90:13,20
19:3 39:2,14	<b>type</b> 9:9 11:2	23:3 30:16,17	67:20,22,23	91:19,25 95:24
70:19 72:22	15:17 35:8	31:7,24 32:14	68:1,8,11,12	96:7 104:14,20
109:20 110:2	62:22 63:9	34:25 46:14,15	68:15 75:12,14	105:11,15
110:16 111:13	66:7	47:2 48:7	75:20 78:2,3	106:1 108:11
114:8,13,18,24	<b>types</b> 9:11	<b>upsetting</b> 77:22	79:17 80:16	108:25 109:5
115:8,22,24	<b>typical</b> 15:22	<b>usage</b> 37:13	82:24 83:1,2,6	112:14,24
116:1,10	17:24	<b>use</b> 27:23 28:5	83:11,12,16	113:14,19
118:19 122:15	<b>typically</b> 15:23	42:9 55:21	84:17,20,21	121:8 122:6
<b>treatments</b> 17:5	21:22 29:18,20	<b>useful</b> 53:19	85:1,5 87:2,3	124:17 125:14
<b>tremendous</b>	55:1 69:17	<b>usually</b> 9:21	87:23 89:8,18	125:25 126:9
17:12	<b>typo</b> 19:21	13:6,13 16:1	90:14,15,21	127:1,14
<b>trial</b> 117:16	_____	17:9 22:11	91:20 92:1	128:16,24
120:19	<b>U</b>	26:19 27:3	95:25 96:1,8	131:7
<b>tried</b> 50:17	_____	34:6	104:13,15,16	<b>Videotaped</b> 1:14
<b>tripping</b> 19:8	<b>U</b> 5:15	_____	104:21 105:10	2:5
<b>trouble</b> 40:10	<b>Uh-huh</b> 48:5	<b>V</b>	105:12,13,16	<b>view</b> 30:17
<b>true</b> 69:5 70:23	<b>ultimate</b> 43:19	<b>v-</b> 1:7	106:2,3,24	<b>virtual</b> 115:21
71:6 73:4,21	<b>ultimately</b> 19:1	<b>Van</b> 38:24 39:2	108:12,24	<b>visit</b> 15:20,22
81:17,19 82:11	50:20 52:2	40:22 90:18,23	109:1,2,6	103:14
82:12 106:17	<b>UMDNJ</b> 6:13	91:1 92:14	111:20 112:12	<b>visualized</b> 31:8
110:23 132:10	<b>un-bias</b> 121:23	<b>vast</b> 58:17 59:16	112:15,25	<b>visually</b> 28:5
<b>truth</b> 80:2 132:8	121:24	59:18	113:13,15,16	<b>voir</b> 4:2 10:2,5
132:8,8	<b>unable</b> 23:17	<b>vehicle</b> 29:5	113:20 121:7,9	13:14
	94:7,22	34:13 36:20	121:10 122:4,7	<b>voluminous</b>
	<b>undergraduate</b>	39:10 91:11,13	124:18 125:13	57:15
	6:10	99:19 118:17	125:15 126:1,2	<b>voluntarily</b>
				79:11

<b>W</b>				
<b>waiting</b> 69:6,9,9 80:9	7:23 9:23 42:23,24 43:12 45:22 46:1,2,5 48:15,16,19 49:19,20 51:1 56:12,13,16 60:20,21 61:23 62:5 64:15,16 64:18 65:25 67:22,23 68:1 68:11,12,15 75:14,15,20 78:2,3,23 79:15 80:8,16 83:1,2,6,11,12 83:16,23 84:19 84:21 85:1,3 87:2,3,20,23 89:8,18 90:14 90:15,18,21 91:4,20 92:1 92:15 93:10 95:17,25 96:1 96:8 103:13 104:15,16,21 105:4,12,13,16 106:2,3,24 108:12,25 109:2,6 111:19 111:20 112:15 112:25 113:15 113:16,20 120:19,20 121:9,10,16,19 121:20 122:1,3 122:7 124:18 125:12,15,17 126:1,2,10 127:2,3,15 128:17,18,25 131:9	<b>wear</b> 74:24,24 76:7	<b>worse</b> 19:12	<b>year</b> 57:9 60:5,7 60:14,25 66:23
<b>walk</b> 17:17 40:4 77:1 94:7,7,22 94:22	<b>web</b> 61:25 62:1 62:20	<b>website</b> 61:12,15 61:19 62:13,17	<b>worsened</b> 33:18	<b>years</b> 7:16,24 8:1 16:16 29:22 61:8 77:20 78:14 96:25 109:20 110:17 111:13 115:9,22
<b>walking</b> 19:13 77:14 80:25	<b>wedging</b> 30:13	<b>Wednesday</b> 1:15 2:12	<b>worsening</b> 52:16	<b>York</b> 6:23 7:2
<b>want</b> 12:6 23:14 27:25 42:9,9 43:4,5 44:2 55:21 64:21 65:4,10 66:3 68:16 74:25 75:8 76:1,8 77:20 81:24 82:12 88:13 90:19 97:17,18 112:22 115:13 119:18 120:25 121:13,17 123:13,16,21 125:7,8 127:8 127:8	<b>we've</b> 77:19 100:20 110:13 120:21	<b>weeks</b> 73:25 116:22,23	<b>wrist</b> 26:9,13,18 27:1 33:23 34:5 39:11 53:24,25 54:9 54:15,17 74:24 75:5,23 76:1,7 91:16	<b>Yup</b> 82:15
<b>wanted</b> 79:20	<b>weak</b> 19:7	<b>went</b> 18:25 39:14 44:19 69:10 71:7 74:12 76:6	<b>wrists</b> 18:14 19:19 20:2 28:23 39:11 40:7 92:5	
<b>wasn't</b> 20:12 30:21 52:20 59:11 106:13 114:19	<b>weakness</b> 19:9 21:21 25:24 51:24	<b>West</b> 1:23	<b>write</b> 18:3 76:9 77:23 81:2	<b>Z</b>
<b>wasting</b> 120:21		<b>wheel</b> 91:17 92:6	<b>writing</b> 40:10 127:20	<b>Z 5:15</b>
<b>water</b> 18:17		<b>witness</b> 4:2 5:9 5:18 75:17 80:11 89:13 101:2 106:11 112:21 132:7	<b>written</b> 6:2 7:11 46:3 48:17 56:14 64:17,19 68:13 83:3,13 84:22 90:16 104:17 105:14 109:3 113:17	<b>ZOOM</b> 2:12
<b>way</b> 22:12,20 24:21 25:14 44:10 65:9 76:4 88:18 89:24 95:3 97:10 100:18 101:10 106:12 110:11 125:2,4 125:7,12		<b>witnesses</b> 100:23	<b>wrong</b> 73:7 102:11	<b>0</b>
<b>ways</b> 25:3		<b>witnesses'</b> 101:4	<b>wrote</b> 13:5,10,12 70:4,14 72:20 78:9,15 81:9 81:23 82:8 87:24 88:3 92:17 101:15 128:5	<b>07512</b> 3:7 <b>07607</b> 1:24 <b>07719</b> 3:4
<b>we'll</b> 42:8 43:22 43:23 44:17 64:8,11 70:18 77:6 78:7 80:4 123:14 125:11 128:22		<b>woke</b> 117:3	<b>wrong</b> 73:7 102:11	<b>1</b>
<b>we're</b> 5:25 6:1,4		<b>woman</b> 18:10	<b>wrote</b> 13:5,10,12 70:4,14 72:20 78:9,15 81:9 81:23 82:8 87:24 88:3 92:17 101:15 128:5	<b>1-5</b> 1:9,10 <b>1,000</b> 57:12 66:24 <b>1/04</b> 45:18 <b>1/31/18</b> 107:1 <b>1/31/2018</b> 107:17 <b>10</b> 3:7 4:6 7:24 8:1 40:24 57:4 58:3 86:14 91:5 95:3 107:17 110:20 110:24,25 111:1,1 113:25 120:21 <b>100</b> 67:13 77:20 114:5 <b>10th</b> 39:3 <b>1177-19</b> 63:2 <b>12</b> 37:14 113:25 <b>12/16/16</b> 91:12 <b>12/21/2016</b> 83:24 <b>12/26</b> 83:23 <b>129</b> 4:5 <b>13</b> 113:25
		<b>woman's</b> 96:14	<b>X</b>	
		<b>word</b> 69:4 72:8 72:10 117:18 117:20	<b>X 4:1,9</b> 62:2	
		<b>work</b> 6:10 8:12 18:18 58:21 59:11,12 62:22 63:9,10,12 65:9 66:7 69:19,20 73:22 74:13,19 130:22	<b>X-rays</b> 16:7 18:1 29:25 113:25	
		<b>worked</b> 73:25 74:1,2	<b>Y</b>	
		<b>working</b> 18:16 22:18 63:16 66:16 74:17	<b>yeah</b> 20:3 33:5 38:16 43:1 45:19 51:4 58:12,12,12 82:17 92:15 106:23 117:17	

<b>135,000</b> 60:7	110:14 111:15	<b>31</b> 97:16 106:24	77 114:5	<b>9:38</b> 122:6
<b>14</b> 16:14 32:16	113:24 114:9	<b>33</b> 128:6	<hr/>	<b>9:41</b> 124:17
<b>14th</b> 31:13	<b>2017</b> 28:20,22	<b>33-year-old</b>	<b>8</b>	<b>9:42</b> 125:14,25
<b>15</b> 36:5 59:21	28:22,23,24,24	128:6	<b>8</b> 61:3,22	<b>9:43</b> 126:9
65:22 66:2	31:2 33:8,17	<b>3387-05</b> 123:6	<b>8:01</b> 62:4	<b>9:44</b> 127:1
<b>16</b> 29:1,6,14	33:22 34:12,19	<b>35</b> 113:25	<b>8:04</b> 64:14	<b>9:46</b> 127:14
34:14 109:21	35:6 36:2 39:3	<b>3500</b> 57:20	<b>8:23</b> 65:24	<b>9:47</b> 128:16
111:15	40:24 45:5	<hr/>	<b>8:24</b> 67:21	<b>9:49</b> 128:24
<b>1643-17</b> 118:15	88:5 91:5 95:4	<b>4</b>	<b>8:28</b> 67:25	<b>9:51</b> 131:9,11
120:4	95:16,19 98:14	<hr/>	<b>8:29</b> 68:10,14	<b>90</b> 11:23 12:7
<b>16th</b> 3:4	99:15 104:25	<b>4</b> 45:10,21 48:2	<b>8:37</b> 75:13	25:9 86:14
<b>17</b> 45:17 128:5	105:6	<b>4,000</b> 57:20	<b>8:38</b> 75:19	<b>909-0666</b> 1:25
<b>175,000</b> 67:4	<b>2018</b> 120:6	<b>40</b> 98:23 99:20	<b>8:40</b> 78:1	<b>92</b> 73:8
<b>18</b> 106:24	125:20	<b>45</b> 85:16,20	<b>8:44</b> 80:15	<b>93</b> 73:8
125:20	<b>2019</b> 127:18	<hr/>	<b>8:47</b> 82:25	
<b>1992</b> 73:2	128:6	<b>5</b>	<b>8:48</b> 83:5,10	
<b>1992/1993</b>	<b>2020</b> 16:14	<b>5,000</b> 69:11	<b>8:50</b> 83:15	
109:14	<b>2021</b> 57:3,8,19	109:9	<b>8:51</b> 84:19	
<b>1993</b> 109:20	58:3 63:2	<b>52</b> 111:4,6,6	<b>8:52</b> 85:1	
110:14	<b>2022</b> 1:15 2:12	<b>56</b> 4:6	<b>8:54</b> 87:1	
<b>1st</b> 31:2 33:8	5:2	<b>57</b> 114:4	<b>8:55</b> 87:22	
34:19 35:6	<b>2032</b> 8:5	<hr/>	<b>8:57</b> 89:7,17	
<hr/>	<b>21st</b> 36:2,9,10	<b>6</b>	<b>8:58</b> 90:13	
<b>2</b>	36:11,12 37:5	<b>6</b> 32:24	<b>8:59</b> 90:20	
<b>2:30</b> 69:1	37:20	<b>6,13</b> 4:5	<b>80</b> 59:20	
<b>20</b> 27:3 59:21	<b>22</b> 1:15 2:12	<b>6:36</b> 2:13 5:3	<b>811</b> 3:4	
85:16,20 88:5	<b>22nd</b> 5:2	<b>6:38</b> 5:24	<b>85</b> 59:21	
96:24 98:23	<b>23</b> 109:20	<b>6:40</b> 6:3	<b>8606</b> 125:19	
114:1,2	110:16 111:13	<b>600</b> 106:25	<b>875</b> 67:1,3	
<b>200</b> 57:9 60:4,10	115:9,22	<b>64</b> 70:9,13	<b>8th</b> 57:3 58:3	
60:11,25 66:23	<b>23rd</b> 33:22	<b>64-year-old</b>	<hr/>	
67:3	34:12,14	91:10	<b>9</b>	
<b>2008</b> 123:6	<b>24/7</b> 77:2	<b>67</b> 70:5	<b>9</b> 45:5,17,19	
<b>201</b> 1:25	<b>240</b> 1:23	<b>67-year-old</b>	91:19,25 98:14	
<b>2011</b> 125:20	<b>25</b> 65:23 66:2	18:10	99:15 104:25	
<b>2013</b> 28:19,20	86:15	<hr/>	<b>9:04</b> 95:24	
28:21 30:7,24	<b>2500</b> 117:13	<b>7:24</b> 42:22	<b>9:05</b> 96:7	
31:11,13 32:16	<b>25th</b> 63:2	<b>7:26</b> 44:16	<b>9:14</b> 104:14	
33:17 35:3	<b>26</b> 45:10,21,21	<b>7:28</b> 45:25	<b>9:16</b> 104:20	
37:15 109:19	45:21 127:17	<b>7:32</b> 46:4	<b>9:17</b> 105:11	
110:13 111:11	<b>277</b> 5:20	<b>7:35</b> 48:14	<b>9:19</b> 105:15	
129:21	<b>29</b> 111:4	<b>7:37</b> 48:18	106:1	
<b>2014</b> 38:1	<hr/>	<b>7:38</b> 49:18	<b>9:22</b> 108:11	
129:15,15	<b>3</b>	<b>7:39</b> 50:25	<b>9:23</b> 108:25	
<b>2016</b> 18:11	<b>30</b> 27:3 86:13	<b>7:46</b> 56:11	<b>9:24</b> 109:5	
28:19 29:2,6	106:23	<b>7:55</b> 56:15	<b>9:28</b> 112:14,24	
29:14 34:14	<b>30XI00203200</b>	<b>7:59</b> 60:19	<b>9:29</b> 113:14,19	
37:5 109:21	132:23	<b>70</b> 9:8	<b>9:37</b> 121:8	
		<b>750</b> 57:12 66:24		