

MEROLA

516 939-9087
1

1 SUPREME COURT OF THE STATE OF NEW YORK

2 BRONX COUNTY: CIVIL TERM: PART 45

3 -----x

4 REYNAULD RIVERA and ELIZABETH RIVERA,

5 Plaintiff(s), INDEX NO.
6 -against- 7233/99

7 RAMON BARCENE, JOHN MARTINS and
8 YONKERS CONTRACTING COMPANY, INC.,

9 Defendant(s).
10 Trial
11 Testimony of
12 Dr. Merola

-----x
11 February 4, 2002
12 851 Grand Concourse
13 Bronx, New York

13 B E F O R E:

14 THE HONORABLE DOMINIC MASSARO,
15 JUSTICE.

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

17 LAW OFFICE OF JAMES J. McCRORIE
18 Attorneys for the Plaintiff
19 250 West 57th Street, Suite 1619
20 New York, New York 10107
21 BY: JAMES J. McCRORIE, ESQ.

22 KAY & GRAY, ESQS.
23 Attorneys for Defendant Ramon Barcene
24 760 Woodbury Road
25 Woodbury, New York 11797
BY: LYNN GOLDBER, ESQ.

(Appearances continued on next page.)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

BRODY, FABIANI & COHEN, ESQS.
Attorneys for Defendants John Martins
and Yonkers Contracting Company, Inc.
570 Lexington Avenue, 4th Floor
New York, New York 10022
BY: STEPHEN M. COHEN, ESQ.

Catherine Mercorella,
Senior Court Reporter

Dr. Merola - for Plaintiffs - Direct

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

2 (Whereupon, the Jury enters the
3 courtroom.)

4 THE COURT: Good afternoon.

5 Mr. Clerk, please call the case.

6 THE COURT CLERK: Case on trial.

7 Reynauld Rivera and Elizabeth Rivera,
8 plaintiffs, versus Ramon Barcene, John Martins
9 and Yonkers Contracting Company, Incorporated,
10 defendants.

11 Let the record reflect the presence
12 of the sworn jurors and alternates and the
13 continuing presence of the respective counsels.

14 THE COURT: Mr. McCrorie, you may
15 proceed.

16 MR. McCRORIE: Your Honor, plaintiff
17 calls Dr. Andrew Merola.

18 THE COURT: Dr. Andrew Merola to the
19 witness stand.

20 THE COURT OFFICER: Left hand on the
21 Bible, raise your right hand, face the clerk.

22 D R. A N D R E W M E R O L A , having first
23 been duly sworn, testified as follows:

24 THE COURT OFFICER: Thank you. Be
25 seated. In a loud, clear voice, state your

Dr. Merola - for Plaintiffs - Direct
1 first and last name, spell your last name.

2 THE WITNESS: My name is Andrew
3 Merola, M-E-R-O-L-A.

4 THE COURT: Good afternoon, Doctor.

5 THE WITNESS: Good afternoon.

6 THE COURT: Sit back, be comfortable,
7 keep your voice up. Be as direct and succinct
8 as possible in your responses.

9 MR. McCORIE: May I inquire?

10 THE COURT: Yes.

11 DIRECT EXAMINATION

12 BY MR. McCORIE:

13 Q Good afternoon, Dr. Merola.

14 A Good afternoon.

15 Q Dr. Merola, have you and I ever met prior
16 to your involvement with Reynauld Rivera's case?

17 A Yes.

18 Q Prior to your involvement with this case?

19 A Oh, no.

20 Q Have you ever testified before a jury in
21 court ever?

22 A No.

23 Q Please tell the jury something about your
24 educational background, and just for clarity, the
25 jury knows what an internship is and they know what

Dr. Merola - for Plaintiffs - Direct

1 a residency is. So if you could take us from your
2 education to where you currently are working now and
3 what you do.

4 A I did my internship and residency at Kings
5 County Hospital Center in Brooklyn, New York; State
6 University of New York, Downstate Medical Center.
7 That's where I did most of my training.

8 Subsequently, I went to the University of
9 Colorado in Denver to do a spine surgical
10 fellowship. After I completed my fellowship, I
11 returned to Kings County Hospital, SUNY Downstate in
12 Brooklyn, as well as St. Vincent's Hospital in
13 Manhattan where I practice spine surgery. I'm the
14 Director of Spine Surgery for the Department of
15 Orthopedic Surgery at SUNY Downstate, Kings County
16 Hospital.

17 Q Do you have hospital privileges elsewhere?

18 A Yes, I do.

19 Q Where do you have hospital privileges?

20 A I have privileges at Kings County, SUNY
21 Downstate, Long Island College Hospital, New York
22 Methodist Hospital, St. Vincent's Hospital and
23 Brookdale Hospital.

24 Q And do you have any teaching or academic
25 positions?

Dr. Merola - for Plaintiffs - Direct

1 A Yes, I do. I'm Assistant Professor of
2 Orthopedic Surgery at SUNY Downstate as well as an
3 Assistant Clinical Instructor of Orthopedics at New
4 York Medical College.

5 Q Where did you go to medical school?

6 A Howard University College of Medicine,
7 Washington, D.C.

8 Q And how about undergraduate?

9 A Undergraduate, New York University.

10 Q Please tell us about any licenses that you
11 hold.

12 A Currently I hold a medical license here in
13 the State of New York, New Jersey and Colorado.

14 Q Are you board certified in any areas?

15 A I am board certified in orthopedic surgery
16 and spinal surgery.

17 Q Was that a separate board certification,
18 the one for spinal surgery?

19 A Yes, it was.

20 Q Have you ever authored any textbooks?

21 A Yes.

22 Q Author or editor, and, if so, tell us what
23 and when.

24 A Yes, I have. Currently I am editing a
25 textbook concerning surgical atlas of spinal

Dr. Merola - for Plaintiffs - Direct

1 approaches and anatomy. I have edited a two-volume
2 set on the biomechanics of the spine. I have been a
3 coauthor for several spinal surgical chapters in
4 various spinal surgical texts.

5 Q How many texts would you say you have been
6 either a coauthor in or had part in?

7 A Approximately four to five texts.

8 Q Are you published in the area of spinal
9 surgery?

10 A Yes, I am.

11 Q Just tell the jury briefly something about
12 your publications.

13 A Most of my publications are either in the
14 Journal of Bone and Joint Surgery or spine, and they
15 deal with topics relating to spinal surgical
16 problems and spinal reconstruction.

17 Q Approximately how many publications do you
18 have in the Journal of Spinal Surgery?

19 A I would say in excess of ten to fifteen
20 publications.

21 Q What is the American Academy of Orthopedic
22 Surgeons?

23 A The Academy of Orthopedic Surgeons is a
24 fellowship of all the orthopedic surgeons in the
25 United States that are currently board certified and

Dr. Merola - for Plaintiffs - Direct
1 practice orthopedic surgery.

2 Q Are you a member of that?

3 A Yes, I am.

4 Q How about the Orthopedic Trauma
5 Association, what is that?

6 A The Orthopedic Trauma Association is an
7 association of orthopedic traumatologists who deal
8 primarily with injuries and problems occurring with
9 fractures or derangements of the musculoskeletal
10 system.

11 MR. McCORIE: Although Dr. Merola
12 has never been in a court or been certified as
13 an expert, I ask your Honor accept him as an
14 expert in the area of orthopedic surgery,
15 specifically orthopedic spinal surgery.

16 MR. COHEN: I have no objection,
17 Judge.

18 THE COURT: There being no objection,
19 based on education, training, and experience,
20 this witness is so declared an expert in the
21 field of orthopedics, more particularly
22 orthopedic surgery.

23 Q We know you haven't testified. Have you
24 been involved in any cases where litigation is
25 involved where you have had to provide a narrative

Dr. Merola - for Plaintiffs - Direct

1 report?

2 A Yes.

3 Q Approximately how many times a year in
4 your practice would you have to provide a narrative
5 report?

6 A I'd say in the neighborhood of maybe three
7 to four times.

8 Q Are you charging for your time in court
9 today?

10 A Yes, I am.

11 Q Did you have to reschedule patients and/or
12 cancel surgeries today?

13 A Yes, I did.

14 Q And, incidentally, you were supposed to go
15 on in the morning. Do you have patients currently
16 waiting in your office?

17 A Yes, I do.

18 Q How much are you charging for your time
19 away from your practice?

20 A It's \$6,000 for the day.

21 Q And how much did your office charge my
22 office to prepare a narrative report?

23 A \$600.

24 Q And how about to meet -- withdrawn.

25 You and I met prior to testifying here today;

Dr. Merola - for Plaintiffs - Direct

1 correct?

2 A Yes, we did.

3 Q I also bought you an egg salad sandwich in
4 addition to all of the other?

5 A Yes, you did.

6 Q And we talked about the case at lunch?

7 A Yes.

8 Q Your testimony?

9 A Yes.

10 Q When did we meet physically for the first
11 time?

12 A Sometime last week.

13 Q And where was that?

14 A In my office.

15 Q Was I charged for that?

16 A Yes, you were.

17 Q And how much was that testimony
18 preparation fee?

19 A \$800.

20 Q How long did that last?

21 A A number of hours.

22 Q Approximately how many spinal surgeries do
23 you do per year, Doctor?

24 A In the neighborhood of 150 to 175,
25 depending upon the year.

Dr. Merola - for Plaintiffs - Direct

1 Q Is Mr. Rivera a patient of yours, Reynauld
2 Rivera?

3 A Yes, he is.

4 Q How did Reynauld Rivera come to be a
5 patient of yours?

6 A Mr. Rivera was referred to me by Dr.
7 Charles DeMarco for evaluation.

8 Q And when he was referred by Dr. DeMarco
9 for an evaluation, what was he referred for,
10 specifically?

11 A Problems with his neck and his arms.

12 Q When he was referred, what, if anything,
13 did Comprehensive Care -- well, what, if anything,
14 did Dr. DeMarco or Dr. DeMarco's office send to you
15 for your review?

16 A They sent an initial M.R.I. report on him.

17 Q And when, if ever, did you view the M.R.I.
18 films that correlate to the initial M.R.I. report?

19 A I reviewed his films prior to his surgery.

20 Q How many times -- the jury knows when the
21 surgery was in July of 2001. Approximately how many
22 times -- withdrawn. Do you have your file here
23 today?

24 A Yes, I do.

25 Q Is that your full file?

Dr. Merola - for Plaintiffs - Direct

1 A Yes.

2 Q And is that file kept in the regular
3 course of your business?

4 A Yes, it is.

5 Q And are you aware of your office's
6 record-keeping procedures?

7 A Yes, I am.

8 Q Did you physically retrieve that file from
9 the office today?

10 A Yes, I did.

11 MR. McCORIE: Your Honor, I'd offer
12 Dr. Merola's file in as Plaintiffs' 37.

13 THE COURT: Share it with defense
14 counsel.

15 MR. McCORIE: Yes, they have looked
16 at it before.

17 MR. COHEN: Subject to any
18 redactions, I have no objection.

19 THE COURT: Ma'am?

20 MS. GOLDBER: No, no objection.

21 THE COURT: Likewise.

22 What has previously been marked as
23 Plaintiffs' Number 37 is now offered and
24 received in evidence as Plaintiffs' Number 37.

25 (Whereupon, Plaintiffs' Exhibit

Dr. Merola - for Plaintiffs - Direct

1 Number 37, Dr. DeMarco's file, was received in
2 evidence and marked.)

3 THE COURT OFFICER: So marked as
4 indicated.

5 Q Doctor, your file is now in evidence and
6 if you need to read from it, you can.

7 Doctor, did you, other than speaking to Dr.
8 DeMarco, take a history from Reynauld Rivera?

9 A Yes, I did.

10 Q And when was your first visit -- when did
11 Reynauld Rivera first come into your office and meet
12 with you?

13 A February 2, 2001.

14 Q And at that time he was being referred
15 specifically for a cervical condition?

16 A Yes.

17 Q Do you know when -- withdrawn.
18 What was the history as taken?

19 A Mr. Rivera indicated to me that he was a
20 truck driver who had been involved in a head-on
21 motor vehicle collision on July 14 of 1998 and had
22 suffered neck pain and some weakness and symptoms in
23 his arms and hands since that accident.

24 Q Doctor, why is the mechanism of an injury
25 important?

Dr. Merola - for Plaintiffs - Direct

1 A Mechanism is very important because it
2 gives me some kind of an idea on what I'm dealing
3 with in terms of magnitude of the problem, what
4 created the problem and what possible solutions I
5 could come up with for that problem.

6 Q And did Mr. Rivera tell you he struck his
7 head on the windshield? Did he ever indicate that
8 in another report?

9 A Yes.

10 Q And you have seen the pictures of the
11 car. I showed them to you; right?

12 A Yes.

13 Q What was your initial diagnosis of
14 Reynauld Rivera's condition based on what he had
15 told you and Dr. DeMarco told you?

16 A My initial diagnosis was one of cervical
17 myelopathy.

18 Q Tell the jury what myelopathy means?

19 A Myelopathy means there is a problem with
20 the spinal cord and nerve roots of the neck
21 secondary to a neck problem.

22 Q And on February 2, 2001 what was that
23 cervical myelopathy secondary to, according to your
24 initial diagnosis?

25 A Giant herniated disk.

Dr. Merola - for Plaintiffs - Direct

1 Q Did there come a time when you reviewed
2 the M.R.I. films that correlate to the 2001 -- I'm
3 sorry, excuse me, correlate to the 1999 report of
4 Dr. Sprecher that is in your file?

5 A Yes.

6 Q And did you do that before the surgery?

7 A Yes.

8 Q When, if ever, did you order a follow-up
9 M.R.I. prior to the surgery?

10 A I had seen several M.R.I.s before the
11 surgery that happened after that '99 M.R.I.

12 Q And when was surgery first discussed with
13 Mr. Rivera?

14 A We actually talked about surgery in
15 February of 2001.

16 Q Did you actually fill out an authorization
17 to request the surgery in February of 2001?

18 A I don't remember exactly when the request
19 was put in.

20 Q Would it be located within your file?

21 A Yes.

22 MR. McCORIE: Your Honor, if it's
23 not in his file, I'm going to have this marked
24 as 38-A -- 38, I'm sorry.

25 THE COURT: I believe the doctor

Dr. Merola - for Plaintiffs - Direct

1 found it.

2 MR. McCORIE: Continue?

3 THE COURT: He found it.

4 A February 5, 2001, request for surgery.

5 Q And was that to the Workers' Compensation
6 Board?

7 A Yes.

8 Q And what type of surgery were you
9 requesting on February 5, 2001?

10 A Anterior cervical diskectomy and fusion.

11 Q What type of surgery did you do in July of
12 2001?

13 A Anterior surgical diskectomy and fusion.

14 Q What does cervical spondylitic myelopathy
15 indicate or mean?

16 A It indicates a problem with the spinal
17 cord and nerve roots at multiple levels within the
18 cervical spine.

19 Q Doctor, when a disk herniates at one
20 level, are the disks at the levels above and below
21 more susceptible to degeneration or to injury?

22 A Yes, they are.

23 Q Why is that?

24 A What happens is when you have a problem
25 with the disk at one of the levels, the other levels

Dr. Merola - for Plaintiffs - Direct

1 that are adjacent to it need to take up the stresses
2 and strains that were originally taken up by the
3 disk injury at that given level. So those other
4 levels are under more stress and strain, and they
5 have to move more and in a different fashion to
6 compensate for the area that's been injured.

7 MR. McCORIE: Your Honor, I'm going
8 to have these marked 38 and 39.

9 THE COURT: Plaintiffs' 38 and 39.

10 MR. McCORIE: For identification.
11 They are the M.R.I. films. I would like them
12 to go into evidence as all the others have.

13 THE COURT: We'll move them at the
14 appropriate moment.

15 MR. COHEN: Judge, can we approach?

16 THE COURT: Yes.

17 (An off-the-record discussion was
18 held at the bench.)

19 (Whereupon, Plaintiff's Exhibit
20 Numbers 38 and 39 were marked for
21 identification.)

22 THE COURT: Mr. McCorie.

23 MR. McCORIE: Yes. I'm sorry. 38
24 and 39, they are right there.

25 THE COURT: Do we have any

Dr. Merola - for Plaintiffs - Direct

1 objection?

2 MR. COHEN: I object, your Honor.

3 MS. GOLDBER: I join.

4 MR. McCORIE: I'll go through the
5 questioning.

6 THE COURT: Yes, all right.

7 Objections are noted.

8 Q Doctor, we have been putting them up --

9 MR. COHEN: Your Honor, there is an
10 objection.

11 THE COURT: First, have you moved
12 them into evidence?

13 MR. McCORIE: No, your Honor.

14 THE COURT: You're not? They're just
15 for identification.

16 Q Doctor, you are being shown 38 and 39 for
17 identification and identification only. Did you
18 review those films from July of 1999 prior to doing
19 the surgery on Mr. Rivera? Yes or no?

20 A Yes.

21 Q And did you render your own interpretation
22 of those films prior to looking at the second set of
23 films as well of June 29, 2001?

24 A Yes.

25 Q And did you, when I was in your office,

1 Dr. Merola - for Plaintiffs - Direct
2 compare the blow-ups that are before you to the
3 original M.R.I. films with a shadowbox?

4 A Yes.

5 Q And is what's before you, 38 and 39, an
6 exact replica of certain views of the cervical
7 M.R.I. of July of 1999?

8 A Yes.

9 Q And are they the exact views just larger
10 so the jury can see them?

11 A Yes.

12 MR. McCORIE: I move them into
13 evidence, your Honor.

14 MR. COHEN: I object, your Honor.
15 Improper foundation.

16 MS. GOLDBER: I join.

17 THE COURT: Over the objection of
18 defense counsel, what's previously marked as
19 Plaintiffs' 38 and 39 for identification is now
20 so marked as having been moved into and
21 received in evidence as 38 and 39, Plaintiffs,
22 and the exceptions of both counsel are noted.

23 (Whereupon, Plaintiffs' Exhibit
24 Numbers 38 and 39, blowups of July '99 M.R.I.s,
25 were received in evidence and marked.)

THE COURT OFFICER: So marked as

Dr. Merola - for Plaintiffs - Direct

1 indicated.

2 Q We could take down the dermatome chart and
3 the other M.R.I. behind it or we can put these up
4 right next to it. That's fine. Thank you.

5 Doctor, we will put 38 on the left and 39 on
6 the right; and if I ask you to mark anything, it
7 will be with the blue pen, blue marker.

8 Doctor, looking at 38 -- withdrawn. Looking at
9 39 on the right, what, if anything, is significant
10 about the C3-C4 disk level?

11 A The C3-4 disk level -- should I mark it
12 out?

13 Q Yes. First tell the jury what is
14 significant about the C3-4 level from the 1999 film?

15 A The C3-C4 disk level indicates an
16 extrusion of discal material into the spinal canal
17 up against the spinal cord.

18 Q Could you please circle that one on the
19 right, which is 39, could you please circle that
20 extrusion that you're talking about.

21 (The witness is complying.)

22 Q Right next to that write the word "C3-C4."

23 (The witness is complying.)

24 MR. McCORIE: Thank you, Doctor.

25 Q Now, at the C4-C5 level, the level below

Dr. Merola - for Plaintiffs - Direct

1 it, what, if anything, is significant?

2 A There is an extrusion of discal material
3 into the spinal canal at the 4-5 level as well.

4 Q Okay. Please circle that and indicate
5 where the 4-5 level is.

6 (The witness is complying.)

7 Q And what about at the C5-C6 level on the
8 '99 films?

9 A The 5-6 level also indicates an extrusion
10 of discal material into the spinal canal.

11 Q Can you please indicate where the C6 level
12 is.

13 (The witness is complying.)

14 Q Doctor, in the film next to that, 38, you
15 don't appear to see the C3-C4 herniation. Is it
16 still there?

17 A Yes, the herniation is still there.

18 Q Please circle where the C3 -- well,
19 withdrawn.

20 Please indicate on 38, Plaintiffs' 38, where
21 C3-C4, C5-C6, all of the levels you have previously
22 indicated for the jury, and tell us what you're
23 indicating?

24 A We normally count down from the top. C2
25 is always very easy to see, so we use C2 to count

Dr. Merola - for Plaintiffs - Direct

1 from. That's C2. This is C3. Below that, C4.

2 Q And where is the extrusion at C3-C4?

3 A You see an edge of the extrusion here.

4 Q And how do you explain only seeing an edge
5 where we see it in full on the view right next to
6 it?

7 A These represent multiple cuts or sections
8 through the neck taken at different depths as you go
9 across the neck from side to side, and what happens
10 is this and this little shadow area down here tells
11 you where that particular cut is taken.

12 As it cuts across the neck, different areas of
13 that disk herniation come into view. So it's like
14 looking at it from different angles.

15 Q Doctor, can I stop you.

16 If one were to look at the C3-4, one might miss
17 the herniation if they didn't look at all the
18 levels? You can miss a herniation; correct?

19 A Yes.

20 Q Okay, continue, please.

21 A This is the C5 level.

22 Q Do we see the protrusion you spoke about
23 on this?

24 A Yeah, it's right here.

25 Q And just make sure you leave some space

Dr. Merola - for Plaintiffs - Direct

1 after the protrusion so you don't cover it with the
2 pen.

3 How about the C5-6 level, do we see a
4 protrusion in the '99 films?

5 A Yes, we do. There is also discal material
6 observed here protruding behind the C5-6 level.

7 Q What does the term "contiguous" mean?

8 A Contiguous means a part of or joined to.

9 Q Is the material at the C5-C6, the disk
10 material that you just testified, is that contiguous
11 with the disk material?

12 A Yes, it is. It's absolutely the same
13 piece of material.

14 Q Just don't draw on that because we'll need
15 it for the other witnesses.

16 Do you see any osteophyte pressing at the C5-C6
17 level into the thecal sac?

18 A There is no osteophyte visible at 5-6, at
19 the 5-6 level.

20 Q We're going to get to the surgery a little
21 later.

22 When you did the surgery, you could actually
23 see the C5-6 level?

24 A Yes.

25 Q Were there any osteophytes, other than the

Dr. Merola - for Plaintiffs - Direct

1 M.R.I.s, when you physically looked at the C5-6
2 level?

3 A No.

4 Q So if a doctor were to come in here and
5 testify that not only does he see them in '99 and
6 that's what was pushing in there, he would be
7 incorrect according to you?

8 A Yes.

9 Q The man who actually went in and saw the
10 neck; correct?

11 A Yes.

12 THE COURT: May the doctor be
13 seated?

14 MR. McCORIE: Yes. Doctor, thank
15 you.

16 Q Were the risks of surgery explained to
17 Mr. Rivera?

18 A Yes.

19 Q And is that an elective surgery?

20 A Yes.

21 Q What does elective surgery mean?

22 A Elective surgery means that it's not life
23 or death. It's something where we sit down together
24 and both the patient and I go over the good things
25 about surgery and the bad things, and then that

Dr. Merola - for Plaintiffs - Direct

1 allows the patient an opportunity to make a decision
2 about whether or not they want to undergo an
3 operation.

4 Q What are the risks of an anterior cervical
5 diskectomy and fusion? We are going to discuss what
6 those words mean. What are the risks? What were
7 they as described to Mr. Rivera?

8 A The risks of surgery are essentially the
9 risks of any surgery because they involved
10 anesthetic and a general anesthetic; and the risks
11 of any general surgical procedure are the risk of
12 anesthesia, the risk of infection, the risk of
13 bleeding, the risk of having a medical problem
14 happen either after or before the operation.

15 The risks specific to cervical disk surgery
16 involve the risk of neurological damage because of
17 the surgery, the risk to the overlying structures
18 within the neck itself, the esophagus, the windpipe,
19 the vertebral arteries. Since I'm doing a fusion,
20 gluing the bones together, there is a risk that
21 fusion may not heal and that it may need to be
22 redone. There is also a risk that since I'm
23 altering the mechanics of the neck, that the levels
24 that are adjacent to that area that are operated on
25 may degenerate over time and require another

Dr. Merola - for Plaintiffs - Direct

1 operation.

2 Q Doctor, I'm sorry. Are you done?

3 A Yes.

4 Q Was another M.R.I. -- withdrawn. We know
5 the other M.R.I. was done. Did you ever see the
6 M.R.I. of 6/29/2001?

7 A Yes.

8 Q Doctor, I'm going to put up Plaintiffs' 25
9 in evidence.

10 Doctor, Plaintiffs' 25 in evidence is the
11 6/29/01 film. The levels are already marked.

12 With your blue pen, can you please indicate --
13 withdrawn. What was significant on your
14 interpretation of the 6/29/01 films with regard to
15 what was previously called the giant herniated disk
16 at C3-C4?

17 A The M.R.I. from 6/29/01 shows us that
18 there has been resorption of that extruded material
19 at C3-4.

20 Q Tell them what that word means?

21 A That means the body has kind of eaten up
22 that material and dissolved it from within the
23 spinal canal so that you no longer see that material
24 in there.

25 Q And is the disk still herniated?

Dr. Merola - for Plaintiffs - Direct

1 A The disk itself remains damaged and
2 herniated with the exception of that material that's
3 been resorbed from the cervical canal.

4 Q And please indicate on any of the views
5 where the C5-C6 level is, the level you did the
6 surgery at a month after this M.R.I.

7 A Sure. This is the --

8 Q Could you circle that, please.

9 A This is the 5-6 level down here.

10 (The witness is complying.)

11 Q Why did you do the surgery at the C5-C6
12 level, Doctor?

13 A Prior to the surgery itself, that was his
14 most symptomatic level.

15 Q Tell them how you know the C5-C6 was
16 symptomatic prior to the surgery?

17 A His hand complaints, his arm and hand
18 complaints.

19 Q And the jury has already seen a dermatome
20 chart. Why would hand complaints be significant in
21 talking about a C5-C6 -- withdrawn, because I'm
22 going to use a word. You said these were
23 protrusions. Are they herniations?

24 A Yes.

25 Q Is it a herniation at the C5-C6 in July of

Dr. Merola - for Plaintiffs - Direct

1 '99 according to your interpretation before you
2 even did the surgery?

3 A Yes.

4 Q And is there a herniation at the C4-C5 on
5 the other films that we looked at, the '99 films?

6 A Yes.

7 Q And is there a herniation on the '99 films
8 at the C3-C4 level?

9 A Yes.

10 Q And are there herniations at all three
11 levels at the 2001 films?

12 A Yes.

13 Q Do you see any osteophytes at C4-C5 on
14 Plaintiffs' 25, 2001?

15 A No.

16 Q If an osteophyte happened to be there, is
17 it ever possible that the osteophyte got knocked off
18 by a new herniation and fell down the spinal canal?
19 Is that even possible?

20 A No.

21 Q Can an osteophyte be knocked off and fall
22 down the spinal canal?

23 A No.

24 Q So you would also disagree if another
25 doctor were to come in here and say that what we

Dr. Merola - for Plaintiffs - Direct

1 looked at on Plaintiffs' 25 is not a herniation but
2 osteophytes that are pushing in on the spinal canal?

3 A Yes.

4 Q How about disk desiccation on the older
5 films? Did you note any disk, significant disk
6 desiccation at the C5-C6 level on the films from
7 '99?

8 A Disk desiccation is not present on the '99
9 films.

10 Q How about at the 3-4 or the 4-5 levels?

11 A No, there is none.

12 Q And how about at the ones you just marked,
13 Plaintiffs' 25, the 2001, is there significant disk
14 desiccation, yes or no, at the 3-4?

15 A No.

16 Q The 4-5?

17 A No.

18 Q The 5-6?

19 A Disk space collapse with a mild amount of
20 desiccation at C5-6.

21 Q Can the disk space narrow through trauma,
22 say, a head hitting a windshield at a high speed?

23 A Yes.

24 Q And if a disk had been herniated a year
25 before and it took a year because of authorizations

Dr. Merola - for Plaintiffs - Direct

1 to get an M.R.I., could the disk get narrow within
2 that year?

3 A Yes.

4 Q Doctor, did we go over several
5 illustrations when I met with you that would aid you
6 in discussing what a cervical anterior diskectomy
7 is?

8 A Yes, we did.

9 MR. McCRORIE: Your Honor, for
10 identification only, previously shown to
11 defense counsel, I would like these marked as
12 Plaintiffs' 40 and 41 for I.D. only.

13 THE COURT: Deemed for identification
14 only.

15 MR. McCRORIE: They are deemed 40 and
16 41.

17 MR. McCRORIE: I don't know which one
18 is 40 and 41.

19 Q Using Plaintiffs' 40 first, and we'll mark
20 them later for identification, please put it up with
21 the other and you can stay at your seat and just
22 describe what we see.

23 What are we looking at there, Doctor?

24 A We are looking at two vertebral bodies
25 with a disk being removed in the middle of those

Dr. Merola - for Plaintiffs - Direct

1 vertebral bodies.

2 Q Obviously, that disk is a herniated disk?

3 A Yes.

4 Q How do you remove the disk once you get
5 into the neck, and we are going to go through your
6 operative report, but how do you remove the disk?

7 A You take some very small instruments that
8 can fit into the disk space and then start to kind
9 of pick away and remove portions of discal
10 material. When you have removed about a half of it
11 or so, you bring a microscope into your operation
12 and then use a microscope to remove the portions
13 that you actually can't see with your eyes until you
14 get all the way back into the spinal canal where the
15 spinal cord is.

16 Q And then do you take the disk out to
17 relieve any pressure on the spinal cord?

18 A Yes.

19 Q Plaintiffs' 41 looks like there is a drill
20 involved. Please tell the jury what happens to
21 someone's vertebral body once the disk is out?

22 A After the disk is removed, what I do is
23 take a drill with this rotating drill bit bur on the
24 outside of it and then bur down or remove the upper
25 and bottom most portion of that vertebral space to

Dr. Merola - for Plaintiffs - Direct

1 prepare that space to accept a bone graft or a cage
2 or something to keep that space separated and glue
3 the bones back together again. This is the fusion
4 portion of the procedure.

5 Q And the patient is under anesthesia
6 obviously?

7 A Yes.

8 MR. McCORIE: Plaintiffs' 31, the
9 record of St. Vincent's Hospital, is already in
10 evidence, your Honor. I'd like these deemed
11 and we can mark them later 31-A, B and C, the
12 operative report.

13 THE COURT: So deemed.

14 Q Doctor, I'm going to put the operative
15 report up and maybe you can stand and just explain,
16 go through the surgery as it was done on Mr. Rivera
17 on July 16, 2001.

18 Well, first of all, this is your report just
19 unsigned?

20 A Yes.

21 Q And you dictated that report?

22 A Yes.

23 Q Please tell the jury what procedure was
24 performed, first of all, and you can, if you need to
25 point, you can point with the marker.

Dr. Merola - for Plaintiffs - Direct

1 A Sure. The procedure performed was an
2 anterior cervical diskectomy and fusion with plate
3 and prosthetic spinal device, bone graft,
4 intraoperative fluoroscopy, intraoperative
5 somatosensory-evoked potential monitoring.

6 Q We have already spoken about the fusion,
7 the plate. What is intraoperative fluoroscopy?

8 A That involves using an x-ray machine
9 during the operation to make sure that I'm at the
10 appropriate level and the instrumentation that I put
11 in there is where it has to be, where the screws
12 need to be and where the actual plate and devices
13 are so that I know I have done the job that I think
14 I have done.

15 Q And the word under, intraoperative somato
16 --

17 A Somatosensory-evoked potential monitoring.

18 Q What does that mean?

19 A That is during the case I have a
20 neurological technician hook the patient up to a
21 computer that monitors their brain and their spinal
22 cord during the case and that does two things.
23 Number one, it tells me that I'm not doing anything
24 bad to their spinal cord during the procedure, and
25 it also tells me if and when I relieve pressure, if

Dr. Merola - for Plaintiffs - Direct

1 I have done a good job of relieving pressure.

2 Q Doctor, the anesthesia is called -- what
3 is that right there, the word?

4 A General endotracheal.

5 Q Just tell the jury what type of anesthesia
6 that is, general?

7 A It means the patient is put to sleep and
8 the anesthesiologists are breathing through a tube
9 for them.

10 Q What was your preoperative diagnosis and
11 postoperative diagnosis?

12 A Preoperative diagnosis is cervical
13 spondylitic myelopathy, and the postoperative
14 diagnosis is the same.

15 Q And I know it's on the page after this,
16 but what level did you do the fusion at?

17 A C5-6.

18 Q Why didn't you do the other levels that
19 you say are still herniated at the time you did the
20 C5-C6?

21 A What I like to do is, generally, my
22 philosophy regarding surgery is to do the least
23 amount of surgery for the most good. So I usually
24 operate on the level that's the most symptomatic.
25 You can operate on all these levels, but the more

Dr. Merola - for Plaintiffs - Direct

1 surgery you do, the more you increase your
2 postoperative complication rate and the more you may
3 increase the chances of having degeneration below
4 the areas that you have operated on because you're
5 making a stiffer, longer cervical spine.

6 Q Prior to the second M.R.I. of June 2001
7 did you know which level you were definitely going
8 to operate on?

9 A Say that again, please.

10 Q Prior to looking at the second M.R.I.
11 where we see that the C3-C4 previously called giant
12 had sucked some of itself back in, had you known
13 exactly which level you were definitely going to
14 operate on?

15 A No.

16 Q And is that why the second M.R.I. was
17 useful to you?

18 A Yes.

19 Q Please continue with -- actually, you
20 could skip it if it's very basic, but please go
21 through the operative report.

22 A Sure.

23 Q And what you dictated?

24 A Okay. So I start off with an indication
25 of why I'm doing the procedure which essentially

Dr. Merola - for Plaintiffs - Direct

1 says that I'm operating on a 48-year-old gentleman
2 who has had difficulty with his hands, dropping some
3 objects, and weakness in both his hands and upper
4 extremities.

5 Physical examination was significant for what's
6 known as a Lhermitte's sign and positive
7 pathological reflexes.

8 Q What are Lhermitte's signs?

9 A Lhermitte's signs basically when you move
10 the patient's neck, if you put pressure on their
11 cord or their nerve roots, you can stimulate
12 electrical sensations going into the hands. It's
13 what we call a provocative test to tell you you are
14 operating on the right thing basically.

15 Q And just to move it along, it just states
16 here he was put up on the operating table, and
17 anything you feel is significant you can please read
18 to us.

19 A Basically, after the patient is
20 positioned, I do an approach to the cervical spine
21 which involves splitting the muscles of the neck,
22 getting down to the area of the neck that we are
23 interested in operating on, confirming that I'm at
24 the right level with the fluoroscopic picture.

25 After that's done, I put all my retractors in

Dr. Merola - for Plaintiffs - Direct

1 there to hold everything open so that I can do the
2 procedure without having to hold on to things. I
3 remove the disk. I fashion the end plates with the
4 bur, as we saw before. I then take the
5 instrumentation and bone graft, size it so that it
6 fits his neck and his bones, place it down onto his
7 neck and his bones, take a confirmatory fluoroscopic
8 view after that. If everything looks great, close
9 the wound that I have created and then wake him up
10 and bring him to the recovery room.

11 Q Please describe in more detail the spinal
12 prosthetic mesh cage?

13 A That is a spacer that you fill with bone
14 graft. It looks a lot like chicken wire. It's very
15 small. It's very light. It's hollow on the inside,
16 and it has a lot of holes in it so you can fill that
17 up with bone graft. It keeps the vertebral bodies
18 apart and gives the bone graft that's on the inside
19 that you put in between the vertebral bodies a
20 chance to heal while helping give the neck immediate
21 stability so that they can cough, sneeze, move
22 around after the operation and not have to worry
23 about having your neck fall apart.

24 Q And the spinal needle that was put into
25 him, that was just for purposes of the

Dr. Merola - for Plaintiffs - Direct

1 intraoperative fluoroscope?

2 A The needle is the first thing I put into
3 the disk to localize that disk. If I'm at the wrong
4 level, the needle doesn't do any damage and I can
5 make sure I go to the right level.

6 Q And this next page is telling us he was
7 sutured then?

8 A Yes.

9 Q Doctor, I'm going to ask you some
10 hypotheticals, and then we are almost through.

11 Assume with regard to the first M.R.I. of July
12 of 1999, assume that Mr. Rivera was in a head-on
13 collision where he came up out of his seat and hit
14 the windshield of his truck after a head-on
15 collision. He was not belted.

16 Assume that he had immediate onset of neck pain
17 that he had never had before. Assume further he had
18 never been to a neck doctor. There are no records
19 of any doctors that he had ever been to; that he had
20 previously been able to work and provide for his
21 family.

22 Assume further that he started treating with a
23 doctor -- withdrawn. Assume that he went to two
24 emergency rooms complaining of neck pain. Assume
25 further that he had pain in his arms in a clinic

Dr. Merola - for Plaintiffs - Direct

1 five days later and that a few months after that he
2 started treating with Comprehensive Care of New York
3 for radiating pains down his arms and that he had
4 never had this beforehand.

5 Assume further after authorization is given the
6 M.R.I. is done and it shows the herniations. Let's
7 just speak about the 3-4 one, the giant one.

8 Do you have an opinion with a reasonable degree
9 of medical certainty as to the cause of the C3-C4
10 herniation as it existed on the July 6, 1999 M.R.I.?

11 A My opinion with respect to the C3-4 disk
12 herniation and that M.R.I. is that the motor vehicle
13 accident that he was in was the cause of that giant
14 disk herniation.

15 Q All of your opinions, Doctor, will be with
16 a reasonable degree of medical certainty unless you
17 state otherwise.

18 How about at the level below it, the C4-5?
19 What is your opinion with regard to that as to the
20 cause?

21 A The C4-C5 disk herniation was caused by
22 the accident.

23 Q And how about in July of '99, the C5-C6
24 herniation that you testified to, what was the cause
25 of that?

Dr. Merola - for Plaintiffs - Direct

1 A The C5-C6 herniation was caused by the
2 accident.

3 Q Doctor, assume further that Mr. Rivera
4 continues treating, continues feeling pain and
5 weakness in the extremities and radiating pain down
6 his arms for another two full years. Assume he had
7 a minor car accident and that the symptoms hadn't
8 changed from before the car accident in April of
9 2001 until after the car accident in 2001, and they
10 didn't change up until the time the second M.R.I. is
11 done on June 29th, 2001.

12 Do you have an opinion -- withdrawn. And
13 assume further that the car accident didn't require
14 emergency room care and that Mr. Rivera, in fact,
15 waited to even speak to his doctor about it until
16 his regularly-scheduled Workers' Compensation
17 approved appointment a few days later spaced out.

18 Do you have an opinion with a reasonable degree
19 of medical certainty as to what the cause of the
20 C3-C4 herniation is as it exists on the June 29,
21 2001 M.R.I.?

22 MR. COHEN: Your Honor, I object to
23 the phraseology in the hypothetical.

24 THE COURT: If the witness
25 understands, I will allow it.

Dr. Merola - for Plaintiffs - Direct

1 Q Does your opinion change with respect to
2 the herniation, the cause of the herniation at the
3 C3-C4 level with a reasonable degree of medical
4 certainty on the second set of M.R.I. films that you
5 reviewed?

6 A My opinion does not change, no.

7 Q How about at the C4-C5 level, does your
8 opinion change with regard to the herniation at
9 C4-C5, the cause of it?

10 A No, it does not.

11 Q What is your opinion, for the record, I
12 know the jury knows it, but for the record the
13 cause?

14 A That the primary motor vehicle accident
15 was the cause of the herniated disks.

16 Q What date would that motor vehicle
17 accident be, the April 2001 or the July 14, 1998?

18 A July 14, 1998.

19 Q And how about the herniation at C5-C6 as
20 it exists on June 29, 2001, the one you say has no
21 osteophytes and has contiguous disk material pushing
22 outward, what would be the cause of that with a
23 reasonable degree of medical certainty?

24 A Also the July 14, 1998 accident.

25 Q Now, had the herniation not been there and

Dr. Merola - for Plaintiffs - Direct

1 had there been a new car accident, just knowing
2 those facts in and of themselves, you wouldn't be
3 able to state with certainty that the cause was the
4 first accident?

5 Assume Dr. Sprecher's report is correct and
6 there is nothing wrong. So assume it's not as you
7 say it is and it's not as Dr. Kolb says it is.
8 Assume it's wrong and Dr. Sprecher's report is
9 correct and now a herniation shows up and there is a
10 car accident, minor or not minor, would you be able
11 to state with a reasonable degree of medical
12 certainty as to what the cause was?

13 A No, I would not.

14 Q What is your prognosis with regard to
15 Mr. Rivera's neck condition?

16 A My prognosis with respect to his neck is
17 guarded.

18 Q And what about the levels above it that
19 haven't been operated on, the two herniations that
20 haven't been operated on, with a reasonable degree
21 of medical certainty, and we know there is no
22 crystal ball and that's why we do it with a
23 reasonable degree of certainty, what is your opinion
24 as to whether Mr. Rivera will require surgeries at
25 those levels?

Dr. Merola - for Plaintiffs - Direct

1 A My opinion is that those levels need to be
2 watched over time to see whether or not they
3 progress into symptomatic levels or incur a
4 neurological problem.

5 Q And do you have an opinion with a
6 reasonable degree of medical certainty as to whether
7 he will need surgeries at those levels?

8 A It is my opinion that as he ages the
9 probability of him requiring further surgery is
10 good.

11 Q "Good" meaning likely or unlikely?

12 A More likely than not.

13 Q And at which levels would that be?

14 A Either 3-4 or 4-5.

15 Q And, again, we discussed those other
16 levels above, do the levels below the 5-6, is there
17 any prognosis with regard to them? Does the fact
18 that a surgery has been done above them affect, have
19 any affect with a reasonable degree of medical
20 certainty?

21 A The levels below are also at risk, but
22 having two damaged levels up on top of the area
23 where the fusion is, it's more likely that those
24 levels will cause a problem in the future.

25 Q With regard to Reynauld Rivera going back

Dr. Merola - for Plaintiffs - Direct

1 to the work force and driving, we're just speaking
2 about working as a driver, would it be advisable,
3 with a reasonable degree of medical certainty, for a
4 man who has had the prosthetic plate in his neck who
5 still has two herniations, is it advisable for him
6 to stop working in a job where he would need to keep
7 his head erect for hours at a time?

8 A Yes, it is advisable for him to stop that.

9 Q How about any type of manual labor,
10 assuming he's required to work for hours at a time?

11 A I would not recommend manual labor.

12 Q How about working on a computer or talking
13 on a phone, assuming he has to work for hours at a
14 time and is not given the opportunity to break
15 whenever he wishes?

16 A That's also pretty difficult having this
17 type of a condition.

18 Q Would you expect, with a reasonable degree
19 of medical certainty, into the future for a man who
20 has the injuries as you have described and who has
21 had the surgery as you have described to have pain
22 after sitting for periods of time?

23 A Yes.

24 Q And how about after standing for periods
25 of time?

Dr. Merola - for Plaintiffs - Direct

1 A Yes.

2 Q How about lifting or bending?

3 A Yes.

4 Q How about sudden movements of the neck?

5 A Yes.

6 Q Or repetitive movements of the neck?

7 A Yes.

8 Q For what period of time with a reasonable
9 degree of medical certainty would you anticipate
10 Mr. Rivera will continue to feel pain to the areas
11 injured in the accident of July 14, 1998, albeit
12 sometimes better than worse but pain?

13 A I would anticipate that he may have pain
14 for the rest of his life.

15 Q And for what period of time -- okay,
16 withdrawn.

17 How much did the surgery cost, forgetting about
18 who paid for it?

19 A \$7,800.

20 Q In the future if Mr. Rivera needs to pay
21 for his surgery, how much will it cost, assuming the
22 cost of living increase, but each surgery would be
23 \$7,800?

24 A Yes.

25 Q How much is a follow-up visit at your

Dr. Merola - for Plaintiffs - Direct

1 office?

2 A Between \$75 and \$110.

3 Q And with a reasonable degree of medical
4 certainty, how long would you anticipate Mr. Rivera
5 will have to follow-up or -- withdrawn.

6 How long should he follow-up, assuming he
7 continues his medical care, how long should the
8 intervals be to follow up with you to monitor his
9 neck condition?

10 A He should be seen at least quarterly and
11 maybe more.

12 Q Quarterly, four times a year?

13 A Four to five times a year.

14 Q How about future physical therapy, with a
15 reasonable degree of medical certainty does
16 Mr. Rivera require future physical therapy?

17 A Yes, I would say so.

18 Q And for what period of time would he
19 require future physical therapy?

20 A He would require physical therapy really
21 for the life of his neck.

22 Q Does the plate and prosthetic device that
23 is in Mr. Rivera's neck limit his movement at all,
24 his range of motion?

25 A It restricts range of motion at the C5-6

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 level.

2 MR. McCORIE: I have no further
3 questions, your Honor.

4 THE COURT: Mr. Cohen.

5 MR. COHEN: Yes. Thank you, Judge.

6 CROSS-EXAMINATION

7 BY MR. COHEN:

8 Q Good afternoon, Doctor. Lucky I'm tired
9 so we are going to try to move through this as
10 quickly as possible.

11 Now, when you drafted your report for Mr.
12 McCrorie, your report that's August 13, 2001 -- it
13 should not be in your file.

14 MR. McCORIE: No, his report is
15 here.

16 Q I'm going to hand it to you and ask you to
17 review it if you need to to refresh your
18 recollection, but you can't read it and please don't
19 put it in the file because it's not in evidence.

20 Now, in your report you noted M.R.I. of the
21 lumbosacral spine showing a disk herniation at L4-5
22 and a bulge at L5-S1; correct?

23 A Yes.

24 Q And let me ask you a question. Do you
25 have any way of knowing with medical certainty based

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 upon your care and treatment of Mr. Rivera whether
2 the disk herniation at L4-5 and the bulge at L5-S1
3 preexisted the accident of July 14, 1998?

4 A It's difficult to say precisely, yes.

5 Q Okay. Difficult to say whether it
6 preexisted or whether it came because of the
7 accident; correct?

8 A Yes.

9 Q Would you agree, sir, that people can have
10 bulges and herniations in the lumbar spine without
11 symptoms?

12 A Yes.

13 Q And if we assume that to be the case,
14 would it be a true statement that the fact that
15 Mr. Rivera did not have prior lumbar symptoms would
16 not be conclusive of whether the herniation and
17 bulge was there before the accident; correct?

18 A I don't know if I exactly understand what
19 you're asking.

20 Q Let me withdraw and rephrase the
21 question.

22 People can have herniations and bulges in the
23 lumbar spine with symptoms and without symptoms?

24 A Yes.

25 Q So if I asked you to assume that prior to

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 the July 14, 1998 accident Mr. Rivera had no lumbar
2 symptoms would the fact that he had no lumbar
3 symptoms be conclusive on the issue of whether the
4 herniation at L4-5 and the bulge at L5-S1 was there
5 prior to the accident?

6 A It's not conclusive.

7 Q So he could have had it even if he had no
8 symptoms; correct?

9 A Sure.

10 Q And certainly that would be true if he did
11 have symptoms prior to the accident; correct?

12 A Sure.

13 Q In fact, would it make it more likely that
14 the herniation at L4-5 and the bulge at L5-S1
15 preexisted the accident of July 14, 1998 if indeed
16 Mr. Rivera had lower back symptoms prior to that
17 accident?

18 A With symptoms it would be more likely.

19 Q Now, sir, during the period of time that
20 you treated Mr. Rivera from February when you first
21 saw him until your August 13, 2001 report to Mr.
22 McCrorie, the lower back was not symptomatic;
23 correct?

24 A His lower back was not the substance of
25 what I was treating Mr. Rivera for.

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 Q That's not what I asked you. You did a
2 report to Mr. McCrorie, did you not?

3 A Yes.

4 Q And in your report I believe you noted
5 that the lower back was not symptomatic; correct?

6 Take a look at Page 4. See if that refreshes
7 your recollection.

8 A Correct, yes.

9 Q So during the six months from February '01
10 to August 15, '01, Mr. Rivera, although it was not
11 the focus of your attention, he had no symptoms in
12 the lower back; correct?

13 A Yes.

14 Q And, sir, even though it wasn't the focus
15 of your attention, you did do some examination of
16 the lower back; correct?

17 A Yes.

18 Q And I believe you said that the range of
19 motion of the thoracolumbar spine was fluid;
20 correct?

21 A Yes.

22 Q ~~What is the thoracolumbar spine? I may be~~
23 ~~pronouncing it wrong. I have a tendency. Is that~~
24 ~~correct, thoraco?~~

25 A Thoraco.

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 Q Tell the jury what the thoracolumbar spine
2 is.

3 A It's the upper portion of your back and
4 the lower portion of your back as it goes down into
5 your pelvis and leg area.

6 Q And what does it mean when you say that
7 the movement was fluid?

8 A It means he was able to perform a range of
9 motion without any interruption in that range of
10 motion.

11 Q Interruption due to something like pain;
12 correct?

13 A Yes.

14 Q And there was also good range of motion of
15 the hips, the knees, the ankles and the feet;
16 correct?

17 A Yes.

18 Q Even though that wasn't the focus, I know,
19 of your effort.

20 Now, you did straight leg testing on
21 Mr. Rivera; correct?

22 A Yes.

23 Q Straight leg testing relates to the lumbar
24 spine; correct?

25 A Yes.

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 Q Tell the jury, just quickly, what straight
2 leg testing is?

3 A It's extending the leg at the knee and at
4 the ankle so that you can try to put some stress on
5 the nerves that go into the leg, basically the
6 sciatic nerve, to see if it's irritated or
7 problematic.

8 Q When straight leg testing is positive, it
9 suggests some nerve root irritation in the lumbar
10 spine; correct?

11 A Yes.

12 Q And you did this test on Mr. Rivera and
13 the straight leg testing was negative bilaterally;
14 correct?

15 A Yes.

16 Q So there was no nerve root irritation,
17 based on your test, on the left or on the right?

18 A Yes.

19 Q Now, you also tested deep tendon reflexes
20 on the lower extremities; correct?

21 A Yes.

22 Q And why would a doctor do that? What are
23 you looking for?

24 A To see if there are any problems with any
25 of the nerves going into his legs.

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 Q And I believe that the reflexes were brisk
2 in both quadriceps, sir?

3 A Yes.

4 Q And in the Achilles as well?

5 A Yes.

6 Q So again there were no abnormal findings
7 on your test?

8 A Yes.

9 Q Tactile sensation was intact; correct?

10 A Yes.

11 Q What does that mean, tactile sensation?

12 A That means when I touch him and ask him if
13 he can feel me touch him in his lower legs he says
14 yes and I couldn't detect any sensory abnormalities.

15 Q And sensory abnormalities in the case of
16 the lower legs, the extremities, would stem from the
17 lumbar spine; correct?

18 A Yes.

19 Q But everything there was normal; correct?

20 A Yes.

21 Q And then there were no focal deficits or
22 deficiencies otherwise appreciated; correct?

23 A Yes.

24 Q So then based on your exams of Mr. Rivera
25 and his visits with you, there were not only no

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 complaints relating to the lower spine, but there
2 were no findings that you made with respect to the
3 lower spine; correct?

4 A Yes.

5 THE COURT: What's the date you are
6 reading from, Counselor?

7 ~~MR. COHEN:~~ I'm sorry?

8 THE COURT: The date you are reading
9 from.

10 MR. COHEN: I'm reading from my
11 notes.

12 THE COURT: Would you direct a date
13 to the doctor so we can have a chronology.

14 ~~MR. COHEN:~~ Yes.

15 Q Doctor, we are talking about over the
16 course of your treatment from when you first
17 examined Mr. Rivera in February of 2001 up until the
18 time that you rendered your report to Mr. McCrorie
19 in August of 2001. Was that your understanding,
20 sir, when you testified?

21 A Yes.

22 Q Okay. Now, Doctor, in regard to the
23 cervical spine, we'll move past the lumbar spine and
24 talk about the cervical spine, you told the jury
25 that there was an M.R.I. report from Dr. Stanley

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 Sprecher dated July 6 of 1999 that you were provided
2 with when the referral came from CCNY; correct?

3 A Yes.

4 Q And in your report to Mr. McCrorie you
5 note that according to Dr. Sprecher we have a large
6 herniation at C3-4; correct?

7 A Yes.

8 Q There is some protrusion at C4-5; correct?

9 A Yes.

10 Q And there are no findings with respect to
11 the disk at C5-6; correct?

12 A Uh-huh.

13 Q In fact, the doctor found no herniation
14 and no bulge at 5-6; correct?

15 A By report.

16 Q Sorry?

17 A By report, yes.

18 Q By report. And it's your testimony, sir,
19 that you then went and took a look at those films;
20 correct?

21 A Yes.

22 Q And when you had to look at those films
23 you determined that in your opinion Dr. Sprecher was
24 wrong at C4-5 and there was really a herniation
25 there; correct?

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 A Yes.

2 MR. McCORIE: At C5-C6.

3 MR. COHEN: No, I said 4-5.

4 Q You also determined at C5-6 Dr. Sprecher
5 was wrong when he said that there was no herniation
6 or bulge and you said that there was; correct?

7 A Yes.

8 Q Now, certainly these films were available
9 to you before the surgery in July of 2001; correct?

10 A Yes.

11 Q So they would have been available to you
12 at the time that you wrote your report to Mr.
13 McCrorie; correct?

14 A Yes.

15 Q So when you discussed the M.R.I. studies
16 in your report to Mr. McCrorie and you laid out what
17 the findings were of the treating radiologist, the
18 radiologist that the treating doctor asked for an
19 interpretation from, you didn't say in that report
20 that I disagree with Stanley Sprecher, did you?

21 A No, I didn't say I disagreed with him.

22 Q You didn't say there is a herniation at
23 C4-5; correct?

24 A I said there is spondylitic changes.

25 Q Did you say there was a herniation like

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 you did today before the jury?

2 A Spondylitic.

3 Q Did you say there was a herniation, sir?

4 THE COURT: Yes or no.

5 A The word "herniation" was not used, no.

6 Q That's the word I'm looking for. That is
7 at C4-5; right?

8 A Yes.

9 Q You didn't say at the C5-6 that there was
10 a herniation there either; correct?

11 A Yes.

12 Q And you provided a diagnosis in your
13 report, did you not?

14 A Uh-hum.

15 Q And I believe your diagnosis was a
16 herniated cervical disk with giant extruded
17 fragments at C3/C4; correct?

18 A Yes.

19 Q And, number two, cervical spondylitic
20 myelopathy; correct?

21 A Yes.

22 Q In your diagnosis did you say that there
23 were herniations at C4-5 or C5-6?

24 A No.

25 Q Even though you had reviewed the films by

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 this time and you disagreed with Dr. Sprecher about
2 his findings at those levels?

3 A Yes.

4 Q Now, in your report to Mr. McCrorie you
5 note also that the surgery that you did represented
6 a stabilization of the neck as well as the injured
7 C3-4 herniated discal segment; correct?

8 A Yes.

9 Q Did you mention in that paragraph that
10 there was any injury to the disk at C4-5?

11 A Which paragraph are we talking about?

12 Q The last paragraph on Page 3.

13 A "Likelihood of future surgery"?

14 Q Yes. My question to you, Doctor, is, did
15 you mention when you were discussing the injured
16 C3-4 disk that there was an injury at C4-5.

17 A No.

18 Q Did you mention when you were discussing
19 the injury at the C3-4 disk an injury at C5-6?

20 A No.

21 Q And, Doctor, on the last page when you
22 discuss your ultimate findings, your findings were
23 of a rather large cervical disk herniation with
24 concomitant cervical spondylitic myelopathic
25 disease; correct?

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 A Yes.

2 Q And that's at C3-4; correct?

3 A That's the entire spine.

4 Q The rather large cervical disk herniation
5 that you referred to is the giant disk herniation
6 that was seen on the '99 M.R.I. film at C3-4;
7 correct?

8 A That's the giant disk herniation, yes.

9 Q And that's the rather large cervical disk
10 herniation you're referring to in your report;
11 correct?

12 A Yes.

13 Q Your report doesn't refer to any disk
14 herniation at C4-5; correct?

15 A Correct.

16 Q And it doesn't refer to any herniation at
17 C5-6 either; correct?

18 A Correct.

19 Q Now, did Mr. McCrorie tell you before you
20 went on the stand that there was testimony
21 previously about the findings of Dr. Sprecher and
22 disagreements among the doctors as to what those
23 findings were?

24 A We talked about disagreements amongst
25 M.R.I. findings, yes.

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 Q That would include the findings at C3-4,
2 C4-5, C5-6 on the '99 films interpreted by Dr.
3 Sprecher; correct?

4 A Yes.

5 Q It's your testimony that you always felt
6 that there were herniations at all three levels,
7 it's not something that you just came up with before
8 you got on the stand today; correct?

9 A Right.

10 Q Even though none of that is mentioned in
11 the written report that you did for Mr. McCrorie in
12 August of 2001?

13 A It is in the written report.

14 Q In the form of myelopathic disease?

15 A Yes.

16 Q Not in the form of herniation at C4-5 or
17 herniation at C5-6?

18 A Correct.

19 Q Not in the form of I disagree with Dr.
20 Sprecher's findings, I see something else?

21 A Correct.

22 Q Now, you had the M.R.I. films from June 29
23 2001 before you did the surgery; correct?

24 A Yes.

25 Q And we know that those films did, in fact,

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 show a herniation at C5-6; correct?

2 A Which film is that?

3 Q The 2001 films.

4 A Yes.

5 Q Showed a herniation at C5-6?

6 A Yes.

7 Q And I believe under Mr. McCrorie's
8 questioning he asked you if you assume that Dr.
9 Sprecher is correct and that there was nothing wrong
10 at C5-6 in '99, you couldn't state with medical
11 certainty that the subsequent automobile accident
12 didn't cause the herniation that you see on the
13 6/29/01 film; correct?

14 A Yes.

15 Q All right. So just to restate then, if the
16 findings of the radiologist, Dr. Sprecher, who
17 interpreted the '99 films for the treating
18 neurologist is correct and that there was no
19 herniation at C5-C6 and no bulge at C5-C6, then it
20 would be impossible for you to say with medical
21 certainty that the herniation that you operated on
22 in July of -- I'm sorry -- 2001, wasn't caused by
23 the second automobile accident?

24 A Yes.

25 MR. COHEN: Okay. Your Honor, may I

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 just approach because I wanted to get behind
2 the witness to those exhibits.

3 THE COURT: You may.

4 MR. COHEN: Excuse me one second, my
5 back, please.

6 (Brief pause in the proceedings.)

7 MR. COHEN: Judge, I'm sorry. I'm
8 looking for 26.

9 MR. McCORIE: Number what?

10 MR. COHEN: 26. Judge, I'm sorry. I
11 can't find it, Number 26.

12 MR. McCORIE: Some are marked on the
13 back. It's a three-view one, so it's got to be
14 a big one.

15 (Brief pause in the proceedings.)

16 (The clerk has brought it in.)

17 THE COURT: Is that it, Counselor?

18 MR. COHEN: Yes. Thank you, your
19 Honor.

20 If I may.

21 THE COURT: You may.

22 Q Doctor, with respect to the large
23 herniated disk at C3-4 that existed in July of 1999
24 pursuant to Dr. Sprecher's interpretation, it was
25 your testimony, I believe, on direct examination

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 that there was some resorption of that disk material
2 so that the body actually either resorbed it or it
3 dried out and came back in a little bit?

4 A Yes.

5 Q Referring to Plaintiffs' 26 in evidence,
6 which would be the June 29th, 2001 M.R.I. studies,
7 and specifically the middle image because this is
8 something that one of the other doctors talked
9 about, you see the C3-4 level?

10 A Yes.

11 Q And there is a disk material between the
12 vertebra C3 and the vertebra C4; correct?

13 A Yes.

14 Q And we've got the spinal cord, which is
15 the light gray straight line running down the
16 middle; correct?

17 A Yes.

18 Q Now, do you see, Doctor, any impingement
19 from the C3-4 disk on this film on the spinal cord
20 itself?

21 A Yes.

22 Q Okay. Now, can you point that out to the
23 jury?

24 A Sure.

25 (The witness is complying.)

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 MR. McCORIE: Just indicating using
2 the blue pen, just for the record.

3 A This is -- you know, can I make a point
4 about this M.R.I. image just to clarify?

5 Q Sure.

6 A On this M.R.I. image you'll notice this
7 portion of it where the cord is and the canal has a
8 dark line around the spinal cord and the other
9 images have a very bright line around the spinal
10 cord. This particular image, it's a T-2 image, so
11 it's weighted to pick up fat and fatty changes, and
12 it's not as good for picking up cervical spinal
13 fluid like the other images are, so the findings
14 here, it's a little bit more difficult to see from
15 far away because although the thecal sac is indented
16 and impingement is occurring here, you don't get a
17 sense that it's a major type of impingement. It's
18 what we call a T-1 weighted image, but you can see
19 discal material coming beyond the borders of the
20 cervical vertebral bodies into the spinal canal in
21 the area where the sac that contains the cord is.

22 Q So the impingement that you see between 3
23 and 4 on the Exhibit 26 would be material, disk
24 material, coming into the thecal sac?

25 A Into the thecal sac area.

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 Q And we know from other doctors, and
2 correct me if I'm wrong, the thecal sac houses the
3 cerebrospinal fluid?

4 A Yes.

5 Q And it represents the space or the canal,
6 between the disks and the vertebra on one side and
7 the cord on the other side; correct?

8 A Yes.

9 Q And you can have disk material which
10 impinges on the sac; correct?

11 A Yes.

12 Q You can have disk material which impinges
13 on a nerve root; correct?

14 A Yes.

15 Q And you can have disk material which
16 impinges right past the sac into the cord; correct?

17 A Yes.

18 Q Now, the original interpretation of the
19 cervical spine from the '99 films showed impingement
20 from the material right through the thecal sac into
21 the cord itself; correct?

22 A Yes.

23 Q This film, however, two years later shows
24 that the disk material having resorbed partially is
25 impinging on the sac but not on the cord itself;

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 correct?

2 A There is actually --

3 Q Let's go by this.

4 A Yes.

5 Q That's what that shows?

6 A Yes.

7 Q This is the one we talked about. Are you
8 suggesting on this one you can see a little bit?

9 A There is a little bit on that section.

10 Q I'm sorry for my back.

11 A There is the border of the spinal cord
12 that I'm outlining with the tip of the blue pen and
13 that's 2, that's 3, that's 4. This you can see.
14 There appears to be something that's coming up
15 alongside the cord there at 3-4.

16 MR. McCORIE: Just for the record,
17 indicating and making a marking on the third
18 image to the right on Plaintiffs' 26 with a
19 blue pen.

20 THE COURT: So indicated.

21 MR. COHEN: He didn't make a mark.

22 THE COURT: So pointed.

23 Q So, Doctor, if we focus on the middle
24 image, we have an impingement on the sac but no
25 impingement on the cord, and if we focus on the

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 right we have a little impingement on the cord. In
2 either case, this represents a vast improvement over
3 what we saw from 1999; correct?

4 A Yes.

5 Q And that was based on resorption of the
6 body at C3-4; correct?

7 A Yes.

8 Q And Mr. Rivera's body did that on its own
9 without any surgical intervention?

10 A Yes.

11 Q Now, I'm almost done. I just wanted to
12 ask you, you mentioned in your report there were EMG
13 studies done on July 14, 1999; correct?

14 A Yes.

15 Q And those EMG studies were done both with
16 respect to the cervical spine and the lumbar spine;
17 correct?

18 A I'm just checking. Can you focus me on a
19 page, please?

20 Q I'm sorry. It's Page 3, sort of like down
21 the middle, a little bit lower.

22 A Yes, nerve conduction EMG studies.

23 Q Did they provide you, by the way, CCNY,
24 with the EMG report?

25 A Yes, I have a copy of the EMG graphs, yes.

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 Q And the EMG study for the cervical spine
2 showed that it was normal?

3 A I don't know if I have the cervical EMG.

4 Q It's in evidence, so I can show it to you,
5 sir.

6 A Okay.

7 MR. COHEN: Your Honor, can I show
8 the witness my copy?

9 MR. McCORIE: That's fine.

10 Q Sir, hold it to yourself. I have
11 highlighted it and I have numbers. I don't want the
12 jury to see that.

13 MR. McCORIE: Just so the record is
14 clear, it's in 36, CCNY.

15 MR. COHEN: It's in that file, yes.

16 A Okay.

17 Q Now, the EMG study that was done with
18 respect to the cervical spine one year after the
19 accident exactly on July 14, 1999 showed that
20 everything was normal; correct?

21 A Yes.

22 Q There was no evidence of any nerve root
23 irritation or nerve root injury in the cervical
24 spine; correct?

25 A By electromyography, yes.

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 Q And, in fact, if we focus on C5-6, this
2 finding of electromyography study on July 14, 1999
3 would be consistent with Dr. Sprecher's finding of
4 no disk herniation and no disk bulge at C5-6;
5 correct?

6 A That's a tough question to answer. Can I
7 explain why?

8 Q Sure.

9 A Okay. EMG studies are excellent studies
10 for looking at peripheral nerve entrapment. They
11 are beautiful for doing that. An EMG involves
12 putting needles into the arms and legs and then
13 looking at how the nerves in the arms and legs
14 function. It's not very good for picking up
15 cervical or lumbar nerve root problems, so we never
16 use it in terms of ruling in or ruling out cervical
17 or lumbar nerve root damage.

18 In fact, I only use it to make sure that I
19 don't have a concomitant nerve root problem in the
20 arm or the leg that may be masquerading as a
21 cervical or lumbar radiculopathy, so to answer that
22 question that it is or is not consistent with that,
23 I can't. I mean, that's a tough question to say it
24 is or it isn't.

25 Q I get it. I got it. So you can have

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 false negatives, if you will, with EMG studies?

2 A Yeah, you can have a false negative or a
3 false positive with an EMG.

4 Q Would you consider an EMG study to be the
5 gold standard to determine if there is nerve root
6 irritation?

7 A No, I would not.

8 Q So on the one hand a negative EMG study in
9 the cervical spine would not necessarily mean no
10 nerve root irritation in the cervical spine,
11 correct, a negative EMG?

12 A A negative EMG in the cervical spine --

13 Q Would not necessarily in your opinion mean
14 or correlate to no nerve root injury or no nerve
15 root irritation?

16 A Yes.

17 Q And, likewise, a positive finding on EMG
18 would not necessarily correlate to, again, a nerve
19 root irritation or a nerve root injury; correct?

20 A It needs to be compared with the history
21 and the physical.

22 Q What about the other diagnostic tests like
23 an M.R.I.?

24 A M.R.I. is kind of a different story. It
25 depends on what we are talking about with respect to

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 the M.R.I.

2 Q All right. Let's get off that because I
3 don't want to get bogged down. I want to get done,
4 and I know you want to leave and I know the Judge
5 wants me to finish.

6 So would you agree that when Mr. Rivera first
7 came to see you he had certain cervical complaints?

8 A Yes.

9 Q And in your report you mention bilateral
10 upper extremity weakness as one of the complaints?

11 A Yes.

12 Q And he had pain radiating into his hands;
13 correct?

14 A Yes.

15 Q And with neck movement there was also
16 electric shocks going into both hands; correct?

17 A Yes.

18 Q Can we agree to call these the
19 preoperative complaints that he had?

20 A Yes.

21 Q And you had done the surgery on July 16,
22 '01; correct?

23 A Yes.

24 Q And would it be fair to say, Doctor, that
25 within about five weeks after the surgery, according

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 to your records, Mr. Rivera's preoperative
2 complaints had pretty much been significantly
3 alleviated?

4 A Diminished, I think I said they were
5 diminished.

6 Q It's in evidence. Take a look at your
7 August 12, '01 note, if you would.

8 A Yes.

9 Q Pretty much, "Mr. Rivera's preoperative
10 complaints have pretty much been significantly
11 alleviated"; that's what you wrote?

12 A Yes.

13 Q That's about what, six weeks after the
14 surgery; correct?

15 A Yes.

16 Q Would it be fair to say, Doctor, that at
17 least to the extent that the preoperative complaints
18 were pretty much significantly alleviated by the
19 surgery, that the surgery got to the cause of those
20 preoperative complaints?

21 A Yes.

22 Q Okay. And the surgery was done at C5-6;
23 correct?

24 A Yes.

25 Q So if we go back to Dr. Sprecher's

Dr. Merola - for Plaintiffs - Cross (Mr. Cohen)

1 interpretation of the '99 M.R.I. and we assume that
2 that was true, would you agree, then, that you could
3 not state with medical certainty that the
4 preoperative complaints emanating from 5-6 or the
5 operation done at 5-6 were causally related to the
6 accident of July 14, 1998?

7 A Yes.

8 Q Okay. So that even if Dr. Sprecher is
9 right, if Dr. Sprecher is right, the preoperative
10 complaints at 5-6 and the operation at 5-6 to fix
11 those complaints could have been caused by the
12 subsequent automobile accident of March 29, 2001?

13 A If Dr. Sprecher is correct.

14 MR. COHEN: Thank you, Doctor. You
15 know what, I'm going to end it there. I thank
16 you. You're very kind. I appreciate it.

17 MR. McCORIE: Does Ms. Golder want
18 to question?

19 THE COURT: I'm going to ask her.

20 MS. GOLDER: One moment, Judge.

21 (Brief pause in the proceedings.)

22 MS. GOLDER: No questions, your

23 Honor.

24 REDIRECT EXAMINATION

25 BY MR. McCORIE:

Dr. Merola - for Plaintiffs - Redirect

1 Q Doctor, I promise to be very brief.

2 The report that's in evidence, the operative
3 report, this too doesn't state that there is a
4 herniated disk at C5-C6, the operative report. The
5 diagnosis is spondylitic myelopathy; correct?

6 A Yes.

7 Q But it says you did a fusion at C5-C6;
8 right?

9 A Yes.

10 Q And in your record, if I could just direct
11 your attention, there is the pathology report from,
12 it's also in evidence as the St. Vincent's. Is
13 there a pathology report in here?

14 A Yes. Here it is.

15 Q What does the pathology report that's also
16 in evidence in St. Vincent's or in evidence in your
17 records, what does that state was going on with
18 regard to herniations in C5-C6?

19 A It says, "C5-6 herniated nucleus pulposus,
20 myelopathy, degenerated fibrocartilage."

21 Q And you also have an authorization that
22 was requested by Mr. Cohen's office and you
23 responded to that, you gave them your whole file;
24 correct?

25 A Yes.

Dr. Merola - for Plaintiffs - Redirect

1 Q Or your office did?

2 A Yes.

3 Q And that's in your file?

4 A Yes.

5 Q That was dated August 2001 when you gave
6 Mr. Cohen's office all of that about the herniated
7 disk at C5-6?

8 A I believe so, yes.

9 Q Okay. Finally, we are just going to go to
10 the sagittal views -- these will be the last
11 questions -- Plaintiffs' 23 being the '99, and I'll
12 keep Plaintiffs' 27 down, but they already appear to
13 be marked, the C3-C4, C4-5, C5-6. Plaintiffs' 23 in
14 evidence, the one on the bottom left, is that the
15 C5-C6?

16 A Yes.

17 Q Okay. Do you see the herniation on the
18 '99 film on the C5-C6?

19 A Yes.

20 Q Where is it? Is it where the other doctor
21 indicated an arrow?

22 A Yes, it is.

23 Q A red arrow?

24 A Correct.

25 Q And that's in '99?

Dr. Merola - for Plaintiffs - Redirect

1 A Yes.

2 Q And we also see the one they call a giant?

3 A Yes.

4 Q Would you agree that that's a big
5 herniation?

6 A Yes.

7 Q As big as they come?

8 A It's a frightening herniation, yes.

9 Q On the axial view as opposed to the other
10 ones that look fine, is there a herniation at C4-5
11 in '99?

12 A Yes, there is.

13 Q When you go to the 2001 films --

14 THE COURT: What exhibit is that?

15 MR. McCORIE: I'm sorry, your Honor.

16 That is Plaintiffs' 27.

17 Q Is the C4-C5, is that herniation depicted
18 here?

19 A Yes.

20 Q Now, we just looked at views of the
21 sagittal views. Do you see the herniation at the
22 C3-C4?

23 A Yes.

24 Q Do you see it better than you see it on
25 the sagittal views?

Dr. Merola - for Plaintiffs - Redirect

1 A Yes.

2 Q At the C3-C4 level?

3 A Yes.

4 Q How about the C5-C6 level? I can't even
5 see where that is.

6 (The witness is marking it.)

7 A C5-6, this is the 5-6 level here.

8 Q Is that the level that you took out?

9 A Yes.

10 Q And you're indicating that with a blue
11 marker on Plaintiffs' 27?

12 A Yes.

13 Q So the reverse of Mr. Cohen's assumption.
14 Assume now that Dr. Sprecher was wrong and the
15 herniation was there in July of 1999 and there is a
16 second accident and the herniation is still there in
17 June of 2000.

18 Can you state with a reasonable degree of
19 medical certainty that the cause of the herniation
20 at C5-C6 was the accident of July 14, 1998, the
21 first accident?

22 A Yes.

23 Q And was the reason you did the surgery?

24 A Yes.

25 MR. McCORIE: I have no further

Dr. Merola - for Plaintiffs - Recross (Mr. Cohen)

1 questions.

2 THE COURT: Mr. Cohen.

3 MR. COHEN: Yeah, Judge, just
4 quickly.

5 RECROSS-EXAMINATION

6 BY MR. COHEN:

7 Q The 2001 films at 5-6, was there more of a
8 herniation than there was in your opinion from the
9 '99 film?

10 A Not really, no.

11 Q Was there impingement from '01 as opposed
12 to '99?

13 A There is. Actually, we see impingement on
14 both.

15 Q Is the impingement worse in '01?

16 A Not really, no.

17 Q So you would have operated at C5-6 based
18 on the '99 films regardless of what was in the '01
19 films; is that your testimony?

20 A Matching that up with his complaints and
21 symptoms and everything else, yeah, 5-6.

22 MR. COHEN: Thank you, your Honor. I
23 have nothing further.

24 THE COURT: Ms. Golder?

25 MS. GOLDER: No.

Dr. Merola - for Plaintiffs - Redirect

1 A Yes.

2 Q At the C3-C4 level?

3 A Yes.

4 Q How about the C5-C6 level? I can't even
5 see where that is.

6 (The witness is marking it.)

7 A C5-6, this is the 5-6 level here.

8 Q Is that the level that you took out?

9 A Yes.

10 Q And you're indicating that with a blue
11 marker on Plaintiffs' 27?

12 A Yes.

13 Q So the reverse of Mr. Cohen's assumption.
14 Assume now that Dr. Sprecher was wrong and the
15 herniation was there in July of 1999 and there is a
16 second accident and the herniation is still there in
17 June of 2000.

18 Can you state with a reasonable degree of
19 medical certainty that the cause of the herniation
20 at C5-C6 was the accident of July 14, 1998, the
21 first accident?

22 A Yes.

23 Q And was the reason you did the surgery?

24 A Yes.

25 MR. McCORIE: I have no further

Dr. Merola - for Plaintiffs - Recross (Mr. Cohen)

1 questions.

2 THE COURT: Mr. Cohen.

3 MR. COHEN: Yeah, Judge, just

4 quickly.

5 RECROSS-EXAMINATION

6 BY MR. COHEN:

7 Q The 2001 films at 5-6, was there more of a
8 herniation than there was in your opinion from the
9 '99 film?

10 A Not really, no.

11 Q Was there impingement from '01 as opposed
12 to '99?

13 A There is. Actually, we see impingement on
14 both.

15 Q Is the impingement worse in '01?

16 A Not really, no.

17 Q So you would have operated at C5-6 based
18 on the '99 films regardless of what was in the '01
19 films; is that your testimony?

20 A Matching that up with his complaints and
21 symptoms and everything else, yeah, 5-6.

22 MR. COHEN: Thank you, your Honor. I
23 have nothing further.

24 THE COURT: Ms. Golder?

25 MS. GOLDER: No.

Dr. Merola - for Plaintiffs - Redirect

1 A Yes.

2 Q At the C3-C4 level?

3 A Yes.

4 Q How about the C5-C6 level? I can't even
5 see where that is.

6 (The witness is marking it.)

7 A C5-6, this is the 5-6 level here.

8 Q Is that the level that you took out?

9 A Yes.

10 Q And you're indicating that with a blue
11 marker on Plaintiffs' 27?

12 A Yes.

13 Q So the reverse of Mr. Cohen's assumption.
14 Assume now that Dr. Sprecher was wrong and the
15 herniation was there in July of 1999 and there is a
16 second accident and the herniation is still there in
17 June of 2000.

18 Can you state with a reasonable degree of
19 medical certainty that the cause of the herniation
20 at C5-C6 was the accident of July 14, 1998, the
21 first accident?

22 A Yes.

23 Q And was the reason you did the surgery?

24 A Yes.

25 MR. McCORIE: I have no further

Dr. Merola - for Plaintiffs - Recross (Mr. Cohen)

1 questions.

2 THE COURT: Mr. Cohen.

3 MR. COHEN: Yeah, Judge, just

4 quickly.

5 RECROSS-EXAMINATION

6 BY MR. COHEN:

7 Q The 2001 films at 5-6, was there more of a
8 herniation than there was in your opinion from the
9 '99 film?

10 A Not really, no.

11 Q Was there impingement from '01 as opposed
12 to '99?

13 A There is. Actually, we see impingement on
14 both.

15 Q Is the impingement worse in '01?

16 A Not really, no.

17 Q So you would have operated at C5-6 based
18 on the '99 films regardless of what was in the '01
19 films; is that your testimony?

20 A Matching that up with his complaints and
21 symptoms and everything else, yeah, 5-6.

22 MR. COHEN: Thank you, your Honor. I
23 have nothing further.

24 THE COURT: Ms. Golder?

25 MS. GOLDER: No.

Dr. Merola - for Plaintiffs - Recross (Mr. Cohen)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. McCORIE: Nothing, your Honor.

I promise to get you your file back.

That does need to remain.

THE COURT: Doctor, you are excused.

You may stand down.

THE WITNESS: Thank you very much.

Thank you.

-o0o-

CERTIFIED to be a true and accurate
transcription of the stenographic notes.


Catherine Mercorella
Senior Court Reporter