

2 (Whereupon, at this time the jury was excused.

3 A recess was taken.)

4 COURT OFFICER: Jury entering.

5 (Whereupon, at this time the jury entered the
6 courtroom.)

7 THE CLERK: Do counsels stipulate to the
8 presence and proper seating of the jury?

9 MR. JANOWSKI: Yes.

10 MR. H. SUBIN: Yes.

11 THE COURT: Call your next witness.

12 MR. JANOWSKI: Dr. Robert Pick.

13 (Whereupon, the witness took the stand.)

14 THE CLERK: Watch your step going up. Remain
15 standing in front of the chair and face the clerk.

16 THE WITNESS: Good morning.

17 THE COURT: Good morning.

18 THE CLERK: Sir, raise your right hand.

19 D R. R O B E R T Y. P I C K, called as a witness by and
20 on behalf of the Defense, after having been first duly sworn,
21 was examined and testified as follows:

22 THE CLERK: Have a seat. In a loud, clear
23 voice, state your name.

24 THE WITNESS: Robert Y. Pick, MD.

25 THE CLERK: State your business address.

1 THE WITNESS: 717 Church Avenue, Brooklyn,
2 New York.

3 THE COURT: You may inquire.

4 DIRECT EXAMINATION

5 BY MR. JANOWSKI:

6 Q. Hello, doctor.

7 A. Hello.

8 Q. We've met before?

9 A. Yes.

10 Q. That was in preparation for testifying at today's
11 trial, correct?

12 A. Yes.

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

15 A. Yes.

16 Q. Do you, also, have an additional degree besides MD?

17 A. Yes.

18 Q. What is that?

19 A. MPH, Master's of Public Health.

20 Q. Explain what a Master's in Public Health is?

21 A. It's a post medical degree with a concentration in
22 occupational medicine.

23 Q. Can you tell the jury a little bit about your
24 background, training, experience and practice over these many
25 years as a doctor?

1 A. I graduated from Albert Einstein College of Medicine
2 Bronx, New York, 1971. Did a year of internship in Brookdale
3 Hospital, Brooklyn, New York.

4 Q. Speak a little louder.

5 A. Yes, sir. I did a year of internship at Brookdale
6 Hospital in Brooklyn, New York. Two years of orthopedic
7 surgical residency at Jacoby Hospital, Bronx Municipal
8 Hospital Center. Third year of which I was in United States
9 Public Health Services, Staten Island, New York.

10 I had active duty with US Navy reserve from 1968 to
11 1975, and the New York State Public Health Services for three
12 years, stationed in Boston and New York. I was honorably
13 discharged in 1978.

14 I did a year of orthopedic trauma fellowship at Old
15 Boston City Hospital, Boston Massachusetts.

16 Q. Explain to the jury what trauma.

17 A. Orthopedic trauma, injuries to the body, trauma
18 injuries.

19 Q. Continue.

20 A. Then I did my Master's of Public Health at Harvard in
21 1978 or '79. And then I joined the staff at Boston City
22 Hospital Orthopedic Surgery in 1984. I went into private
23 practice.

24 Q. How long have you been in private practice, doctor?

25 A. Since 1984. It's two centuries.

1 Q. Over 30 years?

2 A. Yes.

3 Q. Now, are you -- do you have any hospital affiliations
4 at present?

5 A. Boston Medical Center, Boston Massachusetts.

6 Q. Is that near Harvard?

7 MS. H. SUBIN: Objection.

8 THE COURT: Sustained.

9 Q. Are you board certified?

10 A. Orthopedic surgery.

11 Q. Can you give the jury a rough idea of how many
12 orthopedic surgeries you have performed in over 30 years?

13 MS. H. SUBIN: Objection. As to what body
14 parts?

15 THE COURT: Sustained.

16 Q. What parts of the body -- well, can you first -- can
17 you break that down in terms of body parts that you do, that
18 you have done surgeries on, as best you can, to explain to
19 them?

20 A. Spine, cervical and lumbar, shoulders, elbows, wrist,
21 hands, pelvis, hips, knees, ankles and feet.

22 Q. Are you involved in any professional associations or
23 a member of?

24 A. I'm a member of the American Academy of Orthopedic
25 Surgeons.

1 Q. Do you have, in addition to that, any other
2 memberships?

3 A. I can't think of anything.

4 Q. Are you -- do you have experience teaching doctors?

5 A. Yes.

6 Q. Please, explain that to the jury, what your
7 experiences are in that field?

8 A. I taught residents both in Boston and in New York
9 City. You teach them orthopedic surgery.

10 Q. What does that -- in other words, how do you do that?
11 You do the operations and --

12 MS. H. SUBIN: Objection, Judge.

13 THE COURT: Sustained.

14 Q. Can you explain how you do that, to the jury, how you
15 teach?

16 A. You have a --

17 Q. Orthopedic surgery.

18 A. You're assigned several residents you work with. You
19 spend the day with them. You have conferences. You have
20 clinics, and you have surgeries. In each one of those
21 situations you instruct them based on the specific situation.

22 Q. Do they observe you doing surgery?

23 A. Yes.

24 Q. You have done how many surgeries? Is there anyway
25 you could breakdown, in terms of how many surgeries, you have

1 done to the shoulder?

2 A. I can't.

3 Q. What about the neck?

4 THE COURT: You can't shake your head.

5 A. Sorry. I don't know.

6 Q. You served in the military, correct?

7 A. Yes.

8 Q. Tell the jury about your experience in the Medical
9 Core?

10 A. I was in the US Navy reserve from 1968 to 1975. I
11 then switched to the United States Public Health Services for
12 three years. I was honorably discharged 1978.

13 Q. What was your rank in the United States Public Health
14 Services?

15 A. The equivalent of lieutenant commander.

16 Q. Are you -- you have an affiliation with the American
17 Association of Anatomies?

18 A. Yes.

19 Q. Explain what that is?

20 A. It's a membership of physicians interested in
21 anatomy.

22 Q. Do you have any affiliation with the American
23 Federation For Clinical Research?

24 A. I did.

25 Q. Explain that.

1 A. Interest in clinical research.

2 Q. But tell them a little bit about it. Don't be
3 modest.

4 MS. H. SUBIN: Judge.

5 Q. You're being too modest.

6 THE COURT: Sustained.

7 Q. Can you tell them what that involves?

8 A. It's been decades. People, physicians that have an
9 interest in clinical research.

10 Q. Have you received various awards over the course of
11 your practice?

12 A. I have.

13 Q. Please, tell us.

14 A. I received a fellowship for the study of the ankle in
15 Boston City Hospital. We presented a paper and a poster based
16 on that particular study.

17 Q. What about different publications? Can you tell us,
18 generally, the kind of publications that you have authored, to
19 the jury?

20 A. Various publications? Injuries to the wrist, ankle.
21 I don't recall at the moment.

22 Q. How many of -- would it be fair to say you had about
23 28?

24 MS. H. SUBIN: Objection.

25 THE COURT: You're talking how many

1 publications?

2 MS. H. SUBIN: Yes.

3 THE COURT: Overruled. Can you tell us,
4 approximately?

5 A. Over 20.

6 Q. Have you been a presenter at various conferences?

7 A. Yes.

8 Q. What hospital staff positions have you been connected
9 with in your career?

10 A. Boston Medical Center, Boston University School of
11 Medicine, NYU Hospital For Joint Disease.

12 Q. Jamaica Hospital?

13 A. Jamaica Hospital.

14 MS. H. SUBIN: Objection.

15 THE COURT: Sustained. Don't lead the witness,
16 please.

17 Q. Do you have a copy of your CV in front of you?

18 A. Not with me.

19 Q. May I show you?

20 THE COURT: You want him to look at it?

21 Q. Would that refresh your recollection?

22 A. Question, again, please.

23 MR. JANOWSKI: Would you, please, read back the
24 question.

25 THE COURT: Yes.

1 Changed my mind. Ask another question.

2 Q. Does that refresh your recollection?

3 THE COURT: About what? About what?

4 Q. -- about the hospital affiliations?

5 A. Yes.

6 Q. Tell the jury what hospital affiliations you had?

7 A. NYU Hospital for Joint Diseases, Jamaica Hospital, in
8 Manhattan the Veterans Administration Hospital, Newton,
9 N-E-W-T-O-N, Wellesley, W-E-L-L-E-S-L-E-Y, Hospital in
10 Massachusetts, Boston Medical Center, University Hospital in
11 Boston, Massachusetts.

12 Q. Thank you, doctor.

13 How many -- were you asked to perform an examination,
14 an evaluation of the plaintiff, Sarabjeet Bajaj, in this case?

15 A. Yes.

16 Q. And who, initially, contacted you to perform this
17 exam and evaluation?

18 A. It was through Support Claims Services.

19 Q. They assigned you this --

20 MS. H. SUBIN: Judge, objection.

21 THE COURT: Sustained.

22 Q. Did Support Services hire you?

23 MS. H. SUBIN: Objection. I'm objecting to the
24 leading, consistent leading.

25 THE COURT: Sustained.

1 Q. What was the involvement, if any, with respect to
2 Support Claims?

3 A. They set up the examinations.

4 Q. Did you do -- when you say they set up examinations,
5 how many times did you examine the plaintiff, Sarabjeet Bajaj?

6 A. Twice.

7 Q. Let's go through your report for the first
8 examination. When did you, first, perform an examination of
9 Sarabjeet Bajaj?

10 A. March 7, 2016.

11 Q. Now, where was that exam conducted?

12 MS. H. SUBIN: Judge, I'm objecting if he's
13 reading from a document not in evidence.

14 THE COURT: Is he reading? I didn't hear him
15 say anything.

16 THE WITNESS: I'm referring to it.

17 MS. H. SUBIN: If it's refreshing --

18 THE COURT: He can look at it. It's his report.
19 But you can't read from it. It's not in evidence.

20 THE WITNESS: Yes, sir.

21 THE COURT: What was that question, again? He
22 examined him on --

23 MR. JANOWSKI: I think, it was.

24 THE COURT: On March 7th of '15.

25 THE WITNESS: Of '16.

1 Q. Where?

2 THE COURT: If you don't know.

3 A. Union Turnpike, Flushing, New York.

4 Q. Was anyone present, other than you and the plaintiff,
5 Sarabjeet Bajaj?

6 A. The vendor has a group of staff that's present there.

7 Q. Was that Cindy?

8 A. She is one of them, yes.

9 Q. Was there a translator that was, also, present?

10 A. Yes.

11 Q. Did he need a translator?

12 A. I don't recall.

13 Q. But at any rate he was there, you were there, someone
14 else was there from the vendor, and there was an translator?

15 MS. H. SUBIN: Judge, objection.

16 THE COURT: Sustained.

17 Q. Did you -- what was the first -- explain to the jury
18 what you did in terms of when you, first, saw the plaintiff?

19 A. When a person comes in for the examination they fill
20 out paperwork that the staff gives them. They give them back
21 the paperwork.

22 The patient comes in for an evaluation. There is
23 history that I take from the patient in conjunction with the
24 forms that the patient filled out. Then I do a physical
25 examination. Then I review medical records that are provided

1 and do the physical examination.

2 Q. Can you tell the jury the -- withdrawn.

3 You took a history from Mr. Bajaj?

4 A. Yes.

5 Q. What, if anything, did he tell you about the
6 happening of -- withdrawn.

7 Is the case history, a history from the person that
8 you're examining, is that something which is significant?

9 A. Yes.

10 Q. Why?

11 A. It's an essential part of the evaluation.

12 Q. What did you learn in that case history? What did he
13 tell you?

14 A. When I saw him?

15 THE COURT: If you don't remember, you can look
16 at something, but don't read from it.

17 A. Yes, sir.

18 When I saw him he was 53 years old. He described an
19 incident that occurred on April 22, 2014.

20 THE COURT: What else did he tell you?

21 THE WITNESS: He said he was a driver of a
22 vehicle, and he was unrestrained. He didn't have a
23 seatbelt on.

24 He described the collision of sorts. He said he
25 did not go to an emergency room after that incident.

1 Subsequently, he underwent various treatments including --

2 I don't have --

3 It was physical therapy, chiropractic care and
4 acupuncture and massage therapy.

5 Q. Did he make any complaints to you when you, first,
6 saw him?

7 A. Initial complaints or at the time of my examination?

8 Q. Well, he didn't seek medical treatment at the scene?

9 MS. H. SUBIN: Objection.

10 THE COURT: Sustained.

11 Q. Did he make complaints.

12 THE COURT: Don't testify.

13 Q. Did he make complaints to you when you, first, saw
14 him?

15 A. Yes, sir.

16 Q. What were they?

17 A. He described pain in his neck, low back and left
18 shoulder.

19 Q. Did he tell you anything about another motor vehicle
20 accident that he was in or make any reference to that?

21 THE COURT: Yes or no?

22 A. I'm checking, your Honor. He denied any prior.

23 Q. Did he give you any history about his employment,
24 whether or not he missed anytime from work as a result of the
25 accident?

1 A. He did not miss anytime after the accident.

2 Q. Did you do range of -- well, I don't want to lead
3 you. Tell the jury what your exam consisted of?

4 A. It includes observation, seeing the patient and then
5 asking him to do various maneuvers, to evaluate certain
6 components of the examination.

7 Q. Asking various?

8 A. Assess various components of the examination.

9 Q. I'm sorry?

10 A. Motor sensory, reflex and range of motion.

11 Q. Did you do range of motion testing?

12 A. Yes.

13 Q. Did you use a goniometer?

14 A. Yes.

15 Q. As well as using your own eyes as to what he was
16 doing?

17 A. Yes.

18 MS. H. SUBIN: Judge, I object.

19 THE COURT: Sustained.

20 MS. H. SUBIN: Can we get an instruction,
21 please, on the leading because I don't want to have to
22 keep interrupting.

23 THE COURT: Yes. Try not to testify and lead
24 the witness.

25 Q. What, if anything, did you use in your examination,

1 doctor?

2 A. Both visually and with the goniometer, which is the
3 equivalent of a protractor.

4 In elementary school we had the protractor for
5 angles. It's a moveable device that you measure the angles of
6 the patient with.

7 Q. What, if anything, did you observe generally about
8 Mr. Bajaj? Don't read from the report, please.

9 THE COURT: He can read from it, if he doesn't
10 remember, but he can't read it out loud. He can look at
11 it to refresh his recollection.

12 Q. Does this report refresh your recollection as to what
13 you did?

14 A. Yes, sir.

15 Q. All right. General observation, what did you do?

16 A. There was no limp. He did not have an abnormal gait.

17 Q. What's an abnormal gait?

18 A. A limp, and --

19 Q. Did you weigh him?

20 A. He gave me his vitals. He was five-seven and weighed
21 185 pounds.

22 He came in with a straight cane and a brace for the
23 right knee, right ankle and right foot.

24 Q. Anything about that general observation that you can
25 tell the jury about, other than what you already said?

1 A. There was no limp. There was no obvious abnormality
2 about this individual.

3 Q. Let's talk about the -- did you do an examination of
4 his neck, cervical spine?

5 A. Yes.

6 Q. And did you -- tell the jury, what, if anything, you
7 did concerning his neck?

8 A. I asked him to move his neck in various directions.
9 There is up and down. Turn the head to the sides and tilting
10 the head sideways. And I measured whatever he performed.

11 All motions were active. He performed whatever he
12 wanted to do. These are called subjective. I noted the
13 motions.

14 Q. Okay. You said -- you mentioned the word,
15 "subjective"?

16 A. Yes.

17 Q. Explain to the jury what that means in terms of your
18 examination.

19 A. Subjective is what an individual does. Objective is
20 something that can be confirmed by the examiner after he does
21 the evaluation.

22 Everything he did was subjective.

23 Q. You're an orthopedic surgeon, but did you, also --
24 was there also a neurological component to your physical exam?

25 A. Yes. That's right after the orthopedic examination.

1 Q. Tell us what you found with respect to your
2 neurological examination?

3 A. It was unremarkable. Motor sensation, reflexes were
4 normal.

5 Q. Anything else, by looking at that report, that you
6 would add? For example -- well, anything else?

7 A. Well, motions were limited based on criteria of
8 various steps.

9 So again this is a subjective performance. He did
10 whatever he wanted to do. I just documented the motions that
11 he did; otherwise, the examination of the neck was
12 unremarkable.

13 Q. What about the lumbar spine? Did you do an exam and
14 evaluation of the lumbar spine, the lower back?

15 A. Yes, the same as the neck. Again, motions were
16 active, but they were limited compared to certain guides that
17 give certain criteria or value. Everything was unremarkable.

18 Straight leg raising, when the patient is laying down
19 flat on his back and you ask him to raise his leg, you measure
20 the angle between the table and the leg. It's called straight
21 leg raising.

22 If it's over 70 degrees it's normal.

23 Q. What did you find?

24 A. It was normal.

25 Q. Then muscle strength, did you evaluate that?

1 A. Muscle strength sensation and reflexes normal.

2 Q. Did you also examine the left shoulder?

3 A. Yes.

4 Q. Tell the jury what you did in your examination of the
5 left shoulder?

6 A. Again, observation of the shoulders, comparing the
7 two sides. Range of motion again was actively -- individual
8 performed whatever motion he was willing to do, and I just
9 documented the values.

10 He had healed surgical scarring of the left shoulder.

11 He had surgery of the left shoulder June 19, 2014.

12 Q. Can you explain to the jury what crepitus is?

13 A. It's a sound that air makes when you rub two things
14 together, basically.

15 Q. Like a crackling?

16 A. Yes.

17 MS. H. SUBIN: Objection.

18 THE COURT: Overruled. Try not to lead, please.

19 Is that what it is?

20 Q. Did you find any crepitus, doctor?

21 A. No.

22 Q. Can you explain, with respect to the left shoulder,
23 you measured abduction? Please, tell the jury what abduction,
24 is?

25 A. There are several motions we examine. Forward

1 flexion is raising the arm up. Abduction, which is away from
2 the body. Adduction is towards the body. Internal, putting
3 the hand behind the back. Next, rotation is putting the arm
4 sideways.

5 Q. What did you find?

6 A. The motions that he did are reported. They were less
7 than the generally noted parameters for the shoulder.

8 Q. Now, could you, without reading, did you review
9 medical records as a result of information that you received
10 from Support Claims?

11 A. It's part of the evaluation, yes.

12 Q. That would include the operative -- I'm not going to
13 read all of these. That would include the Lutheran medical
14 records?

15 A. Diagnostic test, procedure test, doctor records and
16 hospitals records.

17 Q. You reviewed all of that before you prepared your
18 first report?

19 A. Yes.

20 Q. Did you -- did you give a diagnosis or impression as
21 a result of your examination? This is your first exam of
22 March 7, 2016?

23 A. I did.

24 Q. What was your diagnosis?

25 A. Status post --

1 Q. Could you slow down?

2 A. Status post cervical and lumbar spine surgery,
3 resolved. Status post left shoulder surgery, resolved.

4 Q. And, also, lumbar spine?

5 MS. H. SUBIN: Judge, objection.

6 THE COURT: Sustained.

7 Q. Would you look?

8 A. I said cervical and lumbar spine.

9 Q. I'm sorry?

10 What do you mean when you say, cervical -- "Status
11 post cervical spine surgery resolved"? What is that?

12 A. Status post means it's after the fact. Cervical
13 spine surgery is surgery to the neck, and the outcome is
14 resolved.

15 Q. What does, "resolved," mean?

16 A. Healed.

17 Q. You, also -- what about the left shoulder surgery?

18 A. He had left shoulder surgery, and that healed. It's
19 resolved.

20 Q. Let's talk about any conclusions you made with
21 respect to his alleged disability. Did you find any
22 disability as a result, any orthopedic disability as a result
23 of your examination?

24 A. No.

25 Q. Did you make any conclusions whether Mr. Bajaj was

1 able to work without restrictions or limitations?

2 A. I did, yes.

3 Q. Explain that to the jury. Can he work?

4 A. He can do regular work, yes.

5 Q. He can do activities of daily living?

6 A. Yes.

7 Q. That's called ADL?

8 A. Yes.

9 Q. What about, did you make any conclusions with respect
10 to whether or not there was permanency here?

11 MS. H. SUBIN: Objection, Judge. That's beyond
12 the scope.

13 MR. JANOWSKI: It's not. It's right in the
14 report.

15 THE COURT: It's in his report?

16 MS. H. SUBIN: No, it's not.

17 THE COURT: Overruled.

18 MS. H. SUBIN: But it's not in the report.

19 MR. JANOWSKI: May we approach?

20 THE COURT: I don't know. One says it's in the
21 report. The other says it's not. I don't get that
22 sometimes, the two of you.

23 (Whereupon, at this time a discussion was held
24 off the record, at the bench.)

25 MS. H. SUBIN: Withdrawn, Judge.

1 THE COURT: You said something about permanency
2 in the report?

3 THE WITNESS: Yes.

4 THE COURT: What was that?

5 THE WITNESS: There were no permanency
6 residuals.

7 THE COURT: Next question.

8 Q. With respect to the range of motion, doctor, you
9 mentioned something about subjective range of motion, I
10 believe? What do you mean by that?

11 A. All motions were active. He performed whatever he
12 wanted to do. I just record the values.

13 There are numbers of what's called normal. His
14 motions were less than normal in most or all parameters.
15 That's subjective. He did whatever he wanted.

16 Objective is something you can reproduce. Something
17 that we call passive range of motion; when you move the limb.
18 When the examiner moves the limbs, the shoulder or the knee,
19 that's passive.

20 I just do active. I let the patient do whatever
21 motion he's willing to do.

22 Q. Did you -- were you asked to do -- withdrawn.

23 Let's assume there is testimony that the plaintiff
24 said that when he went to you it was only a five or six
25 minutes physical exam. Is that true?

1 A. The evaluation is about 15/20 minutes.

2 Q. Would you look, doctor? Were you asked to do a
3 second exam?

4 A. Yes.

5 Q. When was that?

6 A. August 8th of '16.

7 Q. Why were you asked to do that?

8 A. I don't know.

9 Q. Was that after surgery, or you had additional medical
10 records provided?

11 A. I had additional records. I saw him for a second
12 time.

13 Q. Did you, again, take a history from him?

14 A. Yes.

15 Q. Did he make any -- do you have that report of August
16 8th in front of you?

17 A. Yes, sir.

18 Q. Did he make any additional complaints, to your
19 knowledge, about his condition at all?

20 A. At this time, he described right foot symptoms.

21 MS. H. SUBIN: I'm sorry. I didn't hear that.

22 THE COURT: I didn't hear that either. Say that
23 again.

24 Q. Speak up louder so the court reporter can get it
25 down.

1 A. In addition to prior complaints of the neck, left
2 shoulder, he complained of his right foot.

3 Q. What did he -- what did he, specifically, complain
4 about, about his right foot?

5 A. He described pain in low back that radiates to the
6 right leg.

7 Q. Did you learn that, that was after a surgery that was
8 done?

9 MS. H. SUBIN: Objection.

10 THE COURT: Sustained.

11 Q. What did you learn, if anything, about the right
12 foot?

13 A. He had surgery on his back before that.

14 Q. You listed on the report the medications that he said
15 he was taking?

16 A. Yes, sir.

17 Q. What was he taking then?

18 MS. H. SUBIN: Judge, he's reviewing this
19 report. I'm going to move it into evidence. I move the
20 report into evidence since he's reviewing it.

21 MR. JANOWSKI: Both reports?

22 MS. H. SUBIN: No. Just this one.

23 MR. JANOWSKI: It's either whole or none.

24 THE COURT: It was prepared for litigation, so
25 unless you --

1 MS. H. SUBIN: I will agree to both. I will
2 agree to both. Both in.

3 THE COURT: Both in. Let's, Christine, mark
4 these two documents, which he prepared.

5 You want them to be yours.

6 MS. H. SUBIN: Plaintiff's-15A and B, so they
7 are together.

8 THE COURT: Are we up to 15?

9 THE CLERK: Yes.

10 THE COURT: 15A and 15B in evidence without
11 objection.

12 (Whereupon, the Dr. Pick's Report was marked as
13 Plaintiff's Exhibit-15A in Evidence, by the Reporter.)

14 (Whereupon, the Dr. Pick's Report was marked as
15 Plaintiff's Exhibit-15B in Evidence, by the Reporter.)

16 COURT OFFICER: So marked.

17 THE COURT: Question.

18 MR. JANOWSKI: I believe, the last question was
19 medication. Can we read the last question back?

20 THE COURT: You may.

21 (Whereupon, at this the requested portion was
22 read.)

23 A. August 8th he told me he was taking oxycodone 10
24 milligrams, it's a narcotic, three times a day. And another
25 unspecified medication, 600 milligrams, three times a day.

1 Along with Fentanyl Patches. These are pain relief patches
2 applied to the body.

3 Q. Now, did he mention anything about how far, at that
4 exam, how far he was able to walk each day? You see the
5 bottom of the page two?

6 A. He said he could walk one or two blocks a day.

7 Q. What else did he tell you? Please, look at the top
8 of the page three.

9 THE COURT: We're still on the 8-8 report?

10 MR. JANOWSKI: Yes.

11 A. He says unable to perform shopping, climbing stairs
12 or ladders, household chores, cooking, cleaning, kneeling,
13 childcare and heavy lifting.

14 Q. That's what he told you?

15 A. Yes.

16 Q. Did you make any assessment with respect to whether
17 that was true or not?

18 A. Not specifically, sir.

19 Q. Now, did you, again, do range of motion measurements?

20 A. Yes. Again, they were all active under the
21 examiner's control.

22 Q. And you, again, used a goniometer?

23 A. Yes.

24 Q. And what you saw independent of that protractor,
25 correct?

1 A. Both visual and the use of the goniometer.

2 Q. In terms of ranges of motion, what did you find?

3 A. There were less than the stated values for given
4 regions, so he did not match what, supposedly, is the normal
5 motion.

6 Q. Did you determine why?

7 A. No. It was volitional. He decided to do whatever he
8 wanted to do.

9 Q. Did he restrict his range of motion?

10 A. I assume he did.

11 Q. I don't want you to assume stuff.

12 A. He didn't have normal motion, so I assume there was
13 some limitation.

14 Q. Now, did you again examine, make a general
15 observation as to his appearance and posture?

16 A. Yes.

17 Q. What was that?

18 A. He appeared normal. There was no limp. He, again,
19 had the straight cane, and the right ankle and right foot, he
20 had the right ankle brace. He, also, at this time distributed
21 something new, right foot drop. He wasn't able to lift his
22 foot to neutral or above. It is what we call a foot drop.
23 That's the result of an injury to the nerve, so that was
24 something new since I saw him in March.

25 Q. He didn't have that when he, first, came in?

1 MS. H. SUBIN: Objection.

2 THE COURT: Sustained.

3 Q. Did he have that when he, first, came in?

4 A. Not in March.

5 Q. Did you, again, perform an examination of the
6 cervical spine?

7 A. Yes.

8 Q. Tell the jury about that, please?

9 A. I would say it's comparable to my evaluation in
10 March.

11 Q. Similar values?

12 A. Yes.

13 Q. The lumbar spine, did you examine that?

14 A. Yes, similar values.

15 Q. There is a sentence here right after it says lumbar
16 spine. You say, "Thereupon, no spasms," correct?

17 A. Yes.

18 Q. Well, what is -- let me just finish the question. Is
19 that significant?

20 A. It's part of the evaluation, yes.

21 Q. Okay. What does that tell you about, when you say
22 there were no spasms, what's going on there?

23 A. It's an observation. Spasm is tightening of the
24 muscle. It could be either volitional or involuntary.

25 Q. What did you find it to be?

1 A. There was no spasm.

2 Q. Did you find minimal tenderness over --

3 A. Yes.

4 Q. -- over the paraspinal muscles?

5 A. I did. Again, that's subjective. He tells me. I
6 asked him if it was uncomfortable, and he said, "Yes."

7 Q. And, again, how long was this second exam,
8 approximately?

9 A. About the same. Approximately 15/20 minutes.

10 Q. You make a reference to straight leg raising which
11 you say was negative on your exam?

12 A. Yes.

13 Q. What, if anything, is the significance of that?

14 A. I was testing for the sciatic nerve. The patient
15 lies flat on his back, and he's asked to raise one leg up.
16 Normal is 70 to 90 degrees off the table.

17 Q. What did you find?

18 A. It was normal.

19 Q. You go on to say he's able to walk on his heals and
20 toes?

21 A. Yes.

22 Q. You see that?

23 A. Yes.

24 Q. What's going on there? What's the significance of
25 that?

1 A. Just checking for muscle function.

2 Q. Was that for both legs?

3 A. Yes.

4 Q. Can you turn, please, doctor, to page four where
5 there was a -- where you did a --

6 Did you do a neurological examination in connection
7 with your orthopedic exam?

8 A. Yes.

9 Q. What did you find?

10 A. It was unremarkable.

11 Q. But can you tell us why you're saying that? What's
12 the basis of your saying it's unremarkable?

13 A. Motor sensory reflex sensors were comparable, but
14 since he had a foot drop I assume he had some muscle weakness
15 relative to that ankle.

16 Q. And, again, the left shoulder, did you do an exam on
17 that?

18 A. Yes, sir.

19 Q. It says there is no tenderness or effusion noted.

20 Can you explain to the jury, first, what tenderness is?

21 A. Tenderness is discomfort. You palpate. You touch
22 certain parts, and you ask if it hurts or not, and the patient
23 tells you if there is or isn't discomfort. If there is
24 discomfort then we classify it as tenderness. That's
25 subjective. It's based on the patient's description.

1 Q. You found no tenderness?

2 A. Correct.

3 Q. What's effusion?

4 A. Swelling, fluid in the joint. There was no swelling
5 noted. There is no effusion.

6 Q. Palpation? What does palpation mean? You're
7 touching?

8 A. Touching, yes.

9 Q. What's effusion?

10 A. Swelling. Fluid in the joint.

11 Q. There was none of that, correct?

12 A. Correct.

13 Q. That was based on a clinical -- can you explain to
14 the jury the difference between, let's say, what you would see
15 on a film and clinical exam?

16 A. Clinical is touching and evaluating the patient
17 face-to-face, touching certain areas. X-rays is radiographic.
18 It's a study of certain areas.

19 Q. Right ankle and foot, was there any sore tissue,
20 swelling or tenderness in the right ankle or in the foot?

21 A. No, sir.

22 Q. It says in your report, range of motion shows
23 dorsiflexion is 20 degrees, 20 normal. What is dorsiflexion?

24 A. It's raising the ankle to the ceiling. The patient
25 sits down, and you ask him to raise the toes to the ceiling.

1 That's dorsiflexion.

2 Give me one minute.

3 Q. You found the dorsiflexion to be normal?

4 A. Just bear with me one minute, sir.

5 Q. It's in the paragraph right --

6 A. I'm looking for something else. Excuse me.

7 Q. Sorry.

8 A. Okay. Question, again, please?

9 Q. Yes. You say there is no soft tissue, swelling or
10 tenderness, and range of motion. Dorsiflexion is 20 degrees,
11 20 normal, you see that?

12 A. Yes.

13 Q. Any restriction there if it's 20/20?

14 A. It's normal, but since he had a foot drop, or he had
15 a brace for a foot drop on, I assumed it's a typographical
16 error.

17 Q. Plantar flexion. Plantar flexion, 40 degrees, 40
18 normal?

19 A. Sitting down pointing the toes down to the floor.

20 Plantar flexion.

21 Q. And inversion?

22 A. Turning the foot inward towards the middle of the
23 body. Eversion, turning the foot outwards from the body.

24 Q. You found that was normal or effected by his foot
25 problem?

1 A. It indicates it was normal, but I assume there's some
2 typographical errors in this irrespective.

3 Q. Do you recall what the range of motion is?

4 A. I have no recollection.

5 MS. H. SUBIN: I didn't hear that answer.

6 THE WITNESS: I have no recollection.

7 THE COURT: No, he doesn't remember.

8 Q. Again, you reviewed those medical records?

9 A. Those that are listed, yes.

10 Q. Including the hospital reports?

11 A. Yes.

12 Q. Reports of Michael Gerling?

13 A. Yes.

14 Q. What was -- can you turn to where you made an
15 assessment of diagnosis and impression? It's on page eight?

16 A. Yes, sir.

17 Q. What did you conclude, if anything, with respect to
18 the cervical spine surgery?

19 A. Resolved.

20 Q. Post lumbar spine surgery, there were two?

21 A. Two operations on his lumbar spine. Also, resolved.

22 Q. And left shoulder?

23 A. Status post shoulder surgery was resolved.

24 Q. Now, you say with respect to evidence of orthopedic
25 disability, did you find any?

1 A. I did not.

2 Q. At that time, did the plaintiff say he was employed
3 -- I'm sorry. Strike that.

4 At the time of your exam, he was not currently
5 working, correct?

6 A. He was not working.

7 Q. But did you make an assessment of whether he could
8 work?

9 A. Yes.

10 Q. What was that?

11 A. He was able to seek gainful employment. Able to --
12 capable of working and performing ADL, activities of daily
13 living.

14 Q. Would you read to the jury the sentence that begins,
15 "although"?

16 A. "Although the claimant exhibited decreased range of
17 motion of the neck, lower back and left shoulder, these are
18 subjective responses, not substantiated by objective
19 findings."

20 Q. Now, all of the -- all of these conclusions that you
21 made, are they to a reasonable degree of medical certainty?

22 A. Yes, sir.

23 Q. Did you issue any other reports?

24 A. Not to my recollection.

25 Q. Do you recall if you reviewed any other documents in

1 preparation for the examination?

2 A. No, sir.

3 Q. In terms of the number of times that you testified,
4 can you break that down? How many times do you testify in
5 court each year, approximately, the best estimate you can?

6 A. In court?

7 Q. Okay. Let's do, first, in court?

8 A. Approximately 20.

9 MS. H. SUBIN: What was that number?

10 THE COURT: 20, approximately.

11 THE WITNESS: 20.

12 Q. And of those 20, how many of those do you do for the
13 MTA Bus Company?

14 A. I don't recall specific entities that I testify for.

15 Q. Okay. Do you -- can you break it down in terms of
16 those 20 times? How many do you -- how much? What percentage
17 do you testify for plaintiffs as opposed to defendants?

18 A. In the current century was all for the defense.

19 (Whereupon, at this time the following was taken by
20 Senior Court Reporter Karen Perlman.)

21 * * *

22

23

24

25

1 BY MR. JANOWSKI:

2 Q. Have you testified for plaintiffs?

3 MR. H. SUBIN: Ever in his career or in the last
4 17 years?

5 THE COURT: When?

6 Q. Any time.

7 A. In the past I did. Yes.

8 Q. Does -- do your opinions today, are they based on the
9 fact that you're testifying here to give testimony on behalf
10 of the New York City -- of the --

11 MR. H. SUBIN: Objection.

12 Q. -- MTA bus?

13 THE COURT: Overruled. What do you think brings
14 him here?

15 A. No.

16 THE COURT: Anything else?

17 Q. And how much -- with respect to this morning, how
18 much is your fee for the time that you're spending here?

19 A. For today, seven and a half thousand dollars.

20 Q. Okay. And is that for the whole day or --

21 A. Yes.

22 Q. -- or is that -- do you break that down just for
23 morning and for afternoon?

24 A. I scheduled the day.

25 MR. JANOWSKI: Thank you, Doctor.

1 THE COURT: Cross-examine?

2 MR. H. SUBIN: Can I see what was marked in
3 evidence? I haven't seen it yet.

4 THE COURT: Christine?

5 THE BAILIFF: What was that, Mr. Subin?

6 MR. H. SUBIN: Can I see those two documents? I
7 haven't seen them.

8 THE COURT: Keep in mind, we're breaking at five
9 to 1:00 for lunch.

10 MR. H. SUBIN: I'll start now.

11 THE COURT: You can go longer than that, but
12 we'll come back.

13 MR. H. SUBIN: Unfortunately, I anticipate that
14 I will.

15 Can I give this back to the witness or the court
16 officer, Judge, I don't want to --

17 THE COURT: Christine.

18 CROSS-EXAMINATION

19 BY MR. H. SUBIN:

20 Q. Hello, Doctor.

21 A. Good morning.

22 Q. Good morning. Let's see where to start. You
23 mentioned that there was a typographical error in your second
24 report, right?

25 A. Yes.

1 Q. A pretty significant one, can we both agree?

2 A. To some degree, yes.

3 Q. Okay. Basically, you found that the man's foot
4 wouldn't stay up, right?

5 A. I did.

6 Q. And then you signed a report under the penalties of
7 perjury that he had perfectly normal range of motion pulling
8 his foot up, right?

9 A. Correct.

10 Q. And that was just false?

11 A. Correct.

12 Q. We can agree to that.

13 So let's talk about this -- let's talk about your
14 business here.

15 My understanding is -- and correct me if I'm
16 wrong -- you did about 40 years in hospital in the area -- the
17 suburban area outside of Boston as a solo practitioner, as an
18 orthopedic surgeon?

19 A. Not 40 years.

20 Q. 30 years.

21 How long were you an attendant at a suburban hospital
22 outside of Boston, how about that?

23 A. Until 2009.

24 Q. And you started in '84?

25 A. Yes.

1 Q. So it's 25 years. Okay. And then you retired from
2 surgery?

3 A. I stopped operating in 1987.

4 Q. Oh, okay. So it's -- it's your 30th anniversary of
5 not operating, right?

6 A. Yes.

7 Q. And then you left Boston and you moved back down to
8 New York in 2010?

9 A. 2009.

10 Q. '9. Okay.

11 And you started a new career doing these type of
12 examinations, in terms of lawsuits or people who are making
13 claims?

14 A. I changed venues, that's all.

15 Q. You used to do this up there too?

16 A. Yes.

17 Q. Okay. So you changed venues down here to do this.

18 Now, you currently don't have any hospital
19 affiliations here in New York, right?

20 A. Not now, no.

21 Q. Right. And the -- you don't practice medicine
22 outside of doing these examinations here in New York, correct?

23 A. I have a private practice.

24 Q. You have a private practice?

25 A. Yes.

1 Q. That's the Brooklyn address?

2 A. That's one of them, yes.

3 Q. Do you pay rent? Any specific office that you pay
4 rent for?

5 A. Not at the moment.

6 Q. Okay. So you don't have an office that's actually
7 your office that you either own or rent, right?

8 A. Yes.

9 Q. Okay. And my understanding is this: That you will
10 travel from location to location, depending on the day of the
11 week, to perform these type of examinations?

12 A. Yes.

13 Q. How many days a week do you perform these type of
14 examinations on victims for lawsuits?

15 A. I'm sorry. I missed your question.

16 Q. How many days a week do you travel to some location
17 to perform examinations of accident victims claiming injury?

18 MR. JANOWSKI: Objection, "accident victims."

19 THE COURT: First of all, it's sustained. Not
20 relevant. Get to the point.

21 Q. How many days a week do you do examinations of this
22 type?

23 A. Between two and four a week.

24 Q. Okay. And you come to Queens?

25 A. Yes.

1 Q. Actually, how many locations in Queens do you come to
2 to perform these?

3 A. Two locations.

4 Q. Okay. You go to Brooklyn?

5 A. Yes.

6 Q. You go to the Bronx?

7 A. Yes.

8 Q. Do you do any in New York?

9 A. No.

10 Q. So those three venues that you travel to or anyplace
11 else?

12 A. To the three boroughs, yes.

13 Q. And when you come to one of these places, they set up
14 somewhere between 10 and 20 people to -- that you'll examine?

15 A. Approximately, yes.

16 Q. And the way as I heard you describe it is that the
17 examinee will fill out a form, a history form there?

18 A. There are forms that are filled out by the examinee.

19 Q. And they come in and you do an examination and you
20 make marks on that form, right --

21 A. Yes.

22 Q. -- is that correct?

23 Okay. And then you submit that form to the company?

24 A. Yes.

25 Q. And they draft a report?

1 A. Yes.

2 Q. You're not -- you can see that screen behind you,
3 Doctor? Do I need to turn it or you can turn your chair?

4 A. It's all right.

5 Q. Can you see it?

6 A. More or less.

7 MR. H. SUBIN: May I, Judge?

8 THE COURT: You may.

9 MR. H. SUBIN: Does that help?

10 THE WITNESS: Better. Thank you.

11 MR. H. SUBIN: Okay. You're quite welcome.

12 Q. So that is your second report. Can you see that?

13 A. Yes.

14 Q. Okay. Can you hold your first report for a second.
15 You can hold your first report, the March report. You don't
16 dictate any of this, correct?

17 A. Correct.

18 Q. Okay. So what -- my understanding is the preprinted
19 form is filled out by the examinee, you make a few marks on
20 that form, it gets submitted to the company, and then
21 it -- and then it basically gets submitted to the defendant;
22 is that a fair statement?

23 A. Submitted back to me for review and --

24 Q. Okay.

25 A. -- signature.

1 Q. Great. And do you proofread?

2 A. For the most part I do. I guess sometimes I don't
3 get everything.

4 Q. This one you didn't proofread, did you?

5 A. That's correct.

6 Q. You never proofread this particular report before you
7 let it go out under your signature with the penalties of
8 perjury.

9 Now, with regard to this one, I want to go -- by the
10 way, let's stop for a second. Let's go to medications. You
11 can see that on -- you can see that? Okay. Oxycodone, you
12 mentioned, is a narcotic?

13 A. Yes.

14 Q. 10 milligrams is a high dose of oxycodone; can we
15 agree?

16 A. Three times a day, yes.

17 Q. Very high.

18 And I want you to assume he's taking 600 MG, that is
19 milligrams --

20 A. Yes.

21 Q. -- of gabapentin or Neurontin; are you familiar --

22 A. Or Motrin.

23 Q. What?

24 A. Or Motrin. They're the same numbers.

25 Q. Neurontin is Motrin?

1 A. I'm saying it's an unspecified medication.

2 Q. Okay. I want you to assume --

3 A. It can be any one --

4 MR. JANOWSKI: Your Honor, can we have -- can he
5 stop interrupting the witness?

6 THE COURT: Don't interrupt the witness. Let
7 him finish.

8 MR. H. SUBIN: I won't.

9 Q. Were you done, Doctor?

10 A. Sorry?

11 Q. Were you done with your answer?

12 A. I'm done.

13 Q. Do you know what Neurontin is?

14 A. Yes.

15 Q. I want you to assume that what Mr. Bajaj was taking
16 was Neurontin. Neurontin is an antiepileptic drug, correct?

17 A. It's a neurologic drug, yes.

18 Q. And it's supposed to help people who have nerve or
19 neuropathic pain, right?

20 A. Yes.

21 Q. Okay. And 600 milligrams, that is a high dose of
22 that drug, correct?

23 A. Yes.

24 Q. And then he was taking something called fentanyl,
25 right? Are you --

1 A. He wasn't taking. A patch.

2 Q. A patch. Well, he was --

3 A. Using.

4 Q. -- wearing it?

5 A. Yes.

6 Q. Thank you.

7 He was wearing something called fentanyl. And
8 fentanyl, we can agree, is a very, very, very strong pain
9 reliever, correct?

10 A. Correct.

11 Q. And it's only supposed to be used for people who have
12 become used to narcotic pain medication, correct?

13 A. Yes.

14 Q. And it -- so the people who have now become somewhat
15 immune to narcotic medication take fentanyl to give them some
16 additional pain relief, right?

17 A. Yes.

18 Q. And fentanyl is actually quite dangerous, we can
19 agree on that, right?

20 A. Yes.

21 Q. Now, let's move along. Doctor, it says a range of
22 motion measurement here, that you used the AMA Guidelines,
23 Fifth Edition, right?

24 A. Yes.

25 Q. Did you ever -- have you ever seen that book?

1 A. Yes.

2 Q. Did you review the normal ranges of motion to make
3 sure that they were correct and consistent with the AMA Fifth
4 Edition?

5 A. Which motions?

6 Q. Shoulder.

7 A. Whose motions?

8 Q. The normal ones.

9 A. The guides?

10 Q. Let's make sure -- hold on. Withdrawn.

11 According to you, the AMA Fifth Edition gives normal
12 ranges of motion for various body parts; is that a correct
13 statement?

14 A. Yes.

15 Q. And that is the source of the normal that you were
16 referring to in your direct examination?

17 A. It's either the AMA guides or New York State
18 guidelines.

19 Q. Well, in this particular case you wrote --

20 A. You're right.

21 Q. -- or somebody wrote on your behalf --

22 A. Right.

23 Q. -- the AMA guidelines?

24 A. Right.

25 Q. Did you ever verify that even the basic normal ranges

1 of motion were correct; yes or no?

2 A. No.

3 Q. Okay. As a matter of fact, they're not correct, we
4 can agree on that, are they?

5 A. Can I say something?

6 Q. Sure. Go ahead.

7 A. I sometimes disagree with the values listed as normal
8 in these guides, the AMA guides or New York State guidelines,
9 there are different normals.

10 Q. Understood.

11 Now, let's go to the -- let's go to the shoulder.

12 You put that -- and you said it under oath, that according to
13 you, that this -- what motion is this, Doctor?

14 A. It's combined flexion abduction.

15 Q. Okay. So if I did forward abduction, right?

16 A. Forward flexion.

17 Q. That is forward flexion?

18 A. Yes.

19 Q. And this is forward abduction?

20 A. It's abduction. It's not forward. It's sideways.

21 Q. What is forward -- you wrote in the report "forward
22 abduction," so why don't you tell me or show us what forward
23 abduction is? Is that even a motion?

24 A. That's a typographical error, sir.

25 Q. Okay. Sorry. What is abduction?

1 A. Sideways motion of the shoulders.

2 Q. Okay.

3 A. That's it.

4 Q. And according to that abduction, you're saying the
5 American Medical Association says it's 180 degrees or you
6 don't know?

7 A. They do, yes.

8 Q. Is this that book, Doctor?

9 A. It is.

10 MR. H. SUBIN: Can I have it marked?

11 THE COURT OFFICER: I believe we are up to 16,
12 Judge.

13 (Whereupon, Plaintiff's Exhibit Number 16, the
14 aforementioned AMA Guidelines, Fifth Edition referred to
15 above, was marked for identification by the Court
16 Reporter.)

17 THE BAILIFF: So marked.

18 Q. Can you go to page 596, Doctor.

19 Doctor, do you see where it says "shoulder"?

20 A. Just one minute, please.

21 Q. What?

22 A. You said page 596?

23 Q. I believe that's --

24 A. Let me find it.

25 Q. I thought you were there. I apologize, sincerely.

1 A. Yes, sir.

2 Q. Do you see where it says normal range of motion for
3 the shoulder values?

4 A. Yes.

5 Q. What?

6 A. Yes.

7 Q. What does it say for forward flexion?

8 A. 150.

9 Q. Okay. So the normal range of motion is not 180, as
10 listed in this report, but actually only 150; is that correct?

11 MR. JANOWSKI: Objection.

12 A. Accord- -- according to this --

13 THE COURT: Overruled.

14 Q. That is the guideline that you're saying you used?

15 A. Yes, sir.

16 Q. So even the basic fundamental normal range of motion
17 is not correct in this sworn report, correct?

18 MR. JANOWSKI: Objection, Your Honor.

19 A. Yes.

20 THE COURT: Overruled.

21 Q. And now let's go to abduction. You did
22 flexion -- which one did you just look at, flexion or
23 abduction?

24 A. You did flexion, forward flexion.

25 Q. Let's do abduction. The normal is 150 for that too,

1 correct?

2 A. Just one minute, please. Yes.

3 Q. Okay. So even the basic statement of what the book
4 says, that's not right in your form, correct?

5 A. As you were standing there and you elevated your arm
6 up, straight up, that's one --

7 Q. Right. And I understand, Doctor, that 150 may be
8 normal. What I'm saying is that's what you put and what you
9 swore to and if I didn't have the book, what we would believe,
10 correct?

11 A. Yes.

12 Q. Thank you.

13 Doctor, you said to us now -- now, we talked about
14 typographical errors on the report. And you talked to us now
15 about the cervical spine and this is now in the second report.
16 Okay?

17 And according to you, you said that -- and I just
18 want to be clear, you said this is flexion, right, with regard
19 to the neck?

20 A. Yes.

21 Q. And you said you measured it with a goniometer which
22 is like a protractor?

23 A. Yes.

24 Q. And it gives you very precise numbers. It can give
25 you single degrees or -- right?

1 A. Yes.

2 Q. And you're saying that Mr. Bajaj moved his head and
3 it was exactly 30 degrees, right? You measured it? And then
4 you did extension and he looked up, and, again, you measured
5 it --

6 A. Yes.

7 Q. -- right?

8 And just coincidentally it was exactly 30 degrees?

9 A. Yes.

10 Q. It wasn't 29, it wasn't 31. And he can't really see
11 where the goniometer is, right, it's behind him?

12 A. It's next to him.

13 Q. It's next to him. But he can't see the numbers on
14 the goniometer?

15 A. Right.

16 Q. So coincidentally he nailed them both at 30.

17 Now, you're saying he did right rotation -- is that
18 right rotation?

19 A. Yes.

20 Q. Explain to -- can you -- you can't measure that with
21 a goniometer, can you?

22 A. You put the center of the goniometer
23 under -- underneath the chin and you have him rotate, and you
24 put the two arms, the -- wherever the head is, so --

25 Q. So --

1 A. One -- one arm of the goniometer comes out straight
2 and --

3 Q. The other one goes like this?

4 A. -- and the other one goes sideways, or you can sit
5 down and do it above his head.

6 Q. And what you're saying to me is -- or to us is that
7 when he turned to the right, okay, when -- when he turned to
8 the left -- I'm sorry. When he turned to the right he turned
9 just exactly 30 degrees, not 31, and not 29, right?

10 A. I generally round them off, sir.

11 Q. What are you using a goniometer for? You're using
12 this highly specific device to measure something?

13 MR. JANOWSKI: Objection. Argumentative with
14 the witness.

15 THE COURT: Sustained.

16 Q. Okay. Is there a reason why you're using the
17 goniometer, Doctor?

18 A. It's an instrument that we use to measure.

19 Q. And then you round off to 30 on every -- okay.

20 And then according to you, he -- by the way, you have
21 no recollection of this examination, do you?

22 A. Correct.

23 Q. Okay. You wouldn't know Mr. Bajaj if you bumped into
24 him on the way out of the hall?

25 A. Correct.

1 MR. JANOWSKI: Object. Move to strike.

2 THE COURT: Sustained.

3 Q. So you have -- so -- and you -- those original notes
4 that you took, those are gone with the wind, right?

5 MR. JANOWSKI: Objection.

6 THE COURT: Sustained.

7 Q. Do you have them?

8 MR. JANOWSKI: Objection.

9 THE COURT: Sustained.

10 Q. Do you have the original notes?

11 MR. JANOWSKI: Objection.

12 THE COURT: Sustained.

13 Q. Do you know where they are?

14 MR. JANOWSKI: Objection.

15 THE COURT: Sustained.

16 MR. H. SUBIN: Judge?

17 THE COURT: That is my ruling.

18 MR. H. SUBIN: Okay. Fine.

19 Q. So did you bring them with you?

20 MR. JANOWSKI: Objection.

21 THE COURT: Sustained.

22 MR. H. SUBIN: Okay.

23 THE COURT: You don't have to yell,

24 Mr. Janowski.

25 MR. JANOWSKI: I apologize. I'm getting carried

1 away, Your Honor.

2 THE COURT: I understand why.

3 Q. You rounded off to the right at 30 degrees and you
4 rounded off to the left at 30 degrees. Without any
5 recollection, do you have any reason to believe why that's not
6 another typographical error?

7 A. I don't know.

8 Q. Okay. Now, when you do -- then you did lateral
9 flexion, right, that is ear to shoulder?

10 A. Sideways, yes.

11 Q. And, again, you rounded off exactly to 35 degrees,
12 both sides, right?

13 A. Yes.

14 Q. Okay. And then you said -- then someone wrote
15 "healed," "healed surgical scarring is noted," right?

16 A. Healed surgical --

17 Q. Scarring is noted.

18 A. Yes.

19 Q. Okay. And you said -- and you swore to us today that
20 those values were the same in August as they were in March,
21 right?

22 A. Yes.

23 Q. And, again, you don't have any recollection of that
24 encounter, do you?

25 A. Yes.

1 Q. You don't have?

2 A. I do not.

3 Q. No recollection. Let's go to that one.

4 MR. H. SUBIN: One moment while I get it up on
5 the screen, please.

6 Q. Am I showing -- am I showing you that March -- your
7 March report up there?

8 A. Yes.

9 Q. Now, let's go to cervical spine.

10 May I approach --

11 THE COURT: Yes.

12 MR. H. SUBIN: Thank you.

13 THE COURT: You have about a minute. Find a
14 point at which --

15 MR. H. SUBIN: This is perfect, I should be --

16 THE COURT: -- to break.

17 Q. Okay. There was limited range of motion of the
18 cervical spine with right rotation to 25 degrees, 80 is
19 normal, so that's a measurement, the measurement and the
20 normal, right?

21 A. Yes.

22 Q. Left rotation 25 degrees, 80 normal. That is a
23 measurement, right?

24 A. Yes.

25 Q. Extension to 25 degrees, 60 normal, right?

1 A. Yes.

2 Q. That is a measurement.

3 Lateral flexion, there is no measurement, correct?

4 A. Yes.

5 Q. And that's this, right, no measurement?

6 Left lateral flexion, there is no measurement --

7 A. Yes.

8 Q. -- correct?

9 Another typographical error, right?

10 A. Yes.

11 Q. So in your very first report, when you just told us
12 that the values were consistent between the two reports, in
13 fact, you have no idea what the values of the ear to shoulder
14 are or do you?

15 A. Correct.

16 Q. When you met with Mr. Janowski, did you talk to him
17 about this error?

18 A. I don't recall.

19 Q. When did you meet with Mr. Janowski?

20 A. This week.

21 Q. What day?

22 A. I think it was Sunday.

23 Q. Okay. And by the way, you have -- where is flexion
24 and extension of the spine?

25 A. It's missing.

1 Q. So looking up, looking down, not even there. When
2 you said that the values were the same between these two, that
3 was incorrect, was it?

4 A. Incorrect.

5 THE COURT: We're going to break at that point.

6 MR. H. SUBIN: Thank you.

7 THE COURT: Keep an open mind. Don't discuss
8 the case. Come back here at 2:15.

9 THE BAILIFF: All rise. Jurors exiting.

10 (Whereupon, the jury leaves the courtroom at
11 this time.)

12 (Whereupon the proceedings were adjourned until
13 May 12, 2017 at 9:15 a.m.)

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