

1 CIVIL COURT OF THE CITY OF NEW YORK

2 COUNTY OF QUEENS

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3 DEBBIE HOOTAM,

4 Plaintiff,

5 -against-

INDEX#
TS-300122-18/QU

6 "JOHN DOE" A FICTITIOUS NAME INTENDED TO
7 DESIGNATE A DRIVER AND C-TEC ELECTRIC CORP.,

JURY TRIAL

8 Defendants.

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December 6, 2018

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10 89-17 Sutphin Boulevard
Jamaica, New York 11435

11 TRIAL TERM,
12 PART 110

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13 B E F O R E:

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HON. MAUREEN A. HEALY, J.C.C.

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

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SHARON COHEN
OFFICIAL COURT REPORTER

Proceedings

1 THE COURT: Counsel, Mr. DiPrisco.

2 MR. DIPRISCO: Yes, the plaintiff would call
3 Dr. Shahid Mian.

4 COURT OFFICER: Please remain standing and
5 raise your right hand.

6 S H A H I D M I A N, M. D., called as a witness on behalf
7 of the plaintiff, after having been first duly sworn, took
8 the witness stand and testified as follows:

9 COURT OFFICER: State your name and address
10 for the record.

11 THE WITNESS: Shahid Mian.

12 893 Park Avenue, New York, New York 10075.

13 THE COURT: How do you spell your name?

14 THE WITNESS: M I A N.

15 THE COURT: And your first name?

16 THE WITNESS: Shahid, S H A H I D.

17 THE COURT: Okay, thank you.

18 You maybe seated.

19 THE WITNESS: Thank you.

20 THE COURT: You may inquire.

21 MR. DIPRISCO: Thank you.

22 DIRECT EXAMINATION

23 BY MR. DIPRISCO:

24 Q Good afternoon, Doctor.

25 A Good afternoon.

Proceedings

1 Q Are you licensed to practice medicine?

2 A I am.

3 Q In what states?

4 A I am licensed in New York and New Jersey.

5 Q And when did you obtain those licenses?

6 A New York license I got in 1984 and New Jersey in
7 2010.

8 Q Could you give us your educational background?

9 A I graduated in 1974 from Dow University.

10 After that, I trained in England for four years.

11 Following that, I did my residency in New York
12 City.

13 I did one year of general surgery at Joint Diseases
14 Hospital.

15 Two years of general surgery at Cabrini Medical
16 Center.

17 Three years of orthopedic surgery at Saint
18 Vincent's Hospital, New York City from '85 to '88.

19 '88 to '89, I did a fellowship in research
20 microsurgery at NYU Medical Center.

21 After that, I have been in private practice.

22 Q And your private practice, what area of specialty
23 do you practice?

24 A I do general orthopedics.

25 Q Do you perform surgeries?

Proceedings

1 A I do.

2 Q Are you board certified?

3 A I am.

4 Q Could you explain to the jury what board certified
5 means?

6 A After completion of your residency, you have to
7 complete certain requirements and apply to take the boards
8 exam, which is given in two parts. After you pass both of
9 them, they give you a certificate, Diplomate, American Board
10 of Orthopedic Surgery.

11 Q So my next question was going to be, what are you
12 board certified in?

13 A Orthopedic surgery.

14 Q Where are your offices located?

15 A I have three offices. I have one in Manhattan, 893
16 Park Avenue, New York, New York 10075. I have one office in
17 Flushing and I have a third office in Oradell, New Jersey.

18 Q What type of surgeries do you perform?

19 A I do knee surgeries, I do shoulders, I do wrists, I
20 do ankles, I do endoscopic spine surgeries.

21 Q In any given year, approximately, how many
22 surgeries do you perform?

23 A Three to four hundred procedures a year.

24 Q And out of those three to four hundred procedures,
25 how many are related to the knee?

Proceedings

1 A Quite a large number, I would say about thirty
2 percent, between thirty and forty percent.

3 Q I don't know if you can answer this question, but
4 generally, how many patients do you have active or have you
5 seen total, however you want to tell us?

6 A The total charts in my practice at one point was
7 20,000.

8 An average in a week I see, approximately, one
9 hundred patients.

10 Q And you treat these patients?

11 A I do.

12 Q You're their doctor for their orthopedic injury?

13 A I am.

14 Q And you perform their surgeries, if they're needed?

15 A Yes.

16 Q Do you ever perform any, what we call, independent
17 medical exams?

18 A No.

19 Q Have you testified on prior occasions?

20 A I only testified on the patients I treat. Yes, I
21 have in the past.

22 Q Well, let's say this year, how many have you
23 testified in this year?

24 A This is my first one this year.

25 Q Okay. In 2017, how many did you testify?

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1 A Once.

2 Q Once. So, it's not something that you do very
3 often?

4 A No, I testify, like, sixty-eight times in
5 twenty-nine years of practice. So the average is a little
6 more than two a year.

7 Q Are you being paid today?

8 A Yes, I am compensated for my time.

9 Q And what is the fee for your testimony, your fee
10 for today?

11 A I charge \$10,000 half or for a full day.

12 Q And what does that money represent, is it -- what
13 does the money represent, this \$10,000?

14 A It's for my time. If I'm not here, I would be
15 either doing surgery or seeing patients.

16 Q So, if you weren't here today, what would you have
17 been doing?

18 A I had a deposition this morning, which I canceled,
19 and I would have seen patients.

20 Q Did you have to cancel your appointments this
21 afternoon?

22 A Yes.

23 Q Was Debbie Hootam a patient of yours?

24 A Yes.

25 Q Did someone refer her to you?

Proceedings

1 A Yes.

2 Q And who was that?

3 (Witness perusing document.)

4 A She was referred to me by an orthopedic surgeon,
5 Dr. Hsu.

6 Q Do you know Dr. Hsu?

7 A I don't know him directly but I've seen patients
8 referred from his office to me.

9 Q Does he perform surgeries?

10 A I'm not sure, I don't think, but, just, he's
11 referring her for surgery to me.

12 Q So, he referred her to you for surgery?

13 A Yes.

14 Q When did she first become a patient?

15 (Witness perusing document.)

16 A First time I saw her was January 12, 2009.

17 Q And on that day, when she came in, did she give you
18 a history?

19 A Yes, she did.

20 Q And can you tell us what that history consisted of?

21 A Her chief complaints were a motor vehicle accident
22 with injury to right knee on 7-30-2008. And she stated, as
23 a seat-belted driver of her car, she was rear-ended by a car
24 on 7-30-2008, injured her right knee. She did not go to the
25 hospital. She came under the care of Dr. Hsu. She was

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1 treated with Ibuprofen and physical therapy four times a
2 week, which she was continuing.

3 When I saw her, her complaints were pain, clicking,
4 and buckling right knee with difficulty walking and doing
5 stairs.

6 Q Did you examine her?

7 A I did.

8 Q And what were the findings of your examination?

9 A She had effusion in the knee. She had tenderness
10 over the medial and lateral joint line.

11 Range of motion was zero to 100 degrees.

12 There was no ligamentous instability.

13 Q You mentioned some terms in there that relate to
14 the knee, the anatomy of the knee, would you, please,
15 explain the anatomy of the knee, if you can, to the jury?

16 A Yes. I have a model, if you want me to use?

17 Q Sure.

18 A It may be easier to explain.

19 Q Sure.

20 A The knee is the largest joint in the body. It
21 is -- it has three bones involved in it. It has the femur,
22 which is the end of the thigh bone. It has the tibia, the
23 upper part of the leg bone and then it has a kneecap, the
24 patella.

25 If you look inside the knee, we have two circular

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1 structures, these are called meniscus. The main function is
2 stability, lubrication and load-bearing.

3 When our knee is straight, fifty percent of the
4 weight is born by these two cartilages and when the leg is
5 straight, ninety percent goes through these cartilages.

6 The knee comes under a tremendous amount of stress
7 and that is counted as body weight. So, normal walking,
8 which we put two or three times our body weight goes to the
9 knee. Doing stairs, four times our body weight goes to the
10 knee. Squatting, nine times our body weight goes to the
11 knee.

12 Then we have cruciate ligaments, which are
13 important structures. They go from the tibia to the femur.
14 There's an anterior cruciate ligament and a posterior
15 cruciate ligament. Anterior means front and posterior means
16 back. And they're in reference to the attachment on the
17 tibia, which is the leg bone. The anterior cruciate
18 ligament stops the anterior translation, so the leg bone
19 can't move out. And the posterior stops the posterior
20 translation.

21 On either side, we have two other ligaments, which
22 stop the knee from opening up on the medial side; the
23 inside, it's called medial collateral ligament. Lateral
24 side, we have a lateral, a lateral ligament.

25 The joint is lined by a structure called articular

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1 cartilage, which is two to four millimeters thick. It is a
2 bifurcated structure, it has two parts. Sixty-five to
3 eighty percent is water and then the remaining is metrics.
4 This is strong enough to withstand a lifetime of stresses.

5 In an injury or any other inflammatory process, it
6 can degenerate earlier than that.

7 During embryonic development, the knee is a three
8 compartment joint. It is divided into three compartments by
9 a synovial membrane, like curtains. In the third to fourth
10 month of intrauterine life, those get resolved. Now, if
11 some of them remain, not completely resolved, these are
12 called plicas. There are about five of them --

13 Q Do you want to use this sheet (indicating)?

14 A Yeah, sure.

15 (Handing to the witness.)

16 Q I'm not sure if it's going to stand on there.

17 A Okay.

18 THE WITNESS: Can I stand?

19 THE COURT: Yes.

20 THE WITNESS: Thank you.

21 A This is a picture, a drawing, which is showing
22 plicas (indicating).

23 This side (indicating) is the outside of the knee,
24 which is the red one, and it's called lateral plica. One on
25 the inside, which is in a blue color here (indicating), is

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1 the medial plica. The one up here (indicating) is called
2 suprapatellar plica. And then below in green is shown an
3 infrapatellar plica (indicating). There's five of them.
4 Usually they disappear at birth, they're not there, but
5 sometimes they remain and that's what's called plica.

6 Q So, your findings on that date that you examined
7 her, would you be able to show us exactly what it was that
8 you found?

9 A Um, basically what had happened was, she had two
10 pathologies in the knee when I went in --

11 MR. MAILLOUX: Objection.

12 May we approach, your Honor?

13 THE COURT: Yes.

14 (Discussion held off the record.)

15 Q You can continue, Doctor.

16 A During the surgery, which I did on her, I found two
17 pathologies; one, the medial plica, which was on the inside,
18 was hypertrophic thickened fibrotic and pressing on the
19 condyle, so I removed that.

20 Number two, I found chondromalacia. Chondromalacia
21 that is damage to the articular cartilage. So, I took a
22 shaver and I cleaned that up, all the unstable and
23 unsupported cartilage was removed.

24 Q Okay. Do you know what treatment Dr. Hsu
25 performed, before she saw you?

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1 A Dr. Hsu treated her conservatively.

2 I saw her five and a half months, after her injury.

3 She received anti-inflammatory medications from Dr.

4 Hsu.

5 She had physical therapy four times a week up till

6 when I saw her and she was continuing at that time.

7 Q Did Dr. Hsu, when he referred her to you, did he

8 give you his diagnosis?

9 A Um, I can't recall exactly when she was first

10 referred to me. It would be in his report.

11 Q Now, after you examined her, did you decide on a

12 course of treatment?

13 (Witness perusing document.)

14 A During my first visit with her, I also had an MRI

15 of the right knee --

16 MR. MAILLOUX: Objection.

17 A -- available.

18 THE COURT: Sustained.

19 MR. DIPRISCO: Can we approach, Judge?

20 THE COURT: Yes.

21 (Discussion held off the record.)

22 Q Okay, you can continue.

23 A I also had MRI of the right knee --

24 MR. MAILLOUX: Same objection.

25 THE COURT: When you say you had an MRI of the

Proceedings

1 right knee, what did you have?

2 THE WITNESS: It was available to me and the
3 report.

4 THE COURT: Just the report or the actual --

5 THE WITNESS: The actual films and the report.

6 THE COURT: Continue.

7 A And the diagnosis on that was tear posterior horn
8 medial meniscus. My diagnosis was tear of the medial
9 meniscus.

10 I discussed with her treatment options, including
11 arthroscopic surgery for the right knee.

12 Q What were the indications for surgery?

13 A She's had six months of pain and mechanical
14 symptoms in the knee. She had positive clinical findings.
15 She had a positive MRI. She had failure of conservative
16 treatment. So, surgery would be indicated in this case.

17 Q Did you, as part of your exam, your initial exam,
18 did you check her range of motion of her knee?

19 A Yes, I did.

20 Q And what was the finding?

21 A Her range of motion was zero to 100 degrees.

22 Q And what's normal?

23 A Zero to 150.

24 Q Could you explain what that means to the jury?

25 A When the knee -- the leg is absolutely straight,

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1 this is called extension and usually we take that as zero.
2 And as we bend the knee, we can measure with a goniometer
3 what angle we bend the knee to. At right angle would be 90
4 degrees and as we bend more and more, it will increase. The
5 normal range is 150 degrees, so she had 100 degrees of
6 motion.

7 Q Would that be abnormal?

8 A Yes, it's abnormal.

9 Q And just so the jury understands, what's a
10 goniometer?

11 A A goniometer is a caliber, which has got some
12 measurements, degrees written on it, so which you could
13 measure the range of motion of joints.

14 Q Now, is a range of motion test a subjective test?

15 A You do need the patient's cooperation.

16 Q Did you find that this patient, Miss Hootam, was a
17 credible patient and relaying to you what was actually
18 happening to her knee?

19 A Yes, I think she was honest and I believed her.

20 Q Did you perform surgery?

21 A I did.

22 Q When and where was that performed?

23 A On 2-18-2009, I did surgery on her right knee at
24 Lenox Hill Hospital Medical Center.

25 Q And that was what type of surgery?

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1 A Arthroscopic surgery of the right knee, partial
2 synovectomy with excision, medial synovial plica,
3 chondroplasty.

4 Q Would you be able to, in layman's terms, explain
5 what you did, when you went into the knee?

6 Before you begin, Doctor, would this help you, the
7 plica (indicating)?

8 MR. MAILLOUX: Is this being marked?

9 MR. DIPRISCO: It's only an aid.

10 MR. MAILLOUX: I have several objections.

11 THE COURT: Come up.

12 (Discussion held off the record.)

13 Q Doctor, before we use this as an aid, could you
14 tell us what it is and where it comes from?

15 A It's a photograph, which shows the mechanism of
16 impingement from a medial plica that would explain the
17 pathology, and it does explain the mechanism of the plica
18 problem and how it impinges on the condyle.

19 MR. DIPRISCO: Anything else, Judge?

20 THE COURT: Do you know where that came from,
21 Doctor?

22 THE WITNESS: Um --

23 THE COURT: Have you seen it before?

24 THE WITNESS: I've seen it before. It's on
25 Google, the image.

Proceedings

1 Q Google Images?

2 A Not Google Images. You just Google it and go into
3 the image.

4 THE COURT: I think you need more of a
5 foundation, just pulling something off Google is not
6 enough.

7 MR. DIPRISCO: Well, he explained what it was.

8 Q Doctor, is this three different images on one
9 explaining different --

10 A These are three images which show the dynamic view
11 of a plica. It shows three different motions of the knee,
12 and as we bend the knee more, how the plica impinges upon
13 the medial condyle of the femur.

14 Q It's a generic one, it's not any person's?

15 A It's not any person's, it's just a photograph.

16 THE COURT: Continue.

17 MR. MAILLOUX: Judge --

18 THE COURT: You have your exception.

19 MR. MAILLOUX: I would also like to object to
20 the fact that it's not marked and preserve it for the
21 record and that I didn't have a chance to voir dire the
22 witness.

23 MR. DIPRISCO: You can mark it.

24 THE COURT: Mark it Plaintiff's D1.

25 (Whereupon, the blowup diagram referred to was

Proceedings

1 marked for identification as Plaintiff's Exhibit D1 by
2 the Court Reporter.)

3 MR. MAILLOUX: I'm objecting, if it's marked
4 for identification and showing it to the jury, it's not
5 in evidence.

6 MR. DIPRISCO: I'm not offering it into
7 evidence, Judge. I'm offering it as a tool for the
8 doctor to explain, like he did with the model of a
9 certain part of the knee. It's not anybody's knee, it's
10 just a diagram of a knee.

11 THE COURT: Well, I don't know where Google
12 got those images from.

13 MR. DIPRISCO: Judge, it doesn't matter
14 because it's not a person's knee. It's just an example
15 of a plica that, in three different positions that he
16 can use, to explain how the plica works. It's just a
17 tool to aid the jury. It's not going into evidence as
18 anybody's knee or anybody's injury.

19 THE COURT: Continue.

20 A Okay. These are three pictures of the knee and the
21 first one you see it says extension (indicating), the knee
22 is straight. And this curtain (indicating), which is thick,
23 and it's not touching the medial condyle, which is the end
24 of the thigh bone.

25 As you bend the knee, which is fifteen to thirty

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1 degrees, which is not too much, it's a little bit of
2 bending, so it starts coming down on to the condyle. And
3 then as you progress, thirty to forty-five is not going over
4 it, and as you bend more and more, it's going to go more and
5 more in contact with it, it rubs against the surface and
6 causes pain. And on top here (indicating) would be your
7 kneecap. So, it gets pinched between the two bones, the
8 structure, and that is the cause of the pain.

9 Q Okay, you can sit again.

10 So, without using the picture, is it possible to
11 explain what you found with Miss Hootam's knee?

12 A It makes it easier to show.

13 Q All right, so explain what happened?

14 A So, I removed the thickened plica, which was
15 impinging on the medial condyle. At the same time I also
16 found chondromalacia on the anterior surface of the medial
17 condyle, which is chondromalacia is damage to the articular
18 cartilage. So, with a shaver and electrocardio system, it's
19 a tool, it's a probe, and so we shave the unstable,
20 unsupported articular cartilage off, so it doesn't break off
21 and go in to the knee to cause more inflammation, but in her
22 case, I did not find a meniscus tear, which was initially
23 diagnosed.

24 Q So, are MRI's always perfect?

25 A No, they are not 100 percent accurate. The most

Proceedings

1 accurate way to diagnose is a knee arthroscopy, but that's
2 an invasive procedure.

3 Q So, have you seen in other situations, where an MRI
4 said there was a tear and you go in for surgery and there's
5 no tear?

6 A It happens all the time, yes.

7 Q Have you seen the reverse, where the MRI says
8 there's no tear, you do the surgery and you find a tear?

9 A That's true, but also, you don't really treat the
10 MRI, you treat the patient. You have to listen to the
11 patient, examine the patient and see what's going on there.

12 Q So, you would have to clinically correlate it with
13 the findings?

14 A Only if the MRI -- the MRI shows a tear and the
15 patient is asymptomatic, you don't do nothing.

16 Q Now, Miss Hootam testified in her testimony two
17 days ago, that when the accident happened, her right foot
18 was on the gas pedal and she was hit from the rear side and
19 her knee went forward and struck the dashboard with a medium
20 to heavy impact, would that be consistent with the injury
21 that you found, when you did the surgery?

22 A Yes, this is a direct impact on the anterior of the
23 front part of the knee and that's where the pathology was,
24 the plica is always anterior medial, anterior means front on
25 the inside of the knee. Also, her chondromalacia was also

Proceedings

1 on the condyle in the front.

2 Q So, when you did the surgery, you repaired whatever
3 was injured?

4 A Right.

5 Q What's the prognosis for Miss Hootam?

6 (Witness perusing document.)

7 A I saw her a few times and the last time I saw her
8 was April 27th of 2009. She was still left with residual
9 stiffness. She stated, at that time, the range of motion
10 was improving. She still had difficulty walking two blocks
11 and difficulty with the stairs.

12 She does have chondromalacia, which is a
13 progressive condition. It will only get worse over a period
14 of time. The articular cartilage does not regenerate, but
15 if it's not injured and if it does not have any other
16 inflammatory process, it can last you a lifetime.

17 Q Since hers was injured, what would you expect would
18 happen, over the course of her lifetime?

19 A She would get accelerated wear and tear in the
20 patellofemoral joint.

21 Q And that would result in what?

22 A Arthritis.

23 Q Arthritis.

24 So it would be premature the arthritis?

25 A Yes, it would speed it up.

Proceedings

1 Q Did you treat any other part of her body?

2 A No.

3 Q You never treated her neck or back?

4 A No.

5 Q And I met with you prior to you testifying; is that
6 correct?

7 A Yes, you did.

8 Q And when we discussed your testimony, was it
9 understood that you would only testify about the knee?

10 A I only treated her knee.

11 Q Right. And that would have been only -- your only
12 testimony?

13 A Yes.

14 Q The range of motion testing that you done later on,
15 what was that?

16 (Witness perusing document.)

17 A Um, right after surgery, the postoperative visit I
18 had with her within a few days, her motion was zero to 90,
19 which is expected, because she's just recovering from recent
20 surgery. But then, when I saw her in March of 2009, it had
21 improved to zero to 120 degrees. And the last time I saw
22 her was April of 2009, by then she had improved to 125
23 degrees of flexion.

24 Q So even though it's not normal because it's not
25 150, it did get somewhat better?

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1 A It's better.

2 Q And that was the result of the surgery?

3 A Yes.

4 Q Now, you said before over time, it is going to
5 degenerate over the course of her lifetime?

6 A Chondromalacia is a progressive condition.

7 Q Would that be relevant in relation to her range of
8 motion testing, would that show?

9 A As the degeneration increases, the range of motion
10 decreases.

11 Q So, over the course of her lifetime, that would
12 result in a decreased range of motion?

13 A Well --

14 Q Perhaps, it doesn't necessarily have to be or it
15 would?

16 A Degeneration is the normal aging process. We all
17 have degeneration as we grow older. The injury, what it
18 does, it accelerates the process, so you get earlier onset
19 of that.

20 Q Doctor, to a degree of medical certainty, have you
21 reached a conclusion as to what was the cause of the injury
22 that Miss Hootam sustained?

23 A It's my opinion that the 7-30-2008 accident caused
24 the knee injuries.

25 Q And to a degree of medical certainty, Doctor, have

Proceedings

1 you reached an opinion as to whether that injury is
2 permanent or not?

3 A It is a permanent condition, yes.

4 MR. DIPRISCO: I have no other questions.

5 THE COURT: Okay.

6 MR. MAILLOUX: May I review the doctor's file?

7 THE COURT: Pardon?

8 MR. MAILLOUX: May I review the doctor's file
9 briefly?

10 THE COURT: Yes.

11 (Handing to defendant's attorney.)

12 MR. MAILLOUX: May I inquire, Judge?

13 THE COURT: You may inquire.

14 MR. MAILLOUX: Thank you, your Honor.

15 CROSS-EXAMINATION

16 BY MR. MAILLOUX:

17 Q Good afternoon, Dr. Mian.

18 A Good afternoon.

19 Q I'm going to be asking you some follow up questions
20 about Miss Hootam and your treatment of her.

21 Before we get into her treatment, I want to talk
22 about what has been marked as Plaintiff's Exhibit 1 for
23 identification.

24 Did you prepare that?

25 A No.

Proceedings

1 Q Was that prepared for you?

2 MR. DIPRISCO: Just objection what prepared
3 means. I'm not sure what he means by prepared?

4 THE COURT: Did you obtain that? Is that
5 diagram something that you use in your practice?

6 THE WITNESS: Um, I do use some pictures,
7 these things to explain to the patients. What I do, I
8 use models. In this instance, when I met with
9 Mr. Dominic, he asked me what a plica looks like, so I
10 showed him, this is what the picture is, and then he
11 blew it up.

12 Q That's a picture that you obtained?

13 A Yes.

14 Q And that's not a picture of the plaintiff; correct?

15 A It is not, no.

16 Q And that's a picture of someone else's knee;
17 correct?

18 A It's demonstrative -- it's for demonstrative
19 purposes.

20 Q But it's an actual photograph of someone else's
21 knee not this plaintiff's knee, is that correct?

22 A Yes.

23 Q Now, you talked earlier when you were going through
24 the model of the knee about the different parts of the knee
25 and the function. I'm going to talk about the knee for a

Proceedings

1 little bit, okay.

2 You indicated that the meniscus performs a number
3 of functions?

4 A Correct.

5 Q And could you just repeat those functions?

6 A It takes in part in stability. It takes part in
7 load-bearing. It takes part in the lubrication.

8 Q So, weight bearing, lubrication and stability.

9 Stability, would it be fair to say that stability
10 would also involve the ACL and the MCL?

11 A Correct.

12 Q Now, in terms of the structure of the knee, you
13 talked about the three bones; the femur, the tibia and the
14 patella; correct?

15 A Yes.

16 Q And the ligaments kind of bind the knee together,
17 all the bones; is that correct?

18 A Yes.

19 Q And inside the knee there's something called
20 synovial fluid; is that correct?

21 A Synovial fluid, yes.

22 Q And the synovial fluid is what allows for the
23 components of the knee to glide and move cause they're not
24 one structure; is that correct?

25 A Yes, it does help the lubrication.

Proceedings

1 Q So, with regard to the knee, would it be fair to
2 say that, when the knee is flexed, the synovial fluid is
3 what helps the patella move up and down in that space?

4 A No, it doesn't.

5 Q Well, when the knee is flexed, doesn't the patella
6 move upwards towards the femur?

7 A It does, but synovium doesn't move it.

8 Q Well, I didn't say that it moves it, it helps it
9 glide, it lubricates?

10 A Synovium is the lining of the joint, it's not on
11 top of the gliding surface of the patella.

12 Q Would it be fair to say that there's fluid in the
13 knee?

14 A Normally, there is no noticeable fluid in the knee.
15 The fluid is a result of any injury or any inflammatory
16 process.

17 Q So, when the bone in the patella moves, there's
18 nothing helping lubricate its path?

19 A No, the articular cartilage is a frictionless
20 structure which moves it very, very smoothly.

21 Q Now, when we're talking about the knee, you're
22 talking about chondromalacia, you mentioned that a couple of
23 times?

24 A Yes.

25 Q And, in fact, isn't there another term for

Proceedings

1 chondromalacia which is known as runner's knee?

2 A No, runner's knee is a different thing.

3 Q You never heard the phrase runner's knee before?

4 A I've heard the name runner's knee, yes.

5 Q What is the significance of the phrase runner's
6 knee?

7 A Most of them are overused injuries.

8 Q What is an overused injury?

9 A Overused injury is when you go beyond the
10 limitations of any body part then it affects that body part
11 to become symptomatic.

12 Q Now, you talked earlier about the stress that's
13 placed on the knee in terms of normal activities; is that
14 correct?

15 A Yes.

16 Q Do you remember that?

17 A Correct.

18 Q So, just in terms of normal day-to-day activities,
19 there's a lot of pressures and forces being exerted on the
20 knee; is that fair to say?

21 A That is correct.

22 Q And, in fact, when we talk about the undersurface
23 of the patella, when you say that there's chondromalacia,
24 would it be fair to say that the undersurface has softened?

25 A Chondromalacia has four stages, softening would be

Proceedings

1 the first one.

2 Q So that would be chondromalacia grade 1 --

3 A That is correct.

4 Q -- would be softening?

5 A Yes.

6 Q And then chondromalacia grade 2 would be also part
7 softening; correct?

8 A There is fragmentation and fibrillation in the
9 superficial layers of the articular cartilage.

10 Q What are the superficial layers?

11 A Close to the superior surface.

12 Q When you're talking about chondromalacia level 2,
13 you're not talking about any exposure of the bone; is that
14 correct?

15 A No, that would be grade 4.

16 Q And grade 4 would be the most severe of the
17 chondromalacias?

18 A That's arthritis.

19 Q Doctor, would it be fair to say that chondromalacia
20 can occur in the setting of natural wear and tear?

21 A It can.

22 Q An individual can obtain chondromalacia through
23 normal degeneration of the knee?

24 A It depends on the age.

25 Q So it's possible?

Proceedings

1 A It's all age dependent. Normal wear and tear is
2 age dependent, below age fifty, you will not see
3 chondromalacia.

4 Q I'm just asking you, a diagnosis of chondromalacia
5 could be related to degeneration as opposed to trauma; fair
6 to say?

7 A Yes.

8 Q And your testimony before was that the plica are
9 folds that exist during the embryonic stage of development;
10 correct?

11 A Yes.

12 Q And for some people they go away, some people they
13 don't?

14 A Correct.

15 Q And, so, in the instance of the existence of the
16 plica that would be considered to be congenital; correct?

17 A It is congenital.

18 Q Now, in terms of normal wear and tear of the knee,
19 a normal wear and tear of the knee, every day usage, if an
20 individual has plica, would it be fair to say that the plica
21 could be inflamed from normal usage of the knee?

22 A It has to be trauma or it has to be overused.
23 Almost fifty percent of the population has plicas.

24 Q Doctor, your testimony is that's impossible for
25 normal wear and tear to cause inflammation in plica?

Proceedings

1 A Normally no.

2 Q What about inflammation in the knee from normal
3 wear and tear, that's possible?

4 A Normal wear and tear doesn't cause inflammation,
5 no.

6 Q Well, Doctor, is another word for inflammation
7 arthritis?

8 A No.

9 Q Arthritis is a condition that can come back
10 naturally; correct?

11 A Arthritis is the wearing down of your articular
12 cartilage. Inflammation is the process, inflammatory
13 process which is usually in the synovium, which is covering
14 the joint.

15 Q And, in this case, you examined the plaintiff on
16 January 12th of 2009?

17 (Witness perusing document.)

18 A Yes.

19 Q Now, you told us earlier -- now, you brought your
20 file with you today, regarding your treatment of the
21 plaintiff?

22 A I did.

23 Q And that file contains all of the documents
24 relative to your treatment?

25 A Yes, it has all of my notes.

Proceedings

1 Q That's a full and complete file with regard to your
2 treatment of Miss Hootam?

3 A Yes.

4 Q Okay. Now, you testified before that you looked at
5 the MRI films; correct?

6 A I did.

7 Q Okay. And where are the films in your file?

8 A They would not be in the file. They're usually in
9 the form of some MRI films or a CD or you could see it on
10 the portal.

11 Q Would it be fair to say that that file then is not
12 the full and complete file regarding your treatment for
13 Miss Hootam?

14 MR. DIPRISCO: Objection, full and complete of
15 what he has not what may exist.

16 THE COURT: Ask your next question.

17 Q Are there other aspects of the file that you have,
18 with regard to your treatment of Miss Hootam, that you don't
19 have here with you here today?

20 A This is probably my entire thing which I dealt
21 with.

22 Q Where are the films?

23 A I do not have the films. We don't keep the films.
24 Normally the patient brings the films, we see it, return it
25 back to the patient.

Proceedings

1 Q So, you don't think it's important to keep a
2 patient's MRI films, when you're examining them, in
3 consideration of possible surgery?

4 A I don't have the capability to file so many films,
5 so we give it back to the patient, so they keep it safe.

6 Q You indicated that the MRI came on a CD?

7 A I don't know how it came. It was film. In my
8 notes it says films.

9 Q And it's your testimony to this jury that you
10 reviewed those films?

11 A I did.

12 Q And you did that over the course of one visit with
13 Miss Hootam?

14 (Witness perusing document.)

15 A Yes, I reviewed it on my first visit with her.

16 Q How many individual pictures of the knee were there
17 in the films that you reviewed?

18 A I have no idea.

19 Q How long did it take you to review those films,
20 when Miss Hootam sat with you?

21 A Whatever it takes. When I see them I see them. It
22 can take a few minutes. It's not long.

23 Q So, you made the diagnosis of the tear from looking
24 at films over just a couple of minutes; is that correct?

25 A It doesn't take long to see images.

Proceedings

1 Q An MRI comes with multiple views; correct?

2 A Yes.

3 Q In fact, an MRI could have a sagittal view, it
4 could have an axial view, it could have a coronal view;
5 correct?

6 A Correct.

7 Q And within each view that's done, there could be
8 different sequences for an MRI; correct?

9 A Yes.

10 Q Some MRI's are a T1 sequence, looking at fat
11 content, and others are a T2 sequence that look at water
12 content; is that correct?

13 A T1 images look at the anatomy. T2 normally looks
14 at the pathology. The fluid looks white on the T2s, yes.

15 Q It's measuring water; correct?

16 A Measuring water, yes.

17 Q And what shows up on a T1 instance is fat content;
18 correct?

19 A Yes, but mostly they're used for anatomy.

20 Q And when an MRI is done, it takes multiple slices
21 of whatever body part is being examined; correct?

22 A Correct.

23 Q So, on one individual MRI study, you could have
24 hundreds of slides of the knee, correct?

25 A It's not hundreds, but there are a few. If you

Proceedings

1 know what you're looking at, it doesn't take much time,
2 five, ten minutes maximum.

3 Q Now, you saw her and then you made the
4 determination that she needed surgery, when you saw her in
5 January of 2009; correct?

6 A I discussed that option with her.

7 Q Well, was there a follow-up visit in between the
8 January 12th 2009 visit and the surgery?

9 A No.

10 Q So, the decision was made that day; correct?

11 A No.

12 Q A recommendation was made that day; correct?

13 A Discussion was on that day and the patients they
14 decide, they call back and schedule it.

15 (Witness perusing document.)

16 A And this was about a month -- a little over a month
17 later.

18 Q Now, Doctor, there are clinical tests that you
19 could use to see whether or not there is a meniscus tear;
20 correct?

21 A There are tests, yes.

22 Q What is the significance of a McMurray's test?

23 A McMurray test is, basically, trying to diagnosis a
24 displaceable posterior horn of medial or lateral meniscus.

25 Q And you did not do the McMurray's test, when you

Proceedings

1 examined the plaintiff in January; correct?

2 A No, I didn't.

3 Q And there's also a modified McMurray's test called,
4 it's an Ege test?

5 A There are a lot of tests, but I don't use that,
6 McMurray I do.

7 Q But you didn't use the McMurray test in this
8 instance; correct?

9 A No, it's not listed in my notes, no.

10 Q So that means you didn't do it; correct?

11 A I can't say I did it, but it's not in my notes.

12 Q Are there tests that you do and then you don't take
13 notes of them?

14 A It is routine to examine the knee. But I did not
15 do it, I can't say for sure.

16 Q Doctor, my question is, is it routine for you to
17 perform an examination and not make a note of it in your
18 records?

19 A No, I make notes of it.

20 Q So, the fact that it's not there indicates you did
21 not do the test; correct?

22 A Correct.

23 Q And you also made a visual observation of the knee
24 and had a finding of joint effusion; is that correct?

25 A It's not a visual, it's an examination.

Proceedings

1 Q Well, joint effusion is reflective of fluid in the
2 knee; is that correct?

3 A That is correct.

4 Q And when you're looking at -- when you indicate a
5 finding of joint effusion, what are you doing, in terms of
6 your examination to make that finding?

7 A You empty the suprapatellar area of the knee from
8 the fluid, press it down and then push from the other end
9 and you see if it fills up, that's how you diagnose it.

10 Q Would it be fair to say then that the plaintiff,
11 when she appeared to you that day, did not have any swelling
12 in her right knee?

13 A Swelling is extra-articular, outside we normally
14 call it swelling, when it's outside the joint. When the
15 fluid is inside the knee, we call it effusion.

16 Q Well, if there's fluid inside the knee, would that
17 affect how the knee looked visually?

18 A If it's a big effusion you will see swelling.

19 Q And, in your evaluation, you found the plaintiff to
20 have a big effusion; correct?

21 A I did not say big I said effusion.

22 Q Doctor, you said that she had a big effusion when
23 she appeared to you on January 12th of 2009; correct?

24 A I never said that.

25 Q Doctor, would you like to review your records?

Proceedings

1 A Yes.

2 Q And I'm going to point you to your physical
3 examination of the right knee on page two in your report.

4 And after reviewing that, I'd ask you to tell me if
5 that refreshes your recollection?

6 (Witness perusing document.)

7 A This says, the one in the notes is a typographical
8 error. If you see the other notes, it's one plus effusion.
9 It wasn't a big effusion.

10 Q Doctor, I'm asking you to refer to page two of your
11 report.

12 A I just did.

13 Q Does that refresh your recollection that you
14 classified Miss Hootam's effusion as a large effusion?

15 MR. DIPRISCO: Objection, he just answered
16 that question, Judge.

17 THE COURT: Overruled.

18 A Do you want me to answer that?

19 Q Yes.

20 A Yes, if you look at my handwritten notes, it says
21 one plus effusion.

22 Q Doctor, I'm asking about the typed written report?

23 MR. DIPRISCO: He's answering the question.
24 He's telling him that his notes said that and he said
25 that the typed notes were an error. He didn't type

Proceedings

1 them.

2 MR. MAILLOUX: He hasn't even admitted that it
3 was typed and he didn't even testify that there's typing
4 on it.

5 I object to counsel testifying on behalf of
6 his client.

7 THE COURT: Sustained. Your objection is
8 sustained.

9 Q Doctor, your typewritten report says that the
10 plaintiff had a large effusion; correct?

11 A That is an error.

12 Q Does your report say that?

13 A It does say large, yes.

14 Q And a indication of a large effusion would be a
15 indication of a significant amount of fluid in the knee;
16 correct?

17 A No, it could be extra-articular, it could be
18 inside.

19 Q If you had large fluid in the knee, even if it's
20 inside, there would be a visual appearance on the outside;
21 correct?

22 A Yes, it should.

23 Q And you didn't see any signs of swelling though
24 when she went to you that day; correct?

25 A No, I did not note swelling.

Proceedings

1 Q And you would have noted swelling if you saw it;
2 correct?

3 A I did not see a swelling.

4 Q Now, Doctor, what investigation did you do to look
5 into examinations of the plaintiff, from the date of the
6 accident to the date that she saw you?

7 A Can you explain that question to me?

8 Q Sure.

9 Her accident was July 30th of 2008; correct?

10 (Witness perusing document.)

11 A Yes.

12 Q And you saw her on January 12th of 2009; correct?

13 A That is correct.

14 Q And did you do any investigation to figure out
15 whether or not there may have been another incident in
16 between July 30th of 2008 and January 12th of 2009?

17 A She did not report any other injuries or anything
18 in the past either.

19 Q Were you relying on the history that the plaintiff
20 gave you?

21 A Yes.

22 Q And do you recall reviewing any records that
23 indicated that she did not have any effusion in earlier
24 visits to Dr. Hsu?

25 A I did not review Dr. Hsu's notes.

Proceedings

1 (Witness perusing document.)

2 A Do you have some?

3 Q You never reviewed Dr. Hsu's notes?

4 A I don't recall reviewing any particular notes.

5 There are some notes in my file from a physiatrist.

6 Q You were aware that the plaintiff was seeing Dr.
7 Hsu before she saw you; is that correct?

8 A I'm aware of that, yes.

9 Q At no point in time did you make an attempt to
10 review Dr. Hsu's records in making your diagnosis?

11 A I made a diagnosis based on my clinical exam and my
12 history. I don't need Dr. Hsu's exam to diagnose that.

13 Q Doctor, don't you have Dr. Hsu's records in your
14 file in front of you?

15 A I have some records from a physiatrist.

16 (Witness perusing document.)

17 Q In fact, in front of you in your file, don't you
18 have the comprehensive examination that Dr. Hsu did of the
19 plaintiff on August 12th of 2008?

20 (Witness perusing document.)

21 A Well, he is circling effusion on the right side.

22 Q Doctor, do you have a comprehensive examination
23 from Dr. Hsu on August 12th of 2008?

24 (Witness perusing document.)

25 A This is August 12, 2008. He is circling where it

Proceedings

1 says --

2 Q I'm just asking if you have it?

3 A He says there is effusion.

4 Q Doctor, you have that record from August 12th of
5 2008 in front of you?

6 A I do.

7 Q And that would be the first medical record of any
8 medical record at all for plaintiff regarding this trauma;
9 correct?

10 A In my file, yes.

11 Q And when we talk about the first time someone sees
12 a healthcare provider, that evaluation is important in
13 figuring out what the cause of the injury is; correct?

14 A No. You take a history from the patient first of
15 all and then you see whatever records are available to you.
16 But in this, Dr. Hsu you're showing me, that shows effusion
17 on the knee.

18 Q You never looked at that record before today?

19 A I might have looked at it a long time ago. I'm
20 just looking at it now.

21 Q Doctor, I want you to review that record and I want
22 to ask you if it refreshes your recollection about whether
23 or not there was a finding of effusion on August 12th of
24 2008?

25 A Okay.

Proceedings

1 (Witness perusing document.)

2 A There is effusion on this record.

3 Q Referring to the --

4 A (Interposing) Page 4.

5 MR. MAILLOUX: I'd like to have this marked as
6 Defendants' L for identification.

7 (Whereupon, the Hollis Medical Care record
8 dated August 12, 2008 referred to was marked for
9 identification as Defendants' Exhibit L by the Court
10 Reporter.)

11 (Handing to the witness.)

12 Q Doctor, I'm going to ask you to take a look at
13 Defendants' L.

14 (Witness perusing document.)

15 Q I'm going to ask that you to take a look at page 4.

16 (Witness perusing document.)

17 A Right.

18 Q And after taking a look at page 4, I'm going to ask
19 you if that refreshes your recollection?

20 A That's what I'm looking at it.

21 Q And the plaintiff's knee was examined on August
22 12th of 2008?

23 A Yes.

24 Q Okay. And it was found that the plaintiff had
25 normal range of motion that day; correct?

Proceedings

1 A No, she had zero to 135 degrees. It says zero to
2 135.

3 Q And it also indicates in writing "within normal
4 limits"; correct?

5 A "Extension within normal limits".

6 Q It says, it's within normal limits?

7 A No.

8 MR. DIPRISCO: Objection, he's just read what
9 he says that it says.

10 A It written "within normal limits", which is written
11 in front of extension "zero", that is normal.

12 Q Doctor, you indicated that she had range of motion
13 of 135 degrees in the knee?

14 A That is correct.

15 Q And it was Dr. Hsu's indication that that was
16 normal on that day; correct?

17 A He did not say it's normal.

18 Q Doctor, would you refer to the line above zero to
19 135?

20 (Witness perusing document.)

21 A Cause I'm looking at it, yes.

22 Q What does the line above zero to 135 say?

23 A It says normal in patient's range of motion, but
24 he's not circling normal. He's writing a number over there.

25 Q Did he indicate any deficiency in range of motion

Proceedings

1 there?

2 A He's writing a specific number 135, which is not
3 normal.

4 Q He didn't write a number 135, it's typed written;
5 correct?

6 A Yes, it says zero to 135.

7 Q Is there any writing on there that there's an
8 abnormal range of motion on that day?

9 A You don't have to write when the number speaks for
10 itself.

11 Q Doctor, is there any indication in that report that
12 there was an abnormal range of motion?

13 MR. DIPRISCO: Objection. The doctor has
14 testified five times that it's 135 and that's not
15 normal. I'm not sure what else he wants him to say.

16 THE COURT: Rephrase your question, please.

17 MR. MAILLOUX: I'll rephrase.

18 Q Doctor, when the plaintiff first sought medical
19 treatment, her right knee was aligned properly; correct?

20 A Yes.

21 Q When she first sought medical treatment there was
22 no effusion in the right knee; correct?

23 A There is effusion.

24 Q Okay. There's an indication, when she first sought
25 medical treatment, she did not have any joint line

Proceedings

1 tenderness; correct?

2 A Yes.

3 Q When she first sought medical treatment, she was
4 negative with regard to a McMurray's test; correct?

5 A Correct.

6 Q And she was also negative with regard to effusion;
7 correct?

8 A No, effusion is present. He has circled effusion
9 here.

10 Q Doctor, this is a part of your file, this report?

11 A No, it's your file I'm looking at. My file is the
12 same thing.

13 Q The report that I handed you, is that the same as
14 the report that's in your file?

15 A Yes.

16 Q And that's a part of the file that you used to make
17 a finding and diagnosis with regard to the plaintiff's
18 condition?

19 A No, I did my own exam and I did my own history, but
20 this record also I looked at it, it does show effusion on
21 it.

22 MR. MAILLOUX: I'm going to move Defendants' L
23 into evidence.

24 MR. DIPRISCO: I have no objection.

25 THE COURT: Okay, in evidence.

Proceedings

1 (Whereupon, the referred to was marked in
2 evidence as Defendants' Exhibit L by the Court
3 Reporter.)

4 MR. MAILLOUX: Judge, may I approach the
5 witness with the exhibit?

6 THE COURT: Yes.

7 Q Doctor, we're looking at page 4 of the exhibit.

8 (Handing to the witness.)

9 A Yes.

10 Q I'm doing this so the jury can see it (indicating).

11 A Yes, sir.

12 Q Doctor, do you see this notation of zero to 135
13 right there (indicating)?

14 A Yes, I do.

15 Q What's the word above that?

16 A If he would circle that it's normal then it would
17 be normal, but he is not writing normal, he's writing a
18 number here. 135 is not the normal range.

19 Q What is the word above that number, Doctor?

20 A It doesn't matter. "Normal".

21 Q The word is normal; correct?

22 A (No response.)

23 Q So, this is the column (indicating) where it tells
24 what the normals are for examination; correct?

25 A No, it's not. It's the range of motion. He's

Proceedings

1 writing 135 here, that's not the normal range.

2 Q Doctor, do you see down here, what word is that
3 (indicating)?

4 A "Alignment".

5 Q What's below that?

6 (Witness perusing document.)

7 A (No response).

8 Q Doctor, does the word negative exist in this column
9 that I'm pointing to (indicating)?

10 A Yes, that's above the joint line tenderness.

11 Q And, Doctor, there's a place in this evaluation to
12 indicate whether or not there's joint effusion; correct?

13 A You see it circled. Yeah, right there
14 (indicating), he has circled that, that means it is present.

15 Q Doctor, I want you to take a look at this a second.

16 (Witness perusing document.)

17 Q What word is circled?

18 A "Effusion".

19 Q The word "effusion" is circled?

20 A He has circled "effusion", yes. And he is circling
21 "negative" for the Joint Line Tenderness.

22 Q And, Doctor, isn't it true the word that's circled
23 is the word "right"?

24 A Effusion in the right knee, yes.

25 Q Isn't it the reason why it's circled "right"

Proceedings

1 because the doctor's differentiating between the right and
2 the left knee, in terms of what was being examined?

3 A No, he is circling Effusion in the right knee.

4 Q Did he indicate that it was positive for effusion?

5 A Yes, here (indicating).

6 Q Did you find the word "positive" on the report?

7 A He is not writing words. Do you see anything in
8 here? He's just circling.

9 Q Doctor, is this word positive?

10 A Which one?

11 Q This one right here (indicating)?

12 A You see positive and negative.

13 Q Is the word "positive" there?

14 A Yes.

15 Q Is the word "positive" circled?

16 A Yes.

17 Q The word "positive" is circled, Doctor?

18 A No, but he is circling here (indicating), so
19 effusion --

20 Q Isn't it true that the word "positive" is not
21 circled on the Effusion column; correct?

22 A He --

23 Q Doctor, it's just yes or no.

24 MR. DIPRISCO: Judge, he doesn't give him a
25 chance to answer. He keeps interrupting him.

Proceedings

1 A I am giving you my interpretation of his notes. In
2 my opinion, he is circling Effusion in the right knee.

3 Q Do you see the word "negative" that's circled
4 there?

5 A Negative is on the Joint Line Tenderness and
6 McMurray's.

7 Q And also on Effusion; correct?

8 A I don't know. He's circling over there. I don't
9 know. You should ask him this question.

10 MR. MAILLOUX: Judge, I'd like to publish page
11 4 of Defendant's Exhibit L to the jury.

12 THE COURT: Let me see it.

13 (Handing to the Court.)

14 (Court perusing document.)

15 MR. MAILLOUX: May I publish this to the jury,
16 your Honor?

17 THE COURT: Yes.

18 MR. MAILLOUX: Should I just --

19 COURT OFFICER: I will.

20 (Whereupon, Defendants' Exhibit L is published
21 to the jury, at this time.)

22 THE COURT: If the jury can read it. I mean,
23 I am somewhat more used to medical records than,
24 perhaps, most of the jurors.

25 Ladies and gentlemen of the jury, you'll be

Proceedings

1 able to take that into the jury deliberation room with
2 you.

3 Q Doctor, I want to turn to the surgery itself.

4 You performed the surgery on February 18th of 2009?

5 (Witness perusing document.)

6 A Yes.

7 Q And you found the meniscus to be intact, when you
8 did the surgery?

9 A Yes.

10 Q You found the plaintiff's ACL to be intact?

11 A Yes.

12 Q You found the plaintiff's MCL to be intact?

13 A Yes.

14 Q When you performed the surgery, was it your aim to
15 rectify whatever condition was causing the plaintiff's
16 complaints?

17 A Yes.

18 Q And you indicated before that you're an experienced
19 surgeon in this area?

20 A Yes.

21 Q You do three to four hundred arthroscopic surgeries
22 in a given year?

23 A Yes.

24 Q And about thirty to forty percent of them are knee
25 surgeries?

Proceedings

1 A Approximately, yes.

2 Q Doctor, could you discuss whether or not an
3 arthroscopic surgery is a common procedure in medicine
4 today?

5 A Yes, it is common.

6 Q Is it true that athletes undergo arthroscopic
7 surgery?

8 A They do.

9 Q Have you ever performed an arthroscopic surgery on
10 an athlete?

11 A I must have.

12 MR. DIPRISCO: Well, just note my objection.
13 Professional athlete, an amateur, a kid playing in a
14 schoolyard. Athlete is so broad.

15 THE COURT: If the doctor doesn't understand,
16 he can always ask.

17 Q And an arthroscopic surgery on the knee is a
18 procedure that's done with the intention that the individual
19 will be able to get back to their normal life; is that
20 correct?

21 A That is the goal.

22 Q And when an arthroscopic surgery is performed,
23 individuals do return to complete pre-accident, presurgery
24 status; correct?

25 A Most of them do, yes.

Proceedings

1 Q Did you see any indication --

2 MR. MAILLOUX: Withdrawn.

3 Q You indicated that your last visit was in April of
4 2009 with the plaintiff?

5 (Witness perusing document.)

6 A Yes.

7 Q And when you perform an arthroscopic surgery,
8 there's a period of time that it takes for the knee to heal
9 from the surgery; correct?

10 A Yes.

11 Q And would that April of 2009 visit have been within
12 the healing time frame for an arthroscopic surgery?

13 A Yes, she is in the earlier stages.

14 Q So, when she appeared to you with restrictions of
15 motion and some other difficulties, that would have been due
16 to the knee still healing from the surgery; correct?

17 A It's about two months now from there. But she did
18 have, at that time, she had some symptoms, yes.

19 Q But those symptoms would have been relative to
20 recovery from the surgery; correct?

21 A I can only say up to that exam what I saw. Only
22 the further follow up would show what she will end up with.

23 Q When she appeared to you with symptoms, it would be
24 fair to say, you didn't think that was a indication that you
25 missed something; correct?

Proceedings

1 A Beg your pardon, missed what?

2 Q When she appeared to you in April of 2009?

3 A Right.

4 Q And when you saw symptoms that she had?

5 A Right.

6 Q You did not think that those symptoms were an
7 indication that you missed something in the surgery;
8 correct?

9 A Yeah, right.

10 Q You did everything you needed to do in the surgery;
11 correct?

12 A Correct.

13 Q So, from that date in April up to today's date, has
14 the plaintiff called you to tell you that she has ongoing
15 pain?

16 A I haven't seen her after that, no.

17 Q Not only haven't you seen her but she hasn't even
18 reached out to you; correct.

19 A Like I said, I did not see her after that.

20 Q And she also didn't call you; correct?

21 A Call, I don't know because I don't take calls
22 normally.

23 Q Doctor, do you recall reviewing any records that
24 indicated that the plaintiff had completely healed with
25 regard to her right knee after your surgery?

Proceedings

1 A I don't have any follow up after April.

2 Q Were you given any records, after the date of the
3 accident?

4 MR. MAILLOUX: Withdrawn, withdrawn. I'm
5 going to reask my question.

6 Q Doctor, was it ever brought to your attention, at
7 any point in time, that the plaintiff had a subsequent
8 accident?

9 A I was told, um, I think a few days ago that there
10 was a subsequent accident, yes.

11 Q That was in preparation for your testimony today?

12 A Yes, when I met with the attorney.

13 Q Doctor, you gave an opinion before that the
14 plaintiff's condition that you have is permanent; correct?

15 A Correct.

16 Q Doctor, wouldn't it be helpful for you to have
17 reviewed records pertaining to plaintiff's subsequent injury
18 before making that type of opinion?

19 A I am basing my opinion on my treatment with her and
20 my findings in her knee --

21 Q Doctor, I want you to assume hypothetically --

22 MR. DIPRISCO: Judge, he wasn't finished, he
23 was about to say something else.

24 Q I'm sorry, Dr. Mian.

25 A The second accident she had, I never examined her.

Proceedings

1 The only thing I saw was an MRI scan on the right
2 knee, which was on 9-25-2012, which was interesting --

3 Q Doctor, I don't want you to go into the contents of
4 that.

5 MR. DIPRISCO: Judge, he just asked him if he
6 reviewed anything and now he doesn't want him to answer
7 the question.

8 MR. MAILLOUX: He can answer what he reviewed
9 without telling me about the contents.

10 MR. DIPRISCO: Well, you asked him a
11 particular question about her healing fully based upon
12 records, now he has the record and he doesn't want him
13 to answer.

14 MR. MAILLOUX: Judge, I object to plaintiff
15 testifying.

16 MR. DIPRISCO: I'm not testifying. I'm
17 objecting to him stopping him from testifying. He was
18 about to say something.

19 THE COURT: Finish your statement, Doctor.

20 A (Continuing) As I said, there only was shown an
21 MRI report, which was on 9-25-2012.

22 The impression is: (Reading) Synovial fluid within
23 the knee joint --

24 MR. MAILLOUX: Judge, I got to object to this,
25 there's no MRI film in evidence.

Proceedings

1 MR. DIPRISCO: He opened the door, Judge. He
2 asked him if you reviewed any document, he did and he's
3 telling him why --

4 MR. MAILLOUX: This isn't a document.
5 You're not even standing up when he's
6 addressing the Court.

7 MR. DIPRISCO: Please.

8 It implies that he asked him if there was --
9 if he knew that there was a subsequent injury and her
10 knee was absolutely fine. And then he said, did you
11 review anything and he said yes and he starts to testify
12 about what he reviewed and now he's afraid to hear what
13 the answer is.

14 THE COURT: Doctor, that document is not in
15 evidence, you can't read from it.

16 THE WITNESS: Okay.

17 Q Doctor, I want you to assume hypothetically that a
18 patient has an injury to their knee for which an
19 arthroscopic surgery is performed in 2008. I want you to
20 further assume that that individual has a subsequent
21 accident in the year 2012. I want you to further assume,
22 that in connection with that subsequent accident, the
23 patient made a claim that her knee had fully recovered from
24 the initial accident.

25 would that be relevant in making a determination

Proceedings

1 about whether or not an injury is permanent?

2 A Um, no, I expect her knee to be normal in the near
3 future, yes.

4 Q What's the time frame that you would expect her
5 knee to become normal?

6 A It takes a few months to recover fully, yes. But
7 it's well documented and well seen in orthopedic literature
8 and experience that immediate results can be excellent.
9 But, five years later, you see significant changes in terms
10 of some bone spurs, flattening of condyle and other changes.

11 Q Now, okay, so, Doctor, taking that, several days
12 ago you were informed that the plaintiff did have a
13 subsequent injury, did you ask to see the records pertaining
14 to that injury?

15 MR. DIPRISCO: Objection, he was about to read
16 them and he stopped him from answering any questions
17 about it. He can't have it both way.

18 THE COURT: I'm looking at the time.

19 MR. DIPRISCO: He can't have it both ways. He
20 can't say, did you review it and then when he wants to
21 tell what's in it or what he thought of it, he stops him
22 from testifying.

23 MR. MAILLOUX: The question was whether or not
24 he asked to see the records pertaining to the subsequent
25 accident.

Proceedings

1 THE WITNESS: Can I answer that?

2 THE COURT: Yes.

3 A Yes, I did.

4 Q And were you given records pertaining to the
5 subsequent accident?

6 A I was only given an MRI report on the knee.

7 Q You weren't given a report from Integrated
8 Neurological Associates?

9 A No.

10 Q Were you given a report from Dr. Leonid Reyfman?

11 A No, this is the only record I have is an MRI
12 report.

13 Q Were you given any reports that attributed a
14 statement to the plaintiff that her right knee had
15 recovered, as a result of the 2008 accident, prior to the
16 2012 accident?

17 MR. DIPRISCO: Judge, I don't know what
18 statement he's talking about. He said he only received
19 one piece of paper. He doesn't have to parade five
20 hundred pieces of paper, if he says there's only one.
21 We know there's only one cause he knows what it is.

22 THE COURT: Ask your next question.

23 MR. MAILLOUX: Thank you, your Honor.

24 No further questions, Judge.

25 MR. DIPRISCO: Can I proceed?

Proceedings

1 THE COURT: Yes.

2 MR. DIPRISCO: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. DIPRISCO:

5 Q Doctor, without going into -- don't read to the
6 jury what's in that piece of paper that was at your -- the
7 MRI report; okay?

8 A Right.

9 Q But just answer this question.
10 Whatever the result was in there, would that be
11 consistent to what you would expect someone to have that
12 many years after the surgery?

13 A Yes.

14 MR. DIPRISCO: Thank you.

15 No other questions.

16 MR. MAILLOUX: Nothing, your Honor.

17 THE COURT: You may sit down, Doctor.

18 THE WITNESS: Thank you.

19

20 (Whereupon, the witness was excused from the
21 witness stand, at this time.)

22

23 THE COURT: Counsel?

24 (Discussion held off the record.)

25 THE COURT: All right, ladies and gentlemen of

Proceedings

1 the jury, it's not that much earlier, but I'm going to
2 excuse you now and ask you to come back at 9:30 tomorrow
3 morning, more medical testimony I expect.

4 COURT OFFICER: what time?

5 THE COURT: 9:30.

6 COURT OFFICER: All rise.

7
8 (Whereupon, the jury was excused from the
9 courtroom, at this time.)

10
11 MR. DIPRISCO: Thank you, your Honor.

12 MR. MAILLOUX: Thank you, your Honor.

13
14 * * * * *

15
16 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT
17 OF THE ORIGINAL STENOGRAPHIC MINUTES TAKEN
18 OF THIS PROCEEDING.

19
20 _____
21 SHARON COHEN
22 Official Court Reporter
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Direct Cross Redirect Recross

FOR THE PLAINTIFF:

SHAHID MIAN, M.D. 2 23 59

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Id.</u>	<u>Evid.</u>
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FOR THE PLAINTIFF:

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Id.</u>	<u>Evid.</u>
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FOR THE DEFENDANT:

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