

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

CAPRIATI CONSTRUCTION CORP.,	)	Supreme Court No: 80107
INC., a Nevada Corporation	)	District Court Case No: A718689
Appellant,	)	Electronically Filed
	)	Aug 12 2020 01:43 p.m.
v.	)	Elizabeth A. Brown
	)	Clerk of Supreme Court
	)	
BAHRAM YAHYAVI, an individual,	)	
Respondent.	)	
	)	
_____	)	Supreme Court No: 80821
CAPRIATI CONSTRUCTION CORP.,	)	
INC., a Nevada Corporation	)	
Appellant,	)	
	)	
v.	)	
	)	
BAHRAM YAHYAVI, an individual,	)	
Respondent.	)	
_____	)	

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**APPENDIX TO  
APPELLANT'S OPENING BRIEF  
VOLUME 8 of 12**

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Appeal from the Eighth Judicial District Court  
Case No. A718689

HUTCHISON & STEFFEN, PLLC

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the **APPENDIX TO APPELLANT’S OPENING BRIEF VOLUME 8 of 12** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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DATED this 12<sup>th</sup> day of August, 2020.

*/s/ Kaylee Conradi*

---

An employee of Hutchison & Steffen, PLLC

1 RTRAN

2  
3  
4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 BAHRAM YAHYAVI,  
8 Plaintiff,

) CASE#: A-15-718689-C  
)  
) DEPT. XXVIII  
)

9 vs.

10 CAPRIATI CONSTRUCTION CORP  
11 INC.

12 Defendant.  
13

14 BEFORE THE HONORABLE RONALD J. ISRAEL  
15 DISTRICT COURT JUDGE  
16 WEDNESDAY, SEPTEMBER 18, 2019

17 **RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 8**

18 APPEARANCES:

19 For the Plaintiff:

DENNIS M. PRINCE, ESQ.  
KEVIN T. STRONG, ESQ.

20 For the Defendant:

21 MARK JAMES BROWN, ESQ.  
22 DAVID S. KAHN, ESQ.  
23

24 RECORDED BY: JUDY CHAPPELL, COURT RECORDER  
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None		

1 Las Vegas, Nevada, Wednesday, September, 18, 2019

2

3 [Case called at 1:13 p.m.]

4 [Outside the presence of the jury]

5 THE CLERK: Case number A 718689, Yahyavi v. Capriati  
6 Construction Corp.

7 THE COURT: So I'm not going to tell you who it is, so it  
8 won't affect your decision as to whether it's an alternate or a juror or  
9 how, but, "My daughter had an allergic reaction and has a doctor's  
10 appointment tomorrow afternoon at 3:15. Is it okay that I leave?" Which  
11 means she's -- so we either have to be -- and the appointment's at 3:15.  
12 She probably has to leave -- he or she, actually. I don't know who it is. I  
13 only have a number.

14 But what do you want to do? Because let's -- assuming --

15 MR. PRINCE: I think -- honestly, I think I can make that work.  
16 I'm going to have my client tomorrow morning, and then Dr. Klarity  
17 [phonetic]. Dr. Klarity will be quick. He's just going to -- we're not  
18 presenting any household service claim, and he's just going to do the  
19 present value of the loss of earnings capacity, and he is also going to do  
20 the present value of the future medical care expense. So I would expect  
21 him to be relatively short. I don't expect to be longer -- me personally,  
22 with Mr. Yahyavi more than an hour.

23 So I don't know who's crossing him or how long it would  
24 take, but -- so we might be able to accommodate that. Maybe take a  
25 short lunch.

1 THE COURT: We have -- but we can't start --

2 THE CLERK: Until 9:45.

3 MR. PRINCE: Oh.

4 THE COURT: 9:45.

5 MR. PRINCE: So that means maybe 10.

6 THE COURT: 10 basically, yes.

7 THE CLERK: And she would probably have to leave --

8 THE COURT: And I don't know --

9 THE CLERK: -- by 2.

10 THE COURT: -- if this --

11 MR. KAHN: If Mr. Prince thinks he can schedule it, I think  
12 that's fine. I have -- my witness is essentially set to start on Friday with  
13 these experts flying in. I had told Mr. Prince if I had to come up with  
14 somebody tomorrow, I could. But I would just as soon start --

15 THE COURT: Oh, I --

16 MR. KAHN: -- fresh though.

17 THE COURT: I don't --

18 MR. KAHN: I think that works.

19 THE COURT: Because --

20 MR. KAHN: And then the Court has to -- has to adjourn at 4  
21 or 4:30 on Friday, right?

22 THE COURT: Yeah.

23 MR. KAHN: So I don't expect -- I have two experts, a doctor  
24 and a vocational. The doctor will take longer.

25 MR. PRINCE: You're talking tomorrow?

1 MR. KAHN: Friday.

2 MR. PRINCE: You're talking about -- but he's talking about  
3 tomorrow.

4 THE COURT: This is tomorrow.

5 MR. PRINCE: Right. You're onto what -- you want to talk  
6 about Friday.

7 MR. KAHN: I'm onto Friday, so --

8 MR. PRINCE: We're talking about tomorrow.

9 MR. KAHN: I think that's fine, as long as the Court's good.

10 MR. PRINCE: I think we'll be okay.

11 THE COURT: So we'll --

12 MR. PRINCE: If we can leave --

13 THE COURT: -- have to ask. But she may have -- he or she  
14 may have to leave at 2, let's say -- I don't know where it is -- but 2:30 to  
15 make the appointment.

16 MR. PRINCE: Can we also -- two more questions. And again,  
17 I think if we don't take a lunch, then we're okay. I mean, just take a -- and  
18 adjourn early. If that's acceptable to the Court, I will willing to  
19 accommodate that. I think that if we go straight through with my  
20 witnesses -- like I said, Dr. Klarity will be quick, and Mr. Yahyavi will take  
21 what he takes. But I expect Mr. Yahyavi to take about two hours with  
22 both exams, is my anticipation.

23 MR. KAHN: Okay. I --

24 THE COURT: All right.

25 MR. KAHN: -- deposed Dr. Klarity. I don't think he's going to

1 take that long on cross as he just has numbers, so --

2 THE COURT: All right. Well, then that's what we'll do.

3 What about -- you started -- I guess you have something on  
4 Friday you wanted to talk about?

5 MR. KAHN: I just -- I have the two experts flying in from  
6 Southern California, Dr. Tom and Bennett, who is the vocational. So  
7 that's essentially my entire day. I didn't want to schedule people over  
8 them, and I knew the Court had shortened the end of the day --

9 THE COURT: Oh, that's --

10 MR. KAHN: -- so --

11 THE COURT: I'm sure that's plenty, if that's what you're  
12 asking.

13 MR. PRINCE: Yeah, we're ready. And I --

14 THE COURT: If --

15 MR. PRINCE: -- I won't be done with my case probably just  
16 because I need to do the depo read of that doctor -- of that witness. So  
17 we just may not get to that tomorrow, so --

18 MR. KAHN: And I've already told Mr. Prince, just to be fair  
19 and give him a heads up, I don't see any motion practice at the end of  
20 this case. So as soon as he's done, we will commence.

21 MR. PRINCE: Well, the point is, I likely done when your  
22 expert witnesses are here. So we'd be taking technically out of order.  
23 So -- but I'm just letting the Court know I have a read as part of the --

24 THE COURT: All right.

25 MR. PRINCE: -- the remaining part of my case.



1 THE COURT: So when we don't have anything -- Monday, by  
2 the way -- oh, no. We took that today. We were going to have a motion  
3 -- the big motion -- criminal motion, but we did that. Which we went  
4 until about 11:30 or -- all right. So Friday, what time are we starting? 9?

5 THE CLERK: 9.

6 THE COURT: Okay. Friday at 9. Will you ask, Steve, who --  
7 what time they need to leave this --

8 THE MARSHAL: Yes, Judge.

9 THE COURT: -- room? All right. And --

10 MR. KAHN: And, Your Honor, I'm just identifying  
11 Ms. Raebese, who's here for my client. And anybody who sits in this  
12 seat will be a client representative. I'm not -- I'm not going to do  
13 anything in front of the jury, but just so the Court's aware of who's at  
14 counsel table.

15 THE COURT: Okay.

16 THE CLERK: And what's your name? I'm sorry.

17 MS. RAEBESE: Felicia Raebese.

18 MR. KAHN: You're going to have to spell your last name.

19 MS. RAEBESE: R-A-E-B -- as in boy -- E-S-E.

20 THE CLERK: Okay.

21 THE COURT: Okay.

22 THE MARSHAL: At 2:50 p.m., Judge.

23 THE COURT: All right. That's what we'll do. Here, do you  
24 want to make this a -- mise well --

25 THE CLERK: Yes.

1 THE COURT: -- anything from them.

2 Okay.

3 THE CLERK: She has to leave --

4 THE COURT: Okay. Anything else --

5 THE CLERK: -- 2 --

6 THE COURT: -- outside the presence --

7 MR. PRINCE: Nothing, Judge.

8 THE CLERK: You said 2:50 p.m.?

9 THE MARSHAL: 50, 5-0.

10 THE CLERK: Okay.

11 THE COURT: Yeah. All right? Bring them in.

12 THE MARSHAL: Please rise for the jury.

13 [Jury in at 1:19 p.m.]

14 [Inside the presence of the Jury]

15 THE COURT: All right. Please be seated.

16 Good afternoon, Ladies and Gentlemen.

17 JURORS: Good afternoon.

18 THE COURT: Someone -- one of you asked, and we will be  
19 adjourning at 2:50 tomorrow afternoon to accommodate -- and I'm not  
20 even sure who it is, but to accommodate somebody.

21 And as far as tomorrow, 9:45. 9:45. And then Friday will be  
22 9 a.m. And, by the way, so you know, yes, we -- not only are we on  
23 schedule, but we might be finishing early. Meaning --

24 MR. PRINCE: I think Tuesday, Wednesday, Judge.

25 Potentially by Wednesday.

1 THE COURT: And don't -- you know, I told you Friday, but we  
2 hope to be done early.

3 MR. PRINCE: Yeah. We're right on pace.

4 THE COURT: Yes. So having said that, the parties  
5 acknowledge the presence the jury?

6 MR. PRINCE: We do.

7 MR. KAHN: Yes.

8 MR. PRINCE: Good afternoon, everyone.

9 GROUP RESPONSE: Good afternoon.

10 THE COURT: Call your next witness.

11 MR. PRINCE: Your Honor, we are going to have Dr. Oliveri  
12 come back. He testified on Friday, and he was in the middle of his direct  
13 exam. And so we'd like to call Dr. Oliveri back to the stand.

14 THE MARSHAL: Watch your step, Doctor, remain standing,  
15 face the Clerk of the Court.

16 DAVID OLIVERI, PLAINTIFF'S WITNESS, SWORN

17 THE CLERK: Please be seated.

18 Please state your name and spell it for the record.

19 THE WITNESS: Dr. David Oliveri, O-L-I-V-E-R-I.

20 THE CLERK: Thank you.

21 THE COURT: Go ahead.

22 MR. PRINCE: Very good.

23 CONTINUED DIRECT EXAMINATION

24 BY MR. PRINCE:

25 Q Dr. Oliveri, thank you for coming back today. I appreciate

1 your time.

2 Kind of let's set the stage a little bit. You were -- gave us the  
3 introduction into the medical care and the nature and extent of  
4 Mr. Yahyavi's injuries, and we talked about some of the treatment and  
5 what your role was as a rating physician by the state of Nevada. And I  
6 want to kind of just recap a few aspects. Okay?

7 A Sure.

8 Q And so just to refresh our memory, in front of you,  
9 Dr. Oliveri, just is Exhibit Number 98, starting at page -- Bate number 578  
10 through 588. That's your permanent impairment evaluation from April  
11 23rd, 2015.

12 Since you were here, we've had Dr. Kaplan, the neurosurgeon,  
13 testify. Do you know Dr. Kaplan?

14 A I do.

15 Q How well do you know Dr. Kaplan?

16 A I know him very well.

17 Q Do you work -- do you coordinate care with patients with  
18 Dr. Kaplan?

19 A I do.

20 Q Is he somebody you have trust and confidence in?

21 A I do.

22 Q Have you, in fact, discussed Mr. Yahyavi's care and treatment  
23 and his prognosis with Dr. Kaplan?

24 A Yes. Over the years, I've talked to Dr. Kaplan many times  
25 about Mr. Yahyavi.

1 Q Okay. Is he well-respected, board certified, fellowship-  
2 trained neurosurgeon in our community?

3 A Absolutely.

4 Q Okay. And do you also know Dr. Joseph Schifini --

5 A I do.

6 Q -- the pain management physician?

7 A Yes.

8 Q Is he also a well-respected member of the medical  
9 community in the area of pain management?

10 A Yes.

11 Q Is he someone you have trust and confidence in as well?

12 A Yes, I do.

13 Q Okay. And so he also -- he testified yesterday. So kind of --  
14 so the jury's heard a lot about the surgery and the injections. And we  
15 may cover some of that kind of in a summary form today, but I want to  
16 catch us up to what you were doing on April 23rd, 2015. You were asked  
17 to do a permanent impairment evaluation as part of the workers'  
18 compensation process, right?

19 A Correct.

20 Q And you're primarily evaluating the cervical spine, the neck --

21 A Correct.

22 Q -- that -- where Dr. Kaplan performed the surgery and where  
23 all the injections took place?

24 A Correct. The surgery had not been done at this time --

25 Q Right.

1           A     -- but that was the body part that was operated on  
2 eventually.

3           Q     Yeah. Kind of like you, I mean, you're involved in his care in  
4 2015, then you got reinvolved in 2018?

5           A     That's correct.

6           Q     Dr. Schifini had did something similar. He was involved in  
7 2013 and '14, and then got reinvolved in 2019 related to the placement of  
8 the stimulator. So he was familiar with his care.

9           So I want to talk about now the -- we talked about the history, we  
10 talked about your exam and what you -- the injuries you thought were  
11 related, but I want to go through some specifics, but --

12           If you look at page -- Bate number 579, I want to focus on those  
13 complaints. Number 1.

14           MR. PRINCE: If you could go to number 1. No, no, not there.  
15 Number 1, and back.

16 BY MR. PRINCE:

17           Q     And it's the neck and upper back, because he reports  
18 constant pain that will shoot from the neck into the upper back, also  
19 intermittent shooting pain into the left arm with some numbness in the  
20 small finger on the left side. Is that consistent with a C8 distribution?

21           A     It is.

22           Q     Dr. Kaplan talked -- showed us a -- you know, we looked at  
23 the dermatome chart that is consistent with the nerve root involved at C8  
24 on the left, and kind of got into the left small finger?

25           A     Correct.

1 Q Okay. In any of the records before that, was there any arm or  
2 nerve related symptoms, even those 2011 records we looked at even for  
3 that one visit or any visit before or after that?

4 A Before this crash, no.

5 Q All right. Was that significant to your -- in your overall  
6 analysis of this case?

7 A Of course. For all the reasons I mentioned Friday, definitely.

8 Q Very good. Also we -- I want to talk -- when you saw  
9 Mr. Yahyavi and you're doing this impairment evaluation, did you speak  
10 with him about his employment, and where he was working at the time?

11 A I did.

12 Q And what did he tell you that he did for a living?

13 A He told me at that time he was doing sales at Chapman, and  
14 he was still working but working less hours when I saw him in 2015.

15 Q Okay. When you say less hours, what do you mean by that?

16 A I don't know that I clarified at the time.

17 Q Okay. Do you understand now?

18 A I believe that he went down to part-time status and continued  
19 to work until he eventually couldn't work anymore.

20 Q Okay. And so by the time he sees you, he's working less  
21 than he did before the collision?

22 A Correct.

23 Q Would that be consistent with his injuries, the limitations,  
24 and the difficulties he was suffering from?

25 A Of course.

1 Q Did you factor that into your overall evaluation in this case?

2 A Yes.

3 Q Now, what were his pain levels at the time of your  
4 examination?

5 A On that day, he indicated to me it was a 6 or a 7 out of 10.  
6 And in the last 30 days before the evaluation, the lowest was a 5 or a 6,  
7 and the highest was a 7 or an 8.

8 Q How would you characterize those pain levels as reported to  
9 you by Mr. Yahyavi?

10 A Those are moderate to high levels of pain.

11 Q And given the nature and extent of his injuries, were -- were  
12 those pain levels reported consistent with those -- the type of injuries  
13 we're talking about in this case?

14 A Yes.

15 Q Have they been -- in fact, have they been consistent  
16 throughout?

17 A Well, there's been some fluctuations in his pain levels.

18 Q I mean, the way he reports it, I'm referring to.

19 A Oh, sure. Yes.

20 Q And what about the pain levels, have those kind of fluctuated  
21 with time?

22 A Yes.

23 Q Okay. Now, one of the things we learned yesterday from  
24 Darian Yahyavi was that -- that's Mr. Yahyavi's son -- that sometimes  
25 he'd go to work, he'd see his dad, you know, at work; he'd go upstairs,



1 he'd put an ice pack on his neck, sometimes he may not feel well if he  
2 kind of overdoes it; or around the house, he may have periods of time  
3 where he doesn't, you know, feel too good and he's actually in pain, and  
4 he's in bed for a couple of days.

5 When someone has this chronic pain syndrome, like Mr. Yahyavi,  
6 can they have periods where they exacerbate the pain or it's temporarily  
7 worse because of activity levels?

8 A Of course. What you described is exactly what does happen  
9 when you have a person who has chronic pain from a valid medical  
10 diagnosis. But they're still motivated to try to be functional and try to  
11 work. So you have good days, bad days, you have some days you can't  
12 accomplish your work duties, some days you have to leave early, some  
13 days you can't go in at all.

14 Q Okay. And in medicine, is there a distinction between the  
15 word exacerbation, on the one hand, and aggravation, on the other  
16 hand?

17 A Yes. They're two different terms.

18 Q And what do they mean?

19 A Exacerbation is a temporary worsening of a condition. So  
20 this is something that -- if we're talking about pain, if pain is  
21 exacerbation, that means that it gets worse temporarily, but then it does  
22 come down to the baseline level. And aggravation is a permanent  
23 worsening of a condition. So that's because the condition, the pain, or  
24 whatever it might be, worsens and it never returns back to the baseline  
25 level.

1 Q In this case, we're talking about multilevel disc injuries, as  
2 well as facet injuries, right?

3 A Yes.

4 Q And we know we had degeneration before this collision,  
5 correct?

6 A Right.

7 Q That was asymptomatic?

8 A Right.

9 Q Do you have an opinion whether there was a permanent  
10 aggravation, and using the definition you just gave us, to those disc  
11 levels and the facet levels?

12 A By definition, that's exactly what happened.

13 Q Okay. And Dr. Schifini gave the opinion yesterday that this  
14 was an aggravation -- a permanent aggravation of his multiple levels of  
15 -- in his cervical spine. Do you agree with that opinion?

16 A I do.

17 Q Okay. Because aggravation means permanent?

18 A Correct.

19 Q Someone who has chronic pain syndrome, like Mr. Yahyavi,  
20 or any other patient, for that matter, are they going to have periods of  
21 exacerbation where they're trying to be more active or they twist wrong  
22 or bend wrong and something happens?

23 A Sure. The temporary fluctuations in pain in a -- in an  
24 individual with chronic pain can occur for no reason, just they happen to  
25 get up that way, or it could happen because it's specifically activity

1 related. They might have done something different that day that made  
2 the symptoms worse.

3 Q Okay. Now, I want to ask you a question -- I want to talk  
4 about the rating process for now. Okay? Let's do -- I wants to do two  
5 things first. One, would you assign a rating for someone who just  
6 simply had a soft tissue, self-limiting injury?

7 A Of course not. It would be zero. They wouldn't even be in  
8 my office.

9 Q Similarly, if someone had just degeneration alone and no  
10 aggravation of the degeneration, the degenerative disc, would you do  
11 any rating at all?

12 A No. The rating has to be a clinical picture. So just because a  
13 person has age-related degeneration on an x-ray or an MRI scan, that  
14 does not equal an impairment rating. That, in fact, is a zero percent.  
15 They have to have clinical symptoms and they have to have clinical  
16 findings. So they can't just have some neck pain. They have to also  
17 have findings such as muscle spasm, loss of motion in certain planes of  
18 motion. So it has to be a combination of those things for there to be a  
19 rating for degeneration.

20 Q Okay. Now, obviously at the time of the rating, Mr. Yahyavi  
21 remained symptomatic?

22 A Yes.

23 Q And he -- had he been symptomatic continuously from the  
24 date of the collision forward --

25 A Yes.

1           Q     -- and to the time he saw you? Now, if we can -- I want to  
2 start on page 586. That's page 9 of your report. That's Bate number 586  
3 of Exhibit Number 98. I want to talk about two things. One says,  
4 nonorganic findings. Do you see that?

5           A     Yes.

6           Q     Okay. And it says, none noted. Number one, what is a  
7 nonorganic finding?

8           A     Nonorganic means that there is something other than a  
9 physical explanation for the patient's presentation. So in simple terms, it  
10 means that the person is exaggerating, they're withholding information,  
11 they're guarded about how they're presenting, something that makes it  
12 less -- or makes it less convincing as an actual medical diagnosis.

13          Q     Okay. And did you, as part of your -- in your encounter in  
14 2015 with Mr. Yahyavi, did you see or appreciate that he was  
15 exaggerating or overreporting his symptoms or conditions in 2015?

16          A     No. I found -- that's what I mean by, none noted. I found no  
17 evidence of that. But then I did acknowledge this functional capacity  
18 evaluation that showed some invalid results.

19          Q     Yeah. We're going to talk about that. But I want to know, as  
20 part of your evaluation --

21          A     Right.

22          Q     -- when he presented to you, did you find him to be  
23 exaggerating or overstating his symptoms in anyway?

24          A     Not at all.

25          Q     And you've had, you said, five or six other encounters with

1 him since then?

2 A Yes.

3 Q Have -- has he ever done that with you?

4 A No. Never.

5 Q Okay. Let's talk about the FCEs, as I acknowledge that the  
6 FCE was listed as invalid. I want to spend a moment and talk about what  
7 an FCE actually is, and what's required of a patient. Okay?

8 A Sure.

9 Q Number one, can you tell the jury what an FCE is, and how  
10 long of a test it is and who does it?

11 A Sure. It stands for functional capacity evaluation. It is  
12 commonly done in the workers' compensation area. It's performed by a  
13 physical therapist. It takes anywhere from two to four hours for the  
14 physical therapist to do the test. They put the person through various  
15 activities, such as bending, lifting, lifting from floor to waist, lifting from  
16 waist to shoulder, lifting overhead. They look at the amount of weight  
17 that the person can do. They compare it two grip strength  
18 measurements. So it's a test of physical function during that time frame  
19 of two to four hours.

20 Q Okay. And, in this case, it says it's invalid. Does that mean  
21 that Mr. Yahyavi was faking or lying or exaggerating or something  
22 inappropriate was going on?

23 A No.

24 Q Okay. I want to make sure that's clear. So it doesn't  
25 necessarily mean it's negative, something negative happened or

1 somebody was doing something wrong?

2 A Correct.

3 Q And you've read Mr. Yahyavi's deposition?

4 A Yes.

5 Q Did he describe how he felt during that physical -- that  
6 functional capacity evaluation?

7 A My recollection is that he had pain symptoms, as would be  
8 expected medically, that affected how his effort was during the test.

9 Q Okay. And do they often have you do things which are  
10 painful during these physical -- FCEs?

11 A Yes.

12 Q Okay. Did that invalidate your examination in any way?

13 A Not at all. Mr. Yahyavi had unresolved problems, he had  
14 problems in his neck that did not have definitive treatment as of that  
15 time, in 2015. So it's not unusual for an individual to have some  
16 difficulty with their consistency on that test.

17 Q Okay. And then it says here, maximum medical  
18 improvement. Do you see that?

19 A Yes.

20 Q And when we see maximum medical improvement, does  
21 that mean that he no longer has pain or will have pain in the future?

22 A No. It means that as of that time that I saw him, he was at a  
23 plateau. He was deciding to try to live with the symptoms and had not  
24 undergone surgery, but he was still having problems.

25 Q Okay. Would you have anticipated him, after your evaluation

1 on April 23rd, 2015, to remain symptomatic?

2 A Yes.

3 Q Would you have anticipated that he would most likely --  
4 more likely than not require medical care to treat his symptoms?

5 A Yes.

6 Q Okay. Now -- so just because you say maximum medical  
7 improvement doesn't mean that, hey, he's back to how he was before  
8 this collision occurred?

9 A Correct.

10 Q All right. Now, if you could describe the rating that you gave  
11 to him relating to his cervical spine, what that consisted of.

12 A The process?

13 Q Yes.

14 A Are the American Medical Association, I believe I touched on  
15 this briefly on Friday, has come up with this methodology to determine a  
16 percentage rating for different body parts that are injured. So for the  
17 spine, they have a section of the guidebook where they look at different  
18 categories of problems; categories that range from something like  
19 Mr. Yahyavi at that time without surgery all the way up to more severe  
20 cases where a person has actually undergone surgery at one or more  
21 levels, they look at objective findings, such as loss of motion, they look  
22 at issues, such as muscle guarding or spasming muscles, and then that  
23 information is placed into the appropriate category.

24 Q Okay. And did you determine that Mr. -- whether  
25 Mr. Yahyavi had a permanent impairment or permanent injury to his

1 cervical spine?

2 A Yes, he did.

3 Q And what rating did you give him for that?

4 A So he fell in what's called a category 2 rating. And the rating  
5 range is between 5 percent and 8 percent on a whole-person basis. The  
6 variation between 5 and 8 is based on an assessment of what's called  
7 activities have daily living. Those are the day-to-day activities that a  
8 person does to get through their day and their week. And I did an  
9 assessment of that and found that Mr. Yahyavi was severely affected by  
10 this condition. And so I placed him at the highest range that I could have  
11 at that point in time, 8 --

12 Q If he'd --

13 A -- 8 percent.

14 Q -- have had -- let's assume he'd have had surgery by that  
15 point. What would he have been rated for then?

16 MR. KAHN: Your Honor, I'm going to object to hypothetical.

17 MR. PRINCE: We're talking about -- he's talking rating  
18 because he hadn't had surgery. So I -- I want --

19 MR. KAHN: Can we approach?

20 THE COURT: Counsel, approach.

21 [Sidebar begins at 1:37 p.m.]

22 THE COURT: Unfortunately, maybe, I did workers' comp. So  
23 I understand a little bit, maybe enough to be dangerous, that just having  
24 surgery changes the category. So tell me -- that's what he is going to  
25 say. If -- you have to understand, first of all, that a percentage, it's



1 percentages within categories. I mean, I can't -- I -- tell me why I should  
2 not allow it, because --

3 MR. KAHN: A, it's not in his report, and, B, it's discussing a  
4 hypothetical situation that he hasn't addressed, and he could have  
5 addressed after the surgery, if he wanted to, other than the spinal cord  
6 stimulator.

7 MR. PRINCE: He's not stable and ratable yet because he  
8 doesn't have the stim. So, no, he's not in that position.

9 MR. KAHN: I would like to get the reports --

10 THE COURT: Well.

11 MR. KAHN: -- and start with that. I --

12 MR. PRINCE: No, no, no. He is talking right now --

13 THE COURT: Well --

14 MR. PRINCE: -- as a treating physician --

15 THE COURT: What's your --

16 MR. PRINCE: -- as the rater --

17 THE COURT: -- objection as to that --

18 MR. PRINCE: -- of category 3.

19 THE COURT: -- question? That's all I want to know --

20 MR. PRINCE: Okay.

21 THE COURT: -- is a hypothetical regarding -- he's not going  
22 to give a specific number, but I believe he's going to say that totally  
23 changes the category which changes the rating.

24 MR. KAHN: I think on Friday he was trying to say 30 percent.  
25 So I think he is going to give a number. That's my problem. If he wants

1 to say it would be higher, whatever. But he didn't -- he didn't provide  
2 that in his reports. He's having surgery years ago -- a year and a half  
3 ago, and -- other than the spinal cord stimulator, and now we're going to  
4 talk about a situation that isn't in his report, not in his first opinion. He  
5 was deposed at some point.

6 THE COURT: Is he a -- did you call him as an expert witness?

7 MR. KAHN: He's a retained expert.

8 MR. PRINCE: No, no. Hang on. He is -- number one, he is  
9 not a retained expert. He was the rating physician --

10 THE COURT: Right.

11 MR. PRINCE: -- involved in the care. And so he's actually a  
12 treating physician. We did give him additional medical records to  
13 review, and he did, in fact, review. So he's in his report talking about a  
14 category 3. And he said if he didn't have a -- he had a surgery, it would  
15 have been a whole different rating.

16 So you can have -- forget the reports. I'm talking about his  
17 treating physician report. It has nothing to do with those reports.

18 THE COURT: All right. Well --

19 MR. PRINCE: I'm talking about his April --

20 THE COURT: -- all I can --

21 MR. PRINCE: -- 2015 --

22 THE COURT: -- deal with is the question.

23 MR. PRINCE: Right.

24 THE COURT: And I think that the question --

25 MR. PRINCE: He was afraid of all the information. Let it --

1 THE COURT: -- as to --

2 MR. PRINCE: -- come in.

3 THE COURT: -- does that change -- does that change the -- if  
4 he had surgery, does it change the category is -- I'm going to allow.

5 MR. PRINCE: Okay.

6 THE COURT: As to his coming up with a hypothetical  
7 percentage, I agree, that -- now you're talking about within the category,  
8 a category -- and by the way, it's probably a category 4 -- that's  
9 discretionary and it's based on an exam, based on all that.

10 But, again, maybe I know more than I should or whatever.  
11 But I think it certainly is reasonable to allow the question under a  
12 hypothetical, does that change the category? How you want to do that, I  
13 think you should rephrase it, make it --

14 MR. PRINCE: Okay. Okay.

15 THE COURT: -- specific to that.

16 MR. PRINCE: I'll do that.

17 THE COURT: I'll allow it.

18 MR. PRINCE: Very well. Thanks.

19 MR. KAHN: Just to -- just to -- hold on, hold on, Dennis.

20 All right. Just to perfect my objection --

21 THE COURT: Sure.

22 MR. KAHN: -- the report date of 12/22/18, which is well after  
23 -- that's the last one -- which is well after the surgery --

24 MR. PRINCE: You're completely --

25 MR. KAHN: -- the fusion surgery.

1 THE COURT: Well, wait. Let him finish.

2 MR. KAHN: Which is the -- December 22nd, '18, he's written  
3 a report. It didn't change the rating after -- this is nearly a year after the  
4 surgery.

5 MR. PRINCE: So he didn't -- he didn't rate him then. He's not  
6 even ratable.

7 MR. KAHN: So all --

8 MR. PRINCE: You're --

9 MR. KAHN: -- all -- yeah, all -- I guess all three of these  
10 reports are after the -- after the surgery, just so --

11 MR. PRINCE: True.

12 MR. KAHN: -- it's --

13 THE COURT: All right.

14 MR. KAHN: -- clear. But that's fine. I'll submit it.

15 THE COURT: I -- so I'm allowing the question --

16 MR. KAHN: The general question?

17 THE COURT: -- since he's had -- yes.

18 "If somebody's had surgery, does that change the category?"

19 MR. PRINCE: Yeah.

20 THE COURT: I'll allow it.

21 MR. KAHN: Thank you, Your Honor.

22 [Sidebar ends at 1:41 p.m.]

23 MR. PRINCE: For the record, that objection was overruled,  
24 Judge?

25 THE COURT: Yes.

1 BY MR. PRINCE:

2 Q Okay. I want to make sure we have the category firmly in --  
3 the -- this question, excuse me, firmly in mind. Okay. It says here for --  
4 in the first paragraph, the last sentence, it says for -- the first paragraph,  
5 it says for all these reasons, right? Do you see that?

6 It says, for all these reasons, even though he appears to have a  
7 significant cervical spine injury, he does not qualify for the purpose of a  
8 rating for a category three. What's the difference between a category  
9 two and a category three?

10 A Category two is an individual that has neck pain, radiating  
11 pain into their arm, loss of motion, muscle spasm, that sort of thing.  
12 Category three is more progressed than that, where they actually have  
13 some level of nerve damage that you can see on physical examination.

14 Q Okay. And if someone had a surgery, would that actually  
15 even change the category to a different category?

16 A Yes. The American Medical Association places a lot of  
17 weight on surgical intervention to the spine because it does alter the  
18 person's anatomy and function quite a bit. So it makes it significantly  
19 higher.

20 Q Okay. Very good. All right. And you rated them as an eight,  
21 at that point -- an eight percent whole person. What does it mean,  
22 briefly, just that we have a whole person impairment?

23 A Body parts are rated separately, and then there's a  
24 conversion factor as far as how that body part percentage impacts the  
25 entire body of a person. It's -- it really comes down to an issue that

1 worker's comp deals with in order to finalize the claim.

2 Q Okay. Now, I'd like to now talk about how things had  
3 changed when you next see Mr. Yahyavi. Okay. I want to talk about the  
4 differences. So that's April 2015. When do you see Mr. Yahyavi again?

5 A March of 2018.

6 Q So three years?

7 A Yes.

8 Q And in that three-year window, briefly, kind of, describe the  
9 therapies and the treatments that Mr. Yahyavi underwent. And by that  
10 time, he had surgery.

11 A Yes. So essentially there was a worsening of his condition  
12 after the time I saw him in 2015 for the rating. He had continued  
13 problems. He had more problems with his left arm. He had more  
14 difficulties with function. He was having more and more difficulty  
15 working. He continued to work in 2015 and into 2016. But I believe it  
16 was September of 2016, when he finally got to the point where he was  
17 unable to do it and stopped working. He was evaluated by Dr. Kaplan.  
18 He had some testing, and he was deemed to be a candidate for this  
19 multilevel neck surgery. The surgery happened in January of 2018,  
20 which was a couple of months before I saw him in 2018 March.

21 Q Okay. And when you see him in March of 2018, which is  
22 about six weeks post-operatively -- he had his surgery on January 30th,  
23 and you saw him March 13th, 2018. What were his complaints at that --  
24 his physical complaints at that time?

25 A Do you have my report that I can reference here?

1 Q I have my version of it.

2 MR. KAHN: Your Honor, I'd be happy to lend counsel one of  
3 these copies.

4 THE COURT: Go ahead. Thank you.

5 BY MR. PRINCE:

6 Q And what were his complaints when he saw you on March  
7 13th, 2018?

8 A He was having constant neck pain. He was having pain in  
9 the left scapula, which is the shoulder blade on the left side. He was  
10 having pain traveling down his left arm, and he was having numbness in  
11 his hand. And he was having headaches.

12 Q Okay. And you also reviewed all of the medical treatment  
13 between April of 2015 and March of 2018?

14 A Yes.

15 Q Do you have an opinion whether all of that treatment,  
16 physical therapy injections, and surgery was reasonable and appropriate  
17 as a result of the injuries caused by this collision?

18 A Absolutely.

19 Q Okay. Is that your opinion to -- obviously to a reasonable  
20 degree of medical probability?

21 A Yes.

22 Q Okay. I also want to talk about your examination. I think  
23 that's significant in this case. And on physical examination, did you  
24 examine his left arm?

25 A I did.

1 Q And what did you find that was significant to you on your  
2 examination of his left arm?

3 A He had atrophy. Atrophy is where the bulk of the muscle  
4 decreases in size. And so there was a visible difference between the left  
5 upper arm and the right upper arm. And specifically, it was limited to  
6 three muscles. It was limited to the deltoid, which is the shoulder  
7 muscle, it was limited to the biceps, and it was limited to the triceps  
8 muscle.

9 Q Okay. Did he have atrophy in April of 2015?

10 A No.

11 Q That was obviously -- that was a worsening of his condition?

12 A Yes. It was consistent with the progression of his problem  
13 over time.

14 Q Okay. Was that a significant finding that has formed some of  
15 the basis of your opinions about the permanency of Mr. Yahyavi's  
16 cervical problem and ongoing limitations?

17 A Yes.

18 Q In addition to that, did you test his grip strength, left --

19 A I did.

20 Q -- compared to right?

21 A Yes.

22 Q Why did you do that?

23 A Grip strength is one of those objective measures that you can  
24 actually test. I have an electronic device that you grab, you squeeze it. It  
25 gives me a digital readout of what the grip strength is, and I am able to



1 obtain measurements -- different trials on each side. And I can compare  
2 side to side and compare with normal.

3 Q Okay. And how was his grip strength on March 13th, 2018?

4 A Not good on the left. He was -- on his good side, his right  
5 side, it was 90 pounds, which is a good, strong grip. On the left side it  
6 was about 30 pounds.

7 Q Okay. And --

8 A And just to -- just to clarify that if I could --

9 Q Yes.

10 A -- in order to open bottles or jars, you really need to have 60  
11 pounds of grip strength. So when he has 30 pounds of grip strength on  
12 the left side, that's much less than what it would take to open a jar or a  
13 bottle and create functional limitations.

14 Q Okay. Was that -- did he have -- was that a progressive  
15 worsening of his condition from when you saw him in April of 2015?

16 A One moment. Yes. He had no differences in strength side to  
17 side in 2015.

18 Q Now, in addition to the medical records that you reviewed,  
19 and we talked about, did you also over the period of time of your  
20 involvement in this case, perform an assessment of Mr. Yahyavi's ability  
21 to return back to work?

22 A I did.

23 Q Okay. And since you were the rating physician involved in  
24 2015, do you think it was reasonable and appropriate to ask you in 2018  
25 what were Mr. Yahyavi's chances of returning back to work and his

1 vocational opportunities?

2 A Sure. I was -- with Mr. Yahyavi, I was in a unique position  
3 because I had seen him before -- once before surgery. And again, like I  
4 mentioned on Friday, assessing physical abilities or work ability is part  
5 of -- a very significant part of the training and experience of a doctor in  
6 my specialty of physical medicine and rehab.

7 Q Okay. And based upon your knowledge of his condition, the  
8 progression of his problems in April -- March of 2008, what did you -- did  
9 you formulate opinions concerning his ability to return back to some  
10 type of gainful employment?

11 A You're talking about in 2018?

12 Q Yes.

13 A At that time I wasn't certain. He was only a couple months  
14 out from the time of his January 2018 surgery. He was still having  
15 significant problems. The healing phase from a surgery like that can be  
16 a number of months. So -- but I did attempt to give my overall  
17 assessment in terms of what the possible scenarios were. So I indicated  
18 that one scenario would be that he continues to improve and would be  
19 able to return back to some type of work maybe on a part-time basis.  
20 And then the second scenario is that he may not significantly improve  
21 functionally and be deemed totally disabled on a permanent basis.

22 Q Right. And were you aware Dr. Kaplan talked about that --  
23 and so did Dr. Schifini, that as a result of the surgery, he suffered a  
24 complication and a nerve related problem to the C5 area called a  
25 neuropraxia?

1 A Yes.

2 Q And was that also important to your overall evaluation to see  
3 if -- how -- if that improved or didn't improve?

4 A Yeah. Of course.

5 Q And now, did you at some point after March of 2018, reach a  
6 conclusion definitively whether or not Mr. Yahyavi was functionally  
7 capable and safely capable of returning back to any type of work,  
8 whether part-time or otherwise?

9 A I did. I don't have the date in front of me. Perhaps you could  
10 direct me.

11 Q Yeah, sure.

12 A Thank you.

13 Q I think it's your report of October 31, 2018. Let's just go to  
14 that.

15 A Thank you. Yes, that's it.

16 Q Yeah. And did you have another face to face meeting with  
17 Mr. Yahyavi?

18 A I did.

19 Q And had he -- did he still have ongoing weakness and  
20 decreased grip strength on the left?

21 A He did.

22 Q How about atrophy?

23 A He did.

24 Q And it says he has unattainable tricep reflexes. What are you  
25 referring to?

1           A     When you go to a physician, sometimes they might check  
2 your reflexes. I think most people know doctors tapping on your knee to  
3 have the leg move. But there are reflexes in multiple muscles in the  
4 arms and the legs that you can test. When a reflex is present or normal,  
5 it means that the function of the nerves going to that muscle and the  
6 functions of the muscle are normal.

7           In Mr. Yahyavi's case, when I would tap on his triceps reflex,  
8 nothing would happen. So it meant that there was a disruption of the  
9 nerve supply going to at least that muscle that was impacting my  
10 finding. It's another objective finding that the individual patient can't  
11 alter, or you know, influence.

12          Q     Okay. And was that also consistent with his progressive  
13 worsening of his condition with time?

14          A     Yes.

15          Q     And now you are -- by October of 2018, you're about ten  
16 months -- nine, ten months after the surgery. Had he made any  
17 significant improvement following the surgery performed by Dr. Kaplan?

18          A     No.

19          Q     Okay. And based on his overall clinical picture, your  
20 examination, assessment, and reviewing all of the medical records, did  
21 you reach a final conclusion, Dr. Oliveri, about whether it was  
22 reasonable, appropriate, or safe for Mr. Yahyavi to return back to any  
23 type of employment?

24          A     I did. My conclusion was that he was permanently and  
25 totally disabled as a result of this cervical injury.

1 Q Okay. I want to talk about that for a minute. Number one, do  
2 you take that -- making that type of a decision lightly?

3 A Of course not. It -- giving news to a patient or coming up  
4 with an opinion that they are permanently disabled is a very serious job  
5 of mine. I take it very seriously. I know what the implications are. I  
6 don't do it very often. It's the unusual situation where I make that call.

7 Q And why --

8 MR. PRINCE: Well, strike that.

9 BY MR. PRINCE:

10 Q By October of 2018, are you aware whether Mr. Yahyavi's  
11 already been determined to be disabled by the Social Security  
12 Administration?

13 A Yes, I believe so.

14 Q Do you do any evaluations for the Social Security  
15 Administration concerning work of -- an individual's disability?

16 A Going back all the way to my training at Stanford, I did work  
17 for -- as a contractor for Social Security, evaluating individuals that were  
18 applying for disability. I did that for a number of years. Since I've been  
19 in Las Vegas in practice, I've had multiple individuals that I've rendered  
20 opinions on. And sometimes -- it's a small number; sometimes they end  
21 up having limitations that are so severe that they can't work.

22 So I've had interactions with Social Security. I've testified in front  
23 of their administrative law judges before regarding patients that are  
24 disabled. I've had a lot of interaction.

25 Q Right. And so in this case, I want to talk about -- and if you

1 could explain, please, why Mr. Yahyavi is not able to go back to any sort  
2 of meaningful, gainful employment, or even his old job for that matter?

3 A I think it's important to clarify this issue of disability doesn't  
4 mean that Mr. Yahyavi can't walk, and talk, and move around.

5 Q Yeah. And I guess you see -- we see him walk into the  
6 courtroom.

7 A Sure.

8 Q And so -- and he walks into your office, right?

9 A Sure.

10 Q People don't have to be, I mean, a quadriplegic or in a  
11 wheelchair to be quote on quote disabled from working, right?

12 A Right.

13 Q Yeah, I want to make sure that we, kind of, understand that.  
14 If you could explain that for us.

15 A Sure. It all -- it comes down to a few things. There has to be  
16 a medical diagnosis that makes sense to the physician. And that medical  
17 diagnosis is based on all the things we talked about Friday in terms of  
18 clinical correlation; what the patient tells you, what you see on the  
19 physical examination, what you see on the tests, and what you come up  
20 with your final diagnosis. It has to be a substantial medical diagnosis.  
21 What it means to be disabled is that those diagnoses result in limitations  
22 that make the person not competitive to enter the workforce in any  
23 meaningful way.

24 So with Mr. Yahyavi, he can do certain things. But we're talking  
25 about being competitive to do work over a period of a day, a week, a

1 month, a year, and ongoing, and being able to do that without putting  
2 himself at risk for future injury or worsening of his condition, without  
3 putting coworkers at risk, without putting the employer at risk.

4 So there are all those factors. And you couple that with the degree  
5 of chronic severe pain that he has ongoing, he doesn't the have the  
6 ability to make it into that entry-level type of work, which is the lightest  
7 physical demand work that we classify and do that on a consistent basis  
8 competitively.

9 Q Right. Now, and even in a sedentary, or even less than -- as  
10 you characterize it, a sub-sedentary position, is he still at risk of injuring  
11 himself or performing those functions safely?

12 A I want to make sure I understand the question. You're asking  
13 outside of work activities, just by the fact that he has these limitations, is  
14 he still at risk?

15 Q Well, let me -- yeah, I'm sorry, maybe I asked a poor  
16 question. Thank you. What physical --

17 MR. PRINCE: Strike that.

18 BY MR. PRINCE:

19 Q In addition to physical limitations, what about someone with  
20 Mr. Yahyavi's condition, can he be consistent? Maybe one day he shows  
21 up and he's able to work two, three, four hours, and then he may not be  
22 able to do those same things for the next two, three, four days.

23 A I came to the conclusion that he shouldn't be working. Okay.  
24 So that's my --

25 Q Right.

1           A     -- that remains my conclusion. If Mr. Yahyavi did try to go  
2 back to work, I would expect a certain pattern with some of the things  
3 that you mentioned. I would expect an individual who -- and by the way,  
4 his pattern of returning back to work after the injury was consistent with  
5 somebody who wanted to work. You know, so he stayed in there. He  
6 changed an occupation. He reduced his work hours. And eventually, he  
7 couldn't do it anymore. But if he were to try to go back, he would be one  
8 of those individuals that would not be consistent. He would have good  
9 days and bad days. He would have to potentially call in sick. He'd  
10 potentially have to leave early. He potentially could put himself at risk  
11 for further injury, or a coworker.

12           Q     Right. I mean, from an employer standpoint -- I mean, if Mr.  
13 Yahyavi injured him on the job, would there be concern from an  
14 employer's standpoint because he's more susceptible to injury than say  
15 a normal healthy person?

16           A     Of course. That -- that fits in with what we mean by  
17 competitive in the workforce.

18           Q     So your opinion is that he would -- he is not competitive in  
19 the workforce because of these injuries?

20           A     He's not.

21           Q     Now, you talked about Mr. Yahyavi, he -- that he continued to  
22 work, and the income -- and his income looked okay for a year, year and  
23 a half because he pushed through until September of 2016. What is your  
24 knowledge of what changes or modifications he made to his  
25 employment at Chapman while he was -- during -- while the period of



1 time he was working?

2 A He started out in -- before the accident he was in sales  
3 management with Chapman. He changed from that down to a  
4 salesperson, which meant less responsibility, less physical activities.  
5 And then from there, he reduced further to work less hours compared to  
6 normal.

7 Q So he worked -- started working part-time?

8 A Yes.

9 Q Okay. In looking at the entirety of the picture, like, all -- his  
10 entire clinical picture, do you feel that he was appropriately motivated,  
11 and he was trying to stay competitive in the workforce for as long as  
12 possible?

13 A Of course. That's the pattern that I'm talking about. People  
14 who are not motivated to work, as soon as they get an opportunity to not  
15 work, they stop. So he had plenty of opportunities to stop working given  
16 the severity of his injuries. He didn't take them. He continued to push  
17 through.

18 Q Now, I want to talk about did you -- also in addition to those  
19 issues, did -- in the courtroom is Mr. Ira Spector, who is our vocational  
20 rehabilitation counselor. Do you know Mr. Spector?

21 A I do.

22 Q Have you also discussed your conclusions and your findings  
23 with Mr. Spector as part of his overall evaluation?

24 A Yes.

25 Q And yesterday, Dr. Schifini, he also is of the opinion that Mr.

1 Yahyavi was -- is vocationally disabled. So obviously you agree with  
2 that decision?

3 A Correct.

4 Q For the reasons you've stated?

5 A Yes.

6 Q Okay. I want to talk about future medical care needs now.

7 A Okay.

8 Q Okay. And I want to talk about -- have you formed opinions  
9 as to what Mr. Yahyavi's future medical care needs are and what the cost  
10 of those are?

11 A I have.

12 Q And can you please share with us what those are?

13 A Sure. How would you like me to present that? Do you want  
14 me to go through everything line by line, or do you want me to talk  
15 about my methodology?

16 Q I want you to first tell us did you formulate a lifecare plan?

17 A I did.

18 Q What is a lifecare plan?

19 A Lifecare plan is an assessment of future medical needs of an  
20 individual that has some sort of catastrophic problem, something that  
21 needs medical care ongoing to a certain degree for the rest of their life.  
22 So it means identifying what those items are, identifying the cost, and  
23 then identifying the duration or length of time that the person will need  
24 those things.

25 Q And first off, let's start off with the duration.

1           A     Okay.

2           Q     Have you predicted what Mr. Yahyavi's future lifecare plan  
3 needs are for the duration of his life?

4           A     Yes.

5           Q     What is his life expectancy at this point?

6           A     Life expectancy is based on governmental tables. So they do  
7 an analysis that's published once a year. And so I'm not here to tell you  
8 that Mr. Yahyavi is going to live a certain amount of time. Nobody  
9 knows that. But what I can provide to you is that the average, the  
10 midpoint is 24 additional years from this point -- from his current age.

11          Q     And in that 24 years, do you have an opinion, Dr. Oliveri,  
12 whether he will continue to experience chronic, severe, life altering pain?

13          A     Unfortunately, yes.

14          Q     And given the fact that as we -- as he ages, would you expect  
15 that condition to improve, stay the same, or worsen?

16          A     The condition is not going to improve. I -- let me -- one  
17 caveat is that he has been recommended for a spinal stimulator. And we  
18 would expect the spinal stimulator to provide some improvement in his  
19 quality of life, reduce his pain level somewhat. But I can guarantee that  
20 he's going to continue to have chronic pain for the rest of his life.

21          Q     And so have you come up with some recommendations of  
22 what he may -- he will need for the remainder of his life to help control  
23 or manage his pain levels, and hopefully improve some level of the  
24 quality of his life?

25          A     Yes.

1 Q And let's just discuss, kind of, on a light ended basis, like, his  
2 basic needs, and the cost of those.

3 A Okay. So he needs to have a physician knowledgeable in this  
4 stuff to see him periodically, to monitor his progress, prescribe  
5 medications, prescribe therapy. So I've given a provision for a doctor's  
6 visit every one -- I'm sorry, a doctor's visit once or twice yearly for the  
7 rest of his life.

8 Q Okay. And what is the cost of that?

9 A The cost is \$313 to \$626 per year. And would you like the  
10 grand total?

11 Q We're going to get to the total. Yeah, we'll just, kind of, talk  
12 about them individually, and then we're going to go to the grand total.

13 A Very good. Okay.

14 Q And then the next item, in addition to doctor visits a couple  
15 of times a year, have you also recommended some physical therapy to  
16 help improve his symptoms or control his symptoms?

17 A Yes. Specifically to help manage or control symptoms,  
18 seeing a physical therapist for 12 visits a year. It could be done all at  
19 once. It could be done periodically throughout the year. But at least  
20 having that available by a skilled therapist is important. The cost is  
21 \$2,280 per year for those 12 visits.

22 Q Okay. And have you also considered medication needs?

23 A Correct. He's been on medications for quite some time, will  
24 be expected to continue to need medications. And I've included a  
25 provision for \$416 a year of prescription medications.

1 Q Okay. What prescriptions did you provide for?

2 A I outlined a prescription for a pain medicine which is called  
3 Tramadol.

4 Q Is that an opiate?

5 A It is.

6 Q Okay.

7 A It's in the opiate family. It's a scheduled or controlled  
8 medication in all states.

9 Q Okay.

10 A And then Zanaflex, which is a muscle spasm reliever.

11 Q Okay. And talking about muscle spasm, in your presence,  
12 have you ever seen Mr. Yahyavi, like, go into a spasm and, kind of, like it  
13 almost take his breath away?

14 A Sure.

15 Q Have you seen that happen with him?

16 A Yes.

17 Q It's unsettling, isn't it?

18 A It is.

19 Q What causes that?

20 A When there's injury to the spine, your body tries to stabilize  
21 the spine. So sometimes in the early phase of injury, if you maybe lift  
22 something the wrong way, your body will tighten up those muscles to  
23 provide some protection, so you don't move too much. The problem is  
24 that when a person has chronic pain that never goes away, those  
25 spasms, they -- they're not needed anymore to protect the movement of

1 the spine, but they continue to cause pain, discomfort, or can be startling  
2 in some ways.

3 Q Why does that, like, almost take his breath away? He almost  
4 looks like -- you know, it's frightening what he looks frightened when it  
5 happens.

6 A Sure. I can just tell you that it's not an uncommon thing that  
7 we see with patients that have had such a severe problem with their  
8 spine.

9 Q The next item I want to talk about is also did you provide for  
10 the cost of the spinal cord stimulator for Mr. Yahyavi?

11 A I did.

12 Q Okay. And number one, we -- they -- the jury learned about a  
13 spinal cord stimulator, and they actually saw one with Dr. Kaplan. They  
14 talked about servicing it. And they talked -- yesterday, Dr. Schifini, who  
15 also has some expertise in placement of those at least on a trial basis, he  
16 talked about the stimulator as well. But I want to talk about the -- you  
17 know, the maintenance of the stimulator, and the cost associated with  
18 that.

19 A Okay.

20 Q So if you can -- let's discuss first off how a spinal cord  
21 stimulator is maintained.

22 A There's two -- well, there's three aspects of maintenance.  
23 One is that the -- I'm sure you saw the pulse generator, or the battery.  
24 And that can actually be programmed by a technician that's associated  
25 with the company that makes these things. And so they can do a

1 computer program that changes how that stimulator reacts, what parts  
2 of the body it affects, does it affect more of the neck, the head, the  
3 shoulder, the arm. And so that technician is involved for the life of that  
4 patient in adjusting and programming. So that's one.

5 The second is that the pulse generator or the battery has a shelf  
6 life. The shelf life means that it pretty much goes out within a few years.  
7 The typical range is three to five years. And when it goes out, it needs to  
8 be replaced surgically. It's an outpatient surgery center procedure. But  
9 the physician or surgeon just makes an incision, removes that little  
10 generator pack from the buttock area, and replaces it with a new one.

11 Q Okay.

12 A Those are the two main ways that the maintenance occurs.  
13 Sometimes there are complications though. There is a complication  
14 sometimes with the leads that need to be replaced. But those are in the  
15 realm of possibilities, and I did not include any of those things in my  
16 lifecare plan.

17 Q Did you include as part of your plan the cost of the  
18 permanent placement of the spinal cord stimulator?

19 A I did.

20 Q Did that include the surgeon, the facility fee, anesthesia, and  
21 all the things associated with that?

22 A And the device, and all the leads. All -- the entire package.  
23 Yes.

24 Q The whole kit and kaboodle?

25 A Yes.

1 Q Very good. And based upon that, what is the cost of the  
2 placement, as well as the maintenance of the spinal cord stimulator  
3 throughout Mr. Yahyavi's life?

4 A Initial placement is \$171,229, including all of those  
5 components. And then the replacement of the pulse generator is  
6 \$45,000 to \$55,000 each time. And that occurs every three to five years,  
7 so I chose the midpoint of every four years.

8 Q Okay. And have you testified in Clark County before in court  
9 about lifecare plans as an expert witness?

10 A Yes.

11 Q And how are you familiar with the costs of these -- like, for  
12 physician visits, therapy visits, costs of spinal cord stimulators, the  
13 servicing, and the, you know, the replacement of those batteries?

14 A I've been involved in doing lifecare plans for almost 20 years,  
15 and I'm very much involved in researching costs of these individual  
16 items. I also did additional training to become certified as a lifecare  
17 planner, where we learn specific methods to research items, and how to  
18 present that information to a jury. So it's something I'm very familiar  
19 with, very comfortable with.

20 Q And what -- using -- in current dollars, you're talking -- are  
21 the costs you've given us, were they in the current medical, you know,  
22 cost dollars?

23 A Yes.

24 Q All right. What --

25 A In 2019 dollars.



1           Q     And what is the range of the costs associated with not only  
2 the doctor visits, physical therapy, medications, and spinal cord  
3 stimulator of which you reached?

4           A     For the items that --

5           Q     We just discussed.

6           A     -- we just discussed. \$468,543, up to \$526,055.

7           Q     Would you -- do you believe these are conservative  
8 numbers?

9           A     By definition, they don't include complications or problems  
10 that can happen during treatment. It doesn't predict additional problems  
11 that could happen to Mr. Yahyavi. So they are a minimum estimate of  
12 what his needs are.

13          Q     Okay. And when someone has a severe injury as you  
14 described here in Mr. Yahyavi -- I mean, he obviously has a severe neck  
15 issue, arm issue, and now he's -- he has atrophy because of loss of use  
16 and some other problems -- do you find them to be less active just so  
17 they don't hurt other parts of their body that are otherwise functional  
18 and healthy?

19          A     Yes.

20          Q     What -- tell us why that is.

21          A     It is a common human reaction to try to protect problems  
22 that are injured. With Mr. Yahyavi's spinal injuries, he's not as  
23 comfortable utilizing his left arm. I mean, I -- I could observe on Friday  
24 from watching him, just the movements -- he doesn't actually have  
25 movement of his neck. So in order to look to the right, he has to adapt

1 or compensate by turning his entire body. And so there's compensation  
2 that occurs by the individual patient that has chronic pain to try to  
3 minimize discomfort, pain, or additional problems.

4 Q And just because we're -- I mean, obviously we're focusing  
5 on the neck and that's the source of the injury. But can that affect  
6 actually his entire body, or other parts of the body other than just his  
7 neck?

8 A Yes. On Friday, we talked about the anatomy of the spine.  
9 The spine is meant to function by all of those segments, the seven  
10 cervical, the twelve thoracic, the five lumbar all moving in consort. So  
11 when you have a fusion from the third cervical down to the first thoracic,  
12 that no longer moves and it affects the movement of the rest of the  
13 spine, it affects the balance of the spine, and it affects the person on a  
14 day to day basis.

15 Q Is that -- among other reasons, is that one of the reasons why  
16 he is not an appropriate candidate to return back to work on any  
17 functional level?

18 A One of many.

19 Q Dr. Oliveri, I have a couple housekeeping items before we  
20 finish up here today. In addition to reviewing all of the medical records,  
21 both from 2013 all the way through 2019, have you formed an opinion  
22 whether all of that treatment that he's received was medically  
23 reasonable, necessary, and caused by this motor vehicle collision?

24 A You're talking about the spinal related treatment?

25 Q Spinal related treatment, yes, sir.

1 A Yes. It is all reasonable and related to this crash.

2 Q And to a reasonable degree of medical probability?

3 A Yes.

4 Q Very good. Have you also reviewed the medical billing  
5 associated with all of these facilities --

6 A Yes.

7 Q -- and providers relating to the treatment of the injuries to the  
8 spine and the neck?

9 A Yes.

10 Q And so I have -- I'm going to just read them off, and just so  
11 we can -- did you review the Las Vegas Fire and Rescue billing? I'm  
12 going to show you -- I have a summary, so let me just give it -- give that  
13 to you. Let me just -- did you read the Las Vegas Fire and Rescue billing?  
14 This -- yes?

15 A Yes.

16 Q University Medical Center billing?

17 A Yes.

18 Q EMP of Clark, the UMC billing, obviously?

19 A That's the physician billing at UMC. Yes.

20 Q Dessert Radiology?

21 A Yes.

22 Q Downtown Neck and Back Clinic?

23 A Yes.

24 Q Center for Occupational Health billing?

25 A Yes.

1 Q Radar Medical Group billing?

2 A Yes.

3 Q Kelly Hawkins Physical Therapy billing?

4 A Yes.

5 Q Dessert Orthopedic billing for the spine?

6 A Yes.

7 Q Dr. Schifini billing?

8 A Yes.

9 Q Clinical Neurology Specialists?

10 A Yes.

11 Q Las Vegas Surgery Center billing?

12 A Yes.

13 Q Lok Acupuncture?

14 A Yes.

15 Q We didn't talk about acupuncture, but do you think it -- was

16 that one of Mr. Yahyavi's efforts to try anything possible to try to avoid

17 surgery in this case?

18 A Yes.

19 Q Did you look at Nevada Spine Clinic billing?

20 A Yes.

21 Q Smoke Ranch Surgery Center billing?

22 A Yes.

23 Q Shield Radiology billing?

24 A Yup.

25 Q Southern Nevada Pain Center billing?

1 A I did.

2 Q Single Day Surgery Center billing?

3 A Yes.

4 Q Steinberg Diagnostic billing?

5 A Yes.

6 Q ATI Physical Therapy billing?

7 A Yes.

8 Q Mountain West Chiropractic billing, Dr. Bahooora?

9 A Yes.

10 Q Western Regional Center for Brain and Spine billing?

11 A Dr. Kaplan, yes.

12 Q Dr. Kaplan. Las Vegas Neurosurgical Institute, which is also

13 Dr. Kaplan, did you --

14 A Correct. Yes.

15 Q Neurology Center of Nevada billing?

16 A Yes.

17 Q The Surgical Anesthesia Associates --

18 A Yes.

19 Q -- Services billing?

20 A Yes.

21 Q And Valley Hospital billing related to the spine surgery?

22 A Yes.

23 Q All right. Were those all relevant to your -- relevant to you in

24 formulating your opinions concerning the -- whether the costs associated

25 with the medical care was reasonable, usual, and customary for our

1 community?

2 A Yes.

3 MR. PRINCE: Your Honor, I'd move for the admission of  
4 Exhibits 116 through 139.

5 MR. KAHN: May we approach briefly?

6 THE COURT: Yes.

7 [Sidebar begins at 2:14 P.M.]

8 MR. KAHN: You went really fast. I just got this a day or two  
9 ago.

10 MR. PRINCE: No, no, no. I was reading from the exhibit list,  
11 and then I'm going to show that to him, the summary.

12 MR. KAHN: Okay. Well, I am fine with stipulating to the  
13 billing coming in as soon as I am certain what we are going to show the  
14 jury about the worker's comp payment that we filed --

15 MR. PRINCE: Oh, that's your burden. That's not our burden.

16 MR. KAHN: Well, I had submitted the proposal in the exhibit  
17 that has the subrogation letters with all the providers listed. So I've done  
18 that a week ago.

19 MR. PRINCE: Well, that's -- I'm not admitting.

20 THE COURT: All right. What --

21 MR. PRINCE: I'm talking about the admission of the bills,  
22 Judge. He's talking about the worker's comp payment.

23 THE COURT: I get that, but that has to come in, and yes, I  
24 said I think it's his burden, but why can't you guys agree on that? It has  
25 to come in.

1 MR. PRINCE: Well, because I don't think he has the accurate  
2 number, and so I haven't seen what I would consider accurate because  
3 it's ongoing. The number he had was old, and he's had more care, so --

4 THE COURT: So why can't somebody call --

5 MR. PRINCE: But, Judge, I'm not on that right now, and he's  
6 saying I'm stipulating to the billing. I'm not asking to stipulate to  
7 anything. I'm moving for the admission of these bills.

8 THE COURT: Okay. All right, but we need to get that done.

9 MR. PRINCE: And he has no objection right now.

10 MR. KAHN: The bills the witness just testified to -- let's make  
11 sure we have a full list. It's from the exhibit list, and based on the  
12 representation that Plaintiff's counsel has made before that all of the  
13 knee charges had been removed, and if that's the representation, then  
14 I'm fine with admission --

15 THE COURT: Have all the knee --

16 MR. KAHN: -- of all those.

17 MR. PRINCE: Yes, yes.

18 THE COURT: -- charges? Okay, fine.

19 MR. PRINCE: And also, Judge --

20 THE COURT: Yeah.

21 MR. PRINCE: -- the instruction you're going to give the jury  
22 is that they're to award the reasonable and usually customary medical  
23 expenses. The jury -- the work comp jury instruction says they are not to  
24 deduct any payments made, so there's -- so --

25 THE COURT: Yeah. The instruction is the instruction.

1 MR. PRINCE: So anyway --

2 MR. KAHN: That's correct.

3 MR. PRINCE: So --

4 MR. KAHN: It's whatever is in the statute.

5 MR. PRINCE: That's fine. Okay, so I'm moving --

6 THE COURT: Okay.

7 MR. PRINCE: -- for the admission of those exhibits.

8 THE COURT: All right.

9 [Sidebar ends at 2:16 p.m.]

10 THE COURT: Those exhibits will be admitted.

11 [Plaintiff's Exhibits 116 through 139 admitted into evidence]

12 MR. KAHN: Great. Can we just go down the numbers so  
13 we're clear?

14 MR. PRINCE: 116 through 139. I just went through those.

15 MR. KAHN: Thank you.

16 MR. PRINCE: All right.

17 THE COURT: He's stipulating to it, correct?

18 MR. KAHN: We are stipulating, yes, Your Honor, based on  
19 the representations we made --

20 THE COURT: Yes.

21 MR. KAHN: -- before the Court.

22 THE COURT: And we discussed that; yes.

23 THE CLERK: Okay. Thank you.

24 BY MR. PRINCE:

25 Q And Dr. Oliveri, as Exhibit 84, is that in your binder?



1           A     Not this one.

2           Q     I think it might be in binder number one, if you can get to  
3 that. I've prepared a summary of all those billings. It looks like it's 32  
4 different provider billings.

5           A     I have it.

6           Q     Exhibit Number 84. And I had provided that to you as -- I  
7 know you reviewed the bills, but I've also provided to you the summary,  
8 right?

9           A     Correct.

10          Q     Does this appear to be a true, and accurate, and reasonable  
11 summary of all the billings that you reviewed in this case?

12          A     Yes.

13               MR. KAHN: Your Honor, may we approach again very  
14 briefly?

15               THE COURT: Yes.

16                         [Sidebar begins at 2:17 p.m.]

17               MR. KAHN: By my count, he's testified to 25 bills. Now he's  
18 saying 32?

19               MR. PRINCE: No. Those are the bills that he's reviewed.

20               THE COURT: Well, he's using this, I assume --

21               MR. PRINCE: This is a summary.

22               THE COURT: -- as a demonstrative to the exhibit.

23               MR. PRINCE: Exactly.

24               THE COURT: So if it's not accurate, you can -- he's not  
25 asking if --

1 MR. PRINCE: I'm getting ready to, so --

2 THE COURT: Well --

3 MR. KAHN: Give me a minute. Maybe we should take a five  
4 minute break.

5 MR. PRINCE: I don't want to take a break. I want to keep  
6 going, because you know what, you should've been ready for this.  
7 You're just not ready. You're not prepared.

8 THE COURT: All right. Counsel, don't. That's not --

9 MR. PRINCE: No, but my point is, I'm trying to just finish this  
10 part of it up. I mean, he's had weeks to deal with this. I don't --

11 THE COURT: I understand, but --

12 MR. KAHN: Hold on. I got his chart, his revised summary  
13 chart like three days ago.

14 MR. PRINCE: That's plenty of time.

15 MR. KAHN: And it has --

16 MR. STRONG: It wasn't substantially different.

17 MR. KAHN: Nevertheless, what he's currently saying is  
18 something I've had for a couple days, I'm now --

19 THE COURT: Yeah, well I need to take a break anyways.

20 MR. KAHN: I do, as well.

21 THE COURT: So we're going to take a break.

22 [Sidebar ends at 2:18 p.m.]

23 THE COURT: All right. We're going to take a 10 minute  
24 recess.

25 During this recess, you're admonished, do not talk or

1 converse amongst yourselves or with anyone else on any subject  
2 connected with this trial, or read, watch, or listen to any report of or  
3 commentary on the trial, or any person connected with this trial by any  
4 medium of information, including, without limitation, newspapers,  
5 television, radio, or internet. Do not form or express any opinion on any  
6 subject connected with the trial until the case is finally submitted to you.  
7 We'll take 10 minutes.

8 THE MARSHAL: Please rise for the jury.

9 [Jury out at 2:19 p.m.]

10 [Recess at 2:20 p.m., recommencing at 2:46 p.m.]

11 [Outside the presence of the jury.]

12 MR. KAHN: Before the jury comes back, just so it's clear with  
13 the Court --

14 THE COURT: Right.

15 MR. KAHN: -- the witness, I think, is going to testify to one  
16 bill that we think was omitted of a couple hundred dollars, and I'm  
17 stipulating to all the entire range of Mr. Prince's request.

18 MR. PRINCE: Okay. So that's now going to be, just for the  
19 record, I stopped short. It's moving for the admission of 116 through  
20 146.

21 [Plaintiff's Exhibits 116 to 146 admitted into evidence]

22 THE CLERK: Okay.

23 THE COURT: Okay. That --

24 MR. KAHN: That's correct.

25 THE COURT: -- will admitted by stipulation.

1 MR. PRINCE: Yeah. And then 84 is my summary, which is  
2 Bate number 156. I simply -- that one I need to lay the foundation with it.

3 THE CLERK: Right. That's still opposed.

4 MR. KAHN: Assuming it tracks what we've just agreed to --

5 MR. PRINCE: It does.

6 MR. KAHN: -- then that's fine, as well.

7 MR. PRINCE: Okay.

8 MR. KAHN: And like I said, the witness --

9 THE COURT: Are you going to stipulate to its admission to  
10 go back to the jury?

11 MR. KAHN: Yeah. I'm not going to make the jury do the  
12 math. I mean, that's fair.

13 THE COURT: Okay.

14 MR. KAHN: If that tracks what Mr. Prince is representing --

15 THE COURT: That's fine.

16 MR. KAHN: -- as all the bills, that's fine.

17 THE CLERK: Okay.

18 THE COURT: I was doing the research back there. Whoops.  
19 Shoot. I left my 52.275 talks about summaries. All right, but that makes  
20 it easy. Well, what is --

21 MR. KAHN: So he's going to testify to the one bill, then  
22 everything is coming in.

23 [Plaintiff's Exhibit 84 admitted into evidence]

24 MR. PRINCE: Yeah.

25 THE COURT: Okay. Bring them in.

1 THE MARSHAL: Please rise for the jury.

2 [Jury in at 2:48 p.m.]

3 [Inside the presence of the jury.]

4 THE COURT: Please be seated. Parties acknowledge  
5 presence of the jury?

6 MR. PRINCE: Yes, Your Honor.

7 MR. KAHN: Yes, Your Honor.

8 THE COURT: Please proceed. Doctor, you're still under oath.

9 THE WITNESS: Thank you.

10 BY MR. PRINCE:

11 Q And, Dr. Oliveri, in front of you should be Exhibit 84. During  
12 the break, we resolved the evidentiary issue, and so the exhibits -- all the  
13 billing associated with Mr. Yahyavi's medical care has now been  
14 admitted into evidence, as well as this Exhibit 84, which is the summary.  
15 Part of your overall billing, did you also look at University Urgent Care  
16 billing for \$722.25?

17 A Yes.

18 Q Okay. And looking at page 156 and 157, you reviewed all of  
19 the charges and expenses, and in your opinion, Doctor, were all of the  
20 charges for the treatment that's been provided usual, customary, and  
21 reasonable for our community?

22 A Yes.

23 Q Were they also caused and necessitated solely by reason of  
24 this motor vehicle collision of June 19th, 2013?

25 A Yes.

1 Q And the total number, we made a revision. We had a math  
2 error in my summary earlier, but the total is \$491,023.24. Were those the  
3 usual and customary expenses for the past medical expenses incurred  
4 by Mr. Yahyavi during the course of his care in this case?

5 A Yes.

6 Q And the other 500 hundred thousand plus dollars, that would  
7 be for the future care needs --

8 A Correct.

9 Q -- expressed in 2019 dollars?

10 A Correct.

11 Q Very good. Have all the opinions you've stated been to a  
12 reasonable degree of medical probability, Dr. Oliveri?

13 A They have.

14 Q Thank you.

15 MR. PRINCE: I have no additional questions. I pass the  
16 witness.

17 THE COURT: Cross-exam? So what's that noise?

18 MR. KAHN: Probably this microphone.

19 THE COURT: No. All right. Somebody dealt with it.

20 CROSS-EXAMINATION

21 BY MR. KAHN:

22 Q Good afternoon, Dr. Oliveri.

23 A Good afternoon.

24 Q My name is David Kahn. Other than seeing me here in the  
25 courtroom the last time you testified, you and I aren't acquainted,

1 correct?

2 A I don't believe so.

3 Q And just to be clear before I start, are you what is called a  
4 retained expert at this point? In other words, have you reviewed  
5 materials beyond what was required for you to treat and also rate the  
6 Plaintiff?

7 A I have never been a treating physician of Mr. Yahyavi. I have  
8 always been either a rater or a retained expert.

9 Q Okay. And so setting aside the worker's compensation rating  
10 effort that you did for the comp system, have you also been retained  
11 separately as an expert witness for this case?

12 A Yes.

13 Q And that's more than just kind of paying you for your time  
14 here today. That's paying you to have reviewed additional materials  
15 beyond what you have to see to rate the Plaintiff, correct?

16 A Correct.

17 Q Can you give me a ballpark number of how much you have  
18 charged the Plaintiff for that portion of your work, separate and apart  
19 from any worker's compensation work?

20 A Yes. I actually have my billing in my chart, roughly since  
21 March of 2018 until just recently, approximately \$15,000.

22 Q Okay. And in addition to that, you were paid separately by  
23 the comp system or whoever paid you for the rating items, correct?

24 A Yes.

25 Q So at what point were you retained by counsel or by the

1 Plaintiff to perform expert work in this case, separate and apart from  
2 your worker's compensation duties?

3 A Early 2018.

4 Q So last nine or 10 months? Something like that?

5 A No.

6 Q 2018?

7 A '18. Correct.

8 Q Okay. So about -- a little bit under two years?

9 A Yes.

10 Q And before early 2018, your role was only as a worker's  
11 compensation doctor, and rater, and physician, not as -- you weren't  
12 involved in the case, right?

13 A Correct.

14 Q And at what point in time did you prepare this rating of the  
15 Plaintiff, the eight percent spinal full body -- cervical spine full body  
16 rating?

17 A 2015.

18 Q Okay. So two to three years before you were retained as an  
19 expert, correct?

20 A Yes.

21 Q And at that point, you were only a rating physician. Not his  
22 treater, not an expert. All you were doing was providing a rating for the  
23 worker's compensation system, correct?

24 A Yes.

25 Q And you used the 5th Edition Guides for the rating; is that



1 correct?

2 A Yes.

3 Q Have those changed much from the 4th Edition Guides, as far  
4 as the relevant portions for Mr. Yahyavi?

5 A I don't recall the differences between the two as I sit here.

6 Q Well, you said -- you testified that he was a category 2 rating  
7 several years ago when you rated him initially, correct?

8 A Yes.

9 Q And there's a category called category 3. It's the next rating  
10 up, correct?

11 A Yes.

12 Q And the main distinction between those two categories, if I'm  
13 correct, and I would like you to confirm it, is that category 2 does not  
14 involve radiculopathy that can be verified, but category 3 does involved  
15 verifiable and radiculopathy; is that correct?

16 A Yes.

17 Q So in 2015, when you rated Mr. Yahyavi, you could not  
18 confirm that he had radiculopathy, right? At that time. Just yes or no for  
19 now.

20 A That's correct.

21 Q And can you explain to the jury what radiculopathy is, just  
22 briefly?

23 A Sure. It depends on who's answering the question. For a  
24 specialist dealing with nerves, it means that there has been some  
25 identifiable and demonstrated injury to the nerve fibers, that results in a

1 certain group of symptoms into the arm. So those symptoms would be  
2 numbness or tingling, it would be weakness, and it would be loss of  
3 reflex in involving that nerve.

4 Q And so just to be clear to the jury now that you've explained  
5 it, in 2015, when you did the rating, at that time, you couldn't objectively  
6 verify any of those things, correct?

7 A Correct.

8 Q And then also, we talked about -- or you talked about the  
9 functional capacity evaluation. In part, that depends on the motivation of  
10 the employee, or patient, or person being evaluated, correct?

11 A Yes.

12 Q So motivation. It depends also on their cognitive awareness;  
13 that's another factor, correct?

14 A Sure.

15 Q It depends on behavioral factors, also, correct?

16 A Yes.

17 Q And it also depends on sincerity of effort, right?

18 A Yes.

19 Q So the functional capacity exam, part of it is making sure that  
20 the patient or individual is being sincere in the effort that they're  
21 expending on the test, right?

22 A Yes.

23 Q I'm going to back up to something that you talked about, and  
24 it's been a couple days, but we do have your transcript, just so you  
25 know. And to be fair to you, if at any point you need to look at it or we

1 need to verify it, it's been generated, so we can do that. But I want to  
2 start out with something that is extremely important to the Defendant. In  
3 one of your reports -- well, as part of your work for the workers' system  
4 and/or for this case, you've generated three written reports, right?

5 A I've generated more than that.

6 Q Okay.

7 A I have a total of five reports since the rating, so I think I've  
8 generated a total of six reports.

9 Q All right. When is it that -- out of all of those reports, when is  
10 it that you identified that you reviewed the records from Southwest  
11 Medical Associates predating the accident, if at all?

12 A I did not.

13 Q Okay. So you did six reports. When was the latest one?

14 A March 21 of 2019.

15 Q So six months ago, roughly, right?

16 A Yes.

17 Q And as of six months ago and six reports, and several years  
18 of work, you did not know that the Southwest Medical Associates  
19 records predating this accident even existed, correct?

20 A Correct.

21 Q And you testified on Friday, and you testified a little bit here  
22 today that you have reviewed those records as you sit here now, right?

23 A Yes.

24 Q When did you first receive those records? What's the timing  
25 of your receipt of the Southwest Medical records pre-accident?

1           A     Within the last couple of weeks, probably.

2           Q     Okay. Within the last few weeks. So when you rated Mr.  
3 Yahyavi, you didn't know that he had a report of neck pain for years, 21  
4 months before this accident, correct?

5           A     Correct.

6           Q     And when you issued all six of your written reports, and  
7 rendered all of your written opinions to worker's compensation and/or  
8 for this case, you didn't know that they were Southwest Medical  
9 Associates' records 21 months before this accident, saying that the  
10 Plaintiff's neck hurt him for years, correct?

11          A     Correct.

12          Q     So your testimony on Friday and your testimony this  
13 morning in regard to his reports of pain 21 months before the accident  
14 are things that were not considered by you when you communicated  
15 with worker's compensation, or wrote reports for either the comp system  
16 or this care, correct?

17          A     Agreed.

18          Q     Worker's compensation has an interest -- the worker's  
19 compensation system has an interest in whether an individual who's  
20 subject to rating, or is making a claim for worker's compensation has a  
21 pre-existing problem or injury, or report of pain in the exact same body  
22 area at issue, correct?

23          A     Yes.

24          Q     So had you known when you rated Mr. Yahyavi that he had a  
25 neck -- a complaint -- subjective complaint of neck pain for years, and

1 you were rating his neck, that's something, at a minimum, you would've  
2 noted in your rating report, correct?

3 A That's correct.

4 Q And you most likely would have reported that to the comp  
5 system, whether or not you factored it in -- whether or not it affected  
6 your ultimate percentage and your ultimate opinions, that's something  
7 that, as a rater, you would include in your reports, right?

8 A I think you asked two things. I wouldn't report it to them.  
9 You know, call them, but I would note it in my report.

10 Q And that's what I meant. I apologize if I was unclear. One of  
11 the things you're saying is that Mr. Yahyavi has a motion segment injury;  
12 is that --

13 A Yeah.

14 Q -- correct?

15 A Yes.

16 Q And a motion segment is defined as two adjacent vertebrae  
17 in the spinal column, and they're interconnecting discs and ligamentous  
18 structures. Would you agree that's at least a definition?

19 A That's a great definition.

20 Q And so essentially what that means is you take the two  
21 vertebral bodies, and in between them there are a number of processes  
22 and things, and it's basically everything between any two vertebrae or  
23 more, right?

24 A Yes.

25 Q So in this case when we talk about the C6-7 level, the spinal

1 -- the motion segment would be the C6 vertebrae, the C7 vertebrae, and  
2 then everything in between, right?

3 A Disc, facet joints, and ligaments.

4 Q Now, I'm going to jump around a little bit, just because  
5 there's a lot to cover here. And so going back to Southwest Medical, at  
6 the end of your testimony on Friday, you were asked about the record  
7 where Mr. Yahyavi said to Southwest Medical, in October of 2011,  
8 roughly 21 months before this accident, I have had neck pain for years.  
9 Do you recall being asked generally about that topic?

10 A Yes.

11 Q And at the end of the day -- at the end of your testimony, I  
12 believe you testified after questioning by Plaintiff's counsel that that  
13 could be a misunderstanding in the records. Do you recall that  
14 testimony?

15 A Something like that, yes.

16 Q So is it your position that Mr. Yahyavi's medical records from  
17 21 months before this accident are somehow wrong?

18 A No, I'm not saying that. What I'm attempting to do is to  
19 reconcile that one record with everything that I know about Mr. Yahyavi  
20 before and after. That's all.

21 Q What did you mean by a misunderstanding? What would  
22 you -- how do you -- what did you mean when counsel asked you, could  
23 it be a misunderstanding, and you said, yes. What did you mean on  
24 Friday?

25 A Mr. Yahyavi has maintained to me that he has no recollection

1 of having neck pain for years. He has no recollection of telling  
2 somebody that. So if his history in that regard is correct, then I'm trying  
3 to come up with explanations that would allow for that documentation.

4 Q Don't you think it would be extremely unusual for a patient to  
5 go to a medical facility, not report cervical neck pain for years, have the  
6 facility document that the patient has neck pain for years, and send the  
7 patient to a set of x-rays, because you would agree he got a set of x-rays  
8 that same day or that same week, right?

9 A Yes.

10 Q Don't you think that would be unusual?

11 A It would be unusual, yes.

12 Q The surgery that Mr. Yahyavi received, the five level fusion --  
13 it has more names. I just call it a fusion. So if I call it the fusion or the  
14 surgery, will you understand that I'm referring to the five level  
15 decompression surgery that he had with the hardware, and that Dr.  
16 Kaplan performed a year and a half or so ago?

17 A Yes.

18 Q And that was a couple months before you last saw him,  
19 right?

20 A It was -- say that again. I'm sorry.

21 Q I think it was in January of 2018, and you said you saw him in  
22 March of 2018?

23 A Right, for the first visit after the rating.

24 Q Okay. So you were asked a bunch of questions about what  
25 worker's comp accepted, and what worker's comp's role was in this.

1 Worker's compensation did not take and cover that surgery, correct?

2 A I'm actually not familiar with what the administrative issues  
3 are. It's my understanding that he still is being treated under the  
4 worker's compensation system, but I don't know what the decisions  
5 were about the surgery.

6 MR. KAHN: Give me one second.

7 MR. PRINCE: Can we approach, Your Honor.

8 THE COURT: All right.

9 [Sidebar begins at 3:04 p.m.]

10 MR. PRINCE: Yeah. Here's the issue. We've already --

11 MR. KAHN: Go ahead.

12 MR. PRINCE: All the other treatment -- the surgery was  
13 actually covered by private healthcare, but obviously work comp is  
14 covering the stimulators and therefore, even though they didn't pay for  
15 the need for the surgery. So he needs to be careful. You have an order  
16 in place on any other collateral source, so regarding payment or not  
17 being covered or anything like that. They are covering the stimulator,  
18 which is associated with the surgery, because the need for surgery was  
19 caused by the collision, whether work comp paid for it or not. So we  
20 need to -- I'm asking for you to limit the questions in this area with  
21 regard to that.

22 MR. KAHN: I have a redacted page from the psychologist's  
23 report that says clearly that his private insurance covered it. It was not  
24 covered by comp, so it's in the admitted record, although it says the  
25 word insurance, so we have to remove it, but the jury currently has the



1 impression that comp paid for the surgery.

2 THE COURT: Has what?

3 MR. KAHN: Has the impression that comp paid for the  
4 surgery, based on his testimony, which is incorrect, so I need to fix that.

5 MR. PRINCE: You don't need to fix that, because the surgery  
6 is related, the cost -- the billing -- the costs associated are related, and so  
7 therefore, my -- that's irrelevant whether they paid for it or didn't pay for  
8 it. That part of it is irrelevant.

9 THE COURT: He wants the relevance as to --

10 MR. PRINCE: The relevance --

11 THE COURT: -- who paid for --

12 MR. PRINCE: Yeah, exactly.

13 THE COURT: As to who paid for it.

14 MR. KAHN: Because on Friday, this witness testified to the  
15 jury for a long time about comp covered this and comp covered that, and  
16 it is within the comp system that it gives the impression to the jury that  
17 it's somehow work related and causally related, and it's an unfair  
18 advantage if that's not the case.

19 MR. PRINCE: Okay. Number one, every physician, every --  
20 Dr. Oliveri, Dr. Kaplan, and Dr. Schifini, all said the need for surgery was  
21 caused by the collision, irrespective of comp. Comp accepted the claim  
22 and approved the treatment. So whether they paid for it or not or who  
23 paid for it is frankly irrelevant to causation, the cost associated with the  
24 surgery, or otherwise.

25 MR. KAHN: Hold on.

1 MR. PRINCE: So he's trying to get into a collateral source,  
2 and this is why *Tri-County* is --

3 MR. KAHN: I have a redacted copy that is in evidence  
4 already that says this. I want to show it to him.

5 THE COURT: That says what?

6 MR. KAHN: That says that comp did not pay for the surgery.

7 MR. PRINCE: No.

8 MR. KAHN: It's in evidence already. It was admitted.

9 MR. PRINCE: No. We need to talk about that then.  
10 Obviously certain things get admitted, and it therefore needs to be  
11 redacted. No, it needs to be redacted.

12 MR. KAHN: I did redact --

13 MR. PRINCE: Excuse me, I'm not finished. And so he's now  
14 trying to talk about source of payment. This is exactly what *Tri-County*  
15 disallowed. You don't get to go into other payment sources.

16 THE COURT: Did work comp approve the surgery?

17 MR. KAHN: No.

18 MR. PRINCE: No, because he wasn't -- no, they didn't. His  
19 private health insurance paid for the surgery.

20 THE COURT: I don't care who paid --

21 MR. PRINCE: And then they --

22 THE COURT: -- for it.

23 MR. PRINCE: -- reopened the claim for -- the comp claim was  
24 reopened for the stimulator.

25 MR. KAHN: I'm not talking about the stimulator. I'm talking

1 about the fusion surgery. It was not within comp.

2 MR. PRINCE: It doesn't matter. It's causation, Judge. It  
3 doesn't matter. For him now to do this, now we have this slippery slope.

4 THE COURT: So now -- wait a second. So now, you want to  
5 inquire as to whether what work comp --

6 MR. KAHN: Whether work comp covered the surgery, which  
7 they did not.

8 MR. PRINCE: Well, no. It doesn't mean --

9 THE COURT: Well I --

10 MR. PRINCE: They're covering the stimulator, and they  
11 reopened -- that's exactly what Dr. Schifini said.

12 THE COURT: If you want to ask did work comp approve of  
13 the surgery or was that part of his claim, I'll allow that, but who paid for  
14 it is collateral source, and we're getting really close to the case that I've  
15 been looking at for the last hour, *Tri-County*.

16 MR. PRINCE: Exactly.

17 MR. KAHN: Okay.

18 THE COURT: And they talk about -- well, you guys, I assume,  
19 have read it as many times as I have. So they talk about -- and I  
20 underlined this -- proof -- because we talked about this at the break.  
21 Proof of the amount of all payments made or to be made by the insurer  
22 or the administrator. Now, why is it you can't get that since we're up  
23 here?

24 MR. KAHN: Well, I'm telling you I don't think we have an  
25 updated thing because he's still talking about a future spinal cord

1 stimulator, but we have provided the most recent subrogation letter, so  
2 that's in with the evidence. We've given them the best thing we could  
3 fine, but we're --

4 MR. PRINCE: Well, that's not accurate. I'm not agreeing to it.  
5 And secondly --

6 MR. KAHN: Well, I'm not saying you have to.

7 THE COURT: All right. We will get to that probably  
8 tomorrow.

9 MR. PRINCE: Yeah.

10 MR. KAHN: So the question I can ask is did worker's comp  
11 approve of the surgery? And if he doesn't know, I want -- I'm going to  
12 want to use the admitted piece of paper that says that they did not.

13 MR. PRINCE: No, Judge. That's the whole point of --

14 THE COURT: Well, what's the paper? Let me see the paper.

15 MR. PRINCE: Well, hang on a second. I want to make my  
16 record because the opinion -- it's a causation medical opinion, and that's  
17 what's been given by three different experts. Regardless of whether  
18 comp paid for it or not, of course they accepted. Dr. Schifini said they  
19 accepted the condition because they're approving the spinal cord  
20 stimulator. So it's -- this is misleading, it lacks the foundation, and it's a  
21 violation of *Tri-County*, and a violation of *Proctor*.

22 MR. KAHN: And my position is --

23 THE COURT: All right. Fine.

24 MR. KAHN: -- he testified about it on Friday. I need to fix it  
25 in front of the jury, not give them the incorrect impression.

1 THE COURT: I think he -- my recollection is he did testify that  
2 these were all accepted.

3 MR. KAHN: Exactly.

4 MR. PRINCE: A permanent injury was accepted by the comp  
5 carrier.

6 THE COURT: Yeah, the surgery wasn't even discussed, I  
7 assume, by work comp, and he's allowed to ask that. Not who paid for  
8 the other. Not who whatever, but did work comp evaluate or accept the  
9 surgery. I'm going to allow that.

10 MR. KAHN: Okay. And I'll get the --

11 THE COURT: Because that's --

12 MR. PRINCE: It's not part of it, Judge

13 THE COURT: That's --

14 MR. PRINCE: The comp carrier -- that's not medical  
15 testimony. That's not medical --

16 THE COURT: He testified they accepted. That's my  
17 recollection.

18 MR. PRINCE: They accepted the cervical --

19 THE COURT: All right. I'm done. I'm allowing it.

20 MR. PRINCE: They accepted the cervical injury -- okay.

21 THE COURT: I'm allowing it.

22 MR. PRINCE: All right. Okay.

23 [Sidebar ends at 3:10 p.m.]

24 THE COURT: The objection is overruled. I still want to see  
25 that document.

1 MR. KAHN: It may take us a minute to get this exhibit up  
2 there.

3 THE COURT: All right.

4 BY MR. KAHN:

5 Q Dr. Oliveri, do you know whether worker's compensation  
6 accepted the fusion surgery?

7 A I don't.

8 [Pause]

9 MR. KAHN: Okay. Your Honor, I'm going to ask to put up  
10 Exhibit 92 --

11 THE COURT: Approach.

12 MR. KAHN: -- page 354.

13 THE COURT: Don't put it up until I -- if it's what we're talking  
14 about, I want to see it.

15 [Sidebar begins at 3:12 p.m.]

16 MR. KAHN: How do we do that without the witness and the  
17 jury seeing it?

18 THE COURT: You give it to me.

19 MR. KAHN: Well, I have it electronic so.

20 UNIDENTIFIED SPEAKER: We don't have a hard copy?

21 THE COURT: What exhibit number?

22 THE CLERK: 94. What page number?

23 MR. KAHN: 354.

24 THE CLERK: 354.

25 THE COURT: What was the page number?

1 MR. KAHN: 352. Or sorry, 354.

2 [Pause]

3 MR. KAHN: So it's about the second paragraph down, and  
4 we can redact that.

5 MR. PRINCE: Where?

6 MR. KAHN: It's the second paragraph from the bottom.  
7 Sorry. This one. We'll take out that phrase.

8 MR. PRINCE: Oh, no. They're trying to back door a record of  
9 Dr. Rinaldi.

10 MR. KAHN: Well, that's in evidence.

11 MR. PRINCE: Yeah. No, the surgery on private insurance  
12 notification reopening, no.

13 MR. KAHN: We can read that. We already have redacted  
14 that -- the private insurance part, but that's into evidence already. That  
15 was your office's redaction.

16 THE COURT: What did Dr. Rinaldi talk about? How is he  
17 involved?

18 MR. KAHN: I'm not going to go into Dr. Rinaldi.

19 THE COURT: Oh, he's --

20 MR. KAHN: I just want to make the point about the comp not  
21 picking up the --

22 MR. PRINCE: Yeah, I'm asking for a redaction. Right,  
23 because that deals specifically with payment.

24 MR. KAHN: But Your Honor, this is their redacted copy from  
25 the Plaintiffs that's been admitted already, so I'm willing to take out the

1 insurance, but I'm not willing to start chopping it up.

2 THE COURT: So what is it you want to do? He's already said  
3 he doesn't know.

4 MR. KAHN: I'm going to ask him -- this is an admitted  
5 record --

6 MR. PRINCE: How can you --

7 MR. KAHN: Hold on.

8 MR. PRINCE: How can you do it --

9 THE COURT: Wait.

10 MR. PRINCE: -- if you don't him the records?

11 THE COURT: Mr. Kahn.

12 MR. KAHN: Do you have any reason to believe this is  
13 incorrect? That's my question. That's it.

14 MR. PRINCE: Oh, then I'm going to follow-up. I'll deal with it  
15 then.

16 MR. KAHN: And we'll redact the part about the private  
17 insurance.

18 THE COURT: Is Dr. Rinaldi coming in?

19 MR. PRINCE: No.

20 MR. KAHN: No.

21 MR. PRINCE: He's never been identified. We don't even  
22 have those records.

23 MR. KAHN: It's too late. We can take out insurance. That's  
24 it.

25 MR. PRINCE: No.



1 THE COURT: Don't you have somebody who's going to say  
2 that this --

3 MR. KAHN: Yeah.

4 THE COURT: -- the claim was closed and --

5 MR. KAHN: We don't have --

6 MR. PRINCE: Dr. Schifini, yes.

7 MR. KAHN: We have --

8 MR. PRINCE: Even Dr. Schifini said yesterday that the claim  
9 may have been --

10 THE COURT: Wait, Mr. Prince. What?

11 MR. KAHN: No, we have a voc guy. I'm not going too much  
12 into the worker's comp. The guy from San Diego, the neurosurgeon is  
13 not going to talk about the comp too much.

14 MR. PRINCE: You know, just let the whole thing in, because  
15 you're going to instruct the jury, and I want you to instruct the jury today  
16 that they're not to consider who has insurance. I want that -- I'm going  
17 to send you that cautionary instruction so you can then instruct the jury  
18 after that not to consider insurance. Just go ahead and do it.

19 MR. KAHN: No, I'm --

20 THE COURT: I believe I already did. Why --

21 MR. KAHN: I think in the pre-instructions.

22 THE COURT: Listen. All right, guys. We're going to take a  
23 break because I don't want to yell at you, but I'm certainly --

24 [Sidebar ends at 3:16 p.m.]

25 THE COURT: All right. We're going to take 10 minutes.

1 During this recess, you're admonished do not talk or converse amongst  
2 yourselves or with anyone else on any subject connected with this trial,  
3 or read, watch, or listen to any report, or commentary on the trial, or any  
4 person connected with this trial by any medium of information, including  
5 without limitation, newspapers, television, radio, or internet. Do not  
6 form or express any opinion on any subject connected with the trial until  
7 the case is finally submitted to you. We'll take 10 minutes.

8 THE MARSHAL Please rise for the jury.

9 [Jury out at 3:17 p.m.]

10 [Outside the presence of the jury.]

11 THE COURT: All right. Doctor, you can go and stay in the  
12 ante room, please.

13 THE WITNESS: Okay.

14 THE COURT: All right. So you asked -- this is Oliveri whether  
15 he knew about that and he said no, and so what is this -- you want to  
16 refresh his memory?

17 MR. KAHN: No. I'd just like to say, this is an admitted  
18 exhibit, do you have any reason to dispute what the psychologist wrote  
19 that's in evidence that says worker's comp did not pay for this surgery.  
20 That's it, and then I can argue it in closing, but I'd like to see if he has any  
21 reason to dispute it, because he's their billing expert, as well.

22 MR. PRINCE: Yeah, but it doesn't matter that -- the paid  
23 doesn't matter. Whether comp covered it or didn't cover it -- actually,  
24 after -- he just went out to his private health insurance after the rating,  
25 and then after the surgical comp claim, he went back and he reopened it,

1 and they accepted the claim because the nerve injury was caused by the  
2 surgery, and that's part of Exhibit Number 111. That's what Dr. Schifini  
3 testified yesterday that -- so he does relate this -- Dr. Thalgott relates the  
4 surgery and the need for the stimulator to the collision. So who paid or  
5 who didn't pay for the surgery is quite frankly, whether work comp or  
6 otherwise, is irrelevant for this purpose. That is a violation of the  
7 collateral source rule.

8               So there are times where you see documents that may or  
9 may not be redacted after you put them in. It doesn't mean that it's this  
10 gotcha moment. S it hasn't been discussed in front of the jury. So I'm  
11 asking that we redact that part of it to make sure that there's no  
12 confusion.

13               THE COURT: Private insurance shouldn't be here.

14               MR. KAHN: That's the part we redacted. That phrase.

15               MR. PRINCE: And then about the part being covered or not  
16 covered. That doesn't go to medical causation, and it doesn't even go to  
17 what work comp did in this case because the jury is told not to deduct  
18 any amounts paid by work comp.

19               THE COURT: And the last question was, I believe, something  
20 to the effect, did he know whether or not work comp accepted the  
21 surgery under the claim, correct?

22               MR. KAHN: Yeah, Your Honor. So here's the problem. I'm  
23 looking at page 20 of the transcript from Friday, which I'm happy to  
24 provide to the Court. This question is asked. At line 7 it starts.

25               "Q   And workers' compensation, did they accept the injury to the

1 cervical spine that was caused by this motor vehicle collision?"

2 MR. KAHN: This is Plaintiff's questioning.

3 THE COURT: Right.

4 MR. KAHN: "A Yes.

5 "Q What does it mean for the worker's compensation to accept  
6 an injury for treatment and rate it?

7 "A Worker's comp deals with injuries based specifically on body  
8 parts. So when a person has an injury, there's an initial report. It's  
9 called an Industrial C4 Form.

10 MR. KAHN: It keeps going on.

11 "A Worker's comp makes a determination based on that  
12 reporting, whether they will consider it a work-related injury. If they do  
13 consider it, what body parts they will allow.

14 MR. KAHN: Plaintiff elicited this testimony. The jury thinks  
15 that --

16 THE COURT: Okay.

17 MR. KAHN: -- comp picked this up, it's in the transcript, and  
18 now I need to fix it. That's all.

19 MR. PRINCE: No, they did accept it.

20 THE COURT: Mr. Prince. They accepted -- I told you -- I am a  
21 little bit -- they accepted the cervical. Now, you want to get in that he  
22 paid the -- or who paid for the neck surgery. I said I'll allow you to ask if  
23 the surgery was approved by work comp and that's it.

24 MR. KAHN: Your Honor, there's one other question --

25 THE COURT: Not who paid for it.

1 MR. KAHN: There's one other question I'd like to read into  
2 the record, on the same page.

3 "Q Did worker's compensation take responsibility for the  
4 treatment and the interventionalist pain management for Mr. Yahyavi's  
5 surgical spine?

6 "A To this day, yes.

7 So the jury does the jury has the impression from this  
8 worker's comp rating physician that this is all comp, and it's all been  
9 decided by the State Worker's Comp Board, and that is not accurate.  
10 And so this is --

11 THE COURT: And I said, you can ask that question or  
12 something to that effect in order to say that that wasn't --

13 MR. PRINCE: Here's the --

14 THE COURT: -- done, or that wasn't -- yeah, done, basically,  
15 under worker's comp. And that's it --

16 MR. PRINCE: Yeah, you can't use the word --

17 THE COURT: -- as to the private insurance --

18 MR. PRINCE: -- approved or not approved. You can just say  
19 under worker's comp, but I don't like the approved part. That's that part  
20 of it. Because if the physician is making the recommendation, Dr.  
21 Schifini testified yesterday that he was involved, that comp has reopened  
22 the claim, and they've approved the ongoing treatment, the ongoing  
23 cervical issues for which he's going to be re-rated, and the spinal cord  
24 stimulator.

25 THE COURT: None of that has anything to do with his

1 questioning and his concern.

2 MR. PRINCE: No, his point is like suggesting that somehow  
3 this isn't part of the industrial injury. It's part of something else.

4 THE COURT: The surgery wasn't approved by work comp.  
5 That's what normally would've happened, and I'm going to ask --

6 MR. PRINCE: Because he had been rated --

7 THE COURT: I'm going to allow him to ask was the surgery  
8 prior approved by work comp.

9 MR. PRINCE: Here's the problem with that, Judge.

10 THE COURT: Yeah.

11 MR. PRINCE: He had been rated, he received a settlement,  
12 and then he -- after the surgery because of his complication, he reopened  
13 the claim. So he had already been rated and settled to resolve before  
14 then, so his claim wasn't even open then. That's the problem I have is  
15 because the claim wasn't open, now we got to get into the mechanics of  
16 opening the claim and all of that sort of thing. He had to reopen in order  
17 to get the stimulator approved, which they did approve it.

18 THE COURT: And he could've done all of that before the  
19 surgery, also.

20 MR. PRINCE: But --

21 THE COURT: And --

22 MR. PRINCE: But he wasn't required to.

23 THE COURT: He wasn't required to --

24 MR. PRINCE: And it's collateral source, now --

25 THE COURT: -- but he --

1 MR. PRINCE: -- this issue.

2 THE COURT: No, I don't think it approaches collateral source  
3 when all he's doing is saying that work comp, under the system, didn't  
4 do a prior approval. You've said several times, asking this witness, did  
5 work comp --

6 MR. PRINCE: They accepted the body part.

7 THE COURT: -- accept this, blah, blah, blah, and you can  
8 argue that in closing, but as far as this, there was no prior approval, and I  
9 think that's a legitimate question to say somehow that this -- Dr. Oliveri  
10 or some other doctor had reviewed the records as he did on several  
11 other things and approved -- he went into the work comp system fairly  
12 well. I think there -- certainly, you could have a work comp expert. You  
13 don't. In any event --

14 MR. PRINCE: You don't need one. I have Dr. Schifini.

15 THE COURT: I didn't say you needed one, but as far as that,  
16 I'm allowing that question. Okay.

17 MR. KAHN: I will ask the question --

18 THE COURT: Now, this does need to be redacted.

19 MR. KAHN: We have a redacted copy here.

20 MR. PRINCE: Well, I don't know. I'm not going to read any  
21 redaction right now.

22 MR. KAHN: May I approach, Your Honor?

23 THE COURT: Yes. Well, I --

24 MR. KAHN: This is our proposed redacted copy of that page.

25 MR. PRINCE: Well, I don't have one, so -- okay, we're ready.

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[Pause]

THE COURT: So this is the psychologist's report about Dr. Rinaldi's report?

MR. PRINCE: Yeah, but then they had Dr. Thalgott who ultimately causally related it and reopened it, and now it's part of the claim, so they did have Rinaldi. I didn't know that until -- actually, I just saw that. So I didn't even know Rinaldi had any involvement. I never heard Rinaldi --

THE COURT: Is his report somewhere?

MR. PRINCE: No.

THE COURT: So all we have is some isolated --

MR. PRINCE: Right. That's the point.

THE COURT: Which is why -- all right. No comment. I --

MR. KAHN: But this is -- yeah. This is the same one their experts talked about for --

THE COURT: I get it. I get it. All right. Is his report somewhere?

MR. PRINCE: No.

THE COURT: So all we have is some isolated --

MR. PRINCE: Right. That's the part --

THE COURT: -- which is why -- all right. No comment.

MR. KAHN: But this is -- yeah. This is the same one their experts talked about for --

THE COURT: I get it.

MR. KAHN: -- a long time.



1 THE COURT: I get it. All right. So I'll allow that question.  
2 If you want it, you can make copies, so they can have it.  
3 Whatever.  
4 THE CLERK: Okay. So I'm going to substitute this --  
5 MR. KAHN: Can you show Mr. Prince the evidence?  
6 MR. PRINCE: Well, I don't want --  
7 THE CLERK: Yeah. Sandy's got a couple of --  
8 THE COURT: We're making copies.  
9 THE CLERK: Thank you.  
10 THE COURT: And this was already supposedly admitted.  
11 MR. PRINCE: It's admitted. Yes, Your Honor.  
12 MR. KAHN: Thank you.  
13 THE COURT: So you need -- I don't need a copy.  
14 THE CLERK: So I'm going to take --  
15 THE COURT: You need to the --  
16 THE CLERK: Well, I'll put it your binder afterwards. I'm  
17 going to take the one that's in the binder, take it out, and I'll mark it as a  
18 94A --  
19 THE COURT: Sure. Make it is a court's exhibit.  
20 THE CLERK: -- as unredacted.  
21 THE COURT: Oh, you want it court's exhibit? Okay. That's  
22 fine.  
23 THE CLERK: But it will take --  
24 THE COURT: All right.  
25 THE CLERK: You want me to do that right now before he

1 comes on or do you want me to --

2 THE COURT: No, we're not giving him the exhibits. We're --

3 MR. KAHN: The wording the Court would prefer I use is  
4 words to the effect of, "Was the surgery prior approved by the -- the  
5 fusion surgery prior approved by workers' compensation?" The witness  
6 is going to say he doesn't know, because I think he's already said that, so  
7 I'm going to have to use this in closing. I'd prefer to show him now, and  
8 go ahead say that he --

9 MR. PRINCE: Yeah, just go ahead and do it now --

10 MR. KAHN: -- doesn't take issue.

11 MR. PRINCE: -- because I'm going to address myself now  
12 that you've brought it up, so now that it's already there, I'm going to  
13 have to deal with it.

14 THE COURT: Is there a redacted version?

15 MR. PRINCE: He just did one, so I don't know.

16 THE COURT: Okay. So I mean, that's -- yeah, all right. Well,  
17 because I'm -- go ahead, yes.

18 THE CLERK: Okay. Here's a set. This is going to be  
19 unredacted.

20 THE COURT: All right. Bring them in, Steve.

21 MR. KAHN: I can use this redacted with the witness?

22 THE CLERK: As long as you don't refer to it in that book.

23 THE COURT: What is it?

24 THE CLERK: You can use the Elmo.

25 MR. KAHN: I'd prefer to ask --

1 THE COURT: You're going to have to lay a foundation that  
2 he knows anything about this. You're asking him to what?

3 MR. KAHN: To confirm that he doesn't --

4 THE COURT: To look at third party -- this was why I said that  
5 I thought it was very unusual -- yes, it's hearsay, and yes, the expert can  
6 rely -- because that was another expert though. Has he said he relied on  
7 this in forming any opinions?

8 MR. PRINCE: No. So that's okay.

9 MR. KAHN: All I'm going to ask -- I would like to ask him if  
10 he has information to the contrary of this admitted exhibit.

11 MR. PRINCE: He's going to show it to him now. You've got  
12 my objection, so let's -- because I'm going to now need to resolve it, so  
13 it's cleared up.

14 THE COURT: All right.

15 MR. PRINCE: It's okay. I'm ready.

16 MR. KAHN: Roberto, you're able to put it up on the screen  
17 when the time comes with the redaction?

18 THE MARSHAL: Please rise for the jury.

19 [Jury in at 3:29 p.m.]

20 [Inside the presence of the jury.]

21 THE COURT: All right. Please be seated.

22 Do the parties acknowledge the presence of the jury?  
23 Plaintiff? Defense? Parties acknowledge the presence --

24 MR. PRINCE: Yes.

25 MR. KAHN: Yes, Your Honor.

1 THE COURT: They're so busy doing other things. Okay.  
2 You're still under oath.

3 THE WITNESS: Thank you.

4 THE COURT: Go ahead.

5 BY MR. KAHN:

6 Q Dr. Oliveri, you have no information right now that the  
7 surgery was covered by workers' compensation, correct?

8 A I don't know one way or the other.

9 Q And I'm going to ask for a single-page to be put up and a  
10 portion to show up on your monitor and the big monitor, and then I'm  
11 going to ask for a portion to be highlighted. There's a redaction in there  
12 that should say redacted so.

13 THE CLERK: Mr. Kahn, your microphone is not on.

14 THE COURT: Your microphone.

15 MR. KAHN: I thought I put it on. Okay. Sorry.

16 BY MR. KAHN:

17 Q I'm looking at the second sentence in this paragraph. This is  
18 an admitted exhibit. I think it's 92.

19 THE COURT: 92.

20 BY MR. KAHN:

21 Q Bears Bates Number P354, and the second sentence as  
22 redacted reads as follows, "Surgery was done after his workers'  
23 compensation claim was closed; therefore, and there was no indication  
24 of reopening and no further treatment was indicated." Now, this goes  
25 back -- this isn't as of today. So my question to you is: This document

1 would seem to indicate that the surgery was done after the workers'  
2 compensation claim was initially closed. Do you have any information to  
3 the contrary as to fusion surgery?

4 A No.

5 Q And then currently, I think what you're saying is the workers'  
6 comp is being reopened, or considering -- under consideration for  
7 reopening for the spinal cord stimulator; is that fair?

8 A I was under the impression that it was opened. He was  
9 seeing Dr. Thalgott and being recommended for a stimulator.

10 Q Okay. We can -- you understand that -- you've talked about  
11 clinical correlation on Friday -- Mr. Prince's pie chart of things that  
12 doctors do to get more information to determine what's going on with  
13 patients, correct?

14 A Yes.

15 Q Do you remember that? And in this case, you've reviewed  
16 the report of my expert Dr. Tung from San Diego, right?

17 A Yes.

18 Q And you understand that he is a board certified  
19 neurosurgeon, similar to Dr. Kaplan, who testified here?

20 A Yes.

21 Q And you understand Dr. Tung has a very different opinion on  
22 the causation for the Plaintiff's injuries generally, right?

23 A For the cervical spine, yes. I think we're in agreement for the  
24 lower back.

25 Q Dr. Tung, his first exercise in this case was he performed an

1 independent medical examination on the Plaintiff, correct?

2 A Yes.

3 Q So Dr. Tung has physically met Mr. Yahyavi, correct?

4 A Yes.

5 Q And would you expect that he would have placed hands on  
6 him in order to have him perform whatever movements he describes in  
7 his independent medical exam?

8 A Yes.

9 Q So does that count, in your mind, as some measure of  
10 clinical correlation, by my expert doctor, that he's met with the Plaintiff,  
11 seen him physically, and put him through a series of tests of movements  
12 in person?

13 A I suppose it's part of the physical examination section of the  
14 pie chart, but as you know, I take exception to how he assimilates or  
15 considers that information.

16 Q I'm not asking you agree with him. Right now I'm just asking  
17 you doesn't an expert physician, who comes to Las Vegas and has the  
18 Plaintiff perform tests and writes up a report after a face-to-face meeting,  
19 doesn't that constitute at least some portion of the clinical correlation pie  
20 chart that you discussed with Mr. Prince?

21 A A little bit, but it really comes down to considering  
22 the -- those items that are documented by other providers. It's what  
23 happens along the timeline of the treatment after the original injury.  
24 Not -- not just one physician.

25 Q One of the things that Mr. Yahyavi is complaining about here

1 are some issues with both of his pinky fingers, correct?

2 A I'm familiar with the left one, and symptoms down the left  
3 arm.

4 Q Are there any things that you noted that were unusual about  
5 the structure of Mr. Yahyavi's left pinky finger?

6 A No.

7 Q I'm going to pull up an x-ray report from Steinberg. You've  
8 reviewed the Steinberg x-ray file, correct?

9 A I have.

10 THE CLERK: What exhibit is this? 102?

11 MR. KAHN: This will be Exhibit 102, Bates P673.

12 BY MR. KAHN:

13 Q So this is date is May 2nd, 2017, Doctor, correct?

14 A Yes.

15 MR. KAHN: And if you could please enlarge the findings  
16 portion?

17 BY MR. KAHN:

18 Q It says the following: "Mild radial deviation of left small  
19 finger at DIP joint." Do you see that? What does that mean to you as a  
20 physician?

21 A So the DIP joint is the distal joint at the finger, so it's the last  
22 joint and we're talking about the little finger and radial deviation means  
23 that there is some tilting of just the end of the finger. I'm going to  
24 simulate it now in that direction, what they're referring to as mild.

25 Q You have no reason to believe that that's anything other than

1 a congenital condition, correct?

2 A Could be congenital. Could be it some remote history of  
3 injuring a knuckle or a -- a joint.

4 Q I'm going to pull up a second one of these that was taken the  
5 same day. It's of the right hand. There may be a typo, so we'll see what  
6 comes up.

7 MR. KAHN: And could we do the same fallouts, please.

8 BY MR. KAHN:

9 Q So again, this is the same day, May 2nd -- sorry --

10 MR. KAHN: We need to go back.

11 BY MR. KAHN:

12 Q This is the same date May 2nd, 2017. Same location,  
13 Steinberg, correct?

14 A Yes.

15 MR. KAHN: And if you could pull up the finding?

16 BY MR. KAHN:

17 Q Now, this is the right pinky. "Minimal radial deviation of the  
18 small finger at PIP joint," which you'll have to tell me if that's a typo, or  
19 they're referencing a separate joint.

20 A It could be a typo. It could be the PIP joint is just next joint  
21 down, so I'm not sure.

22 Q So they're describing in both pinkies the same kind of thing.  
23 It's a little bit bent after one of the joints at the top of the finger?

24 A Correct.

25 Q And so would that lead you to believe, since it's on both



1 fingers that it's a -- more likely it's a congenital defect, more likely than  
2 not?

3 A I don't know. It could be congenital. It could -- fingers get  
4 injured all the time. So it could be trauma, or it could be congenital.

5 Q Do you have any reason -- do you have any information to  
6 explain why both of his pinky fingers are bent in a similar fashion?

7 A No.

8 Q Okay.

9 MR. KAHN: You can get rid of that.

10 BY MR. KAHN:

11 Q I'd like to go over some of the conditions that you think Mr.  
12 Yahyavi had prior to the accident on June 19th, 2013 -- the accident that  
13 we're about?

14 A Okay.

15 Q And I understand that the position of the Plaintiff and the  
16 position of the Defendants is very oppositional, as far as the doctors, but  
17 as far as what you're going to testify here about today, you do believe  
18 that Mr. Yahyavi -- I'm going to say came to the party -- it's not a  
19 party -- it's not a nice term, but came to the party, brought to the  
20 accident degenerative disc disease or degenerative spine disease,  
21 correct?

22 A Radiographically, that is correct.

23 Q And you would agree that Mr. Yahyavi brought to this  
24 accident osteophytes forming in his cervical spine that take a period of  
25 time to grow that wasn't something that happened after the accident;

1 he's documented to have had those before, correct?

2 A Yes.

3 Q And did you see any evidence from the Southwest Medical  
4 Associates X-ray in October of 2011 that he had reversal of his lordotic  
5 curvature, the one that has been described with the spine model?

6 A Yes.

7 Q Okay. So to recap quickly, degenerative disc disease or  
8 degenerative spine disease, osteophytes, reversal of the lordotic  
9 curvature, and what about narrowing at some levels of the cervical  
10 spine? Was that evidenced in the X-ray from Southwest Medical  
11 Associates from October 2011?

12 A Yes. All off of those things they'll fall within the umbrella of  
13 the first thing that you mentioned, which is age-related radiographic  
14 findings of degenerative disease.

15 Q Okay. But I want to be clear, my question to you, very  
16 clearly -- and I appreciate the response -- my question to you is: Before  
17 this accident, Mr. Yahyavi -- so the jury understands, Mr. Yahyavi had  
18 degenerative disc disease, osteophytes, reversal of lordotic curvature,  
19 and narrowing at some levels of his cervical spine; is that correct?

20 A I would agree with the first two and the last one. The  
21 reversal of lordosis, I would tell you that it was present on that X-ray in  
22 2011. I don't know if that was a continued issue that would have been  
23 seen. As I mentioned on Friday, it could be just how they positioned him  
24 at the time of X-ray.

25 Q Right. I understand your testimony is somebody could be

1 put on a table, move their head, but in that X-ray in October 2011, he had  
2 all four of those things, as documented, correct -- degenerated disc  
3 disease, osteophytes, reversal of the lordosis, and narrowing of his  
4 spinal area?

5 A Agreed.

6 Q Okay. And your testimony is clear. Mr. Prince can ask you  
7 more questions. And I understand what you're saying, but I have a lot to  
8 cover here, so what do you know about the Plaintiff's history with taking  
9 making medications? You started seeing him several years ago as a  
10 rater, but do you have a sense of whether he was prescribed  
11 medications and faithfully took them, or whether he had a predisposition  
12 against medications?

13 I'm not saying this to impugn him, or that anybody has to take  
14 medications, but let me back up. Some patients are prescribed  
15 medications that they either don't want to take them, or they take them  
16 once or twice and they decide not to keep taking them. That's a fair  
17 statement, right?

18 A Yes.

19 Q Do you have any information as to whether Mr. Yahyavi was  
20 a patient like that, or whether he was kind of the other kind of patient,  
21 whatever the doctors told him to take and prescribe for him, he would  
22 take on a regular schedule?

23 A I think a little bit in between those two examples. I think he  
24 has been prescription medications, different types over the years since  
25 this injury, but not the type of person that is seeking drugs on a regular

1 basis.

2 Q Now, can you tell the jury what your position is as to whether  
3 Mr. Yahyavi had chronic pain prior to this car accident? I think you're  
4 saying he did not, correct?

5 A I'm just analyzing data points. So Mr. Yahyavi tells me he  
6 didn't. I saw the note from 2011 that talked about neck pain for years,  
7 and I'm making a medical assessment of what that means and the  
8 significance of it.

9 Q And I respect that, but within your definition that you  
10 testified to on Friday of chronic pain, that report, "I have had neck pain  
11 for years", whether it's a misunderstanding, whether it's documented  
12 poorly, it led to a cervical X-ray, whatever the reality of it is, Mr. Yahyavi  
13 going into Southwest Medical Associates in October 2011 and saying, "I  
14 have had neck pain for years," that fits within the definition of chronic  
15 pain, correct?

16 A No. There's not -- there's incomplete information to make  
17 that assessment.

18 Q You would say it would have be ongoing and continuous,  
19 and there couldn't be a one-day break in those years, right?

20 A No, not that extreme, but it has to be constant pain, that is  
21 unrelenting, and doesn't resolve. A pattern of periodically having  
22 symptoms for years doesn't qualify for the term of chronic pain.

23 Q Okay. Well, you testified on Friday that soft tissue -- self-  
24 limiting-soft-tissue injuries should only be about three months, and if  
25 they don't go away after three months, then it's really not a soft-tissue

1 injury; isn't that what you told the jury?

2 A Yes.

3 Q So wouldn't pain for years in the cervical spine, by your own  
4 definition, be more serious, more of a problem than a self-limiting-soft-  
5 tissue injury?

6 A You -- you need to look at not just the presence of the pain,  
7 you need to look at the frequency of it. So it all depends on how  
8 frequent it is.

9 Q Well, we don't have that information from Southwest  
10 Medical, correct?

11 A Agreed.

12 Q And the Plaintiff is telling you, either he forgot it, or he never  
13 said it, right?

14 A Something along those lines, yes.

15 Q So all we have is this document in October 2011 where  
16 he -- the Plaintiff, Mr. Yahyavi, is documented at Southwest Medical to  
17 have reported to them that he had neck pain for a period of years -- and  
18 we don't know how many years, right?

19 A Correct.

20 Q And then they sent him to the cervical x-ray series, which  
21 you have reviewed now, correct?

22 A Yes.

23 Q And the cervical x-ray series showed all of the things that  
24 you said, including degenerated disc disease, right?

25 A Yes.

1 Q Now, can degenerative disc disease, in and of itself,  
2 deteriorate over time, over the course of somebody's life?

3 A Yes.

4 Q And it can cause symptoms without a trauma? If somebody  
5 has degenerative disc disease and it's getting worse and worse over  
6 time, they don't have to be in a car accident, or a fight, or fall down for it  
7 to get worse, correct?

8 A Can you clarify what you mean by get worse? I think your  
9 question intended to mean symptoms.

10 Q Symptoms get worse. The disease progresses that can be  
11 objectively verified, however you would prefer -- however you feel  
12 comfortable defining it medically, because you're a doctor and I'm not,  
13 and I want to be clear about that, but the degenerative disc disease,  
14 without a trauma, can develop and become more problematic for a  
15 patient, right?

16 A I want to answer your question, but I think you're asking if  
17 it -- if degenerative disease absent some trauma can result in a problem  
18 clinically to the patient -- pain symptoms -- yes.

19 Q Okay. And you talked about chronic pain, here, today with  
20 Mr. Prince before I got up, and I think what you were saying is chronic  
21 pain can manifest without a trauma as well?

22 A It can.

23 Q Somebody can wake up one day and their neck can hurt  
24 without falling out of bed, without being in an accident, for a number of  
25 reasons, right?

1           A     Yes.

2           Q     Now, early on there was a nerve conduction study performed  
3 by Dr. Germin in this case. Are you familiar with that?

4           A     Yes.

5           Q     And that's documented in your written reports that  
6 the -- that's part of the case, right?

7           A     Yes.

8           Q     And that first test -- well, let me back up. A nerve conduction  
9 study -- you described it to the jury, but can you -- you've performed  
10 them yourself on occasion, right?

11          A     Regularly.

12          Q     And so can you -- I'm going to ask you to help me a little, and  
13 give the jury a brief description of what that is, and what it tells you as a  
14 doctor; how it works, and give the jury a brief description of what that is  
15 and what it tells you as a doctor, how it works and what does it tell you?

16          A     Okay. It's done for -- in this context, it's done for a person  
17 that might have some sort of neck pain radiating into an arm with maybe  
18 some other associated symptoms. They could have weakness. They  
19 could have other changes on exam.

20                It's done in two components. One is the nerve conduction, where  
21 we do electrical impulses over different parts of the arm and we measure  
22 the conduction of the nerves. And then the second part is taking a  
23 disposable needle and inserting it into multiple muscles of the arm up  
24 into the side of the neck.

25                Those two pieces of information give us information about

1 whether there is a problem with a nerve down into the arm and hand  
2 potentially causing symptoms or if there is a problem with the neck  
3 where there is actual permanent damage to the nerve fibers going down  
4 to the arm or hand.

5 Q And in this case, the first nerve conduction study that was  
6 performed by Dr. Germin did not determine that there was radiculopathy  
7 at that time, correct?

8 A Agreed.

9 Q And are you able to look at your reports and identify when  
10 that was?

11 A Probably.

12 Q I think it's 2014, but I --

13 A Yes, it's January 30 of 2014.

14 Q So just to be clear, you think that a nerve conduction study  
15 which you perform in your practice is an objective test. That is a method  
16 where you can determine some things about the body using the  
17 electrodes and the needles and that's not something that somebody can  
18 easily fake, right?

19 A Correct.

20 Q And in January of 2014, so roughly seven months after this  
21 accident, six, seven months -- I guess it's seven months after the  
22 accident, seven and a half months, there was a nerve conduction study  
23 performed by Dr. Germin, and that study did not find radiculopathy,  
24 correct?

25 A Agreed.



1 Q And can you again remind the jury what radiculopathy is, the  
2 general description or definition?

3 A On a nerve test that we're talking about, it means that there  
4 is compression of the nerve root to the point that some of the nerve  
5 fibers start to die and they die from the point of compression all the way  
6 down to the muscle that they innervate or the muscle that they supply.

7 And when that happens, that death of some of the nerve fibers, we  
8 can pick it up on the needle and that is the term radiculopathy.

9 Q Now that would include, in this case, Plaintiff's left arm,  
10 right?

11 A Yes.

12 Q And so he's claiming now that he has numbness, tingling  
13 and pain in his left arm all the way down to his fingers, right?

14 A Yes.

15 Q But in January 2014, Dr. Germin's nerve conduction study  
16 did not show that objectively, right?

17 A Did not show the radiculopathy objectively. That's correct.

18 Q Then in later years, over the next five or so years, one or two  
19 more nerve conduction studies were performed and those did show  
20 radiculopathy, correct?

21 A Yes.

22 Q Are you an expert on employability?

23 A If it's defined as finding alternative occupations for  
24 individuals, no. That's not my field of expertise.

25 Q As far as you know, the Plaintiff hasn't worked since

1 approximately September of 2016, correct?

2 A Yes.

3 Q Have you ever heard of a company named. AAII LLC?

4 A No.

5 Q What medical restrictions does the Plaintiff have right now in  
6 his neck, relative to his neck?

7 A Because of his cervical spine, I've indicated that he has less  
8 than sedentary physical restrictions. So there's classifications of  
9 workability. Sedentary is essentially, for lack of a better set of terms, a  
10 desk job. So you're lifting 10 pounds or less, you're mostly sitting  
11 throughout the day. You're not doing repetitive bending or lifting or  
12 stooping.

13 My assessment of Mr. Yahyavi is that he is less or he's more  
14 impaired or has more difficulties than would allow him to meet that  
15 sedentary level. So I've listed him as sub-sedentary.

16 Q And then did you just describe also his functional, what  
17 would be called his functional limitations?

18 A Yes, I think that all of that is in the same discussion.

19 Q Bending, sitting, lifting, those kinds of things?

20 A Yes. So he has limitations that would preclude any sort of  
21 repetitive bending, lifting, stooping, climbing, crawling, repetitive head  
22 and neck movements back and forth. Those sorts of things.

23 Q Thank you. One of the things you talked about in your  
24 testimony with Mr. Prince is that you think he's been accepted by Social  
25 Security; is that correct?

1 A Yes.

2 Q And what about disability? Has he been placed on disability?

3 A Under Social Security disability?

4 Q Yes.

5 A He has. That's my understanding.

6 Q And do you know the basis for that? In other words, can you  
7 say for certain that's related to his neck?

8 A That's my medical assumption based on what I know about  
9 him. I don't know that I've seen something to the contrary.

10 Q Those are records you have not reviewed, correct?

11 A Agreed.

12 Q So you don't know for certain if they placed him on disability  
13 for some other reason? You think it's the neck, which is fine, but you  
14 don't know for certain; is that fair?

15 A I mean, I don't know for certain. I just -- out of all the reams  
16 of records I've reviewed, I haven't seen anything that would come close  
17 to indicating that he would be disabled for other reasons.

18 Q Can you look at your records from April 24th, 2018, and in  
19 there is a physical therapy, initial evaluation that's referenced on  
20 January 18, 2017 year.

21 Your review of your records provided you with some chronological  
22 information about all the Plaintiff's treatment that you were --

23 MR. PRINCE: Excuse me. What date are you talking about?

24 MR. KAHN: It's January 18th, 2017.

25 MR. PRINCE: Date of which report?

1 MR. KAHN: It's the first one that would be dated April 24th,  
2 2018.

3 MR. PRINCE: Got it.

4 BY MR. KAHN:

5 Q Have you found that?

6 A I have.

7 Q That's talking about Plaintiff had chronic pain since 2013,  
8 correct?

9 A Yes.

10 Q And this is a record you reviewed from physical therapy, a  
11 company called Desert Valley Therapy, right?

12 A Yes.

13 Q And this was their initial evaluation of Mr. Yahyavi on  
14 January 18th, 2017. So two and a half years or so ago, right?

15 A Yes.

16 Q And then you note in your opinions that you provided here  
17 that his condition was exacerbated six to seven months before that. Do  
18 you see that?

19 A I do.

20 Q So that would be in the middle of 2016, right?

21 A Yes.

22 Q So you've talked about exacerbation and aggravation. Is  
23 exacerbation the temporary increase of pain and problems?

24 A Yes.

25 Q And do you know as we sit here, what is the cause of Mr.

1 Yahyavi in the middle of 2016, having exacerbated symptoms or  
2 problems?

3 A Based on my review of all of these records, there was no  
4 particular cause other than day to day living.

5 Q Fair enough. But you would agree at some point in the  
6 middle of 2016, he had what's described in the medical records as an  
7 exacerbation?

8 A Yes.

9 Q And is this the period when you were -- during the treatment  
10 gap, when you were not seeing him?

11 A Yes.

12 Q So you are not seeing this patient contemporaneous with  
13 that report, right?

14 A Correct.

15 Q This is something you looked at several years later and you  
16 never talked to him about it at the time in 2016, right?

17 A Correct.

18 Q At one point several years ago, Dr. Perry was advising  
19 against surgery, correct?

20 A Yes.

21 Q And that's the same surgery he was advising against that Dr.  
22 Kaplan performed last year; is that right?

23 A Essentially, yes.

24 Q And at some point, Plaintiff saw Dr. Fisher, who's a pain  
25 management doctor, right?

1 A Yes.

2 Q And Dr. Fisher did injections for him, the same as Dr. Schifini  
3 who was here yesterday did for him later on in time?

4 A Similar types.

5 Q Dr. Schifini, to be fair, did them earlier and later, Dr. Fisher  
6 was in between over that period when you weren't seeing him, right?

7 A Correct.

8 Q But your review of the records, have you seen anything  
9 where Dr. Fisher recommended several years ago against more  
10 injections? And I'm talking within your records and I can point it out for  
11 you if I need to.

12 A Please do, if you could.

13 Q Going to take me a second. Okay. Can you look at the same  
14 report here, your first report that you issued, and it would be dated  
15 March 11, 2015 at the bottom of page 10.

16 A I've got it.

17 Q And that seems to indicate Dr. Fisher is saying over four  
18 years ago that there really isn't much point in doing more injections for  
19 Mr. Yahyavi, correct?

20 A Yes.

21 Q But now it's four plus years later and despite that statement,  
22 Dr. Schifini for whatever reason did a large number of injections in the  
23 last year or so, right?

24 A Yes. Dr. Su did some as well in 2016 and later.

25 Q Now, you said you've talked to Dr. Kaplan, you've talked to

1 Dr. Schifini about the Plaintiff. Have you ever talked to these other  
2 doctors about him? Dr. Perry, Dr. Su, Dr. Fisher, any of the other medical  
3 doctors listed in your reports?

4 A No. And to clarify, I've never spoken to Dr. Schifini about Mr.  
5 Yahyavi.

6 Q Okay.

7 A Only Dr. Kaplan.

8 Q Okay. My bad, I apologize. Early on, when you first started  
9 trying to rate the Plaintiff, you rated him as appropriate for light and  
10 sedentary work and that opinion changed; is that fair?

11 A You're talking about my impairment rating?

12 Q Yeah. Initially.

13 A My impairment rating was an impairment rating only. I did  
14 not provide opinions about functional status of Mr. Yahyavi.

15 Q I'm going to ask you something else about the auto fusion.  
16 You would agree that at this point or let's say right before the surgery, it  
17 was documented that Mr. Yahyavi had what's called an auto fusion of  
18 the C6-7 spinal level; is that correct?

19 A Yes.

20 Q And can you make a medical determination more likely than  
21 not as to whether that preexisted this accident or not?

22 A It did.

23 Q Okay. So another thing that Mr. Yahyavi brought to the  
24 accident was a spontaneous fusion of the spinal cord and the C6-7 level,  
25 right?

1           A     Not spinal cord. Spontaneous fusion of two bones, two  
2 vertebral bodies.

3           Q     Yeah. Let me reword it and I apologize. Mr. Yahyavi had a  
4 spontaneous fusion at the C6 spinal level before this accident, correct?

5           A     Yes.

6           Q     And Dr. Perry noted that somewhere in his records as well,  
7 right?

8           A     Yes.

9           Q     And you've reviewed Dr. Perry's records, correct?

10          A     Yes.

11          Q     You've defined symptomatic as in part based on a patient's  
12 reporting of pain, correct?

13          A     Yes.

14          Q     And I think we've discussed that the 2011 Southwest Medical  
15 Associate's records, you don't believe that those equate to symptomatic  
16 because you don't have further evidence that the years of neck pain was  
17 continuous; is that fair?

18          A     No. I'm not disputing the documentation. I acknowledged it.  
19 I'm just comparing that documentation in part to what Mr. Yahyavi says.  
20 But more important to me is that the findings of the provider at  
21 Southwest Medical showed a full range of motion, no spasm.

22               And then I have records that sort of bookend that before and after,  
23 but before the accident that don't mention anything about neck pain.

24               So I'm not disputing that there was some discussion about pain  
25 there, but I'm just telling you and telling the jury that medically it's not a



1 significant issue based on what I'm seen.

2 Q And just to be clear, Mr. Yahyavi's report of years of neck  
3 pain in October 2011 is, what did you call it, not a significant issue; is that  
4 correct?

5 A Not a significant issue to the issue of causation today.

6 Q If you give me just a minute to check my notes. We're close  
7 to done. Oh. You made some statements on Friday that certain things  
8 are impossible. Do you remember using that word?

9 A I don't recall. No.

10 Q I'm looking at your transcript. The question is on page 49.

11 MR. PRINCE: I'd like a copy of the transcript, please. You  
12 said you had a copy.

13 MR. KAHN: We were both able to order it.

14 MR. PRINCE: Well, you said copies for everybody.

15 MR. KAHN: Your Honor, I will forfeit my copy of the  
16 transcript. It's a clean copy.

17 MR. PRINCE: Thank you.

18 BY MR. KAHN:

19 Q So on page 20 of the transcript, it says the following; "If  
20 someone had multi-level discogenic pain, meaning coming from  
21 multiple levels of the spine with affecting a nerve root, would you have  
22 pain, a pain free neck and full range of motion?"

23 You said again, "Impossible."

24 Do you recall saying that?

25 A I do.

1 Q And then there was some other testimony as well. The  
2 question came to you --

3 MR. PRINCE: Excuse me. What page?

4 MR. KAHN: Yeah.

5 BY MR. KAHN:

6 Q The question came to you on page 47, "For someone who  
7 had multi-level --"

8 MR. PRINCE: Hold on. Excuse me. Hold on.

9 MR. KAHN: Page 47, lines 22, 23.

10 BY MR. KAHN:

11 Q Question, "For someone who had multi-level discogenic pain  
12 that's symptomatic for a period of years, then you have by definition full  
13 range of motion."

14 Answer, "No, impossible."

15 Do you recall that testimony?

16 A Yes.

17 Q And then on page 57, lines 23 to 25 the question comes; "In  
18 your opinion, was there ongoing chronic cervical spine, multi-level  
19 discogenic pain complaints before June 2013?"

20 Answer, "Absolutely not. It's impossible."

21 Do you recall that testimony?

22 A Yes.

23 Q Is that something that you've done in other legal cases,  
24 rendered medical opinions that certain things were impossible or is this  
25 the first case you've ever done that in?

1           A     I don't know.

2           Q     Well, I mean, that's pretty extreme. You're not talking about  
3 to a reasonable degree of medical probability like Mr. Prince asked you,  
4 correct?

5           A     Correct.

6           Q     You're not talking about to a certainty. Remember he asked  
7 you every time he asked you to a reasonable degree of medical  
8 probability, is that your opinion? You would say, yes. Then he'd say  
9 more than that. Are you certain? Is that to a certainty? And you would  
10 say, yes, to that. Do you recall that series of questions?

11          A     Yes.

12          Q     So impossible or 100 percent is different than 99.9 percent,  
13 correct?

14          A     Agreed.

15          Q     You're saying my board certified neurosurgeon, Dr. Tung,  
16 essentially, there's no way he could be correct, medically, scientifically,  
17 right?

18          A     I didn't say that. I'm saying for all of the reasons I've  
19 mentioned that I disagree with his assessment of Mr. Yahyavi.

20          Q     Well disagreeing and disagreeing to a reasonable degree of  
21 medical probability is one thing. You're saying that the position of the  
22 Defense medically is impossible, that this accident wasn't the major  
23 cause of Mr. Yahyavi's current problems to his cervical spine, right?

24          A     I was asked specific questions on Friday about a scenario of  
25 if Mr. Yahyavi had a multi-level disc pain, motion segment pain with

1 nerve irritation, would he have had full range of motion and no spasm?

2 And I will tell you again today, the answer is, no. It's not possible.

3 Dr. Tung, my understanding, is saying and testifying that Mr.

4 Yahyavi, his problem was soft tissue, muscle and ligaments. And then

5 he provides a cutoff, which I suggest is arbitrary at 14 months.

6 So I think we're talking about different concepts and different

7 issues. What you just asked me or what Mr. Prince asked me on Friday, I

8 don't believe was an issue that Dr. Tung addressed.

9 Q Right. Let me ask it this way. You're familiar with Dr. Tung's  
10 opinion, correct?

11 A I think so. Yes.

12 Q And do you think that his opinion is medically and/or  
13 scientifically impossible?

14 A No. I would say not medically or scientifically impossible. I  
15 am in strong disagreement for the reasons that we've talked about.

16 Q Okay. Thank you very much. No further questions.

17 A Thank you.

18 THE COURT: Redirect?

19 MR. PRINCE: Yes. We're going to start -- well, let me get  
20 ready. One second, Judge.

21 REDIRECT EXAMINATION

22 BY MR. PRINCE:

23 Q I want to start with talking about Dr. Tung, okay?

24 A Okay.

25 Q Dr. Tung, as you understand it, is the Defendant's sole

1 medical expert, correct?

2 A Yes.

3 Q They don't have somebody who has your -- in your field of  
4 expertise, physical medicine and pain management regarding  
5 rehabilitation of injured workers in making recommendations for what  
6 they're capable of for going back to work or not, right?

7 A Correct.

8 Q So we're only talking -- we're talking about a neurosurgeon.  
9 Okay. So let's -- so we're all on the same page, do you agree based on  
10 your review of Dr. Tung's reports, that Dr. Tung concludes that Mr.  
11 Yahyavi suffered pain and symptoms to his cervical spine following this  
12 collision of June 19th, 2013?

13 A Yes.

14 Q Does -- do you agree based on your review of the records,  
15 that Dr. Tung believes that it was appropriate to treat the cervical spine  
16 up through the end of 2014?

17 A Yes.

18 Q Do you believe that cutoff is arbitrary?

19 A Yes.

20 Q Would someone by definition be suffering from chronic pain,  
21 as you described it as being unrelenting and nonresponsive to treatment,  
22 for 14 months?

23 A A person -- so this is the inconsistency and the contradiction  
24 with Dr. Tung. You can't have a strain -- a soft-tissue strain to your neck  
25 that lasts for 14 months and doesn't improve, and then all of a sudden

1 say that 14 months and one day later, it's no longer a strain, it's due to  
2 his degenerative disease of his spine on an x-ray.

3 Q Okay. Dr. Oliveri, in anywhere in Dr. Tung's reports -- I want  
4 you to be very precise with this -- does Dr. Tung ever express an opinion  
5 that Mr. Yahyavi had pain -- ongoing pain up until the time of this motor  
6 vehicle collision?

7 A Prior to the accident?

8 Q Yes.

9 A No.

10 Q Are you certain, based on your review?

11 A Yes. I did not see it. It doesn't -- it's not in there.

12 Q And you and I read those reports meticulously together,  
13 didn't we?

14 A Yes.

15 Q Right. Because we were looking for that, right?

16 A Well, I was looking for it for sure. And I'm sure you are as  
17 well.

18 Q You could see the reasons why Mr. Yahyavi would want me  
19 to look for that, right?

20 A Yes.

21 Q And you also read Dr. Tung's December 13th, 2018 report  
22 where he himself discusses the Southwest medical records, right?

23 A Yes.

24 Q And just so you and I are very clear, and this jury is very clear  
25 on this point, does Dr. Tung believe based on those Southwest medical

1 records that Mr. Yahyavi was suffering from pain and problems in his  
2 neck all the way up until the time of this collision?

3 A I did not see that. In fact, Dr. Tung, he mentioned the review  
4 of the records, but makes no comment on those records. So to me, he  
5 does not have an opinion in that regard.

6 Q He did not -- or he's never said, has he, up until -- as we  
7 understand until today, said Mr. Yahyavi had ongoing pain and  
8 symptoms for a period of years leading up to the -- and up to the time of  
9 this motor vehicle collision, and that's the explanation for all of this, has  
10 he?

11 A He --

12 Q He's never said that?

13 A He has not.

14 Q And we were -- you were specifically looking for that,  
15 correct?

16 A Sure.

17 Q All right. Did any question that Mr. Kahn ask you, change  
18 any of your opinions in any way?

19 A No.

20 Q Do you still stand by all of the opinions you've expressed?

21 A I do.

22 Q With regard to the Southwest medical records, I know we've  
23 talked about them at length. Have you been able -- based upon your  
24 review of all the records, including the Southwest medical records,  
25 depositions, expert reports, I mean, hundreds, if not a thousand pages of

1 medical records, have you been able to medically rule out that there was  
2 any ongoing problem, that Mr. Yahyavi was having pain, discomfort  
3 coming from multiple segments of his cervical spine before June 19th,  
4 2013?

5 A Yes. I have ruled it out for the reasons I've mentioned now  
6 two or three times. But the documentation from 2011 does not raise  
7 doubt to me as to Mr. Yahyavi's injuries that happened in June of 2013.

8 Q As the rating physician in the State of Nevada -- because you  
9 still want to be accurate with your rating, right?

10 A Sure.

11 Q Assuming you were able to -- you now have those records as  
12 the rating physician, right? You have them?

13 A Yes.

14 Q Do you stand by your rating from 2015, even in light of those  
15 records?

16 A Absolutely. My rating would have been no different had I  
17 been handed the 2011 records when I saw Mr. Yahyavi in 2015. The  
18 rating would've been the same for the reasons I explained Friday and  
19 today.

20 Q All right. Now, with regard to this -- there's all this  
21 discussion about degeneration, osteophytes, disc disease, foraminal  
22 narrowing, auto fusion, have you been able to rule out that those things  
23 were asymptomatic to a reasonable degree of medical probability before  
24 June 19th, 2013, the relevant date we're talking about?

25 A Can you repeat that, please?



1 Q Yes. Can -- have you been able to rule out that these  
2 degenerative conditions, whether it be an osteophyte, whether it be disc  
3 space narrowing, foraminal narrowing, auto fusion, that those were  
4 causing pain or problems before June 19th, 2013?

5 A I acknowledge the 2011 record, but those items were not  
6 causing or contributing to Mr. Yahyavi's current condition. Again, we  
7 treat patients; we don't treat x-rays. And you have to -- it's not  
8 acceptable to look at an x-ray, and then conclude that that somehow is  
9 causing a person problems.

10 Q Okay. Do you believe, as we have discussed, that this  
11 trauma from this collision with this forklift, that this was a permanent  
12 aggravation of those degenerative changes?

13 A Absolutely.

14 Q Okay. Are those at your opinion to a reasonable degree of  
15 medical probability?

16 A Yes.

17 Q Okay. Is there any medical evidence that this auto fusion at  
18 C6-7 was causing pain or any symptoms before the motor vehicle  
19 collision of June 19th, 2013?

20 A No.

21 Q And I want you to be very clear again, Dr. Oliveri, with regard  
22 to Dr. Tung, he saw the same radiology reports with the auto fusion,  
23 right?

24 A Yes.

25 Q Anywhere in Dr. Tung's reporting, does he say that this C6-7

1 auto fusion, which is degeneration, was causing pain, symptoms, or  
2 problems before this forklift crash?

3 A No.

4 Q And I just want to make sure that we're clear; one of the  
5 things that Mr. Kahn asked you about was Dr. Fisher. And it's in your  
6 April 24th, 2018 report. He was, kind of -- you were summarizing some  
7 care of Dr. Fisher, who is also a pain management physician who did  
8 some injections.

9 A Yes.

10 Q He said he -- there wasn't much more to offer, right; not that  
11 he didn't -- his symptoms had resolved, right?

12 A Oh correct. I didn't intend to answer it with that -- that  
13 meaning. He just said there's no more I can do, we're at a point of  
14 plateau.

15 Q Right. And Mr. Yahyavi reached multiple points of plateau,  
16 didn't he?

17 A Of course.

18 Q Are you critical of him for trying every available option, even  
19 two or three times?

20 A No, I'm not critical at all. I think he was following doctor's  
21 orders. He was trying to do things that could help him. He was trying to  
22 avoid surgery. He eventually made the decision to go forward.

23 Q All right. Now, I want to -- Mr. Kahn showed you some x-  
24 rays of Mr. Yahyavi's hands and talked about some -- his pinky fingers  
25 were, I don't know, had some sort of bend or shape to them?

1           A     Yes.

2           Q     Just so we're clear on this, in any way is those because of --  
3 maybe they're tilted in some. Does that explain any of the symptoms  
4 down the left arm or into the hand, the ring finger or the small finger, in  
5 any way?

6           A     No. There's no correlation between some bend in a pinky  
7 finger and symptoms that would include painful, numbness, and tingling  
8 radiating from the neck into the pinky finger. It's comparing apples and  
9 oranges. They are different issues. One's a bone issue that was  
10 described as mild by the radiologist, and one is a significant issue with  
11 the spine and the nerves.

12          Q     When Mr. Yahyavi reported that on the left side he had pain  
13 from his neck that went down his arm and into his fingers, is that  
14 consistent with a nerve root -- at least irritation of the C8 nerve root?

15          A     Definitely.

16          Q     Was it clinically significant to you the way he described it as  
17 the way it was distributing from his neck, through his arm, and into his  
18 hand?

19          A     Yes. And also, sticking with the way physicians think, it's not  
20 good enough to just have a patient complain of something to have a  
21 diagnosis. You have to back it up with something you see on  
22 examination, or an x-ray, or an MRI. His symptom in the pinky finger  
23 matches with what we see on his MRI scan at that level where --

24          Q     Okay.

25          A     -- the C8 nerve root exits.

1 Q Right. So I'm going to -- now I'm going to bring up  
2 demonstrative 2. Okay. That's a C8 distribution?

3 A Yes.

4 Q Does that help you explain this?

5 A Sure. That's exactly what happens with C8 problems.

6 Q Right. Does that -- clinically, did you look at the MRI image  
7 and say yes, there's a problem at C7 T1, which is consistent with his  
8 report of symptoms down his arm and into his hand and into the two  
9 fingers of his hand?

10 A Yes. So you look at what the patient tells you. You look at  
11 physical examination where he had some decreased sensation in the  
12 pinky finger and that part of the hand. You look at the MRI scan, which  
13 showed some narrowing where that C8 nerve root exists, and that's  
14 between the seventh bone of the cervical and the first bone of the  
15 thoracic. And so it correlates to create a diagnosis.

16 Q So you used history, physical exam findings, as well as the  
17 imaging to correlate these issues?

18 A Yes.

19 Q All right. And the way you document it into -- did you  
20 specifically ask him, where does the pain or the numbness go? Did you  
21 ask him specifically where does it go in your hand?

22 A Sure. Where does it start, where does it end up, what digits  
23 are affected, what's the quality of it, how often does it occur, what are  
24 the pain levels.

25 Q Right, because he also reported other pain in other -- from

1 his neck into other parts of his body that was consistent with other nerve  
2 irritation, right?

3 A Yes.

4 Q Okay. Now, with regard to the EMG nerve conduction  
5 studies, does that rule out nerve irritation coming from the motion  
6 segment?

7 A No. As I mentioned to the jury, it rules out death to some of  
8 the fibers of the nerve root that go to the muscles.

9 Q Okay. So just because an EMG nerve -- no, let me back up a  
10 second. Do you -- are you board certified in electrodiagnostic medicine  
11 and performing these types of tests?

12 A Yes, I am.

13 Q Do you perform them regularly?

14 A Yes.

15 Q And just because it's negative, does that mean that you can  
16 just stop looking, and that there's no nerve root irritation coming from  
17 one of the motion segment levels?

18 A No.

19 Q Okay. That's just one of the pieces of the puzzle?

20 A Correct.

21 Q Okay. Did Mr. Yahyavi consistently report symptoms  
22 consistent with multiple levels of the spine with nerve root irritation?

23 A Yes.

24 Q With respect to medications, based upon your review of the  
25 medical records, did Mr. Yahyavi appropriately take or --

1 MR. PRINCE: Strike that.

2 BY MR. PRINCE:

3 Q With respect to medication usage, did you ever see any  
4 history of abuse or anything by Mr. Yahyavi?

5 A No.

6 Q And can being on medications have long-term effects on  
7 patients?

8 A It can. I mean, you can look at the list of side effects for all of  
9 these medications. Constipation, drowsiness, loss of concentration; all  
10 of those things can happen.

11 Q And if a patient wants to and says, you know, I'm going to try  
12 to only take it when it's absolutely necessary, are you critical of them for  
13 that?

14 A No. Of course not.

15 Q Or try to avoid if they can?

16 A No. It's -- having a patient that's more in line with what  
17 you've just mentioned is definitely preferable to the patient that is  
18 seeking stronger and stronger painkillers.

19 Q Did Mr. Yahyavi ever do that?

20 A No.

21 Q With regard to the surgery, remember they're kind of -- I  
22 want to talk about the workers' compensation and, kind of, how things,  
23 kind of, work a little bit. You're obviously familiar with the workers'  
24 compensation system?

25 A Yes.

1 Q You're affiliated with it?

2 A Yes.

3 Q Once somebody is rated, like after you rated Mr. Yahyavi,  
4 generally, does that claim get closed at that point?

5 A Yes.

6 Q Okay. And so does it make any difference to you whether the  
7 claim was open or closed in terms of your overall analysis when Mr.  
8 Yahyavi had his surgery?

9 A No.

10 Q It doesn't change your opinion at all, does it?

11 A No.

12 Q And in fact, after Mr. Yahyavi's surgery, you did learn that he  
13 went back to -- because of all the ongoing problems, he went back and  
14 tried -- he reopened it, didn't he?

15 A Yes. There's a process involved, and he went through that  
16 process. And my understanding is that he was successful.

17 Q Right. And workers' comp sent him to Dr. Thalgott, right?

18 A Yes.

19 Q And Dr. Thalgott, is he also a spine surgeon?

20 A He is.

21 Q And did Dr. -- he did an analysis. Is it Dr. Thalgott's opinion,  
22 to your understanding, that this event, this collision with the forklift,  
23 caused an injury to the cervical spine, for which he underwent treatment,  
24 ultimately surgery, and now he needs a spinal cord simulator, all related  
25 to this industrial event?

1 A Yes.

2 Q Has that been accepted by the workers' compensation carrier  
3 to your knowledge?

4 A Yes.

5 Q Okay. So regardless if work comp is involved or not  
6 involved, would your opinions be the same in this case?

7 A Yes. There are reasons that workers' comp denies things or  
8 accepts things.

9 Q Right.

10 A That's not my -- that's not my interest. My interest is looking  
11 at what injuries medically are caused, what treatment is necessary. This  
12 is, sort of, background noise for me.

13 Q Right. So if the surgery was performed during the time  
14 period when the claim was closed, does that make any difference in this  
15 analysis we're talking about in any way?

16 A No.

17 Q It's a red herring, isn't it?

18 A Yes.

19 Q Okay. Because the fact is, Mr. Yahyavi remained significantly  
20 and severely symptomatic in his neck from the date of this accident,  
21 June 19th, 2013, up through and including today; isn't that true?

22 A It is.

23 Q Right. And that's really the basis of your opinions, right,  
24 among other things?

25 A Among other things, that is a significant part of it.



1 Q And going back to Dr. Tung for a moment and 14 months.  
2 So if he says the end of summer, let's say -- let's just say he's picking  
3 August 31st, 2014. And during that period of time, according to him, he  
4 said it was a self-limiting soft-tissue injury, right?

5 A Yes.

6 Q Would you undergo a cervical spine MRI for a soft-tissue  
7 injury?

8 A No.

9 Q Would you undergo multiple rounds of spinal injections for  
10 simply a soft-tissue injury?

11 A No.

12 Q And during that period of time, did Dr. Perry, who is a spinal  
13 surgeon, did he recommend spinal reconstructive surgery during that  
14 period of time?

15 MR. KAHN: Objection. Vague as to that period of time.

16 MR. PRINCE: I'll show the record.

17 MR. KAHN: Thank you.

18 THE COURT: Sustained.

19 BY MR. PRINCE:

20 Q Exhibit 91, Bate Number 294, July 7th, 2014. That's in the 14  
21 month window of Dr. Tung, right?

22 A Yes.

23 MR. PRINCE: And if we go to the second to last paragraph.

24 BY MR. PRINCE:

25 Q Well, first of all, let's look at the diagnosis. What's it say?

1           A     Neck pain, left greater than right arm pain.

2           Q     So he had problems with the neck and the left arm from the  
3 beginning, right?

4           A     Yes.

5           Q     And on this day, it says --

6                   MR. PRINCE: Go to the second last paragraph.

7 BY MR. PRINCE:

8           Q     It says, "Dr. Perry and I do believe the patient would benefit  
9 from a surgical intervention directed the Level C3-4 and C6-7 as  
10 previously discussed, given these have been identified positively as his  
11 pain trigger area."

12          A     Right.

13          Q     If he had a self-limiting soft tissue injury, would Dr. Perry  
14 have recommended reconstructive spinal surgery?

15          A     Of course not. You don't operate on soft tissue, self-limiting  
16 problems that resolve.

17          Q     Well, Dr. Perry was questioned whether surgery would  
18 improve him or not improve him. I mean, Mr. Yahyavi obviously went  
19 for a period of years trying to manage it without surgery, right?

20          A     I think that's correct. Mr. Yahyavi was well educated as to  
21 the risks, the benefits and the alternatives.

22          Q     Does that mean he was no longer a surgical candidate just  
23 because Dr. Perry thought, I'm not sure, I'm not confident surgery is  
24 going to help you or not at this point, given where you're at?

25          A     Of course not.

1 Q Given all of this, is this why looking at the total picture, the  
2 ongoing symptoms as of July 2014, which is one year from the date of  
3 this collision, a little bit more than a year. Is this why the 14 months by  
4 Dr. Tung who flew out from San Diego to examine at the request of  
5 these lawyers, doesn't make sense? It just doesn't fit the overall picture?

6 A It does not make sense.

7 Q With respect to the expenses, if someone has a complex  
8 catastrophic injury like we're talking about in this case, these are very  
9 expensive for the patients to pursue, aren't they?

10 A Of course.

11 Q I mean, obviously, we paid you \$15,000. We've had to pay  
12 for your time to come to court twice. And so it's a very serious  
13 endeavor, isn't it?

14 A Yes.

15 Q And you're obviously and I respect and appreciate your time  
16 and you charge for your time?

17 A Yes.

18 Q But this is what people have to go through in order to bring  
19 the case to court, right?

20 A Sometimes.

21 Q They have to pay these costs, right?

22 A Yes.

23 Q Finally, there is one question I asked you from a physical  
24 therapy note that there was this exacerbation in 2016. Remember that?

25 A Yes.

1 Q That's while Mr. Yahyavi was still working full time -- was at  
2 least still attempting to work, right?

3 A Yes, it was in the timeframe.

4 Q And just because -- do patients who have chronic pain like  
5 Mr. Yahyavi, can that just worsen with time because you haven't had,  
6 you know, the treatment hasn't been effective?

7 A Can worsen with time. It can worsen with work activities.

8 Q Just waking up in the morning moving can make it worse,  
9 right?

10 A It can.

11 Q And there's no way to get around that, is there?

12 A It's part of dealing with the chronic pain cycle. If it's an  
13 unrelenting, constant problem, activity modification, dealing with flare  
14 ups, ups and downs, that's what happens.

15 Q Is there any evidence of any injury or other cause after June  
16 2013 to explain these ongoing symptoms?

17 A No.

18 Q Have you been able to medically rule that out as well, Dr.  
19 Oliveri?

20 A Yes.

21 Q Thank you. That's your opinion to a reasonable degree of  
22 medical probability?

23 A It is.

24 Q Thank you. I have no additional questions.

25 THE COURT: Any recross?

1 RECROSS-EXAMINATION

2 BY MR. KAHN:

3 Q Hello again, Dr. Oliveri.

4 A Hello.

5 Q I know this is not an enjoyable process, so I'll try to be pretty  
6 brief. You talked about the Southwest Medical Associate's records pre-  
7 accident with Mr. Prince a little bit, do you recall that?

8 A Yes.

9 Q And are you familiar within that set of records from March  
10 2012, so about 15 months before this accident that there's  
11 documentation of a ski injury of some type?

12 A To the knee. Yes.

13 Q Your first report documents that Mr. Yahyavi had a laceration  
14 on his left elbow, correct?

15 A First report, meaning the rating?

16 Q April 24th, 2018.

17 A Yes.

18 Q It's right on the front page.

19 A Yes.

20 Q So he told you he cut his arm. How old was he?

21 A He was at age five, he told me.

22 Q So he's 58 now, right? Roughly.

23 A Yes.

24 Q So he remembers that he cut his arm when he was five,  
25 correct?

1           A     I don't know if -- I doubt he remembers, but at least he recalls  
2 that he's been told that I would imagine.

3           Q     Okay. And that's how you got the information from Mr.  
4 Yahyavi, right?

5           A     Yes.

6           Q     But he's told you he doesn't remember 21 months before this  
7 accident, October 2011, eight years ago or so, having told Southwest  
8 Medical Associates that his neck hurt him for years, correct?

9           A     Correct.

10          Q     And do you believe as you sit here that his left arm was  
11 lacerated when he was five or fractured when he was five?

12          A     I don't know.

13          Q     Well, your records say lacerated, correct?

14          A     Just by history. And I didn't -- I don't recall -- one moment if  
15 I could. Okay. In that initial report you're referring to from 4/24/18, I did  
16 note a scar over the posterior left elbow, which is the back of the elbow  
17 consistent with his history of a remote injury or laceration as a child.

18          Q     Okay. He never told you he broke his arm. He told you he  
19 cut his arm, right?

20          A     Correct.

21          Q     You're talking about a scar, not a bone injury, right?

22          A     Correct. I actually saw a scar on the back of the elbow.

23          Q     And then essentially what you're saying about Mr. Yahyavi's  
24 taking medicines is that he's relatively compliant with doctors and what  
25 they tell them to a degree that you're comfortable with?

1 A Yes.

2 Q Isn't within your own report there documentation that he  
3 went to the hospital for something and he left against medical advice?

4 A Yes. I saw that.

5 Q And he had blood pressure that was something like 230 plus,  
6 and he still left against medical advice?

7 A I don't remember the number, but it was elevated.

8 Q It was high?

9 A Yes.

10 Q And Mr. Prince was asking you about Dr. Perry. Initially he  
11 did recommend surgery, correct?

12 A Yes.

13 Q And then later he changed that opinion and was against  
14 surgery, advised against it, right?

15 A I think he said that he wasn't convinced that it would be  
16 beneficial.

17 Q And in between Dr. Perry saying he should get the surgery,  
18 the same one that Dr. Kaplan gave him later, years later, and he  
19 shouldn't get the surgery, the same one that Dr. Kaplan gave him years  
20 later, was the nerve conduction study by Dr. Germin that did not show  
21 radiculopathy; isn't that correct?

22 A Yes.

23 Q And that's something that surgeons look at in determining  
24 whether to do a surgery is whether a patient has radiculopathy, right?

25 A It's a consideration.

1           Q     And you said that's an objective test, the EMG studies that  
2 you do. This is something the patient can't fake. It doesn't really matter  
3 too much what the patient says. This is using electrical impulses and  
4 needles, right?

5           A     Yes.

6           Q     So my final question to you is this, doctor, I think I  
7 understand what you're telling the jury and so here's the question. If  
8 instead of the words used in the Southwest Medical Associate's report of  
9 October 2011, words to the effect of Mr. Yahyavi telling them, my neck  
10 has hurt for years, they had put in the word ongoing and they had said,  
11 my neck has hurt for years in an ongoing basis, your opinion would be  
12 the exact opposite of what it is here today; isn't it true?

13          A     No. There would need to be one more component. If they  
14 put --

15          Q     What would that be?

16          A     If they put an ongoing neck pain constant for years, and  
17 especially if there was a component of radiating stuff in the arm, and if  
18 they identified things on examination, then I would start looking at the  
19 influence or the degree that that problem prior to the crash affected  
20 history.

21          Q     Let me ask it this way. You said that you're essentially  
22 discounting this report of ongoing neck pain for years because you don't  
23 believe it's medically significant, correct?

24          A     Right.

25          Q     If they had put the word ongoing in there. If he had ongoing



1 pain for years instead of the way it's phrased, you would consider that  
2 medically significant in relation to Plaintiff's cervical spinal problems  
3 today, right?

4 A That would increase the significance of that note to me. But  
5 I'd still be looking at the other factors, physical examination to explain to  
6 the jury whether it alters my ultimate conclusion.

7 Q You wouldn't dismiss it in the same fashion you are in this  
8 case today; is that fair?

9 A That's fair.

10 MR. KAHN: No further questions.

11 THE COURT: Only as to those.

12 MR. PRINCE: I got it.

13 THE COURT: If you have any questions, start writing them  
14 down.

15 MR. PRINCE: All right.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. PRINCE:

18 Q Dr. Oliveri --

19 MR. PRINCE: Can you hear me if I stand right here? Perfect.

20 BY MR. PRINCE:

21 Q First, do you think Mr. Yahyavi was a compliant patient?

22 A Yes.

23 Q Whether he was at the hospital for some unrelated medical  
24 reason and decided to leave for whatever reasons he decided, does that  
25 have any influence on what we're talking about with regard to his neck?

1           A     No.

2           Q     Now, according to your chronology, Dr. Germin did the nerve  
3 conductance study, which was interpreted as normal, February of 2014,  
4 right?

5           A     Yes.

6           Q     Dr. Perry recommended surgery five months later in July of  
7 2014, Bate number 294, right?

8           A     Right.

9           Q     So just because it's a normal EMG doesn't show,  
10 radiculopathy, that doesn't mean that a patient doesn't have a discogenic  
11 problem which is causing nerve radial irritation, is that fair to say?

12          A     It is.

13          Q     Isn't it often, people can have severe arm pain, severe arm  
14 pain and numbness and you may have a normal EMG, doesn't that  
15 occur?

16          A     I do probably 100 or 150 EMG nerve tests a year and the  
17 amount that actually show nerve damage from the neck or from the  
18 lower back, it's a small number. It's probably less than 5 percent. Less  
19 than 10 percent.

20          Q     It's mostly for the peripheral nerves, right?

21          A     Or it's for those situations where there's enough  
22 compression that some of the fibers that go to the muscles start to die  
23 and you get those changes. But I could tell you, it doesn't happen very  
24 often. When it does, it's associated with atrophy, loss of, you know, loss  
25 of muscle bulk, loss of reflex, some other things on examination.

1 Q And at times, Dr. Oliveri, can you have a false positive?  
2 Sometimes it'll pick up a radiculopathy, but the patient has no  
3 symptoms?

4 A Yes, that can happen.

5 Q And so therefore, you can't say, oh, automatically they have  
6 a radiculopathy because you have to look at the clinical picture. Do they  
7 have pain, numbness or tingling in that distribution that they're actually  
8 reporting to you, right?

9 A Yes. Everything we do in medicine requires correlation. You  
10 have to look at multiple factors.

11 Q Okay. Now remember Mr. Kahn just asked you a moment  
12 ago that in March of 2012, Mr. Yahyavi went back to Southwest Medical  
13 after he was skiing.

14 A Yes.

15 Q And complained about some knee complaints.

16 A Yes.

17 Q Was there any neck complaints on that visit?

18 A No.

19 Q Any findings regarding the neck at all?

20 A No.

21 Q Okay. So I want to go to the November 1st, 2012 note. That  
22 is part of Exhibit 156, Bate Number 2106. I want you to pull out the  
23 reason for the visit today. Reason for visit through hematology. I want  
24 to make sure we have our dates very firmly in line.

25 So it says here, "50 year old male presents to discuss lab

1 results. States that he is feeling well about any physical complaints." Do  
2 you see that?

3 A Yes.

4 Q It says, current meds. Is he even on any pain medication of  
5 any kind as of November 1st, 2012?

6 A No.

7 Q If someone had multiple level disc pain and facet pain, would  
8 you expect them to be out there with no physical complaints?

9 A No.

10 Q Would you expect someone to be on medications either anti-  
11 inflammatories, muscle relaxers, opioids like he has been since June of  
12 2013?

13 A Yes.

14 Q Are those important factors that those are not present?

15 A Of course.

16 Q Right.

17 A As I've mentioned.

18 Q Let's go to the examination or the review of systems for the  
19 same date. It says, musculoskeletal, it says, no persistent, muscular  
20 pain. Do you see that?

21 A Right.

22 Q If someone had multiple level discogenic pain and facet pain,  
23 would you have someone with no persistent muscular pain?

24 A No.

25 Q Given that statement, persistent. What does persistent mean

1 to you, medically speaking?

2 A Ongoing.

3 Q Chronic, right?

4 A Yes.

5 Q Unrelenting?

6 A Well, it could be chronic -- it could be less than three to six  
7 months. But it is something that's not going away.

8 Q Okay. Does there appear to be a conflict in the Southwest  
9 medical records like this says on November 1st, 2012, he's got no  
10 physical complaints, and he has no persistent muscular pain, do you see  
11 that?

12 A Yes.

13 Q Is that inconsistent with someone who complains of neck  
14 pain for years? Is there inconsistency with that?

15 A Of course.

16 Q An ambiguity?

17 A Yes.

18 Q Have you attempted to resolve that by looking at the overall  
19 clinical picture?

20 A Of course.

21 Q Very good. Under neurologic. It says, no headaches,  
22 extremity numbness, paresthesia weakness or clumsiness.

23 A Right.

24 Q If someone was having ongoing left arm symptoms, pain  
25 radiating down the arm, the numbness and the tingling like Mr. Yahyavi

1 reported after this collision, would you expect to see that documented  
2 there?

3 A Of course.

4 Q Was it significant to you in your overall ruling out any prior  
5 problems that on this visit that there was no reported numbness,  
6 weakness, tingling, pain going down either arm?

7 A It is.

8 Q And finally, the March 2000 -- excuse me. May 23rd, 2013  
9 visit. Was there any reported neck symptoms, arm symptoms, anything  
10 that's consistent with what we've been talking about after this injury?

11 A No.

12 Q And when you put all of those records from before this  
13 collision, all of them together, does it document any ongoing medical  
14 problem in his neck or his arm which required any medical treatment of  
15 any kind?

16 A No.

17 Q Is that how you've been able to rule that out?

18 A Yes.

19 Q Dr. Oliveri, thank you for your time. I have no additional  
20 questions.

21 A Thank you.

22 THE COURT: Nothing? Questions from the jury, raise your  
23 hand. No questions? Thank you, Dr. Oliveri. You may step down.

24 THE WITNESS: Thank you so much.

25 THE COURT: We're going to take our evening recess.

During this recess you're admonished do not talk or converse amongst yourselves or with anyone else on any subject connected with this trial or read, watch or listen, any report of or commentary on the trial or any person connected with this trial by any medium of information, including without limitation, newspapers, television, radio or Internet.

Do not form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

9:45, please.

THE MARSHAL: Make sure you grab all your personal items. Leave your notebooks and pens. Don't forget your badges tomorrow. Don't lose your badges.

[Jury out at 4:40 p.m.]

[Outside the presence of the jury.]

THE COURT: We are on the record outside the presence. What is the difficulty in getting you -- we've known this for well over a month that it's necessary to tell them the amount. What's the difficulty?

MR. KAHN: I'll look at our proposed exhibit. I'd ask Plaintiff's counsel to do the same. We'll try to put our heads together.

THE COURT: If you need to subpoena him, who, him, her, whatever.

MR. KAHN: The problem is as counsel said, they've reopened comp. They have a subro. We got records twice from them over the course of -- the case has been going on for six, or five years.

THE COURT: I get that. But this is just billing and it's from some department.

1 MR. PRINCE: I guess it's the amounts paid by them.

2 MR. KAHN: I'm willing to make this bargain with Plaintiff's  
3 counsel at his discretion. If he wants to work with me and just come up  
4 with a general set of a number or two the counsel feels is appropriate  
5 within the statute. I don't think we have to put too fine a point on it.

6 In the meantime, I will look through the exhibit and try to  
7 come up with some numbers, but I'm open to a creative solution is what  
8 I'm saying. Okay.

9 THE COURT: Okay.

10 MR. PRINCE: Well, I guess I maintain my objection about it  
11 coming in at all. You've ruled that it can. I'll work of Mr. Kahn to see  
12 what we can come up with. If he sends me a proposal, I'll consider it, so  
13 we can expedite what we're doing here.

14 THE COURT: Sooner rather than later, all right?

15 MR. KAHN: Understood, Your Honor. Ms. Clerk, there's a  
16 second redaction that needs to be made on that page.

17 THE CLERK: This page?

18 MR. PRINCE: Yes.

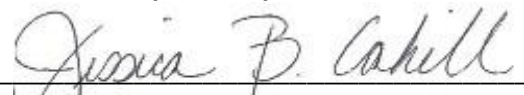
19 [Proceedings concluded at 4:43 p.m.]

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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 BAHRAM YAHYAVI,  
8 Plaintiff,

) CASE#: A-15-718689-C  
)  
) DEPT. XXVIII  
)

9 vs.

10 CAPRIATI CONSTRUCTION CORP  
11 INC.

12 Defendant.  
13

14 BEFORE THE HONORABLE RONALD J. ISRAEL  
15 DISTRICT COURT JUDGE  
16 THURSDAY, SEPTEMBER 19, 2019

17 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 9**

18 APPEARANCES:

19 For the Plaintiff:

DENNIS M. PRINCE, ESQ.  
KEVIN T. STRONG, ESQ.

20 For the Defendant:

21 MARK JAMES BROWN, ESQ.  
22 DAVID S. KAHN, ESQ.  
23 MARK SEVERINO, ESQ.

24 RECORDED BY: JUDY CHAPPELL, COURT RECORDER  
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<u>FOR THE PLAINTIFF</u>	<u>MARKED</u>	<u>RECEIVED</u>
None		
<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
None		

1 Las Vegas, Nevada, Thursday, September 19, 2019

2

3 [Case called at 9:55 a.m.]

4 THE CLERK: Yahyavi v. Capriati Construction Corporation.

5 MR. PRINCE: Good morning, Judge.

6 THE COURT: Good morning.

7 MR. KAHN: Good morning, Your Honor.

8 THE COURT: Anything we need to talk about?

9 MR. PRINCE: Nothing from my end.

10 MR. KAHN: I had a very minor thing, that hopefully won't  
11 spark a dispute. Based on what happened with the opening, I don't care  
12 if Mr. Prince doesn't show me his closing, I won't show him my closing  
13 PowerPoints, as long as they both get marked for the Clerk, and as long  
14 as that no undisclosed photographs get used. I don't really care, as long  
15 as it becomes part of the court record.

16 THE COURT: Okay.

17 MR. KAHN: So, if that's okay, then I just -- I will do the same.

18 THE COURT: Absolutely, it's part of the court record and  
19 any -- anything that's not, especially in closing, it's not an exhibit or  
20 demonstrative and shouldn't be shown. Okay.

21 Bring them in.

22 THE CLERK: And then also, we are putting in a final  
23 redacted.

24 THE COURT: If there's some final redacted, we don't need to  
25 do that now.

1 THE CLERK: Okay.

2 THE COURT: Go ahead, you can bring them in. Thanks.

3 THE MARSHAL: Please rise for the jury.

4 [Jury in at 9:57 a.m.]

5 [Inside the presence of the jury]

6 THE COURT: Please be seated. Good morning, ladies and  
7 gentlemen.

8 IN UNISON: Good morning.

9 THE COURT: So tomorrow, we should be starting at 9:00, I  
10 believe, and we will be done probably at 4:00 or before, something like  
11 that. Today, pretty much the same thing.

12 So call your next witness.

13 MR. PRINCE: Well, I thought today we were ending at 2:50. I  
14 think we're coveting one of the jurors today.

15 THE COURT: Oh, right, okay.

16 MR. PRINCE: So, I will -- I planned for two witnesses for  
17 today, Judge.

18 THE COURT: That's fine, yeah. Somebody has the doctors  
19 or whatever it was.

20 MR. PRINCE: Okay.

21 THE COURT: I'm sure nobody will be upset that we're --

22 MR. PRINCE: We're right on pace, Your Honor.

23 THE COURT: Call your next witness.

24 MR. PRINCE: Your Honor, thank you and good morning. Our  
25 next witness will be Mr. Ira Spector, please.

1 THE MARSHAL: Watch your step and remain standing. Face  
2 the Clerk of the Court.

3 THE CLERK: Please raise your right hand.

4 IRA SPECTOR, PLAINTIFF'S WITNESS, SWORN

5 THE CLERK: Please be seated. Please state your name and  
6 spell it for the record.

7 THE WITNESS: Ira Ian Spector, I-R-A I-A-N S-P-E-C-T-O-R.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. PRINCE:

11 Q Mr. Spector, good morning.

12 A Good morning.

13 Q And tell us what your profession is.

14 A A certified rehabilitation counselor. What rehabilitation  
15 counselors are trained to do in a normal course of work is to assist  
16 persons with disabilities who have been having a difficult time, as  
17 accidents and disabilities cause, and assist them in the adjustment of  
18 that.

19 We are trained psychotherapists, so we're trained to understand  
20 the issues that come along with disabilities, such as depression and  
21 anxiety, and things of this nature.

22 But specifically, vocational rehabilitation counselors are there to  
23 assist with helping that person get back to work, if at all possible, by  
24 understanding their aptitudes or interest or work values, and assisting  
25 them to come up with a plan to return to work that specifically fits what

1 their position has indicated is appropriate for them physically.

2 Q And how long have you been a vocation rehabilitation  
3 counselor?

4 A Since 1990.

5 Q Okay. And what does, just for our record, what does  
6 vocational mean?

7 A Vocational is related to vocation, occupation, to working. It  
8 often gets confused with an occupational therapist, who's trained to help  
9 somebody who is in the hospital do things like put on their clothes, take  
10 a shower, be hygienic, be able to help themselves in that regard.

11 Q And how many injured workers, or individuals, do you think  
12 you counseled or evaluated or assessed over the last 29 years?

13 A I would safely say probably a couple thousand.

14 Q Okay. And tell us about your education. Where did you go  
15 to college?

16 A I went to school, Undergraduate at UNLV. I got a degree in  
17 psychology there at UNLV, and then I returned to UNLV in order to get  
18 my degree in rehabilitation counseling.

19 Q Okay. And do you have a Master's degree?

20 A I do, sir.

21 Q And in what area do you have a Master's degree?

22 A Rehabilitation counseling.

23 Q Okay. And do you also have a -- are you also certified as a  
24 rehabilitation counselor? I think you might have mentioned that a  
25 moment ago.

1           A     Yes, it's --

2           Q     Tell us about that process, how you become certified.

3           A     Absolutely. Our profession requires a certification. It's one  
4 of the main certifications that people look for when utilizing someone of  
5 my services. Also, it's required by law in the State of Nevada to sign for  
6 persons who are not certified and may not have that level of education.

7           A     A certification requires that you have a Master's degree, that  
8 you've undergone the clinical experience that is required after you  
9 graduate, that you have met with a number of injured workers that  
10 satisfies their requirement and you successfully demonstrated to your  
11 professors that you can handle that task.

12          A     And then there is a very large six-hour certification test that we  
13 take, similar to what the Bar may be like. It's very long and difficult, and  
14 once you pass that and have all the other requirements behind you, then  
15 you become certified.

16          Q     And how long have you been certified?

17          A     I believe it was since --

18          Q     Your resume says since 1992.

19          A     Thank you.

20          Q     Does that sound about right?

21          A     Yes, it does.

22          Q     All right. Okay, so almost 27 years. Now tell us, kind of, you  
23 know, what you do, just describe what you do, the people that you see,  
24 and then who you assist, and who asks for your services?

25          A     Okay.



1 Q You can actually look at the --

2 Q We do a couple different kinds of work at our firm. I have  
3 two other counselors that work alongside with me and that are training  
4 to become certified. So, I'm their clinical supervisor.

5 The kind of work that we do is we get referrals from workers comp  
6 insurance companies, self-insured companies, such as some of the  
7 hotels, they insure themselves, and administer themselves. We get  
8 referrals now from attorneys as the law had just changed as of July, and  
9 the attorneys get to pick the counselors that they feel will represent their  
10 injured worker client properly.

11 And in our firm also, we have myself doing forensic work, forensic  
12 meaning testifying in a court of law, as we're doing here this morning.  
13 And so it's workers compensation and forensic work that we do, and we  
14 also have done in the past, employer services, where we help employers  
15 re-employ people who may have gotten hurt on the job, helping them  
16 understand the benefits of doing so.

17 Q And as part of your role, we're going to talk about this, is it  
18 important to understand, you know, the medical condition for which the  
19 person has limitations, impairment, or disability, and you understanding  
20 the medical records, and the course of care?

21 A Absolutely, it's important.

22 Q Why is that -- explain why that's important.

23 A It's important because in the State of Nevada, the physician  
24 is the one who is ultimately responsible for sharing with the counselor  
25 what that person's limitations are. So, in order for us to develop a

1 vocational plan that can get that person back to work, either through  
2 training or through direct placement, we need to know what their  
3 limitations are so we can take that into account, along with their interests  
4 or aptitudes, or work values, and properly place them in a position that  
5 they could have a reasonably good chance of being successful at. And  
6 that's the process we go through.

7       So, the call is with the physician, even though we may get a  
8 functional capacity evaluation as part of that. The physician often uses  
9 the functional capacity evaluation to help them come up with the  
10 ultimate restrictions, so sometimes it's a tool for the physician, but the  
11 physician is the ultimate word to what limitations for that person are.

12       Q     Right. So, as a vocational rehabilitation expert, you have to  
13 rely upon the medical records, diagnosis, the treatment, but also the  
14 recommendations in terms of work restrictions or being disabled from  
15 the physician. You have to rely upon that as part of your own analysis?

16       A     Not only do we have to, it's a State law.

17       Q     Okay. And what area of medical specialty in your experience  
18 do you get to dealing with people who have been injured, and a variety  
19 of contacts, that gives you -- who has the most unique type of experience  
20 of dealing with the rehabilitation of injured workers, giving them  
21 permanent restrictions, or determining if they're disabled for working at  
22 all?

23       A     Well, I'm always overjoyed, pleased, when I have in the  
24 record medical reports from a physiatrist. A physiatrist is --

25       Q     Is that a physical medicine rehabilitation expert?

1           A     Yes, sir.

2           Q     Okay.

3           A     Physical medicine and rehabilitation expert whose training  
4 allows them to not only take into account the body part, or body parts,  
5 that are effected by an accident or an illness, but they're able to look at  
6 the whole person as a whole, especially if there are multiple body parts,  
7 and help us understand how that whole set of circumstances come into  
8 play when we're talking about returning back home or returning back to  
9 some form of open gainful employment.

10          Q     Okay. And in this case, was a physical medicine  
11 rehabilitation expert or a physiatrist involved?

12          A     Yes, there was.

13          Q     Who was that?

14          A     Dr. David Oliveri.

15          Q     And you were here yesterday in the courtroom and you  
16 listened to Dr. Oliveri's testimony regarding Mr. Yahyavi's disability from  
17 returning back to work?

18          A     I did.

19          Q     And is Dr. Oliveri someone that you are familiar with  
20 professionally and, you know, vocationally assessing somebody's ability  
21 to return back to work following a serious injury?

22          A     Yes. I've been fortunate enough to work with Dr. Oliveri in  
23 the worker's comp area, as well as in the forensic area.

24          Q     Is he someone that you have trust and confidence in with  
25 regard to his recommendations to injured workers, or people who have

1 been injured through, you know, motor vehicle collisions, or anything  
2 else for that matter?

3 A One hundred percent.

4 Q All right. Now you've also read medical expert reports from  
5 Defense medical expert, Dr. Tung, the neurosurgeon, right?

6 A Yes, sir.

7 Q Do they have -- have you seen any record, any reports from a  
8 physical medicine and rehabilitation expert, someone like Dr. Oliveri,  
9 from the Defense side in this case?

10 A As a Defense expert?

11 Q Yes.

12 A No, sir.

13 Q Okay. Now, I want to talk about your -- have you also  
14 testified, and as an expert witness here in court in your area of education  
15 and training, vocational rehabilitation?

16 A I have.

17 Q And you and I have worked together in the past?

18 A We have.

19 Q And we've also been on the opposite sides of each other --

20 A Yes, we have.

21 Q -- in these type of cases? Okay. So let's turn to your  
22 evaluation of Mr. Yahyavi, okay?

23 A Yes, sir.

24 Q Very good. And you're obviously familiar -- Mr. Yahyavi, you  
25 have an independent recall of him?

1 A I do.

2 Q All right. Did you meet with him?

3 A Yes, sir, I did.

4 Q And did you perform testing?

5 A I did.

6 Q Okay. How many times have you met with him?

7 A I've met with him, I believe it was twice.

8 Q Okay. And when were you first hired in this matter?

9 A The first time it was around June of -- no, sorry. It was  
10 around March of 2017.

11 Q Okay. And when did you complete -- well, it says here,  
12 this -- this might be a typographical error, so I --

13 A Yes.

14 Q -- wanted to make sure we're clear. It said this rehabilitation  
15 counselor was referred this assignment on March 21, 2018.

16 A I'm sorry, I stand corrected.

17 Q Okay. I just wanted to make sure. So, March of 2018, you  
18 get involved at the request of my law firm?

19 A Yes.

20 Q Okay. Did we send you information?

21 A Absolutely.

22 Q What information did we provide you that assisted you in  
23 your vocational analysis in this case?

24 A I routinely put the sources of information down and I have  
25 them on my Page 2.

1 Q If you can summarize the records that you received and  
2 reviewed as part of your evaluation in this case?

3 A I had records from physical therapists, occupation and health  
4 and wellness centers, neurology specialists, orthopedic specialists,  
5 chiropractic specialists, heart specialists, orthopedic surgeons,  
6 acupuncturists, physical therapists, neurologists, pain management,  
7 surgery centers, diagnostic centers, hospitals, and neurosurgeons. I  
8 think that summarizes it.

9 Q In addition to that, were you also supplied, as part of your  
10 overall review and analysis of all of Dr. Oliveri's reports and analysis?

11 A I was.

12 Q Have you also spoken with Dr. Oliveri concerning Mr.  
13 Yahyavi and coming up with some type of plan for him, whether it's for  
14 safe return to work or full disability status?

15 A Yes, sir.

16 Q Okay. How many times have you spoken to Dr. Oliveri  
17 concerning Mr. Yahyavi, would you estimate?

18 A I think twice, at the most.

19 Q Okay. And what sort of method did you use in performing  
20 your vocational assessment in this case?

21 A Well, I use a methodology consistently called the RAPEL  
22 method.

23 Q Is that generally accepted in the field of vocational  
24 rehabilitation?

25 A Yes, it is, and it's probably the most popularly used

1 methodology.

2 Q Okay. Can you just briefly describe what the RAPEL method  
3 is?

4 A Yeah. The RAPEL method, RAPEL is an acronym which  
5 stands for five things. The R is devising a rehabilitation plan. In other  
6 words, how are we going to get this person back to work. The second  
7 part is access to the labor market. So understanding what this person's  
8 overall access is, with his circumstances, is an important component.

9 The P stands for the place ability, the ability to place someone in a  
10 job based upon their current circumstances. The E is the person's  
11 earning capacity. In other words, what are they capable of -- what's the  
12 highest amount they're capable of earning. And the L is their labor force  
13 participation. In other words, their ability to remain on the job, and  
14 periods of time where they're not able to remain on the job. So, it's  
15 understanding how long they will be expected to be on a job.

16 Q Very good. And did you use that methodology in this case?

17 A I did.

18 Q Did you also, as part of your review, kind of perform a  
19 comprehensive medical file review, kind of looking at the chronology of  
20 Mr. Yahyavi's injuries, his medical care, up through the time that you  
21 initially saw him?

22 A I did.

23 Q Okay. And did that assist you in reaching your opinions and  
24 conclusions in this case?

25 A Yes. What it does is it educates me as to what he's gone

1 through and what some of the opinions are of the physicians that he had  
2 met with.

3 Q Okay. And in addition to reviewing, I mean obviously we  
4 have hundreds, if not thousands of pages of medical records. Did you  
5 actually, you meet after you received all of this information with Mr.  
6 Yahyavi, personally?

7 A Yes, sir.

8 Q What's the purpose of meeting with someone like Mr.  
9 Yahyavi?

10 A Well, it's very important to meet. When I meet with an  
11 individual, we sit down, we have a very casual couple hour interview  
12 where we talk about his person's background, their educational  
13 experiences. We talk about their employment experiences, the types of  
14 skills they use on each and every job, the income they made, the types of  
15 duties they have.

16 Then we talk about their symptoms, what are their symptoms,  
17 what are they going through at the time I'm meeting with them? What  
18 body parts have been effected by this subject illness or this subject  
19 accident? I want to know in depth what they're dealing with and what  
20 that pain is like, and when it occurs and what makes it worse. So a very  
21 detailed understanding of their injuries.

22 Then we also talk about their emotionality, how has this injury --  
23 how has this accident effected their emotions, their psychology.

24 Q Why do you want to know that? Why is that important to  
25 you as a vocational expert?



1           A     It's extremely important because many times that person is  
2 dealing with situational depression and situational anxiety. When you  
3 no longer have the ability to go into work, think of all these anxious  
4 feelings that we have about, well, how am I going to -- how am I going to  
5 pay for that power bill, and when am I going to get back to work? Is my  
6 employer still going to think highly of me, you know, I have pressures  
7 from my family. I have my own self-esteem and my desire to be an  
8 independent active person that I've always been. A lot reflects upon our  
9 own personal self-esteem and our ability to maintain a good feeling  
10 about ourselves or not.

11           Q     Okay. When you -- when did you first meet with Mr.  
12 Yahyavi?

13           A     It was on April 5th, 2018.

14           Q     Okay. And by that point, he had his neck surgery?

15           A     Yes, sir.

16           Q     Okay. And did you understand from your review of the  
17 record and speaking to Mr. Yahyavi that the primary focus of his injury  
18 and disability was his neck, the problems associated with his neck and  
19 his arm symptoms?

20           A     Yes.

21           Q     Okay. And when Mr. Yahyavi came to see you, that you  
22 discussed with him how he was doing, what his -- and what did you  
23 learn that day?

24           A     Well, I learned a lot of things. I learned about his  
25 background. I learned --

1 THE COURT RECORDER: Hold on just a minute. Your  
2 paper's on the microphone.

3 THE WITNESS: I'm so sorry.

4 THE COURT RECORDER: I can't hear you.

5 THE WITNESS: Thank you.

6 THE COURT RECORDER: Thanks.

7 THE WITNESS: I learned about his background, his origin  
8 from Iran, his family. I learned about his hobbies. I learned about his  
9 mother and father's activities professionally. We learned about his  
10 siblings. We then talked about his education, that he moved here in  
11 what would be our tenth grade level, sophomore level, then his  
12 Bachelor's degree in business administration from National University,  
13 and then ultimately, his Master's degree in international business from  
14 that same university.

15 BY MR. PRINCE:

16 Q Okay. And did he also discuss with you the nature and  
17 extent of his injuries to his neck and his spine?

18 A He did.

19 Q Okay. And what did you learn in terms of what type of work  
20 he had been doing up until the time of this collision and even after?

21 A Oh, Mr. Yahyavi has pretty much been in the car business for  
22 over 30 years, which is the majority of his work life in some shape or  
23 form. He has been everything, it seems, from a car salesman to a car lot  
24 owner, and everything in between. He was very passionate about this  
25 business, and he -- I could tell he really -- the part he really, really

1 enjoyed was working with the public and helping the public achieve the  
2 purchase of a new vehicle that they were excited about.

3 Q And by the time you saw him in 2018, was Mr. Yahyavi, was  
4 he working at that time?

5 A I believe he was.

6 Q Okay. In your report on Page 15, you state it's -- that you  
7 learned that he hasn't worked since September 2016.

8 A Okay.

9 Q So, my question is, do you recall that he reported to you that  
10 he stopped working in September of 2016?

11 A Absolutely.

12 Q Okay. So, was he working when he came to see you in 2018,  
13 since he stopped in 2016?

14 A No, he was not.

15 Q Okay. Now did you think it was reasonable for him to stop  
16 working in September of 2016?

17 A Well, according to his description of how he was feeling, his  
18 symptoms, what he was going through, my visual observation of him,  
19 my readings of medical reports, opinions by physicians, and my first-  
20 hand seeing him deal with these issues, it made sense to me.

21 Q Right. You state in your report that his time away from work  
22 since September 2016, is reasonable and medically explained on the  
23 basis of the cervical spine injury. What did you mean by that, that it was  
24 reasonable and medically explained, from your standpoint as a  
25 vocational rehabilitation counselor?

1           A     Pretty much I meant that it was confirmed by medical  
2 information that I had read and medical files, such as in Dr. Oliveri's  
3 reports.

4           Q     Right. And when you met with Mr. Yahyavi, did you ask him  
5 about, you know, how he was feeling, about the nature of his pain  
6 complaints, and how it was effecting him?

7           A     Very detailed, yes.

8           Q     Okay. I'm on Page 15 of your report, just kind of  
9 working -- kind of work through that and how did -- and you can maybe  
10 just discussing his -- the symptoms relating to his neck and spine, how  
11 that was effecting him in his physical abilities.

12          A     All right. Well, I asked him -- I always ask what body parts  
13 are currently effected since the incident occurred, and we went over  
14 some postures and I asked him what his subjective abilities were in  
15 those areas. Would you like me to go over those in detail?

16          Q     Yeah, just related to the -- yeah, the neck and, yeah.

17          A     So I asked him how long he was able to sit for before his  
18 body was telling him, giving him the message, that he must get up and  
19 move. For sitting, it was 10 to 15 minutes, but then he mentioned that he  
20 would have to lie down after the 10 or 15 minutes and just couldn't re-sit.  
21 So, at that time he was having a great deal of problems sitting, as  
22 evidenced visually in my office. I think just during our initial interview,  
23 he got up four times, which was fine with me, but it was evidenced by  
24 what I saw, as well as what I was reading.

25          Q     And this was within -- the surgery was in January of 2018,

1 Mr. Spector, and so you saw him in May, so just a few months later?

2 A Correct.

3 Q Okay.

4 A I asked him about standing, and he mentioned ten to 15  
5 minutes again, but would require approximately 30 minutes a change a  
6 position before attempting to do that same degree of standing.

7 Q Okay.

8 A He also estimated his ability to walk at 15 to 20 minutes,  
9 requiring at least 15 to 20 minutes of change of positioning before  
10 attempting to walk again for that amount of time.

11 Q What happens if someone, Mr. Yahyavi's been in court and  
12 he's walked in here, but he's had, you know, when he's been in court he  
13 sat for an hour or so at a time before we have a break. I mean  
14 somebody's who's got a chronic spinal condition, what effect does that  
15 sitting, from your observation as a vocational expert, does that have on  
16 them?

17 A Well, it's different with every person, but with Mr. Yahyavi, I  
18 constantly saw him getting up, he also has a left upper extremity, so  
19 getting up for both his neck and his left upper extremity problems,  
20 rubbing his left upper extremity problem that is part of what we're  
21 talking about today. But also, moving his neck, sitting on the edge of his  
22 chair in this type of fashion in order to maintain an erect spinal posture,  
23 which takes the pressure off something instead of slouching or having a  
24 head bent downward or upward.

25 I also observed him while he was taking the testing. I have a room

1 where I sit them with their back to me and I have these blinds, venetian  
2 blinds, and I always leave them partially open, so when they're testing, I  
3 can go behind the blinds and watch what their behavior is. I think it's  
4 important to do that when someone's not knowing that someone's  
5 looking, and he did the same thing. He had to get up, he had to move  
6 his neck around, he had to sit on the edge of his chair again, and it was  
7 very in concert with what I saw in my office.

8 Q Now, I'm on Page 16 of your report and I want to -- what did  
9 Mr. Yahyavi describe how his neck pain, his level of pain, and how it  
10 affected him? You can just summarize what he reported to you  
11 that -- and what you recorded that day. Page 16.

12 A Yeah. He said that the average pain over a week's time  
13 coming from his neck on average ranged seven to eight. And he said the  
14 worst pain level would get eight to nine, so he was using a range there.  
15 And he said the lowest would be five to six. He described that the pain  
16 from his neck included constant shooting, numbing, and a crawling type  
17 of sensation.

18 Q Why is it important for you, as a vocational counselor, to  
19 understand the nature and extent and the quality of somebody's pain?

20 A Because that gives me an understanding of what they're  
21 capable of dealing with, what they're capable of putting up with, and  
22 what they're not capable of putting up with. That's why I try to get a  
23 really detailed idea, and that's why I also ask them what kind of  
24 movements or motions tend to make worse that body part, when you  
25 do -- tell me what you do that could make that worse, so I can use that

1 later in plan development.

2 Q Okay. And with regard to -- did he -- I'm on to Page 17 of  
3 your report now. What -- if you could summarize, what sort of  
4 difficulties, was he just having -- with just basic daily living activities that  
5 we just kind of take for granted each and every day?

6 A Housecleaning, repairs, maintenance of his home. I took a  
7 very long detailed, I call it Addendum A, it's a separate form that I use to  
8 list all the types of things that he was having his son come in and do.  
9 His son was evidently very helpful to him, he reported to me, and his son  
10 would take up a lot of the household duties that he was unable to do or  
11 had great difficulty doing under duress.

12 Q Okay. Now, you also, in one of your sections of your report,  
13 I'm on Page -- the bottom of 17. Are you there with me, Mr. Spector?

14 A I am, sir.

15 Q I want you to have this firmly in mind.

16 A Yes.

17 Q It's an emotional and kind of a psychological kind of a  
18 discussion. Did you ask him how he was feeling about, you know, his  
19 injuries and the effect on his life?

20 A Well, absolutely. To me, that's very important. Sometimes  
21 we get people that are at a point where it's so severe that I call the  
22 attorney up and I say listen, if at all possible, can we get this person into  
23 a psychologist to help him deal with these issues because he's having a  
24 hard time, or she, dealing with these issues on their own.

25 Q Yeah. You know, one of the things I didn't ask, but I do want

1 to ask you now, have you performed permanent total disability  
2 assessments for injured workers through the workers compensation  
3 system in Nevada before this?

4 A Many.

5 Q Okay. And have ever even had to defend any of your  
6 opinions regarding your -- an injured worker's determination by you,  
7 vocationally, that he's disabled -- total disability assessment?

8 A You know, I'm very proud that we've never ever, not even  
9 once, had to go to a hearing to defend our opinion regarding whether  
10 someone is permanently and totally disabled or not.

11 Q Okay. And what 's -- what did Mr. Yahyavi, he told you, you  
12 know, the things that affect him that are discouraging and depressing,  
13 what did he tell you about his emotional state caused by these injuries  
14 we're talking about?

15 A Well, he admitted that he's having tears several times per  
16 week, and it's difficult for men, especially men of various cultural  
17 derivations, to admit that type of emotionality and sadness. He had also  
18 lost his father, too, so anyone, of course, would be relatively sad about  
19 that.

20 But the thing that was most impressive to me is this gentleman  
21 loved this business. He loved it no matter what end of it he was in,  
22 whether he was selling, whether he was managing, whether he was  
23 teaching people how to sell, working as a sales mentor to young  
24 associates. He just loved it, and he loved climbing up that corporate  
25 ladder and felt like at one day he would be a general manager of a



1 dealership.

2 But he also felt very down that he was now becoming a burden to  
3 his family, having to ask his son to help him with things that he normally  
4 would have no problems with.

5 Q Okay. And I want to ask you now looking forward, about  
6 thoughts and consideration about being anxious. Indicated I worry  
7 whether my health and condition will improve or whether it will worsen  
8 over time. These types of worries about, you know, being dependent,  
9 worrying about health. How does that effect someone's employability?

10 A Well, when you're -- when you're worried, depression and  
11 anxiety are like two sides of one coin. They're very related, although  
12 they're very separate. So, anxiety is worrying about how things are all  
13 going to turn out, and we all do that every night, I think, most of us. We  
14 lay in bed for a few minutes and worry how that situation that's been  
15 bothering us all day is going to play out eventually and worrying whether  
16 or not you're going to get worse, have to have more surgeries, have to  
17 have more pain, be less dependent, ask for greater help from your  
18 family. These are all very burdensome issues that stay with us and that  
19 we're not proud of.

20 Q And do you think that effects the psyche, if you will, of  
21 someone who's been injured like this, about their ability return back to  
22 work and be, you know, to any level serve of significant function?

23 A Yes, I think it has an effect on everything we do. It effects our  
24 social life, as well as our vocational life, and how we perform socially  
25 and perform occupationally as well.

1           Q     Now in here, did Mr. -- did you ask Mr. Yahyavi, not only did  
2 he, you know, how was he doing at work before this, but did you also  
3 ask him, like what are things, what did you do outside of work that you  
4 enjoyed? Did he talk about an active life, living an active lifestyle?

5           A     Yes.

6           Q     Okay. I'm on Page 19. You kind of have to see, you're kind  
7 of summarizing some of the background at the top of the page.

8           A     Yes. I always ask what their hobbies were and things of that  
9 nature. And let's see here. His interest in hobbies were very active. He  
10 was an active kind of guy. He was into snow skiing, he was into boating,  
11 horseback riding, gardening, working out around his home, and family  
12 activities were, of course, important to him.

13          Q     Okay. In addition to the reviewing medical records, did you  
14 also review his employment records and payroll information from  
15 Chapman Dealership?

16          A     Yes. Whatever was forwarded to me in that regard I  
17 reviewed.

18          Q     Okay. And do you also -- did you also look at his tax  
19 records?

20          A     I did.

21          Q     Okay. So you had a pretty good understanding of his  
22 earnings, right?

23          A     Yes, sir.

24          Q     Okay. And I want to talk about something, as we kind of  
25 move forward here, about something -- earning capacity. Are we going

1 to -- did you form opinions regarding whether there's been a loss of  
2 earning capacity for Mr. Yahyavi?

3 A I did.

4 Q And does Mr. Yahyavi, based on your understanding of  
5 analysis of this case, meeting with him and testing him, does he have  
6 any earning capacity any longer?

7 A Mr. Yahyavi had a earning capacity of that of a sales  
8 manager. He rose to the ranks of being a sales floor manager to mentor  
9 other salesmen, to assist in closing deals, and his earning capacity would  
10 be commensurate with, or that of what a sales manager would normally  
11 be expected to earn.

12 Q Okay. What is earning capacity?

13 A Earning capacity, I put in my report two different definitions  
14 of earning capacity to help the Court, the trier of fact, understand. So,  
15 vocationally, earning capacity is said from Roger Weed and Tim Fields,  
16 that earning capacity is related to the notion of lost future earnings  
17 related to the client's reasonable potential to earn.

18 Q Okay.

19 A Reasonable potential to earn. I also put in a legal term,  
20 because we're dealing with attorneys in the courtroom, so I wanted to be  
21 clear for attorneys. In Black's Law Dictionary, which is a legal source of  
22 information, they say, a person's ability to earn money, given their  
23 talent, their skills, their training, and their experience, lost earnings are  
24 defined as wages, salary, or other income that the person could have  
25 earned if she or he had not lost a job, not suffered a disabling injury, or it

1 may not have died. God forbid. There could be past lost earnings and  
2 there could be future lost earnings, both of those are subsets of lost  
3 earnings.

4 Q Okay. And did Mr. Yahyavi, you know, past would obviously  
5 mean from the date of the accident until today, and the future would be  
6 from today -- you know, from today in court or the end of this case, for  
7 the rest of his work life?

8 A That's correct.

9 Q Okay. And when you reviewed his tax returns, and you  
10 understood the nature of the work he was doing at Chapman, as a floor  
11 sales manager, what was your understanding of his earnings history?

12 A Oh, he did very well. He had years where he made over  
13 \$150,000. In fact, up to \$178,000 on one year.

14 Q Okay.

15 A And I believe the year of injury, he was on track to do well,  
16 he told me. I don't -- I'm not sure exactly how well, but --

17 MR. KAHN: Your Honor, sorry, if the witness is done, I would  
18 ask to approach briefly.

19 THE COURT: Go ahead.

20 [Sidebar begins at 10:32 a.m.]

21 MR. KAHN: I think the \$178,000 are included with \$50,000 for  
22 the son, and everybody's agreeing what's backed out of his taxes in the  
23 supplement. So I don't think that number's correct.

24 MR. PRINCE: Okay. Whatever, it's what he's got written in  
25 that, but you're right, I'll have him deal with it.

1 MR. KAHN: Yeah, let's clear it up because that's a higher  
2 number.

3 MR. PRINCE: That's after anyway. I'm not clearing anything  
4 up [indiscernible].

5 [Sidebar ends at 10:33 a.m.]

6 BY MR. PRINCE:

7 Q Okay. And then after this collision in 2015 and 2016, did his  
8 income drop significantly?

9 A Yes, it did.

10 Q Okay. And let's just look at the 2012 income, and I want to  
11 show you, Mr. Spector, I'm going to show you just the, basically, the  
12 payroll stub, just -- it's directly from his employer.

13 MR. PRINCE: It's part of Exhibit 155 for our record. Bate  
14 number 1354.

15 THE WITNESS: Is that --

16 BY MR. PRINCE:

17 Q I will put that on the monitor for you. Yeah, if we could put it  
18 the -- this is a payroll stub and it says draw, and then commission sales.  
19 Do you see that?

20 A Yeah.

21 Q Draw of \$5,000?

22 A I do.

23 Q Okay. And then commission sales. It looks like he's  
24 receiving some draw against -- and then taken out of his commissions,  
25 right?

1           A     Correct.

2           Q     But the year to date is what I want to focus on. By mid-  
3 December 2012, the year to date earnings through Chapman were  
4 \$159,714.90.

5           A     And that's through what date?

6           Q     Through December 15th, 2012, six months before this  
7 collision, just a year a before. Okay?

8           A     Yeah.

9           Q     And when you did your projection and your estimate of what  
10 Mr. Yahyavi's pre-injury capacity was, what was your conclusion?

11          A     Well, I wanted to present something that would be fair, and  
12 representative of what sales managers earn in the Las Vegas area,  
13 specifically Las Vegas/Henderson area. Mr. Yahyavi's earnings income  
14 information was also filled with times away from work, he took times off  
15 a month, here, there. He was also moving back between sales and  
16 management.

17          So, in order to be fair, in order to fair, I thought it would be prudent  
18 to use the occupational employment statistics from the United States  
19 Bureau of Labor, representative of the Henderson and Nevada area, and  
20 the Las Vegas area, for what sales managers earn. And Mr. Yahyavi was  
21 clearly in the 90th percentile, having worked in this field for over 30  
22 years, so I used what the Bureau of Labor Statistics Survey indicated.

23          Q     And what did -- what was your labor statistics indicate for  
24 just earning capacity before this collision occurred, based upon  
25 your --

1           A     \$163,650.

2           Q     Okay. And according to -- that's just using governmental  
3 statistics, right?

4           A     Yes, sir.

5           Q     Why did you select the 90th percentile of those statistics for a  
6 salesman?

7           A     Well, they're very commensurate with the money that Mr.  
8 Yahyavi has made, as it looked like he earned more than that on  
9 occasion, and it's a survey taken by the Bureau of Labor Statistics of our  
10 specific metropolitan area here in Las Vegas/Henderson.

11          Q     Okay. And here, we have the statistics, but also we have the  
12 payroll stubs ending in mid-December 2012, of \$159,714. Is that  
13 commensurate not only -- is that commensurate with the governmental  
14 statistic that he was actually doing that?

15          A     Exactly.

16          Q     Right. So do you feel comfortable that that's a -- it's fair and  
17 representative of what his true capacity was, approximately \$163,000?

18          A     Absolutely, I feel that way or I would not have made that my  
19 opinion.

20          Q     Okay. Looking at -- I want to show you now the payroll stub  
21 ending June 15th, 2013, just two days after this collision, okay?

22          A     Yes, sir.

23          Q     That's also part of Exhibit 155, 1370.

24               MR. PRINCE: If we could just --

25 BY MR. PRINCE:

1 Q And you have in mind, Mr. Spector, that this collision  
2 occurred on June 19th, 2013, okay?

3 A Four days later.

4 Q Right. And his year to date pay as of June 15th was almost  
5 \$69,000 just through -- very basically six-and-a-half months. Do you see  
6 that? Not even -- five-and-a-half months, you see that?

7 A I do.

8 Q And had he continued on that path, would he be at his  
9 capacity of earning approximately, just assuming the State, consistent  
10 with them, of approximately a hundred-sixty-plus-thousand-dollars per  
11 year?

12 A I think absolutely yes. The first time I saw that, it's very  
13 impressive.

14 Q And so when you're talking about your -- that the earning  
15 capacity, just using governmental statistics outside of his own job  
16 performance, is his own performance consistent with the data that you  
17 actually obtained?

18 A Yes.

19 Q Okay. And when you were speaking with Mr. Yahyavi, why  
20 did he tell you that over time he eventually is continued -- his condition  
21 continued to deteriorate, and he could no longer work. What did he tell  
22 you?

23 A Could you ask that again?

24 Q Sure. Why did Mr. Yahyavi tell you he had to stop working?

25 A Oh, because of the physical nature of what he was dealing



1 with with his neck and shoulder and headaches.

2 Q Okay. And do you think it was a reasonable decision on his  
3 part, from a worker's standpoint, hey, it's becoming too much for me, I  
4 can't do the job anymore in the way I want to do it?

5 A Yes, and if you notice in my first report, before getting Dr.  
6 Oliveri's final decision, and we knew that Dr. Oliveri held out a period of  
7 time that he wanted more information in order to be most assured of his  
8 opinion regarding Mr. Yahyavi, I felt, in my meetings with Mr. Yahyavi,  
9 prior to knowing Dr. Oliveri's final opinion, I felt very strongly that this  
10 gentleman is in significant pain and would not be able to continue his  
11 work.

12 Q Is this before even reviewing Dr. Oliveri's reports?

13 A Before reviewing Dr. Oliveri's final decision regarding his  
14 choice of Scenario 1 or 2.

15 Q Right. And I want to show you -- it's part of Exhibit Number  
16 155. It's a summary of earnings, like bi-weekly earnings for Mr. Yahyavi,  
17 okay?

18 A Okay.

19 MR. PRINCE: 2065. It's been admitted into evidence. It's a  
20 summary.

21 BY MR. PRINCE:

22 Q And I want to focus in on kind of just the trend of what was  
23 happening with him in 2016, because he was still working until  
24 September, okay, Mr. Spector?

25 A Yes, sir.

1 MR. PRINCE: If you can make that photograph?

2 BY MR. PRINCE:

3 Q So, it looks like in February, or, excuse me, January, he had  
4 earned \$5300, and in March, no earnings in February, but then in March,  
5 he had earned 5,000 and 2,000, and he kind of -- it seems like he's going  
6 along and all of a sudden, by around August, you see like his numbers  
7 start to go down to, by August 3rd, \$271.73. Do you see that?

8 A Yes.

9 Q And as the next payroll period, August 10th, \$176, August  
10 17th, \$115.00, August 24th, \$172, and continuing on through the end,  
11 basically with minimal income through the end of September 2016. Do  
12 you see that?

13 A I do.

14 Q Is that trend consistent with what Mr. Yahyavi was reporting  
15 to you, that because of his physical problems, his neck, head and arm,  
16 that he was just simply no longer able to do the job effectively?

17 A Yes. Not only was he very discouraged about his pain, the  
18 ongoing pain levels he was experiencing, but I'm sure he was most likely  
19 discouraged about being there and trying to do his job that he's always  
20 done, but not having the same positive results that he had been used to.

21 Q And preliminarily, well, you also did some testing on him  
22 that day, right?

23 A Yes, sir.

24 Q And how long -- what did the testing consist of? You can just  
25 summarize that for me?

1           A     It's a battery of tests that measure three areas. So there is a  
2 Battery to measure what people are interested in. It's very important to  
3 find out what holds someone's interest.

4           Number 2, work values. How does your personality fit in with  
5 various scenarios at work? We can be interested in something, but if the  
6 atmosphere at work is not conducive to our temperament and our  
7 personalities, then the work could be short lived.

8           Thirdly, we test their aptitudes, and aptitudes are more about our  
9 skill levels, how good are we at mathematics and spatial understandings  
10 and grammar, ability to write a report and being able to read and answer  
11 questions about what we read and being able to quickly see the  
12 difference in numbers, and so on, and also manual speed indexexterity.

13           So there's a number of aptitude in the type of testing that goes on  
14 as well. So those are the three subtests that we provide.

15          Q     And how long would -- does the testing take?

16          A     About two-and-a-half hours.

17          Q     Okay. So it's a multi-hour test?

18          A     Yes.

19          Q     Okay. So you review medical records, you meet with Mr.  
20 Yahyavi, he does several hours' worth of testing, right?

21          A     Yes.

22          Q     All right. And then what -- in your note. I'm looking at them,  
23 I'm on Page 27. And it says Mr. Yahyavi told you about -- he had been  
24 diagnosed with neuropraxia, a nerve injury following his spine surgery.  
25 Do you recall that?

1 A I do.

2 Q Right. And was the neuropraxia and the problems with his  
3 left arm, was that effecting his ability, you know, his abilities day to day,  
4 sitting, standing, walking, just overall --

5 A He was very, very upset about that left arm.

6 Q Okay. And you heard yesterday Dr. Oliveri talking about the,  
7 not only the limitation regarding the neck, but also the left arm and the  
8 atrophy, loss of grip strength and the things that he continues to go  
9 through?

10 A Exactly.

11 Q And was he -- your note says that -- it says it appears to this  
12 rehabilitation counselor that Mr. Yahyavi does not have the physical  
13 integrity to allow him to comfortably alternate between sitting and  
14 standing due to the unrelenting pain he's currently experiencing with  
15 regard to the neuropraxia and other symptoms he's facing. Why did you  
16 feel that way, Mr. Spector?

17 A Where are your reading from? I would like to look at that as  
18 well.

19 Q I'm on Page 27.

20 A Yes, and what --

21 Q In the post-injury earning capacity section.

22 A Okay.

23 Q And it says that as it stands at this point.

24 A How far down is it?

25 Q It's about midway. Just read that section and tell me when

1 you're done. Read the whole section and tell me when you're done.

2 A Okay.

3 [Pause]

4 A Okay. So, in getting up and down, we know that we usually  
5 just don't stand up by pushing down on our feet, that we use our arms to  
6 help us if we're fortunate to have an armchair to help push us up. So, all  
7 the movements we make, both entail our lower extremities, of course,  
8 but also involve our upper extremities. And watching him get up those  
9 four times that we met, there was discernible pain coming from that area  
10 to which he was having a very difficult time and visibly having a very  
11 difficult time with that left shoulder.

12 Q Okay. And in your mind, did that effect his ability to return  
13 and withstand any type of meaningful fulltime gainful employment?

14 A It certainly added to it.

15 Q Okay. Now at that point in, say May of 2018, had -- did Dr.  
16 Oliveri have two potential scenarios for Mr. Yahyavi?

17 A Yes.

18 Q Vocationally?

19 A He did.

20 Q Okay. What were those scenarios?

21 A The Number 1 scenario was that it may become true that Mr.  
22 Yahyavi may not develop or demonstrate the physical abilities and  
23 functionality to be able to work on any part-time or fulltime basis  
24 whatsoever. That's why Dr. Oliveri wanted a period of time to  
25 reevaluate him after various circumstances occurred, so that he could

1 make sure that scenario Number 2 could not or would not or could  
2 occur, which was him working perhaps a part-time or half-time position  
3 in what would be a sedentary type of work description.

4 Q Right. So as of May 2018, because he just had the surgery  
5 and he was having the neuropraxia problems, were pretty severe at the  
6 time, there's two scenarios. One is he's totally vocationally disabled,  
7 right?

8 A Correct.

9 Q The second scenario was that maybe, if his condition  
10 improves with time, he may be able to go back to some part-time  
11 employment in a sedentary type of a job?

12 A That's correct.

13 Q Okay. Were you confident when you met with him in May of  
14 2018, did he ever -- he would ever be able to return back to any  
15 meaningful part-time employment?

16 A Well, I put down on my report, and it was just a strong  
17 feeling I had, that this gentleman was beyond that and that it may end up  
18 being that scenario Number 1 was what would finally be the reality of his  
19 future.

20 Q Right. Did you ultimately, I mean after time went on you  
21 stayed involved and continued to receive information, right?

22 A I did.

23 Q And you continued to receive supplemental reporting and  
24 medical records, correct?

25 A That is correct.

1 Q In addition to the reports from Dr. Oliveri, right?

2 A Yes, sir.

3 Q And it -- at some point, did Dr. Oliveri reach the conclusion  
4 that Mr. Yahyavi was just simply no longer physically capable to return  
5 safely back to the workplace?

6 A That was the case, yes.

7 Q And do you take that decision-making lightly, whereas a  
8 vocational expert that, you know, letting somebody know that it's my  
9 opinion that you're now completely vocationally disabled. Do you take  
10 that lightly?

11 A I would -- if I was to rank the most difficult parts of my work,  
12 of my job, it's when I have to ask the examinee to come back to my  
13 office, go over their testing with them, but also share with them the  
14 ultimate medical opinion. Sometimes we're fortunate and it's opinion  
15 that can work and we draw up a vocational plan, but when I have to look  
16 them in the eye and tell them that a physician whom they respect and  
17 are counting on has made a decision that they are not functionally able  
18 or able to be expected to be able to carry out fulltime gainful competitive  
19 duties again for the remainder of their life. It's devastating to that  
20 person, especially when working holds such a high degree of esteem for  
21 them and is a great source of personal self-esteem, not even taking  
22 account money.

23 Q And is there a certain stigma associated being vocationally  
24 disabled?

25 A I'm sure there is. When people meet you and ask you hi,

1 how are you, what do you do, I mean what do we usually tell them? We  
2 usually tell them what our profession is, and to have to revisit that each  
3 and every time where asked that question, I'm sure it's very painful.

4 Q Now -- well, you did hold out the potential, you just  
5 discussed some options that he might be qualified for, assuming he can  
6 come back with some part-time work. I guess, do you agree with Dr.  
7 Oliveri's final conclusion that he's vocationally and totally disabled from  
8 returning safely back to work?

9 A I did, yes.

10 Q Is that your -- is that your opinion as well? Do you share that  
11 same opinion?

12 A I did, and I even had that opinion prior to hearing Dr. Oliveri's  
13 final opinion, but, of course the doctor's final opinion is what we respect,  
14 what we go on, what we're required to take into account.

15 Q And Dr. Schifini, who was involved in the pain management  
16 and has been involved, and remains involved in Mr. Yahyavi's pain  
17 management, he's also concluded that he's vocationally disabled from  
18 working. So, obviously, you would agree with -- be in agreement with  
19 Dr. Schifini as well?

20 A I would have no reason to disagree with Dr. Schifini.

21 Q Very good.

22 Now, with regard to labor -- not only is only  
23 participation -- well, I need to step back one second. Are you also aware,  
24 Mr. Spector, that Mr. Yahyavi's been found to be permanently and totally  
25 disabled by the Social Security Administration?



1           A     Mr. Yahyavi told me that he had applied for Social Security  
2 Disability, and that, I believe, December of 2017, he received word that  
3 his application, and he told me it was on the first attempt --

4           Q     Okay.

5           A     -- which is highly unusual. On the first attempt, he was  
6 provided with the decision by an Administrative Law Judge of being  
7 permanently totally disabled.

8           Q     Okay. So, not only is it your own opinion, it's the United  
9 States Government's position that he -- that he's totally disabled from  
10 working?

11          A     That's correct.

12          Q     And it's your knowledge and based on your review, all of the  
13 medical records, the evidence in this case, thousands of pages of  
14 records, that it's the neck that's causing the disability and the arm related  
15 issues?

16          A     Primarily, yes.

17          Q     Yeah. And there's no other medical issue causing the  
18 disability, from what --

19          A     Right.

20          Q     Okay. Now do you think that Mr. Yahyavi, based on your  
21 interview with him, the records you reviewed, that he continued working  
22 for more than three years, did it demonstrate that he put forth a good  
23 effort to try to work through this before making the decision to stop  
24 working?

25          A     The answer is yes, and it also, that attitude of his was also

1 demonstrated in him trying to do everything he could not to undergo  
2 that surgery. He did not want to undergo that surgery. He, you know, he  
3 did not want to give up his profession. This gentleman was not going to  
4 go away easily. It meant too much to him. He explained it to me in  
5 detail.

6 It was his -- one of the most important things in life to him was to  
7 continue achieving promotion after promotion and being recognized as  
8 being excellent at his work, such as when he became a salesman at  
9 Chrysler you can achieve. And within five days was noticed as being  
10 suitable for a sales manager position. It meant everything to him.

11 Q And we've talked about, you know, Mr. Yahyavi and his  
12 physical limitation prevent him from going back, you know, safely into  
13 the workplace. You heard that from Dr. Oliveri yesterday?

14 A Yes, sir.

15 Q But also, from an employer standpoint, a prospective  
16 employer standpoint, what concerns would an employer have regarding  
17 hiring somebody who has such limited ability and function abilities, and  
18 with this medical type of condition due to previous injury and disability?

19 A I've done employer services a long time, and workers  
20 compensation, which means we get with the employer and we try to  
21 figure out a way to re-employ that person. It's shameful how many  
22 employers refuse to even participate or contemplate bringing an injured  
23 worker back into their employ. And to think of taking somebody who  
24 has no relationship with a brand new employer and divulge these  
25 restrictions that must be agreed upon before, you can't just be hired on

1 and then -- and then say I have to have all these things. That employer  
2 thinks oh, my goodness, what am I going to have to deal with.

3 Let's see. This person could hurt that particular work comp injury  
4 again and it would be another work comp injury that I have to report and  
5 deal with, or that person could hurt another body part by maybe falling  
6 or having some other type of injury while he's at my employ, or this  
7 person is just going to call in sick a lot because of what's gone on, or  
8 they're going to leave early in the middle of a shift, or, if there's an  
9 emergency or something happens and everyone has to move quickly,  
10 such as in a fire alarm or a fire, that it could pose a hazard or a difficulty  
11 in this person getting out along safely with others. There's so many  
12 things.

13 And the insurance rates, the overall company insurance rates that  
14 insure the other employees. These are the worries, whether rational or  
15 irrational, that employers have that I've had to deal with and listen to.

16 Q Do you also consult with employers, including large  
17 employers, as a vocational rehabilitation counselor?

18 A Yes, Southwest Airlines, Walmart, yes.

19 Q About returning injured workers back to work, how to place  
20 them and implement restrictions that are appropriate for their needs?

21 A We try.

22 Q Now --

23 THE COURT: All right. We're going -- this is a good time to  
24 take a break.

25 MR. PRINCE: Okay.

1 THE COURT: During this recess, you're admonished. Do not  
2 talk or converse amongst yourselves or with anyone else in any subject  
3 connected with this trial, or read, watch, or listen and report of or  
4 commentary on the trial, any person connected with this trial by any  
5 medium of information, including, without limitation, newspapers,  
6 television, radio, or internet. Do not form or express any opinion on any  
7 subject connected with the trial until the case is finally submitted to.  
8 We'll take ten minutes.

9 THE MARSHAL: Please rise for the jury.

10 [Jury out at 10:56 a.m.]

11 [Recess taken from 10:56 a.m. to 11:08 a.m.]

12 [Outside the presence of the jury]

13 THE COURT: I know you asked me yesterday and I don't  
14 know if I directly answered, but you know, we can't go straight through  
15 'til 2:00.

16 MR. PRINCE: No, I understand.

17 THE COURT: Okay.

18 MR. PRINCE: We'll be done with him and then we'll -- I my  
19 next witness and so yeah, I understand. And these guys are --

20 THE COURT: Yeah, these guys are you know --

21 MR. PRINCE: No, no --

22 MR. KAHN: Just --

23 THE COURT: -- county --

24 MR. KAHN: -- so the Court knows, we've worked out -- I think  
25 tomorrow, the Plaintiff's going to start. My doctor, the neurosurgeon is

1 flying in from San Diego, so he will go next, assuming I inherit the case.  
2 And then I have a vocational expert also flying in. Whether or not he get  
3 him on, I believe he is now available to stay over until Monday morning,  
4 so we should have at least a couple experts available as soon as  
5 Plaintiff's done.

6 MR. PRINCE: Yeah, I doubt we get to -- I mean, if you think  
7 Mr. Yahyavi start 9:00, that probably takes the morning -- I don't know, a  
8 decent piece of the morning and maybe you get Tung going. And we  
9 gotta leave -- we're leaving early anyway, so I doubt we'd get to anybody  
10 other than the Plaintiff and Tung tomorrow realistically.

11 MR. KAHN: Just so the Court's clear. Tung is a  
12 neurosurgeon. He's a professor. He's on a committee for --

13 MR. PRINCE: Yeah. We'll get to him. We're going to finish  
14 this. Oh, yeah, yeah. We're -- I'm saying we're going get to him and  
15 finish it. I'm saying we're going to get to him and finish. I'm just saying  
16 there may -- I don't think there's going to be any more time for Bennett.

17 MR. KAHN: Yeah. It may not be, but he'll be sitting here in  
18 case. But Dr. Tung has some kind of convention in Chicago next week  
19 and he's on a committee, so hopefully we get him in and out tomorrow.  
20 I don't see a problem either.

21 MR. PRINCE: No, I don't. I don't.

22 THE COURT: All right.

23 MR. PRINCE: I'm ready, Judge.

24 THE COURT: Yeah. Bring them in.

25 THE MARSHAL: Please rise for the jury.

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[Jury in at 11:13 a.m.]

[Within the presence of the jury]

THE COURT: Please be seated. Parties acknowledge the presence of the jury?

MR. KAHN: Yes, Judge.

THE COURT: Okay.

MR. PRINCE: Yes, Your Honor. Court's indulgence.

THE COURT: Mr. Spector, you're still under oath.

THE WITNESS: Yes, sir.

BY MR. PRINCE:

Q And Mr. Spector, based upon your view of the documents, did you see a consistent decline in the income of Mr. Yahyavi post-accident?

A Oh, yes.

Q All right.

MR. PRINCE: Can we put up demonstrative 61, please?

BY MR. PRINCE:

Q In 2012, the income was \$156,355. In 2013, the year of collision through Chapman, 105,000. A little better the next year, 2014, 123,000, 2015, 97,000, 2016, 55,000 and down to zero.

MR. KAHN: Your Honor, can I talk to counsel for just one second?

THE COURT: Sure.

[Counsel confer]

BY MR. PRINCE:

1 Q So is that reflective of your own analysis, this chart that I  
2 have shown this jury?

3 A Yes. It matches up. It's a typical bell-shaped curve. When  
4 you begin, you start earning more, more, more. And then when an  
5 accident or intervening event occurs, there's where the decline happens.

6 Q Got it. Now, I want to talk about Mr. -- something like work-  
7 life expectancy, okay? Let's leave this here for a moment. We know that  
8 the injury occurred in June of 2013. And so in June of 2013, Mr.  
9 Yahyavi, according to your note, was 51 -- you have this, 51.53 years old.

10 A That's correct.

11 Q I mean, that was actually very precise of you, Mr. Spector.  
12 Okay. And first off, what is work-life expectancy?

13 A Work-life expectancy is what individuals are expected to  
14 remain active in the workforce, had they been either active or inactive  
15 prior and also based upon gender and educational attainment.

16 Q Okay. And in this case, as of the date of his injury, what was  
17 his work-life expectancy?

18 A He had a remaining 14.73 years, approximately 15 years and  
19 that brought him to age 66.26.

20 Q Okay. And then you kind of -- when you rated him -- when  
21 you evaluated him in May of 2018, how old was he?

22 A In 2018 --

23 Q I'm on page 31 of your report.

24 A Yes. Thank you. Yeah. Well, he was the 51 -- I'm sorry --  
25 56.33 from the point that we met.

1 Q All right. And how many -- as of May of 2018, was his work-  
2 life expectancy as of that date?

3 A It was additional 10.9 years, which brought him to 67.23  
4 years of age.

5 Q And where do you get that data that that's his average work-  
6 life expectancy up to 60 -- I'm going to call it 67 years old?

7 A Yeah. This is data is derived from the Markov process of  
8 labor force activity written and authored by forensic economists in the  
9 journal of forensic economics and it is authored by Skoog-Ciecka and  
10 Krueger and it is probably the most widely used peer-reviewed work-life  
11 tables being used by forensic experts in my field.

12 Q All right. Is there any reason to -- medically to believe, other  
13 than this motor vehicle accident, that Mr. Yahyavi wouldn't have at least  
14 made it to working until he was 67, his work-life expectancy?

15 A No reason that I am aware of.

16 Q All right. And he enjoyed his job, right?

17 A Very much.

18 Q He worked there for six years.

19 A Longevity --

20 Q Until he left.

21 A -- at a job.

22 Q And he was passionate about his career?

23 A He was.

24 Q And any -- I mean, people are -- in your experience, are  
25 people generally working longer these days, because they're living



1 longer?

2 A People are working longer, and you look at different careers  
3 like attorneys and physicians and professional people, especially and  
4 folks that are able to make a good living have found a way to do their job  
5 in a way that makes them feel good about what they do and derive great  
6 benefit all at the same time.

7 Q And work well beyond the average work life of say 67 years?

8 A Often.

9 Q Right. And so when it comes to projecting Mr. Yahyavi's  
10 future income or earning -- excuse me -- future earning capacity loss,  
11 using 67, would you believe that's a -- years-old -- that would be  
12 conservative, based on just the statistical average?

13 A I was just going to say going to say what you just said. It's  
14 the statistical average. Some people work less. Some people work  
15 much more.

16 Q Right. So if Mr. Yahyavi anticipated working into his 70s,  
17 then this would be a very conservative estimate overall?

18 A That would be correct.

19 Q Okay. Now, we're going to have next, Dr. Mike Clauretie,  
20 who's an economist from UNLV. Are you familiar with Dr. Clauretie?

21 A I am.

22 Q Have you spoken to Dr. Clauretie about your evaluations in  
23 this case?

24 A I probably did at some point.

25 Q Did you supply him with documents relating to earning

1 capacity, dates of earning, earning loss, those types of things, so he  
2 could perform an economic calculation of what the loss of earning  
3 capacity is?

4 A I did those things, yes.

5 Q Okay. So I want to make sure the jury understands your role  
6 versus what Dr. Clauretie, the economist does. You establish what  
7 someone's earning capacity is, right?

8 A I do.

9 Q And then -- and the work-life expectancy?

10 A Yes.

11 Q Based on all the information you have?

12 A That's correct.

13 Q And then Mr. -- Dr. Clauretie, who was actually a professor of  
14 mine when I was at UNLV as a finance student, he does the calculations  
15 about how much loss there actually is, based on information you supply  
16 him?

17 A He quantifies all of my opinions.

18 Q Okay. So you kind of work hand in hand together?

19 A Exactly.

20 Q You kind of rely on Dr. Oliveri, in part, plus all the other  
21 medical records and then Dr. Clauretie, he in part, relies on the  
22 calculations that you've made?

23 A That is accurate, yes.

24 Q Okay. As you sit here today, is there any additional thoughts  
25 or opinions that you have that somewhere, somehow, some time, Mr.

1 Yahyavi can safely return to the workplace?

2 A I don't think that's at all possible, based upon his ongoing  
3 relentless degrees of pain that he has. I didn't think so after the first time  
4 I met with him, even prior to receiving Dr. Oliveri's final opinion. Just in  
5 speaking with this gentleman, who loved his career, who valued it so  
6 much and the agony that he was sharing with me that maybe he would  
7 have to forgo doing this job of going in every day and assisting people in  
8 purchasing a new vehicle and assisting sales professionals in becoming  
9 the best they can.

10 Q Yeah. I mean, your latest report, March of 2019, just about  
11 six months ago, you noted that he underwent a functional capacity  
12 evaluation.

13 A He did.

14 Q And now a second one. And even though his has some  
15 physical abilities, even with that functioning capacity evaluation, is that  
16 the end of the analysis? If the physical therapist says he's got functional  
17 ability, then he can safely go back to work or is that a physician's  
18 determination?

19 A As I mentioned earlier, it's the physician who provides the  
20 vocational rehabilitation counselor, the floor plan. In other words, the  
21 guideline of what this person is capable of doing. It's not about  
22 obtaining a job. It's not about saying, you know, you're a nice guy. You  
23 can come work for me. It's about the ability to stay and sustain the work,  
24 to be able to be there every day, as the employer expects you to. The  
25 ability to perform and to match the quotas of which an outside candidate

1 would match. That's what complete employment means. And I don't  
2 feel in any way that Mr. Yahyavi has that, based upon his injuries as  
3 described by Dr. Oliveri.

4 Q We have -- it's interesting, in a sense, that we have Dr.  
5 Oliveri, who is both the rating physician and he also decided to work in  
6 this case as an expert witness as well. But he had the unique  
7 opportunity to rate his impairment back in 2015 before any litigation had  
8 been filed. Don't we have -- isn't that kind of unique to this case?

9 A It's unique, period, yeah.

10 Q And have all the opinions that you've described for us in  
11 Court been to a reasonable degree of medical probability concerning  
12 your -- Mr. Yahyavi's inability to return back to work safely and  
13 competitively?

14 A All except, instead of medical, vocational --

15 Q Oh, yeah.

16 A -- probability.

17 Q I'm sorry. I just said -- okay. Thank you --

18 A Yes, sir.

19 Q -- for that clarification.

20 A The answer is yes.

21 Q Is there any medical information that you have that's going  
22 to show any significant improvement over the next nine, ten years, that  
23 would allow Mr. Yahyavi to safely and competitively return back to the  
24 job market?

25 A One of the things Social Security looks at is what's the

1 chance for someone to improve and I didn't see from any physician  
2 involved in this case from beginning to end who stated that this  
3 gentleman's condition is expected to improve in any way, shape or form.

4 Q Okay. Mr. Spector thank you for your time. I have no  
5 additional questions.

6 MR. PRINCE: I pass the witness.

7 THE COURT: Cross.

8 CROSS-EXAMINATION

9 BY MR. KAHN:

10 Q Good afternoon.

11 A Good morning.

12 Q Sorry. Other than the deposition that I took of you in this  
13 case and sitting in the courtroom today, you and I aren't otherwise  
14 acquainted, correct?

15 A Correct.

16 Q Without putting too fine a point on it, you are being paid for  
17 your time in this case, including your testimony you give today, right?

18 A Yes.

19 Q And you are not acting in this case as any kind of  
20 independent workers compensation representative. In other words, your  
21 tasks and activities are solely as an expert witness for the Plaintiff in this  
22 case, right?

23 A That is correct.

24 Q Can you -- do you have any explanation -- remember Mr.  
25 Prince put up the chart with the different incomes and it starts going

1 down. And then he also talked to you about the paystub incomes and  
2 the annual incomes. And it was identified that in the middle of 2016, the  
3 pay of the Plaintiff started being drastically and significantly reduced.  
4 And without putting too fine a point on that one, without the records, do  
5 you generally recall that testimony, that something -- whatever -- in the  
6 middle of 2016, the Plaintiff's earnings went way down?

7 A Yes.

8 MR. KAHN: And can we put up -- I think it is exhibit -- I think  
9 it's 103. Is that correct? And then it will P699. This is an admitted record  
10 that we discussed yesterday.

11 BY MR. KAHN:

12 Q And so this is from Desert Valley Therapy. It's dated January  
13 18th, 2017. Do you know whether you reviewed any records from that  
14 facility or not? You may not have, but --

15 A Desert Valley Therapy?

16 Q Yeah. If not, it doesn't matter too much.

17 A I don't believe I did.

18 Q Okay. I'm not going to ask you about the rest of the  
19 treatment, but this record, which is admitted, says, "Seems to indicate  
20 that in January of 2017, the middle of January, there was some type of  
21 exacerbation of the Plaintiff's situation six or seven months ago.  
22 Exacerbated six or seven months ago. Do you see that portion?

23 A I do.

24 Q I do. And do you have any explanation for any type of  
25 change to the Plaintiff's condition in the middle of 2016, because this is

1 now -- it now appears to be documented in at least one medical record  
2 and I think your testimony is that's the same timeframe, middle of 2016,  
3 that his income took a nosedive. So the question is, do you know what  
4 happened in the middle of 2016 to alter his ability to earn money?

5 A Well, I believe he left the workforce.

6 Q Well, he didn't leave until September, right?

7 A Correct.

8 Q So this would reference -- that six or seven months before  
9 January -- this is referencing the late summer, so it would reference  
10 before he stopped working, correct?

11 A I'm sure it would reference up until, I'm thinking.

12 Q Okay. But do you have any explanation about what this is  
13 referring to, that there's an exacerbation? What changed with the  
14 Plaintiff or do you not have any information about that?

15 A I don't have any information about any type of intervening  
16 event, other than leaving the workforce. That's a pretty big intervening  
17 event.

18 Q But did he explain to you why he was able to work -- he  
19 worked for three plus years after the accident, correct?

20 A Yes.

21 Q And he made in excess of \$100,000 for at least one or two of  
22 those years, right?

23 A Yes.

24 Q And so did he explain to you what changed between working  
25 for the three years until at some point in 2016, he stopped working?

1 A It was purely physical.

2 Q Did he explain that to you, though or did he relate that to  
3 you?

4 A Yes. He explained it in the same way that I heard yesterday  
5 from Dr. Oliveri. The pain became unrelenting and at some point, pain  
6 and quality of life supersedes the money factor and if your life is just too  
7 difficult in the way you're living it, then a change needs to be made.

8 Q Now, when is it that you think he quit his job?

9 A September.

10 Q And had he ever quit his job between the time of the accident  
11 and the September time of 2016 when he quit?

12 A Yes. He quit for a short time, then came back. And the  
13 employer once again asked him to reassume a sales management  
14 position, please.

15 Q How soon after the accident did he quit his job initially? And  
16 feel free to look at your records and your information. I'm fine with that.

17 [Witness reviews document]

18 THE WITNESS: He took a month off in July of '13.

19 BY MR. KAHN:

20 Q Okay. So within a couple weeks of this accident, within  
21 approximately a month or a couple weeks, he quit his time and took time  
22 off?

23 A My understanding is he left the job and they cajoled him  
24 back, saying we need you and we'd like to -- we'd like you to reassume a  
25 management position. And he was out again for another four to six



1 weeks in '14.

2 Q That was for surgery related to an unrelated body part,  
3 correct?

4 A Correct.

5 Q So that's not at issue in this case?

6 A Yes, sir.

7 Q And in fact, while we're on that, before I get to this other  
8 exhibit, that unrelated body part is actually part of his Social Security  
9 disability determination by the Administrative Law Judge, is it not?

10 A I haven't seen any of that paperwork, so I'm not able to assist  
11 you with answers on that.

12 Q Okay. Have you ever served as an advocate, a non-attorney  
13 advocate for people in the Social Security system?

14 A I have not worked as vocational consultant in the Social  
15 Security system.

16 Q So just to be clear --

17 A I'm sorry.

18 Q -- I think Mr. Price had you express some opinions about  
19 what caused the Plaintiff to receive disability from the federal  
20 government and I think your opinion was -- or your testimony was,  
21 rather, that it was related to his neck, correct?

22 A Yes.

23 Q Are you aware whether or not there were other body parts or  
24 other physical issues, or medical issues involved in that decision?

25 A No, because I have not seen the paperwork, so I'm not able

1 to answer. Your previous question -- I -- when I do permanent total  
2 disability assessments, often those assessments are utilized and  
3 forwarded to the Social Security Administration when somebody is  
4 applying for Social Security disability.

5 Q Okay.

6 MR. KAHN: Can we put up -- I'm going to put up Exhibit 114,  
7 Bates Number P1371.

8 BY MR. KAHN:

9 Q And have you -- do you know, if you've seen this before?  
10 This is a record from his employer, Chapman, so if you've seen the  
11 Chapman records, you've likely seen this or had access to it.

12 MR. KAHN: And can we blow up the date up here? Actually,  
13 no we better back off because I think -- oh, that's fine. That's fine.

14 BY MR. KAHN:

15 Q Do you see that date, June 28, 2013?

16 A I do.

17 Q Is that consistent with your understanding that roughly nine  
18 days after this car accident the Plaintiff quit his job?

19 A Is it consistent with, I'm sorry.

20 Q With what you said that the Plaintiff, I think you said July,  
21 that was June, were you aware before today that the Plaintiff quit his job  
22 nine days after the accident?

23 A I remember seeing that he left prior and he quit. I'm just not  
24 sure about the dates.

25 Q And your testimony is that he very much tried to keep

1 working after this accident and did the best he could, correct?

2 A That's just his general attitude.

3 Q But again, your written reports didn't reference the fact that  
4 he quit nine days after the accident prior to today, correct? Is that true?

5 A It may not have -- I may not have noticed that and therefore  
6 not included it in my report.

7 Q I'm going to back up to some of the general things you spoke  
8 about with Mr. Prince. One of the things when you first started testifying  
9 was you were explaining to the jury, your profession should not be  
10 confused with an occupational therapist. Do you recall that?

11 A It often is. That's why I made that comment, yes.

12 Q And when you referenced the occupational therapist, you  
13 said that they worked in hospitals, which is true, but that's something  
14 you said, correct?

15 A Yes. I offered that as an example of where they work.

16 Q But occupational therapists also work outside of hospitals,  
17 outside of the hospital settings as well, right? They have them here in  
18 town what used to be Health South. They have them at physical therapy.  
19 There are several places where you can go outside of the hospital setting  
20 and get occupational therapy, right?

21 A That's correct.

22 Q And can you explain to the jury rather what an occupational  
23 therapist does, what their job is briefly?

24 A Yes. Occupational therapy are therapists versed in assisting  
25 someone who may have just come out from an acute hospital stay, for

1 example, and they need help with learning how to darn their socks or put  
2 on shoes or feed themselves or clothe themselves or even transfer from  
3 a bed to a wheelchair or from a wheelchair onto a toilet, learn how to  
4 perform hygiene issues in the bathroom and do various activities of daily  
5 living that may be physically difficult for them.

6 Q And just to be clear, in the six plus years since this accident,  
7 Mr. Yahyavi, to your knowledge, has never gone to such a person or  
8 never visited an occupational therapist, correct?

9 A I'm not sure about that. I don't recall seeing any notes of that  
10 nature.

11 Q And let me make it very clear. As far as you know based on  
12 all the records you reviewed of the vocational expert for the Plaintiff, you  
13 haven't seen any record, not a single one, where the Plaintiff went to an  
14 occupational therapist to try to work with him to assist him in his work  
15 life, correct?

16 A I've got no independent recollection of that.

17 Q Okay. And that's one thing that an occupational therapist  
18 could have done, at least years ago when he was still working, what  
19 would have been -- he could have worked with him about body  
20 positions, reduction of pain, trying to figure out what might be an  
21 accommodation at work, physical limitations and trying to overcome  
22 them or deal with them, that's what an OT or occupational therapist does  
23 in essence, right?

24 A That's some of the many things that they do, correct.

25 Q And do you know whether or not Mr. Yahyavi's employer

1 accommodated any of his physical or work limitations while he was  
2 working for that three years after the accident?

3 A I believe from talking to him is they try to do their best for me  
4 and that's about, you know, all -- we're talking about a gentleman whose  
5 job it is primarily to stand and talk or sit and talk and those are the two  
6 things which are giving him the most trouble physically.

7 Q As of today, do you believe he can do -- he can use a cell  
8 phone without problem?

9 A I haven't witnessed him doing that, but I can't think of any  
10 particular reason that would prevent him from doing so.

11 Q And what about doing squats, physical squats, the exercise.  
12 Do you think he's capable of that?

13 A I don't believe so. I believe the FC second FCE mentioned he  
14 should avoid that.

15 Q You've read the report of the Defense vocational expert,  
16 Edward Bennett, correct?

17 A I did.

18 Q And he's essentially your counter-part on the Defense side,  
19 right?

20 A That is correct.

21 Q And he's expressed an opinion based on the Defense  
22 medical opinion that the Plaintiff can go back to work, right?

23 A Yes.

24 Q You strongly disagree with that? But I'm just saying that's  
25 the Defense expert's position, correct?

1           A     That's my understanding.

2           Q     And is it not correct that a number of times after this  
3 accident, different doctors and/or chiropractors and/or physical  
4 therapists released the Plaintiff back to work in 2013 and 2014 time  
5 period, the first year or so after this accident?

6           A     Yes. During the worker's compensation training, I mean time  
7 period that they were providing him after the service, yes, he recounted  
8 those.

9           Q     And that wasn't just kind of a chiropractors of physical  
10 therapists, they were also medical doctors/physicians that gave him  
11 return to work instructions either without limitations or more frequently  
12 with some kind of limitations, correct?

13          A     Yes, sir.

14          Q     Now, you said you've seen no evidence that the Plaintiff will  
15 ever improve, the situation will never improve medically; is that correct?

16          A     Yes. I've seen nothing. No physician's reports or opinions,  
17 nor have I heard any opinions to that affect.

18          Q     And what have you been told about the potential  
19 implantation of a spinal cord stimulator, if anything?

20          A     I haven't discussed that with anyone. I'm used to persons  
21 that I deal with undergoing trials and undergoing permanent  
22 implantations, but I haven't dealt too much in this case with that  
23 potential surgery.

24          Q     Well, since you've never discussed it with anybody, but since  
25 you've rendered the opinion that he's never going to get better, I'm

1 going to throw a hypothetical at you if you'll allow me. And if for  
2 whatever reason you don't track it, let me know. Assuming  
3 hypothetically that the Plaintiff had a spinal cord stimulator implanted  
4 and assuming also that the spinal cord stimulator was effective in  
5 eliminating or greatly reducing his pain, wouldn't that alter your opinion  
6 that he couldn't go back to work?

7 A If a spinal cord stimulator greatly reduced his overall pain, I  
8 would be highly surprised because I never seen those occurrences. I see  
9 very partial limited and sporadic improvements, but not quite in the way  
10 that you described it. If he had a general and significant reduction of  
11 pain, I would be very surprised.

12 Q And one of the reasons you think you can't work is because  
13 of his ability to move his neck; is that correct?

14 A That as well as the ongoing and unrelenting pain he derives  
15 from that on a daily basis.

16 Q And is there any accommodation that can be provided to  
17 allow him to have a sitting job, a sedentary job where he doesn't have to  
18 move his neck so much?

19 A He would have to have -- and it would be easy to put a  
20 monitor up at eye level, but still, this gentleman is prohibited from  
21 looking down. He's prohibited from looking at papers or keyboard or a  
22 ten key or a mouse pad. And so, if your neck was static in one position,  
23 probably the static nature I'm often told is not healthy as well, I would of  
24 course defer to a physician in that regard. But I don't think the  
25 accommodations would cause his pain to be unrelenting.

1           Q     I'm not asking you about the pain right now. I'm asking you  
2 about are there accommodations that can be rendered to him that would  
3 avoid him having to turn his neck or even as you say with him, for  
4 example, don't they make electric adjustable height desks so that he  
5 could have a standing desk or could sit? He could sit and move the desk  
6 up and down as needed and if he wanted to be at eye level he could  
7 even pile things up and put them on top. Don't they have those standing  
8 electronic desks that you can buy at Office Depo or online for, you know,  
9 \$500?

10          A     Absolutely they do. Absolutely they have desks that can  
11 move. But again, whether he's standing or whether he's sitting, he is in  
12 ongoing unrelenting pain whether he's provided an accommodation or  
13 not.

14          Q     And how do you know that?

15          A     That's the testimony of -- well, that's what Mr. Yahyavi  
16 explained to me in our meetings and that seems to be the testimony of  
17 Dr. Oliveri.

18          Q     Okay. But Dr. Oliveri, you were sitting here for his testimony  
19 yesterday, correct?

20          A     Yes, sir.

21          Q     And you heard him say essentially that pain can't be  
22 measured generally, correct?

23          A     I -- if that's what his testimony was then yes.

24          Q     And so, essentially when you say the Plaintiff is in ongoing  
25 and unrelenting pain, you're taking the Plaintiff's word for that; is that



1 fair?

2 A I did when I met with him and it seemed to coincide with  
3 many medical reports that I've read.

4 Q And again, I'm not suggesting there's anything wrong with  
5 that, but what I am asking you is, you have no way to independently  
6 verify anybody's pain complaints, including Mr. Yahyavi's, correct?

7 A I don't endeavor to verify pain levels.

8 Q What about wearing some kind of lightweight headset and  
9 using like a Dragon software to talk to a computer so he wouldn't have to  
10 type? Let's say he had some kind of job where he had a very lightweight  
11 headset and he had a laptop or desktop and it was on a raised desk that  
12 he could adjust and he could stand up and look straight forward, he  
13 wouldn't have to look side-to-side and he could speak into a microphone  
14 without moving his head and that would create words on a piece of  
15 paper or on an email or whatever it would be, do you think that that,  
16 setting the pain component aside, that that's a possibility for him to have  
17 a workplace accommodation?

18 A All those things you mentioned are wonderful in things that  
19 we try to incorporate in vocational plans, but you cannot set the pain  
20 aside. The pain is there. We cannot pretend that providing  
21 accommodation would erase the ongoing unrelenting pain that he  
22 experiences in both standing and sitting as well as the use of that left  
23 arm.

24 Q And again, going back to the 2016 change, you don't know of  
25 any event, any traumatic event or any other event that occurred in the

1 middle of 2016 that made him go from being able to work and earn over  
2 \$100,000 a year to suddenly not being able to work; is that correct?

3 A I'm not aware of any specific intervening event.

4 Q And he was under medical treatment on and off between the  
5 accident and that period of time some three years later, correct?

6 A That's my understanding.

7 Q Now, you are attributing to the Plaintiff a -- you're putting  
8 him in a category using statistics of being a sales manager, correct?

9 A Yes, sir.

10 Q And he was at the 90th percentile. You believe that was the  
11 appropriate level to place him at, correct?

12 A Oh, absolutely. This is a gentleman who had been in his  
13 career for over 30 years who had worked at almost every position you  
14 can in the car business. He excelled at every position. He was given  
15 promotions at every position. He earned greater and greater money at  
16 every position. He even owned his own car lot and financed the  
17 purchasing of cars for himself and other dealers.

18 So, he was working in every capacity in that field for over 30 years.  
19 So, I think it's only fair that we compare the 90th percentile of earnings  
20 to his earning capacity.

21 Q And that decision of yours or the statistical item you're using  
22 is based on what's called a OES Survey; is that correct?

23 A Yeah. It's the Occupational Employment Statistics that are  
24 produced by the Bureau of Labor Statistics from the Department of  
25 Labor.

1 Q Those specific statistics, the one you're looking at for sales  
2 manager that you're classifying him as, those include things like  
3 assigning sales territory to sales personnel, correct?

4 A Yes.

5 Q That's something he never did at the Chapman Dealership,  
6 right? He didn't give people sales territories?

7 A He might have said you're over there in the used car lot, you  
8 I want to stay with these vehicles over here. You're going to work  
9 indoors in the show room. As far as -- other than that, I don't know.

10 Q So, you went under the OES Survey for the Occupational  
11 Employment Statistics, you would interpret that as assigning a sales  
12 territory would be telling another salesman under him to go and stand in  
13 a certain part of the lot and that's a territory?

14 A I'm saying it's the type of thing that's synonymous with that  
15 type of job duty.

16 Q What about -- it also includes analyzing sales statistics to  
17 formulate policy and to assist dealers in promoting sales. Do you have  
18 any information he ever did that?

19 A Oh, did sales reports, absolutely.

20 Q What about formulating policy?

21 A That's I'm not sure about.

22 Q Another part of that as I understand it is tricks production,  
23 simple vocation, and standardization to eliminate unprofitable items  
24 from sales lines. Do you think that Mr. Yahyavi had any input into telling  
25 Chapman to stop selling certain new or used cars based on their lack of

1 profitability?

2 A No. And by putting him in and suggesting that his earnings  
3 are compensatory with the OE statistics for sales managers, it's not  
4 saying that he has to participate in every job duty to which the dictionary  
5 of occupational title lists for sales managers. It just means that that  
6 occupation was surveyed by the Bureau of Labor Statistics and is  
7 representative of those earnings that they surveyed.

8 Q That sales manager OES classification is not specific to car  
9 dealers in any way, just sales managers for anything, correct?

10 A Yes, sir. It can be.

11 Q You said Dr. Clauretie relies upon your information, that's  
12 what we're going to see later, relies upon your information and then  
13 essentially reduces that to dollars and cents, correct?

14 A He does.

15 Q And are you aware of a change in Dr. Clauretie's formal  
16 opinion issued in a written report shortly before this trial commenced?

17 A No, I'm not.

18 Q Did you receive a copy of a report that he issued shortly  
19 before the trial commenced?

20 A I have not been presented with it.

21 Q Why did you -- when was this determination made that Mr.  
22 Yahyavi couldn't go back to work? When was it first rendered by either  
23 you or Dr. Oliveri?

24 A Dr. Oliveri rendered that opinion. I believe it was May or  
25 June of '18. You can look back, but.

1 Q And that's fine. I'm not asking you to put a finer point on it  
2 than that. So, about a little over a year ago, right?

3 A I think it was several months after his surgery.

4 Q And is it your understanding that Dr. Clauretje was aware of  
5 that? That he's known for over a year that that was the position of Dr.  
6 Oliveri?

7 A If he was forwarded the necessary information, that would be  
8 important to have received it.

9 Q Does your opinion in this case in any account for any kind of  
10 preexisting neck pain or problems of this Plaintiff?

11 A It does not.

12 Q And have you -- as I understand it, your opinions were all  
13 rendered with the understanding, and this is I think what you said in your  
14 deposition, but I don't think you're going to argue with me on this, your  
15 opinions are based -- your understanding is that Mr. Yahyavi never had a  
16 report of neck pain or neck problems before this accident; is that correct?  
17 And again, feel free to use your information?

18 A Yes. He had only told me about a motor vehicle accident in  
19 the late 80s where he had a low back injury and a few fender benders  
20 where there were no injuries.

21 Q Are you aware that there have been documents admitted into  
22 evidence in this case indicating that he had at least one complaint of  
23 neck pain? I'm asking, are you aware whether he had one instance of  
24 neck pain provided to a medical entity prior to this incident?

25 A I learned that during Dr. Oliveri's testimony yesterday.

1 Q Okay. And before yesterday, you had never heard that,  
2 right?

3 A I did not.

4 Q So, all your written opinions in this case, and you've been  
5 retained for about a year-and-a-half as I understand your testimony,  
6 were all rendered with the understanding that Mr. Yahyavi never had a  
7 neck problem and never expressed neck pain before this accident  
8 occurred, the June 19, 2013 accident, correct?

9 A I was not aware of the incident that you're currently referring  
10 to.

11 Q For medical opinions you rely on what the doctor's say,  
12 correct?

13 A Ultimately, yes.

14 Q You are the equivalent of a psychotherapist had you chosen  
15 to get licensed different ways, you could do that instead of what you're  
16 doing now; that's fair, right?

17 A Of course.

18 Q But you are not a medical doctor, correct?

19 A Correct.

20 Q So, for medical determinations, you take what the doctors  
21 tell you and you use that to do a vocational analysis; is that fair?

22 A We do.

23 Q And in this case, you are not necessarily saying medically the  
24 Plaintiff can't go back to work. You are adopting Dr. Oliveri's opinion  
25 that the Plaintiff can't go back to work and using that to put it into

1 perspective for his work, right?

2 A Yes. What Dr. Oliveri has come to the agreement of and  
3 everything I've learned about Mr. Yahyavi as well.

4 Q Now, your ultimate opinion essentially is that, and you  
5 phrase it a different way, but your ultimate opinion is that Mr. Yahyavi  
6 can never go back to work to earn money; is that fair?

7 A That he has -- does not possess the physical integrity to  
8 withstand and sustain open competitive and gainful employment.

9 Q And essentially you're saying that Mr. Yahyavi can never  
10 work again only as a result of this accident and not a result of anything  
11 else that you're aware of; is that correct?

12 A As a forensic vocational rehabilitation counselor, we do not  
13 or are not trained or able to work within apportionments, so we avoid  
14 that scenario.

15 Q You're familiar with what a Functional Capacity Evaluation is  
16 or Functional Capacity Examination and FCE?

17 A Yes, sir.

18 Q And you're aware from your opinions rendered in this case  
19 that Mr. Yahyavi took a -- did a Functional Capacity Examination years  
20 ago the first one he did, and it was determined to be invalid?

21 A Yes.

22 Q And have you factored that into your opinions, yes or no?

23 A Not at this point because there was a subsequent Functional  
24 Capacity Evaluation rendered. As in many of the cases that I deal with,  
25 there's a second one rendered. And the second one clearly was

1 indicated as valid and reliable.

2 Q Okay. I'm going to ask you two different questions just so  
3 you know I'm going to break it down. One is what are his medical  
4 restrictions related to his neck and the other one is what are his  
5 functional limitations related to his neck? And so, I'll start with the  
6 medical one. Can you tell me his medical limitations just related to the  
7 neck?

8 A You know something, I don't feel like I'm qualified to dissect  
9 out each limitation and portion it to a specific body part. That's the  
10 training of the physical therapist.

11 Q Okay. So, just to be clear. You would defer to the medical  
12 professionals for that half of my two questions, fair?

13 A Yes. Being able to portion out which limitations are related  
14 to what body part.

15 Q Okay. And the next one is functional limitations. That is one  
16 that you're more comfortable with, correct?

17 A Same thing, because you're asking me to decide what body  
18 part is limited in that regard. And this being their expertise, I feel like it's  
19 a bit outside of the scope of what I do.

20 Q So, I'm going to ask you a more general question then in  
21 order to kind of get to the point I'm trying to ask you about. And that is,  
22 what is it that you say other than pain issues, what is it that you say  
23 prevents Mr. Yahyavi from doing some work even if it's extremely  
24 limited, even if it's an hour a day online or using a headset with Dragon  
25 or using an adjustable table or being on his phone or tablet or computer?



1 What is it that you say prevents him from working other than the pain  
2 issues?

3 A Well, the bending of the neck, the constant repetitive cervical  
4 movements. Those are obvious because they mention the neck in the  
5 sentence. Any type of lifting. But this case is very much about Mr.  
6 Yahyavi's unrelenting ongoing high degrees of pain coming from his  
7 neck, coming from his upper left extremity and his inability to have those  
8 subside enough to the point where he can participate in open gainful and  
9 competitive employment. It's my opinion that he cannot do so.

10 Q Now, when I took your deposition and in your written  
11 reports, there's an issue where Mr. Yahyavi had told you that another  
12 doctor, a Mary Ann Shannon, the doctor who looked at his shoulder  
13 neuropraxic injury, told him that he might be paralyzed, correct?

14 A Not that he might be paralyzed. He came in very upset. He  
15 had just been to Dr. Shannon's office and he was visibly shaken in trying  
16 to describe to me what was causing this degree of upsettednessd [sic].  
17 He was rubbing his shoulder and talking about his appointment with Dr.  
18 Shannon and he spoke in a very fearful manner explaining that one of  
19 the worries that he was concerned about is that Dr. Oliveri -- I'm sorry,  
20 Dr. Shannon eluded to the fact that without proper treatment, and I think  
21 there was another surgery recommended or something, that the  
22 potential for having ongoing problems such as paralysis was there. And  
23 that was freaking him out.

24 Q But he specifically used the word with you, paralyzed or  
25 paralysis and you put that in your written report and opinions in this

1 case, correct?

2 A Yes, sir.

3 Q And are you aware of whether or not Dr. Shannon ever told  
4 him he was going to be paralyzed?

5 A I didn't read that in any of her reports.

6 MR. KHAN: At this time, Your Honor, I'd like to approach  
7 briefly.

8 [Sidebar begins at 11:58 a.m.]

9 MR. KHAN: I'm making an offer of proof. I'd like to open Dr.  
10 Shannon's deposition and read it for purposes of either impeachment of  
11 the Plaintiff essentially.

12 MR. PRINCE: Oh, no. You can't use a deposition with this  
13 witness. It's not his deposition. She's not here. So, you can't even use  
14 it that way. It remains hearsay. You can't impeach the Plaintiff with it  
15 because he's never read the deposition, so there's nothing to say that's  
16 inconsistent with it.

17 MR. KHAN: I'd like to --

18 THE COURT: Who is Dr. Shannon?

19 MR. KHAN: She's the one who treated his shoulder and  
20 never said he was going to be paralyzed.

21 MR. PRINCE: He does have paralysis, partial paralysis  
22 because he can't fully use his arm. So, you can't use -- I'm proper use of  
23 the deposition.

24 THE COURT: Well, okay. But what is -- this witness said that  
25 he doesn't think it's there.

1 MR. KHAN: Well, I'll use it for the Plaintiff, but I should be  
2 able to use it for any purposes.

3 MR. PRINCE: Well, you can. You can use a party opponent  
4 deposition.

5 THE COURT: I'm not going to -- we're talking about now. It's  
6 five to 12:00. You want to show him Ms. Shannon's depo for what  
7 purpose?

8 MR. KHAN: To impeach his testimony that the Plaintiff told  
9 him that he could be paralyzed and what he just said that Dr. Shannon  
10 told the Plaintiff that he could be paralyzed.

11 THE COURT: Well, that was hearsay. What is -- he's already  
12 said Shannon doesn't have it in her medical records, correct?

13 MR. KHAN: Right, but she has been deposed and we have --

14 MR. PRINCE: Call her as a witness.

15 THE COURT: So, what are you going to do, read the entire  
16 depo?

17 MR. KHAN: No. It's a three page thing. I'm going to read  
18 him one or two lines where I say to her did you ever use the word  
19 paralysis or paralyzed to Mr. Yahyavi then reported that to this witness?

20 MR. PRINCE: No.

21 MR. KHAN: And in order to do it effectively, I'd have to get it  
22 in with this witness.

23 MR. PRINCE: Improper use of the deposition.

24 THE COURT: I think that under -- I think it's 43 whatever, that  
25 this is going far afield and wasting the Court's time.

1 MR. KHAN: Okay.

2 THE COURT: He's already said that it's not there.

3 MR. PRINCE: In the record, so right.

4 MR. KHAN: I'll ask him the question then I'll reserve it for the  
5 Plaintiff.

6 THE COURT: Okay. All right.

7 [Sidebar ends at 12:00 p.m.]

8 MR. KAHN: I can keep going from the microphone if that's  
9 okay for the recorder. I'll just move over here for a minute just because  
10 we have a battery issue. I apologize.

11 BY MR. KAHN:

12 Q So just to be clear, Mr. Yahyavi came to you and told you  
13 that Doctor Shannon told him that he was potentially going to be  
14 paralyzed in his left arm or shoulder, correct?

15 A He didn't tell me that he was eventually going to be  
16 paralyzed, no. He said that he was fearful from talking to her that he  
17 could potentially be paralyzed.

18 Q And you put that word paralyzed, the words paralyzed and  
19 paralysis in your report as being reported to you by the Plaintiff, correct?

20 A I believe that's the word he used in meeting with her. He  
21 was extremely upset about his condition, very nervous and very upset.

22 Q And just to be clear because I'm going to have to ask the  
23 Plaintiff about this tomorrow, what you were told by Mr. Yahyavi is that  
24 Doctor Shannon, his shoulder doctor, told him before he came and met  
25 with you in person one of the times that he could become paralyzed or

1 he was going to become paralyzed, one of those things, in his arm or his  
2 shoulder, left side?

3 A She didn't say -- or he didn't tell me that she said he will be  
4 paralyzed, no. He said that one of the things, one of the possibilities that  
5 could be is paralysis. And I don't know if this happens, if this doesn't  
6 happen. I don't know any of that. All I know, he was visibly shaken,  
7 visibly upset, very worried, and was having an emotional difficult time  
8 talking to me. He was visibly shaken by this whole thing.

9 Q At the time you reference paralysis in your written report, I'm  
10 looking at your report of May 21st, 2018, I think that's your first report,  
11 correct?

12 A That's correct.

13 Q So if you could go to the bottom of page 18 under  
14 Observations, he was telling you on or before that date a little over a  
15 year and a half ago or so, that Dr. Shannon was telling him that he might  
16 have to have surgery or he might be paralyzed in his left shoulder or left  
17 arm, correct?

18 A The possibility of future surgery and/or paralysis.

19 MR. PRINCE: Where are you, what page?

20 MR. KAHN: Page 18 under Observations, May 21st, 2018  
21 report.

22 BY MR. KAHN:

23 Q And then if you look at page 32 of that report under your  
24 opinions at that time, vocational opinion summarized, you've got five  
25 opinions. Your report is 34 pages long, correct?

1 A Yes, sir.

2 Q And you render five summary opinions, correct?

3 A Yes.

4 Q In opinion number five you're rendering opinions at the  
5 bottom of that paragraph on page 32 about at that time you thought he  
6 might be able to work, but if he becomes -- were to become paralyzed,  
7 he would be less able to work or wouldn't be able to work, right?

8 A Yeah. I'm saying that that would definitely be a factor if that  
9 became true.

10 Q Then if you look at page 33 in the second paragraph, you're  
11 referencing potential paralysis of the left upper extremity, so that's the  
12 arm or the left arm, left shoulder, correct?

13 A Yes.

14 Q So you mention paralysis at least three times in your initial  
15 report in rendering your opinions, correct?

16 A Yes.

17 Q Okay. And as you sit here today, this is now a year and a half  
18 later, you have no reason to believe that the Plaintiff is in any way  
19 paralyzed in his left arm or his left shoulder, correct?

20 A I have no knowledge to that effect.

21 Q And if you look at page 21 of your report, towards the  
22 bottom, I'm looking at the sentence that begins, unfortunately, Mr.  
23 Yahyavi's conditions, the second paragraph from the bottom, at the  
24 bottom of that?

25 A Yes.

1 Q And so one of the things you're saying there is that his  
2 conditions continue to deteriorate, correct?

3 A Yes.

4 Q And you don't make a determination as a vocational expert  
5 whether that's due to traumatic reasons or degenerative age-related  
6 reasons, correct?

7 A Correct.

8 Q You're just saying he got worse and as a result that he found  
9 it more difficult to work, correct?

10 A Right. He seemed as though he was not improving in any  
11 way, which would add to the potential of his being unable to work.

12 Q And at that time you thought he was capable of some kind of  
13 light sedentary work, right?

14 A No, sir. I had put in my report that I doubted that that was  
15 the case, but that I would provide examples of Doctor Oliveri's second  
16 scenario in order to educate the jury, the trier of fact, to help them  
17 understand what potential scenarios could possibly be expected.

18 Q Okay. Let me back up to your opinion number one on page  
19 31. You're saying at that time, a year and a half ago, you were saying it  
20 was medically opined that Mr. Yahyavi will medically emerge with  
21 permanent limitations that identify him as being most physically  
22 appropriate for the sedentary/light physical demand level, and then it  
23 goes on.

24 So at the time yes, I'm not arguing with you that Doctor Oliveri  
25 said there were two scenarios, he can never work again, or if he goes

1 back, he has a light -- he would be light or light sedentary, but at the time  
2 you were being told medically that he had a possibility of going back to  
3 work, correct?

4 A Both scenarios I was taking into account.

5 Q And then if you go to page 32, the second paragraph under  
6 Summary, you say that he had to self-relinquish his employment with  
7 Chapman. Can you explain to the jury what you mean by self-  
8 relinquish?

9 A Well, he has to go back to a sales position feeling though it  
10 would be less demanding on him with the standing and the sitting  
11 degree and he would have a little bit more autonomy than he was  
12 having. He felt this was his only choice.

13 Q So in that context self-relinquish means essentially he quit,  
14 or he left the position voluntarily, right?

15 A Self-relinquish was his idea.

16 Q He wasn't fired, correct?

17 A Correct.

18 Q He wasn't told by his employer we won't accommodate your  
19 physical needs, correct?

20 A Correct.

21 Q As far as you know, he never asked for any accommodation;  
22 he didn't ask for different hours or a special desk or there are kinds of  
23 chairs called cradle chairs, there are different things you can do for  
24 employees that have pain and physical problems to alleviate some of  
25 that. As far as you know, he never asked Chapman for any of that,



1 correct?

2 A Well, he did work less hours and of course had to ask for  
3 that.

4 Q But what I'm asking you is, he never asked Chapman for any  
5 kind of equipment or accommodation, other than his work schedule?

6 A That we never discussed.

7 Q Okay. I'm going to your second report, dated August 24,  
8 2018 and I'm on page 2. This is where you looked at the report of my  
9 expert, Mr. Bennett, and you're commenting on it. I'm just going to go  
10 down a series of yes or no questions and ask you about some of the  
11 other doctors that have opinions about Mr. Yahyavi's ability to work long  
12 ago.

13 So July 18, 2013, almost exactly a month after this accident, Doctor  
14 Klausner, who's an osteopath, said that the Plaintiff could return to work  
15 if he wore some kind of neck collar, correct?

16 A The 18th, July 18?

17 Q Correct. July 18, 2013.

18 A It says he may return to full duty as of that date.

19 Q Modified duty, right?

20 A I'm just reading from my report, Roman Numeral V.

21 Q Okay. And feel free. Doctor Perry, and I'm not picking  
22 everyone, but Doctor Perry, November 11, 2013, has limited duty  
23 restrictions; do you see that?

24 A I do.

25 Q And what was the reason he was off work on November 11,

1 2013, according to Doctor Perry?

2 A He was having some high blood pressure.

3 Q So it had nothing to do with the car accident, the neck pain,  
4 the cervical issues. The only thing documented in the medical records  
5 from November 13 -- sorry, November 11, 2013, so roughly five months  
6 after the accident, is he was taken off work for high blood pressure,  
7 correct?

8 A Mr. Bennett put in he had been off work due to high blood  
9 pressure. I don't have an independent recollection of that citation, which  
10 I'd like to review to be able to ensure its accuracy. I know with high pain  
11 levels we do have bouts of high blood pressure, so.

12 Q Give me just a second. Maybe I can allow you to review it. I  
13 think it's Desert Orthopedic.

14 [Counsel confer]

15 BY MR. KAHN:

16 Q We also discussed very briefly that he was off work in 2014  
17 for surgery related to a different body part, other than his neck, for about  
18 six weeks, right?

19 A Yes.

20 Q Doctor Perry was his treating orthopedic surgeon in 2013,  
21 2014, correct?

22 A He was.

23 Q At least one of them?

24 A One of them, correct.

25 Q And he was allowing him to stay on full duty with some

1 restrictions at least up to August or September of 2014, so over a year  
2 after the accident, correct?

3 A With restrictions.

4 Q With restrictions. But he didn't say don't go to work, you  
5 can't work, you'll never work, he said go to work with restrictions and  
6 he's an orthopedic surgeon, right?

7 A I believe he said he must wear a collar at work.

8 Q I don't know how long the collar lasted, but I'm not  
9 disagreeing that there were restrictions. And then Doctor Fisher, who's a  
10 pain management doctor, saw him going into 2015, so now we're 22  
11 months after the accident and he's allowing him on April 8, 2015, to go  
12 back full duty; isn't that correct, April 8 of 2015?

13 A April of '15, yes. He had a number of citations that I saw.

14 Q And Doctor Fisher, as a pain management doctor, essentially  
15 similarly qualified as Doctor Schifini, who ended up more recently  
16 treating the Plaintiff, correct?

17 A I can't comment on Doctor Fisher's qualifications. I don't --

18 Q As far as --

19 A I'm not familiar with them.

20 Q Sorry, I didn't mean to interrupt. As far as you know, Doctor  
21 Fisher's an M.D. licensed medical doctor at a minimum, correct?

22 A That's correct.

23 Q Regardless of any board certifications he may have?

24 A I assume he is.

25 Q I have a few more questions and we're getting closer to

1 being done, so bear with me, please. Can you explain to the jury what it  
2 means to have reasonable accommodations to an employee, just the  
3 general concept?

4 A Well, reasonable accommodations means that it doesn't  
5 cause the employer an undue hardship. Undue hardship is put in the  
6 Americans with Disabilities Act, which means you really can't ask an  
7 employer to do something that would cause them a quote, undue  
8 hardship, unquote. In other words, bring unusual circumstances to the  
9 workplace that could be detrimental to the workplace or the employer.  
10 So reasonable accommodations is something less than that.

11 Q If Mr. Yahyavi were to go back to work as a -- again, this is a  
12 hypothetical. I'm not asking you to state the opposite of what you have  
13 opined, but were he to go back to work hypothetically as an automobile  
14 salesperson or an automobile sales manager, that would be the type of  
15 work that you classified as light sedentary or sedentary; is that fair?

16 A Are you talking about the salesperson?

17 Q No. I'm talking about the job he used to have before he  
18 stopped working.

19 A Sales manager?

20 Q Yeah, sales manager. He didn't have to -- he didn't often  
21 have to lift heavy things, right? It's not like a construction job, correct?

22 A Right. But the sedentary physical demand level does require  
23 one to be sitting for the majority of that day, whereas the light physical  
24 demand level allows the individual to walk and stand for almost the  
25 entire day if the job requires it.

1 Q Do you, in your records, have you identified what his  
2 employment was between 2004 and 2008?

3 [Witness reviews document]

4 A Right before there I have a Peoples Chevrolet in San Diego as  
5 an independent contractor.

6 Q Was he still in San Diego at that point?

7 A Yes, he was.

8 Q Okay. I'm going to pull up the -- you had said you wanted to  
9 see the exhibit about him being off work for the high blood pressure. So  
10 I have Exhibit 91. I believe it's bates 291. November 11, 2013, so about  
11 five months post-accident. And I'll ask my helper to pull that up.

12 THE COURT: Before you do that, counsel approach.

13 [Sidebar begins at 12:16 p.m.]

14 MR. KAHN: I didn't realize it was past noon, so.

15 UNIDENTIFIED SPEAKER: Hold on, hold on, hold on.

16 THE COURT: How much longer do you have?

17 MR. KAHN: Oh, clearly a half an hour.

18 MR. PRINCE: We should take a lunch break.

19 THE COURT: And then is that -- is he all, because again  
20 you're right, we've leaving at two --

21 MR. PRINCE: Fifty.

22 THE COURT: -- fifty.

23 MR. PRINCE: Yeah, you take way longer than you thought,  
24 just bouncing around and everything.

25 THE COURT: If they come back at 1:15, we have -- he's

1 going to be it.

2 MR. PRINCE: Can we take a shorter lunch?

3 MR. KAHN: Give me five more minutes with him and --

4 THE COURT: Do you have another expert?

5 MR. PRINCE: I have another expert.

6 MR. KAHN: Give me five more minutes with him and let's

7 see if I can get through the cross, and then think about --

8 THE COURT: How long do you have?

9 MR. PRINCE: Probably 20 minutes, but I want to take -- let  
10 him finish, and I'll come back after lunch, so.

11 MR. KAHN: That seems fair.

12 THE COURT: All right. If you think you can get it done.

13 MR. PRINCE: Can we shorten the lunch break to like -- you  
14 know to -- is that possible?

15 THE COURT: Yes, a little. A little.

16 MR. PRINCE: Just a little. Whatever is comfortable for you.

17 [Sidebar ends at 12:17 p.m.]

18 BY MR. KAHN:

19 Q I'm going to ask you a few more questions, then hopefully  
20 we'll take a short break. So I'm just going to highlight this last line here.  
21 It says November 11, 2013, Desert Orthopedic Center. It's Archie Perry,  
22 M.D., so it's the treating orthopedist we talked about. And it says on the  
23 bottom -- well, can you read that out loud for the jury, that last sentence,  
24 please?

25 A You'd like me to read that?

1 Q The last sentence, please.

2 A Yes. He states that he's been taking off work due to high  
3 blood pressure. It's implied that this increase in blood pressure is  
4 related to the patient's pain symptom.

5 Q So have you -- you don't medically comment on whether  
6 Doctor Perry is accurate or not accurate as to whether high blood  
7 pressure is increased by pain symptoms, right? That's outside of your  
8 scope?

9 A Yes, it is.

10 Q But you would agree that the record reflects that he was  
11 released not because -- taking off work not because he said he was in  
12 pain and not because he said he couldn't move his neck, but it was  
13 because of high blood pressure, which the records do reflect Doctor  
14 Perry said has something to do with pain symptoms, correct?

15 A You know, I'm confused when he says, he states that he's  
16 been taking off. So who is making that statement?

17 Q And I think Dr. Perry's referring to Mr. Yahyavi for that  
18 sentence. And then I think when it says this is Dr. Perry saying he, his  
19 patient, Yahyavi, states that he has been taking off work due to high  
20 blood pressure. And then he's saying it is implied, meaning the patient's  
21 implying to him that this increase in blood pressure is related to the  
22 patient's pain symptoms. In other words, isn't that saying that Mr.  
23 Yahyavi's going to his orthopedic surgeon and saying I got taken off the  
24 high blood pressure, but it's all because of my pain?

25 A And the question is?

1 Q That's the question. Doesn't it -- isn't that indicating that Mr.  
2 Yahyavi's going to his orthopedic surgeon and saying I got taken off  
3 work for high blood pressure, but in my mind, as the patient, I think the  
4 high blood pressure was caused by the pain? I'll withdraw. I'll withdraw  
5 it. Don't worry.

6 You've used for the average of his -- of Mr. Yahyavi's --

7 MR. KAHN: You can take that away.

8 BY MR. KAHN:

9 Q -- average of Mr. Yahyavi's income some of his years after  
10 this accident, correct?

11 A No.

12 Q And part of that he made money, significant money, in the  
13 years, a couple of years after this accident, right?

14 A He did.

15 Q And you're not limiting yourself for an average income to his  
16 salary before this accident, right?

17 A Of course not. That would not reflect his earning capacity.

18 MR. KAHN: Give me about 30 seconds, Your Honor. I'm  
19 close to done.

20 BY MR. KAHN:

21 Q You have -- you've worked with patients, clients, before who  
22 have been in wheelchairs; is that fair?

23 A I have.

24 Q And the fact that someone is partially paralyzed or in a  
25 wheelchair or has lost a limb, that alone doesn't stop somebody from



1 entering the workforce and working, correct?

2 A Based upon the full evaluation of all their conditions and that  
3 would be on a case-by-case basis.

4 Q Do you know whether or not the Plaintiff worked at a place  
5 called AAll Holding, LLC?

6 A My understanding of that is that his son had asked him to  
7 mentor him in the development of auto sales scenario, but unfortunately  
8 that never got off the ground.

9 Q You don't believe he can do online auto sales as he current  
10 sits, correct?

11 A It's too simplistic to say online auto sales. There's a lot more  
12 involved than a few clicks on a website.

13 Q Let me ask you a different way. You don't believe there's any  
14 online job of any type that the Plaintiff can perform on a regular ongoing  
15 basis without being in too much pain to perform, right?

16 A I don't believe the examinee, Mr. Bahram Yahyavi, is capable  
17 of any degree of open, gainful, or competitive employment in any  
18 fashion.

19 MR. KAHN: No further questions. I'll pass the witness, Your  
20 Honor.

21 THE COURT: All right. We're going to take our lunch recess.  
22 I'll ask that you be back at let's try for 10 after 1. It's a little less than an  
23 hour, but we are leaving early today.

24 During this recess you're admonished do not talk or converse  
25 amongst yourselves or with anyone else on any subject connected with

1 this trial or read, watch, or listen to any report of or commentary on the  
2 trial or any person connected with this trial by any medium of  
3 information, including, without limitation, newspapers, television, radio,  
4 or internet. Do not form or express any opinion on any subject  
5 connected with the trial until the case is finally submitted to you. We're  
6 in recess.

7 THE MARSHAL: Please leave your notebooks and pens. You  
8 might want to take the chance and get your parking validated. See you  
9 back at 1:10.

10 [Jury out at 12:23 p.m.]

11 [Outside the presence of the jury]

12 THE COURT: We're on the record outside the presence. In  
13 addition to 48.035, the witness is -- there's been no showing of  
14 unavailability for the depo, so it's -- you can't publish it. You can bring  
15 that witness in, assuming she was listed, but just to read a depo of a  
16 witness who is not unavailable is not the correct purpose for a  
17 deposition. And that, I assume, because you did mention you want to  
18 somehow read that for the Plaintiff, is the same case. You can't impeach  
19 a witness based upon another deposition which is hearsay unless  
20 somehow they're unavailable, et cetera.

21 So we can deal with that later. All right.

22 MR. PRINCE: Thank you, Your Honor.

23 [Recess taken from 12:24 p.m. to 1:17 p.m.]

24 THE COURT: Okay. Bring them in. We have an hour and 30  
25 minutes, right? Yeah.

1 [Counsel confer]

2 THE CLERK: Don't forget you have questions from the jury,  
3 too, possibly.

4 MR. PRINCE: Yes.

5 THE COURT: So far they haven't asked any. Well, one or  
6 two.

7 THE MARSHAL: Please rise for the jury.

8 [Jury in at 1:18 p.m.]

9 [Within the presence of the jury]

10 THE COURT: Please be seated. Okay. If I remember, I'll get  
11 you Krispy Kreme tomorrow.

12 THE MARSHAL: And, jury, what he means is I will get you.  
13 He'll order me to do it.

14 THE COURT: That's only if it's the other donut place. Krispy  
15 Kreme is on my way. Okay. Tomorrow 9 a.m., 9 a.m.

16 You're still under oath. Please continue.

17 MR. PRINCE: Very good.

18 REDIRECT EXAMINATION

19 BY MR. PRINCE:

20 Q Mr. Spector, I have some questions and follow-up, okay?

21 A Yes, sir.

22 Q Do you remember Mr. Kahn was asking you some questions  
23 about some workplace restrictions placed on Mr. Yahyavi by some of his  
24 physicians; do you recall that?

25 A I do.

1 Q Okay. And during that period of time, which is according to  
2 July 2013 through December -- excuse me -- July 2013 through April  
3 2015 were the documented workplace restrictions, okay?

4 A Yes.

5 Q So between those approximately two year period, what did  
6 Mr. Yahyavi do during that time?

7 A Well, he was working.

8 Q Right. He worked with the restrictions, right?

9 A Exactly.

10 Q In addition to working, was he also having to attend doctors'  
11 appointments, physical therapy; hundreds of doctors and physical  
12 therapy appointments?

13 A We've seen the medical records. All of the physicians that  
14 were involved in this case and all the appointments he was expected to  
15 attend.

16 Q Right. So in addition to working, he was also attending his  
17 appointments for his medical care?

18 A He was.

19 Q Is that cumbersome and difficult for a worker?

20 A It's not easy if you're not working.

21 Q And I want -- remember the one record from Doctor -- I think  
22 it's bate number 291 of Exhibit 91. Make sure I have the right page.

23 MR. PRINCE: Is it the right date? Okay. At the bottom.

24 Okay. Bring me to day two.

25 BY MR. PRINCE:

1 Q So November 11, 2013, a note from Dr. Perry, who's the  
2 surgeon, okay?

3 A Yes.

4 Q And it says at the bottom, I'll put him on limited duty  
5 restrictions. His high blood restriction, high blood pressure restrictions,  
6 would supersede those during any overlapping if it's determined his  
7 blood pressure, his increase is directly related to patient's neck and arm  
8 pain, then my restrictions change accordingly. Can you -- have, in fact,  
9 have you seen patients that were injured workers that when they have  
10 chronic pain it's not uncommon to have elevated blood pressure?

11 A No, it's associated with it.

12 Q Okay. But also, even during that period, they're talking about  
13 work restrictions. I want you to -- let's look at Mr. Yahyavi's actual  
14 performance in November of 2013 and I want to ask you a question  
15 about his motivation and effort during that month. I want to show the  
16 jury, keeping November 2013 in mind, okay, Exhibit 155, 2062, this is a  
17 summary of all of that --

18 MR. PRINCE: And, Greg, I want you to highlight for me all  
19 the pay periods in November.

20 UNIDENTIFIED SPEAKER: What year?

21 MR. PRINCE: 2013. Okay. And you did a little bit more on  
22 the top. Okay. Now just a little bit to pick up the August -- there you go.  
23 Fine.

24 BY MR. PRINCE:

25 Q And I want to look at Mr. Yahyavi's performance in

1 November, okay?

2 A Yes.

3 Q He's receiving weekly pay, so November the 6th, 2013, that  
4 payroll, \$3,414, the period ending November 13, \$3,255, November 20th,  
5 \$757, and November 26, \$1,490.93. Do you see that?

6 A I do.

7 Q He earned approximately \$9,000 in the month of November  
8 while having these difficulties; do you see that?

9 A All while he's attending physician appointments, as well.

10 Q And physical therapy and managing the pain?

11 A Exactly.

12 Q How would you characterize that effort during that period of  
13 time?

14 A He is working to his fullest. He's dedicated.

15 Q Right. We talked about that he, Mr. Yahyavi, left his job as a  
16 floor sales manager around June 28, 2013; remember that?

17 A Okay.

18 Q Did he continue on in the capacity of a salesman for one of  
19 the Chapman dealership. Instead of Chapman Dodge, he moved to  
20 Chapman Jeep?

21 A Correct.

22 Q Okay. Let's look at the next -- the stub after that was --

23 MR. PRINCE: If you go to 1373 of Exhibit 155.

24 BY MR. PRINCE:

25 Q Do you see at the top there it says 2013 Jeep?

1 A Yes.

2 Q Okay. And according to your history, Mr. Yahyavi took about  
3 a month off of work after this collision?

4 A Yes.

5 Q And then during that month he obviously left his position for  
6 he'll explain tomorrow the reasons why, because they didn't have  
7 anything for him to accommodate him and he became a salesman at the  
8 Jeep store where they could accommodate him, okay?

9 A Correct.

10 Q And does he in fact start back working in 2013 for Chapman?

11 A Yes.

12 Q All right.

13 MR. PRINCE: Let's go to -- just to kind of follow this through,  
14 go to 1374, that payroll stub.

15 BY MR. PRINCE:

16 Q Again, for Chapman Jeep, this is all part of Exhibit 155 from  
17 the Chapman dealerships just so we can look at what we're doing, he  
18 earned commission sales from the time he went back to work ending in  
19 the period ending July 31st, he earned \$3,000; do you see that?

20 A I do.

21 Q And so what does that tell you about his effort level returning  
22 to work after this collision?

23 A The man only had one speed. He gave his full all the time, it  
24 appears.

25 Q Just because he changed from being a floor sales manager

1 to a floor, just being a regular salesman to accommodate his condition  
2 and his appointments, but they would need him to be on the floor if he  
3 was a manager, right?

4 A All the time.

5 Q Right. Now, when he's not capable of being on the floor all  
6 the time because of his physical problems and all the appointments, do  
7 you think it was reasonable for him to move into a sales position where  
8 they could be more accommodating for his schedule?

9 A Yeah. If in fact he had more flexibility, that would enable him  
10 to have less difficulties, absolutely.

11 Q Okay. I want to go back to the chart for 2013 earnings so that  
12 we can be clear.

13 MR. PRINCE: 2062. Now, let's -- give me the first half  
14 through transfer to Chapman Jeep, Greg. Okay.

15 BY MR. PRINCE:

16 Q What I've done here, and it was in evidence for the jury, part  
17 of my Exhibit 155, is to summarize the earnings, the payroll earnings.  
18 And by July 1st, 2013, he earned \$70,943 from working at Chapman  
19 Dodge, okay? Do you see that?

20 A (No audible response heard)

21 Q Is he earning in his capacity? You said it was you using  
22 governmental statistics of \$160,000. Is he earning at his capacity?

23 A Not through this period, no.

24 Q Right. I mean he's just a little less. Well, he had his accident  
25 June 13, so there's 17 days missing, right?



1 A Correct.

2 Q Right. But I mean had he continued earning, would he be  
3 earning at his capacity?

4 A Not quite as far as what I projected as the 160 number.

5 Q Right. If he were to earn \$10,000 in the full month of July or  
6 June and July, he'd have been on pace for \$160,000, right?

7 A Correct.

8 Q In 2012 he earned \$159,000?

9 A Exactly.

10 Q Which is right on your number, right, 160,000?

11 A Very close.

12 Q All right. And then when he transfers to Chapman Jeep, let's  
13 look at the rest of it, he kept working and he earned from July through  
14 the end of the year, only \$43,000; do you see that?

15 A I do.

16 Q Right. And remember we looked at the payroll stub at the  
17 time of this accident he earned almost \$70,000, right?

18 A Right.

19 Q So the second half of the year after this collision, obviously  
20 his income had gone down?

21 A Absolutely.

22 Q Okay. With regard to -- well, let's stay here for a moment.  
23 When Mr. Yahyavi met with you --

24 MR. PRINCE: You can take it down.

25 BY MR. PRINCE: