UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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PAULINE LEUNG,

PLAINTIFF,

-against- Case No.:
20 Civ 7440(RA)

STARBUCKS CORPORATION AND STARBUCKS COFFEE COMPANY,

DEFENDANTS.
----------X

DATE: September 9, 2022
TIME: 8:00 A.M.

DEPOSITION of Expert MICHAEL GERLING, M.D., on behalf of the Plaintiff, held via videoconference, before Victoria Chumas, a Notary Public of the State of New York.

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

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

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that the original of the deposition

DR. GERLING

M I C H A E L G E R L I N G, M.D., called as a witness, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

THE COURT REPORTER: Please state your name for the record.

A. Michael Gerling.

THE COURT REPORTER: What is your business address?

A. 506 5th Avenue, Brooklyn, New York 11215.

EXAMINATION BY MR. TOMPKINS:

Q. Good morning, Dr. Gerling. My name is George Tompkins. I'm a lawyer at Wilson Elser and I'm representing Starbucks in a lawsuit, that has been brought by Pauline Leung as a result of an incident that occurred back in August of 2018. You have been designated as an expert who will testify at the time of trial regarding the injuries that Ms. Leung has sustained. And I also understand that you have treated her

DR. GERLING

for the past couple of years. My questions are going to be focused on both your treatment and your opinions as given to us by Counsel. If at any time you have difficulty hearing me because we're doing this via Zoom, just let me know and I'll try and speak up or rephrase my questions so that you hear it and understand it,

may be signed and sworn to by the witness before anyone authorized to administer an oath, with the same effect as if signed before a Judge of the Court; that an unsigned copy of the deposition may be used with the same force and effect as if signed by the witness, 30 days after service of the original & 1 copy of same upon counsel for the witness.

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

* * * *

okay?
A. Yes, sir.
Q. This is not the first time you have given a deposition; is that correct?
A. Correct.
Q. The address that you provided to us a few minutes ago, what business is actually located at that address?
A. New York Orthopedics.
Q. And what is your relationship with New York Orthopedics?
A. I'm the sole proprietor.
Q. Are there any other employees of New York Orthopedics?
A. Yes.
Q. How many employees does New

DR. GERLING
York Orthopedics have today?
A. I'm not sure. Somewhere between 30 and 40.
Q. Are any of the other employees MDs?
A. Yes.
Q. How many MDs do you have at New York Orthopedics?
A. I believe just three.
Q. Were any of the other employees of New York Orthopedic involved in the treatment of Pauline Leung?
A. I'm not sure.
Q. Would you be able to go to some type of record in order to determine if another physician treated Pauline Leung?
A. Yeah, if you review the chart you'll see.
Q. When you say -- strike that. I have also seen on some of the records a name called Spine Care NYC or Spine Care Orthopedics NYC, is that affiliated with the New York Orthopedics or is it --
A. Yes, sir.

DR. GERLING
Q. A separate entity?
A. Yes, sir.
Q. Is that a separate entity?
A. No, it was just the DBA that I as using for a long time and we switched our DBA a couple years ago. Actually, I don't know exactly when I did, maybe 2021.
Q. I also noticed on some of the

DR. GERLING
to Ms. Leung in this case, was it all done in the Brooklyn office at the address you just gave us?
A. No.
Q. Where else was the treatment done?
A. In my clinical offices.
Q. Where are your clinical offices located? I'm sorry, did you hear me?
A. Yes, I did. Just give me a second.
Q. Oh, okay. I didn't know if you froze?
A. Well, the patient was seen in my Manhattan office. They where seen via tele-medicine at one point. I know that that's not a physical office but it is --
Q. Right.
A. -- notable.
Q. Where is your Manhattan office located?
A. 110 Dwayne Street.
Q. And were you just looking at something either on a computer or a paper

DR. GERLING
in front of you in order to see where she had been treated?
A. Yes, sir.
Q. And what were you looking at?
A. I was looking at my office notes.
Q. Are those hand written notes or typed notes?

records the name Gerling Institute, I believe?
A. Yes.
Q. What is Gerling Institute?
A. That's the new DBA that I switched to.
Q. So you switched from the DBA Spine Care Orthopedics NYC to Gerling Institute?
A. Yes, sir.
Q. Gerling Institute is not a separate entity?
A. No, there is a New Jersey affiliate that is Gerling Institute NJ but Gerling Institute itself is not.
Q. The treatment that you provided

A. Typed.
Q. To your knowledge were those notes turned over to the Counsel for Ms. Leung?
A. Yes.
Q. What is the nature of the practice of New York Orthopedics?
A. Orthopedic surgery.
Q. Other than you does anyone else, any of the other MDs at your organization perform surgery?
A. Yes.
Q. Is there a specific type of surgery that you specialize in?
A. Yes, orthopedic surgery.
Q. Okay. I guess my question

DR. GERLING
wasn't clear. Is there a specific part of the body that you specialize in with respect to orthopedic surgery?
A. I specialize in spinal surgery or subspecialize, I guess is the word.
Q. Do you know the percentage of your business that is dedicated to litigation?
A. I'd say five percent or less, but that's just a guess.
Q. Would there be a way for you to be able to tell what percentage of your business is related to personal injury litigation?
A. No.
Q. Do you represent plaintiffs and defendants in litigation or just plaintiffs?
A. I only really represent my patients.
Q. The five percent or so that you estimate is dedicated to personal injury litigation, are those patients plaintiffs in personal injury actions?

DR. GERLING
A. Yes, I don't do any type of expert testimony in terms of personal injury unless it's an actively treating patient. In other words, if there's no real circumstance that I'm aware of where I could be representing the defendant in an actively treating patient.
Q. Well, have you ever represented

DR. GERLING
attorney's lien?
A. As needed.
Q. With respect to the case we're here to talk about today is there an attorney's lien?
A. I have no idea. I doubt it. I mean this is a -- I thought this was work related. Well, you know what, actually I'm not sure if it's work related. I know they work for the post office.
Q. What did you do to prepare for your deposition testimony here today?
A. I reviewed the Independent Medical Examination by a neurologist. I spoke to the Plaintiff's attorney briefly on two different occasions, purely for logistical reasons related to today's testimony.
Q. When you say you reviewed an IME report of a neurologist, is that Dr. Head?
A. I'm not sure.
Q. Did you review any of your medical records for the treatment that you

DR. GERLING
provided to Ms. Leung to prepare for your deposition today?
A. No.
Q. Did you review your narrative summary that you prepared in connection with your treatment of Ms. Leung in this case?
A. No.

a defendant in personal injury litigation to conduct an Independent Medical Examination or a defense medical examination?
A. Not that I'm aware of.
Q. Does your practice accept private insurance as payment for medical services that you provide?
A. Yes.
Q. Do you know off the top of your head if you accept Blue Cross Blue Shield or Empire Blue Cross Blue Shield?
A. I do not participate in those insurances.
Q. Do you provide medical services to personal injury plaintiffs based on an
Q. Does your firm have a separate billing department?
A. You mean my private practice?
Q. Yes.
A. No.
Q. How are patients billed for the services that they're provided, that you provide?
A. We pass our notes to a outside billing company that then sends out bills.
Q. What's the name of that outside billing company?
A. MD Capital. We have another billing company we've been using recently. I don't recall the name of the company. A gentleman, Scott Stickler. There are

DR. GERLING

instances where we will send an invoice generated from our own internal system that would be a summary of charges that based off of our billing which would reflect any unpaid services. So, from time to time if an attorney has a lawsuit and they are closing the case they will request a summary of the due billing that was not covered by insurances. In which case, we would send them an invoice with a summary of what has been paid and has not been paid from the services that were performed by my business.
THE WITNESS: Would you excuse me for just a second?
Q. Yeah.
(Whereupon, a short recess was taken.)
THE WITNESS: Okay, I'm back.
MR. TOMPKINS: Okay.
Q. Do you know when you first saw Ms. Leung?
A. Yes.
Q. When did you first see her?

DR. GERLING

A. January 15, '19.
Q. Again you're referring to your notes?
A. Yes, sir.
Q. Okay. Do you have them up on your computer?
A. Yes.
Q. How was Ms. Leung referred to

DR. GERLING

taken?
A. Yes, sir.
Q. Who takes that history?
A. I do with my staff.
Q. Do you recall taking the history from Ms. Leung on the January 15th of 2019?
A. Not specifically, I would have to refer to my records.
Q. When a history is taken of a new patient, are there any hand written notes that are made?
A. No.
Q. Are all the notes done digitally?
A. Yes, sir.
Q. What were Ms. Leung's complaints that first time she came to visit you?
A. That she had injured her neck, her upper back, her middle back, her lower back, and her left shoulder.
Q. And did she tell you how she injured those parts of her body?

DR. GERLING

A. Yes.
Q. What did she say?
A. A slip and fall, on August 5, 2018.
Q. Other than saying she slipped and fell, on August 5, 2018, did she give you any other specifics of how she fell?
A. I don't recall.

you?
A. I don't know.
Q. Is that not part of your notes?
A. It says no referring provider.
Q. That notation, no referring provider, does the word provider usually mean another medical care provider?
A. In other words, my staff did not record any specific person that referred the patient to me.
Q. When a patient comes to you for the first time, what's the procedure that's followed?
A. Patient is checked in and then seen in the office.
Q. After a check in is a history

Q. If she had given you specifics of how she fell would that be part of your notes?
A. My notes are a summary. They're not an exhaustive transcription of what is said by the patient or by me.
Q. Are the mechanics of a fall important to you to understand the type of injury that the Plaintiff may have sustained?
A. To some extent, but I'm not an accident reconstructionist. So, I don't do analysis or attempt to breakdown details, maneuvers, and mechanisms. If it's relevant, I'll ask questions about it.
Q. And if you determine at your

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initial intake that it was relevant would that be something that would be in your notes?
A. To some extent.
Q. In your notes pertaining to this case, is there any description of exactly how the Plaintiff fell?
A. Yes.
Q. Where is it -- excuse me. What does it say about the actual mechanics of Plaintiff's fall?
A. It says slipped and fell.
Q. That I get. Do you know whether she fell forward or backward or sideways?
A. Not at this time. I don't recall.
Q. Do you know if she fell all the way to the ground?
A. I don't recall.
Q. Did you know that there was a video that shows her falling?
A. I don't recall.
Q. Did you ever see a video of her

DR. GERLING
fall?
A. I don't recall.
Q. Would a video of somebody falling assist you in diagnosing Plaintiff's injuries?
A. You know, I guess to some extent. I don't routinely, in fact, I very rarely review any type of videos.

DR. GERLING
A. To some extent.
Q. So for example, let's talk about the other 95 percent of your practice. When people come into your office with a problem, is it part of your normal protocol on your intake and analysis as you go through that treatment to determine the cause of the injury that that particular patient suffered?
A. Yes.
Q. So, you don't only do that with respect to the five percent of cases that are litigation oriented, correct?
A. Correct.
Q. In determining the causation of Ms. Leung's injury in this case, would the video have been important to you to see how she fell?
A. As I said, I mean, it's very rare that I see a video. It's very rare that a video even exists regarding an injury I'm treating. It's really not a part of routine orthopedic practice. You know, I may have been aware of the

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existence of a video at some point, but I don't recall. If I had access to it, I probably would have -- if I reviewed it I probably would have made note of it in my chart but...
Q. And is there any note of it in your chart?
A. Not that I know of.

Q. You already told me you don't have -- you don't do any accident reconstruction analysis. Do you have any expertise in by biomechanical analysis?
A. Only by having performed, you know, educational appropriate activity and schooling and some biomechanical research after schooling.
Q. Have you ever testified as an expert on biomechanical analysis?
A. Only indirectly through my testimony as an expert witness treating doctor.
Q. Is it a normal part of your protocol when treating a patient to determine the cause of the injury?

Q. When Ms. Leung first came to you, what specific complaints did she make about her neck?
A. That her pain was ten out of ten, radiating into her left shoulder, and all the way down to her fingers with radicular pain nine out of ten. Numbness, paresthesia is in the same distribution. Weakness in the left shoulder and arm. Occipital cervical headaches and changes in her balance.
Q. On that initial visit did she bring any medical records with her?
A. I believe so.
Q. Are the medical records that she brought with her referenced in any of

your notes?
A. Yes.
Q. And can you tell me what medical records she initially brought to you on January 15th of 2019?
A. Well, specifically we reviewed radiologic records, including the MRI of the cervical and lumbar spine. And I believe, the patient had physical therapy, pain management Kenneth Lee reports.
Q. Did those records that she brought with her become part of your file?
A. I'm not sure.
Q. Was is it a normal practice of your business to incorporate medical records from other providers in a patient's file that you're treating?
A. We try to. Sometimes, they bring them and my front desk doesn't have the ability to scan them or they don't show them to the front desk. They just show them me once they're in the room and I will look at them and give them back to the patient. We're a paperless office. So, we

don't retain paper. We try not to even retain CDs or any type of imaging films.
Q. After examining the Plaintiff, on the January 15, 2019, did you make any recommendations as to further treatment for the injuries that she complained about?
A. Yes.
Q. And what recommendations did

refer the Plaintiff to any physical therapist?
A. I think so.
Q. Do you know the name of the physical therapist or the group that you referred Ms. Leung to?
A. No.
Q. Is that not contained in your notes that you're looking at?
A. I mean, I'm looking at a referral that was given to her. But I don't see a provider.
Q. Was there also a referral given to a pain management specialist at the initial meeting?
A. I don't think so.
Q. Did you prescribe any medicine to Ms. Leung as a result of that first encounter?
A. I don't think so.
Q. Do you know whether she was already on medication for her injuries?
A. Yes.
Q. What type of medication was she

on?
A. Antiinflammatories.
Q. Was she on any pain medication?
A. Yes.
Q. What type of pain medication was she on?
A. Antiinflammatories.
Q. Oh. Did Ms. Leung decide to

you make?
A. Interior cervical discectomy and fusion C-4 to 6.
Q. Was that the only recommendation that you made, surgery?
A. It's the primary recommendation. There were other recommendations. Other things she could do to feel better and to protect herself.
Q. What were some of those other recommendations?
A. Cervical color, lifting restriction, analgesic medications, ongoing physical therapy, home exercise program, back orthosis.
Q. Did you at that appointment

undergo the surgery that you recommended?
A. Yes.
Q. When was that performed?
A. June 10, 2019.
Q. And where was that surgery performed?
A. NYU.
Q. And how long did that surgery take?
A. I don't know.
Q. What was the purpose of performing that surgery?
A. To remove the discs at the C-4, 5 and 5, 6 level.
Q. And was the ultimate goal to relieve her pain?

DR. GERLING
A. That was part of the goal.
Q. What were the other goal or goals of that surgery?
A. To relieve the other symptoms that she was having and to protect her nerves from damage.
Q. From January 15, 2019, until she had the surgery in June, how many times did Ms. Leung come to your office for treatment?
A. Four times -- oh, wait hold on. Sorry, excuse me. She was seen in January. I think just in January of 2019.
Q. Okay. So, I take it then was it agreed upon at the January meeting that the surgery would be performed --
A. Yes.
Q. -- or was there some type of follow up?
A. Yes.
Q. Bad question, sorry. Was it determined, at the January 15, 2019 meeting, that surgery was the next step?
A. Yes.

DR. GERLING
Q. And so the next time that you saw Ms. Leung would have been at NYU?
A. Yes, sir.
Q. Were there any complications during surgery?
A. Not that I know of.
Q. Was the surgery successful in relieving her pain and other symptoms that

DR. GERLING
2019, if you know?
A. I think it was after. Let me just go look at my other notes. Hold on a second. I believe it was, September of 2021.
Q. When is the last time that you saw Ms. Leung in your office?
A. March 8, 2022.
Q. And what was the purpose of that visit?
A. Routine follow up.
Q. Okay. Prior to that visit, on March 8 of 2022, when was the last time that you saw Ms. Leung?
A. July of '21.
Q. In total, how many times have you seen Ms. Leung since you performed surgery on her, in June 2019?
A. Seven times, I believe.
Q. The last time that you saw Ms. Leung, in March of 2022, what were her complaints with respect to her neck and back?
A. In March of '22?

DR. GERLING
Q. Correct.
A. I really only focused on her neck and back during that visit. She said that she was working full time, that she needed some assistance with lifting activities. She could walk five to ten blocks, I believe. She started having pain in her low back after five blocks.

she was experiencing, prior to having the surgery?
A. Yes.
Q. Is that the only surgery that you have performed on Ms. Leung?
A. I believe so.
Q. Do you know if she's had surgery to any other part of her body with respect to the injuries she's claiming in this lawsuit?
A. I believe so.
Q. And what part of her body did she have surgery to, if you recall?
A. Her shoulder.
Q. And was that before or after the surgery that you performed in June of

Her neck pain was four out of ten. She continued to have occipital cervical headaches. Her back pain was seven out of ten. She could stand for up to two minutes before pain would start. That's the primary gist of it.
Q. Did you make any recommendations for any further surgery at your, March 8, 2022, meeting?
A. During that visit we did not make a plan for surgery. I'm not sure if we had discussed -- I think we had discussed surgery during prior visits.
Q. The pain level of four out of ten, is that something that Ms. Leung told you?

DR. GERLING
A. Yes.
Q. And that as compared to the first time you saw her before the surgery indicates that the pain was less?
A. Yes, sir.
Q. And would that also be the same for the back? In other words, the pain was less than prior to the surgery?
A. Somewhat.
Q. At the time that you saw her, in March, and she was still having pain even though surgery had been performed back in June of 2019, did you make any diagnosis as to any other source of the pain that she was experiencing at that time, at that visit?
A. Yes.
Q. What findings did you make?
A. That she had lumbar disc herniations, that she had spondylolisthesis in the lumbar spine, that she had derangement of the left shoulder, that she had sacroiliac pain.
Q. And previously you had not

DR. GERLING
diagnosed those injuries?
A. No, we had diagnosed them.
Q. Other than the slip and fall that she had at Starbucks, did you rule out any other cause of the pain that she was experiencing in her neck and back?
A. Well, that correlation is through history and then we asked her

DR. GERLING
never seen any medical records of Ms. Leung that has preceded her accident at Starbucks, on August 5, 2018?
A. Not that I recall.
Q. In this case you have made a determination though, after your examination of the Plaintiff and taking a history from her that the complaints with regard to her neck and back were causally related to her fall at Starbucks, correct?
A. Correct.
Q. And how did you reach that conclusion?
A. Based off the patient's history.
Q. So if the patient's history was not accurate, then your determination of causation would also not be accurate, correct?
A. To some extent.
Q. Well, if you only based it upon the history that she gave to you and I'm asking you to assume that history was incorrect, doesn't that change your finding

DR. GERLING
of causation in this case?
A. I think that it's pretty easy for you to use semantics in order to, you know, to, you know, guide my answer to that question. What I'll tell you is, that it is possible that the patient told us a history that we interpreted in a certain way and wrote down in a certain way and

whether she had any other symptoms at the time of the fall. So, we did investigate whether or not there were any other sources of the symptoms and to my knowledge there were not.
Q. And when you say investigate, was that merely by questioning the Plaintiff or did you go and obtain medical records that existed prior to her accident at Starbucks?
A. No, we're not private investigators. It was purely by history.
Q. And the history that you received was from Ms. Leung, correct?
A. Yes, sir.
Q. And just for the record, you've

it's not one hundred percent exactly the way it occurred. There are circumstances where a patient uses words that we misinterpret and that we put in our notes our own interpretation of what they are saying. You know, we do our best to make accurate notes. But I mean I could have easily made a mistake as to exactly how she fell or the mechanism of her fall. But I think it's reasonable to assume that if she in deed had an accident that day, and that she had no symptoms before then and that the symptoms started thereafter, then it would be reasonable to draw conclusions about the mechanism and causation of the accident. But as I said, I'm not an

DR. GERLING
accident reconstructionist. But it's based off of history. Certain if there's a huge divergence from truth and for some reason, you know, I was given information that she had a history of injuries before that day, you know, I'd be happy to reevaluate and sort of reformulate my conclusion if you'd like me to do that.
Q. I just -- I don't know if that answers my question. I was just asking you a hypothetical. If in fact you were not told about a prior injury to her neck or back that occurred prior to her fall at Starbucks, wouldn't that affect your conclusion that the injuries that you treated her for were causally related to the fall at Starbucks?
A. You know, I apologize. I think I misunderstood. I thought you said that you wanted me to assume that the history was not accurate.
Q. Yes.
A. Which is different than what you just said.

DR. GERLING
Q. I asked that question. So I asked a different question. So can you answer that question?
A. The question that you just asked me now?
Q. Yeah.
A. I think that, you know, I'm happy to evaluate any new information you

DR. GERLING
remember the details of our conversation, in my report I am relying on the fact that she was not symptomatic in the neck or back at the time of her injury and that she then after her injury had acute onset of symptoms. And that there was a reasonable mechanism of injury and that the symptoms are relatively complex in nature and are all relatable to her findings on MRI. So, from my perspective there is a consistent line between her reported events and our findings clinically.
Q. Are there any specific indications that you look for on an MRI exam in order to determine whether an injury was old or recently incurred?
A. There are some findings on MRI that we look for, yes.
Q. What are those findings that you look for?
A. The morphology of the disc, the swelling of the tissues, Modic changes in the bone. So things, a layman's term would be bruising of tissues. Sometimes,

DR. GERLING
patients have tearing of the tissues. That's certainly not, you know, the only finding we'll have in an acute case. I'd say that patients frequently do not have tearing of the tissue. Certainly swelling and higher signal within the tissue does suggest, you know, some acuity. You know it's challenging because MRIs often times

have. I know that she had prior Workman's Compensation-type injuries. I'm just not aware of her having any symptoms in the neck at the time of the injury. So, I would, you know, I'd be happy to review other notes to try and, you know, clarify my opinions as to whether or not there's causal relationship between the Starbucks injury and her neck injury.

Q. Well, in determining causation and in your treatment you relied on the Plaintiff's representation that she had no prior injuries with respect to her neck and back, correct?

A. Well, in my report which I am relying on today because I don't directly

DR. GERLING

not always.

Q. Were any tears visible in the MRI from September 7, 2018?

A. I believe so.

Q. And do you note in your records, on your review of that MRI, the tears that you observed?

A. No, I didn't focus upon that issue.

Q. You said earlier that you have reviewed the report of Dr. Head; is that right?

A. The Independent Medical Examination report?

Q. Correct.

A. Yes.

Q. And you're aware then that Dr. Head concludes that the Plaintiff's neck and back injuries preexisted the fall at Starbucks; did you see that part of his report?

A. To some extent, yes.

Q. To some extent you saw that part of the report? I'm not sure I

DR. GERLING

understand the answer?

A. I think that that's a summary of what he said, yes.

Q. And you disagree with that summary or opinion that Dr. Head has; is that correct?

A. Yes.

Q. Just generally, what is the

DR. GERLING

this man is making pretty wild statements that honestly he has grossly overstated the findings on MRI, with regards to degenerative changes. And I think he also is grossly overstating the significance of an anular fissure. Most people do not use the terminology anular fissure associated with acute findings. Some people do, but that's not a common term. Most people would say an anular tear or high intensity zone. And if his assumption is that nobody has a traumatic event unless they have an anular fissure on a disc herniation then I don't know where he gets that. Maybe that's in neurologic literature. It's not in the orthopedic spine literature or the neurological neurosurgical literature. So, that's a gross overstatement of his interpretation and I think it's in appropriate.

MR. TOMPKINS: I'm going to try and share my screen right now. If you'll just give me a second.

A. You know, I have one last thing

DR. GERLING

to add to my last answer, if that's okay with you?

Q. Sure.

A. Yeah, in that same section he actually doesn't say that the disc herniations are not a result of the accident. He says that the degenerative findings are chronic and not associated

basis of your disagreement with Dr. Head's conclusions?
A. Well, I have that note in front of me right now and in the diagnosis section, in Section 3, he says that, the protruding discs associated with osteophyte 4, large protruding disks with osteophytes at C 4, 5. With impingement upon the cord, disc osteophyte complexes at C 5, 6, protruding at C 6, 7 and he says that there is defecation of all the cervical discs but no anular fissure associated with any of the bulging or protruding discs. And that he said that these degenerative findings are chronic and did not occur as a result of August 5, 2018 accident. I think that with the accident.
So, in his conclusion there's nowhere that I actually see where he says that the disc herniations, which he himself admits exist, in the cervical spine MRI are not associated with the injury. He only says the degenerative changes aren't. So he's essentially saying that the naturally occurring findings on the MRI are not associated with the accident.
He could also say, that the existence of the bones and the discs in the neck or the throat or the brain on MRI are not associated with the accident. So actually, I don't see in here a conclusion related to whether or not the disc

DR. GERLING
herniations are associated with the accident. Nor the myelopathy and the patients radicular symptoms, he doesn't make comment on those.
He doesn't comment on whether or not, in fact there was an injury and whether or not there was any evidence to support there being a preexisting injury. And he doesn't make any comments as to whether or not the treatment was appropriate. So, I'm sorry I didn't say that the first time. Thank you for giving me the opportunity to finish.
MR. TOMPKINS: I'm going to try and share my screen.
Q. Are you able it see what I put up here on the screen, I can make it larger?
A. Yes.
Q. Okay.
MR. TOMPKINS: Just for the record, we'll mark this as Defendant's Exhibit A of today's date for identification. It's a document

DR. GERLING
entitled Extra Disclosure Pursuant to FRCP Rule 26A2B.
(Whereupon, Extra Disclosure document was deemed marked as Defendant's Exhibit A for identification as of this date by the Reporter.)
Q. Have you ever seen this portion

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correct?
A. I guess so.
Q. You don't know?
A. I see it written there but I have no idea.
Q. Well, you are. In any event --
A. Thank you for that.
Q. In any event, it says there that you are compensated $1,500 to prepare your narrative report; do you see that?
A. Yes.
Q. Okay. Is that accurate?
A. Yes.
Q. Okay. And then it's listed down there that if you do, in fact, testify at trial your fee is $8,000, correct?
A. I think it used to be. It may have gone up a bit --
Q. Like everything else?
A. Within the last could of years. But it's in that ballpark.
Q. Okay. Moving along. Looking at what is now on the screen, which is Page 5 of the Disclosure, it's entitled

DR. GERLING
Narrative Summary and it's dated 3/9/2022; do you see that?
A. Yes, sir.
Q. Okay. And it's on the letterhead of the Gerling Institute, correct?
A. Yes.
Q. And it's referencing Ms. Leung,

of the Extra Disclosure before? And I'll just kind of scroll through it a little bit; have you seen this?
A. I am familiar with what type of document it is. I don't recall seeing this specific document.
Q. Did you have any actual input into creating this portion of the document?
A. Honestly, I don't recall.
Q. I'm going to continue just to go through this disclosure that was made by the attorneys for Ms. Leung. I'm going to skip through this part. Well, let me go here. Your compensation is listed here. You're being paid for your time giving your testimony today by our law firm; is that correct?
A. Yes.
Q. And this was the summary that you prepared after meeting with Ms. Leung, on March 8, 2022?
I can scroll through it, if you like?
A. Yes, it would have occurred after that visit.
Q. Okay. And you, in the Narrative Report, you kind of gave a history of all the times that Ms. Leung had come to visit your office both before the surgery, after the surgery, and up until March 8, 2022; correct?
A. I don't recall.

DR. GERLING
Q. Well, basically when a Narrative Summary, what does a Narrative Summary mean to you?
A. Honestly, it really doesn't matter. It's right in front of us. If you want to scroll down we can look to see whether or not there's an allusion to the other reports and we'll just look at it. That's the physical exam from the initial day.
Q. Right, the initially day. Okay.
A. If you keep scrolling down, we'll see whether or not it -- okay. So, here it has the Summary of the Diagnostic Imaging. So, it had the history and physical from the initial office visit which was pre-op. And then this is a summary of the Diagnostic Testing that we had available.
Q. Okay. And but these are all taken from your medical file notes, correct?
A. Yes.

DR. GERLING
Q. And you're summarizing them here, correct?
A. Yes.
Q. These Narrative Summaries, were you asked to prepare this Narrative Summary by Counsel for Ms. Leung?
A. I believe so, yes.
Q. And then again, we already

DR. GERLING
neurologic disorders. And this just means that there was not a, you know, stereotyped gate pattern that might suggest other types of diagnosis.
Q. When you saw the Plaintiff, in March of 2022, was she working full time?
A. I believe so.
Q. Do you know what her job function was?
A. I think she works at the post office.
Q. Do you know what she did for the post office?
A. I don't recall, right now.
Q. When you initially saw her, in January of 2019, was she working for the post office?
A. I don't recall.
Q. Looking at Page 9 of the Disclosure, talking about the office visit on March 8, 2022, there is an examination of the cervical spine and you got some range of motion tests, things like that in there; do you see that?

DR. GERLING
A. Yes.
Q. The range of motion figures that you have in there, did those improve from the first visit that you had with Ms. Leung?
A. Yes.
Q. And then the same question with regard to the lumbar spine, on the bottom.

talked about what your findings were on March 8th and those are also depicted here, in the Narrative Summary?
A. Yes.
Q. Is this what you were looking at when we were talking about it before or were you looking at something else?
A. Yes.
Q. Looking at something else?
A. This is what I was looking at.
Q. Okay. What does it mean where it says, the patient displays a grossly stable gate?
A. Well, there are a lot of different classically described gate patterns that are associated with

Had her range of motion that you had tested her for, in March of 2022, improve from when you first say her in January of 2019?
A. I don't recall.
Q. When you saw Ms. Leung in March of 2022, was she still undergoing physical therapy?
A. I don't recall.
Q. When you saw her in March of 2022, was she still under the care of a pain management specialist?
A. I don't recall.
Q. When you saw her in March of 2022, did she relay to you any additional medical treatment that she had had since the last time that she had seen you?

DR. GERLING
A. I don't recall.
Q. Have you ever reviewed any records from a Dr. Melissa Chan?
A. I don't recall.
Q. If you had reviewed any records of Dr. Melissa Chan, would there be some type of notation in your file notes?
A. We do make an effort to add addendums or notations within the chart. If I see them during the office visit, I try to add it to the office visit note. If I see something between office visits, we try to add an addendum or a separate note.
Q. Moving on to the next page which is Page 6 of the Narrative Summary and Page 10 of the Disclosure. Actually I'm going to move right past that one. And I want to focus here on Page 7 now, Page 11 of the Disclosure, under the title of Review of Outside Records; do you see where I'm referring to?
A. Yes, I do.
Q. Okay. The first group, let's say of records that you reviewed up to the

DR. GERLING
Progress Report of 12/07/2018, were those all records that you reviewed at the initial consultation with Ms. Leung?
A. I don't recall.
Q. All of those things that are listed up to the 12/07/2018 are items that you have reviewed in connection with preparing your Narrative Summary?

DR. GERLING
Q. Do you have a copy of that Progress Report in your notes or chart?
A. I think we do.
Q. You listed it here. Do you know why you listed it here?
A. I don't recall.
Q. Would you -- do you still have a copy of that Progress Report?
A. I don't see it in my file today. I'm not sure if it's somewhere else in the electronic medical record that maybe for some reason it didn't make it into my file here today. Certainly, when we go to trial I'll make sure that we have it.
Q. Do you know the relationship between Ms. Leung and Dr. Chan?
A. No.
Q. Did you ever speak to Dr. Chan about the progress report that you reviewed?
A. I don't recall.
Q. Did you ever speak to Dr. Chan about Plaintiff's medical history prior to having her accident at Starbucks?

DR. GERLING
A. I'm sorry. Are you asking me whether I spoke to Dr. Chan about it?
Q. Correct.
A. I don't recall.
Q. And the next two things listed are with respect to the surgery that was performed by Dr. Alleyne on the Plaintiff's left shoulder, correct?

A. Yes.
Q. You just don't recall whether you saw these initially or at some later point during your treatment of Ms. Leung, correct?
A. Correct.
Q. We've already talked about the next one on the list, the Independent Medical Exam of William Head. So, I won't go over that again. And then, there is -- I mentioned Dr. Chan a couple minutes ago. There's a reference here to a Progress Report from August 30, 2021; do you have any recollection of reviewing that Progress Report?
A. Not off the top of my head, no.
A. Yes.
Q. You reviewed those in connection with preparing your Narrative Report?
A. I believe so, yes.
Q. And what was the purpose of reviewing the Operative Report and the Progress Report from Dr. Alleyne?
A. We requested the records, we had them, so we reviewed them. Excuse me for one second, please?
Q. Yep.
(Whereupon, a short recess was taken.)
THE WITNESS: Okay, sorry.
MR. TOMPKINS: No problem. I'm

DR. GERLING
going to scroll down a little bit here to the summary. Everybody see that okay?
THE WITNESS: Yes.
Q. Okay. We've already talked a lot about causation, etcetera. But I want to focus right now, just briefly, on the last sentence of the first paragraph where it says, Ms. Leung is severely disabled due to the above stated disorders. What do you mean by severely disabled?
A. That she has significant restriction of function, due to the injuries.
Q. But she continues to work full time for the post office. So she's not limited in that respect, correct?
A. She is limited.
Q. How is she limited?
A. She said that she has modifications to her activity, I believe. That she has restrictions in place.
Q. How do you know that she had modifications to her activity?

DR. GERLING
A. I believe, it's based off a report.
Q. What report have you based off of?
A. You know what, actually, I don't have a lot of details in my report. That was just based off of my recollection. It says that she requires assistance with

DR. GERLING
sections of -- we do try to save those letters. They would appear inside the electronic medical record. They most likely would. Sometimes when a patient requests a letter outside of the normal clinical activities, sometimes we prepare the letter and we make an attempt to always be diligent and add it to the chart.
Q. Well, as you sit here today you're not sure if you or your office sent a letter to the post office, correct?
A. Correct, and sometimes and very often with large institutions such as the post office with large institutions, such as the post office, we'll actually receive a form from the office to fill out and sign. Oftentimes the patient will bring the form with them to the office visit and we will check boxes and fill in appropriate areas and then sign them at that time. And because we're electronic, in order for us to retain a copy of that we would have to scan it. And we do attempt to do that. But oftentimes I think that that is not

DR. GERLING
done, unfortunately.
Q. Okay. I just want to focus now on the paragraph starting with, ongoing treatment; do you see that?
A. Yes.
Q. Okay. You mentioned in the first paragraph that Plaintiff was going to have the ongoing treatment for the cervical

activities of daily living. So, you know, I actually don't have any data in front of me right now to support that memory. I do believe that we've discussed restrictions with her in the past.
Q. Have you in the course of your practice and your treatment of Ms. Leung in this case, have you ever written a letter to her employer advising that she should be on restricted duty?
A. It's possible that we have. Yeah, I don't recall right now.
Q. Well, would that letter, if you did write it, would that letter be in your file somewhere?
A. Usually, it is. There are

and lumbar disorders requiring pain management; what type of pain management is she going to be required to have?
A. Well, patients typically will utilize analgesic medications of some sort. They may have injections intermittently including trigger point injections. They will have epidurals and medial branch block type injections for their pain. People living with the pain that she reports, at this time, are typically engaged in ongoing care because most people don't want to live with that level of pain.
Q. When you saw her in March of 2022, was the Plaintiff under treatment of a pain management specialist, to your

DR. GERLING
knowledge?
A. I don't recall, right now.
Q. The next item on that list is that she will have to undergo physical therapy. What type of physical therapy would she have to undergo?
A. Well, physical therapy is kind of a catch basin of treatments that are guided usually by a physical therapy center based off of needs at that time. Depending on her symptoms, depending on their findings on examination.
Q. Do you know whether the Plaintiff, when you saw her in March of 2022, was seeing a physical therapist on a regular basis?
A. I believe that they were at that time performing a home exercise program that we gave the patient, a formal home exercise program. But that they had not had recent therapy visits.
Q. And during the time that you were treating the Plaintiff for the injuries she's claiming in this lawsuit,

DR. GERLING
was she under going physical therapy treatment?
A. I believe it was just -- I'm sorry, can you repeat the question?
Q. During the time that you were treating or are treating Ms. Leung was she undergoing physical therapy treatment?
A. Yes.

DR. GERLING
deferred those to her shoulder specialist. And we also usually discus aerobic exercise as well. And try to get our patients engaged in some type of aerobic activity.
Q. So as far as the home exercises go that would have been something that you would have discussed with her in your meetings over the years when you're treating her?
A. Yes, and we give a physical document. We'll e-mail the patient, oftentimes, a document or print out a document for them in the office and give it to them, depending on there preference. And that document has a really clear description of different safe exercises that we recommend that are recommended by the American Academy of Orthopedics and other sources.
Q. Did you, during the course of your treatment with Ms. Leung, refer her to any physical therapy group?
A. Yes.

DR. GERLING
Q. What group did you refer her to?
A. I don't recall.
Q. Would the name of the group be in your records?
A. Earlier when we looked at the chart, we found a physical therapy referral but it didn't specify the provider.

Q. Do you know who she was having that treatment with?
A. Not at this time.
Q. Do you know how often she was actually going to a physical therapist?
A. Not at this time.
Q. You mentioned home exercises; do you know what type of home exercise she was prescribed?
A. Yes.
Q. What type of home exercises was she prescribed?
A. Core strengthening exercises focused on the neck and back. We may have given her shoulder exercises, as well. Though we would probably would have

Q. Is there a physical therapy provider that your office uses more than another?
A. No.
Q. Do you have any physical therapists on staff?
A. No.
Q. The next thing you mentioned in that sentence is she's going to have to have ongoing medication. What type of medications is Ms. Leung going to have to have?
A. That just depends on her systems. If she has recurrence of radicular symptoms we would put her on a neuroleptic medicine. She is currently on

DR. GERLING

an anti-inflammatory medications. During flare ups we'll give people muscle relaxers, narcotics, and sometimes sleep aids, stool softeners, ulcer medications.
Q. On the next sentence you estimate the cost of providing those services in the future will cost between five thousand and ten thousand per year; do you see that?
A. Yes.
Q. Now, how did you arrive at those figures?
A. You know, I -- I think that that's just a reasonable assumption, based off of the cost of those types of treatments. Certainly it is going to vary from year to year and sometimes it may exceed that. You know, just injections alone could easily exceed that if she was having a bad year. But that's a reasonable ballpark of what I would allow for in terms of expenses.
Q. Do you know what Ms. Leung had been spending for those -- I'm sorry, for

DR. GERLING

pain management, physical therapy, and medications prior to March 8, 2022?
A. I don't recall.
Q. Is that information that you had when you prepared this report?
A. I don't recall.
Q. You also state that it's your opinion that she will require further

DR. GERLING

fee schedule for the surgical services. And hospital services would fall within that if the patient has insurance. If they don't have insurance it could easily exceed that.
Q. Having future surgeries, though, is just a possibility, correct?
A. Well, given her age and the two-level fusion, I think it's a high likelihood and given the fact that she has ongoing symptoms. She had herniations at other levels in her neck that were not addressed during our initially surgery. I think that in the near future if she continues to have symptoms we would reassess with a new MRI and determine whether or not we think other disc herniations in her neck have progressed or could be associated with her residual symptoms.
Q. The other herniations that you just mentioned, are they also causally connected to the accident, in your opinion?
A. Yes.

DR. GERLING

Q. Do you know whether Ms. Leung has had any injections in the last year?
A. No.
Q. Bad question. To your knowledge has Ms. Leung had any injections to relieve her pain for either her neck or back injury, in the last year?
A. I don't recall.

spinal procedures; do you see that?
A. Yes.
Q. Okay. What type of further spinal procedures are you referring to in that sentence?
A. Well, she has a two-level cervical fusion. She's relatively young so it's quite likely that she'll require an adjacent level surgery. That's quite common. And the costs, I think, are pretty reasonable to assume that it will be in that ballpark.
Q. Well, how did you arrive at that cost?
A. Well, because that is in keeping with the usual and customary rate

Q. When Ms. Leung came to see you, on March 8, 2022, is that something that you asked her about?
A. Yes.
Q. And did you get an answer to that question?
A. I believe that she said she had not had an injection since her prior visit.
Q. Do you know whether she had any injections for her neck or back injury from the time that the surgery was performed up until March 8 of 2022?
A. I don't recall.
Q. Does your practice or your business have any relationship with Ridgewood Diagnostics?

DR. GERLING
A. No.
Q. Does your practice or your business have any relationship with Precision Pain?
A. No.
Q. And does your practice or your business have any relationship with Advance Recovery Equipment and Supplies, L.L.C.?
A. No.
Q. The Disclosure also includes a CV which is dated 10/1/2020, on the first page here; do you see that?
A. Yes.
Q. Okay. Is this the most up to date and current CV that you maintain?
A. No.
Q. You have a later one?
A. Yes.
Q. Okay. How recent is the current CV?
A. I don't know.
Q. Any significant changes from October 1, 2020, and today to your knowledge?

DR. GERLING
A. On a global scale, I mean I've had significant academic activity. But in terms of my appointment at NYU, my prior history, my -- I would think that from a mile high perspective nothing substantial. But I mean, there have been significant clinical -- I mean significant academic activities including board membership at

DR. GERLING
A. Yes.
Q. Are any of the cases currently pending?
A. I think one of them is.
Q. Do you know what court it's pending in?
A. No.
Q. Are you being sued individually?
A. Yes, well, I mean, when you say that I think that most of those lawsuits name other people including the institution.
Q. Right, but I guess what I'm asking is are you being sued in your name or in your company's name or both?
A. I believe in my name.
Q. And the case that's currently open, what briefly is the nature of that case?
A. I think a patient back in somewhere around 2008, literally that long ago. I did a surgery on them. In the recovery room there was a perforation of

DR. GERLING
their esophagus or their pharynx by a Laryngoscope because they had some retropharyngeal bleeding and they required reintubation and during the process the anesthesiologist perforated the pharynx, could not reintubate the patient, and we had to perform a tracheostomy. And even though the patient seemingly did fine from

the Surgical Spine Research Society. I'm on the AO Knowledge Forum. I'm the chairman of a committee at the North American Spine Society. You know, I've given some lectures and I have publications. So, nothing substantial, though, that would change the nature of my credentials.
Q. Have you ever been sued for malpractice?
A. Yes.
Q. One time or more than one time?
A. I'm going to guess about four times, maybe five.
Q. Have those cases been in New York?
that, they ended up suing several people including me.
Q. Did you have to give your deposition testimony in that case?
A. Yes, I believe I did.
Q. In any of the other cases did you also have to give deposition testimony?
A. Yes.
Q. Do you keep a list of the names of the cases where you were sued for malpractice?
A. No, I'm not sure. I think so. I think that, yes, I think that my manager has it. I testified in two of those cases in court this year. Both of which were defense verdicts.

DR. GERLING
Q. You anticipated my next questions. So, two of the cases you testified in court this past year and resulted in defense verdict?
A. Yes.
Q. Okay. That leaves one other case. Is that closed as well?
A. I think that that just was dropped.
Q. Are you currently licensed in New York?
A. Yes.
Q. Are you licensed in New Jersey?
A. Yes.
Q. And are you licensed anywhere else?
A. No.
Q. Have you ever had your license suspended by any state?
A. No.
MR. TOMPKINS: I'll just ask, Counsel, that we be provided with an updated CV I'll put it in writing.
MS. PENNISI: Noted.

DR. GERLING
MR. TOMPKINS: I'm going to continue to scroll down here to the next section of the Disclosure that was provided to us by Counsel for Ms. Leung. And it is a list of, I'm going to get to it, a list of cases where you have provided testimony either by deposition or in court.

DR. GERLING
sound about right?
A. Yeah, I mean the vast majority of those are Workman's Compensation depositions that were for establishment of treatment approval for some form of treatment, whether it be surgery or physical therapy or other types of questions; such as whether or not a patient had a site of injury.
Q. The individual case that -- you got a case name, a case date and it says depo on the three columns that are there, correct?
A. Yes.
Q. And there's no indication whether it was a civil suit, Workers' Comp, or something else, correct?
A. The vast majority of those are Workers' Comp.
Q. Okay. And how do you know that?
A. Because I rarely testify in court, probably five or six times a year.
MR. TOMPKINS: I'm just going

DR. GERLING
to scroll down here a little bit further.
A. And also, when we testify in court we don't call it a depo.
Q. Right. There, see? Do you see that one? It was Nelcida Delorosa (Phonetic). And next to her name is court, correct?

And I'm just going to get some questions out, hopefully. I'm going to have to turn this around a little bit, if I can.
THE WITNESS: I can read it.
MR. TOMPKINS: All right.
That's a little bit better.
Q. Now, without having to go through and -- obviously, we're not going to go through each and every one of these cases. But what I did was count it up that basically from -- up until November 3 of 2021. So from 2018 the entire year, 2019, 2020, and up to November of 2021 there are 160 cases listed where you provided either deposition or court testimony; does that

A. Correct.
Q. Is that a Workers' Comp case?
A. I don't know.
Q. What about the one below it, Ray Halfashi -- or excuse me, Edward Carter?
A. I don't know. They could be Work Comp or they could be otherwise.
Q. You cannot tell from looking at this chart whether it was a civil case or Workers' Comp, correct?
A. Correct.
Q. So, we get a little further along. And now we have a little notation, a little bit more information, with respect to these cases back in 2018. And there are

DR. GERLING
ones that have WC next to them. I assume WC stands for Workers' Comp.
A. Yes.
Q. Okay. And so, if a case doesn't have WC next to it, it likely is a civil litigation, correct?
A. I'm not sure. That was with the prior office manager. And I don't think that this list was made all at one time. I think it was on a rolling basis. And maybe sometimes they, you know, the wind was blowing a different direction and she didn't put down WC. I don't know.
Q. Have you ever done any work in the case with the law firm representing Ms. Leung in this case, Wingate Russotti?
A. I mean, over years I think I have, maybe once or twice.
Q. Do you have any -- well in those cases where you have worked with Wingate Russotti, were you directly retained by the law firm?
A. For testimony, yes.
Q. Were any of the cases that you

DR. GERLING
mentioned referred to you by attorneys at Wingate Russotti?
A. Not that I know of.
Q. When in your medical records, or your notes, or your chart, whatever you want to call them where you have all your information, I noticed on quite a few of them it says insurance and then it says

DR. GERLING
answer is that we have a form letter that we send. If a patient has incomplete insurance information or if we believe that we do not have access to insurance coverage that we can count on to pay for their medical services, we will routinely send a lien letter to their attorney if we think that -- or if they disclosed to us that they have a personal injury type case. In that scenario we would send them that form letter and request that they sign it, in order to back up whatever insurance we're trying to use for payment of services.
Q. Do you have any such letter in this case?
A. As I said before when you asked me, I don't recall. I don't know.
Q. Where would you go to look to see if you do have a letter?
A. I don't maintain those records. I'd have to request that from my staff. They'd have to probably contact the billing company.
Q. Would anybody in your staff,

DR. GERLING
who was employed by your group, be responsible for maintaining those letters?
A. Those letters are usually put inside the electronic medical record, I believe. I'm not a hundred percent sure. It's been a very long time since that was discussed. I'm not sure with my current operations manager what she has decided to

lien A; what does that mean?
A. I'm not sure.
Q. You do not know what that means?
A. Oh, lien A would probably mean that we had a lien document. Like, a legal document signed before treatment and that it was signed by an attorney.
Q. Okay. So, if I told you that in the Leung case the medical records indicate that in that box, lien A, does that mean that you have a written agreement with an attorney, with respect to the treatment of Ms. Leung?
A. It's a -- the short answer is yes. The more accurate and reasonable

DR. GERLING
identification as of this date by the Reporter.)
A. Yes, but I would like to request that you give me a sense of how much longer you're going to be, since I have patients starting right now.
Q. Right. We started a little bit late, so I'm just about done, okay?
A. Okay.
Q. Do you see this invoice?
A. Yes.
Q. Are you familiar with this invoice?
A. No, but I'm familiar with what it is, the structure of it.
Q. Okay. Well, is this an invoice for the services that were provided to Ms. Leung?
A. Yes, it looks like it.
Q. And on the top left hand corner, underneath the word invoice, it says bill two and it has Tarasov, Vakarev and Banilov; do you know who they are?
A. That's a law firm.

DR. GERLING
Q. Were you retained by that law firm to treat Ms. Leung?
A. No.
Q. Do you know why that law firm's name appears in the bill to address line?
A. Probably because when the patient initially came to our office, they told us that's who their attorney was. And

DR. GERLING
Q. Scrolling down then, on this invoice it says, initial office visit. We've already talked about. There's a charge of $750. And then the other office visits, eight of them there. You also have a charge there for X-rays, correct?
A. Yes.
Q. And then, there's a charge for the surgery of $85,000?
A. Yes, sir.
Q. The surgical assistant services; what is that?
A. Well, there's a second surgeon involved in cases at most times or an assistant of some sort.
Q. And that was a charge made to your company or a charge that you paid on behalf of Ms. Leung?
A. In some cases.
Q. And then it says up front payment received 30,000; do you see that?
A. Yes.
Q. And where did that 30,000 come from?

DR. GERLING
A. I'm not sure.
Q. Would you have any records in your office to show where that came from?
A. I mean, probably to the extent that we would probably have at some point deposited a check into a bank account, I would assume.
Q. Would there be any other

so, we put that into your records. And maybe that's where the lien was sent to.
Q. Are you familiar with the law firm that's shown there?
A. I know who they are.
Q. You've worked for them -- worked with them before?
A. I have not. I don't think so. You mean in terms of testimony?
Q. In terms of testimony.
A. Not that I know of.
Q. Have you worked with them in terms of treating one of their clients?
A. Well, that's how I recognize their name. I mean, I've seen their name on invoices in the past.
accounting ledger or anything like that, that would show where that check came from?
A. No, this is the accounting -- I mean, this is the -- I mean, even though this is an invoice this is the format.
Q. Do you have a relationship with any medical funding companies?
A. No.
Q. Are your fees ever paid by medical funding companies?
A. Yes.
Q. Do you know whether that $30,000, that's indicated here, came from a medical funding company?
A. No.
Q. Do you know if that $30,000

came from the law firm of Tarasov, Vakarev, Banilov?
A. I don't think so.
Q. Do you know whether that $30,000 came from the law firm of Wingate Russotti?
A. I don't think so.
Q. Now it shows here that there's a balance due of $61,350; do you see that?
A. Yes.
Q. Do you know who's obligated to pay that amount?
A. Well, the patient presumably. The law firm is not obligated to pay it.
Q. Well, I thought you said earlier there's a lien with respect to the attorneys, correct, or attorney lien letter?
A. It's not with respect to the attorneys. Assuming what you mean by that, it's just attested to by the attorneys or acknowledged by the attorneys. It's not against the attorneys though.
Q. Is it against the proceeds of a

recovery in a lawsuit?
A. It's again the patient. And presumably the patient will, you know, will recover money that will help them pay those bills.
Q. Did the patient pay the $30,000 here?
A. You already asked me about

Q. And has Ms. Leung signed any agreement or any acknowledgement that that is her responsibility to pay?
A. Yes, I would assume so. I mean, I don't recall directly. And I'm not the person who asked her to sign that documentation. But that's our typical routine.
Q. Who would I ask that question to?
A. I mean, you could ask our office for a copy of the lien record, I guess. It's going to be a generic document that says that she agrees to pay our medical services. All patients including, you know, patients with commercial insurance sign the same form that says that they agree to pay our medical bills.
Q. So, I guess, what I'm gathering is that there are other records related to the financial aspect of your relationship with Ms. Leung and the firm of Wingate Russotti, correct?
A. I don't think so.

Q. Well, you mentioned that there's a possibility of a lien letter, there's a possibility that she signed off on a piece of paper acknowledging her responsibility. That's additional records that I don't have. And you don't seem to recall having seen them. So --
A. Right. Nothing in addition to

that. I don't know whether or not they did.
Q. Well, I asked if the law firm's did. I'm asking you now if the patient did?
A. No, you asked me if I knew where that money came from or if I have some ledger for it. And I said I don't.
Q. Now I'm being more specific. Do you know if Ms. Leung paid that amount?
A. That's the same question. I said, I don't know how that was paid.
Q. If there is a defense verdict in this case or there is no recovery, who will pay that balance of $61,350.
A. Ms. Leung.
what we've already discussed.
Q. Is that something I could get from the office manager, Alexis Cancel?
A. You can request them.
MR. TOMPKINS: Thank you, Dr. Gerling. I'll let you get to your patients. I have no further question for you today. I appreciate your time.

(Whereupon, at 10:08 A.M., the Examination of this witness was concluded.)

° ° ° °

DR. GERLING
D E C L A R A T I O N

I hereby certify that having been first duly sworn to testify to the truth, I gave the above testimony.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by me at the time and place specified hereinbefore.

_____
MICHAEL GERLING, M.D.

Subscribed and sworn to before me this _____ day of _____ 20___.

_____
NOTARY PUBLIC

DR. GERLING

E X H I B I T S

DEFENDANT EXHIBITS

EXHIBIT EXHIBIT PAGE

DR. GERLING
C E R T I F I C A T E

STATE OF NEW YORK)
: SS.:
COUNTY OF ORANGE)

I, VICTORIA CHUMAS, a Notary Public for and within the State of New York, do hereby certify:
That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.
I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of September 2022.

<%24723,Signature%>
VICTORIA CHUMAS

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CASE NAME: Leung, Pauline v. Starbucks Corp.
DATE OF DEPOSITION: 9/9/2022
WITNESSES' NAME: Dr. Michael Gerling , M.D.

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MR. TOMPKINS 5

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Dr. Michael Gerling , M.D.

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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