

NEW JERSEY DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT
DIVISION OF WORKERS' COMPENSATION
LEBANON REGIONAL DISTRICT

JOHN SAENGER,	:	
	:	CLAIM PETITION NO.
Petitioner,	:	
	:	2015-8911
	:	2015-8915
vs.	:	
	:	STENOGRAPHIC
	:	TRANSCRIPT OF
UNION COUNTY,	:	TESTIMONY OF:
	:	
Respondent.	:	Dr. Milazzo
-----	:	Dr. Chan

LEBANON, NEW JERSEY
October 22, 2015

B E F O R E :

THE HONORABLE KAY WALCOTT-HENDERSON,
SUPERVISING JUDGE OF COMPENSATION.

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

FOR PETITIONER: LEVINSON AXELROD, ESQS.
BY: TODD WACHTEL, ESQ.

FOR RESPONDENT: JAMES JUDE PLAIA, ESQ.

REPORTED BY: LORA LANDSHOF, C.C.R.

WILLIAM C. O'BRIEN ASSOCIATES
525 BOULEVARD, PO BOX 428
KENILWORTH, NJ 07033-1611
(908) 276-8664

1 I N D E X

2 WITNESS VOIR DIRE DIRECT CROSS REDIR RECROSS

3 SALVATORE J. MILAZZO, D.O.
4

5 By Mr. Wachtel 4 8

6 By Mr. Plaia 6 16
78 PETER S.H. CHAN, M.D.
9

10 By Mr. Plaia 24 26 52

11 By Mr. Wachtel 36
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14

15 E X H I B I T S

16 NO. DESCRIPTION I.D. EVD.

17 P-2 Report of Dr. Lamb, 5-15-15 9 52

18 P-3 Copy of page from Dr. Chan's
19 website 36 5220 P-4 Article Re: Ulnar tunnel
21 syndrome 41

22 P-5 Report of Dr. Lamb, 5-15-15 49 52

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25 R-2 Report of Dr. Chan, 8-31-15 53

1 THE JUDGE: Good morning, Counsel.

2 MR. PLAIA: Good morning, your Honor.

3 MR. WACHTEL: Morning, your Honor.

4 THE JUDGE: This is Claim Petition
5 2015-8911 and 2015-8915. These are before the
6 Court today. This is a motion hearing,
7 continuation of a Motion For Medical and Temporary
8 Disability Benefits; correct?

9 MR. WACHTEL: Yes, your Honor.

10 MR. PLAIA: Yes, your Honor.

11 THE JUDGE: The Court heard from the
12 petitioner, and petitioner has a witness for the
13 Court this morning.

14 Anything that I need to be aware of before
15 we begin?

16 MR. WACHTEL: No, your Honor.

17 THE JUDGE: You have your report marked?

18 MR. WACHTEL: It's been submitted as part
19 of the motion.

20 THE JUDGE: That's right. Okay. Counsel,
21 you may begin.

22 Doctor, would you raise your right hand,
23 please.

24

25

1 S A L V A T O R E J. M I L A Z Z O, D. O, having
2 affirmed to tell the truth, did testify as follows:

3

4 VOIR DIRE EXAMINATION BY MR. WACHTEL:

5

6 Q Please say your name?

7 A Dr. Salvatore Milazzo.

8 Q And what is your address?

9 A P.O. Box 94, Kenilworth, New Jersey.

10 Q And what do you do?

11 A I do a multitude of things. I treat motor vehicle
12 accidents, I treat work-related injuries, and do
13 independent medical exams, narrative reports for
14 accidents, but most of it is injuries.

15 Q And what is your background?

16 A My background? I graduated family practice, but
17 right after that began working in an industrial clinic in
18 Elizabeth, and I did that for several years. Moved on to
19 work with a physiatrist who also did a lot of Workers'
20 Comp and sports rehabilitation, and I took over the
21 Workers' Comp part of his in 2004 or 5 until he passed
22 on, and then I moved on to working motor vehicle
23 accidents which he did also, and continued that realm in
24 Workers' Comp on my own in multiple areas. I'm out in
25 Totowa, Saddle Brook, Harrison, Elizabeth.

1 Q Do you have any board certifications?

2 A Just D.O., nothing specific.

3 Q Okay. And what is a D.O.?

4 A Doctor of Osteopathic Medicine.

5 Q Okay. And where did you graduate?

6 A Well, it's now Rowan University, but back then it
7 was New Jersey School of Osteopathic Medicine.

8 Q And what percentage of your time is
9 for treatment or evaluating petitioners?

10 A Most of my time is treatment, I'd say a good 85
11 percent.

12 Q And what specialty do you do as far
13 as treatment? Is there any one particular or more
14 general?

15 A Well, in terms of motor vehicle accidents, it's
16 whatever presents itself, and then I'll either treat it
17 or move it on. Workers' Comp it's the same thing. They
18 come in; they have specific injuries. You'll order
19 physical therapy modalities, testing, MRIs, x-rays,
20 things of that sort.

21 Q Okay. Have you testified in Workers'
22 Compensation Court before?

23 A Yes, I have.

24 Q And have you been sworn in as an
25 expert before?

1 A Yes, I have.

2 MR. WACHTEL: At this time I would offer
3 Dr. Milazzo as an expert in the field of
4 osteopathic medicine.

5 THE JUDGE: Any objection?

6 MR. PLAIA: Judge, I just have a couple of
7 questions on voir dire of the doctor if I may.

8

9 VOIR DIRE EXAMINATION BY MR. PLAIA:

10

11 Q Doctor, what's the difference between
12 an M.D. and a D.O.?

13 A To put it in plain language, if I were explaining
14 it to a patient, which I hear all the time, I say a D.O.
15 is a combination of an M.D. and a chiropractor.

16 Q Okay. And did you graduate from
17 medical school?

18 A Yes, I did.

19 Q Okay. That was Rowan?

20 A Well, it's called Rowan now, but it was U.M.D.N.J.
21 S.O.M.

22 Q Okay. And do you have a specific
23 specialty?

24 A No, I do not.

25 Q Any specific part of the body? For

1 example, are you a hand specialist?

2 A No.

3 Q Have you -- do you ever perform
4 surgery?

5 A No.

6 Q CTS releases, you've never done any?

7 A No.

8 Q What percentage of your practice is
9 treating as opposed to examining patients for the
10 purpose of rendering an narrative report?

11 A 85 percent at least of treatment.

12 Q Okay. And of the remaining
13 percentage that you examine patients solely for
14 the purpose of rendering a narrative report, what
15 percentage of that is for petitioners and
16 plaintiffs as opposed to respondents and
17 defendants?

18 A It's all petitioners.

19 MR. PLAIA: I have nothing further, Judge.
20 I have no objection offering the doctor.

21 THE JUDGE: Thank you very much.

22 Okay. So the doctor will testify as an
23 expert in osteopathic medicine.

24 You may begin.

25

1 DIRECT EXAMINATION BY MR. WACHTEL:

2

3 Q Doctor, did you have an opportunity
4 to meet with Mr. Saenger?

5 A Yes, I did.

6 Q And when was that?

7 A August 31, 2015.

8 Q And what did he tell you?

9 A Well, in the report he basically told me that he
10 had been a corrections officer for a certain
11 period of time and that what his job entailed in terms of
12 copying reports. He basically in the beginning as an
13 officer was responsible for making reports on any
14 incidents that went on so he would write them.
15 Everything was handwritten at the time. He would grab a
16 pen, push down because everything was carbon copied. So
17 he did that for a period of time.

18 He also had times where he had to go to the firing
19 range and practice to maintain his skills; otherwise,
20 you're not rehired, and then he would also do that on his
21 own to maintain his skill with the firearms.

22 And during that time he began to notice numbness and
23 tingling, pain in the wrist. He said it would go away so
24 he ignored it. He figured it was just something and it
25 continued to do that he said for several years until it

1 slowly progressively worsened where it wasn't going away,
2 and then it was -- he was also appreciating it on the
3 firing range, and he didn't do anything about it until it
4 just never went away which is when he went to a doctor.

5 Q And do you know who he went to?

6 A If it's in -- if I saw it, referred to Dr. Lamb.

7 Q Did you have an opportunity to review
8 Dr. Lamb's records?

9 A The ones I reviewed would be listed in the report.
10 Looks like 2015, February and March.

11 MR. WACHTEL: I'd like to mark -- have we
12 done an evidence sheet yet, Judge?

13 THE JUDGE: Yes, we have.

14 MR. WACHTEL: What are we up to?

15 THE JUDGE: I believe 2. You have the
16 operations report submitted. So this would be
17 P-2?

18 MR. WACHTEL: P-2, yeah.

19

20 (Whereupon P-2 is marked for
21 identification.)

22

23 Q Is this the report from Dr. Lamb that
24 you had an opportunity to review?

25 A Let's see. This one is dated, this one is May 15

1 from Dr. --

2 Q Okay. That's another one that you
3 saw?

4 A No. This one is not in my report. I have
5 February and March of 2015. This looks like he starts it
6 off as a combination. He says, "During our visits in
7 February and March" so.

8 Q Okay.

9 A This looks like a combination of what he did in
10 the first two.

11 Q Okay.

12 MR. WACHTEL: We're just going to keep it
13 marked for identification then as P-2.

14 THE JUDGE: Okay.

15 Q And what treatment, if any, did
16 Dr. Lamb recommend based on the records that you
17 reviewed?

18 A Well, when he first saw him he recommended
19 continuation of a brace, an anti-inflammatory medication,
20 and a nerve conduction study.

21 Q Did he ultimately have that?

22 A He did. According to Dr. Lamb's records, he says
23 the EMG was performed by a Dr. Miller, and it revealed
24 carpal tunnel syndrome, right great than left.

25 MR. PLAIA: Judge, unless these doctors

1 are going to be produced, I would object to
2 Dr. Miller and Dr. Lamb's opinions.

3 MR. WACHTEL: Well, actually, Dr. Milazzo
4 didn't offer their opinions at this point, and
5 they are the basis for his opinion what the
6 treatment was.

7 THE JUDGE: I'll allow it.

8 Q And was there ultimately a
9 recommendation for additional treatment following
10 the diagnostic tests?

11 A Yes, there was.

12 Q What was that?

13 A Recommendation for injection to the right hand and
14 possible surgery if no relief and conservative treatment
15 to the left.

16 Q Did he give you any complaints at the
17 time of your exam?

18 A At the time I examined him he complained of
19 constant numbness in his right hand, mentioning his
20 thumb, index, and middle finger, beginning at his wrist
21 going into the fingers. He also said that at this point
22 in time he was more frequently dropping objects such --
23 something as light as a pen at work or even holding a
24 fork.

25 He stated on the left side his pain and numbness

1 still does occur on and off depending on the activity
2 that he does. It takes longer to occur while using a
3 keyboard and goes away faster.

4 Q Did he have any past medical history
5 relevant to his right or left hand pain?

6 A I could not ascertain anything other than he had a
7 thumb surgery back in high school.

8 Q Did you conduct a physical
9 examination?

10 A Yes, I did.

11 Q What did that consist of?

12 A It consisted of examining his two wrists in terms
13 of palpating, checking for sensation, signs of carpal
14 tunnel syndrome, Tinel's, Phalen's, compression test,
15 strength. I also checked his elbows to make sure there's
16 no radicular symptoms coming down from his elbows.

17 Q Probably should have talked about
18 this earlier, but Mr. Plaia asked you about your
19 treatment practice. Had you ever treated anybody
20 with carpal tunnel syndrome in the past?

21 A Yes, I have.

22 Q And did -- were you able to come up
23 with a diagnosis as to Mr. Saenger?

24 A Yes, I did. On my examination I felt he had
25 carpal tunnel syndrome both in his left and his right

1 wrist.

2 Q What is carpal tunnel syndrome?

3 A Carpal tunnel syndrome is anything that irritates,
4 compresses or damages the median nerve at the wrist
5 causing symptoms to radiate distally into your finger
6 tips. Mostly it's sensory, but if it goes on long
7 enough, it can affect the motor strength in the thumb.

8 Q Okay. Why do you think that
9 Mr. Saenger has carpal tunnel syndrome?

10 A Well, for the most part in my experience carpal
11 tunnel, if it's something not immediately traumatic, it's
12 usually a progressive insidious kind of thing, and it's
13 usually repetition, use of your fingers, usually flexion,
14 so that they talk about gripping, and the flexion of the
15 wrist.

16 So when you're writing, if you're constantly
17 pinching, you're flexing your fingers and you're pushing
18 down with your wrist as you're going through carbon
19 copies, that's following that description.

20 On the firing range you're gripping a gun with two
21 hands, and that's a forcible use of your grip because you
22 don't want that gun to jar loose while you're firing, and
23 he was required to do it with both hands.

24 So if you have something that irritates that median
25 nerve, even if it's one cause, if your hand doesn't have

1 a chance to totally resolve before you go into another
2 aggravating repetitive incident, you keep perpetuating
3 the irritation to the point where it becomes constant.

4 Q Are there any other activities that
5 he does at work other than the writing and typing
6 and firing range?

7 A Those are all the major ones that he had mentioned
8 that I wrote down.

9 Q Do you recall any others that you
10 didn't write down?

11 A He talked about moving heavy gates, like gripping
12 gates and pulling them back and forth. I don't know how
13 often he does it, but I guess in jail cells, if you're
14 check to go see if they're closed or you're opening or
15 locking them, you're always gripping and pulling --

16 MR. PLAIA: I'm going to object to the
17 doctor guessing, Judge, and speculating.

18 THE JUDGE: Okay. Sustained.

19 Q How -- now that you've had a
20 diagnosis of carpal tunnel syndrome, how should
21 the carpal tunnel syndrome be treated?

22 A It depends how long he's had it or what the
23 findings were. When you have something that's as
24 constant as his right hand is, he already has constant
25 loss of sensation and decreased strength in his thumb,

1 the testing showed the same thing. He has a history,
2 according to what I read in Dr. Lamb's report of having
3 been treated with cock-up splints which he was still
4 using, medications, and that's failing, usually the more
5 aggressive approach would be an injection in the carpal
6 tunnel to see if that alleviates the symptoms. If it
7 doesn't, then the next would be surgery.

8 Q And do you agree with Dr. Lamb that
9 he's in need of surgery at this point?

10 A At this point in time if he's done all the other
11 conservative measures, yes, he needs further treatment to
12 try the more aggressive approaches.

13 Q Do you have an opinion within a
14 reasonable degree of osteopathic certainty about
15 the causal relationship of Mr. Saenger's condition
16 to his employment?

17 A Yes, I do. I feel that it's definitely a
18 contributing factor in this case.

19 Q Was it a significant or insignificant
20 contributing factor?

21 A I would think more significant because there's
22 nothing else I could see that would be more significant
23 than his repetition at work.

24 Q Okay. Is there anything unique about
25 a corrections officer in developing these symptoms

1 compared to the general public?

2 A In looking, just looking at an individual and the
3 repetition of his jobs, there are other jobs that are
4 more, you know, you have a bigger percentage of carpal
5 tunnel syndromes, you know, versus correction officers,
6 but, you know, studies show that that's there.

7 MR. WACHTEL: I have nothing further, your
8 Honor.

9 THE JUDGE: Okay. Thank you.

10 Cross.

11

12 CROSS EXAMINATION BY MR. PLAIA:

13

14 Q Doctor, in your report you said that
15 the patient mentioned that he goes, he practices
16 on his own at least once a month going to a local
17 firing range. Did he indicate approximately how
18 long on those occasions he would fire a gun?

19 A If I didn't write it down, then I couldn't tell
20 you.

21 Q Okay. And also you said that the
22 patient indicated numbness and tingling in his
23 right hand occurred more often while using a
24 keyboard. Then you went on to describe his
25 technique as henpecking?

1 A Henpecking.

2 Q Yes. And then you also describe
3 henpecking as making a fist and using a pointed
4 finger and literally hitting one key at a time.
5 Is that more significant than someone who would be
6 typing such as our court stenographer is doing
7 using all of her fingers and thumbs at the same
8 time, henpecking?

9 A Yes. I would think that's more significant.

10 Q Henpecking is?

11 A Uh-huh.

12 Q And why is that, Doctor?

13 A Simply because you're already pursing your two
14 fingers together, and you're doing one of these jobs so
15 you're flexing your wrist instead of doing what she's
16 doing.

17 Q Okay. And he also testified in this
18 court that he began being a supervisor which
19 required typing approximately 17 years ago, but
20 then he also testified that he was diagnosed in
21 1990 with CTS. Is that significant as far as your
22 opinion regarding causality that he was already
23 diagnosed with CTS before he was doing, as he
24 describes, typing?

25 A Now, you're saying by CTS you're meaning carpal

1 tunnel syndrome?

2 Q Carpal tunnel syndrome. I'm sorry,
3 yes.

4 A And he was diagnosed when?

5 Q In 1990, he said. He had an EMG in
6 1990 which revealed carpal tunnel syndrome.

7 A And he was hired in 19 --

8 Q No, he began a supervisor, supervisor
9 position 17 years ago?

10 A That's new information to me because I don't have
11 any past medical history as having carpal tunnel syndrome
12 prior to him being hired as a corrections officer.

13 Q In this court when he testified, I'm
14 referring to page 5, he said he began as a
15 supervisor 17 years ago, and then he also
16 testified that in the 1990s he had an EMG which
17 revealed minimal carpal tunnel syndrome. So I'm
18 going to ask you to accept those as true.

19 Would that change your opinion regarding causal
20 relation? In other words, the fact that he was
21 previously diagnosed before he was doing the typing that
22 he described?

23 A If he's previously diagnosed prior to coming in on
24 this case you said mild or the beginnings of?

25 Q Minimal CTS.

1 A Minimal CTS. Then his repetition then would
2 aggravate that condition, his new occupation.

3 Q Okay. Now, you also mentioned on
4 page 2 of your report some other, let me see if
5 it's page 2 or page 3, I'm sorry, page 3 of your
6 report, many factors are associated with carpal
7 tunnel syndrome. Such factors include, and you
8 also mention obesity. The petitioner testified
9 when he was here last that he was approximately 5
10 foot 8 and 250 pounds. Would you classify that as
11 being obese?

12 A Yes.

13 Q And would that in any way contribute
14 to his carpal tunnel syndrome?

15 A According to reports and records, they point to
16 that as one of the causes that you'll have a higher
17 percentage of carpal tunnel syndrome in obese
18 individuals.

19 Q Did he tell you approximately how
20 much time or percentage in the course of his tour
21 of duty would be spent typing?

22 A In the beginning he told me it was a majority of
23 his time because he was an officer. He said there was
24 less time when he became a supervisor, but he had to
25 review all the reports and he had to comment on all those

1 reports.

2 Q Okay. So he told you that as a
3 supervisor he had less time typing?

4 A That is correct.

5 Q Okay. And he also testified in this
6 court that he began as a supervisor 17 years ago
7 so, in other words, he was doing less typing for
8 the last 17 years?

9 A That's -- if that was when he became a supervisor,
10 there would be less typing than when he was an officer.

11 Q Okay. And does that --

12 A As an officer he was doing more writing.

13 Q And does that change your opinion
14 at all about causal relationship?

15 A No.

16 MR. PLAIA: I have nothing further, Judge.
17 Thank you. Thank you, Doctor.

18 THE JUDGE: Redirect?

19 MR. WACHTEL: No.

20 THE JUDGE: Okay.

21 Thank you very much, Doctor. You may step
22 down.

23 THE WITNESS: Thank you.

24 THE JUDGE: Mr. Plaia, what page were you
25 referring to? You said page 5, and then you said

1 he testified --

2 MR. PLAIA: Judge, he testified on page 5
3 that he was a --

4 THE JUDGE: That part I have.

5 MR. PLAIA: -- a supervisor.

6 THE JUDGE: What about the other part?

7 MR. PLAIA: And then, I believe in his
8 answers --

9 THE JUDGE: The 1990s.

10 MR. PLAIA: In his Answers to
11 Interrogatories.

12 THE JUDGE: You said something about
13 1990s.

14 MR. PLAIA: Answers to Interrogatories he
15 says in the 1990s petitioner had an EMG of the
16 right hand which allegedly revealed minimal carpal
17 tunnel through Workers' Compensation.

18 THE JUDGE: Do you have that, Todd?

19 MR. WACHTEL: I wrote the interrogatories,
20 but I don't have --

21 THE JUDGE: Do you have a report from
22 1990?

23 MR. WACHTEL: I have no medical evidence
24 showing the petitioner had any preexisting carpal
25 tunnel syndrome.

1 THE JUDGE: So that was --

2 MR. PLAIA: Those are his answers.

3 THE JUDGE: -- petitioner's recollection.

4 MR. WACHTEL: That's his recollection, and
5 you can put whatever weight it is on it, but I
6 have not been provided or seen any records that
7 diagnosed him with carpal tunnel syndrome before.

8 THE JUDGE: Just double-check and let me
9 know if he testified to that.

10 MR. PLAIA: I think he did if you would
11 just indulge me for a second. I think on cross
12 examination.

13 THE JUDGE: You can let me know where it
14 is.

15 MR. PLAIA: Judge, in my cross
16 examination, page 22, top of the page:

17 "And you indicated that in the 1990s you
18 had an EMG of the right hand which allegedly
19 revealed minimal carpal tunnel. Do you recall
20 that as well, 1990s?

21 "ANSWER: Back around sometime around
22 then, yes.

23 "In the right hand?

24 "ANSWER: Yes."

25 THE JUDGE: Okay. 22. Okay.

1 MR. PLAIA: And then he continues:

2 "Okay. In the 1990s were you a
3 supervisor?

4 "ANSWER: No. I was an officer at that
5 time."

6 And then you can continue down the page
7 that he describes what he was doing in the 1990s.
8 And that again is, for the Court and counsel, page
9 22.

10 THE JUDGE: All right. Thank you.

11
12 (Whereupon there is a recess.)

13
14 THE JUDGE: Come up, Doctor.

15 Remain standing for just one moment and
16 Lora will swear you in.

17
18 P E T E R S . H . C H A N , M . D . having affirmed
19 to tell the truth, did testify as follows:

20
21 THE JUDGE: Okay. Counsel, good
22 afternoon.

23 MR. PLAIA: Good afternoon again, Judge.

24 MR. WACHTEL: Good afternoon.

25 THE JUDGE: We're back on Claim Petition

1 2015-8911, and I don't need your appearances
2 again.

3 You can have a seat, Mr. Wachtel.

4 MR. WACHTEL: It's still me.

5 THE JUDGE: Counsel, you have a witness
6 for the Court?

7 MR. PLAIA: I do, Judge. I'd like to
8 present at this time Dr. Peter S.H. Chan.

9 THE JUDGE: Okay. Thank you. You may
10 begin.

11

12 VOIR DIRE EXAMINATION BY MR. PLAIA:

13

14 Q Good afternoon, Doctor. Doctor,
15 could you please give us the benefit of your
16 medical background, please.

17 A Sure. I did my undergraduate work at Duke
18 University, medical school at Georgetown, my orthopedic
19 surgical training at University of Pennsylvania, and my
20 hand training and hand fellowship at University of Texas
21 in San Antonio.

22 Q And you have a specialty?

23 A I am.

24 Q And the specialty is?

25 A I'm an orthopedic hand and wrist and elbow

1 peripheral nerve specialist.

2 Q Okay. Now, could you tell us what
3 percentage of your practice is devoted to treating
4 and surgery and what percentage is devoted to just
5 examining patients solely for the purpose of
6 rendering a narrative report?

7 A I'd say probably about 95 percent is clinical
8 treatment and about 5 percent of it is IMEs,
9 medical-legal type of things.

10 Q And of the 5 percent that is devoted
11 to examining solely for the purpose of rendering a
12 report, what percentage of that is petitioner/
13 plaintiff as opposed to respondent/defendant?

14 A I would say that it's probably about 25 percent
15 for plaintiff and about 75 percent for defense.

16 Q Okay. And approximately how many
17 carpal tunnel surgeries do you perform in a given
18 year?

19 A In a given year?

20 Q Yes, sir.

21 A Between 50 and 75 probably.

22 Q Okay. Doctor --

23 Judge, at this time I'd offer the doctor
24 as an expert in the field of orthopedics.

25 THE JUDGE: Any objection?

1 MR. WACHTEL: Not to credentials as an
2 expert, no.

3 THE JUDGE: Any questions?

4 MR. WACHTEL: No, not at this time.

5 THE JUDGE: Okay. The doctor is qualified
6 to testify as an expert.

7

8 DIRECT EXAMINATION BY MR. PLAIA:

9

10 Q Doctor, you had an opportunity to
11 examine a patient by the name of John Saenger?

12 A I did.

13 Q And how many times did you examine
14 him?

15 A I believe just once.

16 Q And where and when did that
17 examination take place?

18 A According to my report here April 13 of this year
19 in my office.

20 Q Okay. Now, do you have an
21 independent recollection or do you have to refer
22 to your report to refresh your recollection?

23 A I pretty much have to refer to my report.

24 Q Okay. And did the patient give you a
25 history?

1 A He did.

2 Q And was that history taken by you or
3 someone on your staff?

4 A By myself.

5 Q I'm sorry?

6 A By myself.

7 Q Okay. And can you give us the
8 benefit of the history that was presented?

9 A He was sent for an independent medical exam, and
10 that his history was that he was 50 years old, he was a
11 corrections officer for 22 years, and had a history of
12 sounds like carpal tunnel syndrome.

13 He told me what he did at his job which at that
14 point was mostly computer use, about 50 percent was what
15 he said, and he had some symptoms of numbness and
16 tingling in the hand on the right side more so than the
17 left side.

18 He had been treated conservatively at that point
19 with injections of cortisone on his right side and had
20 had temporary improvement which is typical. However, his
21 symptoms came back, and nerve studies apparently were
22 performed and showed that he had pretty bad severe carpal
23 tunnel on the right, not so bad on the left side, and
24 that he was being offered surgical intervention.

25 Q Okay. And did you agree with that,

1 that recommendation?

2 A The recommendation that he have surgery?

3 Q Yes, sir.

4 A Based upon his nerve study on the right side being
5 severe, I did recommend -- and his recurrence after
6 conservative treatment, that he undergo surgery, yes.

7 Q Okay. Now, Doctor, the reason we're
8 here today is regarding the issue of causal
9 relationship. Do you have an issue as to whether
10 or not the condition that you describe as carpal
11 tunnel syndrome is causally related to his work
12 experience?

13 A I do not think it was.

14 Q Why do you say that?

15 A The medical literature has been batting around
16 this issue for years. There has been some fairly
17 definitive good literature out in the last few years that
18 has tried to cull together all the different studies to
19 kind of get a basis with regards to what causes it, what
20 does not cause it, and the most recent study by
21 Barcenilla has did what's called a meta-analysis which
22 culls together multiple other studies, and they did
23 conclude fairly definitively, at least according to my
24 reading of the literature, that there are some things
25 that cause carpal tunnel, or at least causally relate it,

1 and the type of work this officer did did not fall into
2 that.

3 Q Okay. And what are some of the
4 things that cause carpal tunnel syndrome?

5 A There are some comorbidities, okay, that have
6 nothing to do with his work or have nothing to do with
7 someone's occupation or work that can be related.

8 Q Such as?

9 A Female sex is one.

10 Q Okay.

11 A Sorry, but it is.

12 Q And that's based upon the anatomy of
13 the wrist?

14 A No. It's probably due more, honestly, I may be a
15 little off topic as an orthopedist, but it's probably
16 more hormonal than anything else. That sounded like a
17 Trumpism, but that's not what I meant, but hormonal
18 probably is why the female sex has a higher preponderance
19 of it. Obesity.

20 Q Okay. Now, obesity. The petitioner
21 testified that he was approximately 5'8"
22 approximately 250. How would you characterize
23 that plaintiff?

24 A I don't have my BMI calculator, but I know because
25 I do look at my BMI on my patients when I take them into

1 surgery that 250 for a guy my size is morbidly obese.

2 Q Okay. And could that be
3 contributory?

4 A Of course.

5 Q Okay. And what are some of the other
6 factors?

7 A Other comorbidities, outside-of-work type of
8 things are diabetes, which I don't think that he admitted
9 to, and thyroid issues, which he did not also, or gout or
10 inflammatory arthritis.

11 Q How about family history?

12 A I don't think there's been enough literature out
13 that really say that, but I think that there's a lot, a
14 lot of things have to do with genetics, but that has not
15 been clearly demonstrated in the literature.

16 Q Okay. Now, you do mention in your
17 first report dated 4/13/2015 which I'd like to
18 mark as R-1 for identification.

19 Judge, do you have a copy of that?

20 THE JUDGE: I do.

21 MR. PLAIA: Okay.

22

23 (Whereupon R-1 is marked for identification.)

24

25 Q You said that vibration, I'm

1 referring to page 2, about halfway down,
2 "Vibration, heavy lifting, heavy and forceful
3 repetitive lifting, and gripping have been
4 correlated with development of carpal tunnel
5 syndrome." So it is your opinion based upon the
6 literature that you've studied that shows that
7 there is some correlation between heavy and
8 forceful repetitive lifting and gripping?

9 A That's right.

10 Q Now, after taking a history from the
11 patient in your office and reviewing his testimony
12 which I provided, in your opinion did the history
13 and the testimony that he gave regarding the type
14 of work he was performing at work, is that
15 contributory to carpal tunnel syndrome
16 in this case?

17 A No. I think what you're asking essentially is
18 what he describes as his work, does that boil down to
19 being heavy forceful repetitive lifting and gripping, and
20 the answer is no.

21 Q Okay. How about, how about
22 repetitive typing for 50 percent of the day, would
23 that be contributory?

24 A No.

25 Q And what do you base that opinion on?

1 A The same study that I was quoting. Other more
2 anecdotal literature out there is actually -- anecdotal
3 literature out there that suggested that light typing can
4 be beneficial, almost preventive from a standpoint of
5 avoiding carpal tunnel.

6 Q And why is that?

7 A What's that?

8 Q And why is that?

9 A Oh, I don't, I don't -- I didn't write the paper.
10 I'm just saying what the literature says, but just
11 anecdotally the world at this point is we all type.

12 MR. WACHTEL: Judge, I'm going to object
13 to the doctor referring to studies which were not
14 referred to in his report nor provided prior to
15 today.

16 THE JUDGE: Okay, Mr. Wachtel, but the
17 doctor has testified so far about a study and
18 there was no objection made earlier. You're
19 talking about going forward?

20 MR. WACHTEL: Yeah.

21 THE JUDGE: Are you asking me to strike
22 the testimony?

23 MR. WACHTEL: No.

24 THE JUDGE: I'm not going to do that.

25 MR. WACHTEL: I'm not asking you to strike

1 the testimony. However, I think you should give
2 it whatever weight is appropriate as the doctor
3 has not provided you with the studies.

4 THE JUDGE: That's true. Okay.

5 Q Doctor, as part of your practice are
6 you continually -- do you continue to review
7 medical studies as they become available to you?

8 A I read my journal articles every month.

9 Q Okay. And what journals are those?

10 A The Journal of Bone and Joint Surgery which is our
11 premier orthopedic literature. I read the Journal of
12 American Society For Surgery of the Hand which is the
13 premier medical journal for the Hand Society of the
14 United States which is a selective organization that you
15 can only belong to if you're a Board Certified and
16 fellowship trained hand surgeon.

17 Q And which you are, by the way?

18 A Yes, I am.

19 Q Okay. And based upon your regular
20 review of these, of this literature, is that what
21 you're basing your opinion on?

22 A Correct.

23 Q Okay. And --

24 MR. WACHTEL: Judge, I would renew my
25 objection.

1 THE JUDGE: So noted.

2 MR. PLAIA: Okay.

3 THE JUDGE: I would also ask that it be a
4 specific study that you refer to, and to the
5 extent you plan to do any more of that, you need
6 to really have your doctor provide the study.

7 MR. PLAIA: Okay. Fine, Judge. Let me
8 move on.

9 Q You did have an opportunity to review
10 the testimony of the petitioner as he testified in
11 this court --

12 A I did.

13 Q -- back in July of this year?

14 A I did.

15 Q Okay. And did you, based upon your
16 review of his testimony, did that alter,
17 strengthen, or do any -- in any way did that
18 change your opinion from your original report?

19 A The, just looking at my, the addendum to my report
20 there, from what I gathered from reading his testimony is
21 that it pretty much was the same thing, mostly computer
22 use, perhaps using keys to open doors at the corrections
23 facility, and based upon that, I did not think there was
24 any change in my opinion.

25 Q Okay. Did you also note in his

1 testimony that he mentioned the fact that in the
2 1990s he was diagnosed with minimal carpal tunnel
3 syndrome as a correction officer?

4 A I did. I did see that, yes.

5 Q And you made note of that in your
6 second report. Okay.

7 If it was also his testimony that at that time he
8 wasn't a supervisor and he wasn't doing the type of
9 recordkeeping and typing that he testified to later in
10 his career, would that in any way either bolster or
11 change your opinion?

12 A No.

13 Q Okay. The fact that, the fact that
14 he was doing, that he had CTS where he started
15 this heavy typing doesn't change your opinion
16 at all?

17 A I just don't think that -- I don't think -- I
18 think the literature is pretty clear that heavy typing or
19 typing period really has anything to do with the
20 development anyway.

21 Q Okay.

22

23 MR. PLAIA: I have nothing further.

24 THE JUDGE: Cross.

25

1 CROSS EXAMINATION BY MR. WACHTEL:

2

3 Q Morning, Doctor.

4 A Good morning.

5 Q Let's start with some preliminaries
6 first. Do you have a website?

7 A I do.

8 MR. WACHTEL: I'd like to mark as P-3 a
9 copy of the doctor's website.

10

11 (Whereupon P-3 is marked for identification.)

12

13 Q Doctor, is this page from your
14 website?

15 A Yes.

16 Q And it's the section for Workers'
17 Compensation information. Is that correct?

18 A That's correct.

19 Q And, in fact, it mentions case
20 managers, nurses, and therapists just as much as
21 it mentions injured workers. Is that correct?

22 A Yes.

23 Q And, in fact, on that page it says
24 that there are unique issues treating injured
25 workers?

1 A Yes.

2 Q What are the unique issues treating
3 injured workers?

4 A What are the unique issues in treating? There
5 is other people involved in their care.

6 Q Okay. Who are they?

7 A I think you just named them.

8 Q Okay. Why does that matter?

9 A Because we have to coordinate care.

10 Q Okay. So -- okay. And they have
11 equal weight to you?

12 A No. Patients come first.

13 Q Okay. You regularly speak in front
14 of adjusters and defense attorneys. Is that
15 correct?

16 A I do speak, yes.

17 Q And, in fact, most recently one that
18 I could find was May 20, 2014, you spoke at the
19 Capehart firm or a request in the Capehart firm?

20 A Where was it?

21 Q Looks like Mt. Laurel?

22 A Okay.

23 Q And who was in attendance that day?

24 A I don't remember. I think mostly attorneys. I
25 think there were some case managers there.

1 Q Okay. It was a one-day seminar
2 designed for liability and comp professionals?

3 A Sounds correct.

4 Q That was actually sponsored by your
5 office in part?

6 A Did I put up a sign with my, there with my cards?

7 Yes, I did.

8 Q Okay. Why did you do that?

9 A Marketing.

10 Q To defense attorneys and case
11 managers?

12 A Sorry?

13 Q To defense attorneys and case
14 managers?

15 A Referring sources.

16 Q I'm sorry?

17 A Referral sources, sure.

18 Q Okay. How often do you speak in
19 front of injured workers groups?

20 A Injured workers groups?

21 Q Right.

22 A I don't know of any.

23 Q Do you ever speak in front of unions?

24 A In front of unions.

25 Q Yeah.

1 A No.

2 Q Okay. So most of your presentations,
3 if not all of them, are in front of case managers?

4 A There's not organized groups of injured workers
5 attorneys. Okay. If there were, I would, but the
6 organized bunch of people are the people in the insurance
7 company. If a plaintiff's group of attorneys wish for me
8 to speak to them about it, I'd be happy to do that also.
9 I haven't been approached.

10 Q You also regularly write for the
11 American Academy of Orthopaedic Surgeons?

12 A I don't regularly write for them, no.

13 Q You have in the past?

14 A I have.

15 Q In fact, you wrote an article on
16 December of 2013. Does that look familiar?

17 A I didn't write this.

18 Q You didn't write that?

19 A No.

20 Q Okay. But it does say your name at
21 the top?

22 A It does.

23 Q And you've never seen it before?

24 A I've never seen it before.

25 Q That is you at the top?

1 A That's my name. I didn't write this. That's my
2 academy.

3 Q Is somebody else in your office
4 authorized to write on your behalf?

5 A Not at all. I have no idea where this came from.

6 MR. PLAIA: Judge, can I see what counsel
7 is referring to?

8 MR. WACHTEL: I'm sorry.

9 THE JUDGE: Absolutely.

10 Q Doctor, in this document which you've
11 never seen before, it says, it talks about cubital
12 tunnel syndrome --

13 A Correct.

14 Q -- which --

15 Mr. PLAIA: Judge, I'm going to object to
16 the doctor referring to --

17 THE WITNESS: I didn't write this.

18 MR. PLAIA: -- or asked questions about
19 something that he's never seen before.

20 THE WITNESS: I didn't authorize it. I
21 didn't write it.

22 MR. WACHTEL: I haven't asked a question
23 yet.

24 THE JUDGE: Okay. One second, Doctor.

25 MR. PLAIA: But if my adversary is asking

1 the doctor questions about an article that he just
2 stated was not his, I think --

3 MR. WACHTEL: Well, I haven't asked a
4 question yet.

5 MR. PLAIA: -- it's improper.

6 THE JUDGE: Okay. Ask a question.

7 Q Doctor, in this article --

8 A Why don't you give me it.

9 Q Sure.

10 What are we up to as far as evidence?

11 THE JUDGE: That would be 4.

12 MR. WACHTEL: I'd like to mark that for
13 identification purposes as well.

14

15 (Whereupon P-4 is marked for identification)

16

17 A Okay.

18 Q In that article it talks about
19 cubital tunnel syndrome and I don't --

20 A No, it talks about ulnar tunnel syndrome.

21 Q Okay. Ulnar tunnel syndrome which
22 comes through the cubital nerve?

23 A Sorry?

24 Q Can you explain what ulnar
25 tunnelsyndrome is?

1 A The ulnar nerve runs from your neck to your armpit
2 all the way down. Cubital tunnel syndrome would be a
3 compressed ulnar nerve at the elbow cubit, and ulnar
4 tunnel syndrome is the same nerve as it goes down into
5 your wrist can be compressed at the secondary place at
6 the wrist level, not at the elbow.

7 Q Okay. So in this article it talks
8 that in ulnar tunnel syndrome that typing is a
9 factor in the development of ulnar nerve syndrome?

10 A Okay.

11 Q All right. Is it your position that
12 typing is not a factor in carpal tunnel syndrome?

13 A Correct.

14 Q Why?

15 A Just based upon the literature.

16 Q Okay.

17 A But this is a different nerve.

18 Q Okay. So what you're saying is
19 typing can affect one nerve, but not the other?

20 A No, it doesn't affect either in this, but I'm not
21 sure where your questioning is. We're talking about a
22 different nerve here.

23 Q Okay. But typing can affect one
24 nerve, but not another?

25 A No.

1 Q Typing can affect no nerves?

2 A Not from my perspective, not from the literature.

3 Q Okay. And you understand there's a
4 difference between medical causality and legal
5 causality?

6 A You're going to let me know?

7 Q No. Is there a difference?

8 A What's that?

9 Q Is there a difference?

10 A I'm testifying based upon me being a physician,
11 not being an attorney.

12 Q Okay. So you at least acknowledge
13 the fact that there could be a difference between
14 --

15 A I don't have an opinion.

16 Q Okay. You have no opinion as to
17 that?

18 A I'm not an attorney.

19 Q Okay. Going back to carpal tunnel
20 syndrome, it's my understanding there's not a
21 precise test that can determine the cause of
22 carpal tunnel syndrome?

23 A A precise test?

24 Q Right.

25 A There's nothing that's 100 percent, no.

1 Q Okay. Is there any test that can say
2 the cause to any degree?

3 A There's some circumstances of specific patients
4 where I would say I know what caused it, yeah.

5 Q Okay. With those specific
6 circumstances, but there's no objective test other
7 than your opinion?

8 A That's how medicine is.

9 Q Well, I would say a broken arm can be
10 shown by an x-ray?

11 A Not always.

12 Q Okay. Okay.

13 A There's called occult fractures of the wrist and
14 hand that happen on a weekly basis in my office that
15 aren't shown on x-rays.

16 Q Okay.

17 A A lot of clinical medicine is putting all the
18 pieces together. There's no perfect test; otherwise, I
19 wouldn't have a job. I'd be a technician.

20 Q And there's no precise test that
21 would rule work out as a contributing factor?

22 A There's no test.

23 Q Right.

24 A I just said that.

25 Q Well, it's a different question.

1 A Okay.

2 Q There's no test that would rule work
3 out?

4 A There is no test that would rule work out. Okay.
5 Sure.

6 Q As a significant contributing factor?

7 A There's no, there's no test that would rule work
8 out.

9 Q Okay. Is work a significant
10 contributing factor to the development of
11 Mr. Saenger's carpal tunnel syndrome?

12 A No.

13 Q So then the only factor that you're
14 considering is his obesity?

15 A There's a component that I know judges hate to
16 hear, but it's idiopathic. There's a lot of stuff we
17 can't, we can't explain, but the reality is as long as
18 we've ruled out specific medical causes for it, it's all
19 right to say something is idiopathic, but obesity is a
20 strong comorbidity for the development of carpal tunnel
21 syndrome.

22 Q And you understand that idiopathic
23 has different meanings in court as it does in
24 medicine?

25 A Okay.

1 Q You understand that in court
2 idiopathic becomes a sole cause?

3 A Okay.

4 MR. PLAIA: Becomes a what?

5 MR. WACHTEL: Sole, s-o-l-e, cause of
6 something.

7 Q All right. Do you understand that?

8 A Okay.

9 Q So you're saying that work has
10 absolutely no factor in the development of carpal
11 tunnel syndrome for Mr. Saenger?

12 A Not in this gentleman here.

13 Q And you understand that there's a
14 Department of Labor study from 2011 that indicates
15 that corrections officers miss more time from work
16 for carpal tunnel syndrome than the average
17 population?

18 A Okay.

19 MR. PLAIA: Judge, I'm going to object to
20 that. I don't see how that is at all relevant.
21 It could be based upon the fact they take more
22 time off, and there's so many variables in that,
23 and I don't think it's a proper question. I don't
24 think it's relevant either.

25 THE JUDGE: Well, the question was whether

1 or not the doctor was aware of the study.

2 MR. PLAIA: Okay.

3 THE JUDGE: I thought your objection was
4 going to be that I don't have the study and do you
5 I would imagine.

6 MR. PLAIA: Well, I don't think, even if
7 the doctor were or were not aware of the study, I
8 don't think it's a proper question the fact that
9 correction officers take more time off from work.

10 MR. WACHTEL: Due to the development of
11 carpal tunnel syndrome.

12 THE JUDGE: Overruled.

13 Q Is there anything unique about
14 corrections officers that give rise to the
15 development of carpal tunnel syndrome other than
16 obesity?

17 A You're saying they're all obese?

18 Q No, I'm not.

19 A So the question is again?

20 Q Is there anything unique to the
21 profession of being a corrections officer --

22 A I don't know. I'm not in the field.

23 Q Right. You said you reviewed the
24 treating records in this matter. Is that correct?

25 A I did.

1 Q It's my understanding that he went to
2 Dr. Goldstein first?

3 A I don't have -- I don't have that medical record.
4 I just have my own report.

5 Q Okay.

6 A If that's correct, then I assume that's correct.

7 Q Then you'd also agree with me that
8 Dr. Goldstein was the doctor that the employer
9 sent him to for the date of loss of February 1,
10 2015. Does that sound right?

11 A I'd have to assume that's correct.

12 Q And you understand that he
13 recommended a hand specialist, and ultimately he
14 was seen by Dr. Lamb on March 10, 2015, and at
15 that point surgery was recommended?

16 A Okay.

17 Q And then you saw him a month later
18 and felt that the surgery was not necessary?

19 A No, I didn't say that.

20 Q Was not work related. I'm sorry.

21 A Correct.

22 Q Have you reviewed any other records
23 other than that?

24 A Just what was provided me for the IME, and then
25 later on the testimony.

1 Q Were you provided the report of
2 Dr. Lamb from May 15, 2015?

3 A I don't recall. If it was in the initial packet
4 sent to me by PMA, I'm sure I did.

5 Q I don't know what was sent to you,
6 but I'd like to mark this as P-5 for
7 identification.

8

9 (Whereupon P-5 is marked for identification.)

10

11 Q Doctor, did you have an opportunity
12 to read that?

13 THE JUDGE: Does he have that?

14 MR. WACHTEL: Oh, yeah, he has it. It was
15 attached to the motion.

16 THE JUDGE: Not the supplemental, but the
17 original motion.

18 A Okay.

19 Q Did you have an opportunity to read
20 that?

21 A Right now, yes.

22 Q Okay. And it's my understanding that
23 Dr. Lamb is also a hand specialist?

24 A Yes.

25 Q And also he has a fellowship at the

1 Philadelphia Hand Center and has similar
2 credentials to yours?

3 A He does.

4 Q It's my understanding reading this
5 report that he believes that the symptoms were
6 related to his employment?

7 A Looks that way.

8 Q Does that change your opinion?

9 A No. Dr. Lamb's not reading the same literature or
10 he's not reading the literature.

11 Q You know what Dr. Lamb is reading?

12 A No. I'm saying that Dr. Lamb may not be reading
13 the same literature or the literature.

14 Q But you don't know?

15 A He may not be.

16 Q But he may be?

17 A Correct. If he were reading the same literature,
18 he wouldn't come to that conclusion.

19 Q There's no question.

20 MR. WACHTEL: I have nothing further, your
21 Honor, other than I'd like to move the evidence
22 in.

23 THE JUDGE: Okay. So what is that last --
24 what is P-5?

25 MR. WACHTEL: Dr. Lamb's report.

1 THE JUDGE: Just one page?

2 MR. WACHTEL: Yes.

3 THE JUDGE: Oh, okay. All right.

4 Any objection?

5 MR. PLAIA: No, Judge. That was attached
6 to the motion.

7 THE JUDGE: To the motion, yes.

8 So that's Dr. Lamb's report.

9 MR. PLAIA: Right.

10 MR. WACHTEL: As one of the authorized
11 treating doctors.

12 THE JUDGE: So you have P-4 which is the
13 article, and then P-3, and you want to move what
14 in?

15 MR. WACHTEL: What was P-3?

16 THE JUDGE: That was the website.

17 MR. WACHTEL: The website? Yeah, we can
18 do that, but I'm out of clean copies.

19 THE JUDGE: The article I don't --

20 MR. WACHTEL: You don't want? Okay.

21 THE JUDGE: The doctor couldn't identify
22 it. He didn't write it.

23 MR. WACHTEL: You can give it whatever
24 weight you want when you review the transcript.

25 THE JUDGE: I don't want that.

1 (Whereupon P-2, P-3 and P-5 are marked
2 into evidence.)

3
4 THE JUDGE: Okay. Then did you have any
5 redirect?

6 MR. PLAIA: I did, Judge, briefly.

7 THE JUDGE: Okay.

8
9 REDIRECT EXAMINATION BY MR. PLAIA:

10
11 Q Dr. Chan, you have no way of knowing
12 what history was given to Dr. Lamb by Dr -- by
13 Mr. Saenger. Is that correct?

14 A I'm sure I reviewed his note.

15 Q But --

16 A But, otherwise, I wasn't there, no.

17 Q And, obviously, you don't know what
18 the patient said to Dr. Lamb about what he did and
19 did not do at work. Is that right?

20 A No, that's correct.

21 MR. PLAIA: I have nothing further.

22 THE JUDGE: Okay.

23 MR. WACHTEL: Nothing further.

24 MR. PLAIA: Judge, I would at this point
25 like to move in as R-1 --

1 THE JUDGE: Doctor, you can step down.

2 Thank you.

3 THE WITNESS: Thank you very much.

4 THE JUDGE: Have a good day.

5 MR. PLAIA: -- Dr. Chan's 4/13/15 report,
6 as R-2 his supplemental report of August 31, 2015.

7 THE JUDGE: Any objection?

8 MR. WACHTEL: No.

9

10 (Whereupon R-1 and R-2 are marked into
11 evidence.)

12

13 MR. WACHTEL: And I'd like to move
14 Dr. Milazzo's report in if I hadn't done it
15 earlier.

16 MR. PLAIA: No objection, Judge.

17 I don't think he did.

18 THE JUDGE: I do have that in already --
19 no, I don't.

20 Okay. So we have in P-2, P-3. P-4 is the
21 only thing not going in. R-1 and R-2 will go in
22 as evidence.

23 May I have that supplemental when you get
24 a chance? Because I don't have Dr. Chan's.

25

* * * *

C E R T I F I C A T E

I, LORA LANDSHOF, a Certified Court Reporter, do hereby certify that the foregoing is a true and accurate transcript of the testimony and proceedings reported by me stenographically on the date and at the place hereinbefore set forth.

Lora Landshof

LORA LANDSHOF, C.C.R.

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DATED: _____