

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: PART 99

- - - - -X
DJHIERRY GOUSSE,

Plaintiff,

- against - INDEX NUMBER:
500574/2021
TRIAL

BEDFORD 2150 LLC, LITTLELEAF PROPERTY MANAGEMENT LLC,
HALT MANAGEMENT INC., ROSEWOOD REALTY GROUP INC.,
NIEUW AMSTERDAM PROPERTY MANAGEMENT LLC & BLACK SPRUCE
MANAGEMENT LLC,

Defendants.

- - - - -X

Supreme Courthouse
360 Adams Street
Brooklyn, New York 11201

July 17, 2026

BEFORE:

HONORABLE RICHARD J. MONTELIONE,
Justice of the Supreme Court
(And a Jury)

APPEARANCES:

LAW OFFICE OF NICHOLAS E. TZANETEAS
Attorney for the Plaintiff
1392 Coney Island Avenue
Brooklyn, New York 11230
BY: NICHOLAS E. TZANETEAS, ESQ.

CULLEN DYKMAN LLP
Attorneys for the Defendants
One Batter Park Plaza, 34th Floor
New York, New York 10004
BY: KENNETH BUFFALOE, ESQ.

LUCILLE CRAVOTTA
Senior Court Reporter

Proceedings

1 THE CLERK: Good morning, your Honor.

2 This is the matter of Djhierry Gousse vs. Bedford
3 2150 LLC. Index number 500574 of 2021.

4 Counsel, please give your appearance.

5 MR. TZANETEAS: Nicholas Tzaneteas for the
6 plaintiff.

7 Good morning.

8 MR. BUFFALOE: Kenneth Buffaloe for the
9 defendants.

10 THE COURT: Good morning.

11 All right. So I think there was one exhibit, an
12 e-mail, let's have that marked as a Court exhibit.

13 THE CLERK: Do you need to see it, your Honor?

14 THE COURT: Yes, please.

15 All right, Mr. Buffaloe, you've already seen Court
16 Exhibit 4?

17 MR. BUFFALOE: I have not.

18 THE COURT: Mr. Buffaloe, I don't want to rush you
19 along, but do you have any objection to that being
20 considered by the Court as a Court exhibit?

21 MR. BUFFALOE: No, your Honor.

22 THE COURT: All right. So Exhibit 2 is in
23 evidence.

24 Let's bring in the jury.

25 MR. TZANETEAS: Exhibit 4.

Proceedings

1 MR. BUFFALOE: Judge, I am checking to see if I
2 actually received this e-mail, I did not receive it.

3 THE COURT: Please get the jury.

4 MR. TZANETEAS: Your Honor, can I put a statement
5 on the record about that, your Honor?

6 THE COURT: Yes.

7 MR. TZANETEAS: I sent that e-mail, Judge, it's to
8 him and his paralegal. It seems that I've been accused
9 this whole trial about not sending stuff. I provided
10 numerous documents. I am basically conducting discovery
11 over again. It's impossible to me that I am getting
12 accused every step of the way of not providing everything.
13 I have cooperated with the Court.

14 At this point, your Honor, I printed that e-mail
15 out from sent e-mails. I saw the attachment, it's to him
16 and his paralegal and maybe to one other person, I am not
17 sure.

18 THE COURT: The e-mail was for Exhibit 2 or
19 something else?

20 MR. BUFFALOE: It was for something else that I
21 got. I got authorizations, a copy of authorizations.

22 MR. TZANETEAS: Yes, yesterday he said he never
23 got an authorization.

24 MR. BUFFALOE: I never said that I never got an
25 authorization, I said I never received these documents.

Proceedings

1 THE COURT: All right. What exhibit exactly was
2 the e-mail referring to? What Plaintiff's Exhibit number?

3 MR. BUFFALOE: No exhibit. As far as I could tell
4 he sent me a response basically saying I already provided
5 you with all this, here's a copy of what was provided for
6 and there is authorizations attached. I specifically asked
7 for any documentation that his economist was going to rely
8 on in connection with his testimony and instead he gave me
9 authorizations, copies of authorizations.

10 MR. TZANETEAS: Well, your Honor --

11 THE COURT: Let me just --

12 THE CLERK: 3 and 4 are in evidence.

13 THE COURT: 2 is only ID and 3 and 4 are in
14 evidence. Yes. I.

15 What did you want to say, Mr. Tzaneteas?

16 MR. TZANETEAS: Those are Court Exhibits, they're
17 not in evidence for the jury; correct?

18 THE COURT: I am sorry, say that again.

19 MR. TZANETEAS: Are they Court Exhibits?

20 THE COURT: The e-mail.

21 MR. TZANETEAS: The e-mail, I am sorry, Judge.

22 THE COURT: The work related records has been
23 marked for identification as Plaintiff's 2.

24 MR. TZANETEAS: Correct. I am sorry, your Honor,
25 I misunderstood.

Proceedings

1 THE COURT: Does the e-mail refer to the records,
2 or it's the authorization for those records? That's my
3 question.

4 MR. TZANETEAS: Your Honor, the e-mail attaches a
5 letter saying that I've already responded, here's the
6 authorizations, that is the authorization part of his
7 letter.

8 THE COURT: I am going to be very specific again,
9 does the authorization refer to the records reflected in
10 Plaintiff's Exhibit 2? That's my question.

11 MR. TZANETEAS: Yes.

12 THE COURT: All right. You are saying you never
13 got it, Mr. Buffaloe?

14 MR. BUFFALOE: I got an e-mail with authorizations
15 attached.

16 THE COURT: Were the authorizations attached
17 having to do with the records, Plaintiff's Exhibit 2?
18 That's my question to you.

19 MR. BUFFALOE: This e-mail is dated June 10th, the
20 authorizations are dated June 9th and I --

21 MR. TZANETEAS: Your Honor, if I may.

22 THE COURT: One second.

23 MR. BUFFALOE: My request at this stage of the
24 game was his economist had given records, had reviewed
25 records, he had referred to them and I wanted --

Proceedings

1 THE COURT: Referred to what? Referred to what
2 records, Exhibit 2?

3 MR. BUFFALOE: I don't know what records he
4 referred to.

5 THE COURT: All right. Do you have a copy of the
6 3101(d), the expert notice response.

7 MR. BUFFALOE: For doctor --

8 THE COURT: For the economist.

9 MR. BUFFALOE: I don't think I have a hard copy,
10 but I do have a copy.

11 MR. TZANETEAS: Your Honor, Exhibit 2 is the
12 records that my economist relies on. I've exchanged them
13 pursuant to 3122 and 2305. I provided authorizations to
14 predecessor counsel and counsel.

15 THE COURT: All right. I am accepting your
16 representations. It's admitted into evidence as
17 Plaintiff's Exhibit 2.

18 MR. TZANETEAS: Subject to redaction, Judge.

19 THE COURT: Subject to redaction.

20 MR. BUFFALOE: Just let me be clear, he never
21 provided me a copy of this document.

22 THE COURT: Did he provide you --

23 MR. BUFFALOE: He didn't provide me --

24 THE COURT: I am sorry. I just had a
25 representation, I am sorry, I just heard from counsel that

Proceedings

1 he provided you with an authorization for these records; is
2 that correct?

3 MR. TZANETEAS: Yes, your Honor.

4 THE COURT: I am accepting that. If it winds up
5 that that is an untrue statement you'll make a motion to
6 the Court.

7 MR. BUFFALOE: He did provide me with an
8 authorization, but I didn't ask for an authorization. He
9 provided the economist with specific documents, I asked for
10 him to provide me those documents so I can know what his
11 economist relied on. His economist in his report doesn't
12 actually say what he relied on, he doesn't reference actual
13 documents.

14 THE COURT: Do you have a copy of the economist
15 expert notice; do you have that?

16 MR. BUFFALOE: Correct, your Honor.

17 THE COURT: So hand it up, we'll have it marked as
18 a Court Exhibit.

19 MR. BUFFALOE: I don't have a hardcopy, I have an
20 electronic copy. I could e-mail to the Court.

21 MR. TZANETEAS: Your Honor, just for the record I
22 did provide a hardcopy pursuant to CPLR 3105. The records
23 my economist relies on, in her report she said she relies
24 on W2, those are from the Storage Facility. Under 2305,
25 February 16th when I got the records from the subpoena and

Proceedings

1 pursuant to 2305 I copied them because I got them by mail
2 and I sent them by mail with a cover letter that I think is
3 also marked.

4 THE COURT: All right. They're admitted into
5 evidence. If you bring a motion to this Court indicating
6 that any representations made to this Court are inaccurate
7 I will consider those motions, but right now they're in
8 evidence.

9 You could call the jury.

10 MR. BUFFALOE: Note my exception, Judge.

11 MR. TZANETEAS: Judge, can I bring my witness in,
12 Judge? The doctor, please.

13 COURT OFFICER: All rise. Jury entering.

14 (Jury entering.)

15 THE COURT: Good morning, everyone. Please sit
16 down. Thank you. I am sorry we have a later than
17 anticipated time that we are starting. Sometimes
18 circumstances are what they are. As I said before there is
19 a lot of moving parts, if one part is missing we can't move
20 forward. Hopefully the rest of the day we will sail
21 through the day. Thank you.

22 Mr. Tzaneteas, do you have a witness you would
23 like to call?

24 MR. TZANETEAS: Yes. At this time I would like to
25 call Dr. Sebastian Lattuga as we are taking him out of turn

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 with your Honor's permission.

2 THE COURT: Again, we're taking him out of order
3 as an accomodation, and then we will have the plaintiff
4 back on once the witness concludes his testimony. Thank
5 you.

6 THE CLERK: Good morning. Please raise your right
7 hand. Do you solemnly swear or affirm that the testimony
8 you are about to give this Court is the truth and nothing
9 but the truth?

10 THE WITNESS: I do.

11 THE CLERK: Thank you. Please be seated. In a
12 loud, clear voice please state your name, your title and
13 your business address. Please spell your first and last
14 name.

15 THE WITNESS: Sebastian Lattuga, M.D., SEBASTIAN,
16 LATTUGA, 2001 Marcus Avenue, Lake Success, New York 11042.

17 THE CLERK: And your title, sir?

18 THE WITNESS: M.D.

19 THE CLERK: Thank you.

20 THE WITNESS: Good morning, your Honor.

21 THE COURT: Good morning.

22 Please proceed.

23 MR. TZANETEAS: Thank you, your Honor.

24 DIRECT EXAMINATION

25 BY MR. TZANETEAS:

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 Q Good morning, Doctor. It's a little chilly in here, I
2 flow.

3 Doctor, are you a physician duly licensed to practice
4 medicine in the State of New York?

5 A Yes.

6 Q When were you so licensed?

7 A 1991.

8 Q Can you tell us a little bit about your educational
9 background?

10 A Yes. I am a board certified orthopedic spine surgeon.
11 I went to medical school at Stony Brook University, graduated
12 1989. Went on to do my orthopedic residency at Stony Brook as
13 well. Graduated 1995. Went on to do a fellowship in adult and
14 pediatric spinal surgery at the University of Miami, 1996. I
15 came back to the New York metropolitan area, I went into private
16 practice. I've been in practice since that time, licensed to
17 practice medicine. I am board certified and currently I am an
18 attending surgeon at Hudson University Hospital.

19 Q How long have you been practicing in private practice?

20 A Since '97.

21 Q And you talked about a fellowship, what is a
22 fellowship?

23 A A fellowship is additional training, you know, I am a
24 surgeon so it's additional training in a subspecialty of
25 surgery, so I am an orthopedic surgeon which is the kind of

1 doctor that takes care of you. You are probably most familiar
2 if you break your leg you see an orthopedic surgeon, he can put
3 you in a cast, he can do surgery. And orthopedics also includes
4 sports medicine, it also includes spine and it's a surgical
5 discipline meaning you learn how to do surgery. I chose to do a
6 fellowship in spinal surgery so that I spent a year and a half
7 just doing, obtaining or receiving additional training as a
8 spinal surgeon.

9 Q And can you tell us the specialty of spine surgery,
10 what is that? I know it sounds obvious, but describe what
11 spinal orthopedic surgery means?

12 A Right. I like to give an analogy, like an OB/GYN
13 delivers babies, that's what I do, I am a spine surgeon, I do
14 spinal surgery. My role in medicine is that if a surgery is
15 necessary they're sent to me to do the surgery.

16 And so, you know, I evaluate people, most people don't
17 need surgery, but when we feel like it's necessary and we think
18 there is a good chance that it would help them then we would
19 recommend it.

20 Q Doctor, as far as your responsibility to your patients
21 do you read and interpret neuroimaging studies?

22 A Yes, in my everyday practice, also as part of my board
23 certification I am required to know how to read MRI's, CT scans,
24 x-rays as they refer to the spine.

25 Q And why is that?

1 A Well, basically it helps, obviously it helps in the
2 diagnosis, right? So if you have -- although there are other
3 specialties that just read films, I get to examine the patient
4 and then I get to look at an image and then I correlate them, I
5 put them together. And so in order to make judgments about if
6 surgery is necessary or what type of surgery that you plan,
7 right, you need a -- you need an imaging study like an MRI and
8 an x-ray in order to help you make your diagnosis, but also make
9 a plan for how to treat that with surgery.

10 Q Now, Doctor, if you are not in court now what
11 activities would you be involved in your office today?

12 A I would be taking care of patients.

13 Q Are you being compensated for cancelling time of your
14 office hours today?

15 A Yes.

16 Q At what rate?

17 A \$1,000 an hour.

18 Q You and I met before, have you ever testified for one
19 of my clients before?

20 A I don't believe so.

21 Q About how many times per year do you find yourself in
22 court testifying for your patients?

23 A About six times a year.

24 Q And is that only for your patients?

25 A Yes, I only testify on patients that I treated.

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 Q Now, you brought your file here with you today?

2 A Yes, sir.

3 Q Is that file that you kept in the regular course of
4 business of your records?

5 A Yes, sir.

6 Q Do you have reports and notes in it that you keep in
7 your regular course of business for certain patients?

8 A Yes.

9 MR. TZANETEAS: Your Honor, at this time I would
10 like to admit the file into evidence subject to redaction.

11 THE COURT: Objection?

12 MR. BUFFALOE: I need to see it.

13 THE COURT: All right. So let's have the file
14 marked. Is it the same consent that you have regarding the
15 records from yesterday, no narrative reports?

16 MR. BUFFALOE: Correct.

17 THE COURT: Yes, so subject to the reports being
18 taken from the file prior to being given to the jury and
19 subject to redactions.

20 MR. TZANETEAS: But your Honor, I would like him
21 to have his narrative report, would you like to mark it for
22 ID? It's up to your Honor.

23 THE COURT: I don't think it's going to be
24 necessary. It will remain in the file folder until it's
25 time to and you could use it for whatever purpose you want.

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 MR. TZANETEAS: I will ask him if he refers to his
2 narrative not to read from it, Judge.

3 THE COURT: All right. So that is 8.

4 THE CLERK: 7.

5 THE COURT: That's 7? I have 7 as report of
6 Scilaris.

7 THE CLERK: I have Scilaris as 5.

8 THE COURT: That's 7. What if the exhibit number.

9 THE CLERK: Dr. Scilaris office hours number 5,
10 CD was 6 and now I have this as 7.

11 THE COURT: All right.

12 MR. TZANETEAS: Health East was in there somewhere
13 too.

14 MR. BUFFALOE: Health East is his exhibit which is
15 D.

16 MR. TZANETEAS: Okay, thank you.

17 THE COURT: All right.

18 MR. BUFFALOE: Judge, can we approach on this?

19 THE COURT: Do we need a reporter?

20 MR. BUFFALOE: I am not sure.

21 THE COURT: Okay, that means we need a reporter.
22 Thank you.

23 (Proceedings held outside the presence of the
24 jury.)

25 MR. BUFFALOE: Of course I don't have time to

1 compare this page by page with the subpoenaed records, but
2 New York Specialty did respond to a subpoena and produced
3 records. There are at least a few pages in here that were
4 not produced, like this page here, that were not produced
5 as part of the subpoenaed records. So I haven't had -- I
6 haven't seen those before. So, if plaintiff is willing to
7 consent to remove those and leave, you know, and take out
8 the reports that were not generated by the Kolb Radiology
9 report here.

10 THE COURT: Well, the only page that I saw that
11 you referred to was like a fax page.

12 MR. BUFFALOE: No, that is -- I don't know what
13 that is.

14 MR. TZANETEAS: Two or three pages asking for
15 physical therapy, Judge. And I am not going to consent to
16 take them out because it's his file.

17 MR. BUFFALOE: Summary, that was not produced
18 pursuant to subpoena.

19 MR. TZANETEAS: Your Honor.

20 MR. BUFFALOE: There is another one like that.

21 MR. TZANETEAS: Your Honor, these are his office
22 files, he could take it up with the doctor on cross
23 examination if they're not the same. Again, we provided
24 numerous authorizations.

25 MR. BUFFALOE: Right, and they didn't produce it

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 in response to any of them.

2 MR. TZANETEAS: How do I know that?

3 MR. BUFFALOE: They're subpoenaed records in the
4 court.

5 MR. TZANETEAS: You had authorizations to all
6 these records numerous times.

7 MR. BUFFALOE: That's right, and I am telling
8 you --

9 THE COURT: Let's get the subpoenaed records.

10 MR. TZANETEAS: I could tell you they're not in
11 there, Judge.

12 THE COURT: Okay.

13 MR. TZANETEAS: They're only reports in the
14 subpoenaed records.

15 MR. BUFFALOE: And this is not in there.

16 THE COURT: Let me ask you, why should they be
17 admitted if they weren't produced on a subpoena?

18 MR. TZANETEAS: Your Honor, these are his office
19 files, subpoenaed records, if I wasn't calling this witness
20 in then I am stuck with whatever they send for subpoenaed
21 records. This is his actual file, so I agree. If the
22 subpoenaed records come in, your Honor, and I think there
23 is something different and the doctors come in I am out of
24 luck.

25 THE COURT: The subpoenaed records, how is the

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 doctor affiliated with the party that produced the
2 subpoenaed records?

3 MR. TZANETEAS: They're not in evidence yet.

4 THE COURT: Is he the owner of the company?

5 MR. TZANETEAS: He's the owner of the company.

6 THE COURT: They don't go in, it's simple.

7 MR. TZANETEAS: May I make a record?

8 THE COURT: Yes, you may.

9 MR. TZANETEAS: Your Honor, at this point my
10 doctor brought his file in to testify about it. Defense
11 counsel subpoenaed records, they're not even in evidence,
12 he didn't put them in evidence and they've had
13 authorizations. This is the doctor's file. When
14 subpoenaed records come in and are produced, maybe look at
15 the subpoena and see what the subpoena says and that's why
16 they produced it. He produced his file with his notes and
17 reports. So they should come into evidence, your Honor.
18 There is no other subpoenaed record in evidence, this is
19 what I am putting in evidence. Defendant could have put
20 the evidence, he wouldn't agree to it yesterday, so now I
21 am putting this in.

22 MR. BUFFALOE: Wait a minute. What are you
23 talking about? I did agree.

24 THE COURT: Look.

25 MR. BUFFALOE: Sorry, Judge.

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 THE COURT: When you subpoenaed did you subpoena
2 the entire file?

3 MR. BUFFALOE: Yes.

4 THE COURT: These records do not go in. This is
5 not just any party. This is a party that owns the company
6 that was supposed to comply with the subpoena. No further
7 record. I am not going to delay this matter. We are going
8 forward.

9 MR. TZANETEAS: For the record --

10 THE COURT: You made the record already.

11 MR. TZANETEAS: For the record he didn't subpoena
12 anything.

13 THE COURT: Did you subpoena these records or not?

14 MR. BUFFALOE: Subpoenaed by prior defense
15 counsel.

16 THE COURT: May I see?

17 MR. TZANETEAS: This is mine that I subpoenaed.

18 THE COURT: Well, actually I was going to give it
19 to Mr. Buffaloe, have him find it. Thank you.

20 Why don't we go in the back so that you can spread
21 out.

22 MR. BUFFALOE: I misspoke, Judge. The records
23 were subpoenaed by plaintiff's counsel himself and they
24 include all medical records, diagnostic tests, MRI's, CT
25 scans, x-rays, operative reports and reports and certified

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 bills. And --

2 THE COURT: So it doesn't seem like the items that
3 are in addition were any of the items you just mentioned;
4 am I correct?

5 MR. BUFFALO: Well, those are all records, all
6 medical records, yes.

7 THE COURT: Can I take a look? It does say all
8 medical records. All right. I am going to --

9 Mr. Tzaneteas, you are saying to me that because
10 it's your subpoena that it was required that the defendant
11 serve their own subpoena asking for all medical records?

12 MR. TZANETEAS: No, your Honor. I corrected
13 defendant as I have corrected numerous times before in this
14 trial of things that he said he's done and he's not done
15 and I was just pointing out to the Court it's my subpoena.
16 I didn't put that into evidence, staff does it.

17 I don't know if it says -- it doesn't say notes in
18 there, it says medical records. The medical records are
19 contained, all medical records, those are records, those
20 are notes and prescriptions. I didn't put in prescriptions
21 in there and MRI's, they don't have MRI's, they don't keep
22 MRI's and the doctor can explain that, your Honor. He
23 doesn't do the subpoenas. I am assuming staff does it,
24 Judge. They respond with medical records, their medical
25 records, not other people's medical records. Maybe it's a

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 HIPAA violation, I don't know to be honest with you. I am
2 just doing it to correct what he's saying because all trial
3 I've been saying to your Honor that he's misspeaking about
4 certain things and not telling the Court the whole truth.

5 THE COURT: Well, I will tell you, I am not going
6 to get into that. What I am going to say though is that if
7 all the records, all medical records were subpoenaed and
8 there are extra pages in the office file, those extra pages
9 will not go before the jury. That's my decision. Thank
10 you.

11 MR. BUFFALOE: In which case should we just mark
12 the subpoenaed records into evidence?

13 MR. TZANETEAS: No, I want the file.

14 THE COURT: No, the file will go in.

15 MR. BUFFALOE: Let's remove the pages.

16 THE COURT: We can do that at a later point in
17 time. He can use the entire file including those pages to
18 give his testimony, what goes before the jury will not be
19 included.

20 MR. TZANETEAS: Before we put it in front of the
21 jury, your Honor, we'll go through and take it out. Fair
22 enough?

23 THE COURT: That's good. Thank you.

24 (Following proceedings in open court, jury
25 present.)

1 THE CLERK: This is marked as 7?

2 THE COURT: Subject to redaction, subject to other
3 reports and other records being removed.

4 Q Now, Doctor, since we're talking about the cervical
5 spine --

6 MR. TZANETEAS: Sorry, Judge, may I proceed?

7 THE COURT: Yes.

8 Q Since we're talking about the cervical and lumbar
9 spine, with your Honor's permission, can you come up and look at
10 the model of the spine and tell the jury a little bit about the
11 spine?

12 THE COURT: Yes. Why don't you go down, yes.

13 Q First of all, Doctor, is that an anatomically correct
14 model of a human spine?

15 A Yes.

16 Q Can you tell us a little bit about the parts of the
17 spine?

18 A Sure. So you guys know what a spine is already, but
19 let me give you a little more detail. So a spine is collarbone
20 that goes down from the skull to the pelvis. There's typically
21 three parts of the spine. There is the neck which we call the
22 cervical spine, the middle part of the spine which is called the
23 thoracic spine, and your low back which is called the lumbar
24 spine. And so each has generally a certain number of vertebrae,
25 seven, twelve and five. And so, and then again it connects the

1 brain and the skull down to the pelvis.

2 The purpose of the spine, the purpose of the spine
3 really is to -- it carries the weight of the upper body, so all
4 the organs, the heart, the lungs, the kidneys, your intestines
5 are here. If there wasn't a spine it would be like a worm, it
6 would just collapse, so you need a spine to support. It helps
7 us to move through space in a stable way.

8 The other main function of the spine really is it acts
9 as a tunnel or conduit for the spinal cord and the nerves. So
10 the brain is like the CPU, right, and then there is fiberoptic
11 cables, my analogy for the spinal cord and the nerves, and so
12 this information in your brain is transferred down to your arms,
13 your legs. Also, there is information that comes back from your
14 arms and legs that go up to the brain. So, that function of the
15 spine affects it, how it protects the spinal cord and nerves is
16 very important because as you could imagine, I am sure you are
17 aware, if you have an injury to the spine you can also be
18 paralyzed or have a neurological injury, right, and the reason
19 for that is because they're right flexion to each other. It's
20 meant to protect the nerves and the spinal cord and if it
21 doesn't then it can be a possible injury.

22 So, break it down a little further, each bone is called
23 a vertebrae, all right, and then the space between each or the
24 structure between each vertebrae is called the intravertebral
25 disks. And so you know, one bone, one disk, one bone act as a

1 unit. What they do really is they primarily it acts to
2 stabilize the spinal column.

3 So what do I mean by that? A normal spine has very
4 little real motion like this, it's really rigid and it needs to
5 be rigid because if it was unstable then that can potentially
6 create an injury to the spinal cord and the nerves. So the disk
7 needs to support that. At the same time it does provide for
8 some flexibility, so stability and flexibility.

9 Now, so in this particular case, right, someone can get
10 an injury to the spine, right, and that injury to the spine can
11 cause either spinal cord injury or nerve injury. The words for
12 nerve injury in doctor speak is radiculopathy. So one doctor
13 speaks to another says oh, patient has a radiculopathy. What
14 he's saying is he has evidence of nerve damage or a pinched
15 nerve. So if in the course of your day someone says I have a
16 pinched nerve doctors would call that radiculopathy.

17 Again, how that happens as you can see on this model
18 you have bones, you have disks, you have a little yellow like
19 wires that come out, I like to say they're like fiberoptic
20 cables. If you pinch this nerve on everybody it gives more or
21 less the same symptoms, because the body is hardwired, right?
22 It's the same on you and you and you. And so if for example you
23 have and the vertebrae number, so if the third cervical
24 vertebrae, the fourth cervical vertebrae created an injury to
25 the nerve or spinal cord you can get have a very specific

1 symptom complex.

2 So what I do I mean by that? It gets a little
3 complicated, but remember I told you about I am in there with a
4 patient, they tell me a story, they tell me what is not working,
5 they tell me where the pain is. And I go okay, sound like you
6 have a pinched nerve, cervical radiculopathy. I can get an idea
7 where in the neck it is more or less and then I will look at the
8 MRI.

9 So for the jury an MRI is a diagnostic imaging study,
10 right, it's like an x-ray. Everybody knows what an x-ray is,
11 right? MRI is way more powerful. What it does, it gives us the
12 ability to look inside you or you and actually see if there is
13 damage to a particular structure. So I will listen to the
14 story, do an exam and correlate that with what I see on an MRI.
15 That's what we're looking for in surgical perspective, that they
16 go together, that story, that whole story put together and
17 that's how we use a spine and an MRI.

18 Q Can you tell us what a herniated disk is, what shows on
19 the spine, and before you sit, what happens when a disk
20 herniates?

21 A Sure. In this model they have a demonstration of a
22 herniated disk. So this disk, right, which purpose is to
23 support the vertebrae, protect the nerves, it can be injured in
24 an accident, a fall or something. And what it really looks like
25 if you take this disk out, take it out of the body it kind of

1 looks like a flat orange in that it has a really hard outer rind
2 and if you rip it open you have a soft fruit inside, right?
3 That is what is meant to represent the soft inner portion which
4 can protrude out and then you could see the proximity to the
5 nerve. You could see how that would -- if that creates
6 inflammation or pinched a nerve how that can create a nerve
7 problem. That's what a herniated disk is.

8 Q Okay, have a seat, I will ask you more questions.

9 Thank you. Now, Doctor, when someone has a herniated
10 disk could you tell us a little bit about the symptomology it
11 might cause?

12 A Sure. So the herniated disk can cause pain in that
13 body part. So if it's in the neck it can cause neck pain,
14 spasm, tenderness because it can create inflammation around the
15 nerves. It can damage nerves, that's not functional, it doesn't
16 work right. So it's all of the following; it's neck pain, it's
17 the nerve pain, it's nerve loss of sensation because the nerves
18 carry sensory information back up to the brain, and then there
19 is motor function and reflexes. So the nerve controls that,
20 that's fiberoptic cable that's going from the brain out to the
21 arm. It carries a lot of information, it carries information to
22 the motors and the reflexes, but it also pulling information
23 back from the extremity back up to the brain and the brain
24 interprets that as a finding.

25 Q And what could be some of the causes of a herniated

1 disk?

2 A You know, herniated disks can happen from, you know,
3 car accidents, work accidents, slip and fall, twisting injuries,
4 whiplash injuries where the head is thrown back and forth.
5 Cervical spine, the way it works biomechanically, is the head is
6 about 30 pounds.

7 So the neck has like a bowling ball, so the neck, that
8 series of column of bones, has to actually support the skull and
9 the contents of the skull. So if there is an abrupt snapping
10 back or if your head hits, that's why so often we see nerve
11 injuries and herniated disks with people that are involved in
12 injuries.

13 Q And what is degeneration?

14 A Degeneration is a very, very generalized term that's
15 used to describe a process of where something starts and then it
16 goes, it deteriorates over time. Right.

17 And so, the classic example is if you tear your
18 cartilage of your knee in college and it creates a problem, over
19 the years that knee wears out faster than the other, right, and
20 so that would be -- the doctor would say, well, that's
21 degenerated, or you know, that's worn out over all these years.
22 It can also occur in the spine. That's also that word,
23 unfortunately I believe is used for age-related changes.

24 A lot of times as we get older, I always say, you know,
25 if I look 50 something on the outside if you take an MRI inside

1 of me I look 50 years old, I look over 50. So there are changes
2 that occur inside the body that are consistent with your age and
3 what happens on the outside. Those changes that you see on an
4 MRI imaging study are often termed degenerative findings by
5 radiologists and doctors.

6 Q And what is degenerative disk disease?

7 A Degenerative disk disease is again that process where
8 it could have been an initial injury and then further erosion
9 over time or, again I say unfortunately, a lot of doctors use it
10 for just age-related changes. So you look at an MRI, you see
11 it, you know, looks like for the jury that's hard to explain it.
12 It basically desiccates, it dries out, then you get changes the
13 way the bones look. Right, bones look more prominent, that's
14 picked up and read as degeneration. I prefer to describe that
15 as age-related changes if that's what occurred.

16 Q Could you tell us what in the terms of as a spinal
17 surgeon what symptomatic and asymptomatic means?

18 A Right. So symptomatic means you have a problem and
19 that's causing you pain and symptoms that you can describe for
20 me, or asymptomatic is you -- if you took an imaging, if you
21 took an image of your heart, for example, an EKG and we saw a
22 problem, but you didn't feel anything, right? You were walking
23 around, I don't feel anything. Your doctor says your EKG says
24 you had a heart attack, that would be asymptomatic, you weren't
25 aware of what it was causing.

1 Q Can a herniated disk be asymptomatic?

2 A Yes.

3 Q Can degenerative disk disease be asymptomatic?

4 A Yes.

5 Q Can a degenerative condition be asymptomatic?

6 A Yes.

7 Q Can all of those conditions be symptomatic?

8 A Yes.

9 Q Okay. Now, I am going to take you, your office, what
10 is your office called, your practice? Tell me a little bit
11 about your practice.

12 A You know, we're what's called an interventional spine
13 practice. We go by the name of New York Spine Specialists. You
14 know, that's what we traditionally practice as. It's me and
15 three other spine surgeons and orthopedic surgeons and
16 interventional pain doctors. And again, the niche is, the niche
17 that I have is that people they need surgery or they had need an
18 injection, right? Then they get referred to my practice for
19 evaluation for those procedures.

20 Q And how many offices does the office have?

21 A We have he over 20 offices.

22 Q Okay. And how many doctors work in your practice?

23 A I think we have twelve.

24 Q Now, I am going to have you look at your records, the
25 only thing that if you are referring to a narrative please if

1 you need to refresh your memory and then look up, don't read
2 from it, but all the other records are in evidence.

3 I want you to take you to the first visit, did there
4 come a time where your office at New York Spine Specialists saw
5 Mr. Gousse in relation to an accident that happened on
6 5/14 2020?

7 A 1/12/21.

8 Q What office did he see -- what office did he go to that
9 day?

10 A I believe in our Manhattan office, 58th Street.

11 Q Who referred this patient to your office?

12 A Dr. Hanan.

13 Q Has Dr. Hanan referred patients to you in the past?

14 A Yes, I have some of his patients, yes.

15 Q And who is the doctor in your office that saw
16 Mr. Gousse the first time on 1/12 2021?

17 A Dr. Mikelis.

18 Q What type of doctor is Dr. Mikelis?

19 A He's a nonoperative or the specialist.

20 Q Okay. And when Mr. Gousse came into the office that
21 day what was his chief complaint?

22 A Patient came in complaining of neck and back pain.

23 Q And what was the history, was a history taken that day?

24 A Yes.

25 Q And what is the purpose of a history?

1 A The purpose of the history really is to get an idea,
2 you know, what could have been hurt, right. You know, I got hit
3 by a car, I twisted my knee on the ball field. It gives us an
4 idea of where to start focussing our energy. So it is relevant.

5 Q What was the history presented to your office on that
6 first visit?

7 A That he -- his aunt's bathroom, the ceiling fell down
8 and hit him in the head.

9 Q And at the time -- what about his past history?

10 A You know, we asked the patient did you ever have this
11 kind of problem before and his answer was no.

12 Q Now, did the patient tell you any specific problems he
13 was having that day under history of present illness?

14 A Yes.

15 Q What did he tell you?

16 MR. BUFFALOE: Objection.

17 THE COURT: Ask the foundational question
18 regarding the need for this information.

19 Q Doctor, why was there a need for the information, to
20 take down a history of the patient and his complaints?

21 A Well, typically it would be our custom and practice.
22 That's like what we do on an ordinary basis, to take a history,
23 we get an idea of the mechanism of the injury and then ask the
24 specifics. So tell me about your symptoms, your arm hurts, is
25 it numb. The patient will begin to articulate what their

1 problem is and obviously, you know, what the doctor does, he's
2 listening, I am listening, and then I am making some judgments
3 on that.

4 Q And what was -- what were the complaints he made to you
5 on that day, what complaints to your office that day?

6 A Neck and back pain with radiation into the upper and
7 lower extremities, associated with numbness, tingling and
8 dyesthesias, D-Y-S-T-H-E-S-I-A-S.

9 Q What is that?

10 A It just means altered sensation. Remember when I
11 discussed to you one of the functions of the nerve is to bring
12 its sensory information back, so if you pinch the nerve here
13 that information gets garbled a little bit to give you sort of
14 an explanation for it. And so, the patient was complaining of
15 dyesthesias.

16 Q What else did he complain about?

17 A He described the pain severity score we ask them, which
18 was nine out of ten for the back and nine out of ten for the
19 neck. Constant dull sharp shooting made worse by lifting,
20 carrying, bending, moving, moving around, standing for long
21 periods of time and twisting in bed was affected as well as his
22 sleeping.

23 Q What else, what other things were affected that he told
24 Dr. Mikelis that day?

25 A Well, from our perspective it was neck and back, but he

1 also had a shoulder, knee injury.

2 Q Okay. Did he also give you a history, give the office
3 a history of what treatment he received before coming to you?

4 A Yes.

5 Q What treatment did he receive before coming to you?

6 MR. BUFFALOE: Objection.

7 THE COURT: What is the ground for the objection?

8 MR. BUFFALOE: Hearsay, not best evidence.

9 THE COURT: Rephrase the question in terms of what
10 do the records reflect.

11 Q What do the records reflect as far as the treatment he
12 received before coming to your office that day?

13 A The records reflect that he was being treated by
14 Dr. Hanan, receiving physical therapy, receiving local
15 modalities like warm packs, ice packs, exercise, massage,
16 bracing was also provided to the patient and physical therapy
17 three times a week.

18 Q And does the record reflect that he was improving
19 because of those therapies before coming to you?

20 A Unfortunately, no.

21 THE COURT: Overruled.

22 MR. BUFFALOE: Objection.

23 Q And at that point did Dr. Mikelis do a clinical
24 examination?

25 A Yes.

1 Q Now, what was the clinical examination that your office
2 does in the regular course of business on a patient that has
3 injured their neck and back?

4 A So typical cervical spine exam really isn't or the
5 lumbar spine, in this particular case both, it really is two
6 parts, right. So first we tested the mechanical stability of
7 the neck and back and we do that by looking for spasm and
8 tenderness. Which a spasm of the muscle is an involuntary
9 contraction, it's kind of -- I don't know, in Brooklyn we say
10 the Charley horse in your leg, right? That little involuntary
11 thing, so that happens in the area of the spine. If you look
12 for spasm and tenderness, that's a sign of an injury. You look
13 for loss of range of motion. So if you can imagine, you know,
14 your range of motion of your neck would be looking extension,
15 flexion, turning left and right. And so, that was examined,
16 that's part of the physical exam and that was found to be
17 abnormal by Dr. Mikelis.

18 So that's the stability and motion of the spine. Then
19 you have the neurological exam and you can see, you can all see
20 why we examine the nerves if we thought it was a neck injury
21 because of this proximity to spinal cord and nerves. And so we
22 do what is called a neurological exam, that's also part of the
23 exam tests, motor strength and sensory function.

24 Q What is an objective and subjective test?

25 A A subjective test is a test where the patient has

1 control over what happens, of what the outcome is of that test.
2 It still could be relevant, but the patient could influence it,
3 right? And an objective test is where the doctor can sort of
4 make an independent observation of his own, the patient really
5 can't influence it.

6 Q What is a range of motion of test; objective or
7 subjective or something else?

8 A It's primarily objective with a subjective component.

9 Q What is the objective component of a range of motion
10 test?

11 A So we guide the patient through their range of motion,
12 right? So we kind of move them through. The patient -- so that
13 would be the objective component, we get a sense of what -- the
14 subjective component the patient has the potential, I am not
15 saying they do, to influence that in a small way, not in a -- I
16 mean it can't be zero, then you would know that they were not
17 participating.

18 In this is case there was no evidence to the contrary.
19 He did participate, but they can influence any of those exams by
20 their response or their participation.

21 Q You go through that first visit the range of motion
22 deficit in the cervical spine and lumbar spine that Dr. Mikelis
23 found?

24 A Yes.

25 Q Please tell us the cervical ones.

1 A So the cervical spine there was tenderness and spasm to
2 percussion and palpation. There was loss of range of motion,
3 flexion which is chin down, 40 with 70 being normal. Extension,
4 chin up all the way, 30 degrees with 45 being normal. And left
5 and right turning was 50 with about 80 degrees being normal.
6 The patient had a substantial decrease in motion of the cervical
7 spine.

8 Similarly in the lumbar spine patient was examined,
9 brought through a range of motion; flexion, extension, found to
10 have substantial decrease in the range of motion.

11 On a neurological findings also they were abnormal.
12 Dr. Mikelis noted that there was weakness of the right deltoid,
13 that's this muscle here that elevates the arm. He also found
14 that there was altered sensation. Remember the garbled
15 informational return in the right C4, right C5 and right C6
16 distribution, which is that altered sensation in that area of
17 the arm.

18 I reviewed the reports of the MRI's or he did, I am
19 sorry, dated 9/23/20. It showed that the report, it showed that
20 he had a herniated disk at C3-4 with some narrowing of the
21 foramen at C5-6 and the lumbar spine he had a disk bulge for the
22 most part.

23 Q At what level?

24 A L5-S1.

25 Q Doctor, did you actually review the MRI's yourself in

1 this case? I am just asking if you reviewed them, I am not
2 asking --

3 A Yes, on this visit it was Dr. Mikelis, but I ultimately
4 reviewed that MRI, yes.

5 Q Okay. And those range of motion and those deltoid
6 loss, are those significant findings?

7 A Yes.

8 Q Why are they significant?

9 A Well, they're significant because I mean to be quick
10 with the answer is that they substantiate the patient's
11 subjective complaints. The patient is saying something, that
12 they feel numb or they feel weak and then we examine them and we
13 find them to be numb and weak.

14 Q And what was Dr. Mikelises's diagnosis on that first
15 visit to your office?

16 A Herniated cervical disk, cervical radiculopathy, lumbar
17 strain, right lumbar radiculopathy.

18 Q And could you tell the jury what a diagnosis is in
19 terms of a medical term?

20 A That's easy, that's like what is wrong with me, Doctor?
21 And they give you the final diagnosis. This is what is wrong in
22 this case, he had evidence of a pinched nerve.

23 Q Based on the exam, the findings, the MRI's did the
24 findings and records match the diagnosis of Dr. Mikelis?

25 A Yes.

1 Q How so?

2 A They were consistent, they correlated like I described
3 before. Subjective complaints, our objective physical exam, the
4 objective tests like the MRI all were consistent with each
5 other.

6 Q Okay. And what was the plan that was given to him that
7 day?

8 A And he was told to continue physical therapy, do
9 some -- consider to do some injections in his spine, that
10 was what the recommendation was.

11 Q Okay. And did he continue to see your office after
12 that first visit?

13 A Yes.

14 Q And what other doctors, what other doctor did he see
15 next on --

16 A On 1/25/21 he saw Dr. Tripathy.

17 Q What type of doctor is Dr. Tripathy?

18 A He's a spine surgeon like me.

19 Q When he saw Dr. Tripathy, just to get to the point,
20 what was the assessment and the plan?

21 A It was consistent with Dr. Mikelises's assessment.
22 Patient had a herniated disk with radiculopathy and he was
23 recommended to continue with pain management, physical therapy,
24 home exercise programs.

25 Q Okay. And did he continue to see your office at that

1 point?

2 A Yes.

3 Q And at some point as part of your practice and part of
4 your -- not just you, your practice, do you determine whether
5 someone -- does your office determine whether someone is
6 disabled or not per injuries?

7 MR. BUFFALOE: Objection.

8 MR. TZANETEAS: Let me withdraw.

9 Q Does your office determine disability on patients?

10 MR. BUFFALOE: Objection.

11 THE COURT: Let's have a sidebar. We won't need a
12 reporter.

13 (An off the record discussion was held.)

14 THE COURT: Proceed.

15 MR. TZANETEAS: I am going to withdraw that
16 question, Judge, and I will ask another question.

17 Q Doctor, does your office determine whether your
18 patients have certain restrictions because of the injuries when
19 they come to you?

20 A Yes.

21 Q What type of determinations do they make in your office
22 regarding the neck and the back in terms of limitations?

23 A Well, frequently we're asked that our opinion as to
24 what activities if someone has this kind of injury. So what
25 activities can they participate in. Often it relates to work,

1 what kind of work they could do. Yes, we do that a lot.

2 Q At that point did your office determine whether
3 Mr. Gousse was restricted in his activities as a result of the
4 injuries sustained in the 5/14 2020 accident?

5 A Yes.

6 Q What restrictions were given to him because of that?

7 MR. BUFFALOE: Objection.

8 THE COURT: Overruled.

9 You could answer.

10 A You know, we said he was disabled, that he was unable
11 to lift, carry, bend, climb ladders, walk on a scaffold.
12 Reasons being he had nerve injury, right, so that would affect
13 his balance, his ability to protect himself. Obviously, when
14 you have a herniated disk you want to avoid any stress to that
15 body part. Any bending or twisting, even for just something
16 very light could make the herniation much worse or the
17 radiculopathy much worse. So, there are restrictions given to
18 patients after injuries like this.

19 Q By the way, did you review Dr. Hanan's record before
20 today?

21 A Yes.

22 MR. TZANETEAS: Your Honor, at this point I would
23 like to admit into evidence subpoenaed records from
24 Comprehensive Healthcare Medical, Dr. Hanan, subject to
25 redaction.

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 THE COURT: Any objection?

2 MR. BUFFALOE: No, your Honor.

3 THE COURT: All right. So that is this in
4 evidence. What are we up to?

5 THE CLERK: That will be number 8.

6 THE COURT: Number 8.

7 THE CLERK: For ID, your Honor?

8 THE COURT: No, in evidence.

9 MR. TZANETEAS: Can I take them, Judge?

10 THE COURT: Yes.

11 Q Now, Doctor, after reviewing Dr. Hanan's records and
12 treatment he received up to that point was the treatment he
13 received reasonable?

14 A Yes.

15 MR. BUFFALOE: Objection.

16 THE COURT: Overruled.

17 Q And upon seeing your office for the first time you said
18 epidural injections were recommended?

19 A Yes.

20 Q Why after somebody has physical therapy epidural
21 injections are the next step?

22 A So, patient under this circumstance, has a pinched
23 nerve and has pinched nerve symptoms, numbness, tingling,
24 weakness, so therapy is very helpful, often it might not be
25 enough.

1 Real briefly, the herniated disk can cause an
2 inflammatory response around the nerve. So you wouldn't see it,
3 you would feel it. Example to you though, if you twist your
4 ankle and your ankle swells that's inflammation, bleeding and
5 inflammation. Same thing if you have a herniated disk in your
6 neck, you get localized bleeding and inflammation which can
7 irritate the nerve.

8 Q And at that point did your office perform an epidural
9 on Mr. Gousse?

10 A Yes.

11 Q How many epidurals did he have in total?

12 A 2/17.

13 THE COURT: That's '21?

14 THE WITNESS: Yes.

15 A I believe he had two. 4/21.

16 Q I think that's it, Doctor.

17 A Yes, that's it.

18 Q Why only two?

19 MR. BUFFALOE: Objection.

20 MR. TZANETEAS: Well, strike that.

21 Q Why two?

22 A Well, there is no exact number. It's just basically if
23 the patient gets substantial amazing relief after one we might
24 stop at one, if that didn't work then we would try two. If two
25 don't work, at all, then oftentimes you might have a

1 conversation with the patient, well we could try one more or,
2 you know, it's not working so let's not try again.

3 Q Slow down.

4 A So there is no exact number, but two is we would
5 consider an adequate trial, right? Because I am using that as
6 -- I mean Dr. Tripathy recommended it, but as a means to
7 alleviate the symptoms using nonsurgical techniques.

8 Q And did it work?

9 A No.

10 Q Have you performed epidurals before?

11 A I mean I did in the past. Yes, it's part of my
12 training, yes.

13 Q What is injected into the spine, what is an epidural?

14 A So, really simply under x-ray a needle is guided down
15 to the space around the nerve, right? And so you don't inject
16 it in the nerve, but you inject it in the space around the nerve
17 and then you inject this and the medicine goes up and around the
18 nerve and then bathes the nerve with an antiinflammatory
19 medicine. So for example, like Advil or Motrin are
20 antiinflammatories orally if you take them by mouth, you could
21 also inject such medicines. In this case it would be a
22 cortisone, into the area where you believe the nerve is
23 inflamed.

24 Q And what is that supposed to do?

25 A Decrease inflammation and decrease symptoms.

1 Q And did it decrease inflammation and symptoms in
2 Mr. Gousse after the second one?

3 A Not substantially.

4 Q And after 4/20, after that second one, was he
5 ultimately referred to you?

6 A Yes.

7 Q Do you know the reason he was referred to you?

8 A I mean no, to be honest I don't know. I mean I cover
9 different offices and Dr. Tripathy might have been, but I have
10 no specific knowledge of it.

11 Q When was the first time you saw him?

12 A 6/7.

13 Q 6/7/21 when you saw him for the first time where did
14 you see him, what office?

15 A 6/7 I saw him in Brooklyn.

16 Q Okay. When he came to you the first time did you take
17 down his history?

18 A Yes, I basically I took the history, similar to the two
19 prior doctors and the history didn't change.

20 Q Okay. And what was his chief complaint coming to your
21 office that day?

22 A Neck and back pain.

23 Q Okay. And what was the severity of the pain that you
24 measured for the neck and the back?

25 A Nine for the neck and nine for the back.

1 Q And at that point did he have any past medical history
2 or surgery or hospitalizations that was of concern to you?

3 A No.

4 MR. BUFFALOE: Objection.

5 THE COURT: Overruled.

6 Q Now, the physical examination of the cervical spine and
7 lumbar spine, the range of motion testing, can you tell us, if
8 any, was it different from when Mikelis took it the first time?

9 A It was substantially similar to the prior exams.

10 Q What was the motor exam of him, the cervical spine and
11 lumbar spine that day?

12 A Same, it was substantially similar to all the prior
13 exams.

14 Q On the diagnostic imaging what did you review?

15 A The MRI.

16 Q Was it the actual MRI's you viewed?

17 A Yes.

18 Q That was on the MRI's of 9/23/20?

19 A Yes.

20 Q Okay. And what was your diagnosis?

21 A Herniated disk with radiculopathy.

22 Q And what about the lumbar?

23 A Lumbar disk bulge with radiculopathy.

24 Q What was the plan at that point over a year after the
25 accident?

1 A So at that point patient had had substantial
2 nonsurgical treatments and had had as well as a restriction of
3 activity, physical therapy, two invasive procedures to try to
4 alleviate his symptoms and that was not successful. So at that
5 point I -- we had the conversation about surgery. And so I go
6 into it's my custom and practice to discuss okay, well, now
7 surgery is now becoming an option for you and I discussed the
8 surgery with them. I show them videos and we discussed the
9 risks and the benefits of surgery. And at that point after all
10 of that patient consented to proceed with surgery.

11 THE COURT: Just for clarity, the two invasive
12 procedures that you are talking about were the injections?

13 THE WITNESS: Yes.

14 THE COURT: Thank you.

15 Please ask your next question.

16 Q How many of the surgeries that you performed on
17 Mr. Gousse have you done in your span of practice?

18 A Thousands.

19 Q And what about the lower back?

20 A Thousands.

21 Q Okay. Now, what surgery did you explain to him that he
22 needed because of his pain?

23 A Cervical disectomy and fusion.

24 Q Are there certain indications that you have to have as
25 a surgeon to recommend that?

1 A Yes.

2 Q All right. Are they objective indications?

3 A Yes.

4 Q And what were the indications that you had to recommend
5 the surgery to Mr. Gousse?

6 A You know, failure of conservative treatment, physical
7 therapy, bracing and medicines, interventional pain management
8 if the patient can get it. We like to see them fail, we don't
9 like to see them fail, we like to see them fail prior to
10 discussing surgery, positive diagnostic studies like an MRI if
11 you can get one. In this case it was positive at 3-4.
12 Neurological deficits, the patient definitely had neurological
13 deficits and then it should be severe. I mean he was for many
14 months claiming he was nine out of ten, I would consider that
15 severe pain, yes.

16 Q Those are subjective findings or objective findings?

17 A Those are all objective, they're really more my
18 judgment and my reasoning behind why I would recommend surgery.

19 Q Okay. Does a herniated disk ever heal on its own?

20 MR. BUFFALOE: Objection.

21 THE COURT: Overruled.

22 A I mean yes, I mean there are instances where herniated
23 disk can resolve itself or the symptoms could resolve. The
24 herniation may still be there on MRI, but the patient says the
25 pain is gone so we just consider that a win.

1 Q What about nerve damage?

2 A Yes, nerve damage patients can have initially
3 significant nerve damage, but they get treated, conservatively
4 or with surgery and oftentimes that responds, doesn't always
5 respond.

6 Q And what is the significance, if any, that this has
7 been over a year and Mr. Gousse has not felt better in his neck
8 or back?

9 A What do you mean the significance of it obviously is
10 that patients going to treatment for a year and he's not better
11 and has nine out of ten pain and numbness and weakness and so
12 that's seriously impacting his life. His life is not going to
13 change. And so that's why we begin to broach the conversation
14 about surgery as an option to make him feel better.

15 MR. TZANETEAS: At this point, your Honor, I would
16 like to admit into evidence the MRI of the lumbar spine and
17 cervical spine dated 9/23 2020.

18 THE COURT: Any objection?

19 MR. BUFFALOE: Same objection as the prior films,
20 your Honor.

21 THE COURT: All right. So this is a good point to
22 take a five minute break.

23 COURT OFFICER: All rise. Jury exiting.

24 (Jury exiting.)

25 THE COURT: Mr. Tzaneteas, do you have a 4532-A

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 notice?

2 MR. TZANETEAS: Yes, your Honor. You took it the
3 other day.

4 THE COURT: Is this the one?

5 MR. TZANETEAS: I think so, Judge.

6 THE COURT: All right. So, all right. This makes
7 a mention of -- if I knew if I read this, I thought this
8 was for -- I thought they were two separate notices. All
9 right. So this covers both 9/23/20 and 6/7/20. So you can
10 make a further record, but the issue is identical to the
11 issue that I've already ruled on. So the MRI does go into
12 evidence.

13 MR. BUFFALOE: I've already set forth my
14 objections to the 4532 and the sufficiency. It's the same
15 objection, your Honor.

16 THE COURT: All right, thank you. So we'll take a
17 break.

18 MR. TZANETEAS: Okay.

19 (A recess was taken.)

20 MR. TZANETEAS: I have two x-rays, postsurgical
21 that were taken on October 8, 2025. Again, 4532 notice was
22 done on December 26, 2025.

23 THE COURT: Do you have a copy of that notice?

24 MR. TZANETEAS: I do, Judge.

25 THE COURT: Why don't you hand it up.

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1 THE CLERK: This is number 9?

2 THE COURT: I think 9 is 9/23 2020 MRI, the disk.

3 THE CLERK: He was getting ready to say 9, then we
4 went on break. ID or evidence, your Honor?

5 THE COURT: Do you have a notice for this one as
6 well, is that correct?

7 MR. BUFFALOE: Yes.

8 THE COURT: Let me just take a quick look.

9 COURT OFFICER: Do you need to see it, Judge?

10 THE COURT: Yes, I should take a look at it. All
11 right. That should be marked as Court Exhibits. Thank
12 you.

13 THE CLERK: So far we have Court Exhibit 4, so
14 this is 5, your Honor?

15 THE COURT: You know, I haven't been keeping track
16 of the Court Exhibits.

17 THE CLERK: This is going to be ID or evidence,
18 your Honor, in CD?

19 THE COURT: That's evidence.

20 (A recess was taken.)

21 MR. BUFFALOE: So Judge, plaintiff is seeking to
22 introduce not the actual purportedly x-rays taken on
23 October 8, 2025, I believe even though the 4532 that
24 plaintiff is presenting dated December 26, '25 says New
25 York Spine Care, I believe he believes New York Spine

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1 Specialists, Mr. Lattuga's company. The 4532 doesn't have
2 an affidavit of service attached to it.

3 THE COURT: Are you denying receipt of that?

4 MR. BUFFALOE: I did not receive it. This was
5 served on prior counsel to me, I did not receive it with
6 the file. I received --

7 THE COURT: I am so sorry, did you receive prior
8 counsel's file or not?

9 MR. BUFFALOE: I did.

10 THE COURT: You did?

11 MR. BUFFALOE: I did.

12 THE COURT: Did you check to see whether or not
13 those notices were in the file?

14 MR. BUFFALOE: I did, it was not in there. I
15 wasn't consent to change attorney was not executed until
16 sometime around January 16th or so. I received the entire
17 file from them and this was not in it. I might add by the
18 way, that these are copies, photocopies of films, not
19 actual films. Not even the actual films, the best
20 evidence.

21 And I might add, by the way, that again we
22 received an authorization along with a disclosure regarding
23 Dr. Lattuga's examination in October 25th, we processed it.
24 We didn't receive any films with the records.

25 MR. TZANETEAS: Your Honor, they weren't the

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1 attorneys in October, 2025. We sent an authorization to
2 prior counsel. This doesn't have an affidavit of service.
3 Your Honor, I do all my trial prep. He got the films,
4 they're digital, this is the only way I can present them.
5 When they save them to disk they wouldn't open. So I
6 mailed it out, I did it myself. Not my staff, I do all
7 trial prep myself, your Honor. Again, I've done all the
8 trial prep on this. I've touched every piece of document,
9 I've sent it out.

10 These are x-rays from Dr. Lattuga's office that
11 are taken after the accident. The x-rays were in his
12 report that he stated that he took x-rays and said it was
13 fusion. They are aware of this, Judge.

14 THE COURT: All right. My decision is the same as
15 it was before. I am going to admit it into evidence. If
16 you bring a motion and I hold a hearing and representation
17 is being made by counsel are not accurate there are
18 consequences to that. But at this point in time you can't
19 tell me for sure whether you actually received the entire
20 file from prior counsel.

21 MR. BUFFALOE: I can tell you that for sure.

22 THE COURT: No, you don't because you are not
23 prior counsel. You don't know whether they sent you the
24 entire file or not. You are assuming that; am I correct?

25 MR. BUFFALOE: I am assuming representation -- the

1 representation of prior counsel was an attorney admitted to
2 the bar is what I am relying on.

3 I might add, Judge, plaintiff did provide an
4 authorization returnable to my firm, I processed that
5 authorization and I did not get these films as part of the
6 records produced. I might add again --

7 THE COURT: Do you have the notice given to the
8 counsel in terms of request for authorization or do you
9 have the preliminary conference order?

10 MR. BUFFALOE: Yes, but that said I received
11 authorizations for this from plaintiff's counsel returnable
12 to my firm.

13 THE COURT: Do you have the letter indicating or
14 the communication saying enclosed is the authorization,
15 provide the records or do you have a subpoena asking for
16 those records?

17 MR. BUFFALOE: I have a letter with the
18 authorization.

19 THE COURT: Did you subpoena them?

20 MR. BUFFALOE: I did not subpoena them, Judge.

21 MR. TZANETEAS: Your Honor, that's another problem
22 I have. I gave them fresh authorizations returnable to the
23 court.

24 THE COURT: You know what, we're not going to
25 discuss this any further. Bring a motion. Put in your

1 motion any facts that you think should be brought to my
2 attention; all right? And then you can respond and if I
3 find that the motion, you know, is worthy it's going to
4 have one result, if I find that the motion is frivolous
5 it's going to have another result.

6 MR. BUFFALOE: Judge, my objection has nothing to
7 do with at least at this point --

8 THE COURT: You didn't subpoena the records;
9 right?

10 MR. BUFFALOE: I did not. I sent a letter asking
11 for the record to be sent to my office, yes, and they were
12 not.

13 THE COURT: Let me ask you, I am sorry, what
14 motion did you bring to compel them to bring the records
15 in?

16 MR. BUFFALOE: I didn't get the authorizations
17 until after, like in June. Having said that, Judge,
18 again --

19 THE COURT: Did you bring a motion to stay the
20 trial because you didn't get any return on the records; any
21 motion at all, order to show cause?

22 MR. BUFFALOE: No.

23 THE COURT: All right. So we're moving ahead.

24 MR. BUFFALOE: I had no idea that he was going to
25 endeavor to introduce photocopies of x-rays, Judge. Again,

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1 those x-rays, those photocopies are not the actual x-rays.

2 THE COURT: Any reason why the actual x-rays are
3 not here?

4 MR. TZANETEAS: Yes, your Honor. They're digital.
5 I copied them to disk.

6 THE COURT: Answer that first. They're digital,
7 they're not on, you know, what we think of as x-rays or
8 film.

9 MR. BUFFALOE: Well, they're in a CD or some
10 digital format which the same thing with the MRI's that
11 he's entered into evidence. Those are digital.

12 MR. TZANETEAS: These are from Dr. Lattuga's
13 facility, they were e-mailed to me. I couldn't put them on
14 disk, I put them on disk, they wouldn't open without them
15 altering it. I printed them out. I am going to show you
16 it digitally, if your Honor doesn't want me to put this in
17 evidence that's fine. I will try to show digitally. I
18 will try to put on a CD, your Honor, it's not going to
19 open. I tried numerous ways. I got them the same way, I
20 sent them to them. I gave them an authorization. At this
21 point, your Honor, again, I provided everything as an
22 officer of the court. Numerous times.

23 THE COURT: Did you provide, well, actually it
24 would have been right from the medical office of Dr.
25 Lattuga.

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1 Well, you know what, I am going to allow you to
2 voir dire the witness now in terms of his practice of
3 responding. But you didn't subpoena the records, you wrote
4 him a letter.

5 MR. BUFFALOE: Correct.

6 THE COURT: Same decision I made before. There is
7 no subpoena, there is no motion to stay the trial. Are you
8 indicating that you didn't receive the CD after an
9 authorization was sent? No motion was brought.

10 MR. BUFFALOE: But Judge, the motion would be
11 against plaintiff's counsel. They are not the custodian of
12 the records.

13 THE COURT: That's correct.

14 MR. BUFFALOE: The custodian of the records is the
15 one that didn't produce these documents.

16 THE COURT: That's correct. That's right.

17 MR. BUFFALOE: Now he's seeking to introduce a
18 document that was not disclosed to me, they didn't produce.
19 It's the same category of those documents that were in his
20 file that weren't actually part of the records.

21 THE COURT: The person who didn't produce it was
22 the office of Dr. Lattuga; is that correct?

23 MR. BUFFALOE: Correct.

24 THE COURT: Okay. You didn't bring a motion to
25 hold him in contempt for failure to supply with the

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1 subpoena because he never subpoenaed them; is that correct?

2 MR. BUFFALOE: I did not bring a motion, correct.

3 THE COURT: All right. Let's get the jury. Thank
4 you.

5 MR. TZANETEAS: Can we mark these, Judge?

6 THE COURT: Yes, let's mark. Well, actually --

7 MR. TZANETEAS: I am going to use them on the next
8 few questions, Judge.

9 THE COURT: All right. The actual evidence though
10 is in the form of a CD; is that correct?

11 MR. TZANETEAS: It's on my computer, it's digital.
12 If your Honor would like --

13 THE COURT: I am sorry, is it on a CD or not on a
14 CD?

15 MR. TZANETEAS: I put it on a CD, it doesn't open
16 so I copied it to my computer.

17 THE COURT: I can't do that.

18 MR. TZANETEAS: Your Honor, he can identify, it's
19 his x-ray.

20 MR. BUFFALOE: Again, not the best evidence.

21 MR. TZANETEAS: It is the best evidence.

22 MR. BUFFALOE: He didn't send me a copy of this
23 digital x-ray, instead he had sent me photocopies of
24 something he generated.

25 MR. TZANETEAS: He didn't object, he didn't say

1 anything and he didn't say send me the digital.

2 THE COURT: The copy that you have on each
3 photograph, does it have the name of the plaintiff?

4 MR. TZANETEAS: Yes.

5 THE COURT: The date of birth, does it indicate
6 any reference number, exactly what it is?

7 MR. TZANETEAS: Reference number, the date it was
8 taken, his name.

9 THE COURT: I will allow you to proceed subject to
10 you getting a CD, an actual hardcopy that opens up that
11 will be admitted into evidence as an exhibit. Unless
12 you've got a hardcopy I am not going to let something be
13 displayed on a computer or generated in a way where the
14 entire record is not there. The CD isn't there.

15 MR. TZANETEAS: Judge, my Doctor is here today,
16 he's the one that's going to talk about it. He's the one
17 that did the surgery and it shows the hardware after the
18 surgery.

19 THE COURT: He's the one who or his office is the
20 one that provided something that you can't place on a disk
21 and that you can't open up?

22 MR. TZANETEAS: He provided it digitally and I
23 asked for a CD and they said it's digital on the computer.

24 THE COURT: I had understand digital on the
25 computer. Everything digital on a computer should be able

1 to copy to a CD that can open up.

2 MR. TZANETEAS: As an officer of the court, Judge,
3 I did it three different ways. I even put a zip drive and
4 for some reason it was blocking me from opening it.

5 MR. BUFFALOE: Essentially saying what was
6 produced to him by the doctor is unreproducible (sic),
7 even though he got it from the doctor, because they could
8 open it up on his computer.

9 MR. TZANETEAS: Judge, they used to give plastic
10 copies of these. They never used to have CD's.

11 MR. BUFFALOE: Judge, can we have the doctor
12 removed from the courtroom while we're having this
13 argument?

14 THE COURT: Yes, yes.

15 (The witness exited the courtroom.)

16 THE COURT: Frankly, I've never had this issue
17 before.

18 MR. TZANETEAS: Frankly I've never gotten objected
19 to before this, Judge.

20 THE COURT: I am sorry, any lawyer would object to
21 the fact that they don't have something that can be marked
22 as an exhibit.

23 MR. TZANETEAS: It is.

24 THE COURT: Those are photos from what?

25 MR. TZANETEAS: He can identify them, Judge, he

1 can authenticate them. If we had the radiologist come in
2 and I showed him that, he said that's the picture of this
3 one and that's what it is, I took it.

4 THE COURT: But they're radiologists, what about
5 them?

6 MR. TZANETEAS: They don't have a radiologist.

7 THE COURT: They probably have a doctor who will
8 be able to interpret whatever you are showing this doctor.

9 Mr. Buffaloe, when I am asking that the jury be
10 called and you have an objection tell me that ahead of
11 time.

12 MR. BUFFALOE: Under this circumstance I
13 appreciate what you are saying, under this circumstance
14 when we took a break for a bathroom break we had still
15 unresolved issues. I thought we were just going to resume
16 them. I didn't know you were going to call the jury back.

17 THE COURT: They've been standing out there for
18 the last 15 minutes or so.

19 Why don't you bring them back and tell them we are
20 going to get to them as quickly as we can. Thank you so
21 much.

22 THE CLERK: 10, 11 and 12 or all in one?

23 MR. TZANETEAS: They're all stapled together, I am
24 only showing him one.

25 THE COURT: So 10.

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 THE CLERK: For ID, your Honor?

2 THE COURT: For ID.

3 Mr. Tzaneteas, let me ask you, does the
4 defendant's doctors make reference to Plaintiff's
5 Exhibit 10 marked for identification?

6 MR. TZANETEAS: No, they're reports are in 2023,
7 this was taken 2025, Judge.

8 THE COURT: All right. So this is my decision. I
9 am going to allow Plaintiff's Exhibit 10 marked for
10 identification to actually be entered into evidence based
11 on the 35, I am sorry, the 4532-A notice. Defendant can
12 bring any motions in the future that he feels necessary to
13 bring, but the requirements I believe have been met under
14 this notice. Thank you. That's it. No further argument.
15 No further argument. I am not going to delay this matter a
16 moment more.

17 Let's get the jury.

18 You've made your record. I see you standing up,
19 Mr. Buffalo, I made reference to you standing up and I am
20 telling you to sit down.

21 MR. BUFFALOE: Just one other thing not related to
22 that.

23 THE COURT: Not related? What do you have to say?

24 MR. BUFFALOE: Plaintiff has also just told me
25 that he intends on having this presented to the jury as

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 demonstrative evidence. This is --

2 THE COURT: Raise the objection when the time
3 comes.

4 MR. TZANETEAS: Can I get the Doctor, your Honor?

5 THE COURT: Yes, please.

6 THE CLERK: All rise. Jury entering.

7 THE COURT: Please, everyone sit down. Thank you.
8 Please proceed when you are ready, Mr. Tzaneteas.

9 MR. TZANETEAS: Thank you.

10 Q At this time, Dr. Lattuga, I want to show you what has
11 been marked as Plaintiff's Exhibit 9 into evidence.

12 MR. BUFFALOE: Objection.

13 THE COURT: What is the basis of the objection?

14 MR. BUFFALOE: That's not what was marked into
15 evidence.

16 THE COURT: Well --

17 MR. TZANETEAS: It wasn't?

18 MR. BUFFALOE: Is that the MRI?

19 THE CLERK: 9, the CD is evidence.

20 MR. BUFFALOE: Never mind. Withdrawn.

21 THE COURT: That's all right. You can proceed.

22 MR. TZANETEAS: Okay.

23 Q All right. Can you see from there?

24 A Yes.

25 Q Do you need this?

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1 A I mean yes.

2 MR. TZANETEAS: May I approach, your Honor?

3 THE COURT: I don't know if it's going to reach.

4 MR. TZANETEAS: It's going to reach.

5 Q Can you tell the jury what we are showing a picture of?

6 MR. BUFFALOE: Can I?

7 THE COURT: Position yourself wherever is best for
8 you to see.

9 MR. BUFFALOE: Thank you, your Honor.

10 THE WITNESS: Mind if I go down, your Honor?

11 THE COURT: Yes, if it's easier you could go down.

12 Keep your voice up, please. Thank you.

13 Q Tell us first what slide we're looking at?

14 A This is an MRI of the patient's neck 1/26/25. This is
15 image ten of fifteen. So an MRI is a diagnostic study that
16 looks inside the body. And so this is -- and it's taking slices
17 actually, that's why when you saw me scroll and the image
18 changed slightly from one side to the other.

19 I picked this slide because it best illustrates,
20 demonstrates the traumatic injury the plaintiff sustained and
21 it's easy for you to see. It's an MRI of the neck.

22 MR. BUFFALOE: Can you identify that particular
23 slide?

24 THE WITNESS: Ten of fifteen.

25 A So to get a vague idea of the anatomy, this is the

1 brain, this is the face, this is the neck. These are the
2 vertebrae. These are the individual disks, and if you look --
3 and this is the spinal cord. If you follow this down, you will
4 see a point where you could see the disk material has moved out
5 of the -- protruded out into the canal creating some narrowing
6 there and impingement on the spinal cord. And so that's the
7 herniation he sustained that I thought was the most symptomatic
8 and the one I recommended surgery on.

9 Q What other findings did you find?

10 A There were also some other smaller herniations. You
11 could see some protrusion, some dipping down, and then some mild
12 collapse of the space because of the injury to the disk.

13 MR. BUFFALOE: Objection.

14 THE COURT: What is the basis? Do you have to go
15 off the record or do you have to be outside the presence of
16 the jury?

17 MR. BUFFALOE: Yes.

18 (Proceedings held outside the presence of the
19 jury.)

20 THE COURT: What was your objection?

21 MR. BUFFALOE: First, lack of foundation as to
22 relevance. Second, he didn't treat him for any of the
23 that, he only treated him for one particular disk. So it's
24 beyond the scope of this particular witness.

25 THE COURT: All right.

1 MR. TZANETEAS: Your Honor, he's a treating
2 physician. He's talking about the MRI, what he found and
3 he said I took out the C3-C4, I dealt with the C3-4, that
4 was more significant. He's a treating doctor, a treating
5 surgeon.

6 MR. BUFFALOE: None of his records reference any
7 of these other conditions. He only talks about the one
8 disk.

9 MR. TZANETEAS: He talks about what he did surgery
10 on, your Honor. He's a treating doctor, he's saying the
11 findings on the MRI, what he looked at.

12 THE COURT: All right. He could continue with the
13 testimony, but concentrate on the damaged area. If he goes
14 beyond that, you know, I am probably going to sustain the
15 objection, so stay to the damaged areas. Thank you.

16 MR. TZANETEAS: That disk is a damaged area.

17 Can we go off the record for a minute? Okay, I'll
18 put it on the record. They're going to come in and they're
19 saying about damage at C5-C6 and foraminal stenosis,
20 they're doctor is saying that. I want to have my treating
21 doctor explain that.

22 THE COURT: Is that correct?

23 MR. BUFFALOE: Well --

24 THE COURT: That's a simple question.

25 MR. BUFFALOE: Yes.

1 THE COURT: Okay, you could ask your question.

2 MR. TZANETEAS: Thank you.

3 (Following proceedings in open court, jury
4 present.)

5 Q Doctor, you said C3-C4 was more concern for you, but
6 you found other things there, tell me why C3-C4 was more of a
7 concern for you?

8 A Based on the appearance of the MRI, I think the jury
9 can see that represents something significant, that's different
10 than normal. Two, it's a broad-based when you look at the whole
11 picture of the type of herniation, that it's likely to create
12 significant symptoms. Three, I think it correlated best in my
13 judgment what I think would be the level that would best be
14 treated in the circumstances.

15 Q Because it was broad-based tell us what that means in
16 terms of any type radiculopathy or nerve pain?

17 MR. BUFFALOE: Objection.

18 Q How about this, can you tell us what broad-based means
19 in terms of what your findings were?

20 A Certainly. You could have what is called a focal
21 herniation like you saw on the model just pinching one part of
22 the nerve or it can be more broad where it pinches multiple
23 nerves and that's what this is doing.

24 Q And how did that affect the nerves in Mr. Gousse's
25 spine that you found a broad-based?

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1 A I feel that's what is creating his symptoms.

2 Q Symptoms of going down his arms?

3 A His arms, yes.

4 Q Numbness and tingling?

5 MR. BUFFALOE: Objection.

6 THE COURT: Sustained.

7 Q With a reasonable degree of medical certainty what do
8 you attribute Mr. Gousse's numbness and tingling in his arm?

9 A The herniations.

10 MR. BUFFALOE: Objection.

11 THE COURT: Overruled.

12 You can answer that question.

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay, thank you.

15 Q Okay, you can sit back down.

16 Doctor, after recommending the surgery to Mr. Gousse
17 did he ultimately have the surgery?

18 A Yes.

19 Q When did he have the surgery?

20 A 2/10/22.

21 Q Where did he have the surgery?

22 A New York Presbyterian.

23 Q Who was the surgeon?

24 A Me.

25 Q Okay.

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 MR. TZANETEAS: Can we mark this for ID, your
2 Honor?

3 THE COURT: That should always be in a folder, so
4 do have you a folder, Latonya?

5 THE CLERK: What is the description, counselor?

6 MR. TZANETEAS: Demonstrative aid.

7 THE COURT: In can be shown to the witness. Thank
8 you.

9 Q Dr. Lattuga, I've handed you up a demonstrative aid,
10 would that aid be helpful in presenting to the jury the
11 procedure that you performed on Mr. Gousse on 2/10/22?

12 MR. BUFFALOE: Objection.

13 THE COURT: What's the basis?

14 MR. BUFFALOE: I can't state the basis in one
15 sentence.

16 THE COURT: All right. Let's go out.

17 MR. BUFFALOE: I stated my objection earlier.

18 THE COURT: You stated what?

19 MR. BUFFALOE: I stated to the Court earlier that
20 I had an objection to this previously, this particular
21 document.

22 THE COURT: I'll tell you, there's been a lot in
23 this trial so previously is meaningless to me, you can go
24 outside and make a record.

25 (Proceedings held outside the presence of the

1 jury.)

2 THE COURT: Okay. The basis?

3 MR. BUFFALOE: Judge, my objection is any evidence
4 plaintiff tends on introducing, even demonstrative, he
5 should disclose to me prior to trial, not during trial.
6 It's not trial by ambush.

7 THE COURT: Did you make a demand for any
8 demonstrative evidence?

9 MR. BUFFALOE: I don't have to make a demand
10 specifically because I don't know what he intends on
11 introducing, if he intends on introducing it he has to
12 disclose it to me beforehand.

13 THE COURT: I will ask the same question I asked
14 before; did you say I demand any demonstrative evidence
15 that you intend to produce at trial?

16 MR. BUFFALOE: I did not make a demand for
17 demonstrative evidence. I am entitled to know what
18 evidence he's introducing.

19 THE COURT: It's demonstrative.

20 MR. BUFFALOE: It's not a photograph, it's
21 something that was introduced. I don't know by whom, and
22 for that matter it wasn't disclosed to me beforehand. I am
23 entitled to them before. I might add, by the way, it's
24 cumulative in any event because the doctor himself can
25 describe the surgery performed. The demonstrative serves

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1 no purpose except to inflame the jury, no probative value.

2 THE COURT: Inflame the jury?

3 MR. BUFFALOE: Yes.

4 MR. TZANETEAS: It's a cartoon.

5 MR. BUFFALOE: Yes. It's an illustration of open
6 flesh and hammers and I don't know what's going on.

7 THE COURT: Have you looked at it?

8 MR. BUFFALOE: I have looked at it.

9 THE COURT: It looks like anything you would get
10 out of an anatomy book. So, this is not direct evidence
11 which you are entitled to, it's demonstrative evidence.
12 It's one page. It shows a procedure that a doctor would
13 take on a part of the anatomy. I am letting it in. Thank
14 you.

15 MR. TZANETEAS: I am not admitting it into
16 evidence, it's demonstrative.

17 THE COURT: That's correct. It's not admitted
18 into evidence. It's for demonstrative purposes.

19 MR. TZANETEAS: Thank you, Judge.

20 (Following proceedings in open court, jury
21 present.)

22 Q Doctor, I want to show you what has been marked for
23 identification.

24 THE COURT: Just so the jury knows, this is called
25 demonstrative evidence. This is not a pictorial of the

1 plaintiff. It's what you would expect to see as part of
2 anybody's anatomy. All right. Thank you so much.

3 Q Tell us a little bit about when Mr. Gousse came into
4 the hospital and you saw him, tell me the procedure and you can
5 use this demonstrative aid to help you explain to the jury?

6 A So a patient came into the hospital for surgery, was
7 brought into the operating room and put to sleep by the
8 anesthesia team. Once the patient is asleep then it turned over
9 to us, the surgical team, and then we prepare and drape the
10 patient, extra equipment is brought in to help facilitate doing
11 the surgery. I am the surgeon, I make an incision on the front
12 of his neck.

13 This operation as you could see titled, it's called
14 "Anterior cervical discectomy and fusion". So what that
15 operation is meant to do is to remove that herniation you saw on
16 the MRI off the spinal cord and the nerves. It's done under
17 direct visualization using magnification, optic magnification
18 and then once I do that then I rebuild the spine using implants
19 and that's what you see.

20 So, we'll look at the A first, that's what it would
21 look like, the big picture with the neck open and the vertebrae
22 exposed. B is sort of what I would be doing, it gives you a
23 little idea of the breathing tube and the swallowing tube are
24 pushed to one side, the esophagus and pharynx, the internal
25 jugular and external jugular veins are retracted to the other

1 side and then in that window implants able to access the disk,
2 visualize the disk, remove the disk, and visualize the spinal
3 cord and the nerves.

4 My findings during surgery which are in my operative
5 report show evidence of instability as well as a herniated disk.
6 So it's consistent with my preoperative diagnosis, consistent
7 with what I thought I would find on the MRI. Once I took the
8 pressure and I felt it was adequate decompression then I rebuilt
9 the space using implants. That's what you see in D, I believe,
10 D, yes. You see an illustration of my hands tapping in the
11 implant, that takes the place of where the disk was and some of
12 the bone that was removed as part of the surgery and then on top
13 of that you see an E, what looks like screws in the vertebrae
14 and a small plate applied, that's also part of the operation.
15 That helps, it's like an internal splint, that helps to
16 stabilize that segment and helps it to heal faster.

17 Q Okay. And when you said you visualized the herniated
18 disk at C3-C4, tell us a little more about that?

19 A Yes, I mean just part of the operation I am looking in
20 and I am seeing there is a disk herniation and I am removing it
21 off the spinal cord and the nerve.

22 Q Okay. I want to show you what is marked as Plaintiff's
23 number 10 in evidence. This is an x-ray taken at your office on
24 10/8 2025, what does this x-ray show?

25 A That's an actual x-ray of the patient's neck and what

1 you could see of the square vertebrae and the spaces you see
2 clear spaces, that's where the intravertebral disks would be.
3 You also see what looks like screws and a plate, that's
4 analogous to what I showed you on the illustration, that was the
5 side view. And then there is a front to back view if you want
6 to put that up. But that's -- yes.

7 Q Hold on.

8 A That basically shows you what is going on. There you
9 go. That's what it looks like front to back, implant is in
10 place.

11 Q Was this the only x-ray you took after the surgery?

12 A I don't recall.

13 Q How many -- what is the purpose of taking x-ray after
14 surgery?

15 A The purpose is to --

16 MR. BUFFALOE: Objection.

17 THE COURT: Overruled.

18 A -- check on your implants. I am sorry.

19 THE COURT: In was an objection. I overruled.

20 You could answer.

21 A I am sorry. Repeat the question.

22 Q Sure. What is the purpose of taking x-rays after
23 surgery?

24 A That's how we monitor the healing process, right? If I
25 put these implants in I want to make sure they heal properly and

1 the x-ray helps me to evaluate the healing process.

2 Q Based on the 10/8 2025 how was the healing process?

3 A It was healed, fused.

4 Q You talked about instability that you found when you
5 opened up and looked in, what instability did you find?

6 A So if you recall when I showed you the model and I was
7 manipulating the model, I showed you how individually those
8 bones are pretty -- it's pretty rigid, right, that structure and
9 stable is the word I like to use. During surgery I noticed that
10 the stability had been lost between one vertebrae and the other
11 and that in this case was a consequence of the herniation.

12 Q Now, what about degenerative condition, when you looked
13 at the spine can you tell us what you found, if anything, about
14 degeneration?

15 A There was no evidence of degeneration on and then in
16 case.

17 Q Is that significant?

18 A I mean it could be. I mean it's just I think what he
19 has was consistent with a 26 year old male that I was operating
20 on.

21 Q Okay. With a reasonable degree of medical certainty
22 was the herniated disk that you found, the instability that you
23 found in his cervical spine, was it a competent producing cause
24 of the 5/14 2020 accident?

25 A Yes.

1 Q What do you base that on?

2 A I base that on the history the patient gave me, his
3 prior care, his failure of conservative treatment. My physical
4 exam, my history taking, my review of the MRI, my intraoperative
5 observation of herniated disk and its instability.

6 Q By the way, in this case your viewing of the MRI or
7 actually seeing the disk, which one is the more reliable source?

8 MR. BUFFALO: Objection.

9 THE COURT: Overruled.

10 A I mean I can't -- I don't really answer that question
11 that way because I think they're both very reliable. Obviously,
12 I think ultimately if you are weighing the scale me actually
13 seeing one in surgery carries the most weight.

14 Q Okay. Did you continue to see Mr. Gousse after the
15 surgery?

16 A Yes.

17 Q Could you tell us the next visit after the surgery?

18 A 2/21/22.

19 Q And could you tell us at that point your examination
20 and what were your findings?

21 A Patient came in, he was postop about a week. He
22 continued to have incisional pain, and pain related to the
23 surgery itself as well as symptoms that had existed prior to
24 surgery. He had the surgery a week before. The incision, we
25 examined, there was no evidence of infection or discharge.

1 Everything was about the same. And so we just -- it was a
2 routine postop check. We are just seeing how he's doing and
3 discharged him to therapy.

4 Q Did you continue to see him on a regular basis after
5 that?

6 A Yes. 3/7, 5/3, 6/15/22, 9/20/22, 9/21 he saw the pain
7 management doctor again.

8 MR. BUFFALOE: Objection.

9 THE COURT: What was the last thing?

10 (The record was read back.)

11 THE COURT: All right, so the question only
12 involved your examination, so 9/21, just disregard it.

13 Go ahead, ask your next question.

14 Q Is that 9/21, is that the pain management from your
15 office?

16 A Yes.

17 MR. BUFFALOE: Objection.

18 THE COURT: That's overruled.

19 MR. BUFFALOE: Okay.

20 Q When is the next time after 9/21/22 your office saw
21 Mr. Gousse?

22 A I am sorry, all these dates. 7/8/26.

23 Q And was that the last time you saw him?

24 A Yes.

25 Q Now, per plaintiff's office request were you asked to

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1 do a comprehensive medical report regarding Mr. Gousse?

2 A Yes.

3 Q And you have it in front of you, it's not into
4 evidence, if you want to refer to it to refresh your memory
5 please do so, but don't read from it.

6 MR. BUFFALOE: Judge, may we approach on this?

7 THE COURT: Yes.

8 (Proceedings held outside the presence of the
9 jury.)

10 MR. BUFFALOE: This report dated 7/8 of 2026 was
11 exchanged the day before we began jury selection in this
12 matter or the day of.

13 THE COURT: It's not in evidence, right?

14 MR. BUFFALOE: But he's getting ready to testify
15 to it, it was not timely disclosed.

16 MR. TZANETEAS: No, he's not testifying to it.
17 He's testifying to a narrative, 10/8.

18 MR. BUFFALOE: He can testify, I don't have --
19 that was properly disclosed to me, but he's referencing the
20 7/8 report.

21 THE COURT: No.

22 MR. TZANETEAS: No.

23 THE COURT: No, it was just to refresh his memory,
24 he's not to read from the report.

25 MR. BUFFALOE: No, I understand.

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1 MR. TZANETEAS: There's a report that -- my
2 narrative is 10/8 2025. Doctor saw him on 7/8 2026 that
3 has the record in the evidence. You didn't get it, I don't
4 want it in, but he's allowed to testify.

5 THE COURT: This was an examination.

6 MR. TZANETEAS: Just an examination, nothing is
7 changed.

8 THE COURT: He can testify.

9 MR. TZANETEAS: I will agree it doesn't come into
10 evidence, if you don't have it I have to be honest with you
11 I don't know if that was exchanged because it was a week
12 ago.

13 MR. BUFFALOE: Right.

14 MR. TZANETEAS: I won't make a big deal of it.

15 THE COURT: It wasn't going into evidence in any
16 event.

17 MR. TZANETEAS: I am just going to ask him if on
18 7/8/26 did anything change?

19 MR. BUFFALOE: I still have an objection, it
20 wasn't disclosed to me.

21 THE COURT: What does it matter, this was an
22 examination.

23 MR. BUFFALOE: I understand. I don't know what
24 the results of the examination were because I don't have
25 any document relating to it.

1 MR. TZANETEAS: The doctor can testify under
2 Hughes case, I have memo of law on that, recent
3 examination, it's a treating doctor. I didn't know if a
4 report was generated, he brought it with him today. I
5 probably didn't exchange it so I can't --

6 THE COURT: Let me ask you, does it deviate
7 significantly from any prior reports?

8 MR. TZANETEAS: Nothing.

9 THE COURT: Okay.

10 MR. TZANETEAS: I'll agree not to have the report,
11 but I want him to be able to testify that nothing has
12 changed.

13 THE COURT: Will the testify be significantly
14 different than that examination?

15 MR. TZANETEAS: No.

16 MR. BUFFALOE: At least before he asks him that
17 question can I see this actual report?

18 MR. TZANETEAS: Let me get my questions out on the
19 narrative and causation and then before I do that that will
20 be the last thing I do, how is that? And then you can look
21 at it. We're probably not going to finish until after
22 lunch anyway.

23 (Following proceedings in open court, jury
24 present.)

25 MR. TZANETEAS: May I continue, your Honor?

1 THE COURT: Yes.

2 Q Doctor, on 10/8 2025 did you examine Mr. Gousse?

3 A Yes.

4 Q Okay. At that point did you give a synopsis of every
5 examination you had with him?

6 A Yes.

7 Q And did you review medical records and did you list
8 them?

9 A Yes.

10 Q Could you tell me what medical records you reviewed?

11 A Comprehensive Medical Care records from multiple dates,
12 document by Dr. Hanan, the FDNY report summary, Ambulatory
13 Surgical records for Dr. Scilaris' surgeries, Dr. Alajean's
14 (Phonetic) procedures, Kolb Radiology MRI's, Dr. Panday's
15 report, and then surgical reports. Again, more surgical reports
16 for Dr. Scilaris.

17 Q Okay. And what is an EMG?

18 A That's a nerve test.

19 Q And did you review EMG's?

20 A Yes.

21 Q What were the results of the EMG's on the dates taken?

22 A The -- the EMG of the upper extremities on 10/22/20 was
23 positive for the word radiculopathy. There was one done in '21
24 on the lower extremities which was -- that showed evidence of
25 radiculopathy. And then there was a follow-up MRI in '25,

1 March of '25 which continued to show radiculopathy in the upper
2 extremities.

3 Q Okay. I want you to assume with a reasonable degree of
4 medical certainty that -- strike that.

5 I want you to assume that Mr. Gousse testified that a
6 piece of ceiling fell on him, hit his head and shoulder and as a
7 result his body twisted, fell backwards and his head and neck
8 snapped back, with a reasonable degree of medical certainty upon
9 your review of records and MRI's and your surgery with a
10 reasonable degree of medical certainty were the injuries that
11 you found as a result of the 5/14 2020 accident?

12 MR. BUFFALOE: Objection.

13 THE COURT: Overruled.

14 A They were the caused by the 5 -- by the accident he
15 sustained when the ceiling collapsed.

16 Q What do you base that on?

17 A Based on the history that he gave, based on no
18 significant prior history, based on his treatment records, the
19 records which I reviewed, based on my own taking of the history,
20 based on my own review of the MRI's, based on my own physical
21 examination, based on my intraoperative findings.

22 Q And with a reasonable degree of medical certainty with
23 the same facts do you have an opinion as to whether the
24 herniated disk was caused by the 5/14 2020 accident?

25 A The herniated disk was caused by --

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1 THE COURT: I am sorry, did you say objection?

2 MR. BUFFALOE: Objection.

3 THE COURT: Overruled.

4 A It was caused by the accident, yes.

5 Q You base it -- I don't want to say it all over again.

6 A From all that stuff I said.

7 Q The radiculopathy that he had, with a reasonable degree
8 of medical certainty do you have an opinion whether the
9 5/14 2020 accident was a competent producing cause of the
10 radiculopathy?

11 MR. BUFFALOE: Objection.

12 THE COURT: Overruled.

13 A The radiculopathy was caused by the accident.

14 Q And with a reasonable degree of medical certainty based
15 on those facts would you agree with me, do you have an opinion
16 on whether or not the surgery that you performed on Mr. Gousse
17 was the competent producing cause of the 5/14 2020, do you have
18 an opinion to that?

19 MR. BUFFALOE: Objection.

20 THE COURT: Sorry, what was the last question?

21 MR. TZANETEAS: Let me withdraw it, Judge.

22 THE COURT: All right. Thank you.

23 Q Doctor, with the same facts do you have an opinion with
24 a reasonable degree of medical certainty whether the surgery
25 that Mr. Gousse had was a direct result of the 5/14 2020

1 accident?

2 A Yes, my opinion is that the need for surgery was caused
3 by the accident he sustained.

4 Q Okay. Now, you saw him five years, approximately five
5 and a half years later on October 8, 2025 from the date of the
6 accident, when you examined him tell us your findings on that
7 particular day?

8 A You talking about the 7/8/26 visit?

9 Q No, on 10/8 2025, narrative.

10 A Okay. It was just essentially the same. He continued
11 to have symptoms consistent with all the prior visits of neck
12 and arm, back and leg pain. He had limited --

13 MR. BUFFALOE: Objection.

14 THE COURT: What is the objection?

15 MR. BUFFALOE: Beyond the scope. Again, he's
16 testifying about things he didn't treat him for.

17 THE COURT: Overruled.

18 A So he continued to have the symptoms related to his
19 neck and back like we were treating for those years. He
20 continued to have abnormalities in his physical findings like
21 his range of motion of the neck and back. He continued to have
22 abnormalities with respect to the neurological changes that he
23 sustained as a consequence of the fall. And his diagnosis
24 remained the same, it was the same problem he had all along, and
25 we continued to treat him palliatively. I think we requested an

1 MRI.

2 Q What does it mean, palliatively?

3 A Support his pain, there was no further cure for his
4 condition.

5 Q Well, what was the point, what was the point of someone
6 having the surgery such as he had?

7 MR. BUFFALOE: Objection.

8 MR. TZANETEAS: I'll withdraw, strike that.

9 Q What was the reasoning you recommended surgery, what
10 was the surgery supposed to do?

11 MR. BUFFALOE: Asked and answered.

12 THE COURT: Overruled.

13 A So like I outline on that visit date, that the patient
14 did have significant chronic symptoms that failed conservative
15 treatment. The surgery is meant to control that, it's to limit
16 that nerve damage because the nerve damage could have gotten
17 much worse. As time went on the amount of that damage on that
18 nerve usually does progress, more weakness, more numbness, more
19 pain. And so by doing the surgery oftentimes patients can get
20 not a complete relief of symptoms, but they get a partial return
21 of their function and we can stabilize the loss at a certain --
22 at a certain amount and that's what happened here.

23 Q Based on your finding on 10/8 2025 how is that
24 significant it being five years later and still having these
25 issues?

1 MR. BUFFALOE: Objection.

2 THE COURT: Overruled.

3 A Unfortunately, he sustained a permanent injury from the
4 accident. Even with surgery although there is some improvement
5 he still has significant residual symptoms that will be
6 permanent.

7 Q And what is a prognosis?

8 A That's the educated guess of what's going to go forward
9 with the patient.

10 Q And is that used in the medical field with doctors?

11 A Yes.

12 Q And tell us a little bit about the prognosis you had
13 for Mr. Gousse after the 10/8 2025 visit?

14 MR. BUFFALOE: Objection.

15 THE COURT: Overruled.

16 A It was poor. I mean obviously its been many years
17 since his accident. Its been many years since his surgery, he
18 was coming in with continued symptoms, some of which just didn't
19 recover despite the surgery. So the reason why it's really poor
20 is you would not expect in the next 20 months if you take some
21 Advil it's all going to go away, it didn't go away after all
22 that other treatment.

23 MR. BUFFALOE: Objection.

24 THE COURT: Sustained. Disregard the last answer.

25 Please ask the next question.

1 Q Since it was five years later and he was still having
2 pain as his surgeon what does that indicate to you?

3 MR. BUFFALOE: Objection.

4 THE COURT: Its been asked and answered.

5 MR. TZANETEAS: It has?

6 THE COURT: The testimony was that it's a
7 permanent loss given that period of time.

8 Q With a reasonable degree of medical certainty because
9 of his permanent loss what are the symptomology that Mr. Gousse
10 will have going into the future?

11 MR. BUFFALOE: Objection.

12 THE COURT: Sustained.

13 Q With a reasonable degree of medical certainty do you
14 have an opinion as to whether this permanent condition will
15 cause limitations with Mr. Gousse?

16 MR. BUFFALOE: Objection.

17 THE COURT: Overruled.

18 A It will cause limitations.

19 Q What type of limitations will it cause with Mr. Gousse
20 in the future?

21 A He has a permanent loss of use of his neck and his low
22 back. In terms of range of motion, in terms of spasm and
23 tenderness, in terms of neurological dysfunction, everything
24 that he documented over the months after surgery and on that
25 date just show that there is a permanent loss of function.

1 Q And what is neurological function, what kind of
2 symptoms does that have?

3 A Weakness of the muscles and the loss of sensation.

4 Q Okay. And what about the range of motion deficits,
5 what is the symptoms of that?

6 A Symptoms, he has a very stiff neck. As a consequence
7 of that he's unable to bend his neck as much as before the
8 accident.

9 Q Will he continue to have radiculopathy with a
10 reasonable degree of medical certainty?

11 MR. BUFFALOE: Objection. Leading.

12 THE COURT: Just rephrase the question. To a
13 degree of medical certainty and the opinion.

14 Q With a reasonable degree of medical certainty do you
15 have an opinion on whether Mr. Gousse will continue to have
16 radiculopathy as a result of this accident?

17 MR. BUFFALOE: Objection.

18 THE COURT: Objection overruled.

19 A Unfortunately, yes, he will continue to have symptoms
20 of radiculopathy going forward.

21 Q With a degree of medical certainty what type of
22 symptoms does radiculopathy produce?

23 A Numbness in the arm, weakness of the arm, pain in the
24 arm. Loss of range of motion of the neck, spasm and tenderness.

25 Q And with a reasonable degree of medical certainty is

1 this permanent?

2 THE COURT: It has been asked, so you --

3 MR. TZANETEAS: Not on radiculopathy, Judge.

4 MR. BUFFALOE: Objection.

5 THE COURT: Sustained.

6 Q With a reasonable degree of medical certainty what type
7 of limitations does Mr. Gousse, if any? Strike that.

8 Do you have an opinion with a reasonable degree of
9 medical certainty what limitations that Mr. Gousse has going
10 into the future?

11 MR. BUFFALOE: Objection.

12 THE COURT: I think this has all been answered
13 already. I am sustaining the objection.

14 Q With a reasonable degree of medical certainty does
15 Mr. Gousse have a limitation with certain activities such as a
16 job?

17 MR. BUFFALOE: Objection.

18 MR. TZANETEAS: Your Honor, can we approach on
19 this? I didn't go into restrictions of activities in the
20 future. You want me to word it that way?

21 THE COURT: It was all testimony in terms of the
22 limitations for range of motion, the permanency, the loss
23 of sensation, how many more questions are you going to ask
24 having to do with the same subject?

25 MR. TZANETEAS: It's activities, it's not the same

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1 subject, Judge.

2 THE COURT: Why don't you answer the last
3 question.

4 MR. TZANETEAS: Can I withdraw and say it again?

5 Q With a reasonable degree of medical certainty do you
6 center an opinion if Mr. Gousse has a restriction of any
7 activities into the future?

8 MR. BUFFALOE: Objection.

9 THE COURT: Can you answer that question?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: All right. Then you could answer it.

12 A Yes, I mean and obviously he does have a permanent
13 restriction in his ability to perform work and activities, yes.

14 Q What type of activities did you recommend that he
15 refrain from --

16 MR. BUFFALOE: Objection.

17 Q -- into the future?

18 THE COURT: Well, that's a leading question. So I
19 am going to be sustain it.

20 Q With a reasonable degree of medical certainty what
21 activities is he restricted in?

22 MR. BUFFALOE: Objection.

23 THE COURT: Overruled. You could answer.

24 A Yes, I mean so because of this persistent radiculopathy
25 and loss of range of motion the limits I would impose on him are

1 as follows, he wouldn't be able to take any jobs.

2 MR. BUFFALOE: Your Honor, can we approach on it
3 before --

4 THE COURT: No, I don't think there is a need for
5 it. That testimony that you just heard is stricken.

6 The question had to do with activities. What
7 activities would he not be able to engage in, that's the
8 question.

9 A So, no climbing stairs.

10 MR. BUFFALOE: Judge, can we approach please?

11 THE COURT: No, it's 20 minutes of 1:00 and I
12 don't think I need you to approach.

13 So, answer the question.

14 A No climbing ladders, no working on scaffolds. No
15 lifting anything heavy. No repetitive bending or stooping,
16 nothing carrying anything, even prolonged sitting is limited to
17 30 minutes and under, those activities I would restrict him
18 from.

19 Q And why is that your recommendation?

20 MR. BUFFALOE: Objection.

21 Q Why do you limit his activities like that as a doctor?

22 MR. BUFFALOE: Objection.

23 THE COURT: I am going to overrule it. But I hope
24 you're coming to an end. Go ahead.

25 MR. TZANETEAS: Your Honor, there's been

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1 objections, I am trying to get to an end. I would have
2 been finished a half hour ago.

3 THE COURT: Overruled.

4 A Could you repeat the question, please?

5 THE COURT: Could you read back the question.

6 (The record was read back.)

7 A One because it makes it unsafe to perform some of the
8 activities, and two, because if it exacerbates his condition
9 further.

10 Q With a reasonable degree of medical certainty will
11 Mr. -- do you have an opinion whether Mr. Gousse will need
12 surgery into the future?

13 MR. BUFFALOE: Objection.

14 THE COURT: Overruled.

15 A More likely than not he will.

16 Q With a reasonable degree of medical certainty what type
17 of surgery --

18 MR. BUFFALOE: Objection.

19 THE COURT: Finish the question.

20 Q With a reasonable degree of medical certainty what type
21 of surgery do you recommend in the future?

22 MR. BUFFALOE: Objection.

23 THE COURT: All right. We're going to take a
24 break now. It's close to the lunch hour. If you could
25 return at 2:10 PM we'll start as close as possible to 2:15.

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 Thank you all for your attention this morning.

2 COURT OFFICER: All rise. Jury exiting.

3 (Jury exiting.)

4 THE COURT: Doctor, if you could wait in the
5 hallway.

6 (Witness exiting.)

7 THE COURT: What is the grounds for the objection?

8 MR. BUFFALOE: Two things, Judge.

9 THE COURT: The question was does he have an
10 opinion in terms of future surgery.

11 Let's wait for the witness to leave, yes.

12 MR. BUFFALOE: He says may more likely than not.
13 It's purely speculative in nature. There is no basis for
14 it based on what he's concluded and found and testified to
15 today. He's making basically a speculative conclusion one
16 way or the other, he says a fusion was successful, it's
17 stable. It's pure speculation.

18 THE COURT: All right.

19 MR. TZANETEAS: Your Honor, his narrative says
20 adjacent segment disease, so he's going to testify per his
21 narrative that the defendant is on notice with a reasonable
22 degree of medical certainty he will need adjacent segment
23 surgery for the level above and level below the herniated
24 disk that was repaired or level below. So defendants were
25 on notice. I will ask him for the reason with a reasonable

1 degree of medical certainty. I think under the law that's
2 enough, Judge. They're on notice of it. It's in his
3 reports and --

4 THE COURT: Well, more likely than not is not
5 likely to a degree of medical certainty.

6 MR. TZANETEAS: I will ask him the next question,
7 Doctor, can you state with a reasonable degree of medical
8 certainty if he says no I stop.

9 THE COURT: Except his testimony is more likely
10 than not.

11 MR. TZANETEAS: Maybe that means a reasonable
12 degree of medical certainty. I am allowed to inquire and
13 ask that question. If he says no then it's over.

14 MR. BUFFALOE: You did ask him within a degree of
15 medical certainty and he responded more likely than not.

16 MR. TZANETEAS: He didn't.

17 THE COURT: Let's go back to that last question.

18 (The record was read back.)

19 THE COURT: All right, I am reserving decision.
20 Thank you. I'll let you know just before we recommence.

21 MR. TZANETEAS: He didn't answer yes or no to that
22 I am entitled if your Honor doesn't think that's enough to
23 ask him another question. He didn't say yes or no. He
24 said more likely than not.

25 THE COURT: Yes.

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1 MR. TZANETEAS: In direct answer to my question to
2 me that that's a yes if your Honor wants a definitive yes I
3 will ask minimum again.

4 THE COURT: I said I will reserve decision on it.

5 MR. TZANETEAS: I am just making my argument on
6 it. Thank you. Have a nice lunch.

7 THE COURT: Yes.

8 (A lunch recess was taken.)

9 THE COURT: Mr. Tzaneteas, the testimony that the
10 doctor was going to give had to do with future surgery,
11 exactly what are the future surgery involved?

12 MR. TZANETEAS: Adjacent, I am sorry, additional
13 surgery including adjacent level of the cervical spine.

14 THE COURT: Is there any reference to that
15 operation in the Bill of Particulars.

16 MR. TZANETEAS: No, my Bill of Particulars says
17 future surgeries, Judge.

18 THE COURT: Yes, but the future surgeries appears
19 to have already taken place. This was a fusion surgery in
20 this matter; is that correct.

21 MR. TZANETEAS: Yes. This report is three years
22 after fusion surgery that he would need an additional
23 surgery including adjacent segment surgery.

24 THE COURT: Well, was the bill ever amended?

25 MR. TZANETEAS: Your Honor, my bill has always

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1 said future surgery after the surgery. When he had the
2 fusion in 2022 there was a Bill of Particulars that was
3 filed that said future surgeries. I don't have it in front
4 of me, but let me look at it.

5 THE COURT: What is the date of that bill?

6 MR. TZANETEAS: I don't know, your Honor. I gave
7 you a packet with the Bill of Particulars.

8 THE COURT: Right, and I am looking at them.

9 MR. TZANETEAS: I don't have it in front of me,
10 Judge. I will look for it right now.

11 THE COURT: All right, that's fine.

12 MR. TZANETEAS: 6/6 2022, Bill of Particulars
13 states, "Need for additional surgery, discectomy,
14 laminectomy and spinal fusion on the cervical spine".

15 THE COURT: All right. I am looking at 7/7 of '23.

16 MR. TZANETEAS: That's not the one, Judge.

17 THE COURT: All right. So the one from 2022,
18 spinal fusion, that's mentioned, this has already taken
19 place; is that correct?

20 MR. TZANETEAS: Yes.

21 THE COURT: So what is the doctor going to testify
22 to, what kind of operation?

23 MR. TZANETEAS: A future surgery including
24 adjacent segment surgery.

25 THE COURT: Let me hear from Mr. Buffaloe.

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1 MR. BUFFALOE: Ready, your Honor? The basis of my
2 objection is twofold. One is on the stand Dr. Lattuga
3 testified that more likely than not.

4 THE COURT: I agree with you, that's speculative.
5 The cases that I've looked at and there aren't a lot, I
6 will tell you right now, it's not enough, but I will give
7 counsel time to ask additional questions that may overcome
8 the way he phrased the question or may -- may elicit
9 testimony that makes it less speculative, because right now
10 I agree with you.

11 MR. BUFFALOE: I guess my objection to that would
12 be after this oral argument allowing him to change his
13 answer when on the stand.

14 THE COURT: I didn't say I would allow that.

15 MR. BUFFALOE: Well, if you ask the question again
16 and he changes his answer.

17 THE COURT: Look, I am not going to tell counsel
18 what questions to ask, there are questions that you can ask
19 that can elicit a rational in terms of why he could give a
20 more definitive answer or not. I don't know. I am not
21 going to anticipate. I am going to tell you right now
22 though I do find more likely than not is speculative.

23 What is the other ground for your --

24 MR. BUFFALOE: The surgery is delineated in his
25 report and the language he uses is, I'll read it to you in

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1 the report of October -- sorry, October, what is the day
2 again, October 8, 2025. And it says, "May require
3 additional procedures and/or surgery in the future
4 including at the adjacent level of the surgical site". So
5 even that language in and of itself is speculative.

6 THE COURT: You want to answer that?

7 MR. TZANETEAS: It says in the beginning it can be
8 stated to a reasonable degree of medical certainty, in the
9 beginning of that paragraph.

10 THE COURT: Those magic words aren't enough when
11 you have more likely than not and may require.

12 MR. TZANETEAS: I will ask him to explain what he
13 means by more likely than not and I will ask him further
14 questions to see.

15 THE COURT: This will be done outside the presence
16 of the jury. I will allow you to ask him outside the
17 presence of the jury. Bring the witness in and then I will
18 make a decision right after this.

19 MR. TZANETEAS: In front of the jury or outside
20 the presence?

21 THE COURT: I just said outside the jury.

22 MR. TZANETEAS: I didn't hear it.

23 (Witness entering.)

24 THE COURT: I just want to remind you you are
25 still under oath.

Proceedings

1 THE WITNESS: Thank you, your Honor.

2 THE COURT: Why don't you proceed, Mr. Tzaneteas.

3 MR. TZANETEAS: Dr. Lattuga, what do you mean that
4 more than likely he will need future surgery?

5 MR. BUFFALOE: Objection.

6 THE COURT: That wasn't the question before. I am
7 sorry.

8 MR. TZANETEAS: I don't remember the question,
9 Judge.

10 THE COURT: The question before was what did he
11 mean by his response that it is -- let me get the exact
12 words "more likely than not," those were the words.

13 MR. TZANETEAS: What did you mean by more likely
14 than not he'll need surgery?

15 THE WITNESS: I meant beyond a degree of medical
16 certainty.

17 THE COURT: You are looking at me, counsel, but I
18 am telling you that's not enough.

19 MR. TZANETEAS: With a reasonable degree of
20 medical certainty what type of surgery will he need in the
21 future?

22 MR. BUFFALOE: Objection.

23 THE COURT: You are going to have to rephrase the
24 question. I can't help you here, counsel.

25 MR. TZANETEAS: Your Honor, just so I understand,

Proceedings

1 I asked --

2 THE COURT: I can't answer any questions in front
3 of this witness.

4 MR. TZANETEAS: Okay. Dr. Lattuga, when you talk
5 about that he needs surgery in the future what do you mean
6 by a reasonable degree of medical certainty?

7 THE COURT: No. Objection sustained. You have to
8 use the word objection.

9 MR. BUFFALOE: Sorry, I was going to.

10 MR. TZANETEAS: Your Honor, can I have a sidebar
11 on this? He said with a reasonable degree of medical
12 certainty.

13 THE COURT: I know you did, I am not going to say
14 more than I did. I am sustaining the objection.

15 MR. TZANETEAS: Doctor, will Mr. Gousse require
16 surgery in the future to his cervical spine?

17 MR. BUFFALOE: Objection.

18 THE COURT: Overruled.

19 THE WITNESS: Yes.

20 MR. TZANETEAS: What do you base that on?

21 THE WITNESS: My years of experience, my knowledge
22 about how cervical operations impact a patient, you know,
23 based on his particular case and his history and his
24 surgery.

25 MR. TZANETEAS: And that's --

Proceedings

1 THE WITNESS: It's to a degree of medical
2 certainty.

3 MR. TZANETEAS: Okay. What type of surgery will
4 he need in the future?

5 THE WITNESS: Similar surgery to what he had
6 before.

7 MR. TZANETEAS: And why is that?

8 THE WITNESS: Because that's the standard
9 operation we do when you have the adjacent level breaks
10 down, then you'll do -- you'll repeat the cervical fusion
11 at an adjacent level.

12 THE COURT: I am sorry, I didn't hear the last
13 answer you gave. Can you repeat that?

14 (The record was read back.)

15 THE COURT: All right. You want to voir dire the
16 witness?

17 MR. BUFFALOE: Dr. Lattuga, you prepared a report
18 when you saw the plaintiff on October 8, 2025; correct?

19 THE WITNESS: Which date, sir?

20 MR. BUFFALOE: October 8, 2025, correct?

21 THE WITNESS: Yes.

22 MR. BUFFALOE: In the report you say he may
23 require; correct?

24 THE WITNESS: If you want to pull the report and
25 we'll quote it exactly.

Proceedings

1 MR. BUFFALOE: So on page eight of the report.
2 Right before the paragraph that begins, "It can be stated".
3 THE WITNESS: Page eight, I am sorry, I left my
4 reading glasses so I am going to go slow, in my bag.
5 THE COURT: You want to get your reading glasses?
6 Yes, why don't you do that.
7 THE WITNESS: Okay, I am on page eight, sir, sure.
8 Where on page eight, sir, do you want me to refresh my
9 recollection?
10 MR. BUFFALOE: It's in the middle of page eight,
11 the phrase, the sentence just before it can be stated based
12 on the facts, do you see that one sentence paragraph, it's
13 the paragraph ahead of that.
14 THE WITNESS: Yes. So you are asking me to
15 clarify --
16 MR. BUFFALOE: I am asking you did you say may
17 require?
18 THE COURT: You know, just because I don't have it
19 in front of me, you want to just read that sentence to me?
20 THE WITNESS: Sure.
21 MR. TZANETEAS: Your Honor, it's not in evidence.
22 THE COURT: I understand.
23 MR. BUFFALOE: There's no jury.
24 THE COURT: I understand it's not, it's his
25 report.

Proceedings

1 MR. TZANETEAS: It's a narrative report. I'll put
2 it in evidence if your Honor wants to. Defendant objected
3 to it coming into evidence.

4 MR. BUFFALOE: We're doing a voir dire.

5 THE COURT: It's going to be in as a Court
6 Exhibit, the Court is going to consider it. It won't go
7 before the jury.

8 So what's the next Court Exhibit?

9 THE CLERK: The next Court Exhibit is 7. So what
10 is this?

11 THE COURT: Court Exhibit 7, it's a narrative
12 report.

13 MR. BUFFALOE: Dated October 8, 2025.

14 THE COURT: All right. We're just going to mark
15 it.

16 THE WITNESS: Okay, no problem.

17 THE COURT: All right, if you could just read that
18 sentence that would be appreciated.

19 MR. BUFFALOE: I could read it, your Honor.

20 THE COURT: Why don't you read it?

21 MR. BUFFALOE: "Djhierry Gousse will require
22 diagnostic imaging, physical therapy, pain management and
23 may require additional procedures and/or surgery in the
24 future including at the adjacent level of the surgical
25 site."

Proceedings

1 THE COURT: All right. So ask your question.

2 MR. BUFFALOE: Dr. Lattuga, you would agree with
3 me there is a difference between will and may; correct?

4 THE WITNESS: They're two different words.

5 MR. BUFFALOE: Right, there is different meaning
6 to those two words?

7 THE WITNESS: Yes.

8 MR. BUFFALOE: Will is certainty, may is not;
9 correct?

10 THE WITNESS: I wouldn't characterize it that way,
11 two different words with two different implications.

12 MR. BUFFALOE: Does may mean certainty to you?

13 THE COURT: You know, I don't need that question
14 to be asked. Have you completed your voir dire?

15 MR. BUFFALOE: You testified twice now that
16 plaintiff may or may not need surgery in the future;
17 correct?

18 MR. TZANETEAS: Objection.

19 THE WITNESS: That wasn't my testimony.

20 THE COURT: The testimony was more likely than
21 not.

22 MR. BUFFALOE: Sorry, more likely than not;
23 correct?

24 THE WITNESS: Yes, sir.

25 MR. BUFFALOE: Now, that again is not certainty,

Proceedings

1 that's not a medical certainty; correct?

2 THE WITNESS: Respectfully, sir, I disagree with
3 that. My -- if you ask me how I use that expression,
4 perhaps I am using it incorrectly, you could educate me.
5 That when I am asked under oath to a reasonable degree of
6 medical certainty it's obvious I can't be 100% sure, I
7 don't have a crystal ball. But based on the facts and my
8 experience it's likely and my understanding that's the
9 expression that we use in court, more likely than not, that
10 that is going to occur.

11 MR. BUFFALOE: You don't have any doubt that he
12 will need physical therapy in the future; correct?

13 THE WITNESS: It's really the same. It's really
14 the same. The way I am portraying it. Perhaps I am not
15 making myself clear, but it's likely and I would expect if
16 you want me to use those words that he's going to need all
17 of those MRI's, physical therapy, injections and surgery,
18 but can I say 100%? Obviously I couldn't do that.

19 MR. BUFFALOE: Again, Dr. Lattuga, when you
20 testified, you said he would need physical therapy, you
21 said he would need --

22 THE COURT: All right, you asked that question
23 before. So, there is no need for further discussion. All
24 right.

25 Would you mind being in the hallway just for a

Proceedings

1 moment?

2 THE WITNESS: No, your Honor.

3 THE COURT: Thank you.

4 (Witness exiting.)

5 THE COURT: All right, this is the decision of the
6 Court. In the Court's opinion the testimony goes beyond
7 what is -- and is inconsistent with what the narrative
8 report indicates and the testimony given so far is just too
9 speculative, so I am not going to allow any testimony
10 regarding future surgery. Thank you.

11 MR. TZANETEAS: Your Honor, just for the record I
12 believe that it has been pled. He's a treating doctor,
13 treating doctors can testify as to future surgery. I think
14 on the stand during voir dire he said he can't be 100%, but
15 that's not the requirement from the court that it has to be
16 100%. He said with a reasonable degree of medical
17 certainty and he said that, he explained it. So I object
18 to this, Judge. This is pled, he was aware of it, the
19 doctor said what he said, that's enough to get it into
20 evidence, Judge. I pled it in my BP. They were aware of
21 it. We pled a future medical report and an economist,
22 everything, Judge. So now they can say they're not aware
23 of it? So note my objection for the record, Judge.

24 THE COURT: That's not the basis that they weren't
25 aware of it, the basis is it's speculative. Look, you made

Sebastian Lattuga, M.D. - Plaintiff - Direct

1 a record, do you need an additional record to be made?

2 MR. TZANETEAS: No, Judge.

3 THE COURT: All right. Thank you.

4 So let's get the jury.

5 MR. BUFFALOE: Judge, in light of the radiology
6 ruling I would ask the testimony regarding may or may not
7 on this line be stricken.

8 COURT OFFICER: All rise. Jury entering.

9 (Jury entering.)

10 THE COURT: Please, everybody sit down. Good
11 afternoon.

12 There was testimony that was given where the
13 doctor said a future procedure more likely than not may
14 have to take place, disregard that testimony. Thank you.

15 Please proceed.

16 DIRECT EXAMINATION (CONTINUED)

17 BY MR. TZANETEAS:

18 Q Dr. Lattuga, with a reasonable degree of medical
19 certainty will Mr. Gousse need any future treatment as a result
20 of this accident?

21 A Yes.

22 MR. BUFFALOE: Objection. Asked and answered.

23 MR. TZANETEAS: I did not.

24 THE COURT: Overruled.

25 A Yes.

1 Q What type of future treatment does he need?

2 A Physical therapy, injections, diagnostic testing and
3 surgery.

4 Q And that's for the rest of his life?

5 MR. BUFFALO: Objection.

6 THE COURT: Overruled.

7 Q And that's for the rest of his life?

8 A Yes.

9 Q Now, Doctor, I want you to assume that Mr. Gousse
10 didn't complain about his neck or pain going down his arm to the
11 next day and assume he went to Dr. Hanan a week later, does that
12 have any affect on your opinion that this accident caused this
13 herniated disk that required surgery?

14 A No.

15 Q Why not?

16 A It's not uncommon that patients can sustain an injury
17 and either not immediately seek care or they think it's not
18 going to be a problem and then they realize, you know, several
19 days or even weeks later that it's becoming a real problem, they
20 can't ignore it anymore. We often see patients delay in
21 treatment on those conditions.

22 Q What is an acute herniation?

23 A Acute herniation typically is related to, there is a
24 specific event that you can tag to when the herniation started.

25 Q And with a reasonable degree of medical certainty do

1 you have an opinion whether this event caused an acute
2 herniation?

3 A Yes, his ceiling collapsed and slipped and fall, or the
4 causal relationship to his herniated disk, the need for surgery,
5 the need for treatment.

6 Q Okay. I want you to assume doctors hired by the
7 defense are going to come in and testify that it is not an acute
8 herniation; do you agree with that?

9 MR. BUFFALOE: Objection to form.

10 THE COURT: Overruled.

11 A No.

12 Q Why not?

13 A Because my years of experience and my personal review
14 of the history and my personal review of the diagnostic tests
15 and my intraoperative examination of the situation collectively
16 lead me to conclude it was a traumatic event.

17 Q Are you an expert or a treating doctor in this case?

18 MR. BUFFALOE: Objection.

19 THE COURT: Sustained. You could both.

20 MR. TZANETEAS: Well, that's why I am asking him.

21 Q Or both?

22 THE COURT: Why don't you ask one question at a
23 time.

24 MR. TZANETEAS: Sure.

25 Q Are you Mr. Gousse's treating doctor?

Sebastian Lattuga, M.D. - Plaintiff - Cross

1 A Yes.

2 Q And what are the responsibilities of a treating doctor?

3 A My responsibilities were exactly as we've demonstrated
4 here in the courtroom, where I, you know, examine the patient,
5 take a history, review the diagnostic tests, come up with a
6 treatment plan, in this case ultimately do surgery and then
7 follow-up after the surgery.

8 Q Okay. Thank you.

9 MR. TZANETEAS: No further questions, Judge.

10 THE COURT: Cross examination.

11 CROSS EXAMINATION

12 BY MR. BUFFALOE:

13 Q Good afternoon, Dr. Lattuga.

14 A Good afternoon.

15 Q You and I have never met before today; correct?

16 A I don't believe so.

17 Q So let's start out with where you left off with an
18 acute herniation. Plaintiff gave you a history that he claims a
19 ceiling collapse fell on his head and caused an acute
20 herniation, an acute, acute means immediate; correct?

21 A Contemporaneous would be a better description.

22 Q Contemporaneous is different than immediate?

23 A Yes.

24 Q Fair to say that he's claiming based on the history
25 that the herniated disk occurred right then and there; correct?

1 A I can't answer that yes or no. What I can say is that
2 I believe it's my opinion and judgment that when the ceiling
3 fell on his head and he slipped and fell back he injured his
4 neck and that created the herniated disk.

5 Q So you're saying that the herniated disk might have
6 occurred at some later time?

7 A No. Contemporaneous when he fell and twisted his neck.
8 It's an evolving situation, it's not like it's not black or
9 white. There is and there was, it could be a little bit and
10 over the next few days get larger, I don't know, there's no way
11 for us to know that. But, you know, based on my prior testimony
12 I do feel that this is a traumatic disk herniation, yes.

13 Q So let's just say what you just described, that it
14 herniated a little bit immediately after, would that have been a
15 competent cause of pain, would that have caused the pain?

16 A I mean I can't answer that yes or no, the way I
17 described it is really what happens. It's not uncommon for
18 patients not to seek treatment or not to really feel how bad it
19 is until, you know, days or hours or days after the injury.

20 Q But you said you can't answer it because you don't
21 know; correct? You don't have an idea as to whether this is an
22 acute herniation, you described it, let me see if I recall what
23 you said, that the spinal disk extrudes onto the nerve; correct?

24 A Correct.

25 Q You're saying that happens right immediately at this

1 event; correct?

2 A As a consequence of the ceiling collapse, yes, sir.

3 Q The contact with the nerve is what causes pain;
4 correct?

5 A Not necessarily, but that does cause pain, yes.

6 Q Would he have had pain immediately?

7 A Not necessarily.

8 Q Not necessarily because it wasn't as acute as it needed
9 to be to cause pain?

10 MR. TZANETEAS: Objection, your Honor.

11 THE COURT: Can you answer that question?

12 THE WITNESS: Yes.

13 A I mean it just evolves. It's like the example I gave
14 about the swollen ankle. If you twist your ankle, right, and
15 you hobble home. Maybe a couple of hours later you look down
16 and the ankle is swollen ten times larger than when you fell
17 two hours ago because it evolves over time. It's an
18 inflammatory response. I am doing the best I can to answer your
19 question, sir. My opinion is that fall, the ceiling collapse
20 and fall created a herniated disk and created the symptoms that
21 were treated by Dr. Hanan and all the other doctors.

22 Q If I understood you correctly you just compared a
23 herniated disk in a cervical spine to a swollen ankle, to edema
24 of a swelling ankle?

25 A Respectfully I think the jury understands that I was

1 trying to give an analogy that's more visible to them. Everyone
2 has that appearance, so just because it's inside of you and you
3 can't see it a similar evolutionary process occurs. I was just
4 trying to make that analogy, I think it's easier to understand.

5 Q So your testimony --

6 MR. TZANETEAS: Your Honor, can he finish his
7 answer?

8 THE COURT: Did you complete your answer?

9 THE WITNESS: Yes.

10 THE COURT: Okay. Ask your next question.

11 Q So your testimony is that without any further trauma
12 whatsoever the herniated disk in the cervical spine at C3-C4 got
13 worse?

14 MR. TZANETEAS: Objection, your Honor.

15 Q Over the amount of days?

16 THE COURT: Overruled.

17 A No, that's not my testimony. My testimony is that the
18 incident created the trauma that gave him a traumatic disk
19 herniation, that's my testimony.

20 Q But you just said that he wouldn't have had pain to
21 begin with because it was smaller and then it got worse, swollen
22 up like an ankle?

23 MR. TZANETEAS: Objection, your Honor.

24 THE COURT: Sustained. Ask your next question.

25 Q So Dr. Lattuga, did the herniation remain the same on

1 the date of the accident until he actually went to get care?

2 MR. TZANETEAS: Objection, your Honor.

3 THE COURT: Rephrase that question.

4 Q Dr. Lattuga, in your opinion this acute herniation that
5 occurred on May 14th of 2020, did it evolve of over a period of
6 time without any further trauma whatsoever?

7 MR. TZANETEAS: Objection, your Honor.

8 THE COURT: Can you answer the question?

9 THE WITNESS: I believe I can, I just got to
10 remember the question exactly. Can we read the question
11 exactly, I had my answer in my head.

12 (The record was read back.)

13 A The pain evolved, right, because what we're saying is
14 that, my understanding, that immediately he didn't feel it, it
15 wasn't enough pain to warrant treatment, but then over the
16 course of several days it was.

17 The actual size of the herniation, we don't have a
18 video, an ongoing video rolling, scrolling in our body to see
19 how that disk would evolve over time. I was just giving you
20 some basis of understanding of why sometimes it can in certain
21 circumstances evolve over time, that's all.

22 Q You don't know if that happened here, at all?

23 A Again, I can't answer that yes or no. All I could tell
24 you is that it's my opinion that this accident created the
25 herniated disk and created the need for treatment and surgery.

1 Q So the herniated disk that you observed in the films,
2 is it fair to say in your opinion that was that caused pain;
3 correct?

4 A Yes.

5 Q Right? And the pain that the plaintiff came to see you
6 that he said was constant was caused by that herniated disk;
7 correct?

8 A Yes, the trauma to his neck, yes, and the consequent
9 injury to his disks and spine.

10 Q But when it happened he didn't have any complaints of
11 pain?

12 A Again, I wasn't there, but I understand the pain
13 evolved over a period of several days which I've testified to
14 that it happens, it happens.

15 Q Do you have any reason to believe as you sit here right
16 now that you what you saw in those MRI films, the herniation
17 that you described during your testimony, changed from the time
18 of this accident to the time those films were taken?

19 MR. TZANETEAS: Objection, your Honor.

20 THE COURT: I don't understand the question. I am
21 sorry.

22 Q Do you have any reason to believe that that herniation
23 that you saw in that film that Dr. Kolb took, that you testified
24 to, the MRI film slide ten or fifteen, that it changed from the
25 date of the accident to the date those films were taken?

Sebastian Lattuga, M.D. - Plaintiff - Cross

1 A I mean --

2 THE COURT: Just to clarify the record, the
3 accident occurred on May 14, 2020 when was the MRI taken?

4 MR. TZANETEAS: I believe it was 6/17 2020, Judge.

5 MR. BUFFALOE: Yes.

6 THE COURT: Okay. All right. With that
7 clarification can you answer the question?

8 THE WITNESS: Yes, as I answered it before, your
9 Honor, I don't have an ongoing video from the time, you
10 know.

11 A My answer would be respectfully, sir, that I believe
12 that this accident caused the herniation, the development of
13 pain in the immediate time after the accident. The need for
14 treatment and the need for surgery. I can't tell you about the
15 evolution of a disk and how it looked on the day or the next day
16 because we don't have imaging studies or any diagnostic studies
17 to make that conversation, I would just be guessing.

18 Q Fair enough, Dr. Lattuga.

19 Now, Dr. Lattuga, are you currently licensed to
20 practice medicine in New York?

21 A Yes.

22 Q But you do not practice in New York; correct?

23 A No, I see patients in New York, I have an office in
24 Midtown.

25 Q So, and are you currently have any surgery privileges

1 in any hospital in New York?

2 A No.

3 Q The hospital that you mentioned that you have current
4 surgical privileges is in New Jersey; correct?

5 A Correct, correct.

6 Q And you haven't done any surgeries in New York in more
7 than a year and a half; correct?

8 A Correct. I moved to Connecticut so this hospital in
9 New Jersey is convenient for me and my patients.

10 Q And now if I understand, you mentioned that you have
11 approximately more than 20 offices?

12 A Yes. I don't go to all of them, but yes.

13 Q You are the owner of all of them; correct?

14 MR. TZANETEAS: Objection, your Honor. Relevance.

15 THE COURT: I am going to sustain the objection.

16 Q The surgery you performed on the plaintiff in this case
17 was done in 2022; correct?

18 A Yes.

19 Q How many surgeries did you do that year?

20 A I mean I do between 300 and 500 a year.

21 Q Do you know how many you did that day?

22 A No.

23 Q Do you have any record of that?

24 A No.

25 Q Fair to say it wasn't just Mr. Gousse's surgery;

1 correct?

2 A I usually do three, four, five surgeries a day, depends
3 on the kind of surgery.

4 Q By the way, the surgery, the cervical procedure that
5 you performed here, it takes about an hour; correct?

6 A About an hour, yes.

7 Q Now, New York Spine Specialist, your facility, there
8 are other doctors who work in that facility; correct?

9 A Yes.

10 Q And they're the doctors who saw Mr. Gousse before you;
11 correct?

12 A Yes.

13 Q They examined the plaintiff; correct?

14 A Yes.

15 Q And they made recommendations and diagnoses; correct?

16 A Yes.

17 Q And it's fair to say that -- let me -- let's see, we
18 talked about Dr. Mikelis saw him, Dr. Tripathy?

19 A Tripathy.

20 Q And Dr. Alajean?

21 A Alajean.

22 Q Saw him before you; correct?

23 A Yes, sir.

24 Q And when they saw him none of them recommended surgery;
25 correct?

Sebastian Lattuga, M.D. - Plaintiff - Cross

1 A It's not a yes or no response. I'll be happy to
2 clarify.

3 Q It is a yes or no or response.

4 A No, it isn't. Two of them are not surgeons, they
5 couldn't recommend surgery, so that question is misleading. The
6 other doctor, Dr. Tripathy, saw the patient soon after the
7 injury and recommended conservative treatment which I agree with
8 that course of action.

9 Q So if I understand you correctly, from my review of
10 these records Dr. Tripathy saw the plaintiff for the first time
11 on January 25th of 2021; correct?

12 A 1/25/21, yes, sir.

13 Q And you saw him for the first time on June 7th of 2021;
14 correct?

15 A Yes, sir.

16 Q Five months later?

17 A Yes, sir.

18 Q So you're saying that Dr. Tripathy's recommendation
19 five months earlier in January of 2025 did not have any weight
20 as far as surgery was concerned?

21 A That's not my testimony.

22 Q Literally that he get he get a follow-up MRI; correct?

23 A Yes.

24 Q And that he get therapy; correct?

25 A Yes.

1 Q No mention of a candidate for surgery in Dr. Tripathy's
2 evaluation; correct?

3 A He did not indicate him for surgery, sir.

4 Q Now, by the way, what is a diagnostic epidural drip?

5 A It's part of the epidural injection when you give it in
6 the spine. The doctors often will inject dye, not only medicine
7 but also dye just to feel how the -- get a sense of where the
8 medicine is going to flow through. You take a picture, you
9 could see the dye track up and these are done in conjunction
10 with each other. It helps to give them information feedback
11 for, you know, if the injection is going in the right place and
12 perhaps, you know, based on that, you know, use a slightly
13 different technique.

14 Q Now, Dr. Alajean --

15 A Alajean.

16 Q -- she performed a diagnostic epidurogram on
17 February 17, 2021; correct?

18 A I'll stipulate to the date, sir.

19 Q And she wrote a report about what the findings of that
20 epidurogram were; correct?

21 A Yes.

22 Q And she found degeneration; correct?

23 A Let's get to the report. 2/17/21, sir.

24 Q Yes.

25 A Okay. And what are you quoting, sir, I'll be happy to

1 read it with you, epidurogram.

2 Q Do you see the notation in the record?

3 A Are you talking to me, sir?

4 Q Yes.

5 A About degenerative changes, is that what the question
6 is?

7 Q Yes. About the epidurogram conducted by Dr. Alajean.

8 A I don't have the report in front of me, sir.

9 Q It's in your medical records though.

10 A Is there a question, sir? I am sorry.

11 Q Yes. Have you been able to find it in your records?

12 A Yes.

13 Q Did it refresh your recollection?

14 A Yes, sir.

15 Q Okay. She found degenerative changes; correct?

16 A No, sir.

17 Q You read the epidurogram and found degenerative
18 changes; correct?

19 A I don't see that. I see the opposite of that, sir. If
20 you like I could quote what her report says.

21 Q Give me one second, see if I could find it. All right,
22 let's see. She has a report dated 2/17/21, epidurography
23 diagnostic study. It says, "Degenerative changes, disk height
24 abnormalities, bone spurs".

25 A Continue the sentence, "Endplate degeneration not

1 visualized," so she's saying that was not visualized. So she
2 said that was not visualized. That's what the report says, sir.

3 Q Not that the endplate degeneration was not visual?

4 A No, I think it's pretty clear she meant none of those
5 findings. I mean I know because I looked at the x-rays and
6 myself none of those factors were there at the time on this
7 patient's spine, but as I read her note, right, because she
8 wrote the note, she's also saying it was not present at the
9 time.

10 Q When Mr. Gousse went to New York Spine and Dr. Mikelis
11 recommended that he get follow-up MRI's that didn't occur; did
12 it?

13 A I don't think so. I think -- I think she went to Dr.
14 Mikelis then she was continuing, he was continuing to be
15 treated, saw Dr. Tripathy.

16 Q Who also recommended that he get follow-up MRI's and
17 that didn't happen either; correct?

18 A I don't believe it happened, sir, no.

19 Q And Dr. Alajean recommended that he get follow-up MRI's
20 and that didn't happen either; correct?

21 A I believe there is only one MRI, the MRI that was taken
22 a month after surgery.

23 Q The one in February?

24 A Yes.

25 Q Of 2020?

Sebastian Lattuga, M.D. - Plaintiff - Cross

1 A Yes.

2 MR. TZANETEAS: June.

3 Q June?

4 A June.

5 Q Now, having said that, when you saw him before you did
6 the surgery you didn't get a further MRI; correct?

7 A No.

8 Q When you saw him for the first time you recommended the
9 surgery; correct?

10 A Yes.

11 Q Despite the fact that no other doctor had done so to
12 date; correct?

13 A I mean I think I responded to that question before.

14 Q Yes or no?

15 MR. TZANETEAS: Objection, your Honor.

16 THE COURT: Can you answer the question?

17 THE WITNESS: Yes.

18 THE COURT: You could answer it.

19 A Dr. Tripathy who is the only one who would have
20 recommended surgery recommended conservative treatment and I
21 agreed with that recommendation.

22 Q So the answer is yes?

23 MR. TZANETEAS: Objection, your Honor.

24 Q No one else had, you did; right?

25 THE COURT: I am sorry, I just want clarity for

Sebastian Lattuga, M.D. - Plaintiff - Cross

1 the record.

2 Two of the doctors were not surgeons so they
3 wouldn't be able to recommend?

4 THE WITNESS: They would never make the
5 recommendation.

6 THE COURT: The other one didn't recommend because
7 the course of treatment would have been conservative care;
8 is that correct?

9 THE WITNESS: He felt after his discussion with
10 the patient at the time that they agreed to, you know, it's
11 collaborative. The decision of surgery is patient and
12 doctor together, they decided to continue --

13 THE COURT: Okay, I just want clarity, Dr.
14 Tripathy was in a position to recommend surgery but did
15 not?

16 THE WITNESS: Correct.

17 THE COURT: All right. You can ask your next
18 question.

19 MR. BUFFALOE: Thank you.

20 Q Now, by the way, before you recommended surgery to
21 Mr. Gousse did you review any of Dr. Hanan's records?

22 A I don't have an independent recollection, it's not
23 recorded.

24 Q Now, you did mention -- the films, the MRI's, did you
25 actually review the MRI reports or the films themselves?

Sebastian Lattuga, M.D. - Plaintiff - Cross

1 A Films.

2 Q And that was on the first time you saw him; correct?

3 A Yes, yes.

4 Q Do you know where you got them from?

5 A No.

6 Q Do you know if the plaintiff brought them in himself or
7 you got them through some other means?

8 A I don't remember. Sorry.

9 Q Do you have it reflected in your records, at all?

10 A I am trying to remember the question. Where I got the
11 MRI to review is not reflected in my records.

12 Q Now, you first saw him on what was it, 6/7 2021;
13 correct?

14 A Yes.

15 Q And you recommended surgery on that date; correct?

16 A Yes, sir.

17 Q Now, the next time you saw him was when you performed
18 surgery; correct?

19 A Yes, sir.

20 Q That was on February 10, 2022?

21 A Yes, sir.

22 Q Now, you saw him, approximately, a week later for
23 follow-ups; correct?

24 A Yes, sir.

25 Q Then you saw him again, approximately, four months

1 later for further follow-up; correct?

2 A I am just going to -- I am going to plough through the
3 record a little bit so I am not just guessing, sorry. So I saw
4 him in February, then I saw him in March.

5 Q You saw him in March, not a different doctor from your
6 firm?

7 A Good question. It looks like it was me on 3/7/22,
8 looks like I was the one who saw him and it also looks like,
9 yes, it looks like it was me saw him also in February a week
10 after surgery. And the next time I saw him was or someone saw
11 him, he saw Dr. Mikelis in May.

12 Q I am just asking about you, sir, just you.

13 A Okay. And so I saw him in June, on June 15th, '22.

14 Q And then the next time you saw him was October 8th of
15 2025, correct, three years ago?

16 A Yes.

17 Q When you saw him on October 8, 2025 that was at the
18 request of his attorneys; correct?

19 A I don't know the answer to that question. I -- he made
20 an appointment. I don't really know.

21 Q Well, you prepared a report; correct?

22 A Yes.

23 Q Did you send that report to his attorneys?

24 A I believe so. Yes, sir.

25 Q So it's fair to say that between 2000, what was it,

Sebastian Lattuga, M.D. - Plaintiff - Cross

1 June of 2022, plaintiff was as of that point he was no longer
2 under your care; correct?

3 A No, that's not correct.

4 THE COURT: Do you mean March of 2022?

5 MR. BUFFALO: No, I think the last time he saw
6 him was June 15, 2022.

7 A I am sorry, if you could repeat the question.

8 Q As of June 15, 2022 he was no longer under your care;
9 correct?

10 A I believe I answered that question, no, that's not
11 correct, sir.

12 Q Did you see him between June 15, 2022 and October 8,
13 2025?

14 A No.

15 Q How is he under your care, continuing to be under your
16 care at that point?

17 A He's still my patient.

18 Q He's still your patient?

19 A Right.

20 Q Did you have any appointments between June 15, 2022 and
21 October 8, 2025?

22 A I don't know.

23 Q Fair to say that they're not in your records; correct?

24 A I am sorry if I misspoke, I didn't see him subsequent
25 to that until the other date, but that doesn't discount him from

1 being my patient, he's still my patient.

2 Q I didn't ask if he was your patient. I guess anybody
3 that sees you is your patient in perpetuity.

4 MR. TZANETEAS: Objection, your Honor.

5 THE COURT: You are going to have to move on.

6 There is no question of fact the doctor did not see this
7 patient, the plaintiff, between June 15, 2022 and
8 October 8, 2025. Move on. Thank you.

9 Q Doctor, it's fair to say that you said degeneration is
10 age-related changes; correct?

11 A I mean that's one way that they're frequently -- it's
12 frequently portrayed by people reading diagnostic images, yes.

13 Q And that could occur at any age; correct?

14 A Not necessarily.

15 Q I didn't ask you not necessarily, I am not sure what
16 that means. It can occur at any age; correct?

17 MR. TZANETEAS: Objection, your Honor.

18 Q It could be degeneration?

19 THE COURT: Finish the question.

20 Q It could be degeneration that occurs in a teenager;
21 correct?

22 THE COURT: Overruled.

23 You could answer the question.

24 A I mean it's possible that that occurs, but it's not a
25 common finding of a degenerative changes in infants or

1 adolescents or young adults, that's not a common finding, but
2 it's possible.

3 Q Now, you said, by the way, part of your conclusion was
4 based on the plaintiff's history he gave you; correct?

5 A Yes.

6 Q And it's fair to say that you agree that it's important
7 that the history is accurate; correct?

8 A Obviously I am trying to get clean history, yes.

9 Q And when you're in this type of situation it's
10 important to have a history that includes as expansive as
11 possible, correct, that it includes any traumatic events;
12 correct?

13 A I would say not necessarily, sir.

14 Q Not necessarily, but you didn't filter and say only
15 tell me about the neck injuries that you had, that you think
16 hurt you, right, you asked him about any injury to his neck and
17 his head; correct?

18 A Perhaps I don't understand. Are you saying the first
19 time that I saw him and I took a history?

20 Q Correct.

21 A And I asked him specifically the nature of any
22 significant prior injury to his neck and back?

23 Q Yes.

24 A Neck or back, his response was he never had any
25 significant injury to his neck or back, yes.

1 Q Did he tell you about an assault --

2 MR. TZANETEAS: Objection, your Honor. No
3 relevance.

4 THE COURT: Let's take the objection as a sidebar
5 with the reporter.

6 (Proceedings held outside the presence of the
7 jury.)

8 THE COURT: All right, so I don't know the nature
9 of the objection and you didn't complete the --

10 MR. BUFFALOE: Question.

11 THE COURT: -- question, but I didn't feel that
12 the question should be completed given that the word
13 "assault" was used. So I am not sure which one to start
14 with. So why don't I start with you, Mr. Buffaloe. Do
15 you -- what do you have in terms of in assault and do you
16 have any medical records indicating any kind of traumatic
17 injury?

18 MR. BUFFALOE: Yes.

19 THE COURT: Okay. So let me hear from counsel.

20 MR. TZANETEAS: Have him show you traumatic injury
21 to the back and neck, Judge, because that is not true. His
22 own doctor said it's not related. They have the records,
23 they're not related to his neck or back. It was assault,
24 he went to the hospital for his head, he got punched in the
25 face. No complaints of neck, no complaints of back.

1 THE COURT: All right. So --

2 MR. BUFFALOE: So the records indicate that the
3 plaintiff was assaulted by his cousin, he was kicked
4 several times while he was on the ground, that he
5 complained of head injury, bruising and edema was noted on
6 his neck.

7 MR. TZANETEAS: Keep looking, keep reading.

8 MR. BUFFALOE: That's all, that's an injury to his
9 neck, that's an injury to his head. That's a trauma. You
10 are literally talking about a trauma to his head caused a
11 herniation here.

12 MR. TZANETEAS: Judge, Judge. This is ridiculous.

13 THE COURT: When did this occur?

14 MR. BUFFALOE: September 23, 2017.

15 THE COURT: September 23, 2017. Any indication
16 that the injuries from that event have anything to do with
17 the injuries he's currently suffering from? I mean
18 that's -- it's 23 years prior approximately; am I correct?

19 MR. BUFFALOE: Yes.

20 MR. TZANETEAS: Does not mention pain to his neck,
21 does not mention pain to his back. I know because I gave
22 you those records.

23 MR. BUFFALOE: They mention specifically head
24 trauma and --

25 MR. TZANETEAS: I am not claiming the head.

Sebastian Lattuga, M.D. - Plaintiff - Cross

1 MR. BUFFALOE: Head injury.

2 MR. TZANETEAS: I am not claiming the head.

3 MR. BUFFALOE: You are claiming the head.

4 MR. TZANETEAS: I am not claiming an injury to the
5 head.

6 MR. BUFFALOE: You are claiming that the competent
7 producing cause of his herniated disk in his neck was a
8 trauma to his head.

9 MR. TZANETEAS: They do don't have any doctor to
10 say this is related. They don't have any expert to say
11 that hitting him in the face caused a herniated disk.

12 THE COURT: So let me ask you, do you have any
13 doctor who could say that this herniation is related to
14 this assault?

15 MR. TZANETEAS: If you go to the four corners of
16 the report, no. I know there is a notation of their doctor
17 saying unrelated, I am just looking for it. I'll find it.

18 THE COURT: All right. Why don't you find it.
19 That will put an end.

20 MR. TZANETEAS: I want to get my doctor off the
21 stand. Can we move on with something else first and I'll
22 find it?

23 MR. BUFFALOE: All of this in my opinion goes to
24 weight, not admissibility. It's a trauma that wasn't
25 reported.

1 THE COURT: I am not going to have this jury
2 distracted by something where there is no connection
3 between the current injuries and that assault. So that's
4 my ruling.

5 MR. BUFFALOE: Wouldn't that be an assessment by
6 the doctor and that would be his opinion.

7 THE COURT: I am sorry, back to Richard
8 Montelione's rule one, if I am talking please.

9 I am asking for an offer of proof indicating that
10 the injuries from this assault have anything to do with the
11 injuries currently alleged or exacerbated the injuries
12 currently alleged, that's my question to you, because if
13 you don't you have to move on and I am going to tell the
14 jury to ignore the last question.

15 MR. BUFFALOE: How would I possibly have that? He
16 had a prior trauma to his head and his neck and it's
17 relevant to the claims in this action.

18 THE COURT: Thank you.

19 MR. BUFFALOE: I can't definitively prove anything
20 one way or the other.

21 THE COURT: That's a problem. Thank you.

22 (Following proceedings in open court, jury
23 present.)

24 THE COURT: The word "assault" was used.
25 Disregard it. Disregard the last beginning of the

Sebastian Lattuga, M.D. - Plaintiff - Cross

1 question. It had nothing to do with this case, separate
2 and apart. Thank you.

3 Please continue.

4 MR. BUFFALOE: Exception, Judge.

5 THE COURT: Just you know, the CPLR has gotten
6 liberal over the years. There is no reason at all, it's
7 actually a section, there's no reason to say exception once
8 I've made a ruling. Thank you so much. Ask your next
9 question.

10 Q Doctor, when a patient comes to your office are they
11 required to complete certain paperwork?

12 A Yes.

13 Q And that includes, well, is that paperwork included in
14 the file you produced today?

15 A No.

16 Q And as you sit here right now do you know if you were
17 paid for your services in this case?

18 MR. TZANETEAS: Objection.

19 THE COURT: Overruled.

20 A No.

21 Q Do you know how the plaintiff paid?

22 MR. TZANETEAS: Objection, your Honor.

23 THE COURT: The second objection is sustained.

24 Q Did you do the surgery or the exams on a lien?

25 MR. TZANETEAS: Objection, your Honor.

Sebastian Lattuga, M.D. - Plaintiff - Cross

1 THE COURT: Overruled.

2 A I am not familiar with the particular billing of this
3 case, sir.

4 Q You had mentioned that you run the -- well, withdrawn.
5 At any point have you produced any billing records to
6 plaintiff's counsel?

7 MR. TZANETEAS: Objection, your Honor.

8 THE COURT: You can you answer that question.

9 THE WITNESS: No, I am not aware, your Honor.

10 THE COURT: All right, that's the answer.

11 Q You are aware that a subpoena was issued to your
12 company; correct?

13 MR. TZANETEAS: Objection, your Honor.

14 THE COURT: Overruled.

15 A I mean I -- I presume, I would just say I presume a
16 subpoena was -- would be issued.

17 Q And are you aware that that subpoena demanded that you
18 produce billing records?

19 A Again, I didn't see the subpoena, I am not aware. It
20 doesn't come to me personally. It goes to administrative
21 medical record department. So I am sorry, I don't really have
22 an answer for that.

23 Q So you mentioned that this, these are your businesses;
24 correct?

25 A Well, I am the founder of this practice, but I have,

1 you know, I have other physicians who care for patients along
2 with me.

3 Q So you don't monitor the income, the accounts
4 receivable?

5 MR. TZANETEAS: Objection, your Honor.

6 Q You don't pay any attention to that?

7 MR. TZANETEAS: Objection, your Honor.

8 THE COURT: Sustained.

9 Q You do charge when you see the patients though;
10 correct?

11 A Yes.

12 Q Every time; correct?

13 A Yes.

14 Q So you don't know if you got paid or not here?

15 MR. TZANETEAS: Objection, your Honor. Asked and
16 answered.

17 THE COURT: It was asked and answered, so
18 sustained.

19 Q Doctor, fair to say you would agree that complaints of
20 pain are subjective?

21 A Yes.

22 Q And as far as the range of motion in the context of
23 concern, you would also agree I think you said there would be a
24 subjective component to that; right?

25 A Yes.

1 Q It depends the results are changed, altered depending
2 on how much the patient cooperates; correct?

3 A It can be to a certain degree, yes.

4 Q When you say, "to a certain degree," you ask the
5 patient to move his arm and he moves it to the extent he says he
6 can before there is pain; correct?

7 A No, usually I am guiding the patient, so my hands are
8 performing the range of motion. The patient can influence that,
9 the patient can stop moving or refuse to move further. I didn't
10 sense that at all. I would have documented that patient wasn't
11 participating. I think because it's obvious that the patient
12 has to participate there has to be some level of subjectivity to
13 it. That's all I am acknowledging.

14 Q Did you examine the initial treatment records for
15 Mr. Gousse?

16 A You mean Dr. Hanan's?

17 Q Dr. Hanan's records, the ambulance call report?

18 A I did review them.

19 Q You did?

20 A Yes.

21 Q All right. Do you know on the ambulance call report
22 there was no evidence of trauma to the plaintiff's neck, he was
23 examined; correct?

24 A Correct.

25 Q There was no edema, there was no swelling; correct?

Sebastian Lattuga, M.D. - Plaintiff - Cross

1 A Correct.

2 Q Do you know if the plaintiff was employed between when
3 you last saw him in June of 2022 and 2025?

4 A No, I am sorry. I don't know that.

5 Q Would it surprise you if he was?

6 MR. TZANETEAS: Objection. You know what,
7 withdraw it, Judge.

8 THE COURT: All right. You can answer the
9 question.

10 A I mean I am not -- I wouldn't be surprised by either
11 response I think.

12 Q It's fair to say that you don't think the plaintiff is
13 disabled from work; correct?

14 A I do believe that this patient is disabled for most
15 kinds of work, yes.

16 Q Most kinds of work, but not from work altogether?

17 A Again, within the restrictions to which I've testified
18 to prior about what restrictions I would place on him.

19 Q Yes, working on a steel beam.

20 MR. TZANETEAS: Objection, your Honor.

21 Q He could drive a car, correct?

22 MR. TZANETEAS: Objection, your Honor. He said
23 other things besides steel beam. He said sitting,
24 standing.

25 MR. BUFFALOE: This is cross examination.

Sebastian Lattuga, M.D. - Plaintiff - Cross

1 THE COURT: I am going to overrule it.

2 As long as -- can you answer the question?

3 Why don't you ask the question again.

4 Q He can drive a car; correct?

5 A Yes.

6 Q He can bathe for himself?

7 A Yes.

8 Q Able to cook for himself?

9 A Light cooking, yes.

10 Q What about able to do sedentary office work?

11 A He can't sit for more than 30 minutes.

12 Q Suppose I was to tell you he was sitting here all day
13 for the last few days for more than 30 minutes, does that change
14 your opinion?

15 MR. TZANETEAS: Objection, your Honor.

16 You know what, I'll withdraw it.

17 THE COURT: All right.

18 A I mean he's not working, right? There is a difference
19 between working, and you know, to be candid he's present at his
20 own trial. He has to stay there. He's forced to stay there and
21 people work for money too, right? Even if they are disabled
22 some people try to work because they have to feed their family.
23 So I wouldn't make an assessment. I would never personally draw
24 any conclusions if someone went to work or not in that
25 circumstance because there is so many reasons why it might

1 happen.

2 Q By the way, Doctor, on direct examination you said if I
3 am recalling correctly that the human head weighs 30 pounds,
4 that's not correct; is it? It actually weighs more like ten,
5 twelve pounds; correct?

6 A If you include the tissues of the neck and including
7 everything, it's anywhere between -- and the size of the head,
8 anywhere between ten and twenty-five pounds.

9 Q Ten and twenty-five, okay.
10 Did you give the plaintiff a home exercise plan?

11 A He has been, I mean I --

12 Q Did you give him a home exercise plan?

13 MR. TZANETEAS: Objection, your Honor. Can he
14 answer the question.

15 THE COURT: One at a time, the reporter can't.
16 Ask your question again and then make your objection at the
17 end of the question.

18 Q Did you give the plaintiff a home exercise plan?

19 A I don't recall.

20 Q Is it reflected in your notes Dr. Gousse, Dr. Lattuga,
21 why don't you take a look?

22 A It is reflected in my notes. He participated in home
23 exercise program, whether it was given by Dr. Tripathy or
24 Dr. Mikelis or Dr. Hanan I don't remember, I am sorry.

25 Q Did you, I am asking about you, the guy who did the

1 surgery who saw him in 2022 and had a three year gap, did you
2 give him a home exercise program?

3 MR. TZANETEAS: Objection.

4 THE COURT: Sustained. No editorializing. You
5 don't have to mention any gaps, just get to the question.
6 Thank you. Ask the question again.

7 Q Did you give him a home exercise plan?

8 MR. TZANETEAS: Objection.

9 THE COURT: Overruled.

10 A I mean I don't recall.

11 Q Now, you mentioned the surgery, when you recommended
12 the surgery to Mr. Gousse the intention was to relieve his
13 symptoms; correct?

14 A Yes.

15 Q So, would you consider the surgery to have failed
16 because his complaints remain essentially identical postsurgery?

17 A No, I don't think the surgery failed. You know, I
18 think I was hoping for, we were all hoping for a better result
19 for this patient, that he had less muscular issues and nerve
20 issues after, but to the extent that the surgery was relatively
21 uncomplicated, not relatively, it was uncomplicated, and the
22 patient went on to obtain a solid fusion of that area, then to
23 that extent it is a Success.

24 Q So is it fair to say that the surgery served no purpose
25 because it didn't relieve the symptoms?

1 A No.

2 Q Is it fair to say that it didn't actually help
3 Mr. Gousse?

4 A No, like I replied in my prior statement. What we did
5 by doing the surgery was he does feel slightly better, he does
6 feel mildly improved, but what we prevented is the deterioration
7 of that nerve root at the time.

8 Q So when you told, when you recommended the surgery to
9 Mr. Gousse did you tell him that he wouldn't get better, but
10 it would keep him the same going forward, going forward he would
11 stay with that same pain that he was complaining to you about;
12 did you tell him that?

13 A Yes, in my discussion with the patient about the
14 potential risk of surgery, one of the things that we always
15 discuss is what we call nonresolution of symptoms. So I did go
16 over there is a possibility if you have surgery, the sum or all
17 of the symptoms will not be resolved, are only partially
18 resolved. That conversation does ensue with the patient prior
19 to the surgery.

20 Q When you say, "partially resolved," you consider
21 partially resolved what you describe as his slight reduce in
22 symptoms; correct? In complaints?

23 A I mean I -- I can't answer that yes or no. You know,
24 from our impression, you know, where I am -- I feel bad, right,
25 that he didn't go back to being normal, so I mean I would just

1 say that that's something that --

2 MR. BUFFALOE: Objection, your Honor.

3 THE COURT: In terms of feeling bad disregard
4 that.

5 MR. TZANETEAS: Objection, your Honor, that's his
6 response to the question.

7 THE COURT: My instruction remains. Thank you.
8 Ask your next question.

9 Q So the surgery that you performed you looked at the
10 x-rays that you took back in October of 2025 and based on your
11 examination of the surgery the hardware is stable; correct?

12 A Yes.

13 Q It's in place, it hasn't moved; correct?

14 A Yes, and it's fused, yes.

15 Q And the disk is fused; correct?

16 A Yes.

17 Q So when you did the fusion the purpose was to remove
18 the disk material that was impinging on the disk; correct?

19 A And to stabilize the vertebrae.

20 Q And now that that was removed there is no competent
21 producing cause of pain, correct; would you agree with that?

22 A No.

23 Q The disk is no longer impinging on the spine?

24 A Correct.

25 Q On the spinal column; right?

1 A Yes.

2 Q No longer impinging on the nerves; correct?

3 A Yes.

4 Q Is the hardware itself causing any pain?

5 A No.

6 Q The hardware you put in?

7 A No.

8 Q So is it fair to say there is some other cause of the
9 pain that you failed to address?

10 A No, there was no other source, but there is an
11 explanation.

12 Q When you diagnosed him your diagnosis was that a cause
13 of his complaints of pain was that disk impinging on the spine;
14 correct?

15 A And the instability, yes.

16 Q And the disk is removed, the instability is removed by
17 the surgery; correct?

18 A Correct.

19 Q So it's fair to say that your diagnosis is incorrect?

20 MR. TZANETEAS: Objection.

21 THE COURT: Overruled.

22 A So the nerve injury occurred at the time of the
23 accident and when I do surgery I am not repairing the nerve. So
24 if the patient, and he did, have nerve damage from this
25 herniated disk which led, gave him those symptoms, I addressed

1 the problem by taking the pressure off the nerve and fusing the
2 vertebrae and it is -- and the jury is aware of this as well, if
3 you have a spinal cord injury or a severe nerve injury, even if
4 you have surgery sometimes you don't recover, that's why you see
5 people they're paralyzed. They had surgery, but never
6 recovered. Was the surgery a failure? Absolutely not. There's
7 reasons why we did it, but just because I did the surgery isn't
8 a guarantee that that nerve will fully recover. The explanation
9 is that the nerve was damaged at the time of the accident.

10 Q But again, it's fair to say even you will admit that
11 there is no stability occurring, correct, instability occurring;
12 correct?

13 A That's correct.

14 Q And that your fusion eliminated the disk that was
15 impinging on the spine; correct?

16 A Correct.

17 Q And it was your -- you anticipated that once the
18 surgery was done the cause of his pain would be eliminated;
19 correct?

20 A No, I anticipated that he would have improvement of his
21 symptoms.

22 Q Dr. Lattuga, do you think that a prior trauma to the
23 plaintiff's head would be of significance?

24 MR. TZANETEAS: Objection, your Honor.

25 THE COURT: Overruled.

Sebastian Lattuga, M.D. - Plaintiff - Redirect

1 A I mean anything is possible.

2 Q If there was such a trauma would you expect the
3 plaintiff to tell you in his history?

4 MR. TZANETEAS: Objection, your Honor. Would he
5 expect the plaintiff to tell him? Objection.

6 THE COURT: Sustained.

7 Q Would you want the plaintiff to tell you that in his
8 history?

9 THE COURT: Sustained.

10 Q When you obtain the history would you like to know that
11 type of information about a prior head trauma?

12 MR. TZANETEAS: Objection, your Honor.

13 THE COURT: I am going to overrule.

14 A I mean the information I am looking for is did you have
15 a significant prior neck or back injury and what I mean by
16 significant is you have physical therapy, injections and perhaps
17 surgery, that's what I am asking. That's what I was looking for
18 in terms of information from the patient.

19 Q All right. Thank you, Dr. Lattuga.

20 THE COURT: Redirect.

21 MR. TZANETEAS: Sure.

22 REDIRECT EXAMINATION

23 BY MR. TZANETEAS:

24 Q You were asked about the FDNY report, no edema, no pain
25 to the neck, after examination what significance is that, if

1 any, about your testimony about the herniated disk?

2 A I think it's consistent with my testimony that some
3 patients don't have symptoms immediately upon their injury and
4 then over the course of hours or days they develop swelling
5 internally and can have more symptoms.

6 Q Anything else that you were cross examined on that
7 changed your opinion about your opinion about what caused these
8 injuries?

9 MR. BUFFALOE: Objection.

10 THE COURT: On what basis?

11 MR. BUFFALOE: If anything in cross examination
12 changes his opinion.

13 THE COURT: Any of your answers in cross
14 examination change your opinion.

15 THE WITNESS: No, sir.

16 THE COURT: All right.

17 MR. TZANETEAS: No further questions.

18 THE COURT: Thank you so much. You can step down.
19 Thank you so much. Let's take a ten minute break
20 and then we'll have the plaintiff back on the stand. Thank
21 you.

22 COURT OFFICER: All rise. Jury exiting.

23 (Jury exiting.)

24

25 THE COURT: Why don't you take a seat. I am just

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1 going to identify you as juror number six.

2 JUROR SIX: Yes.

3 THE COURT: You spoke to the court officer and you
4 wanted to bring something to my attention. You have to
5 answer.

6 JUROR SIX: Yes, yes, your Honor.

7 THE COURT: Tell me why you wanted to speak to me.

8 JUROR SIX: I wanted to speak to you because I
9 guess I mean obviously we went he over some basics of the
10 trial in jury selection but I guess I didn't realizes to
11 the extent that all of these surgeries were going to be a
12 part of the trial and I've had, you know, yesterday I
13 didn't realize he had gotten his right labrum surgery which
14 I had gotten done to me a few years ago. And then right
15 after that I had double hip surgery. So I only wanted to
16 bring it up because, you know, I am quite invested at this
17 point, but I just do worry about my ability to be unbiased
18 just given the surgeries and the four years of surgeries
19 that I went through. So I just wanted to bring it up.

20 THE COURT: All right. Do you have questions,
21 counselors?

22 MR. TZANETEAS: Well, your Honor, could we talk to
23 you in private?

24 THE COURT: But I do have one question to ask you.

25 JUROR SIX: Yes.

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1 THE COURT: Did you express any of your concerns
2 regarding your prior operations with -- other concerns or
3 that you were going to come to the Court about any issues,
4 did you express that to any other jurors?

5 JUROR SIX: Any of the jurors?

6 THE COURT: That's right.

7 JUROR SIX: No, I don't think any of them were in
8 my selection group so they didn't hear me talk about in
9 jury selection.

10 THE COURT: What about since being on the jury?

11 JUROR SIX: No.

12 THE COURT: Can you just go outside into the
13 hallway and we'll call you right back in. Thank you so
14 much.

15 JUROR SIX: Thank you. Appreciate it.

16 THE COURT: Yes.

17 MR. TZANETEAS: Your Honor, I would ask that you
18 ask him if he could, he kind of said I am hesitant to do it
19 because he didn't know the surgeries, but he didn't really
20 say it's going to affect, I think you should ask him is
21 this going to affect how you decide the case.

22 THE COURT: Let me hear from Mr. Buffaloe, but I
23 know what the answer is going to be.

24 MR. BUFFALOE: I think that he's phrasing it
25 gingerly, but he's clearly saying that this is affecting

Proceedings

1 his ability to be objective in the case. That's the only
2 reason to bring it to the Court's attention. So I mean I
3 don't think there is any reason to question him any
4 further.

5 MR. TZANETEAS: I think, your Honor, he said --
6 that's why you wanted me to ask your question, it shouldn't
7 come from me, it should come from your Honor, is that
8 something that's going to affect the case. That's what I
9 wanted to ask, but it shouldn't come from me.

10 THE COURT: The law and the caselaw, it has to be
11 unequivocal, it was not unequivocal.

12 MR. TZANETEAS: That's not what I heard him say,
13 Judge.

14 THE COURT: Well, you and I heard two different
15 things.

16 MR. TZANETEAS: Okay. I'll make my objection on
17 the record.

18 THE COURT: Your objection is noted. Unless a
19 juror can unequivocally tell me that they could be fair and
20 unbiased and that's not what this witness told me.

21 MR. TZANETEAS: That's not what I heard, Judge.
22 That's why I asked to clear it up. I have my objection on
23 the record.

24 THE COURT: What's to clear up? What's to clear
25 up?

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1 MR. TZANETEAS: The answer was I didn't know
2 there's many surgeries and I am just worried about it. I
3 would ask what his concerns are.

4 THE COURT: That worried about is enough for me.
5 Thank you so much.

6 MR. TZANETEAS: You are going to dismiss him on
7 the record.

8 THE COURT: It doesn't have to be on the record,
9 but I am making a record now. I am going to dismiss him.
10 Thank you.

11 (Whereupon, the trial was adjourned to Monday,
12 July 20, 2026 at 9:30 AM.)

13 *****
14 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL
15 STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING.

16 Lucille Cravotta
17 LUCILLE CRAVOTTA
18 Senior Court Reporter
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