SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: TRIAL TERM PART IA-20
- X
DOMINGO CAMILO and MARIA CAMILO,

Plaintiffs,

- against -

YESENIA NUNEZ, AMERICAN UNITED TRANSPORTATION and NANAYAW S. KUMAN KUMAN,

Defendants.
- X

Index No. 303203/2012
Bronx Supreme Civil Court
851 Grand Concourse
Bronx, New York 10451
January 17, 2018

B E F O R E: HON. KENNETH L. THOMPSON, JR.
Justice of the Supreme Court and a Jury

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

THE COURT: Counsel for both plaintiff and defendant, I apologize yesterday for being somewhat rough in moving this case along, typically with the witnesses. But we had a certain time period to try to get the two witnesses out, the medical experts.

And counsel for plaintiff, it was no fault of your own. You had your witness on a time basis. There was a problem with us getting a clerk here so we could proceed expeditiously in that respect.

But I did exercise my prerogative to move the case along, and I would notice that with regards to your expert witness, counsel for plaintiffs -- Dr. Neuman was it?

MR. CANNATA: Yes, Judge.

THE COURT: -- you didn't get a chance to do redirect and I would notice defendant's witness, the emergency room doctor, you didn't get a chance to do redirect. So I think it kind of like balances out in that respect.

Counsel for the plaintiff, yesterday when we took on an adjournment, you wanted to put something on the record, and I told you you could do it today. So you put whatever you want on the record.

MR. CANNATA: Thank you, Judge. I appreciate the

opportunity.

The delay that we had yesterday morning, we didn't start until 11:45, was occasioned because we didn't have a clerk in the part. As the court knew, we had two doctors scheduled to testify and we didn't start until practically before lunchtime.

The plaintiff's treating doctor, who was also his surgeon, testified. We did not waste time. We presented the case expeditiously. The defendants asked a few questions. In fact, at one point, the court actually said to one of the defense counsel, you know, you may want to cut your cross examination short because you had your own doctor testify and that kind of hurried things along.

I had a redirect of my doctor who -- and I was not able to do it because the court cut me off. I think that was entirely out of line, Your Honor. I have a right to recross my client -- my doctor. The court prevented him from correcting some of the errors that I think were made during the cross examination. And the reason for that was so the defendant's doctor could take the stand. Well, you know what? If the defendant's doctor didn't take the stand yesterday, it's too bad. He could have taken the stand today, but I shouldn't have had my rights affected because they have a witness, and we didn't start on time .

Second of all, when the defendant's doctor

testified, I was halfway through my cross examination when it was 5:00 o'clock, and the court stopped the examination and released the witness. That witness has to come back to court so I can finish my examination, and if he doesn't come back to court, Judge, then his entire testimony should be stricken from the record because I have not had an opportunity to cross examine him fully. I have not had an opportunity to get into any of the contradictory information that was in the emergency room record of November 18th at Harlem Hospital, nor the information that was in the Columbia Presbyterian record the following week, nor any of the other treating doctors who saw him the first month after the accident.

The court's decision to release that witness affected my client's rights, and I have a right to complete his examination. If the defendant doesn't bring him back, the only solution is to strike his answer which, by the way -- I mean strike his testimony. As far as I was concerned, he shouldn't had been permitted to testify in the first place because his testimony is cumulative to another doctor who's testifying tomorrow, who's testifying to exactly the same thing. So that's my application. Either they bring him back or you strike his complete testimony because I did not have an opportunity to cross examine him, Judge, and I had that right, and it has

nothing to do with 5:00 o'clock. He could have come back today, and I understand he's left the state now, and now he's beyond your control or any one's control. Strike his answer then -- strike his testimony.

THE COURT: Counsel for defendant, you could respond.

MR. BARRY: Your Honor, yesterday morning we were supposed to have plaintiff's doctor testify at and start at 10:00 o'clock, and my doctor, the trauma doctor, Dr. Jara was scheduled for 2:00 o'clock. For reasons beyond everyone's control --

THE COURT: Yes.

MR. BARRY: -- we had to start a little bit later, and we hurried our cross examination of the plaintiff's physician Dr. Neuman and we had adequate time to put Dr. Jara on the stand. In fact, I believe he went on the stand at ten after four. I was done with the direct maybe 25 after 4, 4:30 at the latest and Mr. Cannata had a half an hour to cross examine Dr. Jara.

And remember Dr. Jara was here for the emergency room records. That's what he was here to testify about, not all the extraneous things about the hospital admissions and everything else. It was particular to the emergency room treatment he received at Harlem Hospital the day of the accident, and he was cross examined extensively by Mr.

Cannata, Your Honor. And at the end of the day, he was dismissed, and he's gone back to Florida. So he's had an opportunity to cross when him. No.

Rights had been prejudiced here or harmed, and, in fact, you know, we even reduced our time when we could have cross examine Dr. Neuman much longer, but the court had asked us to try to accommodate everything, try to get everybody in, which we it. We reduced the cross examination of Dr. Neuman to specific and pertinent questions that were relevant and to allow time for Dr. Jara, which we did, and I don't see any issue with that, Judge.

THE COURT: Is your emergency room doctor available?

MR. BARRY: He's not available today or tomorrow, Judge. He's back in Florida.

THE COURT: Okay. He came from Florida?

MR. BARRY: Right. He no longer -- he hasn't worked in New York in several years. He works down in Florida.

THE COURT: Okay. As I mentioned before, the delay that occurred yesterday was really cased by one of my regular clerks being sick and time was being taken to get a clerk so we could start.

Counsel for plaintiff, from what I could discern,

with regards to the emergency room direct testimony as to what he testified as to the medical records, and in all of the issues that he did with regard that, I really think you had an adequate basis to cross examine him. I think you did thoroughly cross examine him in that respect.

What I could recall at the latter part of your cross examination of the doctor you were going into things in which he really didn't opine on, like with regards to his head and his brain, what sort of test were done in that respect, and it seemed to me that you were going into all of the medical records basically outside what was there and in the emergency room record. So I really don't see there was any injury done to you in that respect. I think you had an adequate basis to cross examine this particular witness.

I would say I got a call from the administrative judge about a quarter to five saying how much longer are you going to be, and I directed the administrative judge that I was going to be finished 5:00 o'clock, and I did this with an assessment of the areas in which you cross examined the doctor in that respect.

So I really feel that there was no basis saying you want the testimony of this doctor struck because you didn't have a thorough examination. I think any attorney could draw a cross examination out until a lengthy period

of time where there are a lot of irrelevant questions that doesn't really get into the basis of the direct examination and what the witness is testifying to. So your application to strike the testimony of that particular witness is denied at this point in time.

You can be heard now.

MR. CANNATA: Your Honor, at no time yesterday did you ask me what other areas of examination I intended to go into. Had you asked that question and given me an opportunity to respond, I would have told you that I intended to continue to question the doctor on contradictions in his testimony and the Harlem Hospital record where senior physicians disputed some of the statements that he made such as whether the plaintiff, in fact, had a brain edema and not just a junior staff that he alluded to that, that he wore a neck brace throughout his stay in the hospital, that the plaintiff returned to the emergency room on November 18th and they ordered physical therapy and occupational therapy for his neck, back and upper extremities and this contradicts the doctor's testimony that there were no back or arm injuries, that the doctor omitted from his summary of the Columbia Presbyterian record that there was complaints of dizziness, which he had said prior was important, that the headaches were worsening in the ten days, that the emergency room

physician's opinion of posttraumatic post-concussion syndrome versus a cervical injury -- I did not have an opportunity to bring that out -- that the plaintiff saw several other doctors prior to the Columbia Presbyterian emergency room of November 26th and those doctors made the diagnosis of neck, back and shoulder injuries. And Dr. Brown on December 1st found memory problems and this was confirmed by the plaintiff himself, unable to recall his phone number in the emergency room.

Your Honor doesn't want to strike the answer, that's fine, Judge. I have a record. I have a basis to reverse this decision, if it goes against the plaintiff. I have an absolute right to fully cross examine a defendant's witness. The witness should have been brought back to courtroom today and not excused by the court. I objected when you did that, and now I'm without remedy.

So I think as far as I could see, Judge, if there's a bad result, I have an appeal, and I have a record for it now, and I'm ready to proceed. I have a doctor here. He's being paid, and I'm ready to go. We didn't work this morning and I'm ready to proceed. I don't want the same thing to happen today as to what happened yesterday.

THE COURT: Do we have all the jurors? Because there was one that had some sort of family court hearing.

Did that juror come back?

THE CLERK: Juror number two.

COURT OFFICER: He's still there.

THE COURT: So we basically have one alternate; right? Okay. Bring the jury down. We're going to seat that one alternate.

MR. BARRY: Judge, I think we are going to lose another juror, too, juror number six, over there, has a trip scheduled.

THE COURT: Has that juror left?

COURT OFFICER: Not yet.

THE COURT: So the juror that's going to leave, so then we only five jurors.

COURT OFFICER: You only have six.

THE COURT: Six?

COURT OFFICER: Yes.

THE COURT: After we seat the alternate.

COURT OFFICER: Yes.

THE CLERK: We lost one alternate so far.

THE COURT: Just one. Okay. Bring them down.

MR. MAILLOUX: Judge, do we know what time this juror is going to be available, then I would just note on the record the objection to excusing that juror.

THE COURT: What time did she say her flight was?

COURT OFFICER: I think he's talking about --

you're talking about the one in family court?

MR. MAILLOUX: Yes. Correct.

COURT OFFICER: He was instructed to be back at 2:00 o'clock. We don't even know --

THE COURT: Evidently, she got caught up in something. So that juror that's going to leave on a trip. She's juror number what?

MR. BARRY: Six.

COURT OFFICER: And he's juror number two, the one in family court.

THE COURT: So the juror that's leaving on vacation -- okay. She doesn't not come back tomorrow.

COURT OFFICER: Correct.

THE COURT: And this juror that's in family court doesn't come back. We are only going to have five; is that correct.

COURT OFFICER: We have six.

MR. BARRY: We picked three alternates.

THE COURT: Bring them down. Bring them down.

COURT OFFICER: And you want me to sit alternate number one as juror number two?

THE COURT: What's your pleasure, guys?

MR. MAILLOUX: That's fine, Judge.

THE COURT: Okay.

Plaintiff you mentioned another doctor that you

have?

MR. CANNATA: Yes, Judge. This afternoon I have a, doctor, Judge.

THE COURT: Excuse me?

MR. CANNATA: I have a doctor this afternoon.

THE COURT: But you have a no fault doctor; is that correct?

MR. CANNATA: No, Judge. This is a treating physician.

THE COURT: Are you calling a no fault doctor?

MR. CANNATA: I don't think I'm going to call the doctor, Judge.

THE COURT: Okay. You guys have a doctor for tomorrow; is that correct?

MR. BARRY: Two more, Judge. A radiologist in the morning and an orthopedist in the afternoon.

THE COURT: Okay.

MR. CANNATA: I have the plaintiff's wife who will be a very short.

THE COURT: Okay.

COURT OFFICER: All rise. Jury entering.

THE COURT: Be seated, ladies and gentlemen of the jury.

Ladies and gentlemen of the jury, I apologize for the delay. The court was adjourned yesterday. I was

trying to get the witness out of here. I forgot that we weren't going to be proceeding until the afternoon at 2:00 o'clock. So I apologize for any inconvenience.

At this point in time, counsel for the plaintiff, do you have a witness to call; is that correct?

MR. CANNATA: Yes, Your Honor. Dr. Hausknecht.

THE COURT: Thank you.

COURT OFFICER: Remain standing, raise your right hand.

D O C T O R A R I H A U S K N E C H T, a witness called on behalf of the plaintiff, having first been duly sworn, took the stand and testified as follows:

COURT OFFICER: You could have a seat. Could you state your name in a loud, clear voice and your business address for the record.

THE WITNESS: My name is Ari Hausknecht. My place of business is 2488 Grand Concourse, Bronx, New York 10458.

MR. CANNATA: May I inquire, Your Honor?

THE COURT: Proceed, counsel.

DIRECT EXAMINATION

BY MR. CANNATA:

Q. Good afternoon, Doctor.

A. Good afternoon, Counsel.

Q. Doctor, are you a physician duly licensed to practice

medicine by the State of New York.

A. I am. I received my license to practice medicine and surgery in New York State in 1992.

Q. And could you tell us your educational background, please.

A. Sure. I graduated from Duke University in 1987, majoring in physical anthropology. I graduated from Mount Sinai Medical School in 1991 with a medical degree. I completed my medical internship training program at Beth Israel Medical Center in Manhattan in 1992, and I completed my neurology residency training program at New York Hospital, Cornell Medical Center and Memorial Sloane Kettering Cancer Center in 1995, and I've been in private practice since 1995.

Q. Doctor, are you board certified in any areas?

A. I am. I am board certified in neurology by the American Board of Psychiatry and Neurology and I'm also certified in pain management by the American Academy of Pain Management.

Q. Could you tell the jury, please, what neurology is?

A. Sure. Neurology is the field of medicine that deals with the treatment and evaluation of disorders of the nervous system. So the nervous system includes the brain, the spinal cord, and the peripheral nerves. Pain management is the field of medicine that deals with the treatment and evaluation of pain and the affects that pain has on a person. So as a neurologist

and a pain management specialist, I see a lot of people with headaches, neck pain, back pain. It's my responsibility to determine what's causing those problems. It's my responsibility to determine what types of treatment are appropriate whether it's medications or physical therapy or chiropractic treatment or injections or some type of surgery to help alleviate those symptoms and improve quality of you life improve ability to function.

Q. Now, Doctor, you mention that you have an office in the Grand Concourse. Do you have other offices in addition?

A. I do. I currently maintain an office in Manhattan on East 37th Street and Forest Hills on Austin Street and on the Concourse on the corner of Fordham Road, as I mention. I'm also affiliated with several different hospitals including New York Presbyterian and Mount Sinai Beth Israel. So I basically split my time between the offices and the hospitals.

Q. And, Doctor, do you actually treat patients?

A. Yeah. That's what I do. I'm a treating doctor.

Q. You don't just come into court to testify on behalf of one side or other?

A. That's right. I have testified before. In general, I've testified about six or eight times a year, but almost always it's on behalf of a patient that I've been treating at my office or the hospital that happens to be involved in some type of accident and has some type of litigation attached to it.

Q. Doctor, before this case with Mr. Camilo, have you and I ever met before?

A. Not before this case, no.

Q. And am I correct, sir, that we met last night at your office to go over the records?

A. That's correct.

Q. Okay. And, by the way, are you being compensated for the time you're spending in court today?

A. I am. My fee for time away from the office is $500 per hour. Normally, I would have been in the Bronx office today taking care of patients until 7 or 7:30 at night. I had to leave at 1:00 o'clock to come down here.

Q. Now, Doctor, I just want to go over review with you some of the medical records that are in evidence and ask you your comments about them as a neurologist and a pain specialist.

A. Sure.

Q. So first I want call your attention to the ambulance call report which is Exhibit 2 in evidence. And, Doctor, am I correct that even before the ambulance personnel arrived that the plaintiff was immobilized in the car by fire department rescue personnel?

MR. BARRY: Objection, your Honor.

MR. CANNATA: Shall I read it, Your Honor?

THE COURT: Well, I'll sustain the objection.

Q. "Thirty-eight-year-old male in back seat of taxi.

Patient already immobilized by 13E3."

Now, could you tell us what that means, Doctor? Not the 13E3, but what does it mean that he was immobilized?

MR. BARRY: Objection, your Honor.

Q. Doctor, are you familiar with emergency EMS reports?

A. I'm familiar with the EMS reports. I'm familiar with the EMS protocol, yes.

Q. And, Doctor, when the EMS report, that's in evidence in this case, states that he was already immobilized by 13E3, what does that indicate to you?

A. That means that there was another EMS unit that was already on the scene, that they had immobilized his neck and back, meaning they put him in a neck collar and they backboard to prevent any potential movement of the spine because they were concerned that there may have been a spinal injury, possible spinal fracture.

Q. And when it says that his head was immobilized, can you tell us what that means?

A. Likewise, he was in a collar that would restrict any type of movement of the head from side to side or back and forth.

Q. Now, am I correct that there are several ways to transport patients to the hospital? One is in a chair, a rolling chair, and one is on a stretcher; am I correct?

MR. BARRY: Objection.

THE COURT: Are those the only ways to transport?

THE WITNESS: Those are not the only ways. Those are two of the ways.

MR. CANNATA: I didn't ask if it was the only ways, Your Honor. I asked if those were two ways that they did it.

Q. Sir, is that two ways that they do things?

A. Yes. You can transported in either one of those positions.

Q. And the fact they transported him on a stretcher, what does that indicate to you, Doctor?

A. They were concerned about a spinal injury.

Q. Now, Doctor, I'd like to turn to the Harlem Hospital record, which is already in evidence as Exhibit 3. And, by the way, you've seen a copy of the Harlem Hospital record?

A. Yes.

Q. So I'd like to call your attention to the emergency room record of November 8, 2011. The time is 2123 which I think we all agree is 9:22 p.m. And the record states blunt force trauma and the patient, quotation marks, "The back of my head hurts." Now, what does that significant to you, Doctor?

A. It is.

Q. And what's the significance of that?

A. The patient that comes to an emergency room complaining of pain after a motor vehicle accident has indicated

that the patient has sustained some type of traumatic injury, possibly to the frame of the skull or possibly to the base of the neck.

Q. And then further on that note it states "38-year-old male complaining of headache, neck, and back pain. Status post MVA, motor vehicle accident. Earlier tonight patient was in unrestrained right side back seat passenger holding a television on his lap in a taxicab. Plaintiff doesn't know the speed of the taxicab when a motorcycle hit taxicab on passenger side (T-boned.) Taxicab then break suddenly, causing patient to move his head forward, slamming his occiput to the headrest. Patient denies loss of consciousness but since the accident has had worsening headache."

Doctor, what's the occiput part of the head, what they call o-c-c-i-p-u-t?

A. The occiput is the base of the skull. So it's the back of the head, right where it connects to the neck. If you feel the back of your skull, there are two little balls that stick out and that's the occipital protrusions.

Q. And then in the same note at 11:03 p.m. it states that the patient is having progressively worsening headache.

Doctor, what's the significant of that as a neurologist?

A. A headache can be a sign of some type of intracranial trauma. It might be an indication of a skull fracture. It

could be an indication of some type of bleed on the brain or could be an indication of swelling of the brain with increased intracranial pressure.

Q. Now, Doctor, that same night they did a CAT scan of the cervical spine. Are you familiar with that?

A. Yes.

Q. And what was the finding of the CAT scan that evening in the hospital?

MR. BARRY: Objection.

THE COURT: What's the question? What was the finding?

MR. CANNATA: Yes.

THE COURT: Overruled.

Q. Do you have a copy of it there, Doctor?

A. I'm just going to find it, just to a make sure that it's accurate.

MR. CANNATA: Well, Judge, may I hand up my copy?

A. I have it. So the CT Scan of the neck was totally normal, did not show any fractures, did not show any abnormalities, did not show any type of arthritis or degeneration.

Q. Is it significant that there was no arthritis or degeneration in his neck?

A. It can be sure.

Q. What's the significance of that?

A. Well, it's an indication that his neck was previously healthy prior to the accident.

Q. Now, I want you to assume, Doctor, that Mr. Camilo has already testified to this jury that prior to this motor vehicle accident he had no problems in his neck, never saw a doctor for neck, never had an x-ray, CAT scan or MRI of his neck. And is it significant to you that there was to prior history of neck injury?

A. It is.

Q. Okay. Now, I want you also to assume that in the accident itself Mr. Camilo testified that he was holding a TV set when the vehicle brake hard he went forward in the back seat of the cab. He hit his shoulder on the door and then went back, slammed back into the back seat. Is mechanism of the accident also important to you as a neurologist?

A. Yes.

Q. And why is that significant?

A. Because it gives an indication as to the nature of the injury. So in a motor vehicle accident, where you have a acceleration-deceleration-rotation type of injury, those forces come to bear on the skull on the brain. Those forces come to bear on the spine and the spinal cord of the nerve roots. If those forces of flexion and extension and rotation are great enough to stretch or tear ligaments in the spine, they'll cause disc bulges and discs herniations if those forces are great

enough to cause tearing of blood vessels or the lining of brain, the dura, it can cause bleeding or swelling of the brain.

Q. Now, Doctor, let me ask you about the swelling. Was there a CAT scan of the brain that was performed in the hospital that night?

A. Yes.

Q. Okay. Tell us what the findings of the CAT scan were, please?

A. The CT Scan of the head revealed lucency which would be a hypodensity, a decreased density in the occipital lobes bilateral. So this is a finding of edema or swelling of the occipital lobes.

Q. Is that significant?

A. Yes.

Q. And is that a life threatening condition?

A. It can be. If that swelling becomes progressively worse, it can cause pressure on other parts of the brain. It can cause pressure on the blood vessels that supply blood to the brain limiting the oxygen supply, causing irreversible brain damage and possibly even death. So intracranial swelling is potentially a life threatening event and that's one of the reasons that they kept him in the hospital for three days. They kept a collar on him and have him see the neurosurgery service.

Q. Let me ask you. I'm going to read to you from November 9th at 1:25 a.m. and it's a note from the surgery

senior attending resident. In the scheme of things, where is a surgery senior admitting resident? Is that a person who's a beginner or is that someone who's been there for awhile?

A. That would be the senior resident. So in surgery, that would be a fourth or fifth year resident. So they would be just below an attending physician.

Q. So do you have a copy of that page, Doctor?

A. I do.

Q. All right. "Impression: Status post motor vehicle accident unrestrained, right side, back seat passenger with possible axonal injury from acceleration/deceleration injury and possible cerebral edema."

Now, could you tell us what that means?

A. Well, once again, the acceleration/deceleration is a whiplash type of event. So what happens is it sort of shakes the brain up. The brain hits the inside of the skull and in this instance, it seems like the trauma was primarily to the occipital region or the back causing this swelling or edema.

Q. Doctor, does the brain actually move around in the skull?

A. It does. The skull is like a container, and the brain is inside that container, and the brain is surrounded by a sac known as the dura and within that sac is some liquid known as the cerebrospinal fluid or the CSF. So the CSF and dura sac provide sort of a cushion around the brain and it also provides

nutrition and support to the brain tissue. But if the force is great enough, it can displace the brain up against the dura, displace that fluid, causing it to bang on the inside of the skull.

Q. Now, Doctor, I'd just like to read a bit of the surgical note of November 9th. Time is 1:29 a.m.

"38 year-old male to the emergency department after sustaining head injury. While riding the back of a car, when upon abrupt brakes, he hit his head at the TV on his lap followed by hyperextending the neck and hitting the back of the head. Patient is complaining of pain at the back of the head." And then as an examination it states "Tender to palpation at the occipital area. Neck in cervical collar. Back of neck is tender to palpation."

Could you tell us what that means?

A. Well, palpation would be touching or manual examination. So in this case, if the surgeon found that the back of his head as well as the tissues around his neck were tender when he was touching it and, furthermore, his back was still immobile. He was still in a collar.

Q. What was the purpose of the cervical collar.

A. To provide support and to restrict motion. So if a patient has an injury to the spine, torn ligaments, tendons, slipped disc, broken bones, the collar helps it to heal up properly.

Q. Okay. And the plan was to admit to trauma. What does that mean?

A. Patient was being admitted to the hospital for further care and specifically to the trauma service.

Q. So he was going to be moved from the emergency room into the hospital itself?

A. Yes.

Q. And follow up with neurosurgery. What does that mean?

A. Well, he had been seen * incrustation by the neurosurgeon. So they wanted the neurosurgeon to follow him while he was on the floor.

Q. And then adequate pain management. What does that mean.

A. Well, he was obviously in pain. In fact, his pain, when he had presented to emergency room, was graded 5/10 which would be considered moderate pain and they wanted to make sure that he was getting adequate pain medications and relief.

Q. Okay. And then later that morning at 9:57 a.m., there was a neurosurgery consult. We talked about that just a moment ago.

And on the brain it says "In a setting of trauma with impact to the occipital lobe -- a pole -- excuse me -- occipital pole. This constellation of findings may represent cerebral edema. There was mild extracranial soft tissue edema at the occipital pole consistent with soft tissue contusion.

Assessment: Status post motor vehicle accident, unrestrained, right side, back seat passenger, cannot rule out external injury from acceleration/deceleration injury and possible cerebral edema."

So that anything different than what you had explained to us?

A. It's a little bit different. So it's just more detailed. So in this case, the neurosurgeon found that, in fact, in the back of his head, on the scalp, the soft tissue, that he had developed a bruise with swelling and tenderness and found that the CAT scan findings likely showed edema due to axonal injury.

Axons are the major portion of the nerve cells within the brain. You can't see them by looking at an MRI or a CAT scan. They're microscopic, but when there's a trauma of this nature, it causes those axons to twist and bend and break and that results in this inflammatory process causing this edema. So the neurosurgeon was impressed that there clearly had been some trauma to the back of the head. In fact, the back of the head was bruised and swollen and that trauma had translated into the brain tissue itself, and the brain tissue was swollen.

Q. Now, Doctor, I want you to assume that on Wednesday morning on the 9th of November at 1:49 a.m. they did a pelvic x-ray. Okay? Doctor, why did they do a pelvic x-ray of this patient from what you can see in the record?

A. Well, in this case to determine if there were any fractures of the lower back or pelvic region.

Q. Well, was there a complaint of pain to his pelvis?

A. Not to his pelvis, to his back.

Q. And would they normally do a pelvic x-ray if there wasn't complaints of pain?

A. No.

Q. Now, Doctor, on November 9th at 5:22 a.m. in the nurse's notes, there's a comment that the patient cannot recall his phone number at this time. Is that something that's as a neurologist that's significant to you?

A. Yes.

Q. Why is it significant.

A. It would indicate that the patient was potentially having some cognitive impairment, some memory issues. A person's phone number is something that's pretty firmly engrained in their mind. So the person cannot recall their phone number. That's an indication that there maybe some brain dysfunction.

Q. Now, Doctor, I want you to assume that the defendant's doctor, Dr. Jara, said that the headaches that the patient was suffering from in the emergency room may be due to an elevated blood pressure. That's what he said. And, in fact, the blood pressure was elevated after the accident. However, on November 9th at 2 a.m. the patient's blood pressure was 146 over

80 and at 4:11 a.m. it was 147 over 78. Are those blood pressures elevated?

A. No.

Q. Were those blood pressures of 146 over 80 or 147 over 78 be sufficient to account for progressively worsening headaches?

A. It's unlikely.

Q. Now, Doctor, I want you to assume that on November 9th at 4:24 p.m. there's a notion that he was still wearing a neck brace. Do you have an opinion as to why he was still wearing a neck brace a full day after he was admitted?

A. The staff that was taking care of him was concerned that he had sustained an injury to his neck that had rendered unstable and they wanted to avoid any further injuries so they kept that collar on.

Q. Now, Doctor, when he was discharged on November 10th of 2011, he was discharged with Ibuprofen. Could you tell us what that medication is?

A. Ibuprofen is anti-inflammatory. It's the same medication that's found in Motrin or Advil over the counter.

Q. He was also discharged with the acetaminophen with codeine phosphate 30 millimeters. Will you tell us what that means?

A. That is Tylenol number three. So that's nan opiate analgesic. It's a stronger pain pill.

Q. And also Docusate Sodium 100 milligrams?

A. That's a stool softener. So sometimes the opiates like codeine can cause constipation. The Docusate helps to prevent that problem.

Q. Would a hospital prescribe a medication with codeine if the patient wasn't suffering from pain?

A. It's unlikely they would prescribe it. In this case, he was clearly having pain and that's why they did prescribe it.

Q. Now, Doctor, I want you to assume that he returned to Harlem Hospital emergency room one week later on November 18th, one week after the accident, and at that time, the patient, according to the record, which is in evidence, Your Honor, as Exhibit 3, that this is on November 18th, "Today the patient is complaining of neck -- sorry -- of pain at the back of his head as well as neck and lower back stiffness."

And could you tell us what the significance of that is?

A. Well, the patient came back a week later and was still having neck and back pain so it's an indication that he had sustained a traumatic injury to his neck and back.

Q. And I want you to assume that on that day there was a referral for occupational and physical therapy for his neck, back and upper extremities. Can you tell us why they would prescribe physical therapy and occupational therapy for his neck, back and upper extremities?

MR. BARRY: Objection.

A. Sure.

THE COURT: The doctor can answer the question.

A. Just to go back for a second. So he actually -- it's not an emergency room visit. He went to the surgery clinic at Harlem Hospital. So this was a scheduled appointment in the clinic.

When they saw him, they indicated that he was still having headaches, neck and back pain. At that point in time, they referred him for further treatment because they felt he needed to be treated for these injury so they recommended that he go for physical therapy as well as occupational therapy as well as pain management.

Q. Well, Doctor, if he hadn't sustained any injury at all in this motor vehicle accident, would you expect that he would be suffering neck and back pain a week later?

A. No. I wouldn't -- if he didn't have any injuries, I wouldn't expect him to have any pain, but in this case, it's pretty clear that he did sustain injuries. It's not a coincidence that he started having headaches, neck pain, back pain and shoulder pain after the accident, that it's document all over the emergency room records and the clinic notes because the accident is what caused it.

THE COURT: You mention shoulder pain, Doctor. Is there any indication that the shoulder pain is in the

emergency room?

THE WITNESS: Not in the emergency room, no. It just said upper extremities. It didn't say shoulder.

Q. Doctor, I want you to further assume that Mr. Camilo went to Columbia Presbyterian Hospital on November 26, 2011 and that record is Exhibit 4 in evidence.

The complaint was the patient has had a persistent headache since the accident. He described the headache as nine out of ten and severity -- I'm sorry -- nine out of ten when severe. It typically last one to two hours and then dissipates with Tylenol or Advil, and the headache occurs two or three times per day.

Doctor, could you tell us what the significance of that is?

A. Well, obviously, the patient was having some pretty serious headaches that were interfering with his daily function and were significant enough to provoke another visit to the emergency room.

Q. And, Doctor, it also indicates that the patient has neck pain and stiffness. Could you tell us what the significance of that is?

A. Once again, it's an indication that about three weeks after the accident that he still had not recovered from that injury to his spine. He was still having pain and stiffness in his neck.

Q. And on page 12 of that record, the assessment and plan is likely headache, secondary to motor vehicle injury. Possible post concussive versus neck stiffness. Could you tell us what that is?

A. The emergency room physician identified that he was having headaches and wasn't sure if it was coming from a concussion meaning emanating from the injury to the brain itself or if it was coming from the injury to the neck with the muscles extending into the occipital region in the back of the head.

Q. And the impression further states patient with whiplash versus post concussion syndrome with appropriate follow-up as outpatient and normal neurological exam. Would you tell us what that means, sir?

A. That they didn't feel that it was an emergency, that he should pursue outpatient work up. So in a doctor's office, not in a hospital.

Q. Now, Doctor, are you aware of the fact that Mr. Camilo went to see a Dr. Pavlova, who was a physician in his neighborhood?

A. Yes.

Q. And do you have any records from Dr. Pavlova?

A. I did. I've reviewed from records from Dr. Pavlova including physical therapy and chiropractic treatments that were rendered in that office.

Q. I want you to assume, Doctor, that Mr. Camilo

testified that when he went to see Dr. Pavlova, which was about two weeks after the accident, he complained of headaches with dizziness, neck pain, right shoulder and arm pain, midback pain and low back pain and stiffness.

I want you to assume that and the treatment that he received was physical therapy, hot and cold therapy, a TENS electrical unit. There was an MRI ordered of the shoulder, and he also received other physical therapy from Dr. Pavlova's office.

Do you have an opinion to a reasonable degree of medical certainty as to whether the injuries that he saw Dr. Pavlova for on November 22nd were caused by this particular accident?

A. I do. In my opinion, with a reasonable degree of medical certainty, his injuries were caused by the motor vehicle accident of 11/8/11. He had saw Dr. Pavlova exactly two weeks after the accident and complained, had complaints indicative of head, neck, back and right shoulder injury.

THE COURT: What sort of doctor Dr. Pavlova?

THE WITNESS: She's a medical doctor. Her exact specialty, I'm not sure. I believe that she's a physiatrist. I'm not sure.

Q. Now, Doctor, when did you first see Mr. Camilo?

A. I'm going to refer to my note, for the sake of accuracy. That would be on12/8/11 so four weeks after the

accident.

Q. So exactly one month after the accident?

A. Correct.

Q. Okay. And how did the patient come to your office? Who referred him?

A. Prior to coming to my office, he was seen by another Dr. Jason Brown, who was a memory specialist. Dr. Brown had done an evaluation and found that he was having --

MR. MAILLOUX: Objection.

THE COURT: Sustained with Dr. Brown.

A. Okay. Dr. Brown referred him to my office for further evaluation.

Q. Okay. And did you get a history of the patient?

A. I did.

Q. And could you tell us what the history is?

A. Patient indicated that he had been involved in an accident. At that time, he hit his head. He did not loss consciousness. He indicated that he was admitted to the hospital for three days and went to the emergency room on another occasion, that he had been seeing Dr. Brown, that he had been going for physical therapy.

When I saw him he complained of headaches. He indicated that he had felt dizzy when he woke up in the morning, and he was having problems with his memory. He complained of neck and back pain. He indicated that his right arm was feeling

weak and he was having problems with his activities of daily living, especially bending and lifting. He had a prior history of high blood pressure, but otherwise denied any prior history of head, neck or back problems. He had been prescribed several different medications including muscle relaxers and pain killers and had been taking his blood pressure medications. Prior to the accident, he was working in construction, but had been unable to return to his job since the accident.

Q. Did the patient indicate to you whether he was right-handed or left-handed?

A. He was left-handed.

Q. Doctor, did you then perform a mental status examination?

A. I did.

Q. Could you tell us what a mental status examination means?

A. It's basically a cognitive evaluation so it's an examination of a person's memory, their ability to process information, their ability to speak, understand and perform other mental processes.

(Continued on the next page ...)

Q And what was the conclusion after you performed the examination on Mr. Camilo?

A Well the findings were I found his mood was somewhat depressed, I found that his information processing, his ability to understand what was being said and to follow commands was slowed. I found that his short term memory was impaired.

Q What is the difference between short term memory and long term memory?

A Short term memory is information that has been recently acquired so within days or weeks as opposed to long term information which would be, for example, your birthday or your social security number. Something that's been ingrained in your brain for many years.

Q Doctor, did you then do a motor system examination?

A I did.

Q And could you tell us what the results of that were?

A I found that there was antalgic weakness in the upper and lower extremities proximally meaning the patient was not able to exert full power in his shoulders or in his hips, both of his legs because of pain.

Q And did you check to see the patient's range of motion of his cervical spine as well as his lumbar spine?

A I did, I measured range of motion actively and passively in the cervical and lumbosacral using a special tool known as a goniometer and I found there were restrictions in

several different directions in the neck and back.

Q Elaborate on that a little bit. What were the deficits that you found?

A Sure. In the cervical spine, left lateral flexion or the ability to bend the head to the left was limited by forty out of a normal fifty degrees so that is a ten or degree or twenty percent loss. Right lateral flexion, bending your head to the right was limited by five degrees or ten percent. Left rotation was limited to sixty five out of a normal eighty so that would be a fifteen degree or approximately eighteen percent loss. And to the right, he was able to get to seventy out of eighty, so that would be a ten degree or approximately twelve percent loss.

Q Did you also examine his lumbar and thoracic spine?

A Yes, I did.

Q And could you tell us the significance?

A The thoracolumbar range of motion was limited to seventy out of a normal ninety, so there was a twenty degree or twenty-two percent loss of his ability to bend forward at the waist. His extension was limited to twenty out of twenty-five or a twenty percent loss of ability to bend backwards.

When I examined his neck and back I found that there was tenderness and spasm in the cervical paraspinal region. There was a positive Spurling's maneuver on the right. When I took his head and pushed down and pushed back it caused a pain in his neck.

Q What is the significance of spasm in the cervical paravertebral area?

A So, spasm is an involuntary reaction to underlying pathology. So for example, if you sprain a muscle or pull a muscle or tendon or a ligament or a disk, the muscle goes into spasm or tightens up as a protective reaction to that underlying injury. So for example, if you injure your neck and your neck muscles go into spasm, you cannot move your neck around like you could normally. If there is an injury, this actually helps the body to heal that injury by restricting the movement.

Q Doctor, did you reach an impression as to Mr. Domingo Camilo's condition after your examination, after looking at the records and after interviewing him?

A I did.

Q And what was your impression?

A I was impressed that he had sustained a close head trauma with post-concussion syndrome and mild traumatic brain injury, a cervical derangement and a lumbosacral derangement.

Q Did you have a plan for treatment of the patient?

A I did.

Q And what was your plan?

A My plan was as far as his neck and back for him to continue physical therapy and to take his medications. My plan for his head was for him to go for a brain MRI, to do a couple of brain wave tests, to continue the therapy with Doctor Brown and I

prescribed him Amitriptyline which we use to treat concussions.

Q Did you have an opinion, Doctor, to a reasonable degree of medical certainty as to what the cause of the injuries that you found were?

A I did.

MR. BARRY: Objection.

A On 12/8/11 --

MR. CANNATA: Sorry, there was an objection.

THE COURT: Witness can answer. Overruled.

A On 12/8/11 it was my opinion within a reasonable degree of medical certainty that his complaints and the findings on examination were causally related to the trauma sustained in the motor vehicle accident of 11/8/11.

Q Were those injuries consistent with the mechanism of the injury that we described earlier?

A Yes.

Q Doctor, do you have an opinion as to whether the injuries that the plaintiff sustained that you found when you examined him that first time on December 18, whether that constituted a significant limitation of use of his neck and brain as of that date?

MR. BARRY: Objection.

THE COURT: I will sustain the objection as to form, counselor. You are talking about different parts of his body.

MR. CANNATA: I will separate it.

Q Doctor, do you have an opinion to a reasonable degree of medical certainty that on 12/8/2011 as to whether the injuries to his neck constituted a significant limitation of use of his neck?

A I did.

Q And what was your opinion?

A My opinion is his neck was significantly limited, he was having pain, limited weakness, loss of motion, tenderness, he was unable to perform the types of activities that he could before that.

Q Doctor, did you have an opinion to a reasonable degree of medical certainty as to whether on December 8, 2011, the injuries to his back constituted a significant limitation of use of his back?

A I did and my opinion was that he did have a significant limitation. Once again he was having lower back pain interfering with his ability to perform activities like bending and lifting and it revealed limited motion in the back. At that time I found him to be totally disabled, certainly unable to return to construction work and recommended he restrict his activities.

Q Do you have an opinion to a reasonable degree of medical certainty as to whether the injuries to the plaintiff's brain on December 8, 2011 constituted a significant limitation of use of his brain?

A I do. Once again he was having headaches and dizziness and memory loss and problems with his communication and his ability to process information. I felt that was a significant limitation of his brain function.

Q Doctor, did you have an opinion to a reasonable degree of medical certainty as to whether on December 8, 2011, the injuries that he presented to you prevented the plaintiff from performing substantially all of the material acts which constituted his usual and customary daily activities?

A I do. In my opinion he was restricted from doing those things.

Q Now, Doctor, when did you next see Mr. Camilo?

A On 12/22/11 two weeks later.

Q On that date did Mr. Camilo express any complaints to you?

A He did.

Q What were the complaints?

A He was having neck and back pain. The neck pain was radiating to both of his shoulders and his right arm was feeling weak. The back pain was radiating to his hips and he was going to physical therapy and taking Tylenol and found it to be helpful. He indicated headaches and dizziness as well as problems with the memory and he was going to therapy with Doctor Brown and found it to be helpful. He had been unable to return to work. He was having difficulty bending, lifting and carrying and he had

been taking the medications that I prescribed to him the Amitriptyline.

Q Did you perform an examination on that date?

A I did. On that date I found that he was bradyphrenic, meaning his ability to process information was slowed. His short term memory was impaired. There was antalgic weakness in the arms and legs and tenderness and spasm in the neck and tenderness in the back. There was pain limited loss of motion in the neck and back.

Q Did you comment on any testing that had been done on the testing, Doctor?

A Yes.

Q What was the testing that you commented on?

A Two tests had been done in my office, two brain wave tests, a BAR and EMG on 12/8/11 that was normal, an MRI of the cervical spine.

MR. BARRY: Objection.

MR. MAILLOUX: Objection.

THE COURT: Is the MRI of the cervical spine in evidence?

MR. MAILLOUX: No, it is not.

THE COURT: You don't have the records from this Doctor?

MR. MAILLOUX: Yes.

THE COURT: As to the cervical MRI, you don't have

the records for that?

MR. MAILLOUX: My objection is him testifying to another doctor's opinion.

MR. BARRY: There is no evidence, the Doctor didn't testify if he looked at the films or the report and that's what he put in the paper here. If he looked at the report, then I have an objection. If he looked at the films, does he have the films with him today.

Q Doctor, did you --

MR. BARRY: There is an open question with an objection.

THE COURT: Read back the last question that caused the objection to be interposed, please.

(Whereupon, the requested testimony was read back)

THE COURT: Was the MRI of the cervical spine done in your office?

THE WITNESS: No, radiology facility.

THE COURT: Did you order it?

THE WITNESS: Doctor Pavlova ordered that particular study.

THE COURT: Objection sustained.

Q I am not asking you about the MRI of the shoulder on November 28th, we discussed that with Doctor Neuman. I am going to skip over it. But let me ask you this, did you have an impression when you saw Mr. Camilo on December 22 as to what his

condition was?

A I did.

Q And what was your opinion at that point?

A It was the same opinion, he had a close head trauma with post concussion syndrome and mild traumatic brain injury as well as cervical and lumbosacral derangement. I found him to be totally disabled and advised him to restrict his activities. His condition was a direct consequence of the injuries that he sustained on November 8, 2011.

Q Doctor, I am going to ask you the same questions I asked you a moment ago about his limitations. Of December 22, did the neck injuries constitute a significant limitation of the use of his neck?

A In my opinion with a reasonable degree of medical certainty when I re-evaluated him on 12/22/11 he had a significant limitation of function of his neck as well as his back as well as his brain. For the same reasons I described before, he was having headaches, dizziness, memory loss, neck pain, back pain, arm and leg weakness, loss of motion in the neck and back and difficulty performing activities.

Q Was the patient capable, in your opinion, of doing construction work on December 22, 2011 with a reasonable degree of medical certainty?

A In my opinion he was not.

Q Doctor, at any point did you refer Mr. Camilo to any

other specialists?

A I did.

Q And who did you refer him to?

A On 12/22/11 it became -- I am sorry, one second. On 2/16/12 it became apparent that he was having a problem with his right shoulder. At that point I referred him to an orthopedic shoulder specialist, Doctor Neuman.

Q I would like to show you a document, sir, can you tell us what this document is.

MR. MAILLOUX: Objection. The document is not marked.

MR. CANNATA: I am using it to refresh his recollection.

MR. MAILLOUX: It still needs to be marked.

(Whereupon, Plaintiff's Exhibit 11, document from Complete Care, marked for identification as of this date)

Q Doctor, take a look at that document, please. Does that document refresh your recollection as to when you referred the plaintiff to Doctor Neuman?

A It does. It is a patient referral form that is dated 1/4/12 so it was in between the December 22, 2011 and the subsequent visit.

Q Doctor, why did you refer Mr. Camilo to Doctor Neuman?

A As I said it became apparent that he had sustained a

right shoulder injury and some of the pain and weakness in his right arm was coming from his shoulder. The MRI of the shoulder was abnormal and I felt that he needed a specialist for the shoulder, an orthopedist.

Q And that would be an orthopedist versus yourself which is a neurologist?

A Generally, shoulder injuries are treated by orthopedic doctors. I am capable of treating a shoulder injury, but not in a surgical manner. So if a person needed some type of a surgery that would be an orthopedist, so that's why I referred him to Doctor Neuman.

Q Doctor, at any point in January, did you order an MRI of the lumbar and thoracic spine?

A I did.

Q And can you tell us why did you order such a test?

A The patient was having continued pain in his lower back region that had not been responding to the physical therapy. I was concerned that there was some type of structural damage such as a slipped disk and the MRI is the diagnostic test of choice to determine if there was any type of soft tissue injury like a slipped disk.

MR. CANNATA: Your Honor, at this time I offer the MRI of January 19, 2012 in evidence.

THE COURT: Counselor.

MR. BARRY: One second, Judge.

MR. MAILLOUX: I object on the basis that it was performed by another doctor.

THE COURT: It was what?

MR. MAILLOUX: There was no testimony that it was performed by Doctor Hausknecht.

THE COURT: You ordered this MRI, Doctor?

THE WITNESS: I did.

MR. BARRY: January 19, 2012.

MR. CANNATA: Yes.

THE COURT: You received a copy of the MRI and you received a report; correct?

THE WITNESS: That's correct.

MR. CANNATA: Those were exchanged too, your Honor so the record is clear and the defendant doctors commented on the MRIs.

MR. BARRY: No objection.

MR. MAILLOUX: My objection is that the MRI film has to be authenticated in terms of the facility. There was no testimony about what facility it came from and no 45.32(a) exchange.

MR. CANNATA: I have a certification right here.

MR. MAILLOUX: It wasn't exchanged. If it is marked into evidence as a separate exhibit, I will withdraw the objection.

THE COURT: Mark it in evidence as a separate

exhibit.

MR. CANNATA: Yes, it would be marked as Plaintiff's Exhibit 12.

THE COURT: Mark it into evidence.

(Whereupon, Plaintiff's Exhibit 12, MRI disk of the thoracic and lumbar spine, marked in evidence as of this date)

MR. BARRY: That's the films.

MR. CANNATA: CD.

Your Honor, with the Court's permission, I would like the Doctor to show the MRI to the jury. We have it loaded into the computer already.

THE COURT: Go ahead.

Q Doctor, would you come down from the stand please. Would you explain to us, please, before you actually go to the film, what are we looking at and explain how this MRI of the spine works?

A Sure, an MRI is an abbreviation for magnetic resonance imaging. It is a radiographic study that is performed where they use, instead of radiation, strong magnetic fields. Typical x-rays and CAT scans are done using radiation and special film records how much of that radiation passes through the tissue. So bone, because it is mineralized, absorbs a lot of that radiation and on CAT scan or MRI it shows you white as opposed to bone which is black.

An MRI does not show mineralized tissue, it shows the soft tissue. So in an MRI, fluid like water turns up very bright or white, intense, and bone like the vertebrae shows up very dark like black, hypointense.

The MRI is also superior to CAT scan or x-ray because it is a computer generated image, so using this computer a physician could take a part of the human anatomy such as the spine and look at it in various directions from front to back, side to side or from top to bottom.

It slices it up into millimeter, thick pieces so it could give a physician a three dimensional picture of a coin in space.

The human spinal column is made up of separate bones known as the vertebrae. Each one of these white bones with the lamina process going backwards and transverse process going left and right known as a vertebrae and they stack up on top of each other. In the cervical spine in the neck there are seven vertebrae, C1 through C7. If you feel the base of your neck where it meets the shoulders, that would be the C7 lamina process.

The thoracic spine or mid back there are twelve vertebrae, T1 through T12. The lumbosacral spine there are five vertebrae L1 through L5 and it meets the sacrum, the S portion.

In between each of the vertebrae on the spinal column is a piece of soft jelly like cartilage known as the disk, so the

disk sits between the bones and acts as a shock absorber. The bones in the disk are held in place by a series of tough connective fibers known as the ligaments which connects the bone. It provides support to stand upright and is flexible so it allows us to move back and forth and side to side and twist left and right.

Within the human spinal column are a number of different openings. In the center is the central canal and the spinal cord begins at the base of the brain and runs all the way down the spine to the lower back.

On both sides right next to the disk in what is known as the neuroforamen, the nerve roots come off the spinal cord and the neck goes out to your arms and hands and the lower back goes down to the hands, legs and feet. It provides messages, information to the muscles to contract or relax and back to the brain such as position or temperature or pain.

Sometimes the disks can slip out of place, that's called a disk bulge or herniation. If forces come to bear on the spine such as flexion and extension, acceleration/deceleration whiplash and rotation, if those forces are strong enough to stretch or tear those ligaments, the disk itself, the soft jelly like disk pushes out against that stretch or a torn ligament and cause a disk herniation. If those are traumatically induced, they are painful and cause pain and tightness and impair the ability to perform the normal activities of the spine such as bending and

lifting and twisting and carrying. We can look at the MRI now.

MR. CANNATA: Can we have the lights turned off, please, your Honor.

A What we are looking at here is what is called the sagittal image. If you take a human spinal column and rotate it 90 degrees so now you are looking from left to right and you take long slices from left to right, each one of the squares represents one of those slices. So each of these squares right here is the vertebrae side view and each one of these oblong shapes is the disk between the bones. This would be the spinal cord coming down and the nerve roots coming out at each one of those openings.

If you look at the spine, what you find is down low in the lumbar region it looks really good, all the disks are plump and have good hydration, meaning good fluid content and good shape and they are not slipped out. When you go up a little higher at T11/12 you see it has a different look to it. On this portion this is what is known as the T1 sagittal image, this is the T2 sagittal image, these are different magnetic fields that show water of different intensities.

MR. MAILLOUX: Can you note for the record what slide and sequence numbers they are?

THE WITNESS: On the right side is sagittal T2 image three, on the left side is sagittal T1 image three. If you see this cursor that is moving, this is L5/S1. This is

L4/L5. As we go up you see this disk over here that slipped out of place, that piece has extended beyond the margins of the vertebrae and this is a disk herniation. You see this T2 image that dot that is sticking out putting pressure on the spinal cord is the disk herniation at T11/12.

MR. MAILLOUX: Can we get the sequence numbers on those?

THE WITNESS: On the right is sagittal T2 image five and likewise on the left is sagittal T1 image five.

THE COURT: Is there a question?

Q Doctor, are MRI examinations routinely used by neurologists in diagnosing back injuries?

A They are. The MRI is the diagnostic test of choice for imaging soft tissue injuries. MRIs were part of our training in medical school, they were part of my training in residency and they were part of my board examination as well as my two board recertification examinations.

I have reviewed and interpreted thousands and thousands of MRIs in my career, often times before a radiologist even looks at it and often times in an effort to institute emergency treatment as need be.

Q Are you done with the MRI films?

A There are many, many different pictures but they all show the same thing.

MR. CANNATA: I don't think we need to do that

then.

Q Let me ask you this, you said that there was, in Mr. Camilo's case and you showed it to the jury, a herniation of the disk on the T11/T/12 level and that herniation actually indents the thecal sac where the spinal cord is. What is the affect of such an injury on the patient?

A This disk injury is causing, well it has been causing him pain, it was provoking spasm and interfering with the mobility or movement of his spine and interfering with his ability to perform specific activities such as bending, lifting and carrying.

Q Was there any swelling or bleeding that was shown in the MRIs?

A Not that I could see.

Q Is there significance to the fact that there was no bleeding or swelling in the MRI of the spine which was taken approximately two and a half months after the accident?

A I don't think so, it is very unusual to see bleeding or swelling on an MRI and certainly if there was any, it would have resolved by the time this scan was done two and a half months later. Any bleeding or swelling would be seen potentially within the first few days.

Q Doctor, was the film that we just saw, was that injury consistent with the mechanism of injury as the patient described to you?

A In my opinion, it is based on the mechanism of injury. There was a flexion, extension and rotation of the spine for whatever reason at that level of T11 and T12, most of the force came to bear on that level or it caused that ligament to tear and the disk material to leak out.

Q Now, Doctor, I would like to resume with your office visits. I would like to call your attention to the February 16, 2012 visit.

A Okay.

Q Can you tell us what the patient's complaints were on that date?

A He was definitely doing better. He indicated that his headaches, dizziness and memory problems were all improving, however, he was still having pain in his neck, lower back and right shoulder. He had been going for physical therapy. He had been taking his medications, he had still been unable to return to work. On examination, I found pain and limited weakness in the right shoulder, tenderness in the cervical region and pain and crepitus in the right shoulder joint with regard to his movement.

Crepitus is grinding or cracking when you move the joint.

Q Did you have an opinion as to whether he was able to perform his full duties as a construction worker on that date?

A On that date I found him to have a partial disability. I told him that he could go back to work as long as

he restricted his activities, specifically avoided heavy or repetitive bending, lifting, carrying, pushing or pulling.

Q And what would be the danger of him doing heavy construction work such as lifting, bending, carrying heavy objects?

A One, he may have reinjured himself because he still had not fully healed and gained full strength and two he would have been a danger to himself or others.

So, for example, if he was carrying a weight up a ladder and dropped it, he could have hurt himself or someone else.

Q Do you have an opinion to a reasonable degree of medical certainty whether on February 16, 2012 he was, his injuries prevented him from performing substantially all of the material acts that constitute his usual and customary daily activities?

A On 2/16/12 I think he recovered function so that he couldn't do all of his acts, but there were some that he could do. But up until that time from 11/8/11 through 2/16/12 he had an impairment of substantially all of his acts and could not return to work in construction.

As of 2/16/12, I released him on a return to work on a restricted basis.

Q Up until 2/16/2012 --

MR. CANNATA: Strike that.

Q On 2/16/2012 were his injuries to his neck, did they constitute a significant limitation of use?

A Yes.

Q Did his back injuries constitute a significant limitation of use of his back?

A Yes.

Q Doctor, I am not going to go through the visits, I am going to just ask you did you see him on February 22, 2013?

A Yes.

Q Did you see him on April 5, 2013?

A Yes.

Q Did you see him on May 31, 2013?

A Yes.

Q July 22, 2013?

A Yes.

Q And July 27, 2013?

A Yes.

Q I am not going to ask you about the specific examinations because we are getting real close to the end of the day here, but let me ask you, did there come a time that you ordered an MRI of the cervical spine, you personally?

A I did order a new MRI of his cervical spine as well as his lumbosacral spine.

Q Let's talk about the cervical spine first. When was the cervical spine ordered?

A The repeat MRI of the cervical spine was performed at NYU hospital on 3/12/14 and the MRI of the lumbosacral was performed at NYU at 3/12/14.

Q What were the findings of the MRI?

MR. MAILLOUX: Objection.

MR. BARRY: Objection.

THE COURT: The findings as per the report, Doctor?

THE WITNESS: I had the films and the report. My interpretation of the films is the same thing it says on the report.

THE COURT: You could answer the question.

A The lumbar spine showed the same thing, a herniation at T11/12. In the cervical region it showed a disk bulging out of place at C5/C6 and below it at C7/T1.

Q Can you explain the significance of that MRI finding in March of 2014?

A For the lower back it showed that disk herniation had not changed, it had not gotten any better or worse but it was still there and causing him problems in the neck. It showed that over the course of time there were injuries to the ligaments at C5/C6 and C7/T1 and over time those disks started to bulge out of place.

Q Would that finding be consistent with the complaints that Mr. Camilo made in the hospital right after the accident

when he was brought to the hospital where he was complaining of neck pain and stiffness?

A Yes, it is.

Q What affect do those bulges in his cervical spine have on the patient?

A In Domingo's case they are causing pain and stiffness and muscle spasm and interfering with movements and his ability to perform his daily activities.

Q Would those bulges be consistent with the mechanism of the motor vehicle accident?

A Yes.

Q Doctor, I would like to just talk about your March 4, 2014 examination. Could you tell us what the complaints were when you saw him -- March 4, 2014 was two and a half years after the accident, the accident being November 8, 2011; right?

A Correct.

Q So two and a half years after the accident, what was his complaint, what were his complaints to you?

A He was still having pain in his neck, back and right shoulder, his right arm was feeling numb and weak. He was having problems with activities, especially bending and lifting, he was having headaches, approximately twice a week but for the most part, the dizziness had improved. His memory and concentration and speech problems had resolved.

Q Did you perform an examination?

A Yes, I did.

THE COURT: Counsel, how much longer do you have with your examination?

MR. CANNATA: Five minutes, your Honor. Your Honor, may I continue?

THE COURT: Go ahead. Do your five minutes.

Q Doctor, did you examine his neck?

A I did. I found that there was pain and limited weakness in the arms and legs and cervical tenderness and spasm, lumbar tenderness. I found that there was restricted range of motion in the cervical and lumbar spine which was similar but not identical to the loss of motion that I described previously.

I was impressed that he had a cervical derangement and a lumbosacral derangement as well as the post-concussion syndrome which had improved.

Q Can you just give us the positive findings on the cervical spine, the areas that he did not have full range of motion?

A Sure. Cervical spine left lateral flexion zero to forty, right lateral flexion zero to forty, that was a ten degree or twenty percent loss in both directions.

Q And in the lumbar thoracic spine?

A Thoracolumbar forward flexion seventy out of ninety or twenty-two percent loss. Extension, twenty out of twenty-five or twenty percent loss.

Q Did you have an impression as to Mr. Camilo's injuries at this moment?

A I did. As I discussed he had a post-concussion syndrome that had improved and a cervical and lumbosacral derangement. I found that he had a partial disability and recommended that he restrict his activities. In my opinion, his condition was permanent in nature and causally related to the motor vehicle accident of November 11, 2011.

MR. CANNATA: No further questions of this witness your Honor. I have three and a half minutes to go.

MR. MAILLOUX: I would like to review the Doctor's file, your Honor.

THE COURT: You may.

(Whereupon, there was a brief pause in the proceedings)

MR. MAILLOUX: Thank you, your Honor. May I inquire?

THE COURT: Go ahead, counselor.

MR. MAILLOUX: Thank you, your Honor.

CROSS EXAMINATION

BY MR. MAILLOUX:

Q Good afternoon, Doctor Hausknecht.

A Good afternoon.

Q I am going to ask you follow up questions with regard to Mr. Camilo and your treatment of Mr. Camilo. As we sit here

today, is Mr. Camilo a candidate for surgery with regard to the cervical spine?

A I don't believe so.

Q As we sit here today, is Mr. Camilo a candidate for surgery for the lumbar spine?

A I don't think so, no.

Q As we sit here today, is Mr. Camilo a candidate for surgery with regard to the brain?

A No.

Q I am going to get into Mr. Camilo's treatment in a second. Doctor, isn't it true that the connection with cases such as these, there was a time where you had examined a patient -- whose name I will the not disclose -- with regard to an accident that happened in 1999 and you examined that patient on behalf of the patient and found there to be no disability whatsoever. A year later, you examined that same patient for that same accident and there was a finding, on behalf of the plaintiff's attorney in that case, and you had a finding that there was a disability?

MR. CANNATA: Objection, your Honor.

THE COURT: I will sustain that objection.

MR. MAILLOUX: May we approach? I have a good faith basis to ask.

THE COURT: Was this a litigation or a case?

MR. MAILLOUX: Trial testimony and reports.

THE COURT: Okay, why don't you break off the case and why don't you put forward the trial testimony, counsel. That's the only way we could clear everything up.

Q Doctor, did you ever evaluate a patient named Shana Hill?

A I recognize the name as one of my patients, yes.

Q And, in fact, you examined Shana Hill in connection with litigation on June 12, 2002?

A I don't recall.

MR. MAILLOUX: Your Honor, may we mark this for identification?

THE COURT: Mark it for identification.

MR. CANNATA: May I see it?

(Continued on following page...)

(Defendant's Exhibit C was marked for identification.)

Q. Doctor, I'd like you to take a look at what's been marked as Defendant's D for identification, and after taken a look at that, let me just ask you a couple of quick questions.

Is that a report that was prepared from your office?

A. I'm not sure.

Q. Well, is that report a heading for your office?

A. Yes.

Q. And that would be Complete Care?

A. Correct.

Q. And that report is by you; correct?

A. It appears so, yes.

Q. And that report was with regard to treatment of Shanna Hill in connection with an accident from March 19, 1999; correct?

A. I didn't review this file before I came here so I'm not really sure what it is.

Q. Well, that report was signed by you under the penalties of perjury; correct?

A. If it's my report but clearly there's a lot of markings and writing on here that are not mine.

Q. Is your signature on there?

A. Yes.

Q. So that's your signature in connection with that

report; correct?

A. I believe so.

Q. And your signature is right above a listing of your name; correct?

A. Correct.

Q. And your signature is right below a statement that you affirmed under the penalties of perjury the statements in that report are true and accurate; correct?

A. Correct.

Q. And that was with regard to Shanna Hill; correct?

A. If it's my report, yes. That's is.

Q. Okay. And you had a finding in that case of no disability; is that correct?

A. You asked me to read the report?

Q. Does it refresh your recollection that you had a finding that there was no disability.

A. No, I don't recall what I found in this case. It's from 2002.

Q. Using the third page of the report, could you review that and see if it refreshes your recollection as to whether or not there was a finding of disability?

A. There it says the patient is not disabled.

Q. And on that report, it has an indication on there that that report was prepared in connection with litigation; correct?

A. No. That's not correct.

Q. In fact, on the first page, there's an indication that it was prepared in connection with litigation; correct?

A. It doesn't say anything about litigation, no.

Q. Well, Doctor, isn't there a heading of what type of report it is? I refer you to the second line of the report on the top left.

A. It says Complete Care -- Complete Medical Care Services of New York PC.

Q. And then under that on the left it says?

A. Shanna Hill, independent medical evaluation.

Q. Now, the notation on the report of an independent medical evaluation, that's not a report indicative of treatment of a patient; correct?

A. Yes.

Q. You were doing an evaluation; correct?

A. I evaluated -- if this is my report, yes, it's an evaluation of a patient.

Q. It's an independent evaluation; correct?

A. If it's my report, it's my evaluation, yeah.

Q. And the phrase "independent medical examination" is a phrase that's used in connection with litigation; correct?

A. It can be, sure.

MR. MAILLOUX: And you had -- okay. I'd like to mark this as Defendant's Exhibit E for identification.

COURT OFFICER: Counsel, this was C for ID.

MR. MAILLOUX: Is it C? So this would be D then.

(Defendant's Exhibit D was marked for identification.

Q. Doctor, reviewing what has been marked as Defendant's Exhibit D, does that refresh your recollection as to whether or not you treated Shanna Hill in the year 2003?

A. No. I told you I recognize this patient's name. She was my patient. I don't recall what treatment was rendered in 2002 or 2003.

Q. Well, the previous report was from 2002; correct?

A. Correct.

Q. And this report is from 2003; correct?

A. Correct.

Q. And in this report, it does not -- you do not prepare this report in connection with an independent medical examination; correct?

A. I'm not sure. It just says narrative report.

Q. And in that report from 2003, that report is with regard to the same patient in connection with the same automobile accident; correct?

A. I believe so. Once again, I'm not sure. I haven't reviewed this file before I came here. I'm not sure that this is my report. Certainly, there's a lot of writing and markings that are not mine.

Q. And on that report, did you sign that report?

A. Yes.
Q. And that's on the third page?
A. Correct.
Q. And you signed that report with the same type of out of station that you did on the previous report; correct?
A. Correct.
Q. Meaning it's under the penalties of perjury?
A. Correct.
Q. In that report, you had a finding with the same patient that they were disabled; correct?
A. Partially disabled.
Q. Okay. And it be would fair to say that, just summing up going back to the original question, that in 2002, you found that she wasn't disabled with no limitations, and on the 2003 exam for the same person, you found limitations that she was disabled. Is that correct?
MR. CANNATA: Judge, I object to this entire line of questioning. I'm not quite sure what the point of this is. Whether she was disabled at one time and then became disabled later on, what's the relevance of any of this to this particular patient that we're dealing with today in this court.
THE COURT: Counsel, you didn't interpose an objection earlier.
Go ahead, counsel.

A. Yes. Assuming that these reports are mine, they're accurate, when I first saw the patient in 2002, I said that she wasn't disabled. When she came back in 2003, I said there was partial disability.

Q. And, in fact, one of those reports was prepared at the request of the defense firm involved in that case and the second report was prepared in connection with your work with the plaintiff's office; correct.

MR. CANNATA: Excuse me, Judge. Is counsel testifying here? He's testifying. I object to the question, Judge. Let him ask the doctor.

THE COURT: I'll sustain the objection as to form, Counsel. Ask the doctor a question. I think that you are leading him.

MR. MAILLOUX: Sure, Your Honor. I'll change my line questioning.

Q. Now, Doctor, in connection with this case, you met with the plaintiff's attorney this weekend or last night I should say?

A. That's right.

Q. Now, when you have a new patient come in, do you have an intake sheet?

A. Usually not.

Q. In this case, I just also want to clear up something. You testified that Mr. Camilo had a history of high blood

pressure when he came to you?

A. That's what he told me, yes.

Q. Doctor, what would be a normal range for a pulse?

A. Everybody is different. Somewhere between 60 and 100 is considered normal.

Q. On the date of the accident when Mr. Camilo appeared at the emergency room, what was his pulse?

A. Ninety-three.

Q. It would it be fair to say that when he went to the emergency room on the date of the accident, he had a normal heart rate?

A. Yes.

Q. Now, you saw Mr. Camilo ten times over the past six years; is that correct?

A. More or less.

Q. Okay. And in connection with those visits, you asked Mr. Camilo for an update as to his treatment; correct?

A. As pertains it to what I was treating him for.

Q. I'll phrase it this way. You asked him how his pain was. Is that fair to say?

A. In part, yes.

Q. You asked him how his restrictions were in his day-to-day life?

A. In part.

Q. You asked what therapeutic undertakings he was taking?

A. Yes.

Q. And you indicated that you know that he underwent physical therapy with Dr. Pavlova?

A. Correct.

Q. Did you ever speak to Dr. Pavlova?

A. No.

Q. And the record that you have are the total records from Dr. Pavlova?

A. Yes.

Q. Do you have any records in your file that, from a medical facility, not from the plaintiff telling you, that note a visit to a physical therapy provider after January 3rd, 2012?

A. Yes.

Q. And who would that be for?

A. Larry Shapiro, PC.

Q. So that was not with Dr. Pavlova; correct?

A. Correct.

Q. You never spoke to Dr. Shapiro either?

A. He's a physical therapist. No, I did not.

Q. Okay. And in terms of the treatment with the plaintiff, you obtained records in order to evaluate the plaintiff; is that correct?

A. In part.

Q. And at some point in time, you wanted to review the hospital record; is that correct?

A. Correct.

Q. That's the hospital record from Harlem Hospital?

A. There were three separate hospital records. There was Harlem Hospital emergency room and the three day hospitalization to Harlem Hospital clinic. I had those, and then subsequently New York Presbyterian which I didn't see until today.

Q. Would it be fair to say that the plaintiff only went to the emergency room twice in connection with this accident, not three times.

A. Correct. He went to Harlem Hospital emergency room by ambulance, then a week later he went to the clinic and then a week later he went to New York Presbyterian emergency room.

Q. Now, in terms of a case when a patient comes to you, is it possible to find out the mechanism of injury?

A. Can be.

Q. You need to know how the accident happened; correct?

A. Can be important, sure.

Q. Is it helpful?

A. It can be.

Q. In this case, did you ask the plaintiff about the car accident?

A. Yes.

Q. And did he describe it to you?

A. Yes.

Q. Did you take any notes about what was said to you

about the car accident?

A. He said he was in a rear passenger. He was involved in a collision on the passenger side, and that he hit his head but did not lose consciousness.

Q. Is that a note that you have that's typewritten that's referring to you?

A. No.

Q. Now, in terms of the history, did you ever obtain a copy of the police report?

A. Not that I recall.

Q. Doctor, would you like to look through your file and refresh your recollection as to whether or not you obtained a copy of police report?

A. Yes. It's in here.

Q. How did you obtain the police report?

A. It was faxed by the attorney's office.

Q. So the police report for this accident was faxed to you by plaintiff's counsel; is that correct?

A. Correct.

Q. And what about the hospital record? How did you obtain the hospital record?

A. I don't recall exactly. Either the patient brought them in or I got them from the hospital or got them from the attorney. It's not really important.

Q. Doctor, did you review your file about the hospital

records to see the Harlem Hospital records? I know you have a couple of set of Harlem Hospital records in there. So would you look at both?

A. There's no indication on the records where they came from.

Q. Okay. Were some of the hospital records faxed to you as well?

A. Not that I can tell.

Q. Doctor, there's a bunch of Harlem Hospital records in there with a faxed tab at the top of them; is that correct?

A. This set I have does not have a faxed tag on it.

Q. If you want to look through your whole file and see?

A. I just told you I don't have to look through it. This set that I have does not have a faxed tag.

Q. Doctor, can I see your file then?

A. You already did.

MR. MAILLOUX: Can I approach?

THE COURT: Yes.

Q. Doctor, I've opened up your file to the page. Does that refresh your recollection as to whether some of the hospital records you received were faxed in this instance?

A. Yeah. The CAT scan reports for the brain and for the cervical spine do have a faxed tag on them.

Q. They were from Harlem Hospital; correct?

A. Correct?

Q. From the plaintiff's initial triage to the hospital; correct?

A. Not the triage, the CAT scan reports.

Q. Okay. Now, they were faxed to you by who?

A. Gregory J. Cannata.

Q. That's the plaintiff's attorney in this case?

A. Yes.

Q. Could you tell the jury what date the hospital records and the police report were faxed to you from plaintiff's counsel for this personal injury litigation?

A. Well, the date on it is 12/6/11, but what day it was actually faxed, assuming that it's accurate, it would be 12/6/11.

Q. Okay. Now, Doctor, you reviewed the ambulance call report?

A. I did.

Q. And that is in evidence as Plaintiff's Exhibit 2?

A. Correct.

Q. And in terms of the ambulance call report, did the medical attendants who appeared at the scene of the accident, did they make an assessment of what their impression was of plaintiff's injuries?

A. I believe so, yes.

Q. And I want you to look on the first page.

A. You have to show it to me.

Q. Sure.

MR. MAILLOUX: May I approach, Your Honor?

THE COURT: Yes.

MR. MAILLOUX: Actually, I can get the copy that's in evidence, Your Honor?

THE COURT: Yes.

Q. Doctor, looking at the first page of the ambulance call report, is there a section which notes medical problem?

A. It says medical problem, yes.

Q. And that section is next to the section that says cause of injury or illness; correct?

A. Correct.

Q. And under cause of injury or illness, the notation made by the ambulance worker was a motor vehicle accident; is that correct?

A. Correct.

Q. And under medical -- the section which says medical, did they make an assessment as to whether or not there's a medical problem with the plaintiff?

A. Said 99, no medical problem.

Q. Doctor, going back to the reports that I had showed you about before, it's your testimony that was your signature on those two reports?

A. I believe so.

MR. MAILLOUX: Your Honor, I would move those

reports into evidence subject to redaction.

MR. CANNATA: Objection, your Honor.

MR. BARRY: Which reports are these?

MR. MAILLOUX: The ones from the prior treatment.

THE COURT: Let me see the reports, Counsel.

(Handing)

MR. CANNATA: You're talking about C and D?

MR. MAILLOUX: I believe it's C and D, Harlem Hospital.

THE COURT: I think the plaintiff objects; is that correct?

MR. CANNATA: Yes, Your Honor.

THE COURT: Objection sustained.

Q. Doctor, at Harlem Hospital, they ultimately found that there was no intracranial hemorrhage; correct?

A. Correct.

Q. And they found that there was no fracture of the skull. Is that correct?

A. That's correct.

MR. MAILLOUX: No further questions.

CROSS EXAMINATION

BY MR. BARRY:

Q. Doctor, the first time that you saw Mr. Camilo was on December 8th of 2011; is that correct?

A. Correct.

Q. And before you saw Mr. Camilo that day, did you have any records in your possession?

A. I assume that some of the records that we discussed before lare the ones with the faxed letterhead were acquired by my office staff and in preparation for the patient. I never saw this patient nor reviewed the records before then.

Q. Okay. If, in fact, you have had records before you did the examination and then you did the examination, and you prepared a three-page, four-page report from that day dated December 2011, would you have included the records that you reviewed if you did, in fact, have the records at that time?

A. If I didn't have him?

Q. No. I'm asking if you had the records --

A. Well --

Q. -- and you reviewed them would they had he been included in your report?

A. If I thought they were significant, I would have included it, but I don't generally include a section that says records review or anything that effect. In this particular case, from looking at my report, I can see that I had the CAT scan report of the head and neck because I mentioned those results in the report, and I can tell that I had the report of Dr. Brown. I guess they were also details of his report mentioned so I would assume that those records were in my possession at the time I saw him.

Q. Now, when a patient first comes in, it's important to take a medical history; correct?
A. Sure.
Q. One of the things that you noted about Mr. Camilo is that he had hypertension?
A. Correct.
Q. And that's another word for high blood pressure, isn't it?
A. Yes.
Q. And did you ask him if he was on any medication at that time before for the hypertension?
A. Yes.
Q. And did he respond to you?
A. Yes.
Q. And was he?
A. Yes.
Q. And did you ask him how long he had had high blood pressure or hypertension?
A. No.
Q. Now, someone who has high blood pressure, if they were involved in an instance, will that elevate the high blood pressure even though it's being controlled by a medication?
A. It can. Any type of stressful incident, any type of pain, can aggravate blood pressure.
Q. And being involved in an automobile accident can be

considered a stressful event?

A. Can be. Sure.

Q. Okay. And you told us before that -- strike that.

Now, Doctor, during that first visit that you had, you did a maneuver of his cranial nerves?

A. Yes.

Q. And you found all of that to be within normal limits, did you?

A. There was some abnormal eye movements. He did have some nystagmus, but otherwise it was normal.

Q. And when you shone the light into the pupils they were all equal and reactive?

A. Right.

Q. And the muscular expression and movement of the face was also within normal limits?

A. That's correct. He never complained of muscular expression problems. I've never treated him for any muscular expression problems.

Q. Strength of movement of the tongue was normal?

A. Once again, he didn't injure his tongue. I didn't treat his tongue.

Q. It's part of head, isn't it?

A. Yeah, the front part.

Q. And his ability to swallow was normal?

A. That's correct. He didn't complain of any swallowing

difficulty. I didn't find any difficulty. I didn't treat him for any swallowing difficulty.

Q. Now, you checked the reflexes; is that correct?

A. Correct.

Q. And could you explain what deep tendon reflexes are?

A. It's an involuntary reaction to a force that's applied to a tendon. So, for example, the patella tendon or the knee reflex, if you hit it with a hammer, it causes an involuntary tightening of the quadriceps muscle, forcing your leg to come up.

Q. Now, Doctor, can you explain what your sensory examination consisted of?

A. Testing the arms and legs as well as the trunk and face for ability to perceive various sensory stimuli including light touch vibration and pinprick.

Q. And, in fact, you checked the trunk and all extremities; is that correct?

A. Correct.

Q. And they were all within normal limits?

A. That's correct.

Q. Now, you also did a mechanical examination?

A. Yes.

Q. That's to trigger deep muscle, deep muscle palpation?

A. That's part of it.

Q. That was normal?

A. No. There was tenderness and spasm in the cervical region.

Q. Well, your reports says there are no discrete trigger points on deep muscle palpation; is that correct?

A. There's no trigger points. That's part of a mechanical exam. There were no trigger points but there were positive findings on the exam.

Q. And straight leg raising was negative bilateral; is that correct?

A. That's correct.

Q. What position did you do straight leg raising?

A. Seated.

Q. And the gait of Mr. Camilo that was normal, wasn't it?

A. Yes.

Q. Now, Doctor, you ordered a test called a BAER. Can you explain what those initials stand for?

A. BAER is an abbreviation for Brain Stem Auditory Evoked Response. It's a test that is performed by putting headphones on and administering a series of clicks and then measuring the brain electrical reaction to those clicks.

Q. And that's a test you ordered; correct.

A. Correct.

Q. And that test was done on December 8, 2011?

A. Right.

Q. And that test was normal?

A. That's correct.

Q. And you also performed an EEG on December 8, 2011 which was also normal?

A. Correct.

Q. Now, when is the first time that you actually reviewed the Harlem Hospital emergency room records?

A. I'm not sure.

Q. Was it last night?

A. No.

Q. Did you make -- in the last two years, have you looked at that record?

A. I mean it was certainly in my possession prior to 2014 because it's discussed in my 2014 report in extensive detail. What exact date I had it, I don't know, but it was certainly prior to March 4, 2014.

Q. And when is the last time you saw Mr. Camilo?

A. It was 2014 in May.

Q. So you haven't examined him since that time period up until today?

A. That's correct.

Q. You haven't spoken to him?

A. That's correct.

Q. And you're not aware if he's under any treatment currently?

A. No, not that I know of.

Q. Have you contacted any other doctor regarding the treatment of Mr. Camilo before you came in and testify today?

A. No.

Q. Okay. And approximately how many visits did Mr. Camilo have with you?

A. I think it's about 10 or 12.

Q. And they were spread out over the course of time over four, three and a half years?

A. Between December 8, 2011 and May 2014.

Q. And you don't have any future appointments scheduled; is that correct?

A. Not that I know of.

Q. Doctor, I have no other questions.

MR. CANNATA: Your Honor, just a couple of questions.

REDIRECT EXAMINATION

BY MR. CANNATA:

Q. Doctor, you were asked about a patient Hill, who you saw on 2002. Do all patients get better all the time?

A. No. Each patient is different. Some patients get better. Some patients get worse. Some patients stay the same. Some patients fluctuate. In this case with Domingo, he definitely got better in terms of his head injury, but not completely better, still having headaches, but the other problems, the dizziness, the memory and the information

processing, fortunately, those things resolved. Unfortunately, his neck and back injuries never fully resolved, although they did improve, but he's stuck with those neck and back problems. He's going to have good days and bad days, but these are permanent problems.

Q. And, Doctor, on the EMS records, it says no medical problems. Yet, they did indicate in the report that he complained of pain. They applied a cervical collar. They immobilized his head, and they put him on back board, and transported him to the hospital on a stretcher.

MR. BARRY: Objection, your Honor.

MR. CANNATA: I didn't finish the question.

THE COURT: Go ahead.

Q. Do those entries contradict each other?

MR. BARRY: Objection. I did not cover that on cross.

THE COURT: Sustained.

MR. CANNATA: Judge, I believe it was done on cross on the issue of no medical problem in the EMS report.

THE COURT: Okay. You issue a question to the doctor relative to a notation and you brought out certain things and you stated an objection and I sustained the objection. So go on to the next question.

Q. Okay, Doctor, based upon your review of the EMS records, was there a medical problem that Mr. Camilo was

suffering when the EMS picked him up from the scene of the accident?

MR. BARRY: Objection.

THE COURT: Sustained. When they picked him up.

MR. CANNATA: Well, when they treated him at the scene, yes.

MR. BARRY: I still have an objection, Your Honor. This scenario wasn't gone over on cross examination. It's beyond the scope.

MR. CANNATA: Your Honor, I believe these questions were asked on cross examination as to the EMS record as to the entry that there was no medical problem. I'm just -- that's where I'm doing.

THE COURT: Pose your question.

MR. CANNATA: Yes.

Q. Doctor, did Mr. Camilo have a medical problem when he was treated by EMS at the scene of the accident on November 8, 2011?

MR. BARRY: Objection.

MR. MAILLOUX: Objection. Speculative.

THE COURT: Hold on. Sustained. There's a notation here in the context of that that said no medical problems. I don't think we could interpose his view on that as a neurologist in that respect.

MR. CANNATA: I have nothing further, Your Honor.

MR. MAILLOUX: No.

THE COURT: Ladies and gentlemen of the jury, we'll take our recess. I would request you return here promptly 10:00 o'clock at which time the trial will resume. Thank you for yesterday, bearing with us, more a lengthy day than usual. I'll see you tomorrow. 10:00 o'clock. Have a good one.

COURT OFFICER: All rise. Jury exiting.

(Jury exits courtroom.)

(This matter was adjourned to January 18, 2018 at 10:00 o'clock a.m.)