UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MOSTAFA R. ASHAN,	13-CV-05929 (SMG)
Plaintiff,	
-against-	United States Courthouse Brooklyn, New York
	November 16, 2016
	9:30 a.m.
STAPLES, INC., STAPLES THE OFFICE SUPERSTORE EAST, INC.,	
Defendants.	

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TRANSCRIPT OF CIVIL CAUSE FOR TRIAL
BEFORE THE HONORABLE STEVEN M. GOLD
UNITED STATES MAGISTRATE JUDGE, and a jury.

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

For the Plaintiff: BHURTEL LAW FIRM PLLC
3749 75th Street, 2nd Floor
Jackson Heights, New York 11372
BY: DURGA P. BHURTEL, ESQ.

For the Defendant: LeCLAIR RYAN
1037 Raymond Boulevard, 16th Floor
Newark, New Jersey 07102
BY: JEFFREY O'HARA, ESQ.
LAURA BREITENBACH, ESQ.

(In open court; jury not present.)
(Honorable Steven M. Gold enters the courtroom.)
THE COURT: Good morning, everyone.
MR. O'HARA: Good morning.
MR. BHURTEL: Good morning.
THE COURT: How are we doing today?
MR. O'HARA: Very well.
THE COURT: Good. Have a seat. Be comfortable. I don't know if all of the jurors are here yet or not. We will know in a moment. If they are, are we ready to go?
MR. BHURTEL: Yes.
THE COURT: Super.
MR. BHURTEL: The doctor is here.
THE COURT: Which doctor are we hearing from again this morning?
MR. BHURTEL: Sebastian Lattuga.
MR. O'HARA: Judge, two things that I want to bring to the Court's attention.
THE COURT: Yes, sir.
MR. O'HARA: Just so there is not a surprise. As the Court is aware from visual observation, Ms. Breitenbach is eight-plus months' pregnant.
THE COURT: I didn't know the schedule, but it couldn't be far.
MR. O'HARA: One of the things that we have been

talking about is, and I understand the Court is moving this case along, it is in her best medical interest that she periodically get up at a greater pace than the breaks that we are taking. So what I've asked her to do is in anticipation of breaks, maybe 10 or 15 minutes before, she may get up and leave the courtroom. I didn't want that to be a surprise to the Court.

THE COURT: Thank you for pointing it out. Of course feel free to address any comfort needs any of you have as long as someone else is here to carry on.

MR. O'HARA: Second, there is another lawyer from my office who will be coming in to court today to watch the comings and goings. He is going to sit in the galley. Again, I know that we have had people come into the courtroom to determine whether they are witnesses. If it is not him when he comes in, I will let you know.

THE COURT: Thank you. Thank you for the heads up on both counts.

We are bringing out the jury, if that's all right.

MR. O'HARA: Yes, sir.

MR. BHURTEL: Yes, your Honor.

(Jury enters the courtroom.)

THE COURT: Good morning, everybody. I really do appreciate how punctual everybody has been. Today we have matched you and today we are ready to beginning on time.

Mr. Bhurtel, is the plaintiff ready to call its next witness?

MR. BHURTEL: Yes.

THE COURT: Please do so.

(Witness takes the witness stand.)

THE COURTROOM DEPUTY: Please stand and raise your right hand.

(The witness was sworn by the Clerk.)

THE COURT: Please be seated. Then you can state and spell your name for us.

THE WITNESS: Sebastian Lattuga, L-A-T-T-U-G-A.

THE COURT: Thank you.

SEBASTIAN LATTUGA,

called by the Plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BHURTEL:

Q Good morning, Dr. Lattuga.

A Good morning.

Q Where did you receive your medical degree?

THE COURT: Mr. Bhurtel, I think maybe the microphone is not on. Is the green light lit?

MR. BHURTEL: Yes. It is lighted.

A I went to SUNY Stony Brook of Medicine. I graduated in 1989.

Q And where did you do or completed your residency?
A I did an orthopedic residency also at Stony Brook, completed it in 1995.
Q And how many years you did residency?
A It was continuous, my education. It was five years of orthopedic residency.
Q And after that, did you receive any board certification?
A Yes. I'm board certified orthopedic spinal surgeon. I received my certification originally in 1988 and I was recertified in 2008.
Q Are you affiliated with any other medical service provider offices?
A Well, I'm a --
Q Withdrawn the question.
So do you provide medical service for people?
A Yes, I'm a practicing orthopedic spine surgeon in the New York Metropolitan area.
Q And when did you receive your license to practice medicine?
A 1991.
Q And which state?
A New York State.
Q Are you licensed to practice in any other state?
A In New Jersey as well.
Q And your license to practice medicine in New York and New

Jersey is in good standing since you received until now?
A Yes, sir.
Q Do you have any privileges with the hospitals?
A Yes.
Q Which hospitals do you have?
A Well, I've academic appointment to Weill Cornell Medical Center and I'm an attending surgeon at New York Presbyterian Hospital.
Q At Cornell, what do you do there?
A In layman's terms, I'm a practicing orthopedic spinal surgeon. The surgeries that I perform are done at New York Presbyterian Hospital. I obviously do surgery in a hospital. I'm in private practice, but I've an academic appointment to the university as a clinical professor of orthopedic surgery. You know, part of that involves teaching obligation.

And then I practice spinal surgery. I've an office, people come visit me for opinions about spine problems in general. Yes, that's what I do.
Q And did you do the fellowship as well?
A Yes. So, again, by way of explanation, I'm an orthopedic spine surgeon trained in orthopedic surgery, but part of education is to do subspecialty training. I've subspecialty training in adult and pediatric spinal surgery. I did that at University of Miami, Jackson Memorial Medical Center. I did that immediately following my residency. That's typically how

it happens. It was approximately 1996 through 1998.

Once I completed that fellowship -- it's called a fellowship in spinal surgery -- in Florida, I came back to New York, and that's when I went into practice. And ever since 1988, I've been in practice here in the New York Metropolitan area as a spinal surgeon.

Q When you say orthopedic spinal surgeon, can you explain what that means?

A Yes. So, I mean, you know, orthopedics in general is the discipline of medicine that takes care of bone and joint problems. You may be most familiar with if you break your leg, that's the doctor that puts you in a cast.

Orthopedics is divided into different subspecialties. My subspecialty is spinal surgery, which includes care and treatment of people who have -- for example, children with scoliosis, right, if they need surgery. People that have accident-related injuries to the neck and back, as well as age-related conditions of the neck and back.

And my role in the whole picture of medicine is I'm the surgeon. When someone needs surgery, they get sent to me. Although most people don't need surgery, but still people need an opinion of whether or not surgery would be of benefit, would be of value, and what are the alternatives to surgery. I spend a lot of time talking about that as well.

Q Do you have societal affiliation?

A Yes. I'm affiliated with the -- so my board certification is with the American Board of Orthopedic Surgery. I'm also a member of North American Spine Society. Those are the two most important -- I'd say most important affiliations that I maintain.

Q Did you involve to provide medical treatment to Mr. Mostafa Ashan?

A Yes. Mostafa Ashan is a patient of my practice, yes. He is, yes.

Q And when was the first time you involved to provide medical treatment?

A So the first time he came to my office, he actually saw my associate, Dr. Mikelis. He came on 9/11 2014. That was the first day that he came to my office.

Q Since then, after that, he is still coming to your office?

A He's, I believe, most recently been seen January of 2016. I believe that's the last date.

THE COURT: And, Doctor, just so we know what you're looking at, is that the file of your records of treatment of Mr. Ahsan, files from your office?

THE WITNESS: Yes, sir.

THE COURT: Thank you, Doctor.

MR. BHURTEL: Your Honor, plaintiff moves for the doctor as an expert treating physician --

MR. O'HARA: No objection.
MR. BHURTEL: -- in orthopedic spinal surgeon.
THE COURT: Your proffer is accepted and you may ask the doctor to render opinions in that field.
MR. BHURTEL: Thank you.
Q When Mostafa came in the first time, what was his complaint?
A His complaint on that date was neck pain on and off -- if it's okay, I will refer to my note to respond to this -- predominantly neck pain with radiation into the left upper extremity, with numbness, tingling and dysesthesia, which is the doctor word for altered sensation. He said it was six out of ten, on and off, sharp shooting, worsened with lifting, carrying, bending, lying on the side, and aggravated by sleeping as well. That was his predominant complaint and this obviously happened after an accident, 9/2/11, when boxes fell on his neck and shoulder.
THE COURT: Doctor, it might help us if you try to keep a mental note of what page it is that you are referring to as you answers these questions. I'm even going to give you some Post-its if that might be useful to you because I suspect that you will be asked to refer back to the very same pages as the questioning continues.
MR. O'HARA: For the record, could you ask the doctor just to identify the date of the note that he is

looking at right now?

THE WITNESS: That was 9/11/14.

MR. O'HARA: Thank you.

MR. BHURTEL: Your Honor, this is Exhibit 24.

THE COURT: Yes, sir.

MR. BHURTEL: Page 1111 through 1131.

THE COURT: What was the exhibit number again?

MR. BHURTEL: 24.

THE COURT: Exhibit 24. Are you offering it in evidence or just identifying it for now?

MR. BHURTEL: For now I give it to the doctor also and we can be on the same page.

MR. O'HARA: Just so the record is clear, he is referring to the doctor's January 22, 2016 narrative report and January 22, 2016 future medical care's report. The doctor's note is marked differently, with a Bates stamp number, than what he has just identified.

THE COURT: Thank you for the clarification. You may proceed.

THE WITNESS: Now the witness has a question. Is that okay, that I ask a question?

THE COURT: Why don't you ask it and then I will see if --

THE WITNESS: I'm using these notes to refresh my recollection. I'm not meaning to read verbatim. Are you

asking me now to use this document so that I can refer to a page? Do you see what I'm saying? Generally, I'm asked to testify based on my recollection.

THE COURT: You can have the documents in front of you. I don't believe there is any objection to that, but I'm not sure exactly what the next question is going to be. So we will see and we will take it one step at a time.

THE WITNESS: I'm sorry, Your Honor.

THE COURT: Thank you for seeking the clarification of the Court, though.

Mr. Bhurtel.

MR. BHURTEL: Yes, your Honor.

Q On first visit, so what was -- what kind of treatment he was provided?

A I think to be more precise we were offering consultation, not a specific treatment on that visit. Based on that visit, we were recommending that he continue his therapy, chiropractic and physical therapy, and we were also, you know, continuing conservative management, non-surgical.

Also, we would discuss with him what was called an epidural steroid injection, which, for the jury, is an injection that is meant to alleviate pain and symptoms related to problems in the spine. That's what we discussed with the patient. It is also part of our recommendation, discussion/recommendation for the patient.

Q And what was the first diagnosis for Mostafa?
A Our diagnosis was herniated disc with radiculopathy. Again, that was based on the history, the physical exam, the review of a diagnostic study that was presented to us on that day, and then we rendered a diagnosis, which is what the doctor -- our opinion as to what's wrong with the patient. Based on that, then we made our suggestions.
THE COURT: You just referenced a diagnostic study. Would that be an MRI film?
THE WITNESS: Yes, sir.
THE COURT: Do you remember which imaging center it was from?
THE WITNESS: I don't recall specifically. I would have to refer to a document.
THE COURT: That's okay.
Go ahead, Mr. Bhurtel.
MR. BHURTEL: Thank you.
Q What was your objective findings in the first visit?
A So the objective findings, which are meant, again, for the jury, to suggest what our exam findings were as follows: He had a neck complaint, so we examined his neck on that date. We noticed tenderness and spasm. Spasm is an involuntary muscle contraction in the neck. We did a range of motion examination, which is typical for a neck exam, where we ask the patient to flex or bring his chin to his chest, look up

all the way and turn left and right.

Now, I will convey to you what the numbers were on that day. Flexion was 40 degrees, with normal being about 70 of degrees.

Extension, which is looking up all the way, was 25, with normal being about approximately 45 degrees.

And Lateral rotation, or turning from left to right, was 40 degrees, and normal is approximately 80 degrees. There was objective loss of range of motion of the cervical spine.

Also, as part of your exam, we do a neurological exam of the upper extremities, which showed the following abnormalities: He had a weakness of left-sided tricep function. So the muscles are examined for strength and they are graded based on the standardized grading system doctor to doctor, with five out of five being normal. His finding of the left tricep was four out of five.

Also, finger abductors. It is the muscle that opens and closes your fingers like this (indicating). That is abduction, when you open and close. That was abnormal as well. It was found to be four to five on the left hand side.

Also, in addition to motor testing or strength testing of an upper extremity, part of an neurological exam, includes sensory testing or sensation. Does the patient feel normally? The abnormality noted on the chart that day was left-sided C6 and left C7 and left C8. What that means, to

the jury, is that the body is actually mapped. There is a uniform mapping of the body so that one doctor can communicate with another doctor. When I say the patient has a loss of sensation in C6, that represents a very specific geographic pattern that another doctor would easily recognize represents the thumb area and the forearm area. Rather than me having to say he's numb around the thumb and forearm, I just say he has dysesthesia in C6 and he understands. That's the way we communicate with each other. And those were the abnormalities that Dr. Mikelis noted on the first day when he examined him.

THE COURT: Doctor, we have heard some references before to C6 in connection with a cervical vertebra. Is this mapping correlated to the vertebra?

THE WITNESS: Precisely.

THE COURT: Can you explain to the jury how that works?

THE WITNESS: So to take it a step back, the same mapping that exists in the upper extremities, it is actually a picture of different areas called dermatomes that are labeled by this geographic designation, C5, C6, C7, C8. It is not random. C stands for cervical. C5, for example, that's where the nerve that comes out under the C5 vertebra goes to. Almost like an electrical cable.

For example, if you press the switch by the door, those lights turn on. We know if the C5 nerve root is

damaged, we get a specific abnormality that correlates specifically to that. That's what the judge was suggesting and that's exactly how it works in the body. And it is very precise. You know, it is very precise. We use that as a way to try, you know, to make diagnosis, look for corroboration in an MRI, like we discussed. We will look for damage at around C5, C6 for those nerve roots, and that also helps to corroborate what the patient may be saying by looking for something objective that we see is actually damaged that is consistent with what the patient is saying, and then that translates into our ability to make a suggestion that is specific for that area of the body and make remedies or therapies that might help the patient. That's why it is very, very relevant, what the Judge was suggesting.

Q Did Mr. Mostafa told your office how the accident happened? Withdrawn that one.

What people knew in your office that caused his neck injury?

A Well, I can be very specific because we asked him to write it down. I will just read what he wrote if that's okay with everyone.

MR. O'HARA: Just for purposes of the record, can we make sure we identify the document because that is in a different packet of materials.

THE COURT: Would you like to come up and see what

the witness is looking at?

MR. O'HARA: Sure.

THE COURT: If both of you want to look at it and give a particular description of the page on the record, it might be helpful.

THE WITNESS: It is part of the patient history form.

MR. O'HARA: Judge, for purposes of the record, we are talking about Ahsan 1958 through 1987, and then also Ahsan 1989.

THE COURT: Correct, Mr. Bhurtel?

MR. BHURTEL: Yes, your Honor.

THE COURT: Yes. You may read it for us. Thank you. And he wrote this in your office, Doctor?

THE WITNESS: He wrote this.

THE COURT: In your office? This was not something that was given to you by the lawyer?

THE WITNESS: No. He filled this out at the time of the first visit, on that date.

THE COURT: Thank you.

THE WITNESS: On September 2, 2011, I was in Staples store located on Northern Boulevard. When I was looking some products to buy, one guy was working with ladder behind me and suddenly two boxes fell on my shoulder (left). That's his description of what happened on that day.

Q And, Doctor, who recommended you to provide medical treatment for Mostafa?
A Dr. Krishna.
Q And which body part your office and you have been providing medical treatment for Mostafa?
A Neck.
Q I want to go again back to the first visit.
A Yes, sir.
Q You refer there that you or your office or Dr. Mikelis reviewed the MRI C-spine. Withdrawn.
Did you review the MRI on that date or --
A Not on that date but on the subsequent visit I had the opportunity to review the MRI, yes.
Q And what was the plan, if anything, on the first visit of Mostafa in your office?
A Again, we made -- we discussed with the patient all of the treatment options that were available, which included surgical and non-surgical treatment options. The surgical option briefly, because we weren't recommending surgery, but, more importantly, the non-surgical options, which included continued therapy, continued chiropractic care and anti-inflammatories, and then, most importantly, the epidural steroid injections, which we were recommending as -- Dr. Mikelis was thinking was the next best option for him, is the best way to say it.

Q So and the first time, if I understand correctly, so your office recommended therapy; right?
A Well, he was getting therapy all along, but we recommended that he continue doing that therapy, but in addition, we recommended that he do the injections.
Q Can you describe what injection you or your office recommended?
A Yes. So I mentioned several times that we were recommending epidural steroid injections. For the jury's sake, if you can imagine there was a problem in your spine and that problem relates to an injured nerve, an inflamed nerve, whatever the reason, say in this case it might be a herniated disc, hypothetical, one of the best strategic interventions that we have for diminishing the pain or dysfunction from a nerve that's irritated would be an injection of steroids in and about that area. So much of the dysfunction of the nerve, which the word is, you're may hear it, it is radiculopathy. That's the doctor word for dysfunctional nerve. It comes from not only a pinched nerve, meaning actually compressed, but the pinch and then the subsequent inflammatory response that is created because of the insult. We will use that word, insult.

So by injecting a steroid into the area much of the symptoms are improved. It can be permanently or temporarily, depending on severity and the circumstances. So very, very often we -- especially as a surgeon in a surgical practice, we

very aggressively recommend the epidurals. You know, it is case specific. In this type of case, many, many people get better or better enough that they don't need surgery. Before we want to discuss surgery, we want to see how they respond to other interventions that quite frankly are much easier to go through. That was our conversation, our discussion/recommendation on that date.

Q And did he follow up on another date in your office?

A Yes. So in November of this year --

THE COURT: Not this year. November of 2014?

THE WITNESS: Yes, Your Honor.

A On 11/3/2014, I saw him in the office for the first time, after there Dr. Mikelis saw him, and examined him.

He had, in the interim, I believe seen the pain management doctor. Let me check the date. He had seen the epidural doctor or the pain management doctor in September. He had visited with the doctor but hadn't yet received the injection. On that date he came to me with similar complaints two months prior, complaining of neck and arm pain radiating into the left upper extremity, numbness, tingling, and dysesthesia, continued to have pain.

His physical finding were substantially similar. That's how I like to characterize it. It was about the same as it was before, with loss of range of motion and neurologic changes in terms of both motor and sensory findings consistent

with the prior visit. My diagnosis was essentially the same, meaning herniated disc with radiculopathy. The word that I described to you before. My recommendation was similar, you know. I was recommending that the patient receive epidurals. That's what I told him he should try.

THE COURT: And as far as you understand, he had not had one, an epidural, that is, between the original visit of September 11th and the follow-up visit in November?

THE WITNESS: Correct, Your Honor.

THE COURT: Thank you.

Q Doctor, can you describe how the disc functions in the neck?

A To be as brief as possible, because this could be a long lecture. The spine is a column of bones separated by intervertebral disc. Everyone here has heard of a herniated disc. It is a pretty common injury that everyone gets. The disc plays an important role in maintaining spinal function.

The spine isn't just a structure. It has actually a function. There are two main functions. One is to provide support for the upper body. If you remember, not like a worm, which has no spine, it can just curl into a little ball. The spine provides support with vertebras. It supports the lung and the heart. It helps us run, move through space without collapsing into a ball. More importantly, it provides stability for its main companion, which is the spinal cord and

the nerves. And so if you have dysfunction of the spine in general, you can have simultaneously dysfunction in the nerve and spinal cord. And you are all aware of how somebody could get paralyzed by having a spinal injury. That's why, because of the close proximity of the spinal cord and the nerves.

Actually, the spine is a conduit. It's like a tunnel. The spinal cord and the nerve run in the middle of the spinal canal. That's how intimately they are related. Disfunction of the spine can create dysfunction of the spinal cord and the nerves.

The disc, which is the question that he asked me, is an integral component of the spine. It is a column of bones separated by the intervertebral disc. The disc allows for some flexibility. Not as much as you think. It actually provides more stability.

A normal spine, in layman's terms, functions like a bamboo fishing pole. There is certainly give in it but it is very, very stable. It is not like a loose bicycle chain. It's not loose. If it did, the spinal cord and the nerves would be damaged. So it has to provide a rigid tunnel for these structures to come through.

The bone is one part of the vertebra. And the intervertebral disc is the other part. One is hard, like a rock, right. And one is sort of like the inside of a bicycle seat. It is like the gel on the inside of a bicycle seat. As

you can imagine, because it is softer, it is more susceptible to injury and other processes. There are other processes. That's why it's so common, when you hear about injuries to people's spine, you will hear about an injury to the intervertebral disc. So that's basically the function and structure of the disc in a nutshell.

THE COURT: Thank you, Doctor.

Q And, Doctor, can you describe how the nerve travel through the canal to the brain and how the patient feels the pain?

A Sure. So, as I described to you that the spinal canal is a conduit or a tunnel for the spinal cord and the nerves, right. It is actually spinal cord, a solid structure that comes out of the brain, right. It comes out of the brain, out of the skull and it travels through the upper -- from C1 -- just to be brief. There are seven cervical vertebras. There is C7 and then there are 12 thoracic vertebra and then there's five lumbar. So it travels from C1 down to around L2, a solid spinal cord. At each level, at each vertebra, C1, two nerves comes off, right and left; C2 two nerves come off, right and left, and so on and so on. Each nerve is tagged with a number, like I described. It goes to a specific body part that I talked to you about before, dermatomes and myotomes. These are doctor words that are used to convey exactly where these nerves go and they attend to very specific functions.

Just like I told you before, that C6 controls the sensation over the thumb and forearm, C6 also controls opening and closing your hand and moving your wrist up and down, in general, without being exactly too specific.

So that a dysfunction of a specific nerve root can lead to the dysfunction of what a doctor sees and a patient complains of, a dysfunction of part of their arm if it is a problem in their neck or in their legs, hypothetically -- or, actually, it's a problem in their low back.

The question he asked is how do they relate to each other, it's that the spinal nerves come out of the -- travel down the spinal canal, two come out at every level left and right, corresponds to a very specific area of the spine which corresponds to a very specific area of the body. If it working, it works. If it doesn't work, you will see things like loss -- radiculopathy, which I will explain the components of radiculopathy. You'll see sensory dysfunction, which I described before. You'll see motor dysfunction, where the muscle isn't as strong.

Do you remember I said the tricep is four out of five. So we will see weakness of the motor. We'll also see loss of a reflex sometimes, because the reflex is -- that's when the doctor hits your knee and the knee jumps. So that could be dysfunctional in a nerve that has an injury.

Finally and most commonly, pain. The word pain is

part of radiculopathy. Sometimes the muscle works fine and sometimes the patient feels totally fine, right, but the patient has severe pain.

A different exam that you all are aware of and that you will understand right away is shingles. Now, shingles, the motor works fine, everything works, but the patient is screaming in pain, right. That's because the nerve itself is dysfunctional for a different reason, not related to spine. Just as way of education, if you irritate the nerve, it hurts like hell. Sorry, Your Honor. You need to understand that pain is part of radiculopathy. It is one of the four components and it's an important thing that we listen for and one of the most important things that we have to treat. Even if they don't have motor dysfunction, it's the pain that we have to take care of, and that's usually, as I described to you, made better with therapy, anti-inflammatories, injections. Injections is the most common form of therapy that I prescribed that makes people better. That's how it ties together.

(Continued on following page.)

EXAMINATION CONTINUES
BY MR. BHURTEL:
Q In second visit, what was the plan you or your office other doctor recommended?
A I recommended on 11/3/2014 I saw the patient and continued to make the same recommendation that the patient get treated with therapy, anti-inflammatories and injections.
Q And what was the -- Mostafa he elected to do?
A Well, I know at some point he had injections. Do you want me to go through and tell you when he had them?
Q No. I mean in this time, what he said to you this time?
A I mean I didn't record specifically what he said, but I didn't record something specific that he -- that he said to me. Let me doublecheck a second.
Q Doctor, all right, so that will go in the record.
I think you wrote it in your record, right, in your --
A No, on 11/3 I saw him. I made those recommendations. That's all -- that's all that's contained in my note. I don't really write what the patient told me other than he had -- you've already asked me about he had complaints of neck pain on that day. Yeah, that was all the same as before.
Q And did you recommend him anything that he should not do?
A Yes. So it's my custom and practice, that means I do it routine with everybody, and in this particular case if someone

has a spinal injury or a complaint of radiculopathy, then I ask them to refrain from, as you can imagine, heavy lifting, heavy carrying, heavy bending, using their upper extremities excessively. Anything that requires them to move their head about excessively, all can exacerbate the radiculopathy. That's what I recommended for him to avoid.

Q And just for the clarification, you were providing the medical treatment, which body part?

A Neck.

Q Neck.

A Related to his cervical spine.

Q Not the left shoulder?

A No.

Q And not the head?

A No, sir.

Q And when did next time Mostafa came to your office for the medical treatment?

A Next office visit was January 29th, 2015.

Q And what was his complaint on that day visit?

A Continued to complain of neck pain. He did convey to us that day he had some shoulder surgery in December 2014. He was receiving therapy twice a week, home exercise program, but he continued to have similar complaints to before of neck pain with radiation to the left upper extremity, numbness, tingling and dysesthesia.

The remainder of his exam was consistent, substantially similar to the prior exams. And we were still recommending conservative treatment, therapy, medicine and we were recommending he continue up with his pain management doctor.

THE COURT: Had he had injections by that point? You cannot tell?

THE WITNESS: You know, I can go through the record I'll find it, a date when documenting his injection, Your Honor. Just give me a second. I know he had one on 7/31.

THE COURT: Of?

THE WITNESS: That's subsequent to that visit.

THE COURT: So that would be 2015?

THE WITNESS: 2015, yes, Your Honor. He had one in 8/28/2015. So that's the -- those are the records I've, so as far as I know he didn't have any epidurals up until that time.

THE COURT: And would those epidurals be something your office would administer?

THE WITNESS: One of the doctors, yes, sir.

THE COURT: Is there a reason you did not administer one of them at the visit of January 29th?

THE WITNESS: Well, my role again, I -- well, he saw Dr. Mikelis my associate on that day. He is also not a pain management interventionalist, so there are specialists in my practice who just do injections. I just do the surgeries,

Dr. Mikelis does the evaluations, steer them in one direction or the other.

BY MR. BHURTEL:

Q And how many doctors you have in office, your office?

A At the time?

Q Yes.

A We had four physicians at the time.

Q And I don't think I asked this question, I want to ask you, what is the name of your business or the medical office?

A New York Spine Specialists.

Q And what is the address for that one?

A Well, the main office -- I've more than one office. But the main office is in Marcus Avenue, 2001 Marcus Avenue, Lake Success.

Q And do you have office in Manhattan also?

A Yes.

Q And can you tell the other doctors' name you have that time?

A So at the time we had Mr. Mikelis.

MR. O'HARA: Objection, relevance. Only doctors that treated the patient.

MR. BHURTEL: Yes, I'm coming to that.

BY MR. BHURTEL:

Q The other doctor who was involved to provide treatment to Mostafa?

A Dr. Mikelis and Dr. Chacko, I believe. Yes, Dr. Chacko.
THE COURT: C-H-A-C-O? Gotcha.
THE WITNESS: C-H-A-C-K-O.
THE COURT: Thank you.
BY MR. BHURTEL:
Q Dr. Jeffrey K. Chacko?
A Yes.
Q And how about the Dr. Billy Ford?
A Dr. Ford also is a doctor in my practice.
THE COURT: But is that a doctor that --
THE WITNESS: Yes. Dr. Ford also saw the patient, yes.
A So subsequent to that date, you asked me about that date, Dr. Chacko has moved on and Dr. Ford replaced him and then Dr. Ford did see him.
Q And what is the speciality of Dr. Chacko?
A Both Dr. Chacko and Dr. Ford were interventional pain management physicians. So their role is they, basically, give injections. They're doctors that are specialists that give injections usually under X-ray into different body parts. Predominantly that's what we do in our practice. We don't do a lot of medicine treatment, mostly interventional pain, meaning that give injections and other treatments like that related to spine problems.
MR. BHURTEL: Can I've the doctor this exhibit, I

want to talk to?

THE COURT: Yes, of course. Make sure Mr. O'Hara sees what you are using before the jury or the doctor sees it, that's all.

MR. O'HARA: Were they used before, counsel?

MR. BHURTEL: Yes.

MR. O'HARA: There is no objection.

THE COURT: If it is already in evidence, you do not need anybody's permission to use it again, just make reference to the number on the back.

And, Doctor, if you want to go down into the well, that is fine.

(Witness steps down.)

THE WITNESS: For what purpose, you want me to show the jury what a herniated disk is?

MR. BHURTEL: Yes.

THE WITNESS: They're all good. This one is fine. I'll take this one, too.

THE COURT: So let's talk about, there are numbers on the back.

THE WITNESS: Yes, I'll give you the numbers. 112-C and 112-E.

THE COURT: C and E, Charlie and Edward.

MR. BHURTEL: This is Plaintiff's Exhibit 112-C. 112-C.

THE COURT: What is your question of the doctor, Mr. Bhurtel?

MR. BHURTEL: Yes, Your Honor.

BY MR. BHURTEL:

Q Doctor, can you describe what you see this one in this Plaintiff's Exhibit 112-C?

A Yes, sir.

So this is a image of a -- a reproduction of an MRI image. So for the jury, MRI is a diagnostic study, like an X-ray or a CAT scan that's done. It's a very specialized test, great test for imaging the spine. It gives us great visualization of both soft tissues, which is different than X-rays and CAT scans. Much better definition of soft tissues like herniated disks and in contrast to hard -- hard structures like bone. So this is the -- and it comes as series of images.

This is just one of a series of images, but the most -- easiest way for me to explain to you, and this is an MRI of Mr. Ahsan's neck, right? And so just to orient you a little bit, here is the brain (indicating), part of the lower part of the brain. This long strap is the spinal cord (indicating), okay. It's numbered, so you have vertebrae C2, it looks a little bit like a pyramid, the rest of them look square, 3, 4, 5, 6 and 7. The vertebrae are square and the structures between each one are called the intervertebral

disk.

There are parts of this that are more normal than not, and I'll try to orient you a little bit, but normally what happens is the spinal cord runs -- and this image, it shows the middle of the spinal canal. There are other images that show more one side than the other that look completely different, but this best illustrates the concept of a disk and a herniated disk.

So generally speaking, in a more normal area of the spine you will see the spinal cord travel down the middle. You will see white on front of and behind, we use those words for here (indicating), and that represents cerebral spinal cord fluid or CSF, and so normally there is not contact with the spinal cord, okay. So the spinal cord floats freely down the spinal canal and it's a tunnel. It's a bony tunnel. You know, it's held in place so it doesn't move back and forth, but generally there is nothing pinching the spinal cord. Okay, let's just say that.

So as you follow down, I'm sure your eyes have already drifted to these other areas where you will see protrusions. I'm going to use that word because it's a very generic word of this intervertebral disk towards the spinal canal, impinging on the spinal canal. These are words that we use. And so that is not normal. Okay, it's not normal. And so patients that have those protrusions, herniations in this

particular case, you know, I agree with the report. I've read it myself, that these are herniated disks.

Can -- you know, it doesn't just -- it doesn't just look that way, there is also an implication that that happens. If the herniated disk -- two things. Number one is that the disk is -- because the disk material is no longer between the two vertebrae, one vertebrae relative to the other moves more than it ought to because it's a stabilizer of that segment, the vertebral segment. The second thing is as it protrudes out, it pinches the spinal cord and creates an inflammatory response around the spinal cord and the nerves. We don't see the nerves in this particular image, I'll show it to you, I hope, on the next one if I could show it to you.

Just one second with that.

And then that creates symptoms, that compression, that impingement, that inflammatory response can then alter the way the spinal cord works. Okay, for some reasons I can get into if somebody asks me about it, but in general that's the problem that everyone is talking about.

So in this case he has a herniated disk at C4/5, and that's an important thing because that the herniated disk, the name of the disk is actually two numbers. It's named by the vertebrae above and below. So the intervertebral disk between C4 and C5 is called a C4/5 disk. So every disk has two numbers, right, and the disk between C5 and 6 is the C5/6

disk. Okay? So that's how it's numbered.

This is the midline (indicating). I'll show you the other views to make you -- hope clarify it further not confuse you more. And this is 11 -- this is 112-E. And so this is -- this is --

BY MR. BHURTEL:

Q Doctor, can you explain to the jury this plaintiff's Exhibit 112-E, what is it?

A Yes, sir.

And so remember I told you it was a series of images, so it actually is slices taken all along the way. And so what specialists do is we actually create this 3-D in our mind. You can actually have this done 3-D, but we kind of see it that way. So do you see the image I showed you before and then there is a line drawn across, right? And so the corresponding alternative image is actually that slice, that slice re-formatted. They take this picture and the computer does it and it gives you the cross-section. So I'll describe the cross-section.

So this is a cross-section through the neck at exactly the level between C5 and C6. All right? And it's meant to demonstrate for us as follows:

This is what the vertebrae -- this is what a vertebrae looks like. You have a vertebral body. You have an arch, it's called a posterior arch, and then the space between

is called the spinal canal. What generally resides in the spinal canal -- you guys are all experts now -- is the spinal cord. That's right, good answer. And so what we see here is a protrusion (indicating). We don't see a normal, we only show the herniated disk, pushing the spinal cord back up against the posterior arch. That's not normal.

What we see also, it just looks like almost a horseshoe shape. We see like a white tunnel that runs out in each direction. Well, that's where the nerve is exiting out from the spinal canal, it's called an intervertebral foramen. That's the word, foramen. And the nerve travels out and not only do you often get herniated disks that pinch the spinal cord, but as often you'll get a herniated disk that could be more to one side than the other and begin to impinge on just the nerve, not the spinal cord alone, and that can yield symptoms. And in this particular case it looks like, and you may or may not be able to see this, do you see that space is a certain diameter and that one looks more narrow (indicating), do you see that that one is a little more narrow? Well, that's the left side and so he has more herniation to one side.

And typically, not always, but typically that causes patients will say, Well, the pain is in my neck, but it goes more to the left side. And that's why, because there is more irritation or compression on the left side.

You can also get symptoms on the other side, not to confuse you, but in this particular case it's consistent with what the patient is saying.

And that's how we -- that's what the doctor does is he listens to the patient, you examine the patient, and then you look for the MRI. You see, do I see anything wrong at that level where the patient is complaining? And the answer is yes, I see something. And so you say, well, this is real. He's got an objective test that -- that correlates, is a doctor word, with what the patient's complaints, you know, subjective complaints are. And then based on that we can make a recommendation. And that's it in a nutshell.

Q Okay.

THE COURT: Do you have another question about the chart?

MR. BHURTEL: Yes.

BY MR. BHURTEL:

Q So, Doctor, you rely on this MRI report or films if you have to do surgery or other treatment recommendations?

A Absolutely.

Q This is one of the tests for the -- the objective test, like you neurosurgeon?

A This is an objective test, yes.

Q -- neurosurgeon rely for the further treatment?

A Absolutely. I mean, obviously, as a spine surgeon, if

that's the question. As a spine surgeon that's what I look for because I want to know that when I operate on people, and I operate on people every day, when I go in there I'm going to find something that I could do, remove the pressure, that's gonna make a meaningful change in the circumstance and hopefully the patient will then get relief of his symptoms.

It's very complicated, but that's kind of what we're looking for as correlation as surgeons. In this case he didn't have surgery.

Q So you just don't recommend -- you don't just recommend surgery just relying on the patient what they say, Oh, I've a pain in the neck?

A Obviously, we look for -- for -- it's called clinical correlation. You will see that word often. We look for other things that correlate what the patient is saying objectively for making recommendations, nonsurgical and surgical.

Q Thank you.

(Witness resumes the stand.)

Q Doctor, when was your office, yourself or other doctor provided medical treatment to Mostafa next time?

THE COURT: The last visit we had discussed, I believe, was January 29th, 2015.

A 4/1/15.

THE COURT: So April 1st is the next visit?

THE WITNESS: Yes, sir.

BY MR. BHURTEL:
Q And what was that time Mostafa's complaint?
A It was, essentially, the same as the prior visit.
Q Did -- you recommended him to physical therapy. The physical therapy was helping him?
A Yes. It was helping him, but obviously, you know, five months had lapsed and it was, essentially, the same. He still came in saying six to nine out of ten pain. Actually, he stated on that day it hurt a little worse. But he got -- he got some relief, but obviously it didn't cure him. I mean still his symptoms were persistent on that date.
Q I think my question was bad, so I should -- did physical therapy help him to cure his neck pain?
A I'm sorry I didn't make myself understood.

No. I mean I think it does -- it gives -- it gives temporary symptomatic relief, meaning that they get benefit, it feels better, but within a few hours the pain returned. I mean, obviously, I don't have a documentation in between visits, but on this date for one, essentially, he has all the same complaints. So that I would say, in general, it was not curing it. Specifically -- not in general, I would say specifically it didn't cure him.

Q And what was the recommendation on that date?
A Get the injections.
Q Yes.

A That was my recommendation again.

THE COURT: Did you have any understanding as to why he had not done that yet?

THE WITNESS: I don't -- I -- no, Your Honor.

BY MR. BHURTEL:

Q To your knowledge, do you know that he received epidural injection in his cervical?

A Yes. I believe I answered that question to His Honor before. The patient did receive an epidural in July of 2015, July 31st. And that was by Dr. Ford, and then also on 8/28/2015 he received an epidural.

Q And can you describe for the jury what is the epidural injection is?

THE COURT: I think we have been over that already, Mr. Bhurtel, unless your question was focused on the specific, something specific as opposed to general about the injections to Mr. Ahsan.

MR. BHURTEL: Yes, Your Honor. I'll actually use these same -- may I use, Your Honor?

THE COURT: Yes, go ahead. Mr. Bhurtel, just show him a document and ask him a question.

THE WITNESS: If you want to put it up, I'd be happy to.

THE COURT: Just show him a document and ask him a question.

MR. BHURTEL: Okay. Again, Plaintiff's Exhibit 112-E.

THE COURT: And what is your question about it?

BY MR. BHURTEL:

Q Doctor, can you describe to the jury how the epidural injection is given?

THE COURT: Go ahead.

(Witness steps down.)

A Well, it's a medical procedure, right? It's done in a facility or, you know, a special room. It's given -- you don't have to do it under X-ray, often it can be done and it's done under X-ray.

The epidural is just -- is a space. It's called the epidural space and that -- what that -- it's not -- what it means to convey is that it's an area in the spine where we inject medicine. For delivering a baby what's injected into the epidural space in your low back is -- is numbing medicine so you don't feel pain. In this case we don't inject numbing medicine, in this case we inject a medicine called Depo-Medrol or Etoposide or one of the steroids. And basically what it is you lie on your side, an X-ray machine is brought in. The doctor feels for those little bumps between -- if you see these little spikes that go out. If you run your fingers up and down your spine you feel those little bumps, right? It's called the spinous process. He'll take a needle the needle.

The needle has to be long enough to get to this space, and it's different for everybody. You know, if you're really skinny, it's a small needle; if you're a big person, it's a long -- it's the same size needle. It's always the same size needle, that's what people don't understand, but you only put it in -- it has to go into the space between where the cerebral spinal fluid is and the bone. That space is called the epidural space. Not in the cerebral spinal fluid, that's a spinal.

When you do a spinal tap, they push it just a little further to retrieve fluid for diagnostic purposes. This is an epidural, so it goes just past the bone into the space, but not into the cerebral spinal fluid. There are ways to know, obviously it's a technique-driven procedure, and once the doctor knows he's in the right spot, he'll inject the medicine. And then the medicine diffuses. You know, I get this question a lot, Oh, Doctor, my herniated disk was C5/6, but I got the shot here (indicating), but it actually diffuses up and down the spine. So you don't have to be in the exact spot for an epidural, and that is at the way it's given.

Yes?

Q Yes.

Can you describe to the jury what are the risks when is the taking of the epidural injection?

A So, you know, I'm on the record as saying it's not risky

or dangerous in general, but with any medical procedure, you know, there are risks. There obviously are risks and dangers to any medical procedure.

So, first is that you could get a spinal, you know. And so the spine headache, I don't know if you've ever heard of it. You know, it's a very severe headache because there's been a puncture of the dura, which is the cover the spinal canal and then the fluid leaks out. It can be very painful. You can get a headache for several days. In general, it's not a life-threatening complication, but, you know, if you had a terrible headache for three days you would not be happy, right? So that's one. That's one risk.

Number two is there is always a risk of hitting one of the blood vessels, creating a bleed, you know, a bleeding.

THE WITNESS: Do you want me to tell all of the risks, Your Honor?

THE COURT: No.

THE WITNESS: Okay.

THE COURT: Just the main risk.

A And then the other main risk would be -- and then the other main risk is like an infection. Infections, you cannot prevent infection, okay. A doctor will do his best to minimize the risk of infection, but there is no way in the world you can make infection zero. Let me just dispel that notion now. So an infection is a risk of a procedure like

this. It's very rare. It doesn't happen often, but it can happen.

So the most common adverse outcome is a spinal headache or an adverse reaction to the steroid that we give. You know, those are the common things. You know, yes, you could die from any medical procedure, but it's not a common complication of this procedure.

Q Okay.

A Any other questions?

Q No, no. Thank you.

A You're welcome.

(Witness resumes the stand.)

BY MR. BHURTEL:

Q And this epidural injection was performed by whom in your office?

A Dr. Ford.

Q Did Ford, right?

A Yes.

MR. BHURTEL: Your Honor, plaintiff offers Exhibit 49 from 1990 through 2001.

MR. O'HARA: No objection, Your Honor.

THE COURT: 1990 through 2001 are received in evidence.

(Exhibit 49, Bates pages 1990 through 2001, was received in evidence.)

MR. BHURTEL: And, Your Honor, plaintiff offers Trial Exhibit 50, Bates Number 2002.

THE COURT: 2002.

MR. BHURTEL: 2009.

THE COURT: Through 2009.

MR. O'HARA: Judge, subject to being sure that the entire office record, both from the doctor's orthopedic treatment, as well as the pain management records, are the exhibits that are being identified and offered I've no objection, but I would ask that the entirety of both records be what's presented to the jury.

THE COURT: Mr. Bhurtel, is that acceptable to plaintiff?

MR. BHURTEL: Yes, Your Honor.

THE COURT: Please turn the microphone back on.

I'll receive the entire office notes then without objection.

MR. BHURTEL: Yes.

(Trial Exhibit 50, Bates pages 2002 through 2009, was received in evidence.)

THE COURT: Please ask your next question.

MR. BHURTEL: And, Your Honor, plaintiff offers the Trial Exhibit 52.

THE COURT: Is that also part of the office notes?

MR. BHURTEL: Yes, Your Honor.

THE COURT: Then we have already agreed that the entire set of office notes will be received in evidence, and they are. And you and Mr. O'Hara will work tonight like you did last night to collect those documents and agree on exactly which Bates numbers they are, but you may ask the witness questions about them as if they are in evidence, because they are.

(Trial Exhibit 52 was received in evidence.)

BY MR. BHURTEL:

Q Doctor, after Mostafa received the first injection, did you see him?

A Well, the next time I saw him -- I saw him was 11/11/15, which was, I believe, subsequent to both injections based on what I said before.

THE COURT: So you did not see him between early July and late August?

THE WITNESS: No, Your Honor.

BY MR. BHURTEL:

Q And when you saw after he received the epidural injection and what was his complaint at that time?

A He continued -- I mean his complaints didn't change. That's the -- that's the sum and substance of the entire visit. He continued to have complaints. You know, on that date it was 5 out of 10, 6 out of 10 was his pain, but waxing and waning, but in general he still had persistent symptoms of

numbness, tingling, weakness. His physical exam was the same. His neurological exam was the same.

So the answer is he didn't receive any substantial improvement in his symptoms or relief of his radiculopathy as a consequence of his two cervical epidural injections.

Q When you say physical exam is same, can you explain?

A Okay. So the neuro -- his physical exam on 11/11/2015 showed, you know, I'll repeat the exam. Flexion was 40 degrees, with normal being 70 degrees; the extension was 20 degrees, with normal 45 degrees. Left and right turning 45 degrees, with normal was 80 degrees. And I would say it's substantially similar to before. Still had tenderness and spasm. He still had weakness of the motor strength deltoid 4 out of 5. Left-hand side, he still had weakness of finger abduction, 4 out of 5; and decreased sensation in the left C6, C7, C9 dermatome.

So those were his findings, which was substantially similar with the prior findings.

Q And what was the neurological findings that day?

A I just described them.

Q That is for both physical and neurological?

A Yeah, the motor strength of his triceps, that's neurological, it was 4 out of 5. Do you want me to repeat it?

THE COURT: No.

BY MR. BHURTEL:

Q And when did your office saw him again next time after this?
A January of 2016.
Q And what was Mostafa's complaint then?
A Substantially similar to the prior visit and all the other prior visits with continued complaints of neck and arm pain, loss of sensation, with less sensation he complained of subjectively. Objectively I noticed the same, but the physical exam was substantially similar. With loss of range of motion in all three planes; flexion, extension, lateral rotation, that was the same as the prior visit. And the neurological exam; triceps function, finger abduction was diminished on the left-hand side, 4 out of 5; and his sensation was diminished C6, 7 and 8 on the left-hand side, which was substantially similar to the prior visit.

MR. O'HARA: Your Honor, could you ask him to clarify that the date of that office visit is January 13th, 2016? I just heard January.

THE WITNESS: Yes, sir.

THE COURT: So, Doctor, if I'm following the timeline correctly, you first saw the gentleman in November of 2014 and now we're up to January of 2016, and the only thing is that he received injections from which he received temporary relief?

THE WITNESS: Yes, sir.

THE COURT: And is there a purpose in bringing him back to your office every couple of months or was that by your suggestion that he returned in 60 days --

THE WITNESS: Yes, sir.

THE COURT: -- or at his initiative?

THE WITNESS: No, no, I recommended he follow up to see how the patient was doing. Especially since I had recommended the injections, I wanted to see how he did, if he responded or didn't respond.

THE COURT: Do you know if he had additional epidurals between the November and January visit?

THE WITNESS: I'm only aware of those two that he had.

(Continued on the following page.)

(Continuing)
Q And what was your recommendation or plan for the further plan to Mr. Mostafa in that time?
A So, once the patient fails epidurals and they say they have persistent symptoms, that's when I'll begin to engage in a conversation about surgery.

So, we did have a more thorough discussion with the implications of surgery and his condition. And I think on both occasions, which was the 11/11 date, which was subsequent to his -- he had to two injections, and then in January, we talked about surgery as an option.
Q When you say surgery, what kind of surgery was discussed and recommended to him?
A The surgery for this problem, a herniated disc in the neck, is called a cervical discectomy and fusion. I describe to the patient it's an operation I do every day for this kind of problem, it's an operation done under anesthesia in a hospital, New York Presbyterian Hospital, where I do the surgery on the patient.

I make an incision on their neck and, using microscopic guidance, I remove the herniated disc, I visualize the spinal cord and the nerve roots. As you saw in that MRI, the herniated disc was protruding the pushing the spinal cord, so I go in, actually remove the whole disc. You can't put it back into place, it's broken. There's no way of repairing it

in that way. So, you take the whole disc out and then you rebuild a segment using implants. You use a titanium plate with a sort of -- reconstruct the normal anatomy of the spine. It's done as an inpatient, he stays overnight and then they go home the next day.

He didn't have surgery but this is the kind of conversation that I've with the patients. It requires, you know, a recovery period of three months or more sometimes. There is therapy involved. Obviously, there are risks involved, on which we spent some time. I document the risks and benefits of an operation like this. And that's the conversation I've with my patients.

MR. BHURTEL: Your Honor, I just want to use...

THE COURT: Go ahead. If it is in evidence, just go ahead.

Q Doctor, could you come here and show, explain to the jury about the surgery.

A But he didn't have surgery.

Q Right. But what is the process and what --

THE COURT: Is there anything that you would add with the use of the chart that you have not already told us?

THE WITNESS: I mean, I just can point to the structures that I'm going to, you know, I mean...

THE COURT: Is that what you want him to do?

MR. BHURTEL: Yes, Your Honor.

MR. O'HARA: Judge, I'm going to object on relevance grounds. There's been no surgery and there's been no suggestion that he's going to have it.

THE COURT: But it was recommended to him?

THE WITNESS: It's an option.

THE COURT: You discussed it with him.

THE WITNESS: Yes.

THE COURT: And you told him about the risks.

THE WITNESS: Yes.

THE COURT: Overruled.

(Witness steps down.)

Q This is Plaintiff's Exhibit 1122-E.

Doctor, can you describe to the jury about how the surgery will be performed, the fusion surgery you just talked about it.

A Yes.

So, it's an operation done on under general anesthesia, done in the hospital. The patient's brought into the operating room and he's put to sleep. Once the patient's put to sleep, I prepare him on the table, I position him accordingly, bring in X-ray machines which are required and then the area of the neck is prepped and draped in the usual sterile fashion like you see on TV.

Then I, as a surgeon, make an incision in the neck transversely across the front on the left-hand side and then I

use a series of instruments to gain exposure to the front of the neck. I've to move to one side the breathing tube and the swallowing tube, the esophagus, the larynx and the pharynx. And the other side I've to move the carotid artery, the jugular vein. I put a protractor in, it's called a self-retaining retractor, it kind of keeps everything out of the way. Then I take an X-ray. The X-ray will then document, I can document that I'm operating on the correct disc.

Once I know I'm at the correct disc, then what I will do is I will remove the disc. My viewpoint actually, my vantage point is straight down. I'm looking this way. I don't see it from the side. I'm looking actually, between the vertebrae. And this is again, magnified under a microscope so it looks very large for me to aid in my visualization. I'm going straight down this line. We actually put a distractor in the vertebrae spreading them apart. And then I slowly remove all of that damaged disc all the way down the spinal cord until I see, you know, the gleaming blue cover of the spinal cord. It's called the dura.

Once I know that I'm at the right level and that there's no disc left up against the spinal cord, then I will move the position of my magnification so I'm looking to the left and the right to make sure that I'm cleaning out that tunnel, called the neural foramina because sometimes the disc will tuck itself into that area. I use special probes to make

sure that the foramen is patent. That's the way we describe it, that there's no disc in there. Once I'm convinced that that there's no more pressure on the spinal cord and either nerve, then I reconstruct the segment or I reconstruct the disc space.

Now, in this particular case, there's as many different implants in the spine as there are cars, okay? But they all essentially work the same way; steering wheel and tires, all right? In this particular case I would put in a piece of a graft material, it comes from transplant patients, it's made of bone and then a titanium clip that would clip in place or screw into place over that segment.

For the jury's sake, why do we do that? It's very important that we maintain stability. Remember we used that word stability? If the bone's moved too much, the patient still has pain with or without a disc. So, by fusing the vertebrae together, we really give the maximum chance that we can alleviate the patient's neck pain and nerve pain. That's, just take it as face value, that's what we do.

So, that's the operation. Then I would just close the skin, sew the skin together, et cetera, et cetera. If the patient needs a second disc, that would be performed at the same time, same exact operation, same decompression, same reconstruction with implants.

THE COURT: Thank you, Doctor.

MR. BHURTEL: Thank you.

(Witness resumes stand.)

THE COURT: Mr. Bhurtel, are you getting near the end?

MR. BHURTEL: Yes, Your Honor.

THE COURT: All right.

MR. BHURTEL: Your Honor, plaintiff offers Exhibit 24, page 1130.

THE COURT: Are those part of the office notes?

MR. O'HARA: One moment, Your Honor, please.

(Pause in the proceedings.)

MR. O'HARA: Judge, I believe what Counsel is going to do, he's identified the Doctor's narrative report which outlines the care and treatment and that the doctor's been using to refresh his recollection. I think there needs to be a foundation as to whether or not that's a medical record or a report that's been prepared in connection with litigation.

THE COURT: Do you understand the objection?

Do you understand the objection?

MR. BHURTEL: I didn't hear, Your Honor.

THE COURT: Mr. O'Hara suggests that it is not clear whether this is a litigation-generated document or an office record of treatment summary. If you lay a proper foundation, you may offer the Exhibit again, but there is an objection based on that ground, so I will wait to hear your foundation.

Q Doctor, so did you prepare the report 1/20/2016, the report?
A Yes.
Q And this report you generally prepare for every patient or just the like Mostafa's case?
A So, this document is prepared in preparation for, usually for litigation. It's requested by attorneys as a -- generally, my custom is to restate the basic facts that have been provided for me and this is where I'm often asked to opine on causality. So, generally speaking, in my notes we don't talk about causality in office practice but if someone asked me to opine on causality, then I will make it in a document like this.
THE COURT: So, this document would not be created if this were not the result of trauma; if it was degenerative and there were no litigation about it.
THE WITNESS: I'm sorry, I don't understand the question exactly. I only formulate this document if I'm asked to opine on causality.
THE COURT: And that would typically arise in a litigation context.
THE WITNESS: And an attorney would request that information, yes.
THE COURT: Do you object to the admission of the document?

MR. O'HARA: Yes, Your Honor.

THE COURT: Sustained.

Q Doctor, do you have --

MR. BHURTEL: Strike that.

Q Doctor, when you prepared this report January 22, 2016, did you review other medical records?

A Yes, and it's listed in this document that, generally speaking, when I make this document I ask for a copy of other medical records to help me make an assessment on causality. And it's listed in the document, which ones I had at the time that I made this.

Q Can you tell us which doctors or notes you reviewed to prepare this report?

A So, I had at the time medical records from Dr. Guha, Dr. Parnes; an MRI report, Diagnostic Imaging; Apollo Imaging; Dr. Krishna's notes; Dr. Jalal's notes; Fidelity Physical Therapy; Dr. Sinha; New York Surgery, Queens records. Obviously, my office is included in that, Mount Sinai Queens records, Bazos, Lishi and Dr. Head's notes.

Q All right. Doctor, what is the medical condition as of now --

MR. BHURTEL: Withdrawn.

Q When you saw the last time Mostafa Ahsan, what is his disability he was suffering?

MR. O'HARA: Judge, I'm going to object to the form

of that question.

THE COURT: Sustained.

Was January 13th, 2016 your last visit with the plaintiff?

THE WITNESS: Just double-check that for you, Your Honor.

January 13th, yes, sir.

THE COURT: What was his condition at that time with respect to his neck?

THE WITNESS: So, I mean, I think the answer the short answer is he had a chronic neck condition, obviously from 2011, that he'd been treated. The diagnosis he carried is left cervical radiculopathy, which we discussed. He had an MRI, he has a herniated disc. Obviously, it's chronic. It's my position to say it, but, you know, I don't think it's going to get better with just time. Doing some other alternative treatment, it's not all going to go away. I do believe that those symptoms are permanent, you know, as of that date that I saw him.

MR. BHURTEL: Exhibit 49, page 199 to 9001.

THE COURT: That has already been received in evidence.

MR. BHURTEL: Yes, I just want to show him.

THE COURT: Go ahead. If it is in evidence, just do it.

Q This is page 2000 to 2001.

Doctor, can you look at it, this page?

A Yes.

Q Can you describe what is this one?

A Okay. These are also notes from my office 8/26/16, by Dr. Ford, of an injection. It's called a medial branch block, which is another type of injection like we described for patients that have neck problems.

Q And Doctor, this is page 1999.

Doctor, can you describe what is this page?

A The date of this is 7/15/2016, so it was right before that. And basically says, it's Dr. Ford's note that says continues to have symptoms from his radiculopathy, pain score seven to eight out of ten. He's on Naprosyn, he's doing physical therapy. You know, he's recommended continual home exercise program, continue the Naprosyn and that he still has the same diagnosis.

Q Thank you, Doctor.

Doctor, can you explain that the last injection, what is that injection about, medial branch block?

A It's another injection in the spine very similar to the other one except instead of being injected right into the area of the spinal canal or the epidural space, it's given over the area of the facet. It's called the facet, it's part of the spine. The medial branch block to be specific, it's blocking

one of the pain fibers that goes to the facet joint called the medial branch but, you know, that's, I think, overly complicated. More specifically it's meant to help reduce the patient's pain that's related to this spine problem.

Q And Doctor, do you have opinion that what caused Mr. Ahsan's neck injury?

A Yes.

Q And can you describe that to the jury?

A You know, if the history given to me is accurate and I believe it to be accurate, that it related to this box falling on his shoulder back in 2011.

Q And that is within reasonable degree of --

MR. BHURTEL: Withdrawn.

Q Doctor, all opinions you give today or you testified today is within reasonable degree of medical certainty?

A Yes.

Q And Doctor, do you have your natural opinion with respect to his future treatment?

A You mean the document that I provided to you?

Q Yes.

A Is that what you're asking me?

Q Yes.

THE COURT: I do not think he means the document. I think Mr. Bhurtel is asking, do you have an opinion about what his future medical care will likely entail.

THE WITNESS: Yes.

THE COURT: Am I right, Mr. Bhurtel?

MR. BHURTEL: Yes, Your Honor.

THE COURT: Would you share that opinion with us?

THE WITNESS: Yes.

I don't think he's going to get better, to a substantial degree having experience with this kind of injury. I mean, patients that have cervical radiculopathy, they have it on and off for years. They have good days and bad days but in general, it doesn't really get better. I think we've seen through the course of treatment that he's had no substantial improvement, so my prognosis is poor. I don't think he's going to get better. I think he's going to stay the same or get worse. I'm very confident saying that that's the circumstance here.

Q And do you recommend other treatment?

A Again, to the degree that he's symptomatic. And that's how I'm going to frame my answer.

So, for example, if -- I mean, you don't just keep giving injection after injection after injection, right? So if the injections are helping, they helped. Albeit temporarily. That would be to his satisfaction and mine. If he needed it more frequently than was medically reasonable, then the only alternative would be surgery.

And you know, I did discuss surgery with him because

I do believe him to be a surgical candidate. You know, this is the classic patient that has sort of chronic pain and he has chronic pain. He's tried everything, isn't better. He has an MRI that shows a pinched nerve and so these are the people that generally do have surgery for relief of their radiculopathy.

Q And what would be the cost for the surgery, Doctor, for his treatment?

A I'll go right to the document. One second, please.

So, these are approximate costs related to care of a patient with spinal problems. So, approximate cost of the surgery like this, and this includes the hospitalization, preoperative testing, implant costs, anesthesia costs, hospital stay is about $80,000, that's what I estimate it. Surgical fees all-inclusive in that.

I also discuss the potential need for further injections. As you've seen, they did provide some relief for the patient, so I said one to three times a year going forward, it's not unusual that people would, rather than do surgery, sometimes they just do injections for many years until it gets so bad. So, one to three years, not unreasonable, at cost of $5,000, and that would be all-inclusive of facility, you know, the actual medicines, doctor fees, et cetera.

THE COURT: Let me stop you there for a second.

That would be $5,000 a year.

THE WITNESS: Yes. A year, a year.

THE COURT: Fine.

The surgery would be a one-time expense.

THE WITNESS: One-time expense.

THE COURT: And those are alternative costs.

In other words, if you have the surgery, if you have a good result, you don't have the injections.

THE WITNESS: Usually, Your Honor. But not necessarily. It depends.

The physical therapy, it seems to be helping maintain his status, so it's not unusual that patients like this would be in therapy on and off for years. You know, what would be best in an ideal world would be three times a week to support his condition. The average cost of a therapy visit is about $100. I wrote $125 a visit here. Medicines like Motrin. I'm not a big medicine doctor, so Advil, Motrin, these are things that we would recommend. $50 a month, you know to a -- $600 a year is what I wrote. Nerve tests, we didn't really talk too much about it, but frequently we will monitor nerve dysfunction by what's called an EMG test. Once every two years is not unreasonable, $1,500 a test.

An X-ray, $300 once a year. An MRI once every three years. Again, I think it's a very reasonable estimate. A thousand dollars for cost. And then I wrote pain management

visits. Usually you see a pain management doctor once a month to help monitor the medicines that you're on. There's also testing if you're going to be on Motrin and even medicines like antiinflammatories, if you take them every day forever, they need to be monitored by a physician. So, that's why he would need to see a doctor regularly. And then I wrote an orthopedic visit five times a year, which is less than once every two months. I would say that is not unreasonable, $200 per visit.

And that's, you know, my best estimate of what this might cost over the next, for the ensuing years.

MR. BHURTEL: Your Honor, Exhibit 66.

THE COURT: Are you almost done, Mr. Bhurtel? Because we are really at a point where we need to take a break very soon.

Are you about to finish up?

MR. BHURTEL: Yes, Your Honor.

THE COURT: Okay.

MR. BHURTEL: Exhibit 66, 2564.

THE COURT: 2564.

MR. BHURTEL: To 2566.

THE COURT: 2566.

MR. O'HARA: A moment please, Judge.

(Pause in the proceedings.)

MR. O'HARA: Okay, thank you.

THE COURT: Are you offering them in evidence or just now identifying them and now you are going to build a foundation?

MR. BHURTEL: Yes, I'm offering.

THE COURT: You are offering them.

MR. O'HARA: Subject to the foundation he is about to lay out, I've no objection.

Q Doctor, can you look at this?

A These are bills from my office.

THE COURT: From your office?

THE WITNESS: Yes, sir.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 66 received in evidence.)

Q And total, how much you have here?

A $11,000.

THE COURT: And that covers not only you, but Dr. Ford and the other physicians from your office?

THE WITNESS: Yes, total bill from my office.

THE COURT: As far as you know, is he scheduled to see anybody in your office?

THE WITNESS: I saw Dr. Ford. He's in our pain management service, so he's seeing Dr. Ford regularly.

Q Doctor, those appointments which Mr. Mostafa came to your office is given by your office?

A Yeah, we, you know, we -- obviously, we've been treating

him and whenever you treat a patient you always provide them a follow-up visit to see how they're doing. And so, he still has active pain and active issues. And for that reason, we are providing him with follow-up visits, yes. Yes.

MR. BHURTEL: I'm...

THE COURT: That completes your examination?

MR. BHURTEL: Yes, Your Honor.

THE COURT: Ladies and gentlemen, let's take ten minutes and then we will have the Doctor's cross-examination.

Do not discuss the case on trial.

THE COURTROOM DEPUTY: All rise.

(Jury exits.)

(In open court; outside the presence of the jury.)

THE COURT: Is everything good, Counselors?

MR. O'HARA: Yes, Your Honor.

MR. BHURTEL: Yes, Your Honor.

THE COURT: Take your ten minutes. 11:20. Thank you.

THE WITNESS: Thank you, Your Honor.

(Recess taken.)

(Continued on following page.)

(In open court - jury not present.)
THE COURT: Have a seat everybody.
Are you ready to proceed?
MR. O'HARA: Yes.
THE COURT: Do you need another minute?
MR. O'HARA: No.
THE COURT: Okay, we will bring out the jury.
(Jury enters the courtroom.)
THE COURT: Hello again, everybody.
Dr. Lattuga, I will remind you that you remain under oath.
Mr. O'Hara, I invite you to begin your cross-examination.
MR. O'HARA: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. O'HARA:

Q Doctor, I'm going to work backwards from the topics that were covered at the end of your testimony so the progression you can follow.

A Yes, sir.

Q One of the last questions that you were asked was about the causation opinion that you held in this case and you noted that if the history was accurate, then you have a foundation off of which you base your causation opinion; is that a fair statement?

A Yes, sir.
Q And what you mean by that is you don't have any direct knowledge about this patient's history both related to the incident or his medical history prior to that for the 55 years that he lived; fair?
A That's correct.
Q And one of the things that as a treating physician as opposed to a physician involved in litigation providing consultation services to testify in front of a jury is you rely upon whatever the patient tells you or whatever the medical records that are provided to you by other providers tells you; correct?
A Yes.
Q And you don't do any independent investigation? You trust the people are going to tell you the truth?
A Yes, sir.
Q And if they don't tell you the truth or leave out key information, that affects the strength or the foundation of the opinion that you offer on that question in terms of what you're talking to a jury about; fair?
A Yes.
Q Now, in this case, not only did you serve as a treating physician, there is a separate role that you were asked to play which resulted in the issuance of your narrative report and that is associated with this lawsuit; fair?

A Yes.
Q In the initial portion of your testimony, you talked about the happening of this accident. You actually made note of the fact that Mr. Ahsan filled out two forms for your office describing the incident; correct?
A Yes.
Q In both of those forms --
MR. O'HARA: And I will identify them for the record, Your Honor.
Q -- the September 11, 2014, three-page document, which is Ahsan 1985 through Ahsan 1987, as well as in a subsequent document dated July -- excuse me, September 19, 2014, which is identified as Ahsan 1989, in both of documents, which were in your chart, he described the happening of this accident; correct?
A Yes.
Q And in both of these documents prepared by Mr. Ahsan, he described exactly where the boxes at the Staples store made contact with his body; correct?
A Yes.
Q And in both documents that he filled out, the language is in English; correct?
A Yes, sir.
Q And he gives a narrative in terms of a detailed description of exactly what happened; correct?

A Yes, sir.
Q And in both descriptions, the plaintiff in this case says the box hit him on his left shoulder; correct?
A Yes.
Q It does not say in either document that is prepared for his office, which is historical information that you and your colleagues reply upon, anything other than contact with his left shoulder; correct?
A Yes.
Q In addition to which, in that same document, there is a review of systems that is identified; correct?
A Yes, sir.
Q And there is actually a body part that he is asked to circle and there is a signature that's on the document talking about shade in areas where you have pain; correct?
A Yes, sir.
Q And where does he identify that he is experiencing pain?
A The line here starts sort of by his wrist and goes up in the back of his arm to the back of the shoulder blade and then, you know, respectfully, that's kind of the shoulder/neck area with a circle around the trapezial area, which is between there.
Q Fair. And the way that he has identified this diagram, that's consisted with pain that is radiating from the neck down through the arm; correct?

A Yes, sir.
Q And that radiating pain is something that you would expect based upon the disc herniations that are located in his cervical spine; fair?
A Yes.
Q If there is nerve root irritation, if there is impingement from the discs that are herniated when he comes in, depending on which disc is herniated, that pain will radiate to different locations in the arm; correct?
A Yes, sir.
Q And can you explain to the jury -- I talked a little bit earlier with one of the witnesses. Can you explain to the jury, you noted that it is a precise map. Which cervical discs innervate which portions of the arm in terms of sensation or feeling?
Do you understand the question?
A Yes, I do.
Q Can you please explain to the jury that?
A Can I use myself? I will point to myself?
Q Yes.
A Do you mind if I stand?
THE COURT: Not at all.
A So with my hand open like this, you'll see -- Google it.
THE COURT: No, don't Google it.
A It's a map like this. It's an overlap. In general, C5

is the top of the arm, the outside. With the hand open, you're talking about the outside of the arm, the inside of the arm.

C5 is the shoulder and arm. C6 goes down the side of the arm to the thumb. C7 is sort of the back of the arm to the middle finger. And then C8 are the two medial fingers. C8 will be the ring and the small fingers, and then the heel side of the hand. I'm pointing to this part of the hand (indicating). It's called the ulnar side of the hand. And then it goes up the medial or the inside of the arm. That would be C8. That's typically the pattern of -- the dermatomal pattern of the upper extremities.

There's a little bit of change but, in general, that applies to most people.

Q Thank you.

A Did I answer your question?

Q Yes. So for purposes of understanding, depending on the level of the disc affected, where you have a herniation that impinges, that causes nerve root irritation, it will affect different portions of the arm because of the way the arm is innervated; is that a fair statement?

A Yes.

Q In this case, after being given that historical information, you were given the benefit of a number of diagnostic studies that were performed on this patient;

correct?
A Yes.
Q Not only were you given the MRI of the cervical spine that you mentioned before from Dr. Krishna, you were also given the diagnostic films and reports from Apollo Imaging, the cervical X-rays that were taken in this case; correct?
A I believe so.
Q And you will recall that the cervical X-rays that were taken before the MRI noted degenerative disc disease with degenerative spurs throughout his cervical spine; correct?
A Yes.
Q And that's consistent with degenerative findings on a more specialized finding, which is the MRI study; fair?
A Yes.
Q Can you explain to the jury, in terms of what you saw on the diagnostic films that you reviewed as someone that specializes in this area, how pervasive, from what portion of the cervical spine in the C2/3 area until down into his thoracic spine were these degenerative changes?
A And, so, the way that I answer this, and I'm very consistent of how I answer this question. So, imaging studies they look in the body, look at specific structures. In this case, the spine. The same way on the outside you could tell that I'm 50 something. You know, if you take an MRI of me on the inside, you'll see changes that reflect that I'm 50

something.

Typically, the way I like to convey it is our age-related changes to the spine. Mr. Ahsan has obviously age-related changes to the spine. Radiologists will frequently, almost always use the word degenerative changes associated with those age-related changes, okay, because as you can imagine, you know, as we get older, we colloquially will express that as we are degenerating over time.

In reality, I think it's more fitting to describe it as age-related changes. So, yes. The instant question is Mr. Ahsan has age-related changes across his entire spine consistent with his age of a 55-year-old man. The specific radiographic findings that the question was about has to do with something called osteophytes or desiccation of the discs. These are things that a radiologist will see on an X-ray and on an MRI that are consistent with degenerative changes or I like to convey it as age-related changes. It isn't necessarily a disease. We have to be very specific. Getting older isn't a disease. It is a natural process. That's what you're referring to. It is present in his spine. There is no question about it. It is also present at the areas where he has herniations. That can be very confusing.

So an area what I could say it appears to be a traumatic herniation, let's just say, hypothetically. You also have age-related changes. So it can be very difficult to

make a distinction between an age-related change and a herniated disc and, you know, chicken and the egg. There is -- is it the herniated disc or the degenerative changes. There is no one answer to your question: Yes, he does have age-related changes, but I -- I believe my reading is consistent with the radiologist's reading there is also herniated discs at those levels.

Q And in terms of the ability to review a diagnostic study, in particular an MRI film, and we have used 112-C and 112-E. I want to focus on 112-C.

When you visualized these discs on MRI study, just looking at this alone, there are no acute tears in the disc. There's nothing that you can look at and say this is specifically related to the trauma as opposed to the natural degeneration that's ongoing in his cervical spine; fair statement?

A I mean --

Q Is that a fair statement?

A I think that's a fair statement in this particular case.

Q And because of that, one of the things that you looked to to identify, especially in litigation, what's the cause of the man's problem, you rely upon the veracity or the truthfulness of the history that's been given to you?

A Yes.

Q And if it's not true, then it affects your ability to

offer an opinion that is caused by an incident as opposed to what we have just described, the natural process that's been ongoing in his life?

A Yes.

Q And as a general matter, degeneration in the cervical spine or any other portion of the spine, is there a consensus as to when that process starts in the human body?

A Not specifically.

Q Is it generally accepted that it begins about 18 or 20 years of age? Once a human body matures to the point of adulthood, the aging process starts?

A Along those lines. They are very general concepts. It is very difficult to apply to this particular case. But, in general, we start to look older when we start to look older. For some people, they look young for much longer.

You know, usually when I'm sitting here I like to give very precise answers, and I can't really answer that question in any precise way.

Q Then I will ask it differently. I want you to answer questions that are fair questions.

You'd agree with me that in addition to the natural aging process, a series of factors associated with a person's lifestyle also affect that ongoing degenerative process; fair?

A Yes, sir.

Q That includes things such as work history?

A Yes.
Q Social history?
A Yes.
Q In particular, with social history, is there a propensity for people that are smokers to have degeneration in the soft tissue or bony structures of their body at a different accelerated rate than those who are not smokers?
A Yes.
Q In this case, do you know whether Mr. Ahsan is a smoker? Let me ask it differently. If I were to represent to you --
A Yes, he's a smoker.
Q If I were to represent to you that there are records in this case to suggest that he is a smoker and there are similarly records in addition that specifically say he's never been a smoker, that's the kind of historical information that is inconsistent that you would want to know about before you are asked to offer an answer about causation; fair?
A Obviously, all information is valuable. Yes, he is a smoker.
Q With respect to his professional history, his work history, what did he tell you about what he does for a living?
A I'm sorry?
Q All of your office notes and your narrative report all indicate that he was not working; correct?
A I don't believe he was working, no.

Q Did he talk with you about his activity outside of this incident? Because there are notations throughout your records, as well as your narrative report, about an effect on his daily normal function. Did he talk --
A As it is contained in my narrative. Those things that I've already testified to with respect to lifting, carrying, bending, lying, his activity of daily living were, he stated, were affected by this pain. To that extent, I'm aware of. But other than that, I'm not aware.
Q And you accept that as; true?
A Yes.
Q In other words, you don't do an independent investigation in terms of the information that's given to you in this case for purpose of your narrative report, that all comes from Mr. Bhurtel; correct?
A Yes, sir. And those records that I reviewed that I listed.
Q Fair. Just so the jury understands, there are some materials in your file that come to you as a matter of normal practice from other physicians; correct?
A Yes, sir.
Q And then separately, there are materials that came to you in this case from Mr. Bhurtel as part of this litigation; correct?
A Yes, sir.

Q Part of the records that were sent to you were Dr. Guha's records; correct?
A Yes.
Q You listed a series of records that are Dr. Guha?
A Yes.
Q Were those sent to you by counsel or by the doctor?
A Counsel.
Q Did those records contain any reference to any care and treatment prior to Staples incident on September 2, 2011?
A Yes.
Q And those records indicated that this patient had a prior history of neck pain; correct?
A There was an office visit reflecting that he had neck -- a neck problem.
Q And there are office visits that reflected that he had shoulder problems; correct?
A Yes.
Q And there are office records that confirm that he had prior headache-related or head problems?
A Yes. He has a neurological issue which is separate from here, but, yes.
Q Now, Doctor, can the degenerative changes that are occurring in Mr. Ahsan's spine remain on the same course independent of the event that gives rise to this lawsuit; in other words, can someone have an event where a box hits them

in the shoulder, they have an ongoing degenerative disc disease or an aging process in their spine and the impact to the shoulder doesn't affect the ongoing changes in that person's cervical spine?

A It can be an independent event.

Q And in order to determine radiographically whether there has been an appreciable change, ideally you would have prior records and prior studies that you can compare during the course of the patient's aging process; correct?

A Yes.

THE COURT: When you say prior, you mean before the alleged accident and after the alleged accident?

THE WITNESS: That's how I understood it. There were some prior objective studies that I could compare against to make an assessment on.

Q And the ability to review that is based on somebody actually identifying medical providers that existed prior to September 2nd of 2011; correct?

A Well, somebody has to give me those records.

Q Whether it is the patient?

A Correct.

Q One of the other treating physicians or the lawyer, you would rely upon the information that those folks provided to you; correct?

A Yes, sir.

Q Do you have any information about Mr. Ahsan's medical treatment other than the one or two notes that we just talked about with Dr. Guha related to his medical profession in his 30s, in his 40s and going into 50s?
A No, sir.
Q Did you ask him questions about whether he received treatment to his cervical spine which he had come to see you for besides the one or two visits that we talked about with Dr. Guha?
A I've asked the question. There was no significant treatment history according to the patient with respect to his neck.
Q Now --
A No surgery, no injections prior. I mean, real things.
Q Now, Doctor, it might be helpful if you follow along with your report, the narrative report.
A Yes, sir.
Q In the January 22, 2016 report, the description from when the patient first comes into your office about the incident changed. Can we agree to that?
A Can you be more specific with the question?
Q Sure. We've talked about when he first came into the office and filled out that form he wrote that the box struck his shoulder?
A He wrote, yes.

Q And then subsequently in your report there are a number of office visits where the history has changed and now he is talking about it striking his head; correct?
A Correct.
Q And that is, would you agree with me, inconsistent with what he actually wrote down in both the first time he came into the office and the second time that he came into the office?
A I would say not necessarily.
Q Well, let me ask a different question. If anything that I ask you is unfair or inaccurate, just tell me and I will ask you another question.

You would agree with me that the first time he writes down what happens he only says it struck my left shoulder; correct?
A Yes.
Q He doesn't in any way, shape or form suggests that it hit him in the head on the document that he filled out; did he?
A He did not write that.
Q And on the diagram of that he circled and colored in, we have already established that he colored in in the area of his trapezius muscles down from his shoulder into his arm; correct?
A But also a little bit back up the neck.
Q I'm not talking about the neck, Doctor. I'm talking

about the head. You have two different references in your report; right?

A He does not reference the head.

Q Did he reference at all any prior medical condition that he had with respect to radiating pain into his left shoulder separate from the description with Dr. Guha?

A I'm not sure I understand the question.

Q At any point were you given any information from Mr. Ahsan that this patient was suffering from myofascial pain syndrome on the left side? It's been described as MPS.

A Other than Dr. Guha's records?

Q Yes.

A No, I'm not aware other than Dr. Guha's records.

Q Now, Doctor, near the end of your testimony there was a discussion about whether this patient may ultimately need surgery. That has not been pursued during the course of the treatment with you; correct?

A Correct.

Q In fact, it's not scheduled, there is no discussion about scheduling it. It is something that he may choose to do in the future, but as of today, he has not done so; correct?

A Correct.

Q Doctor, the last two office notes -- strike that.

Let me back up. If you could turn to your November 11, 2015 reference in your report. It is Ahsan 1124, is the

page.
A Yes, sir.
Q You'll see on the November 11th, the patient is not currently working and his problem interferes with his daily normal function; correct?
A Yes, sir.
Q He says that on November 11, 2015; correct?
A Yes, sir.
Q And then the next office visit, January 13, 2016, which is Ahsan 1126. It is the same notation, not working and the problem is interfering with his normal function?
A Yes, sir.
Q And as of the last time that you see him, January 22, 2016, which is 1127, the same notation, he is not working and it is affecting his daily function; correct?
A Yes, sir.
Q Did he talk to you about what his daily function was during those two time periods?
A Not specifically, no.
Q Did he talk to you about his career in painting?
A I mean, I don't have a recollection, no.
Q Did he talk to you at all about a solo painting exhibition to display his 35 works from November 7th through November 20, 2015 from 10:00 a.m. to 9:00 a.m.?
A I mean --

Q Yes or no? Did he talk with you --
A I don't have an independent recollection of having a conversation about his career as a painter.
Q And he didn't talk to you about an affect on that aspect of his daily function when describing, which is recorded in the notes, things that he could no longer do as being a normal activity; fair?
A I mean, I don't have a specific recollection, no.
Q One of the things about your office notes and your report, as a general matter, you record significant historical information relating to the care and treatment; correct?
A What I think is relevant, yes, sir.
Q When you create a narrative report for litigation, you record significant information, it may not be relevant to the medical treatment, but it is important to you in the opinions that you are going to offer in front of a jury; correct?
A Yes, sir.
Q And, so, if there was information that had been provided to you prior to me asking you this question about this gentleman being involved in painting and then in solo art exhibition that he is the exhibitor from 10 o'clock in the morning until 9 o'clock at night over the 13-day period that includes your November 11, 2015 office visit, that would be in your report; wouldn't it?
A I mean, not necessarily. Not necessarily.

Q How about if thereafter he participated in a different art exhibition on January 23rd through February 7, 2016 where he was one of the artists exhibiting for the public work that he had prepared, would that be information associated with daily activities that would be recorded in your narrative report if he told you about it?
A I mean, it's the same answer, not necessarily.
Q It would depend on whether or not the activities that he was doing had any involvement with the cervical spine, which is the expert area that you have been retained to speak to; correct?
A I mean, most probably, yes.
Q In other words, if he is using his arms in some fashion in these art exhibits, if he is using his hands in some respect in some other activity that is inconsistent with the history that he has been giving you for purposes of your litigation opinions, you would record that in your report; fair?
A I would record a relevant restriction of a specific activity if it came up in a conversation.
Q Understood. And that also applies not only to his daily living activities, that applies to work too, doesn't it?
A I would, if I was aware of it, number one, specifically, and if I thought it was relevant to the office visit itself.
Q And if he was working at a given time, your notes and

your report would not say patient is not working; correct?
A I mean, for the most part we try to be accurate. My understanding was that he was not working. It could be a misprint. But from my understanding is that he wasn't working.
Q And if it's not a misprint, if the recitations in your report are accurate, that accuracy is based on what Mr. Ahsan is telling you; correct?
A That's correct.
MR. O'HARA: That's all that I've, Judge.
THE COURT: Any redirect?
MR. BHURTEL: Just quick.
THE COURT: You may proceed.
REDIRECT EXAMINATION
BY MR. BHURTEL:
Q Dr. Lattuga, if the people have general wear and tear which you say is age-related wear and tear, what is the condition of the peoples generally who have it? Do they feel pain there or they don't feel the pain? How does it work?
A It really varies. Some people have degenerative changes and it goes on unrecognized and in other people it becomes symptomatic. It can be either situation.
Q And if they have this kind of age-related wear and tear or -- yeah, age-related wear and tear, if they have some outside force or some kind of impact or in this case like, you

know, accident, that makes the difference or something, you know?

A Yeah. I mean, obviously, this occurs all the time. You have 60-year-old, 70-year-old, 50-year-old people that would have age-related changes to their spine consistent with their age and they are fine and they are walking around and they can be involved in an accident and as a function of that accident, their life changes forever. Certainly that can happen. The opposite can happen as well, which you where you could have age-related changes and need surgery independent of an accident. Both circumstances occur. But absolutely, you know, just because you have age-related changes doesn't mean that you are going to have surgery. In fact, that's not common. Most people are treated conservatively.

Q You did not provide medical treatment about his head or brain injury; right?

A No, sir.

Q And you are aware that the neurologist is providing him with the medical treatment --

A Yes, sir.

Q -- for the brain injury?

A Yes, sir.

MR. BHURTEL: I complete the redirect.

THE COURT: You are completed?

MR. BHURTEL: Yes.

MR. O'HARA: Nothing further.

THE COURT: You are excused, Doctor. Thank you very much.

THE WITNESS: Thank you.

THE COURT: Counsel, can I see you at the sidebar, please.

(Sidebar held outside the hearing of the jury.)

(Continued on the following page.)

(The following sidebar held outside of the hearing of the jury.)

THE COURT: So I'm wondering, that it is very early for lunch. Do we have someone else that we can present? I don't see the interpreter and I haven't seen the other doctor.

MR. BHURTEL: The interpreter is here, but the doctor is --

THE COURT: What time is the doctor supposed to be here?

MR. BHURTEL: 11:30, but he says he is on his way.

THE COURT: Well, do you think it would be efficient to have a segment of your client's direct examination now, break for lunch and then go to the doctor and you could pick up your client later? Would that be efficient or are we going to have to start where we left off?

MR. BHURTEL: It would be better if I could start the doctor.

THE COURT: Find out how close he is right now because I've to tell the jury what to do.

MR. BHURTEL: Yes, sir.

THE COURT: I'm just trying to figure out our schedule based on when we expect our next witness to be here.

Do you have any information for us?

MR. BHURTEL: It is going to take a little bit of time. Can we have a lunch break and start at 1 o'clock?

THE COURT: Will he be here at 1:00? I don't want to rush the jury back.

MR. O'HARA: He's here.

THE COURT: Is this the doctor?

MR. BHURTEL: Yes.

THE COURT: Let's get started. We will do a little bit before lunch.

MR. O'HARA: What time for lunch?

THE COURT: In about 30 to 40 minutes and then a break for lunch.

(Sidebar concluded.)

(Continued on following page.)

(In open court - jury present.)

THE COURT: Ladies and gentlemen, can you go another 30, 40 minutes without making anybody uncomfortable?

THE JURY: (Collectively) Yes.

THE COURT: All right, let's do it.

Is this your next witness, Mr. Bhurtel?

MR. BHURTEL: Yes.

THE COURT: Please come forward, take the witness chair. Sir, I'm sorry, but this is the witness chair over here. (Indicating.)

THE WITNESS: Oh, thank you.

THE COURT: Thank you.

THE COURTROOM DEPUTY: Please raise your right hand.

(Witness sworn/affirmed.)

THE WITNESS: Yes.

THE COURT: Could you please tell us your name and then spell it for us?

THE WITNESS: My name is David, D-A-V-I-D, and last name is Guha, G-U-H-A.

THE COURT: G-U-H-A.

Please be seated.

Mr. Bhurtel, as soon as you are ready, you may begin your examination.

MR. BHURTEL: Thank you, Your Honor.

THE COURT: Sure.

D A V I D G U H A, M. D.,

called as a witness by the Plaintiff, having been first duly sworn/affirmed, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BHURTEL:

Q Good afternoon, Dr. David Guha.

A Good afternoon, sir.

Q Where did you receive your medical degree?

A In India, Calcutta.

Q What was the name of the medical school?

A Calcutta National Medical.

Q When did you receive?

A 1988.

Q And then did you have any other medical degree?

A Yeah, I did a residency in Brooklyn Hospital.

Q When did you do the residency in Brooklyn Hospital?

A I finished in 1996.

Q And which area of the medical you did the residency?

A I finished residency 1996.

THE COURT: Which area of medicine was the question?

THE WITNESS: Oh, internal medicine.

Q And did you have a license to practice in New York?

A Yes, sir.

Q When did you receive?

A 1996.
Q And how many years you were doing the residency in Brooklyn Hospital Center?
A Three-and-a-half.
Q And are you licensed to practice in any other state?
A No, only New York.
Q And since you received your license to practice in the State of New York, is your license in good standing since then until now?
A Yes, sir.
Q And after the residency, where did you work?
A I work in a -- in a Park Avenue Extended Care Nursing Home and also in some other private places. And also I was doing the simultaneous private practice at the same time.
Q And when you say private practice, what is the name of your business?
A Queens Medical Services.
Q And what is the address of this Queens Medical Services?
A It was in 41-42 Elbertson Street, Elmhurst, New York 11373.
THE COURT: A-L-B-E-R-T-S-O-N?
THE WITNESS: E-L-B-E-R-T-S-O-N.
THE COURT: Elbertson; thank you.
BY MR. BHURTEL:
Q And how long you had office there?

A 'Til last year. I moved after that.
Q Okay. What is your new address now?
A 8735 Britton Avenue, B-R-I-T-T-O-N, Britton Avenue, Elmhurst, New York.
Q And did you involve to provide medical treatment with respect to Mostafa Ahsan's September 2nd, 2011 accident?
A Yes, sir.
Q And when did you started to provide medical treatment to Mostafa Ahsan?
A As a primary care physician, I was treating him since year 2008, March 2008 'til now.
Q And with respect to the -- with respect to his accident-related matter, which is the September 2nd, 2011, when did you started to provide him medical treatment?
A September 2nd he came to me and told me that he has neck pain or shoulder pain and some boxes fell down when he was shopping in -- in Staples. And then I gave pain medicine and referred him for the rehab for physical therapy.
THE COURT: This was on September 2nd, you said?
THE WITNESS: Yeah.
THE COURT: The same day?
THE WITNESS: Yeah.
THE COURT: So when he saw you, he told you he had the accident earlier in the day?
THE WITNESS: Yeah.

BY MR. BHURTEL:
Q And you have been providing the treatment until now?
A Yes, sir.
MR. BHURTEL: Your Honor, plaintiff moves the doctor as a treating physician expert?
THE COURT: Any objection?
MR. O'HARA: To?
THE COURT: To testify --
MR. O'HARA: No objection to him as a general practitioner.
THE COURT: -- as an internal medicine general practitioner and overall primary care physician?
MR. O'HARA: No objection.
BY MR. BHURTEL:
Q On September 2nd, 2011 when Mostafa Ahsan came, what was his complaint?
A He had some neck pain and shoulder pain and that's it.
Q And when he said those pains related -- strike that.
Did he give you why those pain came out?
A Yes, he told me a short history that he was shopping in Staples and some box -- heavy boxes fell down on his head and after that he -- he felt some headache, you know, and neck pain.
Q And what was your recommendation then?
A Oh, I examined him and -- and referred him to a

specialist, rehab doctor.
Q And who did you refer him?
A Dr. Ricardo Santiago.
Q And what kind of doctor is Ricardo Santiago?
A He is rehab and pain medicine.
Q And did you prescribe any other treatment that day?
A I give some pain medicine.
Q What medication you give him?
A As I recall, it's Naprosyn, 500 milligram.
Q And what is the purpose of the immediate Naprosyn?
A Yes, this is anti-inflammatory for the pain relief.
THE COURT: Is that an over-th-counter drug or a prescription?
THE WITNESS: No, it's prescribed.
THE COURT: It's a prescription drug?
THE WITNESS: Yeah.
BY MR. BHURTEL:
Q Did you give any other drugs that day?
A No.
Q And what was his medical condition that day with respect to the blood pressure?
A Pressure was little elevated, you know, and he was taking the medicine for that.
And can I check the chart because I don't totally remember?

THE COURT: Yes, Doctor, you can use your notes to refresh your recollection.

MR. BHURTEL: Yes.

(Pause.)

A Yes, I gave him some blood pressure medicine also to relieve the pressure.

Q Okay.

THE COURT: Had you been, and I'm not clear from the way you expressed it, whether you are saying that Mr. Ahsan was already suffering from high blood pressure before September 2nd --

THE WITNESS: Yes.

THE COURT: -- 2011? Yes?

THE WITNESS: Yes, before that.

THE COURT: And you had prescribed blood pressure medication --

THE WITNESS: Yes.

THE COURT: -- before the accident?

THE WITNESS: Yes. Yes, sir.

THE COURT: And did you change the prescription because of the accident?

THE WITNESS: No.

THE COURT: Okay, I misunderstood before. I'm glad it came out.

MR. BHURTEL: This is Exhibit 56, Your Honor.

THE COURT: Exhibit 56.
MR. O'HARA: Bates number please.
MR. BHURTEL: Page number 2100.
THE COURT: 2100.
MR. O'HARA: No objection, Your Honor.
THE COURT: Okay, 2100 is in evidence then.
(Exhibit 56, Bates page 2100, was received in evidence.)
BY MR. BHURTEL:
Q And when did you give him to come back in your office next time?
A In a few days he saw Dr. Ricardo Santiago and he prescribed the physical therapy for his condition.
THE COURT: And did there come a time when he came back to see you?
THE WITNESS: Yes.
THE COURT: When was the next time you saw him after September 2nd, 2011?
THE WITNESS: I don't exactly recollect, but a few days, a few days.
THE COURT: I see.
MR. BHURTEL: Page 2101.
MR. O'HARA: No objection.
THE COURT: 2101?
MR. BHURTEL: Yes. Same exhibit, Your Honor.

THE COURT: 2101 is in evidence.

(Exhibit 56, Bates page 2101, was received in evidence.)

THE COURT: Mr. Bhurtel, if it's easier for you to question from standing next to the witness chair, if that will move it along, that is fine with the Court.

BY MR. BHURTEL:

Q Do you recognize this document?

A Yes.

Q Is this your record?

A Yeah.

Q Okay. Do you see the date here when he came next time?

A September 9th.

Q And what were the complaint on that September 9, 2011?

A He still continues have chest pain -- neck pain and shoulder pain, and his pressure was also elevated much more.

Q And what was your recommendation?

A Oh, I increased the dose for the -- for the blood pressure medicine and sent him for physical therapy.

Q And when you say you sent for physical therapy, where did you send, same Dr. Santiago or somebody else?

A No, Santiago he used to rent a place in my office for physical therapy, same location.

Q And Dr. Santiago is within the Queens Medical Services?

A He is an employee of the Queens Medical Service.

Q That is your office?
A Yeah.
Q Then after that, when did you see him?
A In the same -- same month, you know, after few days, you know, five, six days.
Q And what did you do on that third visit?
MR. O'HARA: Can we have a date, please?
THE COURT: The doctor gave his best recollection, which was about five days later.
Correct, Doctor?
THE WITNESS: Yes.
A I just continued the same, same treatment, you know, continue the -- checking him for his conditions, it's getting worse or not, and I order some MRIs for the neck and shoulder.
Q And where did you send to perform the MRI?
A No, because as a primary care we have to authorize, we have to get permission from the insurance company. We send a process and the insurance denied it later on.
THE COURT: But the question is what radiology laboratory did you recommend, if any?
THE WITNESS: No, first we send -- no.
THE COURT: Forget about that part. Did there come a time when Mr. Ahsan had a neck and shoulder MRI?
THE WITNESS: (No response.)
THE COURT: Yes?

THE WITNESS: But they didn't give me authorization.
THE COURT: I understand. Did there come a time when he did have the MRI?
THE WITNESS: Yeah, I sent it to Advanced Radiology.
THE COURT: Advanced Radiology?
THE WITNESS: Uh-hum.
BY MR. BHURTEL:
Q And did you -- how long after that you sent to him for the -- to the MRI office body to Advanced Radiology?
A It was a few times it was denied, you know, insurance authorization.
THE COURT: We are asking about the amount of time.
THE WITNESS: I think it's 2014 -- '14. September 2014.
BY MR. BHURTEL:
Q Doctor, what was the reason Mostafa Ahsan could not receive MRI in early?
MR. O'HARA: Objection.
A Because --
MR. O'HARA: Objection. You just --
THE COURT: What was the question? He could not receive an MRI in?
MR. BHURTEL: MRI diagnostics in early.
THE COURT: Earlier?
MR. BHURTEL: Yes, earlier.

MR. O'HARA: My concern is the basis.
THE COURT: I understand.
MR. O'HARA: My objection is the basis for the Court stopping the doctor from commenting earlier.
THE COURT: I understand. I'm going to ask the doctor a couple of questions in a leading way.
Please answer the questions I ask you.
THE WITNESS: Sure.
THE COURT: When you saw Mr. Ahsan for the third time in September of 2011, was it your opinion that it was medically appropriate to refer him for an MRI?
THE WITNESS: Yes.
THE COURT: Is the gap in time between 2011 and 2014 between when you first thought it was medically appropriate for him to have an MRI and when he actually had one, was that because of administrative issues --
THE WITNESS: Yes.
THE COURT: -- rather than medical issues?
THE WITNESS: Yes, sir.
THE COURT: Did Mr. Ahsan refuse to get an MRI during that time period?
THE WITNESS: No, sir.
THE COURT: Did you believe he merited an MRI and that his treatment would be helped by an MRI if he had it sooner?

THE WITNESS: Yes, sir.
THE COURT: Was he cooperative as a patient?
THE WITNESS: Yes, sir.
THE COURT: You may move on, Mr. Bhurtel.
MR. BHURTEL: Thank you, Your Honor. This is Plaintiff's Exhibit 56 with other pages.
BY MR. BHURTEL:
Q Doctor, can you look at it?
MR. O'HARA: Judge, we've been through this.
THE COURT: I understand.
Direct him to a specific page that your question relates to or have him identify the entire exhibit as a whole. And if you have not worked it out with Mr. O'Hara last night that the entire document should be admitted, then you will have to do it tonight, but you lay your foundation now and we will have debate about what portions are admissible after the jury goes.
MR. O'HARA: As he is doing this, Judge, can I just look over his shoulder?
THE COURT: Sure. Or you can just point to specific pages, if you are not going to offer the whole thing. It is your decision, Mr. Bhurtel. I'm not trying to restrict how you proceed.
BY MR. BHURTEL:
Q Can you look at this document, Doctor?

A Yes.

THE COURT: What is the final page, 2100 to what?

MR. BHURTEL: 2100 to 2316.

THE COURT: 2100 through 2316.

(Pause.)

THE COURT: Doctor, you would be more comfortable seeing every page before you answer?

THE WITNESS: (Nodding.)

THE COURT: That's 216 pages, the doctor can look at it over lunch. You can ask your next question and you may direct him to a specific page within the document if you prefer.

BY MR. BHURTEL:

Q Is this your office medical record?

A Yes.

THE COURT: The pages that you saw so far, right, Doctor, because you did not get a chance to look at everything?

THE WITNESS: Yeah, I know.

THE COURT: The pages that you saw so far are your office medical record?

THE WITNESS: (Nodding.)

THE COURT: Yes?

THE WITNESS: A few pages in the front.

THE COURT: You can look at the rest of the document

during the luncheon recess. Mr. Bhurtel will show it to you.

What is your next question, Mr. Bhurtel?

BY MR. BHURTEL:

Q When you referred to the therapy, how often Mostafa was receiving therapy?

A Three times a week.

Q And which body part of the -- which body part he was receiving the physical therapy?

A Neck and left shoulder.

Q And that is the body part you referred?

A Yes.

Q And did that therapy help Mostafa -- I strike that one.

Did that therapy cure Mostafa's neck?

A No. After a few months his condition remains unchanged, so I sent him to the specialist.

Q And how are his left shoulder after the therapy?

A It's not getting better either.

Q And when you say you sent to the specialist, which specialist you sent?

A Orthopedic surgeon and spine surgeon.

Q And what orthopedic surgeon you send?

A Dr. Sinha, Ajoy Sinha.

THE COURT: S-I-N-H-A?

THE WITNESS: Yes.

BY MR. BHURTEL:

Q And any other doctor you referred to him?
A I referred to him Dr. Krishna, the neurologist, and Dr. Jalal, the neurologist also; and Dr. Lattuga, the spine surgeon for his neck.
Q What was the reason you referred to Dr. Jalal -- withdraw that question.
What kind of doctor is Dr. Jalal?
A He's a neurologist.
Q And what purpose you recommended Mostafa to Dr. Jalal?
A Because he was found to have radiculopathy of the neck, so --
THE COURT: He was found to have what of the neck?
THE WITNESS: Cervical radiculopathy.
THE COURT: Cervical radiculopathy?
THE WITNESS: Yeah, so that's why I referred to Dr. Jalal.
BY MR. BHURTEL:
Q And then you also referred Dr. Krishna, what was the reason you referred to him?
A Because the patient wanted a second opinion from another neurologist, so I gave it to him another name.
Q And did you come to know that you received the MRI of his left shoulder?
A Yes, we found the MRI of the left shoulder.
Q And did you receive the MRI of his neck?

A Yeah, we also received MRI, a copy of the MRI of the neck.

Q And is this your regular practice that once you -- once you examine the patient then you refer to the special doctor?

A No, unless -- we try to treat them first, you know, if he doesn't get better we send it to the specialist.

(Continued on the following page.)

(Continuing)
Q With respect to the pain medication in the second visit --
MR. BHURTEL: Strike that.
Q With respect to the pain medication, did you continuously prescribe the pain medication or you stopped sometimes?
A Yeah, on and off because the pain medication causes kidney problems, too. I told him, unless you have a lot of pain, don't take these medicines.
Q Are you aware of any treatment provided by the doctor Dr. Ajoy Sinha?
A Yes.
Q So, what kind of treatment he provided?
A The first he gave --
THE COURT: Whoa, whoa, I'm a little lost.
Are you aware of treatment provided by?
Q Dr. Ajoy Sinha.
THE COURT: Dr. Sinha.
MR. BHURTEL: Yes.
THE WITNESS: The orthopedic surgeon.
THE COURT: Yes, thank you.
And the question is, what kind of treatment did Dr. Sinha provide?
MR. BHURTEL: Yes, Your Honor.
THE COURT: We've heard from Dr. Sinha already in

this trial, he was one of the doctors who testified already?

MR. BHURTEL: Yes, Your Honor.

THE COURT: Did you receive a report from Dr. Sinha's office about the treatment that Mr. Ahsan received from Dr. Sinha?

THE WITNESS: Yes, sir.

THE COURT: Did you use that report to decide how to continue your treatment of Mr. Ahsan?

THE WITNESS: Yes, sir.

THE COURT: What did you learn from Dr. Sinha's treatment that guided you as you decided how to treat Mr. Ahsan?

THE WITNESS: First, he gave the injection of the shoulder and he send a letter prescription, continue physical therapy.

THE COURT: How did at that help you in your treatment of Mr. Ahsan?

THE WITNESS: We have physical therapy in my office, so I recommended physical therapy after the injection, three times a week.

THE COURT: Mr. Bhurtel, I don't mean to cut off any of your questioning that you want to do. So, if I have not covered what you intended to, please feel free to go back over that general area with the questions you intended to ask.

MR. BHURTEL: No problem, Your Honor.

Q And did you learn any other treatment the practitioner provided Mostafa?
A He was following up and then finally, after physical therapy, his pain is not getting better, neither range of motion. So, he went back to him. He did a surgery of the left shoulder on September 2014, mostly debridement of the shoulder.
Q When he did the surgery of left shoulder, did that help you to further treatment him or anything helps you to make assessment of Mostafa's treatment?
A He send the patient to continue therapy after the surgery and he was getting little bit better range of motion, but he didn't get completely better.
THE COURT: When you say range of motion --
THE WITNESS: Shoulder.
THE COURT: -- which joint are we talking about?
THE WITNESS: Left shoulder.
THE COURT: Left shoulder. So, this would be the ability to lift his arm and move it around that we are talking about now.
THE WITNESS: Yes. Yes, sir.
Q So, Doctor, did you see the record from Dr. Jalal, neurologist?
A Yes, sir.
Q And did those records -- another way that you used to

further Mostafa Ahsan's treatment?
A No, it didn't help me.
Q So, you did that treatment yourself?
A I used, I checked his report, but he didn't recommend to do anything. So, you know, I -- you know, Dr. Krishna also wrote that he needs the neurological testing for further evaluation.
THE COURT: Dr. Krishna, but not Dr. Jalal.
THE WITNESS: Jalal, no.
Q Okay. Did you receive Dr. Krishna's report?
A Yes, sir.
Q And did you rely his reports to make a determination of Mostafa Ahsan's treatment?
A Yes.
Q And Doctor, did you prepare report dated February 9th, 2016?
A Yes, sir.
Q And when you prepare that record?
A February 9, 2016.
Q Thank you.
When you prepared that record, did you review any other medical records?
A Yes, I review all the medical records.
Q All right. Do you have a copy of that report with you today?

A Yes, yes, I have.
Q And can you go third page?
MR. BHURTEL: Your Honor, this is that's number 1012.
THE COURT: 1012.
MR. BHURTEL: Through 1015.
THE COURT: January 16th, 2016?
MR. O'HARA: February 9th.
MR. BHURTEL: February 9th.
THE COURT: Oh, I'm sorry.
MR. BHURTEL: Yes.
Q Doctor, can you look at the report date?
A Yes.
Q Yes. Can you tell the jury what other doctors are provided medical records that you reviewed?
A My report is first. Then Dr. Ricardo Santiago. Then Dr. Neil Morgenstern. Dr. Sayed Jalal.
MR. O'HARA: If the witness is reading from the report, I would ask him to read everything that's in the report.
THE COURT: Well, certainly on cross you may.
Q Please, continue.
A And Dr. Krishna and Dr. Sebastian Lattuga. And Sayed Prakash, MD. Dr. Andre Bazos and Fidelity Physical Therapy Rehab. Then Mikelis, Behar, Junior, Jeffrey Chacko and

Salvatore Portugal.

THE COURT: Those are all the medical records you reviewed.

THE WITNESS: Yes.

MR. O'HARA: Before we move on, may I look at what he is reading from?

THE COURT: Sure.

MR. O'HARA: Thank you.

THE COURT: What is your next question, Mr. Bhurtel?

MR. BHURTEL: Yes, Your Honor.

Q Did you review the record of Omega Diagnostic Imaging, also?

A Yes.

Q Did you review the record of Advanced Radiology Imaging also?

A Yes, sir.

Q And did you --

MR. BHURTEL: Strike that.

Q When you saw February 9, 2016, Mostafa Ahsan, what was his complaint?

A His neck. Neck and shoulder pain.

Q And any other he had complaint?

A Only headache. Headache, neck pain and shoulder pain. The same.

Q And what was his diagnosis?

A My impression?
Q Yes.
A Headache secondary to left frontal subdural hygroma, neck pain secondary to disc herniation and internal derangement of the left shoulder.
Q And Doctor, did you do any physical examination of his neck?
A Yes.
Q And what kind of examination you did?
A I did the range of motion and also, the physical exam that was swelling on the left side of the neck and the restricted neck motion, range of motion.
Q And what was the range of motion at that time?
A Normal flexion normal was 50, it was 40. And extension normal 60, he was 30. And right lateral flexion, it was 35 and left lateral flexion, normal is 45, I found 30.
Q And did you do the physical examination of his left shoulder?
A Yes, sir.
Q And what was the your findings?
A The muscle strength decreased four out of five, and tenderness is noted around the joint, and impingement test is also positive, and the range of motion flexion was 140. Normal is 180. Extension is 40, normal is 60. Abduction is 130, normal is 150. And adduction normal is 30 -- 45 and he

had 30.
Q Can you describe the jury what is flexion?
A Flexion is the range of motion from the front, you know, like this, you know.
Q And he had a limited on that one?
A Yes.
Q And what is the extension range of motion?
A Normal was 180, I got 140.
Q Can you describe the jury what is the extension?
A Extension in the back, you know, and it was -- normal is 60, I got 40.
Q And what is the abduction test?
A Abduction is this way. Normal is 150, I got 130. And adduction is this way. Normal is 45, I got 30.
Q And what is the internal rotation?
A Internal rotation is like this way. In the internal rotation, this is external rotation.
Q And what was your findings that day?
A It was little less than normal.
Q Doctor, on September 2nd, 2011 did you do the physical examination also?
A Yes.
Q When you provided the treatment, Doctor, did his condition to the head or neck change or not?
A No change. Still patient stayed from time to time

physical therapy and the pain medication off and on.
Q I'm talking about the headache, head.
THE COURT: Are you talking about Mr. Ahsan's headaches?
MR. BHURTEL: Yes.
THE COURT: What is your question about them?
Q Is his headache is becoming going up, not making, I mean --
MR. BHURTEL: Strike that.
THE COURT: Is there any change in his complaints about headache pain over time?
Is that your question?
MR. BHURTEL: Yes, Your Honor.
THE WITNESS: No, his headache is constant. It's still the same. It never change.
Q And did his neck pain or neck condition change during the time you were providing the treatment?
A No, is the same. The same. He didn't change.
Q And when you, Doctor, Mostafa Ahsan complained headache on August 4, 2011, to your office.
Are you aware of that?
A Yes.
THE COURT: What date was that?
THE WITNESS: August.
MR. BHURTEL: August 3rd, 2011.

THE COURT: So, about a month before the accident at Staples.

MR. BHURTEL: Yes, Your Honor.

THE COURT: Thank you.

Q And can you describe what kind of headache he had that one?

A It was the headache mostly on the back of the head, you know. Then there was like continuous, so I thought maybe it's from the muscle spasm from something, from the lack of sleeping or maybe bad posturing and also, it could be coming from the eye, also. He has eye problem. So, I sent him to the ophthalmologist to check it out.

Q And did you prescribe any medication on that day on August 3rd, 2011?

A I just gave him antiinflammatory. You know, pain medicine.

Q And when Mostafa Ahsan complains headache after the September 2nd, 2011 accident?

A After the 2nd, he continues to have headache all the time. And it stays, it didn't get better.

Q So, do you have opinion with respect to his headache whether his headache was caused by September 2nd, 2011's accident or something else after the September 2nd, 2011?

A That's why when he's not getting better after the accident I send him to the specialist, why his headache is not

getting better and Dr. Lattuga check his spine and Krishna, you know, find out that he has some other problems, so.

Q And Doctor, do you --

MR. BHURTEL: Withdrawn.

Q Are you aware of that Mostafa Ahsan came in your office March 26, 2008 about his neck complaints?

A Yes, sir, first time. He came to me in 2008, March and he complain of neck pain.

Q And any other body part he complained that day?

A No, only neck pain.

Q And did you, what did you do that day?

A I give antiinflammatory and send him to our rehab doctor on staff, Dr. Santiago to check him out.

Q And then what happened?

A And he prescribed some physical therapy. And patient took couple of physical therapy and, you know, pain get resolved.

Q And are you aware of that he had another complaint in February 9, 2009 about the neck complaint?

A Yes, also, February 9th. He had one episode of neck pain.

Q And what did you do that day?

A I just give antiinflammatory. I didn't do anything else.

Q And after that, did he complain his neck or shoulder until the September 2nd, 2011?

A He, no, no.
Q And when you saw February 9, 2016, what was his complaint with respect to his head or brain?
MR. O'HARA: Objection; asked and answered.
THE COURT: Overruled.
A He continues, he says, his pain is not getting better, you know, and it's very irritating for him to work or do something and he's also losing concentration and the neck is also not getting better and the shoulder pain continues.
MR. BHURTEL: Your Honor, page 1012.
THE COURT: 1012.
Q Can you explain the second paragraph?
MR. O'HARA: First, can we identify what this is so the jury can understand?
THE COURT: This is the February 2016 report of the Doctor?
MR. BHURTEL: Yes.
THE WITNESS: Yes.
MR. O'HARA: Prepared in connection with the litigation?
THE COURT: Doctor, did you prepare this report of February 9th, 2016?
THE WITNESS: Yes, sir.
THE COURT: At Mr. Bhurtel's request to summarize the medical history for purposes of the case here in court?

THE WITNESS: Yes, sir.
THE COURT: So, this was not prepared as part of your medical treatment of Mr. Ahsan. This was prepared for the lawsuit; correct?
THE WITNESS: The narrative, yes.
THE COURT: Yes. Okay.
Now, you can use it to refresh your recollection and I think Mr. Bhurtel has a question pending directing you to a particular paragraph and asking you if there is anything you want to add about your examination on February 9th, 2016.
THE WITNESS: Okay.
Q Can you tell us, what was his complaints?
A His complaints was neck pain and headache and dizziness and light-headedness, and difficulty focusing and concentration, and severe neck pain and left shoulder pain.
Q Can you continue?
MR. O'HARA: Judge, I didn't hear the question.
THE COURT: Can you continue, please.
And the Doctor's attention is directed to a particular portion of the document.
A Okay. Patient was ordered MRI of the cervical spine, brain and left shoulder which showed abnormal findings and --
MR. O'HARA: Your Honor, I'm going to object. All he's doing is reading the report.
THE WITNESS: Yes, that's what he said.

THE COURT: I know, we have funny rules of evidence, Doctor, and they may not make sense to us in this particular moment, but there is a reason for them and what those rules say is that you can read this and use it to help you remember, but you have to testify in your own words about what you actually remember, not just what your report says.

THE WITNESS: Oh, okay.

THE COURT: The idea is that, among other things, that simply because you wrote it down in the past, we are interested in what you can recall. If this helps jog your memory, that is fine but you are really supposed to be testifying about what you remember today.

THE WITNESS: Oh, okay.

THE COURT: Okay? You see the difference?

THE WITNESS: Yes.

THE COURT: So, take your time, take a look at the page and then tell us as best you can what you remember about anything about Mr. Ahsan that is responsive to Mr. Bhurtel's question.

THE WITNESS: Yes.

When the patient came to me on February, he continues to have headache, light-headedness and dizziness, and loss of concentration, you know. But although left shoulder pain is not getting better and that's all I recall, you know.

THE COURT: Thank you, Doctor.

You can ask him to read any other portion of it to refresh his recollection. I am not trying to undermine your examination.

Q Does it refresh your recollection? Can you look at it here?

A Yes.

THE COURT: Do you have anything to add after reviewing more of your report?

THE WITNESS: No, it's always the same.

THE COURT: Okay.

Q In this paragraph --

MR. O'HARA: Judge.

THE COURT: I am going to allow it.

What paragraph are you showing him? Let me see.

MR. BHURTEL: This one.

THE COURT: Directing your attention to the portion of the document that Mr. Bhurtel has just pointed to, please read it to yourself and then tell us if there is anything in addition about what you remember concerning the complaints that Mr. Ahsan made in February of 2016 or if you stand by your answer as complete.

THE WITNESS: Okay.

You know, after few months of physical therapy and conservative treatment, his condition didn't improve. So, the

patient was sent to the orthopedic surgeon and the surgery was done in September 2016, and after the surgery his shoulder pain mildly improved.

THE COURT: Mildly improved.

THE WITNESS: Mildly improved, but his condition remained the same like, headache and dizziness, like that.

THE COURT: Okay.

Are you coming to the end of your examination or would you rather have a break?

MR. BHURTEL: Maybe, Your Honor, have a break.

THE COURT: You still have more than five or ten minutes to go?

MR. BHURTEL: Yes.

THE COURT: Is this a convenient stopping point for you, where you will remember where we stopped and it will be easy to pick up?

MR. BHURTEL: Yes, Your Honor.

THE COURT: Ladies and gentlemen, let's take our luncheon recess and let's be back in the jury room by 2:00 o'clock. All right?

(Jury exits.)

(In open court; outside the presence of the jury.)

THE COURT: Doctor, you can step down.

THE WITNESS: Thank you, sir.

THE COURT: You can work out with Mr. Bhurtel if you

would like to leave the records here.

Counselors, if you want to take a shorter lunch and work on the Exhibits now to save time this evening, that's certainly acceptable to me, whatever the two of you agree.

Mr. Bhurtel, I am assuming, given how much we have covered chronologically, that even if you have more than five or ten minutes, you probably do not have more than another half-hour.

MR. BHURTEL: Yeah, not more.

THE COURT: Not more.

MR. BHURTEL: Yeah.

THE COURT: So, obviously, we will reach your client this afternoon because if Mr. O'Hara's history is an indication, his cross-examination will probably be less than 30 minutes at this point.

MR. O'HARA: Yes, Your Honor.

THE COURT: So, we can be finished with this witness by 3:00 o'clock and I certainly do not want to break for the day at 3:00. So, I hope you will be ready to call your client this afternoon.

Tomorrow is the day we have planned for the plaintiff and his wife anyway, right?

MR. BHURTEL: Yes, yes.

THE COURT: So it would not even interrupt the flow if we start this afternoon.

So, I hope you are ready to do that. I know the interpreter is here, I am pleased to see him, I know you have been ready and waiting to help us for a long time. I think this afternoon you may finally get your cue.

Is there anything else before we break?

ALL: No, Your Honor.

THE COURT: All right, especially joy your lunch.

(Recess taken.)

(Continued on following page with AFTERNOON SESSION.)

(In open court; jury not present.)
THE COURT: Is everybody ready for the jury?
MR. BHURTEL: Just one small change, Your Honor, I have.
THE COURT: A small change, you said?
MR. BHURTEL: With respect to the exhibits.
THE COURT: Is it something that you need to do now?
MR. BHURTEL: Yes.
MR. O'HARA: If you are going to use the exhibits, I would respectfully request that do it now.
THE COURT: What do you want to do?
MR. BHURTEL: This is 56. I have selected pages. Earlier I said to the Court that it runs from 2100 to 2316.
THE COURT: Yes.
MR. BHURTEL: Instead of that, that was a mistake from my side. I just want to correct that. I am offering only 2100 through 2103.
THE COURT: 2100 to 2103.
MR. BHURTEL: And then 2111 through 2118.
THE COURT: 2111 through 2118.
MR. BHURTEL: And then 2121 to 2150.
THE COURT: 2121 through 2150.
MR. BHURTEL: And then 2152 through 2153.
THE COURT: And 2152 and 2153.
MR. BHURTEL: Then 2157 through 2181.

THE COURT: 2157 through 2181.
MR. BHURTEL: And 2298 through 2300.
THE COURT: 2298 through 2300.
MR. BHURTEL: And 2309 through 2316.
THE COURT: 2309 to 2316. So limited. Is there still an objection?
MR. O'HARA: Yes, because the line of questioning was a representation that it was the doctor's office chart and he identified the Bates numbers. He's now handpicking portions, but portions of it that he is not putting in. If he is going to segregate out the chart, I think he needs to lay a foundation for the individual records because the chart is one-third the size of what he held up in front of the jury, number one. Number two, this doctor has been asked questions about a progression in his care and treatment. He is not going to put into evidence the records. It is either he puts them all in or he doesn't.
THE COURT: I misunderstood the nature of your objection. That's why I want to start over again. You are not objecting that the pages that he is offering are improper; you are saying they are incomplete?
MR. O'HARA: Exactly.
THE COURT: You want the whole record in?
MR. O'HARA: Exactly.
THE COURT: Is there any objection to putting in the

whole record?

MR. BHURTEL: Your Honor, from my side, as a plaintiff, I want to put only the number of the pages because these are directly related to his neck, head and shoulder treatment and the therapy records.

THE COURT: All right. If the defendant offers the rest of the record, do you object?

MR. BHURTEL: Yes.

THE COURT: Is this on the basis of the in limine motion that you made before trial about evidence concerning his 2008 and 2009 shoulder and neck injury?

MR. BHURTEL: Right.

THE COURT: I have already ruled. There was a motion in limine where, if I recall correctly, Mr. Bhurtel wanted there to be no reference to those injuries. First of all, I denied plaintiff's application. Second of all, we've had a lot of testimony about that. So if the grounds for objecting to the entire chart going in as an integrated whole are that it includes references to those other injuries, the objection is overruled and the entire chart will go into evidence.

Now, if you want to call the doctor's attention to some portion of the chart and not others, of course you may do that. If you want to designate certain pages of the chart as plaintiff's exhibit with a special number to draw attention to

your use of that document, I have no objection to that. But I have already ruled against you as far as admissibility of the other information about the plaintiff's medical history. If those are the grounds of the objection, then I will stand and keep in place the earlier ruling admitting 2100 to 2316 as an integrated exhibit.

MR. O'HARA: Judge, as directed earlier, we will put it with the other exhibits that are in evidence.

THE COURT: Is there anything further that you need before the jury is brought out?

MR. BHURTEL: No, Your Honor.

THE COURT: Okay. Let's bring out the jury.

(Jury enters the courtroom.)

THE COURT: Good afternoon, everyone. Dr. Guha, I remind you that you are still under oath.

Mr. Bhurtel, continue your examination.

DIRECT EXAMINATION (continuing)

BY MR. BHURTEL:

Q Good afternoon, Dr. Guha.

A Good afternoon.

Q What was your impression on February 9, 2016 with respect to Mr. Mostafa?

A Well, his headache looks like secondary to left frontal subdural and neck pain secondary to disc herniation and internal derangement of the left shoulder. That's my

impression.
Q And do you have the opinion of what was the cause of the injuries?
A It looks like from the boxes that fell down on his head.
Q And what was his condition with respect to the permanent of the injuries?
A Well, after long term of treatment, like physical therapy, his condition only mildly improved because due to the ligament damage and degeneration of the spine, that is restriction of his movement further of the joints and that, in my opinion, is permanent in nature, unless he can go for surgery of his head and total replacement of the shoulder.
Q Doctor, before I didn't ask you. Have you before testified in any court?
MR. O'HARA: Judge, objection.
Relevancy. He has been offered and the Court has accepted him as an expert.
THE COURT: Is there any relevance other than his qualifications to testify?
MR. BHURTEL: Not related to the qualification, Your Honor.
THE COURT: It is not related to his qualification. What is it related to?
MR. BHURTEL: Whether he usually testify in the court or he just treat the patients.

THE COURT: Overruled.

You can answer. Have you ever testified a courtroom before?

THE WITNESS: No, first time.

Q And mostly your work is providing the treatment to the patient?

A Yes, sir.

Q And how often -- strike that one.

How much of the percentage of practice that you have with respect to the trauma-related patients you are providing the treatment?

A 10 or 15 percent.

THE COURT: 10 to 15 percent, you said?

THE WITNESS: 10 to 15 percent.

THE COURT: Thank you.

Q And your impression is within a reasonable degree of medical certainty?

A Yes, it is within a reasonable degree of medical certainty that his condition is permanent.

MR. BHURTEL: Your Honor, may I approach?

THE COURT: Yes.

Q Dr. Guha, can you look at this document?

A They are September 2, 2011, yes.

Q Is this -- can you look at this entire document? Is this your office medical record?

A Yes, it is my record.

THE COURT: And that is 2100 to 2116 from Exhibit 56?

MR. BHURTEL: Yes.

THE COURT: Are you moving it in evidence?

MR. BHURTEL: Yes.

THE COURT: As the doctor's medical records?

MR. BHURTEL: Yes.

THE COURT: Any objection?

MR. O'HARA: No, Your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 56 Bates numbers 2100 to 2116 was received in evidence.)

MR. BHURTEL: Your Honor, may I approach?

THE COURT: Yes, you don't have to ask. You are free to move about the well as you chose.

Q Doctor, can you look at this document?

A This is the bill.

THE COURT: This is the billing?

THE WITNESS: Billing record.

THE COURT: Do you have Bates numbers for those, Mr. Bhurtel?

MR. BHURTEL: Yes, your Honor. 2570 through 2617.

THE COURT: 2570 through 2617. Are you offering those.

MR. BHURTEL: Yes, your Honor.
THE COURT: Are those your billing records?
THE WITNESS: Yes.
THE COURT: Any objection?
MR. O'HARA: Subject to the same requirement redaction.
THE COURT: Subject to redaction, they are received in evidence. Counsel, will be expected to work together to do the redaction.
Q And then these bills are related to Mostafa Ashan?
A Yes, sir.
THE COURT: Doctor, you are his primary care physician?
THE WITNESS: Yes.
THE COURT: You saw Mr. Ahsan for things related to the accident, did you also see him for conditions that did not involve the accident?
THE WITNESS: Yes, sir, everything.
THE COURT: Do those medical bills include both, all of your billing over time or just the billing for the complaints he had about the accident?
THE WITNESS: He showed me the billing from only one page, you know.
THE COURT: You only looked at one page?
THE WITNESS: Yeah.

THE COURT: I see. Take a quick look at it and tell me if it includes billing for his general care or just his care for the complaints he attributed to his accident.

THE WITNESS: It's everything.

THE COURT: Everything?

THE WITNESS: Yes.

THE COURT: So some of it relates to the trauma and some of it relates to being his primary care physician regardless of the trauma?

THE WITNESS: Yeah.

THE COURT: Thank you.

Q Doctor, when was the last time you saw Mostafa Ashan?

A About two weeks ago.

Q And what was his complaint?

A The same neck pain, shoulder pain and a headache.

Q And what kind of examination, if anything, you did?

A The same: The range of motion and I order physical therapy.

Q When you say range of motion, for neck?

A For neck and left shoulder.

Q And any other treatment you recommended him?

A No. I don't know any other treatment. It is up to the specialist.

Q And does it change your opinion based on the -- strike that.

Is his condition same or different than he appeared on February 9, 2016, when you saw him the last?

A He is having little bit loss of memory, forgetfulness in the head, a little bit loss of memory, but his headache is constant. It didn't get better.

Q How about the neck?

A Neck is also same and the shoulder is same.

MR. BHURTEL: Your Honor, I complete my examination.

THE COURT: Thank you, Mr. Bhurtel.

Mr. O'Hara, you may inquire when you are ready, when the podium is cleared.

MR. O'HARA: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. O'HARA:

Q Good afternoon, Doctor.

A Good afternoon.

Q I am going to go slow since I know this is the first time that you are testifying.

A Thank you.

Q If I ask you a question that you don't understand, tell me and I will ask you another one.

A Thank you.

Q The questions that I am going to ask you for the most part are going to simply require a yes-or-no answer. If you can't answer yes or no, just tell me and I will ask you a

different question.
A Thank you.
Q And during the questioning, I might ask you to explain something that you have said. Okay?
A Thank you.
Q So the first time that you saw Mr. Ahsan in your office was March 26, 2008; correct?
A Correct.
Q That first office visit he came in with specific complaints about his neck; correct?
A Correct.
Q And do you recall what ultimately was the cause of the pain that he was suffering in his neck when he first came to see you in March of 2008? Do you remember?
A Yeah. I think it's a muscle spasm.
Q And in terms of the history that he gave you, that was a pain that had persisted for a period of time? He wasn't sure what was causing it, and so he came to see you; correct?
A Correct.
Q He next came to your office two days later; correct? He came to your office on March 28, 2008; correct?
A Correct.
Q And according to your office records, at that time he has a different complaint of pain in his left shoulder; correct?
A He didn't tell me that. He told the rehab doctor. He

didn't mention to me.
Q Okay. But your office records indicate that on March 28, 2008 -- strike that.
The pain management person that you are speaking about, that's an employee of Queens Medical Center; correct?
A Correct.
Q And the medical records that you have brought with you today that you have been using to help refresh your memory include these records from when Mr. Ahsan first became your patient; correct?
A Yes.
Q And when he first became your patient, first he presented with problems persisting in his neck; correct?
A Yes.
Q Then, two days later he came and complained of problems relating to his left shoulder, which had been how long in duration? Do you remember?
A He didn't mention it to me, left shoulder, but he gave the history to my rehab doctor.
Q My mistake. I will change the question.
Do you remember how long he said his left shoulder had been bothering him when he described the pain on March 28, 2008?
A No, he didn't mention the time.
Q If I were to tell you that the record indicates that it

was more than one month in duration and that he had muscle spasm and he was also complaining of cervicalgia, would that refresh your memory as to whether or not he complained about the time that he had problems with his left shoulder?

A I'm telling you again this is not my record.

Q I understand.

A This is the rehab doctor. I don't read his record.

Q Then let's change the question just a little bit.

I am going to show you the entry that I am talking about.

A Oh, this is the rehab doctor. Not me.

Q I understand. So read the rehab doctor's to the jury.

THE COURT: Bates numbers?

MR. BHURTEL: Bates numbers 2085.

A Left shoulder pain for one month duration.

Q See where it says present complaints, read this entire passage so that the jury knows what was written down by the pain doctor that works for you.

A Left shoulder pain for one month duration. It is very hard handwriting.

Q Imagine if you were a lawyer.

A Because of long muscle spasm and also complains of bilateral cervicalgia. That means neck pain, you know. Denies any accident or any kind of injury, you know.

Q What else does it say? Keep going.

A Denies -- well, I can't read it.
Q That's okay. You are not sure what the other notations that are made in your chart; correct?
A Correct.
Q Let's go back to the first time you saw him and read your entire note Bates numbered 2080.
A Neck pain with swelling.
Q Continue.
A AND difficulty urination.
Q I don't need you to read that last part.
A Patient came to the office for first time, complains of neck pain and difficulty with urination.
Q I just want you to focus on the neck, the shoulder and the head, the part of this case.
MR. BHURTEL: What were the page numbers?
MR. O'HARA: 2080, 2085.
Q Did the pain doctor in your office render a diagnosis as a result of an evaluation on the 28th of March 2008?
A I think he does neck pain and left shoulder pain.
Q And he diagnosed something called lower trapezius MPS?
A That's myofascial pain syndrome.
Q Tell the jury what that is. What is myofascial pain syndrome?
A This is the muscle pain due to spasm, maybe any virus disease or something. Vague.

Q Tell me if I am correct. So the muscles are sheathed in fascia, and when that fascia gets inflamed or irritated from some source, it causes pain?
A You're right.
Q And that pain is radiating in through his shoulder down to his arm; correct?
A Correct.
Q He also has a problem called cervicalgia. You mentioned before. That's a problem that is persisting with an agitation in his neck; correct?
A Yes.
Q And it is also causing, based on the records in your chart, muscle spasm that requires actual care and treatment; correct?
A Sure. Sure.
Q At that point, in March of 2008, was he sent for any diagnostic evaluation to determine whether there was a disc-related cause in his cervical spine that was the reason why he had this radiating pain down into his shoulder and into his arm?
A No.
Q Now, the problem with his shoulder and his arm continued from March of 2008 into April -- excuse me, February of 2009, when he came back to your office; correct?
A Yeah.

Q And he saw the pain doctor in your office for an evaluation relating to the same problem, his neck and his shoulder; correct?
A Yes.
Q What I'd like you to do is --
MR. BHURTEL: What is the page number?
MR. O'HARA: I will give it to you in a second.
Q I would like you to read and translate for us the diagnosis that was rendered by a physician in your office that is at page 2093. To help us, because I think I know what these acronyms mean, but just tell us what the word means. For example, DX means diagnosis; correct?
A Diagnosis, yeah.
Q Read through the end of this page as to what the doctor in your office diagnoses this patient with now, almost a year later?
A He has cervicalgia and left lower trapezius, and MPS, myofascial pain syndrome, and difficulty --
Q Let me stop you. Let me lead you along. Okay.
So he is diagnosed with cervicalgia?
A Uh-hum.
Q You have to say yes or no.
A Yes.
Q Which is the pain in his neck. A year later he's diagnosed with left lower trapezius myofascial pain syndrome?

A Yes.
Q So that condition has also persisted for a year. Read that for me. He is diagnosed with difficulty with range of motion?
A Range of motion, yes.
Q So not only does he have pain that's in his neck that's radiating into his shoulder down into his arm --
A But he didn't mention about the shoulder.
Q But we know that lower trapezius MPS radiates through the trapezius muscle into the shoulder; correct? Yes?
A Shoulder is supraspinatus, mostly, you know, but the trapezius is down on the neck side.
Q And when he is talking about the history of recurrent left trapezius tightness, that's the same body part that he had come to see your office in March of 2008; right? He came for his neck and he came for his left shoulder?
A Yes.
THE COURT: What is the date of that note, Doctor?
THE WITNESS: 2/9/2009. February 9, 2009.
THE COURT: Thank you.
Q Just for progression, the first time he comes to your office is March 26, 2008; correct?
A Yeah.
Q He comes back and he sees the pain specialist March 28, 2008; correct?

A Yes.
Q Now he is back in the office to see the pain specialist again on February 9, 2009; correct?
A Correct.
Q In addition to having the same persistent problems and the left trapezius myofascial pain syndrome, now there is a notation that he has difficulty with range of motion; correct?
A Correct.
Q The range of motion that he's having difficulty with is his neck; correct?
A Yes, neck.
Q Now, later in this record there's a recommendation for a particular type of treatment.
A Yes, physical therapy treatment.
Q And this is called a myofascial pain syndrome release?
A Myofascial pain syndrome release.
Q Tell the jury what that is.
A Massage, the massage and the electric stimulation.
Q When you are talking about electric stimulation, right below that it says --
A TENS unit.
Q Explain to the jury what TENS unit is?
A TENS unit. That's what we call it.
THE COURT: Is that a device?
THE WITNESS: A small device.

THE COURT: That you wear and it provides an electrical charge?

THE WITNESS: Yes.

THE COURT: Into the muscle in an effort to relax it and stimulate it in a way that will relieve pain?

THE WITNESS: Yes. Yes. That's the one.

Q And there is also a reference to cervical stretch, normal traction. And then at the bottom there is a referral for physical therapy and how long he should continue to do the things --

A Yeah.

Q -- to get him better for these conditions?

A Yes. Four weeks.

THE COURT: Four weeks, you said?

THE WITNESS: Uh-hum.

(Continued on following page.)

EXAMINATION CONTINUES
BY MR. O'HARA:
Q Now, he returns -- your office chart doesn't contain any records from the physical therapy that he is going to receive as a result of this prescription in February of 2009, does it?
A Everything should be in the chart, but I cannot recall, you know, it's so long ago.
Q We actually have the entire chart that's been marked as an exhibit.

Are you aware of any physical therapy records that exist that aren't in your chart?
A No.
Q So if there are no physical therapy records in your chart, that means one of two things, right?
A Yeah.
Q Either they never got to you or he didn't go get the physical therapy, right?
A No, he might go for one day and then didn't come back.
Q And if he went for one day and didn't come back that would be contrary to the medical recommendation that said go for physical therapy two to three times per week for four weeks, correct?
A Yes.
Q And when a patient comes to you with a complaint of problems in their neck persisting into or causing problems in

their shoulder, and they first come to you in the first office visit and then twelve months later they come back with the same complaints, you expect that the patient is going to follow your medical recommendation to get better, right?

A Yes.

Q And the whole purpose of you making the recommendation is because you are the doctor trying to cure or make the patient feel better, correct?

A Yeah.

Q And if the patient doesn't follow that recommendation, that's called being non-compliant, right?

A Yes.

Q Now, according to the medical records that we -- and I will walk up so it will be easier, the next time you see this patient for any reason is on August 17th, 2010, Ahsan 3882. Correct?

A Yes.

Q And he is now complaining of headache persisting for how long?

A Two months.

Q And there is a diagnosis that's new, in that he is now being diagnosed as --

A Hypertension.

Q Okay, and so we all understand hypertension is high blood pressure?

A Yes.
Q And high blood pressure causes, among other things, persistent headaches?
A Sure.
Q And one of the reasons why a physician prescribes medication is to bring the blood pressure down?
A That's correct.
Q And part of the side effects of that medication is you still get headaches from it, yes?
A Sometimes.
Q Sometimes. And in this case, Mr. Ahsan has been on blood pressure medication since August 17th of 2010, correct?
A Correct.
Q And Mr. Ahsan has been complaining, at least according to your office records, of a persistent headache each time he's come into the office?
A True.
Q Okay. And so the next time that he comes into your office, and this is August 3, 2011, correct?
A Correct.
MR. O'HARA: And for the record, Judge, it's 2099, Ahsan, the trial exhibit.
BY MR. O'HARA:
Q He continues to complain of headaches, correct?
A Hum.

Q Yes?

THE COURT: Doctor, if you will say, and I know it is a little more challenging when you are having this kind of questioning, but you need to say yes or no loud and clear so the court reporter knows whether you are just uh-huh, like you understand the question or you are saying yes, you agree with what the question is asking you.

Do you understand the difference?

THE WITNESS: Sure.

THE COURT: So please ask your question again.

MR. O'HARA: Sure.

THE COURT: And give the doctor a little more space.

MR. O'HARA: Sure.

THE COURT: Thank you.

MR. O'HARA: I'm trying.

THE COURT: I know you are trying.

THE WITNESS: No, he's okay.

THE COURT: Mr. O'Hara, I just want to make sure that the record is clear.

MR. O'HARA: Sure.

BY MR. O'HARA:

Q So on August 3rd, 2011 your office records indicate that the patient comes back into the office with a persistent headache, meaning it's continuing during the treatment, correct?

A Correct.
Q And as part of your -- as part of the notation in your chart you indicate whether or not he's actually taking the medication that's been prescribed for his blood pressure, don't you?
A Correct.
Q Tell the jury what you write in this note as to whether or not Mr. Ahsan is taking the medication that's been prescribed for his blood pressure.
A He was not taking it.
Q So at least as of August 3, 2011 the headache that he's complaining of isn't coming from the medication because he is not taking it; is that a fair statement?
A Yes.
Q Now, in the diagnosis that's in the center part of this page, you have the phrase HTN, is that hypertension?
A Correct.
Q And then directly below it, what is that word?
A Dermatitis, skin disease.
THE COURT: So is it correct then that the hypertension or high blood pressure was first noted in your records in August of 2010?
THE WITNESS: Correct.
THE COURT: He wasn't receiving treatment for that beforehand?

THE WITNESS: No, no.
BY MR. O'HARA:
Q Okay, I am going to move past, from August 3rd, 2011, the next time you see the patient is the day of the accident that brought about this lawsuit, correct?
A Correct.
Q And you testified, and I want to make sure I wrote down my notes correctly before I ask you these questions, that when he came into your office he complained of pain in the neck and -- I'm sorry?
THE COURT: He didn't say anything, somebody hit their microphone by accident.
MR. O'HARA: Oh, okay.
THE COURT: Ask your question again.
MR. O'HARA: Sure.
BY MR. O'HARA:
Q That he came in and complained of pain in the neck and shoulder and had a history of boxes that fell on his head.
Do you remember testifying to that?
A Yes, sir.
Q Now, in order to offer that testimony, you don't have a specific recollection as we sit here today about the office visit of September 2nd, 2011, do you?
A Not too much.
Q And so in order to do that, you read the record and that

reminds you because your office practice is to write down important information, what happened that day, correct?

A Yes.

Q I am going to show you the chief complaints and present complaints section of your office note from September 2nd, 2011.

Do you see where it says chief complaints and present complaints?

A Yes.

THE COURT: Which is Bates 2100.

BY MR. O'HARA:

Q I am going to read it out loud and tell me if I read it correctly.

Patient came to the office, complains of pain in neck after heavy boxes fell down while shopping at Staples. He complains of neck pain.

A Correct.

Q Do you see anywhere in there where he complains of pain in any other portion of his body besides his neck?

A Well, I didn't write it down, you know.

Q I am asking you whether you see anywhere in this record a reference to pain anywhere in his body other than his neck?

A No, that's okay. That's right.

Q Okay. And then even lower in the document you talk about the neurological examination?

A Uh-hum.
Q You have to say yes or no.
A Yes.
Q And in doing so, you check off all of the boxes that are the subject of the neuro examination that you do in the office, correct?
A Correct.
Q And every time you check that box it's because your findings are within normal limits, correct?
A Correct.
Q And every single neurologic finding that you tried to elicit during your examination the day of this accident was normal?
A Normal.
Q And the only notation that you have on your chart is neck pain and hypertension, again, correct?
A Correct.
Q The next time that you see Mr. Ahsan is seven days later, correct?
A Correct.
Q And forgive me, but you testified on direct examination that you referred Mr. Ahsan to Dr. Santiago --
A Correct.
Q -- in about that timeframe?
A Correct.

Q If I were to represent to you that the first time that Dr. Santiago, according to the records that we have, sees the patient on January 13, 2012, so not a couple days, but a couple months, would that be consistent with your memory?
A Yes, sir.
Q So on direct examination there was just a mistake; fair?
A I don't understand that question.
Q I'll continue.

When Mr. Ahsan comes into the office seven days later before you referred him to see anyone, again you create an office note that writes down the important information, correct?
A Correct.
Q I want to make sure I understand this and my notes are correct.

You testified on direct examination that the patient was experiencing neck and shoulder pain?
A Correct.
Q Both in the first office visit and the second office visit?
A Correct.
Q And the shoulder pain was elevated, you used the phrase much more; is my recollection correct?
A Correct.

MR. O'HARA: 2101, Your Honor.

BY MR. O'HARA:
Q Please read -- tell me whether I read to the jury correctly what you actually wrote in the office record when the patient was in the office, quote:
Patient came to the office for -- you are going to help me.
A Follow-up.
Q -- follow-up --
A Visit.
Q -- visit. He complained of headache. He continues to have neck pain.
Do you see that?
A Yes.
Q And then, once again, your neuro examination, all of the boxes are checked meaning it's within normal limits, correct?
A Correct.
Q And you write, uncontrolled hypertension and neck pain, correct?
A Correct.
Q So there is nothing in your first record about a problem with his shoulder and there is nothing in your second note about a problem with his shoulder, correct?
A Correct.
Q And he told you that when he came into the office the boxes hit him in the head, correct?

A Correct.
Q When he came into the office and you evaluated him first on September 2nd, 2011, you didn't see any injury to his head, did you?
A No.
Q No bump?
A No.
Q No bruise?
A No.
Q No bleeding?
A No.
Q When he came back seven days later on the 9th of September still no bump?
A No.
Q Still no bruise?
A No.
Q Still no bleeding or any sign that he had actually been hit in the head, correct?
A No.
Q Let me ask it differently because you are saying no when I know you mean yes.

So every single thing I just said is true, yes?
A Yes.
Q Thank you.

And the headache that he had in August, August 3rd,

2011, was still present on September 9th, 2011, correct?
A I don't know that because I didn't see him in between.
Q Fair, but according to your office records the physician who saw him in August, a month before the incident, had the same notation about a persistent headache when you saw him on the 9th of September, correct?
A Correct.
Q And the condition for which you had initially diagnosed him, hypertension, in 2010 he wasn't taking the medications that had been prescribed, correct?
A Correct.
Q Now, according to your office notes, the first time that Mr. Ahsan starts to complain about shoulder pain is October 31, 2011, correct?
A Correct.
Q And in your office records you note that the patient has been diagnosed with left shoulder myofascial pain syndrome, correct?
A Correct.
Q And it's at that point you refer him to Dr. Santiago and a diagnosis is rendered of left shoulder osteoarthritis, correct?
A I don't know. I didn't read his note, so I don't know.
Q Okay, let's take a step back.
Tell the jury what, as a general practitioner,

osteoarthritis is. Tell them.
A Osteoarthritis is old age degenerative disease. You know, people lose their cartilage and they get osteoarthritis.
THE COURT: And lose their cartilage and -- say the same thing again.
THE WITNESS: The old age degenerative joint disease at that time they lose the cartilage and the bone rubbing each other and making the osteophytes and give the osteoarthritis.
THE COURT: So as you get older, the cartilage deteriorates?
THE WITNESS: Yes.
THE COURT: There is less to cushion the bones --
THE WITNESS: Yes.
THE COURT: -- as they interact with each other --
THE WITNESS: Yes, sir.
THE COURT: -- and so you feel pain?
THE WITNESS: Yes, sir. You know more than me.
THE COURT: I am sure that is not true. You are under oath, though.
BY MR. O'HARA:
Q And just so we come full circle with this:
That condition, based upon the history in your records which doesn't show any impact to the shoulder, we've already talked about your understanding was the box hit him in the head.

As of October 31, 2011 that was as a result of the condition that had been diagnosed earlier, left --

THE COURT: Wait a minute, Mr. O'Hara. This witness has never acknowledged that there is a medical note with that diagnosis.

BY MR. O'HARA:

Q Doctor, is there a medical record that you are aware of in this case that has indicated this patient suffers from left trapezius myofascial pain syndrome?

A Yes.

THE COURT: I'm sorry, I misunderstood.

A Yes.

Q And that was the diagnosis that was rendered in March of 2008 when the patient first came to see first you, and then the pain management specialist in your practice, correct?

A Correct.

Q And that is the same diagnosis that was reaffirmed at the time of the October 31st, 2011 office visit, correct?

A Correct.

Q And you referred that patient to a medical doctor in your practice, Dr. Santiago?

A Yes, sir.

Q Pain management specialist?

A (No response.)

Q Yes?

A Yes.
Q And the diagnosis of osteoarthritis or a degeneration in the shoulder was now made, correct?
A Correct, correct.
Q And that diagnosis was made January 13, 2012, correct?
A Correct.
Q Now, you would agree with me, would you not, Doctor, that from March 26th -- strike that -- March 28th, 2008 through January 13th of 2012 it is reasonable as a general practitioner to expect that as Mr. Ahsan is getting older, whatever the problem is relating to degeneration or arthritis is getting progressively worse, correct?
A Unless we do the X-ray or something, we cannot assume something, you know. We didn't do any X-ray, so we don't know, you know.
Q But the complaints are the same in the same body part and the man is now four years older, correct?
A Correct.
Q Now, you didn't refer Mr. Ahsan to Dr. Sinha to review his left shoulder until October 19th, 2012?
A Correct.
Q Nine months later, correct?
A Correct.
Q And you didn't refer Mr. Ahsan to see a neurologist, and, in particular Dr. Syed, until December 11th, 2013, correct?

A Correct.
Q So just so we understand the timing, we are now talking about a year after the accident when you first sent him to an orthopedist, correct?
A Correct.
Q And two years three months after the accident before you send him to a neurologist, correct?
A Correct.
Q Now, Dr. Syed was the first neurologist -- excuse me, yes, Dr. Syed was the first neurologist that you referred this patient to, he performed an evaluation based on that referral, correct?
A Correct.
Q He sent the patient for diagnostic studies in connection with that evaluation, correct?
A Correct.
Q You would agree with me, would you not, Doctor, I am going to ask you a hypothetical question, let me just -- do you need to read something?
If you do, just tell me, it's okay.
A No, it's fine.
Q You would agree with me that any medical doctor that has a patient that complains of blunt force trauma to the head where that patient is exhibiting sequelae, symptoms, a reaction to the blunt force trauma that affects the headache,

vision, smell, taste, balance, gait, or there is appreciable injury to the head and the patient complains of some disruption in consciousness, the standard of care requires a referral immediately, correct?

A Correct.

Q And the reason for that is if that patient has, in fact, sustained blunt force trauma, it's not even open to discussion, it is an automatic you send the patient for a head study to be evaluated by a specialist because there is a concern that there may be a subdural hematoma, correct?

A Correct.

Q And so that the jury understands, that is an active bleed in the brain that is causing all of this?

A Yes.

Q And in this case that was not done, correct?

A Correct.

Q And there was no medical provider that saw Mr. Ahsan that concluded that he had any need for medical attention for a specialist relating to blunt force trauma to the head, is that a fair statement?

MR. BHURTEL: Objection to the question, Your Honor.

THE COURT: On what ground?

MR. BHURTEL: The question -- the question says no doctor says that, so there is --

THE COURT: No, I think the question was that he was

not referred to any doctor in connection with a finding of blunt force trauma to the head. But why don't you ask the question again.

MR. O'HARA: Sure.

THE COURT: Or if you want the reporter to read it back, we can do that.

MR. O'HARA: I'll do it again.

BY MR. O'HARA:

Q Doctor, just so everybody understands, there was no referral for a head workup by a specialist at any point within twelve months of the alleged incident at the Staples store on September 2nd, 2011, is that correct?

A Correct.

Q Now, Dr. Syed sent the patient to Apollo Imaging for an MRI of his brain and an MRI of his neck, his cervical spine, correct?

A Well, I don't know about that. His Dr. Jalal knows it, the report goes to him.

Q Well, you said in your February 9th, 2016 report all of the items that you reviewed to serve as an expert in this case, right?

A Right. I saw him, but he had that report.

Q Just let me ask the question.

And in --

MR. BHURTEL: Which page?

MR. O'HARA: His report? Page 1014.

BY MR. O'HARA:

Q Did you review the diagnostic studies that Dr. Syed obtained based upon your referral to him to evaluate your patient?

A Yeah.

Q Yes?

A Yes, but it was not Apollo there.

Q But you have reviewed these?

A Yeah.

Q Are you familiar with Apollo Imaging?

A Yeah.

Q Is it a facility that you use?

A Sometimes.

Q Is it a facility that have radiologists that review diagnostic studies for you?

A Yes.

Q That you rely upon their views?

A I use sometimes.

Q Sometimes you use them and sometimes you don't?

A No.

Q Sometimes you use other radiologic facilities?

A Sure, sure.

Q And in this case when Dr. Syed, who was seeing your patient, referred Mr. Ahsan for two studies on February 4th,

2004 his brain --

THE COURT: Did you just misspeak? February --

MR. O'HARA: I'm sorry, February 4th, 2014. My mistake.

A 2014.

Q I'll say it again.

And Dr. Syed, seeing your patient based upon the referral, sent Mr. Ahsan for two diagnostic studies on February 4, 2014, one of his brain and one of his spine, correct?

A Correct.

Q And the brain study was normal based on your understanding of the report that was read by the doctors at Apollo Imaging, correct?

A Correct.

Q And the cervical spine study showed degenerative changes and nothing else, isn't that true?

A Right.

Q And just so we're clear, the degenerative changes in the cervical spine, much like what you talked about in the shoulder, same thing happens in your neck, the structures break down as you get older?

A Sure.

Q Yes?

A Yes.

THE COURT: Now, when you are testifying about what these Apollo Imaging results are about the brain and the cervical spine, are you telling us what you, yourself, see in the films or are you telling us what the radiologist reports that come back from the imaging center show?

THE WITNESS: Radiology report come back from the there.

THE COURT: So it is not like you looked at the films --

THE WITNESS: No.

THE COURT: -- and made your own conclusions because that is not your expertise?

THE WITNESS: No, you're right.

THE COURT: So you got a report from a radiology doctor --

THE WITNESS: Yes, sir.

THE COURT: -- who may never even have met Mr. Ahsan, right?

THE WITNESS: No, I never -- no.

THE COURT: The radiology doctor gets the result of the MRI --

THE WITNESS: Uh-hum.

THE COURT: -- looks at it on a computer screen, and decides if there is an abnormality or not, and then writes a report so that you and the other treating doctors can decide

what to do for the patient next?

THE WITNESS: Correct.

THE COURT: Is that the way it works?

THE WITNESS: Yes; correct, sir.

THE COURT: Thank you.

BY MR. O'HARA:

Q And that's customary in your practice, right; you refer patients for radiologic studies, those doctors simply have the studies conducted and then give their expert view in terms of their specialized view as to what those films show, correct?

A Correct.

Q And you trust their medical evaluation and rely upon what they write in the report, correct?

A Correct. They have the license, the radiologist, they should be okay.

Q Right, and just so we're clear, in this case both reports are read by two different radiologists, a Dr. Allan Keil, K-E-I-L, and a Dr. Sid Prakash, and what you're telling us is these are licensed practitioners with specialized medical training and experience in the field of radiology, correct?

A Correct.

Q And that's why they work at a place called Apollo Imaging, a division of Middle Village Diagnostic Imaging, correct?

A Correct.

Q And that's why you sent him?
A Yes.
Q Now, Doctor, did there come a point in time when you were asked to produce your medical records in this case?
A Yes.
Q And the way that worked was an authorization came from a lawyer, signed by Mr. Ahsan?
A Correct.
Q It was mailed to your office and a staff member of yours reproduced the chart and sent it to whomever asked for it, correct?
A Correct.
Q And there is a customary practice where when the request is made, there is a fee for the reproduction of the chart, they send you the check and you send them the chart, correct?
A Correct.
Q And when you do that, you send a photocopy of the actual office chart that you have on a given patient, correct?
A Correct.
Q And you've actually been advised that once you treated a patient, and you testified to this in your deposition, so if you need it I will show you, that you don't amend or change those medical records after the treatment, correct?
A Correct.
Q So I am going to show you what has been produced in

discovery.

MR. O'HARA: Judge, I am going to identify them by Bates number, and then I will work through each office record.

BY MR. O'HARA:

Q First, I am going to identify five different office records, okay?

MR. BHURTEL: Page number?

THE COURT: You are going to get them.

Q The first one is dated January 2nd, 2012 and the Bates numbers are 2159, 2560. Okay?

The second one that I will talk to you about is dated February 22nd, 2013; Bates number 2172 through 2174.

The third office note, October 7th, 2013, Bates number 2230 versus 2232.

MR. BHURTEL: What was the last one, 22?

THE COURT: 2230 --

MR. O'HARA: Through 2232.

THE COURT: -- through 2232.

BY MR. O'HARA:

Q The fourth is dated May 14, 2014, Bates number 2257 through 2258.

And then the last one that I want to talk with you about is dated June 24, 2014; Bates number 2265 through 2267. Okay?

THE COURT: And these are all part of Exhibit 56

already in evidence.

MR. O'HARA: Yes.

THE COURT: I am saying so, I am not asking.

(Continued on the following page.)

(Continuing)
Q Okay, now, Doctor, first I want you to just look at these and tell us whether these are medical records that come out of your office chart for the patient, the five separate items that I've identified.
A Yes.
Q Okay. Doctor, did you ever change any of the entries in any of those five records that I've just presented to you?
A It could be corrected because sometimes I don't fill up the whole chart because I don't have time, I have thousands of patients. I write it later on.
Q And if you --
THE COURT: Let him finish.
Did you finish what you were saying?
THE WITNESS: Yeah.
THE COURT: Okay.
I'm sorry, go ahead.
MR. O'HARA: That's okay.
Q If you write it later on, you're talking about an addendum to your prior note; correct?
A Yeah, but sometimes that, my staff, they don't go through. They just send it, you know, without asking me, you know.
Q Okay. Let me ask you some questions and I will allow you to explain if there are differences, okay?

If you are going to make a change to your record, you have a practice of formally amending your record; correct?
A Correct.
Q And the reason why you do that is because you have been advised that you should not change it otherwise; correct?
A Sure. Sure.
Q So let me ask again. Did you change any of the information in those five packets of medical records that I've identified for those five days; yes or no?
A Let me explain --
MR. O'HARA: I would ask that the witness first answer. I said I would give him a chance to explain.
A This to maybe add to the problem he had because I write it down in small piece of paper. Then when I have time, I do it, you know.
Q Okay.
A But we have a very busy practice, I have staff and so many records going out. So, they might send the old one and they forget the new one, you know.
Q Thank you.
So, there are times when your office records get amended. Despite the fact you've been advised that you should not do so without a formal amendment, you do it anyway; correct?
A Yeah, I change, I write it later on when all the charts

when I go home, I put it in the nighttime, you know, when I get time. But the staff might give you the old one and the new one also, they give it to you, you know.

Q And when you do that, is there any way for us to tell what changes you've made and why?

A No, this is the complaint. Patient complaint, I gave it to them.

Q Let's just work through a couple of these and I'll let you explain why you changed your records, okay?

I'm going to show you the same five medical records on the same five dates that have five different Bates Numbers that were produced as your litigation file at your discovery deposition in this case, okay?

You have to say yes or no.

A Yes.

MR. O'HARA: Judge, can you explain what a discovery deposition is?

THE COURT: Yes.

You may remember I even mentioned it in your preliminary instructions. Before the trial there is a period called discovery and discovery is what it sounds like in that it gives each side the right to discover or learn about information that the other side has. I infer from Mr. O'Hara's remark that among the ways that the defendant tried to discover information from the plaintiff was that

Mr. O'Hara's law firm or another law firm working for Staples took the deposition of Dr. Guha.

A deposition is an opportunity to require somebody to come into a law office generally or a court reporter's office, and be asked questions under oath, and it helps the lawyers anticipate and prepare for what the testimony will be at trial.

Q Okay. I'm going to first focus on the January 2nd, 2013 record, which is the amended record.

MR. BHURTEL: Your Honor, can I have a page number?

MR. O'HARA: I am about to give that you.

MR. BHURTEL: Okay.

MR. O'HARA: 3791 to 3792, okay? So let's first compare. 3791 through 3792. It's a two-page document, okay?

Q Let's compare the reason for the visit.

A No, this is different.

Q Okay, you're right. You changed the date; correct?

A I don't change the date, how can I change the date from the computer?

Q Somebody changed the date from January 2nd, 2012, to January 2nd, 2013; correct?

A There might be another chart, 2012. We cannot change the date in the computer.

Q Okay. So, then --

A We might have another one.

Q So you are suggesting that there is -- actually, you saw him -- you testified on direct examination all of the days that you saw this patient.

You do remember that, yes?

A 2012.

Q Listen. You testified on direct examination all of the office visits that you had with this patient; correct?

A Yeah.

Q Yes?

THE COURT: Do you understand the question?

THE WITNESS: Yes.

THE COURT: Do you remember whether or not on direct you got to talk about each and every office visit with Mr. Ahsan or only some of them?

THE WITNESS: Some of them.

Q Okay.

A I saw him maybe a hundred times, you know.

THE COURT: A hundred times.

THE WITNESS: More than that, you know. In five, six years.

THE COURT: Okay.

Q And of the hundred times, I only want to focus on the ones that deal with head, neck and back injury, okay?

A But he doesn't come for that only. He comes for his blood pressure, cholesterol.

THE COURT: Okay, we do not need to hear about Mr. Ahsan's other medical --

THE WITNESS: That's what it is, you know.

THE COURT: Okay.

THE WITNESS: I am not only the, I do everything.

THE COURT: We understand that, thank you.

Q Okay. So, now tell me if I read this correctly. The Document 2159 indicates that the reason for the visit is shoulder pain. The patient presents to the office complaining of left shoulder pain. The pain radiates to the left arm. The patient reports that the pain has been present since one year and is severe in intensity.

Did I read that correctly?

A Yeah.

Q And the day of this record is January 2nd, 2012. And if we back it up one year, that puts us to January 2nd, 2011?

A Eleven.

Q And that's eight months before the incident at Staples; correct?

A Right.

Q Now, January 2nd, 2013, which is Bates Number 3791, you indicate for reason of visit shoulder pain. The patient presents to the office complaining of left shoulder pain. The pain radiates to the left arm.

You then add, headache with dizziness, neck pain

persists; correct?
A Correct.
Q So, either whatever he had when he came in that's in this record on January 2nd, 2012 existed nine months before the Staples incident or, if this and this are on the same date, you changed the record.
A No.
Q So, these are two different dates?
A Two different dates.
Q And that means this record from January 2nd, 2012 states that this man had shoulder pain that has been present for how long?
A One year.
Q I'm sorry, you have to speak up.
A One year.
Q And describe its intensity.
A Severe.
Q In terms of the jury's understanding when a patient describes pain -- I'll step away.
MR. BHURTEL: Can I have a page number of that, please?
MR. O'HARA: Sure. 2159, 3791.
Q When a patient describes pain, medical providers write it down with three terms: Mild, moderate, severe; correct?
A Correct.

Q Severe being the highest?
A Sure.
Q And on a scale of one to ten -- I'm not good at math because it's more than three ways to divide it -- it's around three to four is mild?
A Yes.
Q Six to seven is moderate?
A Sure.
Q And eight, nine, ten is severe?
A Sure.
Q So, the pain that he's describing that's persisted for a year as of January of 2012 is severe in intensity; correct?
A Correct.
MR. O'HARA: I'm sorry, Judge, I have to sit next to him.
THE COURT: Give him enough room that he understands to speak out loud.
MR. O'HARA: Yes.
It's real important you keep your voice up, they have to hear you and she has to type.
Q The next office record that I want to show you, remember we talked about the February 22nd, 2013 office visit; correct?
A Yeah, yeah.
Q Okay.
MR. O'HARA: And for the record, that's 2172 through

2174.

Q This came from your office chart; correct?

A Correct.

Q And 3754 through 3757, this was attached to your discovery deposition; correct?

A Correct.

Q Okay. Do you see on the original record where it talks about reason for visit, neck pain follow-up.

Do you see that?

A Yeah.

Q Do you see that the patient, can you see the change in the addition of complaints in the litigation record as compared to the office chart that was produced?

A Reason for visit is the same. No change.

Q Take your time.

A Neck pain follow-up. Neck pain follow-up.

Q Here, let me do this. Read the musculoskeletal section. On first your office chart, what does it say about musculoskeletal?

A Negative.

Q What does it say in the litigation file that you produced?

A Positive.

Q So, negative to positive.

A This is old one, I corrected it.

Q Hold on, Doctor, I haven't asked that question.
A Okay.
Q The musculoskeletal reference in the first office record that was produced when a letter came to your office indicated that the musculoskeletal findings on examination with the review of systems was negative; correct?
A Correct.
Q Then, when it came time for your discovery deposition, you produced a document that changed that medical record and you added the words: Positive neck pain, shoulder pain; correct?
A Correct. Because I, I change, because this is the preliminary. After that, I correct. Then we correct it later on because we have a handwritten notes.
Q Okay.
A I put it in the computer.
Q Okay. Did you make any more changes, Doctor, to update it or make it accurate?
A Yeah, this is more accurate.
Q So, the one that you prepared prior to the production of your discovery deposition is the actual record that's accurate?
A Yes.
Q And just so we're all clear, that discovery deposition was taken on April 20th, 2016; correct?

I'll help you. You sat in the discovery deposition with a lawyer from my office and were asked questions under oath on April 20th, 2016?

A Yeah.

Q And before April 20th, 2016, your musculoskeletal finding was negative. And then, seven months ago, it was changed to positive; correct?

A Because we, with, this is the different kind of computer system. When you put it in click, click, click and then, then you go home and you have whatever, you know, positive finding, you change it later.

Q Okay.

THE COURT: The two Bates Numbers you are comparing again?

MR. O'HARA: 2173 to 3755.

Q But what I said is correct; the first record and the second record are different.

A Yeah, little bit different.

Q Well, a lot of it different. One says negative, the other says positive. One says no pain and now you are suggesting that he has neck pain and shoulder pain.

You would agree that's a big difference.

You have to say yes out loud.

A Yes.

Q Okay. Let's talk about the neurologic examination.

Did you change the notation for your neurologic examination from the time that you produced your office record to the time you produced a file at your discovery deposition?
A Yeah, this is more correct for the discovery.
Q Okay. And just so, I'll read. The neurologic examination you indicated was negative. He had headaches, poor balance and sensation of a room spinning. And this time you changed it to positive; correct?
A Yeah.
Q Okay. Let's go to the next one.
MR. BHURTEL: Can I have those?
MR. O'HARA: You can have them all during a break. They've all been produced. You're the one that produced them.
THE COURT: Okay. Let's not have that exchange in front of the jury.
You can follow along if you would like to, Mr. Bhurtel.
Q Same thing, Doctor. Take a look at your June 24th, 2014 record.
MR. O'HARA: Strike that.
Q Take a look at your October 7th, 2013 record for the record Bates Number 2230 through 2232. This was produced in response to the written request for your chart. And then 3713 through 3716, this was produced at your discovery deposition in April of 2016.

Take a look and tell us what changes have been made to that record?

Do you want me to help you? I will help you.

A Okay.

Q In the reason for a visit, you see where it stops? Pain is six out of ten. And in the document that you produced -- the note stops in 2230. Six out of ten. And you've added another sentence in 3713.

Do you see that?

A Yeah.

Q You've added: Headache and left shoulder pain persists; correct?

A Right.

Q And again, you've changed the musculoskeletal findings in your record. You note negative; correct? In the file chart that was produced in written form; correct?

A Correct.

Q And then in the discovery deposition it's been changed to positive and you've added complaints of pain in the neck and the shoulder; correct?

A Correct.

Q And then also in the neurologic examination you initially note that it's negative, and now you've changed it to positive; correct?

A Yeah, positive headache.

Q Okay. There has been a -- you've gone from negative to positive, yes?
A No, these are the generic charts, these just generic. These are not the real. This is the real chart. My staff does it, then I correct those.
Q So, I'm going to ask it just basically.
So, when a lawyer writes you a letter where there's a patient that's been that is involved in a lawsuit, they give a signed authorization, which is required, right?
A Yes.
Q We all know that the Federal law HIPAA requires us to secure a signed authorization. We send it to your office. Is it common practice for a chart to be produced that's wrong?
Let me ask it differently. It's not common practice, is it?
A It's a lot of charts, you know. A lot of paper.
Q Try yes or no.
A Yes.
Q Is it common practice to send out charts that are wrong when a lawyer sends you an executed --
A Yeah, it's wrong, yeah.
Q Okay. Next office visit, May 14, 2014. Let's look at the document that was produced in discovery as opposed to what was produced at your discovery deposition. Bates Number 2257 through 2258 compared to 3681 through 3685. Okay?

Reason for visit, again there's been an addition; correct?
A Yeah, addition.
Q Okay. Review of systems -- actually, what's been produced for this date doesn't have anything, does it, the May 14th. It's just a two-page document.
THE COURT: I don't understand the question, Counsel.
MR. O'HARA: Okay, I will rephrase it.
Q When you ordinarily keep your medical records, they have an entire review of systems, yes?
A Yes.
Q And there has actually been a copy of a record produced for May 14th, 2014 that doesn't have any of the review of systems?
A Yeah, middle page is not there. Missing.
Q Many pages are missing.
THE COURT: Many pages are missing or middle page?
THE WITNESS: Middle page, review of systems.
Q Well, let's make sure.
A This is a review of systems.
Q Okay. It's more than just the review of system, right? It's missing the review of systems and the physical examination; correct?
A You have two pages. Review of systems and that.

Q Okay. And then let's go to the last record, which is June 24, 2014, Bates Number 2265 through 2267 as compared to the discovery Deposition Exhibit 3676 through 3680, okay?

The original record indicates the neck is negative and the revised record indicates the neck is positive; correct?

A Yeah, revised.

Q And the musculoskeletal, the neurologic examination indicates negative at the time that the chart is produced, and it's been changed to positive at the time of your discovery deposition; correct?

A Correct.

Q Thank you.

THE COURT: Can you give me an estimate of how much longer you have with the witness?

MR. O'HARA: It's hard. I have to go through the notes.

I will take a break any time you want, Judge.

THE COURT: Are you about ready? Or do you want to keep going?

THE JURY: I don't know. It's okay.

THE COURT: You're good to keep going? I saw you leaning forward.

THE JURY: It's fine. Stretching.

MR. BHURTEL: I would like a break.

THE COURT: You want a break.

Okay, we will take a ten-minute recess. We will take our mid-afternoon recess now.

MR. O'HARA: Thank you.

THE COURTROOM DEPUTY: All rise.

(Jury exits.)

(Recess taken.)

(Continued on following page.)

THE COURT: We are ready for the jury.

(Jury enters the courtroom.)

THE COURT: Thank you, everybody.

You may inquire.

CROSS EXAMINATION (continuing)

BY MR. O'HARA:

Q Doctor, just briefly, you were shown a packet of documents during your direct examination that are the medical bills in connection with your care and treatment for Mr. Ahsan.

A Sure.

Q Is there any way for us in actually looking at these to determine what care related to the gentleman's head, neck or back as opposed to other conditions?

THE COURT: You said head, neck or back.

Q I'm sorry, head, neck or shoulder. Is there any way to go through these and pick out these are charges for his head, neck or shoulder?

A No.

Q Is there any way for your office do that, to summarize it so that we don't -- part of what we are trying to determine is exactly what the costs are associated with your care and treatment for the injuries in this case as opposed to other stuff. Is there any way for us to do that?

A Because this is the computation by -- I don't get paid --

THE COURT: Can you try to answer the question precisely as it is asked? If you can't, tell me.

I think the question is from looking at the billing records that were shown before, could you or someone from your office use a highlighter or another indicator to show which billing relates to, in your mind, the results of the accident in Staples and which does not? Or is that just not possible to segregate?

THE WITNESS: We can, only physical therapy is related to the accident.

Q So someone in your office -- because this is all coded. There are no medical descriptions in these documents. Someone in your office can go through --

A I can do it.

Q We don't want you to do it now. We are trying to get out of here. You have the ability to go through this and identify what relates to the treatment in this case as opposed to --

A No problem.

Q Thank you.

I have one last line of questioning for you. In terms of as a treating physician, when a patient comes into your office, there is a general procedure that all doctors follow that is taught in medical school on how to assess the patient on initial?

A Correct.

Q And the acronym is called SOAP, S-O-A-P; correct?
A Correct.
Q The first thing S stands for is subject. You get subjective information from the patient?
A Correct.
Q That includes history from the patient?
A Correct.
Q Why they are there?
A Uh-hum.
Q O is objective. You then perform a physical evaluation. To the extent that you can get objective information, you secure that; correct?
A Correct.
Q Then you take that to create the A. You assess the patient based upon the subjective information and then the objective information?
A Correct.
Q And then the last part of the SOAP is P. You then establish a plan on how to treat the patient for whatever reason you concluded that patient has?
A Correct.
Q And you would agree with me, would you not, it is very important to understand the subjective information that comes from the patient?
A Yes.

Q And that includes the history that is given to you from a particular patient of what happened to them that brings them into your office?
A Correct.
Q In this case you were given a history that you described in your February 9, 2016 report, Ahsan -- or the trial binder 1012, Bates number, patient sustained significant injury at Staples store where heavy boxes fell on his head, his neck and his shoulder; correct?
A Correct.
Q We've already talked about what your office records say on that particular day about the actual complaint. Do you recall that?
A Correct.
Q My question to you is at the time that you wrote down heavy boxes, you assumed that those boxes that hit him weighed between 50 and 100 pounds? That's what you testified to in your discovery deposition?
A Could be, yes.
Q And you would agree with me that is a significant fact in terms of the incident that produced the harm, how heavy were the items that hit him; correct?
A Correct.
Q And as part of your review in this case, you listed for us all of the items that you were given to review?

A Yes.
Q 1 through 16?
A Sure.
Q Two of the items that you were not given was the deposition testimony of the Staples personnel that were produced in discovery that described the box or boxes that they found on the ground? That was not given to you, was it?
A No, nothing.
Q And you would agree with me that if that subjective fact that you assumed the box was between 50 and 100 pounds was wrong, that is a big deal to you, that's a significant fact; true?
A True.
MR. O'HARA: That's all I have, Judge.
REDIRECT EXAMINATION
BY MR. BHURTEL:
Q Doctor, with respect to your report February 9, 2009, page 2092 and page 2093, can you read the jury -- can you read your last -- second last line?
A This is not my note, but it is Dr. Santiago.
Q What it say there?
A This last line?
Q Yes.
A No test or MRI/EMG needed at present.
Q This is a February 9, 2009 report; right?

A Yeah.
Q Doctor, Mostafa Ashan, first time he visited March 26, 2008; right?
A Correct.
Q And then after March 26, 2008, he visited March 28th, 2008?
A Yes.
Q So after that, until February 9, 2009, did he came to your office and complain about the neck or head ache or left shoulder?
A He complained to Dr. Santiago, but he didn't explain to me anything about the shoulder as far as I remember. But the headache he complained one time, actually, two times. With the physical therapy, I didn't hear anything after that, that he got better or not. He didn't complain anything to me.
Q So first year of treatment, March 26, 2008 or March 28, 2008, after that, did he come back to you complaining his neck or --
A No. He had one session of physical therapy after that and he got better and he didn't come back with the neck pain or headache anymore.
Q And generally this can happen, you know, the patient can have one-time therapy and then they can cure?
A Yes. If it is a muscle spasm, simple muscle spasm, they get better.

Q And in March 2008, did you requested to do further test, like MRI, EMG?
A No, it is a simple headache and neck pain, I didn't order anything like that.
Q You mean neck pain, not the headache at that time?
A Neck pain, I didn't order anything.
Q As a doctor you made an assessment or decision not to order further test --
A Yes.
Q -- for his pain?
A Yeah, I made a decision not to order any more tests and Dr. Santiago also agreed with me that we shouldn't do any test for the simple neck pain.
Q With respect to February 9, 2009, did you -- strike that.
So sometimes patients, they go one or two times therapy and then they cure, so they don't come back your office?
A No. Once they get better, they don't come back.
Q It happens to other patients also?
A Yes. Many, many times, all the patients.
Q To your knowledge, does Mostafa Ashan have seen in that time other PCP?
A No. PCP should only be one, unless they choose a different PCP.
THE COURT: PCP is primary care physician?

THE WITNESS: Yes, sir.
Q Earlier you were trying to explain during the cross-examination, can you show the jury what is the lower trapezius?
A Trapezius, yes, trapezius muscle.
Q Thank you.
A Trapezius muscle is in the back by the spine.
Q It is nothing to do with his shoulder?
A No, not really.
THE COURT: Is it by the shoulder blade, the part of the back that sticks out?
THE WITNESS: Yeah. From the back, supraspinal, the muscle goes in the shoulder. The trapezius are the main two muscles in the back.
Q When you say the left lower trapezius, where is it located, that one?
A Way down in the thoracic region. Way down, from the neck downward.
Q Can you show the jury?
A Here (indicating).
THE COURT: Pointing to the mid back section of the witness.
THE WITNESS: Yes.
Q Earlier counsel asked you with respect to the box, the 50-pound or 100-pound. Do you remember you testified that you

corrected that testimony in your deposition saying 10 to 12 pounds?

A Yeah. If it is an unexpected fall, he didn't expect, then 10 to 12 pound can damage the head and neck also, unexpected fall.

THE COURT: What difference does it make if it's expected or unexpected?

THE WITNESS: People expected that there's something falling down and all of a sudden he doesn't see anything and something fell down and his head move to the different direction and there is the muscle pull and that can result in injury too.

Q Can you explain, when you say unexpected, is there a difference between the expected fall --

A And unexpected?

Q Yes. What is the difference?

A Because if you see a ball is falling to you, you know, you have the force of the neck and shoulder, you tighten up, so if something fell down, you don't feel it. But if everything loose and something fell down, you know, for the reflex, the head moves to the different direction and can give you the neck spasm.

Q Actually, I said the box is 10 to 20 pounds approximately. So you testified 10 to 20 pounds approximately boxes also can have --

A That can do injury also.
Q How about four-pound boxes also, can cause?
THE COURT: Can a four-pound box injury cause the jury, is that what you're saying?
MR. BHURTEL: Yes, your Honor.
A I can't tell that, but could be, you know. I don't know.
Q Doctor, do you have any changes to your impression at this time?
A No.
Q And do you -- Doctor, do you have an opinion with respect to what caused Mostafa Ashan's injury with respect to his head, neck and left shoulder?
A In my opinion, with a reasonable degree of medical certainty, the injury caused his damage of the head, neck, and shoulder.
Q And that was caused by --
A Caused by the boxes fell down.
Q On September 2, 2011?
A Yes.
MR. BHURTEL: I complete, Your Honor, my exam, my redirect.
THE COURT: You are excused, Doctor. Thank you.
THE WITNESS: Thank you.
THE COURT: Mr. Bhurtel, are you ready to call your next witness?

MR. BHURTEL: Can I have some recess?
THE COURT: We just had a recess. Take a couple of minutes and we will wait.
THE WITNESS: So we are done?
THE COURT: We are done.
THE WITNESS: Can I --
THE COURT: You can shake my hand.
THE WITNESS: Thank you, sir.
THE COURT: Mr. Bhurtel, are you ready to call your next witness?
MR. BHURTEL: Yes, your Honor. Just...
THE COURT: Who are you calling at this time?
MR. BHURTEL: Plaintiff, Mr. Mostafa Ashan.
THE COURT: Mr. Ahsan, please come forward. Do I understand that he will be aided in his testimony?
MR. BHURTEL: Yes, your Honor.
THE COURT: Will the interpreter please come forward.
THE INTERPRETER: Good afternoon, Your Honor.
THE COURT: Please raise your right hand.
(The interpreter was sworn by the Clerk.)
THE COURT: And what language, please?
THE INTERPRETER: Bengali.
THE COURT: Please state your name for the record.
THE INTERPRETER: Badal Hasib, B-A-D-A-L H-A-S-I-B.

Bengali language.

THE COURT: Are you a certified Bengali interpreter?

THE INTERPRETER: Yes, sir.

THE COURT: Please be seated or if you prefer to stand next to the witness, stand. That is fine.

THE LAW CLERK: Will the witness please stand and raise his right hand.

(The witness was sworn by the Clerk.)

THE COURT: Mr. Bhurtel, you may inquire.

MR. BHURTEL: Thank you, Your Honor.

MOSTAFA ASHAN,

called by the Plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BHURTEL:

Q Good afternoon, Mr. Ahsan.

A Good afternoon to you.

Q I will be asking you a series of questions. If you do not understand, please let me know.

A Yes.

Q What is your highest education?

A High school.

(Continued on following page.)

EXAMINATION CONTINUES
BY MR. BHURTEL:
Q And what is your address?
A 2569 45 Street, Astoria, New York 11103.
Q And how long you have been living there?
A Since 2007.
Q Are you married or single?
A I'm married.
Q What is your wife's name?
A Sahana Parvin, S-A-H-A-N-A, P-A-R-V-I-N, V as in Victor.
Q How long you have been married?
A Since 1985.
Q And do you have children?
A Yes.
Q And what is their name?
A One Nahiyan Ahsan -- Nahiyan Ahsan. And the second one is Rajit Ahsan. And the third one is Rubaiyat Tasneem.
THE COURT: Can you spell the names for us?
THE WITNESS: The first one is Nahiyan Ahsan, N-A-H-I, as in ice cream, Y-A-N. Ahsan, A-H-S-A-N.
Second one Rajit, R-A-J-I-T, Ahsan is the last name, A-H-S-A-N.
The third one is Rubaiyat Tasneem, R-U-B, as in boy, I-A-Y-A-T, Tasneem, T-A-S-N-E-E-M.
BY MR. BHURTEL:

Q And how old are they?

THE INTERPRETER: Okay, there is correction on the third name, Rubaiyat, R-U-B-A-I-Y-A-T. Rubaiyat.

BY MR. BHURTEL:

Q And how old are they?

A My first child was born in 1987, and the second one is 1990.

Q I don't need a date of birth, I just need the age.

A I have to count and tell you.

Q Please.

A My eldest son is 29-plus. And second one is little more or less than 26. And the third one is close to 24.

Q And what they do now?

A First two children they are working part-time time, they are doing their part-time jobs. Third one is a student.

Q And what does your wife do?

A She works.

Q Where does she works?

A Boston Market.

Q And what is her job, position?

A She's a shift manager.

Q And how long she have been working there?

A Since 2007.

Q Since 2007 until -- withdraw that.

In 2008 what kind of activities you were doing?

A I wasn't doing anything full-time, I was doing some free-lance work at that time.
Q What kind of work free-lance you were doing at that time?
A I used to do graphic design.
Q Can you describe what kind of graphic design work you doing -- you did in 2008?
A It's printing related.
Q And when you do that kind of -- when you were doing that kind of work in 2008, you work for somebody else or you do yourself?
A I used to do it for myself.
Q And any other thing you used to do?
A Sometime I used to draw.
Q What do you mean by you used to draw, can you explain that?
A I used to do some paintings.
Q And the painting, I am talking 2008, the painting you were doing is something for business or hobby or something else?
A It was my hobby.
Q And how long you have been doing that -- strike that.
Before 2008 -- strike that. Before 2010 -- strike that.
Before 2008 how long you have been doing painting work?

A Okay, I been doing this art work since from -- from my school days.

THE COURT: For income or for entertainment?

THE WITNESS: Entertainment.

THE COURT: And just to be a hundred percent clear, we are talking about painting pictures, not houses, right?

THE WITNESS: Yes, it's painting art work.

BY MR. BHURTEL:

Q And how long you had been doing before 2008 about the graphic works?

A I used to do with hands before 1994, and after 1994 I started doing that in the computer.

Q And can you describe what kind of graphic design work you were doing?

A When I was in involved in this I was involved in doing it, I used to do like for advertisement, I used to do it for business cards, I used to do it for the pads and I used to do it for labeling fliers and brochures.

Q Anything else?

A These are all part of graphic design.

Q And how about in 2009, what kind of activities you were doing?

THE COURT: Before you answer, I would like to see counsel at the sidebar for just a minute. Excuse me, jury.

(Sidebar held outside the hearing of the jury.)

(The following sidebar took place outside the hearing of the jury.)

THE COURT: The reason I called you over is that my recollection is that there was no lost wage claim in this case.

MR. BHURTEL: Yes.

THE COURT: I am a little bit concerned that if you go too much further, you might open the door to whether the income that was earned was not reported. I do not want to have that issue in this case. So please focus your questions, if I am understanding where you are going correctly, and please tell me if I am wrong.

If you want to bring out that he lost the ability to enjoy going to work from his injury, just be careful not to suggest that he also lost any income because I really do not want to have to deal with an application from the defendant that this opens the door to whether he reported income that he earned or not.

MR. BHURTEL: I can say clearly that before the jury we are not claiming loss of wages and not claiming loss of business also.

THE COURT: I know, but if the questions start to suggest and put that idea in the jury's head, we may have an issue, so just be careful. And if I think you are getting too close to the line, I hope you will object rather than

Mr. O'Hara, I am counting on you to object when you think something is inappropriate rather than tactically waiting and then arguing that the door is opened.

MR. O'HARA: Fair.

THE COURT: The other thing I wanted to mention while you were up here, so I do not have to call you up again, is one of the jurors asked my clerk, apparently, whether court is open on Friday after Thanksgiving.

I would like to tell them that we are on schedule and we expect to finish up the proof by Monday and for them to be able to be deliberating on Tuesday.

Now, I know somebody could get sick or there could be an emergency, but that is still what we are planning and it is appropriate for me to say that to the jury in your mind?

MR. BHURTEL: Yes, sir.

MR. O'HARA: I am comfortable telling this jury we may actually have them deliberating on Monday because Dr. Kolb may not be long and I am prepared to close immediately after Dr. Kolb.

THE COURT: So you have to be ready for summation on Monday. Okay?

MR. BHURTEL: Okay.

THE COURT: Thank you.

MR. BHURTEL: Your Honor, so how far I wanted to go the daily activities, what he was enjoying, and that's the

part of the line of the things.

THE COURT: You have a right to do that. Just do not start asking him how much money he was making.

MR. BHURTEL: No.

THE COURT: Do not start asking him if his ability to make money for his family makes him feel less important or anything like that. Do not ask him who his clients were, that kind of thing.

You can ask him did you enjoy your work? Did you still work after the accident? How did it make you feel not to be able to go to work? You can ask him about that, but not about how much money he makes.

MR. O'HARA: And I just want to be candid, just the fact that he has broached this topic and is going to suggest that he has lost the enjoyment of life based upon the ability to do so allows me to cross-examine him, not on the substance of the value, but on the credibility of the testimony.

In other words, if he testifies that he is unable to do this any longer, my intent is to cross him on that and undermine the credibility of that testimony.

THE COURT: That is absolutely fine, you just cannot ask him you did not produce any tax returns.

MR. O'HARA: I won't go anywhere near there.

THE COURT: Great, thank you. Sorry for the interruption. (Side-bar concluded.)

(In open court - jury present.)

BY MR. BHURTEL:

Q What was the reason you choose to do the painting work?

A It was -- it was my passion since my childhood, and I started doing it and later it became my hobby.

Q And what was the reason you choose to do the graphic design work?

A To make a living.

Q Did you enjoy doing the graphic work, graphic design work?

A Certainly, yes.

Q And in 2009, what kind of activity you were doing?

A In 2009 I was doing some free-lance work. I used to do it for myself and sometime my friends used to request me to do something for them. So I used to do that.

Q When you say free-lance work, what kind of work you were doing?

A To me free-lance is something that I do from home because I was never employed anywhere, I was never employed and I never worked for anybody here. I'm talking about 2009.

Q Yes. And did you do the graphic design work also in 2009?

A Same thing that I just mentioned.

Q And how about the painting work?

A Well, painting it is completely depends on my mood. If I

feel like doing it, I do it. It doesn't happen all the time.
Q And when you do the painting work, what kind of painting work you do?
A I use like oil painting and acrylic paint on the canvas. Whenever I see something good, I just kind of memorize it and come home and do it.
Q And what kind of activities you did in 2010?
A The same thing, exactly like 2009.
Q And did you enjoy doing those activities?
A I used to have lot of fun and I was also forced to do it.
Q And what kind of activities you were doing before September 2nd, 2011?
A I -- before September 2nd, 2011 I was in Bangladesh for a long time. I left -- I went to Bangladesh the latter part of 2010.
Q And what was the reason you went in Bangladesh?
A So the work up 2011, cricket tournament was going on in Bangladesh at that time, so I got some assignments to do there.
Q Did you enjoy doing that one?
A Yes. Yes, I enjoyed a lot and these kinds of work I enjoy doing.
Q And -- withdrawn. Who used to do -- withdraw that. Strike that.
(Pause.)

BY MR. BHURTEL:
Q In 2010 what kind of activities your children were doing?
MR. O'HARA: Objection, relevance.
THE COURT: Mr. Bhurtel.
MR. BHURTEL: Yes, I will withdraw, Your Honor.
THE COURT: If that line has some bearing, certainly you could ask about after 2011 if there was a change in that circumstance because of what he claims is his accident, but right now it does not seem connected.
MR. BHURTEL: I am going to, Your Honor.
BY MR. BHURTEL:
Q What kind of work your wife was doing before September 2nd, 2011?
MR. O'HARA: Judge, objection.
THE COURT: Overruled.
A As I said before, she was working in Boston Market since 2007 'til now.
Q In 2007 who used to do at home household work?
A I used to do the most of -- I used to do most of the work because I used to stay at home more than anybody else.
Q So what kind of work you were doing at home?
A I used to do -- literally I used to do all the household works like cleaning, cooking, cleaning the bathroom, cleaning the snow during the wintertime. It was like I used to do everything literally.

Q In 2007?
A I used to do same thing in 2007 as well.
Q And how about in 2008?
A The same thing.
Q And who used to do it in 2009?
A That's me again.
Q And who used to do the household work in 2010?
A It's me. I used to do all the household works before I left for Bangladesh. And after I came back from Bangladesh, I used to do the same thing.
Q And before September 2nd, 2011 who used to do the household work?
A When I stayed home, I used to do everything.
Q Did you involve in an accident?
THE COURT: Is that the end of the question?
MR. BHURTEL: Yes, Your Honor.
THE COURT: Why don't you ask him about a particular point in time whether he was involved in an accident, okay?
MR. BHURTEL: Oh, okay.
BY MR. BHURTEL:
Q Did you involve in an accident September 2nd, 2011?
A Yes, I did.
Q Where did it happen?
A Staples store in Northern Boulevard.
THE COURT: In what town?

THE WITNESS: New York.
THE COURT: Do you know what part of New York?
THE WITNESS: Northern Boulevard, Woodside.
BY MR. BHURTEL:
Q And what was the reason you were going -- withdraw that.
MR. BHURTEL: Did he say it happened in Staples?
THE COURT: He did, Mr. Bhurtel.
MR. BHURTEL: Sorry.
THE COURT: I know, it is a long day.
MR. BHURTEL: Yes.
Q What was the reason you went to Staples store on September 2nd, 2011?
A I wanted to purchase some stationery from there.
Q And what were the purpose of those stationery?
A I wanted to buy some papers, pencils, inks and pens which are necessary for my graphic work.

(Continued on the following page.)

(Continuing)
Q And when you went to there, did you able to buy those things and come home?
A No, I couldn't buy anything.
Q What was the reason you could not buy it?
A As I mentioned earlier, there was an accident and due to that accident, I couldn't purchase anything.
Q So, what happened?
A Thing is, that I was like, looking around to purchase things that I wanted to buy. Then I was standing in an aisle and looking at the things that I was hoping to buy and then, there was a shelf behind me and two heavy boxes fell on my head suddenly, okay. And they were quite heavy as well. And they hurt my neck and head. And shoulder as well.
Q Before these boxes fell on you, what you were doing within the five seconds before?
A I was standing and looking at the products and I was wondering what to buy and what not.
Q And how many boxes fell on you?
A Two.
Q And those boxes, where did they hit in your body part?
A First, it hit, they hit on the left side of my head and then, on my neck and then, on my shoulder.
Q And when it hit --
MR. BHURTEL: Strike that.

Q And did you come to know how these boxes fell on you?
A After I fell down and couple of seconds -- after the boxes fell on my head and I looked up, and I was wondering what fell on me, I saw a man working on a ladder. He was arranging some boxes on the shelves. He may have dropped two boxes on me. That's what I thought.
Q When boxes hit on you, what was the hit? Was it heavy, light or medium?
A When I was hit, it seemed very heavy to me.
THE WITNESS: So, I would like to ask Your Honorable Court if I could use some English word when I answer sometimes.
THE COURT: Is there any objection?
MR. O'HARA: I'm not sure how that works. Either he has to testify through a translator, because I can't tell when he's -- the response is being translated, but he is actually interrupting the translator to correct the translator. I'm not sure how that works.
THE COURT: So, you are objecting?
MR. O'HARA: Yes.
THE COURT: No, you can either answer in English without the interpreter at all or you can speak in Bengali.
THE WITNESS: There are some words that don't exist in Bengali. Like cop, heavy, chair. These are not common in Bengali.

THE COURT: If you cannot find the right Bengali word, you can use the English word and explain why you are doing it.

THE WITNESS: Yes, I'll do that, thank you.

Q So, when the box hit on your head, what happened to your head?

A When they fall on me, suddenly my head moved towards the right side and then, the boxes hit my neck and then, hit my shoulder and the boxes fell on the ground.

Q And did you see the boxes?

A Yes, I did.

Q You saw the box after it hit you or before you hit it?

A After they fell on the ground, then I saw them.

Q And can you describe how big were the boxes in the sense of the measurement?

A I can make a guess.

Q Okay, how big were they?

MR. O'HARA: Judge, I'm going to object.

THE COURT: Sustained.

When you say you are making a guess, do you mean literally that you are making it up or that you will be giving us an estimate that is based upon a real recollection?

THE WITNESS: It happened long time ago, so all I can do, I will try to recollect something from the past.

THE COURT: Well, here are the rules. If you cannot

be specifically certain about the number of inches but do remember the size of the boxes and can estimate for us, you can give an estimate. But you cannot just make a guess. If you do not recall the size of the boxes, you can just say that you do not recall.

THE WITNESS: What I can recollect, I can tell you an estimated size of the boxes.

THE COURT: Then go ahead.

A By lengthwise, it could have been like, 16 to 17 inches and on the height side it was ten to twelve, it should be. And the width should be like, eight to ten inches.

Q And when the box hit you, did you feel any pain, any body part of the --

MR. BHURTEL: Strike that.

Q Did you feel pain when the box hit you?

A Yes.

Q Where did you feel the pain?

A At that exact moment, I felt like most pain in my neck and shoulder. It also hit my head, but most of the pains were in my neck and in shoulder.

MR. BHURTEL: I don't know how much time.

THE COURT: All right. Well, are you at a good breaking point now? You have finished the event in the store.

MR. BHURTEL: Tomorrow I will start with pictures.

THE COURT: All right.

MR. BHURTEL: So.

THE COURT: So, ladies and gentlemen, I think we are at a good breaking point and we will call it an evening.

MR. BHURTEL: Yes.

THE COURT: We will start again at 9:30 tomorrow.

Before you leave --

It is up to you whether you translate this or not.

THE BENGALI INTERPRETER: Sure.

THE COURT: I understand from one of the folks on my staff, one of my clerks, that somebody asked if we were working the Friday after Thanksgiving and I want to assure you that the lawyers are very confident that we are right on schedule and because we are right on schedule and where we expected to be, our best prediction is that you will begin deliberating on Monday or Tuesday of next week. So, I do not think the question of Friday become important. But if it does, we will not sit on Friday. If you are not finished deliberating, we will come back on Monday after Thanksgiving.

It does mean, though, that you may wish to have flexibility to stay later on Monday or Tuesday because once a jury begins to deliberate, sometimes the jurors will ask if they can stay late to continue deliberating past the 5:00 o'clock hour, so just think about that. I will accommodate your request in that regard. Any time it is after 5:00, if you want to go home to come back the next day, I will

let you do it, but if you want to work later than 5:00, that is fine, too.

But obviously, if you think about it now for Monday and Tuesday evening, you can make sure that you have enough flexibility so that you can make a group decision and one of you does not say, oh, if only I had known this might have come up, I could be free to work later but I did not know. So, that is why I am telling you now.

Do not worry about the Friday after Thanksgiving, you will have that to recover from having eaten too much and whatever else you do on Thursday. You will begin deliberating possibly on Monday, confidently by Tuesday. Try to have flexible evening schedules on those days if you can. If you cannot, we will respect it.

Have a good evening. Do not discuss the case with anybody. See you tomorrow at 9:30.

(Jury exits.)

(In open court; outside the presence of the jury.)

THE BENGALI INTERPRETER: Thank you, Your Honor.

THE COURT: You will be here, too.

THE BENGALI INTERPRETER: Yes.

THE COURT: So, a couple of things, Counsel.

First of all, I would like to follow the same practice, make sure we know what Exhibits went in today, add them to the pile. We do not want any last-minute disputes

about what goes in to the jury.

Mr. O'Hara, you referenced impeachment before, which is, of course, your absolute right on cross-examination. We will not be seeing anything that has not been produced in discovery tomorrow during the impeachment phase of the case, I take it.

MR. O'HARA: Well, there will be no evidence introduced that has not been the subject of amendments to discovery. I will ask the witness questions about his practices and if the witness tells the truth, there will be no need to refresh his recollection with any item.

THE COURT: Well, I guess, let me be more specific.

The surveillance video.

MR. O'HARA: This is not about surveillance video.

THE COURT: I know that Counsel sometimes debate exactly when the duty to produce that arises, but as long as we are not talking about that --

MR. O'HARA: We are not.

THE COURT: Or photographs. I know you well enough to know that you would not --

MR. O'HARA: That's correct. I will represent to the Court this is nothing that has been obtained by way of covert efforts, whether it be videotape or still-photographs.

THE COURT: Okay.

Tomorrow you finish Mr. Ahsan, you bring Ms. Ahsan,

and then you rest subject to rebuttal; correct?

MR. BHURTEL: Yes.

MR. O'HARA: Are you calling the wife?

MR. BHURTEL: Yes.

MR. O'HARA: You are, okay.

THE COURT: She will use the interpreter well.

MR. BHURTEL: Yes, Your Honor.

THE COURT: The interpreter is free with us all day tomorrow?

MR. BHURTEL: That is what I am trying to work out with the two interpreters.

THE COURT: I see. You may have somebody else?

MR. BHURTEL: Yes. He is a court certified interpreter and he came yesterday and today. And now, I'm trying to work with another interpreter which Counsel used in the deposition.

MR. O'HARA: As long as it's a New York State certified, I don't care who is here.

THE COURT: Right. Okay, we will finish up in two seconds.

Tomorrow, the only other witness you might have is Urena.

MR. O'HARA: I will have Urena available. We were actually going to bring him here because I have a strong suspicion that the direct examination of the plaintiff is not

going to take that long. And the wife is going to be even shorter. So, I want to have Urena here by the lunch break. If he goes long, I mean, we're working pretty late into the evening. I don't expect Urena is going to be more than, both direct and cross, 60 minutes max. There's just not that much that's in dispute that he has to testify to.

THE COURT: Right.

Mr. Bhurtel, just in terms of us anticipating the time, I am not trying to control what you are going to do. Do you intend to bring Mr. Ahsan through every medical visit and procedure or are you questioning him more from a helicopter bird's-eye view, if you know what I mean.

MR. BHURTEL: Your Honor, I will try to see because he has a short-term memory loss, also. I have to work on that one. If it is he going to remember everything, I may try. Not every detail, but some of them.

THE COURT: Okay.

MR. BHURTEL: Yeah.

THE COURT: Well, do you know how long you expect to take with him?

You do not know.

MR. BHURTEL: No.

THE COURT: Please, tonight or very early tomorrow morning, lay out the Exhibits you are going to use to refresh his recollection, if you have to, so we do not wait many

minutes while you look for a document that might refresh his recollection, okay?

MR. BHURTEL: Okay.

THE COURT: Okay?

MR. BHURTEL: Yes, Your Honor.

THE COURT: All right.

(Discussion held off the record.)

MR. BHURTEL: Your Honor, I have other things about the medical records with respect to the medical records, doctors medical records.

THE COURT: Yes.

MR. BHURTEL: And bills.

THE COURT: Yes.

MR. BHURTEL: They are not here to testify, but as per our joint Exhibits, these all records are authenticated.

THE COURT: Yes.

MR. BHURTEL: And once it is authenticated, under the business records exception, those records should be admitted in evidence.

THE COURT: Well, we talked about this already, right?

So in other words, somebody has to describe them as the business records. They are authenticated as the genuine records from the office, but nobody has laid the technical 8036 magic words that these were kept in the regular course of

business, it was the regular course of business to keep these records.

So, for example, to explain myself to you, if we had one of these litigation opinion narratives, right? We would agree that that is not a business record, right?

MR. BHURTEL: Yes.

THE COURT: But if it was delivered to the courthouse with a seal, it would be accurately described as an authentic record from the doctor's file, right?

MR. BHURTEL: Yes.

THE COURT: So somebody, I think Mr. O'Hara's point is, that somebody has got to describe the document as a business record for the proffer to be complete.

Now, if I recall yesterday -- and I do not want to speak on Mr. O'Hara's behalf without his permission and put words in his mouth -- what Mr. O'Hara said yesterday, if I recall correctly, is if you showed him which records you were talking about, he might agree to their admission without a foundation witness. If he does not agree and you can get a records custodian from the medical office to come in and testify for five minutes and say these are the treatment records of our medical office, I will let you do that. Even if it is out of turn.

MR. BHURTEL: Your Honor, I understand that part, that is why specifically I ask during the joint Exhibits when

we were preparing the joint Exhibits with Mr. Bower.

I said do you want me to subpoena these records, all other medical records. He says, we are doing this thing exactly, that is why I don't want you to subpoena those records, so you don't have to.

THE COURT: The records or the office?

MR. BHURTEL: Right, doctor's medical records.

THE COURT: Doctor's medical records.

MR. BHURTEL: Yes, hospital.

THE COURT: But this is not about the completeness of the records. It is not about the fact that the records were not subpoenaed. It is about the fact that nobody from the office is under subpoena to tell us what the records are, as I understand it.

MR. O'HARA: A suggestion.

MR. BHURTEL: Your Honor, I just want to say clearly because I was under impression that -- not impression -- it was very clear from my side that I, with the certification, with the certification from the custodian.

THE COURT: Yes.

MR. BHURTEL: That record I wanted to subpoena in the court and I was told you don't have to do that one. That's why we are going to do this joint Exhibit.

THE COURT: Okay.

What is your suggestion, Mr. O'Hara?

MR. O'HARA: So, as we talked about at side-bar, we do not, will not and have never contested the authenticity of any of these records.

If Counsel will give me the list that we talked about and show me what medical provider that he is talking about that he wants to introduce these records, as long as one of the five doctors that he's called has noted that in the care and treatment of this patient these are treatment records relating to the progression of the medical course, coupled with any of these five experts we now have thousands of pages of medical records, as long as there is some reference to these doctors being people from whom they obtained medical information to direct their course and treatment, I do not anticipate having a problem.

But in a vacuum, I have no idea what he's talking about. I'm not sure what medical provider, which records or which bills.

THE COURT: So, tomorrow morning come in with the Bates Number list of the records we are talking about so we can have a more concrete discussion, okay?

MR. BHURTEL: Okay.

THE COURT: Can you do that?

MR. BHURTEL: Yes.

MR. O'HARA: Can I make just a little slate?

If you are going to bring the Bates Numbers and you

are going to pull the records out for purposes of using them, just make a copy of them and I will literally do what we've been doing. Sit here after hours for as long as it takes to go page, by page, by page so we can work this out. I am happy to do so, happy being a relative term.

THE COURT: You are going to get the records in by hook or crook because I will even, I do not want you to be unfairly surprised. I do not want you to be fairly surprised. I will let you call somebody from the office by phone and take their testimony over the phone if Mr. O'Hara wants to question somebody about these records.

But I want you to know for your next case that in Federal Court if you have an agreement and it is not written down in the stipulation, you do not have an agreement. And I learned that in my very first trial in this building. I went to introduce an undercover tape recording in a criminal case that the Defense lawyer and I had agreed was acceptable even though it was not the original. We all listened to it and it was a copy. I got up and it was objected to on the grounds that it wasn't the original tape recording. I told the Judge I had an agreement with Defense Counsel and he said show me where the agreement is in writing.

That is the expectation in Federal Court if you reach a Pre-Trial stipulation. So next time, if you are relying on something your adversary has promised you, put it

in writing, get your adversary to countersign it and then, we would not be having this issue, okay?

MR. BHURTEL: Yes, Your Honor.

THE COURT: Just a word of advice for your next case.

Have a good evening.

ALL: Thank you.

(Matter concluded.)

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