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(Whereupon, other proceedings were held in
open Court, not herein transcribed.)

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4

P E T E R L E O V A R R I A L E, Witness, called

5

on behalf of Defendant, having first been

6

duly sworn or affirmed, took the witness stand

7

and testified as follows:

8

THE COURT CLERK: Have a seat, Doctor.

9

In a loud and clear voice, please state

10

your full name spell your last name and your

11

business address.

12

THE WITNESS: Peter Varriale,

13

V-A-R-R-I-A-L-E, 601 Franklin Avenue,

14

Garden City, New York, 11530.

15

THE COURT CLERK: Thank you.

16

THE WITNESS: You're welcome.

17

DIRECT EXAMINATION

18

BY MR. STEWART:

19

THE COURT: Whenever you're ready,

20

Counsel.

21

MR. STEWART: Thank you, Your Honor.

22

Q Good afternoon, Doctor.

23

A Good afternoon.

24

Q Doctor, are you licensed to practice

25

medicine?

26

A Yes.

1

2 Q In what state?

3 A New York.

4 Q And could you please give to the Court
5 and the Members of the Jury your education and
6 training and qualifications from college on?

7 A Sure. I graduated in 1974 from
8 Hofstra University in Hempstead New York. Then I went
9 to the State University of New York at Downstate
10 Medical Center, in Brooklyn where I graduated in 1979
11 with an MD degree. Then I did an internship in
12 general surgery, at Nassau County Medical Center in
13 East Meadow, New York, for one year and then I did a
14 four-year orthopedic residency at Monte Fiore and
15 Einstein Hospitals in the Bronx for four years. And
16 then after that, I've been in private practice ever
17 since, essentially in Garden City.

18 Q And do you have any specialty?

19 A Orthopedic surgery.

20 Q Are you affiliated with any hospitals?

21 A Mercy Medical Center, in
22 Rockville Center, New York.

23 Q And do you have board certification?

24 A Yes.

25 Q And what specialty?

26 A Orthopedic surgery.

1

2 Q Can you explain what board certification
3 is?

4 A Yes. You have to do your one year of
5 internship in general surgery, your four years of
6 orthopedic training, and then you have to be approved
7 by your director of orthopedics for board
8 certification. And then you have to practice for one
9 or two years and then take oral and written
10 examinations, and you have to pass that examination.
11 And then every ten years you have to continue to take
12 an examination to be re-certified.

13 Q And do you, at the current time treat
14 patients on a regular basis?

15 A Yes.

16 Q And do you perform surgery?

17 A Yes.

18 Q How often on a regular basis do you
19 perform surgery?

20 A Every week. Usually about six to
21 eight cases a week or so.

22 Q And what types of surgery do you perform?

23 A I do general orthopedics, I do
24 arthroscopic surgery of knees, shoulders, rotator
25 cuffs, torn ligaments, repairs. I treat a fair amount
26 of fractures; hip, leg, wrist fractures.

1

2 I see --essentially I do a general
3 orthopedic surgery grouping of cases.

4

Q And have you testified in Court before?

5

A Yes.

6

Q About how often do you generally testify

7

in Court during the course of the year?

8

A About two to three times a year.

9

Q Is that generally on behalf of plaintiffs

10

or defendants?

11

A Usually on behalf of defendants, but, my

12

last case was a plaintiff.

13

Q And have you been qualified on prior

14

occasions as an expert witness?

15

A Yes.

16

MR. STEWART: Your Honor, at this time

17

I would offer the Doctor as an expert witness.

18

THE COURT: Any objection?

19

MR. MADONNA: No objection, Judge.

20

THE COURT: All right, he's deemed an

21

expert.

22

Q Now, Doctor, in connection with this

23

case, did there come a time that my office asked you

24

to perform an examination on a plaintiff in this

25

matter, Francisco Santaella?

26

A Yes.

1

2 Q And when did that examination take place?

3 A March 23, 2009.

4 Q And did you prepare a report for us of
5 that examination?

6 A Yes.

7 Q And were you compensated for preparing
8 that report and doing that examination?

9 A Yes.

10 Q How much were you paid for doing that?

11 A I'm not exactly sure how much.

12 Q Do you have a general idea?

13 A It ranges. I get paid for independent
14 examinations anywhere from \$150 to \$600. Generally
15 from an attorney it's a little higher.

16 Q And did you meet with me, today, before
17 you testified?

18 A Yes.

19 Q And are you being paid also to be here,
20 today on behalf of my office?

21 A Yes.

22 Q And how much are you being paid to be
23 here?

24 A \$8,000.

25 Q Now, you met with Mr. Santaella on what
26 date?

1

2 A March 23, 2009.

3 Q Where did that examination take place?

4 A I'm not sure exactly where -- let me see,
5 it was in New York city, my New York city office.6 Q Doctor, if you need to look at your chart
7 or look at your notes or records at any point to
8 refresh your recollection go ahead and do so.

9 A Sure.

10 Q Do you know about how long that
11 examination and that meeting with the Plaintiff took?12 A Well, with my -- I have an assistant who
13 takes a history and I do the --I go over the history
14 and do a physical examination.15 I guess the total time is about
16 thirty minutes or so.17 Q And did you take a history from
18 Mr. Santaella in this case?

19 A Yes.

20 Q And what did you determine from the
21 history that you took?22 A That he had a work related injury on
23 July 26th, of '07, where he fell from a ladder and he
24 sustained injuries to both wrists, his right shoulder,
25 and right collar bone.

26 Q And in connection with this examination

1

2 did you also review a series of medical records?

3 A Yes.

4 Q And generally, what did that consist of?

5 A Essentially reading records from the
6 hospital and emergency room, reading doctors' reports,
7 reading x-ray reports, CAT scans and actually you
8 review the actual films of x-rays of the wrist,
9 pelvis, head, spine.

10 Q And then at some point did you perform a
11 physical examination of Mr. Santaella?

12 A Yes.

13 Q And what did that consist of?

14 A A physical examination is --essentially
15 what you do, is you do visualization. You look with
16 your eyes to see things, you palpate, in other words,
17 use your hands to feel things. You examine strength,
18 you test the muscles for power, you move joints to see
19 how the joints are moving, you know, if they have
20 restricted motion, or normal motion.

21 That's essentially what a physical
22 examination is, I mean there's a few more details.

23 Q As part of this -- we'll go through
24 these -- you examine the areas that he had injured in
25 this accident?

26 A Yes.

1

2 Q Did you do an examination of his right
3 shoulder?

4 A Yes.

5 Q And what did that consist of and what
6 were your findings?

7 A He had healed portals -- what we call
8 them -- about the shoulder. Portals are little holes,
9 usually about little bit more than a quarter of an
10 inch or so in which you make around the joint in which
11 to put instruments when you do what's called a
12 shoulder arthroscopy, which means putting an
13 instrument in the shoulder through small holes and
14 you're actually looking inside the shoulder with a
15 camera and you actually can do the surgery on a
16 monitor. And you use-- you go the other holes because
17 usually there's two or three holes, you use the other
18 holes to put instruments to feel things and to do
19 surgery inside the shoulder.

20 So he had healed arthroscopy portals we
21 call them, they were healed. And as far as the rest
22 of the examination, we test for what's called
23 abduction of the shoulder.

24 Abduction is when your arm is out to the
25 side and you lift it all the way up like that. And
26 that's 180 degrees. That's 90 degrees. And he had

1
2 about 160 degrees, which is about there.

3 We tested for what's called external and
4 internal rotation. What that is --

5 THE WITNESS: Can I stand a second?

6 THE COURT: Yes.

7 A With the elbow down like this, you take
8 the hand and you move it outwards. That's external
9 rotation of the shoulder and it's about normally
10 80 degrees or so, and that was normal for him.

11 And internal rotation of the shoulder is
12 doing that. And again that's about 80 to 90 degrees
13 which is normal. And he was normal.

14 There was good strength, when I tested
15 his muscles internal and external rotation. Also what
16 you do is you examine the shoulder for instability, in
17 other words, you examine the shoulder to see if the
18 ball and socket of the shoulder is unstable, whether
19 the ball wants to come here, because in here is a ball
20 and socket. So we do certain maneuvers to test to see
21 if the ball has a tendency to want to pop out.

22 There are certain maneuvers you do in a
23 physical examination to determine that, and there was
24 no signs that he was unstable.

25 He had also no signs of biceps
26 tendonitis. The biceps is this muscle here in the

1
2 front. Well, it comes up and forms a tendon right
3 here which frequently can be a problem in a shoulder.
4 So you palpate specifically the biceps tendon which is
5 here in the front. And he had no tenderness over his
6 biceps tendon.

7 Also I tested his biceps and triceps for
8 strength and power and that was normal.

9 Q Did you then perform an examination of
10 his right wrist?

11 A Yes. He had scars on the palm side of
12 his wrist, one in this area which was for the carpal
13 tunnel and one in this area which was to put a plate
14 and screws to fix his broken bone in his wrist. He
15 also had a small scar about that little bone on the
16 side, there, in which they removed a small portion of
17 bone from his wrist.

18 When I examined the motion of the wrist,
19 this is called dorsiflexion going from here to here.
20 And normal dorsiflexion is about 80 degrees. This is
21 zero, this is 80 degrees. He had about 20 degrees of
22 dorsiflexion. So he went from zero to about 20 at
23 this, and volar flexion coming from here is about 80
24 degrees and he came to 30 or so. So he did have
25 restricted range of motion in bringing the wrist up
26 and bringing the wrist down from his fracture that he

1
2 had in his wrist.

3 On testing strength of grip, in other
4 words squeezing - I asked him to squeeze my finger, I
5 ask to squeeze as hard as he can, he had a very good
6 grip on squeezing.

7 When I palpated his wrist and asked him
8 if it hurt he says he did have pain when I pressed on
9 his wrist.

10 And as far as testing for sensation, in
11 other words, I asked him if, you know, if there's any
12 numbness in his hand, and on the top of the hand
13 around in this area there was a little bit of numbness
14 on the top of his hand.

15 Q And did you then perform an examination
16 of his left wrist?

17 A Yes, the left wrist exam was totally
18 normal. He had normal dorsiflexion, volar flexion
19 grip sensation and there was no tenderness or
20 swelling.

21 Q And how about his right hand middle
22 finger?

23 A The middle finger of his right hand,
24 there are three joints of the middle finger. This
25 joint right here, the last one is called the
26 DIP joint, the middle one here, this one is called the

1

2 PIP joint and the big knuckle here is called the
3 MCP joint. So, he had a fracture, he had an injury
4 around the PIP joint.

5 There were some records that indicate it
6 could be old, but in some records it seemed that it
7 wasn't old and he had some loss of motion of the
8 PIP joint.

9 In other words, if this is zero degrees,
10 he was -- he was missing about five degrees, which is
11 about there instead of going totally straight, it was
12 slightly bent. And if bending all the way down is 90
13 degrees, he was down to about 80 degrees.

14 So, there was some loss of motion of the
15 PIP joint but the DIP joint and MCP joint had normal
16 motion.

17 Q Now, Doctor, based on these -- the
18 examination, the review of records, the medical
19 history and your training and experience, I'm going to
20 ask you have you been able to form certain
21 opinions to a degree of reasonable degree of medical
22 certainty.

23 Let's start with his finger. Do you have
24 an opinion to a reasonable degree of medical certainty
25 whether he needs any further physical therapy for his
26 finger?

1

2 A No, he had just slight loss of motion,
3 and he was well down the road of healing.

4 Q And do you feel that he's going to need
5 any further surgery or treatment for that middle
6 finger in the future?

7 A No.

8 Q And with respect to his left wrist, do
9 you have an opinion to a reasonable degree of medical
10 certainty whether he needs any further physical
11 therapy for that left wrist?

12 A No, he had resolved, he had a fracture of
13 his left wrist which had totally resolved he had
14 normal function and no further treatment for the left
15 wrist was required.

16 Q And again, do you have an opinion to a
17 reasonable degree of medical certainty with respect to
18 whether he needs any further physical therapy or
19 treatment for his right shoulder?

20 A No, I mean, he had -- his surgery was in
21 February of '08, and I was seeing him of his shoulder
22 and I was seeing him in March of '09, which is well
23 over a year, and he had almost full range of motion of
24 his shoulder and I didn't feel that any further
25 treatment including physical therapy would really be
26 of any benefit.

1

2 Q Now, with respect to his right wrist, do
3 you have an opinion to a reasonable degree of medical
4 certainty whether he needs anymore physical therapy
5 for his wrist?

6 A No. Again, the injury was in July of '07
7 and I was seeing him almost fourteen months later. I
8 think after fourteen months, I don't expect anymore
9 motion to occur at that point.

10 So that would be the only reason, giving
11 physical therapy would be to try to gain more motion
12 out of his wrist but at fourteen months I don't think
13 he would gain anymore motion on his wrist.

14 Q Do you have an opinion to a reasonable
15 degree of medical certainty whether or not he needs
16 any further surgery for the right wrist?

17 A I don't believe any further surgery or
18 future surgery would be necessary for the wrist, no.

19 Q And in expressing your opinion about his
20 right wrist to the jury, would it assist you if you
21 were able to look at the x-rays of the wrist?

22 A Yes.

23 Q Okay.

24 MR. STEWART: Could we have the Doctor
25 come down here?

26 THE COURT: Sure.

1

(Witness complies.)

2

3

Q These are part of the Plaintiff's

4

Exhibit 9.

5

A You want me to go through it?

6

Q Yes, if you could.

7

A This is an x-ray of the right wrist.

8

There's a cast there, you can see this is a cast right

9

here. These are the bones, right in here, obviously.

10

This is a side view, looking at the wrist like that.

11

This is a --

12

THE COURT: If you want to stand behind,

13

you can.

14

A This is a frontal view looking at the

15

hand like that. The date of this is 7/30/07, which is

16

the day --I'm not sure -- it was three days after, I

17

believe, or so.

18

And again, what I want you to see --what

19

I could see anyway, there's a fracture. This is the

20

radius bone, this is the fracture right through here.

21

This is the wrist joint, right here, this is where the

22

wrist moves like that. That occurs right here. This

23

fracture is below it here.

24

There's also a piece of bone here which

25

needs to be attached, which was attached, up here, and

26

it's out of place.

1

2

On the side view, again, there's a fracture down in here of this bone, there's a little fragment right there. It's in reasonable alignment.

4

5

6

7

8

9

This is dated 8/14/07, I guess, which is about a month -- two weeks later or so, and you could see they put this plate with these little screws and pins, to stabilize this fracture. Again, the fracture is down here, the fracture does not go into the joint.

10

11

12

13

Some fractures actually fractures this way into the joint where the wrist bends, and if that happens, you are more susceptible to getting arthritis.

14

15

16

17

Down in here, again, you can see the plate, the screws in place, and they had taken out that bone, that little bone that was down in here, they had taken that out.

18

19

20

So, the fracture did not go into the wrist joint, it was below it. I think that's the main significance of this fracture.

21

22

Q All right, if you could go back up there, Doctor.

23

(Witness resumes the stand.)

24

25

26

Q So, what is your opinion at this point, Doctor, as to the status of that fracture of the right wrist?

1

2 A The fracture is healed and he has lost
3 some motion, you know, as a result of the fracture and
4 the surgery. But the good thing is that the fracture
5 did not go into the wrist joint because if it did, and
6 those fractures did not get realigned that's how
7 people get arthritis, when they fracture it around the
8 joint is when a fracture goes into the joint and then
9 you get incongruity of service.

10 In other words, the joint is two gliding
11 surfaces. There's two smooth, gliding surfaces and
12 that is what makes this move so easily. Well, if you
13 break into the surface and then the surface becomes
14 irregular, you have an irregular surface rubbing on a
15 regular surface and it becomes -- grinds away and
16 that's how you get arthritis.

17 But his fracture did not go into the
18 wrist joint, it was below it. So, you know, in that
19 sense it's good that the likelihood of arthritis is
20 practically nil.

21 Q Doctor, do you have an opinion to a
22 reasonable degree of medical certainty whether
23 Mr. Santaella has any disability with respect to his
24 right shoulder?

25 A No.

26 Q The opinion is no?

1 Cross - Varriale - Madonna

2 A He does not -- yes, he does not have a
3 disability to his right shoulder.

4 Q And do you again have an opinion as to
5 whether he has any disability with respect to his left
6 wrist?

7 A No.

8 Q And any disability with respect to his
9 right hand middle finger?

10 A No.

11 Q How about, do you have an opinion to a
12 reasonable degree of medical certainty whether he has
13 any disability with respect to his right wrist?

14 A Yes, I believe he has a mild disability
15 to his right wrist.

16 Q That's all I have, Doctor, thank you.

17 MR. STEWART: Thank you, Your Honor.

18 MR. MADONNA: May I inquire?

19 THE COURT: Sure.

20 CROSS EXAMINATION

21 BY MR. MADONNA:

22 Q Good afternoon, Dr. Varriale.

23 A Good afternoon.

24 Q As you said you do testify; right?

25 A Yes.

26 Q And you're familiar with the Court, Court

1 Cross - Varriale - Madonna
2 proceedings, besides plaintiffs, defendants?

3 A Essentially.

4 Q Okay and you understand when you're
5 hired -- I think you said you testify mostly for
6 defendants; right?

7 A Mostly.

8 Q All right, and you know when
9 Mr. Stewart's firm hired you in this case you knew
10 that they were representing the Defendant in this
11 case; correct?

12 A Yes.

13 Q And you understand in the process of
14 litigation, since you are a very educated, intelligent
15 man -- I don't mean any disrespect by that, but you
16 understand the two different sides in this case since
17 participating in litigation that the defendant's
18 position in cases like these is to minimize the amount
19 of damage or injury to the plaintiff; correct?

20 A That's in general how things run.

21 Q And you understand that at the time that
22 you're doing the examination and you're hired by
23 Mr. Stewart's firm to do that examination on
24 Mr. Santaella here, today; correct?

25 A Yes.

26 Q Now, you also understand, I think, that

1 Cross - Varriale - Madonna

2 there's a difference between doing an examination for
3 the defendants in litigation such as this and treating
4 your own patient; is that correct?

5 A Yes.

6 Q And one of the main differences in
7 situations like that is when you're treating your own
8 patients you have a physician-patient relationship
9 with that patient?

10 A Yes.

11 Q And there's a significance to that
12 relationship; correct?

13 A Yes.

14 Q And one of the significance to that
15 relationship is that -- well, you can really be held
16 accountable for your opinions and your care and
17 treatment for your patients because of that
18 relationship and the trust they put in you in that
19 relationship; true?

20 A Yes.

21 Q And in a situation where, such as this,
22 when you're examining a plaintiff in litigation such
23 as Mr. Santaella hired by the Defendants, there is no
24 physician-patient relationship; correct?

25 A Not as a treating physician, no.

26 Q And you even go as far as to confirm that

1 Cross - Varriale - Madonna
2 in the reports that you write, you know these reports
3 they're going to be exchanged with the other side.
4 You know when you writing them that they're going to
5 be exchanged; right?

6 A Yes.

7 Q And in the report you have, you state
8 specifically on, I think it's the end of the third
9 page --no, the last page of the report.

10 THE COURT: Is that in evidence?

11 MR. MADONNA: No.

12 Q In your medical report you specifically
13 put in that report that the claimant is examined in
14 that no Doctor patient relationship exists or is
15 implied by this examination; true?

16 A Correct.

17 Q Now, that's different because your
18 opinions, while I know you want to be as honest and
19 straightforward as you can in front of this jury when
20 you're coming in, examining somebody involved in
21 litigation who is trying to minimize the Plaintiff's
22 injuries but that those you can't really be held
23 accountable for can you?

24 A In what sense?

25 Q In the sense of -- in the same sense you
26 can be held accountable for your opinion for the care

1 Cross - Varriale - Madonna

2 and treatment of your patients.

3 A I'm not sure of that.

4 Q You don't have a physician-patient
5 relationship with Mr. Santaella?

6 A No.

7 Q Correct?

8 A Correct.

9 Q The Doctor who is treating him did?

10 A Yes.

11 Q And the Doctor who is treating --do you
12 know Dr. Bullek?

13 A No.

14 Q Did you review his records though, in
15 preparation for his testimony here today?

16 A Yes.

17 Q You wouldn't have any argument with the
18 care that he rendered; true?

19 A No.

20 Q Okay. He treated Mr. Santaella with
21 acceptable orthopedic medical care for all of the
22 injuries that he sustained?

23 A Yes.

24 Q And you examined Mr. Santaella in March
25 of 2009 which is almost two years after the accident
26 occurred; correct?

1 Cross - Varriale - Madonna

2 A Correct.

3 Q And at that point, you did find certain
4 objective and residual findings with regards to his
5 injuries; true?

6 A Yes.

7 Q And you said that he doesn't need anymore
8 treatment.

9 Would you agree with me then, that the
10 injuries as you found them, even as you found them as
11 of that date are permanent?

12 A Yes.

13 Q Okay, and the restriction of motion in
14 the right wrist is not going to ever come back?

15 A I don't believe so.

16 Q And if it's something that causes him
17 pain, that could be from the fracture and from the
18 hardware that's still in there; true?

19 A It's possible.

20 Q Well, do your patients who have wrist
21 fractures who have had surgery ever complain of pain
22 afterwards?

23 A Sure.

24 Q And in the normal progression of
25 treatment for somebody who sustained a wrist fracture,
26 let's say somebody you're treating in your practice,

1 Cross - Varriale - Madonna

2 you treat their symptomology as they're going along;
3 correct?

4 A Sure.

5 Q And you mentioned something earlier about
6 the joint surface and the fracture not being
7 intraarticular; true?

8 A Yes.

9 Q Would you be correct if I told you that
10 Dr. Bullek who came in here and testified before this
11 same jury who had treated Mr. Santaella for this same
12 injury did the surgery and put the plate in that
13 wrist, explained to the jury that there was damage to
14 the articular surface of the joint as a result of that
15 fracture?

16 A It depends what surface he's talking
17 about.

18 Q The articular surface to the right wrist
19 joint.

20 A To the radius, no.

21 Q What about the ulna?

22 A Yes, that was, there was damage, there.

23 Q And as a result of that damage, that
24 joint is more susceptible to post-traumatic arthritis;
25 true?

26 A In that small section on the outside of

1 Cross - Varriale - Madonna

2 don't see it.

3 So if he saw it somewhere in a CAT scan
4 or something, then I would defer to his judgment.

5 Q What about other x-rays that he took,
6 because that wasn't the only x-ray he took. He took a
7 series of x-rays over the years that he was treating
8 him.

9 A Sure, I saw many of his x-rays.

10 Q Now, you -- are you aware that
11 Mr. Santaella also sustained a fracture to his left
12 wrist?

13 A Yes.

14 Q You did indicate in your report, though
15 as your diagnosis that it was only a sprain?

16 A Yes, this was a typo.

17 Q Do you agree now there was a fracture?

18 A Yes.

19 Q Did you see those x-rays?

20 A I have to check.

21 Q Please.

22 THE COURT: Can I interrupt you for one
23 second.

24 MR. MADONNA: Yes.

25 THE COURT: You moved onto the left
26 wrist.

1 Cross - Varriale - Madonna

2 MR. MADONNA: Yes.

3 THE COURT: Dr. Varriale, did the tendon
4 sit on top of the plate and screws that's in his
5 wrist.

6 THE WITNESS: Yes.

7 THE COURT: And if somehow they became
8 irritated by the hardware wouldn't that require a
9 second surgery to remove the hardware?

10 THE WITNESS: If it did.

11 THE COURT: Okay.

12 MR. MADONNA: Thank you, Judge.

13 Q You can check your records.

14 THE COURT: No, thank you, no thank you.

15 MR. MADONNA: No, for letting me
16 continue.

17 THE COURT: I wanted to avoid, you
18 know --

19 MR. MADONNA: Yes.

20 A I saw x-rays of his left wrist, yes.

21 Q Now, would you agree as Dr. Bullek
22 testified to this jury that the left wrist fracture
23 was intraarticular and went to the joint surface of
24 the left radial wrist?

25 A I haven't seen those x-rays recently, I
26 don't know if they were or they weren't, but the

1 Cross - Varriale - Madonna
2 fracture was not displaced, it was just a crack.

3 Again, I don't know whether it was
4 intraarticular or not.

5 Q If it was even just a crack, that can
6 cause future problems; true?

7 A Unlikely.

8 Q Unlikely?

9 A But it can.

10 Q Didn't you just tell this jury a few
11 minutes ago that the whole idea is whether or not
12 there's damage to the smooth surface that could cause
13 problems in the future, of arthritis?

14 A If it's displaced.

15 Q Only if it's displaced?

16 A A fine crack into the bone, into the
17 joint, usually does not cause arthritis.

18 Q But can?

19 A I just said that it can.

20 Q And is there a cure for arthritis?

21 A A cure --

22 Q I know there's not, it's a trick
23 question, I apologize, Doctor.

24 A There are ways to get rid of arthritis:
25 Joint replacement, and stuff like that, but to --

26 Q Well, I think it's a little-- I don't

1 Cross - Varriale - Madonna

2 think it's a being intellectually honest to say joint
3 replacement is a way to get rid of arthritis. You get
4 rid of the whole joint.

5 A Right, you're getting rid of the pain.

6 Q So if somebody does have arthritis, if
7 somebody does have damage to the articular surface of
8 the joints as a result of this, a fracture to their
9 wrist, in the course of your treating your patients,
10 that joint can deteriorate over time; isn't that
11 correct?

12 A Yes.

13 Q And essentially how you're going to treat
14 that deterioration over time is palliative to the
15 symptoms that they're exhibiting; true?

16 A Yes.

17 Q You can give them injections if they're
18 having pain?

19 A Yes.

20 Q You can give them antiinflammatory
21 medication if they have pain?

22 A Yes.

23 Q And if it gets severe enough, what can
24 you do with respect to the wrist joint if the
25 arthritis is there and the pain is eventually
26 significant enough that the pain medication,

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2 injections, nothing else will help? What do you do?

3 A Well, you can immobilize the wrist with a
4 brace, give him a permanent brace to keep it in
5 position.

6 There are surgeries such as removing some
7 bones to decompress the wrist, there's wrist fusion,
8 in which you permanently stiffen the wrist, don't let
9 it move.

10 Q That is essentially the last resort is
11 wrist fusion; correct?

12 A Yes.

13 Q But it does happen?

14 A Yes, it does.

15 Q And arthritis is a --particularly
16 post-traumatic arthritis is a progressive condition;
17 correct?

18 A Yes.

19 Q And it's going to deteriorate more in
20 joints that somebody uses, particularly somebody who
21 is working with their hands if they have arthritis in
22 their wrist joints; true?

23 A It would tend to.

24 Q And the same finger, the middle finger,
25 that joint still has loss of motion and was
26 sub-located or dislocated; correct?

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2 A Yes.

3 Q So if those articular surfaces are
4 damaged, continued additional use of those joints
5 would cause the arthritis to occur and to
6 progressively deteriorate at that joint as you go
7 forward?

8 A I didn't say it would. I used "could."

9 Q Could, okay, but it does happen?

10 A Yes.

11 Q And you've seen it happen?

12 A Yes.

13 Q And in cases where you've treated
14 patients who have had that arthritis continually
15 progress to where the symptomology is significant
16 enough you've prescribed injections, pain medication
17 and eventually wrist fusions?

18 A Yes, very infrequently.

19 Q But it does happen?

20 A It does happen.

21 Q Now, the loss of motion that
22 Mr. Santaella has in his wrist, in the dorsiflexion
23 and palm flexion that's a significant loss; correct?

24 A It's not a mild loss, you know, it's --
25 more than half.

26 Q Right, more than half I think would be

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2 significant.

3 A Yeah.

4 Q We could agree with that.

5 And that's particularly important with
6 somebody who has a finger dislocation and loss of
7 motion in their finger; true?

8 A It adds to the problem.

9 Q Does that also add to the problem of
10 somebody who has weakness in his shoulder?

11 A If somebody has weakness to their
12 shoulder, yes.

13 Q Now the procedure that Mr. Santaella had
14 performed on his shoulder, you're familiar with that
15 procedure?

16 A Yes.

17 Q There was a clavicle arthroscopic
18 decompression?

19 A Yes.

20 Q It means they took out some of the bone
21 and loosened up the joint so he has more range of
22 motion?

23 A Yes.

24 Q And before doing that, having pain when
25 you raise your arm or having impingement a clicking
26 when you're raising your arm, that is consistent with

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2 the condition he had to his shoulder?

3 A Yes.

4 Q And I think we do agree that your history
5 of that Mr. Santaella gave you of these injuries
6 occurring as a result of a fall, a fall from a height,
7 is consistent with the injuries that he had; true?

8 A You mean with the shoulder?

9 Q With the --well, let me ask you this.

10 I want you to assume that there is
11 testimony in the record that Mr. Santaella fell from a
12 14-foot ladder, head first, down towards the ground
13 and had both arms stretched in front of him when he
14 hit the ground.

15 Would that impact on both of his hands in
16 front of him, would that mechanism of that injury,
17 would you agree, is consistent with the fractures to
18 his wrists and damage to his shoulder?

19 A The shoulder, I don't --I'm not
20 necessarily going to fully agree with you, but the
21 wrists, the fractures, certainly.

22 Q Let's assume he didn't have any prior
23 injury to his shoulder.

24 You didn't see any prior injury to his
25 shoulder, did you?

26 A He didn't give a history of one.

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2 Q And you looked through his medical
3 records?

4 A This was no history of one.

5 Q Did you look inside the shoulder?

6 A No, I didn't.

7 Q No, Dr. Bullek did.

8 And he treated him for a sternal
9 clavicular injury and A D C or supraspinatus tear;
10 true?

11 A He had a partial tear most likely,
12 because if he had a tear, he would have repaired it.

13 Q Partial repair; correct?

14 A Right.

15 Q And people who have that type of a
16 surgery on his shoulder, would you agree with me that
17 they would have difficulty with repetitive motion
18 above their head?

19 A I didn't get the first part of that
20 question.

21 Q People who have had the surgery such as
22 Mr. Santaella had on the shoulder, would they have
23 difficulty with repetitive motions above the head?

24 A Yes.

25 Q Pulling and pushing?

26 A They could.

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2 Q They could have a weakness to push and
3 weakness to pull?

4 A Yes.

5 Q Let's assume the shoulder injury as by
6 related Dr. Bullek testified earlier that it was, does
7 that compound the effect that the finger and the wrist
8 have to use of that extremity?

9 A Yes.

10 Q And that's important, especially to
11 somebody who is right-handed, who is predominantly
12 used to doing daily activities with their right hand?

13 A Yes.

14 Q And the injuries that he sustained, the
15 wrist fracture, would swelling of that wrist, would
16 that be consistent with that fracture?

17 A He could get, as well, if he overuses the
18 wrist, yes.

19 Q And if he continued to work and do his
20 job in construction he could have pain and swelling
21 from that?

22 A He could.

23 Q And in the treatment of your patients who
24 have suffered injuries similar to Mr. Santaella's, do
25 they complain about symptomology such as pain and
26 difficulty with weather changes?

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2 A Yes.

3 Q Okay, and that would include the right
4 wrist where the hardware is and the shoulder where the
5 bones have been removed?

6 A Yes.

7 Q So, if he makes those complaints that's
8 consistent with the injuries that he had?

9 A Yes.

10 Q And is there any way to treat those other
11 than palliatively, with medication, such as Motrin and
12 Advil, things like that?

13 A Strengthening exercises is very
14 important, you know, stretching, strengthening,
15 antiinflammatory medications, heat, those are all ways
16 that we treat these problems.

17 Q So, if Mr. Santaella starts to or
18 continues to deteriorate either the left wrist, right
19 wrist, or right shoulder as he goes into the future,
20 would you agree that if he does have symptoms such as
21 pain with weather, pain on overuse, weakness with
22 repetitive motion over his head, that those would need
23 additional medical treatment such as you've mentioned;
24 therapy, or pain medication?

25 A I said medication, exercises, heat,
26 antiinflammatory medications, yes.

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2 Q I just want to go through a couple of
3 other things in your report here that you did find.

4 You did find tenderness. That's an
5 objective sign, doing a physical examination; correct?

6 A That's subjective.

7 Q Well, his expression of pain would be
8 subjective, but your touching him and --

9 A You can't feel tenderness.

10 Q The decrease in sensation, that's
11 objective?

12 A That's subjective.

13 Q That's subjective.

14 And he still did have tenderness in the
15 sternoclavicular joint when you examined him two years
16 after the accident?

17 A Yes.

18 Q You would agree that's permanent if
19 that's still bothering him, now?

20 A Yes.

21 Q So, while you testified a few minutes ago
22 on direct examination to Mr. Stewart that in your
23 opinion, not as Mr. Santaella's physician, with no
24 physician-patient relationship, he doesn't need any
25 further therapy, he doesn't need any further
26 medication, he doesn't need any further medication but

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2 he does have permanent injuries and restrictions that
3 you testified to; correct?

4 A Yes.

5 Q And those conditions, the loss of motion,
6 the fractures, are potentially causes of pain,
7 symptomology with respect to those body parts?

8 A Yes.

9 Q And so, if Mr. Santaella has testified
10 and there's evidence in the record that he suffers
11 from pain from those injuries, that would be
12 consistent with the injuries he sustained?

13 A Yes.

14 Q And if he takes medication for that, that
15 would be consistent with his attempt to treating
16 those?

17 A Yes.

18 Q And again, just finally, and I only want
19 to assume that there's --I want you to assume that
20 there's intraarticular involvement in the right wrist
21 and the left wrist joint as Dr. Bullek had testified
22 yesterday.

23 Assuming that, is Mr. Santaella at a
24 higher risk for post-traumatic arthritis than a normal
25 person?

26 A Reviewing his particular case, I believe

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2 he's at a slightly higher risk, yes.

3 Q And how would you -- as an orthopedic
4 surgeon following up with somebody who has had those
5 injuries, how would you know or what would be your
6 clues, that he is starting to develop post-traumatic
7 arthritis in the affected joints?

8 A It's mainly -- there are several ways.
9 The main one is you look at an x-ray, you see
10 arthritic changes.

11 Q That's really the only definitive way;
12 correct?

13 A Yes.

14 Q To look at a joint in an x-ray and see
15 the arthritis?

16 A Yes.

17 Q Other than that, what other symptomology
18 would there be?

19 A Pain, increasing pain, swelling,
20 decreased range of motion.

21 Q Thank you very much, Doctor.

22 MR. MADONNA: I have no further questions,
23 Your Honor.

24 THE COURT: Mr. Stewart, do you have any
25 redirect?

26 MR. STEWART: No, Your Honor, no

