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## Respondents.

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1 MIRIAM YUDITH PIZARRO ORTEGA, PLAINTIFF'S WITNESS, SWORN

2 THE CLERK: Please be seated. Would you please state  
3 and spell your first and last name for the record.

4 THE COURT: Ms. Interpreter, do you want to sit down  
5 or are you comfortable right there?

6 THE COURT INTERPRETER: I have a chair here. I'm  
7 just going to pull it up.

8 THE MARSHAL: I'll get it for you.

9 THE COURT INTERPRETER: Thank you very much.

10 THE WITNESS: Do you want my name?

11 THE CLERK: And spell, yes.

12 THE WITNESS: Miriam Yudith Pizarro Ortega.

13 M-I-R-I-A-M Y-U-D-I-T-H P-I-Z-A-R-R-O O-R-T-E-G-A.

14 THE COURT: Whenever you're ready.

15 MR. SIMON: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. SIMON:

18 Q Would you like me to refer to you as Ms. Ortega?

19 A That's fine.

20 Q All right. Ms. Ortega, do you speak English?

21 A I understand.

22 Q Do you read English?

23 A Also.

24 Q I'm sorry?

25 A Also.

1 Q Okay. Do you write English?  
2 A Yes.  
3 Q But Spanish is your first language?  
4 A Of course. Yes.  
5 Q And where do you currently live?  
6 A In Montrose, Colorado.  
7 Q At the time of the accident, did you live here?  
8 A Yes.  
9 Q And how old were you at the time of this  
10 accident?  
11 A I had just turned 23 -- no, I was going to turn  
12 23.  
13 Q Okay. Do you have an independent recollection  
14 of the accident?  
15 A Some things, yes.  
16 Q Okay. Do you remember where you were going?  
17 A Of course. I was going home.  
18 Q And do you remember where you were coming from?  
19 A From my work.  
20 Q I'm sorry?  
21 A From my work.  
22 Q Okay. Where did you work?  
23 A The Cafe Rio on Decatur and Blue Diamond.  
24 Q Okay. And so you were coming home from work?  
25 A Yes.

1           Q     All right.  And what's your understanding of  
2 what happened in the accident?

3           A     I was going on Lake Mead and I was going to make  
4 a left turn on Stat Street.

5           Q     All right.  And then you made that left turn?

6           A     Yes.

7           Q     And you pulled right in front of my clients?

8           A     I -- I made a turn because I thought that I was  
9 -- that I had enough space to make the turn.  And I -- and I  
10 made the turn.

11          Q     But you didn't have enough time?

12          A     Unfortunately not.

13          Q     Did you ever see my client's vehicle prior to  
14 the impact?

15          A     I saw it.  I saw it from afar, and I think it  
16 was a white Impala.

17          Q     All right.  And when you pulled out, you put  
18 yourself at danger?

19          A     Yes, of course.  I know.

20          Q     Okay.  But you made a choice to go?

21          A     Well, had I known that I was putting myself in  
22 danger and the life of -- of other people in danger, I  
23 wouldn't have done it.

24          Q     Okay.  But you saw my client's vehicle coming,  
25 right?

1           A     Yes.

2           Q     And you knew you didn't have time to make it?

3           A     Like I said before, I thought that I had enough  
4 time. That's why I did it.

5           Q     Okay. Did you see another vehicle in the area  
6 at the time?

7           A     Another -- another vehicle was at a stop.

8           Q     You don't allege here today that my clients did  
9 anything wrong?

10          MR. MICHALEK: Your Honor, objection. Relevance.  
11 Liability's admitted. There's no claim. It's comparative  
12 negligence.

13          THE COURT: He can still ask it.

14          THE WITNESS: I'm sorry, could you repeat the  
15 question?

16          BY MR. SIMON:

17          Q     I just want to make sure you're not blaming my  
18 clients for anything?

19          A     No.

20          Q     All right. I'm going to show you some pictures,  
21 Exhibit 44-1. Okay. Do you recognize this photo?

22          A     Of course.

23          Q     And what's in the photo?

24          A     My car.

25          Q     That's the car you were driving at the time?



1 A Yes, sir.

2 Q Do you recognize this photo?

3 A Yes. That's the car that the lady and the  
4 mister were driving.

5 Q Okay. And that's the car that hit the side of  
6 your car?

7 A Yes. On the right side.

8 Q Okay. And is that where it ended up after it  
9 hit you?

10 A Yes.

11 Q And this is the front of the vehicle after the  
12 accident?

13 A I didn't come very close to it, but it seems  
14 that it is.

15 Q Thank you. Okay. And at the accident scene,  
16 the fire department came?

17 A I remember the police. Probably yes. Probably  
18 not -- I'm not going to -- I don't remember, I'm not going to  
19 lie to you, I was very frightened.

20 Q Do you recognize this vehicle?

21 A Yes, of course.

22 Q What's that?

23 A That's the car that was at a stop.

24 Q Okay. And you struck that vehicle after my  
25 client's vehicle?

1           A     Yes.  Because we were driving at a speed, so  
2 then when I hit the first car, then it -- it bounced back and  
3 I hit the other car.

4           Q     Okay.

5           MR. MICHALEK:  Objection, Your Honor.  Again,  
6 relevance.  I don't see how this goes to the plaintiff's proof  
7 of causation or damages.

8           MR. SIMON:  My next questions will, Your Honor.  That  
9 was just foundational stuff.

10          THE COURT:  All right.

11          MR. SIMON:  Thank you.

12          THE COURT:  I'm going to allow some questions with  
13 this witness.  I think it's appropriate.

14 BY MR. SIMON:

15          Q     The impact of my client's car that hit the side  
16 of your car, correct?

17          A     Yes.

18          Q     All right.  And that impact was very hard?

19          A     Yes.

20          Q     And the damage to your car from my client's car  
21 is shown in this picture?

22          A     Yes.  On the right side.

23          Q     After the accident your vehicle was towed?

24          A     Yes.

25          Q     You could not drive it away?

1 A No.

2 Q Then your car was totaled?

3 A Yes.

4 Q After the collision, did you go over to my  
5 clients?

6 A Of course. Since I was more worried about them  
7 than -- than myself.

8 Q Okay. So you were able to get out of your car?

9 A Yes.

10 Q And then you walked over to their car?

11 A Yes, of course. I didn't make it all the way to  
12 their car, because Mr. Cervantes was already getting out of  
13 the car. And I -- at the same time I was talking to him and I  
14 was asking him if they were okay.

15 Q Okay. Did you ever go see Ms. Abarca in the  
16 car?

17 A No. Because at that moment police was arriving.

18 Q And did you talk to the police?

19 A Of course. Yes, I -- I made a report.

20 Q Okay. Did you see Ms. Abarca crying?

21 A Yes, of course, I did.

22 Q And what else did you observe?

23 A I saw Mr. Cervantes when he got out of the car,  
24 and I asked him how -- if they were okay. And he told me that  
25 he was okay, but his wife was crying and she was very

1 frightened.

2 Q Did you see the ambulance take them away?

3 A The -- the wife was taken, yes.

4 Q Okay. So with regard to at least the wife, you  
5 knew she had some type of injuries from the accident?

6 A Well, I'm not a doctor. And the only thing that  
7 I knew was that she was in shock and crying.

8 Q All right. And at some point you were served  
9 with a lawsuit?

10 A Yes.

11 Q Okay. And then these lawyers represented you?

12 A Yes.

13 Q All right. And when you got involved in the  
14 case, I'm going to show you what's been marked as Exhibit 25.

15 A Okay.

16 MR. MICHALEK: Your Honor, I'll just object. I  
17 mean --

18 THE COURT: Continuing objection?

19 MR. MICHALEK: Yes, Your Honor.

20 THE COURT: All right. Thank you.

21 BY MR. SIMON:

22 Q Have you ever seen this document?

23 A That came in the mail, yes.

24 Q Okay. Let me --

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

1 THE COURT: You may.

2 BY MR. SIMON:

3 Q I'll just let you review the whole document.

4 MR. BAIRD: Is there a question pending or?

5 MR. SIMON: I'm letting her review the document  
6 before I ask a question.

7 THE WITNESS: But I don't understand it very well.

8 BY MR. SIMON:

9 Q Okay.

10 A Because when I get this type of documents, I  
11 have someone who helps me to read them and understand them.

12 Q Okay.

13 A Thank you.

14 Q You're welcome. Then I will tell you this is  
15 the document that was prepared by your lawyers to respond to  
16 the lawsuit.

17 A Okay.

18 Q Okay? And that's -- this is something that you  
19 don't understand very well? Okay. And this is --

20 A No, because I'm not an attorney.

21 Q Okay. This is something your lawyers prepared  
22 for you?

23 A Correct.

24 Q All right. You would agree that if you caused  
25 injury to my clients, the fair thing for everyone is that you

1 would be responsible for that harm?

2 MR. MICHALEK: Objection, Your Honor. That -- that  
3 calls for a legal conclusion. My client's admitted liability  
4 to the extent that she said she's at fault for the accident.  
5 The other part of his question I think is really irrelevant.  
6 I think it goes to a legal standard which the jury will  
7 determine.

8 THE COURT: I think that's a question a lay person  
9 can understand and answer.

10 THE WITNESS: Could you repeat it, please?

11 BY MR. SIMON:

12 Q In this case, because of how the accident  
13 happened, if you caused harm to my clients, the fair thing  
14 would be that you are responsible for the harm?

15 A I -- I said that I was at fault the very same  
16 day. The police officer asked me and I told him that I made a  
17 left turn where I wasn't supposed to do it, and that I had  
18 caused that and that it was my fault.

19 Q Okay. And because it's your fault, you should  
20 be responsible for any harm you caused?

21 MR. MICHALEK: Same objection, Your Honor.

22 THE COURT: Answer it.

23 THE WITNESS: But what do you mean when you say that  
24 I should be responsible for what -- responsible for what  
25 happened to them?

1 BY MR. SIMON:

2 Q Okay. Well, if you injure their car, you should  
3 be responsible to pay for their car?

4 A I don't know what to answer.

5 Q Okay. If you injure their person, you should be  
6 responsible for the injuries to their person?

7 MR. MICHALEK: Same objection. Ask for a continuing  
8 objection [indiscernible].

9 THE COURT: Yes.

10 THE WITNESS: Do I have to answer?

11 THE COURT: If you can.

12 THE WITNESS: Then I will have to be the person to  
13 pay for what happened to them?

14 BY MR. SIMON:

15 Q Okay. Thank you for your time today.

16 A I'm sorry, was that a question?

17 MR. MICHALEK: Your Honor, I want to reserve my  
18 questioning for --

19 THE COURT: For direct?

20 MR. MICHALEK: For direct, yes.

21 THE WITNESS: Excuse me, Your Honor. I was trying to  
22 ask me if he was trying to ask me that if -- if he was -- if  
23 he was assuming that I had to pay for everything.

24 THE COURT: Mr. Simon?

25 MR. MICHALEK: Can we approach, Your Honor?

1 THE COURT: Sure.

2 (Bench conference.)

3 MR. MICHALEK: I'm concerned about the last question.  
4 I don't want her to accidentally say something about  
5 insurance. She says she's responsible for the accident. I  
6 think that's pretty clear. I'll clear that up on direct, that  
7 she's responsible. But -- but I don't want her to say, Well,  
8 I think I have insurance coverage. And then that would just  
9 be -- that would not be good for anybody.

10 MR. SIMON: Judge, I don't even need an answer. I'm  
11 finished.

12 THE COURT: Okay.

13 MR. SIMON: Okay.

14 (End of bench conference.)

15 THE COURT: Ma'am, at this point, there's no more  
16 questions for you by Mr. Simon. And I don't believe the  
17 attorney representing you have any questions for you either,  
18 at this time.

19 MR. MICHALEK: Right. We'll reserve for a direct.

20 THE COURT: Okay. Thank you, ma'am, for your time.  
21 You're free to step down.

22 THE WITNESS: Thank you.

23 THE COURT: All right. Next witness.

24 MR. SIMON: We'll call Christian Cervantes to the  
25 stand.



1 THE COURT: All right. Remember that you are -- you  
2 remain to be sworn in.

3 THE COURT INTERPRETER: Yes, Your Honor.

4 CHRISTIAN CERVANTES-LOPEZ, PLAINTIFF'S WITNESS, SWORN

5 THE CLERK: Please be seated. Would you please state  
6 and spell your first and last name for the record.

7 THE WITNESS: Christian, Cervantes-Lopez,  
8 C-H-R-I-S-T-I-A-N C-E-R-V-A-N-T-E-S.

9 MR. SIMON: All set? Thank you.

10 THE COURT: Hold on. I thought -- I was waiting for  
11 one more name. Cervantes-Lopez?

12 THE WITNESS: L-O-P-E-Z.

13 THE COURT: All right. Yes. Thank you.

14 DIRECT EXAMINATION

15 BY MR. SIMON:

16 Q Good afternoon.

17 A Good afternoon.

18 Q Have you ever testified in court in front of a  
19 jury before?

20 A This is my first time.

21 Q Okay. Are you nervous?

22 A Yes.

23 Q How old are you?

24 A 27.

25 Q And at the time of the accident you were 24?

1           A     It was 2011, yes, I -- I had just turned 24.

2           Q     And what do you do for a living?

3           A     Well, I work in construction in a mine and I do  
4 a little bit of everything.

5           Q     What are your primary duties at work?

6           A     I -- I drive a lift to load the trucks with  
7 material that is extracted.

8           Q     And when you drive a lift, you mean a forklift?

9           A     No, it's -- it's one of those trucks that has,  
10 like, a bucket to load material.

11          Q     Okay. And how long have you been working there?

12          A     I think in the mine, I've been working there for  
13 nine years. No -- like, seven years in the mine, but nine  
14 years for the same employer.

15          Q     All right. And so you've worked there for a  
16 long time before the accident?

17          A     Yes.

18          Q     Okay. Were you always able to do your job  
19 without pain before the accident?

20          A     Yes. I always did everything without having any  
21 pain.

22          Q     Okay. And prior to the accident, did you ever  
23 have any neck or low-back pain?

24          A     No, not a single pain.

25          Q     At some point you got married?

1 A Yes.

2 Q Who did you marry?

3 A With my wife, Maria Cervantes-Abarca.

4 Q Okay. And at the time of this accident, you  
5 were not married?

6 A We were not married, but we were living  
7 together.

8 Q Okay. And was it your intention to get married  
9 at some point in the future?

10 A Yes.

11 Q Was it your intention to have a family?

12 A Yes.

13 Q Okay. Were you trying to have a family?

14 A At that moment, yes, we were trying.

15 Q Okay. And so how were you trying? Just  
16 kidding. And in order -- okay.

17 So my understanding that your wife was trying to get  
18 pregnant?

19 A Yes.

20 Q All right. And but she had a difficult time  
21 getting pregnant?

22 A She -- she was, because she wasn't ovulating.

23 Q All right. And you were trying to get some  
24 doctors' advice that make that happen?

25 A Yes. Actually, we were going to see a

1 naturalist. And this doctor was helping her to try to solve  
2 that situation at the moment that the accident happened.

3 Q Okay. So let's turn to the accident. Where --  
4 do you remember the accident?

5 A Yes.

6 Q Where were you going that night?

7 A Well, that was a Saturday night, so we were  
8 going from east to west on Lake Mead and we were going to the  
9 Texas Station Casino.

10 Q Do you know why you were going to Texas Station?

11 A Yes. We were going to see a box match with  
12 Manny Pacquaio and Marquez.

13 Q Okay. Did you want to get into an accident that  
14 night on the way?

15 A No, of course not.

16 Q Okay. Tell me what you remember about the  
17 accident and the impact?

18 A Well, I remember, like I said, we were driving  
19 from east to west. So then we passed Pecos Avenue and then we  
20 proceeded on Lake Mead. So then when you pass Pecos on Lake  
21 Mead, I know that the speed limit goes down to 35. So I  
22 reduced my speed. And when I -- when we were passing Belmont,  
23 there was another truck that was driving on my left-hand side.  
24 And I was in the middle -- I was driving in the middle lane.

25 So then I passed Belmont and I see that the truck on

1 my left-hand side kind of drifted. And that's when I saw --  
2 that's when I impacted to the -- in the other car.

3 Q So there was a vehicle in a lane next to you?

4 A Yes.

5 Q And then the defendant's vehicle? The red  
6 Impala?

7 A Yes.

8 Q Pulled right in front of you?

9 A Yes. Right -- right in front of me. And when  
10 -- when she impacted me, it bounced and hit the other -- hit  
11 the truck.

12 Q Okay. Was the impact of your car and her car  
13 forceful?

14 A Yes. I don't remember exactly what happened,  
15 but at that second remembered that I actually wanted to brake  
16 very hard, to slam on the brakes, but I didn't have enough  
17 time to do that and to avoid the collision. So it hit, and at  
18 that moment when it hit, the airbags didn't deploy. And I  
19 don't know if I hit myself with the steering wheel or what was  
20 it. But I -- I know that my body went forward and then  
21 backward, and then it hit the back of the -- my back with the  
22 seat.

23 Q Okay. After your car came to rest, describe  
24 your wife in the passenger seat.

25 A Well, when -- when I was able to get out of the

1 car, I then saw my -- my wife. And everything I was seeing,  
2 like, in slow motion. And I saw that she was crying. So then  
3 I -- that's when I got out to -- to -- to be able to see her,  
4 and I went to see her and ask her if she was okay. And she  
5 told me that she had pain in her stomach.

6 Q And do you remember the ambulance coming?

7 A Yes. I actually called 911 and they actually  
8 requested the ambulance and that's how they got there.

9 Q And did the police come?

10 A They did also, yes.

11 Q And did you speak to the police?

12 A Yes, I did.

13 Q And cooperated and told them what happened?

14 A Yes.

15 Q And did your wife go to the hospital?

16 A The ambulance took her to the hospital.

17 Q And did you go to the hospital?

18 A After I finished explaining to police everything  
19 that happened, my brother-in-law was the one who took me to  
20 the hospital to see my wife.

21 Q And when you went to the hospital to see your  
22 wife, how were you feeling?

23 A I remember that I was at the lobby waiting.  
24 Well, I was -- I remember that I started having a headache. I  
25 didn't feel that it was any bruise or anything. I just felt

1 something, an internal pain. And I started feeling nauseous  
2 and vomiting.

3 Q Okay. And did the doctor see you?

4 A So yes, they made me sign a paper and they made  
5 a physical examine me and they also put me inside a tube to  
6 see my head to make sure that there wasn't any injury.

7 Q Okay. And then did you see your wife at the  
8 hospital?

9 A Yes. After they told me or after they said that  
10 I was okay, that there was nothing wrong with my head, and  
11 they prescribed me some painkillers for the headache, that --  
12 and they released me, that's when I was able to see my wife  
13 and she was still in -- in bed.

14 Q Can you describe what you observed about your  
15 wife, how she looked, how she felt?

16 A Well, they had to ripped her blouse, because she  
17 was having a lot of pain on her body. And I was able to see  
18 all the bruises that she had on her chest and her abdomen.

19 Q And then she was released from the hospital that  
20 night?

21 A In the middle of the night, yes.

22 Q Okay. And did the doctors tell you to follow up  
23 with someone else?

24 A No. They only told us -- they only gave us some  
25 medication, and then they let us go, just like that.

1 Q Okay. Did you see any doctors after that?

2 A Well, not that, because -- not that night,  
3 because it was already Sunday morning. And I don't remember  
4 that we went to see any doctors that day. But we were resting  
5 at the house thinking what we should do next.

6 Q Okay. And did you start to experience pain in  
7 your neck or back?

8 A Yes. Even Sunday morning I had to go to work,  
9 and I couldn't. So I had to call in sick.

10 Q Did you eventually go to a doctor?

11 A Not that same -- that same day.

12 Q Okay. Did you go in the next few days?

13 A On Tuesday. We went on Tuesday.

14 Q Okay. And who did you see?

15 A We went to see the chiropractor, Dr. Adair.

16 Q Okay. And then do you remember your treatment  
17 with Dr. Adair's practice?

18 A Yes. I do remember.

19 Q Okay. Tell the jury generally so we don't go  
20 through each visit what you generally remember?

21 A Well, first they asked us to do exercise. First  
22 they ask us what kind of pain we were experiencing. And then  
23 after the pain was identified, then they would see what kind  
24 of exercise was okay for us to do. From there, I remember  
25 that they would put some patches that gave you, like,



1 electrical shocks in several parts of the body. And they also  
2 would do, like, adjustments, I'm not sure how to call that.  
3 It's when the doctor starts to move or manipulate your body.  
4 And they would give us massages, and also they would put us on  
5 a bed that also had something to massage. And -- and that's  
6 all I remember.

7 Q Okay. And did the treatment help you a little  
8 bit?

9 A A lot. Because that when -- when I started the  
10 treatment I had neck pain, and when I finished the treatment,  
11 I didn't have any more neck pain.

12 Q But you had low-back pain still?

13 A Yes. That pain still was there. It reduced a  
14 great deal, but it was still there. Also the pain in the leg  
15 and also the tingling sensation in my legs. And I think that  
16 the headaches were gone.

17 Q Did you remember being seen by Dr. Coppel?

18 A Yes. When the therapy ended, I actually talked  
19 to the doctor and I told her how I was feeling regarding the  
20 pain. And that's when she told me to go to see Dr. Coppel.

21 Q Dr. Coppel, does he speak Spanish?

22 A Yes.

23 Q And he was able to communicate to you directly?

24 A Yes.

25 Q So do you remember what Dr. Coppel did to you?

1           A     Dr. Coppel order an MRI. And then after, he put  
2 one injection in my spine, in my lower back.

3           Q     And after the injection, did that help?

4           A     Yes. It helped, but not completely. It helped  
5 to reduce the pain, but the pain was still there. Even when  
6 it was minimal, but it was still there.

7           Q     And when you were released by Dr. Coppel, did  
8 you still have pain in your low back?

9           A     It was a little, but still.

10          Q     Okay. And did you still have that pain through  
11 today?

12          A     It's actually stronger.

13          Q     Are you in pain right now?

14          A     Yes, I'm in pain.

15          Q     Okay. So even if -- though you can sit there,  
16 what type of pain are you in?

17          A     Right now the level of pain that I have is  
18 between a 3 and a 5. And I feel, like, a cramp in my leg.

19          Q     Do you remember seeing Dr. Lanzkowsky?

20          A     Dr. Lanzkowsky, yeah. I remember seeing him  
21 after Dr. Coppel, I saw Dr. Lanzkowsky.

22          Q     Do you remember having what the doctors  
23 described as a discogram?

24          A     Yes.

25          Q     Okay. Was that a painful procedure?

1 A That's the worst pain I've ever experienced.

2 Q Okay. Did he also do injections to you?

3 A Yes. He also put an injection, Lanzkowsky.

4 Q Okay. And then do you remember him referring  
5 you to Dr. Kaplan?

6 A Yes. After -- after I saw him he referred me to  
7 Kaplan. And after also seeing that this was deeper, then he  
8 sent me to see Kaplan.

9 Q Do you remember Dr. Kaplan visiting you?

10 A Yes.

11 Q What did Dr. Kaplan tell you about your injury?

12 A Well, he said -- what I remember he said is that  
13 I had a disc, I don't remember he said cracked, that was  
14 causing all the problems. And the only solution to that, he  
15 told me that it was surgery.

16 Q Okay. Did he tell you what the surgery was?

17 A Not exactly.

18 Q Do you want to have surgery right now?

19 A No. I think that not -- not for the moment. I  
20 don't think so.

21 Q Do you know that you're -- do you think that  
22 you're going to need surgery in the future?

23 A I think that in the future the way the pain is  
24 going on right now, I believe that I will need the surgery in  
25 the future.

1           Q     The pain that you have now, tell this jury how  
2 that interferes with your work?

3           A     Well, I went -- the same machine that we were  
4 talking about, the -- the one that I use to lift material, I  
5 would be inside the machine from four to five hours nonstop,  
6 and at that -- at that moment I didn't have any kind of pain.  
7 I was able to just take a break and then go back to work. And  
8 right now -- right now with the pain, I cannot stay -- if it's  
9 30 minutes or one hour, I start feeling discomfort and I have  
10 to stop work and I have to get up or get out and do some  
11 exercises or stretch and then go back again.

12          Q     Do you still try to work even with your pain?

13          A     I've actually always liked to be a responsible  
14 person. I have a family that I have to support. I'm the head  
15 of the family so I've always liked to be responsible.

16          Q     Do you take pride in being the head of the  
17 family?

18          A     Of course. And actually more the way that I am,  
19 I am a responsible husband.

20          Q     After this accident, you went through some  
21 treatment. Did you get in any new accidents?

22          A     No.

23          Q     How old are you?

24          THE COURT INTERPRETER: I'm sorry, counsel. Could  
25 you repeat the question for the interpreter?

1 MR. SIMON: How old is he?

2 THE WITNESS: I'm right now 27.

3 BY MR. SIMON:

4 Q And when's your birthday?

5 A November 2nd.

6 Q Okay. Tell us a little bit about your hobbies.

7 A Well, we -- I like -- we like to walk at the  
8 park, we like to go see movies, we also like to -- we'll walk  
9 to -- in the malls, even when it's only to watch.

10 Q Okay. Has the injuries that you have, has it  
11 affected your life?

12 A Yes. Tremendously.

13 Q Okay. Tell us how?

14 A Well, I cannot be sitting or be standing up for  
15 longer periods. Well, I can, but it hurts. Also, when I walk  
16 for a long time, also when I drive for a long time, like 30  
17 minutes, my -- my back starts hurting.

18 Q But you can still do these things?

19 A Of course I can.

20 Q Okay. But you just start to have pain after a  
21 little while?

22 A Yes. A lot.

23 Q Are there times that you feel pretty good?

24 A There are times when there's no activity at my  
25 work, for instance, that I'm normally walking back and forth,

1 that's when I feel okay.

2 Q Do you ever try to do, when you're feeling  
3 better, do you ever try to do things?

4 A Like what?

5 Q Doing work around the house?

6 A Oh, yes. Sometimes I help my wife to vacuum or  
7 to do the bed. Because we live in an apartment.

8 Q Okay. Have you ever, sometimes when you're  
9 feeling better, try to do some, I don't know, gardening or  
10 labor, where you thought you could do it, but later you  
11 realized maybe it wasn't a good idea?

12 A Well, yeah. Sometimes I have helped people to  
13 do their garden. And it hurts, yes. But, well, sometimes I  
14 just stop and -- and rest. And that is the same thing that I  
15 do at work.

16 Q Okay. There's been some mention that you didn't  
17 treat with any doctors for a long time from the time you left  
18 Coppel until you went to Dr. Lanzkowsky. Were you still in  
19 pain during that time?

20 A Yes. Because Coppel put me to injections to  
21 reduce the pain. And two treatments. And the first one, it  
22 helped, but then it wore off. And then I had another  
23 treatment for that. And then it wore -- wore off again. And  
24 then yes, I was for some time with pain, that's when I went to  
25 see Lanzkowsky.

1           Q     The defense wants to fault you for not going to  
2 the doctor during that time. Do you want to go to doctors all  
3 the time?

4           A     No. Sometimes I actually wanted to stay at  
5 home, rest, be in bed. Because actually going to the doctor  
6 always put me, like, in a bad mood, because I had to fight the  
7 traffic and I always thought that it was too far away.

8           Q     Okay. And when you go to the doctor did you --  
9 they charge you?

10          A     Yes.

11          Q     Costs -- costs money?

12          A     Yes.

13          Q     They -- there was some discussion that you would  
14 be prescribed medication, and then you would not take it.

15          A     Yes. I took it. Not all of it, but I did.

16          Q     Okay. And then would there be times you  
17 wouldn't take any medication?

18          A     Well, I didn't take the medication that was  
19 prescribed by the doctor, because, first place, I had to take  
20 it when I was at work. And that medication makes me very  
21 dizzy. And I would only take it when I was at home and I was  
22 in a lot of pain.

23          Q     Okay. So on the days that you didn't have a lot  
24 of pain, you wouldn't take it?

25          A     No, if it wasn't necessary.

1 Q Do you take medications now?

2 A At -- at night, when I can't sleep, I take  
3 Aleve. And then during the day when I have a lot of pain, I  
4 take naproxen, 220 milligrams -- or milliliters, however you  
5 say it.

6 Q Have you been truthful to all the doctors that  
7 you've seen?

8 A Yes.

9 Q What's the highest level of your education?

10 A I just finished high school, I just got my GED.

11 Q Okay. Thank you, sir. No other questions.

12 THE COURT: Cross?

13 MR. BAIRD: Do you want me to start? Okay.

14 CROSS-EXAMINATION

15 BY MR. BAIRD:

16 Q Okay. Mr. Cervantes --

17 A Yes.

18 Q -- your job involved physical manual labor,  
19 correct?

20 A Yes.

21 Q Your testimony today specifically was you have  
22 never had a single pain prior to this accident; is that a fair  
23 presentation of what your testimony was?

24 A The pain that I have in my back, I never had it.

25 Q The question is, have you ever, ever had any



1 pain in your back?

2 MR. SIMON: Objection, Your Honor. Vague and  
3 ambiguous and too remote.

4 THE COURT: Can you -- what age are you asking, from  
5 zero to 20-something years of age?

6 MR. BAIRD: Your Honor, he testified -- I think I'm  
7 entitled to ask if he's ever had pain.

8 THE COURT: I do, too. But, I mean, you're looking  
9 -- you're looking for zero to --

10 MR. BAIRD: Now. Well, zero to the accident, yeah.

11 THE COURT: Go ahead and answer the question.

12 THE WITNESS: Could you repeat the question, please?

13 BY MR. BAIRD:

14 Q Have you ever had a single pain in your back at  
15 any time prior to this accident?

16 A Maybe the muscles, like some tightness only.

17 Q Okay. You never hurt yourself playing soccer  
18 before?

19 A Yes. Actually, I remember that one day I was  
20 playing and I twisted my left ankle.

21 Q And I'm talking about your back. You never hurt  
22 your back playing soccer?

23 A No, never.

24 Q You played soccer most of your life, correct?

25 A No.

1 Q You haven't played soccer most of your life?

2 A No. When I -- when I played, I only would play  
3 on the weekends, and I never played in competitions, and I was  
4 in a team, but that was a long time ago.

5 Q Okay. How long ago, didn't -- didn't you just  
6 say six months ago?

7 A So that's -- that was when I was 15.

8 Q Okay. At the scene of this accident, you had no  
9 pain; is that true?

10 A Before the accident?

11 Q No. Immediately after the accident, while  
12 you're at the scene.

13 A I only had a headache.

14 Q Okay. Okay. Do you remember when we took your  
15 deposition, you came to my office?

16 A Of course I do.

17 Q And at the time that we took your deposition,  
18 this lawsuit had already begun, correct?

19 A Yes.

20 Q And you knew that you took an oath to tell the  
21 truth, the complete truth, correct?

22 A Just like I did today.

23 Q Okay. And I know some of these things might not  
24 seem like a big deal to you, but we --

25 A Everything is important.

1           Q     -- asked you questions and wanted to be able to  
2 rely on your answers.

3           A     It's okay.

4           Q     Now, do you remember testifying that when you  
5 were at the scene of the accident, you didn't feel any pain?

6           A     Well, if I said the deposition was a few years  
7 back, and if I said that, I don't remember that right now.

8           Q     Okay. After this accident, you testified that  
9 you didn't get a neck brace from the hospital, you went and  
10 got one yourself, correct?

11           THE COURT INTERPRETER: I'm sorry, counsel, could you  
12 repeat the question for the interpreter?

13           MR. BAIRD: Sure.

14 BY MR. BAIRD:

15           Q     You testified that you didn't get a neck brace  
16 given to you at the hospital, you went and got one yourself,  
17 correct?

18           A     No. No, I didn't say that.

19           MR. BAIRD: Okay. I move to publish the deposition  
20 of Christian Cervantes.

21           May I approach the witness?

22           THE COURT: You may.

23 BY MR. BAIRD:

24           Q     Okay. So if we turn to -- I lost my place. Oh,  
25 okay.

1           Starting on page 26, okay. So line 18, I asked you,  
2 "So what hospital was that?" We were talking about where you  
3 went to the hospital. What was your answer? You see that?

4           A     "UMC."

5           Q     Okay. And then I asked, "Were you ever given a  
6 cervical collar or low-back support brace?" What was -- okay.  
7 And what was your answer?

8           A     For the low-back?

9           Q     Well, it said a cervical collar or a low-back  
10 brace. And your first answer was what? Doesn't it say yes,  
11 they gave you a brace?

12          A     In the lower back.

13          Q     Okay. So let's turn the page, page 27. I asked  
14 you who did, who gave you the brace? Line 2. And your answer  
15 was you got a brace all by yourself, correct?

16          A     Yes.

17          Q     So after your visit to the hospital, you got a  
18 brace for your neck, correct?

19          A     I don't remember getting a neck brace for my  
20 neck. I remember that I went to get -- I remember that I went  
21 to get a girdle for my low back.

22          Q     Okay. Now, after going to the hospital, before  
23 you went to anybody else, you went to -- for medical care, you  
24 got an attorney, correct?

25          MR. SIMON: Objection. Relevance.

1 THE COURT: Overruled.

2 THE WITNESS: May I answer?

3 BY MR. BAIRD:

4 Q Yes.

5 MR. BAIRD: Your Honor, can I object to his answer  
6 before it's translated? Because I know -- I know what he  
7 said. No?

8 THE COURT: We have to make a record.

9 MR. BAIRD: Okay.

10 THE WITNESS: Well, on Sunday, actually, we went --  
11 we didn't know what to do, because we are people who don't  
12 have a lot of money, we don't have insurance, either. So we  
13 didn't know what to do.

14 BY MR. BAIRD:

15 Q Now, did --

16 A So that's why we went to see the attorney, so  
17 that he could give us some advice.

18 Q So in order to -- because we're running out of  
19 time and we want to be efficient here, let's try -- I'm going  
20 to ask yes-or-no questions to make things a little easier for  
21 you and the interpreter, okay? Now, when you went to the  
22 chiropractor, what were your complaints? What was her --

23 A What can I answer yes or no?

24 Q You're right, I'll help you out. Were you  
25 having head pain?

1 THE COURT INTERPRETER: I'm sorry, counsel, what was  
2 it?

3 BY MR. BAIRD:

4 Q Head pain?

5 A Yes.

6 Q Neck pain?

7 A Yes.

8 Q Low-back pain?

9 A Yes.

10 Q And the pain that you had the least of all, the  
11 least frequently of those three pains was your low back,  
12 correct?

13 A If that is reported like that, it should have  
14 been.

15 Q Okay. So let's look at Exhibit -- was it 5?  
16 Because ours are off -- it's the --

17 MR. SIMON: Ours are 4, so yours might be 5.

18 MR. BAIRD: So ours is 5? Okay. So our 5, page 10.  
19 Okay. So can we see that one? Oh, 10. Sorry.

20 BY MR. BAIRD:

21 Q So those are your complaints. We looked at the  
22 top one, headings. Says the pain is intermittent, which means  
23 you're not having pain all the time, right?

24 A Uh-huh. Yes.

25 Q And it says you're experiencing that pain 26 to

1 50 percent of your awake time, correct?

2 A Yes.

3 Q Okay. So if we skip down to neck pain, also  
4 it's intermittent and only 26 to 50 percent of your awake  
5 time, correct?

6 A Yes.

7 Q All right. So then we go to low -- low-back  
8 pain. Let's pull that up. It says the pain was only occasion  
9 and it was zero to 25 percent of your awake time, you see  
10 that?

11 A Yes. 4, it was a 4.

12 Q 4 out of 10, yes.

13 A Yes, the pain.

14 Q Okay. And if we look at the next paragraph, you  
15 told Dr. Adair you weren't taking any medicine for these  
16 pains, not even over-the-counter is listed; is that true?

17 A That's correct. I only would do the exercises  
18 that they told me to.

19 Q Who is they, the chiropractor?

20 A Yes, the chiropractor.

21 Q Okay. Well, I don't -- this is your first  
22 visit. So this is before the chiropractor could give you any  
23 exercises.

24 A Well, the first -- the first visit, I'm not  
25 sure, but I think that after the first visit, we started to do

1 exercises.

2 Q Okay. All right.

3 MR. BAIRD: Your Honor, maybe this is a good time  
4 to --

5 THE COURT: I think it is, actually.

6 MR. MICHALEK: Your Honor, could we approach real  
7 quickly?

8 THE COURT: Sure.

9 MR. SIMON: Do I have to go?

10 (Bench conference.)

11 MR. MICHALEK: [Indiscernible] instruction that the  
12 jury's not to consider [indiscernible] insurance --

13 THE COURT: You want to give it again?

14 MR. MICHALEK: Well, it's come up twice today. You  
15 know, at this point I don't know what else to do except  
16 [indiscernible]. It just keeps coming up, and I think the  
17 jury needs to understand whatever improper [indiscernible] --

18 THE COURT: So the limiting instruction again?

19 MR. MICHALEK: Yes [indiscernible].

20 THE COURT: Okay.

21 (End of bench conference.)

22 THE COURT: Ladies and gentlemen, before you leave  
23 for the day I do have to instruct you again that you are not  
24 to discuss or even consider whether or not the plaintiffs were  
25 carrying insurance to cover the medical bills, loss of



1 earnings, or any other damages they claim to have sustained.

2           You are not to discuss or even consider whether or  
3 not the defense were carrying insurance that would reimburse  
4 them for whatever sum of money they may be called upon to pay  
5 to the plaintiffs.

6           Whether or not either part was insured is immaterial  
7 and should make no difference in any verdict you may render in  
8 the case.

9           We'll see you tomorrow at 9:30. Again, do not talk  
10 about this case, do not do any research on this case, do not  
11 form or express an opinion on this case. Thank you.

12                       (Jury recessed at 4:59 p.m.)

13           THE COURT: Okay. Are we -- anything else we need to  
14 address?

15           MR. MICHALEK: No. Just think, Your Honor, we had a  
16 bench conference on --

17           MR. SIMON: I'd just like to put on the record that  
18 last curative instruction was read at the request of the  
19 defense because insurance was discussed in response to defense  
20 counsel's questioning about lawyers. And that was the  
21 response given. That's all.

22           MR. BAIRD: It was a yes-or-no question I asked about  
23 when he retained an attorney, and he gratuitously referred to  
24 insurance. That's correct.

25           MR. MICHALEK: And defense counsel did request the

1 instruction and the Court granted my request. And I --

2 THE COURT: Okay. Great. Thank you.

3 (Court recessed for the evening at 5:00 p.m.)

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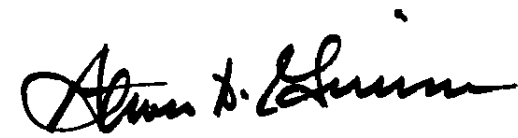
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DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

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

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 5**

FRIDAY, FEBRUARY 27, 2015

APPEARANCES:

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

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## **I N D E X**

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1           **LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 27, 2015, 9:37 A.M.**

2                           **\* \* \* \* \***

3           THE CLERK: Case No. A667141, Christian  
4 Cervantes-Lopez vs. Angelina Ortega.

5           THE COURT: Yeah.

6           MR. MICHALEK: One quick thing, Your Honor. We're --  
7 Danny's allowed us to take Dr. Duke out of order, so we're  
8 going to do that this morning.

9           To the extent that Mr. Simon would be attempting to  
10 impeach Dr. Duke with recent discovery commissioner rulings, I  
11 would request that that be stricken, that there be no attempt  
12 at impeachment to that. There's no authority to use the  
13 discovery commissioner's opinion. It's not proper authority  
14 to cite. I think it would be unfair impeachment. Certainly  
15 not a decision of the Nevada Supreme Court that goes to bias  
16 or prejudice.

17           So I would -- I would -- yeah, it hasn't been  
18 disclosed, either, as an exhibit. So what I would request is  
19 before any attempt -- well, I would request it be out. But  
20 even before that, if there's any attempt at impeachment  
21 through that type of evidence, that we have a -- a full  
22 hearing on that.

23           MR. SIMON: Your Honor, you've already ruled on this.  
24 When we brought our motion to exclude him entirely based on  
25 bias, we presented all of that information, the discovery

1 commissioner's rulings. And you had limited Dr. Duke's  
2 testimony, when -- in this case, particularly about the  
3 general propositions of personal injury --

4 THE COURT: Secondary gain.

5 MR. SIMON: -- secondary gains, malingering, because  
6 there's no evidence in this case. And then you also said, as  
7 far as the bias, you're not excluding him as a witness. But  
8 we can certainly use those orders, and we can use any --  
9 anything else, any other reports we want to, to impeach him,  
10 because it does go to bias. And -- and the Court should use  
11 its discretion to freely allow impeachment of bias, because  
12 that's important to our process.

13 And it's not just a discovery commissioner  
14 recommendation and finding. It is a district court order.  
15 And like any expert that's been retained, I can ask them if  
16 they've ever been excluded in a court. That's fair game. And  
17 if, you know -- so it -- it really comes down to what's he  
18 going to respond to my questions, if he gives rise to  
19 impeachment? He can either tell the truth, and if he doesn't,  
20 then he gets impeached. That's how it works.

21 MR. MICHALEK: Under NRCP --

22 THE COURT: Hold on. Hold on a second. I -- I know  
23 what you're talking about as far as Commissioner Bulla found  
24 -- wanted to exclude Dr. Duke because she found that he often  
25 testifies similarly in trials. And -- and then I did allow

1 him in, because I think everything goes -- his testimony goes  
2 to the weight versus the admissibility. And I did keep out  
3 the fact of Dr. Duke fairly often says people have secondary  
4 gain and all this stuff, and quite frankly, I don't think he's  
5 qualified to -- to say those things, because I think that's  
6 more of a -- a psychiatric. I don't think he's qualified to  
7 get in the brains of people. As to why they do the things  
8 they do and certainly there's been no evidence of malingering  
9 in this case.

10 I mean, plus, he didn't even -- I don't think, did he  
11 even do the IME? He didn't do an IME, it was just a  
12 regular --

13 MR. SIMON: He did an IME.

14 MR. MICHALEK: He did an IME, Your Honor.

15 THE COURT: He did an IME. But I don't think there's  
16 any evidence of malingering. I certainly think secondary gain  
17 he's not qualified to testify to.

18 MR. MICHALEK: He won't -- he won't be doing that.

19 THE COURT: I don't recall saying, though, that you  
20 could use Commissioner Bulla's opinion. However, I know that  
21 Dr. Duke testifies quite frequently, and I know that there's a  
22 lot of trial testimony out there that's often been utilized.

23 MR. MICHALEK: None of which, Your Honor, was  
24 disclosed as impeachment evidence before the close of  
25 discovery under NRCP 16.1 or 26. As the Court well knows, if



1 you're going to use evidence at trial, even for impeachment  
2 purposes, you must disclose that evidence to the defense. At  
3 no time has plaintiff disclosed any trial transcript testimony  
4 or reports or impeachment evidence of Dr. Duke. So he cannot  
5 use it. He had to disclose it prior to the close of  
6 discovery. That was not done.

7 If he wants to ask Dr. Duke about how much he's been  
8 paid, you know, to -- and say, you know, that sort of thing, I  
9 mean, that's -- that goes to the bias as to documents, use of  
10 documents that have not been disclosed, that's -- that's  
11 improper under the -- under the NRCP -- NRCP 16.1 and 26.

12 MR. SIMON: Judge, you can't disclose something that  
13 did -- wasn't -- that didn't exist. This order is entered in  
14 February of 2015. It is -- you can take judicial notice of a  
15 court order as it relates to this specific witness.

16 THE COURT: But if you're talking about -- are you  
17 talking about the court order from Commissioner Bulla in this  
18 case? Because there was a -- a challenge to her  
19 recommendations and it was not -- I mean, the -- the challenge  
20 was sustained by this Court. And that the Court, despite  
21 Commissioner Bulla's ruling did allow Dr. Duke to testify,  
22 even though I limited his testimony for the reasons indicated,  
23 I still allowed him to testify.

24 MR. SIMON: I get that he can testify.

25 THE COURT: So that's never been --

1 MR. SIMON: That -- we don't have a problem --

2 THE COURT: -- signed off as a district court order.

3 MR. SIMON: No, no, no. I'm -- I'm talking about --

4 and I think what he's talking about, there's other court

5 orders that have determined him in those cases to be biased as

6 a matter of law because of the way he does these IMEs. And --

7 MR. MICHALEK: There's been other --

8 MR. SIMON: Excuse me.

9 MR. MICHALEK: Sure. Sorry.

10 MR. SIMON: Okay.

11 THE COURT: Who -- who -- what district court judge?

12 MR. SIMON: Judge Williams entered this order, and

13 it's dated February 20th of 2015. So, obviously, I --

14 THE COURT: I'd be curious to see that, because I  
15 speak with Judge Williams fairly often.

16 MR. SIMON: Sure, Your Honor.

17 THE COURT: And he excluded Dr. Duke from testifying?

18 That would be surprising to me.

19 MR. SIMON: He adopted the discovery commissioner's  
20 record and recommendations that determine Dr. Duke bias as a  
21 matter of law in that case.

22 THE COURT: Hmm.

23 MR. SIMON: And so if you prevent me from doing that,  
24 you're preventing me from exposing his bias, which in these  
25 type of cases, which he has done routinely.

1           MR. MICHALEK: Your Honor, under Supreme Court Rule  
2 123, that is an unpublished opinion, which is not proper  
3 authority at all. It is similarly a district court decision  
4 from a compatriot. And so you're certainly free to make your  
5 own rulings as to Dr. Duke's admissibility and not -- and  
6 you've made it in this case. To admit another judge's  
7 determination would be unfairly prejudicial.

8           Secondly, I would note he hasn't produced that  
9 document. So you can't use it as impeachment evidence. He  
10 says, Well, there has been numerous reasons or numerous  
11 previous testimony of Dr. Duke -- Dr. Duke that would be  
12 available for impeachment. Well, if that's out there, he  
13 should have disclosed it prior to the discovery deadline. He  
14 had the opportunity to grab that testimony, he had the  
15 opportunity to close that as impeachment evidence, and then  
16 use those reports. He did not do so.

17           Under 16.1 and 26, that evidence is untimely, to be  
18 excluded. That would be an unfair determination, that order,  
19 Your Honor, to use it to attempt to impeach Dr. Duke. It's  
20 unpublished, hasn't been ruled upon by the Supreme Court.  
21 There's a specific Supreme Court rule that says you can't use  
22 unpublished opinions, and it's certainly a determination from  
23 the compatriot. Otherwise, every time we'd be coming in here  
24 with -- saying -- with -- arguing with Your Honor, Well, Judge  
25 Williams, allowed liens in. So why can't we discuss it? Or,

1 you know, or whatever the situation, Judge Bare did this.

2 You have made your determination, Dr. Duke can  
3 testify, he should have been -- if he wanted to impeach him  
4 properly, he should have listed reports, he didn't do so.

5 THE COURT: Okay. So in this case, Judge Williams  
6 disqualified him from doing an IME, but allowed him to do --  
7 be a retained expert. Not that this is even analogous. Well,  
8 you know, I --

9 MR. SIMON: Your Honor, it's just cross-examination,  
10 whether or not that in other cases he's been determined to be  
11 bias as a retained expert. It just goes to impeach him.

12 THE COURT: Well --

13 MR. SIMON: That's all it is.

14 MR. MICHALEK: Your Honor, it's not -- it's not --

15 MR. SIMON: It's nothing more, doesn't have to be a  
16 published opinion in order to use it.

17 THE COURT: You know what, I'll -- I'll be honest  
18 with you. My greater problem is the fact that it wasn't  
19 disclosed.

20 MR. SIMON: Your Honor, how could it be disclosed  
21 when it's signed February 20th? We just got it last night in  
22 preparing for Dr. Duke. It's something that exists, it's  
23 something that Dr. Duke knows about. And so if Dr. Duke, you  
24 know, testifies truthfully on the stand about it, then we  
25 don't even have to get into impeachment. It's not being

1 offered for admission.

2 MR. MICHALEK: Your Honor, we could --

3 MR. SIMON: Which is what the disclosure purpose is.  
4 This is cross-examination of a retained expert.

5 MR. MICHALEK: Because my client -- my client's  
6 entitled to a fair and impartial trial. We can't be using  
7 evidence that hasn't been disclosed to us until the night  
8 before in order to impeach an expert. It -- and again, there  
9 was -- if, as Mr. Simon says, there are plenty of prior  
10 reports that would have impeached the credibility of Dr. Duke,  
11 then Mr. Simon should have and could have, under 26 and 16.1,  
12 listed the impeaching evidence and used those reports. He's  
13 attempting to do so now. Now, the opinion --

14 THE COURT: So are we going to have him on direct for  
15 a while? Let me think about this. This is -- this, I think,  
16 is factually different than our case. Because in our case,  
17 Commissioner Bulla wanted to keep him, I think, if I recall  
18 correctly, to keep him out entirely based upon his -- his --  
19 what she interpreted to be bias against plaintiff's lawyers.

20 And there's -- and Judge Williams' case, again, Judge  
21 Williams let him testify as a retained expert. However, he's  
22 -- however, they're just -- he can't do the Rule 35 --

23 MR. SIMON: But, Your Honor, I can ask any retained  
24 expert if they've ever been excluded as a witness.

25 THE COURT: I understand that.

1           MR. SIMON: And then if he says, No, I never have,  
2 then I get to show him, for whatever reason --

3           THE COURT: I don't disagree with you on any of that.

4           MR. SIMON: Okay.

5           THE COURT: Again, my biggest concern is the fact of  
6 it wasn't previously disclosed. And I get your answer that  
7 Judge Williams apparently, or the discovery commissioner  
8 signed it on the 23rd and Judge Williams signed off.

9           MR. SIMON: The very last page is Judge Williams'  
10 signature.

11          THE COURT: The 20th.

12          MR. SIMON: The 20th.

13          MR. MICHALEK: And I believe that opinion  
14 specifically lends itself to that case, Your Honor. I don't  
15 think that there's a -- a provision in there that it would  
16 apply to all cases. And certainly it shouldn't under some --

17          THE COURT: Well, hold on. Let's back up.

18          MR. MICHALEK: Sure.

19          THE COURT: Again, I'll be honest with you, my  
20 biggest concern is the fact that it's not disclosed, and  
21 that's what I'm going to mull over. Had it been disclosed, I  
22 think that either side, I think that it's relevant impeachment  
23 if they've ever been precluded as testifying in a district  
24 court. I mean, certainly, it's a very common question to ask  
25 during the course of the trial. But again, I don't know, the

1 failure to disclose is bothering me. So I guess I have at  
2 least through direct examination to think about it.

3 MR. MICHALEK: Thank you, Your Honor.

4 THE COURT: Then again, it -- it is factually  
5 different from this case --

6 MR. SIMON: And -- and the only other thing --

7 THE COURT: -- as far as how it came about.

8 MR. SIMON: -- I want to bring up about Dr. Duke is  
9 that your -- Your Honor's order has limited his testimony.

10 THE COURT: It has.

11 MR. SIMON: And so I want to ensure that Dr. Duke has  
12 been informed of that and will testify accordingly.

13 MR. BAIRD: We've told him he cannot refer to  
14 secondary gain, he cannot refer to insurance. I don't think  
15 there's any other areas.

16 MR. SIMON: He can't talk about personal injury cases  
17 and mills and lawyers and --

18 MR. BAIRD: He's not --

19 MR. SIMON: -- and what happens in these type of  
20 cases.

21 MR. BAIRD: Your Honor, he should be allowed to  
22 testify in the difference he observes in personal injury  
23 treatment versus regular treatment. Now, Dr. Adair --

24 THE COURT: Hang on.

25 MR. BAIRD: -- Dr. Adair has a disclaimer at the

1 bottom of her record saying, This is medical legal treatment,  
2 not regular physical care. So it is -- would be patently  
3 unfair to let the jury see all of this evidence and only hear  
4 the plaintiff's side.

5 THE COURT: Show me the portion of the -- it's been a  
6 while since I've looked at Dr. Duke's report.

7 MR. BAIRD: Sure. Sure.

8 MR. SIMON: Because, Your Honor, what he does is he  
9 -- he -- in his deposition has done this, and that's why we  
10 brought this motion well in advance. What he does is he says,  
11 Oh, in personal injury cases I see these type of medical  
12 providers. And she did a medical legal exam on him and tries  
13 to characterize that, which is, you know, it's -- it's an  
14 intellectual dishonesty, is what it is. Because he's trying  
15 to characterize all of her treatment as it's motivated because  
16 it's a personal injury case. And that's what he does in every  
17 case.

18 We brought our motion and you said, Is there any  
19 evidence of that in this case? Because he's going to -- and  
20 infer attorney-driven care. There's no evidence of it; and to  
21 try to characterize and -- and pretty much slander these  
22 people in the profession that they do to characterize it that  
23 they are exaggerating their treatment and care, because it's a  
24 personal injury case. You prevented that, because we asked  
25 him specifically, Is there evidence of that in this case? And



1 it's no.

2 THE COURT: Can I see the report, please.

3 MR. BAIRD: Yes. And Your Honor, I --

4 MR. MICHALEK: Can I approach?

5 THE COURT: Yeah, of course you can.

6 MR. BAIRD: Your Honor, the plaintiff herself has  
7 testified she was referred to at least one doctor by her  
8 attorney. A doctor himself has testified that he -- that the  
9 patients were referred to him by an attorney. There is direct  
10 evidence that attorneys are playing a significant role in  
11 directing the care of these plaintiffs.

12 So to act like -- he just told you there's no  
13 evidence. That evidence is already in front of the jury.

14 THE COURT: You have -- there's been absolutely no  
15 testimony. I did -- and Mr. Simon's objected to this, I did  
16 allow the question of who referred him. I think that's fair  
17 game, whether it's a doctor, the next-door neighbor, or a  
18 lawyer. I think that's fair game.

19 However, there's been absolutely no evidence in this  
20 case that the doctors rendered their care based upon  
21 consultations with the lawyers. Everything in this case has  
22 indicated that those doctors rendered their care in accordance  
23 with the medical background. And I think that it's improper  
24 to imply otherwise. I think the mere fact that a -- of  
25 individuals referred to a doctor doesn't necessarily mean that

1 doctor's doing anything improper. I think it goes to the  
2 weight, I mean, as far as who referred them is -- goes to the  
3 weight and the jury can infer -- the jury can weigh that  
4 however they like.

5 MR. BAIRD: And I don't --

6 THE COURT: My biggest problem --

7 MR. BAIRD: Oh.

8 THE COURT: Hold on -- of Dr. Duke is he comes in and  
9 he testifies the same way every time. And I agree with you in  
10 that it goes to the weight versus the admissibility. All  
11 right. Certainly Dr. Duke can come in here and testify.

12 The reason I have excluded him in this case from  
13 testifying a certain way and in other cases is he wants to  
14 come in here and give these -- really, I think there's  
15 psychological test of -- testimony as to secondary gain, why  
16 people psychologically do the things they do. And I -- I  
17 quite simply don't think he's qualified to do that.

18 I think he's qualified to testify regarding the  
19 examination he performed and the medical results that -- and  
20 the objective medical findings. Or the medical findings. But  
21 I don't think he's qualified to get into someone's brain as to  
22 why they do what they do. And -- and I think that's pretty  
23 consistent with what Commissioner Bulla has found and it  
24 appears to be consistent with what Judge Williams found, even  
25 though it's not, obviously, controlling for me.

1           MR. BAIRD: I want to be clear, Your Honor, I don't  
2 expect Dr. Duke to testify on any psychological issues. Like  
3 I said, we've told him you can't testify about secondary gain  
4 motivations. I do not see the impropriety in -- in fleshing  
5 out for the jury what they've already heard that the treatment  
6 was for medical legal purposes, and according to plaintiff's  
7 own records, it's different than regular treatment.

8           Now, he's not going to be saying, Well, this is the  
9 attorneys doing this or that. He's just going to say this  
10 seems to have a different course than you see in  
11 non-litigation cases.

12           THE COURT: What is he going to say exactly?

13           MR. BAIRD: That it looks different. That's --  
14 that's all I expect, was that there is a difference.

15           THE COURT: What looks different? I mean, Dr. Duke  
16 has testified in his cases where he's been the individual  
17 who's provided the care, and he's gone through basically the  
18 same course of treatment that's provided here. There's  
19 absolutely -- what is Dr. Duke going to say that -- I mean,  
20 really, what is he going to say?

21           MR. BAIRD: Perhaps we should voir dire him, Your  
22 Honor, and -- and -- because I don't want to inadvertently  
23 violate an order. This has not been reduced to a signed  
24 order. And so I feel like right now the order's being -- is  
25 evolving or changing, and I think we want to take some

1 steps --

2 THE COURT: It's not.

3 MR. BAIRD: Well, I --

4 THE COURT: I think that Dr. Duke can testify and  
5 should testify regarding -- he did an IME, what he did, what  
6 he found. I mean, he's -- as an expert. So he's going to be  
7 given obviously a lot more ability -- he has a lot more  
8 ability to comment upon the medical care of other doctors and  
9 whether he believes it was medically warranted or not.

10 But again, the psychological aspects of why people do  
11 what they do, I don't think he's qualified to do it.

12 MR. SIMON: And to inject opinions, Your Honor, that  
13 are not medically based, i.e., the attorneys are driving the  
14 care for the medical doctors to make decisions, and that  
15 they're directing the scope of care and the findings of care,  
16 that's not in a medical opinion.

17 MR. BAIRD: I don't believe that's in his reports,  
18 and I didn't expect any of that testimony to be elicited.

19 THE COURT: Well, sometimes he does testify that way.  
20 And I don't know that that's really proper. Because,  
21 basically, it's him sitting up there saying, without any  
22 evidence to the contrary, that the doctors are violating their  
23 -- their hippocratic oath in that they're not doing what they  
24 believe is medically warranted or necessary. Rather, they're  
25 doing medical treatment directed by the -- the attorneys. And

1 they're -- there's -- there's no evidence, particularly in  
2 this case, that that is what's happening.

3 MR. BAIRD: Well, I think he's allowed to testify  
4 what he thinks was and was not medically necessary. But I --  
5 he won't be --

6 THE COURT: Of course.

7 MR. BAIRD: Yeah.

8 THE COURT: Of course he is. I agree with you on  
9 that one.

10 MR. MICHALEK: So I won't -- I will make clear to him  
11 that he's not supposed to imply or -- or allow inferred that  
12 -- that the attorneys are directing what the doctors do or  
13 opine.

14 THE COURT: That's fine.

15 MR. MICHALEK: Okay.

16 THE COURT: Because there's no evidence of that. But  
17 he can -- obviously, he can disagree with the care that was  
18 provided, and provide his -- his opinions as to why that care  
19 was not warranted, or something else should have been done. I  
20 think that's absolutely fair.

21 MR. MICHALEK: Okay.

22 THE COURT: All right. Just -- I'm trying to -- do I  
23 need to read this real fast again?

24 MR. BAIRD: I think we resolved the issue.

25 THE COURT: I can't read it and talk at the same

1 time.

2 MR. BAIRD: Yeah, I know. I think we resolved the  
3 issue.

4 THE COURT: Okay.

5 MR. MICHALEK: If you -- if Your Honor wants to keep  
6 that, I mean --

7 THE COURT: Yeah.

8 MR. MICHALEK: Suitable for framing, Your Honor.

9 MR. BAIRD: Okay.

10 THE COURT: I have a few. But not just Dr. Duke's.

11 MR. MICHALEK: Oh, okay.

12 THE COURT: I have a few of everybody's.

13 MR. MICHALEK: If I could approach, Your Honor?

14 MR. BAIRD: So, just so we're clear, I -- I think  
15 we've resolved when he can and can't testify on.

16 THE COURT: Sure.

17 MR. BAIRD: And then you will advise us whether they  
18 are allowed to bring up these recent -- the recent -- the  
19 recent order by Judge Williams, but since they didn't disclose  
20 any other reports or testimony, they can't bring that up, is  
21 that -- is that a fair characterization? Or you haven't  
22 decided yet?

23 THE COURT: I'm having a hard time, I'll be honest,  
24 Mr. Simon, with the fact that it wasn't disclosed.

25 MR. SIMON: Yeah. But, Your Honor, you can't

1 disclose something that didn't exist. And this is a court  
2 order. You can take judicial notice of it and not everything  
3 has to be disclosed. They're talking about disclosure in  
4 discovery. This is for impeachment purposes.

5 THE COURT: I know.

6 MR. SIMON: I can --

7 THE COURT: I need to look at the rule. I've  
8 forgotten.

9 MR. BAIRD: We have disclosed rebuttal evidence and  
10 it has been excluded. And we have disclosed it formally. And  
11 he's had a week. I mean, this is -- that was signed on the  
12 20th. And this is not the 20th anymore. It is the 27th.

13 THE COURT: Okay. Well, I can mull it over --

14 MR. BAIRD: Okay.

15 THE COURT: -- through direct. I -- I do need to use  
16 the restroom. I kind of whizzed in here.

17 MR. BAIRD: Okay.

18 THE COURT: So excuse me. Is everyone good, water,  
19 everything else?

20 MR. SIMON: Yes, Your Honor.

21 MR. BAIRD: Yes, Your Honor.

22 MR. MICHALEK: I think we're all set.

23 THE COURT: Perfect. Thank you.

24 (Court recessed at 9:56 a.m., until 10:06 a.m.)

25 (Outside the presence of the jury.)

1 MR. BAIRD: That'll be marked as an exhibit? Because  
2 I don't think we -- have you actually seen that order?

3 THE COURT: I don't know if this is the only one; is  
4 this what you're talking about?

5 MR. SIMON: Yeah. It's the only copy I had.

6 MR. MICHALEK: Oh, then I guess we'll mark it as a  
7 court exhibit?

8 MR. SIMON: We can.

9 THE COURT: We'll have to make a copy of it.

10 MR. BAIRD: Yeah, if we could get a copy, because we  
11 haven't --

12 THE COURT: But we can do that at the break.

13 MR. BAIRD: Yeah, that's fine. We just haven't  
14 actually read one yet.

15 (Pause in proceedings.)

16 (Jury reconvened at 10:08 a.m.)

17 THE COURT: All right. Welcome back, ladies and  
18 gentlemen. I know that we're taking a lot of the witnesses  
19 out of order, but with the doctors and everything else, we  
20 kind of have to accommodate their schedules with their  
21 patients. So what we're going to do right now is at some  
22 later time, the trial will continue with Mr. Cervantes-Lopez's  
23 testimony, and right now the defense is going to call one of  
24 their experts, who is Dr. Duke.

25 So if you want to bring Dr. Duke in, please. So



1 again, this is defense expert.

2 DEREK DUKE, DEFENDANT'S WITNESS, SWORN

3 THE CLERK: Please be seated. Would you please state  
4 and spell your first and last name for the record.

5 THE WITNESS: It's Derek, D-E-R-E-K, Duke, D-U-K-E.

6 THE COURT: Whenever you're ready.

7 MR. BAIRD: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. BAIRD:


10 Q What is your profession?

11 A I'm a neurological surgeon.

12 Q Would you explain the specialty of neurosurgery?

13 A Sure. Basically, it's the surgical treatment of  
14 diseases of the brain and spine.

15 Q Okay. Could you give the jury a brief  
16 description of your educational background?

17 A Sure. I went to medical school at the  
18 University of Missouri, Kansas City School of Medicine. I  
19 went to medical school out of high school and did a BA in  
20 human biology concurrent with medical school. I then went to  
21 the Mayo Clinic in Rochester, Minnesota, where I did a  
22 internship in general surgery followed by a neurological   
23 surgery residency, which was five additional years at that  
24 facility.

25 Q So you got your undergraduate degree,

1 bachelor's, and your medical degree concurrently?

2 A Yes.

3 Q At the same time? Did that allow you, when  
4 compared to your peers in this profession, to finish medical  
5 school before them?

6 A Yes. I was 24 when I obtained my doctorate in  
7 medicine.

8 Q Was your medical degree awarded with any honors?

9 A Yes. It was awarded with distinction.

10 Q What does that mean?

11 A It means it's -- it's like a honors designation.  
12 So it's the designation you get if you perform in the top of  
13 your class.

14 Q And so you finished medical school, and then you  
15 mentioned was that a fellowship or what happened next?

16 A After that, in order to do neurosurgery, you  
17 have to do a year of internship in something like general  
18 surgery. And so it's a general surgical skills year. And the  
19 way the Mayo Clinic did it was that whenever you were selected  
20 for neurological surgery, you were also preselected for your  
21 general surgery internship. So I knew going into that that I  
22 was going to be a neurosurgeon. The Mayo Clinic, they take  
23 two people a year. So I was one of two people that -- that  
24 went through that program.

25 Q Two people out of how many?

1           A     Out of -- well, they just take two a year out of  
2 all the applicants that they receive.

3           Q     Okay. And for jurors who may not be familiar,  
4 what is the Mayo Clinic?

5           A     It's a very famous medical center that's in  
6 Rochester, Minnesota. They have a couple of other satellite  
7 facilities elsewhere, but it's known to be the top four  
8 neurology, neurosurgery, and cardiac care, as well.

9           Q     And so was this a residency you did at the Mayo  
10 Clinic?

11          A     Yes. I was there for a total of six years.

12          Q     Okay. And can you explain to the jury your  
13 education and training in understanding the anatomy of the  
14 spine and diagnosis of abnormalities and treatment related to  
15 the spine?

16          A     Sure. Basically, with neurosurgery you have to  
17 do neuroanatomy, neuroradiology, and neuropathology. These  
18 are all components of being a neurosurgeon. So during the  
19 time that you're in the residency, you dedicate time to  
20 studying in these fields, and then you're examined on it as  
21 part of the board certification process.

22          Q     Okay. And so what is the board certification  
23 process?

24          A     For neurosurgery you take a written exam during  
25 the training. And after you pass that, then you matriculate

1 from your program or you graduate from the program and then  
2 you accumulate a year's worth of practice data, you submit  
3 that to the board, they review it. If they have questions or  
4 concerns, then you answer those. And then you do a -- you sit  
5 for an oral exam, where you're examined orally by the board.

6 Q Okay. And so are you board-certified?

7 A Yes. I became board-certified in November of  
8 2002.

9 Q And -- and is that -- what's the name of the  
10 board that has certified you?

11 A The American Board of Neurological Surgery.

12 Q And so you said there was an exam. Do they give  
13 you the results of your -- do they just say you passed or you  
14 failed, or do they give you a ranking? How does that work?

15 A They give you a -- a result for the written  
16 portion.

17 Q And -- and how did you do on the written  
18 portion?

19 A I was told I got in the 99th percentile  
20 nationally.

21 Q Which means -- what does that mean?

22 A A score, basically.

23 Q Okay. What does -- I was -- I'm going through  
24 your CV, there are a bunch of initials I didn't understand.  
25 NBME?

1           A     That -- those -- the NBME and USMLE, those are  
2 part of the examinations for your doctorate in medicine. So I  
3 took those two exams as part of getting my doctorate.

4           Q     Okay. And how did you do in those?

5           A     They were above the 95th percentile or greater.

6           Q     Now, what's the samples, is that nationwide --

7           A     Yes.

8           Q     -- or international?

9           A     Nationwide.

10          Q     All right. Okay. After your residency, did you  
11 enter private practice?

12          A     Yes. I came to Henderson in June of 1999 and  
13 practiced in the Las Vegas area ever since.

14          Q     And what does your practice involve?

15          A     I do brain and spine surgery. The bulk of what  
16 I do is spine, so operations on the cervical spine, thoracic  
17 spine, lumbar spine. That's the vast majority of what I do.

18          Q     And are you a member of any professional  
19 organizations that involve your specialty as a neurosurgeon?

20          A     Yes. The American Association of Neurological  
21 Surgeons, the North American Spine Society, the Neurosurgical  
22 Society of America, to name some.

23          Q     Okay. And where do you hold licenses to  
24 practice medicine?

25          A     Nevada is where I practice. I have licenses in

1 California and Arizona. Many years ago we had clinics in  
2 those areas, but we don't go to those -- or I don't go to  
3 those anymore. But I've maintained those licenses.

4 Q Okay. Does any part of your practice involve  
5 diagnosing and treating patients with spinal problems?

6 A Yes. That's the bulk of what I do day in and  
7 day out.

8 Q How often do you see patients?

9 A I see patients three days a week.

10 Q How many surgeries do you think you've performed  
11 on a spine?

12 A Over 10,000.

13 Q Have any surgeons ever asked you to perform  
14 surgery on them?

15 A Yes. I've operated on a number of spine  
16 surgeons here in town over the years.

17 Q Do you have any on-call responsibilities as a  
18 neurosurgeon?

19 A Yes. Covering calls.

20 Q Have you ever been called upon to come  
21 emergently to a hospital to assess and treat a patient who  
22 sustained a traumatic injury to their spine?

23 A Many times.

24 Q That would include the lumbar spine?

25 A Correct.

1           Q     Have you ever performed surgery to address a  
2 ruptured disc in -- in the spine?

3           A     Yes. Many times.

4           Q     And that includes the lumbar spine?

5           A     Yes.

6           Q     Can you explain to the jury why you feel  
7 qualified to offer opinions about imaging studies of the  
8 spine, such as x-rays or MRIs?

9           A     Being an expert in interpreting neuroimaging is  
10 a part of being a neurosurgeon. Part of our residency is  
11 dedicated to neuroimaging, neuroradiology. Part of my  
12 residency was being with a neuroradiologist. Part of my board  
13 examination was dedicated to neuroradiology. And it's  
14 recognized that neurological surgeons are expert in  
15 interpreting neuroimaging.

16          Q     Okay. Can you explain to the jury why you feel  
17 qualified to offer opinions about the appropriate treatment  
18 for a patient who reports neck and back pain?

19          A     That is core to what I do on a daily basis, and  
20 what a neurological surgeon does. So it's part of our -- what  
21 -- what we do as a neurosurgeon.

22          Q     And just to be clear, does neurological surgery  
23 involve the lumbar spine?

24          A     Yes.

25          Q     How so?

1           A     It -- well, it's part of the, you know, spinal  
2 axis. And we deal with the entire spinal axis. So  
3 neurological surgeons do lumbar surgery, thoracic surgery,  
4 cervical spine surgery, all of it.

5           Q     In the course of your review of cases involving  
6 litigation, as well as treatments of your own patients outside  
7 of litigation, do you review billing from other medical  
8 providers?

9           A     Yes.

10          Q     And you see your own bills, for example, as  
11 well, when you perform surgery and things like that?

12          A     Yes.

13          Q     And at times you review the medical bills and  
14 surgery recommendations and estimates of other doctors?

15          A     Yes.

16          Q     Have you reviewed information gathered from  
17 databases regarding the amounts charged by other providers in  
18 this geographic area?

19          A     Yes.

20          Q     Can you explain --

21               MR. BAIRD: Well, at this point, Your Honor, I would  
22 offer Dr. Duke as an expert in diagnosis, treatment, medical  
23 billing, and radiographic imaging at this point.

24               THE COURT: Any objections?

25               MR. SIMON: No objection, Your Honor.



1 THE COURT: He'll be so qualified.

2 BY MR. BAIRD:

3 Q Let's begin, then, talking about this lawsuit.  
4 Let's talk about what evidence or information you were given  
5 over the course of this lawsuit that you could use to  
6 formulate your opinions.

7 A I was given medical records, imaging studies,  
8 and also performed a physical examination.

9 Q Have you been given and reviewed every  
10 deposition that's been taken in this case?

11 A That I'm aware of, yes.

12 Q Okay. Did that include depositions of doctors  
13 and of the plaintiffs?

14 A Yes.

15 Q And you've seen all the medical records?

16 A Yes.

17 Q Have you had any in-person interaction with the  
18 plaintiffs?

19 A Yes. They were seen as part of the medical  
20 examination.

21 Q Do you speak Spanish, Doctor?

22 A No.

23 Q Okay. So have you conducted an independent  
24 medical examination of a plaintiff prior?

25 A Yes.

1 Q On any other case?

2 A Oh, yes.

3 Q Okay. So how do you resolve the issue where you  
4 don't speak Spanish? Do you just have someone from down the  
5 hall who maybe knows, you know, how to get through an order at  
6 Roberto's to come and interpret for you?

7 A No, no. We've got -- well, one -- there's  
8 certified interpreters that are available and we also have  
9 staff that are bilingual that are medical assistants that do  
10 interpretation.

11 Q Okay. And in this case, did you use a certified  
12 interpreter?

13 A Yes.

14 Q Is it safe to say as you have gone through the  
15 evidence in this case, who had more evidence available to  
16 them; you or anyone of plaintiff's treating providers?

17 A I --

18 MR. SIMON: Objection. Calls for speculation.

19 THE COURT: He can testify.

20 THE WITNESS: Whenever you do a forensic exam --

21 THE COURT: Actually, hold on a second.

22 THE WITNESS: I'm sorry.

23 THE COURT: Why don't -- I mean, is he going to  
24 testify just to what was provided to him?

25 MR. BAIRD: Yeah. Yeah, and the depositions he's --

1           THE COURT: Because I don't know that -- I was just  
2 looking at the report. I don't know that he knows what other  
3 doctors may have had.

4           MR. BAIRD: I think it's discussed in all of their  
5 depositions. I ask them what records they had.

6           THE COURT: And he was provided with the depositions?

7           MR. BAIRD: Yes, he's already testified to that.

8           THE COURT: All right. Then yes, you can ask it.

9           MR. BAIRD: Okay. Thank you.

10          THE WITNESS: Whenever you do a forensic evaluation,  
11 you have the opportunity of reviewing the bulk of the records  
12 typically at one time. They sometimes give you supplemental  
13 records as they become available. And when you have that,  
14 you're oftentimes given information that others aren't  
15 provided, such as traffic accident reports, photographs,  
16 deposition transcripts, and those kinds of things.

17 BY MR. BAIRD:

18          Q     Is a car accident a diagnosis? Is that an  
19 injury unto itself?

20          A     No.

21          Q     Okay. Let's start by talking about Maria  
22 Abarca. Did you determine that any of her claimed injuries  
23 were related to the accident at issue in this case?

24          A     My opinion was to a reasonable degree of medical  
25 probability. Her accident, really to diagnose this, was

1 myofacial strain.

2 Q And what is a myofacial strain?

3 A That is soft tissue. So it means the muscles,  
4 tendons, ligaments, became symptomatic. And that can produce  
5 symptoms in people. And sometimes it can be a little bit  
6 delayed. Sometimes it starts right at the time of the  
7 incident. It just depends.

8 Q Is a myofacial strain or facial strain a disc  
9 injury?

10 A No.

11 Q Is that a structural injury to the spine?

12 A No, it's not.

13 Q Would you -- would you characterize that as a  
14 traumatic spine injury?

15 A No.

16 Q On what did you base that opinion?

17 A The -- the history that I read in the medical  
18 records, the history that she provided me, the objective  
19 review of records, including the MRI imaging, and her clinical  
20 course that occurred throughout the review of records.

21 Q And is that opinion to a reasonable degree of  
22 medical probability?

23 A Yes.

24 Q When you examined Maria, you arrived at some non  
25 accident diagnoses, or non accident-related diagnoses. What

1 were they?

2 A Number one was spondylosis, which is just simply  
3 degenerative change. Pretty much everybody over 20 has some  
4 degree of degenerative change. The amount that she had in her  
5 lumbar spine was compatible with what you'd expect for a  
6 person of her age on average.

7 Q Among the records you were given, did they  
8 include the chiropractor records from Dr. Adair?

9 A Yes.

10 Q Neck and Back Clinic?

11 A Correct.

12 Q Did you -- and you reviewed those?

13 A Yes.

14 Q Did Dr. Adair diagnose any traumatic spine  
15 injury to Maria Cervantes as far as you noted?

16 A No. Not traumatic spine injury, no.

17 Q In your review of the records, did you find  
18 symptoms or findings that would support a diagnosis of a  
19 traumatic spine injury to Maria Abarca?

20 A No.

21 Q If Dr. Adair's records on February 14th, 2012,  
22 indicate that Maria's low back was nontender, does that  
23 signification in any way to you?

24 A Correct. It -- she indicated that it was  
25 nontender, so she was pain-free at that time. There were

1 other records around this time that indicated that she was  
2 pain-free, as well. She was also seen by a PA Rodriguez that  
3 indicated that -- that her back pain had resolved, as well, on  
4 the same day.

5 Q Was there a medical basis for Dr. Adair, the  
6 chiropractor, to order an MRI when plaintiff's symptoms were  
7 resolved in the weeks leading up to the MRI?

8 A No, the -- the patient's -- or Ms. Abarca's  
9 symptoms of back pain had resolved. She'd had multiple visits  
10 where she did not have back pain. She then had an episode  
11 where she was bending and lifting at home, lifting clothes,  
12 and reported some back pain after that incident. But it was  
13 only on one visit. And there were no features to the back  
14 pain that would suggest that -- that really a structural  
15 injury occurred as a result of her bending and lifting  
16 clothes. And so it's not medically necessary to order an MRI  
17 in that situation.

18 And, in fact, you know, within 24 hours of having the  
19 MRI, she was seen by the providers that you just mentioned and  
20 it was documented that she had no back pain within 24 hours of  
21 the MRI. And the MRI findings did not demonstrate anything  
22 that you would expect to be symptomatic, either. So it was  
23 not surprising.

24 Q Did the MRI show conditions in Maria Abarca's  
25 spine that were caused by trauma?

1           A     No.

2           Q     Did the MRI show any traumatic spine injuries  
3 related to this car accident?

4           A     No, not at all.

5           Q     Were there any -- well, there it is. Okay. In  
6 your review of the records of the primary care doctor, Dr.  
7 Koka's office, and this PA Rodriguez that you mentioned -- PA  
8 being physician's assistant, is that --

9           A     Correct. Yes.

10          Q     -- have I got that right? Did you note any  
11 diagnoses of traumatic spinal injury of -- to Ms. Abarca in  
12 those records?

13          A     No, not traumatic spinal injury.

14          Q     And did you observe any findings made that would  
15 indicate that Maria Abarca had a traumatic spine injury?

16          A     There was nothing that would lead me to that  
17 conclusion. Obviously, she -- she had symptoms, but they were  
18 compatible with myofascial strain symptoms, as opposed to  
19 structural spine injury symptoms.

20          Q     Now, Dr. Koka was here the other day, and he'll  
21 be coming back. And I believe he testified that his diagnoses  
22 are contained on his super bills. So let's look at one of  
23 those.

24                 So if we were to look at Exhibit 16, I think it's our  
25 17.

1 MR. BAIRD: Was that Primary Care Consultants?

2 THE COURT: Is the book still up there?

3 MR. BAIRD: Is it -- I think it's behind the doctor.

4 THE COURT: Pull up the big one, Doctor.

5 MR. BAIRD: Right.

6 BY MR. BAIRD:

7 Q So if we go to page 4 --

8 A Of subheading?

9 Q -- Tab 16, I believe. And then page -- let's go  
10 to page 4.

11 A Okay. I'm getting something different.

12 MR. BAIRD: May I approach, Your Honor?

13 THE COURT: Of course, you may.

14 MR. BAIRD: I might -- this will -- okay. Okay. So  
15 it's 17. So page 4 there. That was my bad.

16 BY MR. BAIRD:

17 Q Okay. So page 4, I -- I believe this is the  
18 super bill for Dr. Koka?

19 A Correct.

20 Q Are there any lumbar diagnoses checked?

21 A No. And -- and this was November 22nd, 2011,  
22 eight days after the accident.

23 Q Okay. Now, if we look in Dr. Koka's records, I  
24 think we can leave it alone on page 5. Are -- are waist --  
25 symptoms of pain in the waist, is that the same thing as a



1 lumbar or traumatic spine injury?

2 A No, they're not the same thing.

3 Q Ultimately, well, did Ms. Abarca's care end with  
4 Dr. Koka?

5 A No.

6 Q Was the referral -- or -- well, yeah, the  
7 referral to Dr. Coppel medically necessary?

8 A No.

9 Q Do -- was it medically related to the accident?

10 A No.

11 Q Did you find in your review of the records and  
12 all the evidence in this case that there was a medical basis  
13 for interventional pain management for Maria Abarca --

14 A No.

15 Q -- by Dr. Coppel?

16 A No.

17 Q Is there any medical reason to inject a patient  
18 who's indicated that her pain can be ignored?

19 A No. Not -- not as it existed in this case.

20 Q Did you diagnose lumbar disc displacement in  
21 Maria Abarca like Dr. Coppel did?

22 A No.

23 Q Why not?

24 A She had anatomy that was normal for her age.  
25 She had an MRI that showed the degenerative changes that you

1 expect to see. And so you don't -- I don't characterize that  
2 as being pathology or abnormal. And I certainly couldn't, you  
3 know, make the opinion that -- that age-appropriate  
4 degeneration was causing any of her symptoms.

5 Q Did you diagnose lumbar facet syndrome like Dr.  
6 Coppel did?

7 A No.

8 Q Why not?

9 A Well, number one, she didn't have the proper  
10 workup to establish that diagnosis. The lumbar facet syndrome  
11 is diagnosed with two sets of facet injections. She only  
12 received one. And the criteria is 80 percent or greater  
13 relief following the injections. She reported 50 percent  
14 relief after one injection.

15 There -- there was another problem. Dr. Coppel  
16 failed to document the pain relief at the time of the  
17 procedure, which is when you're supposed to do it. He  
18 reconstructed that three weeks later and that's not a valid  
19 way of making the diagnosis of facet syndrome pain. So the  
20 injection wasn't documented, the result wasn't documented, the  
21 result wasn't good enough to establish the diagnosis. And  
22 number three, there weren't enough injections that confirmed  
23 it.

24 So there's no basis to make the opinion that she had  
25 a lumbar facet syndrome, and there's no basis to make the

1 opinion that she had a need for further care, like a  
2 radiofrequency ablation.

3 Q Okay. Now, I don't recall, Doctor, whether it  
4 was Dr. Kaplan or Dr. Lanzkowsky, or maybe both of them.  
5 There was reference yesterday to medicine being an art and a  
6 science. Have you ever heard that before?

7 A Yes.

8 Q Do you agree with that statement?

9 A Yes.

10 Q Okay. Should the science part of medicine be  
11 ignored?

12 A No.

13 Q And would the guidelines that go into properly  
14 making diagnosis, is that so that diagnoses can be reliable  
15 and scientific?

16 A It -- it is. And it's just, like, there's  
17 criteria for how pilots fly planes. You know, they're  
18 professionals and -- and they have complicated duties and  
19 standards are established for how they perform. And standards  
20 are established for how we perform. And it's important that  
21 you -- that you follow them so that you come to the correct  
22 conclusion and you also make proper recommendations.

23 Q Did you review records from Centennial Spine  
24 from Dr. Lanzkowsky's office related to Maria Abarca?

25 A Yes.

1           Q     Did the doctor who treated Maria diagnose any  
2 degenerative conditions?

3           A     If you could refer me to that paper, I can look  
4 exactly at the terms, so -- just so we get it right.

5           Q     So that would be in the neighborhood of 18 or  
6 19, I'm not sure.

7           A     Okay.

8           Q     So Exhibit -- was it 18 or 19?

9           A     19.

10          Q     Okay. So 19, page 4.

11          A     Yes. He made assessment of lumbar facet  
12 syndrome and lumbar disc degeneration. And this was in  
13 February of 2014. So years, you know, many years after the  
14 motor vehicle incident.

15          Q     Okay. So he also agrees with you at least in  
16 the sense that that didn't look like a traumatic finding; fair  
17 statement? That's not a diagnosis of a traumatic spine  
18 injury?

19          A     Correct.

20          Q     All right. Okay. Let's -- in terms of the  
21 lumbar disc degeneration diagnosis, correct?

22          A     Right.

23          Q     And the -- the facet diagnosis, that's the same  
24 diagnosis that we just discussed with Dr. Coppel?

25          A     Correct. In that there wasn't sufficient

1 diagnostic workup to make that conclusion.

2 Q All right. Well, then, let's move to Christian.

3 Have you reviewed any records related to Christian's  
4 lumbar spine?

5 A Yes. Similar to Ms. Abarca, I reviewed the  
6 medical records, I reviewed the deposition transcripts, the  
7 imaging studies, and -- so basically the same material.

8 Q And based on your review of the records and your  
9 examination of Christian, what is the state of his spine, at  
10 least as of the time you -- you can tell by the records?

11 A The -- you know, the -- the diagnosis, I have to  
12 make it to a reasonable degree of medical probability, which  
13 means that more probably than not, you know, this diagnosis is  
14 related to the accident. He was seen the day of the incident  
15 and had complaints isolated to nausea and some vomiting. And  
16 I obviously thought that was reasonable to attribute to the  
17 motor vehicle accident.

18 On the day of the incident he was evaluated and  
19 specifically denied pain to other areas, he denied neck pain,  
20 back pain, chest pain, etcetera. And so the diagnosis that I  
21 can make to a reasonable degree of medical probability was the  
22 nausea and vomiting.

23 Q Okay. Obviously, a significant issue in this  
24 case is whether this accident caused some sort of damage to  
25 Christian Cervantes' lumbar spine, the L5-S1 level. In your

1 experience, what happens when you traumatically injure and  
2 damage the L5-S1 level?

3 A Well, several things. Number one, when people  
4 have traumatic spine injuries, typically it's symptomatic  
5 nearly immediately. It takes quite a bit of force to  
6 traumatically injure the spine. And people are typically  
7 treated immediately and get a diagnosis within 24 or 48 hours,  
8 because they're in the hospital. That's how the typical  
9 traumatic spine injury gets diagnosed and treated.

10 In his case, there -- there wasn't that symptom  
11 initially. And then when he ultimately had imaging performed,  
12 it, just like Ms. Abarca, demonstrated only findings  
13 compatible with degenerative disc disease or age-related  
14 degeneration and not evidence of trauma.

15 Q And, of course, the employment or daily  
16 activities of a person can also affect how much degeneration  
17 develops in the spine; is that a fair statement?

18 A Sure.

19 Q And does Mr. Cervantes have a desk job?

20 A No. Heavy -- heavy labor.

21 Q Were your -- did you come up with different  
22 findings than Dr. Lanzkowsky did with respect to Christian?

23 A The -- the neurologic exam of Lanzkowsky was  
24 normal for Mr. Cervantes. And -- and my examination was  
25 normal, as well.

1           Q     Okay. Why is that significant, to say  
2 neurological exam, what does that mean?

3           A     That means that when you assess for neurologic  
4 problems, like weakness, numbness, reflex changes, problems  
5 with walking, none of that existed.

6           Q     And does that refer to nerve involve -- the  
7 possibility -- trying to determine nerve involvement with a  
8 possible injury?

9           A     Correct.

10          Q     Is it ever medically necessary to order MRIs  
11 that nobody reads or relies upon?

12          A     No.

13          Q     Is there a difference in your mind be someone --  
14 between someone who is allowed to have a lumbar fusion surgery  
15 and someone who needs a lumbar fusion surgery?

16          A     Well, yes. I mean, having lumbar fusion surgery  
17 is very serious, particularly when you're quite young. He is  
18 less than 30 years old. You need to have a really, really  
19 good reason to do it. I think most everyone's aware of the  
20 problems associated with lumbar fusion surgery, and the fact  
21 that it has implications for the person. So you really need  
22 to have a very good, solid basis for recommending a lumbar  
23 fusion surgery in somebody that's young, he's active, he's  
24 working in a mine, he's very, very physically active. And --  
25 and so you have to have a good reason and good expectation

1 that you can improve them -- improve that level of ability or  
2 function with the surgery. And in this case, clearly lumbar  
3 fusion surgery is not indicated.

4 Q Okay. Why not?

5 A The MRI was normal for his age. The disc  
6 degeneration that he had at the lumbar spine -- and if we want  
7 to just show the lumbar spine, we could show that.

8 Q Okay. Yeah, let's do that.

9 MR. BAIRD: Could we get the MRI of Christian.

10 Q Okay, Doctor, so what are we looking at?

11 A So this -- this is a slice right through the  
12 middle. This is the lumbar spine. You can see that the disc  
13 are in between the vertebral bodies. The -- the disc at the  
14 bottom of the spine, the L4-5 disc, which is right here, and  
15 the L5-S1 disc, which is right there, those are the ones that  
16 usually degenerate the earliest.

17 This amount of disc degeneration is quite typical for  
18 someone that's in their mid- to later-20s. Sometimes people  
19 will have that in their teens, even. I've seen it in people  
20 that are 15, 16 years old on occasion. It's not common, but  
21 certainly I've seen it.

22 The imaging appearance is suggestive of degeneration,  
23 because there's no acute traumatic findings. With trauma, you  
24 can see evidence of bone fracture, hemorrhage, swelling,  
25 rupture through the disc. And none of that exists in this



1 case.

2 The darkness that you see in the disc is reflective  
3 of how much moisture content is within the disc. And you lose  
4 moisture content as you age and it's a very slow process that  
5 occurs over time. And the loss of moisture causing this  
6 darker color isn't the result of a motor vehicle accident or  
7 any single traumatic event. It's -- it's the result of  
8 repetitive stress that occurs over years.

9 And -- and so -- and just to finish answering the  
10 question as to why he's not a candidate for surgery, number  
11 one, the MRI doesn't show injury that's amenable to lumbar  
12 fusion, number one. Number two, the only basis with which I  
13 -- that I can see that he was recommended to have from review  
14 of these records was the discogram. And the discogram is a  
15 procedure where, you know, it's highly controversial. It was  
16 -- it was developed decades and decades ago before we had MRI  
17 imaging. Its controversy is continued despite the fact that  
18 it was something that was developed in the '60s and '70s.

19 But it involves taking a needle and sticking it into  
20 somebody's disc, and then pressurizing the disc. And then if  
21 they say that hurts, then you say that that's positive. But  
22 you might say, well, how could that not hurt? And you're  
23 supposed to do it with very little sedation.

24 And -- and the problem is that a lot of people that  
25 don't have back pain that have the procedure done report

1 symptoms that are positive for disc --

2 MR. SIMON: Your Honor, objection.

3 THE WITNESS: -- discography.

4 MR. SIMON: What other people report has nothing to  
5 do with this case.

6 THE WITNESS: Some studies --

7 THE COURT: Overruled. Just lay a foundation,  
8 please, for this testimony.

9 BY MR. BAIRD:

10 Q Okay. Now, I guess, then, before you continue  
11 talking about this, when you say other people, are -- are you  
12 referring to scientific publications?

13 A Yes.

14 Q Okay. So scientific publications that you have  
15 read as a doctor in your field, have they described any issues  
16 with -- with discograms?

17 A Many issues with discograms. And many issues  
18 with --

19 THE COURT: Question? I'm sorry, Doctor, I didn't  
20 mean to interrupt you. Sir, do you have a question?

21 UNIDENTIFIED JUROR: Yes.

22 THE COURT: Can you write it down please and put your  
23 badge number? Thank you.

24 MR. BAIRD: May -- may we approach briefly, Your  
25 Honor?

1 THE COURT: You may.

2 (Bench conference.)

3 MR. BAIRD: My understanding is that when we do juror  
4 questions [indiscernible] typically come out, typically  
5 they're heard at the end outside the presence so the parties  
6 can object if necessary. Is that what we'll be doing?

7 THE COURT: Yeah. Last time I did it because it was  
8 such a no-brainer question, it was admissible.

9 MR. BAIRD: Okay.

10 MR. SIMON: I -- I think what the proper procedure  
11 is, she calls us to the bench, reads it to us, and if we don't  
12 have an objection, then that way --

13 THE COURT: And again, a lot of the reason I did it  
14 last time is that question was --

15 MR. SIMON: Benign.

16 THE COURT: -- was bilateral.

17 MR. SIMON: Correct.

18 MR. BAIRD: Okay.

19 THE COURT: Okay. Yeah. That's how I do it, too.

20 MR. SIMON: Thanks.

21 MR. BAIRD: Okay. Great.

22 (End of bench conference.)

23 BY MR. BAIRD:

24 Q Does Dr. Coppel, and I think Dr. Lanzkowsky, as  
25 well, were talking about a Grade 5 tear; does that have any

1 significance with respect to the appropriateness of the  
2 discogram in this case?

3 A No. The -- the Grade 5 tear just simply refers  
4 to the radiographic appearance upon dye injection. So it  
5 doesn't mean that there was traumatic injury. It doesn't  
6 diagnose traumatic injury. It's simply a method of describing  
7 the radiographic appearance of dye spread.

8 Q Okay. Have you -- are there any scientific  
9 studies or reports with respect to the reliability of  
10 discograms given to people who have Grade 5 tears?

11 A Yes. You know, basically, if you take a -- a  
12 person that has an annular fissure, which many people have,  
13 and they --

14 Q I'd like to interrupt you, Doctor. I'm sorry.  
15 You just said fissure. And I know the doctors have been all  
16 talking about a tear. Is there a difference between a tear  
17 and a fissure?

18 A No. Annular tear kind of suggests that  
19 something's traumatically torn when it really isn't. An  
20 annular fissure or annular tear, which are the same things,  
21 it's something that occurs over time due to wear and tear and  
22 repetitive use. You can certainly have a disc injury that's  
23 traumatic, but it -- it looks different than a degenerative  
24 injury.

25 Q Okay. Sorry to interrupt. So you were talking

1 about Grade 5 tears and --

2 A Right.

3 Q -- discograms?

4 A Or annular fissures. So, basically, if you take  
5 someone that does not have back pain and you do a discogram on  
6 them, and they have this type of appearance that Mr. Cervantes  
7 has at L5-S1, the -- the false positive rate is nearly 50  
8 percent, meaning 50 percent of the time, even if they don't  
9 have back pain, it comes back positive. And there's some  
10 studies that suggest that -- that in this particular case,  
11 that -- of Mr. Cervantes, the false positive rate is up to 80  
12 percent.

13 And so when you have something that's wrong 50 to 80  
14 percent of the time, you really can't use it to justify  
15 surgery, because it's almost better to do the opposite of what  
16 the test says. And -- and that's why it's so limited and it's  
17 -- it's not an appropriate case to use that diagnostic tool to  
18 justify surgery, particularly when he has age-appropriate  
19 degeneration and he's quite young and very physically capable.

20 Q Doctor, have you ever testified in a personal  
21 injury case on behalf of a plaintiff?

22 A Yes.

23 Q And have you ever testified in a courtroom in a  
24 -- during a trial on behalf of a plaintiff who was claiming  
25 injury?

1           A     Yes.

2           Q     Do you change your beliefs about how to  
3 interpret medical evidence depending on whether you were  
4 retained by a defendant or a plaintiff?

5           A     No.

6           Q     Have you been retained in other cases where a  
7 future surgery was recommended?

8           A     Yes. A multitude of cases.

9           Q     And case where -- that you've seen where a  
10 patient or a plaintiff in -- in those instances is likely to  
11 get surgery, are you typically presented with surgical  
12 estimates, life care plans, well in advance of trial?

13          A     Yes.

14          Q     Was any of that done in your case, to your  
15 knowledge in this one?

16          A     No.

17          Q     Did you notice any gaps in the treatment of  
18 Maria and Christian?

19          A     Yes, I did.

20          Q     Were they gaps of significant amounts of time?

21          A     They were. They were quite long.

22          Q     Is that significant in any way to your opinions?

23          A     It -- it is significant. The -- the symptoms of  
24 Ms. Abarca, even when she was being seen, were intermittent.  
25 And -- and you saw obviously a large gap in care -- Mr.

1 Cervantes -- a large gap in care. And so those are  
2 significant.

3 Q I guess this one is kind of a yes-or-no  
4 question. But, Doctor, have you seen, among the materials  
5 you've been given, evidence that plaintiff Christian Cervantes  
6 has actually demonstrated an ability to perform strenuous  
7 heavy activities in his spare time?

8 A Yes.

9 Q Could that type of activity lead to spinal  
10 injury?

11 A It can, yes.

12 Q Can people with traumatic lumbar injuries  
13 typically engage in those activities in their spare time; not  
14 at work, but in their spare time?

15 A Not -- not typically if they have a significant  
16 structural injury to their spine, no.

17 Q If you knew a patient was claiming -- one of  
18 your patients was claiming a significant L5-S1 injury, but was  
19 doing this on a daily basis, would you consider that patient  
20 likely to need surgery?

21 A No. I -- I would tell them that if they're  
22 already doing that level of function, doing spine surgery is  
23 not going to make that better. In fact, it probably would  
24 reduce it.

25 Q Have you reviewed bills and materials evaluating

1 medical bills in this case?

2 A Yes.

3 Q Is that something you've done in other trials?

4 A Yes.

5 Q And in your review of these materials, did it  
6 provide you with a foundation to offer an opinion regarding  
7 the manner in which this case, the medical treatment was  
8 billed?

9 A Yes.

10 Q And do you know off the top of your head -- and  
11 if you don't, that's fine, but off the top of your head what  
12 the reasonable billing would be for Maria Abarca?

13 A No, not off the top of my head.

14 Q Okay. May I refresh your recollection with --  
15 with the report that you reviewed?

16 A Sure.

17 MR. BAIRD: May I approach, Your Honor?

18 THE COURT: Yes.

19 MR. SIMON: Your Honor, can I see the report?

20 MR. BAIRD: Oh, yes.

21 MR. SIMON: All right. Can we approach, Your Honor?

22 THE COURT: Sure.

23 (Bench conference.)

24 MR. SIMON: He's trying to use Tami Rockholt's  
25 opinions and reportings to spoon feed it to Dr. Duke to now



1 give new opinions. In his deposition, in his report he didn't  
2 have any opinions about medical billing. And the only medical  
3 billing evidence they had in the case was Tami Rockholt. Now  
4 that it's gone, now they're trying to spoon feed him at the  
5 first time at trial. He's never had these opinions.

6 MR. BAIRD: Dr. Duke actually reviewed Tami  
7 Rockholt's report. And [indiscernible] yesterday, plaintiff's  
8 counsel said [indiscernible] Tami Rockholt, because  
9 [indiscernible] same information as Dr. Duke. It certainly  
10 isn't --

11 MR. SIMON: But you can't use --

12 MR. BAIRD: -- [indiscernible]. He -- he's -- he can  
13 review -- he -- hearsay or reports of other experts in forming  
14 his opinion, which [indiscernible]. He's going to give that  
15 opinion. He's not going to refer to Tami Rockholt. But if  
16 it's his same opinion, counsel wants to cross-examine him on  
17 the opinion, so be it. But he's looked at the report, so he  
18 can rely upon it in quoting his opinions.

19 MR. SIMON: These are brand new opinions, though,  
20 Judge. So they were --

21 THE COURT: They're what?

22 MR. SIMON: These are brand new opinions, they were  
23 never given in his report or his deposition. And only because  
24 Ms. Rockholt's gone, they want to spoon feed him her  
25 Powerpoint and her findings. And he's never given that

1 opinion before. So this is the first time. They've never  
2 disclosed it to me.

3 MR. BAIRD: Your Honor, this is kind of funny coming  
4 from plaintiff's counsel. This is Dr. Koka --

5 THE COURT: I'm going to allow it, because it's clear  
6 within his report that's part of what he reported --

7 MR. BAIRD: Thank you.

8 THE COURT: -- reviewed.

9 (End of bench conference.)

10 MR. BAIRD: I'm sorry. May we approach really quick,  
11 Your Honor, briefly?

12 THE COURT: On a different matter?

13 MR. BAIRD: Related to this matter.

14 THE COURT: Sure.

15 MR. BAIRD: I don't want to actually do something --

16 (Bench conference.)

17 MR. BAIRD: I have -- I forgot to tell Dr. Duke not  
18 to say Tami Rockholt's name. So if he accidentally says that,  
19 is that a problem? If it is, I would like to --

20 THE COURT: Can you just tell him right now?

21 MR. SIMON: And he --

22 THE COURT: No, you know, it's not a problem if  
23 that --

24 MR. BAIRD: Okay.

25 THE COURT: -- what's he going to say, that I

1 reviewed -- did you review? Yeah.

2 MR. SIMON: But he can't regurgitate her opinion.  
3 They can't sneak it in that way. He has to have --

4 THE COURT: That's true.

5 MR. SIMON: -- his own opinions. He can -- if he  
6 says I relied on this -- and here's the problem, Judge.  
7 Here's his deposition.

8 MR. BAIRD: They can impeach him on it, I'm aware of  
9 that. And I still...

10 THE COURT: Well, he can -- can rely upon  
11 [indiscernible] of his opinions. Can you, like, re-ask that  
12 he can't Rockholt --

13 MR. BAIRD: [Indiscernible.] That's exactly the same  
14 thing he's testified in this matter before.

15 MR. SIMON: No, he hasn't. There's his testimony.  
16 Doesn't --

17 MR. BAIRD: No, not in this case. I'm saying he's  
18 done it in other cases [indiscernible] like, even with respect  
19 to Tami saying this is [indiscernible]. It's very similar.  
20 He's reviewed [indiscernible].

21 THE COURT: So what are you going to ask him?

22 MR. BAIRD: Well, I'm not going to ask him -- but  
23 when we're discussing this, I got the impression that he  
24 should not say Tami Rockholt. And so I don't want to  
25 accidentally do something in violation of an order. That's

1 all I wanted to [indiscernible].

2 THE COURT: So, basically, in the course of your  
3 review of the records, did you review the billing records?

4 Yes. Did you come to any opinions regarding those  
5 records? Yes. What are those opinions?

6 MR. BAIRD: Yeah. And that's -- that's all. That's  
7 all, Judge. I don't --

8 THE COURT: Yeah. He can ask for that.

9 MR. BAIRD: Thank you, Your Honor.

10 THE COURT: And that's impeachment if you want to use  
11 it.

12 (End of bench conference.)

13 MR. BAIRD: Okay. May I approach, Your Honor?

14 THE COURT: You may.

15 MR. BAIRD: Okay.

16 BY MR. BAIRD:

17 Q Okay. In these two documents, is the  
18 information that is contained on those information you have  
19 viewed and reviewed before?

20 A Yes.

21 Q Does that refresh your recollection as to what  
22 you believe the reasonable medical bills for Maria Abarca are?

23 A Yes.

24 Q And what is that number?

25 A And -- and again, just so you're clear, I'm not

1 saying that -- that this amount is related to the accident.  
2 It's just if one were to bill properly the procedures that  
3 were performed, the amount would be 24,107. But I'm not  
4 relating that to the car accident.

5 Q Very good. And same question with respect to  
6 Christian Cervantes?

7 A And with the same, you know, caveat, it would be  
8 36,214.

9 Q What was the number again?

10 A \$36,214.38. And that was if one properly billed  
11 for all the services that were provided.

12 Q Okay. Now, Doctor --

13 MR. BAIRD: Your Honor, I'm going to approach this  
14 easel here, is that okay?

15 THE COURT: Sure.

16 MR. BAIRD: Okay.

17 BY MR. BAIRD:

18 Q Yesterday, Dr. Coppel told the jury --

19 MR. BAIRD: Can you see this? You can tell I'm not  
20 an artist.

21 Q Okay. Dr. Coppel wrote out all these numbers.  
22 And Wednesday night he decided that this is what a future  
23 surgery for L5-S1 fusion would cost for Christian Cervantes.

24 An L5-S1 surgery is a procedure that you perform,  
25 correct?

1           A     Yes, it is.

2           Q     Okay. Based on your -- and you've seen the  
3 billing both from yourself and other surgeons in this  
4 geographical area for that exact procedure a number of times,  
5 correct?

6           A     Correct.

7           Q     Okay. And in your opinion, did those look like  
8 reasonable prices or costs for an L5-S1 fusion surgery and its  
9 attendant services?

10          A     It looks very high.

11          Q     Okay. Doctor, just because a doctor wants to be  
12 paid much more than the average in an area for his medical  
13 services, does that make it reasonable?

14          A     No.

15          MR. BAIRD: I have no further questions, Your Honor.

16          THE COURT: Thank you.

17          MR. SIMON: Thank you, Your Honor.

18                   CROSS-EXAMINATION

19 BY MR. SIMON:

20          Q     Morning, Dr. Duke.

21          A     Good morning.

22          Q     You're no stranger to the courthouse, fair?

23          A     Well, I don't work here, but I come here from  
24 time to time, about five to 10 times a year.

25          Q     All right. And then five times -- five to 10

1 times a year, usually for defense firms, correct?

2 A The vast majority, correct.

3 Q Let's just kind of work our way backwards with a  
4 few things that are fresh in our minds.

5 MR. SIMON: Can we pull up the... Oh, no, I guess we  
6 need to open and publish his -- his depo.

7 THE COURT: Are you going to use it?

8 MR. SIMON: Yes.

9 THE COURT: Okay.

10 BY MR. SIMON:

11 Q All right. Doctor, do you remember giving a  
12 deposition in this case?

13 A I believe so, yes.

14 Q All right. I'll represent to you it was August  
15 13th of 2014. I'll hand you a copy.

16 A Thank you.

17 Q All right. You're familiar with depositions?

18 A Yes.

19 Q And you give a lot of them per year, correct?

20 A Over the years, yes.

21 Q All right. And people like myself, where you  
22 performed work on behalf of a defendant, will come in and ask  
23 you questions about your opinions?

24 A Correct.

25 Q All right. And at that time, you know you're

1 supposed to give truthful opinions?

2 A Correct.

3 Q Because you take an oath and that's under oath?

4 A Correct.

5 Q Okay. Just like you did here today?

6 A Correct.

7 Q And when you give those opinions, those are  
8 supposed to be your full opinions?

9 A Correct.

10 Q Right? Doctor, I'd like to turn you to page 8.  
11 And I'm going to have you -- I'm going to put up for the jury  
12 lines 9 through 18, and I'll just read it. And we'll read  
13 along, you tell me if that's accurate, what I said, all right?

14 A Sure.

15 Q It says, "Did you review medical bills, as  
16 well?"

17 "I may have seen them. I didn't comment on them  
18 other than I did review the medical billing summaries done by  
19 Ms. Rockholt, but I didn't comment specifically on the bills."

20 "And that's what I just want to clarify. You're not  
21 intending to express any opinion specifically regarding the  
22 medical bills at trial, are you?"

23 "Correct." Did I state that accurately?

24 A Yes, correct.

25 Q All right. So at the time of your deposition



1 you didn't have any opinions about medical bills?

2 A Well, I reviewed the medical bills, but I didn't  
3 at that time have an intent to comment on them specifically.

4 Q Okay. So -- all right. So this is how it  
5 works. Cross-examination, I get to ask you a question, and  
6 then if it calls for a yes or no, I would ask for the same  
7 courtesy that you gave your counsel when responding, and just  
8 give me a yes or no. Fair?

9 A Sure.

10 Q Can we -- can we have that agreement up front?

11 A Yes. Just --

12 Q All right.

13 A -- trying to ask ones that could be answered  
14 with yes or no.

15 Q Okay. Is that -- okay. Just so -- I want to be  
16 fair to you, Doctor. Was that a question that you couldn't  
17 answer yes or no?

18 A Well, I -- I -- I didn't feel like a yes or no  
19 adequately answered the question.

20 Q Okay. Well, let -- let me ask it again and then  
21 you tell me if you can't answer it with a yes or no. Okay?

22 Did you have any opinions about medical expenses at  
23 the time of your deposition, yes or no?

24 A I -- I did. My -- my opinion was, though, I  
25 didn't plan on commenting on them -- on them at trial at that

1 time.

2 Q Okay. So your opinion was you didn't have an  
3 opinion, fair?

4 MR. BAIRD: Misstates his testimony, Your Honor.

5 THE WITNESS: No.

6 MR. BAIRD: That's not what he just said.

7 THE WITNESS: I said I reviewed them.

8 THE COURT: It's overruled.

9 THE WITNESS: And therefore, if I reviewed them, I  
10 had opinions. But it wasn't my intent to comment on them at  
11 trial.

12 BY MR. SIMON:

13 Q Okay. So you didn't give that lawyer asking you  
14 questions opinions about medical bills at that time?

15 A Correct.

16 Q All right.

17 A Yes.

18 Q Okay. So now --

19 MR. SIMON: May I approach?

20 THE WITNESS: Sure.

21 BY MR. SIMON:

22 Q -- and just look at your documents.

23 THE COURT: You may.

24 MR. SIMON: Thank you, Your Honor.

25 BY MR. SIMON:

1           Q     You've been handed a couple of pieces of paper  
2 with some conclusions, fair?

3           A     Correct.

4           Q     And you regurgitated a number that's based on  
5 this chart?

6           A     Correct.

7           Q     This is not a chart you prepared?

8           A     Correct.

9           Q     Right? That was give to you by these lawyers  
10 over here?

11          A     Correct.

12          Q     To reach a conclusion?

13          A     Well -- correct.

14          Q     Right? Because you don't really know how this  
15 was calculated?

16          A     That's not correct. I do know.

17          Q     Oh, you do?

18          A     She used -- yes.

19          Q     Well --

20          A     The -- the database --

21          Q     But you didn't calculate it, right?

22          A     I'm sorry?

23          Q     You didn't calculate it?

24          A     I didn't do the calculation. But it was  
25 based --

1 Q All right. That's -- thank you. All right.  
2 Doctor, you would agree that the defense likes to hire you,  
3 correct?

4 A What do you mean by likes? I mean, I'm --  
5 I'm --

6 Q Well, do defendants --

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

8 THE COURT: No.

9 MR. SIMON: Your Honor, I --

10 THE COURT: Counsel, why don't you clarify your  
11 question, please.

12 BY MR. SIMON:

13 Q Do defendants hire you?

14 A Yes.

15 Q Frequently?

16 MR. BAIRD: Objection. I object to reference of  
17 parties not here. I -- we -- we didn't ask him --

18 THE COURT: I believe it's a permissible line of  
19 questioning.

20 MR. BAIRD: Okay.

21 THE COURT: As to who he testifies for.

22 BY MR. SIMON:

23 Q Okay. Defendants who are in personal injury  
24 cases like to hire you, true?

25 A Well, like -- I'd be speculating as to what

1 their emotions were. Am I -- am I retained frequently by  
2 defense firms? Yes.

3 Q All right. And so when you're retained by  
4 defense firms, you are retained as an expert?

5 A Correct.

6 Q And that is considered an expert to evaluate the  
7 case, fair?

8 A Forensically evaluate the case from the medical  
9 standpoint, yes.

10 Q Right. And you look at all the information that  
11 the defense provides you?

12 A Correct.

13 Q Right? And so if they don't provide you  
14 something, then your opinions might change?

15 A Based upon what I don't have?

16 Q Sure.

17 A Correct.

18 Q All right. But in this case you believe you  
19 have everything, fair?

20 A I -- I have everything that was presented to me.  
21 Obviously, you never know if there's something that wasn't.

22 Q Okay. So all the medical evidence that you know  
23 about, you've been given?

24 A Correct.

25 Q Right? So when you provide your service, you

1 are reviewing the medical records?

2 A Correct.

3 Q And you charge for that?

4 A Correct.

5 Q Right? And that's a service that they pay for?

6 A Correct.

7 Q And you create a report?

8 A Correct.

9 Q And that report is a product that you create,  
10 fair?

11 A Correct. I guess you could call it that.

12 Q Sure. And so in this case, Christian Cervantes,  
13 you prepared three reports?

14 A Correct.

15 Q And Maria Abarca you prepared two reports?

16 A Correct.

17 Q And when you prepared those reports, you've  
18 charged for your time, fair?

19 A Correct.

20 Q All right. Let's take a look at your fee  
21 schedule, which I'm sure you're familiar with. Are you  
22 familiar with your own fee schedule?

23 A Pretty much, yeah.

24 Q Okay. So let's just go over it a little bit.  
25 Are these still your current fees?

1           A     I -- I suspect so. I'm not -- I'm not exactly  
2 100 percent sure on that, though.

3           THE CLERK: It's blurry.

4           MR. SIMON: What's blurry?

5           THE COURT: It is blurry. There you go.

6 BY MR. SIMON:

7           Q     All right. Doctor, I think we can see that.  
8 You charge \$1,000 an hour -- do you still charge \$1,000 an  
9 hour?

10          A     Yes.

11          Q     And that's to review records?

12          A     Correct.

13          Q     All right. So for this particular case, can you  
14 tell me how many hours you reviewed?

15          A     Yes. The -- both reviews were between four and  
16 five hours, I think around four and a half would be an  
17 average.

18          Q     All right.

19          MR. SIMON: With the Court's indulgence.

20 BY MR. SIMON:

21          Q     All right. Let's see. We'll -- we'll come back  
22 to that in a second.

23                Do you know the total cost of an L5-S1 fusion as you  
24 sit here today, the total charge that your practice charges,  
25 the total cost?

1           A     Well, the practice doesn't bill for the total  
2 cost.

3           Q     Okay. I'm not asking you -- okay. So do you  
4 know what the total charges for an L5-S1 fusion is in Las  
5 Vegas?

6           A     The global fee, meaning --

7           Q     The global fee.

8           A     I -- it ranges --

9           Q     Don't guess. Don't guess. So if you know, I  
10 want to --

11           MR. BAIRD: Objection. Your Honor, he's badgering  
12 the witness. He's answering, but he keeps getting  
13 interrupted.

14           THE WITNESS: It --

15           MR. SIMON: Well, I don't want him to guess. I'm  
16 just -- if he knows, I want him to tell us.

17           THE COURT: I think he started to say the average  
18 is --

19           MR. BAIRD: Okay.

20           THE WITNESS: Well, and we -- we've --

21           THE COURT: -- something.

22           THE WITNESS: -- for instance, provided a global fee  
23 for people that, for instance, don't have insurance or  
24 something like that. And it was \$80,000 global fee. But  
25 again, it's -- it ranges depending upon which hospital you



1 choose and -- and what kind of hardware you use.

2 BY MR. SIMON:

3 Q Okay. What's the most amount of money that you  
4 charge for your surgeon fee when you do an L5-S1 fusion?

5 A That -- that depends upon the exact codes that  
6 are used and what surgery it is. So I honestly can't say that  
7 number.

8 Q Okay. What does the assistant surgeon charge?

9 A It's 10 percent of the surgeon fee, typically.

10 Q Okay. But that can range, as well, right?

11 A It can range.

12 Q Okay. 5,000 isn't unreasonable for that, fair?

13 A For anesthesia?

14 Q For an assistant surgeon.

15 A Oh. Well, I mean, I -- I've never had an  
16 assistant that has received \$5,000 for performing that  
17 procedure.

18 Q Did not receive, charged.

19 A I honestly can't say. It depends upon the  
20 surgery.

21 Q Okay. Because you don't know, right?

22 A Correct.

23 Q At this time? All right. Anesthesiologist?

24 A I -- I would say that that's in the range.

25 Q All right. Thank you. Hospital fees can vary

1 depending on the hospital, fair?

2 A It is. It seems like it's on the high end.  
3 120,000 is what I've seen in the past for the L5-S1 fusion.

4 Q Okay. But it certainly -- and when you say in  
5 the past, how long ago?

6 A In the past six months.

7 Q And then there's post-op physical therapy?  
8 That's pretty reasonable, right?

9 A 7,000? That -- I can't comment on what the  
10 charge is for that.

11 Q All right. X-rays, 300 is pretty reasonable?

12 A That seems reasonable.

13 Q All right. Physician visits over the course; I  
14 know the first few are freebies for the first --

15 A Well, three months -- three months are free.

16 Q Okay.

17 A And so I -- I don't know why they're -- it's  
18 even listed. It's a global fee that includes post-op care.

19 Q Okay. But if there's visits after that to  
20 follow the patient --

21 A That -- that would be --

22 Q -- you would charge separately?

23 A If you assume that there was a complication.  
24 But typically you wouldn't see them after three months.

25 Q Okay. And -- and a surgery fee isn't just the

1 surgery, right? I mean, if you're a responsible surgeon,  
2 you're going to order MRIs beforehand to take a look at them,  
3 update them?

4 A Well, it depends on when they were last done.

5 Q Okay. And there might be other tests that you  
6 want to look at?

7 A Correct. Preop testing.

8 Q EMGs studies, do you ever rely on that?

9 A Well, an EMG was already performed in this case.

10 Q Okay. So -- but I'm just saying for you --

11 A It's not a part of preop testing. No, it's not.

12 Q All right. Would it surprise you if EMG testing  
13 does not matter in this case?

14 A Well, it --

15 Q Could you just be confusing that with something  
16 else?

17 A No. I saw the results.

18 Q Oh, you did?

19 A Yeah.

20 Q Okay. Well, we'll ask you to show us that  
21 later. Because I would like to see them.

22 A Sure.

23 Q Okay. All right. So let's talk about your fees  
24 a little bit more. You charge \$1,000 an hour. So we're going  
25 to talk about Maria first. How much time did you spend

1 reviewing Maria's records?

2 A I believe it was between four and four and a  
3 half hours.

4 Q Okay. And that was the initial records?

5 A Correct.

6 Q Okay.

7 A Do -- do you have my bill? I think I gave it to  
8 you at the time of the deposition, so we could get it exactly.

9 MR. BAIRD: Your Honor, if I may, it's an exhibit, I  
10 think, to his deposition. So it could be just at the --

11 BY MR. SIMON:

12 Q Your deposition's right there and --

13 A Great.

14 Q Okay?

15 A Here we go. So it looks like the total -- okay.  
16 Here we go. So go ahead and ask me the question.

17 Q Sure. So you spent time reviewing the records  
18 of Maria?

19 A Correct.

20 Q How many hours?

21 A It was 3.8 hours plus .25 hours.

22 Q All right --

23 A So four -- four hours.

24 Q Okay. 3.8 what?

25 A Plus .25.

1 Q Okay. So four hours. And so 1,000 -- equals  
2 4,000, right?

3 A Correct.

4 Q Okay. And then what additional work did you do  
5 in regard to Maria?

6 A There was an IME.

7 Q All right. Did you charge separately for that?

8 A Yes. That's \$1,000 for the IME.

9 Q All right. Okay. Did you do additional work  
10 for Maria?

11 A No.

12 Q Okay. So you reviewed all the depositions that  
13 you said you reviewed?

14 A Correct.

15 Q And you reviewed all of her medical records?

16 A Correct.

17 Q All of the information and you did all that in  
18 four hours; is that what you're saying?

19 A Correct. Obviously, I -- I read the depositions  
20 for both cases at the same time. I charge for those under Mr.  
21 Cervantes, but I didn't double bill, so obviously I didn't  
22 charge twice.

23 Q Okay. So some of the expenses on Christian, we  
24 can --

25 A Yeah.

1 Q -- assume are maybe a part of this?

2 A Right. I didn't think it was appropriate.

3 Q All right. Okay. And then your deposition was  
4 taken, correct?

5 A Correct.

6 Q And then so how much did you charge for your  
7 deposition?

8 A I -- I don't recall how long it was, do you?

9 Q I'm not sure. But we'll just say --

10 A One or two hours.

11 Q Okay. So your deposition fee is what, \$1,200?

12 A \$1,250, I believe.

13 Q And was this videotaped?

14 A I -- I don't recall that, no.

15 Q All right. Do you charge more for videotaped  
16 depositions?

17 A Yes.

18 Q Why is that?

19 A It's added effort. We have to prepare, free up  
20 the office sooner. There's a greater set-up time and -- and  
21 it's just greater work on -- on my part, basically.

22 Q So when you say greater work on your part, when  
23 you show up --

24 MR. BAIRD: Objection. Relevance. Your Honor, there  
25 was no video deposition taken in this case.

1 MR. SIMON: I'm just going through his fee schedule,  
2 Your Honor.

3 MR. BAIRD: Fees for -- services not provided would  
4 be irrelevant, I think.

5 THE COURT: I don't really see the relevance. But  
6 kind of quickly move through this.

7 MR. SIMON: Sure.

8 BY MR. SIMON:

9 Q So there's an inconvenience to you?

10 A Correct.

11 Q And -- but --

12 A I guess you could put it that way.

13 Q Okay. But you're still showing up and answering  
14 questions with the same amount of time, fair?

15 A Correct.

16 Q All right. So what other work did you do for  
17 Maria? Prepared --

18 A That was it.

19 Q -- you prepared for trial today, right?

20 A Oh, correct. Yes.

21 Q And how much time did you spend preparing for  
22 trial?

23 A An hour.

24 Q Okay. So \$1,000 for Maria?

25 A It was for both, actually.

1 Q For both? Okay.

2 A It was included.

3 Q All right. So what we'll do is we'll just split  
4 that in half and make that \$500. All right. And then you  
5 gave trial testimony today, right?

6 A Correct.

7 Q Getting paid for having to respond to my  
8 questions?

9 A Correct.

10 Q Right. How much are you charging for that?

11 A For -- for both, it's 5,000 for half a day.

12 Q All right. So trial prep, trial testimony, so  
13 that would be 2,500, correct?

14 A Right.

15 Q All right. And then for Christian, since you  
16 said you spent a little bit more time for him, tell me what  
17 you charge for review of his records?

18 A It was 3.75, plus .6, plus 1.7.

19 Q All right. Can you do the math for me on that?

20 A Sure. It would be 6.1 hours.

21 Q All right. 6.1. So \$6,100?

22 A Correct. And that was part work for both, like  
23 I mentioned earlier.

24 Q Okay. And then what about your IME?

25 A 1,000.



1 Q And then what about your deposition, another  
2 500?

3 A Correct.

4 Q And that's giving you the benefit of the doubt  
5 that it was only one hour?

6 A Well --

7 MR. SIMON: I'm sure Mr. Baird will tell me if it was  
8 longer.

9 MR. BAIRD: I don't remember it. I'd have to look.

10 MR. SIMON: Okay.

11 MR. BAIRD: It's -- I'd have to look in there.

12 BY MR. SIMON:

13 Q Okay. And then your trial prep, another 500.  
14 And then your testimony, another 2,500, correct?

15 A Yes.

16 Q Are there going to be any expenses after you  
17 leave here today that you are going to bill them for?

18 A No.

19 Q Okay. And so, Doctor, when you come in and  
20 formulate opinions on behalf of the defense, over the last  
21 three years, you tell me if I'm wrong, you've testified over  
22 80 times for the defense?

23 A I'm sorry, what?

24 Q Since 2012, is it fair to say you've testified  
25 over 80 times for the defense?

1           A     In -- in --

2           Q     In deposition or trial?

3           A     Sure. I -- I imagine that's right.

4           Q     And then over those three, four years, how many  
5 times have you testified on behalf of a plaintiff in a trial?

6           A     In a trial, I believe there's two.

7           Q     So 80 defense, two to the plaintiff, fair?

8           A     Well, we're comparing apples and oranges. You  
9 -- the first question was total depositions and trial  
10 testimony compared to trial testimony. There's been other  
11 depositions that I've done in addition to the two for the  
12 plaintiff, but you asked me a separate question that really  
13 shouldn't be compared to the 80 number.

14          Q     Okay. But in deposition and trial you've  
15 testified on behalf of the defense 80 times?

16          A     Approximately. I'm -- I'm taking your word that  
17 you've counted it correctly from the deposition testimony.

18          Q     And when you testify on behalf of a defense in a  
19 trial, your fees are in this range, right?

20          A     Correct.

21          Q     Do you consider your fees reasonable and  
22 necessary?

23          A     Correct.

24          Q     Customary in the community?

25          A     And whatever you say -- whatever you're saying

1 when I do a deposition, you were pointing to all of it,  
2 obviously, a very small portion go to trial, a -- a very --  
3 you know, a minority go to an IME. So most of the charges  
4 there are to the cases that end up in court. Whereas the --  
5 the bulk of those 80 that you mentioned weren't cases that  
6 went to -- went to trial or went to court.

7 Q When you were hired by the defense, you would  
8 agree that your opinions are usually opposite a treating  
9 physician in those cases, fair?

10 A No, I -- I wouldn't say opposite at all. No.

11 Q Are your opinions opposite to the treating  
12 physicians in this case?

13 A Well, partially they are, and partially they  
14 aren't. I think that my opinions that, for example, Ms.  
15 Abarca had a myofascial strain is concordant with Dr. Koka's  
16 opinions, Dr. Adair's opinions. The opinion diverges whenever  
17 there's a conclusion that, for instance, the disc is injured  
18 or she needs facet injections. Of course, I -- I'm divergent  
19 on that account.

20 Q Okay. Doctor, your opinions in this case, are  
21 they not, that there is no objective evidence that they  
22 sustained a spine injury in this case?

23 A Correct.

24 Q Okay. And this isn't the first time you gave  
25 that opinion when there was a trial going on, right?

1           A     Correct.

2           Q     All right.  You kind of give that opinion  
3 frequently, fair?

4           A     I -- I wouldn't say that frequently.  It's given  
5 whenever it's -- it's warranted.

6           Q     All right.  Do you remember a trial in which you  
7 testified the Bacon v. Lare [phonetic] case?

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

9           THE COURT:  Sure.

10                         (Bench conference.)

11           MR. BAIRD:  We have already said he can't bring up  
12 the trial testimony and the positions they haven't disclosed.

13           MR. SIMON:  This is his testimony under oath.  This  
14 is impeachment.  There's a lot of it there.

15           THE COURT:  You've got to disclose it.

16           MR. SIMON:  No, I don't.  I don't have to disclose  
17 prior --

18           MR. BAIRD:  She said you have to disclose it.

19           THE COURT:  What?

20           MR. BAIRD:  You have to disclose it.

21           MR. SIMON:  I don't have to disclose every single  
22 piece of prior testimony that I'm going to use.  This is his  
23 testimony.  If he answers the questions accurately, then I  
24 move.  If he doesn't, then I impeach him.  It's that simple.

25           MR. BAIRD:  Her order was that you don't get to bring

1 this in if you didn't disclose it. She said that this  
2 morning.

3 MR. SIMON: Listen --

4 MR. BAIRD: I was here.

5 MR. SIMON: -- you don't have to disclose every  
6 single deposition line and page of every testimony that he's  
7 ever testified in if I'm going to use it for impeachment.

8 MR. BAIRD: You have to follow the judge's orders.

9 MR. SIMON: And I'm always happy to follow the  
10 judge's orders. But this is impeachment and this is done in  
11 every case. It's been done in prior cases, and in this  
12 case --

13 MR. BAIRD: Isn't every case is a lie.

14 MR. SIMON: -- and I get to expose him, it goes to  
15 bias. That's all it is. It's his pattern of conduct and I  
16 get to expose it.

17 THE COURT: Those are from district court cases?

18 MR. SIMON: What's that?

19 THE COURT: Are those from district court cases?

20 MR. SIMON: Yeah. It's a trial he testified in not  
21 too long ago.

22 THE COURT: I'm not going to let you -- well, you're  
23 not going to go into the one that we had this morning,  
24 correct?

25 MR. SIMON: No. I'm going to wait until the break

1 for that.

2 THE COURT: All right. Because I have some issues  
3 with that.

4 MR. SIMON: Okay.

5 THE COURT: I'll let that testimony.

6 MR. SIMON: Thank you, Your Honor.

7 MR. BAIRD: Thank you, Your Honor.

8 (End of bench conference.)

9 BY MR. SIMON:

10 Q Dr. Duke, you remember a case in which you  
11 testified in this courthouse not too long ago, the Bacon case  
12 v. Lare?

13 A Vaguely, yes.

14 Q All right. And Mr. Vanna, I think, was  
15 questioning you in that trial, maybe that'll refresh your  
16 recollection?

17 A I don't -- I don't remember the facts of the  
18 case.

19 Q All right.

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

21 THE COURT: Yes.

22 BY MR. SIMON:

23 Q All right. I'll just have you look at the  
24 highlighted portion.

25 MR. BAIRD: Your Honor, am I allowed to take a look

1 at this?

2 THE COURT: Yes.

3 MR. BAIRD: I have no notice of what's going on here.

4 THE COURT: Yes. Would you like to see first?

5 MR. BAIRD: Sure.

6 MR. SIMON: Sure.

7 (Pause in proceedings.)

8 MR. BAIRD: My objection, Your Honor, is there's no  
9 foundation to make this relevant to this case. We have no  
10 evidence that this is any way similar to the facts of this  
11 case. We have three sentences, and that's all -- or however  
12 many sentences, it's a little chunk.

13 THE COURT: Mr. Simon, I'm sure you're going to make  
14 it relevant for the jury?

15 MR. SIMON: Yes, of course.

16 THE COURT: All right.

17 BY MR. SIMON:

18 Q Okay. Doctor, if you could just read that  
19 portion? The highlighted portion?

20 A Right. And --

21 Q You can read it to yourself.

22 A Okay.

23 Q Does that refresh your recollection?

24 A I -- I do. I was providing testimony, though,  
25 not about the accident that was at -- at -- that was being

1 litigated. I was talking about a different accident that was  
2 not being litigated. So this had -- this testimony had no  
3 bearing or no relevance to the litigated issue at hand during  
4 that trial.

5 Q Okay. Fair enough. Thank you. Do you remember  
6 the verdict trial that you testified in basically a week after  
7 the testimony you gave in this trial?

8 A Yes.

9 Q And you --

10 A But I don't remember the facts of the case.

11 Q All right. Do you remember giving the -- the  
12 same opinion, there was no objection evidence that the  
13 plaintiff sustained injury in that case?

14 A I don't recall --

15 MR. BAIRD: Same objection. There's no -- sorry.

16 THE WITNESS: Sorry.

17 MR. BAIRD: There's no foundation that these  
18 accidents are similar, that the facts are related in any way.  
19 It's purely speculative.

20 MR. SIMON: Just asking him --

21 MR. BAIRD: There's no foundation.

22 MR. SIMON: -- if he recalls.

23 THE COURT: All right. Your objection's been made.

24 Thank you.

25 BY MR. SIMON:



1 Q Do you recall that?

2 A Again, I don't recall the facts of that case or  
3 what -- what the injuries were.

4 MR. BAIRD: Could I see that testimony, as well?

5 MR. SIMON: I don't have -- I just asked him if he  
6 recalled it.

7 MR. BAIRD: Oh, okay.

8 BY MR. SIMON:

9 Q All right. Dr. Duke, you would agree that the  
10 opinions that you have offered in this case are similar to  
11 opinions that you've offered in other cases?

12 A Well, to the extent that other cases have the  
13 same injury, yes. Obviously, the -- the testimony doesn't  
14 change radically over time for these diagnoses.

15 Q All right. And in this case, your opinion is  
16 completely opposite the treating physicians that opine that  
17 the disc injury is related to this car accident?

18 A Well --

19 Q True?

20 A -- I don't even know where to start. What disc  
21 injury?

22 Q Okay. So you're denying that a disc injury  
23 exists, correct?

24 A Correct.

25 Q All right. So then the other doctors who've

1 come in and testified for this jury have said that there's a  
2 disc injury related to this car accident.

3 A Correct.

4 Q Did you know that?

5 A Yes.

6 Q Okay. So you disagree with those opinions that  
7 were expressed to this jury to a reasonable degree of medical  
8 probability?

9 A Correct.

10 Q All right. And you're a little bit different  
11 than a treating physician in your role here today?

12 A Correct.

13 Q Right? You are an IME physician, right, hired  
14 by the defense, fair?

15 A I'm -- I'm technically hired I think by who --  
16 whoever the other party is being sued in the accident. They  
17 -- they're the ones who -- who I -- who has representation  
18 who's hired me on their behalf.

19 Q Okay. So this firm, Rogers Mastrangelo, did not  
20 hire you; it was Ms. Ortega back in the court?

21 A I think it was via this firm, correct.

22 Q Okay. Has she paid you any money?

23 A Well, it -- I think she's paid her insurance  
24 premiums, and to the extent that that is what she used to --

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

1 THE COURT: Yes.

2 (Bench conference.)

3 MR. BAIRD: I told him to avoid further  
4 [indiscernible] to insurance. [Indiscernible], but I think we  
5 need to stop the line of questioning, because this is off and  
6 on, this is why we objected to this --

7 THE COURT: I think we need to move away -- I don't  
8 know that that question was intended to elicit insurance  
9 information.

10 MR. BAIRD: I agree. But the problem is we're --  
11 we're spinning our wheels if nothing is relevant.

12 MR. SIMON: Well, that's your opinion.

13 MR. BAIRD: That's the --

14 MR. SIMON: That's your opinion. Wait till my  
15 closing argument and then you'll see. Okay.

16 THE COURT: Okay. Since I have you gentlemen up  
17 here, this is the question, and it might come up in your  
18 cross.

19 MR. BAIRD: There is [indiscernible].

20 THE COURT: He's referring to the MRI that Dr. Kaplan  
21 was referring to.

22 MR. SIMON: Yeah.

23 THE COURT: Is that something you're going to ask?

24 MR. SIMON: Sure, I'll get into it.

25 MR. BAIRD: Yeah, that's fine.

1 THE COURT: Okay.

2 MR. BAIRD: Do we [indiscernible] admonish the  
3 witness [indiscernible] should we take the break that we were  
4 talking about?

5 THE COURT: Yeah. Mr. Simon, I think the jury needs  
6 a break, anyways.

7 (End of bench conference.)

8 THE COURT: Ladies and gentlemen, please don't go far  
9 so we can get Dr. Duke off the stand this morning; 10 minutes  
10 max.

11 Again, you're admonished not to converse amongst  
12 yourselves, do not read, write, or research and don't form or  
13 express and opinion.

14 (Jury recessed at 11:23 a.m.)

15 THE COURT: Actually, do you want the doctor to stay  
16 in here or?

17 MR. SIMON: It doesn't matter to me.

18 THE COURT: Okay. Because we're going to address the  
19 discovery commissioner's report and recommendations.

20 MR. SIMON: Oh, then I would ask that he leave.

21 THE COURT: Doctor, could you please step out. Thank  
22 you, sir.

23 Okay. I was looking at that report and  
24 recommendations. And when I had it back there I noticed  
25 something. I don't have it in front of me right now. But

1 what it appeared was the reason that it was signed off I guess  
2 by Judge Denton was not because Judge Denton had made any  
3 substantive findings on his own; he merely countersigned the  
4 district discovery commissioner's report and recommendations,  
5 given the fact there was no timely objections made, which is  
6 the process. So I was not inclined to let that in.

7 MR. SIMON: Okay. All right, so the -- I'm sorry, I  
8 didn't hear your last part.

9 THE COURT: Okay. That -- that -- really, all that  
10 was, I understand that it was signed off by the district  
11 court. But it was really just a procedural matter of it  
12 getting signed. That was only because there was not timely  
13 objection to the report and recommendations. That's why it  
14 got countersigned.

15 There's nothing to indicate that the district court  
16 judge had any chance to really flesh out the issue on his own  
17 and make a determination whether or not Dr. Duke was prejudice  
18 in any way. Just saying, it's just a district court order --  
19 it's just a discovery commissioner order that procedurally was  
20 signed off by the district court.

21 MR. SIMON: Well, I understand that. That's how all  
22 of those discovery orders --

23 THE COURT: True.

24 MR. SIMON: -- go through the process and discovery  
25 commissioner is still a judge who makes findings. She's not

1 the ultimate judge. But she made findings and reviewed  
2 everything and made her findings. And those findings were  
3 then adopted by Judge Denton and signed off on. It's not just  
4 a rubber stamp. If there was an issue about it, defense  
5 objects.

6 A lot of times the district court -- I don't know  
7 what Your Honor's practice is, but I'm sure that you would  
8 look at these things and if there's an issue that you don't  
9 agree with, you don't sign off on it.

10 He -- it's a final order by a district court judge.  
11 Whether he did a findings of fact, conclusions of law, or an  
12 evidentiary hearing I would submit to you is of no  
13 consequence. It is a final order. It says what it says. And  
14 I should be able to explore that to expose the bias of Dr.  
15 Duke in this case in order for my client to get a fair trial  
16 based on what he's testified to on direct.

17 THE COURT: All right.

18 MR. MICHALEK: It's an unpublished order under  
19 Supreme Court Rule 123. It is not appropriate to use. It is  
20 not final. I am -- there's, you know, I -- I don't know what  
21 went on in that particular case. This gentleman was given the  
22 appropriate order. But I think Your Honor's initial thought  
23 was right, that it's no place -- you've made your  
24 determination as to what Dr. Duke can testify to, to allow  
25 another judge's -- or a discovery commissioner's determination

1 in this courtroom would be usurping your role and your  
2 findings and your authority.

3 THE COURT: All right. I'm not going to allow that.  
4 I am -- I was allowing the deposition transcripts, because  
5 they were transcripts taken from official court proceedings,  
6 district court proceedings. And they're being used solely for  
7 impeachment purposes, not substantive purposes.

8 MR. MICHALEK: And if I can address that, Your Honor,  
9 to make my records.

10 THE COURT: Yes.

11 MR. MICHALEK: So we're looking under the rules, this  
12 is the -- because the Court well knows, 16.1 --

13 THE COURT: Let's see. Let me look at something.

14 MR. MICHALEK: And I'm looking at required  
15 disclosures. And these are the disclosures that every  
16 attorney is bound to make in the state of Nevada in every  
17 lawsuit. And we're looking at 1A. The name and -- and, if  
18 known, the address, telephone number of each individual likely  
19 to have information. Discovery Rules [indiscernible]  
20 impeachment or rebuttal identifying the subjects of the  
21 information; B, a copy of or description by category and  
22 location of all documents, data compilations [indiscernible]  
23 things that are in the possession, custody, and control of the  
24 party and which are discoverable under Rule 26(b); C, a  
25 [indiscernible] of any category of damages claimed by

1 disclosing party, make available for inspection and copying  
2 under the documents of evidentiary matter, blah, blah, blah.

3 So under 16.1 and 26, which I don't have available to  
4 pull up, otherwise I would, a party is under the duty to  
5 identify and provide not only regular evidence they intend to  
6 use, but impeachment evidence that they intend to use.

7 He can't just say, Your Honor, this is for  
8 impeachment only, and so I can reserve it and hold onto it,  
9 and then just spring it on trial. The rules require a  
10 disclosure of all documents, even those for impeachment  
11 purposes.

12 He didn't do that. Instead, he held onto the  
13 testimony and sandbagged the witness at trial with it. That  
14 is not appropriate under the rules. This is the reason why  
15 our video was excluded, because it was -- it was alleged as  
16 sandbagging. And yet, these are --

17 THE COURT: Well, no. Well, yes, you're right. It  
18 was --

19 MR. MICHALEK: Right.

20 THE COURT: -- it was after the disclosure deadline.  
21 You're correct on that.

22 MR. MICHALEK: So he is -- so he -- he was not  
23 allowed and he should not have been allowed to use documents  
24 that have never been produced for impeachment purposes  
25 regardless of whether it's Dr. Duke or a regular witness.



1 It's the same rule that our video was excluded under. And I'm  
2 -- I'm -- well, I'm quite animated, because I -- it's clearly  
3 in violation of the same rule. And I'm -- I'm surprised that  
4 he was allowed to do so.

5 I will say, Your Honor, there was another objection  
6 -- what was the other?

7 MR. BAIRD: Oh, no, that's --

8 MR. MICHALEK: Well, no, there was a -- there was a  
9 mention again, a question by Mr. Simon, did the defendant pay  
10 you. Mr. Simon has been in this community for 20 years  
11 practicing law. He well knows that defendants don't pay, it's  
12 law firms that pay the doctor. That question was only  
13 designed to attempt to get the doctor to say the reference to  
14 insurance.

15 There has not been a day that has gone by at this  
16 trial that the word insurance has not been raised either by  
17 the plaintiffs themselves or other expert witnesses. It has  
18 pervaded this trial. We have asked for two instructions,  
19 which have been given. And yet it keeps -- the questions keep  
20 happening.

21 There is no other remedy at this point except to  
22 declare a mistrial, because the references to insurance have  
23 been so pervasive. And at this point I think the conduct has  
24 been if not intentional, then clearly negligent and designed  
25 to get witnesses to reference insurance. It's not proper and

1 I just don't know what to say, except mistrial's appropriate.

2 THE COURT: You're right. 16.1(B)(1) says it should  
3 be impeachment document.

4 MR. SIMON: Your Honor, may I respond?

5 THE COURT: You may.

6 MR. SIMON: All right. NRS 50.285, Your Honor,  
7 opinions of experts. The facts or data in the particular case  
8 in point in which an expert bases an opinion or inference may  
9 be those proceed by or made known to the expert at the  
10 hearing.

11 I can present anything to him that he presents in his  
12 testimony on cross. I don't have to give every piece of  
13 rebuttal documents. And those are documents that if I know  
14 about or that is evidence in the case. It doesn't need to be  
15 admissible to be used for impeachment. And that's the key  
16 here. I am not using it as admissible evidence that I would  
17 have to provide it under 16.1. This is cross-examination.  
18 And NRS 50.285 says I can use it at trial. And if he has an  
19 objection to it, then he should have a real objection other  
20 than it wasn't disclosed 90 days ago.

21 So aside from -- and the other issue is about the  
22 insurance issue. Number one, Dr. Duke said it the first time  
23 on his own when I asked him about the reasonable cost, and he  
24 tried to be all fancy and downplay the cost of the L5-S1  
25 fusion and talk about his global rates, when there's not

1 insurance available. He brought that up on his own in  
2 response to what a reasonable cost of a fusion is. So they  
3 get to -- they want to use that to their benefit. I didn't  
4 hear them complain about insurance then. I didn't hear Mr.  
5 Baird want to approach you then.

6 But then when they try to play the sympathy card that  
7 she hired them, that she retained Dr. Duke, I mean, that's  
8 just a fraud upon the Court. And that's what invited my  
9 question, is when he tried to suggest that she actually  
10 retained him, which we know is all not true, including counsel  
11 to my right.

12 MR. BAIRD: Your Honor, and if --

13 MR. SIMON: And if he was -- oh, I'm sorry. Just one  
14 last thing.

15 MR. BAIRD: Yeah, go ahead.

16 MR. SIMON: Sorry, Kade. And if she -- he was  
17 instructed not to use the word insurance, like we were told,  
18 it's their witness. I'm not sure why he's doing it. So to  
19 try to suggest that I did something wrong is a little  
20 offensive.

21 MR. BAIRD: Your Honor, there is no -- the only  
22 evidence that is admissible in a trial are facts that are  
23 reasonably expected to -- they have to relate to a material  
24 fact. It is well known to the jury Mr. Simon had to prove  
25 absolutely nothing before he stood up to ask Dr. Duke

1 questions for the jury to know that Dr. Duke was being paid to  
2 offer his opinions. He had to offer zero evidence.

3 And when he got up there and said, So she had paid  
4 you? What other purpose could there have been to ask that  
5 question other than to try and get him to mess up and try and  
6 say, Okay, it was insurance. He's -- he's already -- and went  
7 through his bills for 15 minutes. It was very obvious to the  
8 jury he was being paid. The purpose of that was to hopefully  
9 elicit insurance.

10 Now, I missed the thing about when -- when he said  
11 insurance before. And that's -- I -- had I been thinking  
12 clearly, yes, I definitely would have objected. And if the  
13 Court wanted, I could show that my own notes from preparing  
14 for this, where I made multiple notes saying don't mention  
15 insurance, Dr. -- or Dr. Duke feels bad about that. And when  
16 I talked to him outside, he said, I didn't know how else to  
17 answer. I felt like that's all that I could say. Because the  
18 question really elicited no other possible response. He  
19 didn't know how to do it. And -- and had Mr. Simon not been  
20 asking questions that have no relevance to any material fact,  
21 we wouldn't be in that situation.

22 THE COURT: Okay. All right. Go on your break and  
23 I'll get back to you.

24 (Court recessed at 11:34 a.m., until 11:42 a.m.)

25 (Outside the presence of the jury.)

1 THE COURT: All right. I went back and I was looking  
2 at 16.1, and I'll be honest with you; I was wrong. 16.1,  
3 subsection B1 clearly indicates that all impeachment documents  
4 are part of what must -- are subject to mandatory discovery  
5 exchanges.

6 So the Court was in error in allowing Mr. Simon to go  
7 into that testimony, if it has not been previously disclosed.

8 MR. MICHALEK: Move to strike that testimony.

9 THE COURT: Yes. And the jury will be ordered to  
10 strike the testimony.

11 The next issue would be -- I forgot what I was going  
12 to say, I'm sorry.

13 The reference to insurance. Again, I don't think  
14 that was elicited purposefully by either counsel. I'm kind of  
15 surprised, frankly, Dr. Duke said it, because he does have a  
16 great deal of experience testifying in court, and I've never  
17 heard him slip before, but he obviously did this time.

18 There's -- we've already admonished the jury twice --

19 MR. MICHALEK: Don't want to do it again.

20 THE COURT: -- they're going to get the same  
21 admonishment when they do their jury instructions. And I --  
22 it's a fine line between admonishing them and not wanting to  
23 draw too much attention to the issue.

24 MR. MICHALEK: Yes, Your Honor. Understood.

25 THE COURT: Okay. So let's bring the jury in,

1 please.

2 MR. BAIRD: Should we bring the doctor in before the  
3 jury?

4 THE COURT: I'm sorry. We can bring Dr. Duke in  
5 first, that's fine. I forgot about poor Dr. Duke out there.

6 Hi, Dr. Duke. Let's bring the jury in. Dr. Duke, I  
7 don't know if your attorney talked to you before; no reference  
8 to insurance, please.

9 THE WITNESS: Gotcha.

10 THE COURT: Thank you.

11 MR. BAIRD: Of any kind. Ever.

12 (Jury reconvened at 11:43 a.m.)

13 THE COURT: Doctor, if you'd like to make yourself  
14 comfortable. Sir, you are still under oath.

15 THE WITNESS: Thank you.

16 THE COURT: Ladies and gentlemen of the jury, before  
17 the break you heard testimony -- or you heard questions  
18 regarding other cases Dr. Duke has testified in previously.  
19 You are ordered to disregard that line of questioning.

20 Please continue.

21 MR. SIMON: Thank you, Your Honor.

22 CROSS-EXAMINATION (CONT.)

23 BY MR. SIMON:

24 Q Dr. Duke, you're still under oath; you  
25 understand that?

1 A Yes.

2 Q All right.

3 MR. SIMON: Your Honor, may I approach?

4 THE COURT: You may.

5 BY MR. SIMON:

6 Q Doctor, I'll hand you what I believe you had  
7 provided us earlier. It is a list of your trial deposition  
8 lists over the last several years. If you could take a look  
9 at that?

10 A Yes, that's correct.

11 Q All right. Is that a complete and accurate list  
12 to the to the best of your knowledge?

13 A It's -- it's outdated as of now. But it may be  
14 what you received in August of 2014.

15 Q Okay. So that's updated up through August of  
16 2014?

17 A Well, this -- this particular list is actually  
18 through 2013, August of 2013.

19 Q All right. And on that list there's several  
20 entries by the law firm sitting over here that has retained  
21 you in other cases?

22 A Correct.

23 Q It's not the first time that you came in here on  
24 behalf of them, correct? This isn't the first time that you  
25 were hired by them?

1           A     Well, correct. But I -- I don't know what you  
2 mean by hired by them. Because I don't -- I don't -- I don't  
3 know what you mean by that exactly.

4           Q     Well, Doctor, you're told this --

5           MR. BAIRD: Your Honor, may we approach? I think I  
6 can fix this.

7           THE COURT: No. Hold on.

8           MR. BAIRD: Okay.

9           THE COURT: Doctor, just for ease --

10          THE WITNESS: Sure.

11          THE COURT: -- if you don't understand what he's  
12 asking or what he's getting at, please tell him you don't  
13 understand. He'll rephrase the question.

14          THE WITNESS: Well, they've retained me and -- and I  
15 performed forensic reviews of cases that they're representing  
16 clients for. Though, whenever you -- you use words like hire,  
17 I -- I don't know what that means in this context.

18          Q     Okay. Well, they call you up or send you a  
19 letter and they expect you to perform services, right?

20          A     Correct.

21          Q     And in exchange for payment, you agree to  
22 provide services?

23          A     Well, correct. But again, this goes into things  
24 that we're not supposed to discuss today.

25          Q     Okay. Who told you that?



1           A     The judge.

2           MR. BAIRD:  Objection, Your Honor.

3  BY MR. SIMON:

4           Q     Okay.  Take a look at your list, Doctor.  Tell  
5  me if the -- Maria Abarca or Christian Lopez-Cervantes name  
6  appears there anywhere?

7           A     No.  This was, like I said, through August of  
8  2013.  So the deposition was August of 2014.  So no, it would  
9  not be on there.

10          Q     That's the date on that?

11          A     Yeah.

12          Q     Okay.  Fair enough.  Thank you, Doctor.  And,  
13  Doctor, I -- we started to talk about this a little bit before  
14  we got sidetracked with your fees.  But your role in this case  
15  is to review all of the information, like counsel talked  
16  about, and come up with opinions, correct?

17          A     Correct.

18          Q     All right.  And you're not a treating physician?

19          A     Correct.

20          Q     And that's a different role, agreed?

21          A     Correct.

22          Q     Right?  Because a treating physician takes a  
23  hippocratic oath, fair?

24          A     Well, there's a ceremony that -- that physicians  
25  take, but it's not specific to a treating physician, no.

1           Q     Okay. Well, tell the jury the hippocratic oath  
2 that you are bound by when you treat your spine patients?

3           A     There -- there is no hippocratic oath that we're  
4 bound by. The hippocratic oath is part of the tradition and  
5 ceremony of being a physician. But you're -- we're not bound  
6 by a hippocratic oath. It's a matter of the history of  
7 medicine, the -- the historical nature of certain texts, such  
8 as the hippocratic oath. But it's not -- it doesn't bind our  
9 treatment, and in fact it contains references to many things  
10 that nowadays people would find offensive.

11               And the hippocratic oath was technically not for  
12 surgeons. It was for medical doctors, which in the time that  
13 it was written, was a distinction between the two.

14           Q     All right. But when you became a physician, you  
15 took one, right?

16           A     No. It -- it was read at our ceremony as a part  
17 of the celebration of medicine and the history of medicine.  
18 But do physicians take that oath and are bound by it in  
19 practicing medicine? No. It's a historical significance, not  
20 common practice significance.

21           Q     Would you agree that the principle behind the  
22 hippocratic oath is to do no harm to your patients?

23           A     No, that's not the principle behind it. It's --  
24 you know, I think that's a common misconception. It's -- it  
25 -- it goes into many different things regarding lithotripsy,

1 care of pregnant women. The -- what you're referring to was  
2 added on much later after it was written. I think you're  
3 referring to the Latin firm -- or term primum non nocere.  
4 That wasn't part of the hippocratic oath.

5 Q Okay. When you treat patients you agree that  
6 you have an obligation to help them?

7 A Correct.

8 Q Right? And when helping them, you need to  
9 provide them options?

10 A Correct, if options are appropriate. You -- you  
11 -- if options are not appropriate, then --

12 Q Right.

13 A -- you don't. Obviously, you do what's  
14 appropriate --

15 Q And -- and --

16 A -- and medically necessary.

17 Q Right. And you have to diagnose patients, fair?

18 A Correct.

19 Q And if you don't do the right diagnosis, you can  
20 be held accountable?

21 A Sure.

22 Q Right? But when you do an IME and give  
23 opinions, you don't have a doctor/patient relationship?

24 A Correct.

25 Q Right? In fact, you put that in your reports to

1 make sure it's clear?

2 A I -- I don't actually typically put that in  
3 there. It's --

4 Q All right. So you don't have --

5 A -- [indiscernible].

6 Q -- you can't be held accountable for your exam  
7 by my clients for misdiagnosing them, fair?

8 A Correct. There's no treating patient-physician  
9 relationship.

10 Q All right. Doctor, do you know what  
11 confirmation bias is?

12 A Confirmation bias?

13 Q Yes.

14 A I -- I believe generally.

15 Q All right. Tell the jury what your general  
16 understanding of confirmation bias is.

17 A Where you have a predisposition to find evidence  
18 in your -- that fits what your opinion is.

19 Q Okay. All right. So you, if the jury was to  
20 find that you had confirmation bias, they could reasonably  
21 conclude that you took all the information, but had a bias to  
22 reach certain conclusions? That's one thing they could do,  
23 right?

24 A Well, they -- they can -- they hear the  
25 testimony and they come to their own conclusions. And

1 obviously one has to respect that.

2 Q All right. Well, on direct examination, your  
3 counsel gave you a record from Dr. Koka's office, which I  
4 believe is Exhibit 17. And it was just a -- a billing record.

5 MR. SIMON: Ms. Court Clerk? Court Recorder?

6 Q All right. Do you remember when he showed you  
7 this?

8 A Yes.

9 Q And he said, Hey, is there any box checked off  
10 that talks about low back?

11 A Correct. I recall that.

12 Q Remember that, and you said no?

13 A Correct.

14 Q Then you ended up rendering an opinion that this  
15 was 10 days after the accident, right? And because there's no  
16 low-back box checked, there was no injury to the low back?

17 A I -- I said -- I don't know what the specific  
18 testimony was, but I -- I think I made the -- it clear that  
19 she had waist symptoms. And he checked off lower abdominal --

20 You know, raise up the paper just a bit.

21 Q Sure.

22 A You know, she had lower abdominal symptoms. And  
23 if you read her deposition testimony, she described symptoms  
24 around her waist. And if you look at Dr. Koka's pain diagram,  
25 it -- it indicates symptoms clear around the lower abdominal

1 region, it includes the entirety of the waist.

2 Q Okay. So is there a low back injury or symptom  
3 on this day?

4 A No. There's no -- there's no -- there's no  
5 diagnosis. Dr. Koka testified that his diagnosis was on the  
6 super bill, which is what that is. And I was asked if that  
7 reflects any low-back diagnosis. And he answered no, it does  
8 not.

9 Q Okay. And the inference was that there was no  
10 low back injury on November 22nd, right?

11 A I just said what I was asked. I'm not trying  
12 to, you know, I think we made it clear what it does and does  
13 not indicate.

14 Q Okay. So based on this one record, you said,  
15 Hey, no low back injury on that, because of that record?

16 MR. BAIRD: Objection. Misstates his testimony and  
17 facts.

18 BY MR. SIMON:

19 Q True or not true?

20 A That -- that doesn't -- that doesn't state my  
21 testimony correctly.

22 Q Okay. Well, then let's look at the other  
23 records on the same day. Okay. And look at the pain diagram,  
24 Doctor?

25 A That's consistent with what I -- what I recall.

1 Q Okay. So she's got neck circled, right?

2 A Correct.

3 Q Low back?

4 A Well --

5 Q Correct?

6 A -- it has it around the entirety of the waist,  
7 and Dr. Koka characterized that as low back diagnosis. But I  
8 understand what it shows. I see it.

9 Q Okay. So, I'm sorry, is that -- you're a  
10 doctor?

11 A Right.

12 Q Right? A neuro spine surgeon?

13 A Right.

14 Q You know where the low back is located, right?

15 A Yes. In the --

16 Q Are those marks on the low back?

17 A They're in the low back region, correct.

18 Q Are they in the lumbar region?

19 A Well, it's at the lumbosacral junction, correct.

20 Q Okay. The same area where the MRIs were taken?

21 A Correct.

22 Q Okay. So when you told this jury earlier  
23 because of that one little super bill, that the doctor, the PA  
24 didn't check, that there wasn't symptoms in the low back, that  
25 would be incorrect?

1           A     No.  I -- I said there wasn't a diagnosis  
2 rendered by Dr. Koka as it relates to the low back.

3           Q     Okay.

4           A     You know, you'd have to ask him why he didn't  
5 check it.  I don't know.

6           Q     All right.  So you would refer to Dr. Koka's  
7 office in regard to whether there was a diagnosis of low back  
8 on that day?

9           A     Correct.

10          Q     Okay.  Thank you.  So let's continue past the  
11 November date, same exhibit, page 8.  Again, there's continued  
12 pain diagram of neck, back, and right shoulder?

13          A     Correct.

14          Q     Correct?

15          A     Yes.

16          Q     And so that circle is clearly the low back,  
17 right?

18          A     Correct.

19          Q     And then on the front there's the abdomen that  
20 has a different symptom, correct?

21          A     Yes.  It's marked differently, correct.

22          Q     All right.  And that's December 6.  So she still  
23 has ongoing low back at that time, fair?

24          A     Well, actually, if you read the note from Dr.  
25 Koka, it said she indicated the low back pain was resolved.



1 That's what his note says.

2 Q Okay. But this -- this record --

3 A Well, -- well, you -- you have it really dialed  
4 in there. Can you expand it out a little bit, please?

5 Q Sure. What do you want to see?

6 A Just --

7 Q That part?

8 A -- go down a little bit.

9 Q Sure. This part?

10 A No.

11 Q Up?

12 A Right --

13 Q Let me zoom out and you can point to it?

14 A Okay. Right under low back pain, it says --

15 Q Where, can you point?

16 A It says -- yeah. Right -- right here. Oops.

17 Q Sorry.

18 A How do I --

19 MR. BAIRD: The lower right corner.

20 BY MR. SIMON:

21 Q Oh, I gotcha. I gotcha. Okay. Right here?

22 A So it says "resolved" under "low back pain"  
23 right there. See that?

24 Q Yep. Got it.

25 A That's what I was referring to.

1           Q     Okay. All right. So let's take the same note  
2 and go down a little bit, Doc. Does it say -- what's LS stand  
3 for?

4           A     I'm sorry, it says, "Range of motion without  
5 pain" is what it says.

6           Q     Okay. Without pain?

7           A     Correct. That's what a S with a line over it  
8 means.

9           Q     Okay.

10          A     So it means she was --

11          Q     But she's still marking pain in her low back on  
12 the diagram?

13          A     Well, I -- I wouldn't say she's marking it. I  
14 don't know that she filled that out. What it says is low back  
15 pain is resolved and she has full range of motion without  
16 pain. So.

17          Q     Okay. All right. And, Doctor, you had talked  
18 earlier a little bit about she had an incident, I guess during  
19 her treatment she tried to pick up some clothes --

20          A     Correct.

21          Q     Do you remember that?

22          A     I do.

23          Q     And you told the jury that that wasn't any new  
24 traumatic event, correct?

25          A     No.

1 Q That -- that'd be silly, right?

2 A Well, no. You're -- you're just completely  
3 mischaracterizing what I said.

4 Q Oh, I'm --

5 A She -- she didn't have pain symptoms, and then  
6 she reported to her providers that she was bending and lifting  
7 clothes and had pain symptoms. That can certainly cause back  
8 pain. People can bend over and pick up a Kleenex and have the  
9 onset of back pain.

10 Q Okay. But if they had an injury earlier and  
11 they're still going -- undergoing treatment for their injury,  
12 right, it makes them more susceptible to increase in symptoms  
13 by doing simple little daily activities?

14 A Not necessarily. It depends.

15 Q But -- but it can, right?

16 A Theoretically, hypothetically possible, can  
17 somebody have a diagnosis that that's correct? Yes.

18 Q Right. And that can result from the original  
19 injury that she's still treating for, right?

20 A I don't believe that that's possible in this  
21 case, no.

22 Q Doctor, you don't do chiropractic care, right?

23 A Correct.

24 Q Okay. And so when it comes to chiropractic  
25 care, would you defer to Dr. Adair?

1 A What -- what do you mean exactly?

2 Q Okay. Well, she treated her patient, she was a  
3 chiropractor, she treated her patient. Do you know more about  
4 chiropractic care than Dr. Adair?

5 A No.

6 Q Okay. Do you know more about pain management --  
7 interventional pain management than Dr. Lanzkowsky?

8 A No.

9 Q Do you perform discograms?

10 A I order them, but I don't do them.

11 Q Okay. But you don't perform them, right?

12 A Correct.

13 Q And so how they are done is left to the  
14 physician doing them, right?

15 A Well, no. It has to be done according to  
16 standards.

17 Q Okay.

18 A You know, it -- it can't be just based upon what  
19 they make up.

20 Q And standards are important to you, right?

21 A Correct.

22 Q And you're a member of the North American Spine  
23 Society?

24 A Correct.

25 Q Right? And you are a member of that because

1 that is a society made up of the most respected surgeons,  
2 spine surgeons in our country?

3 A I -- I would say that there are respected spine  
4 surgeons that are a part of it, but I wouldn't say that it's  
5 exclusive to the most respected spine surgeons. I would not  
6 say that.

7 Q Okay. But it's made of some of them, right?

8 A Correct.

9 Q Okay. Doctor, is it your testimony to this jury  
10 that a discogram in this case was useless?

11 A Correct. It was not -- it did not provide  
12 actionable data that you could use to make a surgical  
13 decision.

14 Q Okay. So the discogram in this case was false?

15 A I don't know what you mean by that.

16 Q Was it a reliable test?

17 A Well, I don't know what you mean by that,  
18 either.

19 Q Okay. Well, the test results are either  
20 reliable or they're unreliable.

21 A Well, the results can't be relied upon, because  
22 the false positive reading is too high.

23 Q Okay. And you're basing your opinion because  
24 generally the false positive rate of a discogram is too high?

25 A No.

1           Q     Okay. What information do you have in this  
2 particular case that this particular discogram was false?

3           A     Number one, the disc was MRI normal for his age.  
4 Number two, there were no inflammatory in-plate changes that  
5 surrounded the disc. Three, you can't utilize a discogram  
6 result with this MRI and -- and recommend surgery. Four, we  
7 know that given that the patient has an annular fissure, that  
8 the false positive rates is increased from being 10 to 20  
9 percent, up to 50 percent. And so given all of these factors,  
10 the false positive rate is simply too high to -- to base  
11 making a recommendation for a surgery that's destructive,  
12 permanent, highly invasive, risky.

13           Q     All right. Doctor, I have a question for you.  
14 Do you recognize that?

15           A     I do.

16           Q     Is that a normal disc, in your mind?

17           A     It's -- it's a part of the normal process of  
18 aging.

19           Q     Okay. So what we're looking at to you is  
20 normal?

21           A     Meaning it's -- it's not traumatic. This is  
22 from age --

23           Q     I ask him whether it's traumatic; is it a normal  
24 disc to you?

25           A     Well, I --

1 MR. BAIRD: Objection. Argumentative, Your Honor.

2 THE WITNESS: -- the only way --

3 BY MR. SIMON:

4 Q Yes or no, Doctor; is it normal or not normal?

5 THE COURT: Hold on.

6 MR. BAIRD: Objection. I'm making an argumentative  
7 objection.

8 THE COURT: It's cross-examination, counsel.  
9 Overruled.

10 BY MR. SIMON:

11 Q Okay. Yes or no, Doctor. Normal?

12 A There's not a yes-or-no question -- answer to  
13 it.

14 Q Okay. So you -- you don't know whether this is  
15 a normal --

16 A I do know.

17 Q Okay.

18 A But I don't know how -- in what reference you're  
19 asking me the question.

20 Q Have you ever operated on a disc that looked  
21 like that?

22 A No.

23 Q Never?

24 A Never.

25 Q Okay.

1           A     Green with pink fluid?  No.  Never have seen  
2     that.

3           Q     Oh, because of the color in it, Doctor, right?

4           A     No.

5           Q     That's the only reason you didn't operate on it?

6           A     No, you're asking me questions that don't have  
7     any medical basis, and you're asking me to give cogent answers  
8     to things that don't have answers.

9           Q     All right.  Doctor, does this show a tear?

10          A     It shows an annular tear.

11          Q     Okay.  How -- what degree?

12          A     And that's very normal, that --

13          Q     What degree?

14          A     This would be grade 5.  It goes out to the  
15     anulus.

16          Q     Okay.  Grade -- have you ever operated on a  
17     grade 5 annular tear?

18          A     Not because it was a grade 5 tear, no.

19          Q     Okay.  But for other reasons, right?

20          A     Well, grade 5 tears are a normal part of aging.  
21     It would be like asking me if a wrinkle is normal in somebody  
22     that's 80 years old.  Yes, a wrinkle is normal in somebody  
23     that's 80 years old.

24          Q     Okay.

25          A     Whenever somebody's 30 years old, do they have



1 this type of degenerative change? Of course, they do.

2 Q They do and that's normal? Common?

3 A It's --

4 Q Is that common?

5 A It's very common.

6 Q Very common?

7 A Yes.

8 Q Okay.

9 A I -- I wish mine looked that good, in fact.

10 Q All right.

11 A The incidence is 86 percent of these types of  
12 findings in the asymptomatic population.

13 Q Doctor, you perform L5-S1 fusions, right?

14 A Correct.

15 Q All right. So when a patient comes into you and  
16 you actually perform an L5-S1 fusion --

17 A Correct.

18 Q -- tell me what symptoms they have?

19 A Well, there's a whole host of symptoms.

20 Q Okay. Just tell me.

21 A Lumbar radiculopathies, spinal instability,  
22 spondylolysis, spondylolisthesis, severe spinal stenosis with  
23 degeneration of facet joints, traumatic injury, fracture  
24 [phonetic] dislocation, those are all -- all potential reasons  
25 why somebody can --

1 Q How about axial pain in the low back?

2 A In the right circumstance, yes.

3 Q Okay.

4 A If they have --

5 Q How about back and leg pain?

6 A In the right circumstance. But again, would I  
7 ever offer it to Mr. Cervantes? Not a chance.

8 Q Doctor, when you perform surgery, do you utilize  
9 discography in your planning?

10 A From time to time.

11 Q Okay. So you actually use the test in which you  
12 criticize in this case, fair?

13 A Of course. Because it's improperly used.

14 Q Okay. So it's Dr. Lanzkowsky, did he fall below  
15 the standard of care in performing this test?

16 MR. BAIRD: Objection. Your Honor, this is  
17 irrelevant and...

18 THE COURT: No, we're moving on.

19 MR. SIMON: He's criticizing Dr. Lanzkowsky's care.

20 MR. BAIRD: The standard of care --

21 MR. SIMON: Telling him doesn't know how to do a  
22 discogram.

23 MR. BAIRD: This is not about the standard of care.

24 THE WITNESS: I didn't say that, either.

25 THE COURT: I'm going to allow it.

1 THE WITNESS: Number one, I didn't say he didn't know  
2 how to do a discogram. All's I'm saying is you can't use that  
3 result to justify surgery in this individual.

4 BY MR. SIMON:

5 Q Okay. For this particular case?

6 A Correct.

7 Q Right?

8 A Yes.

9 Q But you use discograms, right?

10 A From time to time in a -- in the appropriate  
11 clinical setting.

12 Q Okay. And you know the North American Spine  
13 Society, as you rely on, right, because you're a member of  
14 that society?

15 A I don't -- I don't believe I rely. But go  
16 ahead.

17 Q You would agree that in patients who fusion is  
18 being considered, discography's role in such cases is to  
19 determine if the disc within a proposed fusion segment are  
20 symptomatic?

21 A Correct.

22 Q And the adjacent discs are normal?

23 A Correct.

24 Q And that's what was done in this case?

25 A No. You can't -- you can't take somebody with

1 age-appropriate anatomy and utilize that method. Again, I've  
2 told you what the false positive rate it. You'd be operating  
3 on everybody if you -- if you practiced like that.

4 Q All right. Let's talk about the age-appropriate  
5 anatomy. You are telling this jury that the age-appropriate  
6 anatomy -- do I have it the right way, Doc?

7 A Yes.

8 Q Or should I flip it around? Okay. All right.  
9 So the black disc is the L5-S1, right?

10 A It's actually not completely black. There's  
11 still some water signal within the disc, you see the white  
12 lines here. It's darker than the rest. Again, L5-S1 and L4-5  
13 are the ones that typically darken first.

14 Q And you would agree that if there's a tear, that  
15 disc can deteriorate over time?

16 A Well, an annular fissure or annular tear is a  
17 result of degeneration. It doesn't cause degeneration.

18 Q I -- I'm not talking about causes. Just answer  
19 my question, please.

20 A But you didn't answer -- you didn't ask it  
21 properly. I'm trying to --

22 Q Okay. All right.

23 A I'm trying to answer it in a way that is --

24 Q All right. Just, Doctor, I know you want to try  
25 to explain everything away so you don't have to answer my

1 questions. But here's how it works.

2 MR. BAIRD: Objection, Your Honor. This is  
3 argumentative. And if he's --

4 MR. SIMON: Judge, I would just -- if -- if he's  
5 going to keep interrupting --

6 THE COURT: Well, counsel, let me handle this, okay?

7 MR. SIMON: Thank you. Thank you.

8 THE COURT: All right. Doctor, just for the sake of  
9 moving this along, your counsel will have a chance to redirect  
10 you --

11 THE WITNESS: Sure.

12 THE COURT: -- and you can clarify anything that  
13 needs to be clarified. So, please, listen specifically and  
14 only answer specifically what Mr. Simon is asking. If you  
15 don't understand or you're unclear, please ask him --

16 THE WITNESS: Sure.

17 THE COURT: -- to rephrase, restate the question.

18 BY MR. SIMON:

19 Q Doctor, is this a normal disc? L5-S1, the --  
20 that we're looking at?

21 A In this circumstance, yes.

22 Q Okay. In this circumstance?

23 A Correct.

24 Q But in other circumstances it might not be?

25 A Correct.

1           Q     The same exact appearance of the disc might not  
2 be in other circumstances?

3           A     For example, on a 10-year-old, correct.

4           Q     Okay. So you'd have to be 10-year-old -- 10  
5 years old to have that disc?

6           A     I -- I just -- no, I was just trying to answer  
7 your question. It's not normal in a 10-year-old, but in  
8 somebody that's in their mid-20s, that's within normal limits.

9           Q     All right. Tell the jury what pain Christian  
10 Cervantes had prior to the motor vehicle accident --

11          A     I have no --

12          Q     -- in his low back?

13          A     I have no idea.

14          Q     No idea, right? Okay. So if we look at this  
15 disc, and I'm going to just give you all the benefit of the  
16 doubt that this disc, the way it looks, pre-dated this  
17 accident. All right? You with me?

18          A     Well, I --

19          Q     Okay.

20          A     -- understand what the question is.

21          Q     All right. The question is if there's no pain  
22 that this disc is causing, and then he gets in a traumatic  
23 event that causes the pain, you would agree that this disc  
24 would make him more susceptible to injury?

25          A     Not necessarily, no.

1 Q Okay. But it could --

2 A Not necessarily --

3 Q -- right?

4 A -- no.

5 Q All right. You would agree that if he's having  
6 pain associated with this disc, that the accident aggravated  
7 this disc to cause the pain?

8 A No.

9 Q Okay. So you disagree with that?

10 A Correct.

11 Q When they presented to you for your exam, you  
12 would agree they reported pain to you?

13 A Correct.

14 Q Correct? Okay. Tell this jury what's causing  
15 his pain now.

16 A We have no evidence that his pain is coming from  
17 his disc or his spine. We don't have evidence of that. The  
18 discogram is, you know, not relevant or valid in this case.  
19 People have back pain for a variety of reasons.

20 Q Okay. I'm not -- not talking about people.  
21 Talking about these people right here.

22 A Correct.

23 Q Okay?

24 A I understand that.

25 Q Right? Okay.

1           A     And that's what I referring to, actually. And  
2     -- but again, I can't speculate what muscles were causing  
3     myofacial pain or whether his work was causing pain, or  
4     whether -- what was impacting his pain complaints. My job in  
5     this case was to determine if this motor vehicle accident  
6     caused any injury to his spine or need for surgery. And that  
7     -- that's what my job is. Not to speculate did he injure  
8     himself without us knowing about it; I don't -- I don't have  
9     to worry about those things.

10           Q     Okay. So you don't have any evidence, right,  
11     that there was any other injury? Just so we're clear.

12           A     Correct.

13           Q     Okay.

14           A     I don't --

15           Q     So -- and you -- and so what I really need you  
16     to answer this time, because you didn't answer it last time,  
17     and I'm going to give you one more opportunity in front of  
18     this jury, because this is your chance; tell this jury what  
19     his current ongoing pain complaints are caused by when he was  
20     examined by you?

21           A     On that day, I don't know.

22           Q     Okay. Thank you. And this disc that you see is  
23     degenerating, as you put it, right? It's a degenerative disc?

24           A     Correct.

25           Q     Okay. That doesn't get better over time, right?



1 A Well, the radiographic appearance does not, no.

2 Q Okay. But our discs degenerate as we get older?

3 A Correct.

4 Q Right?

5 A It's part of normal aging.

6 Q Right. And that's why you make a pretty good  
7 living, because you treat those conditions, right?

8 A What's the question?

9 Q The question is, is that these discs don't get  
10 better, and ultimately they have to come see people like you,  
11 right?

12 A Not -- not always.

13 Q Not always, but they do.

14 A It's -- you know, having --

15 Q Do they, Doc, or not?

16 A I'm just trying to answer your question.

17 Q I would love for you to answer my question.

18 A Well, could you rephrase it so I understand it?

19 Q Sure. These discs don't get better over time?

20 A Whenever you say these discs, you're pointing to  
21 him.

22 Q The L5-S1, this disc is not going to get better  
23 when it's black like that?

24 A Whenever you say better, this is within normal  
25 limits. So I don't -- your question confuses me.

1           Q     Okay. All right. It's a normal disc in your  
2 mind, right?

3           A     Normal for his age, correct.

4           Q     Okay. Isn't it true, Doc, what you just told  
5 this jury that the L4-5 is one of the first discs to  
6 degenerate?

7           A     L4-5 and L5-S1, those two.

8           Q     Okay. Isn't it amazing if you had a  
9 degenerative process that you want to advance to this jury,  
10 that the L4-5 is as pristine as you could possibly see?

11          A     It's -- it's not as pristine as you could  
12 possibly see.

13          Q     Oh.

14          A     That's false.

15          Q     Okay. So there's something wrong with that  
16 disc?

17          A     Well, if you look, all of the discs have some  
18 darkening on the outer margin. So the -- the high signal  
19 associated with hydration that you see early in life is gone.  
20 The process starts from the periphery and works its way  
21 towards the center.

22                 Can we get that lightened up a little bit?

23          Q     Let's see. Sorry. There you go.

24          A     Also, you can see up here, this kite [phonetic]  
25 loss, at the lumbosacral junction, these two discs here, you

1 can see quite a bit of dehydration of this disc right here.  
2 These two -- so far, of course, within normal limits, but  
3 they're already well into the process of dehydration.

4 His sacrum has what we call transitional anatomy,  
5 where the sacrum was in the process of forming another segment  
6 here, which makes the sacrum longer than normal. It's a  
7 congenital anomaly. When people have this congenital anomaly,  
8 it accelerates the degenerative process at the lumbosacral  
9 junction. So it's not surprising at all that he would have  
10 more findings at L5-S1 than the other levels.

11 Q All right. And -- but the L4-5 is much  
12 different than the L5-S1, agreed?

13 A Well, it's all -- it's all --

14 Q May we at least agree on that?

15 A Whenever you say much different, I don't know  
16 what you mean by that. I mean, obviously, there's less  
17 dehydration there. But it's -- they all -- they both exhibit  
18 degenerative changes.

19 Q Okay. All right. And when people have  
20 degenerative changes and they don't have symptoms, they won't  
21 even know they have degenerative changes, right?

22 A Typically.

23 Q And you have no evidence that there was any  
24 symptoms from these degenerative changes before this accident?

25 A Correct.

1 Q Let's see, where is his report. Yeah, right  
2 here.

3 All right. So we'll turn to your opinions on Maria  
4 Abarca. You --

5 A Well --

6 Q I'm sorry, this is your -- and I'll just show  
7 you your portion of your report [indiscernible]. I  
8 highlighted it and that's my writing off to the side.

9 A Correct.

10 Q Are you -- you relate a myofacial strain to the  
11 accident, right?

12 A Correct.

13 Q And the soft-tissue structures?

14 A Correct.

15 Q And you would expect soft-tissue structures to  
16 resolve within four to six weeks?

17 A No. Not -- not necessarily.

18 Q Okay. So when did they resolve in this case?

19 A In this case, if you look at the review records,  
20 she reported symptoms on November 15th, 2011. She reported on  
21 December 6th that it had resolved.

22 Q Okay. So in your opinion her ligaments and  
23 muscle injury, if there was one, resolved?

24 A As it relates to the myofacial strain diagnosis  
25 in the back, yes.

1           Q     All right.  So then you made a diagnosis of  
2 spondylosis, correct?

3           A     Correct.

4           Q     Correct?  And she had no pain of -- associated  
5 with spondylosis after this -- before this accident, right?

6           A     I don't know that.  We don't know that.

7           Q     Doctor, tell this jury what evidence of pain to  
8 her low back that you have?

9           A     That -- that's a different question.  You asked  
10 me if she had pain.  I don't know what she had.

11          Q     Okay.  You don't know.  So we're basing all the  
12 information on the evidence in this case?

13          A     Correct.

14          Q     You know you're not allowed to speculate about  
15 stuff that we don't have?

16          A     Right.  But you --

17          Q     Okay.

18          A     -- asked me a question that was forcing me to  
19 speculate if I answered it.

20          Q     Spondylosis is a condition of the spine in which  
21 you operate, right?

22          A     Correct.

23          Q     Right?  And she has this condition?

24          A     No, you're -- you're -- no.  You can -- you  
25 don't operate on this degree of spondylosis.

1 Q Okay. But she has this condition that you  
2 diagnosed?

3 A Correct.

4 Q Okay. And certainly this accident could have  
5 aggravated her spondylosis to become painful in this case?

6 A I have no evidence of that.

7 Q She reported pain to you, right?

8 A Correct.

9 Q And you can't tell the jury right now what the  
10 cause of her ongoing pain is, fair?

11 A Correct.

12 Q You would agree that she had pain when she was  
13 discharged from the chiropractor?

14 A Correct.

15 Q You would agree she had pain when she was  
16 released from Dr. Coppel?

17 A Correct.

18 Q You would agree that the time she was released  
19 from Dr. Coppel there was a gap in treatment, that you call  
20 it, right?

21 A Correct.

22 Q Okay. And then she saw Dr. Lanzkowsky?

23 A Much later, yes.

24 Q Yep. Much later. She had some pain then?

25 A Correct.

1           Q     Right?  And during that gap in treatment, you  
2 have no evidence that she was pain-free?

3           A     I have no evidence of anything.  Correct.

4           Q     Okay.  And you have no evidence that she had any  
5 intervening trauma or injury?

6           A     Well, other than the incident that we've talked  
7 about with bending and lifting clothes.

8           Q     Okay.  And when -- you -- you're calling that an  
9 incident or a daily activity?

10          A     I wasn't calling it either.

11          Q     Okay.  So just so we're clear, you're not trying  
12 to blame any of her ongoing problems to picking up a light  
13 piece of clothing?

14          A     It certainly could --

15          Q     Oh, no, no, Doctor.  Not could; that's not your  
16 opinion to a reasonable degree of medical probability,  
17 correct?

18          A     That's -- that's why I said, you asked me what  
19 her ongoing pain symptoms were from.  I don't know to a  
20 reasonable degree of medical probability.

21          Q     Okay.  That's all I was asking.  Thank you.  And  
22 so just so I'm clear, you think that the chiropractic  
23 treatment and Dr. Coppel's treatment is unrelated to this  
24 case?

25          A     No, what I had indicated as it relates to her is

1 that a short course of treatment related to chiropractic care  
2 is reasonable. I didn't feel the pain management evaluation  
3 and treatment was necessary.

4 Q Okay. But if she had symptoms and went to Dr.  
5 Coppel, you're not alleging he did anything wrong in treating  
6 her?

7 A Not below the standard of care, correct.

8 Q Okay. And so the reason she went to Dr. Coppel  
9 was because Dr. Adair referred her, true?

10 A That -- I believe that that referral was there.  
11 But again, I -- it wasn't medically necessary as it relates to  
12 this incident, and she was --

13 Q As it relates to this incident?

14 A Correct.

15 Q Was it -- let's take the incident out of the  
16 equation. Was it medically necessary just for the treatment  
17 of her pain?

18 A No. No.

19 Q Okay. So Dr. Adair referred her to Coppel,  
20 correct?

21 A Correct.

22 Q And the accident caused her to go to Dr. Adair,  
23 correct?

24 A I would be speculating as to that.

25 Q Okay. So you -- we heard all about your



1 credentials, the Mayo Clinic, I mean, I -- I don't dispute  
2 that you have a lot of credentials. But you can't make the  
3 temporal relationship between an accident three days earlier  
4 and the first chiropractic evaluation three days later?

5 A Well, again, I said that having treatment for  
6 this is -- is reasonable chiropractic care. But you're --  
7 you're trying to force me to answer a question in a way that's  
8 against the rules.

9 Q Okay. I'm not sure what rules you're talking  
10 about. But the accident caused her to go to Dr. Adair, right?

11 A How do I -- I can't -- I -- I think it's  
12 reasonable that she would have --

13 Q Why not just answer the question yes or no?

14 A I can't answer it without violating the rules.

15 Q You reviewed all of this, right?

16 A Correct.

17 Q Okay. And that's what you do a lot, right? And  
18 you can't tell this jury that three days later the reason she  
19 was in Dr. Adair's office was because of this car accident?  
20 You're not willing to do that for us?

21 A I think that it's reasonable that she had  
22 chiropractic care. But you're asking me why she showed up at  
23 a particular doctor's office. I can't -- I can't testify to  
24 that.

25 Q Okay. Would you agree with me that the law

1 allows for compensation when a victim is in a motor vehicle  
2 accident?

3 A Oh, yes.

4 Q Okay.

5 A If -- if they're injured.

6 Q All right. Now let's just turn to Christian's  
7 report on his exam. I'll just go quick to your diagnosis.  
8 Your diagnosis as to what is related for Christian is nausea  
9 and vomiting, correct?

10 A Correct.

11 Q And that's the only thing that, in your opinion,  
12 is related to this car accident?

13 A And again, to a reasonable degree of medical  
14 probability.

15 Q Okay.

16 A One could assume that he had a myofacial strain  
17 injury, too. In which case you could assume that a short  
18 course of physical therapy and/or chiropractic care is  
19 reasonable. But I had to make this opinion to a reasonable  
20 degree of medical probability.

21 Q Okay. But you weren't willing to give that to  
22 him, right? The --

23 A Well, it's not what I'm willing to do or not  
24 willing to do. It's what the medical evidence, you know,  
25 would -- would say is appropriate.

1 Q Okay. So these are your opinions, though,  
2 right?

3 A Correct.

4 Q Okay. So then let's go to what you said is not  
5 related. You said lumbar spondylosis?

6 A Correct.

7 Q Right? So there is a lumbar condition that you  
8 diagnosed, fair?

9 A Well, spondylosis is a diagnosis.

10 Q Okay. And you said to the lumbar, low back?

11 A Correct.

12 Q So that's a condition you diagnosed?

13 A Yes. I mean, everybody has spondylosis.

14 Q Doctor, why do people go to doctors?

15 A In -- well, it depends on what type of doctor  
16 you're seeing.

17 Q Any doctor.

18 A Well, you know, I -- I don't know how to answer  
19 the question, with the symptoms that make -- that would answer  
20 all the questions.

21 Q Okay. Let me make it a little easier for you.

22 A Uh-huh.

23 Q Okay. When someone has symptoms that concern  
24 them, they go to the doctor; is that fair?

25 A Correct.

1 Q All right.

2 A I mean, you have -- you have many other reasons,  
3 too. Well-patient visits, well-baby checks.

4 Q My question --

5 A You have immunization visits. You have -- you  
6 know, that's why I can't answer it. You asked me this,  
7 like --

8 Q Okay. Fair enough.

9 A -- there's some treatise on why one person goes  
10 to the doctor all of the time. And --

11 Q I get it. No, I agree with you.

12 A Okay.

13 Q I agree with you.

14 A Thank you.

15 Q So, but when people go to you for treatment who  
16 have conditions, right, especially spinal conditions, they  
17 typically have symptoms that require -- that concern them?

18 A Well, correct.

19 Q And what --

20 A If you ask me if somebody has, like, back pain.

21 Q Right.

22 A Correct.

23 Q Okay. So when people go to you, they typically  
24 have pain and ask for your help?

25 A Correct.

1 Q Okay. And then you render a diagnosis?

2 A Correct.

3 Q So when Mr. Cervantes went to you for your  
4 defense exam, you rendered a diagnosis of lumbar spondylosis?

5 A Correct.

6 Q Right? And that's a condition that in your  
7 practice you operate on under the right circumstances?

8 A In -- yes. Not this one, obviously. But --

9 Q Okay.

10 A -- correct.

11 Q Well, obviously.

12 A Right.

13 Q Right. It's obvious.

14 A It is. When --

15 Q Okay.

16 A -- obviously --

17 Q I -- I get it. No question pending, Doctor.

18 Doctor, do you fault either Ms. Abarca or Mr. Lopez for not  
19 treating after Dr. Coppel?

20 MR. BAIRD: Object to the form. Whether any fault of  
21 someone going for treatment, that's not an issue that is -- in  
22 this case.

23 MR. SIMON: I'll rephrase it.

24 THE COURT: All right.

25 BY MR. SIMON:

1           Q     Do you criticize the plaintiffs for not seeking  
2 treatment on a regular basis each month after Dr. Coppel?

3           A     No.

4           Q     And if someone has ongoing pain after getting  
5 injections and there's nothing else to really do for them, you  
6 wouldn't expect them to keep going for physical therapy  
7 forever, right?

8           A     Correct.

9           Q     And as a doctor, you encourage people to return  
10 to work, fair?

11          A     Correct.

12          Q     All right. And spine surgery is an elective  
13 surgery, agreed? Unless you're in the trauma center after a  
14 car accident and somebody's spinal cord or whatever that you  
15 do in the trauma center. But after that, if a spinal  
16 condition is diagnosed that may be surgical, that's an  
17 elective surgery, unless there's myelopathy or something else,  
18 fair?

19          A     There's many different scenarios. It can be  
20 elective.

21          Q     All right. So when it is elective, you would  
22 agree that a 27-year-old should hold off as long as he could  
23 bear it before he had the procedure?

24          A     Well, you know, honestly, it's a very difficult  
25 question to answer. It depends upon what their problem is.

1 Obviously, you would take very seriously a surgical  
2 recommendation in a 27-year-old, very, very seriously. So I  
3 would not encourage them to have surgery unless they really  
4 needed it.

5 Q Okay. So even though they were a surgical  
6 candidate, if they could still function, you would recommend  
7 that?

8 A Are you speaking of a hypothetical patient?

9 Q Yeah, hypothetical.

10 A Not Mr. Cervantes?

11 Q Yeah. Of course not. Hypothetical.

12 A Okay. If they said they could tolerate the  
13 symptoms, I would recommend they not have the surgery.

14 Q Okay. As long as -- until they could not  
15 tolerate the symptoms, fair?

16 A Well, that would be making an assumption that I  
17 knew what was going to happen in the future, and you don't  
18 know that.

19 Q Okay. Okay. And here's our hypothetical.  
20 Okay. Guy comes in to you, Doctor, you recommend an L5-S1  
21 fusion. Okay. He says, you know what, it's kind of a risky  
22 procedure, I want to hold off as long as possible. I think I  
23 can function right now.

24 A Then I wouldn't --

25 Q Would you -- would you encourage that?

1           A     Well, I wouldn't have recommended the -- the  
2 surgery.

3           Q     Why not?

4           A     Because he said he didn't -- he -- he could  
5 tolerate it, he's young, he's functional. I would not have  
6 recommended it.

7           Q     Okay. But let's say he's a surgical candidate.

8           A     What do you mean by that?

9           Q     Okay. You made the determination that he's  
10 surgical.

11          A     Well --

12          Q     Let me ask you this, Doctor. Is the only time  
13 that you would ever recommend surgery for someone is if they  
14 were in severe unbearable pain?

15          A     No.

16          Q     Okay. Have you had an occasion where you  
17 recommended surgery where the person had moderate pain?

18          A     Or no pain, sure.

19          Q     Okay. So between no pain, moderate pain, and  
20 severe pain, you've made that recommendation?

21          A     For completely different conditions.

22          Q     Okay.

23          A     Spinal cord compression, myelopathy, gait  
24 instability. They're not painful, but they can put you in a  
25 wheelchair.



1 Q All right. So --

2 A That's why you're -- you're asking me these  
3 questions that have so many different meanings that is  
4 irrelevant and useless.

5 Q Okay. In regard to surgeries that you've  
6 recommended where the person had moderate pain, you --

7 A Due to what?

8 Q -- and you would encourage them to try to live  
9 their life before ultimately succumbing to surgery?

10 A I can think of --

11 Q Can you at least --

12 A I can think of --

13 Q -- see that?

14 A -- scenarios like that.

15 Q Okay. And, Doctor, there's a lot of risks that  
16 go with a L5-S1 surgery, agreed?

17 A What do you mean by a lot?

18 Q Okay. Well, why don't you tell this jury all  
19 the risks associated with an L5-S1 fusion?

20 A It depends on how it's done. But typically the  
21 risk is less than 5 percent. You have risk of anesthesia,  
22 risk of infection, risk of wound complication. The -- the  
23 surgery itself takes one or two hours, so there's operative  
24 time risk. Reaction to medication, some previously unknown  
25 medical condition becoming symptomatic, those are all

1 potential risks. Neurologic symptoms, that's a potential  
2 risk.

3 Q All right. And neurologic symptoms, you can  
4 even get erectile dysfunction from that type of surgery,  
5 right?

6 A If you go anteriorly, yes.

7 Q Okay.

8 A Obviously, I would not recommend that in him.

9 Q So did you know that Dr. Kaplan testified that  
10 Christian was a surgical candidate at the L5-S1?

11 A I read his report.

12 Q Okay. But you knew that before coming here  
13 today, right?

14 A Correct.

15 Q Okay. And you just disagree with him, right?

16 A Correct.

17 Q And doctors can agree to disagree?

18 A I don't know what you mean by that.

19 Q Okay. Well, people go get second opinions all  
20 the time in your industry, don't they?

21 A Correct. It doesn't mean both are right,  
22 though.

23 Q Okay. So in your -- this case, as you sit here  
24 today, based on whatever's been told to you by the lawyers or  
25 whoever else, you have an understanding that your opinion is

1 the only opinion standing alone that Christian's disc injury  
2 was not from this car accident; did you know that?

3 A I -- you mean out of -- out of the people that  
4 have testified thus far?

5 Q Yep.

6 A I don't -- I don't know what they all testified  
7 to. I would be surprised if Dr. Koka testified to -- regards  
8 -- or with regard to disc injury.

9 Q Okay. What myofacial strains were caused by  
10 this accident for Maria Abarca?

11 A Well, whenever you say what myofacial strain,  
12 myofacial strain is the diagnosis.

13 Q Okay. For what body part?

14 A Well, it's -- it's not specific to a body part.  
15 She had symptoms involving her abdomen, she had symptoms  
16 involving her upper neck, mid-back, low-back. So it in a  
17 variety of different areas.

18 Q Okay. And in her shoulder?

19 A Correct.

20 Q And those are injuries diagnosed by themselves,  
21 right?

22 A I -- I don't know what you mean by that.

23 Q Well, in your report, I don't see where you  
24 diagnosed a -- related to the accident -- a neck strain or a  
25 low-back strain or a right-shoulder strain. Why didn't you do

1 that?

2 A That's part of myofacial strain. That's --  
3 those are all the same diagnosis.

4 Q Okay. So every -- every injury's the same to  
5 each body part?

6 MR. BAIRD: I'll object. Move to strike.

7 THE COURT: Oh, it -- Mr. Simon's last comment?

8 MR. BAIRD: I thought it wasn't a question and then  
9 it became a question. Sorry.

10 BY MR. SIMON:

11 Q Every injury -- every injury that she had from  
12 this accident that involves the muscles and ligaments are the  
13 same to you?

14 A Well, they're classified as myofacial strain  
15 diagnosis.

16 Q Okay. Doctor, you told us earlier that you  
17 actually reviewed EMG studies in this case?

18 A Correct.

19 Q All right. Can you tell me where that is?

20 A Sure. It was November 19th, 2013. It was done  
21 by Dr. Richard Lee. It was an EMG report on Mr. Cervantes  
22 that demonstrated no evidence of any nerve impingement coming  
23 from his back. It was totally normal.

24 Q Okay. And that's one of the bases that you rely  
25 on in giving your opinions to this jury?

1           A     Well, it was an EMG that I read. It was normal.  
2 I wouldn't say -- even if it wasn't there, my opinions  
3 wouldn't change.

4           Q     Doctor, can you show me what you are reading to  
5 rely on that?

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

7           THE WITNESS: Sure.

8           THE COURT: You may.

9 BY MR. SIMON:

10          Q     Thank you, Doctor. All right. So that was done  
11 based on your review of the records?

12          A     Correct.

13          Q     Doctor -- doctor, I will submit to you that that  
14 record that you relied on is not of these patients.

15          A     Okay.

16          Q     Okay? And I invite counsel to tell me if I'm  
17 wrong, but sometimes you might mix things up?

18          MR. BAIRD: Your Honor, I think --

19 BY MR. SIMON:

20          Q     Sometimes you might review records that don't  
21 exist?

22          MR. BAIRD: Your Honor, I would like this matter to  
23 be resolved before we go any further. I would like the  
24 opportunity to have my office go collect the records, or at  
25 least our production of this, so we can determine whether or

1 not this is the right or the wrong patient. But for Mr. Simon  
2 just to say it and leave it, that would be inappropriate at  
3 this time.

4 THE COURT: So this record is not in the plaintiffs  
5 in this case?

6 MR. BAIRD: Well, I'm --

7 MR. SIMON: It's not in the joint exhibits by -- that  
8 either party has.

9 MR. BAIRD: Plaintiffs haven't put it into evidence.  
10 That doesn't mean it's not his record. There's been plenty of  
11 evidence that hasn't been put in.

12 THE COURT: Come here, please.

13 (Bench conference.)

14 THE COURT: What is it?

15 MR. BAIRD: I was looking at this this morning.  
16 There's an EMG study. I -- I don't know why they would think  
17 it's not of him. But I think --

18 THE COURT: EMG study of whom?

19 MR. BAIRD: Of Christian. So that's what I'm saying.  
20 They didn't put it in their exhibits, and I don't see the need  
21 to, we can go and get it and we can look at it. But for him  
22 to say that's not Christian, that's -- that's not fair. We  
23 need to -- we need to know that.

24 THE COURT: I guess I don't understand.

25 MR. BAIRD: Dr. Lanzkowsky ordered an EMG. He

1 testified he never got it, but it's in the records. That's my  
2 understanding.

3 THE COURT: Was it produced?

4 MR. BAIRD: I think so. I mean, I --

5 THE COURT: Then I don't understand what the problem  
6 is.

7 MR. BAIRD: Well, he's saying that it's not of  
8 Christian. But I think it is. But in either case, we should  
9 go get the records.

10 THE COURT: Doesn't it say on the record who the  
11 patient is?

12 MR. SIMON: I don't know. He doesn't -- he doesn't  
13 have the records unless --

14 MR. BAIRD: I mean --

15 MR. SIMON: -- I mean, he's probably --

16 MR. BAIRD: -- I don't have them here, you know, in  
17 minutes.

18 MR. SIMON: But these are records --

19 MR. BAIRD: I'm saying --

20 MR. SIMON: -- that neither one of us have received  
21 in the course of discovery, true?

22 MR. BAIRD: No, no, no.

23 THE COURT: Okay. Wait a minute.

24 MR. BAIRD: No, I don't think that's true.

25 THE COURT: So the doctor has records you don't have?

1 MR. SIMON: I don't -- I've never seen them. I've  
2 never seen that record.

3 MR. BAIRD: I think it's been produced.

4 THE COURT: And the doctor just pulled it out?

5 MR. BAIRD: No, no. It's in his report. It's been  
6 in his report for years. And I have seen the records, and my  
7 understanding it's reproduced [indiscernible] Lanzkowsky's  
8 stuff. So it's --

9 THE COURT: That record you gave the doctor, it  
10 doesn't have his name on it? Maybe I'm slow. I'm starting --  
11 I'm not following.

12 MR. BAIRD: No. Here's what happened.

13 THE COURT: Okay.

14 MR. BAIRD: Lanzkowsky --

15 THE COURT: Hold on a minute.

16 MR. SIMON: Can you -- can you whisper a little bit  
17 more?

18 MR. BAIRD: Oh. Sorry.

19 THE COURT: [Indiscernible.]

20 MR. BAIRD: I don't want to be like [indiscernible].

21 THE COURT: Okay. That record, can we see it?

22 MR. SIMON: There is no record, Judge. It's his  
23 report that he's --

24 MR. BAIRD: Nobody put it into evidence, so it's not  
25 proffered.



1 MR. SIMON: In his report he has a summary of the  
2 records that he reviewed. And all he's reading from is a  
3 summary of a record that, to our knowledge, in this trial we  
4 do not have --

5 MR. BAIRD: To our -- I've read the record.

6 MR. SIMON: -- and I've never seen.

7 MR. BAIRD: And I think I've produced everything.  
8 So.

9 THE COURT: Well, then why don't you -- I mean  
10 [indiscernible] on redirect.

11 MR. BAIRD: Well, but I don't think -- it's not in  
12 the record here. I have to step out and go get the record.  
13 Because I don't want to guess. I have a personal belief, but  
14 I don't want to guess like, I mean, he's guessing. That's my  
15 objection.

16 THE COURT: Okay. Well, I --

17 MR. SIMON: I've never seen it. That's --

18 THE COURT: -- don't know what else to do. I think  
19 we need to contact your office and [indiscernible].

20 MR. BAIRD: Okay. Yeah. I'll step out right now.

21 THE COURT: And you'll have to [indiscernible].

22 MR. BAIRD: Okay. Yeah. That's fine. Thank you.

23 (End of bench conference.)

24 MR. BAIRD: You can continue. I'll [indiscernible].

25 THE COURT: All right. That's fine.

1 MR. SIMON: Thank you, Your Honor.

2 BY MR. SIMON:

3 Q You would agree in this case that Maria Abarca  
4 was transported by ambulance to the emergency room?

5 A Yes, that's correct.

6 Q Right? And so you would agree that the  
7 ambulance ride to the emergency room is related to this car  
8 accident?

9 A Absolutely.

10 Q Okay. But everything after that you can't state  
11 is related to a reasonable degree of medical probability?

12 A No. That's not correct.

13 Q Oh, I'm sorry. Then what do you relate after  
14 the emergency room?

15 A Obviously, the evaluation at the hospital,  
16 the --

17 Q No, after the emergency room.

18 A I'm just trying to answer your question. I  
19 mean --

20 Q Okay. After.

21 A Okay. And the imaging that was performed in the  
22 -- in the ER and then afterwards, a short course of physical  
23 therapy and/or chiropractic care is reasonable, 12 to 24  
24 visits. That's reasonable.

25 Q All right. And then it -- but as far as Mr.

1 Cervantes, after his visit at the hospital, you can't relate  
2 anything to the car accident to a reasonable degree of medical  
3 probability?

4 A That's correct. You got it.

5 Q All right. When a person goes to a doctor, you  
6 would agree that they rely on the advice of the doctor?

7 A Correct.

8 Q All right. And the doctor expects them to  
9 follow a treatment plan to get better?

10 A Typically, I -- I would say yes.

11 Q And when patients don't follow your treatment  
12 plan, that might be a problem in them recovering from what  
13 they are complaining of?

14 A I can think of situations where that would be  
15 true and false.

16 Q And you would agree that patients are allowed to  
17 trust their doctors' advice?

18 A Correct.

19 Q And trust charges that they select are  
20 reasonable?

21 A I'm sorry, could you say that again?

22 Q And trust that the doctors' charges for their  
23 services are reasonable?

24 A I -- I can't -- I mean, that's -- I'd be  
25 speculating as to what they're feeling about that. I -- I

1 don't know what you mean by that.

2 Q Well, in your practice, do patients get to  
3 negotiate your fees before you have a consultation?

4 A Sure, if that's an issue for them, yes. They  
5 can -- they're more than welcome to do that.

6 Q Okay. Do they do that frequently with you?

7 A I wouldn't say frequently. But there are many  
8 patients that have particular circumstances that -- that need  
9 that kind of accommodation, sure.

10 Q But your total charge is your total charge,  
11 fair?

12 A I -- I don't know what you mean by that.

13 Q In this particular case, you do not dispute the  
14 truthfulness of Maria Abarca or Christian Cervantes-Lopez?

15 A Correct.

16 Q Right. You examine them personally and believe  
17 them to be truthful to you?

18 A Correct.

19 Q And truthful in the medical records that you  
20 review?

21 A Correct.

22 Q And when they present it to you, they cooperated  
23 with you?

24 A Correct.

25 Q Answered your questions?

1 A Correct.

2 Q Did what you asked?

3 A Correct.

4 MR. SIMON: Court's indulgence.

5 THE COURT: Of course. He's going to have a document  
6 faxed over --

7 MR. MICHALEK: Okay.

8 THE COURT: -- to chambers. He's calling the office.

9 BY MR. SIMON:

10 Q Doctor, do you criticize Mr. Cervantes-Lopez for  
11 having a job that is -- requires hard work?

12 A No.

13 Q And you don't sit here and blame any traumatic  
14 injury at work for the -- any cause of his ongoing symptoms,  
15 correct?

16 A Not specifically, no.

17 Q Okay.

18 MR. SIMON: Nothing else, Your Honor. Thank you.

19 THE COURT: Did you get hold of your office?

20 MR. BAIRD: I got a hold of them. They're -- we'll  
21 hear from them very shortly. Want me to just start and  
22 then --

23 THE COURT: Yeah.

24 MR. BAIRD: -- Fred will let us know when we hear  
25 form them.

1 THE COURT: That's fine.

2 REDIRECT EXAMINATION

3 BY MR. BAIRD:

4 Q Let's start here. What is the legal standard,  
5 as far as you understand it, to which you are required under  
6 law to offer your opinions in this courtroom?

7 A The standard is to a reasonable degree of  
8 medical probability, which means more probable than not the  
9 diagnosis is related or can be made.

10 Q Okay. And so are you hesitant to offer an  
11 opinion in this courtroom that doesn't rise to that standard?

12 A Yes.

13 Q And does that have anything to do with the  
14 reason you have declined to opine as to what is actually  
15 causing the plaintiff's pain complaints?

16 A Absolutely.

17 Q Now, Mr. Simon was asking you a bunch of  
18 questions about the hippocratic oath and your obligation to  
19 patients. The fact that Christian and Maria are not your  
20 patients, does that relieve you of the obligation to tell the  
21 truth?

22 A No.

23 Q Did you take an oath when you came into this  
24 courtroom today?

25 A Yes.

1 Q Was that an oath to take the truth?

2 A Yes, tell the truth. Yes.

3 Q And so if you lied today, you could be held  
4 accountable for that?

5 A Very much so, yes.

6 Q That -- would that be a crime?

7 A It would be. And I certainly wouldn't  
8 jeopardize my medical career on making false statements in  
9 this matter.

10 Q When your deposition was taken, did you intend  
11 to offer opinions at trial on billing?

12 A No.

13 Q Okay. Did I ask you to offer opinions on  
14 billing?

15 A No.

16 Q How about in preparation for this trial?

17 A No, I don't believe so.

18 Q And -- but as we were getting ready for today,  
19 did we talk about new developments and the possibility of you  
20 discussing billing at trial?

21 A I mean, yes, in the last 24 hours. But --

22 Q That was my idea? Was that my idea or was that  
23 your idea?

24 A Yours.

25 Q Okay. Have you offered any opinions that have

1 not already been given to the plaintiffs?

2 A No.

3 Q Even with respect to billing, correct?

4 A I -- I believe that's correct. I mean, some of  
5 the questions elicited testimony that supplements what I've  
6 said. But I -- I don't believe it's different.

7 Q Okay. Now -- oops, excuse me -- we've got a  
8 total of \$10,600. Do you think that's the exact amount of  
9 what you'll be charging for your services in this case? Has  
10 something been left out?

11 A I -- I don't think so.

12 Q Okay. Now, he erased it, but he records -- and  
13 we can confirm this later, I believe Dr. Caplan --

14 MR. SIMON: Just for the record, it's not 10,600.  
15 That's just for Christian. It's 9,200 for Maria.

16 MR. BAIRD: Oh. Oh. Oh, I got it. So it's -- it's  
17 18,200. Okay.

18 THE WITNESS: I don't see how you got 9,200 for  
19 Maria.

20 MR. BAIRD: Okay.

21 THE WITNESS: That doesn't make sense.

22 BY MR. BAIRD:

23 Q Well, tell me what your estimate would have --  
24 would have finally [indiscernible]?

25 A I thought it was in the 16-hour range, so



1 16,000, maybe slightly over.

2 Q Okay. So I'm going to write down -- I'm not --  
3 I'm not good at math. I assume that's the symbol for  
4 approximately?

5 A Yes.

6 Q Someone told me that. Okay. And then here  
7 we've got 19,800. So those are the two numbers the jury's  
8 been shown, as far as what you might make on this case; do you  
9 think it's closer to 16,000?

10 A Correct.

11 Q Okay. And you said that was about 16 hours of  
12 work?

13 A Correct.

14 Q How long does it take to perform an L5-S1  
15 surgery?

16 A One or two hours.

17 Q Okay. And if Dr. Kaplan is -- is going to  
18 charge \$32,000, like he testified yesterday, for this surgery,  
19 that is going to be \$16-\$32,000 per hour?

20 A Correct.

21 Q Okay. Okay. In retrospect, I should have  
22 written all that bigger. Hopefully you guys can see it.

23 Okay. Have you ever heard of Dr. Kaplan testifying  
24 on behalf of a defendant in trial?

25 A No.

1           Q     Have you heard of him testifying on behalf of a  
2 plaintiff in trial?

3           A     Yes.

4           Q     Have you ever heard of Dr. Lanzkowsky testifying  
5 on behalf of a defendant in trial?

6           A     No.

7           Q     Have you ever heard of Dr. Lanzkowsky testifying  
8 on behalf of a plaintiff in trial?

9           A     Yes.

10          Q     Have you ever heard of Dr. Koka testifying on  
11 behalf of a defendant in trial?

12          A     No.

13          Q     Have you ever heard of Dr. Koka testifying on  
14 behalf of a plaintiff in trial?

15          A     Yes.

16          Q     Okay. Have you heard of any court taking issue  
17 with the amount you charge for your services as an expert?

18          A     No.

19          Q     Okay. Are you aware that there's -- there are  
20 mechanisms that a party could do that if they had a problem  
21 with --

22               MR. SIMON: Objection. Relevance.

23               THE COURT: Overruled.

24 BY MR. BAIRD:

25          Q     There are mechanisms by which a party could

1 complain if your fees were too high?

2 A Yes.

3 Q Okay. Let's -- will you just give me a brief  
4 description of what spondylosis is?

5 A It's the normal wear and tear that occurs from  
6 aging, and it's influenced by genetics and your anatomy.

7 MR. BAIRD: I don't think I have any further  
8 questions, Your Honor.

9 THE COURT: Do you want to see if that -- did your  
10 office fax over any documents?

11 MR. BAIRD: Yes. They have sent them over.

12 THE COURT: Jas, can you go look in the fax machine,  
13 please?

14 MR. BAIRD: Oh, I guess they were e-mailed to him?

15 THE COURT: They were e-mailed to you?

16 MR. BAIRD: I wonder if this is something we even  
17 need the doctor for? I mean, it's probably something we could  
18 work out over lunch and tell the jury if they were related to  
19 Mr. Cervantes or not.

20 MR. SIMON: Yeah, we can do that. I just have a  
21 couple of follow-up with this --

22 THE COURT: Sure. Are you finished with your  
23 redirect?

24 MR. BAIRD: Is that okay? I'm done with my redirect.

25 THE COURT: Okay. Recross limited to redirect,

1 obviously.

2 MR. SIMON: Yes. Thank you, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. SIMON:

5 Q All right. Doctor, do you keep track of all  
6 other physicians' testimony?

7 A No.

8 Q Okay. So just because you've never heard of it  
9 doesn't mean it's true? You're just one guy?

10 A Well, I've -- I've read their depositions that  
11 said what I just heard.

12 Q Okay. But you don't know what they've testified  
13 to, right?

14 A Well, I've -- I've seen that they've testified  
15 to what I just said.

16 Q Okay. So you just said Dr. Lankowsky, you've  
17 never heard of him testifying on behalf of a plaintiff?

18 A At trial.

19 Q Oh. Okay. So you agree that Dr. Lankowsky has  
20 reviewed cases for the defense --

21 A Correct.

22 Q -- and provided testimony in deposition?

23 A Correct.

24 Q And that's the deposition you read?

25 A Correct.

1 Q Okay. And treating physicians are much  
2 different when they come in to testify, right, on behalf of  
3 patients that they've treated?

4 A I don't know what you mean.

5 Q Okay. Well, that's not a retained defense  
6 expert to come up with opinions where they don't have an  
7 efficient -- a patient/physician relationship, right?

8 A I'm -- can -- can you rephrase the question,  
9 please?

10 Q Right. Because it was inferred as if the  
11 treating physicians come in and testify only on behalf of  
12 their patients, right? Is that how it was inferred in your  
13 mind?

14 A No. I -- I answered the question that was  
15 presented to me. I wasn't trying to infer anything.

16 Q All right. So Dr. Kaplan, I guess there's been  
17 equated, surgery's a lot different than reviewing records,  
18 right?

19 A Correct.

20 Q Right? So would Dr. Kaplan's charges for his  
21 surgeon fee would be more, right?

22 A Correct.

23 Q Because your fees are more when you perform  
24 surgery?

25 A Correct.

1           Q     That's a highly technical skilled trained  
2 physician has to do those surgeries so people don't die?

3           A     Correct.

4           Q     Right?

5           MR. SIMON: All right. That's all I have, Your  
6 Honor. Thank you.

7           THE COURT: All right. Anything else before I let  
8 Dr. Duke go?

9           MR. SIMON: Yes, Your Honor.

10          THE COURT: Mr. Baird, anything else of Dr. Duke?

11          MR. BAIRD: No further questions, Your Honor.

12          THE COURT: Thank you, Doctor, for your time.

13          THE WITNESS: Thank you.

14          THE COURT: You're free to go, sir. All right.  
15 We're going to let the jury go for lunch. 1:45 you think?

16          MR. BAIRD: What's that, Judge?

17          THE COURT: 1:45, an hour?

18          MR. BAIRD: Yes. About an hour -- about an hour and  
19 15 minutes.

20          THE COURT: 2:00. Ladies and gentlemen of the jury,  
21 please come back at 2:00.

22                Again, you're admonished not to converse amongst  
23 yourselves do not do any research, do not form or express an  
24 opinion.

25                       (Jury recessed at 12:49 p.m.)

1 THE COURT: Can we go off the record?

2 MR. BAIRD: Pardon?

3 MR. MICHALEK: I don't think so.

4 MR. BAIRD: I don't think so. We'll advise the Court  
5 -- we'll -- you want us back at quarter till and we'll work  
6 out the issue with these records?

7 THE COURT: Sure.

8 MR. BAIRD: I mean, we're looking at them right now.  
9 I just need to determine, you know, when they were obtained.  
10 I -- I don't think it changes anything. I think they --

11 MR. MICHALEK: There's a COR on 60 -- at the end  
12 of --

13 THE COURT: Okay. 1:45.

14 MR. SIMON: Okay. Thank you.

15 MR. MICHALEK: Thank you, Your Honor.

16 (Court recessed at 12:50 p.m., until 1:56 p.m.)

17 (Outside the presence of the jury.)

18 THE COURT: All right. We're back on the record  
19 before the jury has been -- before the jury is here.

20 MR. BAIRD: Okay. Your Honor, the issue with the  
21 EMG/ENCD study that was brought up during Dr. Duke's  
22 cross-examination --

23 THE COURT: Uh-huh.

24 MR. BAIRD: -- I have -- my office has provided me  
25 with copies of everything that show that the -- the record was

1 included -- I think, actually, Mr. Simon's office had  
2 requested it somehow. There's a COR that has his office's  
3 name on it. But in any case, May 13th of 2014 it was  
4 disclosed. It was also in our proposed pretrial disclosures.

5 And then in the transition between using our version  
6 and their version, I assume it was inadvertently omitted. But  
7 I don't think there's any doubt that the record is of  
8 treatment of Mr. Cervantes and we certainly expected that it  
9 was going to be part of the trial exhibits, but lost track of  
10 it during the trial.

11 THE COURT: Okay. So what would you like for me to  
12 do?

13 MR. SIMON: Your Honor, I would like you to exclude  
14 it. It has not been produced in discovery, it was not  
15 produced by the defendants, I realize that they want to tell  
16 you that they produced it as part of their first sub, and they  
17 handed me that today, the first sub, with all new different  
18 records than was produced at the first sub.

19 So if I may approach -- Where's that? This one? All  
20 right. Just so I can quickly point to Your Honor.

21 THE COURT: Uh-huh.

22 MR. SIMON: Here is the first sub that was given to  
23 my office with a disc by the defendants, and that's how they  
24 produced it, via the disc. All right. Now I want you to turn  
25 -- and this is the same pleading sub that they gave me today.



1 So I'd like you to turn to page 7, I believe. So Exhibit 27  
2 is where this EMG would have come through. Okay.

3 THE COURT: Oh, Centennial Pain?

4 MR. SIMON: Right.

5 THE COURT: Okay.

6 MR. SIMON: So their Bates stamps are 1 through 46.

7 MR. BAIRD: Hold one, you're looking at the wrong  
8 one. See, that's for Maria. So it's going to be 17. That's  
9 for Christian.

10 MR. SIMON: Okay. Then --

11 THE COURT: Then it has -- does that mean --

12 MR. SIMON: Then I think I -- then I think I  
13 misspoke.

14 MR. BAIRD: Okay.

15 THE COURT: All right.

16 MR. SIMON: Okay. I was looking at that.

17 MR. BAIRD: It is confusing.

18 MR. SIMON: It is confusing. Okay.

19 THE COURT: Okay. Is there anything else we need to  
20 address?

21 MR. BAIRD: I guess -- so the assumption is -- or --  
22 at this point it's got to be part of the exhibits. It's been  
23 referred to in court, the jury's heard it. I think it would  
24 be unfair to -- to not let them see what was discussed and  
25 understand that that is, in fact, a record related to Mr.

1 Cervantes.

2 MR. SIMON: I guess what I would suggest to Your  
3 Honor is, number one, that I -- I guess although that record  
4 was produced, now that he showed me, through Centennial, it  
5 wasn't in Dr. Lanzkowsky's chart at least, that he saw, and he  
6 didn't talk about it, Dr. Kaplan didn't talk about it. And  
7 he's not -- this particular doctor was never listed as a  
8 witness, and this particular provider was never disclosed as a  
9 provider.

10 THE COURT: Is it the -- one of the doctors that  
11 works at Lanzkowsky's office?

12 MR. SIMON: No.

13 MR. BAIRD: It's -- he was referred out for the --  
14 for the EMG.

15 MR. SIMON: It's a -- it's a completely different  
16 medical --

17 THE COURT: Dr. German?

18 MR. BAIRD: Lee. No, it's Dr. Lee.

19 THE COURT: Lee?

20 MR. BAIRD: Different doctor.

21 MR. SIMON: It's a completely different medical  
22 provider that's never been listed as a medical provider by  
23 either the plaintiff or the defense. We were operating under  
24 the assumption -- I didn't -- that's why I brought it up  
25 today. Was surprised, because I've never seen it before. He

1 was never -- Dr. Lee was never identified as a witness on  
2 either side. Still, through pretrial disclosures. So this is  
3 a, I guess, a record that was a part of Centennial that, you  
4 know, nobody ever discussed through trial.

5 And so I would submit to you it would be completely  
6 unfair to allow this medical record, since my -- you know, at  
7 this late stage in the defendant's case, after my clients have  
8 come and gone and nobody's ever talked about it. And it's a  
9 witness that's never been disclosed and a medical provider  
10 that's never been disclosed.

11 MR. MICHALEK: Your Honor, here's the -- if we could  
12 approach?

13 THE COURT: Didn't you guys stipulate to the  
14 admission of records?

15 MR. MICHALEK: Absolutely. We -- we stipulated to  
16 all the admission of all plaintiff's medical records.

17 MR. SIMON: That's from Centennial.

18 THE COURT: And weren't they contained in -- okay.  
19 Did you guys stipulate to the admission of Centennial Spine  
20 medical records?

21 MR. BAIRD: Yes, we did.

22 MR. MICHALEK: Yes, Your Honor. We had our own  
23 defense exhibits with our own lists where this was contained.  
24 We agreed with the plaintiffs --

25 MR. SIMON: Judge, what his exhibit -- sorry -- sorry

1 to interrupt. We -- we stipulated to the exhibits and the  
2 joint exhibit binder.

3 MR. MICHALEK: Your Honor --

4 MR. SIMON: Nothing beyond that.

5 MR. MICHALEK: -- we had our own lists of our own  
6 plaintiff's lists of medical records and the plaintiffs had  
7 theirs. And we agreed, because rather than have two sets of  
8 plaintiffs medical records, Mr. Simon and Mr. Baird agreed  
9 that we would stipulate as to all of plaintiff's medical  
10 records. I cannot believe that Mr. Simon would come in here  
11 and say I want to exclude one of plaintiff's own medical  
12 records, because I did not see it in the supplement, oh wait,  
13 I did, but now it's unfairly prejudicial.

14 THE COURT: Okay.

15 MR. MICHALEK: I mean, this is --

16 THE COURT: Wait. So the -- was the record  
17 contained --

18 MR. BAIRD: Let's put it on this disc.

19 THE COURT: Hold on. I'm trying to figure this out.  
20 So was the record contained in the records for Centennial  
21 Spine?

22 MR. MICHALEK: Yes.

23 MR. BAIRD: Yes.

24 THE COURT: Okay. And did it ever make it into the  
25 -- the list of stipulated exhibits?

1           MR. BAIRD: Well, no. Because we thought that -- our  
2 assumption was that the records -- here's how it happened. We  
3 each produced a proposed pretrial list of disclosures. In my  
4 discussions with Mr. Simon's office, they said, Ours are  
5 already redacted. I said, That's cool, we'll use yours. We  
6 didn't realize that their version of Centennial did not have  
7 these pages. This is what we've learned, you know, since. We  
8 -- we had -- our list had all of the records from Lanzkowsky's  
9 office.

10           Now, the disclosure that you were shown shows that  
11 Mr. Simon's office had already requested the entire records  
12 from Centennial. So they, you know, inadvertently somehow it  
13 didn't make it into theirs. But they had it in their office.  
14 I'm sure they wouldn't pull it out on purpose. So, clearly,  
15 the parties intended for it to be part of the -- the set.  
16 Unless they're going to say they purposely pulled it. But I  
17 don't think they did.

18           MR. SIMON: No, Your Honor, we have our ECC sub for  
19 Centennial which we produced, which we based all of this one.  
20 And that -- that stuff is not in there. And so that's why I'm  
21 surprised you see it at this stage of the trial. It's not in  
22 there, we didn't know anything about this provider, who a Dr.  
23 Lee was, and you saw me on questioning him, like, I've never  
24 seen it, I'd like to see it. And if he looked through those  
25 exhibits, he wouldn't find it. Because it's not part of the

1 trial exhibits.

2 Mr. Baird has had a copy of the trial exhibits and --

3 THE COURT: Cutting to the chase, was it the intent  
4 that -- did you guys go through and call out some of the  
5 records from the different providers, or did you just put the  
6 entirety of the records in evidence?

7 MR. BAIRD: My understanding was entirety --

8 MR. MICHALEK: No, no, let him -- let him answer.

9 MR. BAIRD: Oh, I thought it was both of us. Sorry.

10 MR. MICHALEK: No.

11 MR. SIMON: Yeah, whatever the trial exhibit binder  
12 was is what we stipulated to. I didn't pull anything out.  
13 And I guess what I'm saying is I'm surprised about this  
14 medical record there and the fact that my -- my witnesses came  
15 and gone and they never even talked to any of my witnesses  
16 about it. Puts me in an unfair advantage now, because, you  
17 know, they can make whatever inferences they want with this  
18 medical records if it's in evidence. It's -- it's not in the  
19 medical records that we intended to have. If it was, I would  
20 have loved to see it, talk about it with all my experts.

21 THE COURT: Okay. But my question is this again.  
22 When you guys went through the medical records, what's  
23 contained in that binder? Did you go through and pick and  
24 choose particular records of providers or did you take the  
25 entirety of the records for each of the providers?

1 MR. SIMON: We took the entirety of the records for  
2 each of the providers that we had possession of at the time.  
3 And I -- I still don't have that other than -- oh, it's not  
4 working. I mean, to verify that it's on there.

5 THE COURT: I'm going to let it come in. I mean, I  
6 think that it was a clerical, at worst.

7 MR. BAIRD: Thank you, Your Honor. All that -- all  
8 we need to tell the jury is --

9 MR. MICHALEK: Just -- it's in --

10 MR. BAIRD: -- is that --

11 MR. MICHALEK: Jim, it's in. It's in. It's part of  
12 their -- it's part of their --

13 MR. BAIRD: Okay. I guess I can just say it in  
14 closing, then. We don't need to do a special thing. That's  
15 fine.

16 THE COURT: Sure.

17 MR. BAIRD: Okay.

18 THE COURT: Can we bring the jury in?

19 (Jury reconvened at 2:05 p.m.)

20 (COURT INTERPRETER SWORN.)

21 CHRISTIAN CERVANTES-LOPEZ, PLAINTIFF'S WITNESS, SWORN

22 THE CLERK: Please be seated.

23 THE COURT: All right. Mr. Simon, if you would like  
24 to continue.

25 MR. BAIRD: I think I was on cross, wasn't I?

1 MR. SIMON: Yes.

2 THE COURT: Were you on cross? I'm sorry.

3 MR. BAIRD: That's all right. It's been a while. Is  
4 it okay if I turn this off, Madam Court Recorder?

5 THE COURT RECORDER: Yes. I can turn it off.

6 MR. BAIRD: I was just afraid the lights were going  
7 to [indiscernible].

8 Is it okay if I just push the button? It's not  
9 urgent. Okay.

10 CROSS-EXAMINATION - (Continued)

11 BY MR. BAIRD:

12 Q Mr. Cervantes --

13 A Yes.

14 Q -- I think yesterday we talked a little bit  
15 about your deposition; do you remember your deposition?

16 A Yes.

17 Q Okay. When you went to see -- I think we left  
18 off right before you went to see Dr. Lanzkowsky; do you  
19 remember seeing Dr. Lanzkowsky in November of 2013?

20 A I believe it was around that date, yes.

21 Q Okay. That was about a week before I took your  
22 deposition, and you've testified that at that first visit Dr.  
23 Lanzkowsky gave you prescriptions for medications?

24 A Yes.

25 Q I think we may have already discussed, you



1 didn't fill those prescriptions until after your deposition,  
2 correct?

3 A Yes.

4 Q Okay. Now, Dr. Lanzkowsky's office said to you  
5 that you could not take those prescriptions just anywhere,  
6 correct?

7 A I don't remember.

8 Q Okay.

9 MR. BAIRD: Have we already published his deposition?  
10 I think we did yesterday.

11 THE CLERK: Yes.

12 MR. BAIRD: Okay. May I have it? May I approach the  
13 witness?

14 THE COURT: You may.

15 BY MR. BAIRD:

16 Q Okay. If we go to page 30 in your deposition,  
17 and let's start at line 22. Okay.

18 MR. BAIRD: I guess could you have the interpreter  
19 read line 22 to the next page, line 1.

20 (Interpreter reads document in Spanish.)

21 BY MR. BAIRD:

22 Q Does this refresh your recollection that you --  
23 when you got that prescription, Dr. Lanzkowsky's office told  
24 you you couldn't go to Walgreen's, you had to go to a special  
25 pharmacy?

1           A     Well, I was told that I have to go to that one,  
2     and I didn't know. I asked them if I could go to Walgreen's,  
3     but they told me that I needed to go to that one.

4           Q     Okay. Did they? Okay. Do you think it would  
5     be fair to make my client pay for medical bills that are  
6     unreasonably high?

7           A     Well, I really don't know anything about that.  
8     I only did what the doctor told me to.

9           Q     Okay. Do you think it is appropriate to charge  
10    more than a fair value for services you provide?

11          A     I really don't know anything about any value or  
12    prices.

13          Q     You would be okay with my client paying more  
14    than is fair for any injuries you may have suffered; is that  
15    true?

16          A     Well, I really don't know exactly what you mean  
17    by that.

18          Q     Dr. Lanzkowsky's office sent you, after  
19    performing the discogram, to see Dr. Kaplan; do you remember  
20    that?

21          A     Yes.

22          Q     You met with Dr. Kaplan --

23          A     Yes.

24          Q     -- for 20 to 30 minutes and then he recommended  
25    a surgery for you?

1           A     [Response by witness in Spanish, not  
2 translated.]

3           Q     What other options did he give you other than  
4 surgery?

5           THE COURT INTERPRETER: The interpreter didn't have  
6 time to interpret --

7           MR. BAIRD: Oh, sorry, sorry.

8           THE COURT INTERPRETER: -- what the defendant said.

9           THE WITNESS: I don't remember how long the  
10 consultation took, but he -- Dr. Kaplan was the doctor who  
11 recommended the surgery.

12          MR. BAIRD: Okay. Must have been listening in --  
13 okay.

14 BY MR. BAIRD:

15          Q     What other options did Dr. Kaplan give you other  
16 than surgery?

17          A     Well, he asked me -- he told me the options that  
18 -- but he told me that the only option was surgery.

19          Q     Do you remember any of those other options?

20          A     Well, the other one was that I said that I would  
21 stay with the pain as long as I could.

22          Q     And those were your two options?

23          A     The one was the one that he gave me, and the  
24 other one is the one that I said.

25          Q     Okay. Did you injure your shoulder in this

1 accident?

2 A I believe so, because I had pain.

3 Q And you told your doctors about this?

4 A I don't remember.

5 Q If your medical records show you didn't tell any  
6 of your doctors about shoulder pain, would that change your  
7 recollection as to where you actually hurt your shoulder in  
8 this accident?

9 A Yes, possibly it would.

10 Q Okay. Okay. So -- so if we look at Exhibit  
11 5th --

12 MR. BAIRD: Oh, are we not -- is that going to work?

13 (Pause in proceedings.)

14 MR. BAIRD: So are we good?

15 BY MR. BAIRD:

16 Q Okay. So Exhibit 5 -- I think it's 5 -- it's  
17 neck and back clinic, Exhibit 5, page 10. Okay.

18 Can you see that?

19 THE COURT INTERPRETER: He was asking the interpreter  
20 if I could see it.

21 MR. BAIRD: Oh, okay. Can you interpret for him the  
22 headings under "present complaints in our office."

23 (Interpreter reads document in Spanish.)

24 MR. BAIRD: Oh, just the heading. I'm sorry. You  
25 don't have to read the whole paragraph.

1 THE COURT INTERPRETER: Oh, I'm -- I'm sorry.

2 MR. BAIRD: That's all right.

3 THE COURT INTERPRETER: I'm sorry, counsel. Thank  
4 you.

5 (Interpreter reads document in Spanish.)

6 BY MR. BAIRD:

7 Q Okay. Do you agree that your shoulder is not  
8 mentioned in those headings at the -- the very least?

9 A I agree, yes.

10 Q Okay. And if we look under neck pain --

11 MR. BAIRD: Can the interpreter translate those first  
12 two sentences for him.

13 (Interpreter reads document in Spanish.)

14 BY MR. BAIRD:

15 Q Do you agree that that says that the neck pain  
16 was not going into your arms?

17 A I agree, yes.

18 Q Okay. And let's go back two pages so that we  
19 can see the date. So on page 8, the date of initial exam,  
20 does that say November 15th of 2011?

21 A Uh-huh.

22 Q Is that a yes? Okay.

23 A Yes.

24 Q Thank you. Do you remember answering written  
25 questions that my office submitted to your attorney with your

1 answers?

2 A Well, yes. I remember that in every appointment  
3 I did that with the doctors.

4 Q Okay. My question is do you remember answering  
5 written questions that came from my office?

6 A I don't remember.

7 Q Okay.

8 (Pause in proceedings.)

9 MR. BAIRD: May I approach the witness, Your Honor?

10 THE COURT: Yes, you may.

11 MR. BAIRD: Do you want me to stop asking?

12 THE COURT: It's not bothering me, but no, you don't  
13 have to ask.

14 MR. BAIRD: Oh. Okay. Okay.

15 BY MR. BAIRD:

16 Q I'm handing this -- have you ever seen that  
17 document before?

18 A I possibly did, but I don't quite remember.

19 Q Okay. Let's go to the verification page, which  
20 I believe is the second -- I think this is Exhibit 34. I  
21 think the second-to-the-last page is the verification. Oh,  
22 that doesn't have it.

23 Sorry, that copy doesn't have a signature. I'm just  
24 looking for one that does. Okay.

25 Here. Let's use this one. Okay. So let's go to the

1 second-to-last page. That one doesn't either?

2 Okay. We've got to find the right copy. I'm sorry.  
3 We'll -- I'll -- we'll cover this later, then.

4 Okay. We'll do something else while we find the one  
5 that you signed.

6 Is it true that the first time you ever heard about  
7 the amount of money Dr. Kaplan wanted to charge for his  
8 surgery that he wants to give you was this week?

9 A I didn't even hear.

10 Q But you never heard it before this week; is that  
11 a fair statement?

12 A I don't know anything about it.

13 Q You've -- you've testified about how you believe  
14 these injuries are affecting your abilities, and mostly you've  
15 talked about how it affects your work life; do you agree with  
16 that?

17 A Could you please repeat the question?

18 Q I'll -- I'll rephrase it a little bit. Do you  
19 agree that this accident has affected your work life more than  
20 your home life?

21 A It -- it is affecting me in both aspects.

22 Q When you're not at work, has this accident  
23 prevented you from doing yard work?

24 A I can do it when I feel okay, but it still  
25 hurts.

1           Q     Have you done heavy yard work since this  
2 accident happened?

3           A     Well, heavy -- heavy, not really. But I  
4 probably did something when I was feeling okay.

5           Q     When -- so there are days when your back isn't  
6 hurting you; is that true?

7           A     There are days that my back hurts on a 2 or 3,  
8 and there are some other days that my back hurts a 6 or a 7.  
9 And when the pain is 2 or 3, I feel better.

10          Q     Would you -- have you, since this accident  
11 happened, done any work outside of work? So this would be at  
12 your home or someone else's residence that involved you  
13 filling up a wheelbarrow and running it up a ramp into a  
14 pickup truck?

15          A     Well, possibly. I don't exactly remember, but  
16 it could be possible that -- because I -- I work, I also work  
17 with the shovel. So it wouldn't be surprising to me if I did  
18 it also.

19          Q     Okay. But I'm talking about not at work, at  
20 places other than work.

21          A     Possibly I did.

22          Q     And you would have -- for more than an hour you  
23 could run full wheelbarrows of dirt up into a truck and empty  
24 it into the truck?

25          A     [Witness answer not translated.]



1 Q More than a -- oh, sorry.

2 A You mean more than one hour, just going back and  
3 forth without stopping?

4 Q Without any big breaks, right.

5 A I really couldn't say yes or no.

6 Q Okay.

7 (Pause in proceedings.)

8 Q Okay. Back to the interrog.

9 MR. BAIRD: My copy has the copy of the stickers.

10 MR. SIMON: Okay.

11 MR. BAIRD: We'll use Dan's copy.

12 BY MR. BAIRD:

13 Q Okay. Now, if we turn to the second-to-the-last  
14 page of that document -- are you there?

15 A Yes.

16 Q Is that your signature?

17 A It is -- it is mine, yes.

18 Q Okay.

19 MR. BAIRD: Could I have the Elmo for just a moment?

20 THE CLERK: Sure.

21 MR. BAIRD: I'm just [indiscernible] first.

22 MR. SIMON: Okay.

23 BY MR. BAIRD:

24 Q So this states that you were acknowledging you  
25 were over 21 and that these answers to your interrogatories

1 were true to the best of your knowledge and belief; understand  
2 that?

3 A Yes.

4 Q Okay.

5 MR. BAIRD: We can take the Elmo off and go back to  
6 blank.

7 Q Now the date on that was the 23rd of July.

8 MR. BAIRD: We're going to look at No. 23, but don't  
9 put it up -- don't put it up yet.

10 Q I will read this to you and the interpreter will  
11 translate for you. The question was if you claim that, "As a  
12 result of the subject incident, you have suffered injuries or  
13 disabilities which have caused you to limit or cease your  
14 participation in any hobbies or other forms of recreation,  
15 please detail all such claimed losses including the exact  
16 nature, your participation, and the hobby or form of  
17 recreation before the subject incident and how that  
18 participation has changed since the incident."

19 And then your answer was, "Plaintiff reports  
20 inability to remain seated or standing for long periods of  
21 time." Do you agree that was your answer?

22 A Yes.

23 Q Okay. Can we agree that's different than the  
24 way you've testified in court this week?

25 A Different how?

1           Q     In this answer, did you talk about how it  
2 changed the way you do things at work?

3           A     That I was doing them with pain.

4           Q     And that's not in this answer we just read, is  
5 it?

6           A     Could you repeat the answer for me, please?

7           Q     Yes. "Plaintiff reports inability to remain  
8 seated or standing for long periods of time."

9           A     It's correct, yes.

10          Q     Okay.

11          MR. SIMON: I just object that the question doesn't  
12 call for work. It talks about --

13          THE COURT: It doesn't call for what?

14          MR. SIMON: Doesn't call for -- directed at his work  
15 duties.

16          MR. BAIRD: You know what? That's right. So let's  
17 ask it this way.

18 BY MR. BAIRD:

19          Q     Did you list -- I asked you a few minutes ago  
20 about how -- whether this accident has affected your work life  
21 only or your work life and your home life, and you said it  
22 affected both?

23          A     Yes, both.

24          Q     So this accident, does it affect your home life  
25 in any way other than your ability to sit or stand?

1           A     Yes, it did -- it did affect.

2           Q     It affected parts of your life other than just  
3 sitting down or standing up at your home?

4           A     Yes. When I'm trying to do household chores,  
5 when I -- using the vacuum or when I'm mopping, when I try to  
6 sleep with -- on my stomach, my lower back starts to hurt.

7           Q     And this was the case even in 2012 and 2013,  
8 correct?

9           A     I suppose it would. I don't remember very well,  
10 but it should have.

11          Q     And you didn't tell us that when we asked you in  
12 this -- in this question, correct?

13          A     I don't remember if I said all of this or not.

14          Q     Okay.

15          MR. BAIRD: Do we have the supplemental answers, too?

16                   (Pause in proceedings.)

17 BY MR. BAIRD:

18          Q     Okay. And then a while later, we got updated  
19 responses right after your deposition, it looks like. And  
20 again, I think it's the second-to-the-last page that has your  
21 signature. The same sort of verification where you say these  
22 answers are the truth, correct?

23          A     Yes. I also signed this, so it should be.

24          Q     Okay. So questions 27 and 28, they're called  
25 interrogatories, we'll have the interpreter interpret those to

1 you.

2 THE COURT INTERPRETER: This is interpreter.

3 Counsel, do you want me to read them?

4 MR. BAIRD: Yes, please.

5 (Interpreter reads document in Spanish.)

6 THE COURT INTERPRETER: The interpreter is speaking.

7 Do you want me to read the answer, as well?

8 MR. BAIRD: No, just the questions for 27 and 28.

9 (Interpreter reads document in Spanish.)

10 BY MR. BAIRD:

11 Q Okay. Those were wordy questions. But do you  
12 agree that in essence those are asking about any future  
13 medical care you may receive?

14 A Yes. That's what the questions are talking  
15 about.

16 Q Okay. And what was your answer?

17 A [Witness answer, not translated.]

18 Q Okay. Can the -- can the interpreter tell you  
19 what your answer was?

20 A At the moment, I don't remember what I would  
21 have responded.

22 Q Thank you. I'm sorry.

23 MR. BAIRD: You can skip the objection. Just  
24 [indiscernible].

25 THE COURT INTERPRETER: Thank you.

1 MR. BAIRD: You can skip that part. Just go to the  
2 part where he was saying what -- the legalese part we don't  
3 need to --

4 THE COURT INTERPRETER: Oh, supplemental answer?

5 MR. BAIRD: Yes.

6 MR. SIMON: Kade, if you want to approach and point  
7 it to her.

8 MR. BAIRD: Okay. Yeah. I'll just point. Let's --

9 (Interpreter reads document in Spanish.)

10 BY MR. BAIRD:

11 Q So on November 19 when we asked you what is your  
12 future care going to be, the only doctor you named was the  
13 doctor that you hadn't seen for about 18 months; is that  
14 correct?

15 A Well, at the moment I answered, it was Coppel.

16 Q Okay. In November of 2013, when I took your  
17 deposition, you had just been to see Dr. Lanzkowsky; isn't  
18 that true?

19 A I kind of remember, but I'm not 100 percent sure  
20 of that.

21 Q Well, let's look at Dr. Lanzkowsky's records,  
22 just so there's no question. So I think it's Exhibit 10.  
23 Look at page 18, it says "Exam Date." So November 5th of  
24 2013.

25 A Okay. Yes.

1           Q     Okay. So weeks before this question was signed  
2 as true, you had seen Dr. Lanzkowsky but didn't put it in your  
3 answer?

4           A     Could you please repeat the question for me,  
5 please?

6           Q     Even though it had been -- I don't know if I can  
7 remember it exactly. Even though it had been more than a week  
8 since you had signed that this answer was true, you didn't say  
9 anything about Dr. Lanzkowsky?

10          A     I don't remember.

11          MR. BAIRD: Your Honor, I think -- I think that's all  
12 I have for Mr. Cervantes.

13          THE COURT: All right. Do you have any redirect?

14          MR. SIMON: Just briefly, Your Honor. The lawyers  
15 are confused, too.

16                         REDIRECT EXAMINATION

17 BY MR. SIMON:

18          Q     Okay. Mr. Cervantes, all right, in regard to  
19 future medical care, I'll just tell you that this answer you  
20 just gave asked you if you'd been advised whether you'll need  
21 future medical care. And you just told this jury that -- that  
22 if my pain does not go away, I may need to be referred to  
23 another doctor, possibly a surgeon?

24          A     Yes.

25          Q     Okay. And just so we're clear, that was your

1 answer to No. 27?

2 A Okay.

3 Q Okay. And that was done in November 2013, and  
4 then Dr. Lanzkowsky referred you to a surgeon?

5 A Uh-huh.

6 Q And I'll represent to you that that was in  
7 January of 2014.

8 A Okay.

9 Q Okay. So that being said, you did exactly what  
10 you said you would do in these answers?

11 A Yes.

12 Q You also talked -- there was an interrogatory or  
13 a question posed of you whether you told them in that piece of  
14 paper whether your injuries interfered with your personal  
15 life. Do you still have your deposition up there?

16 A Yes.

17 Q Okay. Can we turn to page 33. Okay. We're  
18 going to look at line 2. I have to go back to this page, 32,  
19 get the questions. All right. And if you can read that  
20 question?

21 (Interpreter reads document in Spanish.)

22 Q Okay. And now can you read that in English, the  
23 same -- same as you just read?

24 A Page 32, line 25. Question, "Okay. How about  
25 your house, how are you limited?"



1           Answer, on line 2, page 33, "For example, at the time  
2 I go to sleep, I can't sleep in one position only. I have to  
3 keep on moving in order to rest."

4           Q     Okay. Then if you could go down to page 33,  
5 line 13.

6           (Interpreter reads document in Spanish.)

7           Q     Okay. Can you read that question and answer?

8           A     Question, "Were you involved in any sports  
9 before this accident?"

10          Answer, "Soccer."

11          Q     Okay. And then the next question and answer.

12          (Interpreter reads document in Spanish.)

13          A     Question, "You don't play soccer anymore?"  
14 "Sometimes." "Right now?" "No."

15          Q     So at the time of your deposition, which was  
16 dated November 14th of 2013, right around the same time you  
17 filled out those papers, you told Mr. Baird, who was asking  
18 you in the deposition, how it affected you outside of work?

19          A     Yes.

20          Q     Okay.

21          MR. SIMON: Nothing else. Thank you.

22          MR. BAIRD: One question.

23                        RE CROSS-EXAMINATION

24   BY MR. BAIRD:

25          Q     Was there a reason that the facts to which you

1 will swear are the truth are different between one day and  
2 another?

3 A For example?

4 Q The answers were different. You said they were  
5 both true; why are they different? Why is the truth different  
6 on different days?

7 A I don't understand the question.

8 Q Okay. Thank you.

9 THE COURT: All right. Is Mr. Cervantes-Lopez free  
10 to go?

11 All right. Sir, thank you for your time. You can  
12 step down.

13 Who are we calling next?

14 MR. SIMON: Maria Abarca.

15 MARIA ABARCA, PLAINTIFF'S WITNESS, SWORN

16 THE CLERK: Please be seated. Would you please state  
17 and spell your first and last name for the record.

18 THE WITNESS: Maria Abarca, M-A-R-I-A A-B-A-R-C-A.

19 MR. SIMON: Thank you.

20 DIRECT EXAMINATION

21 BY MR. SIMON:

22 Q Good afternoon.

23 A Good afternoon.

24 Q Have you ever testified in court before in  
25 this...

1 A No.

2 Q Okay. Are you nervous?

3 A Yes.

4 Q This is the time that we get to tell the jury a  
5 little bit about you.

6 A Okay. It's fine.

7 Q Are you -- are you married?

8 A Yes.

9 Q Okay. Who are you married to?

10 A Christian Cervantes.

11 Q And how long have you been married?

12 A Almost eight years.

13 Q Okay. And but you were legally married only two  
14 years ago on paper?

15 A Yes, on September 14, 2012.

16 Q All right. But in your culture you considered  
17 yourself married?

18 A Yes.

19 Q And at the time of this accident, you were  
20 living together?

21 A Yes.

22 Q Prior to this accident, did you ever have any  
23 pain in your neck or back?

24 A No.

25 Q Or your shoulder?

1           A     No.

2           Q     Prior to this accident did you have some pain in  
3 your abdomen?

4           A     No. I had an infection, but it was a stomach  
5 infection.

6           Q     Some of the records tell us that you had a  
7 little pain that you were worried about in your stomach?

8           A     Are you talking before or after the accident?

9           Q     Before the accident.

10          A     Yes. That's why I went to hospital. And I  
11 really don't remember what part exactly it hurt, but I  
12 remember it was the stomach.

13          Q     All right. So do you remember where you were  
14 going to that night of the accident?

15          A     Do you mean what street we were driving on?

16          Q     No, where you wanted to go, what place?

17          A     We -- we were going to see a box match.

18          Q     Okay. And do you know where?

19          A     At the Texas Casino.

20          Q     So you and your husband wanted to go out for a  
21 fun night?

22          A     Yes.

23          Q     Tell us what you remember about the accident.

24          A     I remember that we were on Lake Mead going to  
25 the Texas Casino. I remember that we passed Belmont and then

1 there was another little street that I don't remember, because  
2 I actually wasn't paying attention, because I was only --  
3 because I wasn't driving, I was just only seeing like a  
4 regular passenger.

5 Q Okay. Tell me about the collision.

6 A Well, I don't remember. I know that we were  
7 driving and she -- the girl was trying to make a left turn.  
8 And I really wasn't paying attention if she was trying to cut  
9 in or not. But what I know is that the car was going in front  
10 and then we hit him. We hit the car. And I don't remember  
11 exactly how it was. But I remember that I felt the collision.

12 Q Okay. When you -- the collision happened, did  
13 your seatbelt lock up across your body?

14 A Well, I do remember that I moved forward, but  
15 the seatbelt tightened up and it actually kind of asphyxiated  
16 me.

17 Q Okay. After the collision was over, were you  
18 crying?

19 A Yes.

20 Q Were you in pain?

21 A Yes.

22 Q Okay. Tell the jury what you remember.

23 A Well, I remember that the seatbelt kind of  
24 suffocated me, and I remember that I had -- that the -- that  
25 the seatbelt also pulled in, like it kind of pushed my stomach

1 in. And I remember that I had pain in my shoulder, and I felt  
2 a little -- I kind of heard something, a noise in my ears. I  
3 also had a headache and pain in my neck.

4 Q Did you get out of the car?

5 A No.

6 Q So you stayed in the car till the ambulance  
7 came?

8 A Yes.

9 Q And then when the ambulance came they took you  
10 to the hospital?

11 A Yes. Actually, they were the ones that got me  
12 out.

13 Q Okay. And so then you went to UMC Trauma?

14 A Yes.

15 Q When you were released from UMC Trauma, you  
16 followed up with Dr. Adair's office?

17 A Yes. Days after, yes.

18 Q Okay. Tell me how you were feeling then, when  
19 you first went to Dr. Adair?

20 A Well, I was -- I still had the bruising from the  
21 seatbelt that -- that -- all the areas the seatbelt tightened  
22 up. And I also have pain and I -- I felt like, I don't know  
23 how to say, like, tenderness.

24 Q And did you treat with Dr. Adair?

25 A Yes.

1 Q Did you follow her orders?

2 A Yes.

3 Q And you tried to get better?

4 A Yes. Actually, with the treatment and the  
5 exercises, the shoulder -- well, actually, the bruises went  
6 away. And also with the exercises, my shoulder or the pain in  
7 my shoulder went away, also, and the neck and also the pain  
8 that I had in my stomach.

9 Q Okay. And the records show that your low back  
10 improved, also?

11 A Yes.

12 Q Okay. But the records also show that your pain  
13 in your back came back?

14 A Yes.

15 Q Okay. And there is a note that says that you  
16 noticed the pain when you picked up some clothing that was not  
17 heavy?

18 A Yes. Actually, I was cleaning my room and you  
19 know when you go to bed sometimes you just leave your clothes  
20 on the -- on the floor. So it was like that, I just picked up  
21 those clothes and I started feeling something.

22 Q Okay. The pain that you started feeling, is  
23 that the same pain that you felt after the accident?

24 A Yes.

25 Q And then you told that to the doctors?

1 A Yes.

2 Q And then Dr. Adair decided she wanted you to get  
3 an MRI on your back?

4 A Yes.

5 Q Did you follow her orders?

6 A Yes.

7 Q Did Dr. Adair also refer you to Dr. Coppel?

8 A Yes.

9 Q And you heard Dr. Adair testify in trial that  
10 she referred you to Dr. Coppel?

11 A Yes.

12 Q Okay. When you went to Dr. Coppel, were you  
13 truthful with him?

14 A Yes.

15 Q And Dr. Coppel eventually did injections into  
16 your low back?

17 A Yes.

18 Q And when you finished with Dr. Coppel, you  
19 didn't get injections for a period of time?

20 A Could you repeat the question, please?

21 Q When you were released from Dr. Coppel, the  
22 records show you were still in pain?

23 A Yes.

24 Q All right. The pain that you had, did you still  
25 have it?



1           A     Yes.

2           Q     Okay. And did you continue to have it until you  
3 went to see Dr. Lanzkowsky?

4           A     Yes.

5           Q     Okay. And I think the records show that your  
6 pain varies?

7           A     Yes. It -- it would come and go. It was lower,  
8 because I remember that the injection did help to lower the  
9 pain, but the -- the pain was still there.

10          Q     Okay. And then you went to see Dr. Lanzkowsky?

11          A     Yes.

12          Q     His group, Dr. Chambers -- Chamberlain, Dr.  
13 Chamberlain. Okay. What's that?

14          MS. FERRELL: Chambers.

15          MR. SIMON: Chambers. I was right the first time.

16 BY MR. SIMON:

17          Q     Okay. And Dr. Chambers did injections?

18          A     Exactly.

19          Q     Okay. And when you left after that, did those  
20 injections help?

21          A     Same thing. It helped just for a period, but  
22 then the pain continued.

23          Q     Okay. Dr. Lanzkowsky, who was here, who was  
24 looking at the chart notes, said that Dr. Chambers recommended  
25 a procedure to you which is called a radiofrequency procedure.

1           A     Yes.

2           Q     Do you remember that or understand that?

3           A     I understood that there were more injections.

4           Q     Okay. Did you understand the difference between  
5 the injections you already had and the procedure that Dr.  
6 Lanzkowsky described when he testified to the jury?

7           A     Yes. Like I said, I thought at the beginning  
8 that they were talking about injections. But there is a great  
9 difference between that and what Dr. Lanzkowsky explained  
10 here. So after that, I understood what they were talking  
11 about.

12          Q     Are you in pain as you sit here now?

13          A     Yes.

14          Q     Okay. Describe the pain that you're feeling  
15 now.

16          A     Between a 4 and a 5.

17          Q     Okay. And describe your pain; does it hurt in  
18 your low back?

19          A     Lower back, yes. It feels -- I feel numbness  
20 and actually the pain is almost unbearable.

21          Q     Okay. Are you taking anything for your pain as  
22 you sit through trial?

23          A     Yes. I'm taking Tylenol, because it's -- I know  
24 that I will be sitting for a lot of hours. And at night I  
25 take Aleve.

1 Q Okay. So even though you're able to sit for a  
2 few hours, you're in pain sitting?

3 A Yes.

4 Q You talked a little bit about cleaning house.  
5 Okay. You clean your own house?

6 A Yes.

7 Q And do you clean other people's houses?

8 A Yes, I did it.

9 Q Okay. And when you clean other people's houses,  
10 is it difficult for you?

11 A A lot.

12 Q And have you -- do you still clean houses as  
13 much as you did before the accident?

14 A No.

15 Q Why not?

16 A Well, I didn't -- before the accident, I  
17 actually did work cleaning houses. I worked as a -- at a swap  
18 meet, and I have to be standing for longer periods. And I  
19 didn't have any pain in my back, I only have the normal pain  
20 that you get when you are standing for longer periods, meaning  
21 that the sole of your feet start hurting and things like that.  
22 But nothing of my low back.

23 So then when I started cleaning houses, then I saw  
24 the difference between what I did then and cleaning the  
25 houses, because I started feeling pain in my lower back and

1 also in my leg.

2 Q Okay. And that pain has only started after this  
3 collision?

4 A Yes.

5 Q The procedure that Dr. Lanzkowsky talked about,  
6 is that a procedure you would like to try?

7 A Well, like before I -- because before I thought  
8 that they were talking about the injections, and now I know  
9 what it is about, yes, I would be willing to do it now.

10 Q Okay. Tell the jury how your pain has  
11 interfered with your personal life.

12 A Okay. Well, like doing -- like, when I do the  
13 cleaning in my house, that's difficult. And also when I have  
14 to bathe my dogs, before I used to do it in the bathtub, but I  
15 cannot lean forward anymore, because it's very difficult for  
16 me. So now I have to bathe them in the kitchen sink. And  
17 also I like going to the movies, but I don't do it as much,  
18 because I cannot bear being -- sitting for two hours or more  
19 than that. And also walking is difficult for me.

20 Q Okay. Do you have trouble sleeping?

21 A Yes.

22 Q How so?

23 A Well, I cannot be in one same position at a  
24 time. I have to be changing sides constantly. I cannot be  
25 laying down on my back, because that's very difficult and my