In The Matter Of:

Luis Colon and Kareen Colon v
Metropolitan Transportation Authority, et al

A. Merola, M.D.
March 1, 2019

Bronx County Supreme Court

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX : CIVIL TERM : PART IA-2

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LUIS COLON and KAREEN COLON,

Plaintiffs,

- against -

METROPOLITAN TRANSPORTATION AUTHORITY and THE TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,

Defendants.

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Index No. 300140/08

TESTIMONY OF A. MEROLA, M.D.

851 Grand Concourse
Bronx, New York 10451
March 8, 2019

B E F O R E :

HONORABLE ELIZABETH A. TAYLOR, and a jury.
J u s t i c e .

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

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LINDA FITZNER, CSR
Senior Court Reporter

(Whereupon, the following transpired in open court, in the presence of all counsel:)

MR. McCRORIE: Prior to the start of the trial, all parties stipulated that although plaintiff has a prior criminal conviction from - I forget how many years ago - long time ago, that that conviction for the possession of a controlled substance, cocaine, will not come into this case unless the plaintiff opened the door by specifically denying that he's got a criminal conviction.

MR. DERRICO: What's the date of the conviction?

MR. McCRORIE: It is -- I think 15 years ago, 16 years.

MR. ZEMANN: Ten. Ten before.

MR. McCRORIE: The conviction will not come in. Additionally, the plaintiff entered a rehabilitation for drugs and alcohol, one of the drugs being cocaine. He said he had recently started. The rehab part will come in, but only for as it relates to prescription medication pills and alcohol, not cocaine. Cocaine is out of this.

MR. ZEMANN: No, not prescriptions. Opiods.

MR. McCRORIE: Opiods, prescription or otherwise. But cocaine is out of this case completely, the word.

The plaintiff is not challenging the authenticity or the authentication of the video of the

happening of this accident.

Secondly, we're about to put Dr. Merola on. Plaintiff and both sides have agreed to fully exchange all prior medical records, and there was a subsequent motor vehicle accident, subsequent motor vehicle records, and have allowed them in without authenticating witnesses. However, the agreement is that we are fully exchanging them, so marked into evidence now is the prior records, are the records of the primary care treating physician Shivdasani, which also contain records from Kirschenbaum Orthopedics, they contain records from another, Westchester Pain Center. In addition, they contain New Rochelle Radiology reports. That is separately already into evidence. The films of the New Rochelle radiology is 35 and 35A, all of the films taken that day. Also marked into evidence is an emergency room treatment record from St. Joseph's from the motor vehicle accident in January of 2009, specifically January 19th. And all of the records of Dr. John Vitolo, of Skyview Orthopedics. Those are in evidence without authentication and that no other records by either side will be introduced for either, prior or subsequent. We all believe those are the records. That's the stipulation, that nothing else will be shown to any witness. So stipulated?

MR. ZEMANN: Yes.

(Whereupon, Plaintiff's Exhibits 48, 49, 50,, 51, 52, 53, 54 are pre-marked for Idenficiation.)

(Whereupon, Plaintiff's Exhibits 35A, 36E, 38D, 38E, 46A, 55, 56, 57, 58, 59, 60, 61 are pre-marked in Evidence.)

-Transcript continued on next page-

(Whereupon, the following transpired in open court, in the presence of all parties:)

THE CLERK: Come to order.

THE COURT: Good morning, everyone.

Are we ready for the jury?

MR. McCRORIE: Yes, your Honor.

THE COURT: We're ready for the jury.

THE COURT OFFICER: Jurors entering.

MR. DERRICO: With the Court's permission, when I go to do my cross I'm going to bring this over.

MR. McCRORIE: If you want us to move?

THE COURT: No.

(Jurors enter.)

THE COURT: You may be seated.

Good morning, members of the jury. Thank you for coming in at the special time this morning.

You may continue, Mr. McCrorie.

MR. McCRORIE: Thank you, your Honor.

At this time plaintiff calls Andrew Merola, M.D.

THE COURT OFFICER: Watch your step. Remain standing. Face the clerk.

THE CLERK: Please raise your right hand.

Do you swear to tell the truth, the whole truth, nothing but the truth?

THE WITNESS: Yes, I do.

THE CLERK: Please be seated.

Please state and spell your first and last name for the Court.

THE WITNESS: Andrew, A-N-D-R-E-W, Merola, M-E-R-O-L-A.

THE CLERK: Please state your business address, including county.

THE WITNESS: 567 First Street, Brooklyn, New York, Kings County.

THE CLERK: The witness has been sworn.

THE COURT: Thank you.

Good morning, Doctor.

THE WITNESS: Good morning.

THE COURT: I ask that you continue to keep your voice up when testifying, as we have a clerk here and it's very difficult to hear in the courtroom. Do you understand?

THE WITNESS: Yes.

THE COURT: And also speak slowly.

THE WITNESS: Will do. Thank you.

THE COURT: You may inquire, Mr. McCrorie.

MR. McCRORIE: Thank you.

DIRECT EXAMINATION

BY MR, McCRORIE:

Q. Good morning, Dr. Merola.

A. Good morning.

Q. And I don't want you to violate the Judge's order about speaking slowly, but we are going to go rapidly today for the time constraints, okay?

A. Yes.

Q. So can you please tell the jury - I called you doctor - are you a medical doctor?

A. Yes, I am.

Q. Please tell the jury when you became licensed?

A. 1992.

Q. You are the first medical doctor. We won't ask the other medical doctors. If you say a medical term you believe a lay person may not know, even in the medical vernacular, you could define it. Otherwise, I'll ask you to define certain words. Okay?

A. Yes.

Q. Can you please tell the jury as succinctly as you can, without leaving any accolades out, your educational background starting with college taking us through fellowship, internship, residency, things like that?

A. I graduated from New York University, undergraduate, and then I went to Howard University Medical School. After I graduated medical school I went to the State University in Brooklyn where I did a one-year internship in general surgery. I then did four years of orthopedic surgery also at SUNY

Downstate. I then went to do an extra year of spinal reconstructive surgery at the University of Colorado in Denver, came back to New York City in 1996 where I started the full time practice of orthopedic surgery.

Q. Can you please describe for the jury -- tell the jury whether or not you are board certified. And within the answer, so all doctors after you don't have to do it, please tell them the significance of board certification.

A. I am board certified. I'm board certified in orthopedic surgery. That is a process where, after you complete your training, you take a written examination in orthopedics. After you've completed the written exam and you are in practice for a minimum of two years, after that two-year period of time you collect all of your patient information on your surgical cases and you present all that information, which includes x-rays, MRIs, surgical procedures, notes, all these things, to a board of examiners. And then you sit there with them and then they actually speak with you and ask you questions, so it's an oral exam. You pass both parts of that test and then you are board certified and that happens every ten years. So we repeat board certification every ten years so that we are guaranteed to be current with what we're doing and how we're doing it.

Q. What are you board certified in?

A. Orthopedic surgery.

Q. And within orthopedic surgery, do you have any particular specialty?

A. Yes.

Q. Can you tell the jury what that is?

A. I'm a reconstructive spinal surgeon so I focus specifically on the neck and back in pediatrics, which is children, and in adults. So those conditions that would require surgery to either the neck and back in either kids or adults.

Q. Do you perform surgery on any other body parts other than the neck or the back?

A. I do not.

Q. And do you treat -- I know people may have complaints, but do you treat any other, I'm going to call them appendicular, of the appendages, the arms legs, do you treat patients specifically for those body parts?

A. I do not.

Q. What do you do when that comes about when you see a patient first or even subsequent to another doctor and they're complaining of appendicular injury?

A. I would send them to someone who specifically deals with those body parts.

Q. And do you accept referrals from other doctors that, such as appendicular doctors, other orthopedists that don't do neck and back surgeries for consultations?

A. Yes.

Q. Can you tell the jury approximately how many spine surgeries you perform a year?

A. So in general I'm involved in about two hundred or so surgeries per year.

Q. Does your practice accept work-related accidents and any of the rules and procedures that go along specifically to a work-related accident?

A. Yes.

Q. And does your practice also accept motor vehicle accidents and all the special rules that specifically are just for medical -- motor vehicle accidents?

A. Yes.

Q. Does your office also accept various other type health benefit coverages?

MR. DERRICO: Objection. Are we talking about his office or him?

MR. McCRORIE: Him.

Q. You. Let me just clarify this.

Currently you are your own office, is that true?

A. Yes.

Q. We'll explain that in a minute, but do you accept those benefits?

A. Yes.

Q. As well as various other health benefits or plans of

unions and things like that?

A. Yes.

Q. Okay. And in -- for how long have you been operating on patients?

A. I started my residency in 1990 so I've been operating on patients since 1990 and in my own practice, in private practice since 1996.

Q. And in addition to patients that might have accidents with either traumatic injuries at work or car or anywhere, do you also just treat patients that have conditions?

A. Yes.

Q. So for the patients that have had accidents, injuries and the such, in the years from 1990 through now, have you been called to court to testify on behalf of your patients when they have a case?

A. Yes.

Q. For the injuries?

A. Yes.

Q. And in your time practicing medicine, have you had occasion to treat patients of yours that were clients of Sacks and Sacks, specifically construction workers of almost every union and trade?

A. Yes.

Q. And have you, in the last 20 years plus, have you had occasion to come to court on behalf of patients of yours

that were clients of Sacks and Sacks?

A. Yes.

Q. And has that happened on many occasions?

A. Yes.

Q. And are you being paid for your time away from your practice?

A. Yes.

Q. And in the hundreds of surgeries you've testified to, do those patients require follow-up care?

A. Yes.

Q. And what is the rate of -- each doctor gets asked this on all sides, but --

MR. DERRICO: I'm sorry, I didn't hear.

Q. Each doctor always gets asked this, but what rate of pay are you getting paid to be away from your practice to come here to court to prepare and focus on Mr. Colon's case?

MR. DERRICO: Objection to the form of the question.

MR. McCRORIE: Okay. I'll withdraw. I'm sorry, going quick. I'll slow down.

Q. What rate of pay are you being paid today to be away from your practice to come testify about your opinions for Mr. Colon?

A. So the office will submit billing at about $650 per hour for time away from the office.

Q. Will that include any time you and I have prepared for this?

A. Yes.

Q. And did you and I meet prior to your coming here today?

A. Yes.

Q. Did you in fact select views that would most demonstrate Mr. Colon's conditions and or injuries on the MRI and x-ray films to make it easier than looking at them on a CD?

A. Yes.

Q. Okay. And did we meet -- when did we meet to do that?

A. About a week or so ago, or a bit more.

Q. Okay. And did we also speak on the telephone prior to you coming here today to tell you not to come here today but to prepare?

A. Yes.

Q. Okay. We've stipulated everything into evidence, not that you would know what's in evidence or not, but every single record from this matter is in evidence, as well as anything that went on with Mr. Colon before or with the subsequent motor vehicle accident. Okay?

A. Yes.

Q. So you brought your file with you today, correct?

A. Yes.

Q. Back in -- on the date of this accident, on June 19, 2008, where was your practice and what, if any, name did it have back then?

A. So back then I was a spine consultant for a practice called University Orthopedics.

Q. And were you ever attending at St. Vincent's Hospital?

A. Yes.

Q. Can you tell the jury, because I'm going quick and I'm sorry I'm going to go back, what are hospital privileges and where do you have them now?

A. Hospital privileges are basically permission a hospital gives you to treat patients in the hospital. In my case, since I'm a surgeon, admitting or attending privileges mean I'm allowed to bring patients to hospitals, to treat them, operate on them, recover them, et cetera.

Q. And where, what hospitals do you perform surgeries on, where do you have privileges to treat and follow up?

A. New York Hospital and Mount Sinai Hospital.

Q. And back in, say, the date of this accident, where?

A. So at that time back when this happened in 2008, I was at Downstate, New York Methodist Hospital, St. Vincent's Hospital.

Q. And in fact where was the office of -- well, withdrawn.

Back then University Orthopedics had more than one office?

A. Yes.

Q. Where was the office that -- withdrawn.

Is Luis Colon a patient of yours?

A. Yes.

Q. And for how long has Luis Colon been a patient of yours and/or University Orthopedics?

A. I first saw him on June 30th of 2008.

Q. Did any other physicians see him prior to you?

A. Yes.

Q. Just so I don't have to approach you with things, you brought your own file here, correct?

A. Yes.

Q. When did you -- I don't know if I'm using the right term, either. You still do business with University Orthopedics?

A. We share many patients together, yes.

Q. I might be using the wrong vernacular. When did you leave University Orthopedics and start I guess what is known as Andrew Merola, M.D. in a separate office? When did that happen?

A. That was in around 2010 or so, I want to say, right around when St. Vincent's stopped existing.

Q. Did you -- as part of your file do you maintain all

of the records that you, where you treated Mr. Luis Colon from University Orthopedics; in other words, are they part of your file from the other practice?

A. Yes.

Q. And as part of your file, just so I may not have to approach, do you have the rest of University Orthopedics records with you?

A. Yes.

Q. That's part of your file as well?

A. Yes.

Q. Why don't you just tell the jury who the other doctors at University Orthopedics, if you can recall from reviewing, who are the ones that treated Mr. Colon over the time?

A. So my associate Dr. Touliopoulos had treated him, a Dr. Moosazadeh.

Q. Please spell that?

A. That's a tough spell. M-O-O-S-A-Z-A-D-E-H.

Dr. Nguyen, N-G-U-Y-E-N; Dr. Weiser, W-E-I-S-E-R; and of course myself as well.

Q. Okay.

Can you tell the jury what taking a history, what that word in medical vernacular means, when a doctor takes a history?

A. So a history is when you first interact with a

patient and you're speaking with them and they tell you something about what their particular problem is that brings them to see you. So, why are they coming to see you. Basically what hurts, when did it start hurting, and what is it doing to you, so that you can have some idea of how to tailor your examination to try to come up with a plan to make some suggestions to help them.

Q. Can you define these words for the jury as they relate to medicine, either complaints or findings, subjective and objective?

A. So, subjective is always something that's under the control of the patient. For example, if someone, if a patient says my leg hurts or my arm hurts or I have a headache, that's a subjective complaint or a symptom, a headache or leg pain. So those are things that are under the patient's control.

Objective pertains to an examination, like a physical exam, where you are testing something like a reflex that is anatomical, physiological, part of your body that is not under the patient's direct control, or a test like an MRI or an x-ray or a CT scan or a nerve test. Those would be objective because they're testing done by a machine on your body which depends on a result coming from your body that is not subject to patient control.

Q. Again as the first Doctor, can you define diagnosis and prognosis?

A. Diagnosis is what you suspect the problem to be; appendicitis, radiculopathy which means nerve root problem, a tumor, whatever. Those are diagnoses. That's what you suspect based on the patient's history and your examination.

A prognosis is an educated guess into future treatment for the patient based on what the diagnosis is and what your treatment is.

Q. And within either your notes or Dr. Touliopoulos's notes, things like impression, plan, and other words used; what do they typically mean? And we'll get to it.

A. So, in general, an impression is similar if not equivalent to a diagnosis. In other words, what is your impression of this patient, what do you think is going on. Really means what's the diagnosis.

And then a plan is what do I suggest, A, B and C or just A or something else. So your plan is what are you going to do about it. Your impression is based on what your diagnosis is, what's the actual problem involved.

MR. McCRORIE: With the Court's permission, or the court officer, would I be able to just approach and put documents in front up here?

Thank you, sir.

Q. Dr. Merola, I'm going to hand you -- your records are in evidence and I'm going to hand you Plaintiff's 47, which is the complete University; Plaintiff's 45, which is the FDNY

on the date of the accident; Plaintiff's 46, which is St. Barnabas; and Plaintiff's 46A, which is a certain page singled out of the hospital record, okay?

A. Yes.

Q. Let's do this: They're in evidence so we could move it along. Could you please tell the jury when Mr. -- what was the first date Mr. Colon came to treat with University Orthopedics?

A. The first day he presented to University Orthopedics was June 24th of 2008.

Q. Okay. And we'll just take it right down the line. What was his quote/unquote chief complaint as noted at that time when you first see someone?

A. So chief complaint, those are the major symptoms that the patient was having, were head, neck, upper back, low back, left elbow and left leg 'forward slash' knee injuries.

Q. Okay.

Can you just tell the jury the history that was given by Mr. Colon?

A. So the history is that this was a gentleman who was working and fell approximately 12 feet while at work on June 19th of 2008. It says that while torqueing a bolt on a beam standing on a roof, falling approximately 12 feet injuring his head, neck, upper back, low back, left below, left knee and leg. He was taken to St. Barnabas Hospital where he underwent

a staple repair of a laceration, subsequently being released. He was on anti-inflammatory medicines and had been out of work since the time of the accident.

Q. Doctor, only because it's in evidence and it says that the hospital handed him a prescription for Percocet, can you tell the jury specifically what was he taking, what did he tell Dr. Touliopoulos he was taking for his pain?

A. He said that he was taking Advil forward slash Aleve as anti-inflammatory medications.

Q. Continue, please.

A. So his back pain was intermittently what's called radiating into the lower extremities, which are traveling down into the lower extremities which means the legs and the feet. He had no bowel or bladder dysfunction. He had no numbness in his hands or feet. He said that he had some headaches from the time of the accident. His left elbow was quite painful with swelling on the back side of the elbow which was tender to touch.

And there was also left leg and left front-of-the-leg pain with left knee discomfort. He was walking without a brace and without a cane. His pain was overall a 6 out of 10 on a zero to 10 scale which was reported as increasing with activities.

Q. And at that time did he report to you, Dr. Touliopoulos, whether he was work or not?

A. Indicated not working since June 19, 2008.

Q. Okay. The physical examination, just what, if any -- I'll withdraw. I'll back up.

What, in medicine, do positive findings mean and negative findings?

A. Positive findings mean you appreciate the findings so you are able to elicit a positive or affirmative test when you are doing something on an exam. For example, a positive finding, if you had appendicitis, just for example, would be pain in your lower abdomen that you could palpate with your hand. That's a positive finding. A negative finding would be no pain palpating the abdomen in the area of the appendix.

So positive means it's there, negative means it's not there.

Q. Okay. Just taking time I'll just note the first time you saw him then we'll move a little bit more rapidly. But can you tell the jury the positive findings either to the neck or back or on the physical examination on that date?

A. Sure. Walking with a limp, which is known as an antalgic gait. Examination of the cervical and lumbar spines was significant for positive spasm. That means spasm was palpable in the neck and in the back.

Q. If you could just stop for one second; what does palpable mean and what level of spasm was felt?

A. So spasm is the feeling of a muscle contracting in a

very hard way, like a charley horse. If you get a charley horse in your leg you could feel it, it's very hard and it's painful. When you feel a muscle if a muscle is in spasm, you could feel that hard painful contraction of the muscle. This is described as significant spasm and it's described in the neck area and in the low back area.

There's also soft tissue swelling. So swelling is a -- It's an inflammation or an increase in size in a specific location because of inflammation, that's swelling. And in this area it was in the neck and in the back. And there was also listed a restriction of motion in the neck and in the back.

A. There was a test done on the first day, which is called a Spurling sign. A Spurling sign is a specific test to the cervical spine or the neck where you, while feeling the patient's neck, push down and turn the neck and then twist it a touch.

What you're basically doing is your seeing if there's any irritation of the nerves coming out of the neck. The test is positive which means it shows signs of nerve irritation when you have palpable spasm in the muscles of the neck because the neck reflexively does not want to be put in that position to continue to reproduce pain. So a positive Spurling's test indicates nerve irritation coming from the neck and in this case it was positive.

Q. Palpable spasm and the Spurling test, are they

objective or subjective?

A. Those are objective findings.

Q. Continue, please, with the physical examination findings?

A. Let's see. There was swelling in the left elbow. It's noted here to be what's called an effusion, which basically means fluid inside the joint.

Q. As far as the other body parts, Mr. Colon is not claiming them, they were temporary?

A. Sure. There was one more spinal finding as well. In addition to the Spurling sign, it's also noted that he had a lower extremity tension sign which is positive. The tension sign of the lower extremity is a test called the straight leg raise test. It's called a tension sign because it exerts tension or irritation to the sciatic nerve, which is the nerve that travels out of the lower back down the back side of your buttock, leg, and into the foot and ankle. If you pull on that nerve you will elicit a painful response, which is accompanied by what's known as a withdrawal response. Your body reflexively pulls away from tension on that nerve. That's why it's called a tension sign. That is a nerve sign for lower leg or lower extremity nerve root irritation.

Q. So why don't you tell the jury what the impression was, the initial impression what was thought at the time after the first visit? You can just read them right down the line.

A. Sure. Scalp laceration requiring suture repair. Cervical strain, rule out disc injury, which means a problem with the neck muscles whereby the tension signs demonstrated a disc injury with nerve irritation. Lumbar strain, rule out disc injury with radiculopathy. Same thing, palpable spasm in the neck and lower back indicative of a nerve problem coming from likely disc pathology causing nerve root irritation known as radiculopathy. Left elbow contusion, rule out bony injury. Left leg muscle strain and left knee internal derangement.

Q. What was the plan on that date? Just go right through it. And then we'll look at your -- after that.

A. The plan was that the patient was referred to see me for evaluation of their neck and their back, and for requests regarding MRIs of the neck and back.

Q. Okay. Was the patient -- with regard to work, were there any notations noted by Dr. Touliopoulos in the plan?

A. Not to be working, totally disabled.

Q. Was a further prescription given to Mr. Colon, other than the Aleve and the Advil that he was taking?

A. Yes, he, Dr. Touliopoulos, had given him Vicodin.

Q. Okay. And when you say given him he gave him a prescription for it?

A. Yes, correct.

Q. Does your office follow up as to whether or not someone fills the prescription or not?

Mr. Colon will come and testify, but do you follow up? Did you guys, back then, follow up as to whether or not someone goes to a pharmacy and uses it?

A. That would be up to the patient.

Q. Okay. So I want to just go to your visit now. June 30, 2008, please?

A. Okay.

Q. Okay. Now it says follow-up visit, because there's already been an initial visit by the office, correct?

A. Correct.

Q. So just tell the jury, now it's you, what did you note in the history of the follow-up visit?

A. So in the history section I noted the fall of about 12 feet.

Q. He's called Lou Colon there. Did you know Mr. Colon beforehand, in other words?

A. No.

Q. And I think he's called that in the initial note, right? As the patient.

So continue, please.

A. Specifically seeing me because of neck pain with some, what we call bilateral, that means both sides upper extremity, arms and hands, pins, needles, numbness, and tingling, and low back also with pain radiating down into the lower extremities or down into the lower legs and feet. And it

had been going on since that June 19, 2008 fall.

Q. And it's in the record, you noted that those conditions were occurring since the time of the fall, correct?

A. Yes.

Q. What does "pending current diagnostic studies" mean?

A. It means we're waiting for MRI films.

Q. And again it's up to the patient to go get them, right? You guys --

MR. DERRICO: Objection. Leading.

MR. McCRORIE: Withdrawn.

Q. You write a prescription. Your office doesn't have an MRI machine or didn't back then, correct?

A. Correct.

Q. That's an outside facility that a patient would be sent to with a prescription, is that true?

A. Yes.

Q. So what was your physical examination of what you found when you examined Mr. Colon?

A. So my examination also showed that he was walking with a limp known as an antalgic gait. He also had what I described as kyphotic gait which means pitched forward. So generally you'll walk upright. If you lose the lower portion of your back's normal upright posture, it's known as a kyphotic posture, pitched forward gait usually seen with patients who have radiculopathy or nerve root injury.

There was -- once again I appreciated palpable spasm in the neck and palpable spasm in the lower back. In the neck I appreciated what's known as a compression distractionn maneuver. A compression distraction maneuver is a Spurling's test which is the pushing down and turning combined with what's known as a distraction. So when you push down, turn and bend, you're putting pressure on the nerves coming out of the neck. To see whether or not that positive finding is reproducible, you then distract the neck, which means you now open up the nerve root areas. So if that relieves spasm and relieves pain, you're pretty much assured that there's nerve root irritation within the neck. So a Spurling's test combined with a distraction is described as a compression distraction. That test was positive, indicative of nerve root irritation coming from the neck area.

Let's see. And then in the lower back I also did a test called a Phalen's test. The Phalen's test is like a Spurling's test in the lower back, only this case is where you bend the lower back backwards and in so doing you are compressing the area where the nerves are. So straight leg is you push, pulling on the nerve. Phalen's test is your compressing the nerve inside the spinal canal. So those were both positive tests.

Q. Dr. Merola, not today, as we said scenes could have changed, back in June 2008 was permission required to get an

MRI test from --

MR. DERRICO: Objection.

Q. -- the work accident benefits?

THE COURT: There's an objection. Step in the back.

(Whereupon, there was an off-the-record discussion, in the robing room, among the Court and counsel.)

(Whereupon, the following transpired in open court, in the presence of all parties:)

THE COURT: You may continue, Mr. McCrorie.

Q. Doctor, just a yes or a no. I'm not cross examining you, but was permission required to -- before someone could get the test, did they have to wait for the permission?

A. Yes.

Q. So what was your plan on that date?

A. I agreed with Dr. Touliopoulos and I wanted to obtain MRIs of the neck and back.

Q. Okay. And in order to determine what at that time?

A. In order to determine the cause for nerve root irritation in the neck and back areas that were seen on the positive exam.

Q. Okay. Doctor, prior to coming here today were you supplied with -- I'm going to say the medical records of this case as well as his prior treating physician, maybe I'm going

to call it, prior conditions or accidents as well as a motor vehicle accident and the records that came from that in January 2009?

A. Yes.

Q. Okay. I want you to go back to the emergency FDNY that's up there, our record. I believe it's FDNY is 45 and St. Barnabas is 46. So on the FDNY --

MR. DERRICO: Just for clarification, your Honor, could we have the date of those records?

MR. McCRORIE: Sure. We're talking about the FDNY of this particular accident that we're here for, the subject accident, 6/19/'08.

MR. DERRICO: Thank you.

MR. McCRORIE: 6/19/'08.

Q. You could just, if you can, read. And if there is a circle with a, you know, medical circle with a line and arrow on top of it, you could just read what it means to you as a doctor.

A. Sure. It says 28 year-old male found ambulating, alert and oriented times three. Construction work on duty, fell approximately 12 feet off one level onto another level then onto a pile of rocks. Physical examination, negative loss of consciousness, positive laceration, positive abrasion and laceration left elbow and left knee and shin with abrasions. Patient denies neck, back pain. Negative abdominal pain,

abdomen soft, no nausea, no vomiting.

Q. Okay. And then what does it say underneath that?

A. Twelve feet 10 seconds injury. Injury time 1:25. My elbow hurts.

Q. Do you know what the 10 seconds refers to? I mean you didn't do the report?

A. No.

Q. So that's it for the ambulance record, correct?

A. Yes.

Q. There's nothing else on there.

Could you go to the St. Barnabas records of the date of the accident, July 19, 2008?

A. Yes.

Q. They should be all in the same order but on the first page could you read that physician's handwriting?

A. Twenty-eight year-old EMS trauma alert status post fall from 12 feet. Positive loss of consciousness for 10 seconds. Patient complains of head something, elbow pain, no shortness of breath, no neck pain or dizziness, no nausea vomiting, no abdominal pain.

Little bit tough to read some of this. Two centimeter -- now there's a physical section here, physical exam section. It says two centimeter laceration crown of head. Pupils are equal, respond and react to light and accommodation 3 millimeters. Extraocular motors are in tact. No

hemo/pneumo. Abdomen soft and non-tender. Positive left flank ecchymosis.

Ecchymosis is a black and blue.

Q. What is the flank?

A. Side of the body in your torso region.

And elbow abrasion. Alert and oriented times 3. Moves extremities. No gross deformities. Assessment/plan", head trauma, musculoskeletal trauma and then abdomen and pelvis.

Q. What do the impression just on the bottom and then we'll just jump to another page.

A. Head injury, scalp laceration, contusion left flank, abrasion left elbow.

Q. On the next page there's a little section on the right over near the bottom. I'll direct you to it.

He had x-rays to parts of his body. You could just go down the line to what parts of his body?

A. X-rays were taken to the right foot, the right ankle, the right lower leg - which is called the tibia and fibula - the right femur - which is the thigh bone - the left foot, the left ankle, and then the left lower leg, tibia and fibula as well.

Q. And above that, because they were also x-rays listed to the body parts?

A. Chest x-ray, no pneumothorax, pelvis x-ray, left

elbow x-ray.

Q. Doctor, you can go to the page where there's a body, where there's comments?

A. Yes.

Q. So could you just read the brief summary of the incident and the chief complaint?

A. It says patient fell off a construction site approximately 12 feet with positive loss of consciousness. It says 'greater than sign' 10 seconds. Complains of head injury, left sided pain.

Q. And the cervical -- withdrawn. The pre hospital treatment was what?

A. Let's see.

Q. We'll move on.

The body parts, what body parts are circled?

A. The body parts circled are the head area, the left flank, and the left lower leg in the area of the knee.

Q. What part of his head - you could just show the jury - had the two centimeter laceration that required the six staples?

A. It's the back of the head near the top area. So the top back portion of the head. (Indicating.)

Q. Okay. I'm going to, if you could find the page, it might be right after that,I think it's the next page, but if you find the page that we have there marked as 46A. But also

find it in the hospital record, okay?

A. Yes.

Q. Are you there?

A. Yes.

Q. Now, can you read, first can you just hold up the separate page to the jury?

A. (Witness complies.)

MR. McCRORIE: The box, if I may just be permitted to point?

THE COURT: You may.

Q. That box is an enlargement. That's not how the record reads. The records reads just like that, correct?

A. Yes.

MR. DERRICO: I'll stipulate to that.

MR. McCRORIE: That's fine.

Q. So why don't you read that note of -- who's taking the note, if you could tell?

A. It's a trauma doctor.

Q. And it's handwritten obviously?

A. Yes.

Q. So why don't you just read that trauma doctor's note, not from the one that's boxed out because it blocks some things, read it from the unmarked?

A. Sure it says patient is 20 year-old male, status post fall from --

Q. Twenty or 28?

A. Twenty-eight year old male status post fall from the roof. It says question mark, possible loss of consciousness. States he rolled off of roof, bounced off another, then fell to the ground. No shortness of breath. No chest pain. Complains of headache where he sustained a laceration and left elbow pain. Then there's a physical exam section with vital signs. No apparent distress. Alert and oriented times three. There is a 3 centimeter laceration in what's described as the left occipital parietal region, which is basically the top back part of the head and scalp area. Cardiovascular, heart and lungs regular rate and rhythm. Lungs were clear to listening. The extremities demonstrated an abrasion over the left elbow. Pulses were intact. There was positive back and left flank what's described as ecchymosis, which is a black and blue. Neurologically, the extremities --

Q. Can you just stop?

That's the section we blew up. Can you pick up the blown-up section and show the jury where, when you say positive back, how does that actually read?

A. So there's a section on the note that's about halfway down the area where the handwriting is on the right side of the page, and it -- it says back, with a circle and positive, and then L with a circle, which indicates left, and then flank and then underneath both of those it says

ecchymosis. Ecchymosis is a bleeding underneath the skin, which is essentially a black and blue.

Q. And finally -- just we're going to take a break -- what does positive mean back there?

A. It means that it is there, it is known, it's appreciated as actually being there.

Q. What's being there?

A. Black and blue ecchymosis.

MR. McCRORIE: Okay. Break? I'm not directing a break. I got a note.

THE COURT: Members of the jury, we're going to take a brief recess.

THE COURT OFFICER: All rise.

(Jury exits.)

THE COURT: So, Doctor, as you're still providing testimony on the stand, please do not discuss your testimony with anyone during the recess. Do you understand that?

THE WITNESS: Yes, I do.

THE COURT: Thank you.

(Recess taken.)

-Transcript continued on next page-

(Whereupon, the following transpired in open court, in the presence of all parties:)

THE COURT: We're ready for the jury?

MR. McCRORIE: Yes, your Honor.

MR. DERRICO: Yes, your Honor.

THE COURT: Okay.

THE COURT OFFICER: Jurors entering.

(Jurors enter.)

THE COURT: You may be seated.

Doctor, I would like to remind you, you're still under oath. Do you understand that?

THE WITNESS: Yes.

THE COURT: You may continue.

MR. McCRORIE: Thank you.

DIRECT EXAMINATION (CONTINUED)

BY MR. McCRORIE:

Q. Doctor, were the complaints that Mr. Colon made to you about his neck and back, you and Dr. Touliopoulos, consistent with the mechanism of injury described in both the hospital and to you and Dr. Touliopoulos?

A. Yes.

Q. What does "mechanism of injury" mean?

A. The how the accident happened, what happened during accident, during the accident to him.

Q. Can you please describe the concept as it relates -

it could be generally or to this case - of what's known as delayed onset, meaning maybe you don't feel pain one day, next day you do, or days later?

A. Yeah, basically it means not everything happens at the exact time of the accident. For example, if you had a femur fracture and it was cracked in half, that would happen at the time of the accident. But days after that fracture is fixed you may develop neck or back symptoms or other body parts maybe painful and achy for two reasons. Number one, now you're up and starting to walk around. Number two, the trauma with high epinephrine levels and high shock of the trauma are starting to wear off. Number three, the more pressure you put on other body parts, the more they become symptomatic. So there are things that show up right away and then there are things that may take some time to develop.

Q. I'd like you to assume that we've each done opening statements and such. In terms of when you next saw Mr. Colon, we will talk about events that occurred in what's known as a hypothetical question, but when did you next see Mr. Colon after seeing him on June 30, 2008.

First we'll go to when did he return to University Orthopedics?

A. So let's see. The initial University was June 24, 2008 and then he went back on June 30, 2008. That was my visit with him. Then there was a March 31st, 2009 with Dr.

Touliopoulos at University Orthopedics.

Q. Okay. So we have March 31st, 2009 is the first time back to University Orthopedics, correct?

A. Yes.

Q. And then how about to you? Were you still there? That's the time period. So when did he see you?

A. And then I saw him on May 11, 2009.

MR. DERRICO: 2009?

MR. McCRORIE: Yes.

Q. Before we have you step down and do anatomy and what the treatment of Mr. Colon, can you just go through the March 31st, 2009, just for what is positive as it relates to the neck or the back, either subjective or objective.

Same thing with May 11, 2009. Tell us when you move to that note, please.

A. Okay. March 31, 2009. First visit back to University Orthopedics. Mr. Colon reported some improvement with his neck.

Q. I don't know if we have his age in the record. It states it. How old was Mr. Colon when he was seeing you guys?

A. Twenty-nine.

Q. Twenty-eight at the date of the accident.

Okay. Continue, please.

A. The major issue on March 31 of 2009 was back pain radiating down into legs, sciatic pain, pain in the sciatic

nerve. Right leg was the worst. Difficulty with ability to sleep. Frequently waking up at night with low back pain. Symptoms were especially bad in the morning after awakening, and requiring assistance putting on shoes and socks by his wife. It says although working full-time and full duty as an ironworker, difficulty carrying out work duties. Primary care physician has prescribed him Percocet for analgesia. No other changes in his constitutional symptoms.

Q. What is "constitutional symptoms"?

A. Headaches, nausea, vomiting, fever, chills, loss of appetite, those kinds of things.

Q. And although, again, you have or have for 10 plus years ago, you didn't take the note, do you know why as you read the note he was taking Percocet from another physician or, I think you said primary care physician?

A. Primary care, right. So he had been seeing his primary care for whatever other issues he was dealing with.

Q. Okay. Physical examination, please.

A. Physical exam.

Q. Positive only.

A. Positive findings. Limp, antalgic gait, low back tender, tenderness mid thoracic and lumbar region, both right and left sides, with moderate to significant spasm. Also persistent soft tissue swelling and loss of motion.

The lower extremity tension signs, that's the

straight leg raise test, was positive especially on the right side. No neurological deficits were appreciated but there was generalized weakness.

Q. Okay. The plan. If I'm skipping anything, going too fast, that's important, please tell us. It's in evidence, you could read from it, but if you could go to the plan.

A. The plan was MRI scan lumbar spine.

Q. And at that time only the lumbar spine was being requested, true?

A. Yes.

Q. For the record, Mr. Colon -- withdrawn.

No MRI was ever done after it was requested the first time, correct?

A. Yes.

Q. Meaning yes, no ---

MR. DERRICO: Objection. You don't have to repeat it. He answered the question.

THE COURT: Ask him the question.

Q. So continue with the plan. The plan was MRI to the lower back and what else?

A. Dr. Touliopoulos had sent him back to me. He was prescribed Percocet for pain, described to have a marked partial disability, and prognosis was discussed with the patient.

Q. Okay. When did he see you then?

A. I saw him in May 11th of 2009.

Q. Just go through that visit?

A. So he was working, with modifications, trying to avoid repetitive motion to his lower back and trying to avoid things like bending, lifting, and twisting.

He continued to have symptoms in his low back primarily, with radiating symptoms into the lower legs. Some in the neck, but the low back was mostly the problem. And then at that time I was able to look at an MRI which had been done on April 28th of 2009.

Q. Okay. Now, when you say look at the MRI, do you as a board certified orthopedist interpret and review your own -- the MRIs of the patients that are done from outside facilities?

A. Yes.

Q. And do you do the same with an x-ray?

A. Yes.

Q. I'm forgetting because I'm we're going fast. Did you already tell the jury the difference between x-ray and MRI?

A. I have not.

Q. Please do so, as briefly as you can, not leaving out what it is.

A. X-ray is radiation. It's like someone were to shine a very bright light through your body and then take a picture of the shadow cast by that bright light. The bright light is

x-ray beams, which are radiation.

MRIs are a very powerful magnet that magnetizes your body, and then based on how your body is magnetized it generates an image to a computer.

So they're a little different. X-rays use radiation. They're very good at looking at fractures, dislocations, the way things line-up. MRIs are very good at looking at just about everything else, usually the softer things. They could show fluid, they could show inflammation, they could show muscles, tendons, things like that.

MR. McCRORIE: With the Court's permission, I just wanted to walk over and place a board.

THE COURT: You may.

MR. McCRORIE: I'm going to put a board up, 49 I.D. - these are in not in evidence but just for demonstration - and 48. 48 is a model of a spine. I'll put up here for you.

49 is -- and I don't want to speak to the jury, Judge. I could move that if it can't be seen, I just don't know, the board.

THE COURT: Are you able to see the exhibit?

Okay.

MR. McCRORIE: Okay.

Q. So could you please, using the exhibit, the model and the exhibit, as succinctly as you can, describe the anatomy

of the spine and the discs and the nerves?

A. The spine is a column. It's a column of bones that are stacked up on each other, and it keeps your head balanced above your pelvis. The bones are connected to each other by thick pieces of cartilage called discs. So the discs hold the bones in place, they cushion the bones, and they make sure the bones do not slide apart from each other.

The spinal column contains the spinal cord which comes out of your brain, travels down through your neck into your upper back, and the cord then sends off nerves that go into your arms and hands and your legs and feet.

The nerves come out at each level of the spine, because each one of these nerves goes to a specific body part. So the nerves up in the cervical spine or the neck travel down past your collarbone into your arms and hands and are responsible for making your arms and hands work. In your upper back there are the nerves that travel around your chest region. And in your lower back, they're the nerves that travel all the way down into your legs and feet.

Q. Describe what a disc is. And, if you can, you can describe what a protrusion or a herniation is, but using those models and the illustration.

A. So on the illustration the spinal column is on the left side. You could see the side view of the column and the front to back view of the column.

Q. Just stop you for one second.

Where you're looking at MRI or an x-ray using that photograph -- that illustration, can you describe what sagittal and axial mean, in terms of views?

A. So when you're looking at the side-view it's also sagittal, which means the side. It's easy to remember because sagittal and side both have S's. And when you're looking at the spine from the side, it also kind of looks like an S. So it's S's all around; sagittal, side-view, looks like an S.

Axial is a top down view. The axials views are on the right side. So it's as though you were looking from the top of the spine all the way down the spinal column. And there are different slices that are taken through the spine to show the different segments.

Q. And for an x-ray, does an x-ray take slices as opposed to an MRI?

A. So an x-ray takes that picture, that shadow casting picture, whole picture, spine, front to back view or side-view. Simple x-ray.

MRIs are assembled in slices so it's as though the spine were put on a balogna slicer and sliced up into pieces so that you could see the left side of the spine, the center of the spine, the right side of the spine.

And with the axial cuts, these top down views, you could see a portion between the third and the fourth bones,

where that disc is, a portion between the fourth and the fifth bones, where that portion is, sliced up this way.

Q. And does an x-ray see discs, nerves, et cetera, and what does an MRI visualize?

A. An x-ray is really good at looking at the bones, because the bones are very dense. They have lots of calcium in them and the calciums show up as white shadows on the x-ray.

The MRI is better at looking at the cartilage and the joints and the nerves and the spinal fluid and things like that, softer things.

So the MRI is much better at looking at softer things. X-ray better at looking at hard things, like bones.

Q. Briefly, just discuss what a disc is made out of and what does it mean if it's protruding, bulging, or herniated?

A. The disc is a piece of cartilage, not unlike the cartilage at the tip of your nose or your ear. So it's a very strong glue, if you will, or glue that sits in between these bones.

It's made of two parts. There's an outer, on this diagram pink, ring. That's called the annulus. The annulus has woven fibers that are woven together, kind of like my fingers criscrossing here. And those woven fibers hold this center-like gelatinous jelly-like core inside the middle of the disc.

So on the diagram the pink ring is known as the

annulus and the grayer material, that jelly-like material on the center, is known as the nucleus pulposus. So the annulus, tight woven fibers, holds the bones together really tight. That jelly in the center acts as like a shock absorber and a cushion in between the bones.

Q. Will you tell the jury what, on films or in medicine, what does the word "degeneration" or "degenerative" mean?

A. Degeneration or degenerative refers to the normal process that we go through as we age. So after you are done growing, you're an adolescent, 14, 15 years old, after you're done with growing you're no longer generating or making new tissues, right? You're not really building up making new cartilage, your bones aren't getting longer, your shoe sizes really aren't changing anymore. They're changing up until you reach skeletal maturity.

After skeletal maturity, the wearing out process gets faster than the building up process. That's when you start to develop wrinkles on your skin and your joints may start to become achy, because there's a wear-down process that happens. Your body tissues lose fluid, they become more brittle, they become more furrowed, they become degenerative. So that's part of the normal aging process.

Q. Is that so for everyone?

A. Everybody.

Q. Okay. Doctor, if you can, I'd like to have you step down and -- how many MRI films do you interpret and review yourself each year?

A. A lot. I see, I mean, maybe thousands of MRIs a year.

Q. Okay. So you've already defined certain words, sagittal, axial, so when you are going to use these exhibits you could go through as quickly as you can with what you need to explain. But can you please describe -- if you need to use that again, it's fine.

Can you please, with the Court's permission, I'm going to have you step down and go through the MRI that was performed on April 28, 2009.

And I'll put up the first. 36A. I'll leave the others right here B, C, D, E. I'm going to leave a red Sharpie pen.

If you could step down and just show the jury any positive and/or negative findings with Mr. Colon's spine as you visualize them, and any conditions he has?

A. Sure. This is a side-view center of the spine image, low back, as though the patient was facing the jury box.

The bottom bone is called first sacral bone. This is the number 5, fifth lumbar. Fourth. Third. Second. First. The bones are all squares. They're normal in alignment.

In between the squares are the discs. The discs all have bright signals in them, so they have fluid in them. There are -- the spinal canal is this gray and white stripe area. There is no severe compression of any of the nerves. There is pretty good overall alignment on this image.

Q. And so can you, before you go, what does desiccation mean?

A. Desiccation would refer to a loss of signal.

Now, signal means bright, brightness within the discs. So if you see that the discs are losing their bright signal, they would be desiccated.

Q. And you just, briefly as you can, you numbered the bones and you told the jury that the bones have numbers L1 through L5 and then there's an S.

What are the discs called? Because doctors will be referring to them throughout the trial.

A. So the disc is named based on the bones that it sits in between. The disc between 4 and 5 is the 4-5 disc. The disc between 5 and 1 is the 5-1 disc. So each of these discs is basically sandwiched between the bones and so whatever bone is on top and on the bottom gives the name to the disc.

Q. What does it mean when someone is born with something? Congenital, what does that word mean?

A. Congenital means at birth.

Q. What is spinal stenosis or -- withdrawn.

Does Mr. Colon have any congenital conditions?

A. Yes.

Q. Visualized on all the MRIs?

A. Yes.

Q. What are the congenital conditions as visualized on MRI?

A. So the canal, the spinal canal, which is the area I'm drawing with the line here, looks like an H that I've drawn in here, that canal is the area for the nerves.

Stenosis means a narrowing of. Now, a narrowing, you could have any number of reasons why something can be narrowed.

In this case, it's narrowed on a congenital or birth basis, because the bones, the distance between the front of the bone and the back of the bone, is not as wide as you would see in the general population. So this is known as a congenital stenosis. It's something that happens at birth. It's based on the way the person is put together when they're born and when they grow. And this kind of congenital stenosis can happen in normal patients in somewhere between 7 to 15 percent of the population.

Q. Okay. So continue with using any of the films you want. The jury knows the difference between sagittal and axial, so just refer to the number please. You don't need to use them all.

A. So this is number 36C now. This is also April 28, 2009. This is an axial. These are axial cutaways that you're looking straight down the spinal canal.

So here, what we're looking at is a better view of what are known as the joints of the lumbar spine.

Q. Just, I'm going to say that you're doing something for the record when you do it.

A. Yes.

Q. If you don't mind, whenever you do something. You're circling. You put four red circles with the marker, just for the record.

A. Correct. And what I'm doing is I'm circling the joints that are located on the back of the spine. This is the area where the bones actually slide past each other. It's an area that does not contain disc. It contains a joint, not unlike the joint in your fingers or in the knee. Because there's a cartilage in there that slides across itself. And they come together, when you're looking at them in the axial view, they kind of look like hamburgers and the cartilage is in between the hamburger. So there's a top part of the bun, a bottom part of the bun, and then there's cartilage in the middle. And I show that on this illustration all the way to the right.

What these show is that there's some inflammation. There's some fluid build-up inside these particular joints.

Q. Did you note that in your notes?

A. Yes.

Q. Of your review.

What does -- what's the joint? what is the name of the joint?

A. The joint is called the facet joint.

Q. And what do inflammatory changes to the facet joint, what if any medical significance does that have to you or does it have?

A. So it refers to the fact that the joints are accommodating some excessive load.

So the way the spine works is the discs are responsible primarily for maintaining load in the spine. When you're up and walking around, they are the shock absorbers, they are the glue that hold the bones together.

If the disc is not working properly because the cartilage inside the disc is not accommodating shock and it's not holding the bones together properly, something else has to take up that task. And in this case it's the joints. And when the joints take up that task, they can become inflamed and they can become swollen and they could take on fluid because they're doing extra work to compensate for these discs.

Q. Can you please tell the jury medically what does asymptomatic mean as opposed to symptomatic?

A. Asymptomatic means does not bother you. Right? So

if you take a picture of something and then you have a bone growth on your knee but you didn't know it was there until you took a picture, it's asymptomatic. The only reason you know it's there is because you took a picture. No symptoms, does not bother you at all.

Symptomatic means I have pain in my knee. You take a picture and you see something on the knee joint in the picture, you have symptoms in your knee because there's something on the picture that tells us there's a problem there.

Symptoms, I have a problem. Asymptomatic, no problem, no complaints.

Q. What does waxing and waning mean in medicine?

A. Waxing and waning means comes and goes. You may have some good days where you don't really have many symptoms and then you may have some bad days where you have a lot of symptoms. So there may be an undulating up and down course over time that comes and goes with your symptoms.

Q. Can degeneration cause symptoms?

A. Yes.

Q. And can degeneration be asymptomatic?

A. Yes.

Q. Can trauma cause asymptomatic degeneration to become symptomatic?

A. Trauma can precipitate or cause a previously asymptomatic condition to become symptomatic or painful, yes.

Q. Can, regardless whether you call it herniation, bulge or protrusion, can that be degenerative?

A. Yes.

Q. Can that be caused by trauma, those conditions?

A. Yes.

Q. Can a previously asymptomatic degenerative disc become symptomatic with trauma?

A. Yes.

Q. Okay. Could you just --

I want you to take one more view, unless you need the other view, or want them. 36D. Can you describe the MRI, sometimes you see something on one view that you don't see on the other.

MR. DERRICO: Objection, your Honor.

Q. But can you describe how the MRI, does it take it in one place or does it take the entire spine in a circle?

A. It takes multiple slices in different zones. So, for example, this is also April 28, 2009.

Q. Just the number up there, if you just tell us.

A. It's number 36D.

Q. We'll do one date at a time.

A. So this is a side cut. It's like as though you're all the way out on one side of the spine versus the center. The original slice we saw was center. This is a side cut. That's why on the side cut, you'll see the spinal canal starts

to disappear towards the end of the spinal column.

Q. Is there anything else to discuss before we move on to the cervical MRI with the lumbar?

Can I please have those?

Okay. I'm going to put up the cervical MRI.

I'd like you to assume all of this is in evidence but another doctor ordered cervical MRI in August of 2009. I think his name is Sciortino. It's in evidence.

You were treating him primarily for the back when he returned in the beginning, correct?

A. Yes.

Q. I'm going to place up here 37A, B, C, and D. The discs themselves of all the studies are here in court. Let's just -- you've done the anatomy of the back or the neck. You don't have to go fully through it.

Tell us what, if anything, is positive. And you could briefly tell us there's this, there's this.

A. Sure. So this is a side-view of the neck. You could see the brain is up on top.

This is a side-view of the cervical spine. We can tell because the brain is on top and the face is facing the jury box.

On this image, if you look in between the third and the fourth bones, you could see that there is disc material coming out on what are known as the confines of the vertebral

bodies. So there's some herniation of disc in the canal. In the cervical spine because the brain is attached directly to the cord there's a spinal cord here that you don't find in the lower back. So this shows us there's a C3-4 disc herniation or disc material in the spinal canal region touching the spinal cord area.

Q. Okay. If you could just go to any of the other views?

A. This is a side-view of same thing, cervical spine. And you could see that that disc material is protruding or sticking out on the side-view image as well.

Q. The next view, please. All from the same day, September 2nd, 2009.

Could you just tell the jury, we now saw, it's the same day, one of them appears white, one of them appears dark. Tell them what T1 and T2 mean.

A. This is T2. So it gives you better definition between the spinal cord which is gray and the spinal fluid which is white. You could see here between C3 and C4 there is some disc material in the area of the cord between C3 and 4, once again sticking out into the spinal canal area.

Q. You had previously discussed with the jury a condition in Mr. Colon's lower back. Does he have that in his neck, upper?

A. So in the upper back in the neck area he has some

mild degenerative changes, and additionally here we also see some disc herniation, C3-C4.

Q. Briefly, are you aware that Mr. Colon continued to work as an ironworker while you were treating him?

A. Yes.

Q. You could take that down, if you don't mind, just put it next to you.

-Transcript continued on next page-

Q Did you ever refer Mr. Colon out to get any type of injections? And another doctor will be here, but did you do that?

A Yes.

Q And the purpose of the injections, what parts of the body did you request that he get injections into?

A Neck and back.

Q And was that -- withdrawn.

Did you perform surgeries on Mr. Colon?

A Yes.

Q And what parts of the body?

A Neck and back.

Q Did you have to request permission to do each of the MRIs -- you didn't do this MRI, but the other MRI, the back?

A Yes.

Q And did you, prior to doing the back surgery, request another MRI to see what the current condition was?

A Yes.

Q Did Mr. Colon continue to make complaints -- your records are in evidence, we are going to try to move along -- to the neck and the back?

A Yes.

Q What, if any, radicular complaints was he making throughout the treatment up until the times of surgery?

A Radiating, travelling pain; arms and hands, legs and

feet.

Q What I would like to do now is put up December 10, first, we will put up 38B, and then please go over the others as well.

Doctor, so just when I say go over them, it's the second MRI prior to the surgery, what, if anything, is medically significant on the MRIs?

A So this is 2010, this is 38B, side views, low back facing the jury box, between L4 and L5, the 4-5 disk is now quite dark, noticeably dark, when you compare it to the other disks. On the previous MRI in 2009, the disk still had fluid in it and now it's lost enough fluid to appear dark on this particular MRI.

Q What is that condition known as?

A This is what we would call a dark disk with a discogenic degeneration. L5-S1 is not as bad as L4-L5, but L5-S1 is protruding on the side images. You can also see on this other image to the right, between L4-L5, that 4-5 disk is also sticking out more, so than it had been on the previous MRI in 2009.

Q When we get to the opinion questions in just a short while, I would like you to assume that there was a motor vehicle accident on January 19, 2009, and that the first set of MRIs was done April 28, 2009 to the back approximately 3 months after that accident, the 10 months after -- or whenever it was after

this accident -- and that there were no other intervening accidents before the December 2010 MRIs were done, okay?

A Yes.

Q Because I'm going to want you to compare the axial views in just a moment. Can you please get to the axial views and tell the jury, in addition to disk issues that you just told them about, were there any other issues that caused you any more than when you did the MRIs of the back in December 2010?

A Yes. This axial, this is an axial image looking through the joints of the lower back.

Q What's the number, doctor?

A This is 38D, this is number 38D, and what we're looking at again, and I will circle them, is the facet joints. And on the facet joints here, you can see that this is the L. L means left side, R is right side. On the left side, you can see the top portion of the joint and the bottom portion of the joint, and it all appears to be one joint. On the right side, there is a dark line with a triangular piece of bone in it. So one portion of the joint is in tact, the other portion, as this, has this fragment inside of it.

Q Lightly outlining with a red marker, just for the record.

A That fragment is a fracture of the facet joint. So in 2009, we saw that there were some mild degenerative changes with some disk protrusions --

Q 36E is 2009, after the motor vehicle accident --

A -- and inflammation on the joints on the right and left sides, and in December of 2010, the inflammation goes to a fracture of the joint. So what's happening there is those joints are trying to maintain normal spinal motion, but they're being overloaded and they're overloaded to the point where the joint fragments. That fragmentation is a piece of the joint actually breaking off and fracturing in the lower part of the back because the joint can't take up the load. It's unable to accommodate the load that the disks were originally accommodating.

Q Was surgery permission requested and required for both of the surgeries?

A Yes.

Q Which surgery was done first?

A The neck.

Q And the date of that, September 9, 2010, just to move it along?

A Correct, yes.

Q And after the neck surgery, you did the -- you got permission to do the back MRI that you just discussed?

A Yes.

Q Just a different view, same level, same bone level, can you now just -- 38E, you could just show the jury anything significant on that?

A This is just another axial cut. On the left side, you can see the top of the joint and the bottom of the joint are in tact, here you can see that the bottom part of the joint still has this little piece of triangular bone in it, that's the other part of the joint, and there's fluid, there's some fluid inside the joint, that's this white line here, where that swelling and the fracture and juices are kind of leaking into the joint there.

Q For the record, just making red markings on that, as well, 38E.

And this is just two other views of the axial, just looking at the one on the right, is it the same -- can you point out the fractures of the facet there, or circle the whole --

A I'm circling the part of the fracture.

Q On the right.

A And we see that triangular piece of bone inside the joint and triangular piece of bone inside the joint.

Q Okay, what, if anything, was significant about the fact that there was inflammation changes in April of 2009 that became a fracture by 2010 with no trauma in between?

A It's a rather, what we would call, precocious, or meaning distinctly prematurely progressing degenerative condition with facet joint fracture and fragmentation. It's rather quick to see that happen. That typically takes, if it's ever going to happen, in older folks, which sometimes it does,

it takes decades for that to occur. This occurred in less than a year or so.

Q And he was 32 or 31 at the time?

A Right. This would be considered a young adult.

Q Okay. In any event, we are going to go through them a little later, but radiculopathy and sciatica, the model has yellow nerves that stop, both Plaintiff's 50 for identification and a similar one, 51, can you just describe how radiculopathy occurs?

A So at the top of the diagram, you can see the nerves coming out of the lower back. Those nerves kind of coalesce with each other, they form what's known as a plexus in your leg, and then they travel all the way down your leg. The sciatic nerve, which is the next diagram, specifically shows you the sciatic nerve, which is literally a long nerve cable that travels out your lower back into your buttock, down the back of your leg, back of your calf, heel, and side of your foot, and so that nerve is specifically made up of the nerves that are coming out of the fourth, the fifth, and the first portions of the lower part of the back. So if you've ever heard of the term "sciatica," it refers to an inflammation or irritation of this particular nerve.

Q In evidence is 35 and 35A, a disk of when Mr. Colon, in February of 2007, had a motor vehicle accident, his primary care physician sent him for an X-ray --

MR. DERRICO: Objection, is this a question or a statement?

MR. McCRORIE: Well, I have to --

Q You're the first doctor, so it hasn't been testified to, so we told them. Have you reviewed the prior films from before this incident?

MR. DERRICO: Can we have a clarification as to when he reviewed it, please.

Q When did you review the films of -- withdrawn.

Did you review the prior films?

A Yes.

Q When I say "prior," I mean any films of Mr. Colon's back before the date of this accident.

A Yes.

MR. DERRICO: Can we have clarification on when he reviewed them?

MR. McCRORIE: Yes.

Q What types of film did you review?

A Cervical and lumbar X-ray.

Q And when did you review the cervical and lumbar X-rays?

A Several weeks ago.

Q And we will go through the record, his record, everything is in evidence, so during the questioning, I will read to you a hypothetical, okay?

A Yes.

Q In any event, they're all in.

35A, what, if anything, did you visualize in the neck and back of medical significance or insignificance?

A So there were no fractures or dislocations in either the neck or back areas. There were some mild degenerative changes in the lower back, a little bit more than the neck, but otherwise, no significant issues.

Q Okay. Let's just do the surgeries. Did you review your surgical -- do you have your surgical reports with you there?

A Yes.

Q I would like you to know that 56 in evidence are the New York Methodist Hospital and hospitalizations after the surgery, the one, so that's in evidence, but did you -- I'm going to put up, for illustration, 52 for identification, and can you please describe to the jury the surgery you did and what you did?

A In the neck, it's a surgery that's done through the front part of the neck, because the disks are in the front side. So there's an incision on the front of the neck, where the disk is removed, so that you can make room for the spinal cord and the nerve roots. When you remove the disk, you need to rebuild the area that has been, what we call, decompressed, taken pressure off the nerves and the cord. So in order to rebuild that area, we would fashion an area of bone that accommodates,

essentially, what is a plastic, in this case, carbon fiber spacer that's inserted in between the bones. And then that's held together with a titanium plate and two screws. So it rebuilds the upper portion of the neck so that this area can't cause any damage to the cord or the nerve roots in the area where the disk is protruding.

Q And can you tell the jury with your -- when you're doing the surgery, are you visualizing this with the naked eye or something else?

A We're visualizing this with our eyes and magnifying, what are called loops, which are glasses attached to headlights so that you can look at everything in quite specific detail so that you don't cause any damage to the spinal cord or the nerves.

Q Okay, that surgery, was it your recommendation that Mr. Colon, at least post surgery, not go back to work as an ironworker for that period of time?

A Yes.

Q I'm going to go through now, after performing the MRI that you had the permission to do, December 2010, did you request surgery to the back?

A Yes.

Q Did you get permission and do it?

A Yes.

Q I'm going to put up 53, 54 -- they're ID only, so if

you could just discuss the surgery, and if you could take out your operative report because I would like you to read from your operative report if you noted that you actually visualized conditions with your loop magnification?

A Sure, so this is a description of surgery that was done on March 17, 2011, it is specifically known as a laminectomy and spinal fusion, which means we open up portions of the lamina to remove any pressure on the nerves coming from the area where the disk is, and then we are doing what's called a fusion, which is locking the bones together so they don't continue to abnormally move around and cause any additional irritation or damage to the nerves.

So this particular procedure starts with an opening in the lower back, which is seen on the left-hand portion of the illustration, so that the muscles of the lower back can be moved out of the way to expose the actual bones themselves. To stabilize the bones, we will drill holes into each bone that will then accommodate screws that are placed in order to stabilize the bones.

When we are opening the canal area to decompress the nerve roots, we also have an opportunity to remove any disk material that we find in the canal. And in this case, in my operative findings, we were able to remove some disk at L4-L5 and at L5-S1. At L5-S1, there was some disk material on the left side; and at L4-L5, it was more defuse. So there was a

little bit of this material on both the right and the left sides.

The operative findings also showed what I described as a "lysis," which means a fracture in the bones holding the L5 and S1 together in the area of where the joint is. And I also was able to find that fragment of bone that we will see on the actual MRI itself, which was in the joint, that was the facet joint fracture, so that was also visible surgery.

Q Okay. The hardware, the metal that we see in the photos, does that remain in Mr. Colon's body today?

A Yes.

Q In your treatment of Mr. Colon, have you done what's known as follow-up X-rays and MRIs?

A Yes.

Q What is the purpose, briefly, of doing follow-up MRIs and X-rays of someone who's had either a two-level fusion or the condition in the neck?

A Where these are mechanical reconstructions, and when you do a mechanical reconstruction, you're looking at the effects of time, over time, on the degeneration that can happen with the reconstruction, so the other parts of the spine can have a tendency to either wear down or break up, you want to see how that goes and you want to make sure that the screws and rods haven't cracked or fractured or shifted or moved or whatever.

Q Just picking randomly, can you show the jury, in 39C,

what does the neck look like on the inside?

A So this is an X-ray. On the left is the front-to-back view, and you can see the plate holding together the two bones of C3 and C4. The side view, this particular side view, the patient is looking at the judge, the front of the bones contain the plate. And in between the bones, can you see these three tiny little dots? Those dots are inside of the disk spacer.

Q Okay, now, just with the back, I'm going to hand you up 39B.

A X-rays, lower back, front-to-back view. On the left side, you can see the rods connected to six screws holding the lower back stable, together, so it doesn't continue to move around abnormally. Side view, as though the patient is looking at the judge, screws and rods holding the lower bones together so that they stay stable inside.

Q Okay, there's only two more, and then I will sit down. This is just a closer view of -- what is that?

A This is what is known as a cone-down view, or a blow-up view, of the lower lumbar. We're looking at the alignment of these bones to ensure that they remained aligned properly, which they are in proper alignment here.

Q I now want to put up an MRI from 2018, and I just -- since you told the jury the metal is still in there, can we see on 41A, we see the metal in the X-ray, is the metal still in his body, although you don't visualize it on an MRI?

A Yes, the metallic screws and rods are made up of titanium, and titanium, you can do an MRI with titanium because the titanium is not magnetized during the MRI process. If you actually -- and this is the center slice, so this is a slice of the center portion of the spine, which shows that the spinal canal is free and clear of any pressure, the screws and the rods are on the other sides, they're on the right side and on the left side. But what you would see here is, you see some metal artifact in the muscle area of the lower back.

Q And what about the disk that was operated on in terms of the color of it?

A Yeah, there's less disk material seeping in the spinal canal because I was able to suck out those disk fragments that were in the canal previously. You can see that the disk is darker because it had lost its fluid and you can see that the disks that are above the area are still pretty much well maintained at this point in time.

Q What effect does the hardware have, on a two-level fusion to the back, with the ability to move the back?

A It locks motion in the lower back so that you don't have any motion in the lower part of the back where it attaches to the pelvis.

Q What about with the neck?

A The neck locks the area of the two bones together.

Q And finally, what is spondylosis and spondylolisthesis

on any of these views?

A Spondylosis means degenerative changes; spondylolisthesis means the slippage of the bones. There are really no significant slippages here. Spondylosis, you would have to look at the joint areas, which are not on that view.

Q Doctor, do you continue to treat Mr. Colon today?

A Yes.

Q If we can just move quickly, did Mr. Colon -- was there a period of time when Mr. Colon stopped coming back to you for a number of years?

A Yes.

Q So you said -- withdrawn.

When you first -- the first note with your name on it, not University Orthopedics, is December 10, 2010, correct?

A Yes.

Q And did you, in fact, note the facet joint fracture on that note?

A Yes.

Q Did you follow Mr. Colon after the surgeries?

A Yes.

Q Did Mr. Colon express any relief, given by the surgeries, to you? You know, medical, physical relief?

A Yes.

Q In what way -- it's in your notes, but in what way, if you want to paraphrase?

A A decrease in travelling or radiating symptoms.

Q Did he have a total abatement? Did they totally go away, the radiation?

A No.

Q Did Mr. Colon ever tell you whether or not he had previously ever had radiating symptoms whatsoever to his back and his neck?

A No.

Q And in all of the records that are in evidence, that we are going to cite during this question, did you see any radiating symptoms as opposed to just back pain prior to this date of this accident?

A Not significantly in the lower back. A little bit in the neck, but none in the back.

Q Radiating?

A Correct, radiating. None radiating.

Q In the notes of University Orthopedics, the initial notes, when it states that he's been having this pain and radiation since the accident, what does that mean? If they're happening since the accident --

MR. DERRICO: Objection, the record speaks for itself.

Q Okay. What does it mean to you as a doctor if it's happening since the accident?

A That the radiating symptoms began after the accident.

Q Mr. Colon saw you after the accident through what date -- I mean -- after the surgeries, through what date? We know he saw you up to the surgeries, so after the March 2011 back surgery, when did he --

A I saw him in post-op on March 25th of 2011.

Q You can even jump to the year, when did he continue following up, understanding he was following up with other doctors as well?

A So I saw him in 2011, I saw him in 2013, I then again saw him in 2015.

Q Can you go back to 2015, did you see him or was it something else?

A I had a visit with him on February 23rd of 2015.

Q Okay, and then did you -- withdrawn.

Have you ever had telephone conversations noted with Mr. Colon?

A Yes.

Q And then when did you next see him after February 2015?

A I saw him in March of 2018.

Q Okay, that's what I'm talking about for the break. When you last saw Mr. Colon, I want to -- did Mr. Colon, during the treatment with you -- and when I say with you, with University Orthopedics -- from April of 2009 through the date of the first surgery, September of 2009, did he continue to remain an ironworker at full duty?

A Yes.

Q After the neck surgery, did Mr. Colon stop work as an ironworker for at least the period of time until you last saw him in 2015?

A Yes.

Q Was that something based upon your medical recommendation?

MR. DERRICO: Objection, it's not contained in the records.

MR. McCRORIE: Withdrawn.

Q Did you, during that time period, have any recommendations with whether or not Mr. Colon should return to work as a union ironworker performing work after those surgeries and whatever symptoms he told you he was having in the records?

MR. DERRICO: Objection.

THE COURT: Overruled.

A The recommendation was to avoid working in the heavy labor capacity.

Q Okay, so when Mr. Colon returned to you -- withdrawn.

At any time in that approximate five-year period, did Mr. Colon ever call you up and seek any, I'm going to say permission, or clearance, to go back as an ironworker?

MR. DERRICO: Objection, leading.

MR. McCRORIE: Withdrawn.

Q Did you ever have any -- did Mr. Colon have any

conversations or contact with your office between the last visit in February of 2015 and the time he returned in March of 2018?

A No.

Q Just go to the March of 2018, please.

A Yes.

Q Not the whole thing, just give the follow-up visit, the history, what had he been doing since you last saw him?

A He had returned to iron work, I said about a year to a year and a half before that visit, when I had seen him, with modified duties, fire watch -- actually, he had indicated to me he was doing fire watch --

MR. DERRICO: Objection, this is nowhere in any records.

MR. McCRORIE: Judge.

Q You can read the record where he's presently doing the duty as fire watch. If you could just tell the jury what, if any, other doctors he was seeing, what was going on during that period?

A Had returned to work. He was doing fire watch, modified activities, as pain would allow. He had some return of numbness and tingling.

Q What does the return of numbness and tingling, that had previously gone away with the surgery, indicate, if anything, to you? What did, I'm sorry --

A Nerve irritation.

Q Continue, please.

A Reports that he was retreating with Dr. Mandelbaum.

Q What medication was he on?

A Suboxone.

Q I would like you to assume -- you don't have to discuss that -- Dr. Mandelbaum will be here on Tuesday and he will explain to the jury what Suboxone is -- what was the Suboxone -- he was presently on Suboxone for what, you indicated?

A For pain.

Q And what was the other stuff he was getting during that time period?

A Injections.

Q Okay, physical examination in March of 2018, only the positives, neck and back, before we get to your opinions, doctor.

A Sure. Positive spasms in his neck, neurologically, no significant deficits, no progressive deficits, right side. What I indicated nerve root sensory loss with the tendon in the wrist called the brachioradialis, on the right side, the low back quadricep loss, Achilles tendon loss, and some sensory loss in L4-L5 and S1.

Q What, if anything, did you do -- what was the plan in the assessment understanding?

A Updating MRIs.

Q Did you do that?

A Yes.
Q Did you get permission to do that?
A Yes.
Q Did you do the films?
A Yes.
Q What body parts?
A Neck and back.
Q We reviewed only one of them, the back, but did you personally review each and every MRI film that Mr. Colon had, at least regarding this case and anything that went on before?
A Yes.
Q What was the -- after reviewing those films, did you discuss your findings of those films with Mr. Colon, the 2018 MRIs to the neck and the back?
A Yes.
Q And what, if anything, did you discuss with him regarding the films and whether or not he should continue working in a high manual labor capacity?
A So the recommendation was not to do heavy duty or manual labor, primarily to decrease stress --
Q What date? I'm sorry to do that to the reporter.
A This is April 16, 2018.
Q Okay. And based upon what?
A Based on the fact that he had undergone a mechanical reconstruction of the neck, mechanical reconstruction of the

lower back, we did MRIs that showed somewhat of a disk protrusion at C4-5, which is stress underneath the area of the fusion at C4-5 and facet joint changes at L3-L4, that is some inflammatory changes above the area of the low back fusion.

Q Now, you were talking about levels we didn't discuss during the first instance. Can you tell the jury what -- you used the word subadjacent protrusion, what does adjacent level breakdown mean for both the neck and the back?

A It's where the disks and the bones that are attached to the area of the fusion have extra stress on them, so you can see those parts of the spine wear out over time.

Q Okay, and does manual labor help, hurt, or do nothing to that?

A Manual labor is not a good thing for that.

Q Do you continue to see Mr. Colon through today?

A Yes.

Q Do you know if, at least by report, Mr. Colon took your advice and stopped working as an ironworker?

A Yes.

Q Do you know if he has some other form of job he will tell the jury when he gets up there?

A Yes.

Q So with the Court's permission, prior to answering -- asking the opinion questions, I would like to pose a hypothetical question to the doctor.

I would like you to assume that, on the date of the accident, June 19, 2008, Luis Colon was 28 years old.

MR. DERRICO: I'm going to object to this, your Honor.

THE COURT: Just ask a question.

MR. DERRICO: Can we go in the back?

THE COURT: Sure. Just for the members of the jury, we are working to end in the in the morning so that we recess in the afternoon, so there will be no afternoon court.

(Whereupon, an off-the-record discussion was held at sidebar among the Court and counsel.)

THE COURT: You may continue, Mr. McCrorie.

MR. McCRORIE: Thank you, your Honor.

Q I would like you to assume, previously what we talked about, 28 years old on the date of the accident. I would like you to assume that -- in evidence is Mr. Colon's primary treating physician, beginning from -- primary care physician, Dr. Shivdasani, from November 15, 2005, until about the end of 2013. I would like you to assume that Mr. Colon indicated on June 13, 2006 that he hurt his back at work; that when he turned his neck, it hurt; and that he was given Relafen, 800 milligrams. Is that a narcotic or something else?

A It's a nonsteroidal antiinflammatory.

Q I would like you to assume his work history indicates,

he will testify, he was a member of the iron workers union since 2004. I would like you to assume that, as a result of those 2006 complaints, there was no missed time from work, there was no further treatment, he just said that his neck and back were hurt, okay?

A Yes.

Q I would like you to assume that there was a car accident on February 7, 2007, indicated in the doctor's notes, on the Grand Central Parkway service road, he hit a guardrail, sliding on ice. He had left shoulder pain, neck pain, then, that one, there was no emergency room. The primary care physician, Shivdasani, sent him for neck and back pain -- neck back and shoulder X-rays. You've already gone over those with the jury, and they're in evidence, okay?

A Yes.

Q Even by everyone's account, all doctors that will come in, mild degeneration in the back -- and the shoulder is not in this case, okay?

A Yes.

Q I would like you to assume no lawsuit, no missed time from work, Relafen and Flexeril was given. Again, are either of those narcotic medications?

A No.

Q What are they?

A Flexeril is a muscle relaxant.

Q I would like you to assume -- in the notes he was referred to a separate orthopedic, Dr. Kirschenbaum, and that he didn't go, there was no further treatment with anyone, there was no lawsuit, no claim, just the primary care. I would like you to assume that in May of 2007, he was back at his primary care physician, he was a Judlau employee. Having nothing to do with a lawsuit, he stepped in an uneven surface, in a hole, and he twisted his knee. It wasn't a lawsuit, it was a work accident claim, there was no accident. He had a knee complaint May 29, 2007, and that there are no complaints to the neck or back on that date, okay?

A Yes.

Q I would like you to assume that Dr. Shivdasani, that very day, referred him two a center that he went to called the Sports Spine and Pain Treatment Center of Westchester, May 29, 2007, and that Mr. Colon reported to the Sports Spine and Pain Treatment Center of Westchester that it was his knee hurting him, no other complaints noted in that spine center, okay?

A Yes.

Q I would like you to assume that he continued to work for Judlau and that he was referred to that same doctor, also by Dr. Kirschenbaum, that he referred him to from the car accident in 2007 -- I mean in February, it's now May, and that he, at this time, does go see Dr. Kirschenbaum from Kirschenbaum Orthopedics on September 17, 2007. Do you have that so far?

A Yes.

Q And his chief complaint was, I have pain in my left knee, September of 2007, with no other complaints to any other body part in that orthopedic center. Okay? Do you have that, sir?

A Yes.

Q And that only X-rays were done of the knee and that he told that doctor, when offered pain medication, that he was going to take Aleve and Advil, okay?

A Yes.

Q I would like you to further assume, though, on that date, he also went to his primary care physician, and for the first time, had been given Percocet for pain for the left knee. Nothing else is noted in Dr. Shivdasani's notes, other than left knee, okay --

A Yes.

Q -- in evidence. I would like you to assume that Dr. Shivdasani, on September 17, 2007, gave him Percocet and Relafen, you told them, what it was. I would like to you assume, prior to the date of this accident, he never had an MRI to the neck or back and that he never had a symptom documented, or he will tell the jury otherwise, of radiating pain to the neck or the back, just the pain that was noted from the car accident and twisting it at work, okay?

A Yes.

Q I would like you to assume, having nothing to do with -- well, he will tell the jury about something that happened with him in November of 2007, but he worked unimpeded up until -- from all of these conditions I told you, from --

MR. DERRICO: Objection, your Honor, this is testimonial.

Q I would like you to assume the work record indicates there's no break in any work from 2004 through a 30-day break he took, that he will tell the jury about, in November of 2007, to enter a facility, okay?

A Yes.

Q A rehab facility. Immediately getting out of the rehab facility, he works until the date of this accident. The work record -- not every day, of course, okay?

A Yes.

Q I would like you to assume this accident happened and everything you've told the jury about the medical records, about the hospital records, about your treatment, all of that occurred. I know it's a weird thing, but you don't have to say it again, I'm not going to say it again. Everything you have told the jury and everything in your notes occurred, okay?

A Yes.

Q I would like you to assume that in August of 2008, two months after seeing yourself, and Dr. Touliopoulos signed a document initiating the proceedings against MTA, stating he had

neck, back, as well as other problems, his knee, and things like that, okay?

A Yes.

Q I would like you to assume that there was a full opportunity and that he testified to --

MR. DERRICO: Objection, your Honor.

THE COURT: Okay, one second.

MR. DERRICO: Now he's talking about --

THE COURT: I will allow it. You may continue.

Q I would like you to assume that he testified under oath that his neck and back had been bothering him and that, for financial reasons, he was working in December of 2018 from the accident, okay?

A Yes.

Q I would like you to assume that his official claim to workers comp, including -- when he gets up, it will go into evidence -- something he signed, his entire back was hurting him, was filed and signed December 26th or 3rd, 2008, okay?

A Yes.

Q From the accident of 6/19/08. I would like you to assume the official lawsuit was filed January 8, 2009, and that there was a motor vehicle accident on his way to work, January 19, 2009. Do you have all of that?

A Yes.

Q I would like you to assume, I'm going to paraphrase

because we have to move, that he went from the scene of that accident to a hospital called Saint Joseph's Hospital, and that chief complaint of left shoulder pain, that it's indicated he had a harness on -- the previous accident, if I said was a guardrail, the previous car accident from 2007 was a hit in the rear on the Grand Central Parkway. This accident, in January of 2009, was a sliding into a guardrail, okay?

A Yes.

Q He leaves the scene in an ambulance and makes complaints to his -- chiefly to his shoulder, and he's saying he has neck pain as well, okay, in the hospital?

A Yes.

Q There's an indication of back pain, but when he's released, there's an X-ray to his neck and his shoulder, okay, did you review that?

A Yes.

Q Not the films, the report?

A Yes.

Q I would like you to assume that, when he leaves the hospital, it's neck and shoulder and back, nothing from this anymore, okay?

A Yes.

Q I would like you to assume that he enters treatment under the motor vehicle accident benefits in New Jersey from a Dr. Vitolo, Seaview Orthopedics, and that he treats for his

shoulder only in the beginning, and Dr. Vitolo -- here we go. I would like you to assume that he treats with Dr. Vitolo of Seaview Orthopedics, and that, in January of 2009, in his handwriting, he had pain in his left shoulder, sharp at times, tingling in the neck other times, difficulty sleeping. And in July of 2009, still seeing Dr. Vitolo under those motor vehicle benefits, no complaints to back, complaints to shoulder and gets a shoulder MRI, okay?

A Yes.

Q I would like you to assume that Dr. Vitolo, after doing the MRI, the treatment ends in September of 2009, or October, okay?

A Yes.

Q And that there's no complaints of back pain to Dr. Vitolo, and that, subsequently, Mr. Colon starts -- gets the MRI through a Dr. Sciortino, through the work accident benefit, the one that -- the MRI that you eventually operated upon, I know you operated upon. Do you have all of that?

A Yes.

Q Do you have an opinion, with a reasonable degree of medical certainty, as to the cause of the radiating symptoms, the symptoms alone, that Mr. Colon was complaining to you and Dr. Touliopoulos about in the week or two after the accident, this accident, September -- sorry, I'm getting tired, June 19, 2008?

A Yes.

Q Okay, what is your opinion?

A That the cause of the inception of the radiating symptoms into the extremities, arms and hands, legs and feet, was caused by the fall, the 12-foot fall on June 19, 2008.

Q What do you base that opinion upon?

A I base that opinion on the records, the medical evidence that we have regarding when the radiating symptoms began, of course all of the records that I've reviewed, and my treatment of the patient.

Q Do you have an opinion, with a reasonable degree of medical certainty, as to whether or not Mr. Colon had preexisting degeneration?

A Yes.

Q And was that, in your opinion, symptomatic or asymptomatic?

A Essentially, asymptomatic.

Q Do you have an opinion as to whether or not any of Mr. Colon's degenerative conditions that you've described would have aggravated or activated by the accident of 6/19/08?

A Yes.

Q What is the opinion?

A That the accident would have activated and aggravated the radiating symptoms to the arms and hands and legs and feet.

Q You told the jury before, a herniation can happen from

trauma or from aggravation, correct?

A Yes.

Q In this particular case, the herniation you operated on, are they from trauma? Aggravation? Or something else?

A Aggravation of some preexisting degenerative changes, specifically by the fall of 12 feet.

Q What do you base that upon?

A The review of the medical evidence that we have, based on the records, and of course any treatment of the patient.

Q We will zero in right now on the back and then we will do the neck. What, if any, effect does the motor vehicle accident of January 19, 2009, have on your opinion as to the causation of the radiating symptoms he was having before that accident? Before the accident, not yet the final opinion.

A The accident that happened in January of 2009 was primarily shoulder related and didn't significantly effect the neck or back radiating symptom.

Q Did it help the neck or back, that car accident?

A It's not helpful, no.

Q Do you have an opinion, with a reasonable degree of medical certainty, as to the cause of the need for Mr. Colon's -- I can either do it separate or -- back surgery?

A Yes.

Q What is your opinion as to whether or not -- as to whether -- withdrawn.

With a reasonable degree of medical certainty, please tell the jury what your opinion is as to the cause of the need for the back surgery?

A The requirement for the back surgery was a consequence of the fall.

Q Can you please tell the jury the basis of that, whether it is the basis for the opinion with regard to the facet fracture? The disks? Both? Can you please, in one opinion, with a reasonable degree of medical certainty --

A Within a reasonable degree of medical certainty, after the fall occurred, Mr. Colon began to develop radiating symptoms into the extremities and into the lower legs with positive tension signs, with MRI studies that were taken within a short time of each other showing severe, precocious -- that is sped up -- degenerative changes in the lower back and the protrusions at L4-L5 and facet fracture at L5-S1.

Q Do you have an opinion, with reasonable degree of medical certainty, as to the cause for the need for the injections and treatment leading up to the surgery?

A Yes.

Q Please tell the jury what that opinion is, and if permitted, give the basis statement. Only if permitted and not objected to.

A The need for the injections was to treat the radiating symptoms coming from the neck and back regions as a consequence

of the fall, the fall being the inception or the first time that those radiating symptoms were appreciated, complained of, and objectively found on the physical exam. Those injections were necessary and required to treat the neck and back as a consequence of the fall.

Q But for the fall of June 19, 2008, do you have an opinion as to whether or not Mr. Colon, a 29-year-old man who told you did not have radiating symptoms, would have needed a two-level back fusion, fixing a facet fracture in December of 2010 -- in March of 2011?

A If it weren't for that fall, we wouldn't have to fix a facet fracture that developed after, no.

Q Can you please tell the jury, with a reasonable degree of medical certainty, how a facet fracture could have developed?

A Excessive loading of the joints, as a consequence of the disks not functioning properly.

Q The disks not functioning properly, with a reasonable degree of medical certainty, what is your opinion as to why they weren't functioning properly?

A As a consequence of the fall.

Q Once again, there was a motor vehicle accident, did that help his situation? What, if any, effect did it have on the need for the treatment and surgery?

A The subsequent car accident, of course, is not something that's helpful, but it wasn't a significant traumatic

event that started the entire process from progressing.

Q It's indicated in the notes that, when he returns to University Orthopedics, that he is treating with another doctor. He doesn't see you first, he sees Touliopoulos, and that he's taking Percocet. Do you know what he told Dr. Touliopoulos why he was taking the Percocet with the PCP, prime care physician?

A No.

Q You did eventually learn something that was in his primary care medical doctor's records, and you have reviewed them prior to rendering your opinions, correct?

A Yes.

Q And have you reviewed all of the other treatment records, not just from your own of University, every other doctor in the binders and packets we gave you, and the pain management, Dr. Mandelbaum, that would be sent to you normally?

A Yes.

Q And do you base your opinions on all of -- have all of your opinions been based on those records and the review of everything I just stated?

A Yes.

Q And your training and experience?

A Yes.

Q And your treatment of the patient?

A Yes.

Q Do you have an opinion, with a reasonable degree of

medical certainty, as to whether or not it is advisable today -- he's still your patient, correct?

A Yes.

Q Whether or not it's advisable today for Mr. Colon to return to work as a union ironworker at the age of 39?

MR. DERRICO: Objection, asked and answered.

THE COURT: I will allow it.

A I would not advise him returning to work, in a labor capacity, as an ironworker or heavy labor.

Q With a reasonable degree of medical certainty, can you please state the basis?

A The basis for that is the mechanical reconstructions, and doing heavy-duty labor would, of course, wear down the neck and back regions, adjacent to the areas where we did our surgery, rather rapidly.

Q With a reasonable degree of medical certainty, do you have an opinion as to whether or not Mr. Colon will experience pain in his neck and back beyond the date of this trial?

A Yes.

Q Can you please tell the jury what your opinion is, stating to both the neck and back, please?

A My opinion is he would have what we call chronic pain. He has some residual pain and symptoms, continues to treat with pain management, and because it's been going on for all these years, it is anticipated to be a permanent issue.

Q Please tell the basis, for the record.

A The fact that it's been going on for all these years puts it into the category of chronic pain symptom.

Q Are all of your opinions based on your training and experience and treatment of the patient?

A Yes.

Q Do you have an opinion, with a reasonable degree of medical certainty, as to what period of time into the future Mr. Colon will experience pain in his neck and back?

A I would say it would be a lifetime issue for him.

Q You have to state the basis each time.

A Sure, so the basis for that opinion is that he continues to manifest chronic pain at this time and that's anticipated to last a lifetime.

Q Do you have an opinion, with a reasonable degree of medical certainty, as to whether or not Mr. Colon should seek any type of medical treatment beyond the date of this trial into the future?

A Yes.

Q Have you reviewed a life care plan of another doctor in this case?

A Yes.

Q I just want to deal with orthopedic follow up, diagnostic follow up, and physical therapy, okay?

A Yes.

Q Do you have an opinion, with a reasonable degree of medical certainty, as to whether or not it would be advisable, medically, for Mr. Colon to treat with a board certified orthopedic spine surgeon into the future beyond the date of this trial?

A Yes.

Q What is that opinion?

A That opinion is that he should see an orthopedic spine surgeon going forward in the future for his lifetime.

Q On a yearly basis? How many times?

A Twice a year would be reasonable.

Q Can you please tell the jury for what period of time into the future?

A Lifetime.

Q Can you please tell the jury the cost, assuming there's no benefits, out of someone's pocket, what is a follow up visit with a board certified orthopedic surgeon to comprehensively review the back twice a year?

A $250 per visit.

(Continued on next page.)

Q. Can you please tell the jury, with a reasonable degree of medical certainty, if you have an opinion as to whether or not he would require any diagnostic testing into the future beyond the date of this trial?

A. Yes.

Q. One thing I didn't add to the hypotheticals that we already did. I'm showing you Plaintiff's 15.

You knew and saw the pictures of where he fell from, other than him telling you that, correct?

A. Yes.

Q. And all of the opinions are also based on seeing the photo of the conditions where he fell, the height?

A. Yes.

Q. Okay. So do you have an opinion, with a reasonable degree of medical certainty, as to the need for future diagnostics? What are they? I think you already said there was a need.

A. Yes. I would recommend that he do MRIs at least every two years to both the neck and the back.

Q. Every how many years?

A. Two.

Q. And what is the purpose of serial or repeat MRIs in someone that's already, as you said, had subadjacent breakdown -- subadjacent level issues?

A. Monitoring the subadjacent levels.

Q. What's the current cost for the MRI, be it the neck or the back, on average, out-of-pocket cost? Again, on average.

A. Eleven hundred dollars.

Q. Do you have an opinion with a reasonable degree of medical certainty as to -- withdrawn.

How often should that go on? You said every two years. Does that mean for what period of time?

A. Lifetime.

Q. Do you have an opinion finally, with a reasonable degree of medical certainty, as to whether or not Mr. Colon, assuming there's no permission required, whether physical therapy would be something that would be useful to him in the future, for the neck or the back?

A. Yes.

Q. What is your opinion?

A. Physical therapy should be done on a maintenance basis for lifetie purposes.

Q. And just briefly, you refer patients out for physical therapy pretty often?

A. Yes.

Q. And patients also do home therapy while -- home therapy in addition to supervised physical therapy?

A. Yes.

Q. I'm speaking not about home therapy. First, home

therapy, have you told him in the past to do home therapy and taught him?

A. Sure.

Q. Do you have an opinion with a reasonable degree of medical certainty, I'm speaking about in addition to home therapy going into supervised physical therapy for any period of time in the future for the neck and the back?

A. Yes.

Q. What is your opinion on what period of time he should be in supervised therapy for the neck and the back?

A. Supervised therapy would be helpful on what's known as maintenance basis, which is at least two to three times a month, and that would of course last for a lifetime.

Q. So whatever two to three times a --

A. Twenty-four sessions or so a year, I would think, on average.

Q. And the current cost would be -- what is the current average cost for physical therapist visit for the neck and the back, to comprehensively get that?

A. Average about 125 a visit.

Q. Okay. Thank you, Doctor. Sorry -- wait, wait, wait. One second.

MR. McCRORIE: Okay. This is why I'm trying not to speak. I want to make something clear.

Q. The MRIs are you said every two years, is that for

each body part or something else?

A. Each body part.

Q. Okay.

A. Neck and back.

Q. So it would be $1,100 times two every two years?

A. Yes.

Q. Sorry. Again, this is what happens when I'm going fast.

Do you have a reasonable degree of medical certainty, do you have an opinion as to the competent producing cause of pain to Mr. Colon's neck and back from the date of the accident through the date of my asking you questions? We just handled the future.

A. Yes.

Q. I think we did it, but if we didn't this is the last question: What is your opinion as to both the competent producing cause of pain to both his neck and back from the date of the accident through today - not just the symptoms - the cause cause of pain?

A. The fall.

Q. What is the basis, one final time?

A. My review of the records, my treatment of the patient.

MR. McCRORIE: Thank you for your patience, and the Court as well.

THE COURT: Thank you, Mr. McCrorie.

Members of the jury, we're going to take a brief recess.

THE COURT OFFICER: All rise.

(Jurors exit.)

THE COURT: Doctor, I'm reminding you that you're not to discuss the testimony with anyone during the recess as you are still providing testimony in this courtroom, do you understand that?

THE WITNESS: Yes.

THE COURT: Thank you. We're off the record.

(Recess taken.)

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Transcript continued on next page-

(Whereupon, the following transpired in open court, in the presence of all parties:)

THE COURT: We're ready.

THE COURT OFFICER: Jurors entering.

(Jurors enter.)

THE COURT: You may be seated.

MR. DERRICO: May I inquire, your Honor?

THE COURT: Doctor, I would like to remind you that you're still under oath. Do you understand?

THE WITNESS: Yes, I do, your Honor.

THE COURT: Thank you.

You may inquire.

CROSS EXAMINATION

BY MR. DERRICO:

Q. Good afternoon, Doctor.

All right. So you know what speed dating is, right?

A. Yes.

Q. I don't want to speed date you but we're going to something like that. We're going to try to get this going because we want to get out of here by one o'clock.

What we're doing -- we've met before, correct?

A. Yes.

Q. In fact, I've cross examined you a number of times have I not?

A. Yes.

Q. Over the years?

A. Yes.

Q. So just for the benefit of the jury, quick rules: I'm going to stand back here. I'm going to keep my voice up nice and loud, although I tend to be quiet -- only kidding. I'm going to speak real loud. I'm going to ask you to do the same thing. I'm going to ask you to wait until I finish asking the question before you answer the question, so the jury could hear everything and the court reporter could get everything down.

If I speak too quickly, which I have a tendency to do, tell me. If you don't understand my question, tell me. Okay?

A. Yes.

Q. Now, with regard to my questions, some of my questions will be yes or no questions and if you can't answer yes or no, just tell me. Okay. If I want an explanation as to anything, I'll say 'Doctor, could you explain this to the ladies and gentlemen of the jury,' okay?

A. Yes.

Q. Okay. Perfect.

Now, you were asked by Mr. McCrorie to make assumptions; remember that just happened where he read this whole thing to you about I want you to assume this, I want you to assume that, right? Remember that?

A. Yes.
Q. Are assumptions always correct, yes or no?
A. They're assumptions, I guess, so I have to assume that I would take them correct at their word in order to be able to answer the question.
Q. But sometimes assumptions are incorrect, correct?
A. Possibly.
Q. And you were asked questions about this future treatment that Mr. Colon needs, right?
A. Yes.
Q. Is he getting physical therapy right now, yes or no?
A. No.
Q. When was the last time he had physical therapy?
A. I'm not sure.
Q. And do you know if it was more than five years ago?
A. I don't know.
Q. Now, the MRIs; you said he needs an MRI of the neck and the back every two years, correct?
A. Yes.
Q. Now, you did an MRI or you ordered some MRIs in 2018?
A. Yes.
Q. Okay. And correct me if I'm wrong, but the last MRIs before that were 2014?
A. Yes.

Q. And before that, they were 2010, correct?
A. Yes.
Q. So we see 2010, 2014, 2018, correct?
A. Yes.
Q. You didn't order the 2010 MRIs, did you?
A. Correct.
Q. So that's different than this afternoon what you just told us, correct? I mean you told this jury he should have one every two years of the neck and back, but he has not been having that up until this point, correct?
A. Yes.
Q. Okay. Now, you also said with regard to spinal surgeons, you said he should see a spinal surgeon twice a year for follow up examinations, correct?
A. Yes.
Q. Now, he saw you in 2018, right?
A. Yes.
Q. But he didn't see you in 2017, correct?
A. Correct.
Q. He didn't see you in 2016, correct?
A. Yes.
Q. And did he see you in 2015?
A. Yes.
Q. He didn't see you?
A. Did.

Q. He did?
A. Yes.
Q. Once though?
A. Once, and then I went over films with him, so I saw him twice technically.
Q. But would you agree with me that the ladies and gentlemen, that that is different than what you just told this jury, that it's not consistent, right? He hasn't been seeing an orthopedic spinal surgeon for checkups since the surgery two times a year up until today. Would we agree that's not the same?
A. Yes.
Q. We agree?
A. Yes.
Q. Now, did you ever speak to Dr. Vitolo, did you ever speak to him?
A. No.
Q. Did you ever speak to Dr. Shivdasani, his generally practitioner?
MR. McCRORIE: Shivdasani.
Q. Shivdasani, whatever he said. Did you ever speak to Dr. Shivdasani, his general practitioner?
A. No.
Q. Did you ever speak to Dr. Kirschenbaum?
A. No.

Q. Did you ever speak to Dr. Sciortino?
A. No.
Q. Now, you're being paid to be up there, correct?
A. For my time away from the office, yes.
Q. That's a yes or no, I'm sorry.
A. Yes, I'm sorry.
Q. I should have said that.
Okay. And how many times have you testified this year from January until now?
A. I want to say about three times since January.
Q. And for whom, which firm?
A. Various firms, I think. Maybe the last time I testified was actually for Sacks and Sacks, maybe last month or so.
Q. And how many times in the course of your career have you testified for Sacks and Sacks? Just estimate for the ladies and gentlemen of the jury.
A. A number of times over the last 20 years or so. I couldn't give you a number but it's been --
Q. More than 50, right?
A. Twenty some odd years, I don't know if it's more than 50, but it's a number of times.
Q. And how much money do you earn a year testifying in court?
A. I don't have a specific number, but it's a small

percentage of what I do.

Q. Okay. Well, how much do you earn a year?

A. I don't have a specific number.

Q. Give us a ballpark?

MR. McCRORIE: Objection to what he earns, other than from litigation.

THE COURT: Sustained.

MR. DERRICO: I want to know what percentage, your Honor.

THE COURT: Rephrase the question.

MR. DERRICO: Okay.

Q. What percentage of your income is derived from testifying in court?

A. Less than one percent.

Q. Okay. Now, you say that you do spinal surgery; you treat workers, ironworkers?

A. Yes.

Q. You do a lot of ironworkers, don't you?

A. Yes.

Q. And what percentage of the 200 surgeries per year are for ironworkers?

Ninety percent?

A. No.

Q. Seventy?

A. I couldn't give you a percentage because I do all

sorts of patients, but I mean I don't have my office statistics to go over all this with you. I could tell you in general.

Q. Just, remember, one o'clock.

A. No worries, whatever you need.

Q. Is it more than 50 percent?

A. I don't know.

Q. Do you get referrals for patients from attorneys?

A. Yes.

Q. And do you get referrals for patients from Sacks and Sacks?

A. Yes.

Q. Do you get referrals for patients, you know, ironworkers, from members of the union?

A. Yes, sure.

Q. People in the administration, president, vice president, business managers?

A. I know folks have come in through the union, yes.

Q. Now, would you agree with me that you're here today as -- you're a treating, you treated him, correct?

A. Yes.

Q. But you're also here as an expert, correct?

A. Yes.

Q. Okay. So let's talk about when you're a treating doctor. You're doing this for more than how many years?

A. Since '96.

Q. Don't make me do the math.
A. I know, it's a long time.
Q. Thirty years or so?
A. I hope not.
Q. Twenty-seven years?
A. Maybe 27 years or so.
Q. So you get paid. A patient comes to you, right? I come to you?
A. Yes.
Q. And you take a history?
A. Yes.
Q. Right. You want to take an accurate history?
A. A pertinent history.
Q. A pertinent, accurate history?
A. Yes.
Q. So that's when you ask the patient questions, correct?
A. Yes.
Q. And you want to find out about their prior medical history, correct?
A. Yes.
Q. Maybe any accidents or injuries that they've ever had, correct?
A. Yes.
Q. Complaints they've had?

A. Yes.

Q. Whether or not any diagnostic tests may have been done, correct?

A. Yes.

Q. We agree on that?

A. Yes.

Q. That's good practice, right? Good, sound medical practice to do that?

A. Yes.

Q. Because what we're going to do is someone is going to come to you complaining, subjective complaints, they're going to complain about this, that, whatever. You want to take the subjective complaints, you want to do a physical examination, right?

A. Yes.

Q. And you may want to order some diagnostic tests?

A. Yes.

Q. There's a couple of different things that you want to do there, correct?

A. Yes.

Q. So you took a history from Mr. Colon, right?

A. Yes.

Q. Do you have the history here with you?

A. Yes.

Q. You do.

Is it a written history?

A. Yes.

Q. Did you review it before you testified here?

A. Yes.

Q. Okay. One of the other things that you also want to do is review some records, if there are any prior medical -- any records that exist prior to you actually seeing this person, correct?

A. That's not a yes or no answer.

Q. Let me rephrase it then.

Okay. With regard to an accident, if he comes to see you about the June 19, 2008 accident, did you ask him if he had any medical treatment for that accident?

A. Well.

Q. Before seeing him?

A. Well, I had Dr. Touliopoulos's treatment of him after he immediately saw him.

Q. I guess what I'm unartfully asking is --

A. Yes.

Q. Did you know he was treated at St. Barnabas Hospital?

A. We knew he was treated for the laceration of the scalp and was seen in the hospital, yes.

Q. And did you obtain those records?

A. Eventually we obtained those records, yes.

Q. When is eventually?
A. I can't tell you because those would have gone directly to University Orthopedics.
Q. When did you review those records?
A. I reviewed them for in preparation for this trial today, so actually about two weeks ago.
Q. So can we say you didn't see those records before you treated?
A. I saw those records at least two weeks ago, that I recall, for this patient. I can't tell you exactly when I would've seen them in the past because I treat a lot of patients. So I don't want to misspeak, but in order to be completely prepared for today to answer all your questions I specifically reviewed those records at least two weeks ago.
Q. At least?
A. At least.
Q. Are they there with your chart in your file?
A. They're here with me now.
Q. When you came to court you brought your records?
A. I brought my treating records.
Q. Were they contained in your treatment records?
A. I did not bring those records. I were told they would be in court.
Q. When you grabbed your file yesterday, today, whenever you grabbed it, were the St. Barnabas records in there

yes or no?

A. Once again, I have the University records, I saw him originally at University Orthopedics. I don't have --

Q. Yes or no?

A. It's not a yes or no. I can't answer that yes or no.

Q. When you see a patient, you're going to diagnose, treat, and prognose, correct?

A. Yes.

Q. Now, prognose means what we're going to see, what may happen in the future, correct?

A. Yes.

Q. So, like I indicated before, you want to have as much information as you can about your patient's pertinent prior medical history, would you agree with me on that?

A. Yes.

Q. So if they come to you complaining about elbow pain, you would want to know whether they were treated or had any prior injuries to the elbow, would you agree with me on that?

A. Yes.

Q. And would you ask the patient, would you ask the patient have you ever had any prior elbow problems? Would you ask them that?

A. Yes.

Q. Do you, as you sit here today, recall whether or not

you asked Mr. Colon if he had any prior neck complaints or back complaints?

A. I would have asked as a general question.

Q. Okay.

A. Whether or not there was any significant prior neck or back symptoms.

Q. Do you have a specific recollection of asking Mr. Colon that question when you first saw him?

A. I don't have a pertinent positive past recorded in the history section.

Q. That means there was no indication that he had -- would you agree when you say pertinent past, basically what we're saying is there is no reporting to you at that point in time that he had any prior neck or back pain, correct?

A. There was any prior neck or back pertinent prior radiculopathy or treatment.

Q. Treatment?

A. Yes.

Q. When did you first learn about the 2007 motor vehicle accident?

A. In preparation for trial.

Q. Within the last two weeks?

A. Yes.

Q. Within the last week?

A. Probably the last two. I think I've been --

everything turns into like one big day sometimes, but I think at least within the last two weeks I've been preparing to come in.

Q. What about the subsequent motor vehicle accident on January 19, 2009. When did you first learn about that accident?

A. Same, preparation for trial.

Q. Within the last two weeks?

A. Yes.

Q. Now, I believe you used the term "degeneration," correct?

A. Yes.

Q. And degeneration is the process by which the body starts to, I don't want to say breakdown. Is that a good one?

A. Yes.

Q. Breakdown?

A. Sure.

Q. Okay. And so we've got -- I'm going to do this quick. We've got the spine. Got the spine up there?

A. Yes.

Q. And the vertebrae at each level. There's the cervical vertebrae?

A. Yes.

Q. Thoracic?

A. Yes.

Q. And lumbar?
A. Yes.
Q. And in between each is a disc, correct?
A. Yes.
Q. Kind of like a jelly doughnut right?
A. Like a jelly doughnut.
Q. And the outside of the jelly doughnut is called the annulus fibrosis?
A. Yes.
Q. And the inside, the jelly is the nucleus pulposus.
A. Yes.
Q. And they sit between the vertebrae, these discs, and the idea is -- it's more or less God, the way he designed it, it's like a shock absorber, right?
A. Yes.
Q. A shock absorber between the vertebrae.
As we get older, after we stop growing, right?
A. Yes.
Q. Body starts to degenerate, that sometimes, in certain people it's worse than others?
A. Yes.
Q. Occupation can have an impact on degeneration?
A. Yes.
Q. Weight can be an impact on degeneration?
A. Yes.

Q. Congenital issues can have an impact on degeneration?

A. Yes.

Q. Now, would you agree -- because you've testified for ironworkers multiple times in court, correct?

A. Certainly been to court before and given testimony, yes.

Q. And you're familiar with the job requirements; it's a hard job, right?

A. Yes.

Q. Manual labor?

A. Yes.

Q. Picking up steel, bending over, picking up things, jackhammering, and bolting up, and all that other stuff, right?

A. Yes.

Q. That could have an impact on your spine, yes or no?

A. Yes.

Q. And have you ever heard the term "morbidly obese"?

A. Yes.

Q. And morbidly obese means that there's certain guidelines as to what you should and shouldn't -- what you should weigh?

A. Yes.

Q. I happen to believe the scales are a little bit lighter than they should be, but that's just me, right?

A. Yes.

Q. But if you're a percentage over what they recommend you could be considered morbidly obese, right?

A. Yes.

Q. Now, weight, as we indicated, can also have an impact on the spine, correct?

A. Yes.

Q. And prior accidents can have an impact on the spine?

A. Yes.

Q. Whiplash type of, you've heard the term whiplash?

A. Yes.

Q. That happens in a rear-end accident?

A. Can, yes.

Q. Whether the neck goes forward, or backwards and then forward?

A. Yes.

Q. Now, do you know how much Mr. Colon weighed on the date of the accident?

A. No.

Q. Did you ever ask him?

A. I'm sure we have that data somewhere, but I didn't ask specifically, no.

Q. Did you take into consideration his weight with regard to his lumbar and cervical spine?

A. Yes.

Q. You did. And would you agree with me that he's a big fellow?

A. He is a large person, yes.

Q. Large person?

A. Yes.

Q. Did you consider him morbidly obese?

A. What you'd have to do is calculate what's known as his lean body mass and compare that to what's known as body mass index. Often times ironworkers have a lot of muscles associated with large frames so they may not be -- can't answer that yes or no, sorry.

Q. That's all right. That's all right.

Now, he was taking -- was he taking Percocet when you saw him for the first time?

A. I don't know.

Q. You don't know. Okay.

Well, did he tell you he was taking Percocet?

A. When I first saw him?

Q. Yes.

A. I didn't discuss pain medicines with him at the time.

Q. Would you typically ask patients about what pain medications they're taking or not?

A. If I don't have something charted. And I had Touliopoulos' chart with me and I know he prescribed him

Vicodin, so I know that Touliopoulos had given him a prescription for Vicodin.

Q. Percocet is a pretty powerful pain medication, isn't it?

A. Depends on the dosage, but it's --

Q. Are they different?

A. It can be.

Q. Did you ask him if he had, Mr. Colon, had any addictive issues with Percocet?

A. Did not discuss it with him, no.

Q. Did you know that he did?

A. Once again, I did not have that discussion with the patient.

Q. Have you found out today that he did?

A. I found out that he had gone to rehabilitation, yes.

Q. Did Mr. Colon, yes or no, tell you about the 2007 motor vehicle accident?

A. No.

Q. Did he tell you about the January 9 -- 19th, 2009 motor vehicle accident, yes or no?

A. No.

Q. Now, when did you -- did you ever review Dr. Shivdasani's records?

A. Yes.

Q. When was that?

A. In preparation for trial.
Q. Within the last two weeks?
A. Yes.
Q. So would it be fair to say then we could agree that when you saw Mr. Colon on June 30th, 2008, you had not spoken to his general practitioner, you were unaware of the 2007 motor vehicle accident, you were unaware that any x-rays had been done in 2007, correct?
A. Yes.
Q. Did you know that he had retained an attorney for that motor vehicle accident? He hired a lawyer to sue. The you know that?
A. No.
Q. Now, so --
MR. McCRORIE: Could you speak clear on which accident? Maybe I'm missing.
MR. DERRICO: 2007.
MR. McCRORIE: Thank you.
Q. And we agree that you did review Dr. Shivdasani's records, right?
A. Yes.
Q. So June 13, 2006: hurt back at work. Correct?
A. Yes.
Q. Neck hurts. Correct?
A. Yes.

Q. Prior complaints, right? This is 2006?
A. Yes.
Q. Because he had been working as an ironworker for a couple of years, right? And he specifically told the doctor that his back and neck hurt?
MR. DERRICO: And that's in evidence as 58.
MR. McCRORIE: Yeah.
Q. We agree on that, right?
A. Yes.
Q. So he's got prior complaints of neck and back pain, right?
A. Yes.
Q. At least more than two years before this accident?
A. Yes.
Q. And then in February 2007 he has a motor vehicle accident where he's rear-ended and again he makes complaints of neck and back, correct?
A. Yes.
Q. And, in fact, Dr. Shivdasani, his general practitioner, prescribes him Percocet, correct?
A. Yes.
Q. For the neck and back. And also asks him to go -- says go out, I want you to have an x-ray of your neck and back, correct?
A. Yes.

Q. And that in fact is done two days later, correct?
A. Yes.
Q. Now, when did you review that x-ray for the first time, Doctor?
A. In preparation for trial.
Q. So we agree that when you formulated your initial opinion in June 30, 2009, you did not have that x-ray, did you?
A. What opinion was that though? I don't understand that question.
Q. I'm sorry, a little change.
When you saw him on June 30, 2009 -- 2008, when you wanted to evaluate him for the accident and the injuries - right? - you didn't have the benefit of that x-ray, did you?
A. Correct.
Q. And you've reviewed it since.
Now, the x-ray, I'll just read some portions from it. The 2008 --
MR. McCRORIE: Seven.
Q. The February 8, 2007 x-ray of the surgical spine says foraminal stenosis, correct?
A. Yes.
Q. Okay. Let's talk about that real quick.
MR. DERRICO: Can I approach the witness real quick?
THE COURT: You may.

Q. So what we have here is the spine, correct?
I'm going to turn around this way.
So the holes, there's holes on each side of the vertebrae, correct?
A. Yes.
Q. That's the foramina?
A. Yes.
Q. Okay. The holes are the foramina.
The foramina, the holes, an analogy would be like a pipe, like a pipe in your house, like a copper pipe or an iron pipe, correct?
A. Sure.
Q. They don't use iron pipes anymore for homes, do you know that?
A. No.
Q. Do you know why?
A. No.
Q. Because iron rusts, and rusts from the inside out, so what happens is the pipe starts to close and you get reduced water pressure. Did you know that?
A. Interesting, yes.
Q. So now these little white things I'm pulling on, those are the nerves, right?
A. Yes.
Q. And the nerves come out through the foramina, right?

A. Yes.

Q. Ideally, what you would like is you would like the foramina to remain open, right?

A. Yes.

Q. You don't want the nerve, where the nerve goes through the foramina, you don't want it touching any part of it, right?

A. Correct.

Q. Because that could aggravate it?

A. Yes.

Q. Like when someone says I have a pinched nerve. That's a pinched nerve, isn't it?

A. It could cause pinching, yeah.

Q. And when the pipe or the foramina starts to narrow -- because that could happen as you get older, right?

A. Yes.

Q. Foraminal stenosis, right?

A. Yes.

Q. Stenosis, just fancy medical term for the pipe closing down a little bit, right?

A. Yes.

Q. And, in fact, so we agree that the 2007, February 2007 x-ray of the cervical spine specifically says foraminal stenosis from degenerative disease, correct?

A. Yes.

Q. So we agree, we agree on that day that they said that Mr. Colon in his neck had degenerative disease which was impacting the foramina or the pipe that the nerve goes through, correct?

A. Yes.

Q. That's not a normal finding, right?

I just want to go on. Okay. Mild {}uncinate hypertrophy.

Now, that's also known as degenerative joint disease, correct?

A. Degeneration, yes.

Q. Degeneration, that's another indication of degeneration, correct?

A. Yes.

Q. And we agree that Mr. Colon had that in the cervical spine as of 2007, correct?

A. Yes.

Q. And now if we go to the x-ray, same day they do an x-ray of his lumbar spine, this is in February 2007, and degenerative changes, facet hypertrophy at L5-S1.

MR. DERRICO: May I approach, your Honor?

THE COURT: You may.

Q. Now, L5-S1, that's down here, bottom one, right?

A. Yes.

Q. That's the last one on the lumbar region?

A. Correct.
Q. Most commonly, that's the most commonly problematic one?
A. 4-5 and 5-1.
Q. Most commonly problematic?
A. Yes.
Q. Because it's at the base?
A. Yes.
Q. And gravity pushes us down?
A. Yes.
Q. And that's what happens, that's where the most amount of pressure is?
A. Yes.
Q. And these are the jelly doughnuts that we talked about, right?
A. Yes.
Q. The discs.
All right. Do you know what the word patent means, P-A-T-E-N-T?
A. Yes.
Q. Clear, unobstructed?
A. Yes.
Q. That's a good finding; when you say that it's patent, that means that there's nothing affecting the nerve that you're discussing, the nerve root, right?

A. Yes.
Q. So have you heard the term "degenerative spurring"?
A. Yes.
Q. Spurring is the growth of bone, correct?
A. Yes.
Q. And that's part of the degenerative process?
A. Yes.
Q. And correct me if I'm wrong, but those records, the February 2007 not only showed the degenerative changes at L4-L5-S1, but also showed spurring at the end plates, correct?
A. Yes.
Q. Now, let's go to the date of the accident.
Okay. He has the accident on June 19, 2008. He falls. We've heard testimony that he was seen walking up a hill to the ambulance, right?
He wasn't taken out on a gurney. He walked to the ambulance.
Did you review the FDNY records and the St. Barnabas records?
A. Yes.
Q. And within the last couple of weeks?
A. Yes.
Q. Okay. So isn't it true that in the FDNY EMS hospital -- ambulance records, he specifically denied neck and back pain?

A. Yes.

Q. Okay. And his only complaint was actually his elbow and the head, right?

A. Yes.

Q. And then he gets to the hospital at St. Barnabas and again he denies neck and back pain, correct?

A. Yes.

Q. But he does make complaints of elbow, foot, pelvis, foot, right foot, left foot, right leg, left leg, correct?

A. Yes.

Q. And, in fact, you've worked in a hospital before, right?

A. Yes.

Q. When you were an intern?

A. Yes.

Q. Did you ever do a rotation through the emergency room?

A. Yes.

Q. You had to do that, right?

A. Yes.

Q. And one of the things that you want to do is you want to assess, when someone comes into the emergency room after having an accident, you want to assess their physical condition, correct?

A. Yes.

Q. And so you ask them what hurts?
A. Yes.
Q. And they tell you everything that hurts?
A. They tell you what they tell you at the time of the accident, yes.
Q. Okay. And then you do -- you may order some tests, diagnostic tests or treatment based upon those complaints?
A. Yes.
Q. So they did x-rays of every part of his body that he complained of, correct?
A. Yes.
Q. But they didn't do any x-rays of his neck?
A. Yes.
Q. Or CT scans?
A. Correct.
Q. They don't do it and they didn't do any CT scans, MRIs or x-rays of his lower back, correct?
A. Yes.
Q. In fact, they did a neurological test, correct?
A. Yes.
Q. And that's standard when someone comes into the emergency room having sustained a trauma, correct?
A. Yes.
Q. And one of the things that you want to check is your arms, we call them the upper extremities, right?

A. Yes.
Q. The legs, we call them the lower extremities, right?
A. Yes.
Q. So you want to test strength?
A. Yes.
Q. They push down, am I right?
A. Yes.
Q. Then they make you put out your arms and they push down and you push against it, then they pull it and you push back against it. Right?
A. Yes.
Q. One of the things they're checking for, or one of the things that a neurological test helps you determine, not only this, but is whether or not you have any type of nerve issues going on tap in time, correct?
A. Spinal cord or nerve issues, yes.
Q. Spinal cord going right down there or the nerve roots coming out of the nerve root?
A. Yes.
Q. And they also check sensation?
A. Yes.
Q. They want to make sure you don't have any diminished or reduced sensation, because the reduced sensation, diminished sensation could also indicate nerve injury, correct?
A. Yes.

Q. And would you agree with me, yes or no, that when they checked his upper extremities and lower extremities at the emergency room, the date of the accident, he had normal sensation and he had normal neurological findings, correct?

A. Yes.

Q. So you saw him on 6/30. Dr. Touliopoulos saw him on 6/24, then you saw him on 6/30, correct?

A. Yes.

Q. And then the next time you see him you don't see him until May 2009?

A. Correct.

Q. So but you did -- when you saw him on the 30th, you did say to him I want you to go out and have some MRIs?

A. Yes.

Q. And that's prudent to do that, right?

A. Sure.

Q. And by this point you still don't know about those x-rays from 2007, did you?

A. Yes.

Q. You don't know about them?

A. Correct.

Q. And but he never goes and get the MRIs correct?

A. At that time he had not had MRIs, no.

Q. So the first MRI is done April 28, 2009, correct?

A. Yes.

Q. That's what, ten months after the accident?
A. Yes.
Q. And four months after the motor vehicle accident?
A. Yes.
Q. Did you know he totaled the car in that accident? Did you know that?
A. I'm not aware of the car damage, no.
Q. That he was taken to the hospital by ambulance, did you know that?
A. Taken to the hospital, yes.
Q. Put on a cervical collar?
A. They had a cervical collar, yes.
Q. On a bench, he was strapped to. They do that. They strap you to a board, right?
I'd lie on this table, but we don't have enough time.
MR. McCRORIE: I'll stipulate.
Q. They do that to prevent any problem, any issues, if you have a nerve issue or something in the spine?
A. Yes.
Q. And that's what they did, correct?
A. Yes.
Q. And we agree that he had complaints of neck and back pain after that accident, right?
A. Yes.

Q. And he was -- again he's given a prescription after that accident for Percocet and Toradol. Did you know that?

A. Yes.

Q. But he was already getting it from Dr. Shivdasani, did you know that?

A. He had also seen his primary, yes.

Q. So he was getting two prescriptions for Percocet. Did you know that?

A. I know that they had given him a prescription when he left the hospital, yes.

Q. Did you know that his records indicate that there are doctors that specifically knew, that he's told you shouldn't be getting Percocet from two different doctors; did you know that, yes or no?

A. I haven't looked at his medication list, no.

Q. You didn't know that. Okay.

But you know he went to rehab for that, right?

A. Yes.

Q. So we have the MRI for 4/28/'09. That's the first one that's done nine months after the accident or ten months after the accident and after the motor vehicle accident, and now it says, looking at the MRI of the lumbar spine, it says neural foramina patent?

A. Yes.

Q. That's at the levels we're talking about, right?

A. Yes.
Q. Where the surgery is?
A. Correct.
Q. So what it's staying is at L4-L5 and L5-S1, where you ultimately did surgery multiple years later, at that time it was patent, it was clear, nothing impinging on it, right?
A. They were open, yes.
Q. And they said stenosis, he's got mild canal stenosis?
A. Congenital.
Q. Congenital, but we saw that back in 2007, correct? The x-ray. That's what it says, foraminal stenosis?
A. Foraminal, yes.
Q. Stenosis, we agree?
A. Different stenosis.
Q. Now, he goes to this Dr. Sciortino, which we know you never spoke to him. He sees him 8/17. Guess what he gives him? A prescription, too. Did you know that?
A. Yes.
Q. And he's being -- he's treating him now for the motor vehicle accident and then Dr. Sciortino finds out of about the Worker's Comp. -- I mean the work accident, right? Do you know if Dr. Sciortino ever coordinated with you with regard to his treatment?
A. I hadn't spoken to Dr. Sciortino.

Q. Now, there's an MRI which is done in September 2nd, 2009 of the cervical spine at Bayridge. Did you look at that?

A. Yes.

Q. And one of the things that they found was normal signal, right? One of the things they checked?

A. Yes.

Q. That's a good finding?

A. Yes.

Q. That means that the signals coming out of the nerves are normal?

A. No, it means that the discs had normal fluid within them.

Q. And that's a good finding?

A. Yes.

MR. DERRICO: I'm almost done.

Q. So we agree that as early as 2006 Mr. Colon has a degenerative process going on in the cervical spine and the lumbar spine. We agree on that, right?

A. Yes.

Q. And have you ever heard the term degenerative disc disease?

A. Yes.

Q. Would you agree that prior to the accident of 2008 Mr. Colon had degenerative disc disease in the lumbar spine? Would you agree with me on that?

A. No.
Q. You wouldn't. Okay.
But other doctors did find that, correct?
A. Well.
Q. Yes or no?
A. It's not a yes or no.
Q. Okay. Well, you said desiccation, right? You said the December 2, 2010 MRI, now he has mild desiccation, right?
A. Yes.
Q. Which was not seen on the previous study?
A. Yes.
Q. Now, the previous study is April 28, 2009, right?
A. Yes.
Q. So on April 28, 2009 we don't see this desiccation, right?
A. Yes.
Q. But then we see it in September?
A. Correct.
Q. But we both agree that there wasn't any desiccation -- I mean, one could logically conclude that if the desiccation is not seen on April 28, 2009, there was no desiccation going on prior to that?
A. Yes.
Q. And that I believe you said it with Mr. McCrorie , that the accident of January 19, 2009 was not a good thing?

A. Yes.

Q. Would you agree with me that he did make complaints of neck and back after the 2009 accident?

A. Yes.

Q. And then with Dr. Vitolo you said he didn't make any complaints of neck and back pain, right, in 2009?

A. Non-radiating.

Q. Did you know that the week of the accident -- the accident was a Thursday, did you know that? June 19, 2008 was a Thursday?

A. I did not know that.

Q. Do you know if he worked Friday?

A. I don't know.

Q. Do you know how many hours he worked the following week?

A. I don't know.

Q. Forty-two. In fact he continued to work ---

MR. McCRORIE: Objection. Objection.

THE COURT: Sustained. Sustained to the 42.

MR. DERRICO: The records are in evidence.

MR. McCRORIE: They are, but that's the weight they get paid. If you want the union guy to explain.

MR. DERRICO: I'm not --

THE COURT: Ask a question. Ask a question.

Q. Do you know how many hours he worked the week after

the accident, yes or no?

A. No.

Q. But we agree that he worked all the way up until 2010?

A. Yes.

Q. But you had told him to stop working, correct?

A. Yes.

Q. At some point?

A. Modify his duties, yes.

Q. So he didn't listen to you, yes or no?

A. I'm not aware of whether or not he modified the duties, but that was the advice.

MR. DERRICO: I think I may be done. Let me just ask.

MR. McCRORIE: Do you mind if I just grab one piece of evidence?

MR. DERRICO: Thank you, Doctor.

MR. McCRORIE: Do you mind if I start?

MR. DERRICO: Do you mind if I just --

REDIRECT EXAMINATION

BY MR. McCRORIE:

Q. Dr. Merola?

MR. McCRORIE: I need the New Rochelle, I think it's the one right there.

Q. Dr. Merola, because of his age at the time of the

accident, 28, he necessarily had degeneration in his neck and back, correct? You said everyone has it?

A. Yes.

Q. Okay. When someone comes to you and says I've been having radiating radicular symptoms since the accident, when you ask their history do you ask if -- do you say in your life have you ever even had a back pain or do you ask about specifically the radiating symptoms?

A. Specifically about the presenting complaint which is is the radiating symptoms.

Q. Okay. Once you had the -- once you had the records of -- once you had the actual records and the films from the New Rochelle Radiology, after reviewing those records did it change your opinion at all with regard to the cause of the neck and back complaints?

A. No.

MR. McCRORIE: I'll stipulate because you said he was reading from the neck injuries. I'm just looking for them if someone could, the New Rochelle records are right here.

Let me just.

Q. You reviewed -- and Mr. Derrick could read from the body. The final impression was mild degenerative changes, correct? Mild degenerative changes?

A. Yes.

Q. Doesn't say disease, correct?
A. Yes.
Q. What does "mild" mean when they're speaking about degenerative changes?
A. Slight.
Q. And whatever the level of degeneration is at a particular bone or body, is someone more likely or susceptible to get aggravation to that level if there's a trauma?
A. Yes.
Q. And without -- knowing everything you've known and reviewing everything you've reviewed, without the --
MR. DERRICO: Objection, your Honor. This is all beyond the scope.
THE COURT: One second.
Q. Regarding the 2009 car accident, take it out of the picture. Do you have an opinion as to whether or not Mr. Colon would still have needed the treatment surgeries and such?
A. Yes.
Q. What is the opinion and the reason for it?
A. That he would have still required the treatment that he needed to his neck and his back based on the trauma that he sustained from that 12-foot fall.
Q. Again, you stated the car accident doesn't help, but that's not the reason you were treating him?
A. Correct.

Q. Did your opinion change in any way whatsoever after reviewing the fact that he had complained of back pain, non-radiating back pain before the accident, having not missed work for it?

MR. DERRICO: Objection, your Honor. This is all --

THE COURT: One second.

MR. McCRORIE: Okay.

Q. You were asked about a lawsuit. If an attorney was hired but if Mr. Colon were to testify I never did anything because it didn't bother me and I moved on with life, there was no lawsuit, there was nothing came from it, would that mean anything to you one way or the other?

MR. DERRICO: Objection. I don't know what that means.

THE COURT: Rephrase the question.

Q. You were asked if it meant something if the attorney was retained. If nothing was done after the retainer, would that mean anything to you medically?

A. No.

MR. McCRORIE: Okay, I have nothing further.

THE COURT: Thank you.

Any recross?

MR. DERRICO: No.

THE COURT: Thank you.

Members of the jury, we're going to take our afternoon recess and I ask that you return Monday at 9:30 a.m. in the designated area, waiting for the court officer to escort you upstairs.

Enjoy the rest of the day and your weekend.

THE COURT OFFICER: All rise.

(Jury exits.)

(Whereupon, the matter is adjourned to March 11, 2019, at 9:30 a.m.)

* * * *

The above is certified to be a true and accurate transcription of the within stenographic minutes.

LINDA FITZNER, CSR
Senior Court Reporter

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