SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CIVIL PART 23

- -X

DAYRA GONZALEZ,

Plaintiff,

- against -

995 FIFTH AVENUE OWNERS CORP., 995 FIFTH AVENUE, LLC,

Defendants.

INDEX NUMBER: 719084/2018

TRIAL DAMAGES

- -X

Supreme Court
25-10 Court Square
Long Island City, New York 11101
June 25, 2025

B E F O R E :

HONORABLE KARINA E. ALOMAR
Justice of the Supreme Court

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

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CAROLINE MANDATO
ROBIN NUNEZ
SENIOR COURT REPORTERS

THE CLERK: Come to order. Part 23 is now in session, the Honorable Karina E. Alomar is presiding. This is continued case on trial index number 719084 of 2018. Caption and appearances remain the same. Please be seated.

THE COURT: All right. Get the jurors in and we'll get started. All right. Please be seated. I believe Dr. Ali Guy was on the stand and under cross-examination.

Dr. Guy, could you please take the stand.

(Whereupon, the witness stepped up to the witness stand.)

THE COURT: Just remember that you're still under oath.

THE WITNESS: Yes, your Honor.

THE COURT: All right. Counsel, you may inquire.

MR. BRODY: Thank you, your Honor.

CONTINUED CROSS-EXAMINATION

MR. BRODY:

Q. Dr. Guy, yesterday you talked about an injury to plaintiff's left shoulder. Do you recall that?

A. I do.

Q. And you looked at an MRI from 2022 and talked about the fact that there was a tear of the rotator cuff in her shoulder; is that correct?

A. That's correct.

Q. Okay. And one of the things we talked about yesterday was baseline; is that correct?

A. Yes.

Q. And baseline is we'll start at a certain point and then we'll look at something later and then we'll figure out if there's changes in what might have caused it, right?

A. Right.

Q. Isn't it a fact that Mrs. Gonzalez had an MRI of her left shoulder done in 2020?

A. Yes.

Q. And that MRI would have been of the same technique that was done in 2022, correct?

A. Hopefully, yes.

Q. Okay. Well, you reviewed the report of that MRI, right?

A. Right. Doesn't meant it was done exactly the same.

Q. But you relied upon these records in formulating your opinions, correct?

A. I did to a degree.

Q. Okay. Well, in 2020 the MRI only showed that she had some degenerative changes to her spine that were not caused by trauma; is that correct?

MR. SUBIN: Objection.

THE COURT: What's your objection, counsel?

MR. SUBIN: Those films are not in evidence.

MR. BRODY: Yes, they are.

MR. SUBIN: I don't think they're in evidence.

MR. BRODY: The Lenox Hill Hospital, 12 and 12A. 12 is the record and 12A is the disc.

MR. SUBIN: Lenox Hill Radiology, is that it?

MR. BRODY: Yes, it is.

MR. SUBIN: Okay. If that's the case, then I have no objection.

THE COURT: So in light of the disk, counsel, are you withdrawing your objection?

MR. SUBIN: Yeah, withdrawn.

THE COURT: Thank you, counsel.

Q. And, Doctor, I'll save you the time and I do not want to commingle so I'm just going to have that officer hand you this record. I'm going to put that part of the record to the top.

MR. BRODY: I don't think he needs the disk, Officer, but let's just be careful because we had an issue with records not to commingle. If you would hand him Exhibit 12.

THE COURT OFFICER: Plaintiff's Exhibit 12 in evidence is being shown to the witness.

THE WITNESS: Thank you.

A. Okay.

Q. In that record it shows that the plaintiff had rotator

cuff tendinosis; is that correct? Yes or no?

A. That is correct, yes.

Q. And tendinosis is a chronic degenerative condition; is it not?

A. No, sir.

Q. Yes or no?

A. No.

Q. No?

A. It could be acute, subacute.

Q. No, don't explain any further, please.

A. Okay.

Q. It also says she has joint and arthrosis?

A. Yes.

Q. Arthrosis is a degenerative condition; yes or no?

A. Yes.

Q. And the spur, the acromial spur she had, is a degenerative condition; yes or no?

A. Yes.

Q. Thank you.

MR. BRODY: I'm done with that exhibit, Officer, thank you.

Q. Doctor, you have --

MR. BRODY: Withdrawn.

Q. When a doctor prescribes or refers a patient for things like physical therapy or MRIs or tests of any kind they prepare

some type of record and send it to the facility, correct?

A. They should, yes.

Q. How would a facility that you're referring somebody to know that they are there on your referral if you don't create that record?

A. You have to send them the record.

Q. Okay. And so you would create something that says I referred somebody for an MRI, like a prescription made out to the MRI facility, and it says please do an MRI of plaintiff's neck or her back or something else?

A. Correct.

Q. And would the same be true of medications? If you're prescribing a medication to a patient you have to fill out a prescription or enter it into a computer of some kind and keep a record for your file, correct?

A. Yes, you write it on your progress notes.

Q. Okay. And you have progress notes for Ms. Gonzalez, correct?

A. I do.

Q. And let's start with from January. You know what, let's go all the way back from the first day you treated her. Are there actually any prescriptions in your file?

A. For medications, no.

Q. Okay. Did you prescribe any medications?

A. Did not.

Q. Do you have a list of all of the medications that she has been on for the past seven months?

A. The important ones is the Clonopin and the other one are the internal medicine doctor, the doctor whatever he prescribed.

Q. Okay. And what is Clonopin for?

A. Anxiety and muscle spasm.

Q. Why was it prescribed to Ms. Gonzalez?

A. In this case, it was for anxiety.

Q. When you treat a patient do you treat them as from a business standpoint as Dr. Ali Guy or Gramercy Physical Medicine and Rehabilitation?

A. Gramercy Physical Medicine and Rehabilitation, PC.

Q. So, for example, when you do your physical examination that's part of Gramercy; is that correct?

A. That is correct.

Q. And if you prescribe physical therapy for somebody, do you prescribe that to Gramercy or that's just something that you can recommend and you don't need to do a prescription for?

A. No, prescribe it to Gramercy.

Q. Okay. And then Gramercy maintains records of what it does as a physical therapy center, correct?

A. That is correct.

Q. And those records would be part of the records that you brought today, correct?

A. That is correct.

Q. And as you know, I had a chance to look at those records. If you want to please take a look at those records. Do you see any physical therapy records in there between January and June?

A. Yes. One visit, January 15th.

Q. Okay. You actually saw her after that visit on January 24th, correct?

A. I saw her on January 29, '25.

Q. Okay, January 29th. That is my apology, I did not mean to give you the wrong date.

A. You're forgiven.

Q. And the last time you saw her was June 4th, correct?

A. The last time I saw her was June 4th, that is correct.

Q. And between January 29th and June 4th you did not see her, correct?

A. That is correct.

Q. And was there any significance to the date of June 4th as being the reason you saw her?

A. Follow-up visit to see how she was doing and to prescribe the next epidural injection and document her functional abilities and the current range of motion of neck and back.

Q. Okay. Was there any significance to the selection of the date June 4th?

A. No. This is post -- She had a -- She came in for a follow-up examination and no specific reason, no.

Q. Okay. It didn't have anything to do with the fact that jury selection was scheduled for June 4th?

A. How would I know there's jury selection going forth, no.

Q. I don't know. I'm asking you the question.

A. No.

Q. And, Doctor, you scheduled an injection for her, correct?

A. Yes, sir.

Q. And the reason for the injection, according to the report and you have that injection report before you, is failed physical therapy and failed pain medication, correct?

A. That's correct.

Q. Okay. But from January 4th till June -- I'm sorry.

From January 29th until June 4th she didn't have any physical therapy, did she?

A. She did not, no.

Q. And she didn't have any pain medication, did she?

A. Other than over the counter, not prescribed anything by me.

Q. So the real reason that you did the cortal injection had nothing to do with failed physical therapy or pain medication because she wasn't taking any and you hadn't

prescribed any, correct?

A. First of all, it was not a cortal, it was a cervical epidural, and it was trigger point injections as well and she still --

Q. No, Doctor, I'll stand corrected.

But the reason for doing those injections had nothing to do with failed physical therapy or pain management by prescription during that time because she wasn't getting any; isn't that correct? Yes or no?

A. No, that is not correct.

Q. Fine, that's your answer. Thank you, Doctor.

A. All right.

Q. Doctor, you were asked questions by Mr. Subin with regards to findings made by Dr. Toriello. Do you recall that?

A. I do.

Q. Are you aware of the fact that in cases such as this the doctors for the defendants write written reports?

A. Yes.

Q. Okay. So you knew before coming here that Dr. Toriello or some other IME doctor had prepared IME reports with regards to the examination of the plaintiff; is that correct?

A. That is correct.

Q. Have you ever read those reports?

A. From Dr. Toriello?

Q. Yes.

A. Yes.
Q. When did you read them?
A. Before coming here. About two days before coming here.
Q. Okay. So when you did all of your work in evaluating things related to Ms. Gonzalez you didn't read Dr. Toriello's report, correct?
A. That is correct.
Q. And while you disagreed with Dr. Toriello's diagnosis, he essentially said, and you correct me if I'm wrong, that any injuries that Ms. Gonzalez sustained in the accident were resolved and he did not see evidence of them in his exams, correct?
A. That's what he says and that's what I'm disagreeing with.
Q. I understand that.
But wouldn't you agree with me that Dr. Toriello's findings in his physical exam match the findings of Dr. Gondolo in her July 2018 exam that we talked about yesterday?
A. Let me review Dr. Gondolo's report of June 18. I have thirteen reports, not five like you said yesterday. Thirteen.
Q. Actually I talked about Dr. Gowea, I didn't ask how many you had of Dr. Gondolo. No problem.
A. I'm talking about Dr. Gowea.
Q. Right. I want to --
No. I want you to look at Dr. Gondolo, the

neurologist.

A. Oh, Dr. Gondolo.

Q. I asked you about setting a baseline.

A. Okay.

Q. Now all I'm asking is aren't the exam findings of Dr. Gondolo and Dr. Toriello consistent even though you don't agree with them?

A. If you have that report it would save me a lot of trouble looking through all these records.

Q. Yes, be my pleasure.

MR. BRODY: Exhibit 13, please. Sorry, Judge, I just need to find the first page which now seems to be out of order. Here we go.

Officer, if we can hand the witness Exhibit 13. I pulled the four pages of the date that I'm asking him about but he's free to look at anything else if he wants to see anything else.

THE COURT OFFICER: Plaintiff's Exhibit 13 in evidence is being shown to the witness.

THE WITNESS: Thank you.

A. Yeah, it's an incomplete examination performed by Dr. Gondolo. There's no range of motion.

Q. Doctor, I just asked you if you agree that the findings of Dr. Gondolo are consistent with the findings of Dr. Toriello; yes or no?

A. I don't have Dr. Toriello's report in front of me. If you hand that to me, I can compare and answer your question.

Q. I'll rephrase it then.

A. Okay.

Q. You're aware that Dr. Toriello found that any condition the plaintiff may have suffered was resolved, correct?

A. That's what he said, yes.

Q. And he made no abnormal physician findings of her neck or her back, correct?

A. That is correct.

Q. Did Dr. Gondolo, a year and a half before Dr. Toriello saw Ms. Gonzalez, also made no findings of any abnormality with her neck or back, correct?

A. That's what it says in these records, that's correct.

Q. Okay. And just so that we stay consistent, because I think you said yesterday people could have good days and bad days, right?

A. That is correct.

Q. Okay. In November of 2018, four months after that visit, Ms. Gonzalez went back to Dr. Gondolo and again Dr. Gondolo made no positive findings with respect to her neck or her back, correct?

A. That's correct.

Q. Okay, thank you, Doctor. Let's make sure we get thirteen back.

MR. BRODY: Thank you, Officer.

Q. Now, Doctor, are you aware that on behalf of the attorneys for 995 Fifth Avenue, who were the attorneys before my firm, but they retained a radiologist who reviewed films in this case?

A. I'm not aware of it, no.

Q. Were you ever provided copies of her reports?

A. No.

Q. Did you ever discuss her reports with counsel for Ms. Gonzalez?

A. Which reports?

Q. The reports of the radiologist.

Have a conversation about whether there was one, what a radiologist on behalf of 995 found, anything like that with counsel?

A. No, never came up.

Q. Okay. So it would be fair to say that as you sit here today you would have no basis to either agree or disagree with anything that that radiologist found, correct?

A. That is correct.

Q. Now, Doctor, let's just talk about the life care plans that you prepared.

A. Okay.

Q. In general first.

A. Oh, okay.

Q. Okay. You prepare life care plans in connection with lawsuits or other cases where people claim to be injured, correct?

A. Correct and/or when asked to do so.

Q. Okay. And you don't prepare one for just a patient that you're treating who came in with pain in their back because you don't need to prepare that because they're your patient, right?

A. If I'm asked to prepare it for that patient I will do so as well.

Q. Okay. But you do prepare them for law firms, correct?

A. Those that are asking for it, answer's yes.

Q. Okay. And there are some firms that do it more regularly than others, correct?

A. They have bigger volume of cases than others, yes.

Q. Okay. And one of the firms with a bigger volume would be the Subin firm, at least that you know with your office, correct?

A. That's correct.

Q. And when they asked that you do a life care plan they send you the records that they have, correct?

A. That's correct.

Q. And generally speaking, you will examine the claimant or a plaintiff, correct?

A. That's correct.

Q. And then you'll prepare a life care plan, correct?
A. That is correct.
Q. And do you charge for your time reading the records?
A. It's a flat fee. It's not piecemeal, it's a flat fee.
Q. Okay. And what is that fee currently?
A. Twenty five hundred.
Q. And in a month, generally, how many cases do you get where you prepare a life care plan?
A. It varies. Some months none, some months one or two. It varies.
Q. Okay. Are you suggesting that you receive one to two new cases from law firms to prepare life care plans a month; is that your testimony?
A. I said it varies and not every case that I have requires a life care report.
Q. Well, would it be fair to say that in the last six months you've received more than one or two cases from the Subin firm alone?
A. I don't know if that's true. It's possible.
Q. And of course you get cases from Kellner & Kellner?
A. Very few.
Q. You get cases from Seth Harris, the guy who advertises on the billboards in the Bronx?
A. I get referrals from just about every walk of life.
Q. I didn't ask you about walks of life.

A. I do get referrals from Seth Harris's office as well.
Q. And as part of what you do when you're not in court, one of the things that you do is give presentations at law firms about the services you can offer; isn't that true?
A. In the past, yes, that is true, at Mount Sinai school of medicine.
Q. Okay. Well, you also gave a presentation to the Subin firm's lawyers, did you not?
A. Right around COVID time, yes.
Q. Okay. And did you show any type of slide show or presentation during that?
A. No slide show. No slide show.
Q. No Power Point?
A. No Power Point.
Q. You just went in and talked to them?
A. That's correct.
Q. Did you have a prepared speech that you gave to them?
A. I don't prepare a speech, it comes naturally.
Q. Did you talk to them about the services you could provide them?
A. Yes.
Q. Did you talk to them about how, if they sent you their cases, you could increase the value of their cases?
A. No, sir.
Q. Your life care plan is what you consider would be the

ideal treatment plan for the patient that you're examining, correct?

A. That is correct.

Q. Can we agree it has no bearing upon the treatment that they have received in the year, two, maybe three or four years prior to their seeing you?

A. That is correct.

Q. And can we also agree that to do the life care plan part it would be irrelevant whether or not the person's condition was caused by an injury or an accident?

A. A life care plan is a life care plan. Generally it's based on an injury.

Q. Well, Doctor, shouldn't a life care plan not be based on an injury but on a condition?

A. Give me an example and I'll answer your question.

Q. Okay. I have two herniated discs in my back.

A. Okay.

Q. I miss time from work. I have pain but I've never been involved in a trauma. Your life care plan should be based upon my physical condition, having nothing to do with how I acquired it?

A. In that --

Q. Yes or no?

A. Yes, that's correct.

Q. All right. In discussing with the jury your life care

plan isn't it important to take into consideration the realty of the things that have been happening?

A. Like what?

Q. Well, according to you, Ms. Gonzalez should be getting physical therapy once a week, correct?

A. Yes.

Q. For the rest of her life, correct?

A. That is correct.

Q. Yes or no. Did you prescribe for her physical therapy once a week since January 29th of 2025?

A. I did.

Q. Where's your prescription since you just testified you don't have one?

A. Prescription's right here.

Q. Doctor, that prescription's from December of '24; is it not?

A. It continues.

Q. Oh, that's a lifetime prescription?

A. That is the prescription currently. If it needs to be changed or updated it will be done accordingly but that is the prescription.

Q. So let me see if I understand this correctly. Your prescription for Ms. Gonzalez to have physical therapy once a week but she hasn't gone and she's ignoring your advice for the last five or six months; is that correct?

A. The answer's yes for a very good reason.
Q. I don't need the good reason.
A. Yes, you do.
Q. You always answer you have a very good reason for anything.
MR. SUBIN: Objection to the comment.
MR. BRODY: I'll show it in the transcript. I apologize and I'll withdraw it.
THE COURT: Thank you.
Q. Doctor, yesterday I asked you what prescriptions comprised the three to $5,000 a month that you included in your life care plan and you rattled off the names of some medications; is that correct?
A. That is correct.
Q. Can we agree, yes or no, that between January 29th and June 4th when you next saw Ms. Gonzalez you did not issue prescriptions for any of those medications? Yes or no?
A. That is correct, for a very good reason again.
Q. I'm sure.
A. Okay.
Q. And from June 4th until today you haven't issued those prescriptions, have you?
A. That is correct.
Q. Doctor, in your life care plan you give pricing for various things; is that correct?

A. That is correct.
Q. And you testified a little bit on direct about how you come up with your pricing, right?
A. That is correct.
Q. Talk to your friends and colleagues when you go to events and that type of thing, correct?
A. You missed the big boat. I also said I review hundreds and thousands of medical records. In those medical records there's also bills that comes in with those records and I'm familiar with the fee schedule. A lot of things I have in my life care plan I do myself and I'm familiar with those fee schedules.
Q. Okay. But you have a nice big stack of records in front of you for this case, right?
A. Yes.
Q. There's not a single bill in there, is there?
A. There's what?
Q. There's no bills in there, right?
A. In these records, no.
Q. And those were all the records you got in this case, right?
A. That is correct.
Q. Doctor, there's also ways though of going online and determining, for example, the natural average cost of an injection or the national average cost of a trigger point

injection or a cortal injection or any of these other types of procedures, correct?

A. Those are not reliable sources. National is different than the prevailing New York City rates.

Q. Okay. Where are the prevailing New York State rates kept?

A. There is no such thing as any specific bulletin or a guide. The fee schedule is determined by the doctor's specialty, training, board certification and the amount of experience he has for the medical services. Prescriptions you can call a national pharmacy like CVS.

Q. Okay. And for other tests you can review how much various plans allow for the performance of the test, correct?

MR. SUBIN: Objection, Judge.

THE COURT: What's your objection?

MR. SUBIN: We're going into I guess insurance.

MR. BRODY: Can we approach?

THE COURT: Yes, you can approach.

MR. BRODY: That way there's no prejudice.

(Whereupon, the following took place at the side bar off the record in the presence of the Court and counsel.)

MR. SUBIN: Judge, I withdraw that.

THE COURT: Thank you.

MR. BRODY: Judge, I'm just going to ask if we can

have the court reporter read the question back so we can have the same question.

THE COURT: Yes. Madam Court Reporter, could you please read the question back.

(Whereupon, the last question was read back by the Court Reporter.)

A. You could. Doesn't mean it's going to be accurate and medically indicated.

Q. Doctor, your report and your life care plan it contains amounts but can we agree it doesn't contain the source of those amounts or where you derive those sources from?

A. It's my professional knowledge and knowing the medical indications and the fees.

Q. Can we, Doctor, again I'd just like to if we can do it yes or no. So I'll try and put yes or no or correct after each question.

So can we agree that in your report you do not indicate the source of where you determine these prices; yes or no?

A. That is correct.

Q. And to reach the life care plan that you've given it is exactly that, it is a plan, it's not a reflection of what Ms. Gonzalez will actually do, correct?

A. That is correct.

Q. Okay. And it's not a reflection of what she's done over the past few years, correct?

A. That is correct.

Q. And we can also agree that your retention in this case to prepare your life care plan was in connection with presenting it to this jury during a trial, correct?

A. Yes.

Q. You were not hired to do a life care plan to give to Ms. Gonzalez to take to Dr. Gondolo or Dr. Gowea, correct?

A. That's correct, yes.

Q. Doctor, do you, after you go to court and testify about your life care plans, do you check and see how many of those patients you actually see again?

A. It varies. I don't specifically check, no.

Q. Would it be fair to say that, I don't know, let's start with more than fifty percent of them do not return to follow their life care plan after their case is over?

A. I would not say fifty percent. Some do, some do not.

Q. Okay. Would you say ninety percent?

A. That do not follow?

Q. Yep.

A. I would not agree with that number.

Q. Okay. Are you familiar with a patient of yours by the name of Gracie Barcia?

A. Gracie how do you spell the last name?

Q. B-A-R-C-I-A.

MR. SUBIN: Objection. Objection. These are

somebody's --

THE COURT: Approach me. Approach me.

(Whereupon, the following took place at the side bar off the record in the presence of the Court and counsel.)

THE COURT: Let's take a five minute recess.

THE COURT OFFICER: Jury exiting.

(Whereupon, the jury exited the courtroom.)

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

THE CLERK: Come to order.

THE COURT: Counsel, let's be clear, this case that you gave me, which is a first department case, of Barcia versus Costco Wholesale, the decision, and I quote, states: Some of the future medical needs set forth in the life care plan were speculative as record evidence showed that plaintiff had discontinued or not received such treatment. Limit your question to that finding please, to that issue only.

MR. BRODY: Judge, I was going to be very general and very quick.

THE COURT: Okay. But you gotta stop asking questions about other patients, I don't find that that is appropriate under these circumstances.

MR. BRODY: Okay. Just for the record, and I said

that in the side bar, I wasn't actually going to ask about the plaintiff's care and treatment but if I didn't give him a name he wouldn't know what case I was talking about.

That's really all I was doing was referencing a person to see if he remembered the person so I could talk about the case. Beyond that, I have no intention of talking about the care and treatment of any individual.

THE COURT: Yes, but counsel, I think that's problematic because when patients go to see doctors, even if they have a case, they don't expect their name to be brought up in somebody else's trial.

MR. BRODY: But if I have a cross-examination he said one thing in one case and one thing in another case I still have to give the name of the case in order to raise what he testified to. I have no intention of going beyond that, Judge.

THE COURT: Let's move on. Let's get the jury.

MR. SUBIN: Would you like the doctor to come back up to the stand?

THE COURT: Yes, please.

(Whereupon, the witness stepped up to the witness stand.)

THE COURT OFFICER: Jury entering.

(Whereupon, the jury entered the courtroom.)

THE COURT: Have a seat. Counsel, you may

continue your cross.

MR. BRODY: Your Honor, could I get my decision that I handed up to you.

THE COURT: I thought you --

MR. BRODY: Did I take it back?

THE COURT: I thought you did because I printed this one.

MR. BRODY: Never mind, Judge, I have it. Thank you.

Q. Doctor. I believe the question that we were asking before we broke was did you follow-up or do you follow-up in general with what happens in the courts with the cases that you testify in where your life care plan is being presented?

MR. SUBIN: Objection.

THE COURT: Sustained.

Q. Specifically with regards to the Barcia case, did you follow what the courts did with respect to the life care plan?

MR. SUBIN: Objection.

THE COURT: Sustained.

Q. Have you had discussions with counsel about what the courts have done with respect to your life care plan?

MR. SUBIN: Objection.

THE COURT: Sustained.

Q. With regards to Ms. Barcia, do you know whether or not she followed up with the life care plan you gave her?

MR. SUBIN: Objection.

THE COURT: Sustained. Counsel, I think we discussed this in my ruling.

MR. BRODY: And I thought you ruled differently than this but that's fine.

Q. Are you familiar with a case that my firm handled with you by the name of Lowry versus Rye Clean, LLC?

A. I do not recall.

Q. Okay. Was that a case that you issued a life care plan on at or about the exact same time you did the life care plan of Ms. Gonzalez?

A. If I don't recall, how can I answer your question?

Q. Do you do so many life care plans --

A. No.

Q. -- that you can't recall who did them for?

A. No. No. I don't recall. There's no reason for me to recall anything specifically. If you have something to show me I'll be happy to answer your question, otherwise I don't recall that name.

Q. No, my question was do you recall it?

A. I just told you I don't recall.

Q. Thank you.

A. Welcome.

MR. BRODY: Nothing further at this time, your Honor.

THE COURT: Redirect.

MR. SUBIN: Yes, Judge.

(Whereupon, Senior Court Reporter Robin Nunez relieved Senior Court Reporter Caroline Mandato.)

THE COURT: Re-direct?

MR. SUBIN: Yes, Judge.

RE-DIRECT EXAMINATION

BY MR. SUBIN:

Q. Good morning, Dr. Guy.

A. Good morning, sir.

Q. Dr. Guy, yesterday you were asked by Mr. Brody if it was possible that Dayra fell and just hurt herself a little and got better. Do you remember that question?

A. I do.

Q. I want to follow-up with that. And I want to do it by body part with your permission. Is that your opinion with regard to the injuries that Dayra sustained to her neck that she had just the small injury that got better?

A. I'm sorry. I did not understand your question.

Q. What is your opinion with regard to Dayra's neck as a result of this accident?

A. It was caused by this accident, and it caused the three disk herniations that required surgery and for a variety of good reasons.

Q. Could you explain those good reasons?

MR. BRODY: Objection.

THE COURT: Excuse me, yes.

MR. BRODY: I specifically didn't ask him these questions on cross, so this is improper redirect.

THE COURT: Counsel, I recall you asking these questions.

MR. BRODY: I actually did it completely differently and I didn't talk about what his opinion was.

MR. SUBIN: When you asked him if it was possible, I'm asking to follow-up with it.

THE COURT: You opened the door. Overruled.

Q. Give us all the reasons that you believe the disk herniations were caused by the trauma of June 20th of 2017?

A. Number one, there is a lot of records here, none of the prior treating physicians. Not the primary, not the neurologist, none of them have mentions of any prior neck problems. Nobody ever found the need to refer the patient for an MRI or study after the accident. Therefore, in the medical field when a person has no prior problems to the body parts and then an accident happens and the accident initially shows in the emergency room normal examination, normal reflex and everything, and slowly and gradually it worsens and the MRIs confirms the pathology, the patient fails to respond to conservative treatments, and now we have the full picture. It came from this accident. The accident is the competent producing cause of her neck injury injuries.

Q. Now, how do you know medically that she has these herniations?

A. I have the MRI results. I have the injury results. I

reviewed the intraoperative reports of Dr. Gerling and the current recent MRIs, which I ordered, which I reviewed myself, and the recent EMGs I personally performed.

Q. So, if we take -- what's the record that's the best possible, the gold standard for you in determining that, that she --

A. Well, the report of March of 2017, three months before this accident. There is no mention of any neck problems. There is a mention of intermittent episodes of back pain but no MRI was ordered. No EMG was ordered. And so it means it was not a big problem. If it was, somebody should have ordered an MRI or an EMG.

Q. Let's just stay with that.

MR. SUBIN: Judge, may I move the screen forward a little?

THE COURT: Yes.

MR. SUBIN: Thank you.

Q. Mr. Brody asked you a series of questions about a note from Dr. Gondolo July 19th of 2018, do you recall that?

A. I do.

Q. And yesterday, when I was questioning you, you talked about something called EMR?

A. Yes.

Q. I want to show you the note that's in Plaintiff's Exhibit 13, which is Dr. Gondolo. So, on the right here,

Doctor, are you able to see that?

A. I do, I see it, yes.

Q. Okay. And that's from Dr. Gondolo. That's April 20th of '2017. Exactly two months before this trauma, right?

A. That's correct.

Q. And I want to go through with this note for a second. So, with regard to this note two months before the trauma, as a matter of fact, what I'm going to ask you to do, and maybe I'll do it for you --

MR. SUBIN: May I, Judge, may I approach?

THE COURT: Yes, you may.

MR. SUBIN: Okay. May I approach the witness, your Honor?

THE COURT: Yes.

Q. Doctor, can you see the screen, Doctor?

A. I can see it, but not very clearly.

Q. Fair enough. So, you are holding September 19 of '18, right?

A. Yes, sir, that's correct.

Q. And I just want to show the jury, I'm going to read from the cranial exam of April 20th, and I'm going to ask you, actually maybe not, I'm going to show so everybody is clear. I'm showing from two months before the physical findings from Dr. Gondolo. Can you read what it says under cranial nerves?

A. Yes.

Q. So, you are reading July 19th and we are looking at two months before?

A. Okay.

Q. Okay. And go ahead?

A. Cranial nerve number one, olfactory exam, test smell reveals no abnormalities. Cranial nerve number two optic, visual field exam. Is full to concentration. Optic disks with normal color contour and cupping bilaterally with no papilledema. Papilledema means swelling of the fungi of the eye.

Q. For the purposes -- now, I'm just going to ask you to read it because I'm trying to show that they are exactly identical.

A. Okay.

Cranial nerves 3, 4, 6 exam. Pupils are equal, round and reactive to direct and consensual light. OU, CN, that's the fifth cranial nerve, trigeminal sensation exam. Facial sensation is intact in all three distributions of the trigeminal nerve, corneal reflexes are normal bilaterally and muscles of mastication are intact and symmetric. Cranial number seven facial expression exams. Muscles of facial expression expressions are intact and symmetric. Cranial number eight, hearing exam. Hearing is grossly normal. No nystagmus was noted. Halpike test reveals no nystagmus. Cranial nerve number 9 and 10, gag speech and swallow exam. Able to taste in the

posterior third of the tongue. Gas -- that should be gag, not gas. It says gas reflex.

Q. Is that a typo in your opinion, Doctor?

A. Yes, yes.

Q. Can you see this over here?

A. Yes, I see it.

Q. Is that typo continued in this note from July of '19 that Mr. Brody was referencing?

A. It is.

Q. Okay.

A. So, to read it says gas reflex where, in fact, it should be gag reflex is intact bilaterally with symmetrical elevation under soft palate to phonation. Cranial number eleven, spinal accessory exam. The sternocleidomastoid and trapezius muscles are symmetric and 5 over 5 in strength. Cranial number twelve, the hypoglossal exam, the tongue protrudes in the midline.

Do you want me to continue?

Q. Doctor, if you can please bring that down and go through and see if it is exactly identical in all of the motor exams from the two months before the trauma till the note that Mr. Brody showed you of July of '19?

A. It is exactly the same.

Q. Now, I want to show you here we are looking at, again, two months before the trauma, 11/18 of '19, can you take a look

and see -- first of all, is the typographical error carried forward?

A. Exactly the same.

Q. And the whole rest of the finding is exactly the same?

A. Yes.

Q. And, now, I want to show you here is April 20th, again, two months before the trauma and here is now 1/28 of '20, can you remind us what is the date of the surgery that Ms. Gonzalez had in March 19th of '19?

A. Yes, that's correct.

Q. This would be eight months post surgery?

A. Yes.

Q. Is this from eight months post surgery, is this record from Dr. Gondolo, again? Do we have the carry forward of the gas reflex?

A. Yes.

Q. Is the whole page all of the findings identical to the findings that were from the pre-trial note?

A. Yes.

Q. You told us about EMR, what does that tell you about these records?

A. Exactly the same. It carried out from the first time it was produced to the last time or the most recent time it was produced. We call that copy and paste.

Q. And based upon what you've reviewed, the dates going

after the trauma -- withdrawn.

Doctor, you were asked questions about the CAT scan findings, do you recall that?

A. I sure do.

Q. You know, let me finish one thing, when we talked about the primary care doctors records, I wanted to also go through those. So, we have up here this is before --

MR. SUBIN: As a matter of fact, can I get number 13, please. 14 if it is not the other one. 14, please.

Q. Dr. Guy, did you have a chance to go through these records?

A. I did, yes, sir.

Q. What is the -- what's the initial visit -- what's the date of the initial visit by Dayra to Dr. Gondolo?

A. 3/13/2017.

Q. And on 3/13/17, does it indicate what the allergies are? And I'm projecting. You can just look at the projection, Doctor.

A. Look at the projector.

Q. It indicates what her allergies are, right?

A. Penicillin.

Q. Peanuts to penicillin.

A. Potassium causes anaphylactic reaction.

Q. That's the order. Now, if we go to the next note, it brings back all the same allergies?

A. Yes.
Q. If we go to note from 11/29 of '17, brings forward all the same allergies?
A. Yes.
Q. If we go forward to 2 of '18, it brings forward all the same allergies?
A. Same.
Q. And what does that tell you about these records?
A. Paste and copy.
Q. Okay. Now, you were asked questions about a CAT scan from Lenox Hill which I'm going to show. Now, what would the indication -- when it is an indication on the CAT scan, what does that mean?
A. Why the patient is being referred for that study.
Q. And yesterday, we talked about the normal cervical lordosis. What is the reversal of the normal cervical lordosis?
A. The normal shape is reversed. It is usually due to muscle spasm.
Q. Can it also be due to the way the person is positioned?
A. It can be.
Q. What is more likely?
A. Muscle spasm.
MR. BRODY: Objection.
THE COURT: What's your objection?
MR. BRODY: A, I didn't cover this. B, the report

says what it is likely from, and he didn't look at the film.

THE COURT: Overruled.

Q. Now, last few, the next words there, there is no significant spinal canal or neuroforaminal stenosis. Can you explain what that means and why that is significant in your opinion?

A. Yes.

THE WITNESS: May I be allowed, your Honor, to step down and show on the monitor?

THE COURT: Yes.

A. Where the nerve root exits, it is called a neuroforaminal. It has to be nice and wide so there is no compression to the nerve root. And this is an example of narrowed neuroforaminal, corresponding to disk herniation.

Q. Okay. Doctor, what's the significance to you that on the day of this traumatic event, that Ms. Gonzalez didn't have any neurocanal or neuroforaminal stenosis?

A. So, since the nerve roots exit out of the neuroforaminal, and there is no pathology here, there is no reason to believe there is any radiculopathy or damage to the nerve root. If you have an osteophyte anteriorly in the front, has nothing to do with the nerve root. The nerve root is here. Anterior is here. Unrelated. That's what I was trying to make a big issue out of it.

Q. Let me ask you a different question, if we know as a baseline that Dayra didn't have anything squeezing on her nerve on the day of this incident, had immediate pain and then developed the symptoms she developed, what does that signify to you?

A. Exactly what I've been saying yesterday all day, incubation period, the incubation of trauma in several weeks to several months after the trauma. So, the condition, it slowly, slowly began and it slowly, slowly continued, and the herniation is set in motion.

Q. Okay. Counsel asked you about osteophytic lipping at C5-C6, which is one of the areas where she had a problem. If it is anterior, tell me what the significance of that is to --

A. None. Absolutely none. There is no neuro-structures in front of the vertebra. All the structures are on the posterior lateral. In the back, on the side, if you have an osteophyte here, it has nothing to do with the nerve roots and is irrelevant.

Q. Now, the report here from Lenox Hill, that there is mild degenerative changes. First of all, what is the grading from a radiological point of view?

A. Mild, moderate, severe.

Q. So, mild would be the lowest?

A. Yes.

Q. Can you show us where that C1-C2 disk is?

A. C1-C2.

Q. That's what it says on the thing?

A. First one.

Q. Now, point to us again where Dayra had all of her problems in her surgery?

A. 1, 2, 3, 4, 5, 6, 7. From C4 all the way through C7, the last three disks in her neck.

Q. So, the fact that the radiologist at Lennox Hill Hospital mentioned that there was mild degeneration up here but didn't mention any degeneration in the areas where Dayra was injured, what does that signify to you?

A. There was no prior pre-existing conditions to her neck at the level where the disks were herniated.

Q. Counsel brought up that there was only one physical therapy appointment from January till June. Do you recall that?

A. I do.

Q. In January, what procedures did you perform on her, if any?

A. She had a cervical epidural injection and I think she had a shoulder injection as well. On January 17th, '25, she had a first lumbar epidural injection, and I think she had another one before that, give me a second. On January 3rd, '25, she had a left shoulder intraarticular injection. I have first cervical epidural injection.

Q. Now, as far as you are aware, was that Dayra's first

set of injections that she received post surgical?

A. By me, yes.

Q. Now, when you -- is there significance when somebody has a first set of these pain management procedures?

A. They have significant relief of pain.

Q. And is that what happened to Dayra?

A. Yes.

Q. Okay. Now, when was the second time you gave her any?

A. Second time I gave her the neck injection was on June 6th, 2025. That was the cervical and trigger points in her upper back and lower back.

Q. Do you anticipate that she's going to have the same relief that she got from the first set?

A. Yes.

Q. Mr. Brody asked you about the life care plan and whether or not Dayra was going to actually need the procedures and the treatment?

A. Right.

Q. Based upon your most recent examination, do you have an opinion whether or not she's going to need more treatments?

A. The answer is yes.

Q. Can you tell us why based upon your findings from your most recent treatment?

A. She's had good relief from each of these injections. They only last for a short period of time. They are not

designed to give the patient a permanent cure, just a short temporary relief so she can build her body, improve her overall function to the best she can while she has the least amount of pain.

Q. Does she have any symptoms that were important to you in the most recent visit?

MR. BRODY: Objection.

THE COURT: What's the objection?

MR. BRODY: I didn't cover any of this.

MR. SUBIN: This is due to future treatment and whether she needs it.

THE COURT: Yes, overruled.

A. Yes, she's going to be scheduled for her second cervical epidural and upper and lower trigger point injections as of 6/4/25 evaluation, and she had it on 6/6/25. So, now, I have to see her again to see how she's doing and assess what the next step should be for her.

Q. And what about the symptoms from 6/4?

A. She still has neck pain which radiates down both upper extremities. She still has lower back pain which radiates down both lower extremities. She still left shoulder pain, still has right knee pain. This is a little embarrassing, am I'm allowed to say this?

Q. If it is her medical treatment.

A. Yes. She's having problem with sexual dysfunction and

her marriage, it's affecting her. And, also, she's having financial and family issues as well.

MR. BRODY: Objection. Moved to strike.

THE COURT: Sustained, so stricken. Members of the jury, when an item is stricken, you are not to factor that in your ultimate decision.

Q. And, finally, Doctor, Mr. Brody challenged you on your college grades. Can you explain what was happening during your college --

A. Yes, I can. From a very poor family. My father had to work two jobs. My mother worked two jobs as well, and I worked three part time jobs. I was a stock employee at Bloomingdales, I worked in a Deli. I drove a yellow taxi cab. I just didn't have the time to study the way I should. I still got a lot of As. I got an A plus in psychology. I got an A in English. I got an A in economics. I got another A in home economics. So, despite the little time that I have, I was still able to get a lot of As. But the pre-med courses requires a lot of time, like organic chemistry. Organic chemistry, there are a lot of students in the class. Average grade was a D. Half the class fails in organic chemistry because they cover a lot of material fast, very, very quickly.

So, I heard about medical school in the Dominican Republic. I went there, I lived there for 2, 3 weeks. I fell in love with the country. I fell in love with the people, the

food, and I said this is where I'm going to go. I applied to one school and I got accepted. I went there. I was in the Universidad Central Nordestana. I was there for four semesters, and then I switched to Universidad Nordestana, which had a much better program. You do your rotations in the United States, so I did my medical rotations in the U.S.

I passed all my exams the first time around. I got into top training programs, Mount Sinai, and I became the chief resident at Mount Sinai. I'm an assistant professor of NYU School of Medicine. I proved with hard work, anything is possible.

Q. Thank you, Doctor.

MR. SUBIN: Nothing further.

THE COURT: Any recross?

MR. BRODY: Very briefly, Judge.

RE-CROSS EXAMINATION

BY MR. BRODY:

Q. Doctor, you believe it is bad practice for doctors to cut and paste from prior reports, yes or no?

A. I do.

Q. And can we agree that the complaints and why Ms. Gonzalez was in the doctors office on these visits is completely different?

A. Yes, some of those visits it was different, that's correct.

Q. The medication that she was on, they were different, right?

A. Yes.

Q. But the exams, the results of those exams were reported the same, and that offends you; correct?

A. For very good reason, again.

Q. Okay. Doctor, I'm looking at your cervical operative reports.

A. Okay.

Q. Page 2 of each report is the operative procedure you exactly -- how you are placing the needle and what you are doing during the entire time and the plan from each of these reports.

MR. SUBIN: Judge, that is not -- objection, that's showing something to the jury not in evidence.

THE COURT: Is it in evidence?

MR. SUBIN: No.

MR. BRODY: His operative reports aren't in evidence? Let's mark his operative reports as --

THE COURT: Are you going to be objecting to the report in evidence? Are you stipulating to it?

MR. SUBIN: I think the whole file should come in, Judge, if you want to put in the whole file.

MR. BRODY: You know what, I would love for the part of his file that's not the records the Subin firm gave him, but is actually his records, to come in. I would be

great with that.

MR. SUBIN: No objection, Judge.

MR. BRODY: Defendant's C in evidence, Judge?

THE COURT: Yes.

MR. BRODY: May I show it now and mark it afterwards.

THE COURT: Yes.

Q. Doctor, the pages, every word is identical, right?

A. Yes, because the procedure.

Q. I didn't ask why, I just asked if they were --

A. Yes, for very good reason.

Q. Of course, because you do basically the same procedure each time and the information here is the same, and if something changed you would change it, right?

A. But something did change on the first page.

Q. Again, just like with Dr. Gondolo, some of the things changed and she changed them, and some of the things didn't change, so she didn't. And you have no way to say otherwise, do you?

A. I do.

Q. Okay. Because you wrote her report?

A. No --

Q. No, yes or no, did you write her report?

A. Not every question can be answered with yes or no.

Q. Did you write her reports?

A. Did I write her reports, of course not.

Q. Did you ever speak to her?

A. No.

MR. BRODY: I have nothing further, your Honor.

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

We are going to take a brief recess so everybody can use the restroom.

COURT OFFICER: Jury exiting.

(Whereupon, the jury exits the courtroom.)

THE COURT: Mr. Brody, do you have an application?

MR. BRODY: I do, your Honor. Your Honor, it relates to Dr. Guy's testimony, life care plan, and two specific points I wish to raise. The first relates to very specific testimony that Dr. Guy gave yesterday, at page 162 of the transcript of the Court. The question was "so now here is a report of Ms. Gonzalez, the July 19, 2018 report which we talked about today," and the Doctor, after taking the time to review that, and her entire record, was asked the question why isn't the results of this examination Ms. Gonzalez is based on, okay. And his answer is I don't know.

Now, this is a treating Doctor of Ms. Gonzalez, who gives her, essentially, a normal examination with no findings with regards to her neck or back. Dr. Guy could not rule it out as her baseline consistent with the

position taken by the defendants in this case that her conditions from which she was treated after this date are not causally related to the accident. Since he's the only one coming in live, if he cannot explain why that is not her baseline, then his testimony and his conclusions as to what he believes, is speculative, because he is acknowledging that that could, in fact, be her baseline, and her baseline would be no complaints or findings that survived her treatment between the time of the accident and the time of that visit, which would be consistent with the cervical strain or cervical sprain or a lumbar sprain or a lumbar strain.

So, by his own testimony, any claim that he wants to believe or that it is advantageous to believe, that her neck and spine conditions are causally related to the accident, are not to the level that the courts require.

Further, Judge, should you allow his testimony to remain, allowing testimony is part of the life care plan with regards to medications and physical therapy that she's not receiving, that there is extensive gaps in treatment, he does claim he prescribed the physical therapy. It is an outdated prescription. She hasn't undergone it. Didn't say anything about it in his June 4th report. She's not getting physical therapy. In fact, his cut and paste says physical therapy is not helping her. So, a lifetime of

physical therapy is purely speculative.

And, as for the medications, I challenged him on that yesterday. I objected. Counsel picked up on it. He gave a list of medications, and yet he doesn't prescribe any of them. So, yeah, maybe there are things in the world, that would be nice. She's not prescribed them. She's not taking them. To allow a lifetime care plan to include prescriptions would clearly be speculative. While I raised my objection in my paper with regards to all of the other issues, I feel the testimony on this is so conclusive that those two items should be stricken before Dr. Dwyer testifies.

THE COURT: Counsel, I'll hear you.

MR. SUBIN: Judge, on redirect we finished that it was a cut and paste job, yet, they weren't actually the exams of the findings. They were cut and paste jobs from prior, and that's so -- I don't know was in the abstract without looking at the other records and handing him one record and saying that. Clearly we fixed that. And as far as the physical therapy, he said that she got a lot of relief. She's going to say that the new shots didn't help her and she will do the physical therapy, but she was feeling good and didn't want them. This just goes to the weight, and not the admissibility.

THE COURT: I agree, counsel. This is something

you can argue to the jury, Mr. Brody, at your closing argument. You have the right to come out and argue why you believe that this report is speculative and that is something for the jury to determine whether it is speculative or not. Maybe they will agree with you. Maybe they won't. But I think it is improper for me to preclude or to have his entire testimony stricken as you request so.

Do the attorneys need a break or are we ready to proceed?

MR. SUBIN: I'm ready.

MR. BRODY: I'm ready to go, Judge. It is just a short witness. I'll just note my exception for the record.

COURT OFFICER: All rise, jury entering.

THE COURT: Counsel, you may call your next witness.

MR. SUBIN: Thank you. At this time the plaintiff will call Maria San Martin.

COURT CLERK: Raise your right hand. Do you swear or affirm that the testimony you're about to give shall be the truth, the whole truth, and nothing but the truth.

THE WITNESS: I do.

COURT CLERK: Please state your name and business address.

THE WITNESS: Maria San Martin, 167 Kansas Street,

Hackensack, New Jersey 07601.

MR. SUBIN: May I, your Honor?

THE COURT: You may inquire, counsel.

DIRECT EXAMINATION

BY MR. SUBIN:

Q. Hello, Ms. San Martin, how are you?

A. Good morning. Doing well. Thank you.

Q. Okay. What is your profession? What's your occupation?

A. So, I am an assistant professor at the school of medicine at Northwell Hofstra.

Q. And you are here today in what capacity?

A. I am the economist. So, my role in a case like this is to project into the future what are going to be the costs that Ms. Dayra Gonzalez will afford due you to her injuries.

Q. I'd like to go back to your educational background. Can you please share with us what your educational background?

A. Sure. I earned my bachelors degree in economics in Uruguay, then I pursued my masters degree, also in economics, in Spain, and I finally did my Ph.D. in economics at Stony Brook University.

Q. Now, what does it take to get a Ph.D. in economics?

A. To get a Ph.D. in economics, we have first two years of field work, we take classes. We also have some exams which if you don't pass those exams, have to leave the program. And then

we have basically three years where we work in our dissertation.

Q. Okay. And what was your dissertation?

A. My dissertation was about long term care in the elder population in the United States.

Q. Okay. And did it have anything to do with economics?

A. Yes.

Q. How did it have to do with economics?

A. Yes, so, in economics we have different fields. One subfield is the one that I pursued is health economics. So, in health economics what we do is we try to study all sorts of policy problems related to health, so that's the main idea of health economics. It is not macroeconomics. It is mostly related to what is going on with the population in terms of health, and of course economics because we take into account race, we take into account income. We also take into account what's the occupation of the different population and so forth.

Q. Okay. Now, besides just your training, have you done any teaching in economics?

A. Yes.

Q. Can you share with us, please.

A. Yes. So, I have done several courses in economics on the undergraduate and graduate levels. I have taught health economics, data analytics, labor economics. When I was doing the Ph.D. I also taught macroeconomics. Currently teaching cost effectiveness courses. So, yes, I've been teaching in the last

ten years.

Q. What's a cost effectiveness course if you don't mind me asking?

A. No problem. You are probably familiar -- let me explain it with an example. We have a new technology in healthcare. Right, you probably hear a lot of this new technology is very costly, but one of the things that economists try to take into account as well is not only costs but sole outcomes. So, yes, this technology is going to be very costly, but how does it improve the health of the population. So, we take into account costs and outcomes. What is the costs of the new technology and what is the effect. The effectiveness it is going to have on a population.

Q. And you keep using the term economics. Can you define that term for us?

A. Sure. So, in economics, what we do is we try to understand how society allocates the scarce resources. So, we answer questions such as what is produced, how it is produced and who gets what. In particular, as I am more focussed on the health market, I follow health prices, also follow health policy, and I try to understand, as I was saying previously, what is the role of health in economics.

Q. Are you familiar with the term inflation?

A. Yes.

Q. Could you define that for us, please.

A. So, inflation or growth rate, it is the rate at which prices go up over time, that's the main definition of inflation.

Q. Now, is inflation the same across all products and services?

A. No, it is not. So, depending what is the sector that we are looking for, we are going to have different growth rates. So, if you see healthcare, for instance, in the last 25 years, you are going to see that price increases are not 3.3 percent, for example, but if you look to other sectors, transportation, you are going to see the prices may have increased at a different rate.

Q. How about within healthcare itself, is that one number in inflation or is it more than one?

A. It is more than one because within -- so, we have the whole economy, right, then we have different sectors within healthcare. We also have subsectors. So, for instance, if you look -- we look at professional services, right, we are going to have a certain growth rate. If we look at medications, we are going to have a different one. So, each subsector has a different growth rate.

Q. Now, with regards to this information about inflation and the different sectors, where do you derive it from?

A. Yes. So, the U.S. Bureau of Labor Statistics, or BLS, collects information about prices. And, generally, you are going to hear that they produce what is called the customer

price index, or CPI. To create this index they follow a bundle of goods and services from the typical household in the United States. And when they are collecting all this information, the sector that we are going to focus here, that we are going to pay attention, is going to be the medical. You know, the healthcare sector, medical prices.

Q. Now, when you are doing a projection going forward, how do you do that? How do you anticipate what's going to happen in the future?

A. So, what we do, for this type of analysis, we take into account what happened in the past. So, we take into account what has been the history in the last 25 years. And based on that we create, we project what is going to happen in the future.

Q. Now, why did you choose 25 years going back?

A. We take into account what is called a business cycle. If you are not familiar with the business cycle, the business cycle is going to tell us that certain periods in the economy is going to do well, and other periods in the economy we are not going to do well, but what we want to capture from these hills and valleys is the tendencies, what is going on overtime with prices.

Q. Now, let's say in this analysis, did you use 25 years?

A. Yes.

Q. Let's say you chose the last 4 years or 5 years with

regards to inflation. How would you -- would it be different?

A. So, for example, if you remember what happened in the last five years we had COVID, 2020, inflation. The general inflation was around 1.2, but then two years later in 2022, we have eight percent. Right. So, what's going to happen is -- and in the last few years we had a little bit higher inflation, more than the afternoon. What is going to happen if we only capture, you know, what happened in the last few years, we are going to have high inflation, but if we just consider 25 years what we had all these business cycles when the economy was doing well and when the economy was not doing well.

(Whereupon, Senior Reporter Nunez was relieved by Senior Reporter Mandato.)

(Whereupon, Senior Court Reporter Caroline Mandato relieved Senior Court Reporter Robin Nunez.)

Q. So, is it more --

Are you using a more conservative approach?

A. Absolutely, yes.

Q. Now, do you also --

Are you also part of a group that does work in lawsuits?

A. Yes.

Q. Okay. And was your group asked to do an analysis by my firm?

A. Yes.

Q. Okay. And did you bring that with you today?

A. Yes.

Q. Okay. And the analysis was that projection of cost by Dr. Guy for Dayra's Gonzalez's future health costs?

A. Yes.

Q. Okay. And did you produce a report based upon Dr. Guy's --

MR. SUBIN: Withdrawn.

Q. Let me ask you. We gave you Dr. Guy's life care plan. What did you do with it?

A. So we received the life care plan from Dr. Guy, which is a medical expert. So in this plan he provides type of care, frequency, duration and cost in current dollars. As there is

uncertainty of what is going to happen in the future with prices, my role is to project those prices into the future so that we make sure that Ms. Gonzalez can afford the health care that she'll need during her whole life.

Q. Okay. And do you have any medical background?

A. No.

Q. Are you just accepting what Dr. Guy says as being accurate?

A. Correct. He is the medical expert and I don't have the medical expertise.

Q. Okay. And as a result of that analysis, did you produce a report of your findings?

A. Yes.

Q. And I'd like to --

And you provided it to me at some point, right?

A. Yes.

MR. SUBIN: Judge, may I approach for a second?

THE COURT: Yes.

Q. We've marked 16A and B. Is this a big copy of your report?

A. Yes.

MR. BRODY: Objection.

THE COURT: What's your objection?

MR. BRODY: It's actually not the report. It's the table that was an exhibit to the report. I just want

to be accurate.

THE COURT: Okay. Could you modify your question.

Q. Okay. Is this the table of your analysis?

A. Yes.

Q. Okay. Would this assist you in describing your analysis to the jury here?

A. Yes.

Q. Okay. And is this a true and accurate copy, you can look if you need to, of your report that you produced as part of your business being an economist?

A. Yes.

MR. SUBIN: Judge, I'm going to offer it.

MR. BRODY: Objection.

THE COURT: What's your objection?

MR. BRODY: It's not evidence, it's an opinion.

THE COURT: Excuse me?

MR. BRODY: I'm sorry, your Honor.

THE COURT: Stand up so I can hear you.

MR. BRODY: It's not evidence, it's an opinion. It's her calculation of Dr. Guy's life care plan.

THE COURT: Overruled.

MR. SUBIN: Do we want to mark it later, Judge?

THE COURT: Yes.

Q. Now with the Court's permission, I'm going to ask if you can come down and explain what your assumptions were and how

you reached your conclusions.

A. Sure.

Q. And so can you explain?

MR. BRODY: Judge, with your permission, I'm going to move over here. This is going to block my sight.

THE COURT: Yes.

Q. Can you explain what we're looking at?

A. Sure.

Q. It's the same one, right?

A. Yes. Okay. So as I was explaining, I am provided with a life care plan from Dr. Guy which provides me type of service, which you're going to see over here; frequency, it's going to tell me for how long the patient will need treatment; duration; and also it's going to tell me the cost in current dollars and that's what you are going to see in the first row.

So my part is going to be to project into the future these prices. So let me go slow with the first category of care then I am going to move faster.

So, the first category that Dr. Guy recommends that Ms. Gonzalez needs is, you know, be seen by a spinal surgeon. He's going to need -- She's going to need three visits per year and each costs -- each one is going to cost $300. So what did I do, $300 times three is going to provide me with nine hundred in the first row.

Then I use a two point eight growth rate per year. And

if you remember what I said, my role -- This information comes from the U.S. Bureau of Labor Statistics BLS. So my role is to match the categories of care that are provided in the BLS with the categories of care that Dr. Guy provides.

Then what I am going to do is apply this two point eight percent growth rate for each year and then you're going to see that in the year 2026 we have nine hundred having increased to nine twenty five. And then I am going to do the same thing year per year until we reach to the year 2061. How did I end up in the year 2061, I used the life expectancy that it's provided by the Center for Disease Control and Prevention.

Based on the year that Ms. Gonzalez was born and also her gender is going to tell me her survival ability, how many years she has left, and the life expectancy is eighty two years old and it's going to bring us to the year 2061. Then the total amount for the first category of care, the total lifetime cost, the total amount of money that she will need to afford for this services her whole life is going to be 54,540.

Now I am going to move a little bit faster because the methodology is the same. I am going to tell you type of services, growth rate and the cost and also lifetime cost.

So the next category of care that Dr. Guy prescribed was physiatrist. The annual costs 1,800. I use a two point eight percent growth rate because it falls under professional services and the total cost for this, for this category of care

is going to be 109,027.

The next category of care is going to be diagnostics, MRIs. The annual cost is going to be $3,000. I use a two point eight percent growth rate every year and it's going to give us a total amount of 181,712.

Then the next category of care also falls under diagnostics. We have EMGs. The annual cost is 3,333. I use a two point eight percent, you know, growth rate and it's going to give us a total of 201,882.

The next category of care is physical therapy, it falls under other professional services. The growth rate that I use is two point two percent and the annual cost is 10,400.

Q. Why do you use a lower growth rate for the physical therapy than the other categories?

A. Yes. So physical therapy goes under other professional services and with other professional services if we look at the growth, yes, at the growth rate in the last twenty five years it's going to give us two point two percent. So that's why it's different from, you know, professional services.

Q. Okay, thank you.

A. Then the total amount is going to be 509,170.

Then we have medications. The growth rate that I use every year is three point five percent. The annual cost for the first year of care is $4,000 and then the total lifetime cost is 279,411.

Q. Okay. Can you show us the second one, 16B.

A. Sure. Okay. So before I start, now you're going to see that the type of services and the amount of years that she will need it's until 2029 for the first four categories, then you're going to see just one number. Let me explain the first four categories first.

Dr. Guy recommends that for injections and applications she only needs care for the next five years and that's why you are going to see numbers until the year 2029. The first category of care is epidural injections. I use a two point eight percent per year and it's going to give me a total lifetime cost of 143,639.

Then the next is facet injections, also has a two point eight percent growth rate. It has an annual cost of $36,000 and the lifetime cost is going to be 172,366.

Then we have radiofrequency ablations. We use a two point eight percent. The annual cost is 36,000 and the total lifetime cost is going to be 172,366.

And then the next we have also injections at two point eight percent. Annual cost 4,800 and the total lifetime cost is going to be 22,982.

I would like to point out here that we also use a conservative number for injections and applications because if we look -- if we use that these injections would be done in outpatient services we would have used a three point eight

percent. As we want to include a conservative number, we are kind of assuming that this was done in an office and we're using a two point eight percent.

Then we have back surgery and also another type of surgery that is needed. When Dr. Guy --

MR. BRODY: Objection, your Honor. May we approach?

THE COURT: Yes.

(Whereupon, the following took place at the side bar off the record in the presence of the Court and counsel.)

Q. With regard to the back surgery, can I ask you to look at your analysis and how you reached the number, okay. Do you have a copy of your analysis?

A. Yes, I do.

So what I was going to explain, what I was going to explain is what Dr. Guy doesn't say when he -- when the patient needs the surgery. What we do, we just consider all the cost and we put in current dollars. What does it mean? It means we are taking a conservative approach.

It's highly likely that Ms. Gonzalez will need surgery if all the other treatment doesn't work. So what we do is say, okay, she's going to need the surgery in the future but what we do is we take a conservative approach and we don't use the four point two percent growth rate; we just say that this is going to

be in current dollars.

Q. Okay. And the current dollars based on your analysis was how much?

A. Yeah, so with all of the surgeries it is going to be $627,400.

Q. And how about the other?

A. We have exactly the same lifetime cost. And then for the other surgery the total cost of all the expenses is going to be $48,200 and the lifetime cost is exactly the same, $48,200.

Q. Now, did you come to a conclusion within a reasonable degree of your economic certainty as to the total future lifetime cost that Ms. Gonzalez will have based on Dr. Guy's life care plan?

A. Yes.

Q. And what is that?

A. The total is $2,572,617.

Q. And all of the other opinions and the categories and things that you gave were all of those within reasonable degree of your economic certainty?

A. Sure.

Q. Okay. What would a follow-up --

You don't know personally if Ms. Gonzalez is going to need or have any of these treatments?

A. I don't know.

MR. SUBIN: Okay. Judge, I have nothing further.

THE COURT: Okay, cross, Mr. Brody.

MR. BRODY: Yes, Judge, I'll be brief.

CROSS-EXAMINATION

MR. BRODY:

Q. Good morning, Ms San Martin.

A. Good morning.

Q. You and I haven't met before, have we?

A. I don't remember.

Q. You do work with Alan Laken and Deborah Dwyer, correct?

A. That's correct, yes.

Q. And the three of you do life care plans, correct?

A. No, we don't do life care plans.

MR. BRODY: I withdraw it.

Q. You do the economic result of a life care plan?

A. Yes, that's one of the things that we do.

Q. And you do other things I'm sure too, right?

A. Yes.

Q. Do you teach?

A. Yes. So my primary job is to be an assistant professor and this is my part-time job.

Q. Okay. So do you earn more being a professor or do you earn more from doing this testimony and doing these plans?

A. From being a professor.

Q. And how long have you been doing this?

A. Since 2021.

Q. Now, and counsel was very clear I believe in suggesting to you that you don't have a medical background, correct?

A. That's correct.

Q. And you don't know if Ms. Gonzalez really needs any of this treatment, do you?

A. That's correct.

Q. And you don't know if she'll ever attend the treatment, do you?

A. That's correct.

Q. And you don't know how much of this treatment she did in the past six months, correct?

A. I don't know about that.

Q. And you don't know what she's going to do in the next six months, correct?

A. Well, now based on the life care plan, you know, it has, you know, certain treatment that she will need.

Q. But you don't know if she's going to do them, do you?

A. No, I don't know.

Q. Right.

And you don't know if she did any of this treatment in 2024, do you?

A. No, but these -- So what I did is with all the numbers starting in July, you know, 2025. So whatever happened in the past is known. I'm just projecting into the future, the future health care that she will need.

Q. Okay. Do you know if she needed that health care in 2024?

A. I don't know about that.

Q. Okay. Do you know if she received that health care treatment in 2024?

A. I don't know. Maybe if she didn't maybe she couldn't afford it, right.

MR. BRODY: I'm going to move to strike that because there's going to be no evidence of that, ma'am. Your Honor.

THE COURT: Move to strike sustained. That statement is to be stricken from the record. And to the jury, you are to disregard that statement.

Q. Did you do anything to verify the numbers that Dr. Guy gave you?

A. No, because I am not the medical expert. So we --

Q. The answer would be no, right?

A. That's correct, no.

Q. I'm going to try to ask yes or no questions. If you cannot answer it with a yes or no tell me and then we'll try to figure it out. Okay?

A. Sounds good.

Q. You talked about there being a lot of government statistics, correct?

A. Yes.

Q. One of them was the Consumer Price Index; is that correct?

A. Yes.

Q. But there's other government statistics that generate information about health care, correct?

A. Well, depends on what you're looking at. So, for example, which one are you referring to?

Q. So, for example, the Department of Medicare and Medicaid Services puts out information with regards to health care costs, correct?

A. Yes, they do.

Q. Okay. And in order to do, for example, how much care and treatment increases year over year there are statistics as to how much something costs, correct?

A. Could you please reframe that question.

Q. Let me rephrase it.

There are costs, there are statistics that indicate the average cost for an MRI or the average cost for a doctor's visit in giving city, states and throughout the country, correct?

A. Well, if are you referring to the CPT codes for Medicare and Medicaid --

Q. I'm not limiting it to CPT codes. That's one example.

There are a number of statistics out there that are collected and indicate how much a procedure and exam and other things cost, correct?

A. I mean we will need to study each one because each one has its advantages and disadvantages.

Q. Right. But there's statistics out there, whether you agree with the statistics or the numbers or not, there is information available to you as an economist and Dr. Guy in preparing his life care plan that indicates how much an MRI in the City of New York costs, correct?

MR. SUBIN: Objection, beyond the scope.

THE COURT: Overruled.

Q. You can answer.

A. Okay. So, if you are referring to particular categories -- So, if you're saying, okay, I use the U.S. Bureau of Labor and Statistics which basically is telling us on average what is going on. Your question is why didn't I use exactly the MRI cost?

Q. I'm not asking you why. I'm asking if those statistics are out there?

A. Well, again, it might be out there. But, for example, you may find that they are out there for, you know, one year, two years. If you really want to look for the last twenty five years the information might not be out there.

Q. Okay. Can we agree that if Ms. Gonzalez wants to go for an MRI tomorrow the MRI facility is not going to cost her how much it was twenty five years ago?

A. Yes. Prices have increased, that's correct.

Q. Okay. But if I want to know the price today --
A. Um-hum.
Q. -- 2025 in the New York metropolitan area to go to the doctor there is, whether you agree with it or not, statistical information out there as to the cost of an MRI, the cost of an injection, the cost of a twenty minute procedure in an outpatient surgery center these statistics exist; yes or no?
A. Yes and no.
Q. Okay. Which statistics exist?
A. So, for instance, when you are referring to CPT codes, right, the CPT codes it's -- all the codes, for instance, if someone is an elder and they have Medicare --
MR. SUBIN: Objection. I think we're going afield here. Also on your ruling.
THE COURT: I'll allow it but, counsel, I remind you of my ruling and you need to stay within the confines of my ruling.
MR. BRODY: Absolutely, Judge. I think once I get this answer I'm going to ask one question well within your ruling.
THE COURT: We have four minutes left.
MR. BRODY: Then I'll work quicker.
Q. Let me ask this.
A. Okay.
Q. Did you do anything to check when Dr. Guy said it was

$5,000 to do an injection? Did you actually --

A. So --

Q. Did you actually do any research to determine whether or not that was in fact the cost?

A. So based on the word yes or no --

Q. Yes or no.

A. -- no.

Q. Okay. With respect to the surgery column, what surgeries were those?

A. Could you please repeat it.

Q. Yeah.

You did a surgery column and you have surgeries and there's 627,400.

A. Yes.

Q. What column was that --

What surgeries were they?

A. So, over here I can tell you exactly which ones were those surgeries. So over here Dr. Guy recommends four level anterior cervical discectomy with fusion and two level lumbar discectomy. This is what it's saying.

Q. Do you know what those are?

A. No, I don't have the expertise to know those.

Q. So you took the numbers in his plan, multiplied it by two and that's how you came to $627,400?

A. I took -- Yeah. So what I did over there is I took all

the information that was there, yes.

Q. What do you mean you took all the information?

A. Yes, so all the information. So Dr. Guy provides not only the cost so it probably is going to say the surgeon fee, it also says anesthesia, it also says PT. So what I did is I include all those costs and I multiply that times by two.

MR. BRODY: Okay. I have one last question and basically, your Honor, I'm done.

Q. I just want to use your diagram for a second and let's just use physical therapy.

A. Um-hum.

Q. So this cost would be fifty two visits per year. One per week that's fifty two visits, right?

A. The first one is, yes, by using the cost of Dr. Guy.

Q. Right.

So one visit per week would be fifty two visits a year times $200 a visit and you got to $10,400?

A. That's correct.

Q. As someone familiar with economics and statistics and considering you're using past history, we could also take how many visits she did in the last five years. Let's say she averaged three visits a year for the last five years and we can take that three visits a year, multiply it by $200 per visit and, if we were using her history of treatment and not the life care plan, we could come up with numbers that would suggest how

much it would cost her in the future, no?

A. No.

Q. Can't do that; no?

A. No, that's not correct.

Q. Oh, that's not right.

MR. BRODY: Nothing further, your Honor.

THE COURT: Okay. Any redirect?

MR. SUBIN: No, Judge.

THE COURT: Okay. Thank you. The jury is excused at this time, we're going to break for lunch. I'm going to ask the jurors please be back by 2:15. Again, I remind you you have not heard all of the testimony, you have not seen all of the evidence, please do not formulate an opinion as to this case.

(Continued on the next page.)

Do not discuss this case with anybody and do not do any research. And again, if you see anybody, any of the members of the Court, the attorneys or, you know, any of the parties and you're not acknowledged do not be offended, we're just trying to make sure you render an impartial decision. Have a nice lunch.

THE COURT OFFICER: Jury exiting.

(Whereupon, the jury exited the courtroom.)

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

(Whereupon, a luncheon recess was taken at this time.)

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

THE CLERK: Come to order remain seated.

THE COURT: Please be seated. Let the jury come in.

THE COURT OFFICER: Jury entering.

(Whereupon, the jury entered the courtroom.)

THE COURT: Please be seated. So members of the jury, normally the plaintiff calls all their witnesses and once they rest the defense, if they chose, puts on their case. Today we're going to be calling a witness out of turn, it will be a defense witness and this is done to accommodate the witness's calendar.

MR. BRODY: I'm ready, your Honor.

THE COURT: Okay. And this is by stipulation. The parties have agreed to call in this witness out of turn.

Counsel, you may call your witness.

MR. BRODY: Thank you, your Honor. The defense calls Dr. Edward Toriello to the stand.

THE COURT OFFICER: Remain standing, face the clerk please.

THE CLERK: Please raise your right hand. Do you solemnly swear or affirm the testimony you give shall be

the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes.

THE CLERK: Please state your name and business address.

THE WITNESS: Edward Toriello, 78-15 Elliot Avenue, Middle Village, New York 11379.

THE COURT: All right, counsel, you may inquire.

E D W A R D T O R I E L L O, M.D., called as a witness on behalf of the Defense, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. BRODY:

Q. Good afternoon, Doctor.

A. Good afternoon.

Q. Could you please explain to the jury your educational background.

A. Sure. I went to Brooklyn College and completed four years of college in 1973 and then I went to medical school. I started medical school in Italy at the University of Padua. I went to the University of Padua for five years. It's a six year program in Italy.

So in my fifth year, before graduating, I took an examination and transferred to the State University of New York Buffalo Medical School where I completed my last two years of medical training. So I graduated from State University of

Medical School -- New York Medical School in Buffalo in 1980.

Then in 1980 to 1985 I did a five year residency program in Brooklyn at Downstate Medical Center and graduated in 1985. And since that time, I opened up a practice solo practice in orthopaedic surgery in the Brooklyn and Queens area.

Q. Doctor, are you board certified in any subject?

A. I am board certified in orthopaedic surgery.

Q. Okay. And what does it mean to be board certified?

A. Board certification is a voluntary process that a physician puts him or herself through after they complete the five year or six year residency program that they've done. Several years after the residency program, when you're in practice, you will then be able to take a test.

You must pass that test and then a year or two later you are permitted to take an oral examination. If you complete the oral examination successfully as well as the written examination and a background check of course, then you are considered board certified.

Board certification does not last forever in orthopaedic surgery. Board certification must be maintained. Every year one must do a certain amount of credits and also take tests and every ten years one must recertify. So I certified for the first time in 1988 and then again in 1998, 2008, 2018 and I'm presently in the course of be recertified again in 2028.

I've sat on both sides of that table, the examination

table, both as a candidate as well as an examiner for the American Board of Orthopaedic Surgeons examining other orthopaedic surgeons who wish to be certified.

Q. Can you explain generally what is orthopaedic surgery?

A. So generally orthopaedic surgery is that branch of medicine whose physicians will treat the parts of your body that cause you to move, stand, your muscles, your bones, your nerves to some extent as well.

We have a very active office practice. We see patients and examine them and treat them. Fortunately most people do not need surgery. However, if a patient does need surgery an orthopaedic surgeon is then capable of doing orthopaedic surgery. And I had a very active practice of orthopaedic surgery from 1985.

Q. And, Doctor, did there come a time that you began to decrease the amount of actual surgeries that you performed?

A. Yes.

Q. Okay. And when was that?

A. That was in 2006, and it wasn't something that I anticipated. I needed a total knee replacement. So I'm not just the doctor, I'm also a patient. And I had a total knee replacement, two years later got infected and resulted in my missing work and practice for over a year. Various other surgeries I had to have done on my knee.

When I finally straightened out, I found that I could

stand, I could do most everything I needed to do; however, I just needed to sit or take my load off my feet every hour or so. But my operations last much more than that so. And so I elected voluntarily to stop operating at that point.

So after that, I had an office practice, solely office practice, and anyone who I deemed necessary to have surgery I would refer them to a colleague who did the surgery and then would refer them back for postoperative care to me.

Q. The plaintiff claims in this case generically involve the knee, shoulder, neck and back. Are those the types of body parts that you treated as part of your private practice?

A. Yes.

Q. Okay. And are those --

Are the types of ailments meniscus tears, muscle tears, are those the types of things that form the core of your practice in orthopaedics?

A. Yes.

Q. And did there come a time that your private practice or the amount of time that you engaged in private practice changed in any way?

A. Yes.

Q. And when was that?

A. Right around COVID. I stopped seeing patients, new patients actively in my practice. I continued to do medical-legal consultations but at this point since COVID I will

only see old patients, patients that are my prior patients. I don't take any new patients.

And I don't treat them. If they need help they'll come to me and I'll give them a consultation. I'll give them my opinion and I don't charge anyone for that either. I don't take any insurance any longer either. So I will see my old patients to help them out but other than that, no.

Q. You used the term medical-legal consultation. What is that?

A. So that's a type of second opinion in my -- the way I practice. I've been asked many times to render an opinion on people who have a litigation on-going who have been involved in an accident. I treat those particular types of examinations, such as the ones we did in this case, the same I would as anyone who comes to me for a second opinion.

People come to me for a second opinion often not they didn't even know me but they were sent by other people, their friends, other doctors, sometimes their attorneys, and they're asking me to look at their case and render an opinion.

And so I have the opportunity -- And many of us have probably had second opinions as well where you go to a doctor and the doctor is not there to treat you, the doctor is there to explain to you to render an opinion as to what he or she thinks is going on with your case.

And so you have an opportunity to talk to the doctor,

give a history, you have an opportunity to be examined by the doctor and often times you or your physician or someone else will send medical records for the doctor to review.

After the doctor has had an opportunity to do all of that, the doctor generally will write a report and that's exactly what I've done in this case. In this case it was for litigation but it's no different from any other second opinion that I render for over forty years.

Q. How long have you been doing medical-legal consultations?

A. I first started probably in the early nineties.

Q. And obviously if you're no longer treating active patients today it's become a bigger part of whatever you're doing now than what it was before; is that correct?

A. That's right.

Q. Up until lunchtime today, you and I had never met before; is that correct?

A. That's correct.

Q. And actually in this case you were hired by the firm that represented my client before my firm to do a medical-legal consultation beginning about 2020 with regards to Ms. Gonzalez; is that correct?

A. Yes.

Q. Okay. And can you tell the ladies and gentlemen of the jury essentially what happens in connection with your performing

a medical-legal consultation, what do you do?

A. Well, actually it's almost -- it's exactly the same as if that person were coming to me for a second opinion. They would come into the office, be greeted. I would ask them a load of questions about what brought you to my office, what happened at the time of the accident or whatever it is that brought you to the office.

Then I would have an opportunity to examine those body parts, your body parts that have been hurt. And following that, I would then review all your medical records and then write a report. You know, come to a conclusion as to a diagnosis and then write a report for, you know, the person who sent you to my office for the second opinion.

Q. Okay. And in terms of time, how much time does it generally take for you to prepare a medical-legal consultation?

A. Well, from beginning to end takes quite a bit of time. It does not take a lot of time face-to-face time. In other words, most of us go to a doctor and it doesn't take very long for that doctor to put their stethoscope on our chest or examine us. Examinations don't take very long at all.

What takes a lot of time, though, is reviewing the medical records and thinking about it and formulating an opinion as to a diagnosis and what treatment may or may not be necessary as we go forward.

Q. And, Doctor, would it be fair to say that you charge

for doing the medical-legal consultation, correct?

A. I do, yes.

Q. And what do you charge generally for doing a medical-legal consultation?

A. It's about $250 but it could be more considering if there are a lot of medical records for me to review. So it's time based to some extent as well.

Q. Do you recall what it was in this case?

A. I did look it up, yes.

Q. And how much was it in this case?

A. $525.

Q. And do you remember approximately how many pages of Ms. Gonzalez's medical records you had when you first reviewed them?

A. I don't remember because I saw her twice, so I didn't really look at that. I can tell you, I have it all here, but there's more than a thousand pages.

Q. Okay. And you actually have that digitally stored, all of it, correct?

A. Yes, I have it here in my laptop or i-Pad.

Q. And to be clear, and you just said you had an opportunity to examine Ms. Gonzalez again more recently, correct?

A. I did, yes.

Q. Okay. Doctor, can you tell me in connection with your

examinations of Ms. Gonzalez, I'll let you break it down because I don't want to lead you in any way, what happened when you conducted your examinations of Ms. Gonzalez?

A. Well, both examinations in 2020 and 2025 were the same in that they examined the same body parts. Ms. Gonzalez told me that she had injured her neck, her right knee, her lower back and her left shoulder. So I examined her neck, her lower back, both shoulders and both knees.

The examination of her neck in both cases there was a well-healed scar from the surgery that she had done on her neck. I checked the range of motion of her neck. Asked her to look all the way up, all the way down, to the sides and she was able to do so in a normal fashion. There was no abnormality. She was able --

I palpated her neck to feel if there was any spasm of the muscles of her neck, which is important because this is an objective sign of something that could be wrong. You can't make your neck muscles go into spasm voluntarily. So there's a difference between objective findings and subjective findings and maybe I should just talk about that just for a second now.

Subjective findings. When you go to the doctor subjective findings are findings that are completely under your voluntary control, under my voluntary control as a patient. So, for instance, if you asked me raise your arm up as high as you can do and I told you I can only raise it this high that's

completely under my control.

And you as a physician would have no way of knowing whether I could actually do it further unless I actually showed you. So those are subjective complaints. Pain is a subjective complaint. No one knows how much pain you're in. I could tell you I have a horrible headache right now and you wouldn't know. So that's subjective findings.

They are important but what is critical is that those subjective findings as a physician are supported by objective findings, things you cannot control, things that I cannot control. For instance, reflexes. If I tap your arm in a certain way your arm's going to jump. You can't stop it from jumping and you can't make it jump, it just happens. And so that's an objective sign.

Atrophy, muscle atrophy. If you don't use your muscles, if you have your arm in a cast for six weeks you've probably seen when you take the cast off your arm is all atrophied, the muscles become smaller. You can't make that happen. It's just something that happens so it's an objective sign.

So if I see somebody with atrophy I know they haven't been using their arm. I just know it because they can't just fake that. Whereas subjective sign is something that you can just totally control yourself. So like I said, it's critical that subjective complaints are noted but that objective findings

support those subjective complaints before we do any kind of treatment. Because you have to remember, all treatment can cause complications. So before we do anything, we want to make you better not worse.

So back to the neck. So I just checked to see if there was spasm in the neck. Spasm is like a cramp. You can't all of a sudden make your muscle cramp. As a matter of fact, sometimes you wish you could stop it from cramping and you can't. So that's an objective finding.

And your body will go into spasm and cause cramps if it's trying to protect an underlying body part that's injured. Like a shield, if you put a shield up, that shield protects you from the outside world. Same thing here, your muscles will go into spasm to protect your neck if there's a problem.

In Ms. Gonzalez's case, there was no spasm. Her neck muscles were perfectly normal. There was no atrophy in the muscles of the neck. Once again, like I said, if you put your arm in a cast your muscles will get smaller.

The same with your neck, if you don't use your neck your muscles begin to atrophy as well. We have nice, full necks here but if you were not using your neck your neck muscles would become very thin and you would have no neck muscles. Well, she had normal muscles indicating she was moving her neck and using her neck normally.

I checked the motion of her shoulders, her elbows, her

wrists, her digits, her fingers, all of that was normal. That wouldn't happen if you had a problem with your neck because your brain has to get messages to your arms going through the neck. If there's a problem with the disc affecting the nerves going from your brain to your arms your arm would not be able to move.

That's why somebody who has a neck injury often times is paralyzed in their arm. Their arm isn't injured, it's the neck, just the brain can't get the messages to the arm. Got it.

So, but she had normal range of motion of all her body parts in the upper extremities. I checked to see reflexes, once again, an objective finding, something that she can't control, and her reflexes were all normal. If she had a radiculopathy, which I know you've heard about before, one of those very specific reflexes would not be normal. And so as physicians, we look to see if reflex is abnormal, if it's got a corresponding radiculopathy. If it doesn't, it raises a red flag.

I also checked to see how strong her muscles were in her arms and sensation. Why? Because all your muscles in your arms get their messages through your neck and all the sensation, everything you feel in your hands has to go back to your brain where it extends through your neck. So if there's a problem in your neck you could lose sensation, you could lose muscle strength.

Once again, for Ms. Gonzalez, happily, no loss of strength and normal sensation. I checked to see if the

circulation in her arms were normal. Perfectly normal. And I checked to see if her arms had -- muscles in her arms were atrophied, for the same reasons I talked about for her neck. If she wasn't using her arms because she was paralyzed because of something in her neck her arms would be atrophied, thinner. That was a neck examination.

I examined both her knees. Her right knee had a well-healed scar from prior surgery. Now, in 2020 when I did the range of motion of her right knee, actually of both knees, it was absolutely normal. So laying down I asked her to bend her knees all the way back on the examining table, all the way forward. She was able to do that normally.

In 2025 she exhibited decreased flexion in both knees. That is instead of going all the way back normally, she went to ninety degrees, okay. So about halfway, maybe a little more than halfway but not more. That's a subjective finding. As I told you before, there's no way for me to know how far she can actually do it but it's a subjective finding, so I noted it in my report.

The rest of the examination she showed no bruising, no bleeding, no swelling, no tenderness when I pressed on her knee. I checked to see if she had any looseness of her ligaments. Another objective sign because you can't make your ligaments get loose, I have to stretch them and try them. Her knees were perfectly normal, no ligamentous laxity or looseness.

And I did two specific tests for her ligaments, her anterior cruciate ligament, which you may have heard of if you're a sports fan that's a big ligament in the knee, hers was normal. And I also did a test for her meniscus to see if her meniscus was torn and, once again, that test was normal.

So outside of the subjective decreased range of motion in her knees during the second examination, her physical examination of both knees was within normal limits. And also, of course, the scars that she had from the surgery that she had done.

Her lower back both examinations were the same with the same results. That is, while standing I asked her to bend over as far as she could, touch her toes if she could, not to hurt herself, do the best she could; bend from side to side; twist from side to side; go back as best she could and those measurements were all absolutely normal.

I checked to see if she had muscle spasm along the back of her back by her lumbar. Lumbar spine is the lower part of your spine. And once again, the spasm, remember I told you spasm is like having a shield your body puts those muscles in spasm to protect a body part that's injured underneath. In her case, there was no spasm; indicating there was no injury to her lower back that required protection from her muscles.

She had no tenderness. I did a test called a CVA test, she had no tenderness there, that was normal. I checked to see

if she was able to walk normally. Walking normally was a good thing, she was able to do that. But that's all coordinated through nerves that come to your muscles going to your legs through your back and so that all worked out very well.

In fact, I asked her to stand on heels and on her toes and she was able to do both of that. So walking is, if you think about it, pretty amazing to begin with because you're balancing your entire body on two small portions of your feet. But then when I ask you to stand on your toes and stand on your heels that takes a fair amount of coordination and fair amount of strength; and she was able to do that normally, indicating her lower back was working fine, nerves going to and from her legs from -- to her brain were working just fine.

I checked her reflexes in her lower extremities and her legs. Once again, same thing, objective findings, completely under -- not under her control and they were absolutely normal, indicating no evidence of a radiculopathy. And so she also had no atrophy in the muscles in her leg as well, so indicating she was using her legs normally.

And finally, her shoulders. Examining her shoulders in both cases '20 and '25, same examination with the same results. So range of motion of shoulders asking while she's standing to bring her arms all the way up over her head, bring her thumbs together in front of her, bring them up over her head and touch the back of her head, touch the back, touch the opposite

shoulder. This is all testing we do all the time to test range of motion of the shoulders. Remember, range of motion was completely normal and pain free.

I checked to make sure there was no atrophy of the muscles. Once again, same reason I checked all over the place. No muscle atrophy in the shoulders indicating it's working fine. She had no weakness in the shoulder, muscles absolutely fine, strong, normal. People sometimes dislocate their shoulders, they get instability. She had no instability in the shoulder.

I tested for instability and I did a couple of tests to see if she had what's called impingement, which is a term that occurs or a problem that occurs often times with arthritis but she had no evidence of impingement.

And I also examined her wrists and hands. I won't go through all of that because it's really not part of the case but I examined them because I wanted to make sure that her wrists and hands were working fine. Because wrists and hands, as I say, get all their information and all their messages from the brain and through the neck.

So if there's a problem with the wrists or hands it could indicate a neck problem but in her case the wrists and hands examination was within normal limits. Excuse me.

Q. Doctor, as part of the medical-legal evaluation that you performed, you also indicated that you reviewed medical records. Can you give the jury an idea of the medical records

that you reviewed?

A. Sure. Could I just get a little glass of water whenever you get a chance, thanks a lot.

Well, there's a lot. It's two pages of medical records including video surveillance. Video I reviewed as well as operative report from both operations, MRIs of the left shoulder and lumbar spine and neck, reports from Dr. McCullough, Dr. McWeiner, an EMG, velocity studies of the upper and lower extremities, records from the surgery centers, records from the hospital NYU Hospital, records from Dr. Gurling, x-ray reports, more MRI. She had a lot of MRIs.

And records from the Northwell Health emergency room the date of the accident. I just want to see if there are additional records. Yeah, more records from Dr. Gowea, Dr. Puttaswamy P-U-T-T-A-S-W-A-M-Y Puttaswamy Physical Therapy records. Receipts from 2018, 2019, 2024. More MRIs. I think I said reports from Dr. Gurling, a series of reports from him.

More hospital records from NYU from when she had the surgery on her neck. A lot of x-rays post-op. There was a transcript of an examination before trial that I reviewed. Records from Dr. Cohen. CAT scan report of the neck, couple of CAT scan reports of the neck. Reports by Dr. Guy. Fluoroscopy reports, more reports of shoulder and knee and neck, back x-rays. MRI in 2024. Yeah, that's pretty much. I mean, you get the idea, there was a lot of medical records.

Q. And, Doctor, what I want to do, you're aware that she had an accident on June 20th of 2017, correct?

A. Yes.

Q. And you've actually for your first exam and throughout have had a copy of that video, correct?

A. I did, yes.

Q. Okay. And you've looked at that video?

A. Yes.

Q. And you understand that from that accident she's making certain claims in this case, correct?

A. Yes, I'm aware of that.

Q. Okay. What I'd like to do with you over the next while is go through the body parts that she claims an injury on and go over what you reviewed that you believe to be significant and what you believe her injury was that was causally related, if at all, to the fall. Okay?

A. Sure.

Q. Now, to help you do that, did you prepare anything to assist you with regards to the records that you believe were significant in connection with those body parts?

A. I did, yes.

Q. What did you do?

A. Well, this is a pretty complex case. I mean, the medicine is kind of complex because she's had a lot of visits to different doctors, lots of MRIs and couple of surgeries as well.

So for me to keep it all straight, I put together an outline.

And so it's just a brief outline but it goes through each of the body parts that she's alleging injury to and looking at what facts we have to look at to determine what injuries are caused by the accident, which treatment was related to the accident and what wasn't.

And we must continue to remember that we have to base our decisions as a physician, and of course yourselves, on facts that are supported, -- are supporting subjective complaints. So that's why I put together the outline, just to keep it all straight because otherwise it can get very confusing.

Q. Just so we're clear, this is something you prepared not something my office or any other law firm had to do with, correct?

A. No, no, I did it myself.

MR. SUBIN: May we get that, whatever it is, marked, your Honor.

MR. BRODY: Sure.

THE COURT: Yes, so this will be Defendant's D.

MR. BRODY: This will be plaintiff's.

MR. SUBIN: We're up to seventeen.

THE COURT: There's the doctor's report.

MR. BRODY: It is but I'm not offering it.

MR. SUBIN: I'm not offering it. You can mark it.

MR. BRODY: You can mark it defendant's whatever

is next, I don't have a problem. I just didn't want to seem like I was offering it as evidence.

THE COURT: I see, okay.

(Whereupon, outline was marked as Defendant's Exhibit D for identification by the Reporter.)

MR. SUBIN: Judge, can I make a copy of this please?

THE COURT: Please.

(Whereupon, Senior Court Reporter Robin Nunez relieved Senior Court Reporter Caroline Mandato.)

COURT OFFICER: Defendant's Exhibit D marked for identification is being shown to the witness.

THE WITNESS: Thank you very much.

MR. BRODY: May I, your Honor?

THE COURT: You may inquire.

MR. BRODY: Thank you.

Q. Let's begin, Dr. Toriello, with regards to Ms. Gonzalez's neck complaints. Okay. Can you tell the ladies and gentlemen of the jury which of the records you believe were significant in evaluating what you believe the injury was, if any, she sustained in the accident of June 20, 2017?

A. Related to her neck?

Q. Related to her neck.

A. Well, of course all the records are important. However, there are certain ones that really help us determine what was injured, how it was injured, and importantly what is necessary to do for that injury. And, so, first thing I have to preface this with, and that is in her medical records, Ms. Gonzalez has an affliction that's not her fault, she has anxiety, and she has been subject to panic attacks. Now, that really doesn't enter into anything except, as a physician, I know that people who have anxiety and who had been subject to panic attacks sometimes experience things a lot more differently than people who don't have anxiety and sometimes have the tendencies to -- they just feel it more, they are more

sensitive. I have to take that into consideration when I am considering her subjective complaints. Remember, we are talking about subjective and objective. And, now, it becomes very critical as a physician if I'm going to recommend, for instance, surgery or something that drastic, then I make pretty darn well sure that I'm treating not her subjective complaints, but her objective findings that are not under her physical control.

Even though I have to give her the respect to know that she's got -- she senses these things, but it may not be what she thinks it is. And, so, if it is not, for instance, her neck that's causing that pain, operating on her neck is not going to get rid of that pain. So, I have to make sure. And, of course, exposure to all kinds of dangers, anesthesia and everything else, which we don't want to do as a surgeon. We have to keep this in mind as we go through this.

For her neck. In her neck, first of all, we all saw the video, I'm sure you saw the videos millions of times. So, what I saw in the video is a woman who came into a building, slipped, what seem to be a wet floor. Slipped and basically knelt, hit her left knee, on the ground. The front of her left knee. So, she genuflected, basically, and then was held up. So, in the accident I have no doubt that she sustained an injury to her left knee. No question about it in my mind. I didn't see a serious injury to her neck. I didn't see a serious injury to her lower back, and certainly I didn't see any extension or

hyperextension of her right knee. Her right knee bent normally like it would to 90 degrees. I didn't see anything that, offhand, that she injured anything more than her left knee. I'm not saying she didn't hurt anything else. Just looking at that video, that's what I see. And she was able to walk on the left knee to go to a chair with some assistance.

So, there was something that happened to her right knee. She then went to the emergency room and she complained of pain in her neck. She complained of pain in her neck. So, seeing the video, I'm thinking she could have a muscle strain of her neck. It is not a serious injury. It is something that can cause her pain because it is muscles. When she was examined, her physical examination of her neck in the emergency room by the doctor, was normal. Absolutely normal. This is consistent with somebody who got a muscle strain. How many of us play sports on the weekend and you play all day Saturday and then Sunday, the next day, you got pain in your leg because you sprained a muscle, pulled a muscle. That's common. You don't really notice it.

So, her neck muscles may not have gone into spasm yet, so she could have had full range of motion of her neck consistent with a mild injury to her neck. A muscle sprain. However, if she injured her neck so badly that she developed three herniated disks, that's something she would have noticed right away. We would have seen much more trauma on that video

than what we saw in a car accident can do that. What I saw on the video, to me, wasn't sufficient to cause three disks to herniate and then subsequently need surgery. The fact that her physical examination is completely normal, that's not consistent with three herniated disks that happened a couple hours earlier. Just isn't. Happens immediately, you know, right away, a disk herniation occurs.

Her CAT scan, normal. Now, CAT scan is better than an x-ray because it shows detail, and it showed no evidence of any trauma. So, it is important what was there, which was some degeneration, which is something we expect at her age. Degeneration is something that happens as we get older. A car, you drive it off a lot, it starts to deteriorate. She has degeneration in her neck. What's important, what was not there was any evidence of any trauma. No bleeding. No broken bones. No swelling. Nothing. All of this would have shown up on a CAT scan taken several hours after an accident that caused enough damage to the disks to cause three disks to herniate and then need surgery. So, it is inconsistent. In fact, she then went home, and in August --

MR. SUBIN: Judge, objection.

THE COURT: What's your objection?

MR. SUBIN: This record is not in evidence. You can't talk about records that aren't the contents of record -- objection.

MR. BRODY: What record is not in evidence?

MR. SUBIN: August 2nd, 2017, there is no record of that.

MR. BRODY: Okay. First of all, it is in evidence.

MR. SUBIN: I will withdraw my objection if it is.

MR. BRODY: Can I have the Lennox Hill Hospital records. It is like 3 or 4. It is a bigger one, like, a stack. That part of it was on Dr. Guy's chart. He commented on it 8/2/17.

MR. SUBIN: Okay. Withdrawn.

THE COURT: You withdraw your objection?

MR. SUBIN: Yes, withdrawn.

A. So, then, Ms. Gonzalez went to the emergency room again. Now, this is on August 2nd, which is about six weeks after the accident. At that time she had a little injury to her foot, her left toe. She went to the doctor, the emergency room, but when she went to the emergency room she had no complaints, referring to her neck, shoulder, back. Nothing. And, so, if you are positing that someone herniating three disks six weeks earlier, you also have to expect that Ms. Gonzalez would have significant pain from that and yet she goes to an emergency room six weeks later where there are emergency room doctors, no complaints referable to her neck, and the doctor examining her, that's what emergency room doctors do, they examine you. You

complain of one thing, they examine everything. There was no problem. They saw nothing wrong with her neck.

Then she started physical therapy for her neck. But she didn't start physical therapy for nearly three months. September 18th of 2017. So, for three months, somehow, she's able to do everything she does, but has not enough pain to see a doctor, and certainly not enough pain to treat it. This is not consistent with someone who has a serious injury for their neck. It could be consistent, possibly, with someone who has got a mild injury to the neck, and maybe has anxiety and has some pain. That's possible, but not someone who has severe injury to their neck.

She then, a year later, gets an EMG. Now, an EMG is a study, a test, it is an electrical study that tests the nerves in your body. In this case it was her upper extremities, her arms. And the EMG was positive. In other words, there was an abnormality found in the EMG, and what abnormality was, was a right C5-6 radiculopathy. Now, I don't know how much explaining you've had about radiculopathies, and what this all means, but briefly, your neck has seven vertebrae, and numbered, C1, C2, C3, C4, C5, C6. Each one of those vertebrae have nerves that come out from the spinal cord on to very specific parts of your arms. Now, you have to remember that your body is wired much like the wiring in your home. If you go downstairs you turn on the lights in the kitchen. You do the kitchen light switch, you

don't expect the lights in the dining room to go on. You expect the lights in the kitchen to go on. Same thing here. C5-6 goes to very specific spot of your body. It is the nerve, which is kind of like the wires going from the light to the kitchen, this nerve goes and enervates the upper part of your arm by your shoulder. It enervates the reflex of your bicep, and it enervates sensation in the upper part of your arm. You would expect if somebody has got a right C5-6 radiculopathy, and I know I'm getting into a lot of detail, but this is important because details matter. Right C5-6 radiculopathy, you'd expect her to have numbness in her upper part of her arm. You'd expect her to have, maybe, pain in her upper arm, and a loss of reflex in her right arm.

So, she goes to see Dr. Gerling, who is a neurologist. A neurosurgeon actually. So, he does his examination, and what does he find? Well, he did find some abnormalities. But, and this is important, the abnormalities did not correlate with the right 5-C6 radiculopathy. The abnormalities he found was a positive Hoffman, inverted brachioradialis reflex. Those are abnormalities that occur because of something going on in the spinal cord. Not something going on in the level of the disk. So, not something that occurred as a result of this accident. Also, he found decreased sensation in the entire left arm, not the right arm. Left arm. Right C5-C6 is like the lights going on in the kitchen. They are not going to turn on the dining

room lights. Right C5-C6 is not going to cause a left decrease in sensation. It just isn't.

So, his findings, his physical examination findings, were not consistent with any kind of radiculopathy affecting the right side C5-6. Now, how could that be? How can she have a positive EMG and have no symptoms. Well, the fact of the matter is that EMG nerve conduction velocity study is a very sensitive test. It picks up a lot of stuff. Unfortunately, a lot of the stuff that it picks up is not something that needs to be treated and doesn't express itself. For instance, you may have something going on inside that causes no trouble whatsoever, and so you are unaware of it, and it doesn't need to be treated. So, in this case, she has a mild right C5-6 radiculopathy, but it does not need to be treated because even Dr. Gerling's examination is not consistent with a right C5-6 radiculopathy. And, yet, she goes and gets an MRI. And the MRI, two days after she saw Dr. Gerling -- not two days, a couple of months afterwards, and the MRI shows that she has some small herniated disk.

MR. SUBIN: Judge, objection.

THE COURT: What's your objection?

MR. SUBIN: He's never reviewed the MRIs. He's talking about a report. They have a radiologist coming in. I object. MRIs are, I don't believe, I'm not sure those MRIs are in.

MR. BRODY: The MRIs are in, and he reviewed the reports of them. If counsel wants to cross him on them --

THE COURT: Whether he reviewed the film, otherwise he's testifying as to hearsay.

MR. BRODY: Which is exactly what Dr. Guy did.

THE COURT: Counsel, Dr. Guy testified --

MR. BRODY: Your Honor, we should approach.

MR. SUBIN: It has nothing to do with this witness.

THE COURT: Sustained.

MR. BRODY: Why can't an expert not testify based upon a review of a report that's in evidence.

THE COURT: Counsel, your exception is noted.

MR. BRODY: Okay.

A. Okay. Then all I can say is I reviewed the MRI reports, and in my opinion they were not consistent with a serious injury to the neck that would require surgery. Nonetheless, Dr. Gerling -- I'm sorry.

Q. Did Dr. Gerling ultimately perform surgery on the plaintiff?

A. Yes, Dr. Gerling did surgery on November 22nd, 2019. At which time he removed the disks from three levels, C4-C5, C5-C6, C6-C7. 3 levels, and fused those levels as well. In my opinion, the surgery, based on what I've just told you about the emergency room and the way Ms. Gonzalez has acted and also her

medical records, that surgery was not causally caused by any injury that occurred to Ms. Gonzalez's neck as a result of the slip and fall that we saw on the video dated June 20th, 2017.

Q. And, Doctor, any care and treatment that has been claimed from this case -- withdrawn.

Is that your opinion to a reasonable degree of medical certainty?

A. Yes.

Q. Okay. And with regard to the claims that Ms. Gonzalez needs future care and treatment with regards to her cervical spine, post surgery, do you have an opinion to a reasonable degree of medical certainty not as to whether or not she needs any treatment in the future, but whether it is causally related to the accident of June 20, 2017?

A. In my opinion is that she does not require any further treatment related to any of the injuries that she sustained to her neck as a result of the accident of June 20th, 2017. She's fully recovered from those injuries.

Q. Doctor, in your report, and as you sit here today, you did formulate a diagnosis as to any injury that she did sustain to her neck as a result of the accident of June 20, 2017; isn't that correct?

A. Yes.

Q. And what was that diagnosis?

A. My opinion, as a result of the accident June 20th,

2017, she sustained a strain of the muscles of her neck, which have since resolved.

Q. Doctor, let's talk about Ms. Gonzalez's lower back for a moment.

A. Okay.

Q. What medical records did you believe to be significant with regards to Ms. Gonzalez's lumbar spine?

A. So, when Ms. Gonzalez went to the emergency room, she complained of pain in her lumbar spine, but, once again, physical examination, range of motion, everything absolutely normal. Again, there is no evidence of a serious injury to the lower back. There is consistency with an injury to the muscles of the lower back, a strain or sprain, but not any kind of herniated disk or anything serious to the lower back. In fact, she had no complaints related to the lower back from June 20th on the medical records until September 13, 2017.

Q. And, I'd like to stop you right there, Doctor. I'd like to show you a record that's in evidence.

MR. SUBIN: Judge, I don't think he's ever reviewed these records.

MR. BRODY: Actually, it is part of the supplemental disclosure that I gave you.

MR. SUBIN: No objection.

Q. Doctor, I'm referring to part of Dr. Gouda's record, Plaintiff's Exhibit 14, and I'm showing the March 13, 2017

examination, which is before the date of this accident, and I'd ask you to look at the top where it talks about her condition that day. And does it reference to back pain?

A. Yes.

Q. And I asked Dr. Guy some questions about that back pain. I want you to assume for purposes of your testimony today that he said that that's not relevant because there was no radiculopathy recorded from that record, just lower back, okay. So, I'd like you to have that in context as you continue your explanation of the records you thought were important.

Now, a person who has an injury to a disk in their back, can they experience just back pain?

A. An injury to a disk can start off just as back pain, and then can progress to a radiculopathy, but often times back pain disk injury or disk herniation due to degeneration can occur and not cause anything other than just pain in the back.

Q. Isn't it also true that you can have, as we get older, you can have some level of disk injury in your back that causes no pain?

A. Well, you know, we are talking about disk injury. There is two ways that a disk can get herniated. One way is an accident. A car accident, boom, that's a sudden force energy applied to the disk and that caused to burst into injury. That, you feel immediately, and that's terribly painful. And then there is the kind that happens to most of us, thankfully, as we

get older -- let me start, when you are born your disks have a lot of water in it. And it is kind of like the sponge on your sink. At the end of the day, sponges, you bring it out, you go to bed, you come back down the next morning the sponge is dried out. That's a very different sponge than the one you had the night before. It is brittle. It has very different properties. Same thing with your disks. Your disks you have a lot of water from them when you are born, and then slowly, over time, not overnight, thankfully, but over time it begins to dry out. And those disks then can deteriorate with -- well, they do deteriorate. It is just a fact of life. Then you can get bulging and then herniations without any kind of accident, whatsoever.

So, many of us here today have disk herniations, and never having had an accident specifically. She can have had -- she most likely had pain in her back that's perfectly normal for growing old, and she could have had it without radiculopathy. It could just be back pain. None of us can have back pain without radiculopathy. Radiculopathy is going down your leg. I didn't mean to use a big word, but pain going down your leg.

Q. That said, Doctor, what other records that you reviewed that were significant for your determination as to what you believe the injury was that she sustained in her accident related to her lumbar spine?

A. So, we talked about the emergency room, full normal range of motion, and then absolute silence in the medical records until she's seen in September about three months later by Dr. Gouda, who then made references, longstanding low back pain. She then gets treated, physical therapy, that begins a couple of days later in September. So, she's gone from June until September with no treatment, and then there is MRIs. I don't think I'm allowed to talk about the MRIs. I don't know. I reviewed the reports of three different MRIs, I won't go into the detail, one of them, in my opinion, show any kind of an injury that would have been caused by this accident. The MRIs all show normal degeneration that occur as we all get older. Nothing out of the ordinary. And there were three of them. One in 2017, one in 2020, one in 2021. I looked at all of them.

Q. Doctor, I want to stop you there for a second before you talk about anything else related to the back. With regards to the physical therapy, you are referring to the Focus Physical Therapy, is that correct? That was done in September of 2017?

A. Yeah, I don't know the name -- I didn't commit it to memory. It is September of 2017.

Q. Do you have any reason to dispute Dr. Guy's testimony earlier today that the physical therapy records indicated that she was complaining not about functions with her knee, but that she was having back pain going into her knee, assuming that to be true, are those two very different things?

A. Yes.

Q. How are they different?

A. So, there is such a thing called referred pain. A lot of us know that if you have pain in your left shoulder, it may not be your left shoulder. It may be your heart. So, a heart attack sometimes show up as left shoulder pain. These things happen in the body, it is called referred pain, and so what we are talking about here, the difference between an injury to the knee, that is pain, and an injury to the lower back that causes what we call radiculopathy caused pain that goes from the lower back into the knee and can even be felt in the knee, and it only comes from the lower back. So, the reference that the physical therapist made, it is radiating or moving from the lower back to the knee indicates that the right knee is not injured. It is the lower back that's causing the pain in that person's opinion.

I don't know how true that is, because I wasn't there. In that person's opinion, the pain that he's documenting is coming from the lower back, not from the right knee. It is going to the right knee, but not due to the right knee.

Q. Now, Doctor, again, you had the benefit of reviewing the video to see what actually happened to Mrs. Gonzalez on the date of her accident; correct?

A. Yes.

Q. Correlating the video to the medical records that you reviewed, did you formulate an opinion within a reasonable

degree of medical certainty as to what, if any injury, Ms. Gonzalez sustained to her lower back as a result of the accident of June 20, 2017?

A. So, taking the entire picture that I just drew for you, in my opinion, that that video and the records do not support any serious injury to her lower back. What it does support, and what it is consistent with, is someone who may have sprained or strained the muscles in the lower back. All of us have done that, and those get better. They do not require surgery. They do not need ongoing treatment. They generally resolve in 4 to 6 weeks. So, the fact of the matter is, that my opinion is, as a result of the accident from June 20, 2017, she sustained a resolved lower back strain, from which she has fully recovered.

Q. And, Doctor, again, not addressing whether or not she might, for whatever reason, need future medical care and treatment to her lower back, do you have an opinion as to whether or not she requires that treatment causally related to the accident of June 20, 2017?

A. I do.

Q. And what is that opinion, Doctor?

A. If she requires any further treatment to her lower back, it is not as a result of any injury sustained in this accident. She sustained a muscle strain, and she's recovered from that.

Q. Now, Doctor, I want to move to the right knee and I

want to limit the comments here to the right knee. I know you've indicated that something could have happened to the left knee, but there is no claim for left knee injury in this case, okay. So, if you address only the right knee, can you tell me what records you believe were significant in evaluating what you believe any injuries were that Ms. Gonzalez sustained to her right knee?

A. Okay. So, once again, we have to look at both sides to be fair. So, she's claiming a serious injury to her right knee which resulted in surgery. Torn meniscus, all kinds of damage in her knee. And this ultimately required surgery. This is what she -- not she, but they are claiming in this case. And that could have happened. Anything is possible. The question we have here is did it happen. And, so, let's look. So, looking at the emergency room records, now, this is a couple hours after she had her accident. She went to the emergency room. She got no complaints referable to her right knee. That just doesn't make sense. Just doesn't. You don't have to go to medical school to know a serious injury to the right knee, she'd be complaining in pain. She complained of pain in her left knee, that makes sense. We saw what did. But right knee, if she had serious injury to her right knee, meniscal tear, anything like that, she would have a knee that's swollen, painful and decreased range of motion, immediately. She didn't have any complaints. She didn't complain of pain. Okay. Maybe

she was distracted. Possible.

So, her doctor who was there, the emergency room doctor examined both knees, found no problem with her right knee. Full range of motion. Everything was normal. Ligaments were fine. No evidence of damage. If she injured her meniscus and damaged her knee severely a couple hours before that, doctor would have noted it, unless he was totally incompetent, which I don't think he was or she. They did a good job. So, the emergency room immediately makes you think, well, it is unlikely that she had serious injury to her right knee. So, then, we look and see what she did. Actions speak louder than words. I injured my right knee, I'm seriously injured. I need an operation. Actions don't correlate with that, and you expect them to. My mother used to say, actions speak louder than words. When she went -- after the emergency room she didn't see the doctor and complain about pain in her right knee. Not for one month or two months. It wasn't until she was seen by physical therapy that the word right knee appears in her medical records. And, like we just finished going through it, wasn't that she had pain in her right knee, she had pain from her lower back that was referred to her right knee. Her right knee wasn't even a problem three months later.

So, now, she goes and sees a Dr. Weiner in January of 2018. Now, remember, you are about six months down the road now. Had an injury, serious injury to the right knee, and

somehow escaped the attention of everybody, and now she saw Dr. Weiner in January and now she complained of right knee pain.

Q. Doctor, let me stop you right there. You had brought up earlier on August 2nd of 2017, about 4 to 6 weeks after this accident, she was back in the hospital. Do you recall that?

A. Yes.

Q. And she injured her right toe on her right foot significantly, and it caused her to go to the hospital; correct?

A. Yes.

Q. If a person sustained an injury to their right foot, superimposed upon a traumatic torn meniscus to their right knee, wouldn't you expect that person, while they are examining their foot, to be saying, by the way, I was just here six weeks ago and my right knee is killing me. Isn't that what you would expect?

A. I mean, it is a reasonable thing. I mean, anything can happen, and we have to remember that she does have an anxiety disorder, and she has panic attacks. We have to give her some leeway on that, but the doctor would have noticed, I mean, as a physician, you can tell me a lot of things, but I'm going to exam your whole body. Even though you may forget or not even tell me you have a problem with right knee, if I examine your right knee, the knee doesn't bend as much, you seem to have pain. I don't know, it hurts when I press it. It makes me think, let gets an x-ray. Let's see what's going on even if you

don't have any complaints. So, the fact that she didn't have any complaints, I don't know, it doesn't make sense, honestly, but you have to give her some credit or some leeway here. But, her physicians, assuming they are competent, and it is unlikely this is every single one of her physicians she saw were incompetent, they didn't find anything wrong with her right knee. Very, very inconsistent with a serious injury to the right knee that would eventually require surgery.

Q. And, Doctor, were there any other records that you believe were significant in evaluating whether or not the plaintiff sustained an injury to her right knee or significant injury to her right knee resulting from the accident?

A. Dr. McCulloch saw her in March of 2018, and in his physical examination he does have some abnormalities. But they are subjective. In other words, remember what I said, subjective meaning that is under the patient's control. And even I'm not saying she's lying or anything, I'm just saying to her disorder, her anxiety disorder, she may be so anxious that she can't bend her knee in a certain amount. That doesn't mean there is a problem with her knee. It just means she's not able to do it for whatever reason. And, so, Dr. McCulloch's findings were subjective in nature. There were no objective findings. No swelling or anything else that would indicate there is something going on. Nothing objective. Nothing that is out of her control, and there was the MRIs, and the MRIs did not show

anything that required surgery. The MRIs --

Q. Go ahead.

A. I'm not going to go into the MRIs. I don't know if there is any problem with what I saw. The MRI that was done in January of 2018 on the right knee, the report, the MRI report, and I didn't see anything that required surgery, and she actually did have surgery. I'm not saying that Mr. McCulloch did unnecessary surgery, just surgery I can't justify looking at the medical records. If Dr. McCulloch was here, he may tell you other things he saw that he didn't put in the record. Why he wouldn't? I don't know. But, I'm just saying that she had the surgery, and in my opinion, from what I see in the medical records, the surgery that she had done did not address any kind of the injuries that she may have sustained to her right knee, which is unlikely to begin within view of the video that we saw where her right knee doesn't seem to have an injury at all.

If she had surgery, it was done and addressed conditions that were caused or related to something other than the accident date of June 20th, 2017.

Q. Now, Doctor, you just gave your opinion. I'm going to ask you to do it under a slightly different question. The opinion that you've just given, is that opinion given by you to a reasonable degree of medical certainty?

A. Yes.

Q. And with regards to the fact that in 2024 you made some

positive findings with regards to Ms. Gonzalez's right knee, those findings that you made in 2024, do you have an opinion as to whether or not they were causally related to her accident of June 20, 2017?

A. Yes, I do.

Q. And to a reasonable degree of medical certainty, do you believe that the findings you made in 2024 are causally related to the accident of June 20, 2017?

A. I do have an opinion, and my opinion is that the findings that I saw which were decreased range of motion of her knee were subjective findings that were unsupported by any objective data. And, so, in my opinion, her subjective findings were not causally related to any injury that she sustained as a result of the accident in June 20th of 2017.

Q. And, Doctor, again, regardless of whether you agree or disagree with any future treatment that she may need to her right knee, do you have an opinion as to whether or not any such future treatment would be causally related to the accident?

A. I do.

Q. And to a reasonable -- within a reasonable degree of medical certainty, what would that opinion be?

A. In my opinion, at most, she may have sustained a bruise or contusion of her right knee, and it has long since resolved. She's recovered completely. She does not require any further treatment as a result of that injury. She may require treatment

in the future, but not for this.

Q. And, Doctor, with regards to the right knee as opposed to the left knee, did you see anything in the video that would suggest a mechanical explanation for how she would have injured that right knee?

A. Well, let's just think about it for a second. Basically, what she did was she slipped and struck her left knee against the floor. Her right knee bent in a normal manner. It did not extend, hyperextend. It didn't shift to the left. It didn't shift to the right. It just bent kind of, like, when you genuflect, except her genuflection of course was a lot more sudden. Injury to the left knee, I can completely understand. Injury to the right knee, just doesn't seem to have happened. Is it possible? It is possible. And she may have had a mild injury to the right knee. I don't know. But if she did have mild injury to her right knee, it did not require surgery, and she has since recovered.

Q. Doctor, let's move on to the left shoulder then. Can you tell the ladies and gentlemen of the jury what records you believe were significant in allowing you to come to a conclusion as to what, if any injury, Ms. Gonzalez sustained to her left shoulder as a result of the accident of June 20, 2017?

A. Sure. Just briefly because we went through a lot of this already so it is going to be quick. Left shoulder, emergency room, no complaints. She had a serious injury to her

left shoulder rotator cuff tear, dislocation. I don't know. She would have had complaints right away. A non-serious injury, shoulder strain, contusion, bruise. No. She may not a couple hours later, but serious injury absolutely. So, she goes to the emergency room, no complaints. And then the physical examination by the doctor of her shoulder, completely normal. Once again, even if she somehow forgot or didn't realize she had problem with pain in her shoulder, the doctor would have seen something that was wrong, swelling, bleeding, bruising. There was nothing. She doesn't then have any complaints referable to her left shoulder until she sees Dr. McCulloch.

Now, she goes to see Dr. Gouda in the meantime. Couple months later, no complaints to her left shoulder, and she goes and gets physical therapy for a number of months. No treatment and no complaints referable to her left shoulder, and then she goes and sees Dr. McCulloch in July, more than a year later, and has pain in her left shoulder. I can't figure out that given that history and given those actions by Ms. Gonzalez, how you can say that she has any problem in her left shoulder in July of 2018 that's due to the accident in June of 2017.

And, so, there were MRIs that were done. Maybe we missed something. The MRIs showed degenerative changes, not trauma. It showed degenerative conditions, which we all have degenerative conditions. Let's say she had 3, 3 MRIs of her left shoulder, and all three showed the same thing. And of

course there was the video. So, in summation, based on --

MR. SUBIN: Objection. The Doctor doesn't get to give summations.

THE COURT: Sustained.

Q. Doctor, let me ask you questions.

A. Sure.

Q. Let me first, what does the following statement mean, rotator cuff tendinosis-no tear?

A. Okay. So, tendinosis is a fancy way of saying, as doctors, degeneration. So, it means degeneration of tendon, osis means degeneration. Tendinosis degeneration of the tendon. It is what happens to all our bodies. All our tendons are degenerative, an MRI is a very sensitive test and will show that. It is not something that's normal. It is, unfortunately, very normal. We all have it. It is not caused by this accident. It is just a normal process of aging.

Q. And, joint arthrosis and acromial spur, what are those items?

A. So arthrosis, remember the word tendinosis, osis means degeneration. Joint arthrosis means degeneration of the joints. So, the joint, the shoulder joint is made up of a number of bones, and, so, those bones are beginning to wear out and the joint is beginning to wear out. Nothing unusual. All our joints wear out. She's got wearing out of some of her joints.

Q. So, Doctor, on September 4th, 2020, and I reviewed this with Dr. Guy, there was an MRI which those were the two findings. Would you agree that those findings are degenerative and not caused by the accident of June 20, 2017?

A. Well, they are definitely degenerative conditions, yes.

Q. So, can we agree that as of September 4, 2020, the MRIs of Ms. Gonzalez's shoulder, and this is three years post accident, only show degenerative changes, didn't show traumatic injury whatsoever to her left shoulder?

A. That's correct.

Q. Doctor, do you have an opinion based upon the other records, and that specific record, whether or not in the accident of June 20, 2017 to a reasonable degree of medical certainty, Ms. Gonzalez sustained an injury to her left shoulder?

A. I do, yes.

Q. And what is that opinion?

A. My opinion is that if she indeed injured her left shoulder, it was a minor injury, that it was a contusion or a bruise, and that she's fully recovered and required no further treatment.

Q. Doctor, there was a lot of testimony from Dr. Guy in this case about something called EMR. Can you just briefly explain what EMR is?

A. Electronic medical records. That's what it is. Almost

everybody now uses it. It is a digital form of keeping records, charts and everything else like that. That's what electronic medical records are.

Q. And does the fact that one record on one day in the next record on the next date contained the exact same language, does that mean the doctor didn't do an exam?

MR. SUBIN: Objection.

THE COURT: Elaborate on your objection?

MR. SUBIN: Judge, this isn't the doctor, meaning in the ether --

THE COURT: Sustained.

Q. Would you agree with me, Doctor, that each doctor would write their report differently, and without speaking to that doctor, you wouldn't know how they use the EMR?

A. I would agree with that to some extent in that, you know, I don't know exactly how each doctor would use an EMR, but using an EMR for a long period of time myself --

MR. SUBIN: Judge, objection. Beyond the scope.

THE COURT: Sustained.

MR. BRODY: Beyond the scope of?

MR. SUBIN: Your question.

Q. Have you used the EMR in your practice?

A. Oh, yes, I have.

Q. And can you explain how you use the EMR in your practice?

A. So, electronic medical records, the way I used it was I used a voice recognition system. So, I dictate it into a computer and the computer changes my words into, you know, type my words into a record. So, the way I used it was to see patients. When I saw patients, I didn't bring a computer in the room with me. I felt that that was creating a barrier. I brought a piece of paper and I would basically take notes. Take notes, and then afterwards go to the record on my desk and I would dictate it into the recording, the medical records, and then those medical records were then sent almost immediately to the physician who had sent that patient to my office. So, almost before that patient had got on the bus and left the office, the medical record, the chart was going to the doctor.

(Whereupon, Senior Reporter Nunez was relieved by Senior Reporter Mandato.)

Q. And, Doctor, would it be fair to say that if certain things changed you would have to dictate that each time you saw the patient, correct?

A. Yeah. Okay, so I understand what you're saying now. So, yeah, the medical records, the EMR is set up in such a way that there's a certain template that is there for let's say physical examinations. And so the physical examination, orthopaedic physical examination of a shoulder is the same all the time.

And so in an EMR, that record, there is a template. The doctor then does the examination and if in fact there are any abnormalities in the examination of the shoulder then the doctor would change that part of the template that's abnormal.

And so there are templates and if there is no change, if the examination's completely normal, just read it, make sure, yes, the template's exactly right, that's exactly what happened, then that template would just be used for the medical record.

Histories, in other words, history is what you're telling me, that changes every single time. That history is not the same between. It may be similar but they're different because there's no template that knows what, you know, you're going to say. So I can't use that. I dictate that. And of course, the diagnoses often changes as well but sometimes remain the same.

So in answer to your question if there are templates,

there are normal templates but if something's abnormal then I definitely would change it of course.

Q. Now, Doctor, how many times have you testified so far this year?

A. This year, once.

Q. Okay. In say the past three or four or five years how often do you testify?

A. Well, since COVID you're saying. It's probably I go maybe four or five times a year now. Not very often.

Q. In the past it was much more, correct?

A. Oh, before COVID, yes.

Q. Okay. And would it be fair to say that you have primarily testified or perform medical-legal consultations even primarily for parties who have been sued in an accident or have brought a workers' compensation?

A. Well, no. I've done a lot of second opinions for many many patients that weren't involved with litigation in any way. I mean, they're exactly the same reports, the same way I approach it. But I do do these types of second opinions that happen to have med -- I mean the liability or litigation involved, yes.

Q. Okay. And in your testimony, have you testified more for defendants than plaintiffs?

A. Yeah. As it turns out, probably more than ninety five percent, maybe even more than that for defense and occasionally

for plaintiffs. They've asked me to testify as well. So I've testified for both but the preponderance has been for the defense.

Q. And you charge for appearing; is that correct?

A. For the time, yeah, sure.

Q. Okay. And you're charging my firm for your appearance here today, correct?

A. I am.

Q. And how much is that fee?

A. $8,000.

Q. Okay. And that's for your appearance today in court and whatever --

By the way, and you're charging something separate for your time preparing for today, correct?

A. I don't ordinarily do that but since we had talked and it involved a lot of records and everything else, we did charge for that, yes.

MR. BRODY: Great. Thank you very much, Doctor, I have no further questions at this time.

MR. SUBIN: Can we approach for one-half a second, Judge?

THE COURT: Yeah.

(Whereupon, the following took place at the side bar off the record in the presence of the Court and counsel.)

THE COURT: Take the jury out.

THE COURT OFFICER: Jury exiting.

(Whereupon, the jury exited the courtroom.)

THE COURT OFFICER: Jury entering.

(Whereupon, the jury entered the courtroom.)

THE COURT: All right. You may inquire.

CROSS-EXAMINATION

MR. SUBIN:

Q. Dr. Toriello, good afternoon.

A. Good afternoon.

Q. We know each other from prior to today, correct?

A. Yes.

Q. And this is the now the fifth time I've had the opportunity to ask you questions on cross-examination in our respective careers; true?

A. You may be counting, I don't have any reason to quibble with it. I never counted it.

Q. Okay. You'll accept my representation that this is number five?

A. Sure.

Q. Okay, thank you.

Now, are you still doing around forty exams in medical-legal consultations a week?

A. No.

Q. How many are you doing now?

A. Approximately five to seven.
Q. Of medical-legals?
A. Just second opinion consultations. Medical-legal consultations, yes, five to seven.
Q. Okay. And let's go before. I'm going to ask you, Doctor, in medicine, can we agree accuracy is important?
A. Accuracy is important in most things in life including medicine, yes.
Q. So I'm going to ask you a couple of questions and I'm going to ask you to give me your most accurate estimation. Okay?
A. Okay.
Q. How many times in total have you testified as an expert witness in court?
A. Well, let's do the math, okay. Fifteen to seventeen times since the early nineties until like 2020. So whatever that number is. It's a large number I've gone to court, so I don't want to take a guess. But we can easily just multiply that out or I can multiply it out, whatever you want to do.
Q. I'll do it. Seventeen times how many years, twenty five?
A. Well, no, not twenty five. Let's say from 1990 until 2020.
Q. That's thirty years?
A. Right.

Q. Excuse my math, that's over five hundred times that you have been in court as an expert witness?

A. That's correct.

Q. Okay. And how many of these medical-legal exams have you done in the course of your career?

A. Oh my, I would say thousands.

Q. Now, Doctor, thousands could be one thousand or two thousand or five thousand. So are we closer to a hundred thousand?

A. Well, once again, whatever the number is it is. So let's do the numbers.

Q. Okay.

A. All right so.

Q. Let me ask you a different question.

A. Okay.

Q. Back in January of '17 had you indicated that you've done fifty thousand of these medical and legal second opinion exams?

A. Was that a question or is that just a statement? I'm not sure.

Q. It's a question.

A. Did I do that in 2017, I'm not sure. I don't remember but if you're representing that that's what I did, I have no reason to argue with you. The numbers are what they are.

Q. And, Doctor, again as accurately as possible, how much

money have you derived in your career doing these medical-legal examinations?

A. Once again, the number is staggering. It's a lot. I'm trying to remember because we've done this before and I've done the numbers and now you don't want me to guess, so I don't want to guess.

Q. Well, Doctor, I'm going to ask you.

A. Go ahead.

Q. Doctor, you've been on the stand five hundred times you just told us and many of those five hundred times you're asked this question; true?

A. That's correct.

Q. So you must have some sense of a number that you've now spoken about over these last thirty years of how much you made from this portion of your business?

A. Yeah, that's correct. I'm just prefacing it with I'm not really sure. I could be off but the number that I seem to remember was somewhere between ten and twelve million dollars.

Q. Okay. Now I want to talk a little bit about accuracy here. Can you --

You saw Dayra two times; true?

A. I'm sorry, say one more time.

Q. You Dayra two times; true?

A. Yes, I did.

Q. And you issued two reports; true?

A. That's correct.

Q. And you swore to those reports under the penalties of perjury; true?

A. Yes.

Q. And you're not changing any of your opinions from those reports here today; true?

A. Unless I decide or find that there's a mistake and then there's a reason to change it, I will change my opinion, yes. If you show me that I'm wrong, I'll change my opinion, sure.

Q. Okay, great. So can we go to the report of April 23rd of 2025.

A. Sure.

THE COURT: Counsel, do you have a copy of that report?

MR. SUBIN: I gave it to you, Judge.

THE COURT: No, you didn't. You gave me the report of November 2020.

MR. SUBIN: I thought I gave you two, Judge. Hold on.

THE COURT: You gave me two of the same one.

MR. SUBIN: I gave you two of the same one, I apologize very much, Judge.

THE COURT: Even if you just e-mail it, that's fine.

MR. SUBIN: I know. I'll print it right here,

Judge, it will take me two seconds. Half a second, I'm getting it, Judge, my apologies.

THE COURT: It's okay. Continue.

Q. Now, Dr. Toriello, your opinions as to causation are in part based on your review of the medical records; true?

A. That's correct.

Q. Okay. And accurate review of the medical records would therefore be important; true?

A. Yes.

Q. I want you to go to page number three of your report from 2025 and there's a heading that says review of medical records. Do you see that?

A. I do, yes.

Q. And then you wrote that the enclosed medical records were reviewed. Do you see that, too?

A. Yes.

Q. And then there's some bullet points that go down?

A. Yes.

Q. And you see that the one, two, three, four, five -- six bullet point you wrote a series of reports, Dr. Gowea from 2017 and 2018. Do you see that?

A. Yes.

Q. Is that the primary care doctor, Dr. Gowea?

A. I believe that was, yes.

Q. Now, in the very next line you write the medical

records reviewed were a series of physical therapy reports from doctor Puttaswamy from 9/2017. Do you see that?

A. Yes.

Q. Isn't Dr. Puttaswamy the same doctor as Dr. Gowea?

A. Might be. I don't know. I don't know Dr. Gowea personally. I just read what was in the report.

Q. And we have the records from Dr. Gowea, Puttsawamy Gowea. Will you accept my representation that there are no physical therapy records in that?

MR. BRODY: Objection.

THE COURT: What's your objection?

MR. BRODY: The focus records are actually contained within Dr. Gowea's file, so there are physical therapy records from that period of time in her file. They're just the records from the therapist that counsel pointed out she referred the plaintiff to, so they are in the chart.

Q. Let's go on to the next page.

THE COURT: Counsel, do you want to --

MR. SUBIN: I'll withdraw the question and ask another.

THE COURT: Thank you.

Q. Going to the next page. Going down the list you have a series of reports from Dr. Gondolo about midway through the page from 2020.

A. Yes.

Q. Who's Dr. Gondolo?

A. I don't have any independent recollection of who that person is, no.

Q. You also said that --

By the way, do you remember either of these examinations, Doctor?

A. Do I have an independent recollection of them?

Q. Yeah.

A. No.

Q. You also said in the initial report of 2020 that, under physical examination on page two, examination of the cervical spine reveals a well-healed scar from prior surgery. Do you see where it says that?

A. Yes.

Q. And then you told us in the second exam that you also saw the scar. Do you remember that testimony earlier today?

A. Yes.

Q. Go to the report of 2025 and go to your examination of the cervical spine. Did you mention that she had a cervical scar; yes or no?

A. No. There is a typo.

Q. Well, a typo, sir, is when you have the word F-R-O-M from as opposed F-O-R-M form. That's a typographic error where you have two letters that are inverted. Where is the

typographical error that exists on this sworn report of April of 2025?

A. Well, I would take issue with your definition of typographical error. Typographical error occurs when I dictate something and it's not in there. And I can prove to you that I dictated it because I have my notes and my notes indicate that there's a scar on the cervical spine.

However, I missed it. It was my fault. I reread it, I signed it, I didn't notice that the typist had inadvertently left out the word scar. I would have put it in.

Q. Now, I want to talk to you about --

A. By the way, I have my notes with me today if you want to see.

Q. Sir --

A. Okay.

Q. -- with all due respect, Doctor, you understand that you've done this five hundred times. Please just answer questions. Is that okay?

A. Of course.

Q. Thank you.

By the way, you talked about the exam not taking a lot of time. Do you remember that testimony earlier today?

A. Yes.

Q. And at least with my office and with other offices a representative will go with the client or the person you're

examining and take notes. You've seen that before; true?

A. Yes.

Q. And you're aware that the examinations are sometimes timed; true?

A. They could be. I don't know what that individual does. Sometimes they don't even come into the office with me but they do accompany the client, yes.

Q. And your first examination took place on November 3rd of 2020; is that true?

A. Yes.

Q. And if I told you that the examination started at 8:49 a.m. and ended at 8:53 a.m., would you have any reason to say that that wasn't true?

A. I can't say whether it's true or not true. I didn't do that. I didn't take a time -- you know, time it. So I don't know.

Q. Okay. And during that --

Assuming that that is true, the four minutes, you examined Dayra's neck; true?

A. In the examination, I examined her neck, yes.

Q. You examined her right knee, both knees; true?

A. Yes.

Q. You examined her lumbar spine?

A. Yes.

Q. You examined both of her shoulders?

A. Yes.
Q. And you examined both wrists and hands; true?
A. One minute. And her elbows.
Q. And her elbows, okay.
Doctor, you talked about the range of motion of Dayra's neck. Do you recall that testimony?
A. Yeah. I recall talking about it, yes.
Q. Okay. Now, if I look down and I bring my chin to my chest what is that called?
A. Flexion.
Q. And if it's in the neck is it called cervical flexion?
A. Yes.
Q. And if I tilt my head back and look at the ceiling what is that called?
A. Extension.
Q. And if I turn my head and put my chin on my shoulder what is that called?
A. Rotation to the left.
Q. And obviously the right.
And if I bring my ear to my shoulder what is that motion?
A. Lateral bending.
Q. Okay. Did you test the range of motion of Dayra's neck in all those directions?
A. I did, yes.

Q. Okay. And do you list what the expected range of normal of those ranges of motion are?
A. Yes.
Q. Okay. Will you share. Let's do them one at a time.
A. Sure.
Q. Chin to chest, what would be the expected range of normal that you put in your report?
A. Flexion was --
Q. I don't want you to --
A. Normal. Normal, right, okay. Forty five to fifty degrees.
Q. And with regard to the lateral rotation chin to shoulder what is the expected range of normal?
A. Approximately --
Q. Not approximately. What'd you write?
A. Between seventy and eighty degrees.
Q. And flexion and extension what is the normal that you put?
A. Fifty five to sixty degrees.
Q. And did you do lateral bending?
A. Yes.
Q. And what's the expected range of normal?
A. Forty to forty five degrees.
Q. Now, we can agree that when someone has a fusion of one of the discs in their cervical spine that you would expect a

reduced range of motion; true?

A. Only in that segment. The whole cervical spine can move normally even though you fused one, two or three segments.

Q. Well, Doctor, have you testified under oath that you expect a loss of range of motion after a lumbar -- after a cervical fusion?

A. That could happen as well, yes. Both can happen. You can have normal range of motion and decreased range of motion.

Q. Did you testify --

Dr. Toriello, have you testified under oath that after a cervical fusion you expect a reduced range of motion of the cervical spine; yes or no?

MR. BRODY: Objection. He's asked the question, had it answered. Now if he wants to point to specific testimony, he can identify the transcript, the page and the line and the doctor can say whether that was his testimony or not.

MR. SUBIN: He hasn't answered me directly, Judge, which is why I was asking him.

THE COURT: Counsel, as to the objection is sustained. Ask a question appropriately.

Q. Doctor, did you testify on January 9th of 2023 in the case of Jerzel Addison J-E-R-Z-E-L A-D-D-I-S-O-N versus The Public Administrator of Kings County?

A. I don't recall.

Q. And every time you testified in the five hundred times there's always a court reporter that sits either in front of you or on the side of you, right, Doctor?

A. There is a court reporter. I've never read the transcript for accuracy, so you will note that that transcript that you're looking at was not signed by me for accuracy. So I don't know how accurate it is but you can go ahead.

THE COURT: All right, counsel, it's 4:30 p.m.

MR. SUBIN: Okay.

THE COURT: So I think we're going to have to conclude for today. Can you approach me in the back for a second.

(Whereupon, the following took place in the judge's chambers off the record in the presence of the Court and counsel.)

THE COURT: Members of the jury, we have to conclude today at this time because we're required to leave by -- to end by 4:30. The Court has been advised that the doctor is unavailable tomorrow. As such, we will resume his testimony at a later date. He's still under oath.

Doctor, you may not discuss this testimony with anyone until your testimony is concluded. Do you understand?

THE WITNESS: Yes, thank you.

THE COURT: Thank you, Doctor, you're excused for

today.

Tomorrow we have other witnesses and I also don't want to change who's scheduled for tomorrow because we have an interpreter and I don't want to lose our interpreter for tomorrow. So please be here at 9:30 so that we can start.

You haven't heard all of the testimony, you haven't heard all of the evidence, don't form any conclusions. Don't do any research on any issue you have heard today or any of the parties. Have a wonderful day and try and stay cool.

THE COURT OFFICER: Jury exiting.

(Whereupon, the jury exited the courtroom.)

(Whereupon, the trial was adjourned to 9:30 a.m. June 26, 2025.)

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CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING.

_____
CAROLINE MANDATO
Senior Court Reporter

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ROBIN NUNEZ
Senior Court Reporter

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