

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF BRONX : CIVIL TERM : IA-21

3 -----x

4 LILLIAN SOTO,

5 Plaintiff(s)

6 -against-

7 RAMON A. VENTURA,

8 Defendant(s)

9 -----x

10 851 Grand Concourse
11 Bronx, New York 10451
12 07/12/2018

13 B E F O R E:

14 HONORABLE BEN R. BARBATO,
15 Justice

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

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25

26 KIM M. RICHARDS
27 Senior Court Reporter

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#303425-2013

1 THE COURT: Take seats, please. Good morning,
2 ladies and gentlemen.

3 SWORN JURORS: Good morning.

4 THE COURT: Counsel, please call your witness.

5 MR. WATTLEY: Good morning, folks.

6 Your Honor, the plaintiff calls Dr. Gabriel Dassa
7 to the stand.

8 D O C T O R G A B R I E L D A S S A, having been called as a
9 witness by and on behalf of the Plaintiff, having been first duly
10 sworn, was examined and testified as follows:

11 COURT CLERK: In a loud and clear voice, please
12 state your name and profession for the record.

13 THE WITNESS: Yes, Gabriel, G-A-B-R-I-E-L. Last
14 name is Dassa, D-A-S-S-A.

15 THE COURT: Sir, you may inquire.

16 MR. WATTLEY: Thank you very much, your Honor.

17 DIRECT EXAMINATION

18 BY MR. WATTLEY:

19 Q. Good morning, Dr. Dassa.

20 A. Good morning.

21 Q. How are you today?

22 A. I'm great.

23 Q. Good. Doctor, are you licensed to practice medicine in
24 the State of New York?

25 A. Yes, I am, sir.

1 Q. When did you obtain that license?

2 A. In 1992.

3 Q. And what type of doctor are you?

4 A. I am an orthopedic surgeon.

5 Q. Can you kindly explain to us what an orthopedic surgeon
6 is and what orthopedics is?

7 A. Yes, sir. Well, in the process of doing medical
8 training, you have the opportunity to do what is called specialty
9 training. The opportunity to train gives you access to different
10 body systems. So, if you are a heart doctor, you are a
11 cardiologist. If you are a lung doctor, you are a pulmonologist.
12 My particular field is the musculoskeletal system. So, I was
13 trained in dealing with conditions and injuries to things like
14 joints; the spine; the neck; back; you know, knee; shoulders;
15 broken bones, which are fractures; injuries to joints; ligaments.
16 I am also a trained hand surgeon as well. So, I also deal with
17 tendon and nerve injuries and hand injuries.

18 Q. And Doctor, are you board certified in any specialties?

19 A. Yes, I am.

20 Q. What is board certification?

21 A. Well, as part of doing medical training, you have
22 options to do different types of programs. When you complete an
23 accredited program, which is the type of program I did complete,
24 you are deemed to be trained with the qualifications to sit for
25 an exam that's called a board certification exam. So, when I

1 completed my residency training, I was deemed to be board
2 eligible. That allowed me to sit for an exam in the specialty of
3 orthopedic surgery. After completing all parts of that exam, you
4 are deemed to be board certified. And that just is a
5 qualification that deems you are clinically competent and
6 functioning at a level that is set forth by your peers in your
7 field.

8 Q. When did you obtain that board certification,
9 Dr. Dassa?

10 A. I got my initial certification in 2001, and then I
11 recertified in 2010.

12 Q. And would you please tell the jury about your
13 educational background?

14 A. Yes, sir. I completed a four-year course of premed
15 study at Fordham University in Bronx, New York. That was
16 concluded in 1986. From 1986 through 1991, I completed medical
17 school at New York College of Osteopathic Medicine. Upon
18 graduating, I was accepted into an orthopedic surgery residency
19 program, which I did at the Albert Einstein College of Medicine
20 Program. Prior to commencing that, after I graduated, I had to
21 do a year of internship training. So, from 1991 through 1992, I
22 was an internal medicine resident at Coney Island Hospital in
23 Brooklyn, New York. Then, from '92 to '93, I was a general
24 surgery resident at St. Barnabas Hospital in the Bronx. And
25 then, I commenced my orthopedic training from '93 to '97. It was

1 concluded, and then I opted to do an extra year to train as a
2 super specialist as a hand fellow. So, I was accepted to the
3 program at the Hospital For Joint Diseases New York University
4 Medical Center in New York, New York.

5 Q. Do you currently practice medicine?

6 A. Yes, I do, sir.

7 Q. Where do you practice?

8 A. I have several practices or offices in Bronx, New York.
9 I have one on Third Avenue, one on the Grand Concourse. I have
10 offices in Upstate New York, Middletown and Poughkeepsie, New
11 York.

12 Q. Your practices, are they private or do you have
13 hospital affiliations?

14 A. Private practices.

15 Q. Do you have hospital privileges?

16 A. I do, sir.

17 Q. What hospital privileges do you have?

18 A. Montefiore Medical Center and Bronx Lebanon Hospital.

19 Q. And do you see patients on a daily basis as a part of
20 your private practice?

21 A. I do, sir.

22 Q. Approximately, how many patients do you see on a given
23 week, Doctor?

24 A. Again, it varies week to week. Between 250 to 300
25 patients a week.

1 Q. Do you perform procedures on some of your patients?

2 A. I do.

3 Q. What types of procedures?

4 A. I perform orthopedic surgery. All types.

5 Q. And on average, Doctor, how many procedures would you
6 say you perform in a week?

7 A. Again, it varies from week to week. I would say on the
8 average between 15 to 20 surgeries per week.

9 Q. In addition to examining and treating patients, do you
10 also examine people who have been injured as a result of an
11 accident who have brought a lawsuit?

12 A. Yes, sir.

13 Q. And do you do that on behalf of plaintiffs as well as
14 defendants?

15 A. I do it for both.

16 Q. Have you testified on behalf of clients of my firm,
17 Burns & Harris, before?

18 A. Yes, I have.

19 Q. Have you testified for me before?

20 A. Yes, sir.

21 Q. Have you testified against my firm, Burns & Harris,
22 before?

23 A. Yes, sir.

24 Q. And have you testified on behalf of defendants before?

25 A. I have.

1 Q. And Doctor, if you were not testifying this morning
2 here in front of this jury, what would you be doing?

3 A. I would be performing surgery. Today is one of my
4 surgical days.

5 Q. Did you have to cancel those surgeries that were
6 scheduled to be here to testify?

7 A. Yes, sir.

8 Q. And you mentioned that you have offices, two in the
9 Bronx, also in Middletown. Do you have to keep those offices
10 running and your staff there compensated while you're here
11 testifying in court?

12 A. Yes, sir.

13 Q. Are you being compensated for your time away from your
14 patients here in court today?

15 A. Yes.

16 Q. What is the amount of that compensation?

17 A. \$7,000.

18 Q. Doctor, as part of your training and career, do you
19 routinely review diagnostic films?

20 A. Yes, I do, sir.

21 Q. And all types of diagnostic films, MRIs, x-rays, CT
22 scans?

23 A. Well, again, my experience and training is with
24 diagnostic studies of the musculoskeletal system. So, it's
25 ultrasound, x-ray, MRI, CAT scans. Any study that's pertinent to

1 the musculoskeletal system I've been trained to review as part of
2 my residency training, and I do that on a daily basis treating
3 patients.

4 Q. And as part of your training and your career, how many
5 diagnostic films would you say you've reviewed?

6 A. Thousands.

7 Q. As a surgeon, do you often times review diagnostic
8 films even after a radiologist has looked at them?

9 A. Yes.

10 Q. And do you do that before performing surgery?

11 A. Always before surgery. I don't rely on the
12 radiologist's interpretation to make recommendations for surgery
13 because at times my interpretation could differ from the
14 radiologist. So, I rely on my own interpretation of the study.

15 Q. Doctor, I would like for you to describe for the jury
16 the anatomy of the ribs?

17 A. I'm sorry?

18 Q. Could you please describe the anatomy of the ribs to
19 the jury?

20 A. Well, basically when we speak of the ribs, we are
21 speaking of the rib cage and the rib cage is, you know, bony
22 structures that surround your chest and it protects the internal
23 organs of your chest and your abdomen. So, when we speak of
24 ribs, there are 24 ribs. There are 12 on each side. You have
25 what they call seven true ribs, which are ribs that attach

1 singularly to the front and in the back of the spine. Then you
2 have an additional three false ribs where they all attach in the
3 front to one cartilage, and they attach to the back of the spine.
4 And then you have two additional ribs, which are 11 and 12, which
5 are called floating ribs.

6 Q. Now, what does it mean that the 11th and 12th rib are
7 floating? What does that mean?

8 A. Basically, they don't have any anterior or posterior
9 attachment to the spine or to the sternum, so they are mobile
10 ribs.

11 Q. Okay. Doctor, did you have an opportunity to examine
12 Lillian Soto for injuries she is claiming she sustained in an
13 accident of February 26, 2013?

14 A. Yes, sir.

15 Q. When did that examination take place?

16 A. That was October 28, 2016.

17 Q. And did you perform that examination at the request of
18 my office?

19 A. Yes, sir.

20 Q. What records, if any, did you review before you
21 examined Ms. Soto pertaining to the treatment for her injuries?

22 A. There was a police accident report; there were medical
23 records from Jacobi Medical Center; and then there were also
24 studies from a MRI facility called Stand-Up MRI.

25 Q. Okay. And Doctor, I've taken the liberty of loading an

1 x-ray that's in evidence here for you and for the jury. This is
2 an x-ray that was taken at Jacobi Hospital. First, Doctor, what
3 is an x-ray?

4 A. Well, an x-ray is an image that is created utilizing
5 x-ray radiation. Basically, you expose a body part to x-rays and
6 it creates an image on a film, which is similar to creating a
7 photograph. And essentially it's a diagnostic tool that you
8 utilize to look at mostly, more specifically bones. It's used to
9 look for fractures. And also there are some soft tissue findings
10 that you can see on an x-ray, in a general sense, to make some
11 diagnostic conclusions as well.

12 Q. And Doctor, in addition to looking at the x-ray films
13 that were taken at Jacobi, you also told us that you had the
14 opportunity to review the actual medical records from Jacobi; is
15 that correct?

16 A. Yes, sir.

17 Q. Okay. And Doctor, was there a history that was taken
18 of Ms. Soto in the Jacobi medical records?

19 A. Yes.

20 Q. What was that history?

21 A. It was that she was a pedestrian that was struck by a
22 car.

23 Q. And that was taken on February 26, 2013, correct?

24 A. Yes.

25 Q. And when Ms. Soto went to Jacobi Medical Center, what,

1 if any, complaints did she make in the emergency room there?

2 A. She was complaining of left-sided pain.

3 Q. And Doctor, what, if anything, is the significance of
4 that complaint after Ms. Soto was hit by a car?

5 A. Well, I mean, again, when we speak of anything that's
6 hit by a car, you're dealing with something that is a very high
7 mass object that if it's hitting a person, you're hitting
8 somebody that's biological and it's a low mass object. The
9 complaints of left-sided pain after being hit on the left side,
10 as the records indicate, suggested that there was some type of
11 trauma to the area that's causing her to continue to have pain
12 for which she was seen in the hospital.

13 Q. Did the doctors at Jacobi Medical Center conduct an
14 examination of Ms. Soto after she made those complaints?

15 A. Yes, sir.

16 Q. And what did those doctors do?

17 A. Well, they did x-rays; they did a physical examination.

18 Q. And after performing x-rays, what were the findings of
19 the doctors at Jacobi Hospital?

20 A. Well, again, there were several evaluations. One was
21 an x-ray evaluation. The x-ray reviewed by the radiologist
22 raised a question that there was a possible fracture of the left
23 11th rib. And then, in looking at the synopsis of the physical
24 exam in the emergency room, the physicians's conclusions with
25 those X-rays, they diagnosed her with left 11th rib fracture.

1 Q. Doctor, what does it mean that a rib is fractured?
2 What is that?

3 A. Well, any time you speak of a fracture, it represents
4 tissue damage. You know, when we look at bones, we speak of
5 fractures pertinent to bones, but you could also have fractured
6 organs as well. But to the layperson, when we speak of fractures
7 it's mostly associated with bones. So, it would give a
8 description of bone tissue damage. So, when you have fractures,
9 you can have fractures that break into two pieces. You could
10 have fractures that are internal fractures to bones. But any
11 type of fracture configuration represents damage to bone tissue.

12 Q. And Doctor, the complaints that Ms. Soto made at Jacobi
13 Medical Center, as well as the history that was taken and the
14 examination that was performed, were those consistent with the
15 finding and the diagnosis of a left 11th rib fracture?

16 MR. PELUSO: Objection, your Honor. The hospital
17 records speak for themselves.

18 THE COURT: Yes, I agree with you. And they're
19 also in evidence.

20 You can answer that, sir.

21 A. Yes.

22 Q. Now, Doctor, what is the treatment for a rib fracture?

23 A. Again, it would vary with the severity of the rib
24 fracture. Most rib fractures are not displaced, so they're
25 generally treated conservatively. It's a watch and wait type

1 phenomenon. It's respiratory support. You have a person
2 continue to take deep breaths so their lungs don't collapse. You
3 can sometimes use binders. In the event when rib fractures are
4 displaced and associated with other injuries, meaning like a
5 punctured lung or if the rib punctures an organ, you actually
6 have to put the rib back in place and fix it. So, it ranges from
7 conservative treatment to actual opening up the chest and fixing
8 the rib with plates and screws.

9 Q. Now, Doctor, what is atelectasis?

10 A. That is a term that describes a partial collapse of a
11 lung.

12 Q. Was there a finding of atelectasis in the emergency
13 room record at Jacobi Hospital of February 26, 2013?

14 A. Yes, sir.

15 Q. And what, if anything, is the significance of that
16 finding?

17 A. Well, in the realm of looking at lungs that are normal,
18 normal lungs are inflated with air and the air inflation is
19 maintained. Generally, when you see at atelectasis, it's
20 pertinent to poor breathing effort and it's usually connected
21 with some type of event that injures the lungs or an injury
22 that's close to the lungs. So, when we speak of the
23 significance, and especially for the fact that there was
24 atelectasis or a partially collapsed lung at the base of the lung
25 that was next to where the rib fracture was, it would represent

1 that the lung had some -- it was impacted by the impact from the
2 car as well.

3 Q. And Doctor, with the Court's permission, would you show
4 the jury on the x-ray film from Jacobi Hospital the 11th rib and
5 where that fracture was, as well as can we see the atelectasis on
6 the x-ray?

7 A. So, just for reference, this is a chest x-ray. And
8 what we're speaking of is the ribs, which are the bones. You can
9 see it forms what looks like a cage on each side of the lungs.
10 So, we are dealing with the right side of the chest and the left
11 side of the chest. I mean, obviously, they have an L here
12 showing this is the left side, but you know that this is the left
13 side as well, because the heart points towards the left side of
14 the chest. And what we speak of as far as ribs, they're bones
15 and the ribs come down through the chest into the floating ribs
16 and you can see at the 11th rib they saw what they described as a
17 lucency over the 11th rib. And that lucency, if you look at a
18 rib bone that doesn't have anything that's disturbing it, you can
19 see the bone is uniformly the same color. As you get to the 11th
20 rib, you can see there is a shadow around the 11th rib, which is
21 not a normal texture for the bone. So, that represents some type
22 of abnormality to the bone, and you have to correlate that with
23 the history and also the physical findings. So, those findings
24 present on x-ray would raise the suspicion for a rib fracture.

25 Q. Thank you, Doctor.

1 A. The other issue is if you look at the lung fields, you
2 can see where the lungs above, it's filled with air, and you can
3 see how it's brighter in color. That is lung spaces that are
4 filled with air. As you get down to the lower part of the left
5 lung, you can see there is a darkness here, which represents
6 partial collapse of the lung, which is what is described as the
7 platelike atelectasis on the x-ray film. So, you can see here at
8 the base of the left lung, which is very dark, because there is
9 no air in this space relative to the spaces that have air, that
10 is partial collapse of the left lung.

11 Q. And Doctor, the findings on the x-ray at Jacobi
12 Hospital taken on the day of the accident, February 26, 2013,
13 were those findings consistent with Ms. Soto being hit by a car
14 as a pedestrian?

15 A. Yes.

16 Q. Now, Doctor, can asthma cause a rib fracture?

17 A. Asthma?

18 Q. Yes.

19 A. No, sir.

20 Q. Okay. Can asthma cause atelectasis?

21 A. I mean, again, if a person is having an acute asthma
22 attack, you can see atelectasis at times on x-ray if they're in
23 an acute asthma episode. But if they're not having an active
24 asthma attack, where they're wheezing and can't move air, you
25 generally don't see atelectasis.

1 Q. Okay. I'm just going to change the film here.

2 MR. WATTLEY: I ask you to bear with me, folks.

3 Q. Now, Doctor, I'm going to ask you to take a look at the
4 films that were taken at Distinguished Diagnostic Imaging, also
5 in evidence, in May of 2013. So, now we're approximately about
6 three months after the incident of February 26, 2013. Now,
7 Doctor, what are we looking at when we look at these images? And
8 I can move through them or you can. Whatever is easier.

9 A. Okay. So, this particular x-ray sequence as opposed to
10 being just a chest x-ray, it's what's called a rib series. So,
11 it gives you a little bit more of a combed down view of the ribs
12 as opposed to just looking at them in general. And when we come
13 down to the floating ribs, which will be these last two ribs, you
14 can see at the 11th rib, as opposed to the 12th rib, where you
15 can see there is a uniform consistency in color. At the 11th rib
16 you can see this calcification of the 11th rib, and basically
17 that's the lucency that was seen on the other x-ray that I showed
18 earlier.

19 Now, when fractures heal, they heal with bone tissue.
20 And how does bone heal? It heals by calcifying. So, this
21 calcification in the context of that prior history with being hit
22 by a car and that finding on x-ray would represent a healed
23 nondisplaced fracture of the 11th rib. I mean, there is no
24 displaced fracture on this x-ray, but this calcification does
25 indicate that there was some damage to bone tissue, which would

1 account for the pain she was having that day.

2 Q. Doctor, what, if anything, is the significance that in
3 May of 2013, a few months after this incident, an x-ray shows
4 calcification and a healed nondisplaced fracture of the 11th rib?

5 A. I mean, the significance is that, you know, it's
6 bearing out that whatever they saw on the x-ray that I showed
7 before actually was a fracture.

8 Q. Now, Doctor, would you please explain to us, to the
9 jury, the parts of the neck and the back and how they work. And
10 Doctor, I brought a model of the human spine. Let me ask you, is
11 this an anatomically correct model of the spine?

12 A. Yes.

13 MR. WATTLEY: Does the Court require that I mark
14 it or may I use it for demonstrative purposes?

15 THE COURT: You can use it for demonstrative
16 purposes. It's not going to go up to the jury.

17 MR. WATTLEY: No. May I approach?

18 THE COURT: Yes.

19 Q. Would it assist in explaining the parts of the human
20 spine in using this anatomically correct human spine?

21 A. Yes. So, what we're looking at is a model of the spine
22 without the other body parts attached. So, we're speaking of the
23 pelvis. Between the pelvis is a triangular bone called the
24 sacrum.

25 And then we have different parts of the spine. The

1 spine is broken into different sections. So, since we started
2 from the bottom, we'll go up the lumbar spine first. So, from
3 the front you will see that there are five lumbar vertebrae,
4 which is in layman's terms the lower back. So, it's one, two,
5 three, four, five. These are the vertebral bodies or bones that
6 are stacked on each other, which forms the lower part of your
7 spinal column.

8 What is separating the bones is soft tissue, which is
9 called the discs. So, if you ever heard of a disc or a disc
10 injury, that would be tissue that separates the bones in the
11 lumbar spine. So, as you go up from the lumbar spine to the mid
12 back, thoracic or dorsal spine, you have 12 thoracic vertebrae.
13 You can see by comparison they are smaller, but they are also
14 separated from each other by discs.

15 And then, as you come up from the cervical spine,
16 which is the neck, you have seven cervical segments, and those
17 segments as well are separated from each other by discs.

18 And you have in this spinal canal, which is created by
19 the bones, a structure that's called your spinal cord. So, if I
20 bend this forward, you can see the yellow structure inside the
21 canal, the spinal cord, which gives off nerves that exit from
22 windows that travel out to the other parts of your body.

23 Q. And Doctor, how would injuries to the discs in our
24 spine, how are they diagnosed?

25 A. As far as diagnostic modalities?

1 Q. Yes.

2 A. I mean, again, discs, as far as injuries, can be
3 diagnosed clinically. Based upon a person's complaints and
4 physical exam findings, you confirm those conclusions with MRI or
5 CAT scans.

6 Q. What is an MRI?

7 A. An MRI is a study, as opposed to an x-ray, that is
8 performed utilizing magnetism. So, you would go into a MRI
9 machine, which it's like a tunnel, and your body gets exposed to
10 a magnetic field. And the bounce of that magnetism onto the
11 transducer will create an image. And normal tissue will appear a
12 certain way, and abnormal tissue will appear a certain way.

13 Q. I'm attempting to pull up the MRI study that was done
14 to Ms. Soto's neck and back. If you would bear with me, please,
15 I'll see if I can get this open.

16 Doctor, while we're waiting for this, would you
17 explain to us, what's the function or the purpose of the discs in
18 our spine?

19 A. Well, again, the discs serve as support structures.
20 They basically cushion the spaces between the bones that allow
21 the vertebral bodies to lie on each other and have the bones not
22 wear out. So, they serve as support structures for the spine.

23 Q. Doctor, if we could please have you take a look at the
24 MRI film that's again in evidence. It was taken of Ms. Soto's,
25 first her cervical spine, of her neck. If you could explain to

1 the jury what we're looking at and what it shows, please.

2 A. So, basically, what we're looking at here is the
3 cervical spine or the neck. So, this would be the view of the
4 neck from the side, which is what you're looking at here. So,
5 here you can see, here is the base of the skull. And then we
6 have the cervical vertebra. So, on view, this is C2, C3, C4, C5,
7 C6, C7. And that would correspond to two, three, four, five, six
8 and seven.

9 Now, when we look at the bony structures, we can see
10 the vertebral bodies and the darker spaces between the vertebral
11 bodies is the areas where the discs are. Now, when we look at
12 other structures, we also look at the spinal cord, which is the
13 grayish structures behind the bones and the whitish column behind
14 the spinal cord represents the spinal fluid. So, if you've ever
15 heard of somebody having a spinal tap, when they take the fluid
16 out of the spine, that's what that whiteness is, the fluid around
17 the spinal cord.

18 Now, you can see the whiteness is like a river and it
19 flows around the spinal cord. Now, when you go and look at the
20 different cervical segments and the discs, you can see some of
21 this darkness from the discs protruding into the whiteness of the
22 fluid. So, you can see at the C2-3 disc, you have what's called
23 a bulging disc. And you can also see at the C5-C6 disc that you
24 have a bulging disc. But as you get to the C3-4 and the C4-5 and
25 the C6-C7, you can see the disc material actually almost damning

1 up the fluid. So, those are herniations. So, when we speak of
2 discs as far as injuries go, you have a connective tissue wall,
3 and in the center is the fluid, which is called the nucleus.
4 That fluid, when a disc is injured, when we speak of a disc
5 injury, there has to be a tear in the disc wall. So, if the tear
6 is partial, that would be considered to be a bulge. If the disc
7 material is pushing out against the tear. So, in the case of,
8 and if I can give you a comparison, the C2-3, you can see that
9 there is some bulging of the disc, but it's not actually into the
10 whiteness of the fluid. Now, when we speak of a herniation, you
11 have a complete tear in the disc wall, and the disc material
12 squirts through that tear and it actually herniates, which is the
13 term. And you can see the difference between the herniation
14 where you have this disc almost contacting the spinal cord versus
15 the bulge where it's just sticking out a little bit relative to
16 the herniations.

17 So, if I had to give you an analogy that you could
18 understand, take like a jelly donut. If you have a jelly donut
19 where the jelly is contained, that's a normal disc. If you bite
20 into the jelly donut and the jelly squirts out the other side,
21 that would be considered a herniated disk. So, we have disc
22 herniations and bulges in the cervical spine.

23 Q. Doctor, your findings after looking at these films of
24 disc bulges and disc herniations in Ms. Soto's cervical spine, is
25 that consistent with the findings of the radiologist who took

1 those films and read these films back in May of 2013?

2 A. Yes, sir.

3 Q. Doctor, can a bulging disc or a herniated disc cause
4 pain?

5 A. Yes.

6 Q. Why?

7 A. Well, when we speak of a disc bulge or herniation,
8 there is disc damage. And the disc walls have to be torn to have
9 either one of those. It's just whether it's partial or complete.
10 When you have a tear to the disc wall, there are nerves in the
11 disc wall that when there is tearing, you have pain. Because you
12 are inflaming and hurting nerves that are inside that tissue.

13 Q. Now, what, if anything, is the treatment for injuries
14 to the discs in our spine?

15 A. Well, again, there is a whole spectrum of treatment for
16 disc injuries. You always, because the results of any type of
17 aggressive surgical treatment is not predictable, you start off
18 slow with conservative treatment. You try physical therapy.
19 Some people go to chiropractors. Some people try things like
20 acupuncture. You can try anti-inflammatory medications up to
21 narcotic pain medications. If the simpler things don't work, the
22 other things you can try are injections, which are things called
23 epidurals or facet block injections or nerve root injections.
24 There is a also a spectrum of intervention or pain management.
25 And then, ultimately, if all the simple things, which includes

1 injections, don't work, then you would have to send somebody to
2 see a spine surgeon.

3 Q. Now, Doctor, just as a generality, when somebody goes
4 to a diagnostic facility and makes complaints of pain in their
5 neck and back, the staff or the radiologist in that facility
6 takes an MRI and simply reads or interprets what the MRI says; is
7 that correct?

8 MR. PELUSO: Objection, your Honor. Calls for
9 speculation.

10 THE COURT: Rephrase the question, sir.

11 MR. WATTLEY: Sure.

12 Q. Doctor, when somebody goes to a diagnostic facility for
13 MRI, what is the purpose of them going to that facility?

14 A. Again, it would be to provide diagnostic conclusions
15 pertinent to a complaint or a presumptive diagnosis made by a
16 doctor on a clinical basis.

17 Q. And as a medical doctor, if somebody comes to you for a
18 diagnostic test to be performed, do you perform that test and
19 simply report what you found in that test? Is that your practice
20 and protocol?

21 A. For a radiologist?

22 Q. For a radiologist or for anybody who is taking and
23 reading films?

24 A. I mean, generally, there is always a report that's
25 associated with a diagnostic test.

1 Q. Is that your experience, that that report just simply
2 informs or writes down what was shown on the test?

3 A. Yes.

4 Q. Okay. I would like to show the jury the lumbar. Now,
5 Dr. Dassa, we know that the MRI was taken of Ms. Soto's lumbar
6 spine also in May of 2013. Have you had an opportunity to look
7 at the films from that MRI taken in May of 2013?

8 A. Yes, sir.

9 Q. Okay. What are we looking at here, Dr. Dassa?

10 A. So, when we speak of the lumbar spine, again, it's the
11 lower back. So, it's the lower five lumbar segments. Five,
12 four, three, two, one. So, when we come to this MRI, you can see
13 that you have L4-5, L3-4, L1-2 and L2-3. And basically, it's a
14 little dark. You can't really see the definition of the discs
15 between the bones, but you can see the blackness of the disc
16 material extending into the fluid as opposed to the discs below
17 that are contained and not pushing out and herniated. So, the
18 L2-3 and L3-4 discs are herniated into the spinal fluid, which
19 basically, again similar to the cervical spine, represent disc
20 injury and disc herniation.

21 Q. Doctor, your interpretation, your reading of that
22 lumbar MRI film, is that consistent with the findings of the
23 radiologist back in May of 2013?

24 A. Yes.

25 MR. PELUSO: Objection, your Honor.

1 THE COURT: Sustained.

2 Q. Doctor, when you looked at the MRI films, what did you
3 find, of the lumbar spine?

4 A. There were two disc herniations of L2-3 and L3-4.

5 Q. And were your findings consistent with the findings of
6 the radiologist back in May of 2013?

7 MR. PELUSO: Objection, your Honor. I don't
8 believe we've heard from the radiologist.

9 THE COURT: Sustained.

10 MR. WATTLEY: Your Honor, may we approach?

11 THE COURT: No.

12 Q. Doctor, I want you to assume that defendant had a
13 radiologist, a Dr. Jonathan Lerner, who testified before this
14 jury. And that Dr. Jonathan Lerner testified that the lumbar MRI
15 films showed injuries to the spine, to the lumbar spine of
16 Ms. Soto, but he attributed those injuries to degeneration.

17 MR. PELUSO: Objection.

18 THE COURT: Please continue.

19 Q. Doctor, when you looked at the MRI films for the lumbar
20 spine of Ms. Soto, are your findings -- strike that.

21 When you looked at the MRI films of the lumbar spine
22 of Ms. Soto, you found herniations and bulges, correct?

23 MR. PELUSO: Objection to the mischaracterization
24 of the testimony of Dr. Lerner.

25 THE COURT: The objection at this point is

1 overruled. I'm allowing the question.

2 It is the determination and memory of this jury
3 that will recall what the doctor testified to. In the event
4 that you would need any clarification at a later point when
5 you're deliberating, you can have that testimony read back.

6 Counsel, please.

7 MR. WATTLE: Sure.

8 Q. You found herniations and bulges to the lumbar spine of
9 Ms. Soto, correct?

10 A. Yes.

11 Q. And is it your opinion, Doctor, that the MRI taken on
12 May of 2013 shows those herniations and those bulges?

13 A. Yes.

14 Q. Now, Doctor, are you familiar with the term
15 degeneration?

16 A. Yes.

17 Q. What does that mean?

18 A. Well, basically, any type of soft tissue that exists in
19 the body will undergo changes over time with the aging process.
20 So, when we speak of tissues, you can have degenerative changes
21 that occur to tissues with aging. If it's in a joint, it's
22 called arthritis. If it's degenerative arthritis. If it's in a
23 disc, it would be -- the different terms they use are desiccation
24 or disc degeneration or narrowing. So, basically, it's the
25 normal changes that occur to tissues with the aging process.

1 Q. Doctor, I want you to assume that Dr. Jonathan Lerner,
2 the radiologist that testified on behalf of the defendant,
3 testified that the bulges and herniations to Ms. Soto's neck and
4 back were as a result of degeneration.

5 MR. PELUSO: Objection, your Honor, to the
6 mischaracterization of Dr. Lerner's testimony. There was
7 never any testimony about a herniation.

8 THE COURT: Thank you, sir. Overruled.

9 Q. Doctor, are your findings after you looked at the films
10 that were taken in May of 2013 consistent with Dr. Lerner's
11 testimony, sir?

12 A. I mean, again, I don't know what Dr. Lerner testified
13 to, but if we're speaking of degenerative findings versus
14 traumatic findings, again, if you look at an MRI of a person's
15 spine that is in their 40's, it's obligatory. You're going to
16 see some degenerative changes to their tissues. There is no
17 person who is in their 40's who does not have some type of
18 degenerative findings. If your question is, are the findings
19 pertinent to the conclusions of a disc herniation degenerative,
20 again, you can't tell just by looking at a film. I mean there
21 are herniations on there. There are some degenerative findings
22 in the discs. Obviously, she doesn't have 25-year old discs, but
23 the discs are herniated and bulged. To have that occur, there
24 needs to be tearing of the disc wall. There is no way for you to
25 have either one of those without the disc wall tearing.

1 Again, in the realm of coming to a conclusion, you
2 know, if a person has the same symptoms but they never had an
3 accident, then you could reasonably say that it's possible it was
4 just degeneration. But if you have a history of being hit by a
5 car with disc herniations, and they never had a history of prior
6 problems or need for treatment for neck or back problems, you
7 know, if the degeneration is present, it wasn't clinically a disc
8 herniation. It's two distinctive processes. So, yes, there are
9 degenerative findings on the MRIs, but did the degeneration cause
10 those herniations? In my opinion, no, taking into account all of
11 the clinical information.

12 Q. Doctor, why is it important to take into account the
13 clinical information?

14 A. Because you don't know what was the historical details
15 that led to the request of that test. I mean, a radiologist
16 doesn't have the benefit of examining somebody. That's why when
17 you see reports, a lot of times you see clinical correlations
18 necessary. Because just by looking at a piece of film or an
19 image, you can't say definitively, unless there was no herniation
20 present, which is not the case here, that it's only degeneration,
21 but there is degeneration. She is a 40 plus year old person when
22 the study was taken, but there are herniations there. And you
23 have to rely on the pertinent information that led to those
24 symptoms that developed to order the tests. You can't take the
25 car accident out of the equation, because, you know, in my review

1 of this, there would have been no MRI if she wasn't hit by the
2 car. So, I mean, that's why it's important to have that
3 information.

4 Q. And Doctor, you did perform a clinical examination to
5 Ms. Soto, correct?

6 A. Yes.

7 Q. Let's turn to your examination, please. You told us
8 earlier that you examined Ms. Soto on October 28, 2016, correct?

9 A. Yes.

10 Q. When you saw Ms. Soto in 2016, what were her
11 complaints?

12 A. She was complaining of persistent radiating neck and
13 back pain that was shooting to her arms and leg and also
14 left-sided rib cage pain.

15 Q. Doctor what, if anything, was the significance of those
16 complaints in October of 2016, over three years after she was hit
17 by the car in February of 2013?

18 MR. PELUSO: Objection, your Honor. Calls for
19 speculation.

20 THE COURT: Overruled.

21 Please, you can answer, sir.

22 A. Again, the timing of this exam was several years after
23 having been hit by the car. With all these findings that were
24 seen on the objective tests, it demonstrates that she is still
25 having some physical issues and physical orthopedic impairments

1 from these problems.

2 Q. Doctor, after Ms. Soto made those complaints to you in
3 2016, did you conduct an examination of her?

4 A. Yes, sir.

5 Q. What did your examination consist of?

6 A. It consisted of a neck, back and rib cage examination.

7 Q. Could you please tell us how you examined her neck, her
8 back and her rib cage? What did you do?

9 A. Well, when speaking of the neck and back, we examine
10 them as separate areas. We speak of the cervical spine, which is
11 characterized in the report. We checked several ranges of
12 motion. So, the four ranges of motion for the neck and spine is
13 for the neck there is flexion, which is bending forward;
14 extension, patient to the right and left; and then side bending
15 to the right and left. And the measured flexion for her neck was
16 50 degrees and normal is 60. Her extension was 20 and normal is
17 75. Her bending was 25 and normal is 45. And her rotation was
18 20 and normal is 80. We did what is called a palpation exam
19 where you actually physically touch the muscles of the tissues
20 and the bones and there was muscle spasm noted from the base of
21 her skull all the way down to her trapezius, which is the base of
22 her neck. And she had what's called a positive Spurling test,
23 which is a test when positive is a clinical indicator of a
24 pinched nerve or a herniated disc.

25 Q. Doctor, before we move on to the neck, what, if

1 anything, is the significance of the limitation of the range of
2 motion of Ms. Soto's neck in 2016 when you conducted your range
3 of motion test?

4 A. Well, again, range of motion is one of the indicators
5 of the health of a joint or a body system. Any impairment of
6 range of motion manifests an abnormality to that area. And the
7 presence of these range of motion impairments that many years
8 after this incident, number one, they're significant range of
9 motion impairments. And the persistence for that many years
10 would indicate that they have a level of permanency.

11 Q. Now, Doctor, there is something called passive range of
12 motion testing and active range of motion testing; is that
13 correct?

14 A. Yes.

15 Q. Can you describe what they are and what are the
16 differences?

17 A. Well, when you speak of range of motion and you're
18 assessing the movement of a joint. Now, when we speak of passive
19 range of motion, say if I'm checking the motion of this finger, I
20 will bend it until it stops moving and I will straighten it until
21 it stops moving and that's passive range of motion. Now, when I
22 speak of active range of motion, I will tell you, bend your
23 finger. Straighten your finger. That's active range of motion.
24 So, when we speak of the differences of active versus passive,
25 it's an active range of motion really is dependent upon the

1 cooperation of the person that is doing the movement. So, if a
2 person doesn't bend all the way because it hurts, that is a less
3 subjective assessment, because you are relying on them to stop
4 when they say they feel pain. But that same person, if you did
5 it passively, you will usually get more range of motion in
6 assessing that. So, when we speak of passive range of motion
7 where you actually physically bend a joint and take a measurement
8 and straighten a joint and take a measurement without the person
9 interfering with that, that is truly an objective assessment,
10 meaning it is independent of the person's participation. When
11 you speak of active range of motion, where you're asking them to
12 move, it's obviously subjective.

13 Q. What type of range of motion test did you perform to
14 Ms. Soto's cervical spine?

15 A. Passive range of motion.

16 Q. Doctor, let's look at your examination of her lumbar
17 spine, please.

18 A. So, again, we're speaking of the lower back or the back
19 itself. I'm sorry. When we speak of the ranges of motion, it's
20 flexion, which is bending forward; extension, rotation to the
21 right, left; and side bending to the right and left. And when we
22 speak of lumbar flexion, it was measured to be 40, normal is 90.
23 The extension was 20 and normal is 30. The bending was 25 and
24 normal is 40. And the rotation was 15 and normal is 30. Again,
25 to palpation, it was muscle spasm in the lower back from L1

1 through L5. So, all the muscles in the entire lower spine were
2 found to be tight. There was a positive straight leg raising
3 test on the right side, which again, like the cervical spine,
4 that's a positive clinical test for a pinched nerve or a
5 herniated disc in the lower back if that test is positive.

6 Q. Doctor, what, if anything, is the significance of the
7 limitations that you found to Ms. Soto's lumbar spine in 2016?

8 A. Again, for the same reasons, they're significant
9 impairments. Range of motion impairment is a manifestation of
10 abnormality to the health of spine. The persistence of that
11 abnormality for so many years, again, would imply a level of
12 permanency.

13 Q. Now, Dr. Dassa, I want you to assume that we heard
14 testimony from Ms. Soto that she was hit by a car while she was a
15 pedestrian; that she felt immediate pain to her side, her neck
16 and her back. Is an 11th left rib fracture consistent with those
17 complaints?

18 A. Yes, sir.

19 Q. Do you have an opinion to within a reasonable degree of
20 medical certainty as to what the cause of that 11th rib fracture
21 is?

22 A. I do.

23 Q. What is that, please?

24 A. Again, it was the car accident of 2/26/13.

25 Q. And that is your opinion to within a reasonable degree

1 of medical certainty?

2 A. Yes, sir.

3 Q. Doctor, I want you to further assume that Ms. Soto
4 provided testimony in this case where she stated that as a result
5 of being hit by the car, her body was thrown to the ground.

6 Doctor, is that consistent with a finding of multi-level cervical
7 and lumbar bulges and herniations?

8 A. I mean, again, it's consistent with -- if that's as
9 described the way it occurred, consistent with an occurrence that
10 would produce those injuries, yes.

11 Q. And do you have an opinion to within a reasonable
12 degree of medical certainty as to what the cause of those
13 cervical bulges and herniations and those lumbar bulges and
14 herniations is?

15 A. Yes, sir.

16 Q. What is that opinion?

17 A. It's the same car accident from 2/26/13.

18 Q. Doctor, I want you to further assume that Ms. Soto
19 testified that she continues to experience pain in her left rib
20 area, in her neck and in her back. That she is limited in
21 enjoying the activities that she would enjoy before this
22 accident. She talked to us about bowling with her family, going
23 to amusement parks, being able to do her household chores. I
24 want you to assume that she testified that she was unable to do
25 her household chores, that her daughter had to pickup that task

1 for her. I want you to assume that she testified she was unable
2 to return to work for approximately three and a half months, but
3 even after returning to work, she would go to work some days in
4 pain. Doctor, do you have an opinion to within a reasonable
5 degree of medical certainty what the cause of that continuing
6 pain and those limitations is?

7 THE COURT: I'm going to sustain the objection.

8 MR. PELUSO: Objection.

9 THE COURT: Thank you.

10 MR. PELUSO: Sorry.

11 THE COURT: I'm going to ask you to rephrase that.

12 MR. WATTLEY: Sure.

13 Q. Doctor, I want you to assume that Ms. Soto testified
14 that she continues to experience limitations in the performance
15 of some of her daily activities. That some of those daily
16 activities are her household chores. She continues to experience
17 limitations in interacting with her family, going bowling, going
18 to the amusement park, and she continues to experience pain even
19 when she went back to work, and she was prevented from going back
20 to work for a period of time, a little over three months. Do you
21 have an opinion within a reasonable degree of medical certainty
22 why she continues to experience that pain and those limitations?

23 MR. PELUSO: Objecting, your Honor.

24 THE COURT: Overruled.

25 THE WITNESS: May I answer?

1 THE COURT: No.

2 Are you asking whether those symptoms can be
3 causally related to this accident?

4 MR. WATTLEY: Yes, Judge, but I didn't want to
5 lead. That's why I asked the why I did.

6 THE COURT: Can you answer?

7 THE WITNESS: Yes.

8 THE COURT: I'll allow it.

9 A. The symptoms as described are consistent with the
10 injuries as documented. They're consistent with her complaints
11 all along. So, yes.

12 Q. And is that your opinion to within a reasonable degree
13 of medical certainty, Doctor?

14 A. Yes, sir.

15 Q. Doctor, do the injuries to Ms. Soto's neck, left side
16 ribs and lower back constitute a significant limitation of use of
17 those body parts?

18 A. Yes.

19 Q. Why is that?

20 A. Again, her range of motion impairments are significant
21 reductions. If you don't have normal movement, there is
22 limitation in a lot of physical functions you can do or cannot
23 do. She also has tension signs, which are signs, clinical
24 manifestations of irritated nerves or pinched nerves. Those also
25 provide significant impairment of bodily functions, feelings,

1 dexterity, doing different things, walking, sitting, standing.
2 It effects all those things.

3 Q. Do you have an opinion within a reasonable degree of
4 medical certainty of what the cause of that significant
5 limitation is?

6 A. Yes.

7 Q. What is the cause?

8 A. It would be the injuries that were sustained in the car
9 accident of 2/26/13.

10 Q. Doctor, do the injuries to Ms. Soto's rib, left-sided
11 rib, neck and back constitute a permanent consequential
12 limitation of use to those body parts?

13 A. Yes, sir.

14 Q. Why?

15 A. Because, again, she got hurt in 2013. A reasonable
16 timeframe has really been exceeded in which they should have been
17 back to normal. And she has significant dysfunction in both her
18 neck and back. And the persistence of abnormal physical finding
19 beyond that reasonable timeframe would indicate that this is a
20 permanent issue for her.

21 Q. Do you have an opinion within a reasonable degree of
22 medical certainty what the cause of that permanent consequential
23 limitation is?

24 A. Yes, sir.

25 Q. What is that opinion?

1 A. Again, it was the injury sustained to those areas in
2 the same car accident.

3 Q. Doctor, the injuries that Ms. Soto sustained, did those
4 injuries -- strike that. I apologize.

5 Doctor, the injuries that Ms. Soto sustained, do those
6 injuries constitute a medically determined injury that would
7 prevent her from performing her usual and customary daily
8 activities?

9 A. Repeat the question. I'm sorry.

10 Q. Sure. The injuries that Ms. Soto sustained to her
11 left-sided part of her body, her neck and her back, were those
12 injuries medically determined, and if so could they prevent her
13 from performing her usual and customary daily activities?

14 MR. PELUSO: Objection as to a compound question
15 as well as leading, your Honor.

16 THE COURT: Yes. Rephrase the question.

17 MR. WATTLEY: Sure.

18 Q. The injuries that Ms. Soto sustained, those were
19 medically determined, correct?

20 A. Yes, sir.

21 Q. And could those medically determined injuries prevent
22 her from performing her usual and customary daily activities?

23 A. Yes, sir.

24 Q. Why is that?

25 A. Again, as I stated earlier, she has impairments to her

1 neck and back. For all the reasons stated earlier, range of
2 motion impairment, findings of pinched nerves, soft tissue
3 dysfunction, they all impact a person's function to do things.

4 Q. And Doctor, do you have an opinion within a reasonable
5 degree of medical certainty what the cause of those impairments
6 and that inability to perform those usual and customary daily
7 activities is?

8 A. Yes.

9 Q. What is it?

10 A. The same accident from 2/26/13.

11 Q. Do you have an opinion within a reasonable degree of
12 medical certainty whether the injuries Ms. Soto sustained as a
13 result of this car accident, being hit by this car, are
14 permanent?

15 A. Yes.

16 Q. What is that opinion?

17 A. They are.

18 Q. How would those injuries affect her moving forward?

19 A. Again, she has disc herniations and bulges. These
20 conditions generally don't get better if they haven't proven to
21 be better. They get worse over time. So, you can anticipate
22 increased pain over time, increase in mobility over time, more
23 findings of pinched nerves with tingling and numbness. Things of
24 that nature.

25 Q. And Doctor, after taking a history, reviewing the

1 medical records, conducting an examination of Ms. Soto, did you
2 arrive at a prognosis?

3 A. Yes.

4 Q. First, what is a prognosis? What does that mean?

5 A. It's an expected outcome of any condition.

6 Q. What, if anything, was your prognosis for Ms. Soto?

7 A. I listed in my report as guarded.

8 Q. Tell us what that means.

9 A. Basically, it's a watch and wait type of phenomenon.
10 In dealing with patients that have complicated injuries, you
11 know, it changes from day-to-day and you will manage it based
12 upon how the symptoms manifest themselves.

13 Q. And after conducting an examination, listening to a
14 history, reviewing medical records, did you arrive at a
15 conclusion or an impression as to what, if any, surgical
16 procedures or treatment may be needed in the future?

17 MR. PELUSO: Objection, your Honor. Calls for
18 speculation.

19 THE COURT: Overruled.

20 Please. You can answer that, sir.

21 A. My general recommendation was for physical therapy.
22 Also, an evaluation by a pain management specialist for
23 interventional pain management injections. And then, at the end
24 of the spectrum, if all those things failed to alleviate her
25 symptoms, to be seen by a spine surgeon to actually remove those

1 discs and assess whether effusion of those bone segments would be
2 necessary as well.

3 MR. WATTLEY: Thank you, Dr. Dassa.

4 I have no further questions at this time.

5 THE COURT: Thank you, sir.

6 Counsel, cross-examination.

7 MR. PELUSO: Thank you, your Honor.

8 CROSS-EXAMINATION

9 BY MR. PELUSO:

10 Q. Doctor, you're not a spinal surgeon, correct?

11 A. No, sir.

12 Q. You're not a neurologist?

13 A. No, sir.

14 Q. You're not a board certified radiologist, correct?

15 A. I am not, sir.

16 Q. Now, you spoke about the hospital records that you
17 reviewed before coming to your conclusions, correct?

18 A. Yes, sir.

19 Q. Okay. I'm going to show you what has been marked as
20 Defendant's Exhibit C, which is already in evidence. I'm going
21 to show you Jacobi medical records.

22 MR. PELUSO: May I, your Honor?

23 THE COURT: Yes.

24 Q. I want you to look through that and point me to the
25 area of the hospital records where the plaintiff in this case

1 made complaints of pain to her neck and her back.

2 A. There is no statement of any complaints anywhere on
3 this paper.

4 Q. That's all that you can -- it's more than one page.

5 A. Oh, you want the whole record? I'm sorry.

6 Q. Go through the entire thing and let me know where you
7 see the plaintiff made complaints of her neck and back.

8 A. (Complies.) There are none.

9 Q. There are none. And you just reviewed the entire
10 medical record from Jacobi Hospital, correct?

11 A. Yes, sir.

12 Q. And there are absolutely no complaints that were made
13 on the day of the accident of her neck or back pain, correct?

14 A. That is correct.

15 Q. Okay. Now, if somebody got hit by a car and actually
16 did sustain injury to the neck and back, you would assume that
17 they would voice complaints about pain to the neck or back,
18 correct?

19 MR. WATTLEY: Objection. Calls for speculation.

20 THE COURT: Overruled.

21 A. Again, it depends.

22 Q. It depends. It depends on whether they actually
23 sustained those injuries and felt that pain, correct?

24 A. No. Again, it depends on --

25 Q. It's a yes or no, Doctor.

1 A. Again, the way you're stating it, no, that's not what I
2 was trying to say.

3 Q. Okay. Doctor, you reviewed some medical records in
4 connection with the report that you filled out, correct?

5 A. Yes, sir.

6 Q. And you reviewed a Bill of Particulars?

7 A. Yes.

8 Q. Which are claims by the plaintiff in connection with
9 this lawsuit?

10 A. Yes, sir.

11 Q. And that's a legal document that is drafted by a law
12 firm with the claims that are being alleged, correct?

13 A. Yes, sir.

14 Q. So, you knew what was being alleged when you were going
15 through the medical records, right?

16 A. Yes, sir.

17 Q. And you also reviewed multiple medical records from
18 Jacobi Hospital, correct?

19 A. Yes.

20 Q. And multiple MRI reports from Stand-Up MRI, correct?

21 A. Yes, sir.

22 Q. Now, MRI reports are things that are drafted by a
23 radiologist affiliated with diagnostic facilities, correct?

24 A. Yes, sir.

25 Q. And you reviewed those reports?

1 A. Yes.

2 Q. You did not review the actual films, did you?

3 A. I mean, when I did the report, no. I did come to see
4 them later on.

5 Q. You did come to see them later on. Is that earlier
6 today for the first time?

7 A. Yes.

8 Q. So, the first time that you actually saw these films
9 was earlier today?

10 A. Yes.

11 Q. Okay. And the first time that you reviewed the films
12 from Jacobi Hospital was earlier today?

13 A. That's not accurate.

14 Q. When did you review those films?

15 A. When I did the report.

16 Q. When you did the report. Did you get the actual films
17 when you reviewed them or did you get them in CD form?

18 A. To my recollection, I had printed records, but there
19 were discs that had x-ray images of both the Jacobi Medical
20 Center and also the second x-ray that I looked at.

21 Q. The second x-ray that you looked at?

22 A. Yes.

23 Q. Okay. Can you point me to the part of your report that
24 refers to the follow-up x-ray, the fact that you actually
25 reviewed those records?

1 A. Well, the discs that I looked at were with the Jacobi
2 medical records, so I must have listed them all in that section,
3 because that's what they were connected to. I didn't list them
4 as a separate thing, but I do recall seeing both discs, and I
5 definitely didn't see discs on the spine.

6 Q. Okay. So, you didn't see discs on the spine, but you
7 saw discs from Jacobi Medical Center, and you also saw discs from
8 the follow-up rib series. Do you remember the name of that
9 facility?

10 A. I believe it's Distinguished Diagnostics.

11 Q. So, you remember the name of the facility where you saw
12 the actual films, but you didn't differentiate that in the
13 review?

14 A. Again, I didn't know because I saw it this morning.
15 Again, this exam happened in 2016. So, you know, I don't recall
16 all the details, but I know I did look at two discs. One with
17 the x-ray from Jacobi, one with the follow-up x-ray. Again,
18 because they were with Jacobi records, I probably assumed they
19 were altogether.

20 Q. Do you have those discs with you today? Did you bring
21 them with you?

22 A. No, sir.

23 Q. Okay. Now, I want you to point me to the area in your
24 report where you refer specifically to the records that you
25 reviewed from Distinguished Diagnostics?

1 A. Again, I stated earlier I didn't list it separately.

2 Q. So, you reviewed a film from a separate medical
3 facility and you didn't mention it once in the report that you
4 drafted for the plaintiff?

5 A. No, sir.

6 Q. Now, also in coming to your conclusion, you mentioned
7 considerable chiropractic treatment; is that correct?

8 A. Can you speak to the sentence you're speaking of?

9 Q. The first page of your report, four or five sentences
10 up.

11 A. Yes.

12 Q. Considerable amount of conservative treatment?

13 A. Yes.

14 Q. That's what ultimately led you to your conclusion,
15 correct?

16 A. No.

17 Q. Well, that was a factor. The amount of treatment that
18 someone receives after an accident would be an indicator for how
19 severe their injuries are, correct?

20 A. Again, that's only one factor to consider as it
21 pertains to my conclusions as it pertains to injuries sustained.
22 I mean, obviously, if she had treatment, if represented with
23 those injuries, but it wasn't the only factor. It was one of the
24 factors, but not a major factor.

25 Q. But you mentioned considerable treatment was enough of

1 a factor for you to put it in the report you drafted for the
2 plaintiffs in this case, correct?

3 A. Again, it's in the report.

4 Q. I want you to assume that the plaintiff in this case
5 had 16 total chiropractic treatments and 10 total acupuncture
6 treatments following this accident. Would you consider that
7 considerable?

8 A. Yes.

9 Q. You would?

10 A. Yes.

11 Q. Okay. Did you review those films? Did you review
12 those records?

13 A. No.

14 Q. You didn't review any chiropractic records?

15 A. I was not provided any.

16 Q. Other than Jacobi Medical Center, which obviously is
17 devoid of any complaints of neck and back pain, and the films
18 that you reviewed, did you review any records from her treating
19 physician?

20 A. I listed what I reviewed, sir. I didn't see any
21 chiropractic records.

22 Q. Okay. So, according to the records that you reviewed,
23 you reviewed MRI reports and presumably films and Jacobi Medical
24 Center records, correct?

25 A. Yes.

1 Q. No other records?

2 A. Again, I listed what I reviewed.

3 Q. Okay. So, if it's not in your report, you didn't
4 review it?

5 A. That is correct.

6 Q. Did you not think it was relevant?

7 A. Again, I'm not a chiropractor. That discipline, other
8 than the fact that it was a treatment that was given to the
9 patient, doesn't affect my orthopedic opinion. So, it was enough
10 in the historical details that were provided by the patient that
11 she had chiropractic treatment to know that she had some
12 treatment. The absence of that doesn't change my conclusions
13 when it comes to impairment assessment to see her neck, back and
14 ribs were normal.

15 Q. So, if you didn't review any chiropractic records or
16 acupuncture records or any other records from her actual treating
17 doctors, you would agree with me that you didn't review the total
18 medical history of this patient before she came to see you on one
19 occasion?

20 A. Again, I listed what I reviewed. I reviewed --

21 Q. It's either yes or no, Doctor.

22 MR. WATTLEY: Objection. It was not a yes or no.

23 THE COURT: The doctor has testified and will
24 testify, obviously, that he has indicated what he reviewed.

25 Q. Doctor, you saw the plaintiff in this case on

1 October 28th of 2016?

2 A. Yes, sir.

3 Q. And you're aware this accident happened on
4 February 26th, 2013?

5 A. Yes.

6 Q. So, that would be three years and eight months after
7 this accident?

8 A. Yes.

9 Q. That was the first and only time that you saw her?

10 A. Yes, sir.

11 Q. Now, with regards to her actual treatment, if she had
12 any treatment after this accident, wouldn't you agree with me
13 that an actual treating doctor would be in a better position to
14 comment on her injuries, better than you?

15 MR. WATTLEY: Objection.

16 THE COURT: Overruled.

17 A. Obviously, a treating doctor would be in a better
18 position to comment on a person's impairments.

19 Q. So, you agree with me?

20 A. Yes.

21 Q. You're here today as an expert witness, correct?

22 A. Yes.

23 Q. You saw her on one occasion?

24 A. Yes.

25 Q. You didn't give her any treatment whatsoever, correct?

1 A. No, sir.

2 Q. Now, you mentioned that you've testified for the law
3 firm of Burns & Harris before?

4 A. Yes, sir.

5 Q. And you've actually had trials where you testified in
6 court with Mr. Wattley before?

7 A. I believe so, yes.

8 Q. Approximately, how many times have you testified on
9 behalf of the law firm of Burns & Harris?

10 A. I don't know.

11 Q. Can you give me a ballpark?

12 A. It was many times. I can't say exactly. It's not
13 something I quantify or pay attention to. It was many times
14 though.

15 Q. Many times?

16 A. Yes.

17 Q. Okay. Are there other cases pending that you have with
18 Burns & Harris or you will be testifying in the future?

19 MR. WATTLEY: Objection.

20 THE COURT: Sustained.

21 Q. Doctor, you have a website, correct?

22 A. Yes.

23 Q. And part of that website -- the website is for the
24 purposes of advertisement, correct?

25 A. In part, yes.

1 Q. In part. So, you put your name out there to meet
2 Dr. Dassa. You know, it reviews your specialties and what you
3 focus on and things like that?

4 A. Yes.

5 Q. Okay. And on your own website, you list 27 different
6 orthopedic conditions that you're capable of treating, correct?

7 A. Again, it's a list of some of the things I treat, yes.

8 Q. Some of the things that you treat?

9 A. Yes.

10 Q. Okay. Out of the entire 27 things that are listed on
11 your website, they refer to treatments of the hand, right?

12 A. Yes.

13 Q. Treatments of the arm, right?

14 A. Yes.

15 Q. Treatments of the shoulder?

16 A. Yes.

17 Q. Treatments of the knee?

18 A. Yes.

19 Q. Out of all of those 27 things that are listed on your
20 website with regards to orthopedic conditions that you treat,
21 there is not one that specifically refers to the neck or the
22 back, correct, Doctor?

23 A. Again, for that particular site, I don't do spine
24 surgery or neck surgery, as I stated earlier. So, I wouldn't
25 have listed that on my website. So, no, it's not there.

1 Q. So, the neck and the back is not part of the
2 specialties you list on your own website?

3 A. To perform surgery, correct, yes. I do treat neck and
4 back conditions. But surgically, it would not be proper
5 advertisement if I listed those conditions that I treat
6 surgically, because I don't do neck and back surgery.

7 MR. WATTLE: Objection.

8 Q. On your website, you would agree with me, that the
9 conditions are listed as orthopedic conditions and not conditions
10 that I can perform surgery on?

11 A. Sir, it is my website. It's a surgical website. It's
12 a website to inform patients of things about my practice that set
13 me apart from people in the community. I'm a trained hand
14 surgeon in addition to an orthopedic surgeon, a general
15 orthopedic surgeon. I also fix fractures, and I also do knuckle
16 replacements. There is a whole list of things that I do that are
17 not on that list. That's just a general list. That's not an all
18 inclusive list. There is not enough room on that page to list
19 everything that I do. Those are common things that are common
20 needs in the patient population that I treat. So, that's why
21 they are listed there. The omission of those things do not mean
22 I do not treat those problems.

23 Q. So, putting neck and back on a list of conditions,
24 herniated discs, bulging discs, that would take up too much room
25 on your website?

1 A. I don't do neck and back surgery. That would be false
2 advertisement.

3 MR. WATTLEY: Objection.

4 THE COURT: Sustained.

5 A. I don't do neck and back surgery.

6 Q. You don't do neck and back surgery?

7 A. No.

8 Q. But you said you treat conditions to the neck and back,
9 right?

10 MR. WATTLEY: Objection. Asked and answered.

11 THE COURT: Yes. Now, we're getting
12 argumentative. Please, let's move on, sir.

13 Q. Now, part of your curriculum vitae, which I took off
14 your website, has a series of employment, correct?

15 A. Yes, sir.

16 Q. From 2002 to 2010, you were the attending orthopedic
17 surgeon/hand surgeon at All Medical Rehabilitation?

18 A. Yes, sir.

19 Q. And from 2010 to present, you worked at Central Valley
20 Orthopedics as an attending orthopedic surgeon/hand surgeon?

21 A. Yes.

22 Q. And 2010 to present, at Bronx Medical Orthopedic
23 Associates, you've been the medical director, attending
24 orthopedic surgeon/hand surgeon?

25 A. Yes.

1 Q. Doctor, according to your curriculum vitae, you would
2 agree with me that your specialty is in the hand, correct?

3 A. No, sir.

4 Q. No?

5 A. No.

6 Q. So, you list on your CV, specifically mention hand
7 surgeon, but you wouldn't say that you specialize in hand
8 surgery?

9 A. I'm an orthopedic specialist. I'm a specialist in
10 orthopedic surgery that has a subspecialty in hand surgery.

11 Q. Subspecialty in hand surgery?

12 A. Yes.

13 Q. Have you ever performed any spinal surgery?

14 A. I have as a resident.

15 Q. Which is when?

16 A. Between 1993 through 1997.

17 Q. And since 1997, you haven't performed any spinal
18 surgeries or anything like that?

19 A. No, sir. I don't do spine surgery as part of my
20 practice.

21 Q. Now, you have a few publications as well, correct?

22 A. Yes.

23 Q. The publications that you have, they comment on things
24 that you're an expert in, right?

25 A. Again, they comment on research that I did as part of

1 my hand surgery fellowship. So, those are publications pertinent
2 to research and an operation that I developed with the team at
3 the Hospital for Joint Diseases.

4 Q. So, the publications that you have, the research
5 projects that you are involved in, and the scientific
6 publications that you are involved in both locally and
7 internationally, none of those have anything to do with the neck
8 and back, correct?

9 A. That's correct.

10 Q. You don't have any publications as to the treatment of
11 the spine?

12 A. No, sir.

13 Q. You don't have any publications as to spinal surgery?

14 A. No, sir.

15 Q. Now, the one time that you treated the plaintiff in
16 this case, about three years and eight months after the accident
17 occurred, you're aware that when you saw her, it was three years
18 and eight months after her treatment stopped completely, correct?

19 A. Yes.

20 Q. So, from about June of 2013 until she saw you in
21 October of 2016, you are aware that she didn't receive treatment
22 of any kind in connection with this accident?

23 A. To my recollection, yes, that's accurate.

24 Q. Now, you said that your findings in the MRI films,
25 which you saw for the first time this morning, you said that

1 those findings can cause pain, correct?

2 A. Yes.

3 Q. Now, if somebody was in a significant amount of pain in
4 connection with these findings, do you think they may have said
5 something from June of 2013 until you were seen, until you saw
6 her in October of 2016?

7 MR. WATTLEY: Objection. Calls for speculation.

8 THE COURT: I will allow it.

9 A. Again, if a person is in pain or not does not always
10 account for why there was no treatment. I don't know all the
11 circumstances around her not having treatment. I can't say that
12 she didn't have pain in that timeframe. I didn't see her, except
13 for October 28, 2016.

14 Q. Okay. You testified that you performed an
15 examination --

16 A. Yes.

17 Q. -- on Ms. Soto?

18 A. Yes, sir.

19 Q. And, approximately, how long did that examination take?

20 A. I don't remember.

21 Q. Was it minutes?

22 A. It wouldn't be minutes, but I don't remember exactly
23 how long.

24 Q. It didn't take a whole day, did it?

25 A. Obviously not.

1 Q. You would agree with me that your entire involvement in
2 Ms. Soto's life had absolutely nothing to do with her care and
3 treatment and absolutely everything to do with this litigation?

4 MR. WATTLEY: Objection.

5 THE COURT: I'm going to sustain that.

6 Q. Now, this report that you drafted, did you send that
7 directly to Burns & Harris or did you give a copy to Ms. Soto?

8 A. It would have been sent directly to Burns & Harris.

9 Q. So, the recommendations that you were making, that was
10 for the attorneys, right? That wasn't for the patient?

11 A. I don't generally give reports to patients, I discuss
12 recommendations with them. The report was just a chronicling of
13 the things that I discussed with the patients and the things I
14 did with the patient. I don't give reports to patients unless
15 they specifically ask for them.

16 Q. So, the recommendations that you made weren't
17 specifically geared for the plaintiff in this case, right, it was
18 for the attorneys?

19 MR. WATTLEY: Objection.

20 THE COURT: I have to sustain that question.

21 Q. Doctor, earlier you testified that you recommended
22 physical therapy treatment, correct?

23 A. Yes.

24 Q. Are you aware that she didn't have any further physical
25 therapy treatment after she saw you?

1 A. Yes.

2 Q. You recommended a consultation with a pain management
3 specialist for epidural injections, right?

4 A. Yes.

5 Q. Are you aware that from the time she saw you in 2016 up
6 until today's date she never had any epidural injections?

7 A. Yes.

8 Q. Are you aware that from the date of this accident up
9 until today she has never received any injections of any kind in
10 connection with this accident?

11 A. Yes.

12 Q. And you also testified that you recommended a
13 consultation with a spine surgeon, right?

14 A. If the other measures did not prove to be successful,
15 yes.

16 Q. Are you aware that she didn't receive treatment from
17 any spine surgeons, treat or consult with any spine surgeons in
18 connection with this accident?

19 A. Yes.

20 Q. So, you would agree with me that she didn't take your
21 recommendations too seriously?

22 MR. WATTLEY: Objection.

23 THE COURT: I will sustain that objection, yes.

24 Q. Now, the examination that you performed on the
25 plaintiff in this case during the one time that you saw her three

1 years and eight months after this accident, the ranges of motion
2 testing that you performed was done with what's called a
3 goniometer?

4 A. Yes.

5 Q. And that's a contraption that measures the angles that
6 somebody can bend laterally, flexion, extension, things like
7 that?

8 A. Yes, sir.

9 Q. And when you're doing those measurements, you stop when
10 someone says -- when I move that far, it hurts, right?

11 A. No.

12 Q. No?

13 A. No.

14 Q. Okay. You didn't do any of that testing at all?

15 A. Again, I did passive range of motion. In the event
16 that it occurs where the person says stop, it would be noted in
17 the report. So, the way that you described it, that's not what
18 happened. I bent her spine to where it stopped moving. She
19 never stopped me from doing it. I measured it. I twisted her
20 spine to where it stopped moving, so it wasn't the way you
21 described it.

22 Q. You didn't move it to a point where it could still go,
23 but she said pain, that didn't happen?

24 MR. WATTLE: Objection.

25 A. No.

1 MR. WATTLEY: Asked and answered.

2 THE COURT: Overruled.

3 Q. Doctor, we touched on degeneration and disc
4 desiccation. You would agree with me that there are findings of
5 degeneration and disc desiccation in the MRI films you saw for
6 the first time this morning?

7 A. Yes.

8 Q. Reviewing these films you saw for the first time, when
9 did you get here to start reviewing all of them?

10 MR. WATTLEY: Objection.

11 THE COURT: I'll allow it.

12 A. I don't know, 9:15, 9:30.

13 Q. And we started testimony a little after 9:30, 9:45?

14 A. I guess. I don't know exactly what time we started.

15 Q. So, you reviewed all of the MRI films for the cervical
16 spine and the lumbar spine in connection with this accident and
17 were able to formulate an opinion after reviewing them for 15,
18 20 minutes?

19 A. Yes, sir.

20 Q. And you reviewed all of them?

21 A. Yes.

22 Q. Or you just reviewed the ones that you wanted to look
23 at?

24 A. I reviewed all of the series.

25 Q. All of the series?

1 A. Yes.

2 Q. So, the report that you drafted for the plaintiff's
3 attorney in this case, you drafted that report before ever seeing
4 any of these films, right?

5 A. I haven't seen the films before today, yes, you're
6 correct.

7 Q. So, the report was drafted in 2016, after you saw
8 Ms. Soto, before you even looked at these?

9 A. Again, I had the MRI reports. There was no discrepancy
10 in what I interpreted and what the radiologist interpreted.

11 Q. Yes or no?

12 MR. WATTLEY: Again, it's not yes or no.

13 THE COURT: Counsel. Overruled.

14 Q. Before you drafted your report, yes or no, did you
15 review these films?

16 A. No.

17 Q. So, you came to a medical conclusion with a reasonable
18 degree of medical certainty in the report that you drafted back
19 in 2016 before reviewing these films, correct?

20 A. Yes, sir.

21 Q. And it just so happens that your testimony today
22 correlates perfectly with your report, correct?

23 A. It's not coincidental. It's a my report. It's my
24 opinion. That was my opinion in 2016, and I haven't changed it.

25 MR. PELUSO: I have nothing further, your Honor.

1 Thank you, Doctor.

2 THE COURT: Any redirect?

3 MR. WATTLEY: Yes. Thank you, your Honor.

4 REDIRECT EXAMINATION

5 BY MR. WATTLEY:

6 Q. Doctor, before arriving at a conclusion in your report
7 back in 2016, you reviewed the MRI reports of the treating
8 radiologist, correct?

9 A. Yes, sir.

10 Q. And did you rely on the findings of the treating
11 radiologist when you came to your conclusions in your report?

12 A. Yes, sir.

13 Q. Why?

14 A. Because I didn't have films to review at the time. So,
15 that was the only objective information pertinent to the
16 complaints that she had connected to this incident.

17 Q. Doctor, in your experience, again a treating
18 radiologist looks at the films and just reports what is seen on
19 the films, correct?

20 A. Yes.

21 Q. Did you have any reason before you drafted your report
22 to doubt what the treating radiologist reported after looking at
23 the films?

24 A. No, sir.

25 Q. You were asked about degeneration on cross-examination.

1 You told this jury on direct that there was some degenerative
2 changes to Ms. Soto's cervical and lumbar spine, correct?

3 A. Yes.

4 Q. And you would expect to see that in a 40 something year
5 old person, correct?

6 A. Yes.

7 Q. The findings of cervical and lumbar herniations, you
8 arrived at those findings after clinically correlating the
9 complaints and the diagnostic testing; is that correct?

10 MR. PELUSO: Objection to the leading, your Honor.

11 THE COURT: I will allow it.

12 A. Yes, sir.

13 Q. So, there were findings on the MRI films, but you
14 conducted an examination, took a history and clinically
15 correlated those findings, correct?

16 A. Yes, sir.

17 Q. And that is what led you to your conclusions, correct?

18 A. Yes.

19 Q. Is that what led you to your conclusions being
20 consistent with what the treating radiologist found?

21 A. Yes.

22 Q. Doctor, in your experience does every patient follow
23 your recommendations?

24 A. No.

25 MR. PELUSO: Objection, your Honor.

1 THE COURT: Sustained.

2 Q. Doctor, does the fact that a patient doesn't follow
3 your recommendations mean that the patient is no longer in pain?

4 MR. PELUSO: Objection, your Honor.

5 THE COURT: Sustained.

6 Q. Doctor, what, if anything, does it mean that a patient
7 does not follow your recommendations?

8 MR. PELUSO: Objection.

9 THE COURT: Sustained.

10 MR. WATTLEY: This was crossed, Judge.

11 Q. Doctor, does the fact that a patient may not follow
12 your recommendation mean that that person is no longer in pain?

13 MR. PELUSO: Objection, your Honor.

14 THE COURT: I'll have to sustain. I'm not going
15 to allow you to inquire into that area.

16 MR. WATTLEY: I'm sorry, Judge?

17 THE COURT: I'm not going to allow inquiry into
18 that area.

19 MR. WATTLEY: It was crossed.

20 THE COURT: I think I sustained a couple of the
21 objections.

22 MR. WATTLEY: I'll move on, your Honor.

23 THE COURT: Thank you.

24 Q. Dr. Dassa, I think it has clearly been established that
25 you're not a spine surgeon, correct?

1 A. Yes.

2 Q. And you're not going to advertise that you do something
3 that you don't do, correct?

4 A. That is correct.

5 Q. And was that why you, as part of your prognosis and
6 recommendations to Ms. Soto, is that why you recommended that she
7 see a spine surgeon?

8 A. Yes.

9 Q. Does the fact that -- strike that. Why wasn't it
10 necessary for you to view the chiropractic or acupuncture
11 records?

12 A. Again, I was asked to draw conclusions pertinent to
13 orthopedic impairments. Were there any lasting physical effects
14 or abnormalities based upon my examination in this person after
15 being injured. These were treatment records from many years
16 before. It only represented that she had some treatment. It
17 doesn't give me any information that would affect my opinion on
18 conclusions pertinent to orthopedic impairments when the patient
19 was impaired. It's either she has normal tissues or not. Either
20 she has findings of a pinched nerve or not. She has them.
21 They're there. The chiropractic treatments don't change that
22 conclusion. These were findings that were made on October 28,
23 2016. So, it doesn't impact those conclusions.

24 MR. WATTLEY: Nothing further.

25 THE COURT: Sir.

1 MR. PELUSO: Just brief recross.

2 RECROSS-EXAMINATION

3 BY MR. PELUSO:

4 Q. Doctor, you said that you reviewed the films from
5 Jacobi Medical Center, right?

6 MR. WATTLEY: Beyond the scope, Judge.

7 THE COURT: One second, please.

8 THE WITNESS: Yes.

9 MR. PELUSO: Sorry, Judge.

10 THE COURT: One second. Sustained, sir.

11 Q. Doctor, if there was a confirmed fracture, would there
12 be any reason for a further test?

13 MR. WATTLEY: Objection.

14 THE COURT: Sustained. Not appropriate for
15 recross on this particular witness.

16 MR. PELUSO: I have nothing further, Judge.

17 THE COURT: Thank you.

18 Thank you, sir. You may step down.

19 Counsel, next witness.

20 MR. WATTLEY: Your Honor, the plaintiff does not
21 have any other witnesses at this time.

22 THE COURT: Do you rest?

23 MR. WATTLEY: No, Judge.

24 THE COURT: Thank you. What are we looking for
25 next, medical records?

1 MR. WATTLEY: Yes, your Honor.

2 THE COURT: We have nothing further for today?

3 MR. WATTLEY: No, Judge. I have not been to 217
4 today.

5 THE COURT: All right. It may be an early day
6 again. And it is a beautiful day outside. So, you can
7 enjoy that. Again, tomorrow, remember, I had 16 cases. I
8 don't anymore. I have 13. It's Friday the 13th, and I have
9 13 cases on. Okay. And again, Monday is my calendar day.
10 So, we cannot take testimony on that day.

11 So, Tuesday would be our last day of trial,
12 correct, gentlemen? Correct, Counsel?

13 MR. WATTLEY: Subject to my ability to rest, yes,
14 Judge.

15 THE COURT: I just want to keep the jury informed
16 so it's not a guess of everyday. But I understand we're
17 dealing with personnel, people, hospitals, doctors,
18 administrators that are not within our control. And I can
19 very well subpoena everybody to come in and then hold
20 everybody in contempt, but the jails are already full. So,
21 I don't want to do that.

22 We're going to adjourn this matter to Tuesday at
23 9:30 in the morning. Again, please do not discuss the case
24 either among yourselves or with anyone else. If anyone
25 tries to discuss this case with you, please let myself, the

1 court officer know or my clerk. I don't want her to feel
2 left out. And please do not do any other research,
3 independent research with respect to anything you've heard
4 here today or in the past days. Thank you very much. Enjoy
5 your day. We'll see you.

6 COURT OFFICER: All rise.

7 (Whereupon, the sworn jurors exited the
8 courtroom.)

9 THE COURT: Counsel, please.

10 MR. WATTLEY: Let the record reflect that this
11 morning, before we started taking testimony, Mr. Peluso
12 counsel for defendant, informed me that he no longer intends
13 to call the orthopedic doctor, Dr. Sheth, or the
14 neurologist, Dr. Golden. As such, I will be seeking for a
15 missing witness charge as to those two doctors.

16 MR. PELUSO: And obviously, it is, as the Court is
17 already aware, I put plaintiff's counsel on notice after the
18 plaintiff testified she received chiropractic treatment,
19 acupuncture treatment, as well as treatment from a doctor
20 that performed EMG, any of those doctors who have not
21 appeared and as treating doctors I'm going to be asking for
22 missing witness charges on every single one of them.

23 THE COURT: We'll do that at our charge
24 conference, just so we can get the names and what they --
25 and we need to have a bases or a reason for that witness not

1 appearing.

2 MR. PELUSO: To avoid the missing witness charge,
3 Judge?

4 THE COURT: No, when you give a missing witness
5 charge, it tells you the witness and this and that, and
6 there is a basis or reason for it. It's for a determination
7 for the jury whether or not they give my credence for that
8 missing witness charge. They can very well find that it
9 wasn't necessary to call that witness. If you read the
10 charge, that's what it says.

11 MR. PELUSO: Understood, Judge. Just with regards
12 to the medical record that is apparently being subpoenaed
13 from Jacobi.

14 THE COURT: Yes.

15 MR. PELUSO: It's a blowup --

16 THE COURT: Excuse me.

17 (Whereupon, a brief pause in the proceedings was
18 held.)

19 MR. PELUSO: It appears to be the blowup from
20 discharge papers that were from Jacobi Hospital. Now, those
21 are not part of the actual Jacobi medical records, as we
22 know, because the subpoenaed records are already here, and
23 that was a document that was signed by Ms. Soto when she
24 was --

25 THE COURT: Discharged.

1 MR. PELUSO: When she was discharged. There is no
2 medical finding on these films, on this record. So, there
3 is no reason why the record would be coming into evidence.

4 MR. WATTLEY: I absolutely disagree, Judge. This
5 is a medical record from Jacobi Medical Center that
6 strangely was part of the subpoenaed records when I reviewed
7 them the week before this trial started and for some
8 inexplicable reason was not part of the subpoenaed records
9 when I went to cross-examine the defendant radiologist. It
10 is part of the Jacobi Medical Center records. It is not a
11 record my client has created. It has been subpoenaed.

12 THE COURT: We have reviewed this situation. My
13 determination will be based on whether or not it's here and
14 I'll make that determination at some other point. You
15 indicated to this court on a number of occasions that you
16 had reviewed that in the medical records that had been
17 subpoenaed. It does not appear to be in the medical records
18 today. The only individual, and it's logged in downstairs,
19 I believe who reviewed those medical records was yourself.

20 MR. WATTLEY: That's not accurate, Judge.

21 MR. PELUSO: Judge, I reviewed the medical
22 records. And as your Honor noted --

23 THE COURT: In the courtroom?

24 MR. PELUSO: No, downstairs in the subpoenaed
25 records as well. As your Honor noted, the records from

1 Jacobi Hospital, all the records we had, they were stapled.
2 There were no pages removed. On top of that, Judge, I
3 personally went through each and every record. I've looked
4 at every single piece of paper in the subpoenaed records and
5 that record is not in there.

6 THE COURT: That document.

7 MR. PELUSO: Was never in there. Otherwise, it's
8 something that I would have noted.

9 THE COURT: It's possible. We'll reserve on that.

10 MR. PELUSO: So, any insinuation that it was there
11 and for some reason is no longer there is, in my opinion,
12 ridiculous and insulting.

13 THE COURT: I'm assuming you have every mental
14 acuity available to the human person and if you indicate
15 that you saw it or had seen it in the records, it was there,
16 I have no doubt. You're an officer of this court, sir. And
17 I also have no doubt that when counsel looked it was not
18 there.

19 MR. WATTLEY: Judge, I just want the record to be
20 clear. I'm not making an insinuation. I'm making a
21 declarative statement that it was there. I'm not
22 insinuating anything.

23 THE COURT: Is there anything else we need to keep
24 the court reporter here for?

25 MR. WATTLEY: No, thank you.

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MR. PELUSO: I don't think so.

(Whereupon, the Court stands in recess, and the
case is adjourned to Tuesday, July 17, 2018, at 9:30 a.m.)

This is certified to be a true and accurate
transcript of the stenographic notes.

KIM M. RICHARDS
Senior Court Reporter