

Dr. Richter - Plaintiff - Direct

1 upon taking their respective seats, the following
2 occurred:)

3 THE CLERK: Both sides stipulate to the proper
4 seating of the jury?

5 MR. SCAHILL: Yes, your Honor.

6 MR. HOLBROOK: Yes, your Honor.

7 THE COURT: Okay. Please be seated.

8 MR. HOLBROOK: Your Honor, at this time, the
9 plaintiff calls Dr. Edwin Richter.

10 COURT OFFICER: Step up right in the witness box.
11 Remain standing and face the clerk D.

12 R. E D W I N R I C H T E R, a witness called by the
13 Plaintiff, after having been first duly sworn by the Clerk of
14 the Court, took the witness stand and testified as follows:

15 THE CLERK: State your name.

16 THE WITNESS: Dr. Edwin Richter.

17 THE CLERK: Spell your last name.

18 THE WITNESS: R-I-C-H-T-E-R.

19 THE CLERK: Office address?

20 THE WITNESS: 29 Hospital Plaza, Suite 601,
21 Stanford, Connecticut, 06902.

22 THE CLERK: Have a seat.

23 MR. HOLBROOK: May I inquire, Judge.

24 THE COURT: Go ahead.

25 DIRECT EXAMINATION

Dr. Richter - Plaintiff - Direct

1 BY MR. HOLBROOK:

2 Q Good afternoon, Dr. Richter.

3 A Good afternoon.

4 Q Are you licensed to practice medicine?

5 A Yes.

6 Q What states?

7 A New York and Connecticut.

8 Q How long have you been a licensed doctor?

9 A New York since 1989, Connecticut 2005.

10 Q Can you tell the jury about your educational
11 background?

12 A Yes. I went to college at Harvard University,
13 graduated in 1983 with honors with a degree in biology. I then
14 went to New York University School of Medicine, graduated in
15 '87. I then did my internship and residency also at NYU,
16 rotating internship in internal medicine, neurology,
17 neurosurgery and orthopedics and then went on to do my
18 three-year residency primarily at the Rusk Institute of Rehab
19 Medicine, but also at Bellevue, the Manhattan VA and Hospital
20 for Joint Diseases and Goldwater Hospital in the field of
21 physical medicine and rehabilitation.

22 Q What is the Rusk Institute?

23 A The Rusk Institute is the rehabilitation institute of
24 NYU, one of the oldest and largest rehab institutes in the
25 country and known to have trained the largest number of

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1 rehabilitation doctors like myself in the country.

2 Q What is the field of physical and rehabilitation
3 medicine, what does that mean?

4 A We take care of patients with disabling or impairing
5 conditions, conditions that prevent them from functioning at
6 what would be their normal level. Many of our outpatients have
7 what we call musculoskeletal problems, so they have problems
8 with bones, joints, nerves or muscles. We also treat
9 inpatients, such as I do as well, where we get patients who come
10 usually from a hospital after some major disabling event like a
11 stroke, a hip fracture, spine surgery or spinal cord injury or
12 an amputation, something like that, where they need inpatient
13 rehab, inpatient physical and occupational therapy before they
14 can go home.

15 Q Could you describe for the jury your work experience
16 and your medical practice now?

17 A Yes. When I graduated from NYU, I stayed on at Rusk
18 Institute. I became a member of the faculty of the New York
19 University School of Medicine, which I continue to be on to this
20 day. I practiced at the Rusk Institute until 2005 and, over the
21 years, I became the associate clinical director of the Rusk
22 Institute, as well as serving on numerous committees, as well as
23 having my own private practice there with both inpatients and
24 outpatients.

25 After 2005, I was recruited to go up to Stanford

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1 Hospital to become the director of the division of rehab
2 medicine there. So, we have a 17-bed inpatient rehab unit of
3 which I'm the medical director, and I also have an outpatient
4 office practice at the address I gave a few minutes ago.

5 I continue to do teaching, both at Stanford Hospital,
6 NYU and at other academic institutions.

7 Q And aside from the teaching appointments at those
8 universities and your current practice, do you hold any board
9 certifications or other specialty appointments?

10 A Yes. I'm board certified in the field of physical
11 medicine and rehabilitation.

12 Q Doctor, you testified a little bit about what your
13 practice is like now. You are here in court today.

14 Can you give the jury an idea of what the split is
15 between you treating patients and dealing with your own practice
16 versus courtroom work?

17 A Courtroom and court-related work is about 10 percent of
18 my time. The taking care of my patients, my administrative work
19 and some teaching represent the other 90 percent.

20 Q And, Doctor, in terms of testimony for my law firm, is
21 it fair to say, over the course of your decades-long career,
22 this would be I believe the fourth time you've testified for us?

23 A Yes.

24 Q Okay. And you've been qualified as an expert in court
25 before?

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1 A Yes.

2 Q In what fields?

3 A Physical medicine and rehabilitation.

4 Q You have never been denied qualification; is that
5 correct?

6 A Correct.

7 Q If you weren't here today on behalf of Miss Kim, where
8 would you be?

9 A I would be on the Van Munching Rehab Institution,
10 that's our 17-bed inpatient rehab unit at Stanford Hospital.

11 Q And for your time here, taking you away from treating
12 your patients, how do we compensate you?

13 A \$2,000 for a half day in court.

14 Q You also compiled a report and did an examination, a
15 physical examination of Miss Kim in your office, that's true,
16 right?

17 A Yes.

18 Q And how much did you get compensated for your time to
19 examine Miss Kim, review her records and compile a report?

20 A \$1,750.

21 Q Now, Doctor, just before we go on to offering you as an
22 expert, have you published in the field of physical medical and
23 rehabilitation?

24 A Yes, I have. I have over 60 publications in total,
25 including several textbook chapters and I co-edited a textbook

Dr. Richter - Plaintiff - Direct

1 called Medical Aspects of Disability.

2 MR. HOLBROOK: Your Honor, I would proffer Dr.
3 Richter as an expert in the field of physical and
4 rehabilitative medicine.

5 THE COURT: Any objection?

6 MR. SCAHILL: No, your Honor.

7 THE COURT: He is an expert.

8 Q Doctor, in connection with this case, were you provided
9 with medical records from my office for a Hyun Sook Kim for
10 injuries stemming out of a car crash on May 2, 2014?

11 A Yes, I was.

12 Q Can you go over briefly with the jury what records you
13 reviewed in connection with the case?

14 A Operative report by Dr. Shiau, records of Dr. Tuncel,
15 record of Franklin Hospital, All County, LLC, radiology reports,
16 lumbar spine flexion and extension X-ray report, records of Dr.
17 Das, D-A-S, Physical Therapy of North Queens, North Shore
18 University Hospital, Queens Chiropractic Spinal Care,
19 Westchester Medical Center and Day-Op Center of Long Island,
20 Precision Imaging of New York, Franklin Hospital, Dr. Berkowitz,
21 All County, LLC, Dr. Liguori, Dr. Vargas. And I also reviewed a
22 number of images, a lumbar spine X-ray from 2/27/16. And then I
23 later also reviewed the images from the other MRI reports.

24 (Whereupon, Senior Court Reporter Susan Napoli
25 began recording the following proceedings:)

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1 DIRECT EXAMINATION (CONTINUED)

2 BY MR. HOLBROOK:

3 Q So you reviewed the MRI reports and films or discs; is
4 that fair?

5 A Yes.

6 Q Doctor, I want to go over some terminology with you.

7 A Sure.

8 Q And just see if you can describe what these terms mean
9 to you.

10 Are you familiar with the term degeneration?

11 A Yes.

12 Q What does hey mean?

13 A Well, in the human body that's the wear and tear. As
14 people go through life, certain body parts just like mechanical
15 devices, get wear and tear.

16 Q And in a 50-year old individual, would you expect to
17 find some level of degeneration in terms of either their spine or
18 other soft tissues?

19 A Yes.

20 Q And the term symptomatic and asymptomatic, what does
21 that mean to you?

22 A Symptomatic means that someone is having a complaint or
23 a problem that relates to a diagnosis or a finding. Asymptomatic
24 means the person has no complaints or no limitations on their
25 function, despite what you might see on an exam finding or an

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1 imaging finding.

2 Q What about the term aggravation and exacerbation?

3 A They mean essentially the same thing, that someone may
4 have a condition that either bothers them a little and after
5 something exacerbates it, it bothers them more or they may have a
6 finding that doesn't cause them any symptoms or limitations, but
7 then after some event happens, that event exacerbates it and it
8 makes them have problems such as pain or limited motion.

9 Q So, in other words, Doctor, if I understand you
10 correctly, somebody could have either a dormant degenerative
11 condition or a prior injury that healed and be asymptomatic and
12 then get in a car crash or some other traumatic event and then
13 have injuries?

14 A Yes.

15 Q And in those types of cases, what's the competent cause
16 of the injury?

17 A Well, that would be the new accident or event that
18 caused the injury.

19 Q Now, I want to direct your attention to August 25th of
20 2016. Did you do an examination of Miss Kim, my client, in
21 connection with the injuries she sustained in this case?

22 A Yes.

23 Q Did you take a medical history?

24 A Yes, I did.

25 Q And was there a Korean translator there?

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1 A Yes.

2 Q Now, I want you to assume for the purposes of this
3 question -- well, did Miss Kim tell you whether or not she was
4 having problems with her knee, back, shoulder or neck before the
5 accident when you did the history?

6 A Yes. She was not having problems with any of those
7 areas prior to this accident.

8 Q Now, as you sit here today, I've shown you films or an
9 MRI report rather from the 2003, right?

10 A Yes.

11 Q Would that change anything, knowing that she had those
12 MRIs or treatment in 2003, regarding your overall diagnosis and
13 findings here today?

14 MR. SCAHILL: Objection.

15 THE COURT: Overruled.

16 A No, it would not.

17 Q Now, in this case the levels of the spine that we're
18 discussing that were operated on with Miss Kim are L2-3 and C5-6;
19 is that correct?

20 A Yes.

21 Q What, if anything, did you note of significance in the
22 2003 MRIs?

23 MR. SCAHILL: Objection.

24 THE COURT: Overruled.

25 A Neither of those levels were found to be abnormal in

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1 those other two MRI studies.

2 Q Does that have any significance to you when determining
3 whether Miss Kim had a causally related injury here?

4 MR. SCAHILL: Objection. Judge, I know you don't
5 want speaking objections, but he's not a treating doctor.
6 He's an expertise bound by his 3101(d).

7 MR. HOLBROOK: Right, and the 3101(d) says he's
8 going to offer an opinion as to causal relationship.

9 THE COURT: Then I'll allow it.

10 THE WITNESS: Could you repeat the question,
11 please?

12 MR. HOLBROOK: Are you able to read it back?

13 THE COURT: Read it back.

14 (Whereupon, the requested portion of testimony was
15 read back.)

16 A Yes, that is significant, because we know that she had
17 normal findings on MRI of her neck and her back after that prior
18 event. So prior to this accident she had an MRI showing that
19 those levels were normal. After this accident, she has imaging
20 that shows abnormality there and then even more definitively she
21 has doctors go in and look directly at the injuries and look at
22 the discs and find that there were abnormalities there.

23 Q Doctor, I want to ask you this hypothetical question,
24 okay? I know you just said the MRIs in 2003 showed no damage to
25 the levels we're talking about here, but hypothetically, if it

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1 did show damage and then Miss Kim had it resolved and went ten
2 years with no problems and then got in a new accident and it made
3 it worse, in your opinion, would that be a classic aggravation
4 and exacerbation case?

5 MR. SCAHILL: Objection.

6 THE COURT: Overruled.

7 A Yes.

8 Q Now, Doctor, did you do an examination on Miss Kim?

9 A Yes, I did.

10 Q Tell the jury about that.

11 A I did a physical exam, looked at her. Her appearance is
12 normal, aside from the fact that she did appear to be in
13 discomfort. Her transfers, meaning getting on and off the chair,
14 on and off the exam table, changing positions, were consistently
15 guarded, meaning moving in a cautious way.

16 Looking at her neck, she had a three centimeter scar on
17 the front of her neck.

18 Cervical ranges of motion included rotation to the
19 right, that's going like that (indicating), 35 degrees. Normal
20 is 80. Going to the left was 45 degrees. Again, normal is 80.
21 Extension, looking up, 20 degrees, normal is 60 degrees, and
22 flexion, going forwards, 40 degrees. Normal is 50 degrees.

23 Spurling's, which is a maneuver where I rotate and twist
24 the neck, was positive, meaning it gave pain going down the arm
25 on each side.

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1 There was tightness of the paraspinal muscles, which are
2 the muscles on either sides of the spine in the neck. There was
3 decreased sensation on left in the C6 and C7 dermatomes. What I
4 mean by that is, we know that the nerve roots come out at
5 different levels in the cervical spine and we give them numbers
6 to identify them, and I know by testing sensation with a
7 filament, a little plastic probe, on different parts of in this
8 case the hand, I can test for whether there's full or decreased
9 sensation coming from that area of the neck.

10 I checked her left shoulder. Abduction, moving it away
11 from the body, was at 80 degrees rather than 150, which is
12 normal, and flexion, 80 degrees, again, normal there is 150
13 degrees going upwards (indicating). Those motions were painful.

14 Codman's, which is a maneuver where I rotate the arm to
15 stress the rotator cuff, was positive, and supraspinatus sign,
16 another test that tests the rotator cuff, was positive.

17 I looked at her left knee. It was positive with
18 McMurray's, which is a test where I'm moving the knee while
19 putting a rotation on the lower leg. There was crepitus, which
20 is crackling, tenderness at the joint line, all on the left knee.

21 Looking at her back, the lumbar spine, forward flexion
22 bending forwards, 40 degrees. Normal is 90. Going back,
23 extension, 15 degrees. Normal is 25. Lumbar motions were
24 painful. There was a four centimeter surgical lumbar scar.
25 There was tightness, tenderness and spasm of the lumbar

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1 paraspinal muscles, meaning that when I pressed on those muscles,
2 the tenderness means that an amount of pressure that normally
3 wouldn't hurt was actually painful to her, uncomfortable. Spasm
4 means that I can feel an abnormal tightness, sort of a clinching
5 of the muscles as I'm feeling them.

6 Straight leg raising was negative, meaning it didn't
7 make pain run down her leg, but it aggravated her knee pain.

8 Q Doctor, are you familiar with the terms objective
9 findings and subjective findings?

10 A Yes, I am.

11 Q What is the difference between the two?

12 A Objective is something that we can measure, that we
13 don't have to rely on the patient's report or the patient's
14 opinion. Subjective would be the patient describing that they
15 feel pain or they feel depressed or something like that.
16 Objective is something we can measure and record.

17 Q Can a patient fake objective findings?

18 A No.

19 Q Okay. What are examples of objective tests?

20 A Objective tests, for example, when I'm feeling for the
21 spasm, that's something that I'm feeling with my hand, so I don't
22 need the patient to tell me that it hurts or doesn't hurt.
23 That's something that I can feel. Range of motion is something I
24 can measure with a plastic device called a goniometer. So I'm
25 getting objective measurements. Measuring the scar is another

Dr. Richter - Plaintiff - Direct

1 objective measurement.

2 Q What about diagnostic tests?

3 A Diagnostic tests, certainly x-rays, MRIs, EMGs, those
4 are examples of objective diagnostic tests.

5 Q So, Doctor, did you formulate an opinion, based on your
6 examination and your review of the medical records, as to whether
7 or not Miss Kim's subjective complaints, coming from her, lined
8 up with the objective findings that can't be faked?

9 A Yes, I did. They did line up.

10 Q Now, Doctor, after you went through the records and your
11 examination and so forth, did you formulate what's called a life
12 care plan or a -- you came up with an opinion as to what her
13 future medical needs would be, correct?

14 A Yes, I did.

15 Q And you prepared a report, correct?

16 A Yes.

17 Q Now, are you --

18 MR. HOLBROOK: Your Honor, actually at this time
19 I'm going to ask for permission for Dr. Richter to come down
20 into the well.

21 THE COURT: Okay.

22 Q Dr. Richter, now, if you could just explain to this
23 jury, how are you familiar with the cost of treatment and care?
24 We see present day costs of, let's say, \$155 for a visit to a
25 spine specialist. Where are you getting these numbers from?

Dr. Richter - Plaintiff - Direct

1 A Okay. Well, for things that pertain to a doctor's
2 practice, I mentioned before I, myself, am in private practice,
3 so I have to set my charges for things like doctor visits or if I
4 perform electrodiagnostic testing, like an EMG. So I work with a
5 company, consulting and billing company, called Transmedia that
6 provides me with a database with average charges for different
7 types of doctor services, such as an established patient visit to
8 the doctor's office. So that gives us the typical charge for
9 this area for that type of service.

10 For physical therapy, I mentioned before I've had
11 administrative posts at both Rusk and at Stanford Hospital and I
12 refer patients for therapy all the time as well. So I'm familiar
13 with what hospitals charge, with what outside practices charge.

14 In terms of medications, for that I use an internet
15 reference, a website called Good Rx, which is a website that sort
16 of aggregates prices, kind of like a website you might use to get
17 a good price on a flight.

18 For MRIs and x-rays, again, because of my hospital work,
19 I'm familiar with what the hospitals charge for those services
20 and also I'm familiar with what my patients can be charged at
21 outside facilities when they go there.

22 In terms of surgical costs, again, because of working
23 with hospitals and being familiar with what the overall charges
24 are, not just for the surgeon, but for the hospital and other
25 doctors and other resources, that's where I get information about

Dr. Richter - Plaintiff - Direct

1 the cost of surgeries.

2 Q Just to be clear, Dr. Richter, these figures below were
3 prepared by the economist, the data up top is what was prepared
4 in your report, correct?

5 A Yes.

6 Q Now, let's just start here, the spine specialist.
7 How often did you indicate in your report Miss Kim would
8 need to see a spine specialist going forward?

9 A Two to three times per year on average.

10 Q Describe what you mean by that, why two to three times
11 on average?

12 A Because she has injuries to her spine, she's had surgery
13 to her spine. The surgery was to stabilize the damage, not to
14 cure it, and she continues to have complaints and problems and I
15 project her to have worsening of her complaints and problems in
16 the future. So she needs to see an expert in the spine to
17 monitor and track the progress of her condition, to decide when
18 she might need to be referred for x-rays or other procedures and
19 to monitor for the need for potential future surgery.

20 Q Now, Doctor, you say two, three times a year. I want
21 you to assume for purposes of this question Miss Kim has not gone
22 to the doctor in over a year. What does that do to your
23 calculations?

24 A It doesn't change it. The key thing is that this is on
25 average and she is likely to have good years and bad years, just

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1 like many of my other patients do. So she may go through a
2 period of time, coming off the relatively recent surgeries, where
3 she has a span of time where she might not need to see a doctor
4 for this condition and then there might be another year where she
5 needs several visits.

6 Q So, in other words, she may have no visits in 2018 and
7 then five visits in 2019, depending on her condition?

8 A Yes.

9 Q And there's where your average comes in?

10 A Yes.

11 Q Now, with respect to her past treatment, would you say
12 two to three visits per year is, at a minimum, a conservative
13 indication of what she's been doing during the course of the post
14 2014?

15 A Yes.

16 Q Now, if you go to musculoskeletal or pain specialist,
17 could you just describe for the jury, and you could just walk
18 through your findings.

19 A Sure. The pain specialists are for monitoring the
20 status of her pain, prescribing pain medication as needed. The
21 names of the medicines aren't listed on this chart, but in my
22 report I note the names of the medicines, and she does take
23 medication that's a controlled substance that needs to be
24 monitored carefully by a doctor. The rules in the last couple of
25 years have, understandably, gotten very strict about those

Dr. Richter - Plaintiff - Direct

1 things. So she needs to actually see doctors for this, not just
2 to get like a mail order medication for her treatment.

3 The physical therapy, as I said, she's expected to have
4 good and bad years, years where she may have flare-ups of her
5 pain, more exacerbations. Physical therapy can help to control
6 the symptoms and to slow the progression of her condition, which
7 I expect overall to worsen, but it can slow that worsening.

8 The MRIs of the spine, that's to track the status of her
9 other discs as well as the levels that had the fusion surgery to
10 see what's going on there. There is a concern when people have
11 had fusion surgery about what we call adjacent level syndrome,
12 meaning that the other levels that aren't fused have a heavier
13 workload and, therefore, they're likely to breakdown faster than
14 they would have were it not for the injury and the need for that
15 surgery.

16 The EMG, that's an electrical diagnostic test to check
17 on essentially pinched nerves in Miss Kim's case and that can be
18 done to monitor progression as well.

19 X-rays, again, to keep track of the status of the fusion
20 of that -- of the spine.

21 The MRIs of the knee and shoulder, she has the injuries
22 there, she had arthroscopy to both joints and, again, that's to
23 sort of stabilize the problem. It doesn't cure it. We know that
24 people in particular with knee arthroscopies have a high risk of
25 going on to need knee replacement at some point in the future,

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1 but this is a way to monitor the status of the soft tissues
2 inside the joints.

3 So then the lumbar surgery, within 10 to 15 years, I
4 touched upon that adjacent level syndrome and the fact that this
5 is going to put extra wear and tear on her low back.

6 Same idea with the cervical spine, the extra wear and
7 tear because of the fusion there.

8 And then the knee surgery, which I touched on briefly,
9 the fact that people with this condition often will go on to need
10 a knee replacement. In this case, projected within a 10 to
11 15 years, and with that type of surgery it often has to be
12 revised after 10 to 15 years because of wear and tear on the
13 construct of the surgery.

14 Q Doctor, with a reasonable degree of medical certainty,
15 do you have an opinion as to the affect aging will have on the
16 injuries sustained by Miss Kim? She is 53 nearly 54 now.

17 A Yes, I do.

18 Q Can you go ahead and share that with the jury?

19 A Yeah. Aging is going to make these things worse.
20 Everybody gets some progression of degenerative problems as they
21 age, but she's not starting at a level playing field with other
22 50-year-old people because she has these injuries to the neck,
23 the back, the knee and the shoulder, where they're all
24 essentially damaged, and so the aging process is going to just
25 pile on top of that and make it worse.

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1 Q Doctor, did you formulate, with a reasonable degree of
2 medical certainty, an opinion as to whether the injuries and
3 treatments Miss Kim has received here and the future needs that
4 you've calculated were a result of the crash from May 2nd, 2014?

5 A Yes.

6 MR. SCAHILL: Objection.

7 THE COURT: Overruled.

8 A Yes, I did.

9 Q And what is that?

10 A They were related to that motor vehicle crash.

11 Q And would that include the fact that it was an
12 aggravation and exacerbation injury?

13 A Yes.

14 Q I want to just ask you a few questions and then I'm
15 going to sit down.

16 I want you to assume an expert is going to come into
17 court and say, seat belted passenger not expecting the impact in
18 this rear end collision couldn't have gotten hurt in the way
19 Miss Kim did.

20 Do you agree with that?

21 MR. SCAHILL: Objection.

22 THE COURT: Overruled.

23 A Disagree.

24 Q Why?

25 A She's a seated passenger with a seat belt on, which is

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1 good, that prevents much worse potential injuries, but you do
2 still have impacts. You still do have a person's body being
3 thrown forwards and back with the impact and the person trying to
4 brace themselves after the fact. They can't brace themselves
5 before the fact in this type of crash. Trying to use their limbs
6 to protect their body and their head, so it's very competent.

7 Q I want you to assume for purposes of this question an
8 opinion will be offered that, hey, Miss Kim's not treating right
9 now, hasn't treated in over a year, so it's nonsense, she's never
10 going to have to go to the doctor again for 30 years.

11 Do you agree with that?

12 MR. SCAHILL: Objection.

13 THE COURT: Overruled.

14 A I would disagree with that. With the multiple injuries
15 that she has, with each one of them I would expect her to need
16 doctor follow-up for the problems that she has.

17 Q And I want you lastly to assume that an expert is going
18 to come in here and testify that what Miss Kim's gone through or
19 what she may have to go through is not at all related to a
20 traumatically induced event, but is merely a product of
21 degeneration.

22 Do you agree with that?

23 MR. SCAHILL: Objection.

24 THE COURT: Overruled.

25 A Disagree.

Dr. Richter - Plaintiff - Cross

1 Q Why?

2 A She did have some evidence when we looked at her scans
3 of some degenerative changes, which are no surprise for someone
4 who is around 50 years old, but she was asymptomatic, functioning
5 normally, living her normal life, not seeing doctors, not going
6 for surgery or therapy or anything like that. Then all of this
7 happens and it's clearly related causally and temporally to the
8 car accident.

9 MR. HOLBROOK: Nothing further.

10 THE COURT: Cross-examination.

11 MR. SCAHILL: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. SCAHILL:

14 Q Good afternoon, Doctor.

15 A Good afternoon.

16 Q Doctor, you've testified over a hundred times, correct?

17 A Yes.

18 Q So you know the rules of cross-examination?

19 A Yes.

20 Q If I ask you a yes or no question, you'll answer it yes
21 or no?

22 A Yes.

23 Q Is it a fact that you just found out about the prior
24 accident and prior treatment that Miss Kim had today?

25 A Yes.

Dr. Richter - Plaintiff - Cross

1 Q Is it a fact that your review of those prior MRI
2 films -- prior MRI reports was done five minutes before you
3 testified?

4 A Yes.

5 Q And is it a fact that you testified for the
6 Schwartzapfel Law Firm in September in Nassau County on a
7 different case?

8 A Yes.

9 Q And did you also prepare reports for the Schwartzapfel
10 Law Firm in September, October and November of 2016?

11 A I don't remember specifically the reports, but probably,
12 yes.

13 Q Do you remember giving them a report on a patient by the
14 name of Saldino, Robert Saldino?

15 A No.

16 Q Do you remember giving them a report on a patient by the
17 name of Amador Padrone?

18 A Yes.

19 Q And you prepared a report with respect to Miss Kim in
20 this case, correct?

21 A Yes.

22 Q Do you regularly do work for the Schwartzapfel Law Firm
23 in this type of a setting?

24 A Periodically, yes.

25 Q When you say "periodically," 10 times a year, 20 times a

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1 year, 30?

2 A Less than -- maybe ten at most.

3 Q So you work on ten cases a year for them?

4 A Around, yes.

5 Q Now, when were you retained in this case?

6 A It would be shortly before my report, so some point in
7 maybe August of 2016.

8 Q And am I correct that you are not Miss Kim's treating
9 physician? You saw her once for purposes of this lawsuit,
10 correct?

11 A Yes.

12 Q The treatment plan that you put together, this is just
13 for this lawsuit, correct?

14 A Yes.

15 Q That has nothing to do with her actual treatment by her
16 own physicians, this is purely for litigation purposes, correct?

17 A Yes.

18 Q The recommendations that you made to see a spine
19 specialist, pain specialist, physical therapy, medications, MRIs,
20 EMGs, x-rays, MRIs, surgery, future surgery, that's all just for
21 litigation, it's not endorsed by any of her doctors; is that fair
22 to say?

23 MR. HOLBROOK: Objection.

24 THE COURT: Overruled.

25 A I don't know if any of her doctors have seen it, but I

Dr. Richter - Plaintiff - Cross

1 would not know.

2 Q Well, let me ask you that. Did you talk to any of her
3 doctors?

4 A No.

5 Q Did you -- other than the interview -- by the way, how
6 long did that interview take?

7 A The combination of the interview and the exam took about
8 an hour.

9 Q Other than seeing Miss Kim last October -- was it
10 October 2016?

11 A August.

12 Q August, last August, over a year ago, for one hour, did
13 you talk to any of her doctors, Drs. Berkowitz, Das, Shiau,
14 Rafiy, Schneider, her primary care physicians, about what they
15 felt her treatment plan should be going forward?

16 A No.

17 Q Do you think it would be a more accurate portrayal of
18 what her future medical needs are if you interviewed any of those
19 doctors?

20 A Not necessarily, no.

21 Q Did anything prevent you from picking up the phone and
22 saying, I'm working on a case for Miss Kim, I want to know what
23 your recommendations are for her future treatment? Did anything
24 prevent you from doing that?

25 A A lot of doctors --

Dr. Richter - Plaintiff - Cross

1 Q That's a yes or no.

2 A Yes.

3 Q Something prevented you from doing that?

4 A Yes.

5 Q Okay. And what about her medications, did you ask her
6 what medications she was on then when you saw her?

7 A Yes.

8 Q The recommendations for future medications and the cost
9 that you have for future medications, do you know what
10 medications she's on now?

11 A Today, no.

12 Q You saw her over a year ago?

13 A Yes.

14 Q 14 months ago, actually. Now, as part of your fee, I
15 would anticipate that before you came to testify you would see
16 her again, so you could give this jury an accurate representation
17 of what her current condition is.

18 Did you do that?

19 A No.

20 Q Would it have been more accurate to give a portrayal to
21 the jury if you had a conversation and an interview with her
22 contemporaneously with your testimony?

23 A Yes.

24 Q And nothing prevented you from doing that, correct?

25 A Yes.

Dr. Richter - Plaintiff - Cross

1 Q And you choose not to; is that fair to say?

2 MR. HOLBROK: Objection.

3 A I wouldn't put it that way.

4 Q Now, let me ask you about her care plan.

5 You indicated in her care plan that you believe that she
6 should see a spine specialist, two to three visits per year, at a
7 cost of \$388; is that correct?

8 A No.

9 Q This is for 2018.

10 A Oh, I mean, I projected the current costs. The
11 economist comes up with the future. So 2018 would be the
12 economist working with the numbers.

13 Q When you're talking about the current cost, first of
14 all, were you aware that she hasn't seen a spine specialist in
15 over a year and a half?

16 A Yes.

17 Q And when you're talking about the current cost, those
18 are numbers that you came up with, not Dr. Das or Dr. Shiau,
19 correct?

20 A Yes.

21 Q You didn't call up Dr. Shiau or Dr. Das and ask them,
22 what is the cost for a visit for Miss Kim? You picked these
23 numbers out of your own practice or research, correct?

24 A Yes.

25 Q Okay. Would it have been a more fairer representation

Dr. Richter - Plaintiff - Cross

1 to the jury if you called up her actual treating doctors and say,
2 how much does it cost and when does she have to come back to you?
3 Would that have been a fairer representation?

4 A No.

5 Q It would not have been?

6 A Correct.

7 Q You also indicated that she should see a pain
8 specialist, five visits per year; is that correct?

9 A Yes.

10 Q Do you know if she's ever been to a pain specialist?

11 A Um, I'm not sure if any of the doctors she's seen are
12 pain specialists, per se, no.

13 Q So you recommended that she see a pain specialist and
14 she's never seen a pain specialist? She's had treatment with a
15 host of doctors and never been to a pain specialist, but you, as
16 the litigation consultant, say that she should see a pain
17 specialist five times a year?

18 MR. HOLBROOK: Objection.

19 THE COURT: Overruled.

20 Q Is that correct?

21 A Yes.

22 Q You also indicated that she should seek physical therapy
23 30 times a year; is that correct?

24 A Yes.

25 Q You realize she hasn't been to physical therapy in over

Dr. Richter - Plaintiff - Cross

1 two and a half years; is that correct?

2 A Yes.

3 Q All right. Did you ask her did she have any intention
4 to go back to physical therapy?

5 A Actually, I'm not sure about two and a half years, but
6 at any rate, no, I did not ask her if she had an intention, no.

7 Q But yet you recommended that she go back 30 times a
8 year; is that correct?

9 A Yes.

10 Q Did you discuss any of these recommendations with her?

11 A No.

12 Q Let me get this straight, you're telling the jury that
13 this is what she needs (indicating)?

14 A Yes.

15 Q And you never told her?

16 A That she would need those? No.

17 Q You're just coming in to say it this one time for this
18 lawsuit?

19 MR. HOLBROOK: Objection.

20 THE COURT: Overruled.

21 A Yes.

22 Q Those prices that you talk about, did you ever contact
23 any of the facilities that actually treated Miss Kim to find out
24 what the prices are for the items that you're recommending?

25 A No.

Dr. Richter - Plaintiff - Cross

1 Q Would it have been more accurate and fair to tell the
2 jury what the actual prices were rather than come up with a
3 number yourself?

4 A I'd say no.

5 Q You talked about needing MRIs of the knee and the
6 shoulder, two every four years; is that correct?

7 A Yes.

8 Q MRIs are not done for a maintenance basis; is that fair
9 to say?

10 A Yes.

11 Q That's a fair statement, that you don't do MRIs for
12 maintenance?

13 A Yes.

14 Q But you recommended it every two to four years at \$1,600
15 each for \$33,000?

16 A Yes.

17 Q So something that isn't done medically on a regular
18 basis, you recommended it for purposes of this litigation; is
19 that fair to say?

20 MR. HOLBROOK: Objection.

21 THE COURT: Overruled.

22 A No.

23 Q Well, you just told me that you don't do maintenance
24 MRIs, yet you recommended one or actually two every four years;
25 is that right?

Dr. Richter - Plaintiff - Cross

1 A That is correct. I never said that they should be done
2 for maintenance purposes.

3 Q Is it fair in your mind, Doctor, to award the plaintiff
4 future medical costs for things that she doesn't need?

5 MR. HOLBROOK: Objection.

6 THE COURT: Sustained.

7 Q Now, you talked about the need for future knee
8 replacement surgery; is that right?

9 A Yes.

10 Q And part of these charges, in fact, the knee surgery,
11 \$143,000 in anticipated future medical cost, does everybody that
12 has a meniscus surgery need a knee replacement?

13 A Everybody? No.

14 Q Do you know how many meniscus surgeries are done across
15 the United States every day?

16 A I don't know per day. I know that hundreds of thousands
17 are done in the U.S.

18 Q And do those people need, every one of those people need
19 knee replacement surgery?

20 A Not right away.

21 Q You think they all need it?

22 A Many of those will need it later in life, assuming they
23 live long enough.

24 Q And you could need a knee replacement with or without a
25 car accident, correct?

Dr. Richter - Plaintiff - Cross

1 A Correct.

2 Q Do you think it's fair to be -- withdrawn.

3 Your testimony, with respect to future surgery to the
4 knee, to the spine, to the cervical spine, the lumbar spine,
5 that's pure speculation on your part; is that correct?

6 MR. HOLBROOK: Objection.

7 THE COURT: Overruled.

8 A No.

9 Q So you have a certainty, with a reasonable degree of
10 medical certainty, that Miss Kim is going to need future surgery
11 to her knee, to her shoulder, to her neck and her back; is that
12 what you're telling us?

13 A Not the shoulder, but yes to the other three.

14 Q And she's definitely going to need that?

15 A Within a reasonable degree of medical certainty.

16 Q Now, Doctor, I'd ask the two reports that you did -- by
17 the way, do you have a file on Miss Kim?

18 A Yes, I have it with me.

19 Q Is that the file (indicating)?

20 A Yes.

21 Q How many pages is that?

22 A Um, well, there's a report that's about five pages.

23 There's a number of computer discs. There's two pages from my
24 history and examination and the bills and particulars are printed
25 out in here also.

Dr. Richter - Plaintiff - Cross

1 Q Did you prepare a report for purposes of this
2 litigation?

3 A Yes.

4 MR. SCAHILL: Judge, can we deem that to be marked
5 as Defendant's Exhibit for identification?

6 THE COURT: Yes.

7 (Whereupon, the report referred to was deemed
8 marked for identification as Defendant's Exhibit F.)

9 Q And is that dated October 25th, 2016?

10 A Yes.

11 Q And the other parties that I talked about, Robert
12 Saldino and Amador Padrone, did you also prepare similar reports
13 for the Schwartzapfel Law Firm with respect to those parties?

14 MR. HOLBROOK: Objection.

15 THE COURT: Overruled.

16 A Yes.

17 MR. SCAHILL: And I'd ask that the reports of those
18 individuals be deemed marked for identification and I have
19 copies for plaintiff's counsel (handing).

20 MR. HOLBROOK: Objection.

21 THE COURT: We can mark it for ID. It's overruled.

22 (Whereupon, the reports referred to were deemed
23 marked for identification as Defendant's Exhibit G.)

24 MR. SCAHILL: And can we -- can I present these --
25 Keith, can I present these to the witness (handing)?

Dr. Richter - Plaintiff - Cross

1 THE COURT OFFICER: (Hanging.)

2 Q Doctor, are those reports that you prepared for the
3 Schwartzapfel Law Firm on Amador Padrone and Robert Saldino?

4 A Yes.

5 Q And did you prepare a similar report for Miss Kim?

6 A Yes.

7 Q I'd ask you to go to the impression page of the report
8 with Miss Kim.

9 MR. HOLBROOK: I'm just going to object at this
10 point, Judge. I mean, we've got two different cases.

11 THE COURT: This is on Kim.

12 A Okay.

13 Q Do you see that your impression suggests all of the
14 treatment that we just went through here? It has each one of the
15 items that we just went through here.

16 I'd ask you to look at what's been marked for
17 identification or deemed marked as to Mr. Padrone and
18 Mr. Saldino.

19 MR. HOLBROOK: Objection, your Honor.

20 THE COURT: Sustained.

21 Q Are each of the reports that you prepare for the
22 Schwartzapfel Law Firm or for all lawyers, are they cookie-cutter
23 reports that you put in the same information?

24 A No.

25 Q I'd ask again that you have an opportunity to review the

Dr. Richter - Plaintiff - Redirect

1 reports of Mr. Saldino and Mr. Padrone.

2 MR. HOLBROOK: Objection.

3 Q And are they identical to the report that you prepared
4 for Miss Kim in this case?

5 THE COURT: Sustained.

6 MR. HOLBROOK: That's patently false and --

7 THE COURT: Sustained.

8 MR. SCAHILL: No further questions, your Honor.

9 MR. HOLBROOK: Briefly.

10 REDIRECT EXAMINATION

11 BY MR. HOLBROOK:

12 Q Dr. Richter, a couple of hypotheticals.

13 I want you to assume that Dr. Berkowitz came into this
14 courtroom and said he agrees with you that Miss Kim will need
15 further treatment for the knee and that, in fact, she would be a
16 candidate, more likely than not were his words, for this very
17 surgery that you came up with.

18 Do you agree with Dr. Berkowitz on that?

19 A Yes, I do.

20 Q And that's her treating doctor, right?

21 A Yes.

22 Q I want you to assume for purposes of this question that
23 Dr. Das came into the courtroom and he said because of the
24 adjacent levels and a number of other factors, that Miss Kim
25 would be a candidate, more likely than not, for future surgery to

Dr. Richter - Plaintiff - Redirect

1 her cervical spine, just like you said.

2 Do you agree with Dr. Das, her treating doctor?

3 A Yes, I do.

4 Q And I want you to assume for purposes of this question
5 that Dr. Shiau testified here yesterday that he found the
6 injuries to be related and that her future needs would be related
7 and that she would need a lumbar spine surgery for the same
8 reasons that you spoke to the jury about moments ago.

9 Do you agree with Dr. Shiau, the treating spine doctor?

10 A Yes.

11 MR. HOLBROOK: Nothing further.

12 MR. SCAHILL: No further questions, your Honor.

13 THE COURT: Okay. You can step down.

14 (Whereupon, the witness was excused.)

15 THE COURT: Okay. We're finished with witnesses
16 today. I'd ask you to not discuss the case among yourselves
17 or with anyone else. Please don't visit the scene. Please
18 don't do any internet searches or anything internet related,
19 Facebook or anything like that.

20 See you back on Monday at 10 o'clock. Have a very
21 nice weekend.

22 THE COURT OFFICER: All rise. Jury exiting.

23 (Whereupon, the jury exited the courtroom.)

24 THE COURT: Monday you're going to rest?

25 MR. HOLBROOK: Yes. Monday what I'm going to do,