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
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Brooklyn, New York 11230
BY: NICHOLAS E. TZANETEAS, ESQ.

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One Batter Park Plaza, 34th Floor
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BY: KENNETH BUFFALOE, ESQ.

LUCILLE CRAVOTTA
Senior Court Reporter

THE CLERK: Good morning, your Honor.

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

Counsel, please give your appearance.

MR. TZANETEAS: Nicholas Tzaneteas for the plaintiff.

Good morning.

MR. BUFFALOE: Kenneth Buffaloe for the defendants.

THE COURT: Good morning.

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

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

THE COURT: Yes, please.

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

MR. BUFFALOE: I have not.

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

MR. BUFFALOE: No, your Honor.

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

Let's bring in the jury.

MR. TZANETEAS: Exhibit 4.

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

THE COURT: Please get the jury.

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

THE COURT: Yes.

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

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

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

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

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

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

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

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

MR. TZANETEAS: Well, your Honor --

THE COURT: Let me just --

THE CLERK: 3 and 4 are in evidence.

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

What did you want to say, Mr. Tzaneteas?

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

THE COURT: I am sorry, say that again.

MR. TZANETEAS: Are they Court Exhibits?

THE COURT: The e-mail.

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

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

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

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

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

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

MR. TZANETEAS: Yes.

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

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

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

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

MR. TZANETEAS: Your Honor, if I may.

THE COURT: One second.

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

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

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

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

MR. BUFFALOE: For doctor --

THE COURT: For the economist.

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

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

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

MR. TZANETEAS: Subject to redaction, Judge.

THE COURT: Subject to redaction.

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

THE COURT: Did he provide you --

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

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

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

MR. TZANETEAS: Yes, your Honor.

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

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

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

MR. BUFFALOE: Correct, your Honor.

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

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

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

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

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

You could call the jury.

MR. BUFFALOE: Note my exception, Judge.

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

COURT OFFICER: All rise. Jury entering.

(Jury entering.)

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

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

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

with your Honor's permission.

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

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

THE WITNESS: I do.

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

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

THE CLERK: And your title, sir?

THE WITNESS: M.D.

THE CLERK: Thank you.

THE WITNESS: Good morning, your Honor.

THE COURT: Good morning.

Please proceed.

MR. TZANETEAS: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. TZANETEAS:

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

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

A Yes.

Q When were you so licensed?

A 1991.

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

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

Q How long have you been practicing in private practice?

A Since '97.

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

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

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

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

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

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

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

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

Q And why is that?

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

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

A I would be taking care of patients.

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

A Yes.

Q At what rate?

A $1,000 an hour.

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

A I don't believe so.

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

A About six times a year.

Q And is that only for your patients?

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

Q Now, you brought your file here with you today?
A Yes, sir.
Q Is that file that you kept in the regular course of business of your records?
A Yes, sir.
Q Do you have reports and notes in it that you keep in your regular course of business for certain patients?
A Yes.
MR. TZANETEAS: Your Honor, at this time I would like to admit the file into evidence subject to redaction.
THE COURT: Objection?
MR. BUFFALOE: I need to see it.
THE COURT: All right. So let's have the file marked. Is it the same consent that you have regarding the records from yesterday, no narrative reports?
MR. BUFFALOE: Correct.
THE COURT: Yes, so subject to the reports being taken from the file prior to being given to the jury and subject to redactions.
MR. TZANETEAS: But your Honor, I would like him to have his narrative report, would you like to mark it for ID? It's up to your Honor.
THE COURT: I don't think it's going to be necessary. It will remain in the file folder until it's time to and you could use it for whatever purpose you want.

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

THE COURT: All right. So that is 8.

THE CLERK: 7.

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

THE CLERK: I have Scilaris as 5.

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

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

THE COURT: All right.

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

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

MR. TZANETEAS: Okay, thank you.

THE COURT: All right.

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

THE COURT: Do we need a reporter?

MR. BUFFALOE: I am not sure.

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

(Proceedings held outside the presence of the jury.)

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

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

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

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

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

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

MR. TZANETEAS: Your Honor.

MR. BUFFALOE: There is another one like that.

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

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

in response to any of them.

MR. TZANETEAS: How do I know that?

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

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

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

THE COURT: Let's get the subpoenaed records.

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

THE COURT: Okay.

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

MR. BUFFALOE: And this is not in there.

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

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

THE COURT: The subpoenaed records, how is the

doctor affiliated with the party that produced the subpoenaed records?

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

THE COURT: Is he the owner of the company?

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

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

MR. TZANETEAS: May I make a record?

THE COURT: Yes, you may.

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

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

THE COURT: Look.

MR. BUFFALOE: Sorry, Judge.

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

MR. BUFFALOE: Yes.

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

MR. TZANETEAS: For the record --

THE COURT: You made the record already.

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

THE COURT: Did you subpoena these records or not?

MR. BUFFALOE: Subpoenaed by prior defense counsel.

THE COURT: May I see?

MR. TZANETEAS: This is mine that I subpoenaed.

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

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

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

bills. And --

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

MR. BUFFALOE: Well, those are all records, all medical records, yes.

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

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

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

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

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

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

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

MR. TZANETEAS: No, I want the file.

THE COURT: No, the file will go in.

MR. BUFFALOE: Let's remove the pages.

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

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

THE COURT: That's good. Thank you.

(Following proceedings in open court, jury present.)

THE CLERK: This is marked as 7?

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

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

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

THE COURT: Yes.

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

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

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

A Yes.

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

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

brain and the skull down to the pelvis.

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

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

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

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

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

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

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

symptom complex.

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

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

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

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

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

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

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

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

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

disk?

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

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

Q And what is degeneration?

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

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

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

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

Q And what is degenerative disk disease?

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

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

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

Q Can a herniated disk be asymptomatic?
A Yes.
Q Can degenerative disk disease be asymptomatic?
A Yes.
Q Can a degenerative condition be asymptomatic?
A Yes.
Q Can all of those conditions be symptomatic?
A Yes.
Q Okay. Now, I am going to take you, your office, what is your office called, your practice? Tell me a little bit about your practice.
A You know, we're what's called an interventional spine practice. We go by the name of New York Spine Specialists. You know, that's what we traditionally practice as. It's me and three other spine surgeons and orthopedic surgeons and interventional pain doctors. And again, the niche is, the niche that I have is that people they need surgery or they had need an injection, right? Then they get referred to my practice for evaluation for those procedures.
Q And how many offices does the office have?
A We have he over 20 offices.
Q Okay. And how many doctors work in your practice?
A I think we have twelve.
Q Now, I am going to have you look at your records, the only thing that if you are referring to a narrative please if

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

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

A 1/12/21.

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

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

Q Who referred this patient to your office?

A Dr. Hanan.

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

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

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

A Dr. Mikelis.

Q What type of doctor is Dr. Mikelis?

A He's a nonoperative or the specialist.

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

A Patient came in complaining of neck and back pain.

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

A Yes.

Q And what is the purpose of a history?

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

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

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

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

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

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

A Yes.

Q What did he tell you?

MR. BUFFALOE: Objection.

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

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

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

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

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

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

Q What is that?

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

Q What else did he complain about?

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

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

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

also had a shoulder, knee injury.

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

A Yes.

Q What treatment did he receive before coming to you?

MR. BUFFALOE: Objection.

THE COURT: What is the ground for the objection?

MR. BUFFALOE: Hearsay, not best evidence.

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

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

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

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

A Unfortunately, no.

THE COURT: Overruled.

MR. BUFFALOE: Objection.

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

A Yes.

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

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

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

Q What is an objective and subjective test?

A A subjective test is a test where the patient has

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

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

A It's primarily objective with a subjective component.

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

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

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

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

A Yes.

Q Please tell us the cervical ones.

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

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

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

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

Q At what level?

A L5-S1.

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

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

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

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

A Yes.

Q Why are they significant?

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

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

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

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

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

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

A Yes.

Q How so?
A They were consistent, they correlated like I described before. Subjective complaints, our objective physical exam, the objective tests like the MRI all were consistent with each other.
Q Okay. And what was the plan that was given to him that day?
A And he was told to continue physical therapy, do some -- consider to do some injections inn he were spine, that was what the recommendation was.
Q Okay. And did he continue to see your office after that first visit?
A Yes.
Q And what other doctors, what other doctor did he see next on --
A On 1/25/21 he saw Dr. Tripathy.
Q What type of doctor is Dr. Tripathy?
A He's a spine surgeon like me.
Q When he saw Dr. Tripathy, just to get to the point, what was the assessment and the plan?
A It was consistent with Dr. Mikelises's assessment. Patient had a herniated disk with radiculopathy and he was recommended to continue with pain management, physical therapy, home exercise programs.
Q Okay. And did he continue to see your office at that

point?
A Yes.
Q And at some point as part of your practice and part of your -- not just you, your practice, do you determine whether someone -- does your office determine whether someone is disabled or not per injuries?
MR. BUFFALOE: Objection.
MR. TZANETEAS: Let me withdraw.
Q Does your office determine disability on patients?
MR. BUFFALOE: Objection.
THE COURT: Let's have a sidebar. We won't need a reporter.
(An off the record discussion was held.)
THE COURT: Proceed.
MR. TZANETEAS: I am going to withdraw that question, Judge, and I will ask another question.
Q Doctor, does your office determine whether your patients have certain restrictions because of the injuries when they come to you?
A Yes.
Q What type of determinations do they make in your office regarding the neck and the back in terms of limitations?
A Well, frequently we're asked that our opinion as to what activities if someone has this kind of injury. So what activities can they participate in. Often it relates to work,

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

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

A Yes.

Q What restrictions were given to him because of that?

MR. BUFFALOE: Objection.

THE COURT: Overruled.

You could answer.

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

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

A Yes.

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

THE COURT: Any objection?
MR. BUFFALOE: No, your Honor.
THE COURT: All right. So that is this in evidence. What are we up to?
THE CLERK: That will be number 8.
THE COURT: Number 8.
THE CLERK: For ID, your Honor?
THE COURT: No, in evidence.
MR. TZANETEAS: Can I take them, Judge?
THE COURT: Yes.

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

A Yes.

MR. BUFFALOE: Objection.
THE COURT: Overruled.

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

A Yes.

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

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

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

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

A Yes.

Q How many epidurals did he have in total?

A 2/17.

THE COURT: That's '21?

THE WITNESS: Yes.

A I believe he had two. 4/21.

Q I think that's it, Doctor.

A Yes, that's it.

Q Why only two?

MR. BUFFALOE: Objection.

MR. TZANETEAS: Well, strike that.

Q Why two?

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

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

Q Slow down.

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

Q And did it work?

A No.

Q Have you performed epidurals before?

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

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

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

Q And what is that supposed to do?

A Decrease inflammation and decrease symptoms.

Q And did it decrease inflammation and symptoms in Mr. Gousse after the second one?
A Not substantially.
Q And after 4/20, after that second one, was he ultimately referred to you?
A Yes.
Q Do you know the reason he was referred to you?
A I mean no, to be honest I don't know. I mean I cover different offices and Dr. Tripathy might have been, but I have no specific knowledge of it.
Q When was the first time you saw him?
A 6/7.
Q 6/7/21 when you saw him for the first time where did you see him, what office?
A 6/7 I saw him in Brooklyn.
Q Okay. When he came to you the first time did you take down his history?
A Yes, I basically I took the history, similar to the two prior doctors and the history didn't change.
Q Okay. And what was his chief complaint coming to your office that day?
A Neck and back pain.
Q Okay. And what was the severity of the pain that you measured for the neck and the back?
A Nine for the neck and nine for the back.

Q And at that point did he have any past medical history or surgery or hospitalizations that was of concern to you?
A No.
MR. BUFFALOE: Objection.
THE COURT: Overruled.
Q Now, the physical examination of the cervical spine and lumbar spine, the range of motion testing, can you tell us, if any, was it different from when Mikelis took it the first time?
A It was substantially similar to the prior exams.
Q What was the motor exam of him, the cervical spine and lumbar spine that day?
A Same, it was substantially similar to all the prior exams.
Q On the diagnostic imaging what did you review?
A The MRI.
Q Was it the actual MRI's you viewed?
A Yes.
Q That was on the MRI's of 9/23/20?
A Yes.
Q Okay. And what was your diagnosis?
A Herniated disk with radiculopathy.
Q And what about the lumbar?
A Lumbar disk bulge with radiculopathy.
Q What was the plan at that point over a year after the accident?

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

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

THE WITNESS: Yes.

THE COURT: Thank you.

Please ask your next question.

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

A Thousands.

Q And what about the lower back?

A Thousands.

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

A Cervical diskectomy and fusion.

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

A Yes.
Q All right. Are they objective indications?
A Yes.
Q And what were the indications that you had to recommend the surgery to Mr. Gousse?
A You know, failure of conservative treatment, physical therapy, bracing and medicines, interventional pain management if the patient can get it. We like to see them fail, we don't like to see them fail, we like to see them fail prior to discussing surgery, positive diagnostic studies like an MRI if you can get one. In this case it was positive at 3-4. Neurological deficits, the patient definitely had neurological deficits and then it should be severe. I mean he was for many months claiming he was nine out of ten, I would consider that severe pain, yes.
Q Those are subjective findings or objective findings?
A Those are all objective, they're really more my judgment and my reasoning behind why I would recommend surgery.
Q Okay. Does a herniated disk ever heal on its own?
MR. BUFFALOE: Objection.
THE COURT: Overruled.
A I mean yes, I mean there are instances where herniated disk can resolve itself or the symptoms could resolve. The herniation may still be there on MRI, but the patient says the pain is gone so we just consider that a win.

Q What about nerve damage?

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

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

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

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

THE COURT: Any objection?

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

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

COURT OFFICER: All rise. Jury exiting.

(Jury exiting.)

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

notice?

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

THE COURT: Is this the one?

MR. TZANETEAS: I think so, Judge.

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

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

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

MR. TZANETEAS: Okay.

(A recess was taken.)

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

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

MR. TZANETEAS: I do, Judge.

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

THE CLERK: This is number 9?

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

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

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

MR. BUFFALOE: Yes.

THE COURT: Let me just take a quick look.

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

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

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

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

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

THE COURT: That's evidence.

(A recess was taken.)

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

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

THE COURT: Are you denying receipt of that?

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

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

MR. BUFFALOE: I did.

THE COURT: You did?

MR. BUFFALOE: I did.

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

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

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

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

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

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

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

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

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

MR. BUFFALOE: I am assuming representation -- the

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

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

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

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

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

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

THE COURT: Did you subpoena them?

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

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

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

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

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

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

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

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

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

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

MR. BUFFALOE: No.

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

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

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

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

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

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

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

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

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

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

MR. BUFFALOE: Correct.

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

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

THE COURT: That's correct.

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

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

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

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

MR. BUFFALOE: Correct.

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

subpoena because he never subpoenaed them; is that correct?

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

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

MR. TZANETEAS: Can we mark these, Judge?

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

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

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

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

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

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

THE COURT: I can't do that.

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

MR. BUFFALOE: Again, not the best evidence.

MR. TZANETEAS: It is the best evidence.

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

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

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

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

MR. TZANETEAS: Yes.

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

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

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

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

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

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

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

to copy to a CD that can open up.

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

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

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

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

THE COURT: Yes, yes.

(The witness exited the courtroom.)

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

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

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

MR. TZANETEAS: It is.

THE COURT: Those are photos from what?

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

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

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

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

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

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

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

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

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

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

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

THE COURT: So 10.

THE CLERK: For ID, your Honor?

THE COURT: For ID.

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

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

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

Let's get the jury.

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

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

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

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

demonstrative evidence. This is --

THE COURT: Raise the objection when the time comes.

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

THE COURT: Yes, please.

THE CLERK: All rise. Jury entering.

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

MR. TZANETEAS: Thank you.

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

MR. BUFFALOE: Objection.

THE COURT: What is the basis of the objection?

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

THE COURT: Well --

MR. TZANETEAS: It wasn't?

MR. BUFFALOE: Is that the MRI?

THE CLERK: 9, the CD is evidence.

MR. BUFFALOE: Never mind. Withdrawn.

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

MR. TZANETEAS: Okay.

Q All right. Can you see from there?

A Yes.

Q Do you need this?

A I mean yes.

MR. TZANETEAS: May I approach, your Honor?

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

MR. TZANETEAS: It's going to reach.

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

MR. BUFFALOE: Can I?

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

MR. BUFFALOE: Thank you, your Honor.

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

THE COURT: Yes, if it's easier you could go down. Keep your voice up, please. Thank you.

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

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

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

MR. BUFFALOE: Can you identify that particular slide?

THE WITNESS: Ten of fifteen.

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

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

Q What other findings did you find?

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

MR. BUFFALOE: Objection.

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

MR. BUFFALOE: Yes.

(Proceedings held outside the presence of the jury.)

THE COURT: What was your objection?

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

THE COURT: All right.

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

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

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

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

MR. TZANETEAS: That disk is a damaged area.

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

THE COURT: Is that correct?

MR. BUFFALOE: Well --

THE COURT: That's a simple question.

MR. BUFFALOE: Yes.

THE COURT: Okay, you could ask your question.

MR. TZANETEAS: Thank you.

(Following proceedings in open court, jury present.)

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

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

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

MR. BUFFALOE: Objection.

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

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

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

A I feel that's what is creating his symptoms.
Q Symptoms of going down his arms?
A His arms, yes.
Q Numbness and tingling?
MR. BUFFALOE: Objection.
THE COURT: Sustained.
Q With a reasonable degree of medical certainty what do you attribute Mr. Gousse's numbness and tingling in his arm?
A The herniations.
MR. BUFFALOE: Objection.
THE COURT: Overruled.
You can answer that question.
THE WITNESS: Yes, sir.
THE COURT: Okay, thank you.
Q Okay, you can sit back down.
Doctor, after recommending the surgery to Mr. Gousse did he ultimately have the surgery?
A Yes.
Q When did he have the surgery?
A 2/10/22.
Q Where did he have the surgery?
A New York Presbyterian.
Q Who was the surgeon?
A Me.
Q Okay.

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

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

THE CLERK: What is the description, counselor?

MR. TZANETEAS: Demonstrative aid.

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

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

MR. BUFFALOE: Objection.

THE COURT: What's the basis?

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

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

MR. BUFFALOE: I stated my objection earlier.

THE COURT: You stated what?

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

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

(Proceedings held outside the presence of the

jury.)

THE COURT: Okay. The basis?

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

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

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

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

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

THE COURT: It's demonstrative.

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

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

THE COURT: Inflame the jury?

MR. BUFFALOE: Yes.

MR. TZANETEAS: It's a cartoon.

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

THE COURT: Have you looked at it?

MR. BUFFALOE: I have looked at it.

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

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

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

MR. TZANETEAS: Thank you, Judge.

(Following proceedings in open court, jury present.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Q Hold on.

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

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

A I don't recall.

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

A The purpose is to --

MR. BUFFALOE: Objection.

THE COURT: Overruled.

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

THE COURT: In was an objection. I overruled. You could answer.

A I am sorry. Repeat the question.

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

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

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

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

A It was healed, fused.

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

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

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

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

Q Is that significant?

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

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

A Yes.

Q What do you because that on?
A I base that on the history the patient gave me, his prior care, his failure of conservative treatment. My physical exam, my history taking, my review of the MRI, my intraoperative observation of herniated disk and its instability.
Q By the way, in this case your viewing of the MRI or actually seeing the disk, which one is the more reliable source?
MR. BUFFALOE: Objection.
THE COURT: Overruled.
A I mean I can't -- I don't really answer that question that way because I think they're both very reliable. Obviously, I think ultimately if you are weighing the scale me actually seeing one in surgery carries the most weight.
Q Okay. Did you continue to see Mr. Gousse after the surgery?
A Yes.
Q Could you tell us the next visit after the surgery?
A 2/21/22.
Q And could you tell us at that point your examination and what were your findings?
A Patient came in, he was postop about a week. He continued to have incisional pain, and pain related to the surgery itself as well as symptoms that had existed prior to surgery. He had the surgery a week before. The incision, we examined, there was no evidence of infection or discharge.

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

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

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

MR. BUFFALOE: Objection.

THE COURT: What was the last thing?

(The record was read back.)

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

Go ahead, ask your next question.

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

A Yes.

MR. BUFFALOE: Objection.

THE COURT: That's overruled.

MR. BUFFALOE: Okay.

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

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

Q And was that the last time you saw him?

A Yes.

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

do a comprehensive medical report regarding Mr. Gousse?

A Yes.

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

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

THE COURT: Yes.

(Proceedings held outside the presence of the jury.)

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

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

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

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

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

THE COURT: No.

MR. TZANETEAS: No.

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

MR. BUFFALOE: No, I understand.

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

THE COURT: This was an examination.

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

THE COURT: He can testify.

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

MR. BUFFALOE: Right.

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

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

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

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

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

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

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

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

MR. TZANETEAS: Nothing.

THE COURT: Okay.

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

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

MR. TZANETEAS: No.

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

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

(Following proceedings in open court, jury present.)

MR. TZANETEAS: May I continue, your Honor?

THE COURT: Yes.

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

A Yes.

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

A Yes.

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

A Yes.

Q Could you tell me what medical records you reviewed?

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

Q Okay. And what is an EMG?

A That's a nerve test.

Q And did you review EMG's?

A Yes.

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

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

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

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

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

MR. BUFFALOE: Objection.

THE COURT: Overruled.

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

Q What do you base that on?

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

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

A The herniated disk was caused by --

THE COURT: I am sorry, did you say objection?
MR. BUFFALOE: Objection.
THE COURT: Overruled.
A It was caused by the accident, yes.
Q You base it -- I don't want to say it all over again.
A From all that stuff I said.
Q The radiculopathy that he had, with a reasonable degree of medical certainty do you have an opinion whether the 5/14 2020 accident was a competent producing cause of the radiculopathy?
MR. BUFFALOE: Objection.
THE COURT: Overruled.
A The radiculopathy was caused by the accident.
Q And with a reasonable degree of medical certainty based on those facts would you agree with me, do you have an opinion on whether or not the surgery that you performed on Mr. Gousse was the competent producing cause of the 5/14 2020, do you have an opinion to that?
MR. BUFFALOE: Objection.
THE COURT: Sorry, what was the last question?
MR. TZANETEAS: Let me withdraw it, Judge.
THE COURT: All right. Thank you.
Q Doctor, with the same facts do you have an opinion with a reasonable degree of medical certainty whether the surgery that Mr. Gousse had was a direct result of the 5/14 2020

accident?

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

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

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

Q No, on 10/8 2025, narrative.

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

MR. BUFFALOE: Objection.

THE COURT: What is the objection?

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

THE COURT: Overruled.

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

MRI.

Q What does it mean, palliatively?

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

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

MR. BUFFALOE: Objection.

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

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

MR. BUFFALOE: Asked and answered.

THE COURT: Overruled.

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

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

MR. BUFFALOE: Objection.

THE COURT: Overruled.

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

Q And what is a prognosis?

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

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

A Yes.

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

MR. BUFFALOE: Objection.

THE COURT: Overruled.

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

MR. BUFFALOE: Objection.

THE COURT: Sustained. Disregard the last answer. Please ask the next question.

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

MR. BUFFALOE: Objection.

THE COURT: Its been asked and answered.

MR. TZANETEAS: It has?

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

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

MR. BUFFALOE: Objection.

THE COURT: Sustained.

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

MR. BUFFALOE: Objection.

THE COURT: Overruled.

A It will cause limitations.

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

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

Q And what is neurological function, what kind of symptoms does that have?
A Weakness of the muscles and the loss of sensation.
Q Okay. And what about the range of motion deficits, what is the symptoms of that?
A Symptoms, he has a very stiff neck. As a consequence of that he's unable to bend his neck as much as before the accident.
Q Will he continue to have radiculopathy with a reasonable degree of medical certainty?
MR. BUFFALOE: Objection. Leading.
THE COURT: Just rephrase the question. To a degree of medical certainty and the opinion.
Q With a reasonable degree of medical certainty do you have an opinion on whether Mr. Gousse will continue to have radiculopathy as a result of this accident?
MR. BUFFALOE: Objection.
THE COURT: Objection overruled.
A Unfortunately, yes, he will continue to have symptoms of radiculopathy going forward.
Q With a degree of medical certainty what type of symptoms does radiculopathy produce?
A Numbness in the arm, weakness of the arm, pain in the arm. Loss of range of motion of the neck, spasm and tenderness.
Q And with a reasonable degree of medical certainty is

this permanent?

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

MR. TZANETEAS: Not on radiculopathy, Judge.

MR. BUFFALOE: Objection.

THE COURT: Sustained.

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

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

MR. BUFFALOE: Objection.

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

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

MR. BUFFALOE: Objection.

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

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

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

subject, Judge.

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

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

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

MR. BUFFALOE: Objection.

THE COURT: Can you answer that question?

THE WITNESS: Yes, your Honor.

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

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

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

MR. BUFFALOE: Objection.

Q -- into the future?

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

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

MR. BUFFALOE: Objection.

THE COURT: Overruled. You could answer.

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

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

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

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

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

A So, no climbing stairs.

MR. BUFFALOE: Judge, can we approach please?

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

So, answer the question.

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

Q And why is that your recommendation?

MR. BUFFALOE: Objection.

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

MR. BUFFALOE: Objection.

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

MR. TZANETEAS: Your Honor, there's been

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

THE COURT: Overruled.

A Could you repeat the question, please?

THE COURT: Could you read back the question.

(The record was read back.)

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

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

MR. BUFFALOE: Objection.

THE COURT: Overruled.

A More likely than not he will.

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

MR. BUFFALOE: Objection.

THE COURT: Finish the question.

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

MR. BUFFALOE: Objection.

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

Thank you all for your attention this morning.

COURT OFFICER: All rise. Jury exiting.

(Jury exiting.)

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

(Witness exiting.)

THE COURT: What is the grounds for the objection?

MR. BUFFALOE: Two things, Judge.

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

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

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

THE COURT: All right.

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

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

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

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

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

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

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

MR. TZANETEAS: He didn't.

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

(The record was read back.)

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

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

THE COURT: Yes.

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

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

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

THE COURT: Yes.

(A lunch recess was taken.)

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

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

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

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

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

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

THE COURT: Well, was the bill ever amended?

MR. TZANETEAS: Your Honor, my bill has always

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

THE COURT: What is the date of that bill?

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

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

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

THE COURT: All right, that's fine.

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

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

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

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

MR. TZANETEAS: Yes.

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

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

THE COURT: Let me hear from Mr. Buffaloe.

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

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

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

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

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

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

What is the other ground for your --

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

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

THE COURT: You want to answer that?

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

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

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

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

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

THE COURT: I just said outside the jury.

MR. TZANETEAS: I didn't hear it.

(Witness entering.)

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

THE WITNESS: Thank you, your Honor.
THE COURT: Why don't you proceed, Mr. Tzaneteas.
MR. TZANETEAS: Dr. Lattuga, what do you mean that more than likely he will need future surgery?
MR. BUFFALOE: Objection.
THE COURT: That wasn't the question before. I am sorry.
MR. TZANETEAS: I don't remember the question, Judge.
THE COURT: The question before was what did he mean by his response that it is -- let me get the exact words "more likely than not," those were the words.
MR. TZANETEAS: What did you mean by more likely than not he'll need surgery?
THE WITNESS: I meant beyond a degree of medical certainty.
THE COURT: You are looking at me, counsel, but I am telling you that's not enough.
MR. TZANETEAS: With a reasonable degree of medical certainty what type of surgery will he need in the future?
MR. BUFFALOE: Objection.
THE COURT: You are going to have to rephrase the question. I can't help you here, counsel.
MR. TZANETEAS: Your Honor, just so I understand,

I asked --

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

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

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

MR. BUFFALOE: Sorry, I was going to.

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

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

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

MR. BUFFALOE: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

MR. TZANETEAS: What do you base that on?

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

MR. TZANETEAS: And that's --

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

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

THE WITNESS: Similar surgery to what he had before.

MR. TZANETEAS: And why is that?

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

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

(The record was read back.)

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

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

THE WITNESS: Which date, sir?

MR. BUFFALOE: October 8, 2025, correct?

THE WITNESS: Yes.

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

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

MR. BUFFALOE: So on page eight of the report. Right before the paragraph that begins, "It can be stated".

THE WITNESS: Page eight, I am sorry, I left my reading glasses so I am going to go slow, in my bag.

THE COURT: You want to get your reading glasses? Yes, why don't you do that.

THE WITNESS: Okay, I am on page eight, sir, sure. Where on page eight, sir, do you want me to refresh my recollection?

MR. BUFFALOE: It's in the middle of page eight, the phrase, the sentence just before it can be stated based on the facts, do you see that one sentence paragraph, it's the paragraph ahead of that.

THE WITNESS: Yes. So you are asking me to clarify --

MR. BUFFALOE: I am asking you did you say may require?

THE COURT: You know, just because I don't have it in front of me, you want to just read that sentence to me?

THE WITNESS: Sure.

MR. TZANETEAS: Your Honor, it's not in evidence.

THE COURT: I understand.

MR. BUFFALOE: There's no jury.

THE COURT: I understand it's not, it's his report.

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

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

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

So what's the next Court Exhibit?

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

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

MR. BUFFALOE: Dated October 8, 2025.

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

THE WITNESS: Okay, no problem.

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

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

THE COURT: Why don't you read it?

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

THE COURT: All right. So ask your question.
MR. BUFFALOE: Dr. Lattuga, you would agree with me there is a difference between will and may; correct?
THE WITNESS: They're two different words.
MR. BUFFALOE: Right, there is different meaning to those two words?
THE WITNESS: Yes.
MR. BUFFALOE: Will is certainty, may is not; correct?
THE WITNESS: I wouldn't characterize it that way, two different words with two different implications.
MR. BUFFALOE: Does may mean certainty to you?
THE COURT: You know, I don't need that question to be asked. Have you completed your voir dire?
MR. BUFFALOE: You testified twice now that plaintiff may or may not need surgery in the future; correct?
MR. TZANETEAS: Objection.
THE WITNESS: That wasn't my testimony.
THE COURT: The testimony was more likely than not.
MR. BUFFALOE: Sorry, more likely than not; correct?
THE WITNESS: Yes, sir.
MR. BUFFALOE: Now, that again is not certainty,

that's not a medical certainty; correct?

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

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

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

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

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

Would you mind being in the hallway just for a

moment?

THE WITNESS: No, your Honor.

THE COURT: Thank you.

(Witness exiting.)

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

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

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

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

MR. TZANETEAS: No, Judge.

THE COURT: All right. Thank you.

So let's get the jury.

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

COURT OFFICER: All rise. Jury entering.

(Jury entering.)

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

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

Please proceed.

DIRECT EXAMINATION (CONTINUED)

BY MR. TZANETEAS:

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

A Yes.

MR. BUFFALOE: Objection. Asked and answered.

MR. TZANETEAS: I did not.

THE COURT: Overruled.

A Yes.

Q What type of future treatment does he need?
A Physical therapy, injections, diagnostic testing and surgery.
Q And that's for the rest of his life?
MR. BUFFALOE: Objection.
THE COURT: Overruled.
Q And that's for the rest of his life?
A Yes.
Q Now, Doctor, I want you to assume that Mr. Gousse didn't complain about his neck or pain going down his arm to the next day and assume he went to Dr. Hanan a week later, does that have any affect on your opinion that this accident caused this herniated disk that required surgery?
A No.
Q Why not?
A It's not uncommon that patients can sustain an injury and either not immediately seek care or they think it's not going to be a problem and then they realize, you know, several days or even weeks later that it's becoming a real problem, they can't ignore it anymore. We often see patients delay in treatment on those conditions.
Q What is an acute herniation?
A Acute herniation typically is related to, there is a specific event that you can tag to when the herniation started.
Q And with a reasonable degree of medical certainty do

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

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

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

MR. BUFFALOE: Objection to form.

THE COURT: Overruled.

A No.

Q Why not?

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

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

MR. BUFFALOE: Objection.

THE COURT: Sustained. You could both.

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

Q Or both?

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

MR. TZANETEAS: Sure.

Q Are you Mr. Gousse's treating doctor?

A Yes.
Q And what are the responsibilities of a treating doctor?
A My responsibilities were exactly as we've demonstrated here in the courtroom, where I, you know, examine the patient, take a history, review the diagnostic tests, come up with a treatment plan, in this case ultimately do surgery and then follow-up after the surgery.
Q Okay. Thank you.
MR. TZANETEAS: No further questions, Judge.
THE COURT: Cross examination.
CROSS EXAMINATION
BY MR. BUFFALOE:
Q Good afternoon, Dr. Lattuga.
A Good afternoon.
Q You and I have never met before today; correct?
A I don't believe so.
Q So let's start out with where you left off with an acute herniation. Plaintiff gave you a history that he claims a ceiling collapse fell on his head and caused an acute herniation, an acute, acute means immediate; correct?
A Contemporaneous would be a better description.
Q Contemporaneous is different than immediate?
A Yes.
Q Fair to say that he's claiming based on the history that the herniated disk occurred right then and there; correct?

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

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

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

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

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

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

A Correct.

Q You're saying that happens right immediately at this

event; correct?

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

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

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

Q Would he have had pain immediately?

A Not necessarily.

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

MR. TZANETEAS: Objection, your Honor.

THE COURT: Can you answer that question?

THE WITNESS: Yes.

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

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

A Respectfully I think the jury understands that I was

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

Q So your testimony --

MR. TZANETEAS: Your Honor, can he finish his answer?

THE COURT: Did you complete your answer?

THE WITNESS: Yes.

THE COURT: Okay. Ask your next question.

Q So your testimony is that without any further trauma whatsoever the herniated disk in the cervical spine at C3-C4 got worse?

MR. TZANETEAS: Objection, your Honor.

Q Over the amount of days?

THE COURT: Overruled.

A No, that's not my testimony. My testimony is that the incident created the trauma that gave him a traumatic disk herniation, that's my testimony.

Q But you just said that he wouldn't have had pain to begin with because it was smaller and then it got worse, swollen up like an ankle?

MR. TZANETEAS: Objection, your Honor.

THE COURT: Sustained. Ask your next question.

Q So Dr. Lattuga, did the herniation remain the same on

the date of the accident until he actually went to get care?

MR. TZANETEAS: Objection, your Honor.

THE COURT: Rephrase that question.

Q Dr. Lattuga, in your opinion this acute herniation that occurred on May 14th of 2020, did it evolve of over a period of time without any further trauma whatsoever?

MR. TZANETEAS: Objection, your Honor.

THE COURT: Can you answer the question?

THE WITNESS: I believe I can, I just got to remember the question exactly. Can we read the question exactly, I had my answer in my head.

(The record was read back.)

A The pain evolved, right, because what we're saying is that, my understanding, that immediately he didn't feel it, it wasn't enough pain to warrant treatment, but then over the course of several days it was.

The actual size of the herniation, we don't have a video, an ongoing video rolling, scrolling in our body to see how that disk would evolve over time. I was just giving you some basis of understanding of why sometimes it can in certain circumstances evolve over time, that's all.

Q You don't know if that happened here, at all?

A Again, I can't answer that yes or no. All I could tell you is that it's my opinion that this accident created the herniated disk and created the need for treatment and surgery.

Q So the herniated disk that you observed in the films, is it fair to say in your opinion that was that caused pain; correct?

A Yes.

Q Right? And the pain that the plaintiff came to see you that he said was constant was caused by that herniated disk; correct?

A Yes, the trauma to his neck, yes, and the consequent injury to his disks and spine.

Q But when it happened he didn't have any complaints of pain?

A Again, I wasn't there, but I understand the pain evolved over a period of several days which I've testified to that it happens, it happens.

Q Do you have any reason to believe as you sit here right now that you what you saw in those MRI films, the herniation that you described during your testimony, changed from the time of this accident to the time those films were taken?

MR. TZANETEAS: Objection, your Honor.

THE COURT: I don't understand the question. I am sorry.

Q Do you have any reason to believe that that herniation that you saw in that film that Dr. Kolb took, that you testified to, the MRI film slide ten or fifteen, that it changed from the date of the accident to the date those films were taken?

A I mean --

THE COURT: Just to clarify the record, the accident occurred on May 14, 2020 when was the MRI taken?

MR. TZANETEAS: I believe it was 6/17 2020, Judge.

MR. BUFFALOE: Yes.

THE COURT: Okay. All right. With that clarification can you answer the question?

THE WITNESS: Yes, as I answered it before, your Honor, I don't have an ongoing video from the time, you know.

A My answer would be respectfully, sir, that I believe that this accident caused the herniation, the development of pain in the immediate time after the accident. The need for treatment and the need for surgery. I can't tell you about the evolution of a disk and how it looked on the day or the next day because we don't have imaging studies or any diagnostic studies to make that conversation, I would just be guessing.

Q Fair enough, Dr. Lattuga.

Now, Dr. Lattuga, are you currently licensed to practice medicine in New York?

A Yes.

Q But you do not practice in New York; correct?

A No, I see patients in New York, I have an office in Midtown.

Q So, and are you currently have any surgery privileges

in any hospital in New York?

A No.

Q The hospital that you mentioned that you have current surgical privileges is in New Jersey; correct?

A Correct, correct.

Q And you haven't done any surgeries in New York in more than a year and a half; correct?

A Correct. I moved to Connecticut so this hospital in New Jersey is convenient for me and my patients.

Q And now if I understand, you mentioned that you have approximately more than 20 offices?

A Yes. I don't go to all of them, but yes.

Q You are the owner of all of them; correct?

MR. TZANETEAS: Objection, your Honor. Relevance.

THE COURT: I am going to sustain the objection.

Q The surgery you performed on the plaintiff in this case was done in 2022; correct?

A Yes.

Q How many surgeries did you do that year?

A I mean I do between 300 and 500 a year.

Q Do you know how many you did that day?

A No.

Q Do you have any record of that?

A No.

Q Fair to say it wasn't just Mr. Gousse's surgery;

correct?

A I usually do three, four, five surgeries a day, depends on the kind of surgery.

Q By the way, the surgery, the cervical procedure that you performed here, it takes about an hour; correct?

A About an hour, yes.

Q Now, New York Spine Specialist, your facility, there are other doctors who work in that facility; correct?

A Yes.

Q And they're the doctors who saw Mr. Gousse before you; correct?

A Yes.

Q They examined the plaintiff; correct?

A Yes.

Q And they made recommendations and diagnoses; correct?

A Yes.

Q And it's fair to say that -- let me -- let's see, we talked about Dr. Mikelis saw him, Dr. Tripathy?

A Tripathy.

Q And Dr. Alajean?

A Alajean.

Q Saw him before you; correct?

A Yes, sir.

Q And when they saw him none of them recommended surgery; correct?

A It's not a yes or no response. I'll be happy to clarify.
Q It is a yes or no or response.
A No, it isn't. Two of them are not surgeons, they couldn't recommend surgery, so that question is misleading. The other doctor, Dr. Tripathy, saw the patient soon after the injury and recommended conservative treatment which I agree with that course of action.
Q So if I understand you correctly, from my review of these records Dr. Tripathy saw the plaintiff for the first time on January 25th of 2021; correct?
A 1/25/21, yes, sir.
Q And you saw him for the first time on June 7th of 2021; correct?
A Yes, sir.
Q Five months later?
A Yes, sir.
Q So you're saying that Dr. Tripathy's recommendation five months earlier in January of 2025 did not have any weight as far as surgery was concerned?
A That's not my testimony.
Q Literally that he get he get a follow-up MRI; correct?
A Yes.
Q And that he get therapy; correct?
A Yes.

Q No mention of a candidate for surgery in Dr. Tripathy's evaluation; correct?

A He did not indicate him for surgery, sir.

Q Now, by the way, what is a diagnostic epidural drip?

A It's part of the epidural injection when you give it in the spine. The doctors often will inject dye, not only medicine but also dye just to feel how the -- get a sense of where the medicine is going to flow through. You take a picture, you could see the dye track up and these are done in conjunction with each other. It helps to give them information feedback for, you know, if the injection is going in the right place and perhaps, you know, based on that, you know, use a slightly different technique.

Q Now, Dr. Alajean --

A Alajean.

Q -- she performed a diagnostic epidurogram on February 17, 2021; correct?

A I'll stipulate to the date, sir.

Q And she wrote a report about what the findings of that epidurogram were; correct?

A Yes.

Q And she found degeneration; correct?

A Let's get to the report. 2/17/21, sir.

Q Yes.

A Okay. And what are you quoting, sir, I'll be happy to

read it with you, epidurogram.

Q Do you see the notation in the record?

A Are you talking to me, sir?

Q Yes.

A About degenerative changes, is that what the question is?

Q Yes. About the epidurogram conducted by Dr. Alajean.

A I don't have the report in front of me, sir.

Q It's in your medical records though.

A Is there a question, sir? I am sorry.

Q Yes. Have you been able to find it in your records?

A Yes.

Q Did it refresh your recollection?

A Yes, sir.

Q Okay. She found degenerative changes; correct?

A No, sir.

Q You read the epidurogram and found degenerative changes; correct?

A I don't see that. I see the opposite of that, sir. If you like I could quote what her report says.

Q Give me one second, see if I could find it. All right, let's see. She has a report dated 2/17/21, epidurography diagnostic study. It says, "Degenerative changes, disk height abnormalities, bone spurs".

A Continue the sentence, "Endplate degeneration not

visualized," so she's saying that was not visualized. So she said that was not visualized. That's what the report says, sir.

Q Not that the endplate degeneration was not visual?

A No, I think it's pretty clear she meant none of those findings. I mean I know because I looked at the x-rays and myself none of those factors were there at the time on this patient's spine, but as I read her note, right, because she wrote the note, she's also saying it was not present at the time.

Q When Mr. Gousse went to New York Spine and Dr. Mikelis recommended that he get follow-up MRI's that didn't occur; did it?

A I don't think so. I think -- I think she went to Dr. Mikelis then she was continuing, he was continuing to be treated, saw Dr. Tripathy.

Q Who also recommended that he get follow-up MRI's and that didn't happen either; correct?

A I don't believe it happened, sir, no.

Q And Dr. Alajean recommended that he get follow-up MRI's and that didn't happen either; correct?

A I believe there is only one MRI, the MRI that was taken a month after surgery.

Q The one in February?

A Yes.

Q Of 2020?

A Yes.

MR. TZANETEAS: June.

Q June?

A June.

Q Now, having said that, when you saw him before you did the surgery you didn't get a further MRI; correct?

A No.

Q When you saw him for the first time you recommended the surgery; correct?

A Yes.

Q Despite the fact that no other doctor had done so to date; correct?

A I mean I think I responded to that question before.

Q Yes or no?

MR. TZANETEAS: Objection, your Honor.

THE COURT: Can you answer the question?

THE WITNESS: Yes.

THE COURT: You could answer it.

A Dr. Tripathy who is the only one who would have recommended surgery recommended conservative treatment and I agreed with that recommendation.

Q So the answer is yes?

MR. TZANETEAS: Objection, your Honor.

Q No one else had, you did; right?

THE COURT: I am sorry, I just want clarity for

the record.

Two of the doctors were not surgeons so they wouldn't be able to recommend?

THE WITNESS: They would never make the recommendation.

THE COURT: The other one didn't recommend because the course of treatment would have been conservative care; is that correct?

THE WITNESS: He felt after his discussion with the patient at the time that they agreed to, you know, it's collaborative. The decision of surgery is patient and doctor together, they decided to continue --

THE COURT: Okay, I just want clarity, Dr. Tripathy was in a position to recommend surgery but did not?

THE WITNESS: Correct.

THE COURT: All right. You can ask your next question.

MR. BUFFALOE: Thank you.

Q Now, by the way, before you recommended surgery to Mr. Gousse did you review any of Dr. Hanan's records?

A I don't have an independent recollection, it's not recorded.

Q Now, you did mention -- the films, the MRI's, did you actually review the MRI reports or the films themselves?

A Films.
Q And that was on the first time you saw him; correct?
A Yes, yes.
Q Do you know where you got them from?
A No.
Q Do you know if the plaintiff brought them in himself or you got them through some other means?
A I don't remember. Sorry.
Q Do you have it reflected in your records, at all?
A I am trying to remember the question. Where I got the MRI to review is not reflected in my records.
Q Now, you first saw him on what was it, 6/7 2021; correct?
A Yes.
Q And you recommended surgery on that date; correct?
A Yes, sir.
Q Now, the next time you saw him was when you performed surgery; correct?
A Yes, sir.
Q That was on February 10, 2022?
A Yes, sir.
Q Now, you saw him, approximately, a week later for follow-ups; correct?
A Yes, sir.
Q Then you saw him again, approximately, four months

later for further follow-up; correct?

A I am just going to -- I am going to plough through the record a little bit so I am not just guessing, sorry. So I saw him in February, then I saw him in March.

Q You saw him in March, not a different doctor from your firm?

A Good question. It looks like it was me on 3/7/22, looks like I was the one who saw him and it also looks like, yes, it looks like it was me saw him also in February a week after surgery. And the next time I saw him was or someone saw him, he saw Dr. Mikelis in May.

Q I am just asking about you, sir, just you.

A Okay. And so I saw him in June, on June 15th, '22.

Q And then the next time you saw him was October 8th of 2025, correct, three years ago?

A Yes.

Q When you saw him on October 8, 2025 that was at the request of his attorneys; correct?

A I don't know the answer to that question. I -- he made an appointment. I don't really know.

Q Well, you prepared a report; correct?

A Yes.

Q Did you send that report to his attorneys?

A I believe so. Yes, sir.

Q So it's fair to say that between 2000, what was it,

June of 2022, plaintiff was as of that point he was no longer under your care; correct?

A No, that's not correct.

THE COURT: Do you mean March of 2022?

MR. BUFFALOE: No, I think the last time he saw him was June 15, 2022.

A I am sorry, if you could repeat the question.

Q As of June 15, 2022 he was no longer under your care; correct?

A I believe I answered that question, no, that's not correct, sir.

Q Did you see him between June 15, 2022 and October 8, 2025?

A No.

Q How is he under your care, continuing to be under your care at that point?

A He's still my patient.

Q He's still your patient?

A Right.

Q Did you have any appointments between June 15, 2022 and October 8, 2025?

A I don't know.

Q Fair to say that they're not in your records; correct?

A I am sorry if I misspoke, I didn't see him subsequent to that until the other date, but that doesn't discount him from

being my patient, he's still my patient.

Q I didn't ask if he was your patient. I guess anybody that sees you is your patient in perpetuity.

MR. TZANETEAS: Objection, your Honor.

THE COURT: You are going to have to move on. There is no question of fact the doctor did not see this patient, the plaintiff, between June 15, 2022 and October 8, 2025. Move on. Thank you.

Q Doctor, it's fair to say that you said degeneration is age-related changes; correct?

A I mean that's one way that they're frequently -- it's frequently portrayed by people reading diagnostic images, yes.

Q And that could occur at any age; correct?

A Not necessarily.

Q I didn't ask you not necessarily, I am not sure what that means. It can occur at any age; correct?

MR. TZANETEAS: Objection, your Honor.

Q It could be degeneration?

THE COURT: Finish the question.

Q It could be degeneration that occurs in a teenager; correct?

THE COURT: Overruled.

You could answer the question.

A I mean it's possible that that occurs, but it's not a common finding of a degenerative changes in infants or

adolescents or young adults, that's not a common finding, but it's possible.

Q Now, you said, by the way, part of your conclusion was based on the plaintiff's history he gave you; correct?

A Yes.

Q And it's fair to say that you agree that it's important that the history is accurate; correct?

A Obviously I am trying to get clean history, yes.

Q And when you're in this type of situation it's important to have a history that includes as expansive as possible, correct, that it includes any traumatic events; correct?

A I would say not necessarily, sir.

Q Not necessarily, but you didn't filter and say only tell me about the neck injuries that you had, that you think hurt you, right, you asked him about any injury to his neck and his head; correct?

A Perhaps I don't understand. Are you saying the first time that I saw him and I took a history?

Q Correct.

A And I asked him specifically the nature of any significant prior injury to his neck and back?

Q Yes.

A Neck or back, his response was he never had any significant injury to his neck or back, yes.

Q Did he tell you about an assault --

MR. TZANETEAS: Objection, your Honor. No relevance.

THE COURT: Let's take the objection as a sidebar with the reporter.

(Proceedings held outside the presence of the jury.)

THE COURT: All right, so I don't know the nature of the objection and you didn't complete the --

MR. BUFFALOE: Question.

THE COURT: -- question, but I didn't feel that the question should be completed given that the word "assault" was used. So I am not sure which one to start with. So why don't I start with you, Mr. Buffaloe. Do you -- what do you have in terms of in assault and do you have any medical records indicating any kind of traumatic injury?

MR. BUFFALOE: Yes.

THE COURT: Okay. So let me hear from counsel.

MR. TZANETEAS: Have him show you traumatic injury to the back and neck, Judge, because that is not true. His own doctor said it's not related. They have the records, they're not related to his neck or back. It was assault, he went to the hospital for his head, he got punched in the face. No complaints of neck, no complaints of back.

THE COURT: All right. So --

MR. BUFFALOE: So the records indicate that the plaintiff was assaulted by his cousin, he was kicked several times while he was on the ground, that he complained of head injury, bruising and edema was noted on his neck.

MR. TZANETEAS: Keep looking, keep reading.

MR. BUFFALOE: That's all, that's an injury to his neck, that's an injury to his head. That's a trauma. You are literally talking about a trauma to his head caused a herniation here.

MR. TZANETEAS: Judge, Judge. This is ridiculous.

THE COURT: When did this occur?

MR. BUFFALOE: September 23, 2017.

THE COURT: September 23, 2017. Any indication that the injuries from that event have anything to do with the injuries he's currently suffering from? I mean that's -- it's 23 years prior approximately; am I correct?

MR. BUFFALOE: Yes.

MR. TZANETEAS: Does not mention pain to his neck, does not mention pain to his back. I know because I gave you those records.

MR. BUFFALOE: They mention specifically head trauma and --

MR. TZANETEAS: I am not claiming the head.

MR. BUFFALOE: Head injury.

MR. TZANETEAS: I am not claiming the head.

MR. BUFFALOE: You are claiming the head.

MR. TZANETEAS: I am not claiming an injury to the head.

MR. BUFFALOE: You are claiming that the competent producing cause of his herniated disk in his neck was a trauma to his head.

MR. TZANETEAS: They do don't have any doctor to say this is related. They don't have any expert to say that hitting him in the face caused a herniated disk.

THE COURT: So let me ask you, do you have any doctor who could say that this herniation is related to this assault?

MR. TZANETEAS: If you go to the four corners of the report, no. I know there is a notation of their doctor saying unrelated, I am just looking for it. I'll find it.

THE COURT: All right. Why don't you find it. That will put an end.

MR. TZANETEAS: I want to get my doctor off the stand. Can we move on with something else first and I'll find it?

MR. BUFFALOE: All of this in my opinion goes to weight, not admissibility. It's a trauma that wasn't reported.

THE COURT: I am not going to have this jury distracted by something where there is no connection between the current injuries and that assault. So that's my ruling.

MR. BUFFALOE: Wouldn't that be an assessment by the doctor and that would be his opinion.

THE COURT: I am sorry, back to Richard Montelione's rule one, if I am talking please.

I am asking for an offer of proof indicating that the injuries from this assault have anything to do with the injuries currently alleged or exacerbated the injuries currently alleged, that's my question to you, because if you don't you have to move on and I am going to tell the jury to ignore the last question.

MR. BUFFALOE: How would I possibly have that? He had a prior trauma to his head and his neck and it's relevant to the claims in this action.

THE COURT: Thank you.

MR. BUFFALOE: I can't definitively prove anything one way or the other.

THE COURT: That's a problem. Thank you.

(Following proceedings in open court, jury present.)

THE COURT: The word "assault" was used. Disregard it. Disregard the last beginning of the

question. It had nothing to do with this case, separate and apart. Thank you.

Please continue.

MR. BUFFALOE: Exception, Judge.

THE COURT: Just you know, the CPLR has gotten liberal over the years. There is no reason at all, it's actually a section, there's no reason to say exception once I've made a ruling. Thank you so much. Ask your next question.

Q Doctor, when a patient comes to your office are they required to complete certain paperwork?

A Yes.

Q And that includes, well, is that paperwork included in the file you produced today?

A No.

Q And as you sit here right now do you know if you were paid for your services in this case?

MR. TZANETEAS: Objection.

THE COURT: Overruled.

A No.

Q Do you know how the plaintiff paid?

MR. TZANETEAS: Objection, your Honor.

THE COURT: The second objection is sustained.

Q Did you do the surgery or the exams on a lien?

MR. TZANETEAS: Objection, your Honor.

THE COURT: Overruled.

A I am not familiar with the particular billing of this case, sir.

Q You had mentioned that you run the -- well, withdrawn.

At any point have you produced any billing records to plaintiff's counsel?

MR. TZANETEAS: Objection, your Honor.

THE COURT: You can you answer that question.

THE WITNESS: No, I am not aware, your Honor.

THE COURT: All right, that's the answer.

Q You are aware that a subpoena was issued to your company; correct?

MR. TZANETEAS: Objection, your Honor.

THE COURT: Overruled.

A I mean I -- I presume, I would just say I presume a subpoena was -- would be issued.

Q And are you aware that that subpoena demanded that you produce billing records?

A Again, I didn't see the subpoena, I am not aware. It doesn't come to me personally. It goes to administrative medical record department. So I am sorry, I don't really have an answer for that.

Q So you mentioned that this, these are your businesses; correct?

A Well, I am the founder of this practice, but I have,

you know, I have other physicians who care for patients along with me.

Q So you don't monitor the income, the accounts receivable?

MR. TZANETEAS: Objection, your Honor.

Q You don't pay any attention to that?

MR. TZANETEAS: Objection, your Honor.

THE COURT: Sustained.

Q You do charge when you see the patients though; correct?

A Yes.

Q Every time; correct?

A Yes.

Q So you don't know if you got paid or not here?

MR. TZANETEAS: Objection, your Honor. Asked and answered.

THE COURT: It was asked and answered, so sustained.

Q Doctor, fair to say you would agree that complaints of pain are subjective?

A Yes.

Q And as far as the range of motion in the context of concern, you would also agree I think you said there would be a subjective component to that; right?

A Yes.

Q It depends the results are changed, altered depending on how much the patient cooperates; correct?

A It can be to a certain degree, yes.

Q When you say, "to a certain degree," you ask the patient to move his arm and he moves it to the extent he says he can before there is pain; correct?

A No, usually I am guiding the patient, so my hands are performing the range of motion. The patient can influence that, the patient can stop moving or refuse to move further. I didn't sense that at all. I would have documented that patient wasn't participating. I think because it's obvious that the patient has to participate there has to be some level of subjectivity to it. That's all I am acknowledging.

Q Did you examine the initial treatment records for Mr. Gousse?

A You mean Dr. Hanan's?

Q Dr. Hanan's records, the ambulance call report?

A I did review them.

Q You did?

A Yes.

Q All right. Do you know on the ambulance call report there was no evidence of trauma to the plaintiff's neck, he was examined; correct?

A Correct.

Q There was no edema, there was no swelling; correct?

A Correct.
Q Do you know if the plaintiff was employed between when you last saw him in June of 2022 and 2025?
A No, I am sorry. I don't know that.
Q Would it surprise you if he was?
MR. TZANETEAS: Objection. You know what, withdraw it, Judge.
THE COURT: All right. You can answer the question.
A I mean I am not -- I wouldn't be surprised by either response I think.
Q It's fair to say that you don't think the plaintiff is disabled from work; correct?
A I do believe that this patient is disabled for most kinds of work, yes.
Q Most kinds of work, but not from work altogether?
A Again, within the restrictions to which I've testified to prior about what restrictions I would place on him.
Q Yes, working on a steel beam.
MR. TZANETEAS: Objection, your Honor.
Q He could drive a car, correct?
MR. TZANETEAS: Objection, your Honor. He said other things besides steel beam. He said sitting, standing.
MR. BUFFALOE: This is cross examination.

THE COURT: I am going to overrule it.

As long as -- can you answer the question?

Why don't you ask the question again.

Q He can drive a car; correct?

A Yes.

Q He can bathe for himself?

A Yes.

Q Able to cook for himself?

A Light cooking, yes.

Q What about able to do sedentary office work?

A He can't sit for more than 30 minutes.

Q Suppose I was to tell you he was sitting here all day for the last few days for more than 30 minutes, does that change your opinion?

MR. TZANETEAS: Objection, your Honor.

You know what, I'll withdraw it.

THE COURT: All right.

A I mean he's not working, right? There is a difference between working, and you know, to be candid he's present at his own trial. He has to stay there. He's forced to stay there and people work for money too, right? Even if they are disabled some people try to work because they have to feed their family. So I wouldn't make an assessment. I would never personally draw any conclusions if someone went to work or not in that circumstance because there is so many reasons why it might

happen.

Q By the way, Doctor, on direct examination you said if I am recalling correctly that the human head weighs 30 pounds, that's not correct; is it? It actually weighs more like ten, twelve pounds; correct?

A If you include the tissues of the neck and including everything, it's anywhere between -- and the size of the head, anywhere between ten and twenty-five pounds.

Q Ten and twenty-five, okay.

Did you give the plaintiff a home exercise plan?

A He has been, I mean I --

Q Did you give him a homer exercise plan?

MR. TZANETEAS: Objection, your Honor. Can he answer the question.

THE COURT: One at a time, the reporter can't. Ask your question again and then make your objection at the end of the question.

Q Did you give the plaintiff a home exercise plan?

A I don't recall.

Q Is it reflected in your notes Dr. Gousse, Dr. Lattuga, why don't you take a look?

A It is reflected in my notes. He participated in home exercise program, whether it was given by Dr. Tripathy or Dr. Mikelis or Dr. Hanan I don't remember, I am sorry.

Q Did you, I am asking about you, the guy who did the

surgery who saw him in 2022 and had a three year gap, did you give him a home exercise program?

MR. TZANETEAS: Objection.

THE COURT: Sustained. No editorializing. You don't have to mention any gaps, just get to the question. Thank you. Ask the question again.

Q Did you give him a home exercise plan?

MR. TZANETEAS: Objection.

THE COURT: Overruled.

A I mean I don't recall.

Q Now, you mentioned the surgery, when you recommended the surgery to Mr. Gousse the intention was to relieve his symptoms; correct?

A Yes.

Q So, would you consider the surgery to have failed because his complaints remain essentially identical postsurgery?

A No, I don't think the surgery failed. You know, I think I was hoping for, we were all hoping for a better result for this patient, that he had less muscular issues and nerve issues after, but to the extent that the surgery was relatively uncomplicated, not relatively, it was uncomplicated, and the patient went on to obtain a solid fusion of that area, then to that extent it is a Success.

Q So is it fair to say that the surgery served no purpose because it didn't relieve the symptoms?

A No.

Q Is it fair to say that it didn't actually help Mr. Gousse?

A No, like I replied in my prior statement. What we did by doing the surgery was he does feel slightly better, he does feel mildly improved, but what we prevented is the deterioration of that nerve root at the time.

Q So when you told, when you recommended the surgery to Mr. Gousse did you tell him that he wouldn't get better, but it would keep him the same going forward, going forward he would stay with that same pain that he was complaining to you about; did you tell him that?

A Yes, in my discussion with the patient about the potential risk of surgery, one of the things that we always discuss is what we call nonresolution of symptoms. So I did go over there is a possibility if you have surgery, the sum or all of the symptoms will not be resolved, are only partially resolved. That conversation does ensue with the patient prior to the surgery.

Q When you say, "partially resolved," you consider partially resolved what you describe as his slight reduce in symptoms; correct? In complaints?

A I mean I -- I can't answer that yes or no. You know, from our impression, you know, where I am -- I feel bad, right, that he didn't go back to being normal, so I mean I would just

say that that's something that --

MR. BUFFALOE: Objection, your Honor.

THE COURT: In terms of feeling bad disregard that.

MR. TZANETEAS: Objection, your Honor, that's his response to the question.

THE COURT: My instruction remains. Thank you. Ask your next question.

Q So the surgery that you performed you looked at the x-rays that you took back in October of 2025 and based on your examination of the surgery the hardware is stable; correct?

A Yes.

Q It's in place, it hasn't moved; correct?

A Yes, and it's fused, yes.

Q And the disk is fused; correct?

A Yes.

Q So when you did the fusion the purpose was to remove the disk material that was impinging on the disk; correct?

A And to stabilize the vertebrae.

Q And now that that was removed there is no competent producing cause of pain, correct; would you agree with that?

A No.

Q The disk is no longer impinging on the spine?

A Correct.

Q On the spinal column; right?

A Yes.
Q No longer impinging on the nerves; correct?
A Yes.
Q Is the hardware itself causing any pain?
A No.
Q The hardware you put in?
A No.
Q So is it fair to say there is some other cause of the pain that you failed to address?
A No, there was no other source, but there is an explanation.
Q When you diagnosed him your diagnosis was that a cause of his complaints of pain was that disk impinging on the spine; correct?
A And the instability, yes.
Q And the disk is removed, the instability is removed by the surgery; correct?
A Correct.
Q So it's fair to say that your diagnosis is incorrect?
MR. TZANETEAS: Objection.
THE COURT: Overruled.
A So the nerve injury occurred at the time of the accident and when I do surgery I am not repairing the nerve. So if the patient, and he did, have nerve damage from this herniated disk which led, gave him those symptoms, I addressed

the problem by taking the pressure off the nerve and fusing the vertebrae and it is -- and the jury is aware of this as well, if you have a spinal cord injury or a severe nerve injury, even if you have surgery sometimes you don't recover, that's why you see people they're paralyzed. They had surgery, but never recovered. Was the surgery a failure? Absolutely not. There's reasons why we did it, but just because I did the surgery isn't a guarantee that that nerve will fully recover. The explanation is that the nerve was damaged at the time of the accident.

Q But again, it's fair to say even you will admit that there is no stability occurring, correct, instability occurring; correct?

A That's correct.

Q And that your fusion eliminated the disk that was impinging on the spine; correct?

A Correct.

Q And it was your -- you anticipated that once the surgery was done the cause of his pain would be eliminated; correct?

A No, I anticipated that he would have improvement of his symptoms.

Q Dr. Lattuga, do you think that a prior trauma to the plaintiff's head would be of significance?

MR. TZANETEAS: Objection, your Honor.

THE COURT: Overruled.

A I mean anything is possible.
Q If there was such a trauma would you expect the plaintiff to tell you in his history?
MR. TZANETEAS: Objection, your Honor. Would he expect the plaintiff to tell him? Objection.
THE COURT: Sustained.
Q Would you want the plaintiff to tell you that in his history?
THE COURT: Sustained.
Q When you obtain the history would you like to know that type of information about a prior head trauma?
MR. TZANETEAS: Objection, your Honor.
THE COURT: I am going to overrule.
A I mean the information I am looking for is did you have a significant prior neck or back injury and what I mean by significant is you have physical therapy, injections and perhaps surgery, that's what I am asking. That's what I was looking for in terms of information from the patient.
Q All right. Thank you, Dr. Lattuga.
THE COURT: Redirect.
MR. TZANETEAS: Sure.
REDIRECT EXAMINATION
BY MR. TZANETEAS:
Q You were asked about the FDNY report, no edema, no pain to the neck, after examination what significance is that, if

any, about your testimony about the herniated disk?

A I think it's consistent with my testimony that some patients don't have symptoms immediately upon their injury and then over the course of hours or days they develop swelling internally and can have more symptoms.

Q Anything else that you were cross examined on that changed your opinion about your opinion about what caused these injuries?

MR. BUFFALOE: Objection.

THE COURT: On what basis?

MR. BUFFALOE: If anything in cross examination changes his opinion.

THE COURT: Any of your answers in cross examination change your opinion.

THE WITNESS: No, sir.

THE COURT: All right.

MR. TZANETEAS: No further questions.

THE COURT: Thank you so much. You can step down.

Thank you so much. Let's take a ten minute break and then we'll have the plaintiff back on the stand. Thank you.

COURT OFFICER: All rise. Jury exiting.

(Jury exiting.)

THE COURT: Why don't you take a seat. I am just

going to identify you as juror number six.

JUROR SIX: Yes.

THE COURT: You spoke to the court officer and you wanted to bring something to my attention. You have to answer.

JUROR SIX: Yes, yes, your Honor.

THE COURT: Tell me why you wanted to speak to me.

JUROR SIX: I wanted to speak to you because I guess I mean obviously we went he over some basics of the trial in jury selection but I guess I didn't realizes to the extent that all of these surgeries were going to be a part of the trial and I've had, you know, yesterday I didn't realize he had gotten his right labrum surgery which I had gotten done to me a few years ago. And then right after that I had double hip surgery. So I only wanted to bring it up because, you know, I am quite invested at this point, but I just do worry about my ability to be unbiased just given the surgeries and the four years of surgeries that I went through. So I just wanted to bring it up.

THE COURT: All right. Do you have questions, counselors?

MR. TZANETEAS: Well, your Honor, could we talk to you in private?

THE COURT: But I do have one question to ask you.

JUROR SIX: Yes.

THE COURT: Did you express any of your concerns regarding your prior operations with -- other concerns or that you were going to come to the Court about any issues, did you express that to any other jurors?

JUROR SIX: Any of the jurors?

THE COURT: That's right.

JUROR SIX: No, I don't think any of them were in my selection group so they didn't hear me talk about in jury selection.

THE COURT: What about since being on the jury?

JUROR SIX: No.

THE COURT: Can you just go outside into the hallway and we'll call you right back in. Thank you so much.

JUROR SIX: Thank you. Appreciate it.

THE COURT: Yes.

MR. TZANETEAS: Your Honor, I would ask that you ask him if he could, he kind of said I am hesitant to do it because he didn't know the surgeries, but he didn't really say it's going to affect, I think you should ask him is this going to affect how you decide the case.

THE COURT: Let me hear from Mr. Buffaloe, but I know what the answer is going to be.

MR. BUFFALOE: I think that he's phrasing it gingerly, but he's clearly saying that this is affecting

his ability to be objective in the case. That's the only reason to bring it to the Court's attention. So I mean I don't think there is any reason to question him any further.

MR. TZANETEAS: I think, your Honor, he said -- that's why you wanted me to ask your question, it shouldn't come from me, it should come from your Honor, is that something that's going to affect the case. That's what I wanted to ask, but it shouldn't come from me.

THE COURT: The law and the caselaw, it has to be unequivocal, it was not unequivocal.

MR. TZANETEAS: That's not what I heard him say, Judge.

THE COURT: Well, you and I heard two different things.

MR. TZANETEAS: Okay. I'll make my objection on the record.

THE COURT: Your objection is noted. Unless a juror can unequivocally tell me that they could be fair and unbiased and that's not what this witness told me.

MR. TZANETEAS: That's not what I heard, Judge. That's why I asked to clear it up. I have my objection on the record.

THE COURT: What's to clear up? What's to clear up?

MR. TZANETEAS: The answer was I didn't know there's many surgeries and I am just worried about it. I would ask what his concerns are.

THE COURT: That worried about is enough for me. Thank you so much.

MR. TZANETEAS: You are going to dismiss him on the record.

THE COURT: It doesn't have to be on the record, but I am making a record now. I am going to dismiss him. Thank you.

(Whereupon, the trial was adjourned to Monday, July 20, 2026 at 9:30 AM.)

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CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING.

Lucille Cravotta

LUCILLE CRAVOTTA
Senior Court Reporter

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