

Liguori for plf. Direct

1 Mr. Chakmakian, your next witness.

2 MR. CHAKMAKIAN: Thank you, Judge.

3 Plaintiff calls Dr. James Liguori, MD.

4 JAMES LIGUORI, called as a witness on behalf of the plaintiff,
5 having been first duly sworn or affirmed by the clerk
6 of the court, was examined and testified as follows:

7 THE CLERK: State and spell your name for the
8 record.

9 THE WITNESS: James Liguori, L-i-g-o-u-r-i.

10 THE CLERK: Your address?

11 THE WITNESS: 1999 Marcus Avenue, Lake Success.

12 THE COURT: Mr. Chakmakian.

13 DIRECT EXAMINATION

14 BY MR. CHAKMAKIAN:

15 Q Dr. Liguori, good afternoon.

16 A Good afternoon.

17 Q Are you a medical doctor duly licensed to practice
18 medicine in the State of New York?

19 A Yes.

20 Q Are you one of the treating physicians of Venetia
21 Chiara?

22 A Yes.

23 Q I will ask you questions first about your background.
24 Tell the jury about your educational background, starting with
25 your undergraduate.

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1 A I did a seven-year program at New York Tech and
2 New York College of Osteopathic Medicine. I finished in '92,
3 then went to Long Island Jewish Medical Center, where I
4 completed the neurological residency program from '92 to '96,
5 where I finished as chief resident. Since then I have been in
6 private practice.

7 Q What does it mean to be a chief resident?

8 A At the end of your residency they vote on who is the,
9 I guess, the highest resident, and they're like a liaison
10 between the residents and the attending staff of the hospital.
11 And I was voted in.

12 Q What year did you complete your residency?

13 A '96.

14 Q You have been in private practice ever since?

15 A Yes.

16 Q Are you currently in private practice with yourself
17 or other physicians?

18 A I'm alone now.

19 Q Tell the jury: What is the science of neurology, the
20 discipline?

21 A Treatment of the disorders of the brain, spinal cord,
22 nerves, and muscles.

23 Q The practice or address you just gave the Court, how
24 long have you been in practice there?

25 A I think six or seven years.

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1 Q Can you tell the jury: On any given week or so how
2 many patients you would see?

3 A At least a hundred, maybe more.

4 Q This might be quite obvious, but were you able to see
5 patients today?

6 A No, not this afternoon. Up until -- I think I
7 finished today maybe 12:30.

8 Q Did you have to reschedule patients earlier in the
9 week because of this trial?

10 A Yes.

11 Q How many patients would you say you had to
12 reschedule?

13 A I don't know.

14 Q Are you being compensated for your time here today?

15 A Yes.

16 Q Tell the jury, please: As part of your practice do
17 you treat trauma patients, patients with traumatic neck
18 injuries?

19 A Yes.

20 Q Would you tell the jury, please -- and you can refer
21 to your chart, with the Court's permission.

22 First of all, did you bring your entire medical chart
23 here?

24 A Yes.

25 Q What does your medical chart consist of, generally?

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1 A It's my notes regarding the patient, any tests that
2 were done, and whatever insurance forms, questionnaires.

3 Q When did you first begin treating Ms. Chiara?

4 A I saw her June 23 of '05.

5 Q Could you tell the jury: Do you have a questionnaire
6 that the new prospective patient fills out for a history?

7 A I have what's called a symptom checklist.

8 Q Is that something generated in the ordinary course of
9 business with your practice?

10 A Yes.

11 Q Is it filled out by the patient or the doctor?

12 A No, the patient does that.

13 Q Did Ms. Chiara fill one out?

14 A Yes.

15 Q The accident happened on May 7 of 2005. What is the
16 date of the symptoms checklist?

17 A 6/23/05.

18 Q Could you tell us, please, what symptoms were
19 reported by Ms. Chiara on that day?

20 A She checked off headaches, memory disturbance, neck
21 pain.

22 Q Is it signed by her?

23 A I think so.

24 Q Is there a signature at the bottom of the page?

25 A There is a signature at the bottom.

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1 Q Tell me, Doctor, when on -- the first occasion that
2 you met Mrs. Chiara? First of all, how was she referred to
3 you?

4 A By a Dr. Mills, her orthopedist.

5 Q On the first visit did you have an opportunity or
6 occasion to examine Ms. Chiara?

7 A Yes.

8 Q Would you tell the jury, very descriptively, if you
9 can: What did your examination consist of with respect to
10 Ms. Chiara on that date?

11 A I do a standard neurologic exam. The first part is
12 mental status, which is her mental function. Second is cranial
13 nerves, the nerves that come off the brain stem and go to the
14 face. Third one is a motor exam, where I test muscle strength,
15 reflexes. Fourth part is a sensory exam, where I check for
16 muscle spasm, sensory input into the arms and legs. And last
17 is coordination and gait, where I watch the patient walk, make
18 them do things like touch their nose, things like that.

19 Q What was the result of the first examination?

20 A There was 4 plus out of 5 weakness of the APB or
21 abductor pollicis brevis on the right, a positive Hoffman
22 bilaterally. There was cervical and lumbar muscle spasm.
23 There was sensory loss in the C5-C6 distribution in both arms,
24 and a positive Tinel's sign over the median of the wrist
25 bilaterally.

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1 Q What is a muscle spasm?

2 A Muscle spasm is just when a muscle becomes tight and
3 contracted.

4 Q Where did you find that with respect to Ms. Chiara?

5 A In both her neck and low back.

6 Q Is a muscle spasm an objective finding or subjective?

7 A It's objective.

8 Q Explain to the jury the difference in the medical
9 sense, the difference between objective and subjective.

10 A A subjective finding is something the patient would
11 tell me or have control over. A headache is a subjective
12 symptom. An objective finding is something I would find that
13 the patient would have no control over.

14 Q And the spasms were an objective finding?

15 A Yes.

16 Q Did you specifically find them with respect to her
17 cervical region?

18 A I had both the cervical and lumbar.

19 Q At that point in time did you arrive at any type of
20 differential diagnosis?

21 A I had an impression.

22 Q OK. Tell the jury what your impression was.

23 A One was cervical radiculopathy. Two was rule out
24 carpal tunnel syndrome.

25 Q What is radiculopathy?

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1 A It's Latin for bad nerve root. That's a pinched
2 nerve in the neck going in the arms.

3 Q Did she have an MRI when she saw you?

4 A Yes.

5 Q Could you tell the jury in lay terms what an MRI is?

6 A It's kind of like a three-dimensional x-ray. It's
7 more designed for soft tissue than bone.

8 Q Does it pick up things not seen on an x-ray?

9 A Yes.

10 Q Have you read MRIs throughout the course of your
11 career?

12 A Yes.

13 Q Could you tell the jury, could you estimate how many?

14 A I do it every day. I couldn't estimate the number.

15 Q Did you review the MRI report in this particular
16 case?

17 A Yes.

18 Q Did you review it upon your first examination of
19 Ms. Chiara or your first meeting with her?

20 A Yes.

21 Q What were the findings of the MRI?

22 A There was a reversal of the cervical lordosis,
23 suggesting --

24 Q I'm going to stop you there, if you don't mind.

25 Sorry to interrupt you, but I want to take it slowly. What is

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1 cervical lordosis?

2 MR. MARTYN: Can I interject? Are we talking
3 about what the radiologist found, or what his findings
4 were when he reviewed the film?

5 MR. CHAKMAKIAN: I think that's for
6 cross-examination.

7 THE COURT: The objection is overruled. We will
8 permit the witness to continue.

9 Q Explain to the jury, please. First tell us: What is
10 a reversal of the cervical lordosis?

11 A A spine is shaped like an S. In the cervical spine,
12 the first curve comes forward. That's called a lordosis. In
13 somebody with muscle spasm, what happens is -- you will see it
14 on an MRI or x-ray -- the bones will be in a straight
15 alignment, and that's a reversal of the lordosis.

16 Q What was the next finding?

17 A There were small herniations at C4-C5, C5-C6.

18 Q What is C4-C5 and C5-C6?

19 A There are seven bones in the cervical spine. Disks
20 are anatomical shock absorbers, look kind of like a jelly
21 doughnut would be, and they are between the bones. So when you
22 name a disk, you name it for the bone above and below it. So
23 there are always two numbers for a name of a disk.

24 Q I have an anatomical model. Would the model I
25 brought here myself assist you in explaining it to the jury?

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1 A It might.

2 THE COURT: We will mark that for
3 identification.

4 (Plaintiff's Exhibit 10, model of the spine,
5 marked for identification.)

6 Q Doctor, first of all, is this your model?

7 A No.

8 Q Did I bring this for you? Did we discuss it last
9 night, that I would bring this for your aid in explaining
10 things to the jury?

11 A Yes.

12 Q OK. With the Court's permission, get off the stand
13 and tell us a little bit about the anatomy. I will ask you
14 questions.

15 A I'm allowed to come down?

16 Q Of course.

17 THE COURT: Here is how we will do it. You can
18 step down, Doctor. I would like you, Doctor, to step down
19 next to the end of the table, facing both the court
20 reporter and the jury, so that you are looking from there
21 towards the model and towards everyone else.

22 Don't worry about Mr. Chakmakian back there. It
23 will work out much better if you face this direction so
24 everyone can see and hear you.

25 (The witness left the witness stand.)

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1 THE COURT: You may proceed, Mr. Chakmakian.

2 Q Dr. Liguori, you told us about numbers C4-C5. Would
3 you explain, please, using the anatomical model? What you are
4 referring to?

5 A The yellow here is the cervical region. There is a
6 total of seven vertebrae. When the vertebrae -- I don't know
7 how much you can see or not. There are these -- little
8 cartilage pieces are, I guess, a better term. These are the
9 disks.

10 When you go down, this is the thoracic spine.

11 What I was talking about before with the lordosis,
12 the way a spine usually works is there is a bend forward at the
13 cervical [Indicating]. The thoracic, which is the orange, I
14 guess, goes this way [Indicating]. And then the lumbar curves
15 back around [Indicating]. So this is a little bit off, but it
16 should theoretically be like an S.

17 Q When there is loss of lordosis, is it straightened
18 out?

19 A This is actually a loss of cervical lordosis.

20 Q That's indicative of muscle spasm?

21 A Yes.

22 Q Could you show us where C4-C5 and C5-C6 is?

23 A This would be the C4-C5 disk [Indicating]. This is
24 the C5-C6 disk [Indicating]. And these [Indicating] are the
25 little nerve roots that come down to the arms.

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1 Q I want to ask you about that. Is it fair to say that
2 those nerve roots in the cervical region run down the arms?

3 A Yes.

4 Q Where do the ones in the lumbar region run down?

5 A The legs.

6 Q Would you expect someone who has a herniated disk to
7 have symptomatology with respect to radiating down the arms?

8 A You can.

9 Q OK, all right. I think that's all I have for the
10 model right now. I wanted them to get a general idea. If you
11 can take the seat, your seat?

12 (The witness resumed the witness stand.)

13 Q Again, you can refer to your notes.

14 Can you tell me: Was Mrs. Chiara on any medication
15 when she first reported to you, presented to you?

16 A She was using Flexeril.

17 Q Explain what Flexeril is.

18 A It's a muscle relaxer.

19 Q A prescription muscle relaxer?

20 A Yes.

21 Q Was that prescribed by you or the doctor prior to
22 you?

23 A No, she was on that when she came to see me.

24 Q Did you arrive at a treatment plan after the first
25 meeting with Ms. Chiara?

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1 A Yes.

2 Q What was the treatment plan?

3 A I performed electrical testing, both EMG NCV testing
4 as well as SSEP testing. I prescribed her Relafen, which is an
5 anti-inflammatory. I continued physical therapy. And then I
6 discussed using a treatment called trigger point injections.

7 Q Was she already on physical therapy, undergoing
8 physical therapy when she presented to you?

9 A Yes.

10 Q Did you write -- did you report your findings to the
11 doctor who referred her to you?

12 A Dr. Mills?

13 Q Yes.

14 A Yes.

15 Q What did you have as far as chief complaints?

16 A Neck pain, headaches in a bifronto-temporal
17 distribution, numbness and tingling in both hands and arms.

18 Q Tell me: What does bifrontal temporal distribution
19 mean?

20 A Here [Indicating].

21 Q Both sides of the head?

22 A Yes.

23 Q Were you given a past medical history?

24 A Yes.

25 Q Was there anything significant about her past medical

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1 history that would give you any pause in your treatment here?

2 A No.

3 Q Was her past medical treatment reported as negative
4 to you?

5 A Yes.

6 Q Did she report any trauma or accidents?

7 A She had nothing.

8 Q Did she report any prior symptoms to you?

9 A No.

10 Q Would you go back to your motor exam, if you would.

11 If you would look at your report to Dr. Mills, was there
12 anything significant about the weakness you found in the motor
13 exam?

14 A She had weakness is what's called the APB muscle, the
15 muscle here [Indicating] in the thumb. You can sometimes get
16 that from a pinched nerve in the neck or sometimes from a
17 pinched nerve at the wrist.

18 Q What is a pinched nerve?

19 A Something is causing the nerve not to conduct
20 electricity well.

21 Q Does a herniated disk do that?

22 A Yes.

23 Q You also report sensory loss in a C5-C6 distribution.
24 Would you explain that to the jury?

25 A A nerve goes down the arm in a certain area, where it
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1 picks up sensation, basically. And what you do when you test
2 somebody, you do either light touch or pinprick and you find
3 out which distribution, so you can see which nerve root is
4 being affected.

5 It's very hard to get one nerve root alone because
6 everybody's overlaps, so we use two to document. And in her
7 case it was C5-C6.

8 Q Did you prescribe medication on that day?

9 A Yes.

10 Q What was that?

11 A Relafen.

12 Q Did you tell us that already? Is that a muscle
13 relaxer?

14 A No, it's an anti-inflammatory.

15 Q At that point in time you discussed trigger point
16 injections?

17 A Yes.

18 Q Describe to the jury what trigger point injections
19 is.

20 A It's a treatment I use for pain. What I do is I use
21 a small needle, usually lidocaine alone, which is like
22 Novocain. Occasionally I will put a small dose of cortisone in
23 it. And you inject it into certain muscle knots, and by doing
24 that you can break up the muscle knots and relieve pain.

25 Q When did Mrs. Chiara return to you?

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- 1 A July 4, '05.
- 2 Q What were her complaints at that time?
- 3 A Neck pain, numbness and tingling of the hands.
- 4 Q Did she report any improvement at that time?
- 5 A No.
- 6 Q Did you do an examination on that day?
- 7 A Yes.
- 8 Q Did you have marked down -- mark down an impression
9 on your records?
- 10 A Yes.
- 11 Q What was your impression?
- 12 A Cervical radiculopathy.
- 13 Q In your opinion within a reasonable degree of medical
14 certainty, what was the cause of that cervical radiculopathy?
- 15 A The disk herniations.
- 16 Q Let me go back. Did you form an opinion based upon
17 that and your review of the MRI report about the cause of her
18 herniated disk?
- 19 A Yes.
- 20 Q What was your opinion?
- 21 A It was caused by the accident.
- 22 Q Was that opinion formed way back then, or recently?
- 23 A I would have had that opinion at the first visit.
- 24 Q What do you base that opinion on?
- 25 A Her history, physical findings, and MRI findings.

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1 Q Was there anything in the MRI report that you read
2 which suggested that the cervical herniated disk or herniated
3 disks were degenerative in nature?

4 A I don't think so. Let me double-check.
5 There was nothing about desiccation of the disks.

6 Q Is there a history on the MRI report?

7 A Yes.

8 Q What is the history? Would you tell the jury,
9 please?

10 A Neck pain with radiculopathy, rule out disk
11 herniation.

12 Q What was the date of the MRI?

13 A 5/17/05, and read 5/18/05.

14 Q What does it mean, when it says rule out disk
15 herniation?

16 A The point of sending -- when you send for a test you
17 usually write "rule out," meaning you are looking for
18 something.

19 Q Was a herniated disk ruled out?

20 A It was ruled in.

21 Q OK. Could you tell me the next time you saw
22 Ms. Chiara, please?

23 A 8/1/05.

24 Q OK. And --

25 A I apologize. It may be 9/1/05.

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1 Q What was done for her on that day?

2 A I performed trigger point injections.

3 Q And I know you explained it, but what exactly did you
4 use on Ms. Chiara?

5 A I injected lidocaine, a total of 3 cc's, two on the
6 left and two on the right side.

7 Q I don't want to steal your thunder or presume, but do
8 you actually inject right through the muscle?

9 A No, I inject into the muscle.

10 Q Is that done under anesthesia?

11 A No. There is lidocaine in it. You don't really need
12 anesthesia.

13 Q What is the purpose or -- what is the hope that a
14 trigger point injection would accomplish?

15 A Release muscle spasm, release pain, make her feel
16 better.

17 Q Did Ms. Chiara report any significant relief from the
18 trigger point injections?

19 A The next time I saw her she said she had some relief.
20 We never did it again.

21 Q Was the relief reported as somewhat limited?

22 A I wrote plus minus, meaning some relief, not enough.

23 Q When was that?

24 A 10/10/05.

25 Q What do your records report on 10/10/05?

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1 A She was seeing a chiropractor, reported some relief.
2 She had neck pain, numbness in the hands, she had headaches in
3 the back of the head.

4 Q Are these records when you -- are these in your own
5 handwriting?

6 A Yes.

7 Q Do you write them down as the patient reports the
8 findings to you?

9 A Yes.

10 Q What was your impression on that particular day?

11 A It was the same: cervical radiculopathy.

12 Q Did you have a plan that was reported on that day?

13 A To continue chiropractic care. We discussed doing
14 more trigger point injections. That was it.

15 Q Did you have her return?

16 A Yes.

17 Q Please go the next day. I will walk you through a
18 few more, or maybe all of them; it shouldn't take too long.

19 What was the next day you saw her?

20 A 11/7/05.

21 Q What were her complaints on that date?

22 A Headaches and neck pain.

23 Q Did your impression change at all on that day?

24 A I wrote cervical derangement with headaches.

25 Q Is cervical derangement any type of new diagnosis?

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1 A No. It just means she had the neck pain but not the
2 radicular findings.

3 Q What about the plan? Is it the same?

4 A I prescribed a new medication. I gave her Midrin,
5 which is a medicine used for headaches.

6 Q Is that used for migraine type headaches?

7 A It's used for more tension headaches, muscle tension
8 headaches, and migraine.

9 Q What is a muscle tension headache?

10 A One of the main causes -- the brain itself doesn't
11 sense pain, so most headaches have nothing to do with the
12 brain. Most headaches are caused from muscle spasm. What can
13 happen is the muscles in the neck, in the back of the head, or
14 in this area [Indicating] can contract, and that causes pain in
15 the head.

16 This works well for that.

17 Q Did you find evidence of that neck spasm on every
18 occasion that you met with her?

19 A I think so.

20 Q What was the next date you met with her?

21 A 2/27/06.

22 Q Were there any changes in her reports of pain at that
23 point?

24 A She had neck pain, numbness and tingling of the right
25 arm, and headaches in the back of the head.

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1 Q Doctor, without going through every one -- I'm not
2 sure there is a reason to go through it; everyone was heard
3 it -- did her complaints ever change throughout the course of
4 treatment?

5 A The next one, she complained of feeling light-headed
6 and tired. Otherwise it was the neck pain, the headaches, the
7 arm.

8 I think they were all pretty much about the same.

9 Q Would you glance through them, please, and see if
10 there is anything different, rather than us just go through
11 each one?

12 A The majority of it is about neck pain, numbness of
13 either the right arm, sometimes both hands.

14 No, they have all been about the same.

15 Q Have you reviewed other records with respect to
16 Ms. Chiara's treatment in preparation for your testimony?

17 A Yes.

18 Q What are you reviewed?

19 A ER records, and a record by a neurosurgeon,
20 Dr. Overby.

21 Q Have you the record of Dr. Overby with you here?

22 A Yes.

23 Q What did you learn from the record of Dr. Overby?

24 MR. MORELLI: Objection.

25 MR. MARTYN: Note my objection, Judge.

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1 THE COURT: Sustained.

2 Q Doctor, in the course of your treatment with
3 Mrs. Chiara did you ever measure her range of motion of her
4 cervical region?

5 A Yes.

6 Q Explain to the jury, please: What is range of
7 motion? It might be obvious, but explain to them, as best you
8 can in lay terms, what are we talking about with a range of
9 motion.

10 A You can do it for any body part. In her case, the
11 neck is the issue. You have the patient move their head in
12 certain directions. There is a normal range of motion, and you
13 measure how far she can move it.

14 Q When for the first time did you measure her range of
15 motion?

16 A I think it was the first visit, 6/23/05.

17 Q And would you describe for the jury what your
18 findings were on that date?

19 A On rotation to the right, she was limited to
20 30 degrees. On the left --

21 Q Let me slow you down for a minute, please. Explain
22 what rotation is to the right, maybe show it.

23 A This is rotation to the right [Indicating], this is
24 rotation to the left [Indicating].

25 Q Explain the findings.

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1 Q Do you have an opinion to that same degree of
2 reasonable medical certainty as to whether that is related to
3 the car accident?

4 A Yes.

5 Q What is your opinion?

6 A It is.

7 Q Could you tell us what you base that opinion on,
8 please?

9 A She had no symptoms prior. She had a traumatic
10 injury, and afterwards had physical findings and findings on an
11 MRI that all correlate.

12 Q Can you tell me, Doctor, at this point in time, again
13 to a reasonable degree of medical certainty, as to whether or
14 not Ms. Chiara's limitations and injuries are permanent in
15 nature?

16 A Yes.

17 Q What is your opinion?

18 A They are permanent.

19 Q What is your prognosis for Mrs. Chiara at this point?

20 A It's guarded. She is probably going to be about the
21 way she is now forever.

22 Q Do you have an understanding as to why she did not
23 treat with you since, I guess it was, 2008?

24 A I would assume she would come to me --

25 MR. MORELLI: Objection.

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1 THE COURT: Sustained.

2 Q Besides monitoring her and prescribing the
3 medication -- well, withdrawn.

4 Did she ever express any dissatisfaction with the
5 fact that she was on medication for so long?

6 A I don't understand.

7 Q I'll withdraw the question. Just give me a second.

8 Oh, there was something discussed earlier today I
9 wanted to ask you about. Did you at some point in time receive
10 a censure from the Department of Health?

11 A Yes.

12 Q OK. I would like you to explain to the jury the
13 circumstances surrounding that, please.

14 A Years ago we used to maintain a paper tracing on a
15 certain test we did. This is before we had the computerized
16 systems. And the standard was they would save samples of the
17 test and not save the entire paper tracing.

18 The Department of Health thought I should have kept
19 the entire paper tracing. And, instead of a lengthy battle,
20 rather than a long, drawn-out procedure, I took a short censure
21 on not having kept the total treatment.

22 Q Did the censure have anything to do with your
23 treatment of a patient --

24 A Yes.

25 Q -- or care of a patient?

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1 A No.

2 Q Have you ever had a malpractice judgment against you?

3 A No.

4 Q How many patients have you seen over your career?

5 A I have been in practice fifteen years. Probably 25,
6 30 thousand.

7 Q Doctor, are you currently involved in a civil action,
8 civil dispute with an insurance company?

9 A Yes.

10 Q Could you tell the jury a little bit about that,
11 please?

12 A What do you mean, Allstate?

13 Q Yes.

14 A Unfortunately, in medicine there are lawsuits between
15 doctors and insurance companies. And I know I have lawsuits
16 against them, and they have one against me.

17 Q What kind of lawsuits would you have against them?

18 A They don't pay me, so we sue them. They don't pay
19 doctors, we sue them, and then they sue us back, and it goes
20 back and forth.

21 Q And the action that was brought against you, what was
22 the allegation there?

23 A I think they wrote on -- I think there they used the
24 word fraud and unjust enrichment, but I have no idea what the
25 exact allegations are.

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1 Q Has there been any discovery in that case?

2 A There was some paperwork sent back and forth. We
3 have not done anything as far as depositions.

4 Q Have you given testimony in that case?

5 A No.

6 Q Have you ever been involved in something like that
7 before?

8 A Yes.

9 Q Was that case dismissed?

10 A Yes.

11 Q Is that reasonably common in the medical community,
12 that when you are not paid you bring an action against the
13 insurance company?

14 A We have to sue them. There is no other way we can
15 survive.

16 MR. CHAKMAKIAN: Just give me a second, if you
17 would, Judge.

18 Q Well, Doctor, just some housecleaning things.

19 Have I ever referred any patients to you at all?

20 A No.

21 Q Have you ever referred any clients to me?

22 A I don't think so.

23 Q Have you and I ever met before this afternoon and the
24 last couple of days?

25 A I think we met -- I don't know. The other day we

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1 met. That was the first time.

2 Q That's what I meant.

3 A Not before then.

4 Q Have you and I discussed anything during
5 Mrs. Chiara's treatment? Have I got on the phone with you?
6 Have we met at all?

7 A You mean prior to last week?

8 Q Yes, of course.

9 A No.

10 Q When did you find out you would be testifying in this
11 case?

12 A I guess it was last week.

13 Q And the opinions that you discussed about causation,
14 about permanency, and so forth, are those opinions you formed
15 prior to learning you would be testifying in this case?

16 A Yes.

17 Q Did you ever do exams for companies, where a litigant
18 will come in and you do what is called a so-called independent
19 exam?

20 A IMEs?

21 Q Yes.

22 A No.

23 Q Have you testified before for patients?

24 A Yes.

25 Q Would you tell the jury: In total how often are you

cb

Liguori for plf. Cross-Morelli

1 called upon to testify?

2 A A couple times a year; two, three times a year.

3 Q Did Mrs. Chiara ever refuse to do -- withdrawn.

4 What's a noncompliant patient?

5 A That would be somebody that doesn't take your
6 recommendations or does something different than you would want
7 them to do.

8 Q Was Mrs. Chiara ever noncompliant in your suggestions
9 or prescriptions?

10 A I don't think so.

11 Q How many patients have you seen, met over the years?

12 A The number would be probably between 25,000 and
13 30,000.

14 Q Have you had occasions, patients on occasions you
15 would you have seen that were exaggerating or not telling the
16 truth?

17 MR. MORELLI: Objection.

18 THE COURT: Sustained.

19 MR. CHAKMAKIAN: I have no further questions,
20 Judge. Thank you.

21 THE COURT: Thank you.

22 Mr. Morelli.

23 CROSS-EXAMINATION

24 BY MR. MORELLI:

25 Q Good afternoon, Doctor.

Liguori for plf. Cross-Morelli

1 A Good afternoon.

2 Q Just so I'm clear on something, you said that you had
3 brought actions against insurance companies to be paid for your
4 services?

5 A Yes.

6 Q OK. Would that be under our no-fault procedures, if
7 you know?

8 A I don't understand what you are saying.

9 Q It's having to do with patients who you treated who
10 were involved in motor vehicle accidents?

11 A Yes.

12 Q And the insurance company did not pay you because
13 they claimed the treatment was not medically necessary?

14 A There are different reasons why they don't pay.
15 That's one of them.

16 Q And each and every time you sued the insurance
17 company on the issue of medical necessity, did you win?

18 A I think I have lost one case in my career.

19 Q Have you testified before in this courthouse?

20 A Yes.

21 Q Now, you indicated you had to cancel your patients
22 for this afternoon, or reschedule them. What's your
23 compensation for coming in here today?

24 A I get 5,000.

25 Q And before you saw the patient last week in

cb

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1 preparation for your testimony here, the last time you saw the
2 patient was in 2008?

3 A Yes.

4 Q You told about the reprimand from the Health
5 Department. Were you also put on probation for three years?

6 A Yes.

7 Q As a condition of probation did you have to be
8 monitored by a board certified neurologist?

9 A Yes.

10 Q Were you also involved with some proceedings with the
11 New York State Workers' Compensation Board?

12 A Yes.

13 Q Did they find that they would not permit you to treat
14 Workers' Comp patients?

15 A Yes.

16 Q When did that occur?

17 A Right after the censure and reprimand.

18 Q Now, with regard to the MRI, did you read the actual
19 film or just receive a report?

20 A I just had the report.

21 Q And would you agree that a board certified
22 radiologist has more expertise in reviewing MRIs than
23 neurologists?

24 A It depends.

25 Q Well, don't you always follow the conclusions of the

cb

Liguori for plf. Cross-Morelli

1 board certified radiologist when you get his report?

2 A Do I always follow it? No.

3 Q Most of the time you do, don't you?

4 A Yeah.

5 Q Now, on June 23, 2005, did you do some tests on this
6 patient in your office?

7 A Yes.

8 Q Was one of them an upper extremity electromyography?

9 A Yes.

10 Q Would you tell the Court and jury what that is,
11 please?

12 A Nerve testing that's performed in the arms to look
13 for nerve damage. It's two parts to it. It's called an
14 EMG NCV. The EMG stands for electromyograph. NCV stands for
15 nerve conduction studies. There is two parts.

16 The first part is we use electrical currents to
17 stimulate the nerve at one point, record over another point,
18 and find out how fast the electricity is traveling. The second
19 part, EMG, I use a small pin. At the end of the pin is a
20 microphone. I insert that in certain muscle groups. I record
21 it at rest and then record it while the muscle is being used,
22 and then I interpret that to see if there is any nerve damage.

23 Q Did you find any nerve damage in this patient?

24 A No.

25 Q What's the medical significance of that finding,

cb

Liguori for plf. Cross-Morelli

1 Doctor --

2 A As far as --

3 Q -- to you as a neurologist, that you found no nerve
4 damage in a person with those complaints?

5 A In her case, or in general?

6 Q In her case.

7 A In her case I did it because I wanted to see if there
8 was nerve damage coming from in the neck or hand. The fact
9 that it was not coming from the hand meant I didn't have to
10 treat that. The fact it was not coming from the neck made it
11 less likely for me to have her need surgery [sic].

12 Q Also on June 23 did you perform a somatosensory
13 evoked potential study of the upper extremities of this
14 patient?

15 A Yes.

16 Q Tell the Court and jury what that is.

17 A Sure. We call them SSEPs. I did it actually on the
18 upper and lower extremities.

19 The other impression I had was myelopathy, which the
20 Latin means bad spinal cord. Sometimes a disk can be sitting
21 on the spinal cord, causing it not to work well. So what we do
22 is, we run electricity from the hand to the neck to the top of
23 the head, and we do the same thing from the foot to the low
24 back up to the top of the head, to see if there is a delay
25 somewhere.

cb

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1 If the delay -- for argument's sake, if the delay is
2 from here to the neck, the problem is usually a pinched nerve
3 on the outside. If the problem is it gets to the neck OK but
4 is delayed going up to the top of the head, there is a problem
5 with the spinal cord itself.

6 Q And with regard to the tests of the upper extremity,
7 what was the result?

8 A Normal.

9 Q And concerning the range of motion test that was done
10 on the 23d that you spoke to the Court and jury about
11 previously, the only restriction was the rotation of the head;
12 isn't that correct?

13 A Yes.

14 Q All the other ranges of motion were normal?

15 A Correct.

16 Q Now, you saw the patient again on July 14, 2005?

17 A Yes.

18 Q Have you got that? Do you have that in your chart
19 there?

20 A July 14 '05, yes.

21 Q At that time, as is your custom and practice, you
22 conducted a neurological exam?

23 A Yes.

24 Q Mental status, what did you find?

25 A Normal.

Liguori for plf. Cross-Morelli

1 Q Cranial nerves, what did you find?

2 A Normal.

3 Q With regard to motor, what did you find?

4 A Normal.

5 Q Did you -- you did a sensory test?

6 A Yes.

7 Q What were your findings there?

8 A She had cervical muscle spasm.

9 Q You already testified to that.

10 And her coordination and gait?

11 A Normal.

12 Q What was your impression on that day?

13 A Cervical radiculopathy.

14 Q Again, without going through the multiple visits that

15 were made, is that basically the same neurological exam

16 findings throughout your examinations of this patient?

17 A I think so.

18 Q If you want to flip through it?

19 A I think, yeah, they're all pretty much the same.

20 Yes, they're all about the same.

21 Q Do you have any notes there, Doctor, where you

22 restricted the patient's activities for any reason?

23 A I don't think so. I don't think so, unless you have

24 something specific.

25 Q In good practice if you were going to restrict a

Liguori for plf. Cross-Morelli/Cross-Martyn

1 patient's activities, wouldn't you put it in your chart?

2 A If I were going to restrict her activity? Probably.

3 MR. MORELLI: Thank you, Doctor.

4 THE COURT: Thank you, Mr. Morelli.

5 Mr. Martyn.

6 MR. MARTYN: Yes.

7 CROSS-EXAMINATION

8 BY MR. MARTYN:

9 Q Good afternoon, Doctor.

10 A Good afternoon.

11 Q We have never met prior to today, have we?

12 A I don't think so.

13 Q OK. I notice --

14 A Sorry. What was your name?

15 Q Thomas Martyn.

16 A I don't think so.

17 Q OK. I notice that you're referring to your chart
18 that you brought with you here today?

19 A Yes.

20 Q And we're referring to an accident that happened six
21 years ago today; is that correct?

22 A Yes.

23 Q So far, for the most part, your testimony is based on
24 your review of the file that you have kept? In other words,
25 you would not have an independent recollection of your

Liguori for plf. Cross-Martyn

1 treatment of her back in 2005 as you sit here today. Is that
2 accurate?

3 A I know her. I can't say I have a permanent memory of
4 everything we did together. But I remember treating her.
5 She's been a patient of mine for a while.

6 Q You just saw her a couple of days ago, in connection
7 with this lawsuit a couple days ago; correct?

8 A Right.

9 Q You went over this case as well, since you were going
10 to be testifying in her behalf; correct?

11 A Correct.

12 Q May I just take a minute and take a look at the file
13 you brought with you, Doctor?

14 A Sure [Hanging].

15 [Pause]

16 Q OK, Doctor [Hanging].

17 Just initially, to clear up a couple initial matters,
18 the lawsuit that's pending against you right now by the
19 insurance company, is that a lawsuit seeking to recover
20 \$1.5 million from you?

21 A I think that's the number on it, but I don't think
22 that's the legitimate number.

23 Q You obviously are disputing the lawsuit. But, be
24 that as it may, they're claiming damages of \$1.5 million from
25 you?

Liguori for plf. Cross-Martyn

1 A I think that number's been dramatically reduced since
2 then. I'm not sure if I'm allowed to talk about this, though.

3 Q Let's just say, Doctor, that you would agree that
4 there is a lawsuit, as you testified before, pending against
5 you based on a claim that you rendered improper tests to
6 patients that were in motor vehicle accidents? Is that a
7 generalized enough comment?

8 A No. I have to be honest. We have not gotten to the
9 point where they have even said why. They just put a big name,
10 and -- number, and that was it.

11 Q OK. We will move on from there, Doctor.

12 The New York State Workers' Compensation Board
13 determination, just so that I'm clear, is it true that the
14 New York State Workers' Compensation Board has prohibited you
15 from rendering medical or other treatment and care to
16 individuals who have suffered work-related injuries or
17 illnesses?

18 A Yes.

19 Q That you know about. Is that correct, Doctor?

20 A Yes.

21 Q As a matter of fact, you fought that determination by
22 hiring an attorney, did you not?

23 A I won twice.

24 Q And you lost the last time. Is that fair?

25 A I'm not sure I would call it a loss.

cb

Liguori for plf. Cross-Martyn

1 Q Doctor, are you allowed to treat patient involved in
2 work-related injuries or illnesses presently?

3 A No.

4 Q Thank you.

5 Moving on, Doctor, there is such a thing as
6 subjective versus objective findings; is that correct?

7 A Yes.

8 Q All right. And I guess the issue that's brought us
9 here today is the injury that you claim Ms. Chiara has, which
10 is essentially a herniated disk in her neck?

11 A Two.

12 Q OK, two in her neck, at two different levels; is that
13 correct?

14 A Correct.

15 Q Would you agree with me on the general comment -- let
16 me withdraw that.

17 First of all, you treat -- it's not uncommon that you
18 treat people involved in motor vehicle accidents that have
19 lawsuits; is that correct?

20 A That's correct.

21 Q And you testify in their behalf?

22 A Sometimes.

23 Q And you sign affidavits on their behalf?

24 A Yes.

25 Q As a matter of fact, in this particular case their

cb

Liguori for plf. Cross-Martyn

1 attorney prepared an affidavit for you, which you reviewed and
2 signed on Mrs. Chiara's behalf?

3 A Yes.

4 Q OK. And we will move on from there.

5 Herniated disks, you treated patients that have
6 herniated disks before?

7 A Yes.

8 Q OK. Do you just treat patients that have herniated
9 disks from motor vehicle accidents and are suing people?

10 A No.

11 Q OK. You can have a herniated disk that's not caused
12 by a motor vehicle accident. Do you agree with that, Doctor?

13 A Yes.

14 Q It's actually -- would you agree, Doctor, that it's
15 not uncommon for people to have herniated disks in their spine?

16 A That's correct.

17 Q OK. And you can have a herniated disk that's caused
18 by bending over, caused by everyday strain and pulling? In
19 other words, it doesn't have to be a traumatic event to cause a
20 herniated disk?

21 A Correct.

22 Q All right. And coming to your opinion today that
23 Mrs. Chiara's herniated disk was caused by the accident, you're
24 relying in part on a x-ray film review that was done -- or an
25 MRI that was done on Ms. Chiara; is that correct?

cb

Liguori for plf. Cross-Martyn

1 A Yes.

2 Q Do you know which doctor recommended that MRI film to
3 be reviewed?

4 A Dr. Mills.

5 Q Now, to your knowledge was Dr. Mills the plaintiff's
6 first treating orthopedist?

7 A I don't know.

8 Q Do you know what an orthopedist is?

9 A Yes.

10 Q What is an orthopedist?

11 A It's a doctor that treats the bones, diseases of the
12 bones.

13 Q And would it be appropriate for an orthopedist to
14 treat someone that had a herniated disk?

15 A Yes.

16 Q OK. And, again, a radiologist would have done that
17 MRI report; correct?

18 A Yes.

19 Q Or a review of her film?

20 A Yes.

21 Q In other words, you take a picture of someone's
22 cervical spine. A radiologist will take a look at that picture
23 and he issues a report to you that says, "These are my
24 findings"?

25 A Yes.

Liguori for plf. Cross-Martyn

1 Q And a radiologist -- just as an orthopedist
2 specializes in bone and a neurologist specializes in nerves, a
3 radiologist will specialize in these tests or these film
4 reviews?

5 A Yes.

6 Q All right. You didn't look at the actual films that
7 were taken of Ms. Chiara in this particular case?

8 A That's correct.

9 Q And you reviewed the report that a radiologist
10 prepared?

11 A Yes.

12 Q Is it true, Doctor, that in the report that you
13 reviewed it does not say, it does not say that Ms. Chiara has
14 small herniations that were caused by a motor vehicle accident?

15 A I'm not sure I understand that question.

16 Q The radiologist prepared a report?

17 A Yes.

18 Q You relied on that report in coming to your diagnosis
19 about a herniated disk?

20 A Yes.

21 Q He doesn't say in that report that the herniated disk
22 was caused by a motor vehicle accident, does he?

23 A No.

24 Q OK. You, by the way, you gave certain findings that
25 the radiologist found in that report which you relied on;

cb

Liguori for plf. Cross-Martyn

1 correct?

2 A Yes.

3 Q You didn't tell the jury everything that's in that
4 report, did you?

5 A No, I didn't.

6 Q OK. Is it true, Doctor, that that report also talks
7 about degenerative changes in her spine?

8 A Yes.

9 Q OK. Doctor, would you agree with me that a
10 degenerative change can be a finding that's not caused by a
11 motor vehicle accident?

12 A That's correct.

13 Q All right. And if someone has a degenerative -- let
14 me ask you: What is a degenerative condition?

15 A For lack of a better term, it's an arthritic change
16 or -- "breakdown" is a better term. It's a breakdown.

17 Q That's something that someone will have for their
18 life, for the rest of their life?

19 A Yes.

20 Q In other words, medication won't cure degeneration?

21 A You can give anti-inflammatories, but it won't cure
22 it, just treat it.

23 Q Why would you give anti-inflammatories to someone
24 with degeneration?

25 A If there is degeneration from an arthritic process,

cb

Liguori for plf. Cross-Martyn

1 which is from inflammation, an anti-inflammatory would stop
2 that process and slow down the degenerative process.

3 Q Would the degeneration process -- could that result
4 in symptoms to the patient?

5 A Yes.

6 Q What kind of symptoms are we talking about?

7 A Usually, if it's just degeneration of the bones, you
8 will get local neck pain.

9 Q Could a person with degenerative condition also
10 develop a restriction in range of motion of the neck?

11 A Yes.

12 Q And based on -- just so we're clear, based on at
13 least the MRI report that you reviewed there was some
14 degenerative findings for Ms. Chiara in this case?

15 A Yes.

16 Q And, by the way, a chiropractic treatment wouldn't
17 cure that, would it?

18 A Degenerative changes?

19 Q Right.

20 A No.

21 Q It might make it feel temporarily better?

22 A Yes.

23 Q Fine. Also in part of your initial file you have the
24 hospital records?

25 A Yes.

Liguori for plf. Cross-Martyn

1 Q Do you understand that Mrs. Chiara went to the
2 hospital at some point after her accident on the date of the
3 accident?

4 A Yes.

5 Q Based on your review of the hospital record, did you
6 see -- which hospital was it? I'm sorry, I'm sorry. Which
7 hospital did she go to, based on your records, Doctor?

8 A It was North Shore. I'm not sure which one. I'll
9 tell you in a second.

10 Q Correct.

11 A It just says North Shore.

12 Q OK. And North Shore Hospital you would consider a
13 good hospital, Doctor?

14 A Yeah.

15 Q All right. Certainly if a person came in to the
16 hospital saying they were experiencing neck pain, would you
17 expect that the hospital would do at least an x-ray of that
18 person?

19 A No. They could, but it's not -- you don't do an
20 x-ray on everybody that has neck pain. You only do an x-ray if
21 you suspect a fracture.

22 Q So if someone came in saying, "I was just in a motor
23 vehicle accident with a DWI driver and I'm experiencing neck
24 pain," you wouldn't expect and it wouldn't be good practice for
25 a hospital to do an x-ray?

cb

Liguori for plf. Cross-Martyn

1 A No, not if it isn't any bony tenderness -- sorry.
2 Not if there is not any bony tenderness.

3 Q So there would have to be some sort of finding for
4 them to do an x-ray of her; correct? Is that what you're
5 saying?

6 A I would think so.

7 Q Again, you didn't work in the hospital in that
8 particular case?

9 A I didn't work at the one in this case. I do cover a
10 hospital.

11 Q So if there was some sort of objective findings other
12 than what the patient is telling you, that might justify an
13 x-ray in a hospital?

14 A Can you say that again?

15 Q Yeah. Other than -- you just said a person who comes
16 in saying "I'm experiencing pain in my neck" wouldn't
17 necessarily justify a hospital doing an x-ray, there would have
18 to be some other finding at that time, in your opinion?

19 A There would have to be some suspicion of a neck
20 fracture to warrant an x-ray of the neck.

21 Q In this case do you know whether or not there was
22 ever an x-ray done of Mrs. Chiara's neck?

23 A I don't think so.

24 Q Do you know whether or not, in accordance with the
25 records that you have here of the hospital -- what their

cb

Liguori for plf. Cross-Martyn

1 preliminary diagnosis of Mrs. Chiara was?

2 A Under impression, it says -- I can't really read it.
3 It's C, something afterwards, looks "like sprain." And it
4 looks like SP, meaning status post, MVA.

5 Q Does that say calf, c-a-l-v [sic], sprain?

6 A It's -- it almost looks like c-a-l-f.

7 Q I may have misspelled it, Doctor.

8 [Laughter]

9 Q Sorry. Does that spell "calf"? Is that the proper
10 spelling?

11 A Yeah. I'm not sure that's what it says. But you
12 could see it.

13 Q OK. The calf is part of the leg, the last time I
14 read anything?

15 A Yeah, it's a muscle in the leg.

16 Q It doesn't say anything about neck injury in that
17 hospital report, at least that you can see, Doctor?

18 A Under the impression?

19 Q Yeah.

20 A No. That's the only thing I read under impression.

21 Q Fair enough. Now, Dr. Mills, we talked briefly about
22 Dr. Mills. He referred Ms. Chiara to you?

23 A I think so.

24 Q And he was to your knowledge a treating doctor of the
25 plaintiff?

cb

Liguori for plf. Cross-Martyn

1 A I think so.

2 Q Do you know whether or not he actually saw her in the
3 hospital?

4 A I don't know that.

5 Q Do you know what testing he performed?

6 A I don't, other than the MRI I got from him, no.

7 Q You don't?

8 A No.

9 Q You don't know if he did x-rays or what they found?

10 A I don't know. When a doctor refers a patient over we
11 call for whatever records. And we got the MRI. So I don't
12 know if he did anything else. If he did, I didn't get it.

13 Q Let's get to your treatment. You first saw
14 Ms. Chiara a month after the accident, give or take?

15 A May 7 to June -- about six weeks, I think. Is that
16 right, May 7 to June 23, about six weeks?

17 Q A little bit longer than a month?

18 A OK.

19 Q Briefly, Doctor, we talked a little bit about
20 objective testing. That is a test that you do that you say
21 gives an objective finding?

22 A Yes. An objective test is something the patient has
23 no control over. A subjective test is something the patient
24 would have some control over.

25 Q In other words, I say to you right now, "Dr. Liguori,
cb

Liguori for plf. Cross-Martyn

1 you know, I've been on my feet all day, I have terrible pain in
2 my neck and back." That's a subjective complaint, is it?

3 A Yes.

4 Q Similarly, Doctor, if I say to you, "Dr. Liguori, I
5 have significant pain in my neck and my back, and it didn't
6 start until I had a car accident yesterday" or "I slipped and
7 fell yesterday," that's subjective, what the patient tells you?

8 A Correct.

9 Q And you rely on it, as far as what a patient tells
10 you, in coming to your opinion of a cause of a particular
11 injury that you found with the patient?

12 A Yes, absolutely.

13 Q There are different ways to treat a herniated disk?

14 A Yes.

15 Q In other words, a herniated disk can cause pain down
16 someone's arms? We're talking about the neck; correct?

17 A Yes.

18 Q All right. And if it's causing pain for a
19 significant period of time there will be symptoms other than a
20 patient complaining of pain? That was a horrible question.
21 Let me withdraw that.

22 Someone that has a herniation that's caused pain,
23 generally it means that that herniation is impinging on a nerve
24 root?

25 A No. If a herniation is causing pain going down the

cb

Liguori for plf. Cross-Martyn

1 arm from the neck --

2 Q Correct.

3 A -- then that would be touching a nerve root, yes.

4 Q OK. And if you have a significant impingement of a
5 nerve root over a significant period of time, would a patient
6 show atrophy over a course of time?

7 A If there's persistent compression of the motor
8 fibers, yes, there would be atrophy.

9 Q Explain to me what atrophy is.

10 A Atrophy is the loss of muscle mass.

11 Q In other words -- and we will stick with the arm.
12 I'm having significant pain and it's coming down my arm and
13 it's going on over a course of time and it's not going away.
14 I'm not using that arm as much as my other arm, and my muscles
15 will wither a little bit, or atrophy?

16 A Yes.

17 Q Now, would you agree with me there is no finding
18 anywhere in your charts that there is any atrophy for
19 Ms. Chiara?

20 A That's correct.

21 Q All right. Is that consistent with the objective
22 testing that you have made in this case?

23 A Yes.

24 Q OK. In other words, when you first saw her you did
25 an objective test, did you not?

cb

Liguori for plf. Cross-Martyn

1 A Yes.

2 Q OK. And the testing was an EMG?

3 A Yes.

4 Q And that's a necessary test, would you agree?

5 A I'm sorry?

6 Q I'm sorry. I'm having a hard time.

7 That would be a necessary test, in your opinion?

8 A Yes.

9 Q And why is it an important test, Doctor?

10 A In her case I wanted to find out whether she had
11 nerve damage coming from the neck or nerve damage in the hand,
12 and then I wanted to know not only the location of the nerve
13 damage but the very severity of it.

14 Q If someone has significant herniation that's
15 impinging on a nerve root, it's going to show up in your tests;
16 correct?

17 A Not always.

18 Q Are you saying not always because in this particular
19 case, of course, the test that you did was normal?

20 A Probably, in patients with radiculopathy, I think the
21 range somewhere -- is somewhere between thirty and fifty
22 percent come up positive on EMG testing.

23 Q In this case, which you agree was an objective
24 testing, it was normal for Ms. Chiara?

25 A Yes.

Liguori for plf. Cross-Martyn

1 Q In other words, your test, the objective test, didn't
2 show any nerve damage to her?

3 A Yes, that's correct.

4 Q And was that the only time that you did these type of
5 testings or independent testing on Ms. Chiara?

6 A I think that was the only time I did the EMG. I
7 think I have done NCV testing on other occasions.

8 Q What's an NCV testing?

9 A The second part of that test that I described for --
10 sorry. On 2/8/07 I redid both the EMG and NCV testing. I
11 apologize.

12 Q 2/8/07, which is now over a year after the accident;
13 correct?

14 A Over a year, yes.

15 Q And you did another test of her?

16 A Yes, I did.

17 Q And was that also to see if there was any kind of
18 nerve damage that you could find based on an objective test?

19 A Yes.

20 Q OK. And let's ask: What was the result of that test
21 on Ms. Chiara?

22 A That was normal.

23 Q So, based on, I guess, the objective testing you
24 performed, there was no evidence of any kind of nerve damage to
25 her?

cb

Liguori for plf. Cross-Martyn

1 A Correct.

2 Q And is there any other testing that you did,
3 objective testing of her, that you have in your records,
4 Doctor?

5 A The SSEP testing we discussed before.

6 Q When did you do that?

7 A That was on the first visit.

8 Q OK. And then?

9 A And then I think I performed just the NCV portion.
10 Yes, I performed the NCV portion, never performed the EMG
11 portion again.

12 Q Now, Doctor --

13 A Wait, I apologize. I did the NCV portion once alone,
14 and then recently, on Monday, I did the EMG NCV test.

15 Q The one you did before the one that you did just the
16 other day, what was the date of that one?

17 A That was 4/28/08.

18 Q April 28, '08?

19 A Correct.

20 Q Was that the last time, approximately the last time
21 you had seen her up until just a couple days ago?

22 A After that I saw her 6/9/08, 8/18/08, and then
23 Monday.

24 Q So from August 18 of '08 up until Monday you had not
25 treated with this patient?

cb

Liguori for plf. Cross-Martyn

1 A Correct.

2 Q All right. And that's over three years?

3 A Yes.

4 Q All right. And the last, again, objective test that
5 you did to her, other than the last time you saw her two days
6 ago, that was in '08 as well, April of '08? Is that what you
7 said?

8 A Yes.

9 Q And what kind of tests did you do at that point?

10 A 4/28/08?

11 Q Yeah.

12 A I did the NCV portion.

13 Q What's that a test of?

14 A That's the nerves itself. That's more specific for
15 carpal tunnel than nerve damage for the neck.

16 Q That didn't have anything to do with her neck?

17 A That test had nothing to do with her neck.

18 Q And that was normal as well?

19 A That was normal. But it had nothing to do with the
20 neck.

21 Q We are almost done.

22 THE COURT: Did you say you are almost done?

23 MR. MARTYN: I'm getting close.

24 THE COURT: In terms of taking a break or not,
25 if you have only a few more minutes, we will wait.

cb

Liguori for plf. Cross-Martyn

1 MR. MARTYN: Just a few minutes.

2 THE COURT: That's fine.

3 Q Would you agree x-rays of someone's spine can show
4 degeneration?

5 A Of the bone?

6 Q Yeah.

7 A Yes.

8 Q And of course you didn't review any x-rays prior to
9 coming in today or in the course of your treatment, did you?

10 A No.

11 Q All right. A herniation that's significantly causing
12 a patient -- causing a patient pain that's lasting over an
13 extended period of time can be treated by surgery, can it not?

14 A Can it be treated by surgery? Yes.

15 Q You're not a surgeon; is that accurate?

16 A I'm not a surgeon.

17 Q And there is different types of surgery to treat a
18 herniated disk, are there not?

19 A Yes.

20 Q OK. One can be just a surgery where you remove just
21 a little portion of a disk to keep it from compressing on a
22 nerve?

23 A Yes.

24 Q That's called disectomy?

25 A Yes.

Liguori for plf. Cross-Martyn

1 Q Has Mrs. Chiara to your knowledge had such a surgery?

2 A No.

3 Q Another way is if there is a herniated disk that's
4 causing instability in the bones, it can be treated by fusing
5 the vertebrae; is that correct?

6 A Yes.

7 Q To your knowledge, Mrs. Chiara has not had that kind
8 of surgery either, has she?

9 A No.

10 Q And, Doctor, the first time you actually saw the
11 patient was about six weeks after her accident? That was the
12 first time you had ever seen her?

13 A Yes.

14 Q You don't personally, based on your own personal
15 knowledge, know whether or not she had any kind of -- what her
16 neck condition was before this accident, because you didn't
17 personally treat her until a month or six weeks after this
18 accident. Would that be accurate to say?

19 A Yes.

20 MR. MARTYN: I have no further questions. Thank
21 you.

22 THE COURT: Thank you.

23 Mr. Chakmakian, I think we will take a break at
24 this point for a few minutes.

25 MR. CHAKMAKIAN: Absolutely, sure.

Liguori for plf. Redirect

1 THE COURT: Ladies and gentlemen, we will keep
2 this one brief, just to stretch your legs, use the
3 bathroom if you need to. I know it's kind of tight in the
4 jury room in terms of facilities. But we will try to keep
5 it under ten minutes for once.

6 Please do not discuss the case among yourselves
7 or with anyone else, and we will bring you back here in
8 about ten minutes.

9 (The jury exited the courtroom.)

10 THE COURT: Ten minutes.

11 (Recess.)

12 (In open court.)

13 THE COURT: All right. Let's get the jury.

14 (The jury entered the courtroom.)

15 JAMES LIGUORI, having been previously sworn or affirmed,
16 resumed the witness stand and further testified as
17 follows:

18 THE COURT: Mr. Chakmakian.

19 MR. CHAKMAKIAN: Thank you, Judge.

20 REDIRECT EXAMINATION

21 BY MR. CHAKMAKIAN:

22 Q Dr. Liguori, I'm going to work backwards from what
23 some of what these gentlemen asked you, OK?

24 You were asked questions about the EMG being
25 negative. Is it uncommon to find a negative EMG with a

Liguori for plf. Redirect

1 herniated disk?

2 A No.

3 Q Explain that to the jury, just in terms of percentage
4 you mentioned before. I want them to understand that.

5 A It's estimated between thirty and forty percent of
6 people with herniated disk and clinical findings of
7 radiculopathy have negative EMGs.

8 Q Does that suggest there is not a finding or not
9 radiculopathy [sic]?

10 A No.

11 Q Is a muscle spasm an objective finding?

12 A That's objective.

13 Q Did you find it throughout your treatment of
14 Ms. Chiara?

15 A Yes.

16 Q The hospital record, did you -- you will find that in
17 the front of your chart, by the way. Are you able to read any
18 of that record?

19 A Some of it.

20 Q Is it uncommon for someone not to have pain at the
21 instant of trauma?

22 A Is it --

23 Q -- common or uncommon not to have pain at the onset
24 of trauma?

25 A Two things after the trauma: Your whole body is full

cb

Liguori for plf. Redirect

1 of adrenalin, and there not much swelling yet.

2 And in terms of trauma and inflammation, it's not
3 completely there for three or four days. A lot of people don't
4 feel anything the first couple of days.

5 Q Does an x-ray show a herniated disk?

6 A No.

7 Q What shows a herniated disk?

8 A An MRI.

9 Q The MRI report you reviewed does mention degenerative
10 changes. Does it say anything about the herniated disk being
11 degenerative in nature?

12 A No.

13 Q In practice when you get a radiology report, do
14 radiologists usually set forth the causation issue on a
15 radiologist's report --

16 A No.

17 Q -- unless they're asked to?

18 And when you get a radiologist report in practice,
19 when you are practicing, does it say "This is related to a
20 motor vehicle accident, this is related to a fall"?

21 A No.

22 Q At best it says "Clinical correlation suggested"?

23 A The radiologist usually doesn't try and attribute
24 what they find. They just state -- if there is a herniated
25 disk, they state there is a herniated disk. If there is a

cb

Liguori for plf. Redirect

1 tumor, they state there is a tumor. They don't state why.

2 Q Directly on this report does it say "history of pain
3 to the neck"?

4 A "Neck pain with radiculopathy."

5 Q In your opinion is a radiologist qualified in a
6 vacuum to review a film and tell a jury whether or not
7 something is related to a trauma?

8 A It would be pretty hard.

9 Q Why is that?

10 A There's really no way of telling just from an MRI
11 alone what causes something. There are some clues you can
12 obtain from an MRI, but not hard and fast.

13 Q What do you need for a complete picture?

14 A You need the patient's history, you need physical
15 findings.

16 Q How many times did you examine the patient all
17 together?

18 A A lot. I think about fifteen.

19 Q That's all right. I'll withdraw that question. We
20 will see your records. OK.

21 Let me see if I can read my own writing.

22 The EMG NCV test that you told us were negative, does
23 that mean there was no damage?

24 A There is no permanent nerve damage.

25 Q Where?

cb

Liguori for plf. Redirect

1 A In her nerves in her neck.

2 Q OK. But is the damage with the herniated disk
3 permanent in nature?

4 MR. MARTYN: Judge --

5 THE COURT: I'll permit it.

6 A The disk itself is permanent.

7 Q Does that cause pain?

8 A Yes.

9 Q Just a couple other questions about your background.
10 You told us about the Workers' Compensation issue,
11 not being able to see Workers' Compensation patients after --
12 you said right after that reprimand?

13 A Yes.

14 Q Was it as a result of the reprimand?

15 A Yes.

16 Q And you said you appealed that decision and you won
17 it twice?

18 A Yes.

19 Q And you mentioned before about bringing an action
20 against insurance companies and finally that they brought an
21 action against you. You said you won all but one in your
22 career.

23 Why did you bring the lawsuits against the insurance
24 companies?

25 A They don't pay us, and we can't survive if we don't

cb

Liguori for plf. Redirect

1 get paid.

2 Q And you said one of the issues was, was something
3 medically necessary. What are the other issues that they fight
4 you on?

5 A They'll deny the claim. They'll have a doctor
6 examine the patient and say they don't need any further
7 treatment. They come up with a bunch of different excuses.

8 Q Did you have any ax to grind as you sit here today
9 against insurance companies?

10 MR. MARTYN: Note my objection to that question.

11 THE COURT: Sustained.

12 MR. CHAKMAKIAN: Judge, I have no further
13 questions, but I do as a housekeeping matter.

14 I didn't get Dr. Liguori's records into
15 evidence, and I would offer them into evidence. I can ask
16 the questions that we need to ask.

17 THE COURT: Any objection to the records, or do
18 we -- you want me to mark them, and we will have them
19 identified?

20 MR. MARTYN: You got it.

21 MR. MORELLI: Yes, Judge.

22 THE COURT: Can we do that.

23 MR. CHAKMAKIAN: That's fine.

24 (Plaintiffs' Exhibit 11, office records of
25 Dr. Liguori, marked for identification.)

cb

Liguori for plf. Redirect

1 THE COURT: You may inquire.

2 Q Just a few more questions about your records. I have
3 to build a foundation.

4 Are those records that are prepared in the ordinary
5 course of your practice?

6 A Yes.

7 Q OK. And are the notes and recordings in there
8 recorded at or about the time of your visits with Mrs. Chiara?

9 A Yes.

10 Q The records that are in there that are not exactly
11 your records, did you use those in arriving at your treatment
12 plan with Mrs. Chiara?

13 A Yes.

14 Q Is anything in the records prepared specifically for
15 this litigation?

16 A The ER notes and the note by Dr. Overby.

17 Q I don't think you understood my question.

18 A Oh.

19 Q Did you generate anything specifically for this
20 litigation, or are they all records generated in the ordinary
21 course and treatment of your practice?

22 A I'm not sure I understand that. I think the answer
23 is no, they're my records.

24 MR. CHAKMAKIAN: OK, thank you.

25 THE COURT: You offer them?

Liguori for plf. Redirect

1 MR. CHAKMAKIAN: I do. At this time I offer
2 them in evidence.

3 THE COURT: Mr. Morelli, do you wish to see
4 them?

5 MR. MORELLI: No. I would like an opportunity
6 at the appropriate time to go through the entire chart and
7 see if anything should be redacted.

8 THE COURT: Other than that, do you have any
9 questions?

10 MR. MORELLI: I have no objection other than
11 that.

12 MR. MARTYN: Ditto.

13 THE COURT: So the Court will admit the records
14 subject to redaction.

15 Ladies and gentlemen, what that simply means is
16 that if there are materials that are unrelated to this
17 action or unrelated to the issues before you the Court
18 will direct they be removed before they're given to you
19 for your deliberations because they're not legally
20 admissible for purposes of this trial.

21 So we will mark it at this time in evidence
22 subject to redaction.

23 (Plaintiffs' Exhibit 11, described previously,
24 received in evidence.)

25 THE COURT: Anything further?

Liguori for plf. Recross-Martyn

1 MR. CHAKMAKIAN: No, Judge. Thank you.

2 THE COURT: Any further questions, Mr. Morelli?

3 MR. MORELLI: Just one or two.

4 THE COURT: We had a discussion about that.

5 RECROSS-EXAMINATION

6 BY MR. MORELLI:

7 Q You told us just a little while ago that a plane
8 x-ray cannot show a herniated disk. Because that's basically a
9 bony process; isn't that correct? I mean, it's not a bony
10 process, a herniated disk?

11 A Correct, that's correct.

12 Q But a plane x-ray can show a degenerative process in
13 the bone, can't it?

14 A Yes.

15 Q And a degenerative process in the bone can be the
16 competent producing cause of pain, can't it?

17 A Yes.

18 MR. MORELLI: Thank you.

19 THE COURT: Mr. Martyn.

20 RECROSS-EXAMINATION

21 BY MR. MARTYN:

22 Q And just so we are clear, you have not reviewed any
23 MRIs with respect to treatment of Ms. Chiara?

24 A Films?

25 Q Yes.

Liguori for plf. Recross-Martyn

1 A Yes.

2 Q Let's get something straight with this Workers'
3 Compensation determination. You said you fought them twice and
4 won?

5 A Yes.

6 Q OK. Would you agree with me that you went to the
7 Appellate Division, Third Department, and litigated that issue,
8 and you hired an attorney, and you eventually lost the issue?

9 A I'm not sure how to word this. I think the end
10 result was that they upheld that what happened to me was wrong
11 but that a state judge has no right to override a state agency.

12 I could be incorrect; I'm not an attorney. So I
13 think the end result was I won, but tough luck.

14 Q OK. That's your interpretation, is it?

15 A That's exactly my interpretation.

16 MR. CHAKMAKIAN: Objection.

17 THE COURT: Overruled.

18 Q The attorney that was litigating this action against
19 you, that you fought, was that Andrew Cuomo's office, the AG's
20 Office at the time?

21 A Yes.

22 Q OK. And just so we're clear, regardless of your
23 interpretation as to what happened in the Appellate Division,
24 you are not allowed to treat people in connection with
25 work-related injuries as we stand here today?

Liguori for plf. Recross-Martyn

1 A Correct, that's correct.

2 Q All right. And you said a radiologist can't
3 determine from looking at a film as to whether or not a disk, a
4 herniated disk, is a traumatically caused herniated disk or an
5 age-related herniated disk? Is that what you claim?

6 A I think I said that a radiologist would have a
7 difficult time looking at just a film and stating the causation
8 of it.

9 Q OK. But you would agree with us that there are signs
10 of a herniated disk and that people do give opinions all the
11 time when looking at a film of a herniated disk, as to whether
12 or not that's trauma-related or accident-related or
13 age-related? They do it all the time?

14 A You are talking about a disk herniation?

15 Q Yes.

16 A When I get reports on a disk herniation, the
17 radiologist -- I don't want to say never, but usually don't
18 comment on causation or time frame.

19 Q OK, on the reports you are getting.

20 But my question to you, Doctor, is: Isn't it a fact,
21 and wouldn't you agree, that radiologists all the time will
22 review a film and come in and give their opinion as to whether
23 or not that's an age-related herniation or a trauma-related
24 herniation?

25 A You're asking me if it's my opinion that radiologists

cb

Liguori for plf. Recross-Martyn

1 do that?

2 Q Yes.

3 A Yes, they do that.

4 Q OK, thank you.

5 And, lastly, you are not a radiologist, Doctor? I
6 know we have established that?

7 A That's correct.

8 MR. MARTYN: Thank you, Doctor.

9 THE COURT: Anything further, Mr. Chakmakian?

10 MR. CHAKMAKIAN: No, Judge. Thank you.

11 THE COURT: Thank you.

12 Doctor, you are excused. Thank you.

13 THE WITNESS: Thank you.

14 (The witness was excused.)

15 THE COURT: Counsel, step up briefly.

16 (Discussion held off the record at the bench
17 among the Court and counsel.)

18 THE COURT: Thank you, ladies and gentlemen, for
19 your patience. The lengthy discussion was simply about
20 scheduling. And we are going to adjourn at this point.

21 We do have a witness scheduled for Monday
22 morning, so I'm going to ask you to be here at 10 o'clock
23 so we can -- ready to go at 10 o'clock to we can proceed.

24 Please remember my instructions to you over the
25 weekend. Do not discuss any subject connected with the

cb