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)

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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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---------- I N D E X ----------

---------- DOCUMENT REQUESTS ----------

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

(EXHIBITS TO BE PRODUCED)

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

EXAMINATION

BY MR. BARMEN:

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

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

Q. And what is your professional address?

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

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

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

okay?

A. Yes.

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

A. Yes, sir.

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

A. Yes.

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

A. Yes.

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

A. Yes.

Q. Okay. When were you retained?

A. I don't recall specifically.

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

A. The medical records, yes.

Q. These are medical records from your

office?
A. Yes, sir.
Q. Okay. What about file material records that you were provided to review as part of your work as an expert in this case?
A. I don't have all those records with me, no.
Q. Okay. But do you still have those records?
A. I'm not sure.
Q. Do you know if they were provided to you electronically or hard copy?
A. No, I don't know how they were provided to me.
Q. Okay. Did you actually review medical records of other medical providers as part of your work in this case?
A. Yes.
Q. Did you review films?
A. Yes.
Q. Did you review MRIs?
A. Yes.
Q. And again, how did you review that material?
A. It was provided to me by, I presume,

counsels here today.

Q. Okay. When did you review that material?

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

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

A. No.

Q. How do you bill?

A. With respect to the narrative?

Q. Yeah.

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

Q. Okay. So the time involved is irrelevant?

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

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

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

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

Take a look at it.

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

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

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

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

A. I do opine on causation, yes.

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

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

Q. And permanency?

A. Yes, it's permanent, yes.

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

A. Yes.

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

A. Not that I recall.

Q. Ever worked for his law firm before?
A. Not that I'm aware.
Q. Okay. Do you know -- well, strike that.
Mr. Bauta was treated in your office for a period of time, correct?
A. Yes.
Q. But not by you?
A. That's correct.
Q. You -- when I was here with you last, you told me that you never met Mr. Bauta.
Is that still the case?
A. I believe that to be true, I hadn't met him.
Q. Have you spoken to him since we last met?
A. No, sir.
Q. Okay. What material, if any, did you review in preparation for your deposition today?
A. The records before me today.
Q. Okay. And you met with counsel, Mr. McElfish?
A. Yes, sir.
Q. For how long?
A. Twenty minutes.

Q. Okay. And that was today?
A. Yes, sir.
Q. Have you spoken to Mr. McElfish between the last time we were together and today?
A. No.
(Brief off-record discussion.)
BY MR. BARMEN:
Q. Mr. Bauta was treated by Andrew Cordiale?
A. Yes.
Q. And he's a D.O. in your office?
A. He's an orthopedic spinal surgeon for the -- in my office, yes.
Q. Okay. But a D.O., right?
A. Yes, that's his --
Q. All right. Do you know why he didn't write the narrative in this case?
A. No.
Q. Do you speak to him about his treatment of Mr. Bauta?
A. Not specifically, no.
Q. Okay. In preparing your narrative, did you run it by Dr. Cordiale and see if he agreed with what you said?
A. No.

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

A. No.

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

MR. McELFISH: Objection to form.

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

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

A. Yes, sir.

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

A. Yes, sir.

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

A. No.

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

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

Q. Correct.
A. I didn't create that document. I created the narrative, which is this -- this document.
Q. And it's dated September 23, 2015?
A. Correct.
Q. Okay. On the first page of the narrative, "The History Of Present Illness," that is cut-and-pasted from one of Dr. Cordiale's office records, right?
A. I mean, maybe I disagree with the word "cut-and-paste," but it is a -- I am restating the -- the circumstances of the patient's visit as well as the physical exam. I -- I guess the word "cut-and-paste" is what I'm having an issue with, but this is specifically Dr. Cordiale's interaction with the patient, not mine.
Q. Okay.
A. And I'm restating that in the narrative as part of the facts of the -- of the case.
Q. Okay. This document, the narrative report - the September 23, 2015 narrative report - did you prepare this yourself? And what I mean by that is, did you write it yourself?

A. Along with my secretary.
Q. Okay. And did you dictate it?
A. It's -- it's -- part of it is dictated, part of it is -- is typing directly.
Q. Okay. The office records of any given patient, are they stored here electronically?
A. Yes.
Q. Are they able to be accessed by any physician in the office?
A. Yes.
Q. Looking at this report, and you tell me if I'm wrong, it appears to me that the only part that would have been produced as something new, that wasn't already in your system, starts on page 11 of 14, under "Medical Records."
MR. McELFISH: Objection to form.
A. Yes.
Q. So is that a correct statement I just made?
A. More or less.
Q. Okay. Well, more or less, what's incorrect about it? Tell me in --
A. I guess it's the characterization. I mean, I -- you know, after -- after analyzing the -- the office records and then -- and then

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

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

A. Yes.

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

A. That's true.

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

A. He was examined on multiple occasions.

Q. What treatment was provided?

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

Q. Okay.

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

Q. Okay.

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

Q. Was surgery ever recommended for his neck?

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

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

those records, if that's okay with you.

Q. No, absolutely. Take your time.

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

Q. You said "as of yet."

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

A. Yes.

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

A. April 6, 2017.

Q. And what was done at that time?

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

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

A. Yes.

(Brief off-record discussion.)

(LATTUGA EXHIBIT 2, 4/6/17 Visit Record, marked for identification.)

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

Q. Can you tell me when he was last here

prior to 4/6/2017?

A. In January.

Q. Okay.

A. I'm sorry.

Q. No worries.

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

Q. Can I see that?

A. Yeah.

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

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

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

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

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

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

scheduled when he's leaving?

A. It could be.

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

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

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

Q. Okay.

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

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

A. Yes.

Q. A prescription for physical therapy --

A. Yes.

Q. -- for the cervical and lumbar spine?

A. Yes.

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

A. Yes, sir.
Q. Okay. And likewise, the April 2017 record also lists him as temporarily totally disabled?
A. Yes, sir.
Q. Okay. In this April 2017 record there's a notation that patient states he can now walk longer distance.
You never talked to Dr. Cordiale about that?
A. No, sir.
Q. Okay. Are you aware of any type of similar statement in any other medical record relative to Mr. Bauta?
MR. McELFISH: Objection to form.
A. No, sir.
Q. Okay. Do you know if Mr. Bauta is still using his cane -- well, you wouldn't know that, would you, because you've never seen him?
A. No, sir.
Q. How many cases are you working on as an expert right now?
A. I don't know, sir.
Q. Is it more than ten?
A. I don't -- I don't have a specific

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

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

Q. It does, and I appreciate the clarification.

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

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

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

A. $1,200.

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

A. Five years.

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

A. No.

Q. -- as expert work?

A. No.

Q. You just started doing it five years ago?

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

Q. Okay.

A. And before that, it was less.

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

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

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

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

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

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

Q. What percentage --

A. Of car accidents, right? Yeah.

Q. What percentage of your patients are

in active litigation?

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

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

A. No.

Q. -- in that 30 to 35 percent?

A. No.

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

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

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

A. I would say that was close, yes.

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

A. The remaining portions.

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

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

A. No.

MR. McELFISH: Objection to form.

Q. How many lawsuits are you involved in now?

MR. McELFISH: Objection to form.

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

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

A. You mean in medical malpractice?

Q. Any type of lawsuit.

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

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

Q. Yes.

A. Yes.

Q. How many?

MR. McELFISH: Objection to form.

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

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

MR. McELFISH: Objection to form.
A. Yes.
Q. What's the lawyer's name?
MR. McELFISH: Objection to form.
Q. Or the firm?
A. Josh Cohen.
Q. Josh Cohen.
Do you know the firm?
A. No. Josh Cohen.
Q. C-O-H-E-N?
A. Yes.
(Brief off-record discussion.)
(LATTUGA EXHIBIT 4, Complaint/Unitrin Auto & Home Insurance Company, marked for identification.)
MR. BARMEN: Doctor, I'm handing you what's been marked for identification as Exhibit 4. This is a complaint that was filed in Supreme Court of the State of New York by Unitrin Auto & Home Insurance Company.
Q. You were named as a defendant in this suit, right?
A. Yes.

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

A. Yes.

Q. Okay. What happened to this lawsuit?

MR. McELFISH: Objection to form.

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

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

Q. Well, there were several.

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

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

Q. Okay. Well, having seen this and

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

A. Not that I recall.

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

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

A. Yes, sir.

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

A. Yes.

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

A. Yes.

Q. -- of experts working in New York?

A. Yes.
Q. On the page just before that, the fifth paragraph down, you wrote: "I have treated Jose Bauta from 11/17/14 through the present time."
We know that's not true, correct?
MR. McELFISH: Objection to form.
A. Yes.
Q. Okay. Is there a reason you haven't produced a supplemental report correcting that error?
A. No, I think it was -- no one's asked me to, number one --
Q. Okay.
A. -- you know.
Q. Why would you have said you treated him, when you never did?
MR. McELFISH: Objection to the form.
A. Again, it's -- I think I explained it last time. It's a typographical error. I was preparing this narrative for my practice. So from time to time I can prepare a narrative for my practice and it would say -- it would just read that we -- you know, "we," we meaning that we/me, as writing the narrative for the practice, have

treated.

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

A. No.

MR. McELFISH: Objection to form.

Q. No? Okay.

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

MR. McELFISH: Objection to form, argumentative.

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

Q. No?

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

that's relevant to each visit.

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

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

A. Yes.

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

A. Yes.

Q. Who does?

A. Dr. Cordiale and Dr. Mikelis.

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

A. Yes.

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

MR. McELFISH: Objection to form.

A. The practice.

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

A. Yes.
Q. Are you the sole owner of the practice?
A. Yes.
Q. How many reports, on average, does Dr. Cordiale do a week?
MR. McELFISH: Objection to form.
A. I would say for the practice it's one to two a week. That's what I was referring to when I answered the question before.
Q. Okay. It's one to two a week total, on average?
A. On average, it's -- you know, we -- I don't keep a tally, but that's a rough -- more or less.
Q. Well, that was going to be my next question.
Is there some record of that, where I could find out -- determine definitively how many are done on average here?
A. No.
Q. Okay. Who does the billing for your practice?
A. I mean, I'm involved with the billing. I mean, I have employees that, you know, send

bills.

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

A. No.

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

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

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

A. I would say Danesha Cypres.

Q. Does she work out of this office?

A. No, the main office.

Q. Danesha Cypres, can you spell that?

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

Q. I'm sorry, which office again?

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

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

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

Q. Okay. In looking through your file

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

Where would those be?

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

Q. Can you get them to me today?

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

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

A. Okay.

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

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

MR. McELFISH: Well, I --

BY MR. BARMEN:

Q. So is that burdensome for you?

MR. McELFISH: Can I just --

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

MR. McELFISH: I'd like to finish.

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

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

MR. BARMEN: It's not nonsense.

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

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

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

BY MR. BARMEN:

Q. Can you do that?

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

Q. Okay, great. I appreciate it.

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

Q. Understood.

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

Q. Okay.

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

Q. Would an email suffice?

A. Sure, fine.

Q. What's your email address?

A. Slattuga@yahoo.

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

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

A. Yes.

Q. That bill was paid in full, correct?

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

MR. BARMEN: Would you pull that up,

please?

MR. SAAL: Franklin Hospital?

MR. BARMEN: Yeah.

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

A. No, no.

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

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

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

A. Guarantee?

Q. Yes.

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

MR. McELFISH: Objection to form.

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

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

Q. Okay. Well, I'm talking now

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

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

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

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

A. I mean --

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

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

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

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

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

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

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

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

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

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

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

MR. BARMEN: It matters to me.

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

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

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

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

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

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

MR. BARMEN: Right, but --

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

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

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

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

BY MR. BARMEN:

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

A. Yes, sir.

Q. Your practice provided treatment to Mr. Bauta?

A. Yes, sir.

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

A. Not specifically, no.

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

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

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

Q. Okay.

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

Q. Absolutely.

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

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

A. Sure, yes, sir.

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

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

A. Yes.

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

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

A. It's relatively contemporaneously with the accident.

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

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

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

A. Contemporaneous with the -- with the accident.

Q. So --

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

Q. What do you consider contemporaneous with the accident?

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

Q. Within months of the accident?
A. Right, but I don't -- I don't -- I apologize because I don't have those records in front of me to tell you exactly the first date that -- that he complained of back pain. I don't recall that today.
Q. Look, I don't expect you to recall. I don't recall what I had for dinner two days ago, so -- but you did review those records, right?
A. Yes, sir.
Q. Evangelical Hospital --
A. Everything that was listed, I'm sorry, on the narrative report.
Q. Have you reviewed any other expert reports in this case?
A. No, only what's listed in this narrative.
Q. Well, I didn't see any expert reports listed. Maybe I'm wrong.
A. This listing.
Q. Right.
A. Yeah, all of these documents I had in my possession at the time of the preparation of this narrative.
Q. All right. So you weren't provided

any of the defense expert reports to review?

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

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

A. No.

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

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

Q. Okay.

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

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

reviewed on that date.

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

A. It looks like they were all treating doctors.

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

A. I would say yes.

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

A. No, no.

Q. Why was it -- strike that.

You did review everything here, right?

A. Yes.

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

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

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

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

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

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

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

A. Yeah.

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

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

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

Q. Okay.
A. So I ask for all the records, and this was what was provided for me. I make my opinion based on what's provided for me. I mean, I --
Q. Sure. And you want all the records because, as an expert, you want as much of the information as you can have to review so you can make --
A. Yes.
Q. -- an objective opinion, right?
A. Yes, sir.
Q. Okay. I'm going to tell you, and Mr. McElfish can tell me if I'm wrong, the crash report from the Pennsylvania State Police is not the EMS run report. There were separate records from the ambulance company - multiple ambulance companies showed up on site, this was a big accident -- and there is an EMS run report relative to Mr. Bauta.
Is that something you would have liked to have seen?
MR. McELFISH: Objection to form, you're preaching, so --
MR. BARMEN: Well, I get preachy.
MR. McELFISH: -- let's ask questions.

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

(Simultaneous speaking.)

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

BY MR. BARMEN:

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

A. I don't recall.

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

A. No, I don't remember.

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

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

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

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

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

Q. That was going to be my next question.

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

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

Q. Of course.

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

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

A. Yes.

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

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

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

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

A. No.

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

MR. McELFISH: Objection to form.

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

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

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

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

A. No.

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

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

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

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

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

A. That's a different question.

Q. It is a different question.

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

Q. Please.

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

No, I don't see any, sir.

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

A. No.

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

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

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

herniation at L5-S1?

A. Yes, sir.

Q. Okay. And there was impingement?

A. Yes, sir.

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

A. Yes, sir.

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

A. Yes, sir.

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

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

MR. McELFISH: Objection to form.

A. -- today.

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

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

have those herniations.

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

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

MR. McELFISH: Objection to form.

A. Not necessarily.

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

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

Q. Even with nerve root impingement --

A. Yes.

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

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

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

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

MR. McELFISH: Objection to form.

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

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

Q. What is a retrolisthesis?

A. Retrolisthesis is a radiographic

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

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

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

A. It can be caused by both.

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

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

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

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

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

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

Q. Okay.

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

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

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

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

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

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

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

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

A. Of course it can.

MR. McELFISH: Objection to form.

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

MR. McELFISH: Objection to form.

A. Yes, it can.

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

A. Yes, I felt it was consistent.

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

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

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

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

MR. McELFISH: Objection to form.

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

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

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

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

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

A. No, not specifically.

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

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

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

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

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

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

basis for that opinion. This is my one shot.

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

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

A. I don't know where they are.

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

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

Q. Is it typical?

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

Q. Okay.

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

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

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

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

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

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

A. I mean -- yes, yes.

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

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

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

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

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

A. Correct.

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

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

Q. Hang on, let me get there.

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

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

Q. Okay.

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

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

A. Yes.
Q. It can't be --
A. No, it's --
Q. -- L5-S1?
A. No, it's definitely -- it's more like -- it's L4. And TA is -- TA is like L4 as well. EHL is L5.
Q. And what is EHL?
A. Extensor hallucis longus. It's the big toe.
Q. Okay.
A. So that's -- this is -- typically what happens is there's an overlap. So there are adjacent segments in the lumbar spine, there's an overlap of neurological dysfunction between two nerve roots. It's prudent to address both surgically.

I mean, you wouldn't want to just do one in the presence of seeing a herniated disc and ignore it, because you didn't think it might be -- and having the patient not have the response you wanted. So I think that was appropriate treatment, a two-level decompression and fusion.
Q. In this case, did Mr. Bauta have the result he wanted?

A. I mean --

MR. McELFISH: Objection to form.

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

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

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

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

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

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

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

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

So you do have the opinion that --

A. Yeah, I just said that though.

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

first, saying that was --

MR. McELFISH: Objection to form.

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

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

A. Yes.

Q. What can't he do?

MR. McELFISH: Objection to form.

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

So that -- does that answer your question?

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

Your office didn't provide any injections?

A. No, I didn't see any.

Q. Okay. Your office didn't provide any

type of conservative actual medical treatment relative to his neck?

MR. McELFISH: Objection to form.

Q. Other than examinations.

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

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

MR. McELFISH: Objection to form.

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

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

A. Sometimes, yes.

Q. And when is it warranted?

MR. McELFISH: Objection to form.

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

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

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

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

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

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

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

BY MR. BARMEN:

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

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

A. Yes.

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

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

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

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

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

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

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

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

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

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

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

A. I mean, it could be, yes.

Q. Okay. Can he do sedentary work?

A. Yes.

Q. Could he do light-duty work?

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

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

MR. BARMEN: I don't mind.

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

MR. McELFISH: Objection to form.

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

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

format that you've used here?

A. Yes.

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

A. No.

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

MR. McELFISH: Objection to form.

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

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

MR. McELFISH: Objection to form.

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

Q. I'm asking, is it typical?

MR. McELFISH: Objection to form.

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

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

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

A. That happens, yeah, that happens.

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

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

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

A. Yes.

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

A. Yes.

Q. -- in the accident?

A. Yes.
Q. Do you have any other opinions that you're prepared to give in this case?
A. I mean, other than what you see there? I mean, if you ask me some question that hasn't been proposed to me, I might come up with a -- with an opinion.
Q. I bet you would.
A. Yeah, but why wouldn't I? I mean, not everything is -- you know, is asked of me at the time, so...
Q. On page, I believe, 13 of your report, you state he may require additional procedures in the future?
A. Yes.
Q. Do you have an opinion as to the percentage chance of him needing additional procedures in the future?
A. That's always a very difficult question to answer. The best answer I can give you is it's more likely than not that he might require surgery with respect to his low back from a phenomenon known as adjacent segment decompensation, and it's more likely than not he'll need cervical surgery based on, you know,

his complaints at the time and the findings.

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

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

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

A. Yes.

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

A. Yes.

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

A. No.

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

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

A. Yes.

Q. Where did you get your numbers from?

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

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

A. No.

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

A. If I'm asked.

Q. If you're asked, okay.

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

A. Yes, sir.

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

MR. McELFISH: Objection to form.

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

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

MR. McELFISH: Law firm?

MR. BARMEN: Lawsuit. Thank you.

MR. McELFISH: Objection to form.

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

Q. Okay.

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

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

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

MR. BARMEN: Thank you.

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

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

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

MR. McELFISH: From New York Spine?

MR. BARMEN: Yes.

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

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

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

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

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

THE WITNESS: Absolutely.

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

MR. McELFISH: No questions.

(Brief off-record discussion.)

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

MR. McELFISH: Yes, a copy.

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

C E R T I F I C A T E

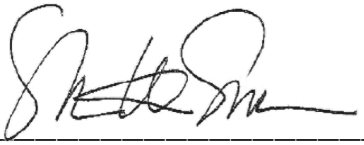
STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

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.



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MARIANNE WITKOWSKI-SMITH

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