

1 McMahon - Plaintiff - Direct

2 Sir, would you state your name and address  
3 for the record.

4 THE WITNESS: Mark, M-A-R-K, McMahon,  
5 M-c-M-A-H-O-N, 876 Park Avenue, New York, New York  
6 10075.

7 THE CLERK: Thank you.

8 The witness states his name is Mark McMahon  
9 of 876 Park Avenue, New York City, New York 10075.

10 And the witness has been sworn, your Honor.

11 THE COURT: You may inquire.

12 MR. RAUSHER: Thank you, Judge.

13 DIRECT EXAMINATION

14 BY MR. RAUSHER:

15 Q Good afternoon, doctor.

16 A Hello.

17 Q Doctor, are you licensed to practice medicine in  
18 the State of New York?

19 A Yes.

20 Q For how long have you been so licensed?

21 A 1987 is when I was licensed.

22 Q And do you hold any specialty?

23 A Yes.

24 Q What is that?

25 A Orthopedic surgery.

26 Q And, in your specialty, are you board certified?

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2 A Yes.

3 Q Can you detail for the members of the jury,  
4 please, your educational background leading to medical  
5 licensure.

6 A I went to Georgetown University where I obtained  
7 my bachelors of science degree. Then I went to Harvard  
8 where I obtained my MD degree. I also obtained a masters  
9 degree at the London School of Economics. And then I went  
10 to Lenox Hill Hospital for an internship in general surgery,  
11 Lenox Hill in Manhattan. And then I did my orthopedic  
12 surgical residency at Lenox Hill Hospital in Manhattan.  
13 That was a four-year program.

14 And I also did two extra years of fellowship  
15 training, one at Massachusetts General Hospital in Boston,  
16 and the other one at the Hospital for Joint Diseases in  
17 Manhattan. And that was it. And then I went on to  
18 practice.

19 Q Did you have any awards or significant  
20 accomplishments in Georgetown?

21 A Well, I did receive, you know, things like phi  
22 beta kappa, you know, summa cum laude I got. That was it, I  
23 guess, at Georgetown.

24 Q That's fine. The board certification, when did  
25 you achieve that?

26 A 1995.

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2 Q And we've heard a little bit already, just to keep  
3 it short, about testing, etcetera, leading to board  
4 certification. Did you go through all that?

5 A Yes.

6 Q Now, in addition to the education that you've just  
7 told us, do you have any other accomplishments in your  
8 field?

9 A You mean as far as writing papers?

10 Q Including publications, yes.

11 A I've written a good number of papers, you know,  
12 scientific papers in the field of orthopedics, maybe 20, 25.

13 Q And, in addition to journal articles, have you  
14 also written any chapters in any orthopedic textbooks?

15 A Yes, a few, maybe six, five or six chapters in  
16 orthopedic textbooks, yes.

17 Q Have you ever testified in the courts, Federal and  
18 State, in New York as an expert in orthopedic surgery  
19 before?

20 A Yes.

21 Q And have you been qualified by the Court?

22 A Yes.

23 MR. RAUSHER: Your Honor, I will proffer Dr.  
24 McMahon as an expert in orthopedic surgery.

25 THE COURT: He can testify.

26 Q Doctor, since you were licensed, have you

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2 maintained a private practice?

3 A Yes.

4 Q And since when about? Approximately, when did you  
5 start your private practice?

6 A 1993.

7 Q And what types of patients and injuries do you  
8 deal with in your practice?

9 A Well, orthopedic. So, that includes anything  
10 involving bones, joints, muscles, tendons.

11 Might also think of it as the arms, the legs and  
12 the spine, you know, the neck and back.

13 Q And, in connection with your practice, you said  
14 orthopedic surgery, what's the difference between orthopedic  
15 and orthopedic surgery?

16 A Well, then I also do surgery on these areas, you  
17 know, the joints, you know, bones.

18 Q How often do you do surgery to this present day?

19 A About ten per week, I would say.

20 Q Now, are those all on the spine?

21 A No.

22 Q In different areas of different parts of the body?

23 A Yes.

24 Q What percentage of those involve spine surgery?

25 A Maybe, I would say, 20 percent.

26 Q Have you been doing these surgeries since 1993 or

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2 a different period?

3 A No, I think since 1993.

4 Q Now, did there come a time that you came to meet  
5 Ms. Rutledge?

6 A Yes.

7 Q And what were the circumstances?

8 A It was May 3, 2010. And she -- actually, you and  
9 she came to my office, you know, made an appointment and  
10 came in.

11 Q And what was the purpose of our coming to you?

12 A She -- it had to do with her neck and back  
13 conditions, and should she have surgery, and what type of  
14 surgery and/or should she continue in pain management. That  
15 was pretty much it.

16 Q Now, did you take a history from her?

17 A Yes.

18 Q And did she detail for you everything from the  
19 accident up until the time she saw you?

20 A Yes.

21 Q And did you take notes or issue a report in this  
22 regard?

23 A Yes.

24 Q You can refer to that for me.

25 Can you tell us the history that you obtained.

26 A On November 23, 2003, she was boarding a City

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bus, and the doors closed on her and this injured her left shoulder, neck and back, you know, just generally her left side because the bus was pulling away while this was happening.

The next day she went to the emergency room at Mount Sinai and she tried to go back to work after that as a nursing assistant or a nurse's aide for three days, but she couldn't work because of her neck and back condition.

And then on December 12, 2003, she went for chiropractic treatment at a place called Uptown Chiropractic run by Dr. Heyligers, and she went there for a period of time as often as five times a week.

But she also got physical therapy and TENS, you know, treatment with both electrical stimulation and acupuncture, chiropractic.

Q I'm sorry to interrupt you. You mentioned a TENS unit?

A TENS Unit, yes.

Q What is a TENS unit?

A A TENS unit, it's capital T-E-N-S. That is a device that a physical therapist would give you. You take that home with you.

It's an electric device that gives stimulation to the skin like an electrical sensation which will, in a sense, like trick the body. So, instead of feeling, instead

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2 of pain in your neck, you overwhelm the nerves with these  
3 electrical impulses and you don't feel the neck pain. A lot  
4 of patients with neck and back pain use these, you know,  
5 so-called TENS machines.

6 Q I'm sorry to interrupt. You may continue.

7 A She also had a -- she saw Dr. Etemadi during that  
8 period and he performed an EMG test on her upper and lower  
9 extremities, and that revealed what we call an L4/5  
10 radiculopathy. And she did have an acute episode on  
11 February 24, 2004 where she had to be taken by ambulance to  
12 the emergency room at Lincoln Hospital.

13 She also had MRIs. On January 6 of 2004, she had  
14 a MRI of the cervical spine and her lumbar spine. She also,  
15 on March 3, 2004, received injections from Dr. Lipsky.

16 So, she had lumbar -- lumbar steroid injections,  
17 and also sacroiliac blocks which are injections into your,  
18 you know, into the joints in the back. She had  
19 trigger-point injections, which are injections into the  
20 muscles. And then she had that repeated by Dr. Lipsky.

21 Then, as the years went on, in 2006, December 21,  
22 2006, she had additional MRI of her cervical and lumbar  
23 spine. And she, as far as what she was doing in terms of  
24 work, she attempted to go back to work. She was actually  
25 out of work for seven months after the accident. And then  
26 after that, she tried to go back to work, but had difficulty

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2 holding a job because of her neck and back conditions.

3 More recently, she had been going to pain  
4 management at Metropolitan Hospital and seeing Dr. Kuzan who  
5 is a neurologist. And, you know, she had a fear -- has  
6 developed a fear of riding buses, or a phobia you might say.

7 As far as her current condition, she had ongoing  
8 low back pain which was made worse by bad weather. The back  
9 pain radiated into her right, excuse me, her left hip and  
10 thigh and down as low as her second toe, which was numb and  
11 tingling, and also had numbness and tingling in the left hip  
12 and thigh.

13 She was wearing a back brace and using a cane  
14 lately. She stated that she couldn't wear high heels, she  
15 couldn't dance, her back was made worse with bending and  
16 lifting. She had difficulty with household activities,  
17 chores. That is as far as her back.

18 As far as her neck, it was painful and stiff and  
19 worse with movement. Her left hand was numb and tingling.  
20 The neck pain was waking her up from sleep and she was  
21 having difficulty sleeping. Cold weather was making her  
22 neck worse.

23 And that was essentially, you know, bringing it up  
24 to the present.

25 Q After you obtained a history, did you perform a  
26 physical examination of Ms. Rutledge?



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2 A Yes.

3 Q And could you detail that for the members of the  
4 jury.

5 A Well, you know, I first looked at her neck, then  
6 her back. So, as far as her neck, I first tested range of  
7 motion, and she was able to flex in this way 5 degrees with  
8 pain. You would expect 60 degrees of flexion.

9 She was able to extend like this 20 degrees with  
10 pain. You would expect 50 degrees.

11 She could bend to the left 15 degrees with pain.  
12 And you would expect 20 degrees.

13 And then to the right, she was able to go  
14 20 degrees out of an expected 20.

15 I tested sensation in her hands, and it was less  
16 in the left hand. I pressed around on her neck. And, on  
17 her left side, it was painful to touch.

18 I also pressed on this muscle here, which is  
19 called the trapezius, which was in pain. And I also felt a  
20 spasm in that trapezius muscle.

21 Then as far as her -- then I looked at her low  
22 back. On that day, she was using a cane for ambulation.  
23 And I asked her to flex forward. And she was able to go  
24 40 degrees with pain out of an expected 90.

25 And, as far as bending backwards, she was able to  
26 go 3 degrees with pain out of an expected 20.

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2 Bending to the left, she could go 10 degrees with  
3 pain. You would expect 20.

4 And then bending to the right, she can go  
5 10 degrees with pain. You would expect 20.

6 I pressed around on her low back and, on the left  
7 side, it was painful, and I felt a muscle spasm there on the  
8 left side.

9 I asked her to walk around on her tiptoes, on her  
10 heels, which she was able to do.

11 Then I tested light -- I tested sensation in her  
12 legs and it was decreased on the left, left leg.

13 I did a test called the straight leg raising sign,  
14 which is where you kind of hold the person's leg and lift  
15 it. And that was positive on the left.

16 I tested the strength of her big toes, you know,  
17 point -- ask her to bring her big toes up toward the  
18 ceiling. And the one on the left was weak. It was four out  
19 of five out of an expected five out of five.

20 I tested the reflexes in the ankle, her ankles and  
21 knees, and they were two plus, as we say.

22 And that was it as far as the physical exam.

23 Q Okay. I'm not going to go through all of that,  
24 but I'm going to hit some of it, please.

25 A Yes.

26 Q The range of motions you have given, again, we can

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2 do our calculations, but were they normal or abnormal?

3 A They were abnormal.

4 Q And would you call this a mild loss or decrease,  
5 moderate, severe? How would you describe it?

6 A In some cases, it was moderate I would say. In  
7 some cases it was severe.

8 Like, for instance, her cervical spine, you know,  
9 or her neck. When I said, you know, like as far as flexion,  
10 she was only going 5 degrees. And you would expect her to  
11 go to 6. So, that would be a severe loss.

12 In some cases, you know, she has a 10 out of 20,  
13 or, in a case like flexing her lumbar spine, she can go 40  
14 out of 90. So, I would call that -- it's moderate to  
15 severe. I would say in that range.

16 Q Just so that we understand one another, do these  
17 words mild, moderate, severe, have specific meaning in the  
18 medical context?

19 A They probably do. I just mean it more in a  
20 general sense like a big loss, or like a little loss or sort  
21 of average.

22 Q Well, in medicine, when someone says minor --

23 A Yes.

24 Q -- in percentage rates, what would that mean?

25 A I would say --

26 MR. HARDICK: Objection.

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2 THE COURT: Overruled.

3 Can you answer that?

4 THE WITNESS: Maybe not. It's difficult.

5 Q Starting at zero, would it be up to 10, 20, 30 or  
6 any other number that would be mild, and then for moderate  
7 and then for severe?

8 A I would say moderate might be like a 50 percent  
9 loss, and then mild might be say, zero to 20, in that range.  
10 Anything, say, two-thirds or more, I would call severe in  
11 terms of loss of range of motion.

12 Q In your examination, did you find any evidence  
13 whatsoever of any prior or subsequent accident or injury to  
14 Ms. Rutledge?

15 A No.

16 Q Find any scarring?

17 A No.

18 Q During the course of your examination, did you  
19 find her to comply with your request or not to comply?

20 A She complied.

21 Q Cooperative or not?

22 A Yes.

23 Q In the history as given, and your physical  
24 examination, were they consistent or inconsistent?

25 A Consistent.

26 Q In addition to your own physical examination, did

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2 you have an opportunity to review prior medical records from  
3 this case?

4 A Yes.

5 Q And, just to streamline a little, did they include  
6 the emergency room record, Mount Sinai that you talked  
7 about, the Lincoln Hospital record?

8 A Yes.

9 Q Metropolitan record?

10 MR. HARDICK: Objection. Why don't you let  
11 the doctor say what he looked at.

12 MR. RAUSHER: Trying to save time. I'm happy  
13 to do it.

14 Q Doctor, would you tell us, if you recall, what  
15 were the records that you reviewed.

16 A Also, there was Dr. Dr. Lipsky's records, Dr.  
17 Etemadi's records, the MRIs I mentioned before, and that was  
18 it. I mean, that was pretty much it. The EMG and the  
19 emergency room records that you mentioned.

20 Q To save a little time, all of the records that  
21 you've reviewed, were those consistent or inconsistent with  
22 the history and your own physical exam findings?

23 A Consistent.

24 Q Was there anything you found in any of those  
25 records that was inconsistent?

26 MR. HARDICK: Objection.

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2 THE COURT: Overruled.

3 A No.

4 Q I will ask you to assume before you appeared this  
5 afternoon, Dr. Etemadi, the neurologist, did appear and  
6 testify. That he said that certain tests, NCVs, were  
7 negative, that the upper MRI was negative. You know of a  
8 positive EMG for the left L4/5. You mentioned a positive  
9 EMG for L4/5.

10 I'll ask you to assume that there was testimony  
11 that there were normal sensory and motor examinations.

12 Does any of that alter your opinions? Is any of  
13 that inconsistent with your findings?

14 A No.

15 Q Based on your review of the records, the history  
16 and your physical examination and the objective test  
17 results, did you come to an opinion to a reasonable degree  
18 of orthopedic medical certainty as to whether all of these  
19 injuries and the effects of these injuries were related to  
20 the incident as described on November 23 '03?

21 A Yes.

22 Q What is your opinion?

23 A They were caused by it, that accident.

24 Q The mechanism of the accident, being caught in the  
25 doors, then the sudden start and stop of the bus, would that  
26 be, to a reasonable degree of orthopedic medical certainty,

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2 would that be consistent or inconsistent with the injuries  
3 found?

4 MR. HARDICK: Objection.

5 THE COURT: Overruled.

6 A Consistent.

7 Q All of these findings that you've described, the  
8 test results, are they competent producing causes of pain  
9 for Ms. Rutledge?

10 A Yes.

11 Q These losses of range of motion that you've  
12 described, some cases moderate and some severe, will those  
13 interfere with her activities of daily living?

14 A Yes.

15 Q How?

16 A Well, you know, if you can't -- let's say, take  
17 the low back. If it's hard to like just to bend over, an  
18 activity like putting your shoes and socks on. Or let's say  
19 with your neck. You know, if you can't -- if you don't have  
20 much movement, it's just hard to, you know, say if you're  
21 driving a car, you know, you're looking around. Many  
22 activities that you might do, just if you have a loss of  
23 range of motion, it will affect them.

24 Q Now, you said up to this amount of range of motion  
25 with pain. What does that mean?

26 A Well, like when, say, for example, she has a habit

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of doing say an extension of her neck like this, she got to a certain point and it was painful. So, in other words, she both had a loss of range of motion and it was also painful to do.

Q If she had been lifting, using her body in the course of normal activities, will that also be a competent producing cause of pain?

A Yes.

Q If she describes that it interfered with prolonged standing, walking, sitting, that she couldn't dance, couldn't do her normal daily activities, including work, to a reasonable degree of orthopedic certainty or medical certainty, would the injuries and loss of range of motion as you found them, would that be consistent or inconsistent with her claims?

MR. HARDICK: Objection.

THE COURT: Overruled.

A That is consistent.

MR. HARDICK: Leading.

THE COURT: I'll allow it.

A That is consistent.

Q Now, you said that you became aware of a positive EMG. That's a neurologic test; is that correct?

A Yes.

Q Did you review the actual test?



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2 A Yes.

3 Q Or -- you did.

4 And, in terms of the MRIs that you described,  
5 2004, cervical, neck, lumbar, low back; right?

6 A Yes.

7 Q And 2006 the same.

8 Did you review those films yourself?

9 A Yes.

10 Q And do you have any training or experience in  
11 reading MRI films?

12 A Yes.

13 Q You're not a radiologist, are you?

14 A No.

15 Q What is your training, your experience in that  
16 regard?

17 A Well, you know, part of being an orthopedic  
18 surgical resident is we're looking at x-rays, and MRIs and  
19 cat scans. That's part of our training.

20 And then in practice, it's very common for  
21 patients to have MRIs when they come in. Or we order MRIs.  
22 So, we are looking at MRIs all the time frequently. On any  
23 given day, many of them.

24 Q In your own private practice with your patients --

25 A Yes.

26 Q -- do you review the actual films?

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2 A Yes.

3 Q And, again in this case, on your review, were your  
4 findings -- did you also -- withdrawn.

5 Did you also receive reports that were affiliated  
6 or associated with the films from when they were actually  
7 taken by the original radiologist?

8 A Yes.

9 Q In each case for the four films, was your finding  
10 for each study the same or different from the reported  
11 radiological finding?

12 A The same.

13 Q Did you bring those films with you?

14 A Yes, I have them right here.

15 MR. RAUSHER: Your Honor, if it's possible,  
16 could we have the shadowbox set up so that the doctor  
17 can demonstrate with the films for the jury.

18 And, again for the record, the four MRIs I've  
19 described were marked in evidence outside of the jury's  
20 presence.

21 THE COURT: Members of the jury, if you need  
22 to move to see, would you move. Don't be shy about  
23 that.

24 Q On the outside of each of the four envelopes,  
25 there's an evidence sticker. I would ask you to refer to  
26 which item you're using.

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2 A This one is Exhibit 18, and it's the lumbar MRI of  
3 January 6, 2004.

4 Q Thank you.

5 A All right. So, this is -- you know, MRI stands  
6 for magnetic resonance image, and it gives you many images  
7 in different planes. That's why each one of these envelopes  
8 has other sheets in it. But I just pulled out this one.

9 And you could see this is the lumbar spine. You  
10 know, the low back. And it's a side view. And you see  
11 these alternating bones and disks.

12 You know, disks are like these kind of rubbery  
13 cartilage-type tissue that allows movement and gives a  
14 little bit of a cushioning. And then the bones are more  
15 rectangular structures between them.

16 Now, the disk with the abnormality is this one  
17 here, the L4/5, "L" just standing for lumbar. We call it  
18 4/5 because there are five lumbar vertebral bodies. And so  
19 here's the fifth one. This is the fourth one. So, the  
20 disks always have two numbers. So, this is the L4/5.

21 And you can see here sticking out of the back of  
22 the disk this herniation. And right, right on -- right next  
23 to the disk is the nerve tissue.

24 You know, in the sense of spinal nerves, the  
25 spinal cord and the nerves are coming off of it. These are  
26 the nerves that run down your leg either supplying sensation

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2 or strength.

3 Anyway, the disk is pressing into the neural  
4 tissue, the nerve tissue there, and that's at the L4/5  
5 level.

6 Q Doctor, can I ask you -- I'm sorry to interrupt  
7 you -- just a question or two.

8 You said this is a side image?

9 A Yes.

10 Q Can you explain that, how the slice --

11 A What I mean is like, it's as if you're looking at  
12 the spine from the side. The view is like looking at this  
13 side.

14 Q Is it like slicing a person down the middle?

15 A Exactly. If you sliced the person like this, and  
16 you looked in, you would see the spine in this way.

17 Q Now, where you showed us the vertebral bodies and  
18 the disks, you said it's pushing back, the disk is pushing  
19 back.

20 A Yes.

21 Q What, if any, anatomical structure is immediately  
22 behind that?

23 A Right behind the bones and the disks is the spinal  
24 cord and all the nerves that come off the spinal cord that  
25 eventually run down your legs, you know, into the legs.

26 Q Now, the spinal cord, the nerves, are they

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2 contained in any anatomical body?

3 A Yes.

4 Q And what is that called?

5 A The area that contains it is either called the  
6 dura or the dural sac. It's also called the thecal sac.

7 Q And what is that? What's the function? What is  
8 that structure?

9 A That's almost like a lining around the nerves  
10 that, you know, just protects it and just kind of contains  
11 this fluid covering the nerves called the cerebrospinal  
12 fluid. It contains the fluid.

13 Q In the actual MRI, what physical relationship is  
14 there, if any, between the herniated L4/5 disk you're  
15 describing and the cord or the thecal sac?

16 A Well, the disk is pushing right in the thecal sac  
17 or the cord, impinging it, or you might call it compressing  
18 it.

19 Q When an anatomical structure like the disk  
20 compresses or impinges the nerves, what, if any,  
21 symptomatology would be expected to be reported?

22 A Well, that causes back pain and muscle spasm. It  
23 also causes pain down the leg, you know, could be the thigh,  
24 down as far as the toes.

25 You could also have numbness and tingling down the  
26 leg, you know, into the toes, or weakness.

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2 THE COURT: Or what? I can't hear you,  
3 doctor.

4 THE WITNESS: Weakness.

5 Q Now, you talked about the nerve tissue or nerve  
6 roots.

7 A Yes.

8 Q Where are those?

9 A You can't see it. You know what it is, they come  
10 out of the spinal cord. And then they -- they're -- each  
11 one of them runs down the leg. So, it's hard to visualize  
12 that on this.

13 Q Are you able from this film or any of the films in  
14 this series --

15 THE COURT: Keep your voice up, please.

16 Q Are you able to determine from this film or any of  
17 the other films in this series of whether there is any  
18 compression of the nerve roots?

19 A There is compression of the nerve roots, yes.

20 Q And how can you tell that?

21 A Well, at this level, the L4/5 level, most of what  
22 you're seeing here is actually nerve roots. And, so, it's  
23 pressing into that, and that is where the nerve roots are.

24 THE COURT: I'm sorry, doctor. I can't hear  
25 you. You're trailing off.

26 THE WITNESS: That is where the nerve roots

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2 are, I would say.

3 Q And, again, the compression on the nerve roots,  
4 would that be the same symptoms you just described or  
5 different?

6 A Same.

7 Q Now, the nerve roots, are they only at this level  
8 or do they come at each level?

9 A Every level has nerve roots.

10 Q And, for L4/5 specifically, what part of the body  
11 do those go to?

12 A They go down the leg into the foot. And so I  
13 would say the foot.

14 Q So, being specific for this case, the symptoms,  
15 the complaints of Ms. Rutledge, and your physical findings  
16 on examination, were they consistent or inconsistent with  
17 what you're seeing here on the MRI?

18 A They are consistent.

19 Q This MRI, is it objective or subjective?

20 A Objective.

21 Q And what does that mean?

22 A Objective is something that you can actually see  
23 or test. Subjective is more of an opinion or a feeling.  
24 This is something that, you know, you visualize it.

25 Q Is there anything else you want to show us on this  
26 film?

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2 A No. That's about it.

3 Q Anything else from this exhibit, any of the films  
4 in this series?

5 A Well, then there's another MRI two years later of  
6 the same. You want to look?

7 Q Do you want to go there next?

8 A Yes.

9 Q Would you, please.

10 Please make sure these go in the right envelope.

11 MR. HARDICK: Your Honor, could I ask that we  
12 just put a sticker on this particular film so we mark  
13 it maybe 18-A as the one from that package that he  
14 observed.

15 THE COURT: Yes.

16 MR. RAUSHER: No objection.

17 THE COURT: Don't talk while we're doing it.

18 A I put up a second film which is dated 12-21-06.

19 Q Which exhibit is this?

20 A Oh, this one is 19.

21 Q And I apologize, doctor. What was the date?

22 A 12-21-06.

23 Q And that's again lumbar MRI?

24 A Yes.

25 Q Sorry to interrupt.

26 A And this is exactly the same, you know, image as



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2 we looked at before. Now, it's say two years later.

3 Once again, the side view. It's also known as the  
4 sagittal view.

5 And, if you look over at the L4/5 here, once again  
6 you would see sticking out of the back of that disk there's  
7 kind of a black bulging or prominent area going into the  
8 nerves, you know, which are behind the bones and the disks  
9 there.

10 So, once again, you see the L4/5 disk herniation  
11 impinging into the, you know, the nerves and the thecal sac.

12 Q Now, does this kind of herniation and impingement  
13 that you're showing us, does this come and go or does it  
14 remain constant?

15 A It remains constant.

16 Q And, seeing it several years apart, is that  
17 significant?

18 A Yes.

19 Q What's the significance of that?

20 A It just shows that it's been there, you know. We  
21 know it was there in '04. And we checked again in '06, and  
22 it's still there. So, it's been pushing on the nerves, you  
23 know, during that two-year period.

24 Q Are you able to tell from these, this two-year  
25 difference in time, approximately, is there any change, any  
26 progression? Is it the same? How would you describe it?

1 McMahon - Plaintiff - Direct

2 A I think it's somewhat bigger here than it was on  
3 the prior one, but just maybe slightly. It's either the  
4 same or it's maybe slightly bigger, I would say.

5 Q Is there anything else you want to share with us  
6 from this film?

7 A No, that's it.

8 MR. RAUSHER: Did you want to mark this one  
9 as well?

10 MR. HARDICK: Yes.

11 THE COURT: This is 19-A in evidence.

12 Q Doctor, if you would next show us the cervical  
13 from 2004 and tell us what exhibit number that is, please.

14 A This one is Exhibit 20.

15 This is similar, although you could see now we're  
16 in a different part of the body. Once again, we'll get one  
17 of these side views.

18 Here you see the base of her brain here, and then  
19 here's her mouth here in the front. So, this is her neck  
20 from the cervical spine.

21 One thing that you observe here is that there  
22 isn't -- you normally expect more of a gentle C-shaped curve  
23 to the neck. And, instead of seeing that, it looks like  
24 it's more of a straight up and down type of effect. And we  
25 call that a reversal of the lordoses. In fact, some cases  
26 more than just straight up and down. It's almost curving

1 McMahon - Plaintiff - Direct

2 the other way. You expect the curve to be more like this.

3 So, that's one thing you note.

4 Q And what significance, if any, is there of that?

5 A That is a sign usually of muscle spasm in the  
6 neck. That will make it curve, you know, in the reverse  
7 direction from what you would expect.

8 Q With regard to the cervical, the disks throughout  
9 the cervical region --

10 A Yes.

11 Q -- are they normal or abnormal for a woman  
12 approximately 22 years old at that time?

13 A Although they were read as -- the only thing the  
14 radiologist read on this was that reversal of the curvature,  
15 although my sense is that there was --

16 MR. HARDICK: Objection.

17 THE COURT: Step up.

18 (Discussion at the bench off the record.)

19 THE COURT: Overruled.

20 Q Sorry, doctor. Would you begin again so we have  
21 it clear.

22 A I do see some bulging which, you know, before I  
23 was talking about herniation, bulging.

24 THE COURT: Keep your voice up, doctor. I  
25 have to hear you.

26 A I see bulging at two of the levels, the C-4/5 and

1 McMahon - Plaintiff - Direct

2 the C-5/6 levels.

3 Q Okay. Would you share with us what is a bulge and  
4 how is it different from a herniation?

5 A A bulge is not as bad as a herniation, and a bulge  
6 is pretty much what you would imagine. Just the disk is  
7 bulging out. And, when it does that, right behind it is the  
8 spinal cord that's sort of the white, like the brighter area  
9 there. You can see the spinal cord running through it.

10 And the herniation is when the bulge actually  
11 kind of just -- it's more than just a bulge. It sort of  
12 comes right out. It's just like a bigger, you know, it's  
13 a -- where the disk, the contents of the disk, actually come  
14 out even further.

15 Q In terms of anatomy, without getting too medical  
16 or scientific, what is the composition of a disk?

17 A Well, the outer part is called the annulus and the  
18 inner part is known as the nucleus pulposus. And, you know,  
19 some people liken it to a jelly doughnut which is, I think,  
20 a useful analogy. And, with a herniation, the inner part is  
21 like a jelly. It's like if you took a jelly doughnut and  
22 squished it a little bit. The jelly comes out that little  
23 hole. That's more like a herniation.

24 Q And the bulge?

25 A And the bulge, it's hard to do the jelly doughnut  
26 analogy. A bulge might be more like maybe a tire with a

1 McMahon - Plaintiff - Direct

2 bulge on it.

3 Q So, in the bulge, there's no tear?

4 THE COURT: No, don't testify, please.

5 Q In a bulge, does the inner material come out or  
6 not?

7 A No.

8 Q And, in a herniation, does it come out or not?

9 A Yes.

10 Q The bulges that you are identifying at C-4/5 and  
11 C-5/6, do they have any impingement, encroachment, whatever  
12 word, with regard to the spinal column, the thecal sac and  
13 nerve roots?

14 A Yes. They are bulging into the spinal or you  
15 might say the thecal sac which covers the spinal cord.

16 Q And what about with regard to the exiting nerve  
17 roots at those levels?

18 A Hard to -- hard to say that exactly on this, but  
19 if you have a bulge into the spinal cord, that is where the  
20 nerve roots are. So, it would be affecting nerve roots  
21 also.

22 Q In terms of the upper levels, the disks at the  
23 upper levels of the neck, do they appear to be appropriate  
24 in terms of height, size, color, whatever for a women of 22  
25 years old?

26 A Yes.

1 McMahon - Plaintiff - Direct

2 Q Or not?

3 A They do appear appropriate.

4 Q And, lastly, I guess Exhibit 21.

5 MR. RAUSHER: Oh, do you want that marked,  
6 Dan?

7 MR. HARDICK: Yes.

8 A And this is dated 12-21-06, and this would be  
9 Exhibit 21. And, once again, it's -- you know, here we are  
10 two years later, same images, you know, same views, and here  
11 you can see that the two disks, the C-4/5 and C-5/6, are  
12 bulging and they're pushing into, as you can see, the spinal  
13 cord there.

14 Q Can you show them again, please, very specifically  
15 where it's into the cord.

16 A I'd say right at this level. This is the cord  
17 here. Here's the brain and the cord coming down. And  
18 here's this bulging disk coming into it.

19 Q Does it show actual compression into the spine?

20 MR. HARDICK: Objection.

21 THE COURT: Yes, sustained.

22 Q Does it or does it not?

23 THE COURT: No, you can't start out with  
24 "does it or does it not". It's your witness.

25 Q What is the relationship between these two bulging  
26 disks and the actual spinal cord according to this MRI?

1 McMahon - Plaintiff - Direct

2 A They're right, you know, they're right next to the  
3 spinal cord, and they're pushing into the spinal cord and  
4 the thecal sac which is covering the spinal cord.

5 Q Again, what effect would you as a physician expect  
6 to see from this exact MRI?

7 MR. HARDICK: Objection.

8 THE COURT: Overruled.

9 MR. HARDICK: Form.

10 A You would expect neck pain and stiffness and  
11 spasm, also pain down the arms, numbness and tingling down  
12 the arms and/or weakness in the arms.

13 Q Once again, the other disks, how do they appear  
14 for someone now two years older, approximately 24 years old?

15 A They look okay.

16 Q What, if any, integral change is there from the  
17 2004 MRI at these levels to the 2006 MRI at these two  
18 levels?

19 A I think they are more apparent now than they were  
20 then.

21 Q When you say "more apparent", what do you mean by  
22 that?

23 A I think the bulge is a little further.

24 Q I failed to ask. So, I apologize.

25 With regard to the two lumbar studies, other than  
26 the L4/5, the disks, did they appear normal or abnormal for

1 McMahon - Plaintiff - Direct

2 someone 22 and 24 years old?

3 A They look normal.

4 Q Is there anything else you want to show us from  
5 this particular film?

6 A No, that's it.

7 MR. RAUSHER: Do you want that marked?

8 MR. HARDICK: Yes.

9 MR. RAUSHER: I believe we're done with the  
10 shadowbox.

11 May I continue. May I continue, your Honor.

12 THE COURT: Yes. I didn't stop you.

13 MR. RAUSHER: Okay.

14 THE COURT: I don't recall stopping you.

15 Go ahead, please.

16 Q Doctor, you saw Ms. Rutledge on one occasion; is  
17 that correct?

18 A Yes.

19 Q And, as a result of that, did you have notes?

20 A Yes.

21 Q Were those handwritten, typed?

22 A Both, actually.

23 Q Do you have those with you today?

24 A Yes.

25 MR. RAUSHER: Your Honor, I would offer into  
26 evidence the doctor's handwritten and typed notes of



1 McMahon - Plaintiff - Direct

2 the disk subject to appropriate redaction.

3 THE COURT: Show it to the other side,  
4 please.

5 MR. HARDICK: Objection. We've got the  
6 doctor's testimony.

7 MR. RAUSHER: Your Honor, they have been  
8 shown.

9 THE COURT: Don't talk. Give them to the  
10 other side.

11 Thank you.

12 MR. HARDICK: Your Honor, I object to the  
13 introduction of the report or the records. We have the  
14 doctor's testimony.

15 THE COURT: Objection is sustained, please.

16 MR. HARDICK: Sustained?

17 Q Doctor, are these your original records?

18 A Yes.

19 Q Do you keep them in the regular course of your  
20 business?

21 A Yes.

22 Q Are you required by the State of New York to keep  
23 such records in the course of your business?

24 A Yes.

25 Q Each of the entries in those records, are they  
26 made at or about the time that's reflected in the records?

1 McMahon - Plaintiff - Direct

2 A Yes.

3 Q And are you the custodian of these records?

4 A Yes.

5 MR. RAUSHER: Your Honor, I offer them into  
6 evidence.

7 MR. HARDICK: Your Honor, they're a --

8 THE COURT: Step up.

9 MR. HARDICK: Can I have a voir dire.

10 THE COURT: Well, yes, you can have a voir  
11 dire.

12 Go ahead.

13 MR. HARDICK: Doctor, your normal business  
14 isn't writing narrative medical reports, is it?

15 THE WITNESS: Is not?

16 MR. HARDICK: Is not.

17 THE WITNESS: No.

18 MR. HARDICK: All right.

19 Not kept in the regular course of business,  
20 your Honor.

21 MR. RAUSHER: May I, your Honor.

22 THE COURT: Go ahead.

23 Q When you treat patients, how do you record your  
24 notes?

25 A I handwrite and often I then also have it typed.

26 Q In this case, what did you do?

1 McMahon - Plaintiff - Direct

2 A That's what I do. I handwrote it and I had it  
3 typed.

4 Q And was that the ordinary course of business in  
5 this case for how you dealt with your treatment notes?

6 A Yes.

7 MR. RAUSHER: I offer them into evidence,  
8 your Honor.

9 MR. HARDICK: Same objection.

10 THE COURT: Step up, please.

11 May I see it please, doctor.

12 (Discussion at the bench off the record.)

13 THE COURT: The handwritten notes will come  
14 in subject to redaction.

15 We'll have it marked, please.

16 MR. RAUSHER: May I.

17 THE COURT: You may hand it to the court  
18 reporter.

19 MR. RAUSHER: And this is back to the doctor.

20 THE CLERK: 22 in evidence, your Honor.

21 MR. RAUSHER: May I continue, your Honor.

22 THE COURT: You may continue.

23 Q Doctor, in connection with your appearing today,  
24 do you have a standard fee for closing your office and  
25 appearing in court?

26 A Yes.

1 McMahon - Plaintiff - Direct

2 Q And how much is that?

3 A \$6,000.

4 Q And, in connection with that standard fee, have  
5 you already received payment before you took the witness  
6 stand?

7 A Yes.

8 Q And was that in connection with canceling your  
9 patients, surgery, etcetera, to be here?

10 A Yes.

11 Q Now, to a reasonable degree of orthopedic surgical  
12 certainty, have you come to an opinion as to whether, for  
13 Ms. Rutledge, the conditions that you've already said were  
14 causally related to the November 23 of '03 incident are  
15 permanent?

16 A They are permanent, yes.

17 Q And, by "permanent", do you mean for the rest of  
18 her life?

19 A Yes.

20 Q Are these conditions competent producing causes of  
21 pain for her on a constant basis for the rest of her life?

22 A Yes.

23 Q Are the limitations that you found approximately  
24 seven years later --

25 A Yes.

26 Q -- do you expect the limitations to be permanent

1 McMahon - Plaintiff - Direct

2 or nonpermanent?

3 MR. HARDICK: Objection.

4 THE COURT: Rephrase it, please.

5 Q Do you have an opinion as to whether the  
6 limitations of use of her neck and back are permanent or  
7 nonpermanent?

8 A Yes.

9 Q And what is that opinion?

10 A They are permanent.

11 Q Will that affect her ability to do her daily  
12 normal activities for the rest of her life?

13 A Yes.

14 Q Did she make you aware at your visit of continuing  
15 pain management treatment at Metropolitan Hospital?

16 A Yes.

17 Q And do you have an opinion as to whether that is  
18 appropriate for her or not?

19 A That is appropriate.

20 Q And did she detail for you medications that she  
21 was taking and did you see them in the records?

22 A I did see them in the record, yes.

23 Q I believe they include Lyrica, Skelaxin, Flexeril  
24 and a number of other -- Tramadol. Are those appropriate  
25 for her conditions?

26 A Yes.

1 McMahon - Plaintiff - Direct

2 Q Do you have an opinion as to whether she should  
3 continue to medicate to help her with her pain and these  
4 conditions into the future?

5 A She should, yes.

6 Q And how long should she do so?

7 A Permanently.

8 Q Are you aware of whether or not she has continuing  
9 physical therapy for her conditions?

10 A I know she's going to pain management.

11 THE COURT: If you don't know, don't guess,  
12 please.

13 A I don't know.

14 Q Do you have an opinion of your own independent of  
15 Metropolitan as to whether she should have physical therapy?

16 MR. HARDICK: Objection.

17 THE COURT: Yes, sustained.

18 Q Would Ms. Rutledge benefit from physical therapy  
19 treatment into the future?

20 MR. HARDICK: Objection.

21 THE COURT: Step up, please.

22 (Discussion at the bench off the record.)

23 THE COURT: I'll allow it.

24 Q Shall I repeat the question, doctor?

25 A No.

26 Q Will physical therapy into the future benefit Ms.

1 McMahon - Plaintiff - Direct

2 Rutledge?

3 A It will, yes.

4 Q For how long?

5 A Permanently.

6 Q Would you have a recommendation as to how often or  
7 how much?

8 A Maybe once a week.

9 Q Did you prescribe any medication on your one visit  
10 for Ms. Rutledge?

11 A I don't remember actually.

12 Q Can I refer you to the end of your report. And  
13 just read it to yourself, please.

14 A Well, yeah, I recommended that she continue in  
15 pain management.

16 THE COURT: That's not the same question.

17 Did you prescribe any medication?

18 THE WITNESS: I don't think so. I don't  
19 remember. But I don't -- no, I don't think so.

20 Q With regard to the pain management, is there any  
21 reason you did not prescribe it on that occasion?

22 MR. HARDICK: Objection.

23 THE COURT: Well, yes. Sustained.

24 Q Were you aware at that time that she was receiving  
25 medication from the pain management at Metropolitan?

26 A Yes.

McMahon - Plaintiff - Direct

Q Would there have been any benefit to your prescribing medication in addition to what they were prescribing?

A No.

Q Was what they were prescribing appropriate for her?

A Yes.

Q Based on the totality, everything that you've told us today, test results, the materials you've reviewed, your own examination, did you come to a conclusion or opinion to a reasonable degree of orthopedic surgical certainty as to whether or not Ms. Rutledge would be a candidate for surgery for these conditions?

A Yes.

Q And what is your opinion?

A That she would benefit from surgery for these conditions.

Q What kind or kinds of surgery would you contemplate?

A Well, in regard to her cervical spine, she would benefit from a C-4 to C-6 decompression and fusion using instrumentation and bone graft.

Q To the best of your ability, in our lay language, could you tell us what's involved in that type of surgery. How is it performed?



1 McMahon - Plaintiff - Direct

2 A Well, you remove the disks that have the problem  
3 with the bulging disks, you remove them and replace them  
4 with bone that you take either from her hip, or sometimes  
5 you can take it from a bone bank, and you replace the disks  
6 with bone through an incision which is made in the front of  
7 the neck, and then you hold all this together using a metal  
8 plate with screws into the C-4, C-5 and C-6 vertebral bodies  
9 of the bones. And that would be -- that's the operation.

10 Q What effect does that have on a patient?

11 A Well, one thing it does, it prevents those disks  
12 from pressing in on the nerves or on the spinal -- that we  
13 looked at before.

14 It does remove movement or eliminates movement  
15 from those two levels. So, now your C-4 to C-6 or, I should  
16 say, the C-4/5 and C-5/6 disks no longer have movement.  
17 It's fused like rigid across, across those levels.

18 Q The hardware that you're describing of the bone  
19 grafts, the screws, plates, are those permanent or  
20 nonpermanent?

21 A Permanent.

22 Q Do you know what the current cost of such a  
23 cervical surgery as you've described would cost?

24 MR. HARDICK: Objection.

25 THE COURT: Overruled.

26 MR. HARDICK: No claim in the bill of

1 McMahon - Plaintiff - Direct

2 particulars.

3 MR. RAUSHER: I object to speaking  
4 objections, your Honor.

5 THE COURT: Step up.

6 (Discussion at the bench off the record.)

7 THE COURT: Overruled.

8 Q Sorry, doctor.

9 In present dollars, what would be the approximate  
10 cost of that surgery? That would include surgical fees,  
11 hospital, anesthesia, if appropriate, etcetera.

12 MR. HARDICK: Objection.

13 THE COURT: Overruled.

14 MR. HARDICK: Another basis, Judge.

15 (Discussion at the bench off the record.)

16 THE COURT: Overruled.

17 Q Sorry about that. Do you need me to re-ask or?

18 A No. \$50,000.

19 Q Does such a surgery involve any kind of aftercare?

20 A Yes.

21 Q What would that be?

22 A Narcotics and other types of medications. At some  
23 point afterwards, physical therapy. Follow-up x-ray and  
24 other radiologic studies.

25 Q In the \$50,000 figure you mentioned, were you  
26 including these or would that be in addition?

1 McMahon - Plaintiff - Direct

2 A I was including that actually.

3 Q Now, with regard to the lumbar surgery --

4 A Yes.

5 Q -- what, if anything, would be recommended in that  
6 regard?

7 A She would benefit from an L4/5 what's known as a  
8 decompression and fusion using pedicle screws and bone  
9 graft.

10 Q Would you explain that to us, please.

11 A That is a similar operation where the level where  
12 there's the problem at L4/5, you take away the part of the  
13 disk that's pressing on the nerves, and you fuse across  
14 using screws and rods and you put bone graft. And the goal  
15 is to make that level like rigid so that you prevent the  
16 disks from pressing in on the nerves.

17 Q The words you used with the cervical, I think you  
18 said fused or lack of flexion, would this surgery have any  
19 similar effect for the lumbar spine?

20 A Yes.

21 Q And this, again, this hardware or grafting, would  
22 that be permanent or nonpermanent?

23 A Permanent.

24 Q In current dollars, what would this surgery and  
25 all associated care come to?

26 A \$50,000.

1 McMahon - Plaintiff - Direct

2 Q As an orthopedic surgeon, is it appropriate or  
3 safe to do these two surgeries at the same time or do they  
4 have to be done separately?

5 A You could do them both at the same time actually,  
6 although usually they're done separately. But so either or.  
7 I would say most of the time, they're done separately.

8 Q And, in general, what is -- in terms of the  
9 aftercare, etcetera, about how long is one left with the  
10 effects of the actual surgery?

11 In other words, not the permanent effects of the  
12 graft or plates, but in recovery time I guess would be the  
13 way to put it.

14 A Usually takes six months to a year, you know, to  
15 recover from these operations.

16 Q From your examination, which I understand is years  
17 later, and your review of all the medical records, do you  
18 have an opinion to a reasonable degree of orthopedic  
19 surgical medical certainty as to whether the conditions that  
20 Ms. Rutledge suffered as a result of this accident affected  
21 her ability to work?

22 A Yes.

23 Q And what is that opinion?

24 A That they did affect her ability to work.

25 Q In the medical profession, are you familiar with  
26 what certified nursing assistants do and for geriatric

1 McMahon - Plaintiff - Direct

2 patients?

3 A Yes.

4 Q Could she do that kind of work?

5 A No.

6 Q Will she ever be able to do that kind of work?

7 A No.

8 Q Ms. Rutledge is all of 29 years old presently. As  
9 she gets older, would you expect the injuries, the effects  
10 of the injuries that you described, to remain the same, get  
11 better or get worse?

12 A Get worse.

13 Q Can you explain that, please.

14 A Well, as time, you know, as the years go on, those  
15 levels where the damage occurred, she will develop arthritis  
16 at those levels which will -- arthritis often --

17 MR. HARDICK: Objection. There's no claim  
18 for arthritis in this case.

19 MR. RAUSHER: Continue to object to the  
20 speaking objections for the jury, your Honor. He's not  
21 testifying. If we need to approach, I accept that.

22 THE COURT: Overruled.

23 You may answer.

24 A Arthritis in the spine often appears in the form  
25 of bone spurs, and the bone spurs are very sharp and the  
26 nerves are very sensitive. And that often makes the pain

McMahon - Plaintiff - Direct

worse, and then the symptoms down the arms and down the legs worse.

Q I'll ask you to assume that there's testimony by Ms. Rutledge that the medications that she's taking often make her lethargic or sleepy.

Would that be consistent or inconsistent with the kinds of meds she's taking?

A Consistent.

Q From beginning to end of your involvement in this case, from every medical record you've reviewed, is there anything inconsistent with the opinions that you've just offered us now?

MR. HARDICK: Objection.

THE COURT: Yes, sustained.

Q Have you discovered in your review of this case anything inconsistent with the cause and effect of these injuries to Ms. Rutledge?

MR. HARDICK: Objection.

THE COURT: Sustained.

Q Doctor, today did I give you a copy of a report by a Dr. Joseph Paul to review?

A Yes.

Q And did you learn that Dr. Paul saw Ms. Rutledge on February 12 of 2004 on behalf of the defendant New York City Transit Authority?

1 McMahon - Plaintiff - Direct

2 A Yes.

3 Q This report is not in evidence. So, please do not  
4 read from it.

5 Did you find the findings, without again reading  
6 from it, of Dr. Paul to be consistent or inconsistent with  
7 the other medicals that you reviewed in this case?

8 A Inconsistent.

9 Q Was there any specific medical that led you to  
10 that conclusion?

11 MR. HARDICK: Objection.

12 THE COURT: Yes, sustained.

13 MR. RAUSHER: Your Honor, there's one item in  
14 evidence may I retrieve.

15 I'm sorry. What number is that?

16 THE COURT OFFICER: Seven.

17 Q Doctor, what I've just had handed to you is  
18 Plaintiff's Seven in evidence. Are those the records of Dr.  
19 Felderstein?

20 A Yes.

21 Q Now, the examination by Dr. Paul was on February  
22 12, 2004; is that correct?

23 A Yes.

24 Q Are there any records in front of you with the  
25 same date?

26 A Yes.

McMahon - Plaintiff - Direct

Q And what is that?

A February 12, 2004.

Q And what does that record reflect?

A It's an evaluation of the range of motions of her neck and back, of Ms. Rutledge's neck and back.

Q And, to the extent you can categorize, what were the findings with regard to Dr. Felderstein's range of motion examination on the same day as the defendant's physician?

A There were, you know, moderate to severe losses of range of motion.

Q To a reasonable degree of orthopedic or medical certainty, on the same day, would those range of motions be expected to change?

A No.

MR. RAUSHER: I'm done with that.

I'll remove all that.

Q You also indicated that you had a straight --

THE COURT: We're having trouble hearing you if you drop your voice.

MR. RAUSHER: I'm sorry. I'm really not aware of it. I apologize.

Q I'll move on from there, doctor.

You also indicated that you had a straight leg raising test on your examination; is that correct?



1 McMahon - Plaintiff - Direct

2 A Yes.

3 Q And what is a normal for straight leg raising?

4 A A normal would be if you grab the person, you  
5 know, you hold the person's ankle and you lift their leg up  
6 while they're, say, lying on the exam table, and if you get  
7 to 90 degrees and it doesn't create a pain running down  
8 their leg into their foot, then that would be normal.

9 Q For a healthy 22-year old, would a 75-degree  
10 finding be normal or abnormal for a straight leg raising?

11 A Abnormal.

12 MR. RAUSHER: I'm about to finish.

13 Nothing further. Thank you.

14 THE COURT: No.

15 MR. HARDICK: Your Honor, okay.

16 THE COURT: We'll take a few minutes, please.

17 You may step out. Don't talk about the case.

18 THE COURT OFFICER: All rise. Jury exiting.

19 (The jury left the courtroom.)

20 THE COURT: You can step down, doctor. Just  
21 don't go too far.

22 (Recess.)

23 THE COURT: On the record, please.

24 The Court is in receipt of a note. It will  
25 be marked as a Court's exhibit. It indicates that the  
26 juror has a death in her family and will not be able to

1 McMahon - Plaintiff - Cross

2 attend after today, really. It says after tomorrow,  
3 but tomorrow will not be a trial day.

4 MR. HARDICK: Which juror?

5 THE COURT: This is Number Two. So, she's  
6 going to be excused with the thanks of the Court.

7 THE COURT OFFICER: Okay.

8 All rise. Jury entering.

9 (The jury entered the courtroom.)

10 THE COURT: Be seated, please, those of you  
11 who are still standing.

12 You may inquire.

13 MR. HARDICK: Thank you.

14 THE COURT: I know we're all getting tired.

15 CROSS-EXAMINATION

16 BY MR. HARDICK:

17 Q Doctor, an MRI and an ordinary x-ray are very  
18 different, are they not?

19 A Yes.

20 Q You take a look at an x-ray of a bone and it shows  
21 it's broken, the bone's broken. There's no question,  
22 doctor?

23 A Yes.

24 Q An MRI, however, doctor, is a computerized picture  
25 of what the computer thinks the back looks like based upon a  
26 magnetic signal; correct?

1 McMahon - Plaintiff - Cross

2 A Correct.

3 Q And, doctor, there was a study a long time ago. I  
4 haven't kept up with all the studies. 50 percent of the  
5 people --

6 MR. RAUSHER: Objection.

7 May we approach.

8 MR. HARDICK: Let me just ask it a different  
9 way.

10 MR. RAUSHER: He's testifying.

11 MR. HARDICK: Let me ask it a different way.

12 THE COURT: Overruled.

13 Go ahead. Rephrase it.

14 Q 50 percent of people who have bulging disks on  
15 MRIs are asymptomatic.

16 MR. RAUSHER: Objection.

17 THE COURT: Overruled.

18 A The study that I --

19 THE COURT: Answer the question. Don't talk  
20 about the study.

21 A It was 65-year old patients, and the conclusion  
22 was a third of patients who are 65 have bulging disks.  
23 Or -- I think that was the study.

24 Q And no symptoms?

25 A Without symptoms, yes.

26 Q And 20 percent of them have herniated disks with

McMahon - Plaintiff - Cross

no symptoms?

MR. RAUSHER: Objection. Move to strike.

THE COURT: Overruled.

A That I'm not -- that I'm not sure about that part.

Q Anybody over 50 is going to have a lot of bulging disks; isn't that correct?

MR. RAUSHER: Objection, direct, not this case.

THE COURT: Overruled.

A Not necessarily. I would say not necessarily.

Q I don't say necessarily, but a lot of -- most people over 50 have bulging disks; right?

A I don't know if I would go as far as to say most, maybe many, many people.

Q And they're asymptomatic?

A Yes.

MR. RAUSHER: Objection.

THE COURT: Overruled.

Is that a question?

MR. HARDICK: He answered.

THE COURT: I didn't hear it.

A Yes.

Q All right.

Now, doctor, what was your fee for the examination and report, or was that one or was that two separate things?

1 McMahon - Plaintiff - Cross

2 A It was, well, it was the total of \$750.

3 Q Who paid that?

4 A Mr. Rausher.

5 Q Do you treat Medicaid patients?

6 A No.

7 Q All right.

8 Now, doctor, you mentioned that Dr. Etemadi found  
9 a positive EMG at L4/5?

10 A Yes.

11 Q Okay. Do you agree with Dr. Etemadi who testified  
12 here this morning that a positive EMG can be caused by  
13 inflammation of a muscle?

14 A Inflammation of a muscle?

15 Q Yes. Myofascitis I think he called it.

16 A I don't know. I just don't know.

17 Q And you mentioned the positive EMG. Do you know  
18 there was also a negative NCV?

19 A Yes, I do know that, yes.

20 Q And NCV is nerve conduction velocity study.  
21 That's another thing. That's another way you can -- what  
22 you're doing is testing the speed at which the electrical  
23 current goes down the nerve; right?

24 A Yes.

25 Q And, if the nerve is impinged in some place, you  
26 expect that signal to be slow?

McMahon - Plaintiff - Cross

A Yes.

Q Okay. And his NCV study of the upper and lower extremities was within normal limits?

A Yes.

Q And are you aware of the fact that Dr. Etemadi did a physical examination when he first saw the plaintiff on November 15, 2003?

A I thought it was December. Is that December 15? I have December.

Q I'm sorry. December 15.

A Yes.

Q And do you know what his findings were at that time?

A I have -- I have that in here.

Q Okay. But off the top of your head, you don't know?

A No.

Q All right. Would it surprise you to know that there was no gait deviation noted, that the motor examination for wasting, normal, fasciculation, normal, spasticity, normal, rigidity, normal, and flaccidity, normal. Muscle strength 1-5, which he told us was normal.

MR. RAUSHER: Objection.

Q And there was no involuntary tic or tremor.

MR. RAUSHER: Objection.

1 McMahon - Plaintiff - Cross

2 There was no testimony the 1-5 muscle is  
3 normal. There's no such testimony.

4 THE COURT: Overruled.

5 Q Would you agree with that?

6 A I would say some of those are not, I would say,  
7 not related to this type of problem, like a tic or a tremor,  
8 things like that. It's like general neurological things.

9 Q Okay. But no limp?

10 A No limp, yes.

11 Q That's important; right?

12 A That's --

13 Q Because when you examined her, she had a cane;  
14 right?

15 A Yes. I didn't see a limp either, actually. I  
16 didn't observe a limp, I would say.

17 Q His exam, there was no sensory loss at that time.  
18 All reflexes were normal. Straight leg raising was negative  
19 on the right and left sides at that time.

20 This is --

21 MR. RAUSHER: At what time?

22 MR. HARDICK: 12-15 2003.

23 Q He examined her again on December 29. Muscle  
24 strength was 5/5. Shoulder, bicep, tricep, finger flexion,  
25 leg extension, leg flexion, foot dorsiflexion, plantar  
26 flexion all 5/5. Reflexes all 5/5.

1 McMahon - Plaintiff - Cross

2 He saw her again on February 4, 2004. Reflexes  
3 2/2, muscle strength 5/5.

4 There's no indication of a straight leg raising  
5 test at that time.

6 Doctor, are all these findings consistent with  
7 your findings?

8 A Yes. In fact, when I tested her reflexes, they  
9 were normal.

10 Q And her muscle strength was normal?

11 A The only abnormality I found was on her big toes  
12 on the left. I gave a 4 out of 5. And 5 out of 5 on the  
13 right. But in the arms, she was normal.

14 Q All right. Again, on the 16, normal reflexes  
15 except for the left knee which he could not elicit it, and  
16 muscle strength is again 5/5. But your muscle strength was  
17 also 5/5.

18 A Everywhere except the --

19 Q The big toe?

20 A That big toe, yeah, on the left.

21 Q Well, doctor, if somebody is suffering from pain  
22 for seven years, pain running down their leg, wouldn't you  
23 expect by that time there would be some motor loss, some  
24 loss of strength in the leg?

25 A No. I would say that, you know, they could have  
26 pain, but that doesn't necessarily mean they have motor



McMahon - Plaintiff - Cross

loss. I mean, pain as opposed to like a weakness.

Q But pain, wouldn't that -- well, first of all, doctor, one of the symptoms of a nerve impingement is weakness; right?

A It can be, yes.

Q Yes. Well, that's one of the two things that nerves do; right? They sense and they provide motor power?

A Yes.

Q And, if you get a pinched nerve, that leg is weak. Even after the pinched nerve goes away, you have weakness in that leg?

A Some people have weakness with pinched nerves, but others don't. I mean, you can have it.

Q Depends how bad it is; right?

A Yes. Some people, yeah. I would say the majority of people don't have weakness with pinched nerves, but some do.

Q All right. So, the clinical exams that you perform looking for a herniated disk, you check reflexes?

A Yes.

Q You check strength?

A Yes.

Q You check sensation?

A Yes.

Q These are all negative, negative, negative, every

McMahon - Plaintiff - Cross

time someone tests it.

A Well, I did find, in her left hand, I found a decreased sensation in the left hand.

Q Seven years after the occurrence, did anybody else find weakness in her left hand?

A Or just a loss of sensation. And also in her -- also in her left leg I found a loss of sensation.

Q Okay. But in any other report from any other doctor that you looked at over those seven years, was there any such finding?

A I can't remember. I can't remember exactly what their findings were.

Q All right. Then she went to -- all right.

I think you started to run through a history with her, you know. She went first to Mount Sinai, and then three weeks later she goes to the chiropractor, and the chiropractor retains the neurologist and he also retains the physiatrist that treats her, and he gives her physical therapy for a month and-a-half; right?

Is that accurate?

MR. RAUSHER: Objection.

THE COURT: Overruled.

A You know, I don't know if I have the exact duration of the physical therapy.

Q All right. So, you don't know if it was a month

1 McMahon - Plaintiff - Cross

2 and-a-half. You don't know how long it was; right?

3 A I just have -- what I have is I have five times a  
4 week.

5 Q You don't know how long?

6 A I'm not sure how long that went.

7 Q All right. Would it surprise you that it didn't  
8 go more than five days a week and got down to three and two  
9 days a week in that month and-a-half?

10 A They often start it a lot. They often go with a  
11 lot and they tend to diminish it.

12 Q And then she went to New Jersey for these  
13 injections in March?

14 A Yes.

15 Q When is her next medical treatment after March of  
16 2004?

17 A The next thing I have is December of 2006, I  
18 believe is the next date that I have.

19 Q So, we have almost three years of no treatment.  
20 Is that consistent with somebody who's got continuing neck  
21 and back problems?

22 A I think part of it was, I think, she did move. I  
23 think she was in a different part of the country for part of  
24 that three-year period, I think.

25 Q Okay. So, I take it Atlanta doesn't have any  
26 medical facilities in it?

McMahon - Plaintiff - Cross

A I think we may just not have the record. That's one possibility.

Q There's no treatment?

MR. RAUSHER: Objection. Counsel is testifying.

A The other thing I was thinking was, you know, once they, like a person who treated for a period of time, and they also have insurance issues, they kind of stop, you know. She's already had her MRIs. And they just live with the problem for awhile, you know. They just -- so then they just stop treatment because they --

Q Well, doctor, isn't that kind of indicative of how much trouble somebody is being put through?

MR. RAUSHER: Objection.

THE COURT: Overruled.

Q Depending upon the seriousness of pain, you're much more likely to go and get medical care?

MR. RAUSHER: Objection.

THE COURT: Overruled.

A Yes. I would say yes.

Q So, we got almost three years of nontreatment. Then what do you have in 2006?

A Then she has these -- she, I guess, goes back to Uptown chiropractic and then they arrange these MRIs.

Q Do you have any record from Uptown Chiropractic

1 McMahon - Plaintiff - Cross

2 that she returned there in 2006?

3 A The only -- one reason I thought that is because  
4 on the MRI reports that the radiologist wrote, it's, you  
5 know, it's writing it to Dr. Heyligers. So, I figured Dr.  
6 Heyligers had to be the one that ordered it. Other than  
7 that, I don't have a record.

8 Q You don't know?

9 A No.

10 Q You don't know who requested those subsequent MRIs  
11 in 2006, do you?

12 A It does say Dr. Heyligers. Like they're sending  
13 the report to Dr. Heyligers. So, he must have been the one  
14 that ordered it.

15 Q But he hadn't treat her since January 2004.

16 MR. RAUSHER: Objection.

17 THE COURT: Overruled.

18 THE COURT: Mischaracterizing the testimony.

19 THE COURT: Overruled.

20 Q Are you aware of any treatment?

21 A No.

22 Q Did you see any records that Uptown Chiropractic  
23 was treating her in 2000 -- in December of 2006?

24 A No.

25 Q And MRIs are expensive; right?

26 A Yes.

McMahon - Plaintiff - Cross

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Q What does an MRI cost?

A I would say a thousand to 1,300, in that range.

Q And that's for each one?

A Yes.

Q One for the neck, one for the back?

A Yes.

Q So, that's like \$2,600. And you're dealing with a woman who says she has no money?

A Yes.

Q So, do you have any idea who paid for those MRIs?

A No.

Q All right.

Now, after the MRIs, what's her next treatment?

A Well, then she starts seeing -- she starts going to pain management at Metropolitan.

Q When is that?

A You know, I don't think I have that. I can't give you an exact date on that. I'm not sure.

Q How about July 2008?

MR. RAUSHER: Objection. Mischaracterizing the evidence.

THE COURT: Overruled.

A Yeah, because I don't have the specific dates. So.

Q All right. So, there's an awful lot of big holes

1 McMahon - Plaintiff - Cross

2 in her treatment; isn't there?

3 MR. RAUSHER: Objection.

4 THE COURT: Overruled.

5 Q As a matter of fact, we don't have any treatment  
6 other than an MRI between March of 2003 and July of 2008?

7 A 2004, March 2004.

8 Q That's right, 2004.

9 A Yes.

10 Q Yes. Okay.

11 So, here's a woman with no treatment for five  
12 years, more than five years.

13 MR. RAUSHER: Objection.

14 THE COURT: Overruled.

15 Q And you think she's got some sort of permanent  
16 restrictions of motions and she can't do all sorts of things  
17 even though she doesn't seek any medical treatment for five  
18 years?

19 A I think it's closer to more like four, maybe four  
20 years because it's March of 2004 till --

21 Q Okay. Four years. You're right. Okay.

22 On July 25, 2008, she went to the clinic there and  
23 they found her motor was 5, motor power was 5/5, and her  
24 sensation was intact.

25 You agree with that, those kind of findings?

26 A Yes. That, I don't have those records. I don't

1 McMahon - Plaintiff - Cross

2 have that record that you're talking about.

3 Q You never had those records?

4 A No.

5 Q So, you don't know anything about the findings at  
6 Metropolitan over the time they were treating her?

7 A I don't think I have records, those records, no.

8 Q So, you are basing your testimony based upon an  
9 exam you did in May of 2010 and medical records concerning  
10 her treatment from November 24, 2003 to March of 2004?

11 A Well, plus I had those MRIs from December of 2006.

12 Q All right. But, doctor, you wouldn't operate  
13 based on an MRI; right?

14 A Well --

15 MR. RAUSHER: Objection to form.

16 THE COURT: Rephrase it, please.

17 Q Doctor, an MRI is not a diagnosis. It's a tool;  
18 right?

19 A It is a tool, yes.

20 Q Yes. And, if somebody came to you with an MRI and  
21 said look, I got a herniated disk, can we schedule surgery  
22 for next week, what would you say?

23 A Well, you would want to do more things. You would  
24 want to do a physical examination and do other tests.

25 Q You want to do a physical examination, check their  
26 motor, their reflexes, see if they had anything, their



McMahon - Plaintiff - Cross

sensation, see if there's anything to indicate they have a herniated disk?

A Yes.

Q And, if the MRI was four years old, you would want to take a new MRI; right?

A Yes, yes.

Q You would never operate on the basis of a four-year old MRI?

A No.

Q So, you saw another MRI in this case, didn't you?

MR. RAUSHER: Objection.

THE COURT: Overruled.

A Yes.

THE COURT: Yes or no, doctor?

THE WITNESS: Yes.

Q Yes. And that was an MRI done on October 4, 2008 at Metropolitan Hospital; correct?

A Correct.

Q You didn't bring that MRI with you today?

A Correct.

Q You brought the old MRIs?

A Yes.

Q Why didn't you bring the MRI from 2008 from Metropolitan Hospital?

A Because I didn't have that one.

1 McMahon - Plaintiff - Cross

2 Q Well, doctor, reading from your report, on  
3 October 4 --

4 MR. RAUSHER: Objection. Can we approach.

5 Q Doctor --

6 MR. HARDICK: Withdrawn.

7 MR. RAUSHER: Can we approach?

8 THE COURT: Let me hear the question.

9 MR. HARDICK: Withdrawn.

10 Q Doctor, didn't you say in your report --

11 MR. RAUSHER: Objection.

12 THE COURT: Asked and answered.

13 Don't read it unless I know what it is.

14 Bring it.

15 Come up, counsel.

16 (Discussion at the bench off the record.)

17 Q Doctor, you had the October 2008 MRI. You  
18 reviewed it, did you not?

19 A I had the -- I didn't have the films. I had the  
20 radiologist's report, but I didn't have -- I didn't have the  
21 films even though I know I wrote that there. But that was a  
22 mistake.

23 Q Didn't you say in your report that you had the  
24 October 2008 film and that you reviewed it?

25 A That's what I wrote. But what I meant to say was  
26 that I reviewed the radiologist's reading of it. So, I

McMahon - Plaintiff - Cross

couldn't -- I never actually got the films themselves.

Q Did you review this report before you wrote it?

MR. RAUSHER: Objection.

THE COURT: Overruled.

Q Did you read it over?

A Yes, I did, yes.

Q So, you not only dictated it, but you went back and you read --

A I read it over.

Q -- "I had the 2000 -- the October 4, 2008 of the lumbar spine and I reviewed it"?

A Yes, I reviewed that, yes.

Q But now you're saying you didn't review it?

A I reviewed the report, not the films. But that indicates I saw the films, but I never saw them.

Q Okay. If you didn't see the films, doctor, wouldn't it have been important for your diagnosis of this woman to at least see what the 2008, October 2008 MRI showed?

A The problem was, you know, all those others are from Lenox Hill, you know. That's where I work. So, those were easy to obtain. But this one was from Metropolitan.

Q That would have been trouble; right?

A Yes.

MR. RAUSHER: Objection, argumentative.

1 McMahon - Plaintiff - Cross

2 THE COURT: Overruled.

3 Q You were recommending --

4 MR. RAUSHER: Your Honor, may I have a ruling  
5 for the record.

6 THE COURT: I said overruled.

7 MR. RAUSHER: Sorry.

8 Q You were going to recommend surgery on this woman  
9 without knowing what the 2008 MRI of the spine looked like?

10 A Yes. It would have been nice to have it.

11 Q All right. It would have been good to have it;  
12 right?

13 A Good to have it, yes.

14 Q It would have made your report more accurate?

15 A It would have been better, yes.

16 Q And that, in fact, before you dared operate on  
17 this woman, you would have taken a new MRI, wouldn't you?

18 A Yes.

19 Q And maybe you would have wanted to find out what  
20 her medical history was for 2005, 2006, 2007, 2008, 2009 and  
21 2010; right?

22 A Yes.

23 Q Why did you see her?

24 A May 3, 2010.

25 Q Why? Why did she say she was coming to you?

26 A She was -- she was considering having surgery at

1 McMahon - Plaintiff - Cross

2 that point because I think she had seen another surgeon  
3 perhaps who had --

4 Q Perhaps. You don't know?

5 MR. RAUSHER: Objection.

6 THE COURT: Overruled.

7 MR. RAUSHER: This is argumentative again.

8 THE COURT: Overruled.

9 MR. RAUSHER: Can the doctor be allowed to  
10 answer without being cut off.

11 THE COURT: Overruled.

12 A And she was, now that it's seven years, whatever,  
13 six or seven years from the accident, and so she was  
14 thinking maybe she should do it. But I think it boiled down  
15 to at her age, which is only 20 something, 20 --

16 Q All right. Then I ask you, I mean, did you get  
17 the records of that doctor?

18 A No, I did not.

19 Q Do you know whether that doctor recommended  
20 surgery or no surgery?

21 A I'm not sure, but I just remember that was --

22 Q Would it interest you to know that it was --

23 MR. RAUSHER: Objection.

24 Q -- the neurosurgeon?

25 MR. RAUSHER: Objection. May we approach.

26 THE COURT: Step up.

1 McMahon - Plaintiff - Cross

2 (Discussion at the bench off the record.)

3 THE COURT: I'll allow it.

4 Overruled.

5 MR. RAUSHER: Exception.

6 Q Are you aware that the neurosurgeon at  
7 Metropolitan Hospital recommended against any sort of  
8 surgery?

9 MR. RAUSHER: Objection.

10 THE COURT: Overruled.

11 A No.

12 Q After that MRI in 2008, and one more visit on  
13 October 19, 2008, the plaintiff didn't return to  
14 Metropolitan Hospital where she's treating until May of  
15 2009. So, we have a period of seven months with no  
16 treatment whatsoever.

17 THE COURT: Is there a question?

18 Q Is that consistent with somebody who's suffering  
19 from a lot of pain?

20 MR. RAUSHER: Objection.

21 Q And disability?

22 THE COURT: Overruled.

23 MR. RAUSHER: Form.

24 Q And can't work?

25 THE COURT: Overruled.

26 MR. RAUSHER: Form and mischaracterized.

1 McMahon - Plaintiff - Cross

2 A I think there are a lot of insurance issues that  
3 prevented her from --

4 Q Are you aware of these issues? I mean, she was on  
5 Medicaid.

6 MR. RAUSHER: Objection.

7 THE COURT: Yes, sustained.

8 Q She testified to that.

9 MR. RAUSHER: Your Honor --

10 THE COURT: Yes, sustained.

11 Q Oh, so, it was insurance issues. So, she couldn't  
12 afford to go to a doctor; is that what you're saying?

13 A No. But that might have been part of the reason.

14 The other part was, like I said before, you know,  
15 she had already been treated and it's something that you  
16 just kind of resign yourself to, that you have these  
17 symptoms.

18 Q Depending upon how bad they are; right? Yes?

19 A The severity, yes, can affect things, yes.

20 Q On May 6, 2009, she had motor power of 5/5. The  
21 sensory power in her upper extremities was normal. Her  
22 lower extremities, she had double pants. So, they couldn't  
23 test.

24 On 5-6, again, sensory exam -- the motor power was  
25 5/5. Sensory, pinprick, normal in the upper extremities.  
26 They couldn't test the lower extremities.

1 McMahon - Plaintiff - Cross

2 Let's get to 5-21.

3 5-21-09, rehabilitation. Passive range of  
4 motion -- full passive range of motion for all extremities.  
5 Lumbar flexion, 90 degrees. Motor, 5/5, except left lower  
6 extremity limited by pain, 90 degrees.

7 That's quite inconsistent with what you found;  
8 isn't it?

9 A Yes.

10 Q And, all of these, all of this treatment that  
11 she's getting at Metropolitan, none of it is for her neck.  
12 It's all low back pain. Are you aware of that?

13 MR. RAUSHER: Objection.

14 THE COURT: Overruled.

15 MR. RAUSHER: Mischaracterized the evidence.

16 THE COURT: Overruled.

17 A I just know she's going there for pain management.

18 Q You don't know what they were treating her for?

19 A No, because I don't have those more recent  
20 records.

21 Q You mean the records from July of 2008 up until  
22 June of 2010, you didn't have them?

23 A No.

24 MR. RAUSHER: Objection.

25 The question assumes records that were after  
26 his examination.



1 McMahon - Plaintiff - Redirect

2 THE COURT: Overruled.

3 MR. HARDICK: Thank you, doctor.

4 THE WITNESS: You're welcome.

5 MR. RAUSHER: Your Honor, may I have Exhibits  
6 15, 8 and 9, please.

7 Thank you.

8 REDIRECT EXAMINATION

9 BY MR. RAUSHER:

10 Q Would you first look in what's in evidence as  
11 Plaintiff's 15. These are the records of Uptown  
12 Chiropractic.

13 A Yes.

14 Q And would you find the bill which is not too far  
15 from the top.

16 MR. HARDICK: Objection.

17 Improper redirect.

18 MR. RAUSHER: Wait for the question, your  
19 Honor.

20 THE COURT: I'll wait for the question.

21 You know, it's ten to five. You want him  
22 searching for a bill?

23 MR. RAUSHER: Can I approach and pull it out?

24 THE COURT: All right.

25 MR. RAUSHER: No, this is the wrong one.

26 That's why you can't find it. That's 15.

1 McMahon - Plaintiff - Redirect

2 I'm sorry. Maybe I have marked it wrong.

3 THE COURT: That's what you said.

4 MR. RAUSHER: I need the Uptown Chiropractic.

5 MR. HARDICK: If you want to put a number in  
6 and talk to him about it without him seeing it, I'm not  
7 going to object.

8 MR. RAUSHER: He needs to see it.

9 MR. HARDICK: All right.

10 THE COURT: It is 15.

11 MR. RAUSHER: It should be 15; right?

12 THE COURT: Yes.

13 MR. RAUSHER: For some reason, this appears  
14 to be Dr. Lipsky and the New Jersey.

15 THE COURT: Do you have a question for the  
16 doctor?

17 MR. RAUSHER: I will in one second, your  
18 Honor. Perhaps it's in here.

19 Maybe those records were just on top. It was  
20 mixed up during testimony.

21 Here it is.

22 Thank you.

23 A Yes.

24 Q Doctor, this is in evidence. This is a bill from  
25 Uptown Chiropractic and it specifies dates of treatment in  
26 the billing.

1 McMahon - Plaintiff - Redirect

2 You were asked whether or not there was only a  
3 month or a month and-a-half and if treatment ended in  
4 January of '04. According to this, is that true?

5 A No.

6 Q Did treatment continue past January '04?

7 A Yes.

8 Q And when did it continue to?

9 A The last date here is 10-31-05.

10 Q And are there entries throughout up to April of  
11 '04?

12 A Yes.

13 Q And continuing later in '04?

14 A Yes.

15 Q When the plaintiff testified that she came back to  
16 New York and treated when she came back to New York, are  
17 there entries of treatment in later '04 and '05?

18 A Yes.

19 Q Now, MRIs from '06, those were sent to Dr.  
20 Heyligers; correct?

21 A Yes.

22 Q Can a patient walk into an MRI facility and get an  
23 MRI without a doctor referral?

24 A No.

25 Q Did that indicate treatment in '06?

26 A Yes.

1 McMahon - Plaintiff - Redirect

2 Q The other records you were given are the  
3 Metropolitan Records. There's some duplication. They're in  
4 evidence.

5 If I tell you that there is 2004 visits to  
6 Metropolitan, you didn't have these records; correct?

7 A Correct.

8 Q So, if counsel said that if this isn't possible,  
9 you wouldn't be surprised. You wouldn't know. You didn't  
10 have the records; right?

11 A Right.

12 Q Those records will be there for the jury.

13 If I tell you that there's evidence of treatment  
14 there when she visited back in New York, would that surprise  
15 you?

16 A No.

17 Q In fact, you were given dates of treatment, May  
18 first, May six. The records show that she was constantly  
19 trying to get help going to emergency rooms.

20 MR. HARDICK: Objection.

21 THE COURT: Sustained.

22 Q You were asked about --

23 MR. HARDICK: Objection.

24 Q You were asked about some very injuring treatment.  
25 If she went --

26 MR. HARDICK: Objection.

1 McMahon - Plaintiff - Redirect

2 Was it sustained, your Honor?

3 THE COURT: Yes, sustained.

4 MR. HARDICK: And you kept talking.

5 MR. RAUSHER: Your Honor, in -- I'll ask the  
6 question.

7 Q I will ask you to assume that these records which  
8 are in evidence show that she was going back sometimes on a  
9 daily basis to the emergency room, including in '08, '09,  
10 trying to get help. Would that indicate the severity of her  
11 pain and injuries?

12 A Yes.

13 THE COURT: It's a two-minute warning.

14 Q So, now, this hole or gap that counsel is talking  
15 about, there's no longer any four-year gap; is that correct?

16 A Correct.

17 Q In your practice, have you ever seen people who  
18 had insurance issues?

19 MR. HARDICK: Objection.

20 THE COURT: Yes, sustained.

21 Q Do you know if Ms. Rutledge's bills have been  
22 paid?

23 A I don't know.

24 MR. HARDICK: Objection.

25 THE COURT: Overruled.

26 Q Okay. So, do you know if there are liens against

1 McMahon - Plaintiff - Redirect

2 her or if she's still responsible for those bills?

3 A I don't know.

4 Q You said you don't take Medicaid?

5 A Right.

6 Q Do you take other forms of payment?

7 A Yes.

8 Q Do you ever take liens on cases when need be?

9 A Yes.

10 Q And if you did the surgery in this case --

11 MR. HARDICK: Objection, leading.

12 MR. RAUSHER: This was brought in on cross.

13 THE COURT: No one said anything about a  
14 lien.

15 Q He asked about Medicaid, he wouldn't take payment.  
16 I'm trying to establish that he would.

17 THE COURT: Alternate payment. That is  
18 something you can say.

19 Q Doctor, are there alternate payments that you  
20 would consider for Ms. Rutledge for surgery you prescribed?

21 A Yes.

22 Q Were you aware that the neurosurgeon who was  
23 consulted for surgery at Metropolitan said --

24 MR. HARDICK: Objection.

25 Q -- recommended that she --

26 MR. HARDICK: Objection.

1 McMahon - Plaintiff - Redirect

2 THE COURT: Just a moment.

3 Q Recommended that she see an orthopedic person to  
4 consider those issues?

5 MR. HARDICK: Objection.

6 THE COURT: Overruled.

7 MR. HARDICK: There's nothing in the records.

8 A I didn't know that specifically.

9 Q And, in fact, it's not that there was a  
10 recommendation against, but it said no specific  
11 recommendations. Does that mean the same thing?

12 A No.

13 Q You said the plaintiff is only in her 20s. What  
14 did that reference mean with regard to surgery to Ms.  
15 Rutledge?

16 A Well, that was -- that I think was the main reason  
17 she didn't want to have the surgery.

18 MR. HARDICK: Objection.

19 THE COURT: Yes, sustained.

20 Q Did you discuss the risks versus the benefits of  
21 these surgeries to her?

22 MR. HARDICK: Objection. Improper redirect.

23 THE COURT: Yes, sustained.

24 Q Are there risks to these surgeries to her?

25 MR. HARDICK: Objection. Improper redirect.

26 THE COURT: Sustained.

1 McMahon - Plaintiff - Redirect

2 Q You were asked about Dr. Etemadi, and you were  
3 asked to assume that he testified that there were other  
4 causes for positive EMG which included this myofascitis.

5 Did you find anything in any of the records or  
6 your own examination of Ms. Rutledge that led you to find  
7 any other cause for positive EMG for her?

8 A No.

9 THE COURT: I have to stop you.

10 You want to come back Monday?

11 MR. RAUSHER: I have one question.

12 THE COURT: Go.

13 Q Is there anything about any of the things Mr.  
14 Hardick asked you that would change any of the opinions you  
15 gave under oath to this jury today.

16 A No.

17 MR. RAUSHER: Thank you.

18 MR. HARDICK: Nothing, nothing.

19 THE COURT: Thank you very much. You may  
20 step down. You're finished, doctor.

21 (Witness excused.)

22 THE COURT: We're going to suspend at this  
23 time. I must admonish you not to discuss this matter  
24 among yourselves or with anyone else until it's turned  
25 over to you for your deliberations.

26 Tomorrow will not be a trial date. We have