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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX: TRIAL TERM PART IA-25

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VICTORIA THANASIAS and THOMAS THANASIAS,

PLAINTIFFS,

- against -

JOHN O. MAGGARD and EVA E. SLEOUSZKI,

DEFENDANTS.

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Index No. 026570/03

March 5, 2010

Supreme Court
Bronx, New York 10451

B E F O R E: MARK FRIEDLANDER, Justice, and a jury of six plus two alternates.

A P P E A R A N C E S

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Catherine Callahan, R.P.R.
Official Court Reporter

(Whereupon, the following takes place on the record in open court, in the presence of the Court, and Counsel.)

MR. MALLAS: I would like to have these items pre-marked.

(Whereupon, the items referred to were marked as Plaintiff's Exhibits 38 through 46 in evidence.)

THE COURT OFFICER: Jury entering.

(Jury entering.)

THE COURT: Good morning, members of the jury. We are still on Plaintiff's case.

And Mr. Mallas, you may call your next witness.

MR. MALLAS: Plaintiff calls Dr. Andrew Merola.

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

THE COURT OFFICER: In a loud, clear voice, state your name, title and place of business for the record.

THE WITNESS: Doctor Andrew Merola. I am at 36 Seventh Avenue, suite 502, New York, New York 10011.

DIRECT EXAMINATION

BY MR. MALLAS:

Q Good morning, Dr. Merola.

A Good morning.

Q Are you licensed to practice medicine in the State of New York?

A Yes, I am.

Q Can you tell the jury more specifically what area you specialize?

A I am an orthopedic reconstructive spinal surgeon.

Q How long have you been licensed?

A I was licensed in 1992.

Q Could you tell the jury a little bit about your educational background?

A Sure. I went to New York University Undergraduate College, Howard University College of Medicine in Washington, D.C. Came back to New York City and did my general surgical training and orthopedic training at S.U.N.Y. Downstate in Brooklyn.

I then went to the University of Colorado where I did a spinal surgical fellowship, and returned to New York City in 1996 to start the practice of orthopedic spinal surgery.

Q Have you been in private practice since then?

A Yes, I have.

Q Are you affiliated with any hospital currently?

A Yes.

Q What hospitals?

A I am affiliated with S.U.N.Y. Downstate in Brooklyn as well as St. Vincent's Hospital in Manhattan.

Q Can you tell the jury a little bit about your professional background? Catch up us to speed with your professional background?

A I specialize in surgery for children and adults who have spinal issues, that's the neck and back problems that require surgery for the neck and the back. So, that is my particular area of specialization and expertise.

Q Are you board certified?

A Yes.

Q Can you tell the jury what it means to be board certified?

A Board certification is a process that you go through after you finish your surgical training. And it's a two-step process.

First step is -- it's an exam. So, you take a written examination that tests your knowledge of your

field. After you pass the written examination and you have been in practice for at least two years, you take an oral examination, and what you do there, you take all of your surgical cases, the patients that you have taken care of and you bring those cases to Chicago where everybody meets. You sit in front of a board of examiners who sit down and then ask you questions about your patients, your treatment, what you did, why you did it, how you did it.

And then after you pass that part of the examination. You are what's considered board certified.

Every ten years we are also required to recertify, so you go through a recertification process every ten years to make sure that you are current with your treatment and your education.

Q In what specialty are you board certified?

A Orthopedic surgery.

Q Briefly, if you can tell the jury what orthopedics is?

A Orthopedics is the treatment of basically all of your bones and joints and the muscles and tendons and everything that attaches to them.

So, everything that you do to move around during the day and everything you use your body for is

part of the scope of orthopedic surgery.

Q Now, have you published anything?

A Yes.

Q Can you tell the jury what you published?

A Sure. One of the things that I do is I also teach and I do research at S.U.N.Y. Downstate in Brooklyn, which means that I publish articles and textbooks and review articles about spine issues and spinal surgical issues.

So, I published on topics involving children and spinal deformity, scoliosis, including topics on adults.

I have published on surgical techniques. And I have also reviewed what's called a peer review for other people that publishes articles and textbooks.

Q Have you also done any work abroad?

A Yes, I have.

Q Can you tell the jury?

A Sure. One of the other things that I do is myself and other spinal surgeons have had an opportunity to do charitable work in Central America, Dominican Republic and other countries as part of a -- what we call a global outreach for spinal surgery.

So, we go to places that don't have the techniques and the equipment that we have here and we

bring it to them and to the doctors that are there, to foster education and care for children and adults with spinal issues.

Q Now, your professional experience, has that included dealing with traumatic injuries to the spine?

A Yes.

Q Does that include dealing with traumatic injuries in the hip?

A Yes.

Q And has your experience dealt with dealing with traumatic injuries which resulted in injuries to the discs?

A Yes.

Q In your experience, have you dealt with traumatic injuries to the hip?

A Yes.

Q In your experience, have you dealt with traumatic injuries dealing with R.S.D., reflex sympathetic dystrophy?

A Yes.

Q In your experience, have you dealt with traumatic injuries which resulted in meralgia paresthetica?

A Yes.

Q Have you ever treated patients for those

things I just listed which required surgery?

A Yes.

MR. MALLAS: Your Honor, I offer Dr. Merola as an expert in the field of orthopedic surgery.

THE COURT: Any objection.

MR. DERRICO: It's up to you. You are the --

THE COURT: He is so certified.

Q Now, prior to coming in here to testify, you and I spoke; correct?

A Yes.

Q In fact, we spoke last night and this morning?

A Correct, yes.

Q And you are being compensated for being in court here today?

A Yes.

Q Now, did Victoria Thanasias come under your care?

A Yes.

MR. MALLAS: Your Honor, permission for Dr. Merola to refer to his notes.

THE COURT: Sure. You may refer to the notes to refresh your recollection. You shouldn't

be reading from them though.

Proceed.

Q Now, when did Victoria Thanasias come under your care?

A Initially presented to my office on March 20th, 2007.

Q Why?

A She came in for an opinion regarding low back pain and chronic pain to the lower back.

Q Do you know who referred her to you?

A Initial referral was from a gentleman named Dr. Antonio Vlantis.

Q How do you know that?

A It's her primary medical doctor and it was indicated when she came into the office that he was the primary referral.

Q So, back in 2007, that's what your records indicate?

A Yes.

Q Now, what complaints did she make to you when she came to see you?

A At that time, she had complaints of right thigh pain, which were worse at night as well as low back pain, which was essentially constant. And right lower extremity numbness.

Q Did you examine her?

A Yes.

Q What did your examination reveal?

A My examination essentially demonstrated she had abnormal lumbar and lumbosacral range of motion with pain spasm and tenderness in the lower back and dysesthesia, which means abnormal sensory findings in the right leg.

Q Did you test her range of motion?

A Yes.

Q What were the results of those tests?

A Her range of motion -- let me refresh my memory.

She had what was reversal of a lumbar lordosis.

Q Doctor, what is lumbar lordosis?

A In your lower back, your lower back has typical curvature to it. If you look at it from the side view, you put your hand into the lower back, you can almost feel like a hole in there. That's known as lordosis.

So, your lower back has a curvature that combined with the other normal curve in your back keeps you upright and well balanced. When you have a reversal of that particular curvature, it means that

the muscles in your lower back are -- you don't have that normal sway back curve in your low back and it results in an abnormal posture and in an abnormal motion to your low back.

MR. DERRICO: Your Honor, may I just see what the doctor is referring to?

THE COURT: Sure.

(Pause held.)

THE COURT: Continue.

Q Now, you said that she had dysesthesia of the right thigh area?

A Yes, correct.

Q And you briefly told the jury -- can you explain what that means?

A Sure. Dys -- whenever you hear the word "dys" it means abnormal. "Esthesia" basically is a word that means sensation. You can feel something.

So, dysesthesia means abnormal sensory findings. So, when you are -- when you touch a particular part of the body, in this case the leg, when you touch that area and you compare sensation in that area to the other side.

If the sensation is abnormal, you would record it as dysesthetic or abnormal sensory findings.

Q Did you test the range of notion in the right hip?

A Yes.

Q Could you tell the jurors what you found?

A Sure. I recorded it as painful range of motion of the right hip.

Q Now, ultimately did you have her send for any testing?

A Correct, E.M.G.'s.

Q Who did the E.M.G.?

A Dr. Vlantis.

Q Could you tell me the result of those?

A The E.M.G. results demonstrated what was indicated as a chronic right sided L-5 and S-1 radiculopathy.

MR. DERRICO: Can we have a date on that, Your Honor?

THE COURT: Sure.

THE WITNESS: The date of the E.M.G. testing is March 21st, 2007.

Q Can you tell us what that means?

A An E.M.G. is a nerve test. It's a test whereby you record -- you simulate the nerves and then you take recordings from those stimulated nerves. It's similar to how an E.K.G. tests your heart, the

electrical system in your heart.

This is done with the nerves in your arms and your legs. So, you stimulate the nerves and then you take recordings and then, based on what those recordings look like, you can make some conclusions about how the nerves are functioning.

Chronic means that it's long standing. And L-5, S-1 refers to the nerve roots that are involved to be abnormal.

Q And L-5, S-1 that's the level below L-5, L-4?

A Yes, that's correct.

Q Did you examine the size of her extremities?

A Yes.

Q What did that examination reveal?

A The exam of her extremities, let's see. Demonstrated what I reported as mild atrophy of the right calf when compared to the left side.

Q What does that mean?

A Atrophy basically means some shrinkage, and mild would mean a small amount or slight amount of shrinkage. So that would be measured we would call qualitatively, by feeling and comparing one side to the other.

Q What is that indicative of?

A Atrophy is generally indicative of the muscle

not working as much as the muscle on the other side is, and in a patient who has nerve problems, it's indicative of a neurological dysfunction to the leg.

Q Now, you have examined her on subsequent occasions; correct?

A Yes.

Q How many occasions?

A Let's see, at least three other occasions.

Q Can you tell me when the most recent examination was?

A Most recent exam was September of 2009.

Q Can you tell me what that examination revealed?

A Sure. At that time, she continued to have chronic low back pain with right leg pain. And her exam at that point in time demonstrated what's known as an antalgic and kyphotic gait pattern with palpable spasm in her lower back.

On that particular day, it was difficult to measure her lumbar range of motion because of pain and spasm in the lower back area.

She continued to have abnormal sensory findings or dysaesthesia on the right leg. There was what's known as a straight leg raise sign on the right side at forty degrees with --

Q Can you tell the jury what that means?

A Sure. A straight leg raise is something that you do when you are examining a patient to test nerve irritation.

So, one of the things that you can do is you can basically straighten out the patient's leg to pull on the nerves that are coming down into the leg. If those nerves are being irritated when you straighten the leg out you are going to increase the irritation on that nerve and it's what we call a protective sign of nerve irritation. And she had that sign at what we call forty degrees when you are starting the leg off the floor. At forty degrees is where the pain response came in.

Q Did you review medical records when you first saw her? Did you review medical records?

A Yes.

Q Can you briefly tell us what medical record you looked at?

A I actually looked at a number of medical records. I looked at records from 1997, where those were provided to me as well as more recent records from 2003, 2004 and 2005.

The most recent records that I had an opportunity to review from her dealt with some

procedures which she had done to her back and hip.

Q Doctor, as a result of your examination, your review of the records, did you come to a diagnosis?

A Yes.

Q Can you tell the jury what that diagnosis was?

A Sure. At that point in time she gave a history and physical findings and symptoms that were what we call consistent with a reflex sympathetic dystrophic syndrome, chronic radiculopathy, chronic leg pain, disk herniation in the lower back, and a history of prior laminectomy to the low back. What we call prior laminectomy syndrome as well.

Q Could you explain to the jury what reflex sympathetic dystrophy is?

A Sure. That's a -- it's a fancy way of saying that there is an abnormal nerve problem in one of your arms or legs.

The word sympathetic refers to a particular group of nerves which we call the sympathetic nervous system. Those are the nerves that cause you to, for example, sweat or not sweat. They cause the blood flow in your leg to increase or decrease. They take care of the things that you don't really think about in terms of controlling your body. And those nerves and nerve

fibers run along the same areas that -- what we call the never roots run along.

When that portion of your nervous system is not working, we say it's dystrophic. There is the word "dys" again. It means it's not working properly. It's the sympathetic nervous system.

So, it's that system which is not under your voluntary control and it's reflexive because just like with anything else that's reflexive. It can be triggered by different things.

For example, hot or cold, or walking or hitting something. Anything that's basically going to irritate those nerves can trigger it off.

So, it's a triggered abnormal response of the sympathetic nervous system in your arms, in your legs.

Q Can you explain to the jury what chronic radiculopathy and chronic pain is?

A Chronic basically means it's longstanding. So, it's been around for a long time, longer than six, eight or twelve weeks.

Radiculopathy means that a nerve root is not working well. And the root, if you think about the root as though you would think about cables coming out of your spinal cord that go into muscles in your arms

and legs.

Each one of those little cable does a specific thing in your arm or leg. So, if they are not workings properly, if those roots aren't working properly, we call it a radiculopathy or a problem with the nerve root.

Q You said chronic. I want you to assume Ms. Thanasias said she had pain in these areas since the car accident in November 2002. Is that considered chronic?

A Yes.

Q And also I believe you said there was chronic leg pain secondary to hip pain injury?

A Yes.

Q Could you explain to the jury what that is?

A Sure. She had an altered and painful range of motion of her right hip. She had also undergone surgical intervention to the right hip.

So, in addition to the low back and nerve issues that she had, she also had a right hip problem that was contributing to this.

Q And at the time Ms. Thanasias first saw you, was she under any active treatment?

A Yes.

Q What kind of active treatment?

A She was being treated by a pain management physician who was managing these chronic and ongoing problems for her with medications and other interventions depending on what her symptoms were.

Q And pain management, does that cure a problem?

A No. Well, the word management means that it's treatment in order to address and take care of the issues that are occurring. It's not a pain cure. It's pain management, which means it's pain treatment.

So, it's not a cure as much as it is a management of an ongoing issue.

Q After she came under your care, did she undergo any other surgical procedures?

A Yes.

Q Can you tell the jury what that was?

A After I had seen her back in 2007, she ultimately, as a result of her pain management physician, underwent what was called a placement of a dorsal column stimulator or a spinal cord stimulatory. And what that involves is it involves a trial or a temporary stimulator to see whether or not this device can decrease or make better some of the pain that you are having.

And if that device is successful and it does

make you feel better, you eventually undergo what's called a permanent implantation of this spinal cord stimulator device.

So, she had undergone a trial stimulator, and then eventually a permanent placement of a spinal cord stimulator.

Q Now, Doctor, do you have an opinion within a reasonable degree of medical certainty whether or not the injury and the findings that you have just talked about were causally related to the accident of November 14th, 2002?

A Yes.

Q What's that opinion?

A That these were causally related to the accident of 2002.

Q And, Doctor, how did you come to that conclusion?

A A review of the history as given to me by the patient's records, which I had an opportunity to look at, her physical examination, and the results of all those things put together can help you come up with that conclusion.

Q Doctor, it's not one single factor; correct, that goes into making a determination? Am I correct on that?

A Yes.

Q You took all the factors together; correct?

A Yes.

Q Now, let me just -- did you have a prognosis for Ms. Thanasias? Do you have a prognosis?

A Yes.

Q What's that prognosis?

A The prognosis which means what -- what do you anticipate or what can you predict is going to the happen in the future.

A prognosis for Ms. Thanasias is what's called guarded. It's a guarded prognosis. Which means it is -- good would mean you think things are going to get better; poor, they are absolutely going to get worse; and guarded, it's chronic and not anticipated to change but as a likelihood of getting worse so requires continued care and treatment.

Q Did you come to a diagnosis if she needs anything, any treatment in the future?

A Yes.

Q What was your opinion of what she needs in the future, medical-care wise?

A There are --

MR. DERRICO: Your Honor, I am going to object. May we approach on that please?

(Whereupon, a discussion was held, off the record, at the bench, between the Court and Counsel.)

Q Doctor -- I forgot my last question.

(Whereupon, the testimony as requested was read by the court reporter.)

A Yes. So, with respect to what she may require in the future is a disk replacement and/or a lumbar fusion.

Q Could you tell the jurors what that is?

A Sure. A disk replacement is much like you would do a hip or knee replacement. It's a metal and plastic device that you insert into the area where the disk is to replace that segment of your spine to preserve more normal spinal motion.

Fusion is a procedure where you use rods and screws to lock together the bones of the spine. You prevent them from moving.

Both of those are options to try to correct a chronic long-term disk problem that's producing pain.

Q What's a fusion?

A Fusion is the -- basically the gluing together or the locking together of bones so that they no longer move.

Q What's the purpose of the fusion?

A To decrease pain and block abnormal motion in the spine.

Q When you have a fusion don't you also block off all motion at that level?

MR. DERRICO: Objection.

Q Do you belong off all motion at that level?

MR. DERRICO: Objection. He is reading him the answer.

Q What happens at that level with regard to motion?

A Since fusion locks two bones together, you have essentially eliminated the motion between the two bones that you are locking together.

Q Now, as far as the spinal column stimulator, can you describe for the jury what the spinal column stimulator is?

A Sure. A spinal column stimulator is an electronic device much like a pacemaker. So, it has a little generator device that's usually round, contains a battery and electrical circuits that are then connected to a long wire. And then the wire is connected to a pad of electrodes.

The device sends out an electrical current that the pad then transmits to your spinal cord. And what it does is it transmits electrical signals to your

spinal cord that turn off or inhibit pain signals coming from your legs back up to your brain.

So, the pad is inserted through a procedure called a laminectomy, which means you open up the spinal canal area, you slip the pad in on top of the cord, you connect the device and then you start to run current through it. And as you run current through it, you're testing the patient.

Basically you are asking the patient what that current that you are running through the device is doing to the pain that they feel. So, you want to make sure you have it in the right place stimulating the right nerves and current that you were sending through, it is achieving the purpose of decreasing the pain that they are feeling.

When you get it in the right place at the right current, you then basically sew in the wire so that it doesn't move. The pad stays in place. And then the device itself is implanted underneath your skin in a little area that you make. You make a little opening for it or a pouch and then put the device in, sew it down so that this is all self-contained within your body so that it can continue to work over time.

So, it's a lot like a pacemaker but instead of your heart it's for your spinal cord.

Q How big is the device?

A The wire is about that long. A wire length can vary depending upon the size of the patient. And the actual electrical device itself is -- it's about that big in diameter.

So, it's about three or four inches across and about an inch and a half or so thick. They come in different sizes. And the newer devices are smaller than the older devices are. So, it varies, but in general it's about that size. So, it's a little bit larger than a pacemaker, but very similar in size and shape.

Q Do you also have an opinion as to whether or not Ms. Thanasias is going to need future surgery with regard to that device?

A Yes.

Q What's that opinion?

A So, with that particular device, it runs on a battery. So, that battery -- eventually that battery wears down and needs to be changed. Which means you have to go into the pouch, you have to open up that area, get the device and then do a battery change. So, that's a requirement after you place that device.

So, there is maintenance and upkeep on the actual device itself that does require going into the

area where the device is to do battery change, for example.

Q When you say going into the area, the patient -- do they have to actually open --

A They have to open the pouch that the device is contained within, yes.

Q Does the skin have to be breached?

A Yes.

Q And I want to go over some records with you quickly.

First, I have an X-ray I want you to see from December 9, 2002.

Can I have the doctor step down, Your Honor?

THE COURT: Yes.

Q Doctor, take this X-ray and I want to ask you some questions about it.

Now, what is that an X-ray of?

A This is an X-ray of the lumbar spine or the lower back of Ms. Victoria Thanasias.

Q What does it show?

A This X-ray shows the bones of the lower back and the joints of the lower back. And in the lower -- lowest portion of the lower back between the L-5 and the S-1 bones, it demonstrates that there is a crack in one of the bones.

Q What's that crack called?

A The crack has a fancy name to it and it's called a lysis. A lysis is just a medical term. It means crack or break. And it's called a spondolysis, which means a vertebral body crack or break.

It's a particular portion of the vertebral body called a pars P-A-R-S, which is really translated as part. So, it's a broken part of the vertebral body.

Q Can you tell the jury what --

A Pars inter-articularis, or in between the joints. So, pars means part, inter means in between, articularis means joints. So, it's a break in the part in between the joints.

Q And this is -- is that break or --

MR. DERRICO: Objection. Ask him what the significance of it is. Don't tell him the answers.

MR. MALLAS: Judge, I am asking an opinion question.

THE COURT: We are trying to save a little time here and I must say, I don't think the doctor is subject to being influenced by the questions. So, within certain limits, I will allow it.

Q Doctor, do you have an opinion within a

reasonable degree of medical certainty whether or not that pars break that you just described is causally related to the accident of November 14th, 2002?

A Yes.

Q What's that opinion?

A That it is causally related.

Q Why do you have that opinion?

A Well, we have the actual X-ray here itself that was taken after the accident. And we have a history of low back pain after the accident as well. The break in the pars is a painful problem because it's a crack in bone and when you have a crack in bone it does manifest itself as pain. And it's in the area that was also operated upon.

Q Now, Doctor, that X-ray. Does it show arthritis?

A It does show some, what we call, arthritis in the area of the pelvis, in particularly in the area what we call the sacroiliac joint.

Q Does that change the opinion that you just gave the jury?

A No. These findings, particularly in the sacroiliac joint, which is that joint that connects your pelvis to your sacrum, is pretty typical as we age. Most of these issues happen to all of us as we

get older, just free wear and tear issues.

Q Doctor, you can have a seat.

Doctor, I want to bring to your attention some other stuff that's in evidence.

I want you to assume there was an MRI on December 17th, 2002.

MR. DERRICO: December 16th.

MR. MALLAS: Yes, the report is the 17th.

Q December 16th, 2002, and the impression was desiccation of the L-5 disc and disc bulge with possible annular tear at the midline. What's the significance of that? Just to be -- no focal disc herniation demonstrated.

Could you explain that?

A What that reading of the film means is that desiccation -- desiccation refers to the fact that the disc has lost water. Everything in your body has water in it, including your discs. And on an M.R.I. when you are looking at your discs -- discs that have water in them have a particular appearance to them.

So, desiccation means a dried up -- a dried up disc. That's what that term means. That can be from a degenerative wear and tear process over time. Annular tears refers to a section of the disc that has

a tear within it. And annular tear is something that happens to a disc when there is abnormal motion around the disc that actually causes a tear.

So, the substance of the disc -- just like you would tear a piece of paper.

And then, part of that reading said -- I am sorry, something about no focal.

Q There was no focal disc herniation?

A No focal disc herniation means that when you are looking at a disc and you want to describe the disc, is the disc herniated or not. And you look at the appearance of the disc.

A disc is normally somewhat round. So, the external border, the border of that disc continues to have a nice smooth, round appearance to it. It's not described as being herniated.

If the border of the disc has an out pouching in it, that makes it not nice and round and clearly you know it would have what's called a herniation.

Just like you can see the herniation on the wall of a tire that's about to pop. Or if you squeeze a jelly donut and you see some jelly dripping out of the side of the donut. It wouldn't have that normal circular appearance to it.

So, if you don't see that, if that's not

there, then it would mean there is focal herniation of disc material.

Q Now, Doctor, I want you to assume there was another M.R.I. of Ms. Thanasia's lumbar spine on May 30th, 2003.

Initially it was read as a negative M.R.I. of the lumbosacral spine. And then it was -- there was a redictation and findings were Schmorl's node involving superior end plates at the L-1 and L-3 level. Small posterior annular bulge at the L-5/S-1 level. And no evidence of spinal canal stenosis.

Would you explain what that means?

A Schmorl's node. When you look at the lumbar spine, you are looking at bones stacked up on each other. Those bones are typically square. When you see them, they are square.

In between the bones is a disk. So, it's almost like an Oreo cookie. The top and bottom half of the cookie are your bones and the stuff that's on the inside is the disc.

And the bones have a typically square appearance to them and they are typically flat where they come into contact with the disc.

Now, a Schmorl's node is congenital. It's a congenital remnant of when you were a little fetus

developing in your mother's womb. Because when you are growing as a little fetus, that disc and bone area actually has some opening in it and they are not completely and entirely flat. Those end plates are not flat.

And a Schmorl's node basically means that the disc -- the way the disc sits in between the bones causes a concavity in the bony surface. And that's what we call a normal congenital variant when you are describing the appearance of the disc and bones that many of us have if you are looking at M.R.I.'s of the lumbar spine.

Q What's the small posterior annular bulge formation at L-5/S-1?

A Small posterior annular bulge formation means that, once again, when you are describing the circumference of the way the disc looks, instead of the disc being completely and entirely underneath the border of the vertebral body, it's going beyond the border of the vertebral body in a symmetrical or smooth way.

So, it's bulging outside, beyond the border of the vertebral body under which it normally sits.

Q Doctor, in a month's span, two M.R.I.'s -- a little more than that, about a five month span, there

were two M.R.I.'s of the lumbar spine. Is that odd?

MR. DERRICO: Can we have a reference as to what year he is --

Q I just referred to two M.R.I.'s. The two that I just referred to were from December 2002 and May of 2003. That's a five-month span?

MR. DERRICO: Thank you.

Q Doctor, is that abnormal to have two M.R.I.'s in the same area that close?

A No.

Q Why would you have two M.R.I.'s that close in time?

A One of the reasons you do an M.R.I. in that type of circumstances is if a patient's clinical process were deteriorating, you're getting worse. You would do another M.R.I. to see if there were any changes from the previous M.R.I. that you had done.

Q Typically, based on your experience, when testing is ordered for a patient to a particular part of the body, that's because of patient-- why is that done?

A Testing -- when we as doctors order a test for a body part, X-ray, E.M.G., whatever it might be, it's based on the complaints and physical findings from our exam that a patient offers to us regarding that

particular body part.

Q So, if there is an X-ray of the hip, it's safe to assume there was a complaint from the patient; correct?

A Yes.

Q And now, can you explain to the jury what a lumbar discogram is?

A Lumbar discogram is a test whereby you take a needle and you take dye, radiopaque contrast material which is kind of a dye so that you can see it on an X-ray or CAT scan, and you take the needle and then you inject the discs with that material. So, you're looking at how much dye the disc accepts, what it feels like when you are injecting it to the person who is doing the actual injection, what the dye does once it's inside the disc, and whether or not the patient has reproduction of symptoms when you are injecting a particular disc.

So, it's a way of testing the discs by actually injecting material into each disc and then looking at not only what it looks like, but what it does to the patient after you have injected it.

Q Doctor, I am going to show you what's been marked in evidence -- or a copy, if you don't mind, Counsel, that I use a copy of it.

MR. DERRICO: That's fine.

Q I am using a copy of Plaintiff's 36 in evidence, which is the -- this is a report of the discogram; correct?

A Yes.

Q And can you tell the jury what that impression of that discogram is?

A Sure. So --

Q Why don't we go to the third page, then I will ask you some questions.

A Okay, I am on the third page.

Q Where it says impression, could you tell the jurors what that says, starting with one?

A Yes. Number one, it says, limited evaluation of L-5, S-1 intervertebral disc space secondary to asymmetric right-sided positioning of contrast material.

Q Could you tell the jury what that means?

A That describes -- this is -- that's a discographic examination of where the dye goes when you inject it into a disc. When you inject it into the disc, it goes into the soft part of the disc or the nucleus and an asymmetrical right-sided positioning of the contrast material means that the contrast is going into a herniated section of disc.

So, that's a description of a disc herniation.

Q Could you tell the jury what the next finding is?

A Number two, it says, right ventrolateral disc space herniation probably representing an extrusion at L-5, S-1.

Q Explain to the jury what that means?

A That means that that area where you were seeing the abnormal positioning of that dye material is actually also enhancing, it's making you see a piece of disc material that's actually broken off of the actual disc itself and coming out beyond the confines of where the normal disc is. That's what the extrusion means.

Q Now, Doctor, I am going to show you something else. I want to show you the operative report which has been marked in evidence as exhibit 34.

Doctor, take a look at this operative report and then I will ask you some questions.

Doctor, can you tell the jury what operative report that is?

A This is the operative report from July 18th of 2003 regarding Victoria Thanasias' operative surgeon is, Dr. James McMurty.

Q Can you tell me what type of operation this

was for?

A This was for a lumbar herniated disc.

Q That is a pre-operative diagnosis from the doctor at this time?

A Correct.

Q What's that pre-operative diagnosis?

A Lumbar herniated disc.

Q Is there a post-operative diagnosis?

A Yes.

Q What's that?

A Same.

Q Can you tell the jury how this procedure is done?

A Sure. So, this is a procedure -- this a surgical procedure on the lower back whereby you open up the area of the lower back through an incision in the skin. You go to the area where the herniation is, and then you open the canal to get down to the area where the nerve is, find the nerve, move it out of the way, find the disc and then remove the herniated portion of the disc.

Q And I want to turn to page 2. And was that actually done?

A Yes.

Q What was done?

A The operative report indicates that the disc was removed with a combination of pituitaries and the nerve root was decompressed.

Q Doctor, the M.R.I.'s and the neurological tests that we have spoken about, those are called diagnostic tests; correct?

A Yes.

Q And they are tools; correct?

A Yes.

Q Who is the best -- who is in the best position to see whether or not there is, in fact, a herniated disc?

A The best way-- I mean, the gold standard for knowing whether or not there is a disc herniation is actually looking at the disc itself.

Q That's what happened during the surgery?

A Yes.

Q Because Victoria's back was actually open, a surgeon was actually looking at it?

A Yes.

Q I want to turn to the hip for a moment. I want to refer you to --

MR. DERRICO: May we approach for one second?

THE COURT: Sure.

(Whereupon, a discussion was held, off the record, at the bench, between the Court and Counsel.)

Q Now, Doctor, for brevity sake because Counsel does bring up a very good point --

MR. DERRICO: I am sorry.

Q I am going to show you the --

MR. DERRICO: I think one of the jurors needs water.

(Pause held.)

Q Now, April 30th, 2004, there was an M.R.I. of the right hip; correct?

A Yes.

Q That M.R.I. was essentially normal? Why don't you tell us what it shows.

A The M.R.I. indicates no evidence of what's called osteonecrosis. There is no osteopathology. The bones are alive and well, there is nothing wrong.

Intact pelvic musculature, which means the muscles in the pelvis are fine, no problem.

Bilateral ovarian follicles. That's kind of a normal finding for ovaries.

Visualized deep pelvic soft tissues are preserved. No abnormalities are noted in the pelvis.

Q And then there is an M.R.I. -- arthrogram of

the right hip on June 10th, 2004; correct?

A Yes.

Q Now, based on your experience of what appears to be a normal M.R.I. of the hip, why would an arthrogram of the hip be ordered?

A An arthrogram of the hip is very similar to a discogram. It gives you more dynamic information about the hip and the hip joints.

So, if you have persistent symptoms and physical findings in a hip where the M.R.I. is otherwise normal, you take some dye, you inject that dye into the hip joint and then the dye can actually float around inside the joint and illuminate or make you see more clearly the structures that are inside the joint that may not show up on a normal M.R.I. scan.

Q Can you tell the jury what the findings of that arthrogram were?

A The findings for this arthrogram -- it indicates a tear of the anterior labrum of the hip joint.

Q Can you tell the jury what that -- the labrum is?

A Your hip joint is a -- it's a ball and socket joint. So, the ball is on top of your hip. It is the thigh bone, and it sits into a socket which is in your

pelvis.

So, there is a bony contact in there. Around the edge of the socket where the bone contacts everything is a cartilage rim that -- that rim of cartilage is called the labrum and that area helps to hold the hip joint in place.

So, not only is it just a bone socket ball joint, but it is also held by this ridge or rim of cartilage that's on the outside of the joint to help hold that joint together. And that's what the labrum is. The labrum is cartilage outside the portion of the hip joint.

Q I want to refer you to-- I am going to give you the operative report which is also in evidence. I believe it's part of Plaintiff's 33. And can you tell me what this operative report is for?

A So, this is an operative report for the right hip labrale tear.

Q Is a labrale tear painful?

A Yes.

Q Why?

A As the hip -- so, that cartridge rim that's normally helping to hold the hip joint together, if it's torn it means that when the hip joint moves, that little piece of cartilage where it's torn is flapping

around inside the joint. So, it's interfering with the normal articulation or motion of the hip joint.

And when it does that, it's like you have something -- it's like you have something caught inside your hip joint and that causes irritation inside the joint, that causes inflammation, that causes swelling, that causes pain.

Q And what was done in this procedure?

A So, this procedure was a right hip arthroscopy and labrale debridement.

Q What's the purpose of it? What's it supposed --

A The purpose of this procedure is to clean the area, clean up the area where that labrum is torn so that you prevent it from flapping around as the hip joint is moving, thereby decrease the irritation, inflammation and pain.

Q I want to bring your attention down to the area that says findings.

A Yes.

Q And it says, there was fraying of the superior aspect of the weight bearing surface of the acetabulum with grade two type chondromalacia approximately thirty percent.

Can you explain what that means to the jury?

A Sure. That's a way of describing what the surface of the joints looked like. So, normally when you look at a joint surface, it's covered in cartilage. The cartilage is normally very smooth, very clear and very slick, almost like ice, like ice on a hockey rink. It has that color to it, and it's very slick and smooth. Your joints move around real nice and don't cause any pain.

And what fraying means is that smooth appearance that the cartilage normally has and that slickness that the cartilage normally has is gone, because now the cartilage is softer. It can contain some tears and some fraying.

So, it's like an ice rink that the skaters been skating around on for a while and that are leaving slushy spots and that's what's happening in about -- according to this -- thirty percent of the surface. It is covered in that kind of an abnormal cartilage area.

Q What is that indicative?

A That's indicative of abnormal wear and tear inside the hip joint.

Q How long would it take for the labrum to develop this type of fraying?

A It would take many months for the cartilage within that hip joint area to wear down to the point

where you would start to see those types of cartilage changes.

Q So, certainly it's uncommon that the November 14th, 2002 --

MR. DERRICO: Objection. Leading.

Q Do you have an opinion within a reasonable degree of medical certainty whether or not the tear in the labrum was caused by the accident of November 14th, 2002?

A Yes.

Q What is that?

A It's that it is causally related to that car accident.

Q Is there fraying -- do you have an opinion within a reasonable degree of medical certainty as to whether or not the fraying is as a result of that injury?

A Yes.

Q What's that opinion?

A That the fraying is a result of that injury.

Q Now, Doctor, I want to refer you to Dr. Roberts records, which are Plaintiff's Exhibit 38. I am going to turn to the back where it says impression. If you can read that to the jury for me.

A Impression. Ms. Thanasias is suffering from

low back pain probably right S-1 radiculopathy, meralgia paresthetica.

Q What is meralgia paresthetica?

A Meralgia paresthetica is a term that means the femoral nerve, which is the nerve that comes out under your pelvic ligament and goes into your thigh, it specifically refers to this nerve called the femoral nerve and it means that there is femoral nerve irritation and pain.

Q Could you continue?

A Sure. I doubt there is a component of reflex sympathetic dystrophy, now known as complex regional pain syndrome. She has tried multiple oral medications and has had problems with tolerance or lack of benefit, and is currently using Fentanyl, Lidoderm and Elavil with some relief.

I think she is candidate for selective nerve root block to determine if more invasive treatment of this S-1 radiculopathy is warranted. And also, a separate right lateral femoral cutaneous block to see if further more aggressive treatment is warranted.

Q I want to focus on one specific thing. This report is after you first saw Victoria; correct?

A Yes.

Q And he says he doubts that there is R.S.D.;

correct?

A Yes.

Q Do you disagree with him?

A No, not necessarily.

Q Explain to the jury why?

A These two things -- if you are looking at the nerve problem and nerve symptoms are not mutually exclusive. You can have R.S.D., meaning in addition to the meralgia paresthetica. They are both chronic nerve problems, and they can both manifest themselves in abnormal sensory findings in a leg, and abnormal physical findings that she has had.

And basically, what he is telling us is that he wants to do some things to further investigate the abnormal nerve findings that's she has in her leg.

Q Now, Doctor, do you have an opinion within a reasonable degree of medical certainty whether or not these injuries and these treatments that we have discussed with the jury are causally related to the accident of November 14th, 2002?

A Yes.

Q What's that opinion?

A They are causally related to the accident.

Q Do you have opinion whether or not, within a reasonable degree of medical certainty these injuries

are permanent in nature?

A Yes.

Q What is that opinion?

A That these injuries are permanent.

Q Now, did you diagnose whether or not Ms. Thanasias is disabled?

A Yes.

Q What was that diagnosis?

A I indicated that she had a partial disability.

Q Explain to the jury what that is?

A Sure. So, in terms of disability or inability for you to return to duties, you could have none, or you can have total or you can have something in between, which means partial.

Partial means that you can go back to work and duties are, albeit, modified.

MR. DERRICO: Objection. Can we approach for a second?

(Whereupon, a discussion was held, off the record, at the bench, between the Court and Counsel.)

Q Were you finished explaining what permanent, partial disability is?

A I think so, yes.

Q Now, one more thing.

Do you have an opinion within a reasonable degree of medical certainty whether or not the injuries sustained by Ms. Thanasias that you described to the jury presented a significant limitation of use of a body part, function or system?

A Yes.

Q What is that opinion?

A That it produced a significant limitation.

Q Do you have an opinion within a reasonable degree of medical certainty as to whether or not Ms. Thanasias suffered a medically determined impairment or injury of a non-permanent nature which prevented her from performing substantially all of the usual, customary, daily activities for not less than ninety days during the first one hundred eighty days immediately following the accident?

A Yes.

Q What is that opinion?

A That she did have that disability, correct.

Q Do you have an opinion whether or not the break we discussed presents a fracture?

A Yes.

Q What is that opinion?

A That it does represent a fracture of that

portion of the bone.

Q Doctor, I am going ask you to assume the following facts are true.

Ms. Thanasias -- I am sorry. I did lie, I have another question.

Someone who has desiccation in their spine, does that make them more susceptible to an injury?

A Yes.

Q And someone who has a prior injury to their spine, are they more susceptible of exacerbation of an in jury?

A Yes.

Q Can you explain what that means?

A That means that if you have a portion of your body that is not in brand spanking new condition and there is an injury, you are more susceptible to having an injury in that area than you would be if you didn't have to that problem.

Q Is it possible for someone to have a back injury heal and then that person have a back injury and not heal?

MR. DERRICO: Objection to the form.

Anything is possible.

Q Based on your experience and examining patients, Doctor?

THE COURT: You can answer the question?

A Yes, that is possible.

Q Depends on the person; correct?

A Yes.

Q I am going ask you to assume the following facts are true:

That back in 1997, Ms. Thanasias was involved in car accident, rear-end collision where she treated with Dr. Simonetti, she treated with Dr. Simonetti for six months, Dr. Simonetti testified that he discharged her asymptomatic, and then in 2002 Ms. Thanasias was involved in another motor vehicle accident, was rear-ended while stopped at a light.

I want you to assume that the ambulance came, where she complained of my head and lower back hurt --

MR. DERRICO: Objection. That's not what it says in the ambulance call report.

MR. MALLAS: Judge, I am reading verbatim from evidence.

Q And I want you to assume that the ambulance took her to the emergency room at White Plains Hospital where she complained of lower back pain.

And I want you to further assume that about a week later, she followed up with her primary care doctor, Dr. Antonio Vlantis, who initially referred her

for conservative care, including physical therapy, acupuncturist and she also saw a chiropractor.

I want you to assume that Ms. Thanasias testified that these conservative treatments did not help her. Thereafter, after testing, she had surgery to her back with Dr. McMurty.

She testified after the surgery the back pain got somewhat better, but that she had continuing leg pain and groin pain.

I want you to assume she had SED surgery to repair a torn labrum and she said the pain subsided somewhat in that area.

I want you to assume she had been diagnosed with meralgia paresthetica and R.S.D.

I want you to further assume that Ms. Thanasias has missed time from work as a result of this accident. There has been testimony -- and that there has been testimony by her and her husband that her activities of daily living have been affected.

Doctor, do you have an opinion within a reasonable degree of medical certainty whether or not the car accident of November 14th, 2002, I described earlier was the competent producing cause of the pain and treatment that Victoria has dealt with from the date of the accident up until today?

A Yes.

Q What is that opinion?

A That it is causally related to the accident.

Q Doctor, do you have an opinion within a reasonable degree of medical certainty as to whether or not these injuries are permanent?

A Yes. Yes.

Q I want you to also assume that -- I left this part off, that Ms. Thanasias has had subsequent surgeries to have a spinal column stimulator implanted into her spine, as well as a prior surgery to have the testing for the stimulator implanted.

Is your opinion the same as to those procedures?

A Yes.

Q They are causally related to the accident; correct?

A Yes.

Q Those are also permanent injuries; correct?

A Yes.

Q And, Doctor, you said they are permanent. Are they into the future?

A Yes.

Q How long into the future?

A Lifetime.

MR. MALLAS: I have no further questions.

THE COURT: You may cross.

MR. MALLAS: Before that, I would like to mark this file in evidence.

THE COURT: Sure.

MR. MALLAS: Can we have it deemed marked?

THE COURT: Yes.

MR. DERRICO: Just give me a second to set up.

CROSS-EXAMINATION

BY MR. DERRICO:

Q Let's talk briefly about the ambulance call report. Let's read this together.

Do you have a copy of this?

A No.

Q Let's read this together to the jury, right here with the subjective assessment.

A It says, subjective assessment. Female patient found sitting in driver's seat of vehicle. C.O.S. times 3.

Q Stop. What is that?

A It's alert and oriented.

Q Time three means what?

A Time, person and place.

Q She is able to communicate, she knows where she is. That's indicative that she has no type of head trauma or head injury?

A Yes. Indicative of no concussion that caused her --

Q She is able to communicate with the ambulance personnel?

A Yes.

Q Go ahead.

A Complains of pain to head. Patient was --

Q Operator?

A Operator of vehicle that was rear-ended with minor damage to vehicle.

Q Minor damage; correct?

A Yes.

Q It also indicates she was wearing her seat belt?

A Yes.

Q Now, you have testified in cases involving motor vehicle accidents before; correct?

A Yes.

Q With injury to the cervical spine, the neck and the lumbar spine?

A Yes.

Q And when you're rear-ended in a car -- you have heard the term whiplash?

A Yes.

Q That's when the neck goes forward; correct?

A Yes.

Q That's a whiplash injury?

A Yes forwards and backwards.

Q When you are wearing a seat belt in a car, would you agree with me that you would be more susceptible to a whiplash injury than you would to a lumbar injury? Yes or no, would you agree?

A No.

Q We will touch upon that a little bit more later. I just want to go over a couple of points with you.

How much are you being paid --

A Six hundred fifty dollars per hour.

Q That's portal to portal, door to door?

A For time away from the office, yes.

Q What time did you leave? You said from when you leave your house up to the point you get home or back to the office?

A It should be from the time I get back to the office.

Q What time did you leave your house and come

here today?

A 8:00 a.m.

Q So, you are on the clock since 8:00. It's 12:00 now, four hours. That's twenty-four hundred -- twenty-seven hundred so far; correct?

A Yes.

Q And then assume we finish around 1:00, which I am hoping, that will be another six hundred fifty dollars. Brings us to three thousand fifty dollars. And then when you get back to the house or the office, that takes you about another hour at six fifty; correct?

A Hopefully will take less than an hour, yes.

Q You testify pretty often; don't you?

A Not often.

Q You do testify -- how many times have you testified already this year, 2010?

A This year?

Q Yes.

A I can think of one time that I have testified this year.

Q When was that?

A Actually, this is 2010.

Q 2010?

A I am sorry. I don't know that I have

testified in 2010 yet. This might be the first trial.

Q What about 2009, how many times did you testify?

A About four times.

Q Actually, I cross-examined you in 2009?

A Yes, you did.

Q In the Genadi case?

A Yes.

Q Have you ever testified for Mr. Mallas or his office before?

A No, I haven't.

Q You have three offices?

A Actually, I only have two offices.

Q You did formerly have three?

A Yes.

Q One in Queens, one be in Manhattan, and where was the other one?

A Brooklyn.

Q You saw Ms. Thanasias for the first time in March of 2007; correct?

A Yes.

Q March 20th, I think it was?

A Yes.

Q You took a history from her?

A Correct.

Q You gave her a questionnaire; correct?

A Yes.

Q Did she ever mention to you, Ms. Thanasias ever mention to you the prior motor vehicle accident?

A Yes.

Q Where is it? Is it referenced anywhere in your notes?

A Actually, I do have it referenced on my handwritten notes that I took on the 20th which is the front of my chart about her prior.

Q Can I see that please?

A Sure.

Q You mean on the cover?

A On the cover of my chart, yes.

Q It's handwritten here?

A Yes, correct, lower left-hand corner in the square.

Q Prior history?

A Yes.

Q What is it?

A Prior M.V.A. '97, left shoulder, left arm, plus minus, low back pain, June '97 M.R.I., HHP L-5/S-1 asymptomatic until.

Q These are not -- did you have some typed notes?

A Correct.

Q After each one of your examinations or interviews with her, three or four of them?

A Yes.

Q But there is no mention of the prior motor vehicle accident in the initial one; is there?

A No, that is on the 26th of March actually. For some reason the 20th -- I don't think the 20th was transcribed.

Q The 20th?

A Yes. But I think the 26th note that I did write had the prior history of the injury in it. That's March 26th.

Q That's not the 20th.

A The initial was the handwritten note on the front of the chart.

Q We will come back to this. I want to point out something.

On your record of the 26th, you indicate you reviewed an operative report and prior motor vehicle accidents --

A Yes.

Q -- motor vehicle accident, and you said Pristine Medical Diagnostic Images?

A Yes.

Q And you reviewed four images?
A I think I have four listed there.
Q 4/2/98, 6/5/97, 8/27/97 --
MR. MALLAS: Back on that?
MR. DERRICO: And 6/26/97. I am just saying that comes from his records. That wasn't from my records.
Q You indicated that she had four diagnostic tests?
A As that must have been there, yes.
Q If I remember correctly -- we are not supposed to be talking to each other while --
THE COURT: Counsel, just proceed.
Q Doctor, now, did you ever call Dr. Simonetti?
A No.
Q And you reviewed his records?
A I believe so, yes.
Q You know Dr. Simonetti when he is -- he is a chiropractor; correct?
A Yes.
Q When he examined her he found there was a positive Kemps test. Did you note that?
A Did I note it?
Q Did you know that?
A I don't recall offhand.

Q But a positive Kemps test mean when you are rotating the trunk it produces pain down the leg?

A Yes.

Q But you don't recall seeing that Dr. Simonetti's record indicate that was positive back in 1997 for that?

A I don't recall offhand if I didn't signal it down on the note.

Q But if you have radicular pain back in '97 that's an indication that you have a nerve injury or problem; correct?

A Or irritation.

Q But that's not normal; correct?

A It's an abnormal physical finding, correct.

Q Did you know there was a nerve conduction test done on June 5th, 1997?

A Did we list it? I think we might have seen a nerve test, okay.

Q And do you know what -- did you know it was positive for lumbar radiculopathy?

A I don't recall offhand.

Q You would agree with me that lumbar radiculopathy is an abnormal finding?

A Abnormal finding, yes.

Q We agree the M.R.I. which was done

June 14th, 1997, showed a herniated disc at L-5/S-1?

A Yes.

Q Did you actually look at that film?

A Did I see the film from '97? I don't recall, but I do know that I saw the report.

Q Did you -- you are not certain -- wouldn't you agree with me that if you are going to come to some sort of medical conclusion or diagnosis or prognosis, you should have available to you all the medical records; correct?

A As much as is reasonably possible.

Q But you knew that there was an M.R.I. done on June 14th, 1997; correct?

A Yes.

Q And there is nothing in your record which indicates that you got that actual film and looked at it; is there?

A Correct.

Q Now, Ms. Thanasias goes to White Plains Hospital right after this accident; correct?

A Yes.

Q And she makes some complaints while she is there; correct?

A Yes.

Q And they do some tests while she is there?

A Yes.

Q Diagnostic tests; correct?

A Yes.

Q They did a C T scan of her neck; correct?

A Yes.

Q But they never did a CAT scan, X-ray of her lumbar spine; correct?

A Yes.

Q And there is no mention in the White Plains Hospital records of a hip injury; is there?

A I don't know. I would have to look at the record one more time just to refresh my recollection of that.

Okay, I am sorry. I was looking at this so I forgot your last question.

Q That's okay. At the White Plains Hospital she made no specific complaint about right or left hip injury or pain?

A Right. I don't see that, correct.

Q So, let's -- there is a thing called -- there is an acute finding; correct?

A Yes.

Q That's something that happens as a result of a trauma; right?

A Yes.

Q Acute finding?
A Yes.
Q And there is something that can happen over time which is non-trauma related?
A Yes.
Q Now, if I tore my labrum in a motor vehicle accident, you said that's a painful thing?
A Yes.
Q That's what you said?
A Yes.
Q You are saying she had an acute tear of her labrum; correct?
A Yes.
Q So, if I tour my labrum in a motor vehicle accident on November 14th, 2002, and I go to the hospital, one would think -- correct me if I am wrong -- that there would be a mention of some pain in the right hip, yes or no, Doctor?
A If the pain manifested itself in the hip area.
Q Is there any mention of any leg pain in that medical record in the hospital record; yes or no?
A I am sorry. Of any --
Q Leg pain.
A Not the leg.

Q We agree that she complained of headache pain and lower back pain?

A Yes.

Q Now, you also said on direct that this pars fracture is a painful thing as well?

A Yes.

Q And they didn't do an X-ray of her back, lumbar back spine at the hospital; did they?

A No.

Q So, there is no confirmation on the date of that accident that she had this alleged pars fracture the date of the accident? There is no diagnostic correlation; yes or no?

A They did the diagnostic study of her lower back on that day. No.

Q There is no diagnostic confirmation?

A There is no test of it, correct, that's right.

Q Now, they did check the cervical lordosis at the hospital?

A They did an examination of her neck, yes.

Q And they noted that the lordosis, the curvature there was normal?

A Yes.

Q Now, lordosis, as we discussed, is the

curvature of the -- where it comes down from the neck and it goes in on the back; correct?

A Yes.

Q And one of the things you would see if you have a neck injury or back injury, a doctor would expect to see -- one of the telltale signs would be a reversal of the lordosis or straightening; correct?

A Yes.

Q People would straighten up because the body is trying to protect itself; correct?

A Yes.

Q And there is -- if you are checking the cervical lordosis, you would be -- because where you're checking, you would be able to see if that is abnormal with the lumbar lordosis, the entire lordosis; yes or no?

A No.

Q No?

A No.

Q So, you would say they were just looking at this right at the cervical aspect, but --

A That's what they did, because they didn't order any X-rays of lumbar --

Q But they don't note any problem with the lumbar lordosis?

A No, they don't.

Q Did you look at the record of Dr. Antonio Vlantis?

A I believe I did .

Q Do you have them there?

A No, I don't have Dr. Vlantis' record.

Q Where did you look at them?

A Let's see. Notes from Dr. Vlantis. Those would have been taken in by Victoria and I would have reviewed them and given them back to her.

Q You don't keep them?

A No, I don't necessarily keep all the notes, no.

Q What notes specifically did you look at?

A Well, we can -- I don't know, but I do have a review of notes from Dr. Vlantis.

Q That Ms. Thanasias gave you?

A Yes.

Q So, you don't know if it's a complete copy of Dr. Vlantis' records; do you?

A I don't keep his records, nor do I --

Q This is going to go much quicker if we can do a yes or no.

A I will give you -- no.

Q You don't know if you got a complete copy?

A Correct, that's right.

Q Now, do you know if Dr. Vlantis' records contain any complaint about right hip or leg pain?

A I would have to review them to refresh my recollection of that for --

Q As you sit here today, you have no idea?

A Do I have an idea? Well, I wouldn't have an idea unless I can take a look at them again for you.

Q I am sorry.

A I don't have a recollection of them, but I do -- I would be happy to look at them for you.

Q You knew you are you were going to testify here today?

A Absolutely, yes.

Q And you were paid money to look at these records; weren't you?

A I was not paid money to look at the records. I am compensated for my time away from my office.

Q Did you look at anything last night other than speak to Mr. Mallas?

A Yes, we did review records.

Q What records did you review?

A I don't recall. I had done four operations and it was about 10 o'clock at night and I wanted to go home and go to sleep, so I reviewed whatever I had in

the hopes of going home and getting rest.

Q You reviewed whatever they gave you; yes or --

A I made a review of records, yes.

Q I am asking you, you just said whatever you thought was necessary.

Well, as you sit here right now, do you recall reviewing Dr. Vlantis' records last night before you testified here today?

A I do not recall.

Q I am not going to go through the entire record, but I am going to submit to you, there is no complaint in Dr. Vlantis' records of hip pain, specific hip pain --

MR. MALLAS: I object.

Q All right?

THE COURT: Ask the question.

Q As you sit here today, do you know whether she made any specific complaint of hip pain to Dr. Vlantis?

A I don't recall.

Q I am talking about when she initially saw him. When she initially saw Dr. Vlantis, when she was -- soon after the accident, in fact, it was a week after the accident, normally the only complaints she

had were lower back, neck and shoulder.

There is no complaint -- did you know there was no complaint on that date, a week after the accident, of hip pain.

Judge, if he would like to show him on redirect.

MR. MALLAS: Judge, I object, because all along -- he is impling the records say something they don't. He is saying --

THE COURT: Let's not break into speeches.

THE COURT: Let him ask the question.

Q When --

MR. MALLAS: I didn't say anything until he spoke, Judge.

MR. DERRICO: Judge --

THE COURT: Ask your question.

Q Did you know, yes or no, that when Victoria Thanasias first presented to Dr. Vlantis on November 21st, 2002, she did not make any specific complaint of -- about her right hip? Did you know that, yes or no?

MR. MALLAS: Objection, Judge.

THE COURT: Overruled.

Q Did you know that, yes or --

A I don't remember, no.

THE COURT: You can respond to that on redirect.

Q Now, did you review the Bronx physical therapy records?

A Yes, I believe so.

Q Do you have them with you?

A No.

Q Do you know what complaints she made to the people at Bronx --

A We can look at the same record once again. If you would like, I would be happy to look at them again.

Q Do you have any specific recollection that she made any complaint to anyone at Bronx physical therapy about her right hip or leg, as you sit here?

A Do I recall?

Q Yes?

A No.

Q Now, you did look at -- I am sorry.

Did you look at the X-rays taken by Dr. Thanawala on December 9, 2002?

A Yes.

Q Was that here or somewhere else?

A We just looked at them here.

Q That was the first time?

A I don't recall, but you --

Q You don't remember whether or not you looked at that X-ray ever before?

A Honestly, no.

Q Now, in the X-rays of 12/9/02, that you just looked at, it shows some narrowing disc space at L-5/S-1; correct?

A Yes.

Q And that 12/9/02 is a month -- less than a month actually after the accident; correct?

A Yes.

Q It also shows degenerative arthritis?

A Yes.

Q That doesn't happen in three weeks?

A Correct.

Q So, we agree that that's a preexisting condition that she had?

A Yes.

Q And arthritis means it's not a normal finding, it means there is a problem there; correct?

A Correct. It means there is a problem with the joint, yes.

Q And the joint we are talking about is the lumbar joint; correct?

A Lumbar and sacroiliac, as I recall from that reading.

Q Dr. Thanawala also did an X-ray of the right hip and pelvis; correct?

A Yes.

Q He found degenerative arthritis; correct?

A Yes.

Q That's not normal?

A Correct.

Q That's within less than a month of this accident; correct?

A Yes.

Q Now, the Schmorl's node that we talked about, could that be -- is that a vertical herniation that pushes down, the Schmorl's node, or no?

A It's a congenital remnant of the development of the spinal canal, and you can describe it as nuclear material in the neighborhood of the end plates. So, in that sense, it can be described as a vertical herniation.

Q So, when we talk about a vertical herniation, we are talking about the jelly donut is the disc and the outside is the annulus fibrous?

A Yes.

Q And the inside of the jelly is the nucleus

pulposus. When you are talking about a vertical herniation, you are just talking about some of the pulposus, the jelly being pushed out; correct?

A Yes. It doesn't happen in the vertical sense though, so it's a little different than when you were talking about it the other way.

For anatomical reasons, because the bone puts pressure on that annulus or that outside of the jelly donut, so you can never actually get a herniation of the nuclear material out. What you do have is abnormal contour.

Q Pushing it?

A Well, you have abnormal contour of the disc and that abnormal contour, if you are talking about how -- the way the disc looks, it can be described as a herniation.

Q Now, Doctor, we went and looked at the-- you looked at the 12/16/02 MRI?

A Yes.

Q Did you actually look at it yourself or the report?

A Yes.

Q And it mentions desiccation?

A Yes.

Q Desiccation is the drying out of the jelly?

A Yes.
Q That's not normal?
A Correct.
Q It happens over time?
A Yes.
Q It didn't happen in that month period of time between the accident and the -- correct?
A Yes.
Q And that M.R.I. report on 12/16/02 doesn't say that there is abnormal lordosis?
A No.
Q Doesn't mention it?
A Correct.
Q That would be a significant finding; yes or no?
A Not on an M.R.I., no.
Q But it is noted on M.R.I. reports; yes or no?
A Yes, it has been.
Q But it's not noted on this one?
A Correct.
Q Is does note some end plate spurring on that M.R.I.?
A Yes.
Q Spurring is the bone; correct?
A Yes.

Q And the end plate means the vertebrae, the end of the vertebrae or the spurring off a little bit? Tell them what it means?

A Spurring means that instead of a smooth contour to the end of the bone, you have what looks like a spur, like a spurring on the back of a boot or heel which is a little piece of bone coming off the normal smooth contour of a bone.

Q That's not normal?

A It depends on the bone that you are talking about for the spurring. In the lumbar spine if you have eight multiple levels on an M.R.I. spurring can be what's called an end plate irregularity.

So, you could have spurring with normal congenital end played irregularities. So, it's not normal when you look at the X-ray on her spine.

Q I am talking about the M.R.I.

A I mean, you have to compare the X-ray and M.R.I. if you are going to talk about the spurring actually being normal or abnormal.

So, you have look at the bone on the X-ray and M.R.I. because there are some instances where you can see spurring in a normal sense.

Q Was that the case here; yes or no?

A At L-5, S-1 she did have a degenerative

change, so I don't think there is -- there is desiccation and some degenerative findings at the --

Q Consistent with arthritic changes we are talking --

A Consistent with degenerative changes, yes.

Q When you herniate a disc, the disc does not spontaneously fix itself; does it?

A That's an interesting question. So, it depends on what kind of herniation we are talking about. It depends on the -- there are different factors to the disc and disc healing that need to be taken into consideration.

In general, a herniated disc doesn't fix itself.

Q We know that she had a herniated disc in 1997, L-5, S-1, and we know that subsequently, five years later, I think it's May 30th, 2003, there is a herniated disc at that level; correct, yes or no?

A In addition to the annular tear, yes.

Q Now, let me ask you this. Did you -- if someone has a differential length of a leg, could that -- that would throw your hips off; wouldn't it?

A If you have a leg length discrepancy, you could have what's called imbalance in your hip joints, yes.

Q And having an imbalance in your hip joints can affect the hips; correct?

A Yes.

Q And an imbalance can then affect the back; correct, ultimately?

A It could, yes.

Q Did you ever read Dr. Nicholas' records?

A Dr. Nicholas, let's see.

Q He was the chiropractor --

A Okay.

Q -- that saw her initially?

A Yes.

Q Did you see his records?

A I'm not sure. I am just looking at my review of records to see whether or not I noted Nicholas' records. I don't see his records listed.

Q Those are in evidence; right?

MR. MALLAS: Yes.

Q Did you know that on January 7th, 2003, that Dr. Nicholes noted that she had a one inch right leg shortening? Did you note --

A How did he measure it?

Q I have no idea. Look at his records.

You didn't look at his records; right?

A More importantly --

Q Did you look at his records?

A I don't recall, but I can tell more importantly is how he measured it.

Q You didn't look at his records; right? Never look at his records; correct?

A You are saying never.

Q Did you look --

A I don't have it listed here, no.

Q Did you measure her legs?

A Did I measure her legs? Did I notice a leg --

Q Did you measure the length of the legs; yes or no?

A I did not do a quantitative measurement of her legs, no.

Q Did you review the record of Dr. Robert Israel?

A I don't have them listed in my review, no.

Q Would you agree with me -- let's back up a second.

You saw her in 2007, March?

A Yes.

Q For the first time?

A Yes.

Q Would you agree with me that a doctor who saw

her perhaps in 2003, within three or four months of the accident, would be in a better position than you to gage the extent of her injury as a result of the 2002 accident; yes or no?

A He would be closer to the timeframe of her injury but not necessarily in a better position to gage or not gage the extent of her injury.

Q You would agree with me that because you didn't see her until 2007, you have no idea what her -- independently yourself, you have no idea what her physical condition was in, let's say, January 2003?

A That's right, yes.

Q So, you didn't know that Dr. Robert Israel had examined her on January 27th, 2003? You had no idea about that?

A Okay.

Q You didn't know --

MR. MALLAS: Show me that record, Counsel.

MR. DERRICO: Sure. I will do it after.

MR. MALLAS: Before you --

MR. DERRICO: Judge, if he wants to look at the record and cross-examine, he is more than willing. I want to finish up so --

THE COURT: Next question.

MR. MALLAS: We spent the morning putting records in evidence. I had to do it so he is not surprised.

THE COURT: Counsel, proceed. No speeches please.

Q Did you know that on January 27th, 2003, Dr. Israel performed an examination of Ms. Thanasias and found that her lumbar lordosis was normal? Did you know that? You didn't know --

A No.

MR. MALLAS: Judge, objection.

THE COURT: Noted.

Q Did you also note that when Dr. Israel examined her, he also noted there was no spasming, lumbar spasming?

MR. MALLAS: So I don't have to keep standing up, please note my continuing objection.

THE COURT: Your continuing objection is noted.

A No. I would have to look at that record.

Q And if someone had a normal lordosis -- we already covered that. I will move on.

Doctor, do you know that doctor -- strike that.

Show us how you would abduct and extend your

hips?

A Abduct?

Q Yes.

A I have to stand for you.

Abduction means you are taking a body part away from your body. So, abduction means going like this.

Extend means you are bending it backwards, so you are bringing it out and back.

Q So, if someone has an acute labrale tear, they would have pain upon abduction and extending?

A It depends on the day of the exam, whether or not they are taking any medications, whether or not it was active or passive.

Q You are saying she had an acute tear of the labrum, which eventually required surgery some eighteen months after the accident; correct?

A Yes.

Q Did you know that on January 27th, 2003, when Dr. Israel did the abduction and extension of the right hip, there was no pain whatsoever? You didn't know that; did you?

A I know now.

MR. MALLAS: He knows he is saying that. Judge, may we approach?

THE COURT: Yes.

(Whereupon, a discussion was held, off the record, at the bench, between the Court and Counsel.)

THE COURT: We will take a five minute break.

(Jury exiting.)

MR. MALLAS: Judge, what he wants to introduce is a no fault physical. Yesterday he had an objection to me introducing a physical from 1997. I have an objection to this, Judge.

MR. DERRICO: I assume this is a no fault physical, although Dr. Israel's records were exchanged with plaintiff's counsel.

They are not addressed but I assume that it is the no fault physical.

THE COURT: Are these certified records?

MR. DERRICO: They should be, yes.

(Break held.)

THE COURT OFFICER: Jury entering.

(Jury entering.)

THE COURT: Both Counsel have agreed to try to move this along as fast as possible so that we can be out within a few minute of 1 o'clock and not have an afternoon session.

Please proceed.

Q Doctor, did you ever review any M.R.I.'s of Ms. Thanasias' right knee or left shoulder?

A No.

Q But you knew that those were some complaints she was making; correct?

A Yes.

Q Doctor, did you ever - did you know that on 2/27/03 an M.R.I. was done of the right knee and an M.R.I. was done of the left shoulder and both came back as normal?

A Okay, yes.

Q Did you --

A I don't recall.

Q But that if they came back as normal, that would be an indication there was no issue?

A Correct, yes.

Q Now, did you look at Dr. McMurty's record?

A Yes.

Q He is the surgeon?

A Yes.

Q He is one that did the laminectomy? It was a micro --

A Lumbar discectomy.

Q Did you review all of his records?

A I reviewed whatever I was given and listed as having reviewed, yes. I can't tell you if it was everything, but it was what I had an opportunity to look at, including the operative note.

Q They did a -- do you know that they did a subsequent M.R.I. after the surgery?

A Yes.

Q Did you look at that M.R.I.?

A Yes.

Q Did you look at Dr. McMurty's records, specifically dated 1/14/04? Do you have a recollection of that?

A No, not offhand, no.

Q Did you know that he did a neurosurgical evaluation on January 14th, 2004 of Ms. Thanasias?

A Yes.

MR. DERRICO: And may I approach the witness?

THE COURT: Yes.

Q I am going to read this and tell me if you agree with what it says.

"Ms. Thanasias was seen for a follow-up visit on 1/12/04 and was accompanied by her husband. She had an M.R.I. scan which I reviewed. The scan looks wonderful. There is no evidence of recurrent disc or

new disc herniation and no stenosis."

Now, stenosis, is, we know, narrowing of the spinal canal?

A Yes.

Q If there is no narrowing, then that -- if you have narrowing, it can have an impact on the nerves and give you some symptoms; correct?

A Yes.

Q He is saying there is no narrowing?

A Correct.

Q She is doing better and her husband states she is doing much better than she was prior to the surgery, but she states she is having pain towards the end of the day especially since she is taking care of an active household with children.

You read that; right?

A Yes.

Q Now, did you review Dr. Ahmed's records, Dr. Chris Ahmed's records?

A Yes, I believe so.

Q Now, you don't have a copy of those records with you; do you?

A Correct.

Q Were those records also brought to you by Ms. Thanasias?

A Yes.

Q Do you recall reading the prognosis note dated June 21st, 2004?

A Yes.

Q I will quote from it: "She also underwent a laminectomy by Dr. McMurty on July 2nd, 2003 for symptoms of low back pain and radicular type symptoms on the buttocks and outside of right leg which slowly resolved following the surgery."

A Yes.

Q Do you recall reading that?

A Yes.

Q So, it resolved, according to him, in 2004, June, we had a resolution; correct?

A According to that note, yes.

Q In fact, further on it says, she denies any more numbness and tingling. Do you recall reading that?

A Yes.

Q Now, let's go to 7/19/04. It says, burning pain on the outside aspect of her thigh which is now resolving.

Do you remember reading that?

A Resolving, yes.

Q Do you remember reading, does not have

intense pain in the hip radiating down to the buttocks following the surgery. Do you remember reading that?

A Yes.

Q And there are no other areas of deceased sensation. Do you remember reading that?

A Yes.

Q That's 2004?

A Yes.

Q That's within -- that's twelve days post-surgery of the hip.

And 8/9/04, there is an ability to straight leg raise at the hip without pain. No pain with stress internal rotation. No cracking or clicking with provacative external and internal rotation.

Do you remember reading that?

A Yes.

Q Do you remember reading, there is intact sensation? Do you remember reading that?

A Yes.

Q So, he checked the leg, right, to see if there was normal sensation?

A Correct.

Q And he said intact sensation?

A At that time, yes.

Q In fact, it indicates she had five out of

five motor strength. Five out of five means normal?

A Yes.

Q So, you check the person's strength in her legs and that's what this doctor did in August 2004, and he found it to be normal?

A On that day, yes.

Q Now, 9/13/04, tow months post-surgery, he notes that she had just gone to Greece and had done some extensive walking and attended the Olympics. Did you know that?

A Yes.

Q And, in fact, he sees her right after that. And isn't it true that he notes there is -- her gait is normal? Gait meaning her ability to walk?

A Yes.

Q It's non-antalgic?

A Yes.

Q Normal. In fact, September 13th, 2004, she tells Dr. Ahmed she is satisfied with the surgery and there is -- and it notes, pain is no longer in the hip radiating into the buttocks? That's what he notes then; correct?

A Yes.

Q In fact, he notes again, there is five out of five motor strength; correct?

A Yes.

Q Now, 10/11/04, three months post-surgery, once again, the gait is normal, no longer has hip pain; correct?

A Yes.

Q He notes she is doing well. I am not going to go through everyone of them. We will go to 12/13.

Now, 12/13, examination of right hip reveals asymmetrical range of motion to the contralateral with no pain on internal or external rotation.

Do you remember reading that?

A Yes.

Q He is moving her leg around?

A Correct.

Q And there is no pain?

A Yes.

Q No limitation?

A Yes.

Q He notes there is no edema or instability; correct?

A Yes.

Q Edema is swelling; correct?

A Yes.

Q Now, 7/21 -- we will just jump a whole year after.

On 7/21/05, a year after the surgery, hip has full range of motion without pain, normal sensation. It's a year after the surgery. That's what those records say?

A Yes.

Q Now, if I tell that you I am in pain, that my elbow hurts, that's what we call a subjective complaint?

A Yes.

Q And if we go to the hospital and we take an X-ray of my elbow and it shows that it's broken, that's an objective finding?

A Yes.

Q It means I don't really have any saying?

A Yes.

Q Once again, July 21st, '05, they find no edema, swelling in the lower right extremity; correct?

A Yes.

Q And no instability?

A Yes.

Q Now, let's go over to some of your office visits.

Now, you haven't seen her since September of last year?

A Correct.

Q In fact, the first time you see her is -- I believe was March 20th, and then you see her again on the 28th, and then December and then September of '09, four visits in total?

A Yes.

Q Did you ever say that Ms. Thanasias needs the continual and regular daily assistance of a home health aide to accomplish her usual and daily activities; did you ever say that?

A Is that from one of my notes?

Q It's something that Plaintiff's Counsel served upon us, which says that you are going to opine to that, that you are going to give us an opinion that you are going to tell this jury that's what she needs; does she?

MR. MALLAS: Is he referring to the --

MR. DERRICO: The 3101-D.

THE COURT: Just ask if the --

Q Is that your opinion, yes or no?

A Yes.

Q It is?

A Yes.

Q But it doesn't say that anywhere in your record?

A It does.

Q She doesn't have a home health aide right now?

A I don't know.

Q You never asked her; did you?

A I haven't spoken to her today about it, no.

Q You know she is working?

A Yes.

Q In fact, further on you -- is it your opinion that her physical limitations causes her to not be gainfully employed? Did you ever tell anyone that?

A I indicated she had a partial permanent disability.

Q Did you ever tell anyone including her lawyer --

MR. MALLAS: Can we have the date of that 3101-D?

MR. DERRICO: Judge, it doesn't make a difference.

THE COURT: Counsel, I'm not sure this whole line of examination is proper. What he told the lawyers is not before the court. Why don't we move on?

Q Did you ever tell anyone that she would not be gainfully employed; yes or no?

A No.

Q Is she undergoing physical therapy right now?

A She is undergoing pain management with Dr. Weinberger.

Q When was the last time she saw him?

A I think she sees him about every three months.

Q When was the last time?

A February 1st of 2010 I believe.

Q Do you have those records?

A No.

Q How do you know that?

MR. MALLAS: They are in evidence.

Q Have you spoken to Dr. Weinberger at all?

A No.

Q But she is not undergoing physical therapy right now?

A She is not having P.T., no.

Q But, did you ever tell anyone she needs regular P.T.?

A She should have-- well, my opinion would be that she would require what's called maintenance physical therapy.

Q Did you know whether or not any surveillance was taken? Do you know of surveillance footage of Ms. Thanasias?

A Yes.

Q Did you ever see it?

A No.

Q Did you ask to see it?

A No.

Q Did you ever -- have you ever seen any photograph or video tapes which depict her walking with a normal gait? Have you ever seen anything like that?

A Not that I recall, no.

Q Did you ever -- have you ever seen anything where it shows her bending over?

A I mean, I have seen her bend over in the office.

Q How about rotating and twisting, did you ever see her do any of that?

A Not that I recall, no.

Q You say her condition is guarded; correct?

A Yes.

Q Didn't Dr. Simonetti say the same thing in 1997, that her condition was guarded, July 1997?

A The chiropractor?

Q Yes. Do you recall that?

A Okay.

Q Yes? Not okay.

A Yes.

Q What about Dr. Gooch, did you ever look at Dr. Gooch's records?

A How do you --

Q G-O-O-C-H, Dr. Clifton Gooch. He did an E.M.G. on or about February 16th, 2005. Did you ever look at the E.M.G.?

A I don't recall, no.

Q But he did an E.M.G. test for nerve abnormalities; correct?

A We talked about that, yes.

Q You didn't look at that?

A I don't remember, no.

Q It's one of the records Victoria didn't give you?

A I don't recall that.

Q Did you know that his conclusions were, no evidence of neuropathy, lower lumbosacral radiculopathy myopathy or flexopathy. Did you know that?

A Okay, yes, now we know.

Q You didn't know that; did you, that that's what the E.M.G. showed in 2005?

A I don't recall offhand, no.

Q Now, when you did your examination of Ms. Thanasias of her lower extremity, right leg, did you notice any discoloration in her leg?

A No.

Q Did you notice any temperature changes in her leg?

A No.

Q Did you notice any swelling or edema in the right leg?

A No, just the atrophy of her calf.

Q R.S.D. has some diagnostic criteria; doesn't it?

A There are no criteria for R.S.D., yes.

Q And the criteria is -- is it change or discoloration can be one of them in the extremity?

A It can be, yes.

Q One of the other criteria is change in temperature of the extremity; correct?

A Yes.

Q So, if I had R.S.D. in my hand, you might see my hand swollen with edema; correct?

A You might, yes.

Q That would be a really good indicator that I have R.S.D.?

A That is one of the things that you would look for for R.S.D.

Q But she didn't have that. She didn't have any discoloration in the leg?

A Correct.

Q Another thing would be change in the nails; correct?

A You can have nail changes.

Q Did you notice if she had any change in the nails in her right foot?

A No.

Q There was no swelling and there was no temperature change; correct?

A Correct.

Q Those are four of the criteria for diagnosing R.S.D.?

A Those some of the criteria for the diagnosis, yes.

Q And pain or -- subjective pain is another one; correct?

A Yes.

MR. DERRICO: I am done, Your Honor.

Let the record reflect I did it by 1:00.

REDIRECT EXAMINATION

BY MR. MALLAS:

Q Doctor, I want you to assume Dr. Simonetti came here and testified yesterday, and he said that Victoria was released from his treatment asymptomatic. Is that significant in your findings?

MR. DERRICO: Objection. Asked and answered. It's the same thing he covered on direct. He already --

THE COURT: I can't swear that he did or didn't, but if it doesn't belabor it, I will let him answer the question.

A Asymptomatic means she was having absolutely no symptoms referable to her lower back at all.

Q Is that significant in you determining that the injuries were caused by this accident?

A Yes.

Q I just want to refer to a couple of things in the records. I want to refer to the note of Dr. Michael Weinberger who -- the records are in evidence, who is the physician referred by Dr. Ahmed, who she is still treating with. Could you read the --

MR. DERRICO: Objection. Can we approach? I didn't talk about Weinberg's record. This goes beyond the scope. If he wants to do that he should have done it on his direct.

MR. MALLAS: He was talking about her condition following the hip surgery.

THE COURT: All right, I will allow it.

Q Can you read what that says?

A Impression: Ms. Thanasias is a forty year

old lady with multiple complaints including low back pain and right lower extremity. In terms of patient's right lower extremity pains, she may have sustained femoral nerve injury following arthroscopic repair of the hip.

In terms of treatment, she may benefit from trial and medication for neuropathic pain. It might be reasonable to consider E.M.G. nerve conduction study to document whether nerve dysfunction exists.

In terms of back pain, the patient is status post laminectomy with ongoing symptomology.

I do not have access to the full record regarding this procedure. She appears to have a annular tear.

Discussion was held with Ms. Thanasias that she may benefit from the trials and medication for her thigh pain.

Q I just want you to read this part of Dr. Ahmed's note. If you can look at the date on the bottom --

A This is November 1st, 2004 progress note, Dr. Christopher Ahmed. Progress note.

Q Can you read it?

A Sure. Victoria, follow-up status post right hip arthroscopy, debridement of labrale tear. Is now

having difficulty with anterior knee pain and lateral knee pain. She is describing ability to walk up to ninety minutes with her kids during Halloween, but then her pain stopped her. She denies pain related to the hip.

Q So, essentially saying that the hip pain is better, but she has leg pain; correct?

MR. DERRICO: Objection. Essentially.

THE COURT: Let's move on.

Q Necessary -- not necessary for complaints pain in these records; correct?

A Yes.

Q Even following the arthroscopic hip surgery; correct?

A Yes, that's right.

Q In fact, your review of the record shows the pain now is in the leg; correct?

MR. DERRICO: Objection.

THE COURT: All right, I will allow that in interest of time saving.

Q Yes?

A Yes, there is leg pain.

Q We spent a lot of time talking about lordosis. Doctor, from 1997 until 2002, Ms. Thanasias was having problems with her back and her neck,

wouldn't you expect to see reversal of the lordosis when you examine her?

MR. DERRICO: Objection. It goes beyond the scope --

MR. MALLAS: He said --

Q I am saying if she is having problems from '97 until 2002, would you not expect to see a change in the lordosis in 2002, after this accident? If it's discontinuing, this continuing problem.

A If it is a continuing problem, yes.

Q But, if it's not, you wouldn't see it; right?

A That's right.

Q Hip pain, you were starting to say on cross-examination, hip pain doesn't always present as pain in the hip; correct?

MR. DERRICO: Objection. Could we lead a little bit less?

Q How else -- how does hip injury present as pain?

A Hip jury can present as buttock pain or referred low back pain with hip problems.

Q In the hospital record, can you tell us what it says in the triage note?

A The White Plains Hospital record indicates low back pain.

Q And Dr. Vlantis sent her for a hip X-ray; correct.

A Yes, he did.

Q In December.

A Correct.

Q Why do doctors send people for procedures?

A Because of --

MR. DERRICO: Objection. Asked and answered multiple times.

THE COURT: I will allow it.

A Because of complaints demonstrable to the right hip.

Q I want to show you part of the record that was marked in evidence yesterday, Plaintiff's 22 and -- first, can you read me the date? I will stand here with the doctor. The date on this record?

A The date is January 16th, 2003.

Q Can you tell me -- describe her complaints.

MR. DERRICO: Can we have what record it is.

MR. MALLAS: I said, Plaintiffs's 22.

MR. DERRICO: Who is it from?

MR. MALLAS: Tri-state Diagnostic.

MR. DERRICO: Judge, how can be reading from records that he didn't do on direct. This

goes beyond the scope of my cross.

THE COURT: Counsel, it's getting there.

MR. MALLAS: He is talking about hip complaints. I am almost done.

I am asking what it says here and we talked about this yesterday too. It was evidence, Judge.

A It says back pain, herniated disc, right hip, knee, leg pain, tingling and numbness.

Q That's from January 16th, 2003; correct?

A Yes.

Q Dr. Nicholas' records, you actually did review them, Doctor?

MR. DERRICO: Objection.

THE COURT: Sustained.

Q Can you look at your records? Forget it.

Dr. Nicholas' records, his records are in evidence. I offered them already.

Dr. Nicholas' treatment of Ms. Thanasias, that's after this accident; correct?

A Yes.

Q So, the shortening of the leg that Counsel was talking about is after this accident, if there was any, but it's after?

MR. DERRICO: Objection. Is he saying

we shortened her leg as a result of the accident?

MR. MALLAS: Judge, it's a chiropractor's finding.

MR. DERRICO: Objection.

THE COURT: I have to tell the jurors, please ignore these speeches in the form of outbursts. They are not testifying.

MR. MALLAS: I have more but I am going to sit down.

MR. DERRICO: I have one question.

THE COURT: It better be one.

RECROSS-EXAMINATION

BY MR. DERRICO:

Q The MRI at Palisades which was done on 2/27/03, of the right knee was normal; correct?

A Yes.

Q And that's before she made these complaints about the pain while she was going trick or treating with her children?

MR. MALLAS: Objection, Judge. I didn't talk --

Q The complaint of her leg pain while trick or treating; right?

A Yes.

MR. DERRICO: Thank you.

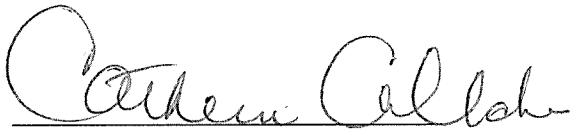
THE COURT: You may step down.

Members of the jury, 2 o'clock on Monday. We will meet again at 2 o'clock. We have another medical practitioner testifying. We would like to get that person in and out, so 2 o'clock on Monday.

Have a good weekend.

* * * *

Certified to be a true and accurate transcript of the stenographic minutes taken within.



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