

**EXHIBIT E**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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RICHARD MCGILL,

**Index No.: 158766/2015**

Plaintiff,

-against-

**AFFIRMATION OF  
YONG KIM, MD**

WHITNEY MUSEUM OF AMERICAN ART and  
TURNER CONSTRUCTION COMPANY,

Defendants.

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**YONG KIM, M.D.**, hereby affirms under penalty of perjury as follows:

1. I am not a party to this action, nor am I affiliated with any party to this action.
2. I obtained my medical degree from the New York University School of Medicine in 1993. I completed an Internship in General Surgery followed by a Residency in Orthopedic Surgery at the New York University Hospital for Joint Diseases from 1993 to 1998. I completed a Spine Fellowship at the Texas Back Institute in 1999. I am currently the Director of Degenerative Spine Surgery at NYU Langone Medical Center and a Clinical Professor of Orthopedic Surgery at NYU Grossman School of Medicine.
3. By virtue of my training and experience, I am familiar with the accepted standards of practice in the performance of spinal surgeries, including corpectomy procedures.
4. This Affirmation is submitted in support of a motion made on behalf of defendants WHITNEY MUSEUM OF ART and TURNER CONSTRUCTION COMPANY for a deposition of Andrew Merola, M.D., adjourning the trial of this action currently scheduled for May 6, 2024 and the filing of a Third Party Complaint against Andrew Merola, M.D.

5. I am fully familiar with the facts and circumstances of this action from my review of the relevant materials, including the plaintiff's medical records as maintained by Dr. Merola, radiology films dated July 7, 2020, September 15, 2021, February 6, 2022 and December 5, 2023; along with other records referenced in my IME reports. I performed an independent orthopedic spine examination of the plaintiff on March 4, 2019 and re-examined the plaintiff on December 15, 2022. See **Exhibit A** attached hereto. I recently received for review for the first time the actual imaging of plaintiff's the pre-operative MRI of the cervical spine dated July 7, 2020, post-operative X-Ray study of the cervical spine dated September 15, 2021, and post-operative MRIs of the cervical spine dated February 6, 2022 and December 5, 2023.

6. As detailed below and based upon my review of the above mentioned materials, it is my opinion within a reasonable degree of medical certainty that Dr. Merola did not perform a partial corpectomy on the plaintiff.

7. The cervical spine consists of seven bones, referred to as C1-C7 vertebra, which are separated from one another by intervertebral discs. A corpectomy is a procedure which involves removing the front part of the vertebra, the vertebral body. After a corpectomy, this space between the vertebrae is enlarged. As a result, pre-operative imaging in comparison with post-operative imaging produces an observable difference in the space between the vertebrae pre-operatively and post-operatively. Corpectomy is performed in an attempt to decompress the neural elements behind the vertebral body.

8. On May 26, 2021, Dr. Merola reported that he performed the following procedures: Anterior cervical interbody arthrodesis, C5, C6, C7 vertebral segments; **partial vertebral corpectomy with resection of 50% of the C6 vertebral body**; decompression of the spinal cord nerve roots at C5-6; decompression of the spinal cord nerve roots at C6-7; placement of biomechanical device at C5-6; placement of biomechanical device at C6-7; autogenous locally harvested bone graft, allo bone graft;

placement of separate and distinct structurally supportive anterior spinal instrumentation consisting of a locking plate screw, anterior spinal instrumentation construct placed specifically across the C5, C6, C7 vertebral segments for inherent stability and not merely to hold the biomechanical device in place; intraoperative fluoroscopy; intraoperative evoked potential monitoring. **See Exhibit B.** (emphasis added).

9. Based upon my review of the plaintiff's pre-operative July 7, 2020 MRI in comparison with the plaintiff's post-operative X-ray study of September 15, 2021 and MRI studies of February 6, 2022 and December 5, 2023, the relative height of the C6 vertebral body did not change. None of the post-operative imaging studies show any evidence of partial corpectomy having been performed at the C6 vertebral body. I opine to a reasonable degree of medical certainty that Dr. Merola did not perform a partial vertebral corpectomy with resection of 50% of the C6 vertebral body.

I affirm this 1st day of May, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

A handwritten signature in black ink, reading "Yong Kim M.D.", written over a horizontal line.

YONG KIM, M.D.