

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS - CIVIL TERM - PART 94
-----X

3 STEVEN ARCUK,
4 Plaintiff,

5 -against-

6 DAUN CAB CORP. AND ANWAR KHAMEES,
7 Defendants.

Index No.
522513/2016E
Excerpt

8 -----X
9 (Plaintiff's testimony)

Kings County Supreme Court
360 Adams Street
Brooklyn, New York 11201
August 6, 2019

10 B E F O R E:

11 HONORABLE PAMELA L. FISHER,
12 J U S T I C E

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

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21
22 NAOMI SCHWARTZ, RPR
23 Senior Court Reporter
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1 THE COURT: Mr. Kolp, call your first witness.

2 MR. KOLP: Yes. I call the plaintiff, Steven
3 Arcuik to the stand.

4 THE COURT OFFICER: Right this way, sir.

5 THE COURT CLERK: Remain standing. Please raise
6 your right hand.

7 Do you solemnly swear or affirm that the testimony
8 you're about to give this Court is the truth and nothing but
9 the truth?

10 THE PLAINTIFF: I do.

11 THE COURT CLERK: Please be seated.

12 In a loud and clear voice, please state your name
13 and address for the record.

14 THE PLAINTIFF: My name is Steven Arcuik and my
15 address is 4535 Parsons Boulevard in Flushing.

16 THE COURT: You can examine the witness, counsel.

17 MR. KOLP: Thank you, your Honor.

18 DIRECT EXAMINATION BY

19 MR. KOLP:

20 Q Good morning, Mr. Arcuik.

21 A Good morning.

22 Q I'm going to stand back here because if I can't hear
23 you then the jurors can't hear you, all right?

24 A All right.

25 Q Just speak up.

1 A Okay.

2 Q How long have you lived at the address you just
3 mentioned?

4 A About five years.

5 Q And who do you live there with?

6 A My father.

7 Q Anyone else?

8 A No.

9 Q Do you have any other family members?

10 A I have an older sister that lives with my aunt and my
11 mom passed away.

12 Q And what do you do?

13 A I do plumbing maintenance for transit, the MTA.

14 Q And did you do that at the time of the accident?

15 A No, I did not.

16 Q What did you do at the time of the accident?

17 A I worked for the DEP repairing water meters and reading
18 meters.

19 Q And you just heard Mr. Scahill say at DEP, I think he
20 said you lift and move water meters?

21 A Right.

22 Q Before the accident, did you lift and move water
23 meters?

24 A I did before the accident, yes, I lifted.

25 Q And after the accident, did you lift and move water

1 meters -- let me just back up.

2 What is a water meter? How big is it?

3 A A water meter could be anywhere from could say six
4 inches to maybe ten inches. It weighs maybe I'd say around five
5 pounds, and they could range anywhere from five, close to maybe
6 15. That's about it.

7 Q So the heaviest water meter is 15 pounds; is that
8 correct?

9 A We didn't deal with anything that was really heavy.
10 That was another department, a separate department.

11 Q So at the time of your job, you lift and moved five to
12 15-pound water meters?

13 A Right.

14 Q And you're not saying after the accident, you couldn't
15 move a five-pound water meter, are you?

16 A No. I would just have more help installing them and I
17 would have other co-workers helping me out more.

18 Q And what was your title at the time at the DEP?

19 A It's a water use inspector.

20 Q And just for the jury, what does a water use inspector
21 do?

22 A We go around from residential houses to commercial
23 houses and read water meters, we read the readings off of them.

24 If they had to be repaired, we would repair them or
25 replace them. That was pretty much it.

1 Q And what does repairs entitle, just briefly?

2 A There's a head on the meter that reads the meter.
3 Could change the head off of that, or if the whole meter was
4 broken, you would have to replace that whole meter, so it was
5 two nuts you have to take those off, take the old meter off, put
6 the new one in.

7 Q And that was your old job, what's your new job?

8 A My new job is doing maintenance plumbing for Transit.
9 It's no hard plumbing. It's all very small plumbing. It would
10 be anywhere from fixing things inside of faucets to clearing
11 toilet bowl stoppage, no heavy work, not piping out the whole
12 Transit or whole buildings or anything like that.

13 Q And when you say water stoppage, what are you actually
14 doing?

15 A Toilet bowls, as far as clearing the stoppage inside a
16 toilet bowls.

17 If it had to do with anything heavier or more than
18 that, they would contract it out to somebody else.

19 Q Do you work with a partner or --

20 A Yes, I always have to be with a partner.

21 Q And you carry around a box of tools as a plumber?

22 A No, we have a truck that has what we need in it.

23 If we do carry around tools and we're on the train it
24 would be a Channellock, a wrench, a small wrench and a
25 screwdriver.

1 Q And you mentioned the train, you don't drive to these
2 sites, you take the train?

3 A Each trade has their own driver so there's someone
4 driving the truck, that's a commercial truck, or if not, if it's
5 a very light job, we're on the train.

6 Light job is meaning inspecting something, don't even
7 touch a tool or do anything.

8 Q And, so, there's no like what I would picture a toolbox
9 to bring --

10 A No, we don't have tool bags. We don't care all that
11 stuff, no.

12 Q If you need a plunger, where would that be?

13 A Inside the shop, there is a tool room where you do get
14 whatever it is you need for that job.

15 Q I want to direct your attention to June 22nd, 2014.
16 Around three in the morning. What were you doing?

17 A I picked up my friends for a late night drive. Just
18 driving around. We drove around into the City. Just a thing
19 that we were into doing, taking pointless drive, driving around,
20 having fun.

21 And around three --

22 Q How many people did you pick up?

23 A Three of my friends. They all live close by me.

24 Q And this was Saturday night going into Sunday?

25 A Yeah, yes.

1 Q And was this a typical thing you did or an atypical
2 thing --

3 A Yeah, it was a typical thing. We just enjoy each
4 other's company. We can be in a car or in a room watching TV or
5 whatever it is, just driving around, talking, having fun.

6 Q So why didn't you just say why don't you guys come over
7 to my house and we'll hang and chat versus going into the City?

8 A My house is small, and I didn't really want to bring
9 them there with my dad being there so I decided to just get some
10 air, be out.

11 Q So you're driving and you pick up you said you have
12 three friends?

13 A Yes, my three friends.

14 Q And where are you guys headed in the city, any
15 particular place?

16 A No particular place. We went in through downtown,
17 through the Williamsburg Bridge. We drove around, around 42nd
18 Street, headed back, back downtown. It was just to drive.

19 Q And this was something you did with your friends often?

20 A Yeah. We would always drive to the City, whether it
21 was just to hang out or go get a dollar slice of pizza or
22 something.

23 Q Did you get a slice of pizza on this particular ride?

24 A No. No, we didn't get anything to eat or anything.

25 Q Directing your attention to around 3:30, 3:45, what

1 would be Sunday morning?

2 A Right.

3 Q Can you tell us what happened?

4 A I was driving around, heading towards the Williamsburg
5 Bridge to head back home and I went down Park Row.

6 Q Is Park Row a one-way, a two-way, two lanes?

7 A Park Row is a one-way. It's right between the Brooklyn
8 Bridge and the -- and Pace University, a college, so I was
9 driving down that street.

10 Q And about how fast are you going?

11 A I'd say around 15 miles, 10 miles an hour.

12 Q What happened next?

13 A And then I seen a cab coming up the one-way, the wrong
14 way, so we kind of met up with each other, parallel to each
15 other, and I started to proceed a little and he slammed on his
16 gas and hit the back of my car, which forced me to hit another
17 car on my right side, a parked car and then a few feet down I
18 stopped.

19 Q And the original impact --

20 A Right.

21 Q -- where was that?

22 A My left rear, my left rear side of my fender. Right
23 where my wheel is, right above the wheel, they basically hit the
24 back wheel.

25 Q On the driver's side?

1 A On my driver's side, yeah.

2 Q And what was -- you mentioned there was another impact,
3 was the first impact light, medium or heavy?

4 A It was heavy. It was like he slammed on the gas and
5 came right into me.

6 Q And what part of his car hit your car?

7 A His front left fender hit the backside of my car, my
8 driver's side.

9 Q And then what was the next impact that you mentioned?

10 A Then I hit a parked car. It forced my car to hit a
11 parked car on my right side and the back where the wheel is over
12 there.

13 Q And was that impact light, medium or heavy?

14 A It was also heavy.

15 Q Describe for the jury at the time of the first impact
16 and then the second impact what happened exactly with your body
17 inside the car?

18 A My body shifted when he hit me on this side, my body
19 shifted this way to the left, and when I hit the parked car, my
20 body shifted to the right. It was two heavy impacts.

21 Q And when you mentioned this side, you mentioned -- you
22 mean --

23 A To the left.

24 Q You're gesturing --

25 A Right. My body kind of slammed towards the door and

1 then when I went to the right, the whole middle console, I
2 slammed into that.

3 Q Did you hit anything when you moved to the left and did
4 you hit anything in the second impact when you moved to the
5 right?

6 A As far as me in the car?

7 Q Correct.

8 A When I moved to the left, I hit myself on the door, and
9 then when I moved to the right, the middle console is there, I
10 hit myself on that.

11 Q The time between when you saw the car coming at you and
12 then you said it stopped and the impact, about how long from the
13 time you first saw the car to the impact?

14 A When I first seen the car to the impact, he must have
15 came -- it must have been ten seconds before we became parallel
16 with each other.

17 Q So he was driving for about ten seconds directly at you
18 in the one way?

19 A Right. And so was I, and that's when we met up with
20 each other, and when he hit me, it must have been two seconds
21 from when he slammed on the gas.

22 Q Immediately after the impact, which way was your car
23 faced after the impact?

24 A My car was faced straight.

25 Q And right after the impact, what, if anything, did you

1 do?

2 A Right after the impact, I didn't -- I didn't do
3 anything. I didn't get out of the car after the accident
4 happened. I didn't get out of the car for around maybe three or
5 four seconds.

6 Q And then after several seconds, what did you do next?

7 A Then I got out of the car. I didn't make contact with
8 the driver. I actually sat on the step on the corner of Pace
9 University and I actually -- I started crying a lot because the
10 month before that my mom had passed away in an accident, in a
11 car accident, so I didn't make no communication with the driver.

12 Q Did the driver of the other car come over and apologize
13 or --

14 A No.

15 Q -- or try to talk to you?

16 A No, he didn't say anything to me.

17 Q And you had mentioned you were on the sidewalk --

18 A Yeah.

19 Q -- crying?

20 A Yeah. I was in shock after what just happened, between
21 my body and my mind being in shock and I was nervous, as far as
22 if my friends were hurt, if I was hurt. A lot could have went
23 wrong. I mean, a lot did go wrong, but I had a lot going on in
24 my mind as far as being lucky and thinking about my mom and
25 everything. It all kind of just traumatizing when he hit me.

1 Q And you said it sort of quitely, frankly, but you said
2 your mom passed away in a car accident the month before?

3 A Yeah, the month right before, she was actually driving
4 in the rain --

5 MR. SCAHILL: Judge, I'm sorry to cut this off, but
6 I object to --

7 THE COURT: Sustained.

8 Q Well, let me ask you this: You were sitting on the
9 sidewalk, correct?

10 A Right.

11 Q And you said you were crying, correct?

12 A Yes.

13 Q Did -- who was the first person you spoke to right
14 after?

15 A In the car, I asked my friends if they were okay, if
16 anybody was hurt and then when I got out, I sat on the step, I
17 was crying there for a while and a cop came over to me and he
18 tried to calm me down and let me know everything was okay and I
19 had to call a tow truck and get my car towed.

20 Q And at that time did the officers ask you if you wanted
21 an ambulance?

22 A Yes, they did, but I didn't want an ambulance at the
23 time. I just wanted to get home. It was late. I just dealt
24 with so much, I had to go through so much and I just wanted to
25 get home. And when I got home, actually, in the morning time is

1 when I realized that my back was hurting me after I guess I
2 settled down and everything after the accident, and that's when
3 I went to the hospital, Booth Memorial.

4 Q And how did you sleep that night, did you feel any
5 pain?

6 A I did wake up. When I got out of my bed is when I
7 started feeling pain in my back and that's when I decided that I
8 got into a pretty hard impact of an accident, that I should go
9 get myself checked out.

10 Q And you were 22 years old at the time of this?

11 A I was 22.

12 Q And did you tell your father about the accident?

13 A Yeah, I told him in the morning time. He actually
14 brought me to the hospital. I told him in the morning.

15 Q So he drove you to the hospital?

16 A Yes.

17 Q You didn't drive?

18 A No.

19 Q The damage to both the vehicles, did you get a chance
20 at that time to see the damage to your car or to his car or to
21 the parked car?

22 A I did see the damage to my car at the time of the
23 accident. I seen the damage from his car. I think his wheel,
24 he had a flat tire, it was off to the side and he was just
25 parked parallel onto the street.

1 Q Right after the accident, when you said you're sitting
2 on the corner, did you feel pain to your body right there and
3 then?

4 A No. I had -- I wasn't concentrating on pain, I just
5 had so much going on through my mind and it was like I was in
6 shock. I was just thinking about a hundred things.

7 Q And at that time did you just want to get home?

8 A Yes, I just wanted to get home.

9 Q You said -- several -- you went home and that was
10 around what, four or five in the morning, correct?

11 A Yeah.

12 Q And that night you said you went to sleep, did you feel
13 any pain while you were sleeping?

14 A I mean, I couldn't get really a good night sleep, after
15 what just, you don't go right to sleep. I had a lot going
16 through my mind like I was just saying. I had no car. I had a
17 long night than I anticipated it would be.

18 I had pain mostly when I woke up. Once I left my bed
19 is when I started feeling the pain in my back. Felt like my
20 back was locking up --

21 Q Just -- I want you to describe --

22 A Yes, it was --

23 Q -- the pain that you felt that morning to the jury,
24 where it was specifically?

25 A Okay. Once I got up out of my bed, I started feeling

1 like my back was locking up and I started feeling like, it was
2 like a sharp pain in my back and I never felt that before, so
3 that's when I decided to go get checked out.

4 Q And the back is pretty big, where did you feel the
5 pain, upper, middle or lower back?

6 A It felt -- it was almost like my middle back, but it
7 felt like my whole spine was just like, like really tensed up.

8 Q And on the way to the hospital --

9 A Yeah.

10 Q -- how far is the hospital from your house?

11 A It's maybe five, ten minutes away. It's close.

12 Q And your dad drove you there?

13 A He drove me there, yeah.

14 Q And when you got to the hospital, did you describe to
15 the -- where did you go in the hospital?

16 A I went to the emergency room in the hospital.

17 Q And did you describe to the people within the hospital
18 where your pain was?

19 A Yeah. I told him that I just got into a car accident
20 last night. Told them that I had pain in my back, and that's
21 when we got saw by a doctor.

22 Q At that time you had mentioned that your back locked
23 up, right?

24 A Right.

25 Q Was it constantly locked or would it lock, unlock?

1 A It felt like it would constantly lock and then I would
2 have to take a few seconds and try to straighten myself back
3 out, let the pain go away and then it would be fine and then it
4 would come back, it was like an on and off type of thing.

5 Q So your range of motion at the time could vary,
6 correct?

7 A Right.

8 Q And were there times where you could fully move and you
9 felt pain and there were times that you couldn't move because it
10 locked up, as you said?

11 A Yeah. As far as from when the accident happened?

12 Q Yes. When you were at the hospital?

13 A When I was at the hospital, my back was in pain, right,
14 but there was times that it would stop and it would come and it
15 would go.

16 Q And about how long did you wait for the doctors to see
17 you approximately?

18 A It wasn't too long. It was I'd say around 15, 20
19 minutes.

20 Q And if I told you in the hospital records at times,
21 when they checked you, they said full range of motion, does that
22 --

23 A I might have had full range of motion, but I did have
24 pain in my back. It might have been like I was straightening
25 myself to make a full range of motion, but I felt pain.

1 Q And in the 24, 48, 72, like one to three days --

2 A Right.

3 Q -- when did the pain in your back get worse?

4 A I would say it was probably the morning after the
5 accident, which led me to go to the hospital, and the day after
6 I still felt the pain so I decided I had to go to a therapy
7 office.

8 Q And did anyone else go with you to the therapy office?

9 A My friend John Restrippo (phonetic), yeah.

10 Q And how did you hear about this therapy office?

11 A John knew about it from a family member that went there
12 and recommended it.

13 Q So he had a family member that had been injured?

14 A Yeah, one of his aunts, yes.

15 Q Within the hospital, what sort of medical care did they
16 give you?

17 A In Booth Memorial?

18 Q Yeah.

19 A They didn't give me -- they just see if I could move my
20 legs, move my back. They told me to bend down, move to the
21 right, left. But they didn't give me no real, no real, I guess,
22 medication or anything like that.

23 Q And did they recommend that you do anything else or
24 they said you're fine --

25 A They said that I should go to physical therapy, that I

1 might have bulging or herniated discs, something in detailed
2 with my back.

3 Q So they did tell you, you might have bulging or
4 herniated discs?

5 A Right.

6 Q Did they say they could help you in the emergency room
7 for those?

8 A No, they didn't. I would have to go to a medical
9 therapy office for that.

10 Q Did you receive any other medical care at the hospital?

11 A No.

12 Q Tell us about -- you mentioned Yellowstone Medical,
13 where is that?

14 A It's in Queens on Woodhaven Boulevard.

15 Q And how far is that from your apartment?

16 A I'd say 20 minutes. It's closer to my job that I
17 worked at the time. It was ten minutes.

18 Q So it's on the way to your job?

19 A I could go after work, it would be ten minutes.

20 If I go from my house, it would be 20 minutes.

21 Q Let me just back up. Briefly right after the accident,
22 in the following days, did you go to work after that --

23 A No.

24 Q -- after the accident?

25 A I took off for two days. I didn't want to take off any

1 longer because I just started the job, I was on probation, I
2 didn't want to give myself any problems with the job.

3 Q How long had you been on the job at the time the
4 accident occurred?

5 A About a year.

6 Q And you mentioned probation, explain to the jury what
7 that means, it's not like jail or something like that?

8 A No, it's pretty much that your time and attendance is
9 really looked at -- probation was for a year and a half so I had
10 to complete that in order to keep the job.

11 If you missed days at work, if they see that you're not
12 a reliable person, they'll let you go.

13 Q And you had just started there you said?

14 A I just started a year ago, yeah.

15 Q And the probation period is a year and a half?

16 A Right.

17 Q So how many days out of work were you?

18 A Just two.

19 Q And when you got back to work, did you tell them you
20 had an accident?

21 A I did. I told them I had an accident, yeah. Told them
22 I had an accident.

23 Q And did they do anything for you or did you have to
24 make arrangements after --

25 A No. I had a partner so I would communicate with my

1 partner and let him know that my back was hurting, if he could
2 help me more with the heavier things or whatever it was we
3 needed to do.

4 Q And what are the heavier things on your job?

5 A As far as lifting boxes of water meters, unloading
6 them, bringing them into the office, into the shock room,
7 they'll have us do that sometimes. I would tell him listen, can
8 you do that.

9 Q Now, Yellowstone Medical --

10 A Mm-hmm.

11 Q -- tell us, how many times a week did you go to
12 Yellowstone Medical?

13 A I went there four times a week, three, four times a
14 week for, I'd say around six months, seven months.

15 Q And when you initially went there, did you meet with
16 their primary doctor?

17 A Yes, I did. It was about every other four weeks.

18 Q And on the first meeting, what did the primary doctor
19 say to you?

20 A He asked me if the therapy was doing anything for me.
21 It wasn't. I would feel fine --

22 Q Wait, just back up. The initial meeting that you had,
23 who was that with and what did the doctor say? Not the
24 followups.

25 A Oh, the first time I went in the door, to the place?

1 Q Correct.

2 A I spoke to the doctor, and I told him that I got into a
3 car accident. My back was hurting.

4 Q And what did he tell you to do?

5 A He recommended that I do -- it was acupuncture, and
6 also they put pads on your back that send like an electric shock
7 and that I see a chiropractor.

8 Q And how many times a week did he say to do that?

9 A Four times a week.

10 Q And for how long did he suggest at that time?

11 A He didn't suggest it for a certain amount of time, but
12 he did tell me to keep up -- you know, keep it up until the pain
13 wasn't progressing.

14 Q So at that time he didn't know if you needed one month,
15 two month, three month, seven months, right?

16 A No.

17 Q And did you go to those followup examinations?

18 A Yes, I did.

19 Q And did you go four times a week to that therapy?

20 A Yeah.

21 Q And each time, about how long was each time?

22 A Each time was anywhere from an hour to an hour and a
23 half.

24 Q And you mentioned during that hour and a half you did
25 chiro, massage, electric pads, anything else that they did for

1 you?

2 A No, that was it.

3 Q Did the doctor at any time suggest that there was
4 another course of treatment that you could do?

5 A He suggested that I could get shots in my back, but I
6 refused to do the shots, also, because I heard that it was a
7 temporary fix. I didn't want to do that. And that was pretty
8 much all he requested.

9 Q You were looking for a more permanent fix?

10 A Yeah, looking for a permanent fix.

11 Q Did you ever get any of these injections that he talked
12 about?

13 A No.

14 Q With back injuries, do you have good days and bad days?

15 A Yes, definitely.

16 Q Take us through on an average day, what you do?

17 A On an average day --

18 Q With the pain you feel?

19 A My pain could last me two years, and sometimes I'll
20 have a day where there's no pain. Or there will be a whole week
21 where my back is in pain. It's like a sporadic type of thing.
22 It's like a random thing when my back hurts. But if I do have
23 pain, it will be from when I'm sleeping at night, I will wake up
24 in the middle of the night, or when I go down to my car, sit in
25 my car, there's pain there.

1 When I get dressed there will be pain in my back there.

2 When I get to work, start working, there will actually
3 be pain in my back then.

4 Q But you're not suggesting to this injury that that's
5 all the time, right?

6 A It's not all the time, but -- right, it's good days and
7 bad days type of thing.

8 Q And what do you do, if anything, to alleviate the pain?

9 A I have Tylenol. I take Tylenol, I take Advil. I keep
10 them in my locker at my job. I keep a 50 bottle in my medicine
11 cabinet. I keep a pack of Tylenol on me. I have a heating pad
12 and I'm like an electric shock thing that they put on me at the
13 therapy office, I have it at my house. I lay down for an hour
14 or two and use that. I try to lay down. I heard laying down on
15 a flat wooden floor helps.

16 Q And you said a 50 bottle, what is that?

17 A A 50 count bottle.

18 Q Of Tylenol?

19 A Of Tylenol.

20 Q And, so, on average, how many times a week do you take
21 Tylenol and how many?

22 A I could go through a 50 bottle -- 50 count bottle
23 within two weeks, less sometimes.

24 Q In less than a week?

25 A Right. A little over a week, a little less than two

1 weeks.

2 Q How long did you go four times a week to Yellowstone
3 Medical?

4 A Around six months.

5 Q And was there a time that you went from four to less?

6 A Yes. Towards the end, I started going less because I
7 felt like I was going so much, it was taking up so much of my
8 time and it wasn't helping me, so that's when I just decided to
9 stop going.

10 Q From the time you started at Yellowstone Medical, to
11 the time you finished six months later and you were going, you
12 said about four times a week, did you get any better?

13 A No.

14 Q What -- by the way, what was the name of the doctor,
15 the primary doctor at Yellowstone Medical?

16 A Dr. McGee.

17 Q What, if anything, when you were meeting with Dr.
18 McGee, what, if anything, did Dr. McGee say about your
19 condition?

20 A He told me it was when I went for the MRIs that he seen
21 that I had herniated discs and bulging disc. He recommend not
22 to lift anything heavy or do any heavy activities or anything
23 like that.

24 Q And you mentioned MRIs, Dr. McGee sent you out to do
25 MRIs?

1 A Yes, three of them.

2 Q And just briefly, tell us about what you did and what
3 you saw after those MRIs?

4 A I had three MRIs. One to my lower back, one to my
5 upper neck, and I got the papers stating that I had herniated
6 disc. It was around five of them.

7 Q Did Dr. McGee, did you know what a herniated disc was
8 before then?

9 A No, I had no idea --

10 Q Did Dr. McGee explain to you --

11 A Yeah, he explained to me it was almost like a doughnut
12 and when you push it out of whack, that's when you will start
13 feeling pain.

14 Q And other than the injections, did he suggest anything
15 else for these herniated discs?

16 A No, he didn't.

17 Q You mentioned Tylenol and Advil, did anyone ever say
18 you need something stronger?

19 A The doctor actually did recommend me to take, that I
20 could take stronger pills. I don't want to take stronger pills,
21 I don't want to get addicted to any type of heavy drugs like
22 that or anything like that.

23 Q Did you ever in the course of -- from the time of the
24 accident, did you ever take anything stronger to alleviate the
25 pain?

1 A No, no.

2 Q Had you prior to this accident, did you have any sports
3 injuries or any prior accidents before this accident?

4 A No, no injuries.

5 Q Play any other sports before this accident?

6 A I did play sports. I played basketball, I skateboarded
7 and I rode my bike a lot.

8 Q And did you ever get any injuries to your back or any
9 other part of your body --

10 A No.

11 Q -- from any of those?

12 A No. I wouldn't go so hard on them where I would get
13 injured because I knew I had a job and I didn't want to get
14 injured. I didn't get injured, no.

15 Q You did the conservative treatment and did the medical
16 center for about six months, you said?

17 A Right.

18 Q And you mentioned it didn't help anything, have you
19 done anything since the six months to try to alleviate some of
20 the pain?

21 A I haven't been back to a doctor. I've been taking
22 Tylenol and putting a heating pad on, using the electric shock
23 thing on my back.

24 Q Did Dr. McGee ever suggest surgery or any other
25 possibilities for you to alleviate this pain?

1 A No, no surgery.

2 Q He didn't suggest surgery or --

3 A He didn't suggest surgery, no. He suggested the
4 injections, but I didn't want to do that.

5 Q When you were -- was there any other diagnosis that Dr.
6 McGee gave you in terms of any other injuries to any other parts
7 of your body?

8 A No, no.

9 Q So he told you the MRIs reflected bulges and herniated
10 discs, do you have any injuries anywhere else?

11 A No.

12 Q How have your activities -- let's just talk about, in
13 your regular life, not work life, how have the activities in
14 your regular life changed since this accident?

15 A As far as riding my bike, I sold my bike. I don't ride
16 my bike anymore.

17 I used to go to the gym, work out. I haven't been to
18 the gym.

19 My skateboard, I gave it to my little cousin, and,
20 yeah, I don't do activities, like hard activities to push myself
21 anymore.

22 Q You sold your bike after the accident?

23 A Right.

24 Q Did you try riding your bike to just to see if you
25 could do it?

1 A I did, and I was in too much pain. It was pointless
2 for me to have it so I sold it.

3 Q Do you play basketball anymore?

4 A No. I used to look forward to playing basketball on
5 the weekends, after work and stuff, and it's too much strain on
6 my back. I don't play anymore.

7 Q And activities around the house, you said you live with
8 your father, correct?

9 A With my father, yeah. Doing certain chores puts me in
10 pain. Doing my laundry, I do less laundry. I don't do it. Let
11 it build up.

12 As far as food shopping, I eat out a lot now. I don't
13 really -- I used to like to cook, you know, I would buy food for
14 the whole week. Now, I buy it one day out of two weeks. The
15 rest of the time I'm just ordering breakfast, lunch and dinner.

16 Q You remember you had a deposition in this case, right?

17 A Yes.

18 Q Where you gave sworn testimony?

19 A Yeah.

20 Q And I asked some of the questions that I'm asking you
21 now, right?

22 A Right.

23 Q Did you talk about food shopping in your deposition?

24 A Yes, I did.

25 Q And why is it that you don't food shop as much or not

1 at all, you tell me?

2 A Because of the bags, the weight of the bags, carrying
3 -- after buying all that food, I would have to carry those bags.
4 I stopped doing that.

5 Q When you first had the injury, did you try to do some
6 of the -- you shopped for you and your dad?

7 A Right. I would cook for me and my dad, me and my
8 girlfriend. I tried to food shop and I couldn't lift all those
9 things. I had my father help me, and after a while, I stopped
10 ordering -- I stopped food shopping like that.

11 Q But you're not telling this jury that you can't go to
12 the grocery store and pick up a few things?

13 A No, I can go to the grocery store, I'll pick up meat or
14 something for the whole day, but as far as a week --

15 Q So you're not saying you can't carry little bags --

16 A Right.

17 Q -- you just can't --

18 A I consider food shopping, shopping for food for the
19 whole week, or preparing my dinner and lunch.

20 Q And tell us about how the activities and I don't mean
21 to be personal, but tell us about the activities -- you have a
22 girlfriend now?

23 A Yes, I do.

24 Q We see pictures of her on social media?

25 A Social media, yeah.

1 Q How is your relationship and your dynamic with your
2 girlfriend changed and the activities that you do?

3 A It's changed. I do go on vacations. I try to, you
4 know, live my life like a normal person.

5 Before my mom passed away, she went on a lot of
6 vacations so that's why I want to, you know, do the same thing
7 that she did. Go on vacations. That's what she'd want me to
8 do.

9 But, sure, she'd want to go do things as far as jumping
10 out of an airplane or something like that. I can't do things
11 like that. I do things with her, as far as riding a jet ski or
12 stuff like that, but nothing where I'm really straining my body
13 or lifting heavy things like that.

14 Q And you guys -- to go on these vacations, you go on a
15 plane, right?

16 A Right, yeah.

17 Q Do you do anything different while you're on the plane
18 or if you go for long rides?

19 A Yeah, I'd have to get up and stand up, if I'm sitting
20 there for such a long flight, two or three hour flight. I would
21 feel like my back would start looking up. Or I could have
22 another flight where I wouldn't have to get up.

23 Q Do you guys go to the movies and go out to dinner?

24 A Yeah, we still watch -- we watch movies together.

25 That's another way that affected me. I would have to get up,

1 stand up, pause the movie because I feel like my back is locking
2 up from sitting there so long and I would have to stretch myself
3 out.

4 Q I want to talk about the defense doctors now. Did
5 there come a time that you met with the defendant's doctors?

6 A Yes.

7 Q Can you tell us about those meetings?

8 A It was two doctors I met with over in Brooklyn, and it
9 was a two-minute doctor visit. I went in there and before I
10 knew it, I was out.

11 Q Well, when you say two minute, did you go to a waiting
12 room?

13 A I went to a waiting room -- in one office I waited for
14 a pretty long time.

15 Q What's a pretty long time?

16 A It was about a half an hour.

17 Q Okay.

18 A And when I went into the doctor's office, it was like
19 -- they checked me one, two, three, and that was it, I was out.

20 Q And when they checked you, what did they do?

21 A They checked my range of motion. They would see my
22 nerves and stuff like that, but it was -- it was quick.

23 Q And did you -- when you were doing the range of motion
24 with those doctors, did you express to them you were in pain,
25 not in pain --

1 A Yeah, I expressed. I told them I was in pain, here or
2 there, and it wasn't like a thorough doctor's visit.

3 MR. SCAHILL: Objection.

4 THE COURT: I'll allow it.

5 A I felt, at least.

6 Q And for both doctors, how long were you in with the
7 doctor?

8 A With the actual doctor?

9 Q Yeah. Tell us the whole time -- the first time --

10 A The first time, I was sitting in a waiting room and
11 when I went in, it was a quick visit. It was a quick visit the
12 second time too. I didn't just wait, that was the only
13 difference.

14 Q And did both doctors -- you mentioned -- both doctors
15 do range of motion tests?

16 A Right. They would make me lift my arms up, make me
17 lift my legs, try to bend over, move my head.

18 Q And if you recall, for those two doctors, were you
19 having -- if you recall, were you having a good day, bad day,
20 something in between, regular day?

21 A I couldn't say. I didn't recall. I don't remember
22 having any serious pain at the time.

23 Q But for both doctors you're saying not counting the
24 time that you were waiting, for both doctors you're saying how
25 much was the total time?

1 A It was five minutes, if that.

2 Q And you had mentioned this briefly, but I want to be
3 clear, there's stuff that you said that you still do with pain
4 and then there's stuff that you don't do anymore, right?

5 A Right.

6 Q The stuff that you don't do anymore, do you go to the
7 gym anymore?

8 A No.

9 Q Do you ride your bike anymore?

10 A No.

11 Q Do you play basketball anymore?

12 A No.

13 Q Do you do shopping and carry heavy groceries anymore?

14 A No.

15 Q Are there times when you have since the accident, where
16 you have done things that you thought you could do and as this
17 sort of progresses, that you realize you can no longer do that
18 you thought you could do?

19 A I'll do things and I know that they'll hurt my back but
20 I'll push myself to do it.

21 Q Why would you do that?

22 A So that way I could, you know, have fun with my
23 girlfriend or have fun with my friends. Not look like an old,
24 boring person and try to live my life like a normal person.

25 Q So there's times when you --

1 A There's times when I do it and afterwards, I'll feel
2 the consequence of doing it and then I'll stay in bed for two
3 hours, whatever it is, taking Tylenol, and not going out because
4 I just took four Tylenols and not drink and feel like I'm
5 missing out.

6 Q So is it fair to say that there are times that you
7 actually know that this could hurt your back and you do it
8 anyway?

9 A Right, yes. There's times that I know it will hurt my
10 back and I'll do it just so I can, you know, live my life.

11 Q And are there other times when you don't know it and
12 your back --

13 A Right, I won't be thinking about it. I'm young, so I'm
14 just trying to do what I have to do and then I'll feel the
15 consequence after.

16 Q We talked about your deposition before?

17 A Mm-hmm.

18 Q Nowhere in your deposition do you say that you couldn't
19 sometimes carry things, correct?

20 A No.

21 Q When I sit down, the defense is going to get up and ask
22 you a few things.

23 A Okay.

24 Q So I want to cover a few things.

25 As you're aware, pretty much the entire defense in this

1 case --

2 MR. SCAHILL: Objection, your Honor.

3 Q -- is social media?

4 MR. SCAHILL: Objection.

5 THE COURT: Rephrase your question.

6 Q Are you aware that in this case the defense has
7 pictures of you and your girlfriend and your friends on social
8 media?

9 A Yes.

10 Q Are you aware that some of the pictures on social media
11 show you doing certain things, correct?

12 A Yeah.

13 Q They show you, I would say, attempting to swim?

14 A Right.

15 Q They show you doing various things. I'm going to break
16 it down and ask you about those things. Okay?

17 A Okay.

18 Q Let me ask you this first: Why are you on social
19 media?

20 A Just for pleasure, for fun. It's just to see the news
21 and communicate with people.

22 Q Are you aware the defense has photos and videos that
23 they took from your social media, right?

24 A Yeah, yes.

25 Q There's a photo of you and I believe it's your

1 girlfriend on a jet ski?

2 A It's not a jet ski, it's a rhino. It was an excursion
3 off a cruise. It was kind of like a tour with ten other people
4 and you would have to, you know, keep your own -- keep in a
5 concern miles per hour. You can't make waves or go crazy with
6 them because they'll kick you off of it.

7 Q And tell us, you differentiated. I know what a jet
8 ski, you're calling it a rhino, what is that?

9 A A rhino is kind of like a boat, shaped like a jet ski.
10 It has a seat, but it's a steering wheel. They don't go as fast
11 as a jet ski.

12 Q Why?

13 A Because it was a tour guide, they wanted to keep you in
14 line and it was more for like a scenic thing. It wasn't for a
15 go crazy, fun thing like that.

16 Q So you're not wave riding or jumping off of waves,
17 right?

18 A No.

19 Q There's video of you -- I don't know that I'd call it,
20 not swimming, but floating, getting off what I believe is the
21 rhino?

22 A That's what the rhino is like. They drop you off ten
23 feet from the water, off the beach and you have to make your way
24 to the sand and that's where you hang out for a little, and they
25 made three stops like that.

1 Q And to get from the rhino to the beach, what do you
2 have to do?

3 A To get from the rhino to the beach?

4 Q Yeah.

5 A You have to drive it -- park it pretty close to shore
6 and make your way to shore.

7 Q And the video which we'll see later shows you on the
8 rhino and then I believe there's film of you getting into the
9 water, right?

10 A I'm kind of tumbling off because I didn't want to dive,
11 I didn't want to dive into the water, jump off the boat.

12 Q Why can't you dive?

13 A Because if I jump too fast or do anything too fast, I
14 would hurt myself.

15 Q So that we know you would hurt yourself?

16 A There's sometimes where I want to take the consequence
17 and sometimes I don't.

18 Q So at that time you didn't want to take the consequence
19 --

20 A Yeah.

21 Q And it's just a snippet, but then I assume you get to
22 the beach that way, right?

23 A Right.

24 Q I want you to tell us what's not in social media that
25 day. I want you to tell us about after that tour, I want you to

1 describe for us what happened to you and your body that night?

2 A Okay, yeah. After that day, I had -- we went back to
3 our cruise ship. I had tickets for dinner that we were supposed
4 to go. You buy the tickets because it's a nicer dinner. I
5 didn't go to the dinner. We were supposed to see an
6 interpretation of Michael Jackson. I kind of just laid up in
7 bed all day. I had my girlfriend get me food from the buffet.
8 My whole night was ruined pretty much from doing that.

9 Q So you cancelled both the dinner you paid for and the
10 show you're talking about?

11 A Yeah, I didn't go to either of them. I went to -- that
12 morning I did all of that stuff and it was killing my back
13 afterwards. I'm glad I did it, but put me in pain afterwards.

14 Q And you said something, I didn't quite get it, you sent
15 your girlfriend at the time to get you food --

16 A Yeah, to go get me food. It was a buffet, and we had
17 tickets to a nicer dinner. I had her instead when I was laying
18 in bed get me food.

19 Q About how old were you when that occurred?

20 A I'd say around 25.

21 Q So this is three years after the accident?

22 A Yeah. Yep.

23 Q If you could have done that tumble or dive over again,
24 would you still have done that?

25 MR. SCAHILL: Objection.

1 THE COURT: Sustained.

2 A Could you repeat it?

3 THE COURT: No. He'll ask a different question.

4 Q Do you regret what you did in the water that day?

5 A No.

6 MR. SCAHILL: Objection.

7 THE COURT: I'll allow it.

8 Q Why not?

9 A I regretted it after that day. But I don't regret the
10 fun that I had. I regretted it after I was laying in bed.

11 Q There's another picture, you know, in your deposition
12 you talked about not carrying bags and groceries, there's
13 another picture, there's a bunch of pictures, right, on social
14 media as you say, trying to live your life?

15 A Right.

16 Q There's one picture of I believe it's you and your
17 girlfriend pumpkin picking and you're carrying a pumpkin, right?

18 A I was carrying a pumpkin.

19 Q But in your deposition you said you don't shop and
20 carry heavy stuff?

21 A Right, that wasn't considered -- I wasn't looking at as
22 considered of holding shopping bags, five bags in this hand,
23 five bags in this hand. I kind of went to pick up the pumpkin,
24 I shouldn't have done it, but it was -- I've never pumpkin
25 picked, I've never jet skied. I wanted to experience all of

1 those things, knowing that my back would hurt after that.

2 Q In the social media, it looks -- I mean, you have -- in
3 the social media, you have an envious life, you go on what looks
4 like several vacations, right?

5 A Yeah.

6 Q And this is from the time of the accident, to how old
7 are you now?

8 A 27.

9 Q Why do you go on so many vacations?

10 A 'Cause that's what my mom would have wanted me to do.
11 That's what she did before she went, so that's why I do that.
12 Try to live my life.

13 Q And you typically bring your girlfriend with you when
14 you go on these vacations?

15 A Yeah.

16 Q And do you try to act like a normal 22, 23, 24, 25, 26
17 and 27 year old?

18 A I try to. As hard as I can.

19 Q Are you always successful?

20 A No.

21 Q As you sit here today, are you disabled?

22 MR. SCAHILL: Objection.

23 A No.

24 THE COURT: I'll allow it.

25 THE PLAINTIFF: Sorry.

1 Q Do you feel that you can't do things that you used to
2 do before the accident?

3 A Yes.

4 Q And is there things that you no longer -- that you did
5 before the accident that you now do with pain?

6 A Yes.

7 Q And are some of those things like swimming and picking
8 up a pumpkin and going on a rhino?

9 A Yes, definitely.

10 Q And do some of those things cause you pain in those
11 areas that the MRI showed you had herniated discs?

12 A Yes.

13 Q And how long does that pain afterwards typically last?

14 A It could last me from two hours to the rest of my whole
15 night, that I can't sleep. It will last me for a day or two,
16 and some days I'll do things and it won't hurt me at all.

17 MR. KOLP: Thank you, Steven. No more questions.

18 THE COURT: Mr. Scahill.

19 MR. SCAHILL: Thanks, Judge. Just need a moment to
20 set up.

21 THE COURT: We're going to take like a not even
22 five-minute break, so the officer will take you back into
23 the jury room and use the facilities.

24 THE COURT OFFICER: All rise.

25 (Jury exits.)

1 THE COURT OFFICER: All rise. Jury entering.

2 THE COURT: Okay. Please be seated, everyone.

3 Mr. Scahill, you can examine the witness.

4 MR. SCAHILL: Thank you, your Honor.

5 CROSS-EXAMINATION BY

6 MR. SCAHILL:

7 Q Good morning, Mr. Arcuik.

8 A Good morning.

9 Q Sir, you testified you were 22 at the time of the
10 accident?

11 A Yeah.

12 Q And your last treatment for the injuries that you claim
13 from this accident happened in 2014, the same year of the
14 accident?

15 A Yeah.

16 Q You treated for about six months and you stopped?

17 A Yeah.

18 Q And since 2014, over the last five years, you have not
19 had any treatment for the injuries that you claimed in this
20 accident, correct?

21 A Correct.

22 Q When you were deposed in this case, you gave a
23 deposition in 2017, three years after the accident, do you
24 remember giving that deposition?

25 A Yes.

1 Q And just like today when you testified before this
2 jury, you gave an oath to tell the truth, the whole truth and
3 nothing but the truth, correct?

4 A Correct.

5 Q Now, at that time, when you were deposed in 2017, you
6 were asked about your complaints about this accident, correct?

7 A Correct.

8 Q And you told under oath that you were complaining about
9 your back, your shoulders and your neck?

10 A Yes.

11 Q And you said that you had pain every day?

12 A Yes, almost every day.

13 Q You said you had pain in your back at least ten times a
14 day?

15 A Yes.

16 Q You also said that the pain was down your whole back,
17 from your neck, down, all the way to your back, at least ten
18 times a day, do you recall that testimony?

19 A Yes, correct.

20 Q And you also said it was sharp pain and it locks up and
21 it spazzes (sic), that was your word, right?

22 A Yes.

23 Q Do you remember all of that?

24 A Yes.

25 Q And all that testimony was true?

1 A Yes.

2 Q You talked about that you had pain in your shoulders to
3 the extent that you couldn't move your right or your left arm?

4 A Correct.

5 Q Do you remember giving that testimony?

6 A Yes.

7 Q All of that was true?

8 A Yes.

9 Q And that was three years after the accident?

10 A Yes.

11 Q And Mr. -- plaintiff's counsel was asking you, Peter
12 was asking you whether or not you would do food shopping, you
13 had a long discussion about food shopping?

14 A Correct.

15 Q Back in 2017, you said you never food shop, right?

16 A Right.

17 Q Because you couldn't pick up the bags?

18 A Right.

19 Q You also said you couldn't clean the house, right?

20 A Right.

21 Q Do you remember giving that testimony?

22 A Yes.

23 Q That's what you said under oath in 2017?

24 A Okay.

25 Q And you also said that you couldn't drive?

1 A I didn't say I couldn't drive --

2 Q For long periods of time, I think, correct?

3 A Correct. I would be in pain and I would have to --
4 right.

5 Q So we heard about Facebook and you heard about that you
6 post online activities about your daily life, you put up
7 pictures of yourself and your girlfriend and your friends
8 online?

9 A Yes.

10 Q I'm going to go through those social media pictures
11 with you.

12 A Okay.

13 Q So you just talked about trips, so since this accident,
14 you've been to Vegas with your buddies?

15 A Mm-hmm.

16 Q Yes?

17 A Yes, correct.

18 Q St. Martin with your girlfriend?

19 A Yes.

20 Q San Juan, Puerto Rico with your girlfriend?

21 A Yes.

22 Q Punta Cana?

23 A Yes.

24 Q The Yucatan Peninsula, Playa del Carmen.

25 A Yes.

1 Q And where is Happy Bay Beach in St. Martin?

2 A That was one of the trip stops that the tour made.

3 Q I'm going to show you some of these photographs that
4 you posted online and tell me if this was a fair and accurate
5 depiction of your physical condition at the time the photos were
6 taken.

7 Can you see that, Mr. Arcuik?

8 A Yeah.

9 Q Is that you and your girlfriend in Punta Cana?

10 A Yes.

11 Q And when was that?

12 A When we went to Punta Cana, it was around a year ago.

13 Q This is another photo that you have online?

14 A Yeah.

15 Q Is this also Punta Cana or this is another trip?

16 A That was with the Rhinos, I think that was in St.
17 Martin.

18 Q And this is a fair and accurate condition of your
19 physical condition? You didn't take that photo, right, someone
20 else took it?

21 A Right.

22 Q What about this photo, are you -- are you in this
23 picture?

24 A Yes, I am.

25 Q You're in the back there with your tongue sticking out,

1 is that you?

2 A Yeah.

3 Q Is this with your buddies on your birthday?

4 A Yes.

5 Q Was this a fair and accurate depiction of your physical
6 condition at the time?

7 A Yes.

8 Q How about this photo, you talked about this a little
9 bit with Mr. Kolp. This was the pumpkin picking that you went
10 to?

11 A Yes.

12 Q You testified that you never shopped because you can't
13 pick up the bags. Did you have any difficulty walking with the
14 pumpkin?

15 A Yes, I did.

16 Q And that caused you pain you said?

17 A Yeah.

18 Q I'm going to show you a few more pictures that you have
19 online. How about picking up the pumpkin like that, did that
20 cause you pain?

21 A That caused me pain, yes. Afterwards, after pumpkin
22 picking.

23 Q I understand. And at the time this photo was taken,
24 you were not in pain, right?

25 A No.

1 Q How about this photo, this is Tobay Beach, is that on
2 Long Island?

3 A Yes.

4 Q You know when this was taken?

5 A The exact date, I'm not sure.

6 Q It says May of 2017?

7 A Oh, okay.

8 Q I'm sorry. July of 2017. July 3rd, actually?

9 A Two years ago.

10 Q Two weeks later you gave a deposition in court and
11 swore under oath that you had constant pain ten times a day,
12 that your back spazzes up and locks, that you had difficulty
13 reaching your arms and your shoulders and you had pain every
14 day.

15 Two weeks before, you were able to go to Tobay Beach;
16 is that correct?

17 MR. KOLP: Just objection as to reaching his arms
18 and shoulders. I'm not sure where that is --

19 THE COURT: Rephrase.

20 Q I believe your exact testimony was you had sharp pain
21 in your neck, pain in your shoulders every day, I can't move my
22 right and left arm?

23 A Right.

24 Q Did you say that two weeks later?

25 A Right, it wasn't all day. It was most of the day, ten

1 times a day that I had pain in my body.

2 Q Let me show you a few more of these photographs that
3 you posted online. Do you know where this photograph was taken?

4 A That was Maryland.

5 Q That was where?

6 A Maryland.

7 Q At a water park in Maryland?

8 A No, it was a bar that has seating like that.

9 Q The bar has seating out in the water?

10 A Yeah.

11 Q So you have to get on one of these rafts and go out --

12 A No, it's all shallow water. It's up to below your
13 knees. You just walk to one of the rafts and sit down.

14 Q And when was this taken, it says May of 2017, May 28th?

15 A Right.

16 Q Does that refresh your memory about when that was
17 taken?

18 A Right, yes.

19 Q And is that the same period of time that you were
20 having pain ten times a day?

21 A Yes.

22 Q This is another photograph, Happy Bay, where is Happy
23 Bay?

24 A That was one of the trips that the stop made -- that
25 the tour made a stop at.

1 Q Oh, you took a cruise?

2 A Right.

3 Q And this is May of '17?

4 A Yes.

5 Q Is this during the same period that you were having
6 pain ten times a day?

7 A Yeah.

8 Q How about -- this is the same place, Happy Bay, this is
9 the same period of time that you were having pain ten times a
10 day?

11 A Yes.

12 Q And this is with you -- you called it a rhino?

13 A Right.

14 Q Is that right?

15 A Correct.

16 Q This is the same trip?

17 A Yeah.

18 Q How about this -- this is a different trip, San Juan,
19 Puerto Rico?

20 A They were all the same trip. They were just stops on
21 the cruise that we did.

22 Q So this is you in front of the cruise ship?

23 A Right.

24 Q And this is the same period of time that you're having
25 that pain that you talked about earlier?

- 1 A Yes.
- 2 Q This is the same trip?
- 3 A Yes.
- 4 Q Same level of pain, ten times a day?
- 5 A Yeah.
- 6 Q What about this picture with your buddies?
- 7 A That was --
- 8 Q This is a different trip?
- 9 A That was for a bachelor party.
- 10 Q You went to Vegas; is that right?
- 11 A That's right.
- 12 Q Did you tell your buddies that you were having pains
13 ten times a day and you needed to lay down for two hours after
14 any strenuous activities?
- 15 A Yeah, I did.
- 16 Q You told them that on the Vegas trip?
- 17 A Yes.
- 18 Q A few more of these photographs that I want to show
19 you.
- 20 This is from the same trip, the Punta Cana trip?
- 21 A Yes.
- 22 Q There's a nice note on this photograph, was this on
23 your birthday?
- 24 A Yeah.
- 25 Q What birthday was that?

1 A It was my past birthday in February.

2 Q This was your past birthday?

3 A Yeah.

4 Q There's a nice note there. Is that from your
5 girlfriend?

6 "Thank you to my thrill-seeking, domino-playing
7 partner, always look better than me in portrait mode."

8 Is that a note from your girlfriend?

9 A Yes.

10 Q That's a nice note.

11 This is another, Playa del Carmen. This is a different
12 trip that you made to the Yucatan Peninsula?

13 A No, that was in Mexico, that was in the resort.

14 Q Is that the same cruise --

15 A No, not the same cruise.

16 Q This is a different trip?

17 A Yeah.

18 Q Is this the trip to Mexico or somewhere else?

19 A That's Mexico.

20 Q Also Mexico?

21 A That was Mexico, yeah.

22 Q And you did a tour with the backpack, you didn't tell
23 the tour guide that you had pain ten times a day and you
24 couldn't --

25 A I held the backpack for a little, but my girlfriend

1 held the backpack for most of the tour ride. And that --

2 THE COURT: Wait for a question.

3 THE PLAINTIFF: Okay. Sorry.

4 Q This also the same trip, this is in Mexico?

5 A Yeah.

6 Q Also Mexico?

7 A Yes.

8 Q This looks like Coney Island to me --

9 A It is.

10 Q That's a different time?

11 A Right.

12 Q That's you laying down, your girlfriend taking a
13 selfie?

14 A Yes.

15 Q When was this taken, do you know?

16 A Last year.

17 Q Is this during the period you had pain ten times a day?

18 A Yes.

19 Q This picture at the Yankee game, this is Yankee
20 Stadium, I presume, right?

21 A Yes.

22 Q When was that, do you know?

23 A I can't remember. I want to say last year.

24 Q This is the body that you're talking about?

25 A Yeah.

1 Q I wanted to show you, also, that movie that you posted.
2 If we can take a look at that, briefly.

3 That's you?

4 A Yes.

5 Q I just want to replay that quickly. And tell me that
6 this is the same period that you were having pain ten times a
7 day and your shoulders were locking up.

8 Is that the same period of time that that was happening
9 to you?

10 A Yes.

11 Q You are aware, Mr. Arcuik, that your online presence is
12 not compatible with what your testimony is, the photos and the
13 video, everything you put online show that you're living a
14 normal life, with a nice family, nice friends, doing all the
15 things that you want to do with absolutely no restrictions, you
16 are aware of that?

17 A I'm doing them with having consequences of pain.

18 Q Doesn't show that online. I'll let the jurors make
19 that decision themselves.

20 Is it fair to say that you're exaggerating now the
21 extent of the injury that you're complaining about?

22 A No.

23 Q Are you exaggerating your restrictions on your
24 activities?

25 A No.

1 Q How many trips have you made since this accident, out
2 of the country?

3 A I want to say around four.

4 Q The cruise was one?

5 A Cruise, Mexico.

6 Q Puerto Rico. Where is the other one?

7 A Dominican Republic.

8 Q When did you do that?

9 A I think it might have been three years ago, two, three
10 years ago.

11 Q Right after the accident?

12 A It was after the accident.

13 Q Also with your girlfriend?

14 A Yeah.

15 Q Let's go back to the accident itself.

16 I want to show you some pictures of your car.

17 This is the damage to your car after the accident?

18 A Yes.

19 Q And that's on the passenger's side of the vehicle in
20 the rear?

21 A Correct.

22 Q And that was the heaviest damage to the car, right?

23 A Right.

24 Q These are other photos. Now, this is the driver's
25 side. This is on your side of the vehicle. That's the damage

1 to your car?

2 A Right.

3 Q That's the front of your car, I presume. And this is
4 the driver's side on your side, right?

5 A Yes.

6 Q Now, you're not claiming any medical expenses in this
7 case, right, all your medical expenses were paid?

8 A Yes.

9 Q You're not claiming any lost wages, all your lost wages
10 were paid, correct?

11 A Correct.

12 Q You're not claiming any damage to the car, the car was
13 paid as well?

14 A Correct.

15 Q So this whole lawsuit is about your pain and suffering?

16 A Right.

17 Q Is that right?

18 A Correct.

19 Q You're asking to be compensated for your pain and
20 suffering for the injuries you sustained in the accident?

21 A Correct.

22 Q So in terms of the injuries that you sustained in this
23 accident, an ambulance came to the scene?

24 A Right.

25 Q And the ambulance driver spoke to you, correct?

1 A No --

2 Q The police spoke to you, you said?

3 A Right.

4 Q They asked you if you wanted an ambulance and you told
5 them no?

6 A Right.

7 Q You took the train home with your buddy, Mr. Restrippo,
8 right?

9 A Correct.

10 Q So this is at 4:00 in the morning, you probably got
11 back to Queens at 5:00 or 6:00 in the morning?

12 A Correct.

13 Q Is that right?

14 A Yes.

15 Q And you went to bed, you got up later that day, the
16 accident happened at 3:45 in the morning, right?

17 A Right.

18 Q And you and your buddies had been driving around
19 Manhattan for about an hour and three quarters at that point,
20 right?

21 A Yeah.

22 Q So when you're driving that night, right before this
23 accident, you're on Park Row, Pace University is to your right,
24 the Brooklyn Bridge is your left, right?

25 A Correct.

1 Q And you're going slow; is that fair to say?

2 A Correct.

3 Q In fact, you testified that you were going at five to
4 ten miles per hour at impact?

5 A Correct.

6 Q And the cab was making a U turn --

7 A Right.

8 Q Is that also fair to say?

9 A Yes.

10 Q So you're going slow and the cab is making a U turn
11 when this impact occurred and you had your seatbelt on, correct?

12 A Correct.

13 Q Did your seatbelt restrain you?

14 A It pulled me back, but my body shifted.

15 Q Okay. So the seatbelt did what it was supposed to do,
16 pulled you back, and you said your body shifted?

17 A Right.

18 Q How did your body shift in the seat? Did you strike
19 anything inside the car?

20 A My door, my driver's door and the middle console.

21 Q Well, what hit the driver's door?

22 A My left side of my body.

23 Q So --

24 A Slammed --

25 Q So even though your seatbelt held you back, your body

1 hit the left side of the door of the car?

2 A Yes.

3 Q And then you said you hit the center console, with
4 what?

5 A With my lower back.

6 Q With your lower back?

7 A Right.

8 Q So you shifted back and forth in the seat even though
9 the seatbelt was restraining you, is that your testimony?

10 A The impact of the cab that hit me --

11 Q How long after the accident did you experience this
12 pain?

13 A The next morning.

14 Q And would you characterize it as a tightness, as a
15 soreness?

16 A It was a tightness, a locking, like a locking feelness
17 (sic).

18 Q Now, you said you took two days off from work, correct?

19 A Correct.

20 Q And you also went to the hospital. At the hospital,
21 you were examined and released; is that fair to say?

22 A Correct.

23 Q I just wanted to show you a piece of the hospital
24 record and tell me if you recall. When you were at the
25 hospital, there's a notation that there's a final diagnosis

1 lumbar sprain -- chief complaint of shoulder pain, chief
2 complaint of back pain, chief complaint of neck pain and the
3 diagnosis was lumbar strain and whiplash. Were you told that by
4 the staff?

5 A That I had sprains in my back?

6 Q Sprains?

7 A Correct.

8 Q And were you also given an examination where a doctor
9 examined your musculoskeletal system?

10 A Yes.

11 Q And after that evaluation, well, during that
12 evaluation, you talked about it earlier, that you had full range
13 of motion, that's what's noted in the record, that you had full
14 range of motion.

15 This is the history that they have listed: "Patient is
16 a 22-year-old male. Patient was a driver of a Hyundai Sonata
17 when his car was hit on the driver's side at 4:00 a.m.
18 yesterday. He has pain in the neck and back. He said he feels
19 tense. He was wearing a seatbelt."

20 Is that an accurate --

21 A Yes.

22 Q -- rendition of what was said at the hospital, what you
23 said?

24 A Yeah.

25 Q "The extremities, the musculoskeletal, says full range

1 of motion, head, neck, musculoskeletal, nontender, full range of
2 motion to the back, no spinal tenderness, bilateral, paraspinal
3 lumbar lower tenderness, full range of motion with pain."

4 Is that an accurate rendition of your physical
5 condition when you were at the hospital?

6 A I had pain in my back at the hospital.

7 Q Now, this work that you did at the DEP, when did you
8 leave that job?

9 A It might have been 2000 -- two years ago, so 2000 --

10 Q You left it for a better job with Transit?

11 A Yeah.

12 Q And your title is a plumber for Transit?

13 A It's not a plumber. It's maintenance. We're all
14 maintenance workers.

15 Q How long were you at the DEP?

16 A Two years.

17 Q And during that time you were a good worker?

18 A Yeah.

19 Q You got raises?

20 A No -- you don't get raises -- nobody gets raises.

21 Q You were respected by your supervisors and the people
22 that you work with?

23 A Yes.

24 Q You had no problems at work?

25 A No.

1 Q You did your job well?

2 A Yeah.

3 Q You were considered a good worker?

4 A Yes.

5 Q Same thing at the Transit Authority?

6 A Yeah.

7 Q You're considered a good worker?

8 A Yes.

9 Q You've gotten raises since you've gotten in Transit,
10 right?

11 A Yeah, it comes with the job.

12 Q But your reviews, you get reviews, nobody's saying
13 you're slacking at work or sleeping in the --

14 A I have co-workers that tell me you're 20-something
15 years old, why can't you lift this or why can't you do that.

16 Q But you're getting raises and good reviews from your
17 bosses --

18 A It's not a raise from my boss. It's a set wage from
19 the job. It's not for my performance.

20 Q So you're saying your performance is poor?

21 A No. I'm saying I try my best. I do my best at work.

22 Q What about Yellowstone Medical, the treatment that you
23 had for that period of time. You were referred there by
24 Restrippo?

25 A Yes.

1 Q And the treatment that you had for six months, the
2 acupuncture, the massage, the physical therapy, is it your
3 testimony that that did nothing to improve your condition?

4 A Correct.

5 Q And how about today, is the pain that you have today at
6 the same level that you had five years ago when you were
7 undergoing treatment?

8 A Yes.

9 Q So for the last five years you've had this significant
10 pain but you haven't gone to any medical professional at all,
11 you never went to an orthopedist, you never went to another
12 chiropractor, you never went for another MRI, you did nothing in
13 the last five years even though you're telling this jury that
14 you have constant pain in your neck and your back. Is that your
15 testimony?

16 A Right. I've tried the therapy, when I was trying it
17 for the six months and it wasn't working --

18 Q But that was five years ago, Mr. Arcuik?

19 A Right.

20 Q You have benefits with your job, right?

21 A Right.

22 Q You can go to any doctor that you want, you can go to
23 any hospital that you want. You have union benefits, you can go
24 to the best hospitals in New York. Yet, you've gone nowhere?

25 A They were going to do the same thing that they were

1 doing for me there.

2 Q You're sure of that?

3 A I mean, that's what they did for me there.

4 Q But that was five years ago, sir?

5 A Right.

6 Q And during this time, you've been working the entire
7 time?

8 A Yes.

9 MR. SCAHILL: Nothing further.

10 Thank you, your Honor.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION BY

13 MR. KOLP:

14 Q What did Dr. McGee tell you about continuing treatment,
15 did he say just keep continuing for several years?

16 MR. SCAHILL: Objection to what the doctor told
17 him.

18 THE COURT: Rephrase.

19 Q Did Dr. McGee ever tell you anything about continuing
20 treatment after the six months?

21 A He recommended me to continue, but it was totally up to
22 me so I stopped going because it wasn't progressing. It was
23 like wasting time almost.

24 Q And did Dr. McGee said -- say to you anything about,
25 well, if you don't do that, here are the 15 options that you

1 have to cure this herniated disc?

2 A No. He told me if you don't do that, you should avoid
3 doing this and avoid doing that as opposed to him saying you
4 should go get surgery or something like that.

5 Q So your options were continue physical therapy forever
6 --

7 A Right.

8 Q -- get injections to relieve temporary pain or do what
9 you've decided to do now which is take Tylenol --

10 A Take Tylenol, lay down, relax.

11 Q Did Dr. McGee ever tell you that there's a cure all to
12 herniated discs or something you can do to cure a herniated
13 disc?

14 A No.

15 MR. SCAHILL: Objection to what the doctor keeps
16 telling you.

17 THE COURT: I'll allow it.

18 Q There was a lot of discussion about ten times, ten
19 times, ten times. It's been five years since. Every day in
20 those five years, is it always ten times, is it sometimes one
21 time a day it hurts, is it two times a day it hurts, do you keep
22 track on a journal and say it's ten times exactly for the last
23 five years?

24 A No, I don't keep a journal saying I have ten times a
25 day. I'll have pain ten times a day, 15, and sometimes it will

1 be two times a day on a good day.

2 Q You know now after dealing with this for five years
3 what causes pain and what doesn't cause pain, correct?

4 A Right, correct.

5 Q Does basketball cause you pain anymore?

6 A Yes.

7 Q Do you still play basketball?

8 A No.

9 Q Do you bike after this accident?

10 A No.

11 Q The pictures in social media of you standing in the
12 water, is that just after a nice long swim that you had or are
13 you just doing that for a picture on social media?

14 A No, that was just a picture for social media. That
15 wasn't for a swim or anything.

16 Q When you went to the hospital and they checked you,
17 right, did they send you for an MRI then?

18 A No.

19 Q Did they send you for X-rays at that time?

20 A No.

21 Q So did they know at that time that you had five
22 herniated discs?

23 MR. SCAHILL: Objection.

24 THE COURT: Sustained.

25 Q Did you know that you had five herniated discs at the

1 time you went to the hospital that day?

2 A No.

3 Q Did any of the doctors say to you we've looked at the
4 MRI and we see that you have five herniated discs?

5 A After the MRIs, yes.

6 Q But no time before?

7 A No.

8 Q When you were asked about this full range of motion at
9 the hospital, right?

10 A Right.

11 Q You're not telling this jury that you're so disabled
12 that you can never bend over, stand up straight, are you?

13 A No.

14 Q You're not telling this jury that you're unable to some
15 days have a full range of motion, are you?

16 A No.

17 Q Mr. Scahill went into all these trips that you did,
18 right?

19 A Right.

20 Q And he also talked about your deposition. Any time in
21 your deposition, did you say that you can't stand in the water
22 and take a picture?

23 A No.

24 Q Any time in your deposition did you say that you
25 couldn't ride on top of a rhino?

1 A No.

2 Q Of all those pictures that you saw --

3 A Right.

4 Q -- do you recall some of those days?

5 A Yes.

6 Q And the days where you did some of the physical
7 activity --

8 A Right.

9 Q -- what were your nights like?

10 A I felt the consequence afterwards, after pushing myself
11 during the day.

12 Q So what did you do?

13 A I would take Tylenol after, or if I wasn't taking
14 Tylenol, the rhino, that night I missed the dinner, I missed the
15 show I wanted to go to. I was in bed all night.

16 Q The photo of you on the rhino, I want to ask you --
17 it's actually video?

18 A Correct.

19 Q You were wearing your life jacket, I guess you got off,
20 your girlfriend is taking the video?

21 A Yeah.

22 Q Why didn't you just dive into the water, you do this
23 sort of awkward roll?

24 A I never really -- I'm not a big swimmer. I don't swim
25 all the time. I don't dive. I didn't feel like I could have

1 dived, that's why I did get out of the water like that.

2 Q Why don't you feel like you could dive?

3 A I didn't want to hurt myself at the time, jumping like
4 that.

5 Q And we see towards the end of the video, you're turned
6 around and you're going like this on your back, do you know how
7 to swim?

8 A I know how to swim, yeah, I'm not the best swimmer.

9 Q So why didn't you swim in that video?

10 A I just wanted to kind of get out of the water. I'm not
11 the best swimmer.

12 Q The ten times that you talk about a day, is it always a
13 sharp pain, you talked about spazzes, sharp pain, is it always
14 the same?

15 A It's not always the same, no. It could be maybe if I
16 get up too fast, my body will feel like it locks up, like as far
17 as my back and I will have to straighten myself out. It could
18 be like a pulsing feeling or a spasm feeling where it feels like
19 my muscles are spazzing in my back.

20 Q You were asked about a bunch of photos where it looks
21 like you're either in the water or holding hands with your
22 girlfriend in the water or standing there behind rocks. Do
23 those pictures, either before or after them, do they involve
24 swimming, or you know, were you going out -- it looks like
25 you're headed out to the water, are you going out to go for a

1 swim in those pictures?

2 A No, just to get my feet wet.

3 Q Before or after those pictures, other than the video
4 where you're floating afterwards, are you swimming before or
5 after them?

6 A No.

7 Q Mr. Scahill made -- pointed out that in February 2019,
8 he said oh, that's a nice note, that your girlfriend said you're
9 a thrill seeking, domino-playing --

10 A Yeah.

11 Q You're a domino player?

12 A I started playing dominos after the accident. Just an
13 activity I could sit down and play with my friends.

14 Q You were asked about a backpack and we can't really
15 tell because you're facing towards us. What's in that backpack?

16 A Backpack, I had sunscreen and bug spray in there.

17 Q Anything else?

18 A No.

19 Q About how much is that bug spray and sunscreen?

20 A A pound or two.

21 Q You were asked about how your body moved when you were
22 hit, right?

23 A Right, correct.

24 Q You remember that?

25 A Yeah.

1 Q And you said -- the first hit put you into the door,
2 correct?

3 A Correct.

4 Q And the second hit, you went the other way to the
5 right, correct?

6 A Correct.

7 Q Did your seatbelt, which was on top of you here, did
8 that restrain you from going left or right?

9 A No.

10 Q How come you didn't take the ambulance that night?

11 A I was too much in shock to I guess feel any pain in my
12 body.

13 Q And you took the train home, correct?

14 A Right.

15 Q Did you want to get home to your dad and tell him that
16 you were okay in this car accident?

17 A Yes.

18 Q Why was that important?

19 A Considering the month that I had before that.

20 Q You were asked about your bosses. Do your bosses
21 typically see what you're doing from day to day?

22 A No.

23 Q But you typically have the same partner?

24 A It switches off. Right now my job is there's six of
25 us, so one day I'll be with this guy, one day I'll be with that

1 guy.

2 Q And during the course of the week, are there times that
3 you have to ask your partner -- you mentioned a comment, you're
4 20-something years old, why can't you do this. Tell us about
5 scenarios --

6 A As far as we have something to unload or offload on a
7 truck, you know, as far as a tool that we have to bring in,
8 maybe using the drill, I would have to ask him, you know, it's
9 on the ceiling, can you do it for me. And I'll tell my other
10 partner, I'll do something else.

11 Q Both partners know you've been in an accident?

12 A Yeah.

13 Q Both partners know that you've damaged your back
14 permanently?

15 MR. SCAHILL: Objection.

16 THE COURT: Sustained.

17 Q Have you told your partners about the damage to your
18 back?

19 MR. SCAHILL: Objection.

20 THE COURT: I'll allow it.

21 A Yes.

22 Q And why did you tell them?

23 A 'Cause I wanted -- I didn't want them to think that I
24 couldn't do it.

25 MR. KOLP: No more questions.

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MR. SCAHILL: Nothing further, your Honor.

THE COURT: You can step down, sir. Thank you.

(Witness exits.)

C E R T I F I C A T I O N

I hereby certify that the foregoing is a true and accurate copy of the stenographic proceedings of the hearing held in the above matter.

NAOMI SCHWARTZ, RPR
Senior Court Reporter