

1 Q Correct. But there was were fractures to it, meaning  
2 the T-12, correct?

3 A Yes.

4 Q Which were well aligned, right?

5 A Yes.

6 Q Dr. Merola, after the surgery, the T-12 burst fracture  
7 resolved, correct?

8 A After the surgery, T-12 burst fracture was stabilized.

9 Q Let me do it another way. The purpose of the surgery  
10 is to stabilize that part of the thoracic spine?

11 A Correct.

12 Q And then stabilize the burst fracture?

13 A Yes.

14 Q So, there is no further treatment to the T-12 burst  
15 fracture per se after the surgery, correct?

16 A Yes.

17 Q Meaning, that there are no elements of the bone that  
18 are impacting the spinal canal or any other part of Mr. Verdon  
19 to cause him pain, correct?

20 A To cause neurological compression.

21 Q Right, which would lead to pain?

22 A Which can lead to neurological pain, depending upon the  
23 amount of compression.

24 Q But the point is that they looked at this, they did the  
25 surgery, they stabilized it, there is no more incident or issue

1 or T-12 burst fracture itself, correct?

2 A Right.

3 Q It's stabilized?

4 A Correct.

5 Q Now, I'll come forward with it also, mentions the  
6 epidural bleeding that you talked about, correct?

7 A Yes.

8 Q And there, it was from underneath the alignment of the  
9 fractures, correct?

10 A Yes.

11 Q And that was easily stopped by the surgeon, correct?

12 A Yes.

13 Q Yes?

14 A Yes.

15 Q All the screws went in smoothly?

16 A Yes.

17 Q Correct. The screw positions were verified with  
18 fluoroscope, did I say that, right, close?

19 A Correct.

20 Q Then the custom shaped rod was placed into the screw  
21 heads which were then secured. You mentioned that with the Jury  
22 before, correct?

23 A Yes.

24 Q And it says, the patient's kyphotic deformity was  
25 corrected by compressing to the rod posteriorly and locking the

1 rod in place, correct?

2 A Yes.

3 MR. GANNON: Your Honor, we could break if you  
4 want to. Just because I'm going to go into another area.

5 THE COURT: Let's take five quick minutes, just  
6 to stretch, get a drink and then we'll finish up.

7 (Whereupon, a recess was taken in this matter, and  
8 after the recess, the following took place in open court,  
9 with the Court and all parties being present)

10 (Continued next page)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 COURT OFFICER: All rise. Jury entering.

2 (Jury enters courtroom; the following  
3 occurred:)

4 THE COURT: Have a seat.

5 Q. Dr. Merola, Mr. McCrorie questioned you about some  
6 additional CAT scans or films that were done by Lenox Hill  
7 Radiology. Do you recall that?

8 A. Yes.

9 Q. We've marked it as Plaintiff's Exhibit 5A, an MRI of  
10 the lumbar spine, which you testified about. You told and you  
11 said that you found compression at L3-L4, L4-L5, correct?

12 A. Yes.

13 Q. Are you aware of Lenox Hill Radiology in reading  
14 that -- are you aware of an impression of that x-ray of mild to  
15 moderate ventral lateral spondylosis T10, T11 through L2-L3?

16 A. Which? I'm sorry.

17 MR. McCrorie: Objection.

18 THE COURT: Overruled.

19 Q. The film will be marked as Plaintiff's exhibit 5A.  
20 Did you review the reports of those films?

21 MR. McCrorie: Just tell him the date of that.

22 Q. So you need a date?

23 A. Yes.

24 Q. I apologize. November 17, 2005.

25 A. MRI of the lumbar spine?

1 Q. Yes.

2 A. Yes.

3 Q. Do you have that report in your file?

4 A. I do, yes.

5 Q. And you're aware in that report there's a mild to  
6 moderate ventral lateral spondylosis T10 to T11 through L2-L3?

7 A. Yes.

8 Q. What does spondylosis mean?

9 A. Spondylosis?

10 Q. Yes.

11 A. It's a descriptive term regarding the appearance of  
12 nerve bodies and usually it has something to do with the  
13 degenerative changes.

14 Q. They're finding a degenerative change at this  
15 location, correct?

16 A. Yes.

17 Q. It means it's been there before? It's been there  
18 already?

19 A. Yes.

20 Q. It's been a there a while?

21 A. Yes.

22 Q. You didn't mention that though when you testified  
23 earlier the other day. You didn't mention that spondylosis, did  
24 you?

25 MR. McCORIE: Objection.

1 THE COURT: Overruled.

2 A. No, because it's not of any clinical significance.

3 Q. The fact that he has degenerative changes in that area  
4 is not of any clinical significance?

5 A. Correct.

6 Q. Okay. Also there's a mildly degenerative -- you're  
7 aware of the impression from that report as well of a mildly  
8 degenerative disc bulge at L1-L2, L2-L3, L4-L5?

9 A. Yes.

10 Q. And also that there is a mild to moderate facet joint  
11 arthropathy diffusedly. That's in the report as well? You're  
12 aware of that?

13 A. Yes.

14 Q. Mild multi-level neural foraminal stenosis. Do you  
15 see that?

16 A. Yes.

17 Q. And that's at L4-L5 --

18 A. Yes.

19 Q. -- correct? And it goes on. Without any existing  
20 nerve root compression, correct?

21 A. Exiting.

22 Q. I'm sorry. Exiting nerve root compression. There's a  
23 stenosis. That's the narrowing at that point in the spine,  
24 correct?

25 A. Yes.

1 Q. Do you have in your file -- did you look at the MRI of  
2 the cervical spine of from November 17, 2009.

3 A. Yes.

4 MR. McCORIE: Report you mean?

5 MR. GANNON: Report, right.

6 Q. You have that in your file, Doctor?

7 A. Yes, I do.

8 Q. And again the impression here is mild spondylosis.  
9 Again that's a degenerative finding, correct?

10 A. Yes.

11 Q. And disc budging C2-C3 through C5,6, correct?

12 A. Correct.

13 Q. And again you didn't talk about that because you  
14 didn't find clinically that's of any significance, correct?

15 A. In terms of -- I'm sorry -- the spondylosis or the  
16 degenerative changes?

17 Q. The spondylosis and the disc bulging at C2-C3 through  
18 C5-C6?

19 A. Correct.

20 Q. You did not talk about that in your direct  
21 examination, correct?

22 A. Yes.

23 Q. And again because you don't find it to be clinically  
24 significant?

25 A. It's just part of a description of the film and some

1       constitutive changes, yes.

2           Q.    Do you disagree with that finding?

3           A.    No.

4           Q.    C3-C4 level there's -- let me skip to that part --  
5       more stenosis again at C3-C4, C4-C5 and mid left C4-C5, correct?

6           A.    Yes.

7           Q.    And there's also a disc herniation, correct?

8           A.    Yes.

9           Q.    At T2-T3?

10          A.    Yes.

11          Q.    Oak.  The MRI of the cervical spine October 9, 2011  
12       there is a C3-C4 posterior disc budging and accompanying  
13       osteophytes.  Again that's a degenerative change?

14          A.    Yes.

15          Q.    Doctor, on the MRI of the lumbosacral spine October 9,  
16       2011, they note disc bulging, correct?

17          A.    Yes.

18          Q.    They note stenosis at L3-L4?

19          A.    Yes.

20          Q.    Narrowing at L4?

21          A.    Yes.

22          Q.    And, Doctor, on the exam date of June 29, 2013, there  
23       were x-rays taken at Lenox Hill.  Do you have that report in  
24       your file?

25          A.    June 2013.

1 Q. June 29, 2013?

2 A. I don't have that.

3 Q. Plaintiff's Exhibit 12A was the x-rays that you looked  
4 at. Do you recall this is the thoracic spine and lumbar spine  
5 radiographs?

6 A. Yes.

7 Q. Are you aware of the reports from Lenox Hill Radiology  
8 that the findings of the metallic fusion hardware appeared to be  
9 in place?

10 A. Yes.

11 Q. And that there was no evidence of metallic fracture or  
12 loosening, correct?

13 A. Yes.

14 Q. So this is almost four years post surgery, correct?

15 A. Yes.

16 Q. And the finding by this Lenox Hill Radiology x-ray is  
17 that the hardware he has in his back is in place with no  
18 problems?

19 A. Without any fracture or --

20 Q. I'm sorry.

21 A. Without any implant failure, correct.

22 Q. Okay. Now, Doctor, did you look at an x-ray taken  
23 February 12, 2014 at Lenox Hill Radiology Associates?

24 A. Yes.

25 Q. You did look at that?

1 A. Yes.

2 Q. And you're aware of the finding in there there's a L5  
3 fragment appears partly sacralized?

4 A. Yes.

5 Q. Do you have that report?

6 A. No.

7 Q. And sacralized means what?

8 A. It just means that the L5, the lower most segment,  
9 appears to form a portion of the sacrum which is just an  
10 anatomical variant that occurs between 70 percent of the  
11 population.

12 Q. Is that a genetic finding? Do you have that at birth?

13 A. Most likely, yes.

14 Q. And again there are small osteophytes projecting from  
15 the vertebral margins there?

16 A. Yes.

17 Q. And the fact that the L5 -- I'll strike that.

18 And again this is now February 2014. They talk about  
19 that the hardware again is in place in tact, correct?

20 A. Yes.

21 Q. That there is a osteophytic encroachment upon the  
22 canal, an osteophyte as a degenerative change?

23 A. .

24 Q. And that there is minimal spondylosis in the ventral  
25 mark, correct?

1 A. Yes.

2 Q. Now, Dr. Merola, you first saw Mr. Verdon November 9,  
3 2009, correct?

4 A. Yes.

5 Q. And in your first report, do you have that in front of  
6 you?

7 A. Yes.

8 Q. Did you make any recommendation in this report other  
9 than sending him to your colleague Dr. Touliopoulos?

10 A. Yes.

11 Q. What was your recommendation?

12 A. MRI's.

13 Q. Anything else?

14 A. Neurological consultation.

15 Q. Which is consultation with Dr. Hausknecht?

16 A. Yes.

17 Q. And other than that, did you make any other  
18 recommendations?

19 A. Diagnostic imaging studies, neurology consultation  
20 and then I had referred him to Dr. Touliopoulos for the shoulder  
21 yes.

22 Q. Okay. You then saw him again December 7th, correct?

23 A. Yes.

24 Q. You saw him January 18, 2010?

25 A. Yes.

1 Q. And January 18, 2010, you base your recommendation was  
2 to continue with present care, treatment and management and  
3 return visit in four to six weeks, correct?

4 A. Yes.

5 Q. March 1st, 2010, you are making a request for surgery,  
6 correct?

7 A. Yes.

8 Q. It wasn't done at that time, correct?

9 A. Correct.

10 Q. Other than that you recommended that he come back to  
11 you again in four-to-six-weeks time?

12 A. Yes.

13 Q. You see him April 19, 2010?

14 A. Yes.

15 Q. Same thing. You recommend lumbar surgery but other  
16 than that you're asking for four-to-six-weeks time, correct?

17 A. Yes.

18 Q. See him May 24, 2010, July 12, 2010, September 13,  
19 2010, December 6, 2010, correct?

20 A. Yes.

21 Q. You see him twice in 2011 on April 4th, 2011 and  
22 October 24, 2011, correct?

23 A. Yes.

24 Q. You don't see Mr. Verdon at all in 2012, do you?

25 A. Correct.

1 Q. You don't see him at all in 2013 either, do you?

2 A. Correct.

3 Q. And the first time you saw him again was February 3rd,  
4 2014 prior to this trial commencing this March, correct?

5 A. Yes.

6 MR. GANNON: Your Honor, if I could just have a  
7 moment?

8 Q. Dr. Merola, you've made a recommendation for future  
9 surgery for Mr. Verdon which he says he does not want to do,  
10 correct?

11 A. At this time?

12 Q. At this time. And that first recommendation came from  
13 you how many years ago?

14 A. I guess a couple of years ago, 2010.

15 Q. So for the past four years you've been recommending  
16 surgery for Mr. Verdon and he's turned -- he's declined do it?

17 A. Yes.

18 Q. And he's given you reasons for that but he's declined?

19 A. Yes.

20 Q. And we heard from Dr. Hausknecht earlier that he  
21 recommended certain procedures as well like injections or a TENS  
22 unit. Mr. Verdon also turned that down. Did you know that?

23 MR. McCORIE: Objection to turning down. It  
24 wasn't authorized.

25 THE COURT: Sustained. I think the testimony was

1           turned down the shots.

2           Q.    TENS is not authorized but he turned down the shots.

3           Are you aware of that?

4           A.    Yes.

5           Q.    And, Dr. Merola, in deciding to do this surgery for  
6           Mr. Verdon, have you ever gone back to his original surgeon who  
7           did the fusion on the spine and ask for his input?

8           A.    No.

9           Q.    And that's not your practice?

10          A.    I think Anthony did a great job of fixing his spine  
11          traumatically. Now, we're dealing with posttraumatic deformity  
12          which is more of my specialty.

13          Q.    And those posttraumatic deformities that you're  
14          talking about are in the areas of the cervical spine, correct?  
15          Yes?

16          A.    Well, it's the entire spine.

17          Q.    Right but let's go one at a time. You say in the  
18          cervical spine there are what you call deformities, correct?

19          A.    Well, he has a spinal deformity and it involves his  
20          entire spine.

21          Q.    All right. But I want to go through that.

22          A.    Okay.

23          Q.    You said he's got an issue with his cervical spine,  
24          correct?

25          A.    Yes.

1 Q. And he had issues already before this incident in  
2 2011, correct?

3 A. He had constitutive degenerative changes prior to the  
4 accident.

5 Q. Right, and then you said he has issues now in the  
6 lumbar spine, correct?

7 A. Yes.

8 Q. He also had issues before in the lumbar spine,  
9 correct?

10 A. He had asymptomatic constitutive degenerative changes.

11 Q. Meaning -- asymptomatic means he wasn't complaining of  
12 pain?

13 A. And he was working full time, full duty until he fell  
14 off of a height and blew apart his spine, yes.

15 Q. But you mentioned he also wasn't complaining of pain?

16 A. Correct.

17 Q. And you also mentioned he's a stoic guy?

18 A. Yes.

19 Q. And he doesn't really complain of pain that often,  
20 does he?

21 A. Pain, no.

22 MR. GANNON: Thank you, Doctor.

23 REDIRECT EXAMINATION

24 BY MR. McCORIE:

25 Q. Dr. Merola, you have Dr. Hauscknecht's notes as part

1 of your file, correct?

2 A. Yes.

3 Q. And were you aware that the times Mr. Verdon wasn't  
4 seeing you in 2012 and 2013 every six weeks he was under the  
5 care of a board certified pain management specialist Dr.  
6 Hausknecht?

7 A. Yes.

8 Q. Whenever you did see Mr. Verdon did he tell you about  
9 the medications he was on?

10 A. Yes.

11 Q. And you told us yesterday and Dr. Hausknecht told us  
12 today that although he does not choose to do this epidural  
13 injection -- well, the epidural injection that both yourself and  
14 Dr. Hausknecht have talked to him over time about the spinal  
15 cord stimulator, if he ever wants to choose that to have that  
16 inserted in his body, correct?

17 A. Yes.

18 Q. You were asked whether or not you sought Dr. Frempong?

19 A. Anthony Frempong.

20 THE COURT REPORTER: I'm sorry. Can you spell  
21 that?

22 THE WITNESS: F-r-a-m-p-a-o-n-g - B-a-d-h-u.  
23 That's a phonetic spelling.

24 Q. I'm just going to hold up Plaintiff's 21 in evidence.  
25 You were asked whether or not you called Dr. Frampaong on the

1 phone to see in preparation of the MediVisuals. When you look at  
2 the CT scan that's on here on the MediVisuals is that a fair and  
3 accurate depiction of what is in the actual x-ray -- of the CT?

4 A. Yes.

5 Q. And when we come down here to the sagittal view of the  
6 CT and where the arrows are, is that a fair and accurate  
7 depiction of the MediVisuals that was made?

8 A. Yes.

9 Q. In terms of the surgery that Dr. Frampaong did -- I  
10 will just hold up Plaintiff's 20 and we actually have x-rays to  
11 compare it to but looking at the CT scan done on 8/13/09,  
12 approximately a month -- one day after the surgery, does this  
13 Metavisual fairly and accurately depict a board certified spinal  
14 reconstruction surgeon who does two to 300 surgeries a year, the  
15 surgery that Dr. Frampaong did?

16 A. Yes.

17 Q. I don't know if -- I'm just going to put the official  
18 Bellevue record up here although your file may contain some of  
19 the reports that Mr. Gannon went over.

20 It was pointed out that you're not a board certified  
21 radiologist and you're not a board certified neuroradiologist.  
22 Do you still standby your contention that as a board certified  
23 spinal surgeon that you don't need a board certified radiologist  
24 to interpret the films of Mr. Verdon or any other patient?

25 A. Correct.

1 Q. And, in fact, when a radiologist, whether they do it  
2 in a hospital or whether they do it in an office, reads films  
3 that come before them, they don't even know anything about the  
4 history of the patient; is that correct?

5 MR. GANNON: Objection.

6 THE COURT: Sustained.

7 Q. Well, the patient doesn't meet with the radiologist;  
8 is that correct?

9 MR. GANNON: Objection.

10 Q. The technician takes the film?

11 MR. GANNON: Objection.

12 Q. Okay. Are you familiar with how MRI's are taken in  
13 the tristate area in New York?

14 A. Yes.

15 Q. Okay. Does a technician take the MRI or does a  
16 radiologist physically take the MRI?

17 A. The technician does the MRI.

18 Q. Okay. And in your practice, did the radiologist,  
19 whether it be in a hospital or in an MRI facility, ever meet the  
20 patient -- withdrawn.

21 Do they typically meet the patient?

22 MR. GANNON: Objection.

23 THE COURT: Sustained.

24 Q. And on the 200 to approximately 300 surgeries you do  
25 spinal surgeries, you interpret the films yourself for all of

1 those patients for all these years; is that correct?

2 A. And for all patients that I don't operate on that I  
3 see in my office as well, yes.

4 Q. I want to go back to some of the findings in the  
5 emergency room but you have no reason to doubt that Mr. Verdon  
6 as a witness came in and told the jury and it's reported right  
7 in the emergency room that he fell a certain height and landed  
8 on the rebar depicted in those photographs?

9 MR. GANNON: Objection.

10 THE COURT: Sustained.

11 Q. Well, it was pointed out that there was no bruising on  
12 his back at least in the record. Is bruising a prerequisite to  
13 having a burst fracture at the T12 or a wedge fracture at T10?

14 A. No.

15 Q. If you could find where radiological reports starting  
16 on August 11, 2009, the one that Mr. Gannon was going over with  
17 you. I want to go over some of the things that weren't pointed  
18 out on the reports with you.

19 And if we could just step back one moment to Mr.  
20 Gannon read to you that Mr. Verdon had denied any tingling or  
21 had denied certain things on the date of the accident in the  
22 emergency room?

23 A. Yes.

24 Q. And do you have any knowledge, and I'm going to point  
25 it out to you in a moment, as to whether or not Mr. Verdon's

1 head was actually split open and required staples to close that  
2 day?

3 MR. GANNON: Objection, outside the scope, Your  
4 Honor.

5 MR. McCORIE: He was asking about the head --

6 Q. Why don't we do this? Go to the CT scan of August 9,  
7 2009, 1936, the very one that Mr. Gannon read to you?

8 MR. GANNON: Of the cervical?

9 MR. McCORIE: This is the CT of the cervical  
10 spine.

11 A. Yes.

12 Q. Okay. The findings before it talks about what he read  
13 to you, the exaggerated cervical lordosis. This is taken at  
14 7:36, it says scalp staple project posterior ossifice of the  
15 scalp?

16 A. Yes.

17 Q. What does that mean? Tell the jury what that means?

18 MR. GANNON: Objection, beyond the scope.

19 MR. McCORIE: He asked about the head CT.

20 MR. GANNON: Objection.

21 MR. McCORIE: And he asked him about the brain  
22 CT.

23 THE COURT: I'll allow that. Go ahead.

24 A. That means that there are surgical staples in the skin  
25 of the scalp Mr. Verdon's head.

1 Q. Okay. We're not going to go too far into it but if I  
2 tell you it's part of the certified record that knowing he had  
3 T12 burst fracture and a T10 wedge fracture and a head injury  
4 that required staples to close his head, knowing it was a head  
5 injury and a fall from a scaffold, did you see also that the EMS  
6 record says he had no head, neck or back pain?

7 MR. GANNON: Objection, your Honor.

8 THE COURT: Sustained.

9 Q. If I tell you that it's in the record as part of the  
10 evidence do some times people with head injuries report strange  
11 things in emergency rooms --

12 MR. GANNON: Objection.

13 Q. -- or fail to report them?

14 THE COURT: Sustained.

15 MR. GANNON: Objection.

16 Q. Okay. So sticking with that same report, you were  
17 asked a lot questions about that one, so right under the part  
18 that says the staples are projecting over the posterior  
19 ossifice. Can you tell the jury what that means what the  
20 posterior ossifice is?

21 A. It's the back part of your head.

22 Q. It's a ridiculous question because it's not mentioned  
23 anywhere else in this Bellevue record at all. The jury may see  
24 some photos later but --

25 MR. GANNON: Objection, your Honor.

1 Q. Were the staples --

2 THE COURT: Sustained.

3 Q. Will you tell the jury whether or not the staples are  
4 preexisting if they're not mentioned anywhere else but this --

5 MR. GANNON: Objection.

6 Q. But this CT --

7 MR. GANNON: Your Honor, I'll object and I'll  
8 stipulate he didn't have staples in his head before.

9 THE COURT: With that outside the knowledge that  
10 he didn't go to work that day with staples.

11 MR. McCRORIE: I understand, Judge. My point was  
12 not mentioned anywhere --

13 MR. GANNON: Objection, your Honor.

14 THE COURT: Okay.

15 Q. And the C shape -- I'm going to hold up 4A from the  
16 2009 film, two weeks after the accident -- the C shape on the  
17 MRI film, Plaintiff's 4A, you told the jury the other day,  
18 Friday, that this was an exaggerated lordosis, a C shape; is  
19 that correct?

20 A. Yes.

21 MR. GANNON: Objection to the -- can we approach,  
22 Your Honor?

23 (Discussion off the record.)

24 Q. Going back to -- Your Honor, may I continue?

25 THE COURT: Yes.

1 Q. Going back, Doctor, to 7:36 p.m., the night of the  
2 accident, the exaggeration of the normal cervical lordosis, that  
3 Mr. Gannon read to you, can you tell the jury your opinion how  
4 Mr. Verdon's cervical lordosis became exaggerated?

5 A. So, one of things he had thoracic multiple  
6 noncontiguous thoracic compression fractures also being  
7 mobilized and being put into a position whereby he wouldn't  
8 further cause any damage to his spine puts him into a position  
9 in addition to the fractures whereby he has an excess of  
10 cervical lordosis.

11 Q. And right after that we just used the word with regard  
12 to the lumbar spine, right after that it says the vertebral  
13 alignment is otherwise normal without spondylolisthesis. That's  
14 the word -- is that what that says there?

15 A. Yes.

16 Q. And it says the vertebral body height and disc spaces  
17 are maintained?

18 A. Yes.

19 Q. What does that indicate to you in connection with the  
20 exaggerated cervical lordosis?

21 A. So what that means is that, first of all, there are no  
22 fractures or disc locations in the cervical spine. In fact, the  
23 body height and the disc spaces are maintained means that there  
24 are minimal types of degenerative changes.

25 Q. And when a radiologist, this radiologist, specific

1 speaking about this film says there are minimal degenerative  
2 changes in this 59 almost 60-year-old gentleman. What does  
3 minimal mean in front of the word "degenerative?"

4 MR. GANNON: Your Honor, objection. That is not a  
5 quote from the record.

6 MR. McCORIE: I'm reading it, Judge. There are  
7 minimal degenerative changes at C2-C3.

8 MR. GANNON: It doesn't make any reference to Mr.  
9 Verdon, his age. If Mr. McCorie wants to read from a  
10 record, read it accurately. Don't interject what's not  
11 there.

12 THE COURT: I'm going to overrule the objection  
13 but I'll allow you to follow up.

14 Q. Okay. At the top, does it have Mr. Verdon's date of  
15 birth and it actually has his age as 63. You're correct. You  
16 see that up there?

17 A. Yes.

18 Q. Okay. So thinking he was a 63-year-old, the  
19 radiologist wrote those words, correct?

20 A. Yes.

21 Q. What does minimal mean in front of the word  
22 "degenerative?"

23 A. Minimal means very limited and not significant.

24 Q. And on the lumbar x-ray of that same date when it  
25 talks about mild multi-level degeneration or degenerative, what

1 does mild mean as opposed to minimal?

2 A. Once again mild and minimal are adjectives that  
3 describe very little, very little degenerative changes, minimal  
4 degenerative changes, not significant degenerative changes.

5 Q. And in the operative report and in the x-rays when  
6 they talk about the kyphosis that needed to be straightened out,  
7 can you tell the jury whether or not the thoracic kyphosis in  
8 your opinion was preexisting or caused by something else?

9 A. The thoracic kyphosis was caused by the burst fracture  
10 at T12.

11 Q. And in front of the word or in the middle, it said  
12 diffuse mild osteopenia, could you tell the jury what that means  
13 regarding the osteopenia that the radiologist in the hospital  
14 was noting in the T spot?

15 A. So osteopenia is that term that means not as dense as  
16 and diffuse means for all the vertebral bodies and mild means  
17 not very significant or minimal or not very much.

18 Q. Sure. Okay. Whether or not -- I'm going to hold up  
19 2C from that study -- whether or not Mr. Verdon has diffuse mild  
20 osteopenia, do you have an opinion as to whether or not the  
21 osteopenia had anything to do with the T12 fracture, T10  
22 fracture or the facet fracture that occurred on August 11th?

23 MR. GANNON: Objection.

24 THE COURT: Overruled.

25 A. So all of those bones when you look at them are well

1 minimalized to the point where osteopenia would not be  
2 contributory to that type of major spinal trauma with multiple  
3 noncontiguous fractures.

4 Q. And it was read to you that on at least when Dr.  
5 Frempong did the surgery that he did not see any retropulsion at  
6 least at that point in the surgery?

7 A. Yes.

8 Q. I would like you to go to the August 13th, two days  
9 later, 2009 CT scan of the thoracic spine. I just want to --  
10 when it talks about mild central canal stenosis seen at the  
11 superior endplate of T12 secondary to minimal residual  
12 retropulsion, what does that mean?

13 A. That means there is a piece of bone in the canal  
14 narrowing down.

15 Q. And that's two days after the surgery?

16 A. Yes.

17 Q. And regardless of the spine and vertebral bodies were  
18 anatomic after the surgery, can you tell the jury, using what  
19 you showed them the other day on several of the x-rays, whether  
20 or not Mr. Verdon's spine stayed anatomically correct over the  
21 last four and a half years?

22 MR. GANNON: Objection, Your Honor. This was  
23 covered on direct.

24 THE COURT: I'm sorry.

25 MR. McCORIE: He said it was covered on direct.

1 MR. GANNON: Outside the scope.

2 THE COURT: Sustained.

3 MR. McCORIE: Well, it was brought out that the  
4 surgery --

5 MR. GANNON: Your Honor, could we not have this  
6 in front of the jury if he has a point to make?

7 THE COURT: The question you asked him was  
8 brought out probably much more than he has on cross.

9 Q. Is Mr. Verdon's spine anatomically correct today?

10 MR. GANNON: Objection.

11 THE COURT: I'll allow it. Go ahead.

12 A. No.

13 Q. Tell the jury why? In what way is it not  
14 anatomically, correct?

15 A. So he's out of spinal alignment of the progressive  
16 kyphosis in the thoracic region particularly above the level of  
17 the instrumentation with progressive hyperlordosis to the lower  
18 portion of his back throwing him into a condition of  
19 posttraumatic kyphosis.

20 Q. And it was read to you in the hospital records  
21 regarding the lumbar CT's that there were circumferential disc  
22 bulges. Do you remember that?

23 A. Yes.

24 Q. Can you tell the jury whether or not a fall from the  
25 height that we know Mr. Verdon fell can that cause a disc bulge?

1 MR. GANNON: Objection.

2 THE COURT: Well --

3 MR. GANNON: This is the third time we've done  
4 this on the record. We've done it again on redirect.

5 MR. McCORIE: We went over herniation. He's  
6 talking about a disc bulge and I'm just --

7 MR. GANNON: Objection.

8 MR. McCORIE: He brought it up.

9 THE COURT: Last time. Can that cause a disc  
10 bulge?

11 THE WITNESS: Yes.

12 Q. And when a disc bulge occurs from trauma, can that  
13 progress to the level of what you showed the jury over time a  
14 herniation?

15 MR. GANNON: Objection.

16 THE COURT: Overruled.

17 A. Yes.

18 Q. Mr. Gannon asked you about separate findings in both  
19 the neck and the back and then asked you whether or not they  
20 could be asymptomatic just as he ended.

21 Assume that Mr. Verdon had asymptomatic conditions of  
22 his lower back that were either circumferential bulges and the  
23 rest of the findings that are degenerative as listed in the  
24 radiological report at the hospital, okay?

25 A. Yes.

1 Q. And as well as the degenerative findings in Mr.  
2 Verdon's back that were present in the lumbar spine in Lenox  
3 Hill, okay?

4 A. Yes.

5 Q. Assume that to be true that he had those degenerative  
6 findings, that they were asymptomatic and that there was, in  
7 fact, a circumferential disc bulge in the lumbar region in those  
8 three areas.

9 Assume then that he had the same accident, he had the  
10 same treatment in hospital, he had the same traumatic thoracic  
11 fractures, he had the same fusion at all of the levels, that he  
12 had here the same kyphosis of the thoracic spine, the same  
13 reversible of the cervical lordosis, do you have an opinion with  
14 a reasonable degree of medical certainty as to whether or not  
15 the accident aggravated and activated previously asymptomatic  
16 conditions of his lumbar spine?

17 MR. GANNON: Objection, asked and answered on  
18 direct.

19 THE COURT: Sustained. You asked that on direct.

20 MR. McCORIE: Not of this doctor and then he  
21 asked it on cross. I only did it with Dr. Hausknecht.

22 MR. GANNON: Your Honor, Mr. McCrorie doesn't get  
23 a second shot to give an opinion out of the same witness.

24 MR. McCORIE: It's not the same witness, Judge.

25 THE COURT: Sustained.

1 MR. McCORIE: Can I approach just because that's  
2 the last area?

3 THE COURT: Objection sustained.

4 Q. It was just pointed out it might be obvious that there  
5 were no fractures of the neck and no fractures of the back. Can  
6 you tell the jury so they're clear where the fractures that were  
7 traumatically induced in this accident occurred?

8 A. Fractures were at the T10 vertebral body, the T12 of  
9 the vertebral body and then what is known as the spinous process  
10 behind those vertebral bodies in the area spanning that T10  
11 segment down that T12 segment.

12 MR. McCORIE: I have nothing further.

13 MR. GANNON: Very brief.

14 RE-CROSS EXAMINATION

15 BY MR. GANNON:

16 Q. Dr. Merola, you just testified when Mr. McCrorie asked  
17 you that the surgery was done to correct the kyphotic deformity  
18 in his thoracic region, correct?

19 A. The kyphotic deformity as caused by the fracture, yes.

20 Q. As caused by the fracture. The fracture we're talking  
21 about is the T12 burst fracture, correct?

22 A. Yes, and the T10 fracture. That's way the hardware  
23 had to be as high as it did.

24 Q. Right, but the hardware went up to what level?

25 A. T8.

1 Q. And it down to what level?

2 A. L3.

3 Q. The doctor who did the surgery, he fitted the rod to  
4 fit a kyphotic deformity that he found, correct?

5 A. The rod was contoured --

6 Q. Right.

7 A. -- in order to accommodate the thoracic kyphosis and  
8 then placed into the screw heads with compression to reduce the  
9 fracture, correct.

10 Q. Where is the T12 burst fracture on this model  
11 Plaintiff's Exhibit 17?

12 A. Right here, right here. I'm sorry.

13 Q. This is T12.

14 A. Yes.

15 Q. And you said T10 also had what?

16 A. Had a fracture in it.

17 Q. So in the vertebral body?

18 A. Correct, so this one as well.

19 Q. Okay and everything else was fractured back here to  
20 what?

21 A. The spinous process and the facet joints.

22 Q. Okay. So the rod was placed in and it went to what  
23 levels of the spine?

24 A. The rod went up to T8 and then down to L3.

25 Q. So he's talking about correcting a kyphotic deformity

1 in his operative report, is he not?

2 A. Yes.

3 Q. The T12 fracture is in one location?

4 A. Yes.

5 Q. And there's a fracture of the vertebral body above,  
6 correct?

7 A. Eleven. One adjacent to the one above.

8 Q. Adjacent, and yet in his operative report he talks  
9 about adjusting a rod to fix a kyphotic deformity in the  
10 thoracic region, correct?

11 A. Yes.

12 Q. Above where the burst fracture was?

13 A. For the entire length of where the rod was.

14 Q. Right. In order to -- actually the doctors do it. He  
15 sees a spine and he places the rods so it matches the curve of a  
16 person's --

17 A. And also take into consideration the fracture itself  
18 so that he can get reduction of the fracture.

19 Q. Right, but your testimony is that the entire kyphosis  
20 from T8 -- you said that's kyphosis from T8 all the way down to  
21 what?

22 A. Well, which kyphosis are we talking about?

23 Q. Thoracic, thoracic, the thoracic kyphosis you're  
24 talking about. You're saying goes from T8 to where?

25 A. There's a couple of types of kyphosis. One is the

1 posttraumatic kyphosis that happened because of the spinal  
2 imbalance.

3 Q. And the other is a natural kyphosis that can occur  
4 because of aging, correct?

5 A. And then there's a natural thoracic kyphosis and then  
6 there's the actual kyphosis at the fracture site.

7 Q. Correct.

8 A. So the operative report is talking about reducing the  
9 kyphosis at the fracture site.

10 Q. Right, but it's not talking about a preexisting  
11 kyphosis which is there that he finds in Mr. Verdon's spine  
12 correct? That's what --

13 MR. McCORIE: Objection to preexisting kyphosis.

14 THE COURT: Overruled.

15 A. No. It's not so much that he -- he's adjusting to the  
16 rod in order to accommodate the natural contour of the --

17 Q. Accommodate the kyphotic deformity that he finds in  
18 his spine?

19 A. But that the deformity is the fracture.

20 Q. Right.

21 A. Yes.

22 Q. Right. And he had cervical lordosis exaggerated  
23 preexisting. So it was there already.

24 MR. McCORIE: Objection. He said it wasn't  
25 preexisting.

1 THE COURT: To the extent it's cross, I'll let  
2 him ask the question. The doctor can answer.

3 Q. Doctor, we saw an x-ray film, can't remember where was  
4 but there is a preexisting exaggerated cervical lordosis,  
5 correct?

6 MR. McCORIE: Objection.

7 THE COURT: Overruled. Did you look at this  
8 film?

9 A. Right. I looked at that film and he had cervical  
10 lordosis. He had cervical lordosis. He had cervical  
11 hyperlordosis on the film, yes.

12 Q. So your testimony is that Dr. Frampaong put in a rod  
13 from T8 to-

14 A. -- L3.

15 Q. L3 because of a T12 burst fracture in that one  
16 location?

17 A. Well, it was as a result of the T10 fracture. That's  
18 why he went to T8.

19 Q. He had to basically bend the rod to fit a kyphotic  
20 condition above the burst fracture?

21 A. No.

22 Q. No?

23 A. No. That's not what he did, no.

24 Q. He just put the rod in one place?

25 A. Correct. The rod went from T8 down to L3 then he

1 contoured that rod to accommodate the thoracic spine area.

2 Q. Right, and to basically mold it into place with what  
3 the spine appeared to -- upon surgery when he opened him up,  
4 correct?

5 A. Right.

6 Q. Thank you, Doctor.

7 RE-REDIRECT EXAMINATION

8 BY MR. McCORIE:

9 Q. I just want to make one thing clear. The cervical  
10 hyperlordosis that you showed the jury before was that  
11 preexisting in your opinion or did it come from the fall?

12 A. The hyperlordosis that he has is from the -- is from  
13 the fractures that he suffered in his thoracic spine because  
14 there are T10 with multiple posterior spinous process fractures,  
15 facet fractures and the T12 burst.

16 Q. And this 2/12/2004, there was also a hyper -- or this  
17 was a kyphotic condition?

18 A. This is a kyphotic condition --

19 Q. 13B.

20 A. -- of particularly above the level of the HB implants,  
21 right? So above T8, what you can see is the spine is actually  
22 bending itself away from where the implants are. So he's  
23 turning his thoracic spine into a big C and the areas that are  
24 not fused in the thoracic spine are continuing to kyphos  
25 forward. That's where the posttraumatic kyphotic deformity is

1 and then the accommodation is the lumbar spine going into more  
2 lordosis.

3 MR. McCORIE: Thank you.

4 MR. GANNON: Thank you.

5 THE COURT: Thank you, Doctor. Thank you. You  
6 may step down.

7 THE WITNESS: Thank you.

8 THE COURT: With that, we are done for today.  
9 You got nervous. We'll resume tomorrow morning at  
10 10:00 a.m. with another witness. Have a good night and  
11 please don't discuss the case.

12 COURT OFFICER: All rise. Jury exiting.

13 (Jury exits courtroom.)

14 \* \* \* \* \*

15 (This matter was adjourned to April 9, 2014 at  
16 10:00 a.m.)

17  
18  
19  
20  
21  
22  
23  
24  
25