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1. *EXPERT TRIAL TRANSCRIPT EXCERPT OF SEBASTIAN LATTUGA, MD, 2013 Trial Trans. LEXIS 352*

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EXPERT TRIAL TRANSCRIPT EXCERPT OF SEBASTIAN LATTUGA, MD; 2013 Trial Trans. LEXIS 352

United States District Court for the Southern District of New York

Case No. 1:09cv6329

April 15, 2013

Reporter
2013 Trial Trans. LEXIS 352 *

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Gregory Mulholland v. The City of New York

Expert Name: SEBASTIAN LATTUGA, M.D., F.A.C.O.S.

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Proceedings

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[1](Trial resumed; jury present)

[2]THE COURT: Good morning, members of the jury. I

[3]apologize for being late this morning. I hope I didn't

[4]inconvenience you too much. Be seated, everyone.

[5]You have a new witness this morning?

[6]MR. FRIEDMAN: Yes, your Honor.

[7]THE COURT: Who is the witness?

[8]MR. FRIEDMAN: Dr. Sebastian Lattuga.

[9]THE COURT: Please step up.

[10]Pay attention to the oath.

[11]SEBASTIAN LATTUGA,

[12]called as a witness by the plaintiff,

[13]having been duly sworn, testified as follows:

[14]THE COURT: You may inquire.

[15]MR. FRIEDMAN: Thank you, your Honor. Good morning.

[16]DIRECT EXAMINATION

[17]BY MR. FRIEDMAN:

[18]Q. Dr. Lattuga, are you a physician duly licensed to practice

[19]medicine in the state of New York?

[20]A. Yes.

[21]Q. When were you so licensed?

[22]A. In 1991.

[23]THE COURT: Doctor, please keep your voice up.

[24]Q. Can you provide the Court and jury with your educational

[25]background and qualifications, beginning with your
[MISSING PAGES 293-330]
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[1] **[*2]** studies, did you form a diagnosis?

[2]A. Yes.

[3]Q. What was your diagnosis?

[4]A. Cervical lumbar radiculopathy. The word "radiculopathy" is

[5]the doctor word for nerve pain, so a pain, disfunction of any

[6]sort, motor or sensory, in the distribution of a nerve is

[7]called radiculopathy. If I see a sign of that, I call it

[8]radiculopathy. And it is very common diagnosis in patients

[9]with spinal injuries or conditions.

[10]Q. Doctor, what in your opinion caused the radiculopathy?

[11]A. It was his accident at work.

[12]Q. Did you make any recommendations to Mr. Mulholland for

[13]treatment?

[14]A. Yes.

[15]Q. What did you recommend, Dr. Lattuga?

[16]A. I recommended continued therapy and epidural steroid

[17]injections.

[18]Q. What is an epidural steroid injection?

[19]A. For patients that suffer from radiculopathy, a pinched

[20]nerve pain from many, many sources, one of the most powerful

[21]tools that we have without surgery to diminish the symptoms of

[22]the radiculopathy is injecting steroids into the area. It is

[23]not A-Rod steroids, it is medical steroids -- I'm sorry --

[24]THE COURT: You couldn't resist.

[25]THE WITNESS: It is medicine.

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[1] **[*3]** THE COURT: A-Rod denied it.

[2]THE WITNESS: Who didn't deny it; I'll use them as an

[3]example?

[4]THE COURT: Andy Pettite.

[5]THE WITNESS: Not Andy Pettite steroids, but it is

[6]like medical steroids that you can give for an anaphylactic

[7]reaction or poison ivy. It is what is called defermental.

[8]This medicine is very good. It is not bad. It is injected

[9]right into the spinal canal, usually done on the x-ray by a

[10]specialist, a pain management specialist.

[11]And the theory in practice, it does pan out is by --

[12]much of the pain from the disc injuries, not only from the

[13]actual impingement, but inflammation. The body sets up an

[14]inflammatory response in the area of the spine, disc and the

[15]nerve roots, As a consequence of that inflammatory response

[16]the patient feels pain. We can improve the pain or lessen the

[17]pain -- we don't reverse the disc or injury, but we lessen the

[18]pain by injecting in a limited quantity, obviously, a steroid

[19]into the area. And that's what we call epidural steroid

[20]injection. In this case I think he received it in the neck and

[21]the low back.

[22]Q. Did he receive three injections **[*4]** in his neck, three

[23]injections in his low back?

[24]A. Yes.

[25]Q. Are there any risks involved in epidural injections?
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[1]A. There are risks. It is a very common procedure and 99

[2]percent of the time it goes fine, but like any medical

[3]procedure, there is always a risk. You can feel worse. You

[4]can get an infection. There can be some consequences.

[5]Q. Did you explain all of this to Mr. Mulholland?

[6]A. Yes.

[7]Q. You next saw him on November 25, 2009?

[8]THE COURT: How many injections did you give him?

[9]THE WITNESS: It was given by the pain management

[10]doctor, but three in the neck and three in the low back. That

[11]is generally --

[12]THE COURT: At one time?

[13]THE WITNESS: No on separate events, separate dates.

[14]THE COURT: The first one didn't work and you gave him

[15]a second one?

[16]THE WITNESS: We usually give it as a set of 3. It is

[17]like taking antibiotics. You take it for a week, not just one.

[18]Similarly, the effect is better, more lasting, in my opinion,

[19]if you give three. Sometimes they will give one or two, but I

[20]think just give three and see if they are better. If they are

[21]better, **[*5]** that gives you an idea of what to do next, and that's

[22]what I generally recommend.

[23]Q. In order to speed up your examination or your testimony,

[24]did he have lumbar spine epidural injections on December 11,

[25]2009, December 23, 2009 and January 8, 2010?
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[1]MR. HOEY: Objection. If he didn't do them, how would

[2]he know?

[3]THE WITNESS: It is contained within my record.

[4]THE COURT: He says it is contained in his record. It

[5]is part of what a doctor does. He is ordering these to happen,

[6]right, Dr. Lattuga?

[7]THE WITNESS: Yes.

[8]THE COURT: And you are getting reports if it didn't

[9]happen as you instructed?

[10]THE WITNESS: Yes, sir.

[11]THE COURT: Objection overruled.

[12]Q. Dr. Lattuga, did Mr. Mulholland undergo cervical spine

[13]epidural injections on January 22, 2010, February 22, 2010 --

[14]THE COURT: Why don't you just ask the doctor, when

[15]were those sets of three to the lumbar and the cervical?

[16]THE WITNESS: The lumbar, as he said, and the cervical

[17]were on 1/22/10, 2/22/10 and 3/19/10.

[18]THE COURT: So a month apart, so two sets of three,

[19]one for the lumbar, one for the **[*6]** cervical areas and, generally

[20]speaking, separated each by about a month, so three months type

[21]of treatment?

[22]THE WITNESS: Yes, sir.

[23]THE COURT: The danger of infection in a modern

[24]doctor's office using antiseptics and the like, and fresh

[25]needles is minimal, isn't it?
[MISSING PAGES 335-341]
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[1]that it helped them. They feel better. Some say dramatically

[2]so. Some say, I am better than I was before but I still have a

[3]lot of pain.

[4]Again, I am paraphrasing to make the jury understand

[5]that it could be any one of those. If they are happy with that

[6]outcome, so am I. They can say, my arm is much stronger, but I

[7]still can't feel anything. It could be a result or it might

[8]not be, depending on your perspective.

[9]It is very variable, but in general -- you can take

[10]this as a good way to keep it in mind -- about 90 to 95 percent

[11]of the patients say that it helped them, but the degree is

[12]different for every patient.

[13]Q. Did Mr. Mulholland agree to undergo the surgery?

[14]A. Yes.

[15]Q. Doctor, based on your experience as an orthopedic spinal

[16]surgeon, do patients agree to undergo epidural **[*7]** injections and

[17]spinal surgery without significant symptoms?

[18]MR. HOEY: Objection.

[19]THE COURT: Sustained.

[20]Q. In Mr. Mulholland's case, what were the indications for

[21]spinal surgery?

[22]A. Precisely as I laid them out before, positive MRI --

[23]THE COURT: Then you don't need to repeat them.

[24]Q. Did Mr. Mulholland in fact undergo the cervical spine

[25]surgery on July 14, 2010?
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[1]A. Yes.

[2]Q. Who performed the surgery?

[3]A. Me.

[4]Q. Where was it performed?

[5]A. At Franklin North Shore Hospital.

[6]MR. FRIEDMAN: Your Honor, I offer as Exhibit 25 the

[7]in-patient records of North Shore LIJ Franklin Hospital. They

[8]have been agreed to.

[9]MR. HOEY: No objection.

[10]THE COURT: Received.

[11](Plaintiff Exhibit 25 received in evidence)

[12]Q. Doctor, can you explain the surgical procedure that you

[13]performed to the jury?

[14]A. Would you like the x-ray. If I took the x-ray, just help

[15]them be oriented.

[16]Q. Absolutely.

[17]MR. FRIEDMAN: Your Honor, we are going to show Dr.

[18]Lattuga Plaintiff Exhibit 22 which is agreed and marked in

[19]evidence.

[20]THE COURT: All right.

[21]THE **[*8]** WITNESS: I had him put the x-ray up because it

[22]gives you some idea in your own mind, you will begin to focus

[23]on the area of the spine that I did the surgery.

[24]This particular x-ray is of Mr. Mulholland's neck

[25]after the surgery -- well after the surgery, but it does show
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[1]the implants that I have placed inside the spine, from the side

[2]view which is the lateral and the front view being the AP. And

[3]what you see is an outline of his neck and bones, his skeleton,

[4]the front view and then the side view.

[5]What this operation is, is an operation done under

[6]general anesthesia. It is done in a hospital. The patient is

[7]brought into the operating room and placed under anesthesia by

[8]the anesthesiologist. Then the area of the neck which is where

[9]he is having the surgery is what we call prepped and draped in

[10]a sterile fashion. In other words, so you prepare the skip so

[11]that it minimizes the risk of infection, but drapes on the

[12]body. So that the only area exposed is this area of the

[13]patient's body.

[14]And then I make an incision with the knife over the

[15]neck area. It is in front of the neck on the left-hand **[*9]** side in

[16]skin crease. It is about an inch and or two in length,

[17]depending on how many levels we are doing and the size of the

[18]patient.

[19]As you are all aware and thinking right now, there are

[20]some vital structures in the neck, like your swallowing tube,

[21]your breathing tubes and major vessels of the neck. All of

[22]those things I have to push aside and set aside in order to

[23]give me exposure to the vertebrae. I need to get my hands and

[24]fingers down to the bones of the vertebrae and the discs.

[25]Once the breathing tube which is called the trachea
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[1]and the esophagus is displaced to the one side and the vessels

[2]are displaced to the other side, they are held in place by

[3]retractors so I don't have to hold them. Then I have exposure

[4]to the vertebrae and the discs.

[5]We take x-rays during surgery to confirm that I am at

[6]the right place and then I go ahead and proceed with what is

[7]called a discectomy and so as you remember because you are an

[8]expert in the model --

[9]THE COURT: We are not going to test you.

[10]THE WITNESS: -- each vertebrae is separated by that

[11]disc and that disc was damaged **[*10]** in the accident. It is not

[12]reparable. You cannot sew it closed. We don't have the

[13]technology to put fetal stem cells and it regrows and it is

[14]perfect. We don't have that. So we need to rebuild it. We

[15]rebuild it by removing it with special instruments, microscopic

[16]instruments.

[17]The way it is set up, I am actually looking straight

[18]down from the front. From your perspective, I can actually see

[19]the spinal cord and the nerves at the back. It is all done

[20]through a microscope, so it looks really big in my head but, in

[21]reality, it is really small.

[22]So I remove all of the damaged disc down to the spinal

[23]cord, I remove the ligaments, I remove the small little ends

[24]of the bone at the end. I actually look at the spinal cord,

[25]touch the spinal cord because I have to make sure that there is
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[1]nothing compressing it.

[2]And then I actually look to the sides, on both sides

[3]it is called foramen. That is where the nerves come out of the

[4]side because what happens is those nerves could get impinged or

[5]the disc can actually migrate into that area.

[6]So I am looking, I'm touching, I'm feeling and I am

[7] **[*11]** examining to make sure that there is nothing pressing on the

[8]nerve. That is discectomy part. Again, this operation is

[9]called anterior -- meaning from the front -- discectomy, I just

[10]explained how I did a discectomy.

[11]Now I am going to talk about the fusion. So now we

[12]don't have a disc in that spot. We cannot just leave it. We

[13]need to rebuild it or reconstruct it. So we have technology.

[14]We have different kinds of implants that we can put into the

[15]disc space.

[16]So my preference -- is still my preference at this

[17]time, it is sort of in two pieces. One that feels the gap.

[18]You can see it now because the body has incorporated. It just

[19]looks like a solid piece of white. In reality, that itself was

[20]an implant that went into that spot that the body now has

[21]incorporated. So that is the first part of the implant.

[22]And the second part of the implant is this titanium

[23]plate which gets screwed into place and you can see some of the

[24]screws on that view. And, again, you can see it on that view.

[25]And that plate is put in place to hold those areas in place, to
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[1]keep the implants in place and allow for the patient **[*12]** to move

[2]his head right after surgery. We don't use those halos in this

[3]case anymore -- all of those big collars, because the internal

[4]fixation, the plates act to support the spine.

[5]Q. How many screws are implanted?

[6]A. Six.

[7]Q. Does the plate and screws remain in the patient?

[8]A. Generally, it stays in forever.

[9]Q. Doctor, do you have an opinion with a reasonable degree of

[10]medical certainty whether --

[11]THE COURT: Are we finished with the picture?

[12]MR. FRIEDMAN: I think that we are at this time, your

[13]Honor.

[14]Q. Dr. Lattuga, what was your postoperative diagnosis?

[15]A. Traumatic herniation.

[16]Q. Doctor, do you --

[17]THE COURT: Say those words again.

[18]THE WITNESS: Traumatic herniation.

[19]THE COURT: The trauma is the event that caused the

[20]herniation?

[21]THE WITNESS: Yes. That particular disc, it was

[22]contained in my operative record.

[23]THE COURT: Trauma is something different. It could

[24]be inherent in a person.

[25]THE WITNESS: It could be degenerative. It could
[MISSING PAGES 348-349]

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[1]feel comfortable about saying three and under. The lower the

[2]number, the **[*13]** more comfortable I get to feel when you look at

[3]something that way. It is not something like ten years.

[4]That's what I would say.

[5]THE COURT: All right, Mr. Friedman.

[6]Q. Doctor, do you have an opinion whether the surgery was

[7]causally related to the accident of July 2, 2009?

[8]THE COURT: Mr. Hoey, did you miss that question?

[9]MR. HOEY: No, your Honor. You ruled on my objection.

[10]THE COURT: I figured that you would object again.

[11]MR. HOEY: I object most strenuously.

[12]THE COURT: Sustained.

[13]Q. Doctor, was the accident of July 2, 2009 a competent

[14]producing cause of the herniated disc?

[15]THE COURT: I think that he has explained that, Mr.

[16]Friedman. He has explained that the quality of the disc that

[17]showed it was hydrated -- tell me if I get it right or not --

[18]was consistent with a more recent injury than an older injury,

[19]right?

[20]Did I capture it right?

[21]THE WITNESS: Yes, your Honor.

[22]THE COURT: Let's move.

[23]Q. Did Mr. Mulholland return to you for postoperative visits

[24]after the cervical spine surgery?

[25]A. Yes.

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[1]Q. When you saw him on July 23, 2010, did **[*14]** he offer any

[2]complaints?

[3]A. Yes. I mean it is a postop. It is one week after surgery

[4]so, generally, patients have a lot of complaints with respect

[5]to their incision, having surgery. They make, not a lot of

[6]complaints, but comments about the experience of having

[7]surgery. And they also may or may not have some of the

[8]original symptoms. When I read a note, there is nothing -- it

[9]seems to be a normal postoperative visit. He complained of

[10]everything that he should complain about after having an

[11]operation. Essentially that was the sum and substance of that

[12]visit.

[13]Q. Did you place any restriction on his activities?

[14]A. Yes. No heavy lifting, carrying or bending. And we start

[15]him on physical therapy.

[16]THE COURT: Forever or until he heals?

[17]THE WITNESS: It would be until he heals.

[18]THE COURT: What does the healing process take

[19]usually?

[20]THE WITNESS: On the neck it is usually three to six

[21]months. It can take as long as a year. For the back it is the

[22]same thing. It is usually four to eight months, but a year is

[23]what we give to totally recover and general advice.

[24]Q. You continued **[*15]** to see Mr. Mulholland monthly or six weeks or

[25]so?

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[1]A. Yes.

[2]Q. Did you have cervical spine x-rays taken of Mr. Mulholland

[3]from time to time?

[4]A. Yes.

[5]Q. For what reason?

[6]A. We were looking for incorporation of the implants. On that

[7]x-ray that I showed you, they were fully incorporated.

[8]THE COURT: The body tends to do what? What do you

[9]mean by incorporate?

[10]THE WITNESS: It is a fusion. So I always say -- me

[11]and the patient are the grafting and God does the fusion. The

[12]body has to say, this is an implant, I am going to accept it,

[13]adapt it and make it part of my own. And that's what happened

[14]here.

[15]Q. Doctor, did you examine Mr. Mulholland on January 21, 2011?

[16]A. What date, sir?

[17]Q. January 21, 2011?

[18]A. January 21st, sir?

[19]Q. Yes, sir.

[20]A. Yes.

[21]Q. Did he offer any complaints at that time?

[22]A. He continued to be symptomatic with his low back, so that

[23]he was operating on his neck. So he had continued to have

[24]symptoms with respect to his back and still made those

[25]complaints to me in the office.

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[1]THE COURT: So the operation alleviated the pain in

[2]his neck? **[*16]**

[3]THE WITNESS: To a certain extent he was satisfied

[4]with his recovery and how he was feeling and was more offering

[5]his low back as a continued chronic problem.

[6]Q. Did you conduct a physical examination of Mr. Mulholland on

[7]January 21, 2011?

[8]A. Yes.

[9]Q. What did your physical examination reveal?

[10]A. Examination of his back showed that he had tenderness and

[11]spasm; loss of range of motion with 40 degrees of flexion with

[12]90 being normal; 15 degrees of extension with 40 being normal;

[13]Left and right turning 30 degrees, with 60 being normal.

[14]THE COURT: How did it compare with the time you took

[15]those measurements on the last visit -- that was the visit of

[16]October 30, 2009, so it would be a year and a half earlier?

[17]THE WITNESS: To give you a comparison, your Honor.

[18]The range of motion of the lumbar spine on 10/30, flexion was

[19]22, now it was 40. It was 10 degrees of extension, now it is

[20]15. And left and right turning was 15, but was now 30. So it

[21]was a little bit better but still markedly diminished. That's

[22]how you characterize that finding.

[23]Q. Did you make any recommendations with respect to **[*17]** treatment

[24]of Mr. Mulholland's low back injuries?

[25]A. Yes.

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[1]Q. What was your recommendation?

[2]A. That he go on to have surgery.

[3]Q. And what surgery did you recommend?

[4]A. Lumbar decompression and fusion.

[5]Q. Did Mr. Mulholland agree to undergo that surgery?

[6]A. Yes.

[7]Q. Where was it performed?

[8]A. At North Shore Franklin Hospital.

[9]THE COURT: Let's take the new words, lumbar

[10]decompression and fusion.

[11]THE WITNESS: Essentially for the jury's perspective,

[12]it is the same exact operation I did in the neck but low back.

[13]The difference is there are certain anatomical

[14]differences, like the low back is different than the neck. The

[15]bones are different and we do things differently.

[16]The operation, in theory, is exactly the same, meaning

[17]there is an incision. In this case, it happens on the low

[18]back. It is removing discs and parts of the bone. That's the

[19]decompression. That is one word that replaces two

[20]discectomies -- it is not only am I taking disc away, but some

[21]bone as well.

[22]And then there is the fusion part which includes

[23]putting implants in, titanium implants that **[*18]** stay in forever.

[24]So from your perspective, it is the same operation, it

[25]is a little bit technically different because the bones are
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[1]different shapes and sizes in the low back. But it goes

[2]through -- it has all the same benefits and all the same risks.

[3]It requires a hospitalization, requires anesthesia. It

[4]requires being in the operating room. It requires being in the

[5]hospital for several days. It requires recovering from the

[6]pain and a certain amount of pain for you to fully recover.

[7]THE COURT: Why didn't you do it at the same time that

[8]you did the cervical area?

[9]THE WITNESS: We usually do separate. We almost never

[10]do them at the same time. And the reason for that is usually

[11]it is very painful, number 1.

[12]Number 2 -- that's the primary reason. There are also

[13]issues, the risk factors markedly increase if you are doing two

[14]different surgeries at the same time.

[15]And the third reason is a lot of people don't want to

[16]undergo all of that surgery at that time because it is very,

[17]very painful to have different body parts operated on the same

[18]day.

[19]Q. Do you recall how long **[*19]** the surgical procedure for the spine

[20]took?

[21]A. The neck operations are about an hour, hour and a half in

[22]total. The low back operations are about three to four hours

[23]in total.

[24]MR. FRIEDMAN: Your Honor, I offer as Plaintiff

[25]Exhibit Number 26, the in-patient records, North Shore LIJ
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[1]Franklin Hospital, May 17, 2011 and May 20, 2011.

[2]MR. HOEY: No objection.

[3]THE COURT: Received.

[4](Plaintiff Exhibit 26 received in evidence)

[5]MR. HOEY: Would this be a good time to explain with

[6]the x-ray --

[7]THE COURT: We have not had a mid morning break,

[8]members of the jury. It is now 5 minutes to 12. Would you

[9]like to have a break or we can continue going until the direct

[10]examination is finished?

[11]What is your estimate, Mr. Friedman, how long?

[12]MR. FRIEDMAN: Probably another 20 minutes or so.

[13]THE COURT: We can have an early lunch. We will go

[14]until about 4 o'clock today because I have another major motion

[15]at the end of the day, so what you would like to do?

[16]JUROR: We can continue.

[17]

[18](Continued on next page)

[19]

[20]

[21]

[22]

[23]

[24]

[25]
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[1] **[*20]** THE COURT: You all right, Doctor? You need some

[2]water?

[3]THE WITNESS: Some water would be great, your Honor.

[4]THE COURT: Members of the jury, you want some water?

[5]A JUROR: Yes.

[6]Q. Dr. Lattuga, can you please, with the use of Exhibit No.

[7]23, explain to the Court and jury how the lumbar spine surgery

[8]was performed.

[9]MR. FRIEDMAN: No. 23, your Honor, is agreed to be

[10]admissible in evidence, and I offer it at this time.

[11]THE COURT: Received.

[12](Plaintiff's Exhibit 23 received in evidence)

[13]A. So this is an x-ray of two views of Mr. Mulholland's low

[14]back.

[15]THE COURT: Keep your voice up, please.

[16]A. This is two views, x-rays, two views of Mr. Mulholland's

[17]low back, and represents a couple of things. And the jury can

[18]see easily. Number one is the low-back lumbar spine. Number

[19]two, there are implants that are left in permanently as a

[20]consequence of the surgery. Number three, the jury can get a

[21]look, is sort of like a horseshoe-shaped, almost like dark

[22]space here. There is a part of the spine that is,

[23]quote/unquote Roto-Rooter, "Roto-Rooter" to use a New York

[24]word, "depression" **[*21]** to use a doctor word. And this window

[25]that's created in the bone, I'm able to access the nerve roots,
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[1]the disc that's herniated, and to take the pressure off the

[2]nerve.

[3]So again incision is made in the low back. I retract

[4]the muscles. The retractor is left in place. X-rays used --

[5]microscopically remove all the disc, the vertebrae, the

[6]ligament, any tissue that I think is, during the surgery, may

[7]adversely compress the nerve or cause irritation to the nerve,

[8]that's all removed. Once that's down, the implant is, screws

[9]that are placed, there are two at each level if the body can

[10]accept it, two at each level. That's what he has. And then

[11]the remain -- assembled, it's a construct of assembled screws,

[12]rods, and then there's, believe it or not, little nuts, nuts

[13]that tighten and hold everything in place.

[14]Q. I'm not sure I asked you before, Doctor, what is actually

[15]implanted?

[16]A. There are two things that are implanted, both in the neck

[17]and low back. One is a grafting adjuvant, which is something

[18]that stimulates the body to create bone. In the neck it's a

[19]bone graft. In this case it's something, **[*22]** it's a synthetic

[20]product that helps to create bone. That's where you see this

[21]little fluffy material. It's going to be very hard for the

[22]jury to see because you have to feel it as well as see it.

[23]There's something here underneath it. That's what stimulates,

[24]we call that bone -- we say hypothetically bone graft. It's a

[25]bone graft that's placed in the neck or the low back. And then

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[1]implants, which are made of titanium -- we use titanium because

[2]you can get an MRI after, you can go through the airport after.

[3]The body generally doesn't reject it, doesn't create an

[4]inflammatory response.

[5]That was the operation.

[6]Q. Thank you.

[7]After the low-back surgery, did you continue to -- or

[8]did Mr. Mulholland continue to follow up with you from time to

[9]time?

[10]A. Yes.

[11]Q. Can you tell us when you, just the dates after the low-back

[12]surgery that you saw Mr. Mulholland in the office.

[13]A. 513 A. 5/27/11, 7/1/11, 8/12/11, 12/2/11, 1/13/12, 3/27/12,

[14]3/27/12. Maybe not 3/27. Every day up until that 3/27, I

[15]believe. That was the date of the report.

[16]Q. Excuse me, Doctor?

[17]A. 317 A. 3/27/12 was **[*23]** the date of my narrative. So all those dates

[18]except for 3/27.

[19]Q. When was the last office visit?

[20]A. Did I say 1/12/12? Is that the right date?

[21]Q. According to my records --

[22]THE COURT: Let's not have this discussion. You want

[23]to -- look at your records.

[24]Q. Dr. Lattuga --

[25]THE COURT: Mr. Friedman, he's looking.
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[1]A. I'm sorry. I have 4/20/12 as well.

[2]Q. 4/20/12?
3 A. 4/20/12.

[4]Q. When you saw him on 4/20/12 for the final visit, did he

[5]offer any complaints?

[6]A. Continued to have chronic neck pain and low-back pain,

[7]improved from preop, with residual symptoms.

[8]Q. You took a final examination on April 20, 2012.

[9]A. Yes.

[10]Q. With respect to his neck or cervical spine, what did it

[11]reveal? And I would ask you to compare it to your initial

[12]examination on October 30, 2009.

[13]A. Cervical spine continued to show some tenderness and spasms

[14]were noted. Range of motion of the cervical spine was as

[15]follows: 40 degrees, four zero, degrees of flexion, again with

[16]70 being normal, and it was 17 degrees on the first visit.

[17]Q. So it improved.

[18]A. Some improvement, yes. 25 degrees **[*24]** of extension with 45

[19]being normal, and it was 12 degrees on the first visit. Left

[20]and right -- left and right turning 45 degrees, with 80 being

[21]normal. And it was 20 on the first visit. Lumbar spine,

[22]similarly, there was tenderness to percussion and palpation,

[23]with spasms noted. Lumbar spine range of motion, 45 degrees of

[24]flexion on the most recent visit, with 22 on the first visit.

[25]20 degrees of extension on the most recent visit, 10 degrees on
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[1]the first visit. Left and right turning 30 degrees, with 15

[2]degrees on the first visit.

[3]THE COURT: So it was better but not altogether

[4]better?

[5]THE WITNESS: Better but still diminished from normal.

[6]Q. Would you expect Mr. Mulholland's range of motion of his

[7]lumbar spine and cervical spine to further improve?

[8]A. No.

[9]Q. What was your diagnosis on April 20, 2012?

[10]A. The diagnosis is chronic lumbar and cervical radiculopathy,

[11]you know, it's called status post, and "status post" means

[12]after, after cervical lumbar fusion.

[13]Q. Whats do the word "chronic" mean?

[14]A. "Chronic" means it's a condition that's lasted for more

[15]than three months. In **[*25]** this case it's lasted for several years.

[16]Q. Doctor, do you have an opinion with a reasonable degree of

[17]medical certainty whether or not plaintiff's, or

[18]Mr. Mulholland's injuries to his neck and back are permanent in

[19]nature?

[20]A. Yes.

[21]Q. What is your opinion?

[22]A. They're permanent. They're permanent.

[23]Q. What is your opinion?

[24]A. That they're permanent.

[25]Q. Are you familiar with Mr. Mulholland's duties as a ferry
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[1]boat deckhand working for the City of New York?

[2]A. Yes.

[3]Q. Do you have an opinion with a reasonable degree of medical

[4]certainty whether Mr. Mulholland will be able to return to his

[5]former occupation as a ferry boat deckhand in the future?

[6]MR. HOEY: Objection.

[7]THE COURT: Overruled.

[8]A. He will not be able to return to that work.

[9]Q. Have you placed any restrictions on Mr. Mulholland's

[10]activities?

[11]A. Yes.

[12]Q. What restrictions have you placed on him?

[13]A. No bending, no twisting, no lifting, no pulling, no

[14]carrying. And the pound equivalent is about 8 pounds would be

[15]the limit to what he could lift.

[16]Q. How many pounds?

[17]A. 817 A. 8 pounds would be the **[*26]** limit to what he could carry.

[18]Q. Doctor, what is your prognosis?

[19]A. It's poor.

[20]Q. Why do you say that?

[21]A. I mean, if -- "prognosis" is the doctor word for guessing

[22]or, you know, an educated guess, as to, you know, what

[23]direction the patient might go in. And so obviously in this

[24]case, you know, a substantial amount of time has transpired

[25]from his injury and from the surgery. And so he's left, as a
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[1]consequence of the accident, with a permanent deficit of one

[2]sort or another. And so -- and he had surgery and he had some

[3]response but not complete response. I would -- I say poor

[4]because I don't expect that just if he waits a little longer,

[5]he does a little bit more therapy, is he going to be back to

[6]normal? Obviously he's never going to be normal again.

[7]MR. HOEY: Your Honor, I have nothing further at this

[8]time.

[9]THE COURT: It's too early to break for lunch. Why

[10]don't you start your cross-examination, Mr. Hoey.

[11]Is the jury OK? Anybody need a break? Don't be shy

[12]if you do. You've heard a lot of testimony this morning.

[13]OK, Mr. Hoey.

[14]MR. HOEY: Thank you, your Honor. **[*27]**

[15]CROSS EXAMINATION

[16]BY MR. HOEY:

[17]Q. Dr. Lattuga, are you being compensated for your time here

[18]today?

[19]A. Yes.

[20]Q. Are you being well compensated for your time here today?

[21]MR. FRIEDMAN: Objection to the form.

[22]THE COURT: Sustained. You can ask how much.

[23]Q. OK. How much are you being compensated?

[24]A. $ 600 an hour.

[25]Q. Now, Doctor, when Mr. Mulholland first visited you, did he

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