

Transcript of the Testimony of
Sebastian Lattuga, M.D.

Date: April 19, 2017

Case: Jose Bauta v. Greyhound Lines, Inc., et al.



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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE BAUTA,

Plaintiff,

-versus-

GREYHOUND LINES, INC., SABRINA
ANDERSON, AKOS GUBICA, KAROLY GUBICA,
CAV ENTERPRISE LLC, FIRST GROUP
AMERICA, INC., and FIRSTGROUP, PLC,

Defendants.

Case No.: 14-3725 (FB)(RER)

-----X

150 East 58th Street
New York, New York

April 19, 2017
10:24 a.m.

DEPOSITION of SEBASTIAN LATTUGA, M.D.,
before Marianne Witkowski-Smith, a Shorthand
Reporter and Notary Public of the State of New
York.

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Sebastian Lattuga, M.D.
4/19/2017

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WITNESS	EXAMINATION BY	PAGE
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----- DOCUMENT REQUESTS -----

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----- E X H I B I T S -----

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(EXHIBITS TO BE PRODUCED)

1 S E B A S T I A N L A T T U G A, M. D.,
2 the witness herein, having first been duly
3 sworn by the Notary Public, was examined and
4 testified as follows:

5
6 EXAMINATION

7 BY MR. BARMEN:

8 Q. Dr. Lattuga, would you state and spell
9 your name for the record, please, sir?

10 A. Sebastian Lattuga, M.D.;
11 L-A-T-T-U-G-A.

12 Q. And what is your professional address?

13 A. 2001 Marcus Avenue, Lake Success, New
14 York 11042.

15 Q. As you know, my name's Brad Barmen.
16 We've met before. I'm one of the lawyers
17 representing Greyhound Lines Inc. and Sabrina
18 Anderson in the Bauta matter currently pending in
19 Federal Court in Brooklyn. We're here to take
20 your deposition this morning. I appreciate you
21 making yourself and your office available.

22 I know you know the ground rules, but
23 I do like to remind deponents that if I ask you a
24 question that you don't understand or that's
25 unclear to you in any way, please tell me that,

1 okay?

2 A. Yes.

3 Q. If you answer my question, I'm going
4 to assume you understood it, I'm going to rely on
5 the answer; is that fair?

6 A. Yes, sir.

7 Q. We some have some information to go
8 through this morning. I don't think we'll be here
9 too, too long, but if at any time you need a break
10 for any reason, just tell me that and I'll be
11 happy to accommodate you, okay?

12 A. Yes.

13 Q. I would just ask that if there's a
14 question on the table, you answer that question
15 before we break; is that fair?

16 A. Yes.

17 Q. Okay. You are an expert orthopedic
18 surgeon retained in this case, correct?

19 A. Yes.

20 Q. Okay. When were you retained?

21 A. I don't recall specifically.

22 Q. You have in front of you what I
23 believe is your file on Mr. Bauta?

24 A. The medical records, yes.

25 Q. These are medical records from your

1 office?

2 A. Yes, sir.

3 Q. Okay. What about file material
4 records that you were provided to review as part
5 of your work as an expert in this case?

6 A. I don't have all those records with
7 me, no.

8 Q. Okay. But do you still have those
9 records?

10 A. I'm not sure.

11 Q. Do you know if they were provided to
12 you electronically or hard copy?

13 A. No, I don't know how they were
14 provided to me.

15 Q. Okay. Did you actually review medical
16 records of other medical providers as part of your
17 work in this case?

18 A. Yes.

19 Q. Did you review films?

20 A. Yes.

21 Q. Did you review MRIs?

22 A. Yes.

23 Q. And again, how did you review that
24 material?

25 A. It was provided to me by, I presume,

1 counsels here today.

2 Q. Okay. When did you review that
3 material?

4 A. It would be contemporaneous in
5 preparation with this report, so sometime on --
6 you know, on or about September 2015.

7 Q. Okay. Do you have any time sheets
8 that indicate your work done, time spent on this
9 matter?

10 A. No.

11 Q. How do you bill?

12 A. With respect to the narrative?

13 Q. Yeah.

14 A. It's a flat fee for the narrative
15 usually.

16 Q. Okay. So the time involved is
17 irrelevant?

18 A. No, it's not irrelevant, it's just
19 generally -- you know, it's not irrelevant, but
20 there's no specific time sheets kept.

21 (LATTUGA EXHIBIT 1, Narrative
22 Report and 7/21/16 Report, marked
23 for identification.)

24 MR. BARMEN: All right. We've marked
25 for identification purposes Exhibit 1.

1 Q. This is a copy of your report,
2 correct?

3 Take a look at it.

4 A. Yes, it's a copy of the narrative
5 report and also an additional report of 7/21/16,
6 which I guess is a later visit with Dr. Cordiale.

7 Q. What were you asked to do in this
8 case?

9 A. I'm asked to prepare a narrative,
10 which is a medicolegal document.

11 Q. Okay. But are you asked to opine on
12 causation?

13 A. I do opine on causation, yes.

14 Q. Okay. Are you asked to opine on
15 projected disability?

16 A. I do make some projections with
17 respect to future health care needs.

18 Q. And permanency?

19 A. Yes, it's permanent, yes.

20 Q. Okay. Is that pretty standard when
21 you're retained as an expert?

22 A. Yes.

23 Q. Okay. Have you ever worked for
24 Mr. McElfish before?

25 A. Not that I recall.

1 Q. Ever worked for his law firm before?

2 A. Not that I'm aware.

3 Q. Okay. Do you know -- well, strike
4 that.

5 Mr. Bauta was treated in your office
6 for a period of time, correct?

7 A. Yes.

8 Q. But not by you?

9 A. That's correct.

10 Q. You -- when I was here with you last,
11 you told me that you never met Mr. Bauta.

12 Is that still the case?

13 A. I believe that to be true, I hadn't
14 met him.

15 Q. Have you spoken to him since we last
16 met?

17 A. No, sir.

18 Q. Okay. What material, if any, did you
19 review in preparation for your deposition today?

20 A. The records before me today.

21 Q. Okay. And you met with counsel,
22 Mr. McElfish?

23 A. Yes, sir.

24 Q. For how long?

25 A. Twenty minutes.

1 Q. Okay. And that was today?

2 A. Yes, sir.

3 Q. Have you spoken to Mr. McElfish
4 between the last time we were together and today?

5 A. No.

6 (Brief off-record discussion.)

7 BY MR. BARMEN:

8 Q. Mr. Bauta was treated by Andrew
9 Cordiale?

10 A. Yes.

11 Q. And he's a D.O. in your office?

12 A. He's an orthopedic spinal surgeon for
13 the -- in my office, yes.

14 Q. Okay. But a D.O., right?

15 A. Yes, that's his --

16 Q. All right. Do you know why he didn't
17 write the narrative in this case?

18 A. No.

19 Q. Do you speak to him about his
20 treatment of Mr. Bauta?

21 A. Not specifically, no.

22 Q. Okay. In preparing your narrative,
23 did you run it by Dr. Cordiale and see if he
24 agreed with what you said?

25 A. No.

1 Q. Since the last time we were together
2 and today, you haven't spoken to Dr. Cordiale at
3 all about Mr. Bauta?

4 A. No.

5 Q. Do you agree with me that the bulk of
6 your report is just cutting and pasting
7 Dr. Cordiale's office records?

8 MR. McELFISH: Objection to form.

9 A. I mean, not specifically, but it
10 represents my overview and -- and review and -- of
11 his medical -- his medical treatment, as well as
12 the office visit with Dr. Mikelis.

13 Q. Looking at your report, the first
14 page, "7/21/2016, Follow up Visit," that wasn't
15 with you, that was with Dr. Cordiale, right?

16 A. Yes, sir.

17 Q. And this is his office record from
18 that visit, correct?

19 A. Yes, sir.

20 Q. Okay. You didn't change any of this
21 information?

22 A. No.

23 Q. You didn't write any of this yourself?

24 A. No, but it -- this is just a copy of
25 his -- one of his office records.

1 Q. Correct.

2 A. I didn't create that document. I
3 created the narrative, which is this -- this
4 document.

5 Q. And it's dated September 23, 2015?

6 A. Correct.

7 Q. Okay. On the first page of the
8 narrative, "The History Of Present Illness," that
9 is cut-and-pasted from one of Dr. Cordiale's
10 office records, right?

11 A. I mean, maybe I disagree with the word
12 "cut-and-paste," but it is a -- I am restating
13 the -- the circumstances of the patient's visit as
14 well as the physical exam. I -- I guess the word
15 "cut-and-paste" is what I'm having an issue with,
16 but this is specifically Dr. Cordiale's
17 interaction with the patient, not mine.

18 Q. Okay.

19 A. And I'm restating that in the
20 narrative as part of the facts of the -- of the
21 case.

22 Q. Okay. This document, the narrative
23 report - the September 23, 2015 narrative report -
24 did you prepare this yourself? And what I mean by
25 that is, did you write it yourself?

1 A. Along with my secretary.

2 Q. Okay. And did you dictate it?

3 A. It's -- it's -- part of it is
4 dictated, part of it is -- is typing directly.

5 Q. Okay. The office records of any given
6 patient, are they stored here electronically?

7 A. Yes.

8 Q. Are they able to be accessed by any
9 physician in the office?

10 A. Yes.

11 Q. Looking at this report, and you tell
12 me if I'm wrong, it appears to me that the only
13 part that would have been produced as something
14 new, that wasn't already in your system, starts on
15 page 11 of 14, under "Medical Records."

16 MR. McELFISH: Objection to form.

17 A. Yes.

18 Q. So is that a correct statement I just
19 made?

20 A. More or less.

21 Q. Okay. Well, more or less, what's
22 incorrect about it? Tell me in --

23 A. I guess it's the characterization. I
24 mean, I -- you know, after -- after analyzing
25 the -- the office records and then -- and then

1 creating a document that -- that puts that
2 information on paper, which is the beginning of
3 it, which is my review of someone else's records,
4 then this additional information is -- is added
5 into the narrative, which includes the -- you
6 know, some -- some of the records that I reviewed,
7 because that wouldn't ordinarily be contained in
8 an office visit, as well as, you know, issues on
9 causality and different -- different --
10 different -- my perspective on the case.

11 Q. Okay. And I absolutely understand and
12 agree with what you're saying, but those issues,
13 your perspective on the case, doesn't begin until
14 after you list the medical records reviewed,
15 right?

16 A. Yes.

17 Q. Okay. So what I said about there
18 being nothing in pages 1 through 11, up to
19 "Medical Records," that wasn't already contained
20 in Dr. Cordiale's records is true?

21 A. That's true.

22 Q. Okay. What treatment was provided by
23 your office for Mr. Bauta's neck?

24 A. He was examined on multiple occasions.

25 Q. What treatment was provided?

1 A. I mean, there's no surgery on his
2 neck, if that's the question you're asking.

3 Q. Okay.

4 A. Generally speaking, when -- and it
5 could be a difference in the -- about our
6 understanding of the word "treatment." But in
7 general, when -- if a doctor examines and
8 documents -- makes documentation about a patient's
9 body part, we -- we -- we would convey that as
10 treating the patient.

11 Q. Okay.

12 A. So that's -- each of those notes does
13 reflect conversations that Dr. Cordiale or
14 Dr. Mikelis had with the patient about his neck
15 and examined his neck. I mean, ultimately surgery
16 wasn't performed on his neck, right? But it
17 doesn't mean that those issues weren't contained
18 in the records of those physicians.

19 Q. Was surgery ever recommended for his
20 neck?

21 A. And that would be by Dr. Cordiale.
22 That's -- I just want to double check that.

23 If you pardon me, I'm -- my narrative
24 ends at a certain point and Dr. Cordiale continues
25 to treat the patient, so I just want to check

1 those records, if that's okay with you.

2 Q. No, absolutely. Take your time.

3 A. No, Dr. Cordiale has not, as of yet,
4 recommended surgery.

5 Q. You said "as of yet."

6 Do you know if Dr. Cordiale is still
7 treating Mr. Bauta?

8 A. Yes.

9 Q. When was the last time Mr. Bauta was
10 in the office for any type of treatment?

11 A. April 6, 2017.

12 Q. And what was done at that time?

13 A. It was a follow-up visit on -- it was
14 an examination of his lumbar spine after lumbar
15 surgery.

16 Q. All right. May I see that record,
17 please?

18 A. Yes.

19 (Brief off-record discussion.)

20 (LATTUGA EXHIBIT 2, 4/6/17

21 Visit Record, marked for

22 identification.)

23 MR. BARMEN: Okay. We've marked as
24 Exhibit No. 2 the 4/6/17 follow-up visit.

25 Q. Can you tell me when he was last here

1 prior to 4/6/2017?

2 A. In January.

3 Q. Okay.

4 A. I'm sorry.

5 Q. No worries.

6 A. I'm sorry, 12/22/16, yes.

7 Q. Can I see that?

8 A. Yeah.

9 MR. BARMEN: Okay. Let's mark that
10 too, please.

11 (LATTUGA EXHIBIT 3, 12/22/16
12 Visit Record, marked for
13 identification.)

14 MR. BARMEN: Okay. We've marked -- 3
15 is the 12/22/16 record and 2 is the 4/6/17
16 record.

17 Q. As of now, is Mr. Bauta essentially
18 PRN, comes in when necessary?

19 A. I mean, I think you -- I can't answer
20 that question. You should ask Dr. Cordiale,
21 because he's visiting him regularly, so I can't
22 answer that question. It doesn't appear that way
23 because he -- right, PRN, as needed, so...

24 Q. Okay. Typically in your office, if
25 you've got ongoing care of a patient, is one visit

1 scheduled when he's leaving?

2 A. It could be.

3 Q. Does that make any sense at all? It
4 was poorly worded.

5 A. Yes, I understood the question. And
6 the answer is sometimes it's like that, sometimes
7 the patient makes the appointment when he feels
8 he's more comfortable.

9 This patient has not been discharged.
10 A PRN patient would be almost a discharged
11 patient. He's actively -- he continues to be
12 actively treated by Dr. Cordiale --

13 Q. Okay.

14 A. -- and you can ask him about what his
15 plans are.

16 Q. Okay. Well, I mean, I notice from the
17 December 22, 2016 record, Exhibit 3, that there
18 was a prescription for pain management issued?

19 A. Yes.

20 Q. A prescription for physical therapy --

21 A. Yes.

22 Q. -- for the cervical and lumbar spine?

23 A. Yes.

24 Q. And it lists him as temporarily
25 totally disabled, correct?

1 A. Yes, sir.

2 Q. Okay. And likewise, the April 2017
3 record also lists him as temporarily totally
4 disabled?

5 A. Yes, sir.

6 Q. Okay. In this April 2017 record
7 there's a notation that patient states he can now
8 walk longer distance.

9 You never talked to Dr. Cordiale about
10 that?

11 A. No, sir.

12 Q. Okay. Are you aware of any type of
13 similar statement in any other medical record
14 relative to Mr. Bauta?

15 MR. McELFISH: Objection to form.

16 A. No, sir.

17 Q. Okay. Do you know if Mr. Bauta is
18 still using his cane -- well, you wouldn't know
19 that, would you, because you've never seen him?

20 A. No, sir.

21 Q. How many cases are you working on as
22 an expert right now?

23 A. I don't know, sir.

24 Q. Is it more than ten?

25 A. I don't -- I don't have a specific

1 quantity. I'm not trying to be evasive; I don't
2 have like a specific quantity. Many of my
3 patients are involved in personal injury cases.
4 Even in a workers' comp case, if you would
5 consider that -- you know, I'm an expert treating
6 physician, so I don't have an exact answer.

7 If you're asking me how many
8 narratives I produce a week, maybe it's one or
9 two. That might help you; I don't know.

10 Q. It does, and I appreciate the
11 clarification.

12 You're producing, on average, one or
13 two narrative reports a week?

14 A. And that's a -- that's an estimate.

15 Q. And what is your flat rate for a
16 narrative report?

17 A. \$1,200.

18 Q. How long have you been, on average,
19 doing one to two narratives a week?

20 A. Five years.

21 Q. And prior to five years, were you
22 still doing narratives --

23 A. No.

24 Q. -- as expert work?

25 A. No.

1 Q. You just started doing it five years
2 ago?

3 A. No, not specifically, but certainly
4 the -- you know, that's -- I would say over the
5 last five years, that that's been -- my answer to
6 the prior question reflects what I've been doing
7 over the last five years.

8 Q. Okay.

9 A. And before that, it was less.

10 Q. Okay. So over the last five years, on
11 average, you make a minimum of 60 grand a year
12 doing narrative reports?

13 A. I would say, to the best of my ability
14 to give you an answer, yes.

15 Q. And are all of those for injured
16 parties as opposed to the defense in a --

17 A. Generally, for the patients that we --
18 that we treat in our -- in our practice.

19 Q. What percentage of your patients are
20 in no-fault situations?

21 A. About 30 -- I'd say 30 percent, 30 to
22 35 percent.

23 Q. What percentage --

24 A. Of car accidents, right? Yeah.

25 Q. What percentage of your patients are

1 in active litigation?

2 A. I mean, I would include any of those
3 in active litigation. Whether or not they're --
4 to what extent, you know, I just presume that
5 there is legal proceedings regarding that, and
6 then also patients that are workers' comp injuries
7 as well, which is -- you know, there are legal
8 proceedings with respect to that as well.

9 Q. So are you including the workers' comp
10 patients --

11 A. No.

12 Q. -- in that 30 to 35 percent?

13 A. No.

14 Q. What percentage of your patients are
15 workers' comp?

16 A. I would say about 30 -- same thing,
17 about 30, 35 percent.

18 Q. So 60 to 70 percent of your patients
19 are either no-fault or comp patients?

20 A. I would say that was close, yes.

21 Q. Okay. What percent of your patients
22 are private pay?

23 A. The remaining portions.

24 Q. Okay. Have you personally or your
25 practice ever been accused by a state authority or

1 in a lawsuit of providing medical services that
2 were unnecessary to no-fault patients?

3 A. No.

4 MR. McELFISH: Objection to form.

5 Q. How many lawsuits are you involved in
6 now?

7 MR. McELFISH: Objection to form.

8 A. With respect to the -- to these cases?

9 Q. No, no. How many lawsuits are you
10 involved in where either you or your medical
11 practice have been sued currently?

12 A. You mean in medical malpractice?

13 Q. Any type of lawsuit.

14 A. I wouldn't know -- there are no -- not
15 other lawsuits that I'm aware of, okay?

16 So medical malpractice, currently are
17 there open cases against me?

18 Q. Yes.

19 A. Yes.

20 Q. How many?

21 MR. McELFISH: Objection to form.

22 A. I don't have a specific recollection.
23 I would say five.

24 Q. Are the same lawyers defending you in
25 those five?

1 MR. McELFISH: Objection to form.

2 A. Yes.

3 Q. What's the lawyer's name?

4 MR. McELFISH: Objection to form.

5 Q. Or the firm?

6 A. Josh Cohen.

7 Q. Josh Cohen.

8 Do you know the firm?

9 A. No. Josh Cohen.

10 Q. C-O-H-E-N?

11 A. Yes.

12 (Brief off-record discussion.)

13 (LATTUGA EXHIBIT 4,
14 Complaint/Unitrin Auto & Home
15 Insurance Company, marked for
16 identification.)

17 MR. BARMEN: Doctor, I'm handing you
18 what's been marked for identification as
19 Exhibit 4. This is a complaint that was
20 filed in Supreme Court of the State of New
21 York by Unitrin Auto & Home Insurance
22 Company.

23 Q. You were named as a defendant in this
24 suit, right?

25 A. Yes.

1 Q. Does this refresh your recollection
2 about ever being involved in something where you
3 were accused of providing treatment that was
4 unnecessary?

5 A. Yes.

6 Q. Okay. What happened to this lawsuit?

7 MR. McELFISH: Objection to form.

8 Q. Did it get dismissed, did you settle
9 it, is it still --

10 A. I think -- what's the patient's name?
11 Because I'm not going to remember -- I don't know
12 insurances. So if you tell me the patient's name,
13 I can give you some idea of what might have
14 happened.

15 Q. Well, there were several.

16 Teresa Castro, Maria Castillo, Andrea
17 Castillo, Brigida Guzman, Rosemary Guzman.

18 A. Well, if my memory serves me
19 correctly, it was dropped. The case was settled,
20 plaintiffs' case against -- the insurance company
21 settled the case, and we were -- we were dismissed
22 out of this case because they, the -- the
23 plaintiff and the insurance company settled, so
24 then they -- they dropped all the providers.

25 Q. Okay. Well, having seen this and

1 refreshing your recollection, are there other
2 issues out there or other suits or accusations out
3 there where there was unnecessary treatment
4 provided to no-fault patients?

5 A. Not that I recall.

6 Q. I want you to go back to your report,
7 which we marked as Exhibit 1.

8 The last page of the narrative, where
9 you signed it, which I think is the third page
10 from the end of the stapled material -- that is
11 your signature, correct?

12 A. Yes, sir.

13 Q. And the paragraph above, "I, Sebastian
14 Lattuga, M.D., being duly licensed to practice in
15 the State of New York, affirm that the
16 foregoing" -- "affirm the foregoing under
17 penalties of perjury to CPLR 2106," do you
18 conclude that in all your narratives, that
19 paragraph about signing under the penalty of
20 perjury?

21 A. Yes.

22 Q. Forgive me, I don't practice generally
23 in New York. Is that something that's required --

24 A. Yes.

25 Q. -- of experts working in New York?

1 A. Yes.

2 Q. On the page just before that, the
3 fifth paragraph down, you wrote: "I have treated
4 Jose Bauta from 11/17/14 through the present
5 time."

6 We know that's not true, correct?

7 MR. McELFISH: Objection to form.

8 A. Yes.

9 Q. Okay. Is there a reason you haven't
10 produced a supplemental report correcting that
11 error?

12 A. No, I think it was -- no one's asked
13 me to, number one --

14 Q. Okay.

15 A. -- you know.

16 Q. Why would you have said you treated
17 him, when you never did?

18 MR. McELFISH: Objection to the form.

19 A. Again, it's -- I think I explained it
20 last time. It's a typographical error. I was
21 preparing this narrative for my practice. So from
22 time to time I can prepare a narrative for my
23 practice and it would say -- it would just read
24 that we -- you know, "we," we meaning that we/me,
25 as writing the narrative for the practice, have

1 treated.

2 Q. Okay. But when you prepared the
3 narrative and you -- I know you don't like the
4 term "cut-and-pasted," but when you used
5 Dr. Cordiale's treatment records to fill out your
6 narrative, you took off the part where
7 Dr. Cordiale signed this and you set this up to
8 look as if you were providing the treatment,
9 correct?

10 A. No.

11 MR. McELFISH: Objection to form.

12 Q. No? Okay.

13 Why did you take off Dr. Cordiale's
14 signature on the treatment records?

15 MR. McELFISH: Objection to form,
16 argumentative.

17 A. Again, that's not what I did.

18 Q. No?

19 A. No. It's -- it's my -- this is how I
20 prepare narratives, is I -- for my practice, is I
21 restate the facts as I would have seen the patient
22 on a date or any of the doctors within my
23 practice. I don't include the final, you know,
24 sign-off, whatever that expression would be for
25 the signature at the bottom, because I don't think

1 that's relevant to each visit.

2 And then -- so that's -- that's why
3 the narrative looks the way it does, and I -- I
4 wouldn't include and I don't include the
5 signatures on each visit as part of the narrative.
6 That's it.

7 Q. You do, on average, one to two of
8 these narratives a week for patients being treated
9 in this office, right?

10 A. Yes.

11 Q. Does any other physician in this
12 office do these narratives?

13 A. Yes.

14 Q. Who does?

15 A. Dr. Cordiale and Dr. Mikelis.

16 Q. And when Dr. Cordiale or Dr. Mikelis
17 do one of these narratives, are they also charging
18 a flat rate of \$1,200?

19 A. Yes.

20 Q. Is that something that goes to them or
21 does it go to the practice?

22 MR. McELFISH: Objection to form.

23 A. The practice.

24 Q. You're the owner of the practice,
25 right?

1 A. Yes.

2 Q. Are you the sole owner of the
3 practice?

4 A. Yes.

5 Q. How many reports, on average, does
6 Dr. Cordiale do a week?

7 MR. McELFISH: Objection to form.

8 A. I would say for the practice it's one
9 to two a week. That's what I was referring to
10 when I answered the question before.

11 Q. Okay. It's one to two a week total,
12 on average?

13 A. On average, it's -- you know, we -- I
14 don't keep a tally, but that's a rough -- more or
15 less.

16 Q. Well, that was going to be my next
17 question.

18 Is there some record of that, where I
19 could find out -- determine definitively how many
20 are done on average here?

21 A. No.

22 Q. Okay. Who does the billing for your
23 practice?

24 A. I mean, I'm involved with the billing.
25 I mean, I have employees that, you know, send

1 bills.

2 Q. Do you have -- do you use a billing
3 company?

4 A. No.

5 Q. What employees are in any way involved
6 with preparing or sending bills?

7 A. I mean, I -- I mean, I have a billing
8 supervisor.

9 Q. And what's that person's name?

10 A. I would say Danesha Cypres.

11 Q. Does she work out of this office?

12 A. No, the main office.

13 Q. Danesha Cypres, can you spell that?

14 A. C-Y-P-R-E-S.

15 Q. I'm sorry, which office again?

16 A. The main -- the administrative office,
17 2001 Marcus Avenue.

18 Q. Does anybody else work on billing,
19 other than yourself and Danesha Cypres?

20 A. I mean, there are individual employees
21 that, you know, under the -- in the Billing
22 Department, but they're not individually
23 knowledgable of the whole process, right? So
24 Danesha would be the billing supervisor.

25 Q. Okay. In looking through your file

1 before we started here, I did not see any bills
2 for services provided to Mr. Bauta.

3 Where would those be?

4 A. Contained in the office practice. I
5 can get them to you.

6 Q. Can you get them to me today?

7 A. I mean, not right now, but I'll -- you
8 know, I'll arrange, after this meeting, to have --
9 you know, make me a list, make me -- put in
10 writing exactly what you want and I'll have it
11 probably by the end of the day.

12 RQ* Okay. I want every bill ever produced
13 relative to Mr. Bauta's care.

14 A. Okay.

15 MR. McELFISH: Objection on that. For
16 the record, I mean, all the bills have been
17 produced in the litigation. I mean, I think
18 that's a little bit burdensome.

19 MR. BARMEN: Well, not really. He
20 said he could get it for me by the end of
21 the day. It certainly doesn't sound
22 burdensome.

23 MR. McELFISH: Well, I --

24 BY MR. BARMEN:

25 Q. So is that burdensome for you?

1 MR. McELFISH: Can I just --

2 A. I mean, I said I'll try to get you --
3 that's why I said "try."

4 MR. McELFISH: I'd like to finish.

5 MR. SAAL: We never received them, and
6 we sent two letters asking for them.

7 MR. McELFISH: No, that -- that's
8 nonsense.

9 MR. BARMEN: It's not nonsense.

10 MR. McELFISH: It is, and let me just
11 explain. I can show you an email form where
12 you received and Harold's office and his
13 office has received the bills a number of
14 times.

15 I don't think the witness understood,
16 you know, the size of the request, if you
17 will, in saying that he can get it for you
18 right away. That's the Franklin Hospital,
19 that's the surgical bills.

20 I'm just saying, whatever he says -
21 it's up to you guys - if he wants to produce
22 them. I'm just letting you know it's been
23 produced. I'll show it to you.

24 BY MR. BARMEN:

25 Q. Can you do that?

1 A. Again, I mean, I -- I mean, it's -- to
2 the best of my understanding, I can get you a copy
3 of the bills.

4 Q. Okay, great. I appreciate it.

5 A. I said probably by the end of the day,
6 I wasn't saying definitely by the end of the day.

7 Q. Understood.

8 A. But I also said you need to put it in
9 writing and then send it to me in writing so that
10 I can then have my, you know --

11 Q. Okay.

12 A. If you want to produce a quick letter
13 and send it to me today, I'll give you my --

14 Q. Would an email suffice?

15 A. Sure, fine.

16 Q. What's your email address?

17 A. Slattuga@yahoo.

18 Q. We're going to be back here tomorrow
19 with Dr. Cordiale, so tomorrow would be fine too.

20 The surgery done by Dr. Cordiale was
21 at Franklin Hospital, right?

22 A. Yes.

23 Q. That bill was paid in full, correct?

24 A. I don't know. I don't know.

25 MR. BARMEN: Would you pull that up,

1 please?

2 MR. SAAL: Franklin Hospital?

3 MR. BARMEN: Yeah.

4 Q. Do you know, as you sit here, whether
5 Medicare or Medicaid paid any of your office
6 bills?

7 A. No, no.

8 Q. No, you don't know, or --

9 A. No, I don't believe -- no, they didn't
10 pay any of my office bills.

11 Q. Okay. Do you have any type of
12 guarantee with Mr. McElfish or his office for your
13 bills for services in this case?

14 A. Guarantee?

15 Q. Yes.

16 A. I don't know what that means,
17 guarantee.

18 MR. McELFISH: Objection to form.

19 Q. Well, you've certainly been paid for
20 your expert services, right?

21 A. I mean, I -- I don't have an
22 independent recollection. I don't know if there's
23 outstanding bills for the medicolegal part of
24 this; I don't know.

25 Q. Okay. Well, I'm talking now

1 specifically just about the medical care and
2 treatment that Mr. Bauta has been receiving from
3 Dr. Cordiale.

4 Do you have any type of guarantee
5 where -- from agreement with Mr. McElfish, that
6 those bills will be paid out of proceeds from this
7 lawsuit?

8 A. The word "guarantee" is foreign to me;
9 I can't give you an answer yes or no if there's a
10 guarantee. Are there outstanding bills? Yes. If
11 there's outstanding bills -- and I'm not even sure
12 to what extent they've been paid or not paid, but
13 certainly if there is an outstanding bill, then I
14 expect to get paid. I don't know what the word
15 "guarantee" means.

16 Q. Okay. Well, understanding you don't
17 know what the word "guarantee" means, do you have
18 any type of agreement with Mr. McElfish or his
19 office to get your bills paid for services
20 provided once the lawsuit resolves?

21 A. I mean --

22 MR. McELFISH: Well, first of all,
23 objection to the question. And I'm going to
24 ask the witness not to answer this question
25 because it is -- well, he's an expert

1 witness, and I think expert communications
2 are protected under the Federal Rules.

3 If he were a treating doctor, I would
4 understand you're looking for issues about
5 letters of protection with respect to the
6 treatment, which is fair game. But with
7 respect to my communications with
8 Dr. Lattuga, we've already understood that
9 there was a mistake in the report about his
10 role in the case and we've talked about
11 that, beat that horse to death.

12 So now that it's understood he's an
13 expert witness, I'm going to ask him not to
14 answer the questions about our
15 communications, as it is protected under the
16 Federal Rule. If you have some reason why
17 you believe it's not protected, tell me,
18 because I'd rather resolve it now than have
19 to go to court.

20 MR. BARMEN: And I appreciate that,
21 and I absolutely agree with you that under
22 the Federal Rules, communications with
23 experts are protected. There's certainly a
24 blurred line here, because he was --
25 mister -- sorry, Dr. Lattuga was initially

1 disclosed as an expert, then that was
2 withdrawn and you said he was a treater.

3 He's said he was a treater in the
4 report that was provided. Certainly his
5 office has provided treatment, as he's
6 indicated an explanation for the -- what you
7 call an error in the report, when he should
8 have said "we" provided. He's the owner of
9 this practice.

10 So if there's outstanding money owed
11 to the practice for services, I think that
12 it is fair game.

13 MR. McELFISH: Okay. Well, first of
14 all, I didn't testify today, so I didn't say
15 that there was an error. He testified.

16 MR. BARMEN: Well, yeah, but you just
17 said that. I know you're not testifying.

18 MR. McELFISH: Well, I'm not
19 testifying, so I -- what I say today or
20 whenever doesn't matter usually.

21 MR. BARMEN: It matters to me.

22 MR. McELFISH: But let's do it this
23 way, if you're okay with this: If he has
24 any understanding as to the bills for the
25 treatment, I think that's fair game.

1 MR. BARMEN: That's what I'm talking
2 about.

3 MR. McELFISH: But with respect to his
4 expert services, whether or not he's been
5 paid for that, I think that's protected
6 under the Federal Rules.

7 So to the extent you want to question
8 him about bills and -- for treatment from
9 his office, paid/not paid, that's fine. But
10 with respect to my relationship as an expert
11 witness and what he's been paid for and all
12 that, I would respectfully ask that you
13 recognize the Federal Rule.

14 MR. BARMEN: I appreciate that, I
15 agree with everything you've said, and I'm
16 limiting it to issues with outstanding bills
17 for services provided for treatment.

18 MR. McELFISH: Fair. But since he
19 didn't treat him, I'm not sure where that's
20 going, so let's just -- I want to be clear
21 about that. He didn't treat him --

22 MR. BARMEN: Right, but --

23 MR. McELFISH: -- so I'm not sure
24 there's going to be a bill.

25 MR. BARMEN: -- but I'm going back to

1 the idea where he said "I" treated and he
2 meant "we," so we meaning --

3 MR. McELFISH: Well, as long as we
4 understand that you're asking him about the
5 bills generated by the practice for the
6 treatment, I'll --

7 BY MR. BARMEN:

8 Q. Okay. Doctor, you're the owner of
9 this practice, right?

10 A. Yes, sir.

11 Q. Your practice provided treatment to
12 Mr. Bauta?

13 A. Yes, sir.

14 Q. Okay. Do you know if there are
15 outstanding bills for that treatment?

16 A. Not specifically, no.

17 Q. Are you aware of any agreement with
18 Mr. McElfish's office that any outstanding bills
19 for treatment will be paid with proceeds from this
20 lawsuit at a later date?

21 A. Not -- not specifically an agreement,
22 but all -- generally patients that are involved in
23 motor-vehicle accidents sign what's called a lien
24 agreement, and that lien agreement with the
25 patient means that there's -- that we have some

1 claim to recovery of -- of our bills at the end of
2 the case.

3 Q. Okay.

4 A. So that's not an agreement with a --
5 with the law firm but that's an agreement with the
6 patient, so --

7 Q. Absolutely.

8 A. That's my custom and practice, to get
9 a lien on all such cases.

10 Q. Okay. And I did see, when I was going
11 through your file material, that there is a lien
12 agreement signed between your office and
13 Mr. Bauta. And that would be this financial
14 agreement contract, right?

15 A. Sure, yes, sir.

16 Q. Okay. And that's what I was getting
17 at. I didn't see anything between you and -- or
18 your practice and Mr. McElfish's practice, so
19 that's what I was getting at.

20 The lien agreement is with Mr. Bauta.
21 Where the money comes from, you don't care, but if
22 he ever gets money to pay your bills, you expect
23 it to be paid, fair?

24 A. Yes.

25 Q. Okay. When did Mr. Bauta, based on

1 your review of the records, first complain of any
2 back pain as a result of the accident that
3 occurred in October of 2013?

4 A. It's relatively contemporaneously with
5 the accident.

6 Q. So it's your understanding that he
7 complained to EMS first responders of back
8 problems or back pain, he complained at the ER of
9 back pain?

10 A. I mean, not -- not specifically, but
11 generally contemporaneous with the onset -- with
12 the onset of this.

13 Q. Okay. Well, what do you mean by -- I
14 mean, you reviewed the records. Tell me when you
15 first saw any complaints of back pain.

16 A. Contemporaneous with the -- with the
17 accident.

18 Q. So --

19 A. You want a specific -- I don't recall,
20 today, specifically what date.

21 Q. What do you consider contemporaneous
22 with the accident?

23 A. You know, it could -- it could
24 happen -- within several months of the accident a
25 patient can complain of back pain.

1 Q. Within months of the accident?

2 A. Right, but I don't -- I don't -- I
3 apologize because I don't have those records in
4 front of me to tell you exactly the first date
5 that -- that he complained of back pain. I don't
6 recall that today.

7 Q. Look, I don't expect you to recall. I
8 don't recall what I had for dinner two days ago,
9 so -- but you did review those records, right?

10 A. Yes, sir.

11 Q. Evangelical Hospital --

12 A. Everything that was listed, I'm sorry,
13 on the narrative report.

14 Q. Have you reviewed any other expert
15 reports in this case?

16 A. No, only what's listed in this
17 narrative.

18 Q. Well, I didn't see any expert reports
19 listed. Maybe I'm wrong.

20 A. This listing.

21 Q. Right.

22 A. Yeah, all of these documents I had in
23 my possession at the time of the preparation of
24 this narrative.

25 Q. All right. So you weren't provided

1 any of the defense expert reports to review?

2 A. If it's not here, again -- because
3 there's so many, I'm not trying to -- if it's not
4 here, I didn't have it at the time.

5 Q. Okay. Have you gotten additional
6 records, deposition transcripts, reports
7 subsequent to what you wrote here in your --

8 A. No.

9 Q. Okay. So you haven't reviewed any
10 expert reports, fair?

11 A. Again, if it's not -- and I'm not
12 trying to push back. I just don't know if any of
13 these right now are expert reports.

14 Q. Okay.

15 A. If there's nothing that's written in
16 here, if this is not an expert -- if you want me
17 to read it into the record, I've documented I've
18 reviewed this police crash report 10/9/13 -
19 exactly what you see here - the Evangelical
20 Hospital record on 10/9; the Brookdale Hospital
21 record, 10/10; the Rehab Center, whatever that is;
22 Dr. Gutstein's, Liebowitz's, Goldman, Lichy; the
23 MRI reports, all of them; Dr. Alladin's records;
24 Pain and Rehab; Claxton-Hepburn.

25 That's it, those are -- that's what I

1 reviewed on that date.

2 Q. And I'll represent to you, and I don't
3 think that I'll get a disagreement, that none of
4 these are experts retained in the case, these are
5 all treaters.

6 A. It looks like they were all treating
7 doctors.

8 Q. Okay. So you didn't review any expert
9 records, fair?

10 A. I would say yes.

11 Q. You didn't review any deposition
12 transcripts, true?

13 A. No, no.

14 Q. Why was it -- strike that.

15 You did review everything here, right?

16 A. Yes.

17 Q. What benefit or purpose did you have
18 in reviewing the police report from the crash?

19 A. I mean, generally or specifically in
20 this case?

21 Q. Well, let's start with generally, then
22 we'll get --

23 A. I mean, generally I ask for all the
24 records, right? So I'm provided with all the
25 records that -- I ask for all the available

1 medical records, including ER -- like emergency
2 ambulance records, right? That would be what I
3 would ordinarily review when opining on causality,
4 right?

5 So -- and in this particular case, I
6 would obviously be interested in -- if there was a
7 car accident, right, wouldn't I want to know what
8 happened at the time of the car accident when
9 issuing a report on causality? I mean, that would
10 be important.

11 Q. Well, I certainly think it would be
12 important, based on what you said, to see the EMS
13 records.

14 A. Yeah.

15 Q. But that wasn't provided to you, was
16 it?

17 A. Again, I've asked -- if that's not
18 listed, I mean, right. I mean, I -- I'm not sure
19 that was just a police report, not the actual -- I
20 mean, I don't know -- I don't know -- again, and
21 I'm speaking -- I really want to give you a right
22 answer.

23 I don't know who shows up to the
24 emergency. Is it the cops, is it EMS? I'm not
25 sure who shows up, right?

1 Q. Okay.

2 A. So I ask for all the records, and this
3 was what was provided for me. I make my opinion
4 based on what's provided for me. I mean, I --

5 Q. Sure. And you want all the records
6 because, as an expert, you want as much of the
7 information as you can have to review so you can
8 make --

9 A. Yes.

10 Q. -- an objective opinion, right?

11 A. Yes, sir.

12 Q. Okay. I'm going to tell you, and
13 Mr. McElfish can tell me if I'm wrong, the crash
14 report from the Pennsylvania State Police is not
15 the EMS run report. There were separate records
16 from the ambulance company - multiple ambulance
17 companies showed up on site, this was a big
18 accident -- and there is an EMS run report
19 relative to Mr. Bauta.

20 Is that something you would have liked
21 to have seen?

22 MR. McELFISH: Objection to form,
23 you're preaching, so --

24 MR. BARMEN: Well, I get preachy.

25 MR. McELFISH: -- let's ask questions.

1 I mean, there was a question at the
2 end of all of that, so answer the question
3 that --

4 (Simultaneous speaking.)

5 THE WITNESS: Again, the answer is
6 yes, I would like any and all information
7 with respect to the -- this patient at the
8 time of preparing a narrative.

9 BY MR. BARMEN:

10 Q. Okay. Did you -- after you were
11 provided these records, did you ask for any
12 additional information?

13 A. I don't recall.

14 Q. Okay. Do you recall -- as you sit
15 here, do you have an independent recollection of
16 reviewing the police report, the crash report?

17 A. No, I don't remember.

18 Q. Do you remember if it was a small
19 report, five or ten pages, or five hundred?

20 A. I'm sorry, I don't have a
21 recollection.

22 Q. Okay. Did you review every record
23 that you obtained in its entirety?

24 A. I don't have an independent
25 recollection of reviewing those records on the

1 date. It is my custom and practice, if I can
2 answer that way --

3 Q. That was going to be my next question.

4 A. -- to look through the document for
5 those pieces of information that I find relevant
6 to issues of the patient's injuries and causality.

7 So, for example, you know, I'm not
8 going to look at the -- what band the police were
9 transmitting on when communicating with each
10 other, right?

11 Q. Of course.

12 A. So that's -- that would answer what I
13 would be looking for and things I would not
14 obviously be looking for.

15 Q. Okay. Would I be right in assuming
16 that because of what you do, what you've testified
17 you do with these -- preparing these narratives,
18 that you've seen many traffic crash reports?

19 A. Yes.

20 Q. Are they typically a few pages or are
21 they typically hundreds of pages?

22 A. I mean, they vary. Usually they're
23 not hundreds of pages, they're -- they're
24 relatively short documents, yes.

25 Q. We call them OH-1s in Ohio.

1 Have you ever seen a traffic crash
2 report that was 300 pages long?

3 A. No.

4 Q. If you saw that, you'd remember it,
5 right?

6 MR. McELFISH: Objection to form.

7 A. I mean, I can't answer that question
8 yes or no, but it's -- just generally, they're not
9 lengthy reports.

10 Q. Okay. Will you pull out for me,
11 please, the first follow-up appointment record for
12 Mr. Bauta after he had the spinal surgery? And I
13 think the surgery was in May of '15; May 27, '15.
14 I think the first postoperative report is June 16
15 of 2015.

16 A. Yes, sir, I have it here. June 16,
17 Dr. Cordiale's report postop, June 16, 2015.

18 Q. Okay. There's nothing in the June 16,
19 2015 postop record indicating any disability for
20 Mr. Bauta, is there?

21 A. No.

22 Q. When is it first noted in any report
23 that there's any type of disability, whether it be
24 temporary or total?

25 A. The following visit, 7/28/15.

1 Q. Do you know what changed between the
2 first and second postop visit?

3 A. No, he's -- obviously he had the same
4 disability on the visit before, it just wasn't
5 part of the record, okay?

6 Q. Well, is it a part of the record
7 anywhere prior to surgery?

8 A. That's a different question.

9 Q. It is a different question.

10 A. Yeah, so you want me to review the
11 records prior to surgery --

12 Q. Please.

13 A. -- to see if there's any documentation
14 on his disability?

15 No, I don't see any, sir.

16 Q. Do you know why all of a sudden on the
17 second postoperative visit it's noted that he's
18 temporarily and totally disabled?

19 A. No.

20 Q. All right. That's a question for
21 Dr. Cordiale?

22 A. I can't answer that yes or no, sir. I
23 don't --

24 Q. We can agree you reviewed the films,
25 you know that Mr. Bauta had a decent size

1 herniation at L5-S1?

2 A. Yes, sir.

3 Q. Okay. And there was impingement?

4 A. Yes, sir.

5 Q. And he was complaining of pain and
6 radiculopathy into his legs?

7 A. Yes, sir.

8 Q. And you believe, based on my review of
9 your report, that this was caused by the accident
10 of October 9, 2013?

11 A. Yes, sir.

12 Q. Do you consider the herniation at
13 L5-S1 a large herniation?

14 A. I mean, I -- I can't answer that
15 question yes or no --

16 MR. McELFISH: Objection to form.

17 A. -- today.

18 I don't have the films in front me,
19 you know, so I don't have a specific -- can't
20 grade it as large or small.

21 All I can do is -- I'm reviewing the
22 record that was produced by me and Dr. Cordiale,
23 which does describe -- and I did review it at the
24 time, so -- at the time of preparing the narrative
25 but not subsequent to that, that he did indeed

1 have those herniations.

2 And I agreed with Dr. Cordiale's
3 preoperative assessment that he had herniation at
4 those two levels and impingement, you know, based
5 on his -- you know, and I agreed, having reviewed
6 his medical records, that surgery was indicated.

7 Q. Okay. If this was a traumatic
8 herniation that happened in the bus accident,
9 would you expect its symptomology to start
10 immediately?

11 MR. McELFISH: Objection to form.

12 A. Not necessarily.

13 Q. Explain to me your answer of "not
14 necessarily."

15 A. I mean, it's not -- it's not uncommon
16 that patients can have a traumatic injury to their
17 cervical and lumbar spine and not begin to
18 experience symptoms in those body parts or seek
19 treatment for that problem for a period of time.

20 Q. Even with nerve root impingement --

21 A. Yes.

22 Q. -- they're not going to feel that?

23 A. Again, the answer, it's not -- it's
24 not unusual that patients can have delayed onset
25 of presentation to the physician and that we don't

1 see the patient or start treating the patient
2 immediately at the time of the accident but at
3 some point after.

4 Q. Well, I'm not talking about a delay in
5 a patient seeking treatment. I'm talking about
6 when is the patient going to feel a traumatic
7 herniation with nerve root impingement?

8 MR. McELFISH: Objection to form.

9 A. I mean, it -- it's very variable and
10 it's not -- you know, some patients can have a
11 herniated disc and just experience pain in one
12 area. And then, as time - days or even weeks -
13 progress, they get more and more radicular
14 symptoms or pain in the arm, and that was from the
15 original injury, but the radiculopathy or the pain
16 and the neurological dysfunction doesn't occur for
17 weeks or even, as it progresses, to months later.

18 It can get worse over time if it's a
19 traumatic injury, creates a herniation,
20 radiculopathy begins to occur over the ensuing
21 several weeks or months or more, and then it gets
22 to the point that they need surgery. That can
23 happen, it's a known entity.

24 Q. What is a retrolisthesis?

25 A. Retrolisthesis is a radiographic

1 finding on MRI or CAT scan where you have a
2 displacement of the vertebral body. It can be in
3 the neck or low back - retro, which is posterior,
4 towards the back - and it's just a sign of
5 instability at the segment.

6 So it's a -- it's just a radiographic
7 description of a -- of an instability in a
8 specific direction, retro as opposed to lateral or
9 antero, and just reflects that there is
10 instability at that segment.

11 Q. Is it typically caused by degenerative
12 process or trauma?

13 A. It can be caused by both.

14 Q. Is one more prevalent a cause than the
15 other?

16 A. I mean, that's a very difficult
17 question, because prevalence is -- you know, I
18 would say that the -- they're both equal causes
19 of -- of instability, degenerative processes,
20 traumatic processes. So it's a very, very common
21 cause of instability, both degenerative and
22 traumatic.

23 Q. When you reviewed the MRI films, did
24 you see degenerative processes in Mr. Bauta's
25 spine?

1 A. I mean, not -- not specifically. I
2 mean, I -- I felt that the majority of -- you
3 know, I did see a traumatic herniation at L5-S1.
4 He also has the spine of a 38-year-old man, so --
5 so I did not -- he did -- I did not give him a
6 diagnosis of degeneration of the spine, based on
7 my review, but there are some mild age-related
8 changes consistent with a 38-year-old gentleman.

9 Q. And what are some of those typical
10 degenerative process you would expect to see in a
11 person of that age?

12 A. Again, I didn't use the word
13 "degenerative," you did. I mean, I said there
14 were age-related changes.

15 Q. Okay.

16 A. And again, you just see age-related
17 changes to the spine, you see some --

18 Q. And which of those did you see in this
19 case when you reviewed the films?

20 A. Again, I didn't -- I didn't write them
21 down and I don't have an independent recollection,
22 so I --

23 Q. Is disc dehydration a typical
24 degenerative process you expect to see in a 35- to
25 40-year-old man, generally speaking?

1 A. I mean, the word "degenerative" I
2 think is the wrong word, but dehydration is an
3 age-related change that occurs to the spine, yes,
4 and that is something you would typically see
5 in --

6 Q. What about the loss of disc height; is
7 that an age-related finding?

8 A. It can be, as well as herniated disc.
9 It causes the collapse of the disc.

10 Q. What about disc-bulging; can that be
11 age-related?

12 A. Of course it can.

13 MR. McELFISH: Objection to form.

14 Q. And disc herniation can also be
15 age-related?

16 MR. McELFISH: Objection to form.

17 A. Yes, it can.

18 Q. You said - and correct me if I'm
19 wrong - that what you saw here was a traumatic
20 herniation at L5-S1?

21 A. Yes, I felt it was consistent.

22 Q. What is it that you saw that tells you
23 it's traumatic versus degenerative or age-related?

24 A. I mean, I think it's -- again, without
25 the MRI in front of me, I don't -- it's going to

1 be hard to reproduce exactly what are the
2 specific -- his specific details, but I felt at
3 the time when I reviewed it that it was traumatic
4 in nature.

5 Q. When you're looking at any film, what
6 are you looking for to determine whether it's
7 traumatic or age-related?

8 MR. McELFISH: Objection to form.

9 A. That might not apply to this
10 particular patient, so -- you know, but in
11 general, you could still -- you could see some
12 changes in the annulus that are consistent with an
13 acute injury, changes in the disc that are
14 consistent with an acute injury, the absence of
15 severe other findings.

16 Again, I -- I'm speaking generally,
17 not specifically to this patient. You know, I
18 don't have his MRI today, so I'm sorry I can't
19 give you a better answer.

20 Q. Well, where do you -- where do you
21 have the films?

22 A. I don't know if we still have them.
23 If we still have them, you know, we can -- or we
24 could have returned them to whoever sent them to
25 us in the first place.

1 Q. Well, if you returned them, wouldn't
2 you expect to see some sort of letter saying
3 "Enclosed, please find" or "Here you go"?

4 A. No, not specifically.

5 Q. You do a lot of this work. Where do
6 you typically keep the file material; the medical
7 records, the CDs, the film that you review? Where
8 do you --

9 A. I mean, we'll keep them in the office,
10 but oftentimes it gets bulky and we'll send it
11 back to where it came from. It can be quite
12 bulky.

13 Q. Okay. Can we take a break and can you
14 see if you have the MRI films here?

15 A. I don't have them here, I'd have to --
16 you know, I can -- again, at the end of the day,
17 why don't you give me a list of things that you
18 want, and I will do my best to provide it to you.

19 Q. Well, respectfully, you're the expert.
20 You're here today, you're supposed to have your
21 file with you, and you've made a comment -- or you
22 testified on the record that this is a traumatic
23 herniation.

24 I'm trying to find out from you what
25 you saw that makes you say that or what is the

1 basis for that opinion. This is my one shot.

2 A. Right. Well, again, that's my opinion
3 based on when I prepared the narrative. I don't
4 have those narratives -- I don't have those
5 documents with me today and I don't have the films
6 with me today.

7 Q. Okay. And so the record's clear, as
8 you sit here, you don't know where those films are
9 that you reviewed, fair?

10 A. I don't know where they are.

11 Q. In an acute traumatic herniation, do
12 you expect to see damage to the spine around the
13 area of that herniation?

14 A. I mean, you could, yes, you could.

15 Q. Is it typical?

16 A. No, not -- it's not an -- I wouldn't
17 even say it was the majority of the cases.
18 Usually you just see injury at the level of the
19 disc itself.

20 Q. Okay.

21 A. That's a very vulnerable structure, so
22 that's what usually gets injured most quickly and
23 most obviously.

24 Q. What at the L4 level do you believe
25 warranted surgical intervention?

1 A. I mean, I think that's a question
2 better left to Dr. Cordiale.

3 Q. I'm going to ask him, but I'm asking
4 you as the expert, based on your review, what
5 warranted surgery at L4?

6 A. I mean, there was also a herniated
7 disc at L4-5. I mean, I think that that's the
8 most obvious answer, but the specific details, you
9 should -- you know, you should ask Dr. Cordiale.

10 Q. Well, he had bulges and herniations in
11 the cervical spine too, right?

12 A. I mean -- yes, yes.

13 Q. Okay. Those didn't warrant surgical
14 intervention, or it would have been recommended,
15 right?

16 A. No, not necessarily. I mean, you
17 know, you really should ask Dr. Cordiale why he
18 chose to operate on those two levels.

19 Based on the report and my review of
20 the films, there were herniated discs both at L4-5
21 and L5-S1. So the fact that he included both
22 those segments in the surgery is -- and consistent
23 with some of the neurologic -- some of the
24 physical findings, I think it's -- it was the
25 appropriate medical intervention.

1 But, I mean, you're going to talk to
2 him tomorrow. So, you know, you can ask him
3 directly.

4 Q. Well, herniated disc doesn't always
5 warrant surgical intervention, right?

6 A. Correct.

7 Q. What neurological findings were
8 related to the L4 level as opposed to L5-S1?

9 A. So I'm quoting from the 5/5/15 note.

10 Q. Hang on, let me get there.

11 A. This is 5/5/15, this is the
12 preoperative note, this is where he lists all his
13 indications for surgery. It's stated explicitly
14 in here, but to go back to the text of his note,
15 it's right there: L4 in terms of altered
16 sensation; weakness of tibialis anterior;
17 quadriceps, which is also an L4.

18 So that -- he documents in here
19 neurological dysfunction both of the L4 nerve root
20 and the L5 nerve root --

21 Q. Okay.

22 A. -- and I think that that's what would
23 ordinarily inspire him, if I can use that word, to
24 operate.

25 Q. That's fine. "Quad" is L4?

1 A. Yes.

2 Q. It can't be --

3 A. No, it's --

4 Q. -- L5-S1?

5 A. No, it's definitely -- it's more
6 like -- it's L4. And TA is -- TA is like L4 as
7 well. EHL is L5.

8 Q. And what is EHL?

9 A. Extensor hallucis longus. It's the
10 big toe.

11 Q. Okay.

12 A. So that's -- this is -- typically what
13 happens is there's an overlap. So there are
14 adjacent segments in the lumbar spine, there's an
15 overlap of neurological dysfunction between two
16 nerve roots. It's prudent to address both
17 surgically.

18 I mean, you wouldn't want to just do
19 one in the presence of seeing a herniated disc and
20 ignore it, because you didn't think it might be --
21 and having the patient not have the response you
22 wanted. So I think that was appropriate
23 treatment, a two-level decompression and fusion.

24 Q. In this case, did Mr. Bauta have the
25 result he wanted?

1 A. I mean --

2 MR. McELFISH: Objection to form.

3 A. -- I'm not the surgeon, I mean, I'm
4 sort of an outside observer on this particular
5 case.

6 I think that the patient did have --
7 continues to have a disability despite having
8 surgery. I would use his -- you know, I would use
9 doctor -- because I didn't actually see him,
10 right? So I would use Dr. Cordiale's description
11 that he's doing well postoperatively, with
12 improvement - that's what he writes - however,
13 continues to have residual pain and symptoms
14 consistent with the preoperative condition, which
15 is very typical for patients who have severe
16 traumatic injuries.

17 They have some improvement, but they
18 still have some residual symptoms. And that's
19 what he said, and I would -- you know, I would say
20 that that was the result, you know.

21 Q. Is it also typical of a patient who
22 has this type of injury, because of an age-related
23 or degenerative processes, to have residual pain
24 after surgery or does that just happen in
25 traumatic situations?

1 A. No, any patient that has spinal
2 surgery can have -- one of the outcomes of spinal
3 surgery is non-resolution -- only partial
4 resolution of symptoms, okay? So that's not
5 specific to traumatic patients but any patient.

6 Q. What specifically about Mr. Bauta's
7 condition currently renders him disabled?

8 A. So again, it's a little bit out of the
9 context of my -- my having -- I haven't examined
10 him. But based on Dr. Cordiale's last note and
11 based on the my review of his -- his symptoms and
12 his injury, is that he still has significant
13 disability with respect to his neck and his low
14 back, okay, after the accident and after the
15 surgery. And to that extent, he has a disability
16 related to -- a permanent disability related to
17 this dysfunction in his neck and back.

18 Q. Well, you do state in your report, to
19 a reasonable degree of medical certainty, that the
20 motor vehicle of 10/9/13 is the competent
21 producing factor of his injuries and his permanent
22 disability.

23 So you do have the opinion that --

24 A. Yeah, I just said that though.

25 Q. Okay. Well, you kind of couched it at

1 first, saying that was --

2 MR. McELFISH: Objection to form.

3 Q. -- more of Cordiale's opinion and not
4 yours.

5 It's in your report, and you're
6 prepared to come to trial and say this man is
7 permanently disabled, right?

8 A. Yes.

9 Q. What can't he do?

10 MR. McELFISH: Objection to form.

11 A. Okay. So he certainly has -- you
12 know, he currently has a -- you know, based on the
13 record, you know, that he has a limitation in the
14 use of his -- of his low back, okay, as a
15 consequence of the injury, okay? Also, he also
16 has a limitation of the use of his neck because of
17 the injury, okay?

18 So that -- does that answer your
19 question?

20 Q. Well, let's talk about his neck. We
21 talked about it a little earlier.

22 Your office didn't provide any
23 injections?

24 A. No, I didn't see any.

25 Q. Okay. Your office didn't provide any

1 type of conservative actual medical treatment
2 relative to his neck?

3 MR. McELFISH: Objection to form.

4 Q. Other than examinations.

5 A. Examinations, et cetera. That's what
6 we provided for him, examinations and
7 documentation.

8 Q. Right. He would come in, Dr. Cordiale
9 would do a typical -- take a history, do an exam,
10 and Mr. Bauta would say "my neck hurts" and that
11 was the extent of it, to his neck, right?

12 MR. McELFISH: Objection to form.

13 A. I mean, I wouldn't characterize it
14 that way, but yes, he -- we are basically
15 recording his complaints with respect to his neck.
16 But as of the last visit, he did not receive any
17 injections in his neck in my office.

18 Q. Okay. Is that something your office
19 does for patients, cervical epidurals?

20 A. Sometimes, yes.

21 Q. And when is it warranted?

22 MR. McELFISH: Objection to form.

23 A. I mean, it's warranted when -- you
24 know, if the patient doesn't have another -- you
25 know, oftentimes a patient has their own pain

1 management doctors. He does. For example, you'll
2 see those referrals to different pain management
3 facilities. So if they have their own doctor, we
4 don't involve themselves [sic], so that's the
5 first thing.

6 And then to be more specific, the
7 indication for injections in the spine would be
8 continued pain and/or disability, radiculopathy
9 with a positive MRI, which he does have. So -- so
10 there -- you know, he was and is -- he was a
11 candidate for injections, he is a candidate for
12 injections.

13 You know, frequently when a patient
14 has two injuries, neck and back, they'll often
15 just treat one for a while. You know, it just --
16 it becomes a little overwhelming to do both,
17 but...

18 MR. BARMEN: All right. Why don't we
19 take a little break? I want to make sure
20 we're squared away for the Bronx.

21 (Recess taken, 11:33 a.m.)

22 (On the record, 11:43 a.m.)

23 BY MR. BARMEN:

24 Q. You state in your report, on the last
25 page above your signature - and we already talked

1 about it a little bit - that this guy is
2 permanently disabled, right? That's your opinion?

3 A. Yes.

4 Q. Okay. Dr. Cordiale only says in his
5 notes "temporary total." Where does
6 Dr. Cordiale -- well, strike that.

7 Dr. Cordiale never had the opinion
8 that this man is permanently disabled, correct?

9 A. I mean, all he's written in his note
10 is "temporary totally disabled." That's what he
11 writes.

12 Q. All right. So how do you make the
13 leap to permanent?

14 A. Because I'm -- that's what I'm being
15 asked; do I think there's a permanence here with
16 respect to his injury? And I do think that
17 there's a permanence.

18 Q. Okay. Is the problem in the fact that
19 he has the hardware in the back?

20 A. That he had a traumatic injury to his
21 neck and back and that those injuries will give
22 him permanent symptoms forever. That's my
23 opinion.

24 Q. Okay. Is he incapable of working, in
25 your opinion?

1 A. He's incapable of like specific types
2 of work.

3 Q. Okay. As we talked about before on
4 Exhibit 2 - the April 6, 2017 record - he made a
5 point to state he can walk longer distances now.

6 Is that consistent with a permanent
7 disability and an inability to earn an income?

8 A. I mean, it could be, yes.

9 Q. Okay. Can he do sedentary work?

10 A. Yes.

11 Q. Could he do light-duty work?

12 A. Yes, as long as it's accommodative to
13 his disabilities.

14 MR. McELFISH: Objection to form on
15 those two questions, if you don't mind going
16 back.

17 MR. BARMEN: I don't mind.

18 Q. Do you know what Mr. Bauta did for a
19 living before the accident?

20 MR. McELFISH: Objection to form.

21 A. You know, I have that he was a
22 student. So, I'm sorry, I don't have a thorough
23 understanding of what his job occupation was.

24 Q. When you do narratives for other
25 patients or in litigation, do you use the same

1 format that you've used here?

2 A. Yes.

3 Q. And whether it's you or Dr. Cordiale
4 or Dr. Mikelis that treated the patient, do you
5 always say you treated the patient?

6 A. No.

7 Q. Would you expect in a situation like
8 this, if Mr. Bauta had traumatically herniated
9 this disc in the accident, that he would have had
10 a normal neurological exam in the ER?

11 MR. McELFISH: Objection to form.

12 A. He could have a normal neurological
13 exam right after the injury, yes.

14 Q. What about a month after the injury;
15 would you expect a normal neurological exam if
16 he's got a traumatic herniation with radiculopathy
17 and impingement?

18 MR. McELFISH: Objection to form.

19 A. I mean, anything's possible, but, I
20 mean --

21 Q. I'm asking, is it typical?

22 MR. McELFISH: Objection to form.

23 A. Again, I think I answered the question
24 before. It's not unusual that patients could not
25 have, you know, a full-blown radiculopathy at the

1 time of the injury and that it would develop over
2 time. That happens very frequently, the fact that
3 you have an injury and it gets worse and
4 progresses, which is what happened in this -- you
5 know, it's relevant in this case. That's what
6 happened: He had an injury, he got worse over
7 time, and then that's when Dr. Cordiale thought it
8 was bad enough for surgery. That happens.

9 Q. If you've got a traumatic herniation,
10 the disc is extruding and impinging on the nerve,
11 you would expect gradual onset of neurological
12 symptoms?

13 A. That happens, yeah, that happens.

14 Q. Do you hold any opinions in this case
15 that we haven't discussed or that are not already
16 contained in your report?

17 A. I can't answer that question. Unless
18 you give me a question, I can't answer, you know.

19 Q. Well, we've talked about your opinion
20 that he's permanently disabled?

21 A. Yes.

22 Q. We've talked about your opinion that
23 this was a traumatic herniation --

24 A. Yes.

25 Q. -- in the accident?

1 A. Yes.

2 Q. Do you have any other opinions that
3 you're prepared to give in this case?

4 A. I mean, other than what you see there?
5 I mean, if you ask me some question that hasn't
6 been proposed to me, I might come up with a --
7 with an opinion.

8 Q. I bet you would.

9 A. Yeah, but why wouldn't I? I mean, not
10 everything is -- you know, is asked of me at the
11 time, so...

12 Q. On page, I believe, 13 of your report,
13 you state he may require additional procedures in
14 the future?

15 A. Yes.

16 Q. Do you have an opinion as to the
17 percentage chance of him needing additional
18 procedures in the future?

19 A. That's always a very difficult
20 question to answer. The best answer I can give
21 you is it's more likely than not that he might
22 require surgery with respect to his low back from
23 a phenomenon known as adjacent segment
24 decompensation, and it's more likely than not
25 he'll need cervical surgery based on, you know,

1 his complaints at the time and the findings.

2 Q. Well, you said it's more likely than
3 not that he might need additional cervical [sic]
4 surgery?

5 A. I know. It's a difficult -- it's the
6 best answer I can give.

7 Q. Can you say, to a reasonable degree of
8 medical certainty, that he will need additional
9 cervical surgery?

10 A. Yes.

11 Q. Okay. Can you say, to a reasonable
12 degree of medical certainty, that he will need
13 cervical [sic] surgery?

14 A. Yes.

15 Q. Okay. Can you give me an idea as to
16 when he will need those?

17 A. No.

18 Q. You also included in your report
19 projected health care costs.

20 I assume that's something you were
21 asked to do?

22 A. Yes.

23 Q. Where did you get your numbers from?

24 A. Just the -- it's from my experience in
25 caring for patients.

1 Q. Okay. Did you review the life care
2 plan that was provided -- or that Mr. Provder did
3 for Jose Bauta?

4 A. No.

5 Q. Okay. This projected health care cost
6 sheet that you included in your report, is that
7 something that you always include in your
8 narratives?

9 A. If I'm asked.

10 Q. If you're asked, okay.

11 Based on the first line, orthopedic
12 lumbar and cervical spine visits five times a year
13 at a cost of \$200 per visit, does that mean that
14 it's \$200 every time Mr. Bauta comes here?

15 A. Yes, sir.

16 Q. Okay. Do you or your practice have
17 any interest in the outcome of this lawsuit?

18 MR. McELFISH: Objection to form.

19 A. I can't answer that. I don't
20 understand the question.

21 Q. Do you have any financial stake in the
22 outcome of this law firm?

23 MR. McELFISH: Law firm?

24 MR. BARMEN: Lawsuit. Thank you.

25 MR. McELFISH: Objection to form.

1 A. Not specifically, but obviously if the
2 patient wins, if there are outstanding bills - and
3 I'm not sure that there are - then we'll get paid,
4 right?

5 Q. Okay.

6 A. Or he might have the money to pay me.
7 He still has to pay me at the end, once he gets
8 the money. There's no guarantee that's going to
9 happen, right? But...

10 MR. BARMEN: Were you able to put
11 together a quick email?

12 MR. SAAL: Yes, that's already been
13 confirmed received.

14 MR. BARMEN: Thank you.

15 All right, Doc, you're going to get
16 out of here on time.

17 MR. McELFISH: What is it you're
18 asking for exactly? Because I've been
19 looking, and I see all the bills turned
20 over. So what are you looking for exactly?

21 MR. BARMEN: Any billing from his
22 office relative to the care and treatment of
23 Mr. Bauta.

24 MR. McELFISH: From New York Spine?

25 MR. BARMEN: Yes.

1 MR. McELFISH: Okay. Well, that
2 shouldn't be that hard to generate. Plus,
3 I'm not sure that all the new stuff was
4 turned over before anyway, because this
5 is --

6 MR. BARMEN: No. I mean, I've seen
7 records that I haven't seen before, so --

8 MR. McELFISH: So if you don't mind
9 getting an updated, you know --

10 THE WITNESS: Yeah, I'll update the
11 bills, and that's something --

12 MR. BARMEN: And I'd like to get a
13 copy of this before I leave, please, these
14 two.

15 THE WITNESS: Absolutely.

16 MR. BARMEN: Based on all that, Doc, I
17 have no further questions for you, and I
18 appreciate your time, sir.

19 MR. McELFISH: No questions.

20 (Brief off-record discussion.)

21 MR. BARMEN: I want it, E-Tran and
22 regular, please.

23 MR. McELFISH: Yes, a copy.

24

25 (Time Noted: 11:53 a.m.)

C E R T I F I C A T E

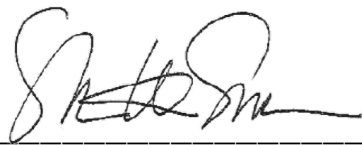
STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, MARIANNE WITKOWSKI-SMITH, a Notary
Public within and for the State of New York,
do hereby certify:

That SEBASTIAN LATTUGA, M.D., the witness
whose deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is a
true record of the testimony given by such
witness.

I FURTHER CERTIFY that I am not related
to any of the parties to this action by blood
or marriage and that I am in no way interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 28th day of April, 2017.



MARIANNE WITKOWSKI-SMITH

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