UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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DARNELL DESAUSSURE,

Plaintiffs,

-against- Case No.: 2-17-CV-04497-SJF-GRB

ARIEL E. PEREZ and VIRGINIA TRANSPORTATION

Defendants.

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May 15, 2018
3:30 p.m.

DEPOSITION of SEBASTIAN LATUGGA, M.D., a non-party witness taken by the parties, appearing herein at 150 East 58th Street, New York, New York pursuant to Subpoena to be taken before a Notary Public in and for the State of New York

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

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F E D E R A L S T I P U L A T I O N

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties hereto, that the filing, sealing, and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question shall be reserved to the time of trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before this court.

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S E B A S T I A N L A T U G G A,
the witness herein, having first been duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

THE COURT REPORTER: Would you please state your full name for the record?

THE WITNESS: Sebastian Latugga.

THE COURT REPORTER: Would you please state your address for the record?

THE WITNESS: 150 East 58th Street, New York, New York 10004.

EXAMINATION BY
Ms. Christina Marshall, Esq.

(Whereupon, before commencement of this deposition medical records were marked as Defendant's Exhibit A and B for identification as of this date.)

Q. Good morning Dr. Latugga. My name is Christina Marshall, I'm an attorney with the law firm of Wilson Elser. We are here today for your deposition regarding your treatment of Darnell Desaussure in the context of a lawsuit that he commenced related to a January 25, 2017 motor vehicle accident.

I'll be asking you a series of questions today. If at any point you do not understand the

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question that I ask, please let me know, I'll be happy to rephrase it. If you need a break at any point that's fine, I just ask that you answer the question before you leave the room. I also ask that you keep all your answers verbal and avoid gestures and nods of the head so the court reporter here can get down everything that we say here today.

A. Yes.

Q. Dr. Latugga do you have any other business addresses?

A. 2001 Marcus Avenue, Lake Success is the administrative office. And there are several other offices listed.

Q. And the 150 East 58th Street is also one of your --

A. That's here, yes.

Q. Do you have other office addresses for your practice?

A. I mean I do. I don't know them off the top of my head. We have one in the Bronx, I can tell you the boroughs. We have one in Queens, we have one in Brooklyn -- two in Brooklyn, actually. One in Manhattan.

Q. The name of your practice is New York Spine Specialist?

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A. Yes.
Q. Are you affiliated with other practice groups?
A. No.
Q. And are you a member or shareholder of New York Spine Specialists?
A. Yes.
Q. Is it both?
A. Well, it's a specialty MBPC d/b/a New York Spine Specialist, right? So I am the sole owner of Sebastian Latugga MBPC.
Q. Do you share space at your 150 East 58th office with any other doctors?
A. My employee physicians come here, yes.
Q. Other than your employee physicians?
A. No.
Q. And what about your 2001 Marcus Avenue address?
A. No.
Q. Do you sublease any space to any other practices or doctors at 2001 Marcus Avenue office?
A. No.
Q. Now, you're here today pursuant to a subpoena and a $40 fee, a fee for mileage, correct?
A. I presume so, ma'am.

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Q. Are you being paid by the office of Sanders Sanders Block for your testimony here today?
A. I'm not aware of that, no.
Q. Now, are you being paid by my office, Wilson Elser for your testimony here today?
A. I believe that's who is supposed to pay but I'm not sure about the transaction. It hasn't occurred yet.
Q. Okay, when you say "transaction" do you mean a payment fee?
A. Yes, fee for my deposition, my time for being deposed.
Q. What is your usual customary hourly fee?
A. $600 an hour.
Q. Is that the same for trial testimony?
A. It can be as much as $900.
Q. Has anyone promised you payment for testimony you're giving here today?
A. Your firm, I hope, I believe.
Q. Did you personally speak to anyone from my firm about that?
A. No.
Q. Do you have any discussions with Sanders Sanders who represents Plaintiff in this action before giving this deposition here today?

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A. No.
Q. Have you ever testified on behalf of Sanders Sanders Block before?
A. I don't recall.
Q. And you've testified in the past with regard to personal injury litigation?
A. Yes.
Q. How often would you say?
A. I would say once every three months. I think I'm around forty total court appearances.
Q. Right, throughout your entire --
A. Career.
Q. -- career. Do you know what the breakdown in terms of depositions as opposed to court appearances?
A. No, I don't have a specific, but obviously most often we're not deposed in New York for personal injury cases. It's only when it's a federal case that I would get deposed and I would say I was deposed less than half a dozen times.
Q. Approximately what percentage of your practice would you say is devoted to accident cases?
A. Between automobiles, slips and falls, Worker's Compensation, I would say seventy percent.
Q. Can you briefly tell me about your

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educational background and history? Tell me where you went to college, medical school, residency, fellowship?
A. St. John's University, BS biology. SUNY Stony Brook School of Medicine. Orthopedic residency SUNY Stony Brook. Spine surgery fellowship, University of Miami.
Q. How long have you been in practice?
A. Twenty-one years.
Q. What is your specialty?
A. Orthopedic spinal surgery.
Q. Where are you licensed to practice?
A. New York and New Jersey.
Q. And are you board certified?
A. Yes.
Q. In what specialty? In orthopedic spinal surgery?
A. Yes.
Q. Is that also in New York and New Jersey?
A. It's a national certification.
Q. Have you ever been suspended from the practice of medicine?
A. No.
Q. When did you last have to renew your certification?
A. 2018 I recertified.

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Q. That already happened for this year?
A. Every ten years, so '98, '08, and 2018; supposed to carry for ten years.
Q. So the recertification process for 2018 has already occurred?
A. Yes, I'm certified.
Q. Do you perform surgeries solely to spine?
A. Yes.
Q. How often do you perform operations?
A. Twice a week.
Q. Do you have admitting or attending privileges at any hospital?
A. Yes.
Q. Which hospitals?
A. New York Presbyterian in lower Manhattan.
Q. That's both admitting and attending?
A. Yes.
Q. Have your privileges ever been suspended at New York Presbyterian?
A. No.
Q. Have you ever been suspended at any other hospital?
A. No.
Q. Now, the records that you brought with you today, we've marked them as Exhibit A and Exhibit B.

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Did you review these records before the deposition today?
A. Briefly.
Q. Before reviewing the records do you have any independent knowledge of what they contained?
A. No.
Q. Do your records contain reports and records from any other facilities?
A. I -- it's not my custom and practice to carry other physician's records. I don't see it here in my brief perusal prior to the deposition so mostly no except for the MRI reports or EMG reports which we may find through our review of the records.
Q. Mr. Desaussure, when did he first become a patient of yours?
A. First time, I believe in 2016 and when you say "yours" I say patient of practice.
Q. What is the relationship between New York Spine Care and Prompt Medical Spine Care?
A. Prompt is another P.C. which I'm currently sole owner of which just specializes in interventional pain management. So that's another entity that I own.
Q. Are you familiar with Dr. Billy Fort?
A. Yes.
Q. Who is he?

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A. My employee physician.
Q. And how long has Dr. Billy Fort been your employee physician?
A. It would be a guesstimate of over three years, almost three years, something like that.
Q. Will Dr. Fort usually refer patients to you? Within the practice?
A. Yes, of course. We have different specialties.
Q. Would you refer patients to Dr. Fort within the practice?
A. Yes.
Q. Were you familiar with Dr. Fort before he became a part of your practice approximately three years ago?
A. No, I didn't know him. Not really is the answer to the question.
Q. What type of treatment would you refer patients to Dr. Fort to within the practice?
A. Interventional pain management.
Q. And that would be what for instance?
A. That would be injections mostly, prescriptions of medicines or patches to help alleviate people's pain.
Q. Were you aware that Dr. Fort treated Mr.

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Desaussure?
A. Yes, I believe his records are contained in these records.
Q. And are those part of the records that you reviewed in preparation for the deposition of Prompt Spinal Medical Care?
A. Yes, ma'am.
Q. Do you know how Mr. Desaussure came to be a patient of your practice initially?
A. He was referred by Dr. Muzzo.
Q. That's Dr. Muzzo?
A. Yes.
Q. What type of doctor is he?
A. He runs, he's a chiropractor that runs a therapy facility.
Q. Where is his practice located?
A. Westbury I believe.
Q. Has Dr. Muzzo referred other patients to you in the past?
A. Yes.
Q. How long has he been referring patients to you?
A. Many years. I would say more than ten years.
Q. How many referrals has Dr. Muzzo given to

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you over the years, if you can approximate?
A. I can't.
Q. Can you approximate by month by year total?
A. I can't.
Q. Is it over ten per month?
A. I can't approximate.
Q. Do you refer patients to Dr. Muzzo?
A. Yes.
Q. Has it been over the same, more than ten year period?
A. Yes.
Q. Can you approximate how often or how many referral you've given to Dr. Muzzo in that relationship?
A. No.
Q. Does Dr. Muzzo perform spinal surgery?
A. No, he's a chiropractor. And he has a permanent therapy facility so he provides therapy services to patients.
Q. Does he generally refer patients to you that he believes require spinal surgery?
A. From time to time as well as to Dr. Fort for interventional pain, et cetera, et cetera.
Q. Do you know the circumstances under which Mr. Desaussure was originally referred to this facility

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by Dr. Muzzo?
A. I have the records. So patient evidently was involved in a -- somebody went through a stop sign and he was injured in that accident. Date of accident 12/29/15 and he injured his neck and back and his shoulder as well.
Q. The records that were marked today as Exhibits A and B, specifically, I actually want to direct your attention to Defendant's Exhibit A, page four. The first page.
A. A?
Q. Yes. Go to page four of A, it's a 2/2/16 report?
A. Yes, ma'am.
Q. How are these reports created?
A. Contemporaneously with the office visit.
Q. So do you type them or dictate the information?
A. They are probably an electronic medical records package. It's a word file that is created by the doctors.
Q. And do you have equipment to type the --
A. Yes.
Q. -- report in the examining room --
A. Yes.

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Q. -- as you're taking the history and the information from the patient?
A. Yes.
Q. And is there any revision to the report that's done after the report is finalized?
A. It could be, yes.
Q. Would that be by you or the physician or someone else?
A. It's mostly filled out by the examining physician. The doctor that produced the record, right?
Q. Are these records kept solely electronically or are they kept in paper form as well?
A. Electronically.
Q. If you've seen a patient in the past and you've already created one of these reports electronically, when that patient comes back to see you is there some type of form that is kind of pre-populated this information from the prior visit or do you have to physically type everything in again?
A. It's done through the electronic medical records -- the answer is no to your question, it's not pre-populated for prior injury or different accident or different problem. But for the same series of problems, the patient comes in, obviously we're accessing the medical record from the prior visit.

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Does that make sense to you? And then therefore, you have access to, direct access to that information and you log into the current file.
Q. So then when you log into the current file and you're sitting with the patient, is there already information in whatever report it is that you are creating for that date or visit?
A. No, not necessarily. Generally what happens, this is the most accurate way to answer your questions, you click into the old note. So you're examining, you're reviewing what transpired the last time.
Once you got in the examining patient you switch to a new screen and you create the document and you can just create a drop down, you just click --
Q. And does the drop down have the information from that section from the old report?
A. Not specifically, but, you know, most often, that document is created contemporaneously by the physician, using the, you know, the electronic medical record device, so.
Q. And if a patient were to tell you that there had been no changes in their symptoms or complaints from the last visit, would you kind of just import the information from the last visit?

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A. No, it's a case by case basis.
Q. And what is the procedure in your office for taking in a new patient? Do you meet with them before you get them into the examining room, do you meet them for the first time in the examining room. Tell me how that happens.
A. I mean obviously the all patient interactions generally occur in an examining room.
Q. And generally what types of questions do you pose to a new patient when he comes to see you?
A. I mean insured it's more or less what you see like on this, it's like who are you, what happened, did it ever happen before, what hurts, where does it go, et cetera, et cetera. So that gives you an idea of the kind of questions that we ask and they fill out this questionnaire but we will hone in on certain areas that were in the conversation, things that are pertinent or relevant to our conversation.
Q. So you review this intake form --
A. Yes.
Q. -- during the exam --
A. Yes.
Q. -- with the patient?
A. Yes, ma'am.
Q. Do you take any notes outside of the

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electronic system during the exam?
A. No.
Q. Do you recall taking a look at your records what the date of Mr. Desaussure first visit was to the practice in general. Not to you specifically, but to the practice?
A. I didn't look through every record, but I think 2/2/16.
Q. I'm looking at one for Prompt?
A. Yes.
Q. For January 14, 2016 when he saw Dr. Fort, I believe?
A. Okay.
Q. Oh, you know, I'm sorry, Dr. Muzzo that's who saw him that date. And do you recall the date that you actually first saw Mr. Desaussure personally?
A. That I did?
Q. Yes.
A. 6/27/16.
Q. Were you aware that your first visit with Mr. Desaussure he been a patient of the practice for some time before you first saw him?
A. Yes.
Q. And prior to that examination, did you review the prior office to the practice regarding

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Mr. Desaussure?
A. I don't have an independent recollection, but that's generally my custom and practice.
Q. Did you take a history of Mr. Desaussure on that first exam if you can recall --
A. Yes.
Q. -- on June 27, 2016?
A. Yes.
Q. What did that include?
A. It's listed on the note on 6/27/16 that he was involved in a -- if you want me to read it I would be happy to read it for you?
Q. If it jogs your memory, do you want to let me know?
A. The patient was involved in A car accident, his injury was 12/29/15. He worked as a driver, he noticed the pain started at the time of the accident, et cetera.
Q. What types of complaints did he make? What body parts did he complain of?
A. Neck and back.
Q. Did Mr. Desaussure tell you what type of work he did at that time?
A. Driver.
Q. Are you aware that he was a truck driver for

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Coca Cola and he loaded and unloaded these trucks?
A. Yes.
Q. Did Mr. Desaussure come to you at that time with records from any other facility?
A. I don't have an independent recollection, but I do have copies of MRIs and reports in my things, so at some point that was given to us, but I don't know exactly what happened.
Q. Did you ever obtain copies of Dr. Massa's records regarding treatment of Mr. Desaussure?
A. No. Not that I recall, not that I noticed in the records.
Q. Was that something you would typically do if you have a referral from another practice or physician, would you obtain the records?
A. No, not usually.
Q. Do you know when Dr. Muzzo started treating Mr. Desaussure and what treatment he was providing?
A. Other than the obvious which would be just and that would be in the records, he was treating him for his neck and back and shoulder subsequent to his car accident.
Q. And as far as you were aware, that was another chiropractic treatment?
A. Yes.

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Q. Now, the records show that Dr. Fort and Dr. McCallus both treated Mr. Desaussure before your first visit with Mr. Desaussure on June 27, 2016, is that correct?

A. Yes.

Q. What is Dr. McCallus's specialty?

A. He's a physiatrist.

Q. And what does that include or entail?

A. Well, he's -- it's a specialty. It's a non-surgical specialty in musculoskeletal orthopedic problems. So that's the best way to characterize what physiatrists do. There is a broad range of what he does in my practice is that he acts as a non-surgical provider of musculoskeletal orthopedic issues.

Q. Did you review Dr. McCallus's records before that visit that you had with Mr. Desaussure?

A. Yes.

Q. Are you aware of whether the complaints for which you saw Mr. Desaussure on June 27, 2016 were the same or similar to the complaints that he had treated with Dr. Fort and Dr. McCallus for?

A. Substantially similar, yes.

Q. So that was to the neck and back?

A. Yes, ma'am.

Q. And to your knowledge that was also related

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to the December 29, 2015 accident?

A. Yes, ma'am.

Q. Now, did you actually examine Mr. Desaussure at that first visit?

A. I believe so, yes.

Q. And what were your findings at that time?

A. Oh, so on 6/26/16 I had examined his neck and back. I found that he had abnormalities and range of motion to his neck and back including tenderness and spasms. Loss of range of motion in the cervical spine and the lumbar spine.

Also there was some abnormalities in the neurological function. Weakness of the deltoid left 4 and 5 and loss of sensation left C4/C5, C6. The lower extremity neurological damage was in normal limits. That was my exam.

Q. Now, the report here on the second page indicates diagnostic imaging, MRI of the cervical spine and thoracic spine dated June 6, 2016. Do you know whether you reviewed the actual films or did you review reports or both?

A. I don't recall. I just want to make sure what you're talking about. You're talking about this, the MRI C Spine?

Q. Yes.

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A. That was 1/6/16.

Q. 1/6.

A. Okay. So I don't recall.

Q. The dates for those MRIs should be January 6, 2016. At any point during your treatment of Mr. Desaussure up to that point do you recall whether you actually reviewed those January 6, 2016 films?

A. I don't have an independent recollection.

Q. What was your normal practice back in 2016 with respect to a patient who had come in, who had had prior imaging studies to the spine?

A. Most often I would review them, but I don't have an independent recollection of having reviewed those.

Q. And most often you would review the actual films themselves?

A. Yes, ma'am.

Q. Do you have any idea whether the information from these cervical and thoracic MRI films that are written in the report, so, for example the MRI of the cervical spine it says disc bulge at C4, 5, tear. Do you know if that information came from your report a review of the film or something else?

A. A combination of both.

Q. So you believe that you did review the film

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to come up with --

A. You know, again, I thought I was being very clear. I don't have an independent recollection, it's my custom and practice. My report there is substantially consistent with the third party report if you want to call it that, the radiologist report. But I don't remember, in fact at that time that I saw the MRI.

Q. What was your impression at that time of that initial examination of Mr. Desaussure?

A. So that he had a cervical diagnosis, cervical spine pain, cervical rotary impingement sprain thoracic region. I didn't list, but he also had a lumbar sprain on that date based on reviewing the whole record. I essentially recommended he continue to disc conservative treatment. I did talk about other -- I talked about all the other treatment options I didn't recommend anything other than to continue physical therapy.

Q. Did you review any lumbar spine MRIs on that date?

A. Again, I don't have an independent recollection. I didn't list lumbar in my report on that day so I don't have an independent recollection.

Q. What were the treatment options that were

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recommended at that point?
A. Just to continue therapy. That's what I recommended.
Q. What other options did you discuss with Mr. Desaussure at that time?
A. So it's my custom and practice to talk about, you know, because everyone coming to see me generally wants to hear about surgery, that's a generic statement, right?
So part of my conversation to all patients is where surgery plays a role in their injury. So if someone is not a candidate for surgery then I'll say, look, these are surgeries that are available but you're not a candidate. And these are the reasons why. That would be my custom and practice.
I will say besides surgery there are things like interventional pain management which they may or may not have already participated in. How that could help or how it may not help. That is my custom and practice and then talk about, you know, non-interventional treatments like therapy, chiropractic, et cetera, talked about that briefly, how that could help, how could it not help. So that's my custom and practice with patients.
Q. Do you recall specifically here what you

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conveyed to Mr. Desaussure about how surgery would fit into his treatment if at all?
A. I don't have an independent recollection but I could say for certain I did not recommend surgery on that day.
Q. And did you recommend that he -- injections at that point?
A. Again, I don't have an independent reelection, but I did recommend that he continue therapy, that he continue to see the interventional pain management injections. You kind of see that. "Patient has elected to proceed with chiropractic physical therapy, a home exercise program and cervical spine epidural injections. That was my recommendation. It's on the back side of the document.
Q. Do you recall whether you had discussed with Dr. Fort continuing the interventional pain management or injections within your practice or somewhere else or both?
A. I don't have an independent recollection.
Q. Do you know whether at that time if Mr. Desaussure was receiving any type of interventional medicine aside from your office?
A. Not that I'm aware of.
Q. Do you know at that point whether

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Mr. Desaussure had already received any injections to his neck or back either inside of your practice or outside your practice?
A. As of that date?
Q. As of that date.
A. Had he received any injections?
Q. Yes.
A. As of 6/27?
Q. Right.
A. If you know the note you can refer it to me.
Q. I think it's 1/26/16.
A. So 1/27/16 he received a surgical injection by Dr. Muzzo.
Q. And that was an epidural steroid injection?
A. Yes.
Q. Any records also show any February 29, 2016 medial branch block injections at C3,4,5 and T6, is that correct?
A. Yes, ma'am.
Q. Are you aware that Mr. Desaussure also treated with a Dr. Ferhana Ahmed a multi-specialty pain management back in 2016 for this accident?
A. No, ma'am, I don't have an independent recollection.
Q. Okay, so I'm also showing a lumbar epidural

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steroid injection at L4, 5 by Dr. Fort on May 2, 2016, a second cervical epidural steroid injection C7, T1 on May 17, 2016 and a second lumbar epidural steroid injection at L4, 5 on June 7, 2016, is that correct?
A. Yes, ma'am.
Q. Now, I know you don't have this in front of you and you don't recall, but we have records from Dr. Ahmed the pain management physician indicating that she administered a bilateral L 5 nerve block injection on April 25, 2016 and then two cervical trigger point injections in December of 2016? Are you aware of that?
A. No, ma'am.
Q. Now, after that first visit that you had with Mr. Desaussure on June 27, 2016, did you continue to see him?
A. He remained a patient in the practice, yes.
Q. And did you next see him on March 13, 2017? Off the record.
(Whereupon, a discussion was held off the record.)
A. This is after his next accident.
Q. Do you know the date of that next accident?
A. Yes, 1/25/17.
Q. So you just had the one visit personally with Mr. Desaussure related to the December 29, 2015

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when he came back to you in March of 2017 after the January 2015 accident, correct?

A. Yes, ma'am.

Q. And when Mr. Desaussure came back to you in March of 2017, did you review the records regarding his treatment from the time of your initial visit with him in June 2016 up until that point?

A. I mean I don't have an independent recollection but obviously I was aware of his prior condition and prior issues.

Q. Do you recall specifically ever discussing Mr. Desaussure's care with Dr. Fort?

A. No.

Q. Do you know the date of Mr. Desaussure's last visit to this practice before the January 2015 accident?

A. I have a 9/1/16 comp visit and I have a 10/6/16 visit.

Q. At that 9/1/16 visit with Dr. Fort there was some indication that he was still doing physical therapy in the chiropractic treatment two times a week. Do you see that? And he was advised to continue medication? Do you see that?

MS. SIMMS: Off the record.

(Whereupon, a discussion was held off the

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record.)

A. Yes, date of service, is that what you're asking about, ma'am?

Q. Right. He was advised to continue his physical therapy and chiropractic program, medication and he was not presently working. So I want to direct you to Dr. McCallus's report from October 6, 2016 which is back in the package marked A?

A. Dr. McCallus --

Q. No, just directing you to that report?

A. Yes, ma'am.

Q. So on that date the severity of pain is reported eight out of ten and for the back and the neck and the plan was to proceed with chiropractic care physical therapy and cervical epidural injections. Do you see that in the report?

A. Yes, ma'am.

Q. In determining that a patient is a candidate for surgery, what are the factors that you take into account?

A. The patient history, physical exam, diagnostic records and patient's response to other treatments.

Q. Does other treatment include injections?

A. Yes, ma'am.

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Q. Did you ever determine at any point that Mr. Desaussure returned to you in March of 2017 that he would be a candidate for cervical surgery?

A. I never recommended surgery.

Q. Why did you not recommend surgery?

A. I just didn't think he was bad enough that it warranted surgery. That's the short answer.

Q. So even though he had undergone several injections to his neck and his back before and after your initial visit with him in June of 2016 and it looks like his complaints were still eight out of ten pain for the neck and the back as of October 2016 surgery was never discussed?

A. I never recommended surgery nor gave it to him as an option for treatment.

Q. Given that Mr. Desaussure reported that he had the eight out of ten back pain and eight out of ten neck pain in October 6 of 2016, after several injections beginning in May of 2016, would that have been considered a good response to the injections?

A. I can't say yes or no. I mean it was a response. It's difficult in retrospect to make that kind of analysis. Obviously at the time I would have to go back to Berkowitz analysis that he didn't, recommending on that nine visit.

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Q. 9/16?

A. Yes, he didn't schedule another injection, I don't believe he scheduled another injection but there is nothing in that record that suggested to me that he was surgical at the time. He had a serious problem but it wasn't -- obviously he was getting injections, but certainly nothing was recommended for surgery on that day.

Q. Given the report of the eight out of ten of the neck and back on October 2016, if those levels had continued despite the injection that he had received previously and even if he had not received any other injections, would you have eventually recommended surgery? Is that something you could -- given the course of how --

A. It's a hypothetical?

Q. Yes, it's a hypothetical question.

A. And what are the circumstances for the hypothetical?

Q. So given he was eight out of ten pain from the neck and the back in October 2016 and at that point received at least over five months several injections to his neck and his back with a still eight out of ten pain level, under what circumstances would you have, eventually if you did and would, recommend surgery to

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his neck?
A. I mean if he had significant neurological changes and if the pain levels were increasing. If on a followup MRI the MRIs were getting that much worse it went from a bulge to like a herniation that would be a circumstance. That's the best answer I can give you.
Q. And if the pain had remained the same, would you have recommended surgery at some point?
A. I mean it's possible. It really depends on how it would affect the patient's life and other circumstances.
Q. So I want to direct you to the note for March 13, 2017.
A. Yes, ma'am.
Q. Did you take a history from Mr. Desaussure at that point?
A. Yes.
Q. What did he convey to you?
A. That he was involved in a car accident.
Q. What was the date of that accident?
A. 1/25/17.
Q. Did he indicate to you that he sustained any injuries at that time?
A. He injured his neck and back.
Q. Were you aware of whether Mr. Desaussure was

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still receiving treatment relating to the December 2015 accident at the time of that January 25, 2017 accident?
A. I mean not specifically. I can't answer that question. I don't have that information.
Q. I'm going to direct you to the history of present illness of that report, four lines down. Actually, we'll start at two lines down. "The patient sustained injury on January 25, 2017. At the time of the accident the patient worked as a driver. Pain was first noted since the accident."
Can you just tell me what that means? For which accident you were referring to?
A. Well, I mean, you know, obviously you got to keep reading, right? It said the patient did have a significant prior history from a prior MVA, so, you know, I mean, you can't just take it out of context. You know, patient was first noticed pain since the accident.
To me, again I wrote the note -- did I write the note? Yes, I wrote the note, so obviously at the time of the accident he had pain immediately at the time of the accident. But then the next line immediately, I had him document that he had this significant prior history.
And obviously I'm aware he visited the

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office four months, six months before, right, for a similar problem so that's the sum and substance of that that means, you know.
Q. And after that section that you read one line down, it says in parenthesis, "this case is closed." What does that mean?
A. Well, that just means -- were they still, you know, was the case, you know, whether they were still prosecuting the other prior case, you know, whatever that meant. I'm from Brooklyn there is a lot of action going on and for the obvious reasons, e-mailing records and all the logistics of having multiple inquire on multiple different things, so, umm, that's the best I can give you.
Q. Did Mr. Desaussure communicate to you at that time or did he discuss whether he was still having any symptoms to his neck and his back when this January 25, 2017 accident occurred?
A. I don't have an independent recollection.
Q. Did you examine Mr. Desaussure at that time?
A. Yes, ma'am.
Q. What were your findings?
A. My findings, again the cervical lumbar spine, he had loss of motion both in the neck and low back with tenderness and spasm. He also had

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neurological dysfunction in both upper and lower extremities with weakness.
Q. Those findings are similar to the findings that you had with your first visit with Mr. Desaussure back in June of 2016 for the neck and the back?
A. I mean similar that they are the same body parts, but there are also changes, right. There are differences in this exam then there are in other exams both in the upper and lower extremities.
Q. But generally, there was also here again, abnormalities, decreased range of motion in the neck and back as there was back in June 2016 as well as abnormalities in neurological function, correct?
A. Yes.
Q. And what was your diagnosis on that day in March of 2017?
A. Cervical radiculopathy, cervical spine pain herniated cervical disc, lumbar pain and bilateral lumber radiculopathy.
Q. Can you explain to me in what ways, if any, this diagnosis is different than the diagnosis at that first visit in June of 2016? And I mean your personal --
A. Yes, that's why I want to go back to that document. Here I did a diagnosis cervical

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radiculopathy. They are very similar, there are subtle changes but cervical nerve impingement and cervical pain, on this document I wrote cervical radiculopathy and his actual herniated disc which was not present on the prior MRI so I'm listing that as a new diagnosis. I'm seeing on the prior sprain the thoracic region, there was also a lumbar problem. I didn't put that in the diagnosis --

Q. But that was part of the June '16 diagnosis?

A. Yes, there was a lumbar diagnosis as well even though it wasn't listed, but what is difference I think on this is that I now listed radiculopathy as the diagnosis of the lumbar spine so, you know, there are similarities, same body parts, but it is different. This other note is different compared to the other note.

Q. And just, I think you already testified about this, but the diagnosis for the lumbar spine in June 2016 was lumbar --

A. Lumbar sprain.

Q. Right. What is the difference between a sprain and radiculopathy?

A. A sprain is local phenomenon to the tissue, you know, any part of the body can get traumatized and become, you know, muscle tear, the ligaments, injury to

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the ligaments. Radiculopathy is a word of nerve dysfunction and generally traumatic spine injuries. It refers to some traumatic injury to the spine which could be inflammatory or disruptive process around the nerves that create dysfunction in the actual nerves. That's the difference. It's the most serious diagnosis in a sprain, it has the worse prognosis and it can be a surgical diagnosis.

Q. At that June 2016 visit that you had Mr. Desaussure, did you make any determination at that point as to whether the diagnosis to his neck and cervical spine, his thoracic spine and his lumbar spine and his lumbar spine were causally related to that December 29, 2015 accident?

A. I mean I didn't opine that in the note. There is no causality opinion given in the note.

Q. Right, but outside the notes, did you ever draw or make any opinion or inference --

A. At the time, no.

Q. Did you at some point later?

A. Today? Perhaps -- I'm not trying to be indirect, but obviously if someone says they were involved in an accident and they are here after the accident there is a connection that I make in my mind between that new event and their current circumstance

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in the context of their prior history. So, you know, it certainly would have occurred to me at the time that there was some relation to the accident, but again, I'm not saying today that I opined causality on that day. So that's the best answer I can give you.

Q. At the March 13, 2000 visit with Mr. Desaussure did you form any opinion at that time or any point thereafter whether those injuries that were recorded were related to the June 25, 2017 accident as opposed to the December 29, 2015 accident?

A. I have no opinions related to causality, specific opinions related to causality that day.

Q. And after that point did you form any opinion?

A. I don't believe so. I don't believe that I was asked to opine in writing as to the issues of causality. I'm not aware that that exists.

Q. Doctor, do you have any opinion as to whether the injuries that Mr. Desaussure reported to you, to his neck and his back and the symptoms to those body parts in March of 2017 were causally related to the January 26, 2017 accident as opposed to the December 29, 2015 accident?

A. And --

Q. I don't mean to cut you off the question is

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to a reasonably degree of medical certainty?

A. I don't want to say no I don't have an opinion. I could give an opinion if I'm asked, but I don't have all the records. I can't give you an opinion. You understood what I'm saying, right? I'm not trying to avoid anything. I'm just trying to --

Q. No, I understand.

A. So you want this on the record?

Q. Yes, on the record.

A. So as of today I don't have all the records in front of me in order to opine on causality however notwithstanding, there are substantial differences between the post accident, 1/25/17 accident that suggest to me strongly that there was a significant exacerbation to his cervical spine requiring me to do surgery. I reserve judgment on my final opinion until I receive all the records that are available in order to make that opinion.

MS. MARSHALL: Off the record.

(Whereupon, a discussion was held off the record.)

Q. I know you don't have the records and you haven't reviewed them, but Mr. Desaussure continued to treat with Dr. Ahmed until that January 25, 2017 accident, that last visit with Dr. Ahmed was

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January 16, 2017. At that point he still complained of back pain.

He saw Dr. Muzzo two days before the January 16, 2017 accident on January 23rd. At that point he still had neck pain, he still had back pain. How would that factor into your coming to an opinion as to whether to a reasonable degree of medical certainty Mr. Desaussure's neck and back injury eventual neck surgery which we'll get to were related to the January 25, 2017 accident as opposed to the December 29, 2015 accident?

A. All I think that information gives me makes me more confident that I could say that it was an exacerbation or there was an underlying issue and it was an accident that created an exacerbation. He obviously complained the problem seven days before. We can't say that he had no problem prior to the accident or that he did have an existing problem and therefore this accident presented an exacerbation.

Q. Back to the note from that March 2017 visit. It indicates that there were cervical lumbar MRIs taken on February 6th and 5th of 2017. Do you know whether you actually looked at those films or if you looked at the report or a combination of the two?

A. Eventually I saw at the film because I did

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the surgery based on that. It's my custom and practice to always see the film if it's available, so I'm sure I saw the film related to Mr. D's 1/25/17 accident. I don't remember exactly when.

Q. Do you know if you ever compared those February 2017 films to the films that you reviewed back in June - or, I'm sorry -- that were listed in the report of June 2016?

A. I don't recall having done that.

Q. At that March 2017, that first visit after the January 25, 2017 accident, did you discuss the option of surgery with Mr. Desaussure at that point?

A. Not on 3/13.

Q. Did you discuss the option of surgery with Mr. Desaussure at some point thereafter?

A. Yes, on 4/7/17.

Q. Did you conduct an exam that day?

A. Yes.

Q. What were the findings?

A. The findings beyond the cervical lumbar spine it showed the diminished range of motion both in the cervical lumbar spine with spasm and tenderness. There was a loss of motion in the upper extremities, bilateral deltoids, 4 to 5, bilateral biceps 4 to 5, bilateral wrist extensors 4 to 5, flexors 4 to 5.

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Bilateral figure ABductors.

Continued to have loss of sensation in C4 distribution. He also had neurological changes in the lower extremity that were significant and substantial. We did diagnostic images, called them flexion extension radiographs which basically showed Reciboli {phonetic} in C4, 5 which is spondylolisthesis. It's written on that part of the area on the diagnostic imaging.

And then I went ahead based on the history, the review of the MRI, the review of my diagnostic text like an X-ray, the recommended cervical disc effusion of C 4, 5.

Q. Do you know if you had reviewed any cervical spine X-rays before the January 25, 2017 accident?

A. There was no, I don't have a report of any instability prior to that.

Q. Would findings such as instability be apparent on an MRI or are those only apparent on an X-ray?

A. I mean there could be, but they weren't in this case. It wasn't on the report.

Q. The report from the prior? Do you ever look at any reports from a prior X-ray?

A. I mean I don't have any independent recollection, I don't have it in my records. I mean

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that was a finding that I obtained on the day.

MS. MARSHALL: Off the record.

(Whereupon, a discussion was held off the record.)

Q. One of the indications here for surgery was failed conservative treatment, six months of physical therapy. So that brings us back to before this January 25, 2017 accident?

A. Yes.

Q. The date of this visit was April of 2017, correct?

A. Yes.

Q. So does this indicate that Mr. Desaussure was receiving therapy related to his complaints to his neck which he ultimately underwent the surgery prior to this January 25, 2017 accident?

A. No, that's not what that indicates.

Q. What does that indicate to you?

A. I mean it's a statement that the patient had significant attempts at conservative treatment. It is an acknowledgment that he had treatment even before this accident with respect to his neck. Again, that's why I'm saying the word exacerbation, but again, that's all that means.

Q. Is it your opinion to a reasonable degree of

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medical certainty that Mr. Desaussure had a symptomatic neck or cervical spine condition prior to this January 25, 2017 accident that was exacerbated by the accident and necessitated further treatment or surgery?

A. Yes, ma'am. I believe that's what I said.

MS. SIMMS: Can you read that back?

(Whereupon, the last question was read back by the court reporter for the record.)

Q. Doctor, are you able to form an opinion as to what percentage of the need for the neck surgery was related to the January 25, 2017 accident as opposed to the December 29, 2017 accident?

A. I can't -- I would like to see more of the records, but -- and it's also very difficult to do a percentage. I don't know if something like that is completely accurate, so I would not want to give you an answer today.

Q. Would you agree that the December 29, 2015 accident did play some role in the need for the neck surgery?

A. I won't agree with that necessarily.

Q. Why is that?

A. Because many, many patients, you know, eighty percent, ninety percent of people that have neck injuries even with herniated discs don't require

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surgery. So just having treated for it and I acknowledge treating was extensive, in the presence of a bulging disc on MRI doesn't necessarily mean that they are destined to have surgery.

So that's why I answered it that way. But from a statistical standpoint most people don't need surgery. So having that, even being treated with injections doesn't mean you are going to go on and have surgery.

It's a minority of people that end up having operations, so just based on that real fact I would say that it was not likely the patient was going to have surgery based on when I saw the patient at that time.

Q. And can you say whether or not to a reasonable degree of medical certainty whether the December 29, 2015 accident, the injuries that Mr. Desaussure sustained during that accident were related to that ultimate surgery?

A. I don't think they were related to that surgery, I think they created a baseline disability for the patient. I think, you know, there were some permanent change to his body because of that, but not one requiring surgery.

Q. Did you continue to see Mr. Desaussure after the operation?

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A. So he was seen, operation was on 5/4/17, he was seen a couple weeks after 5/22, then he was seen on 7/7 Dr. McCallus, my associate. And he was seen, I have a letter from medical necessity, 9/1/17 just I ran across this, you know, in which I do say that there is some relationship, that there is a palliative limitation description to the use of function related to this 1/25/17. Again, it's in the record. I did make some opinion regarding that.

He was seen 9/11 by me as well. He was seen 12/8/17, Dr. McCallus and finally the last visit was 4/27/18. He was seen in the office as well.

Q. Can you just describe for me the surgery that was actually performed to Mr. Desaussure?

A. Yes, it's called cervical discectomy effusion. It's an operation that is done on his neck under generalized anesthesia done at the hospital in lower Manhattan campus. It's a microsurgical procedure where I go in and remove any damage disc and rebuild the spine using a titanium implant, essentially.

It's an inpatient procedure, stays overnight, general anesthesia, goes home the following day. That's the procedure.

Q. That operation was May 4, 2017, correct?

A. Yes, ma'am.

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Q. So the first postop visit was it May 22, 2017. Do you have any discussion with Mr. Desaussure about how he was feeling following surgery?

A. Yes. Obviously yes, the patient came in for a postop visit. He was examined, we took an X-ray, his findings were relatively ordinary for somebody who had just had surgery consistent with what you would expect from someone to have a surgical discectomy effusion a couple of weeks before.

Q. And the impression that patient is doing well postoperatively with improvement. What does that mean?

A. Well, I mean that's shorthand for me being this is, well, he's doing well for having surgery several weeks before.

Q. Improvement in terms of his condition before the surgery or --

A. Something, pain levels, from improvement I saw him in the hospital just a generic statement. There is nothing, no alarms.

Q. And it looks like there was a prescription for physical therapy and a prescription for a bone stimulator. Do you know whether Mr. Desaussure ever received or used the bone stimulator?

A. No, I don't.

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Q. What is the purpose of the bone stimulator?
A. I would describe it as -- my custom and practice I would prescribe on all my patients that are having fusions. It's an external bone stimulator which is technology that is available to patients that have spinal surgery, specifically fusion surgery.
It helps expedite the actual effusion process to increase the amount of time it takes to initiate a solid fusion. And, you know, I describe it to my patients and it helps the patient.
Q. When was your most recent visit with Mr. Desaussure, personally?
A. It looks like the last time I saw him was 9/11.
MS. SIMMS: What year?
A. '17.
Q. What symptoms, if any, did Dr. Desaussure report to you at that time and what were your findings upon examination?
A. I document that his chief complaint he was having pain, some symptoms consistent with his preoperative condition which would be, you know, neck, neck and back symptoms. His testimony I knew he continued to have some weaknesses of the lower extremities as of the last visit, hasn't improved.

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The X-ray that we took showed that he had gone on to fused, so the surgery was successful from the perspective that he bones healed together. And the plan was to physical therapy.
Q. And the report listed under present illness patient with some improvement of neck pain, correct?
A. Yes, ma'am.
Q. In addition to the surgery being successful in terms of the fact that his bones had fused, was there any other indication to you that the neck surgery had been successful?
A. The subjective complaint that the patient had less pain. From the patient's perspective they are feeling better. That's one of the parameters for surgical success. Two would be the fusion of material being fused together. Three, you know, the neurological picture not changing, it would not be considered a success. In other words, we'll put the money out because we're hoping for his improvement.
His neurological condition. So they really didn't get improvement. The good news is that the surgery doesn't get worse, so that whatever he has it's a consequence of the accident not a consequence, you know, not expected to get worse as a subsequent. But from my perspective you certainly would want to see

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more function return in the nerves that were damaged.
Q. What would more function in the nerves that had been damaged present at. What would that look like?
A. The neurological exam that you see is four out of five. I would have liked it to return to five out of five, you know, for example, on this visit.
Q. September 2017.
A. It's like the last time I saw him?
Q. Yes. September the 11th.
A. So the last time I saw him and the last time he was in the office, he was examined by doctor -- let me refer to Dr. McCallus's office.
Q. Because that is April 27, 2018?
A. Yes. By that visit the patient had gone through the four to four plus, but did not go to a five. So there was some improvement. His preoperative condition meaning it was only a four and now whatever the timeframe, it's four plus. It's a little better, but it didn't return to a five.
Had it returned to a five, I would have been happier, patient gained full motion, the patient would have been happier. So the word success is difficult in saying it's a little bit better it was successful. You know, I think so, but obviously a better success would

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have been a complete recovery. So that's the most accurate way to answer that question.
Q. Considering that from the time of May 2017 accident to the time of April 2018 most recent visit to your office and Dr. McCallus, the motor exam had increased in all aspects from four to four plus, was that some indication that Mr. Desaussure continued to improve or not if?
A. That's a hypothetical I can't answer one way or the other. I mean, I'm hoping that he continues to improve and he can improve over several years after surgery. All is what he had on that day when you saw him.
Q. Can you just explain to me what the motor strength of four out of five or four plus out five or five out of five indicates generally?
A. Well, five out of five would be normal. And so four out of five is weakness that is demonstrable objectively to me the doctor, okay? And then at four plus out of five is what we call slightly -- when we apply counter pressure, it's almost normal but not quite normal. That's how we describe it.
Q. Just taking a look at -- bringing you back to the February 2, 2016 initial visit after the December 29, 2015 accident?

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A. Yes.
Q. It lists a motor strength of four out of five on the deltoid left. So given that as of April 2018 there was a four plus out of five motor strength for the deltoid left, is that indicative of some improvement following the treatment and the surgery that Mr. Desaussure had?
A. Yes.
Q. Now, I know you weren't there and you haven't read his transcript, but Mr. Desaussure testified in a deposition of April of this year that he does not have any neck pain. Is that indicative to you of successful fusion surgery to the neck?
A. Yes, and it's consistent in some of my report.
Q. And is that to a reasonable degree of medical certainty?
A. Yes, ma'am.
Q. At some point did you clear Mr. Desaussure to return to work without any restriction following the surgery?
A. I don't believe I gave that recommendation, no. So I have a back to work note, 6/17, that's the date he can return to work.
Q. So you have a letter dated September 12,

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2017 indicating that Mr. Desaussure was able to return to work. It says fully duty, but I'm assuming that means full duty on October 16, 2017 without restrictions, correct?
A. Yes, back to full duty on October 16, 2017, correct.
Q. And that was full duty as a truck driver with Coca Cola --
A. Yes.
Q. -- loading and unloading trucks?
A. Yes.
Q. Doctor, do you believe that Mr. Desaussure requires any further treatment at time time to his neck or his back.
A. I haven't recommended any other than what we said on the last visit.
Q. You're referring to the visit with Dr. McCallus in April?
A. Yes. So I mean I guess the answer is yes, I would believe that he would need further treatment with respect to his neck and back.
Q. What treatment would that be?
A. Well, for example, with respect to his low back he still has symptoms related to his radiculopathy. Even though he is able to go back to

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work he still has symptoms related to his radiculopathy, you know, that might require physical therapy, follow up MRIs. It may require further interventional pain management. It might require treatment. So the answer is yes, I do expect him to need further treatment.
My notes don't say his neck is pain free, I mean you're saying that. If he said to me I have no symptoms in my neck then I would say then you need no treatment. Our notes say that he does have some symptoms so it's not unusual that after traumatic injuries that patients can have -- even though they are feeling better they still have some symptoms.
We do continue to maintain, evaluate and treat those symptoms, whether it be therapy, injections, X-rays, MRIs, you know certainly possible based on my note.
If you're telling me that he's pain free then I wouldn't say that with respect to his, you know, my notes say that he has continued symptoms in this neck and back and therefore my answer is yes, I think he still needs some treatment to his neck and back as I've discussed.
Q. Have you ever discussed the possibility of surgery to Mr. Desaussure's back?

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A. No. It's part of my discussions, but never recommended surgeries.
Q. Have you ever recommended any further neck surgeries to Mr. Desaussure?
A. No.
Q. Do you know whether it was recommended by your office that Mr. Desaussure return for a followup visit in the future?
A. I don't know. Dr. McCallus did write follow up for a repeat evaluation, but I don't know if that's scheduled.
MS. MARSHALL: Off the record.
(Whereupon, a discussion was held off the record.)
Q. Doctor, are you able to estimate the cost of any future medical treatment that Mr. Desaussure may need for his neck or back?
A. No.
MS. MARSHALL: That's all I have.
EXAMINATION BY
Ms. Cindy Simms, Esq.:
Q. I have one question. Based on your testimony today with the medical and I'm asking for your opinion with the medical, would it be safe to say that the plaintiff received a different cost of

treatment for his 2015 accident versus his 2017 accident?

A. I mean --

Q. Based on his symptoms and the diagnostic test?

A. I really -- I mean he received surgery for the second, but that's different than the first time.

Q. Well, that's my question. Would it be fair to say based on his symptoms from the 2015 accident that the cost was different for that accident as compared to the 2017 accident?

A. I would say that there was difference surgery involved in the second accident. There was no surgery involved in the first accident.

Q. Would it be fair to say then, in your medical opinion just to clarify that his symptoms worsened as a result of this 2017 accident?

A. Yes.

MS. SIMMS: Thank you.

FURTHER EXAMINATION BY

Ms. Christina Marshall, Esq.:

Q. Just to qualify, from your records and your exams and discussions with Mr. Desaussure that he still had symptoms at the time of January 25, 2017 accident, correct?

A. I mean I don't have an independent recollection, but I believe I answered that in the prior questions that he was being treated in recent time prior to this accident. From my records it indicates that something on that day he had more pain than the day of the accident.

MS. SIMMS: Relating to that accident?

THE WITNESS: Relating to this accident.

(Whereupon, examination of this witness was concluded at 12:38 p.m.)

_____

SEBASTIAN LATUGGA, M.D.

Subscribed and sworn to me
on this day of , 2018.

_____

NOTARY PUBLIC

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Exhibit retained by Counsel Marshall.

C E R T I F I C A T E

I, Margaret E. Clark, a Shorthand Reporter and Notary Public of the State of New York, do hereby certify:

That the witness, whose testimony is herein before set forth, was duly sworn or affirmed by me, and the foregoing transcript 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.

Margaret E. Clark

E R R A T A S H E E T

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