

CROSS-EXAMINATION OF THE PLAINTIFF

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF WESTCHESTER: CIVIL TERM: PART LJL

3 -----x
 4 KATHLEEN NOCERA, as Administratrix for the
 5 Estate of GARY NOCERA and KATHLEEN NOCERA,
 6 individually,

Plaintiff,

-against-

Index#61337/2014

7 LINDA CUOMO, MD, BENJAMIN BERNSTEIN, MD,
 8 WESTCHESTER COUNTY HEALTH CARE CORPORATION
 9 and WESTCHESTER MEDICAL CENTER,

Defendants.

10 -----x
 11 Trial (Cont'd)

February 14, 2018

12 B E F O R E:

HONORABLE LEWIS J. LUBELL,

Supreme Court Justice, and a jury.

(Appearances same as previously noted.)

13 Nicole Ameneiros

14 Senior Court Reporter

15 - - - - -
 16 THE COURT: Ms. Nocera, can I ask you to come up

17 and take the stand, please.

18 THE WITNESS: Yes, sir.

19 COURT OFFICER: Jury entering.

20 THE COURT: Jurors, you may be seated as you enter.

21 Counsel, ladies and gentlemen, please be seated. Good
 22 morning, Jurors.

23 JUROR: Good morning.

24 THE COURT: Sorry for the little delay. The irony
 25 is conferencing matrimonial cases on Valentine's Day. It's
 kind of like, what do I do with this.

Anyway, we are going to continue with presentation
 of the plaintiff's case. You'll recall that when we

1 recessed yesterday we had completed receiving the testimony
2 of Dr. Charash on behalf of the plaintiff's case. As a
3 result of taking certain witnesses out of turn, we had
4 adjourned the continuation of Mrs. Nocera's
5 cross-examination by Mr. Vigorito and following with
6 Mr. Venditto.

7 So we're going to continue this morning on the
8 plaintiff's case. Let the record reflect that Mrs. Nocera
9 has retaken the stand. Mrs. Nocera, I remind you you are
10 still under oath.

11 THE WITNESS: Yes, sir.

12 THE COURT: And Happy Valentine's Day folks.

13 THE WITNESS: Thank you.

14 JUROR: Thank you.

15 THE COURT: Mr. Vigorito.

16 MR. VIGORITO: Happy Valentine's Day to you too,
17 your Honor. Good morning, ladies and gentlemen.

18 CROSS-EXAMINATION (Cont'd)

19 BY MR. VIGORITO:

20 Q Good morning, Mrs. Nocera.

21 A Good morning.

22 Q You were here yesterday. You heard Dr. Charash's
23 testimony?

24 A Yes, sir.

25 Q Okay. You heard Dr. Charash testify that he read your

1 deposition as well as medical records, right?

2 A I believe so.

3 Q You heard Dr. Charash tell this Court and jury that
4 your husband felt the pain after he was working on a car, you
5 heard that too, right?

6 A Yes, I did.

7 Q That was incorrect, wasn't it?

8 A Yes, it was.

9 Q It wasn't a car, he was working on the oil burner in
10 the home?

11 A Correct.

12 Q And you testified to that very clearly in both your
13 statutory hearing testimony and your deposition testimony, true?

14 A Yes, I did.

15 Q Which Dr. Charash says he read, you heard him say that,
16 right?

17 A Yes, he did.

18 Q Mrs. Nocera, if the Westchester Medical Center record
19 stands for the proposition that there was a five- or six-hour
20 span of time when your husband did not complain of any pain
21 whatsoever, you would dispute that, true?

22 A I was asked if he ever told me that his pain
23 diminished, and the answer I gave was, no, he never told me.

24 Q With all due respect to you, Mrs. Nocera, the question
25 was kind of a yes or a no. Let me try to ask it a different

1 way.

2 You testified two times prior to your trial testimony
3 in this case, statutory hearing, which we've talked about, and
4 an examination before trial, correct?

5 A I believe that's what they're called, yes, sir.

6 Q Both of those took place in my office in Valhalla,
7 true?

8 A I do not remember where they took place. If you say so
9 must have been.

10 Q And on each of those occasions you told me, in response
11 to my questions, that your husband had pain from the moment he
12 got to Westchester Medical Center that day continually, nonstop,
13 until he didn't wake up a couple of days later; isn't that your
14 testimony?

15 A To the best of my knowledge and to what I was told by
16 my husband, yes, that is what I said.

17 Q And aside from what you told us the other day, those
18 moments in time when you might have been texting someone or
19 fielding a telephone call, you were present with your husband in
20 the emergency department, in the small confines of the emergency
21 department of Westchester Medical Center that day, the 18th,
22 true?

23 A Yeah, I was not in the bed with him, but I was near the
24 bed, outside the room slightly, yes.

25 Q Would you think, ma'am -- I'm sorry. Are you finished?

1 A I am.

2 Q I want to make sure you finished the answer.

3 Would you think, ma'am, that over the course of a
4 six-hour span when your husband did not exhibit any pain, as
5 recounted by the nurses in the chart, that over six hours you
6 might become aware of that fact, yes or no?

7 A No.

8 Q How about this note?

9 MR. VIGORITO: Ed, would you put up the first page.

10 THE WITNESS: Judge, I'm going to...

11 THE COURT: Yes, you may.

12 MR. VIGORITO: Go to the second page, Ed.

13 Q Mrs. Nocera, when a nurse wrote, and it's Nurse Lecia
14 Gannon, as evidenced by the LG right there, that's Lecia Gannon
15 at 1514, so that's 3:14 p.m., when Lecia Gannon writes in her
16 electronic medical record patient sitting upright on stretcher;
17 no complaints offered; patient's wife at bedside, does that
18 refresh your recollection that at least on that occasion at
19 3:14 p.m. your husband was sitting up on the stretcher, he had
20 no complaints to offer whatsoever and you were right there with
21 him?

22 A Which part would you like me to answer first?

23 Q Were you with him at that time at 3:14?

24 A I don't know. I didn't keep track of time. Most
25 likely.

1 Q So the question is, does that note refresh your
2 recollection that there was a time or several times when your
3 husband did not have any pain and you were there and you knew
4 about it?

5 A No, it does not.

6 Q Were you present when your husband informed the medical
7 professionals at Westchester Medical Center that the first time
8 he felt this pain running across his chest was when he got up
9 off the floor from trying to fix the oil burner, were you
10 present for that?

11 A I was not out in the admitting room when he was giving
12 his explanation, no, I was not there originally.

13 Q But you knew that before your husband ever set foot in
14 the emergency department that day, did you not?

15 A Knew what?

16 Q That the first time he felt the pain was when he lifted
17 himself up off the floor from either lying on his back or lying
18 on his side while working on the oil burner, you knew that?

19 A I don't know what position he was in. I don't know if
20 he was lying down, whether he was sitting up, if he was on his
21 knees. I do not know that the pain came immediately after he
22 got up, as he was getting up. I do not know. To the best of my
23 recollection, through my conversation with my husband, was that
24 it happened sometime after he got up, and those were the words
25 he used.

1 Q Do you remember on direct examination by Ms. Weisman
2 days ago being asked questions about where your husband was when
3 he was working on the oil burner?

4 A Yes.

5 Q And do you remember a specific question regarding was
6 he in close confines, was he in a walled off area or an open
7 area; do you recall those questions?

8 A Specifically, I do not recall them, but I do remember
9 answering something to the effect of giving a description of the
10 area where the oil burner was located.

11 Q And do you recall that the description that you gave
12 was that it was in a -- an open area, do you recall that?

13 A Yes, sir.

14 Q Okay. And that's not exactly what it was, was it?

15 A Absolutely open area.

16 Q I'm going to read to you, ma'am, I'd ask you to listen
17 along, this is your statutory hearing on March 10th, 2014.
18 Before I read it, let me ask you this question: Would you say
19 that your memory of the events from 2013 was better one year
20 later in 2014 than it is five years later in 2018; would you say
21 that?

22 A I can't answer yes or no.

23 Q You don't know if it is or not?

24 A I can't answer if my memory is better then or now. No,
25 sir.

1 Q March 10th, 2014, you were represented by Ms. Weisman,
2 I was there and I was the only one there asking you questions at
3 the statutory hearing at page 46:

4 "Question: Line 20. Where is the oil burner located
5 in your house?

6 Answer: In the basement?

7 Question: Is it in the self-contained room?

8 Answer: No.

9 Question: Like a walled off room or is it in an open
10 part of the basement?

11 Answer: Walled off, yeah."

12 Do you recall being asked those questions and giving
13 those answers back in 2014?

14 A I do not recall. However --

15 Q That's the answer. You answered the question.

16 Now, let me ask you, did your husband tell you that
17 night that he was working on the oil burner, that the first time
18 he felt this pain going across his chest was when he pulled
19 himself up off the floor from working under the oil burner
20 trying to change a part, did he tell you that?

21 A Under the oil burner? I don't recall him being under
22 the oil burner, since the oil burner is sitting on the floor.

23 Q All right. Let me continue to read on the same page,
24 page 47:

25 "Question: Line five. Did your husband tell you that

1 he had to squeeze into a particular spot in order to access the
2 part of the burner that he needed to work on?

3 Answer: He had to lay down.

4 Question: On his back?

5 Answer: And get it from underneath. I don't know if
6 he was -- if it was his back or his side, but...

7 Question: When did he tell you about the attempt at
8 fixing the oil burner?

9 Answer: When I got home from work.

10 Question: When he started complaining about the chest
11 pain to you that evening did you relate it at -- to his working
12 on the oil burner?

13 Answer: He told me that he sat up and that he felt the
14 pain. Indicating.

15 Question: The sitting up and feeling the pain, does
16 that mean sitting up from when he was laying, do you know,
17 either on his back or his side, working on the oil burner?

18 Answer: Yes.

19 Question: So as part and parcel of the discussion of
20 this onset of pain he did tell you that he was lying on his side
21 or on his back, whatever the case may be, and when he finally
22 got up and he sat up again that's when he started to feel the
23 pain?

24 Answer: Yes."

25 Do you remember being asked those questions and giving

1 those answers nearly four years ago? Just do you remember?

2 A Not off the top of my head, no.

3 Q Do you know if you corrected or changed any of the
4 testimony that you rendered under oath in this transcript?

5 A Which transcript are we speaking of?

6 Q This is the 50-H transcript.

7 A I never opened the envelope. I never opened the
8 envelope. I never reread it. It made my ill.

9 Q This is a transcript that was sent to you by your
10 attorney?

11 A Yeah, it's still in the envelope.

12 Q Still hasn't been opened?

13 A No, sir.

14 Q Might have a cover letter in there?

15 A Maybe.

16 Q Might have instructions from Ms. Weisman in there as to
17 what to do with the transcript, right?

18 A Perhaps.

19 Q Never opened it?

20 A No, sir. It made my sick and I couldn't think about
21 it. I couldn't deal with it.

22 Q Did you have any conversations with Ms. Weisman about,
23 you know, you have to read this and check to see if it's
24 accurate?

25 A Do not recall.

1 Q Are you telling us now, by virtue of what you just told
2 us, that what I read to you and the answers that you gave were
3 just flat out wrong; is that what you're telling us?

4 A No. What I'm telling you is I don't recall what I said
5 back then. I was not in the best frame of mind.

6 Q Did you express or did you tell your attorney that you
7 couldn't go forward with that statutory hearing at that time
8 because you wouldn't be able to competently answer questions
9 like where was your husband working on the oil burner?

10 MS. WEISMAN: Your Honor.

11 THE COURT: Can I hear it back, please.

12 (Record read.)

13 THE COURT: Sustained.

14 THE WITNESS: Can you read that back to me, please?

15 THE COURT: No, I sustained it.

16 THE WITNESS: Oh, God.

17 Q Mrs. Nocera, this information about your husband
18 working in close quarters on the floor underneath the oil
19 burner, trying to change a part, this was all information that
20 was related to personnel at Westchester Medical Center, wasn't
21 it?

22 A I don't know. I didn't read it. I don't think it says
23 anything about an oil burner. I believe they mistook his
24 information and said a car.

25 Q You're pointing to the screen?

1 A There's -- I saw things that were not right.

2 Q Was it an oil burner that your husband was working on?

3 A Yes, sir.

4 Q You know that there's another note in the chart written
5 by the fellows that reported to Dr. Cuomo that recounts your
6 husband saying he was working on an automobile, you know that?

7 A I believe I heard that.

8 Q Not only did you hear it, you heard the expert who came
9 in to testify on behalf of your claim in this case, you heard it
10 from Dr. Charash yesterday, that apparently he knew about it
11 because when I asked him what Mr. Nocera was working on he said
12 it was a car, right?

13 A As you did in my hearings.

14 Q And you corrected us and said, no, it wasn't a car, it
15 was under the oil burner?

16 A I don't remember using the term under the oil burner.

17 Q All right.

18 A I'm not a mechanic.

19 Q Let's ask --

20 THE COURT: Hold it, hold it again.

21 A I'm not a mechanic, so.

22 THE COURT: Next question.

23 Q Mrs. Nocera, whether it was under the oil burner, along
24 side of the oil burner or on top of the oil burner, we can agree
25 that your version of what your husband was doing when the pain

1 started was he was working on the family's oil burner, true?

2 A That is correct.

3 Q And as soon as he stopped working on it, whether he was
4 standing, kneeling, sitting, that's when he felt this crushing
5 chest pain, true?

6 A Never said crushing.

7 Q It was running across his chest, right?

8 A Yes, sir.

9 Q That you remember very well?

10 A Yes, sir.

11 Q What did he tell you?

12 A He had chest pain over here and it started after he was
13 working on the oil burner.

14 Q And you gave him a baby aspirin that night?

15 A Later that evening I did, yes.

16 Q And he went to sleep?

17 A Yes, sir.

18 Q And all of this happened at around 5 to 7 o'clock at
19 night; is that a fair range of time? You were cooking dinner
20 when he came up from trying to repair the oil burner; do you
21 recall that?

22 A I cannot give you a timeline. It was --

23 Q What time of day do you think it happened when he told
24 you he had the pain?

25 A I don't know what time of day. It was after I got home

1 from work. It could have been 5:00. It could have been 3:00.
2 It could have been 7:00. I'm not clear on the exact time he
3 told me.

4 Q Well, you see, that's what I mean about whether your
5 recollection might be better, you know, four years ago than it
6 is today. So let me read you again from your statutory hearing
7 at page 36 line 15:

8 "Question: What time of evening was it when he first
9 alerted you to his complain of chest pain?

10 Answer: I was preparing dinner.

11 Question: 6 p.m., 7 p.m.?

12 Answer: Six, seven.

13 Question: And he told you that it was constant?

14 Answer: Yes.

15 Question: Did he tell you when it began?

16 Answer: About an hour or so earlier before I got home.

17 Question: What was your husband doing at 5 o'clock
18 that day, do you know?

19 Answer: No."

20 Does that refresh your recollection, ma'am, those
21 questions and those answers that you gave under oath, as to the
22 timeline as to when your husband complained to you about the
23 pain?

24 A From that?

25 Q Yeah.

1 A It sounds like I didn't have an exact timeline. It
2 does not refresh my memory, sir.

3 Q But when you answered those questions under oath
4 four years ago were you doing your best to recall what was
5 happening on that day? I know it's a stressful day, but were
6 you trying to answer the questions to the best of your ability?

7 A I was doing the best I could, sir.

8 Q And do you think that perhaps your memory and your
9 recollection of these events might have been better back then
10 than it would be today?

11 A I can't say yes and I cannot say no.

12 Q There were conversations with the personnel at the
13 medical center regarding their suspicions that your husband's
14 pain might have been in some way related to his physical
15 activity the day before; is that a fair statement?

16 A Yes.

17 Q And the reason there was such a conversation about
18 that, linking the chest pain to his physical activity, is simply
19 because your husband told these people, nurses and doctors, what
20 he was doing the day before when the chest pain started, right?

21 A Yes.

22 Q And you know that, as you sit here now, because you
23 heard those very words being spoken by your husband in the
24 emergency room at Westchester Medical Center, right?

25 A Yes.

1 Q Did you add anything to that conversation that your
2 husband explained when his chest pain started? Did you say,
3 correct him in some way or add something to the conversation?

4 A At this moment in time I don't recall.

5 Q Your husband went on the computer that night and I
6 think you said Googled heart attacks, right, or chest pain?

7 A Heart attack.

8 Q Okay. And after he looks something up on the computer
9 he announced, at least to you, that he wasn't having a heart
10 attack, at least he thought, right?

11 A That's not what I said.

12 Q Tell us what he said.

13 A He said he didn't -- from Google it didn't -- he didn't
14 have the signs of a heart attack.

15 Q And from that moment when he had that chest pain did
16 you say to him let's go to an emergency room the night before?

17 A I don't recall exactly what we said. We discussed
18 options.

19 Q Was one of the options to go and seek medical
20 attention, whether it was at an ER or to call up Dr. Prestiano,
21 the family physician, or someone else?

22 A At this time I don't recall. I know we discussed it.
23 We talked amongst ourselves. We decided to at least take a baby
24 aspirin, just precautionary, which I had in the home, my home,
25 because I get -- gave it to my dog, and then he was going to see

1 how he felt. He just wanted to go to sleep.

2 Q And he went to sleep that night after the baby aspirin?

3 A Yes.

4 Q And as far as you can recall, he didn't wake up in the
5 middle of the night for any reason because of the chest pain?

6 A I don't know if he woke up. I sleep soundly.

7 Q And the following morning your testimony is that he
8 left the house, was picked up by your son who lived in Mahopac
9 and they drove to the City together?

10 A Are we talking Wednesday, sir?

11 Q We're talking on the day of his presentation to the
12 medical center, the 18th.

13 A Wednesday. That is true.

14 Q And you did not see him that morning?

15 A No, I did not.

16 Q You did not have an opportunity to have any
17 conversation with him or assess whether he was feeling worse or
18 the same?

19 A No, I did not.

20 Q And the next piece of information that you learned was
21 that you had a conversation with -- was it your son later that
22 morning about how your dad -- how his dad felt the night before?

23 A Excuse me. Yes, sir.

24 Q Okay. And as a result of these conversations you
25 wanted your son to go pick him up and take him to a hospital to

1 be checked out because he still had the chest pain?

2 A No, what I said was I was going to go into -- drive
3 into Manhattan, pick up your father and get him to the hospital.

4 Q And your son offered to do that, leave work where he
5 was, different job site, pick him up and take him and that you
6 would drive down from Put Valley and meet them at the hospital?

7 A Because it will take less time for him to get him and
8 bring him to the hospital, yes.

9 Q You realize that the medical record itself says that
10 your husband presented from home, you know that that's what it
11 says?

12 A Yeah, and that is inaccurate.

13 Q That would be inaccurate as far as you're concerned?

14 A It's absolutely inaccurate.

15 Q Okay. Let's talk about that six-hour period where the
16 pain level is listed as zero on the medical record. Each time a
17 nurse put down a zero on a scale of zero to ten for pain level
18 of your husband, each time a nurse did that, it would be your
19 position that the nurse was wrong, true?

20 A I never said that.

21 Q And that's because you don't really know if he was pain
22 free because you might have been distracted doing some other
23 things?

24 A No, what I said is he never told me he was pain free,
25 and I was not reading the chart as she was putting the notes in.

1 Q And you never heard him then say to a nurse, if the
2 nurse questioned him, Mr. Nocera, how are you feeling now when
3 they checked on him, you never once, during that six-hour
4 timeframe, heard your husband say I feel fine, I don't have any
5 pain and I want to go home? You never heard him say that?

6 A I did not.

7 Q There did come a point into later that afternoon into
8 the early evening where your husband did express the desire to
9 go home?

10 A After the doctor told him it's nothing
11 life-threatening, it's just a muscle pull, it's going to take a
12 while to heal, follow-up with my office.

13 Q And you saw that was my client, Dr. Cuomo, that said
14 those very words?

15 A Oh, yes, it was.

16 Q Because you were standing there at that time and you
17 definitely heard those words?

18 A Because I challenged her.

19 Q You challenged her? How did you challenge her? Tell
20 us.

21 A I told her that we had been there all day. The other
22 doctor told us he needed further testing to find out the cause
23 of the chest pain. We were here, let's get this done.

24 Q And Dr. Cuomo said nothing to worry about, not
25 life-threatening, here's my card, call my office, make an

1 appointment and we'll take care of it next week; that's
2 essentially what she said --

3 A She said --

4 Q -- according to your testimony?

5 MS. WEISMAN: Can you wait for her to finish?

6 MR. VIGORITO: I didn't finish my question yet so
7 you have to have a question before you have an answer. Go
8 ahead.

9 THE COURT: If anybody is going to have
10 conversations, direct them to me.

11 MR. VIGORITO: Okay, your Honor.

12 MS. WEISMAN: Okay, your Honor.

13 MR. VIGORITO: Could we have it read back maybe so
14 we have the full question now?

15 THE COURT: Can I hear it, Nicole.

16 (Record read.)

17 THE COURT: Go ahead, Mrs. Nocera.

18 A Dr. Cuomo told us that it was a muscle pull. It was
19 nothing life-threatening. She took a card out of her pocket,
20 she circled her name on the card and said follow-up with my
21 office because you need further testing.

22 Q Did Dr. Cuomo give your husband the discharge
23 instructions in this case?

24 A I don't believe it was Dr. Cuomo.

25 Q Did Dr. Bernstein give him the discharge instructions?

1 A I don't believe it was Dr. Bernstein either.

2 Q Did a nurse give them?

3 A I believe it was nurse that came in last.

4 Q What makes you say that, that you believe it was the
5 last nurse to see him?

6 A Because that nurse came by when we were in the cubicle
7 and she looked at us and said, you're still here? I'm like,
8 yeah, why? Oh, you've been discharged a while ago. No one told
9 us we were discharged.

10 Q And is that the nurse that gave your husband the
11 papers?

12 A I don't remember if it was the same nurse. Somebody
13 came back. I believe they just took his vitals, whatever you
14 do.

15 Q Did you ever take the papers yourself?

16 A No, I did not.

17 MR. VIGORITO: Ed, if you could put up the
18 discharge instructions. You have to go in several pages.

19 Q Mrs. Nocera, if you look at what we have up on the
20 screen right now, my first question to you is, is this the first
21 time you're seeing these papers?

22 A In this courtroom? Or today?

23 Q Ever. Ever.

24 THE COURT: Do you understand the question,
25 Mrs. Nocera?

1 THE WITNESS: No, I do not, sir.

2 MR. VIGORITO: I'll rephrase.

3 Q The other day you testified that you never read these
4 papers at home, right?

5 A Correct.

6 Q That you don't think your husband ever read the papers
7 at home, you said that too the other day?

8 A Possibly.

9 Q Right?

10 And so my question today, couple days later to you is,
11 looking at them up on this board, on this screen, is this the
12 first time you've ever seen the discharge instructions that were
13 given to your husband when you left Westchester Medical Center
14 on the 18th?

15 A No, I saw them the other day when we were in court.
16 The first day I believe Ms. Weisman put them up.

17 MR. VIGORITO: So, Ed, scroll down. I want the
18 top.

19 Q At the very top in bold print, follow up with Dr. Cuomo
20 of cardiology this week, exclamation point. You must have an
21 echocardiogram and a stress test. Call, there's the phone
22 number, to schedule your appointment. Return with any worsening
23 symptoms or other acute concerns.

24 Do you know, do you know, if either you or your husband
25 read that paragraph to yourselves back on the 18th of September,

1 the 19th or the 20th? Just a yes or a no.

2 A I never read them, no.

3 Q And what about your husband, do you know -- did he read
4 them and say to you once you got home, you know, this has got
5 some information in it, I have to follow these instructions if
6 something happens? Did you have any conversation that would
7 intimate to you that he had read the instructions? Just a yes
8 or a no.

9 MS. WEISMAN: Just note my objection to the form,
10 your Honor.

11 THE COURT: Overruled.

12 A Can you repeat that, please?

13 Q Sure. I'll rephrase it. Let me simplify it.

14 A Please. Thank you.

15 Q Was there any contact between you and your husband once
16 you left Westchester Medical Center that would give you the
17 ability to tell us that he must have read these papers?

18 A I don't recall anything yes or no. I do recall being
19 told to follow-up, which is exactly what he did. According to
20 that, it says --

21 Q Mrs. Nocera, the question is, was there any
22 conversation with your husband that indicated he read the papers
23 and you said, no, you don't recall?

24 A I -- at this time I do not recall.

25 Q And this line here that says diagnosis instructions,

1 chest pain of unclear etiology, heart murmur; and this line,
2 have you been seen for chest pain, the cause of your pain is not
3 yet known, do you know if when you left the hospital that your
4 husband made any comments to you, gee, I'm here all day and they
5 haven't been able to figure out why I'm having the chest pain,
6 they're telling me the cause of my pain is unknown? Was there
7 any conversation about that simple topic? Just a yes or a no.

8 A Can't be answered simple yes or no.

9 MR. VIGORITO: Go to the bottom of the page, Eddie.
10 Can you scroll up and highlight the paragraph starting with
11 sometimes?

12 Q Mrs. Nocera, in this document, which your husband left
13 the hospital with that day, it says sometimes chest pain is
14 caused by a dangerous condition like a heart attack, aorta
15 injury, blood clot in the lung or collapsed lung. Was there any
16 discussion between you and your husband about these potentials
17 as being the cause of his chest pain once you left the hospital
18 that day?

19 A No. We thought we left with the diagnosis --

20 Q You answered my question.

21 A -- of a muscle pull.

22 Q Ma'am, you answered my question. Thank you.

23 MR. VIGORITO: And this next paragraph, Ed, if you
24 would highlight this, chest pain.

25 Q Where it says chest pain is serious, it is very

1 important that you follow-up with your regular doctor and seek
2 medical attention immediately here or at the nearest emergency
3 department if your symptoms become worse or they change, did you
4 discuss the information in that paragraph with your husband?
5 It's just a yes or a no. Not a yes and something else.

6 A I did not --

7 Q Did you --

8 A -- read the documents, sir.

9 Q Did your husband discuss that information with you at
10 all, do you remember?

11 A I do not recall.

12 Q And the next paragraph down, where it says, you should
13 seek medical attention immediately, either here or at the
14 nearest emergency department, if any of the following occurs,
15 your pain gets worse --

16 MR. VIGORITO: Ed, go to the next page. Scroll
17 down.

18 Q -- your pain makes you short of breath, nauseated or
19 sweaty. Your pain gets worse when you walk, go up stairs or
20 exert yourself. You feel weak, lightheaded or faint. It hurts
21 to breathe. Your legs swell. Your symptoms get worse or you
22 have new symptoms or concerns. I take it that none of these
23 things were discussed with your husband? You have no recall of
24 this document; is that the same answer?

25 A None of those things happened.

1 Q The next two days go by, Thursday and Friday, right,
2 with your husband staying home?

3 A Yes, sir.

4 Q And I think you testified at the statutory hearing and
5 at the deposition that essentially he was in the house, spent a
6 lot of time sitting in his favorite chair, petting or
7 accompanied by the dogs, the family dogs?

8 A Yes.

9 Q You went to work both of those days or just one of
10 those days, which was it?

11 A I work Thursday.

12 Q Okay. So that would be the next day after he came home
13 from the emergency room?

14 A Yes.

15 Q So that evening when he came home from the emergency
16 room on the 18th he was able to sleep through the night, as far
17 as you know?

18 A I don't know if he slept through the night. I sleep --

19 Q You don't have any recollection that he got up in the
20 middle of the night and disturbed you in any way?

21 A You can set off a bomb, you can't disturb me, no.

22 Q Okay. And there were certainly no conversations the
23 following day that -- by him that you recall that, gee, my pain
24 was so bad I had to get up and take something?

25 A No.

1 Q By the way, did your husband have any pain medication
2 in the house, any prescription pain medication in your home?

3 A Did he?

4 Q Yeah.

5 A His pain medication?

6 Q Did he have any?

7 A Not that I know of.

8 Q In the prior six months before your husband passed away
9 had he received any prescriptions for any pain medications?

10 A Off the top of my head, I don't recall.

11 Q So that Thursday you go to work and -- you work at
12 Biffer Chiropractic?

13 A Yes, sir.

14 Q And that's in, where, Jefferson Valley area of Shrub
15 Oak?

16 A Jefferson Valley.

17 Q Or Yorktown? Route 6, Hill Boulevard, right?

18 A Would you like the address, sir?

19 Q Unnecessary. But --

20 A Jefferson Valley.

21 Q That's where you went?

22 Okay. Were you at work all day?

23 A I always work in the morning. Afternoons are flexible,
24 depending on what's going on in the office.

25 Q When you got home that day, whatever time it was, did

1 your husband express any concerns to you other than he still had
2 this same pain?

3 A No add -- Thursday, hold on. No additional concerns,
4 no, sir.

5 Q Okay. Now, Friday was a day, I think you told us at
6 the depositions, that you normally did some errands, maybe you
7 did them together. Was I -- am I accurate about that?

8 A We used to run errands on Friday together, yes, sir.

9 Q But he didn't go to do any of the errands with you that
10 day, he stayed home?

11 A Yes, sir.

12 Q And you went out and I think one of the errands that
13 you did you had to take at least one of the pets, one of the
14 dogs to the veterinarian, right?

15 A Yes, sir.

16 Q And was it for a regularly scheduled visit for the dog,
17 like a checkup, of something that was on the schedule already
18 for that pet?

19 A I don't know if it was for an -- a follow-up for
20 something that had been going on. My little dog attacked my big
21 dog and I was going to the vet for follow-ups. I can't tell you
22 if it was the first one, the third one. I'm not 100 percent
23 sure.

24 Q When you say the first one or third one are you
25 referring to the --

1 A Veterinary --

2 Q -- number of dogs?

3 A Veterinary visits.

4 Q Oh, okay. But you think it was because of the injury
5 that the little dog might have sustained with the bigger dog?

6 A Yes.

7 Q That was the purpose of taking the dog to the vet?

8 A Well, actually, it was to discuss what we needed to do
9 to keep my little dog, my little nine-pounder, safe from the big
10 dog because she kept attacking it, and in the beginning she --
11 the other dog, the larger dog, used to let her getaway with it
12 and then one time she attacked her, punctured behind her -- I
13 guess under the arm, her back paw. It was pretty serious. It
14 hadn't been the first time the dog attacked -- the little one
15 attacked the big one. My vet suggested that I give up one of my
16 dogs but I rescue them and we were determined to keep them. So
17 at that point we decide, after her treatment and such, we put
18 the little dog on Prozac to calm her down.

19 Q So you went with the dog, just the one dog I take it
20 that day, you didn't take both of them to the vet?

21 A No, I did not.

22 Q And your husband stayed home that day?

23 A Yes, he did.

24 Q And as far as you know, on that day, which was a
25 Friday, he was still complaining of the pain?

1 A Basically, everything was status quo, sir.

2 Q Status quo meaning he still had pain?

3 A Everything was basically the same.

4 Q The pain had never gone away?

5 A Not to my knowledge, no, sir.

6 Q Then we go into the unfortunate night of the 20th,
7 leading into the morning of the 21st and you're sleeping
8 together and when you awake, when you awake, you realize that
9 your husband is not waking up and that's when, I think your
10 phrase was, all hell broke loose, you called out or screamed
11 out, your daughters came in the room, they tried to administer
12 some CPR to your husband, the ambulance was called and they took
13 him to Hudson Valley Hospital Center?

14 A Pretty much so.

15 Q Okay. If you need a moment just --

16 A I got it.

17 Q -- tell me.

18 A I'm good.

19 Q Let me know if you're okay to go forward and I'll ask
20 you a question.

21 A Do your thing.

22 Q Do you remember yesterday listening to Dr. Charash?

23 One of the things he told the Court and jury was that sometimes
24 the most important piece of information that we get as doctors
25 is when people first come to us or first come into an emergency

1 room and we ask them why are you here and they give us their
2 present sense impression, it's usually super accurate and
3 reliable; do you remember hearing that from Dr. Charash
4 yesterday?

5 A Yes, sir.

6 Q You were one of the first people to go to Hudson Valley
7 Hospital Center, you were allowed to actually ride in what they
8 call a bus or the ambulance with your husband and the paramedics
9 to the hospital?

10 A They reluctantly took me. My husband was a volunteer
11 firefighter and he convinced them to allow me in the ambulance.

12 Q When you got to --

13 A Not my husband, excuse me. My husband. The guys on
14 the fire department, the other firefighters.

15 Q When you got to Hudson Valley Hospital Center and your
16 husband was brought in and you finally make your way into the
17 building you had to give some information or answer some
18 questions to the personnel there I take it? You may not
19 remember that, but did you do that?

20 A I was quite ill. I was quite emotional. No, I don't
21 remember what happened.

22 MR. VIGORITO: Okay. Can you go to the Hudson
23 Valley Center record?

24 Q Ma'am, I'm going to show you a note and ask you a
25 question from the Hudson Valley Hospital record, and I just want

1 you to take a look at it with me and tell me if you recall, you
2 know, giving this piece of information to the people at Hudson
3 Valley Hospital. Okay?

4 All right. This is the very first page of the Hudson
5 Valley Hospital record. It said the presenting problem, cardiac
6 arrest. History of present illness. All history is obtained
7 from EMS, family members and others, as patient is unable to
8 give history due to unconsciousness. And the next sentence now,
9 patient went to bed fine and then awoke gurgling for air.

10 Mrs. Nocera, do you know, and if you don't remember you
11 just say that and that's fine, we'll move on, were you the
12 person that told the people at Hudson Valley Hospital that when
13 your husband went to bed the night before he went to bed fine,
14 would that have been you or someone else, if you know?

15 A I don't know.

16 Q Okay. And that phrase, went to bed fine, you wouldn't
17 agree with that, would you? He was still in pain, according to
18 your testimony, right?

19 A He was just status quo.

20 Q One more subject for you. Your husband was a patient
21 at Biffer Chiropractic, right?

22 A Yes, sir. As am I.

23 Q The place that you work at?

24 A Yes.

25 Q And he was a patient who went there on numerous

1 occasions, true?

2 A Multiple occasions.

3 Q And those records are in evidence so I'm just going to
4 -- not read them to you now, but I just want to ask you this,
5 would you agree with me that the majority, the great majority of
6 his presentations to Biffer Chiropractic were for his continuous
7 complaints of back pain over a several year period? Just a yes
8 or a no.

9 A I can't answer yes or no.

10 Q Did he have back pain that was treated at Biffer?

11 A Yes.

12 Q Was that the primary complaint that he went to a
13 chiropractic doctor for for back pain?

14 A I don't know. I didn't -- was not in the exam room
15 with him.

16 MR. VIGORITO: Thank you, ma'am. I have nothing
17 else.

18 THE COURT: All right. Ladies and gentlemen, we're
19 going to take a five-minute recess. Please don't discuss
20 the case amongst evident yourselves.

21 (Jury exits.)

22 (Recess taken.)

23 COURT OFFICER: Jury entering.

24 THE COURT: Jurors, you may be seated. Counsel,
25 ladies and gentlemen, be seated. Welcome back, Jurors.

1 You'll recall that when we took our recess
2 Mr. Vigorito had completed his cross-examination of
3 Mrs. Nocera. We will now continue with cross-examination by
4 Mr. Venditto.

5 Let the record reflect that Mrs. Nocera has retaken
6 the stand. Again, Mrs. Nocera, I remind you you are still
7 under oath.

8 THE WITNESS: Yes, sir.

9 THE COURT: Mr. Venditto.

10 MR. VENDITTO: Thank you, Judge. Good morning.
11 Good morning, members of the jury.

12 JUROR: Good morning.

13 CROSS-EXAMINATION

14 BY MR. VENDITTO:

15 Q Good morning, Mrs. Nocera.

16 A Good morning, sir.

17 Q Again, we're sorry for your loss. You understand that,
18 correct?

19 A Thank you.

20 Q I want to discuss with you the morning of the day
21 Mr. Nocera went to Westchester Medical Center, okay? And I
22 believe you had said that that was a Wednesday, correct?

23 A Yes, sir.

24 Q Mr. Nocera woke up that morning and went to work that
25 morning, correct?

1 A Yes, sir.

2 Q And when he went to work he would go to work -- either
3 he would drive or he would meet Luke, your son, and they would
4 drive into the City or Brooklyn together to go to their
5 respective places of employment; would that be generally a fair
6 statement?

7 A If they were working in the same borough, yes.

8 Q Okay. And you know Luke gave deposition testimony in
9 this case, correct?

10 A Yes, sir.

11 Q If I were to tell you that Luke testified that he met
12 Mr. Nocera at the park-and-ride and that Luke then drove into
13 the City to go to work but he dropped your husband off by the
14 Triborough Bridge to get on the subway so he could go to work,
15 would that basically sound correct from what you know?

16 A I don't know how they commuted that day, but if my son
17 said it, then I guess that is what happened.

18 Q Okay. And if your husband had to meet Luke at the
19 park-and-ride -- where is the park-and-ride in relation to where
20 you live?

21 A To where we used to live? It's about four miles
22 from -- possibly five miles from Putnam Valley on Route 6. I
23 believe the area is still called Jefferson valley. Could be
24 Yorktown. There's a border right there.

25 Q Okay. And a park-and-ride, just so we're clear, is

1 somewhere people go park their car and either get on the train
2 or take some other transportation into the City?

3 A From this particular park-and-ride you would have to
4 get into another car.

5 Q And your husband, did he drive to the park-and-ride
6 when he would meet someone, whether it be Luke or someone else,
7 at the park-and-ride to go to work?

8 A That would be the only way to get from my home in
9 Putnam Valley to --

10 Q In other words, he didn't walk there?

11 A No, sir.

12 Q Okay. And then he proceeded to go to work that
13 morning, correct?

14 A Yes, sir.

15 Q And then at some point that morning a decision is made
16 with the family that he's going to leave work, Luke's going to
17 pick him up and they're going to -- they're going to go to the
18 hospital, correct?

19 A Yes, sir.

20 Q And as far as you know, Mr. Nocera was able to commute
21 to work that morning, come home and go to the emergency room,
22 correct?

23 A No, sir. He did not come home in between.

24 Q My mistake. He was able to commute to work, get picked
25 up and then proceed to the emergency room, correct?

1 A Yes, sir.

2 Q And he did not go to the emergency room in an
3 ambulance; would that be true?

4 A No, he did not.

5 Q Okay. When he was in the emergency room you had almost
6 simultaneously arrived with him and Luke; would that be somewhat
7 correct?

8 A No, sir, I came after them.

9 Q He's at the registration desk, giving answers to
10 questions and then you walk in, correct?

11 A Yes.

12 Q Okay. Mr. Nocera was able to hear the physicians and
13 nurses speaking to him, correct, as far as you could tell?

14 A As far as I can tell. He did have some hearing loss
15 but.

16 Q But he was able to -- in other words, if they ask him
17 what is your name you were able to hear him say my name's Gary
18 Nocera?

19 A If they asked him, yes, he could respond, yes.

20 Q Okay. He was not short of breath during that period of
21 time, correct?

22 A No. He could not take a deep breath.

23 Q But he was not having any trouble breathing, true?

24 A At that time, no, sir.

25 Q Okay. At no time during that emergency room visit

1 would you agree with me did he ever have any trouble breathing,
2 correct?

3 A Only drawing a deep breath.

4 Q Drawing a deep breath means if he inhaled he felt it;
5 would that be correct?

6 A I could only assume that is what it means.

7 Q Okay.

8 A You can't breathe. You can't take a deep breath. It
9 was painful.

10 Q Did he ever say to you I'm having difficulty breathing?

11 A No, he did not tell me that.

12 Q And his skin color was good, correct? You saw him
13 physically. He wasn't blue; he wasn't gray?

14 A No. A little red from rosacea.

15 Q Okay. It happens, right. No fault of his. But
16 certainly he wasn't blue or gray or super pale, anything like
17 that? You saw the records, correct?

18 A Yeah, I saw the records.

19 Q Okay. Now, he's in the emergency room for
20 approximately five plus hours; would that be a fair estimate?

21 A I believe it was more like seven plus hours.

22 Q Okay. And can we agree that there were nurses in the
23 emergency room?

24 A There were lots of people in the emergency room, yes.

25 Q And also Dr. Bernstein, correct?

1 A Yes.

2 Q And Dr. Bernstein did a physical exam of your husband,
3 correct?

4 A Yes.

5 Q And Dr. Bernstein alerts you and your husband to the
6 presence of a heart murmur, true?

7 A Yes, he did.

8 Q And the thing that Dr. Bernstein said was you have a
9 heart murmur or something along those lines, correct?

10 A Word wise I don't know exactly, but the gist was, yes,
11 you have --

12 Q Okay. And --

13 A I hear a heart murmur is what he said.

14 Q And that is the first time that you and Mr. Nocera
15 became alerted to the fact that he had a heart murmur; would
16 that be true?

17 A Yes.

18 Q Now, you mentioned on questioning by Ms. Weisman that
19 Dr. Bernstein made some statements about a CAT scan, an MRI,
20 things of that nature; do you recall that?

21 A I recall him telling us they needed to find out the
22 cause of the pain, which needed further testing, perhaps an
23 echocardiogram, a CAT scan, I believe an MRI, but I'm not
24 100 percent sure about the MRI.

25 Q Now, you certainly agree, after being questioned by

1 Mr. Vigorito, that you gave deposition testimony in this case,
2 correct?

3 A Yes, I did.

4 Q And at that deposition you were represented by
5 Ms. Weisman, true?

6 A Yes, I was.

7 Q And just like you did here in court, you gave an oath
8 to tell the truth in response to questions you were asked,
9 correct?

10 A Yes.

11 Q And you did so, correct?

12 A To the best of my ability, yes.

13 Q If that transcript was shown to the jury or read to the
14 jury about conversations you had with Dr. Bernstein and there
15 was no mention of CAT scan or echocardiogram in your responses,
16 would that refresh your recollection as to what actually
17 transpired?

18 A Can you --

19 Q Sure.

20 A -- repeat that?

21 Q It was a poorly phrased question, I'll agree.

22 If we were to read the testimony to you would you
23 dispute that at no point did you mention CAT scan or
24 echocardiogram as something Dr. Bernstein had told you?

25 A If you read it to me and I didn't see it I would not

1 dispute it, sir.

2 Q Okay. Now, from the time Mr. Nocera was discharged --
3 let me withdraw that.

4 Would you be able to recognize Mr. Nocera's signature
5 if you saw it?

6 A Yes.

7 Q And in your review of these records -- strike that.
8 I'm sorry.

9 Did you ever review the records, the discharge
10 instructions, as you sit here today at any point in time?

11 A No, I did not.

12 Q If you saw Mr. Nocera's signature would you recognize
13 it?

14 A Yes, I would.

15 MR. VENDITTO: Can we bring up the signature pages,
16 please.

17 Q I'm going to ask you to look at some signatures,
18 Mrs. Nocera, and if you see Mr. Nocera's signature would you be
19 so kind as to let us know?

20 A Yes, sir.

21 Q Thank you. On this page is there any signature that
22 pertains to Mr. Nocera?

23 A Yes, above the patient signature line.

24 MR. VENDITTO: Okay. And can we highlight the
25 sentence that reads above that?

1 Q That sentence reads, I, Nocera, comma, Gary, understand
2 the instructions and will arrange for follow-up care. True?

3 A That's how it reads, yes.

4 Q Was your husband the type of person who would sign
5 medical documents without knowing either verbally or in writing
6 what the information was that was in the document?

7 A Possibly.

8 Q As a foreman carpenter did he ever have to signoff on
9 plans or invoices, things of that nature?

10 A I do not know.

11 Q Can we agree that Dr. Bernstein wanted some blood work
12 done, true?

13 A Yes, sir.

14 Q And that was in fact done?

15 A Yes, sir.

16 Q We can agree that Dr. Bernstein wanted a chest x-ray
17 done and that was done, correct?

18 A Yes, sir.

19 Q Dr. Bernstein wanted Mr. Nocera to be sought in consult
20 or to be examined by a cardiologist, true, and that was done?

21 A Yes, sir.

22 Q And Mr. Nocera was not only examined by Dr. Cuomo, an
23 interventional cardiologist, but there was also a cardiologist
24 Dr. Sharma, a fellow in cardiology, who saw Mr. Nocera as well?

25 A I do not -- there were two other doctors that saw him.

1 They told me they were fellows. I don't know their names. One
2 was male; one was female.

3 Q Okay. And after they did an examination of Mr. Nocera
4 before Dr. Cuomo arrived; would that be true?

5 A Yes.

6 Q And then Dr. Cuomo arrives and she does her own
7 examination of Mr. Nocera, correct?

8 A Correct.

9 Q Can we agree then that there were at least three
10 physical examinations of Mr. Nocera in the emergency room during
11 this period of time?

12 A I guess so, yes.

13 Q Okay. So it's Linda Cuomo, Ben Bernstein and fellows.
14 Anyone else do the physical exam?

15 A There were nurses that came by. I don't know if they
16 did exams.

17 Q Initially, do you know if the triage nurse did an
18 examination of Mr. Nocera?

19 A Can you describe your -- what you're considering an
20 exam?

21 Q What do you consider an exam?

22 A Usually when a doctor comes in, does a full medical
23 history, takes all your vitals.

24 Q Let me ask you, did you see a nurse do something very
25 similar to that with Mr. Nocera?

1 A I saw people. Again, I will not guarantee it was a
2 nurse. Most likely, but don't hold me to it. She put an oxygen
3 --

4 Q Pulse oximeter?

5 A Right, that one. And I remember a blood pressure.

6 Q Okay. In sitting in this courtroom over the last few
7 days you have seen witnesses being cross-examined, true?

8 A Yes, sir.

9 Q And in seeing some of the witnesses being
10 cross-examined, specifically with Dr. Charash, you saw how
11 Mr. Vigorito had used some of Dr. Charash's testimony in prior
12 cases to illustrate that what he was saying here in the
13 courtroom was different than what he had said in the past, true?

14 A No, I don't have much knowledge of it.

15 Q Just if you saw that being done.

16 A Personally I saw --

17 Q Let me rephrase the question. I'll withdraw it.

18 Did you see Mr. Vigorito use prior testimony and
19 question Dr. Charash about the prior testimony, yes or no?

20 A Yes, he did, as he did to me just now.

21 Q As he just did to you now?

22 A Uhm-hum.

23 Q Okay. But yesterday you saw him do it to Dr. Charash?

24 A Yes, sir.

25 Q And you knew today you would have to continue

1 testifying, correct?

2 A Yes, sir.

3 Q It's not comfortable, Mrs. Nocera, correct, to be in
4 that seat?

5 A I could say I would rather be doing a lot of other
6 things.

7 Q I'm sure you would. And I'm trying to move this along
8 and I apologize. But knowing that the testimony that had been
9 given in the past could be something that a witness would be
10 questioned on, did you last night say, you know what, let me
11 read that deposition testimony so I know what I said?

12 A Which deposition, sir? I did --

13 Q The one where you were represented by mister --
14 Ms. Weisman; Mr. Vigorito and myself were present.

15 A Does that -- is the first or the second?

16 Q The second at Mr. Vigorito's office in Valhalla. I
17 understand that the 50-H also occurred there, but the one where
18 I was present. Did you say let me read this to see what I said?

19 A Yeah, I read over it.

20 Q You read over it last night?

21 A Yes, sir.

22 Q Okay. And what about the 50-H, the envelope that
23 stayed sealed with the instructions from Ms. Weisman, did you
24 say let me go back and read that?

25 A No.

1 Q The two days that transpire from the time Mr. Nocera is
2 discharged from the emergency room up until the time of his
3 unfortunate passing, you were either home but certainly with
4 Mr. Nocera during that period of time, correct?

5 A For the entire two days, no, I was not.

6 Q No, not 24 hours a day but you were living together?

7 A Yes, sir.

8 Q Okay. And you -- how long were you married to
9 Mr. Nocera?

10 A Thirty-five years.

11 Q Thirty-five. And I heard you say earlier that you
12 sleep very soundly?

13 A Yes, sir.

14 Q Okay. We share that in common, Mrs. Nocera.

15 THE COURT: What's your secret?

16 MR. VENDITTO: I think it was inherited from my
17 father, Judge, to tell you the truth. My dad, he was out.

18 Q Over the course of the 35 years was there ever a time
19 though that, even though you slept and do sleep very soundly,
20 where Mr. Nocera woke you up and maybe said something like,
21 honey, shouldn't have had those White Castle hamburgers? Right,
22 we were talking about White Castle? The reason I mentioned that
23 because we had talked about that earlier, right?

24 A No, he never woke me up to say something to me about
25 having an issue. He did wake me up because he had severe sleep

1 apnea and, you know, after a while I had -- when you pushed him
2 over nothing was happening. My brother used to throw a shoe at
3 him when they went hunting to wake him up to stop the snoring.
4 He snored terribly. However, if I fell asleep first it didn't
5 matter how loud that snoring was, I could sleep through it.

6 Q Certainly we can agree though during that two-day
7 period that at no point did Mr. Nocera wake you up and say, you
8 know, honey, something's wrong here?

9 A No, he did not.

10 Q I think this is getting worse, anything of that nature?

11 A He never said it was getting worse, no, sir.

12 Q Okay. Now, Mr. Nocera was handy around the house?

13 A Yes, sir.

14 Q You said he fixed a lot of stuff, right?

15 A Everything.

16 Q He also did a lot of yard work I'm assuming, correct?

17 A Until the boys came along he did most of it, yes.

18 Q Okay. And being employed in the trade and doing manual
19 labor, my dad did manual labor, there would be times he'd come
20 and say to you, I hurt this at work doing X or I hurt this at
21 work doing Y; did that ever happen?

22 A Sure, slammed a finger --

23 Q Okay.

24 A -- with a hammer, you know.

25 Q Any time that he said while working around the house

1 that he hurt himself doing some type of manual labor?

2 A Over 35 years, possibly.

3 Q Was there an occasion where he lifted a box and hurt
4 himself?

5 A In my home?

6 Q Yeah.

7 A I do not recall.

8 Q And when he had these issues is that when he would go
9 see Dr. Biffer?

10 A If he had pain, yes.

11 Q And what do you do at Dr. Biffer's office, Mrs. Nocera?
12 What is it exactly you do on sort of a day-to-day basis?

13 A I do medical reception and I do the accounts
14 receivables from the insurance companies that post payments into
15 the patient's accounts, and if there's discrepancy I call the
16 insurance companies and I try and get them resolved.

17 Q Does Dr. Biffer practice as a solo practitioner or does
18 she have other people in her office as assisting her providing
19 chiropractic care?

20 A Solo practitioner.

21 Q Okay. And as a medical receptionist what do you do,
22 aside from what you've told us? Do you answer phones, do you
23 meet and greet patients? What do you do?

24 A I answer the phones. I verify insurance. I have the
25 patients fill out all their paperwork. I enter their

1 information into the computer. After the doctor sees the
2 patients she gives me the diagnosis codes, the procedure codes,
3 I enter those into the patient's account, and if there's
4 co-payments or monies due I try and collect it from the patient.

5 Q Does Dr. Biffer give you, as part of the paperwork,
6 discharge instructions to hand to the patients who are leaving
7 chiropractic care?

8 A No, she does not.

9 Q Does she do it herself with the patients as far as
10 you've seen or heard?

11 A I have never been in the room, but I've come -- the
12 encounter forms that she uses to give us the information how to
13 bill will have the word discharge written on it.

14 Q All right. I know Mr. Vigorito asked you questions
15 that you had given Mr. Nocera a baby aspirin the night that he
16 first started complaining of chest pain, correct?

17 A Yes.

18 Q And at that time in your household did you have over
19 the pain -- sorry. At that time in your household did you have
20 over-the-counter pain medications such as Tylenol and Advil or
21 anything of that nature?

22 A Very likely.

23 Q And you chose to give a baby aspirin, correct?

24 A Yes, I did.

25 Q Okay. That night did you contact any physicians that

1 you know or Mr. Nocera knows?

2 A No, I did not.

3 Q To ask them what do I do if Gary has chest pain?

4 A No, I did not.

5 Q Did you contact any physicians the two days in between
6 the discharge and the time Mr. Nocera passed away to discuss
7 what was going on with Mr. Nocera?

8 A I did. I called Dr. Cuomo's office.

9 Q Okay. Other than Dr. Cuomo, did you have any
10 conversation with anyone else?

11 A Medical providers?

12 Q Correct. Doctors, either Prestiano, Dr. Biffer, anyone
13 else?

14 A Dr. Biffer and I most likely discussed what was going
15 on because when my -- I got the call from my son I was at the
16 office. The office is usually closed on Wednesdays, that's
17 usually when I handle the insurance --

18 Q I'm sorry to interrupt you. I'm just doing this for
19 time purposes. I mean, from the time Mr. Nocera was discharged
20 from the ER up until the point that he had passed away, during
21 that period of time did you contact Dr. Biffer?

22 A Most likely. I went to work that day and she asked me
23 how he was doing, and I told her that it was just a muscle pull,
24 nothing life-threatening, and he was to follow-up with the
25 cardiologist.

1 Q It was clear though to you and Mr. Nocera, regardless
2 of the discharge instructions, that he was to follow-up with the
3 cardiologist, true?

4 A Which he did.

5 Q Okay.

6 A Or attempted to do.

7 Q That part was clear to you, correct?

8 A Yes, sir.

9 Q Mr. Nocera had never been seen by a cardiologist, as
10 far as you know, prior to that day?

11 A To the best my knowledge, no, sir.

12 Q What -- can we agree that Mr. Nocera was the type of
13 person that if his -- if he had a medical condition that didn't
14 improve he ran to the doctor?

15 A If he had a medical condition that didn't improve did
16 he run to the doctor? If he hadn't already seen the doctor then
17 yes.

18 Q Okay. Do you recall your deposition when you were
19 being questioned by Mr. Vigorito, in somewhat of a joking manner
20 you said, oh, if Gary had a pimple on his butt that didn't clear
21 up he ran back to the doctor?

22 A I did not say back to the doctor.

23 Q He would run to the doctor?

24 A Yes, sir, he would.

25 MR. VENDITTO: Okay. I'm almost done, Judge.

1 Q Were you present when Mr. Nocera told Dr. Bernstein
2 that he felt okay to be discharged?

3 A I don't recall that at all, sir.

4 Q When you were testifying on direct examination by
5 Ms. Weisman I believe you said that when it came time to be
6 discharged the doctors were speaking to Mr. Nocera and you had
7 stepped back, would that be a fair and correct assessment of
8 what you've testified to?

9 A I don't believe the doctors physically told us he was
10 being discharged at that time.

11 Q Okay. At the very least can we agree that when
12 Mr. Nocera was leaving the emergency room with you to go home
13 that night he was carrying papers with him, would that be
14 correct?

15 A I guess so.

16 Q Okay. And now he had parked at the park-and-ride that
17 morning, correct?

18 A From what you're telling me, yes.

19 Q Okay. If he was parked at the park-and-ride would you
20 proceed to drive straight home or would you drive Mr. Nocera to
21 the park-and-ride so he can get his vehicle and then meet you up
22 at home?

23 A I drove straight home, sir.

24 Q Do you know or do you recall anyone getting his vehicle
25 from the park-and-ride, either that night or any point

1 thereafter?

2 A Most likely two people would have done -- picked it up.
3 I don't remember who it was. Could have been my children.
4 Could have been my children and their friends. One person would
5 have to drive to the park-and-ride with a set of keys to drive
6 the other car home.

7 Q And Mr. Nocera was the passenger or the driver on the
8 way home?

9 A From the emergency room?

10 Q Correct.

11 A He was the passenger.

12 Q He was able to physically walk out of the emergency
13 room, true?

14 A Yes, sir.

15 Q And being somewhat familiar with Westchester County
16 Medical Center, when you come out of the emergency room was the
17 parking lot to your left, straight ahead or to your right, if
18 you remember?

19 A I do not recall, sir.

20 Q Okay. Mr. Nocera was able to walk to the car; would
21 that be fair to say?

22 A Yes, sir.

23 Q And Mr. Nocera was able to get in the car, correct?

24 A Yes, sir.

25 Q And he was able to put his seat belt on and travel

1 home; would that be true?

2 A I do not recall if he put his seat belt on, but he was
3 able to travel home with me, yes, sir.

4 Q Was it his custom and practice, being that you were
5 married for 35 years, to get into a car and put the seat belt
6 on, did he do that?

7 A On a normal basis?

8 Q Yes.

9 A Yes.

10 Q Okay.

11 A You asked me about that evening and I honestly don't
12 remember if he did or did not.

13 Q In your car do you have one of those absolutely
14 annoying things that happen when somebody in the passenger seat,
15 like my dad, decides he's not going to wear the seat belt? Did
16 you hear that on the way home and you saying, Gary, you're
17 driving me crazy, put the seat belt on?

18 A No, because that particular car was a very, very old
19 car, early 90's, late 80's --

20 Q Okay.

21 A -- and it didn't have that feature.

22 Q Did it have that feature where that annoying little red
23 light pops up on the dashboard, says fasten seat belts?

24 A I don't believe it did.

25 Q He was able to discuss with you that he wanted to make

1 it home by a certain time to watch Survivor?

2 A No, he didn't say he wanted to make to home. We had
3 already missed --

4 Q He wanted to see a TV show I remember you saying.

5 A No, what I said was I remembered the time only because
6 we walked through the door and he loved to watch Survivor and
7 right at that point when we got home was when they do that
8 tribal council and they throw people off.

9 Q Right, they light the torch?

10 A They vote people off and you put your torch out. And
11 he said, I don't want to watch this now. I want to watch it
12 DVD, wants to watch the whole thing, so I made him watch Say Yes
13 to the Dress instead.

14 MR. VENDITTO: Mrs. Nocera, you've been very kind
15 to answer my questions. Thank you. I have nothing further,
16 Judge.

17 THE COURT: Thank you, Mr. Venditto. Ms. Weisman,
18 redirect?

19 MS. WEISMAN: Just a couple questions, your Honor.

20 REDIRECT EXAMINATION

21 BY MS. WEISMAN:

22 Q Ms. Nocera, Mr. Venditto mentioned a -- your testimony
23 at a deposition regarding the conversation you had with
24 Dr. Bernstein about ordering more testing; do you recall when
25 you -- when he just asked you that?

1 A Yes.

2 Q And do you recall in that testimony that you did in
3 fact say that --

4 MR. VENDITTO: Objection.

5 THE COURT: Read it back.

6 (Record read.)

7 THE COURT: Overruled. You can use the transcript
8 if we need to.

9 MR. VENDITTO: It's also leading, your Honor.

10 MS. WEISMAN: I can use the transcript, your Honor.

11 THE COURT: No, I overruled the objection.

12 MS. WEISMAN: Okay.

13 Q All right. Do you recall the conversation you had with
14 Dr. Bernstein wherein you did ask him -- wherein he did tell you
15 that he was going to admit your husband for CAT scan and
16 echocardiogram, perhaps an MRI?

17 MR. VENDITTO: Can I have a page?

18 A Yes, I do remember that.

19 MS. WEISMAN: Page 129.

20 MR. VENDITTO: Of her EBT?

21 MS. WEISMAN: Yes, of her EBT.

22 Q You indicated between the time that Gary Nocera, your
23 husband, came home and Saturday morning that you did speak with
24 Dr. Cuomo's office?

25 A Yes, I did.

1 Q Okay. Can you tell us about that conversation?

2 A I was upset that when the appointments were made
3 Dr. Cuomo had stated you need to have these tests done, I was
4 upset at the timeframe why it was taking almost --

5 MR. VIGORITO: Your Honor, I have to object.

6 A -- days.

7 MR. VIGORITO: This is -- this is beyond the scope,
8 I think, of what Mr. Venditto asked, and certainly I did not
9 go into this conversation at all. So being that it's
10 redirect, I think it's inappropriate. I will object.

11 THE COURT: I'm not sure it's beyond the scope.

12 You have an exception. Overruled.

13 MR. VENDITTO: I will join in the objection, Judge.

14 THE COURT: And you can join in the exception.

15 Go ahead. Let's go.

16 A We were told that these tests were medically necessary
17 to determine the cause of the chest pain. They needed to be
18 done. My husband followed the doctor's instructions by staying
19 home, resting, making his appointments. Those appointments were
20 made on Thursday. The first appointment given, and I do not
21 recall which test it was for, was the following Monday and the
22 second test was the following Thursday. When my -- when Gary
23 told me that --

24 MR. VIGORITO: Objection. That's dead man statute,
25 Judge.

1 THE COURT: Really? Then how come it didn't apply
2 when he was being -- she was being questioned on
3 cross-examination? Door's open. Go ahead, Mrs. Nocera.
4 Overruled.

5 THE WITNESS: Thank you, sir.

6 A When Gary told me that these tests were scheduled for
7 the following week I was very upset and I called the doctor's
8 office myself from the vet's office, and I wanted to know why
9 the tests were not being done immediately, why they were taking
10 so long to have these tests done that the cardiologist told us
11 in the hospital were necessary, and somebody told me hold on --

12 MR. VIGORITO: Now I have an objection.

13 THE COURT: Sustained.

14 A -- came back --

15 THE COURT: That's stricken. The jury will
16 disregard it.

17 Q And what was the result of that conversation?

18 A The result --

19 MR. VIGORITO: Objection. Calls for hearsay now.

20 THE COURT: Sustained.

21 Q Did you have an understanding as to why the tests
22 weren't done earlier?

23 MR. VIGORITO: Objection.

24 MR. VENDITTO: Objection.

25 THE COURT: I think we're going far afoot.

1 Sustained. Now we're getting into hearsay.

2 MS. WEISMAN: Okay.

3 Q Were the tests changed?

4 MR. VENDITTO: Objection.

5 MR. VIGORITO: Objection.

6 THE COURT: Read it back.

7 (Record read.)

8 THE COURT: Sustained as to form.

9 Q When were the tests scheduled for?

10 MR. VENDITTO: Objection.

11 MR. VIGORITO: Objection. That's asked and
12 answered.

13 A The following Monday and Thursday.

14 THE COURT: I'll allow it.

15 MS. WEISMAN: I have no questions.

16 THE COURT: Any recross?

17 MR. VIGORITO: None.

18 MR. VENDITTO: Yes, Judge. I'll be brief, Judge.

19 RECROSS-EXAMINATION

20 BY MR. VENDITTO:

21 Q Mrs. Nocera, do you recall giving the following
22 testimony at your examination, page 129, commencing line number
23 seven?

24 A Excuse me?

25 Q I'm going to read to you and let me know if you recall

1 --

2 A I just need to know the first one or the second one,
3 sir.

4 Q Oh, I'm sorry. When I say your deposition I mean the
5 second one. I apologize.

6 A Thank you.

7 MR. VENDITTO: Ms. Weisman, you ready?

8 MS. WEISMAN: Yeah.

9 Q "Told me he was going to admit my husband into the
10 hospital, do an echocardiogram and perhaps a CAT scan or an MRI.

11 Question: So he was going to do an echo or he was
12 going to order an echocardiogram. What else? What other tests?

13 Answer: He did not say that he was going to order it.
14 He said my husband needed further tests."

15 Was that your testimony under oath at that time?

16 A That my husband needed further tests to determine the
17 cause of the pain.

18 Q "Did he say what other tests?

19 Answer: He said perhaps an MRI or a CAT scan. They
20 needed further tests."

21 Was that your testimony?

22 A Yes, sir.

23 Q Perhaps? You used word perhaps, yes?

24 A If it's in there I probably used it.

25 Q Okay. Thank you.

1 A Maybe I misworded it.

2 MR. VENDITTO: Nothing further, Judge.

3 THE COURT: Ms. Weisman.

4 MS. WEISMAN: I have no other questions.

5 THE COURT: Ms. Nocera, step down.

6 THE WITNESS: Thank you, sir.

7 (Witness excused.)

8 THE COURT: Okay. Ladies and gentlemen, we are
9 finished for the day, so, I'd like you here tomorrow 20
10 after 9:00. We're going to have a full day tomorrow. So,
11 Mr. Rivel, go catch that train. Everybody else have a
12 wonderful evening. Get home safely. Please don't discuss
13 the case amongst yourselves or with anybody else and see you
14 tomorrow.

15 (Jury exits.)

16 MR. VIGORITO: Your Honor, can we have couple
17 minutes to discuss a few issues?

18 THE COURT: Sure. Go ahead. What are the issues?

19 MR. VIGORITO: Anthony and I are anticipating that
20 Ms. Weisman is going to call all three children to the
21 stand, and in light of Mrs. Nocera's very voluminous
22 testimony on the role of the children interacting with the
23 father and --

24 THE COURT: Are you worried about cumulative?

25 MR. VIGORITO: I'm worried about cumulative, and

1 I'd ask for an offer of proof or an order of preclusion so
2 they can't testify to the same topic areas that have been
3 covered already.

4 THE COURT: Well, you know what, I made this
5 similar ruling with regard to the testimony purportedly to
6 be filed both by Dr. Sixsmith and Dr. Charash with regard to
7 overlap and Dr. Charash potentially commenting on emergency
8 room and Dr. Sixsmith commenting on cardiology and my ruling
9 at that time is going to be -- is my ruling now on your
10 application is consistent. The logistics of witnesses and
11 their testimony lies in the hands of the attorney calling
12 those witnesses to testify. I do not know what Dayna will
13 testify, if Dayna is called. I don't know what Janine will
14 testify, if Janine is called. I don't know what Luke will
15 testify, if Luke is called. I have not seen his deposition
16 -- any of their deposition transcripts to the extent they
17 appear at EBTs.

18 I can only tell you, Ms. Weisman, you can call
19 whoever you want that is relevant and material to the case
20 at bar. If I start to hear an objection on cumulative
21 testimony I'll deal with that at the appropriate time. Or
22 are you asking what each child is going to testify to?

23 MR. VIGORITO: Well, in part I was asking that so
24 that we might be able to streamline the testimony in the
25 trial a little bit, because perhaps if we hear an offer of

1 proof now we might be able to conclude that it is cumulative
2 and therefore --

3 THE COURT: Do you not have the deposition
4 transcripts of the children?

5 MR. VIGORITO: I have them all, sure.

6 THE COURT: You read them?

7 MR. VIGORITO: Yeah.

8 THE COURT: Okay. So.

9 MR. VIGORITO: That's why I make the application.

10 THE COURT: Well, I'm sure that during an EBT
11 testimony can be cumulative. At trial that will be up to
12 you to object to. I can't sit here and project en futuro
13 what is going to be elicited. Ms. Weisman understands the
14 nature of your application and the nature of my ruling. It
15 seemed to have worked out well with the two medical experts.

16 MR. VIGORITO: Wonderfully well.

17 THE COURT: So, Ms. Weisman, be guide accordingly.

18 MS. WEISMAN: Okay. Thank you, your Honor. I
19 will.

20 THE COURT: Anything else?

21 MS. WEISMAN: Can we discuss scheduling issues?
(Proceedings so concluded.)

22 * * *
23 THIS IS TO CERTIFY THAT THE ABOVE TRANSCRIPT IS A TRUE AND
24 ACCURATE TRANSCRIPTION OF MY STENOGRAPHIC NOTES.

25 -----X
Nicole Ameneiros
Senior Court Reporter

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PLAINTIFF CROSS
DAY #2

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF WESTCHESTER: CIVIL TERM: PART LJL

3 -----x
 4 KATHLEEN NOCERA, as Administratrix for the
 5 Estate of GARY NOCERA and KATHLEEN NOCERA,
 6 individually,

Plaintiff,

-against-

Index#61337/2014

7 LINDA CUOMO, MD, BENJAMIN BERNSTEIN, MD,
 8 WESTCHESTER COUNTY HEALTH CARE CORPORATION
 9 and WESTCHESTER MEDICAL CENTER,

Defendants.

10 -----x
 11 Trial (Cont'd)

12 February 15, 2018

13 B E F O R E:

14 HONORABLE LEWIS J. LUBELL,

15 Supreme Court Justice, and a jury.

16 (Appearances same as previously noted.)

17 Nicole Ameneiros

18 Senior Court Reporter

19 - - - - -
 20 THE COURT: Mrs. Nocera, can you come up, please?

21 COURT OFFICER: Jury entering.

22 THE COURT: Jurors, you may be seated as you enter.

23 Counsel, ladies and gentlemen, please be seated. Good

24 morning, Jurors.

25 Again, on behalf of the Court and on behalf of
 counsel and the parties, thank you for your patience. You
 know, things happen during the course of a trial that
 require the Court's attention on various matters involving
 the trial, and this morning was again one of them. It's not
 like we planned to have you sit in there half an hour
 unannounced again. I cannot express enough our warmest
 thanks for your patience and courtesies.

1 So you will recall when we recessed yesterday we
2 had completed receiving the testimony Mrs. Nocera. A slight
3 issue has been brought to the Court's attention, so we're
4 going to reopen Mrs. Nocera's testimony for a very brief and
5 limited purpose.

6 So let the record reflect that Mrs. Nocera has
7 retaken the stand. Mrs. Nocera, I again remind you you are
8 still under oath.

9 Whose witness?

10 MR. VIGORITO: Mine, your Honor.

11 THE COURT: Mr. Vigorito.

12 MR. VIGORITO: Thank you, Judge.

13 K A T H L E E N N O C E R A ,

14 recalled as a witness on behalf of the Plaintiff, having been
15 previously duly sworn, was examined and testified as follows:

16 CROSS-EXAMINATION

17 BY MR. VIGORITO:

18 Q Good morning, Mrs. Nocera.

19 A Good morning.

20 MR. VIGORITO: Good morning, Jurors.

21 Q Mrs. Nocera, yesterday I questioned you and in part I
22 asked you some questions about whether or not you recalled past
23 testimony that you had given in this matter; you recall that?

24 A Correct.

25 Q And you wanted to make a distinction at some point

1 between whether it was the first time or the second time, I
2 think those were your words. You recall that?

3 A Correct.

4 Q And the first time being something that we were then
5 referring to as the statutory hearing that was taken first by me
6 alone, Mr. Venditto was not present, right?

7 A I don't remember who was there, sir.

8 Q Okay. And then there was a formal examination before
9 trial, something we call a deposition, where both of us were
10 present and both of us had an opportunity to question you?

11 A Correct.

12 Q And one happened relatively soon after Mr. Nocera's
13 death, and the other one happened down the road a piece?

14 A That's the truth.

15 Q All right. And when I asked you questions yesterday
16 about the first one, the statutory hearing, okay, you gave this
17 testimony. Let me read it to you briefly. The official trial
18 transcript, page 598, question -- line 3 down, if you corrected
19 or changed any of the testimony that you rendered under oath in
20 this transcript. You asked by answer which transcript are we
21 speaking of.

22 My question was this is the 50-H transcript. I would
23 tell you that 50-H means statutory hearing. The next answer
24 that you gave was I never opened the envelope. I never opened
25 the envelope. I never read it. It made me ill.

1 "Question: This is a transcript that was sent to you
2 by your attorney?

3 Answer: Yeah, it's still in the envelope.

4 Question: Still hasn't been opened?

5 Answer: No, sir.

6 Question: Might have a cover letter in there?

7 Answer: Maybe.

8 Question: Might have instructions from Ms. Weisman in
9 there as to what to do with the transcript, right?

10 Answer: Perhaps.

11 Question: Never opened it?

12 Answer: No, sir. It made me sick and I couldn't think
13 about it. I couldn't deal with it.

14 Question: Do you have any -- did you have any
15 conversations with Ms. Weisman about, you know, you have to read
16 then check to see if it's accurate?

17 Answer: I do not recall.

18 Question:" -- top of page 599, line 1 -- "Are you
19 telling us now, by virtue of what you just told us, that what I
20 read to you and the answers that you gave were just flat out
21 wrong? Is that what you're telling us?

22 Answer: No. What I'm telling you is I don't recall
23 what I said back then. I was not in the best frame of mind."

24 Do you recall being asked those questions and giving
25 those answers yesterday?

1 A I recall being asked that yesterday, I do.

2 Q Mrs. Nocera, I have in my hands your original 50-H
3 testimony from March 10th, 2014 held in my office. I was the
4 only one questioning you. Ms. Weisman was there with you. It
5 is 107 pages up to the last question and answer, and the
6 signature page. And with the Court's permission, I'd just like
7 to show this to you.

8 MR. VIGORITO: If I might, your Honor. I can do it
9 myself.

10 THE COURT: Yes, you may.

11 Q It looks like on July 12th, 2014, a few months after
12 that testimony was given, you signed and witnessed your own
13 testimony; isn't that true?

14 A That's how it appears.

15 Q And it seems like you brought it to someone to notarize
16 your signature, as you were instructed to do by Ms. Weisman;
17 isn't that true?

18 A If she told me to do something or anybody else did I
19 just did it.

20 Q And the person who notarized it, you actually know that
21 person, don't you?

22 A Yes, I do.

23 Q He's an attorney in Long Island, right?

24 A Yes.

25 Q He represented you on a car accident case in the past;

1 did he not?

2 A Yes, he did.

3 Q Okay. So you knew to go to Mr. Cavalier and say,
4 Mr. Cavalier, would you notarize my signature on my 50-H sworn
5 testimony, right, and he did that?

6 A I don't know what I asked him. He was my sister's
7 boyfriend at the time, and I did a lot of stuff with him.

8 Q Does this -- looking at this now, does this refresh
9 your recollection that not only did you open the envelope when
10 you got it from Ms. Weisman, but you read it, you corrected it,
11 you signed the signature page and you had it notarized? Yes or
12 no?

13 A No, it doesn't. I will tell you --

14 Q Now answer my question, ma'am.

15 A No, it does not.

16 Q Okay. Did you sign it?

17 A Obviously.

18 Q Did you go to Mr. Cavalier and say can you please
19 notarize this for me? Or you don't remember that?

20 A No, I -- I don't remember anything for about the first
21 two years of my life. My mental state of mind, I was on
22 medication, I was seeing a psychologist because I was just going
23 through my life's functions. I have a copy of this in an
24 envelope sealed in my bedroom cabinet in my husband's armoire
25 that I have never opened. If I did this, I swear to God I do

1 not recall. If I did it, then I'm assuming that I got a second
2 copy and was told do this.

3 I have no recollection of two years of my life,
4 including planning a wedding for my daughter. I just went
5 through the motions of my life. If you told me sign it, I
6 signed it. If you told me pay a bill, I paid it. If you told
7 me don't worry about it, I didn't worry about it. If you told
8 me you want to eat, I said I don't really care. You want to go
9 out, not really. That was my life for two years.

10 Q Before I ask another question, Mrs. Nocera, out of
11 respect to you I want to make sure is there anything else you
12 want to add to that answer you just gave?

13 A I don't remember anything, sir, so I did not lie when I
14 told you that. I have no recall of close to two years of my
15 life as far as -- yeah, I got up, I went to work, I did this, I
16 did that. I did it because I did it out of function, got in the
17 car, put the key in the car, drove where I had to go. Do I
18 remember if I shopped? Do I remember if I -- my kids came over?
19 I don't remember anything. It was just going through the
20 motions. I'm finally becoming stable as far as emotionally and
21 getting my life on a new track that I never wanted.

22 Q Okay.

23 A So, no, I do not remember any of this.

24 Q The page with your signature, I think it's 107 or 108,
25 could you open it up to that for a second, that page. And the

1 page that's up on the screen, could you just take a look at it.

2 They are one in the same, right? You see where it's
3 notarized at the bottom by Matthew John Cavalier on the 12th of
4 July 2014?

5 A I assume so.

6 Q So the page you have in front of you and that page
7 appear to be the same page, right?

8 A As far as I can tell. I can't read the whole thing,
9 but yes.

10 Q Okay. If we look inside of that original transcript,
11 if I just borrow it from you for a second, I just want to show
12 you something.

13 A I want no part of it, so.

14 Q This is the original transcript, stamped original. You
15 go through it, and let me just show you one or two things. And
16 I hate to trouble you with this, but in light of yesterday's
17 testimony, I just have to point out a couple of things to you.
18 Like on this page, page 71, this pink ink with the circle and
19 the writing over here where it says -- you underlined this week
20 and you wrote test scheduled for following week, and you circled
21 6:45 p.m. Do you know if you did that? Is that your
22 handwriting?

23 A Yes, it is.

24 Q And you used a pink pen, obviously. And you did that
25 when you proofread the transcript before you signed it, right?

1 A Obviously. Do I remember it? No, sir.

2 Q So you just told us you don't remember it.

3 A Don't remember any of it.

4 Q I understand that. But yesterday when I asked you the
5 question, instead of telling the jury that you have no
6 recollection of this, you chose to tell the jury that the
7 transcript was never taken out of an envelope, it stayed in the
8 envelope --

9 MS. WEISMAN: Objection, your Honor.

10 Q -- and you never looked at it.

11 THE COURT: Overruled.

12 Q Right? That's what you told the jury as opposed to I
13 have no recollection of any of this. Am I being fair and
14 accurate about that in terms --

15 A Which is true. I still have it in a cabinet in an
16 armoire totally unopened. I did not have any recollection of
17 doing this possibly from another copy. I do not remember any of
18 that. I do have the other one in a cabinet.

19 Q And at page 79 when you circled Mr. Vigorito and I'm
20 memorialize it in writing, which is something I said at page 79
21 of the transcript, in pink ink, that was you as well, right?
22 Did you do that?

23 A Possibly. It's a circle. I don't have any initials
24 there.

25 Q It's the same color ink, too.

1 A I don't recall doing that. I don't recall any of this.
2 You can ask me a million questions, and I don't recall --

3 Q And --

4 A -- any of it.

5 Q And on page 89 when you changed the "I" to "he" called
6 Dr. Cuomo's office instead of you, meaning you called, and then
7 you circled yes and you wrote no, Gary called, that's on page
8 89. Let me show you that.

9 A You don't need to show me, I believe you.

10 Q Did you make those changes, too? Did you make those
11 changes? I do have to show it to you, I'm sorry.

12 A I assume so, yes.

13 MR. VIGORITO: No further questions.

14 THE COURT: Mr. Venditto?

15 MR. VENDITTO: No, Judge, nothing. Thank you.

16 THE COURT: Ms. Weisman?

17 MS. WEISMAN: No, your Honor.

18 THE COURT: You can step down, Mrs. Nocera, thank
19 you.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 THE COURT: Ladies and gentlemen, just so there's
23 no confusion, you will recall during my opening instructions
24 I said that the evidence that you will receive during the
25 course of the trial will come in the form of testimony or

1 depositions, which I have enlightened you to a certain
2 degree as deposition transcripts are being used.

3 You have now heard testimony about 50-H or
4 statutory hearing. It is considered as a deposition, but
5 the difference is -- so you're not confused and the reason
6 why Mr. Venditto or his firm was not there -- whenever a
7 municipality, whether it's a town, a village, a city, a
8 county, a public benefit corporation such as Westchester
9 Medical Center, a school district or any other municipal
10 organization is sued, they are entitled to a couple of
11 things. One is a notice of claim which is filed within a
12 certain time which is pursuant to General Municipal Law
13 Statute 50-E. Subsequently, when you hear 50-H, General
14 Municipal Law section 50-H entitled that entity to obtain a
15 hearing pursuant to statute in order to further investigate
16 the claim before we move into section 50-I, which is the
17 filing of the summons and complaint within a year and
18 90 days from the date of the occurrence.

19 So you may hear deposition, you've heard statutory
20 hearing. For your purposes of receiving and determining
21 evidence, they are one in the same.

22 All right, give us five minutes. We're going to
23 restructure. I have to speak to the attorneys on some
24 witness testimony that's going to be coming in.

25 (Jury exits.)

1 (Recess taken.)

2 COURT OFFICER: Jury entering.

3 THE COURT: Jurors, you may be seated. Ladies and
4 gentlemen, Counsel, please be seated. Welcome back, Jurors.

5 When we took our recess, we had completed the
6 testimony of Mrs. Nocera in its entirety. We will now
7 continue with the presentation of the plaintiff's case.

8 Ms. Weisman, call your next witness.

9 MS. WEISMAN: Thank you, your Honor. Plaintiff
10 calls Luke Nocera.

11 COURT OFFICER: Remain standing for a moment, left
12 hand on the Bible. Raise your right hand. Face the judge.

13 L U K E G A R R E T T N O C E R A,
14 called as a witness on behalf of the Plaintiff, having been
15 first duly sworn, was examined and testified as follows:

16 THE WITNESS: Yes, I do.

17 THE COURT: Please have a seat, Mr. Nocera. I'll
18 ask you to give your full name for the record and state your
19 address.

20 THE WITNESS: My name is Luke Garrett Nocera. I
21 live at 59 Mount Hope Road, Mahopac, New York 10541.

22 THE COURT: You may inquire.

23 MS. WEISMAN: Thank you, your Honor.

24 DIRECT EXAMINATION

25 BY MS. WEISMAN: