

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS : CIVIL TERM : PART 73

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3 RUBY SARWAT,
4
5 PLAINTIFF,

6 -against- Index No.
7 14792/15
8 Trial

9 FIVE STAR CARTING, INC. And EDWIN FLORES,
10
11 DEFENDANTS.

-----X

12 Supreme Courthouse
13 360 Adams Street
14 Brooklyn, New York 11201
15 September 28, 2018

16 B E F O R E :

17 HONORABLE PETER SWEENEY,
18 J U S T I C E , and a Jury

19 A P P E A R A N C E S :

20 HILL ROSENBERG & THURSTON, LLC
21 Attorneys for the Plaintiff
22 26 Court Street - Suite 1602
23 Brooklyn, New York 11242
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* * *

FRANCESCA CIOFFI, CSR, RMR
Senior Court Reporter

Sarwat - Plaintiff - Redirect

1 THE COURT OFFICER: Jury entering.

2 (Whereupon, the jury entered the courtroom.)

3 THE COURT: Good morning, ladies and gentlemen. As
4 you know, when we left off yesterday, we were on the
5 plaintiff. I think we will finish with the plaintiff very
6 shortly and we have our second witness out in the hallway so
7 we're ready to proceed.

8 So, counsel, I believe we were up to you. So if
9 you have any questions, feel free.

10 MR. FEEHAN: Would you like me to wait until she
11 gets her water?

12 THE WITNESS: No, that's okay. When I came in I
13 need it.

14 THE COURT: All right.

15 THE WITNESS: Thank you, sir, for worry about me.
16 Thank you.

17 RECROSS-EXAMINATION

18 BY MR. FEEHAN:

19 Q Ms. Sarwat, good morning.

20 A Good morning, sir. How are you?

21 Q I'm all right.

22 A Good, sir.

23 Q Do you remember testifying during your testimony you
24 indicated --

25 A Sir, can you please, if you don't mind, speak little

Sarwat - Plaintiff - Redirect

1 bit? I can't.

2 Q Absolutely. I can be loud.

3 A Is thank you so much.

4 Q Do you remember yesterday counsel asked you some
5 questions about your relationship with your husband and perhaps
6 why you weren't speaking on the day of the accident?

7 A Sir, this is my personal matter, please. It's really
8 like a long story. I don't want to be discuss with in front of
9 anybody's.

10 Q And I'll be honest with you, I apologize for having to
11 ask.

12 A Sir, please. This is really my personal.

13 MR. ROSENBERG: Let him ask.

14 THE WITNESS: Okay.

15 A Okay, sir.

16 Q It's unfortunately part of the job and I have to ask
17 you some questions.

18 A Sir, go ahead.

19 Q I'll be as brief as I can.

20 How long have you been having problems with your
21 husband before this accident?

22 A Sir, when I marriage, I try my best to keep this
23 marriage.

24 Q Ms. Sarwat, I don't want to upset you.

25 A Please, let me finish. I try my best to keep this

Sarwat - Plaintiff - Redirect

1 marriage. Almost 22, 23, I try, I don't know how long I do. I
2 know the first when I came this country, what he done, what all
3 these things. I don't want to be sure take off my clothes in
4 front of everybody to show, please.

5 I have very tough time from him and we come from
6 Pakistan, we don't have it easy to do the divorce and all these
7 things. I go through lot of things because my family and
8 everyone is said it's okay, it's okay, it's okay. It's not
9 okay.

10 They telling me the culture. I said 1993, I am over
11 here. I adopt the culture over here. I am not in Pakistan. I
12 work tough, I run the house, I pay the mortgage, I do the
13 grocery, drop off the kid, everything. (Crying.)

14 THE COURT: All right.

15 Q Are you okay? You want to take a break?

16 A I tell you to don't start with me.

17 THE COURT: Ladies and gentlemen, we will take a
18 short recess, okay? Five minutes.

19 THE WITNESS: I ask you please don't start. I beg
20 you to don't start.

21 (Whereupon, a brief recess was taken, after which:)

22 THE COURT: Ms. Sarwat, would you like to get up
23 and go outside for a moment and collect yourself? Feel
24 free. You don't have to stay there. You can go to the
25 ladies room or go out in the hallway.

Sarwat - Plaintiff - Redirect

1 MR. ROSENBERG: Judge, while we're waiting, I asked
2 one question in response to Mr. Feehan's questioning about,
3 "How come you didn't tell your husband that you were in an
4 ambulance?"

5 THE COURT: Right, and you brought up the fact that
6 they were not getting along.

7 MR. ROSENBERG: So which is how we got that. Could
8 we end this line of questioning? What is the purpose of
9 this? To torture her?

10 THE COURT: Obviously not, counsel. Look, he's
11 entitled to inquire. I don't know how many more questions
12 you have in this area.

13 MR. FEEHAN: I didn't get an answer, first of all,
14 to my one question that I asked.

15 MR. ROSENBERG: What was the question?

16 THE COURT: Counselors, you want to go forward with
17 the doctor? We will put her on afterwards.

18 MR. ROSENBERG: I think she wants to get it over
19 with, Judge.

20 THE WITNESS: Sir, I'm sorry.

21 THE COURT: Look, if she can go forward shortly,
22 sure, but that's your problem, counsel; you have a doctor.

23 MR. ROSENBERG: I know.

24 THE COURT: It's 11:00.

25 MR. ROSENBERG: Ask her.

Sarwat - Plaintiff - Redirect

1 THE WITNESS: Sir, let's finish.

2 THE COURT: Okay. Are you sure you're going to be
3 able to go forward.

4 MR. ROSENBERG: Ms. Sarwat, just answer exactly.
5 He asked you a very easy question: How long have you had
6 problems with your husband? Give him a time frame of how
7 long and we will be done with this.

8 THE COURT: He didn't ask you the nature of the
9 problems or --

10 THE WITNESS: Sir, is memories me. Everything is
11 came in my --

12 THE COURT: I think you'll be a lot better off if
13 you just answer the question, okay, and don't go on and on
14 and on, all right? And you'll be off the stand much
15 quicker.

16 THE WITNESS: Okay. I'm sorry.

17 THE COURT: Don't apologize.

18 THE WITNESS: I'm sorry for everybody. I can't
19 control it.

20 MR. FEEHAN: It's fine. I will try to make it as
21 easy as possible; I know it's bad. If you just answer what
22 I ask you, it will be easier for you I hope.

23 THE WITNESS: Okay, I'm sorry.

24 (Whereupon, a brief recess was taken, after which:)

25 THE COURT OFFICER: All rise. Jury entering.

Sarwat - Plaintiff - Redirect

1 (Whereupon, the jury entered the courtroom.)

2 THE COURT: All right, counsel, you may proceed.

3 Ms. Sarwat, just again, just listen very carefully
4 to his questions. When you answer, just answer what he's
5 asking you; no more, okay?

6 THE WITNESS: Okay. Sure, sir.

7 THE COURT: Go ahead, counsel.

8 RECROSS-EXAMINATION (CONTINUED)

9 BY MR. FEEHAN:

10 Q Ms. Sarwat, would it be fair to say you have had
11 problems with your husband since the beginning of the marriage?

12 A Yes.

13 Q Are you still married?

14 A Yes.

15 Q Are you legally separated?

16 A I don't file the separation. I live separate.

17 Q You live in different locations currently, correct?

18 A Yes.

19 Q Was your husband ever physically abusive to you?

20 MR. ROSENBERG: Objection. Really?

21 THE COURT: Yes, I'm going to --

22 MR. FEEHAN: Physical condition is an issue.

23 A Sir, I don't have any -

24 MR. ROSENBERG: Don't say anything.

25 THE COURT: Come up, counsel.

Sarwat - Plaintiff - Redirect

1 (Whereupon, an off the record discussion was held
2 at the bench, after which:)

3 THE COURT: Ladies and gentlemen, I ask that you
4 step out in the hall for a quick second.

5 (Whereupon, the jury exits the courtroom.)

6 THE COURT: Go ahead, counsel.

7 MR. ROSENBERG: Before he does, let me state my
8 objection to the question.

9 This whole line of questioning, whether or not she
10 was physically assaulted by her husband --

11 THE COURT: Again, I guess the record already
12 reflects that the jury is not present. Go ahead.

13 MR. FEEHAN: To be clear, your Honor, you want me
14 to ask it in a general sense?

15 THE COURT: Ask her whatever you want.

16 EXAMINATION BY

17 MR. FEEHAN:

18 Q Ms. Sarwat, were you ever physically assaulted by
19 anyone that caused an injury to you?

20 MR. ROSENBERG: Objection.

21 A No.

22 THE COURT: Were you ever physically assaulted by
23 your husband? Yes or no? Can you answer the question?

24 THE WITNESS: No.

25 THE COURT: You can't answer the question or your

Sarwat - Plaintiff - Redirect

1 answer is no?

2 THE WITNESS: I don't want to be answer this
3 question.

4 THE COURT: You have to answer the question, ma'am.

5 MR. ROSENBERG: Answer the question.

6 THE WITNESS: Sir.

7 Q The answer is yes or no, ma'am.

8 A He slap me in the face.

9 MR. ROSENBERG: Okay. So good, bring the jury in
10 and let her say that. That's outrageous that he would ask
11 that.

12 THE COURT: Counsel, relax.

13 Is that it, ma'am? He slapped you in the face?

14 THE WITNESS: Yes.

15 THE COURT: He never threw you on the ground and
16 hurt your back or anything?

17 THE WITNESS: No.

18 THE COURT: That's on the record so now we don't
19 have to go into it, okay? You want to -- go ahead.

20 MR. FEEHAN: Can I ask one further question?

21 THE WITNESS: Sir, I want to ask why are we --

22 THE COURT: What's the question?

23 MR. FEEHAN: Did she fall as a result of it?

24 THE COURT: Fair enough.

25 Q Ma'am, when he slapped you, did you fall?

Sarwat - Plaintiff - Redirect

1 A No.

2 MR. FEEHAN: All right.

3 THE COURT: Do you have any other questions for
4 her, counsel?

5 MR. FEEHAN: I don't.

6 THE COURT: So do you have any recross?

7 MR. ROSENBERG: No, Judge.

8 THE COURT: So, bring the jury back in and you'll
9 just say I have no more questions and you'll say you have no
10 questions and we will hear from the doctor.

11 In the meantime, somebody can go out and get the
12 doctor.

13 MR. ROSENBERG: Judge, rather than have her walk in
14 front of the jury again, can we have her -- he'll say he has
15 no further questions and we're done?

16 MR. FEEHAN: I don't have to say it at all. I can
17 say it now if you like.

18 THE COURT: Well, no. All right. So you want her
19 to step down?

20 MR. ROSENBERG: Yes.

21 THE COURT: You can leave the stand. Nobody has
22 any more questions for you. You're done.

23 (Whereupon, the witness stepped down from the
24 stand.)

25 THE COURT: Why don't you get Dr. Merola?

Dr. Merola - Plaintiff - Direct

1 THE COURT OFFICER: All rise. Jury entering.

2 (Whereupon, the jury entered the courtroom.)

3 THE COURT: Ladies and gentlemen, both attorneys
4 had no further questions for the witness so we're up to our
5 next witness.

6 Please call your next witness.

7 MR. ROSENBERG: Plaintiff calls Dr. Merola.

8 A N D R E W M E R O L A, M D, called as a witness by and on
9 behalf of the Plaintiff, after having been first duly sworn,
10 was examined and testified as follows:

11 THE COURT OFFICER: In a loud, clear voice, state
12 your name and business address for the record.

13 THE WITNESS: Andrew Merola, M-E-R-O-L-A, 567 First
14 Street, Brooklyn, New York 11215.

15 THE COURT: You may inquire, counsel.

16 DIRECT EXAMINATION

17 BY MR. ROSENBERG:

18 Q Morning, Doctor.

19 A Morning.

20 Q Doctor, I'm calling you Doctor but tell the jury what
21 your occupation is.

22 A I'm an orthopedic reconstructive spinal surgeon.

23 Q And, Doctor, are you licensed in the State of New York
24 to practice medicine?

25 A Yes, I am.

Dr. Merola - Plaintiff - Direct

1 Q Any Board certifications?

2 A I am Board certified in orthopedic surgery.

3 Q And how long have you been Board certified?

4 A Since 1998.

5 Q Doctor, how long have you been a doctor?

6 A I graduated medical school in 1990. I did an
7 internship and a residency at SUNY Downstate Kings County
8 Hospital; that was five years. I did a year fellowship in
9 spinal reconstructive surgery after that. And I've been
10 practicing as an attending surgeon here in New York City since
11 1996.

12 Q Doctor, do you have affiliations or hospital
13 privileges?

14 A Yes, I do.

15 Q Tell the jury what hospitals.

16 A Mount Sinai Hospital and New York Hospital.

17 Q And, Doctor, approximately in any given year in the
18 past few years, approximately how many spinal surgeries do you
19 do a year?

20 A Several hundred per year.

21 Q And can you tell the jury generally what that -- what
22 types of spinal surgeries they are?

23 A So, they are surgeries that involve either
24 reconstructing the neck or the lower back areas. They're
25 surgeries that involve a whole host of problems, either

Dr. Merola - Plaintiff - Direct

1 fractures or infections or tumors and in some cases, it's birth
2 defects, those kind of things.

3 So, any kind of structural abnormality or problem
4 involving the neck or the back.

5 Q Doctor, you and I, have we ever met before?

6 A Yes.

7 Q In the past since 1996, how many times have our paths
8 crossed?

9 A I would probably say four or five times.

10 Q When is the last time that you and I have crossed
11 paths?

12 A I don't remember precisely but maybe last year.

13 Q Doctor, can you tell the jury did there come a time --

14 MR. ROSENBERG: By the way, Judge, I move that this
15 doctor be deemed an expert in spinal surgery.

16 MR. FEEHAN: No objection.

17 THE COURT: So, the Court will permit the doctor to
18 express his opinions in the field of orthopedic surgery.

19 MR. ROSENBERG: Thank you.

20 Q Doctor, did there come a time where you were referred a
21 patient by the name of Ruby Sarwat?

22 A Yes.

23 Q Can you tell the jury when that was?

24 A It was October 9th of 2015.

25 Q And do you have notes?

Dr. Merola - Plaintiff - Direct

1 A I do.

2 Q You can't read from them but you can look at them and
3 refresh your recollection if you need to recall.

4 Doctor, tell the jury who referred Ms. Sarwat to you.

5 A Her pain management physician, Dr. Leon Reyfman.

6 Q And when did Ms. Sarwat come under your care or come
7 for the first time to your office?

8 A October 9th, 2015.

9 Q And at that time, did you examine her?

10 A Yes, I did.

11 Q Tell the jury, first off, did she make complaints of
12 pain and if so, what they were and if you examined her and what
13 the examination entailed?

14 A Sure. Her major problem was pain in her back that was
15 radiating or traveling down into her legs and her feet. And
16 that was pain that was significant enough to interfere with her
17 normal day-to-day activities, particularly activities that
18 required her to bend at the waist or otherwise put pressure on
19 the lower back.

20 Q One question I forgot to ask you, Doctor, if you could
21 back up a second.

22 Are you being paid to take time out from your practice
23 to come to court?

24 A Yes, I am.

25 Q Do you come regularly as an expert to court, Doctor?

Dr. Merola - Plaintiff - Direct

1 A I have a regular practice so I only come to court when
2 I'm asked by my patients to come in.

3 Q Were you asked this time around?

4 A Yes, I was.

5 Q And how much are you being paid to come in?

6 A We will generate a bill based on \$650 an hour for time
7 away from the office.

8 Q In order to be here today, tell the jury what did you
9 do with your schedule today?

10 A So, I basically had to clear today's schedule to be
11 here.

12 Q Doctor, generally speaking, about how many patients do
13 you see in either a month, a year, any way you can quantify
14 that?

15 A Sure. So, I do several hundred surgeries per year;
16 barring any vacations, I'm generally working pretty much the
17 entire week. Mondays I have office hours. I have office hours
18 on Fridays. Tuesdays, Wednesdays and Thursdays I'm in the
19 operating room and generally on weekends, based on whoever is in
20 the hospital, we will be following those patients in the
21 hospital.

22 I generally treat somewhere in the neighborhood of
23 about 75 or so patients per week. Those are both patients --
24 inpatient surgeries and office visits in the hospital in the --
25 in my private office as well.

Dr. Merola - Plaintiff - Direct

1 Q Doctor, did you review records from -- for Ms. Sarwat?

2 A Yes.

3 Q Tell the jury what did you look at?

4 A Well, she had been referred by the pain physician and
5 she had been doing physical therapy. So I had an opportunity to
6 look at the pain management physician's notes of course and the
7 physical therapy notes that she was doing therapy at Dr. Coyne's
8 office.

9 She had come in basically because it was a surgical
10 consultation regarding potential surgery to the lower back as a
11 consequence of a failure of what we call conservative treatment.

12 Q Can you explain to the jury what conservative treatment
13 is?

14 A Conservative treatment is that kind of care that's
15 first started when patients have, for example, a traumatic
16 injury, your body has an opportunity to heal from trauma and
17 often times it takes some time to do that. So you start with a
18 course of physical therapy.

19 The physical therapy is not helpful if the physicians
20 notice that the condition is getting worse. The next portion of
21 conservative treatment would be for local pain management where
22 you would actually have the administration of certain special
23 medications into the area where the injury is in order to
24 decrease one of the consequences of an injury called
25 inflammation.

Dr. Merola - Plaintiff - Direct

1 Those medications are generally steroids and those
2 steroids have a way of completely blocking the chemical effects
3 of the inflammatory process from a traumatic, for example, disc
4 herniation. If the body has not been able to heal through those
5 nonsurgical procedures, then patients are oftentimes referred
6 for a surgical consultation.

7 So in general, conservative means nonsurgical but it
8 can also mean up to and including special types of injections
9 that are administered through the skin into the area of the
10 injury.

11 Q And, Doctor, you mention the word herniated disc. Can
12 you tell the jury generally what that means?

13 A Sure. So, if you think about your spinal column, your
14 backbone, it's not one side of bone, it's multiple bones that
15 are stacked up on top of each other and in between the bones,
16 there's a piece of cartilage that holds those bones together,
17 and that piece of cartilage is called the disc.

18 There's an inside portion of the disc which is very
19 jelly-like, so the disc is very squishy and there's an outside
20 portion of the disc that's made of these bands of very tough
21 fibers so it prevents the bones from moving around in an
22 abnormal way and also holds that jelly-like material inside.

23 Q Doctor, I'm going to show you if I can a diagram.

24 MR. ROSENBERG: Judge, can I approach to get the
25 tripod?

Dr. Merola - Plaintiff - Direct

1 THE COURT: Sure.

2 Q You can come off so you can point.

3 THE COURT: Before you show it to the jury, we
4 should have a little discussion about it, counsel.

5 MR. FEEHAN: You have a question?

6 MR. ROSENBERG: My question is can he come off and
7 show the jury?

8 THE COURT: Come up here.

9 (Whereupon, an off the record discussion was held
10 at the bench, after which:)

11 Q Doctor, let me show you a copy of what's here and ask
12 you does that or those diagrams, do those show the disc that you
13 just told us about?

14 A They're a description of the surgical procedure and
15 there's an illustration of discs within the illustration,
16 correct.

17 Q And do those discs accurately depict or show what you
18 were just talking about with respect to the disc spaces?

19 A Yes.

20 MR. ROSENBERG: Okay.

21 THE COURT: Do you have any issue, counsel? Any
22 voir dire?

23 MR. FEEHAN: I don't, but is he offering it?

24 THE COURT: You're just using it for demonstrative
25 purposes?

Dr. Merola - Plaintiff - Direct

1 MR. ROSENBERG: I'm offering it into evidence.

2 MR. FEEHAN: I just asked a question.

3 MR. ROSENBERG: I offer it into evidence.

4 THE COURT: Any objection?

5 MR. FEEHAN: No objection.

6 THE COURT: So we will mark the exhibit as
7 Plaintiff's Exhibit 6 and it will be received in evidence.

8 MR. ROSENBERG: With no objection? I didn't hear.

9 THE COURT: Yes, it's being received in evidence.

10 (Whereupon, the aforementioned document was marked
11 as Plaintiff's Exhibit 6 in evidence as of this date.)

12 THE COURT OFFICER: Exhibit 6 so marked.

13 Q Doctor, can you show the jury about the discs? If you
14 could just show the jury presurgery. I know we're going to get
15 to postsurgery but can you point to what you were discussing the
16 jury about the discs spaces?

17 A So, on the lower right-hand corner of this
18 illustration, you can see the bones of the lower back are
19 depicted as being stacked up on each other and each one of them
20 has a number and here you have the third lumbar bone, the
21 fourth, the fifth and then what's known as the sacrum, so
22 they're all stacked up on top of each other.

23 And in between each of the bones, you can see this
24 light blue area, that light blue area is that particular piece
25 of cartilage called the disc and it sits or is sandwiched

Dr. Merola - Plaintiff - Direct

1 directly in between the bones, once again, to hold those bones
2 together and prevent them from moving around in a bad way and to
3 absorb shock and motion in between the bones.

4 Q Doctor, on a normal person -- when I say "normal"
5 someone that does not have a herniated disc -- can you explain
6 to them how that compares to someone that does have a herniated
7 disc? What it looks like that's different?

8 A The disc is sandwiched in between the bones which means
9 that all of the disc material has to be within the borders of
10 those bones. And the reason that that disc material needs to be
11 within the borders of all those bones is directly adjacent to
12 the bones and the area where the disc is are the nerves that
13 travel down into your legs and your feet. So, those nerves are
14 traveling through your spinal canal before they get down into
15 where your legs and feet are.

16 So, if disc material is herniated or sticking into the
17 spinal canal, the consequence of that is that it would put
18 pressure on the nerves that then travel down into your legs and
19 your feet.

20 Q Okay. Have a seat for a moment.

21 A (Complying.)

22 Q Doctor, after Ms. Sarwat came to you, did you examine
23 her?

24 A Yes, I did.

25 Q What else did you do as part of you examination?

Dr. Merola - Plaintiff - Direct

1 A Well, of course a physical examination to test the body
2 parts that were told to me to be painful and causing a problem.
3 And then in order to correlate that physical examination with
4 what was going on on the inside, I also reviewed some nerve
5 testing that had been done as well as an MRI film that had been
6 done.

7 Q Okay. Not just a report but the film?

8 A The film itself, correct.

9 Q Doctor, can you tell the jury just generally speaking
10 about MRIs?

11 A So, an MRI is a way of taking an image of the inside
12 portion of your body using a very special type of magnet, and
13 that magnet is able to generate an image of the internal anatomy
14 of your body so that we can get basically a relatively decent
15 picture for what things look like on the inside.

16 Q And tell the jury in your experience as a
17 reconstructive spinal surgeon, do you rely on that, do you not?
18 Explain to them a little bit about that reliance or nonreliance.

19 A So, the MRI itself is important because it will help
20 you to confirm the diagnosis of the patient's condition. So in
21 other words, after you've spoken to the patient about what's
22 bothering them and you've done a physical exam, you are just
23 about 99 percent positive of what the problem is and that's the
24 diagnosis of their condition.

25 The MRI is there in order to confirm the diagnosis that

Dr. Merola - Plaintiff - Direct

1 you suspect based on the examination and the other thing that
2 the MRI does is it will tell you whether or not there might be
3 something else causing that particular problem.

4 For example, when you're dealing with a patient that
5 has a disc problem that you suspect the problem is from a disc
6 causing a nerve problem, the MRI will tell you if indeed is a
7 disc herniation or is it something else like an infection or
8 tumor or a fracture or something like that.

9 So, the MRI confirms your physical findings and the MRI
10 also makes sure that there isn't something else that could
11 possibly causing the problem.

12 Q Doctor, generally speaking, the gold standard if I may,
13 for lack of better word, do you rely a hundred percent on the
14 MRI? Does the radiologist MRI differ in opinions? How does
15 that work?

16 A One of the things about MRIs are is it's an image or a
17 picture or a photograph of what the inside portion of your body
18 looks like. So, any time you're looking at an image, that image
19 is subject to interpretation. There are adjectives that we use
20 to describe the image.

21 For example, if a radiologist reads a film, what that
22 means is the radiologist looks at the image and then gives you a
23 verbal description of what they see based on their
24 interpretation. So, I will look at the film itself so that I
25 know what I have seen based on what I also see on the patient

Dr. Merola - Plaintiff - Direct

1 during the physical exam. Now, I'm also able to take that
2 information and combine it with what I know things look like at
3 actual operation or surgery.

4 So, MRIs are helpful in once again confirming the
5 diagnosis that we make, in making sure that we don't have
6 another problem causing the condition but ultimately what's
7 actually happening inside the body is based on what the -- what
8 we would call surgical findings which is really what's happening
9 inside that patient that you would otherwise directly visualize
10 during a surgery.

11 Q Let me ask you this: Who would be in the best position
12 to see what's there to be seen? Would it be the doctor or
13 surgeon, the radiologist, both, or something else?

14 A The best person to be able to actually see what the
15 problem is would be the operative surgeon who's physically
16 touching, looking at, and removing that particular problem.

17 Q Okay. Doctor, in your practice since 1996 or earlier
18 than that, have you seen herniated discs during your operations?

19 A Yes.

20 Q About how many times?

21 A Thousands of times.

22 Q And, Doctor, can you tell the jury how does one sustain
23 or get a herniated disc?

24 A So, disc herniations can come from a variety of
25 different causes. Sometimes disc herniations can come just

Dr. Merola - Plaintiff - Direct

1 through the normal wear and tear and aging process. Sometimes
2 disc herniations can come from an excessive lifting issue.
3 Sometimes herniations can come from a sudden increase in
4 abdominal pressure, for example, a sneeze or a horrible coughing
5 or horrible vomiting can cause sudden increases in
6 intra-abdominal pressure which could pressurize a disc and
7 result in herniations, and herniations can also come from
8 traumatic causes.

9 Q Doctor, can you explain to the jury what type of force
10 is needed? I know you mentioned some examples but is there a
11 certain amount of force that's needed to herniate a disc? How
12 does all that work?

13 A So, everybody is different. Everybody's cartilage is a
14 little bit different. For example, the cartilage on the tip of
15 your nose, every one of us has a different nose and the tips of
16 all of our noses feel a bit different because it's the cartilage
17 in your nose that's making the tip of that nose.

18 So, there is no specific number that we can say this is
19 the number beyond which herniations will occur. It's
20 individualized based on the patient. What has to happen for the
21 herniation to occur is that the disc has to become at least
22 pressurized to the point where the fibers of that outer covering
23 tear to the point where that jelly-like stuff that's on the
24 inside can now make its way out.

25 So, there has to be some point at which those fibers

Dr. Merola - Plaintiff - Direct

1 fail and in so failing cause that jelly-like substance to leak
2 outward, and it's that leaking outward that's the herniation
3 itself.

4 Q Doctor, motor vehicle accidents, in your experience in
5 treating people with spinal injuries, have you ever seen someone
6 herniate a disc as a result of a motor vehicle accident and if
7 so, how often?

8 A Yes, I have seen motor vehicle accidents herniate discs
9 and it happens with relatively frequency to patients who are
10 involved in motor vehicle accidents.

11 Q Can you explain to them in a motor vehicle accident --
12 let me try it this way.

13 Doctor, I want you to assume that there's been
14 testimony by Ms. Sarwat that she was stopped at a traffic light
15 and felt two hits to the rear of her SUV Lincoln Navigator by a
16 garbage truck. I want you to assume that there was an -- there
17 was no significant property damage to the rear other than some
18 damage to the rear bumper of the vehicle.

19 With those assumptions, Doctor, do you have an opinion
20 whether or not someone could herniate a disc in such an accident
21 like that?

22 A Patients can herniate discs under those types of
23 accidental conditions, yes.

24 Q Doctor, can you explain to the jury the significance of
25 low impact rear-end collisions, high impact rear-end collisions,

Dr. Merola - Plaintiff - Direct

1 medium impact rear-end collisions? Can you tell them about the
2 force or forces that are required or not required and how people
3 herniate discs?

4 MR. FEEHAN: Objection.

5 THE COURT: Yeah, I'm going to at this time sustain
6 the objection.

7 MR. ROSENBERG: I'll rephrase it.

8 Q Doctor, can you discuss with the jury in your
9 experience -- let me back up a second.

10 Doctor, do you have any experience and have you ever
11 taken any classes in biomechanics or physics?

12 A Yes.

13 Q How many?

14 A Specific classes quite a few, plus part of orthopedic
15 surgery is biomechanics.

16 Q Doctor, can you tell the jury -- I want you to discuss
17 in a high impact case, do people necessarily herniate discs?

18 MR. FEEHAN: Objection.

19 THE COURT: Well, I'll let him answer that
20 question. Go ahead.

21 A People don't necessarily have to have a herniation
22 given the particular type of impact that occurs which means that
23 patients who have high impact type accidents don't necessarily
24 have to herniate, no.

25 Q Okay. Have you seen people herniate discs in high

Dr. Merola - Plaintiff - Direct

1 impact cases?

2 A Yes, I have.

3 Q Have you seen people herniate discs in low impact
4 cases?

5 A Yes, I have.

6 Q Have you seen people herniate disc in medium impact
7 cases?

8 A Yes, I have.

9 Q Generally speaking, is there a way of quantifying or
10 telling the jury that you need X speed or X amount of damage to
11 a car to herniate a disc?

12 MR. FEEHAN: Objection.

13 THE COURT: Now you have to lay a foundation if you
14 want to ask him that question.

15 MR. ROSENBERG: I'm sorry?

16 THE COURT: You're going to have to lay a
17 foundation with the doctor before I'm going to allow him to
18 answer that question.

19 Q Doctor, do you have any experience in your training in
20 on-the-job experience with respect to motor vehicle accidents?

21 A Yes.

22 Q Doctor, do you have an opinion as to what force is
23 necessary to herniate a disc?

24 MR. FEEHAN: Objection.

25 THE COURT: Sustained.

Dr. Merola - Plaintiff - Direct

1 Q Doctor, I want you to assume that Ms. Sarwat was
2 involved in a low to medium rear-end impact motor vehicle
3 accident.

4 MR. FEEHAN: Objection.

5 MR. ROSENBERG: I'm not done with the question yet.

6 THE COURT: Yes, it's in a hypothetical question.

7 You can answer. Go ahead, let him finish.

8 Q I want you to assume that Ms. Sarwat was involved in a
9 low to medium impact rear-end collision to the -- involving her
10 vehicle while she was stopped.

11 Doctor, with that assumption, do you have an opinion
12 whether or not Ms. Sarwat could herniate a disc as a result of
13 that?

14 MR. FEEHAN: Objection. Can I approach?

15 THE COURT: Come up.

16 (Whereupon, an off the record discussion was held
17 at the bench, after which:)

18 Q Doctor, have you ever treated patients involved in low
19 impact rear-end collisions to herniated discs?

20 A Yes.

21 Q Have you ever treated patients for medium impact
22 collisions from motor vehicle accidents?

23 A Yes.

24 Q Have you ever treated people with herniated discs
25 involving high impact rear-end collisions?

Dr. Merola - Plaintiff - Direct

1 A Yes.

2 Q Doctor, can you tell the jury did you elicit a history
3 from Ms. Sarwat when she came to visit you?

4 A Yes.

5 Q Can you tell the jury what was significant, if
6 anything, in the history that you obtained?

7 A The most significant thing in the history that I got
8 from the patient was that she began to develop the symptoms,
9 that is, the complaints and the problems with her lower back
10 including the pain radiating down into the legs and feet after
11 an accident which occurred in July of 2015. July 9th of 2015.

12 Q Did you find out what she did for a living?

13 A She was a driver.

14 Q And anything else that you got out of the history from
15 Ms. Sarwat when you initially saw her?

16 A That she had, as we said, tried conservative treatment
17 after the accident occurred. Was actively doing that treatment
18 including up to having had several of these specific injections
19 to the lower back called epidural steroid injections and that
20 she was specifically coming to see me because her pain
21 management physician was concerned that her condition had not
22 shown the type of improvement that he would otherwise have liked
23 to have seen.

24 Q Did you make recommendations after seeing her at that
25 time?

Dr. Merola - Plaintiff - Direct

1 A After examinations and reviewing all her treatments and
2 of course her diagnostic imaging studies, yes, I did make a
3 recommendation.

4 Q What recommendation did you make?

5 A The recommendation was to remove the herniation in the
6 lower part of her back that was compressing or putting pressure
7 on her nerves that were resulting in damage to the nerves.

8 By removing the disc herniation itself and by
9 stabilizing the lower back, the key term being stabilization, we
10 can prevent the condition from continuing to progressively get
11 worse.

12 Q Doctor, after that recommendation, did you see Ms.
13 Sarwat again?

14 A Yes.

15 Q When did you see her again?

16 A My next visit with the patient was actually when we had
17 her prepared and ready to have the surgery the day of the
18 operation where we once again reviewed her condition, how she
19 was feeling, her physical exam and then prepared her for the
20 actual surgery itself.

21 MR. ROSENBERG: Judge, I'm going to offer another
22 board into evidence.

23 THE COURT: Any objection?

24 MR. FEEHAN: No objection.

25 THE COURT: So, we will mark this board as

Dr. Merola - Plaintiff - Direct

1 Plaintiff's Exhibit 7 and it will be received in evidence
2 without objection.

3 (Whereupon, the aforementioned document was marked
4 as Plaintiff's Exhibit 7 in evidence as of this date.)

5 THE COURT OFFICER: Plaintiff's 7 in evidence so
6 marked.

7 Q Doctor, I'm going to show you a copy of what the jury
8 sees and ask you what does that show?

9 A This is a description of the reconstruction that is the
10 rebuilding of the lower back and the stabilization procedure
11 that's undertaken after the disc is removed.

12 Q Did you perform an operation on Ms. Sarwat?

13 A I did.

14 Q What date was that?

15 A December 16th of 2015.

16 Q Where was it is done?

17 A At New York Presbyterian Hospital in lower Manhattan.

18 Q Doctor, what part of her spine did you operate on?

19 A The least part of -- lowest part of the spine known as
20 the L-5, S-1 segment.

21 Q Can you tell the jury generally how many of these
22 operations to that part of the spine have you done before Ms.
23 Sarwat's surgery?

24 A In the 20 some odd years that I have been practicing
25 prior to that surgery, of course I'd done maybe a thousand or

1 more of those.

2 Q Doctor, can you tell the jury or describe for the
3 jury -- I know this is somewhat later in the operation -- can
4 you tell them earlier in the operation what you did?

5 A Sure.

6 Q Can you take them through it?

7 A Sure. So, this is an operation that involves the
8 lowest most part of your back and it's the portion of your lower
9 back that attaches to your pelvis where your hips and your legs
10 are. Every operation that you do involves being able to see the
11 area that you need to see in order to be able to do the surgery,
12 and that's known as an approach.

13 So, the patient undergoes a general anesthetic so that
14 they are put to sleep before the procedure. They're then
15 positioned on a special table that positions the lower portion
16 of their back in such a way that we can work on that area.
17 After they've been put to sleep and positioned and they've been
18 surgically prepared so that they are prepped in a sterile
19 fashion, you can then start what's known as the approach.

20 The approach involves making an incision in the lower
21 part of the back so you can move the muscles of the lower back
22 out of the way because there are large muscles in the lower part
23 of your back that are covering the bones of the lower back. So,
24 we need to move those muscles away so we can actually expose the
25 bones that are the subject of the procedure.

Dr. Merola - Plaintiff - Direct

1 Q Doctor, let me stop you for a second and ask you if you
2 could look.

3 Do any of those pictures on that board that I'm showing
4 you now which is a copy of Plaintiff's 6 in evidence, do any of
5 those show that part of the surgery?

6 A Yes.

7 Q Can you tell the jury which one?

8 A Sure. The upper left-hand portion of the illustration
9 demonstrates the area of the incision; it's in the lower part of
10 the back. The lower portion of the illustration demonstrates
11 the moving aside of the muscles that cover the muscles and the
12 bones of the lower back.

13 There's an image of the actual incision itself which is
14 a photograph of the lower back of the patient in the middle
15 portion of the illustration.

16 MR. ROSENBERG: I'm going to offer into evidence
17 another board.

18 THE COURT: We will mark this other board as
19 Plaintiff's Exhibit 8. Any objection, counsel?

20 MR. FEEHAN: No objection.

21 THE COURT: 8 will be received in evidence.

22 (Whereupon, the aforementioned document was marked
23 as Plaintiff's Exhibit 8 in evidence as of this date.)

24 Q Doctor, I'm going to show you another board, a copy of
25 what I'm showing the jury now as soon as I step out of the way.

Dr. Merola - Plaintiff - Direct

1 Do any of those depictions illustrations show what
2 happened next during the surgery?

3 A Yes.

4 Q Can you explain them?

5 A On the left-hand portion of the illustration is an
6 image that shows the spinal canal opened; in other words, the
7 roof where the covering of the canal has been removed. That's a
8 procedure known as a laminectomy.

9 Q Let me stop you for a second. Is that actually what
10 you see is what is illustrated?

11 A Yes.

12 Q Okay. Go ahead, I'm sorry.

13 A And you are actually directly looking at the nerves in
14 the lower part of the back that then travel down into the legs.
15 And the reason that you want to see those nerves is you need to
16 move those nerves out of the way in order to remove the
17 herniation because the herniation is directly impinging upon or
18 putting pressure upon these nerves and it's important to be able
19 to visualize everything very clearly so you don't damage those
20 nerves while you are moving them out of the way to remove that
21 herniation.

22 Q Doctor, let me interrupt you for a second.

23 The herniation just to go back for a second is where
24 this piece, that shock absorber or blue thing is pushed out?

25 A Correct, it's where that shock absorber light blue

Dr. Merola - Plaintiff - Direct

1 piece of material that we're looking at on the illustration is
2 now. The portion of that material is inside the spinal canal on
3 the actual nerve roots themselves.

4 Q So I think -- I don't think we covered this yet but
5 what did you see with your eyes when you lifted that cover off
6 her spinal canal? What is it that you visualized?

7 A What I visualized -- what was described in the
8 operative report was a large herniation, in other words, a large
9 piece of disc material that was actually compressing the nerves
10 themselves.

11 Q Doctor, if you could tell the jury in your experience,
12 you described it as large; what does that mean? Large versus
13 small versus medium? What's the significant, if any, of that?

14 A Sure. I mean, the significance of large is that there
15 was a quite a bit of pressure on the nerves themselves. In
16 fact, large herniations have a tendency to displace or push the
17 nerves out of the way because it's -- the herniation is taking
18 up room that the nerves would otherwise normally take up.

19 So in that sense, that description means that there was
20 a significant amount of disc material inside the canal.

21 Q What is the significance to Ms. Sarwat of that
22 herniation? In other words, what does it produce? Does it
23 produce -- what are the symptoms of that?

24 A So, the symptoms of that are pain in the back because
25 the disc is no longer working properly and also pain traveling

Dr. Merola - Plaintiff - Direct

1 down into the legs with neurological deficits to the legs and
2 those neurological deficits; that means that the nerves are not
3 working properly. These are the nerves that are responsible for
4 giving you the ability to walk and, in fact, her left leg was
5 weaker than her right leg and there was a lack of sensation and
6 reflexes.

7 So, that disc material compressing those nerves is
8 causing damage to those nerves which then causes those
9 neurological problems to occur. By removing that disc and by
10 stabilizing the condition, our goal is to stabilize, is to take
11 this area and prevent it from causing any more damage.

12 Q Doctor, tell the jury if someone does not take care of
13 that herniation, what would happen?

14 A So, in patients that have nerve damage in terms of
15 sensation loss, reflexes loss or weakness, in cases where
16 herniations are producing pressure, the longer that pressure is
17 there, the more damage occurs as time goes on and then
18 eventually, you can incur what's known as a drop foot or you
19 would be dragging that foot because the muscles that those
20 nerves are working are no longer getting the proper signal that
21 they need in order to maintain your normal ability to walk.

22 Q Now, I know you used the word surgery stabilizers that
23 have nerve involvement. Does it grow back, does it get better?
24 Does it get worse? Explain the significance of time with
25 stabilization.

Dr. Merola - Plaintiff - Direct

1 A So, nerve tissue -- so, surgeries that are done on
2 nerves are important in the sense that nerves are the type of
3 organ in your body that does not have a great potential to
4 recover. So, when nerve tissue is lost and/or damaged, that
5 material can't really grow back well.

6 If you break a bone, you can heal a fracture. If you
7 cut your skin, the skin can heal of course with a scar but it
8 can heal. If you have damage to a nerve or nerve tissue, that
9 nerve tissue and those nerves are unlikely to regrow or grow
10 back. There's also nothing from a surgical perspective that we
11 can do to repair those nerves because they're extremely small
12 structures that involve very sensitive chemical processes that
13 occur within the nerve that just don't always regenerate.

14 So, the consequence of having these types of
15 neurological problems and the reason for doing the stabilization
16 is to preserve whatever function you have so that you can
17 continue the ability to basically walk.

18 Q What, if any, impact does it have on pain?

19 A So, pain -- your nerves do several different things.
20 Number one, your nerve feels. That's how you know you're
21 wearing a pair of pants; you can feel the pants on your leg.

22 The nerve that goes into your leg will move a reflex.
23 If you've ever seen anybody tap on a knee, you know if you jerk
24 your knee, that's a reflex that's maintained by a nerve. The
25 ability to move your leg and your foot up and down and walk is

Dr. Merola - Plaintiff - Direct

1 the muscles that the nerve is working so that you can walk. The
2 other thing that the nerve does is it feels pain, like if you
3 get stung by a bee, you know you were stung because there's a
4 pain sensation from having been stung likewise if your burned or
5 whatever painful stimulus you may have.

6 On the inside of the spinal canal, the pain fibers in
7 the nerve are very sensitive and the herniation first affects
8 the pain fibers. It then later starts to affect the sensory
9 fibers, the muscle fibers and the reflex fibers. Now, when
10 those pain fibers are damaged, they're working, they're firing,
11 they're telling the brain there's pain in this nerve. What
12 happens is that there is an imprint that occurs within your
13 brain and your spinal canal and that's called a neurogenic
14 component of pain.

15 So, that neurogenic component of pain goes along with a
16 nerve root injury. So by taking the pressure off we hope that
17 we take some of that away by not having any more pressure on the
18 nerves but you can have a -- you can have residual nerve pain
19 from the compression and the injury.

20 Q Okay. Doctor, let me continue the operation. What is
21 next thing that you did?

22 A So once we have the herniation removed and the nerves
23 are now free from pressure, we basically need to rebuild or
24 reconstruct the lower back and that starts by inserting special
25 views into the bones so we can now hold those bones in place

Dr. Merola - Plaintiff - Direct

1 from preventing them from moving in an abnormal way. Because
2 the disc is no longer holding the bones and maintaining them in
3 a normal fashion, we don't want the bones to collapse and then
4 cause more damage to the nerves.

5 So, in order to prevent that from having screws, we
6 insert these special screws and you can see that there's on the
7 left side of the illustration a diagram of how the screws are
8 inserted from the back to the front and the upper --

9 Q Can I see which board you're looking at?

10 A Sure. (Complying.)

11 MR. ROSENBERG: Judge, I'm offering this into
12 evidence.

13 THE COURT: All right. So, we will mark this
14 exhibit as Plaintiff's Exhibit 9 and Plaintiff's Exhibit 9
15 will be received in evidence without objection.

16 (Whereupon, the aforementioned document was marked
17 as Plaintiff's Exhibit 9 in evidence as of this date.)

18 Q These are the screws that you're talking about?

19 A Correct. So, on the left side of this illustration is
20 an illustration of the screw placement into the L-5 and S-1
21 bones from front to back and the upper right-hand portion of the
22 illustration is kind of a cut away for what that looks like so
23 that you can get the idea for where those bones are holding on
24 to the -- what we call the vertebral bodies or the bones of the
25 lumbar spine.

Dr. Merola - Plaintiff - Direct

1 Q And how many screws or holes are put in?

2 A Four.

3 Q Okay. What did you do next?

4 A The next thing to do is to replace the area where the
5 disc has been removed by inserting a special device called a
6 cage. It's basically like a shim you would put under a piece of
7 furniture to maintain the furniture level; it's a shim and it's
8 placed in between the bones.

9 It's sized to take up the appropriate amount of space
10 between the bones so that they are normally spaced and it adds
11 into the area where those bones will now grow together to form
12 what we call a fusion or a stabilization through solid bone
13 growth between two previously separated bones.

14 Q Let me stop you for a second. Do you have a board that
15 illustrates what you're talking about that's up there?

16 A I do. It's this one.

17 Q Okay. The piece that's inserted that you're telling us
18 about, is that in the left side?

19 A That's on the left side of the illustration and it's a
20 charcoal gray on the illustration itself.

21 Q Okay. In this cage that you talked about, what is
22 that?

23 A That's the replacement or the shim that's inserted
24 between the bones.

25 Q What did you do next?

Dr. Merola - Plaintiff - Direct

1 A And then the next thing that's done is that the screws
2 themselves are locked together by affixing each screw with a rod
3 so now the rods are joining the screws in order to hold
4 everything together to give the entire lower back an opportunity
5 to heal together as one piece of bone.

6 Q Doctor, is that meant to be permanent or does that come
7 out or something else?

8 A That is permanent.

9 Q By the way, can you tell the jury what is the
10 longevity? How long does that last, that apparatus?

11 A So, this is a mechanical reconstruction of the human
12 body. It's not -- it's made up of titanium metal and carbon
13 fiber plastic. So these mechanical reconstructions alter the
14 way your body now functions because now you are -- you're part
15 mechanical, right? So, you're still part human but you're also
16 part mechanical.

17 So, when mechanical reconstructions are taken, these
18 kinds of things are monitored over time by surgeons who do these
19 surgeries to look for what we call an adjacent segment of
20 problem which means a wearing down of the actual fusion process
21 itself from the normal wear and tear that happens as you live
22 your life and go through the normal aging process.

23 So, the general longevity of these kind of procedures
24 is in the neighborhood of about seven to ten years.

25 Q Then what do you have to do?

Dr. Merola - Plaintiff - Direct

1 A At that time, based on the imaging studies, you can
2 image the areas that are worn down and then you need to
3 reconstruct those areas which essentially means mechanically
4 fusing the areas that are attached to your primary fusion.
5 That's a revision procedure.

6 Q I'm going to get back to this in a second but just
7 jumping ahead for a second, I want you to assume that Ms. Sarwat
8 has a life expectancy of 34.4 years.

9 Do you have an opinion if Ms. Sarwat should live to
10 34.4 years how many future revision surgeries she will need?

11 A These things, as I say, have a life expectancy of about
12 7 to 10 years. So you'll see in about 10 years at least or at
13 most that this will break down and require revision.

14 Now, at that point in time, as you get older, your
15 overall demands change and you have less demands and less stress
16 and indeed patients with these problems as they get older have a
17 tendency to have more difficulty with their activities of daily
18 living, so their stress also changes over time.

19 So, with a 34-year-old, if one anticipates life
20 expectancy, you're guaranteed at least one surgery and likely --
21 most likely to have also a second at some point in time.

22 Q What did you do next during the surgery?

23 A After the surgery is completed and you've stabilized
24 everything, you then have to reverse that process of exposure
25 which means you basically have to sew the muscles and the skin

Dr. Merola - Plaintiff - Direct

1 back together again in order to give everything that's on the
2 outside now a chance to heal.

3 Q Was Ms. Sarwat admitted to the hospital for a period of
4 time and if so how long?

5 A Yes, I believe this admission for Ms. Sarwat lasted
6 about five days or so.

7 Q When is the next time you saw Ms. Sarwat?

8 A So, I saw her for her postoperative visit in January.
9 So we did the surgery in December and I had seen her in January
10 of 2016.

11 Q When you saw her in January, did you make complaints of
12 pain and if so, what were they?

13 A So at that time, she did not have any new symptoms or
14 complaints, she was healing from the effects of the surgery.
15 She did have some redness around the area of her incision and I
16 had prescribed some medications for her.

17 Q When did you see her again?

18 A So, the next time I had seen her was that area of
19 redness that she had around the incision was responsible for a
20 condition we call a dehiscence. A dehiscence is an opening up
21 of the incision so the area that was previously sewn together
22 had now started to open and so I admitted her to the hospital in
23 order to revise the incision and to explore the fusion.

24 Q How long was she admitted that time?

25 A I believe she was in for about the same amount of time

Dr. Merola - Plaintiff - Direct

1 if not a bit more.

2 Q Did you operate on her again?

3 A I did, yes.

4 MR. ROSENBERG: Judge, I'm offering this board into
5 evidence.

6 THE COURT: Any objection, counsel?

7 MR. FEEHAN: No.

8 THE COURT: We will mark this board as Plaintiff's
9 Exhibit 10 and it will be received in evidence without
10 objection.

11 (Whereupon, the aforementioned document was marked
12 as Plaintiff's Exhibit 10 in evidence as of this date.)

13 Q Doctor, I'm going to give you a copy. Can you tell the
14 jury what Plaintiff's 10 in evidence shows?

15 A Sure. That's an illustration of the second surgery
16 which is the dehiscence of the incision and then a revision of
17 the incision with what's known as an exploration.

18 So basically, we remove the area of the closure that
19 was not healing and then we clean out the entire area to look
20 inside to make sure that there's nothing on the inside that's
21 causing a problem with the healing.

22 We place some special drains to absorb any excess fluid
23 that might be there and then we reclose the entire area using a
24 little bit of a different kind of a closure technique in order
25 to reinforce the closure to provide it with some extra healing

1 capacity, if you will.

2 Q What, if anything, does that closure performed in the
3 second surgery do with respect to a scar?

4 A Well, in the primary closure that's done, we generally
5 use a stitch that runs underneath the skin so there's no visual
6 external stitches so you have a tendency to decrease overall
7 scarring.

8 In cases such as this, we then use another type of
9 stitch that's placed outside the skin in order to give it extra
10 strength for the healing process, so you have a tendency to have
11 a greater scar formation with this type of incisional closure.

12 Q Permanent?

13 A Yes.

14 Q Doctor, can you tell the jury this dehiscence, is
15 that -- explain to them is that something that is a risk or is
16 this something common? Explain to them about that.

17 A So, a dehiscence or a breakdown of the surgical
18 incision is something that's one of the known complications --
19 potential complications of surgery and it happens in the
20 neighborhood of four to five percent of cases.

21 And essentially, it means the skin needs an extra type
22 of closure in order to stimulate the growth factors that are
23 involved in stitching that skin.

24 Q Doctor, when is the next time you saw her?

25 A So, this procedure was done on January 13th of 2016.

Dr. Merola - Plaintiff - Direct

1 We had a hospital stay after that. And then I saw her back in
2 the office on February 12th of 2016.

3 Q And on February 12th, did she make complaints of pain
4 or make complaints to you and if so, what were they?

5 A That was her standard postoperative visit; that was her
6 second postoperative visit. There were no new complaints at
7 that time and at that time, the incision itself was healing
8 well.

9 Q When is the next time you saw her?

10 A I then saw her in June of 2016.

11 Q What complaints, if any, did she make and what did you
12 do?

13 A The majority of her symptoms were what we call
14 mechanical axial pain; that's pain in the back area. It's pain
15 that is generated by activities like bending and lifting and
16 twisting. Surgery was helpful in terms of decreasing the
17 shooting component of the pain going down the legs but she did
18 have some residual symptoms, most of which were pain related in
19 the back.

20 Q Doctor, can you tell the jury when someone has this
21 type of surgery, the first surgery where the cage is put in and
22 the screws, Doctor, what effect does that have on someone's
23 range of motion and can you -- let me back up.

24 Tell the jury what is a range of motion.

25 A Range of motion is the ability to move a body part like

Dr. Merola - Plaintiff - Direct

1 your fingers. If you take your finger and you bring it all the
2 way down to here, that's the range of motion of all the joints
3 in the finger and you can measure that. The same holds true for
4 your spine.

5 So in your lower back, if you think about the range of
6 motion of your lower back, what kinds of positions can you put
7 it into? You can put it into the position where you bend
8 backwards or look towards the sky; that's called extension.
9 That's typically around 60 degrees of bending backwards.

10 You can bend forwards to put on your shoes and touch
11 your toes, and that's some -- typically in the area of somewhere
12 around 80 degrees or so. You can also bend side to side, both
13 the left side and the right side and in your lower back; that's
14 about 40 degrees to each side and of course you can also rotate.
15 So, you can see something coming from off your shoulder, you can
16 rotate your torso either to the right or to the left.

17 Rotation is generally 80 degrees because you should
18 just be about able to get your entire body off to one side to
19 see what's happening from the side should you have to do that.
20 So, those are the standard ranges of motion for your lower back
21 and those ranges of motion are based upon the ability of those
22 bones that are in your lower back to what we call articulate
23 with each other. So, there are joints that sit in between those
24 bones. And when you're moving in those positions, those joints
25 are also moving.

Dr. Merola - Plaintiff - Direct

1 Now, there are five bones that articulate together to
2 attach yourself to your pelvis. So, in a patient that has a
3 fusion, you have removed the section of the articulation, right?
4 The joint that occurs between your lumbar spine and your pelvis.
5 So, part of the stabilization process is you sacrifice some of
6 the range of motion because now you don't want that area to move
7 because if it moves, it continues to cause more damage.

8 So, the effect of a fusion because it is a
9 stabilization is to totally restrict the range of motion in the
10 lower portion of your lumbar spine.

11 Q What type of restriction in terms of degrees or any
12 other way you can describe it?

13 A I mean, I could tell you I have some range of
14 measurements that I made on the patient in actually July of this
15 year of the lower back.

16 Q Tell the jury what that was in.

17 A So, in measuring the patient's range of motion, her
18 lumbar extension which is backward bending was 10 degrees. Her
19 forward bending was up to 40. Her right bending was to 40. And
20 her left was to 40 as well. Rotations were a bit restricted.

21 In fact on the right side, it was only to 35 degrees.
22 And on the left side it was 40 degrees. So on the right side it
23 was a bit less than half of normal and on the left side it was
24 just half of normal.

25 Q Doctor, is that -- can you describe to them what the

Dr. Merola - Plaintiff - Direct

1 difference is between subjective and objective testing?

2 A So, subjective is based on what the patient tells you;
3 that's subjective. It's based on the patient's telling you
4 something.

5 Objective is based on something that the patient
6 doesn't have voluntary control over; for example, a reflex. If
7 you test a reflex, that reflex actually lives inside your spinal
8 cord. So, you don't really have voluntary control over what
9 happens with a reflex because it's something that's just
10 happening inside the cord itself.

11 Withdrawal responses -- for example, when you withdraw
12 from pain, you don't have to think about withdrawing from pain;
13 it's else an automatic response that your body does. It's
14 protective, right? You don't want to have to sit there and go,
15 "My hand is on fire; I need to move my hand." No, it
16 automatically happens, right?

17 Spasm in a muscle is reflective. In other words,
18 that's automatic it's not under your voluntary control. Spasm
19 happens because a muscle in your body wants to prevent a body
20 part from going into a position that causes pain. So, these
21 kinds of automatic responses that your body generates are what
22 we call objective physical findings. It's something that you
23 can feel on a patient and measure that are not based upon a
24 patient's actual voluntary control.

25 Q When you took Ms. Sarwat through her range of motion

Dr. Merola - Plaintiff - Direct

1 testing in July of this year, was there any component of that
2 that was objective?

3 A So, when you measure a range of motion, the way to
4 measure that range of motion so that you know exactly what the
5 patient is capable of doing or not doing is you have your hand
6 on their muscles.

7 So, you are basically ranging the patient; you're
8 taking them through what's known as a passive range of motion
9 because you're putting the patient into a range but you're also
10 feeling their muscles. You don't want to of course take them
11 beyond the limit where there is spasm because that's going to
12 hurt them, so you really need to know where that spasm is
13 happening. And when you feel spasm, you know this is as far as
14 the body can possibly do because I feel a spastic muscle.

15 What does a spastic muscle feel like? It feels like a
16 Charlie horse; it's like a rock-hard portion of your muscle. If
17 you're experiencing it, it hurts in the area where the muscle is
18 in spasm. So, when you measure the range, that's what you're
19 doing; you're feeling the muscles and taking the patient through
20 the range of motion based on where they experience that, what we
21 call palpable spasm.

22 Q Where you feel it?

23 A Correct.

24 Q Doctor, let me jump ahead for a second and ask you with
25 respect to the future, will Ms. Sarwat ever get any better on

Dr. Merola - Plaintiff - Direct

1 her range of motion than what you saw on this July?

2 A No, so this is 2018. We did surgery back in '16,
3 that's several years ago, and we fused the lower part of her
4 spine purposefully so these ranges of motion are permanent.

5 Q What will the aging process do, if anything, with
6 respect to the range of motion?

7 A The normal aging process is going to have, as we said,
8 a wear and tear effect. It happens as time goes on so the
9 functionality of her range of motion will, as a consequence of
10 that aging process, gradually decrease as time goes on.

11 Q Doctor, is that the last time you saw her was in July
12 of this year?

13 A Yes.

14 Q When did you see her before that?

15 A We were in communications with each other so we could
16 monitor her treatment with Dr. Reyfman. I had several
17 conversations with her and my last in-office visit with her was
18 in 2016.

19 Q When in 2016?

20 A June.

21 Q And your conversations with Dr. Reyfman, when did they
22 take place?

23 A So, one of the things that I had done for Ms. Sarwat
24 was as part of that monitoring process, I got some postoperative
25 imaging studies on her.

Dr. Merola - Plaintiff - Direct

1 MR. FEEHAN: Objection, your Honor. Can we
2 approach?

3 (Whereupon, an off the record discussion was held
4 at the bench, after which:)

5 Q Doctor, let me ask you I think on Plaintiff's 6 in
6 evidence --

7 A I can see it.

8 Q -- the top right?

9 A Yes.

10 Q Was that something that you ordered?

11 A Yes.

12 Q When was that taken?

13 A That X-ray, that was -- looks like was taken 2015.

14 Q Okay. And would that be what it would look like today?

15 A No, it would look different today.

16 Q How would it be different?

17 A You'd start to see some of these mechanical changes
18 occur at the joints above the area of where the X-ray is.

19 Q Okay. What was the purpose of taking that
20 postoperative X-ray?

21 A You want to get a baseline image for what things look
22 like so you can follow it over the course of time.

23 Q And, Doctor, can you explain to the jury after having
24 done the first surgery and visualizing what was there to be
25 seen, someone with a large herniation such as what Ms. Sarwat

Dr. Merola - Plaintiff - Direct

1 had, explain to the jury whether or not this condition of a
2 herniated disc would be something that someone could actually
3 walk around with for any period of time.

4 A So, this kind of a nerve compression causing sensory
5 problems and weakness to the legs, the operation was done so
6 that you could walk because had it not been done, if this were
7 long standing, you would have lost that capacity to walk.

8 So basically, someone wouldn't really be able to be up
9 and walking around and functioning in any kind of a normal sense
10 with that kind of pressure on their nerves.

11 Q Can you explain to the jury -- do you have an opinion
12 one way or another whether or not Ms. Sarwat's herniated disc at
13 L-5, S-1 was traumatic in nature?

14 A I do.

15 Q If so, can you explain to the jury how you arrive at
16 that opinion?

17 A Sure. So, two things. In number 1: The surgical
18 findings demonstrated that the disc itself was quite large and
19 easily removable. Discs that are longstanding, in other words,
20 had been sitting there for a long period of time don't really
21 come out that easy and you need to do some surgical tricks to
22 get them out which sometimes involves chiseling things away and
23 drilling things and doing other stuff which was not necessary in
24 this case; that's number one.

25 Number 2: Discs that produce, as I indicated before,

Dr. Merola - Plaintiff - Direct

1 the kinds of physical problems that the patient was having can't
2 be longstanding because otherwise, she wouldn't have been able
3 to walk around with that kind of a herniation.

4 Q Doctor, I want you to assume that before July 9th, 2015
5 that Ms. Sarwat was a limo driver that drove 50, 60 hours a
6 week; I want you to assume that.

7 Would someone be able to do that with that type of a
8 herniation that you visualized?

9 A No.

10 Q Doctor, did you know that Ms. Sarwat was a limo driver?

11 A Yes.

12 Q And, Doctor, do you have an opinion based upon the fact
13 that Ms. Sarwat -- I want you to assume that Ms. Sarwat had no
14 prior complaint of lower back pains ever. I want you to assume
15 that Ms. Sarwat was driving 50, 60 hours a week again before
16 this accident happened.

17 With that assumption, do you have an opinion whether or
18 not Ms. Sarwat would be able to drive a limo had she had this
19 injury before July 9, 2015?

20 A I do.

21 Q What's that opinion and what do you base it on?

22 A My opinion is that she would not have been able to do
23 that type of work. I base it on my 20 plus some odd years of
24 experience, my personal treatment of the patient, my review of
25 the records and of course, the operative findings of the disc

Dr. Merola - Plaintiff - Direct

1 herniation that I was able to look at.

2 Q Doctor, when you removed the disc, what significance
3 did that have in terms of your observations whether or not this
4 was traumatic in nature or long-standing or something else?

5 A As I said before, it was an easily removable large
6 herniation producing significant nerve root compression that
7 went along with the history that she gave me of the accident
8 occurring in July of 2015.

9 Q So, with a reasonable degree of medical certainty, I
10 think you've answered it but let me make sure that we have this.

11 Do you have an opinion as to whether or not Ms. Sarwat
12 sustained a herniated disc at the L-5, S-1 with impingement on a
13 nerve as a result of the July 9, 2015 motor vehicle accident?

14 A Yes.

15 Q And what is your opinion?

16 A My opinion is that she sustained a disc herniation at
17 L-5, S-1 with significant impingement to the L-5, S-1 nerve
18 roots.

19 Q Do you have a reasonable degree of medical certainty --
20 Doctor, what is the future of -- I know you talked a little bit
21 about Ms. Sarwat needing revision surgeries.

22 What does the future hold with a reasonable degree of
23 medical certainty for Ms. Sarwat in terms of her daily
24 activities?

25 A So, daily activities are one of the kinds of things

Dr. Merola - Plaintiff - Direct

1 that as you would anticipate after having had a reconstruction
2 and fusion with some residual neurological loss. Those
3 activities of daily living have a tendency to progressively get
4 worse as the normal aging process occurs over time.

5 So, that's something of course that would need to be
6 addressed with the patient as she ages and gets older.

7 Q Do you have an opinion whether or not Ms. Sarwat will
8 need assistance, with a reasonable degree of medical certainty,
9 in the future?

10 A Yes.

11 Q And tell the jury what that opinion is and what do you
12 base it on?

13 A So, based on my experience and treating patients that
14 have had these conditions and of course even seeing other
15 patients that are older who have had these conditions who come
16 into the office for care and treatment and opinions, we know
17 that these patients over the course of time do develop a
18 requirement for assistance.

19 It's one of those things that it's important to be able
20 to decrease stress and strain on their back; it helps maintain
21 their independence and it's part of their future treatment
22 process.

23 Q Doctor, I know that you're not a fortune teller but
24 with a reasonable degree of medical certainty, do you have an
25 age at which you predict Ms. -- again, with a reasonable degree

Dr. Merola - Plaintiff - Direct

1 of medical certainty -- that Ms. Sarwat will need some home care
2 or assistance?

3 A I think a reasonable age to predict these things as
4 occurring is in middle to late 60s.

5 Q And tell the jury in your experience doing this for as
6 long as you have been and seeing the older patients now, what
7 would be the progression?

8 A You progressively see deterioration in function as time
9 goes on in older patients.

10 Q In your specialty, are you familiar with the costs that
11 are involved with respect to spinal surgeries?

12 A Yes.

13 Q For the future medical care as it relates to your
14 specialty, can you quantify what the cost would be for a spinal
15 revisions?

16 A Spinal revision, because it's a redo procedure, it
17 involves a longer hospital stay and it also involves different
18 kinds of implants and bigger post operative team, you're looking
19 at \$125,000 cost for revising these procedures.

20 Q Is that the physician cost, hospital cost, total cost?

21 A That's total cost.

22 Q And this would be times two?

23 A Based on what we previously said and know about a
24 patient who's got this 34 year life span, God willing, yes.

25 Q Doctor, what would be the cost associated with other

Dr. Merola - Plaintiff - Direct

1 stuff, other medical stuff that would go along with spinal
2 revision such as --

3 MR. FEEHAN: Objection to form.

4 THE COURT: All right. Other medical stuff that
5 goes along with it.

6 Q They don't like the word stuff.

7 THE COURT: You can use the word "stuff" counsel.
8 Not that eloquent, but we will let it go.

9 Q What other medical costs would be entailed other than
10 the spinal revisions such as would that be costs associated?
11 Would you recommend physical therapy? Would you recommend other
12 things?

13 A Patient of course would have therapy and continued pain
14 management afterwards, yes.

15 Q I know we're having another doctor come in this
16 afternoon but in your experience for Ms. Sarwat, do you have an
17 opinion whether or not she'll need pain management for the rest
18 of her life or not?

19 A I do.

20 Q Tell the jury what that opinion is.

21 A She would involve what we call chronic or long term
22 pain management.

23 Q I didn't hear that; the door was closing.

24 A I said she would require chronic or long term pain
25 management.

Dr. Merola - Plaintiff - Direct

1 JUROR NUMBER 1: That would be for the rest of her
2 life, correct?

3 THE WITNESS: Yes.

4 Q Doctor, in terms of medications, again with a
5 reasonable degree of medical certainty, would she be required to
6 take medications for the rest of her life, prescription
7 medication?

8 A That would be under the auspices of the pain management
9 physician, yes.

10 Q Doctor, did you place like -- in July when you last saw
11 Ms. Sarwat, did you ever place any restrictions on what she
12 could do or can't do?

13 A So, my counseling and advice to the patient is that she
14 could perform those activities that she felt comfortable doing.
15 She should avoid excessive repetitive motion to the back and of
16 course try to avoid activities that required bending, lifting,
17 and twisting.

18 But otherwise, she was allowed to perform activities on
19 an as tolerated basis which means let your body be your guide;
20 it has a very good way of telling you what your tolerances are.
21 So if you can do something and tolerate doing it to within
22 reasonable comfort, it would be okay.

23 Q Doctor, it may be repetitive but I'm going to go there
24 for a couple of more questions. With a reasonable degree of
25 medical certainty, do you have an opinion if Ms. Sarwat, as a

Dr. Merola - Plaintiff - Direct

1 result of this motor vehicle accident, permanently lost the use
2 of a body organ, member function, or system?

3 A Yes.

4 Q What is your opinion and what do you base it on?

5 A My opinion is based on my experience, my treatment of
6 the patient, my review of the records and diagnostic studies
7 that she has lost functions of the musculoskeletal system, lower
8 spine, and neurological system L-5, S-1 nerve roots.

9 Q Permanently?

10 A Yes.

11 Q With a reasonable degree of medical certainty, do you
12 have an opinion whether or not as a result of this motor vehicle
13 accident that Ms. Sarwat was involved in that she sustained a
14 significant limitation of a use of a body function or system and
15 if so, what is your opinion; what do you base it on?

16 A Yes, I do, and I base that opinion of course on my
17 experience and my treatment of the patient, my review of the
18 records, and this is with respect to her musculoskeletal system
19 and neurological L-5, S-1 nerve root.

20 Q The word "Significant", Doctor, tell the jury what do
21 you mean by that; what is significant?

22 A It's a loss of sensation reflexes and weakened and loss
23 of motion to the lumbar spine, and this is significant because
24 it's outside the range of what's anticipated to be normal for
25 age.

Dr. Merola - Plaintiff - Direct

1 Q How far outside is Ms. Sarwat?

2 A Significant. Significantly outside the normal range.

3 Q Doctor, with a reasonable degree of medical certainty,
4 do you have an opinion whether or not as a result of Ms.

5 Sarwat's motor vehicle accident, whether or not she sustained a
6 permanent consequential limitation of use of a body organ or
7 member and if so, what is your opinion; what do you base it on?

8 A Yes, I have an opinion, of course, that's based on my
9 experience and my treatment of the patient as I've indicated
10 beforehand, and this is with respect to her musculoskeletal
11 system and her neurological system as well.

12 Q With a reasonable degree of medical certainty, Ms.
13 Sarwat's motor vehicle accident, do you have an opinion whether
14 or not Ms. Sarwat will have a scar to the back of her -- to the
15 back where you operated on her twice?

16 A Yes.

17 Q And what is that opinion and what do you base it on?

18 A My opinion is she has a permanent scar of her lower
19 back and that's based on the actual fact she has a scar on her
20 lower back.

21 Q How big is it?

22 A I have not measured the incision itself but I can tell
23 you that based on of course my operative report and my procedure
24 itself, this is about at least four and a half to five inches
25 worth of midline lower back skin incision.

Dr. Merola - Plaintiff - Direct

1 Q And would it be fair to say that what she has now, the
2 look of it now, will it get better or worse over time or stay
3 the same?

4 A It should stay the same over the course of time.

5 Q Doctor, do you have an opinion, with a reasonable
6 degree of medical certainty, as a result of Ms. Sarwat's motor
7 vehicle accident, that she sustained a medically determined
8 injury that prevented her from performing her usual customary
9 daily activities for 90 out of 180 days immediately after that
10 accident?

11 A Yes.

12 Q Tell the jury.

13 A She sustained an inability to perform her work and
14 duties after the accident.

15 Q For how long?

16 A I don't remember the exact amount of time but it was
17 significant and it was one of the reasons that her pain
18 management physician sent her to me because she was unable to
19 work.

20 Q Would you be upset if I told you I don't have any more
21 questions?

22 A Not at all.

23 THE COURT: All right; thank you, counsel.

24 We will take a short break before we hear
25 cross-examination.

Dr. Merola - Plaintiff - Cross

1 (Whereupon, the jury exits the courtroom.)

2 (Whereupon, a brief recess was taken, after which:)

3 THE COURT OFFICER: All rise. Jury entering.

4 (Whereupon, the jury entered the courtroom.)

5 THE COURT: Mr. Feehan, whenever you're ready.

6 MR. FEEHAN: Thank you, your Honor.

7 CROSS-EXAMINATION

8 BY MR. FEEHAN:

9 Q Good afternoon, Dr. Merola.

10 A Good afternoon.

11 Q Let me introduce myself to you. My name is Jim Feehan;
12 I represent the defendants. And unless I'm mistaken, I never
13 met you before, correct?

14 A Yes.

15 Q You testified this morning about your fee for appearing
16 here today and you indicated it's based on \$650 an hour, is that
17 right?

18 A Yes.

19 Q Have you already sent a bill for your appearance?

20 A No.

21 Q How many hours do you anticipate billing him for?

22 A I guess it depends on how long I'm here for today;
23 hopefully not that many hours.

24 Q I would hope so, too.

25 You indicated that the first time that you saw Ms.

1 Sarwat you conducted a physical examination?

2 A Yes.

3 Q In addition to reviewing some records and the MRI
4 films?

5 A Yes.

6 Q How long does it take you to do a physical examination
7 in those circumstances?

8 A It depends. I mean, it's hard to give you an exact
9 number because sometimes exams are easier to do than others. I
10 mean, this was a decently comprehensive examination involving
11 the neck and back and then I had to review the diagnostic
12 studies and then speak with the patient, so I don't know. I
13 wouldn't want to guess a time; I don't really base it on time.

14 Q I guess my question really goes to the actual exam
15 itself. If you're doing whatever it is you do in the exam as
16 opposed to talking to her about your findings and those kind of
17 things, how long does the exam take?

18 A It depends. I mean, a reflex can take a minute or so
19 to elicit a response and you're eliciting multiple reflexes,
20 you're testing muscles, you're examining gait, you look at range
21 of motion; it adds up.

22 Q Do you remember how long hers took?

23 A No.

24 Q When you first saw Ms. Sarwat -- just to backtrack for
25 a second, you brought your file today, Doctor?

Dr. Merola - Plaintiff - Cross

1 A Yes.

2 Q Did you receive a subpoena for your records from my
3 office.

4 A I don't know.

5 Q Somebody else in your office take care of those
6 matters?

7 A Yes.

8 Q I have here some records that were received pursuant to
9 a subpoena.

10 MR. FEEHAN: And I'm going to move those into
11 evidence, your Honor.

12 THE COURT: Show it to counsel.

13 MR. FEEHAN: (Complying.)

14 MR. ROSENBERG: Okay.

15 THE COURT: So, the records will be marked as
16 Defendant's Exhibit B and will be received in evidence
17 without objection.

18 (Whereupon, the aforementioned document was marked
19 as Defendant's Exhibit B in evidence as of this date.)

20 Q Doctor, just so you're aware, what the subpoenaed
21 records include are your office visit notes, the operative
22 reports from the two surgeries, and I believe just two telephone
23 conversation notes, okay?

24 A Yes.

25 Q And the MRI report as well, all right?

Dr. Merola - Plaintiff - Cross

1 Now, the file that you have, do you have anything
2 further in that file?

3 A So, I have everything that you've listed inclusive of
4 the last follow-up that was in July of 2018.

5 Q That too?

6 A I have two MRI reports because I have the one that was
7 pre-op and I have the post-op.

8 Q Okay.

9 A And EMG. Did we say EMG?

10 Q That is not here.

11 A I have that as well.

12 Q Those are not in evidence. And they were not provided
13 pursuant to the subpoena.

14 Relative to your first witness with Ms. Sarwat on
15 October 9 of 2005 -- please feel free to refer to your notes --
16 did you take a history from her at that time?

17 A Yes.

18 Q Did she tell you during the course of taking that
19 history that she had been involved in a prior motor vehicle
20 accident?

21 A No.

22 Q Is that something you typically want to know?

23 A If there's a significant course of treatment they're
24 after, yes.

25 Q Did she provide you with copies of medical records from

Dr. Merola - Plaintiff - Cross

1 that prior automobile accident?

2 A No, I haven't seen any records regarding any prior
3 accident at all, no.

4 Q Assume for the purpose of my question we had testimony
5 yesterday that she had treatment following an earlier automobile
6 accident for a course of month and a half, two months. Would
7 you want to have looked at those records?

8 MR. ROSENBERG: Objection, that's not what she
9 said.

10 THE COURT: I don't remember what she said so you
11 can ask it in the hypothetical way. I assume that said
12 that.

13 Q Assume that she said she had treatment for a period of
14 months; would you wanted to have looked at those records?

15 A If she had conservative treatment for a period of
16 months and then was back to working, it would be irrelevant to
17 really look at those records. No, they wouldn't make a
18 difference.

19 Q Wouldn't make a difference to you?

20 A Correct.

21 Q Okay. But nevertheless, she never provided you any
22 records?

23 MR. ROSENBERG: Objection. Asked and answered.

24 THE COURT: Fair enough.

25 Q So, fair to say, Doctor, you don't know anything about

Dr. Merola - Plaintiff - Cross

1 that prior automobile accident?

2 MR. ROSENBERG: From 2002?

3 THE COURT: You can answer the question.

4 You don't have any idea of what, if any, medical
5 treatment she had following that accident?

6 THE WITNESS: That's correct.

7 THE COURT: Okay.

8 Q Doctor, you indicated earlier during your testimony
9 that something as simple as coughing could cause a herniated
10 disc, correct?

11 A Yes.

12 Q Could you herniate a disc sitting in a chair sitting
13 down?

14 A You can herniate if you have an increase in your
15 abdominal pressure. It overloads the annulus, yes.

16 Q Are there other factors that can cause low back
17 problems?

18 A Low back problems in general?

19 Q Yes.

20 A There are multiple factors that can lead to low back
21 problems.

22 Q Would obesity be one of those factors?

23 A Obesity is kind of an interesting thing because there
24 has really never been any clear clinical correlation to obesity
25 and spinal disorders because patients' bodies have a tendency to

Dr. Merola - Plaintiff - Cross

1 accommodate whatever their particular body habits happens to be.

2 Q How about a sedentary life-style?

3 A Sedentary life-styles can lead to deconditioning but in
4 and of themselves are not known to produce herniations.

5 Q Doctor, you gave an opinion that the accident of July
6 the 9th of 2015 caused the disc herniation at plaintiff's L-5,
7 S-1 vertebrae, correct?

8 A Yes.

9 Q Does now knowing about that earlier motor vehicle
10 accident change that opinion in any way?

11 A No.

12 Q But you don't know anything about that accident,
13 correct?

14 MR. ROSENBERG: Objection.

15 THE COURT: No, overruled. You can answer. You
16 can answer yes or no.

17 A Based on everything that I discussed, the herniation
18 that I removed, the appearance of that herniation, the ease of
19 which that herniation was removed and the neurological deficits
20 the patient had, I would tell you that any prior issues, if
21 there were at all any prior issues to her back, had no relevance
22 on this particular injury.

23 Q Would you agree with me there could have been a prior
24 issue with respect to her lower back that was exacerbated by the
25 accident of July 9th and caused that herniation?

1 A There was nothing that I saw that led me to see there
2 were degenerate issues that were activated or exacerbated by
3 this particular accident.

4 Q Doctor, on each of your visits with Ms. Sarwat, you
5 create office notes, correct?

6 A Yes.

7 Q Is it fair to say that it's only that last note that
8 you had on July 23rd where you put in writing that she needs the
9 revision surgeries?

10 A That's where we indicated in writing that revision is
11 one of those things that's the rationale for continuing
12 treatment, yes.

13 Q In your experience in the initial part of your
14 treatment of her, did you know that in those types of
15 procedures, revisions would be necessary?

16 A That's part of the informed consent process, of course,
17 when we discuss and it's in her operative report where I say
18 informed consent. We look at the realistic goals and
19 expectations of surgery and then potential surgical
20 complications, one of them being the fact that mechanical
21 reconstructions require these revision surgeries in the future.
22 Yes, of course.

23 Q It says you discuss the possibilities. It doesn't say
24 specifically that a revision would be necessary, does it, in any
25 of those earlier records?

Dr. Merola - Plaintiff - Cross

1 A You never say never and you never say always. But
2 certainly more likely than not in patients who have mechanical
3 reconstructions.

4 Q Did you write that in any of the earlier records?

5 A It's part of their discussion, it's part of my normal
6 practice.

7 Q I'm asking if you actually wrote it the way you wrote
8 it in the July 23, 2018 note.

9 A No, it was more specifically outlined in the July 2018
10 note.

11 Q Prior to that July 2018 visit, you hadn't seen her in
12 two years, correct?

13 A Correct.

14 Q Doctor, as you sit here today, the testimony that you
15 gave relative to your belief that at some point the implant will
16 fail and necessitate a revision?

17 A There's mechanical breakdown in the area where the
18 fusion is that will necessitate a future surgery.

19 Q You can't tell us when that's going to happen, right?

20 A Within seven to ten years.

21 Q You don't know the date?

22 MR. ROSENBERG: Objection.

23 THE COURT: You can answer.

24 MR. ROSENBERG: Is he looking for May 9th?

25 MR. FEEHAN: I'm looking for a no.

Dr. Merola - Plaintiff - Redirect

1 MR. ROSENBERG: You're looking for what?

2 MR. FEEHAN: For him to say no.

3 THE COURT: Come on, let's go. Next.

4 Q Are you going to answer the question?

5 THE COURT: You don't know the date that she will
6 have that surgery, correct?

7 THE WITNESS: No, I do not have a specific date.

8 Q Have you scheduled the surgery at this point?

9 A No, I have not.

10 MR. FEEHAN: Thank you, Doctor.

11 THE COURT: Thank you.

12 Any redirect?

13 MR. ROSENBERG: I promise.

14 REDIRECT EXAMINATION

15 BY MR. ROSENBERG:

16 Q Doctor, can you tell the jury again about obesity? I
17 know you started to explain to them.

18 What effect, if any, does obesity have on herniated
19 discs?

20 A So, everybody has a particular body morphology to them,
21 right? So certain patients are built in certain ways. Some of
22 us are taller or skinnier or thicker or wider or shorter. So,
23 there's a habitus that you have based on your genetics and your
24 bones and your joints and your lungs and your organs, and all of
25 these things accommodate to whatever that particular habitus

1 happens to be.

2 So, patients that are skinny and short have spinal
3 conditions and spinal problems and patients that may be taller
4 and bigger can have spinal conditions and spinal problems; we
5 see it across the spectrum. There's nothing specifically that
6 means if you are or are not of a particular body mass index, you
7 have any particular predisposition to having a disc problem, per
8 se.

9 Q Doctor, I want you to assume for a second that in 2002,
10 Ms. Sarwat had a car accident, that she received less than a
11 month's worth of physical therapy to her neck. Would that --

12 MR. FEEHAN: Objection. That's not the testimony.

13 MR. ROSENBERG: I'm asking him a hypothetical.

14 THE COURT: Go ahead.

15 Q With that assumption, Doctor, would that have any
16 effect on the herniated disc that you saw and took out of Ms.
17 Sarwat's lower back?

18 A No.

19 Q Explain it to them; is there any correlation?

20 A No correlation at all.

21 Q Would someone be able to walk around with that kind of
22 a herniated disc had she had that a week before this accident
23 happened without seeking medical treatment?

24 A Not with the particular kind of herniation that she had
25 at L-5, S-1; no.

Dr. Merola - Plaintiff - Redirect

1 MR. ROSENBERG: I have no other questions.

2 THE COURT: Anything else?

3 MR. FEEHAN: Nothing.

4 THE COURT: Thank you very much, Doctor.

5 THE WITNESS: Thank you, your Honor.

6 (Whereupon, the witness stepped down from the
7 stand.)

8 THE COURT: Ladies and gentlemen, it's 1:00 or
9 thereabout. We will take our lunch break and see you at
10 2:15.

11 (Whereupon, the jury exits the courtroom.)

12 (Whereupon, a luncheon recess was taken.)

13 A F T E R N O O N S E S S I O N:

14 THE COURT OFFICER: Jury entering.

15 (Whereupon, the jury entered the courtroom.)

16 THE COURT: Good afternoon, everyone. We're all
17 set; we have the witness in the courtroom.

18 Mr. Rosenberg, please call your next witness.

19 MR. ROSENBERG: Plaintiff calls Dr. Reyfman.

20 L E O N R E Y F M A N, M D, called as a witness by and on
21 behalf of the Plaintiff, after having been first duly sworn,
22 was examined and testified as follows:

23 THE CLERK: Please state your name and address for
24 the record.

25 THE WITNESS: Leon Reyfman, 2279 Coney Island

Dr. Reyfman - Plaintiff - Direct

1 Avenue, Brooklyn, New York 11223.

2 THE COURT: Okay. Counsel, you may inquire.

3 MR. ROSENBERG: Thank you.

4 DIRECT EXAMINATION

5 BY MR. ROSENBERG:

6 Q Good afternoon, Doctor.

7 A Hello.

8 Q Doctor, I'm calling you Doctor; tell us are you
9 licensed to practice medicine in the State of New York?

10 A Yes, I am.

11 Q How long have you been so licensed?

12 A Since 2004.

13 Q And, Doctor, do you have a specialty?

14 A My specialty is anesthesia and pain management.

15 Q And can you tell the jury just briefly your
16 credentials?

17 A Sure. I finished medical school in 2002. Completed
18 residency in anesthesia at SUNY Downstate in 2006 and I
19 completed a year of pain management fellowship at St.
20 Luke's-Roosevelt Hospital in 2007. I'm Board certified in
21 anesthesia and pain management.

22 Q I don't know if I asked Dr. Merola this: Can you tell
23 the jury what is to be Board certified? What does that mean?

24 A Board certification means that the physician must
25 finish accredited residency and fellowship, then sit for a

Dr. Reyfman - Plaintiff - Direct

1 written and oral exam. Upon successful passing of both, then
2 the appropriate Board, in this case American Board of
3 Anesthesiology, will grant a Board certification status.

4 Q Doctor, do you teach now and if so where?

5 A Yes, I am on faculty at SUNY Downstate Medical Center.
6 I work as a director of pain management. I teach residents and
7 fellows. I also have hospital privileges at Mount Sinai and
8 Beth Israel of Brooklyn.

9 Q Doctor, before I forget, before today, have you and I
10 ever met before?

11 A No.

12 Q Have we ever talked before?

13 A No.

14 Q Doctor, in order to be here today, if you weren't here,
15 what would you be doing?

16 A I would be seeing patients.

17 Q And in order to be here today, were you -- you're not
18 coming for free -- how much do you charge?

19 A I'm being compensated an hourly rate of \$425 an hour.

20 Q Doctor, can you tell the jury with respect to your
21 specialty, what is it that you do?

22 A I treat patients who have pain. My subspecialty, I
23 treat primarily patients who have spine conditions; patients who
24 have neck, midback, lower back pain.

25 I also see patients who have pain in their joints,

Dr. Reyfman - Plaintiff - Direct

1 shoulders, and knees. And I also treat patients who have nerve
2 damage neuropathies. Most of my patients that I treat have some
3 form of pain because of problems from their spine.

4 Q And I was just going to ask you if you can quantify for
5 the jury what percentage of your patients have spinal pain?

6 A Probably about 80 percent.

7 Q Doctor, do you do surgeries?

8 A I do minimally invasive spine surgeries, yes.

9 Q Can you describe for them what types of surgeries?

10 A My specialty or my training is to deal surgeries that
11 are minimally invasive, disc decompression procedures, spinal
12 cord stimulators, morphine pumps. Those are the most common
13 surgeries that I perform of my peers in my specialty.

14 Q And how long have you been doing that?

15 A Since 2007.

16 Q Doctor, did there come a time when you came upon a
17 woman by the name of Ruby Sarwat?

18 A Yes.

19 Q And how did it come about that she came to your office?

20 A She was referred to me by Dr. Coyne on August 3rd,
21 2015.

22 Q And when she came to you, did you get a history from
23 her?

24 A Yes, this was a 43-year-old female who was involved in
25 a car accident. She was injured on 7/9/2015. She primarily had

Dr. Reyfman - Plaintiff - Direct

1 complaints to her neck and lower back as a result of the injury.

2 Q And, Doctor, did you find out what she did for a
3 living?

4 A She was a limo driver and this happened when she was
5 driving dropping off a passenger in New York City and she was
6 hit by a moving garbage truck. That's the history I obtained.

7 Q Doctor, when Dr. Coyne referred her to you, did you
8 speak with Dr. Coyne about Ms. Sarwat?

9 A I'm not sure.

10 Q And when she first came to you, can you tell the jury
11 did she make complaints of pain?

12 A Yes, she did.

13 Q What is it that she said?

14 A She said that she has lower back pain, that was also
15 swelling in her left foot. She described pain on the scale of 9
16 out of 10, 10 being the worst. Constant sharp, aching pain,
17 pain was worse when she was sitting, standing, walking and
18 bending.

19 Q And what treatment, if any, did you do for her?

20 A She was receiving physical therapy treatment from Dr.
21 Coyne. I examined her with -- we discussed various treatment
22 options, medications and possible injections into her neck, her
23 lower back. She was given prescription for Norco which is
24 Vicodin some people know it as, and we use the medication for
25 patients in moderate to sever pain.

Dr. Reyfman - Plaintiff - Direct

1 She receive prescription and given information about
2 lumbar steroid injection.

3 Q What is it you told her about that? You said you gave
4 her information?

5 A Yes.

6 Q What information?

7 A Information about injection, lumbar epidural steroid
8 injection.

9 Q Can you tell them what is that?

10 A Lumbar steroid injections I use for patients who have
11 physical therapy, have had former pain medications and they
12 continue to have progressive neck or back pain. Steroids are
13 very strong antiinflammatory medication so it's mostly
14 symptomatic treatment. It's to inject steroid in the area of a
15 problem, in this case it was L-5, S-1 to reduce inflammation and
16 irritation in her lower back.

17 Q Did you review MRI reports, EMG reports? Tell the jury
18 what records you reviewed.

19 A I have reviewed the MRI of lumbar spine which was
20 performed on 7/20/15 which was consistent with L-5, S-1 disc
21 herniation which was protruding by 3 millimeters. She also had
22 a nerve test --

23 Q Can I interrupt you for one second?

24 A Yes.

25 Q That 3 millimeter, can you tell the jury in your

Dr. Reyfman - Plaintiff - Direct

1 medical opinion what significant --

2 MR. ROSENBERG: By the way, Judge, I never offered
3 him as an expert in his field of pain management.

4 MR. FEEHAN: No objection.

5 THE COURT: We will permit Dr. Reyfman to render
6 his opinion in the field of pain management as it applies to
7 this case.

8 Q Doctor, the 3 millimeter herniation, what
9 significance -- what does that mean?

10 A The space where the disc are and the nerves, blood
11 vessels is called epidural space; it's a fairly narrow space in
12 the area of 5 to 6 millimeters. So, 3 millimeter protrusion is
13 a 50 percent of that space is occupied by that herniated disc.

14 Q And is that small, medium, large?

15 A It's large.

16 Q Doctor, did you review EMG reports?

17 A Yes, she had an EMG done performed in 2015 which was
18 consistent with bilateral L-5, S-1 radiculopathy.

19 Q Can you tell them what radiculopathy is?

20 A Radiculopathy by definition is constellation of
21 symptoms, someone having lower back pain shooting down lower
22 extremity with numbness pins and needles. Physical exam
23 findings consistent with neurological deficits such as muscle
24 weakness, loss or decreased reflexes and also diagnostic test
25 such as EMG and/or MRI that shows she has a protrusion that

Dr. Reyfman - Plaintiff - Direct

1 impinges on the nerve that result in nerve damage.

2 EMG is a test to perform to see if there's any form of
3 impingement and if there is, to specify the location; in this
4 case it was L-5, S-1.

5 Q When was the EMG done?

6 A It was done in October of 2015.

7 Q And can you tell them for those that have not had an
8 EMG how is it done?

9 A This test has two components to it; it's called nerve
10 conduction velocity. We use a nerve stimulator. We shock
11 various areas of arms or legs, depends where it's being
12 performed along the nerve distribution. And we record the wave
13 length of nerve stimulation on a computer.

14 The second part of the test is taking a small needle
15 and inserting it into various muscle groups that are innervated
16 by that nerve. And we also look for muscle contraction which
17 also gets recorded on a computer and through a software
18 analysis, we can determine whether there's impingement or not.

19 Q Can you also tell the jury that test, is that test
20 painful, is it not?

21 A It's uncomfortable.

22 Q The patient is not anesthetized when they undergo that
23 test, are they?

24 A No.

25 Q Doctor, why was she sent to you?

Dr. Reyfman - Plaintiff - Direct

1 A Because she's been having a lot of back pain, neck
2 pain. She had already several weeks of physical therapy. And
3 she was in a lot of pain.

4 Q And after you saw her that first time, did you see her
5 again after that?

6 A Yes.

7 Q Approximately altogether how many times have you seen
8 her?

9 A We have altogether about 49 visits.

10 Q And on what schedule did you see her?

11 A Approximately once a month every two to three weeks on
12 occasion.

13 Q Doctor, let me jump back for a second and ask you
14 approximately how many patients do you see in a week?

15 A I see personally 150 about patients or so.

16 Q And ultimately, did Ms. Sarwat undergo these
17 injections?

18 A Yes, she had two epidural steroid injections performed
19 by me.

20 Q When were they done?

21 A They were done in October and November of 2015.

22 Q And, Doctor, can you tell the jury mechanically how is
23 it done? How do you give someone that type of shot?

24 A Sure. Usually this procedure is performed either in
25 office surgery suite or surgery center or hospital. Most often

Dr. Reyfman - Plaintiff - Direct

1 they perform under local anesthetic.

2 So, the way it's typically done patient will come into
3 the procedure room, will lie down on their stomach. We take
4 X-rays as we do these injections so we can see the needle
5 progress to someone's spine on the screen. The skin gets clean
6 with iodine to avoid infection. We take a needle with lidocaine
7 which is numbing medication. We inject the skin, that part
8 usually stings for a few seconds, and through that numb area, we
9 use three and a half to five inch needle and we advance it to
10 the point where we know we're in the right spot by taking
11 multiple X-rays. And then once we know we're in the right
12 position, we inject steroid.

13 Q And that is something you're watching on the screen?

14 A That's correct.

15 Q What are the risks to that?

16 A Risk of spinal injections are infection, damage, and
17 bleeding. Most often patient will complain of headaches or some
18 back pain afterwards. There's small chance of causing damage
19 but we take every precaution to avoid such. Those are the risk
20 factors.

21 Q And the actual endpoint of where the epidural goes in,
22 is that -- where in the spine -- is it in the canal?

23 A It's exactly in epidural space, epidural canal.

24 Q Doctor, altogether, let me jump ahead. Presently, is
25 she still under your care?

Dr. Reyfman - Plaintiff - Direct

1 A Yes, she is.

2 Q Let me jump to the end and then we will go back for a
3 second. In the future, will she continue to be seeing you or
4 another pain management doctor?

5 A I would strongly think so, yes.

6 Q And for how long?

7 A For her lifetime.

8 Q Doctor, tell us in your practice as a pain management
9 doctor, have you seen patients before that have had spinal
10 fusions?

11 A Sure.

12 Q How often is that that you see this patients?

13 A On the average once a month.

14 Q Okay. And how often in your practice do you see them
15 on a week on a month or a day?

16 A I see them every month; depends on what type of
17 treatment they're receiving.

18 Q I'm asking total. When patients come to you, what
19 percentage of the patients have spinal -- have had spinal
20 fusions?

21 A Out of the total, I see probably 15 to 20 percent had
22 some form of spinal surgery.

23 Q And generally speaking, those people that have had a
24 spinal fusion are going to require a pain management doctor for
25 the rest of their life?

Dr. Reyfman - Plaintiff - Direct

1 A Most often, yes.

2 Q Doctor, after those injections, did they work?

3 A No. She only reported very mild temporary relief after
4 the two epidurals.

5 Q And so what is it that you did with those results?

6 A I gave her referral to see Dr. Merola who's a spine
7 surgeon to discuss surgical options.

8 Q Why is it that you thought at that point in time that
9 was best?

10 A This was a patient who already had approximately three
11 or four months of physical therapy. She had -- she required a
12 lot of pain medications. She had two injections. And she still
13 had significant amount of pain in her lower back. And I thought
14 the right thing to do would be to have her explore surgical
15 options to see if this problem can be fixed.

16 Q What type of medications is it that you gave Ms.
17 Sarwat?

18 A She took -- we trial various medication; muscle
19 relaxants, we try antiinflammatories, we try narcotics such as
20 Percocet, Vicodin. We gave her medication called Gabapentin
21 that be use commonly for nerve pain.

22 So we did trial several regimens of medication and she
23 still had pain. She also reported drowsiness with medication,
24 so she wasn't happy the way this medication made her feel.

25 Q And ultimately, after you referred her to Dr. Merola,

Dr. Reyfman - Plaintiff - Direct

1 did you ever talk to Dr. Merola about Ms. Sarwat?

2 A Yes, I have.

3 Q And what is it that you discussed? What did you say to
4 him?

5 A We spoke primarily after her first surgery where she
6 had infection in her spine which required second procedure. We
7 discussed various treatment options and I think we both agreed
8 that surgery would be appropriate in this case to help the pain.

9 Q And, Doctor, based upon the history you got from Ms.
10 Sarwat and based upon the treatment you rendered for Ms. Sarwat,
11 do you have an opinion whether or not this accident, this motor
12 vehicle accident that she was involved in on July 9, 2015, was
13 that the competent producing cause of her pain and her injuries?

14 A Yes, I believe that the accident --

15 MR. FEEHAN: Objection to form.

16 THE COURT: Hold on a second. Come up.

17 (Whereupon, an off the record discussion was held
18 at the bench, after which:)

19 THE COURT: Rephrase your question.

20 Q Doctor, do you have a medical opinion, with a
21 reasonable degree of medical certainty, as to what the cause of
22 Ms. Sarwat's pain is?

23 A Yes. In my medical opinion, I believe that the
24 accident of 7/9/2015 resulted in her symptoms.

25 Q What do you base that opinion on?

Dr. Reyfman - Plaintiff - Direct

1 A This was a woman who was functional; she had no prior
2 injuries or prior complaints of neck and lower back pain until
3 this injury.

4 Q Doctor, I already asked you if you knew what she did
5 for a living.

6 Doctor, I want you to assume for a second that Ms.
7 Sarwat was working 50, 60 hours sitting in a limousine driving
8 clients. Would someone with that type of job be able to do that
9 type of sitting for those prolonged periods with that type of 3
10 millimeter impingement?

11 A I highly doubt that somebody would be able to drive and
12 work having large herniated disc in the lower back in their
13 lower back.

14 Q Doctor, what do you base that opinion on?

15 A Based on my -- based on the history that I obtained,
16 based on the physical exam findings, based on the radiological
17 studies as well as nerve tests.

18 Q Radiological studies that you're referring to is the
19 MRI?

20 A Yes.

21 Q And the EMG?

22 A That's correct.

23 Q What else have you done for her -- I don't want to go
24 through 49 visits. I don't think they want to listen to 49
25 visits.

Dr. Reyfman - Plaintiff - Direct

1 A Sure. So after she had surgery, she resumed physical
2 therapy after the scar healed. She did require less medication
3 at some point. We also -- I also performed a lumbar facet
4 injection. Facets are the joints that run from the base of the
5 skull all the way down to the tailbone.

6 The function of the joints is to give mobility and
7 flexibility of the spine. When somebody looks down or rotates
8 their spine, that's how their joints work. Oftentimes, after
9 surgery, after fusion, these joints get inflamed. And what I
10 did is I injected her lower back joints in both sides after
11 which she had little relief. Then we continued pain
12 medications.

13 Q When were those injections from that facet done?

14 A Early 2016 I think. Then for about a year and a half
15 or so, we just manage her with pain medications. Then we spoke
16 to her about an option of --

17 Q Can I interrupt you for a second?

18 A Yes.

19 Q Tell the jury what are the risks in long term use of
20 pain medications.

21 A Primarily with all opiates, there's risk of dependency,
22 tolerance and addiction. Unfortunately, opiates can cause side
23 effects such as drowsiness, diminished reflexes and rash; those
24 are common but mostly concerned about addiction.

25 Q I'm sorry, go ahead?

Dr. Reyfman - Plaintiff - Direct

1 A In 2017, we spoke to her about considering spinal cord
2 stimulator; it's a device that be use for patients who's had
3 back surgery and they still have persistent back pain.

4 So we did a trial. What it's performed it's done in
5 the surgery center setting or hospital. Patient do get
6 anesthesia for they're somewhat asleep for it. We insert two
7 electrodes on top of their spine and we stimulate a certain area
8 of somebody's spinal cord that's responsible for lower back pain
9 and leg pain.

10 Q Can I interrupt you for a second?

11 A Yes.

12 Q When you say you insert it, this is not on top of the
13 skin?

14 A No, no, it's deep into the spine. So it's right on top
15 of the spinal cord; it's very deep.

16 Q I'm sorry.

17 A So, she had that procedure done and usually the trial
18 lasts a week and during this week, we monitor patients to see
19 how well they respond to it. In her case, she had no relief.
20 In fact, she just didn't like the way she was feeling. She had
21 some heart palpitation so we removed those leads and we kind of
22 back to Square 1 with pain medications unfortunately. That's
23 really the story of Ruby's long term pain management treatment.

24 Q When is the last time you saw her?

25 A I saw her recently last week. It was 9/26.

Dr. Reyfman - Plaintiff - Direct

1 Q And you're still seeing her on an approximately monthly
2 basis?

3 A Yes.

4 Q And when you -- tell the jury is there a reason why you
5 see her monthly as opposed to every six months or every year?

6 A We want to see how she responds to her treatment,
7 medications, and see if she develops any other complaints or
8 issues. Narcotics are not refillable in New York State so the
9 patients will need to come in on a monthly basis and overall, we
10 like to see to make sure there's no worsening of her condition
11 that we need to address.

12 Q Doctor, can you tell the jury about the prognosis?
13 What does the future hold for Ms. Sarwat?

14 A She is what we call chronic pain patients. After six
15 months after treatment after initial insult, anyone that has
16 pain, this really becomes a chronic issue. She had done a --
17 everything possibly could be offered from pain management
18 standpoint, rehabilitation and as well as surgical standpoint.

19 She will need ongoing treatment with pain medications.
20 She will need further diagnostic tests, CAT scans X-rays MRIs.
21 There is definitely a role for more injections. There is
22 possibility that she may need additional surgery because of her
23 condition. As she gets older she will need help at home.

24 Right now, even her age now, she has difficulty
25 performing her activities of daily living. Grocery shopping,

Dr. Reyfman - Plaintiff - Direct

1 meal preparation, personal hygiene; they're already affected
2 now. And I think as she gets older, she will be need more help
3 with home health aide and our goal is to provide care to her to
4 avoid to -- to make her as functional as possible.

5 Even now she works a little, as much as she can, so
6 she's doing everything possible to move on with her day.

7 Q And, Doctor, did you review Dr. Schuster's life care
8 plan?

9 A Yes, I did.

10 Q Was there anything in that life care plan that you
11 disagreed with?

12 A No.

13 Q The costs that were associated in that life care plan
14 as it concerns pain management, were those costs appropriate?

15 A Yes, they were.

16 Q And for the future, other than what you've told us
17 already, if I want you to assume that life expectancy charts in
18 the books she has 34.4 years should she live to her full life
19 expectancy, will she get worse over time?

20 A Unfortunately, I think she will get worse as she ages.

21 Q Doctor, did you have an opportunity to look at the 2017
22 MRI?

23 A Yes, I have.

24 Q Is that in your records as well?

25 A Yet, it is.

Proceedings

1 Q Can you tell the jury is there anything significant in
2 that?

3 MR. FEEHAN: Objection, your Honor.

4 MR. ROSENBERG: It's in evidence, Judge.

5 THE COURT: All right. Read back the question.

6 (Whereupon, the referred to question was read back
7 by the Reporter.)

8 THE COURT: In what?

9 MR. ROSENBERG: In the 2017 MRI.

10 THE COURT: While --

11 MR. FEEHAN: Your Honor, I'd like to approach.

12 THE COURT: Come up.

13 (Whereupon, an off the record discussion was held
14 at the bench, after which:)

15 THE COURT: Ladies and gentlemen, two minutes
16 please; step outside.

17 (Whereupon, the jury exits the courtroom.)

18 THE COURT: What is this, Defendant's B?

19 MR. ROSENBERG: Defendant's B, yep.

20 THE COURT: All right.

21 MR. ROSENBERG: Judge, I --

22 THE COURT: Relax. Let's go on the record.

23 You're making an objection, counsel, correct?

24 MR. FEEHAN: I am, your Honor.

25 THE COURT: So state your objection for the record.

Proceedings

1 MR. FEEHAN: The objection for the record is that
2 the MRI that's being referred to, my office was never given
3 an authorization for that MRI previously. I was unaware of
4 it until today.

5 I spoke to counsel about it. He said he wasn't
6 going to inquire about it in the first place. I looked at
7 the subpoenaed records for Dr. Merola's office earlier today
8 before I questioned him and I did not see it in there. It's
9 apparently there now.

10 There was a second set of Dr. Merola's records on
11 the table when I returned after the lunch break. I don't
12 know where this came from, quite frankly.

13 THE COURT: All right.

14 MR. ROSENBERG: Here's the best part, if I may.

15 THE COURT: Go ahead.

16 MR. ROSENBERG: This is in a subpoenaed record
17 room. There's one staple that went through this entire
18 packet of papers. Clearly, Mr. Feehan didn't look at it
19 closely enough because it's here and it's attached and this
20 is not my copy.

21 THE COURT: Hold on a second, all right? I don't
22 care what came in on the subpoenaed records, all right?
23 That doesn't make the MRI report admissible, number one.

24 I'm just -- when you offered these records, you're
25 the one that offered them, correct, Mr. Feehan?

Proceedings

1 MR. FEEHAN: I did, your Honor.

2 THE COURT: We're talking about Defendant's Exhibit
3 B, correct?

4 MR. FEEHAN: Correct.

5 THE COURT: And you're claiming when you offered
6 them in evidence, the MRI report was not in there?

7 MR. FEEHAN: I did not see it. I looked through it
8 and I did not see it in there looking for it.

9 THE COURT: Okay.

10 MR. ROSENBERG: You care to look at it, Judge?

11 MR. FEEHAN: There's no question it's there now.

12 THE COURT: Let me see.

13 MR. ROSENBERG: Sure. (Handing.)

14 MR. FEEHAN: Your Honor, it doesn't change the fact
15 it's never been exchanged and shouldn't be a part of this
16 case.

17 THE COURT: Counsel, when you offer it and he
18 doesn't object and it becomes in evidence, it becomes a
19 problem. If you objected, you're absolutely right; I would
20 have pulled it out in two seconds, it's not admissible the
21 way it was offered.

22 But if you offered it and it went in without
23 objection, then I have a problem. Well, you know, I see
24 multiple staples that have been removed and whatnot here.

25 MR. ROSENBERG: Judge, not in the main packet.

Proceedings

1 THE COURT: What?

2 MR. ROSENBERG: Not in the main packet.

3 THE COURT: What's the main packet? This?

4 MR. ROSENBERG: No. The bulk of the papers, Judge,
5 is where it's in. That's his subpoena too. That's not my
6 subpoena.

7 THE COURT: When you offered these records,
8 counsel, was the staple here or not?

9 MR. FEEHAN: There was a staple, yes.

10 THE COURT: Look at the staple in the middle of the
11 package.

12 THE COURT OFFICER: (Handing.)

13 MR. FEEHAN: There was a staple.

14 THE COURT: I only see one staple in the middle.
15 So, I'm just wondering how he could have stuck in or how
16 someone could have stuck in an MRI report if there was a
17 staple similar to that when you saw it.

18 MR. FEEHAN: Your Honor, when Dr. Merola was on the
19 stand, I went through with him page by page referring to
20 what was there.

21 THE COURT: Let me see.

22 THE COURT OFFICER: (Handing.)

23 THE COURT: I'm sort of stumped, counsel. I don't
24 see how it's possible, to be honest with you. I don't. But
25 you can give me a suggestion and I'll listen. But there's

Proceedings

1 one staple that holds all these records together, all right?
2 I don't see any other staple marks by the MRI report
3 where -- and I just can't fathom that someone could have
4 stuck the MRI report in.

5 If you want to give me an explanation as to how you
6 think that's even possible -- take a look, counsel.

7 MR. FEEHAN: Judge, I don't have an explanation.
8 I'm not going to be able to come up with one for you. I
9 literally sat there with Dr. Merola and I went through each
10 one of his notes and I --

11 THE COURT: Maybe you didn't see it. My view of
12 this is the MRI report had to be in those records since
13 they're all stapled together and it couldn't have been
14 inserted in those records afterwards, all right? So maybe
15 you didn't see it.

16 Given that, what can I do? You know, it's in
17 evidence, you offered it; he didn't object. Unless you
18 think I have grounds to reconsider your objection, I don't
19 know. I mean, again, Mr. Rosenberg, that MRI report should
20 not be in evidence if he objected.

21 MR. ROSENBERG: He's the one that offered it. I
22 didn't offer it, Judge.

23 THE COURT: Well, that's sort of the problem that
24 we're at, all right? So, I have to make a ruling. My
25 ruling is going to be that the MRI report was in that

Proceedings

1 packet, there's no possible way where it couldn't have been
2 and unfortunately, you just didn't see it, so....

3 But then again, you know, where's the prejudice if
4 he wants to renew his objection? You know?

5 MR. ROSENBERG: Renew his objection? Judge, it's
6 in evidence. I'm not agreeing that it be withdrawn out of
7 evidence. And I'll take it one step further. I'll bet you
8 if I go through Dr. Coyne's records that are in evidence
9 also, I'm going to find a copy in there as well.

10 So, Judge, I'm not withdrawing my consent to that
11 coming into evidence. I can't undo the hands of time.
12 That's ridiculous and you know, Judge, I take offense that
13 someone is sort of insinuating that I'm the one that stuck
14 that into the packet. He should have read the file better.
15 Clearly that was there.

16 I have Dr. Merola's records right here, by the way.
17 I have what he had. It's sitting here. He left it here and
18 there's another copy right here.

19 MR. FEEHAN: And the doctor said he had a copy of
20 it.

21 THE COURT: I remember when he was about to
22 question him on the MRI report, you came up, we had a
23 sidebar and he indicated that he would not go into it.

24 MR. FEEHAN: By agreement, that it wasn't part of
25 the case.

Proceedings

1 THE COURT: What's that?

2 MR. FEEHAN: By agreement, that it wasn't part of
3 the case. Therefore, there's no prejudice to taking it out
4 of the exhibit at this point because it's not part of the
5 case.

6 MR. ROSENBERG: No, it doesn't work that way.
7 You're the one that offered it.

8 THE COURT: That is the problem. Off the record.

9 (Whereupon, an off the record discussion was held,
10 after which:)

11 THE COURT: We're in recess for a short second.

12 (Whereupon, a brief recess was taken, after which:)

13 THE COURT: Where are we? It's in evidence. Are
14 we conceding?

15 MR. ROSENBERG: It hasn't been marked in evidence.

16 THE COURT: All right.

17 MR. FEEHAN: As to Dr. Merola's records, I will
18 withdraw my objection because it's also contained in Dr.
19 Coyne's records. My problem is at this point, I'm going to
20 put a radiologist on the stand, he's going to be crossed by
21 Mr. Rosenberg as to the fact that he has never seen or
22 reviewed that MRI or that MRI report; neither has ever been
23 provided to my office.

24 Today is the first day I found out about its
25 existence. I don't have a problem necessarily with Dr.

Proceedings

1 Reyfman testifying about it today. My concern is that my
2 doctor is going to be subject to collateral attack because
3 he hasn't seen it when nobody on the defense side ever knew
4 it existed before today.

5 MR. ROSENBERG: Judge, if you want me to respond to
6 it, I'll respond simply by saying I didn't offer it into
7 evidence. It's the same thing.

8 THE COURT: I understand that. But now, I mean,
9 here's the potential problem that I see. You now have an
10 expert on the stand who's an expert in pain management, all
11 right? And you want him to do what? Read materials that
12 are in evidence?

13 MR. ROSENBERG: Yeah.

14 THE COURT: And then what?

15 MR. ROSENBERG: And offer his opinion as to what it
16 means.

17 THE COURT: All right.

18 MR. ROSENBERG: He's a medical doctor.

19 THE COURT: Did you serve a report for this doctor?

20 MR. FEEHAN: No.

21 MR. ROSENBERG: No, he's a treating doctor.

22 THE COURT: I know he's a treating doctor. That's
23 another issue, counsel. Did you serve an expert exchange
24 for him where you spoke about this MRI?

25 MR. ROSENBERG: No, Judge.

Proceedings

1 THE COURT: So, there's no report where he
2 discussed this MRI, all right?

3 MR. ROSENBERG: Judge, I don't have to exchange a
4 narrative report on a treating doctor.

5 THE COURT: You don't?

6 MR. ROSENBERG: You do not.

7 THE COURT: That's a new one on me.

8 MR. ROSENBERG: Okay.

9 THE COURT: That's a new one on me.

10 MR. ROSENBERG: Is that what Mr. Feehan is arguing,
11 that I have to --

12 THE COURT: I mean, where's the notice that you
13 have an expert that -- just because he's a treating
14 physician, he can get any expert opinion he wants under the
15 sun? Is that what you're saying?

16 MR. ROSENBERG: He's a medical doctor. You want me
17 to lay the foundation and ask him how many MRI reports he
18 reads a day? He reads thousands.

19 THE COURT: At the end of the day, I always thought
20 if you want to put a treating physician on the stand, of
21 course you can and there's certain liberties you have, such
22 as opinions on causation and permanency that don't have to
23 be in his report.

24 But certainly the injuries have to be in his report
25 and I think if there's X-rays in his report, he has to

Proceedings

1 mention them I think.

2 MR. ROSENBERG: Just so we're clear for the record,
3 Judge, is it your understanding that a treating doctor that
4 comes in for the plaintiff has -- the plaintiff's attorney
5 has to serve a narrative report for that doctor?

6 THE COURT: Yes, under the trial rules.

7 MR. ROSENBERG: I take exception to that because
8 that's not --

9 THE COURT: We will see.

10 MR. ROSENBERG: Judge, also in addition to that,
11 Mr. Feehan is being disingenuous to this Court because
12 there's another subpoena here from Complete Radiology in the
13 subpoenaed records room.

14 THE COURT: By the way, I'm not saying necessarily
15 a narrative report but some sort of report setting forth the
16 nature of the injuries and everything else.

17 MR. ROSENBERG: Judge, he accepted the Complete
18 Radiology. It's here.

19 THE COURT: What is it? 202(h)? Let me look it
20 up. Hold on a second. What are the rules of medical
21 exchange? Anybody know that cite, Mr. Appellate Guy?

22 MR. ROSENBERG: If I had to get --

23 THE COURT: 202.17.

24 By the way, was there a request for -- here, read
25 this. Read this. Let me go look this up. (Handing.)

Proceedings

1 THE COURT: It's really 207.17 mostly (b).

2 "(b): At least 20 days before the date of such
3 examination -- " okay, all right.

4 "At any time after joinder of issue and service of
5 a Bill of Particulars, the party to be examined or any party
6 may serve on all other parties a notice fixing the time and
7 place of examination."

8 And it goes on and on.

9 Now (b): "At least 20 days before the date of
10 such examination or on such other date as the Court may
11 direct, the party to be examined," that would be you, "shall
12 serve upon and deliver to all other parties the following
13 which may be used by the examining medical provider: 1:
14 Copies of the medical reports of those medical providers who
15 have previously treated or examined the party seeking
16 recovery. These shall include a recital of the injuries and
17 conditions as to which testimony will be offered at trial
18 referring to and identifying those X-rays and technicians
19 reports which will be offered at trial including a
20 description of the injuries, the diagnosis, and prognosis.
21 Medical reports may consist of completed medical provider
22 Workers' Compensation or insurance forms and provide the
23 information required by this paragraph."

24 So you're quite right, Mr. Rosenberg, you don't
25 have to serve a narrative report; it's simple service of

Proceedings

1 medical reports will do.

2 Then it goes on: "And you must also provide the
3 following: Duly executed and acknowledged written
4 authorizations permitting all parties to obtain and make
5 copies of all hospital records and such other records
6 including X-ray and technicians reports as referred to and
7 identified in reports of these providers who have treated or
8 examined the party seeking recovery."

9 Again, so I'm going to go look it up right now. So
10 if you want to call a doctor to testify, you have to serve a
11 report from that doctor, doesn't have to be a narrative, all
12 right, and if he's going to make reference to X-rays or any
13 other technicians report, it has to be set forth in that
14 report. That's my reading of the rule and not only do you
15 have to do that, you have to provide authorizations.

16 So now the question is: What if you don't? Is
17 that grounds to preclude the testimony from that doctor as
18 to eliciting any testimony concerning that X-ray report or
19 MRI?

20 MR. ROSENBERG: If you look it up, you're going to
21 find cases that say that authorizations --

22 THE COURT: Did you give him an authorization for
23 the MRI? He said you didn't.

24 MR. ROSENBERG: I gave him authorization for all --

25 THE COURT: He said you didn't.

Proceedings

1 MR. ROSENBERG: Judge, he subpoenaed it; it's here.
2 Yes, the answer is yes. He had an authorization.

3 THE COURT: Did you get an authorization for this?

4 MR. FEEHAN: I got a trial subpoena authorization
5 after the case --

6 THE COURT: You got a trial subpoena. So let's say
7 the authorization component perhaps is complied with, did
8 you ever get a medical report from Dr. Reyfman setting forth
9 what his testimony is going to be regarding the plaintiff's
10 injuries and what he's going to say in connection with any
11 X-ray or --

12 MR. FEEHAN: No.

13 MR. ROSENBERG: That's not --

14 THE COURT: I'm going to go look it up. You're
15 saying you don't have to do that?

16 MR. ROSENBERG: I didn't say that yet.

17 THE COURT: All right.

18 MR. FEEHAN: I'm going to be to but I --

19 MR. ROSENBERG: His office records are four inches
20 thick. His narrative report is in there.

21 THE COURT: Quit yelling; I'm trying to keep calm.

22 My question is very simple; listen to my question:
23 Did Dr. Reyfman indicate anywhere in any report in this pile
24 of records, that I guarantee there are pile of reports over
25 there, that he read this MRI and somehow indicated what his

Proceedings

1 testimony was going to be concerning this MRI? Yes or no?

2 MR. ROSENBERG: Read it, yes. I don't know if he
3 said what his testimony would be.

4 THE COURT: Show me what you got. Show me, show
5 me.

6 MR. ROSENBERG: Okay.

7 THE COURT: And that was served on him, by the way.
8 Not just came in pursuant to the subpoenaed records.

9 MR. ROSENBERG: You know what, Judge? Go look it
10 up and you're going to find exactly what I said. I don't
11 have to give him any more than an authorization. And he got
12 authorizations for the MRIs, he got them during Discovery
13 and he got them for a trial authorizations.

14 I'll rest on that and I'll tell you that the cases
15 for treating doctors say just that. I don't have to give
16 him a 3101.

17 THE COURT: I understand you don't have to give him
18 a 3101.

19 MR. ROSENBERG: That's correct.

20 THE COURT: Okay.

21 MR. ROSENBERG: Yep.

22 THE COURT: I understand that a hundred percent but
23 you have to give him a report that complies with this
24 section.

25 MR. ROSENBERG: Okay.

Proceedings

1 THE COURT: You say you don't?

2 MR. ROSENBERG: I don't.

3 THE COURT: Let's see what the law says.

4 MR. ROSENBERG: Okay. Go ahead, go look it up. Go
5 ahead.

6 MR. FEEHAN: Can I be heard?

7 THE COURT: Yes.

8 MR. FEEHAN: My objection to it is that that
9 particular MRI is July of 2017. This was already on the
10 calendar. I couldn't have gotten authorization for it
11 before that. It didn't even exist.

12 THE COURT: All right. So the point is?

13 MR. FEEHAN: I have never been given an
14 authorization for it.

15 MR. ROSENBERG: First of July 2017, it wasn't on
16 the calendar.

17 MR. FEEHAN: You have the date?

18 MR. ROSENBERG: The case was marked final.

19 THE COURT: Find out when you gave him an
20 authorization for it.

21 MR. ROSENBERG: I gave him an authorization for it.

22 THE COURT: Show me. You'll have proof of that.

23 MR. ROSENBERG: No problem.

24 THE COURT: All right, get that.

25 MR. ROSENBERG: Judge, so I'm clear, is he denying

Proceedings

1 he didn't get an authorization for Dr. -- for Dr. Reyfman
2 and Complete Radiology?

3 MR. FEEHAN: I got an authorization for Dr.
4 Reyfman.

5 MR. ROSENBERG: What about Complete Radiology?

6 MR. FEEHAN: After the time that the new MRI was
7 taken.

8 MR. ROSENBERG: Judge, he got trial authorizations
9 for them as well.

10 THE COURT: So in other words, trial authorizations
11 wouldn't have done him much good in getting the films in
12 time for his radiologist to look at the films, correct?

13 MR. ROSENBERG: Wrong. He got the trial
14 authorizations a year ago.

15 THE COURT: After the case --

16 MR. ROSENBERG: The Note of Issue was filed.

17 THE COURT: Take a recess.

18 (Whereupon, a brief recess was taken, after which:)

19 THE COURT OFFICER: All rise, jury entering.

20 (Whereupon, the jury entered the courtroom.)

21 THE COURT: Sorry for the delay, ladies and
22 gentlemen, but every once in a while, we have to discuss
23 things.

24 So, we're ready to go. So go ahead, counsel,
25 continue your examination.

Dr. Reyfman - Plaintiff - Direct

1 MR. ROSENBERG: Sure.

2 DIRECT EXAMINATION (CONTINUED)

3 BY MR. ROSENBERG:

4 Q Doctor, do you have the 2017 MRI report?

5 A Yes, I do.

6 Q Can you tell the jury what significance, if any, you
7 gleaned from that?

8 A There is still a L-5, S-1 disc herniation that's
9 slightly less than it was before, 2 millimeter protrusion.
10 There's also an L-5 bulging disc that's protruding by 3
11 millimeters at L-3, 4 which wasn't present in 2015.

12 Q Okay. And, Doctor, on conclusion of that MRI report
13 item number 5 --

14 A Okay.

15 Q -- can you read that to the jury?

16 A Sure. "Extensive postoperative changes are seen related
17 to posterior paraspinal musculature of mid/lower lumbar spine
18 and metallic artifact with prior surgery seen within the
19 subcutaneous soft tissue."

20 Q And what does that mean, "extensive postoperative
21 changes"?

22 A These are muscular changes, that the muscle have
23 undergone changes such as inflammatory chronic inflammatory
24 changes.

25 Q Causally related from this accident?

Dr. Reyfman - Plaintiff - Direct

1 A Yes.

2 Q Doctor, before I forget, with respect to home care that
3 we talked about a little bit, I'm going to ask you if you can --
4 do you have a copy of the vocational rehabilitation expert's
5 report in your file?

6 A Yes, I do.

7 Q And can you turn to the page near the end for support
8 care?

9 A Yes, I see it.

10 Q I know earlier I asked you just in lump sum because
11 we're going to have the vocational rehabilitation expert I think
12 Monday afternoon.

13 But with respect to home health care, I know you said
14 you agreed with the report in its entirety but specifically in
15 your experience as a pain management doctor, can you tell the
16 jury is that reasonable, age 65 to 78, 8 hours a day?

17 A I think it's very reasonable. At least they'll be able
18 to cover majority of her daytime with help of others to get her
19 more functional.

20 Q Then actually progresses in age 70 to life, do you
21 agree with the particular part detailing 12 to 14 hours a day?

22 A I think it's reasonable.

23 Q Okay. Doctor, let me ask you, and it may be a little
24 bit repetitive, I apologize.

25 Doctor, with a reasonable degree of medical certainty,

Dr. Reyfman - Plaintiff - Direct

1 do you have an opinion whether or not Ms. Sarwat sustained a
2 herniated disc at L-5, S-1 with impingement from the July 9th,
3 2015 motor vehicle accident?

4 A Yes, I do have an opinion, which is she did sustain a
5 herniated disc at L-5, S-1.

6 Q And what do you base that opinion on?

7 A Based on her symptoms, presentation as well as
8 diagnostic studies MRI which was performed in 2015.

9 Q Doctor, with a reasonable degree of medical certainty,
10 do you have an opinion whether or not Ms. Sarwat sustained a
11 permanent loss of use of a body organ member function or system
12 and if so what is your opinion?

13 A My opinion is she did develop loss of use of her lumbar
14 spine. She was injured three years ago. She underwent
15 extensive course of treatment. She still have progressive
16 disability and chronic pain. I believe there's significant loss
17 of her lower back function.

18 Q You used the word and I'm going to ask you now another
19 question and I'm going to ask you what significant means.

20 Can you form an opinion or do you have an opinion with
21 a reasonable degree of medical certainty whether or not Ms.
22 Sarwat sustained a significant limitation of a use of a body
23 function or system as a result of this motor vehicle accident of
24 July 9, 2015?

25 A Yes, she did develop significant limitation or loss of

Dr. Reyfman - Plaintiff - Direct

1 function of her lumbar spine based on the previous answer. She
2 had extensive treatment, she had lumbar surgery followed by
3 complication. A number of procedures and she still today shows
4 significant limitation of her lumbar spine.

5 Q Doctor, I didn't ask you this but have you recommended
6 Ms. Sarwat to try and undergo again the neurostimulator?

7 A No, I did not.

8 Q Is there a reason why?

9 A She had it done last year and she didn't show any
10 improvement during the trial.

11 Q Doctor, with a reasonable degree of medical certainty,
12 do you have an opinion whether or not as a result of this motor
13 vehicle accident whether Ms. Sarwat sustained a permanent
14 consequential limitation of a use of a body organ or member and,
15 if so, what is that opinion?

16 A She did sustain permanent loss, permanent damage to her
17 lumbar spine.

18 Q Doctor, with a reasonable degree of medical certainty,
19 do you have an opinion whether or not as a result of this motor
20 vehicle accident, that Ms. Sarwat sustained or was prevented
21 from performing her usual and customary daily activities for at
22 least the 90 out of 180 days immediately following this
23 accident?

24 A Yes.

25 Q What's the opinion?

Dr. Reyfman - Plaintiff - Cross

1 A She did have limitation in her activities of daily
2 living from the accident till present.

3 Q And let me ask you: You said from the day of the
4 accident till present, and what about the future?

5 A And the future as well.

6 Q Would it be fair to say forever until she dies?

7 A That's reasonable, yes.

8 MR. ROSENBERG: That's it. I don't have any other
9 questions.

10 THE COURT: Thank you.

11 Your witness, counsel.

12 MR. FEEHAN: Thank you.

13 CROSS-EXAMINATION

14 BY MR. FEEHAN:

15 Q Good afternoon, Dr. Reyfman; how are you?

16 A How are you?

17 Q How you holding up?

18 A I'm okay.

19 Q Good. Just a while ago, you testified that the
20 plaintiff never made any prior complaints to the neck or back,
21 is that right?

22 A Speak up a little? I'm sorry. Can you repeat your
23 question?

24 Q Sure. You testified earlier that prior to this
25 accident, the plaintiff had never made any complaints to her

Dr. Reyfman - Plaintiff - Cross

1 neck or back, is that correct?

2 A That's correct.

3 Q If I told you that there's been testimony in this case
4 yesterday by the plaintiff that she injured her neck previously,
5 would that surprise you?

6 A Her main focus of treatment was to her lower back. I
7 mean, if there is any obviously records, that would be good to
8 know obviously.

9 Q If the testimony was that she was involved in a prior
10 motor vehicle accident, would you want to have seen those
11 records?

12 A If there was a significant damage of course.

13 Q Were you provided with those records?

14 A No.

15 Q Were you aware of the prior accident?

16 A No, I was not.

17 Q You took a history from the plaintiff, correct?

18 A Yes, I did.

19 Q On the first time that you saw her?

20 A That's correct.

21 Q And she gave you what her prior medical history was,
22 correct?

23 A Yes, she did.

24 Q And your notes, you don't note that she told you about
25 the prior motor vehicle accident, correct?

Dr. Reyfman - Plaintiff - Cross

1 A That's correct.

2 Q Doctor, if you would take a look at your first office
3 notes from 8/3 of 2013. On the third page of that under the
4 second paragraph, second bold heading where it says "Cervical
5 Radiculopathy"?

6 A Yes.

7 Q Were you recommending that the plaintiff undergo
8 cervical epidural injection?

9 A Both cervical or lumbar which were provided to her
10 information during this office visit, yes.

11 Q So, she was complaining of neck pain as well when she
12 first saw you?

13 A That's correct.

14 Q Did you ever do that?

15 A No.

16 Q Why is that?

17 A She had more disability, more pain because of lower
18 back.

19 Q Did the neck pain ever go away?

20 A As my last visit, she -- I have to review all my chart
21 but as of my last visit, she only had lower back pain.

22 Q When was the last time she complained to you of neck
23 pain?

24 A As I said, I would have to go through each --

25 Q Go ahead.

Dr. Reyfman - Plaintiff - Cross

1 MR. ROSENBERG: Judge, at this point, I'll object
2 because there is no claim in this case for cervical. If he
3 wants to, then I'll be happy for him to go into that.

4 THE COURT: Well, you want an answer, counsel?

5 MR. FEEHAN: I would like to know when the last
6 time she complained was.

7 THE COURT: Okay, give us an answer to that
8 question.

9 A As of 11/28/2016, there were no complaints of neck
10 pain.

11 Q You indicated that you saw Ms. Sarwat a couple of weeks
12 ago?

13 A Yes.

14 Q When was the last time you saw her before that?

15 A 9/5.

16 Q You testified earlier that one of the -- as a pain
17 management doctor, someone prescribing medications, one of the
18 things you worry about is dependency?

19 A Yes.

20 Q Has there been any sign of dependency in this case?

21 A No.

22 MR. FEEHAN: I don't have anything else, Doctor;
23 thanks.

24 THE COURT: Okay. Any redirect?

25 MR. ROSENBERG: There is.

Proceedings

1 REDIRECT EXAMINATION

2 BY MR. ROSENBERG:

3 Q Doctor, I want you to assume that Ms. Sarwat had a
4 motor vehicle accident in 2002; 16 years ago. I want you to
5 assume that she received approximately less than a month of
6 physical therapy only for her neck. Does that change your
7 opinion in any way with respect to her lower back?

8 A No.

9 MR. ROSENBERG: I have no other questions.

10 MR. FEEHAN: Nothing else.

11 THE COURT: All right. Thank you very much,
12 Doctor.

13 THE WITNESS: Sure.

14 (Whereupon, the witness stepped down from the
15 stand.)

16 THE COURT: All right, counsel, I'm assuming we're
17 done for the day?

18 MR. FEEHAN: We are.

19 THE COURT: So, ladies and gentlemen, we have no
20 more witnesses for today. But the case obviously is not
21 over. Monday you're off in the morning, Monday is my motion
22 day just so you know, so you can take the morning off.

23 But we do have a witness for the afternoon. So
24 we're going to start about 2:00 Monday afternoon, okay? So
25 we're getting there.

Proceedings

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So, have a great weekend. We will see you Monday
afternoon.

(Whereupon, the jury exits the courtroom.)

(Whereupon, Court is recessed and the case
adjourned to Monday, October 1, 2018 at 2:00 p.m.)

* * * * *

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE
ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING.

FRANCESCA CIOFFI, CSR, RMR
Senior Court Reporter

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