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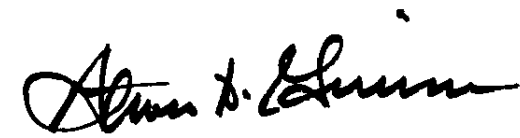
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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CHRISTIAN CERVANTES-LOPEZ,)	
)	
Plaintiff,)	CASE NO. A-12-667141
)	DEPT NO. XXIII
vs.)	
)	
EVANGELINA ORTEGA,)	
)	
Defendant.)	TRANSCRIPT OF
)	PROCEEDINGS

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

JURY TRIAL - DAY 3

WEDNESDAY, FEBRUARY 25, 2015

APPEARANCES:

For the Plaintiff:	DANIEL S. SIMON, ESQ. ASHLEY M. FERREL, ESQ.
For the Defendant:	ROBERT KADE BAIRD, ESQ. CHARLES A. MICHALEK, ESQ.
Also Present:	Lorena Pike, Interpreter

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1 **LAS VEGAS, NEVADA, WEDNESDAY, FEBRUARY 25, 2015, 12:44 P.M.**

2 *** * * * ***

3 (Outside the presence of the jury.)

4 THE COURT: All right. Counsel, please state your
5 appearances for the record.

6 MR. SIMON: Danny Simon and Ashley Ferrell on behalf
7 of the Plaintiffs.

8 MR. MICHALEK: Charles Michalek on behalf of the
9 Defendant. My co-counsel, Kade Baird, is frantically eating
10 lunch and will be here shortly.

11 THE COURT: Okay. So we have some matters we needed
12 to address yesterday.

13 MR. MICHALEK: Yes, Your Honor.

14 THE COURT: So let's --

15 MR. MICHALEK: Well, from the Defense side, I guess
16 the first thing to raise is the future care and treatment by
17 the Plaintiff. I have provided the court clerk a copy of two
18 opinions. I don't know if Your Honor got them.

19 THE COURT: I got them. I have not had a chance to
20 finish reading them.

21 MR. MICHALEK: Okay. I -- I know that the Court is
22 familiar with FCH1 versus Rodriquez. That was a -- a prior
23 case from the Nevada Supreme Court. The other case that I
24 gave to the Court was Calvert versus Ellis, just recently
25 fresh off the press, February 2015, also from the District of

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1 Nevada.

2 I think these two cases are important and show
3 clearly why the future medical treatment and care and cost
4 should be excluded from this trial. As Rodriquez says, "Only
5 opinions that are formed during care and treatment of the
6 Plaintiff are allowed in from a treating provider."

7 If you're going to go beyond that scope, you become
8 an expert witness and you become subject to the expert witness
9 disclosure requirements. There was no expert disclosure
10 reports from the treating providers, so they are simply
11 limited to their opinions formed during the care and
12 treatment.

13 There was no opinion regarding the cost of future
14 care and surgery which was performed or formed during the care
15 and treatment. We know this because there's never been a
16 computation of damages provided to the defense that lists out
17 the costs of the future care, the future surgery, the future
18 treatment.

19 In both Rodriquez and especially in Calvert, there
20 were arguments by the plaintiff that they did not have to
21 comply, that simply turning over medical records was
22 sufficient, simply listing an expert disclosure was
23 sufficient. And I will note that Mr. Eglet's arguments in
24 Calvert were all denied by the District Court judge.

25 We deposed the chiropractor who testified today and

1 we deposed Dr. Koka. We asked them if the Plaintiff was going
2 to have any future care or treatment with them, had any
3 appointments scheduled. Both doctors said no. The burden,
4 according to Calvert and Rodriquez is on the doctor, the
5 doctor to disclose the records that he reviewed in forming the
6 care and treatment.

7 So even if the Plaintiff, had they disclosed whatever
8 they disclosed was certainly outside the discovery deadline,
9 but even the -- that record [inaudible] by the Plaintiff is
10 not sufficient. The doctors' records must show what he
11 reviewed, what he looked at.

12 THE COURT: Can you step back? I was kind of given
13 these cases in a vacuum. I'm not really sure --

14 MR. MICHALEK: Here's our problem.

15 THE COURT: -- what you're going at.

16 MR. MICHALEK: Right. The -- the Plaintiff is going
17 to be requesting future costs for future surgeries. Plaintiff
18 has never told us how much that surgery is going to cost.
19 They -- they instead -- well, she may have a fusion; but
20 that's not sufficient under the rules.

21 You have to tell us what type of fusion it is, how
22 much the cost is expected to be; the future injections, what
23 kind of cost that would be, that sort of thing. All of that
24 is specifically delineated in Calvert and in Rodriquez. And
25 at no time has Plaintiff ever provided us a number as to what

1 the cost of that surgery is going to be.

2 And as Calvert would say and as Rodriquez says, both
3 specifically, you cannot just simply dump medical records upon
4 the defendant. There is a requirement under the rules to
5 provide a computation. A computation is not simply: Here,
6 I'm giving you all the medical records.

7 You must actually delineate what you're going to
8 request as damages. That comes specifically from Calvert.
9 None of that was ever done. The Plaintiff yesterday in his
10 opening said that the Plaintiff is going to have ongoing
11 chiropractic care for life. None of that was ever disclosed.
12 None of that was ever told to us either in -- either in the
13 cost or that it would occur.

14 When we took the deposition of the chiropractor, both
15 Plaintiff and Defendant had been released from care. It is
16 the burden upon the Plaintiff to produce that information and
17 it's -- it's a requirement. It's a duty under 26, NRCB 26 to
18 supplement that information. It was not done.

19 If they're going to testify on the stand about future
20 damages, I think it is absolutely clear from -- from Rodriquez
21 and from Calvert that they are considered experts. That they
22 had to produce this information. They had to produce a
23 computation and they did not do so. Because of that, there
24 should be no discussion of future care, future surgery, future
25 costs.

1 And I also say that when we took the depositions of
2 these two particular individuals, we asked them about the
3 mechanism of injury and they said they had no idea. So I
4 would object to any request or any discussion by them as to
5 the mechanism of injury.

6 But specifically, as to future care, it is quite
7 clear, Your Honor, if you read Rodriquez and if you read
8 Calvert, you cannot simply say, Oh, here I told you in an
9 expert disclosure the plaintiff may have a need for future
10 surgery. That is not sufficient.

11 It is also not sufficient to say, Oh, here, I gave
12 you a bunch of the plaintiff's medical records. That is not
13 sufficient. And I will quote specifically from the Court in
14 Calvert at footnote 4, it says, "Plaintiff boldly states
15 there's no requirement for plaintiff to disclose these costs
16 at the initial expert deadline as long as their experts give
17 the opinions that such surgeries are warranted and the reasons
18 therefore and she timely supplements her computation of
19 damages."

20 First of all, there was no disclosure at the expert
21 deadline. There was no disclosure anywhere at any time of the
22 cost because there was never a computation of the future
23 damages. So when the Court asked for -- asked plaintiff, that
24 would be Mr. Eglet, to provide a citation, he couldn't do so
25 under the Federal Rules and he couldn't note any case.

1 FCH1 Rodriguez already sided favorably to the Nevada
2 District Court. And in regards to the duty of a treating
3 physician to provide a report, Calvert is clearly on point. I
4 think it would be unfairly prejudicial at this point for
5 either of these two doctors to discuss the future care.

6 I haven't gone through every single physician, but
7 I'm -- I'm quite clear that nobody in -- in any of their
8 depositions -- none of the doctors in any of their depositions
9 ever stated what the cost would be. Mr. Kade and I were going
10 through this morning, but we sort of ran out of time before we
11 came over here, but I noticed specifically these two doctors
12 did not.

13 So if the Court wants to hold until -- I -- I think
14 there needs to be an actual showing from Plaintiff, one, the
15 date that he told us what the computation would be and what
16 the -- what that amount is. There won't be one because that
17 has never been disclosed to us.

18 And without that showing and without the proper
19 report under 26, I think the -- the expert should not be able
20 -- the treating physicians -- excuse me -- should not be able
21 to testify as to any future damages. The case law is
22 absolutely 100 percent in our favor, Your Honor.

23 THE COURT: Counsel.

24 MR. SIMON: Thank you, Your Honor. Well, we
25 understand why the Defense wants to bring this position.

1 Unfortunately, I think his authority and his arguments are
2 flawed for many reasons.

3 First, they already brought this motion in limine to
4 Your Honor. Argument was made. You made several comments in
5 your orders and specifically distinguishing the Palms case to
6 this case and talked about that these doctors can testify to
7 future costs within the scope of their expertise.

8 They are quite different than Dr. Schifini, who at
9 the very last minute, decided to gather up all of the medical
10 providers and everything in a deposition and start testifying
11 to a life care plan in the middle of a deposition after the
12 discovery cut-off.

13 Obviously the Supreme Court didn't appreciate that.
14 They didn't like the result and they came down pretty hard on
15 him. But what the Defense wants to do, extrapolate that --
16 the fact-intensive basis for that opinion to all cases, and
17 that's not what it's about.

18 This Court still has wide discretion to allow the
19 admissibility of testimony, including future damages and
20 costs. And so when you look at the Palms case and the timing
21 of the Palms case, the Schifini information was before the
22 2012 amendments and the note to the 2012 amendments clearly
23 states that treating physicians are allowed to testify to
24 causation, prognosis, and don't have to provide a report.

25 In addition to that, all that is required is a fair

1 disclosure so there's no ambush. In this case in our
2 designation of experts long before -- long before they were
3 due, the Plaintiff gave a lengthy description of what each
4 expert would testify to, including the cost and necessity of
5 future medical treatment.

6 Part of the problem that we have here is that the
7 Defense took the deposition of Dr. Adair, Dr. Koka, Dr.
8 Kaplan, Dr. Lanzkowsky, and although they had an opportunity
9 to ask them: Do you have an opinion to the future care? And
10 if so, what the cost of that care is? They refused to even
11 ask that question. And now for their lack of diligence, they
12 want to come in and use that to their benefit and be a sword
13 to the Plaintiff to cut off their future care.

14 And Dr. Kaplan is the most egregious by the Defense
15 because what happened in this case, which you haven't learned
16 yet, Dr. Lanzkowsky, well within the period of discovery, sees
17 him, does a discogram, which is positive. He refers Christian
18 to Dr. Kaplan specifically for a surgical opinion.

19 In his record he says he needs a fusion at the L5-S1
20 level. It's in the records. Well disclosed long before the
21 discovery cut-off, in addition to our disclosure. They take
22 his deposition. In his deposition, Dr. Kaplan says, Yes, he
23 needs an L5-S1 fusion, and it's related to the accident, and
24 they don't ask what the cost is.

25 And now they want to come and say, well, he didn't

1 say it because we didn't ask it and we want you to cut it off.
2 It's within his scope of expertise. It's based on his
3 treatment at the time he's already given the opinions. There
4 is no prejudice to the Defense.

5 And again, this isn't a hard-and-fast rule about
6 computation of damages. It's what's fair. And what the Palms
7 case does discuss, it says, the whole purpose and intent
8 behind that ruling is so there's no surprise at trial. Well,
9 there's no surprise that this guy needed a surgery that's
10 related to this and what the specific surgery was. And
11 because they didn't want to ask for that, they can't benefit
12 from that.

13 The other side of it -- and I just was presented with
14 this district court case, which is an unpublished opinion --
15 number one, it's based on Federal rules, not the Nevada rules
16 of civil procedure.

17 But what's interesting is just looking at the very
18 beginning of it, the Plaintiff in that case never talked about
19 future treatments even in a disclosure, any disclosure. And
20 so that's why the Federal court here came down hard on Mr.
21 Eglet because he never even talked about a future surgery.

22 Here it's been well known to the Defense of the
23 future surgery. They had an opportunity to give it to Dr.
24 Duke. Dr. Duke already opined and reviewed all of the same
25 records of Kaplan and Lanzkowsky and he just disagrees with

1 them: I don't think that he needs surgery and I don't think
2 it's related.

3 So there's no ambush and there's no unfair surprise.
4 And the only unfair surprise would be for them to come in in
5 the middle of a trial and raise this now after this Court has
6 already ruled that it's permissible. So based on that, we
7 would submit.

8 MR. MICHALEK: Let me address first the -- the Court
9 has already ruled on it because I'm looking specifically at
10 the minutes and this Court did deny our motion, but said,
11 However can be revisited at trial. And I'm more than happy to
12 show the Court the minutes.

13 THE COURT: I read it.

14 MR. MICHALEK: Sorry?

15 THE COURT: I read it.

16 MR. MICHALEK: Okay. So the issue certainly is -- is
17 one that can be revisited. Let me also discuss Mr. Simon just
18 grossly misrepresented the decision in Calvert. And I urge
19 Your Honor to read it very closely.

20 Calvert says specifically that the plaintiff cannot
21 shift her Rule 26 responsibilities onto the defendant. You
22 can't say, well, they didn't ask for something I was obligated
23 to provide. Federal Court said, no, you have to provide this
24 information.

25 What I did not hear at any point in time during Mr.

1 Simon's argument was this was the date I told the Plaintiff --
2 I'm sorry -- the Defense that the future surgery would cost X
3 amount of dollars. You never heard him say that because he
4 never did that.

5 Calvert explicitly says it's not just the expert
6 requirement. You have to have a duty to disclose the
7 computation of damages. And I will note in Calvert then Mr.
8 Eglet at a later point in time even did do a computation of
9 damages late, and the Court still said that was insufficient.

10 There was no argument that the Plaintiff could make
11 that Mr. Eglet did not make in Calvert and was rejected except
12 for the fact that he didn't even do what Mr. Eglet did in
13 Calvert. He didn't even provide the computation late as -- as
14 it was done in Calvert.

15 There is a difference between an expert -- I'm sorry
16 -- a treating physician giving his opinion as to what I did to
17 this person on this particular date. That is what the Federal
18 Court allowed Dr. Schifini to testify to because anything
19 after that would be an expert opinion.

20 None of these doctors formed an opinion regarding the
21 care and -- sorry -- the future cost of surgery during their
22 care and treatment, so it should be out. Even if they did,
23 they didn't properly disclose it under Calvert, it's still
24 out.

25 There is unfair prejudice if it were allowed to be

1 in. As I said, Your Honor, there is absolutely no argument
2 the Plaintiff has raised that wasn't already addressed and
3 declined in Calvert. As to Calvert being a unpublished
4 decision, the Nevada Supreme Court in FCH1 versus Rodriquez
5 already addressed that. You're allowed to consider
6 unpublished decisions. Certainly on this particular issue,
7 especially when it goes to a matter of unfair prejudice of
8 defense.

9 We were never ever told how much a surgery would be.
10 We were never told during counsel's opening the Plaintiff
11 would require chiropractic care for life. That's why we took
12 these doctors' depositions, and they had a duty to supplement
13 under 26 and they didn't do so. They had a duty to give me a
14 computation of damages, and they didn't do so.

15 It's got to be excluded. It would be unfair to allow
16 it now. It is trial by ambush. If Your Honor would take five
17 minutes and read the Calvert case -- Calvert case in its
18 entirety, I'm sure Your Honor would agree with me that it is
19 covered quite clearly.

20 I did not hear, I did not see any computation
21 anywhere from the Defendant. You can't simply say: Here's
22 the Plaintiff's medical records. Here's an expert disclosure
23 and he's going to testify about future care. Thank you very
24 much. You have to give me the actual numbers and he didn't do
25 so. With that, I'll rest, Your Honor.

1 THE COURT: Mr. Simon, when is the first time -- did,
2 in the initial disclosures, were there references to future
3 surgeries?

4 MR. SIMON: In our ECC we listed the doctors as
5 experts and talked about the -- what they would testify to and
6 in -- and then that was re-submitted several times at every
7 supplement and then separately --

8 THE COURT: So did you --

9 MR. SIMON: -- timely designation of expert witnesses
10 and reports, and that was dated in March of '14.

11 THE COURT: So was it indicated in your initial
12 disclosures that Dr. Kaplan had recommended a fusion?

13 MR. SIMON: What is recommended is what he would
14 testify to, that he would -- that he would testify to future
15 medical care and the necessity and cost of future medical
16 treatment. His reports were also -- his records were produced
17 identifying that they were a surgical candidate and required
18 an L5-S1 fusion, and that was all done before the discovery
19 cut-off. And then they took their deposition. He stated
20 again in the deposition and that it was related to the
21 accident, and specifically the L5-S1 fusion.

22 THE COURT: Okay. My prior decision is going to
23 stand. First of all, looking at the FCH1, LLC versus
24 Rodriquez, 130 Nevada advanced opinion 46, I don't honestly
25 read that opinion the way the Defense would urge me to read

1 it.

2 In that opinion the Nevada Supreme Court clearly says
3 that a treating physician can testify regarding opinions that
4 were formed during the course of the treatment. In that case
5 where they had issue with Dr. Schifini's testimony was that
6 Dr. Schifini treated an individual for pain associated with a
7 knee injury, but then testified to -- testified to a multitude
8 of different specialties, and commented on the reasonableness
9 of a different specialty and a different doctor's treatment
10 and medical cares that would be reasonable for that. I think
11 in this particular case it's clearly distinguishable.

12 As far as Dr. Kaplan, he's a surgeon. The individual
13 went there for a surgical consult. He is testifying regarding
14 the examination of the plaintiff, the opinions formed during
15 that, and those opinions would also include any care for
16 future medical care or treatment. So I think it's clearly
17 distinguishable.

18 Looking at the Calvert versus Ellis, which is 2015
19 Westlaw 631284, again, I think it's distinguishable. In this
20 case the initial disclosures did mention future care and
21 treatment. In that case, the Court took notes, took great
22 pains to note in the opinion that plaintiff made absolutely no
23 reference to any claims for future medical expenses in their
24 initial disclosures.

25 They didn't do anything to put the other party on

1 notice of potential -- of future medical care and expenses
2 until, let's see, three months after the initial expert
3 disclosure deadline and approximately three months before the
4 discovery closed, even though plaintiff admitted that the
5 surgery, the need for surgery was known at the time of the
6 initial disclosure. So I think it's clearly distinguishable
7 from the instant case and the ruling will stand.

8 What else do we need to address?

9 MR. MICHALEK: Yes, Your Honor. And just let me
10 briefly say the Calvert decision discusses exactly what you
11 just said, Your Honor, but in -- in the reverse. It says,
12 there was a disclosure of the computation of damages at some
13 point by Mr. Eglet.

14 And I will note again, and I don't want to belabor
15 the point, but there's never been any monetary amount
16 disclosed to us. We don't know how much future surgery is
17 going to cost, and Calvert would say that's why it should be
18 excluded; but I get your ruling on that.

19 I guess the purpose now would be I don't want to
20 belabor the point by having every single time a future
21 surgical amount is mentioned that we have to have a bench
22 conference on this. So my suggestion would be is either we
23 stipulate that we have a continuing objection on this point or
24 Mr. Baird can simply stand up and say "objection for the
25 reasons previously noted" and the Court can simply deny our --

1 THE COURT: Well, I think the -- sorry. I think for
2 the ruling to apply, I think that your -- your objection does
3 apply to -- you made it general enough that it applied to any
4 doctor who would opine that future medical care of any kind is
5 necessary. At least that's the way I took it.

6 MR. MICHALEK: Okay. And -- and --

7 THE COURT: [Inaudible] future medical care,
8 treatment, surgeries, et cetera.

9 MR. MICHALEK: Okay. So we wouldn't have to object
10 every time for the --

11 THE COURT: I don't think you would need to to
12 preserve the record.

13 MR. MICHALEK: And one last distinction, are we
14 talking specifically about Dr. Kaplan? Because the
15 chiropractor and the -- Dr. Koka did --

16 THE COURT: Well, I don't know what's in the reports.

17 MR. MICHALEK: Well, that's what I'm -- well, okay.
18 I guess we can -- all right. That's --

19 THE COURT: I only know Dr. Kaplan because that was
20 the one that was used by way of example, but I -- I haven't
21 seen the reports for all the medical providers.

22 MR. MICHALEK: Okay.

23 THE COURT: Certainly if there's no mention of future
24 medical care in the records, I think that's a different issue
25 than Dr. Kaplan who clearly -- well, clearly based upon the

1 representation of both Plaintiff and Defendant has indicated a
2 need for future care in the way of surgery.

3 MR. MICHALEK: Okay. I guess we can address that at
4 that point in time when it comes up to it.

5 One quick thing, and I'm going to be -- well, I'm
6 going to assume for the moment that it was not intentional by
7 Mr. Simon. I've known Mr. Simon for 20 years, so I don't
8 think that he saw the juror when he made the comment, but my
9 technician and I were outside when Mr. Simon came up.

10 He made a joke about my box, and he said, With all
11 the insurance money you have, you couldn't find a better box.
12 I don't know if a juror overheard that. It was a juror
13 sitting on the opposite side. He was loud enough to be heard.
14 Like I said, I'm not accusing Mr. Simon of anything except
15 making maybe a loud joke that probably wasn't appropriate.

16 THE COURT: Do you know what juror it was?

17 MR. MICHALEK: It was -- the one --

18 MR. BAIRD: Korey Johnson is his name.

19 MR. MICHALEK: Yes. I didn't know his name. And
20 then there was the short-haired juror who came in sort of --
21 she was coming in from the elevator afterwards. I'm not
22 saying they heard the comment. I'm not sure what the Court
23 even wants to do about it because I don't --

24 THE COURT: Well, there's two ways you can handle it.
25 You can either not address it or the only -- I'm not going to

1 -- to dismiss the whole panel because of that. What I would
2 do instead would be to call the juror in who may have heard it
3 and just generically ask the juror if they heard anything that
4 would affect their ability to be fair and impartial, and to
5 remind them again that the only thing they can consider is
6 what is learned here in court.

7 MR. MICHALEK: Would you do that, I guess,
8 individually, or, just say, hey, panel, have you heard
9 anything during this trial?

10 THE COURT: I probably wouldn't do it as a whole
11 panel because I don't want one person to taint the others.

12 MR. MICHALEK: Okay.

13 THE COURT: So the -- you know, the question -- I
14 mean, if you want me to call them in just to doublecheck,
15 that's fine. It's not -- unfortunately it's happened in other
16 trials.

17 MR. MICHALEK: You know, I would rather get the case
18 on. I haven't really had a chance to discuss this with my
19 co-counsel, so I don't want to make any decisions since he's
20 lead counsel.

21 THE COURT: Sure.

22 MR. MICHALEK: I just want to bring it to the Court's
23 attention. At this point, I mean, I guess, we could maybe
24 take two minutes after the jury -- the rest of the jury at the
25 end of the day and just say, hey, have you heard anything, you

1 know --

2 THE COURT: Well, if you look at the jury and you
3 recognize the juror -- I mean, again, this -- this
4 unfortunately happens, you know.

5 MR. MICHALEK: Right. And I -- I don't want to start
6 -- I don't want to start -- I mean, I don't want to stop the
7 process just for one juror. I'd rather we go forward. I
8 think we can address it at the end of the day.

9 THE COURT: Sure. Sure. That's fine. Anything else
10 we need to address?

11 MR. SIMON: Just so we're clear, he seems to have
12 this ongoing characterization of everything that we're doing,
13 which I don't necessarily agree with. So, for example, he was
14 accusing me of nodding and winking to the juror about
15 insurance.

16 THE COURT: I did not see that happen.

17 MR. SIMON: That is clearly not true and it did not
18 happen, and so for him to make that inference is improper. He
19 also talked about a slide that was there for eight seconds,
20 that was his interpretation about eight seconds. I would say
21 if it was there more than two or three, that would be a lot
22 because I went as fast as I could to get to the next slide.

23 Here we are again. I come around the corner and see
24 these two and they are by themselves. Jurors are way down on
25 the other side of the aisle past the doors to get into the

1 courthouse, and there was one guy there and I did not see him,
2 and I was just trying to be friendly to these two guys and
3 here they are trying to accuse me of some more stuff.

4 I submit to you it was not loud, but I -- I encourage
5 you to ask him if he overheard anything the attorney said
6 prior to coming into court. Because if that's the case and
7 there is that issue, I certainly don't want that to taint the
8 trial. And so from now on, I will refrain from any jokes to
9 the other side for the rest of the trial.

10 THE COURT: Okay.

11 MR. MICHALEK: For the record, I was -- I wasn't
12 accusing Counsel of anything. I specifically said, Your
13 Honor, that I was going to assume that it was -- it was -- he
14 didn't see the juror. I -- I will want to make a note,
15 though, considering the way Counsel addressed it, there has
16 been three violations during voir dire and the opening
17 statement of references to insurance if for one --

18 THE COURT: Hold on. We've already argued this
19 yesterday.

20 MR. MICHALEK: Right. But if one were to make the
21 case that --

22 THE COURT: Hold on. We're not going to do this.
23 Let me just set some ground rules. I'm pretty easy going and
24 pretty laid back. There's -- there are certain rules in this
25 department. I mean, one is I give you guys a chance to make

1 the record, which you're absolutely entitled to, and when
2 you're finished I make a ruling; and then it's done, whether
3 you agree or disagree with it.

4 Once issues are brought up and addressed by the
5 Court, that issue is done, okay? It's just inappropriate to
6 keep rehashing things.

7 As far as the issue -- I haven't seen either counsel
8 for the Plaintiff, counsel for the Defendant, I have not
9 observed anything, any unethical conduct in any way, shape or
10 form. As far as one -- one attorney speaking a little too
11 loudly or saying things not knowing that a juror was close by,
12 unfortunately it does happen.

13 The only concern for the Court is is that juror is
14 not tainted to either side as a result of what they may have
15 heard. So, you know, and there was a way for me to go about
16 addressing that without, you know, having to get rid of my
17 panel. So that's it.

18 MR. MICHALEK: Yes. Thank you, Your Honor.

19 THE COURT: And I -- I just need to get my water and
20 then I'm ready to call the jury in if you are all ready.

21 MR. SIMON: There was one other issue that I don't
22 know if we need to resolve is this surveillance issue.

23 THE COURT: We do.

24 MR. SIMON: And I'd rather that be done sooner than
25 later and so --

1 MR. MICHALEK: I thought your ruling was it's out.

2 THE COURT: My ruling was it's out, and yesterday I
3 told you that I went through the computer system. I did not
4 go back and view the video, but I went back and looked at the
5 computer system and I shared with you what the computer system
6 indicated, and that was probably the -- the reasoning behind
7 my decision.

8 MR. MICHALEK: And I -- I think the Court just noted,
9 we went over that yesterday and you made your ruling and I
10 think we've preserved our record on that, unless Mr. Simon
11 feels otherwise. But I think --

12 MR. SIMON: Okay. I'm good.

13 THE COURT: I'll get my water, use the restroom, and
14 I'll be back here in just a minute.

15 (Pause in proceedings.)

16 THE COURT: Okay, Jason. Bring them in. Are you
17 guys set up for opening?

18 (The jury reconvened at 1:19 p.m.)

19 THE COURT: All right. Welcome back, ladies and
20 gentlemen of the jury. Where we left off yesterday -- again
21 this is Christian Cervantes-Lopez and Maria Abarca versus
22 Ortega. It is Case A667141. Where we left off yesterday, the
23 Plaintiff had just finished his opening statement.

24 At this time, the Defense, would you like to present
25 your opening?

1 MR. BAIRD: Yes, Your Honor.

2 THE COURT: All right.

3 DEFENDANT'S OPENING STATEMENT

4 MR. BAIRD: Good afternoon, ladies and gentlemen.

5 I'm here representing Miriam Pizarro-Oretega, the young woman
6 in the corner there. Miriam is 26 years old. She lives in
7 Montrose, Colorado; although at the time of this accident she
8 did live here in Las Vegas. She has a two-and-a-half-year-old
9 son named Aidan, and she's hoping soon to return to full-time
10 education to get her own education in preparation for her
11 future.

12 Ladies and gentlemen, we are here as part of this
13 case because Plaintiffs are going to ask you for money. No
14 matter what Plaintiffs' counsel says about harms and losses,
15 that's just lawyer-speak for money. As you prepare to receive
16 the evidence in this case, I want to give you a map, some sign
17 posts that you can look for that are going to help you
18 anticipate what evidence will be coming and what to do with
19 that evidence as you receive it.

20 First and foremost, as you may have gathered from
21 jury selection, this is a case that's not about myself and Mr.
22 Michalek against Mr. Simon or Ms. Ferrell. This is a case
23 about Christian Cervantes and his wife, Mary Abarca, against
24 my client, Miriam Pizarro-Ortega.

25 As my client is not a doctor. The majority of the

1 evidence in this case will come from the two Plaintiffs,
2 either directly from them or it will be filtered back to you
3 through their doctors. Their claims are that this accident --
4 and you can see the results of the accidents in the photos of
5 their car -- that this accident caused traumatic spinal
6 injuries.

7 They would have you believe that these photos are
8 enough. The question for you will be: Are these pictures and
9 the claims made by Christian and Maria enough to prove that
10 they suffered a traumatic spine injury in this case? The
11 obligation to prove their case, the burden of proof, is
12 Plaintiffs to bear.

13 You'll recall from jury selection that one of the
14 agreements you made as part of being allowed to sit on a jury
15 is that you would require that Christian and Maria would give
16 to you enough evidence to prove their case. To bear that
17 burden, they're going to present evidence to you.

18 Now, it's been mentioned a little bit in voir dire
19 and so we'll discuss it a little bit more where does all the
20 evidence come from? There was reference to discovery, and
21 after a lawsuit is filed the parties begin to exchange
22 documents and information. They can ask for more information.
23 That's when we got to talk to Christian and to Maria.

24 And as that information comes out, the picture that
25 each party has about the case can change. Plaintiffs' counsel

1 noted that at the outset we had answered for Miriam and said
2 it didn't look like she was at fault and just a month later,
3 the evidence showed otherwise.

4 As you can see, it took a few years to complete this
5 process, and we've gathered everything we can and now the
6 evidence will be presented to you, the jury, to determine the
7 truth. Through the presentation of the evidence, you are
8 going to see two versions of both Mary -- Maria and Christian.

9 As the Plaintiffs are going to go first, Mr. Simon
10 will present to you the first version of the Plaintiffs you'll
11 see and that version is the lawsuit version. This is the
12 version that Maria and Christian give to their attorneys, the
13 version they give to their doctors, and the versions they give
14 under oath at times in proceedings related to this lawsuit.
15 This version of Maria and Christian is focused on getting
16 money from this lawsuit.

17 Then my clients will get their turn. Through
18 cross-examination of the doctors that Maria and Christian put
19 on the stand and through our own witnesses that we will
20 present, we'll present a second version. The real version.
21 This is the version that Maria and Christian demonstrate when
22 their doctors and their attorneys and jurors aren't around.

23 Plaintiffs are going to tell you that this accident
24 injured them. Their job will be to present to you evidence
25 that they were injured traumatically and that they needed

1 surgery. They're making these claims as part of a lawsuit for
2 negligence. A term you've probably heard before.

3 And in order to recover money for negligence, the
4 Plaintiffs have the obligation and the burden to prove their
5 case by proving four different elements. These elements are
6 first duty, breach, causation, and damages. If they don't
7 prove all four of these elements, you cannot give them any
8 money.

9 Every single piece of evidence that you receive in
10 this case needs to be filtered through this lens: Does it
11 apply to these four elements? And if a piece of evidence does
12 not relate to one of these statements, like a plea for
13 sympathy, at the conclusion of the trial the Judge is going to
14 ask you to ignore that evidence.

15 Now, let's talk about these. First off, duty. What
16 is a duty? This is a common-sense element. When any person
17 is driving a car, they have a duty to everyone else on the
18 road, and I guess pedestrians too, to drive safely, to drive
19 reasonably.

20 A trial is a quest to find the truth. And because of
21 that, Miriam has admitted she had a duty to the Plaintiffs.
22 Plaintiffs don't need to prove that one. She admits it.

23 What about breach? In order to recover, the
24 Plaintiffs have to prove that Miriam breached that duty that
25 she owed to them. Again, this is a search for the truth. And

1 the truth is Miriam breached that duty when she made that left
2 turn when she did. Maybe she turned too soon. Maybe she
3 turned too late. But she made the mistake and it caused an
4 accident.

5 So half of your job is done, ladies and gentlemen.
6 Duty and breach are admitted, proven, and now you don't have
7 to worry about it. That brings us to the third element and
8 this will be the focus of almost this entire case: Causation.

9 Plaintiffs must prove that this motor vehicle
10 accident actually caused the injuries they claim. It would
11 have been nice if as part of this accident we had video with
12 sensors on the Plaintiffs, pictures of the Plaintiffs before,
13 pictures of the Plaintiffs after, pictures of the cars before
14 and after, MRIs or x-rays of their spines before and after
15 this accident. Plaintiffs won't be giving you any of that.

16 And just like we can't look at pictures of the
17 Plaintiffs' spine today and determine what they looked like
18 before the accident, we only have evidence of the condition
19 and complaints of the Plaintiffs after the accident
20 [inaudible].

21 The Plaintiffs, a husband-and-wife team, will testify
22 that they suffered serious injuries, as you've heard
23 Plaintiffs' counsel tell you. They will claim that initially
24 they had head, neck and shoulder pain, low back pain that over
25 time turned into low back pain that continues to this day that

1 they say could result in surgery.

2 You'll be given evidence of their medical care and
3 you'll hear the statements that they made to their doctors.
4 Plaintiff, as I said, will go first. And what they present
5 will be different than what we present. Let's look at some
6 calendars.

7 These calendars are just a regular calendar. The
8 dates in red, that shows the date that the Plaintiffs got
9 medical care. So November 2011, right after the accident,
10 here's where the Plaintiffs go to the hospital and you've
11 heard Plaintiffs' counsel say they both have injuries. They
12 didn't have anything wrong with them before.

13 Starting on the 15th they start to go to
14 chiropractors. Start to go to Dr. Koka who you'll hear from
15 today. This is where they started to build their case.
16 Because after that first red dot, they retained an attorney,
17 and that's when lawsuit Maria and Christian began.

18 As we go into December, we have more red dots, more
19 red days where treatment happened. And throughout this time
20 period they would have you believe that they were in constant,
21 significant, severe pain.

22 Go to January. At this time in their treatment, Mr.
23 Simon said in his opening that at times Ms. or Ms. Abarca
24 might have had moments where she wasn't pain free. According
25 to the Plaintiffs and the arguments that you will hear, the

1 evidence that you will be given during this period of time,
2 they had severe pain in their necks, in their low backs and in
3 shoulders.

4 Let's go to the next month. For Maria, now the
5 treatment is starting to taper off a little bit. She will
6 tell you again she had serious pain throughout this time, only
7 moments of relief from her pain. However, in this month you
8 will learn that she was discharged, discharged from care with
9 a chiropractor.

10 Let's go to the next month. Now she begins to see a
11 pain management doctor, Dr. Coppel. Next month. Just a
12 couple more visits. And let's go to the next month. Two
13 visits only. Are we in May? Now we're in September.

14 December of 2013, Plaintiffs will have you believe
15 that now we're almost a year after the accident and they have
16 had constant pain. Maria's pain is now worse than it was
17 before, that the treatment has been totally unsuccessful, and
18 essentially she's miserable every day because of these
19 injuries.

20 Now we go to January. Another visit. And then as we
21 get ready for this trial, just a couple weeks before trial, we
22 have another visit to the doctors right before she comes to
23 ask you for money. And then the Plaintiff version of Maria
24 Abarca comes to you this week to present her case.

25 Well, that's the Plaintiff version. But let's look

1 at the real version. When we look at these same months, we'll
2 start again in November, as I mentioned, the pain complaints
3 were not as consistent as Ms. Abarca would have you believe.

4 If we go through December and January, by January,
5 her -- her neck complaints had essentially resolved and she
6 started to say her back complaints were feeling a lot better.
7 If we go to February, at this point she told her chiropractor,
8 I think I'm better. She could say at some times I've gone a
9 week without pain.

10 With that information and giving that same
11 information to her primary care doctor, Dr. Koka, they both
12 release her from care. But for some reason, in spite of her
13 saying, I'm feeling much better, she was referred to a pain
14 management doctor and sent out for an MRI when she had no
15 symptoms.

16 Go to the next month. After this, Maria will tell
17 you that her attorney prescribed Dr. Coppel. Dr. Coppel began
18 to see her and in the next month she got a few injections.
19 And then April of 2012, nothing happened. Next month, there's
20 the injections. Next month, nothing. Next month, in August
21 -- we go to September, still nothing has happened.

22 You will learn that Maria had a prescription and she
23 filled it at the beginning of her case, at the beginning when
24 lawsuit Maria was created, and that she did not take all those
25 medications. Dr. Coppel gave her medications that she did not

1 take them all.

2 At this point when she's not seeing the doctor, and
3 she will have told you that she was in severe pain, she has
4 prescription pain pills at her house that she could take, and
5 in this month, she doesn't take them. And the next month, she
6 doesn't take them.

7 In November, this is when I got to depose her and she
8 will -- you will learn that she said, I'm in severe pain, I
9 needed to go to the doctor, but she hadn't taken any pain
10 pills for over a month. This deposition seems to have
11 reminded her about her case [inaudible] next month she goes
12 back and begins treatment starting in December.

13 Now we're into 2013. Nothing. This should be
14 February. She ended her treatment -- I think in January and
15 February no treatment. And then again, just like before,
16 March, April, May, June, July, she does not see another doctor
17 in that year.

18 Let's go to the next red date. All right. So that
19 was 2012. Now we're after the deposition. I'm sorry. My
20 contacts are not as clear as I would like. So December this
21 is where after I deposed her, she goes back to her doctor.

22 Let's go to the next month. Now we're into January.
23 And in February -- here we go. Now we can go all through
24 2014. Thirteen months, ladies and gentlemen, not a visit to
25 the doctor. You won't be given any prescription receipts or

1 doctor records after January of 2013 until just right before
2 this trial. Lawsuit Maria went to her doctors a couple weeks
3 before she saw you getting ready to ask you for her money.

4 Let's talk about her husband. Very similarly, in
5 November of 2011 we have the accident for Christian. Very
6 similar pattern for treatment. He's going to tell you that he
7 had low back, upper back and shoulder pain. You heard
8 Plaintiffs' counsel mention the shoulder pain, but what you're
9 not going to find in the medical records is references to
10 shoulder pain.

11 We keep going through December. This is where in
12 some instances this neck pain starts to go away and in some
13 instances seems like his back pain is just now beginning to
14 appear. Go to January. Over these next few months his back
15 pain continues, that's in his records, but how it's described
16 varies.

17 But ultimately he's discharged, like his wife, from
18 chiropractic and primary care and he's sent to Dr. Coppel.
19 This is the attorney -- this is the doctor that the attorney
20 prescribed for Maria. Dr. Coppel treated him for a while with
21 medications and injections.

22 And then as we continue on -- I should get closer so
23 I can read these months. I think if we go to June, now in
24 July, now November 2013. There's a little gap. Plaintiffs
25 are probably going to want you to skip over it like we just

1 did.

2 Right before the deposition, that red date there,
3 Christian is going to say because of his ongoing severe pain
4 he went to the doctor. At that doctor visit you will learn
5 that Christian was given a prescription for pain medication.
6 Because all in that gap he didn't have pain medication. He's
7 going to tell you, My pain was so bad I had to get a
8 prescription.

9 A week later, I depose him. After my deposition, his
10 treatment continues. So through November, December, into
11 January. How about February? After February -- now we're
12 into February of 2015. Now again, just like his wife, he has
13 to see two doctors right before trial; right before lawsuit
14 Christian is ready to ask you for money.

15 But what we will present is a little bit different.
16 You will learn that in November the complaints didn't come on
17 quite the way that Christian said they did. In November of
18 2011, on the 12th, no neck pain, no back pain. The only pain
19 complaint was maybe a headache, he was dizzy, and he vomited.

20 Mr. Simon said there was a lot of adrenaline. You're
21 going to hear testimony from the emergency room doctor that
22 adrenaline doesn't mask pain. There's been no study that says
23 that. It's a red herring. There weren't any symptoms on that
24 day related to his back or to his neck.

25 So [inaudible] an attorney. Now we begin care with

1 Dr. Adair, the chiropractor, and Dr. Koka, the primary care
2 doctor. Dr. Koka's diagnoses and Dr. Adair's diagnoses are
3 going to be different, even though they work in the same
4 office, even though they're treating the same patient many
5 times on the same date.

6 Let's go to December. The diagnoses and the
7 complaints will not match. Let's go to January. In this
8 period of time his neck pain is really gone. The shoulder
9 pain that he's referred to in some of his written statements,
10 you're not going to find any reference to it in the records.

11 And now we go into February. In February and March
12 he's getting discharged from his chiropractic care, discharged
13 from the primary care doctor, and they expect that he's fine.
14 That maybe he's got a little bit of pain, but they have no
15 plans for further treatment. They don't expect him to come
16 back, but he's got to see Dr. Coppel.

17 Now we go -- he's gotten his injections with Dr.
18 Coppel. Let's go to May. Here's his last few visits with Dr.
19 Coppel. In June, I think there's a few more. Now July. Now
20 comes just like his wife. You're not going to see a whole
21 bunch of prescription pain medication receipts.

22 You will not receive evidence of ongoing medical care
23 through July, through August, September. Just like his wife,
24 when we get to November we have his visit in preparation for
25 his deposition. I'm sorry. He didn't prepare. He showed up

1 in -- we're in December. [Inaudible.] It's a long time
2 without treatment.

3 I mean, you can see how Plaintiffs' counsel would
4 also like you to forget how many months go by before he gets
5 his care. How many months of the real Christian Cervantes go
6 by with him working and living his life. Are we back to
7 November yet? Here we go.

8 A week before his deposition he goes to a pain
9 management doctor and that's where he gets his prescription
10 for pain medication. Litigation version of Christian is ready
11 to swear under oath and tell me his story. Take his
12 deposition. You will learn that he says his pain is very,
13 very bad. It affects his work. It affects his daily life.
14 Very high levels of pain.

15 But when I asked him about pain medications, he says,
16 yeah, I just got a prescription a week ago. You will learn
17 that I said, Well, have you filled that prescription? No, he
18 had not. His pain was so bad that he went to the doctor and
19 didn't do anything about it.

20 Let's go to the next month. A visit in December. At
21 this time, January, we're supposed to believe he has severe,
22 very bad pain. This is where his doctors are starting to talk
23 about if this isn't -- if this is a really bad injury, maybe
24 he's going to have to have surgery some day.

25 Next month. And the next month. We're back to

1 normal. This is the real Christian Cervantes. Month after
2 month after month going to work, doing his activities, living
3 his life. He's not taking pain medications. He's not seeing
4 doctors. He's just living his life all throughout 2014.
5 January of this year, nothing. Just like his wife right
6 before the lawsuit is going to be coming to trial he goes to a
7 couple of doctors.

8 Ladies and gentlemen, something to watch for in this
9 trial. We've already briefly discussed discovery. Mr. Simon
10 told you that the parties left no stone unturned. I don't
11 know if that's a fair way to put it. We did what we could,
12 but after you see the evidence you may feel that while my
13 office was trying to discover the basis for Plaintiffs'
14 claims, they were busy hiding the ball.

15 MR. SIMON: Objection, Your Honor. Violates your
16 court orders.

17 THE COURT: Which one?

18 MR. BAIRD: I'm not aware which one that would be.

19 MR. SIMON: May we approach?

20 (Bench conference.)

21 MR. SIMON: We had a motion in limine that he can't
22 allege without [inaudible] my clients failed to disclose a
23 prior injury [inaudible]. He's telling them they're hiding
24 the [inaudible] about prior medical history that does not
25 exist.

1 MR. BAIRD: I'm not talking about a prior history.

2 THE COURT: What are you talking about then?

3 MR. BAIRD: I'm talking about the fact that they keep
4 changing their complaints, tell the doctors one thing
5 [inaudible] and [inaudible] call it a moving target.

6 THE COURT: Well, [inaudible] moving target
7 [inaudible], but don't infer that they have treatment they
8 didn't have.

9 MR. BAIRD: Okay. Yeah. Thank you, Your Honor.

10 (End of bench conference.)

11 MR. BAIRD: In writing they've been -- Mr. Cervantes
12 and Ms. Abarca said that the disability that they've suffered
13 as a result of this accident is not being able to sit for long
14 periods of time; not being able to stand for long periods of
15 time. Pay attention. Have you noticed, will you notice
16 whether they are suffering from these disabilities?

17 Ladies and gentlemen, watch what the Plaintiffs tell
18 you about their disabilities now. Now that they're not at
19 home living their lives, now that they're here about to ask
20 you for money, how has their lives changed from this accident?
21 Will it be different from what they said was their real
22 problem?

23 When we talked to the doctors, [inaudible] that none
24 of them gave either Maria or Christian a slip to get off of
25 work. None of these doctors said, You need to avoid specific

1 activities because of these serious injuries. None of these
2 doctors have found that these Plaintiffs are disabled.

3 No doctor had any plans to perform surgery. You will
4 learn that Dr. Coppel, the first pain management doctor, when
5 we took his deposition, he assumed that the Plaintiffs were
6 fine and enjoying their lives. He didn't know that their
7 attorney had decided they needed to see a different doctor.

8 As you receive this evidence, the reliability of
9 Plaintiffs' version of their lives may cause you to question
10 whether they can be trusted. At the end of this lawsuit, at
11 the end of this trial, you'll have the opportunity to consider
12 the motivations of Maria and Christian and how it could affect
13 the things that they tell you are their injuries and the
14 symptoms from this accident.

15 Finally, ladies and gentlemen, you are not going to
16 just have to take their word for it or their doctors. We
17 have, indeed, hired an expert doctor, Dr. Derek Duke. He is a
18 highly trained, well-credentialed neurosurgeon. He's reviewed
19 all of the records.

20 He's reviewed all the testimony that the Plaintiffs
21 have given. Their deposition where I was able to ask them
22 questions under oath, he's read it. He's seen things and read
23 the things that Plaintiffs' doctors have not all read or even
24 cared to ask to see. He's seen the whole case.

25 Dr. Duke has also taken the opportunity to examine

1 and speak with the Plaintiffs himself. As to both Maria
2 Abarca and Christian Cervantes, Dr. Duke will tell you there
3 is no objective evidence of a traumatic injury. Objective
4 being measurable, hard evidence.

5 He will tell you that most of this medical care that
6 Plaintiffs attribute to this accident was not related to any
7 injury that they received in this accident. He will tell you
8 that the evidence, the objective evidence shows that most the
9 Plaintiffs received: Sprain, strain. Soft tissue injuries.
10 Not a traumatic spine injury.

11 You will learn that the conditions that some of the
12 Plaintiffs' doctors have identified in Plaintiffs' spine,
13 there's people in this courtroom who have those same
14 conditions that are causing no symptoms at all as we sit here
15 today.

16 The question that you will need to answer on
17 causation, ladies and gentlemen, is this: At the end of the
18 case, did Maria Abarca and Christian Cervantes prove that they
19 suffered a traumatic spine injury from this car accident? Not
20 whiplash. Not stretched ligaments and muscles. An injury to
21 their spine caused by trauma. When you answer that question,
22 you will have the ultimate answer in this case.

23 The last element, ladies and gentlemen, is damages.
24 Even if the Plaintiffs have proven injury, that doesn't
25 automatically mean they get money. They have to then show you

1 that they incurred damages. Medical bills are going to be a
2 major part of their damages. They may be referred to as
3 special damages as we go through this trial.

4 Simply putting a medical bill in front of you does
5 not suffice. They must not only show you the bills, they must
6 show you that that medical treatment was billed correctly and
7 reasonably. To support that [inaudible], the Plaintiffs are
8 going to [inaudible] each of their doctors, either in person
9 or by deposition. As expected, all of these doctors are going
10 to say, well, my bills are reasonable and they're billed
11 correctly.

12 These doctors, they want to be paid out of this
13 lawsuit, ladies and gentlemen. We will show you some of these
14 doctors don't know how their billing is done. They put
15 something on a piece of paper and it goes to other people, and
16 then the bill is made.

17 Some of these doctors don't know how they selected
18 their charges. They had no involvement in it. Some of these
19 doctors inherited what they charge for their treatments from
20 some other doctor who said it for who knows why? The simple
21 fact is the doctors the Plaintiffs will present to you will
22 not have the foundation and will not have the knowledge to say
23 why their bills are reasonable.

24 But that won't be all. We'll be calling Tami
25 Rockholt. She's a medical billing expert. She's a registered

1 nurse. She's been doing this for over 20 years. She will
2 tell you that she has access to all of the data and she knows
3 how to figure out what people are charging in any given
4 location. In Vegas, for example. In Phoenix. In Los
5 Angeles.

6 And she can say in Las Vegas the average charge for
7 this procedure, say in the initial consultation, is X. And
8 she will tell you whether the charges by each of Plaintiffs'
9 doctors were too high, way, way, way above average, or even
10 below.

11 Perhaps more importantly, she knows how the codes
12 work. You haven't heard about these, but you'll learn about
13 it when she testifies. But every time a doctor treats a
14 patient, they have to assign a code to what they did. This
15 code describes what they did.

16 And if you misuse these codes, sometimes it's called
17 up-coding, you can increase the cost of medical care greatly
18 and, intentionally or unintentionally, charge too much or
19 charge for services that weren't provided, or charge for
20 services that were more complex and more difficult than what
21 you actually did.

22 Ms. Rockholt has gone through all of the medical
23 bills, compared what the doctors billed for, and looked at
24 what they said they did in their records. And she will be
25 able to tell you what was correct, what was incorrect, and

1 ultimately how it should all resolve into a reasonable bill.

2 You remember Plaintiffs' slide for Christian
3 Cervantes. He said \$56,930.45. Those are the medical bills.
4 That's what he was charged. After Ms. Rockholt is done, she
5 will show you that Christian's doctors are over charging by
6 \$19,410.88. The real reasonable charge should have been
7 \$35,000 and change.

8 The same with Maria. Plaintiffs' counsel said her
9 medical bills are \$43,266.47. Tami Rockholt went through
10 those bills, looked at what the doctors said they did, looked
11 at what they really did, and then looked at what it really was
12 worth, what was reasonable. The reasonable value was almost
13 half of this. She took \$18,932 off and the reasonable amount
14 was \$24,107.99.

15 Plaintiffs are also going to ask you for pain and
16 suffering. We talked about this a lot during the jury
17 selection process. They wanted to make sure you were willing
18 to pay his clients for pain and suffering. Indeed, that is
19 something you will have to consider.

20 And as you take in this evidence, you need to decide,
21 have the Plaintiffs proved that there was pain and suffering?
22 Have they proved with month after month after month of no
23 care, no medication, no time off work, if this made such a big
24 impact on their lives, why aren't they asking for lost wages?
25 Did it not affect their lives that much? Consider these

1 things as you retain the evidence.

2 Plaintiffs are preparing to ask you for a lot of
3 money from this accident. They're going to claim serious
4 injuries and attempt to prove that they were caused by this
5 car accident. Because the real-life impact of these alleged
6 injuries doesn't match what they tell you it did, they're
7 going to fail to meet that burden. If anything, the
8 Plaintiffs suffered a soft tissue injury, a mild, temporary
9 injury.

10 Further, the Plaintiffs will show you a lot of
11 medical bills; but remember, the only actual medical billing
12 expert you will see will be Tami Rockholt. Plaintiffs aren't
13 going to bring one.

14 You are not required to be angry at or hate any of
15 the parties of this case. Mr. Simon may make it sound like
16 you're already obligated to give his clients money simply
17 because they think that this was a big enough accident to
18 cause an injury.

19 You may feel some sympathy for the Plaintiffs. You
20 may feel some sympathy for Miriam. But you have committed and
21 you were selected to serve on this jury because you told us
22 and you told the Judge you could be fair, you could be
23 impartial, you could follow the law.

24 You need only listen to the evidence as it applies to
25 the elements of negligence, causation and the damages and it

1 will guide you to the correct verdict. On behalf of my
2 client, I thank you for your service in this case.

3 THE COURT: All right. Thank you, Counsel. Are you
4 ready to present your first witness?

5 MR. SIMON: I believe so. Call Dr. Adair.

6 MARILYN ADAIR, PLAINTIFF'S WITNESS, SWORN

7 THE CLERK: Would you please state and spell your
8 first and last name for the record?

9 THE WITNESS: Dr. Marilyn Adair, M-A-R-I-L-Y-N,
10 A-D-A-I-R.

11 THE COURT: Whenever you're ready.

12 MR. SIMON: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. SIMON:

15 Q Good afternoon.

16 A Hi.

17 Q Dr. Adair?

18 A Yes.

19 Q We've never met before?

20 A No.

21 Q My name is Danny Simon.

22 A Hello.

23 Q You've been called to testify here in the case
24 involving a few of your patients, Christian Cervantes and
25 Maria Abarca; is that your understanding?

1 A Yes.

2 Q All right. What do you do for a living?

3 A I'm a doctor of chiropractic.

4 Q And what does that mean?

5 A I treat injuries to the spine.

6 Q And I'm assuming that you went to some
7 specialized school to have a doctor in front of your name?

8 A I did.

9 Q All right. Tell us what that is.

10 A I did my undergraduate studies in health
11 sciences at Purnell University; and I completed my doctorate
12 of chiropractic at Life University in Marietta, Georgia, in
13 1993.

14 Q Okay. And what brought you to Las Vegas?

15 A Marriage.

16 Q A marriage. Okay.

17 A Yes.

18 Q And how long have you been in Las Vegas?

19 A Since 1995.

20 Q And how long have you been doing chiropractic
21 here?

22 A Twenty years.

23 Q And in the 20 years that you've been doing it,
24 how many -- how many times have you specialized in dealing
25 with car accidents? How many of those years?

1 A Most of them.

2 Q Most of them. So for 20 years you've been
3 seeing patients traumatically injured in car accidents, fair?

4 A I have.

5 Q Yes? Okay. Did you have an occasion to meet
6 Christian Lopez and Maria Abarca?

7 A I have.

8 Q Okay. And under what circumstances?

9 A I treated them for their injuries.

10 Q Okay. And where do you work in town?

11 A I work at the Neck and Back Clinic.

12 Q Okay. And tell us a little about the Neck and
13 Back Clinic. What do they do?

14 A Do physical medicine and rehabilitation for
15 people that are injured or have pain brought on for various
16 reasons.

17 THE COURT: Doctor, can you either lean forward or
18 bring that closer to you?

19 THE WITNESS: Sure. Sorry.

20 THE COURT: Thank you.

21 MR. SIMON: If you could speak up just a little bit.

22 BY MR. SIMON:

23 Q Okay. And so that clinic treats what type of
24 conditions?

25 A We treat spinal conditions, musculoskeletal

1 conditions.

2 Q All right. And in this particular case, what
3 brought you to treat Christian and Maria?

4 A They came to my office to seek medical attention
5 for injuries sustained, as I believe, in a motor vehicle
6 collision.

7 Q All right. Did my office refer them to you?

8 A I don't believe so.

9 Q Okay. Let's -- if you could turn to Exhibit 4
10 that's in front of you. I see you brought your chart with you
11 on each of them?

12 A Yes.

13 Q All right. If you want to -- is there an easier
14 way for you to testify in this case?

15 A I think my charts would probably be the best.

16 MR. SIMON: All right. Without objection, can she
17 rely on her chart?

18 MR. BAIRD: We do object because it will be harder to
19 follow along. I would rather we use the Bates numbered
20 version so we all know what page we're on.

21 MR. SIMON: All right. Fair enough.

22 BY MR. SIMON:

23 Q Can you turn to Exhibit 4 for us, please?

24 A Ready.

25 Q You're ready already? Okay. Let's have you

1 turn to Exhibit 4, Bates Stamp 8. And Bates stamp are the
2 little numbers at the bottom right-hand corner. All right.
3 And I believe pages 8 through 18 is your initial report in
4 this case; is that accurate?

5 MR. BAIRD: Exhibit 4 or 5?

6 MR. SIMON: I am in Exhibit 4 is what I have.

7 MR. BAIRD: The one you gave me has it as 5. Okay.
8 Hold on.

9 MR. SIMON: I think I did.

10 MR. BAIRD: It's different from what you gave me.
11 Okay.

12 MR. SIMON: Are you with me?

13 MR. BAIRD: Yeah, I'm there.

14 BY MR. SIMON:

15 Q All right. Can you tell us when you first saw
16 them? What was the first date you first saw them?

17 A November 15th of 2011.

18 Q All right. And tell me what -- what injury or
19 symptoms they were reporting to you?

20 A For Mr. Lopez, headaches, neck pain, low back
21 pain.

22 Q All right. Headaches, neck pain and low back
23 pain. And what was the date of that?

24 A Date of the injury or the date they came to see
25 me?

1 Q Date they came to see you?

2 A The 15th of November, I believe.

3 Q All right. So within three days of the accident
4 they were reporting -- Christian, at least, was reporting neck
5 pain, low back pain and headaches; is that accurate?

6 A Yes.

7 Q All right. What -- what did you do when you
8 treated him that day? Tell us the process you went through.

9 A Okay. We did a physical exam on the patient.
10 We took a medical history on the patient. There were x-rays
11 -- x-rays performed on the visit.

12 Q All right. And did you also obtain a medical
13 history from him?

14 A I did.

15 Q And is that important to your treatment and care
16 of a patient?

17 A It is.

18 Q Is there anything in the medical history that
19 would suggest he had any prior neck or back injuries?

20 A There was not.

21 Q Or any neck or back pain?

22 A There was not.

23 Q What was your understanding the reason that they
24 came to see you, other than for treatment of the pain? Was
25 there a traumatic event that prompted them to come see you?

1 A They were in a car accident.

2 Q All right. And what's your understanding of the
3 car accident?

4 A They had a front-end impact. I believe in Ms.
5 Abarca's it was a little more detailed. As I understand, they
6 were hit, another vehicle that turned in front of them, and
7 they were unable to avoid the collision.

8 Q All right. And so the -- it's your
9 understanding that they had a front-end impact to the vehicle
10 they were in?

11 A [Inaudible.]

12 Q Okay. And so the symptoms that they conveyed to
13 you, at least Christian at the time of your initial exam, was
14 that consistent with that type of injury?

15 A Yes.

16 Q And the symptoms that was reported to you, did
17 you have an opinion what caused those symptoms?

18 A I causally related their injuries to the motor
19 vehicle collision.

20 Q And what's that based on?

21 A They say medical probability, but based on the
22 event that there was a traumatic impact and force to their
23 spine which caused their injuries.

24 THE MARSHAL: Judge, Juror No. 3 can't hear.

25 THE WITNESS: Sorry you guys. Sorry. I'll try to

1 speak up.

2 MR. SIMON: Do we want to put the microphone a little
3 -- is this the microphone or you just record --

4 THE COURT: That's the microphone.

5 THE WITNESS: Okay. I'll just keep it closer.

6 Thanks.

7 BY MR. SIMON:

8 Q All right. Dr. Adair, you said you performed a
9 physical exam. Tell us the physical exam that you performed.

10 A We performed orthopedic testing that was a Kemp
11 [phonetic] test in the low back, a maximum compression test in
12 the neck, and [inaudible] maneuver on both.

13 Q Okay. And what are the -- what do all those
14 tests mean?

15 A So orthopedic testing is really to replicate
16 patient's symptoms. They call it provocative orthopedic. We
17 push, we pull, we stress tissues to elicit a response in order
18 for us to determine a diagnosis and treatment plan for the
19 patient.

20 Q And do -- do you have an obligation as a
21 chiropractic physician to help these people get better?

22 A Yes.

23 Q Do you take an oath --

24 A I do, yes.

25 Q -- do you take an oath to do that?

1 A Yes.

2 Q And was that your intention with these people?

3 A Absolutely.

4 Q And when they presented to you with these
5 symptoms after this car accident three days later, did you
6 render a diagnosis after your physical exam?

7 A Yes.

8 Q And what was that?

9 A The diagnosis for Mr. Lopez was muscle spasm,
10 lower extremity. They [inaudible] neuritis, radiculitis
11 versus pain referral. There was a cervical sprain, a
12 lumbosacral sprain, and post-traumatic headaches.

13 Q All right. Let's take one of those separately,
14 please. What was the first one?

15 A Muscle spasm.

16 Q Can you tell us what a muscle spasm is and how
17 that can be caused by a car accident?

18 A A muscle spasm is an involuntary contraction of
19 a muscle.

20 Q And how do you determine that in your expertise?

21 A We determine it by physically touching the
22 muscle and also putting the patient through a range of motion.

23 Q And can you feel the muscle spasming as you
24 touch it?

25 A You can.

1 Q Is that an objective test?

2 A That is an objective finding, yes.

3 Q Is that an objective finding that shows an
4 injury?

5 A Yes.

6 Q And in your opinion, that -- that objective
7 finding is related to the car accident three days earlier?

8 A Yes.

9 Q All right. What's the next diagnosis that you
10 made on your initial evaluation?

11 A Lower extremity neuritis, radiculitis versus
12 pain referral.

13 Q Okay. And tell us what that means in laymen's
14 terms.

15 A In laymen's terms neuritis, radiculitis is an
16 injury to a nerve, which will produce either a pain down a leg
17 or a numbness, tingling sensation, or both.

18 Q All right. And what's that caused from?

19 A Injury to a nerve.

20 Q Okay. And in Mr. Lopez's situation, what nerve
21 was injured?

22 A According to the MRI that I have, it was his
23 lowest disc, L5 disc.

24 Q And so the symptoms that he had, what was the
25 actual symptom going down the leg?

1 A Tingling in the bilateral thigh.

2 Q All right. And so tingling in the bilateral
3 thigh, is that down the left side?

4 A Bilateral means both.

5 Q Okay. So he had tingling down both legs. And
6 now is that a soft tissue finding? Or, is that more of a
7 disc-injury finding?

8 A It's an injury to the nerve itself, which could
9 be caused by a disc injury, or by an over-stretch injury, or
10 by compression to a nerve.

11 Q Okay. And what -- how do you get compression to
12 a nerve?

13 A You could have compression to a nerve by a disc
14 injury or you could have compression to a nerve by a joint
15 that is not anatomically correct. So if a joint is restricted
16 or not moving properly, the hole that the nerve comes out
17 could compromise the nerve.

18 Q Okay. So just so we're clear, the symptoms you
19 reported three days after the accident involving the nerve,
20 those all stemmed from inside -- inside the disc? Right?
21 Inside the vertebra?

22 MR. BAIRD: Object to foundation.

23 THE COURT: You want to lay the foundation, Counsel,
24 for the question?

25 BY MR. SIMON:

1 Q Can you explain where the source of that pain or
2 symptom would come from in Mr. Lopez's situation?

3 A A nerve root, which is --

4 Q And where does the nerve root start and end?

5 A Between the disc and the foramen in the spinal
6 canal.

7 Q Okay. In the spinal canal, correct?

8 A Yes.

9 Q Not on the outside where the muscles are and
10 ligaments are?

11 A Correct.

12 Q It would have to be something going on
13 internally in the disc?

14 A That is one of our differentials when we treat a
15 patient, yes.

16 Q All right.

17 A In this case, I suspected a disc injury.

18 Q All right. And that was three days after the
19 accident?

20 A Correct.

21 Q Okay. What was your other diagnosis?

22 A Sprain/strain of the neck and low back.

23 Q So if this jury was just told that Mr. Lopez
24 didn't have any reports of low back pain until January, that
25 would be incorrect?

1 A Can you repeat that? I'm sorry.

2 Q If this jury was just told that Mr. Lopez didn't
3 have any reports of low back pain until months after this
4 accident, that would be incorrect?

5 A Mr. Lopez complained of pain three days after
6 the collision at my office.

7 Q Right. Okay.

8 A He may have had it immediately, but I can refer
9 back to it and let you know.

10 Q All right. But if he was told the first report
11 of a pain to his low back was months later, that wouldn't be
12 true, would it?

13 A Correct.

14 Q All right. Looking at the -- was there any
15 other diagnosis? I'm sorry.

16 A Headaches, post traumatic headaches.

17 Q And is that common after this type of accident?

18 A It is.

19 Q What was your plan at that time for Mr. Lopez?

20 A Well, the plan is always to restore the patient
21 to pre-traumatic injury status, which in his case related pain
22 free. The treatment that we have is to work on the spinal
23 joints and the soft tissue, the musculoskeletal injuries.

24 Q All right. And is there a protocol that's
25 accepted in your industry to treat this type of injury?

1 A Yeah, physical therapy modalities, chiropractic
2 manipulations, massage therapy, and therapeutic exercises.

3 Q Okay. And is that what you implemented?

4 A We did.

5 Q Okay. Tell me the frequency in which you
6 recommended that.

7 A I would have to look.

8 Q Sure. Help yourself.

9 A For this -- but I don't know -- okay.

10 MR. SIMON: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MR. SIMON:

13 Q Okay. Let's see. Let me see. All of this
14 exhibit is for Christian, so just --

15 A Oh. Okay.

16 Q This is the chart on Christian for you.

17 A Okay.

18 Q Okay.

19 A So again, I don't know -- to make it easier, my
20 charts have little tabs. I don't know.

21 MR. SIMON: Any objection for her going through her
22 chart?

23 THE WITNESS: It would just be quicker because I have
24 it all separated.

25 MR. BAIRD: Yeah, if the only difference between what

1 you gave me and what she has is just 4 and 5 are swapped, then
2 that's fine.

3 THE WITNESS: Yeah, because this --

4 MR. BAIRD: I thought maybe all of mine were out of
5 order, so.

6 THE WITNESS: So this I could just get right to it.
7 I know --

8 BY MR. SIMON:

9 Q That would --

10 A Okay.

11 Q That would help everybody.

12 A Okay.

13 Q Go ahead.

14 A I -- I started him at three days a week, three
15 times a week.

16 Q And is that common in your industry?

17 A It is.

18 Q All right. And then tell us how he responded?

19 A Responded overall or?

20 Q Yeah. Well, no, just to your treatments --

21 A Initially?

22 Q Yeah, just -- just give us a little story line
23 of your treatment for him and how he did.

24 A Okay. When he first came in, he had some
25 restricted range of motion in the neck and the low back. He

1 had -- his headaches were about a four out of ten. They were
2 daily. The neck pain was also four out of ten, and it was
3 every day. And the low back pain was also about a four out of
4 ten, and every day. And he had the numbness, tingling in the
5 thigh. And overall with his treatment I recall him having
6 full range of motion, so we restored that. The numbness and
7 tingling in the neck, I believe, subsided. And his pain went
8 down to four or five days a week, less frequent throughout the
9 day, and about a three out of ten.

10 Q All right. And so how long did you continue to
11 treat him?

12 A I treated him from November through March.

13 Q Did he experience any pain and suffering during
14 the course of your treatment?

15 A He did.

16 Q And when someone comes to your office for
17 treatment, that takes time out of their day, agreed?

18 A Agreed.

19 Q How long would they be there for your treatment
20 at your place?

21 A Typically, 45 minutes, give or take doing the
22 exercises, the therapies, massage, then the visit with me and
23 the length of the time that they spent with me on that
24 particular day.

25 Q And if someone was going to come in and tell

1 this jury later in this trial that your treatments that you
2 provided were unnecessary, that he could just do all of this
3 at home, how would you respond to that?

4 A I wouldn't say they are unnecessary. They're
5 necessary to help tissues heal appropriately.

6 Q Okay. Tell us how.

7 A With these types of injuries left untreated,
8 muscles tend to heal with, say, scar tissue, which can limit
9 motion and cause pain. The therapies we have here actually
10 help the chemical irritants and [inaudible] from torn tissue,
11 which is the strain/sprain component of the diagnosis. When
12 you stress a muscle and you make it work, it helps re-absorb
13 that scar tissue and it helps heal to a more natural state
14 with less residual problems.

15 Q So without this treatment of yours, they could
16 go on to form permanent scar tissue with permanent pain
17 related to that?

18 A It's possible.

19 Q All right. So your treatment again is a
20 recognized protocol for treatment of these types of injuries?

21 A Correct.

22 Q Thank you. Was there a point in time that he
23 improved in regard to his neck?

24 A Yeah.

25 Q Tell us when and how.

1 A Looks like about -- he continued to improve with
2 the neck throughout the whole length of treatment, between
3 November and March. It looks like he was having neck pain on
4 and off -- I'm here in December. About right around January,
5 the beginning of January, I have him as resolved, first week
6 of January, about six weeks.

7 Q Okay. For the neck. Did his low back ever
8 fully resolve?

9 A No, the low back did not fully resolve.

10 Q Okay. Tell us how your treatment helped the low
11 back and then what you did when it did not resolve.

12 A Okay. So we restored biomechanical motion to
13 the low back as full. We got his pain level down from half of
14 the day to about a quarter of the day. And it looks like he
15 was experiencing at the end about four to five days a week for
16 pain, instead of every day.

17 Q All right. And what was his reported pain
18 complaints of his low back?

19 A At the end?

20 Q Well, during the course of your treatment, what
21 were the pain levels that you documented?

22 A Well, the pain levels that I documented ranged
23 from the mild to the moderate. So, in other words, some days
24 the pain was tolerable for him; some days the pain
25 exacerbated. Throughout these injuries pain will wax and

1 wane. That tells me that patients are improving with my
2 treatment.

3 Q Okay. What does "wax and wane" mean?

4 A Wax and wane, they go -- it's not just always
5 one number or level. Some days it's more tolerable than
6 others. Some days it's less tolerable than others.

7 Q So even if you have no pain and then have pain a
8 few days later, does that mean the injury is resolved?

9 A No. That means the injury has either plateaued
10 or continues to improve.

11 Q And in regard to Mr. Lopez's situation, his low
12 back pain never resolved; is that accurate?

13 A That's accurate.

14 Q All right. And what, if anything, did you do to
15 explore the cause of his ongoing pain?

16 A I ordered an MRI of his low back.

17 Q Okay. And what is an MRI?

18 A An MRI is a magnet -- magnetic resonance
19 imaging, which will give a physician a 3D picture of the spine
20 and help find any pathology either in a disc or the soft
21 tissue in that area or the bone.

22 Q All right. And you did request an MRI in this
23 case?

24 A I did.

25 Q And did you receive the results of the MRI?

1 A I did.

2 Q And what was the result of the MRI?

3 A The results of the MRI were he had a disc, a
4 bulge, 2 millimeters, 1 to 2 millimeters at L4 and L5, L5-S1,
5 the last disc in the spine. There was a broad base central
6 and posterior lateral disc protrusion that was extending 4
7 millimeters into what we talked about the posterior lateral
8 recesses on both sides, which was where that nerve root was
9 that we talked about.

10 Q All right.

11 A Which is very, you know, consistent with the
12 numbness, tingling he was talking about.

13 Q So the finding on the MRI that you ultimately
14 obtained a few months later, that finding matched up with his
15 initial complaints to you on the first visit?

16 A It did.

17 Q What, if anything, did you do to treat his new
18 or his disc injury that you were able to identify in the MRI?

19 A Well, as a chiropractor we treat the soft tissue
20 and the joints of the spine. A disc injury is a whole another
21 level. So at that time I referred him to a pain management --
22 a medical specialist to evaluate and discuss future treatment
23 options for Mr. Lopez.

24 Q And is that something that you do commonly when
25 you have a positive MRI and ongoing pain?

1 A Yes.

2 Q And who did you refer him to?

3 A I referred him to Dr. Coppel.

4 Q So -- and who is Dr. Coppel?

5 A Dr. Coppel is a medical doctor that specializes
6 in pain management to help people deal and cope with their
7 pain.

8 Q Okay. And what's your understanding of what Dr.
9 Coppel's involvement would be with your patient in this case,
10 Mr. Lopez?

11 A To provide him additional therapeutic benefit to
12 help resolve his pain.

13 Q And did Dr. Coppel ever return any reports to
14 you as part of his treatment?

15 A I have an initial report from Dr. Coppel.

16 Q And tell us what Dr. Coppel's findings were in
17 the course and scope of your treatment of Mr. Lopez?

18 A His findings were disc displacement and lumbar
19 facet syndrome.

20 Q And what does that mean?

21 A It means that the soft tissue injuries that I
22 treated him for had resolved, but that he had ongoing pain in
23 the low back. And Dr. Coppel the -- was differential
24 diagnosing the joints of the spine and the disc, which is
25 another thing pain management will do because when you have an

1 injury like this some times it's -- the disc may get a little
2 better, but it's the joint of the spine that's causing the
3 pain. They find the pain generator. That's what they --

4 Q Okay. So the pain generator, at least at this
5 stage of Mr. Lopez's treatment, is inside the disc, correct?

6 MR. BAIRD: Objection, foundation. Your Honor, he's
7 asking her to opine on an opinion reached by a medical doctor.
8 As a chiropractor I think there's no foundation, that's beyond
9 the scope of this witness.

10 THE COURT: I'm not sure how she is qualified for
11 these questions.

12 MR. SIMON: Well, I can lay the foundation, if you'd
13 like.

14 THE COURT: If you will, please.

15 MR. SIMON: All right.

16 BY MR. SIMON:

17 Q Doctor, when you treat patients, you refer them
18 out for tests, correct?

19 A Correct.

20 Q And you send them out to specialists for further
21 evaluation?

22 A Yes.

23 Q Right? And it's still your patient?

24 A It is.

25 Q And then you receive the information back to you

1 because you're still the doctor treating them?

2 A Yes.

3 Q And as part of your practice over 20 years, are
4 you able to interpret what all of these other doctors are
5 saying about your patient and the condition of the
6 musculoskeletal system which you specialize in?

7 A Can you please repeat that?

8 Q Sure. When you receive these reports back with
9 findings --

10 A Yes.

11 Q -- from a pain management doctor, are you able
12 to interpret those findings?

13 A I still am not sure what you're asking me.

14 Q Okay. Let me ask you this: Doctor, have you
15 ever testified in court?

16 A I have not.

17 Q This is your very first time today?

18 A It is.

19 Q All right. What I'm asking you is when you're
20 treating a patient, you send them out and they see other
21 doctors.

22 A Yes.

23 Q Right? Do those doctors send their reports back
24 to you?

25 A Correct.

1 Q Why do they do that?

2 A To let us know that -- their findings and what
3 they found on their examinations and to recommend a course of
4 treatment continued. I mean, they do what I don't do.
5 They're just --

6 Q So when you -- when you look at the findings,
7 let's say, Dr. Coppel sent you in this case, do you understand
8 them?

9 A Yes.

10 Q And do you know what they mean in relation to
11 your patient?

12 A Yes, I do.

13 Q And are you able to competently testify here
14 today about what Dr. Coppel said about Mr. Lopez?

15 A I could give my opinion based on his record. I
16 can't speak for him.

17 Q Right. You can't speak for him, you can't speak
18 for the radiologist; but you know how to look at the reports,
19 right?

20 A And make an opinion, yes.

21 Q Yeah, within your field as a chiropractor?

22 A Yes.

23 Q Who specializes in treating the structures of
24 the spine?

25 A Yes.

1 THE COURT: Is Dr. Coppel going to be called to
2 testify?

3 MR. SIMON: Only by deposition. He's not available
4 live.

5 MR. BAIRD: She's -- essentially she's just reading
6 records. I don't think she should be opining on doctors --

7 THE COURT: I don't think she can interpret Dr.
8 Coppel's findings, but I think that she can testify regarding
9 how those findings affect her treatment of him. I mean, I'm
10 not sure where you're going with the questions.

11 BY MR. SIMON:

12 Q Well, Dr. Coppel made some findings and I just
13 wanted to know how that affected your treatment.

14 THE COURT: I think that's fine.

15 THE WITNESS: Okay. Well, at the time that he saw
16 Dr. Coppel, my patient had plateaued with the care that I had
17 to offer him. So, in essence, I was releasing this patient to
18 Dr. Coppel for ongoing treatment and I haven't seen the
19 patient after I released him to Dr. Coppel.

20 BY MR. SIMON:

21 Q Okay. All right. So, but you knew what was
22 going on with him, correct?

23 A I knew that he had a disc injury and I knew that
24 he plateaued with the care that I had to give him.

25 Q Right. And at the time that he left your care,

1 did you have an understanding that he was continuing to seek
2 future care?

3 A I made my recommendation for the patient to
4 continue with Dr. Coppel as I dismissed him from my care,
5 released him from my care at maximum benefit with the
6 therapies that I had to offer him at the time.

7 Q All right. And so you referred this patient to
8 Dr. Coppel?

9 A I did.

10 Q Not a lawyer, right?

11 A I did.

12 Q Not me. So if this jury was told that a lawyer
13 referred him, that wouldn't be accurate, right?

14 A I referred him to Dr. Coppel.

15 Q Correct. Tell me who Dr. Koka is.

16 A Dr. Koka is a medical -- well, he's a DO, he's
17 an osteopath.

18 Q All right. So he's a doctor?

19 A Yeah.

20 Q And what involvement does Dr. Koka have with
21 your patients?

22 A We are not medical doctors, so in order to
23 assure a well-rounded scope and care for our patients, some
24 are in the need of medical attention, not only chiropractic,
25 so Dr. Koka will come in and assess the patients and treat

1 them medically.

2 Q Okay. And when you say "treat them medically,"
3 what does that mean?

4 A He would make his recommendations medically
5 and/or provide pharmaceutical support for the patients. I
6 can't and don't in my scope of practice write prescriptions
7 for any medicine they may need to help them heal or deal with
8 their pain.

9 Q Okay. And is that common that Dr. Koka will see
10 patients in conjunction with you?

11 A Yeah.

12 Q During the course of your treatment with
13 Christian Cervantes-Lopez, was he being truthful to you?

14 MR. BAIRD: Objection, speculation.

15 THE COURT: Sustained.

16 BY MR. SIMON:

17 Q Based on your experience, was he faking his
18 injuries when he came to you?

19 A No.

20 MR. BAIRD: Objection, Your Honor. This is also in
21 violation of the order. May we approach?

22 THE COURT: Sure.

23 (Bench conference.)

24 MR. BAIRD: We had an agreement, I think it was
25 addressed in one of my motions in limine, but [inaudible].

1 THE COURT: Wasn't that objection just sustained,
2 though?

3 MR. BAIRD: Well, but it's contained [inaudible]. I
4 mean, if it's not going any farther, that's fine, but my
5 concern is he's going to ask her a bunch questions, was he
6 telling the truth, was he lying. That's not in the report.
7 You can't do that.

8 MR. SIMON: I can ask her if she feels her patient
9 was being truthful about his symptoms. He just said that in
10 opening that they weren't and that they're inconsistent and
11 that they're all over the place, and then he's going to parade
12 Dr. Duke in here and try and say how they're not being
13 truthful. And so that's sandbagging. If I can't present it
14 in my case-in-chief and then he gets to do it at the end.

15 MR. BAIRD: [Inaudible] consistency [inaudible].

16 THE COURT: I don't think -- I think he's right. I
17 don't think you can say whether or not an individual is
18 truthful.

19 MR. SIMON: Of -- of course. She can say the
20 symptoms reported to her were truthful and matched up with
21 everything.

22 MR. BAIRD: Consistent is different than truthful.

23 MR. SIMON: It's the same thing. All doctors --

24 MR. BAIRD: [Inaudible.]

25 MR. SIMON: Yes, it is. All doctors are asked that.

1 Every doctor was asked that in their deposition in this case.

2 MR. BAIRD: [Inaudible] when I said truthful, were
3 the symptoms truthful.

4 THE COURT: I agree with Defense counsel on that one.
5 I think you need to ask that a different way.

6 MR. SIMON: Okay.

7 (End of bench conference.)

8 BY MR. SIMON:

9 Q In regard to Mr. Lopez, when he presented his
10 pain complaints to you, did you, as part of your examination,
11 believe that that was consistent with his injuries?

12 A I did.

13 Q And did you believe that he was exaggerating his
14 symptoms to you at all?

15 A I don't.

16 Q Okay. And why not?

17 A Based on my interaction with the patient, my
18 physical exam, his subjective complaints. He came in, his
19 pain was constant, but he wasn't saying it was a ten. He said
20 it was about a four on average. I just -- I found him to be
21 truthful.

22 MR. BAIRD: Objection, Your Honor. We're still on
23 the truthful issue here.

24 THE COURT: The objection was previously sustained.
25 I don't think that was in response to a question elicited by

1 Mr. Simon, it was rather the doctor's answer. Move on,
2 please.

3 MR. BAIRD: Could we strike the answer then?

4 THE COURT: Ladies and gentlemen of the jury,
5 disregard the portion of the doctor's testimony where she
6 opined on the truthfulness of the Plaintiff.

7 Mr. Simon, next question.

8 BY MR. SIMON:

9 Q Without saying the word "truthful," as you sit
10 here today, in your opinion based on your physical
11 examination, touching this patient, seeing this patient
12 several times a week for several months, you don't think this
13 patient was exaggerating his symptoms, do you?

14 A I don't.

15 Q And do you think that this patient unnecessarily
16 wanted to come to you and treat for a period longer than you
17 recommended?

18 MR. BAIRD: Objection, foundation, beyond the scope.

19 THE COURT: Overruled.

20 THE WITNESS: Please repeat the question.

21 MR. SIMON: I'll try.

22 BY MR. SIMON:

23 Q Do you believe that this patient wanted to come
24 to you and overtreat with you for any particular reason?

25 A No.

1 Q Was this patient compliant with your
2 recommendations for treatment?

3 A He was.

4 Q [Inaudible] all of the treatment that this
5 patient received at your facility was at your direction?

6 A It was.

7 Q He wasn't there saying, hey, I don't want to be
8 released, can you treat me another month?

9 A No.

10 Q No?

11 A No.

12 Q All right. In regard to the -- the billings.
13 If you could turn to the first few pages. I'll ask you to
14 review pages one through seven. And so the billing -- have
15 you had an opportunity to review that?

16 A Yes.

17 Q All right. And the total billing I have
18 incurred for Mr. Cervantes-Lopez is \$7,685; is that what you
19 have?

20 A Yes.

21 Q And, Doctor, is it your opinion that these bills
22 were reasonable and necessary?

23 MR. BAIRD: Objection, Your Honor, no foundation.
24 I'd like to voir dire the witness on this expert opinion.

25 THE COURT: She's just testifying regarding her own

1 bills?

2 MR. BAIRD: Right. He's asking about reasonable and
3 customary in the community, and that's -- that's what she has
4 no foundation for.

5 THE COURT: Reasonable and customary in the
6 chiropractic community?

7 MR. BAIRD: Right. I'd like to voir dire her, Your
8 Honor, before she offers this opinion.

9 THE COURT: I don't think it's necessary to voir dire
10 her. I think she's already stated her qualifications.

11 MR. BAIRD: There's a difference between being a
12 chiropractor and having a foundation to testify as to what the
13 charges are in the particular community.

14 THE COURT: Mr. Simon, lay some foundation.

15 BY MR. SIMON:

16 Q Doctor, you've been doing this for 20 years,
17 right?

18 A I have.

19 Q And the treatment and care that you give
20 patients -- you don't work for free, do you?

21 A No.

22 Q All right. I mean, you're a professional?

23 A I'm -- yes.

24 Q Right? And the clinic that you work for, they
25 don't work for free?

1 A No.

2 Q All right. They charge for their services,
3 correct?

4 A Correct.

5 Q And you provided over four months of treatment
6 for Mr. Lopez?

7 A Yes.

8 Q All right. As part of that, do you have an
9 understanding of what your facility charges for your services?

10 A It's right in front of me. Yes, I do.

11 Q All right. And so you're able to testify to
12 what the bills are in front of you?

13 A Yes.

14 Q All right. And whether those bills would be
15 reasonable in the Las Vegas community?

16 MR. BAIRD: Same objection, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: The fees are set by the Neck and Back
19 Clinic.

20 BY MR. SIMON:

21 Q Okay.

22 A I believe them to be reasonable and customary
23 based on the geographic region.

24 Q [Inaudible] related to this case?

25 A As it relates to this case.

1 Q All right. The car accident in November of
2 2011?

3 A Yes.

4 Q Doctor, during the course of your treatment, did
5 you ever take Mr. Cervantes off of work?

6 A I don't believe I did.

7 Q You didn't prevent him from going back to work?

8 A I did not.

9 Q So if he went to work, he wouldn't be violating
10 any of your restrictions, correct?

11 A Correct.

12 Q What would be your recommendation to him about
13 returning to work?

14 A I would recommend that upon returning to work he
15 would not perform any activities that would put himself at
16 risk or moderately increase his pain, if possible.

17 Q Okay. And so why would you make that
18 recommendation?

19 A Because we want him to get better and not put
20 himself at risk of hurting or reinjuring himself.

21 Q But, at some point, people have to go back to
22 work, right?

23 A Correct.

24 Q That's the reality of the patients you treat?

25 A Yes.

1 Q So if Mr. Lopez went back to work and then had
2 an increase in pain, would that be something that would be
3 caused by a whole new injury at work or would it be part of
4 the original injury in which you were treating him?

5 MR. BAIRD: Objection, expert opinion beyond what
6 she's already opined [inaudible]. It's basically speculating.

7 THE COURT: I don't see where it's an expert opinion.

8 MR. BAIRD: He's asking her --

9 THE COURT: Ask the question -- ask the question one
10 more time, please.

11 THE WITNESS: I can say that he never reported an
12 injury to me through any work-related problem that he had.

13 BY MR. SIMON:

14 Q Okay. But there was a point in time in your
15 treatment that he returned to work?

16 A He did.

17 Q And then that he came back to you and reported
18 that he had some increased pain while trying to work?

19 A I do recall seeing that in my notes.

20 Q Okay. And is there anything based on your
21 treatment record and what he reported to you that he had some
22 new injury at work?

23 A No.

24 Q Okay. Would his increase in pain, trying to
25 return to his normal work schedule, still -- would that pain

1 still be related to the car accident?

2 A It would.

3 Q Why?

4 A Because although a patient may be responding to
5 care and healing throughout the process, when you still put
6 loads on healing tissue, they may become symptomatic or you
7 may experience increased soreness based on the activities that
8 you do on that day. Some days he was better. Some days he
9 may have had a harder day and felt a little worse. But to me,
10 he didn't get progressively worse; he got progressively better
11 with the treatment that I had to offer him at the time.

12 Q All right. So is it -- would you agree, in your
13 opinion, that your treatment helped?

14 A Yes.

15 Q When he went back to work and had ongoing pain
16 -- and I think you testified earlier that at least your
17 treatment helped the soft tissue structures around the disc?

18 A Correct.

19 Q And ultimately resolved that in your opinion?

20 A Yes.

21 Q The ongoing pain as he was being released from
22 you was from the disc?

23 A From the disc and/or the spinal joint, which was
24 what Dr. Coppel was saying.

25 Q And in your experience over 20 years is when you

1 have an injury to your disc, is that the type of injury that
2 worsens over time?

3 MR. BAIRD: Objection, foundation. Beyond her scope
4 as an expert.

5 THE COURT: Counsel, how would she be qualified to
6 testify on this?

7 MR. SIMON: Based on her experience in dealing with
8 spinal conditions for the last 20 years.

9 MR. BAIRD: She testified she doesn't treat discs.

10 THE COURT: I don't think she's qualified to testify
11 regarding discs. I think that's Dr. Coppel's area of
12 expertise.

13 MR. SIMON: Okay.

14 BY MR. SIMON:

15 Q Do you have an understanding of the integrity of
16 the discs and how they may affect your patients over time
17 after you get a positive MRI back?

18 MR. BAIRD: Same objection, Your Honor.

19 THE COURT: I'll allow it as it relates to the care
20 that she offers.

21 THE WITNESS: It is my experience that disc injuries
22 are permanent and patients will likely experience
23 exacerbations for various amounts of time after the initial
24 healing phase is complete. Disc injuries are permanent.

25 BY MR. SIMON:

1 Q All right. Let's turn to Maria Abarca, if we
2 could. Fifteen. All right. Do you have Ms. Abarca's chart
3 in front of you?

4 A I do.

5 Q All right. Can you tell us what -- when she
6 first presented to you?

7 A November 15, 2011.

8 Q And when she first presented to you, can you
9 tell us the complaints that she had?

10 A She had headaches. She had neck pain. She had
11 tingling in her upper back region, mid-back pain, shoulder
12 pain on the right, interior chest wall pain, right thigh pain,
13 and low back pain.

14 Q And the pain that she presented to you was the
15 reason that -- is your understanding she experienced that pain
16 is from the car accident?

17 A Yes.

18 Q And as you sit here today, do you relate that
19 pain that you treated on that day to the car accident?

20 A I do.

21 Q So she didn't have the exact same injuries as
22 Mr. Lopez did?

23 A Not exact same injury.

24 Q She had additional body parts and injuries?

25 A Correct.

1 Q Tell us if she had any bruising or swelling that
2 she could identify on your physical exam?

3 A She had a bruising to the right upper chest, the
4 left abdomen, and the right upper thigh.

5 Q And what, if anything, did you determine to be
6 the cause of that bruising?

7 A It appears that the bruising was caused by her
8 restraint from the seatbelt across the [inaudible].

9 Q Do you have an understanding if she saw any
10 medical providers before seeing you?

11 A She was seen at the hospital.

12 Q Do you know how she was -- arrived at the
13 hospital?

14 A Ambulance.

15 Q So when she first presented to you, what was her
16 pain levels in each body part that you noted?

17 A Headaches, on average, six out of ten. Neck
18 pain was also six. [Inaudible] was a six. The shoulder was a
19 seven. The chest was a six. The thigh was a six. And the
20 low back was a six.

21 Q Did she report that she had any neck pain or
22 back pain prior to this accident?

23 A She stated she did not have any pain or injuries
24 to any of those areas prior to the collision.

25 Q All right. In regard to her abdomen, did she

1 have any of those complaints before the accident?

2 A She related in her past medical history that she
3 had ovarian cysts approximately two years before the
4 collision, so that's something that she had treated for in the
5 past and may have experienced.

6 Q Okay.

7 A They come and go.

8 Q In regard to her neck and back, did you perform
9 a physical examination on her?

10 A We did.

11 Q And what were your findings?

12 A Roughly the same, sprains, strains, contusions,
13 nausea, dizziness, headaches, nerve injuries in the upper
14 extremity.

15 Q Okay. And are those the type of injuries you
16 would expect from this type of car accident?

17 A I would.

18 Q In regard to the treatment program, what did you
19 recommend?

20 A We recommended the same manipulation,
21 physio-therapy modalities, massage, and exercises to
22 rehabilitate the spine.

23 Q All right. And did she follow your
24 recommendations?

25 A She did.

1 Q And did she improve with your treatment?

2 A She did.

3 Q Okay. Tell us how.

4 A She continued to heal throughout. To get her
5 pain level down there were days that she felt a little bit
6 better and then there were days that she felt a little worse;
7 but she was not having pain every day like she was, a constant
8 pain, when she came in.

9 Q Okay. You mentioned earlier that there's an
10 initial phase of healing?

11 A Correct.

12 Q Can you tell us what that means?

13 A Well, there's pain that's acute. There's pain
14 that's -- it's called sub-acute. There's pain that's chronic.
15 Acute pain lasts for the first week to ten days, roughly, and
16 then it goes into the healing phase, and that phase could last
17 total 12 to 15 weeks. After that, you're looking at a chronic
18 condition.

19 Q Okay. So if the pain doesn't go away by then,
20 chronic means permanent?

21 A Chronic means lasting pain, correct.

22 Q All right. So tell us how she improved with
23 each body part, if you could, for your treatment.

24 A Okay. Well, throughout these visits, it appears
25 that everything actually improved and all of her complaints

1 resolved, which means went away, except for the low back.

2 Q All right. And what, if anything, did you do to
3 identify her ongoing pain for her low back?

4 A I sent her for an MRI.

5 Q Okay. And is that just standard protocol?

6 A It is.

7 Q All right. And so when you got the MRI back,
8 what did it show?

9 A It showed disc bulge at L4/L5, and it showed a
10 disc protrusion at L5-S1.

11 Q And is it any surprise to you based on the
12 history about this car accident that she --

13 A May I say it also showed a tear in the disc.

14 Q I'm sorry. Thank you. Tell us what a tear
15 means from your perspective.

16 MR. BAIRD: Objection, beyond her scope as a
17 chiropractor.

18 MR. SIMON: Your Honor, I think that based on her
19 experience, she received MRI's and can understand the findings
20 within the scope of her treatment which allows her to make the
21 next medical decision for the patient.

22 THE COURT: All right.

23 MR. BAIRD: They're -- they're going to call Dr.
24 Kaplan, they're going to call Dr. Lanzkowsky, doctors who are
25 qualified to testify about discs and annular tears and they're

1 going to be here, so why a chiropractor would be testifying
2 about something she doesn't treat since that would be beyond
3 her scope and expertise.

4 THE COURT: Objection sustained.

5 MR. BAIRD: Thanks.

6 BY MR. SIMON:

7 Q Do you know what an annular tear is?

8 A I do.

9 Q Okay. Do you know what a disc bulge is?

10 A I do.

11 Q Do you know what a disc protrusion is?

12 A I do.

13 Q Do you know the differences between them?

14 A Yes, I do.

15 Q Okay. And do you regularly recognize those
16 findings on an MRI for your patients?

17 A I do.

18 Q You have to rely on those findings in order to
19 make medical decisions for your patients?

20 A I do.

21 Q Are you qualified to talk about within the
22 chiropractic setting for your treatment and care of a patient
23 what medical decisions you would need to make after you get
24 findings similar to that?

25 MR. BAIRD: Same objection. My previous objection

1 was sustained, Your Honor. I don't know why he's still trying
2 to have her testify about discs.

3 THE COURT: Because I believe he's trying to lay a
4 foundation to have her testify how it affects her chiropractic
5 treatment.

6 MR. BAIRD: It's also cumulative because we're --
7 he's bringing two doctors that specialize in this.

8 THE COURT: I'll allow it for the purpose he's
9 redirected his question for her.

10 MR. SIMON: Thank you, Your Honor.

11 BY MR. SIMON:

12 Q All right. In regard to the annular tear, you
13 understand those findings with Ms. Abarca?

14 A Yes.

15 Q Correct? And so based on those findings from a
16 chiropractic setting, what would you do next and why?

17 A Well, again given the appearance of an injury to
18 a disc, I am going to send my patient to a medical
19 professional to assess, evaluate, and recommend a treatment
20 for that disc.

21 Q Okay. And did you do that in this case?

22 A I did.

23 Q And who did you send her to?

24 A Dr. Coppel.

25 Q Okay. And you sent her to Dr. Coppel, correct?

1 A I did.

2 Q All right. And you're sure as -- as it's
3 daylight outside that you're the one who sent her to Dr.
4 Coppel?

5 A My name is on the referral.

6 Q Okay. All right. Did you receive any
7 information back from Dr. Coppel regarding her?

8 A I have an initial evaluation, I do.

9 Q All right. And what was your understanding from
10 a chiropractic setting what his findings were of your patient?

11 A Okay. So he has a lumbar disc displacement, a
12 lumbar facet syndrome, and a lumbar radiculitis,
13 radiculopathy.

14 Q And your understanding from a chiropractic
15 profession is that that's consistent with a disc injury?

16 A Yes.

17 Q Is there any surprise to you that both Christian
18 and Maria Abarca had symptomology stemming from the L5-S1
19 disc?

20 MR. BAIRD: Same objection, Your Honor. It's beyond
21 her scope.

22 THE COURT: Overruled.

23 THE WITNESS: Please repeat.

24 BY MR. SIMON:

25 Q Yeah. Based on the information you know about

1 this accident and how it happened.

2 A Yes.

3 Q Where both of them were thrown forwards and
4 backwards, is it any surprise to you that both of them had a
5 disc injury to the L5-S1 disc?

6 A Surprise, no.

7 Q Okay. And why not?

8 THE COURT: Do you think it maybe would help the jury
9 if they knew exactly where L5-S1 was?

10 MR. SIMON: Possibly.

11 BY MR. SIMON:

12 Q Can you tell us where L5 --

13 A Yeah. It's just the very last disc in the spine
14 before your tailbone, the lowest level you can get.

15 Q All right. And is there any -- and why is it
16 no surprise to you that they both had problems at that same
17 disc level, the very lowest one?

18 A Very routine in these type of injuries to
19 involve the very last two discs, which would be L4-L5 and
20 L5-S1, very common.

21 Q Okay. Is one of the reasons that that's kind of
22 the first disc at the bottom?

23 A Yeah, sure. You can say that.

24 Q Okay. Did you ever restrict her from any
25 activities during the course of your treatment?

1 A I believe I -- I recommended the same as I do to
2 all my patients, to be cautious and careful of some of the
3 daily activities that they do, bending, lifting, twisting,
4 things of that nature.

5 Q And she treated with you for how long?

6 A She treated with me from November 15th to
7 February 28th.

8 Q Okay. So not as long as Christian did?

9 A I guess. Let me see. Oh. He was into March,
10 right? He was March [inaudible], correct.

11 Q So she progressed a little bit better and
12 quicker and was released earlier, correct, from your care?

13 A It appears she did.

14 Q All right. But when she was released from your
15 care, she still had ongoing low back?

16 A Low back, correct?

17 Q Right? But everything else --

18 A Everything else felt better.

19 Q As far as her pain complaints that she reported,
20 did she also report to you lower pain complaints?

21 A Lower meaning into the legs?

22 Q No. Lower meaning in number.

23 A Oh. Oh. Yeah, yeah, she did great. Yeah.

24 Q Did you think, at any point in time in your
25 treatment, that she was exaggerating her symptoms to you?

1 A No.

2 Q And why not?

3 A Because she continued to get better.

4 Q And is that something that tells you, as a
5 doctor, that the patient is being consistent with her injuries
6 to you?

7 A Yes.

8 Q Does that tell you something as a doctor that
9 this patient's trying to get better?

10 A Yes.

11 Q Was there periods of your treatment where she
12 reported no pain to you?

13 A There were.

14 Q Okay. And so, did you continue to treat her
15 even though she was reporting no pain?

16 A I did.

17 Q And why do you do that?

18 A Because you can see through the records that she
19 was experiencing pain approximately two to three days a week.
20 So if there are seven days in a week, she might have been in
21 on a day where she was having a good day as opposed to a bad
22 day. I have to take a lot of factors into consideration when
23 I treat my patients. She was improving, so I held off on
24 doing the MRI because I didn't want her -- I wanted her to get
25 better. But when my patients come in and tell me -- it's a

1 conversation and a dialogue, so we have to make these
2 determinations in real-time based on the patients. She was
3 getting better, but then she wasn't. She was still flaring
4 and having exacerbations with her activities, which lead me to
5 believe that she had a disc injury because everything else got
6 better, and it's my duty to find out why is my patient still
7 in pain, especially when everything else got better. So I
8 sent her for the MRI and there was an injury.

9 Q In regard to Dr. Koka's treatment, do you
10 collaborate with his office on the treatment?

11 A We will -- we will talk about our patients.
12 They are -- their records are in our charts, so, yes. But Dr.
13 Koka, his assistant, was seeing this patient, not Dr. Koka.

14 Q Okay. So when you say "his assistant," who is
15 that?

16 A Diana Rodriguez.

17 Q Okay. Did you know Diana Rodriguez at the time?

18 A I -- yeah, she -- she -- I worked with her.

19 Q Did you happen -- and so as part of your chart
20 you have Dr. Koka's and Diana Rodriguez's medical records,
21 correct?

22 A I do.

23 Q All right. I think there was a point in time
24 where Ms. Rodriguez [sic] suggested she had no -- no more low
25 back pain and released at least from their group without

1 residuals?

2 A Correct.

3 Q Does that mean that finding that she didn't have
4 any ongoing issues with her back?

5 A I'm sorry. Say it again?

6 Q That note on that day is a picture in time?

7 A Correct, yeah.

8 Q Right? So when someone comes into your facility
9 and you report the pain on that day, it's a picture for that
10 day, correct?

11 MR. BAIRD: Objection, foundation. He's asking her
12 to speculate about the intent of another medical provider who
13 did a record that she didn't [inaudible]. There's no
14 foundation for her to offer opinions about another doctor's
15 state of mind when they made a record for this patient.

16 THE COURT: Okay.

17 MR. SIMON: That's not what I'm getting at. First,
18 my question that he's objecting to was whether or not when her
19 patients come in to see her, that the pain they report is a
20 picture in time.

21 THE COURT: That was the question I heard, as well.

22 MR. BAIRD: Okay. I thought he was still talking
23 about Rodriguez. I'll withdraw the objection.

24 BY MR. SIMON:

25 Q Okay.

1 A Start over.

2 Q I'm going to start over.

3 A Please.

4 Q All right. So when a patient comes into see you
5 on any particular day, you ask them how they're doing, right?

6 A Correct.

7 Q Okay. And then they tell you and you ask what's
8 your pain level today?

9 A I may on -- yeah.

10 Q And you may write it down?

11 A Correct.

12 Q That medical record generated that day is a
13 picture in time how they're doing that day at that hour, fair?

14 A Yes.

15 Q All right. So as part of Dr. Koka's records,
16 you reviewed those in conjunction with your own in the course
17 and treatment of this patient, Maria Abarca?

18 A Yes.

19 Q All right. And there is a note where Ms. -- is
20 it Rodriguez?

21 A Diana, yeah.

22 Q Diana Rodriguez reports that she had no pain on
23 a particular day?

24 A Correct.

25 Q Okay. Does that mean from your perspective in

1 the course of your treatment that she was pain [inaudible] --
2 pain free and cured in her low back?

3 A Based on her record?

4 Q Based on the condition of the patient, what you
5 were treating, her records [inaudible] --

6 A Oh. Okay. So I'm just going to say I can't
7 speak for what Diana Rodriguez did. I can only speak for what
8 I did and what I know in my experience.

9 Q Okay. So even if Ms. Rodriguez said she didn't
10 have any pain and was released without problems, that's not
11 your opinion?

12 A I -- I want to say that Diana Rodriguez has a
13 note that her low back pain resolved; however, in the
14 objective portion of this note it says that she has range of
15 motion with pain. So I would prefer you talk to Dr. Koka
16 about Diana's notes.

17 Q Okay. At the time that note was made, she --
18 you were still treating her for low back pain?

19 A Correct.

20 Q Right? And sending her for MRIs?

21 A At the time of this note, no, because the MRI
22 was later.

23 Q Oh. Okay. The MRI was later. But you were
24 still treating her for low back pain?

25 A Correct.

1 Q And that low back pain --

2 A And neck pain and [inaudible] and shoulder pain.

3 Q All right. And that low back pain never went
4 away?

5 A Correct. Completely it never went away.

6 Q I'll have you take a look at the billing
7 statement generated for Maria Abarca. Exhibit 15, pages one
8 through seven -- one through six. Do you have it in front of
9 you?

10 A Yes.

11 Q All right. The total bill that I have -- let's
12 see --

13 A \$7,310.

14 Q All right. \$7,310; is that accurate, in your
15 opinion, that's for the chiropractic care that you performed
16 on Maria Abarca?

17 A Yes, and the x-rays.

18 Q All right. And is the bill reasonable and
19 necessary in this community?

20 MR. BAIRD: Same objection as before, Your Honor.

21 THE COURT: Overruled as before. You can answer.

22 THE WITNESS: They're reasonable and customary in the
23 geographic area.

24 BY MR. SIMON:

25 Q Okay. And all of the treatment and care and the

1 bills incurred were related to this car accident in November?

2 A Correct.

3 Q Are you familiar with MRI charges?

4 A Am I familiar with them?

5 Q Yeah, when you said --

6 A How much does an MRI cost? Yes, there is --
7 yes.

8 MR. BAIRD: Objection. Your Honor, may we approach?

9 THE COURT: Sure.

10 (Bench conference.)

11 MR. BAIRD: [Inaudible] pretty egregious. Now he's
12 trying to have her testify about MRI charges. She doesn't
13 even bill for MRIs. She orders them. I mean, she should have
14 been disclosed as a billing expert in radiology if this is
15 what her testimony is going to be. I've not objected to her
16 testimony about chiropractic care, but for her to now testify
17 as an expert about MRI billing, this is really far beyond the
18 scope.

19 MR. SIMON: Your Honor, he's been objecting to every
20 single thing about a billing. It's ridiculous. She orders
21 MRIs. She's familiar with MRIs, their charges. It's part of
22 her practice. It's in her medical records. She's already
23 laid the foundation that she knows what they are. She's been
24 doing it for 20 years. She's been here forever. This is part
25 of what they do every day.

1 THE COURT: Anything else?

2 MR. BAIRD: No. It's pretty clear.

3 THE COURT: All right. I'm going to let you ask her.

4 MR. BAIRD: Okay.

5 (End of bench conference.)

6 THE COURT: Mr. Simon, are you almost finished?

7 Because I think the jury needs to use the restroom and
8 stretch.

9 MR. SIMON: I am almost finished.

10 THE COURT: Okay.

11 MR. SIMON: But we can take a break, if you'd like.

12 THE COURT: If you're close then let's just finish up
13 your direct.

14 MR. SIMON: All right.

15 BY MR. SIMON:

16 Q Dr. Adair, you had referred Christian for an MRI
17 of the lumbar spine; is that accurate?

18 A Yes.

19 Q And the bill incurred for the lumbar spine is
20 \$1,550?

21 A Yes.

22 Q In your opinion, is that reasonable and
23 necessary?

24 A Yes.

25 Q I mean, this wasn't an unnecessary procedure,

1 right?

2 A Correct.

3 Q Right? I mean, you ordered it for a reason?

4 A Correct.

5 Q Okay. And this is something that's common
6 within the community?

7 A It is.

8 Q And it is also related to the car accident?

9 A Yes.

10 Q I know it sounds obvious, but I got to ask the
11 question.

12 A Okay.

13 Q I'm going to present you also with the MRI for
14 Maria Abarca. All right. [Inaudible] this MRI is also
15 \$1,550?

16 A Yes.

17 Q And, in your opinion, is that reasonable and
18 necessary?

19 MR. BAIRD: Same objection, Your Honor.

20 THE COURT: Again, overruled.

21 THE WITNESS: Yes.

22 BY MR. SIMON:

23 Q And related to the accident?

24 A Yes.

25 Q And, Doctor, all of the opinions that you have

1 given here today are based on a reasonable degree of medical
2 probability?

3 A Yes.

4 Q And lastly, the treatment and care that you
5 rendered and the diagnoses that you made throughout the entire
6 course of your treatment for both Maria and Christian was
7 caused by the motor vehicle accident in November?

8 A Yes.

9 MR. SIMON: Yes. Thank you. Nothing else.

10 THE COURT: All right. We're going to give the jury
11 a quick break before you start your cross.

12 Ladies and gentlemen, please take a 10-minute break.
13 Do not read, watch or form any opinions on this case and do
14 not talk about this case with anyone. See you shortly.

15 Do you need any water, Doctor?

16 THE WITNESS: Thank you. I'm good. You know what?
17 Maybe a little water.

18 (The jury recessed at 3:02 p.m.)

19 MR. MICHALEK: Your Honor? Just -- just real briefly
20 while we're outside the presence. Just want to make a note
21 that under Rodriquez this was not -- the chiropractor's care
22 and treatment, she did not perform the MRI, therefore, any
23 opinions regarding the reasonableness and necessity of the
24 medical bills she did not provide would be improper under
25 Rodriquez.

1 Secondly, the Court has prohibited us from using the
2 liens, introducing the liens into evidence. We would just
3 make an offer of proof that if we had the opportunity this
4 afternoon we would inquire into whether the Plaintiff had been
5 treating on a lien and how much that lien is. The Court's
6 already ruled on that. I'm just making my offer of proof now
7 so we don't have to do it at a later point.

8 Finally, we would make a motion to take a witness out
9 of order tomorrow. I believe Mr. Baird and Mr. Simon have
10 already worked it out, but our billing expert, Tami Rockholt
11 is coming in on Thursday. I believe we can try and squeeze
12 her in some time tomorrow afternoon. That would be out of
13 order because it would be during the Plaintiffs' case, but we
14 would make a motion to do that.

15 THE COURT: Is that okay?

16 MR. SIMON: No, it's not. I mean, it is and it's
17 not, and I've already told them, so why they're now making a
18 motion to try and force you to do something that I've already
19 told them I would work with them on? I have Dr. Lanzkowsky
20 and Dr. Kaplan coming. One first thing in the morning; one
21 first thing in the afternoon.

22 If there's any time after their testimony, I'm happy
23 to let her testify out of order and I've already told them
24 that. So I'm not sure why you're making a motion to try and
25 get the Judge to force me to re-arrange my doctors when I've

1 already told you I would accommodate you within that reason.

2 MR. MICHALEK: Noted. I -- I don't think -- if I did
3 represent that way -- I don't think I did. I thought I said
4 that Mr. Baird and Mr. Simon had -- were working things out on
5 that. I was simply notifying the Court that we have a witness
6 out of order. She's from out of state. She's coming in
7 tomorrow. We would like to get her to testify.

8 We went over a couple days on the voir dire process
9 and so we thought we would have Thursday and Friday to present
10 our witnesses. That doesn't look like it's going to happen.
11 We're stretching into next week. Plaintiffs' doctors are
12 local. Ours is coming in out of state.

13 All I'm saying is we'd like to get her on tomorrow.
14 I think we can work that out. If that becomes a problem, I
15 guess I'll -- I'll raise it tomorrow, but I would think the
16 Court would be inclined to allow us to get our out-of-state
17 witnesses on since we have a limited amount of time.

18 THE COURT: I think that -- well, let's get the
19 Plaintiffs' witnesses on because, as you know, these doctors
20 are going to block out that whole day --

21 MR. MICHALEK: Right.

22 THE COURT: -- and charge them for it, regardless of
23 whether or not he utilizes it, so. And I bet we're going to
24 finish those two doctors anyway tomorrow and we'll just put on
25 your witness if that's -- if there's no other Plaintiffs'

1 witnesses that have been paid to get here tomorrow.

2 MR. MICHALEK: If I -- if I intimated that we hadn't
3 been working things out, I apologize. We certainly were. I
4 just wanted to bring it to the --

5 THE COURT: I would think that's fair to tell your
6 doctor -- I mean, your nurse that it's going to be in the
7 afternoon probably.

8 MR. MICHALEK: I will --

9 THE COURT: [Inaudible.]

10 MR. MICHALEK: -- yes. I will do that, Your Honor.
11 Yes.

12 THE COURT: Okay.

13 (The Court recessed at 3:06 p.m. until 3:20 p.m.)

14 (Outside the presence of the jury.)

15 THE COURT: Okay. We're on.

16 MR. BAIRD: And I want to be very clear, Your Honor.
17 I'm not asking for anything to be reconsidered or revisited,
18 but in light of your ruling that Plaintiffs are going to be
19 allowed to present evidence of future surgery and the costs
20 therefore, we would ask that the Plaintiffs at this time
21 disclose whatever evidence this is going to be, especially the
22 costs, timelines, and names of procedures so at the very least
23 we can give our experts 24 hours with that information before
24 they testify.

25 THE COURT: Wasn't that contained in the medical

1 record?

2 MR. BAIRD: It is not.

3 MR. SIMON: The L5-S1 fusion procedure is in all of
4 the medical records, so if they want me to call up Dr. Kaplan
5 and say, Hey, what is -- what are you going to ultimately say
6 it is --

7 MR. BAIRD: His testimony is --

8 MR. SIMON: -- I can try and do that for them.

9 MR. BAIRD: Yeah. I mean, when we asked him about it
10 in his deposition, he said, I haven't done any cost on this,
11 no one's asked me to. So if he's going to testify on that
12 tomorrow, we should know what that is in advance.

13 THE COURT: I would agree with that.

14 MR. SIMON: All right. I will -- I'll get that to
15 them tonight.

16 MR. BAIRD: That will be great.

17 THE COURT: Is there anyone else who is testifying
18 regarding they're going to provide future care?

19 MR. BAIRD: I don't know.

20 THE COURT: I don't have all the [inaudible].

21 MR. BAIRD: Yeah. No, but the first we heard about
22 future chiropractic and future medical was yesterday. So I
23 don't know if that's going to be her next thing. We don't
24 know. We don't know about any other future things.

25 THE COURT: She's finished on direct.

1 MR. BAIRD: That's true. So unless somebody else is
2 going to testify there's going to be future chiropractic,
3 future medication --

4 MR. SIMON: The only person would probably either be
5 Dr. Lanzkowsky or Dr. Kaplan because the future surgeries
6 already been talked about all over the place, but there's also
7 the time frame in which the treatment they need before they
8 have to have that procedure. So there's just conservative
9 modalities and treatments to try and hold off on that
10 procedure.

11 THE COURT: And he's going to testify regarding those
12 modalities? Who's --

13 MR. SIMON: Dr. Kaplan would be.

14 MR. BAIRD: So we would like --

15 MR. SIMON: Those are the things that he would tell
16 his patients that they should be afforded until they
17 ultimately come to the procedure.

18 MR. BAIRD: So we would like a full disclosure of the
19 expected modalities and treatment, as well as costs therefor.

20 THE COURT: Those aren't in his report?

21 MR. BAIRD: No.

22 THE COURT: Why didn't he put those in his report?

23 MR. SIMON: Because this particular patient was sent
24 to him specifically for the fusion procedure, which he
25 diagnosed and recommended based on the discogram. He wasn't

1 doing a lifecare plan.

2 THE COURT: He's not going to do a lifecare plan, is
3 he?

4 MR. SIMON: What's that? No, he's not going to come
5 in here and do a lifecare plan, but what he is going to talk
6 about is the future surgery that they know about, and then if
7 there's any conservative care that would help alleviate their
8 symptoms until they ultimately succumb to that.

9 THE COURT: I'm a little bit concerned about without
10 seeing Dr. Kaplan's records, I'm a little bit concerned about
11 it. If it's not in his records that he's going to suggest or
12 refer them for physical therapy, chiropractic care, whatever
13 it means, I'm a little bit concerned about that as far as it
14 doesn't appear that the Defense had any indications that was
15 the case versus the surgery, which Dr. Kaplan's the surgeon,
16 and quite clearly he articulated that surgery is --

17 MR. SIMON: Fair enough, Judge.

18 THE COURT: -- suitable --

19 MR. SIMON: What I'll do, if there's no indication in
20 the records, then, you know, we'll be -- we'll be stuck with
21 that.

22 THE COURT: Okay.

23 MR. BAIRD: Thank you. That's all we've got.

24 THE COURT: Let's bring the jury in.

25 (The jury reconvened at 3:23 p.m.)

1 THE COURT: All right. The jury is back. Would you
2 like to begin your cross?

3 MR. BAIRD: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. BAIRD:

6 Q Okay. Dr. Adair, you believe your medical
7 records that your clinic has maintained and produced in this
8 case are accurate and complete; is that true?

9 A I do.

10 Q Your office doesn't purge or remove anything
11 from the records or documents from your files; is that true?

12 A No, not that I'm aware of.

13 Q Okay. It's -- it's not true they haven't?

14 A No.

15 Q Your -- you have testified -- do you remember,
16 was I your first deposition?

17 A I remember you.

18 Q Okay. So when I took your deposition I asked
19 you a whole bunch of questions, a number of questions about
20 billing. Do you remember that?

21 A Yes.

22 Q And one of the questions I asked you --

23 THE COURT: Counsel, do you want to turn the podium
24 this way so you're not -- you don't have your back to the
25 jury?

1 MR. BAIRD: Okay. Sure. Yeah, I'll do that. Your
2 Honor, I'd like -- I move to publish the deposition of Dr.
3 Adair.

4 THE COURT: Any objections?

5 MR. SIMON: No.

6 THE COURT: That's fine. Adair.

7 BY MR. BAIRD:

8 Q Do you remember, of course, when your deposition
9 was taken you were placed under oath to tell the truth, do you
10 recall that?

11 A Yes.

12 Q And I asked you if you knew what the customary
13 charge in Las Vegas was for any particular CPT code. Well,
14 let me -- let me start here. Let me start here.

15 How does the billing work in your office? You see a
16 patient and you do things for that patient. Then what you do
17 is you write down what you did; is that a fair statement?

18 A Correct.

19 Q Then that little piece of paper goes to a
20 billing person, right?

21 A Correct.

22 Q And they turn that into codes and ultimately a
23 bill; is that true?

24 A Correct.

25 Q Do you know off the top of your head what your

1 office charges for any particular procedure that you perform
2 or service you provide?

3 A Off the top of my head, no.

4 Q Okay. So in order to tell us what you charge
5 for, say, an established patient consultation -- is that
6 something that you do?

7 A Yes.

8 Q Okay. You would have to look that up; is that
9 true?

10 A I -- I don't concern myself with the fees. I
11 just concern myself with being a physician and --

12 Q Right. Now, do you know what someone -- now
13 your clinic is called Neck and Back Clinic, right?

14 A Correct.

15 Q Okay. Do you know what any other clinics in
16 town charge for any particular procedure? Let's use the
17 established patient consultation as an example.

18 A I know there are ranges of fees; but, no, I
19 can't say that I do.

20 Q Okay. So you don't know -- I remember when I
21 was a kid in school, I think they were called the Iowa tests,
22 and then we would all take these -- fill in bubbles for a few
23 days and then we would get a percentile score. And do you
24 know what a percentile score would be, how those work?

25 A I could guess; but I can't say, no.

1 Q Have you heard of something where if you have a
2 higher score than 99 percent of the other people that took the
3 test -- not that I ever got one -- that you would be in the
4 99th percentile? Have you ever heard that? Or, does that
5 make sense to you? We'll start there.

6 A I -- I don't know.

7 Q Okay. Let me ask it this way then. Where do
8 your charges sit in relation to other charges in Las Vegas?
9 Are you in the top 10 percent, the bottom 10 percent, the
10 middle 80 percent? Do you -- can you quantify it in any way?

11 A I can't, not a specific percentile.

12 Q Okay. When we took your deposition, your
13 testimony was that you were confident that your clinic's fees
14 were reasonable and customary. That is based on just some
15 trust you have in the people that set up the fee scheme in
16 your office. Is that a fair statement?

17 A It's fair.

18 Q When it comes to the nuts and bolts about your
19 billing, you are not a person who has knowledge about that?

20 A I do not set the fees for the Neck and Back
21 Clinic.

22 Q And this confidence that you developed in the
23 reasonableness and customariness of your billing, that didn't
24 come from you checking your bills and comparing them with what
25 anybody else charges?

1 A No. It was based on my seven years with the
2 company and never having this come up as an issue.

3 Q Okay. And you've never testified in court
4 before so you've never had to deal with -- with the burden to
5 prove your bills are reasonable; is that a fair statement?

6 A No. However, since we've -- you deposed me, I
7 have been assured that the fees are reasonable and customary
8 and they have documentation as to how they derive their fees.

9 Q Okay. Now, did you bring with you today any
10 documentation of that fact?

11 A I haven't.

12 Q So somebody somewhere has told you this and
13 that's what you bring to us today?

14 A They have literature determining how they set
15 their fees. I didn't bring it and I probably should have. I
16 apologize.

17 Q And you're not personally familiar with the
18 process in which your services are specifically turned into a
19 bill?

20 A I don't concern myself with the billing.

21 Q And you don't know with what frequency the Neck
22 and Back Clinic accepts reductions in the amount they charge?

23 MR. SIMON: Objection, relevance, Judge.

24 MR. BAIRD: Pardon?

25 MR. SIMON: I said objection, relevance.

1 THE COURT: What is the relevance, Counsel?

2 MR. BAIRD: The reasonableness and customariness of
3 the charges, if they typically don't even accept that much --
4 (Bench conference.)

5 THE COURT: There's a case that says they're entitled
6 to ask for the entirety of the amount.

7 MR. BAIRD: But that doesn't mean -- that doesn't
8 mean [inaudible]. That's just a suggestion. [Inaudible.]

9 THE COURT: No, I'm not going to let that question
10 [inaudible]. They're entitled to ask for the entirety of it,
11 even if it comes up that it's [inaudible] what the insurance
12 company paid.

13 MR. BAIRD: [Inaudible.]

14 THE COURT: Well, no, [inaudible] by that example.
15 But they -- I mean the case law is clear that they're allowed
16 to ask for it.

17 MR. BAIRD: Okay.

18 (End of bench conference.)

19 BY MR. BAIRD:

20 Q Doctor, you have testified today is it safe to
21 say the majority of your testimony today as related to your
22 initial examination and treatment of each of these Plaintiffs,
23 Maria and Christian?

24 A Say that -- what about it?

25 Q The first visit?

1 A Yeah.

2 Q That November 15th visit?

3 A Yes.

4 Q The first time that you personally saw them and
5 examined them?

6 A The initial examination was performed by Dr.
7 Barnett, my associate.

8 Q Oh. Okay. So you didn't personally examine and
9 treat Maria and Christian on the first day?

10 A On the first day, no.

11 Q Okay. On the first day, some other chiropractor
12 who isn't here today performed all that?

13 A Correct.

14 Q Okay. You signed the letter, you signed that
15 report?

16 A I did.

17 Q That's what you did. Now --

18 A It was an intern.

19 Q Pardon?

20 A It was an intern, Dr. Barnett.

21 Q Okay.

22 A Post --

23 Q Sorry. I didn't mean to interrupt you.

24 A Go ahead.

25 Q Let me get the big book. Can we look at -- I

1 guess it would be Exhibit 15. If you could put that up.
2 Exhibit 15, page -- what I'd actually like you to do is open
3 up Exhibit 15 in that big binder. And, I'm sorry, this might
4 take a minute, maybe two.

5 A Okay.

6 Q But when you look through Exhibit 15 -- and I
7 think these are the records for Maria?

8 A Yeah.

9 Q Does that contain all of the records generated
10 by your office with respect to Ms. Abarca?

11 A There's -- my -- my records, not the MRI, not
12 Dr. Coppel.

13 Q Okay.

14 A My -- my --

15 Q But the records that your office creates, those
16 are all in there?

17 A Yeah. It looks to be.

18 Q And any documents that a patient would create or
19 fill out, those are in there?

20 A Yes.

21 Q Okay. All right. So if we look at Exhibit 15,
22 let's say page -- page 22. I'm going to have to wear my
23 glasses from now on. Let's see, this is Number 16.

24 A Yeah.

25 Q Would this be the initial visit?

1 A This would be a follow-up visit that Dr. Barnett
2 saw the patient on that day.

3 Q Okay. Is there -- what is this that we're
4 looking at? What -- what do you call this document?

5 A Daily soap [phonetic] note.

6 Q Okay. And is this a document that is filled out
7 every time a patient comes in to see you?

8 A Yes.

9 Q And this is the document where the subjective
10 complaints of a patient or their pain complaints when they
11 tell you about their symptoms, that's where that's recorded,
12 right?

13 A Correct.

14 Q And this is where objective findings are made,
15 measurements that you make of a patient, correct?

16 A Correct.

17 Q And the results of any tests that you take,
18 correct?

19 A Correct.

20 Q Okay. Will you show me in this exhibit Dr.
21 Barnett's initial examination notes? I'm not sure where they
22 are and I've been trying to find them. That would have been
23 on the November 15th date, right?

24 A Correct.

25 Q Do you see it in there?

1 A Which?

2 Q Any soap notes from that first visit?

3 A Yeah.

4 Q Okay. What do you have?

5 A Oh. What do you mean? The first visit --

6 Q Well, I thought you --

7 A -- was the initial report.

8 Q Okay.

9 A This is the second visit.

10 Q Okay. So what notes are generated by a doctor

11 when they visit a patient for their first visit?

12 A The initial report.

13 Q Okay. The initial report, and that starts on

14 page 15 of Exhibit 15? Or, sorry, seven.

15 A Seven.

16 Q I'm looking at [inaudible]. Okay. That is a

17 type-written document?

18 A Correct.

19 Q Okay. So on the first visit, somebody else

20 types up this document and then you sign it?

21 A Correct.

22 Q Okay. And you don't have the patients fill

23 anything out, that's true?

24 A On the first visit?

25 Q Right.

1 A They fill out all their intake forms, pain
2 diagrams, and daily activity checklist.

3 Q Okay. And is that in this exhibit?

4 A It is.

5 Q Okay.

6 A Page 51.

7 Q Page 51.

8 A 52 is the first one. 51 is the last visit.

9 Q Okay. All right. So if we go back to page --
10 we'll start on page 7. So this is the first page of your
11 report. And when we say "your report," this is the report you
12 signed that Dr. -- what was it? It starts with a B?

13 A Barnett.

14 Q -- Barnett actually filled out. So this initial
15 report is based on the assumption that Dr. Barnett, of course,
16 was thorough and correct in all of his activities and
17 interviewing and examining the Plaintiff, the patient, Maria,
18 correct?

19 A Correct.

20 Q Okay. Now, if we turn to page 14, right under
21 your signature, can you read that disclosure for the jury,
22 please?

23 A "This report is for medical/legal assessment of
24 the injury noted and not to be construed as a complete
25 physical examination for general health purposes. This

1 examiner has assessed only those symptoms which are believed
2 to have been involved in the injury or that might have been
3 related to the injury."

4 Q Okay. And so when it says "related to the
5 injury," in this case it's talking about the car accident?

6 A Yes.

7 Q Okay. So if we're to believe what your report
8 says -- and you said you believe it to be correct -- your job
9 is to not find, diagnose or treat anything not related to the
10 car accident?

11 A Correct.

12 Q You should ignore anything else?

13 A Not ignore. We make a recommendation that they
14 seek medical attention --

15 Q Elsewhere?

16 A Unrelated.

17 Q Okay. Do you explain that to your patients?

18 A Yes.

19 Q Okay. So a patient who comes to your office, if
20 they want you to treat them, it would be in their interest to
21 relate all of their complaints to the injury that they tell
22 you brought them to your office?

23 A It would be.

24 Q Okay. Do you agree that in some cases people
25 seek medical care and they want more than just medical care,

1 they have other motivations, as well? Such as --

2 A More than medical care?

3 Q Yes. Such as an interest in financial gain or
4 secondary --

5 MR. SIMON: Objection, relevance.

6 THE COURT: I'm sorry.

7 MR. SIMON: Objection, relevance, lacks foundation.
8 No evidence of this and it's already been excluded.

9 MR. BAIRD: I mean, this is a foundational question
10 and I'm asking if it's a phenomenon that she has heard of and
11 the motivations and biases of any party are certainly
12 relevant.

13 MR. SIMON: Your Honor, there's no evidence -- we've
14 already discussed this previously.

15 MR. BAIRD: She just testified that her patients are
16 already motivated to contribute anything they can to the car
17 accident in order to continue treatment. I want --

18 THE WITNESS: I don't believe that's what I said.

19 THE COURT: Hold on a second. I don't think she said
20 that with respect to the two Plaintiffs in this case.

21 MR. BAIRD: In general she said it was [inaudible].

22 THE COURT: I think that mischaracterizes what she
23 said.

24 MR. BAIRD: Well, I guess the record says what it
25 says.

1 THE COURT: You can follow on the line of what Mr.
2 Simon has already asked, if that's what your -- your intent
3 was. Mr. Simon asked him if there's any reason to believe
4 that -- asked along the line of whether or not the complaints
5 were consistent with what she was seeing, but --

6 MR. BAIRD: That is ultimately where I'm going to
7 get, yes.

8 THE COURT: I think you need to get there without
9 these questions.

10 MR. BAIRD: Okay. Sure. Let me get my copy of your
11 -- oh, here it is. So I can't ask her anything about whether
12 the phenomenon exists? Whether it's something she's heard
13 about?

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

15 THE COURT: Yes.

16 (Bench conference.)

17 THE COURT: You know we had that long discussion with
18 Dr. Duke, how Dr. Duke says, oh, they're [inaudible], they're
19 secondary gain. How does Dr. Duke really qualify to get into
20 their brains and figure out the psychological aspect for why
21 people do what they do? This really sounds like [inaudible]
22 same type of question.

23 MR. BAIRD: The difference, Your Honor, is no one can
24 get inside anyone's brain; but I am entitled to show that the
25 Plaintiffs here had motivations outside of sympathy recovering

1 their [inaudible]. Money is a [inaudible] possibility in this
2 case and I should be entitled --

3 THE COURT: Is there --

4 MR. BAIRD: If it's a phenomenon [inaudible]
5 identified, then the jury can consider that if there's
6 evidence of that in this case. It's not -- has nothing to do
7 with Dr. Duke.

8 THE COURT: Is there any evidence of it in this case?

9 MR. BAIRD: [Inaudible] doctor said it's a real
10 phenomenon. It all comes down to the credibility of the
11 Plaintiffs and if the jury does not believe [inaudible]
12 because they see their motivation [inaudible]. That's the
13 whole point.

14 MR. SIMON: Judge --

15 MR. BAIRD: To be prevented from exploring the
16 motivations of a witness -- I mean, this is --

17 THE COURT: How would she know -- how would she
18 qualify to testify regarding the motivations? Because I think
19 it's completely [inaudible] and some times they -- they say
20 one thing, Oh, my back, whatever, they say something about
21 their symptomology and what they see, and the doctor says that
22 all the time is inconsistent with that. I think that's fair
23 game and that you can draw reasonable inferences from that. I
24 think [inaudible] like Dr. Duke has been qualified to talk
25 about the psychological [inaudible] people do.

1 MR. BAIRD: No, no. You can forget Dr. Duke.
2 [Inaudible] not going to deal with Dr. Duke. I mean, what I
3 show in the [inaudible], it's already been opened. The fact
4 is their treatment [inaudible] with actions in this lawsuit,
5 so there is a [inaudible] between financial motivation and the
6 medical [inaudible]. And so that is fair game and I should be
7 able to show that to the jury and this line of questioning --

8 THE COURT: I'll let you argue it.

9 MR. SIMON: Judge, motion in limine number one,
10 you've already precluded this. It said Dr. Duke or any other
11 witness may not discuss secondary gain or malingering. The
12 secondary -- he wants to call them a liar because of these
13 motivations and they're not in this case. Even Dr. Duke says
14 they're truthful.

15 He has to have evidence related to these people about
16 secondary gain. He doesn't have any. He just wants them to
17 speculate outside the record based on this phenomenon that Dr.
18 Duke talks about in personal injury actions people are
19 motivated and there's this, but it's not in this case. He has
20 no evidence of it and it's improper and it violates your
21 order.

22 MR. BAIRD: Motivations of a witness, I think that's
23 black-and-white in the statute. That is something that comes
24 in.

25 MR. SIMON: He wouldn't let me even talk about

1 whether they were being truthful to the doctors. He's trying
2 to do the opposite. He's trying to do the exact same thing,
3 calling them a liar and he has no evidence of it.

4 THE COURT: I don't want -- [inaudible] secondary
5 gain. I mean, you can do [inaudible] and argue their sporadic
6 treatment, I would absolutely let you argue that.

7 MR. BAIRD: I'll just argue that. Thank you, Your
8 Honor.

9 (End of bench conference.)

10 BY MR. BAIRD:

11 Q You agree that you actually know very little
12 about the car accident at issue in this case, correct?

13 A I know there was a car accident.

14 Q Right. Beyond that, your information doesn't go
15 much farther than knowing there was a car accident, fair
16 statement?

17 A I know a little more than that.

18 Q Okay. You know the speed of the vehicles? How
19 do you know that?

20 A I don't know the speed.

21 Q I thought you said you do.

22 A I know the -- I know that the car was towed, and
23 I know there was a front-end impact, and I know that --

24 Q Do you know -- you don't know the speed of the
25 vehicles, correct?

1 A Correct.

2 Q Okay. You don't know on what road this
3 happened, correct?

4 A Correct.

5 Q The make or the model of the vehicles?

6 A That's in there, I believe.

7 Q Okay. Do you know whether those vehicles had
8 been in any prior accidents?

9 A No.

10 Q Do you know whether air bags deployed?

11 A I would have to look. That would be in there.

12 Q Okay. Do you know whether any seats broke over
13 the course of the accident?

14 A I do not.

15 Q Do you know whether there was any intrusion into
16 the passenger compartment?

17 A I do not.

18 Q Do you know whether the frame of the vehicle was
19 taken out of [inaudible], was altered as a result of the
20 accident?

21 A I do not.

22 Q Is it safe to say, I believe, the extent of the
23 information you have regarding this case was found in -- in
24 the charts that you have in front of you with respect to Maria
25 Abarca and Christian Cervantes?

1 A Yes.

2 Q And the -- the disclaimer we just read -- and
3 after that disclaimer there comes a whole bunch of other
4 things about injuries. You testified in your deposition that
5 that is something that you put specifically in cases probably
6 where someone is going to be asking for money, right? Where
7 someone else is going to be reviewing your chart; is that a
8 fair statement?

9 A Correct.

10 Q Okay. If a patient comes to you and -- and they
11 are not involved in something that is likely going to lead to
12 someone asking for money, you probably don't put in that
13 disclaimer and then the pages that follow, fair statement?

14 A I don't see it as people coming and asking for
15 money. I just see people are treating and when you have a
16 med/legal situation, legal, med.

17 Q Right. And when medicine and the law combine,
18 safe to say there's usually money involved?

19 A Sure.

20 Q Your opinion on what caused the Plaintiffs
21 injuries can be summed up as this: They told you that there
22 was an accident and that it lead to pain and you agreed with
23 them; is that a fair statement?

24 A No.

25 Q No. Okay. What other information that connects

1 their injuries to the car accident did you gather?

2 A The subjective complaints, the objective
3 findings.

4 Q Okay. So before you go any further, let's talk
5 about subjective and objective.

6 A Okay.

7 Q Is it true that objective findings are findings
8 that are measurable, reproducible, x-rays, for example?

9 A Objective findings, yes, things that we do --

10 Q Okay.

11 A -- to test the patient.

12 Q Now, is it safe to characterize subjective as
13 findings that require the cooperation or the honesty or at
14 least the assistance of the patient?

15 A Yes.

16 Q Okay. It varies from subject to subject or
17 patient to [inaudible]. Okay. Those are hard to
18 independently verify; is that a fair statement?

19 A Yes.

20 Q It is not possible to visualize pain?

21 A No.

22 Q Okay. So you say objective findings help you
23 determine what caused their injuries. Let me put it another
24 way. You said objective findings helped you tie the
25 complaints of the Plaintiffs in this case to this car

1 accident. Did you see any objective findings that could only
2 be caused by the subject car accident, the November 11th car
3 accident -- or 12th, I meant to say?

4 A Say --

5 Q The objective findings, did you see x-ray -- did
6 you see anything on an x-ray that could only come from the car
7 accident that we're here to talk about today?

8 A No.

9 Q Okay. Was there some other objective finding
10 that could only be produced by a car accident?

11 A That could only be produced? No.

12 Q Okay. Your -- let's look at the -- is it safe
13 to say the most complete description of the Plaintiffs that
14 you have of them is going to be in that first report?

15 A Yeah.

16 Q Okay. That's where their history is contained.
17 So let's go -- was that page 7? Let's go to page 7 of Exhibit
18 15. Okay. Is there a second -- if it's not on page 7, tell
19 me what page it is. And we're in -- this is Maria Abarca
20 we're still on, right?

21 A Yes.

22 Q Okay. Where is her patient history?

23 A Page one.

24 Q Okay. What does it tell about her other than
25 what describes the car accident?

1 A About her past medical history?

2 Q Yes.

3 A That she suffered from ovarian cysts three years
4 prior.

5 Q Okay. Anything else, about her daily life and
6 activities?

7 A I want to understand. I want to answer --

8 Q Okay.

9 A -- to the best of my ability.

10 Q By reading your medical history, which is all
11 the information you have about Ms. Abarca outside of this car
12 accident, can you see whether she has a job that involves
13 physical labor?

14 A She was not employed at the time of the
15 collision.

16 Q Okay. Does it say anything about her employment
17 history, like if she had a job that would put a strain on her
18 back?

19 A It did not.

20 Q Did it describe any sporting activities that she
21 might engage in that could lead to injury?

22 A It stated that she had not had any
23 sports-related injuries --

24 Q Okay.

25 A -- in the last --

1 Q So she didn't reveal any injuries to you, but it
2 didn't tell what sort of sporting activities she engaged in or
3 recreational activities, for that matter?

4 A No.

5 Q At your deposition, you indicate that Maria and
6 Christian did not tell you about any potential injury-causing
7 activities in which they may have engaged before this
8 accident; you agree with that statement?

9 A Yes.

10 Q Okay. And if it were true that they were
11 engaged in activities that could lead to injury, it's possible
12 those could have contributed to the conditions that you
13 ultimately treated following this car accident; is that a fair
14 statement?

15 MR. SIMON: Objection, calls for speculation, lacks
16 foundation. There's no evidence of any prior injuries.

17 THE COURT: And, I'm sorry, I didn't hear the
18 question.

19 MR. BAIRD: I said, If there were activities that
20 could lead to injury, those could have contributed to the
21 conditions that she treated following this accident.

22 THE COURT: Counsel, is there any indication of
23 injuries?

24 MR. BAIRD: There's no evidence of traumatic
25 injuries, but most of the complaints -- which I haven't gotten

1 to yet -- but she'll testify they can be caused by
2 degenerative processes.

3 THE COURT: Counsel, come here, please.

4 (Bench conference.)

5 MR. BAIRD: [Inaudible.]

6 THE COURT: But do you have any foundation for these
7 questions? The basis is what? Because I thought there was no
8 prior treatment you guys had?

9 MR. BAIRD: No, I'm not saying prior treatment. I'm
10 not [inaudible]. I'm talking about activities and we're about
11 to talk about degenerative conditions that could lead to the
12 same thing she's treated.

13 THE COURT: Okay. To the extent the Plaintiff
14 testified to it at deposition, did she engage in that?

15 MR. BAIRD: Yeah. [Inaudible.]

16 THE COURT: Oh. Okay.

17 (End of bench conference.)

18 BY MR. BAIRD:

19 Q Okay. You can't answer the question. Did you
20 remember it, though?

21 A Just tell me it again.

22 Q Okay. If there were activities that could lead
23 to injury that you were not told about, if they existed, those
24 could contribute to the same conditions you're treating
25 following this car accident; is that a fair statement?

1 MR. SIMON: Again, objection. Lacks foundation,
2 relevance. He has no information that they were engaged in
3 any activities that caused an injury. He's asking her to
4 speculate outside of the record. It's not allowed.

5 MR. BAIRD: It was just overruled --

6 MR. SIMON: No, not --

7 MR. BAIRD: -- at the bench.

8 THE COURT: Just kind of how you're asking it.

9 MR. BAIRD: Change how I'm asking it? Okay.

10 THE COURT: I think that's the main problem with Mr.
11 Simon.

12 MR. BAIRD: I'll take a different tact.

13 BY MR. BAIRD:

14 Q Other than bruises -- let me ask this: Did you
15 find anything -- let's talk about Christian for a minute.

16 A Okay.

17 Q So he's Exhibit 5, I believe. Sorry to jump
18 around.

19 A That's okay.

20 MR. BAIRD: My numbers are off. It is 5.

21 MR. SIMON: No.

22 MR. BAIRD: Or 6, but it's really 5. Okay.

23 MR. SIMON: No. For Christian it's 4, our 4.

24 BY MR. BAIRD:

25 Q So I guess 4 for you. I'm sorry. The disk he

1 gave us is one number off.

2 A I understand. So are we talking about his
3 initial report?

4 Q Yes.

5 A Okay. I'm just going to --

6 Q Okay. You look at yours and we'll look at the
7 exhibit.

8 A Because I can do this fast. I can't -- go
9 ahead.

10 Q Okay. With respect to Christian, were there any
11 diagnoses -- was there anything objective that you noted or
12 that Dr. Barnett or Barlett noted that could only be caused by
13 trauma?

14 A There any -- no.

15 Q Okay. So everything that was diagnosed with Mr.
16 Cervantes could have been caused -- can also be caused by
17 things other than trauma, [inaudible] for example?

18 A The -- the muscle spasm. Not the sprain/strains
19 or post-traumatic headache.

20 Q Okay. Not the sprain/strain, not the post-
21 traumatic headache. What is a post-traumatic headache?

22 A A headache you experience after a trauma.

23 Q Okay. So a post-traumatic headache is really a
24 headache that you talk about after trauma has occurred. That
25 doesn't mean it was caused by the trauma, fair statement?

1 A No. No.

2 Q Okay. Mr. Cervantes didn't tell you he hit his
3 head on anything; is that true?

4 A No.

5 Q Okay. On that first visit with Christian, let's
6 look at page -- we'll start -- I'm on your initial report
7 still.

8 A Okay.

9 Q Let's go to page 10. Now this says "present
10 complaints in our office"?

11 A Yeah.

12 Q In each of those paragraphs you talk about a
13 different part of his body. You start with the headaches.
14 The second sentence -- if I'm right -- the second sentence
15 says how frequently he's experiencing headaches. How
16 frequently was it?

17 A Every day since the collision.

18 Q Okay. What about the other thing -- oh. You're
19 right. Third sentence, what does that say?

20 A "He rated his pain on average of four out of
21 ten."

22 Q Am I that bad at counting? Okay. The first
23 sentence says, "Mr. Cervantes-Lopez stated he's experiencing
24 headache pain." Okay. That's the first sentence. Second
25 sentence, "He stated --"

1 A Oh.

2 Q "-- is experiencing this pain daily --"

3 A I read the third line.

4 Q Okay.

5 A Third sentence, "The pain is intermittent."

6 Q And then what does it say in parentheses?

7 A "Twenty-six to 50 percent of awake time."

8 Q Okay. Let's go -- the next one is his neck
9 pain. How -- how much of his awake time did he tell you he
10 was experiencing neck pain?

11 A Twenty-six to 50 percent.

12 Q Okay. Now let's go to his low back where he's
13 telling us there is a disc injury. How frequently -- how much
14 of his awake time was spent hurting from his lower back?

15 A Occasional, zero to 25 percent of awake time.

16 Q Okay. At maximum, 25 percent of his awake time
17 he was hurting in his back; fair statement?

18 A Fair statement.

19 Q Okay. Looking in your records, that doesn't
20 change, does it?

21 A It does -- well, it got less.

22 Q Okay. So it improved?

23 A It did.

24 Q Now, when Mr. Simon was questioning you, he
25 asked about a disc injury. And if I heard correctly, and I

1 may not because I don't have a transcript obviously, but
2 sounded like the finding he relied on to diagnose a spinal
3 injury was that he had some tingling in his thighs?

4 A He reported tingling in the thighs.

5 Q The symptom that you testified -- the only
6 symptom you testified that was unique to a disc injury was a
7 tingling in the thighs. That symptom was resolved when you
8 ordered the MRI; was it not?

9 A It appears -- yes, it improved with the therapy.

10 Q Okay. So it was gone, correct? The tingling in
11 the thighs?

12 A On my final exam I believe that I did have it as
13 not being symptomatic. I think you're right, yeah.

14 Q Okay. All right. You're looking at your final
15 exam. [Inaudible] report or the soap notes?

16 A The report.

17 Q Great. So let's look at the report together.
18 And that is going to be page -- it starts on page 19; is that
19 right?

20 A I'm looking at my --

21 Q Oh. You're looking at yours.

22 A Yeah.

23 Q All right. So for everybody else, it starts on
24 page 19. But let's turn to the end of it. Okay. If we look
25 at the -- excuse me -- the second to last page, the page

1 before your signature under future treatment, it says, "Mr.
2 Cervantes-Lopez was unable to fully recover from his injuries.
3 This has left him with continued low back pain and residual
4 weakness." What -- what kind of weakness were you talking
5 about? Was this neurological weakness? I guess is my
6 question.

7 A Yeah. I'm looking for something real quick.
8 Lack of symptomatology, meaning just because somebody is not
9 experiencing something at some time doesn't make them
10 resolved. It just makes them improving.

11 Q Okay.

12 A Okay? So injuries such as this nature continue
13 to improve and heal long after they may be dismissed from my
14 care. So tissues are like -- I know -- I know I gave you this
15 analogy in my deposition. If I may? Yes?

16 Q Well, what I'm trying to find out -- let's --
17 let me -- let's go to page 20. Maybe this will make it easier
18 to answer. Page 20 under "current complaints, low back pain."
19 What does the third sentence say?

20 A Which one? I'm sorry.

21 Q Under "current complaints, low back pain" --

22 A Yeah.

23 Q -- the third sentence.

24 A Oh. On the final?

25 Q Yeah.

1 A One, two, three. "He wasn't experiencing
2 numbness, tingling or weakness in the bilateral lower
3 extremities."

4 Q Was there any weakness noted?

5 A Okay. So when we talk about weakness, we're
6 talking about weakness in a limb, muscle [inaudible], not
7 structural integrity, say, of a tissue like a muscle or a
8 disc.

9 Q Okay. So when you talk about the weakness at --
10 at the last page or second to last page of your report, you're
11 just talking about the soft tissues that have had to heal?

12 A We're talking about a foot drop, you know, where
13 he's not dragging his legs along with them when he's walking.

14 Q Okay. Now, I don't want the jury to get
15 confused.

16 A Okay.

17 Q So the foot drop you just mentioned, that would
18 be a -- a neurological finding?

19 A Correct.

20 Q There was no foot drop in this case, correct?

21 A Correct.

22 Q Okay. The weakness you talk about on the second
23 to last page of your discharge report, you're talking about
24 soft tissues?

25 A A residual weakness, correct.

1 Q Okay. Not a disc weakness, not a nerve
2 weakness?

3 A Yes, yes.

4 Q Okay.

5 A Disc, ligament, muscle, tendon. What?

6 Q You said that you were actually talking about
7 disc -- disc weakness?

8 A We're talking about weakness of the tissues.

9 Q Okay.

10 A Okay? So we know that a disc could take months
11 to years to heal, if ever. When I say "heal," become -- discs
12 will heal themselves by, say, scarring over. They don't have
13 a direct blood supply. So disc injuries are permanent. In
14 other words, the disc will never, quote-unquote, heal.

15 Q Okay.

16 A People use the lingo "heal." I say,
17 "asymptomatic."

18 Q Right. Okay. So we're getting a little off
19 track, though, because you --

20 A But --

21 Q -- you testified that the sign that you had for
22 disc injury had resolved by the time he discharged, correct?
23 The numbness, the tingling in this thighs was resolved,
24 correct?

25 A Correct.

1 Q Okay. So my next question is: Did you make a
2 specific diagnosis of injury to the posterior facet joints?

3 A Specific to the facet joints?

4 Q Yes.

5 A No.

6 Q Okay.

7 A However, that's all included in the
8 sprain/strain diagnosis.

9 Q So it could have been in there, it was just kind
10 of in the collection?

11 A It's collective.

12 Q Okay. Do you have documented -- well, is it
13 safe to say that at some point Mr. Cervantes' symptoms were
14 mild enough that he didn't have to take prescription pain
15 medications?

16 A I would have to look.

17 Q All right. Take a look on January 16th and see
18 if I read that correctly. I think that's page 46.

19 A I got it.

20 Q Okay. What does that note say with respect to
21 Mr. Cervantes?

22 A That he was using over-the-counter medications
23 occasionally.

24 Q Okay. So he doesn't even need to take the
25 maximum dosage all the time. He can use them some times?

1 A When he needed it, he took it.

2 Q Okay. Would you -- you've described to Mr.
3 Simon that Mr. Cervantes progressed and improved through your
4 care, correct?

5 A Yes.

6 Q Okay. And even though his pain was controlled
7 with only over-the-counter medications, your testimony is that
8 you referred him to Dr. Coppel and you referred him for an
9 MRI, correct?

10 A Correct.

11 Q Okay. Let's go back to Maria then.

12 A Yes.

13 Q Your initial report for Maria indicates that you
14 were going to request the radiological studies that the
15 hospital did on the day of the accident. Did your office ever
16 get those?

17 A Yes. Well, we got the hospital records.

18 Q Okay. But you didn't get the reports of the
19 radiological studies, correct?

20 A They might be in here.

21 Q Okay. Can you confirm that for me?

22 A CT abdomen. Doesn't look like they took them at
23 the hospital. They took them in my office, and I don't see a
24 radiology report for the x-rays.

25 Q Okay. So you've got no radiology from the

1 hospital?

2 A No.

3 Q Okay.

4 A Just the -- just the CT Scan.

5 Q Got a SC Scan, an abdominal CT Scan? Is that
6 what it is?

7 A CT -- wait -- CT cervical.

8 Q Oh. Cervical. All right.

9 A And abdomen, pelvis.

10 Q Safe to say those were all negative?

11 A Negative.

12 Q Negative meaning there was no abnormality found
13 or sign of injury?

14 A No bony abnormality in the neck. No fracture.

15 Q Okay. Now, you have the hospital report that
16 generally describes your visit with the hospital?

17 A Yes.

18 Q Okay. Did you complain of low back pain at the
19 hospital?

20 A Can you please repeat the question?

21 Q Yes. Did Ms. Abarca complain of low back pain
22 at the hospital?

23 A No. She didn't.

24 Q Okay. When you discharged Ms. Abarca, did you
25 have plans to continue to treat her?

1 A When I released her?

2 Q Yes.

3 A I just recommended that if her pain worsens, she
4 should come back.

5 Q Okay. And her pain was mild at the time you
6 discharged her, correct?

7 A Mild to moderate.

8 Q Okay. Now, same with Mr. Cervantes. You didn't
9 have plans to treat him in the future when you released him
10 [inaudible]?

11 A No.

12 Q Okay. Anywhere in your records does it say that
13 they are going to need chiropractic care every year for the
14 rest of their lives?

15 A I did not have that in my report, no.

16 Q That's not anywhere in your files. In fact, you
17 testified today that by the time Christian and Maria were done
18 with your care, they had received the maximum benefit of
19 chiropractic care at that point?

20 A Yes.

21 Q Okay. I'm almost done. We're still on Maria,
22 right?

23 A Yes.

24 Q On what date did you order the MRI?

25 A I ordered the MRI February 8th.

1 Q February 8th. Okay. So let's look at your
2 February 1st visit. And that is Exhibit 15, page 47 -- our
3 16.

4 A Okay.

5 Q Okay. You're there?

6 A Just about. Can I read it first? Yes.

7 Q Okay. What were her pain complaints that day?

8 A She was not having pain complaints on that day.

9 Q Okay. On the objective findings you talked
10 about muscle spasm with Mr. Simon. In the middle section
11 there are objective findings, looks like it says "non tender,"
12 do you see that? Does that mean that you touched her back and
13 it wasn't painful for you to touch it?

14 A The muscles were non tender.

15 Q Right.

16 A Yeah.

17 Q You weren't identifying any spasms; is that a
18 fair statement?

19 A Correct.

20 Q Okay. So the next visit was February 8th,
21 correct?

22 A Yes.

23 Q Actually, we need to go back one first. Sorry.
24 So that was February 1. Let's go to January 24th, which is
25 page 46.

1 A Yes.

2 Q Okay. On this date, what does she say her pain
3 scenario was?

4 A She was looking like she wasn't experiencing any
5 symptoms for about a week.

6 Q So she had gone a week without pain, according
7 to her?

8 A [Inaudible.]

9 Q And you're not really able to disagree with her
10 when she tells you when she's [inaudible], right? Correct?

11 A Correct.

12 Q Okay. Non tender on exam, you felt her back and
13 it felt [inaudible]?

14 A Yes.

15 Q Okay. Let's go to January 18th. What's her
16 pain there?

17 A No pain.

18 Q No pain for the last few days, right?

19 A Correct.

20 Q Okay. So if we are conservative with our
21 numbers, a few is three maybe? So that would put us to
22 January 15th, no pain. You go to January 24th, she's been
23 good for a week. Well, it was a week since she had been in to
24 see you, right? So now we're talking about ten days in a row.
25 And then on February 1st she continues to have no complaints?

1 A Uh-huh.

2 Q [Inaudible.] One or two weeks, more like 17
3 days. Let's go to February 8th. On page 48. Does she tell
4 you about an event or occurrence that lead to pain?

5 A Yes.

6 Q What was it?

7 A She was -- she said she picked up some clothes
8 off the floor, nothing heavy.

9 Q Okay. And then that caused her to have pain,
10 fair statement?

11 A Yes.

12 Q Okay. Was her -- was her movement limited?

13 A It was full with mild pain on extension and
14 flexion.

15 Q Mild pain on extension you say?

16 A Uh-huh.

17 Q Okay. So let's go to February 14th. What did
18 she say about her pain on that day?

19 A She was good. She had no pain at that time.
20 She wasn't sure why -- she wasn't understanding why, you know,
21 her back was hurting.

22 Q Okay.

23 A Because -- well, I think what she meant was she
24 didn't really have another event that would cause an injury.

25 Q Okay. And let's go to February 20th. What did

1 she say then?

2 A She told Dr. Barnett she had no pain.

3 Q No pain since her last visit?

4 A Since the last visit.

5 Q Okay. And then the next thing you did is order
6 an MRI and sent her to a pain management doctor, correct?

7 A Well, the MRI, I think, was already ordered --

8 Q Okay. So --

9 A -- at that time.

10 Q Okay. It was ordered on the day that she had
11 pain?

12 A On the 8th.

13 Q Okay. And then you sent her to Dr. Coppel.

14 A Right.

15 Q If Ms. Abarca testified under oath that her
16 attorney prescribed Dr. Coppel, do you think she's lying?

17 A I don't think she's lying. I think maybe she
18 was confused.

19 Q Do you think she would know if her attorney told
20 her to go to Dr. Coppel?

21 A I -- I don't know what she -- I don't know what
22 she talked to her attorney about.

23 Q I might be done. Let me make sure. Oh. Oh.
24 Sorry. I have two more questions on Christian.

25 A Yeah.

1 Q Did he tell you that his job was a manual labor
2 job?

3 A I remember him being a machine operator, I
4 think, driving a lift.

5 Q Okay. That was your understanding of what he
6 did?

7 A I believe so.

8 Q Okay. Did he tell you that he was a soccer
9 player?

10 A I would have to look. Off the top of my head, I
11 -- I -- that was so long ago.

12 Q Can't remember off the top of your head?

13 A Not off the top of my head.

14 Q Okay. We can figure that out later.

15 A I can look.

16 Q The discharge report for Maria -- will you look
17 in Exhibit 15. I guess it's our 16. I want you to look in
18 Exhibit 16 in the binder.

19 A Maria?

20 Q I want you to go to the binder for Maria. It's
21 Exhibit 15. So we were talking what? Page 20 something.

22 A Fifteen or 16.

23 Q Your Exhibit 15. Exhibit 15, page -- okay. I
24 was wrong. Page 19 starts the final report. Okay. So we
25 turn the page to the next page and it's 20, page 2 of your

1 report. And then we go to the next page, page 3 of your
2 discharge report. Page 21. And we turn the page and there's
3 no more report. Will you read the last sentence of your
4 report?

5 MR. SIMON: Page, Counsel?

6 MR. BAIRD: Twenty-one.

7 THE WITNESS: Prognosis?

8 BY MR. BAIRD:

9 Q Yeah. Just the last sentence. You're missing a
10 page, right?

11 A [Witness nods head.]

12 Q That's not [inaudible].

13 A I think I have it.

14 Q Okay. But you agree we don't have it.

15 A You don't have it.

16 Q Until today if -- if you happen to have it -- if
17 you happen to have it in your file, we have it; otherwise, for
18 years we haven't had it?

19 A Yes.

20 Q Okay. All right. Now, you haven't seen any
21 photographs of any of the cars involved in this accident,
22 correct?

23 A No.

24 Q And you were given to understand there were two
25 vehicles involved in this accident, correct?

1 A Correct.

2 MR. BAIRD: Okay. I have no further questions.

3 Thank you.

4 THE COURT: Redirect.

5 REDIRECT EXAMINATION

6 BY MR. SIMON:

7 Q Let's start with Ms. Abarca. Okay. Start with
8 Ms. Abarca. You were asked a question whether she reported
9 low back pain at the hospital?

10 A Yes.

11 Q Right? On the day of the incident?

12 A Correct.

13 Q Right? And you said she did not?

14 A Correct.

15 Q But she did report neck pain?

16 A Correct.

17 Q Right? And head pain and shoulder pain, right?
18 A lot of other stuff going on. Okay. Then you diagnosed low
19 back pain three days later; is that accurate?

20 A Yes.

21 Q Because she didn't report low back pain right
22 when she was transported by ambulance on that day, does that
23 mean her low back injury is not related to the car accident?

24 A No.

25 Q Do people have to report pain in an emergency

1 room setting from an accident in order for it to be related to
2 that accident?

3 A No.

4 Q Okay. So if a doctor came into this court and
5 told this jury that whatever is reported at the emergency room
6 is the only thing that can be related to this car accident,
7 would that be an unfounded medical opinion?

8 A I agree.

9 MR. BAIRD: Objection, foundation, beyond her scope.
10 I mean, she's -- she's challenging speculative opinions.

11 THE COURT: I'm sorry. I didn't hear all the
12 question.

13 MR. SIMON: He asked her questions about whether she
14 reported low back pain at the emergency room.

15 MR. BAIRD: She asked what question you asked her.

16 MR. SIMON: I'm --

17 THE COURT: I didn't hear all of that. I heard his
18 objection, but I didn't hear all of your question. I'm sorry.

19 MR. SIMON: Oh. Okay.

20 THE COURT: So if you want to tell me what it was
21 again.

22 MR. SIMON: I can't remember it. I think the -- the
23 gist of it is, is that if a doctor came in and told this jury
24 that you -- the only injuries that could be related to the
25 accident are what's reported at the hospital, whether that

1 would be an unfounded medical opinion.

2 MR. BAIRD: And that's beyond her scope as a
3 chiropractor and also speculative.

4 THE COURT: I don't know that I understand the
5 question, Mr. Simon.

6 MR. SIMON: Okay. Well, she's testified earlier
7 about the injuries she diagnosed three days after. And so my
8 question is: If somebody else came in here and told this jury
9 the only thing related to the accident is -- has to be
10 reported at the emergency room, whether that would be an
11 unfounded opinion, and inconsistent with what she's diagnosed
12 in this case.

13 THE COURT: You can ask if the Doctor understands it.

14 MR. SIMON: Okay.

15 BY MR. SIMON:

16 Q Do you understand that?

17 A I know where he is. I think what you're saying
18 is if a patient doesn't report an injury at the hospital, does
19 that mean the patient's not injured?

20 Q Right. And if they report --

21 A No.

22 Q -- and if they report low back pain three days
23 later --

24 A It's within the realm of reasonableness. I like
25 to go about seven to ten days after an injury, yes.

1 Q Okay. So if it's reported within seven to ten
2 days and there's a traumatic event and no other possible
3 explanation, the most likely event would be the car accident,
4 correct?

5 A Agreed.

6 Q All right. In regard to -- I think Maria is 15.
7 All right. She was progressing well with your treatments,
8 correct?

9 A Yes.

10 Q And she actually reported to you pain free?

11 A Correct.

12 Q And when a patient reports "pain free," they're
13 not exaggerating their symptoms, I would assume?

14 A No.

15 Q Right? So but during the course of your
16 treatment, her symptoms would come and go, correct?

17 A Correct.

18 Q And then they never went away. I'll turn you to
19 Exhibit 15, Bates Stamp 48, which is your February 8, 2012,
20 where it states, "My neck is better, my low back has been
21 hurting since I picked up clothes off the floor, nothing
22 heavy."

23 Is picking clothes off the floor a type of event that
24 would cause a new injury or would this pain still be related
25 to the car accident, in your opinion?

1 A I related the exacerbation of her symptoms due
2 to the inherent weakness of the tissues from the car accident.

3 Q Okay. So if she's just returning to her normal
4 activities, right, and feels a little bit of pain, it's not a
5 new traumatic event, right?

6 A No.

7 Q So at least as of February 8th, she still had
8 back pain related to the accident, in your opinion?

9 A Yes.

10 Q All right. Turning to Exhibit 15, Bates Stamp
11 8. Do you have a section marked "mechanism of injury"?

12 A Yes.

13 Q In fact, it's a big paragraph. And that
14 highlight is mine, not anything in the records. So you had an
15 understanding of the accident and how her injury could have
16 occurred?

17 A Yes.

18 Q Right? And you understood that it was a pretty
19 significant accident because the cars were totaled?

20 A Yes.

21 Q Correct? I'll show you Exhibit 44, Bates Stamp
22 7, which is a picture of the Abarca vehicle. Okay. That's
23 the front end of the vehicle that went into the side of that
24 vehicle. Is that the type of accident that would cause these
25 types of injuries?

1 MR. BAIRD: Objection, Your Honor. May we approach?

2 THE COURT: Yeah.

3 (Bench conference.)

4 [Inaudible] highlighted in the records. So it's one thing for
5 him to say, well, [inaudible], she doesn't get to talk about
6 the forces involved [inaudible] as to that.

7 THE COURT: Okay.

8 MR. SIMON: I didn't ask anything about forces or
9 dynamics or anything.

10 MR. BAIRD: [Inaudible] two cars were totaled, here's
11 the damage, did that cause -- that's [inaudible].

12 MR. SIMON: That is appropriate because it's not a
13 biomechanical opinion whatsoever.

14 MR. BAIRD: What is it?

15 MR. SIMON: And this is the evidence in the case.
16 It's already admitted. And he asked her about pictures and he
17 asked her about the mechanism of injury, so I have to come
18 back and rehabilitate that.

19 MR. BAIRD: I didn't say [inaudible].

20 MR. SIMON: Yes, you did. You went through the
21 whole --

22 MR. BAIRD: Right. Yeah, he's turning into an expert
23 that says she was [inaudible] it's never [inaudible]
24 information when she formed her opinions, so now he's
25 expanding her scope on the stand. This is trial by ambush.

1 THE COURT: Okay. I think it goes outside the scope
2 of what she can testify. I think it's bordering on
3 biomechanics, which I don't believe she's qualified to testify
4 to. I mean, I think it's a distinction from what caused the
5 accident was a motor vehicle accident. What I heard it as was
6 similar to the Defendant, which is: Were the forces involved
7 in this accident sufficient to cause this injury? And I don't
8 think she's qualified for that.

9 (End of bench conference.)

10 BY MR. SIMON:

11 Q Dr. Adair, you were given a history by these
12 Plaintiffs, correct?

13 A Correct.

14 Q That was in your initial report?

15 A Yes.

16 Q And they relayed to you that they never had any
17 prior injuries to their neck or back?

18 A Yes.

19 Q All right. Never had any conditions that caused
20 pain to their neck or back?

21 A Correct.

22 Q Didn't have any treatment to their neck or back?

23 A Yes.

24 Q All right. And nothing the Defense has done
25 here on cross-examination has shown you anything otherwise?

1 A Correct.

2 Q In regard to Christian Cervantes, on the day you
3 examined him three days after, he had numbness and tingling
4 which you caused -- or stated was a nerve injury, right?

5 A Correct.

6 Q And that symptom had somewhat resolved during
7 your treatment?

8 A Correct.

9 Q Right? Because of your treatment?

10 A Yes.

11 Q Isn't that the most likely cause of the
12 resolution during that period?

13 A Yes.

14 Q But that symptom came back after your treatment,
15 didn't it? Didn't Dr. Coppel tell us a little bit about that
16 in the report that he sent you?

17 A I would have to look.

18 Q All right.

19 A But -- okay. Let me see. Yes.

20 Q All right. And so nothing new happened to now
21 cause all that; that's just something that's common during
22 your treatment, right? Those symptoms can come and go, but
23 still --

24 A It seems like the treatment helped him get
25 better and then without the treatment --

1 Q All right. Let's talk a little bit about your
2 discharge. This is Exhibit 4, Number 20. Let's see. Low
3 back pain. So on your discharge he had continued low back
4 pain?

5 A Yes.

6 Q Right? At the time of your discharge?

7 A Yes.

8 Q Although he didn't have those symptoms and
9 numbness and tingling at that time, he still had pain of
10 three, four, five days a week?

11 A Yes.

12 Q Okay. And that his back pain was persistent
13 with low back problems with general activities; is that
14 accurate?

15 A Yes.

16 Q And when your treatment was concluded, you had
17 recommended that he continue treatment, right, and return when
18 he -- as needed?

19 A Sorry?

20 Q When he was released from care, you recommended
21 further treatment with Dr. Coppel?

22 A I recommended he continue to treat with Dr.
23 Coppel.

24 Q And return as needed?

25 A I'm looking. I recommended -- I recommended

1 that he continue to see Dr. Coppel in order to monitor
2 progress and evaluate the need for future treatment.

3 Q And do you provide future treatment for patients
4 that have ongoing chronic pain?

5 A I do.

6 Q And even though they've reached the healing
7 phase, do you provide treatment regularly to help them to --
8 for palliative care to help their mobility, to help them
9 function?

10 A We do see people after they are released to
11 provide them palliative care.

12 Q All right. And if Mr. Cervantes and Ms. Abarca
13 continue to have that pain to such a degree and return to see
14 you, would you see them?

15 A I would.

16 Q And that would be reasonable, right, for them to
17 return?

18 A Sure.

19 Q When someone comes to you for palliative care,
20 is there a certain amount of treatments that would be
21 considered reasonable during a course of a year?

22 MR. BAIRD: Objection, Your Honor. May we approach?

23 THE COURT: Sure.

24 (Bench conference.)

25 THE COURT: What's --

1 MR. BAIRD: It's like he's now trying to present
2 evidence [inaudible...]

3 MR. SIMON: In your motion in limine you said if
4 she's going to talk about future care, the chiropractor can
5 talk about the --

6 MR. BAIRD: The motion in limine you're only talking
7 about surgery. And she's testified she's [inaudible]
8 recommend future care [inaudible...]

9 MR. SIMON: I can show you the transcript. This was
10 already discussed in motions in limine.

11 THE COURT: I thought she said if they were going to
12 need medical care, they were going to follow with Coppel.

13 MR. SIMON: They were -- that was part of her
14 treatment program to send her to Coppel, but now I'm talking
15 about just future care on a palliative basis.

16 MR. BAIRD: [Inaudible.]

17 THE COURT: I'm not going to allow it if it hasn't
18 been disclosed.

19 MR. BAIRD: Thank you.

20 (End of bench conference.)

21 BY MR. SIMON:

22 Q You -- you were asked on cross-examination upon
23 review of the x-rays that you performed whether there was any
24 findings, remember that?

25 A I do.

1 Q The injuries -- and the findings you would be
2 looking for on an x-ray is what?

3 A Usually we screen for fracture and any type of
4 bony pathology that might exclude chiropractic manipulation as
5 part of their treatment.

6 Q You would just want to rule out whether there's
7 a fracture of the bones?

8 A Correct.

9 Q Right? So the injuries that you diagnosed
10 wouldn't be seen on an x-ray, would it?

11 A No.

12 Q The -- the studies that you would need to get to
13 look at the injuries are going to be an MRI?

14 A Yes.

15 Q Right? And then the pain management diagnostic
16 tools?

17 A Correct.

18 Q You were asked a little bit about billing. The
19 bills that you reviewed in this case, you work for a group in
20 town, right? They have several locations, you're just an
21 employee?

22 A Just an employee.

23 Q Right? But the bills you've looked at, were
24 those fraudulent bills? Somebody trying to present fraudulent
25 bills here today?

1 A I -- no.

2 Q Okay.

3 A No.

4 Q I mean, those bills you've reviewed and those --
5 that's the actual treatment that you performed, right?

6 A Correct.

7 Q Right? On each day you itemize exactly what you
8 did for this patient?

9 A Correct.

10 Q Those are the bills that this patient owes to
11 your facility for the treatment received?

12 A Correct.

13 Q Right? Did the patient have any say in how much
14 they were going to get charged for this?

15 A No.

16 MR. SIMON: I have nothing else. Thank you for your
17 time.

18 THE COURT: All right. Is there anything else before
19 the doctor --

20 MR. BAIRD: Very briefly, Your Honor.

21 THE COURT: Limited to obviously the redirect.

22 MR. BAIRD: Yes.

23 RECROSS-EXAMINATION

24 BY MR. BAIRD:

25 Q Mr. Simon asked about the shoulder pain. Can

1 you find in Maria's records where she complained of shoulder
2 pain?

3 A Yeah.

4 Q Okay. Oh. You had Christian open? Sorry. Go
5 to Maria. I thought I had --

6 A That's okay. It's easy.

7 Q We're going to do them both.

8 A It's easy. What do you need?

9 Q Shoulder pain.

10 A Yeah. What about it?

11 Q What date did she complain of shoulder pain?

12 A On the initial visit, November 15th.

13 Q And what -- how frequently was it that she was
14 experiencing [inaudible]?

15 A I think she had it at the hospital, too.

16 Q No. My question is how -- what percentage of
17 her awake time?

18 A Seventy-six to 100.

19 Q Okay. That was the bruising in that area,
20 right?

21 A That is the shoulder pain, the contusion and a
22 sprain/strain diagnosis. It was an element of both.

23 Q Okay. Very good. Have you ever had someone
24 come into your clinic and say, I did a very mundane thing
25 today and suddenly my back locked up?

1 A Yes.

2 Q Has anybody ever described bending down or
3 lifting something that wasn't heavy and they end up in your
4 clinic because after that they had significant pain?

5 A Yes.

6 Q So in some cases, even picking up clothes can be
7 sufficient trauma to cause an injury to someone's back, fair
8 statement?

9 A Yes.

10 Q Okay. Now let's go to Christian, if you don't
11 mind. Just tell me if he complained of shoulder pain.

12 A He did not.

13 MR. BAIRD: Okay. Nothing further. Thank you.

14 THE COURT: All right. Is the Doctor free to go?

15 MR. SIMON: Just -- just one question, Your Honor.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. SIMON:

18 Q When Maria reported to your clinic that she bent
19 down to pick u p clothes that were not heavy, is that a
20 traumatic -- a new traumatic event in this case?

21 A As it relates to this case, no.

22 Q It's not just some other patient for whatever
23 reason. We're talking about these people in this case,
24 correct?

25 A Yes.

1 Q And you can state that to a reasonable degree of
2 medical probability?

3 A Yeah.

4 MR. SIMON: All right. Thank you, Doctor.

5 THE COURT: All right. Thank you, Doctor.

6 THE WITNESS: Thank you, everybody.

7 THE COURT: Do you have any other witnesses here?

8 MR. SIMON: I do. I have Dr. Koka here.

9 THE COURT: Okay. Do you want to get started with
10 Dr. Koka?

11 MR. SIMON: Sure.

12 THE COURT: Okay.

13 GOVIND KOKA, PLAINTIFF'S WITNESS, SWORN

14 THE CLERK: Please be seated. Would you please state
15 and spell your first and last name for the record?

16 THE WITNESS: Sure. My first name is Govind,
17 G-O-V-I-N-D. Last name is Koka, K-O-K-A.

18 THE COURT: Whenever you're ready.

19 DIRECT EXAMINATION

20 BY MR. SIMON:

21 Q Doctor, what's your specialty?

22 A Family medicine.

23 Q What does that mean?

24 A The old days, like a general practice doctor.
25 Kind of see everything from cradle to grave kind of stuff.

1 Q All right. And what do you -- what is your
2 speciality now?

3 A Pretty much do everything. Primary care; trauma
4 in the terms of not broken bones and stuff, but urgent care;
5 and musculoskeletal medicine.

6 Q All right. And do you treat people in car
7 accidents?

8 A I do.

9 Q Do you treat people in traumatic events?

10 A Yes.

11 Q What percentage of your practice deals with
12 those type of patients?

13 A Anywhere from 15, 20 percent.

14 Q Okay. And what does the other 80 percent deal
15 with?

16 A You know, high blood pressure, diabetes, cuts,
17 bruises, lacerations. I mean, anything that you can come into
18 an urgent care for.

19 Q And as part of the -- part of your practice in
20 personal-injury type of work, are you familiar with any of the
21 billing processes?

22 A I am.

23 Q And how so?

24 A Well, we do billing for that, as well. I've
25 been a medical director in the past of a chiropractor office,

1 so I know their billing; and then I have -- or had a pain
2 management doctor that worked for us for two years and I did
3 the billing for that, as well.

4 Q And in regard to your own treatment obviously,
5 you're away of what you bill?

6 A I am.

7 Q And how you set your fees?

8 A I am.

9 Q All right. Do you think your fees are
10 excessive?

11 A No, I do not.

12 Q In fact, doctors have an obligation to only bill
13 their patients what's reasonable?

14 A Yes, what's reasonable for the community.

15 Q All right. So before we get into the treatment
16 process, I'm going to just go through some of the billing
17 issues first and then we'll get to the treatment.

18 A Okay.

19 Q If that's all right. Which is Exhibit 6,
20 there's a binder in front of you.

21 MR. SIMON: May I approach, Your Honor?

22 THE COURT: You may.

23 BY MR. SIMON:

24 Q All right. So Exhibit 6, page 1, can you tell
25 me what that is?

1 A That is a page of billing from my office.

2 Q All right. And how many times did your office
3 see this particular patient?

4 A Appears eight times.

5 Q All right. So here's your billing in relation
6 -- so you saw them how many times?

7 A Eight times.

8 Q Okay. And in those eight times, the total
9 amount of bills owed is twenty-two forty-six?

10 A Correct.

11 Q And are those bills considered reasonable and
12 necessary in your opinion?

13 A They are.

14 Q And related to the incident in which you
15 treated, which is the car accident?

16 A Yes, they are.

17 Q And are reasonable within community standards?

18 A Yes, they are.

19 Q And that opinion is to a reasonable degree of
20 medical probability?

21 A It is.

22 Q Thank you. Let's see. Turn you to Exhibit 7,
23 page 1. And if you just look on the screen, that might be
24 easier.

25 A Oh. Okay.

1 Q We might move along a little quicker. All
2 right. This is the MRI bill from Advantage Diagnostic, which
3 was ordered in the course and scope of your treatment through
4 Dr. Adair. Do you have an understanding of MRI charges?

5 A I do.

6 Q And is that charge reasonable and necessary in
7 your mind?

8 A Yes, it is.

9 MR. BAIRD: Objection, Your Honor, foundation.

10 THE COURT: Foundation, please.

11 MR. SIMON: Sure.

12 BY MR. SIMON:

13 Q Can you tell us how you know about billings for
14 MRIs?

15 A Yeah. Routinely when it comes to ordering an
16 MRI, they're expensive tests to get done, and so our office
17 throughout the 10, 15 years have been calling imaging centers
18 finding out the prices of them.

19 MR. BAIRD: Your Honor, may we approach?

20 THE COURT: Sure.

21 (Bench conference.)

22 MR. BAIRD: Plaintiff [inaudible] so now he's trying
23 to turn this treating doctor into an expert. He didn't take
24 the MRI, so he's commenting on someone else's records and
25 [inaudible...]. He did not testify in his deposition he was

1 going to talk about MRI billing or the billing of anyone
2 [inaudible] treatment either way. This is far beyond the
3 scope. He -- they [inaudible...] doctor who didn't do the
4 treatment testify outside the treatment [inaudible] unless
5 it's disclosed.

6 MR. SIMON: Judge, you don't need a cost expert to
7 talk about the bills. In fact, all I need to do -- the bills
8 are already entered into evidence. All he's doing is about
9 reasonableness. That's for the jury. And this guy oversees
10 all this treatment. He's the main guy. He's the primary.

11 THE COURT: I think there's enough foundation to ask
12 him the question. The objection is overruled.

13 MR. SIMON: Thank you.

14 (End of bench conference.)

15 BY MR. SIMON:

16 Q Thank you, Doctor. So, in your opinion, is this
17 charge for this MRI for Christian Cervantes reasonable and
18 necessary?

19 A I think it is, yes.

20 Q And it's related to the car accident that's
21 involved here?

22 A Yes, it was.

23 Q And it's within community standards?

24 A It is.

25 Q Let's see, turning you to page no. 8, which is

1 the medical billing and charges for Dr. Coppel. Have you had
2 an opportunity to review those fees?

3 A I have.

4 MR. BAIRD: Objection, Your Honor.

5 THE COURT: Yes.

6 MR. BAIRD: Foundation, and this is beyond his scope
7 as a percipient witness.

8 THE COURT: These are his medical bills.

9 MR. BAIRD: I thought he said Coppel.

10 MR. SIMON: These are Dr. Coppel's.

11 THE COURT: I'm sorry.

12 MR. SIMON: These are Dr. Coppel's bills that were
13 generated in the course and scope of the initial treatment
14 that he oversaw.

15 THE COURT: I'm not sure how he would be qualified to
16 testify to Dr. Coppel's billing.

17 MR. SIMON: Because he's very familiar with the
18 billing, including pain management, and he's already laid the
19 foundation that he actually had a pain management doctor in
20 his office and has worked with them.

21 MR. BAIRD: Your Honor, I'd have the same objection
22 as before. He was never designated as a cost expert.

23 MR. SIMON: And again, you don't have to have a cost
24 expert. That's for the jury to determine.

25 THE COURT: How long ago was the pain management

1 doctor in your office?

2 THE WITNESS: From 2010 to -- end of 2012.

3 THE COURT: Between 2010 and 2012, what was your role
4 with respect to billing in the office?

5 THE WITNESS: I'm the final person that it comes to
6 billing in my office.

7 THE COURT: What does that mean? That you finalize
8 all bills?

9 THE WITNESS: Yeah, I -- I finalize all bills. I'm
10 the one that okay's the bills. I'm the one that sets the fee
11 bills and then takes the reductions and all those kind of
12 things.

13 THE COURT: Okay. And are those for all the bills --
14 all the different specialities that you work with?

15 THE WITNESS: Correct. Physiatry, pain management,
16 primary care.

17 THE COURT: I'll allow it.

18 MR. SIMON: Thank you, Your Honor.

19 BY MR. SIMON:

20 Q The total medical bill for Dr. Coppel's
21 treatment is 15,000 -- for Christian Cervantes is \$15,730?

22 A I see that, yes.

23 Q Is that considered reasonable and necessary?

24 A I just see the break down here of 2400, 750,
25 4000, and 500. I don't see where the other amounts are. I'm

1 sorry.

2 Q Okay. Let's see, what number was that?

3 A I see it's for two dates of service. I've got
4 it here. The first one is for about half that amount for the
5 service done on 5/18 -- or I guess the first one on 3/2/2012,
6 and the second set injections done on 5/18/2012.

7 Q And are those bills for that particular service
8 considered reasonable and necessary?

9 A They're actually low. Oh. He did it in the
10 facility. He didn't take it to a facility center, so that's
11 why they're very low. It should be about \$8,000 to \$5,000
12 more per shot, more expensive, but it's his bills.

13 Q Okay. And what -- what do you base that on?

14 A When you do a -- when you do an injection, you
15 can either do it in your office if the patient is young
16 enough, healthy enough. And/or if you want to save money, you
17 can go to a facility like a surgical center, or you can go to
18 a hospital and have it done there, which is the most
19 expensive.

20 Q Okay. And so this was done in-office for Dr.
21 Coppel?

22 A Correct.

23 Q So it's probably half the price if they went to
24 a surgery center?

25 A Probably less than -- I'd say more than that.

1 It's probably about 33 percent of what the surgical center
2 price would be, just for that facility code, which is the
3 99070.

4 Q So certainly Dr. Coppel's bills are very
5 reasonable?

6 A Correct.

7 Q Correct? Thank you. And then Dr. Coppel also
8 has a -- a couple pharmacy invoices in the next exhibit for
9 \$120 each.

10 A Is that Exhibit 9?

11 Q Yeah.

12 A Yes. Actually, we have our own dispensing
13 pharmacy, as well, and they're actually cheaper than mine.

14 Q Doctor, turning you to Exhibit 12, Bates Stamp 1
15 and 2. Is the UMC Medical Center bill -- about to show it --
16 if you can see it in Exhibit 12. Here, I'll just show it to
17 you here.

18 A Okay.

19 Q You'll see that it shows it's from UMC. And
20 here are the specific line items. And then the second page
21 with the total being \$7,948.14?

22 A Yes, I see that.

23 Q Is the charges that University Medical Center on
24 the day of the accident, in your opinion, reasonable and
25 necessary?

1 MR. BAIRD: Objection, Your Honor, beyond the scope.

2 THE COURT: Counsel, I think this is going beyond the
3 scope if it's UMC. I allowed him to testify regarding the
4 other because a foundation was laid that as part of obviously
5 his role in the medical corporation, he was the one that
6 reviewed the billings for all the different doctors that were
7 in that medical facility; but I don't know that there's a
8 foundation for him to testify regarding the bills at UMC.

9 MR. SIMON: I -- I can lay that, Your Honor.

10 THE COURT: Sure.

11 MR. SIMON: Thank you.

12 BY MR. SIMON:

13 Q What gives you the foundation to talk about
14 emergency room bills?

15 A I've seen many bills throughout my career of
16 practicing medicine.

17 Q And do you -- do you practice in emergency
18 medicine?

19 A I used to back as a resident, but I don't know.

20 Q Do you own a -- a facility?

21 A I do. An urgent care.

22 Q As part of your urgent care, do you see patients
23 initially after car accidents?

24 A I do.

25 Q And do you see patients that are initially seen

1 in the emergency room?

2 A Either they can come to us or they go through
3 the emergency room and they come to us, yes.

4 Q Okay. And as part of your practice, do you
5 often review medical bills from emergency rooms?

6 A Medical bills and medical records, yes.

7 Q All right. And those include hospital bills and
8 hospital medical records?

9 A Absolutely. We have a hospital -- in-patient
10 hospital division of our practice, as well.

11 Q And so you've done that in this case, looked at
12 these records?

13 A I have.

14 MR. SIMON: Based on that, Your Honor, we would
15 submit the proper foundation for this has been laid.

16 MR. BAIRD: I'd like to approach, Your Honor.

17 THE COURT: Sure.

18 (Bench conference.)

19 MR. MICHALEK: The problem [inaudible] Rodriquez,
20 he's getting outside his own care and treatment. If he's
21 going to go outside his own care and treatment, [inaudible]
22 expert is required to give a report, required to say
23 [inaudible] opinion about another doctor's treatment.
24 [Inaudible] certainly [inaudible] never disclosed. He's
25 outside his own care and treatment [inaudible] expert must

1 disclose it. No report was ever [inaudible]. It's got to be
2 out.

3 MR. SIMON: I have a disclosure where he'll talk
4 about the treatment and the care and the necessity and the
5 reasonableness of the medical bills. That has been disclosed
6 for Dr. Koka in my disclosures. So for them to say that he's
7 never been disclosed, that's not true. And he doesn't need a
8 report. He's a treating physician and he laid the foundation.
9 All he's -- all he's talking about is the bills that are
10 reasonable.

11 MR. MICHALEK: Your Honor, Rodriguez says --

12 THE COURT: Can we let the jury go because we're not
13 going to finish with Dr. Koka today and they're getting quite
14 irritated with all these sidebars?

15 MR. SIMON: I don't disagree with that.

16 MR. MICHALEK: I don't disagree either.

17 MR. BAIRD: [Inaudible.]

18 THE COURT: All right.

19 (End of bench conference.)

20 THE COURT: Go until 9:30 tomorrow. Again, remember
21 you cannot converse among yourselves on any subject connected
22 with the trial. Do not read, watch or listen to any report of
23 or commentary on the trial. Do not allow -- do not do any
24 research on the trial and do not form or express an opinion on
25 the trial. We'll see you back tomorrow at 9:30.

1 (The jury recessed at 4:52 p.m.)

2 THE COURT: Doctor, I don't know that you need to be
3 in here necessarily, so. Is he going to come tomorrow at 9:30
4 or I don't know what -- what would accommodate the doctor?

5 MR. SIMON: We're just going to have to try and
6 reschedule him unfortunately.

7 THE WITNESS: Tomorrow?

8 MR. SIMON: It doesn't have to be tomorrow.

9 THE WITNESS: I can --

10 MR. BAIRD: Tomorrow will be hard, though, because
11 we've got to try and fit in Tami Rockholt, who is coming in
12 from out of town, along with his two.

13 THE WITNESS: If you do it after three o'clock I can
14 be here. I can re-arrange stuff on my schedule and try to
15 re-arrange my afternoon patients.

16 THE COURT: I don't know how we're going to get all
17 of these individuals done tomorrow, frankly. Doctor, I think
18 Mr. Simon is going to have to confer with you on your
19 schedule. What is your schedule like generally, sir?

20 THE WITNESS: I work every day except for Sundays.

21 THE COURT: You have patients scheduled for Thursday
22 and Friday?

23 THE WITNESS: I'm usually booked two weeks out, but I
24 -- I can try to move things around or I could ask the patients
25 to, you know -- they understand there are emergencies and

1 things that happen.

2 MR. SIMON: Should we come in on Sunday? Maybe
3 Friday or something we can squeeze you in the afternoon.

4 THE WITNESS: Yeah, if you give me at least 24 hours,
5 I can ask patients to move and usually they're really nice
6 about it.

7 THE COURT: I don't think we're going to know until
8 tomorrow.

9 THE WITNESS: Okay.

10 THE COURT: Because don't you have those two other
11 doctors?

12 MR. SIMON: Yeah, we can't do it tomorrow. The other
13 two are set and he wants to squeeze somebody in.

14 MR. BAIRD: But if we're doing Duke in the morning, I
15 don't think there's any reason we couldn't do him in the
16 afternoon on Friday. Who else do we have on Friday?

17 MR. SIMON: Just my clients, I guess.

18 MR. BAIRD: So we could probably -- I mean, just for
19 the sake of convenience, we can probably -- if you want to
20 reserve Friday afternoon, we can make it reasonably certain
21 for him and then everyone else can be here.

22 MR. SIMON: If that works.

23 THE WITNESS: Just give me -- I mean, I have to call
24 the office, but I'm sure it will. Most people are okay with
25 that.

1 MR. SIMON: Okay. Sorry for this.

2 THE WITNESS: That's okay. It happens.

3 THE COURT: Counsel, is there any way we could take
4 this up at nine o'clock tomorrow? You gentlemen have worn me
5 out.

6 MR. BAIRD: Sure.

7 MR. SIMON: I apologize.

8 MR. MICHALEK: Eight o'clock tomorrow?

9 MR. BAIRD: Nine o'clock.

10 MR. MICHALEK: Nine o'clock tomorrow. I'm sorry. I
11 didn't --

12 MR. BAIRD: 5:30, Your Honor?

13 THE COURT: I have calendar -- a busy calendar before
14 we started this trial. I'm --

15 MR. MICHALEK: He suggested Sunday, Your Honor. I
16 just --

17 THE COURT: Feel like I hit a speed bump today. I'm
18 exhausted.

19 MR. BAIRD: No problem. Nine o'clock. We'll be
20 here.

21 THE COURT: You want to come in -- we have to address
22 a couple things. We have to address the issue pertaining to
23 Dr. Koka, but we also need to address Plaintiffs' trial brief
24 regarding Tami Rockholt.

25 MR. MICHALEK: Yes.

1 MR. BAIRD: We'll be prepared for that, as well.
2 THE COURT: Can you come in about 9:00 tomorrow?
3 MR. BAIRD: Sounds good.
4 MR. MICHALEK: What time did you want the jury to
5 start?
6 THE COURT: They come in at 9:30. Are you going to
7 need more time than that? You've been a bit verbose.
8 MR. MICHALEK: I will try and keep my verbosity to a
9 minimum.
10 MR. BAIRD: I'll come in with him.
11 MR. MICHALEK: Yeah, I mean, it's real simple. It's
12 going to be Rodriguez, so I -- I think we can get it done in
13 half an hour.
14 THE COURT: Okay. Then I'll see you at 9:00?
15 MR. MICHALEK: Thank you, Your Honor.
16 MR. BAIRD: Thank you, Your Honor.
17 (The Court recessed for the evening at 4:56 p.m.)
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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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