

**In The Matter Of:**

*J. Colon v.*

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*October 10, 2017*

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*Richmond Supreme Court*

Original File J.Colon v. Lefkovic.txt

**Min-U-Script® with Word Index**

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF RICHMOND: CIVIL TERM PART DCM1  
3 JUAN COLON,  
4 Plaintiff

5 V.

6  
7 LEONARD LEFKOVIC, MD. RICHMOND  
8 CARDIOLOGICAL SERVICES, PC AND ISLAND  
9 MEDICAL SPECIALISTS  
Defendants

10 Index #150443-2015

11  
12 18 Richmond Terrace  
13 Staten Island, New York 10301  
14 October 10, 2017

15 B E F O R E: ORLANDO MARRAZZO, JR., Judge

16  
17 A P P E A R A N C E S:

18 KRENTSEL & GUZMAN  
19 17 Battery Place  
New York, New York

20 BY: CLASA M. VILLARREAL, ESQ.  
Appearing on behalf of the Plaintiff

21 GLENN W. DOPF, ESQ.  
22 440 Ninth Avenue  
23 New York, New York

24 Appearing on behalf of the Defendants

25 Tammy Rodriguez, Court Reporter

1 THE CLERK: DCM 1 of Richmond Supreme Court the  
2 Honorable Orlando Marrazzo presiding. This is the continued  
3 matter of Juan Colon versus Leonard Lefkovic M. D., Richmond  
4 Cardiological Services P. C., and Island Medical  
5 Specialists. Index 150443 of 2014. All appearances remain  
6 the same.

7 MR. DOPF: Yes.

8 MS. VILLARREAL: Thank you.

9 THE COURT: Counsel, what's your application?

10 MR. DOPF: Yes, your Honor. If you'll recall we  
11 submitted a memorandum of law on the issue of new claims. I  
12 would like the witness to leave the courtroom, the expert.  
13 Thank you.

14 We discussed the issue of new claims, claims that  
15 were interposed by Plaintiff's counsel during jury selection  
16 -- actually Judge Minardo said get me a list of your  
17 departures and counsel provided a list of 50, 60 departures  
18 of which there were four new ones, which were identified in  
19 our memorandum of law, and I'd ask that the expert not be  
20 asked any questions relating to the four new departures  
21 disclosed during jury selection. That's application number  
22 1.

23 THE COURT: Let's take one at a time. Were they  
24 ever exchanged prior to jury selection?

25 MR. DOPF: Well, 95 percent was exchanged before.

1 It's the five percent that I'm objecting to.

2 MS. VILLARREAL: I would like to know what  
3 specifically they are?

4 MR. DOPF: It's in the memo of law that I  
5 provided counsel with.

6 They're as follows paragraph 4, Negligently  
7 failing to generate accurate quality cardiac tests,  
8 imagining, and reports.

9 MS. VILLARREAL: I have no problem excluding  
10 that.

11 MR. DOPF: Great.

12 THE COURT: That will be excluded.

13 MR. DOPF: Number 5, which is pretty much the  
14 same, Negligently interpreting poor quality echocardiograms.

15 I have no problem with any comments relating to  
16 the echocardiogram, but poor quality is in the claim.

17 MS. VILLARREAL: Well from the standpoint that  
18 those records were in they were interpreted, so we have a  
19 right to voir dire and actually cross examine on that whole  
20 issue of the basis of his diagnosis, which is the  
21 echocardiogram, and the quality of the echocardiogram.

22 So obviously that's part of -- that's always been  
23 part of our claim. That's nothing new.

24 MR. DOPF: Show us in the BP or 3101 (D). Show  
25 us.

1 MS. VILLARREAL: Failure to interpret.

2 MR. DOPF: That's fine. No problem with that  
3 failing to interpret, but quality I object to.

4 THE COURT: The issue is similar. What is in the  
5 Bill of Particulars?

6 MS. VILLARREAL: It's part of the failure to --

7 THE COURT: Was that language brought out?

8 MS. VILLARREAL: The failure to interpret was and  
9 I supplemented at least 30 days.

10 THE COURT: That's allowed. He's not going to  
11 say poor quality. You want to work around that I'll allow  
12 you to do that. Do not use the term poor quality.

13 Next one.

14 MR. DOPF: Number 6, Negligently interpreting and  
15 rendering an inaccurate diagnosis and report based upon poor  
16 quality echocardiogram images.

17 I don't have any problem with everything up to  
18 poor quality echocardiogram images.

19 And, your Honor, if you say "work around it" if  
20 counsel asks the question, Doctor can you comment on the  
21 quality of the echocardiograms that's not working around it.

22 MS. VILLARREAL: It's about interpreting what is  
23 there. We have every right to interpret. It's part of our  
24 BP from the beginning even before we supplemented that. It  
25 was there. That's part it.

1 THE COURT: Ask the question failure to --

2 MS. VILLARREAL: It's about the interpretation.

3 THE COURT: He's not --

4 MS. VILLARREAL: It encompasses the  
5 interpretation.

6 THE COURT: Not going to say poor quality.

7 MS. VILLARREAL: I won't say the words "poor  
8 quality".

9 MR. DOPF: What if he asks the open question.

10 THE COURT: Let's see what the question is.

11 MR. DOPF: Number 40, Negligently failing to  
12 consider mitral valve tricuspid and pulmonary regurgitation.

13 MS. VILLARREAL: I'll withdraw that.

14 THE COURT: Okay. Anything else?

15 MR. DOPF: Yes, Judge. There is a lady in the  
16 back. I have no problem if she stays here unless she's  
17 going to be a witness. Maybe I can get guidance.

18 MS. VILLARREAL: That's his girlfriend.

19 MR. DOPF: Is she going to testify?

20 MS. VILLARREAL: She may.

21 MR. DOPF: Then out she goes. If she's going to  
22 testify.

23 MS. VILLARREAL: Okay. Sure.

24 THE COURT: She has been here before by the way  
25 during testimony.

1 MR. DOPF: Yeah.

2 MS. VILLARREAL: No problem.

3 THE COURT: If you say maybe you know that.

4 MS. VILLARREAL: Absolutely.

5 MR. DOPF: Judge, we've had a lot of back and  
6 forth on the issue of what we've agreed to in terms of  
7 authentication and my need to bring somebody from the  
8 outside.

9 I think that one thing that counsel has made  
10 abundantly clear that any cardiology or internal medicine  
11 records she's not going to make me bring in a medical record  
12 librarian. Her concern relates to neck issues.

13 The question that I have for your Honor, are we  
14 in agreement when Plaintiff rests that Dr. Tirado's records  
15 come in, the internist and Dr. Tamburrino he's the new  
16 cardiologist.

17 If counsel is going to go back on the stip on  
18 that then I have to drag people in from their offices.

19 MS. VILLARREAL: I never -- first off, the  
20 stipulation is not about them going into evidence, going in.  
21 They're about failure to authenticate. I have no problem.  
22 My position has been anything related to cardiac treatment.  
23 I have no problem with -- I stipulate to not having to bring  
24 somebody in to authenticate them.

25 MR. DOPF: So if I understand when counsel rests

1 there's no objection to me offering them into evidence. If  
2 counsel has an objection in terms of relevance to something  
3 it's preserved. You're not fighting me on authentication?

4 MS. VILLARREAL: No.

5 MR. DOPF: I'll not bring the medical record  
6 librarian. If she wants to argue about something else it's  
7 preserved.

8 MS. VILLARREAL: Now I want to be completely  
9 clear as to the scheduling issues.

10 THE COURT: Me too.

11 MS. VILLARREAL: I agree. Just want to make  
12 sure. We have our expert here to testify today. I  
13 anticipate that we should finish with him today, but I want  
14 to make clear that counsel is going to have his expert  
15 tomorrow.

16 THE COURT: I don't know.

17 MR. DOPF: That's correct.

18 MS. VILLARREAL: I want to make sure and then my  
19 client will continue his cross examination on Thursday.

20 MR. DOPF: Maybe this afternoon when I finish.

21 MS. VILLARREAL: That I don't know. That's what  
22 I don't know what the story is.

23 THE COURT: We're going full days. This is  
24 lasting longer than I thought it would, and the jurors are  
25 having issues. They were told five or six days. It's

1 longer than that. I don't want to hold them. I would like  
2 to work the whole day if we can do so.

3 MS. VILLARREAL: Sure.

4 MR. DOPF: So, Judge, the agreement that counsel  
5 and I have, of course, if counsel wants to breach it so be  
6 it --

7 THE COURT: Don't say that.

8 MR. DOPF: I've basically said you give me the  
9 afternoon with your expert, and I'll get him out of here  
10 today. I won't bring him back. I'll give you the afternoon  
11 more, than the afternoon. I'll probably be hour and a half,  
12 an hour with my expert that was the agreement.

13 I'm hoping that the baton will be passed.

14 THE COURT: Let's see what time we finish.

15 MS. VILLARREAL: Judge, the other thing that I  
16 would like to make sure is that we do not have a claim for  
17 lost earnings or incapacitation.

18 Counsel, when he did do his -- the entire cross  
19 examination of my client went into the lost earnings, the  
20 incapacitation, the inability to work. Your Honor did  
21 sustain those objections, but I want to make sure that  
22 counsel is not allowed to go into that, even asking the  
23 question.

24 This is completely improper incendiary comments.  
25 Asking why he can't be a toll collector is completely

1 incendiary. He cannot get into something we have not  
2 claimed. Also, specifically, there's no connection with the  
3 cervical injuries.

4 What was brought out during cross examination  
5 with respect to cervical injuries -- these are cervical  
6 injuries, range of motion issues that have nothing to do  
7 with the heart attack condition or anything like that.

8 The range of motion with respect to his neck and  
9 movement that is not the issue in this case.

10 Again, if counsel can make sure that nothing  
11 comes back.

12 THE COURT: He said a couple of things lost wages  
13 and range of motion.

14 MS. VILLARREAL: Range of motion, cervical  
15 limitation with respect to the range of motion.

16 THE COURT: Let's talk about that right now.

17 Do you have any issue with that?

18 MR. DOPF: Lost earnings no issue with that. I  
19 have a big issue -- I've submitted a brief on it, a  
20 memorandum on it on my ability to cross examine on  
21 preexisting injuries.

22 In other words, if this gentleman testified under  
23 oath that he can no longer play racquetball, no longer can  
24 have sex, touch football, no longer can enjoy his  
25 granddaughter in the park, but said all the same things a

1 year before to the United States government there's  
2 something wrong.

3 That goes to credibility, your Honor. I'm going  
4 to renew my application for the disability form that was  
5 marked for identification to be admitted into evidence.

6 MS. VILLARREAL: Your Honor, we vigorously object  
7 to any of this stuff coming in, Social Security Disability  
8 records coming in because it brings into issue the  
9 incapacitation issue, which was not part of our claim.

10 But if, in fact, counsel wants to open the door  
11 to incapacitation then we should have a right to then get  
12 into that and specifically the fact that the heart attack  
13 has effected his ability to even consider seeking new  
14 employment.

15 MR. DOPF: I have no problem with that.

16 MS. VILLARREAL: It's really never been part of  
17 our claim, so we can't get into a lost of incapacitation  
18 inability. One thing he's impeached him with what he  
19 indicated with a document that I think is improper for him  
20 to have utilized, and then to specifically identify the  
21 document before it was introduced into evidence all that was  
22 highly incendiary, highly improper, and we made our record  
23 with respect to that making sure that, that is out.

24 He made reference to the document that it was a  
25 disability federal government record. He can't make

1 representations to a document that is not in evidence. Now  
2 he made reference to it, and he continues to go down that  
3 road, your Honor, then if there is a mistrial we're going to  
4 request cost and sanctions against counsel for going after  
5 something that he knows is completely improper.

6 THE COURT: Does it go to credibility?

7 MS. VILLARREAL: It does not go to credibility.  
8 He asked him specifically -- first off, on my direct of my  
9 client I didn't bring up all those issues. Certainly he  
10 could have brought them up what he's testified, but it was  
11 improper the whole impeachment process because it wasn't  
12 brought up. It was outside the scope first off. It was  
13 basically running and jogging that was specifically  
14 testified to. With respect to credibility it doesn't go to  
15 credibility.

16 He testified that this is what he -- when he was  
17 disabled from his employment, these are the things that he  
18 specifically could not do, and again the issue of disability  
19 of his Social Security Disability benefits should not be  
20 part of this case.

21 If counsel refers to that document again I  
22 consider it to be highly prejudicial to my client and I'm  
23 going to have to make a motion for a mistrial again in the  
24 middle, once we've incurred the cost of bringing this trial  
25 and counsel does so then we request cost and sanctions

1           against counsel for doing so.

2                       MR. DOPF: I'm going to request costs and  
3           sanctions against not the law firm, but against this  
4           attorney for pursuing a case where there's clearly some  
5           horrific lying and perjury going on.

6                       You can't fill out an eight page report under the  
7           penalties of perjury, he admitted it was his signature, and  
8           say you can't do these things as a result of your neck  
9           racquetball, sex, touch football, playing with the  
10          granddaughter, you can't say that and then a year later give  
11          a deposition and say oh, all that started after my heart  
12          attack. That's in his deposition. It's in the Bill of  
13          Particulars all of those things.

14                      Now if Plaintiff wants to walk away from it I  
15          don't see how Plaintiff can in good faith pursue this case  
16          when it's clear that lies have been perpetrated against the  
17          Court and the jury.

18                      He said black in a deposition and white in his  
19          report, in the report he filled out for the federal  
20          government.

21                      Yes, your Honor that absolutely goes to  
22          credibility a hundred percent goes to credibility. Somebody  
23          lying on an application or somebody lying at a deposition  
24          certainly goes to credibility.

25                      So I'll be seeking sanctions if counsel persists

1 with this meritless lawsuit.

2 THE COURT: We're not talking about sanctions.

3 MS. VILLARREAL: I believe what counsel just  
4 engaged in is an effort to intimidate my client in  
5 testifying. He is doing so openly and doing so with my  
6 client present. This is an effort for him to intimidate my  
7 client, intimidate me, and I consider what counsel is doing  
8 to be highly improper.

9 The incapacitation issue is not an issue in this  
10 case. The fact that my client testified two years before,  
11 not one year before, two years is when his disability claim  
12 was brought up, and that was because of work related issues  
13 that he could no longer work.

14 We're not claiming that he can no longer work as  
15 a result of his heart attack. So counsel cannot now bring  
16 in the employment disability claim, Social Security  
17 Disability claim as part of this case.

18 It is highly improper and we ask your Honor that  
19 he be instructed to not go into it again. He did enough  
20 damage as it is with respect to bringing up what he claims  
21 to be perjurious commentary. He tried to intimidate my  
22 client to specifically not say certain things. It's  
23 outrageous. I find it to be -- what counsel is doing to be  
24 highly reprehensible.

25 MR. DOPF: Counsel asked for sanctions, I replied

1 I would be seeking sanctions also.

2 Had counsel not brought up the subject of  
3 sanctions I would not have stood up and talked about the  
4 subject of sanctions. What's good for the goose is good for  
5 the gander.

6 I ask that Plaintiff's counsel tell witness  
7 Charash, he may not reference the quality or lack thereof of  
8 the echocardiogram.

9 THE COURT: I ruled on that.

10 MR. DOPF: I'm asking that she tell her expert.

11 THE COURT: I ruled on that. I'm sure she's not  
12 going to mention.

13 MR. DOPF: I'm worried he's going to mention it.  
14 I'm asking that she instruct him.

15 THE COURT: It will be stricken from the record.

16 MS. VILLARREAL: The other thing I wanted to  
17 mention, Friday there were little things that were going on  
18 in this courtroom that I need to make sure it does not  
19 happen today.

20 When I was doing my direct examination of my  
21 client the court report interrupted my direct examination to  
22 take a phone call that was two minutes or whatever minutes  
23 it was, and then went back on the record. That was  
24 completely improper for her to do so.

25 After she finished and she switched with the

1 reporter that is here now, in front of the jury, as she  
2 walked by she was coddling, I should say with Mr. Dopf and  
3 said, Okay Mr. Dopf now make sure you project.

4 She said it in front of the jury for the jury's  
5 purpose too. I want to make sure that none of this happens  
6 again. This is all stuff that really shouldn't be  
7 happening. We have enough problems that I heard a juror  
8 say --

9 THE COURT: Who denies saying it.

10 MS. VILLARREAL: I'm an officer of the court.  
11 I'm standing next to her and I heard her say it.

12 THE COURT: For the record I did ask her and she  
13 denies that.

14 MS. VILLARREAL: She denied saying it, of course,  
15 she's going to deny saying it.

16 THE COURT: Don't say that. You're telling me  
17 she lied to me?

18 MS. VILLARREAL: I heard her. I heard what she  
19 said. She was sitting -- I was sitting right next to her  
20 when she said it. So yes.

21 THE COURT: You're telling me that she lied to  
22 me.

23 MS. VILLARREAL: She's not telling the truth.

24 THE COURT: Same thing.

25 MS. VILLARREAL: Correct.

1 MR. DOPF: Sadly officers of the court have been  
2 known to lie.

3 THE COURT: Let's not get into --

4 MR. DOPF: I'm not saying -- for this lawyer to  
5 cloak yourself with the garment, I'm an officer of the Court  
6 I would never say anything inaccurately, I don't think it's  
7 right Judge. There's plenty of lawyers that have gone down  
8 the wrong road for not being honest.

9 THE COURT: That issue is over with. To be  
10 honest with you I didn't see the court reporter taking a  
11 phone call or saying anything to Mr. Dopf. I didn't see it.  
12 I don't know if she said anything to you.

13 Did she say anything to you?

14 MR. DOPF: I heard her say keep your voice up.  
15 The phone call, I must say, I don't remember. I'm not  
16 denying it. I don't remember.

17 THE COURT: She's not here. Go get the jury.  
18 For the record jurors mentioned to Chris, my court officer,  
19 they're concerned about how much longer this trial will  
20 take. What should I tell them? Since it's longer than what  
21 you told them it was going to take.

22 MR. DOPF: I'm going to give you my thoughts and  
23 counsel can give you her thoughts.

24 THE COURT: We're going to lose them.

25 MR. DOPF: If counsel rests at some point

1 tomorrow and my expert finishes tomorrow then that pushes us  
2 into Thursday. I think I can put the rest of my case on  
3 Thursday and sum up on Friday.

4 THE COURT: I would like to end this case this  
5 week.

6 MR. DOPF: I think it's doable if the witness,  
7 this witness is turned over to me by 2 o'clock.

8 MS. VILLARREAL: I just need to know who Mr. Dopf  
9 is intending on calling. He still hasn't told me. He  
10 indicated at the beginning of the trial that he had a bunch  
11 of witnesses he's going to call.

12 THE COURT: Who are you calling?

13 MR. DOPF: I'm calling my expert who she knows  
14 about and Dr. Chapman because counsel is making me bring  
15 somebody in to authenticate records.

16 MS. VILLARREAL: Judge, I will absolutely move to  
17 have Dr. Chapman not brought in. He is the pain management  
18 cervical doctor. This is not -- we're not litigating his  
19 cervical injuries. So to bring in the cervical injuries and  
20 bring in the treating doctor on the cervical injuries is  
21 quite outrageous.

22 So I'm moving to preclude that testimony and to  
23 have that doctor come and testify. I think it's an effort  
24 also to delay this trial.

25 Those records, Dr. Chapman's records, have not

1           come into the subpoena record room at no point. So they're  
2           not here. It's completely improper for him to try to bring  
3           in the cervical doctor on this case.

4                   MR. DOPF: There's a great deal of relevance to  
5           him for an abundance of reasons. One of the reasons is that  
6           Mr. Colon saw him twice after Dr. Lefkovic's last office  
7           visit in February 2013, and before the heart attack.

8                   Mr. Colon says I have all these symptoms everyday  
9           right up to the heart attack. I would like to see what  
10          Dr. Chapman says about that number one.

11                   Number two, if Mr. Colon is fatigued or seems to  
12          be one of his primary complaints, I'm entitled to bring out  
13          the fact that this doctor is prescribing large amounts of  
14          narcotic medications the side effect -- one side effect of  
15          which is drowsiness that's two.

16                   Number three, it goes to credibility. The  
17          Plaintiff testified at his deposition that he couldn't do  
18          all of those things because of the heart attack. When we go  
19          over Dr. Chapman's record it shows just the opposite.

20                   So there's no reason at all to preclude him from  
21          testifying. As a practical matter, Judge, I'm going to try  
22          to limit my direct to 15 minutes. Why? Because of that  
23          note. So I don't intend -- I intend to get his records into  
24          evidence 10, 15 minutes and call it a day.

25                   MS. VILLARREAL: Your Honor, first off, defense

1 has not at any point indicated in any of his pleadings,  
2 affirmative defenses, and Bill of Particulars specifically  
3 that the types of injuries relating to fatigue and  
4 drowsiness had anything to do with the cervical injuries or  
5 complaint that he made to Dr. Chapman.

6 He is limited to what he pled. At no point has  
7 he supplemented those pleadings. So anything to do with  
8 drowsiness related to narcotics this is brand new, never  
9 brought up before.

10 The fact that he's talking about fatigue related  
11 to the narcotics is something brand new, never brought up  
12 before.

13 The fact that he's also relating it to the  
14 complaint that he was making of fatigue to Dr. Chapman has  
15 nothing to do with the cardiac injuries.

16 These are cardiac symptoms. This is outrageous  
17 for counsel to be bringing it in delaying this trial. I  
18 think it's being done on purpose in an efforts to delay the  
19 trial and possibly lose the jury.

20 MR. DOPF: I don't want a mistrial. I want a  
21 verdict, so I have no interest in delaying a darn thing.

22 THE COURT: I'm going to reserve on that. We'll  
23 see where we go.

24 THE COURT OFFICER: Jury entering.

25 (At this time the jury enters the courtroom.)

1 THE CLERK: Jury present and properly seated both  
2 sides stipulate?

3 MR. DOPF: So stipulated.

4 MS. VILLARREAL: Stipulated.

5 THE CLERK: Case on trial continues.

6 MS. VILLARREAL: At this time we call Dr. Bruce  
7 Charash to the stand.

8 BRUCE CHARASH, 205 East, 63rd Street, New York, New York 10065,  
9 having been first duly sworn, was examined and testified as  
10 follows:

11 THE COURT: Counsel proceed.

12 MS. VILLARREAL: Thank you, your Honor.

13 DIRECT EXAMINATION

14 BY MS. VILLARREAL:

15 Q. Good morning, Dr. Charash?

16 A. Good morning.

17 Q. Are you a physician dually licensed to practice  
18 medicine?

19 A. Yes.

20 Q. Would you please provide the jury with the benefit of  
21 your medical education, training, and experience?

22 A. Of course.

23 I graduated from Cornell Medical School in 1981  
24 getting my M. D. degree.

25 From 1981 to '84, I trained in the field of internal

1 medicine, which is primary care for adults, but not using  
2 surgery at Mount Sinai Hospital.

3           The first year is universally called internship. The  
4 second, third years are called residency. In 1984 after  
5 completing that training, I was eligible to take, and I did take  
6 a two day national written test called the board of internal  
7 medicine. By passing that I was designated a Board Certified  
8 internist.

9           From 1984 to '87 I trained at the New York Hospital in  
10 the subspecialty of heart disease. Again nonsurgical heart  
11 disease in the field called cardiology. The training was a  
12 fellowship. In 1987, when I completed, I took and passed the  
13 two day written test, the board of cardiology becoming a Board  
14 Certified cardiologist.

15           From 1987 to '91 I was on the full-time medical school  
16 faculty of Cornell as an assistant professor of medicine, and I  
17 was the assistant chief of the cardiac intensive care unit.

18           In 1991 until February 1, 2005 I became the chief of  
19 the cardiac care unit at Lenox Hill Hospital. I was also a  
20 clinical associate professor of medicine at NYU Medical School  
21 from February 1, 2005 to July 1, 2006.

22           I spent 17 months as a full-time member of the  
23 Columbia University Medical School faculty as an assistant  
24 professor of clinical medicine and then July 1, 2006 I went into  
25 private practice where I've been since then.

1 I have admitting privileges at Lenox Hill Hospital and  
2 I'm still a clinical associate professor of medicine at NYU.

3 Q. Thank you, Doctor. Dr. Charash, have you received any  
4 awards or honors in your career?

5 A. Yes. When I graduated from medical school I was  
6 inducted into a national medical honorary society called Alpha  
7 Omega Alpha.

8 In my second year of fellowship I received an award  
9 called the Dan and Elaine Sergeant Fellow of Cardiology, which  
10 was an award for the highest ranking cardiac training for my  
11 year and basically a scholarship that funded my position in  
12 2008.

13 An organization called The Greater New York Hospital  
14 Association gave me the Doctor of the Year award for New York  
15 State.

16 And most recently, I think 2012, a Washington D. C.  
17 institute called The Caring Institute that promotes the ideals  
18 of patient care communication and ethics, they gave me their  
19 Caring Person of the Year award for the United States in 2012.

20 Q. Thank you, Doctor.

21 Dr. Charash, are you involved in any international  
22 medical work?

23 A. Yes. Very briefly for the last 11 years I started my  
24 own organization that collects surplus medical supplies in the  
25 United States. We end up sending to landfills seven tons a day

1 of unused medical supplies or reusable equipment.

2 We refurbish everything up and we send them to  
3 hospitals in Africa and Caribbean to reestablish healthcare  
4 systems.

5 I've made 14, 15 trips to different hospitals for  
6 education as well as evaluation.

7 Q. Doctor, this is not the first time you're in court, is  
8 that right?

9 A. Correct.

10 Q. Nor is it the first time we've been involved in what  
11 we call a medical/legal case, is that right?

12 A. That's correct.

13 Q. Would you please provide the jury with the benefit of  
14 your medical/legal experience?

15 A. I was first approached by a lawyer in 1987 after I  
16 passed my board certification in cardiology to be an expert. I  
17 had been a practicing Board Certified internist for three years  
18 at that time and a newly admitted cardiologist.

19 Since 1987, I guess, in the last 30 years I've  
20 reviewed in the range of 900 cases from lawyers in as many as 40  
21 states.

22 The overall majority of the cases comes from local  
23 states, but over 30 years I've received one case from Texas six  
24 years ago, one case from Louisiana three years ago. Most of the  
25 cases are more localized.

1           In some cases I've given opinions about healthcare  
2 providers outside of my own field including surgeons,  
3 gynecologist, emergency room doctors, but never in their field.  
4 Good heavens I'm not qualified to discuss the operating room,  
5 but if a surgeon gives a patient an antibiotic to take at home  
6 and I give the same, we shared the same possibility to recognize  
7 the allergies of that medicine.

8           So whenever I've given an opinion about a doctor that  
9 is not in my field, it's always been in an area of common  
10 practice that we would share basic medical school training not  
11 subspecialties the other doctor works with.

12           About 85 percent or so of the cases that I have  
13 reviewed come from lawyers like yourself who represent families  
14 or family members and like 15 percent of the cases that I've  
15 reviewed come from lawyers that defend doctors or hospitals.

16           I've given testimony outside of a courtroom called a  
17 deposition under oath averaging about 11 times a year, and I  
18 have testified in court like I am today averaging around seven  
19 times a year.

20           Where as 15 percent of what I review come from lawyers  
21 defending doctors or hospitals for many different reasons the  
22 amount of times I'm asked to testify in those cases is much  
23 less, so 15 percent of my review are defense cases, but under 5  
24 percent of my testimony are defense cases.

25           Q.    Dr. Charash, tell the jury what is your day to day

1 practice?

2 A. I have an office-based practice. I see patients  
3 weekdays. I would say that 50 percent of my patients are  
4 cardiac patients that came to me who have their own primary care  
5 doctor.

6 Twenty-five percent of my patients were sent to me to  
7 be their cardiologist and then over time they ask me to also  
8 become their primary care doctor which I did.

9 And 25 percent of my patients came to me strictly for  
10 primary care, and over the years over half of them have  
11 developed some form of heart disease because it's the biggest  
12 disease in the United States.

13 I perform EKGs in my office, echocardiograms in my  
14 office, and stress test and stress echocardiograms.

15 Q. Dr. Charash, do you treat patients that have chest  
16 pain?

17 A. Very frequently.

18 Q. Would you explain?

19 A. Chest pain is the number one symptom that drives  
20 people to the emergency room. Not more than 50 percent of the  
21 biggest single reason why people go to the emergency room is  
22 chest pain. The biggest single complaint that people ask for an  
23 added visit to a doctor much less a heart doctor is chest pain.

24 Chest pain is the number one symptom of concern and,  
25 of course, because chest pain carries the possibility of heart

1 disease, which can be fatal it is obviously a very important  
2 area of evaluation.

3 For 20 years when I ran the cardiac care unit between  
4 Cornell and Lenox Hill I was evaluating patients in the  
5 emergency room with chest pain. Frequently admitted patients  
6 that had chest pain I frequently recommended interventional  
7 cardiology with patients with chest pain.

8 Clearly, with chest pain you have to make decisions as  
9 to whether it could be a heart attack or whether it can be  
10 nonheart attack chest pain, angina. It can be stable or  
11 unstable. There's a fair number of decisions made when a person  
12 says they have chest pain.

13 I had to say that, that's been the biggest single part  
14 of my clinical career.

15 I deal with other problems like pacemakers,  
16 arrhythmias, people losing consciousness, but the majority of  
17 what I've done for 30 years involving well over 20,000 patients  
18 has been evaluate chest pain.

19 Q. Dr. Charash, do you perform exercise stress tests on  
20 patients?

21 A. Yes, I do.

22 Q. Explain that, please?

23 A. Well, if you do -- if a person has any form of chest  
24 pain there are noninvasive and invasive ways to tell whether or  
25 not the pain may or may not be cardiac.

1           One way is a stress test. A stress test just means  
2 that you -- when most people exercise you're increase working at  
3 higher, faster speeds to get the heart to pump faster harder to  
4 push the need for fuel, with the assumption if the fuel lines  
5 are clogged at a higher level of exercise the heart will become  
6 miserable.

7           That cardiac misery we call ischemia. Can be  
8 reflected by the EKG, by changes in the EKG, which are like  
9 satellites looking at the electricity of the heart.

10           An EKG is 12 leads. Each lead is looking over one  
11 part of the heart like satellites looking down.

12           An echo is one to look at the motion of the heart  
13 muscle. If you do a stress echo you both get the advantage of  
14 the EKG information, which is totally independent from the echo  
15 information, so you have two sources of information about the  
16 heart, the EKG and the imagining. Then you can combine the two  
17 and based on the nature of the patient's symptoms make an  
18 appropriate clinical decision as to what comes next.

19           Q. So, Dr. Charash, you do perform resting  
20 echocardiograms as well?

21           A. Yes. Resting echocardiograms is probably second to  
22 EKG in terms of the most common tests that heart doctors do.

23           Q. Exercise echocardiograms as well?

24           A. Yes.

25           Q. Can you explain that to us?

1           A.    I can.

2           Q.    Now you treat patients who have a diagnosis, previous  
3 diagnoses of coronary artery disease?

4           A.    Yes.

5           Q.    Please explain that?

6           A.    Well, a large percentage of my practice are people who  
7 have previously been diagnosed with coronary disease.  So if you  
8 think about it you have two populations.

9                    One population of people who may have symptoms where  
10 you don't know anything about their heart.

11                   Another population of people have symptoms where there  
12 is previous experience in studying the heart.  So I would say  
13 that's 60 percent of my practice or 70 percent are people who  
14 have had previous proven coronary artery disease and their  
15 approach is slightly different from people who have no previous  
16 history of coronary disease.

17           Q.    Can you please explain to us what is coronary artery  
18 disease?

19           A.    Certainly.  The heart is a pump.  It's pumping blood  
20 up through the aorta the highway that takes all the blood to the  
21 body.

22                   The heart pumps upward in the chest.  The aorta rises,  
23 forms an arch and descends eventually down in the pelvis.

24                   Divides to the legs femoral arteries, gives off branches to  
25 every vital organ.  At the peak of the arch there are branches

1 that go to the brain carotid arteries, down the arm which is  
2 where we can feel you pulses in the midarm and near the thumb,  
3 the radial artery.

4           The very first branches that come off the aorta are  
5 the coronary arteries. The heart has plumbing and electricity.  
6 There is the strength of the heart muscle, the status of the  
7 plumbing, the coronary arteries, and the disease in the western  
8 world is sludge, cholesterol building up in a coronary artery  
9 blocking the amount of blood flow, so you can have a blockage  
10 that grows progressively, so you can say it's 60 percent  
11 blocked, which means it's 40 percent open or 70 percent blocked  
12 or 80 percent blocked. That's cholesterol sludge blocking one  
13 of the coronary arteries reducing blood flow to a section of the  
14 heart muscle. That is the largest disease in the United States  
15 and the biggest cause of death in the United States.

16           The electrical system means the heart has to pumping  
17 regularly and has electricity spreading through the muscle to  
18 make it beat. If you want to understand the heart all you need  
19 to know about the given person is the strength of the muscle,  
20 the status of the plumping and whether the electricity is  
21 working well.

22           Coronary disease is again the cholesterol build up  
23 inside the arteries that fill the heart muscle.

24           Q. Dr. Charash, can you tell us what an acute coronary  
25 syndrome is?

1           A.    I can and it would be helpful if I can potentially  
2 draw something.

3           Q.    Yes.  I have a pad and some pens there.

4                    Would you like to do it from there or come here?

5           A.    I think it would make more sense if I stand.  Is that  
6 okay, your Honor?

7                    THE COURT:  Yes.

8                    THE WITNESS:  Thank you, sir.

9           A.    I'm going to draw a blow up of a coronary artery.  One  
10 of the three arteries on the surface of the heart that delivers  
11 oxygen to the heart muscle.

12                   There are three separate arteries each going to  
13 separate territories of the heart, three rivers, garden hoses,  
14 fuel lines.  So if you blow up a fuel line -- this is an artery  
15 bringing blood to the heart.  It has a wall.  When cholesterol  
16 builds up it starts to penetrate the wall.  It grows into what  
17 we call a plaque.

18                   This plaque, which blocks the artery, in this case  
19 you're going to argue that's 70 percent blocked.  Now this  
20 plaque, which may be 70 percent blocking an artery is filled  
21 with chaotic bodily tissue.  It has cholesterol inside, free  
22 fatty acids, cell debris, scar tissue , inflammatory cells.  
23 It's a hodgepodge of a battle as the plaque grows.

24                   If blood were to come into contact with the meat of  
25 the plaque, the blood would misinterpret that as a knife wound

1 because material is so chaotic that from the blood's point of  
2 view it thinks it's an injury. When the blood thinks it's an  
3 injury it forms a blood clot abruptly in place, but fortunately  
4 the cholesterol plaque as it grows has an outer layer, which  
5 I'll consider similar to an egg shell that separates the blood  
6 as it flows through the artery from the material inside.

7           Because of this egg shell type layering over the  
8 plaque, blood travels through it although may be limited because  
9 the blood has to go through a more narrow passage, but it's  
10 completely separated from the chaotic material inside of that  
11 plaque.

12           Now, every year in the United States two million  
13 people suffer a crack in that egg shell. Two million people a  
14 year who have plaque will have a plaque rupture where the egg  
15 shell cracks, which means that blood traveling down the artery  
16 abruptly comes into contact with that inflammatory material and  
17 forms an acute blood clot.

18           Now an acute blood clot, if it forms can abruptly take  
19 a 70 percent blockage to a hundred percent within seconds as the  
20 clock rapidly seals on the remaining artery.

21           Of the two million people a year that have a ruptured  
22 plaque one million of them immediately have heart attacks, and  
23 we call them ST elevation heart attacks because the EKG goes  
24 crazy when it happens.

25           There are segments that rise up. Those million people

1 when that blood clot forms it's there to stay. Unless they get  
2 to a hospital where either catheter can be put in to smoosh it  
3 open or drugs given to dissolve the clot, they will feel, if the  
4 clot never went away, severe unremitting pain for 18 to 24  
5 hours. Then the pain will go away on it's own because  
6 everything downstream is dead.

7 Now of the million people who get this ruptured plaque  
8 and a complete closure there's say 100,000 of them die before  
9 they ever get to the hospital.

10 Arrhythmia usually a short circuit of the electrical  
11 system 900,000 get admitted through emergency room where they  
12 primarily go to a lab where a balloon is put in to smoosh it  
13 open, interrupting the heart attack or get clot busting drugs.

14 One million people when the plaque ruptured you get an  
15 abrupt heart attack. There's another million people that when a  
16 plaque ruptures, a blood clot does form just like the ST  
17 elevation major heart attack people, but in the other million,  
18 the other 50 percent the body fights back.

19 Within the cells of the arteries of the heart there is  
20 natural blood dissolving agents and blood thinners that can  
21 fight the clot. Now the interesting thing is it becomes a  
22 battle because once a clot forms it keeps trying to grow, but  
23 for these million people what we call an acute coronary syndrome  
24 as opposed to a full heart attack, the body dissolves the clot  
25 allowing even a small opening that will relieve the symptoms.

1           So it's like an arm wrestling competition when the  
2 clot has you pinned you'll feel pain, the pain can last for  
3 three minutes, ten minutes, 20 minutes. Usually it occurs at  
4 crazy times because stable coronary disease would be you have a  
5 70 percent blockage when you run full speed up a hill you're  
6 working your heart so hard that you develop chest pain.

7           Here this isn't about what you do anymore. Chest pain  
8 is coming and going based on the battle that's occurring on the  
9 surface of that plaque.

10           Of the million people a year every pattern imaginable  
11 has been seen. People can have on again off again chest pain  
12 for hours, days, and potentially weeks before they have a heart  
13 attack.

14           So the million people who have an acute coronary  
15 syndrome have ruptured a plaque, formed a blood clot, but  
16 they're engaged in a critical struggle within the coronary  
17 artery where the body is doing everything positive to dissolve  
18 that clot and that clot is doing everything possible to grow and  
19 block the artery.

20           The most common symptom is of an acute coronary  
21 syndrome is the development of chest pain while doing nothing.  
22 Which demonstrates that the problem in your heart isn't related  
23 to the work you're doing, but it's related to the artery  
24 collapsing on itself. Like I said pain can be three times a  
25 day, 30 times a day. Pain can be extremely intensive,

1 moderately intense. So you can have any pattern, any duration  
2 because a million people a year get this problem the nature of  
3 how they present is so diverse that virtually any pattern fits  
4 into this.

5 But once a person complains of chest pain at rest if  
6 it's coronary, it's a big if, if a person is having chest pain  
7 at rest, and if it is coming from the coronary artery it is by  
8 definition an acute coronary syndrome where they're engaged in a  
9 struggle where they can lose at any time.

10 Somebody with chest pain at rest that comes and goes  
11 if it's not cardiac it's not nothing. If it is cardiac they're  
12 life is on the line because most people lose the battle,  
13 eventually they lose the battle in an hour, in a day in a week  
14 and sometimes in a couple of months.

15 So it can extend over a really long period of time  
16 depending how strongly the bodies ability to resolve the clot.  
17 You're virtually facing a high probability of losing the battle  
18 and then you become one of the heart attack patients.

19 That's all I need to draw.

20 Q. Thank you.

21 Dr. Charash, you did review Juan Colon's medical  
22 records specifically the medical records of Dr. Lefkovic, is  
23 that correct?

24 A. Correct.

25 Q. Doctor, I'm going to take you to the stress test of

1 February 5, 2013 that was performed by Dr. Lefkovic on Mr.  
2 Colon.

3 Can you please -- Did you have an opportunity to  
4 review that before you came here today?

5 A. I did.

6 Q. Now, I would like you to assume, Doctor, that when Mr.  
7 Colon presented for the stress echocardiogram to Dr. Lefkovic's  
8 office for the stress echo he had already been diagnosed with  
9 coronary artery disease in 2008, having had a positive stress  
10 echo test done then, and having had a cardiac catheterization  
11 performed on November 4, 2008.

12 I would like you to further assume that at that point  
13 Dr. Snyder, Dr. Lefkovic's partner, diagnosed that there was a  
14 60 percent stenosis of the first diagonal branch of the left  
15 anterior descending artery.

16 When Mr. Colon presented on February 5, 2013 he had  
17 also began to complain of chest pain, on and off chest pain.

18 How is that significant?

19 A. Well, it's significant on several levels. Mr. Colon  
20 had shown a 60 percent blockage in a branch of one of the bigger  
21 arteries and he had some irregularity in his right corner artery  
22 called luminal irregularity early atherosclerosis.

23 In cardiology the understanding is that over the  
24 course of a year, over the course of three months coronary  
25 disease doesn't usually change very much, but over the course of

1 a year it can radically change.

2 So it's five years in 2013, under five years from when  
3 he was demonstrated to have some blockages. Five years is a  
4 long time and as a result he was certainly vulnerable to having  
5 advanced coronary disease.

6 So he wasn't just a patient who is presenting for the  
7 first time in his life with chest pain. He's somebody who has  
8 proven as of five years ago he had a blockage and whether or not  
9 you do aggressive measures to try and prevent cholesterol growth  
10 you have to always work under the assumption it's going to  
11 progress no matter what you do. If you're lucky it doesn't.

12 But the physician treating you, if somebody has chest  
13 pain, must worry that your heart disease has gotten much worse  
14 in five years. When he presented with on again/off again chest  
15 pain, which resulted in him getting a stress test that  
16 ultimately raises the concern of coronary symptoms.

17 And then if he's having coronary symptoms, depending  
18 on whether they're presenting at maximum activity, which would  
19 be stable or minimal activity or rest, which would be unstable  
20 would texture what you need to do in terms of the diagnosis.

21 Obviously if you're having unstable coronary pain time  
22 is your enemy. When he presented for a stress test he's high  
23 risk for having advanced coronary disease, having recurring  
24 chest pain. So a stress test at this point is very important.

25 Q. I would also like you to assume, Doctor, when he

1 presented for the stress test on February 5, 2013 that he did  
2 not have -- I would like you to assume that Dr. Lefkovic at no  
3 point in 2008 to 2013 provided any type of medical therapy to  
4 the patient, nor did he participate, nor did he record any type  
5 of active treatment, any risk factor modifications, so when he  
6 presented on that day what is a resting 25 on the EKG?

7 A. Sorry.

8 Q. You had an opportunity to look at the 2013 EKG?

9 A. Yes.

10 Q. Doctor, can you tell us what that February 5, 2013  
11 suggests?

12 A. Okay. On February 5, 2013 before he underwent  
13 exercise Mr. Colon had a regular EKG done, which is called  
14 baseline EKG before you exercise somebody.

15 So that's the first piece of medical information.  
16 What does your EKG look like before you exercise?

17 In his case his EKG was correctly interpreted as  
18 showing inversions of what we call T waves in the inferior  
19 leads. The actual interpretation is T wave abnormality consider  
20 inferior ischemia.

21 Inferior ischemia, which this EKG suggests is a  
22 possibility, even before you exercise the EKG is saying he may  
23 be experiencing a battle going on in his heart. It's telling  
24 you it's the bottom wall of the heart.

25 The bottom wall of the heart is most commonly

1 providing blood flow from the right coronary artery. As a  
2 clinical cardiologist when you see an EKG at rest before they  
3 even exercise that says there's T wave inversions in the  
4 inferior leads. You begin with a bias that there is a  
5 likelihood of a blockage in the right coronary artery or at  
6 least with that as a clinical concern.

7 Q. Going to direct you to this screen. There is that  
8 resting EKG of February 5, 2013. I'll give you the date at the  
9 bottom. You can see it there, February 5, 2013?

10 A. Yes. Well, that's the interpretation you're showing.  
11 It does say T wave abnormality consider inferior ischemia and  
12 that's because there are T waves inverted in leads 3 and ADF.

13 Of the 12 satellites some of the leads look at the  
14 bottom of the heart and in his case a T wave, which should be up  
15 right was inverted that's a potential now, it doesn't prove it's  
16 a coronary, but in the back drop of him having chest pain this  
17 type of EKG would be concerning for ischemia.

18 Q. Now explain to the jury what ischemia is?

19 A. Well, the heart doesn't really care how blocked your  
20 artery is, it doesn't know how blocked your artery is. The  
21 heart only cares if it's getting oxygen and nutrition. So if  
22 the heart is not getting enough oxygen and nutrition to work  
23 that's what I say is misery of the heart because it's working in  
24 the absence of oxygen, and we call that ischemia which is the  
25 heart having to perform work without enough oxygen to create the

1 energy.

2           So if the heart isn't getting enough oxygen to create  
3 the energy to work. Without oxygen that builds up acid which  
4 then causes pain or pressure. So if the heart is at rest not  
5 getting enough oxygen that would be a sign of potential unstable  
6 disease.

7           If the heart at maximum activity shows a lack of  
8 oxygen that would indicate a higher risk for stable disease.

9           Q. Now, on February 5, 2013 Mr. Colon also underwent  
10 exercise EKG, is that correct?

11          A. Yes, he did.

12          Q. Doctor, can you tell us what the results were  
13 regarding the stress EKG results?

14          A. I want to give a prospective. He went through a  
15 stress echo, which means before he exercised there was a  
16 sonogram taken of his heart to look at the muscle. He's  
17 attached to it 12 leads, EKG.

18               He exercises until he can no longer exercise. Every  
19 minute that he exercises an EKG is taken to look for evidence of  
20 EKG exchanges. At the end of the exercise, as soon as he stops  
21 as quickly as logistically possible, he's put on the table and  
22 echocardiogram is performed at the end of exercise. So you have  
23 two ways of evaluating the heart.

24               One is the presumption that the arteries are really  
25 terrible, the heart wall might weaken during exercise that would

1 be an abnormal finding.

2           The other way we evaluate the heart is looking at the  
3 EKG and see if there are classic EKG changes that are consistent  
4 with ischemia.

5           Again, both the EKG, these electrical satellites, and  
6 the echo are independent measurements of the heart that are  
7 occurring simultaneously. So you get two sets of information  
8 the imagining study and the EKG. In his case his EKG showed  
9 classic abnormalities for ischemia according to the report and  
10 there are called ST segments that drop down. In ischemia one  
11 millimeter is the magical number.

12           There was one millimeter of ST depression in the  
13 following leads 2, 3 AVF, V5 and V6 that means in five of his 12  
14 EKG satellites there were classic findings for oxygen  
15 depravation to the heart during exercise. So if he just had the  
16 treadmill and the EKG was the only thing done you would conclude  
17 that this was an abnormal stress test and that it was likely he  
18 had coronary disease that's what the EKG would tell you.

19           Q.    What are the segments of ST depressions on those five  
20 leads?

21           A.    One milliliter suggests ischemia. If it's found in  
22 two leads that becomes significant. If it's found in five leads  
23 it's very significant. They would be classically read as a  
24 stress test positive, which is a bad thing, positive for  
25 coronary artery disease.

1           So if you took the echo out of the equation this  
2 stress test would be said that it's abnormal and that he has  
3 blocked arteries.

4           Q.   That's my next question what would the positive stress  
5 test suggest?

6           A.   It would suggest that he is being attacked by coronary  
7 disease and, of course, later on based on his symptoms it would  
8 lead to a more aggressive intervention.

9           Q.   Now, in addition to the EKG aspect of the stress  
10 echocardiogram what else is done during that process?

11          A.   Well he had the echocardiogram done at rest and at the  
12 end of exercise. What you do is you compare -- by the way the  
13 programs are based as Dr. Lefkovic had in his office you can see  
14 side by side.

15                When you do an echocardiogram you look at the heart  
16 from different angles to get different slices of the left  
17 ventricle.

18                What you do is you look at certain predetermined  
19 angles of the heart and then you look at the same places at rest  
20 and exercise and on the screen you can project the rest imagine  
21 and the exercise imagine side by side.

22                From each of the different views you can see whether  
23 or not the heart muscle is showing any fragility during exercise  
24 or whether it strengthens. Most of us the heart muscle gets  
25 stronger, stronger, harder and harder with exercise.

1 Presumably with blocked plumbing some part of the  
2 heart muscle might weaken that's what you look for. When you do  
3 an echocardiogram there's a special caveat that is that an  
4 echocardiogram is a test that sends you sound waves from your  
5 chest wall that must penetrate your skin, bone to look at the  
6 heart.

7 Some people the way their body is build you see the  
8 heart wall perfectly well. Other people the way their body is  
9 formed it's not. It's not the doctor or technician's fault you  
10 can't see the heart very well.

11 So walls just can't be seen with clarity. So every  
12 echo can be scored in terms of how technically effective it was.

13 A perfect stress echo would be perfect clarity of the  
14 walls seeing them strengthen. If there is difficulty in  
15 envisioning the wall that changes things.

16 What I mean by the wall, I can draw it here. Is if  
17 you see the heart muscle you want to see the outer and inner  
18 wall. You want to see them both beat. If you have a view that  
19 delineates a wall with both the outer and inner rim and watch it  
20 beat that is a perfect echo imagine.

21 If you on the other hand get an imagine that looks  
22 like this and you can't see the wall it's not delineated, then  
23 you cannot consider that a valid imagine to make a determination  
24 because sometimes a wall will be just haze. You're not really  
25 seeing the wall. If that's the case, and the more that's the

1 case the less effective the echo test is in being reliable  
2 because you really need to see the clarity of the walls if you  
3 don't that would limit the stress echo portion.

4 Q. Now, if you have an abnormal EKG, but you have a  
5 normal echocardiogram what does that mean specifically?

6 A. If a patient has let's say they have the perfect echo  
7 stress test and you see all the walls perfect well and they get  
8 better with exercise and then you have conflicting information  
9 that the EKG, which again is independent, shows ischemia that's  
10 a mixed result. One part of the test says you're normal one  
11 part of the test says you're not. You would have to  
12 individualize the patient based on their risk and the nature of  
13 their system.

14 If a person is very high risk for coronary disease  
15 such as Mr. Colon having previous coronary disease five years  
16 earlier, and if they're having pain at rest and pain at rest  
17 means the struggle to close the artery then with a mixed  
18 exercise test you have to err on the side of coronary disease.

19 You cannot dismiss the EKG that's if the stress test  
20 were perfect on both ends because you're dealing with a high  
21 risk patient with the highest risk symptom.

22 That would mean with a mixed result, perfect echo  
23 that's normal and EKG with classic ischemia in five leads you  
24 would have to work on the assumption that he has coronary  
25 disease and submit him for a catheretization and angiogram

1 because it's not like a low risk patient with low risk symptoms,  
2 which would then in a lower risk environment have less  
3 consequences in a high risk patient.

4 You cannot be higher risk than Juan Colon from the  
5 fact -- even though he had major disease, clear disease five  
6 years earlier and if his pain was at rest that's life  
7 threatening. If it's coronary even with a perfect split between  
8 the echo and EKG you have to err on the side of safety and  
9 catheterize him.

10 Q. What you're stating is that the echocardiogram portion  
11 of the stress test does not override the EKG abnormal stress  
12 test, is that correct?

13 A. Because again they're unrelated to each other.  
14 They're totally independent evaluations. Even if the echo is  
15 better in terms of adding more information it's certainly not  
16 perfect and there are things called false negatives.

17 About five to ten percent of all stress echoes even if  
18 they're normal people have major coronary disease. So if the  
19 EKG lights up and the echo doesn't in a high risk patient with a  
20 high risk symptom the standard of care says you must assume it's  
21 coronary disease because their life depends on it.

22 Q. What is the significance that you mentioned earlier of  
23 not visualizing the walls of the heart on the echocardiogram?

24 A. Well, the less information seen on the echo by poor  
25 visualization the even weaker your conclusion is that the echo

1 is normal.

2 In Mr. Colon's case as we will demonstrate there are  
3 many views where the heart wall cannot be seen at all. There  
4 are some views you see it great other views there's no  
5 visualization of the wall and key images are missing. The wall  
6 in that case, the technical limitation by failing to see  
7 critical sections of the heart muscle wall means that you can't  
8 call the echo normal. It's incomplete.

9 So even if it were normal the EKG changes were so  
10 significant and rest pain is so concerning, but in this case the  
11 echo is far from perfect because there are a number of clear and  
12 critical views of the heart wall including the lateral wall,  
13 which was involved that you just don't see the wall at all.  
14 There's no clear visualization. You're guessing at the wall and  
15 that weakened the ability to say the echo was normal.

16 Q. So it's vital to see all the critical views on the  
17 echocardiogram?

18 A. It's a sliding scale from perfection to complete  
19 snowing in Buffalo. We use that term when we see a white out.

20 There's an in between. In this case there were well  
21 visualized views of the heart wall where you see the full  
22 thickness, a valid view to compare it, and other crucial views  
23 where the wall is invisible.

24 Q. Would you like to show the jury at this point?

25 A. Yes. Is there a way to dim the lights?

1                   THE COURT:  It's possible, but I would rather  
2                   not.  They might not come back on.

3                   A.  I'll do the best we can with what we have.

4                   It's hard to see with the lights on.  You can see here  
5                   that actually in this view you're seeing the heart wall  
6                   thickness very well.  I wish we could see better than that, but  
7                   this is the thickness of the heart wall.  You're seeing an inner  
8                   and outer edge, which is a good image.

9                   Likewise here you're seeing the inner and outer wall  
10                  of the heart, which means that these rest and exercise images  
11                  when compared are effectively looking at the heart muscle and  
12                  when it moves you can see the heart muscle more effectively than  
13                  what you can see with the lights on.

14                  When you get to a view such as this here on the rest  
15                  image, it's hard to see.  You can see a wall here a wall here.  
16                  On the exercise image over here it's hard to see.  You don't see  
17                  the complete wall.  I'm just sorry it's hard to show better than  
18                  this, but there's a more important view, this is a perfect  
19                  comparison.  I just will use this as an example.  There's no  
20                  point in seeing every image.

21                  At this view at rest you see the walls effectively in  
22                  here you can see the walls effectively.  Here on the exercise  
23                  image you can see the wall almost all the way around, but here  
24                  you can see that there's nothing.  It's just complete white out  
25                  of the wall.  This is the lateral wall of the heart.  You can't

1 see the wall at all. You can vaguely see a wall at rest and you  
2 cannot see any wall at all at exercise.

3 So I think that the only point I want to make from --  
4 I'm not showing every image of the stress test, there are clear  
5 moments in the stress test where due to Mr. Colon's body build  
6 there were views where you could not see the heart wall at all,  
7 which means that the echo was incomplete.

8 I agree with Dr. Lefkovic that the images that he saw  
9 where you saw the walls were good images because the heart  
10 muscle did get stronger from rest to exercise, which is a good  
11 response, but there were too many images like this one where you  
12 could not visualize the wall, and that may well be the wall that  
13 was showing the trouble. And if you can't see the wall you  
14 cannot conclude the test was complete.

15 Again, that's the nature of echo. Some people you see  
16 sharper better views of every part, some people everything is  
17 like this and it's totally useless. I would say Mr. Colon was  
18 in between. There were some critical views of his heart where  
19 the wall could not be evaluated, not established as a result.  
20 You can't call this as a normal stress test because too many  
21 vital walls were just not visualized.

22 Thank you, sir.

23 Q. Dr. Charash, I would like you now to assume that after  
24 Mr. Colon left Dr. Lefkovic's office on February 5, 2013 that he  
25 continued to present with complaints of chest pain and the

1 symptoms became more intense, and I would like you to assume  
2 that he made an appointment and called Dr. Lefkovic for an  
3 office appointment to see Dr. Lefkovic for the first time in his  
4 office since he had seen him in 2008 because of the complaint of  
5 chest pain that he was feeling.

6           Specifically, Doctor, I would like you to assume that  
7 when he made that phone call he was able to obtain an  
8 appointment for February 21, 2013 at which appointment he  
9 presented to Dr. Lefkovic's office and his complaints were chest  
10 pain at rest, palpitations, shortness of breath, dyspnea,  
11 dizziness, slight headedness. I would like you to assume that,  
12 Doctor.

13           And I would like you to also assume that Dr. Lefkovic  
14 was aware and had already confirmed that the patient, Mr. Colon,  
15 already was diagnosed five years earlier for coronary artery  
16 disease.

17           What is the significance of that presentation, Doctor?

18           A. You left out one of the symptoms, which was exercise  
19 intolerance.

20           Q. Yes.

21           A. So what's documented in the note is short of breath.  
22 Short of breath can be for a lot of reasons. It could be lung  
23 disease, heart disease, it can be being out of shape, but when  
24 someone says they're short of breath they're usually meaning at  
25 a time that they don't expect it.

1           We all know what will make us short of breath and  
2 consider normal if you're complaining of shortness of breath to  
3 a doctor. If you're writing that down that means not at your  
4 maximum work when you should be getting short of breath like  
5 running up five flights of stairs.

6           He had exercise intolerance. Although it's not clear  
7 whether the exercise intolerance is caused by the shortness of  
8 breath or not and how much limitation to exercise is not  
9 recorded, how intolerant is he, how bad is it.

10           Light headedness and palpitations are very concerning  
11 for cardiac symptoms. Palpitations is the feeling of the heart  
12 beating harder, faster, which carries with it arrhythmia and  
13 whenever somebody has symptoms and palpitations is added it  
14 raises the coronary artery disease that there's instability in  
15 the heart.

16           Again, we know that Mr. Colon is a diabetic and he had  
17 coronary disease as a result, five years later it's going to be  
18 worse. So before you even integrate the stress test results  
19 into this office visit the note says, Stable chest pain at rest.  
20 Denies exertional chest pain.

21           Well, I'm not sure how to interpret "stable chest pain  
22 at rest" other than to say there is chest pain at rest.

23           Now if a person is having chest pain at rest if it's  
24 coming from the heart the clock is ticking because they have a  
25 ruptured plaque and they're about to close the artery that's the

1 only reason why you get cardiac pain at rest. It's the only  
2 reason. There is something going on in the artery that's  
3 driving your problems.

4           Given his stress test result where there was  
5 unquestionable ST segment depression a marker of ischemia, given  
6 the stress test result that showed concern for inferior wall  
7 ischemia on the EKG before the exercise began, which again  
8 predicts the right corner artery, which is the artery that acted  
9 up, and given the incomplete echo even though, even if it were  
10 complete the standard of care required to refer him to  
11 catheretization.

12           He knows he has coronary disease. It's going to  
13 progress pain at rest, palpitations, light headedness, short of  
14 breath. The note is incomplete. It doesn't tell you how long  
15 the episodes are, how frequent they are, if there was a pattern,  
16 if there was a change.

17           The word stable indicates that whatever was going on  
18 with the rest pain it wasn't dynamically changing. I would  
19 accept that, that the pattern of rest pain was not changing day  
20 to day. There's still pain at rest in a man who is  
21 statistically going to have much more disease than he did five  
22 years ago. Inferior ischemia on the EKG, clear ST depression,  
23 and like I said even with a perfect echo, but in this case not a  
24 perfect echo you have to then send him for catheretization to  
25 much is at stake.

1           The standard of care required referral for  
2 interventional cardiology to diagnose the blocked artery.

3           Q.    When you say interventional cardiologist that's  
4 basically doing a cardiac catheterization and going in and  
5 seeing what exactly is blocked?

6           A.    Yes you have a diagnostic study where you inject  
7 contrast material, see it flow.  If it narrows down you can tell  
8 it's a blockage.  Then the intervention where you put in a  
9 balloon.  I didn't train in interventional cardiology.  I have  
10 not done intervention since my fellowship, so I don't do the  
11 procedure, but I refer people for this procedure regularly and  
12 probably done it over 5,000 times or 10,000 times in my career,  
13 so as a result he's a man that needed referral for the  
14 procedure.

15                   THE COURT:  Let's take a minute.

16                           (At this time Elaine Forlenza relieves Tammy  
17 Rodriguez as the court reporter.)

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1           Q           Dr. Charash, I am going to ask you to now, do  
2 you have an opinion to a reasonable degree of cardiac  
3 certainty whether Dr. Lefkovic departed from good and  
4 accepted medical practices on February 21st, 2013 for  
5 failure to diagnose Mr. Juan Colon with an acute coronary  
6 syndrome because the patient had presented with pain --  
7 chest pain at rest, dizziness, light-headedness, exercise  
8 intolerance, fatigue, palpitations, shortness of breath, who  
9 had been previously diagnosed with coronary artery disease  
10 five years previously, and who had presented to his office  
11 weeks before -- two weeks before on February 5th, 2013, with  
12 a positive EKG which showed one millimeter ST depressions in  
13 the five leads specific to the inferior portion of the  
14 heart? Do you have an opinion, Doctor?

15           A           Yes.

16           Q           And what is that opinion?

17           A           That he deviated from the standard of care by  
18 failing to recognize that Juan Colon was suffering from at  
19 least a very high risk for acute coronary syndrome and  
20 failing to refer him for cardiac catheterization for the  
21 diagnosis.

22           Q           And what is the basis of your opinion, Doctor?

23           A           Well, pretty much everything we have said.  
24 His previous known coronary disease, his abnormal EKG  
25 suggesting the right coronary artery was in trouble even

1 before the exercise began, the EKG being abnormal under  
2 stress test, the echo being incomplete, and the symptoms  
3 that we've discussed when he came in of pain at rest. Pain  
4 at rest meaning if it's cardiac it's unstable.

5 So for those reasons and because it's the  
6 equivalent of a ticking package, you don't know when the  
7 heart is going to blow, time is against the patient, so you  
8 have to refer speedily for a cardiac catheterization.

9 Q Did Dr. Lefkovic also deviate from the  
10 standard of medical care in obtaining proper diagnostic  
11 notes as to the patient's presentation of his chest pain,  
12 including the frequency pattern and magnitude of the resting  
13 chest pain?

14 A Yes. I believe he deviated by having an  
15 inadequate note because there are pieces of information that  
16 would be important. But that doesn't really change my over  
17 all opinion.

18 Q Now following this acute presentation  
19 Dr. Lefkovic, at that point, February 21st of 2013, ignored  
20 the symptoms of Mr. Colon, ignored the positive EKG findings  
21 and told the patient to go home and exercise. At which  
22 point, on March 30th of 2013, he now presents to the  
23 emergency room of Staten Island University Hospital with a  
24 presentation of acute coronary syndrome.

25 Doctor, have you been able to review those

1 records?

2 A Yes.

3 Q And can you tell us what were the significant  
4 complaints that Mr. Colon presented with on that date?

5 A Well, on March 30th he presented via EMS for  
6 acute chest pain, presented to Staten Island University  
7 Hospital with chest pain. Had ST segment depressions in the  
8 emergency room. And there were two things that occurred.  
9 One is they measured things called cardiac enzymes.

10 Cardiac enzymes are certain proteins and the  
11 most important one is called troponin. Troponin is a  
12 protein that lives inside the heart muscle cell and it's  
13 really is not found in the body. If there is heart damage  
14 of any magnitude heart cells die, explode open and release  
15 this protein into the blood.

16 And it's like a bell curve. It rises up if  
17 there is heart damage and it comes down. And we look at the  
18 peak of that bell curve to get an idea of how much heart  
19 damage. Normally the amount of troponin is so low it's  
20 almost zero and if there is heart muscle damage you can  
21 follow the troponin.

22 And what was clear on Mr. Colon's presentation  
23 on March 30th are two things. He had a rise of his troponin  
24 from the low baseline of .09 up to a number greater than  
25 ten, which started to drop again. And then he had a second

1 rise in his troponin to another peak of eleven and dropped  
2 again suggesting he had a heart attack in two waves which  
3 happens.

4 Because he wasn't having the acute ST  
5 elevations. He was having what we call non ST segment  
6 elevation. It's a stuttering heart attack which means it  
7 was in pieces. The artery closed and opened, closed and  
8 opened, leading to a double-dip heart attack which resulted  
9 in permanent damage of heart muscle cells.

10 He also was noted to have recurrent chest pain  
11 in the hospital which required morphine from the time he was  
12 admitted. So what you can see is he didn't come in with a  
13 classic ST elevation heart attack. Instead, he came in with  
14 this much more intense stuttering heart attack which is kind  
15 of a double dip in the enzymes which we can show you.

16 Until he was finally catheterized which of  
17 course showed that the culprit artery was the right coronary  
18 artery which was the artery you would have predicted  
19 medically based on that first EKG, the stress test, which  
20 showed inferior wall ischemia. The stress test condition  
21 predicted the artery accurately.

22 Q The stress test of February 5th, 2013  
23 specifically predicted the area of the heart that would be  
24 affected and where the heart attack would actually occur; is  
25 that correct? EF

1 MR. DOPF: Objection, leading, answer in  
2 the question.

3 A Yes.

4 THE COURT: Already answered. Overruled.

5 MS. VILLARREAL: Thank you, your Honor.

6 Q Now, Doctor, I am going to ask you Page 200 LL  
7 and it shows specifically Staten Island University Hospital  
8 records that the troponin level on March 30th was .09.

9 Doctor, can you tell us first what is  
10 troponin?

11 A I think I have explained it. It's a protein of  
12 the heart muscle.

13 Now if you look where it says reference the  
14 range of normal is zero. Troponin in the blood which a lot  
15 of people have zero to .5 and that's in nanograms per  
16 milliliter. Now you notice his is not even at the upper  
17 limit of the reference range. It's .09. That's a very low  
18 number.

19 So he had when he came in the door even though  
20 he was engaged in a heart attack it takes hours for those  
21 enzymes to rise. So his first enzymes tell you his baseline  
22 .09. It's low. It's where most people are. It's very  
23 common to have in that range. It could be less, it could be  
24 more but that's about normal.

25 Q Doctor, someone a patient who is presenting in

1 the emergency room with cardiac symptoms, is it protocol for  
2 there to be an order of troponin?

3 A Of course.

4 Q And it's done -- it has to be done hours later  
5 because it doesn't come up in the bloodstream; is that  
6 correct?

7 A You repeat it in intervals of hours because,  
8 yes, it takes hours for cells that have died or to actually  
9 explode and it takes hours for the protein to seep out of  
10 the heart attack zone to seep into the bloodstream. So it  
11 takes approximately 12 to 18 hours for troponin to reach its  
12 peak after an attack.

13 Q And when the troponin reaches its peak what is  
14 it indicative of?

15 A Well, the peak of a bell curve gives you an  
16 idea of how much total death there was. So we use the  
17 ballpark of how much damage occurred.

18 Q When you say death you are talking about death  
19 to the actual heart muscle into the areas affected by the  
20 heart attack?

21 A Yes. How many cells died because if two cells  
22 die that's double the amount of troponin then one cell  
23 dying. So watching the rise of the troponin reaching a peak  
24 gives you an idea.

25 We use the peak as an assessment of the total

1 damage. Because that's absolutely reflective of death of  
2 the heart muscle cells.

3 Q And in addition to the troponin indicating  
4 there was a heart attack, what other indicators and what  
5 other treatment was given to Mr. Colon when he presented to  
6 the emergency room with respect to his heart attack?

7 A I do not understand your question.

8 Q Okay. I am going to strike that and we're  
9 going to stick to this at this point.

10 Now on March 31st the troponin levels, can you  
11 tell us what was occurring on March 31st at approximately  
12 1747?

13 A You mean at 5:06.

14 Q Correct.

15 A Well, again, we saw his first troponin when he  
16 came in was at 0.09. By five in the morning, on March 31st  
17 the next morning, he reached his peak for this peak because  
18 there is a second peak, of 10.51. You have to realize that  
19 that is 116 times higher than his initial level. So this is  
20 indicative of substantial heart muscle death. His troponin  
21 rose 116 times from when he came in the door.

22 Then you can see the troponin starts to drop  
23 again. And by midnight on March 31st it's coming down to  
24 4.12. Again, it's a bell curve so as the cells die it  
25 releases and then the release rate slows down and it

1 literally forms a curve. And you see a very clear bell  
2 curve of him reaching a peak of 10.51.

3 Q So based on those records, Dr. Charash, these  
4 records indicate that Mr. Colon experienced heart muscle  
5 death and a heart attack on March 31st; is that correct?

6 MR. DOPF: Objection, leading, answer in  
7 the question.

8 THE COURT: Overruled.

9 A It showed a heart attack occurred on  
10 March 30th because the troponin peaked in the morning of the  
11 31st.

12 Q It already started?

13 A So because the peak usually is 18 hours -- 12  
14 to 18 hours after the heart attack that proves that that  
15 peak level is reflecting the pain he had when he came to the  
16 hospital on the 30th.

17 Q And at this time on March 30th you reviewed  
18 the records he had not been taken immediately to the cath  
19 lab on March 30th; is that correct?

20 A Correct.

21 Q And on March 31st also he was not taken  
22 immediately to the cath lab at that time; is that right?

23 A That's correct.

24 Q Now we have troponin levels, Dr. Charash, that  
25 occurred on April 1st. Would you please explain to the jury

1 what we are seeing on the screen?

2 A Sure. We are seeing his troponins dropping  
3 from the initial curve because the second to the bottom  
4 April 1st at 1347, which is 1:47, it's down to 3.85. That's  
5 dropping from the heart attack from the 30th peaking on the  
6 31st and coming down again on the 1st.

7 But then he rises again to a new peak of 11.47  
8 at 1651, or 4:51 p.m. A second peak that's higher than the  
9 first peak. That would mean that 12 to 18 hours earlier  
10 there was a second wave of a heart attack that led to a  
11 second rise and fall.

12 So he had a clear curve that occurred when he  
13 came in on the 30th. The records show that he continued to  
14 have pain on the 31st and as a result again he was probably  
15 having what we call a stuttering heart attack, going back  
16 and forth and it led to a second peak which does happen.  
17 Not often but it does occur.

18 Q So in this situation Mr. Colon experienced two  
19 heart attacks from March 30th to April 1st?

20 MR. DOPF: Objection.

21 THE COURT: Overruled.

22 A You could look at it that way. The real way  
23 to look at it is he had a stuttering on again off again  
24 heart attack with two peaks. So it's all one acute coronary  
25 process with two major components where there was major

1 damage over the course of those two days.

2 Q Okay. And during the time that he presented  
3 to the hospital, Dr. Charash, do you know if Dr. Lefkovic  
4 was still his treating cardiologist?

5 A According to the records he was.

6 Q And pursuant to the hospital records did  
7 Dr. Charash -- did Dr. Lefkovic, I'm sorry, specifically  
8 accept service of this patient?

9 MR. DOPF: Accept service? Objection.

10 THE COURT: Sustained. I don't  
11 understand the question.

12 Q The term accept service, Dr. Charash, can you  
13 please explain that to us in the hospital records when a  
14 patient is being admitted?

15 A Well, the term we would use typically would be  
16 Dr. Lefkovic became his cardiologist of record. So he  
17 became the principle cardiologist in charge of his case.

18 Q So he became principle cardiologist and would  
19 be able to control his treatment at the hospital; is that  
20 correct?

21 MR. DOPF: Objection.

22 THE COURT: Overruled.

23 A Yes.

24 Q And, in fact, Dr. Lefkovic, at no point from  
25 the beginning of when Mr. Colon presented to Staten Island

1 University Hospital South and then was transferred by EMS to  
2 Staten Island University North to the critical care unit,  
3 and from the time he had the diagnosis of an acute  
4 myocardial infarction and accept service of this patient, he  
5 did not direct that an emergency catheterization be  
6 conducted on Mr. Colon until April 1st, 2013?

7 MR. DOPF: Objection, timing, bill of  
8 particulars.

9 THE COURT: I will allow it.

10 A Correct.

11 Q Thank you. And, Doctor, I am going to just  
12 refer you briefly to where it says here that the attending  
13 emergency room doctor, Christopher Niles, stated, "in  
14 discussion with Dr. Lefkovic and El-Sayegh will transfer  
15 patient to North CCU. Specifically he continues to state,  
16 "still waiting for primary doctor call." I will refer you  
17 to the top. "Contact Lefkovic, primary doctor  
18 cardiologist." Do you see that?

19 A Yes.

20 Q So the attending physician at the ED,  
21 Christopher Niles, confirmed that Dr. Lefkovic was the  
22 primary medical doctor for the patient, his treating  
23 cardiologist, and attempted to call him when he was admitted  
24 to the emergency room. At which point it took four phone  
25 calls to Dr. Lefkovic. And then, finally, Dr. Niles

1 indicates, "initial admit patient intermittently symptoms";  
2 is that correct, doctor?

3 A Yes.

4 Q "Initial admit to hospital as primary medical  
5 doctor with no call back times four has now called back  
6 admit changed to his service."

7 Does that indicate, Doctor, that specifically  
8 Dr. Lefkovic, when he accepted service of this patient,  
9 agreed to conduct and control the treatment of this  
10 patient --

11 MR. DOPF: Objection.

12 THE COURT: Overruled.

13 Q -- at the hospital?

14 A Yes.

15 Q Thank you.

16 Now, Dr. Charash, do you have an opinion to a  
17 reasonable degree of medical certainty whether the patient  
18 Juan Colon should have been brought as an emergency basis to  
19 the cardiac catheterization lab?

20 A I do.

21 MR. DOPF: Objection.

22 Q What is that opinion, sir?

23 MR. DOPF: Objection, bill of  
24 particulars, time.

25 THE COURT: I will allow it subject to

1 connection.

2 MR. DOPF: And 3101(d), failure to state,  
3 3101.

4 THE COURT: I will allow it subject to  
5 connection.

6 A Well, I believe that once Mr. Colon presented  
7 to the emergency room on the 30th with chest pain and very  
8 quickly was determined to be having a heart attack, once you  
9 come in and you continue to have chest pain even without a  
10 classic EKG, that's an absolute indication for emergency  
11 catheterization. Because, you know, as it showed he had a  
12 stuttering heart attack.

13 The initial wave of damage couldn't have been  
14 prevented because that already happened when he arrived.  
15 But that second wave of damage would have been prevented had  
16 he had an emergency catheterization and angioplasty.

17 Q And do you have an opinion, Doctor, whether  
18 Dr. Lefkovic deviated from the standard of care when he  
19 failed to direct the emergency catheterization of the  
20 patient?

21 MR. DOPF: Objection. No claim, bill of  
22 particulars, 3101(d) and bill of particulars  
23 limits scope of time and allegations.

24 THE COURT: Sustained, unless you can  
25 prove otherwise.

1           Q           Doctor, do you have an opinion as to whether  
2 Dr. Lefkovic deviated from good and accepted medical  
3 practices when he accepted service of this patient?

4                   MR. DOPF:  Objection.  Same objection,  
5 same basis.

6                   THE COURT:  Sustained, unless you can  
7 show otherwise.

8                   MS. VILLARREAL:  Judge, may we approach?

9                   THE COURT:  Sure.

10                   (Discussion held off the record at the  
11 bench.)

12                   THE COURT:  Why don't we take a  
13 ten-minute break, ladies and gentlemen?

14                   (Jury left the courtroom.)

15                   THE COURT:  Show me where or where not it  
16 appears in the bill of particulars.

17                   MS. VILLARREAL:  Judge, I don't think I  
18 have a copy.

19                   THE COURT:  I have one right here.

20                   MS. VILLARREAL:  And it's the end of  
21 departures.  It's right in the first departures.

22                   MR. DOPF:  Which document are we looking  
23 at?

24                   THE COURT:  Bill of particulars I am  
25 assuming.           EF

1 MR. DOPF: We are looking at the bill of  
2 particulars? Okay.

3 (Pause in proceedings.)

4 MS. VILLARREAL: It's the supplemental  
5 bill of particulars, Judge. The first one and  
6 it's the first departure that I mention.

7 THE COURT: Just looking at the bill of  
8 particulars.

9 MS. VILLARREAL: Okay.

10 THE COURT: Hold on.

11 MS. VILLARREAL: It's --

12 THE COURT: Are you ready?

13 MR. DOPF: Do you mind if I look on?

14 THE COURT: I have three of them here.

15 MS. VILLARREAL: Okay, great.

16 THE COURT: Why you gave me three I don't  
17 know.

18 MS. VILLARREAL: Try to be nice. Here we  
19 go.

20 MR. DOPF: This is supplemental.

21 MS. VILLARREAL: The supplemental  
22 specifically says --

23 THE COURT: What are you referring to?

24 MS. VILLARREAL: The first paragraph  
25 departed from good and accepted medical practice

1 in negligently misdiagnosing and failing to  
2 diagnose plaintiff's cardiac presentation.

3 Do you see that?

4 THE COURT: No. Where are you reading  
5 from?

6 MS. VILLARREAL: Supplemental verified --

7 THE COURT: Hold on.

8 MS. VILLARREAL: First paragraph, number  
9 one.

10 THE COURT: Go ahead.

11 MS. VILLARREAL: And then couple of --  
12 one, two, three, four, five, six sentences, six  
13 lines down, Judge.

14 "And departed from good and accepted  
15 medical practice in negligently misdiagnosing and  
16 failing to diagnose the plaintiff's cardiac  
17 presentation, acute cardiac symptoms, acute  
18 coronary syndrome, myocardial infarction, coronary  
19 occlusion; and in failing to properly record and  
20 evaluate the plaintiff's symptoms and complaints  
21 on clinical examination; defendants were careless  
22 and departed from good and accepted medical  
23 practice failing to properly evaluate and record  
24 the plaintiff's symptoms and complaints, and to  
25 take into consideration the plaintiff's past

1 medical history."

2 It goes on to the next page. "In failing  
3 to offer the plaintiff medical treatment to alter  
4 the progression of his disease, and to follow up  
5 with diagnosis and treatment of the plaintiff's  
6 medical condition; failure to promptly prescribed,  
7 order or perform additional tests including  
8 cardiac catheterizations, angiograph, angiogram,  
9 nuclear stress tests, echo-stress test, EKG" --  
10 it's all in there, Judge.

11 MR. DOPF: It doesn't make it, Judge,  
12 because if you look at the bill of particulars,  
13 Paragraph 7, counsel meticulously outlines the  
14 dates of alleged departures. And to be very  
15 specific it says, quote, beginning in or about  
16 November 2011 and continuing until plaintiff's  
17 myocardial infarction on March 30th, 2013.

18 I will show it to you, Judge.

19 MS. VILLARREAL: It continues if I can  
20 with the same supplemental bill of particulars on  
21 the second page at the bottom. It's one, two,  
22 three, four, five, six --

23 MR. DOPF: What page?

24 MS. VILLARREAL: It's the second page.

25 MR. DOPF: Second page.

1 MS. VILLARREAL: Second page. One, two,  
2 three, four, five, six from the bottom, Judge.  
3 There is a double colon that's like the marker.

4 MR. DOPF: I see it.

5 MS. VILLARREAL: "Failing to properly  
6 refer the patient to the emergency room for  
7 emergency cardiac assessment including cardiac  
8 catheterization; in failing to obtain necessary  
9 blood work, an interventional cardiology consult;  
10 in failing to properly and adequately evaluate and  
11 monitor the progress of the plaintiff's cardiac  
12 arterial disease, or lack thereof; in failing to  
13 order and/or perform necessary diagnostic tests  
14 and procedures including appropriate blood work  
15 including cardiac enzyme studies; in failing" --  
16 the next page.

17 "In failing to timely order necessary and  
18 indicated consultations and make timely and proper  
19 referrals; in failing to obtain medical records  
20 and consult with pulmonologist -- that's  
21 different.

22 "In failing to heed and/or take note of  
23 risk factors, clinical presentation and  
24 plaintiff's complaints, and EKG results for  
25 myocardial infarction."

1           This is all part of it, Judge. It's all  
2 part of it. This is all the lack and then the  
3 first -- the first very first thing that I say in  
4 my departures if you have that in front of you,  
5 Judge, and then it goes on. I say it again in the  
6 same page here.

7           MR. DOPF: Judge, I have a very simple  
8 question. How is counsel going to get around the  
9 fact that there is a bill of particulars that was  
10 served and Paragraph 7 brings the garage door down  
11 on the date of the myocardial infarction?

12           To quote, Beginning in or about  
13 November 2011 and continuing until -- continuing  
14 until plaintiff's myocardial infarction on  
15 March 30th, 2013, end quote.

16           All of the allegations that counsel just  
17 read to you would arguably have application before  
18 the heart attack. There are claims that we should  
19 have gotten a cardiac catheterization, for  
20 example, before the heart attack. So every one of  
21 those claims was completely and is completely  
22 applicable to anything on the day up to the heart  
23 attack and going backwards.

24           There is no way to go around this. We  
25 have the right to rely on a bill of particulars

1 which brings the garage door down on March 2013.

2 MS. VILLARREAL: Well, the supplemental  
3 bill of particular does not bring the garage door  
4 down.

5 MR. DOPF: Show us a date.

6 MS. VILLARREAL: I just indicate there is  
7 no --

8 THE COURT: There is no date.

9 MS. VILLARREAL: There is no date. So  
10 that's the reason it's specifically brought up to  
11 encompass the fact that he failed to immediately  
12 send him for emergency catheterization, which is  
13 stated in there.

14 It is the first line of my departures,  
15 Judge.

16 THE COURT: I understand that but I don't  
17 see a date in there.

18 MS. VILLARREAL: Because there is no  
19 date, Judge. It encompasses not only the first  
20 time when he made -- when he presented to his  
21 office on the 21st, but also when he presents  
22 continually in the emergency room now that he had  
23 a myocardial infarction which specifically it's in  
24 there.

25 So they're all in there, Judge. It

1 doesn't -- it doesn't limit in any way as to  
2 limiting it only to the 21st and up to the 30th.  
3 It continues.

4 That's why the supplemental was done  
5 because it's broader. It's broader and it  
6 continues the same issue which is that he should  
7 have been referred to emergency catheterization.  
8 It's there and if I can read your Honor from my  
9 departures because I don't have them in the front  
10 of me. Either it's the first one --

11 MR. DOPF: These are the departures that  
12 were provided during jury selection. So what.  
13 And that's not a 3101(d).

14 MS. VILLARREAL: And specifically it was  
15 part of the 3101(d) and it was --

16 THE COURT: I haven't seen the 3101(d).

17 MR. DOPF: Judge, very simply we served  
18 demand for a verified bill of particulars with the  
19 answer. And one of the questions, Question 7, was  
20 in effect, set forth the dates of the alleged  
21 negligence and those are the dates set forth.

22 I don't see how in the world plaintiff  
23 can now come in and say, oh, we can go past those  
24 dates. There is nothing in writing putting us on  
25 notice to that. And as I said every single claim

1 that plaintiff just read from could apply to  
2 things before.

3 MS. VILLARREAL: Judge, they apply to  
4 things before, they apply to things after. That's  
5 why it was broad and that's why we served a  
6 supplemental bill of particulars, and that's why  
7 it's in the 3101(d). It doesn't specify a date.  
8 That's what was omitted in the supplemental and  
9 3101(d) -- the supplemental 3101(d) because it was  
10 -- specifically it was a continuous process of  
11 failing to send him to have emergency  
12 catheterization.

13 That's why those dates were omitted. And  
14 it is a continuous process. It starts on the 21st  
15 and it continues all the way through until he had  
16 the catheterization. And he is in his service.  
17 So the jury has every right to hear that question,  
18 Judge, and to get a response from the expert.

19 THE COURT: Then why did you put dates  
20 down in the original?

21 MS. VILLARREAL: I didn't do it, Judge.

22 THE COURT: I am not saying you in  
23 particular.

24 MS. VILLARREAL: But that's why there was  
25 a supplemental bill of particulars. That's why

1                   there was a supplemental 3101(d).

2                   THE COURT: But they didn't have  
3 supplemental dates.

4                   MR. DOPF: Correct, Judge.

5                   MS. VILLARREAL: I didn't. The dates  
6 were not included in the supplemental 3101(d).

7                   THE COURT: I understand that which is  
8 the problem.

9                   MS. VILLARREAL: Well, it's not a  
10 problem, Judge, because it specifically shows that  
11 it's a continuous process of failing. It's not  
12 limited to that date. It goes -- it continues  
13 into --

14                  THE COURT: But it doesn't say that.

15                  MS. VILLARREAL: Well, it doesn't have  
16 to, Judge. As soon as it says the failure to  
17 diagnose myocardial infarction, every level, every  
18 time the plaintiff presents to him. And basically  
19 he has the the opportunity to treat the patient  
20 with an emergency catheterization is the point.

21                  He was the treating doctor. That was  
22 continuous treatment and the continuous treatment  
23 included his service at the hospital. And that's  
24 why -- that's why the dates were omitted because  
25 it's a continuous treatment. It doesn't have to

1 be on --

2 THE COURT: How do you know that? You  
3 said you didn't prepare that. How did you know  
4 what they were thinking when they prepared it?

5 MS. VILLARREAL: I am not talking about  
6 the first one. I am talking about the  
7 supplemental and the 3101(d).

8 THE COURT: Okay.

9 MR. DOPF: Why are there no dates?

10 MS. VILLARREAL: It's continuous  
11 treatment. It's continuous treatment.

12 MR. DOPF: That's a disingenuous  
13 argument. That means it goes on forever.

14 THE COURT: Hold on. One at a time.

15 MS. VILLARREAL: If counsel had any  
16 problem with the supplemental bill of particulars  
17 and the 3101(d) it would have been incumbent upon  
18 him to raise those issues at the very beginning of  
19 this trial. Not in the middle of my cross -- my  
20 direct examination of my expert cardiologist.

21 These were broadened supplemental bill of  
22 particulars and 3101(d) was specifically there was  
23 no date set forth because it was continuous  
24 treatment and the failure of this doctor at every  
25 point to send the patient for emergency

1 catheterization is the entire case, Judge. At  
2 every point.

3 THE COURT: I know it's the entire case  
4 which is why we're having this argument.

5 MR. DOPF: Judge, just so we're clear.  
6 Another episode of disingenuousness. I have been  
7 complaining about the fact that questions have  
8 been allowed for stuff that happened after the  
9 admission for the heart attack. So I have been  
10 bringing to the Court's attention literally from  
11 day one that the stop sign when we're finished is  
12 the heart attack up until. Until. Oxford  
13 dictionary, Webster dictionary, until, it means  
14 it's done, over, and I am entitled to rely upon  
15 that.

16 MS. VILLARREAL: Judge, counsel is not  
17 entitled because he decided to ignore the  
18 supplemental bill of particulars and to ignore the  
19 supplemental 3101(d), which did not provide a  
20 date. And specifically it was done purposely to  
21 not provide a date because it was continuous  
22 treatment. And every time the patient presented  
23 to this doctor and he had the ability to direct  
24 his catheterization, it was not done.

25 That's why the supplemental was done and



1 questions based on --

2 MS. VILLARREAL: It's in there. It's not  
3 limited. It's not limited, Judge. It's in my  
4 supplemental. It's there.

5 THE COURT: Tell me exactly where it's  
6 there because to be honest with you I still don't  
7 see it.

8 MS. VILLARREAL: Judge --

9 THE COURT: Yes.

10 MS. VILLARREAL: It's in there.

11 THE COURT: Where?

12 MS. VILLARREAL: I just went over it,  
13 Judge.

14 THE COURT: I still don't get it.

15 MS. VILLARREAL: Okay.

16 THE COURT: So.

17 MR. DOPF: Give us a date. Give us a  
18 date.

19 MS. VILLARREAL: There is no date. The  
20 date I just indicated --

21 THE COURT: Where does it say this goes  
22 on infinitum?

23 MS. VILLARREAL: Significant --

24 THE COURT: Show me where.

25 Show me the exact --

1 MS. VILLARREAL: We'll start from the  
2 beginning.

3 THE COURT: No. Show me the exact  
4 language where it goes on beyond March 30th.

5 MS. VILLARREAL: It doesn't give a date.

6 THE COURT: Tell me where it goes on  
7 after that.

8 MS. VILLARREAL: It doesn't.

9 THE COURT: Without a date.

10 MS. VILLARREAL: The whole supplemental  
11 bill of particulars does not provide a date.

12 THE COURT: I understand that. That's my  
13 question. So how could you get this in?

14 MS. VILLARREAL: Because, Judge, it's  
15 continuous treatment.

16 THE COURT: Give me that exact language,  
17 continuous treatment.

18 MS. VILLARREAL: This is -- here we go.

19 MR. DOPF: Continuous treatment has to do  
20 with statute of limitations. That's where that  
21 term comes in. Why bother even asking for alleged  
22 days of malpractice or negligence? Why even put  
23 it in your demand for a bill of particulars?

24 If counsel is going to say it's all  
25 continuous treatment why should we even have the

1 question?

2 MS. VILLARREAL: "Careless, negligent,  
3 and de parted from good and accepted medical  
4 practice in negligently misdiagnosing and failing  
5 to diagnose the Plaintiff's cardiac presentation,  
6 acute cardiac symptoms, acute coronary syndrome,  
7 myocardial infarction, coronary occlusion."

8 That's myocardial infarction, Judge, is  
9 when he presents at the hospital. That's exactly  
10 then. That's why it was not limited.

11 Counsel had an opportunity to review  
12 this. He had every opportunity. If he had any  
13 objections and wanted more specificity as to this  
14 supplemental bill of particulars he could have  
15 requested it. He did not.

16 It goes on. "Defendants were negligent  
17 and departed from good and accepted medical  
18 practice failing to properly evaluate and record  
19 the plaintiff's symptoms and complaints, and to  
20 take into consideration" --

21 THE COURT: Where specifically does it  
22 say beyond March 30th? That's all I'm asking.

23 MS. VILLARREAL: What, Judge?

24 THE COURT: Where does it say beyond  
25 March 30th? EF

1 MS. VILLARREAL: The supplemental bill of  
2 particulars.

3 THE COURT: I got it.

4 MS. VILLARREAL: Right. It doesn't  
5 say --

6 THE COURT: I still haven't heard it.

7 MS. VILLARREAL: Okay. Okay, here we go.

8 "Including his confirmed -- and to take  
9 into consideration the plaintiff's past medical  
10 history, including his confirmed coronary arterial  
11 disease and progression of his disease over a  
12 significant period of time; in failing to offer  
13 the plaintiff medical treatment to alter the  
14 progression of his disease, and to follow up with  
15 diagnosis and treatment of the plaintiff's medical  
16 condition; failure to promptly prescribed, order  
17 or perform additional tests including cardiac  
18 catheterizations, angiograph, angiogram, nuclear  
19 stress test, echo-stress test, EKG and/or a stress  
20 test, echocardiogram, nuclear testing, chest CT;  
21 in failing to render proper care and treatment,  
22 including failing to prescribe, order and follow  
23 up re: Cardiac medications, angiogram, angiography  
24 balloon angioplasty, anticoagulants, anti-platelet  
25 agents, clot dissolving drugs".

1                   It goes on. Okay. And then it goes on.

2                   "Percutaneous coronary intervention,  
3                   that's specifically cardiac catheterization and  
4                   angioplasty or a combination of treatments; in  
5                   negligently failing to diagnose the plaintiff's  
6                   heart disease and acute cardiac condition; in  
7                   negligently failing to diagnose plaintiff's  
8                   myocardial infarction", that is a presentation in  
9                   the hospital.

10                    "In failing to appreciate the  
11                   significance and fully evaluate and record the  
12                   plaintiff's signs, symptoms and complaints  
13                   including shortness of breath at rest and on  
14                   exertion/rest and chest pain or discomfort; in  
15                   failing to consider and interpret EKG results  
16                   including ST depressions" -- it goes on, Judge.

17                    There is no limitation. Counsel had this  
18                   supplemental bill of particulars since August and  
19                   at no time objected. He objected to the specific  
20                   departures that were submitted during jury  
21                   selection. The first departure that is mentioned  
22                   there was not mentioned before the witness took  
23                   the stand this morning.

24                    And that was specifically -- if you can  
25                   read from it, Judge, because I don't have it in

1 front of me what that is and that the failure to  
2 diagnose the myocardial infarction and send the  
3 the plaintiff for immediate emergency  
4 catheterization. It's continuous. There is no  
5 limit.

6 I don't say only on the 21st. I don't  
7 say on the 21st and March 30th and April 1st and  
8 April 3rd and April 4th. I don't say that. So it  
9 specifically omitted the dates because our  
10 allegation is broad.

11 If he, in fact, had any problems with  
12 those with the lack of specificity it was  
13 incumbent upon counsel to make those objections at  
14 the very beginning of the trial and certainly  
15 before my expert testified, it was not mentioned,  
16 it was not raised. And now in the middle of  
17 cross-examination he is not being allowed to  
18 answer a question that is clearly in here. The  
19 lack of to immediately refer the patient for  
20 emergency catheterization at another point in  
21 time.

22 MR. DOPF: May I be heard? This is all  
23 repetition. It's perseveration. May I be heard?

24 THE COURT: You will be.

25 MS. VILLARREAL: It is prejudicial. My

1 client has clearly set forth the allegations. The  
2 allegations were that at every level this  
3 continued. This is why the failure to diagnose  
4 the myocardial infarction, this is a presentation  
5 at the hospital. That's clearly at the hospital.  
6 That's when he is there.

7 So he was on notice there was no dates,  
8 Judge. If he wanted specificity it was incumbent  
9 upon him to request specificity at the very  
10 beginning and not in the middle of my  
11 cross-examination.

12 MR. DOPF: I had specificity, Judge. The  
13 Oxford living dictionary defines the word until  
14 as, quote, up to the point in time or the event  
15 mentioned. As preposition, quote, The kidnapers  
16 have given us until October 11th to deliver the  
17 documents. Or, quote, he held the office until  
18 his death. Until is a simple word. That's when  
19 the garage door came down. I had the right to  
20 rely upon it.

21 THE COURT: I am not going to allow it.

22 MS. VILLARREAL: Judge --

23 MR. DOPF: Can we take a break now,  
24 Judge?

25 THE COURT: Yes.

1 MS. VILLARREAL: Note my exception, your  
2 Honor. This is extremely adverse and prejudicial.  
3 It is clear in the supplement bill of  
4 continuation, Judge, and really I don't see how --

5 THE COURT: Your exception is noted.

6 MR. DOPF: Thank you. May we take a  
7 break, Judge? Five minutes okay?

8 THE COURT: Yes.

9 (Recess taken.)

10 COURT OFFICER: Jury entering.

11 (Jury entered courtroom.)

12 THE CLERK: The jury is present and  
13 properly seated. Do both sides stipulate?

14 MR. DOPF: Stipulated.

15 MS. VILLARREAL: Stipulated.

16 THE CLERK: Case on trial continued. The  
17 the parties remain the same.

18 THE COURT: Thank you.

19 Q Dr. Charash, I am going to direct your  
20 attention to the transthoracic echocardiogram that was  
21 conducted on March 31st of 2013 at the hospital of patient  
22 Juan colon and specifically in the document here. Could you  
23 tell us what the findings were?

24 You had an opportunity to review this  
25 document; is that correct, Doctor?

1           A           Yes.

2           Q           And specifically tell us where it says,  
3           clinical question ACS, could you start there and tell us the  
4           significance of what is denoted in that report?

5           A           Well, ACS means acute coronary syndrome which  
6           Mr. Colon was suffering from. And this is a sonogram of the  
7           heart measuring it's size and strength. And it says the  
8           ventricle, meaning the left side, the big pump was mildly  
9           dilated. Systolic function which is the strength, the  
10          beating, moderately reduced. Ejection fraction is estimated  
11          to be 35 percent.

12          Q           Could you explain to us what that means?

13          A           If you take a water balloon the best way to  
14          understand ejection fraction, fill it with water, hold the  
15          lip closed. If you release the closed lip and squeeze as  
16          hard as you can, it's obviously impossible to squeeze out  
17          one hundred percent of the water.

18                    Let's say you squeeze out 95 percent of the  
19          water and you would say that squeeze you ejected out of the  
20          water balloon 95 percent of the water. So the fraction you  
21          ejected 95 percent is what we call the ejection fraction.

22                    The normal left heart when it fills up with  
23          blood squeezes ejecting blood into the aorta. Normally when  
24          the heart squeezes most people the normal normal is 60  
25          percent. Most of us sitting here when the heart squeezes

1 one squeeze 60 percent of the blood inside gets sent out to  
2 the aorta, and 40 percent remains behind. Then more blood  
3 mixes in and then it squeezes again 60 percent of that out.

4 So the normal ejection fraction is 60. We say  
5 the range of normal is 50 to 70 but most people live at 60.  
6 If it's under 50 it is unquestionably clinically reduced,  
7 but people can have varying responses to changes of ejection  
8 fraction. Some people with very dilated hearts can actually  
9 tolerate low ejection fractions because the heart is triple  
10 in size, then a lower ejection fraction is still squeezing a  
11 lot of blood.

12 So people respond differently to ejection  
13 fraction changes. But here it is 35 percent which is  
14 moderately severe in terms of how much damage there was.

15 Q And what is the significance of ejection  
16 fraction that was 35 percent on March 31st, 2013 compared to  
17 when Mr. Colon had his last echocardiogram on February 5th,  
18 2013 where the echocardiogram resulted indicated he had an  
19 ejection fraction of greater than 55 percent?

20 A Right. I mean he was probably closer to 60 as  
21 almost everybody is. Now it's reduced to 35. Clearly his  
22 ejection fraction recovers because after a heart attack and  
23 you have an angioplasty some of the muscle that looks dead  
24 is actually asleep or hibernating and it can recover. But  
25 at this moment in time this is the weakest his heart

1 appeared and it was down to 35.

2 Q And this is a marker -- another marker that  
3 the medical community has in order to determine if the  
4 person had, in fact, a myocardial infarction?

5 A Yes.

6 Q So if the ejection fraction is moderately  
7 reduced or reduced from 55, 60 to 35 that would be another  
8 indication the person suffered damage to his heart?

9 MR. DOPF: Objection leading.

10 THE COURT: Overruled.

11 A Yes.

12 Q In addition -- on this echocardiogram in  
13 addition to the finding that his ejection fraction had been  
14 moderately reduced from 35 percent to the normal of 60, it  
15 also indicates that there was a kinesis of the inferior and  
16 hypokinesia of the inferolateral wall. Can you explain what  
17 that means, Doctor?

18 A Well, inkinesia means the wall isn't moving,  
19 the bottom wall had the heart attack which is supplied by  
20 the right artery. And the inferolateral wall, is the bottom  
21 side wall of the ventricle was weakened.

22 Q And that all is evidenced in this  
23 echocardiogram was the result of the myocardial infarction?

24 A Correct.

25 Q And, Doctor, following this result I'd like

1 you to assume that Mr. Colon continued to have cardiac  
2 presentation and was catheterized again following this 4/1  
3 catheterization.

4 And I would like you to assume that since his  
5 heart attack he experienced increased fatigue which did not  
6 permit him to play with his granddaughter, to go jogging, to  
7 go walking, to generally enjoy the things that he would do  
8 around the house and helping out.

9 What is the fatigability specifically  
10 following the myocardial infarction?

11 A Fatigability at any time is evidence that the  
12 heart is not producing enough general blood flow for the  
13 activities that you want to perform. When his ejection  
14 fraction was 35 percent that was when it was at its weakest  
15 which would be severely limiting in terms of the activities  
16 that a person can perform.

17 We know Mr. Colon's ejection fraction over the  
18 next few years improved. It rose on echocardiogram, nuclear  
19 images and catheterizations in the future to the 45, 50  
20 percent range or around 50.

21 Now 50 percent is not a terrible ejection  
22 fraction. If it is 50 it's in the range of normal but he  
23 was higher than 55 when he started. Some people at 50  
24 percent can carry on a normal day. I have seen people with  
25 ejection fraction of 40 percent with very little limits.

1 Other people with 50 percent especially with the amount of  
2 enzymes he lost, it may be 50 at rest, but he may not be  
3 able to mount an increase that's supposed to happen after  
4 activity.

5 So sitting in a chair with 50, 60 when he  
6 would get up to goes up to 70. So some heart attacks you  
7 are really not that damaged but you then don't have the  
8 ability to mount the cardiac response needed for activities.  
9 It's very variable based on individual response to a heart  
10 attack and potential comorbidity. So the point is people  
11 vary.

12 If Mr. Colon suffers from fatigability and a  
13 limitation in certain daily activities that he used to  
14 participate in, certainly the damage he had quantified by  
15 the enzymes that are released and the fact that his heart is  
16 resting at a low 50 that it certainly would mean that he  
17 can't mount the cardiac response to activity. He may be  
18 okay at rest and moderate activity, but it can vary from  
19 person to person. There are some people tolerate the same  
20 ejection fraction far better. Others far worse.

21 Q Given the damage that was done to Mr. Colon's  
22 heart are his symptoms and his presentation consistent with  
23 the damage that he sustained?

24 A Well, yes. There is no question that the  
25 heart attack that brought him by ambulance on March 30th,

1 2013 resulted in permanent damage to his ventricle. There  
2 is just no doubt we measured two peaks of enzymes and his  
3 ejection fraction was lower than where it was.

4 So unquestionably the heart attack that  
5 occurred between his office visit with Dr. Lefkovic in  
6 February to his heart attack in the end of March resulted in  
7 permanent damage.

8 Q And I'd like you to assume, Doctor, that two  
9 years before Mr. Colon's heart attack of 2013 -- heart  
10 attacks of 2013 he was disabled due to a cervical injury.  
11 Would you tell us, Doctor, what would be the significance of  
12 a heart attack occurring in 2013 on those cervical injuries  
13 preexisting condition?

14 A In medicine and I think in people who have  
15 experienced more than one medical problem understand that  
16 there is a term we call synergy. Where it's one plus one  
17 equals two, one plus one equals three or four. And that  
18 means if you have one chronic medical problem you are  
19 adjusting to even if it limits you, if you develop a second  
20 serious medical problem, the combination of the two can  
21 result in a far worse, over all physical ability than the  
22 sum of the two of them individually. Because they add on to  
23 each other.

24 People who have severe musculoskeletal  
25 problems often need higher cardiac outputs because they are

1 in pain, their body is under stress. So if you add to that  
2 a heart attack the impact of the heart attack might be more  
3 profound on a man like Mr. Colon because he has both  
4 problems, than a man who didn't have a cervical problem or a  
5 preexisting disability.

6 So there is a frequent concept of synergy. If  
7 you get more than one serious medical problem, the two of  
8 them are more destructive than either one individually when  
9 you add them together.

10 Q Doctor, do you have an opinion to a reasonable  
11 degree of medical certainty whether the damage that was done  
12 to Mr. Colon's heart, symptoms that he experienced and the  
13 problems that he's continuing to experience as a result of  
14 that permanent damage to his heart were because of the  
15 negligence and the departures of Dr. Lefkovic?

16 MR. DOPF: Objection.

17 THE COURT: Overruled.

18 A Yes. Yes. I believe Dr. Lefkovic's failure  
19 to refer Mr. Colon for an emergency cardiac catheterization  
20 in February of 2013 resulted in him suffering an otherwise  
21 totally preventable kind of double-dip heart attack starting  
22 on March 30th, 2013. And I think that he would have had his  
23 right coronary artery repaired without any damage to his  
24 ventricle. And with the current state of stents and  
25 coronary repair then he would not have any cardiac injury

1 today.

2 MS. VILLARREAL: Thank you very much,  
3 Doctor. I have no further questions.

4 MR. DOPF: May I, Judge, just for a few  
5 minutes? Three minutes?

6 THE COURT: About five minutes. Then we  
7 have to break.

8 CROSS-EXAMINATION

9 BY MR. DOPF:

10 Q Sir, are you aware of the fact that Mr. Colon  
11 testified that in February of 2013 when he went to  
12 Dr. Lefkovic and up until his heart attack he continuously  
13 suffered from shortness of breath, chest pain, palpitations  
14 among other things? Are you aware of that testimony?

15 MS. VILLARREAL: Objection. I don't  
16 understand what he's talking about.

17 THE COURT: Overruled.

18 Q Are you aware of that testimony? Yes, sir or  
19 no, sir?

20 A I'm sorry, are you talking about deposition or  
21 trial?

22 Q I will take either. Have you read the trial  
23 testimony?

24 A No.

25 Q Then why ask me about trial? Deposition.

1           A           I don't know if there is --

2                               MS. VILLARREAL:  Objection.

3           A           I only ask because I don't know if there was  
4 testimony that I am unaware of.

5           Q           So back to my question.  Are you aware of the  
6 fact from reading his deposition that he had continuous  
7 complaints of pain, sweating, fatigue, palpitations,  
8 shortness of breath from the February visit to Dr. Lefkovic  
9 up until the heart attack?  Are you aware of that?

10          A           Yes.

11          Q           Now tell our jurors have you mastered the  
12 facts of this case?  Do you have a good understanding of the  
13 facts of this case?

14          A           I have a good understanding but I haven't  
15 memorized all the materials.

16          Q           Right.  You need a good understanding because  
17 you never want to come into Court under oath and swear or  
18 affirm another physician committed malpractice if you didn't  
19 have a good, basic understanding of the facts.  Fair  
20 statement?

21          A           I think more important --

22          Q           Is that a fair statement?

23          A           It's an incomplete statement.

24          Q           Sir, did doctor -- excuse me, did Mr. Colon  
25 see any physicians from his last office visit to

1 Dr. Lefkovic in February of 2013 up to his heart attack?

2 Did he see any physicians?

3 A I am not aware of any.

4 Q Who is Dr. Chapman?

5 A I think his primary care physician.

6 Q Wrong.

7 A Okay.

8 Q Who is his primary care physician?

9 A Doctor -- I am just going -- Dr. Tamburrino  
10 was his new cardiologist.

11 Q Who was his primary care physician?

12 A I could look it up here. I know I have it  
13 here.

14 Q Are you telling us you don't remember as you  
15 sit here?

16 MS. VILLARREAL: Let him finish the  
17 question. Objection.

18 THE COURT: Wait until you get an answer.

19 MR. DOPF: Okay.

20 A Dr. Tirado I think actually was his primary  
21 care physician.

22 Q Okay. Now let's go to Page 63 of the hospital  
23 chart. It would be that thick binder there.

24 MS. VILLARREAL: Note my objection, your  
25 Honor. May we approach?

1 MR. DOPF: Why? I am cross-examining.

2 THE COURT: No. He's entitled to  
3 cross-examine.

4 MS. VILLARREAL: Your Honor, with respect  
5 to Dr. Chapman we didn't have a ruling on that.

6 THE COURT: I know.

7 MS. VILLARREAL: That's why we need to  
8 approach.

9 MR. DOPF: I am moving on, Judge. I am  
10 moving on to a totally different subject.

11 THE COURT: You are not mentioning  
12 anything about Dr. Chapman.

13 MR. DOPF: No, I'm not.

14 Q Are you there, Page 63?

15 A Yes, sir.

16 Q In a loud, clarion voice would you tell our  
17 jurors where it says private physician, the upper left hand  
18 corner, private physician whose name is that?

19 A Dr. Tirado.

20 Q Now what do the initials PMD stand for?

21 A Private medical doctor.

22 Q Okay. And can we agree, sir, that Dr. Tirado  
23 was the private medical doctor of this patient, Mr. Colon?  
24 Do we agree or do we disagree, sir?

25 MS. VILLARREAL: Objection. One of the

1 private medical doctors.

2 MR. DOPF: We don't need coaching, Judge.

3 We don't need coaching.

4 THE COURT: Overruled. If you know answer  
5 the question, Doctor.

6 A He was.

7 Q And when we talk about PMD or private medical  
8 doctor, as a general proposition it's generally the  
9 internist, the family doctor, those are generally the  
10 primary care physicians, correct?

11 A I agree.

12 Q How many times did the primary care physician  
13 not call back according to that page?

14 MS. VILLARREAL: Objection. He is  
15 completely distorting the facts and the record.

16 MR. DOPF: She is not allowed to make  
17 these statements, Judge.

18 MS. VILLARREAL: Objection, your Honor.  
19 There is no foundation for that question.

20 THE COURT: It's cross-examination. He  
21 is allowed to ask.

22 A According to this it said initial admit to  
23 hospital as PMD with no call back times four pages.

24 Q So the four times when there was no call back  
25 it was Dr. Tirado who didn't call back, correct? PMD, am I

1 correct or incorrect?

2 MS. VILLARREAL: Objection.

3 THE COURT: Overruled.

4 Q Am I correct or incorrect?

5 A I don't know if that can be determined by that  
6 sentence alone.

7 Q Didn't we agree a moment ago that PMD means  
8 private medical doctor? Didn't you just tell our jury that?

9 A Yes.

10 Q Didn't you tell the jury that private medical  
11 doctor is typically the internist? Didn't you say that just  
12 a minute ago?

13 MS. VILLARREAL: Objection. That's not  
14 what he testified to.

15 THE COURT: Objection sustained. Let's  
16 break for lunch.

17 MR. DOPF: Judge, before --

18 THE COURT: Hold on.

19 (Jury left the courtroom.)

20 THE COURT: You could step down, Doctor.

21 THE WITNESS: Thank you, sir.

22 MR. DOPF: I don't want him to leave. I  
23 have a question.

24 THE COURT: Wait until after lunch.

25 MR. DOPF: I thought you would like me to

1 do it during lunch so I could get ready.

2 THE COURT: What are you talking about?

3 MR. DOPF: If the doctor has any notes or  
4 report. I see he has Post-its, could I see them  
5 over the lunch period?

6 MS. VILLARREAL: No.

7 MR. DOPF: Otherwise I am going to need  
8 to take a break at 2 o'clock to read them. I am  
9 entitled to see any notes, Post-its, stickers,  
10 underlines that he has done.

11 THE COURT: Ask the questions. You can  
12 ask him after lunch. If you need time to read  
13 them --

14 MR. DOPF: I am going to ask that none of  
15 the stickers, Post-its be taken off during the  
16 lunch break.

17 THE COURT: Just leave them the way they  
18 are.

19 THE WITNESS: I will leave them here. No  
20 one is touching them.

21 THE COURT: Right now regarding Chapman I  
22 am inclined not to preclude him from testifying.

23 MS. VILLARREAL: Not to preclude him?

24 MR. DOPF: Not to.

25 THE COURT: To preclude him from

1           testifying.

2                   MS. VILLARREAL: Thank you, Judge.

3                   THE COURT: I think that's only going to  
4           be piling on.

5                   MR. DOPF: Only be what?

6                   THE COURT: Piling on.

7                   MR. DOPF: Well, Judge, I would like to  
8           at least admit his records into evidence because  
9           his records have two visits between the heart  
10          attack and the last time.

11                  THE COURT: I am just telling you where I  
12          am leaning to.

13                  MS. VILLARREAL: Judge, if he wants to  
14          look at the records during lunch he can look at  
15          the records during lunch. Whatever he wants to do  
16          so he doesn't have to break at any point during  
17          the testimony.

18                  MR. DOPF: Are you saying I can take them  
19          to lunch?

20                  MS. VILLARREAL: Yes.

21                  (Lunch recess taken.)

22                  (Elaine Forlenza was relieved by Tammy  
23          Rodriguez, as official court reporter.)

24

25

1 MS. VILLARREAL: I want to make sure that there  
2 is no further questioning regarding Dr. Chapman. Regarding  
3 that your Honor has ruled.

4 THE COURT OFFICER: Jury entering.

5 (At this time, the jury enters the courtroom. )

6 THE CLERK: Jury is present and properly seated.

7 MS. VILLARREAL: So stipulated.

8 MR. DOPF: So stipulated.

9 CROSS-EXAMINATION

10 BY MR. DOPF:

11 Q. Sir, we can agree that you are no stranger to the  
12 courtroom. You've been in the courtroom hundreds of times, as  
13 an expert, correct?

14 A. Yes.

15 Q. You realize that in a courtroom setting as an expert  
16 witness you can be asked to answer questions yes or no or tell  
17 us you can't answer yes or no, you're familiar with that  
18 routine?

19 A. Yes.

20 Q. So I'm going to ask you to adhere to that routine for  
21 the purposes of my questions.

22 Can we agree, sir, that you've been asked by defense  
23 attorneys like me on many occasions to estimate your total  
24 earnings for all of your medical, legal activities over the past  
25 roughly 30 years, would you agree with me, you've been asked

1 that before I asked you today?

2 A. Yes.

3 Q. Sir, would you agree with me that you've earned at  
4 least \$2 million in your medical/legal reviews and testimony, if  
5 we go back to the beginning and up to today?

6 A. No.

7 Q. Sir, state a number, tell this jury how much you've  
8 earned from medical/legal work whether it be testifying,  
9 reviewing, or whatever, how much have you earned in total, just  
10 give us a number or a range?

11 A. Well, I've been doing this for 30 years.

12 MR. DOPF: Judge --

13 A. I'm trying.

14 Q. I asked for a number or a range?

15 THE COURT: Overruled.

16 A. Doing this for 30 years the average income is probably  
17 been between 30 and 50 over those 30 years, so I would say  
18 \$900,000.00 to \$1.2 million.

19 Q. Did you say the average was somewhere between 30 and  
20 50,000?

21 A. If you talk about over 30 years, yes.

22 Q. So 50,000 times 30 years would be 1.5 million?

23 A. Yes.

24 Q. Have you met with Plaintiff's counsel before coming to  
25 court today?

1 A. Yes.

2 Q. Did you meet over lunch?

3 A. No.

4 Q. Lunch separately?

5 A. I went on my own way.

6 Q. How many times did you meet with counsel?

7 A. Twice.

8 Q. By the way what will your total earnings be or your  
9 total invoice be for your review time in this case, conference  
10 time, and time in court about?

11 A. Time in court is \$4,000.00 for a full day away from  
12 work, and prep time probably was including meeting time 8 hours  
13 over three years, \$450.00 an hour. I can't do it, eight times  
14 \$450.00, but that's under \$4,000.00, so I would say it would be  
15 about \$8,500.00.

16 Q. So trial review time, conference time, about eight and  
17 a half thousand dollars?

18 A. Yes.

19 Q. Sir, you testified in a courtroom more than 230 times  
20 haven't you, yes or no?

21 A. Probably.

22 Q. Now if we do 230 times not times eight and a half  
23 thousand for the whole review and the testimony lower, we'll  
24 make it \$5,000.00. If you got \$5,000.00 for review of a file  
25 and testifying in court, and you did it 230 times, what would

1 that add up to?

2 A. I don't know.

3 Q. \$1,150,000.00 just on those cases that you've  
4 testified, fair statement?

5 A. No because many --

6 Q. Is it fair or unfair?

7 MS. VILLARREAL: Objection. Let him answer the  
8 question.

9 A. Unfair.

10 Q. Sir, in addition you've given over 330 depositions  
11 under oath, meaning in a lawyer's office or in a courtroom where  
12 there's no Judge and jury?

13 A. That's accurate.

14 Q. Sir, your minimum for many years for a deposition has  
15 been two hours, fair statement?

16 A. Unless we agree that it's less.

17 Q. Your typical deposition with prep time and going to  
18 the deposition is at least four hours, fair statement, including  
19 prep time?

20 A. Probably.

21 MS. VILLARREAL: Note my objection to the  
22 deposition, no foundation.

23 THE COURT: Overruled.

24 Q. So let's do your depositions now. If it's four hours  
25 let's just take a lower number \$400.00 that would be \$1,600.00

1 per deposition, times 330 depositions that's over half a million  
2 dollars?

3 A. My rates were under \$300.00 an hour. They only went  
4 up to \$400.00 an hour in the last five years. Some of those  
5 depositions were much quicker. I reviewed many of the trials  
6 were four hours not eight. They were local New York although I  
7 know you're trying to come up with an honest assessment of what  
8 my 30 years income is, the way you're projecting it is not  
9 exactly accurate.

10 Q. Let's do this journey together. You reviewed about a  
11 thousand medical malpractice cases over your career 950 to  
12 1,000?

13 A. Close to 950 I don't know the number.

14 Q. Wouldn't you estimate that you get at least \$500.00 on  
15 average going back 30 years sometimes \$2,000.00 sometimes  
16 \$300.00, but you get at least \$500.00 per lawsuit review, fair  
17 statement?

18 A. Unfair. The average time was one and a half hours for  
19 the majority of cases when my rates were well under \$300.00.

20 I know you're trying to micro do it. I've never been  
21 able to calculate 30 years of income. I don't have tax forms  
22 going back that far. I certainly have made a lot of money doing  
23 this. It's obviously evident.

24 Q. You've told jurors up to one quarter of your income is  
25 derived from this kind of work, fair statement?

1           A.    I've said two or three years where it reached 25  
2 percent mostly 20 percent of income.

3           Q.    When was the last time that you were an admitting  
4 cardiologist for a private patient at the hospital you're  
5 affiliated at Lenox Hill?

6           A.    Two weeks ago.

7           Q.    Can you tell us, sir, you agree with what we talked  
8 about before lunch that Mr. Colon had testified that the  
9 symptoms he presented with to Dr. Lefkovic in February of 2013  
10 persisted and, in fact, you can assume in the trial testimony he  
11 says it got worse up until the heart attack, you don't dispute  
12 that, correct?

13          A.    Of course not.

14          Q.    Now, who is Dr. Tirado?

15          A.    Dr. Tirado is his primary care doctor.

16          Q.    Did you look at Dr. Tirado's record to see if  
17 Dr. Tirado saw Mr. Colon between February and the heart attack?

18          A.    I did not see a note during that period of time.

19          Q.    Did you look at Dr. Tirado's records?

20          A.    I had, yes.

21          Q.    Okay. Let me hand them up to you?

22                   MS. VILLARREAL: Note my objection, your Honor.  
23 May we approach.

24          Q.    You did master the facts before you concluded that  
25 Dr. Lefkovic committed malpractice, fair statement?

1           A.    I don't think that I can answer the question the way  
2 you're phrasing it limited to a simple yes or no.

3           Q.    Do you have a good working knowledge and understanding  
4 of Mr. Colon's medical history, yes or no?

5           A.    I don't think that I can answer that question the way  
6 you phrase it.

7           Q.    Let's try it again. Let's keep trying. Do you think  
8 you have a good understanding now, stop me if you don't like the  
9 word good or understanding, if you have a good understanding of  
10 Mr. Colon's medical history before the heart attack, yes or no?

11                   MS. VILLARREAL: Objection, asked and answered.

12                   THE COURT: Overruled.

13           A.    I think.

14           Q.    Yes or no?

15           A.    I don't believe I can answer the question the way  
16 you're phrasing it limited to a yes or no without explanation.

17           Q.    Who is Dr. Nunez?

18           A.    I don't recall Dr. Nunez.

19           Q.    Did the patient ever see a Dr. Nunez?

20           A.    I was never sent records.

21           Q.    What records were you sent?

22           A.    I was sent a record from Dr. Tirado, your client,  
23 Staten Island.

24           Q.    That's it?

25           A.    Yes.

1 Q. You're sure?

2 A. Yes.

3 Q. So you never saw the records of Dr. Tamburrino, fair  
4 statement?

5 A. And Dr. Tamburrino after the heart attack --

6 Q. I just asked --

7 A. Yes, I have Dr. Tamburrino in front of me. Yes, I've  
8 seen his records too.

9 Q. Tell us from your review of the records how many times  
10 did Mr. Colon see a physician after Dr. Lefkovic in February and  
11 before the heart attack, how many physician visits did he have?

12 THE COURT: Overruled.

13 A. I do not know. I have not seen any visits.

14 Q. How much time did you devote to medical records review  
15 and learning this case about five hours, ten hours?

16 A. Six hours.

17 Q. Okay. Would it be fair to say that you -- strike  
18 that.

19 When did you first get retained approximately to  
20 review this case?

21 A. 2015.

22 Q. Two years ago roughly?

23 A. Yes.

24 Q. Sir, you have a collection of lots of cases that are  
25 under review consistently, fair statement?

1 MS. VILLARREAL: Objection.

2 A. I don't know what lots means to you, but maybe 30  
3 cases that may be active.

4 Q. You were in another medical malpractice case  
5 testifying last week, weren't you and you were asked about this  
6 case?

7 A. Eight days and I was asked about this case.

8 Q. There is no cardiologist in America to your knowledge  
9 who has testified more times against physicians than you, fair  
10 statement?

11 A. I have no knowledge of how many times anyone has  
12 testified other than myself.

13 Q. Have you heard of any expert in cardiology testify  
14 against physicians more than you?

15 MS. VILLARREAL: Objection.

16 A. I have not heard of any cardiologist who do testimony  
17 other than myself. I'm unaware of any other cases.

18 Q. Sir, 97 percent of your trial testimony over the past  
19 30 years has been against physicians and/or hospitals, fair  
20 statement?

21 A. No, because some of them have not always been about  
22 medical cases, but 95 percent have been for Plaintiff's, yes.  
23 Over 95 percent have been for Plaintiff's, yes.

24 Q. If we were to collect all the testimony that you've  
25 given over the years this being just some of it --

1 MS. VILLARREAL: Objection to the reference.  
2 Move to strike.

3 THE COURT: Let me hear the question.

4 Q. Would we be able to fill this jury box with your  
5 testimony, sir?

6 MS. VILLARREAL: Objection.

7 THE COURT: Overruled.

8 A. I doubt it.

9 Q. Do you remember testifying in a case called Brenner  
10 versus Dr. Saxena and others in Brooklyn in front of a jury in  
11 2014?

12 A. I remembered the name of the case, but I don't  
13 remember anything about it.

14 Q. In that case did you testify quote, "So only like  
15 three percent of the cases that I receive are defense cases  
16 where I end up testifying, where very few Plaintiff's cases  
17 revolve before I'm asked to testify."

18 Did you ever give that testimony about three percent  
19 meaning 97 percent to another jury, yes or no?

20 MS. VILLARREAL: Objection, no inconsistency.

21 THE COURT: Overruled.

22 A. Yes.

23 Q. You've told other jurors that 97 percent of your  
24 testimony in court as an expert witness has been against  
25 physicians and hospitals, correct?

1           A.    Not always against physicians and hospitals, but 97 --  
2   again, I said over 95, but 97 are on Plaintiff's cases, but  
3   they're not always about hospitals or doctors and they're not  
4   always talking about the standard of care.

5           Q.    Sir, of the cases that the Plaintiff's attorney sent  
6   for you like counsel people that are representing the patient  
7   you've told other jurors that you find 95 percent of them have  
8   merit, true?

9           A.    After our phone call, yes.

10          Q.    Now, you've also told jurors of the defense cases that  
11   you've reviewed after the phone call you only find half of them  
12   to have merit you've told jurors that too?

13          A.    Half of them are defensible, yes you're right.

14          Q.    The other half are indefensible?

15          A.    In my opinion, yes.

16          Q.    So it's 50/50.  When you're reviewing for or asked to  
17   review for a defense attorney, but it's 95 percent you find  
18   malpractice if you're asked to do it by a patient's attorney is  
19   that a fair statement yes, fair no, unfair?

20          A.    Very fair.

21          Q.    Have you reviewed any depositions in this case?

22          A.    Yes, but only two.

23          Q.    Which ones?

24          A.    Your client's and Mr. Colon.

25          Q.    Does Mr. Colon have any problems today that you're

1 aware of?

2 A. I don't understand your question medical problems.

3 Q. Medical sure, medical?

4 A. Only as far as his deposition testimony.

5 Q. Okay. What problems does he have today?

6 A. As of the time of his deposition he had fatigability,  
7 weakness, limited ability to do certain things.

8 Q. Couldn't have sex?

9 A. I don't recall that.

10 Q. Couldn't play with the granddaughter?

11 A. That part I think I was told or read.

12 Q. Couldn't play racquetball. I'll move on. So you've  
13 reviewed his deposition and who else?

14 A. Your client's I haven't read, Mr. Colon's deposition  
15 in a few months.

16 Q. Did you make any notes as you reviewed these documents  
17 over the years?

18 A. No.

19 Q. The reason you don't make notes is because if you do  
20 I'm allowed to see them and cross examine you on your notes you  
21 know that?

22 A. I don't write notes. I have post its to remind me of  
23 what's in the record, so I don't need notes.

24 Q. You reviewed in 30 years a thousand cases, are you  
25 saying that you never make notes as you review your cases?

1           A.    No.  The only time I do approach notes are in cases  
2 where I'm required to write a report.

3           Q.    In cases where you're not required to write a report  
4 you don't write notes because you know that you can be cross  
5 examined on them, correct or incorrect?

6           A.    No, because this works, post it's and highlighting  
7 works for me.  I don't need to write notes.  It's all here.

8           Q.    Do you have any of Dr. Lefkovic's testimony in that  
9 file?

10          A.    No, I do not.

11          Q.    How many times did you examine Mr. Colon?

12          A.    I never examined Mr. Colon.

13          Q.    No?

14          A.    No.

15          Q.    Any reason why you didn't?

16          A.    I'm not his treating doctor.

17          Q.    Not for treatment purposes, but to see how he's doing?

18          A.    I was not asked to evaluate him.

19          Q.    If you're going to testify to his injuries wouldn't it  
20 be best if you examined him yourself?

21                   MS. VILLARREAL:  Objection.

22                   THE COURT:  Sustained.

23          Q.    Why didn't you examine him?

24                   MS. VILLARREAL:  Objection.

25                   THE COURT:  Sustained.

1 Q. Who's his treating cardiologist at the moment based  
2 upon your review of the records?

3 A. Dr. Tamburrino.

4 Q. What was the last ejection fraction record in  
5 Dr. Tamburrino's records?

6 A. I have to look. I have one 50 percent in 2014, one 50  
7 percent from nuclear in 2015 October 28th, and an EF of 50 to 55  
8 percent by an echo on November 28, 2015, and I think that's the  
9 last I was September.

10 Q. Did you ever see him with a better ejection fraction  
11 than 55 percent, any records?

12 A. Since before.

13 Q. Any time from birth?

14 A. I have to look back at the earlier studies.

15 Q. Tell us if he ever had a better ejection fraction and  
16 you can start out when he was a child if you like, did he ever  
17 get better than 55?

18 MS. VILLARREAL: Objection.

19 THE COURT: Overruled.

20 A. We know he was better than 55 during the stress test.

21 Q. Okay. 55 is a very good score, isn't it?

22 A. Very good score.

23 Q. When did you first see the echocardiogram that was  
24 projected to the jury today, in other words when were you first  
25 presented with that piece of evidence, was it within the last

1 couple of weeks?

2 A. I would say between two to four weeks ago.

3 Q. Between two and four weeks ago was the first time that  
4 you saw the echocardiogram projected to our jurors?

5 A. I believe so.

6 MS. VILLARREAL: I just want to be clear on the  
7 record the images is he talking about those images.

8 THE COURT: Ask the question again try to be more  
9 specific.

10 Q. The 2013 echocardiogram that was projected, correct?  
11 The images that were projected 2013, right?

12 A. Correct.

13 Q. You got those images for the first time four to six  
14 weeks ago, fair statement?

15 A. Two to four weeks ago.

16 Q. But you had concluded a year ago without having ever  
17 seen those films that Dr. Lefkovic committed malpractice, you  
18 concluded that more than a year ago, didn't you?

19 A. Absolutely, I did.

20 Q. Without seeing all the evidence, sir, correct?

21 A. The echo made it worse.

22 Q. Without seeing all the evidence you made a conclusion,  
23 correct?

24 MS. VILLARREAL: Note my objection counsel let  
25 him answer the question.

1 Q. Yes or no this is cross?

2 A. That question I can't answer as a simple, yes or no.

3 Q. Have you been paid in full, sir, by counsel's law  
4 firm?

5 A. No.

6 Q. When you're done you'll send the bill?

7 A. Yes.

8 Q. Have you testified for the Krentsel and Guzman law  
9 firm, the firm that's brought this action?

10 A. Yes.

11 Q. Have you also reviewed cases for them?

12 A. Yes.

13 Q. How many cases have you reviewed for them about?

14 A. Probably eight cases in the last ten years.

15 Q. On average \$1,000.00 a review?

16 A. No.

17 Q. How many times have you testified at the request of  
18 the Krentsel and Guzman law firm?

19 A. I'm not sure if it's my second or third time. I don't  
20 remember actually.

21 Q. How many catheterization has Mr. Colon had in his life  
22 to your knowledge, based upon your review of the records?

23 A. I'm aware of three.

24 Q. You're aware of three. What are the dates of the  
25 three that you're aware of?

1           A.    The November 2, 2008, the catheretization on April 1,  
2    2013, and then there was a catheretization in 2014.  There may  
3    be one more actually 9/22/14 there was a catheretization.

4           Q.    So there were four?

5           A.    Yes.

6           Q.    Did you look at the catheretization reports and the  
7    films?

8           A.    No, just the reports.

9           Q.    Just the reports.  Is there any reason you didn't say  
10   to counsel I would like to look at the films?

11          A.    There was no apparent dispute about the accuracy of  
12   the reports, and they didn't impact my opinion.

13          Q.    What medicine was Mr. Colon taking in February and  
14   March of 2013 relating to heart issues?

15          A.    He was on Statin.

16          Q.    Who prescribed it?

17          A.    Primary care doctor, Dr. Tirado.

18          Q.    Is that typical that the primary care physician will  
19   prescribe Statin.  I'm not saying universally, but typical?

20          A.    It can be either the primary care or cardiologist as  
21   long as someone does.

22          Q.    From your review of the chart who's Dr. Snyder?

23          A.    Dr. Snyder was, he may have been one that catheterized  
24   him in 2008, but I'm not sure.

25          Q.    Who catheterized him in 2013?

1           A.    I don't remember.  I have to look.  I haven't  
2 memorized every name on every appointment, so I don't remember  
3 that.  I have it here I can look it up.  I don't remember.

4           Q.    You spent how many hours reviewing this file?

5           A.    Six.

6           Q.    When was the last time that you reviewed it?

7           A.    Last night.

8           Q.    What happened a month after the cath, roughly a month  
9 after the catheretization done in 2013, meaning was the patient  
10 admitted to the hospital again roughly?

11          A.    He had chest pain again.

12          Q.    And do you recall it being chest pain and being  
13 described as identical to the chest pain that he had before the  
14 first heart attack, do you recall that?

15          A.    Yes.

16          Q.    The chest pain went up to his jaw and his neck and  
17 Dr. Snyder said, Go to the emergency room.  We need to admit  
18 you.  Do you remember that?

19          A.    I remember him going to the emergency room.

20          Q.    Now, with those complaints I have this burning  
21 sensation in my chest, my jaw, my neck.  It was good practice  
22 for Dr. Snyder to say go to the emergency room good practice?

23                   MS. VILLARREAL:  Note my objection outside the  
24 scope.

25                   MR. DOPF:  It's foundational.

1 THE COURT: Overruled.

2 A. Correct.

3 Q. With those symptoms in hand was another  
4 catheterization done at some point after the second admission,  
5 want me to restate that?

6 A. I don't remember the dates. I know he had a second  
7 catheterization.

8 Q. Let's call it the second catheterization?

9 A. Okay.

10 Q. What were Dr. Snyder's findings a month after the cath  
11 where he stented?

12 A. Everything was open.

13 Q. Everything was open?

14 A. Yes.

15 Q. Again he had terrible debilitating chest pain and  
16 sweating and palpitations and pain going into his jaw and neck,  
17 but when they looked inside his blood vessels feeding his heart  
18 everything was open, fair statement?

19 MS. VILLARREAL: Objection, no foundation as to  
20 any of it.

21 THE COURT: Rephrase the question.

22 Q. A cardiac catheterization was done about a month after  
23 the one done for the infarct, fair statement?

24 A. Fair.

25 Q. The doctor injected dye, which doctor did this?

1 A. I have to look at the report.

2 Q. You don't remember?

3 A. I don't remember every doctor that did what. I did  
4 not memorize that. I'm sorry.

5 Q. That's where notes might come in handy, right?

6 MS. VILLARREAL: Objection.

7 THE COURT: Sustained.

8 MS. VILLARREAL: May the witness utilize the  
9 chart actually at this point.

10 THE COURT: He's asking. It's cross examination.

11 MS. VILLARREAL: Note my objection.

12 THE COURT: Overruled.

13 Q. What did Dr. Snyder find when he injected dye the  
14 second time?

15 A. The artery was open.

16 Q. Even though this gentleman had all these horrible  
17 symptoms everything was open, is that true or false?

18 A. True. He's probably --

19 Q. Sir, yes or no.

20 THE COURT: Next question, counsel.

21 Q. You'll agree with me that there's no way in the world  
22 that you can testify with any degree of certainty that had a  
23 cardiac catheterization been done in February that it would have  
24 shown that there was a lesion and had to have been acted upon  
25 immediately, agreed or disagree?

1           A.    I could state with near medical certainty that, that  
2 right coronary artery would have been 95 percent and I can state  
3 with reasonable medical certainty it would have to have been  
4 acted on.

5           Q.    Sir, if he had that then wouldn't you expect when he  
6 went to physicians between Dr. Lefkovic and the heart attack, he  
7 would be crying I'm short of breath, I'm sweating, I have  
8 pounding chest pain going up to my neck, my jaw wouldn't you  
9 expect that when he saw those physicians those three visits in  
10 between Dr. Lefkovic and the heart attack he would have had the  
11 same symptoms, would you have expected that yes or no?

12          A.    I expect the opposite if he was falsely reassured that  
13 his heart was okay. It would be natural for him to stop  
14 bringing up a symptom that he was told was safe.

15          Q.    Tell us, sir, what did Mr. Colon say under oath to  
16 this jury about whether the pain was everyday?

17          A.    I don't know.

18          Q.    Why don't you know? Did you ask to look at the trial  
19 testimony?

20                   THE COURT: Sustained.

21          Q.    Did you ask to look at the trial testimony?

22                   MS. VILLARREAL: Objection.

23                   THE COURT: Sustained.

24          Q.    Do you know the reporters are typing trial testimony?

25                   MS. VILLARREAL: Objection.

1 THE COURT: Sustained.

2 Q. In other litigations have you looked at trial  
3 testimony?

4 MS. VILLARREAL: Objection.

5 THE COURT: Sustained. Come on, counsel.

6 Q. For the most part your customers for your business of  
7 medical/legal reviews and testifying are the attorneys  
8 representing the patient, fair statement?

9 A. The majority, yes.

10 Q. Do narcotic medications cause fatigue?

11 A. They can.

12 Q. Was Mr. Colon on any narcotic medicine before his  
13 heart attack to your knowledge?

14 A. After his neck problem.

15 Q. After what?

16 A. His neck problems.

17 Q. For how many years was he on narcotic medicine?

18 A. I don't know how many years.

19 Q. More than ten?

20 A. I don't know.

21 Q. More than two?

22 A. I don't know. I think it was a couple of years  
23 before, but I don't recall the exact time.

24 Q. By the way if you look at the hospital chart, which is  
25 to your right, there are these stamps on the top, a graph stamp,

1 hospital stamp. Tell us a couple of the names stamped. Pick  
2 random pages we will not go through every page?

3 A. ER is Dr. Niles.

4 Q. You know what I'm asking for the stamp?

5 A. The stamp, Dr. Tirado.

6 Q. Dr. Tirado that's what you would expect. You would  
7 expect the private physician to be the admitting physician,  
8 correct?

9 MS. VILLARREAL: Objection.

10 THE COURT: Overruled.

11 A. It could go either way. Sometimes the primary care  
12 doctor is the admitting physician sometimes the cardiologist is.

13 Q. In any event here is Dr. Tirado, fair statement?

14 A. Yes.

15 Q. Does Dr. Lefkovic do catheterizations?

16 A. I don't remember.

17 Q. I'm sorry.

18 A. I don't remember.

19 Q. There's something known as an interventional  
20 cardiologist, which would be somebody who to make it simple  
21 injects dye to look at the heart?

22 A. There are invasive cardiologists that do diagnostic  
23 studies and interventional cardiologist that do procedures. You  
24 wouldn't call it an intervention if it's diagnostic study.

25 Q. From your review of the records and your review of

1 Dr. Lefkovic's testimony, does he do any of those kinds of  
2 studies -- is he trained to do those studies where you inject  
3 dye whether it's for diagnosis or treatment?

4 A. I don't remember without certainty. I thought he did  
5 diagnostic catheterization, but I'm not a hundred percent sure.

6 Q. You're guessing?

7 A. I'm not guessing. I'm not a hundred percent sure.

8 Q. To your knowledge did Mr. Colon ever have problems  
9 before the heart attack and because of his neck playing with his  
10 granddaughter, playing racquetball, enjoying sex, do you know  
11 one way or the other?

12 A. No.

13 Q. No, meaning you don't know?

14 A. I don't know.

15 Q. Good advise for Mr. Colon following his heart attack  
16 and up to today would be to stay as active as you can without  
17 overdoing it, would that be a fair statement?

18 A. Yes, it would.

19 Q. You don't want your patient in this scenario to be a  
20 couch potato?

21 A. Fair enough.

22 Q. Do you know if Mr. Colon has been following doctor's  
23 advise on keeping active, do you know one way or the other?

24 MS. VILLARREAL: Can we have a timeline, your  
25 Honor.

1 Q. Following the heart attack up to today do you know one  
2 way or the other?

3 A. I can't answer the question the way you phrase it  
4 limited to a simple yes or no without explanation.

5 Q. Did Dr. Tamburrino make any recommendations in terms  
6 of activity? You said that you reviewed his chart, what did he  
7 say?

8 A. Be active, exercise.

9 Q. Has Mr. Colon complied with that request?

10 A. Well, the word comply implies that you're capable of  
11 complying with the request. There are two reasons why you  
12 wouldn't do it either one, you chose not to or two, you don't  
13 physically have the stamina to do it. You have to separate  
14 those two because if the person can't physically do it, it's not  
15 a lack of compliance. It's a lack of capability.

16 Q. You haven't done any stamina testing on Mr. Colon,  
17 have you?

18 A. I have not.

19 Q. You don't know whether it's a question of stamina or  
20 laziness or something else?

21 MS. VILLARREAL: Objection.

22 THE COURT: Overruled.

23 A. I can't testify to that part.

24 Q. Would you agree with the statement, sir, you can have  
25 a heart attack and have a completely normal life expectancy with

1 clean arteries and minimum muscle damage, would you agree with  
2 that?

3 A. Of course I agree with that.

4 Q. That's because most people, the vast majority of  
5 people recover from their heart attacks and go on with their  
6 lives, fair statement?

7 A. And they're being watched by cardiologists for future  
8 disease.

9 Q. Let's go back to the yes or no again, so we have a  
10 clean record if you would.

11 Most patients who have heart attacks under the  
12 supervision of their cardiologist go on to live life fully, most  
13 the majority?

14 MS. VILLARREAL: Objection asked and answered.

15 THE COURT: Overruled.

16 A. I can't answer your question as you phrase it as a  
17 simple, yes or no.

18 Q. Do you know what majority means?

19 A. It's the word fully, living life fully.

20 Q. Do you know, understand what that means living life  
21 fully?

22 A. In terms of the majority of people have had heart  
23 attacks and progress to have disease and requires treatment, I  
24 don't know if anyone can say that the majority of people that  
25 have heart attacks go back to a carefree life full and

1 unlimited.

2           The majority of people who survive heart attacks with  
3 good care can get the best they can. They would not live  
4 carefree unlimited lives, but there are many among them that do,  
5 but I wouldn't say the majority.

6           Q. How about the majority of those with the 55 percent  
7 ejection fraction three, four years after he has a heart attack,  
8 would you expect in general that they go back to their prior  
9 life in general with some exception?

10          A. I would say that a large number of people would go  
11 back to a normal life and a large number of people wouldn't  
12 depending on comorbidities and other factors.

13          Q. Have you testified to the reverse?

14          A. I've testified in many cases that people have an  
15 ejection fraction of 55 percent can have normal life expectancy  
16 and function EF of 30 percent have been functional it's oddly  
17 variable.

18          Q. Can we go back to yes or no. You have rules at the  
19 hospital --

20                   THE COURT: Sustained.

21          Q. I'm going to ask you to go by our rules of yes or no  
22 if you. Would you agree, sir, as a general proposition that the  
23 echocardiogram is the workhorse of cardiology?

24          A. Yes.

25          Q. Would you agree, sir, that the other type of test that

1 is universal with cardiologist in a person having chest pain  
2 would be an exercise stress test, fair statement?

3 A. Fair.

4 Q. Both of them done here in 2013 by Dr. Lefkovic, yes or  
5 no?

6 A. Yes.

7 Q. Now, do you remember testifying in a case called  
8 Lamonssoff versus Lanos in February of this year, Suffolk County,  
9 do you remember doing that?

10 A. Yes.

11 Q. Do you remember telling the jury that your fee for  
12 that case was seven and a half thousand dollars meaning review  
13 time and court time, do you recall that?

14 A. Now I do.

15 Q. If we start to do the multiplication, the number of  
16 testimony you've given both at deposition and at trial at these  
17 numbers were easily over \$2 million?

18 MS. VILLARREAL: Objection.

19 THE COURT: Sustained.

20 Q. Sir, is it any medical specialty, withdrawn.  
21 You've testified against obstetricians correct?

22 A. Yes.

23 Q. Radiologist, correct?

24 A. Yes.

25 Q. Vascular surgeons, correct?

1 A. Yes.

2 Q. Nurses, correct?

3 A. Yes.

4 Q. P. A. physician's assistant, correct?

5 A. Yes.

6 Q. Neurosurgeons, correct?

7 A. I think so.

8 Q. Anesthesiologist, correct?

9 A. Yes.

10 Q. In fact, without naming everyone you testified against  
11 16 to 20 different specialty physicians in their capacity as  
12 defendants?

13 A. It may be.

14 Q. Do you know how many times you testified at  
15 depositions in 2014?

16 A. 2014.

17 Q. Three years ago?

18 A. Fifteen maybe.

19 Q. If I told you 17 to 18 you wouldn't argue with me?

20 A. No.

21 Q. If I told you, you testified at trial eight or nine  
22 times, you wouldn't argue with that either?

23 A. No.

24 Q. So that's a total of roughly 26 or 27 testimonies in  
25 one year, sir, fair statement, is the math correct?

1 A. I'm trying to get the math, but I would assume so.

2 Q. Retrospective bias, retrospective, one of the things  
3 that you have the benefit of in any case like this is you know  
4 what happened you know the end result and there's something in  
5 medicine known as retrospective bias, true?

6 A. I cannot answer the question the way you phrase it as  
7 a simple yes or no.

8 Q. Let's go to your testimony in the Lanos case on page  
9 73. Reading from your testimony from a case of this year  
10 February 2017 out in Riverhead, February 1st?

11 MS. VILLARREAL: Objection to counsel reading  
12 from documents not in evidence and stating what they are.  
13 He can ask questions without doing so.

14 MR. DOPF: I never heard of such a thing. I'm  
15 allowed to read from prior consistent or inconsistent  
16 testimony.

17 THE COURT: Overruled.

18 Q. Question in front of that jury line 22 page 72.

19 "Question: Are you familiar with the term, have  
20 you ever heard the term retrospective bias?

21 "Answer: Yes.

22 "Question: Does that mean that since you know  
23 what happened at the end you're bias looking backwards?

24 "Answer: That's what the term means, yes."

25 Did you give those answers to those questions, yes or no.

1 A. Yes.

2 Q. Those were correct answers, weren't they?

3 A. Yes.

4 Q. Now you know through the help of this testimony what  
5 retrospective bias is?

6 A. I know what it is. You asked a slightly different  
7 question, which I could not answer as a simple yes or no.

8 Q. Two doctors can be faced with the same data and one  
9 decides one thing and one decides the other thing and they can  
10 both be correct, can't they?

11 A. As long as they're both within the standard of care.

12 Q. And they can both be correct. Sir, have you ever  
13 testified that a departure from accepted standards of care is  
14 not necessarily mentioned have you ever said that, sir?

15 A. Depends on the context. I may have if I said that a  
16 departure may not have led to any damage, so it wouldn't be  
17 negligence. Negligence may be a legal term. I don't know.  
18 Depends on the context of that.

19 Q. Can certainly be negligent without causing damage,  
20 can't you?

21 A. I guess.

22 Q. Can't you?

23 A. I don't know if negligence means a legal word or not  
24 make a mistake without consequence. That's certainly true.

25 Q. Chest pain can be due to many different things,

1 correct, sir?

2 A. Yes.

3 Q. Did this patient have a history of any disease process  
4 that would cause chest pain?

5 A. Yes, he had coronary disease since 2008.

6 Q. As the master of the fact of the history, what else  
7 did he have that might cause chest pain?

8 A. It depends on the nature of the chest pain, but in  
9 theory cervical pain or compression of the spinal column can  
10 cause chest pain.

11 Q. What you're saying as a master of the fact is that the  
12 cervical pain could cause chest pain?

13 A. Could cause chest pain.

14 Q. Was there anything else about him, about his medical  
15 history from your review of the records and his testimony that  
16 would account for chest pain other than coronary artery disease  
17 and the neck?

18 A. GERD reflux disease can cause it.

19 Q. How long did he have GERD for?

20 A. Long term, but I don't remember when.

21 Q. What medicine, if any, was he taking for it?

22 A. I think carafate or one of the equivalents. He was on  
23 anti protein medicine. I don't recall.

24 Q. The effect that GERD can have in terms of pain on the  
25 chest can absolutely mimic pain from a heart attack, correct?

1 A. Not absolutely, but it can mimic it.

2 Q. I think you've testified on other occasions that  
3 there's no way that every person who comes into the ER with  
4 chest pain is going to get an echocardiogram you've said that,  
5 haven't you?

6 A. Yes.

7 Q. Would you agree that you've testified under oath in  
8 2014 with an injection fraction of 40 percent quote, "you can  
9 still have a productive life" close quotes?

10 A. Yes.

11 Q. The last ejection fraction for Mr. Colon was 55  
12 percent or higher?

13 A. 50 to 55 is less I have.

14 Q. Cases where you've reviewed cases for attorneys  
15 Massachusetts, Florida, New Jersey, Pennsylvania, Connecticut,  
16 Illinois, Washington D. C., Georgia, Kansas, Virginia, New  
17 Mexico, Colorado, Maryland, New Hampshire, Vermont, Missouri,  
18 West Virginia, Texas, Arizona, Kentucky, Louisiana, Maine,  
19 Michigan, Mississippi, Rhode Island, Washington State, and North  
20 Carolina that would be some of the jurisdictions where you have  
21 reviewed cases. I don't mean that you went there, but cases  
22 coming from those jurisdictions, fair statement?

23 A. Correct.

24 Q. Now, in addition to those cases where you've looked at  
25 records to form opinions from roughly 40 other states, 45 other

1 states, you've also actually traveled to give testimony to  
2 places such as New Mexico, Kansas, Illinois, Washington D. C.,  
3 Massachusetts, Pennsylvania, Maryland, Georgia and Florida, fair  
4 statement?

5 A. Yes.

6 Q. You know any other cardiologist in America that has  
7 done as much travel as you for the purpose of giving expert  
8 testimony?

9 MS. VILLARREAL: Objection.

10 THE COURT: Sustained.

11 Q. In the year 2014, three years ago, would it be fair to  
12 say that when you testified at those depositions we've  
13 identified the 17 or 18 and the trials we've identified the  
14 eight or nine for 2014, each and every one was against a  
15 physician or hospital, agree or disagree?

16 A. I don't know.

17 Q. Reading from your testimony in Knote versus Dr. Mark  
18 Kirshner and others, a case where you testified in court in May  
19 of 2015 out in Suffolk county, did you give this answer to this  
20 question page 102?

21 "Question: So let's be technically accurate, if  
22 you want to split hairs a hundred percent of the cases you  
23 testified at deposition or trial last year were cases where  
24 you testified on behalf of the Plaintiff?

25 "Answer: Last year that would be true."

1 Did you give that answer to that question?

2 MS. VILLARREAL: Objection, no foundation.

3 THE COURT: Overruled.

4 A. Yes, but your question was different.

5 Q. Yes or no, sir?

6 A. But some of those Plaintiff's were not necessarily  
7 doctors -- some of those Plaintiff's were not against doctors or  
8 hospitals, which was the question that you asked me. Many of  
9 those cases --

10 MR. DOPF: Judge there's no question.

11 THE COURT: Ask a question.

12 Q. You did give that testimony that a hundred percent of  
13 your testimony in 2014 was on behalf of Plaintiff's, you did  
14 give that testimony, didn't you?

15 A. I fully accept that. I didn't remember now, but if I  
16 testified to that then they were all Plaintiffs.

17 Q. Have you ever testified in a case called Wildermuth  
18 versus Johnson in Florida that if an artery is 40 percent  
19 blocked a person will not get chest pain even if they run a  
20 marathon, have you said that under oath?

21 A. Yes.

22 Q. Have you ever testified under oath that it's your  
23 position that a patient has a duty to follow the doctor's  
24 advise?

25 A. Yes.

1 Q. Do you know one way or the other, yes or no, whether  
2 Mr. Colon is following the advise of Dr. Tirado and  
3 Dr. Tamburrino concerning activity, do you know?

4 MS. VILLARREAL: Timeline please.

5 Q. From heart attack to present?

6 A. I don't know.

7 Q. You've also testified, sir, that stress tests are not  
8 perfect tests?

9 A. Correct.

10 Q. That marathon runners have had multiple severe  
11 blockages, but no symptoms you've said that under oath also?

12 A. I have.

13 Q. You also said under oath that about half of the heart  
14 attacks that occur in America occur suddenly?

15 A. Yes.

16 Q. Did you give this answer to this question in the case  
17 of Ferraro versus Fuller in this county, Richmond County in 2009  
18 page 452?

19 "Question: Doctor, if you have a burn as cardiac  
20 in origin or burning from GERD or heartburn, how does a  
21 doctor following good and accepted practice distinguish  
22 between the two?

23 "Answer: Answer sometimes they can't. Sometimes  
24 good practice it's confusing. It depends on the  
25 circumstances. Sometimes based on the symptoms alone you

1 can't tell the difference and you can't chase everybody down  
2 for heart disease who has reflux."

3 Did you give that answer to that question, sir.

4 A. Yes of course.

5 Q. Did you also testify, sir, in the very same case that  
6 plaque surface in an artery can change abruptly. You also gave  
7 that testimony, didn't you?

8 A. About rupture yes, they can rupture abruptly.

9 Q. So a rupture can happen at any time and can happen  
10 suddenly, correct?

11 A. Yes.

12 Q. In the case of Jennings versus Dr. Fausett and others  
13 a deposition in 2007 for a case venue in Georgia, did you state  
14 under oath quote "so that's why I've always testified in court  
15 that standard of care deviation doesn't necessarily mean  
16 negligence."

17 Did you give that testimony in that case yes or no,  
18 sir?

19 A. I have no idea what that means I need to know the  
20 surrounding question to see if there's a context to that. Out  
21 of context it makes no sense.

22 Q. That's why I've always testified in court that  
23 standard of care deviation doesn't necessarily mean negligence.  
24 Did you ever give -- make such a statement in a courtroom under  
25 oath?

1 MS. VILLARREAL: Objection, your Honor. There's  
2 no context. There's no question. It's being given  
3 before --

4 THE COURT: Sustained.

5 MR. DOPF: He's testified that Dr. Lefkovic  
6 departed that's what I'm asking.

7 THE COURT: Sustained.

8 Q. Would you tell our jurors what textbooks in cardiology  
9 in your opinion are authoritative? Name the ones that you  
10 allowed me to read from as being a authoritative?

11 A. They're not authoritative when they come to the  
12 treatment of medicine, but they are when it comes to reference  
13 and road fact any books from Braunwauld to Topol are  
14 authoritative. None of them are written about how to treat  
15 patients because general principles must be applied to the facts  
16 of every single given case. They're authoritative and not --

17 Q. Do you understand, sir, that unless you tell our  
18 jurors that the book is completely authoritative I can't read  
19 from it, do you know that, sir, yes or no?

20 THE COURT: Overruled.

21 A. I --

22 Q. No from all your testimony 500 plus pieces of  
23 testimony you know that in New York State if you say a book is  
24 not authoritative I can't read it to the jury, you know that,  
25 don't you?

1           A.    I don't know if I know it.  I may have heard it  
2 before.  I don't know, but the books are not.

3           Q.    But, there's no but.  Most people who have a negative  
4 stress test will not have a heart attack in the future, do you  
5 agree with that statement?

6           A.    Yes.

7           Q.    Most people who have a negative stress test will not  
8 have a heart attack in the future?

9           A.    Most.

10          Q.    You also agree that a patient can have a legitimately  
11 normal stress test one day and even a day later have a heart  
12 attack?

13          A.    Of course.

14          Q.    You've said that?

15          A.    Of course.

16          Q.    So a beautiful, beautiful, stress test on Tuesday,  
17 textbook beautiful wall being shown all the time it's gorgeous  
18 and even though it's a beautiful stress test and properly  
19 declared or interpreted to be negative, there are patients who  
20 drop dead the next day, fair statement?

21          A.    Correct.

22          Q.    The classic chest pain of a heart attack, sir, we know  
23 there are different variations, but the classic one is in  
24 effect, I feel like an elephant is sitting on my chest.  That  
25 would be at least one of the classic presentations?

1 A. Yes.

2 Q. Did Mr. Colon ever make such a statement to anyone  
3 either in a deposition, in the courtroom, or in the records?

4 A. Not to my knowledge.

5 Q. Would you agree with the statement that with an  
6 ejection fraction of 40 and 50 percent the patient probably  
7 would never know it, and the patient could run a marathon, play  
8 tennis, and have a normal life with very little impact on his or  
9 her life, do you agree with that statement, sir?

10 A. Yes, probably.

11 Q. Did you say publically?

12 A. Probably.

13 Q. This group of patients 40 to 50 percent ejection  
14 fraction you've testified could run a marathon?

15 A. Some could.

16 Q. You've gone down to Florida a bunch of times to  
17 testify against physicians?

18 A. Yes.

19 Q. In one year from one law firm you recovered about  
20 \$50,000.00 in medical/legal fees for your work?

21 A. There was one year over a decade ago, yes.

22 Q. In Florida?

23 A. Yes.

24 Q. Did you tell or did you testify under oath last year  
25 that the ability to fix coronary disease and give a patient back

1 a normal life is so powerful, did you ever say that under oath?

2 A. Probably.

3 Q. Did you in the case which was Kulcuzza versus New York  
4 Hospital, Queens, 2016. Did you ever say, People who have  
5 blocked arteries they get fixed and they go back to work in a  
6 matter of days, did you say that under oath?

7 A. Absolutely.

8 Q. Predictive value of a stress test about 95 percent?

9 A. 95 percent for a maximum thelium for echocardiogram it  
10 can range from 70 to 95 percent depending on the quality of the  
11 image and quality of the viewer.

12 There are published studies showing it from 70 to 95.  
13 It can vary based on the ability to see the heart.

14 Q. You wrote a book a number of years ago, I think it's  
15 not in print anymore about the heart?

16 A. A quarter of a century ago.

17 Q. Twenty-five years ago about the heart. In that book  
18 did you indicate quote, "Reading some of my opinions may have  
19 been seen controversial because they represent alternative view  
20 point." Did you write that?

21 A. In that book I say they may be seen as controversy  
22 because they're showing complete information what the whole  
23 forward says.

24 Q. Did you say, "Reading some of my opinions may have  
25 been seen controversial because they represent alternative view

1 point"?

2 A. Yes, absolutely that's why I wrote the book.

3 Q. Sir, you answered yes?

4 A. I'm sorry. Yes.

5 Q. There have been years you earned \$100,000.00 a year or  
6 more from your medical/legal --

7 MS. VILLARREAL: Objection.

8 THE COURT: Sustained.

9 Q. Would it be fair to say that you've told other jurors  
10 and given testimony that no one knows the answer to the question  
11 of what causes a plaque to rupture?

12 A. Correct.

13 Q. No one knows the answer as to what causes a plaque to  
14 rupture?

15 A. We don't know why it ruptures.

16 Q. Correct?

17 A. Correct.

18 Q. In February of this year in Nassau County in the case  
19 of Zuluga versus Angelopolous February 2nd of 2017, do you  
20 recall being asked whether this type of work, which does not  
21 involve direct patient care by you as a physician represents 25  
22 percent of your income and on February 2nd of this year you said  
23 yes?

24 A. I would have to see that because it's been 25 percent  
25 of my income two years out of 35.

1 Q. Let's see if we can find it. Reading from your  
2 testimony February 2, 2017 at page 370 line nine.

3 Okay. Do you remember in the same case in the Knote  
4 case on page 81 being asked, Does this type of work, which  
5 doesn't involve direct patient care by you as a physician  
6 represent 25 percent of your income. And your answer was yes.  
7 Do you recall giving that testimony?

8 MS. VILLARREAL: Note my objection again, your  
9 Honor. Move to strike.

10 THE COURT: Overruled.

11 A. I cannot answer the question the way you phrase it yes  
12 or no. It sounds like you're referring to a case within a case.

13 Q. Read the question and read your answer right here just  
14 the question, just the answer in a loud clarion voice?

15 A. Well again.

16 Q. Sir, I'm not asking that --

17 THE COURT: Counsel, please.

18 A. Read the question beforehand. My answer says that  
19 most years it's 15 to 20, but occasionally 20 to 25. It's right  
20 there.

21 Q. Let's see what's right there, sir.

22 MS. VILLARREAL: Objection.

23 THE COURT: Sustained.

24 Q. You're asked if the Knote case whether it was 25  
25 percent and you said yes?

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THE COURT: Sustained.

(At this time Elaine Forlenza relieves Tammy Rodriguez as the court reporter.)

1 COURT OFFICER: Ready for the jury?

2 THE COURT: Let's go.

3 COURT OFFICER: Jury entering.

4 (Jury entered courtroom.)

5 THE CLERK: The jury is the present and  
6 properly seated. Do both sides stipulate?

7 MS. VILLARREAL: Stipulated.

8 MR. DOPF: Stipulated.

9 THE CLERK: Case on trial continues. All  
10 parties remain the same.

11 Q Sir, if I heard you correctly your fee for  
12 today is 450 an hour?

13 MS. VILLARREAL: Objection.

14 MR. DOPF: I want to do a calculation,  
15 Judge.

16 THE COURT: Sustained.

17 Q Sir, I want you to assume that based upon your  
18 earlier testimony your fee for today will be \$3,600?

19 MS. VILLARREAL: Objection.

20 MR. DOPF: May I finish?

21 Q Is that more than you earn in your daily  
22 practice at Lenox Hill?

23 MS. VILLARREAL: Objection.

24 THE COURT: Overruled.

25 A Some days, yes. Some days, no.

1 Q So, sir, at \$3,600 a day, if you do that math  
2 if you did it every day, you'd earn about 900,000 a year.  
3 Cardiologists like you don't earn anywhere near 900,000.

4 MS. VILLARREAL: Objection.

5 THE COURT: Sustained.

6 Q It's much more lucrative for your wallet to  
7 come in and testify --

8 MS. VILLARREAL: Objection.

9 THE COURT: Sustained.

10 Q -- than it is to see patients?

11 MS. VILLARREAL: Move to strike.

12 Q Is a 75 percent blockage of an artery critical  
13 in your book?

14 A In its simple context it's not, but it can be.

15 Q A narrowing of 75 percent is generally not the  
16 stuff of heart attacks?

17 A Not of heart attacks, unless they are  
18 unstable.

19 (Pause in proceedings.)

20 Q Did you testify, sir, in the case of Gonzalez  
21 versus Dr. Veloso, V E L O S O and others? This is a case  
22 from Florida, Dade County, in 1995. Did you ever testify in  
23 sum and substance, quote, I am saying that a heart attack is  
24 characterized by one hundred percent blockage of an artery,  
25 not a 75? EF



1 MS. VILLARREAL: This is everything that  
2 he stated is like way off of my direct and outside  
3 of the scope if he could limit to what was  
4 testified to.

5 THE COURT: Overruled.

6 Q Sir, would you agree, sir, that you've also  
7 said under oath that there are twenty million people walking  
8 around with plague in their bodies, plague in there hearts,  
9 atherosclerotic disease who don't know it and angiograms are  
10 not done on all of them. Have you ever said something like  
11 that?

12 A Of course.

13 Q Well, when you say of course, you know it's of  
14 course, but the jury doesn't know it's of course, do they?

15 MS. VILLARREAL: Objection.

16 THE COURT: Sustained.

17 Q Have you ever told other jurors that there is  
18 no standard of care for the record or for record keeping?  
19 Have you ever made such a statement, sir?

20 A It depends on the context into that there are  
21 times record keeping doesn't reflect care and care is what  
22 matters. And other circumstances where record keeping does  
23 affect care. So I would have to see the context of that.

24 Q I will give it to you. This is another  
25 Florida case, Dade County, Gonzalez versus Dr. Veloso.

1 Deposition, March 3. 100 East 77th Street. That's the  
2 address of Lenox Hill Hospital, correct?

3 A Yes.

4 Q Would it be fair to say, sir, that you were  
5 doing depositions as part of your medical legal business at  
6 Lenox Hill Hospital? In other words the attorneys would  
7 come to the hospital and you would find a room for them and  
8 they would take your deposition. Did that ever happen?

9 A No. I had an office, permanent office there.  
10 That was permanent office and did depositions there.

11 Q So you did depositions there while you were on  
12 hospital time, correct or incorrect? Did you ever do a  
13 deposition at Lenox Hill Hospital on hospital time when you  
14 were a hospital employee, yes or no?

15 A I cannot answer the question as you phrased it  
16 yes or no.

17 Q You were an employee at Lenox Hill Hospital  
18 for how many years about?

19 A 14.

20 Q 14?

21 A At Lenox Hill.

22 Q Yes, as an employee, correct?

23 A Yes.

24 Q And you had an office in Lenox Hill Hospital  
25 for how many years about?

1           A       14.

2           Q       14. And over those fourteen years can we  
3 agree that you gave at least twenty depositions in your  
4 office while you were being paid by Lenox Hill Hospital to  
5 be there?

6                   MS. VILLARREAL: Objection.

7                   THE COURT: Overruled.

8           A       No. I was paid not by the hour. I was paid  
9 to get the job done and some nights I would stay until  
10 eleven or twelve. I never -- they never failed to get the  
11 hours out of me and if there was an emergency I would leave  
12 because I was the cardiac floor. But I was not being paid  
13 by Lenox Hill during that hour. I was paid to run the  
14 cardiac care unit.

15          Q       Do you know what yes or no means?

16                   THE COURT: Counsel --

17                   MS. VILLARREAL: That was not a yes or  
18 no.

19                   THE COURT: Sustained.

20                   MS. VILLARREAL: Let the witness finish  
21 if he can.

22                   THE COURT: Ask another question.

23          Q       Reading from Page 95.

24                   "QUESTION: Isn't there a standard with  
25 respect to record keeping?

1                   "ANSWER: I think that there are legal issues  
2 in terms of one's ability. You know, someone's word against  
3 another's to show what they did. But to me the standard of  
4 care is how he practices medicine. His record keeping is a  
5 matter of how he can support to you and perhaps to a jury  
6 what he did, but there was no standard of care for the  
7 record. If the patient lives and the record dies I will be  
8 happy."

9                   Did you ever give that testimony, yes or no,  
10 sir?

11                  A           Yes.

12                  Q           Would you agree, sir, that plaque rupture and  
13 thrombosis, the forming of a clot, is often generated by  
14 events that cardiologists can't understand, fair statement?

15                  A           Yes.

16                  Q           Have you also taken the position, sir,  
17 repeatedly that a stress test can be considered reliable,  
18 the results, for about up to one year after it and then  
19 after that you can't attest to the reliability of it going  
20 forward? It has a shelf life of about a year?

21                  A           Yes.

22                  Q           How many stress tests whether they were echos  
23 or stress tests did Mr. Colon have before his heart attack?

24                  A           I don't recall. There were a number of them  
25 but I don't remember the number.

1 Q More or less than ten?

2 A I don't remember if it was more.

3 Q More or less than five?

4 A I would think. I don't remember the number  
5 but I would imagine it's in the range of three to six but  
6 you don't know the number.

7 Q You know that answer is wrong?

8 A Well, then I am wrong. I didn't memorize.

9 Q Why are you guessing, sir? You are under  
10 oath. Why are you guessing?

11 MS. VILLARREAL: Objection.

12 THE COURT: Sustained.

13 MS. VILLARREAL: And specifically if he  
14 is going to ask that question the witness should  
15 be allowed to actually look at the record like his  
16 client did.

17 Q Have you ever testified, sir, that with an  
18 ejection fraction above 50 the patient is as strong as they  
19 were at fifteen years of age?

20 A Many patients, yes.

21 Q Now in the case that you testified in Queens  
22 County, October 2 of this year, so that's --

23 A Eight days ago.

24 Q -- eight days ago. Did you tell the jurors  
25 that you charge \$500 an hour for court time?

1 A Yes.

2 Q What are you charging here for court time?

3 A \$500 an hour.

4 MS. VILLARREAL: Objection, your Honor.

5 Asked and answered.

6 MR. DOPF: I thought you said 450. Okay.

7 THE COURT: Overruled.

8 Q In the case that you testified to seven days  
9 ago, whatever, Mirmelstein versus Garrison, once again it  
10 was against a physician or physicians, fair statement?

11 A It is.

12 Q And did you testify, sir, that \$10,000 is a  
13 typical amount that you collect or charge for cases that go  
14 to trial?

15 A In recent years, yes.

16 Q Agree that generally speaking if an artery is  
17 less than 50 percent blocked the patient can run a marathon  
18 without trouble?

19 A Yes.

20 (Pause in proceedings.)

21 Q Do you have a closet back in your office or  
22 your home where you keep all of your testimony, sir?

23 A I don't keep my -- I usually don't get my  
24 testimony so I don't have transcripts.

25 (Pause in proceedings.)

1 Q Sir, in 2005 in this courthouse in front of  
2 the Honorable Joseph Maltese, did you give testimony in a  
3 case called Barnick, B A R N I C K, versus Dr. Labarbera,  
4 L A B A R B E R A? Do you recall that, sir, February  
5 2, 2005?

6 A The name is familiar, but that's a long time  
7 ago. I don't recall the case.

8 Q And, sir, would it be fair to say that you  
9 told that jury that in general you've earned \$70,000 a year  
10 as a ball park figure for your medical legal work? Do you  
11 recall that?

12 MS. VILLARREAL: Note my objection.

13 THE COURT: Overruled.

14 A In those years at that period of time I was  
15 earning around 70 a year.

16 Q And that was twelve years ago, right?

17 A Yes.

18 Q So, sir, if we do the math at 70,000 a year  
19 times 30 years that's easily over two million bucks; isn't  
20 it?

21 A That was only --

22 MS. VILLARREAL: Objection, your Honor.

23 It's been over and over and over.

24 THE COURT: Sustained.

25 Q Would you agree, sir, that most chest pain in

1 general is not cardiac?

2 A Yes.

3 Q You don't do angioplasty, do you?

4 A I do not.

5 Q And never have?

6 A I have never.

7 Q Do you do diagnostic catheterizations?

8 A No.

9 Q Meaning in simple language you don't inject  
10 die into any of your patients to look at their heart, fair  
11 statement?

12 A Correct.

13 Q And when you need to have an angiogram done  
14 for whatever purpose in general, you refer the patient to a  
15 cardiologist who has expertise in that which you don't have,  
16 fair statement?

17 A Correct.

18 Q Do you remember testifying in a case called  
19 Hinlicky, H I N L I C K Y, versus Frank, County of Broom,  
20 New York State, December 8th, 2003? Do you remember that at  
21 all, sir?

22 A Just the name.

23 Q Just the name?

24 (Pause in proceedings.)

25 Q In the case of Hinlicky in front of the

1 Honorable Walter Relihan, R E L I H A N, on December 8th of  
2 2003, you testified that you read the deposition of Dr.  
3 Ilioff, I L I O F F. Do you recall that?

4 A No.

5 Q Do you recall after you told the jury that you  
6 read the deposition of Dr. Ilioff, the attorney said how  
7 could you do it, he never gave a deposition? Do you  
8 remember that?

9 A No.

10 Q Let me ask you if you gave this testimony on  
11 Page 87.

12 "QUESTION: Good afternoon, Doctor. I am  
13 Kevin Hunt. I represent the anesthesiologist Dr. Ilioff in  
14 the corner. Did you review deposition transcript by  
15 Dr. Ilioff?

16 "ANSWER: Yes.

17 "QUESTION: You did?

18 "ANSWER: Yes, back in 2002.

19 "QUESTION: Excuse me?

20 And do you have that here?

21 "No.

22 "QUESTION: Anywhere here? Is that in the  
23 briefcase or anywhere here?

24 "ANSWER: No.

25 "Back in your office?

1 "ANSWER: Yes.

2 "QUESTION: Okay. Would it surprise you to  
3 know that Dr. Ilioff never gave a deposition in this case?

4 "ANSWER: Then I didn't read his. I thought I  
5 did."

6 Did you give those answers to those questions  
7 sir, yes or no?

8 A I must have.

9 Q So, sir, why would you tell a jury that you  
10 read the deposition of a physician when you knew you didn't?  
11 Why would you make it up?

12 A I was obviously confused with someone else. I  
13 would not make something up but I have made mistakes in  
14 representing the names of certain people. But not in  
15 medicine. But, yes, I have gotten names confused.

16 Q So that's what you say you got the name  
17 Ilioff -- Ilioff is kind of a name like Smith or White or  
18 Black, common name?

19 A Oh sure.

20 MS. VILLARREAL: Note my objection,  
21 Judge.

22 THE COURT: Sustained.

23 Q In your book did you write that we measure the  
24 strength of a heart, of a patient's heart by counting how  
25 much blood is squeezed out with each beat?

1 A Yes.

2 Q Fair statement?

3 A Yes.

4 Q And how much blood is squeezed out with each  
5 beat is what we have been calling ejection fraction,  
6 correct?

7 A Correct.

8 Q And you wrote that we cardiologists can  
9 determine the strength of a patient's heart by counting how  
10 much blood is squeezed out, correct?

11 A Yes.

12 Q And we know that at least in the most recent  
13 records of Dr. Tamburrino, 2016, 2017 records, the  
14 cardiologist, Mr. Colon had a magnificent ejection fraction,  
15 you know that, right?

16 A I haven't seen 2017 but I don't know your  
17 definition of magnificent.

18 Q 50 percent or better.

19 A Depends on how much better. Depends how much  
20 on whether it can amount up to further activity or stuck  
21 there. There is context to what you're asking.

22 Q Bigger the heart attack, the weaker the heart  
23 resulting in a lower ejection fraction and a gloomier  
24 prognosis for the patient. Did you write that in your book,  
25 sir? EF

1           A           Yes.

2           Q           So let's break it down. The bigger the heart  
3           attack, the weaker the heart, the lower the ejection  
4           fraction and the gloomier outlook for the patient, correct?

5           A           Yes.

6           Q           Did you also write that if the ejection  
7           fraction is greater than 45 percent the outlook for the  
8           patient is to quote you excellent. Did you ever write that  
9           in your book?

10          A           Yes.

11          Q           45 percent prognosis is excellent. Did you  
12          write or didn't you, sir?

13          A           I did.

14          Q           And did you also write that not all the chest  
15          pain coming from the heart or coming from the chest means  
16          that there is death of heart muscle. You've written that  
17          too, haven't you, in your book?

18          A           Right. Not all chest pain is a heart attack.

19          Q           And did you also write, sir, in your book,  
20          Page 120, but minimal plaque can abruptly occlude -- occlude  
21          means block, right?

22          A           Yes.

23          Q           -- leading to a heart attack. These minimal  
24          narrowings will not affect the result of a stress test, but  
25          they can still rupture --

1           A        Yes, you can.

2           Q        I need to finish.  They can still rupture,  
3 form blood clots and result in a heart attack.  Did you  
4 write that?

5           A        Yes.

6           Q        And when you said minimal plaque can abruptly  
7 occlude resulting in a blood clot and a heart attack, when  
8 we say abruptly occlude, it could be as fast as the snap of  
9 a finger, correct?

10          A        Yes.

11          Q        And, sir, you also wrote at Page 121, that  
12 most people who pass a stress test will not have heart  
13 attacks in the future.  A favorable test offers a  
14 statistical reassurance that things should be okay.  Did you  
15 write that?

16          A        Yes.

17          Q        And, sir, Mr. Colon had stress test, after  
18 stress test, after stress test, dating back to something  
19 like 2002 that were all reported to be negative, except one  
20 in 2008 that resulted in a catheterization.  Did you know  
21 that?

22          A        Well --

23          Q        Did you know?  That's all --

24          A        There was the one that was positive.

25          Q        Sir --        EF

1 MS. VILLARREAL: Objection. Objection,  
2 let him answer.

3 Q If you knew that, yes, I knew, or, no, I  
4 don't.

5 THE COURT: Let him answer the question.

6 A I cannot answer the question as you phrased  
7 it.

8 Q Most people after a heart attack can go back  
9 to their good old sex life, right?

10 A Most people.

11 Q It's the formation of the clot that's  
12 ultimately responsible for blocking the artery and starting  
13 the heart attack, fair statement?

14 A Yes.

15 MR. DOPF: Judge, I need a moment but I  
16 think I have no further questions of this witness.

17 (Pause in proceedings.)

18 Q On average when you have your office practice  
19 running, how many patients do you see a day?

20 A Range from five to eleven.

21 Q And on average there is no way that you earn  
22 \$4,000 a day for seeing those five to eleven patients on  
23 average, fair statement?

24 A Most days you're right.

25 Q So then doing what you do here and reviewing

1 cases is much more lucrative, better for your wallet than  
2 seeing patients, is that a fair statement?

3 A Yes. But most of my trial days are actually  
4 my vacation days. But that said, yes, it makes more money.

5 MR. DOPF: Nothing further, Judge.

6 THE COURT: Redirect?

7 MS. VILLARREAL: Yes, your Honor,  
8 briefly.

9 REDIRECT EXAMINATION

10 BY MS. VILLARREAL:

11 Q Dr. Charash, besides ejection fraction are  
12 there any other indicators of how well a person is doing and  
13 whether they're in fact still -- whether they sustained  
14 damage after a heart attack?

15 A Well, you look at the ejection fraction and  
16 clearly if it's terribly low most people are in really bad  
17 shape. If you have an ejection fraction where there is  
18 clear heart muscle damage, if your ejection fraction 50,  
19 some people could be limited by the failure of heart to rise  
20 ten or twenty points of activity.

21 Many people who have normal ejection fraction  
22 of 55, never suffered death, when they get to do activity  
23 the heart ejection fraction goes up. Many people have heart  
24 attacks remain flat at 50 so they could become limited.

25 Q And, Dr. Charash, you are aware that following

1 the heart attack in 2000 -- heart attacks in 2013 of  
2 Mr. Colon, he continued to treat with his treating  
3 cardiologist Dr. Frank Tamburrino, who performed various  
4 tests for his heart, including one more than a year and a  
5 half following the heart attack performed a nuclear stress  
6 test exercise. And that would have been on -- this one was  
7 on July 23rd, 2014. Are you aware of that one, Doctor?

8 A Pardon me?

9 Q Are you aware of that one?

10 A Yes, I am.

11 Q And, specifically, I am going to ask you to  
12 assume that the nuclear stress -- first off, could you  
13 please explain to the jury what a nuclear stress test is?

14 A You inject into the body a nuclear isotope  
15 that gets absorbed by the heart muscle so you can see the  
16 heart wall beat and see where the muscles are not working.

17 Q How would you compare a nuclear stress test  
18 comparatively to an echocardiogram?

19 A Nuclear stress tests are measured very  
20 actively by nuclear levels in the heart muscle. You can  
21 actually measure the counts. Most are done by relative  
22 estimates. Some great quality echos can be quantitative but  
23 in general nuclear are more specific, the numbers.

24 A nuclear test might come up with 46 where an  
25 echo would normally be 45 or 50.

1 MR. DOPF: Objection to any further on  
2 nuclear because I didn't go into it, scope. I  
3 don't think the word nuclear came out of my mouth.

4 MS. VILLARREAL: He talked about  
5 Dr. Tamburrino's records.

6 THE COURT: Sustained.

7 Q Dr. Tamburrino's records specifically  
8 indicated on this stress test that he did, that specifically  
9 the left -- a year and a half after the heart --

10 MR. DOPF: I am going to object to  
11 reading anything not in evidence and those records  
12 are not in evidence.

13 MS. VILLARREAL: I am not reading  
14 anything.

15 THE COURT: Let me hear the question.

16 MR. DOPF: As long as she is not reading  
17 something --

18 MS. VILLARREAL: Judge, this is  
19 ridiculous.

20 Q Are you aware, Doctor, that following a year  
21 and a half there was still left ventricle hypotrophy  
22 following the heart attack?

23 A Yes, there was still weakened heart muscle.

24 Q And hypotrophy exactly is what?

25 A Are you talking about the heart muscle not

1 beating with a normal strength.

2 Q And if you're talking about mild global  
3 hypokinesia, explain that?

4 A Hypokinesia means the heart muscle not moving  
5 with normal strength.

6 Q And that's approximately a year and a half  
7 following the heart attack, Mr. Colon was still exhibiting  
8 problems with the heart muscle movement; is that correct?

9 MR. DOPF: Objection, leading.

10 THE COURT: Sustained.

11 Q Doctor, are you aware that Mr. Colon sustained  
12 heart muscle movement irregularity following the heart  
13 attack for more than a year and a half recorded on a stress  
14 test done by Dr. Tamburrino?

15 MR. DOPF: Objection, leading, answer in  
16 the question.

17 THE COURT: Sustained.

18 MS. VILLARREAL: It's not leading, your  
19 Honor.

20 THE COURT: Yes, it is.

21 MS. VILLARREAL: It's an open question.

22 THE COURT: Yes, it is.

23 Q Are you aware that Dr. Tamburrino performed a  
24 stress test more than year and a half following the heart  
25 attack?

EF

1           A           Yes.

2           Q           Are you aware, Doctor, that there was still  
3 global hypokinesis noted on those resting images?

4                       MR. DOPF:  Objection.

5                       THE COURT:  Sustained.

6                       What did it show, Doctor?

7                       THE WITNESS:  It showed permanent damage  
8                       to heart muscle with weakening of the bottom wall.

9           Q           And specifically it showed that the left  
10 ventricle ejection fraction at stress, meaning at exercise,  
11 was 50 percent.

12                       MR. DOPF:  Objection.

13           Q           Correct?

14                       THE COURT:  Sustained.

15           Q           What was the ejection fraction at stress,  
16 Doctor?

17           A           I need the report.

18           Q           Okay.

19                       MS. VILLARREAL:  May I?

20                       THE COURT:  Yes.

21                       (Handed to the witness.)

22           A           The ejection fraction was 50 percent at  
23 stress.

24           Q           And what was it at rest?

25                       MR. DOPF:  That's not in evidence, Judge.

1 THE COURT: Overruled. He can answer the  
2 question.

3 A 35 percent at rest.

4 Q So the ejection fraction at rest a year and a  
5 half following the heart attack was still 35 percent?

6 MR. DOPF: Objection.

7 Q Is that correct?

8 MR. DOPF: Objection, asked and answered.

9 THE COURT: Asked and answered.

10 Q What was the significance of an ejection  
11 fraction a year and a half following two heart attacks being  
12 35 percent?

13 MR. DOPF: Objection.

14 THE COURT: Sustained.

15 Q Doctor, what is the significance of those  
16 findings?

17 MR. DOPF: Objection.

18 THE COURT: Sustained.

19 Q Doctor, can you tell us what the significance  
20 of those findings are?

21 MR. DOPF: Same question, same objection.

22 THE COURT: Sustained.

23 MS. VILLARREAL: Judge, may we approach?

24 THE COURT: No.

25 Q The findings that are recorded in that record

1 does that change or does that confirm your opinion that  
2 Mr. Colon sustained permanent damage to his heart muscle  
3 following his heart attacks of 2013?

4 MR. DOPF: Objection.

5 THE COURT: Sustained.

6 MS. VILLARREAL: Judge --

7 THE COURT: Sustained.

8 Q Doctor, anything that was stated during the  
9 cross-examination by Mr. Dopf, the various cases that you  
10 talked about have nothing to do with this case, does that in  
11 any way change your opinion as to the permanent damage that  
12 was sustained to Mr. Colon's heart?

13 MR. DOPF: Objection, form and substance.

14 THE COURT: I will allow it.

15 A No, none of it did.

16 MS. VILLARREAL: Thank you very much,  
17 Dr. Charash. No further questions.

18 MR. DOPF: I just need one second, Judge.

19 (Pause in proceedings.)

20 RE-CROSS-EXAMINATION

21 BY MR. DOPF:

22 Q Sir, when did Dr. Tamburrino -- strike that.

23 MS. VILLARREAL: Note my objection, your  
24 Honor, to counsel conferring with his client in  
25 the middle of cross-examination.

1 MR. DOPF: Why is that wrong?

2 THE COURT: Middle of cross. I am  
3 limiting it to what counsel asked.

4 MR. DOPF: Sure.

5 Q Back to on the issue of heart damage and  
6 ejection fraction, when was the last time that dye was  
7 injected into this gentleman's heart to see if there were  
8 blockages and assess the vitality of his muscle?

9 MS. VILLARREAL: Objection.

10 Q When? All I am asking is when?

11 THE COURT: Overruled.

12 MR. DOPF: I will take a year.

13 MS. VILLARREAL: Beyond the scope of my  
14 redirect.

15 THE COURT: Overruled.

16 A Well, are you talking about nuclear or  
17 contrast?

18 Q Cardiac cath?

19 A I thought it was 2014, but I am not sure.

20 Q 2014?

21 A Or '15. I need to look back at the records to  
22 get the dates.

23 THE COURT: He says he doesn't recall.

24 Next question.

25 Q How many cardiac catheterizations, if any, did

1 --

2 MS. VILLARREAL: Objection.

3 MR. DOPF: I am not finished.

4 Q -- did Dr. Tamburrino do?

5 THE COURT: Sustained. Beyond the scope.

6 Q The most recent cardiac catheterization done  
7 by Dr. Tamburrino showed a really beautiful heart, didn't  
8 it?

9 THE COURT: Sustained, beyond the scope.

10 Q The last cardiac catheterization done by  
11 Dr. Tamburrino doesn't show any permanent heart damage,  
12 agree or disagree?

13 MS. VILLARREAL: Objection.

14 THE COURT: Sustained, beyond the scope.

15 MR. DOPF: We were talking about heart  
16 damage.

17 THE COURT: Come on, no.

18 MR. DOPF: Nothing further.

19 THE COURT: Folks, that's it. As far as  
20 this witness.

21 MS. VILLARREAL: Yes.

22 THE COURT: Please step down.

23 THE WITNESS: Thank you, sir.

24 (Witness dismissed.)

25 MR. DOPF: Can Mr. Colon be called? I

1 will continue.

2 THE COURT: How much time?

3 MR. DOPF: I probably need an hour.

4 THE COURT: No.

5 MR. DOPF: Understood.

6 THE COURT: Quarter after four as I told  
7 you we have to break.

8 Ladies and gentlemen, we're going to  
9 adjourn for the day. Just so you know after  
10 conversations with the attorneys we are hoping to  
11 sum up at the end of the week. So that's where  
12 we're at right now. Okay?

13 Have a good night. See everybody  
14 tomorrow morning.

15 (Jury left the courtroom.)

16 (Court stood in recess until Wednesday,  
17 October 11, 2017.)

18 \* \* \* \*

19 It is hereby certified that the  
20 foregoing is a true and accurate  
21 transcript of the proceedings.

21

22 \_\_\_\_\_  
23 TAMMY RODRIGUEZ  
24 OFFICIAL COURT REPORTER

24

25 \_\_\_\_\_  
ELAINE FORLENZA  
OFFICIAL COURT REPORTER

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