

1 Yassari - Direct - Plaintiff

2 THE COURT: All right, we are going to have a
3 long lunch hour. You can spend it however you
4 want. Go home or whatever you want to do. We
5 will be promptly back in court at 2:00 o'clock.

6 2:00 o'clock. Sorry for the delay, but it
7 happens. Have a good lunch.

8 (Jury exits courtroom.)

9 THE COURT: All right, off the record.
10 (Whereupon a discussion was held off the record.)

11 (Luncheon recess taken.)

12 A F T E R N O O N S E S S I O N

13 OFFICER: Come to order.

14 THE COURT: Ready to go?

15 MR. SIRIGNANO: Yes.

16 THE COURT: Bring in the jury. Where is your
17 doctor?

18 MR. SIRIGNANO: Right outside.

19 (Jury enters courtroom.)

20 THE COURT: Be seated everyone. All right,
21 we are back in session and we have a witness for
22 the plaintiff and will you call your next witness.

23 MR. SIRIGNANO: Yes, plaintiff calls Dr.
24 Reza Yassari.

25 R E Z A Y A S S A R I, called as a witness on behalf of

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2 the Plaintiff, having been duly sworn, testified as
3 follows:

4 THE COURT: Be seated, sir. Give us your
5 full name.

6 THE WITNESS: My name is Reza Yassari.

7 THE COURT: Spell the first name.

8 THE WITNESS: Y A S S --

9 THE COURT: Is that the last name?

10 THE WITNESS: Yes.

11 THE COURT: First name is spelled?

12 THE WITNESS: R E Z A, Y A S S A R I.

13 THE COURT: Do you have a professional
14 address, doctor.

15 THE WITNESS: I'm an assistant professor of
16 neurosurgery at Montefiore Medical Center.

17 THE COURT: Your address there?

18 THE WITNESS: 3316 Rochambeau, Bronx, New
19 York, 10467.

20 THE COURT: Your witness, please.

21 MR. SIRIGNANO: Thank you.

22 DIRECT EXAMINATION

23 BY MR. SIRIGNANO:

24 Q Doctor Yassari, good afternoon.

25 A Good afternoon.

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2 Q We are going to ask you to keep your voice up so
3 all of the jurors can hear you. They have the most
4 important ears in the courtroom today so we want to be sure
5 that you are loud. Are you a physician duly licensed to
6 practice medicine in the State of New York?

7 A I am.

8 Q How long have you been so licensed?

9 A In New York I have been licensed almost three
10 years.

11 Q Have you been licensed to practice medicine in
12 other states or countries?

13 A Yes, I have been licensed in Illinois and in
14 Baltimore -- in Maryland.

15 Q Okay. What medical school did you attend?

16 A I went to the University of Vienna in Austria.

17 Q When did you complete your studies, your medical
18 school studies?

19 A In 1997.

20 Q Following graduation from medical school, doctor,
21 did you begin a postgraduate course of study or some
22 doctor's refer to it as an internship or residency?

23 A Yes. I went to Cambridge in England and did my
24 basic surgical training there for two years, year and a
25 half and then I came to United States where I went to the

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1 university of Chicago and did a graduate study and
2 subsequently my residency program in neurosurgery at the
3 university of Chicago and a fellowship training in clinical
4 ethics at university of Chicago before I relocated to Johns
5 Hopkins in Baltimore where I did a fellowship program as a
6 junior faculty member in complex and reconstructive spinal
7 surgery.
8

9 Q So your postgraduate course of study focused on or
10 was limited to a certain area of neurosurgery?

11 A Yes, so first I did the general in surgical
12 training. After finishing that at university of Chicago I
13 did a specialized training where I was focusing on diseases
14 of the spine, degenerative changes, traumatic changes and
15 tumors.

16 Q Would you tell the jury what neurosurgery is as a
17 specialty?

18 A Neurosurgery is the specialty that deals with
19 surgical diseases that involve the brain and the spinal
20 cord and all the nerves that come from the spinal cord. So
21 it involves tumors or vascular problems that you have in
22 your brain, but it encompasses also the spinal cord and all
23 the nerves that go to your limbs and other areas.

24 Q Have you held any teaching positions?

25 A Yes.

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2 Q What positions have you held?

3 A Well as a faculty member part of my job is to
4 teach residents and I'm the assistant program director so
5 I'm in charge of developing the program for all the
6 residents at Montefiore.

7 In that capacity I work with my chairman to
8 develop all the educational requirements to teach the next
9 generation of neurosurgeons.

10 Q So you are training young doctors to become
11 neurosurgeons?

12 A That's correct.

13 Q Do you have a specialty or an area that you
14 particularly focus on?

15 A Yes. So the they hired me to become the spine
16 tumor expert because they have a cancer center that
17 includes a lot of patients who have now survived longer
18 with cancer so this new subspecialization has sort of been
19 created where we treat surgically tumors to the spinal cord
20 -- to the spinal column anchored.

21 That's only 20 percent of my job. The rest is
22 still the traditional complex spine. They hired me to also
23 do the big surgical procedures for degenerative and
24 traumatic changes to the spine.

25 Q Let's stay a moment and explain to the jury what

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2 degenerative changes, what you mean by degenerative changes
3 versus traumatic changes?

4 A So degenerative changes are basically as we get
5 older there is some wear and tear to the spine and
6 everybody develops that.

7 What it encompasses is that the spinal column
8 changes the way it looks and the way it moves and there are
9 wear and tear on the bones a little bit like breaks in a
10 car. After a while it doesn't work very well. The body
11 adapts to some degree with it, but it degenerates into a
12 something that is a little bit abnormal.

13 It does not necessarily mean you need surgical
14 procedure for that. Some people do very well without
15 surgery, but it is the normal process of aging is
16 degeneration.

17 Traumatic injury is however if you have an
18 accident or a you know it can be anything, you can fall
19 from something, you have a car accident. You got shot.
20 All this encompasses trauma that causes fractures or
21 disruption of the tissues so it is not a normal process
22 that leads to some changes, but an external force that
23 causes changes within the spinal column.

24 Q Can I impose on you to give the jury a brief
25 anatomy lesson on the spinal column. What are the

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2 components of the spinal column?

3 A So basically what happens is the brain needs to
4 give all the information down to your limbs and get
5 information from the outside up so it can analyze what's
6 going on when you touch something.

7 In order to do that it is sort of an extension
8 from the brain there is a thin string of nerves
9 approximately as thick as your finger that needs to run in
10 the spinal column down all the way to the lower back. And
11 at each level it gives nerves out.

12 It is a little bit like a highway with exits on
13 each side. And because it is very delicate the body is
14 constructing sort of a tunnel around it and the bones form.
15 So the bones are stuck on top of each other.

16 And in the in the back of it there is a ring that
17 if you stuck them on top of each other it creates this
18 tunnel and through that tunnel passes the spinal cord. And
19 then in each level you have little openings on the side.

20 And from the spinal cord the nerves go out and
21 bring information out to your limbs so you know how to move
22 them. It also gets all the information in so it can be
23 then transferred up that highway to the brain and the brain
24 analyzes and tells you what to do.

25 Q Please explain what the vertebral bodies are. Is

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2 that another word for the bones of the spinal column?

3 A Yes. That's actually the portion that are stuck
4 on top of each other. So it is the hard portion of each
5 vertebra which encompasses the spinal cord. If you want
6 those sort of bricks that form the tower and they have
7 between them soft component so you can actually move them;
8 otherwise, it would be very stiff.

9 That component is called the disk that is between
10 the vertebral bodies. When you move that's where the
11 degenerative changes come about because that wear and tear
12 occurs at that juncture between the bones where the disks
13 which is really like a jello that absorbs it is like a
14 shock absorber that moves and creates that rubbing.

15 So when you are young it is nice and juicy and
16 works well and as you get older the content of water that
17 it has goes away and so it becomes a little bit more
18 rubbery.

19 Q What are the disks made of? What is the material?

20 A The material is a little bit like crab meat. It
21 is very soft, but it gives you an idea of what the
22 consistency is, right. So what it is basically a soft
23 component in the middle and around it is a fibrous, more
24 sturdy material that keeps it confined, basically holding
25 it together.

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2 Basically if you can imagine it is like a jelly
3 that allows you when there is compression to absorb that
4 shock and it allows the bone to move properly against each
5 other.

6 Q The spacing between the disks, that is the space
7 between the vertebra that is the disks themselves, is that
8 a standard size on most humans or does it vary?

9 A No. There is no standard size. Depending on
10 which part of the vertebral body can you imagine that there
11 is less pressure on the one on the top than on the very
12 bottom one. The bottom one has to be a bigger vertebral
13 body and the disk is going to be bigger, thicker because it
14 has to absorb much more than if you are up here in the
15 neck.

16 So each one of them has a very characteristic
17 feature of what it does based on the amount of pressure
18 that it has to control.

19 Q What if anything holds these bony parts together
20 in the whole column?

21 A Yeah so the disk itself is like a mortar if you
22 want between the bricks to hold it together except it is
23 not hard but the bones in the front and in the back have
24 ligaments, and there are joints between the bones that are
25 also connected basically like any other joint in your body.

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And the ligaments are basically like tendons around it that hold it together. And in addition you have the muscles that come attached to the spinal column and allow the movement because that's how you actually move.

So the spinal column is held together by the ligaments, the fascia which is the skin around the muscle and the muscle itself.

Q And would you explain to the jury what degenerative disk disease or protrusion is?

A So as I mentioned before because you move your neck all the time or your back all the time, there is continuous rubbing and you can imagine that after a while when you get older the degeneration occurs that the replacement of the cells that are being used is not as good any more.

It is a little bit like getting wrinkles in your face. You get wrinkles in the outside, but everything in the inside doesn't heal as nicely any more either. Mainly it has to do with the loss of water and wrinkles you get because your skin loses its elasticity. But you have that also inside.

Remember that jello I told you it is actually a lot of water. When you get older and the water content decreases, it becomes a little bit less elastic. With this

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loss of water you have these degenerative changes. So what happens is that the height of the disk decreases. It is not as sturdy any more to be able to do its job.

The bone starts reacting to that and forms little osteophytes which are basically over growth around the bone and everything becomes a little tighter because of these over growths.

Q Okay.

A Can I add one more thing to make it easier to understand. The Boston cream donut when you squeeze it, it comes out, so it is a little bit like that. If you put too much pressure on something that cannot hold the pressure any more, the disk can squeeze out, right. That fiber I told you that holds it in space can't hold it in space anymore. And when there is too much pressure it just squeezes out.

It is not a big deal if it doesn't -- if it just squeezes out and is not close to a nerve but because the spinal cord and nerves are very close if it happens to push on the side where the spinal cord is running or where the nerve is coming out, it can cause a lot of pain and worse it can cause damage to the nerve or the spinal cord.

THE COURT: What are those called, doctor?

THE WITNESS: I beg your pardon?

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2 THE COURT: Are they called herniations?

3 THE WITNESS: Herniations. There is a word
4 called spondylosis which is the scientific version
5 of saying degenerative spine disease. But what I
6 just described is a disk herniation, yes.

7 Q When the nerves become affected, doctor, what are
8 the consequences for your extremities upper and lower
9 extremities?

10 A It is a little bit like cables. Each nerve goes
11 to a special portion of your hand or leg, and so when I see
12 a patient and they say that the pain is over here, I kind
13 of know which nerve it should be because everybody is
14 pretty much wired the same way. What happens is if the
15 nerve is compressed it is what is called radiculopathy
16 which means disease of the root so we call that portion
17 that comes out the nerve root.

18 And so what happens is you have in a very specific
19 distribution based on which nerve is compressed, symptoms
20 of pain, numbness, tingling; you may lose function in that
21 muscle that the nerve goes through and then I can examine
22 that and determine where that comes from.

23 Q What is meant by spinal cord impingement, doctor?

24 A So that's different. It is a little bit like the
25 analogy I gave with the highway and the exits. If an exit

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2 is blocked, the highway is still working. The exit block
3 would be the nerve block that I told you just about where
4 it goes to a specific portion of the arm.

5 But if you have the highway blocked, all the exits
6 are not going to work because there is no traffic and
7 that's what is -- why spinal cord compression is much more
8 dangerous. What it creates is it basically in the tunnel
9 that I told you the disk for example is now blocking that
10 highway. And information that goes normally from the brain
11 up or from the limbs up -- from the brain down and from the
12 limbs up doesn't go there any more.

13 So not only are you going to have problems with
14 the level where the compression is, but everything below
15 that is not going to work either. So it is a much more
16 serious condition.

17 THE COURT: What's that called?

18 THE WITNESS: Myelopathy. So myelopathy is
19 much more serious because it actually blocks all
20 the information going up and down. It translates
21 also the way we treat that when you have a
22 radiculopathy where the nerve is impinged 85
23 percent of people get better. It is usually pain
24 you can get injections and studies have shown if
25 you operate right away or you do conservative

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treatment for a year or so the outcome is the same.

When you have myelopathy when the spinal cord is compressed it is a little bit of a difficult thing for patients because they will come and say they have problems walking because the information from the legs doesn't go up.

They don't have any neck pain typically, and I say you have a compression in your neck so they don't believe me. They will go home, they will get better and then suddenly they get worse and then they will be fine again and then they get worse. But over a long period of time they will deteriorate and ultimately they will be paralyzed.

The problem with that is that you can't wait with this. The longer you wait the more damage you will have that could be reversed, it could be irreversible.

So while I wait for radiculopathy pain down the arm because of nerve pinch it the spinal cord is impinged it is much more dangerous and should be surgically treated right away.

Q So the leg weakness or unsteady gait is a consequence of this spinal cord impingement?

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2 A Yeah so you are standing here, you know, where
3 your legs are you don't need to look at them. Why because
4 your muscles and joints are sending signals without you
5 knowing up your spinal cord to your brain.

6 And if it is in a -- we are in a position or you
7 are losing balance it will correct without you being
8 consciously aware of it. When the spinal cord is impinged,
9 that information does not go up. You don't know where your
10 legs are. So what you do is you have to use your eyes to
11 help yourself determine where you are.

12 And the gait instability comes from the fact that
13 that signal from the joints and the muscles don't --
14 doesn't get up and so your brain cannot unconsciously
15 process that so you have to help yourself and that's why
16 you get wobbly on your feet.

17 Q I see. Very good. Now, doctor, you are a
18 practicing neurosurgeon, correct?

19 A That's correct.

20 Q How many surgeries a year have you performed say
21 in the last twelve months?

22 A In the last 12 months I performed something like
23 200 surgeries.

24 Q In what hospitals do you perform your surgeries
25 at?

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2 A I'm at Montefiore at the Wyler Campus and I am at
3 the Albert Einstein hospital. They have a hospital there
4 too and I also operate out of St. Barnabus. There is a
5 trauma center that I cover for trauma.

6 Q That's where you were this morning St. Barnabus?

7 A That's correct.

8 Q Have you ever been called into New York court
9 before today?

10 A No.

11 Q Well, welcome.

12 A Thank you.

13 Q Doctor, Vinnie Taurone here came under your care
14 and treatment in June of 2012, about a year ago, correct?

15 A Yes.

16 MS. TAYLOR: I'm just going to object, your
17 Honor. Is counsel offering him as an expert?

18 MR. SIRIGNANO: Yes.

19 THE COURT: You don't have to do that any
20 more.

21 MR. SIRIGNANO: I offer him as an expert.

22 THE COURT: You can do whatever you want, but
23 it is not necessary any more.

24 MR. SIRIGNANO: I understand, but since it
25 has been brought up, I think I'm entitled to it.

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2 THE COURT: Yes. The Court will recognize
3 this physician is an expert particularly in
4 neurosurgery and in complex surgery of the spine.

5 MS. TAYLOR: Your Honor, I didn't have an
6 opportunity to voir dire. That's why I raised it.

7 THE COURT: Well, you know, let's go side
8 bar.

9 (A sidebar conference is held with Court and
10 counsel on the record:)

11 THE COURT: Nobody ever has done this for the
12 last five years.

13 MS. TAYLOR: Your Honor, it's a course of
14 procedure.

15 THE COURT: No, it is not necessary now. I
16 mean that's what the evidentiary cases say in the
17 State of New York. Nobody does it any more.

18 MS. TAYLOR: That doesn't mean I should be
19 precluded from doing it.

20 THE COURT: It doesn't mean that in the
21 Court's discretion I have to let you do it.

22 MS. TAYLOR: That's right.

23 THE COURT: It is just not done.

24 MS. TAYLOR: I should be able to offer -- I
25 do it in the Bronx every day.

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2 THE COURT: Yes, but the Bronx is a whole
3 different country.

4 MS. TAYLOR: Come on, Judge, that's low,
5 really.

6 THE COURT: I lived there. I happen to know
7 that.

8 MS. TAYLOR: If the Court is not permitting,
9 that's fine, but I should have an opportunity to
10 do it; that it's done every day in the Bronx and
11 that's of equal jurisdiction with Westchester
12 supreme court.

13 MR. SIRIGNANO: I believe the proper time is
14 for cross-examination or attack his credentials if
15 that's what she chooses to do.

16 THE COURT: I'm going to allow her to do it
17 in cross, okay.

18 (Back in open court.)

19 THE COURT: That's overruled.

20 Q Doctor, you first saw Vinnie in June of 2012, is
21 that correct?

22 A That's correct.

23 Q Did you take a history at that time?

24 A I did.

25 Q What was your general understanding of his medical

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2 history that brought him to your office?

3 A That Mr. Taurone had a surgical procedure done
4 from the front of his neck in if I recall correctly 2009.
5 And within a few weeks after the surgical procedure he was
6 involved in a motor vehicle accident that exacerbated his
7 symptoms and he required a second surgical procedure.

8 I saw him then in a year ago when he had
9 progression of his problems and he came basically for
10 evaluation to see if there is anything else that can be
11 done for him.

12 Q He was referred to you by other treating doctors?

13 A I don't actually recall -- yes, Dr. Jodi Mones.
14 She is an oncologist with whom I work and I think she was
15 the person who was referred to Mr. Taurone to me.

16 THE COURT: Do you know how to spell it?

17 THE WITNESS: M O N E S, Jodi, J O D I is the
18 first name.

19 Q Okay, did you examine him at that time?

20 A I did.

21 Q What were your clinical findings?

22 A So he had clinical signs and symptoms of severe
23 myelopathy which is a sign of spinal cord compression which
24 correlated with the previous history that he had. What he
25 was telling me was that he was getting worse, that he

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2 couldn't use his hands. He couldn't put his clothes on and
3 button shirts. His handwriting had deteriorated. He
4 couldn't open jars any more.

5 Essentially the dexterity of his hands both sides
6 had been deteriorating more I think on the right side.

7 THE COURT: What?

8 THE WITNESS: Dexterity.

9 THE COURT: Dexterity?

10 A (Continuing) So any type of fine movement he
11 couldn't do any more. He couldn't pick up a paper,
12 couldn't take coins out of his pockets. If you put coins
13 in his pocket, and you said what type of coin is it,
14 quarter or dime, he wouldn't be able to tell you. And his
15 gait was deteriorating. His balance was completely off.
16 And those were all signs of progress myelopathy.

17 Q Did you have an opportunity at that first visit,
18 that first examination in June of 2012 to review any
19 radiographic studies that had been done?

20 A So the radiographic studies at that time I'm not
21 sure whether -- I think he came in with an MRI, but the MRI
22 when you have screws in there it is a little bit difficult
23 to see because it is an artifact.

24 THE COURT: What?

25 A An artifact. The screws don't allow the MRI to

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2 show the picture very well because you shouldn't have any
3 metal in there.

4 THE COURT: Okay.

5 A So what I do usually in people who have had
6 surgery before is I get a CAT scan because it allows me to
7 see what the hardware, the screws and the plate that he had
8 put in looked like and more importantly whether the bones
9 have continued to over grow.

10 Because every time you have a surgical procedure,
11 the body reacts to it. I wanted to understand better what
12 that looks like. So I ordered a CAT scan for him and I
13 asked him to come back with the CAT scan.

14 Q Okay. Did he come back with the CAT scan?

15 A Yes, he did.

16 Q That was July the 5, 2012?

17 A Correct.

18 Q Did you review that CAT scan?

19 A I did.

20 Q What was your reading of that CAT scan?

21 A So the area where he had the previous surgery was
22 completely fused. That means the bones had grown together
23 which is the aim of the surgical procedure that he had
24 previously. But as a consequence of that surgery the top
25 portion of where the screws were had undergoes changes with

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2 time and he had a lot of bone over growth. And the spinal
3 cord was squeezed again.

4 So the bony over growth went into the tunnel and
5 so the example that I gave with the disks squeezing out
6 sometimes the bone can grow inside it and his spinal cord
7 was impinged. It compressed again.

8 Q Now, doctor, you did know about the history of the
9 first surgery on October the 12, 2009 and the second
10 revision surgery on January the 6, 2010 less than three
11 months afterwards?

12 A Yes.

13 Q Having those two surgeries, major surgeries so
14 close together, is that -- did that in your opinion to a
15 reasonable degree of medical certainty exacerbate this bony
16 growth that you saw when you saw the CAT scan in July of
17 last year?

18 A So every time you have a surgical procedure and
19 that's what I tell my patients too is you change the
20 dynamic of your spine. If you want you have seven bones in
21 your neck. They take the pressure of -- the whole pressure
22 is divided between seven bones.

23 The surgery that Mr. Taurone had basically takes
24 three of these bones and fuses them together. So they act
25 like one. So if you take three out of these seven out, now

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2 you really have only four bones, three small ones -- four
3 small ones and a big block of bone which means each one of
4 these bones now is going to get more pressure.

5 And the consequence of that is that with time
6 degenerative changes accelerate and especially when you put
7 like a metal plate in there the portion on top can start
8 over growing bone. Now if you have a -- the more surgery
9 the more manipulation you have there, the higher the risk
10 of this happening.

11 It doesn't mean that everybody who has surgery
12 will have that, but the chance is increased the more
13 surgeries you have. The consequence of a second surgery
14 increases the risk of having this type of progression and a
15 deterioration of the problem.

16 Q After you saw the CAT scan in July and further
17 evaluated Vinnie and spoke to him about his options, what
18 advice did you give him?

19 A Well you know he had seen other doctors before and
20 some had proposed a surgical procedure that would go from
21 the back. Now that's a little bit more difficult for the
22 patient because it is technically somewhat more difficult
23 for the surgeon and it is more painful for the patient
24 because you have to dissect through all the bones -- all
25 the muscles and that can be quite painful.

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Moreover, his spine had lost its normal curve.

The cervical spine in the neck is usually curved like this like a C a little bit. And in Mr. Taurone's case because of the fusion, it had lost that curve and sort of bending a little bit forward and falling a little bit forward.

And what I had proposed is that instead of going from the front which would be a third surgery and probably not help him because he has also lot of bony over growth behind the area that he had the previous surgery. To go from the back and unroof it.

So the spinal cord that is in this canal and being pinched, right, I can't do anything from the front, but what I can do is open up the back and let the spinal cord swing out a little bit so it is not compressed any more.

The surgical procedure I proposed to him was to unroof the spinal column and let the spinal cord swing out. Now the problem with this surgery is that the surgery does not really help with recuperating, getting back to function that is lost.

What I told Mr. Taurone was that the aim of the surgery is to stop this from getting worse so fast. I can't heal him from the problem that he has, but what I can do is alleviate, take away some of this pain and slow it down. What I couldn't promise him is that he's going to

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2 get actually better.

3 Because once the nerve is damaged it is very
4 difficult to come back. And the longer you wait the less
5 chance you have to get better. So for example I told him
6 the balance problem that he has and the jerkiness of his
7 legs will never go away because that's a damage that we
8 based on experience know will not go away.

9 But that maybe we can get some of the other
10 functions back like his hand dexterity, but that wasn't the
11 primary goal of the surgery. The primary goal was to stop
12 this from getting worse and worse and worse so that he
13 doesn't become completely paralyzed. If he can regain some
14 of the function, then that's good.

15 I was a little bit worried about him because he
16 has other medical conditions and the surgery is a difficult
17 surgical procedure for him. Technically a bit demanding so
18 I explained all the risks and benefits and he consented to
19 the surgical procedure.

20 Q Before we get to the surgery itself, would you
21 explain in a little more detail this loss of the natural
22 curvature of the spine or lordosis it is called?

23 A Yeah. So the spine sort of forms this normal
24 curve to it once you start walking. If you imagine a baby
25 when it is born the first thing it does it starts lifting

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2 its head up before it can do anything. That movements
3 creates that curve. It is a little bit like a C shaped
4 curve.

5 As we get older the degenerative changes that with
6 the disks becoming thinner and all this bony over growth
7 you start developing some spasm in your muscles and the
8 neck goes from this alignment a little bit into a straight
9 one so it loses lordosis. Lordosis is that curve backwards
10 and sometimes it is called kyphosis. It falls forward.

11 THE COURT: How do you spell that?

12 THE WITNESS: K Y P H O S I S.

13 A (Continuing) What happens now is the spinal cord
14 was aligned here. Imagine this is all bone, right, the
15 spinal cord is here. This falls forward it will pull on
16 the spinal cord. And that can be dangerous. If on top of
17 that you have bumps made of bone inside there it can be
18 squeezed. And so that was the case with Mr. Taurone.

19 Q Doctor, do you have an opinion with a reasonable
20 degree of medical certainty whether the accident and the
21 need for that second surgery within three months time
22 exacerbated the lordosis problem?

23 A It certainly can. He already had a straightening
24 of the spine and with the changes, by mechanical changes it
25 can certainly contribute to that, yes.

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2 Q Is that consistent with your understanding of
3 Vinnie's history?

4 A That's correct.

5 Q Now, doctor, you performed what I believe is
6 called a cervical -- I'm sorry a laminectomy at the C-4-5
7 C-6-7 levels?

8 A Correct.

9 Q Would you describe to the jury what you did in
10 Vinnie's neck?

11 A So what I did is basically we talked about the
12 fact that there is a bone structure that is the brick and
13 then there is the ring around it and that hole is where the
14 nerve goes. What I essentially did is I opened that ring
15 and that's called a lamina.

16 And what I do is basically the patient is on his
17 belly. We open up the neck and remove all the muscles and
18 expose the bone and then unroof that ring; that's called a
19 laminectomy and I did it at C-4 which is the fourth
20 vertebral body, the fourth bone in your neck, four, five,
21 six and seven. When you do that you if there is already a
22 kyphosis and you just leave it be like that, it will just
23 fall forward.

24 So if what I need to do is put screws in his neck
25 in order to hold in this position. Otherwise he's going to

1 Yassari - Direct - Plaintiff

2 be back in six months with more kyphosis with more of this
3 lamina. So what I did is I unroofed it and then put screws
4 in and a rod connecting these screws to hold the spine in
5 that correct alignment.

6 Q So what he has rods in his neck?

7 A That's correct.

8 Q How many?

9 A Two.

10 Q And how long are they, inches, centimeters;
11 approximately?

12 A I guess they would be something like 15, ten, 15
13 centimeters.

14 Q In inches would be?

15 A I don't know. Inches would be probably five, six
16 inches.

17 Q And each of the rods are affixed to the bone parts
18 of the spinal column?

19 A Yes.

20 Q With screws?

21 A Correct. He has a total of ten screws.

22 Q What impact if any did that have on his mobility
23 of his neck and his flexion and extension?

24 A So the whole purpose of the screws is for him not
25 to be able to do flexion extension any more because that

1 Yassari - Direct - Plaintiff
2 was the reason why he was falling forward because his
3 muscles and his bone can't hold it in proper position.

4 So what it did create is some reduction in his
5 ability to flex and extend. Now Functionally people
6 usually feel better after surgery and they don't feel it
7 subjectively because they were in so much pain and they
8 couldn't move it now that I stabilized it they can move it
9 more so they feel better, but the overall movement ability
10 is reduced because what I did is I basically bolted it and
11 he can't move it because that's the whole purpose for not
12 doing that any more. What I do is the screws are actually
13 just like, like a cast. When you have a broken arm you can
14 put the cast in and wait until the bone heals.

15 You can't put a cast around your neck. So what we
16 do is it is like an internal cast you put the screws in,
17 wait until the bone is healed. Theoretically you can go
18 back and take those screws out. We don't do it because it
19 is an extra danger and the screws can stay in there.

20 The initial function is to hold the spine until it
21 is fused. Once it is fused, this flexion extension is
22 going to be reduced permanently. It is already
23 permanently, the screws hold it back until the fusion takes
24 place.

25 Q What do you mean by fusion, is that the allograft?

1 Yassari - Direct - Plaintiff

2 A Yes. So fusion is basically a word we use to say
3 that the bones stuck together, right. And we instead of
4 healing or fracture that heals a fracture is a bone that
5 usually was attached and you broke it and now you want to
6 reattach.

7 A fusion is when you have bones that are not
8 normally attached to each other and what you want is now
9 for them to be attached to each other and that's called a
10 fusion. So what you do is you drill some of the bone away.
11 You create a bridge between them. You can put artificial
12 bone or the patient's own bone in there and then you wait
13 until that whole thing becomes one piece. That's called a
14 fusion.

15 Q In Vinnie's case you used both autograft and
16 allograft?

17 A Yes.

18 Q What is that?

19 A Autograft is bone from the ring that I took off
20 that's his own bone, but usually that's not enough. You
21 want to have more material. So we used cadaveric bone or
22 artificial bone.

23 Q From a cadaver?

24 A Yes. That's the normal process. That's called an
25 allograft.

1 Yassari - Direct - Plaintiff

2 Q Right. What type of anesthesia was Vinnie put
3 under for the surgery?

4 A He had the general anesthesia.

5 Q For approximately how long did this procedure
6 take?

7 A It usually takes something like six to seven
8 hours.

9 Q And what was the hope or the expectation if you
10 will for the result of this surgery? What were you trying
11 to accomplish?

12 A So my primary objective was to stop the
13 progression of the problem he had and decompress.

14 THE COURT: Stop what?

15 THE WITNESS: Of the degeneration and the
16 compression of his spinal cord.

17 A (Continuing) I can't stop the disease process
18 itself. I'm not curing him from the degeneration; that's a
19 normal process of aging, but what I can do is slow it down.

20 That's one objective. The second one was that he
21 had because of the over growing bone again of impingement
22 of his spinal cord. I wanted to release that pressure from
23 the spinal cord and hope that it will allow him to feel
24 better with it functionally although that's just a second
25 goal.

1 Yassari - Direct - Plaintiff

2 Q Is it your expectation that these rods will remain
3 in his neck for the rest of his life or do they come out?

4 A No. They don't come out.

5 Q Why is that?

6 A Because initially they are holding it together.
7 So in the first three to six months the only thing that is
8 holding the spine together is these rods the hardware.
9 Afterwards I hope that the fusion will take place and the
10 rod will be then encased in bone.

11 For me to go back and bring it out would mean I
12 would have to drill that out again. That defies the whole
13 purpose. And a lot of people with a lot of screws in their
14 bodies that do just fine there is no need to take the risk
15 of doing such a surgery where there is no benefit.

16 Q He was hospitalized at Montefiore for the surgery,
17 is that correct?

18 A That's correct.

19 Q He was admitted on the day of the surgery, the
20 morning of the surgery August 21, 2012. He remained there
21 until September -- I will get the date for it. I believe
22 it is September 6. Does that sound about right?

23 A That's two weeks, yeah.

24 Q Two weeks?

25 A Yeah.

1 Yassari - Direct - Plaintiff

2 THE COURT: When was the surgery?

3 THE WITNESS: August 21 was the surgical
4 procedure. I don't know the exact discharge date.

5 Q Doctor, I'm going to hand you what has been
6 entered into evidence as Plaintiff's 7. It is a complete
7 hospital chart from Montefiore for the hospitalization for
8 this surgery. Feel free to refer to that if necessary as
9 we go through his.

10 After the surgery what kind of medication, pain
11 medications would you prescribe for Vinnie?

12 A So what I normally prescribe is PCA which is a
13 patient controlled anesthesia. And basically it is a
14 narcotic that the patient can administer himself or herself
15 by pushing a button. We set the dosage and the frequency.

16 And, you know, you can push as much as you want,
17 but you can't overdose yourself with it. There is a limit
18 that I determine. Typically for this type of surgery
19 because there is a lot of dissection in the neck patients
20 are going to hurt. Especially somebody like Mr. Taurone
21 who has a lot of muscle bulk. He's a big guy, and the
22 muscles become spastic because they didn't like me
23 dissecting them out because it is quite painful.

24 I give them that PCA.

25 THE COURT: What is that?

1 Yassari - Direct - Plaintiff

2 THE WITNESS: Patient controlled anesthesia
3 which is the abbreviation.

4 A (Continuing) Then he gets muscle relaxants, Valium
5 or Flexeril. Those are medications that stop the muscle
6 from spasing and allows to relieve the pressure somewhat.

7 Q For how many days or weeks after the surgery does
8 did Vinnie and patients generally experience both this
9 significant pain and muscle spasm?

10 A So that's very variable. Some people do very well
11 after the surgery. A little old lady does much better than
12 a big guy like Mr. Taurone. It has do with the muscle
13 bulk. It has to do with the overall ability to tolerate
14 pain. But it can take up -- the spasm can take three to
15 six months because the muscle needs to reattach to that
16 bone now that it had formed a scar tissue and these
17 contractions can take quite a while.

18 A lot of time the pain gets controlled -- well the
19 incisional pain and all these things like cutting your
20 finger it will get better after a couple weeks, but the
21 spasm can take three to six months. Typically once they
22 are off the medication or you reduce the pain medication,
23 it can stay that long three to six months on the muscle
24 spasm medication.

25 Q What is the cause of the spasms? That comes as a

1 Yassari - Direct - Plaintiff

2 result of what?

3 A Of me dissecting it off the bone. So the muscle
4 is attached to the bone and moves the bone by pulling
5 itself together. What I did is I dissected it out to get
6 to the bone. Now it needs to reattach. When I did the
7 surgical procedure, I stitch it back on, but there is no
8 way for me to stitch it really back on to the bone. The
9 body has to form scar tissue and bring that back.

10 Muscle is really a contracting organ. And when
11 you cut it, it will -- it doesn't like it. It just loses
12 its normal function. So what it does is it has this
13 uncontrolled contractures, that's the spasm. That needs to
14 be treated until the bone and or muscle reattaches.

15 Q What nerve involvement if any did your surgery
16 cause?

17 A I don't understand the question.

18 Q Did you have to cut away any nerves?

19 A No.

20 Q You followed Vinnie while he was still at
21 Montefiore post-operative?

22 A Of course.

23 Q Then upon his discharge can you tell the jury what
24 his condition was upon discharge?

25 A So he was still in considerable amount of pain.

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Spasm and otherwise. I think his pain tolerance is very high, but this is a quite traumatic surgical procedure. And I treated him afterwards for a good three to six months for pain.

We had the nurse practitioner who actually is specialized in narcotic prescription and pain control that we use for our patients and especially those who have more problems. And Mr. Taurone was certainly somebody who needed more control with that.

Q Doctor, what is Vinnie's prognosis going forward in your medical opinion?

A Well so the damage that he has occurred from the first one, second one and right before I saw him for the surgical procedure is a permanent damage. In my last exam of Mr. Taurone is he had gained some function back in his arms. His gait is getting somewhat better so that's sort of the icing on the cake because I told him that that probably will not be the case.

So I'm happy to hear that. But overall I didn't cure him from anything. There was very little we actually cure. Diabetes we don't cure. We just treat a more chronic disease. That's essentially what I did. What I did is I allowed him to progress in a slower pace.

He will continue to deteriorate at some point as

1 Yassari - Direct - Plaintiff

2 he gets older over the next 20 years. My job was to buy
3 him some time. I think that some of the damage of his that
4 occurred will not go away. The jerkiness of his legs won't
5 go away.

6 The ability of him to walk in the dark, for
7 example, he's going to be very limited because as long as
8 he doesn't have his visual cues he doesn't know where his
9 legs are. That will not go away no matter what you do.
10 The damage has already occurred. I told you that
11 beforehand and that was the conversation that we had before
12 the surgery is to have a realistic expectation of what I'm
13 going to be done. Because on the scans you can see the
14 spinal cord is bruised. Once you see that, it just is a
15 bad sign. It is actually so bad that even if he never has
16 another compression there is still a good chance that the
17 spinal cord will deteriorate because the reserve it has to
18 compensate for the aging is much more limited.

19 It has been used. So what could happen and that
20 was initially my thought with Mr. Taurone is that even if
21 there is no compression, the spinal cord can suddenly get
22 worse because it just doesn't function properly any more.

23 Eventually I think that's what's going to happen
24 to Mr. Taurone that he's going to have this progression.
25 My job was to slow it down and I hope that that will be the

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case. But he has permanent damage from his nerve compression and his spinal cord compression. And some of the things he has will not get better.

Q So his neck pain is going to be with him the rest of his life?

A Well you know pain is a difficult thing to say. I'm much more comfortable telling you about his neurological function because that's something I can measure. Pain is I'm sure that Mr. Taurone is a much tougher guy than I and tolerates pain more than I. Maybe if I had his pain I would be completely unable to do anything. So it is difficult to say. But would he always have some degree of pain, absolutely.

Q In terms of neurological function or lack of it, numbness, weakness in his extremities; is that permanent?

A So there is data to suggest as to when you can say that a function is permanently lost. Typically we say that it can take up to a year before you become better functionally. I think Mr. Taurone has reached that level.

Does that mean that he will never become any better? No, but it sort of plateaus because of what is left in his spinal cord may not be able to do these functions. I think that he will always have some degree of functional deficit.

1 Yassari - Direct - Plaintiff

2 Q Do you have an opinion within a reasonable degree
3 of medical certainty knowing your patient as you do whether
4 he will ever be able to return to work as a driver?

5 A Well, you know I don't think so.

6 Q Why is that?

7 A Because you need the feedback from your feet.
8 When you are driving you use your pedals. You can't look
9 at the pedals all the time; otherwise, you can't look at
10 the street. He needs that tactile feedback. I'm not sure
11 he will regain that.

12 That's one of the things that doesn't come back
13 from myelopathy. Whether he can get his grip back is
14 another question. Can he steer properly? I have not
15 cleared him to drive nor do I think that -- I mean is it
16 possible in the future? Miracles happen, but this type of
17 injury usually does not allow you to have tactile feedback
18 so you know what your feet are doing.

19 And I think that's a little bit dangerous if you
20 want to drive even if you were able to steer the wheel with
21 the proper hand grip, I don't think that he has the proper
22 feedback to do this as a job.

23 Q What future medical care and treatment, surgery do
24 you anticipate, reasonably anticipate Vinnie will need at
25 age now 55 next month for the rest of his life?

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1
2 A That's I mean I don't have a crystal ball so I
3 can't tell you what will happen. He's going to live what
4 another 40 years, 30 years. Let's say 70 of which is the
5 normal average and let's give him 70 because he has been
6 smoking and doing other stuff that you know may have
7 contributed to a his health problems that he has.

8 So let's give him 70 years. That's another few
9 decades to go. The chances of this disease progressing
10 because it is a disease of getting older is there. So I
11 think I can with almost certainty say that this will
12 progress. Whether he will need more surgical procedures
13 will depend on how it progresses. The fact that he had
14 already three surgical procedures increases his risk of
15 having more problems.

16 Can I predict what will happen? Well I would like
17 to predict that he will get better, but with the reasonable
18 approach to this is that he will slowly get worse and
19 eventually will have more problems. Whether that requires
20 surgery, I don't know.

21 Q Why is it that the second surgery and your third
22 surgery has made his prognosis less bright, more guarded?

23 A So the reason for that is that the more surgery
24 you have to do the more you manipulate something that is
25 organic. You know when I put screws in somebody's bone it

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2 is not like a table. The table doesn't react to the bone.
3 But your body reacts to these implants.

4 For one thing it will recognize it as foreign. So
5 what it will do is try to get rid of it. It will try to
6 digest it. It can't digest titanium, but the bone starts
7 reacting to the screws. Now when it fuses it doesn't react
8 any more because you have a big bulk of bone.

9 But there is still something there and the fact
10 that we had to do this three times now increases the
11 reaction of the body and therefore the risk of further
12 problems.

13 Q Doctor, you reviewed the surgical records from the
14 October 12, 09 surgery and the January 6, 2010 surgery
15 before you performed your third surgery, correct?

16 A That's correct.

17 Q You reviewed some radiographic films taken between
18 the accident date of November 9 and the January 6, 2010
19 second surgery, correct?

20 A Yes.

21 Q What if anything did you observe on the films and
22 maybe you can identify the film or films that you are going
23 to speak about in terms of this, the placement of the
24 plate, the titanium plate and the screws that Dr. Lee put
25 in on October the 12, 2009.

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2 A So I have looked at the scans that he had done I
3 think within 24, 48 hours after the accident happened. And
4 that includes an x-ray that demonstrates the plate. And on
5 that x-ray it is clearly visible that the bottom of the
6 plate is elevated and is not flush to the bone where it
7 should be.

8 In reviewing the operative report from October 12,
9 Dr. Lee indicates that what he did is he drilled down all
10 these bumps on the bone in order to put the plate flush on
11 to the bone. And that was then confirmed on the report
12 that I saw post-operatively after his first surgery that
13 the hardware is in good position. So with that in mind
14 when I look at the scan that he had done I think a couple
15 of days after the accident, the bottom portion of the plate
16 is elevated. And that causes two problems.

17 One, it is now sticking right behind the
18 esophagus, the meal pipe, and it is causing probably some
19 pressure when you swallow, and second, its function is
20 lost. If you remember I mentioned that the screws are done
21 first to hold things together until it is healed and fused.

22 So the only thing that's holding it are these
23 screws. When it is not properly where it should be any
24 more, then it doesn't fulfill that function any more. And
25 I think based on my review of the January 6, OR report when

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2 Dr. Lee went in he confirmed that there was a backing off
3 of the plate and the screw which was also the reason why he
4 decided to have the surgical procedure in view of the fact
5 that Mr. Taurone felt immediately worse after the accident.

6 Q Do you have an opinion with a reasonable degree of
7 medical certainty whether that second surgery and that
8 revision surgery was necessary surgery?

9 A I have no doubt it was because even if he wasn't
10 worse, if Mr. Taurone would have been perfectly fine, I
11 would have still because of the elevation of that plate
12 that that's a problem because it causes possible erosion.
13 It can go into the meal pipe. So I would have just done
14 the surgery to put the plate back on.

15 Q So you concur with Dr. Lee's decision to do the
16 revision surgery?

17 A Absolutely.

18 Q Now, doctor, I'm going to ask you to assume the
19 following facts to be true. I'm going to ask you a
20 hypothetical. On October the 12, 2009, Vinnie underwent
21 the anterior cervical discectomy and fusion of the C5-6
22 C6-7 with instrumentation.

23 On November 9, 2009 he was a front seat passenger
24 in a van stopped in traffic. He was wearing a shoulder lap
25 seat belt. The van in which Vinnie was riding was struck

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2 from behind and the rear of the van was lifted up and the
3 van was propelled forward some three car lengths or more.

4 His body was thrown backward and forward as the
5 van was pushed into the automobile stopped in front of him.
6 He was taken immediately to St. John's Riverside Hospital
7 where he complained of cervical pain, right arm shoulder
8 pain and numbness. He reported his pain severity upon
9 admission to be ten on a scale of one to ten.

10 Doctor, do you have an opinion to a reasonable
11 degree of medical certainty as to whether the November 9,
12 2009 motor vehicle accident was a substantial factor in
13 bringing about his injuries?

14 A I don't understand the question correctly.

15 Q All right I will rephrase it. Do you have an
16 opinion with a reasonable degree of medical certainty as to
17 whether the motor vehicle accident and what you call the
18 necessary revision surgery has exacerbated Vinnie's spinal
19 condition?

20 MS. TAYLOR: Objection, your Honor. It is a
21 compound question.

22 THE COURT: Well I don't think it is. But it
23 is -- do you mean has it exacerbated the condition
24 that was present after August -- withdrawn --
25 October 12, 2009?

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2 MR. SIRIGNANO: Correct.

3 THE COURT: And well that's the first
4 question I think. Let's do it that way. Do you
5 have an opinion with a reasonable degree of
6 medical certainty whether the surgery that was
7 done by Dr. Lee on October 12, 2009 was affected
8 negatively, that that surgery was somehow changed
9 or by the accident?

10 THE WITNESS: Absolutely because what
11 happened was anybody who had the -- I mean this
12 was within 30 days. He hadn't healed properly
13 yet. Certainly the soft tissue can heal, but the
14 bone hasn't healed. The only thing holding that
15 together was the plate.

16 There is evidence with the x-ray that the
17 plate was suboptimal when it was done after the
18 accident in November 11th I think or 18 or
19 whenever it was done. But demonstrating that the
20 hardware was not where it is supposed to be, the
21 only causative -- in order for this to happen
22 right you have to have a high -- there is a lot of
23 force required for that.

24 You can't just rotate your neck and that
25 thing comes out, right. So can I say that this is

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2 correlating that the accident created the problem
3 with the plate? In my opinion it did.

4 Q Doctor --

5 THE COURT: Now what about the other question
6 about the January 6 surgery.

7 MR. SIRIGNANO: Yes.

8 Q Doctor, you told the jury that the January 6, 2010
9 second surgery, the revision surgery was absolutely
10 necessary. You would have done it yourself, correct?

11 A Yes.

12 Q Can you tell the jury the causal relationship
13 between the November 9, 2009 accident and the need for that
14 surgery?

15 MS. TAYLOR: Objection, your Honor. Calls
16 for a legal conclusion.

17 THE COURT: Well he can ask. Can you tell us
18 whether or not the accident resulted in any need
19 for surgery? He can say that.

20 Q Doctor, did the accident, was the accident a
21 substantial cause of the need for the second surgery?

22 A I think that the plate was moved after the
23 accident and hence it didn't fulfill its function. So the
24 process of him healing from the first surgery was
25 negatively impacted. So that's one.

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2 And the second one is that the plate was elevated
3 and would have caused problems potentially with perforation
4 of his esophagus.

5 THE COURT: Perforation of what?

6 THE WITNESS: Of his meal pipe.

7 THE COURT: Esophagus?

8 THE WITNESS: Yes. I do have a little bit of
9 a funny accent.

10 A (Continuing) And so those are the two reasons why
11 he should have had surgery and because the plate was
12 elevated on the bottom that's not a good thing.

13 Q Doctor, could you -- I believe you have your lap
14 top here with you. Can you show the jury the film that you
15 are talking about that shows the plate being elevated?

16 THE COURT: Do you wish that he stand and go
17 to the jury box?

18 MR. SIRIGNANO: Yes. I don't know how big
19 his lap top is, but once he brings it on the
20 screen.

21 THE WITNESS: Let me bring it up.

22 MR. SIRIGNANO: Once he finds it perhaps we
23 can publish it to the jury box.

24 THE WITNESS: This would be the film from
25 November 18.

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2 THE COURT: What year, please?

3 THE WITNESS: 2009.

4 MR. SIRIGNANO: Can you maybe stand and we
5 will put it here if it doesn't fall off and point
6 it out to the jury.

7 THE WITNESS: This is an x-ray. You see
8 these spikes here which you can feel when you
9 touch the back of your neck. This is the
10 vertebral body where the bones are stuck on top of
11 each other and here is the screws that are going
12 in. And you can see is that this is the end of
13 the bone and the plate should be flush to that and
14 it is elevated. You see how it is rotated
15 outwards approximately half a centimeter.

16 And the meal pipe runs right here. When that
17 elevates it can poke into and it is metal. So
18 every time you swallow the muscle moves and it
19 rubs against that metal and that can be a problem.

20 Moreover, here are the pieces of bone that
21 were put inside so the disk space is here and
22 these are the extra bones he put in to make this
23 fuse together. And what you can see is that the
24 screws are holding it together. And if you don't
25 have that, it won't fuse.

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Yassari - Direct - Plaintiff

Now there is a little bit of a -- a little detail but you can see here a shadow around the screw. It's a little black shadow. You have to have an eye for it. I know it because I looked at this a lot.

But what that shows is that the screw has what is called a halo around it and that means it has been pulled out. So looking at this scan I already know that based on the fact that the surgery Dr. Lee first described he drilled it down and put it flush on to the bone, this certainly moved away.

MR. SIRIGNANO: Can I have you slide that down and point out things to this side of the jury box.

THE WITNESS: Yeah. These are the screws. This is the vertebral body. These bones are stuck on top of each other. This is the bone in the back that you can feel. This plate is supposed to be flush on it so it is lying right on top of bone. You can see there is a distance here between the plate and the bone.

That's half a centimeter which is a quarter of an inch. And the meal pipe runs right here so

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it will poke in around here. You see this little black narrow halo which is basically a ring around it. That shows that the round back is a little bit loose and the screw is pulled back.

For me that's evidence that the plate on the bottom has basically retracted. And that's a problem. A problem because this won't fuse any more. This doesn't hold the bones together.

Q Doctor, I have a few more questions. Do you have an opinion with a reasonable degree of medical certainty as to whether a result of this accident and the need for the second revision surgery Vinnie has permanent loss of use of a body, organ, member, function or system?

A Well he can't use his right arm, right.

THE COURT: He cannot?

THE WITNESS: Well his right hand is not very functional.

THE COURT: So he cannot?

THE WITNESS: He cannot. That was the case when I saw him. From my surgery he got a little better, but I don't think he will ever regain complete function. I can't really tell you which one is part of the degeneration and which part is the exacerbation through the accident.

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It is very difficult. It is not discernible. But certainly the fact that he had to have a second surgery accelerated, it can accelerate the degenerative process because trauma is known to do that which lead him to me.

Whether he will ever be able to use his right arm I doubt it. I think the damage that has occurred is a combination of the degeneration and the fact that he needed a second surgical procedure because of the accident is probably not going to get better.

Q Let me ask it this way. Doctor, but for the accident and the need for the second surgery, would you have been performing your surgery in August of 2012 or would it have been in August of 2020 or 2025?

A That's a possibility. I mean look, the process, the surgery that Dr. Lee did was essentially a different type of surgery with the same goal which was to decrease the rapid progression of this problem, right. If he had not had that second surgery, that process may have been slower. Can I be certain? No.

Is there a possibility of a slower progression? Yes. This type of injuries we will all have the degeneration. Some of us will tolerate it well and have

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2 never have the need for a surgical procedure and others
3 won't. The fact that he had a second surgery which is the
4 consequence of the accident certainly exacerbated it.

5 Does that mean I would have certainly not seen him
6 in 2012? No. But is there a good chance to assume that
7 the progression may have been slower? Yes.

8 Q It is more likely than not you would have seen him
9 later than sooner but for the accident and surgery?

10 A That's possible.

11 Q Has he sustained a significant limitation of use
12 of a body function or system?

13 A Yes.

14 Q And has he sustained a permanent consequential
15 limitation of body organ or member?

16 A He can't walk and doesn't have good balance so
17 again that's a combination of the two of them. But one
18 exacerbates the other.

19 Q So the answer would be yes?

20 A Yes.

21 Q Doctor, you are being paid for your coming to
22 court today?

23 A That is correct.

24 Q You are being paid for having me come to your
25 office twice to bother you and speak with you, correct?

1 Yassari - Direct - Plaintiff

2 And when you were with me today you are with the jury if
3 not for this case you would be taking care of patients in
4 your office?

5 A That's correct.

6 Q Or you would be performing surgery in the OR
7 correct?

8 A That is correct.

9 Q So you are being compensated for your time based
10 on your expertise?

11 A That is correct.

12 Q Correct. Okay. And what is your standard fee for
13 this kind of, for giving testimony in a deposition or
14 trial?

15 A For a trial? When I come to court the fee is for
16 the day is \$5,000.

17 Q Doctor, you are continuing to follow Vinnie or I
18 should say he's following with you?

19 A That is correct.

20 Q With what regularity do you expect to see him
21 every year going forward?

22 A So in the first year what I do generally what I do
23 is I see them one week, three weeks, six weeks, three
24 months, six months and a year. And after that it depends
25 how often I want to see them. It can then be every year or

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longer or not at all.

In Mr. Taurone's case I think the next time we see each other is six month from the one year anniversary. Well anniversary is joyful, so I guess one year surgery date.

Q As you sit here today maybe this is up to your office manager, do you know what the likely fees are on an annual basis for you to monitor Vinnie?

A I have no idea.

Q Fair enough.

A I don't get paid by visits. I have a salary and then I see the patients as needed. So there is no incentive for me to see them more or less. And I'm not involved in the economics at all. I don't know what people pay and how much it costs to see me.

Q So how much of your time do you spend seeing patients, performing surgery versus your professorships or your administrative duties as chief of neurosurgery at St. Barnabus?

A At St. Barnabus my clinical duties or administrative duties take approximately 20 percent of my time. 80 percent is clinical work.

Q You published peer review articles, correct?

A That's correct.

1 Yassari - Direct - Plaintiff

2 Q And I'm looking at your resume on one of them you
3 have you wrote a piece on Decision Making in Spinal Care
4 for the Journal of Neuro Interventional Surgery?

5 A Yes.

6 Q That was this past March?

7 A That is correct.

8 Q Would you tell the jury just a little bit about
9 that. We don't want to get too deep into it, but what do
10 you mean by decision making in spinal care?

11 A Actually that was an I was asked to review a book
12 that was written recently comprised of I think something
13 like 80 chapters based on discussing specific decision
14 making processes in spine surgery.

15 And I read through the book and depicted whether
16 it is accurate, whether it is properly written, user
17 friendly, who should be reading it and basically went
18 through the book determining whether the authors had
19 created a book that is of worth and accurate and the gold
20 standard of the care we give right now. So it was a
21 review.

22 Q Is there anything out there on the cutting edge of
23 medical developments that holds any promise for Vinnie that
24 hasn't yet been put into practice that you are aware of
25 that might give him a better prognosis as we sit here?

1 Yassari - Direct - Plaintiff

2 A Well the main problem with Mr. Taurone is that the
3 spinal cord has been injured. And right now there is no,
4 nothing that we can do to regenerate the spinal cord. Now
5 in the future there is some talk about stem cell
6 transplantation, but this is I mean stem cell
7 transplantation spinal cord and Star Wars are very close
8 next to each other. I think it is very far in the future.

9 I don't think there is anything that comes even
10 close to in clinical implementation for Mr. Taurone. And
11 regard to his degenerative spine there is just nothing we
12 can do about the progress of aging which is really
13 degeneration.

14 Q After you performed your surgery in August of
15 2012, last year, did Vinnie undergo any physical therapy or
16 any other post surgical?

17 A Yeah that's a standard for patients like Mr.
18 Taurone to undergo physical therapy. What I usually do is
19 I don't start it immediately. I let them heal at least the
20 soft tissue component is healed because you don't want the
21 wound to break up or have an issue with immediate post
22 operative care.

23 Usually I wait up to six weeks at the minimum
24 before I start physical therapy because obviously physical
25 activity can exacerbate the problem. As you can see with

1 Yassari - Direct - Plaintiff

2 the accident which happened within 30 days and you know
3 obviously these type of things I want Mr. Taurone to do
4 doesn't have the same impact.

5 The reason I don't want him to do anything is I
6 want him to heal properly and for this to then be so he can
7 tolerate the physical therapy afterwards.

8 Q What type of physical therapy did you recommend
9 and what was the goal? What were you trying to accomplish?

10 A Yeah so lot of people become very stiff after the
11 surgical procedure because of the spasm that basically they
12 have the neck like this so they move like that and that's
13 not so good because what you don't want is for them to get
14 the stiff neck.

15 And so what you do is after the wound has healed
16 you actually exercise to try to rotate their head so the
17 muscles loosen up a little bit. It has more to do with the
18 spasm. That can take up to three to six months that the
19 physical therapy is geared towards relaxing those muscles.

20 And, yes, he does have limitation of flexion
21 extension but still he can do some of it and with exercise
22 increase that range. And it will never go back to normal
23 but within the limit of the fusion you can still make it
24 somewhat better and that's why he gets physical therapy.

25 Q For what period of time would you recommend or are

1 Yassari - Direct - Plaintiff

2 you recommending that he continue with physical therapy?

3 A It depends. There are two issues with that. One
4 is that the insurance companies don't let me do this
5 forever. So they limit me. Usually what I do is I exhaust
6 what the insurance companies pay for. And the second thing
7 is that it depends on the patient. Some people do just
8 fine. And the motivation is good enough for them to learn
9 the exercises and do them at home and don't require going
10 to physical therapy.

11 Some people need a little bit more motivation.
12 There is a psychological component to it where people feel
13 a little bit depressed. And so for those I actually say I
14 want you to work with someone because that motivates you.
15 So it is variable. Mostly it is limited by insurance.

16 What I sometimes do is if I have the luxury to
17 wait with the surgery I wait until it is in the last
18 quarter so I can have two quarters of insurance company
19 allow me to do it for an extended period of time.

20 THE COURT: Counsel we are running out of
21 time. Do you have any more questions?

22 MR. SIRIGNANO: No. Thank you very much,
23 doctor.

24 THE COURT: Thank you. All right we are
25 going to take a ten minute break, no longer. 25

1 Yassari - Cross - Defense
2 of 4, all right. We will be back in session.
3 Thank you.
4 (Jury exits courtroom.)
5 (Recess taken.)
6 THE COURT: Welcome back.
7 (Jury enters courtroom.)
8 THE COURT: We are still under examination of
9 the doctor with cross-examination by Ms. Taylor.
10 Doctor, you remain under oath; understood and
11 agreed?
12 THE WITNESS: Yes.
13 CROSS-EXAMINATION
14 BY MS. TAYLOR:
15 Q You as part of your review, medical review before
16 you did Mr. Taurone's surgery, you reviewed all of his
17 medical records, isn't that correct?
18 A The ones that I was provided with, yes.
19 Q Were you provided with the records for his St.
20 John's admission on November 9, 2009?
21 A The actual --
22 Q The records?
23 A For the surgery when I made the decision for
24 surgery?
25 Q I'm talking about November 9, 2009 there was a

1 Yassari - Cross - Defense

2 hospitalization after his accident. Did you review those
3 records?

4 A Are you talking about when I did the surgery or
5 for this?

6 Q For any reason, before the surgery, just to review
7 his history?

8 A I didn't see the actual file from November from
9 the hospital before that before the surgery.

10 Q Okay. And did you subsequently after the surgery
11 review the November 9, 2009 hospital admission?

12 A Not all of them, no.

13 Q Well did you review the CAT scan that was done on
14 the night of the admission after the motor vehicle
15 accident?

16 A I had those in my decision making for Mr.
17 Taurone's surgery.

18 Q Were you aware that a CT scan was done of Mr.
19 Taurone's spine on November 9, 2009?

20 A Yes.

21 Q Were you aware that that CT scan showed that there
22 was no defect in the hardware that Dr. Lee had put in in
23 the October, 2009 surgery?

24 A That the CAT scan from October -- from November?

25 Q Were you aware that the CAT scan that was done on

Yassari - Cross - Defense

November 9 showed that there was no defect in the hardware that Dr. Lee had put in to Mr. Taurone in the October surgery?

A I don't remember which CAT scan I looked at. There was one also done on the 18, one of them.

MS. TAYLOR: Your Honor, this is part of exhibit five. I would like to take this out and show it to the witness.

THE COURT: First mark that five number one, small number one.

(Plaintiff's Exhibit 5(1) marked for identification.)

Q Doctor, would you take a look at that record. Do you see on the bottom of that report?

MS. TAYLOR: Withdrawn.

Q Do you recall seeing this C T scan report dated November 10, 2009?

A I remember seeing this report, yes.

Q Do you recall seeing that before you did your surgery in August, 2012?

A No.

Q You don't recall seeing this before you did your surgery?

A No, I don't recall seeing this before, no.

1 Yassari - Cross - Defense

2 Q Did you see on your report that it indicates that
3 there was no fracture or subluxation?

4 A That's correct.

5 THE COURT: What does subluxation mean?

6 THE WITNESS: Subluxation is a movement. So
7 the alignment is disrupted.

8 Q So there was no disruption of the alignment of the
9 vertebra area?

10 A That's correct.

11 Q You also see that on item number 3 of that report
12 indicates that the anterior fusion hardware was retained.
13 Do you see that, doctor?

14 A Yes, she wrote retained here.

15 Q As a neurosurgeon who does fusion surgeries and
16 who has extensive practice and also teaching experience,
17 retained hardware would mean that the screws and plates
18 that Dr. Lee put into Mr. Taurone in October was in fact in
19 the position it should have been, wasn't it?

20 A That's the meaning of retained, yes.

21 Q Now you said that you took a history of Mr.
22 Taurone before you did the surgery, is that right?

23 A Yes, that's correct.

24 Q Now were you aware of what type of motor vehicle
25 accident Mr. Taurone had been involved in on November 9,

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1

2

2009?

3

A I knew that he was rear ended.

4

5

6

Q As a result of the rear end accident based on your experience that would mean that there would be thrust forward movement, is that correct?

7

A That's correct.

8

9

Q There would be movement of the spinal column forward?

10

A Correct.

11

12

Q And that's significant that forward flexion movement, isn't it?

13

14

15

16

A It depends on the impact, but the area that is most vulnerable is the neck because the head is on top of it. It is heavy and so that's the area that usually moves the most.

17

18

19

Q Also a fall on the back that would be cause of an impact to the neck area and the cervical spine as well, wouldn't it?

20

A When you fall on your back?

21

Q Yes.

22

23

A No, the impact actually on the fall of the back is more on the area that you impact on the ground.

24

Q But it could have some effect on?

25

A It can because you have the same splash movement

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back and forth.

Q And a fall on the back could also effect or dislodge any type of hardware that Mr. Taurone had in his cervical area as well, couldn't it?

A It can, yes.

Q Now, doctor, were you aware that on November 17 Mr. Taurone had fallen which necessitated him going to St. John's emergency room on November 18?

A Yes, that's in his record that he went for a second time after he fell.

Q Were you also aware, doctor, when you reviewed his history that he reported to St. John's emergency room on October 29 because he had neck pain?

A Yes, I think so.

Q And that October 29 report to the hospital was before obviously the November 9 accident?

A Yes.

Q Were you also aware, doctor --

MS. TAYLOR: Withdrawn.

Q Did Mr. Taurone also indicate that he was a smoker as part of the history that you took?

A Absolutely.

Q And smoking would affect that interior surgical fusion wouldn't it?

1 Yassari - Cross - Defense

2 A It inhibits or it decreases the fusion rate.

3 Q And the fusion rate, correct me if I'm wrong,
4 would mean that the cells would grow to replace the area
5 that was with the screws in place, is that right?

6 A That's correct.

7 Q And long term smoking could affect the rate of the
8 healing process, isn't that correct?

9 A That's correct.

10 Q Now with the anterior surgery that Mr. Taurone had
11 on October 12, 2009, would it be fair to say that in the
12 medical field it would be minimum four to six months for
13 that healing process to begin?

14 A It depends, but that's three to six month is a
15 good estimate.

16 Q So notwithstanding this motor vehicle accident on
17 November 9, 2009, less than 30 days after this surgery, he
18 still had not fully healed or began his healing process, is
19 that correct?

20 A He had healed -- the healing process of the wound
21 is faster so he's probably done with that in the reasonable
22 fashion within two weeks, 16 days, 21 days maximum. The
23 bone takes longer because it is a slower process.

24 Q Right?

25 A So was he completely healed? The wound was

1 Yassari - Cross - Defense

2 healed. Was the fusion done? No.

3 Q When you say wound, you are talking about the
4 surgical incision that Dr. Lee made?

5 A Correct.

6 Q You are not talking about the actual plates that
7 were inserted or the vertebrae?

8 A That's correct. I'm talking about the incision
9 and the closure of the wound itself. That takes anywhere
10 between 14 to 21 days. The healing process that includes
11 the fusion can take three to six months.

12 Q In that November 10, 2009 CT scan there is no
13 indication in there that the wound or the incision site was
14 affected in any way by this November 9 accident?

15 A The CAT scan is not the right way to determine if
16 superficial wound healing you would not be able to see
17 that. That's why she doesn't comment on it.

18 Q My question is it is not reflected on that
19 November 10 scan, is it?

20 A No, because that's the wrong tool to evaluate.

21 Q If you had used an MRI is it your testimony that
22 that would have shown?

23 A It gives you more indication because it visualizes
24 the soft tissue. CAT scan only visualizes -- it visualizes
25 soft tissue, but not very much. Typically MRI would be a

1 Yassari - Cross - Defense

2 better way to say how much healing that has been taking
3 place.

4 Q Is it fair to say that the C T scan would be the
5 better tool to use to find out if there was any affect on
6 the hardware or also vertebrae?

7 A Absolutely.

8 Q You are aware that Mr. Taurone did not have an MRI
9 between November 9, 2009 until December, 2009?

10 A That's right.

11 Q So there was no tool or diagnostic test such as an
12 MRI to tell you whether there was any affect on that
13 surgical wound, right?

14 A Yeah, but you know what the surgical wound is not
15 such a big issue for the healing process. I think we tried
16 to based on the records Mr. Taurone did not tolerate the
17 MRI so that was initiated but as you said correctly it
18 wasn't done.

19 Q You are aware he did not do MRI's because of his
20 claustrophobia?

21 A That's correct. I had the same problem where I
22 got to operate on him where we did open MRIs.

23 Q As part of that history were you aware that Dr.
24 Lee had instructed Mr. Taurone to wear a cervical collar?

25 A No.

1 Yassari - Cross - Defense

2 Q You weren't aware of that. Were you aware that
3 Mr. Taurone was not compliant with wearing that cervical
4 collar after the October 12, 2009 surgery?

5 A No.

6 Q You weren't aware of that. Certainly wearing a
7 cervical collar would assist in that healing process, isn't
8 that correct?

9 A It depends who you ask.

10 Q Well I'm asking you?

11 A Well I don't put them in a collar. The reason is
12 I have an internal cast. The screws that are there are
13 holding it together. Now with all due respect to Dr. Lee I
14 don't even know Dr. Lee, but I suppose he's an older, more
15 experienced surgeon than I am.

16 In the old school they used to put people all the
17 time in the collar. It felt better. It is more
18 comfortable and give surgeons some degree, I just operated.
19 Let's leave it in there. The new thought of school is that
20 once the screws are in you do not need a collar.

21 I never put my patients in a collar unless they
22 have subjective pain and that gives them a psychological
23 boost to have something that makes them feel better. But
24 from a stability perspective, there is no reason to put
25 anybody in a collar once the screws are in.

1 Yassari - Cross - Defense

2 Q As you just said there is a divergence in school
3 of thought on that?

4 A Absolutely.

5 Q Were you aware that Dr. Lee had also given Mr.
6 Taurone a bone stimulator; were you aware of that?

7 A No.

8 Q You weren't aware of that. A bone stimulator
9 after that fusion surgery would be important in terms of if
10 I have it right if I have it wrong let me know, stimulating
11 the cells to grow for the bone to fuse?

12 A Absolutely.

13 Q Were you aware that Mr. Taurone was not compliant
14 with the bone stimulator?

15 A No.

16 MR. SIRIGNANO: Objection, your Honor. I
17 don't think that's --

18 MS. TAYLOR: He took a history, your Honor.

19 THE COURT: Well --

20 MR. SIRIGNANO: I don't think that's the
21 state of the record though.

22 THE COURT: The question is whether or not
23 this information was elicited by the witness. The
24 fact that counsel may ask that does not mean that
25 any witness has stated that that was a fact.

1 Yassari - Cross - Defense

2 MS. TAYLOR: That's fair.

3 Q Were you aware that he wasn't compliant?

4 A No.

5 Q Now you said that when you did your surgery that
6 Mr. Taurone that he had a spinal cord injury?

7 A Correct.

8 Q The CAT scan for November 10, 2009 and even the
9 November 18, 2009 which you showed the jury did not show
10 any spinal cord injury, did it?

11 A Well I showed the jury an x-ray. And you can't
12 see spinal cord injury on those x-rays. Again the CAT scan
13 is not -- I don't evaluate the spinal cord by looking at
14 the CAT scan. For that I get the MRI. So you are right in
15 the assumption in the CAT scan I did not see an injury
16 because that's the wrong tool to see it.

17 Q Well there was an MRI done on in December of 2009;
18 you are aware of that, aren't you?

19 A I think so, yes yeah, I am. December, yes, that
20 was right before Dr. Lee did the surgery, yes. That was
21 finally the MRI that Mr. Taurone was able to tolerate.

22 Q That was part of Mr. Taurone's medical records
23 that you reviewed part of his history?

24 A That's correct.

25 Q You are aware that there indicates that there was

1 Yassari - Cross - Defense

2 some spinal stenosis --

3 A Yes.

4 Q -- as of that date? But it does not indicate
5 whether any of the hardware caused that, does it?

6 A You can't see the hardware on the MRI. So just
7 for clarification, the MRI allows me to see the soft
8 tissue. But the disadvantage is that I don't see the
9 hardware because the metal creates an artifact around it so
10 it is a little bit not clearly visible.

11 For that in order to determine whether the bone
12 looks okay and what the hardware looks like you look at the
13 CAT scan. But the CAT scan disadvantage that I don't see
14 the soft tissue so I need both to determine what does the
15 spinal cord look like with the MRI and with the CAT scan I
16 look at what the bone and hardware looks like.

17 Q Well the CAT scan that was done on November 18,
18 2009 isn't it a fact that that did not show any defect in
19 any of the hardware or the screws or the plates that Dr.
20 Lee had put in?

21 A Per the report you mean?

22 Q Yes.

23 A Per report it says there is no defect.

24 THE COURT: The report says what?

25 THE WITNESS: There is no defect.

Yassari - Cross - Defense

Q Also on December 31 -- withdrawn. There was a --
I would assume it says RAD chest. Is that like a scan as
well?

A What does it say?

Q It says RAD slash test?

A Yes that's an x-ray of the chest probably a
preoperative chest x-ray before he did the anesthesia. He
may have had work up for operative clearance for the
surgery.

Q Do you recall seeing that report December 31,
2009?

A No, I didn't look at that report.

MS. TAYLOR: I would ask that that be shown.

I'm sorry. I will hold off on that.

Q Doctor, are you aware that in that December 31,
2009 report it did show the instrumentation but it did not
note that there was any defect? Are you aware of that?

A No. I don't know that he had the scan done. So I
cannot be --

Q I'm sorry?

A I cannot be aware of a report of a film that.

Q That you didn't see?

A Don't see.

Q That's fair.

1 Yassari - Cross - Defense

2 A But can I say something to that?

3 Q No, no, just the questions I ask?

4 A I'm going to ask the question though you are
5 referring to the chest x-ray, right?

6 Q Yes.

7 A That's right.

8 Q The chest x-ray in your experience could show that
9 fusion and the instrumentation, isn't that correct?

10 A It depends because if it is higher up it is not
11 geared towards neck so you can see only from here that's
12 one thing. The other is that if they were asked to do a
13 chest x-ray, the radiologist would comment on the chest
14 x-ray not on the fusion necessarily.

15 Q Now I want to just take you to the degeneration
16 that you talked about. That is a condition of normal wear
17 and tear, isn't that correct?

18 A Correct.

19 Q That's not traumatic such as something of quick
20 onset such as motor vehicle accident?

21 A Doesn't get initiated by it, no.

22 Q Isn't it a fact that when you did your surgery in
23 August, 2012 that Mr. Taurone still at that point had
24 severe spondylitic changes in his cervical spine?

25 A That's correct.

1 Yassari - Cross - Defense

2 Q And spondylosis is like a disease process; that
3 fair to say?

4 A That's correct.

5 Q Again, that's not traumatic, is it?

6 A Originally, no.

7 Q You also said, doctor, that there was a
8 myelopathy?

9 A Yes.

10 Q Again that is a disease process, isn't that right?

11 A Yes. It is a syndrome, yes.

12 Q Doctor, again with that November 9, 2009 C T scan,
13 in addition to saying there was no problem or defect in the
14 hardware, it also indicated that Mr. Taurone had
15 degeneration and spondylosis; are you aware of that?

16 A Yes.

17 Q And?

18 A It says it here.

19 Q Also on the November 18, 2009 C T scan are you
20 familiar with that?

21 A Yes.

22 Q It also indicates that there was no dislocation of
23 the fusion plate and screws?

24 A I don't have the report, but if that's what the
25 report says, then that's what the report says.

1 Yassari - Cross - Defense

2 MS. TAYLOR: I think we have the reports over
3 here. Your Honor, this is certified so I will
4 just show it to counsel and admit it into
5 evidence.

6 MR. SIRIGNANO: Fine.

7 THE COURT: You want it admitted?

8 MS. TAYLOR: Yes.

9 MR. SIRIGNANO: I thought this was already
10 admitted.

11 MS. TAYLOR: No, it hasn't.

12 MR. SIRIGNANO: I think it is already in
13 evidence.

14 THE COURT: So this is for the defense. What
15 is that?

16 MS. TAYLOR: November 18, 2009 St. John's
17 Hospital record.

18 THE COURT: All right, Defendant's E. Any
19 objection, counsel.

20 MR. SIRIGNANO: No.

21 THE COURT: So stipulated? Admitted.

22 MS. TAYLOR: Thank you. I will be right with
23 you, your Honor. I apologize.

24 Q Doctor, I just took out one report and put it on
25 top for your convenience. I would ask you to take a look

1 Yassari - Cross - Defense

2 at that. Do you recall seeing that report?

3 A I think so, yes.

4 Q That report indicates at that time November 18,
5 2009 Mr. Taurone had the degenerative spondylosis; isn't
6 that correct?

7 A Degenerative changes, yes.

8 Q He also had the disk space narrowing at that
9 point?

10 A No. It doesn't say anything about that.

11 Q Does that C T scan also confirm that there was no
12 fracture?

13 A It doesn't mention a fracture, yes.

14 THE COURT: It doesn't?

15 THE WITNESS: Does not.

16 Q It also indicates that you, the hardware or
17 actually the hardware was intact?

18 A Say again.

19 Q The hardware was in the location that it was
20 originally put when doctor --

21 A It says anterior fusion with disk implantation at
22 both levels.

23 Q In your experience reading reports, films and the
24 surgery that you do, would the radiologist include if there
25 was shown to be any kind of defect or dislocation of the

1 Yassari - Cross - Defense

2 hardware? Would there be normally included in that scan?

3 MR. SIRIGNANO: Objection.

4 THE COURT: Read the question back.

5 (Requested portion was read by reporter.)

6 THE COURT: Sustained.

7 MS. TAYLOR: I will withdraw.

8 Q Doctor, if there were a defect in the hardware in
9 your experience would you expect that to be shown in a C T
10 scan for the cervical spine?

11 MR. SIRIGNANO: Same objection.

12 THE COURT: Sustained.

13 Q Also the November 18, 2009 C T scan indicates that
14 there was a comparison to an October 26, 2009 scan, is that
15 correct?

16 A This one?

17 Q Yes?

18 A No. It doesn't compare anything to anything.

19 Q You don't see there --

20 A No, maybe I'm repeat -- it says that a repeat
21 study should be suggested because there is motion on
22 multiple images. But I don't see any comparison directly.

23 Q Now the December 15 MRI also that you indicated
24 that you did see before you did the surgery said that there
25 was no hardware fusion defect or dislocation, didn't it?

1 Yassari - Cross - Defense

2 A With the caveat that I would not use an MRI to
3 determine whether --

4 Q Right?

5 A -- that's the case.

6 Q So now to your knowledge, doctor, having reviewed
7 all of Mr. Taurone's records, taking a history from him,
8 isn't it a fact that there was no diagnostic test either
9 CT, MRI, x-ray or anything other than what you noted on
10 November 18, 2009 that shows any movement of that hardware?

11 A The x-ray from November 18 clearly shows a change
12 in my opinion of the plate.

13 Q Okay, but nothing before from October 12 to
14 November 17 showed any type of dislocation?

15 A In the reports, no.

16 Q In fact when you showed the jury the November 18,
17 2009 film or scan you don't have any other scan that shows
18 that elevation that you talked about, do you?

19 A I do.

20 Q Is it here with you today?

21 A It is here with me. Because I want to give you
22 one thing before I show you that film. I don't mean this
23 in a disrespectful way.

24 Q Doctor, I'm going to stop you right there. What
25 is the date of that film that you are referring to?

1 Yassari - Cross - Defense

2 A November 18, 2009 when we first did this CAT scan
3 you have in front of me. This is what I wanted to say --

4 Q Okay --

5 MR. SIRIGNANO: Your Honor, the witness
6 should be able to answer the question.

7 MS. TAYLOR: Your Honor, I just want to be
8 clear where he's going with this because if he's
9 referring to something I haven't seen.

10 THE WITNESS: No, no. I don't refer to
11 anything --

12 THE COURT: Everyone stop talking. Counsel
13 has a right to control the witness. You can
14 always go into it at another time. If it is
15 responsive to her question, of course, he may
16 answer.

17 MR. SIRIGNANO: I don't believe the witness
18 is out of control.

19 THE COURT: But he has to respond to her
20 question whatever that is. Anything that goes
21 beyond her question or does not respond to her
22 question of course may be stricken upon
23 application.

24 MR. SIRIGNANO: Your Honor, two questions
25 earlier she asked or in her own cross-exam

Yassari - Cross - Defense

properly rhetorical way there are no other studies other than this one. And the witness was trying to explain there is in fact another study, and then she cut him off and changed the subject.

MS. TAYLOR: No, I wanted to know, your Honor, I want to know what is the date of that study.

THE WITNESS: November 18, 2009 when we first did the CAT scan the report of which you gave me and that was what I wanted to refer to because you asked me whether I read all the reports that are sent to me.

Q Right?

A And the answer is no. And the reason is I like to look at scans myself. One, the radiologist can make mistakes. Second I don't even know this radiologist and his ability to read scans. That's why I usually don't read the report until I see the scan. There is going to be discrepancy sometimes absolutely. Who do I trust when I see a scan versus a report from somebody I don't know? I trust my judgment.

Q Okay. But you are not a radiologist, are you, doctor?

A Absolutely not.

1 Yassari - Cross - Defense

2 Q And you don't on a daily basis look at films as a
3 radiologist, do you?

4 A I don't work as a radiologist, that's correct.

5 Q The November 18, 2009 film that you showed the
6 jury is there something in addition to that that we are not
7 aware of?

8 A I don't know what you are aware of, but the reason
9 I say that this scan, this report is inaccurate in my
10 opinion is because I do see an elevation of the plate that
11 I can show you on the scan that I have and this is a
12 suboptimal scan in any case because there is motion and the
13 guy suggested we should do another study just to see it
14 correctly. So that's the reason why I don't look at these
15 reports. Because if I go only by this, right, I would
16 agree with you there is no mention of anything. But he
17 also doesn't mention that there is soft tissue swelling or
18 doesn't mention there is no fracture.

19 Lot of things that are not mentioned. The absence
20 of evidence does not mean that it was read properly which
21 is the very reason why I don't look at these reports.

22 Q It is possible some of the radiologists films you
23 are saying at St. John's Hospital where Mr. Taurone treated
24 could be at variance with what your observation is?

25 A Absolutely. It happens all the time.

Yassari - Cross - Defense

1
2 Q Okay. Now in Dr. Lee's January 6, 2010 surgical
3 report he did not mention any elevation of the plate, did
4 he?

5 A Quite to the contrary.

6 Q Did he?

7 A Yep.

8 Q Where is that, doctor?

9 A In the description of the operative finding it
10 indicates that there is some -- when he describes why he's
11 doing the surgery he indicates that there is some
12 elevation. I don't know if the word is elevation, but
13 there is some problem with the plate.

14 Q Well he didn't use the word elevation, did he,
15 doctor?

16 A No, I can tell you exactly what he used if you let
17 me look at the report. But there is a mention of him not
18 being satisfied with the way the plate looks.

19 Q That could be as a result of the osteophyte that
20 have formed, couldn't it, doctor?

21 A No. The plate does not move because osteophytes
22 push it away. The osteophytes go around it. If the plate
23 is screwed in the osteophytes just don't push it out.

24 Q But isn't it a fact that there was no elevation as
25 you call it or anything shown on any of the films or

1 Yassari - Cross - Defense

2 reports or scans on November 9?

3 A No, that's incorrect.

4 Q On November 9, 2009?

5 A On November 9 he didn't have any x-rays.

6 Q Well he had a C T scan, didn't he, doctor?

7 A On November 9?

8 Q Yes?.

9 A I don't remember that one. The one that I
10 remember is the 18 which is the time when he had the x-ray
11 that I showed the jury.

12 Q Okay. So you don't remember what his cervical
13 spine looked like by film November 9, 2009?

14 A That's correct, I don't remember.

15 Q That is correct you said?

16 A That is correct.

17 Q Now the goal of your surgery you said to us and
18 correct me if I'm wrong was to stop the progression of the
19 degeneration, is that right?

20 A That was one of the goals, yes.

21 Q So it did not have anything to do with any of the
22 fusion surgery that had been done on January 6, 2010?

23 A I don't understand the question.

24 Q Well you said that the goal was to stop the
25 degeneration which is a natural process, right?

Yassari - Cross - Defense

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2 A No that's not what I meant. What I meant was that
3 the goal of the surgical procedure was to stop the
4 compression that comes about with degeneration. And the
5 compression was a consequence of what is called adjacent
6 level disease of the previous surgical procedure and the
7 degenerative changes that continue to occur.

8 Q Which is not a result of the motor vehicle
9 accident of November 9, 2009, is it?

10 A Which doesn't get initiated but can get
11 exacerbated by a motor vehicle accident.

12 Q You do not have any type of film, MRI, CAT scan
13 that shows that the motor vehicle accident of November 9
14 exacerbated the degenerative disease, do you?

15 A No. Degenerative disease is a process. It is not
16 an event. So there is no such thing as here there is no
17 degeneration then here you have it and there is an impact.
18 It is a process. What can happen is that that process can
19 accelerate, right, due to trauma.

20 It certainly can get accelerated due to whatever
21 reason you have a second surgical procedure that then
22 exacerbates the process and that can be proceeding to a
23 faster pace.

24 Q It could be exacerbated by a traumatic fall,
25 couldn't it, doctor?

1 Yassari - Cross - Defense

2 A Any type of trauma.

3 Q Any type of trauma could cause that. And any type
4 of trauma could cause that exacerbation of the
5 degeneration, isn't that correct?

6 A It can.

7 Q Thank you, doctor. Now, doctor, when Mr. Taurone
8 fell on his back on November 17, 2009, could that have had
9 an affect on that kyphosis or cause that kyphosis in any
10 way you talked about?

11 THE COURT: What are you talking about?

12 MS. TAYLOR: Kyphosis.

13 THE WITNESS: Yes.

14 THE COURT: Lordosis?

15 THE WITNESS: Lordosis is normally when he
16 bent forward. It was kyphosis.

17 Q Kyphosis. So can the fall cause that?

18 A It is another trauma it depends on the impact of
19 the trauma.

20 Q It is a possible cause?

21 A Any type of trauma in a non-healed fusion or
22 non-fused construct can cause problems.

23 Q And in your medical opinion as of November 18,
24 2009 Mr. Taurone was not in a healed situation of the
25 cervical spine?

Yassari - Cross - Defense

1
2 A He was not fused.

3 Q Now you also said that the C T scan can show
4 spinal cord bruising?

5 A No, the MRI.

6 Q Oh, the MRI?

7 A Yes.

8 Q Did you see any spinal cord bruising on that
9 November 18, 2009 MRI?

10 A He didn't have an MRI on November 18. He had an
11 MRI in December. And on that one there is some signs of
12 what is called signal changes so the spinal cord looks a
13 little different and that shows that it is swollen and he
14 does have those signs.

15 Q That was December after the November 9 accident
16 and also after the November 17 fall, is that right?

17 A Time wise, yes, but if you are referring whether I
18 can determine from an MRI when the impact took place,
19 absolutely not.

20 Q No. I wasn't asking that. I was saying as a
21 matter of fact the bruising that you saw was well after the
22 November 9 accident and also the November 17 fall?

23 A So if he had had the MRI let's say on November 19,
24 18, we may have not seen the bruise because it was too
25 fresh and the technique of the MRI does not pick that up so

1 Yassari - Cross - Defense

2 fast. You have to wait until a few days until you see
3 that.

4 So, yes, the MRI on December 12 -- December
5 whatever it was, sorry, I don't know the exact date. It
6 shows bruising of the spinal cord.

7 Q But you cannot tie that to any specific traumatic
8 event, can you?

9 A That is correct. I cannot do that.

10 MS. TAYLOR: I think I'm almost finished,
11 doctor. I just want to make sure if you would
12 just bear with me.

13 Q Oh, now when Dr. Lee did the October surgery, he
14 did what is called an anterior fusion, anterior cervical
15 fusion discectomy, is that correct?

16 A That's correct.

17 Q And that means that the disk was taken out at the
18 C-5 through C-7 levels, is that correct?

19 A Yeah. He takes a good majority of it out. You
20 can't take all of it out because there are certain areas
21 around it that is a little dangerous because there are
22 vessels running there. So if you try to fish that out you
23 have to do it blindly and there is a risk of injuring the
24 spinal cord. You create a corridor with some disk left on
25 the sides.

1 Yassari - Cross - Defense

2 Q Based on your review of all of Mr. Taurone's
3 records was there any indication in any of those records,
4 reports or diagnostic tests that there were any herniations
5 caused -- withdrawn -- any herniations existing on or after
6 November 9, 2009 but before January 6, 2010?

7 A I didn't understand that. I was a little
8 confused.

9 Q Did you see in any of the records, reports, scans
10 any herniations either on November 9, 2009 at any time up
11 to January 6, 2010?

12 A So I don't understand everything you are saying,
13 but there was only one MRI between November and January.
14 The MRI is the only way to find out if there is a
15 herniation. On the December MRI of which I have only a
16 report, right, when I reviewed it it does indicate that
17 there are some disks that have herniated.

18 THE COURT: It does?

19 THE WITNESS: It does.

20 Q But you would not be able to again tie that to any
21 specific traumatic events such as November 9, 2009, would
22 you?

23 A Without any doubt, no.

24 Q Just a few questions on that. You had indicated
25 that you have not testified in New York court before, is

1 Yassari - Cross - Defense

2 that right?

3 A That is correct.

4 Q Have you testified in either in Illinois or
5 Maryland where your other licenses are?

6 A No.

7 Q How long are you licensed in Illinois?

8 A About six years.

9 Q Is your license still extant there?

10 A No, it is inactive.

11 Q What about Maryland, how long are you licensed
12 there?

13 A Maryland that was a little bit more than two
14 years, two years almost but it is inactive now as well.

15 Q Doctor, isn't it a true statement that even with
16 the November 9, 2009 accident that there was a possibility
17 that Mr. Taurone would have had to have additional cervical
18 surgery?

19 MR. SIRIGNANO: Objection.

20 THE COURT: Sustained. Possibilities are
21 guesses.

22 Q Well isn't it true in the medical literature that
23 sometimes persons who undergo anterior cervical fusion
24 surgery do have to have subsequent surgeries?

25 A 25 percent.

Yassari - Cross - Defense

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2 Q And a lot of times that is due to not just trauma
3 but just because of the progression of the underlying
4 disease?

5 A That is correct.

6 Q If Mr. Taurone had the underlying spondylitic
7 changes behind the fusion that would mean that the fusion
8 didn't cause it, it would be in the anatomy of the bone
9 itself, isn't that correct?

10 A Not the way you formulate it. The fusion itself
11 can cause over growth. That was actually the case with Mr.
12 Taurone. So despite the fact he was smoking and it usually
13 decreased the fusion rate, his fusion rate was not only
14 great, it was excessive and that caused the extra bone
15 behind the fusion.

16 Q And that extra bone is that correct to say to
17 describe that as the osteophytes?

18 A Yes.

19 Q The osteophytes it is like an arthritic condition,
20 isn't it?

21 A Yeah, very similar, yes. It is just over growth
22 without being controlled. Normally the body controls where
23 certain things grow. And in these type of problems it has
24 a little bit loss of limit so it grows beyond where it
25 should be.

1 Yassari - Cross - Defense

2 Q The osteophytes can cause pain, can they not?

3 A If they compress the spinal cord or nerve roots.

4 Q Osteophytes can also cause numbness, can't they?

5 A Absolutely.

6 Q Doctor, you did a report on July 5, 2012. Do you
7 have that report with you?

8 A No, which one are you referring to?

9 Q Well in that report you indicated that there were
10 spondylitic changes into the canal. By that did you mean
11 that the spondylosis had spread into the spinal canal?

12 A That's correct.

13 Q And that can cause pain as well, couldn't it?

14 A That's correct.

15 Q That spread of the spondylitic changes into the
16 spinal canal could also cause the numbness that Mr. Taurone
17 felt, couldn't it?

18 A Absolutely.

19 Q Okay.

20 A But you are referring to July, 2012, right?

21 Q Yes?

22 A Yes, absolutely. At that time the spondylitic
23 changes had grown into the canal and were responsible for
24 the symptoms for which I saw him.

25 Q There is nothing that can really for lack of a

1 Yassari - Redirect - Plaintiff

2 better term cure that spondylosis?

3 A There is no cure.

4 Q You are aware that Mr. Taurone had that
5 spondylosis back in October when Dr. Lee did the surgery?

6 A That was the reason he did the surgery.

7 MS. TAYLOR: I have nothing further. Thank
8 you.

9 THE COURT: Redirect examination?

10 REDIRECT EXAMINATION

11 BY MR. SIRIGNANO:

12 Q Doctor, you talked about the degenerative changes,
13 spondylitic changes were in Vinnie's case exacerbated by
14 the motor vehicle accident and the second surgery on
15 January the 6. Explain to the jury what you mean by
16 exacerbation or exacerbated?

17 A It is a little bit like a wound that you irritate.
18 Right, if you have a wound that is healing well and leave
19 it be it is fine it will heal in a certain amount of time.
20 If you actually have a wound in your finger and keep on
21 pushing it the whole time, that's going to take a little
22 longer and maybe make a bigger scar and going to be
23 completely different in the healing process than one that
24 you leave be.

25 The same thing applies to deeper wounds. If you

Yassari - Redirect - Plaintiff

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2 have a bone you drill it will react to it by trying to
3 replace the bone you drilled. Imagine you do it twice and
4 you have an impact of a trauma where everything moves when
5 it hasn't been healed properly. That irritates and the
6 exacerbation is that the bone will react to it and can have
7 an over growth and exaggerate or make things go faster.

8 Something that may have happened over a longer
9 period of time it sort of pushing him over a little edge
10 and now he's rolling.

11 Q So in laymen's terms Vinnie's condition became
12 worse faster than it would otherwise have been because of
13 the motor vehicle accident and the second surgery?

14 A It can do that, yes.

15 Q You were asked about the December, 2009 MRI it
16 showing signal changes indicative of bruising of the spinal
17 cord. And when Ms. Taylor asked you whether there were any
18 herniated discs shown, you said yes there were some of the
19 disks?

20 A The report as per what Dr. Lee also wrote in his
21 notes indicate that he felt that there are some new
22 herniation there.

23 Q What is the medical significance of seeing disk
24 herniations in Vinnie's spine at those levels?

25 A It can compress further the spinal cord.

1 Yassari - Redirect - Plaintiff

2 Q Is that a further exacerbation of his problems?

3 A It can.

4 Q You said that Vinnie's bone fusion right was great
5 and so despite being a smoker he was his bones were fusing
6 faster than you would normally expect for a non-smoker?

7 A That's correct.

8 Q So and you said that it is three to six months
9 typical after this kind of major spinal surgery fusion for
10 the bones to fuse, correct?

11 A Well not completely but they can be, that's when
12 you start what I do usually is a scan to see if there is
13 the scan shows me there is bone. Usually it can take up to
14 a year sometimes longer depending on individual bone
15 growth, but at that time around that time you should expect
16 to see some growth. So what I do is an x-ray to determine
17 whether it is progressing properly.

18 Q Okay. So 28 days after the first surgery what
19 would you say Vinnie's status was in terms of bone fusion?

20 A Zero.

21 Q Was he particularly then fragile for an automobile
22 accident?

23 A Absolutely. The only thing that holds it is the
24 plate and the screws.

25 Q So despite the fact that he was a smoker at 28

1 Yassari - Redirect - Plaintiff

2 days out from a surgery, his smoking had no impact
3 whatsoever on the exacerbation of his injuries?

4 A On the fusion rate?

5 Q Yes, on the fusion rate?

6 A No. No. I wouldn't expect to him having any
7 fusion at 28 days any way. If anything I would have
8 thought it would have been even less advanced, right
9 because of the smoking slows down the fusion which means it
10 is even more dependent on the hardware that is there. I
11 would not expect at all developed any fusion especially
12 with his smoking.

13 Q Now, doctor, you were asked about a fall and a
14 trip to the ER that Vinnie took on November the 19 of 09
15 and those records were put into evidence and marked as
16 defendant's -- are they up in front of you?

17 A I have a CAT scan report here.

18 MR. SIRIGNANO: Defendant's E.

19 THE WITNESS: Yeah I think that's the --
20 that's from 11,18 what I have here.

21 Q Correct. I would ask you to open that up that
22 exhibit up and go to the emergency department medical chart
23 page two of eight.

24 THE COURT: What emergency room is that?

25 MR. SIRIGNANO: The St. John's Riverside

1 Yassari - Redirect - Plaintiff

2 Hospital.

3 THE WITNESS: Here.

4 Q Okay. Got it?

5 A Yep.

6 Q At the bottom there is a history notation.

7 Patient to ER states HX -- what is that history?

8 A HX is history.

9 Q Of spinal SX on Ten, Nine?

10 A Surgery.

11 Q Was in MVA, motor vehicle accident begin this
12 month states fell yesterday, lost balance, landed on back.
13 Doctor, is it uncommon for a person with Vinnie's condition
14 after this motor vehicle accident to have a balance
15 problem?

16 A No.

17 Q In fact the accident was a cause of in some part
18 of his balance problem?

19 MS. TAYLOR: Objection, leading.

20 THE COURT: Overruled. Can you say with a
21 reasonable degree of medical certainty that --

22 THE WITNESS: No.

23 THE COURT: -- that his accident could have
24 resulted or would have resulted in balance
25 problems?

1 Yassari - Redirect - Plaintiff

2 THE WITNESS: No.

3 THE COURT: You can't?

4 THE WITNESS: No.

5 Q Doctor, it is not uncommon for a patient with
6 Vinnie's condition post motor vehicle accident a week or
7 two to have a balance problem, correct?

8 A I think in his case the balance problem was there
9 before and certainly this can cause some balance problem,
10 but the balance problem is due to the underlying condition.

11 Q The accident exacerbated the underlying condition?

12 A That's correct.

13 MR. SIRIGNANO: I have nothing further.

14 Thank you.

15 MS. TAYLOR: I have one.

16 THE COURT: One question? Promise?

17 MS. TAYLOR: Do I have to tell the truth on
18 that, I'm limited to one?

19 RECROSS-EXAMINATION

20 BY MS. TAYLOR:

21 Q Doctor Yassari, were you aware that Dr. Lee had
22 cautioned Mr. Taurone not to smoke?

23 A I don't know what Dr. Lee said to Doctor Taurone.
24 I wasn't there. But I wouldn't be surprised if he did
25 because it gives me great pleasure to tell people not to

Proceedings

1
2 smoke.

3 Q But were you aware that --

4 THE COURT: That's question two.

5 Q Upon reading Dr. Lee's records and getting a
6 history from Mr. Taurone before you did the surgery, were
7 you aware that Dr. Lee had instructed Mr. Taurone not to
8 smoke because of the affect on the fusion surgery that he
9 did in January 6, 2010?

10 A I have to apologize. I don't actively remember
11 what he did before which surgery. I just know that when he
12 saw him I remembered that when he saw him after he was
13 admitted to the hospital there was a conversation that he
14 in his consultation note wrote that he had consulted him on
15 cessation of smoking and the impact of smoking on fusion.

16 Q And the impact his smoking could have an effect on
17 the fusion notwithstanding his great rate of --

18 A Fusion, right.

19 Q Thank you.

20 MS. TAYLOR: Nothing further.

21 MR. SIRIGNANO: Nothing further, your Honor.
22 Thank you, doctor.

23 THE COURT: Thank you, very much.

24 Ladies and gentlemen we are going to break
25 for the day. We will be back tomorrow morning.