

Transcript of the Testimony of  
**Edmond A. Provder**

**Date:** February 22, 2017

**Case:** Jose Bauta v. Greyhound Lines, Inc., et al.



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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOSE BAUTA,

Plaintiff,

-vs-

GREYHOUND LINES, INC., SABRINA  
ANDERSON, AKOS GUBICA, KAROLY GUBICA,  
CAV ENTERPRISE LLC, FIRST GROUP  
AMERICA, INC., and FIRSTGROUP, PLC,

Defendants.

Case No.: 14-3725 (FB) (RER)  
-----x

575 Madison Avenue  
New York, New York

February 22, 2017  
9:44 a.m.

Deposition of EDMOND A. PROVDER, pursuant  
to Notice, before Darby Ginsberg, RPR, a Notary  
Public of the State of New York.

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2/22/2017

Page 3

## ----- I N D E X -----

WITNESS	EXAMINATION BY	PAGE
EDMOND PROVDER	MR. MOROKNEK	5, 135
	MR. McELFISH	93

## ----- E X H I B I T S -----

PROVDER	DESCRIPTION	FOR I.D.
Exhibit 1	Dr. Lattuga's report dated 9/23/2015	82
Exhibit 2	Life care plan December '15	98
Exhibit 3	January 23, 2017 deposition	99
Exhibit 4	Dr. Mobin's report dated August 10, 2016	102
Exhibit 5	Report of Dr. Mobin dated November 20, 2016	103
Exhibit 6	Report from Dr. Mobin dated November 28, 2016	103
Exhibit 7	Provder supplemental report dated November 17, 2016	105
Exhibit 8	Provder rebuttal report dated November 28, 2016	105

**Edmond A. Provder**  
**2/22/2017**

Page 4

----- E X H I B I T S (Cont'd) -----

PROVDER	DESCRIPTION	FOR I.D.
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Exhibit 9	New York Spine Specialists document signed by Dr. Cordiale	106
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Exhibit 10	New York Spine Specialists reports from 10/10/15; 12/15/15; 3/22/16; 7/21/16; 10/20/16; 12/22/16	109
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Exhibit 11	Deposition of Dr. Mobin dated October 13, 2016	111
------------	---	-----

Exhibit 12	Deposition of Wendy Cummings dated 2/3/2017	112
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(EXHIBITS TO BE PRODUCED)

1 E D M O N D P R O V D E R, called as a witness,  
2 having been first duly sworn, was examined  
3 and testified as follows:  
4

5 EXAMINATION BY

6 MR. MOROKNEK:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. Harold Moroknek is my name. I represent  
10 some of the defendants in this lawsuit, and I am  
11 here today to I guess follow up or do a  
12 supplemental deposition of you as pursuant to the  
13 recent order of the Court pertaining to some  
14 developments that have taken place since your  
15 last deposition.

16 A. I understand.

17 Q. Okay. When you say you understand, what  
18 is it you understand about that?

19 A. That I was needed to have a further  
20 deposition dealing with my life care plan.

21 Q. Okay. And how did you come to that  
22 understanding?

23 MR. McELFISH: Objection.

24 THE WITNESS: Mr. McElfish?

25 MR. McELFISH: Don't answer.

1 MR. MOROKNEK: I am sorry, sir?

2 MR. McELFISH: Do not answer the  
3 question. Do not answer.

4 BY MR. MOROKNEK:

5 Q. So you started to say, did Mr. McElfish  
6 advice you as to the Court's --

7 MR. McELFISH: No, no, no, no, no. Do  
8 not answer.

9 BY MR. MOROKNEK:

10 Q. Did Mr. McElfish advise you --

11 MR. McELFISH: Mr. Moroknek, please.

12 Mr. Barmen actually quoted the federal  
13 rule last time that what is said between a  
14 lawyer and the expert is not discoverable.  
15 So if you would please not continue, I would  
16 appreciate that. Thank you. Next question.

17 MR. MOROKNEK: There is a distinction  
18 here, sir, insofar as the Court ordered you  
19 make this witness available and several  
20 others as a result of issues with  
21 Dr. Lattuga --

22 MR. McELFISH: But what I told you --

23 MR. MOROKNEK: Let me finish, sir. Let  
24 me finish. Thank you.

25 What I will do is ask this witness

1 questions with regards to his understanding  
2 and what has been told of him and to him  
3 with regard to the Court's order.

4 If that is an issue for you, what my  
5 suggestion is, is that we get the Court on  
6 the phone now and we --

7 MR. McELFISH: Let's do it.

8 MR. MOROKNEK: -- we get over it, or we  
9 wait to the end.

10 MR. McELFISH: You know, let's do it.  
11 Let's get the Court on the phone.

12 MR. MOROKNEK: Okay.

13 MR. McELFISH: Go ahead. This witness  
14 is available for you to ask him any  
15 questions about the issues, but you are not  
16 going to get into what he and I discussed.

17 MR. MOROKNEK: Okay.

18 MR. McELFISH: Mr. Barmen and you made  
19 that rule very clear to me.

20 MR. MOROKNEK: You don't see the  
21 distinction?

22 MR. McELFISH: No.

23 MR. MOROKNEK: You don't see that?

24 MR. McELFISH: No. Because the Court  
25 ordered him to come back for -- to answer



1 further questions, which I am going to allow  
2 him to answer all of those, but what he and  
3 I discussed still falls within the rule of  
4 what a lawyer and an expert discuss.

5 So why don't you ask him about the  
6 Lattuga reports and all of the other things  
7 that the Court ordered?

8 MR. MOROKNEK: I appreciate your  
9 suggestion.

10 MR. McELFISH: Why don't you do that?

11 MR. MOROKNEK: That's very kind of you,  
12 but what I am going to do is --

13 MR. McELFISH: Yeah.

14 MR. MOROKNEK: -- I am going to reserve  
15 my right to recall the doctor. I will get  
16 the Court's phone number, and we will call  
17 the Court at our first break.

18 MR. McELFISH: Great.

19 MR. MOROKNEK: Fantastic.

20 MR. McELFISH: Sounds good.

21 MR. MOROKNEK: Good.

22 BY MR. MOROKNEK:

23 Q. Okay. Now, sir, when did you first  
24 learn that you would be having a supplemental  
25 deposition?

1 A. I was told by my office.

2 Q. Okay. And other than being told by your  
3 office, did anybody else tell you that you were  
4 having a supplemental deposition?

5 MR. McELFISH: Objection to the extent  
6 that it refers to what he potentially heard  
7 from me.

8 You may answer.

9 THE WITNESS: No.

10 BY MR. MOROKNEK:

11 Q. Okay. Now, in anticipation of this  
12 supplemental deposition, did you review any  
13 documents -- and I don't want to waste your  
14 time -- but in addition to or over and above what  
15 you already told us you reviewed for your last  
16 deposition?

17 A. Yes.

18 Q. Okay. And what did you review in  
19 anticipation of this deposition today?

20 A. I reviewed Dr. Mobin's -- re-reviewed  
21 Dr. Mobin's deposition dated October 13th, 2016.

22 Q. I am so sorry. October 13, 2016?

23 A. Yes, sir.

24 Q. Thank you.

25 A. I reviewed the deposition of Wendy

1 Cohen -- Cummings, C-U-M-M-I-N-G-S, 2/3/2017. I  
2 reviewed my deposition of January 23rd, 2017.

3 Q. Okay.

4 A. And those, I believe, are all -- and I  
5 re-reviewed additional documents, both  
6 Dr. Mobin's report, as well as the report of  
7 Dr. Lattuga and his group.

8 Q. Please forgive me. When you say -- and  
9 I don't know if I heard you right -- you said you  
10 re-reviewed or you reviewed the report of  
11 Dr. Lattuga and his group?

12 A. No. I reviewed the reports of  
13 Dr. Lattuga and his group that I had in my  
14 possession, part of which I had in my possession  
15 at the time of my evaluation of Mr. Bauta, and  
16 other documents from his group that were updated  
17 records that were forwarded to me after I did  
18 my -- after I did my --

19 Q. Initial dep -- forgive me. I cut you  
20 off. After you did your evaluation?

21 A. Yes.

22 Q. Thank you.

23 Okay. If you could tell me, just  
24 briefly, specifically what records you reviewed  
25 from Lattuga's office; I think that's New York

1 Spine Specialists; is that correct?

2 A. Yes.

3 Q. Thank you.

4 A. Well, I divided the records up into two  
5 particular groups. The first group is all the  
6 records that I received prior to my evaluation --

7 Q. Okay.

8 A. -- which are noted in my report, which  
9 range from November 17th, 2014, to September  
10 23rd, 2015.

11 Q. Okay.

12 A. And then I separated them out as to the  
13 records that were received after that date.

14 Q. When you say "that date" --

15 A. After the date that I just mentioned  
16 after --

17 Q. September 23, 2015.

18 A. -- September 23, 2015. Yes.

19 And these were follow-up records that go  
20 from 10/6/2015 through 12/22/2016.

21 Q. Okay. Those records that you reviewed  
22 post your evaluation --

23 A. Yes.

24 Q. Okay. How many of those records are  
25 signed by Dr. Lattuga?

1 A. None.

2 Q. Okay. And kind of a silly question, but  
3 you have not prepared a supplemental report of  
4 any kind, have you, other than what we have  
5 already exchanged and received?

6 A. No, sir.

7 Q. Okay. Now, in order to formulate your  
8 opinions in this case for your reports that you  
9 have prepared and have exchanged, you have  
10 advised that you have relied on certain  
11 documentation; is that correct?

12 A. Yes, sir.

13 Q. Okay. And of the documents that you  
14 have relied on, I know I think you indicated at  
15 page 62 in your deposition there were really two.  
16 It was the Lattuga report of September 2015, and  
17 a conversation that you had with Dr. Mobin?

18 MR. McELFISH: Objection. Misstates his  
19 testimony.

20 BY MR. MOROKNEK:

21 Q. If there was anything in addition to  
22 that, let me know. I am just trying to get an  
23 understanding as to what documents you relied on.

24 A. What page?

25 MR. McELFISH: What Dr. Lattuga relied

1 on?

2 MR. MOROKNEK: No, sir. What the  
3 witness relied on.

4 MR. McELFISH: You just said Lattuga.

5 MR. MOROKNEK: Let me withdraw the  
6 question and ask it this way.

7 BY MR. MOROKNEK:

8 Q. Sir, tell me, please, what you relied on  
9 in order to form your opinion and conclusion in  
10 this case.

11 A. I relied on the entire medical records  
12 that I reviewed, particularly Dr. Mobin's  
13 reports, as well as my conversation with  
14 Dr. Mobin, and the report of Dr. Lattuga.

15 Q. Okay. Let's talk about Mobin's reports  
16 and your conversation with Dr. Mobin.

17 Initially, what's the date of  
18 Dr. Mobin's report?

19 A. August 10, 2016.

20 Q. Okay. And the date of your report, sir?

21 A. My report date is December 15, 2015.

22 Q. Okay. And the date of your supplemental  
23 report is what, sir?

24 MR. McELFISH: Objection as to the  
25 characterization of the report as it was not

1 designated as a supplemental report, but it  
2 was designated as a rebuttal reports to  
3 witness Capotosto and witness Cummings.  
4 They were not supplemental reports. They  
5 were rebuttal reports for particular  
6 purposes.

7 MR. MOROKNEK: That's fair. That's very  
8 fair. I will rephrase the question.

9 BY MR. MOROKNEK:

10 Q. What was the date of your rebuttal  
11 report? Although I think, if I am not mistaken,  
12 it was called a supplemental report, wasn't it?

13 A. It is.

14 Q. That's what I thought. I think  
15 Mr. McElfish is correct, though. It was in the  
16 nature of a rebuttal report, but I think you  
17 called it a supplemental report?

18 A. Yes.

19 MR. McELFISH: That's true.

20 THE WITNESS: My date for the two  
21 reports: November 17th, 2016 and  
22 November 28th, 2016.

23 BY MR. MOROKNEK:

24 Q. I am so sorry. Do that again for me?

25 A. November 17, 2016.

1 Q. Yes, sir.

2 A. And November 28, 2016.

3 Q. Okay. So you actually issued a total of  
4 three reports in this case, correct?

5 A. Yes.

6 Q. Two supplemental and one original  
7 report?

8 A. Two supplemental, one life care plan,  
9 yes.

10 Q. One life care plan. Exactly. Okay.  
11 Now, the supplemental plan of -- I am  
12 sorry. The supplemental report dated  
13 November 17, 2016, does that report reference or  
14 mention anything regarding either Dr. Lattuga,  
15 Dr. Capiola, or Dr. Lattuga's partner, whose name  
16 at the moment I can't think of?

17 MR. McELFISH: Cordiale.

18 MR. MOROKNEK: Cordiale. Thank you.

19 THE WITNESS: No.

20 BY MR. MOROKNEK:

21 Q. That supplemental report was with regard  
22 to, I guess, responsive to the reports of Peter  
23 Capotosto and Wendy Cummings; is that fair?

24 A. True.

25 Q. Okay. The report of November 28th, kind



1 of same thing, sir, this report, my understanding  
2 referenced to and was responsive to Wendy  
3 Cummings' report; is that correct?

4 A. Yes.

5 MR. MOROKNEK: Okay.

6 MR. McELFISH: Just so the record is  
7 correct, the November 17th report was  
8 responsive, it appears, to Peter Capotosto,  
9 specifically; and the November 28th report  
10 was rebuttal to Wending Cummings  
11 specifically.

12 MR. MOROKNEK: Appreciate that.  
13 However, the November 17, 2016, report does  
14 speak to both Peter Capotosto and Wendy  
15 Cummings.

16 MR. McELFISH: That's right. Okay.

17 THE WITNESS: It states that I  
18 reviewed -- yes, that's correct.

19 BY MR. MOROKNEK:

20 Q. Okay. The second supplemental report of  
21 November 28, 2016, only speaks to Wending  
22 Cummings?

23 A. True.

24 Q. Doesn't reference Dr. Lattuga or any  
25 other orthopedic doctor for that matter?

1 A. Or neurosurgeon, no.

2 Q. Or neurosurgeon. Okay.

3 Now, you said, in substance, and correct  
4 me if I am wrong, that you had a conversation  
5 with Dr. Mobin at some point in time relative to  
6 your life care plan?

7 A. Yes.

8 Q. Okay. When did you have this  
9 conversation with Mobin?

10 A. I can't recall the exact date. I think  
11 I mentioned it in my deposition.

12 MR. McELFISH: It was asked and answered  
13 in the deposition, but go ahead.

14 BY MR. MOROKNEK:

15 Q. Just give me a ballpark. You don't have  
16 to waste your time.

17 A. I don't know. I don't recall.

18 Q. Okay. Was the conversation before or  
19 after you issued the plan?

20 A. After. Because he did not issue his  
21 report until August 10, 2016; I had issued my  
22 report December 15, 2015.

23 Q. Okay. So if I understand what you are  
24 saying, your plan had been issued and I think  
25 served to defendants at the time you spoke to

1 Dr. Mobin?

2 A. That's my understanding, yes.

3 Q. Okay. Do you have any paperwork,  
4 documents, emails, anything at all in writing  
5 with regard to the sum and substance of your  
6 conversation with Dr. Mobin?

7 A. No, sir.

8 MR. McELFISH: By the way, just an  
9 objection is being made on the record that  
10 this line of questioning is way outside the  
11 scope of the Court's order.

12 However, because we are talking about  
13 documents that were printed in his -- I am  
14 sorry -- we are talking about documents that  
15 were in Mr. Provder's possession but not  
16 specifically questioned about by Mr. Barmen  
17 on the first -- in other words, in the first  
18 deposition, Mr. Provder testified that he  
19 had Mr. Mobin's reports -- Dr. Mobin's  
20 reports, but had not printed them.

21 Mr. Barmen did not question him. This line  
22 of questioning is appropriate because I am  
23 allowing it.

24 However, it's outside the scope of the  
25 issues relating to Dr. Lattuga.

1 With that, you may continue. It's just  
2 important to note for you, Mr. Moroknek,  
3 that the questions that the Court said you  
4 could come back and ask related to  
5 Dr. Lattuga. Now you are getting into  
6 Dr. Mobin, which is fine. I think that's  
7 fine.

8 MR. MOROKNEK: And I appreciate what you  
9 are saying. What I am getting into is  
10 ultimately what the witness relied on, okay,  
11 to form his opinion, which is ultimately  
12 relevant to the Dr. Lattuga issue, I  
13 believe.

14 MR. McELFISH: As long as we agree that  
15 you are basically trying to cover the  
16 foundation for his opinions, which include  
17 the Lattuga issue, I am fine with that.

18 MR. MOROKNEK: And I think that's what's  
19 happening here.

20 MR. McELFISH: Okay.

21 MR. MOROKNEK: If we can go off the  
22 record for a minute?

23 (Discussion held off the record.)

24 BY MR. MOROKNEK:

25 Q. So let's just go back for a minute.

1 Let's dance around this Mobin thing for a minute.  
2 And please forgive me. I am not sure you  
3 answered my question about records, documents,  
4 emails regarding conversations with Mobin.

5 A. I did not. There were no emails or any  
6 notes taken of the conversation. My goal in  
7 talking to Dr. Mobin was to have him have an  
8 opportunity to go through the life care plan and  
9 indicate that he agreed with the life care plan.

10 Q. Okay. You sent him the life care plan?

11 A. I believe he already had it.

12 Q. Okay. Do you know how he got it?

13 A. Well, we went through the life care  
14 plan, so he had it in his possession at the time  
15 that I -- that we did the interview, but I don't  
16 know whether -- how he got it. I assume he got  
17 it from Mr. McElfish.

18 Q. Did you send it to him?

19 A. I did not.

20 Q. At the time that you were speaking with  
21 Dr. Mobin, did you have a copy of Dr. Mobin's  
22 report?

23 A. I don't recall whether I did or did not.  
24 I am sorry.

25 Q. That's okay. It's kind of a goofy

1 question because at the time you spoke to him,  
2 had his report been prepared?

3 A. Again, I don't know.

4 Q. Okay. Did you reference Dr. Mobin's  
5 report in your life care plan?

6 MR. McELFISH: Objection. Again, the  
7 witness testified that the life care plan  
8 was prepared almost a year before the  
9 report. So --

10 MR. MOROKNEK: If he doesn't, he  
11 doesn't.

12 MR. McELFISH: How can he reference  
13 something that was prepared a year before?

14 MR. MOROKNEK: Fair. Fair.

15 MR. McELFISH: It's not a fair question,  
16 though.

17 BY MR. MOROKNEK:

18 Q. Do you reference Dr. Mobin's report in  
19 any of your supplemental reports?

20 MR. McELFISH: Again, objection. It's  
21 not a fair question. They are rebuttal  
22 reports.

23 MR. MOROKNEK: Okay. He can answer the  
24 question.

25 THE WITNESS: I did not.

1 MR. McELFISH: They are not fair  
2 questions, counsel. That's the point.

3 MR. MOROKNEK: Okay.

4 MR. McELFISH: They are misleading.

5 MR. MOROKNEK: I don't think they are.  
6 I'm getting an explanation.

7 MR. McELFISH: No, that's why you have  
8 the deposition twice.

9 MR. MOROKNEK: I don't want to get into  
10 this. Okay.

11 MR. McELFISH: That's fine.

12 BY MR. MOROKNEK:

13 Q. So let's talk about -- let's talk about  
14 the Lattuga thing.

15 A. Okay.

16 Q. All right? Let's talk about this. I  
17 understand in this case that you relied on the  
18 September 23, 2015, report of Dr. Lattuga.

19 A. One of the things I relied upon. Yes,  
20 sir.

21 Q. I understand.

22 A. Yes, sir.

23 Q. I understand. And you do reference that  
24 in your report?

25 A. Yes, sir.

1 Q. Okay. Now, in that regard, when you --  
2 well, why did you rely on Lattuga's report?

3 A. Well, as a life care plan planner, I  
4 look at what type of services a person is  
5 receiving; what their diagnosis is; but  
6 Dr. Lattuga laid out in his report on page --  
7 on -- he has a special page for this. He looked  
8 at projected health care costs, which basically  
9 lays a foundation for the life care plan.

10 Q. Okay. Prior to using or making the  
11 decision to utilize Dr. Lattuga's report, did you  
12 speak to Dr. Lattuga?

13 A. I did not.

14 Q. Okay. And do you mind if I ask why you  
15 didn't talk to him?

16 A. Well, there was really no reason to talk  
17 to him because of the fact that he laid out in  
18 his September 23, 2015, the areas of the life  
19 care plan that he felt were reasonable and  
20 necessary based on his background as a physician.  
21 So he gave me all of the information I needed in  
22 his September 23rd, '15 report for a foundation  
23 for the life care plan.

24 Q. When you say based upon his -- I think  
25 you said -- experience as a physician?



1 A. Yes.

2 Q. I might not have gotten that exactly  
3 correct. But you say he laid out what he  
4 believed to be, I guess, relevant based on his  
5 experience as a physician. You said something  
6 like that?

7 A. Yes.

8 Q. I was just going to ask you, where did  
9 he get this information from?

10 A. I have no idea.

11 Q. Okay. You used the phrase "live  
12 data" --

13 A. Yes.

14 Q. -- okay, during your previous  
15 deposition. Do you --

16 A. Live research.

17 Q. Live research. Forgive me. Forgive me.  
18 And I appreciate your help.

19 Did you know that Dr. Lattuga utilized  
20 live research to obtain his data?

21 A. I would have no idea. I didn't  
22 incorporate his data into my findings. I only  
23 incorporated his recommendation for services.

24 So say, for example, he recommends that  
25 there be five visits a year at a cost of \$200 a

1 visit --

2 Q. Uh-huh?

3 A. -- I didn't incorporate that as part of  
4 the factoring as to one of the pieces of data  
5 that I looked at. I did my own research  
6 regarding the contacts for that information.

7 Q. So help me understand how you did  
8 utilize that portion of his September 23rd, 2015,  
9 report.

10 A. Okay. We -- we have orthopedic and  
11 lumbar, cervical spine visits. He indicates the  
12 frequency of it; that I used. Pain management  
13 visits 12 times a year; that I used. All of the  
14 suggestions that he has and regarding the  
15 frequency and items needed, I utilized.

16 Q. So --

17 A. I didn't utilize the costs.

18 Q. Because you went and got your own costs?

19 A. Yes.

20 Q. With your live research?

21 A. Yes.

22 Q. Okay. So your reliance, though, on  
23 Dr. Lattuga was predicated on the idea that he  
24 was the treating physician?

25 A. No.

1 Q. What was it based upon?

2 A. Based on that he was a physician that  
3 had reviewed the file and was knowledgeable  
4 regarding Mr. Bauta because he was treated at his  
5 program at the New York Spine Specialists.

6 Q. Okay. How do you know he reviewed the  
7 file?

8 A. Well, it states in the report that he  
9 reviewed certain records, I believe. Well, he  
10 reviewed -- these are various parts of an  
11 examination. So --

12 Q. No. I understand. Just show me where  
13 he says he said he reviewed portions of the file.

14 MR. McELFISH: Reference the page,  
15 please.

16 MR. MOROKNEK: Yes, page and paragraph,  
17 whatever you need to.

18 THE WITNESS: Well, the data comes out  
19 of the data that he has in his report.

20 BY MR. MOROKNEK:

21 Q. Sir, did you hear my question?

22 A. I did. That's what I am trying to  
23 explain. Are you going to let me finish?

24 Q. Of course. Always. Go right ahead.

25 A. The data that he has in his report is

1 similar to the data that's reported in the New  
2 York Spine Specialist reports that I had received  
3 prior to doing -- prior to his comprehensive  
4 report.

5 Q. Right. Right. Okay. And I absolutely  
6 appreciate the similarities. I am asking you a  
7 different question, though.

8 A. Okay.

9 Q. I am asking you where it says in his  
10 report that he reviewed the records of his  
11 office.

12 A. It does not specifically say that.

13 Q. Okay. Because before you said in your  
14 testimony here this morning that you knew he  
15 reviewed the records.

16 A. Yes. Because he has statements in his  
17 narrative report that coincide with documents  
18 that are in the New York Spine Specialist records  
19 that I have had in my -- had in my possession.  
20 He is reporting various findings that are the  
21 same as the findings that are in the documents  
22 that I received prior to his eval -- his report.

23 Q. But as Mr. McElfish says frequently,  
24 just so I understand what you are saying, right,  
25 nowhere in his report of September 23rd, 2015,

1 does it say that he actually reviewed the records  
2 of New York Spine Specialists or other doctors of  
3 that facility?

4 MR. MOROKNEK: Actually, the question  
5 isn't for you. The question is for the  
6 witness.

7 MR. McELFISH: Relax. Relax.

8 MR. MOROKNEK: Oh, I am sorry. Was that  
9 a direction or a suggestion?

10 MR. McELFISH: Relax. I think you will  
11 be okay. Take it easy.

12 MR. MOROKNEK: "Okay" is a relative  
13 term.

14 BY MR. MOROKNEK:

15 Q. What did Mr. McElfish just show you?

16 A. Just wait. I see. Mr. McElfish pointed  
17 out that there is a series of medical records  
18 contained on page --

19 Q. I don't think it has pages, actually.

20 A. Yes. It does at the top. Looks like 11  
21 of 14. You need magnifying glasses in order to  
22 see it.

23 Q. Oh, my God. I think you are right. I  
24 think I say it does say 11 of 14 -- thank you --  
25 of the September 23, 2015, report?

1           A. Right. There are a series of records  
2 that indicate that in this report.

3           Q. I am sorry, sir. I am not understanding  
4 what you are saying.

5           A. Okay. Well, on page 11 of the 14-page  
6 report, at the bottom of the page there is an  
7 indication of various medical records, and I  
8 would assume that these medical records were  
9 reviewed as part of the report.

10          Q. Well, in your making that assumption,  
11 did you ever pick up the phone and call Lattuga  
12 to say, hey, did you review these reports? Did  
13 you review these documents?

14          A. No.

15          Q. No? Okay. Let me see. It is funny,  
16 though, isn't it?

17                 Now, you are referring to -- I guess  
18 midway down the page -- it says Medical Records?

19          A. Yes.

20          Q. Then there is a listing of medical  
21 records?

22          A. Yes.

23          Q. All right. Does it indicate on that  
24 page or even on the next page that he reviewed  
25 those medical records?

1 A. They are just listed.

2 Q. Okay. All right. Let me just see this  
3 for a second.

4 All right. Now, did you know when you  
5 were reviewing Dr. Lattuga's report or did you  
6 believe when you were reviewing Dr. Lattuga's  
7 report, that Dr. Lattuga actually treated Mr.  
8 Bauta over the course of several months at New  
9 York Spine?

10 A. There is no indication of that.

11 Q. That he treated Mr. Bauta?

12 A. Yes. Because the records that I have  
13 from the New York Spine Specialists prior to this  
14 report are all signed by Dr. Cordiale.

15 Q. Okay. I mean, you read Dr. Lattuga's  
16 report, right?

17 A. Several times.

18 Q. Several times. All right.

19 So midway down the page where it says,  
20 "I have treated Jose Bauta," forgive me. I am  
21 having a hard time reading upside-down. "I have  
22 treated Jose Bauta from November 17, 2014,  
23 through the present time." Do you see where it  
24 says that?

25 A. That's what it states.

1 Q. At present time would be September of  
2 2015?

3 A. Right.

4 Q. September 28?

5 A. 13 of the report.

6 Q. Got it. Okay. So when you were  
7 utilizing Dr. Lattuga -- I keep doing that --  
8 Dr. Lattuga's report in anticipation of preparing  
9 your report, was it your understanding that  
10 Dr. Lattuga was, in fact, a treating physician --

11 A. That's what I --

12 Q. -- of Mr. Bauta?

13 MR. McELFISH: Objection. Asked and  
14 answered.

15 The witness may answer.

16 THE WITNESS: It states in this report  
17 on page 13 that he had treated Mr. Bauta.

18 However, his name did not appear on any  
19 of the documents that I had prior to this  
20 from New York Spine Specialists prior to  
21 this report.

22 BY MR. MOROKNEK:

23 Q. Okay.

24 A. Meaning he had not signed as a treating  
25 doctor.



1 Q. Okay. But, I mean, you agree with me  
2 that report clearly says he was a treater for Mr.  
3 Bauta, right?

4 MR. McELFISH: Asked and answered. It's  
5 argumentative.

6 THE WITNESS: Yes.

7 BY MR. MOROKNEK:

8 Q. And did you look at the last page of  
9 Dr. Lattuga's report where he says, "I, Sebastian  
10 Lattuga, being duly licensed to practice in the  
11 State of New York, affirm the foregoing under  
12 penalty of perjury to CPR 2106 that the foregoing  
13 is true and accurate to the best of my knowledge  
14 and information." And he signs it?

15 A. Yes. I see that.

16 Q. Okay. So he is certifying, is he not,  
17 that he was the treating physician or a treating  
18 physician of Jose Bauta?

19 A. Yes.

20 MR. McELFISH: Objection. Lacks  
21 foundation as to this -- as to this  
22 document. This witness did not prepare this  
23 document. This witness is only -- has  
24 already testified that the treating records  
25 are in his file as well from Dr. Cordiale.

1           You may answer.

2           THE WITNESS: Yes. That's what it  
3           states.

4       BY MR. MOROKNEK:

5           Q. Okay. So when you prepared your report,  
6           did you prepare your report with the  
7           understanding and knowledge that Dr. Lattuga was  
8           a treating doctor of Mr. Bauta?

9           A. That's what it states. That's what the  
10          report states.

11          Q. Okay. And did you hear my question?

12          MR. McELFISH: Can you let him finish  
13          answering?

14          MR. MOROKNEK: I will always let him  
15          finish.

16          THE WITNESS: That's what the report  
17          states; that he was a treating doctor, but,  
18          to me, it's not really that relevant because  
19          what I have in front of me at the last page  
20          is a physician's recommendation to what Mr.  
21          Bauta needs in the future that serves as a  
22          foundation for the life care plan.

23       BY MR. MOROKNEK:

24          Q. Okay. So if -- assume the following  
25          with me -- if Dr. Lattuga didn't treat Mr. Bauta,

1 and he didn't review the records of Mr. Bauta  
2 relative to the treatment he did receive at New  
3 York Spine, how would he know what Mr. Bauta  
4 needs?

5 A. You are asking me to put my mind into  
6 Dr. Lattuga's mind? I have no idea.

7 Q. No.

8 MR. McELFISH: Objection. Foundation.  
9 You may answer.

10 THE WITNESS: I have no idea what was in  
11 his mind when he wrote this report.

12 From a rehabilitation or life care  
13 planning standpoint, the important part of  
14 this report is the document that we talked  
15 about, which lists the various  
16 recommendations he made.

17 BY MR. MOROKNEK:

18 Q. Okay. So let's assume for the moment  
19 that he didn't treat Mr. Bauta, and let's also  
20 assume for the moment that he didn't review any  
21 of the records of his office -- or from his  
22 office. Do you know how he arrived at the  
23 conclusions and opinions that he arrived at?

24 A. I do not.

25 Q. Okay. And you didn't pick up the phone

1 to ask him that question?

2 A. I don't know why I would ask him.

3 Q. When did you come to learn or have you  
4 come to learn that Mr. or Dr. Lattuga did not  
5 treat Jose Bauta?

6 A. Within the last couple of weeks.

7 Q. Okay. And how did you come to learn  
8 that information?

9 MR. McELFISH: Objection. Don't answer.  
10 If it's from me. If you learned some other  
11 way, that's fine.

12 BY MR. MOROKNEK:

13 Q. If it's from Mr. McElfish, don't answer,  
14 but if it was from somebody else, certainly  
15 answer.

16 A. I'm not going to answer.

17 Q. Okay. So when did Mr. McElfish tell you  
18 that Dr. Lattuga didn't treat Mr. Bauta?

19 MR. McELFISH: Objection.

20 Don't answer.

21 BY MR. MOROKNEK:

22 Q. Are you take the attorney's instruction  
23 not to answer the question?

24 A. No answer.

25 Q. Okay. That's fine. So --

1 MR. McELFISH: Actually, you know what,  
2 I am going to relax the rule. Go ahead.  
3 Let him answer. It's fine.

4 Mr. Provder, you can answer.

5 MR. MOROKNEK: Hang on. Let him answer  
6 what?

7 MR. McELFISH: The question I objected  
8 to, and I withdraw the instruction not to  
9 answer.

10 Go ahead.

11 BY MR. MOROKNEK:

12 Q. I don't remember the question.

13 A. I don't remember the question.

14 MR. McELFISH: When did I tell you he is  
15 not a treating doctor?

16 THE WITNESS: Past couple of weeks.

17 BY MR. MOROKNEK:

18 Q. Okay. See, that didn't hurt, did it?

19 All right.

20 So you indicated in your deposition that  
21 you were kind enough to give on January 23, 2017,  
22 at page 62 certain things that I want to talk to  
23 you about, but I want to ask you a question  
24 before we get into that.

25 A. Page 62?

1 Q. We will get to that. I don't know why I  
2 referenced it at this point.

3 But so if Dr. Lattuga signs this report  
4 under oath, swearing that the contents of the  
5 report are true, okay, and then we learn that, in  
6 fact, and that you know he says in his report  
7 that he treated Bauta, okay, and then we learn  
8 that he actually didn't treat Bauta, okay? Do  
9 you find that inaccurate?

10 MR. McELFISH: Objection to the form of  
11 the question. Dr. Lattuga is a designated  
12 expert in this case as well, so please --

13 MR. MOROKNEK: He wasn't at the time.  
14 He was not at the time.

15 MR. McELFISH: Actually, hold on a  
16 second. He actually was at the time.

17 MR. MOROKNEK: No, not at the time he  
18 said he wasn't treating. At the time he  
19 said he never treated Bauta he was not --

20 MR. McELFISH: For a couple of weeks he  
21 was withdrawn. Correct.

22 MR. MOROKNEK: I don't think it matters.  
23 Finish your objection.

24 MR. McELFISH: The objection is he has  
25 been a retained expert in this case. He is

1 now a retained expert in this case. So  
2 please include all the facts in your  
3 questions.

4 MR. MOROKNEK: Yeah -- no. Not as you  
5 want them to be. If you have an objection,  
6 just say what your objection is.

7 MR. McELFISH: Let me actually make the  
8 objection.

9 MR. MOROKNEK: Please do in the next  
10 20 minutes, would you?

11 MR. McELFISH: Incomplete -- please,  
12 come on. You are learning too much from  
13 Brad. Incomplete hypothetical. Go ahead.

14 BY MR. MOROKNEK:

15 Q. Sir, Dr. Lattuga at one point said he  
16 was a treating physician of Mr. Bauta.

17 A. True.

18 Q. He told us at his deposition that he  
19 never treated Mr. Bauta.

20 MR. McELFISH: Lacks foundation. This  
21 witness may not know that.

22 You may answer.

23 BY MR. MOROKNEK:

24 Q. Assume the following hypothetical, sir.  
25 Assume that, after signing his report saying he

1 was a treating physician of Mr. Bauta, he then  
2 gave testimony that said he was not the  
3 treating -- a treating physician for or of Mr.  
4 Bauta. Okay?

5 A. Yes.

6 Q. Ultimately, do you believe that  
7 inaccuracy -- that to be an inaccuracy?

8 MR. McELFISH: Well, foundation.  
9 Speculation. It's -- frankly, it's  
10 confusing.

11 You may answer.

12 THE WITNESS: I don't understand the  
13 question. I am sorry.

14 MR. MOROKNEK: Okay.

15 MR. McELFISH: Vague. Ambiguous.

16 You may answer.

17 BY MR. MOROKNEK:

18 Q. Well, you said in your last deposition  
19 that it's one of your basic assumptions that you  
20 make in your life care plan and vocational  
21 evaluation, and that's a person being truthful  
22 and accurate to you. If it's not truthful and  
23 accurate to you, then it's going to affect your  
24 opinion?

25 A. May affect my opinion, yes.



1 Q. Well, no. You say that, "It's going to  
2 affect my opinion." Page 62, line 16.

3 A. Yes. It could affect my opinion, yes.

4 Q. Do you find the change in Dr. Lattuga's  
5 position with regard to whether he was a treating  
6 doctor or not inaccurate?

7 A. Well, he testified, from what you are  
8 telling me, that he was not a treating physician,  
9 so his statement in the report is inaccurate.

10 Q. Okay. So, sir, let me ask you this,  
11 then. You base your report on the statements,  
12 opinions and conclusions of Dr. Lattuga -- in  
13 part, on Dr. Lattuga; is that fair?

14 A. Dr. Mobin, Dr. Lattuga, yes.

15 Q. Okay. Well, hang on. When you say  
16 Dr. Mobin, you didn't have Dr. Mobin's report at  
17 the time you prepared your report, right?

18 A. No. His report was completed and his  
19 assessment was done after I did my evaluation.

20 Q. Right. Right. So do you know what  
21 Dr. Lattuga based his opinions on, and his  
22 conclusions on?

23 MR. McELFISH: Asked and answered.

24 You may answer again.

25 BY MR. MOROKNEK:

1 Q. Well, I am just trying to understand.

2 A. I don't know.

3 MR. McELFISH: No, you keep asking the  
4 same question. Asked and answered.

5 Go ahead.

6 BY MR. MOROKNEK:

7 Q. Sir, I didn't get your answer. Your  
8 attorney was speaking.

9 A. I don't know.

10 Q. You don't know. Okay.

11 Did you make any effort whatsoever to  
12 determine what Dr. Lattuga based his opinions and  
13 conclusions on?

14 MR. McELFISH: Asked and answered.

15 You may answer.

16 THE WITNESS: No. How would I know  
17 that?

18 BY MR. MOROKNEK:

19 Q. Picking up the phone?

20 A. There was no reason for me to pick up a  
21 phone. He had laid a foundation in his report  
22 that was significant to me that enabled me to lay  
23 down the foundation for the life care plan.

24 Q. Okay. And being that it was significant  
25 to you, right, is it significant to you that he

1 never treated Mr. Bauta?

2 A. Well, that goes to the question of how  
3 he formulated his opinions and his  
4 recommendations; that I don't know.

5 Q. Okay. So --

6 A. I have reports -- I have many reports  
7 from consultative doctors that lay a foundation  
8 for the life care plan. Is it necessary that the  
9 person be a treating doctor to lay a foundation  
10 for the life care plan? So it's how he based his  
11 opinion as to what Mr. Bauta's needs were, I  
12 don't know about that. I don't know how he  
13 reached those opinions.

14 Q. Okay. Well, is one way to do that by  
15 being a treating doctor? If I'm a -- as I  
16 understand it, and correct me if I am wrong, but  
17 if I am a treating doctor, I understand the  
18 needs, I understand my patient. I understand the  
19 medications. I understand his conditions, you  
20 know, the whole bit.

21 A. True.

22 Q. Okay. So it's fair to say that there is  
23 a benefit, okay, to being a treating doctor to  
24 you -- let me withdraw that.

25 There is a benefit to you when you are

1 relying on a treating doctor's opinions and  
2 conclusions? In other words, you know what you  
3 are getting. You know this guy treated the  
4 patient or the client, okay, and you know he's  
5 got firsthand knowledge of what's wrong with the  
6 guy.

7 A. If you are asking me whether the fact  
8 that somebody is a treating doctor is important  
9 to me when they render a foundation for the life  
10 care plan, the answer is yes.

11 Q. Okay. Why is it important?

12 A. Well, we talked a little bit about this  
13 before. They know the client. They know the  
14 patient. They know his condition. They reviewed  
15 the records. So on. But again, I have many  
16 cases that I don't have the foundation by the  
17 treating doctor. I have it from a consultive  
18 doctor.

19 Q. Consultive doctor, is that what you  
20 said?

21 A. Yes.

22 Q. Consultive doctor, that is someone who  
23 just reviews the records?

24 A. And may do an examination.

25 Q. Okay. Do you know in this case if

1 Dr. Lattuga ever met Mr. Bauta?

2 A. I do not know.

3 Q. Well, assume the following to be true in  
4 this case: Dr. Lattuga offered testimony that he  
5 never met Mr. Bauta. Is that significant to you?

6 MR. McELFISH: Relevance and incomplete  
7 hypothetical.

8 You may answer.

9 THE WITNESS: Again, I have had reports  
10 of individuals that have reviewed records  
11 and documents and rendered opinions as to  
12 the life care plan needs and medical needs  
13 that a person is going to have without the  
14 person seeing the individual, basing it on  
15 the records and documents he has.

16 BY MR. MOROKNEK:

17 Q. So just based upon the records and  
18 documents?

19 A. Sure. It happens frequently.

20 Q. I understand. And again, just so I am  
21 clear, given what your testimony is, can you show  
22 me where Dr. Lattuga's report it says that he  
23 reviewed the records?

24 MR. McELFISH: We covered this several  
25 times.

1           You may answer again.

2           THE WITNESS: As I noted before, there  
3           is a list of records that are contained in  
4           this report. Whether Dr. Lattuga actually  
5           reviewed those records, I don't know.

6       BY MR. MOROKNEK:

7           Q. Well, I mean, you know, Dr. Lattuga also  
8           said in his report that he treated Mr. Bauta. We  
9           learned that Dr. Lattuga did not treat Mr. Bauta,  
10          right?

11          MR. McELFISH: Argumentative.

12          MR. MOROKNEK: I am asking right? Isn't  
13          that --

14          MR. McELFISH: It's argumentative.

15       BY MR. MOROKNEK:

16          Q. Isn't that a correct statement?

17          A. That's what I am told.

18          Q. Okay. So I guess my question to you  
19          is --

20          MR. MOROKNEK: Do you need a tissue?

21          MR. McELFISH: I am fine.

22          MR. MOROKNEK: Okay.

23          MR. McELFISH: It's getting ridiculous,  
24          so I am going to terminate soon.

25          MR. MOROKNEK: Okay.

1 MR. McELFISH: I am.

2 MR. MOROKNEK: I appreciate that.

3 MR. McELFISH: You are badgering the  
4 witness.

5 MR. MOROKNEK: I don't think I am.

6 MR. McELFISH: And you are being  
7 argumentative.

8 MR. MOROKNEK: Have you sat in on your  
9 depositions?

10 MR. McELFISH: You have asked the same  
11 questions over and over and over again.

12 MR. MOROKNEK: And I appreciate that.

13 MR. McELFISH: Unlike Barmen, I will not  
14 try to tell you how to ask questions.

15 MR. MOROKNEK: No, listen, I appreciate  
16 that.

17 MR. McELFISH: I am making the  
18 objections.

19 MR. MOROKNEK: I appreciate the  
20 assistance.

21 MR. McELFISH: And I am just letting you  
22 know it is getting repetitive and  
23 argumentative. Go ahead. I will not tell  
24 you how to do your deposition.

25 MR. MOROKNEK: I appreciate that.

1 BY MR. MOROKNEK:

2 Q. Doctor --

3 A. Mr. Provder.

4 Q. Forgive me. Do you have your report  
5 accessible? May I? Thank you, sir.

6 MR. McELFISH: Most people want to be  
7 doctor.

8 MR. MOROKNEK: Yeah, why don't you want  
9 me to call you Doctor?

10 THE WITNESS: I want to keep the record  
11 clear and clean.

12 BY MR. MOROKNEK:

13 Q. Okay. Now, Doctor, you indicate --

14 A. Mr. Provder.

15 Q. I am going to keep calling you "Doctor."

16 Mr. Provder, you indicate under the  
17 Record Review section of your report on page 7,  
18 this is the life care plan that I am looking at;  
19 is that fair?

20 A. Yes. These are the records reviewed.

21 Q. Okay. In there you indicate that you  
22 reviewed records. It says, "Dr. Lattuga/New York  
23 Spine Specialists, November 17th, '14,  
24 September 23, 2015."

25 A. Yes.



1 Q. Just help me out here for minute. Where  
2 did you get those dates from? Where did those  
3 dates come from?

4 A. Those are the documents from the New  
5 York Spine Specialists company.

6 Q. That you had before counsel provided you  
7 the supplemental; is that fair?

8 A. Yes. The additional records.

9 Q. Okay. Yes, sir. That we talked about  
10 earlier?

11 A. Yes.

12 Q. Okay. Now when you say, "Outlines  
13 future medical care and states," what document  
14 are you referring to? Where are you getting that  
15 language from?

16 A. September 23rd, 2015, the documents we  
17 have been discussing.

18 Q. And that document we have been  
19 discussing is the document that was signed by  
20 Dr. Lattuga?

21 A. True.

22 Q. Okay. So it says, quote, "Status post  
23 posterior spinal fusion and laminectomy,  
24 permanent disability," close quote. Is that  
25 right?

1 A. Yes.

2 Q. That language comes from Lattuga's  
3 report? May I, sir, while you are looking at  
4 that?

5 A. Sure.

6 Q. Thank you.

7 MR. McELFISH: Are you going to mark  
8 anything?

9 MR. MOROKNEK: Not yet.

10 MR. McELFISH: When you are done, I will  
11 mark everything.

12 MR. MOROKNEK: That was my intention.  
13 Let me just see something.

14 THE WITNESS: May I see my report?

15 MR. MOROKNEK: Of course. That's what I  
16 am looking at, too. Here you go.

17 (Discussion off the record.)

18 THE WITNESS: Did you hand me back the  
19 Lattuga report?

20 MR. MOROKNEK: I did not. I still have  
21 it. Here you go.

22 THE WITNESS: Well, the quote comes from  
23 the entirety of the records, which is noted  
24 on the last document, July 28, 2015, status  
25 post posterior spinal fusion and

1 laminectomy.

2 BY MR. MOROKNEK:

3 Q. Can I just see what you are referring  
4 to, sir?

5 A. Yes. July 28, 2015.

6 Q. Thank you.

7 A. That first page, Diagnosis.

8 Q. Got it. May I see the Lattuga report?

9 A. (Indicating.)

10 Q. Thank you. Okay. Now do you see where  
11 the says Diagnosis on page 11 of 14 in the  
12 September 23, 2015, report of Dr. Lattuga?

13 A. Yes.

14 Q. And what does that say, sir?

15 A. Same thing.

16 Q. Okay. So as you sit here right now, do  
17 you know where you got that from?

18 MR. McELFISH: Objection. He already  
19 said he got it from July 28th, but you can  
20 answer again.

21 THE WITNESS: Yes. I got it from --  
22 that quote came from the review of the  
23 entire records, which were the New York  
24 Spine Specialists records November 17, 2014,  
25 including Dr. Lattuga's last reports,

1           September 23, 2015, and best of my  
2           knowledge, it came from July 28, 2015,  
3           report.

4       BY MR. MOROKNEK:

5           Q.   Okay.  And when you say to the best of  
6           your knowledge you think it came from the  
7           July 28, 2015, report, why do you think that?

8           A.   Because the diagnosis is the same, and  
9           when I review the records of a group like the New  
10          York Spine Specialists, that's how I get the  
11          dates inclusive of the records that I reviewed.

12          Q.   Okay.  But here you wrote Dr. Lattuga,  
13          New York Spine Specialists -- just let me finish  
14          my thought, okay -- you don't write the name of  
15          any other doctor associated with New York Spine  
16          Specialists; is that fair?

17          A.   That's fair.  But New York Spine  
18          Specialists are the treating people that took  
19          care of him.

20          Q.   I completely understand that.

21               MR. McELFISH:  Let him finish.  You are  
22           asking him to let you finish.  Then you are  
23           interrupting him.

24       BY MR. MOROKNEK:

25          Q.   My question is this:  Nowhere in this

1 report does it include the name of another doctor  
2 from the New York Spine Specialists other than  
3 Dr. Lattuga?

4 MR. McELFISH: Again, objection to the  
5 question. It's argumentative. It's not a  
6 fair question at all.

7 MR. MOROKNEK: Is that fair, sir?

8 MR. McELFISH: It's not a fair question.

9 THE WITNESS: I did not include the name  
10 of any other doctor. The reason being is  
11 that these were the New York Spine  
12 Specialists records.

13 BY MR. MOROKNEK:

14 Q. Why did you include Dr. Lattuga's name  
15 in here?

16 A. Because he was one of the doctors that  
17 were -- authored some of the reports.

18 Q. Well, we can agree that he authored one  
19 report?

20 A. Yes.

21 Q. And there were a multitude of records  
22 and reports authored by another doctor?

23 A. Yes. By a Dr. Cordiale.

24 Q. Dr. Cordiale?

25 A. Cordiale.

1 Q. So why didn't you include his name in  
2 your report?

3 A. I didn't have to because we already had  
4 the name of the group.

5 Q. Why did you --

6 A. I didn't even have to include  
7 Dr. Lattuga's name because what I was looking at  
8 was the group records, not specifically  
9 Dr. Lattuga.

10 Q. But why did you include Dr. Lattuga's  
11 name?

12 A. Well, you are asking me something that  
13 happened almost a year and a half ago --

14 Q. Right.

15 A. -- and I can't recall.

16 Q. Right.

17 MR. McELFISH: You are missing the fact  
18 that the dates of the reports that he did  
19 reference are not Lattuga's reports. They  
20 go back a year before Lattuga wrote a  
21 report.

22 MR. MOROKNEK: I'm actually --

23 MR. McELFISH: That's why it's not a  
24 fair question.

25 MR. MOROKNEK: I am actually not missing

1           that.

2           MR. McELFISH: But that's the point. He  
3           has records in here from a year before  
4           Lattuga issued a report that he's  
5           referenced, and he doesn't necessarily list  
6           the name of the doctor, but he lists the  
7           dates.

8           MR. MOROKNEK: That's fine and  
9           irrelevant to me. What's relevant to me is  
10          that he's included Dr. Lattuga's name here  
11          and no other name. That's what's relevant  
12          to me. All right. Relevant, interesting,  
13          call it what you will. Okay.

14 BY MR. MOROKNEK:

15          Q. Now, by the way, you also -- and I  
16          should, I guess, reference this here -- you also  
17          reference Dr. Capiola and Dr. Liebowitz, is that  
18          right, in your report on page 8 at the top?

19          A. Yes.

20          Q. Okay. And are those -- well, I should  
21          say: Did you review records from either/or  
22          Dr. Capiola or Dr. Liebowitz?

23          A. No. In the initial deposition my file  
24          went berserk. So you have to bear with me  
25          because they are not in the order -- my exhibits

1 never came back to me, so I have incomplete  
2 records at this point in time.

3 MR. McELFISH: Correct.

4 THE WITNESS: So I am going to go  
5 through them and try to answer your  
6 questions as best as I can. Okay?

7 BY MR. MOROKNEK:

8 Q. Before you do that, and I appreciate  
9 that, I really do. Let me just ask you this:  
10 Off the top of your head, do you recall reviewing  
11 records from either Capiola -- Dr. Capiola or  
12 Dr. Liebowitz?

13 A. Two years ago?

14 Q. Yes, sir.

15 A. I don't recall specifically, right now.  
16 If you let me go through the file --

17 Q. Of course. Of course. Of course. I  
18 wanted to save you time.

19 MR. McELFISH: But it's in his report,  
20 right?

21 MR. MOROKNEK: It is.

22 MR. McELFISH: What do you mean does he  
23 remember it? He put it in his report that  
24 he did it.

25 MR. MOROKNEK: Well, he included that he



1 had -- he said --

2 MR. McELFISH: Do you sit around for two  
3 weeks trying to figure these questions out?

4 MR. MOROKNEK: He said he doesn't  
5 remember.

6 MR. McELFISH: It's in his report that  
7 he read the records.

8 MR. MOROKNEK: You should testify, then,  
9 at each deposition.

10 MR. McELFISH: This is crazy.

11 MR. MOROKNEK: I just want to know what  
12 specifically you looked at, that's all.

13 MR. McELFISH: It's in his report.

14 MR. MOROKNEK: It's not.

15 THE WITNESS: Of Dr. Liebowitz?

16 MR. McELFISH: Yes, sir.

17 THE WITNESS: Here we go. I have  
18 Dr. Liebowitz's report. It's the  
19 preliminary medical report dated 10 --

20 MR. MOROKNEK: You know what actually,  
21 let's make this --

22 MR. McELFISH: It's actually not  
23 Liebowitz. It's Capiola. Helping the  
24 witness.

25 BY MR. MOROKNEK:

1 Q. And that's my question because you have,  
2 according to your report, it says here you have  
3 reviewed -- it appears to say here that you  
4 reviewed records from Dr. Liebowitz, and then you  
5 give dates: October 3, 2013, December 24, 2015;  
6 it leads the reader to the conclusion that you  
7 reviewed Dr. Liebowitz's records from those  
8 dates.

9 A. Yes.

10 Q. Is that correct?

11 A. Well, it's -- I see Liebowitz and  
12 Capiola are the same based on my reviews.

13 Q. They are certainly not the same. They  
14 are two different doctors.

15 A. Yes. But, for example, I have -- so  
16 let's look at what I have. I have a report  
17 10/30/2013.

18 Q. I said -- it's 10/30. You are right.

19 A. 10/30/2013, it's signed by Dr. Capiola,  
20 looks like Capiola, but one of the doctors in the  
21 group is Dr. Liebowitz.

22 Q. Okay. So when you say in this report  
23 that you reviewed records from Dr. Liebowitz from  
24 October 30, 2013, to December 22, 2014, did you  
25 review a record from Dr. Liebowitz of October 30,

1 2013? It sounds like you didn't.

2 A. No. Dr. Capiola.

3 Q. Right. Okay.

4 So are there any other records in this  
5 portion of your report that you say you reviewed  
6 that you actually didn't review?

7 MR. McELFISH: Argumentative.

8 THE WITNESS: No, no, no. I reviewed  
9 records. It's just they are not records --  
10 okay. Dr. Liebowitz is from Orthopedic  
11 Specialists of Greater New York. We have  
12 Dr. Liebowitz, Dr. Scilaris and Dr. Capiola.

13 MR. MOROKNEK: Right.

14 THE WITNESS: So we have all three  
15 doctors.

16 MR. MOROKNEK: Right.

17 THE WITNESS: So looking back, what I  
18 probably should have done is just called it  
19 Orthopedic Specialists of Greater New York  
20 and gave the range of examinations that they  
21 had, but I have divided them up. I am not  
22 sure why. It was over two years ago, but I  
23 have a report of Dr. Liebowitz -- I'm  
24 sorry -- Dr. Capiola dated 10/30/2013.

25 BY MR. MOROKNEK:

1 Q. So that's Capiola, right, not Liebowitz?

2 A. That's Capiola.

3 Q. Just -- and thank you for your  
4 explanation. So really when you say  
5 Dr. Liebowitz, that should have been the group,  
6 and not Dr. Liebowitz?

7 A. Correct.

8 Q. Or it should have been Capiola and not  
9 Dr. Liebowitz?

10 A. To make it correct, I should have used  
11 the group, and then it would have been both of  
12 those guys.

13 MR. McELFISH: Excuse me for one second.

14 Way outside the scope of the Court's  
15 order now. I am going to let it go. There  
16 is no problem. You are going back into  
17 things that Mr. Barmen should have done and  
18 did not do in his first deposition, which I  
19 appreciate the fact that you are more  
20 thorough and --

21 MR. MOROKNEK: Nobody said that.

22 MR. McELFISH: -- because no one is  
23 marking -- well, I did -- and no one is  
24 marking any exhibits, they just keep going  
25 around and around. Mr. Provder is referring

1 to exhibits that were, in part at least --  
2 well, no, let me say that differently.

3 He is referring to binders that were  
4 marked at his first deposition that are  
5 incomplete because the exhibits were given  
6 to the reporter, and he did not receive the  
7 exhibits back yet, in at least what he has  
8 received in terms of what he has reviewed.  
9 They may have come back, but I am not so  
10 sure the witness got them back into his  
11 binders yet and doesn't have them  
12 necessarily here today.

13 MR. MOROKNEK: Can we clarify that?

14 MR. McELFISH: Sure. Let's do that.

15 BY MR. MOROKNEK:

16 Q. From your last deposition, you gave the  
17 reporter all of your records?

18 MR. McELFISH: Well, you guys did.

19 BY MR. MOROKNEK:

20 Q. The reporter has your records?

21 A. Right.

22 Q. Have those records come back to you  
23 physically?

24 A. Not all of them, no.

25 Q. Okay. Help me understand that.

1           A. The records that are missing from the  
2 binder, okay. So I am only led to believe that  
3 they never made it back to me. For example, the  
4 index on binder number one is not here. My  
5 report is not here in the binder. The  
6 supplemental reports are not in the binder.

7           Q. Forgive me. The one that we are looking  
8 at on the supplemental reports that you were kind  
9 enough to pull out earlier, those were not from  
10 the binder?

11          A. I had to reprint those.

12          MR. MOROKNEK: Okay. Just off the  
13 record for a minute.

14          (Discussion off the record.)

15          MR. McELFISH: Let's leave this on just  
16 so we know what we talked about. If we are  
17 arguing --

18          MR. MOROKNEK: I agree. I agree. I am  
19 concerned --

20          MR. McELFISH: Well, let me say this: I  
21 don't know there is any reason to be  
22 concerned, and I don't know if Darcy was --  
23 I don't remember who the --

24          MR. MOROKNEK: Reporter.

25          MR. McELFISH: -- reporter was, and

1 perhaps the exhibits were returned to my  
2 office and not yet provided back to  
3 Mr. Provder. Perhaps we don't have them  
4 yet. Perhaps, I don't know. All of -- the  
5 point is, that he is reference -- the reason  
6 I wanted to make the statement is nothing is  
7 marked and there is a lot of things being  
8 referred to which makes the record a little  
9 confusing.

10 Mr. Provder is now, with respect to  
11 Orthopedic Specialists of Greater New York,  
12 is referring to records that are in these  
13 binders that were produced as part of the  
14 first deposition; and I guess the issue is,  
15 is we are not sure which ones did not come  
16 back and which ones were taken out. That's  
17 all. I am not trying to stop you or tell  
18 you what to do. I am just trying to get  
19 some idea of what we are referring to  
20 because nothing marked in the record.

21 MR. MOROKNEK: Well, my understanding --  
22 but before you say anything --

23 MR. McELFISH: Don't say anything just  
24 yet. Let us finish our nonsense.

25 MR. MOROKNEK: My understanding was that

1           these have already been marked. The binders  
2           are marked, and what he is referring to is  
3           from one of those binders that was at the  
4           first deposition marked. You are right. I  
5           should have identified it more clearly going  
6           into it. I did not, and I will do that  
7           going forward.

8           MR. McELFISH: Okay.

9           MR. MOROKNEK: If there is something  
10          that you want to say, go ahead.

11          MR. McELFISH: Go ahead.

12          THE WITNESS: There is a missing record.  
13          I realize that the research that I did is  
14          not contained in this binder, either, that I  
15          provided at the time of the first  
16          deposition. It was 75 pages of research.

17          MR. McELFISH: And since we don't have  
18          the -- present with us today we don't have  
19          the exhibits that were given and binded  
20          [sic] at the first -- or marked at the first  
21          deposition. There is no way to know as we  
22          sit here which ones are missing and which  
23          ones aren't.

24          So having said that, Mr. Moroknek,  
25          again, anything I say in a deposition as a



1 defender of the deposition is not intended  
2 to curtail your questions or tell you what  
3 to say or what to do. Honestly, it's not.

4 MR. MOROKNEK: Okay.

5 MR. McELFISH: I just want the record to  
6 be a little clearer about what we are  
7 talking about and what we are pointing to.  
8 That's all.

9 MR. MOROKNEK: And I appreciate that.

10 MR. McELFISH: Unlike some of the other  
11 things we have undergone.

12 MR. MOROKNEK: I get it. I did not  
13 know -- I did not know that you did not get  
14 your records back, and my bad on not marking  
15 first. That's what I should have done,  
16 but -- and I apologize for that. Okay. So  
17 let me just ask you another question.

18 BY MR. MOROKNEK:

19 Q. As you sit here right now with regard  
20 to -- and then we are done with this topic --  
21 with regard to Liebowitz only, do you know  
22 actually what, if any, records you looked at that  
23 were authored by Dr. Liebowitz?

24 A. A quick review of the documents in my  
25 Tab Number 11 and 12 -- Tab -- I am sorry --

1 Tab 11 -- Tab 11 and Tab 12 appear that all of  
2 the records that I reviewed were from the  
3 Orthopedic Specialists of Greater New York, but  
4 they all appear to be signed by Dr. Capiola.

5 Q. Okay. Do you know what kind of doctor  
6 Dr. Capiola is?

7 A. Well, other than a doctor, he signs it  
8 M.D.

9 Q. He is an M.D. I will give you that.  
10 Ask a stupid question applies here.

11 A. I assume he is an orthopedist. He is in  
12 an orthopedic group.

13 Q. Other than the assumption he is an  
14 orthopedic, you don't know?

15 A. No.

16 Q. So let's just go back, so I think we can  
17 almost be done here. As I understand it, when  
18 you got the report from Dr. Lattuga in the first  
19 place, the very first place to use to rely on to  
20 draw your opinions and conclusions, it was your  
21 understanding that he was a treating doctor?

22 A. Yes.

23 MR. McELFISH: We have already covered  
24 this.

25 Go ahead.

1 THE WITNESS: Yes. It states in his  
2 report.

3 BY MR. MOROKNEK:

4 Q. Okay. In fact, I think, and please  
5 correct me if I am wrong, but at the time of your  
6 last deposition, you believed -- and we are going  
7 to explore this just a little bit -- but you  
8 believed that Dr. Lattuga had seen and/or treated  
9 Mr. Bauta at least five times? Do you remember  
10 saying that?

11 A. I don't recall saying that exact  
12 statement. The New York Spine Specialists I know  
13 had seen him a certain amount of times, but I  
14 don't know whether I said that. If you point me  
15 to the point in --

16 Q. I will. I have written it down. Just  
17 give me a minute. Forgive me, Doctor.

18 A. Do you have a page?

19 Q. I do. Page 44, lines 24 and 25 is the  
20 question. Page 44 at the top, lines 1 through 2.

21 A. Okay.

22 Q. Do you remember saying that, "I need my  
23 records, the best of my count looks like five"?

24 A. Yes.

25 Q. When you said, "the best of my count

1 looks like five," what were you counting?

2 A. Counting the New York Spine Specialists  
3 records that we had dated -- or we had dated from  
4 November 17, 2014, to I believe the date is  
5 July 28, 2015.

6 Q. Does it indicate in that set of records  
7 that you referred to that Dr. Lattuga actually  
8 treated Mr. Bauta five times?

9 A. No. Dr. Cordiale.

10 Q. Okay. Okay. Now -- and please forgive  
11 me if I asked you this already -- do you in your  
12 report reference treatment specifically by Dr.  
13 Cordiale as opposed to Dr. Lattuga?

14 A. Page 5 on my report.

15 Q. May I see?

16 A. Dr. Cordiale and Dr. Lattuga at New York  
17 Spine Specialists.

18 Q. Let me see. Okay. Now, do you cite  
19 anywhere in your report to anything that Dr.  
20 Cordiale said? And I see that you do cite to  
21 something that Dr. Lattuga says. But do you cite  
22 in your report to anything Dr. Cordiale says?

23 MR. McELFISH: Asked and answered.

24 You may answer again.

25 Earlier he testified about the July 28th

1 reports.

2 THE WITNESS: Okay. On page 7, as we  
3 discussed before, where it says Dr. Lattuga,  
4 slash, New York Spine Specialists per your  
5 prior question, I believe that the statement  
6 as to his diagnosis comes from Dr. Cordiale.

7 BY MR. MOROKNEK:

8 Q. Right. But, and again, just to tie that  
9 issue up, it doesn't say that thought there, does  
10 it?

11 A. It does.

12 Q. It says that Dr. Cordiale quote?

13 A. No. But it says New York Spine  
14 Specialists, which is the group.

15 Q. I understand. I understand. Okay.  
16 Thank you. All right.

17 So getting back to what you said about  
18 if it's not truthful and accurate to you, then  
19 it's going to affect my opinion, does the fact  
20 that Lattuga didn't treat the plaintiff affect  
21 your opinion?

22 A. I have already testified to that. I  
23 felt -- he is a physician. He rendered an  
24 opinion as to his recommendations of what Mr.  
25 Bauta requires; stated in his reporting as a

1 treating physician, but we found out now that he  
2 is not.

3 Q. I didn't mean to interrupt you. Go  
4 ahead.

5 A. So certainly, as I testified before, if  
6 he was a treating physician, I would certainly  
7 like to have that information if he was a  
8 treating physician.

9 Q. And similarly, if you found out that he  
10 was not a treating physician, you would like to  
11 have that information as well?

12 A. True.

13 Q. Because it's certainly, at the very  
14 least, relevant to your consideration?

15 A. True.

16 Q. And important to your consideration; is  
17 that fair?

18 A. It would have been one of the factors I  
19 considered, yes.

20 Q. So which raises another interesting  
21 question. When you say it would have been one of  
22 the factors that you would have considered, would  
23 you have given it less -- I don't know --  
24 credence in your mind because he wasn't a  
25 treating doctor?

1           A. Not necessarily. As I have testified  
2 before, I have many cases where I can have a  
3 foundation by a treating physician. Sometimes  
4 treating physicians are not cooperative in  
5 litigation-related cases. So I need a foundation  
6 from a consultive physician, which we could see  
7 Lattuga as being a consultive physician, and I  
8 also, in addition, I had Dr. Mobin.

9           So, I mean, so I had Dr. Mobin stating  
10 that he had reviewed my life care plan. I spoke  
11 with him. He laid a foundation for it. So I  
12 felt -- when I walked in, I felt I had two  
13 doctors, one an orthopedic surgeon, one a  
14 neurosurgeon, basically saying the same thing.

15          Q. Yeah, but that's kind of a funny point  
16 that you bring up because when you say you walked  
17 in, you walked into where?

18          A. When I came into the deposition.

19          Q. The deposition the first time?

20          A. The first time.

21          Q. Back in January?

22          A. Exactly.

23          Q. But that report had already been  
24 authored, it had already been exchanged, right?  
25 You had already set your opinions and

1 conclusions, right?

2 A. Exactly.

3 Q. And you did that before you spoke to  
4 Mobin?

5 A. Yes, of course. Yes. My report was  
6 issued before Mobin, yes.

7 Q. Right?

8 A. But when I walked into the deposition in  
9 January, I had foundation from Dr. Lattuga based  
10 on his report of September 23rd, 2000 --

11 Q. '15?

12 A. '15.

13 Q. As a treating doctor?

14 A. As a treating doctor, as a physician,  
15 and then I had talked to Dr. Mobin, and in fact,  
16 we now -- now I have or had at the time his  
17 deposition where he states that I reviewed  
18 Mr. Provder's report.

19 Q. Right.

20 A. And I agree.

21 Q. But we can agree, I think, that at the  
22 time you authored your report, you signed your  
23 report -- I don't know, did you sign your report  
24 under penalty of perjury?

25 A. Yes. I signed my report.



1 Q. I understand. I don't think you are  
2 hearing me. Did you sign your report under  
3 penalty of perjury or anything like that?

4 A. I don't do that.

5 Q. All right. So you just signed it. And  
6 your signature attests to the truth of the  
7 matter?

8 A. Of course.

9 Q. And you believe that your opinions are  
10 valid based upon the information you have, right?

11 A. True.

12 Q. We can agree that the opinions and  
13 conclusions that you reach are really only as  
14 good as the information you rely on?

15 A. True.

16 Q. Okay. So if the information you rely on  
17 isn't good, okay, or is faulty or defective or,  
18 as you say, not truthful and not accurate, right,  
19 that's a problem?

20 A. It is.

21 Q. Okay. So you talked before about -- and  
22 I do not want to put words in your mouth, sir, so  
23 please correct me if I am wrong, but you talked  
24 before about the fact that you would, I think,  
25 rather have someone who was a treating doctor,

1 who knows the patient, there are benefits; let me  
2 put it that way.

3 A. Yes.

4 Q. There are benefits to your relying on a  
5 report that comes from a treating doctor?

6 A. Yes.

7 Q. Okay. And what's the downside of  
8 relying on a report from someone who is not a  
9 treating doctor?

10 A. To me, there is no downside because they  
11 are a physician, and they are rendering opinions  
12 in their particular specialty regarding a  
13 person's long-term medical care needs.

14 So whether somebody is a treating  
15 doctor, whether they are a consultive doctor,  
16 whether they base it on an examination or base it  
17 on a review of records, to me, that goes to the  
18 weight that somebody is going to render and then  
19 going to give to that particular information. To  
20 me, it's coming from a physician, and the  
21 physician has opined XYZ.

22 Q. Are you finished? I don't want to  
23 interrupt.

24 A. Yes.

25 Q. Okay. Mr. McElfish would yell me. I

1 don't want to do that.

2 But there are different --

3 MR. McELFISH: I might advise you. I  
4 don't yell at you. Yelling is not  
5 professional and inappropriate.

6 MR. MOROKNEK: That's fair. And I  
7 appreciate you saying that.

8 MR. McELFISH: I would advise you. Make  
9 an objection.

10 MR. MOROKNEK: I might not take your  
11 advice. Please.

12 BY MR. MOROKNEK:

13 Q. Right. Okay. So we can agree, though,  
14 there are physicians who have a different  
15 knowledge base upon whom you rely, right?

16 A. True.

17 Q. Just like yourself, you made a decision  
18 in this case, I think before you rendered your  
19 opinion to actually meet Mr. Bauta, right?

20 A. Yes.

21 Q. And you spoke to Mr. Bauta?

22 A. Yes.

23 Q. You spent some several hours with Mr.  
24 Bauta, right?

25 A. Three hours.

1 Q. Why did you do that?

2 A. Well, it's one of my methodologies in  
3 evaluating an individual, so I have an  
4 opportunity to ask them questions, observe them,  
5 and so on.

6 Q. Does that make you more informed in the  
7 particular case of the needs and the concerns of  
8 a particular client or a patient that someone who  
9 has not met or treated a patient or client?

10 A. Well, sometimes I am placed in that  
11 position where I don't have the opportunity to  
12 see the person.

13 Q. But that's not my question.

14 A. Well, that was in response to the  
15 question as best as I can.

16 Q. It was really a yes-or-no question.  
17 So --

18 A. I believe that it's important from a  
19 vocational rehab standpoint or a life care  
20 planning standpoint to see the person. It's  
21 always my preference.

22 Q. Okay. And is it fair that as an expert  
23 in the field of what you are an expert in the  
24 field of, wouldn't you rather rely on the report,  
25 opinions and conclusions of a doctor who treated

1 the particular person?

2 MR. McELFISH: Form.

3 You may answer.

4 THE WITNESS: I think I already answered  
5 the question. The answer is yes.

6 BY MR. MOROKNEK:

7 Q. So when you learn, okay, as we have  
8 talked about here today, that Dr. Lattuga was --  
9 I don't know -- either not straight or was not  
10 telling the truth about his being a treater or  
11 made a mistake or whatever it was, okay, did you  
12 ask the question, well, how the heck did he come  
13 up with these conclusions?

14 A. I didn't ask that question, and I think  
15 the answer -- you asked that question before, and  
16 the answer is no. I have no idea how he reached  
17 those opinions. I would have to put myself in  
18 his place, and I can't do that.

19 Q. I get that, but you relied on his  
20 opinions --

21 MR. McELFISH: No, no, no.

22 BY MR. MOROKNEK:

23 Q. And you relied on his conclusions,  
24 right?

25 MR. MOROKNEK: Let him --

1 MR. McELFISH: Objection to form.

2 MR. MOROKNEK: That's fine. Thank you.

3 BY MR. MOROKNEK:

4 Q. Right? I mean, you relied on his stuff?

5 A. As I indicated, it's only -- we had both  
6 Dr. Mobin and Dr. Lattuga basically coming up  
7 with the same opinions. Okay? So I looked at  
8 Dr. Lattuga's materials. I looked at Dr. Mobin.  
9 I spoke with Dr. Mobin. They basically came up  
10 with the same recommendations. So as I said to  
11 you when I previously testified when I walked in  
12 here in January of this year, I thought I had two  
13 foundations for my life care plan.

14 Q. Okay.

15 A. And I still have two foundations.

16 Q. That's not where I was going to go. I  
17 was going to go someplace else.

18 Would you agree that now you only have  
19 one? Now you only have Mobin? Because, frankly,  
20 Lattuga swore under oath, right, that he was a  
21 treating doctor?

22 MR. McELFISH: That's argumentative.  
23 Form.

24 MR. MOROKNEK: I'm still asking the  
25 question. Thank you.

1 BY MR. MOROKNEK:

2 Q. And now you learn that he is not.

3 MR. McELFISH: Form.

4 BY MR. MOROKNEK:

5 Q. So might you, as you say here on  
6 page 62, has your opinion been affected by that?

7 A. It could be. I don't know.

8 MR. McELFISH: Form. Let me --

9 BY MR. MOROKNEK:

10 Q. The question is: Has it been?

11 MR. McELFISH: Listen, I am trying to  
12 get -- I'm trying to let him finish the  
13 questions so I don't interrupt him, and then  
14 I am trying to get an objection.

15 The objection is to form, and it's  
16 argumentative.

17 THE WITNESS: I forget the question. I  
18 am sorry.

19 MR. McELFISH: Guys, come on.

20 MR. MOROKNEK: Well -- all right. I'm  
21 not going to get into it.

22 BY MR. MOROKNEK:

23 Q. Sir, as a result of what you learned  
24 regarding Dr. Lattuga, as you testified here back  
25 in January of 2017 on page 62, has this Lattuga

1 thing affected your opinions?

2 MR. McELFISH: Same objection. Form.  
3 Argumentative.

4 THE WITNESS: Number one, I have already  
5 testified that, of course, I would have  
6 preferred him to be a treating physician.  
7 Okay. Obviously, from what the conversation  
8 has been, he was not a treating physician,  
9 but he is an orthopedic surgeon. He reached  
10 some conclusions. I don't know how he  
11 reached it; but to me, I have Dr. Mobin, who  
12 agrees with what my findings are. So  
13 whether Lattuga is not -- I don't know how  
14 to explain it -- was not truthful and --  
15 that doesn't necessarily mean that his  
16 opinions aren't accurate, but I have Mobin,  
17 who basically I have spoken with and agrees  
18 with my opinions.

19 BY MR. MOROKNEK:

20 Q. But I guess you raise another great  
21 point. If the guy is not truthful, right, and  
22 you say it doesn't necessarily mean his opinions  
23 and conclusions aren't accurate, how do we know  
24 that?

25 A. That's not up to me. That's not my area



1 of expertise to weight anybody's particular  
2 opinions. That's up to fact-finders, I guess.

3 Q. But you used his opinions, right?

4 A. But it didn't -- I have his opinion, and  
5 I have got Dr. Mobin's opinion.

6 Q. Just answer my question. You used his  
7 opinion and relied on his opinion, fair?

8 A. That was one of the factors I relied  
9 upon. Yes, sir.

10 Q. Okay. So I mean, if we exclude his  
11 opinion altogether for purposes of this  
12 discussion, right --

13 MR. McELFISH: You are making some  
14 hypothetical? Rephrase it, please.

15 BY MR. MOROKNEK:

16 Q. So assume hypothetically for purposes of  
17 our discussion here today, that we remove  
18 Dr. Lattuga from the picture, right?

19 A. Yes.

20 Q. Okay. Do you still maintain the same  
21 opinions and conclusions that you maintained in  
22 your report that you provided and exchanged in  
23 this case?

24 A. Yes. Because I have Dr. Mobin, who I  
25 talked to and who agreed with my opinions as to

1 Mr. Bauta's long-term life care plan needs and  
2 states in his deposition.

3 Q. And I know you keep saying that, but the  
4 fact of the matter is, just so I understand this,  
5 that you did not obtain interaction or  
6 confirmation from Dr. Mobin until after your  
7 report had been authored?

8 A. True.

9 Q. All right. Bounce back with me just for  
10 a minute. Is that Lattuga's report out here  
11 which we have not marked?

12 A. Yes.

13 MR. MOROKNEK: All right. Do we want to  
14 do it afterwards or just do it now?

15 MR. McELFISH: Do what?

16 MR. MOROKNEK: Just mark it.

17 MR. McELFISH: I am going to mark  
18 whatever you don't mark, so go ahead. Do  
19 whatever you want.

20 MR. MOROKNEK: Let's do this: Let's  
21 mark this, this is Dr. Lattuga's report.  
22 Defendants A, today's date, please, and then  
23 we'll mark the rest of the stuff.

24 MR. McELFISH: Why don't you mark it as  
25 Provder 1?

1 (Provder Exhibit 1, Dr. Lattuga's report  
2 dated 9/23/2015, marked for Identification.)

3 BY MR. MOROKNEK:

4 Q. Okay. So showing you what we have been  
5 talking about for a good portion of the morning  
6 that has now been marked Provder Exhibit 1 for  
7 Identification, I just want to talk to you about  
8 the last -- the second-to-last page of this  
9 document.

10 You told me -- you started to tell me --  
11 you started to go down that list of items that  
12 you relied on and that you didn't rely on. Just  
13 so I understand, the only thing you didn't rely  
14 on in there was cost; is that right?

15 A. True.

16 Q. Okay. So everything else in there you  
17 used as part and parcel in your report?

18 A. Yes.

19 Q. Okay. And, again, you have no idea how  
20 he came up with this?

21 A. True.

22 Q. By the way, have you ever worked with  
23 Dr. Lattuga in the past?

24 A. No.

25 Q. Have you ever met him?

1 A. No.

2 MR. McELFISH: Outside the scope.

3 BY MR. MOROKNEK:

4 Q. So I showed you the last page of  
5 Dr. Lattuga's report marked Provder Number 1 that  
6 states that he was Mr. Bauta's treating physician  
7 for a period of time, and it's signed and sworn  
8 to, actually under oath, in that report. You  
9 have seen that, right?

10 A. Yes, sir.

11 Q. Okay. And I have told you that -- we  
12 spoke hypothetically -- I asked you to assume  
13 some things; one of them was that Dr. Lattuga  
14 testified that he never met and never treated the  
15 plaintiff Bauta in this case?

16 A. Yes.

17 Q. Okay. Assuming that to be true, as you  
18 sit here today, do you believe that in signing  
19 the narrative report of September 23, 2015, Mr.  
20 Lattuga --

21 A. Dr. Lattuga.

22 Q. Doctor. Forgive me, Doctor.

23 A. Mr. Provder.

24 Q. -- Dr. Lattuga perjured himself?

25 MR. McELFISH: Whoa, whoa, whoa. Legal

1 conclusion. Form.

2 THE WITNESS: Not my expertise.

3 BY MR. MOROKNEK:

4 Q. Do you believe he lied in his report?

5 MR. McELFISH: Same objection.

6 THE WITNESS: Out of my area of  
7 expertise. That's not my area.

8 MR. McELFISH: It's argumentative.

9 BY MR. MOROKNEK:

10 Q. Do you believe he wasn't telling the  
11 truth in signing that report?

12 MR. McELFISH: Argumentative.

13 Foundation. Speculation.

14 Hold on. Let me do this. Let me do  
15 this.

16 Argumentative. Foundation.

17 Speculation. Beyond the scope. Legal  
18 conclusion.

19 You may answer.

20 THE WITNESS: I don't know.

21 BY MR. MOROKNEK:

22 Q. Have you ever run into a situation like  
23 this before?

24 MR. McELFISH: Vague and ambiguous.

25 Relevance.

1 THE WITNESS: Not that I can recall.

2 BY MR. MOROKNEK:

3 Q. Okay. You indicated that Dr. Mobin and  
4 you -- that you and Dr. Mobin had a conversation  
5 at some point after you authored and signed your  
6 report?

7 A. True.

8 Q. Okay. And that was -- forgive me --  
9 that was a telephone conversation?

10 A. Yes, sir.

11 Q. And you just had one conversation with  
12 Dr. Mobin?

13 A. Yes, sir.

14 Q. Did you have a follow-up conversation?

15 A. No, sir.

16 Q. Follow-up emails, follow-up discussion  
17 of any kind?

18 A. No, sir.

19 Q. So how did you go -- just give me a  
20 brief idea how -- how that conversation went. I  
21 am trying to understand.

22 A. Well, basically the way I handle a  
23 conversation with the physicians --

24 Q. Okay.

25 A. -- as best I can recall with Dr. Mobin,

1 is that he had the life care plan. We went  
2 through the life care plan charts, and I asked  
3 him whether he believed that the items in the  
4 life care plan charts were medically reasonable  
5 and necessary, and he answered affirmatively,  
6 yes, that he believed that those were the items  
7 that Mr. Bauta required. That's all I needed.

8 Q. Okay. So this was a relatively short  
9 conversation?

10 A. I think I have testified 15 minutes.

11 Q. Yeah, that's what you said. I just  
12 wanted to confirm this was a relatively short  
13 conversation.

14 A. Yes. Doctors are busy.

15 MR. McELFISH: Form. Guys.

16 MR. MOROKNEK: All right.

17 MR. McELFISH: You want to ask him if  
18 Dr. Lattuga lied again?

19 MR. MOROKNEK: Not yet. I am holding  
20 that. Give me a minute.

21 (Break taken.)

22 BY MR. MOROKNEK:

23 Q. Let's just go back, and then I think I  
24 am -- I think I am done.

25 MR. McELFISH: You should have let me go

1 first.

2 MR. MOROKNEK: You want to?

3 MR. McELFISH: You should have.

4 MR. MOROKNEK: Go.

5 MR. McELFISH: No, I mean from the  
6 beginning today.

7 MR. MOROKNEK: Yeah, you're very good at  
8 this.

9 BY MR. MOROKNEK:

10 Q. You told me the way you found out about  
11 this whole Lattuga issue, okay, or you didn't  
12 tell me, the way you found out about this Lattuga  
13 issue was that Mr. McElfish gave you a call and  
14 said, hey, here is what the Court said; is that  
15 fair?

16 A. Could be kind of fair.

17 Q. Something like that. All right.

18 Tell me just -- give me the sum and  
19 substance of the conversation that took place  
20 with regard to the issues relating to  
21 Dr. Lattuga.

22 A. From Mr. McElfish?

23 Q. Yes, sir.

24 A. Well --

25 MR. McELFISH: For purposes of the



1 record, don't forget the question. For  
2 purposes of the record, I have agreed with  
3 counsel that I will waive the privilege on  
4 these -- just on this limited basis on these  
5 questions.

6 THE WITNESS: Mr. McElfish told my  
7 office that we needed to have another  
8 deposition scheduled, and the reason the  
9 deposition had to be scheduled was because  
10 of Dr. Lattuga's testimony; and that he had  
11 not -- in his deposition testimony he had  
12 stated that he was not a treating physician.

13 BY MR. MOROKNEK:

14 Q. Did you have any conversation with him  
15 about your report and the effect of that issue on  
16 your report?

17 A. I did have a conversation, and I stated  
18 to him that I had spoken with Dr. Mobin, as he  
19 knew. Dr. Mobin and had laid a foundation for my  
20 life care plan in my conversation with him. In  
21 fact, he notes it in his deposition, Dr. Mobin's  
22 deposition, and therefore I felt that Dr. Mobin  
23 provided a good foundation for my life care plan.

24 Q. That foundation that Dr. Mobin -- well,  
25 that foundation that you have claim Dr. Mobin

1       laid for your life care plan was done after the  
2       life care plan, again, had been prepared?

3             A.    True.

4             Q.    Okay.  Now, did you discuss your  
5       testimony with Mr. McElfish?

6             MR. McELFISH:  Which testimony?

7             MR. MOROKNEK:  Thank you.

8       BY MR. MOROKNEK:

9             Q.    Did you discuss your testimony today  
10       with Mr. McElfish?

11            A.    No.

12            Q.    Did you meet with Mr. McElfish before  
13       testifying today?

14            A.    Yes.

15            Q.    Okay.  And how long did you meet with  
16       him?

17            A.    About a half hour.

18            Q.    Typically, when you prepare your life  
19       care plans, do you speak to the physicians you  
20       are dealing with?

21            MR. McELFISH:  Vague and ambiguous.

22            You may answer.

23            THE WITNESS:  Depends.  Sometimes.

24            Sometimes not.

25       BY MR. MOROKNEK:

1 Q. When would you speak to the doctors whom  
2 you are relying on to draw your conclusions and  
3 your opinions?

4 MR. McELFISH: Same objection.

5 Go ahead.

6 THE WITNESS: It happens sometimes.

7 It's not usually the way it happens.

8 Usually my report, as I design my life care  
9 plan, is submitted to a physician, usually  
10 by the referring source; and then I usually  
11 get a letter or some sort of documentation  
12 that indicates that the doctor agrees with  
13 my life care plan or any other  
14 recommendations that they may have.

15 BY MR. MOROKNEK:

16 Q. And did that happen here with  
17 Dr. Lattuga?

18 A. No. I had -- well, Dr. Lattuga's report  
19 was forwarded to me prior to my doing my life  
20 care plan.

21 Q. Okay. And did you ever submit -- again,  
22 forgive my ignorance here -- but did you ever  
23 submit your report to Dr. Lattuga for his review?

24 A. No. Not that I -- I never did.  
25 Mr. McElfish may have. I never did.

1 Q. So again, and just the answer to my  
2 question: Do you ever speak to doctors when you  
3 are preparing reports with regard to your  
4 opinions and conclusions? You say sometimes. I  
5 am just trying to get a feel for when you would  
6 and when you wouldn't.

7 A. Well, it depends on the -- depends on  
8 the situation. If it's a doctor that I know, I  
9 may call them. If it's somebody that I don't  
10 know, I may just have the attorneys submit the  
11 documentation to the doctor.

12 Q. Okay. And, again, I am not sure if I  
13 asked you this, but is there a reason that you  
14 didn't call Dr. Lattuga in this case?

15 MR. McELFISH: Form.

16 You may answer.

17 THE WITNESS: I answered that already.

18 There was no reason to. He had laid a  
19 foundation in his report, the September 23rd  
20 report.

21 BY MR. MOROKNEK:

22 Q. Okay. And the follow-up to that would  
23 be: The foundation that he laid in your opinion  
24 was based upon him being a treating physician?

25 A. That's what it states in the report.

1 Q. I understand that. But was it based  
2 upon him being a treating physician?

3 A. Not necessarily. I testified that many  
4 times I have foundations laid by consultive  
5 physicians and foundations laid by individuals  
6 that don't examine.

7 Q. But I am --

8 A. As long as they are physicians, that's  
9 what I need, a medical foundation.

10 Q. Okay. But I am asking you in this case,  
11 though, right, in this case did you draw your  
12 opinions and conclusions predicated upon the fact  
13 that Lattuga was a treater?

14 MR. McELFISH: We covered this about  
15 five times. Form.

16 You can answer.

17 THE WITNESS: I have answered that  
18 question already.

19 MR. MOROKNEK: See, I don't think you  
20 have answered it, actually.

21 MR. McELFISH: He has several times.

22 BY MR. MOROKNEK:

23 Q. Why don't you answer it again?

24 A. Okay.

25 Q. Go ahead.

1           A. Well, I read his report. It states he  
2           is a treater. I have already testified that, of  
3           course, I would like to have a foundation laid by  
4           a treating doctor. We have discussed why. But  
5           many times that doesn't happen; and therefore, I  
6           have to have it done by either a consultative  
7           physician or maybe just a physician that -- a  
8           physician that reviewed the records. As long as  
9           I have a medical foundation, that's important to  
10          me.

11           MR. MOROKNEK: Okay. Thank you, sir,  
12          for the moment.

13           Go ahead.

14           MR. McELFISH: As we discussed,  
15          Mr. Moroknek, off the record, we -- I am  
16          going to ask some questions and mark some  
17          exhibits.

18           MR. MOROKNEK: Okay.

19           MR. McELFISH: And, you know, feel free  
20          if you need to depose Dr. Provder again --  
21          Mr. Provder again, you may do that for the  
22          third time.

23           MR. MOROKNEK: Okay.

24          EXAMINATION BY

25          MR. McELFISH:

1 Q. Okay. All right. I guess let me begin  
2 by marking some things and asking you some  
3 questions, Mr. Provder.

4 A. Okay.

5 MR. McELFISH: And let me preface my  
6 questions and with the idea that in the  
7 event that there is more motion practice on  
8 this issue or any issue related to this that  
9 we have -- we have a testimonial and exhibit  
10 record for the motions that may be brought.

11 Okay. So Mr. Moroknek has marked as an  
12 exhibit -- is it 1 for I.D. today? Provder  
13 1?

14 MR. MOROKNEK: Yes, yes, yes.

15 BY MR. McELFISH:

16 Q. Now, to be clear, that exhibit is the  
17 September 23rd, 2015, Lattuga report, correct?

18 A. Yes, sir.

19 Q. All right. And you relied upon this  
20 report in preparing your life care plan back in  
21 2015, true?

22 A. Yes.

23 Q. And I believe I said earlier that you --  
24 you looked at everything and relied upon  
25 everything in the report except for the cost

1 figures on the second-to-last page?

2 A. Yes.

3 MR. MOROKNEK: Objection to form.

4 BY MR. McELFISH:

5 Q. And that was because you researched your  
6 own cost issues, I believe?

7 A. Yes, sir.

8 Q. Okay. All right. And we will put that  
9 down, and just so we can sort of clear the room  
10 here, let's put these documents aside for a  
11 minute, and we will mark everything as we go.

12 There is two black binders on the table?

13 A. Yes, sir.

14 Q. Okay. And black binder number one, just  
15 so we can identify what we have today, is --  
16 appears to be Exhibit 3 through 14 of a two-part  
17 set, true?

18 A. Well, they are Tabs 3 through 14.

19 Q. Right. And this was the binder that was  
20 marked -- was this the binder that was marked in  
21 your first deposition in January?

22 A. I believe so.

23 Q. Okay. And we don't have exhibit tabs  
24 anywhere in this binder, presumably because the  
25 part of the exhibits that were in here are not



1 here now?

2 A. True.

3 Q. Okay. But can we infer from the second  
4 binder that the first binder here is Provder 1A  
5 for I.D.?

6 A. Yes.

7 Q. All right. And you don't know, as you  
8 sit here, what is here and what's not here or  
9 what's been returned?

10 A. Well, the index page for binder one,  
11 Provder 1A, is missing; and obviously, Tab 1 and  
12 Tab 2 are missing.

13 Q. Okay. So Tab 1 and 2 are missing?

14 A. Right.

15 Q. 3 is here. 4 is here. But I guess to  
16 make this simple, you don't know which ones are  
17 missing or which ones are not?

18 A. Other than what I have already put on  
19 the record, that would be correct.

20 Q. Okay. All right. And you were  
21 referring to this binder 1A that was previously  
22 marked in January throughout your deposition  
23 today?

24 A. True.

25 Q. Put it aside for now.

1 Now we have a second black binder here  
2 in the room that begins with Exhibit -- well, it  
3 begins with an index, and then Exhibit 15, true?

4 A. Yes.

5 Q. And it's also marked with an exhibit  
6 sticker Provder 1B for Identification. Do you  
7 see that?

8 A. Yes.

9 Q. And this was also marked as 1B -- this  
10 was marked, in fact, as 1B at your first  
11 deposition in January?

12 A. True.

13 Q. And you also referred to parts of this  
14 exhibit while you were testifying earlier to  
15 Mr. Moroknek's questions, true?

16 A. Yes.

17 Q. Now, what I want to do, just for  
18 completeness, is mark for I.D. a copy of your --  
19 mark for I.D. a copy of your life care plan  
20 that's not here today. Is this the same as the  
21 one that you produced in this case if you know?

22 A. Yes, sir.

23 MR. McELFISH: So do you have a sticky,  
24 Darcy?

25 THE REPORTER: Yes.

1 MR. McELFISH: Do you want me to do it  
2 for you? Oh, you already did it.

3 So we will mark the life care plan that  
4 was prepared in December '15 as Exhibit 2  
5 for I.D., and make that part of the record.  
6 Okay?

7 MR. MOROKNEK: Now that, just so we  
8 understand, that's a duplicate original copy  
9 of the life care plan?

10 THE WITNESS: Duplicate of the original  
11 copy, yes, sir.

12 MR. MOROKNEK: Okay. And the original  
13 copy now, we don't know where that is?

14 MR. McELFISH: It's with the court  
15 reporter, probably.

16 But this is -- just to be even hopefully  
17 clearer, this is just a copy of what was  
18 already produced at your first exhibit  
19 [sic]; you just had to print it out today.

20 THE WITNESS: Correct. First  
21 deposition.

22 MR. MOROKNEK: Deposition, yes, sir.

23 (Provder Exhibit 2, life care plan  
24 December '15, marked for Identification.)

25 BY MR. McELFISH:

1 Q. Okay. Now, we can share this if you  
2 want. Actually, what we will do as mark this as  
3 4 for I.D.

4 This is your deposition transcript from  
5 January?

6 MR. MOROKNEK: Yes?

7 THE WITNESS: Yes.

8 THE REPORTER: Exhibit 3.

9 MR. McELFISH: I'm sorry. Yes, 3.

10 Thank you, Darcy.

11 We will go ahead and make that part of  
12 the record today. So your deposition from  
13 January will be considered 3 for I.D.

14 (Provder Exhibit 3, January 23, 2017  
15 deposition, marked for Identification.)

16 BY MR. McELFISH:

17 Q. I want to direct your attention to pages  
18 7 and 8 of this deposition transcript marked as  
19 Exhibit 3 for I.D. today where Mr. Barmen is  
20 asking you about Dr. Mobin's reports. Do you see  
21 that?

22 A. Yes.

23 Q. And you referenced an original report  
24 over here on page 8, and you referenced  
25 supplemental reports from Dr. Mobin?

1 A. Yes.

2 Q. Okay. And you indicate that they --  
3 specifically on page 7, at lines 18 -- that,  
4 "There are reports from Dr. Mobin that I don't  
5 have in the file that I wasn't -- I didn't bring  
6 with me. They just didn't make it into the file.  
7 That's all." What did you mean by that?

8 A. Well, there were reports that I had in  
9 my possession that just didn't get into the file  
10 binder Provder 1 or 1A or 1B.

11 Q. When you say didn't get into the file,  
12 do you mean they weren't printed? What do you  
13 mean?

14 A. Yes. They weren't printed, and my  
15 office didn't put them in the file for me.

16 Q. But you have had them in your possession  
17 as part of your expert file?

18 MR. MOROKNEK: Objection to form.

19 MR. McELFISH: I am sorry?

20 THE WITNESS: Yes.

21 BY MR. McELFISH:

22 Q. And do you know when you came into  
23 possession of those reports?

24 A. I don't recall.

25 Q. Okay. And do you know how many there

1 were?

2 A. We have them here.

3 Q. Okay. Yeah, no. I am going to do that  
4 next. All right. But you do testify that you  
5 had them in your file; you just failed to print  
6 them?

7 A. True.

8 MR. MOROKNEK: Objection to form.

9 MR. McELFISH: So that will be 4 for  
10 I.D. -- I'm sorry. 3 for I.D. is the  
11 transcript.

12 BY MR. McELFISH:

13 Q. Now let me show you what's going to be  
14 marked as 4 for I.D. Can you identify that  
15 exhibit, please?

16 A. Dr. Mobin's report dated August 10,  
17 2016.

18 Q. And is that the report that you  
19 referenced in your transcript?

20 A. Yes.

21 Q. Was that report in your file prior to  
22 your deposition in January of 2017?

23 MR. MOROKNEK: Objection to form. Asked  
24 and answered.

25 THE WITNESS: Yes.

1 MR. McELFISH: Well, I ask him generally  
2 if the report was in his file, but now I am  
3 directing the witness to a specific exhibit  
4 marked for I.D., so I didn't ask that  
5 before, and I just want to ask it again  
6 because I want it to be clear.

7 BY MR. McELFISH:

8 Q. Is the August 10, 2016, report marked  
9 for I.D. as Exhibit 4 today the report you were  
10 referencing that was in your file?

11 A. Yes.

12 MR. MOROKNEK: Objection to form.

13 (Provder Exhibit 4, Dr. Mobin's report  
14 dated August 10, 2016, marked for  
15 Identification.)

16 BY MR. McELFISH:

17 Q. I'm sorry?

18 A. Yes.

19 Q. Okay. And did you rely upon this report  
20 in forming your life care plan and your opinion?

21 A. Yes.

22 MR. MOROKNEK: Objection to form.

23 BY MR. McELFISH:

24 Q. Let's go to -- and is that the report  
25 you indicated you had but you did not print out?

1 A. Yes.

2 MR. MOROKNEK: Form.

3 (Provder Exhibit 5, report of Dr. Mobin  
4 dated November 20, 2016, marked for  
5 Identification.)

6 BY MR. McELFISH:

7 Q. So we will go to 5 for I.D. now. Tell  
8 me what this is.

9 A. A report of Dr. Mobin dated November 20,  
10 2016.

11 Q. Okay. And did you rely upon and review  
12 that?

13 A. Yes.

14 Q. Was that referenced in your deposition  
15 transcript in January of '17?

16 MR. MOROKNEK: Objection to form.

17 THE WITNESS: Yes.

18 BY MR. McELFISH:

19 Q. And same question for the next one,  
20 which will be marked as Provder 6 for I.D.

21 MR. MOROKNEK: When he asked him if he  
22 relied upon this last document, please note  
23 my objection to the form of that question.

24 Thank you.

25 (Provder Exhibit 6, report from



1 Dr. Mobin dated November 28, 2016, marked  
2 for Identification.)

3 BY MR. McELFISH:

4 Q. Let me show you what's marked for I.D.  
5 as Exhibit 6, Provder 6. Can you identify it?

6 A. Yes. This is a report from Dr. Mobin  
7 dated November 28, 2016.

8 Q. Did you rely upon that in forming your  
9 opinions?

10 MR. MOROKNEK: Form objection.

11 THE WITNESS: Yes.

12 BY MR. McELFISH:

13 Q. Did you have that in your file? When  
14 did you receive that in your file?

15 A. Before my deposition of January this  
16 year.

17 Q. Okay. And because there were form  
18 objections, let me just go back to Provder 5 for  
19 I.D. When did you have this in your file?

20 A. Before my deposition.

21 Q. And same thing with respect to Provder 4  
22 for I.D., when did you have this in your file?

23 A. Before my deposition.

24 MR. McELFISH: Now, so the last one that  
25 was marked is the November 28, 2016,

1 supplemental report from Mobin marked today  
2 as Provder 6 for I.D.

3 Moving right along. Okay. Let's go to  
4 7 for I.D.

5 (Provder Exhibit 7, Provder supplemental  
6 report dated November 17, 2016, marked for  
7 Identification.)

8 BY MR. McELFISH:

9 Q. Tell me what this is.

10 A. Supplemental report that I authored  
11 dated November 17, 2016.

12 Q. What was the purpose of that report?

13 A. That was a report that noted that I had  
14 received defense reports from Peter Capotosto and  
15 Ms. Cummings, and I reviewed those records.

16 Q. Was that specifically a rebuttal report?

17 A. It is.

18 MR. McELFISH: Let's go to 8 for I.D.

19 Provder 8 will be next.

20 (Provder Exhibit 8, Provder rebuttal  
21 report dated November 28, 2016, marked for  
22 Identification.)

23 BY MR. McELFISH:

24 Q. Take a look at 8 for I.D. and tell me  
25 what it is.

1           A. This is a report I authored November 28,  
2           2016, which is a rebuttal report regarding  
3           Ms. Cummings' life care plan.

4           Q. What was the purpose of that?

5           A. Rebuttal to note my findings regarding  
6           my life care plan in comparison to the work that  
7           she did in the case.

8           MR. McELFISH: Okay. Now, fair enough.

9           Thank you. Let's go to Provder 9 for I.D.

10           (Provder Exhibit 9, New York Spine  
11           Specialists document signed by Dr. Cordiale,  
12           marked for Identification.)

13          BY MR. McELFISH:

14           Q. Can you identify this set of documents,  
15           please?

16           A. These are documents from New York Spine  
17           Specialists from signed by Dr. Cordiale from  
18           12 -- I am sorry -- from 11/17/14 -- sorry --  
19           11/17/14 to July 28, 2015.

20           Q. And are those the same records that are  
21           identified, if you know -- everything is as to if  
22           you know -- but are those the same records that  
23           are referred to in your life care plan on --  
24           authored on December 15, 2015, on page 5 under  
25           Positions where you indicate right here, New York

1 Spine Specialists 11/17/14 through 7/28/15  
2 referring to Provder 2 for I.D.?

3 A. Yes, sir.

4 MR. MOROKNEK: Objection to form.

5 BY MR. McELFISH:

6 Q. Okay. Then because of the objection,  
7 what is -- is Exhibit 9 for I.D. marked today  
8 indicated in your life care plan anywhere marked  
9 today as Exhibit 2 for I.D.?

10 A. Yes. Exhibit 9 is the records that I  
11 reviewed prior to authoring my life care plan  
12 from New York Spine Specialists referenced on  
13 page 5 of my report.

14 MR. MOROKNEK: May I see the exhibit?

15 BY MR. McELFISH:

16 Q. And while Mr. Moroknek is looking at  
17 that, did you rely upon --

18 MR. MOROKNEK: If you can hang on for  
19 one minute.

20 Could you open his report to what you  
21 just referred to please, sir?

22 MR. McELFISH: Sure.

23 MR. MOROKNEK: Thank you.

24 MR. McELFISH: Yo know, you do get a  
25 chance after I am done.

1 MR. MOROKNEK: I understand. I just  
2 want to make sure I know what you are  
3 talking about, that's all. I am not as  
4 smart as you.

5 MR. McELFISH: Page 5 of -- we are  
6 referring to page -- for the record, page 5  
7 of Exhibit 2, which is the life care plan,  
8 duplicate life care plan.

9 MR. MOROKNEK: Show me what you just  
10 pointed to in comparing these two documents,  
11 please.

12 MR. McELFISH: Me or him?

13 MR. MOROKNEK: I don't care who.  
14 Somebody.

15 MR. McELFISH: First paragraph under  
16 Physicians.

17 MR. MOROKNEK: I got it now. Where is  
18 Exhibit 1?

19 MR. McELFISH: Here is 1.

20 MR. MOROKNEK: Thank you.

21 BY MR. McELFISH:

22 Q. Okay. Now, with respect to Exhibit 9  
23 for I.D., tell me what these are.

24 A. Well, these are the records from his  
25 treating doctor source, New York Spine

1 Specialists. They are signed by Dr. Cordiale,  
2 who is his doctor that treated him.

3 Q. Okay. And if you go back to the first  
4 record in this list that's marked cumulatively as  
5 9 for I.D., there is a report from 11/17/2014  
6 also referenced in your life care plan. Who is  
7 that authored by?

8 A. Another doctor from this group,  
9 Dr. Mikelis.

10 Q. So there is several doctors from this  
11 group that you have reviewed and relied upon?

12 A. Yes.

13 MR. McELFISH: Now, this next set of  
14 records let me mark for I.D. as 10.

15 (Provder Exhibit 10, New York Spine  
16 Specialists reports from 10/10/15; 12/15/15;  
17 3/22/16; 7/21/16; 10/20/16; 12/22/16, marked  
18 for Identification.)

19 Q. And for the record, 10, just for  
20 purposes of description, is New York Spine  
21 Specialists reports from October 10th of '15,  
22 December 15th of '15; appears to be March 22nd of  
23 '16; July 21st of '16; and October 20th of '16;  
24 and December 22nd of '16.

25 Okay. Can you tell me if you know what

1 those records are?

2 A. These are records from New York Spine  
3 Specialists that were referred to me after I  
4 authored my evaluation regarding Mr. Bauta's  
5 treatment.

6 Q. You mean after the life care plan?

7 A. Yes.

8 Q. Okay. Was that before you testified in  
9 January?

10 A. I received these documents before I  
11 testified, yes.

12 Q. Okay. Now, who authored these records?

13 A. Dr. Cordiale.

14 Q. And did you rely upon those in forming  
15 your opinions?

16 A. Well, those records were received after  
17 my evaluation and I did my life care plan, but  
18 they were taken into consideration in my  
19 testimony that I gave in my initial deposition  
20 and today's deposition.

21 Q. And how do they add to or do they add to  
22 your opinions?

23 A. No. They just indicate what his current  
24 treating source is and what they are doing for  
25 him now.

1 Q. And how does that affect your opinions  
2 in terms of life care plan?

3 A. Well, it's what I have in my records  
4 regarding the current treatments, is what they  
5 are implementing now regarding physical therapy  
6 and orthopedic consultation.

7 Q. Oh, I see. So they are actually  
8 implementing some of the things you said he  
9 needed?

10 MR. MOROKNEK: Objection to form.

11 THE WITNESS: Yes.

12 MR. McELFISH: Now, so let's mark as the  
13 next one in line, the deposition of  
14 Dr. Mobin. We will make it Provder 11 for  
15 I.D.

16 (Provder Exhibit 11, deposition of  
17 Dr. Mobin dated October 13, 2016, marked for  
18 Identification.)

19 BY MR. McELFISH:

20 Q. Let me show you this exhibit,  
21 Mr. Provder. First I.D. it?

22 A. Yes. This is Dr. Mobin's deposition  
23 dated October 13, 2016.

24 Q. And you reviewed that?

25 A. Yes, sir.



1 Q. And how, if at all, does that affect  
2 your opinion?

3 A. Dr. Mobin in his report -- in his  
4 deposition on page 54 notes that he agrees with  
5 my findings in my life care plan.

6 MR. McELFISH: Okay. And next one in  
7 line is 12 for I.D.

8 (Provder Exhibit 12, deposition of Wendy  
9 Cummings dated 2/3/2017, marked for  
10 Identification.)

11 BY MR. McELFISH:

12 Q. Please identify it.

13 A. This is the deposition of Wendy  
14 Cummings, C-U-M-M-I-N-G-S, 2/3/2017.

15 Q. Okay. And how has that affected your  
16 opinion?

17 A. It hasn't.

18 Q. I had a set of records here. I just  
19 want to make sure the marked exhibits are  
20 complete.

21 Also contained in Exhibit 9 for I.D.,  
22 this set of records from New York Spine  
23 Specialists, is also the Franklin Hospital  
24 surgical records, true?

25 A. Yes.

1 Q. Okay. And those are also listed in your  
2 life care plan as records reviewed. I am just --  
3 to help you out. Prior to -- these were reviewed  
4 prior to authoring your report, and I am going to  
5 refer you to page 7 of your life care plan.

6 A. I see it.

7 Q. There are several references to the  
8 Franklin North Shore Hospital records?

9 A. Yes, sir.

10 Q. And the Franklin Medical Center records  
11 that you reviewed and relied upon?

12 A. Yes, sir.

13 Q. Okay. So here is all of the records for  
14 your reference if you need to look at them. I  
15 will ask you a couple of questions, and then I am  
16 going to give it to Mr. Moroknek again.

17 Now, if you review records prior to  
18 putting together a life care plan, you include  
19 those records in the plan?

20 A. Yes.

21 MR. MOROKNEK: Form.

22 BY MR. McELFISH:

23 Q. All right. And do you issue  
24 supplemental reports on records you receive after  
25 your initial life care plan?

1 A. Sometimes.

2 Q. And when do you and when do you not?

3 A. When it's requested --

4 Q. Okay.

5 A. -- from the referring source.

6 Q. Okay. Do any of the records that you  
7 have received in this case after your life care  
8 plan was authored in December of 2015 change your  
9 opinions?

10 A. No, sir.

11 Q. If any of them changed your opinions --  
12 your opinion, would you have issued a  
13 supplemental report?

14 MR. MOROKNEK: Objection to form.

15 THE WITNESS: Yes. I would have issued  
16 a supplemental report, and I would have  
17 modified the life care plan.

18 BY MR. McELFISH:

19 Q. Okay. Now earlier when Mr. Moroknek was  
20 questioning you, he questioned you -- let's begin  
21 with the issue of Dr. Lattuga being a treating  
22 doctor. Okay?

23 A. Yes.

24 Q. Did you also understand that Dr. Lattuga  
25 was a retained expert in this case?

1 MR. MOROKNEK: Objection to form.

2 THE WITNESS: Yes.

3 BY MR. McELFISH:

4 Q. And do you -- is it your custom and  
5 practice as an expert witness to rely upon  
6 opinions of expert witnesses or retained experts?

7 A. Yes.

8 Q. And when you testified earlier in  
9 response to Mr. Moroknek's questions, and you  
10 testified about a consulting doctor, did you mean  
11 a retained expert witness?

12 A. Yes.

13 MR. MOROKNEK: Objection to form.

14 BY MR. McELFISH:

15 Q. In other words, a doctor that had  
16 reviewed the records and come to opinions that  
17 may not have treated the plaintiff?

18 A. Yes.

19 Q. In this case you have had the treating  
20 doctor in this case, Dr. Cordiale's records, and  
21 Dr. Mikelis's records since 2014?

22 MR. MOROKNEK: Objection to form.

23 THE WITNESS: Yes.

24 BY MR. McELFISH:

25 Q. How far back do the treating records go

1 with respect to Dr. Mikelis and Dr. Cordiale that  
2 you have in your file?

3 MR. MOROKNEK: Form objection.

4 MR. McELFISH: That's why I asked it  
5 again, so I corrected the form.

6 BY MR. McELFISH:

7 Q. Let me speed this up.

8 A. From November 17, 2014, to July 2015.

9 Q. And to your understanding, Dr. Mikelis  
10 and Dr. Cordiale were the treating doctors in  
11 this case and not Dr. Lattuga?

12 A. Yes.

13 Q. All right. Do the reports, both the  
14 reports before you issued your report and the  
15 reports you have received after you issued your  
16 report, do they provide sufficient information  
17 for you in order for you to issue a life care  
18 plan in this case?

19 A. Yes.

20 MR. MOROKNEK: Objection to form.

21 THE WITNESS: Yes.

22 BY MR. McELFISH:

23 Q. Aside from Dr. Lattuga's September 2015  
24 report marked as Exhibit 1 for I.D., do the  
25 treating records from Dr. Cordiale and

1 Dr. Mikelis provide a sufficient foundation for  
2 your opinion?

3 A. Yes. They are medical treating doctors,  
4 and they set forth the type of treatment they  
5 administered to Mr. Bauta, as well as the therapy  
6 that they recommended.

7 Q. All right. And to your understanding,  
8 Mr. Provder, did Dr. Lattuga's September 23,  
9 2015, report add anything additional other than  
10 what you had seen in his treating records from  
11 New York Spine?

12 MR. MOROKNEK: Objection to form.

13 THE WITNESS: Well, Dr. Lattuga's report  
14 is specific as to what his opinion is  
15 regarding Mr. Bauta's long-term medical care  
16 needs.

17 BY MR. McELFISH:

18 Q. I see. So Dr. Lattuga's report, what it  
19 does different from Dr. Cordiale's reports, is it  
20 gives a projection of future care?

21 A. True.

22 Q. All right. Okay. Now, you were asked  
23 by Mr. Moroknek that one way for you to have  
24 foundation for your opinions is through a  
25 treating doctor, but I believe you just said

1 another way is through a retained expert?

2 A. Yes.

3 Q. Or both in this case?

4 A. True.

5 Q. All right. And to your understanding,  
6 when Mr. Moroknek was asking you if you  
7 interviewed Mr. Bauta, do you have any  
8 understanding as to whether or not Dr. Cordiale  
9 met Mr. Bauta? Dr. Cordiale, the treating  
10 doctor?

11 MR. MOROKNEK: Objection to form. As --  
12 hang on -- as Dr. Cordiale is characterized  
13 in that question.

14 MR. McELFISH: Let me rephrase it, then.  
15 BY MR. McELFISH:

16 Q. You understand from the exhibits that  
17 are in your file that have been marked that Dr.  
18 Cordiale was the treating doctor in this case?

19 MR. MOROKNEK: Objection to form.

20 MR. McELFISH: What's the form  
21 objection? I am asking him what his  
22 understanding is.

23 MR. MOROKNEK: Well, no. You are asking  
24 what his understanding is and then telling  
25 him what his understanding is. Ask him what

1 his understanding is.

2 BY MR. McELFISH:

3 Q. What's your understanding of Dr.  
4 Cordiale's role in the case?

5 A. Based on the records I reviewed, it  
6 appears that he is Mr. Bauta's treating  
7 physician.

8 Q. Right. Okay. So do you have any  
9 understanding based upon your review of those  
10 records as to whether or not Dr. Cordiale met  
11 with and examined and saw Mr. Bauta?

12 MR. MOROKNEK: Objection to form. Lacks  
13 foundation. How would he possibly know  
14 that?

15 MR. McELFISH: Well, I am asking -- the  
16 foundation is -- hold on.

17 MR. MOROKNEK: You can ask the question.

18 MR. McELFISH: But I am not asking  
19 questions where there's objections and then  
20 later the objections are raised. I am  
21 trying to cure the objection. That happens  
22 a lot, just so you know.

23 MR. MOROKNEK: Okay. So I appreciate  
24 that.

25 MR. McELFISH: Right. I am trying to



1           cure the objections. So the objection is,  
2           how would he know?

3 BY MR. McELFISH:

4           Q. Have you reviewed Dr. Cordiale's records  
5 to see whether or not he actually met with or  
6 actually examined clinically -- excuse me --  
7 actually clinically examined Mr. Bauta on one or  
8 more than one occasion?

9           MR. MOROKNEK: Objection to form.

10          THE WITNESS: Yes. The records reflect  
11 that he did, and he conducted medical  
12 examinations of Mr. Bauta quite a number of  
13 occasions.

14 BY MR. McELFISH:

15          Q. And he also operated on him twice, true?

16          A. True.

17          MR. MOROKNEK: Objection to form.

18          MR. McELFISH: What's the --

19          MR. MOROKNEK: You are asking him -- all  
20 you do is ask leading questions. The  
21 objection is --

22          MR. McELFISH: Fair enough.

23          MR. MOROKNEK: That's all. Just let him  
24 testify. That's fine.

25 BY MR. McELFISH:

1 Q. To your knowledge, was Dr. Cordiale Mr.  
2 Bauta's treating surgeon?

3 A. Yes.

4 Q. And to your knowledge, did he operate on  
5 Mr. Bauta?

6 A. Yes.

7 Q. How many occasions?

8 A. Twice, I believe.

9 Q. Do you know what the operations were?

10 A. Surgery to his back, lower back.

11 Q. Okay. Now, with respect to Dr. Mobin's  
12 reports, you have reviewed and relied upon those  
13 as well, true?

14 A. Yes.

15 Q. And they -- let's take a look at those  
16 for the next set of questions.

17 MR. MOROKNEK: I am sorry, Ray. His  
18 reports or his depositions?

19 MR. McELFISH: His reports.

20 BY MR. McELFISH:

21 Q. Beginning with his August 10th report,  
22 what did you rely on in terms -- tell us what you  
23 relied upon in his -- in that report.

24 MR. MOROKNEK: 10/16. Forgive me.

25 THE WITNESS: Well, Dr. Mobin reviewed

1 the records, talked about Mr. Bauta, and  
2 then formulates an opinion as to his long-  
3 term medical care needs as noted in page 5  
4 of his report dated August 10, 2016, from  
5 Provder 4.

6 BY MR. McELFISH:

7 Q. Okay. And did you specifically -- let  
8 me ask it this way:

9 You already -- at the time that you  
10 reviewed Dr. Mobin's August 10, 2016, report, you  
11 already had issued a life care plan, true?

12 A. Yes.

13 Q. Okay. So how did Dr. Mobin's opinions  
14 about the future care needs affect your life care  
15 plan?

16 A. Well, essentially, he came to the same  
17 opinions that I came to and states on page 5.

18 Q. Okay. So was it -- based on the  
19 August 10, 2016, report of Dr. Mobin, did the  
20 future care needs of Mr. Bauta change in any way  
21 from your December 15, 2015 life care plan?

22 MR. MOROKNEK: Objection to form.

23 THE WITNESS: No, sir.

24 MR. McELFISH: What's the objection? I  
25 am asking --

1 MR. MOROKNEK: To form.

2 MR. McELFISH: What's the form  
3 objection? I am asking if it changed in any  
4 way.

5 MR. MOROKNEK: If what changed in any  
6 way?

7 MR. McELFISH: If his opinions that were  
8 in his 2015 life care plan changed in any  
9 way based upon Mobin's report in August of  
10 2016.

11 MR. MOROKNEK: That postdated his  
12 report?

13 MR. McELFISH: Correct.

14 MR. MOROKNEK: Right.

15 MR. McELFISH: If it changed those  
16 opinions going backwards. He had opinions  
17 in 2015.

18 MR. MOROKNEK: Right.

19 MR. McELFISH: And he got the new  
20 records in with some future medical care.

21 MR. MOROKNEK: Right.

22 MR. McELFISH: Did it change his  
23 opinions? Yes or no? And if so, how?

24 THE WITNESS: Is there a pending  
25 question?

1 MR. McELFISH: That's the question.

2 THE WITNESS: It did not. It did not --  
3 Dr. Mobin's report, Exhibit 4, did not  
4 change my opinions as noted in my  
5 December 15th life care plan.

6 BY MR. McELFISH:

7 Q. And because this has become an issue in  
8 the case, and has been before the Court, can you  
9 tell us why it did not change your opinion?

10 A. Because --

11 Q. Excuse me. "It" meaning the August 10,  
12 2016, Mobin report, why that report did not  
13 change your opinions in your December 2015 life  
14 care plan?

15 A. Because Dr. Mobin's long-term medical  
16 care opinions are similar to the opinions that I  
17 reached in my life care plan dated December 2015,  
18 and so, therefore, my opinions did not change.

19 Q. And with respect to Dr. Lattuga's report  
20 from September of 2015, did you have a chance to  
21 compare Dr. Mobin's August 10, 2016, report and  
22 Dr. Lattuga's September 2015 report?

23 A. Yes.

24 MR. MOROKNEK: Objection to form.

25 MR. McELFISH: Just asking if he a

1 chance to compare them.

2 MR. MOROKNEK: I hear what you are  
3 asking.

4 MR. McELFISH: What's the objection?

5 MR. MOROKNEK: Comparison. He is  
6 comparing the opinions of two doctors, one  
7 who didn't -- both of whom didn't see the  
8 plaintiff?

9 MR. McELFISH: But they are experts.

10 MR. MOROKNEK: I know who they are.  
11 Actually, that's not true. That's actually  
12 not true. At the time that he considered  
13 Lattuga's report, he was not an expert. He  
14 was a treating doctor.

15 MR. McELFISH: Not true.

16 MR. MOROKNEK: I think it is.

17 MR. McELFISH: Dr. Lattuga, just for our  
18 own purposes here today so we have a clear  
19 record, Dr. Lattuga's been an expert up  
20 until, I quote, he was designated in August  
21 of 2016 when the destination dates -- you  
22 know, when the expert designations were  
23 issued, Dr. Lattuga was designated as a  
24 retained expert in the case. I do believe.  
25 I will check.

1 MR. MOROKNEK: Okay.

2 MR. McELFISH: And was only de-  
3 designated briefly I think in February of  
4 2017 or maybe it was December of '16, and  
5 then the Court ruled he could come back in  
6 and testify. We will see where that goes  
7 but --

8 MR. MOROKNEK: Okay.

9 MR. McELFISH: But I do believe at the  
10 time that the experts were disclosed,  
11 Dr. Lattuga was a retained expert.

12 MR. MOROKNEK: Okay.

13 MR. McELFISH: So --

14 MR. MOROKNEK: You are asking the  
15 witness to compare A and B?

16 MR. McELFISH: Yeah. I want to know --

17 MR. MOROKNEK: I want to know.

18 MR. McELFISH: -- because you and I had  
19 an off-the-record discussion about what  
20 happens if Dr. Lattuga is not in the case.

21 MR. MOROKNEK: Yep. Yep.

22 BY MR. McELFISH:

23 Q. Is there any difference in terms of  
24 formulating a life care plan between the reports  
25 of Dr. Lattuga as an expert and the reports of

1 Dr. Mobin?

2 MR. MOROKNEK: Objection to form.

3 THE WITNESS: The main difference is  
4 that Dr. Lattuga suggests a cervical fusion.  
5 Dr. Mobin opines no opinion.

6 BY MR. McELFISH:

7 Q. Okay. And did that change your life  
8 care plan in any way?

9 A. No.

10 Q. All right. Is there any other  
11 difference between Dr. Mobin and Dr. Lattuga's  
12 opinions and/or reports? Let's just stick with  
13 reports. Is there any difference from a life  
14 care planning point of view, Mr. Provder, is  
15 there any difference between the report of  
16 Dr. Mobin from August 10th of 2016 and the report  
17 of Dr. Lattuga from September 23rd of 2015 as far  
18 as you are concerned as an expert?

19 MR. MOROKNEK: Objection to form. The  
20 documents will speak for themselves. If  
21 there is a distinction between the two  
22 documents, then the distinction exists.

23 MR. McELFISH: You missed the point of  
24 the question.

25 MR. MOROKNEK: I don't think I did. I



1 heard what you said.

2 MR. McELFISH: The point of the question  
3 is --

4 MR. MOROKNEK: I don't care what  
5 perspective, for purposes of vocational  
6 rehabilitation perspective or whatever, the  
7 documents are what they are.

8 MR. McELFISH: But you are interrupting.

9 MR. MOROKNEK: I don't think I am. I am  
10 making an objection.

11 MR. McELFISH: Just make it so the  
12 witness can answer.

13 MR. MOROKNEK: Okay.

14 BY MR. McELFISH:

15 Q. From -- let me clear it up for  
16 Mr. Moroknek.

17 So for purposes of your opinion as a  
18 life care expert and the needs of Mr. Bauta for  
19 the future, was there a difference between the  
20 opinions that you relied upon of Dr. Mobin and  
21 Dr. Lattuga?

22 MR. MOROKNEK: Objection to form.

23 MR. McELFISH: You may answer.

24 THE WITNESS: The only difference was  
25 that Dr. Lattuga suggests and recommends a

1           cervical fusion. Dr. Mobin does not.

2       BY MR. McELFISH:

3           Q. But both experts recommended lumbar  
4       future care and other future care, correct?

5           MR. MOROKNEK: Objection to form.

6       Leading.

7           MR. McELFISH: Sorry?

8           THE WITNESS: Yes, sir.

9       BY MR. McELFISH:

10          Q. Well, let me ask it this way: What  
11       other, if you can say, what other similarities or  
12       what other recommendation -- future care  
13       recommendations did both experts agree on?

14          MR. MOROKNEK: You mean after you just  
15       told him? Objection to form.

16          MR. McELFISH: I didn't tell him. It's  
17       very specific as to the actual needs.

18          MR. MOROKNEK: Objection to form.

19          MR. McELFISH: You can keep those snide  
20       comments to yourself.

21          MR. MOROKNEK: It wasn't snide. It was  
22       pretty straight.

23          MR. McELFISH: It's snide because --

24          MR. MOROKNEK: Objection to form. No,  
25       no, no. Objection to form. Ask your

1 question. If you have a question, can ask  
2 the question.

3 MR. McELFISH: No, no, no. I want to  
4 explain because I didn't actually tell him  
5 what the medical needs were. That's his  
6 testimony.

7 MR. MOROKNEK: You asked the question in  
8 a leading form, suggesting the answers to  
9 the question.

10 MR. McELFISH: The question was what --

11 MR. MOROKNEK: Then you fixed the  
12 question or attempted to fix the question.

13 MR. McELFISH: Let me start over, and  
14 listen carefully, please.

15 MR. MOROKNEK: I will do my best.

16 MR. McELFISH: Please.

17 BY MR. McELFISH:

18 Q. What are the future medical needs --  
19 what future medical needs that you have opined  
20 on, Mr. Provder, do both experts agree on?

21 A. As I indicated before, both experts  
22 agree on all future medical needs except the  
23 cervical fusion, which Dr. Lattuga suggested.

24 Q. Okay. And you did not accept any of the  
25 cost figures from either expert for the future

1 care needs?

2 MR. MOROKNEK: Objection to form. Asked  
3 and answered.

4 THE WITNESS: True.

5 BY MR. McELFISH:

6 Q. It was asked of Dr. Lattuga. I am  
7 asking now both for Dr. Mobin. True?

8 A. I did my own research as to the cost of  
9 all the items in the life care plan, and that  
10 documentation has been marked previously in the  
11 first deposition. I don't know the number that  
12 it was marked as.

13 Q. Then you spoke with Dr. Mobin about his  
14 reports and your life care plan?

15 MR. MOROKNEK: Objection to form.

16 Leading.

17 THE WITNESS: Yes.

18 BY MR. McELFISH:

19 Q. Okay. And you have already testified as  
20 to that conversation?

21 A. Yes.

22 MR. McELFISH: I don't believe I have  
23 any further questions of this witness at  
24 this time, Mr. Moroknek. You are free to  
25 question -- I realize I marked a number of

1 documents that were originally in his --

2 MR. MOROKNEK: I actually appreciate  
3 that.

4 MR. McELFISH: That were in his  
5 possession before that were not -- that were  
6 not questioned about in the prior  
7 deposition, but as I indicated in a  
8 meet-and-confer letter, that these were part  
9 of his file, and certainly to the degree you  
10 want to question him on them today, he is  
11 here, and you are welcome to.

12 MR. MOROKNEK: Let's just clarify  
13 that --

14 MR. McELFISH: Sure.

15 MR. MOROKNEK: -- real quick. The  
16 Mobin -- Mobin reports of August 10, 2016,  
17 and November 20, 2016, November 28, 2016,  
18 now marked 4, 5, and 6 respectively, were  
19 not in his file at the time of the last  
20 deposition because he says they weren't  
21 copied.

22 MR. McELFISH: Not true.

23 MR. MOROKNEK: So then, please, that's  
24 what I am saying. What --

25 MR. McELFISH: He is saying it was in

1 his file, but he didn't print them and put  
2 them in the binder, but he had them in his  
3 possession and in his working file. That's  
4 what he said in his deposition. I am not  
5 saying that. That's what he said.

6 MR. MOROKNEK: No, I understand that.  
7 My recollection was a little different, but  
8 similar.

9 MR. McELFISH: There were a couple of  
10 things that he had not printed because he  
11 was in a rush, and Mr. Barmen asked him to  
12 go print one thing in particular, which he  
13 did go print, but there were a couple of  
14 other things he had not printed.

15 MR. MOROKNEK: So did -- hang on a  
16 second.

17 MR. McELFISH: Page 7 and 8. If you  
18 look at 7, he says he had his reports, and  
19 Barmen says, "You mean the supplemental  
20 reports?" I mean, those are rebuttal  
21 reports. He wouldn't rely on those. They  
22 were rebuttal as to Casden and Provenzale  
23 and Rabin.

24 MR. MOROKNEK: Okay. So he had an  
25 opportunity to question him on that is my

1 question.

2 MR. McELFISH: I am sorry?

3 MR. MOROKNEK: So at the last  
4 deposition, he was questioned with regard to  
5 the Mobin reports or no?

6 MR. McELFISH: He was, on 7 and 8.

7 MR. MOROKNEK: No. I don't think he  
8 was. He was asked if they were part --

9 MR. McELFISH: He was not questioned.

10 MR. MOROKNEK: He didn't have them  
11 physically.

12 MR. McELFISH: I am sorry, Harold. He  
13 was not questioned about the substance of  
14 the reports, no.

15 MR. MOROKNEK: Right.

16 MR. McELFISH: And as I said in my  
17 meet-and-confer, in all fairness, since we  
18 are a ways from trial, and he is here, you  
19 are more than welcome to do it outside the  
20 scope of the Court's order.

21 And just, by the way, Harold, so we are  
22 clear, you are free to ask this man anything  
23 you want about his opinions. I don't want  
24 to limit you in any way.

25 MR. MOROKNEK: Wait a minute. Go off

1 the record for a minute.

2 (Discussion off the record.)

3 EXAMINATION BY

4 MR. MOROKNEK:

5 Q. So just a couple of things that I am not  
6 sure if I am clear about.

7 Mr. McElfish showed you, and you guys  
8 talked -- you talked about what you reviewed  
9 regarding New York Spine Specialists.

10 A. Yes.

11 Q. And you referenced records from  
12 November 17, 2014, to September 28, 2015.

13 A. Yes. Actually the records are  
14 referenced on page 7, I believe it is, that we  
15 discussed before.

16 Q. Right. And I guess my question is --  
17 right. My question is: Why here, the following  
18 physician's records were reviewed, you say,  
19 Dr. Lattuga, New York Spine, November 17, 2014,  
20 September 23, 2015, right? In other words, why  
21 is this not the same as this under Physicians?  
22 We are talking page 5 and page 6. You see what I  
23 am --

24 A. I had a Dr. Cordiale in there. I don't  
25 understand what the question is.



1 Q. Well, the question is pretty simple. I  
2 want to know why you referenced dates of  
3 November 17, 2014 to September 28, 2015 under  
4 Physicians, and then under -- whoops, under  
5 where? Under the following physician's records  
6 were reviewed on page 7, you say Dr. Lattuga, New  
7 York Spine, November 17, 2014 to September 23,  
8 2015.

9 A. Because this section here on page 5  
10 talks about doctors, doctors that he consulted or  
11 seen. And that's --

12 Q. Say the last part of that again. Not --

13 A. These are doctors that he has seen --

14 Q. Right.

15 A. -- or that he was seeing at the time.

16 Q. Right.

17 A. He indicated these are the doctors that  
18 he saw. Okay? Dr. Cordiale, and as you can see,  
19 I have their telephone number there.

20 Q. Yes.

21 A. And that's the dates of the blurb that I  
22 used regarding the diagnosis. That's my typical  
23 way of doing it. And here is the actual records.  
24 The records, again, are the same type of dates  
25 except I have Dr. Lattuga's date in there as the

1 final date. That's all.

2 Q. But I don't understand why you omitted  
3 it on page 5. "It" being the September 23, 2015  
4 date.

5 A. Because, obviously, what I did, as I  
6 previously testified, that I used the diagnosis  
7 here from Dr. Cordiale in his report as part of  
8 this description.

9 Q. That's not obvious to me. So --

10 A. It's obvious to me.

11 Q. So forgive me.

12 A. Okay.

13 Q. But you say here, you say nothing about  
14 Dr. Cordiale, but you say, "Dr. Lattuga states  
15 status post posterior spinal fusion and  
16 laminectomy." You don't say Dr. Cordiale states.

17 A. No. But I indicate here, this is a  
18 section that deals with his treatment, and he  
19 indicated that his treatment was from Dr.  
20 Cordiale at New York Spine Specialists.

21 Q. But as I asked you before, when you  
22 first got the report of Dr. Lattuga and prior  
23 thereto, you were under the understanding that  
24 Dr. Lattuga was the treating physician?

25 A. One of the treating physicians.

1 Q. Okay. So again, I mean, we can agree  
2 that you don't mention Cordiale in this portion  
3 on page 5?

4 A. I do here.

5 Q. Forgive me. You are right. You say,  
6 "Dr. Lattuga states," you don't say "Dr. Cordiale  
7 states."

8 A. Because that's -- I am quoting from  
9 Dr. Lattuga's report that we just discussed as  
10 the diagnosis, and I have already talked about  
11 the diagnosis maybe ten times already.

12 Q. Okay.

13 A. And I am not sure of the relevancy of  
14 any of this.

15 Q. Okay. I think we --

16 MR. McELFISH: Don't worry about the  
17 relevancy. Just answer his questions.

18 THE WITNESS: I had a deposition  
19 scheduled for 30 minutes, and now we are on  
20 the third hour.

21 MR. McELFISH: Easy.

22 THE WITNESS: No, not easy. I have  
23 clients to see today, also.

24 MR. McELFISH: He is right, actually.

25 MR. MOROKNEK: I know. Give me minute.

1 MR. McELFISH: By the way -- stay on the  
2 record, please.

3 In looking at the exhibit books that  
4 were exchanged in August of 2016, Exhibit C  
5 was Sebastian Cordiale as an orthopedic.

6 MR. MOROKNEK: Sebastian Cordiale?

7 MR. McELFISH: Yeah. I'm sorry. Yes,  
8 Cordiale and Lattuga both. Lattuga was  
9 exchanged, but Cordiale's reports were  
10 included in July 21st -- this is the book.

11 MR. MOROKNEK: But this doesn't have  
12 anything to do with what I just asked him.

13 MR. McELFISH: I know, but I am letting  
14 you know that earlier you were disputing  
15 that he was a retained expert, and here is  
16 his retention documents under Rule 26.

17 MR. MOROKNEK: Thank you, sir.

18 MR. McELFISH: Do you have any further  
19 questions of this witness?

20 MR. MOROKNEK: Not at the moment.

21 MR. McELFISH: And we have all of these  
22 exhibits, I just want to make sure.

23 MR. MOROKNEK: The purpose of our  
24 deposition today was to talk to him about  
25 Dr. Lattuga.

1 MR. McELFISH: Yeah, right.

2 MR. MOROKNEK: It wasn't to talk to him  
3 about, you know, the records that he didn't  
4 have in his file at the last deposition.  
5 That's all.

6 MR. McELFISH: Well, A, they were in his  
7 file. They were not printed. Clear from  
8 his transcript.

9 MR. MOROKNEK: Hang on. Hang on.

10 MR. McELFISH: You have gone into a lot  
11 of areas beyond Dr. Lattuga.

12 MR. MOROKNEK: I appreciate that. I  
13 appreciate that.

14 MR. McELFISH: So I'm telling you he is  
15 here to be deposed.

16 MR. MOROKNEK: We have no further  
17 questions at this time.

18 MR. McELFISH: Sorry. One thing. I got  
19 to make a statement on the record here.

20 As I indicated in my meet-and-confer  
21 letters to counsel a number of times, these  
22 were records in Mr. Provder's file. They  
23 had not been printed, and they had not been  
24 requested, and they were not questioned on,  
25 and you are certainly welcome to question

1 him on them now. They are here.

2 MR. MOROKNEK: You want to spend two  
3 hours on it, I will do it.

4 MR. McELFISH: Sure. He will cancel  
5 patients, and I will pay for it. No  
6 problem.

7 THE WITNESS: If you are, I need a  
8 break. I have to go to the bathroom, and I  
9 have to find out where my clients are.

10 MR. McELFISH: Give him a time estimate  
11 because he is going to have to cancel  
12 patents.

13 MR. MOROKNEK: Go to the bathroom.

14 THE WITNESS: Do I have to go upstairs  
15 and tell them?

16 MR. MOROKNEK: Not yet.

17 (Break taken.)

18 MR. McELFISH: So we have taken break;  
19 discussed this with Mr. Moroknek. Exhibits  
20 have been attached. He is welcome to  
21 question the witness. He is passing  
22 basically.

23 MR. MOROKNEK: I am not passing. I have  
24 no questions for him at this point.

25 MR. McELFISH: That's it. Then we can

1           close the record for today. The witness has  
2           asked Ms. Darcy how can he get these  
3           exhibits?

4           THE REPORTER: Can I go off?

5           (Time noted: 12:22 p.m.)  
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A C K N O W L E D G M E N T

STATE OF )  
 ) ss.:  
COUNTY OF )

I, EDMOND PROVDER, hereby certify that I  
have read the transcript of my testimony taken  
under oath in my deposition; that the transcript  
is a true, complete and correct record of my  
testimony, and that the answers on the record as  
given by me are true and correct.

\_\_\_\_\_  
EDMOND PROVDER

Signed and subscribed to before me, this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_.

Notary Public, State of \_\_\_\_\_



C E R T I F I C A T E

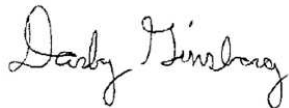
STATE OF NEW YORK       )  
  ) ss.:  
COUNTY OF NEW YORK     )

I, DARBY GINSBERG, a Notary Public  
within and for the State of New York, do hereby  
certify:

That EDMOND PROVDER, the witness whose  
deposition is herein before set forth, was duly  
sworn by me and that such deposition is a true  
record of the testimony given by such witness.

I further certify that I am not related  
to any of the parties to this action by blood or  
marriage; and that I am in no way interested in  
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 6th day of March, 2017.



DARBY GINSBERG  
Commission Number: 01GI6230654  
Expires: 11-1-2018

<b>A</b>	63:10,11 65:25 69:4 81:18 90:5 92:25 93:13 99:11 <b>akos</b> 1:6 <b>allow</b> 8:1 <b>allowing</b> 18:23 <b>altogether</b> 80:11 <b>ambiguous</b> 39:15 84:24 89:21 <b>america</b> 1:7 <b>amount</b> 66:13 <b>anderson</b> 1:6 <b>andor</b> 66:8 127:12 <b>answer</b> 5:25 6:2 6:3,8 7:25 8:2 9:8 21:23 31:15 33:1 34:9 35:9,13 35:15,16,20,23 35:24 36:3,4,5 36:9 38:22 39:11,16 40:24 41:7,15 43:10 44:8 45:1 50:20 55:5 67:24 76:3,5 76:15,16 80:6 84:19 89:22 91:1,16 92:16 92:23 128:12 128:23 138:17 <b>answered</b> 17:12 20:3 31:14 32:4 40:23 41:4,14 67:23 76:4 86:5 91:17 92:17,20 101:24 131:3 <b>answering</b> 33:13 <b>answers</b> 130:8 143:12 <b>anticipation</b>	9:11,19 31:8 <b>anybody</b> 9:3 <b>anybodys</b> 80:1 <b>apologize</b> 64:16 <b>appear</b> 31:18 65:1,4 <b>appears</b> 16:8 57:3 95:16 109:22 119:6 <b>applies</b> 65:10 <b>appreciate</b> 6:16 8:8 16:12 19:8 24:18 27:6 46:2,12,15,19 46:25 55:8 59:19 64:9 74:7 119:23 132:2 140:12 140:13 <b>appropriate</b> 18:22 <b>area</b> 79:25 84:6 84:7 <b>areas</b> 23:18 140:11 <b>arent</b> 63:23 79:16,23 <b>arguing</b> 61:17 <b>argumentative</b> 32:5 45:11,14 46:7,23 52:5 58:7 77:22 78:16 79:3 84:8,12,16 <b>arrived</b> 34:22,23 <b>aside</b> 95:10 96:25 116:23 <b>asked</b> 17:12 31:13 32:4 40:23 41:4,14 46:10 67:11,23 76:15 83:12 86:2 91:13 101:23 103:21 116:4 117:22	130:7 131:2,6 133:11 134:8 137:21 139:12 142:2 <b>asking</b> 27:6,9 34:5 41:3 43:7 45:12 51:22 53:12 77:24 92:10 94:2 99:20 118:6,21 118:23 119:15 119:18 120:19 122:25 123:3 124:25 125:3 126:14 131:7 <b>assessment</b> 40:19 <b>assistance</b> 46:20 <b>associated</b> 51:15 <b>assume</b> 20:16 29:8 33:24 34:18,20 38:24 38:25 44:3 65:11 80:16 83:12 <b>assuming</b> 83:17 <b>assumption</b> 29:10 65:13 <b>assumptions</b> 39:19 <b>attached</b> 141:20 <b>attempted</b> 130:12 <b>attention</b> 99:17 <b>attests</b> 72:6 <b>attorney</b> 41:8 <b>attorneys</b> 2:4,14 35:22 91:10 <b>august</b> 3:16 13:19 17:21 101:16 102:8 102:14 121:21 122:4,10,19 123:9 124:11 124:21 125:20	127:16 132:16 139:4 <b>authored</b> 52:17 52:18,22 64:23 70:24 71:22 81:7 85:5 105:10 106:1 106:24 109:7 110:4,12 114:8 <b>authoring</b> 107:11 113:4 <b>available</b> 6:19 7:14 <b>avenue</b> 1:12 2:15
			<b>B</b>	
			<b>b</b> 3:7 4:1 126:15 <b>back</b> 7:25 19:4 19:25 49:18 53:20 55:1 58:17 59:16 60:7,9,10,22 61:3 62:2,16 64:14 65:16 68:17 70:21 78:24 81:9 86:23 94:20 104:18 109:3 115:25 121:10 121:10 126:5 <b>background</b> 23:20 <b>backwards</b> 123:16 <b>bad</b> 64:14 <b>badgering</b> 46:3 <b>ballpark</b> 17:15 <b>barmen</b> 6:12 7:18 18:16,21 46:13 59:17 99:19 133:11 133:19 <b>base</b> 40:11 73:16 73:16 74:15	

<b>based</b> 23:20,24 24:4 26:1,2 40:21 41:12 42:10 44:17 57:12 71:9 72:10 91:24 92:1 119:5,9 122:18 123:9	26:9 30:6 39:6 61:2 67:4 68:5 72:9 75:18 83:18 84:4,10 94:23 95:6,22 117:25 121:8 125:24 126:9 131:22 135:14	126:3 <b>bring</b> 70:16 100:5 <b>brook</b> 2:16 <b>brought</b> 94:10 <b>busy</b> 86:14	97:19 98:3,9 98:23 102:20 106:3,6,23 107:8,11 108:7 108:8,13 109:6 110:6,17 111:2 112:5 113:2,5 113:18,25 114:7,17 116:17 117:15 117:20 122:3 122:11,14,14 122:20,21 123:8,20 124:5 124:14,16,17 126:24 127:8 127:14 128:4 128:18 129:4,4 129:12 131:1,9 131:14	69:13 132:9 140:25 <b>certify</b> 143:8 144:9,14 <b>certifying</b> 32:16 <b>cervical</b> 25:11 127:4 129:1 130:23 <b>chance</b> 107:25 124:20 125:1 <b>change</b> 40:4 114:8 122:20 123:22 124:4,9 124:13,18 127:7 <b>changed</b> 114:11 123:3,5,8,15 <b>characterizati...</b> 13:25 <b>characterized</b> 118:12 <b>charts</b> 86:2,4 <b>check</b> 125:25 <b>cite</b> 67:18,20,21 <b>claim</b> 88:25 <b>clarify</b> 60:13 132:12 <b>clean</b> 47:11 <b>clear</b> 7:19 44:21 47:11 94:16 95:9 102:6 125:18 128:15 134:22 135:6 140:7 <b>clearer</b> 64:6 98:17 <b>clearly</b> 32:2 63:5 <b>client</b> 43:4,13 75:8,9 <b>clients</b> 138:23 141:9 <b>clinically</b> 120:6 120:7 <b>close</b> 48:24 142:1
<b>basic</b> 39:19 <b>basically</b> 19:15 23:8 70:14 77:6,9 79:17 85:22 141:22 <b>basing</b> 44:14 <b>basis</b> 88:4 <b>bathroom</b> 141:8 141:13 <b>bauta</b> 1:3 10:15 26:4 30:8,11 30:20,22 31:12 31:17 32:3,18 33:8,21,25 34:1,3,19 35:5 35:18 37:7,8 37:19 38:16,19 39:1,4 42:1 44:1,5 45:8,9 66:9 67:8 68:25 74:19,21 74:24 83:15 86:7 117:5 118:7,9 119:11 120:7,12 121:5 122:1,20 128:18 <b>bautas</b> 42:11 81:1 83:6 110:4 117:15 119:6 121:2 <b>bear</b> 54:24 <b>beginning</b> 87:6 121:21 <b>begins</b> 97:2,3 <b>believe</b> 10:4 19:13 20:11	<b>believed</b> 24:4 66:6,8 86:3,6 <b>benefit</b> 42:23,25 <b>benefits</b> 73:1,4 <b>berserk</b> 54:24 <b>best</b> 32:13 51:1,5 55:6 66:23,25 75:15 85:25 130:15 <b>beyond</b> 84:17 140:11 <b>binded</b> 63:19 <b>binder</b> 61:2,4,5 61:6,10 63:14 95:14,19,20,24 96:4,4,10,21 97:1 100:10 133:2 <b>binders</b> 60:3,11 62:13 63:1,3 95:12 <b>bit</b> 42:20 43:12 66:7 <b>black</b> 95:12,14 97:1 <b>blood</b> 144:15 <b>blurb</b> 136:21 <b>book</b> 139:10 <b>books</b> 139:3 <b>bottom</b> 29:6 <b>bounce</b> 81:9 <b>brad</b> 38:13 <b>break</b> 8:17 86:21 141:8,17 141:18 <b>brief</b> 85:20 <b>briefly</b> 10:24	<b>c</b> 2:1 139:4 143:1 144:1,1 <b>california</b> 2:6 <b>call</b> 8:16 29:11 47:9 54:13 87:13 91:9,14 <b>called</b> 5:1 14:12 14:17 58:18 <b>calling</b> 47:15 <b>cancel</b> 141:4,11 <b>cant</b> 15:16 17:10 53:15 76:18 <b>capiola</b> 15:15 54:17,22 55:11 55:11 56:23 57:12,19,20 58:2,12,24 59:1,2,8 65:4,6 <b>capotosto</b> 14:3 15:23 16:8,14 105:14 <b>care</b> 3:11 5:20 15:8,10 17:6 20:8,9,10,13 21:5,7 23:3,8,9 23:19,23 33:22 34:12 39:20 41:23 42:8,10 43:10 44:12 47:18 48:13 51:19 70:10 73:13 75:19 77:13 81:1 86:1,2,4 88:20 88:23 89:1,2 89:19 90:8,13 90:20 94:20	<b>carefully</b> 130:14 <b>casden</b> 133:22 <b>case</b> 1:9 12:8 13:10 15:4 22:17 37:12,25 38:1 43:25 44:4 74:18 75:7 80:23 83:15 91:14 92:10,11 97:21 106:7 114:7,25 115:19,20 116:11,18 118:3,18 119:4 124:8 125:24 126:20 <b>cases</b> 43:16 70:2 70:5 <b>cav</b> 1:7 <b>center</b> 113:10 <b>certain</b> 12:10 26:9 36:22 66:13 <b>certainly</b> 35:14 57:13 69:5,6	<b>carefully</b> 130:14 <b>casden</b> 133:22 <b>case</b> 1:9 12:8 13:10 15:4 22:17 37:12,25 38:1 43:25 44:4 74:18 75:7 80:23 83:15 91:14 92:10,11 97:21 106:7 114:7,25 115:19,20 116:11,18 118:3,18 119:4 124:8 125:24 126:20 <b>cases</b> 43:16 70:2 70:5 <b>cav</b> 1:7 <b>center</b> 113:10 <b>certain</b> 12:10 26:9 36:22 66:13 <b>certainly</b> 35:14 57:13 69:5,6

<p><b>cohen</b> 10:1  <b>coincide</b> 27:17  <b>coleman</b> 2:13  <b>com</b> 2:10,20  <b>come</b> 5:21 7:25  19:4 35:3,4,7  38:12 48:3  60:9,22 62:15  76:12 78:19  115:16 126:5  <b>comes</b> 26:18  49:2,22 68:6  73:5  <b>coming</b> 73:20  77:6  <b>comments</b>  129:20  <b>commission</b>  144:24  <b>company</b> 48:5  <b>compare</b> 124:21  125:1 126:15  <b>comparing</b>  108:10 125:6  <b>comparison</b>  106:6 125:5  <b>complete</b> 112:20  143:11  <b>completed</b> 40:18  <b>completely</b>  51:20  <b>completeness</b>  97:18  <b>comprehensive</b>  27:3  <b>concerned</b> 61:19  61:22 127:18  <b>concerns</b> 75:7  <b>conclusion</b> 13:9  57:6 84:1,18  <b>conclusions</b>  34:23 40:12,22  41:13 43:2  65:20 71:1  72:13 75:25</p>	<p>76:13,23 79:10  79:23 80:21  90:2 91:4  92:12  <b>condition</b> 43:14  <b>conditions</b> 42:19  <b>conducted</b>  120:11  <b>confirm</b> 86:12  <b>confirmation</b>  81:6  <b>confusing</b> 39:10  62:9  <b>consideration</b>  69:14,16  110:18  <b>considered</b>  69:19,22 99:13  125:12  <b>consultation</b>  111:6  <b>consultative</b>  42:7 93:6  <b>consulted</b>  136:10  <b>consulting</b>  115:10  <b>consultive</b> 43:17  43:19,22 70:6  70:7 73:15  92:4  <b>contacts</b> 25:6  <b>contained</b> 28:18  45:3 63:14  112:21  <b>contd</b> 4:1  <b>contents</b> 37:4  <b>continue</b> 6:15  19:1  <b>conversation</b>  12:17 13:13,16  17:4,9,18 18:6  20:6 79:7 85:4  85:9,11,14,20  85:23 86:9,13</p>	<p>87:19 88:14,17  88:20 131:20  <b>conversations</b>  20:4  <b>cooperative</b> 70:4  <b>copied</b> 132:21  <b>copy</b> 20:21  97:18,19 98:8  98:11,13,17  <b>cordiale</b> 4:5  15:17,18 30:14  32:25 52:23,24  52:25 67:9,13  67:16,20,22  68:6,12 106:11  106:17 109:1  110:13 116:1  116:10,25  118:8,9,12,18  119:10 121:1  135:24 136:18  137:7,14,16,20  138:2,6 139:5  139:6,8  <b>cordiales</b> 115:20  117:19 119:4  120:4 139:9  <b>correct</b> 11:1  12:11 14:15  15:4 16:3,7,18  17:3 24:3  37:21 42:16  45:16 55:3  57:10 59:7,10  66:5 72:23  94:17 96:19  98:20 123:13  129:4 143:11  143:13  <b>corrected</b> 116:5  <b>cost</b> 24:25 82:14  94:25 95:6  130:25 131:8  <b>costs</b> 23:8 25:17  25:18</p>	<p><b>counsel</b> 22:2  48:6 88:3  140:21  <b>count</b> 66:23,25  <b>counting</b> 67:1,2  <b>county</b> 143:5  144:5  <b>couple</b> 35:6  36:16 37:20  113:15 133:9  133:13 135:5  <b>course</b> 26:24  30:8 49:15  55:17,17,17  71:5 72:8 79:5  93:3  <b>court</b> 1:1 5:13  6:18 7:5,11,24  8:7,17 19:3  87:14 98:14  124:8 126:5  <b>courts</b> 6:6 7:3  8:16 18:11  59:14 134:20  <b>cover</b> 19:15  <b>covered</b> 44:24  65:23 92:14  <b>cpr</b> 32:12  <b>crazy</b> 56:10  <b>credence</b> 69:24  <b>cummings</b> 4:14  10:1,1 14:3  15:23 16:3,10  16:15,22  105:15 106:3  112:9,14,14  <b>cumulatively</b>  109:4  <b>cure</b> 119:21  120:1  <b>current</b> 110:23  111:4  <b>curtail</b> 64:2  <b>custom</b> 115:4  <b>cut</b> 10:19</p>	<p><b>D</b>  <b>d</b> 2:7 3:1,8 4:2  5:1,1,1 65:8,9  94:12 96:5  97:18,19 98:5  99:3,13,19  101:10,10,14  102:4,9 103:7  103:20 104:4  104:19,22  105:2,4,18,24  106:9 107:2,7  107:9 108:23  109:5,14  111:15,21  112:7,21  116:24 143:1  <b>dance</b> 20:1  <b>darby</b> 1:17  144:7,24  <b>darcy</b> 61:22  97:24 99:10  142:2  <b>data</b> 24:12,20,22  25:4 26:18,19  26:25 27:1  <b>date</b> 11:13,14,15  13:17,20,21,22  14:10,20 17:10  67:4 81:22  136:25 137:1,4  <b>dated</b> 3:9,15,17  3:20,22,25  4:12,14 9:21  15:12 56:19  58:24 67:3,3  82:2 101:16  102:14 103:4,9  104:1,7 105:6  105:11,21  111:17,23  112:9 122:4  124:17  <b>dates</b> 48:2,3  51:11 53:18</p>
--	---	--	--	--

54:7 57:5,8 125:21 136:2 136:21,24 <b>day</b> 143:21 144:19 <b>de</b> 126:2 <b>dealing</b> 5:20 89:20 <b>deals</b> 137:18 <b>december</b> 3:12 13:21 17:22 57:5,24 98:4 98:24 106:24 109:22,24 114:8 122:21 124:5,13,17 126:4 <b>decision</b> 23:11 74:17 <b>defective</b> 72:17 <b>defendants</b> 1:8 2:14 5:10 17:25 81:22 <b>defender</b> 64:1 <b>defense</b> 105:14 <b>degree</b> 132:9 <b>dennehey</b> 2:13 <b>dep</b> 10:19 <b>depends</b> 89:23 91:7,7 <b>depose</b> 93:20 <b>deposed</b> 140:15 <b>deposition</b> 1:16 3:14 4:11,13 5:12,15,20 8:25 9:4,12,16 9:19,21,25 10:2 12:15 17:11,13 18:18 22:8 24:15 36:20 38:18 39:18 46:24 54:23 56:9 59:18 60:4,16 62:14 63:4,16	63:21,25 64:1 66:6 70:18,19 71:8,17 81:2 88:8,9,11,21 88:22 95:21 96:22 97:11 98:21,22 99:4 99:12,15,18 101:22 103:14 104:15,20,23 110:19,20 111:13,16,22 112:4,8,13 131:11 132:7 132:20 133:4 134:4 138:18 139:24 140:4 143:10 144:11 144:12 <b>depositions</b> 46:9 121:18 <b>description</b> 3:8 4:2 109:20 137:8 <b>design</b> 90:8 <b>designated</b> 14:1 14:2 37:11 125:20,23 126:3 <b>designations</b> 125:22 <b>destination</b> 125:21 <b>determine</b> 41:12 <b>developments</b> 5:14 <b>diagnosis</b> 23:5 50:7,11 51:8 68:6 136:22 137:6 138:10 138:11 <b>didnt</b> 23:15 24:21 25:3,17 33:25 34:1,19 34:20,25 35:18	36:18 37:8 40:16 41:7 53:1,3,6 58:1,6 68:20 69:3 76:14 80:4 82:12,13 87:11 91:14 100:5,6 100:9,11,15 102:4 125:7,7 129:16 130:4 133:1 134:10 140:3 <b>difference</b> 126:23 127:3 127:11,13,15 128:19,24 <b>different</b> 27:7 57:14 74:2,14 117:19 133:7 <b>differently</b> 60:2 <b>direct</b> 99:17 <b>directing</b> 102:3 <b>direction</b> 28:9 <b>disability</b> 48:24 <b>disclosed</b> 126:10 <b>discoverable</b> 6:14 <b>discuss</b> 8:4 89:4 89:9 <b>discussed</b> 7:16 8:3 68:3 93:4 93:14 135:15 138:9 141:19 <b>discussing</b> 48:17 48:19 <b>discussion</b> 19:23 49:17 61:14 80:12,17 85:16 126:19 135:2 <b>disputing</b> 139:14 <b>distinction</b> 6:17 7:21 127:21,22 <b>district</b> 1:1,2 <b>divided</b> 11:4	58:21 <b>doctor</b> 8:15 16:25 31:25 33:8,17 36:15 40:6 42:9,15 42:17,23 43:8 43:17,18,19,22 47:2,7,9,13,15 51:15 52:1,10 52:22 54:6 65:5,7,21 66:17 69:25 71:13,14 72:25 73:5,9,15,15 75:25 77:21 83:22,22 90:12 91:8,11 93:4 108:25 109:2,8 114:22 115:10 115:15,20 117:25 118:10 118:18 125:14 <b>doctors</b> 28:2 42:7 43:1 52:16 57:14,20 58:15 70:13 86:14 90:1 91:2 109:10 116:10 117:3 125:6 136:10 136:10,13,17 <b>document</b> 4:4 32:22,23 34:14 48:13,18,19 49:24 82:9 103:22 106:11 <b>documentation</b> 12:11 90:11 91:11 131:10 <b>documents</b> 9:13 10:5,16 12:13 12:23 18:4,13 18:14 20:3 27:17,21 29:13 31:19 44:11,15	44:18 48:4,16 64:24 95:10 106:14,16 108:10 110:10 127:20,22 128:7 132:1 139:16 <b>doesnt</b> 16:24 21:10,11 54:5 56:4 60:11 68:9 79:15,22 93:5 139:11 <b>doing</b> 27:3 31:7 90:19 110:24 136:23 <b>dont</b> 5:25 7:20 7:23 8:5,10 9:13 10:9 17:15,17,17 20:15,23 21:3 22:5,9 28:19 35:2,9,13,20 36:12,13 37:1 37:22 39:12 41:2,9,10 42:4 42:12,12 43:16 45:5 46:5 47:8 51:14 55:15 61:21,22,23 62:3,4,23 63:17,18 65:14 66:11,14 69:23 71:23 72:1,4 73:22 74:1,4 75:11 76:9 78:7,13 79:10 79:13 81:18,24 84:20 88:1 91:9 92:6,19 92:23 95:23 96:7,16 98:13 100:4,24 108:13 127:25 128:4,9 131:11 131:22 134:7
--	---	---	---	--

134:23 135:24 137:2,16 138:2 138:6,16 <b>downside</b> 73:7 73:10 <b>dr</b> 3:9,15,17,19 4:4,11 6:21 9:20,21 10:6,7 10:11,13 11:25 12:17,25 13:12 13:14,14,16,18 15:14,15,15 16:24 17:5 18:1,6,19,25 19:5,6,12 20:7 20:21,21 21:4 21:18 22:18 23:6,11,12 24:19 25:23 30:5,6,7,14,15 31:7,8,10 32:9 32:25 33:7,25 34:6 35:4,18 37:3,11 38:15 40:4,12,13,14 40:14,16,16,21 41:12 44:1,4 44:22 45:4,7,9 47:22 48:20 50:12,25 51:12 52:3,14,23,24 53:7,9,10 54:10,17,17,22 54:22 55:11,12 56:15,18 57:4 57:7,19,21,23 57:25 58:2,10 58:12,12,12,23 58:24 59:5,6,9 64:23 65:4,6 65:18 66:8 67:7,9,12,13 67:16,16,19,21 67:22 68:3,6 68:12 70:8,9	71:9,15 76:8 77:6,6,8,8,9 78:24 79:11 80:5,18,24 81:6,21 82:1 82:23 83:5,13 83:21,24 85:3 85:4,12,25 86:18 87:21 88:10,18,19,21 88:22,24,25 90:17,18,23 91:14 93:20 99:20,25 100:4 101:16 102:13 103:3,9 104:1 104:6 106:11 106:17 109:1,9 110:13 111:14 111:17,22 112:3 114:21 114:24 115:20 115:21 116:1,1 116:9,10,11,23 116:25 117:1,8 117:13,18,19 118:8,9,12,17 119:3,10 120:4 121:1,11,25 122:10,13,19 124:3,15,19,21 124:22 125:17 125:19,23 126:11,20,25 127:1,4,5,11 127:11,16,17 128:20,21,25 129:1 130:23 131:6,7,13 135:19,24 136:6,18,25 137:7,14,14,16 137:19,22,24 138:6,6,9 139:25 140:11	<b>draw</b> 65:20 90:2 92:11 <b>drive</b> 2:5 <b>duly</b> 5:2 32:10 144:11 <b>duplicate</b> 98:8 98:10 108:8 <hr/> <b>E</b> <b>e</b> 2:1,1 3:1,7 4:1 5:1,1 143:1,1 144:1,1 <b>earlier</b> 48:10 61:9 67:25 94:23 97:14 114:19 115:8 139:14 <b>eastern</b> 1:2 <b>easy</b> 28:11 138:21,22 <b>edmond</b> 1:16 3:3 143:8,17 144:10 <b>effect</b> 88:15 <b>effort</b> 41:11 <b>either</b> 15:14 55:11 63:14 76:9 93:6 130:25 <b>eitheror</b> 54:21 <b>emails</b> 18:4 20:4 20:5 85:16 <b>enabled</b> 41:22 <b>enterprise</b> 1:7 <b>entire</b> 13:11 50:23 <b>entirety</b> 49:23 <b>esq</b> 2:7,17 <b>essentially</b> 122:16 <b>estimate</b> 141:10 <b>eval</b> 27:22 <b>evaluating</b> 75:3 <b>evaluation</b> 10:15 10:20 11:6,22	39:21 40:19 110:4,17 <b>event</b> 94:7 <b>exact</b> 17:10 66:11 <b>exactly</b> 15:10 24:2 70:22 71:2 <b>examination</b> 3:2 5:5 26:11 43:24 73:16 93:24 135:3 <b>examinations</b> 58:20 120:12 <b>examine</b> 92:6 <b>examined</b> 5:2 119:11 120:6,7 <b>example</b> 24:24 57:15 61:3 <b>exchanged</b> 12:5 12:9 70:24 80:22 139:4,9 <b>exclude</b> 80:10 <b>excuse</b> 59:13 120:6 124:11 <b>exhibit</b> 3:9,11,13 3:15,17,19,21 3:24 4:3,6,11 4:13 82:1,6 94:9,12,16 95:16,23 97:2 97:3,5,14 98:4 98:18,23 99:8 99:14,19 101:15 102:3,9 102:13 103:3 103:25 104:5 105:5,20 106:10 107:7,9 107:10,14 108:7,18,22 109:15 111:16 111:20 112:8 112:21 116:24 124:3 139:3,4	<b>exhibits</b> 4:17 54:25 59:24 60:1,5,7 62:1 63:19 93:17 95:25 112:19 118:16 139:22 141:19 142:3 <b>exists</b> 127:22 <b>experience</b> 23:25 24:5 <b>expert</b> 6:14 8:4 37:12,25 38:1 75:22,23 100:17 114:25 115:5,6,11 118:1 125:13 125:19,22,24 126:11,25 127:18 128:18 130:25 139:15 <b>expertise</b> 80:1 84:2,7 <b>experts</b> 115:6 125:9 126:10 129:3,13 130:20,21 <b>expires</b> 144:25 <b>explain</b> 26:23 79:14 130:4 <b>explanation</b> 22:6 59:4 <b>explore</b> 66:7 <b>extent</b> 9:5 <hr/> <b>F</b> <b>f</b> 144:1 <b>facility</b> 28:3 <b>fact</b> 23:17 31:10 37:6 43:7 53:17 59:19 66:4 68:19 71:15 72:24 81:4 88:21 92:12 97:10 <b>factfinders</b> 80:2
--	--	--	--	---

<b>factoring</b> 25:4	<b>find</b> 37:9 40:4	<b>foregoing</b> 32:11	<b>forth</b> 117:4	122:14,20
<b>factors</b> 69:18,22	141:9	32:12	144:11	123:20 128:19
80:8	<b>findings</b> 24:22	<b>forget</b> 78:17	<b>forward</b> 63:7	129:4,4,12
<b>facts</b> 38:2	27:20,21 79:12	88:1	<b>forwarded</b>	130:18,19,22
<b>failed</b> 101:5	106:5 112:5	<b>forgive</b> 10:8,19	10:17 90:19	130:25
<b>fair</b> 14:7,8 15:23	<b>fine</b> 19:6,7,17	20:2 24:17,17	<b>found</b> 69:1,9	
21:14,14,15,21	22:11 35:11,25	30:20 47:4	87:10,12	<b>G</b>
22:1 40:13	36:3 45:21	61:7 66:17	<b>foundation</b>	<b>g</b> 143:1
42:22 47:19	54:8 77:2	67:10 83:22	19:16 23:9,22	<b>generally</b> 102:1
48:7 51:16,17	120:24	85:8 90:22	32:21 33:22	<b>getting</b> 19:5,9
52:6,7,8 53:24	<b>finish</b> 6:23,24	121:24 137:11	34:8 38:20	22:6 43:3
69:17 74:6	26:23 33:12,15	138:5	39:8 41:21,23	45:23 46:22
75:22 80:7	37:23 51:13,21	<b>form</b> 13:9 19:11	42:7,9 43:9,16	48:14 68:17
87:15,16 106:8	51:22 62:24	37:10 76:2	70:3,5,11 71:9	<b>ginsberg</b> 1:17
120:22	78:12	77:1,23 78:3,8	84:13,16 88:19	144:7,24
<b>fairness</b> 134:17	<b>finished</b> 73:22	78:15 79:2	88:23,24,25	<b>give</b> 17:15 36:21
<b>falls</b> 8:3	<b>firm</b> 2:3	84:1 86:15	91:19,23 92:9	57:5 65:9
<b>fantastic</b> 8:19	<b>first</b> 1:7 5:2 8:17	91:15 92:15	93:3,9 117:1	66:17 73:19
<b>far</b> 115:25	8:23 11:5	95:3 100:18	117:24 119:13	85:19 86:20
127:17	18:17,17 50:7	101:8,23	119:16	87:18 113:16
<b>faulty</b> 72:17	59:18 60:4	102:12,22	<b>foundations</b>	138:25 141:10
<b>fax</b> 2:9,19	62:14 63:4,15	103:2,16,23	77:13,15 92:4	<b>given</b> 44:21 60:5
<b>fb</b> 1:9	63:20,20 64:15	104:10,17	92:5	63:19 69:23
<b>february</b> 1:13	65:18,19 70:19	107:4 111:10	<b>franklin</b> 112:23	143:13 144:13
126:3	70:20 87:1	113:21 114:14	113:8,10	<b>gives</b> 117:20
<b>federal</b> 6:12	95:21 96:4	115:1,13,22	<b>frankly</b> 39:9	<b>glasses</b> 28:21
<b>feel</b> 91:5 93:19	97:10 98:18,20	116:3,5,20	77:19	<b>go</b> 7:13 11:19
<b>felt</b> 23:19 68:23	108:15 109:3	117:12 118:11	<b>free</b> 93:19	17:13 19:21,25
70:12,12 88:22	111:21 131:11	118:19,20	131:24 134:22	20:8 26:24
<b>field</b> 75:23,24	137:22	119:12 120:9	<b>frequency</b> 25:12	36:2,10 38:13
<b>figure</b> 56:3	<b>firstgroup</b> 1:7	120:17 122:22	25:15	41:5 46:23
<b>figures</b> 95:1	<b>firsthand</b> 43:5	123:1,2 124:24	<b>frequently</b> 27:23	49:16,21 53:20
130:25	<b>five</b> 24:25 66:9	127:2,19	44:19	55:4,16 56:17
<b>file</b> 26:3,7,13	66:23 67:1,8	128:22 129:5	<b>front</b> 33:19	59:15 63:10,11
32:25 54:23	92:15	129:15,18,24	<b>funny</b> 29:15	65:16,25 69:3
55:16 100:5,6	<b>fix</b> 130:12	129:25 130:8	70:15	77:16,17 81:18
100:9,11,15,17	<b>fixed</b> 130:11	131:2,15	<b>further</b> 5:19 8:1	82:11 85:19
101:5,21 102:2	<b>follow</b> 5:11	<b>forming</b> 102:20	131:23 139:18	86:23,25 87:4
102:10 104:13	<b>following</b> 33:24	104:8 110:14	140:16 144:14	90:5 92:25
104:14,19,22	38:24 44:3	<b>formulate</b> 12:7	<b>fusion</b> 48:23	93:13 95:11
116:2 118:17	135:17 136:5	<b>formulated</b> 42:3	49:25 127:4	99:11 102:24
132:9,19 133:1	<b>follows</b> 5:3	<b>formulates</b>	129:1 130:23	103:7 104:18
133:3 140:4,7	<b>followup</b> 11:19	122:2	137:15	105:3,18 106:9
140:22	85:14,16,16	<b>formulating</b>	<b>future</b> 33:21	109:3 115:25
<b>final</b> 137:1	91:22	126:24	48:13 117:20	133:12,13

134:25 141:8 141:13,14 142:4 <b>goal</b> 20:6 <b>god</b> 28:23 <b>goes</b> 42:2 73:17 126:6 <b>goggin</b> 2:13 <b>going</b> 7:16 8:1 8:12,14 24:8 26:23 35:16 36:2 39:23 40:1 44:13 45:24 47:15 49:7 55:4 59:15,16,24 63:5,7 66:6 68:19 73:18,19 77:16,17 78:21 81:17 93:16 101:3,13 113:4 113:16 123:16 141:11 <b>good</b> 5:7,8 8:20 8:21 72:14,17 82:5 87:7 88:23 <b>goofy</b> 20:25 <b>gotten</b> 24:2 <b>great</b> 8:18 79:20 <b>greater</b> 58:11,19 62:11 65:3 <b>greyhound</b> 1:6 <b>group</b> 1:7 10:7 10:11,13,16 11:5 51:9 53:4 53:8 57:21 59:5,11 65:12 68:14 109:8,11 <b>groups</b> 11:5 <b>gubica</b> 1:6,6 <b>guess</b> 5:11 15:22 24:4 29:17 45:18 54:16 62:14 79:20	80:2 94:1 96:15 135:16 <b>guy</b> 43:3,6 79:21 <b>guys</b> 59:12 60:18 78:19 86:15 135:7 <hr/> <b>H</b> <b>h</b> 3:7 4:1 <b>half</b> 53:13 89:17 <b>hand</b> 49:18 144:19 <b>handle</b> 85:22 <b>hang</b> 36:5 40:15 107:18 118:12 133:15 140:9,9 <b>happen</b> 90:16 93:5 <b>happened</b> 53:13 <b>happening</b> 19:19 <b>happens</b> 44:19 90:6,7 119:21 126:20 <b>hard</b> 30:21 <b>harold</b> 2:17 5:9 134:12,21 <b>hasnt</b> 112:17 <b>head</b> 55:10 <b>health</b> 23:8 <b>hear</b> 26:21 33:11 125:2 <b>heard</b> 9:6 10:9 128:1 <b>hearing</b> 72:2 <b>heck</b> 76:12 <b>held</b> 19:23 <b>help</b> 24:18 25:7 48:1 60:25 113:3 <b>helping</b> 56:23 <b>hereunto</b> 144:18 <b>hes</b> 43:4 54:4,10 <b>hey</b> 29:12 87:14 <b>hlmoroknek</b>	2:20 <b>hold</b> 37:15 84:14 119:16 <b>holding</b> 86:19 <b>hollywood</b> 2:6 <b>honestly</b> 64:3 <b>hopefully</b> 98:16 <b>hospital</b> 112:23 113:8 <b>hour</b> 89:17 138:20 <b>hours</b> 74:23,25 141:3 <b>hurt</b> 36:18 <b>hypothetical</b> 38:13,24 44:7 80:14 <b>hypothetically</b> 80:16 83:12 <hr/> <b>I</b> <b>idea</b> 24:10,21 25:23 34:6,10 62:19 76:16 82:19 85:20 94:6 <b>identification</b> 82:2,7 97:6 98:24 99:15 102:15 103:5 104:2 105:7,22 106:12 109:18 111:18 112:10 <b>identified</b> 63:5 106:21 <b>identify</b> 95:15 101:14 104:5 106:14 112:12 <b>ignorance</b> 90:22 <b>im</b> 22:6 35:16 42:15 53:22 58:23 77:24 78:12,20 99:9 101:10 102:17 139:7 140:14	<b>implementing</b> 111:5,8 <b>important</b> 19:2 34:13 43:8,11 69:16 75:18 93:9 <b>inaccuracy</b> 39:7 39:7 <b>inaccurate</b> 37:9 40:6,9 <b>inappropriate</b> 74:5 <b>include</b> 19:16 38:2 52:1,9,14 53:1,6,10 113:18 <b>included</b> 54:10 55:25 139:10 <b>including</b> 50:25 <b>inclusive</b> 51:11 <b>incomplete</b> 38:11,13 44:6 55:1 60:5 <b>incorporate</b> 24:22 25:3 <b>incorporated</b> 24:23 <b>index</b> 61:4 96:10 97:3 <b>indicate</b> 20:9 29:2,23 47:13 47:16,21 67:6 100:2 106:25 110:23 137:17 <b>indicated</b> 12:14 36:20 77:5 85:3 102:25 107:8 130:21 132:7 136:17 137:19 140:20 <b>indicates</b> 25:11 90:12 <b>indicating</b> 50:9 <b>indication</b> 29:7 30:10	<b>individual</b> 44:14 75:3 <b>individuals</b> 44:10 92:5 <b>infer</b> 96:3 <b>information</b> 23:21 24:9 25:6 32:14 35:8 69:7,11 72:10,14,16 73:19 116:16 <b>informed</b> 75:6 <b>initial</b> 10:19 54:23 110:19 113:25 <b>initially</b> 13:17 <b>insofar</b> 6:18 <b>instruction</b> 35:22 36:8 <b>intended</b> 64:1 <b>intention</b> 49:12 <b>interaction</b> 81:5 <b>interested</b> 144:16 <b>interesting</b> 54:12 69:20 <b>interrupt</b> 69:3 73:23 78:13 <b>interrupting</b> 51:23 128:8 <b>interview</b> 20:15 <b>interviewed</b> 118:7 <b>irrelevant</b> 54:9 <b>isnt</b> 28:5 29:16 45:12,16 72:17 <b>issue</b> 7:4 17:20 19:12,17 62:14 68:9 87:11,13 88:15 94:8,8 113:23 114:21 116:17 124:7 <b>issued</b> 15:3 17:19,21,24 54:4 71:6
---	---	---	--	--



114:12,15 116:14,15 122:11 125:23 <b>issues</b> 6:20 7:15 18:25 87:20 95:6 <b>items</b> 25:15 82:11 86:3,6 131:9	30:4 34:3,22 35:2 36:1 37:1 37:6 38:21 40:20 41:2,9 41:10,16 42:4 42:12,12,20 43:2,3,4,13,13 43:14,25 44:2 45:5,7 46:22 50:17 56:11,20 61:16,21,22 62:4 63:21 64:13,13,21 65:5,14 66:12 66:14 69:23 71:23 76:9 78:7 79:10,13 79:23 81:3 84:20 91:8,10 93:19 96:7,16 97:21 98:13 100:22,25 106:21,22 107:24 108:2 109:25 119:13 119:22 120:2 121:9 125:10 125:22 126:16 126:17 131:11 136:2 138:25 139:13,14 140:3 <b>knowledge</b> 32:13 33:7 43:5 51:2,6 74:15 121:1,4 <b>knowledgeable</b> 26:3 <b>knows</b> 73:1	41:21 70:11 88:19 89:1 91:18,23 92:4 92:5 93:3 <b>laminectomy</b> 48:23 50:1 137:16 <b>language</b> 48:15 49:2 <b>lattuga</b> 6:21 8:6 10:7,11,13 11:25 12:16,25 13:4,14 15:14 16:24 18:25 19:5,12,17 22:14,18 23:6 23:12 24:19 25:23 29:11 30:7 31:7,10 32:10 33:7,25 35:4,18 37:3 37:11 38:15 40:12,13,14,21 41:12 44:1,4 45:4,7,9 48:20 49:19 50:8,12 51:12 52:3 53:9,20 54:4 65:18 66:8 67:7,13,16,21 68:3,20 70:7 71:9 76:8 77:6 77:20 78:24,25 79:13 80:18 82:23 83:13,20 83:21,24 86:18 87:11,12,21 90:17,23 91:14 92:13 94:17 114:21,24 116:11 125:17 125:23 126:11 126:20,25 127:4,17 128:21,25	130:23 131:6 135:19 136:6 137:14,22,24 138:6 139:8,8 139:25 140:11 <b>lattuganew</b> 47:22 <b>lattugas</b> 3:9 10:25 15:15 23:2,11 30:5,6 30:15 31:8 32:9 34:6 40:4 44:22 49:2 50:25 52:14 53:7,10,19 54:10 77:8 81:10,21 82:1 83:5 88:10 90:18 116:23 117:8,13,18 124:19,22 125:13,19 127:11 136:25 138:9 <b>law</b> 2:3 <b>lawsuit</b> 5:10 <b>lawyer</b> 6:14 8:4 <b>lay</b> 41:22 42:7,9 <b>lays</b> 23:9 <b>lc</b> 2:3 <b>leading</b> 120:20 129:6 130:8 131:16 <b>leads</b> 57:6 <b>learn</b> 8:24 35:3,4 35:7 37:5,7 76:7 78:2 <b>learned</b> 35:10 45:9 78:23 <b>learning</b> 38:12 <b>leave</b> 61:15 <b>led</b> 61:2 <b>legal</b> 83:25 84:17 <b>letter</b> 90:11	132:8 <b>letters</b> 140:21 <b>letting</b> 46:21 139:13 <b>licensed</b> 32:10 <b>liebowitz</b> 54:17 54:22 55:12 56:15,23 57:4 57:11,21,23,25 58:10,12,23 59:1,5,6,9 64:21,23 <b>liebowitzs</b> 56:18 57:7 <b>lied</b> 84:4 86:18 <b>life</b> 3:11 5:20 15:8,10 17:6 20:8,9,10,13 21:5,7 23:3,9 23:18,23 33:22 34:12 39:20 41:23 42:8,10 43:9 44:12 47:18 70:10 75:19 77:13 81:1 86:1,2,4 88:20,23 89:1 89:2,18 90:8 90:13,19 94:20 97:19 98:3,9 98:23 102:20 106:3,6,23 107:8,11 108:7 108:8 109:6 110:6,17 111:2 112:5 113:2,5 113:18,25 114:7,17 116:17 122:11 122:14,21 123:8 124:5,13 124:17 126:24 127:7,13 128:18 131:9 131:14
<hr/> <b>J</b> <hr/> <b>january</b> 3:13 10:2 36:21 70:21 71:9 77:12 78:25 95:21 96:22 97:11 99:5,13 99:14 101:22 103:15 104:15 110:9 <b>jose</b> 1:3 30:20,22 32:18 35:5 <b>july</b> 49:24 50:5 50:19 51:2,7 67:5,25 106:19 109:23 116:8 139:10	<hr/> <b>K</b> <hr/> <b>k</b> 143:1 <b>karoly</b> 1:6 <b>keep</b> 31:7 41:3 47:10,15 59:24 81:3 129:19 <b>kind</b> 8:11 12:2,4 15:25 20:25 36:21 61:8 65:5 70:15 85:17 87:16 <b>knew</b> 27:14 88:19 <b>know</b> 7:10 10:9 12:14,22 17:17 20:12,16 21:3 24:19 26:6	<hr/> <b>L</b> <hr/> <b>l</b> 12:17 143:1 <b>lacks</b> 32:20 38:20 119:12 <b>laid</b> 23:6,17 24:3		

<b>limit</b> 134:24	<b>lumbar</b> 25:11	131:10,12,25	56:16,22 58:7	123:13,15,19
<b>limited</b> 88:4	129:3	132:18	59:13,22 60:14	123:22 124:1,6
<b>line</b> 18:10,21	<hr/> <b>M</b> <hr/>	<b>marking</b> 59:23	60:18 61:15,20	124:25 125:4,9
40:2 111:13	<b>m</b> 1:14 5:1 65:8	59:24 64:14	61:25 62:23	125:15,17
112:7	65:9 142:5	94:2	63:8,11,17	126:2,9,13,16
<b>lines</b> 1:6 66:19	143:1	<b>marriage</b> 144:16	64:5,10 65:23	126:18,22
66:20 100:3	<b>madison</b> 1:12	<b>marshall</b> 2:13	67:23 73:25	127:6,23 128:2
<b>list</b> 45:3 54:5	<b>magnifying</b>	<b>materials</b> 77:8	74:3,8 76:2,21	128:8,11,14,23
82:11 109:4	28:21	<b>matter</b> 16:25	77:1,22 78:3,8	129:2,7,9,16
<b>listed</b> 30:1 113:1	<b>main</b> 127:3	72:7 81:4	78:11,19 79:2	129:19,23
<b>listen</b> 46:15	<b>maintain</b> 80:20	144:17	80:13 81:15,17	130:3,10,13,16
78:11 130:14	<b>maintained</b>	<b>matters</b> 37:22	81:24 83:2,25	130:17 131:5
<b>listing</b> 29:20	80:21	<b>mcelfish</b> 2:3,7	84:5,8,12,24	131:18,22
<b>lists</b> 34:15 54:6	<b>making</b> 23:10	3:4 5:23,24,25	86:15,17,25	132:4,14,22,25
<b>litigationrelated</b>	29:10 46:17	6:2,5,7,10,11	87:3,5,13,22	133:9,17 134:2
70:5	80:13 128:10	6:22 7:7,10,13	87:25 88:6	134:6,9,12,16
<b>little</b> 43:12 62:8	<b>man</b> 134:22	7:18,22,24	89:5,6,10,12	135:7 138:16
64:6 66:7	<b>management</b>	8:10,13,18,20	89:21 90:4,25	138:21,24
133:7	25:12	9:5 12:18,25	91:15 92:14,21	139:1,7,13,18
<b>live</b> 24:11,16,17	<b>march</b> 109:22	13:4,24 14:15	93:14,19,25	139:21 140:1,6
24:20 25:20	144:19	14:19 15:17	94:5,15 95:4	140:10,14,18
<b>llc</b> 1:7	<b>mark</b> 49:7,11	16:6,16 17:12	97:23 98:1,14	141:4,10,18,25
<b>long</b> 19:14 89:15	81:16,17,18,21	18:8 19:14,20	98:25 99:9,16	<b>mcelfishlaw</b>
92:8 93:8	81:23,24 93:16	20:17 21:6,12	100:19,21	2:10
122:2	95:11 97:18,19	21:15,20 22:1	101:9,12 102:1	<b>mdwcg</b> 2:20
<b>longterm</b> 73:13	98:3 99:2	22:4,7,11	102:7,16,23	<b>mean</b> 30:15 32:1
81:1 117:15	109:14 111:12	26:14 27:23	103:6,18 104:3	45:7 55:22
124:15	<b>marked</b> 60:4	28:7,10,15,16	104:12,24	69:3 70:9 77:4
<b>look</b> 23:4 32:8	62:7,20 63:1,2	31:13 32:4,20	105:8,18,23	79:15,22 80:10
57:16 105:24	63:4,20 81:11	33:12 34:8	106:8,13 107:5	87:5 100:7,12
113:14 121:15	82:2,6 83:5	35:9,13,17,19	107:15,22,24	100:13 110:6
133:18	94:11 95:20,20	36:1,7,14	108:5,12,15,19	115:10 129:14
<b>looked</b> 23:7 25:5	96:22 97:5,9	37:10,15,20,24	108:21 109:13	133:19,20
56:12 64:22	97:10 98:24	38:7,11,20	111:12,19	138:1
77:7,8 94:24	99:15,18	39:8,15 40:23	112:6,11	<b>meaning</b> 31:24
<b>looking</b> 47:18	101:14 102:4,8	41:3,14 44:6	113:22 114:18	124:11
49:3,16 53:7	102:14 103:4	44:24 45:11,14	115:3,14,24	<b>medical</b> 13:11
58:17 61:7	103:20 104:1,4	45:21,23 46:1	116:4,6,22	28:17 29:7,8
107:16 139:3	104:25 105:1,6	46:3,6,10,13	117:17 118:14	29:18,20,25
<b>looks</b> 28:20	105:21 106:12	46:17,21 47:6	118:15,20	44:12 48:13
57:20 66:23	107:7,8 109:4	49:7,10 50:18	119:2,15,18,25	56:19 73:13
67:1	109:17 111:17	51:21 52:4,8	120:3,14,18,22	92:9 93:9
<b>lot</b> 62:7 119:22	112:9,19	53:17,23 54:2	120:25 121:19	113:10 117:3
140:10	116:24 118:17	55:3,19,22	121:20 122:6	117:15 120:11
<b>lower</b> 121:10		56:2,6,10,13	122:24 123:2,7	122:3 123:20

124:15 130:5 130:18,19,22 <b>medically</b> 86:4 <b>medications</b> 42:19 <b>meet</b> 74:19 89:12,15 <b>meetandconfer</b> 132:8 134:17 140:20 <b>mention</b> 15:14 138:2 <b>mentioned</b> 11:15 17:11 <b>met</b> 44:1,5 75:9 82:25 83:14 118:9 119:10 120:5 <b>methodologies</b> 75:2 <b>midway</b> 29:18 30:19 <b>mikelis</b> 109:9 116:1,9 117:1 <b>mikeliss</b> 115:21 <b>mind</b> 23:14 34:5 34:6,11 69:24 <b>minute</b> 19:22,25 20:1 48:1 61:13 66:17 81:10 86:20 95:11 107:19 134:25 135:1 138:25 <b>minutes</b> 38:10 86:10 138:19 <b>misleading</b> 22:4 <b>missed</b> 127:23 <b>missing</b> 53:17,25 61:1 63:12,22 96:11,12,13,17 <b>misstates</b> 12:18 <b>mistake</b> 76:11 <b>mistaken</b> 14:11 <b>mobin</b> 3:17,19	4:11 12:17 13:14,16 17:5 17:9 18:1,6 19:6 20:1,4,7 20:21 40:14,16 70:8,9 71:4,6 71:15 77:6,8,9 77:19 79:11,16 80:24 81:6 85:3,4,12,25 88:18,19,22,24 88:25 99:25 100:4 103:3,9 104:1,6 105:1 111:14,17 112:3 121:25 122:19 124:12 127:1,5,11,16 128:20 129:1 131:7,13 132:16,16 134:5 <b>mobins</b> 3:15 9:20,21 10:6 13:12,15,18 18:19,19 20:21 21:4,18 40:16 80:5 88:21 99:20 101:16 102:13 111:22 121:11 122:10 122:13 123:9 124:3,15,21 <b>modified</b> 114:17 <b>moment</b> 15:16 34:18,20 93:12 139:20 <b>months</b> 30:8 <b>morning</b> 5:7,8 27:14 82:5 <b>moroknek</b> 2:17 3:3 5:6,9 6:1,4 6:9,11,17,23 7:8,12,17,20 7:23 8:8,11,14	8:19,21,22 9:10 12:20 13:2,5,7 14:7,9 14:23 15:18,20 16:5,12,19 17:14 19:2,8 19:18,21,24 21:10,14,17,23 22:3,5,9,12 26:16,20 28:4 28:8,12,14 31:22 32:7 33:4,14,23 34:17 35:12,21 36:5,11,17 37:13,17,22 38:4,9,14,23 39:14,17 40:25 41:6,18 44:16 45:6,12,15,20 45:22,25 46:2 46:5,8,12,15 46:19,25 47:1 47:8,12 49:9 49:12,15,20 50:2 51:4,24 52:7,13 53:22 53:25 54:8,14 55:7,21,25 56:4,8,11,14 56:20,25 58:13 58:16,25 59:21 60:13,15,19 61:12,18,24 62:21,25 63:9 63:24 64:4,9 64:12,18 66:3 68:7 74:6,10 74:12 76:6,22 76:25 77:2,3 77:24 78:1,4,9 78:20,22 79:19 80:15 81:13,16 81:20 82:3 83:3 84:3,9,21	85:2 86:16,19 86:22 87:2,4,7 87:9 88:13 89:7,8,25 90:15 91:21 92:19,22 93:11 93:15,18,23 94:11,14 95:3 98:7,12,22 99:6 100:18 101:8,23 102:12,22 103:2,16,21 104:10 107:4 107:14,16,18 107:23 108:1,9 108:13,17,20 111:10 113:16 113:21 114:14 114:19 115:1 115:13,22 116:3,20 117:12,23 118:6,11,19,23 119:12,17,23 120:9,17,19,23 121:17,24 122:22 123:1,5 123:11,14,18 123:21 124:24 125:2,5,10,16 126:1,8,12,14 126:17,21 127:2,19,25 128:4,9,13,16 128:22 129:5 129:14,18,21 129:24 130:7 130:11,15 131:2,15,24 132:2,12,15,23 133:6,15,24 134:3,7,10,15 134:25 135:4 138:25 139:6	139:11,17,20 139:23 140:2,9 140:12,16 141:2,13,16,19 141:23 <b>morokneks</b> 97:15 115:9 <b>motion</b> 94:7 <b>motions</b> 94:10 <b>mouth</b> 72:22 <b>moving</b> 105:3 <b>multitude</b> 52:21 <hr/> <b>N</b> <hr/> <b>n</b> 2:1 3:1 5:1 143:1,1 <b>name</b> 5:9 15:15 31:18 51:14 52:1,9,14 53:1 53:4,7,11 54:6 54:10,11 <b>narrative</b> 27:17 83:19 <b>nature</b> 14:16 <b>necessarily</b> 54:5 60:12 70:1 79:15,22 92:3 <b>necessary</b> 23:20 42:8 86:5 <b>need</b> 26:17 28:21 45:20 66:22 70:5 92:9 93:20 113:14 141:7 <b>needed</b> 5:19 23:21 25:15 86:7 88:7 111:9 <b>needs</b> 33:21 34:4 42:11,18 44:12 44:12 73:13 75:7 81:1 117:16 122:3 122:14,20 128:18 129:17
---	---	---	---	--

130:5,18,19,22 131:1 <b>neurosurgeon</b> 17:1,2 70:14 <b>never</b> 37:19 38:19 42:1 44:5 55:1 61:3 83:14,14 90:24 90:25 <b>new</b> 1:2,12,12,18 2:16 4:3,6 10:25 26:5 27:1,18 28:2 30:8,13 31:20 32:11 34:2 48:4 50:23 51:9,13,15,17 52:2,11 58:11 58:19 62:11 65:3 66:12 67:2,16 68:4 68:13 106:10 106:16,25 107:12 108:25 109:15,20 110:2 112:22 117:11 123:19 135:9,19 136:6 137:20 144:3,5 144:8 <b>nonsense</b> 62:24 <b>north</b> 2:5 113:8 <b>notary</b> 1:17 143:24 144:7 <b>note</b> 19:2 103:22 106:5 <b>noted</b> 11:8 45:2 49:23 105:13 122:3 124:4 142:5 <b>notes</b> 20:6 88:21 112:4 <b>notice</b> 1:17 <b>november</b> 3:18 3:20,22,25	11:9 14:21,22 14:25 15:2,13 15:25 16:7,9 16:13,21 30:22 47:23 50:24 67:4 103:4,9 104:1,7,25 105:6,11,21 106:1 116:8 132:17,17 135:12,19 136:3,7 <b>number</b> 8:16 61:4 64:25 79:4 83:5 95:14 120:12 131:11,25 136:19 140:21 144:24 <hr/> <b>O</b> <hr/> <b>o</b> 5:1,1 143:1 <b>oath</b> 37:4 77:20 83:8 143:10 <b>objected</b> 36:7 <b>objection</b> 5:23 9:5 12:18 13:24 18:9 21:6,20 31:13 32:20 34:8 35:9,19 37:10 37:23,24 38:5 38:6,8 50:18 52:4 74:9 77:1 78:14,15 79:2 84:5 90:4 95:3 100:18 101:8 101:23 102:12 102:22 103:16 103:23 104:10 107:4,6 111:10 114:14 115:1 115:13,22 116:3,20 117:12 118:11	118:19,21 119:12,21 120:1,9,17,21 122:22,24 123:3 124:24 125:4 127:2,19 128:10,22 129:5,15,18,24 129:25 131:2 131:15 <b>objections</b> 46:18 104:18 119:19 119:20 120:1 <b>observe</b> 75:4 <b>obtain</b> 24:20 81:5 <b>obvious</b> 137:9 137:10 <b>obviously</b> 79:7 96:11 137:5 <b>occasion</b> 120:8 <b>occasions</b> 120:13 121:7 <b>october</b> 4:12 9:21,22 57:5 57:24,25 109:21,23 111:17,23 <b>offered</b> 44:4 <b>office</b> 9:1,3 10:25 27:11 34:21,22 62:2 88:7 100:15 <b>offtherecord</b> 126:19 <b>oh</b> 28:8,23 98:2 111:7 <b>okay</b> 5:17,21 7:12,17 8:23 9:2,11,18 10:3 10:23 11:7,11 11:21,24 12:2 12:7,13 13:15 13:20,22 15:3 15:10,25 16:5	16:16,20 17:2 17:8,18,23 18:3 19:10,20 20:10,12,25 21:4,23 22:3 22:10,15 23:1 23:10,14 24:11 24:14 25:10,22 26:6 27:5,8,13 28:11,12 29:5 29:15 30:2,15 31:6,23 32:1 32:16 33:5,11 33:24 34:18,25 35:7,17,25 36:18 37:5,7,8 39:4,14 40:10 40:15 41:10,24 42:5,14,22,23 43:4,11,25 45:18,22,25 47:13,21 48:9 48:12,22 50:10 50:16 51:5,12 51:14 54:13,20 55:6 57:22 58:3,10 60:25 61:2,12 63:8 64:4,16 65:5 66:4,21 67:10 67:10,18 68:2 68:15 72:16,17 72:21 73:7,25 74:13 75:22 76:7,11 77:7 77:14 79:7 80:10,20 82:4 82:16,19 83:11 83:17 85:3,8 85:24 86:8 87:11 89:4,15 90:21 91:12,22 92:10,24 93:11 93:18,23 94:1 94:4,11 95:8	95:14,23 96:3 96:13,20 98:6 98:12 99:1 100:2,25 101:3 102:19 103:11 104:17 105:3 106:8 107:6 108:22 109:3 109:25 110:8 110:12 112:6 112:15 113:1 113:13 114:4,6 114:19,22 117:22 119:8 119:23 121:11 122:7,13,18 126:1,8,12 127:7 128:13 130:24 131:19 133:24 136:18 137:12 138:1 138:12,15 <b>omitted</b> 137:2 <b>ones</b> 62:15,16 63:22,23 96:16 96:17 <b>open</b> 107:20 <b>operate</b> 121:4 <b>operated</b> 120:15 <b>operations</b> 121:9 <b>opined</b> 73:21 130:19 <b>opines</b> 127:5 <b>opinion</b> 13:9 19:11 39:24,25 40:2,3 42:11 68:19,21,24 74:19 78:6 80:4,5,7,7,11 91:23 102:20 112:2,16 114:12 117:2 117:14 122:2 124:9 127:5 128:17
--	--	--	--	--

<b>opinions</b> 12:8 19:16 34:23 40:12,21 41:12 42:3,13 43:1 44:11 65:20 70:25 72:9,12 73:11 75:25 76:17,20 77:7 79:1,16,18,22 80:2,3,21,25 90:3 91:4 92:12 104:9 110:15,22 111:1 114:9,11 115:6,16 117:24 122:13 122:17 123:7 123:16,16,23 124:4,13,16,16 124:18 125:6 127:12 128:20 134:23 <b>opportunity</b> 20:8 75:4,11 133:25 <b>opposed</b> 67:13 <b>order</b> 5:13 7:3 12:7 13:9 18:11 28:21 54:25 59:15 116:17 134:20 <b>ordered</b> 6:18 7:25 8:7 <b>original</b> 15:6 98:8,10,12 99:23 <b>originally</b> 132:1 <b>orthopedic</b> 16:25 25:10 58:10,19 62:11 65:3,12,14 70:13 79:9 111:6 139:5 <b>orthopedist</b> 65:11	<b>outcome</b> 144:17 <b>outlines</b> 48:12 <b>outside</b> 18:10,24 59:14 83:2 134:19 <hr/> <b>P</b> <hr/> <b>p</b> 2:1,1 5:1 142:5 <b>page</b> 3:2 12:15 12:24 23:6,7 26:14,16 28:18 29:5,6,18,24 29:24 30:19 31:17 32:8 33:19 36:22,25 40:2 47:17 50:7,11 54:18 66:18,19,20 67:14 68:2 78:6,25 82:8 83:4 95:1 96:10 99:24 100:3 106:24 107:13 108:5,6 108:6 112:4 113:5 122:3,17 133:17 135:14 135:22,22 136:6,9 137:3 138:3 <b>pages</b> 28:19 63:16 99:17 <b>pain</b> 25:12 <b>paperwork</b> 18:3 <b>paragraph</b> 26:16 108:15 <b>parcel</b> 82:17 <b>part</b> 10:14 25:3 29:9 34:13 40:13 60:1 62:13 82:17 95:25 98:5 99:11 100:17 132:8 134:8 136:12 137:7	<b>particular</b> 11:5 14:5 73:12,19 75:7,8 76:1 80:1 133:12 <b>particularly</b> 13:12 <b>parties</b> 144:15 <b>partner</b> 15:15 <b>parts</b> 26:10 97:13 <b>passing</b> 141:21 141:23 <b>patents</b> 141:12 <b>patient</b> 42:18 43:4,14 73:1 75:8,9 <b>patients</b> 141:5 <b>pay</b> 141:5 <b>penalty</b> 32:12 71:24 72:3 <b>pending</b> 123:24 <b>people</b> 47:6 51:18 <b>period</b> 83:7 <b>perjured</b> 83:24 <b>perjury</b> 32:12 71:24 72:3 <b>permanent</b> 48:24 <b>person</b> 23:4 39:21 42:9 44:13,14 75:12 75:20 76:1 <b>persons</b> 73:13 <b>perspective</b> 128:5,6 <b>pertaining</b> 5:13 <b>peter</b> 15:22 16:8 16:14 105:14 <b>phone</b> 2:8,18 7:6 7:11 8:16 29:11 34:25 41:19,21 <b>phrase</b> 24:11 <b>physical</b> 111:5	<b>physically</b> 60:23 134:11 <b>physician</b> 23:20 23:25 24:5 25:24 26:2 31:10 32:17,18 38:16 39:1,3 40:8 68:23 69:1,6,8,10 70:3,6,7 71:14 73:11,20,21 79:6,8 83:6 88:12 90:9 91:24 92:2 93:7,7,8 119:7 137:24 <b>physicians</b> 33:20 70:4 74:14 85:23 89:19 92:5,8 108:16 135:18,21 136:4,5 137:25 <b>pick</b> 29:11 34:25 41:20 <b>picking</b> 41:19 <b>picture</b> 80:18 <b>pieces</b> 25:4 <b>place</b> 5:14 65:19 65:19 76:18 87:19 <b>placed</b> 75:10 <b>plaintiff</b> 1:4 2:4 68:20 83:15 115:17 125:8 <b>plan</b> 3:11 5:20 15:8,10,11 17:6,19,24 20:8,9,10,14 21:5,7 23:3,9 23:19,23 33:22 39:20 41:23 42:8,10 43:10 44:12 47:18 70:10 77:13 81:1 86:1,2,4	88:20,23 89:1 89:2 90:9,13 90:20 94:20 97:19 98:3,9 98:23 102:20 106:3,6,23 107:8,11 108:7 108:8 109:6 110:6,17 111:2 112:5 113:2,5 113:18,19,25 114:8,17 116:18 122:11 122:15,21 123:8 124:5,14 124:17 126:24 127:8 131:9,14 <b>planner</b> 23:3 <b>planning</b> 34:13 75:20 127:14 <b>plans</b> 89:19 <b>plc</b> 1:7 <b>please</b> 6:11,15 10:8 13:8 20:2 26:15 37:12 38:2,9,11 66:4 67:10 72:23 74:11 80:14 81:22 101:15 103:22 106:15 107:21 108:11 112:12 130:14 130:16 132:23 139:2 <b>point</b> 17:5 22:2 37:2 38:15 54:2 55:2 62:5 66:14,15 70:15 79:21 85:5 127:14,23 128:2 141:24 <b>pointed</b> 28:16 108:10 <b>pointing</b> 64:7 <b>portion</b> 25:8
---	---	---	--	--

58:5 82:5 138:2 <b>portions</b> 26:13 <b>position</b> 40:5 75:11 <b>positions</b> 106:25 <b>possession</b> 10:14 10:14 18:15 20:14 27:19 100:9,16,23 132:5 133:3 <b>possibly</b> 119:13 <b>post</b> 11:22 48:22 49:25 137:15 <b>postdated</b> 123:11 <b>posterior</b> 48:23 49:25 137:15 <b>potentially</b> 9:6 <b>practice</b> 32:10 94:7 115:5 <b>predicated</b> 25:23 92:12 <b>preface</b> 94:5 <b>preference</b> 75:21 <b>preferred</b> 79:6 <b>preliminary</b> 56:19 <b>prepare</b> 32:22 33:6 89:18 <b>prepared</b> 12:3,9 21:2,8,13 33:5 40:17 89:2 98:4 <b>preparing</b> 31:8 91:3 94:20 <b>present</b> 30:23 31:1 63:18 <b>presumably</b> 95:24 <b>pretty</b> 129:22 136:1 <b>previous</b> 24:14 <b>previously</b> 77:11	96:21 131:10 137:6 <b>print</b> 98:19 101:5 102:25 133:1,12,13 <b>printed</b> 18:13,20 100:12,14 133:10,14 140:7,23 <b>prior</b> 11:6 23:10 27:3,3,22 30:13 31:19,20 68:5 90:19 101:21 107:11 113:3,4,17 132:6 137:22 <b>privilege</b> 88:3 <b>probably</b> 58:18 98:15 <b>problem</b> 59:16 72:19 141:6 <b>produced</b> 4:17 62:13 97:21 98:18 <b>professional</b> 74:5 <b>program</b> 26:5 <b>projected</b> 23:8 <b>projection</b> 117:20 <b>provder</b> 1:16 3:3 3:8,21,24 4:2 18:18 36:4 47:3,14,16 59:25 62:3,10 81:25 82:1,6 83:5,23 93:20 93:21 94:3,12 96:4,11 97:6 98:23 99:14 100:10 102:13 103:3,20,25 104:5,18,21 105:2,5,5,19 105:20,20	106:9,10 107:2 109:15 111:14 111:16,21 112:8 117:8 122:5 127:14 130:20 143:8 143:17 144:10 <b>provders</b> 18:15 71:18 140:22 <b>provenzale</b> 133:22 <b>provide</b> 116:16 117:1 <b>provided</b> 48:6 62:2 63:15 80:22 88:23 <b>public</b> 1:18 143:24 144:7 <b>pull</b> 61:9 <b>purpose</b> 105:12 106:4 139:23 <b>purposes</b> 14:6 80:11,16 87:25 88:2 109:20 125:18 128:5 128:17 <b>pursuant</b> 1:16 5:12 <b>put</b> 34:5 55:23 72:22 73:2 76:17 95:8,10 96:18,25 100:15 133:1 <b>putting</b> 113:18	41:4 42:2 45:18 51:25 52:5,6,8 53:24 57:1 64:17 65:10 66:20 68:5 69:21 75:13,15,16 76:5,12,14,15 77:25 78:10,17 80:6 88:1 91:2 92:18 103:19 103:23 118:13 119:17 123:25 124:1 127:24 128:2 130:1,1 130:2,7,9,10 130:12,12 131:25 132:10 133:25 134:1 135:16,17,25 136:1 140:25 141:21 <b>questioned</b> 18:16 114:20 132:6 134:4,9 134:13 140:24 <b>questioning</b> 18:10,22 114:20 <b>questions</b> 7:1,15 8:1 19:3 22:2 38:3 46:11,14 55:6 56:3 64:2 75:4 78:13 88:5 93:16 94:3,6 97:15 113:15 115:9 119:19 120:20 121:16 131:23 138:17 139:19 140:17 141:24 <b>quick</b> 64:24 132:15 <b>quite</b> 120:12 <b>quote</b> 48:22,24	49:22 50:22 68:12 125:20 <b>quoted</b> 6:12 <b>quoting</b> 138:8 <hr/> <b>R</b> <b>r</b> 2:1 5:1,1 144:1 <b>rabin</b> 133:23 <b>raise</b> 79:20 <b>raised</b> 119:20 <b>raises</b> 69:20 <b>range</b> 11:9 58:20 <b>ray</b> 121:17 <b>raymond</b> 2:7 <b>reach</b> 72:13 <b>reached</b> 42:13 76:16 79:9,11 124:17 <b>read</b> 30:15 56:7 93:1 143:9 <b>reader</b> 57:6 <b>reading</b> 30:21 <b>real</b> 132:15 <b>realize</b> 63:13 131:25 <b>really</b> 12:15 23:16 33:18 55:9 59:4 72:13 75:16 <b>reason</b> 23:16 41:20 52:10 61:21 62:5 88:8 91:13,18 <b>reasonable</b> 23:19 86:4 <b>rebuttal</b> 3:24 14:2,5,10,16 16:10 21:21 105:16,20 106:2,5 133:20 133:22 <b>recall</b> 8:15 17:10 17:17 20:23 53:15 55:10,15 66:11 85:1,25
---	--	--	--	--

100:24	34:1,21 43:15	135:11,14	<b>relevancy</b>	14:12,16,17
<b>receive</b> 34:2	43:23 44:10,15	136:2	138:13,17	15:7,12,13,21
60:6 104:14	44:17,23 45:3	<b>references</b> 113:7	<b>relevant</b> 19:12	15:25 16:1,3,7
113:24	45:5 47:20,22	<b>referencing</b>	24:4 33:18	16:9,13,20
<b>received</b> 11:6,13	48:8 49:23	102:10	54:9,11,12	17:21,22 20:22
12:5 27:2,22	50:23,24 51:9	<b>referred</b> 62:8	69:14	21:2,5,9,18
60:8 105:14	51:11 52:12,21	67:7 97:13	<b>reliance</b> 25:22	22:18,24 23:2
110:10,16	53:8 54:3,21	106:23 107:21	<b>relied</b> 12:10,14	23:6,11,22
114:7 116:15	55:2,11 56:7	110:3	12:23,25 13:3	25:9 26:8,19
<b>receiving</b> 23:5	57:4,7,23 58:4	<b>referring</b> 29:17	13:8,11 19:10	26:25 27:4,10
<b>recollection</b>	58:9,9 60:17	48:14 50:3	22:17,19 76:19	27:17,22,25
133:7	60:20,22 61:1	59:25 60:3	76:23 77:4	28:25 29:2,6,9
<b>recommendati...</b>	62:12 64:14,22	62:12,19 63:2	80:7,8 82:12	30:5,7,14,16
24:23 33:20	65:2 66:23	90:10 96:21	94:19,24	31:5,8,9,16,21
129:12	67:3,6 73:17	107:2 108:6	103:22 109:11	32:2,9 33:5,6
<b>recommendati...</b>	93:8 105:15	114:5	113:11 121:12	33:10,16 34:11
34:16 42:4	106:20,22	<b>refers</b> 9:6	121:23 128:20	34:14 37:3,5,6
68:24 77:10	107:10 108:24	<b>reflect</b> 120:10	<b>rely</b> 23:2 65:19	38:25 40:9,11
90:14 129:13	109:14 110:1,2	<b>regard</b> 7:3 15:21	72:14,16 74:15	40:16,17,18
<b>recommended</b>	110:12,16	18:5 23:1 40:5	75:24 82:12,13	41:21 44:22
117:6 129:3	111:3 112:18	64:19,21 87:20	102:19 103:11	45:4,8 47:4,17
<b>recommends</b>	112:22,24	91:3 134:4	104:8 107:17	49:3,14,19
24:24 128:25	113:2,8,10,13	<b>regarding</b> 15:14	110:14 115:5	50:8,12 51:3,7
<b>record</b> 16:6 18:9	113:17,19,24	20:4 25:6,14	121:22 133:21	52:1,19 53:2
19:22,23 47:10	114:6 115:16	26:4 73:12	<b>relying</b> 43:1	53:21 54:4,18
47:17 49:17	115:20,21,25	78:24 106:2,5	73:4,8 90:2	55:19,23 56:6
57:25 61:13,14	116:25 117:10	110:4 111:4,5	<b>remember</b> 36:12	56:13,18,19
62:8,20 63:12	119:5,10 120:4	117:15 135:9	36:13 55:23	57:2,16,22
64:5 88:1,2	120:10 122:1	136:22	56:5 61:23	58:5,23 61:5
93:15 94:10	123:20 135:11	<b>regards</b> 7:1	66:9,22	65:18 66:2
96:19 98:5	135:13,18	<b>rehab</b> 75:19	<b>remove</b> 80:17	67:12,14,19,22
99:12 108:6	136:5,23,24	<b>rehabilitation</b>	<b>render</b> 43:9	70:23 71:5,10
109:4,19	140:3,22	34:12 128:6	73:18	71:18,22,23,23
125:19 135:1,2	<b>refer</b> 113:5	<b>related</b> 19:4	<b>rendered</b> 44:11	71:25 72:2
139:2 140:19	<b>reference</b> 15:13	94:8 144:14	68:23 74:18	73:5,8 75:24
142:1 143:11	16:24 21:4,12	<b>relating</b> 18:25	<b>rendering</b> 73:11	80:22 81:7,10
143:12 144:13	21:18 22:23	87:20	<b>repetitive</b> 46:22	81:21 82:1,17
<b>records</b> 10:17,24	26:14 53:19	<b>relative</b> 17:5	<b>rephrase</b> 14:8	83:5,8,19 84:4
11:4,6,13,19	54:16,17 62:5	28:12 34:2	80:14 118:14	84:11 85:6
11:21,24 13:11	67:12 113:14	<b>relatively</b> 86:8	<b>report</b> 3:9,15,17	88:15,16 90:8
20:3 26:9	<b>referenced</b> 16:2	86:12	3:19,22,24	90:18,23 91:19
27:10,15,18	37:2 54:5	<b>relax</b> 28:7,7,10	10:6,6,10 11:8	91:20,25 93:1
28:1,17 29:1,7	99:23,24	36:2	12:3,16 13:14	94:17,20,25
29:8,18,21,25	101:19 103:14	<b>relevance</b> 44:6	13:18,20,21,23	99:23 101:16
30:12 32:24	107:12 109:6	84:25	13:25 14:1,11	101:18,21

102:2,8,9,13 102:19,24 103:3,9,25 104:6 105:1,6 105:10,12,13 105:16,21 106:1,2 107:13 107:20 109:5 112:3 113:4 114:13,16 116:14,16,24 117:9,13,18 121:21,23 122:4,10,19 123:9,12 124:3 124:12,12,19 124:21,22 125:13 127:15 127:16 137:7 137:22 138:9 <b>reported</b> 27:1 <b>reporter</b> 60:6,17 60:20 61:24,25 97:25 98:15 99:8 142:4 <b>reporting</b> 27:20 68:25 <b>reports</b> 4:7 8:6 10:12 12:8 13:13,15 14:2 14:4,5,21 15:4 15:22 18:19,20 21:19,22 27:2 29:12 42:6,6 44:9 50:25 52:17,22 53:18 53:19 61:6,8 68:1 91:3 99:20,25 100:4 100:8,23 105:14 109:16 109:21 113:24 116:13,14,15 117:19 121:12 121:18,19	126:24,25 127:12,13 131:14 132:16 133:18,20,21 134:5,14 139:9 <b>represent</b> 5:9 <b>reprint</b> 61:11 <b>requested</b> 114:3 140:24 <b>required</b> 86:7 <b>requires</b> 68:25 <b>rer</b> 1:9 <b>rereviewed</b> 9:20 10:5,10 <b>research</b> 24:16 24:17,20 25:5 25:20 63:13,16 131:8 <b>researched</b> 95:5 <b>reserve</b> 8:14 <b>respect</b> 62:10 104:21 108:22 116:1 121:11 124:19 <b>respectively</b> 132:18 <b>response</b> 75:14 115:9 <b>responsive</b> 15:22 16:2,8 <b>rest</b> 81:23 <b>result</b> 6:20 78:23 <b>retained</b> 37:25 38:1 114:25 115:6,11 118:1 125:24 126:11 139:15 <b>retention</b> 139:16 <b>returned</b> 62:1 96:9 <b>review</b> 9:12,18 29:12,13 34:1 34:20 47:17 50:22 51:9 54:21 57:25	58:6 64:24 73:17 90:23 103:11 113:17 119:9 <b>reviewed</b> 9:15 9:20,25 10:2 10:10,12,24 11:21 13:12 16:18 26:3,6,9 26:10,13 27:10 27:15 28:1 29:9,24 43:14 44:10,23 45:5 47:20,22 51:11 57:3,4,7,23 58:5,8 60:8 65:2 70:10 71:17 93:8 105:15 107:11 109:11 111:24 113:2,3,11 115:16 119:5 120:4 121:12 121:25 122:10 135:8,18 136:6 <b>reviewing</b> 30:5,6 55:10 <b>reviews</b> 43:23 57:12 <b>ridiculous</b> 45:23 <b>right</b> 8:15 10:9 16:16 22:16 26:24 27:5,5 27:24 28:23 29:1,23 30:2,4 30:16,18 31:3 32:3 36:19 40:17,20,20 41:25 45:10,12 48:25 50:16 53:14,16 54:12 54:18 55:15,20 57:18 58:3,13 58:16 59:1 60:21 63:4	64:19 68:8,16 70:24 71:1,7 71:19 72:5,10 72:18 74:13,15 74:19,24 76:24 77:4,20 78:20 79:21 80:3,12 80:18 81:9,13 82:14 83:9 86:16 87:17 92:11 94:1,19 95:8,19 96:7 96:14,20 101:4 105:3 106:25 113:23 116:13 117:7,22 118:5 119:8,25 123:14,18,21 127:10 134:15 135:16,17,20 136:14,16 138:5,24 140:1 <b>rmcelfish</b> 2:10 <b>role</b> 119:4 <b>room</b> 95:9 97:2 <b>rpr</b> 1:17 <b>rule</b> 6:13 7:19 8:3 36:2 139:16 <b>ruled</b> 126:5 <b>run</b> 84:22 <b>rush</b> 133:11 <b>rye</b> 2:16 <hr/> <b>S</b> <hr/> <b>s</b> 2:1 3:7 4:1 <b>sabrina</b> 1:6 <b>sat</b> 46:8 <b>save</b> 55:18 <b>saw</b> 119:11 136:18 <b>saying</b> 17:24 19:9 27:24 29:4 38:25 66:10,11,22	70:14 74:7 81:3 132:24,25 133:5 <b>says</b> 26:13 27:9 27:23 29:18 30:19,24 32:2 32:9 37:6 44:22 47:22 48:22 50:11 57:2 67:21,22 68:3,12,13 132:20 133:18 133:19 <b>scheduled</b> 88:8,9 138:19 <b>scilaris</b> 58:12 <b>scope</b> 18:11,24 59:14 83:2 84:17 134:20 <b>sebastian</b> 32:9 139:5,6 <b>second</b> 16:20 30:3 37:16 59:13 96:3 97:1 133:16 <b>secondtolast</b> 82:8 95:1 <b>section</b> 47:17 136:9 137:18 <b>see</b> 7:20,23 28:16,22 29:15 30:2,23 32:15 36:18 49:13,14 50:3,8,10 57:11 67:15,18 67:20 70:6 75:12,20 92:19 97:7 99:20 107:14 111:7 113:6 117:18 120:5 125:7 126:6 135:22 136:18 138:23 <b>seeing</b> 44:14 136:15
--	---	--	--	--



<b>seen</b> 66:8,13 83:9 117:10 136:11,13 <b>send</b> 20:18 <b>sent</b> 20:10 <b>separated</b> 11:12 <b>september</b> 11:9 11:17,18 12:16 22:18 23:18,22 25:8 27:25 28:25 31:1,4 47:24 48:16 50:12 51:1 71:10 83:19 91:19 94:17 116:23 117:8 124:20,22 127:17 135:12 135:20 136:3,7 137:3 <b>series</b> 28:17 29:1 <b>served</b> 17:25 <b>serves</b> 33:21 <b>services</b> 23:4 24:23 <b>set</b> 67:6 70:25 95:17 106:14 109:13 112:18 112:22 117:4 121:16 144:11 144:19 <b>share</b> 99:1 <b>sherbourne</b> 2:5 <b>shore</b> 113:8 <b>short</b> 86:8,12 <b>show</b> 26:12 28:15 44:21 101:13 104:4 108:9 111:20 <b>showed</b> 83:4 135:7 <b>showing</b> 82:4 <b>sic</b> 63:20 98:19 <b>sign</b> 71:23 72:2 <b>signature</b> 72:6	<b>signed</b> 4:4 11:25 30:14 31:24 48:19 57:19 65:4 71:22,25 72:5 83:7 85:5 106:11,17 109:1 143:20 <b>significant</b> 41:22 41:24,25 44:5 <b>signing</b> 38:25 83:18 84:11 <b>signs</b> 32:14 37:3 65:7 <b>silly</b> 12:2 <b>similar</b> 27:1 124:16 133:8 <b>similarities</b> 27:6 129:11 <b>similarly</b> 69:9 <b>simple</b> 96:16 136:1 <b>sir</b> 5:7 6:1,18,23 8:23 9:23 12:6 12:12 13:2,8 13:20,23 15:1 16:1 18:7 22:20,22,25 26:21 29:3 38:15,24 40:10 41:7 47:5 48:9 49:3 50:4,14 52:7 55:14 56:16 72:22 78:23 80:9 83:10 85:10,13 85:15,18 87:23 93:11 94:18 95:7,13 97:22 98:11,22 107:3 107:21 111:25 113:9,12 114:10 122:23 129:8 139:17 <b>sit</b> 50:16 56:2 63:22 64:19	83:18 96:8 <b>situation</b> 84:22 91:8 <b>slash</b> 68:4 <b>smart</b> 108:4 <b>snide</b> 129:19,21 129:23 <b>somebody</b> 35:14 43:8 73:14,18 91:9 108:14 <b>someplace</b> 77:17 <b>soon</b> 45:24 <b>sorry</b> 6:1 9:22 14:24 15:12 18:14 20:24 28:8 29:3 39:13 58:24 64:25 78:18 99:9 100:19 101:10 102:17 106:18,18 121:17 129:7 134:2,12 139:7 140:18 <b>sort</b> 90:11 95:9 <b>sounds</b> 8:20 58:1 <b>source</b> 90:10 108:25 110:24 114:5 <b>speak</b> 16:14 23:12 89:19 90:1 91:2 127:20 <b>speaking</b> 20:20 41:8 <b>speaks</b> 16:21 <b>special</b> 23:7 <b>specialist</b> 27:2 27:18 <b>specialists</b> 4:3,6 11:1 26:5 28:2 30:13 31:20 47:23 48:5 50:24 51:10,13 51:16,18 52:2	52:12 58:11,19 62:11 65:3 66:12 67:2,17 68:4,14 106:11 106:17 107:1 107:12 109:1 109:16,21 110:3 112:23 135:9 137:20 <b>specialty</b> 73:12 <b>specific</b> 102:3 117:14 129:17 <b>specifically</b> 10:24 16:9,11 18:16 27:12 53:8 55:15 56:12 67:12 100:3 105:16 122:7 <b>speculation</b> 39:9 84:13,17 <b>speed</b> 116:7 <b>spend</b> 141:2 <b>spent</b> 74:23 <b>spinal</b> 48:23 49:25 137:15 <b>spine</b> 4:3,6 11:1 25:11 26:5 27:2,18 28:2 30:9,13 31:20 34:3 47:23 48:5 50:24 51:10,13,15,17 52:2,11 66:12 67:2,17 68:4 68:13 106:10 106:16 107:1 107:12 108:25 109:15,20 110:2 112:22 117:11 135:9 135:19 136:7 137:20 <b>spoke</b> 17:25 21:1 70:10 71:3	74:21 77:9 83:12 131:13 <b>spoken</b> 79:17 88:18 <b>ss</b> 143:4 144:4 <b>standpoint</b> 34:13 75:19,20 <b>start</b> 130:13 <b>started</b> 6:5 82:10,11 <b>state</b> 1:18 32:11 143:3,24 144:3 144:8 <b>stated</b> 68:25 88:12,17 <b>statement</b> 40:9 45:16 62:6 66:12 68:5 140:19 <b>statements</b> 27:16 40:11 <b>states</b> 1:1 16:17 26:8 30:25 31:16 33:3,9 33:10,17 48:13 66:1 71:17 81:2 83:6 91:25 93:1 122:17 137:14 137:16 138:6,7 <b>stating</b> 70:9 <b>status</b> 48:22 49:24 137:15 <b>stay</b> 139:1 <b>stick</b> 127:12 <b>sticker</b> 97:6 <b>sticky</b> 97:23 <b>stop</b> 62:17 <b>straight</b> 76:9 129:22 <b>stuff</b> 77:4 81:23 <b>stupid</b> 65:10 <b>submit</b> 90:21,23 91:10 <b>submitted</b> 90:9
---	---	--	---	---

<b>subscribed</b> 143:20	<b>T</b>	<b>ten</b> 138:11	22:2,7,11	17:10,24 19:6
<b>substance</b> 17:3	<b>t</b> 3:7 4:1 143:1	<b>term</b> 28:13	26:22 27:1	19:18 22:5
18:5 87:19	144:1,1	122:3	30:25 31:11	23:24 28:10,19
134:13	<b>tab</b> 64:25,25	<b>terminate</b> 45:24	33:2,9,9,16	28:23,24 37:22
<b>sufficient</b> 116:16	65:1,1,1 96:11	<b>terms</b> 60:8 111:2	35:11,25 39:21	46:5 51:6,7
117:1	96:12,13	121:22 126:23	45:17 49:15	65:16 66:4
<b>suggested</b>	<b>table</b> 95:12	<b>testified</b> 5:3	51:10,17 53:23	71:21 72:1,24
130:23	<b>tabs</b> 95:18,23	18:18 21:7	54:2,8,11	74:18 76:4,14
<b>suggesting</b> 130:8	<b>take</b> 28:11 35:22	32:24 40:7	56:12 57:1	86:10,23,24
<b>suggestion</b> 7:5	74:10 105:24	67:25 68:22	59:1,2 62:16	92:19 125:16
8:9 28:9	121:15	69:5 70:1	64:8,15 70:15	126:3 127:25
<b>suggestions</b>	<b>taken</b> 5:14 20:6	77:11 78:24	72:19 74:6	128:9 134:7
25:14	62:16 86:21	79:5 83:14	75:13 77:2,16	138:15
<b>suggests</b> 127:4	110:18 141:17	86:10 92:3	77:22 79:25,25	<b>third</b> 93:22
128:25	141:18 143:9	93:2 110:8,11	80:2 84:7 86:7	138:20
<b>sum</b> 18:5 87:18	<b>talk</b> 13:15 22:13	115:8,10	86:11 91:25	<b>thorough</b> 59:20
<b>supplemental</b>	22:13,16 23:15	131:19 137:6	92:8 93:9	<b>thought</b> 14:14
3:21 5:12 8:24	23:16 36:22	<b>testify</b> 56:8	97:20 98:8	51:14 68:9
9:4,12 12:3	82:7 139:24	101:4 120:24	100:7 108:3	77:12
13:22 14:1,4	140:2	126:6	109:4 116:4	<b>three</b> 15:4 58:14
14:12,17 15:6	<b>talked</b> 34:14	<b>testifying</b> 89:13	120:23,24	74:25
15:8,11,12,21	43:12 48:9	97:14	124:1 125:11	<b>tie</b> 68:8
16:20 21:19	61:16 71:15	<b>testimonial</b> 94:9	125:11 130:5	<b>time</b> 6:13 9:14
48:7 61:6,8	72:21,23 76:8	<b>testimony</b> 12:19	132:23 133:3,5	10:15 17:5,16
99:25 105:1,5	80:25 122:1	27:14 39:2	136:11,21,22	17:25 20:14,20
105:10 113:24	135:8,8 138:10	44:4,21 88:10	137:1,9 138:8	21:1 30:21,23
114:13,16	<b>talking</b> 18:12,14	88:11 89:5,6,9	140:5 141:25	31:1 37:13,14
133:19	20:7 64:7 82:5	110:19 130:6	<b>therapy</b> 111:5	37:16,17,18
<b>sure</b> 20:2 44:19	108:3 135:22	143:9,12	117:5	40:17 55:2,18
49:5 58:22	<b>talks</b> 136:10	144:13	<b>theres</b> 119:19	63:15 66:5
60:10,14 62:15	<b>telephone</b> 85:9	<b>thank</b> 6:16,24	<b>thereto</b> 137:23	70:19,20 71:16
91:12 107:22	136:19	9:24 10:22	<b>thing</b> 16:1 20:1	71:22 83:7
108:2 112:19	<b>tell</b> 9:3 10:23	11:3 15:18	22:14 50:15	93:22 122:9
132:14 135:6	13:8 35:17	28:24 47:5	70:14 79:1	125:12 126:10
138:13 139:22	36:14 46:14,23	49:6 50:6,10	82:13 104:21	131:24 132:19
141:4	62:17 64:2	59:3 68:16	133:12 140:18	136:15 140:17
<b>surgeon</b> 70:13	82:10 87:12,18	77:2,25 89:7	<b>things</b> 8:6 22:19	141:10 142:5
79:9 121:2	103:7 105:9,24	93:11 99:10	36:22 59:17	<b>times</b> 25:13
<b>surgery</b> 121:10	108:23 109:25	103:24 106:9	62:7 64:11	30:17,18 44:25
<b>surgical</b> 112:24	121:22 124:9	107:23 108:20	83:13 94:2	66:9,13 67:8
<b>swearing</b> 37:4	129:16 130:4	139:17	111:8 133:10	92:4,15,21
<b>swore</b> 77:20	141:15	<b>thats</b> 8:11 10:25	133:14 135:5	93:5 138:11
<b>sworn</b> 5:2 83:7	<b>telling</b> 40:8	14:7,7,14,19	<b>think</b> 10:25	140:21
144:12	76:10 84:10	16:16,18 18:2	12:14 14:11,14	<b>tissue</b> 45:20
	118:24 140:14	19:6,18 20:25	14:16 15:16	<b>today</b> 5:11 9:19

60:12 63:18 76:8 80:17 83:18 87:6 89:9,13 94:12 95:15 96:23 97:20 98:19 99:12,19 102:9 105:1 107:7,9 125:18 132:10 138:23 139:24 142:1 <b>today's</b> 81:22 110:20 <b>told</b> 6:22 7:2 9:1 9:2,15 38:18 45:17 82:10 83:11 87:10 88:6 129:15 <b>top</b> 28:20 54:18 55:10 66:20 <b>topic</b> 64:20 <b>total</b> 15:3 <b>transcript</b> 99:4 99:18 101:11 101:19 103:15 140:8 143:9,10 <b>treat</b> 33:25 34:19 35:5,18 37:8 45:9 68:20 <b>treated</b> 26:4 30:7,11,20,22 31:17 37:7,19 38:19 42:1 43:3 45:8 66:8 67:8 75:9,25 83:14 109:2 115:17 <b>treater</b> 32:2 76:10 92:13 93:2 <b>treating</b> 25:24 31:10,24 32:17 32:17,24 33:8 33:17 36:15	37:18 38:16 39:1,3,3 40:5,8 42:9,15,17,23 43:1,8,17 51:18 65:21 69:1,6,8,10,25 70:3,4 71:13 71:14 72:25 73:5,9,14 77:21 79:6,8 83:6 88:12 91:24 92:2 93:4 108:25 110:24 114:21 115:19,25 116:10,25 117:3,10,25 118:9,18 119:6 121:2 125:14 137:24,25 <b>treatment</b> 34:2 67:12 110:5 117:4 137:18 137:19 <b>treatments</b> 111:4 <b>trial</b> 134:18 <b>true</b> 14:19 15:24 16:23 32:13 37:5 38:17 42:21 44:3 48:21 69:12,15 72:11,15 74:16 81:8 82:15,21 83:17 85:7 89:3 94:21 95:17 96:2,24 97:3,12,15 101:7 112:24 117:21 118:4 120:15,16 121:13 122:11 125:11,12,15 131:4,7 132:22 143:11,13	144:12 <b>truth</b> 72:6 76:10 84:11 <b>truthful</b> 39:21 39:22 68:18 72:18 79:14,21 <b>try</b> 46:14 55:5 <b>trying</b> 12:22 19:15 26:22 41:1 56:3 62:17,18 78:11 78:12,14 85:21 91:5 119:21,25 <b>twice</b> 22:8 120:15 121:8 <b>two</b> 11:4 12:15 14:20 15:6,8 55:13 56:2 57:14 58:22 70:12 77:12,15 95:12 108:10 125:6 127:21 141:2 <b>twopart</b> 95:16 <b>type</b> 23:4 117:4 136:24 <b>typical</b> 136:22 <b>typically</b> 89:18	81:4 82:13 85:21 92:1 98:8 108:1 114:24 118:16 133:6 135:25 137:2 <b>understanding</b> 5:22 7:1 12:23 16:1 18:2 29:3 31:9 33:7 62:21,25 65:21 116:9 117:7 118:5,8,22,24 118:25 119:1,3 119:9 137:23 <b>united</b> 1:1 <b>updated</b> 10:16 <b>upside down</b> 30:21 <b>upstairs</b> 141:14 <b>use</b> 65:19 <b>usually</b> 90:7,8,9 90:10 <b>utilize</b> 23:11 25:8,17 <b>utilized</b> 24:19 25:15 <b>utilizing</b> 31:7	<b>W</b> <b>w</b> 143:1 <b>wait</b> 7:9 28:16 134:25 <b>waive</b> 88:3 <b>walked</b> 70:12,16 70:17 71:8 77:11 <b>want</b> 9:13 22:9 36:22,23 38:5 47:6,8,10 56:11 63:10 64:5 72:22 73:22 74:1 81:13,19 82:7 86:17 87:2 97:17 98:1 99:2,17 102:5 102:6 108:2 112:19 126:16 126:17 130:3 132:10 134:23 134:23 136:2 139:22 141:2 <b>wanted</b> 55:18 62:6 86:12 <b>warner</b> 2:13 <b>wasnt</b> 14:12 37:13,18 69:24 84:10 100:5 129:21 140:2 <b>waste</b> 9:13 17:16 <b>way</b> 13:6 18:8 18:10 35:11 42:14 54:15 59:14 63:21 73:2 82:22 85:22 87:10,12 90:7 117:23 118:1 122:8,20 123:4,6,9 127:8 129:10 134:21,24 136:23 139:1 144:16
		<b>U</b> <b>uhhuh</b> 25:2 <b>ultimately</b> 19:10 19:11 39:6 <b>undergone</b> 64:11 <b>understand</b> 5:16 5:17,18 17:23 22:17,21,23 25:7 26:12 27:24 39:12 41:1 42:16,17 42:18,18,19 44:20 51:20 60:25 65:17 68:15,15 72:1	<b>V</b> <b>v</b> 5:1 <b>vague</b> 39:15 84:24 89:21 <b>valid</b> 72:10 <b>various</b> 26:10 27:20 29:7 34:15 <b>view</b> 127:14 <b>visit</b> 25:1 <b>visits</b> 24:25 25:11,13 <b>vocational</b> 39:20 75:19 128:5 <b>vs</b> 1:5	

<b>ways</b> 134:18	32:22,23 33:2	<b>writing</b> 18:4	109:15,20	121:21 127:16
<b>weeks</b> 35:6	33:16 34:10	<b>written</b> 66:16	110:2 112:22	<b>11</b> 4:11 28:20,24
36:16 37:20	36:16 38:21	<b>wrong</b> 17:4	117:11 135:9	29:5 50:11
56:3	39:12 41:16	42:16 43:5	135:19 136:7	64:25 65:1,1
<b>weight</b> 73:18	44:9 45:2 46:4	66:5 72:23	137:20 144:3,5	111:14,16
80:1	47:10 49:14,18	<b>wrote</b> 34:11	144:8	<b>111</b> 4:11
<b>welcome</b> 132:11	49:22 50:21	51:12 53:20	<b>youre</b> 87:7	<b>1112</b> 2:5
134:19 140:25	52:9 55:4			<b>1112018</b> 144:25
141:20	56:15,17,24	<b>X</b>	<b>Z</b>	<b>111714</b> 106:18
<b>wending</b> 16:10	58:8,14,17	<b>x</b> 1:2,10 3:1,7	<b>0</b>	106:19 107:1
16:21	60:10 63:12	4:1	<b>01gi6230654</b>	<b>11172014</b> 109:5
<b>wendy</b> 4:13 9:25	66:1 68:2 76:4	<b>xyz</b> 73:21	144:24	<b>112</b> 4:13
15:23 16:2,14	78:17 79:4	<b>Y</b>	<b>1</b>	<b>12</b> 4:13 25:13
112:8,13	84:2,6,20 85:1	<b>yeah</b> 8:13 38:4	<b>1</b> 3:9 66:20	64:25 65:1
<b>went</b> 20:13	88:6 89:23	47:8 70:15	81:25 82:1,6	106:18 112:7,8
25:18 54:24	90:6 91:17	86:11 87:7	83:5 94:12,13	142:5
85:20 86:1	92:17 98:10,20	101:3 126:16	96:11,13	<b>121515</b> 4:8
<b>west</b> 2:6	99:7 100:20	139:7 140:1	100:10 108:18	109:16
<b>westchester</b> 2:15	101:25 102:3	<b>year</b> 21:8,13	108:19 116:24	<b>122216</b> 4:10
<b>whats</b> 13:17	103:17 104:11	24:25 25:13	<b>10</b> 3:16 4:6	109:17
19:18 43:5	111:11 114:15	53:13,20 54:3	13:19 17:21	<b>12222016</b> 11:20
54:9,11 73:7	115:2,5,11,23	77:12 104:16	56:19 101:16	<b>13</b> 4:12 9:22
96:8,9 101:13	116:21 117:13	<b>years</b> 55:13	102:8,14	31:5,17 111:17
104:4 118:20	120:10 121:25	58:22	109:14,15,19	111:23
119:3 120:18	122:23 123:24	<b>yell</b> 73:25 74:4	122:4,10,19	<b>135</b> 3:3
122:24 123:2	124:2 126:15	<b>yelling</b> 74:4	124:11,21	<b>13th</b> 9:21
125:4	127:3 128:12	<b>yep</b> 126:21,21	132:16	<b>14</b> 28:21,24
<b>whatsoever</b>	128:24 129:8	<b>yesorno</b> 75:16	<b>101015</b> 4:7	47:23 50:11
41:11	131:4,17,23	<b>yo</b> 107:24	109:16	95:16,18
<b>whereof</b> 144:18	138:18,22	<b>york</b> 1:2,12,12	<b>1016</b> 121:24	<b>143725</b> 1:9
<b>whoa</b> 83:25,25	139:19 141:7	1:18 2:16 4:3,6	<b>102</b> 3:15	<b>14page</b> 29:5
83:25	141:14,21	10:25 26:5	<b>102016</b> 4:9	<b>15</b> 3:12 13:21
<b>whoops</b> 136:4	142:1 144:10	27:2,18 28:2	109:17	17:22 23:22
<b>withdraw</b> 13:5	144:13,18	30:9,13 31:20	<b>103</b> 3:17,19	71:11,12 86:10
36:8 42:24	<b>witnesses</b> 115:6	32:11 34:3	<b>1030</b> 57:18	97:3 98:4,24
<b>withdrawn</b>	<b>words</b> 18:17	47:22 48:5	<b>10302013</b> 57:17	106:24 109:21
37:21	43:2 72:22	50:23 51:10,13	57:19 58:24	109:22 122:21
<b>witness</b> 3:2 5:1	115:15 135:20	51:15,17 52:2	<b>105</b> 3:21,24	<b>15th</b> 109:22
5:24 6:19,25	<b>work</b> 106:6	52:11 58:11,19	<b>10573</b> 2:16	124:5
7:13 9:9 13:3	<b>worked</b> 82:22	62:11 65:3	<b>106</b> 4:3	<b>16</b> 40:2 109:23
14:3,3,20	<b>working</b> 133:3	66:12 67:2,16	<b>1062015</b> 11:20	109:23,23,24
15:19 16:17	<b>worry</b> 138:16	68:4,13 106:10	<b>109</b> 4:6	126:4
19:10 21:7,25	<b>wouldnt</b> 75:24	106:16,25	<b>10th</b> 109:21	<b>17</b> 3:22 14:25
26:18 28:6	91:6 133:21	107:12 108:25		15:13 16:13
31:15,16 32:6	<b>write</b> 51:14			30:22 50:24

67:4 103:15 105:6,11 116:8 135:12,19 136:3,7 <b>17th</b> 11:9 14:21 16:7 47:23 <b>18</b> 100:3 <b>1a</b> 96:4,11,21 100:10 <b>1b</b> 97:6,9,10 100:10	136:3,8 137:3 <b>2016</b> 3:16,18,20 3:23,25 4:12 9:21,22 13:19 14:21,22,25 15:2,13 16:13 16:21 17:21 101:17 102:8 102:14 103:4 103:10 104:1,7 104:25 105:6 105:11,21 106:2 111:17 111:23 122:4 122:10,19 123:10 124:12 124:21 125:21 127:16 132:16 132:17,17 139:4 <b>2017</b> 1:13 3:13 10:2 36:21 78:25 99:14 101:22 126:4 144:19 <b>20th</b> 109:23 <b>2106</b> 32:12 <b>21st</b> 109:23 139:10 <b>22</b> 1:13 57:24 142:5 <b>22nd</b> 109:22,24 <b>23</b> 3:13 11:17,18 22:18 23:18 28:25 36:21 47:24 50:12 51:1 83:19 99:14 117:8 135:20 136:7 137:3 <b>232017</b> 4:14 10:1 112:9,14 <b>23rd</b> 10:2 11:10 23:22 25:8 27:25 48:16	71:10 91:19 94:17 127:17 <b>24</b> 57:5 66:19 <b>25</b> 66:19 <b>26</b> 139:16 <b>28</b> 3:20,25 15:2 16:21 31:4 49:24 50:5 51:2,7 67:5 104:1,7,25 105:21 106:1 106:19 132:17 135:12 136:3 <b>28th</b> 14:22 15:25 16:9 50:19 67:25	137:3 138:3 <b>54</b> 112:4 <b>575</b> 1:12 <hr/> <b>6</b> <b>6</b> 3:19 103:20,25 104:5,5 105:2 132:18 135:22 <b>62</b> 12:15 36:22 36:25 40:2 78:6,25 <b>659</b> 2:8,9 <b>6th</b> 144:19 <hr/> <b>7</b> <b>7</b> 3:21 47:17 68:2 99:18 100:3 105:4,5 113:5 133:17 133:18 134:6 135:14 136:6 <b>72116</b> 4:9 109:17 <b>72815</b> 107:1 <b>7300</b> 2:18 <b>7301</b> 2:19 <b>75</b> 63:16 <hr/> <b>8</b> <b>8</b> 3:24 54:18 99:18,24 105:18,19,20 105:24 133:17 134:6 <b>800</b> 2:15 <b>82</b> 3:9 <hr/> <b>9</b> <b>9</b> 1:14 4:3 106:9 106:10 107:7 107:10 108:22 109:5 112:21 <b>90069</b> 2:6 <b>914</b> 2:18,19 <b>9232015</b> 3:10 82:2	<b>93</b> 3:4 <b>977</b> 2:18,19 <b>98</b> 3:11 <b>99</b> 3:13
---	---	--	--	---