

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF BRONX : CIVIL TERM : Part 23
3 EDWARD E. CASTRO, : Index:
4 : 300592/2014
5 Plaintiff(s) . :
6
7 -against- : Trial
8
9 PENTECOSTAL CHRISTIAN CHURCH :
10 CRUZADA, DE LA FE, INC.,
11 Maria Gonzales, :
12
13 Defendant(s) . :
14 :
15 851 Grand Concourse
16 Bronx, New York 10451
17 June 2, 2021
18

19 B E F O R E:

20 THE HONORABLE JOSEPH E. CAPELLA,
21 Justice of the Supreme Court and Jury.

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

23 FOR THE PLAINTIFF(S):

24 Burns & Harris
25 233 Broadway
NY, NY
By: Sheri Holland, Esq.

26 FOR THE DEFENDANT(S):

27 Scahill Law Group
28 1065 Stweart Avenue
29 Bethpage, NY 11714
30 By: Timothy Jones.

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Lorraine L. Ramsey
Senior Court Reporter

THE COURT OFFICER: Ready, Judge?

THE COURT: Yeah, we're ready.

THE COURT OFFICER: All rise, jury entering.

(Whereupon, the sworn jurors enter the courtroom
their respective seat.)

THE COURT: You guys can have a seat and relax.

Thank you.

Counsel, are you ready?

MR. JONES: Yes. Thank you, Judge.

CROSS EXAMINATION

BY MR. JONES:

Q Good afternoon, doctor.

A Good afternoon.

Q You and I have met before, correct?

A Yes.

Q And you testified in court before, obviously?

A Yes.

Q All right. You know the rules of cross examination?

A I do.

22 Q Okay. So, basically, I'll try to elicit from you a yes
23 or no answer. If I don't put it in the proper form, if you
24 can't answer yes or no, let me know, okay? If you need to
25 explain, you let us know, as well, okay?

1 A Yes.

2 Q All right. Now, Mr. Castro is not your patient,
3 correct?

4 A That is correct.

5 Q In fact, you were introduced to Mr. Castro through the
6 law firm of Burns and Harris, correct?

7 A Yes.

8 Q Now, how many cases have you worked on for Burns and
9 Harris over the past ten years?

10 A I can't say how many. I don't know exactly.

11 Q More than a hundred?

12 A Uhm, I wouldn't say that much, no. But it's definitely
13 more than 25, 30.

14 Q And you say you testified many times on behalf of
15 clients of Burns and Harris, correct?

16 A Yes.

17 Q And Burns and Harris, as you know, has billboards on
18 the Deegan Expressway soliciting personal injury plaintiffs.
19 You've seen those billboards before?

20 A Yes.

21 Q So, you deal with his staff or does your office staff
22 deal with the staff of Mr. Harris?

23 A Um, my staff probably.

24 Q So, you have a business relationship with the Burns and
25 Harris office?

1 A I mean not beyond them referring me clients to examine.

2 But I don't have any business dealings with him.

3 Q Have you ever issued a prescription for pain medication
4 for Mr. Castro?

5 A No, sir.

6 Q Have you issued any prescription for physical therapy
7 for Mr. Castro?

8 A No, sir.

9 Q Have you spoken with Doctor Wert his original surgeon?

10 A No.

11 Q Have you spoken with Doctor Wert about Mr. Castro?

12 A No.

13 Q Have you spoken with Doctor Wert about Mr. Castro?

14 A No, sir.

15 Q You haven't spoken with any of his treating physicians
16 anytime prior to coming to the court today, correct?

17 A Correct.

18 Q And you didn't speak with any of his treating
19 physicians any other time before preparing any reports you
20 referred to today, correct?

21 A Correct.

22 Q Would it be fair to say that the information that you
23 have with regard to pain or complaints of pain came from the
24 plaintiff himself?

25 A During the visits or?

1 Q Yes?

2 A -- or his condition?

3 Q Since you have the information you received?

4 A Again, direct information only came from Mr. Castro

5 Q Now, doctor, in the course of your practice, have you
6 had occasion to make videos to promote your law practice?

7 A I would say yes.

8 Q And on those videos, do you recall making a video,
9 doctor, where you advertise your intent to advocate for personal
10 injury litigants?

11 A Again, I don't specifically advertise for litigants. I
12 advocates for my patients. I don't recall saying that I
13 advocate for litigants. I treat patients, not litigants. So,
14 if you're using the term litigants, I never used the term
15 litigant.

16 Q Well, do you advocate -- did you make a video
17 indicating that you advocate for your patients in court?

18 A Again, I don't recall the substance of all the videos.
19 You'll have to show it to me, if you need me to answer that.

20 MS. HOLLAND: So, I think that he wants to show a
21 video.

22 MR. JONES: I do. I want to show a video of the
23 witness that he made himself.

24 MS. HOLLAND: Okay. But, I don't think a
25 foundation's been laid. I don't know what's on this

1 video. Before it's shown to the jury, I don't know if it's
2 being used -- I don't know what it's being used for.

3 THE COURT: I think it's being used for
4 impeachment purposes.

5 MS. HOLLAND: I don't think the witness has been
6 -- the witness said --

7 THE COURT: No, I understand your argument.
8 There's nothing to impeach.

9 MS. HOLLAND: I don't know what it is. I'm not
10 arguing --

11 THE COURT: I'm going to allow you to see the video
12 before the jury. How about that?

13 MS. HOLLAND: Okay.

14 (Whereupon, the video is shown to counsel at side
15 table, outside the presence of the jury.)

16 MS. HOLLAND: No objection.

17 THE COURT: Okay.

18 MS. HOLLAND: So, I'm not objecting to the entire
19 video being played. Counsel only wants to play a portion of
20 it.

21 MR. JONES: For purposes of this expediency, I'll
22 play the whole thing.

23 CROSS EXAMINATION

24 BY MR. JONES: (Cont's)

25 Q Now, doctor, were you able to hear that video?

1 A Yes.

2 Q Okay. And, obviously, that was made by you sometime
3 ago, correct?

4 A A long time ago.

5 Q All right. Now, you understand the difference between
6 an advocate and someone who objectively interprets evidence?

7 A Again, if you're asking me for the purposes of what I'm
8 doing today? Or that video, my patients -- I'm my patients'
9 advocate. That video wasn't just speaking of court. So, do I
10 understand the difference on rendering objective opinions? Yes.

11 Q Okay, doctor, you understand that counsel we're
12 advocates, you understand that, correct?

13 A Yes.

14 Q All right. And, you consider yourself someone who's
15 presenting fair and unbiased testimony to the jury, based upon the
16 record you've reviewed on behalf of Mr. Castro?

17 A Yes.

18 Q Would you agree that your video suggests that you are
19 advertising, in effect, for personal injury plaintiffs to go to
20 court for them?

21 A Again, I'm advertising for patients, yes. But that
22 doesn't affect my objectivity. The point of what I'm doing is
23 to be objective.

24 Q But you would agree, doctor, and you appreciate the
25 difference between an advocate and one who is objective,

1 correct?

2 A Again --

3 Q Yes or no, sir?

4 A Again, depend on the context that you're speaking and
5 how you define an advocate. I advocate for my patients. Again,
6 we're speaking of Workers Compensation issues. I have to do
7 depositions to advocate to get treatment authorizations for
8 them. So, you're taking my words out of context of the
9 examining of the video. That wasn't advertised for personal
10 injury cases. It was that I'm a person who takes their time,
11 when other doctors don't, to try to get the things done for
12 their patients, if they need. That's my understanding of an
13 advocate. Not to come to court to make up stories, and not be
14 objective.

15 Q So, you think you were objective interpreting Mr.
16 Castro's medical records?

17 A Yes, sir.

18 Q Okay. Your last report was generated in April of 2021,
19 correct?

20 A Yes, sir.

21 Q I want to talk about wrists for a moment, okay.

22 Your three reports address an allege wrist injury,
23 correct?

24 A Yes, sir.

25 Q And in every single report, your report dated 9-2 of

1 2016, February 3rd of 2017, and April 5th of 2021, you recommend
2 arthroscopic surgery for his right wrist, that being Mr. Castro,
3 correct?

4 A Yes, sir.

5 Q And, in fact, your last report was just about six weeks
6 ago, correct?

7 A That is correct.

8 Q Did you conduct a full physical examination of Mr.
9 Castro's right wrist on that date?

10 A Yes.

11 Q Did you ask him how he was feeling?

12 A Yes.

13 Q Have you ever read Mr. Castro's deposition transcript
14 with regard to his complaints of pain?

15 A No, sir.

16 MR. JONES: Your Honor, at this time I'm going to
17 read from the plaintiff's deposition dated September 14,
18 2017. That being a Mr. Edward Castro.

19 THE COURT: Let me just tell the jury.

20 So, what's going on now, at some point before this
21 trial commenced, the plaintiff and probably other
22 witnesses, appeared at one of the attorney's office to
23 answer some questions that were recorded by a court
24 reporter, and put into these nice bound volumes.

25 What's important is that when the attorney reads

1 from it, it's as though you're hearing it live in court
2 today, okay.

3 CROSS EXAMINATION

4 BY MR. JONES: (Cont's)

5 Q And referring to page 40, lines 10 through 13. This
6 will be the deposition of Mr. Edward Castro taken here on 88
7 River Avenue, on September 14, 2017.

11 Answer: No.

12 Q Now, that deposition, and that question and answer,
13 doctor, was given over three years ago. Close to four years
14 ago, in September of 2017.

15 Are you telling us that in May of 2021, you did a
16 physical examination of the plaintiff and he had wrist pain?

17 A I, in the April visit of 2021, I did not report wrist
18 pain.

19 Q On page four of the 2021 report, doctor, you stated:

20 It is my opinion that today's exam do represent
21 persistent orthopedic dysfunction to the right wrist.

22 Do you see that statement?

23 A Yes, I do.

24 Q You also wrote on page four: Given the patient's degree
25 of persistent dysfunction of right wrist and persistent

1 subjective pain. You see that word?

2 A Yes.

3 Q I do believe he still requires arthroscopic surgery to
4 the right wrist for management of the injury that you diagnosed.

5 Did you write that?

6 A I did.

7 Q So, doctor, getting back to my point. As someone who,
8 in terms of the evidence objectively verses an advocate, those
9 statements in your report were they rendered as an advocate or
10 as an unbias examiner, as a medical doctor?

11 A Well, they were --

12 Q Please answer my question yes or --

13 A As an unbias examiner, as a doctor examining a patient,
14 you are choosing parts of the information to present to make it
15 sound otherwise.

16 I agree the physical exam findings, if you allow me to
17 support that statement. But you only want to chose one part of
18 the statement, so.

19 Q Then did I read it to you, doctor, words that you wrote
20 in your report?

21 A Yes. But you are -- but you are not reading the
22 information that supports the statement.

23 Q It's a yes or no--

24 A You're only omitting the word pain, but not the part
25 that supports the orthopedic dysfunction, and the recommendation

1 for surgery.

2 That's not a question I can answer yes or no, because
3 the implication is serious.

4 The patient to me, as a physician now speaking with the
5 surgery. For you to make the implication that I would recommend
6 surgery because I am advocating for this person in a lawsuit who
7 is not even my patient is not appropriate. So, I have to defend
8 myself because there is a lot of information in that report to
9 support those statements, and you're only choosing one aspect of
10 the report to support an erroneous conclusion.

11 Q Doctor, I did read your words accurately in the report?

12 A Not entirely because you read a conclusion that was not
13 based upon only the first paragraph of the report. There's a
14 whole paragraph range of motion restriction that is swelling in
15 his wrist, okay. Tenderness that you are not presenting in your
16 question. So, obviously, you're misrepresenting my assessment
17 of this patient trying to make it look like I am not being
18 objective.

19 MR. JONES: Excuse me. Judge, I'm going to ask
20 that the doctor be remained yes or no answer. If he wants
21 to editorialize, please, tell him not to do that.

22 MS. HOLLAND: And I have an objection to that
23 because the instruction was if you can't answer the
24 question yes or no, then he's allowed to elaborate on the
25 answer.

1 THE COURT: Okay. Thank you. So, I think the
2 question posed called for a yes or no answer.

3 So, doctor, this part of the trial will actually
4 go a lot faster, if you answer the question yes or no. Or
5 if you cannot answer yes or no just say I cannot answer
6 that question with a yes or no. It's Miss Holland's job to
7 try to address this on redirect, okay.

8 THE WITNESS: Yes.

9 THE COURT: All right.

10 Q Doctor, you just told us earlier that there were no
11 complaints of wrist pain in the April 2021, examination,
12 correct?

13 A I stated it wasn't mentioned in the body of the reports
14 there. I don't recall the entirety of the report. At least
15 what I was reading in the first paragraph. We were speaking
16 largely of knee pain. I didn't say anything about wrist pain.
17 But for me to make the statement it could have been an omission.
18 So, there was no mention of knee pain in that first paragraph.
19 So, yes.

20 Q I'm talking about wrist pain, doctor?

21 A Wrist pain. Sorry.

22 Q There was no mention of wrist pain. But do you, as you
23 stated, recommend an arthroscopic surgery, as a last
24 recommendation in the April 2021 report, correct?

25 A Yes.

1 Q Okay. Would you agree, doctor, that there are certain
2 indications that need to be present before the surgery is
3 indicated?

4 A Yes.

5 Q Would one of those indications be pain?

6 A Yes.

7 Q Would another indication be failure of diagnostic or a
8 positive diagnostic test?

9 A Yes.

10 Q And possibly failure of the cervical therapy, would
11 that be an indication?

12 A Yes.

13 Q But would you need all three to perform the surgery,
14 wouldn't you?

15 A No.

16 Q Well, when you have pain, doctor, correct?

17 A Again, I answered that in the affirmative because in
18 reading my report there was pain there. And in my discussion
19 does reflect that. So, my interpretation of the first paragraph
20 was incorrect.

21 Q Well, then you agree that your findings in your report
22 would be inconsistent with the deposition testimony I read to
23 you about Mr. Castro in September 14th of 2017, when he stated
24 he has no issues with his wrists?

25 A Yes.

1 Q Okay. So, if Mr. Castro doesn't have pain in his
2 wrists today or for the last four years, you'd agree that the
3 indications are not present for his wrist surgery?

4 A Again, if you're telling me that's his statement, and
5 he has no pain, then I would not recommend surgery to him. I saw
6 him in April, and if the recommendation was made surgery, then
7 there would have been a complaint of pain that I did not record
8 in the report. As a matter of fact, he has all findings to
9 justify the recommendation of the surgery which has never
10 changed from the first time I saw him, so.

11 Q So, doctor, getting back to my question, if you focus
12 on my question. So, if he's not in pain, would you say surgery
13 would not be indicated, correct?

14 A That is correct.

15 Q Okay. So, then your report is incorrect in April 2021,
16 where you stated that arthroscopic surgery was recommend,
17 correct?

18 MS. HOLLAND: Objection.

19 THE COURT: Yes or no?

20 A My report is correct. It's not incorrect.

21 Q So, doctor, you're telling us that you're recommending
22 Mr. Castro without any symptom of pain receive arthroscopic
23 surgery to his right wrist? That is a yes or no question?

24 A I can't answer that yes or no, sir. Because you're not
25 accurately reflecting the reality of this situation.

1 If I have the opportunity to ask Mr. Castro right now
2 if he has pain and he said yes, I would stand by my conclusion.

3 MR. JONES: Judge, I'm going to ask you to remind
4 the witness that my questions are framed in such a way that
5 he can answer yes or no. If he chooses to give a long
6 explanation, could you please --

7 THE COURT: Objection sustained. Testimony is
8 stricken. Next question.

9 Q Approximately how many times per year, doctor, do you
10 testify?

11 A Ongoing normal year 12 to 15 times per year.

12 Q And on each occasion you charge a fee of approximately
13 \$6,500?

14 A Yes.

15 Q And the records that you reviewed, doctor, just so we
16 can go over them, GFG physical therapy record Doctor Wert?

17 A Yes.

18 Q South Westchester Orthopedics?

19 A Yes.

20 Q Madison Avenue Radiology?

21 A Yes.

22 Q Doctor Lent, Doctor Wert?

23 A Yes.

24 Q That's about it ?

25 A Yes.

1 Q Now, you provide a history in your narrative reports.
2 In fact, doctor, if you look at your narrative reports, they are
3 almost all identical, aren't they? Precept reports?

4 A History is history. It wouldn't change unless he gives
5 me a different history. So, of course, they are identical.

6 Q As well, take a look at your September 2nd, 2016,
7 report and compare it with the first pages of your April 5, 2021
8 report. Aside from the last sentence are those identical?

9 A No.

10 Q Look at the range of motion testing in all three
11 reports, doctor, right wrist. September 2nd of 2016, with
12 regard to flexion, extension, pronation and supination, compared
13 to with the report of February 3rd of 2017, they are almost
14 identical, aren't they?

15 A The range of motions are not identical. Almost doesn't
16 qualify as identical. To say they are the same or not, and they
17 are definitely not the same. (Sic)

18 Q Let's go to the GFG physical therapy records.

19 Doctor, you read this x-ray report? The contents of it
20 on direct examination before, correct?

21 A Yes.

22 Q Okay. And this is an x-ray report generated as a
23 result of three film studies done of the plaintiff on July 24,
24 2013, correct?

25 A That is correct.

1 Q Three weeks, right?

2 A Yes.

3 Q And it says right wrist, right elbow, and his right
4 knee, correct?

5 A Correct.

6 Q Okay, and with respect to the right knee, there's a
7 notation that says calcification posterior to distal right femur
8 was seen. You see that?

9 A Yes.

10 Q Okay. Now, calcification in the knee is part of a long
11 standing and degenerative process, isn't it?

12 A It could be, yes.

13 Q Is there -- well, counsel, calcium deposits in the
14 joints as part of arthritis, isn't it?

15 A Again, all calcium is not arthritis. Depends on the
16 condition that produced that calcification. In this particular
17 case I believe the calcification is from degenerative changes.

18 Q Known as arthritis, correct?

19 A Yes.

20 Q And with respect to the remainder of this operative
21 report, it's handwritten? Am I correct, with regard to the
22 right wrist that it states there's an elevated calcification
23 distal to the radial carpal joint?

24 A It says elongated, but it does state there's elongated
25 calcification distal to the carpal joint.

1 Q Doctor, how long does it take for it to process to
2 develop to point -- doctor, how long does it take for calcium to
3 deposit into the joint to the point where it presents on an
4 x-ray?

5 A Again, if you're speaking of arthritis or just in
6 general. Because there are conditions that will make it
7 manifest itself rapidly. And if you are talking about
8 osteoarthritis, it's decade. If it's rheumatoid or some
9 inflammatory arthritis, it can happen in a few months. Depends
10 on the conditions that are associated with the those
11 calcifications.

12 Q Doctor, we could agree that the calcium deposits, the
13 elevate calcium deposits pre existed this accident, right?

14 A In my opinion, yes.

15 Q Doctor, this x-ray report also states that there's
16 osteophyte formation in the right knee condyle of the right
17 tibia. You see that?

18 A Yes.

19 Q Okay, you didn't mention this on direct examination,
20 did you?

21 A I did answer.

22 MS. HOLLAND: Objection. I object. I don't want
23 to give a speaking objection, but I questioned him about
24 this on direct.

25 Q Let's talk about osteophytes?

1 THE COURT: He said yes, didn't he?

2 I'm sorry, doctor, did you say yes to that
3 question.

4 THE WITNESS: I said yes.

5 THE COURT: He said yes.

6 Q Okay. Doctor, osteophytes, they are a bony growth,
7 correct?

8 A Yes.

9 Q And it sometimes takes osteophytes years to develop
10 when they become deposited in a joint space, correct?

11 A Yes.

12 Q And osteophytes are part of long standing and
13 degenerative process, correct?

14 A Yes.

15 Q When calcium deposits in the joints, an osteophyte
16 develops in the joints, they can cause a restrictive range of
17 motion, can't they?

18 A Again, it depends on the extent. Generally, osteophytes
19 in themselves don't affect range of motion unless they cause
20 inflammation. So, you know, if you're giving me a clinical
21 picture of swelling osteophytes, yes they can affect range of
22 motion. But just to have because you have an osteophytes
23 doesn't necessarily mean it will affect your range of motion.

24 Q Doctor, osteophytes calcifications can also develop as
25 a result of previous trauma, correct?

1 A Yes.

2 Q All right. But on this x-ray, the first x-ray taken of
3 the plaintiff following this accident, there's no sign of trauma
4 in this representation, correct?

5 A I mean, he's not documented any traumatic findings.
6 There's no signs of trauma on the x-rays.

7 Q What he documents, Doctor Guan (sic), is preexisting
8 arthritic conditions in the plaintiff's right wrist and right
9 knee in this x-ray report, correct?

10 A Yes.

11 Q And, doctor, is osteophytes and calcification deposited
12 to the point that they present on the x-ray, they can restrict
13 range of motion in those affected joints, can't they? This is a
14 proposition?

15 A Not necessarily, no.

16 Q So, if someone has the deposits of calcium and signs of
17 arthritis in the joint, are you telling us that it does not
18 affect the range of motion in that joint? That's a yes or no?

19 A Again, I'm not saying that. I can't answer it yes or
20 no.

21 Q Now, doctor, as a physician who doesn't want to give an
22 opinion in court, would you agree that sometime the mechanism of
23 the injury is important for you to know?

24 A Yes.

25 Q Okay, and were you told by Mr. Castro, that a speeding

1 van rear ended him at a high rate of speed?

2 A Yes.

3 Q You took his word for that?

4 A Yes.

5 Q Okay, because you want to believe the patient. That
6 isn't your patient. You want to believe the clients that are
7 sent to you, correct?

8 A Again, I believe him because that's the history he gave
9 me, and there was nothing to suggest otherwise.

10 Q I want you to take a look at what's been marked as
11 Defendant's A6, in evidence. It is the rear of the Castro
12 vehicle.

13 Now, for expediency, doctor, you handle cases with
14 people involved in automobile accidents, correct?

15 A Yes.

16 Q Does this look like the vehicle that was impacted at
17 that high speed in the rear?

18 MS. HOLLAND: Objection.

19 THE COURT: Overruled. Doctor you can answer.

20 A No.

21 Q Now, doctor, did you ask Mr. Castro what he did on the
22 day of the accident, as part of your interview?

23 That's just a yes or no question?

24 A Yes.

25 Q As you sit here today, do you know what he did

1 immediately after the accident?

2 That's a yes or no question?

3 A Exactly? No, I don't know exactly what he did.

4 Q All right, but it's your testimony, doctor -- just to
5 rehash it a little bit -- that the accident where Mr. Castro was
6 seated in the vehicle, in front of you, to his rear, caused a
7 traumatic tear to his meniscus on July 4, 2013; is that your
8 opinion?

9 A Yes.

10 Q Okay. Have you read any of the plaintiff's sworn
11 deposition testimony from his initial deposition?

12 A No.

13 Q Mr. Castro, as he testified here in court, after the
14 accident, exited his vehicle, retrieved his camera, walked up
15 and down the accident scene without assistance. Did not get any
16 assistance to get out of the car. He remained at the scene for
17 one hour until the police arrived.

18 Now, the fact that he was standing and weightbearing on
19 the alleged injured knee from this accident, without any
20 complaints of pain, isn't that inconsistent with someone who's
21 claiming trauma to the knee on the date of the accident?

22 Just yes or no?

23 A Not necessarily. No.

24 Q How thick is the meniscal ring?

25 A How thick?

1 Q Yeah, what's the thickness of it?

2 A Again, it varies. You know, 6, 7 millimeters.

3 Q And in terms of would that be about -- in terms of
4 inches, in case we look, some people may not be familiar with
5 the metric system. Half inch? Quarter inch?

6 A Well, again, depends on where you're looking at. The
7 meniscus, the inner edge is about 1 to 2 millimeters. The
8 outside edge, you know, could be one to a quarter of an inch
9 thick.

10 Q And it has nerves in it, correct?

11 A Yes.

12 Q And depending upon where the meniscus is located that
13 also has blood flow, correct?

14 A Yes.

15 Q So, if the meniscus was traumatically torn, whether it
16 be 1 to 2 centimeters thick or seven centimeters thick, in an
17 accident, wouldn't you, as a medical practitioner, the one who
18 evaluates medical evidence, expect a complaint of pain to the
19 right knee at the moment of impact?

20 A Depends.

21 Q Well, Doctor, isn't it more likely than not, if the
22 trauma occurred at the moment of impact, that he would of
23 complained of pain at the scene of the accident?

24 A Depends. If you're talking about meniscus tear, it
25 depends on the size of the tear. It depends on the location of

1 the tear. Many patients don't develop pain for a few weeks
2 after these types of injuries. So, it's not always obligatory
3 that a person would have pain, and severe pain at the time of
4 the incident with meniscus tear.

5 Q Let's play this out a little bit. Suppose I were to
6 tell you that following the accident the plaintiff refused
7 medical attention at the scene from the police. Are you aware
8 of that?

9 A No.

10 Q Is his refusal of medical attention at the scene
11 inconsistent with one who claims trauma to the knee, as a result
12 of an auto accident?

13 A Again, it's inconsistent with the level of pain at that
14 moment, that would require medical attention. It doesn't mean
15 that he wasn't traumatized. It's just a reflection of his pain
16 at that moment.

17 Q Doctor, we just took a look at the x-ray report. The
18 first one taken following this accident, and we agree that it
19 showed no signs of trauma, correct?

20 A It said he didn't have a fracture. There were no signs
21 of trauma mentioned. So, if you can look at the x-rays I
22 testified to earlier, it's only specific to bone injury. It
23 doesn't mean there were not other injuries, and x-rays would not
24 have seen. But the things that x-rays could see that are
25 traumatic were not present in that report.

1 Q Doctor, we could agree that sometimes x-rays can
2 visualize some soft tissue, correct?

3 A Not the damage that you're talking about in this case.
4 You can't see meniscus tears on an x-ray. You can't see.

5 Q Doctor, listen to my question, please.

6 MS. HOLLAND: Objection.

7 Q X-rays can visualize some soft tissue?

8 A You see soft tissue shadows.

9 Q And an x-ray can show soft tissue swelling in some
10 instances too, correct?

11 A That's correct.

12 Q And on this x-ray report taken three weeks post
13 accident, there's no reference to soft tissue swelling. Can we
14 agree on that?

15 A Yes.

16 Q Now, I want you to further assume that the plaintiff
17 testified under oath that following his refusal of medical
18 attention at the scene, he proceeded to get back in the car and
19 go to a picnic in Sunken Meadow Park, where he remained until
20 closing on the July 4th weekend.

21 The fact that he remained in a time of day at a park
22 without medical attention or complaint of pain, doctor, isn't
23 that inconsistent with someone who's claiming a traumatic injury
24 to his knee and wrist on July 4th of 2013?

25 A Not necessarily.

1 Q So, he can go the entire day, have a traumatic torn
2 meniscus and not even say ouch?

3 A Again, depends on the extent of the tear at the time.
4 It can take a whole month for symptoms of pain to develop, if
5 the tear is a small tear.

6 So, the fact that he went to the park after the
7 accident because he wasn't feeling severe pain on the day of the
8 accident, should not be implied that he did not have an injury
9 that led to all his other stuff in his knee, and all the surgery
10 that he had.

11 Q I didn't say he complained of severe pain. That wasn't
12 my question.

13 Understanding he didn't complain of any pain. Assuming
14 that he didn't have any pain at the scene of the accident, and
15 he refused medical attention, isn't it inconsistent with someone
16 who claimed to have traumatically injured his knee in the
17 automobile accident?

18 MS. HOLLAND: Objection, that wasn't the
19 testimony.

20 THE COURT: It's overruled. He can answer.

21 A Not necessarily.

22 Q On July 4, 2013, plaintiff drove home from the picnic
23 by himself. He didn't split the driving, he drove the vehicle
24 himself to the Bronx, and he remained at home that weekend. Were
25 you aware of that before I just told you that?

1 A No.

2 Q Okay. The fact that the plaintiff went home for the
3 remainder of the weekend, didn't seek any medical attention for
4 his knee, isn't that inconsistent with someone claiming
5 traumatic injury to his knee in an automobile accident?

6 A Again, not necessarily.

7 Q Is it more likely, doctor, based upon the facts I have
8 given you, that the plaintiff has testified to under oath that
9 he did not injure his right knee in the automobile accident,
10 based upon the facts I just gave you?

11 A Again, the objective is also to the test that he had
12 after the accident, and notes he had an injury and it's only
13 explained by the car accident because he didn't have pain and
14 drove himself home, doesn't mean because he didn't have pain
15 immediately he wasn't injured.

16 Q Okay, doctor, let me develop it a little further for
17 you.

18 Do you know, sitting here after examining the plaintiff
19 three separate times, what he did on the Monday following the
20 automobile accident?

21 A No.

22 Q Do you know that he went to work?

23 A I know he went to work. I don't know the date that he
24 went to work.

25 Q Do you know what he did for a living about the time of

1 the accident?

2 A I believe he was an electrician's assistant or
3 apprentice.

4 Q How long had he been doing electrical work, as of the
5 date of the accident?

6 A I believe 30 plus, years.

7 Q And, doctor, as a physician, one who has treated so
8 many patients, you're aware of the physical labors of
9 electricians and construction worker, are you not?

10 A Yes.

11 Q And with respect to electricians, they engage with a
12 lot of twisting with their hands, correct?

13 A Yes.

14 Q Turn wires, tools. Correct?

15 A Yes.

16 Q Operate drills?

17 A Yes.

18 Q They work on construction sites?

19 A Yes.

20 Q They do lots of bending?

21 A Yes.

22 Q Correct, they carry ladders?

23 A Yes.

24 Q Now, the fact that the plaintiff went to work for
25 almost seven months following this double accident, doctor,

1 isn't that inconsistent with one who claims to have been injured
2 in an automobile accident?

3 A Not necessarily.

4 Q And doing the same thing he said he had done before the
5 accident?

6 A Again, not necessarily. Makes it more consistent
7 with -- that's more consistent with someone -- somebody that he
8 needs to work. If they working through pain, that he states he
9 developed after he sought treatment three weeks after an
10 accident. So, if you're telling me that he worked through that
11 pain, it doesn't mean that he didn't get hurt because he went to
12 work.

13 Q Doctor, are you an advocate with that answer? Or are
14 you here to give your unbias opinion about the medical record?

15 A Again, it's not my patient. I'm here to give objective
16 assessment, sir.

17 Q Doctor, did you review South Westchester Medical
18 records?

19 A Yes.

20 Q All of them?

21 A Whatever I was provided with.

22 Q Doctor, I'm showing you the sheet treatment South
23 Westchester, one of the records. They are, I believe,
24 Plaintiff's 13A, in evidence.

25 A Excuse me.

1 Q Have you seen this office visit before?

2 A Yes.

3 Q It refers to a work related accident that occurred on
4 January 6, 2014. Seven months post accident, correct?

5 A Yes.

6 Q Did you refer to this office note anywhere in the three
7 narrative reports that you provided to plaintiff's attorney?
8 And I am referring to June 1st testimony?

9 A No.

10 Q Are you telling us, doctor, that you are here as an
11 objective physician, and not an advocate? That's a yes or no?

12 A The accident I was asked to comment on shoulder injury
13 and again you asked the question 50 times. I'm here as an
14 objective assessor and a witness, not an advocate. He's not my
15 patient. This has nothing to do with the knee or wrist injury.
16 He didn't get these injuries in a car accident. Why would I
17 discuss them in the report.

18 Q Doctor, having -- let me ask you some questions first,
19 okay. I'm talking about the implications of that note with
20 regard to the claims he's making in this case, okay.

21 The note states, patient is a 58 year old right-hand
22 dominant male who I'm seeing for the first time today. And this
23 would be Doctor Spencer's South Westchester, correct?

24 A Yes.

25 Q He injured his right shoulder while at work on the job

1 on January 6, 2014, four days ago, when he was lifting a heavy
2 ladder.

3 Now, did that sentence cause you to become curious with
4 his level of disability when you read it?

5 A No.

6 Q All right. The plaintiff's claim right wrist injury in
7 this case, correct?

8 A Yes.

9 Q So, you didn't think the fact that he's lifting a heavy
10 ladder on the construction site seven months post accident has
11 any implications for disability he claims with regard to his
12 wrist?

13 A Again, he didn't hurt his wrist. It has no
14 contributory information to my conclusion. I didn't consider
15 that, no.

16 Q You think somebody with injured wrists lifts heavy
17 extension ladders, doctor?

18 A Possibly.

19 Q Doctor, did this arouse any curiosity at all for you to
20 ask the plaintiff of his history of disability and his activity?
21 Just yes or no?

22 A No.

23 Q Now, you stated before that a knee is a weight bearing
24 joint, correct?

25 A Yes.

1 Q Which means when you walk and you carry your body
2 weight, it's putting pressure on both knees, correct?

3 A Yes.

4 Q And one in addition to carrying his own weight, lifts a
5 heavy extension ladder, doesn't that have implication with
6 regard to the weight bearing of the knees? Yes or no?

7 A It could. But in this case, no because he wasn't
8 complaining of knee pain. He hurt his shoulder. So, the answer
9 is no. Clearly, no.

10 Q Is it doctor? Are you telling us as a medical
11 practitioner that this note of January 10, 2014, where the
12 plaintiff was injured lifting a heavy extension ladder on a work
13 site has absolutely no implication for the claims he's making
14 with regard to his knee and right wrist? Yes or no?

15 A The answer's yes with no. There's no mention of it.
16 He didn't hurt the knees from lifting the ladder or his wrist.
17 He hurt his shoulder. It has nothing to do with his knees or
18 his wrist.

19 Again, I don't know what implication you're looking for
20 me to admit to, but there's no mention of knee injury or
21 exacerbation of his knees or anything because of the lifting or
22 his wrist. He hurt his shoulder. And if you look further, he
23 tore his rotator cuff, that's why he would pain.

24 Q Doctor, I'm going to remind you again, I'm phrasing a
25 question in a yes or no fashion. I would ask you to answer it

1 yes or no without explanation, unless you feel you need to give
2 an explanation.

3 So, here's my question, again, doctor. Are you telling
4 the jury that this note of January 10, 2014, has no implication
5 with regard to the plaintiff's claims of a weight bearing knee
6 point injury, or a rotated right wrist injury?

7 MS. HOLLAND: Objection.

8 A Yes, I'm saying it has no implication to his knee or
9 his wrist.

10 Q Are you aware plaintiff is working full-time from the
11 day of the accident, up until at least January 10th of 2014?

12 A I know he was working, but I don't know the extent.
13 So, the answer is no.

14 Q Doctor, there are no complaints of knee pain in this
15 particular note, correct?

16 A Correct.

17 Q Do you find that odd?

18 A No.

19 Q This is the same practice Doctor Lent and Doctor
20 Spencer that eventually treated the plaintiff for his knee
21 replacement surgeries some years later, correct?

22 A That's correct.

23 Q All right? And did you see any reference of injuries in
24 the South Westchester notes that had nothing to do with the
25 accident?

1 A Again, I saw shoulder injuries in these Workers
2 Compensation notes, and you are only allowed to treat what's
3 authorized. So, I did not see reference to anything else other
4 than what they were authorized to treat for those dates.

5 Q Did you read the entire South Westchester --

6 A Yes.

7 Q Okay, this is a note prepared by Doctor Spencer on
8 January 10, 2014, same day that the plaintiff went and
9 complained, okay, about his shoulder injury. Have you seen this
10 before?

11 A Yes.

12 Q Okay, and we could agree that this note is about full
13 duty appears nowhere in your three narrative reports?

14 A It won't be in my notes. No, it's not in my notes.

15 Q I'm going to read it and you tell me if I'm reading it
16 correctly. Written by Doctor Eric Spencer. This is to certify
17 that Edward Castro has been under my professional care for a
18 period. The above named patient may return to work on 11-3-2014.
19 Remarks: Full duty. No restriction.

20 Did I read it accurately?

21 A Yes.

22 Q Now, you saw this note before today?

23 A Yes.

24 Q And you didn't incorporate this in your narrative
25 reports?

1 A No.

2 Q All right. Now, doctor, does this note arouse your
3 curiosity as to whether or not the plaintiff really was
4 suffering from any type of knee disability?

5 A No, sir.

6 Q Have you heard of the concept of secondary gain,
7 doctor?

8 A Yes.

9 Q And secondary gain means someone may say something or
10 act in a certain way to receive an award?

11 A Yes.

12 Q Okay, and did you notice, doctor, that the plaintiff
13 complains about knee pain to the physician that someone who
14 testifies for him, but he doesn't complain to -- complain to the
15 physician who is not coming to testify for him?

16 MS. HOLLAND: Objection.

17 Q Did you notice that?

18 A I can't answer that yes or no.

19 Q But you heard the term secondary gain?

20 A I can't answer yes or no. And I heard the term
21 secondary gain, yes.

22 Q I'm going to read from the charts from Southern
23 Westchester Orthopedic Sports Medicine.

24 Doctor, on February 3rd of 2014, you can read no
25 complaints of knee pain here?

1 A There would not be in there no complaints of knee pain.

2 Q Doctor --

3 A There's no complaints of knee pain.

4 Q Is it -- again, there are no complaints of knee pain;
5 is there right?

6 A There's no complaints of knee pain.

7 Q Disability letter date January 10, 2014, plaintiff
8 requested to return to work 11-3-2014.

9 Doctor, have you seen this before today?

10 A Yes

11 Q Now, plaintiff testified that he never went back to
12 work after January 10th of 2014. And looking at this note this
13 disability letter in a statement attributed to the plaintiff
14 that he wanted to return to work on the 13th of January 2014.

15 Does this note cause you to question his veracity and
16 his ability to tell the truth about how much he was working?

17 MS. HOLLAND: Objection.

18 A No.

19 THE COURT: Sustained.

20 MS. HOLLAND: Objection. He --

21 Q Doctor, this is a note from Southern Westchester
22 Orthopedic Group dated March 11, 2014, March 11, 2014. Have you
23 seen this note before today?

24 A Yes.

25 Q And now referring to plaintiff's left shoulder pain,

1 correct?

2 A Yes.

3 Q And it has nothing to do with Workers Comp, correct?

4 MS. HOLLAND: Objection, as to form.

5 THE COURT: If you know, doctor.

6 A I don't know.

7 Q You read the records, didn't you?

8 A I don't recall every detail of notes that have nothing
9 to do with his knee problem. So, this was a shoulder. I don't
10 recall what was the reason for his left shoulder injury.

11 Q The point is, doctor, that Mr. Castro was the
12 individual, based upon the content of these records, who
13 volunteers to get treated for conditions, other ailments he may
14 be suffering from other than the one he was there to treat for,
15 would you agree, based upon the content of this note?

16 A No.

17 MS. HOLLAND: Objection.

18 THE COURT: I didn't understand the question.

19 Q Well, Mr. Casting volunteers other ailments he may be
20 suffering from to his physician, based upon the content of this
21 note, correct?

22 MS. HOLLAND: Objection.

23 THE COURT: Your objection's sustained.

24 Q Did he complain of left shoulder pain in this note,
25 doctor?

1 MS. HOLLAND: Objection.

2 THE COURT: What pain?

3 Q Left shoulder pain?

4 THE COURT: Is this the March 11th?

5 MR. JONES: Yes.

6 THE COURT: Objection is overruled.

7 A Yes.

8 Q All right, and it has nothing to do with the complaints
9 based upon the previous records I've just shown you, correct?

10 A It has nothing to do with anything other than his left
11 shoulder. So, he was complaining of the left shoulder pain.

12 Q Did you review any MRI reports with respect to the
13 plaintiff's left shoulder, in your review of the records?

14 A I believe so, yes.

15 Q And he had the onset of arthritis in his left shoulder,
16 didn't he?

17 A Yes.

18 Q And he had onset arthritis in his right shoulder,
19 didn't he?

20 A Yes.

21 Q And he had onset arthritis in both of his knees, didn't
22 he?

23 A Yes.

24 Q So, Mr. Castro's an individual who has systemic
25 arthritis in several of his joints, right?

1 A Again, you don't classify osteoarthritis as systemic.
2 He has generalized arthritis. Systemic arthritis would imply
3 compensatory --

4 Q With several joints, correct?

5 A Yes.

6 Q And that arthritis preexisted the day of the accident?

7 A Preexisted.

8 Q Doctor, the motor vehicle accident April 15, 2014, no
9 complaint of knee pain, correct?

10 A Correct.

11 Q Complaint of left shoulder?

12 A Yes.

13 Q Subacromial impingement, correct?

14 A Yes.

15 Q And subacromial impingement in the shoulder occurs when
16 there's growth in the AC joint, which presses into the tail of
17 the rotator cuff, correct?

18 A Impingement occurs not always the way you describe it.

19 Q That's one of them, correct?

20 A Yes.

21 Q Excessive bone growth, correct?

22 A Impingement can be functional. It can be could be bone
23 growth. It could be from a beginning of both. It doesn't
24 necessarily have to be from either. You can have impingement
25 without bone growth. You can have bone growth, but no

1 impingement. It's how it affects the patient's functioning. In
2 this particular case, he does have impingement and he does have
3 bone growth.

4 Q This is a note from April 15, 2014. Patient states
5 shoulder was killing him.

6 Do you see any complaints of knee pain in this note?

7 A No, sir.

8 Q Doctor, and again this is the same group that
9 eventually treated the plaintiff for his knee paint, right?

10 A Yes.

11 Q The knee pain, right?

12 A Yes.

13 Q April 28, 2014, are there any complaints of knee pain
14 there?

15 A No.

16 Q He received Percocet for the shoulder pain, correct?

17 A Yes.

18 Q Not knee pain?

19 A He prescribed for shoulder pain. I don't know what he
20 was taking for his knee pain. He may be using it for both. I
21 don't know.

22 Q Doctor, you are a careful medical practitioner. We can
23 agree he wasn't taking any pain medication for the knee pain,
24 based upon the record you viewed until he had surgery, correct?

25 A Again, you asked me if he's taking Percocet. The

1 answer is yes. What he was consuming the Percocet for, for what
2 pain, I don't know. I can just say he was prescribed for his
3 shoulder.

4 Q We have a note here from Southern Westchester
5 Orthopedic dated April 29th, of 2014. If you look at the
6 highlighted portion, it says we have AC joint arthroscopy of the
7 right shoulder. Do you see that, doctor?

8 A Yes.

9 Q You are aware that he had arthritis in his right
10 shoulder, correct?

11 A Yes.

12 Q And, doctor, May 9, 2014, that was his last visit
13 before he underwent right shoulder arthroscopy, right?

14 A Yes.

15 Q And any mention of knee pain?

16 A No.

17 Q Do you know June 2nd, 2014, did you see this note,
18 doctor?

19 A Yes.

20 Q What does this note say, June 2nd, 2014, with respect
21 to the plaintiff's range of motion of his right wrist?

22 A It states full range of motion.

23 Q Did you note that anywhere in your three narrative
24 reports?

25 A No.

1 Q And, doctor, you read the Bill of Particulars for this
2 case?

3 A No.

4 Q Take a look at the items reviewed.

5 A Yes. I'm sorry, I misspoke. I did.

6 Q Now, doctor, you agree are you aware of, as a result of
7 his making a claim of right elbow injury, correct, according to
8 the Bill of Particulars?

9 A I don't recall any claims. I don't remember.

10 Q Well, was it in the Bill of Particulars?

11 A Again, I don't recall that.

12 Q If it was in the Bill of Particulars, as an injury
13 caused by the accident of July 4, 2013, then according to this
14 note Mr. Castro talking to his doctors about injuries sustained
15 in the auto accident, correct?

16 A Again, he's speaking of the elbow. I didn't take care
17 of -- I mean exam the elbow. And I don't know about the Bill of
18 Particulars -- I don't know what you're asking me.

19 MR. JONES: Can we mark this for identification,
20 please.

21 (Whereupon, the item referred to, previously
22 Defendant's Exhibit U was marked for identification.)

23 Q Doctor, I'm going to show you what's been marked as
24 Defense's U. for identification. The letter U.

25 Looking at the medical portion of that document, does

1 it refresh your recollection as to whether or not the plaintiff
2 made a claim of elbow injury, as a result of the subject motor
3 vehicle accident?

4 A Again, as far as the lawsuit it speaks for itself. He
5 never made any claim to me.

6 Q Is that a yes?

7 A I don't know. I don't know what this means. I don't
8 know who prepared this document. I don't know what this means.
9 This is not my work product. He never complained of his elbow
10 to me. I was examining his wrist and his knees because that's
11 what he was there to be checked for. If you're telling me, if
12 it mentions something pertinent to the elbow, I have to concede
13 that it's there, but I don't know what that means.

14 Q Thank you, doctor. The x-ray, the complaint of elbow is
15 in the Bill of Particulars, correct?

16 A Yes.

17 Q Okay. Sorry. For getting back to my original question.
18 Mr. Castro, based upon your review of the Bill of Particulars,
19 tells his physician at Southern Westchester Orthopedic about
20 injuries sustained in an automobile accident, correct, based
21 upon this note?

22 A Yes.

23 MS. HOLLAND: Objection.

24 Q Okay.

25 THE COURT: Overruled.

1 Q Doctor, the GFG therapy records, are you familiar with
2 those?

3 A Yes.

4 Q Okay. And give or take would it be fair to say the
5 plaintiff stopped his therapy for the right knee and wrist in or
6 about May of 2014?

7 A Yes.

8 Q And are you also aware that he had no therapy following
9 arthroscopic surgery, in October of 2014?

10 A Yes.

11 Q Now, as a medical practitioner, doctor, is it common as
12 a surgeon to prescribe physical therapy to rehabilitate what may
13 have been done during the surgery of a knee?

14 A Again, depends on the condition. What the degree of
15 articular damage that he had physical therapy has a great
16 potential to worsen the pain and the condition. So, some
17 physicians would not order physical therapy. If it was my
18 patient, I wouldn't order physical therapy. But, again, if he
19 did not have a prescription for therapy because that was his
20 doctor's mindset, I have no particular reason why. But not all
21 physicians order physical therapy as an ordinary custom and
22 care.

23 Q So, until he had the home care to come to his home for
24 rehabilitation following the knee replacement. Would it be fair
25 to say, doctor, that there was no physical therapy for Mr.

1 Castro from 2014 until September 2017?

2 A That's right.

3 Q When did you see Mr. Castro for the first time?

4 A September 2nd, 2016.

5 Q You're not his treating physician?

6 A That's right.

7 Q So, would it be fair to say, doctor, that from 2014, in
8 October of 2014, when he last saw Doctor Lent, up until
9 October 2016, this are no documented complaints of right knee
10 pain for any treating physician for Mr. Castro?

11 A There's no reference to that, no.

12 Q Two years, correct?

13 A Yes, that's correct.

14 Q Did you ask Mr. Castro if there had been any
15 intervening events or what his activity had been during that
16 two-year period of time?

17 A Yes.

18 Q And, doctor, you've testified before on direct that he
19 has a degenerative process arthritis in his knees, correct?

20 A Yes.

21 Q Arthritis is a progressive disease, is it not?

22 A Yes.

23 Q And it would get worst over time, correct?

24 A Yes.

25 Q And he had arthritis before this accident in both of

1 his knees, correct?

2 A Yes.

3 Q Knees, correct?

4 A Yes.

5 Q I just want you to get back to that operative report of
6 October 10th of 2014. I'm just finding it.

7 Doctor, looking at the operative report generated as a
8 result of the October 10, 2014, arthroscopic surgery two-page
9 report?

10 A Yes.

11 Q And I want the second page that describes what was
12 performed in the procedures performed during that surgery,
13 correct?

14 A Yes.

15 Q Okay. Doctor, chondromalacia is a softening of the
16 cartilage behind the patella or the knee?

17 A Yes.

18 Q Patella commonly known as kneecap. Little circular
19 bone?

20 A Chondromalacia doesn't only affect kneecap.

21 Chondromalacia is present during softening of cartilage.

22 Q And, doctor, chondromalacia is a degenerative
23 condition, correct?

24 A Yes.

25 Q And that's the first thing that was addressed during

1 the surgery, correct?

2 A Yes.

3 Q And chondromalacia, we can agree, existed before this
4 accident?

5 A Yes.

6 Q And the next thing that was addressed, what's
7 hypotrophic synovitis? You see that?

8 A Yes.

9 Q Okay. Now, hypotrophic synovitis is present when
10 there's arthritis in the joint, correct?

11 A Not necessary.

12 Q It's consistent with being present with arthritis?

13 A A hypotrophic arthritis could be consistent with
14 inflammation. Inflammation is present with the artist. Yes, it
15 will be present, but it's not always present.

16 Q Doctor, we've already gone through the x-ray reports
17 that show calcification osteophytes in the plaintiff's knee only
18 three weeks post accident, correct?

19 A Yes.

20 Q And that's arthritic too, correct?

21 A That's not synovitis.

22 Q Synovitis? Doctor, my point is it can be present when
23 there's arthritis?

24 A Again, synovitis is inflammation of the lining of the
25 joint. It can be present with arthritis. It can be present

1 without arthritis. It's a separate condition from arthritis.
2 They don't always have to exist together. You do commonly see
3 synovitis with arthritis, yes. But they don't always go
4 together.

5 Q Well, doctor, hypotrophic synovitis that's present in
6 this operative report was addressed in that report that too was
7 present before this accident?

8 A I can't say that, sir.

9 Q If you had arthritis before the accident, doctor, and
10 in the absence of any other collateral findings on the MRI,
11 maybe more likely than not, doctor, that the hypotrophic
12 synovitis was there because of preexisting condition of
13 arthritis?

14 A No.

15 Q But that was addressed by Doctor Wert, correct?

16 A Yes.

17 Q And it was in the patella femoral joint where the
18 chondromalacia was found, correct?

19 A It was found in all of the joints. That's one of the
20 areas that it was found.

21 Q And the lateral meniscus it was observed, correct?

22 A Yes.

23 Q And there was no evidence of any problems with the
24 lateral meniscus, correct?

25 A That's correct.

1 Q And, again, doctor, looking at the operative report.
2 There's something known as significant amount of hypotrophic
3 synovitis noted in the operative report, correct?

4 A Yes.

5 Q That's also consistent with preexisting arthritis, is
6 it not?

7 A Not necessarily.

8 Q Can it be present in and --

9 A In a hypothetical imaginary person, yes. In a person
10 that was traumatized the answer is no.

11 Q You spoke a little more about the trauma. You're --
12 what does your report say about ACL, MCL, tendons?

13 A What report are we speaking of?

14 Q You addressed them?

15 A No, sir, I'm not certain what you're asking me. What
16 are you referring to?

17 Q Look at your report dated September 2nd of 2016.

18 A Yes.

19 Q Reportedly, there are tears, according to the MRI, in
20 the MCL, and ACL ligaments. Do you agree with that?

21 A Yes, there were.

22 Q Right? Take a look at the operative report. Did you
23 read this?

24 A Yes.

25 Q Okay. Now, sometimes, doctor, a surgeon can have a

1 pre-operative diagnosis, anticipate they may have a certain
2 finding based upon diagnostic MRI, and during the surgery find
3 that the condition is not present. Has that happened to you?

4 A Yes.

5 Q That's called a false positive?

6 A Yes.

7 Q We can agree that the MRI reports, diagnosis ACL and
8 MCL tears?

9 A Yes.

10 Q We can also agree that the operative report rules
11 out --

12 A No.

13 Q Take a look at the portion of the report --

14 A I can read the report by --

15 Q Let me finish my question.

16 A The gestation does not rule it out.

17 Q Doctor, let me finish my question, okay. Are you here
18 as an advocate or are you here as an objective physician doctor?

19 MS. HOLLAND: Objection.

20 THE COURT: Sustained. Okay, let's take a break.

21 (Whereupon, there is a pause in the proceedings,
22 as the court takes its afternoon break.)

23 THE COURT OFFICER: All rise. Jury entering.

24 (Whereupon, the sworn jurors enter the courtroom
25 to take their respective seat.)

1 THE COURT: You guys can remain standing. We are
2 gonna break for today. We're going to reconvene tomorrow.
3 We got plaintiff's continued testimony, okay. And together
4 Friday?

5 MR. JONES: Yeah.

6 THE COURT: We are together tomorrow and Friday,
7 right?

8 MR. JONES: Yeah.

9 THE COURT: All right, I'll see I guys tomorrow
10 9 o'clock. Thank you.

11 THE COURT OFFICER: All rise, jury exiting.

12 (Whereupon, the trial is adjourned to Thursday,
13 6/3/21, 9 a.m.)

14 CONTINUED ON NEXT PAGE.....

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