

In The Matter Of:

Honorio Rosario-Silverio v.

*PPC Commercial, LLC, 1489 Food Corp., d/b/a Foodtown
Supermarket and Parkchester Preservation, Inc.,*

Paul Ratzker, M.D.

December 12, 2025

Michelle Cox

Senior Court Reporter

Bronx Civil Supreme Court

851 Grand Concourse

Bronx, New York 10451

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF BRONX: CIVIL TERM: PART IA-7

3 -----:
4 HONORIO ROSARIO-SILVERIO, :

5 Plaintiff, : Index No.
6 -against- : 31210/2017E
7 : Paul Ratzker, M.D.

8 PPC COMMERCIAL, LLC, 1489 FOOD CORP., :
9 d/b/a FOODTOWN SUPERMARKET and :
10 PARKCHESTER PRESERVATION, INC., :

11 -----:
12 Defendants. :

13 851 Grand Concourse
14 Bronx, New York 10451
15 December 12, 2025

16 B E F O R E:
17 HONORABLE WILMA GUZMAN,
18 Justice of the Supreme Court

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

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ALSO PRESENT: Daisy Koch

Michelle Cox
Official Court Reporter

1 MR. PRONER: I have a couple of details.

2 Yesterday I told you I would bring in a paper
3 copy, Plaintiff 23 for ID that was the demonstrative. I
4 have the chart.

5 THE COURT: It was marked?

6 MR. PRONER: It was the -- Dr. Solomon's chart of
7 the cost that we showed the jury and I said I'd bring a
8 paper copy. I've got that here.

9 It's up. 23 for ID. Plaintiff's 23 for ID.

10 Secondly, I want --

11 THE COURT: Hold on. I want her to mark it so we
12 don't lose track.

13 (Brief pause in the proceedings.)

14 THE COURT: Okay. What else?

15 MR. PRONER: When I advised Dr. Ratzker last
16 night that we were going to be starting later today, he
17 informed me that he observes the Sabbath and he has a hard
18 stop at 2:30.

19 So I will do my best to get through his direct
20 and give time for the defense to cross, but I wanted to
21 advise the Court.

22 And maybe -- I know that your staff is entitled
23 to and should have lunch, but perhaps we could have that
24 lunch a little bit later so we can get a bunch of testimony
25 done.

1 THE COURT: I don't know. I have to consult with
2 them because I know it's a set rule. I'll speak with them
3 inside. Two seconds.

4 MS. BUHOLTZ: Your Honor, with regard to
5 Exhibit 23, I will address this later, but I'd like to move
6 it into evidence but we can certainly address it later, not
7 now. But I want to get it on the record.

8 THE COURT: Can I talk to everyone inside.
9 (Whereupon, an off-the-record discussion was
10 held.)

11 MR. PRONER: Thank you, Your Honor.
12 (Plaintiff's Exhibit 24, Cervical Spine MRI dated
13 November 22, 2017, marked for identification as of this
14 date.)

15 (Plaintiff's Exhibit 25, Cervical Spine MRI dated
16 November 22, 2017, marked for identification as of this
17 date.)

18 (Plaintiff's Exhibit 26A, Anterior Discectomy and
19 Fusion dated March 23, 2022, marked for identification as
20 of this date.)

21 (16 Exhibit 26B, Anterior Discectomy and Fusion
22 dated March 23, 2022, marked for identification as of this
23 date.)

24 MR. PRONER: Cervical MRIs of the spine from
25 11/22/2017, and a colorized --

1 THE COURT: Hold on a second.

2 MR. PRONER: -- with a cervical colorization.

3 THE COURT: This is 24?

4 MR. PRONER: Both of them are identical.

5 THE COURT: 24 and 25?

6 MR. PRONER: Yes. One is just an axial view and
7 the other sagittal. So 25 would be the sagittal.

8 26A and B --

9 THE CLERK: Hold on. Let the reporter mark these
10 please.

11 MR. PRONER: This is 26A and B.

12 THE CLERK: What are those?

13 MR. PRONER: Anterior Discectomy. They're both
14 the Anterior Discectomy.

15 THE CLERK: Judge, did you get 27?

16 THE COURT: No.

17 MR. PRONER: 27 is x-ray cervical spine, 4/25/22.

18 MR. CALABRESE: No objection to this. I'm still
19 looking at this.

20 THE COURT: That's it.

21 MR. PRONER: I can lay a foundation.

22 MR. CALABRESE: The only thing I'd ask, Judge,
23 similar to what happened yesterday, I fairly couldn't
24 remember. This is not the surgery. This is a sample of
25 it. This is not the same level. This is -- obviously,

1 it's illustrative purposes, fine.

2 But I'd ask that the top portion be removed.
3 There was a conversation yesterday about cutting it off and
4 everything. But unfortunately, when it went, actually
5 distributed to the jury, it said it on it.

6 So I just ask, again, today, for these other two,
7 which we have no objection.

8 THE COURT: What number is that?

9 MR. CALABRESE: This is 26A and 26B for ID,
10 Plaintiffs.

11 MR. PRONER: And, Your Honor, I can lay the same
12 foundation that this was his surgery. This was performed
13 by this doctor. He helped to prepare these medical
14 illustrations. And it's not just a stock photo or stock
15 illustration. This is Mr. Honorio Rosario cervical spine.

16 THE COURT: If you establish that, then you could
17 you show it to the jury; otherwise, no.

18 MR. PRONER: Thank you.

19 MR. CALABRESE: Thank you, Your Honor.

20 THE COURT OFFICER: All rise. Jury entering.
21 (Whereupon, the jury enters the courtroom.)

22 THE COURT: Please be seated. It's still two
23 minutes to noon. So good morning, Ladies and gentlemen.

24 THE JURY: Good morning.

25 THE COURT: We're going to get started.

1 Mr. Proner, you want to call your next witness.

2 MR. PRONER: Your Honor, with the Court's
3 permission, rather than going back and forth, can I just
4 stay here with this microphone?

5 THE COURT: Yes.

6 MR. PRONER: Okay. Thanks.

7 Call to the witness stand Dr. Paul Ratzker, M.D.

8 THE COURT OFFICER: Just remain standing. Raise
9 your right hand.

10 P A U L R A T Z K E R M D, a witness called on
11 behalf of the plaintiff after having been first
12 duly sworn and took the witness stand and
13 testified as follows:

14 THE COURT OFFICER: State your name and your
15 business address for the record.

16 THE WITNESS: Paul Ratzker, M.D., 700 Rahway
17 Avenue, Union, New Jersey 07039.

18 THE COURT OFFICER: Thank you.

19 THE COURT: You may inquire.

20 MR. PRONER: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. PRONER:

23 Q Good morning, Dr. Ratzker.

24 A Good morning.

25 Q Prior to today, have you and I ever met?

1 A No.

2 Q And have you ever testified before for any of your
3 patients that were my clients?

4 A Not that I'm aware of.

5 Q Doctor, can you tell the jury your occupation, please.

6 A Yes.

7 I'm a neurological surgeon.

8 Q And are you licensed to practice medicine in the State
9 of New York?

10 A Yes.

11 Q Can you tell the jury about your education and
12 professional experience, please.

13 A Yes.

14 I obtained my medical degree actually right here in
15 the Bronx at Albert Einstein College of Medicine. And I did my
16 residency at the University of Miami in neurological surgery.
17 And I've been in practice primarily in New Jersey since I
18 finished training in 1996, and I also practice a little bit in
19 New York.

20 Q Are you board certified?

21 A Yes.

22 Q What is board certification?

23 A Every specialty has a board that overlooks its
24 practitioners to make sure they are actually qualified to perform
25 that specialty, and neurosurgery has its own board.

1 To become board certified, you have to complete a six-
2 or seven-year neurosurgical residency training program, past a
3 written test, then do two years of practice and submit your
4 cases to the board and then pass an oral exam.

5 And then subsequently, every year, we have to
6 recertify via an online exam.

7 Q And you passed those exams and passed the screening by
8 the board and are board certified as a spinal surgeon?

9 A Yes.

10 Q Do you treat spinal injuries?

11 A Certainly.

12 Q Can tell the jury approximately how many spinal
13 surgeries you've done in your career?

14 A In my career.

15 I do probably 150 a year for 30 years. So do the
16 math, 4500.

17 MR. PRONER: Your Honor, I would like the Court
18 to recognize Dr. Ratzker as an expert in the field of
19 spinal surgery and neurosurgery and the Court recognize his
20 testimony as expert testimony.

21 MR. CALABRESE: No objection, Your Honor.

22 MS. BUHOLTZ: No objection.

23 THE COURT: So qualified.

24 Q Doctor, did there come a time that
25 Honorio Rosario-Silverio presented as a patient in your

1 practice?

2 A Yes. I'm referring to my own office notes here. That
3 was December 4th of 2020.

4 THE COURT: Just, Doctor, don't read from your
5 notes. You can refer to them, put them down and just
6 testify accordingly.

7 Thank you.

8 THE WITNESS: Okay.

9 Q And at that time, Doctor, did you take a history?

10 A Yes.

11 Q And what did the history reveal?

12 A Mr. Rosario told me that he was injured in an
13 occupational accident that occurred October 14th of 2017. He
14 indicated he somehow fell off a type of a ramp moving
15 refrigerators and fell backwards. A metal -- some kind of metal
16 object was driven into him and he injured multiple body parts.

17 Q And did you conduct an exam?

18 A Oh, I'm sorry, that was just the accident. Back to the
19 history.

20 Yes. So at that time he was seeing me for severe low
21 back pain. So he described pain in the very low lumbar area.
22 The very low, low back, so to speak. He had pain radiating into
23 both buttocks and the back of his thighs and calves to the sole
24 of his feet.

25 He rated his pain level as a 9 on his irritant scale.

1 Typically, we ask patients to try and quantify their
2 pain by saying 0 is no pain at all; 10 is the worst pain you can
3 imagine, what number are you. And he said 9.

4 His symptoms were worse on the left side. He had
5 difficulty sleeping, difficulty getting out of bed, severe
6 limitations bending over and was never able to return to work.

7 MR. CALABRESE: Judge, just let the record
8 reflect he's reading directly from his record.

9 THE COURT: Doctor, again, you can't read. You
10 can refresh your recollection, just put it down and then
11 testify.

12 Q The way I would like you to use those records is --
13 testify from your memory. If you don't recall something, then
14 please, feel free to look at those records. Read them to
15 refresh your memory. And then, once again, testify to the jury
16 from your memory rather than from the records.

17 Okay?

18 A All right.

19 Q Thank you.

20 And did you personally exam, Mr. Rosario?

21 A Yes.

22 Q What did your examination reveal, if anything?

23 A He had good strength throughout. He had diminution to
24 pin prick in his left lateral calf. That means we test sensation
25 by running a pin along the skin, and his was decreased along the

1 outside of his left calf.

2 Reflexes were normal. Straight leg raising, that
3 means we lift the patient's leg with a knee lock [phonetic] that
4 stretches the sciatic nerve, that's a test for that type of
5 nerve pain, and that was positive on the left side.

6 He had significant tenderness to palpation in the
7 lumbosacral junction. That's where the bottom of the spine
8 meets the pelvis. It's basically the last disc space in the
9 spine.

10 He had minimal range of motion. That means he could
11 very minimally bend backwards or forwards. Bilateral rotation
12 was also limited. That means going like this or going like
13 that. And his baseline gait is what we call "antalgic." That
14 means it's very hesitant and not normal.

15 Q I'm sorry.

16 Antalgic is not normal with what?

17 A Well, I guess we would say it's a fancy way of limping
18 when somebody's favoring a leg because of pain, they don't walk
19 properly.

20 Q Okay. And did you speak with him about his condition?

21 A Well, first I reviewed his MRI.

22 Q What MRI did you review?

23 A I don't know the date. The MRI that he had come in
24 with.

25 Q And what did that reveal?

1 A That revealed what we call a spondylolisthesis, which
2 is a fancy medical term for saying one vertebrae is slipped on
3 the other. If my two fists are the vertebrae, instead of them
4 being lined up properly or on top of the other, the top one is
5 slipped forward.

6 Now that was subsequent to what we call a pars defect.
7 So what that means is the pars is the actual part of bone that
8 connects the front of the spine to the back of the spine.

9 If there's a defect there, particularly on both sides,
10 which is what he had, that's what causes the slip. The front of
11 the spine is disconnected from the back of the spine.

12 The disc itself was what we call "unroofed" because
13 the top vertebrae is slipped forward. So the discs between
14 them, the top of it, nothing's on top of it, it's akin to a
15 herniation. And I don't want to miss anything.

16 Yeah, that's about it.

17 Q Okay. And I want you to -- we're talking about the
18 lower back, at this point?

19 A Yes.

20 Q Now, you described this pars defect as something
21 someone's born with?

22 A Most likely, yes.

23 Q And could that be asymptomatic, meaning it doesn't
24 hurt someone?

25 A It generally is asymptomatic. People live to middle

1 age or beyond and not have symptoms.

2 Q So when would it start to hurt, if at all?

3 A Very common after a trauma pain begins. And what
4 typically happens is the body normally fills in this defect with
5 scar tissue, what we would call fibrosis. So it's relatively
6 stable, but it's certainly not solid like bone, as it's supposed
7 to be.

8 If someone has a significant trauma to the low back
9 that can disrupt the whole fibrous connection and then they will
10 be very symptomatic and have pain.

11 Q Did you discuss the condition you observed and found
12 on the studies, and your physical findings after your physical
13 examination with your patient, Honorio Rosario-Silverio?

14 A Yes, certainly.

15 He had already -- generally, we try what we call
16 "conservative treatment" first for almost any spine problem,
17 which typically consists of physical therapy and/or
18 chiropractic, medications, then possibly escalating to
19 injections, and he had failed all that after a long period of
20 time.

21 Again, I think I was seeing him in '20 here, yeah. So
22 something like three years of this already. So I told him I did
23 not believe he was going to improve with anything other than
24 surgery.

25 Q Did you continue to see the patient?

1 A Yes.

2 So I saw him next on February 26th of '21.

3 Q And what were your findings on that date?

4 A On that day he was complaining also more of neck pain.
5 And he had pain into his left shoulder. And he had pain to
6 palpation of the cervical spine, meaning touching on his neck he
7 did have pain.

8 His range of motion was also limited, meaning bending
9 his neck forward, backwards was painful and limited. And low
10 back really was pretty much the same as, you know, I had
11 described on his first visit. There's no reason it should have
12 changed much in a couple of months.

13 Q And what did you observe with regard to his neck?

14 A So with his neck, he had a three-year-old MRI which did
15 show a disc herniation between his 4th and 5th surgical
16 vertebrae. But, again, it was three years old. So at that visit
17 I ordered a new MRI.

18 And I also ordered a CAT scan of the lumbar spine, low
19 back, because the CAT scan shows these bony defects better than
20 an MRI. The bony defect that we had been discussing.

21 Q When did you see him next?

22 A I next saw him June 4th of 2021, and he came back with
23 the MRI. Unfortunately, he did not bring the CAT scan.

24 Q What did you find on that date?

25 A The MRI of the cervical spine did confirm -- the new

1 MRI confirmed the presence of a disc herniation at the C4-5
2 level. That means the disc between the 4th and 5th vertebrae.
3 And it was off to the left side and compressing the exiting nerve
4 root. That would have been the C5 nerve root, which matched his
5 complaint.

6 Q Was that the same findings you had in the 2017 MRI?

7 A Yes.

8 Q Okay. And at that point, what was his pain like, if
9 any?

10 A He discussed, again, pain shooting off to the left
11 side, meaning from his neck to the left side. He said it was
12 bothering him tremendously.

13 Well, the physical exam, again, wasn't changed. We
14 wouldn't expect much of a change in that intervening time
15 period.

16 Q Did you discuss surgery with him again?

17 A So once again, this is close to four years later, and
18 he was having severe pain. So I recommended what we call an
19 anterior discectomy and fusion.

20 So what that means is, we operate from the front. We
21 remove the disc. We decompress the nerve. We fill the space
22 where the disc was with a bone graft and lock the vertebrae
23 above to the vertebrae below. That was what I recommended, the
24 ideal operation to treat this kind of a problem.

25 Q Doctor, at this point, I'm going to show you the

1 Jacobi Hospital record, which has been admitted into evidence.

2 THE COURT: Can we get the Jacobi Hospital
3 record, please.

4 MR. PRONER: If it's okay, Your Honor, I'm going
5 to pull up on the screen page 24 of that record.

6 THE COURT: You may.

7 Q Doctor, on the screen --

8 THE COURT: Hold on.

9 We're going to put it up on the screen.

10 Q -- in front of you --

11 THE WITNESS: Oh, this screen.

12 THE COURT: You have to be close enough to the
13 mic.

14 THE WITNESS: I'm sorry.

15 THE COURT: You have to be close enough to the
16 mic.

17 MS. BUHOLTZ: Your Honor, what exhibit number are
18 we looking at?

19 MR. PRONER: 16.

20 THE COURT: I'm sorry, I can't hear you.
21 What did you say?

22 MS. BUHOLTZ: What exhibit number are we looking
23 at?

24 Mr. Proner said 16.

25 THE COURT: 16.

1 MR. PRONER: 1-6, 1-6. 16.

2 THE COURT: Okay.

3 MR. PRONER: Ask permission to publish it to the
4 jury as well?

5 THE COURT: Yes.

6 MR. PRONER: Thank you.

7 Q Doctor, referring to where it says, "History" --

8 THE COURT: Hold on a second. Hold on, Counsel.
9 Don't tell me those new monitors aren't working.
10 Those are new monitors. We just installed them. You want
11 to check and see, Darrold.

12 (Whereupon, an off-the-record discussion was
13 held.)

14 THE COURT: I apologize for the inconvenience,
15 everyone.

16 Okay, go ahead.

17 Q Doctor, where it says, "History of present illness,"
18 do you see the portion of that paragraph where it says, "and
19 left neck pain radiating up to the top of the head and down the
20 left arm to the elbow"?

21 A Yes.

22 Q Was that consistent with the pain he was describing
23 when he saw you?

24 A Yes, certainly.

25 Q And to a neurosurgeon, what's the significance of that

1 pain?

2 A Well, that's quite honestly exactly the way the C5
3 nerve root goes. Every nerve root travels in what we call a
4 "different dermatome." That means it supplies a different skin
5 pattern. Well, in the cervical spine, that means the arm.

6 So the C5 nerve root, after it comes out the side of
7 the neck, it goes towards the shoulder, down the arm and stops
8 at the elbow.

9 Q And is that the same pain he was presenting with when
10 he saw you?

11 A Yes.

12 Q And you said?

13 A C5.

14 Q C5.

15 And is that the same disc that you saw damaged on the
16 MRI or something else?

17 A Yes, same.

18 Q Same disc you saw.

19 MR. PRONER: Okay, we can pull it down. I'll
20 continue.

21 Q Doctor, now I'm going to show you Plaintiff's 24 for
22 ID, the MRI of the cervical spine from November 22nd of 2017.

23 THE COURT: Just for the doctors and attorneys
24 for now.

25 Q Doctor, are you seeing that MRI?

1 A Yes.

2 Q And the corresponding colorized --

3 A Yes, I am.

4 Q And that's the MRI of the cervical spine for
5 November 22, 2017?

6 A Yes.

7 Q Okay. Let's start with the MRI on the left, the black
8 and white.

9 A Yes.

10 THE COURT: You want to -- now for demonstrative
11 purposes to the jury?

12 Because they're not seeing it.

13 MR. PRONER: I'm sorry, yes.

14 Your Honor, ask to publish to the jury for
15 demonstrative purposes only.

16 THE COURT: Yes.

17 MR. PRONER: Sorry about that. Thank you for
18 helping.

19 Is the jury seeing it?

20 THE JURY: Yes.

21 THE COURT: Everybody has it?

22 THE JURY: Yes.

23 Q So starting off with the MRI on the left which says,
24 "sagittal view," what do you see as significance, as a
25 neurosurgeon?

1 A Well, there is a herniation between the 4th and 5th
2 cervical vertebrae. It's hard to point out, obviously. But
3 there's -- the jury sees there's white in front of that gray
4 stripe. The gray strip is the spinal cord.

5 Where you see C4 and C5, you can see along that area
6 it's narrowed as opposed to below. So that's evidence of a disc
7 slipping backwards and narrowing that space.

8 Q So you got the number C2 to T1?

9 A Right.

10 Q Those are vertebrae?

11 A Yes.

12 Q And vertebrae is another name for bones?

13 A Yes.

14 Q Bones in the spine?

15 A Yes.

16 Q Okay. And in between those C2 through T1, it looks
17 like it goes, like a dark stripe, then a light stripe, then a
18 dark stripe.

19 What is that?

20 Look at C2. Then just before C2 you see a dark
21 stripe --

22 A Sorry, yes, yes. Those are the discs --

23 Q The light --

24 A When --

25 THE COURT OFFICER: One at a time.

1 THE COURT: Yes.

2 THE WITNESS: Sorry?

3 THE COURT: One at a time. You can't talk over
4 each other.

5 Q Go ahead, Doctor.

6 A So what you called the stripe, that's the disc.
7 Everything is gray, I know. With the outline of the darker gray
8 and the lighter gray that's much narrower than what are the gray
9 boxes, those are the discs that are in between the vertebrae.

10 Q So let's go over to the colorized, because perhaps
11 that makes it much easier to see.

12 A Okay.

13 Q In the colorized version, we're looking at the same
14 MRI just with color added to it, correct?

15 A Yes.

16 Q And here you can see C2, C3, C4 and C5 --

17 A Yes.

18 Q -- those are vertebrae?

19 A Yes.

20 Q That's your spine?

21 A Correct.

22 Q And then in between them you have the discs, correct?

23 A Correct.

24 Q And that yellow stripe, what is that?

25 A That's the spinal cord.

1 Q That's the spinal cord.

2 And the purple that's on either side of the yellow,
3 what is that?

4 A That is spinal fluid.

5 Q Okay. So on T1 and C7 down, it's pretty wide striped,
6 that purple, correct?

7 A Correct.

8 Q And once you get above it, it becomes narrower?

9 A Correct.

10 Q And why is that?

11 A Well, part of that is that in the thoracic spine, the
12 cord is much thinner so there's more spinal fluids surrounding
13 it.

14 Q But is the spinal fluid around the spinal cord at
15 C4-C5 normal in appearance to you?

16 A That's even thinner than it should be. If you look,
17 let's say, between C5 and C6, as opposed to right at the disc at
18 C4, you'll see it's thinner.

19 Q And is that a normal condition?

20 A No, that's not normal.

21 Q And can that cause pain?

22 A Yes.

23 Q Why is that?

24 A Well, the disc themselves have pain fibers. If they
25 are damaged and out of position, that can be irritating.

1 Q And that looks like a damaged disc to you?

2 A Yes.

3 Q And it's consistent with the findings that he
4 presented with in the Jacobi Hospital emergency room?

5 A Yes.

6 Although, I know we have another view that will show
7 that it's off to the left side. So that's actually the more
8 important, as far as explaining the symptoms.

9 Q Let me pull up the next view.

10 A Yes.

11 Q This is another view?

12 A Yes. This is what we call an "axial view." That means
13 it's a cross-section. So it's sort of as if we point the person
14 in the guillotine, and we have slices through his neck like that.

15 Q And what do we see here?

16 A So if you look at the MRI in the top left --

17 THE WITNESS: There's no way for me to point, is
18 there, Your Honor?

19 MS. BUHOLTZ: Your Honor, can we have this
20 exhibit identified by number?

21 THE COURT: Hold on. Hold on.

22 MS. BUHOLTZ: Could we have this exhibit
23 identified by number, please.

24 MR. PRONER: Plaintiff's 25, for ID.

25 Q Are you seeing the arrow?

1 A Yes.

2 If you could move -- let's leave it -- let's leave it
3 there.

4 So right in front of arrow is the right-sided nerve
5 that's coming off the spinal cord. The way they film these
6 MRIs, it's like we're on the floor looking up. That's why
7 that's the right side, also.

8 If you want to cheat, you can see an R on the bottom
9 left of the screen. Anyway, that's a normal nerve.

10 You see how large and thick it is?

11 But if you go the other side, the left side, it looks
12 like a string. So that's significant compression of that,
13 left-sided, what's the C5 nerve. That's the main finding here.

14 Q And what's the significance of that?

15 A If a nerve is compressed, you're going to get symptoms
16 in the distribution of that nerve.

17 And as I pointed out before, this is the C5 nerve. So
18 this travels out towards the shoulder and down the outside of
19 the arm toward the elbow.

20 Q Okay. And so that would be on the left side?

21 A Yes.

22 Q And going over to the colorized, are we looking at the
23 same thing?

24 A Yes.

25 Q That on one side it's clear and free, and the other

1 side appears to be jammed up?

2 A Yes, jammed up. You can see --

3 MR. CALABRESE: Objection to the "jammed up."

4 THE COURT: Sustained.

5 Q How would you describe it?

6 A We usually use the term "pinched" --

7 Q Pinched?

8 A Or maybe more technically, "compressed."

9 You can see between the outside of the red disc and
10 that tan structure that's on the other side of the yellow nerve,
11 that's what's called the "facet joint." So that's obviously a
12 hard bony structure. The nerve is trapped in there. That's why
13 it looks so thin and that's why the person would have pain in
14 that distribution of the nerve.

15 Q And did you continue to proceed with your treatment of
16 the patient?

17 A Sure.

18 So ultimately we performed the surgery, which was on
19 March 23rd of 2022, and I don't know if you want to use the
20 visual aid at this point.

21 So the goal of the surgery as I mentioned before is to
22 remove -- basically remove the damaged disc, decompress the
23 nerve and replace the disc.

24 So you can see on the image there, we make that
25 incision. Actually, for him it's on the left side. That's

1 actually not important because we end up in the middle.

2 And then the middle picture you can see we have --
3 those red retractors are in. And those are pulling the tissues
4 away from the spine. On one side it's basically the trachea,
5 meaning the breathing tube and the esophagus. On the other side
6 it's the carotid artery.

7 And you see this device -- I'm not sure what those red
8 arrows are. But I think they are just documenting the way the
9 retractors are pulling.

10 But anyway that spoon-like device is removing disc
11 tissue. Above it is what's labeled C4; that's the vertebrae.
12 And below is C5; that vertebrae. In the middle is the disc.
13 And that instrument is removing disc.

14 MS. BUHOLTZ: Your Honor, what document are we
15 looking at?

16 MR. PRONER: 26A.

17 A Then on everybody's right, that instrument is called a
18 "Kerrison Rongeur." And you can see it's sort of a biting
19 instrument.

20 What we do with that is we bite away some of the bone
21 in front of the nerve to give the nerve more room.

22 And that's what's being demonstrated there.

23 Q Okay. So, again, starting from the left --

24 THE COURT: What exhibit is that, Counsel, you're
25 showing now?

1 MR. PRONER: It's 26B.

2 A So that's a drill. That instrument is a drill. It's
3 preparing the endplates. That's the end of the bone. We want
4 them to be -- I know it sounds crude, but we actually do want
5 them to be bleeding a little bit because that's going to
6 introduce vascularity to the graph that we put in. It's a living
7 graph. We want the bone to grow in there.

8 The next one shows the graph going in there. That
9 kind of dark gray thing with the black hole in it, that's the
10 implant that we put in.

11 And if you look further to the right, you'll see what
12 the actual cage looks like. And we put bone graph in there.

13 Q Where does the bone graph come from?

14 A We get a little bone marrow from one of the vertebrae
15 via a needle stick. And we mixed that with some
16 artificially-produced bone material that will basically induce
17 bone growth.

18 So that cage goes in there, the bone in the middle of
19 it will ultimately grow and attached to the vertebrae above,
20 vertebrae below and form a solid bone. So all that will become
21 like one bone.

22 Now that takes about three or four months to become
23 solid.

24 The last thing we do the surgery, you'll see in the
25 middle bottom picture is we put a titanium plate on, with a

1 screw in the vertebrae above and the vertebrae below that's
2 going to lock that vertebrae together right now. And that's
3 going to eliminate the movement there immediately and allow the
4 bone to heal.

5 And then the final picture just shows the wound being
6 closed. Obviously, we're going to close the wound.

7 So that was the surgery.

8 Q And, Doctor, after the surgery, did you take x-rays?

9 A Yes.

10 We always take postoperative x-rays because,
11 obviously, these are all man-made products, and sometimes they
12 can fail. Screws can break and pull out. Obviously, we want to
13 make sure that doesn't happen.

14 So the x-ray on the left, that's a postop x-ray. You
15 can see this is shot from the side with him looking to his
16 right. So you see the plate in front. You see the screw into
17 C4, the screw into C5. Those dots are just markers, metallic
18 markers that they put on the graph because otherwise it's
19 invisible to x-ray. It's made of what's called "carbon fiber";
20 you wouldn't see anything.

21 So we see where the end of the graph is. And you can
22 see it's right in the middle of the disc space. Basically,
23 that's how it should look.

24 The image on the right is, you know, the figurative.
25 So you can see what's the plate, what's the screw above, screw

1 below, the graph in between.

2 THE COURT: What exhibit is that one, Counsel?

3 MR. PRONER: I'm sorry, I didn't hear.

4 THE COURT: Exhibit?

5 MR. PRONER: This is 27 for ID.

6 Q Doctor --

7 A Yes.

8 Q -- based upon your evaluation, image review, treatment
9 and ultimate surgery and postoperative care, do you have an
10 opinion within a reasonable degree of medical certainty as to
11 the cause of Mr. Honorio Rosario-Silverio's cervical condition
12 that required the surgery?

13 A Yes. I believe it was the occupational accident.

14 Q So that would be -- this damage to his neck, you
15 believe was caused by his accident of October 14th of 2017; is
16 that correct, Doctor?

17 A Yes.

18 Q And that opinion is within a reasonable degree of
19 medical certainty?

20 A Yes.

21 Q And, Doctor, how did the postsurgical course and
22 treatment go?

23 A Well, I think he did reasonably well. I think his pain
24 improved. We never expect a perfect result in these kind of
25 cases because we can't recreate what, let's say, God intended.

1 By definition, when you do this operation, it's a
2 fusion. Every disc is a motion segment. So you lose the motion
3 at that level by definition. That's about 8 percent of the
4 flexion, extension, meaning bending backwards and forwards. And
5 that does, you know, cause abnormal muscle movement. You know,
6 our muscles around our spine are not meant to contract and
7 release around a few segments. So most people that have this
8 operation have some degree of residual pain: Neck pain,
9 stiffness, soreness. We always expect that to worsen with like
10 cold, humid days or someone is doing a lot of lifting, exercise,
11 et cetera.

12 So considering all that, I think Honorio did
13 reasonably well but, of course, he's not perfect.

14 Q Doctor, are you familiar with --

15 MR. PRONER: We could take off the monitors; I'm
16 done with that.

17 Q Doctor, are you familiar with the term "adjacent disc
18 syndrome"?

19 Or if there's another term for it, I apologize.

20 A We usually say adjacent segment disease.

21 Q What is adjacent segment disease?

22 A So as I mentioned, every fusion you do, that creates a
23 solid bar of bone; basically, two vertebrae are one, not --
24 without any joint between them.

25 So that puts an increased stress on the disc above and

1 below. They are taking more of the load of the movement of the
2 spine, so there's accelerated breakdown.

3 So in his case, that would be the vertebrae above;
4 what we would call "C3-4" and the vertebrae below that we would
5 call "5-6."

6 So there's a 17 percent risk of this happening to
7 people that have a fusion.

8 Q And so if this -- so there is an increased risk of the
9 adjacent discs breaking down --

10 A Yes.

11 Q -- and that's within a reasonable degree of medical
12 certainty?

13 A Yes.

14 Q And what would the treatment for those --

15 A Well, it depends how severe it is.

16 We would start from scratch, so to speak. Someone
17 develops symptoms. Let's say they have a collapsed herniation
18 at the level below. We would try to treat them first with
19 physical therapy, medicines, maybe injections.

20 And ultimately if they failed all of that, they would
21 need another fusion at the level below.

22 Q Now, additionally, Doctor, you had initially
23 recommended the surgery for the lumbosacral spine, correct?

24 A Yes.

25 Q To your acknowledge, is that still bothering him?

1 A Oh, yes, it definitely is.

2 We're actually in the process of scheduling him for
3 that surgery.

4 Q And do you believe that that need for the surgery on
5 the lumbosacral is also necessary because of the accident of
6 October 14th of 2017, within a reasonable degree of medical
7 certainty?

8 A Yes, I do.

9 Q So, Doctor, he's going to need surgery on the lower
10 back. He may need surgery on the neck.

11 What other care?

12 MR. CALABRESE: Objection.

13 THE COURT: Sustained.

14 MR. PRONER: Withdrawn.

15 Q Doctor, tell the jury, within a reasonable degree of
16 medical certainty, what care Mr. Honorio Rosario-Silverio is
17 going to need in the future as a result of his October 14, 2017,
18 accident, within a reasonable degree of medical certainty?

19 A Well, again, to start, as I mentioned, we are
20 scheduling him for surgery on his low back. That would entail an
21 operation where we decompression the nerves in his low back. And
22 similarly remove the disc at that level, put in a similar but
23 larger graph in that lumbar spine with some fixation screws above
24 and below to lock in together. So that's to start. That's
25 actually, hopefully, going to be done in the next couple of

1 months.

2 And then that unfortunately also sets him up for
3 adjacent segment breakdown in the lumbar spine, in the low back.
4 So the disc above that, L4-5 is going to be put at increased
5 stress, and he may have a problem with that down the line. And
6 then everything we spoke about about adjacent segment disease in
7 the cervical spine.

8 So those are all, you know, potential problems down
9 the road.

10 Q Doctor, are you familiar with the term "degenerative"?

11 A Yes, of course.

12 Q What is that?

13 A That is slow breakdown of any body part due to time and
14 wear and tear.

15 Q The conditions that you observed and treated for his
16 neck and lower back, do you believe these are from degeneration?

17 A No, I do not.

18 Q Why is that?

19 A Well, first of all, I believe he was 37 when this
20 incident happened. We don't expect too much degeneration in
21 somebody in their 30s. That's more of a 50s and on problem.

22 Number two, as far as I know, he was working doing
23 extremely heavy duty work just immediately prior to this
24 accident, and this accident triggered all these problems.

25 Number three, I didn't really see much evidence of

1 degeneration anywhere else other than these two focal injuries,
2 one in the cervical, one in the lumbar.

3 Q So, Doctor, we've addressed causation, these
4 conditions were caused by his accident of 2017, within a
5 reasonable degree of medical certainty.

6 Is the damage to his lower back and the neck, is it
7 permanent, within a reasonable degree of medical certainty?

8 A Yes.

9 Q -- from his -- the damage from his October 14, 2017,
10 accident, is it permanent within a reasonable degree of medical
11 certainty?

12 A Yes.

13 Q Why is that?

14 A Well, in the cervical spine, by definition, he's lost
15 that motion segment. He's lost 8 percent of the movement of his
16 spine, that's a definite.

17 Number two, as I mentioned, he's unfortunately never
18 going to be perfect. He's always going to have some degree of
19 soreness, stiffness, difficulty doing a lot of the tasks I
20 mentioned before. And he's permanently at risk for the adjacent
21 segment syndrome.

22 Lumbar spine, all the same. You know, he's going to
23 need a fusion there. He's going to lose the last motion segment
24 in his back. He's going to have restrictive range of motion.

25 And again, you know, even before the surgery I told

1 him, I tell every patient, you're not going to be perfect. It's
2 not going to be a miracle. It's not like you're going to be
3 like you were ten years ago. You know, even the best-result
4 people have problems when they're doing a lot of bending,
5 lifting, standing or, you know, cold, humid days.

6 Q Can he go back to working construction with these
7 injuries?

8 A What I tell everybody is, you can try. You can try.

9 I would say, roughly speaking, about 50 percent of
10 patients can go back to, you know, very demanding jobs, let's
11 say, like moving, construction, things like that and about
12 50 percent can't.

13 Q The condition he's in now?

14 A Now, I don't think so.

15 Q And his inability to go back to construction, that's
16 from -- as a result of his October 14, 2017, accident; is that
17 correct?

18 MS. BUHOLTZ: Objection, Your Honor.

19 THE COURT: Sustained to form.

20 Q Doctor, he's presently disabled; is that correct?

21 A Yes.

22 Q And do you believe he's presently disabled as a result
23 of his October 14, 2017, accident within a reasonable degree of
24 medical certainty?

25 A Yes.

1 Q Doctor, when did you last examine him?

2 A Actually, I think it was last week.

3 Q And was he pain free?

4 A No, no. He was still complaining of a lot of pain.

5 Q And where is the pain?

6 A At this point, predominantly in his low back with some
7 radiation into his legs, overwhelming on the left side.

8 Q Does he still have neck pain?

9 A He still has neck pain also. Mostly on the left side.

10 Q And did he give -- did he quantify the pain?

11 A I believe he said it was in order of 7 or 8 on, 0 to 10
12 scale.

13 Q Doctor, is there anything else important about the --
14 your patient, Honorio Rosario-Silverio's injuries that you think
15 is important for the jury to know?

16 MS. BUHOLTZ: Objection.

17 MR. CALABRESE: Objection to the form.

18 THE COURT: Sustained.

19 MR. PRONER: Okay. Nothing further.

20 THE COURT: Cross-exam.

21 Hold on.

22 Does anyone want a break?

23 Okay. Cross-exam.

24 MR. CALABRESE: Thank you, Your Honor.

25 //

1 CROSS-EXAMINATION

2 BY MR. CALABRESE:

3 Q Dr. Ratzker, good afternoon.

4 A Good afternoon.

5 Q My name is Richard Calabrese.

6 You understand your job here today is to connect the
7 2017 accident to the cervical fusion, correct?

8 MR. PRONER: Objection, Your Honor.

9 THE COURT: Sustained to form.

10 Q You're here today to testify, as you just did, that
11 the October 2017 incident at the Foodtown is the
12 injury-producing cause of the ailments he sustained to the
13 cervical and lumbar spine, correct?

14 MR. PRONER: Objection.

15 THE COURT: Sustained.

16 Same question, different form.

17 Q His injuries that you just testified to are causally
18 related, yes?

19 A I believe so.

20 Q You believe so?

21 A Yes.

22 Q Now, to get a traumatically caused herniation at C4 or
23 C5, there needs to be some trauma or force factor, to use your
24 words to the neck or head, correct?

25 A The predominant of the time, yes.

1 Q Predominance of the time?

2 A Yep.

3 Q So like, for example, in a car accident --

4 MR. PRONER: Objection.

5 Q -- the head gets pushed --

6 THE COURT: Let him finish.

7 Doctor, don't answer.

8 Go ahead, finish the question.

9 Q For example, in a car accident when a head moves,
10 backwards, forward, and backwards again, can that cause a
11 herniated disc?

12 MR. PRONER: Objection.

13 THE COURT: I'll allow it.

14 A Yes.

15 Q Okay. What is the mechanism of injury -- like we just
16 talked about in a car accident when a head violently moves back
17 and forth, that's the mechanism of injury there.

18 What's the mechanism of injury in this incident, the
19 2017 incident?

20 A Well, obviously I was not there to witness it. I would
21 be making a presumption that he probably landed backwards and
22 there was a force vector to the back of his neck, which was
23 transmitted to the mid cervical spine, which is the most
24 vulnerable.

25 I think people are familiar that the cervical spine

1 gently curves backwards. So the most anterior part or the top
2 of the curve, if you will, is about C5.

3 Q Okay. You're making certain presumptions, yes?

4 A Yes.

5 Q Okay. So prior to coming in to testifying, did you
6 see the Jacobi emergency room records?

7 A I don't recall.

8 Q Okay. But you saw them here today with Mr. Proner,
9 correct?

10 A Yes.

11 Q We read a little portion of it at page 24.

12 Do you recall seeing the section that denied hitting
13 head?

14 A No.

15 Q Do you recall seeing the section denied loss of
16 consciousness?

17 A No.

18 Q Do you recall seeing the section where it said no
19 nausea, vomiting, vision issues; did you recall seeing that?

20 MR. PRONER: Objection. Outside of the scope.

21 THE COURT: Overruled.

22 A No.

23 Q So you can't tell us if you ever looked at the --
24 backing up.

25 Are those signs that doctors such as yourself would

1 look for if you're seeing if there was a force factor?

2 A Whether he had nausea or vomiting, loss of
3 consciousness, no not necessarily.

4 Q Those are signs of an impact to the head, though,
5 Doctor, yes?

6 A Yes.

7 Q And impacts to the head is something you often deal
8 with relating to the neck, yes?

9 A Yes.

10 Q So do you know if he hit his head at all?

11 A I don't know. Again, I wasn't there.

12 Q Doctor, again, we know you weren't there. So you
13 don't need to preference your answer with not being there.

14 MR. PRONER: Objection.

15 THE COURT: Sustained.

16 Q I'm just asking: Do you know if he even hit his neck?
17 Yes or no.

18 A I don't know.

19 Q We can often determine these things by looking at
20 first-in-time medical records, can we not?

21 A Looking at what?

22 I'm sorry.

23 Q First-in-time medical records, the ambulance call
24 report, the emergency room records.

25 A To some extent.

1 Q To some extent.

2 But you didn't do that here?

3 A I took the history from the patient, primarily.

4 Q The patient gave you the history, right?

5 A Yes.

6 Q And per your records, the patient states he believes
7 he lost consciousness?

8 A I have to --

9 Q Go ahead.

10 A If you really want me to answer, I have to look back at
11 my records.

12 Q Yes, please.

13 It's on your first -- December 2020 records.

14 A Okay.

15 Q December 4, 2020, first paragraph.

16 Left side --

17 MR. PRONER: Objection.

18 THE COURT: Sustained.

19 A I have here he believes he lost consciousness.

20 Q And that came from him, yes?

21 A Yes.

22 Q But fair to say, Doctor, you don't know if he did one
23 way or another, fair?

24 A Fair.

25 Q Thank you.

1 In looking at records for other patients, are you
2 familiar with assessing or looking for records of Glasgow Coma
3 Scale?

4 A Yes.

5 Q This is something you're rather familiar with as a
6 neurosurgeon?

7 A Quite.

8 Q Okay. 3 to 15?

9 A Yes.

10 Q 15 is the highest?

11 A Yes.

12 Q He was 15 at the ER?

13 A I don't know.

14 Q If I told you he was 15 at the ER and it's referenced
15 in the hospital records, do you have any evidence to refute it?

16 A I have no reason to disbelieve you.

17 Q Thank you.

18 Do you have any reason to disbelieve me then, sir,
19 that he was medically cleared by an orthopedist following
20 surgical studies at that ER?

21 A I'm not sure what "medically clear" means.

22 Q That an orthopedist took a radiological study, a
23 radiological study was done at the ER on the date of accident,
24 and an orthopedist evaluated him, physically examined him,
25 looked at the films and said, you're free to be discharged.

1 Are you familiar with that?

2 A Well, I'm not familiar with it. I'm not surprised.
3 That just means he didn't have a fracture. That's what the ER
4 does.

5 Q That's all that means?

6 A Yes.

7 Q As a neurosurgeon, Doctor, when you're making medical
8 conclusions, you send patients for various radiological testing,
9 yes?

10 A Yes.

11 Q And that radiological test is a tool that you use and
12 rely upon in coming to your ultimate conclusion and diagnosis
13 for a treatment plan, fair?

14 A Yes.

15 Q Okay. And those studies are reviewed by the
16 interpreting radiologist, yes?

17 A Yes.

18 Q Now, I know you're probably used to looking at the
19 films yourself; is that accurate?

20 A Correct.

21 Q But you are not a radiologist, correct?

22 A Correct.

23 Q So you rely on the radiologist to interpret the film
24 to ultimately support your diagnosis, fair?

25 A Sometimes.

1 Q Sometimes you disregard them?

2 A Yeah, it's varied. I use it as one tool in the armor
3 interim of evaluating a patient in totality. So sometimes I
4 think the radiologist is wrong. Sometimes they overread;
5 sometimes they underread.

6 Q What is an overread when it comes to radiology?

7 A They'll say that a disc -- simple of case, if a disc is
8 herniated or bulging when I think it's normal.

9 Q What is a under-read?

10 A The opposite.

11 Q Explain it, please.

12 A I think there's a disc herniation there and the
13 radiology doesn't mention it or something like that.

14 Q What do you do in a situation when you have a
15 differing opinion from the interpreting radiologist?

16 A Again, I put everything together: What is the patient
17 complaining about; what do I find on exam; what do other tests
18 show, and I put that altogether.

19 If I think that there's a herniation and it matches
20 the patient's symptoms and his physical exam findings and the
21 radiologist didn't call it, I may act on it based on my own
22 assessment of reading films for close to 40 years.

23 Q Fair.

24 Now, you said put it altogether.

25 These are many pieces of a puzzle that fit together to

1 make the totality of the picture before you're willing to
2 proceed, yes?

3 A Yes.

4 Q Okay, good.

5 So you --

6 THE COURT: Sustained as to the word "good."

7 I'm not sure what you mean by that.

8 Q You rely on the history the patient comes to you with,
9 yes?

10 A Yes.

11 Q You assume it to be fair and accurate, yes?

12 A Yes.

13 Q The basic foundation of your opinion with respect to
14 the history is that it's not faulty, fair?

15 A Correct. I don't believe my patients are liars.

16 Q I'm not saying anything about that, sir. I'm just
17 asking about the pieces of the puzzle.

18 And then next you move on to physical examination.

19 You do your own physical examination, various testing,
20 yes?

21 A Yes.

22 Q And we've already spoken about the radiological
23 testing that is done?

24 A Yes.

25 Q Am I missing any puzzle pieces so far?

1 A I don't think so.

2 Q So about those three?

3 A Yes.

4 Q One plus one plus one equals three.

5 MR. PRONER: Objection.

6 THE COURT: Sustained.

7 Q So we're talking about the three pieces so far.

8 MR. PRONER: Objection, Your Honor.

9 THE COURT: Sustained.

10 Q If one of those pieces are missing, do you have a
11 complete picture?

12 Yes or no.

13 A No.

14 Q No.

15 Let's talk about degeneration, okay. Mr. Proner
16 already discussed it with you a little bit. So I'll do it as
17 quick as I can.

18 The normal --

19 THE COURT: Counsel, again, your comments are
20 unnecessary.

21 Go ahead.

22 MR. CALABRESE: May I?

23 THE COURT: Yes.

24 Q Okay. That is the normal process of aging, yes?

25 A Well, that, I wouldn't say "normal." That's the

1 process of aging.

2 Q Fair.

3 And since you won't use the word "normal,"
4 degeneration happens differently in every person, yes?

5 A Yes.

6 Q Some degenerate quicker than others?

7 A Yes.

8 Q Some many, many factors go into someone's degeneration
9 or degenerative nature of their various body parts, fair?

10 A Yes.

11 Q Okay. What are some of those various factors?

12 A Genetics, family history.

13 Q Genetics, and family history, yes?

14 A Yes.

15 How old they are.

16 Q Age?

17 A Yeah, age. What they've been doing in terms of
18 exercises. Let's say, I think, jogging would be an excellent
19 example regarding somebody's knees.

20 Q What about marathon running?

21 A Yes.

22 Q Marathon running, impactful on the spine?

23 A Yes.

24 Q Okay. So somebody that runs marathons before
25 October 2017 or is in a running club on a regular basis could

1 potentially show earlier degeneration than a 40-, 50-year old
2 that you discussed earlier?

3 A Well, I think we're a little off topic here. But just
4 to be accurate, the marathon runner may have the countervailing
5 advantage of probably being very, very thin and his spine not
6 carrying a lot of weight on it.

7 All these factors come into play.

8 Q Of course. Multifactorial, many factors.

9 A Right.

10 Q So let's talk about some of those factors.

11 What was Mr. Rosario's weight prior to the accident?

12 A I don't know.

13 Q Okay. Exactly.

14 What was --

15 MR. PRONER: Objection, Your Honor.

16 THE COURT: Sustained to the "exactly," Counsel.

17 MR. CALABRESE: Sorry, Your Honor.

18 THE COURT: I'm not sure what you meant by that.

19 MR. CALABRESE: I'll move on.

20 THE COURT: Thank you.

21 MR. CALABRESE: I'll move on.

22 THE COURT: Please.

23 Q How many 5ks marathon did he do before this accident?

24 A I don't know.

25 Q You don't know his prior history, fair?

1 A Fair.

2 Q Just so I can save us some time on questions.

3 MR. CALABRESE: You're all right?

4 MR. PRONER: I'll believe that one for a dollar.

5 MR. CALABRESE: Oh, okay.

6 Q You know nothing about Mr. Honorio Rosario-Silverio
7 before you first saw him on December 4, 2020, fair?

8 A Sure.

9 Q Okay. And everything you --

10 MR. PRONER: Objection.

11 THE COURT: Sustained.

12 Q And everything you do know about him comes from him,
13 yes?

14 A Yes.

15 Q Thank you.

16 Moving back, sir, you looked at a demonstrative
17 exhibit showing the spine, the vertebrae, the bones and then the
18 discs spaces, the discs themselves or the jelly doughnuts, as
19 you like to refer to them, yes?

20 MR. PRONER: Objection.

21 THE COURT: Sustained. He didn't refer to any
22 jelly doughnuts in this courtroom.

23 Q You've --

24 THE COURT: Go ahead.

25 MR. CALABRESE: Hold on, Judge, sorry.

1 THE COURT: You're telling me to hold on?

2 MR. CALABRESE: I thought -- I'm very sorry, Your
3 Honor.

4 THE COURT: Okay, thank you.

5 All right. The juror we'll take five, okay.

6 Thank you.

7 Raise your hand.

8 We'll take five.

9 THE COURT OFFICER: All rise. Jury exiting.

10 (Whereupon, the jury exits the courtroom.)

11 (Whereupon, a recess was taken.)

12 THE COURT OFFICER: All rise. Jury entering.

13 (Whereupon, the jury enters the courtroom.)

14 THE COURT: Please be seated.

15 You may continue.

16 MR. CALABRESE: Thank you, Your Honor.

17 Q Dr. Ratzker, you have the vertebrae that are the bones
18 of the spine, and then you have the soft tissue which is the
19 discs, yes?

20 A Correct.

21 Q Okay. And those soft tissues act as little shock
22 absorbers between the bones, yes?

23 A Yes.

24 Q And those little shock absorbers have sort of like a
25 gelatin, there's a jelly material in the middle, yes?

1 A Yes.

2 Q And sometime when you have a bulge or herniation, the
3 jelly comes out of the sides and pitches the nerves, right?

4 A Sometimes.

5 Q Sometimes, okay.

6 When it's actually pitching, sometimes it could bulge
7 and cause no pain, yes?

8 A That's possible.

9 Q Okay. A herniation is a more severe aspect of the
10 soft tissue pushing out --

11 A Yes.

12 Q -- fair?

13 A Yes.

14 Q Okay. These discs -- excuse me.

15 These soft tissue discs, these are water, yes?

16 A No, they're not water.

17 Q But there's water in them?

18 A Sure, there's water in every single tissue in the body.

19 Q Of course.

20 So --

21 MR. PRONER: Objection.

22 THE COURT: Sustained.

23 Again, each one has to wait until the other
24 finishes with the answer on the question.

25 Doctor, you hear an objection, just pause.

1 Okay. Go ahead.

2 Q These soft tissues, the disc, when we're speaking,
3 again, about degeneration, they -- the water component of the
4 material dries out --

5 A Yes.

6 Q -- yes?

7 And this is called "disc desiccation" --

8 A Yes.

9 Q -- or "disc dehydration"?

10 Those are partly synonymous, desiccation and
11 dehydration?

12 A Yes.

13 Q Okay. Thank you.

14 And if it's really advancing, it's referred to as
15 degenerative disc disease; is that fair?

16 A Yes.

17 Q Now, the degeneration, the water loss, okay, that can
18 cause the discs to come closer, yes?

19 A Yes.

20 Q Because that soft tissue is now losing its water, so
21 the vertebrae gets closer, yes?

22 A Yes.

23 Q They compress, yes?

24 A Yes.

25 Q That compression causes the disc material to bulge

1 out, yes?

2 A It can.

3 Q It can, okay.

4 Can it sometimes cause bulges?

5 A Yes.

6 Q Can it sometimes cause herniations?

7 A I wouldn't use the term herniation in that case.

8 Herniation technically means some body part is out of its place.

9 A flattening of a disc with some bulging out, I'm not sure I
10 would use that term.

11 Q Okay, fair.

12 Now, when an injury -- we're only talking about the
13 discs, Dr. Ratzker.

14 You will typically see the bulge in a traumatically
15 caused injury in a certain side or direction responding to the
16 force factor, yes?

17 A To some extent there's a -- there is a ligament called
18 the Posterior Longitudinal Ligament which runs behind the spine,
19 which sort of blocks the discs from slipping directly backwards,
20 which is fortunate because that's where the spinal cord is, which
21 would be a most catastrophic problem.

22 So typically the disc, when it herniates, it will go
23 to one side or the other.

24 Q One side or the other in a traumatically caused, yes?

25 A Or a non-traumatically caused, yes.

1 Q Okay. So you can have them on the side, either
2 traumatically caused or degenerative, yes?

3 A Yes.

4 Q And when we see bulging at a disc level on all sides,
5 in all directions, is that the result of the compression?

6 A Yes.

7 Q We typically see that associated with degeneration,
8 yes?

9 A Yeah, we typically see that with degeneration.

10 Q Okay. Let's move on to bone spurs, okay.

11 Bone spurs are osteophytes, yes?

12 A Yes.

13 Q They're over-time calcium deposits that deposit and
14 start little bone growths?

15 A That's correct.

16 Q Bone spurs don't occur overnight, yes?

17 A Correct.

18 Q They occur over an extended period of time?

19 A Yes.

20 Q Okay. And we also see bone spurs in chronic
21 longstanding conditions, yes?

22 A Yes.

23 Q So if we see bone spurs on an MRI close in time to an
24 incident, that means those things were already there, the bone
25 spurs were already there; that didn't occur inside the 30 days?

1 A Yes.

2 Q Okay. So disc dehydration and bone spurs are signs of
3 longstanding chronic non-acute conditions, correct?

4 A Yes.

5 Q Now, if we could go to your medical treatment of
6 Mr. Rosario-Silverio.

7 He comes to you in December 2020, three years
8 following the accident, yes?

9 A Yes.

10 Q His lawsuit is already pending?

11 A I wouldn't know that.

12 Q If I told you the lawsuit was started in 2017, that
13 would be before you saw him?

14 MR. PRONER: Objection.

15 THE COURT: Sustained.

16 Q Plaintiff was referred to you by doctors at CitiMed,
17 yes?

18 A Yes.

19 Q Okay. And you're familiar with the doctors at
20 CitiMed?

21 A Some of them, not all.

22 Q Not all.

23 But you're familiar with the facility?

24 A Yes.

25 Q This is not your first patient from them, right?

1 A Right.

2 Q Okay. At that December 2020 visit, he presented with
3 complaints of low back pain only, correct?

4 A Correct.

5 Q Okay. And your examination of him was limited to the
6 lower back, correct?

7 A Correct.

8 Q Okay. And you looked -- you took a look at that older
9 MRI, yes?

10 A Yes.

11 Q Okay. And what did you find in that MRI, per your
12 records?

13 A Are we talking about his lumbar spine?

14 Q Yes.

15 Again, your first visit in December 2020 was only
16 limited to the lumbar spine, correct?

17 A Correct.

18 Q Okay. You're free to review your notes if it helps
19 refresh your recollection.

20 Is there any mention of the cervical spine in that
21 December 2020 office visit?

22 A Not that I'm aware of.

23

24

25

1 (Whereupon, there is a pause in the proceedings.)

2 CROSS EXAMINATION

3 BY MR. CALABRESE:

4 Q Okay. But is there reference to a lumbar MRI, yes?

5 That you reviewed?

6 A Yes.

7 Q And you relied upon, of course?

8 A Yeah.

9 Q Okay. And go to that last page?

10 A Yes, got it.

11 Q Bottom of that first page, doctor. You talked about
12 unroofing of the, of the disk?

13 A Yes.

14 Q Earlier? What other word did we use in our report? In
15 your report? Desiccation, yes?

16 A Yes.

17 Q Okay, so there was lumbar desiccation, in that film
18 that you looked at?

19 A Yes.

20 Q Okay, and do you know when that film was taken?

21 A I do not.

22 Q Okay, if I told you it was taken November 17, 2017,
23 approximately one month post accident, would you have any reason
24 to challenge that?

25 A No.

1 Q Okay, and you said at that point that first visit, at
2 what I see here, Mr. Rosario-Silverio, you need a lumbar fusion,
3 yes?

4 A Yes.

5 Q Okay, and then you said there's a pars defect?

6 A Yes.

7 Q At that L5/S1 level, the lumbar spine? The lower back?

8 A Correct.

9 Q Okay, and -- I think you said this is a birth defect.
10 We're born with the pars defect?

11 A Most likely.

12 Q Most likely. Do you know here with Mr. Rosario was he
13 born with it or was it traumatically caused?

14 A I don't know. The odds favor being born with it.

15 Q Odds favor being born with it? Okay. And you said he
16 was asymptomatic with that prior, right?

17 A Yes.

18 Q And that comes from him, yes?

19 A Yes.

20 Q You didn't review any medical records to confirm that
21 or substantiate that, did you?

22 A Correct.

23 Q Correct? Okay. So, you next see him in February 2021,
24 yes?

25 A Yes.

1 Q And then you're documenting there, in February 2021,
2 his right knee surgery and his need for right ankle surgery, and
3 that he's now complaining of cervical neck pain, yes?

4 A Yes.

5 Q Okay. Do you know when the lawsuit for the 2020 auto
6 accident was filed?

7 A No, I don't.

8 Q Okay? If I told you it was filed January 2021 --

9 MR. PRONER: Objection.

10 Q Before you saw him?

11 THE COURT: Sustained --

12 Q Would you have any reason to challenge --

13 THE COURT: Sustained. Counsel, why do you
14 continue?

15 Q Okay, at that visit, your second visit in
16 February 2021, you then call for some new cervical MRIs, because
17 you reference that the other cervical MRIs, the neck MRIs were
18 done three years ago, yes?

19 A Correct.

20 Q But you did look at the old study?

21 A Yes.

22 Q Okay? And it's part of your records and you relied
23 upon it in your assessment, yes?

24 A Yes.

25 Q Okay. Because, of course, we've already agreed you

1 want to review first in time medical records to have the
2 complete picture, fair?

3 A Fair.

4 Q Okay. So the first in time cervical MRI, was November
5 2017, 1 month post accident, okay?

6 And you indicated to this jury we're looking at that
7 demonstrative that the C4/C5 disk was already--

8 MR. PRONER: Objection.

9 Q Those were already smaller than normal, yes?

10 MR. PRONER: Objection.

11 THE COURT: Sustained.

12 Q Okay, we look at it on the screen, correct? The
13 November 2017 study is the black and white study that you had
14 color images over?

15 A Yes.

16 Q Okay. Yes. So we've already shown it to the jury,
17 yes?

18 A Yes.

19 Q Okay. So, the study we're talking about, just so the
20 jury understands, is the study that I'm asking you about is the
21 one you showed the jury, yes?

22 A Correct.

23 Q And then while talking to the jury about it, you said
24 that the C4 --

25 MR. PRONER: Objection.

1 THE COURT: Sustained.

2 MR. CALABRESE: Can I -- okay.

3 Q And that C4/C5 disk in that one month post accident
4 study was already smaller than the other discs, yes?

5 A No.

6 Q No? You didn't say that?

7 A I don't believe so. I believe I pointed out the
8 prolapse. I don't believe we talked about disk height.

9 Q You didn't say that that disk was already smaller in
10 that image?

11 A Not that I recall.

12 Q Okay. Well, it's a good thing we have a reporter.

13 THE COURT: We don't need --

14 MR. PRONER: Objection.

15 THE COURT: Again, counsel, sustained. Your
16 comments are totally uncalled for.

17 MR. CALABRESE: Okay.

18 THE COURT: This is the continuous pattern
19 throughout this trial. Okay.

20 Q Were you ever provided with the November 2020 neck MRI?
21 From City Med?

22 A November 2020, uhm, I don't know which MRI that would
23 be. I ordered a new MRI that year and I saw it. I don't recall
24 where it was performed or what the date is.

25 Q Sure, what is the new MRI you looked at?

1 A Again, I don't know where it was performed.

2 Q No, no, no. It was a 2021 study you looked at, yes?

3 A Oh, 21, yes. You're right. Yes, yes.

4 Q You looked at the 21 study that you ordered?

5 A Correct.

6 Q But you didn't see the November 2020 neck study from
7 City Med, right?

8 A Not to my knowledge.

9 Q Good. Did you see --

10 MR. CALABRESE: Sorry, Your Honor.

11 MR. PRONER: Objection.

12 THE COURT: Sustained.

13 MR. CALABRESE: Sorry, sorry.

14 Q You didn't see the November 2020, lumbar MRI from City
15 Med, correct?

16 A Again, not to my knowledge.

17 Q To date have you ever reviewed them?

18 A Again, not to my knowledge.

19 Q You saw him four times before performing the March 23,
20 2022, neck fusion surgery, four and a half earlier after this
21 accident, yes?

22 A I believe that's correct.

23 Q Okay. Were any cervical injections attempted before he
24 underwent the surgery?

25 A Uh, I'm not sure. I don't know.

1 Q Okay. Would that be reflected in your records?

2 A Uhm, it may. It may have been, it may not have been.

3 Q Okay. When you testified earlier you talked about the
4 conservative treatment of three years that he had already gone,
5 underwent and failed, thus the reason for your need to conduct
6 the surgery, fair?

7 A Yes.

8 Q But fair to say you don't know if he underwent any
9 cervical steroid injections, as a conservative measure, fair?

10 A That's correct.

11 Q Okay. Do you have any knowledge -- yes or no, doctor,
12 whether he has an allergy to steroid injections? Do you ever
13 recall learning that in your history taking?

14 A I don't recall.

15 Q Okay. If a patient comes to you doctor three years
16 post accident and says I still have neck pain doctor, can you
17 help me? What are my recourses? Do you ask the question, well,
18 what have you done to date, patient?

19 A Typically, yes.

20 Q Do you confirm what he had done to date? Do you go
21 look at his medical records and say, hey, City Med, give me what
22 you got, let me see what this guy went through so I can assess
23 it?

24 A I generally trust the patient, but if the records are
25 available, I'll certainly review them.

1 Q If the records are available? Who makes them
2 available?

3 A Every patient is different. Some of them come in with
4 them. Sometimes we get them from the referring doctor. So, it
5 depends.

6 Q So, you had access --

7 A Sometimes they are unavailable.

8 Q Sometimes they are unavailable?

9 A Yeah.

10 Q Okay, but -- so, either, Mr. Rosario the patient could
11 have given them to you, yes?

12 A It's possible sure.

13 Q Possible? Or also possible you could have gotten them
14 from City Med, correct?

15 A Sure.

16 Q Okay, you could have picked up the phone or had your
17 office send an e-mail City Med Grand Concourse can you send --

18 MR. PRONER: Objection.

19 THE COURT: Sustained.

20 Q Did you ever --

21 THE COURT: You can't ask the question that's been
22 sustained. You've got to ask a new question.

23 MR. CALABRESE: Moving on, Judge.

24 THE COURT: Yeah.

25 Q Did you ever direct anybody from your office or

1 yourself to send an e-mail or call, whatever means of
2 communication, to get the conservative treatment records from
3 City Med, yes or no?

4 MR. PRONER: Objection.

5 THE COURT: Same question, different form.

6 Sustained.

7 Q We've already established -- let me backup.

8 Have you seen the conservative treatment records from
9 City Med? Yes or no?

10 MR. PRONER: Objection.

11 THE COURT: Sustained. You've asked that question
12 already.

13 Q Your records indicate that he was -- before undergoing
14 the surgery that he was confident he understood the neck surgery
15 procedure and his options explained to him, and that he wanted
16 to proceed with the surgery, yes?

17 A Yes.

18 Q Okay. You, of course, need before surgery of this type
19 informed consent, yes?

20 A Certainly.

21 Q Certainly? Okay. So, the patient need to fully
22 appreciate the surgery, the risks, the recovery, the
23 limitations, and need to be able to comply with your post
24 surgical directives, yes?

25 A Those are two different questions. But, in terms of

1 first, yes. They certainly need to understand the surgery, what
2 we're doing, the risks, the potential outcomes, recovery
3 etcetera.

4 Totally, separately, we would hope that they comply
5 with postoperative recommendations.

6 Q Fair. You're of course hoping postoperative --

7 MR. PRONER: Objection.

8 THE COURT: Sustained to the word -- let me finish.
9 Sustained to using constantly the words fair, good, or
10 otherwise.

11 Q Before you conduct the surgery of a patient, you want
12 to make sure they understand the risks?

13 MR. PRONER: Objection.

14 THE COURT: Sustained. Sustained, you asked
15 already, the doctor answered.

16 Q I'm not asking about if he's going to follow-up,
17 doctor. But before you conduct the surgery you tell the patient
18 what is going to be required of them post-operatively, yes?

19 A I tell them that there's going to be a need for
20 postoperative physical therapy. That's pretty much which is
21 pretty much it.

22 Q Fair, but --

23 MR. CALABRESE: Sorry, Judge.

24 THE COURT: Again --

25 MR. PRONER: Objection.

1 Q What I'm trying to get at is are you, as the
2 neurosurgeon that's conducting the surgery making an assessment,
3 does this patient understand what he needs to do after?

4 MR. PRONER: Objection.

5 THE COURT: Sustained.

6 Q Okay, he gave you informed consent?

7 A Yes.

8 Q Okay, were you aware when he consented to the surgery,
9 he was treating with Doctor Golzad for traumatic brain injury?
10 Yes or no?

11 A Yes.

12 Q Okay. Okay, were you aware that he was undergoing
13 cognition therapy and had deficits, and in processing things,
14 memory loss, comprehension. Things of that nature?

15 A Yes.

16 Q Okay. Are you aware he was reporting cognitively
17 inability to bathe, self care, things of that nature?

18 MR. PRONER: Objection.

19 THE COURT: Sustained.

20 Q Were you aware that he was reporting exhibiting fits of
21 range and depression?

22 MR. PRONER: Objection.

23 THE COURT: Sustained.

24 Q Is this -- you felt he was neurologically sound to give
25 the informed consent?

1 A Yes.

2 Q Okay, and before any patient undergoes a surgery of
3 this type, they undergo a neurological evaluation? A surgical
4 clearance, yes?

5 A No.

6 Q There's no surgical clearance for your surgeries?

7 A I don't know what that means, even.

8 Q Okay. Let me backup. Before you conduct a cervical
9 fusion like that, do you require that your patients get
10 presurgical clearance?

11 A From who? I don't know what that means.

12 Q From another doctor?

13 A No.

14 Q No?

15 A I don't know what you're talking about.

16 Q Okay. Do you do anything to assess if this person is
17 stable enough to undergo the surgery, yes or no?

18 A Yes I interview them. That's how I get the history and
19 conduct the physical exam and go over their MRI with them and so
20 on.

21 Q Okay, so there's no neurological testing that you do or
22 send him for --

23 MR. PRONER: Objection.

24 THE COURT: Hold on, doctor.

25 Q Prior to you undergoing the surgery?

1 THE COURT: All right, sustained.

2 Q Were there any surgical complications from this
3 surgery?

4 A No.

5 Q Okay. Postoperatively, x-rays were done?

6 A Yes.

7 Q And monitored --

8 A They were shown to the jury, yes.

9 Q I'm sorry?

10 A They were shown to the jury.

11 Q We've already seen them, yes?

12 A Yes.

13 MR. PRONER: Objection.

14 THE COURT: Sustained to the comments.

15 Q They showed the hardware?

16 A Yes.

17 Q And your own records and opinion is that hardware was
18 in excellent condition and alignment?

19 A Yes.

20 Q Okay. Everything was stable?

21 A Yes.

22 Q Okay. Uhm, had your September 22nd office visit? You
23 continue in that opinion, yes?

24 A Let me just get it, if you don't mind.

25 Q Please, 9/22. You comment that the surgical films look

1 quite good and excellent condition?

2 A Yes.

3 Q Okay. You talked about a 17 percent risk of adjacent
4 disk syndrome, yes?

5 A Yes.

6 Q Okay. Question one, first question I have for you
7 regarding that is, yes or no, does Mr. Rosario have adjacent
8 disk syndrome?

9 A Yes.

10 Q Yes or no?

11 A Not to my knowledge at the present time.

12 Q He doesn't have it presently, fair?

13 A Yes.

14 Q You said probably need further cervical surgery, in the
15 future. Probably. Can you say that he needs it, with
16 certainty, a further neck surgery?

17 MR. PRONER: Objection.

18 THE COURT: Sustained.

19 Do it not answer, doctor. It's sustained.

20 Q Doctor?

21 A Oh, I'm sorry.

22 THE COURT: You don't have to answer because I
23 sustained the question. So, is there a new question?

24 MR. CALABRESE: I'm getting to it, Your Honor.

25 THE COURT: Okay.

1 Q Will you say within a reasonable degree of medical
2 certainty, that he will need a further cervical surgery; yes or
3 no? Neck surgery?

4 A No.

5 Q You won't say that to this jury, correct?

6 A That's correct.

7 Q And that's because -- I don't need it. Thanks.

8 Now, your post surgical follow ups document a normal
9 gait? Meaning his walking is normal?

10 A Yes.

11 Q But when you saw him previously at the first visit
12 December 2020, his gait was not normal?

13 A That's correct.

14 Q Okay. So, his gait got corrected following the
15 surgery?

16 A That implies the surgery corrected his gait. In much
17 as I would like to take credit for that, no. It just happened
18 over the intervening time period.

19 Q Okay, do you know how his gait got better?

20 A I don't know. I can conjecture.

21 Q I'd rather you not speculate or conjecture. It's not
22 allowed here in the courtroom, so I won't even ask about it.

23 Doctor, if you tell a patient that there is nothing
24 other than surgery that can be done to improve their lumbar
25 symptoms or complaints, would you, as a neuro surgeon, see any

1 benefit in continuing to go send that person for injections or
2 physical therapy?

3 A No, I would not.

4 Q You would see no purpose in it, right?

5 A That's correct.

6 Q Okay. So, look at your September 22nd, report, doctor.

7 A Okay.

8 Q Second to the last paragraph?

9 A Yes.

10 Q And you, in fact, indicate that to Mr. Rosario there's
11 nothing more that can be done for the lumbar back, but surgery.

12 A Yes.

13 Q Okay. So, for Mr. Rosario, you would not recommend any
14 more injections or P.T. to the back because they are not gonna
15 help him?

16 A That's correct.

17 Q And with medical certainty, to a reasonable degree of
18 medical certainty, you see no benefit in future physical therapy
19 or P.T. for the lower back, correct?

20 A Well, let me just with at caveat. Because I have
21 a this by experience. People that go for P.T., and they get a
22 message and they get a hot pack, they feel better temporarily.
23 So, if you include that in the benefit, then yes. If we're
24 looking to actually fix this permanently, no.

25 Q Mr. Rosario returned to you following that September

1 2022 treatment in April of 2023, after not seeing him for seven
2 months. And you indicated that he did not follow your orders to
3 see a pain management doctor, as you recommended. Yes?

4 A Well, hold on one second. That's correct.

5 Q Doctor, why would you recommend someone to pain
6 management?

7 A Well, in this case he was complaining of pain that's
8 shooting up in the left side of his head, which is --

9 Q Sorry, let me interrupt you, doctor, I'm sorry.
10 Generally, and then we'll get specifically to Mr. Rosario. I
11 should have been clear in my question.

12 MR. PRONER: Your Honor, allow him to finish the
13 answer.

14 THE COURT: Sustained. Let him finish the answer.

15 Q You can continue.

16 A He was having pain shoot up to his head which I thought
17 was coming from the occipital nerve, that's the nerve that kind
18 of runs from the top of the spine, a little bit behind the ear,
19 up towards the back of the head. It's very commonly irritated
20 it's called occipital neuralgia, and it responds well to
21 injections. And I thought that's what he was suffering and that
22 why I suggested he see a pain specialist.

23 Q Okay. So, there was a chance at some further relief of
24 the pain that he failed to comply with?

25 A Yes.

1 Q Okay. Uh, also in your April 2023 office visit, you
2 indicate that he complained of left shoulder pain that you could
3 not explain.

4 Doctor, by that, correct me if I'm wrong, do you mean
5 that as a doctor you could not match the subjective complaints
6 to your objective testings?

7 A Correct.

8 Q Meaning you couldn't correlate them?

9 A Correct.

10 Q You could -- the man is making complaints of left
11 shoulder pain, but you couldn't determine where they were coming
12 from?

13 A That's right.

14 Q Because the testing you were doing, whatever it may
15 have been, showed he shouldn't have the shoulder complaint?

16 A More accurately, I'm not an orthopedist. So, if he was
17 having pain because of an intrinsic problem in his left shoulder
18 meaning something like a rotator cuff tear, that's not in my
19 province, so I couldn't explain it, right.

20 Q Fair. So you said --

21 MR. PRONER: Objection.

22 THE COURT: I'm sorry?

23 Q You said you saw him last week? Just last week, yes?

24 A Yes.

25 Q How many times did you see him before last week?

1 A In totality, since I first saw him.

2 Q No, no, no. Fair, fair. Poorly worded question.

3 MR. PRONER: Objection, I don't know way fair,
4 fair, fair.

5 THE COURT: Sustained.

6 Q Doctor, following April 2023, the office visit we just
7 discussed, how many more times did you see him?

8 A It looks like I saw him November 6th of '25; oh, wells
9 that's just -- so those two times, yeah.

10 Q So, that's it just last week?

11 A Right.

12 Q For the purposes of this trial?

13 A I can't tell you that. I mean, he came in, in November
14 complaining of, you know, basically the same low back pain he's
15 had for this entire time.

16 Q I didn't ask what he was complaining of.

17 MR. PRONER: Objection.

18 A You asked me if he came in.

19 THE COURT: Sustained.

20 Q I just asked the date?

21 THE COURT: Let the doctor finish. You asked a
22 question, let him finish.

23 MR. CALABRESE: I just asked the date, Your Honor.

24 THE COURT: Let the doctor finish. Thank you.

25 Doctor finish.

1 A He came in complaining of he still had some residual
2 neck pain, and he was having the same lumbar pain that he's had
3 this whole time, and he came for treatment. I ordered, I
4 ordered new studies of both his cervical and lumbar spine.

5 Q Those have not been undergone to date, correct?

6 A That's not true. For whatever reason, he only had the
7 lumbar studies done, and that's what I reviewed when he came
8 back -- well, last week, and you know, basically.
9 Unsurprisingly, it showed the same problem and that's why we're
10 proceeding with the surgery.

11 Q Okay. Do you know who sent him in, in November of
12 2025, after not seeing him since April of 23?

13 A Well, you know, he's my patient. Nobody needs to send
14 him in.

15 Q My question is do you know if he of his own volition
16 picked up the phone and said doctor can I make an appointment?

17 MR. PRONER: Objection.

18 THE COURT: Sustained.

19 Q The lumbar surgery, the lower back surgery that you're
20 saying is in the process of being scheduled, okay? Tell me
21 doctor how many times have you conducted a surgery for injuries
22 traumatically and acutely caused from an accident 8 or 9 years
23 later?

24 A Uhm, surprisingly more, more often than one would think
25 because these kinds of concomitant problems. And as I

1 mentioned, in this case in particular, the national history of
2 this is there's a break in the bone, as I described previously.
3 And the body responds to that by trying, attempting to scar it
4 in. So, the natural history is people get better for awhile,
5 then it disrupts again. They turn the wrong way and then they
6 get worst again. So, this kind of drawn out thing, especially
7 with intervening probabilities, as we've been discussing, it's
8 not so surprising.

9 Q So, the break in the bone is the cause for his need to
10 undergo this lumbar fusion surgery that you're recommending?

11 A Yes.

12 Q Okay. And when is it scheduled for?

13 A I don't think it's scheduled yet. We have to, you
14 know, get approval.

15 Q As you sit here today it's not on the books, correct?

16 A I can't tell you that for sure. Uhm, I, I don't know.

17 Q Fair.

18 MR. PRONER: Objection.

19 THE COURT: Sustained.

20 Q Let's talk about --

21 MR. CALABRESE: Sorry, Judge, I can't help myself.

22 It's a natural rhythm I have when questioning.

23 MR. PRONER: Objection.

24 THE COURT: Whatever your natural rhythm is

25 counsel, it's always being sustained.

1 MR. CALABRESE: Okay.

2 THE COURT: That's all.

3 MR. CALABRESE: Thank you.

4 THE COURT: You're welcome.

5 MR. CALABRESE: As long as the Court's not taking
6 any offense to it.

7 THE COURT: I don't take any offense to anything.
8 I just make a record, counsel.

9 MR. CALABRESE: Thank you.

10 CROSS EXAMINATION

11 BY MR. CALABRESE:

12 Q You got paid for all your treatment of Mr. Rosario,
13 yes?

14 A I would assume so.

15 Q Okay, and you're still getting paid with your treatment
16 of him up till last week?

17 A I would assume so.

18 Q Okay. So, as far as you know, Doctor, to your
19 knowledge, he has a means to provided health care for treatment,
20 if it's determined he needs it?

21 MR. PRONER: Objection.

22 THE COURT: Sustained.

23 Q You prepared a narrative report for Mr. Proner, in
24 December 2023, yes?

25 A Yes.

1 Q Okay. And you learned about this 2020 auto accident
2 sometime around April of 2025, when Mr. Proner finally told you
3 about it, yes?

4 MR. PRONER: Objection, as to form.

5 THE COURT: Sustained.

6 Q You learned of the auto accident sometime around
7 April 2025, when you did a additional report?

8 A Yes.

9 Q And that additional report was for Mr. Proner?

10 A Yes.

11 Q Okay. You billed for both of them, correct?

12 A Uh, I believe so. I don't handle the billing and
13 collecting or any of the business aspects of my practice.

14 Q Do you continue to do work if you don't get paid for
15 it?

16 A No. But I wouldn't know specific case whether I get
17 paid, how much I got paid, etcetera.

18 Q I'm not asking how much you got paid, but do you get
19 paid for these narrative reports?

20 A Yes.

21 Q It's part of your business?

22 A Yes.

23 Q Okay. So, that April 2025, narrative report you
24 comment on the 2021 film?

25 A Yes.

1 Q Okay? And you say, oh, I already saw it in the 2017
2 film?

3 A That's correct.

4 Q So, therefore, the auto accident of 2020, didn't do
5 anything to the neck?

6 A That's correct.

7 Q That's in somewhat you say, yes?

8 A Correct.

9 Q You've seen what my radiologist says, right?

10 A No.

11 Q No? Mr. Proner has not given you my radiological
12 exchange? What my radiologist is going it to say?

13 A No.

14 Q Okay. And you still to date have not seen the November
15 2020 neck or lumbar films, correct?

16 A Correct.

17 Q Okay. Anymore amended reports that we should expect?

18 MR. PRONER: Objection, Your Honor.

19 THE COURT: Sustained.

20 Q So, when you learned in April of 2025, of this other
21 auto accident, did you call for all the records from City Med,
22 Gun Hill Road, in those 2020 films?

23 A No.

24 Q Any reason why not?

25 A I wasn't asked to.

1 Q Who ask you to do stuff like that?

2 MR. PRONER: Objection.

3 THE COURT: Sustained.

4 Q Are you aware he's claiming a causally related C4/C5
5 herniation in the auto accident?

6 MR. PRONER: Objection.

7 THE COURT: All right, I have to -- let's take a
8 break, five-minute break.

9 THE COURT OFFICER: All rise. Jury exiting.

10 (Whereupon, the sworn jurors exit the courtroom.)

11 THE COURT: Do we need the doctor to step out?

12 MR. PRONER: I don't -- the last part of his
13 question.

14 THE WITNESS: I need to go to the bathroom.

15 THE COURT: He needs the bathroom, anyway.

16 MR. PRONER: Read back the question.

17 THE COURT: Read back the question.

18 (Whereupon, the Court Reporter reads back the
19 requested testimony.)

20 THE COURT: I heard that. I need to know the
21 basis? The injuries being claimed here, too. So, I need to
22 know the basis of that, in the auto accident. I don't have
23 a Bill of Particulars. I don't think I still have it.

24 MR. CALABRESE: They were part of the motions in
25 it. If the Court would like it, I can furnish it for you.

1 THE COURT: Please, I don't have the motions in the
2 front of me.

3 MR. CALABRESE: May I approach?

4 THE COURT: You can approach my clerk or you could
5 approach my officer. You can't approach the bench.

6 MR. CALABRESE: Judge, you want the Bill of
7 Particulars in the --

8 THE COURT: I want the basis as to why that
9 question.

10 MR. CALABRESE: Certainly. Judge, they are tabbed.
11 Feel free to go through it and they are highlighted. This
12 is the Bill of Particulars, in the 2020 auto accident, in
13 the Index Number of 800413/2021E of Mr. Rosario-Silverio
14 verses vantage Wholesale Supply. It is the Bill of
15 Particulars in Mr. Proner's office that's served by him
16 before the date of this accident. It claims right knee
17 tears, overlapping injury in our accident.

18 THE COURT: We're not talking about right knee.
19 We're talking being C4/C5.

20 MR. CALABRESE: It claims C4/C5 disk herniations,
21 it claims lumbar L5/S1 injuries.

22 THE COURT: Counsel, I'm looking at the BP, and all
23 it saying it's a cervical strain and bulging of the annulus
24 fibrosis of the C3/C4; C4/C5, C5/C6 disks.

25 MR. CALABRESE: Your Honor, which page are you on?

1 THE COURT: Three.

2 MR. CALABRESE: Page 3? Okay, bulging discs at C3
3 through C6, yes?

4 THE COURT: Let me make sure it's the right one,
5 it's the right plaintiff I'm looking at. Yup, right
6 plaintiff. That's on page 3. And then the rest on page 4
7 deals with Maria Dominguez. That's all it is, that one
8 paragraph bulging.

9 Counsel?

10 MR. PRONER: Counsel -- Your Honor, even, even if
11 there were identical complaints, which there are not.
12 There's no claim in there that surgery was as a result of
13 those -- of that pathology.

14 We have a neurosurgeon on the stand, it's improper
15 cross to use a pleading from a plenary action to cross
16 examine this doctor. He can ask about his treatment, he can
17 ask about his findings, he can ask about the records he
18 reviewed. But to get into pleadings from a plenary action
19 is improper use of the pleadings and improper cross.

20 THE COURT: Sustained.

21 MR. CALABRESE: I will respectfully disagree and
22 note my objection.

23 THE COURT: Counsel, you can disagree. Your
24 objection is noted. We do have a time on this matter which
25 I've allowed. I've even had the jury -- I'm holding the

1 jury over, I'm holding my staff over.

2 Doctor, you want to take the stand? Come on in,
3 doctor, take the stand.

4 Get the jurors.

5 MR. CALABRESE: Your Honor, if I could just make my
6 record, please?

7 THE COURT: You can make your record afterwards.
8 Let's finish with the doctor. I sustained this it. Move
9 on. Okay.

10 THE COURT: Do not go into it, counsel.

11 MR. CALABRESE: Note my exception for the record.

12 THE COURT: It's noted.

13 MR. CALABRESE: Thank you.

14 THE COURT OFFICER: All rise. Jury entering.

15 (Whereupon, the sworn jurors enter the courtroom
16 and take their respective seat.)

17 THE COURT: Please, be seated. You may continue.

18 CROSS EXAMINATION

19 BY MR. CALABRESE:

20 Q Doctor, Mr. Rosario told you he can never return to
21 work in any capacity; is that accurate?

22 A I don't think so. I don't recall that.

23 Q Okay. Your record indicates that he hasn't returned to
24 employment, correct?

25 A Correct.

1 Q Okay. You testified earlier that construction workers,
2 50 percent of the time that they can return back to their heavy
3 construction work following --

4 MR. PRONER: Objection, that wasn't correct.

5 THE COURT: Sustained.

6 MR. CALABRESE: That's exactly what he said.

7 MR. PRONER: Objection.

8 THE COURT: Nope, sustained. That's not what he
9 testified to.

10 Q Doctor, do you recall your testimony about 50 percent
11 returning to work?

12 A Yes.

13 Q Okay, what was that context?

14 A Uh, that was I tell people that have these kinds of
15 surgeries, they can attempt to return to work. There's no
16 medical contraindication. But roughly 50 percent are able to do
17 so in heavy fields like construction.

18 Q Okay, and Mr. Rosario was working in heavy construction
19 per your knowledge?

20 A Yes.

21 Q Okay. Do you know the physical tasks that he was
22 performing on a daily basis to -- amounts to heavy construction?

23 A Other than the incident moving heavy refrigerator, I
24 don't know.

25 Q Your January 2022 office visit, if you don't mind.

1 This is the office visit before the March 2022 cervical fusion
2 surgery that you performed, okay?

3 A Okay.

4 Q This is the fifth time you've see him, since you
5 started treating him in December of 2020. You talk about the
6 lumbar surgery, you talked about the cervical surgery, and then
7 he comes back to you in January 2022. And says, he voices some
8 concerns about the ability to return back to work?

9 A Okay.

10 Q Are you there?

11 A Yeah, yeah I got it.

12 Q Okay. And, he was concerned over whether he could
13 return to his heavy duty work and sports. And you informed him
14 certainly that he could, right?

15 A Yeah, I did. Yeah.

16 Q Okay. Any documentation in your records I advised him
17 you only got a 50-50 shot?

18 A We have to separate the cervical and the lumbar, okay.

19 Q I'm just talking about the cervical right now?

20 MR. PRONER: Objection. Allow him to finish.

21 THE COURT: You can redirect counsel on that.

22 Q I'm just talking about the cervical spine.

23 A Cervical spine I believe he would be able to return to
24 heavy duty work.

25 Q Your neurological --neurosurgeon opinion, with a

1 reasonable degree of medical certainty, doctor, is that based on
2 what you've seen and examined with respect to his cervical
3 spine, his neck, you believe he should be able to return back to
4 employment because everything was in good alignment, fair?

5 A Yes. At one level cervical fusion, if that's all he
6 had, I believe he would be able to return to heavy work.

7 Q Okay. Did you ever tell Mr. Rosario he cannot return
8 to work?

9 A Not that I'm aware of.

10 Q Okay. So, it's not anywhere in your records unable to
11 return to work?

12 MR. PRONER: Objection.

13 THE COURT: Sustained.

14 Q Did you ever impose any restrictions on him?

15 A Yes, immediately after the surgery I would tell him not
16 to do any heavy lifting and pounding exercises and so on for
17 approximately two months.

18 Q Okay. And he post surgery he went through his course
19 of -- post surgical physical therapy?

20 A Yes.

21 Q And he went through the course of your post surgical
22 monitoring? His follow-up with the studies to insure the
23 alignment?

24 A Yes.

25 Q And everything according to you was excellent, yes?

1 A Yes.

2 Q Okay. So, based on that, you impose no restrictions on
3 his neck, correct?

4 A That's correct.

5 Q Okay. So, you didn't see the need to prescribe him any
6 medical equipment for his neck, units, things of that nature?

7 A Correct.

8 Q Okay. Do you see any need for tens units, or anything
9 going forward for his neck?

10 A No.

11 Q Nothing going forward for his neck, fair?

12 A Fair.

13 Q Doctor, you've testified in court before for
14 plaintiffs, yes?

15 A For plaintiffs, yes.

16 Q Plaintiffs, yes?

17 A Yes, yes.

18 Q How many times in the last five years have you
19 testified on behalf of plaintiffs?

20 A Eight.

21 Q Okay. Uhm, these narrative reports and this trial
22 testimony is a source of your annual income, yes?

23 A Yes. Relatively small, yes.

24 Q Sure. Doctor, Paul K. Ratzker, correct?

25 A Yes.

1 Q New Jersey Medical License 25MA06 --

2 MR. PRONER: Objection.

3 Q 06300 --

4 THE COURT: Counsel, I sustain and you still
5 continue talking?

6 MR. CALABRESE: I was trying to talk over Mr.
7 Proner.

8 THE COURT: No, he said objection. I said
9 sustained. At that point it stops. Let's go inside.

10 MR. CALABRESE: I have one last question.

11 THE COURT: No, we're going inside.

12 (Whereupon, the following discussion takes place in
13 the robing room among the Court and Counsel, outside the
14 hearing of the sworn jury.)

15 THE COURT: The reason why I'm calling everyone
16 inside into the robing room is because I'm not sure where
17 you're going with another doctor's -- you were giving a
18 number out. I'm assuming it was a license number, medical
19 license number of a doctor, and in front of the jury which
20 I'm not sure what purpose that served. So, I wanted to put
21 the brakes on something coming out that might have been
22 totally improper in front of a jury, which I know Mr. Proner
23 objected and I sustained. So, I'm not sure where you're
24 going next, counsel. So, I need some offer of proof of
25 where you intend to go. You continue that line of

1 questioning.

2 MR. CALABRESE: Certainly. His New Jersey medical
3 license was suspended.

4 THE COURT: Whose medical license?

5 MR. CALABRESE: This man. That's fair impeachment.

6 THE COURT: Well, counsel --

7 MR. PRONER: First of all, I don't think that it's,
8 it's, his license and suspension is in any way accurate or
9 valid, and I don't think that plaintiffs -- I don't think
10 that the defense counsel conduct is proper, in that he
11 specifically said on the record, when I was objecting, he's
12 says I was trying to talk over plaintiff's counsel. If
13 we're talking about over each other, we can't get a clear
14 record. So, his conduct is inappropriate, it's been
15 continuous, and I don't, I don't know where he's going with
16 this, but I think he's not --

17 THE COURT: But I need, before you could even go
18 there, I need a certified record from New Jersey. I'm not
19 sure who certifies in New Jersey. I know who does it in New
20 York and they provide certified records when your license
21 get suspended after they have a hearing and everything else.
22 I need a certified record from New Jersey, whoever the
23 department is in New Jersey that does the hearing and
24 conducts everything with the doctors showing that, in fact,
25 that is true, counsel.

1 MR. CALABRESE: I have.

2 THE COURT: And this should have been brought up a
3 while back before the doctor even took the stand. Because
4 we did motions in limine with regards to RICO and other
5 stuff.

6 MR. CALABRESE: May I speak? I don't want to speak
7 over you.

8 THE COURT: Go ahead.

9 MR. CALABRESE: First responding to Mr. Proner.
10 Yes, I said on the record I was trying to speak over Mr.
11 Proner, of course. Because Mr. Proner stands up the entire
12 time I'm asking questions. I understand he doesn't like my
13 questions, I understand Your Honor doesn't like my
14 transitional word of fair and next, and I'm sorry.

15 THE COURT: It's not that I don't like them. It's
16 that they are improper, counsel.

17 MR. CALABRESE: Understood.

18 THE COURT: And if I have an objection, I'm going
19 to address the objection, that's all.

20 MR. CALABRESE: Of course, Your Honor. It's your
21 courtroom.

22 THE COURT: If you're allowed in some other
23 courtroom, and then and you don't have an objection that's
24 in another courtroom, when I face objections in my
25 courtroom, I'm going to handle them accordingly, whether I

1 like them or not is irrelevant.

2 MR. CALABRESE: Of course, Your Honor. But the
3 jury is seeing some back and forth between you and I.

4 THE COURT: And whose fault is that, counsel?

5 MR. CALABRESE: Exclusively mine, Your Honor.

6 THE COURT: Thank you.

7 MR. CALABRESE: Because you have said to stop using
8 those words.

9 THE COURT: Yes.

10 MR. CALABRESE: And I --

11 THE COURT: Continue.

12 MR. CALABRESE: With respect to the transitional
13 word and I will get -- it's a natural speaking pattern for
14 me and I will apology for that. I submit most of my
15 questions, Judge, both on cross and today and other times
16 have been fair comment for cross examination that you have
17 explained plaintiff's objection, that it's on the record
18 that's why it's on the record. So no comment there further,
19 Your Honor.

20 So, Mr. Proner has repeatedly throughout this trial
21 gotten up and purposely he does it all throughout the
22 depositions. I have now had a few depositions with this man
23 and I read the deposition transcript of this case before I
24 ever got them.

25 THE COURT: I'm not going into the deposition. I'm

1 going into the trial.

2 MR. CALABRESE: Fair.

3 THE COURT: Right now you know what? All I want to
4 know is do you have that certification record by a state
5 agency who suspend a doctor's license?

6 MR. CALABRESE: I have.

7 THE COURT: That's all.

8 MR. CALABRESE: Summons.

9 THE COURT: Not a summons, counsel, listen to what
10 I'm saying. The certification record by the agency of the
11 State of New Jersey.

12 MR. CALABRESE: Yes.

13 THE COURT: The certification record.

14 MR. CALABRESE: It's a certified final order,
15 consent and settlement. He consented to the settlement
16 after six allegations of administrative complaint was filed
17 against him.

18 THE COURT: And it doesn't mean it comes in because
19 I've got to read the administrative complaint.

20 MR. CALABRESE: Certainly.

21 THE COURT: Okay, whether it's relevant or not.

22 MR. CALABRESE: Essentially, if I may, Your Honor,
23 Doctor Ratzker and his two other partners in New Jersey,
24 license physicians, in New Jersey, own the Back Institute,
25 okay. His three other partners also had financial interest

1 in another facility. I'm sorry, I left my notes outside.
2 It's highlighted in another Neurophysiological Monitoring,
3 LLC.

4 THE COURT: He's going to have to come back.

5 MR. CALABRESE: Your Honor, I could finish. Just
6 to let you know.

7 THE COURT: No, because I just got this right now,
8 I'm assuming Mr. Proner's got in right now. I've got to
9 read this, okay. I'm not going to do this in a few minutes
10 end. And when this doctor, due to his religious belief has
11 a time set, and I allowed it. And now everybody has been
12 working through their lunch hour, I have staff that's
13 working through their lunch hour, which I'm sure they have
14 certain rules that I was suppose to give them that hour
15 between one and two, but they consented and agreed to
16 because we're going to break. I'm not going to rush this,
17 counsel.

18 MR. CALABRESE: Nor am I asking the Court to rush.

19 THE COURT: Saying five minutes doesn't give -- you
20 have the opportunity for me to honestly rule for or against,
21 really?

22 MR. CALABRESE: Nor am I asking the Court to rush,
23 Your Honor. I'm just letting the Court know, so that Her
24 Honor can make an informed decision with the time
25 constraints. We have candidly -- I would like to finish

1 Doctor Ratzker today. I think we can, and not have to call
2 him back another day, and I'm sure Mr. Proner would be happy
3 with that, as well. Your Honor, my last question is on this
4 issue.

5 THE COURT: And that's the problem. I've got to
6 read this.

7 MR. CALABRESE: Understood. I think it's fair
8 comment. I don't need to put him on notice of my cross
9 examination.

10 THE COURT: No, you don't. But, he has the
11 opportunity now to whether to address it or not.

12 MR. CALABRESE: Of course.

13 THE COURT: Has he read what you've given the
14 Court.

15 MR. CALABRESE: I would think he'd do research on
16 the expert he's putting up.

17 THE COURT: I don't know. Mr. Proner?

18 MR. PRONER: I haven't seen the certified document
19 he's offered, and I would like an offer of proof.

20 THE COURT: I have it right here.

21 MR. PRONER: First of all, certified true copy. We
22 don't know who certified this.

23 MR. CALABRESE: It's stamped and --

24 MR. PRONER: That stamp doesn't say who stamped it.

25 MR. CALABRESE: Your Honor, it speaks to -- well,

1 Mr. Proner, okay if I, I speak while he reads. Your Honor,
2 what it is, he had financial interest in two different
3 companies, and he was referring patients to another, his
4 other facility, where he has financial interest and that is
5 in violation of New Jersey Code. That's referenced in the
6 complaint and the resulting order in which his suspension
7 was ultimately limited after paying restitution and finance.
8 This is fair comment. It speaks right to his veracity, it
9 speaks to his action regarding financial profit. It's
10 already in the direct line of the direct, and now my cross.
11 It is fair comment, and fair game on cross examination for
12 impeachment purposes, Your Honor.

13 THE COURT: If I allow it, of course.

14 MR. CALABRESE: My position, of course.

15 THE COURT: That's your position, and then if I
16 allow it. Because it doesn't go to his medical ability,
17 that's why I need to --

18 MR. CALABRESE: It --

19 THE COURT: I understand what you're saying, it
20 goes to his credibility. But his credibility as a
21 physician, but his medical ability, what he's testifying it
22 here as to neurosurgeon --

23 MR. CALABRESE: It's hard. I couldn't do if
24 either.

25 MR. PRONER: May I, may I speak with the witness in

1 private for one moment?

2 THE COURT: He's on the stand at this point. But
3 if it is a certificated copy, you are allowed.

4 MR. CALABRESE: Thank you, Your Honor.

5 MR. PRONER: Okay, I'm prepared to proceed, and.

6 THE COURT: Counsel, my problem is I don't want
7 this dragged. I'm allowing two questions. What are your
8 two questions?

9 MR. CALABRESE: Uhm, forgive me. Your New Jersey
10 medical license was suspended.

11 THE COURT: Without numbers.

12 MR. CALABRESE: I'll take out the numbers.

13 THE COURT: No, I don't need numbers.

14 MR. CALABRESE: The only reason I was including not
15 for any privacy, that's why I -- the reason said his middle
16 initials, I said you're Paul K. I tried to do it this one
17 time prior with a different doctor, it wasn't the doctor. I
18 thought I had something, and it wasn't even the guy. I had
19 pie on my face.

20 THE COURT: You can make sure that you, that he is
21 the right doctor.

22 MR. CALABRESE: I think I've already -- what do you
23 want me to do in that regard?

24 THE COURT: No, with the name.

25 MR. CALABRESE: Paul K. Ratzker.

1 MR. PRONER: What is your follow up?

2 MR. CALABRESE: What is my follow-up? Your license
3 was suspended for three years, and it was due to having a
4 financial interest -- I'll word the question this way, and
5 if the Court will permit it, to avoid objection.

6 THE COURT: Your license was suspended for three
7 years.

8 MR. CALABRESE: Three years.

9 THE COURT: That's fine. That's okay. Is it true
10 or not that your license, yes or no, whichever way you want
11 to phrase it.

12 MR. CALABRESE: Thank you. Am I correct that it
13 was due to financial billing issues.

14 THE COURT: That's fine.

15 MR. PRONER: Okay.

16 THE COURT: I think that's fine. That's fair.

17 (Whereupon, the following takes place in open
18 court, in the presence of the defendant and the sworn jury.)

19 THE COURT: Go ahead, counsel.

20 CROSS EXAMINATION

21 BY MR. CALABRESE:

22 Q Doctor Paul K. Proner, correct?

23 A Ratzker.

24 Q Ratzker, I'm so sorry. That was not intentional.

25 Ratzker, sorry doctor. You're New Jersey medical license was

1 suspended for three years and you were placed on probation?

2 Yes?

3 A No, it was waived, whatever they call it. I don't know
4 what they call it. Never happened.

5 Q It never happened? There wasn't a proceeding that you
6 settled?

7 MR. PRONER: Objection.

8 A Yes, there was.

9 THE COURT: Sustained.

10 A It wasn't suspended. Yeah, there was a proceeding. I
11 paid a fine.

12 Q There was some issues was financial billing?

13 A Not related to my practice. It was related to
14 neurophysiological monitoring company that my whole practice
15 owned that the monitoring tech was wearing a badge that said
16 M.D., to get a free lunch, and we were sanctioned for not
17 supervising him properly.

18 MR. CALABRESE: May I, Your Honor?

19 MR. PRONER: Objection.

20 THE COURT: Sustained. That's what we discussed.

21 MR. CALABRESE: Based on his response.

22 THE COURT: That's what we discussed.

23 MR. CALABRESE: Thank you, doctor. No further
24 questions.

25 THE COURT: Okay. One more attorney, Mr. Proner,

1 sit down.

2 THE COURT: Miss Buholtz, cross exam.

3 MS. BUHOLTZ: I have none, Your Honor.

4 THE COURT: Redirect.

5 MR. PRONER: Real, real brief.

6 REDIRECT EXAMINATION

7 BY MR. PRONER:

8 Q Doctor, you were asked some questions on cross about
9 the basis of your opinions. Can you briefly remind the jury
10 what materials you relied upon, in forming your opinions in this
11 case?

12 A Sure. My own interactions with the patient, taking his
13 history, talking to him, the physical exams over the time
14 period, and all the studies. The MRIs, the x-rays, yeah.

15 Q Are those the same materials you rely on everyday in
16 your medical practice?

17 A Day in and day out.

18 Q You were questioned suggesting degeneration. Can
19 degenerative findings exist without symptoms?

20 A Yes.

21 Q Can you explain that to the jury, please?

22 A Very simply. A study was done not long ago taking a
23 whole bunch of people in their 40s and 50s that were
24 asymptomatic, no back problems at all. And 40 percent had some
25 degree of what we could call degenerative findings.

1 Q Now, doctor, you were asked questions about being able
2 to go back to work just with regard to the cervical spine?

3 A Yes.

4 Q But it is it your opinion, given the totality of Mr.
5 Honorio Rosario's symptoms, I want you to take into
6 consideration Barbara Steele has testified that he's got a
7 permanent shoulder injury, Doctor Golzad has testified he's got
8 a permanent head injury with traumatic brain injury cognitive
9 deficits.

10 Given the fact that he's got a lumbar pending surgery,
11 is it your opinion this guy can go back to construction?

12 MR. CALABRESE: Objection to the form.

13 THE COURT: Sustained. Leading.

14 Q Doctor, given all of the patient's symptoms --

15 MR. CALABRESE: Same objection. Sorry, I know
16 where he was going.

17 THE COURT: Sustained as to form. You've got to
18 rephrase it.

19 MR. PRONER: Okay.

20 Q Doctor, in your question about his ability to return to
21 work, you were limited to his cervical spine. When you take the
22 other body parts that you have examined in his medical records
23 and examined and treated him, is it your opinion, as he sits
24 here today, he can work in construction?

25 MR. CALABRESE: Objection to the form.

1 THE COURT: Overruled. That I'll allow.

2 A I do not believe so.

3 MR. PRONER: Nothing further.

4 THE COURT: Okay.

5 MR. CALABRESE: Re-cross?

6 THE COURT: We got four questions, that's all
7 you're limited to, counsel.

8 MR. CALABRESE: He talked about the lower back.

9 THE COURT: That's all you're limited to. Whether
10 he could go back to work, as a result of the low back.
11 That's all you're limited to.

12 MR. CALABRESE: All right.

13 THE COURT: Go ahead. It's at the discretion of
14 the court at this point, counsel. Go ahead.

15 RECROSS EXAMINATION

16 BY MR. CALABRESE:

17 Q And that lower back prevented him from returning break
18 to work, in your opinion, is causally related to the 2017
19 accident, yes?

20 A Yes.

21 Q And are you aware that he's claiming L5/S1 herniation
22 with spondylolisthesis in the other accident?

23 MR. PRONER: Objection.

24 THE COURT: Sustained, sustained.

25 MR. CALABRESE: Nothing further.

1 THE COURT: Okay, thank you doctor. You may step
2 down.

3 THE WITNESS: Thank you, Your Honor.

4 MR. CALABRESE: Thank you, doctor.

5 MR. PRONER: Thank you, Judge, for the court for
6 going through lunch.

7 (Whereupon, the witness exits the courtroom.)

8 THE COURT: Okay. Ladies and gentleman of the
9 jury, so that does it for today. We will be back Tuesday.
10 Monday unfortunately I do have a very, very heavy calendar.
11 I'm not going to have you come back on Monday, because it's
12 just going to be waiting, and it's not fair. So, I'm going
13 to have you come back on Tuesday 9:30, okay. So just
14 remember you have heard some of the evidence, you have not
15 yet heard all of the evidence, so please keep an open mind
16 till you do hear all the evidence, until you hear the
17 summations of the attorneys, my charge to you on the law and
18 more importantly you get this case for full deliberation.

19 Do not discuss this matters amongst yourselves or
20 with anyone else. Have a great weekend and I'll see you
21 back here Tuesday morning 9:30.

22 THE COURT OFFICER: All rise.

23 (Whereupon, the sworn jurors exit the courtroom.)

24 MR. PRONER: Your Honor, I just wanted to go on the
25 record.

1 THE COURT: Hold on.

2 MR. PRONER: Again, thank you, the Court and court
3 personnel for working through lunch. They accommodate the
4 witness's Sabbath observation. I appreciate that. Thank
5 you.

6 THE COURT: Now let me inform you of something I
7 just found out today that I --

8 (Whereupon, there is a pause in the proceedings.)

9 MR. CALABRESE: Judge, can I briefly make a record?

10 THE COURT: Go ahead.

11 MR. CALABRESE: Thank you, Judge. Just revisiting
12 my objection for the record with respect to cross examining
13 this neurosurgeon Doctor Ratzker on the record with the Bill
14 of Particulars, and the claims made therein regarding Mr.
15 Rosario-Silverio's subsequent October 2020 auto accident
16 resulting litigation.

17 The Court has already speaking first to the
18 cervical spine, the claims here is that there's a cervical
19 C4/C5 herniation requiring cervical fusion four and a half
20 years after the accident with a intervening accident which
21 these doctors have testified they have not seen the record
22 for or films of.

23 The Bill of Particulars, though of course as Mr.
24 Proner point out does not allege a fusion surgery or
25 cervical surgery, it does say cervical sprain -- excuse me,

1 strain, bulge, disk bulges at C-3 through C-4, C-4 through
2 C-5, and including C6 disk levels.

3 THE COURT: Okay.

4 MR. CALABRESE: Those bulges are also claimed same
5 levels in our accident here in our action here. So, I think
6 cross examining the surgeon with a lack of records towards
7 the subsequent intervening accident should be fair comment
8 for cross examination not have been blocked.

9 Next --

10 THE COURT: You finished with that comment, so he
11 can respond then we can.

12 MR. CALABRESE: I was going to the back or leave it
13 at the neck first.

14 THE COURT: Do the neck first.

15 MR. CALABRESE: Certainly.

16 THE COURT: You didn't cover the neck, you were
17 only doing the C4/C5, we didn't even go into the back.

18 MR. CALABRESE: I did at that last cross exam
19 question and then you sustained his objection.

20 THE COURT: I sustained it because you were going
21 beyond the scope, in addition it's re-cross, and it's at the
22 discretion of the court to even allow any further
23 examination. So that's a different issue. The only issue
24 with the Bill of Particulars was as to the cervical spine.
25 Mr. Proner, I will allow to you answer on that.

1 MR. PRONER: First of all this doctor testified
2 about his findings and examination of the records,
3 examination of the patient, serial treatments. To cross
4 examine him with a pleading from a plenary action is
5 improper use of a pleading.

6 Further, we -- it's not proof of the injury. We
7 have to put on doctors on the stand to prove the injury and
8 the medical proof is not going to be adduced in any case by
9 pleadings. It has to be proven by the records that the
10 doctor examine, the examinations, the things that doctors
11 normally rely upon. There's no law that says a doctor
12 normally rely upon pleadings to come to an opinion and it's
13 improper use of pleading, and the use of pleading in plenary
14 action is improper cross.

15 MR. CALABRESE: Judge, responding if I may.

16 THE COURT: Real quick. It's, because it's time.

17 MR. CALABRESE: I get to impeach the witness who
18 connects a 2017 accident to cervical injuries and resulting
19 surgery. A pleading is not used to being proved on my end
20 to prove the injuries or the sustained injuries in that
21 second action. I'm just using it for impeachment.

22 Next, if I could move onto the lumbar spine just to
23 create my record, Your Honor. May I?

24 THE COURT: With regards to allowing the
25 redirect -- I mean the recross and you questioning the

1 doctor on anything with the lumbar spine?

2 MR. CALABRESE: Yes, just allow me for the record,
3 Your Honor, please.

4 THE COURT: I don't really think you need anything
5 because that was at the discretion of the court allowing
6 recross, and I ruled on it already. I think the record
7 speaks for itself. We don't need anything further on that,
8 okay.

9 MR. CALABRESE: Thank you, Your Honor.

10 THE COURT: See everybody on Tuesday.

11 MR. CALABRESE: Tuesday 9:30.

12 MR. PRONER: Thank you.

13 THE COURT: 9:30, yup.

14 (Whereupon, the trial is adjourned to Tuesday,
15 12/15/2025, 9:30 a.m.)

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