

1 SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF QUEENS : CIVIL TERM : PART 36

2 -----X  
 ADRIANA N. MERO,

3 Plaintiff,

4 -against-

Index No. 714782/2023

5 N.E. BRIDGE CONTRACTORS, INC.,  
 6 GARY ARTHUR SAVAGE,

**JURY TRIAL**

7 Defendants.

8 -----X  
 Supreme Courthouse  
 88-11 Sutphin Boulevard  
 9 Jamaica, New York 11435  
 February 22, 2026

10  
 11 B E F O R E:

12 THE HONORABLE ROBERT I. CALORAS,  
 SUPREME COURT JUSTICE

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

14 LAW OFFICES OF STEPHEN Z. WILLIAMSON, PLLC  
 Attorneys for the Plaintiff  
 15 1889 Palmer Ave, su #3  
 Larchmont, NY 11053  
 16 BY: STEPHEN Z. WILLIAMSON, ESQ.

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 18 118-36 Queens Blvd.  
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 19 BY: WILLIAM ENRIQUE ACEVEDO-HERNANDEZ, ESQ.

20 ROBERT G. SPEVACK, ESQ.  
 Attorney for Defendants  
 21 150 Broadway  
 New York, NY 10038

22 Also present: Christina Pingaro, Appellate Counsel fro Defts.  
 23

24 PAULINE MUSA  
 JACKLYN LISI  
 25 Senior Court Reporters

1                   THE CLERK: All rise. Queens Supreme Court Part  
2 36 now in session. Trial before the Court, index number  
3 714782 of 2023. Adiana N. Mero versus N.E. Bridge  
4 Contractors. All counsels are present.

5                   THE COURT: Morning, counsel. Before we commence,  
6 with today, any motions, any applications, anything that  
7 you need or want to bring to my attention?

8                   MR. WILLIAMSON: One brief thing is, we'll finish  
9 cross and go into our surgeon, Dr. Lattuga. As Your Honor  
10 is well aware, there is a pretty well settled collateral  
11 source rule in New York. I don't intend to get into how  
12 Ms. Mero's treatment was paid for namely, that it was paid  
13 for by no fault, and start mentioning insurance. I'm sure  
14 counsel does not want me to mention that. If counsel on  
15 cross-examination gets into other matters where Dr. Lattuga  
16 may have done surgeon with a lien or with a loan, in  
17 addition to them being irrelevant, they would seemingly  
18 open the door to mean on redirect establishing Ms. Mero  
19 with Dr. Lattuga that none of that happened here, that all  
20 his bills were paid and will be paid by no fault.

21                   I don't intend to get into that. The door,  
22 seemingly, would be opened if he went into the area on  
23 cross. I want to mention that so that, in advance, it's  
24 put out there.

25                   THE COURT: Mr. Spevack.

1 MR. SPEVACK: I have no objection to his  
2 mentioning insurance. I'm going to open the door and walk  
3 through it. I will be the first to admit and to the doctor  
4 that this was paid by no fault and this is not on a lien.

5 THE COURT: I think that is advocacy 101, if you  
6 are going to do a negative you should cover it. No problem

7 MR. SPEVACK: Your Honor, I intend to make an  
8 application to recall the plaintiff. In the event you  
9 change your mind or I get a different ruling about the  
10 motion, the documents that are important. I don't need to  
11 do that now.

12 THE COURT: Absolutely.

13 MR. SPEVACK: Obviously, if you rule in my favor,  
14 I would recall her for the limited purposes of that. I  
15 won't do that now. So we have the doctor, no fault.

16 THE COURT: Anything more of about what you will  
17 do in the future? We'll worry about what we'll do now.

18 MR. WILLIAMSON: No, sir.

19 THE COURT: Let's bring in the jurors.

20 MR. WILLIAMSON: May the witness take the stand?

21 THE CLERK: You are reminded you are still under  
22 oath.

23 THE WITNESS: Morning.

24 THE COURT OFFICER: All rise. Jury entering.

25 THE CLERK: Do all counsel stipulate to the

1 presence and proper seating of the jury?

2 MR. WILLIAMSON: Yes.

3 MR. SPEVACK: Yes.

4 THE COURT: Welcome back. Have a seat. Relax.

5 If you need to stretch out, feel free to go toward the  
6 back. We are keeping to what I told you yesterday. We'll  
7 be finishing out the examination of Ms. Mero and then we  
8 have Dr. Lattuga.

9 Mr. Spevack, please continue your cross  
10 examination.

11 MR. SPEVACK: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. SPEVACK:

14 Q I have a few questions for you. I looking at my notes  
15 last night, confused. I had down, correct me if I am wrong, on  
16 direct examination counsel asked you how you found Dr. Lattuga  
17 you said your nurse best friend recommended him?

18 A Yes.

19 Q Then on cross examination you said that she didn't  
20 recommend him. She didn't know about him. She just looked him  
21 up on a computer. Is that true too?

22 A She found him, yes, and she showed me what she found  
23 because I asked her if she could help me find someone that was a  
24 specialist that took my coverage.

25 Q What was it about that you saw on the computer that

1 made you think he was the right doctor for you?

2 A Well, when she showed me what she found, he had  
3 basically good reviews, but also we found out that, like I said,  
4 he took my coverage from the accident.

5 Q Okay. So, no idea at that time that this doctor had  
6 testified over 50 times in court?

7 A No, I did not.

8 Q That would be a coincidence?

9 A I would say.

10 Q Okay. Now, you take Aleve and you take what else?

11 A I took Aleve after the surgery.

12 Q At the present time what do you take?

13 A I am sorry.

14 Q What do you take now?

15 MR. WILLIAMSON: Medication.

16 A Medication. Oh, I take, Tylenol, Advil. I use  
17 lidocaine patches.

18 Q Did you ever take something called Naprosyn?

19 A I'm not sure.

20 Q Now, it's about three years after the accident. Ius  
21 it fair to say -- Well, the lidocaine patches, you get over over  
22 the counter, right?

23 A Yes.

24 Q You get that at Walmart or CVS?

25 A No. I order them from Amazon.

1 Q Okay. Three years after the accident you just take  
2 over over-the-counter medication, Aleve, things like that?

3 A Not Aleve. Tylenol, Advil.

4 THE COURT: I don't know if there was an answer.  
5 You are only taking over-the-counter medications at this  
6 time?

7 THE WITNESS: Yes.

8 Q I think we should keep our voices up, Ms. Mero.

9 A Yes.

10 THE COURT: He is staying at your level.

11 MR. SPEVACK: Not a reference to my height, Your  
12 Honor?

13 THE COURT: No. No.

14 Q We have two accidents in this case, right?

15 A In this case?

16 Q Withdrawn. You had an accident in 2019, right?

17 A Yes.

18 Q You had an accident in 2023, right?

19 A Yes.

20 Q You are suing about the second accident, right?

21 A Yes.

22 Q For shorthand, I will call the earlier accident the  
23 first accident, and later accident the second accident, okay?

24 A Okay.

25 Q You had treatment for if the first accident and

1 treatment for the second accident, right?

2 A Yes.

3 Q The treatment for the first accident was basically, is  
4 the same as the treatment for the second accident with the  
5 exception of Dr. Lattuga. Let's take Dr. Lattuga out of the  
6 equation, so, would that be true?

7 A Yes.

8 Q The first accident you had chiro, you had physical  
9 therapy, you had electric stimulation, right?

10 A Yes.

11 Q The records looks like might have had a hundred  
12 treatments or more; is that your recollection? I know you don't  
13 have an exact number.

14 A For which treatment?

15 Q For the treatment from the first accident.

16 A I am not sure.

17 Q You had shots, you had trigger point injections for the  
18 first accident, right?

19 A I believe so, yes.

20 Q And you had these steroidal injections, epidural  
21 steroidal injections for the first accident?

22 A I believe so.

23 Q Dr. Apple, did that didn't he?

24 A Yes.

25 Q You went to Dr. Apple several times for procedures?

1 A Yes.

2 Q To the first accident?

3 A Yes.

4 Q Everything with Dr. Apple is just the first accident,  
5 right?

6 A Yes.

7 Q Why didn't you go back to him?

8 A I am sorry. Can you repeat?

9 Q Why didn't you go back to him?

10 A Well, because Dr. Apple was not closer to me, to my  
11 house, and also I wanted to find a specialist around that I know  
12 around my job because I know they specialize in surgeries like  
13 this.

14 Q How far was Dr. Apple from your house?

15 A If I may remember it was about like 40 minutes if I am  
16 not mistaken.

17 Q But Dr. Apple had done a great job for you, hadn't he?

18 A Yes.

19 Q You said that he had you cured 95 percent, right?

20 A Yes.

21 Q You had a doctor -- Withdrawn. You were seriously hurt  
22 in the first accident, right?

23 A Yes.

24 Q You complained of pain up to, I think 8 out of 10,  
25 correct?

1 A From the first accident?

2 Q Yeah.

3 A 8 out of 10, not exactly a 10. I would say between 8  
4 and 9.

5 Q Okay. Let's take a step back. When you go to the  
6 doctor, they have this pain scale from 0 to 10, right?

7 A Yes.

8 Q So, do they say or tell you, written that zero means no  
9 pain and 10 sometimes they say, the worse imaginable pain?

10 A Yes.

11 Q You put as high as 9 when the last time you saw Dr.  
12 Apple, didn't you?

13 A Yes, but I also put lower pain before, also.

14 Q So, 9 is not the worse pain imaginable, but it's just  
15 one scale below that; is that fair?

16 A Yes.

17 Q Assuming you did that in August of 2020, what were you  
18 doing at that time work wise?

19 A Work wise?

20 Q Yes.

21 A I was working in the operation room.

22 Q How are you getting to do work?

23 A Driving.

24 Q At night?

25 A At night, yes.

1 Q How many days a week?

2 A Five days a week.

3 Q What time would you get in your car to go to work?

4 A I would leave my house around 9:00 p.m.

5 Q What time did you get home?

6 A I would get home 6:30 in the morning.

7 Q Long day?

8 A Long day, yes.

9 Q I am sorry. Where did you live? Queens Village?

10 A Rosedale.

11 Q You get in your car 9:30 at night and drive to

12 Manhattan, and you get to work about what time?

13 A Around 9:30.

14 Q Where do you park?

15 A In the streets.

16 Q There is parking in the streets then?

17 A Around that time, yes.

18 Q This is physical labor. You are not sitting at a desk,  
19 right?

20 A No.

21 Q Tell the jury what you are doing in the OR?

22 A In the OR, operation room we sanitize the rooms. We  
23 take garbage out, linen, make sure we mop each corner of the  
24 room. I would went down to two knees and make sure we clean the  
25 wheels, the blood residue from the surgery before, and we'll set

1 it up for the morning. Go ahead.

2 Q Did you have some sort of cleaning cart like we see?

3 A Yes.

4 Q How many hours do you do that?

5 A It's an eight-hour shift. We do get an hour break.

6 So, for seven hours.

7 Q You work for about three, three-and-a-half hours and  
8 you get a break?

9 A From 10:00 to 3:00; that is five hours.

10 Q Then what time do you get off?

11 A At 6:00 in the morning.

12 Q It's your testimony before this jury that you do this  
13 physical work with pain that is just under the most unbearable  
14 pain you could imagine; is that your testimony?

15 A Well, I did have a coworkers I worked with. So, we  
16 would help each other out which minimized how much I would  
17 actually do in a room.

18 Q Well, you said yesterday that sometimes you would be  
19 hurting so you couldn't get water from somebody.

20 A That is my current position right now.

21 Q So, you're not saying you didn't do your job, did you?

22 A No.

23 Q You got down on your knees and scrubbed the wheels?

24 A Yes.

25 Q You took out the trash?

1 A Yes.

2 Q All with pain just under the most unbearable pain you  
3 could imagine; that is the testimony, right?

4 A When I wouldn't be in pain, yes. That is exactly what  
5 I would do.

6 Q Well, I want to you assume that Dr. Apple says you were  
7 in that much pain on August 10th. August 10th, one of the last  
8 times you saw Dr. Apple, or were you spending nine hours on your  
9 feet, nine on your knees cleaning and scrubbing?

10 A If I was in unbearable pain, no, I would not be doing  
11 that. I would ask someone for help.

12 Q All right. You were unfortunate enough to be involved  
13 in two accidents. The first accident and the second accident.  
14 Neither accident was your fault. You were hit the rear the  
15 first time, and the second time you hit the front of the truck,  
16 but my client he went through a red light, so neither accident  
17 is your fault.

18 A No it's not.

19 Q Right. You don't sue for nothing. This case you had  
20 a perfectly legitimate reason to due my sue. My client went  
21 through a red light, right?

22 A My intentions was not to sue in the beginning. It was  
23 only until after I saw I needed to have a surgery was when I  
24 proceeded to contact my lawyers now that I wanted to proceed  
25 with suing.

1 Q Was that your intention with the first accident?

2 A No.

3 MR. WILLIAMSON: Objection.

4 THE COURT: Overruled.

5 Q The first accident, you intended to make a claim,  
6 right?

7 MR. WILLIAMSON: Objection.

8 THE COURT: What kind of claim, counsel.

9 MR. SPEVACK: For the injury that she felt when  
10 she was hit in the rear.

11 MR. WILLIAMSON: Objection.

12 THE COURT: We have discussed this. Please don't  
13 go into this.

14 Q How serious was the first accident in terms of the  
15 impact?

16 A I would say it was a minor accident.

17 Q Not as serious as far as the impact as the second  
18 accident?

19 A Yes.

20 Q We have Dr. Perry's records in court. He is the one  
21 who primarily treated you for the first accident, right?

22 MR. WILLIAMSON: Who?

23 MR. SPEVACK: I am sorry.

24 MR. WILLIAMSON: Dr. Apple?

25 MR. SPEVACK: Withdrawn.

1 Q We have Dr. Apple's records. He is the one who  
2 primarily treated you for the first accident, right?

3 A Yes.

4 Q And you had gone to physical therapy for the first  
5 accident, right?

6 A Yes.

7 Q What was the name of that physical therapy place?

8 A I can't recall.

9 Q It was the one associated with Dr. Apple, right?

10 A I believe so, yes.

11 Q It was on Hempstead Avenue?

12 A Yes.

13 Q How far was that from your house?

14 A About the same distance as KT Physical Therapy, the one  
15 I go to now.

16 Q Your second accident you decided not to go back to the  
17 place that you had been to for the first accident, correct?

18 A No.

19 Q Why didn't you go back to the place where you'd been  
20 treated at the first accident?

21 A When I first tried to search for it I couldn't find the  
22 the name, so I couldn't find it.

23 Q You had been there a hundred times, hadn't you?

24 A That was years ago.

25 Q Unlike Dr. Lattuga, you couldn't Google it?

1           A     As I said I tried to find it, but because I couldn't  
2 find the name, I couldn't remember, I couldn't find it.

3           Q     The question is, could you Google it?

4           A     I could have, yes.

5           Q     Was there another reason why you didn't want to go back  
6 to get treatment at the same place where you had treatment in  
7 the first accident?

8           A     No, there was no particular reason.

9           Q     Did you want to keep those separate?

10          A     No.

11          Q     It's true that all the people who treat you in the  
12 first accident are different than all the people that treated  
13 you in the second accident, right?

14          A     Yes.

15          Q     You weren't trying to hide anything, were you?

16          A     No, I wasn't.

17          Q     We have Dr. Apple's records in court. I have looked  
18 through them. Do you read medical records?

19          A     Do I read medical records? At times.

20          Q     I mean, you are in the medical field. You work at a  
21 hospital. Sometimes, do you have occasion to look at them? I  
22 will withdraw the question. You don't have to, but have you  
23 ever looked at your medical records in this case?

24          A     My medical records?

25          Q     Yes.

1 A No.

2 Q Did you ever look at Dr. Apple's medical records?

3 A Years ago, I did.

4 Q Okay. Did you ever see where he notated that you had  
5 made a 95 percent recovery?

6 A I don't remember, no.

7 Q You must have been fairly grateful to the man, right?

8 A I am sorry.

9 Q You must have been fairly grateful to the man, right?

10 A Yes, he helped me.

11 Q At some point, I know it's years ago, you don't have an  
12 exact recollection. At some point you remember going back and  
13 saying, doc, I feel so much better. This is great, and the  
14 doctor saying, that is wonderful. We'll note it, come back in  
15 six months. Anything of that nature?

16 A I honestly don't remember as I said this was years ago.

17 Q Isn't it true that that never happened?

18 A I know I got a follow-up call from after the procedure,  
19 and they asked me how I felt. I remember telling them I felt  
20 better, a little pressure but I felt better.

21 Q Tell us about this visits with Dr. Perry. You went out  
22 to Stamford, Connecticut?

23 A Yes.

24 Q Who did you go with?

25 A By myself.

1 Q Did you speak to your lawyers before you went out  
2 there?

3 A To situate out how I was going to get there, yes.

4 Q Don't tell what you said. Did you speak to the lawyers  
5 about the case and what Dr. Perry was going to do?

6 A They explained to me what Dr. Perry was basically  
7 specialized in and what we were going to do at the visit.

8 Q This was just before trial, right? You had a trial  
9 date, right?

10 A Trial date?

11 Q You were told by your lawyers that your trial is  
12 imminent, right?

13 A I am sorry. I am not understanding your question.

14 Q This case was supposed to -- First had a trial date of  
15 just a month or two before. Were you aware when this case was  
16 going to trial with your lawyers telling if you could go to  
17 trial?

18 A Yes.

19 Q It was soon, right?

20 A At the time we spoke about it, it didn't feel soon.

21 Q So, what was your understanding of why you were driving  
22 out to Stamford to speak to Dr. Perry?

23 A Why I was going to talk to Dr. Perry? Just to talk  
24 about my pain and things I was going through.

25 Q Who was going to pay Dr. Perry?

1 A From my understanding I believe, it's my coverage.

2 Q You thought this was insurance coverage?

3 A I am not sure.

4 Q Did you submit a bill to Dr. Perry for his  
5 consultation?

6 A I am not sure.

7 Q You go there and what happens with you? You sit  
8 face-to-face in a conference room? What is the situation?

9 A Yes. We sit in his office.

10 Q You didn't bring any medical records, did you?

11 A No. I believe he had my medical records already.

12 Q Did he have it on a computer?

13 A Yes.

14 Q Then he start to ask you questions about your case,  
15 right; about your medical condition, right?

16 A Yes.

17 Q Did you have an understanding that he was going to  
18 testify in court?

19 A No.

20 Q You had no idea that you were speaking to a man that  
21 was going to come in as an expert in court?

22 A No.

23 Q Why did you think you were going to go to Connecticut  
24 to speak to him?

25 A Just to talk to him about my progress, my procedures

1 everything that I was doing, but I didn't know he was going to  
2 go testify, not that I recall or remember him speaking about  
3 that.

4 Q He was not going to treat you, right?

5 A He examined me at the location.

6 Q Did you ask to go to Connecticut to see this Dr. Perry?

7 A No.

8 Q Did your lawyers tell to you go to Connecticut to speak  
9 to this Dr. Perry?

10 A Yes.

11 Q At that time you told him for the first time in the  
12 records that I see, that in the first accident you were 95  
13 percent better; is that what you told him?

14 A Yes.

15 Q As far as you know, is that in any of the medical  
16 records?

17 A I am not sure.

18 Q If Dr. Perry comes in to court and says you were  
19 95 percent better after the first accident, it would be because  
20 that is what you told him, right?

21 A I remember telling him that, yes.

22 MR. SPEVACK: Thank you, ma'am. Nothing else.

23 MR. WILLIAMSON: Just couple quick follow-ups.

24 THE COURT: Hold on one second.

25 JUROR 3: Did she say --

1                   THE COURT: You are not allowed to ask questions  
2 yet. Hold the thought. Make a mental note and during  
3 deliberations if you need additional, if you want her  
4 testimony read back that's fine. I thought you needed a  
5 break.

6                   Continue please.

7 REDIRECT EXAMINATION

8 BY MR. WILLIAMSON:

9                   MR. WILLIAMSON: Thank you.

10           Q     Ms. Mero, counsel asked you questions. One of them, in  
11 one of them, he said whether the treatment from the first  
12 accident was the same as the treatment from the second accident;  
13 do you remember that question?

14           A     Yes.

15           Q     In the first accident in 2019 is it accurate you had  
16 physical therapy for approximately five months?

17           A     Yes.

18           Q     And then since March of 2023, this accident, have you  
19 been doing physical therapy pretty much continuously to now?

20           A     Yes.

21           Q     That would be five months versus three years?

22           A     Yes.

23                   THE COURT: Counsel, forgive me. I know there is  
24 no objection. I would like to remind you this is your  
25 witness. This is redirect. Please ask appropriate

1 questions.

2 MR. WILLIAMSON: Understood, Your Honor.

3 Q How long did the injections go on for with Dr. Apple,  
4 three months, six months, a year, in the first accident?

5 A I am sorry. Could you rephrase the question.

6 Q The injections you had with Dr. Apple, what was the  
7 span of time over which that happened?

8 A After you stopped treating, after the five months  
9 because of COVID, I saw him in September, which was only one for  
10 the discectomy and the trigger points. I believe I only had two  
11 to three trigger points with Dr. Apple.

12 A Yes.

13 Q Was that in 2019?

14 A Yes.

15 Q In this accident, this second collision that happened  
16 in March of 2023, have you been doing injections for the past  
17 three years?

18 A Yes.

19 Q Now, counsel also asked you about seeing different  
20 doctors in the first accident versus the doctors that you have  
21 seen in the 2023 collision; do you remember those questions?

22 A Yes.

23 Q And he asked whether you were trying to keep them  
24 separate. Dr. Lattuga, your surgeon, will be testifying in a  
25 few moments. Did you tell Dr. Lattuga on the first visit that

1 you had been hurt in 2019 and you injured your neck previously?

2 A Yes.

3 Q He also, counsel did ask you about your work, both  
4 before 2023 and after. With respect to the job you had in  
5 maintenance, cleaning the operating rooms, was that your job in  
6 2019 and 2020?

7 A The maintenance job, yes.

8 Q Was it also your job in 2021 until the end of the year?

9 A Yes.

10 Q But by 2023, March when this collision happened, were  
11 you already in the new job as a unit assistant, out of  
12 maintenance, and in inpatient care?

13 A Yes.

14 Q Counsel also asked you about working with intense pain  
15 back in 2019 when you were recovering from the first accident  
16 but still working; do you remember that question?

17 A Yes.

18 Q In 2019 when you had days of intense pain from first  
19 accident, did you still drive to Manhattan at night and go to  
20 work?

21 MR. SPEVACK: Lead, Your Honor. Objection.

22 THE COURT: Sustained.

23 Q During the periods in 2019 when you were having intense  
24 pain as reflected in the records, did you continue to work?

25 A Yes.

1 MR. WILLIAMSON: Nothing further, Your Honor.

2 THE COURT: Recross.

3 MR. SPEVACK: No, Your Honor, thank you.

4 THE COURT: Thank you, Ms. Mero.

5 THE WITNESS: Thank you.

6 MR. WILLIAMSON: Your Honor, may we have a moment.

7 A brief, brief recess to set up for the doctor. He is  
8 here. Just a couple of minutes.

9 THE COURT: Yes.

10 We'll take a short break and we'll get you back  
11 here as soon as we can. Please do not speak with anyone  
12 about the case even if you have questions regarding  
13 testimony. Thank you, very much. See you soon.

14 THE COURT OFFICER: All rise. Jury exiting.

15 (Whereupon, a brief recess was taken.)

16 \* \* \* \* \*

17 THE CLERK: Part 36 now in session. Honorable  
18 Robert I. Caloras presiding.

19 MR. SPEVACK: Your Honor, there is a motion in  
20 limine to preclude some of the proposed testimony of Dr.  
21 Lattuga. I recently read all his reports. Dr. Lattuga,  
22 the treating physician as the treating physician, he  
23 doesn't have to give a 3101D exchange. Apparently, he  
24 has, so he uses suspenders and a belt. Be that as it may,  
25 Dr. Lattuga is going to talk about the 2019 MRI. I don't

1 see it mentioned in in his reports. To the extent he  
2 mentions it in his report and records he can say whatever  
3 he said. If he is going to be called an expert to opine  
4 about what it shows, how severe it was, what the causation  
5 was; he is not allowed to do that. He's limited to the  
6 four corners of his medical records. I didn't see  
7 anything in his medical records where he gave an opinion  
8 evidence about what the significance of that is. If he  
9 looked at it and saw it, then he can say he looked at it  
10 and saw it.

11 THE COURT: If it's not in the report, but he  
12 remembers looking at it and using it, he is allowed to say  
13 that too. He just didn't put in the report; as long as he  
14 doesn't start giving opinion.

15 MR. SPEVACK: It's not in his records, not in the  
16 report.

17 THE COURT: I understand. I will just finish my  
18 thoughts. I didn't let you -- I have a witness can say,  
19 it's not in the report, but I remember looking at it and  
20 utilizing it in my diagnosis or treatment, correct?

21 MR. SPEVACK: I would not have objection with  
22 that.

23 THE COURT: Is that a no?

24 MR. SPEVACK: I agree with you.

25 THE COURT: Okay. I'm just building a foundation.

1                   MR. SPEVACK: He is going to now say and now I  
2 look at it, and I see it was not so serious and I see that  
3 the accident here is unrelated to that. All these things  
4 that he just treated him. If he wants to say, I looked it  
5 and I considered it, anything that's in the records.

6                   THE COURT: Yes, he is a treating physician.

7                   MR. WILLIAMSON: I think counsel is mistaken on  
8 two levels. One, Dr. Lattuga did a narrative report in  
9 this case which was exchanged. In that narrative report  
10 he said he reviewed the 2019 cervical MRI. It says it  
11 right here, we serve upon you on December 10, 2025. I  
12 reviewed the records from the 2019 accident, including City  
13 Med MRI of the cervical spine, 6-24-19. Then he goes on to  
14 say that based on review the 2019 records, she sustained,  
15 in part, an aggravation and exacerbation of a pre-existing  
16 condition. He goes on to say that she had increased  
17 susceptibility to injury as a result of the prior accident.  
18 Counsel is mistaken that he didn't look at the film, and it  
19 was in a report and we didn't disclose. It was, it is and  
20 it's here, and we disclosed it.

21                   MR. SPEVACK: What is the date of report?

22                   MR. WILLIAMSON: December 10, 2025. It was  
23 e-filed.

24                   In addition, Your Honor, the very first time Ms.  
25 Mero went to Dr. Lattuga she told him she was in the 2019

1 accident when she injured her neck. He is the treating  
2 physician. He is not bound by Article 31. Even if this  
3 report didn't exist, even if he had not commented, under  
4 the rules, he can testify about items in evidence. He is  
5 not limited to -- What counsel said is incorrect. He said  
6 Dr. Lattuga is limited to the four corners of his report.  
7 That is i not true. Every other physician coming in who's  
8 not a treat physician, who's an expert, including my  
9 experts, is limited to their reports. Dr. Lattuga is not  
10 governed by Article 31. I don't think we even get there.  
11 There is a report where he says he looked at the film and  
12 based on that he sees an aggravation.

13 MR. SPEVACK: I didn't see the last-minute report,  
14 but if that is the case, I move to preclude testimony Dr.  
15 Payne (name phonetic). He is going to say the same thing.  
16 We don't need two doctors saying the same thing.

17 THE COURT: Regarding the prior.

18 MR. SPEVACK: Yeah, he's going to say it's an  
19 aggravation of the pre-existing injury. He looked at the  
20 MRI and sees what it was before. He sees what it was or  
21 he sees what it is now. I thought they were relaying on  
22 Dr. Payne. They can't rely two people to say the same  
23 thing.

24 MR. WILLIAMSON: Your Honor, I can rely on two  
25 different physicians from two different specialties. It's

1           like me saying he has two doctors, but they can't both come  
2           in because they both say Ms. Mero wasn't injured.    They  
3           have two different specialties.

4                     Can we hold that, at least, until next week given  
5           Dr. Lattuga is in the hallway and counsel waited until the  
6           last second to bring this up?  We have a circumstance, he  
7           wanted to stop early.  I respect that.  We finished the  
8           plaintiff.  The doctor is in the hallway.

9                     THE COURT:  Anything further since the doctor  
10          indicated he looked at it, and any other issues, I believe,  
11          are those that would be addressed in any cross examination  
12          that you wish to pursue regarding the issue?  Overruled.

13                    MR. WILLIAMSON:  Your Honor, I have some films to  
14          admit which I have shown to counsel, which I believe there  
15          is no objection.

16                    MR. SPEVACK:  No.

17                    MR. WILLIAMSON:  These are the MRI films on a  
18          flash drive.

19                    This is Mr. Mohan.  He works for me.  He is not  
20          an attorney.

21                    THE COURT:  I hold him in a higher esteem.

22                    MR. WILLIAMSON:  He's also the only guy who knows  
23          how to show the films on the screen.

24                    THE COURT:  Maybe between two, three, four of you  
25          he's the only person.  I don't think he's specialized with

1 all due respect to your profession, sir.

2 MR. WILLIAMSON: For that purpose and that purpose  
3 only. May he sit here?

4 THE COURT: No problem.

5 MR. WILLIAMSON: Thank you.

6 THE COURT: Bear in mind the reporter needs to see  
7 you. Other reporters need to see your face while you are  
8 talking.

9 MR. WILLIAMSON: Yes.

10 THE COURT: Jurors need to see your screen. That  
11 is why we have that amazing pointer.

12 MR. WILLIAMSON: We can get started?

13 THE COURT: You are ready? Are you sure?

14 THE COURT OFFICER: All rise. Jury entering.

15 (Whereupon, the jury entered the courtroom.)

16 THE CLERK: All counsel stipulate to the presence  
17 and proper seating of the jury?

18 MR. WILLIAMSON: Yes, Your Honor.

19 MR. SPEVACK: Yes.

20 THE COURT: Please be seated. Welcome back.

21 We'll continue.

22 MR. WILLIAMSON: Your Honor.

23 THE COURT: You may call your next witness.

24 MR. WILLIAMSON: At this time the plaintiff calls  
25 Dr. Sebastian Lattuga to the stand.

1 THE WITNESS: Morning, Your Honor.

2 THE COURT: Morning.

3 THE CLERK: Remain standing. Do you swear or  
4 affirm that the testimony you are about to give is the  
5 whole truth?

6 THE WITNESS: I do.

7 THE CLERK: Thank you. You may be seated. Please  
8 speak in the microphone. State and spell your full name.

9 THE WITNESS: Sebastian Lattuga, M.D. 2001 Marcus  
10 Avenue, Lake Success New York 11042.

11 THE CLERK: Thank you.

12 DR. S-E-B-A-S-T-I-A-N L-A-T-T-U-G-A, called as a witness by  
13 and on behalf of the Plaintiff, after having been first duly  
14 sworn, was examined and testified as follows:

15 MR. WILLIAMSON: May I inquire?

16 THE COURT: Yes, please.

17 DIRECT EXAMINATION

18 BY MR. WILLIAMSON:

19 Q Morning, Dr. Lattuga.

20 A Morning.

21 Q Are you duly licensed to practice medicine in New York  
22 State?

23 A Yes.

24 Q Sir, how long have you been so licensed?

25 A Since 1991.

1 Q Do you have a specific specialty?

2 A Yes, I am Board certified orthopedic spinal surgeon.

3 Q How long have you been practicing medicine in that  
4 area?

5 A Since 1996.

6 Q Sir, can you tell us about your education and training  
7 starting with college and going through medical school and  
8 anything in terms of training you did thereafter?

9 A Sure. I went to St. John's University here in Long  
10 Island and in Queens, and went down to do my training in  
11 medicine in Stony Brook Medical School here on Long Island as  
12 well. Graduated medical school 1989, and went on to do my  
13 orthopedic residency at Stony Brook as well. Graduated 1995,  
14 and then I went, I was accepted in to a spine fellowship, which  
15 is an additional training for surgeons at the University of  
16 Miami, Jackson Memorial Center. I received my first Board  
17 certification in 1998, and subsequently been recertified and I  
18 am currently certified. So, I maintained my certification. I  
19 came back to Long Island to practice. I originally practiced  
20 in Long Island. Moved to New York City. Been practicing in  
21 New York metropolitan area since 1997 or so.

22 Q You mentioned Board certification. Can you tell us  
23 what that means and how one gets it and maintains it?

24 A Sure. There is a governing body that oversees the  
25 training and education of doctors. In my particular case it is

1 orthopedic surgery. The American Board of Orthopedic surgery.  
2 They make all the rules of what you have to study and they make  
3 the tests, all the regulations for you, so that you are  
4 considered to be properly trained. Once you go through that  
5 process, you take the exams. There is also a written and oral  
6 part of the exam. You're asked to present your work after a  
7 year or so, practiced. They review your work. They review your  
8 test grades. If it's acceptable they award with you Board  
9 certification.

10 (Whereupon, the following testimony was recorded  
11 and transcribed by senior court reporter, Jacklyn Lisi.)

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1 MR. WILLIAMSON: Sir, this is Plaintiff's  
2 Exhibit 12 in evidence. I'm going to fold it over so we  
3 don't waste time.

4 THE COURT OFFICER: Handing the witness  
5 Plaintiff's Exhibit 12 for evidence.

6 Q Do you see the report there, sir?

7 A Yes.

8 Q Is that the report of Dr. Apple's surgery on, I  
9 believe, it's September 20th of 2020?

10 A Yes.

11 MR. SPEVACK: Objection.

12 MR. WILLIAMSON: This is my last line of  
13 questioning, Your Honor.

14 MR. SPEVACK: This is not even in the report. He  
15 never even mentions it.

16 MR. WILLIAMSON: Yes, it is.

17 (Brief pause.)

18 MR. SPEVACK: Yes, okay.

19 No objection so far.

20 BY MR. WILLIAMSON:

21 Q Sir, is that the surgical report of Dr. Apple from  
22 September 2020?

23 A Yes.

24 Q Okay.

25 What did Dr. Apple do for Ms. Mero on that day?

1 MR. SPEVACK: Objection.

2 He just said that he didn't have the report. He  
3 said he just looked at the report.

4 MR. WILLIAMSON: Judge, it's in evidence and he  
5 said he reviewed it.

6 THE COURT: If you recall.

7 Q Doctor, the record is in evidence.

8 What did Dr. Apple do for Ms. Mero on that day?

9 A He did a percutaneous discectomy.

10 Q The record is in evidence and the report is on the  
11 screen.

12 A percutaneous discectomy is a minimally invasive  
13 surgery for the neck?

14 A Yes.

15 Q And does it indicate on this report what level Dr.  
16 Apple operated on when he did this procedure on Ms. Mero's neck  
17 in September of 2020?

18 A Yes, C4-5.

19 Q Okay.

20 Now, if you scroll down, sir, there is this first page  
21 and then there is a whole other page. Keep going. Keep going.

22 At any point -- you've got the record there, sir. At  
23 any point in his entire procedure note, does Dr. Apple say  
24 anything about the level C5-6?

25 A He does not.

1 Q Everything here is focused on C4-5?

2 A Correct.

3 Q And are those two levels right next to each other?

4 A Yes.

5 Q So if Dr. Apple was focused on C4-5 and working on C4-5  
6 that day, he would be right next to C5-6?

7 A Yes.

8 Q And there is no mention of C5-6 here?

9 A No mention of C5-6.

10 THE COURT: Counsel, we have to stop.

11 MR. WILLIAMSON: We have to stop here?

12 THE COURT: Yes. The jurors will break for lunch  
13 now.

14 Remember, the case isn't yours. Please do not  
15 discuss the case with anyone. And if you take a walk,  
16 hopefully, it stopped raining.

17 See you after lunch. Have a good lunch and I'll  
18 get full reports when you get back here today.

19 THE COURT OFFICER: All rise, jury exiting.

20 (Whereupon, at this time, the jury exited the  
21 courtroom.)

22 THE COURT: Doctor, you are still under oath.  
23 Please do not speak to anyone about the case. You are  
24 still testifying.

25 (Whereupon, at this time, a luncheon recess was

1 taken.)

2 \* \* \* \* \*

3 A F T E R N O O N S E S S I O N

4 \* \* \* \* \*

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6 THE CLERK: Come to order.

7 THE COURT: Any objection to the doctor taking the  
8 stand, Mr. Spevack?

9 MR. SPEVACK: No.

10 THE COURT OFFICER: All rise. Jury entering.

11 (Whereupon, at this time, the jury entered the  
12 courtroom.)

13 THE CLERK: Do the parties stipulate to the  
14 presence and the proper seating of the jury?

15 MR. WILLIAMSON: Yes.

16 MR. SPEVACK: Yes.

17 THE COURT: Welcome back, jurors. Please be  
18 seated.

19 Where did you go for lunch? Did you go out?

20 JUROR #7: No, I brought lunch.

21 THE COURT: All right. We are short on time, we  
22 can't fool around too much.

23 Mr. Williamson, please continue.

24 MR. WILLIAMSON: Thank you, Your Honor.

25 DIRECT EXAMINATION BY (Continued)

1 MR. WILLIAMSON:

2 Q Good afternoon, Dr. Lattuga.

3 A Good afternoon.

4 Q Before we broke for the lunch recess, we were  
5 discussing some of the medical treatment and testing that Ms.  
6 Mero had in 2019. Do you recall that?

7 A Yes, sir.

8 MR. WILLIAMSON: I'm going to show you Plaintiff's  
9 Exhibit 11 in evidence, which is AFC Rockaway from 2019.  
10 I'll hand it up. And like I did before, I'm going to open  
11 it up to the page that I want to ask you about.

12 MR. SPEVACK: Your Honor, just note my objection  
13 to the line of questioning, all this line of questioning.

14 THE COURT: Duly noted.

15 THE COURT OFFICER: Handing the witness  
16 Plaintiff's Exhibit 11 marked for evidence.

17 THE WITNESS: Thank you.

18 Q Sir, what is this report?

19 A An MRI, sir. MRI of the cervical spine for the  
20 patient, Adriana Mero.

21 Q Is this Ms. Mero's neck MRI that we looked at on the  
22 screen just before lunch?

23 A Yes.

24 Q And this is the report of the original reading  
25 radiologist?

1 A Yes.

2 Q Just scroll down.

3 Now, in the impression section, does the radiologist  
4 mention the C4-5 disc that Dr. Apple operated on?

5 A Yes.

6 Q In the impression section, does the radiologist who  
7 interpreted this report make reference to the C4-5 disc level  
8 that Dr. Apple operated on in 2020?

9 A Yes.

10 Q Is there any reference here to the C5-6 level?

11 A There is no reference to the C5-6 level.

12 Q Okay.

13 Now, I'm going to turn this off. Let me move forward  
14 back to 2023.

15 I believe when you were testifying at the beginning, I  
16 believe this was about Ms. Mero's first visit to you --

17 A Yes.

18 Q -- when she gave you her history and the treatment she  
19 had before coming to see you?

20 A Yes.

21 Q Did you mention a Dr. McGee?

22 A Yes.

23 Q Do you know who he is?

24 A He's a physiatrist.

25 Q Did she tell you she had seen him after the accident,

1 before she came to see you?

2 A I don't have an independent recollection. When I  
3 reviewed the records, I just saw that he had seen the patient  
4 and then it reminded me, but independently I don't have a  
5 recollection.

6 Q But at the time when she made you aware of her prior  
7 treatment, you were aware of Dr. McGee?

8 A Dr. McGee and his treatment, yes.

9 MR. WILLIAMSON: Okay.

10 We are going to put up the record of Dr. McGee,  
11 which is in evidence as Plaintiff's Exhibit 13, this  
12 integrated, and I'm going to hand this up to you. This is  
13 13 in evidence.

14 THE COURT OFFICER: Handing the witness  
15 Plaintiff's Exhibit 13 marked for evidence.

16 Q Is what you have in your hand, sir, the same as what's  
17 on the screen?

18 A Yes.

19 Q Is this what Ms. Mero mentioned to you about going to  
20 see Dr. McGee after the accident?

21 A Yes.

22 Q Do you see the date up here of the exam?

23 A 3/24/23.

24 Q 3 what?

25 A 24, 2023.

1 Q That would be two days after the collision with the  
2 truck?

3 A Yes.

4 Q And did she tell you that Dr. McGee's facility was the  
5 first place she went?

6 A Yes.

7 Q And with respect to her chief complaints, which is at  
8 the bottom of the screen here, what did she tell Dr. McGee two  
9 days after the truck collision about how she was feeling?

10 MR. SPEVACK: I'll object, Your Honor.

11 What does this have to do with his treatment?

12 THE COURT: Overruled.

13 A Neck pain radiating into the arms. Lower back pain  
14 radiating into the legs. Left shoulder pain.

15 Q And just to be clear, when you began treating her in  
16 June and she told you that she had conservative care before  
17 coming to you, was that part of the factors you considered in  
18 doing your evaluation?

19 A Yes.

20 Q Okay. I'll turn this off.

21 Okay. Now, sir, based on everything that we have  
22 covered so far, your treatment and surgery of Ms. Mero, your  
23 review of the radiology in this case, your review of the prior  
24 records and some of the other treatment records in 2023 and  
25 beyond, including Dr. McGee that we just looked at, have you

1 reached a diagnosis to a reasonable degree of medical certainty  
2 for her neck?

3 A Yes.

4 Q What is your diagnosis?

5 A Cervical herniated disc at C5-6 with radiculopathy.

6 Q Same question for the low back.

7 Based on everything that we have looked at so far,  
8 everything I've just mentioned, have you reached a diagnosis to  
9 a reasonable degree of medical certainty as to a diagnosis for  
10 her low back?

11 A Yes.

12 Q What is that, sir?

13 A Lumbar herniated disc with radiculopathy at L4-5.

14 Q Now, sir, again, based on everything that we have  
15 covered so far today, do you have an opinion to a reasonable  
16 degree of medical certainty as to the cause of the neck injuries  
17 you diagnosed?

18 A Yes.

19 Q What is your opinion?

20 A It's the consequence of the motor vehicle accident,  
21 obviously the second one, I don't remember the date, 3 --

22 Q Was it March 22nd --

23 A March 22nd.

24 Q 2013?

25 A 2023.

1 Q I keep saying 2013. I don't know why I do that.

2 A I thought you were trying to trip me up there.

3 Q Let me ask the question again.

4 Based on everything that you've reviewed so far that I  
5 just mentioned, have you reached an opinion to a reasonable  
6 degree of medical certainty as to the cause of the neck injuries  
7 you diagnosed?

8 A Yes, it's causally related to the motor vehicle  
9 accident of March of 23rd.

10 Q Okay.

11 Same question with respect to the low back. Based on  
12 everything that we have reviewed so far, do you have an opinion  
13 to a reasonable degree of medical certainty as to the cause of  
14 the lumbar spine, the low back injuries you've diagnosed?

15 A Yes. It was causally related to the motor vehicle  
16 accident in March of '23.

17 Q And what is the basis for your conclusion with respect  
18 to the neck and the back here?

19 A Well, the basis of that conclusion really is that even  
20 though she had a prior accident, she went back to work, she  
21 wasn't being treated, we sustained the history of the accident,  
22 she made the complaints to Dr. McGee, she had significant  
23 treatment, she had objective evidence of a herniated disc on an  
24 MRI at C5-6, which was not present on the prior -- she had one  
25 before. She didn't respond to therapy, medicine or injection.

1 And same applies for her lumbar spine. And so the need for  
2 surgery was causally related to the accident as well.

3 Q Do you have an opinion to a reasonable degree of  
4 medical certainty about the cause of the onset of her neck and  
5 back symptoms in March of 2023?

6 A It was from the motor vehicle accident in March of  
7 2023.

8 Q And you kind of just said this, but I want to ask for  
9 the record, do you have an opinion to a reasonable degree of  
10 medical certainty about what caused the need for the neck  
11 surgery and the low back surgery, along with all of the other  
12 care that your office has rendered to her? Do you have an  
13 opinion as to the cause for the need for those surgeries and  
14 treatment?

15 A It was causally related to the motor vehicle accident  
16 in March of 2023.

17 Q Now, sir, with respect to her prior neck injury from  
18 2019 to 2020, along with everything that we have talked about in  
19 2023 and thereafter, do you have an opinion to a reasonable  
20 degree of medical certainty about whether the collision on  
21 March 22, 2023 aggravated or exacerbated her preexisting neck  
22 condition?

23 A I mean, I believe it caused a new herniation in C5-6.  
24 And certainly it, to the extent that she had increased neck  
25 pain, aggravated the prior as well.

1 Q So are you saying two things occurred? There was a new  
2 injury to the neck?

3 MR. SPEVACK: Objection.

4 Leading, Your Honor.

5 MR. WILLIAMSON: Withdrawn.

6 Q What do you mean by that answer, sir?

7 A She sustained a new herniation, as proven by the fact  
8 that we had her MRI prior to her motor vehicle accident a few  
9 years before. The new MRI showed that she had a herniated disc  
10 at C5-6. I believe that to be causally related to the motor  
11 vehicle accident.

12 To the extent that she had a prior neck problem at  
13 C4-5, you know, that type of accident, these conditions can  
14 exacerbate that condition as well.

15 Q And is it your opinion that in addition to the new  
16 injury that was caused by the March 22, 2023 accident, the old  
17 condition was aggravated by this accident?

18 A Yes. I believe so, yes.

19 Q Do you have an opinion, sir, to a reasonable degree of  
20 medical certainty about whether her prior neck condition made  
21 her more susceptible to sustaining neck injury in a later  
22 trauma, such as occurred here in March 22, 2023 in the collision  
23 with the truck?

24 MR. SPEVACK: Objection, Your Honor.

25 Leading.

1 THE COURT: Rephrase the question.

2 Q Do you have an opinion to a reasonable degree of  
3 medical certainty about whether or not her prior neck condition  
4 made her more susceptible to sustaining neck injury in a later  
5 trauma, such as the collision with the truck?

6 A I do believe that that injury, having a prior  
7 herniation and treatment and surgery, makes you more susceptible  
8 to a subsequent injury.

9 Q Now, sir, again, based on everything you reviewed so  
10 far, do you have an opinion to a reasonable degree of medical  
11 certainty about whether the neck and back injuries that you've  
12 diagnosed are permanent?

13 A I believe they are permanent.

14 Q And what is the basis for that opinion? How can you  
15 say that?

16 A Well, the herniation that she sustained in her neck and  
17 back wasn't there prior. It was subsequent to the accident, as  
18 a consequence of the accident. That's a structural deformity of  
19 the spine, which on top of that, she had surgery. So, she has a  
20 plate and implants in her neck. That's different than it was  
21 before. That's permanent.

22 And, similarly, for the low back, she had the surgery,  
23 the discectomy; the disc was removed. That's not a normal disc.  
24 And so that disc is -- has forever been changed. And so that's  
25 why it's permanent.

1           Q     The fact that Ms. Mero remains symptomatic today  
2 several years after the incident and remains under treatment, is  
3 that a relevant factor in reaching your conclusion about  
4 permanency?

5           A     Yes.

6           Q     Why?

7           A     Well, I mean it's clear that even though she had some  
8 improvement with surgery, she is not the way she was before the  
9 accident.

10          Q     Sir, what does it mean when an injury is progressive?

11          A     Progressive means that you have an injury that you are  
12 treated for and then even with treatment, over time it might get  
13 worse. Even if you are doing treatment, sometimes things might  
14 get worse. That's progressive.

15          Q     And we've been talking a lot about diagnosis. What  
16 does the term prognosis mean?

17          A     Prognosis is the doctor word for guess. You know, an  
18 educated guess about what's going to happen in the future. When  
19 the doctor makes a prognosis, he doesn't have a crystal ball,  
20 but he can give you an idea of what he thinks is probably going  
21 to happen.

22          Q     I don't want you to guess. I only want you to give an  
23 opinion that you can give to a reasonable degree of medical  
24 certainty.

25                    So let me ask it that way. Have you reached a

1 prognosis for the future with respect to Ms. Mero's neck and  
2 back to a reasonable degree of medical certainty?

3 A Yes. To a reasonable degree of medical certainty, the  
4 prognosis is poor. She is not going to all of a sudden start to  
5 feel completely better. It's already -- time has elapsed from  
6 her surgeries. She's been treated and basically this is as good  
7 as she is going to get. And she could get worse over time.

8 Q Now, doctor, I'm going to wrap up, I just have a few  
9 questions more on a different topic.

10 You have your own private practice?

11 A Yes.

12 Q And are you the owner of that practice?

13 A Yes.

14 Q Do you have one office or multiple offices?

15 A Multiple offices.

16 Q How many offices do you have?

17 A Approximately 20 offices.

18 Q And do you have physicians who work with you and work  
19 for you in your practice?

20 A Yes. Yes.

21 Q Approximately, how many physicians do you have working  
22 with you?

23 A 12.

24 Q And is it your role in the practice to see patients and  
25 operate?

1 A Correct. I still see patients and operate, yes.

2 Q Do you operate on a weekly basis?

3 A Yes.

4 Q Now, today, if you were not here with us in court all  
5 day, and it seems like you are here with us all day, would you  
6 be at your practice either seeing patients or in the operating  
7 room operating?

8 A Yes.

9 Q Does today's day, being away from your practice and  
10 with us, represent a loss of revenue to your practice?

11 A Yes.

12 Q Are you being paid for your time here with us today  
13 away from your practice to deal with that loss of revenue?

14 A Yes, \$1,000 an hour.

15 Q \$1,000 an hour?

16 A Yes.

17 Q And is that your customary rate you charge when you are  
18 asked to come to court?

19 A Yes.

20 Q Now, in your practice, sir, what percentage of the  
21 patients that you see for spinal issues and spinal injuries are  
22 coming to see you after an accident or a trauma like a car  
23 collision or a work accident or otherwise?

24 A I don't keep precise statistics, but I would say it was  
25 about 80 percent.

1 Q About 80 percent.

2 And of that 80 percent of your patients who are coming  
3 to see you after some kind of accident or trauma with their  
4 spine, do a certain amount of that 80 percent have legal cases  
5 where they are suing for injuries like Ms. Mero's here?

6 A Yes.

7 Q With those patients, if you were asked to come to court  
8 to testify about your treatment and surgery, do you do so?

9 A Yes. I'll testify on patients if I treated them, yes.

10 Q And over the years, have you testified many times in  
11 injury cases like this on behalf of patients like Ms. Mero?

12 A Yes.

13 Q Have you testified numerous times here in Queens and  
14 numerous times in the other counties of New York and the  
15 surrounding areas?

16 A Yes.

17 Q As I think we covered at the beginning?

18 A Yes.

19 Q And when you've testified in cases like this, is it  
20 always on behalf of your patients like the situation we have  
21 here with Ms. Mero?

22 A Yes.

23 Q And over the years, have there been prior cases where  
24 you've come to court to testify about treatment you've rendered  
25 to a patient and I was the attorney who was representing the

1 plaintiff, your patient, and the case went to trial like this?

2 A Yes.

3 Q Approximately, how many times; if you know?

4 A Five.

5 Q And that's over a period of years?

6 A 20 years.

7 Q How many years?

8 A 20.

9 Q Okay.

10 And have there been, over the years or decades, other  
11 cases where you've treated a patient who had some kind of legal  
12 claim where she or he was represented by the attorney of record  
13 for Ms. Mero?

14 A You mean that didn't go to trial, but was represented  
15 by the attorney of record?

16 Q Correct. Well, I'm of counsel, trial counsel, and I  
17 just want to be thorough here. Have there been other cases  
18 where you treated a patient, performed surgery, and that person  
19 had a legal claim and they were either represented by me or the  
20 other attorneys who represent Ms. Mero?

21 A Yes.

22 Q Whether the case has gone to trial or it hasn't?

23 A Correct.

24 MR. WILLIAMSON: Your Honor, I don't have anything  
25 further.

1 THE COURT: Mr. Spevack?

2 MR. SPEVACK: Thank you.

3 CROSS-EXAMINATION BY

4 MR. SPEVACK:

5 Q Hi, doctor.

6 A Hello.

7 Q I think you have less hair than last time I saw you.

8 A I appreciate the compliment. I think it applies to you  
9 as well.

10 Q So you've had at least five cases with Mr. Williamson  
11 before; right?

12 A Yes.

13 Q And these cases have to do with fusion?

14 A I mean, I don't recall, but that's what I do. I  
15 basically do only a handful of operations; discectomies,  
16 fusions, et cetera, yes.

17 Q And when you do fusions, do you use the same diagrams  
18 that you used in this case?

19 A I mean, I didn't provide those diagrams, but every  
20 surgery pretty much looks the same. So, they are  
21 interchangeable.

22 Q Let me ask you this. After five cases, are you  
23 familiar with the questions and answers that are going to be  
24 given?

25 A I mean -- yes, to a certain extent. Obviously, I'm

1 being asked about my care and treatment of the patient which is  
2 pretty much standardized; yes.

3 Q Okay.

4 Doctor, sometimes they will ask you if you remember  
5 testifying some time in the past and it's been a long time, so  
6 you might not remember.

7 You testified last Monday; right? In Moldavan in  
8 Federal court?

9 A No, that case was settled.

10 Q I said you testified?

11 A There was no trial.

12 Q You gave deposition testimony?

13 A Perhaps, there was a deposition; yes.

14 Q I have a copy of that, so if you'd like to look at it,  
15 that's fine, I'll give it to you. But I'm just going to ask you  
16 some questions. They are basically the same questions, some of  
17 them, that you were asked there.

18 A Okay.

19 Q Is it your usual -- as you said -- your usual and  
20 customary for you to charge \$100,000 fee for a fusion?

21 A My billing practices are standard within the industry.

22 Q So you don't always get 100,000, but you testified that  
23 your usual and customary practice is 100,000; correct?

24 A Correct.

25 Q And you do surgeries three days a week?

1 A Yes.

2 Q And you can do up to four a day; right?

3 A Yes.

4 Q So that's \$1.2 million?

5 A Yes. I mean, we don't always get that much money, but  
6 that would be my usual customary, based on the fair health  
7 standards.

8 Q Sometimes if your patients don't have money, you will  
9 finance your fee; right?

10 A That's not correct. I'm not involved in any form of  
11 financing.

12 Q You'll do something on what they call a lien; right?

13 A Correct, a lien.

14 Q So, in other words, the patient will come to you and  
15 you will take some money up front, but the balance of the money  
16 will come from the proceeds of the lawsuit; right?

17 MR. WILLIAMSON: Objection.

18 THE COURT: Overruled.

19 A I mean, it really depends on the circumstances. It's  
20 really a self-pay. So, if the patient has no coverage then we  
21 -- you know, the hospital requires payment. If there is no  
22 coverage then, you know, it's incumbent, unfortunately, on the  
23 patient to come up with the money.

24 Q So, in some circumstances, not all, but in some  
25 circumstances, you can wind up, as a case resolves, that you get

1 more money than the patient gets? That can happen; right?

2 A I think that's false. I don't always know what the  
3 settlements are, obviously. Most of the time, I don't know what  
4 the settlements are.

5 My billing fees and lien fees are consistent with the  
6 environment that I practice in.

7 Q And is that environment doctors who operate almost  
8 exclusively for accident lawyers?

9 A No. I mean, the fees are -- the commercial fees, which  
10 are with patients that don't -- aren't involved in motor vehicle  
11 accidents -- are usual customary fees.

12 Q You charge interest to your patients; right? Seven  
13 percent?

14 A I don't charge interest on my patients, but interest is  
15 awarded to us when we litigate against insurance companies.

16 Q Did you testify that you charge seven percent interest  
17 on your liens?

18 A No. That was -- she had asked me -- someone had asked  
19 me how much interest -- I don't recall what the statutory rate  
20 is. I gave the best answer I can. But when we -- oftentimes,  
21 insurance companies won't pay the doctors' bills, so we have to  
22 sue them to get the money. And they make us wait to get paid,  
23 years. So once we go through that process, the courts award us  
24 interest for having waited all these years.

25 So when they asked me that question, do you charge

1 interest. I said yes, because in that circumstance interest is  
2 awarded to us.

3 Q So in the cases that you take on a lien, where you get  
4 the money from the proceeds of the lawsuit, you don't charge  
5 interest?

6 A We don't charge interest.

7 Q You have five main offices; right?

8 A Yes.

9 Q And you said you have up to 10 satellite offices?

10 A More than that. We have over 20 offices; yes.

11 Q You employ 10 doctors -- as of last week it was 10  
12 doctors; right?

13 A Somewhere between 10 and 12.

14 Q Okay.

15 Some of them are pain management doctors?

16 A Yes.

17 Q So they can come to your offices -- and, by the way,  
18 you are the sole owner of the company which provides these  
19 services; right?

20 A Yes.

21 Q So people who are suing in accident cases can come to  
22 you to get both pain management and surgery; right?

23 A Not to me, but we provide those services for patients.

24 Oftentimes, as you see in this case, patients are  
25 treated nonoperatively. And one of the remedies is like

1 interventional injections, pain management. So we do employ our  
2 own pain management doctors so the patients have an opportunity  
3 to get treated that way.

4 Q Is it wrong to call your practice a one-stop shopping  
5 for people who are suing in court for injuries?

6 MR. WILLIAMSON: Objection.

7 THE COURT: Please rephrase the question.

8 MR. SPEVACK: Withdrawn.

9 Q Doctor, I'm going to ask you this one question and I'm  
10 just going to accept a yes or no. If you want to give a more  
11 fulsome answer, please feel free to do so. I'm not going to ask  
12 you any question beyond this; okay.

13 Do you ever perform unnecessary surgeries at the behest  
14 of personal injury lawyers who refer their client to you?

15 MR. WILLIAMSON: Objection.

16 THE COURT: Overruled.

17 A No. No.

18 Q All right. Let's look at the case in question; okay?

19 The last half hour or so dealt with documents that you  
20 had just received I think in December regarding this case. That  
21 is, her prior treatment; right?

22 A Yes.

23 Q And they were sent by the lawyer to you; right?

24 A Correct.

25 Q When was the last time you had a case with Mr.

1 Wolfstein?

2 A Six, eight months, maybe, a year. I mean, I don't  
3 recall.

4 Q Was that case tried here?

5 A I don't recall.

6 The last time we worked -- you asked me the last time  
7 we were in court together. And I said perhaps six or  
8 eight months, but I don't have a specific recollection.

9 Q So the documents that he sent you in December, you know  
10 that that was in preparation for the trial; right?

11 A Yes.

12 Q And since it's actually -- you said -- you testified --  
13 over 80 percent of your cases are personal injury accident  
14 cases; right?

15 A About 80 percent.

16 Q Could it be 90?

17 A It's about 80 percent, sir. That's my response.

18 Q So is it fair to say that when you treat a patient and  
19 you are writing the chart, you are aware that there is a good  
20 possibility that what you are putting in this chart is going to  
21 go to court?

22 A I mean, it's certainly possible; yes.

23 Q I mean, if you are a surgeon who doesn't have your  
24 niche, not doing this particular kind of work, most surgeons  
25 don't expect if they are treating a patient that their record is

1 going to wind up a lawsuit; right? Is that fair to say?

2 A I take care of patients -- traumatically injured  
3 patients -- like people who get hurt on the job. I mean, for  
4 example, those patients don't go to court, but there is legal  
5 correspondence regarding their injuries. So -- and it's  
6 incumbent on me, as a doctor, I have to take an accurate history  
7 when someone comes. They are either coming to me to get treated  
8 because they got hurt on the job or they slipped and fall and I  
9 have to write that down. So that's -- my role -- my role in  
10 this is to do that.

11 Q My only point was in your particular niche, what you  
12 decided to do, it's a high possibility that what you write is  
13 going to be seen by lawyers and is going to be an exhibit in  
14 court some day; right?

15 A I mean, I wouldn't -- obviously, I guess my response  
16 was, as I gave you before, I'm involved in taking care of people  
17 that have been injured in traumatic injuries. And so I document  
18 everything appropriately. If that goes on to litigation or to  
19 relate to the patient's work status, those documents are used  
20 either to support the case or controvert the case or whatever it  
21 is.

22 Q The last batch of documents, they were sent to you  
23 specifically to support your testimony in court? I'm talking  
24 about, you got the reports from Dr. Wolfstein and Dr. Perry, I  
25 believe. Is it Dr. Perry?

1 MR. WILLIAMSON: You are talking about Dr. Perry  
2 and Wolfstein?

3 MR. SPEVACK: Dr. Perry and Wolfstein.

4 A In preparation for trial, I reviewed the records; yes.

5 Q I mean, that wasn't part of your treatment. You knew  
6 an attorney was giving it to you so you could give an opinion in  
7 court to these people; right?

8 A Yes, they were asking me my opinion on what happened.  
9 So I asked to see the other records before rendering my opinion.  
10 That's the sequence.

11 Q And when they gave you the records about the first --  
12 I'm going to call it the first accident and the second accident;  
13 okay?

14 A Me too.

15 Q So when they gave you the records for the first  
16 accident just recently, that wasn't for your treatment; right?  
17 That was for you to give an opinion about the exacerbation of  
18 what caused the injury; right? Is that a fair statement?

19 A I mean, they gave it to me because I wanted to know  
20 about the prior history.

21 Q You've been treating the patient for three years;  
22 right?

23 A But obviously I'm giving an opinion on causality;  
24 right? So, if I'm giving an opinion on causality, prior to  
25 doing that I want to see the records. I asked for the records

1 and they were given to me.

2 Q I understand.

3 So can we agree for the three years that you were  
4 treating the patient, you didn't ask to see the first accident  
5 records? You only asked to see it when you were about to come  
6 to court? Is that a fair statement?

7 A Correct.

8 Q You know what dailies are? Where you get the  
9 transcript of what went on in court the day before?

10 A There are transcripts that are --

11 Q Have you seen the transcript of what plaintiff said  
12 yesterday?

13 A No.

14 Q So you don't know what she said?

15 A No. I didn't review her transcript; no, sir.

16 Q Okay.

17 Can you pull up your report? The first one is fine --  
18 the first visit.

19 A Yes. Thank you.

20 THE COURT OFFICER: Handing the witness

21 Plaintiff's Exhibit 18 marked for evidence.

22 Q And the bottom of the last line where it says history  
23 of present illness, do you see that?

24 A Yes.

25 Q The last line it says patient complains of low back

1 pain and neck pain. And then can you read what it says there?

2 I'll do it. Maybe you can't find it.

3 With radiation into both right and left upper  
4 extremities; okay?

5 So that means, that's medical talk for right and left  
6 arm; right?

7 A Yes.

8 Q And then the next thing that you put down is that she  
9 has numbness; right? And tingling; right?

10 A Yes.

11 Q Now, numbness and tingling are words -- in the normal  
12 English lexicon, we all sort of know what numbness is.

13 When you say numbness, do you mean what an average  
14 person means? Like we can't feel things?

15 A The paint says that they feel numb, they don't feel  
16 things.

17 Q And tingling means what we usually mean? Like a  
18 tickle, but not a good-feel tickle?

19 A Right.

20 Q And also you say dysesthesia, that can mean like  
21 burning?

22 A Burning or altered sensation.

23 Q Doctor, there was a philosopher Wittgenstein who said  
24 that you can't have a toothache without knowing it.

25 What I think he meant was pain is something you

1 experience. If you are in pain, you know it. Is that a fair  
2 and obvious statement?

3 A I'm sorry, I didn't understand the question.

4 Q Well, we have the transcript, the jury can read it.

5 The plaintiff never used the word numbness. And the  
6 plaintiff never used the word tingling.

7 Now, if she was having numbness, she would know it;  
8 wouldn't she?

9 A I mean, the premise of your question I think is false;  
10 right. She told us she had numbness and tingling. That's what  
11 I documented in the note.

12 Q Do you know why she wouldn't mention that to the jury?

13 A I can't answer that question, sir.

14 Q All right.

15 So she testified under oath, and if what she said to  
16 the jury is true, then you might not have a basis for doing that  
17 surgery; right?

18 MR. WILLIAMSON: Objection.

19 THE COURT: Overruled.

20 A I can't answer that question yes or no, but, obviously,  
21 I believe the patient, after having read her MRIs, did a  
22 physical examination and had multiple encounters with her, that  
23 she was being truthful in what she said and I thought surgery  
24 would help her. That's my response.

25 Q Well, the jury can get the record, but if the patient

1 never mentioned anything about her right arm, that would be  
2 inconsistent with what you say where she has numbness, tingling  
3 and dysesthesia, a burning sensation in the right arm?

4 A I mean, I think you are misquoting the record, sir.  
5 It's in Dr. McGee's note that she has radiating symptoms. It's  
6 in my note. It must be written 20 different times in the record  
7 that she has those symptoms.

8 Again, I'm not trying to be argumentative, but I don't  
9 have any evidence that what you are saying is accurate, so I  
10 can't respond to you. I'm just saying you are wrong. In fact,  
11 she did have those symptoms.

12 Q In fact, you put that in every note every time she  
13 comes to see you; right?

14 A I put in the note, Dr. McGee put it in the note, Dr.  
15 Mikelis put it in the note, Dr. Cherkalin put it in the note and  
16 Vallarino put in the note. All different doctors on different  
17 days.

18 Q The L5-6, the herniation was on the left; right?

19 A You mean C5-6?

20 Q C5-6 was on the left; right?

21 A It was more unilateral, but it can cause bilateral  
22 symptoms.

23 Q Your note says that she has numbness and tingling down  
24 the right leg.

25 Do you know if the plaintiff ever said that when she

1 came to see you she had numbness and tingling down the right  
2 leg?

3 A That's what she told me, that's what she told Dr.  
4 McGee, that's what she told Dr. Vallarino, that's what she told  
5 Dr. Cherkalin.

6 Q Well, I'm only cross-examining you.

7 A That should be a sufficient response to you, sir.

8 Q All right.

9 And is it your testimony that you wouldn't write that  
10 down if that wasn't what she told you?

11 A Correct.

12 Q And is it your testimony that you wouldn't write that  
13 down just to have a predicate to do a spinal fusion?

14 MR. WILLIAMSON: Objection.

15 MR. SPEVACK: Withdrawn.

16 Q How many cases did you say you had with the law firm  
17 that counsel is trial counsel to?

18 A I don't have an independent recollection, sir.

19 Q Is it the one called Ifraimoff? Mr. Ifraimoff?

20 A I think so, yes.

21 Q How many cases did you have with them?

22 A I don't know.

23 Q There are some law firms that you have up to as many as  
24 20 cases with; right?

25 A I'm practicing for 30 years so, I mean, I don't keep an

1 individual record, but I'm sure there is patients that I operate  
2 on that have been represented by the same attorney.

3 Q Did you testify last Monday that there are some law  
4 firms that you might have gotten referred cases up to the amount  
5 of 20 cases?

6 A I don't think that's an unreasonable number, but I  
7 don't keep, counsel.

8 Q My question is, is that what you said Monday?

9 A I don't recall. It was a long deposition.

10 Q Well, if they came to you and all those clients of this  
11 law firm and all these now patients of yours had spinal fusions,  
12 that can be over \$2 million from that law firm; right?

13 MR. WILLIAMSON: Objection.

14 THE COURT: Overruled.

15 A I don't understand the question.

16 Q What history did you take from the plaintiff when she  
17 first came to see you? I mean, just in terms about accident  
18 number one?

19 A I mean, that she was involved in a motor vehicle  
20 accident on March 22, 2023 when a truck ran a red light striking  
21 the front bumper resulting in her injuries.

22 Q I'm going to stop you.

23 What did she tell you about the first accident, not the  
24 second? There is a mention of it; correct? I believe there is.

25 A The patient had a prior neck or back injury in 2019 and

1 she had surgery on her neck.

2 Q Okay. Okay.

3 Did you get those records?

4 A No.

5 Q Why not?

6 A Because they weren't relative to the care and treatment  
7 of her existing condition. And no one was asking me to give an  
8 opinion on causality. That's not the interaction when they come  
9 here. They are asking me, doctor, how do I feel better? What  
10 do I need to feel better?

11 Q Well, did you think there can be anything in her  
12 medical history that can help you diagnosis and treat her?

13 A No, because you'd have to update everything; right. I  
14 would never rely on a four year-old MRI from before her accident  
15 in order to determine what proper treatment is after an accident  
16 with completely different injuries, okay, which also, you know,  
17 we are still examining the old body parts, right, the other  
18 areas.

19 So, that's like someone comes into it the ER with chest  
20 pain and you say I want to look at the old one, let me look at  
21 your old EKG, I'm going to work off your old EKG. No, you have  
22 to work off the new EKG, because what's relevant there and I'm  
23 not cardiologist, is what you need to take care of.

24 Q Doctor, I'm not a cardiologist either, but isn't the  
25 first thing a hospital does when you come in with chest pains is

1 ask for your old records?

2 A And that can be relatively -- that can be important in  
3 circumstances. In this particular case, having the old records  
4 didn't -- wouldn't influence -- and I do this all of the time,  
5 wouldn't influence what treatment patterns I would put the  
6 patient through.

7 Q Let me tell you what the plaintiff testified to; okay?  
8 She testified she had the accident in 2019, that she treated for  
9 a little over a year, that she had the discectomy and,  
10 miraculously, wonderfully, she was 95 percent cured.

11 So, now you have a patient and wouldn't you want to  
12 know that after a certain amount of limited treatment and  
13 limited surgery, she found herself almost completely cured?

14 A I apologize, but you are not recounting the history as  
15 I obtained it correct, so I can't answer your question yes or  
16 no.

17 Q But that's because you didn't take any full history;  
18 isn't that correct?

19 A You are completely mistaken. I took a history of the  
20 prior accident. I took a history that she was -- went back to  
21 work, okay, but she had new pain since the new accident and she  
22 was being treated by multiple doctors, including getting  
23 injections.

24 I reviewed the current MRI, which is going to tell me  
25 the status of her spinal condition, and would also reveal if

1 there was any significant prior; right. If I look at an MRI  
2 today, it's going to show me if there was a prior problem. I  
3 review that MRI with the patient and make treatment  
4 recommendations.

5 Q Doctor, a patient comes in to see you and says that I  
6 had a prior problem -- a prior neck problem, I went through some  
7 conservative treatment and some minimally invasive things and  
8 after a while I was fine.

9 Would you agree with me that your surgery is a surgery  
10 of last resort? It's something you want to avoid if you can?

11 A I mean, I can't answer that yes or no. Sometimes  
12 operating sooner is better than later. You get better results  
13 if you operate sooner.

14 In this particular case, I felt that she had three  
15 months of conservative treatment. She tried everything. She  
16 also had invasive procedures and she continued to have pain. So  
17 at that point I felt that surgery was medically necessary.

18 Q So why didn't you do an EMG?

19 A So EMGs, although they can be helpful, in my particular  
20 case, I had an MRI, which is objective, which is more definitive  
21 than an EMG. I had a physical exam that was consistent with  
22 radiculopathy. I had the patient subjective history, yes, but  
23 it was consistent with my objective review of the MRI, okay, and  
24 my objective physical testing. So I was -- I don't need more  
25 information to make a decision on whether to have surgery. The

1 EMG doesn't play a role at that point, because we have evidence  
2 already of nerve compression.

3 (Whereupon, the following testimony was recorded  
4 and transcribed by senior court reporter, Pauline Musa.)

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1 Q What was your initial diagnosis on the lumbar spine?

2 A Herniated lumbar disc with lumbar strain.

3 Q At the L4-5 level?

4 A Yes.

5 Q Did she have other symptoms with respect to her low  
6 back and her legs --

7 A Yes.

8 Q -- in that first visit?

9 A Yes.

10 Q Given that, why it was it that you recommended she do a  
11 neck surgery over a low back surgery? I am just trying to  
12 understand why the recommendation was for the neck surgery as  
13 opposed to some treatment either at the same time or for the low  
14 back?

15 A I think after our conversation with the patient we felt  
16 the neck was causing her for more symptoms, giving her more  
17 trouble. That is why she requested, and I agreed that she  
18 should do her neck first.

19 Q Was there any recommendation given by non-surgical  
20 treatment for the low back and the insurance?

21 A I always recommend, in addition to the recommending  
22 surgery, I discuss palliative options. Palliative means, makes  
23 you feel letter better, maybe not cure you, so it helps. So, we  
24 always recommend therapy, more injections, you know, either  
25 while you are waiting for surgery or recovering from a different

1 surgery.

2 Q I will direct you back to your chart, sir. Did you see  
3 her back in your office ten days after the surgery on July 24?

4 A Yes.

5 Q How was she doing at that time per your note? Let me  
6 first ask you this; did see her personally ten days later?

7 A Yes. 7-24-23 I saw her, yes.

8 Q Okay. How was she doing at that time?

9 A She was doing well. Mostly a week after surgery people  
10 have complaints relative to their incision. It's what's called  
11 incisional pain. That will be persistent for several months.  
12 She, obviously, had that complaint. There was no signs of  
13 infection or bleeding or post-operative complications. One of  
14 the main reasons why we are doing the visit, I take an x-ray.  
15 Took an x-ray, everything looked good on the x-ray. She was  
16 tracking normally for someone that has surgery a week ago. We  
17 usually put them back into therapy. That is my customary  
18 practice. We give a cervical collar, some ice packs. We  
19 gingerly manage their recovery after surgery.

20 Q Did she come back again on 9-5-23 to see your office?

21 A 9-5-23 in the office?

22 Q Was she seen by your colleague that day, a Dr.  
23 McEllis (name phonetic)?

24 A Yes.

25 Q In the first part of Dr. McEllis' report from September

1 5th, does he indicate she was already doing physical therapy and  
2 doing home exercises --

3 A Yes.

4 Q -- and using the collar?

5 A Yes.

6 Q And using the cervical collar you mentioned?

7 A She was using the cervical collar.

8 Q Now, back then and now, do you have other doctors in  
9 your medical practice?

10 A Yes.

11 Q Do some of those other physicians sometimes do  
12 follow-ups on patients like Ms. Mero after the surgery --

13 A Yes.

14 Q -- or provide other non-surgical care?

15 A Yes.

16 Q Did you personally see her again on October 18th?

17 A Yes.

18 Q How was she doing at that time?

19 A Well, she continued to be tracking appropriately. She  
20 was saying subjectively she felt better, she was, that the  
21 surgery helped her, she still wasn't fully recovered, obviously.  
22 Her physical exam is consistent with someone that just had  
23 surgery a few months ago. She still had some limitations in  
24 the neck. Examining the low back she still had some limitations  
25 there, substantially similar. Neurological exam was

1 substantially similar. I repeated the x-ray. On that day,  
2 10-18, I found it to be satisfactory. I was pleased with what  
3 I saw. I reviewed MRI of low back. I guess that might have  
4 came up. I discussed with her, you know, she wanted to see the  
5 MRI of her back. I showed it to her. She had that herniation  
6 which I showed to you before. My diagnosis impression was the  
7 same, she was recovering from neck surgery. She had this  
8 persistent back problem which just, can I say, punting on. We  
9 are just waiting to go see how she did with her neck, but  
10 treating it; not ignoring it, treating it with the conservative  
11 treatment.

12 Q Doctor, we have got a lot of visits I want to move  
13 through. Not all of them, but some of them. My questions will  
14 be targeted as to each visit so we can try to do cover all the  
15 subject matter. Did she return again to the office on  
16 November 29th?

17 A Yes.

18 Q Seen one of your colleagues then?

19 A Yes.

20 Q Still receiving physical therapy?

21 A Yes.

22 Q In the interval history, the middle of the first page,  
23 did it indicate or does it indicate she was working full-time  
24 and was managing her persistent pain with Advil or Tylenol?

25 A Yes.

1 Q Now, did she come back to the office again, and now we  
2 are in to 2024 on April 15th of 2024?

3 A April 15, 2024, yes.

4 Q Do you have that report in front, sir?

5 A Yes, sir.

6 Q On that day was she seen by your colleague in the same  
7 office, Jay Shah(name phonetic)?

8 A Yes.

9 Q In this visit, April 15, 2024, was the focus on the  
10 neck or was it on the low back?

11 A I mean, ultimately, the low back was the focus of this  
12 exam.

13 Q With respect to her physical exam of the low back  
14 performed by Dr. Shah on that day, I'm looking at the bottom of  
15 the first page, lumbar neurological, what did Dr. Shah find?

16 A Well, we found abnormalities in her neurological  
17 functions, lower extremities. She had developed some weakness  
18 in her low extremities at L4-5, which is consistent with what we  
19 saw on the MRI at the same level. She still had the same back  
20 and leg symptoms, so she still had her lumbar radiculopathy.  
21 Her exam, unfortunately, he had gotten a little worse.

22 Q A little bit higher up on that first page, history of  
23 present illness, the second paragraph, what did she say about  
24 her symptoms?

25 A Patient still with back pain and stiffness,

1 intermittent radiculopathy to left, greater than right leg.

2 Back and leg pain is 8 and 9 out of 10.

3 Q Now, shortly after that visit on May 13th of 2024, did  
4 you perform a second procedure on Ms. Mero, this time on her low  
5 back?

6 A Yes.

7 Q Now, was this second procedure also done at New York  
8 Presbyterian lower Manhattan Hospital?

9 A Yes.

10 Q Was this the same kind of procedure you did on her  
11 neck, back in 2023, or was it a smaller less invasive procedure?

12 A It was a less invasive procedure, yes.

13 Q Could you describe for us -- We have illustrations of  
14 this procedure too. I am going to put them on the screen. I  
15 think can you stay up there, but this way the jury can see?  
16 This is the first of the two of slides. With these slides to  
17 help, could you explain for the jury, what this procedure was  
18 that you did on her low back in 2023?

19 A Sure. Can you see this disc was much larger in the  
20 lumber spinal L4-5, right. So, we have an opportunity, I  
21 believe, that there is a good success rate with what is called  
22 an endoscopic discectomy. It's done via a scope with a camera  
23 and as well as an x-ray. It's in conjunction with both. It's  
24 still an operation. Patient still comes to the hospital, gets  
25 put to sleep. It's prepared and draped in the usual sterile

1 fashion and under x-ray, I guide a scope into in the disc space  
2 with the forceps and I retrieve some of this disc material that  
3 is protruded out. We also use thermal ablation to help, you  
4 know, seal the tear. If you recall I mentioned to you that  
5 there is a tear in the annulus usually associated with this.  
6 So, besides is the discectomy, we also do thermal ablation on  
7 the disc and it helps to strengthen the disc and hopefully, it  
8 won't come back again.

9 Q In 2024, by the time this happened, why was she a  
10 candidate for this kind of procedure?

11 A Well, I mean, she was always an candidate from the  
12 beginning. It just wasn't as symptomatic, and I don't have an  
13 independent recollection. Usually as a the patient's neck pain  
14 goes away, they begin to begin feel the other pain more. Like,  
15 if this is less of a problem, it's not uncommon for a patient to  
16 come in and say, this is feeling much better, but this back,  
17 now, is all I can think about, is an example of what happened.  
18 So, that is why we did the back.

19 Q Let's go to the second slide. Okay. Looking at the  
20 second slide, can you tell us what it is we are looking at here,  
21 and what was done on her low back on May 13, 2024?

22 A Sure. You can see on the top left slide, you see like  
23 a hand, and you see Ms. Mero's low back, her low back here. So,  
24 a small incision was made on the side, through, which if you go  
25 to the far right, you will see a cannula, a metal device that's

1 stuck into the disc, right. That is both the camera and it's a  
2 working portal. Meaning, I could put an instrument, and I do,  
3 put an instrument through that cannula and I retrieve some of  
4 the fragments of loose disc. The middle, top middle, is sort  
5 of the big picture, you'll see the scope coming in through the  
6 top left. We're working with the patient face down. That is  
7 why you see it that way. They are prone, it's called prone,  
8 face down. Then, bottom left is illustration of the grasping  
9 instruments, grasping and removing loose disc material. That's  
10 the discectomy; we called that a discectomy. In the middle one  
11 would you be deployment of the thermal probe; it's a high energy  
12 heat probe. If you see like, because there is a tear and a  
13 little bit of a void in the disc by using of the thermal energy,  
14 you're able to shrink it down, tighten it up. Hopefully, seal  
15 the tear. The symptoms will be less pronounced.

16 Q Sir, the neck surgery from the preceding year, that's  
17 an open surgery?

18 A Correct.

19 Q When you mention visualizing, you are actually looking  
20 inside --

21 A Correct.

22 Q -- the patient's body? Are you able to visualize  
23 inside Ms. Mero's low back to this procedure, not through the  
24 opening but through the fluoroscope?

25 A Through a scope, right. Yes.

1 Q It's a camera?

2 A It's a camera. You put the camera in first before you  
3 do the retrieving to see the fragments of disc, and generally,  
4 you end up putting the cannula, right near where the disc is,  
5 generally, or where it's he is easiest to grab the disc and then  
6 that gives you access.

7 Q When visualize the L4-5 disc during this procedure did  
8 you see the herniation that you saw on the MRI?

9 A I saw the damaged disc, yes.

10 Q Did the findings during this procedure confirm your  
11 initial diagnosis of her low back?

12 A Yes.

13 Q Was this procedure also completed successfully?

14 A Yes.

15 Q I'll turn this off, and ask you, sir, did she return to  
16 your office after this procedure on June 3rd of '24 and then  
17 again on July 17th of '24?

18 A Yes.

19 Q With respect to the second of the two, July 17th of  
20 '24, do you have that note, 7-17?

21 A Yes.

22 Q Was the focus of that note her recovery from the low  
23 back procedure?

24 A Yes.

25 Q In the middle of the first page do you see interval

1 history and then a description, starts with 7-17-24?

2 A Yes.

3 Q What does it say in the second line or thereabout, what  
4 she was doing with medication and braces and other items at home  
5 to help her pain?

6 A She said the pain now was 2 out of 10. Deny radicular  
7 symptoms. She was attending PT twice a week with some benefit.  
8 Managing residual pain over-the-counter Ibuprofen and  
9 Acetaminophen.

10 Q Going to September 6th, did she see another physician  
11 in your office by the name Dr. Cherkalin. Am I saying his name  
12 right?

13 A Yes. Yes.

14 Q Did she see Dr. Cherkalin in your office on  
15 September 6th?

16 A Yes.

17 Q If you scroll past his office note, did she undergo a  
18 procedure with Dr. Cherkalin on that day? If it's not in the  
19 note it's afterward, it should be?

20 A Cervical epidural steroid injection?

21 Q Yes.

22 A On 9-6-24.

23 Q That is an a pain management technique to deal with  
24 pain in the neck?

25 A Yes.

1 Q Now, if you jump ahead to October is there another  
2 visit with Dr. Cherkalin where he did another proceed on the  
3 4th?

4 A He did a medial branch block.

5 Q What is that, sir?

6 A That is using a radio frequency and high energy heat to  
7 dull the pain nerves in the back of the neck.

8 Q So, as can you see from Dr. Cherkalin's notes, was she  
9 still experiencing neck pain at this time?

10 A Yes.

11 Q And he was treating her for that neck pain?

12 A Yes.

13 Q A little bit later that month on the 16th of October,  
14 did she do yet another pain management procedure with Dr.  
15 Cherkalin 10-16?

16 A Yes.

17 Q Was that another medial branch block?

18 A Yes.

19 Q Jumping to November, the 11th of that month -- Excuse  
20 me. Yes, the 11th of November. There is a record in your  
21 chart from All City Family Health with Dr. Cherkalin. What did  
22 she do with Dr. Cherkalin that day, the 11th of of November?

23 A Sorry. Another medial branch block, left C5-6 medial  
24 branch block.

25 Q Now, I want to try to move this along. Were there

1 additional visits on 3-14 -- because now we are into '25,  
2 fortunately. March 14, '25 and April 9th, May 9th of '25?

3 A Yes.

4 Q With respect to -- Can you find the March 14th note?  
5 That was with Dr. Cherkalin.

6 A Yes.

7 Q Did you test for range of motion in her neck and back  
8 that time?

9 A Yes. Yes.

10 Q Could you just tell us what Dr. Cherkalin tested for  
11 and what he found with respect to range of motion and any loss  
12 with her neck and her back?

13 A He noted a restriction reflection of five degrees, 45  
14 degrees versus 50. I am reading someone else's notes. So,  
15 there was restricted range of motion, cervical spine. 45  
16 degrees of flexion, extension 50. Left and right turning 65  
17 degrees and in the lumbar spine, low back there was restriction  
18 of motion, flexion extension. Flexion 50 degrees, extension 15  
19 degrees. Left to right turn, 25 degrees.

20 THE COURT: I am sorry. Just for my own  
21 edification, is there indication of how those results were  
22 found? What was the testing method? If you were  
23 discussing subjective tests, it could helpful to the  
24 jurors.

25 THE WITNESS: Sure. The pinch is in the -- You

1 take the patients through a range of motion. You would  
2 stand next to patient and place your hands on them and ask  
3 them to put their head as far back as you can. That would  
4 be extension. You ask them to move it forward and  
5 encourage them to go as far back as they can go, and then  
6 left and right turn and you would do the same thing. For  
7 the low back, you would do the same thing.

8 THE COURT: Those would be subjective testing?

9 THE WITNESS: I would say it's predominantly an  
10 objective test with a subjective component.

11 THE COURT: The subjective component is the  
12 patient going as far as the patient can or wants to go?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: In this instance is there an  
15 indication that is what the doctor did here?

16 THE WITNESS: Yes.

17 THE COURT: Thank you.

18 Q Moving to April 9th of 2025. Let me know when that  
19 you have though note.

20 A What date?

21 Q April 9th of 2025? Should be an order.

22 A Okay.

23 Q Just below chief complaint, do you see where it lists  
24 the date 4-9-25?

25 A Yes.

1 Q Can you tell us what it says after that with respect to  
2 how she was doing?

3 A 4-9-2025 returns today with persistent complaints of  
4 neck greater than low back pain which can vary in severity  
5 depending on the day activities. She continues physical  
6 therapy at the same frequency and home exercise programs. She  
7 rates her neck pain as 7 to 8 out 10 and her low back and can  
8 hurt but not as often.

9 Q Then the following month, there is a visit on 5-9  
10 should come right afterwards? May 9th.

11 A Sorry. I am not so quick with this. May 9th.

12 Q At the very top of the note to indicates interval  
13 history; do you see that?

14 MR. SPEVACK: Your Honor, may we approach?

15 THE COURT: Yes. Sure. One moment.

16 A Yes.

17 THE COURT: We'll be back.

18 Okay. Any of the jurors need a break? Juror  
19 3 trying to go stretch a little bit. I make the offer to  
20 every jury and we have one that only two alternates and one  
21 of the alternates was she started doing full yoga routines.  
22 It wasn't disturbing. She ended up being the foreperson and  
23 one of the more attentive people. So, the joke is, there  
24 you go.

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

1 THE COURT: Back on the record.

2 Back to you, sir. Sorry for the interruption.

3 MR. WILLIAMSON: Thank you, Your Honor.

4 Q Did we find the interval history on top of 5-9?

5 A Yes.

6 Q Could you just tell us after the date, what Ms. Mero  
7 told you?

8 A Complaining of left axle --

9 Q Dr. Cherkalin on that day?

10 A Yes, 5-9-25. Complaining of left axle neck pain.  
11 Grades it 6 out of 10 with radiation to the shoulder blades.  
12 Also complaining of axial back pain graded that 7 out of 10.  
13 Difficulty prolonged sitting, prolonged standing, prolonged  
14 walking would make those symptoms worse. Still getting therapy  
15 or doing therapy once or twice a week and still working.

16 Q Then on the next page of the same report, did Dr.  
17 Cherkalin again test the range of motion of her neck and back?

18 A Yes.

19 Q There is an indication on the second page of this  
20 report of surgical swelling right and then there's a plus,  
21 swelling left plus; what does that mean?

22 A Cervical sympathetic -- I mean, when he examined her he  
23 found there was some swelling over her ganglion, which is the  
24 area of the neck.

25 Q On that same date, did Dr. Cherkalin perform trigger

1 point injections --

2 A Yes.

3 Q -- or muscle spasms?

4 A Yes.

5 Q A few days later on 5-21, was Ms. Mero back with Dr.  
6 Cherkalin to undergo a radio frequency ablation procedure?

7 A Yes.

8 Q What is a radio frequent ablation?

9 A It's a invasive procedure done under x-ray which the  
10 doctor guides an instrument, call it a bladder, towards the area  
11 of the spine where the pain nerves are concentrated and then he  
12 can dull those pain nerves by doing that.

13 Q I am going to jump ahead couple of visits to 6-11-25.  
14 If you could find that, sir.

15 A Yes.

16 Q Okay. You see in the beginning of the report it says  
17 chief complaints and the patient complaint and then interval  
18 history?

19 A Yes.

20 Q Right below interval history, after the date 6-11 could  
21 you tell us what it says there; what they wrote down about what  
22 she said?

23 A Yes, sir. Still complaining of left-sided neck pain,  
24 greater than right. Radiating into the upper trapezius. She  
25 reports that her low back is stable and she only gets pain with

1 activities that are demanding and prolonged, bending and  
2 lifting. She's seeing pain management and underwent left  
3 cervical RFA, what we described before, which gave her partial  
4 relief. She also got one trigger point this month and she's  
5 managing with lidocaine patches.

6 Q On the next page, sir, there is reference to something  
7 called a Spurling test. What is a Spurling test?

8 A Spurling test is a test for nerve compression and  
9 generally, it's when you put axial pressure when you press on  
10 the spine, there's certain direction and it can exacerbate the  
11 nerve pain.

12 Q Does this indicate on the second page of Dr.  
13 Cherkalin's report from 6-11, that he did the Spurling test and  
14 found it positive on the left side?

15 A Yes.

16 Q Then with respect to the last page of the report, the  
17 very end of the report -- I am sorry. This is not Dr. Cherkalin  
18 on 6-11, it's Dr. Vallarino. Am I saying that correctly?

19 A Yes.

20 Q There is an RX notation. What does it say about what  
21 she was given for medication?

22 A Lidocaine topical patch and methocarbamol.

23 Q What is that?

24 A It's a muscle relaxer.

25 Q Please jump ahead, sir, to 7-23 of '25, July of last

1 year.

2 A Okay.

3 Q Again, first page of the report, top chief complaints,  
4 patient complaint and interval history and then the date again  
5 7-23-25; what does it say after that as to how she was doing?

6 A Patient reports no significant change in her condition  
7 since I saw her last. Still complaining of left greater than  
8 right neck pain, stiffness. No radicular symptoms. Continues  
9 PT once or twice a week. Engaged in her own home exercise  
10 program. She continues to manage with lidocaine patches.

11 Q Jumping ahead to 9-325. Another report by Dr.  
12 Vallarino on than date.

13 A Yes.

14 Q Again, at the top of the report under chief complaint,  
15 after interval history, 9-3-25, what does it say about how she  
16 was doing that day. She returns today with increasing low back  
17 pain radiating into right buttock and at the right lateral hip  
18 at times. She denies radiation further down the right left --  
19 right lower extremities and associated paresthesias. She's  
20 still attending PT twice a week with only partial relief.  
21 Continuing to management a over-the-counter like Ibuprofen and  
22 Tylenol and as well as the lidocaine patches. Neck pain isn't  
23 changed. Left greater than right. She still complains of  
24 stiffness and muscle spasm?

25 Q Go to the next page of that same report. Did the

1 doctor on that day, again, do the Spurling test?

2 A Yes.

3 Q Was it, again, found to be positive on the left side?

4 A Yes.

5 Q That test, Spurlings, is that an objective test or  
6 subjective test or some combination of both?

7 A Objective test.

8 Q Right beneath that there is an indication that  
9 something known as a SI joint exam was performed. Do you see  
10 that?

11 A Yes.

12 Q It appears, if I am reading it correctly, there was a  
13 positive finding for the favors test and the tenderness to  
14 palpation. Did I read that right?

15 A Correct.

16 Q What does all that mean? What did they find that day?

17 A Patient was experiencing symptoms of sacroiliitis.

18 Q What is that?

19 A Inflammation of the sacroiliac joint, sometimes seen  
20 in patients that have a lumbar radiculopathy. Because they are  
21 walking abnormal, they put more load on one side. That is what  
22 it represents.

23 Q That is something that you see in patients with lumbar  
24 dysfunction and after some period of time --

25 A Correct.

1 Q -- dealing with the condition?

2 A Yes, sir.

3 Q Right beneath that it says, positive right greater  
4 trochanter bursa tenderness. Did I say that correctly?

5 A Yes.

6 Q What does that mean?

7 A She had point tenderness over her greater trochanter  
8 which the boniness over your right side of your hip, if you  
9 press, that's the greater trochanter. That is what the patient  
10 was complaining of.

11 Q Jumping to, just later that same month, she was back at  
12 your office seeing Dr. Cherkalin again. This is 9-25-25, do you  
13 see that note?

14 A Yes.

15 Q About halfway down the first page there is series of  
16 paragraphs each with an a different date on it. The fourth down  
17 is 9-25-25. Do you see that?

18 A Yes.

19 Q Can you read that and tell us how she was doing on the  
20 25th of September?

21 A Adriana is present for a follow-up. Patient mostly  
22 complains of right-sided low back radiating into right buttock.  
23 Patient grades her pain 6 out of 10. Prolonged sitting,  
24 prolonged standing, prolonged walking exacerbates pain.  
25 Patient can lift up top 10 pounds. Patient can sit for up to 20

1 minutes, 20 to 30 minutes. Patient can stand 20 to 30 minutes.  
2 Therapy once or twice a week. She's currently working and drove  
3 herself to the office.

4 Q Next page of the same report. Can you take us through  
5 tests they did on cervical spine, which includes the range of  
6 motion and testing for palpation and tenderness; what was with  
7 found?

8 A So, with the cervical spine inspection percussion at  
9 palpation shows tenderness and spasms noted. There are  
10 restricted range of motion, 45 with flexion. Extension 50 and  
11 left and right turning were 60 degrees. She also had a  
12 positive Spurling test left and right on that day. Lumbar  
13 spine also low back also had tenderness around spasm. There's  
14 restricted the range of motion, lumbar spine, low back. Flexion  
15 35, extension 15, left and right turning 25 degrees. Again,  
16 this was abnormal finding. She had a positives for leg raise  
17 on right-hand side is.

18 Q What does that mean?

19 A That is an examination that provokes radiculopathy or  
20 sciatica. It's a test the doctor does to independently assess  
21 if the patient has a radiculopathy.

22 Q You said independently; is that a objective or  
23 subjective test?

24 A I would say that was objective.

25 Q Right after that there's a line that says muscles

1 spasms and right lumbar quadratus, right piriformis right  
2 gluteus maximus.

3 A Yes.

4 Q Patient has difficulties getting off the exam table.

5 A Yes.

6 Q I understand what getting off the table difficult  
7 means, but what does the other stuff mean?

8 A It's all consistent with someone that had a lumbar  
9 injury. These areas of the spine also, like the sacroiliac  
10 joint, they can get inflamed and create pain to percussion of  
11 palpation and interfere with the patient's normal movement  
12 patterns.

13 Q Got it. Just going a few pages beyond that. On same  
14 day 9-25-25, it did she have another series of trigger points  
15 injections with Dr. Cherkalin?

16 A Yes.

17 Q Jumping over the next visit. One second, I am sorry.  
18 Just a little further down on February 14, '25, did she have yet  
19 another set of trigger points with Dr. Cherkalin?

20 A Yes.

21 Q There is a visit from November 5th of 2025 where, I  
22 believe, you saw her personally again. Could you find that  
23 note, sir?

24 A Okay.

25 Q Am incorrect that on the 5th of November of last year

1 you, personally, examined Ms. Mero, again?

2 A Yes.

3 Q Do you have that report in front you?

4 A Yes.

5 Q On the first page there a big paragraph entitled  
6 "history." Then below that, there is a smaller paragraph that  
7 deals with the pain levels in the neck and back. Can you tell  
8 us what was noted there?

9 A Pain on day. She had 8 out 10 pain for her back and  
10 for her neck she was also 8 out of 10 on and off. Made worse  
11 by lifting, carrying, bending and moving around, standing, lying  
12 walking and sleeping.

13 Q Now, I promise this is the last physical exam finding I  
14 will go through. On the next page of that report November 5,  
15 2025, can you tell us when you tested, when you did the physical  
16 exam of neck and back, what did you find with range of motion  
17 and Spurlings --

18 A She had a --

19 Q -- noted here.

20 A Restricted range of motion, flexion 35, extension 45.  
21 Left and right turning, 50 degrees. We noticed also the  
22 ganglion was swollen, left and right side. There was positive  
23 Spurling test bilaterally, left and right. In the lower spine  
24 she had percussion, tenderness to percussion and palpation as  
25 well as loss of range of motion. Flexion 45, extension 15.

1 Left and right, during 25. Yeah, that was the pertinent  
2 findings.

3 Q At the bottom of that page, sir, does it say bilateral  
4 positive faceta -- At the bottom does of that page, does it say  
5 bilateral positive facet loading?

6 A Yes.

7 Q What does that mean?

8 A It's part of the spine when it undergoes pressure or  
9 loading, it can be painful and it's consistent with someone that  
10 had a herniated disc.

11 Q Now, at the end of that visit when you saw her  
12 personally in November, and I am at the last page, did you  
13 recommend she continue with physical therapy and with pain  
14 management with Dr. Cherkalin?

15 A Yes.

16 Q I'm not going them but does your chart contain a couple  
17 more visits where she returned to your practice later that  
18 November and then in December and then once earlier this month  
19 in February?

20 A Yes.

21 Q Now, sir, going back to the very first visit that you  
22 had with her in June of 2023, did you say that when she first  
23 came to see you she told you about the 2019 accident and the  
24 neck injury that resulted?

25 A Yes.

1           Q     Sir, as this case was nearing trial, did she provide  
2 you with the records from the 2019 accident, the treatment  
3 records relating to her neck in 2019 and 2020?

4           MR. SPEVACK: Your Honor, I am going to object.

5           THE COURT: What's the basis?

6           MR. SPEVACK: He is reading from the reports of  
7 other experts. He is just going to say he agrees with the  
8 other experts. If the other experts are going to come in,  
9 we don't need him to justify their reports. Now, he's  
10 going to say I agree with their reports.

11          MR. WILLIAMSON: That is not what I am going to  
12 do. It's the prior records. Everybody is going to come.  
13 They are in evidence.

14          THE COURT: Prior medical records of Ms. Mero?

15          MR. WILLIAMSON: Yes, that he reviewed and that  
16 that are in evidence.

17          MR. SPEVACK: Based on the other Dr. Perry and Dr.  
18 Willstein(name phonetic). They sent him their reports.

19          MR. WILLIAMSON: I am not going to referring to  
20 Perry and Willstein. I am referring to 2019.

21          THE COURT: Okay. We'll resolve your objection  
22 without me making a ruling.

23          MR. WILLIAMSON: Yes.

24          THE COURT: Okay.

25          MR. WILLIAMSON: Yes.

1 Q Sir, sorry for that. With respect to the medical  
2 records from the 2019 accident, her treatment primarily for neck  
3 in 2019, did we send you the medical records related to that  
4 prior accident, prior treatment as this case was nearing trial?

5 A Yes.

6 Q Did you issue a narrative report at our request where  
7 you commented on your review on your review of those records and  
8 your review of the MRI from 2019?

9 A Yes.

10 Q That was at our request?

11 A Yes.

12 Q Did you look at the physical therapy records from the  
13 five months of PT she did in 2019?

14 A Yes.

15 Q Did you look at the MRI of her neck in 2019?

16 A Yes.

17 Q Did you look at the EMG that was done in 2019?

18 A Yes.

19 Q Did you review the records of Dr. Apple from 2019 and  
20 2020?

21 A Yes.

22 Q Now, we have the MRI from 2019 in evidence. You had  
23 an opportunity to see that?

24 A Yes.

25 MR. WILLIAMSON: We are going to put that up on

1 the screen. May I have the evidence?

2 THE COURT: Was this for treatment?

3 MR. SPEVACK: Objection.

4 THE COURT: Was your review of all these -- This  
5 was for what?

6 MR. SPEVACK: Preparation for trial.

7 MR. WILLIAMSON: Correct.

8 MR. SPEVACK: Objection.

9 THE COURT: Sustained.

10 MR. WILLIAMSON: Your Honor, may we approach.

11 THE COURT: You can approach.

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

13 THE COURT: On the record. Overruled.

14 Q Doctor, we'll put up the 2019 cervical MRI. This is a  
15 study that you had an opportunity to see?

16 A Yes.

17 MR. WILLIAMSON: Would you step down with the  
18 Court's permission, Your Honor.

19 THE COURT: You have my permission.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Continuing permission. We'll give you  
22 the pointer.

23 Q Now, sir, this is Ms. Mero's 2019 MRI for cervical  
24 spine that is in evidence as Plaintiff's 17. Do you see on the  
25 top right it says her name?

1 A Yes.

2 Q Does this have her date of birth date of birth three  
3 lines down?

4 A Yes.

5 Q Does it have the imaging facility where this was done?

6 A Yes.

7 Q At the bottom right does it have the date 6-24-2019?

8 A Yes.

9 Q Can you tell us what you found when you reviewed this  
10 study from 2019, and in particular, with respect to comparison  
11 to the cervical spine MRI that was done in May of 2023?

12 A I mean, I would say there was no significant herniation  
13 at C5-6. This is the level that, subsequent to the second  
14 accident, I felt I saw a herniated disc. At C5-6 there is no  
15 significant, maybe tiny little small herniation, but I don't see  
16 it as a significant herniation.

17 Q What you see on this film at the C5-6 level, is there  
18 any involvement with the spinal cord?

19 A No.

20 Q Any involvement --

21 MR. SPEVACK: Objection, Your Honor.

22 THE COURT: Sustained.

23 Q What, if anything, do you see at the C5-C6 level on  
24 this film?

25 MR. SPEVACK: He just answered the question.

1 THE COURT: Please answer the question.

2 MR. WILLIAMSON: May he answer.

3 THE COURT: Yes.

4 MR. WILLIAMSON: You may answer.

5 A I don't see a significant herniation at C5-6.

6 Q Now, what about the C4-5 level next to it?

7 A Again, it's not a substantial size herniation for my  
8 personal opinion as a surgeon. There is some changes to that  
9 consistent with the herniated disc. I don't really -- I am not  
10 seeing anything major.

11 Q With respect to the C5-C6 level, what, if any,  
12 differences do you see on this film of 2019 compared to the 2023  
13 film of her neck at the same level, C5-C6?

14 A The difference is I do not see a herniated a disc  
15 pressing the spinal cord in the nerves.

16 Q Any other findings here or distinction between the two  
17 films that are pertinent?

18 A No.

19 Q You can you retake the stand.

20 MR. WILLIAMSON: May I have the evidence, please?

21 All of it except for the really big one. Thank you.

22 THE COURT OFFICER: Handing counsel Plaintiff's  
23 Exhibit 10, 11, 12, 13 and 14. All marked for evidence.

24 MR. WILLIAMSON: Thank you. Sorry, Your Honor.

25 Q Sir, I am going to hand you what has been marked into

1 testified as Plaintiff's 10, which are the records from Central  
2 Metro from 2019.

3 THE COURT OFFICER: Handing the witness  
4 Plaintiff's Exhibit 10 marked for evidence.

5 Q Sir, was this one of the records form 2019 that you  
6 previously had an opportunity to review?

7 A Yes.

8 Q Now, I turn to one with the pages of this record from  
9 2019. The page that I turn to, what kind of test is that?

10 A EMG test.

11 Q What is a EMG test?

12 A A test done my physician for radiculopathy. They put  
13 probes on a patient --

14 MR. SPEVACK: Objection. He's going to call  
15 another witness to the stand and have other experts testify  
16 on the same exact subjects.

17 THE COURT: Let this witness testify first and  
18 then we'll worry about other witnesses. Overruled. Thank  
19 you.

20 Q We have it on the screen here, sir. It this the EMG  
21 test of Ms. Mero from 7-26-2019?

22 A Yes.

23 Q Can you do a EMG test of the arms that test for a nerve  
24 involvement in the neck --

25 A Correct.

1 MR. WILLIAMSON:

2 Q -- versus a EMG test for nerve involvement of the low  
3 back?

4 A Correct.

5 Q This one, was it for the upper or lower?

6 A Neck.

7 Q Neck. She was, I think it indicates here on your chief  
8 complaint, 30 years old at the time and complaining of neck pain  
9 radiating her to arms?

10 A Yes.

11 Q Let's scroll down. I know we are getting very close  
12 to lunch. I will get right to the end of this. Right there.  
13 Is this the end of the report, the end of the EMG report where  
14 with the doctor who did it indicated her findings?

15 A Yes.

16 Q In the impression section, what does it say?

17 A The above electro diagnostic study reveals no evidence  
18 of cervical radiculopathy.

19 Q This doctor on this date, 7-26-2019, when did the EMG  
20 found no evidence of radiculopathy in the neck; is that correct?

21 A Correct.

22 Q Now, did you also have have the opportunity to review  
23 the records of Dr. Apple from 2019 and 2020?

24 A I believe so, yes.

25 (Whereupon, the following testimony was recorded

1           and transcribed by senior court reporter, Jacklyn Lisi.)  
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1 MR. WILLIAMSON: Sir, this is Plaintiff's  
2 Exhibit 12 in evidence. I'm going to fold it over so we  
3 don't waste time.

4 THE COURT OFFICER: Handing the witness  
5 Plaintiff's Exhibit 12 for evidence.

6 Q Do you see the report there, sir?

7 A Yes.

8 Q Is that the report of Dr. Apple's surgery on, I  
9 believe, it's September 20th of 2020?

10 A Yes.

11 MR. SPEVACK: Objection.

12 MR. WILLIAMSON: This is my last line of  
13 questioning, Your Honor.

14 MR. SPEVACK: This is not even in the report. He  
15 never even mentions it.

16 MR. WILLIAMSON: Yes, it is.

17 (Brief pause.)

18 MR. SPEVACK: Yes, okay.

19 No objection so far.

20 BY MR. WILLIAMSON:

21 Q Sir, is that the surgical report of Dr. Apple from  
22 September 2020?

23 A Yes.

24 Q Okay.

25 What did Dr. Apple do for Ms. Mero on that day?

1 MR. SPEVACK: Objection.

2 He just said that he didn't have the report. He  
3 said he just looked at the report.

4 MR. WILLIAMSON: Judge, it's in evidence and he  
5 said he reviewed it.

6 THE COURT: If you recall.

7 Q Doctor, the record is in evidence.

8 What did Dr. Apple do for Ms. Mero on that day?

9 A He did a percutaneous discectomy.

10 Q The record is in evidence and the report is on the  
11 screen.

12 A percutaneous discectomy is a minimally invasive  
13 surgery for the neck?

14 A Yes.

15 Q And does it indicate on this report what level Dr.  
16 Apple operated on when he did this procedure on Ms. Mero's neck  
17 in September of 2020?

18 A Yes, C4-5.

19 Q Okay.

20 Now, if you scroll down, sir, there is this first page  
21 and then there is a whole other page. Keep going. Keep going.

22 At any point -- you've got the record there, sir. At  
23 any point in his entire procedure note, does Dr. Apple say  
24 anything about the level C5-6?

25 A He does not.

1 Q Everything here is focused on C4-5?

2 A Correct.

3 Q And are those two levels right next to each other?

4 A Yes.

5 Q So if Dr. Apple was focused on C4-5 and working on C4-5  
6 that day, he would be right next to C5-6?

7 A Yes.

8 Q And there is no mention of C5-6 here?

9 A No mention of C5-6.

10 THE COURT: Counsel, we have to stop.

11 MR. WILLIAMSON: We have to stop here?

12 THE COURT: Yes. The jurors will break for lunch  
13 now.

14 Remember, the case isn't yours. Please do not  
15 discuss the case with anyone. And if you take a walk,  
16 hopefully, it stopped raining.

17 See you after lunch. Have a good lunch and I'll  
18 get full reports when you get back here today.

19 THE COURT OFFICER: All rise, jury exiting.

20 (Whereupon, at this time, the jury exited the  
21 courtroom.)

22 THE COURT: Doctor, you are still under oath.  
23 Please do not speak to anyone about the case. You are  
24 still testifying.

25 (Whereupon, at this time, a luncheon recess was

1 taken.)

2 \* \* \* \* \*

3 A F T E R N O O N S E S S I O N

4 \* \* \* \* \*

5

6 THE CLERK: Come to order.

7 THE COURT: Any objection to the doctor taking the  
8 stand, Mr. Spevack?

9 MR. SPEVACK: No.

10 THE COURT OFFICER: All rise. Jury entering.

11 (Whereupon, at this time, the jury entered the  
12 courtroom.)

13 THE CLERK: Do the parties stipulate to the  
14 presence and the proper seating of the jury?

15 MR. WILLIAMSON: Yes.

16 MR. SPEVACK: Yes.

17 THE COURT: Welcome back, jurors. Please be  
18 seated.

19 Where did you go for lunch? Did you go out?

20 JUROR #7: No, I brought lunch.

21 THE COURT: All right. We are short on time, we  
22 can't fool around too much.

23 Mr. Williamson, please continue.

24 MR. WILLIAMSON: Thank you, Your Honor.

25 DIRECT EXAMINATION BY (Continued)

1 MR. WILLIAMSON:

2 Q Good afternoon, Dr. Lattuga.

3 A Good afternoon.

4 Q Before we broke for the lunch recess, we were  
5 discussing some of the medical treatment and testing that Ms.  
6 Mero had in 2019. Do you recall that?

7 A Yes, sir.

8 MR. WILLIAMSON: I'm going to show you Plaintiff's  
9 Exhibit 11 in evidence, which is AFC Rockaway from 2019.  
10 I'll hand it up. And like I did before, I'm going to open  
11 it up to the page that I want to ask you about.

12 MR. SPEVACK: Your Honor, just note my objection  
13 to the line of questioning, all this line of questioning.

14 THE COURT: Duly noted.

15 THE COURT OFFICER: Handing the witness  
16 Plaintiff's Exhibit 11 marked for evidence.

17 THE WITNESS: Thank you.

18 Q Sir, what is this report?

19 A An MRI, sir. MRI of the cervical spine for the  
20 patient, Adriana Mero.

21 Q Is this Ms. Mero's neck MRI that we looked at on the  
22 screen just before lunch?

23 A Yes.

24 Q And this is the report of the original reading  
25 radiologist?

1 A Yes.

2 Q Just scroll down.

3 Now, in the impression section, does the radiologist  
4 mention the C4-5 disc that Dr. Apple operated on?

5 A Yes.

6 Q In the impression section, does the radiologist who  
7 interpreted this report make reference to the C4-5 disc level  
8 that Dr. Apple operated on in 2020?

9 A Yes.

10 Q Is there any reference here to the C5-6 level?

11 A There is no reference to the C5-6 level.

12 Q Okay.

13 Now, I'm going to turn this off. Let me move forward  
14 back to 2023.

15 I believe when you were testifying at the beginning, I  
16 believe this was about Ms. Mero's first visit to you --

17 A Yes.

18 Q -- when she gave you her history and the treatment she  
19 had before coming to see you?

20 A Yes.

21 Q Did you mention a Dr. McGee?

22 A Yes.

23 Q Do you know who he is?

24 A He's a physiatrist.

25 Q Did she tell you she had seen him after the accident,

1 before she came to see you?

2 A I don't have an independent recollection. When I  
3 reviewed the records, I just saw that he had seen the patient  
4 and then it reminded me, but independently I don't have a  
5 recollection.

6 Q But at the time when she made you aware of her prior  
7 treatment, you were aware of Dr. McGee?

8 A Dr. McGee and his treatment, yes.

9 MR. WILLIAMSON: Okay.

10 We are going to put up the record of Dr. McGee,  
11 which is in evidence as Plaintiff's Exhibit 13, this  
12 integrated, and I'm going to hand this up to you. This is  
13 13 in evidence.

14 THE COURT OFFICER: Handing the witness  
15 Plaintiff's Exhibit 13 marked for evidence.

16 Q Is what you have in your hand, sir, the same as what's  
17 on the screen?

18 A Yes.

19 Q Is this what Ms. Mero mentioned to you about going to  
20 see Dr. McGee after the accident?

21 A Yes.

22 Q Do you see the date up here of the exam?

23 A 3/24/23.

24 Q 3 what?

25 A 24, 2023.

1 Q That would be two days after the collision with the  
2 truck?

3 A Yes.

4 Q And did she tell you that Dr. McGee's facility was the  
5 first place she went?

6 A Yes.

7 Q And with respect to her chief complaints, which is at  
8 the bottom of the screen here, what did she tell Dr. McGee two  
9 days after the truck collision about how she was feeling?

10 MR. SPEVACK: I'll object, Your Honor.

11 What does this have to do with his treatment?

12 THE COURT: Overruled.

13 A Neck pain radiating into the arms. Lower back pain  
14 radiating into the legs. Left shoulder pain.

15 Q And just to be clear, when you began treating her in  
16 June and she told you that she had conservative care before  
17 coming to you, was that part of the factors you considered in  
18 doing your evaluation?

19 A Yes.

20 Q Okay. I'll turn this off.

21 Okay. Now, sir, based on everything that we have  
22 covered so far, your treatment and surgery of Ms. Mero, your  
23 review of the radiology in this case, your review of the prior  
24 records and some of the other treatment records in 2023 and  
25 beyond, including Dr. McGee that we just looked at, have you

1 reached a diagnosis to a reasonable degree of medical certainty  
2 for her neck?

3 A Yes.

4 Q What is your diagnosis?

5 A Cervical herniated disc at C5-6 with radiculopathy.

6 Q Same question for the low back.

7 Based on everything that we have looked at so far,  
8 everything I've just mentioned, have you reached a diagnosis to  
9 a reasonable degree of medical certainty as to a diagnosis for  
10 her low back?

11 A Yes.

12 Q What is that, sir?

13 A Lumbar herniated disc with radiculopathy at L4-5.

14 Q Now, sir, again, based on everything that we have  
15 covered so far today, do you have an opinion to a reasonable  
16 degree of medical certainty as to the cause of the neck injuries  
17 you diagnosed?

18 A Yes.

19 Q What is your opinion?

20 A It's the consequence of the motor vehicle accident,  
21 obviously the second one, I don't remember the date, 3 --

22 Q Was it March 22nd --

23 A March 22nd.

24 Q 2013?

25 A 2023.

1 Q I keep saying 2013. I don't know why I do that.

2 A I thought you were trying to trip me up there.

3 Q Let me ask the question again.

4 Based on everything that you've reviewed so far that I  
5 just mentioned, have you reached an opinion to a reasonable  
6 degree of medical certainty as to the cause of the neck injuries  
7 you diagnosed?

8 A Yes, it's causally related to the motor vehicle  
9 accident of March of 23rd.

10 Q Okay.

11 Same question with respect to the low back. Based on  
12 everything that we have reviewed so far, do you have an opinion  
13 to a reasonable degree of medical certainty as to the cause of  
14 the lumbar spine, the low back injuries you've diagnosed?

15 A Yes. It was causally related to the motor vehicle  
16 accident in March of '23.

17 Q And what is the basis for your conclusion with respect  
18 to the neck and the back here?

19 A Well, the basis of that conclusion really is that even  
20 though she had a prior accident, she went back to work, she  
21 wasn't being treated, we sustained the history of the accident,  
22 she made the complaints to Dr. McGee, she had significant  
23 treatment, she had objective evidence of a herniated disc on an  
24 MRI at C5-6, which was not present on the prior -- she had one  
25 before. She didn't respond to therapy, medicine or injection.

1 And same applies for her lumbar spine. And so the need for  
2 surgery was causally related to the accident as well.

3 Q Do you have an opinion to a reasonable degree of  
4 medical certainty about the cause of the onset of her neck and  
5 back symptoms in March of 2023?

6 A It was from the motor vehicle accident in March of  
7 2023.

8 Q And you kind of just said this, but I want to ask for  
9 the record, do you have an opinion to a reasonable degree of  
10 medical certainty about what caused the need for the neck  
11 surgery and the low back surgery, along with all of the other  
12 care that your office has rendered to her? Do you have an  
13 opinion as to the cause for the need for those surgeries and  
14 treatment?

15 A It was causally related to the motor vehicle accident  
16 in March of 2023.

17 Q Now, sir, with respect to her prior neck injury from  
18 2019 to 2020, along with everything that we have talked about in  
19 2023 and thereafter, do you have an opinion to a reasonable  
20 degree of medical certainty about whether the collision on  
21 March 22, 2023 aggravated or exacerbated her preexisting neck  
22 condition?

23 A I mean, I believe it caused a new herniation in C5-6.  
24 And certainly it, to the extent that she had increased neck  
25 pain, aggravated the prior as well.

1 Q So are you saying two things occurred? There was a new  
2 injury to the neck?

3 MR. SPEVACK: Objection.

4 Leading, Your Honor.

5 MR. WILLIAMSON: Withdrawn.

6 Q What do you mean by that answer, sir?

7 A She sustained a new herniation, as proven by the fact  
8 that we had her MRI prior to her motor vehicle accident a few  
9 years before. The new MRI showed that she had a herniated disc  
10 at C5-6. I believe that to be causally related to the motor  
11 vehicle accident.

12 To the extent that she had a prior neck problem at  
13 C4-5, you know, that type of accident, these conditions can  
14 exacerbate that condition as well.

15 Q And is it your opinion that in addition to the new  
16 injury that was caused by the March 22, 2023 accident, the old  
17 condition was aggravated by this accident?

18 A Yes. I believe so, yes.

19 Q Do you have an opinion, sir, to a reasonable degree of  
20 medical certainty about whether her prior neck condition made  
21 her more susceptible to sustaining neck injury in a later  
22 trauma, such as occurred here in March 22, 2023 in the collision  
23 with the truck?

24 MR. SPEVACK: Objection, Your Honor.

25 Leading.

1 THE COURT: Rephrase the question.

2 Q Do you have an opinion to a reasonable degree of  
3 medical certainty about whether or not her prior neck condition  
4 made her more susceptible to sustaining neck injury in a later  
5 trauma, such as the collision with the truck?

6 A I do believe that that injury, having a prior  
7 herniation and treatment and surgery, makes you more susceptible  
8 to a subsequent injury.

9 Q Now, sir, again, based on everything you reviewed so  
10 far, do you have an opinion to a reasonable degree of medical  
11 certainty about whether the neck and back injuries that you've  
12 diagnosed are permanent?

13 A I believe they are permanent.

14 Q And what is the basis for that opinion? How can you  
15 say that?

16 A Well, the herniation that she sustained in her neck and  
17 back wasn't there prior. It was subsequent to the accident, as  
18 a consequence of the accident. That's a structural deformity of  
19 the spine, which on top of that, she had surgery. So, she has a  
20 plate and implants in her neck. That's different than it was  
21 before. That's permanent.

22 And, similarly, for the low back, she had the surgery,  
23 the discectomy; the disc was removed. That's not a normal disc.  
24 And so that disc is -- has forever been changed. And so that's  
25 why it's permanent.

1           Q     The fact that Ms. Mero remains symptomatic today  
2 several years after the incident and remains under treatment, is  
3 that a relevant factor in reaching your conclusion about  
4 permanency?

5           A     Yes.

6           Q     Why?

7           A     Well, I mean it's clear that even though she had some  
8 improvement with surgery, she is not the way she was before the  
9 accident.

10          Q     Sir, what does it mean when an injury is progressive?

11          A     Progressive means that you have an injury that you are  
12 treated for and then even with treatment, over time it might get  
13 worse. Even if you are doing treatment, sometimes things might  
14 get worse. That's progressive.

15          Q     And we've been talking a lot about diagnosis. What  
16 does the term prognosis mean?

17          A     Prognosis is the doctor word for guess. You know, an  
18 educated guess about what's going to happen in the future. When  
19 the doctor makes a prognosis, he doesn't have a crystal ball,  
20 but he can give you an idea of what he thinks is probably going  
21 to happen.

22          Q     I don't want you to guess. I only want you to give an  
23 opinion that you can give to a reasonable degree of medical  
24 certainty.

25                    So let me ask it that way. Have you reached a

1 prognosis for the future with respect to Ms. Mero's neck and  
2 back to a reasonable degree of medical certainty?

3 A Yes. To a reasonable degree of medical certainty, the  
4 prognosis is poor. She is not going to all of a sudden start to  
5 feel completely better. It's already -- time has elapsed from  
6 her surgeries. She's been treated and basically this is as good  
7 as she is going to get. And she could get worse over time.

8 Q Now, doctor, I'm going to wrap up, I just have a few  
9 questions more on a different topic.

10 You have your own private practice?

11 A Yes.

12 Q And are you the owner of that practice?

13 A Yes.

14 Q Do you have one office or multiple offices?

15 A Multiple offices.

16 Q How many offices do you have?

17 A Approximately 20 offices.

18 Q And do you have physicians who work with you and work  
19 for you in your practice?

20 A Yes. Yes.

21 Q Approximately, how many physicians do you have working  
22 with you?

23 A 12.

24 Q And is it your role in the practice to see patients and  
25 operate?

1 A Correct. I still see patients and operate, yes.

2 Q Do you operate on a weekly basis?

3 A Yes.

4 Q Now, today, if you were not here with us in court all  
5 day, and it seems like you are here with us all day, would you  
6 be at your practice either seeing patients or in the operating  
7 room operating?

8 A Yes.

9 Q Does today's day, being away from your practice and  
10 with us, represent a loss of revenue to your practice?

11 A Yes.

12 Q Are you being paid for your time here with us today  
13 away from your practice to deal with that loss of revenue?

14 A Yes, \$1,000 an hour.

15 Q \$1,000 an hour?

16 A Yes.

17 Q And is that your customary rate you charge when you are  
18 asked to come to court?

19 A Yes.

20 Q Now, in your practice, sir, what percentage of the  
21 patients that you see for spinal issues and spinal injuries are  
22 coming to see you after an accident or a trauma like a car  
23 collision or a work accident or otherwise?

24 A I don't keep precise statistics, but I would say it was  
25 about 80 percent.

1 Q About 80 percent.

2 And of that 80 percent of your patients who are coming  
3 to see you after some kind of accident or trauma with their  
4 spine, do a certain amount of that 80 percent have legal cases  
5 where they are suing for injuries like Ms. Mero's here?

6 A Yes.

7 Q With those patients, if you were asked to come to court  
8 to testify about your treatment and surgery, do you do so?

9 A Yes. I'll testify on patients if I treated them, yes.

10 Q And over the years, have you testified many times in  
11 injury cases like this on behalf of patients like Ms. Mero?

12 A Yes.

13 Q Have you testified numerous times here in Queens and  
14 numerous times in the other counties of New York and the  
15 surrounding areas?

16 A Yes.

17 Q As I think we covered at the beginning?

18 A Yes.

19 Q And when you've testified in cases like this, is it  
20 always on behalf of your patients like the situation we have  
21 here with Ms. Mero?

22 A Yes.

23 Q And over the years, have there been prior cases where  
24 you've come to court to testify about treatment you've rendered  
25 to a patient and I was the attorney who was representing the

1 plaintiff, your patient, and the case went to trial like this?

2 A Yes.

3 Q Approximately, how many times; if you know?

4 A Five.

5 Q And that's over a period of years?

6 A 20 years.

7 Q How many years?

8 A 20.

9 Q Okay.

10 And have there been, over the years or decades, other  
11 cases where you've treated a patient who had some kind of legal  
12 claim where she or he was represented by the attorney of record  
13 for Ms. Mero?

14 A You mean that didn't go to trial, but was represented  
15 by the attorney of record?

16 Q Correct. Well, I'm of counsel, trial counsel, and I  
17 just want to be thorough here. Have there been other cases  
18 where you treated a patient, performed surgery, and that person  
19 had a legal claim and they were either represented by me or the  
20 other attorneys who represent Ms. Mero?

21 A Yes.

22 Q Whether the case has gone to trial or it hasn't?

23 A Correct.

24 MR. WILLIAMSON: Your Honor, I don't have anything  
25 further.

1 THE COURT: Mr. Spevack?

2 MR. SPEVACK: Thank you.

3 CROSS-EXAMINATION BY

4 MR. SPEVACK:

5 Q Hi, doctor.

6 A Hello.

7 Q I think you have less hair than last time I saw you.

8 A I appreciate the compliment. I think it applies to you  
9 as well.

10 Q So you've had at least five cases with Mr. Williamson  
11 before; right?

12 A Yes.

13 Q And these cases have to do with fusion?

14 A I mean, I don't recall, but that's what I do. I  
15 basically do only a handful of operations; discectomies,  
16 fusions, et cetera, yes.

17 Q And when you do fusions, do you use the same diagrams  
18 that you used in this case?

19 A I mean, I didn't provide those diagrams, but every  
20 surgery pretty much looks the same. So, they are  
21 interchangeable.

22 Q Let me ask you this. After five cases, are you  
23 familiar with the questions and answers that are going to be  
24 given?

25 A I mean -- yes, to a certain extent. Obviously, I'm

1 being asked about my care and treatment of the patient which is  
2 pretty much standardized; yes.

3 Q Okay.

4 Doctor, sometimes they will ask you if you remember  
5 testifying some time in the past and it's been a long time, so  
6 you might not remember.

7 You testified last Monday; right? In Moldavan in  
8 Federal court?

9 A No, that case was settled.

10 Q I said you testified?

11 A There was no trial.

12 Q You gave deposition testimony?

13 A Perhaps, there was a deposition; yes.

14 Q I have a copy of that, so if you'd like to look at it,  
15 that's fine, I'll give it to you. But I'm just going to ask you  
16 some questions. They are basically the same questions, some of  
17 them, that you were asked there.

18 A Okay.

19 Q Is it your usual -- as you said -- your usual and  
20 customary for you to charge \$100,000 fee for a fusion?

21 A My billing practices are standard within the industry.

22 Q So you don't always get 100,000, but you testified that  
23 your usual and customary practice is 100,000; correct?

24 A Correct.

25 Q And you do surgeries three days a week?

1 A Yes.

2 Q And you can do up to four a day; right?

3 A Yes.

4 Q So that's \$1.2 million?

5 A Yes. I mean, we don't always get that much money, but  
6 that would be my usual customary, based on the fair health  
7 standards.

8 Q Sometimes if your patients don't have money, you will  
9 finance your fee; right?

10 A That's not correct. I'm not involved in any form of  
11 financing.

12 Q You'll do something on what they call a lien; right?

13 A Correct, a lien.

14 Q So, in other words, the patient will come to you and  
15 you will take some money up front, but the balance of the money  
16 will come from the proceeds of the lawsuit; right?

17 MR. WILLIAMSON: Objection.

18 THE COURT: Overruled.

19 A I mean, it really depends on the circumstances. It's  
20 really a self-pay. So, if the patient has no coverage then we  
21 -- you know, the hospital requires payment. If there is no  
22 coverage then, you know, it's incumbent, unfortunately, on the  
23 patient to come up with the money.

24 Q So, in some circumstances, not all, but in some  
25 circumstances, you can wind up, as a case resolves, that you get

1 more money than the patient gets? That can happen; right?

2 A I think that's false. I don't always know what the  
3 settlements are, obviously. Most of the time, I don't know what  
4 the settlements are.

5 My billing fees and lien fees are consistent with the  
6 environment that I practice in.

7 Q And is that environment doctors who operate almost  
8 exclusively for accident lawyers?

9 A No. I mean, the fees are -- the commercial fees, which  
10 are with patients that don't -- aren't involved in motor vehicle  
11 accidents -- are usual customary fees.

12 Q You charge interest to your patients; right? Seven  
13 percent?

14 A I don't charge interest on my patients, but interest is  
15 awarded to us when we litigate against insurance companies.

16 Q Did you testify that you charge seven percent interest  
17 on your liens?

18 A No. That was -- she had asked me -- someone had asked  
19 me how much interest -- I don't recall what the statutory rate  
20 is. I gave the best answer I can. But when we -- oftentimes,  
21 insurance companies won't pay the doctors' bills, so we have to  
22 sue them to get the money. And they make us wait to get paid,  
23 years. So once we go through that process, the courts award us  
24 interest for having waited all these years.

25 So when they asked me that question, do you charge

1 interest. I said yes, because in that circumstance interest is  
2 awarded to us.

3 Q So in the cases that you take on a lien, where you get  
4 the money from the proceeds of the lawsuit, you don't charge  
5 interest?

6 A We don't charge interest.

7 Q You have five main offices; right?

8 A Yes.

9 Q And you said you have up to 10 satellite offices?

10 A More than that. We have over 20 offices; yes.

11 Q You employ 10 doctors -- as of last week it was 10  
12 doctors; right?

13 A Somewhere between 10 and 12.

14 Q Okay.

15 Some of them are pain management doctors?

16 A Yes.

17 Q So they can come to your offices -- and, by the way,  
18 you are the sole owner of the company which provides these  
19 services; right?

20 A Yes.

21 Q So people who are suing in accident cases can come to  
22 you to get both pain management and surgery; right?

23 A Not to me, but we provide those services for patients.

24 Oftentimes, as you see in this case, patients are  
25 treated nonoperatively. And one of the remedies is like

1 interventional injections, pain management. So we do employ our  
2 own pain management doctors so the patients have an opportunity  
3 to get treated that way.

4 Q Is it wrong to call your practice a one-stop shopping  
5 for people who are suing in court for injuries?

6 MR. WILLIAMSON: Objection.

7 THE COURT: Please rephrase the question.

8 MR. SPEVACK: Withdrawn.

9 Q Doctor, I'm going to ask you this one question and I'm  
10 just going to accept a yes or no. If you want to give a more  
11 fulsome answer, please feel free to do so. I'm not going to ask  
12 you any question beyond this; okay.

13 Do you ever perform unnecessary surgeries at the behest  
14 of personal injury lawyers who refer their client to you?

15 MR. WILLIAMSON: Objection.

16 THE COURT: Overruled.

17 A No. No.

18 Q All right. Let's look at the case in question; okay?

19 The last half hour or so dealt with documents that you  
20 had just received I think in December regarding this case. That  
21 is, her prior treatment; right?

22 A Yes.

23 Q And they were sent by the lawyer to you; right?

24 A Correct.

25 Q When was the last time you had a case with Mr.

1 Wolfstein?

2 A Six, eight months, maybe, a year. I mean, I don't  
3 recall.

4 Q Was that case tried here?

5 A I don't recall.

6 The last time we worked -- you asked me the last time  
7 we were in court together. And I said perhaps six or  
8 eight months, but I don't have a specific recollection.

9 Q So the documents that he sent you in December, you know  
10 that that was in preparation for the trial; right?

11 A Yes.

12 Q And since it's actually -- you said -- you testified --  
13 over 80 percent of your cases are personal injury accident  
14 cases; right?

15 A About 80 percent.

16 Q Could it be 90?

17 A It's about 80 percent, sir. That's my response.

18 Q So is it fair to say that when you treat a patient and  
19 you are writing the chart, you are aware that there is a good  
20 possibility that what you are putting in this chart is going to  
21 go to court?

22 A I mean, it's certainly possible; yes.

23 Q I mean, if you are a surgeon who doesn't have your  
24 niche, not doing this particular kind of work, most surgeons  
25 don't expect if they are treating a patient that their record is

1 going to wind up a lawsuit; right? Is that fair to say?

2 A I take care of patients -- traumatically injured  
3 patients -- like people who get hurt on the job. I mean, for  
4 example, those patients don't go to court, but there is legal  
5 correspondence regarding their injuries. So -- and it's  
6 incumbent on me, as a doctor, I have to take an accurate history  
7 when someone comes. They are either coming to me to get treated  
8 because they got hurt on the job or they slipped and fall and I  
9 have to write that down. So that's -- my role -- my role in  
10 this is to do that.

11 Q My only point was in your particular niche, what you  
12 decided to do, it's a high possibility that what you write is  
13 going to be seen by lawyers and is going to be an exhibit in  
14 court some day; right?

15 A I mean, I wouldn't -- obviously, I guess my response  
16 was, as I gave you before, I'm involved in taking care of people  
17 that have been injured in traumatic injuries. And so I document  
18 everything appropriately. If that goes on to litigation or to  
19 relate to the patient's work status, those documents are used  
20 either to support the case or controvert the case or whatever it  
21 is.

22 Q The last batch of documents, they were sent to you  
23 specifically to support your testimony in court? I'm talking  
24 about, you got the reports from Dr. Wolfstein and Dr. Perry, I  
25 believe. Is it Dr. Perry?

1                   MR. WILLIAMSON: You are talking about Dr. Perry  
2                   and Wolfstein?

3                   MR. SPEVACK: Dr. Perry and Wolfstein.

4           A        In preparation for trial, I reviewed the records; yes.

5           Q        I mean, that wasn't part of your treatment. You knew  
6           an attorney was giving it to you so you could give an opinion in  
7           court to these people; right?

8           A        Yes, they were asking me my opinion on what happened.  
9           So I asked to see the other records before rendering my opinion.  
10          That's the sequence.

11          Q        And when they gave you the records about the first --  
12          I'm going to call it the first accident and the second accident;  
13          okay?

14          A        Me too.

15          Q        So when they gave you the records for the first  
16          accident just recently, that wasn't for your treatment; right?  
17          That was for you to give an opinion about the exacerbation of  
18          what caused the injury; right? Is that a fair statement?

19          A        I mean, they gave it to me because I wanted to know  
20          about the prior history.

21          Q        You've been treating the patient for three years;  
22          right?

23          A        But obviously I'm giving an opinion on causality;  
24          right? So, if I'm giving an opinion on causality, prior to  
25          doing that I want to see the records. I asked for the records

1 and they were given to me.

2 Q I understand.

3 So can we agree for the three years that you were  
4 treating the patient, you didn't ask to see the first accident  
5 records? You only asked to see it when you were about to come  
6 to court? Is that a fair statement?

7 A Correct.

8 Q You know what dailies are? Where you get the  
9 transcript of what went on in court the day before?

10 A There are transcripts that are --

11 Q Have you seen the transcript of what plaintiff said  
12 yesterday?

13 A No.

14 Q So you don't know what she said?

15 A No. I didn't review her transcript; no, sir.

16 Q Okay.

17 Can you pull up your report? The first one is fine --  
18 the first visit.

19 A Yes. Thank you.

20 THE COURT OFFICER: Handing the witness

21 Plaintiff's Exhibit 18 marked for evidence.

22 Q And the bottom of the last line where it says history  
23 of present illness, do you see that?

24 A Yes.

25 Q The last line it says patient complains of low back

1 pain and neck pain. And then can you read what it says there?

2 I'll do it. Maybe you can't find it.

3 With radiation into both right and left upper  
4 extremities; okay?

5 So that means, that's medical talk for right and left  
6 arm; right?

7 A Yes.

8 Q And then the next thing that you put down is that she  
9 has numbness; right? And tingling; right?

10 A Yes.

11 Q Now, numbness and tingling are words -- in the normal  
12 English lexicon, we all sort of know what numbness is.

13 When you say numbness, do you mean what an average  
14 person means? Like we can't feel things?

15 A The paint says that they feel numb, they don't feel  
16 things.

17 Q And tingling means what we usually mean? Like a  
18 tickle, but not a good-feel tickle?

19 A Right.

20 Q And also you say dysesthesia, that can mean like  
21 burning?

22 A Burning or altered sensation.

23 Q Doctor, there was a philosopher Wittgenstein who said  
24 that you can't have a toothache without knowing it.

25 What I think he meant was pain is something you

1 experience. If you are in pain, you know it. Is that a fair  
2 and obvious statement?

3 A I'm sorry, I didn't understand the question.

4 Q Well, we have the transcript, the jury can read it.

5 The plaintiff never used the word numbness. And the  
6 plaintiff never used the word tingling.

7 Now, if she was having numbness, she would know it;  
8 wouldn't she?

9 A I mean, the premise of your question I think is false;  
10 right. She told us she had numbness and tingling. That's what  
11 I documented in the note.

12 Q Do you know why she wouldn't mention that to the jury?

13 A I can't answer that question, sir.

14 Q All right.

15 So she testified under oath, and if what she said to  
16 the jury is true, then you might not have a basis for doing that  
17 surgery; right?

18 MR. WILLIAMSON: Objection.

19 THE COURT: Overruled.

20 A I can't answer that question yes or no, but, obviously,  
21 I believe the patient, after having read her MRIs, did a  
22 physical examination and had multiple encounters with her, that  
23 she was being truthful in what she said and I thought surgery  
24 would help her. That's my response.

25 Q Well, the jury can get the record, but if the patient

1 never mentioned anything about her right arm, that would be  
2 inconsistent with what you say where she has numbness, tingling  
3 and dysesthesia, a burning sensation in the right arm?

4 A I mean, I think you are misquoting the record, sir.  
5 It's in Dr. McGee's note that she has radiating symptoms. It's  
6 in my note. It must be written 20 different times in the record  
7 that she has those symptoms.

8 Again, I'm not trying to be argumentative, but I don't  
9 have any evidence that what you are saying is accurate, so I  
10 can't respond to you. I'm just saying you are wrong. In fact,  
11 she did have those symptoms.

12 Q In fact, you put that in every note every time she  
13 comes to see you; right?

14 A I put in the note, Dr. McGee put it in the note, Dr.  
15 Mikelis put it in the note, Dr. Cherkalin put it in the note and  
16 Vallarino put in the note. All different doctors on different  
17 days.

18 Q The L5-6, the herniation was on the left; right?

19 A You mean C5-6?

20 Q C5-6 was on the left; right?

21 A It was more unilateral, but it can cause bilateral  
22 symptoms.

23 Q Your note says that she has numbness and tingling down  
24 the right leg.

25 Do you know if the plaintiff ever said that when she

1 came to see you she had numbness and tingling down the right  
2 leg?

3 A That's what she told me, that's what she told Dr.  
4 McGee, that's what she told Dr. Vallarino, that's what she told  
5 Dr. Cherkalin.

6 Q Well, I'm only cross-examining you.

7 A That should be a sufficient response to you, sir.

8 Q All right.

9 And is it your testimony that you wouldn't write that  
10 down if that wasn't what she told you?

11 A Correct.

12 Q And is it your testimony that you wouldn't write that  
13 down just to have a predicate to do a spinal fusion?

14 MR. WILLIAMSON: Objection.

15 MR. SPEVACK: Withdrawn.

16 Q How many cases did you say you had with the law firm  
17 that counsel is trial counsel to?

18 A I don't have an independent recollection, sir.

19 Q Is it the one called Ifraimoff? Mr. Ifraimoff?

20 A I think so, yes.

21 Q How many cases did you have with them?

22 A I don't know.

23 Q There are some law firms that you have up to as many as  
24 20 cases with; right?

25 A I'm practicing for 30 years so, I mean, I don't keep an

1 individual record, but I'm sure there is patients that I operate  
2 on that have been represented by the same attorney.

3 Q Did you testify last Monday that there are some law  
4 firms that you might have gotten referred cases up to the amount  
5 of 20 cases?

6 A I don't think that's an unreasonable number, but I  
7 don't keep, counsel.

8 Q My question is, is that what you said Monday?

9 A I don't recall. It was a long deposition.

10 Q Well, if they came to you and all those clients of this  
11 law firm and all these now patients of yours had spinal fusions,  
12 that can be over \$2 million from that law firm; right?

13 MR. WILLIAMSON: Objection.

14 THE COURT: Overruled.

15 A I don't understand the question.

16 Q What history did you take from the plaintiff when she  
17 first came to see you? I mean, just in terms about accident  
18 number one?

19 A I mean, that she was involved in a motor vehicle  
20 accident on March 22, 2023 when a truck ran a red light striking  
21 the front bumper resulting in her injuries.

22 Q I'm going to stop you.

23 What did she tell you about the first accident, not the  
24 second? There is a mention of it; correct? I believe there is.

25 A The patient had a prior neck or back injury in 2019 and

1 she had surgery on her neck.

2 Q Okay. Okay.

3 Did you get those records?

4 A No.

5 Q Why not?

6 A Because they weren't relative to the care and treatment  
7 of her existing condition. And no one was asking me to give an  
8 opinion on causality. That's not the interaction when they come  
9 here. They are asking me, doctor, how do I feel better? What  
10 do I need to feel better?

11 Q Well, did you think there can be anything in her  
12 medical history that can help you diagnosis and treat her?

13 A No, because you'd have to update everything; right. I  
14 would never rely on a four year-old MRI from before her accident  
15 in order to determine what proper treatment is after an accident  
16 with completely different injuries, okay, which also, you know,  
17 we are still examining the old body parts, right, the other  
18 areas.

19 So, that's like someone comes into it the ER with chest  
20 pain and you say I want to look at the old one, let me look at  
21 your old EKG, I'm going to work off your old EKG. No, you have  
22 to work off the new EKG, because what's relevant there and I'm  
23 not cardiologist, is what you need to take care of.

24 Q Doctor, I'm not a cardiologist either, but isn't the  
25 first thing a hospital does when you come in with chest pains is

1 ask for your old records?

2 A And that can be relatively -- that can be important in  
3 circumstances. In this particular case, having the old records  
4 didn't -- wouldn't influence -- and I do this all of the time,  
5 wouldn't influence what treatment patterns I would put the  
6 patient through.

7 Q Let me tell you what the plaintiff testified to; okay?  
8 She testified she had the accident in 2019, that she treated for  
9 a little over a year, that she had the discectomy and,  
10 miraculously, wonderfully, she was 95 percent cured.

11 So, now you have a patient and wouldn't you want to  
12 know that after a certain amount of limited treatment and  
13 limited surgery, she found herself almost completely cured?

14 A I apologize, but you are not recounting the history as  
15 I obtained it correct, so I can't answer your question yes or  
16 no.

17 Q But that's because you didn't take any full history;  
18 isn't that correct?

19 A You are completely mistaken. I took a history of the  
20 prior accident. I took a history that she was -- went back to  
21 work, okay, but she had new pain since the new accident and she  
22 was being treated by multiple doctors, including getting  
23 injections.

24 I reviewed the current MRI, which is going to tell me  
25 the status of her spinal condition, and would also reveal if

1 there was any significant prior; right. If I look at an MRI  
2 today, it's going to show me if there was a prior problem. I  
3 review that MRI with the patient and make treatment  
4 recommendations.

5 Q Doctor, a patient comes in to see you and says that I  
6 had a prior problem -- a prior neck problem, I went through some  
7 conservative treatment and some minimally invasive things and  
8 after a while I was fine.

9 Would you agree with me that your surgery is a surgery  
10 of last resort? It's something you want to avoid if you can?

11 A I mean, I can't answer that yes or no. Sometimes  
12 operating sooner is better than later. You get better results  
13 if you operate sooner.

14 In this particular case, I felt that she had three  
15 months of conservative treatment. She tried everything. She  
16 also had invasive procedures and she continued to have pain. So  
17 at that point I felt that surgery was medically necessary.

18 Q So why didn't you do an EMG?

19 A So EMGs, although they can be helpful, in my particular  
20 case, I had an MRI, which is objective, which is more definitive  
21 than an EMG. I had a physical exam that was consistent with  
22 radiculopathy. I had the patient subjective history, yes, but  
23 it was consistent with my objective review of the MRI, okay, and  
24 my objective physical testing. So I was -- I don't need more  
25 information to make a decision on whether to have surgery. The

1 EMG doesn't play a role at that point, because we have evidence  
2 already of nerve compression.

3 (Whereupon, the following testimony was  
4 recorded and transcribed by senior court reporter, Pauline  
5 Musa.)

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1 Q You never do EMGs before you do surgery?

2 A I do sometimes.

3 Q But not this time?

4 A I didn't feel it was necessary.

5 Q When she came to you, and you wrote down that she has  
6 bilateral in her upper arms and upper legs, numbness and  
7 tingling and dysesthesia. You thought that was enough to do one  
8 of your surgeries you can sometimes bill a hundred thousand  
9 dollars for; is that correct?

10 A No. Again, your premise -- You are mischaracterizing  
11 all the sequence of events. So, I'm not going to answer yes or  
12 no. By the way, in this case we didn't get that. That is not  
13 if the kind of money we got on the case.

14 MR. SPEVACK: So amusing.

15 Q Are you scheduled today give testimony later on this  
16 month?

17 A Not that I am aware of, sir.

18 Q Do you have a Ms. Fuentes that works with you, right?

19 A Yes.

20 Q She's the person just in charge of taking care of the  
21 liens that you charge for these fusions that you offer, right?

22 A She's an employee in my office, but she's not  
23 exclusively assigned that task. No.

24 Q Did you testify last Monday that among her jobs is to  
25 take care of the liens?

1           A     She processes.  She's one of the people that processes  
2    liens,  yes.

3           Q     You have more than one person to process the liens?

4           A     Yeah.  In order to schedule surgery you need to verify  
5    insurance coverage, that is one person.  You need scheduling  
6    people, and you need people to speak to the patient about if  
7    they need to pay out of pocket for the surgery.  All these  
8    people are involved in trying to determine how to get the  
9    patient what they need.

10          Q     Doctor, would you agree that the practice of charging a  
11    lien against recovery is something unique to doctors who treat  
12    injury patients referred by accident injuries?

13                   MR. WILLIAMSON:  Objection.

14                   THE COURT:  Overruled.

15          A     So, a lien just means, to the jury, what happens is the  
16    insurance company does to the want to pay for the care.

17                   MR. SPEVACK:  Doctor, I just asked --

18          A     Because they don't want to pay for care, these patients  
19    are injured and hurt, doctors like us, are forced to take care  
20    of people for free, basically.  The lien just says that they  
21    are responsible for the bill at the end, or personally  
22    responsible for the bill, and we continue to treat the patient.  
23    That is exactly what a lien is, which is the standard for all  
24    doctors that take care of patients involved in motor vehicle  
25    accidents, all doctors have to be prepared because again,

1 insurance companies take money, but don't want to pay the  
2 premium. They don't want to pay to the clients. I didn't  
3 create the system. I am just trying to take care of people.

4 Q My question is, is it unique to people, to doctors, who  
5 decide to treat, basically, only people in accidents cases, is  
6 that unique to them?

7 A It's only for patients involved in motor vehicle  
8 accidents for the most part.

9 Q You are not treating for free. You are charging  
10 sometimes a hundred thousand dollars for your services; is that  
11 correct?

12 A My billing practices are standard and lien practices  
13 are standard for the industry. This particular case, this was  
14 covered by the no fault insurance carrier. So, we received the  
15 no fault fee for this case.

16 Q Thank you.

17 A You are welcome, sir.

18 THE COURT: Redirect?

19 MR. WILLIAMSON: Yes.

20 REDIRECT EXAMINATION

21 BY MR. WILLIAMSON:

22 Q Dr. Lattuga, counsel just asked you about a bunch of  
23 questions about liens and other cases. He didn't ask you about  
24 liens in this case. Let's talk about this case for a moment.  
25 The Adriana Mero case from when this collision with the truck

1 happened March 22, 2023, up through today, has there been any  
2 liens for her treatment with respect to your office?

3 A No.

4 Q That is for you, your treatment personally, or any  
5 physicians associated who work with you?

6 A All the treatment was paid by the insurance company.

7 Q That would be Ms. Mero's insurance company?

8 A Yes.

9 Q When we say Ms. Mero's insurance company, we're talking  
10 about the no fault insurance coverage that was attached to the  
11 car that she was driving when she was hit by the truck?

12 MR. SPEVACK: Objection; leading.

13 THE COURT: When it comes to insurance can you  
14 lead.

15 Q Is that what we are talking about, Ms. Mero's no fault  
16 insurance attached to the car that she was in when she was hit  
17 by the truck?

18 A Yes.

19 Q That is because that is the coverage that applies to  
20 the medical bills for an auto accident like this?

21 A Yes.

22 Q You started treating her and your practice started  
23 treating her in June of 2023 and continues to treat her. From  
24 when you first saw her, from the first time ever walked into  
25 your practice up to now, how have the bills been paid for Ms.

1 Mero's case for your practice. That includes you, office  
2 visits. It includes surgeries you did. It includes the other  
3 physicians in your practice who saw her. It includes pain  
4 management procedures that Dr. Cherkalin and the other doctors  
5 did in your practice, how is that all paid for?

6 A By the no fault insurance carrier.

7 Q Is it continuing to be paid by Ms. Mero's no fault  
8 insurance carrier?

9 A I am not aware that they have stopped paying, no.

10 Q In other words, it's being billed out?

11 A It's still being billed, yes.

12 Q Because we know questions were coming, did you check  
13 before you came here -- My question to you sir, has there ever  
14 been a lien of any kind in this case?

15 A There are no bills pending or due to this patient. All  
16 the bills have been paid by no fault.

17 Q If there is any pending bills, those will be billed to  
18 no fault?

19 MR. SPEVACK: Objection, Your Honor.

20 MR. WILLIAMSON: Withdrawn. Withdrawn.

21 THE COURT: We are beyond the minutia of  
22 insurance. Now, back to questions.

23 Q If there is a bill tomorrow, how will it be submitted?

24 A To no fault.

25 Q To your knowledge, is there or has there ever been a

1     lien against this case from your practice?

2                     MR. SPEVACK:  Objection; asked and answered twice.

3             You can see, there are no liens.

4             Q     So, the questions that counsel asked related to other  
5     cases?

6             A     Correct.

7             Q     Because her treatment was paid by the no fault, did you  
8     charge or did you receive the hundred thousand dollars for the  
9     surgery you performed on Ms. Mero that counsel asked about  
10    repeatedly?

11            A     I did not.

12            Q     Is that because the rate that no fault pays is  
13    substantially less than?

14            A     Substantially less than that.

15            Q     Is that also true in any other case where you treat a  
16    patient in an auto accident and there is no fault coverage, the  
17    fee charged and amount received is substantially less than a  
18    hundred thousand dollars because you are getting the fault rate?

19            A     Correct.

20            Q     And that is what happened here?

21            A     Yes.

22            Q     Whether it's the cervical fusion that you did July of  
23    2023 or the lumbar endoscopic discectomy that you did in 2024 or  
24    any of the other treatments that the physicians your practice  
25    performed on Ms. Mero, they would have charged whatever the

1 applicable no fault rate is?

2 A Yes.

3 Q Counsel asked you about the records that my office sent  
4 you as we were preparing for this trial. Do you remember those  
5 questions?

6 A Yes.

7 Q Did you ask to see records in 2019 and other records  
8 before rendering opinions?

9 A Yes.

10 Q Is that your standard practice?

11 A Yes.

12 Q Before you put pen to paper and commit to an opinion,  
13 you have as much as of the facts in front of you --

14 MR. SPEVACK: Objection.

15 THE COURT: Sustained.

16 Q Why do you ask for records before you render an  
17 opinion?

18 MR. SPEVACK: We had this all on direct.

19 MR. WILLIAMSON: Withdrawn.

20 Q Did you have -- Counsel asked you about it. I am just  
21 following up on what he asked. Did you have an opportunity to  
22 see the report of Dr. Perry and the report of Dr. Willstein, two  
23 experts retained by my office in this case?

24 A Yes.

25 Q Did you comment on the medical recommendations they

1 made for Ms. Mero's future?

2 A Yes.

3 Q Did you a say in the report you found those  
4 recommendation to be reasonable and --

5 MR. SPEVACK: Objection, Your Honor.

6 THE COURT: Sustained.

7 Q Let me move on to another topic. Counsel asked a  
8 series of questions about what you knew or didn't know and what  
9 you asked for and didn't ask for relating to the 2019 prior when  
10 you first started treating Ms. Mero. Do you remember those  
11 questions?

12 A Yes.

13 Q Does your first treatment reflect that when she first  
14 came to see you, she volunteered the information that she had  
15 been hurt, and in fact, injured her neck in an auto accident in  
16 2019?

17 MR. SPEVACK: Objection. This is the same  
18 question on direct.

19 MR. WILLIAMSON: Your Honor, I am just following  
20 up on -- Just laying a predicate for what he raised. It's  
21 redirect. He raised it.

22 THE COURT: If he raised it and got the same  
23 answer that you got on direct, now we would be hearing it  
24 again and that would be a little overkill, or are you  
25 setting yourself up for another question? Hopefully, does

1 not repeat another answer we have gotten already.

2 MR. WILLIAMSON: Correct. It won't.

3 THE COURT: Okay.

4 Q Counsel asked on cross examination why you didn't ask  
5 for the 2019 records in 2023 when you first saw her; do you  
6 remember that?

7 A Yes.

8 Q I believe you said it wasn't relevant to my treatment  
9 of her at that point?

10 A Correct.

11 Q Those records would have been old. They would have  
12 been outdated; is that why?

13 MR. SPEVACK: Your Honor, counsel is testifying.

14 THE COURT: Sustained. Don't answer the question.

15 MR. WILLIAMSON: Withdrawn.

16 Q Why did you feel -- Why did you say that you didn't  
17 need the records from 2019 to make a treatment decision in June  
18 of 2023?

19 MR. SPEVACK: Objection. He gave a long answer.

20 I asked him on cross and he gave his full answer.

21 MR. WILLIAMSON: This is what is was asked on  
22 redirect.

23 THE COURT: That was cross. Counsel, again,  
24 redirect isn't just repeating what has been said on direct  
25 and cross, and now again. If you have something to add,

1           you said it was going to lead to something that has not  
2           been discussed or perhaps, there is confusion based upon  
3           the cross and an answer.    So far we are just getting  
4           repetition.   That is not appropriate for redirect.

5                   MR. WILLIAMSON:   I'll just ask one more question  
6           on this line.

7                   THE COURT:   I am not limiting you to the  
8           questions.   I'm just directing you.

9           Q        Sir, counsel was asking you about whether or not you  
10           needed these records in June of 2023.   When you first saw her  
11           in June of 2023, did you have a current MRI at your disposal?

12           A        Yes.

13           Q        Was it from -- Were there two MRIs, one in the neck and  
14           one in the back from the month before

15                   MR. SPEVACK:   Objection.

16           A        Correct.

17                   MR. SPEVACK:   This is exactly what he explained.  
18           He didn't need it.

19                   MR. WILLIAMSON:   It's okay.   I will move on.

20                   THE COURT:   Okay.

21           Q        Counsel asked you about the decision to operate in July  
22           as opposed to waiting.   You said something about the  
23           compression of the nerve.   Let me ask you this, if a nerve in  
24           the neck is compressed by a herniate disc and it goes untreated  
25           for a period of time, can it result in permanent or worsening

1 nerve damage?

2 A Yes.

3 Q Was that part of your calculation in recommending the  
4 surgery to Ms. Mero when you did?

5 MR. SPEVACK: Your Honor --

6 A Yes.

7 MR. SPEVACK: Your Honor, he explained it very  
8 well to my cross examination.

9 THE COURT: Overruled.

10 Q Let me ask you the question again, sir. If a nerve in  
11 the cervical spine is compressed because of a herniated disc in  
12 the neck and it goes untreated for some period of time, can that  
13 result in permanent nerve damage or progression of nerve damage?

14 A Yes.

15 Q Was a factor in your decision to recommend surgery when  
16 you did for Ms. Mero when you did?

17 A Yes.

18 MR. WILLIAMSON: Nothing further, Your Honor.

19 MR. SPEVACK: None. Thank you.

20 THE COURT: All right. That is it.

21 THE WITNESS: Am I good?

22 THE COURT: Thank you, Doctor.

23 THE WITNESS: Thank you.

24 (Whereupon, the witness exits the courtroom.)

25 THE COURT: If I recall correctly, is that it for

1 the day?

2 MR. WILLIAMSON: I have another doctor in the hall  
3 -- I am joking, Judge. I wouldn't have done that on a  
4 Friday. Monday is my next witness.

5 THE COURT: We are done for the day?

6 MR. WILLIAMSON: Yes.

7 THE COURT: Very good.

8 Jurors, we are done for the day. Have a nice  
9 weekend. I hope the sun comes out at some point for the  
10 weekend.

11 Remember, the case isn't yours yet. Please do not  
12 speak with anyone about the case. See you on Monday.

13 Is it a morning witness.

14 MR. WILLIAMSON: Yes.

15 THE COURT: How many witnesses on Monday do you  
16 plan?

17 MR. WILLIAMSON: Can we approach?

18 THE COURT: Sure.

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

20 THE COURT: 10 o'clock Monday. Remember  
21 everything I said already and be safe. Monday we have one  
22 witness. I don't know if it will go into in the afternoon,  
23 and off the record.

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

25 THE COURT: Back on the record. See you on

1 Monday.

2 THE COURT OFFICER: All rise. Jury exiting.

3 (Whereupon, the jury exits the courtroom.)

4 MR. SPEVACK: Your Honor, I do have a motion this  
5 Friday afternoon. We can deal with it now or later. It  
6 has to do with the in camera inspection; etcetera.

7 THE COURT: What do you think might be in there  
8 now based on what --

9 MR. SPEVACK: I know what is in there. Counsel  
10 told me what is in there. What is in there is the  
11 settlements of the personal injury case and the resolution  
12 of the SUM claim. We are on the record?

13 Plaintiff says that she treated after the first  
14 accident and then she was 95 percent cured. The records  
15 that we have are we are arguing that is not true. She was  
16 never 95 percent cured. We believe the reason she stopped  
17 treating was because she settled her case. Plaintiff is  
18 suing my client for \$4 million dollars for future medical  
19 treatment. The total verdict could be in excess of the  
20 policy. My client could be personally liable for the  
21 excess debt.

22 It's crucial for my client to, at least advance to  
23 the jury, an alternate theory why she stopped treating  
24 suddenly in the path of the first accident.

25 THE COURT: Okay. So, if I have it right, you can

1 get from here that case was settled. You know it was  
2 settled.

3 MR. SPEVACK: What I want to ask her is, did she  
4 stop treating because she resolved any issues she might  
5 have had with the driver of that car, and that is pretty  
6 benign, and that is all I would want to ask her.

7 THE COURT: It's so benign and so -- I love the  
8 other B word, binal, that you don't need anything in here  
9 because also, even if what is in here, do you think there  
10 are no notes that say, I am not going to a doctor any more,  
11 even though I need a doctor because I have settled the  
12 case. You are not going to find that, which means all you  
13 can possibly find is what you know already, which means you  
14 can ask her. Okay. Isn't it true that you -- and you ask  
15 that kind of question. I forget. I didn't memorize  
16 everything. It was good cross. I didn't memorize  
17 everything. You asked her those questions.

18 MR. SPEVACK: Counsel to my left, I asked for the  
19 entire file. I even wrote in a courtesy e-mail I said, I  
20 don't need the whole file. I just need the settlement  
21 documents. I want to see when the case was settled. I  
22 know in my bones it was settled, coincidentally, when she  
23 stopped treating. Counsel told me and I quote, Okay.  
24 When he said, okay, I thought he meant okay, I will give it  
25 to you. I didn't know he meant okay, I am not going to

1 give it to you.

2 THE COURT: My daughter does that to me all the  
3 time. I finally figure out okay doesn't mean anything.

4 MR. SPEVACK: What I don't have is the date it was  
5 settled. If it's coincidentally just about the time that  
6 she stopped treating then my client has a right to present  
7 to the jury an alternate theory of why she stopped  
8 treating, and there is no note in her medical records that  
9 she ever got better. The jury can accept it or reject it.  
10 They have a right to offer that as circumstantial evidence  
11 that that is why she stopped treating. Maybe they might  
12 believe that if she gets four million dollars she won't go  
13 on treating in this lawsuit.

14 THE COURT: Okay. That goes against the rule that  
15 you cannot talk about a prior lawsuit. I admittedly have  
16 not studied all the aspects of that rule, but I don't think  
17 your basis for carving out an exception to the rule can be  
18 premised upon an issue that you to can very easily bring  
19 out without anything that's in the file or without  
20 discussing the prior lawsuit. You can just ask, did you  
21 ask her? Okay. You are going to say -- What did we find  
22 out so far? Did you ask her why she stopped treating.

23 MR. WILLIAMSON: Yes.

24 MR. SPEVACK: Because she got better.

25 THE COURT: She got better. Okay. You're saying

1 she stopped treating because she settled the lawsuit.  
2 Only since you brought up the king of logic, I don't see  
3 the connection. I see it in a nefarious kind of way, but  
4 you have medicals, your medicals if your medicals suggest  
5 that she didn't get all that, much better you can cross  
6 examine her completely without any reference to the  
7 lawsuit.

8 MR. SPEVACK: I ask to go Palmeri(phonetic). You  
9 are misunderstanding the entire thing. You can't talk  
10 about prior lawsuits. I will just say.

11 THE COURT: I will look at it again right now.  
12 What is the cite?

13 MR. SPEVACK: What is it says --

14 THE COURT: Wait. Wait.

15 MR. WILLIAMSON: The first Palmeri.

16 THE COURT: Who do they quote; Palmeri?

17 MR. SPEVACK: What every one of them says, is you  
18 can't bring up an old irrelevant lawsuit. None of them  
19 say--

20 THE COURT: One second, counsel.

21 MR. SPEVACK: None of them say you can't bring up  
22 an old lawsuit that is the heart of the case. They say if  
23 he sued three years ago for shoplifting or sued five years  
24 ago because of police brutality, you can't bring it up to  
25 try to prove you are a litigious person. I have already

1 established on the record that she had two accidents,  
2 neither of which were her fault and she was hurt in both.  
3 The idea to she think they think she's a litigious person  
4 because she had two accidents, none of which were her  
5 fault, and that will cast her as a bad character is  
6 ludicrous. This is the only case that the two accidents  
7 are so intertwined that it would be ridiculous to separate  
8 them.

9 THE COURT: Counsel, you have medicals that do the  
10 twinging. They put it together. The fact there was a  
11 lawsuit doesn't add much to anything other than, I know  
12 you're hinting at it, it was a fake lawsuit. Because you  
13 stopped treating as soon as you got some money.

14 MR. SPEVACK: That's the bow.

15 THE COURT: And that is improper.

16 MR. SPEVACK: Okay. Respectfully.

17 THE COURT: Do you have a cite? Is Palmeri the  
18 one they cite? What is the cite for that?

19 MR. SPEVACK: My point is and then I will let  
20 counsel speak. There is no case says --

21 THE COURT: One second.

22 MR. SPEVACK: -- same injury or related injury you  
23 can't bring up the prior case. There's no case that says  
24 that.

25 MR. WILLIAMSON: Absolutely.

1           THE COURT: Why would you need to bring up a prior  
2 case if you have all the medicals? Its inherently  
3 prejudicial to start talking about another case. It makes  
4 it that much more if it's you are going to throw in the  
5 other case and the medicals show that basically what -- If  
6 someone would give me a cite, I don't have to keep shooting  
7 in the dark, so to speak.

8           MS. PINGARO: It's 133 NY 261.

9           MR. WILLIAMSON: Your Honor, may I be heard?

10          THE COURT: Thank you. 133 NY 2d --

11          MR. SPEVACK: I think it's NY 2d, Judge.

12          THE COURT: What was number?

13          MS. PINGARO: 133 New York 2d 261.

14          THE COURT: 133 New York 2d 261 133 NY 2d, no NY  
15 2d would be Court of Appeals.

16          MR. WILLIAMSON: It's 133 --

17          MS. PINGARO: It's just NY, not 2d.

18          THE COURT: Thank you. It's that old?

19          MS. PINGARO: By the way, Your Honor, I am  
20 appellate counsel to the defendant. I realize I have not  
21 introduced myself to Your Honor.

22          MR. WILLIAMSON: Your Honor.

23          THE COURT: One second. 1892.

24          MR. SPEVACK: Yes.

25          MR. WILLIAMSON: The most recent 2nd Department

1 case that follows it is Ocampo.

2 THE COURT: What is the cite?

3 MR. WILLIAMSON: 6 AD 3d 1077.

4 THE COURT: Hiding in the back of the book.

5 MR. WILLIAMSON: There's also a 2nd Department  
6 case.

7 THE COURT: One second. Does Ocampo say anything  
8 that you want it to say?

9 MR. WILLIAMSON: Absolutely. As does --

10 THE COURT: Let me read it. Hold on.

11 MR. WILLIAMSON: I have the quote right here. I  
12 can I hand it in my motion, it quotes the case.

13 MR. SPEVACK: It's the facts.

14 THE COURT: I was reading the head note. Hold on.  
15 I will get to the body of it. You are saying while prior  
16 accidents or lawsuits may not be explored where the purpose  
17 is to induce the inference of negligence or demonstrate  
18 that the plaintiff is litigious and therefore, unworthy of  
19 belief, it is open to one charge of having caused an injury  
20 to inquire into whether the claimant had sustained or had  
21 claimed to have sustained the same injury and circumstances  
22 unrelated to those of loss. Which is it you want to do?  
23 Is that the quote you wanted me to find?

24 MR. WILLIAMSON: That is one with the quotes from  
25 Ocampo. If I may, what counsel is saying a complete

1 misstatement of the law. The Court of Appeals case here  
2 and multiple 2nd Department cases and there is several of  
3 them, there's not just Ocampo, but there is  
4 Bauers(phonetic) and --

5 THE COURT: Did they say anything different than  
6 what I just read?

7 MR. WILLIAMSON: They say it in different  
8 language.

9 THE COURT: A rose is still a rose. Nothing.

10 MR. WILLIAMSON: What they all say is that this  
11 point of law applies to cases like this where you have a  
12 prior accident, prior injury to the same part of the body,  
13 exactly what counsel is saying. Counsel is being  
14 disingenuous here. The reason he won't let this go is  
15 because what he wants to tell this jury is she made a legal  
16 claim before and got money. The Court of Appeals said,  
17 the 2nd Department has said is that that serves no  
18 probative value. There's no issue in this case about  
19 whether she got money before. The only issue as Your  
20 Honor said is in the medical evidence. Whether she had an  
21 injury before and whether what she's claiming hear relates  
22 to the prior injury. If it's allowed to come in that got  
23 money or had a legal claim, it goes to what these cases say  
24 is that it prejudices the plaintiff in the eyes of the jury  
25 as being litigious. Counsel is right these two accidents

1 and injuries are intertwined. There is a partial  
2 aggravation here as Dr. Lattuga said. All of the records  
3 from 2019 are here, and he has no limitations getting into  
4 the prior accident, the prior treatment, the prior  
5 complaints, all of it. None of is necessary -- Excuse me.  
6 Getting into how much money got or whether she had a legal  
7 claim is not necessary to establish that she had prior  
8 injuries that continued or never went away or anything like  
9 that. The only purpose is to prejudice the plaintiff, and  
10 you can't win on the merits or fearful he can't win on the  
11 merits, so he wants to put this in front of a jury. These  
12 cases, all of them, if you read Bauers, if you read the  
13 rest of them, what they say is, if it's allowed in here, if  
14 the Court permits it to come in that she had a legal claim,  
15 it is reversible error because it is prejudicial without  
16 probative value. All these case have said it's the law in  
17 the First Department, it's the law in the 2nd Department,  
18 what counsel's saying, is has to do with a irrelevant  
19 lawsuit from before or some other injury, that is just not  
20 true. He is making it up.

21 All of these cases have to do -- This is when it  
22 comes up in a case like this where you have a prior neck  
23 injury and later the injury is the same part of the body.  
24 You can get into the prior medicals, but can't get into the  
25 prior legal.

1           It doesn't have any probative value. She had a  
2           right to make a legal claim before, and whether she had the  
3           legal claim or didn't have the legal claim doesn't speak to  
4           the medical causation issues in this case. It's a medical  
5           causation case. The medical evidence is what covers them.  
6           Going beyond that, Judge --

7           THE COURT: That's not quite the same as you said.  
8           The other case is more of a paraphrase this. If I read the  
9           other one it may flesh it out.

10          MR. WILLIAMSON: If I may --

11          THE COURT: Counsel, you will give me a citation  
12          and I will read the case.

13          MR. SPEVACK: Judge, my application is for you not  
14          to decide this, and over the weekend, one of us is wrong.  
15          I will hand up a brief. Counsel will hand up a brief. I  
16          will go case by case by case and explain my position so  
17          you'll have it. I wasn't expecting to re-argue this  
18          particular aspect of the case, but this particular aspect  
19          has come up again. It's in my motion papers. I ask you  
20          to reserve decision and allow me and counsel, of course, to  
21          cite each one of these cases and explain what the  
22          difference is, so you will have it all in front of you.

23          THE COURT: Let me ask you. If I recall  
24          correctly, you are seeking to show that after the  
25          settlement of the prior accidents, she ceased medical

1 treatment.

2 MR. SPEVACK: Right.

3 THE COURT: Is that it?

4 MR. SPEVACK: Yes.

5 MR. WILLIAMSON: Your Honor, if you look at --

6 THE COURT: And do the medicals indicate a medical  
7 basis for ceasing treatment?

8 MR. SPEVACK: Our position is that they contradict  
9 her own testimony she got better.

10 THE COURT: The medicals contradict that she got  
11 better and therefore, as she said, she stopped treatment.

12 MR. SPEVACK: Right.

13 THE COURT: Forgive me. She didn't say anything  
14 about insurance not covering. Just she got better; is  
15 that your recollection?

16 MR. WILLIAMSON: What the testimony was is that  
17 after she had a percutaneous discectomy with Dr. Apple that  
18 she largely recovered and she didn't have any more  
19 treatment.

20 THE COURT: Okay. Did she give you a reason why  
21 didn't have any more treatment?

22 MR. WILLIAMSON: Yeah. She got mostly better  
23 after that procedure.

24 THE COURT: Okay, and medicals contradict that?

25 MR. WILLIAMSON: No.

1                   THE COURT: Mr. Spevack just indicated his  
2 position is the medicals contradict it --

3                   MR. SPEVACK: It depends how you read the  
4 medicals. She had a discectomy --

5                   THE COURT: Is that your position?

6                   MR. SPEVACK: Yes.

7                   THE COURT: Okay. I am not making a ruling on it.  
8 If that is your position you have it in the medicals, and  
9 now, to take a leap that that is your basis for wanting to  
10 discuss the lawsuit, and I will read the other cases. I  
11 promise. I can read them fairly quickly. You can shout  
12 them out and I will read them, quickly. Based on Ocampo  
13 that is not an allowed reason. Based on Ocampo I would  
14 think it's kind of narrow because they are more or less  
15 saying when there is an issue as to a prior injury, which  
16 means that's narrow because, generally, you have the  
17 medicals that are going to show you have a prior injury.  
18 There might be other cases that is flesh this out and  
19 interpret it differently, but I get that from whether or  
20 not it was open to one chart to having caused an injury to  
21 inquire whether or not the claimant had sustained or  
22 claimed to have sustained the same injury in circumstances  
23 unrelated to those at bar. We know that. We know it.  
24 There is no basis for you to go into the lawsuit.

25                   I will look at the other cases. If you want to do

1 a brief, feel free. It's your weekend. I'll check it. I  
2 will do it. That's my understanding. I will read it.  
3 Well, since we are here and it's before 4:00 -- Hold on.  
4 Give me another case.

5 MR. WILLIAMSON: Counsel has this. Can I give the  
6 Court a copy of my case. Counsel has this. It's the same  
7 one I gave counsel a week ago.

8 THE COURT: Do you have one that explains Ocampo a  
9 little more?

10 MR. WILLIAMSON: Yes.

11 THE COURT: Do they all cite Ocampo? Give me  
12 your best one.

13 MR. WILLIAMSON: I have several.

14 THE COURT: I don't feel like going upstairs yet.

15 MR. WILLIAMSON: Several cases.

16 THE COURT: Give me one.

17 MR. WILLIAMSON: Rodolitz, R-O-D -- 74 AD 2d 821.

18 74 AD 821. Name of the case is Rodolitz, R-O-D-O-L-I-T-Z.

19 THE COURT: 1980. It's not 1892. Wait. Wait. I  
20 am going to read this.

21 MR. WILLIAMSON: It's like, at the end.

22 THE COURT: All right. As this case must be  
23 retried, we take occasion to note at this time that the  
24 cross examination which sought to establish plaintiff's  
25 litigious nature is highly improper. They cite to Palmeri

1 and Molinari. Did you cite to Molinari also?

2 MR. WILLIAMSON: I have another Court of Appeals  
3 case for you, Judge.

4 THE COURT: In the two thousands?

5 MR. WILLIAMSON: Yes. This is all good law.

6 THE COURT: I get it. This supports it.

7 MR. WILLIAMSON: 26 AD 2 --

8 THE COURT: Hold on. Let the record reflect the  
9 Court is using its wonderful laptop on the bench, looking  
10 up these decisions and through our IT department, I am able  
11 to connect with Lexus, not Westlaw.

12 MR. WILLIAMSON: 26 AD 2d 552.

13 THE COURT: Bauers V Johnson.

14 MR. WILLIAMSON: Bauers V Johnson. 26 AD 2d 552.

15 THE COURT: For some reason with this wonderful  
16 connection --

17 MR. WILLIAMSON: Bauers V Johnson.

18 THE COURT: Hold on. It came up as the -- Got it  
19 this time. 1966. I am not that old. It's the same quote  
20 maybe this is where Ocampo gets it: While it is improper  
21 to show, I am reading from Bauers, while it is improper to  
22 show only that a claimant has had other accidents and thus,  
23 was negligence to the accident at bar, or to show only that  
24 he has commenced other actions, and thus is litigious and  
25 undeserving of belief, nevertheless, it is open to one

1 charge, having caused an injury to inquire into whether the  
2 claimant had sustained or had claimed to have sustained the  
3 same injury in circumstances unrelated to those at bar.

4 Than kind of helps Mr. Spevack.

5 MR. WILLIAMSON: I don't think so, Your Honor.

6 THE COURT: No. Other than until they go to my  
7 saying you are getting into medicals, it says he is allowed  
8 to ask whether the claimant had sustained or had claimed to  
9 have sustained the same injury and circumstances unrelated  
10 to those at bar. Now, we go the next step because I am  
11 still waiting for a case that kind of is going with what  
12 we're saying. You have it in the medicals. So, you  
13 don't--

14 MR. WILLIAMSON: Correct.

15 THE COURT: You can you say correct. This  
16 doesn't say that. This only says he can go into it. You  
17 are asking the Judge to use the Judge's discretion and say  
18 you have it in the medicals. There is no reason to bring  
19 in the prejudicial aspect of a prior lawsuit. This case  
20 doesn't say that. This case, in fact, says the opposite,  
21 and so does the case with the O.

22 He can he go into a prior accident if it's to show  
23 -- a prior lawsuit, if it's to show that she had the same  
24 injury. I'm going the next step and saying, because you  
25 have the medicals you should not be able to bring up the

1 lawsuit. I am asking you again, do you have a case that  
2 says what I am saying? This doesn't. Palmeri, I don't  
3 know what Palmeri says because it was 1892. The other one  
4 with the O, says the same thing. You're asking me,  
5 basically, and we'll hear this again.

6 Bolstering and unnecessary, and unduly  
7 prejudicial.

8 MR. SPEVACK: I want to I apologize. I probably  
9 should not have done this by oral argument. I just asked  
10 again, that I will go case by case and submit a brief that  
11 I believe is in my client's favor and we don't have to have  
12 oral argument unless the Court wants it, and Monday morning  
13 I will explain our position on each one of these cases. We  
14 can end the oral argument because the brief will stand for  
15 itself.

16 THE COURT: As an efficiency person, do you  
17 interpret the cases -- Do you have any cases that said it's  
18 okay when you have medicals that show there was a prior  
19 injury that is very similar to if the instant injury, and  
20 would serve the purpose that it is allowed and you've  
21 sustained the same injury that you can also go into the  
22 prior medicals and a prior lawsuit.

23 MR. SPEVACK: I think those cases already put me  
24 there. I think you are putting up an unnecessary burden by  
25 saying you can't go into the settlement. The settlement

1 is intricately related to with the medicals. We're  
2 explaining why the medicals ended where they did. We are  
3 addressing the medicals, one reason for the medicals. One  
4 reason to understand what the medicine progression was was  
5 because of the settlement.

6 THE COURT: Counsel, you then are putting in  
7 front of this jury that Ms. Mero committed a fraud; not  
8 that she's litigious, that she committed a fraud. For  
9 that, you need a lot more than a settlement and a  
10 contradiction that you already can extrapolate upon, bring  
11 out to the point of nausea in front of the jury that, hey,  
12 she had this prior. She says she was fully recovered.  
13 That is why she stopped medicals, and you have the medicals  
14 that say, no where in the medicals does it say the injury  
15 resolved.

16 MR. SPEVACK: I'll address the issue of potential  
17 fraud.

18 THE COURT: I am making it as narrow as my brain  
19 can handle.

20 MR. SPEVACK: I understand. I'll address the  
21 issue of fraud.

22 THE COURT: That is your going. Mr. Williamson  
23 and I --

24 MR. WILLIAMSON: I agree with Your Honor.

25 THE COURT: Because I agree with you. That is the

1 way it works.

2 MR. WILLIAMSON: If you also look, counsel said  
3 that there was, he said there was something inaccurate  
4 about the treatment. If you look at the no fault files,  
5 you look at all the medicals we have, the very last time she  
6 treat interested for the 2019 accident was when she had  
7 that discectomy with Dr. Apple in September of 2020. You  
8 cross examined her extensively about how she had 9 out of  
9 10 pain, and how could she have gotten better. You had  
10 ample opportunity and there is ample evidence for you to  
11 continue to argue that the medicals records suggest  
12 something different. You have a tremendous medical  
13 argument to make on the record without producing this  
14 highly prejudicial thing about her being litigious and  
15 about, as the Court said, because as the Court wisely said,  
16 if you follow the logical train of your argument, you are  
17 saying that she committed a fraud of some kind where she  
18 continued treating up until the case settled.

19 If Your Honor looks at the file and looks at when  
20 the case settled because the settlement documents are in  
21 there, and it doesn't even match up. His argument does not  
22 match up with the dates because the resolution of the case  
23 was, I think, six months after she stopped treating.

24 So, if his argument is that she waited, she kept  
25 treating and kept treating until her settled and she

1           stopped; that's not what the record shows. If you show one  
2           medical record that shows she treated after September 20th  
3           of 2020, I will be surprised because it doesn't exist. If  
4           the Court looks in camera at the settlement documents, it  
5           was months and months after that. The argument doesn't  
6           even work. It doesn't even correlate. Even if it did it  
7           would be highly prejudicial. You can make the same  
8           argument. This is a medical causation case. Use the  
9           medicine to win on the merits as opposed to injecting  
10          something in that she can't respond to and can be  
11          prejudicial.

12                       MR. SPEVACK: That's A, that she stopped treating  
13          and she settled the USN claim, uninsured motorist claim,  
14          got another 75 thousand.

15                      THE COURT: Did you go through all? You went  
16          through the, just on factual -- You've gone through all the  
17          medicals and she stopped. There are no treatments for that  
18          prior accident after the settlement because you just the  
19          word assumed. I watched Odd Couple many years ago. I know  
20          what happens. Okay. So, did you actually review it?

21                      For those of you who have never seen that episode,  
22          look it up on YouTube. It's when Felix is in court, and  
23          discussing the word "assume."

24                      Back to you. Have you gone through and factually  
25          wise, you do not see any medical treatment for the prior

1 accident after the date of the settlement?

2 MR. SPEVACK: After what?

3 THE COURT: After the date of settlement.

4 MR. SPEVACK: No. He refused to show it to me.  
5 He won't tell me what the date is.

6 MR. WILLIAMSON: No. No. This is what I will  
7 say. I will tell you right now, and the Court can look,  
8 the last medical treatment that she had for the 2019  
9 accident was in, I believe, September 20th, definitely  
10 September of 2020, the case both the DIM and the UF case  
11 settled within a week of each other six months later. So,  
12 they are not correlated. It's not she waited. It wasn't  
13 like she was treating until the case settled. She stopped  
14 all treatment.

15 If you can find any record of a treatment after  
16 September of 2020, I will look at it. That is the last  
17 treatment and the Court can look. The settlement happened  
18 months and months later the following year. So, it's not  
19 correlated.

20 MR. SPEVACK: That's what I am asking him for for  
21 two weeks.

22 THE COURT: Do you know where that is? Would you  
23 mind showing it to Mr. Spevack now?

24 MR. SPEVACK: Yes.

25 THE COURT: Off the record.

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

2           THE COURT: On the record.

3           MR. WILLIAMSON: According to all the medical  
4 records from the 2019 accident, the last treatment was on  
5 had September 9th of 2020 with Dr. Apple. According to  
6 the closing statement in this case the case was settled on  
7 March 9th and March 15th of 2021, which by my math would be  
8 six or seven months later. So, that argument that she  
9 treated all the way up until case settled and then stopped  
10 doesn't correlate.

11           THE COURT: On just a factual basis?

12           MR. WILLIAMSON: Yeah. That puts aside the  
13 prejudice, the implication, the case law, all of it. It's  
14 just not factually there.

15           THE COURT: Are you satisfied by the  
16 representation of two officers of the court?

17           MR. SPEVACK: No. I don't want to see one piece  
18 of paper. I want to see the files to see if they were  
19 about to settle, couldn't settle, if they were going to  
20 settle. I don't know.

21           THE COURT: Counsel, this Court accepts the  
22 representation and it's review of the file. That's what  
23 Mr. Williamson just said is accurate. Therefore, just on a  
24 factual basis, I am not getting into logic or allowable  
25 conjecture, etcetera, your argument fails.

1                   MR. SPEVACK: I just would like -- I don't know  
2                   that they had they consummated the settlement on that day.  
3                   He might be right. I might look at it and say, you're  
4                   right, the file settlement date is this date. They won't  
5                   let me look on the file. If they let me look at the file,  
6                   I might say, you are right, that's just the day they  
7                   settled. That's the day they decided to consummate the  
8                   settlement or signed the papers. I don't know it because  
9                   they won't let me look.

10                  MR. WILLIAMSON: Your Honor, I don't want to  
11                  belabor this, but the other major point here which we did  
12                  he address earlier, is the case law is equally clear that  
13                  you cannot use a subpoena post Note of Issue or on the eve  
14                  of trial or during trial --

15                  THE COURT: Let me stop you. We'll go back to  
16                  that.

17                  MR. WILLIAMSON: They never asked for this.

18                  THE COURT: Procedurally, it was denied. That is  
19                  why we have been getting more into in the merits.

20                  Off the record.

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

22                  THE COURT: Back on the record. Procedurally,  
23                  no. Admissible evidence wise, no. For all the reasons  
24                  that I have said ad nauseam, and others have followed.

25                  Are we done?

1                   MR. WILLIAMSON: Yes, Your Honor. I will give  
2 this back to you.

3                   THE COURT: I think we are done. See you Monday  
4 at 10:00.

5                   (Whereupon, the trial was adjourned to February  
6 23, 2026.)

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