

1 has been helpful --

2 A. Correct.

3 Q. -- correct? And at this point, he's taking Vicodin as  
4 needed for pain --

5 A. Correct.

6 Q. -- correct? Do you indicate anywhere in here the  
7 amount he's taking?

8 A. No. I don't say how often or how much he's taking.

9 Q. At this point, you didn't prescribe this for him or  
10 did you?

11 A. Yes, I did prescribe it to him, the Vicodin.

12 Q. You did. Okay.

13 Doctor, not that it ever works out, but I have some  
14 monitors for the jury. All these are evidence. As I go  
15 through, the jury will be able to follow along.

16 If anyone has difficulty seeing, please just let me  
17 know.

18 So the February 2nd, 2010, you prescribed Vicodin as  
19 needed for pain?

20 A. Correct.

21 Q. Correct? In other words, in this situation, the  
22 Vicodin you're talking about, it's up to Mr. Verdon, if he feels  
23 pain to take it, if he doesn't feel pain, he doesn't need to  
24 take it?

25 A. Right.

1 Q. The physical examination that you do of Mr. Verdon on  
2 February 2nd, 2010, this is you essentially manipulating and  
3 looking at his body and making findings based on that, correct,  
4 generally?

5 A. More or less, yes.

6 Q. Okay. You have a notation in here that there is, a I  
7 think you said on your direct examination, you found an  
8 exaggerated kyphosis of the thoracic spine, correct?

9 A. Correct.

10 Q. And you did that based on what? A physical  
11 examination?

12 A. Yes.

13 Q. And you also said that based upon what you're seeing  
14 here, I think your quote was -- I wrote it down. I may be  
15 wrong -- that his spine was beginning to collapse, correct?

16 A. Correct.

17 Q. Okay. In the impression that we have, which you  
18 talked about just before the impression section of your report,  
19 is what you find to be significant in terms of recommending  
20 future treatment, correct?

21 A. Correct.

22 Q. You don't mention the exaggerated kyphosis in the  
23 thoracic spine, do you?

24 A. No, I do not mention that.

25 Q. You also don't mention that you believe his spine was

1 beginning to collapse, did you?

2 A. It doesn't say that, no.

3 Q. Okay. And, in fact, what you advise him in your plan  
4 for Mr. Verdon is to continue with his current course of  
5 rehabilitation, correct?

6 A. Correct.

7 Q. You don't make any recommendation that he should  
8 change his rehabilitation therapy in any way, correct?

9 A. Not at that point, no.

10 Q. And again you recommended that he take his medication  
11 as prescribed?

12 A. Yes.

13 Q. At that point, you're not telling Mr. Verdon you got  
14 to go get yourself into the hospital and get treatment  
15 immediately, are you?

16 A. Not on that date, no.

17 Q. Now, let's go -- I know some of your notes are  
18 handwritten. Those were handwritten by you?

19 A. Yes, either me or my physician assistant, yes.

20 Q. Okay. And when you have the HPI in your office visit,  
21 that's history of present illness?

22 A. Correct.

23 Q. It's what you find at that time during that visit?

24 A. It's what the patient says that has happened over the  
25 past six or five years.

- 1 Q. Now, you saw him February 2nd, 2010. You next see him  
2 on March 26, 2010, correct?
- 3 A. Correct.
- 4 Q. He's taking Vicodin and Motrin?
- 5 A. Correct.
- 6 Q. Your notation under HPI: Vicodin, Motrin and what  
7 does that say?
- 8 A. PRN which means as needed.
- 9 Q. It says Vicodin, Motrin and then there's a word and  
10 then it says helps?
- 11 A. PRN.
- 12 Q. And helps means just as needed?
- 13 A. No. PRN means as needed.
- 14 Q. What does it help?
- 15 A. It helps when he takes it.
- 16 Q. He's noticing relief in pain from taking that?
- 17 A. When he takes the medication, yes.
- 18 Q. Okay. He's still in your physical therapy at this  
19 point, correct?
- 20 A. Correct.
- 21 Q. Now, when you see him again two months, almost close  
22 to two months later March 7, 2010 under HPI, what's the first  
23 word you have?
- 24 A. He's feeling better.
- 25 Q. All right. He's telling better, okay. And you also

1 in terms of your assessment you note that there is some clinical  
2 improvement for Mr. Verdon?

3 A. Yes.

4 Q. And what do you mean by that?

5 A. Primarily his neck had been improving.

6 Q. Does it say primarily his neck? It says Survalet and  
7 Provacado (ph), right? The next one says some clinical proof.  
8 That's for both?

9 A. I'm telling you based upon this note in my experience  
10 with him primarily his neck improved. You're looking at HPI.  
11 It says decreased neck pain.

12 Q. Right. The assessment you're talking about: Cervical  
13 pain, lumbar pain and you note some improvement?

14 A. Correct.

15 Q. That's in both.

16 A. It's not in both. That's what you're saying. You're  
17 taking bits and pieces. His neck was better. His back wasn't.

18 Q. Okay. You next see him June 18, 2010 and you note  
19 that his neck continues to improve, correct?

20 A. Correct.

21 Q. His overall pain on that visit is five out of ten and  
22 again he's taking Motrin and Vicodin, correct?

23 A. That's correct.

24 Q. Again, June -- and sorry July, 30, 2010, you note the  
25 Vicodin helps and is well tolerated?

1 A. Correct.

2 Q. Meaning by well tolerated he's having no adverse  
3 effect from taking the medication like getting sick or anything  
4 like that?

5 A. Right.

6 Q. On August -- I'm sorry -- September 24, 2010, you see  
7 Mr. Verdon again. In the HPI under the neck injury, could you  
8 read that to the jury what that says in your notes?

9 A. Neck pain resolving, four out of ten, radiating into  
10 right shoulder, no numbness, tingling, no weakness in arms.

11 Q. So that is based upon your examination of Mr. Verdon's  
12 history that he gave to you there?

13 A. No. That's his history that he's given. The HPI is  
14 basically what he's said.

15 Q. So the neck and the pain -- the neck pain is  
16 improving. He's now four out of ten in his complaints and right  
17 shoulder, what does that say right shoulder, no numbness?

18 A. Neck pain resolving, four out of ten radiating to  
19 right shoulder, no numbness, tingling, no weakness in the upper  
20 extremities.

21 Q. What's the next thing?

22 A. No headaches, no dizziness.

23 Q. And the next one?

24 A. Right shoulder pain was resolving status post surgery,  
25 still some difficulties reaching and dressing, improving back

1 pain radiating into right leg and numbness into groin down to  
2 legs and feet.

3 Q. Okay. You see him again two months later, see his  
4 pain as five out of ten. He's on Vicodin. You essentially tell  
5 him to continue physical therapy in each of these visits?

6 A. Yes.

7 Q. You're not recommending anything other than continuing  
8 physical therapy and the medications that you prescribed,  
9 correct?

10 A. The only things that he's accepting are the therapy  
11 and the medications. We discussed other options like the  
12 injections and the spinal cord stimulator.

13 Q. I'm sorry. We'll get there. At this point, you're  
14 basically telling him to continue conservative treatment,  
15 physical therapy?

16 A. Yes.

17 Q. You're not recommending anything else at this point?

18 A. Correct.

19 Q. You then see him in -- let's go to your notes I think  
20 it's August 11, 2011. And under HPI, could you read to the jury  
21 what that says under HPI?

22 A. What's the date?

23 Q. I'm sorry. August 11, 2011.

24 A. I'm not seeing that note.

25 Q. 8/11/11.

1 MR. McCORIE: Maybe that's a three.

2 Q. It might be 3/11.

3 A. Yes, 3/11.

4 Q. Doctor, see I didn't make a comment about the doctor's  
5 handwriting.

6 A. I'm surprised I could read my own handwriting.

7 Q. So 3/11/11, could you read to the jury under HPI what  
8 that says?

9 A. It says right shoulder much better, 80 percent better,  
10 continue neck and back pain exaggerated by activity, taking  
11 Vicodin PRN with relief well tolerated, positive bilateral lower  
12 extremity radicular symptoms.

13 Q. And his overall pain level in this visit. Four out of  
14 ten?

15 A. It's four out of ten but it's ten out of ten with  
16 activity.

17 Q. And again you have at this point you recommend that he  
18 continue home exercises, correct?

19 A. Correct.

20 Q. Now, you're aware at this point that Mr. Verdon has  
21 finished Kessler rehabilitation therapy?

22 A. He's been discharged from there, yes.

23 Q. And he's never gone back since 2011 to Kesler for any  
24 physical therapy, correct?

25 A. Not as far as I know.

1 Q. Okay. Other than home exercises like stretching,  
2 that's what he's been doing since 2011 as far as you're aware  
3 of, correct?

4 A. Correct and the TENS unit that was prescribed.

5 Q. The TENS unit. June 3rd, 2011 again this is his  
6 overall pain level is four out of ten but a ten out of ten with  
7 activity?

8 A. Correct.

9 Q. Now, your note of October 13, 2011 this is your typed  
10 note if you can get that in front of you please. Are you with  
11 me?

12 A. Yes.

13 Q. Okay. When for the first time did Mr. Verdon complain  
14 to you of any type of a incontinence? Is this the first time of  
15 is there a --

16 A. Well, bladder symptoms would be October 13, 2011.  
17 He's complaining of urinary frequency or urgency rather.

18 Q. Urinary urgency. Is this the first time he made a  
19 complaint of any type of urinary urgency or incontinence?

20 A. As far as I can tell yes.

21 Q. Okay. How old is Mr. Verdon at this time in 2011.

22 A. He's about 62.

23 Q. What are the causes of urinary urgency or urinary  
24 incontinence?

25 A. It could be a problem with the bladder, it could be a

1 problem with the prostrate.

2 Q. Did you look to any of those other issues when you  
3 first learned that he had urinary urgency or urinary  
4 incontinence?

5 A. No.

6 Q. Did you provide or recommend any test to determine the  
7 source?

8 A. No.

9 Q. No?

10 A. No.

11 Q. And also you note that Mr. Verdon wants to defer  
12 surgery for the time being?

13 A. That's correct.

14 Q. You note again that he's completed a course of  
15 supervised physical therapy and he's been doing exercises at  
16 home on his own, right?

17 A. Correct.

18 Q. And he's taking Norco as needed for pain, correct?

19 A. Correct.

20 Q. And the Norco that he's taking at this time seems to  
21 be effective and it's well tolerated, correct?

22 A. Yes.

23 Q. You mention though again in the plan that you  
24 prescribed a TENS unit for home use as well and you'll renew his  
25 prescription?

1 A. Right.

2 Q. Did he ultimately obtained that TENS unit?

3 A. It took about two years but he did get it, yes..

4 Q. When did he first start using the TENS unit?

5 A. Some time in 2013 I believe. I'm not sure. I think  
6 it was some time after August 2000.

7 Q. And did you see him after he began using the TENS  
8 unit?

9 A. Yes.

10 Q. And did he say to you that the TENS unit provided him  
11 relief from his pain?

12 A. I'm sorry. Can you repeat that?

13 Q. When you saw Mr. Verdon after he began to use the TENS  
14 unit, did he indicate to you that that provided him relief?

15 A. Some.

16 Q. Okay. You first prescribed it at what date? Was this  
17 that --

18 A. 2000.

19 Q. Okay. Do you know the date exactly when he first  
20 began to use it?

21 A. I'm not sure. It was prescribed in 211. It was  
22 re-prescribed 6/25/13 or 8/6/13. I think it was some time after  
23 the 8/6/13 that he actually got -- started using it.

24 Q. Each of the times you prescribed the TENS unit, did  
25 you discuss with Mr. Verdon what a TENS unit is?

1 A. More or less.

2 Q. Is it your practice when you sit down with a patient  
3 to discuss the TENS unit? As an example, you describe to them  
4 what you believe the type of relief it could provide to the  
5 patient?

6 A. I'm not sure of the discussion being that detailed but  
7 basically would be to the effect that I'm going to prescribe a  
8 stimulation unit to use at home similar to what you're getting  
9 in physical therapy. If you feel like it helps, you should use  
10 it.

11 Q. He chose not to?

12 A. No. He's been using it.

13 Q. No. I mean from the first time that you did until  
14 2013, despite you speaking with him, did he choose not to do it?

15 A. No. He couldn't get authorization to get the actual  
16 unit.

17 Q. Okay. But you have no information as to what that  
18 process was, correct, other than what Mr. Verdon told you? He  
19 said I couldn't get authorization to use it?

20 A. I prescribed it. It's a physical unit. He has to get  
21 the unit to use it. He did not get -- the company that supplies  
22 the unit could not get permission to give it to him until August  
23 2013.

24 Q. I mean could you describe it -- and what does it cost?  
25 What does a TENS unit cost?

1           A.    This particular unit that I prescribed I think costs  
2           about a thousand dollars.

3           Q.    And how long does it last? How long do you have that?

4           A.    Once again generally about three to five years  
5           although the electrodes needs to be replaced more commonly.

6           Q.    Okay. And the reason he didn't use it as far as you  
7           understand it is because it wasn't authorized for him to use it?

8           A.    Because he didn't have it, he couldn't use it.

9           Q.    It wasn't authorized so he didn't get it?

10          A.    Right.

11          Q.    Did you write note on his behalf to the person  
12          authorizing it as saying you got to give him this TENS unit?

13          A.    I didn't write a note. I didn't tell anyone they got  
14          to do anything. I just wrote the prescription with the medical  
15          justification as to why he needed it.

16          Q.    And each time he came back and you asked him do you  
17          have a TENS unit and he said I don't have it, will you  
18          re-prescribe it or did you just sort of let it go at that?

19          A.    No, I re-prescribed.

20          Q.    Each time you re-prescribed it he didn't get it and  
21          didn't use it because it wasn't authorized?

22          A.    He didn't use it until he got it and he didn't get it  
23          until 2013.

24          Q.    And basically each time he came back for those visits  
25          from 2011 you essentially said, well, continue with your home

1 exercise therapy, correct?

2 A. More or less, yes.

3 Q. Let's go, if we can. I want to keep moving along.  
4 You see him other times but let me ask you a little bit about  
5 April 13, 2012. Do you see that?

6 A. Yes.

7 Q. And you noted here the current RX -- am I reading that  
8 correctly -- the current RX is effective?

9 A. That's correct.

10 Q. That's the prescription you were giving him that's  
11 effective for helping him with his pain?

12 A. Yes. On that particular day, it was Norco.

13 Q. Again you prescribed continue home exercises?

14 A. Correct.

15 Q. June 2012, you see him. You see him August 10, 2012.  
16 You then see him October 19, 2012. January 18, 2013 is the  
17 first time that you recommended epidural injections?

18 A. I'm not sure it's the first time that we recommended  
19 it but it's certainly the first time that he specifically said  
20 that he doesn't want to do it.

21 Q. Well, in any of your notes prior to January 18, 2013,  
22 did you prescribe epidural injections for Verdon?

23 A. Did I prescribe it to him? No. I never -- at no time  
24 did I actually prescribe it to him. It's a discussion that we  
25 had in terms of his alternatives for treatment.

1 Q. And can you show me the note prior to January 18, 2013  
2 where you discuss epidural injections with Mr. Verdon?

3 A. Doesn't specifically say epidural injections. It just  
4 says other treatment options.

5 Q. It doesn't say epidural injections?

6 A. It does not specifically say that term.

7 Q. So assuming this is the first time that there is a  
8 discussion and Mr. Verdon's action was I'm not doing it, he  
9 declined it?

10 A. I wouldn't say that's exactly his reaction but, yes,  
11 the sum and substance of course he did decline.

12 Q. And what epidural injection are you recommending on  
13 January 8, 2013?

14 A. The cervical and lumbar.

15 Q. Okay. And you said to Mr. Verdon in my medical  
16 opinion if I give you epidural injections in your cervical area,  
17 in your lumbar area that will provide relief to you. That's the  
18 purpose of those, correct?

19 A. No. That's not exactly the conversation that  
20 occurred. So the conversation is there are risks, benefits and  
21 alternatives to all different types of medical treatments. The  
22 epidural injections can give you, in his case, some temporary  
23 symptomatic relief for his neck and back pain although I don't  
24 think it would be curative, it wouldn't fix his problem. I  
25 don't think it would eliminate the need for the eventual surgery

1 but, yes, there is a reasonable likelihood that that would give  
2 him some symptomatic relief.

3 Q. Okay. Again, the next time you have a discussion of  
4 epidural injections is May 10, 2013 and again he declined that,  
5 correct?

6 A. I can't say for sure that that's the only time we had  
7 these discussions. These had been ongoing discussions but, yes,  
8 he did decline.

9 Q. I guess we'll move along, Dr. Hausknecht.  
10 Are you able to point to me other than these two notes  
11 where the issue of epidural steroid injections is mentioned in  
12 your notes when you first started to see him until today?

13 A. 8/6/13 it says he's been indicated for surgery and  
14 injection but it says he is hesitant to proceed. 6/25/13, at  
15 this point in time Mr. Verdon declines any further surgery or  
16 interventional pain management. So it doesn't necessarily say  
17 epidural injections but when I talk about injections or  
18 interventional pain management that's what I'm referring to.

19 Q. But each of the times that the issue of epidural  
20 injections is discussed, one of the purposes of epidural  
21 injection is to relieve pain whether temporary or a long-term  
22 basis, correct?

23 A. Correct.

24 Q. And each time he turned it down?

25 A. That's correct.

1 Q. And each time you discussed the possibility of surgery  
2 to possibly relieve pain for him he turned it down?

3 A. Correct.

4 Q. In June 25, 2013 again you note he's experiencing  
5 urinary incontinence in connection with the erectile  
6 dysfunction, correct?

7 A. Yes.

8 Q. You didn't look into any other sources after that  
9 potential complaint, correct?

10 A. I had a pretty good understanding of what was causing  
11 it. I did not look at any other sources.

12 Q. You assumed it was related to the lumbar spine and you  
13 accepted that?

14 A. Yes.

15 Q. Again you noted in June 25, 2013 the kyphoscoliosis.  
16 Again this is on physical examination?

17 A. I'm sorry. I didn't hear the question.

18 Q. Yes. In that June 25, 2013 note, you note  
19 kyphoscoliosis and that's upon physical examination, correct?

20 A. Correct.

21 Q. Okay. Your note for August 6, 2013 under your  
22 impression you note aggravation of osteoarthritis, correct?

23 A. Correct.

24 Q. What is osteoarthritis?

25 A. Degenerative joint disease, wear and tear.

1 Q. Okay. Did you look into any issues regarding to Mr.  
2 Verdon in terms of any bone density studies?

3 A. No.

4 Q. What is bone density?

5 A. Bone density refers to the mineralization content of  
6 the bone.

7 Q. And if you have a poor -- I'm not sure of the exact  
8 term -- a poor or compromised bone density, what's the affect on  
9 a person's skeletal system?

10 A. It causes a condition known as osteoporosis, a  
11 weakening of the bones and this generally happens in  
12 postmenopausal women. It really has no relation to  
13 osteoarthritis.

14 Q. And you're not aware of any findings or any films or  
15 studies that mention any issue with osteoarthritis, correct?

16 A. I don't understand the question. The initial CAT  
17 scans and the hospital showed that he had some arthritis. That  
18 was there before but not loss of bone density. That's  
19 osteoporosis. That's another thing.

20 Q. You mentioned before that you did some NCV-EMG  
21 reports, correct?

22 A. Correct.

23 Q. Now, how many did you do in total?

24 A. A total of three. The first one was 12/22/09 and then  
25 repeat studies were performed 10/13/11 and then again on 8/6/13.

1 Q. And when you're doing this NCV-EMG study, what are you  
2 testing? Are you testing upper and lower extremity?

3 A. Yes.

4 Q. And were your studies that was done on October -- I'm  
5 sorry -- December 22, 2009 based upon all of those studies, it  
6 revealed chronic L5-S1 right radiculopathy, correct?

7 A. Correct.

8 Q. You also did a SSEP study?

9 A. Correct.

10 Q. And that study found a normal DV nerve, SSEP study  
11 correct?

12 A. As well as tibial nerve, yes.

13 Q. Normal median nerve what are you referring to?

14 A. I'm sorry?

15 Q. Normal median nerve refers to what?

16 A. It's technical. It's the nerve that was tested from  
17 the arm to the brain. The tibial would be from the calf to the  
18 brain.

19 Q. And those were normal?

20 A. Yes.

21 Q. You did one on October 13, 2011 again? Again chronic  
22 right L5-S1 radiculopathy, correct?

23 A. Correct.

24 Q. And a mild diffused polyneuropathy of the upper and  
25 lower extremities?

1 A. Correct.

2 Q. What does that mean?

3 A. Neuropathy refers to mild dysfunction of the nerves  
4 and the arms and legs.

5 Q. Normal median nerve study on that date?

6 A. The SSEP's were normal, yes.

7 Q. And again your third one is on June 25, 2013 again  
8 chronic right L5-S1 radiculopathy, correct?

9 A. Correct.

10 Q. And a diffused polyneuropathy?

11 A. Correct.

12 Q. Otherwise all the other findings were normal?

13 A. More or less.

14 Q. Normal median nerve study, SSEP study?

15 A. The SSEP's were normal.

16 Q. Also you had a normal tibial nerve study, correct?

17 A. The SSEP's, yes.

18 Q. Okay.

19 MR. GANNON: Your Honor, if I could have one  
20 moment?

21 Q. Dr. Hausknecht, you mentioned when I first started  
22 questioning you it's significant for you to look at as many  
23 different medical records from as many different medical  
24 providers as you can find, correct?

25 A. In general, the more information you have the better

1 off.

2 Q. Would it be significant to you if Mr. Verdon went to  
3 see another doctor denied urinary issues or erectile issues?

4 A. It's possible.

5 Q. And if you saw records in which he denied this in  
6 2013, that would have been a significant finding for you should  
7 you want to consider it in giving your opinion, correct?

8 A. Well, if it would be inconsistent, I would certainly  
9 question him about it, sure.

10 Q. Okay.

11 MR. GANNON: Dr. Hausknecht, thank you very much.

12 THE COURT: Any follow up?

13 MR. McCORIE: Yes, Your Honor. I hope to be  
14 quick.

15 THE COURT: Go ahead. It's just about one. If  
16 it's a couple of minutes, we'll do it.

17 MR. McCORIE: I think it's a couple of minutes.

18 THE COURT: Okay. Go ahead.

19 REDIRECT EXAMINATION

20 BY MR. McCORIE:

21 Q. Dr. Hausknecht, if you did see such a note and that  
22 doctor had the history of the accident completely wrong, would  
23 you consider that as to whether or not giving the note any  
24 weight? He saw another doctor once or twice and that doctor had  
25 the history of the accident?

1           A.    I'll consider a lot of things.  Bernard and I have  
2   pretty personal things to talk about so I feel comfortable  
3   discussing it with him.  I don't know.  Maybe he didn't feel  
4   comfortable discussing it with that doctor.  I really don't  
5   know.  You would have to ask about him it.

6           Q.    Okay.  Just so we're clear.  You said you take work  
7   accidents and you take union coverage.  Are you aware that his  
8   union coverage had been long gone since he stopped working?

9                   MR. GANNON:  Objection.

10                  MR. McCRORIE:  Subject to connection.

11                  THE COURT:  Sustained.

12           Q.    Were you seeing him under union coverage or work  
13   accident related benefits?

14                  MR. GANNON:  Objection.

15                  THE COURT:  Overruled.  Do you know?

16           A.    Do I know?  Yes, I know.

17                  THE COURT:  Okay.

18           Q.    Which one was it?

19           A.    I was seeing him through the Workers' Compensation  
20   guidelines.

21           Q.    Although it was pointed out -- I don't have the  
22   machine to do it -- but on your first note -- I'll just read it  
23   to you.  Although it was pointed out that you didn't prescribe  
24   any medication, you did actually write that he's trying to avoid  
25   taking medications although he had complaints of pain to you; is

1 that correct?

2 A. That's correct.

3 Q. Okay. I just wanted to -- each time -- the notes are  
4 actually up for the jury though. I'll just pick one, say, on  
5 March 2010. It said each time all you did in your plan was to  
6 ask him to follow up with physical therapy and continue with the  
7 medication. You also on each time ask him to follow up with you  
8 in six weeks or thereabout, correct, in the plan?

9 A. Yes.

10 Q. You also said to follow up with Dr. Merola, the spine  
11 surgeon he was seeing, and Dr. Touliopoulos, the shoulder  
12 surgeon; is that right?

13 A. Correct.

14 Q. In the plan, each time?

15 A. That's correct.

16 Q. And was it -- you mentioned to the jury that you were  
17 aware that spinal surgeries was being considered and offered to  
18 Mr. Verdon; is that right?

19 A. Yes.

20 Q. You heard about a spinal surgery but did you  
21 understand it to take all the metal that is in this back out and  
22 add to it?

23 MR. GANNON: Objection.

24 THE COURT: Sustained.

25 Q. In any event, when you say to the jury that he was

1 hesitant to proceed with the surgeon and hesitant to proceed  
2 with the epidural injections, what did you mean "hesitant?" Why  
3 was he hesitant?

4 MR. GANNON: Objection.

5 THE COURT: Well, you said he followed up. Why  
6 was he hesitant? I'll sustain it. What did you mean when  
7 you wrote "hesitant?"

8 A. He was concerned about the potential risks associated  
9 with the injections and with the surgery and he was concerned  
10 about the potential that it wouldn't help.

11 Q. And, finally, despite any of the positive findings  
12 meaning that there was nothing from the calf to the brain, there  
13 was indeed, you told the jury, findings on EMG from the back  
14 through the thigh and the back down to the toes, correct, on the  
15 EMG?

16 A. The EMG showed that there was nerve damage coming from  
17 the lower back.

18 MR. McCORRIE: Nothing further.

19 MR. GANNON: Nothing, Your Honor.

20 THE COURT: Okay. That's it, Doctor. You could  
21 step down.

22 THE WITNESS: Thank you, your Honor.

23 THE COURT: It's 1:02. So with that, we'll break  
24 for lunch for one hour. Please be back in one hour and  
25 we're going to go back to the other one.

1 Don't discuss the case. I probably could tell  
2 you if I ever forget to say don't discuss the case, just  
3 make believe I said don't discuss the case.

4 COURT OFFICER: All rise. Jury exiting.

5 (Jury exits courtroom.)

6 THE COURT: The objection to 28 is sustained.

7 MR. McCORIE: Understood.

8 THE COURT: Okay.

9 (A luncheon recess was taken.)

10 \* \* \* \* \*

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

12 (The trial continued.)

13 COURT OFFICER: All rise. Jury entering.

14 (Jury enters courtroom; the following  
15 occurred:)

16 THE COURT: Have a seat. We're going to continue  
17 with Dr. Merola. That's the doctor who testified last  
18 week. I think we have a relatively short period of time to  
19 go on his direct exam and then we'll take a short break and  
20 defense counsel will begin his cross examination.

21 MR. McCORIE: May I continue, Your Honor?

22 THE COURT: Go ahead.

23 DIRECT EXAMINATION (CONTINUED)

24 BY MR. McCORIE:

25 Q. Good afternoon, Dr. Merola.

1           A.    Good afternoon.

2           Q.    Dr. Merola, just to orient you when we left, we had  
3 already done just one opinion regarding a future surgery, future  
4 surgery you told the jury about. I want to pick up with that  
5 opinion and get into other opinions.

6                    Can you tell the jury with a reasonable degree, as it  
7 was the other day. We'd ask that all of your opinions be within  
8 a reasonable degree of medical certainty, if they can't, you'll  
9 tell us in case we forget to ask.

10                   Can you tell the jury with a reasonable degree of  
11 medical certainty whether or not that future surgery you are  
12 suggesting Mr. Verdon have and you said it was inevitable the  
13 other day, other day whether or not that will take away his  
14 lower back pain?

15           A.    So the rationale for the future surgery is to prevent  
16 continued and progressive collapse of the lower portion of the  
17 spine because of the condition of posttraumatic, that is, after  
18 fracture kyphosis. So posttraumatic kyphosis, the purpose of  
19 future surgery is actually to stabilize and balance the spine  
20 itself from a structural point of view. That's not something  
21 that addresses pain so much. It's a more of a structural  
22 reconstruction.

23           Q.    So within a reasonable degree of medical certainty,  
24 can you tell the jury whether or not you have an opinion that a  
25 man with Mr. Verdon's condition whether or not he will continue

1 to have pain in the future after the date of this trial to his  
2 low back and neck or mid back?

3 A. So with this type of major injury to the spine with  
4 multiple noncontiguous fractures --

5 Q. Doctor, I'm just going to stop you just for the record  
6 the way it has to be done. First, do you have an opinion?

7 A. Yes.

8 Q. Can you tell us the opinion and the basis for it?

9 Thank you, Doctor. Sorry to interrupt you.

10 A. So I guess I do have an opinion and the basis for my  
11 opinion is based on what we know about the structural integrity  
12 of the patient's spine and what's going to happen to it over the  
13 course of time.

14 Q. What is the opinion whether or not he will have pain  
15 or not into the future, for what period of time?

16 A. So the opinion is that these types of injuries to the  
17 spine with multiple noncontiguous fractures, having required the  
18 reconstruction that it's already undergone is producing and will  
19 continue to produce a chronic pain syndrome or long lasting  
20 pain.

21 Q. We haven't done this and, again, it may be obvious but  
22 we are at trial for this and we need to do it.

23 Taking the facts, as you knew them to be, the fact  
24 that Mr. Verdon fell from a height on Plaintiff's 14 from a  
25 height of anywhere from 10 to 15 feet, whatever it would be at

1 least a story, landed on his back just with regard to the spine  
2 injuries, the kyphotic deformity of fractures of the back that  
3 he had those as diagnosed in Bellevue and as diagnosed by  
4 yourself when you showed the jury the fractures to the T12, the  
5 T10 and the spinous process fractures the other day, do you have  
6 an opinion with a reasonable degree of medical certainty just,  
7 because it has to be on the record, as to the cause of those  
8 fractures?

9 A. Yes, I do.

10 Q. And could you tell the jury what that opinion is and  
11 what the basis is?

12 A. The cause of those fractures is the fall from the  
13 height producing fractures to the spine.

14 Q. Do you have an opinion within a reasonable degree of  
15 medical certainty as to the cause of the lumbar herniations? I'm  
16 just the holding 10A. You pointed out herniations at three  
17 levels in the lumbar region. Do you have an opinion as to the  
18 cause of those?

19 A. Yes, I do.

20 Q. And can you tell the jury the opinion and the basis of  
21 same?

22 A. So the opinion regarding the lumbar spine is based on  
23 the progressive collapse of the lumbar spine and a response to  
24 the posttraumatic kyphotic deformity from the fractures.

25 Q. And only because I'm going fast, Doctor, I wanted to

1 first -- we have to breakdown -- as to the cause of the -- was  
2 that the cause of the herniation?

3 A. Yes.

4 Q. And that's in the lower back. Do you have an opinion  
5 within a reasonable degree of medical certainty as to the cause  
6 of the -- I'm now holding up Plaintiff's 7A, the cervical  
7 herniations that you pointed out and circled for the jury the  
8 other day?

9 A. Yes.

10 Q. And can you please tell the jury your opinion and the  
11 cause of it. Please do it with a reasonable degree of  
12 certainty?

13 A. So my opinion based on a reasonable degree of medical  
14 certainty is that the herniations and impingements and injury to  
15 the neck were caused by the fall as well.

16 Q. And I don't know if it came in the answer last time  
17 but as regards to both the neck and the back you told the jury  
18 the day of what's called the progression or progressive  
19 breakdown.

20 Do you have an opinion within a reasonable degree of  
21 medical certainty as to what caused the progression or  
22 progressive breakdown of the cervical and lumbar spine?

23 A. Yes, I do.

24 Q. Please tell the jury that opinion and the basis for  
25 same?

1           A.    My opinion and the basis regarding that opinion, once  
2 again, is sagittal or spinal imbalance as a consequence of the  
3 multiple fractures that have been sustained to the spine  
4 producing posttraumatic kyphotic deformity.

5           Q.    And just so the record is complete as far as the  
6 cervical and lumbar, do you have an opinion within a reasonable  
7 degree of medical certainty as to the only MRI film we had of  
8 the thoracic, which I'll hold up Plaintiff's 11A as to the cause  
9 of the herniation you've circle in 11A, the thoracic MRI taken  
10 on June 29, 2013, do you have an opinion as to the cause of that  
11 herniation?

12          A.    Yes, I do.

13          Q.    Could you please tell the jury what your opinion is  
14 within a reasonable degree of medical certainty and state the  
15 basis for same?

16          A.    That herniation is a consequence of the burst fracture  
17 of the T12 segment and the significant amount of trauma that was  
18 sustained to the spine with that type of major injury is  
19 responsible for that herniation as well.

20          Q.    Without getting into the specifics of what might be  
21 needed, do you have an opinion within a reasonable degree of  
22 medical certainty as to whether or not Mr. Verdon should  
23 continue into the future past the date of this trial seeing an  
24 orthopedic spine surgeon on any type of basis?

25          A.    Yes, I do.

1 Q. And what is that opinion and your basis for same?

2 A. So my opinion is that he should continue to see an  
3 orthopedic spine surgeon because he will come to require a  
4 revision surgery to stabilize the lower portion of the spine and  
5 treat the posttraumatic kyphotic deformity and that's based on  
6 what we know of from his diagnostic imaging studies and the  
7 sagittal imbalance that he's suffering from because of the  
8 deformity.

9 Q. Do you have an opinion within a reasonable degree of  
10 medical certainty as to when -- for what period of time -- I'm  
11 sorry -- should he see a orthopedic surgeon with some  
12 regularity?

13 A. He should see that orthopedic surgeon with some  
14 regularly essentially for the rest of his life.

15 Q. And when Mr. Verdon sees an orthopedic surgeon, do you  
16 have an opinion with a reasonable degree of medical certainty as  
17 to whether or not he should have future diagnostic studies to  
18 monitor his spine such as x-ray, MRI, CT scan?

19 A. Yes, I do.

20 Q. What is that opinion?

21 A. My opinion is that diagnostic studies would be  
22 required and indicated as time goes on to monitor the spine and  
23 its balance as well its integrity.

24 Q. With a reasonable degree of medical certainty, first,  
25 can you tell the jury with spine injury such as the one that Mr.

1 Verdon sustained in this accident, can you tell the jury five  
2 years post injury approximately where we are? What would be the  
3 purpose of physical therapy to the areas of the spine that were  
4 injured?

5 MR. GANNON: Objection.

6 Q. From an orthopedic standpoint?

7 MR. GANNON: Objection.

8 THE COURT: Overruled.

9 A. So the purpose of physical therapy five years after an  
10 injury is what we would call palliative, that is, to maintain as  
11 much mobility and function as possible and to try to decrease  
12 some pain and symptoms.

13 Q. With a reasonable degree of medical certainty when Mr.  
14 Verdon has this inevitable surgery you say he needs, do you have  
15 an opinion whether or not he will require post surgical physical  
16 therapy?

17 A. Yes, he will.

18 Q. What would be the purpose of post surgical physical  
19 therapy after such an operation as you told the jury about the  
20 other day?

21 A. So after he has a reconstruction of the spine whereby  
22 the spine is then attached or fused to the pelvis, that starts  
23 with acute physical therapy in the hospital basically getting  
24 him up mobilized and then it proceeds to physical therapy  
25 whereby he can be taught how to function because of the

1 accommodations that we would have to make because of loss of  
2 mobility that he would have combined with decreasing symptoms  
3 and maintaining flexibility of his other -- his arms and his  
4 legs, etc.

5 Q. And, finally, one or two questions, Doctor. Do you  
6 have an opinion with a reasonable degree of medical certainty as  
7 to whether or not Mr. Verdon whether he has the future surgery  
8 or not will have pain upon sitting or standing for periods of  
9 time?

10 MR. GANNON: Objection.

11 A. Yes.

12 THE COURT: Overruled.

13 Q. If you could just tell the jury why?

14 A. Yes, and that part of the chronic pain syndrome  
15 stemming from the original fractures -- once again, I hate to be  
16 repetitive -- but the posttraumatic deformity and the  
17 progressive collapse and impingements in the lumbar spine.

18 Q. And have each of your opinions today and the other day  
19 been within a reasonable degree of medical certainty?

20 A. Yes.

21 MR. McCORIE: I have nothing further, Judge.

22 THE COURT: Okay. We'll take a break a little  
23 sooner than normal but we'll get set up for cross  
24 examination. We'll be back in a few minutes. Please do  
25 not discuss the case.

1 COURT OFFICER: All rise. Jury exiting.

2 (Jury exits courtroom.)

3 (A recess was taken.)

4 (Defendant's Exhibit C, Lenox Hill Radiology  
5 records, were marked for identification.)

6 MR. GANNON: Your Honor, we took the break so I  
7 could mark this.

8 Your Honor, we took a break because my  
9 understanding when we first started this trial, we went  
10 over the subpoenaed records that were in court, my  
11 understanding is that as long as they were certified and in  
12 court neither side was going to raise the issue with regard  
13 to their admissibility subject to redaction.

14 The MRI films have gone into evidence. Dr.  
15 Merola testified about them. They were not taken by Dr.  
16 Merola. They were taken by another facility including  
17 Lenox Hill. I've now asked to mark and put into evidence  
18 the corresponding MRI reports themselves and put them in  
19 evidence so that I could obviously question Dr. Merola  
20 about those reports the same way he was questioned about  
21 the films and I understand that the plaintiff has an  
22 objection to that.

23 MR. McCORIE: The objection is -- the  
24 understanding we had was -- the MRI films are in evidence  
25 under 45 -- under the notice, proper notice of intention

1 and in addition to the proper notice of intention, it's  
2 been changed that if the defense reviews the films they are  
3 in by operation of law. The films themselves, the reports  
4 under Wagman and all of the other cases -- I mean this  
5 wasn't discussed that the reports were going in. I  
6 specifically don't want them in and this is way.

7 There's -- it could be any number of five, six  
8 different reading radiologists and the court -- the defense  
9 has a radiologist that could look at all the films, put  
10 them up and give his interpretation. A radiologist that  
11 reads four or 500 films a day puts them up and doesn't know  
12 any history of the patient, any complaints. It's a little  
13 different. That's why we don't allow the reports in. The  
14 treating doctor who reviewed the report himself and the  
15 report is -- the film is in evidence. I'm not saying he  
16 can't say did you look at this report? Does it refresh --  
17 did you see it? Did you rely on it? But the report itself  
18 doesn't go to the jury. I'm not saying he can't question  
19 Dr. Merola on it but the report is not in evidence, the  
20 films are by 4532a. The hospital films and the hospital  
21 records and reports are in under the hospital record  
22 exception. But so I'm not -- I don't know if we're talking  
23 about the same thing. I don't think they should go into  
24 evidence.

25 THE COURT: I think you're talking the same.

1 thing, two different opinions so far but -- the films went  
2 in. You gave the notice. You didn't -- they didn't object  
3 and so on.

4 MR. McCORIE: But other than that, by operation  
5 of law, it's changed if they review the films.

6 THE COURT: Right. So generally speaking reports  
7 under Wagman it says don't go in evidence unless other  
8 things have happened with reports.

9 MR. McCORIE: Because we have a radiologist --

10 THE COURT: You said he can ask the doctor. How  
11 much can he ask a doctor? He could say take a look at  
12 this, don't read it out loud. Does that change your  
13 opinion. I don't think that's what he's getting at.

14 MR. McCORIE: Judge, the orthopedic records and  
15 all the doctors from Comp can't go in. These are doctors  
16 that aren't here that we can't question what they knew  
17 about at the time. The films themselves -- we each  
18 hired -- well, we have a treating. They hired an expert --  
19 this is what my interpretation is. He could even ask that  
20 person do you agree with the interpretation of the original  
21 radiologist but to have the film in front -- the report  
22 is -- it's never allowed and I don't -- I thought his  
23 doctors is going to come in and talk about what he says is  
24 degenerative.

25 THE COURT: I don't doubt that he will but I'm

1 assuming there's something in that report that he wants to  
2 get before the jury that's, I would guess, not favorable to  
3 plaintiff's position or we wouldn't be having this  
4 conversation.

5 MR. GANNON: Exactly.

6 THE COURT: So under what theory do you get the  
7 report in?

8 MR. GANNON: Well, Your Honor, obviously my first  
9 theory it would have been for Mr. McCrorie after we  
10 discussed all the subpoenaed records and we had an  
11 understanding, and my fault for not putting those  
12 records -- I trusted him obviously. These are subpoenaed,  
13 they are in court and are going into evidence. He didn't  
14 say -- and we went through Lenox Hill reports, Bellevue  
15 reports, every report that's in here. We compared it, we  
16 compared the list. Now, we're saying no I don't want to do  
17 that.

18 Now, I understand what the legal argument he's  
19 making but my intention is to ask Dr. Merola whether I can  
20 show the jury or not whether he was aware of the following  
21 findings in these reports.

22 THE COURT: Right. That's what I was asking when  
23 you say he could ask him about it. He's going to want to  
24 ask him about it in such a way that the jury may never get  
25 the report up in the jury room.

1 MR. McCORIE: I just want to respond because I  
2 disagree with Mr. Gannon. He didn't say I want to  
3 put these reports -- everything he just said is in because  
4 we got it in advance by operation of law. He's not  
5 allowing -- we did subpoena the comp records. He doesn't  
6 want the comp records. He just said everything we  
7 subpoenaed. That's not true.

8 THE COURT: He didn't say the report of the  
9 hospital doctors.

10 MR. McCORIE: Because they come in any way.  
11 They're in. He can't -- what could he object to them  
12 coming in? They are subpoenaed with a certification. The  
13 MRI's, the actual -- the actual x-ray films that comes in  
14 by operation of law. Maybe it could have been a little  
15 clearer but I'm certainly not trying to trick him.

16 MR. GANNON: I didn't say that.

17 MR. McCORIE: No, no, I know but I'm not being  
18 disingenuous either. I don't think the MRI reports should  
19 go into evidence just like the reports on any other doctor  
20 that's not coming here to say this is what my report is.  
21 Doctors whose office notes are in that's one thing. They  
22 are here, they testify, they could be cross examined. You  
23 could put them up on a screen. If he calls in Dr. Milbauer  
24 or any of the other doctors I could say did you know this?  
25 Did you know that he fell? Did you know that he had other

1 MRI's?

2 THE COURT: Rather than the suspense since the  
3 jury is not here, what exactly is in the report that you  
4 want to bring out?

5 MR. GANNON: Your Honor, it's loaded with  
6 preexisting degenerative conditions and other issues with  
7 the plaintiff that are clearly the causal reason for his  
8 pain in certain parts of his body.

9 MR. McCORIE: Can't he just ask Dr. Merola does  
10 this condition -- is this causing him pain and then his  
11 doctor will go here it is. Here's the condition. Same  
12 thing whatever is in the report, here's the condition and  
13 this is what's causing him the pain and then it's up to the  
14 jury between the two experts that know all the information.

15 MR. GANNON: Your Honor --

16 MR. McCORIE: I'm sorry.

17 MR. GANNON: I'll be very frank. What I'm going  
18 to ask Dr. Merola is are you aware of this finding in this  
19 report? No, I'm not. I never reviewed it. If I can't  
20 show it to the jury, that's what I intend to do. I intend  
21 to go through each finding and each MRI report asking him  
22 if he's aware of it. He's going to obviously probably say  
23 no and then he never -- then mark the report for  
24 identification and then get him to admit that he's never  
25 even looked at it. If it can't go to the jury at that

1 point, I understand the argument. I agree it's based upon  
2 our conversation but that's what I intend to do with this  
3 witness.

4 MR. McCORIE: I think what all the doctor said,  
5 both of them so far, they said we reviewed our own MRI.  
6 I'm sure he looked at the report too but he said this is my  
7 interpretation.

8 THE COURT: Okay. So --

9 MR. McCORIE: Going into evidence, the report,  
10 that's the issue I have, not using it to cross examine him  
11 somehow.

12 THE COURT: Well, I think at this point I think  
13 he sort of just said or hinted that's what he wanted to do.  
14 There's a disagreement as to what the agreement was and  
15 that's nobody's fault necessarily. It's something that's  
16 understandable considering what we're talking about. I  
17 think and here's what I'm -- either someone is dropping the  
18 end of their sentence or I'm not paying attention. So he  
19 seems to think it's okay. Let me ask him about this. I  
20 understand it won't go into evidence even if I don't agree  
21 and you're saying go ahead ask him about it as long as it  
22 doesn't go into evidence.

23 MR. McCORIE: Yeah. It's not going to be up on  
24 the board.

25 THE COURT: What he's going to ask him exactly --

1 I'm going to avoid objections in the middle. So if he  
2 raises the question are you aware that the radiologist that  
3 took these pictures indicated that he has arthritis at this  
4 level for 20 years or whatever and he's going to say --  
5 either he's going to say, yeah, I read it, I don't agree  
6 with it or he's going to say I didn't even read the report.  
7 You're okay with that as long as the jury doesn't get the  
8 report?

9 MR. McCORIE: I'd rather not read from it and  
10 I'd rather it not go up on -- because it won't be in  
11 evidence but I think it could be simply there's an  
12 impression one, two, three, four, look at this date. Do  
13 you agree with the impression number two? Do you agree  
14 with that or do you agree that there's a Schmorl's node or  
15 whatever it is. I mean they've already said there's  
16 degeneration. He's going to agree I believe that there's  
17 degeneration. Just the report is going in.

18 THE COURT: Okay. It's sort of an interesting  
19 question. I think you're right on the evidentiary part of  
20 it in terms of the report under Wagman and a hundred  
21 thousand other cases since then. However, under these  
22 circumstances, having thought mistakenly for whatever  
23 reason that everything was going in, I'm going to split the  
24 baby. I'm not going to put it into evidence. I'm not  
25 going to let him put it on the screen because that's as

1 good as putting it in evidence because I'm going to let you  
2 ask the questions the way you phrased them.

3 MR. GANNON: Thank you, your Honor.

4 THE COURT: And I understand that's sort of  
5 letting the jury hear something but under these  
6 circumstances, I'll allow it.

7 MR. McCORIE: Understood.

8 MR. GANNON: Bellevue is in though?

9 MR. McCORIE: Bellevue is the hospital and  
10 anything that was part of it.

11 MR. GANNON: Thank you.

12 THE COURT: Okay. We can get him and the jury.

13 (Continued on the next page ...)

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1 (Whereupon the sworn Jury entered the courtroom)

2 THE COURT: Okay, have a seat. Whenever you are  
3 ready.

4 MR. GANNON: Thank you.

5 CROSS EXAMINATION

6 BY MR. GANNON:

7 Q Doctor Merola, how are you, good to see you again?

8 A Good, thank you.

9 Q I'm going to try to make sure I get you done here. I  
10 know you accommodated us to come back again?

11 A Thank you.

12 Q You've been licensed as a doctor in New York since 1992  
13 you said, correct?

14 A Yes.

15 Q I failed to do this again, please answer my questions  
16 yes or no, unless you are unable to and you will let me know  
17 that, okay?

18 A Yes.

19 Q You've been licensed as a doctor since 1992?

20 A Yes.

21 Q And did I hear you right, you perform two hundred to  
22 two hundred and thirty-five spinal surgeries a year?

23 A Yeah, depending upon the year, yes.

24 Q What did you perform in 2013?

25 A 2013 is probably in the neighborhood of two hundred

1 twenty-five or two hundred thirty.

2 Q How many working days are there in a year, do you know?

3 A Three hundred and sixty-five.

4 Q Working days, no Saturdays, no Sundays, no holidays, no  
5 religious holidays, 261, right?

6 A Yeah, but I work on holidays and weekends.

7 Q Now, you've been doing that, two hundred to two hundred  
8 thirty-five surgeries a year since, did you say 1996?

9 A That's when I started my private practice, yes.

10 Q How many is that altogether, up to today, how many  
11 surgeries have you done since 1996?

12 A So, I guess if you average two hundred and twenty-five  
13 times, since '96, perhaps somewhere in the neighborhood of about  
14 three thousand surgeries or so.

15 Q And what does a, say single level or, say two level  
16 spinal fusion surgery cost?

17 A A two-level, are we talking about a lumbar or cervical?

18 Q Let's say cervical?

19 A A two-level cervical surgery depending upon the types  
20 of implants that you use and depending upon the length of stay  
21 in the hospital, it could range somewhere in the neighborhood of  
22 total cost, hospital, everything, included?

23 Q Yes?

24 A Probably somewhere in the neighborhood of fifty,  
25 seventy-five thousand.

1 Q What about thoracic?

2 A Thoracics are usually more than one level. So, let's  
3 say you were only doing a two-level thoracic, anterior or  
4 posterior, because it makes a little bit of a difference.

5 Q Posterior?

6 A Posterior two-level thoracic, somewhere in the  
7 neighborhood of about a hundred thousand or so.

8 Q And how about lumbar?

9 A A two-level lumbar posterior with implants and the  
10 hospital stay, somewhere in the neighborhood of about a hundred.

11 Q Now, let's add additional levels of fusion. Is there a  
12 multiplier you would apply in terms of the costs, going up from  
13 a two-level fusion and higher, is there a multiplier for each  
14 level of fusion to the overall cost for the surgery?

15 A Yeah, in general, it depends upon what the implants are  
16 that you are using and how much more time is involved and  
17 whether or not you are using cages or not.

18 Q So, what's the multiplier, what's the range of the  
19 multiplier for the cost?

20 A For each additional level you can probably look at  
21 somewhere in the neighborhood about, reasonably speaking for the  
22 entire cost including the hospitalization and the implants,  
23 maybe somewhere in the neighborhood of about twenty thousand  
24 dollars or so.

25 Q Added on?

1 A Per level.

2 Q Per level?

3 A Depending upon the amount of implants and cages that  
4 you use and that kind of stuff.

5 Q Can you tell the Jury what your income last year was  
6 from doing surgeries?

7 A My income from surgery?

8 MR. MCCRORIE: Objection.

9 A From last year.

10 MR. MCCRORIE: Objection.

11 THE COURT: Overruled.

12 A I don't have that exact number with me.

13 Q You don't know?

14 A No.

15 Q You don't know what you made last year in terms of a  
16 range?

17 A No, my wife usually handles all the finances, she's the  
18 office manager. I need more time to worry about taking care of  
19 patients.

20 Q I appreciate that. It's never come up once in 2013 how  
21 much you made?

22 MR. MCCRORIE: From surgeries.

23 Q From surgeries?

24 A I make enough to send my kids to school and night  
25 clubs.

1 Q Dr. Merola, did you file tax returns?

2 A Yes, I did.

3 Q Did you sign the tax returns?

4 A Yes I did.

5 Q What was the number on that tax return?

6 A I don't know the exact number.

7 Q You signed it but you don't know?

8 A Yes.

9 MR. MCCRORIE: Objection.

10 Q How many cases have you testified in court on behalf of  
11 Sacks and Sacks since you started practicing?

12 A I don't know the exact number on that.

13 Q Would it surprise you if I told you that currently you  
14 are treating or examining at least fifty individuals on behalf  
15 of Sacks and Sacks law firm.

16 A I'd say that after all the years I've been in practice,  
17 I wouldn't be surprised by that number, no.

18 Q Probably higher, right?

19 A I don't know.

20 Q Maybe a hundred that you are currently treating?

21 A I don't know. I wouldn't, I would be lying if I told  
22 you an exact number.

23 Q Not less than fifty?

24 A Once again, I don't want to be pinned down to a number.  
25 I don't have the statistics.

1 Q It's not five?

2 A Once again, if I gave you a number, I'd be giving you  
3 statistics.

4 Q So, you are telling me if I asked you that you only, to  
5 agree with the statement that you only treated five Sacks and  
6 Sacks clients in the history of your practice, and I asked you  
7 to agree to that, that would be a lie, right, because it's more  
8 than that, obviously?

9 MR. MCCRORIE: Objection.

10 THE COURT: Overruled.

11 A If you asked me to agree to a specific number, yeah, it  
12 would be difficult for me to agree with a specific number, but I  
13 would say I have treated Sacks and Sacks patients.

14 Q I asked you, I think you agreed at least fifty that you  
15 are currently treating that are clients of the Sacks and Sacks  
16 law firm, would you agree to at least fifty, correct?

17 A I wouldn't be surprised by that number, if that is the  
18 number.

19 Q And it could be higher, you just don't know?

20 A Whatever the number is. If you know it, I'm happy to  
21 know it.

22 Q I'm telling you now, you are currently treating fifty  
23 people --

24 MR. MCCRORIE: Objection. How does he know?

25 MR. GANNON: I didn't finish.

1 THE COURT: I think the way you started it.

2 MR. GANNON: Fair enough.

3 Q Do you keep records of all the individuals that you are  
4 seeing?

5 A I have treatment records for all of my patients, yes.

6 Q And, who maintains your files in your offices?

7 A They are maintained in the office, we have an  
8 electronic record, so they are part of our electronic medical  
9 record.

10 Q How many times have you been to the Sacks and Sacks  
11 office?

12 A I've been to that office, that I can recall, probably  
13 about, I want to say maybe four or five times.

14 Q What was the purpose of going there. You are not  
15 providing treatment obviously to individuals in their law  
16 office, right?

17 MR. MCCRORIE: Objection.

18 A I've been asked to come in for some trial preparation.

19 THE COURT: You objected.

20 MR. MCCRORIE: That's fine, the answer he said  
21 trial prep.

22 Q All the time you came in was for trial prep?

23 A I'm sorry?

24 Q All the times that you've gone to the Sacks and Sacks  
25 office is for trial prep?

1 A Yes.

2 Q Doctor Merola, you are aware, aren't you, that as a  
3 licensed Doctor in New York, and I think you said you are on  
4 staff at Mount Sinai?

5 A Yes.

6 Q You have an obligation to reveal whether or not you  
7 have any financial interests in a company that manufactures or  
8 supplies devices that will be used for, in your surgery,  
9 correct?

10 A Yes.

11 Q And what's, is that the Sunshine Act?

12 A I think, yes, the Sunshine Act is part of where you  
13 have to disclose your relationship with medical device  
14 companies.

15 Q And obviously, the hospitals are doing that so there is  
16 no conflict of interest of you as a surgeon recommending certain  
17 pieces of hardware, screws, plates or rods that would impact  
18 your judgment in doing the surgery, correct?

19 A Correct.

20 Q Now, you've made such a disclosure, haven't you?

21 A Yes.

22 Q And do you have any financial interest in any company  
23 that manufactures any of the equipment you use in your spinal  
24 surgeries?

25 A I don't have any relationships with any of the

1 companies that manufacture equipment that I use, no.

2 Q Do you have any financial interests in any company that  
3 manufactures any equipment used, whether by you or another  
4 Doctor in spinal surgery?

5 MR. MCCRORIE: Objection.

6 THE COURT: Overruled.

7 A At one time I did have a financial interest in a  
8 company that had just started up called Alpha Tech and I advised  
9 my financial advisors to divest from Alpha Tech when the  
10 Sunshine rule came into effect.

11 Q What percentage of interest did you have invested in  
12 Alpha Tech?

13 A Extremely small.

14 Q Can you put a number on it. I know you can't do how  
15 much you made, can you put a number on that, what percentage?

16 MR. MCCRORIE: Objection.

17 THE COURT: Overruled.

18 A Extremely small because I don't have a lot of money to  
19 make for investments, with three kids at home and school.

20 Q I know you mentioned that about your kids already. But  
21 are you able to tell me the percentage of interests you had in  
22 Alpha Tech at the time you divested?

23 A Very, very small. I could jut tell you it was  
24 insignificant small, to the point I don't think they really  
25 cared about me.

1 Q What is insignificant?

2 A A minimum amount of money.

3 Q What is a minimum amount? Doctor, you can say it. Is  
4 it five percent, six percent?

5 A Much less than that, perhaps a point of a percentage.

6 Q And how long did you have an interest in Alpha Tech?

7 A I would say like a year or two, perhaps.

8 Q When did it start and when did it end?

9 A I don't know.

10 Q Well, when the Sunshine Act came out recently, do you  
11 know what year it came out?

12 A I don't recall the year.

13 Q Did you have an interest in Alpha Tech when you joined  
14 Mount Sinai?

15 A No.

16 Q Did you have an interest in Alpha Tech when you were  
17 with St. Francis hospital?

18 A St. Francis.

19 Q The hospital that closed down?

20 MR. MCCRORIE: St. Vincent's.

21 A St. Vincent's Hospital. I've been at St. Vincent's  
22 Hospital for a long time.

23 Q During the entire time that you had an affiliation with  
24 St. Vincent's Hospital, during any of that time did you have a  
25 financial interest in Alpha Tech?

1 A I may have because I was at St. Vincent's from when I  
2 finished school.

3 Q Did you disclose that to St. Vincent's when you were  
4 there?

5 A I don't know if St. Vincent's asked, if they did I  
6 would have.

7 Q Do you disclose to St. Vincent's --

8 A I don't recall if they asked, I don't recall when the  
9 Sunshine Act came in.

10 Q I appreciate that. Whether or not they asked, did you  
11 go to St. Vincent's, you were on staff at St. Vincent's?

12 A Up until they closed, yes.

13 Q Did you ever go to St. Vincent's when you were on  
14 staff, whether they asked or not, and say by the way, just so  
15 you know, I have a financial interest in Alpha Tech?

16 MR. MCCRORIE: Objection, asked and answered.

17 THE COURT: Overruled.

18 Q Did you ever do that?

19 A I honestly don't recall because it was such a long time  
20 ago. If they did, I would have told them, yes.

21 Q You don't know if you did or didn't?

22 A No.

23 Q What did Alpha Tech make?

24 A Alpha Tech made rods, screws, anterior implants.

25 Q And the Alpha Tech implants and rods and screws, were

1 those used at St. Vincent's Hospital by any surgeon at St.  
2 Vincent's Hospital?

3 A Not that I'm aware of, no.

4 Q Did you ever use them?

5 A No.

6 Q Did you ever, try to find the right phrase, were you  
7 ever a consultant to any company that manufactured equipment or  
8 medical devices used in spinal surgery?

9 MR. MCCRORIE: Objection.

10 THE COURT: Overruled.

11 A Yes, I had consulted in the past.

12 Q And who did you consult with?

13 A I consulted with, I was a consultant, I believe Sofamor  
14 Danek bought out by a company called Medtronics. And another  
15 company called Depuy, bought out by Johnson and Johnson.

16 Q And when you say you consulted, what did you do?

17 A Well, because I'm, because I teach and I do research in  
18 spinal surgery, as a consultant, what we did, myself and the  
19 other physicians that were involved with implants, we would test  
20 implants, review implants for the companies and make  
21 recommendations on making those implants better for patients.

22 Q Was any of that consulting and recommendation done  
23 before any of the implants went out to the market?

24 A Was there consulting done before implants went to  
25 market? Most of the consulting was done on post marketed FDA

1 approved implants.

2 Q So, when you say most, are you saying that you did  
3 consult on some occasions for medical devices used in spinal  
4 surgery before they went on the market?

5 MR. MCCRORIE: Objection.

6 THE COURT: Overruled.

7 A It's hard to say, because when you are doing research,  
8 you test a wide variety of implants so you don't always know  
9 whether or not a particular implants is pre or post market but  
10 the research that we did was always done on cadavers and  
11 something called an MTS machine which is a machine that tests  
12 metal fatigue on implants. So, we never tested any of the  
13 implants on patients, or did we implant them as part of any of  
14 the research.

15 Q Well, you wouldn't test it on a patient, obviously it's  
16 done on a cadaver?

17 A Correct.

18 Q You want to see if it will work or not?

19 A There are a lot of different things you look for when  
20 you are testing.

21 Q What did you receive in terms of payment for your  
22 consulting?

23 A I never received any payment directly. All of the,  
24 anything that was either given to myself or my staff or my team  
25 was just in terms of providing the implants and covering the

1 cost of the actual testing itself. I never received a salary or  
2 anything.

3 Q I understand that, but there was a certain amount of  
4 money paid by some of these companies to, was it university  
5 orthopedics at the time?

6 A No.

7 Q Was it paid to you?

8 A No.

9 Q Who was it paid to?

10 A Either St. Vincent's Hospital, or I was doing the  
11 research through Downstate, Downstate Medical Center or what  
12 have you.

13 Q I understand. You testified earlier that you are board  
14 certified in orthopedic surgery, correct?

15 A Yes.

16 Q And you have a subspecialty in spinal reconstruction,  
17 correct?

18 A Yes.

19 Q You are not board certified in radiology?

20 A Correct.

21 Q And you are not board certified in neuroradiology?

22 A Correct.

23 Q How long have you been at Mount Sinai?

24 A I went to Mount Sinai when St. Vincent's closed, so  
25 right after St. Vincent's closed, I acquired privileges there.

1 Q I'm sorry, Doctor, when was that, that you joined Mount  
2 Sinai, was it 2009?

3 A May have been 2009. I want to say I've been at Mount  
4 Sinai for about three or four years now.

5 Q And you understand having been at Mount Sinai for three  
6 or four years now, they have a fairly extensive radiology  
7 department, don't they?

8 A Yes.

9 Q And in fact, the way medicine is developed these days,  
10 many doctors in certain fields, there is usually a companion  
11 radiology field, correct? Do you know what I mean by that?

12 A No.

13 Q In other words, within Mount Sinai, you are aware that  
14 there is a radiology specialist in chest and cardiovascular  
15 imaging?

16 A Okay, yes.

17 Q That's what I'm getting at?

18 A Yes.

19 Q There is also a department of CT dash MRI, of the body?

20 A Yes.

21 Q There is even a radiology department for  
22 gastrointestinal issues, correct?

23 A Yes.

24 Q There is a radiology department for head and neck,  
25 correct?

1 A Yes.

2 Q They have at Mount Sinai a radiology department for  
3 musculo-skeletal as well, correct?

4 A Yes.

5 Q There is also, obviously a neuroradiology department,  
6 correct?

7 A Yes.

8 Q There is a nuclear medicine slash PET Scan department,  
9 correct?

10 A Yes.

11 Q Pediatric radiology, correct?

12 A Yes.

13 Q Vascular interventional radiology, correct?

14 A Yes.

15 Q Ultrasound, correct?

16 A Yes.

17 Q And radiology informatics, right?

18 A Yes.

19 Q And within each of these departments there are doctors  
20 who are board certified as radiologists and perhaps with a  
21 subspecialty, say in neuroradiology, correct?

22 A Yes.

23 Q And you testified that when you do your surgeries,  
24 multi-level fusions, you never have a radiologist in the  
25 operating room with you, correct?

1 A Correct.

2 Q And in fact you don't even consult with radiologists  
3 when you are examining, say someone like Mr. Verdon, correct?

4 A Correct.

5 Q You said, I read all my own films?

6 A Yes.

7 Q Right. So, it's not, is it important to you to go out  
8 and seek a second opinion from another radiologist, from a  
9 radiologist who may have a subspecialty in the area that you  
10 practice in?

11 A No.

12 Q It's not important to you at all?

13 A No.

14 Q It's only your opinion that you rely upon?

15 A Well, I read the film myself, yes. And, when I'm  
16 comfortable with my decision, I proceed with what I think is  
17 best for the patient.

18 Q So, your testimony is that when you are suggesting this  
19 traumatic surgery for Mr. Verdon, it's based upon only your  
20 reading of the MRI and CAT scan and X-rays. You didn't go to  
21 anyone else and say, I'm finding this, do you agree with me.  
22 You not do that, did you?

23 A No.

24 Q And you don't plan on doing that, do you?

25 A Correct.

1 Q In fact, when Mr. Verdon first came to you, you did  
2 look at the MRIs and X-rays that had been taken before, correct?

3 A Yes.

4 Q You looked at them from Bellevue Hospital, where he had  
5 an operation done, correct?

6 A Yes.

7 Q And you also looked at them for Lenox Hill, correct?

8 A Lenox Hill radiology.

9 Q Lenox Hill radiology?

10 A Yes.

11 Q Okay. Now, Doctor, I just want to switch gears for one  
12 second. And I want to talk, just generally, because I knew you  
13 did it already in front of the Jury, generally the anatomy of a  
14 spine. Now, you did it already, I'm not going to cover things  
15 that you did before, but, and we have a model here. And  
16 obviously, it really is, this is a full scale model of a spine,  
17 correct?

18 A Yes.

19 Q So, when you, if I could ask you to hold this, if you  
20 don't mind?

21 A Sure.

22 MR. GANNON: And this is Plaintiff's Exhibit 17.

23 I'm going to hand it up to you.

24 (Whereupon, that exhibit is handed to the  
25 witness)

1 Q So, when Mr. Verdon was operated on and they did the  
2 fusion on August 11th, 2009, can you point out for the Jury  
3 which vertebrae were fused?

4 A Sure. So, if we count up from the lumbar spine, I'll  
5 go up to L3. L3 is the last vertebrae that was fused, that was  
6 the bottom portion of the construct and then they went up to  
7 T-8. So, T-8 is this vertebra where my index finger is. And  
8 then the bottom one is where my other index finger is.

9 Q I'm going to try not have you hold that the whole time.  
10 That's okay, I'll take it back from you. Thank you. But the  
11 spine, Doctor, let me ask you, you mentioned during your direct  
12 that the typical human spine has a cervical lordosis?

13 A Yes.

14 Q Correct, which then moves into a thoracic kyphosis?

15 A Correct.

16 Q Correct and then a lumbar lordosis?

17 A Yes.

18 Q So, and you talked about this being the gentle S?

19 A Yes.

20 Q And you mentioned how the spine in the human body is  
21 essentially, depending upon what's going on in the spine, sort  
22 of readjusting in order for the head to stay above the hips, so  
23 we can be balanced correct?

24 A Yes.

25 Q And you mentioned that's what kind of distinguishes us

1 from other animals because we can stand up and stay balanced,  
2 correct?

3 A Yes.

4 Q So, if I were to give you an example of an individual  
5 who came to you and already had an exaggerated cervical  
6 lordosis, right, that means it's, it's more pronounced than  
7 normal, typically what the spine would then do is eventually  
8 adjust itself in a way that the head stayed above the hips,  
9 correct?

10 A Yes.

11 Q It's compensated for itself. So, if someone had a  
12 pre-existing cervical lordosis, it would not surprise you to see  
13 some other changes in the spine to account for that cervical  
14 lordosis, correct?

15 A Yes.

16 Q And same if there is a lumbar lordosis and it's an  
17 exaggerated lordosis, there is a change kyphotically in the  
18 thoracic region and probably cervical, correct?

19 A Yes.

20 Q And that can happen, someone could have a cervical  
21 thoracic or lumbar changes for degenerative reasons, correct?

22 A You can change your lordosis or your kyphosis for  
23 degenerative issues, yes.

24 Q For example, if a person presented to you and they had,  
25 I mean, you said skeletal development for a male sort of peeks

1 at sixteen years old, right?

2 A More or less, yes.

3 Q Maturity wise, no, but by skeleton, yes, and women,  
4 it's younger, thirteen, fourteen?

5 A Yes.

6 Q So, really from that date forward, if there is any type  
7 of degenerative change in the cervix, the cervical region, there  
8 would also then be ultimately corresponding changes in the  
9 thoracic region and the lumbar region to maintain that balance?

10 A Yes, there can be.

11 Q There can be, okay. And you are aware that Mr. Verdon,  
12 I think in August is going to be sixty-five, right, do you know  
13 that?

14 A Yes.

15 Q And at the time of his injury he was one week away from  
16 turning sixty, correct?

17 A Yes.

18 Q And, you are aware, are you not, that Mr. Verdon has  
19 worked as a carpenter since 1965, did you know that?

20 A Yes.

21 Q And where did you learn that information from?

22 A Having spoken to him for amount of time that I had seen  
23 him.

24 Q And I know he'll probably testify himself, but Mr.  
25 McCrorie mentioned that he was a carpenter in Ireland in 1965,

1 came to the United States in 1985, you are aware of that?

2 A Yes.

3 Q So, that's twenty years of being a carpenter and it  
4 would not surprise you given that type of activity, that there  
5 could be degenerative changes even just because you are a  
6 carpenter for twenty years, correct?

7 A You can have degenerative changes from twenty years  
8 worth of work, yes.

9 Q And you can also have degenerative changes just because  
10 you are no longer sixteen, but you are fifty, correct?

11 A Yes.

12 Q In fact, if I'm fifty-two, I wouldn't be surprised if  
13 you look at my back, and I had degenerative changes somewhere in  
14 my spine, correct?

15 A Unfortunately I think we both do, yes.

16 Q I can feel it. And probably changes in my disk space,  
17 yes?

18 A Yes.

19 Q Probably changes in my disks themselves?

20 A Yes.

21 Q Drying out, right?

22 A Yes.

23 Q Okay. Now, in terms of the different regions, we  
24 mentioned the cervical region where there is obviously a certain  
25 amount of flexibility and mobility, correct?

1 A Yes.

2 Q Naturally there is that, and also in the lumbar region  
3 there is flexibility as well?

4 A Yes.

5 Q I don't know if you agree with the phrase, there is  
6 much less flexibility in the thoracic region of a person's  
7 spine, correct?

8 A Yes.

9 Q And the reason is, you are not really bending over from  
10 the mid region, you bend from your back or you bend from your  
11 neck?

12 A And your hips.

13 Q And your hips. And when you do testing of Mr. Verdon  
14 on his thoracic spine, the test is the movement in his hips you  
15 are talking about, not the movement per se in his spine,  
16 thoracic, in thoracic region, correct?

17 A Well, when you are measuring spinal motion, you are  
18 looking at basically, the pelvis is kept level, so you are not  
19 looking for that motion, you are looking at actual spinal  
20 motion. You are looking at the way the spine moves as a whole.

21 Q Right, but my point is, when you are measuring  
22 someone's mobility and whether it's positive or negative or  
23 changed, naturally, people have much more mobility in their  
24 neck. When you function on a daily basis, it's really your neck  
25 lumbar, hips, it's not so much your thoracic region, correct,

1 that's relatively stable?

2 A In terms of its overall range of motion, thoracic  
3 region has the most limited range of motion, yes.

4 Q Now, Doctor, you have your file with you?

5 A Yes.

6 Q Do you have in your file, the Bellevue records or any  
7 records from Bellevue?

8 A I do, yes.

9 Q I'm going to ask you, I have to show, you are aware  
10 when Mr. Verdon was admitted into the hospital, he reported that  
11 he hit his head and he hit his mid back, correct?

12 A Let's see, instead of my going through the entire  
13 record, is it possible to show it to me.

14 Q Sure. We'll find it. If I could approach. Patient  
15 reports he hit his head and mid back on the scaffolding below,  
16 correct?

17 A Yes.

18 Q He reports mid back pain and head pain, correct?

19 A Yes.

20 Q He denies any numbness or tingling of his extremities,  
21 correct?

22 A Yes.

23 Q He denies inability in moving his extremities, correct?

24 A Yes.

25 Q And he denies incontinence of bowel or bladder?

1 A Yes.

2 Q And they ask about the bowel and bladder, that can  
3 ultimately impact the spinal cord?

4 A Yes.

5 MR. MCCRORIE: Just because the record is two  
6 weeks.

7 MR. GANNON: Admission date August 11th, 2009.

8 MR. MCCRORIE: Is that the date of the record as  
9 well.

10 MR. GANNON: Yes. Yes. Handwritten.

11 MR. MCCRORIE: Thank you.

12 Q And Doctor Merola, you had an exhibit here where you  
13 did your Metivisual of the impact. So, we have in as  
14 Plaintiff's Exhibit 19 and you took the Jury through this?

15 MR. GANNON: I apologize.

16 Q What is this part of the spine again?

17 A The spinous process.

18 Q And you mentioned that you noticed some impact in the  
19 thoracic region, based upon the films that you reviewed,  
20 correct?

21 A Yes.

22 Q There was no impact that you noted in the cervical  
23 region?

24 A There were no fractures in the cervical spine.

25 Q And there were no fractures in the lumbar region,

1 correct?

2 A Correct.

3 Q And also in the hospital, they don't report any  
4 bruising to the cervical region, correct?

5 A As far as I know.

6 Q And no bruising to the lumbar region, correct?

7 A Yes.

8 Q Now, when he entered the hospital, you testified that  
9 they appropriately took X-rays, CAT scans, MRIs, during his  
10 admission, correct?

11 A Yes.

12 Q And if we could put up the reports of the head CAT scan  
13 from August 11th, 2009.

14 (Whereupon, that was displayed on the monitor)

15 Q Doctor, do you have that report in your file?

16 A Let me see.

17 Q Doctor, if you don't have it, I'll come forward?

18 A I have non-contrast head CT.

19 Q Head CT and the date and time of that is 7:49?

20 A Let's see. August 11, August, 2009.

21 Q Yes and the time is 0749, you see that, right next to  
22 the date?

23 A Yes.

24 Q So, that's the time that this was taken in the  
25 hospital, correct?

1 A Yes.

2 Q And it's a head CAT scan, you see that?

3 A Yes.

4 Q And you see that the findings there and we have it up  
5 for the Jury so they can see it as well, no intracranial mass  
6 effect, contusions or hemorrhage is demonstrated correct?

7 A Yes.

8 Q The gray white matter differentiation is normal,  
9 correct?

10 A Yes.

11 Q No abnormal extra axial collection is visualized,  
12 correct?

13 A Yes.

14 Q The orbits of his eyes are normal, you see that?

15 A Yes.

16 Q There is mild soft tissue swelling at the posterior  
17 vertex, correct?

18 A Yes.

19 Q There is no evidence of intracranial hemorrhage or  
20 parenchymal contusion correct?

21 A Yes.

22 Q There is mention though of a right basal ganglia, age  
23 indeterminate, lacunar infarct, what is that?

24 A Lacunar infarcts, versus dilated perivascular space.

25 Q What is that?

1 A Lacunar are a portion of the brain located deep within  
2 the mid brain area, and it's a section of your brain where some  
3 of your motor fibers are located, a sub-anatomical structure of  
4 the brain.

5 Q That' an abnormal finding?

6 A Non-specific eight millimeter ovoid hypodensity.

7 Q Yes?

8 A They, don't they don't read it. They give it two  
9 differentials as a lacunar infarct and dilated perivascular  
10 space.

11 Q But they can't determine how long it's been there?

12 A Correct.

13 Q When you say give two different differentials, is it  
14 common practice for a doctor, when a patient presents to them  
15 with a complaint, not to take the answer of the Plaintiff but to  
16 look for differential issues, do a differential diagnosis?

17 A Generally you do a differential diagnosis in your head  
18 and then you come up with the diagnosis based upon, for lack of  
19 a better term, a preponderance of the evidence in front of you,  
20 for that particular patient. If you, if you are between the  
21 horns of a dilemma in terms of what the actual diagnosis is,  
22 then you may say, these are possibilities.

23 Q So, you could list the possibilities with the  
24 differential diagnosis or seek another opinion, correct?

25 A Well, actually, those are not mutually exclusive. I

1 mean, if you can come up with a diagnosis, you give a diagnosis.  
2 Before you come up with any diagnosis though, you run through  
3 differentials in your head.

4 Q Right?

5 A If you are unsure of what the actual diagnosis itself  
6 is, then you would give several possibilities and just list the  
7 differential.

8 Q I see, so if you as a doctor have several different  
9 possibilities for a condition that a plaintiff, that a patient  
10 presents to you, you would typically list the different  
11 differential diagnoses that you are considering, correct?

12 A Well, I think a good example is what they are doing  
13 here because they can't call it based on what they are seeing,  
14 they are saying these are two possibilities of what I'm looking  
15 at.

16 Q Let's put this one aside. Any complaint where someone  
17 comes in to you as a treating Doctor and you have differential  
18 diagnoses, meaning it could be caused by different things, you  
19 typically would list those different things in your report?

20 A If you can't make the, if you are unsure about what the  
21 diagnosis is, then you would say, one possibility is this, and  
22 another possibility is this other thing.

23 Q I think we agree with each other but what I'm saying  
24 is, if do you that, if a doctor in the future is going to look  
25 at your record, you want to have in there, the different

1 possibilities that are the basis of the differential diagnosis,  
2 correct, if you haven't decided yourself at that point?

3 A After you've listed the two potential diagnoses, the  
4 differential list is generally, I mean it's generally pretty  
5 standard, you know what I mean. So, the other Doctor, you don't  
6 have to put the differential in, for the other Doctor to look at  
7 it, because hopefully they went to medical school and they know  
8 what the differential is for your diagnosis.

9 Q Now, the next, I want to ask you to look at is the  
10 lumbar spine X-ray. It's also August 11th, 2009. This is taken  
11 at 8:41 that same morning of the incident.

12 A Let's see. I have the thoracic. I have the lumbar.

13 Q You have the lumbar?

14 A Yes. 8:41. 11 August, 2009.

15 Q Again, this is another X-ray taken at Bellevue Hospital  
16 upon his admission?

17 A Yes.

18 Q Before surgery?

19 A Correct.

20 Q And the findings there are the, for the lumbar spine,  
21 the vertebral alignment is normal, correct?

22 A Yes.

23 Q There is a moderate wedged compression fracture of the  
24 T-12 vertebral body, correct?

25 A Yes.

1 Q The remainder of the visualized thoracic and lumbar  
2 vertebral bodies are preserved, correct?

3 A Yes.

4 Q That means that they are in place, correct?

5 A Yes.

6 Q No damage to them?

7 A They are not fractured, correct.

8 Q And then it notes mild multi-level degenerative changes  
9 of the thoracic and lumbar spine are seen with osteophyte  
10 formation, you see that?

11 A Yes.

12 Q Osteophyte is a degenerative condition, correct?

13 A Yes.

14 Q So here, they are noting degenerative changes in the  
15 thoracic region, correct, where there is injury, and in the  
16 lumbar spine, they see that, correct?

17 A Yes.

18 Q The impression is a moderate T-12 vertebral wedge  
19 compression deformity, mild degenerative changes, correct?

20 A Yes.

21 Q Let's now go, Doctor, to the cervical spine, is a CAT  
22 scan, August 11th, 2009. 1936. Do you have that?

23 A Yes, I do.

24 Q So that is 7:36 p.m., correct?

25 A Yes.

1 Q So, this again is before his surgery was performed?

2 A Yes.

3 Q Correct. And again, the findings, now this is the  
4 cervical spine CT, and it indicates there is an exaggeration of  
5 normal cervical lordosis, do you see that?

6 A Yes.

7 Q Indicating that upon admission, they were able to find  
8 an existing cervical lordosis, exaggerated, in that part of his  
9 body, correct?

10 A Yes.

11 Q It indicates against the cervical spine, there is no,  
12 and I may butcher this word, prevertebral soft tissue swelling,  
13 did I get that right?

14 A Yes.

15 Q What is that?

16 A That means that there is no, prevertebral soft tissue  
17 is the soft tissue in the front of the vertebral bodies in the  
18 cervical spine, and it means that those soft tissues are not  
19 swollen, so there is no evidence of any swelling within those  
20 tissues that would typically occur, if you were to have a  
21 cervical fracture.

22 Q Or would he have that as well if there is any kind of  
23 impact to the front of his throat, something showing there?

24 A No, because not, if you had an impact to the front of  
25 the throat, you wouldn't, but if you had a fracture in the

1 cervical body, you would.

2 Q And what is paraspinal?

3 A Paraspinal means adjacent to the spine.

4 Q And again, that says the evaluation of the paraspinal  
5 soft tissues is normal?

6 A Yes.

7 Q What is the paraspinal soft tissues?

8 A Those are the muscles and the tissues that attach  
9 themselves to the cervical spine.

10 Q So, also an indication of no trauma, correct?

11 A Let's see. What line is that?

12 Q It's under findings, it's the last sentence of the  
13 second paragraph. Evaluation of the paraspinal soft tissues is  
14 normal?

15 A Evaluation, yes.

16 Q Again, notes minimal degenerative changes at C2/C3.  
17 Correct?

18 A Yes.

19 Q And they are also noting at this time, posterior end  
20 plate scleroses and minimal right neuroforaminal narrowing at  
21 this level. Correct?

22 A Yes.

23 Q That's an indication of the pre-existing condition in  
24 this part of the spine, correct?

25 MR. MCCRORIE: Objection.

1 THE COURT: Overruled.

2 A At C2/C3, yes.

3 Q Okay. Doctor, would you take a look at thoracic spine  
4 CT, August 11, 2009, this one is at 1440, the time, do you have  
5 that?

6 A Yes.

7 Q This also, this actually is not the report, but this is  
8 one of the films you put up before the Jury that was Plaintiff's  
9 2A, and C. That series of CT's, correct?

10 A Yes.

11 Q And you commented on those films for the Jury, correct?

12 A Yes.

13 Q And you note, Doctor, in this report, they have an  
14 indication of there is diffuse mild osteopenia, correct?

15 A Yes.

16 Q What is osteopenia?

17 A Osteopenia, it's an adjective to describe the  
18 appearance of the density of the vertebral bodies. So, it's a  
19 descriptive term regarding the appearance of the vertebral  
20 bodies on CT scan.

21 Q But an osteopenia is not a normal finding, correct?

22 A Osteopenia means that relative, relative to the quote  
23 unquote normal density that you would see on a bone, it appears  
24 as though it has less, a less intense signal on the CAT scan.

25 Q Less dense, right?

1 A Yes.

2 Q That means, that's also a product of aging, isn't it?

3 A Yes, it can be.

4 Q Okay. And it also means, paracentral disc ridge  
5 complex at T12-L1. That's also a definitive condition?

6 A The ridge portion of it can be degenerative. The ridge  
7 portion of it would be a osteophyte.

8 Q Calcification is noted. I'll skip that one, Doctor.  
9 Now, when it said diffuse mild osteopenia, diffuse means  
10 throughout, right?

11 A Yes.

12 Q So, this means on this thoracic film or CAT scan, when  
13 they say diffuse mild osteopenia means Mr. Verdon on August 11,  
14 2009, already had diffuse osteopenia throughout his thoracic  
15 spine, correct?

16 A It means that what the description that the radiologist  
17 is giving us regarding what he sees on those bones, yes.

18 Q Let's go to the lumbar CAT scan, August 11, 2009. This  
19 one is at 1936.

20 MR. MCCRORIE: Lumbar, Chris.

21 MR. GANNON: Lumbar spine, yes, CT.

22 Q Taken at 1936? 7:36. Do you have that?

23 A Yes, I do.

24 Q This one, they mentioned the diverse fracture. They  
25 talk about posterior mild retropulsion, correct?

1 A Yes.

2 Q There is no additional fractures in the lumbar spine,  
3 correct?

4 A Yes.

5 Q They do note however that there is mild to moderate  
6 multi-level degenerative discogenic disease of the lumbar spine?

7 MR. MCCRORIE: There is no additional fractures  
8 seen, not that there's none, in the other one.

9 MR. GANNON: Did I misread that?

10 MR. MCCRORIE: It says none seen because you just  
11 said there were none, because here they were all noted.

12 MR. GANNON: You are right.

13 Q It said no additional fractures are seen, correct?

14 A Yes.

15 Q Okay. But they do have a mild to moderate multi-level  
16 degenerative discogenic disease of the lumbar spine, that's  
17 noted correct?

18 A Yes.

19 Q Also, with osteophytes, correct?

20 A Yes.

21 Q They've got multi-level degenerative end plate changes?

22 A Yes.

23 Q Multi-level circumferential disc bulges in the lumbar  
24 spine, correct?

25 A Yes.

1 Q Again, this is degenerative in nature, so it's taking  
2 place over time, so at this point, he has disc bulges correct?

3 A It's hard to say what's happening with the disc bulges.

4 Q Let me stop you. It says, circumferential disc bulge,  
5 that is a bulge, what does that mean, circumferential?

6 A Circumferential means it's going around the entire  
7 disc.

8 Q Right and they note this at L1/L2, L2/L3, L3/L4,  
9 correct?

10 A Yes.

11 Q And there is anterior disc ridge complex at L3/L4?

12 A Yes.

13 Q There is no significant canal or neuroforaminal  
14 stenosis, correct?

15 A Yes.

16 Q The lumbar spine CAT scan continues. And, one  
17 impression is T-12 burst fracture, correct?

18 A Yes.

19 Q With no additional fractures, and mild to moderate  
20 degenerative discogenic disease to the lumbar spine, correct?

21 A Yes.

22 Q Now, his surgery was on what date, Doctor Merola?

23 A Let's see. Soon after his admission. After these  
24 studies were done.

25 Q The 12th, Mr. McCrorie just told me August 12?

1 A Yes.

2 Q They do a thoracic spine CAT scan on August 13, after  
3 the surgery, do you have that in front of you?

4 A Yes.

5 Q 1610. They note he's post surgery correct?

6 A Yes.

7 Q They do this because they are trying to check out the  
8 surgery, in terms of, and what's in place in the spine, correct?

9 A Yes.

10 Q The hardware is intact, correct?

11 A Yes.

12 Q And, there is an issue, they talk about the left  
13 transpedicular, screw, minimally approaches on the left lateral  
14 recess without contacting the cord, correct?

15 A Yes.

16 Q The post reduction alignment is anatomic. Which means,  
17 when they sort of corrected his spine, they put in the rods that  
18 the alignment is anatomically correct?

19 A Yes.

20 Q There is mild to central canal stenosis, at T-12?

21 A Yes.

22 Q There is stenosis at T-12/L1, correct?

23 A Yes.

24 Q And again, though they make mention now of the disc  
25 ridge complex which is unchanged, correct?

1 A Yes.

2 Q And, they are now noting or they note here, mild  
3 central canal stenosis of L4/L5 secondary to the disc bulge we  
4 talked about, correct?

5 A Yes.

6 Q And there is no evidence of any type of post-operative  
7 complication, correct?

8 A Correct.

9 Q Meaning based upon this study, the reading of this is  
10 that the surgery was successful, he's anatomically correct, the  
11 hardware is in place and there were no issues at that time,  
12 correct?

13 A But he does have a pleural effusion. They didn't bring  
14 that up as a complication, but that's a consequence of the  
15 surgery.

16 Q Which resolved?

17 A Correct.

18 Q His foot, there is also an X-ray of his foot taken on  
19 September 1st, 2009. Do you have that?

20 A I do, yes. September 1, 2009, left foot.

21 Q Taken 11:53, again post surgery, X-ray of the foot?

22 A Yes.

23 Q And they obviously take an X-ray, he had a fall, they  
24 want to see if there are any complications there, correct?

25 A Yes, there was a complaint about the foot, and they

1 wanted to look at it.

2 Q And in this X-ray of his foot they also note  
3 degenerative changes at the Hallux and sesamoid complex,  
4 correct?

5 A Yes.

6 Q Suspected hammer toe deformities, correct?

7 A Yes.

8 Q That's also a condition that develops over time?

9 A Hammer toes are kind of a strange thing, you can  
10 actually have congenital hammer toes as well.

11 Q You can have congenital hammer toes?

12 A Yes.

13 Q And there is a notation of some joint arthrosis in the  
14 left foot, correct?

15 A Yes.

16 Q What's arthrosis?

17 A Arthrosis refers to, it's descriptive term referring to  
18 a joint displaying some degenerative changes.

19 Q Displaying some?

20 A Degenerative change.

21 Q So, Mr. Verdon at this time is also having degenerative  
22 changes in his foot?

23 A Yes.

24 Q Now, Doctor, if you could pull out the operative  
25 report, the operation of August 12th, 2009.

1 A I can't find the operative report.

2 Q Are you able to find it.

3 MR. GANNON: Can I approach, your Honor, if I  
4 can?

5 THE COURT: Go ahead.

6 Q This is part of Plaintiff's exhibit 1, this is part of  
7 the operative report. Can you tell the Jury who the physician  
8 is who did this surgery?

9 A Sure. The attending surgeon is Doctor Anthony  
10 Frampong.

11 Q You've never spoken to Doctor Frampong about Mr.  
12 Verdon?

13 A No.

14 Q You never consulted with Dr. Frampong about the surgery  
15 that you are suggesting to him?

16 A No.

17 Q You never spoke to Doctor Frampong about the actual  
18 surgery itself, correct?

19 A Correct.

20 Q In fact, the Metivisual where you had a diagram of the  
21 surgery was based upon your reading of the operative report?

22 A Yes.

23 Q And your understanding of how these surgeries are done?

24 A Correct.

25 Q It notes in the operative report that upon admission to

1 the emergency room, he was neurologically intact, correct?

2 A Yes.

3 Q They also note from this view, of the T-12 vertebral  
4 body, appeared to be intact, correct?

5 A Yeah, that's, it's hard to know what he means there,  
6 there is a little contradiction there.

7 Q Fair enough. You understand that an operative report,  
8 this is actually a report done, maybe dictated contemporaneously  
9 with the surgery, correct?

10 A It was, yes.

11 Q And the findings in this report are exactly what Doctor  
12 Frampong was actually seeing when he was doing this, correct?

13 A Yes, this was actually dictated by another physician,  
14 Doctor Moshell, but this is a report of the operation that was  
15 done, yes.

16 Q So, Mr. Doctor Moshell would be --

17 A A resident.

18 Q A resident dictating what he's observing and Doctor  
19 Frampong is observing when he performed the surgery?

20 A Yes.

21 Q Upon observation, the T-12 vertebral body appeared to  
22 be intact, correct?

23 A Yes.

24 Q And there was no retropulsed bone?

25 A Yes.