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STATE OF NEW YORK

WORKERS' COMPENSATION BOARD

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CLAIMANT: JORDAN CARPIO

EMPLOYER: RCD

CARRIER: NYSIF

CLAIM: 74094616-373

WCB: G3455858

D/O/A: 12/16/2022

----------x

TELECONFERENCE

AUGUST 11, 2023

9:02 A.M.

EXAMINATION OF JOSEPH WEINSTEIN, D.O., the claimant's treating physician, held at the above date and time, pursuant to Notice, taken before Holly Van Pelt, a Reporter and Notary Public within and for the State of New York.

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

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BY: SEAN DOOLEY, ESQ., OF COUNSEL
VECCHIONE, VECCHIONE,
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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing, sealing and certification be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

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J O S E P H W E I N S T E I N, D.O.,
the witness herein, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

BY THE REPORTER:

Q. Please state your name for the record.

A. Joseph Weinstein, D.O.

Q. Please state your address for the record.

A. 62-54 97th Place, Queens, New York 11374.

VOIR DIRE EXAMINATION BY
MS. MANDLEUR:

Q. Doctor, are you licensed to practice medicine in the state of New York?

A. Yes.

Q. What year were you licensed?

A. 2009.

Q. Are you licensed or have you ever been licensed in any other state?

A. In New Jersey.

Q. Have either of your licenses ever

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been subject to any disciplinary action?

A. No.

Q. Are you coded by the Workers' Compensation Board; if so, what are your code letters?

A. I don't know what the code letters are, but orthopedic surgery.

MS. MANDLEUR: Mr. Dooley, do you have any questions regarding the doctor's qualifications?

VOIR DIRE EXAMINATION BY

MR. DOOLEY:

Q. Just, Doctor, have you ever had any license in any jurisdictions placed under any disciplinary action?

A. No.

MR. DOOLEY: No other questions on qualifications.

Thank you.

MS. MANDLEUR: Thank you.

So this is a NYSIF case; we'll go ahead and start with cross-examination.

Mr. Dooley.

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MR. DOOLEY: Okay, no problem.

Good morning, Doctor.

My name is Sean Dooley. I represent the insurance carrier.

I'm just going to ask you a few questions. If you don't understand anything or if you would like me to repeat anything, go ahead and let me know, okay.

THE WITNESS: Yes.

CROSS-EXAMINATION BY

MR. DOOLEY:

Q. So I have that you saw this gentleman on two occasions, 3/6/23 and 7/12/23. Is that accurate?

A. I also saw him on 4/17/23.

Q. Just looking at the first one, the 3/6/23, the history he gave you was that he slipped on a wet platform and debris; is that accurate?

A. That's what's on there, yes.

Q. Did he give you any additional information regarding the mechanism of

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injury?

A. No.

Q. It just says slipped, so do you know did the slip result in him actually falling?

A. Yes, I believe he fell.

Q. Do you know if he struck any -- well, let me ask it a different way.

Do you know what body parts he struck when he fell?

A. He complained that he injured his neck, back, right shoulder and right knee when he fell.

Q. I guess my question is are you under the impression that when he fell all four of those sites struck the ground?

A. He told me that he injured all those sites when he fell.

Q. He did not give you specifics as to how those sites were injured, correct?

A. I don't have more specifics than really what's in my note.

Q. Did he give you any indication of any past history of injury to any of those

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sites?

A. No.

Q. In your report it says denies. Can I interpret that to mean that you asked him about a past medical history, he denied it?

A. It says he -- yeah -- well, no past medical history like if he has diabetes or anything like that. In the narrative it says he states he never had any issues regarding his neck, low back, right shoulder or right knee.

Q. Do you know what his job was at the time this happened?

A. One second. I believe he was working in construction.

Q. At the time he fell, do you know what type of activity he was engaged in?

A. Construction activity.

Q. You don't know if he was lifting something, hammering something, anything else?

A. (No verbal response).

Q. Sorry, Doctor, did you answer that?

A. I'm sorry, I said no, but I believe

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on his C3 it says he was passing down bags of cement from the scaffold.

Q. Did he provide you a copy of the C3 or did his attorney?

A. I have no idea.

Q. Do you know how he was referred to your office?

A. No.

Q. Have you ever received any correspondence from his attorney, that you're aware of?

A. I haven't received anything, no.

Q. In your 3/6/23 report you indicate that he's totally disabled. Is that from the construction work or all employment?

A. From all employment.

Q. He is 22, correct?

A. Correct.

Q. What would prevent him from doing a sedentary job?

A. On the basis he was injured not too long prior. He stated he had 9 out of 10 pain. He did have positive physical exam findings. He had intense pain, so I stated

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that he was disabled from all work.

Q. At your most recent exam, 7/12/23, did that remain your opinion, disabled from all work?

A. That's correct.

Q. Going to that examination, 7/12/23, he still indicated to you that his pain was 9 out of 10?

A. Yes.

Q. How did you communicate with him? Was it in English or Spanish?

A. I have a Spanish interpreter in the room at all times.

Q. So when you asked him to rate his pain, do you tell him that 10 is the worst pain imageable?

A. Yes, and there's a visual chart in the room as well.

Q. So when he told you that his pain was 90 percent of the way to the worst pain imaginable, was he able to actually vocalize that thought?

A. Sorry?

Q. Well, when he said his pain was 9

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out of 10, almost the worst pain imageable, was he just talking or was he riving on the ground in agony or something else?

A. He communicated to me by talking.

Q. Would you agree that pain is subjective?

A. Certainly.

Q. Can you look at your report, and it looks like, notwithstanding the amount of pain which he reported, I don't see that you documented that he was in any acute distress. Would that be accurate?

A. He was in no acute distress.

Q. I'm just taking a note. Give me a second.

Taking a look at your physical examination findings on that day, I see that it looks like his reflexes were normal and I don't see that there were any sensory deficits in the cervical and lumbar spine. Is that accurate?

A. Correct.

Q. The strength was normal in the upper and lower extremities?

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A. Correct.

Q. I do see some limitations in range of motion and pain on palpation. Would you agree both of those findings have some subjectivity?

A. They can, yes.

Q. I see some positive orthopedic tests to the right shoulder and right knee with limitations in range of motion. Would you agree that those tests also can have subjectivity?

A. Unless the patient read the orthopedic book, they really shouldn't be that subjective.

Q. Well, those tests are reliant upon a response from the patient, correct?

A. Correct.

Q. The shoulder you have flexion to 140 degrees. That would be what, mild deficit, moderate deficit?

A. I would say mild to moderate.

Q. And then the knee has flexion to 125; mild deficit, moderate, mild to moderate, something else?

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A. I would say mild.

Q. So Doctor, I'm sorry, just so that I understand, your positive findings are essentially limitations in range of motion, some orthopedic tests, but decent range of motion to the right shoulder and right knee, normal reflexes, normal strength, normal sensation and this gentleman's 22 years old. Why couldn't he could do a sedentary job?

A. Well, he's continued to have pain. I believe his whole claim was denied or is denied, so I'm not sure how much physical therapy he had, so I'm not sure. So I was giving him a chance to do physical therapy and nonoperative treatment prior to him going back to work.

Q. Well, if he was doing, for example, a desk job physical therapy wouldn't be a bar to that, correct?

A. Well, he wouldn't be able to go to physical therapy if he was working.

Q. All right, so let's say that you had a patient, this is a hypothetical, who wasn't a construction worker and was a

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clerical worker and had these examination findings and they came to you and said I'd like to go back to work, would you release them to go back to work?

A. If they like -- if they'd like to go back to work, sure.

MR. DOOLEY: I don't think I have anything else.

Thank you for your time, Doctor.

MS. MANDLEUR: Thank you.

Doctor, just one question.

REDIRECT EXAMINATION BY
MS. MANDLEUR:

Q. Is your opinion on causal relationship and degree of disability within a reasonable degree of medical certainty based on the records you've received and your physical examination?

A. Yes.

MS. MANDLEUR: Thank you.

I have nothing further.

Mr. Dooley.

MR. DOOLEY: I have nothing

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else.

Thank you for your time, Doctor.

THE WITNESS: No problem. Have a good day.

MS. MANDLEUR: Thank you for your time, Doctor.

THE WITNESS: No problem.

MS. MANDLEUR: I would just ask that the judge consider the customary fee for his time and testimony today.

-o0o-

(Whereupon, the examination of JOSEPH WEINSTEIN, D.O. was concluded at 9:14 A.M.)

_____

JOSEPH WEINSTEIN, D.O.

Subscribed and sworn to before me this _____ day of _____, 2023.

_____

NOTARY PUBLIC

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I N D E X

WITNESS	EXAMINATION BY	PAGE
JOSEPH WEINSTEIN, D.O.		
	MR. DOOLEY	6
	MS. MANDLEUR	14

Received by WCB Email on 8/11/2023 1:18:25 PM

C E R T I F I C A T E

I, HOLLY VAN PELT, a Reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness(es) whose testimony is hereinbefore set forth was duly sworn by me, and the foregoing transcript is a true record of the testimony given by such witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Holly Van Pelt

HOLLY VAN PELT

Received by WCB Email on 8/11/2023 1:18:25 PM

1

10 [4] - 9:23, 10:9, 10:16, 11:2
10007 [1] - 2:15
11 [1] - 1:14
11369 [1] - 2:7
11374 [1] - 4:14
11th [1] - 2:14
12/16/2022 [1] - 1:10
125 [1] - 12:24
14 [1] - 16:7
140 [1] - 12:20
199 [1] - 2:13

2

2009 [1] - 4:21
2023 [2] - 1:14, 15:22
22 [2] - 9:18, 13:9

3

3/6/23 [3] - 6:16, 6:20, 9:14
31-01 [1] - 2:6

4

4/17/23 [1] - 6:18

6

6 [1] - 16:6
62-54 [1] - 4:13

7

7/12/23 [3] - 6:17, 10:3, 10:7
740946 16-373 [1] - 1:8

9

9 [3] - 9:23, 10:8, 10:25
90 [1] - 10:21
90th [1] - 2:6
97th [1] - 4:13
9:02 [1] - 1:15
9:14 [1] - 15:17

A

A.M [2] - 1:15, 15:17
able [2] - 10:22, 13:21
accurate [4] - 6:17, 6:22, 11:13, 11:22
action [3] - 5:2, 5:16, 17:13
activity [2] - 8:18, 8:19
acute [2] - 11:12, 11:14
additional [1] - 6:24
address [1] - 4:11
administer [1] - 3:19
agony [1] - 11:4
agree [3] - 11:6, 12:5, 12:11
AGREED [3] - 3:5, 3:11, 3:16
ahead [2] - 5:23, 6:11
almost [1] - 11:2
amount [1] - 11:10
AND [3] - 3:5, 3:11, 3:16
answer [1] - 8:24
attorney [2] - 9:5, 9:11
Attorneys [1] - 2:5
attorneys [1] - 3:6
AUGUST [1] - 1:14
authorized [1] - 3:18
aware [1] - 9:12

B

bags [1] - 9:2
bar [1] - 13:19
based [1] - 14:19
basis [1] - 9:22
between [1] - 3:6
blood [1] - 17:14
Board [1] - 5:5
BOARD [1] - 1:3
body [1] - 7:10
book [1] - 12:14
BY [8] - 2:8, 2:16, 4:7, 4:15, 5:12, 6:13, 14:14, 16:4

C

C3 [2] - 9:2, 9:4
CANO [1] - 2:18
CARPIO [1] - 1:5
Carrier [1] - 2:12
CARRIER [1] - 1:7
carrier [1] - 6:6
case [1] - 5:22
causal [1] - 14:16
cement [1] - 9:3
certainly [1] - 11:8
certainty [1] - 14:18
certification [1] - 3:8
certify [2] - 17:6, 17:12
cervical [1] - 11:21
chance [1] - 13:15
chart [1] - 10:18
Church [1] - 2:13
claim [1] - 13:12
CLAIM [1] - 1:8
CLAIMANT [1] - 1:5
Claimant [1] - 2:5
claimant's [1] - 1:19
clerical [1] - 14:2
code [2] - 5:5, 5:7
coded [1] - 5:4
communicate [1] - 10:11
communicated [1] - 11:5
Compensation [1] - 5:5
COMPENSATION [1] - 1:3
complained [1] - 7:12
concluded [1] - 15:17
CONNORS [1] - 2:18
consider [1] - 15:11
construction [4] - 8:16, 8:19, 9:16, 13:25
continued [1] - 13:11
copy [1] - 9:4
correct [9] - 7:21, 9:18, 9:19, 10:6, 11:23, 12:2, 12:17, 12:18, 13:20
correspondence [1] - 9:11
COUNSEL [1] - 2:16
Court [1] - 3:21
cross [1] - 5:24
CROSS [1] - 6:13
cross-examination [1] - 5:24
CROSS-EXAMINATION [1] - 6:13
customary [1] - 15:12

D

D.O [6] - 1:18, 4:2, 4:10, 15:16, 15:20, 16:5
D/O/A [1] - 1:10
date [1] - 1:20
debris [1] - 6:21
decent [1] - 13:6
deficit [3] - 12:21, 12:24
deficits [1] - 11:21
degree [2] - 14:17, 14:18
degrees [1] - 12:20
denied [3] - 8:6, 13:12, 13:13
denies [1] - 8:4
deposition [1] - 3:17
desk [1] - 13:19
diabetes [1] - 8:8
DIANE [1] - 2:8
different [1] - 7:9
DIRE [2] - 4:15, 5:12
disability [1] - 14:17
disabled [3] - 9:15, 10:2, 10:4
disciplinary [2] - 5:2, 5:16
distress [2] - 11:12, 11:14
doctor [1] - 4:17
Doctor [8] - 5:14, 6:4, 8:24, 13:3, 14:11, 14:13, 15:4, 15:8
doctor's [1] - 5:11
documented [1] - 11:12
DOOLEY [8] - 2:16, 5:13, 5:18, 6:2, 6:14, 14:8, 14:25, 16:6
Dooley [3] - 5:9, 5:25, 6:5
dooley [1] - 14:24
down [1] - 9:2
duly [2] - 4:4, 17:8

E

East [1] - 2:7
EDMOND [1] - 2:4
effect [1] - 3:20
either [1] - 4:25
Elmhurst [1] - 2:7
EMPLOYER [1] - 1:6
employment [2] - 9:16, 9:17
engaged [1] - 8:18
English [1] - 10:12
ESQ [2] - 2:8, 2:16
essentially [1] - 13:5
exam [2] - 9:24, 10:3
examination [6] - 5:24, 10:7, 11:18, 14:2, 14:20, 15:15
EXAMINATION [6] - 1:18, 4:15, 5:12, 6:13, 14:14, 16:4
examined [1] - 4:6
example [1] - 13:18
except [1] - 3:12
extremities [1] - 11:25

F

falling [1] - 7:6
fee [1] - 15:12
fell [6] - 7:7, 7:11, 7:14, 7:16, 7:19, 8:17
few [1] - 6:8
filing [1] - 3:7
findings [5] - 9:25, 11:18, 12:5, 13:4, 14:3
first [2] - 4:4, 6:19
flexion [2] - 12:19, 12:23
Floor [1] - 2:14
follows [1] - 4:6
force [1] - 3:19
foregoing [1] - 17:9
form [1] - 3:13
forth [1] - 17:8
four [1] - 7:17
FUND [1] - 2:11
FURTHER [2] - 3:11, 3:16

G

G3455858 [1] - 1:9
gentleman [1] - 6:16
gentleman's [1] - 13:9
given [1] - 17:10
ground [2] - 7:17, 11:4
guess [1] - 7:15

H

HAKIMIAN [1] - 2:4
hammering [1] - 8:21
held [1] - 1:19
HEREBY [1] - 3:5
hereby [2] - 3:9, 17:6
herein [2] - 3:7, 4:3
hereinbefore [1] - 17:8
history [4] - 6:20, 7:25, 8:6, 8:8
Holly [1] - 1:21
HOLLY [1] - 17:4

Received by WCB Email on 8/11/2023 1:18:25 PM

hypothetical [1] - 13:24

I

idea [1] - 9:6
imageable [2] - 10:17, 11:2
imaginable [1] - 10:22
impression [1] - 7:16
indicate [1] - 9:14
indicated [1] - 10:8
indication [1] - 7:24
information [1] - 6:25
injured [4] - 7:12, 7:18, 7:21, 9:22
injury [2] - 7:2, 7:25
INSURANCE [1] - 2:11
insurance [1] - 6:6
intense [1] - 9:25
interested [1] - 17:15
interpret [1] - 8:5
interpreter [1] - 10:13
IS [3] - 3:5, 3:11, 3:16
issues [1] - 8:10
IT [3] - 3:5, 3:11, 3:16

J

Jersey [1] - 4:24
job [4] - 8:13, 9:21, 13:10, 13:19
JORDAN [1] - 1:5
Joseph [1] - 4:10
JOSEPH [4] - 1:18, 15:16, 15:20, 16:5
judge [1] - 15:11
jurisdictions [1] - 5:15

K

knee [5] - 7:13, 8:12, 12:9, 12:23, 13:7

L

LAW [1] - 2:4
letters [2] - 5:6, 5:7
license [1] - 5:15
licensed [4] - 4:17, 4:20, 4:22, 4:23
licenses [1] - 4:25
lifting [1] - 8:20
limitations [3] - 12:3, 12:10, 13:5
LLP [1] - 2:18
look [2] - 11:9, 11:17
looking [1] - 6:19
looks [2] - 11:10, 11:19
low [1] - 8:11
lower [1] - 11:25
lumbar [1] - 11:21

M

MANDLEUR [10] - 2:8, 4:16, 5:9, 5:21, 14:12, 14:15, 14:22, 15:7, 15:10, 16:7
marriage [1] - 17:14
matter [1] - 17:15
mean [1] - 8:5
mechanism [1] - 6:25
medical [3] - 8:6, 8:8, 14:18
medicine [1] - 4:18
mild [5] - 12:20, 12:22, 12:24, 13:2
moderate [4] - 12:21, 12:22, 12:24, 12:25
morning [1] - 6:4
most [1] - 10:3
motion [4] - 12:4, 12:10, 13:5, 13:7
MR [7] - 5:13, 5:18, 6:2, 6:14, 14:8, 14:25, 16:6
MS [9] - 4:16, 5:9, 5:21, 14:12, 14:15, 14:22, 15:7, 15:10, 16:7

N

name [2] - 4:8, 6:5
narrative [1] - 8:9
neck [2] - 7:13, 8:11
never [1] - 8:10
NEW [1] - 1:2
New [8] - 1:23, 2:7, 2:15, 4:5, 4:13, 4:18, 4:24, 17:6
new [2] - 2:11, 2:15
nonoperative [1] - 13:16
normal [5] - 11:19, 11:24, 13:8
Notary [3] - 1:22, 4:4, 17:5
NOTARY [1] - 15:25
note [2] - 7:23, 11:15
nothing [2] - 14:23, 14:25
Notice [1] - 1:20
notwithstanding [1] - 11:10
NYSIF [2] - 1:7, 5:22

O

oath [1] - 3:19
objections [1] - 3:12
occasions [1] - 6:16
OF [4] - 1:2, 1:18, 2:4, 2:16
office [1] - 9:8
officer [1] - 3:18
OFFICES [1] - 2:4
old [1] - 13:9
one [3] - 6:19, 8:15, 14:13
opinion [2] - 10:4, 14:16
orthopedic [4] - 5:8, 12:8, 12:14, 13:6
outcome [1] - 17:15

P

P.C [1] - 2:4
PAGE [1] - 16:4
pain [13] - 9:24, 9:25, 10:8, 10:16, 10:17, 10:20, 10:21, 10:25, 11:2, 11:6, 11:11, 12:4, 13:11
palpation [1] - 12:4
parties [2] - 3:7, 17:13
parts [1] - 7:10
passing [1] - 9:2
past [3] - 7:25, 8:6, 8:7
patient [3] - 12:13, 12:17, 13:24
PELT [1] - 17:4
Pelt [1] - 1:21
percent [1] - 10:21
physical [7] - 9:24, 11:17, 13:13, 13:15, 13:19, 13:22, 14:20
physician [1] - 1:19
Place [1] - 4:13
placed [1] - 5:15
platform [1] - 6:21
positive [3] - 9:24, 12:8, 13:4
practice [1] - 4:18
prevent [1] - 9:20
problem [3] - 6:3, 15:5, 15:9
provide [1] - 9:4
Public [3] - 1:22, 4:4, 17:5
PUBLIC [1] - 15:25
pursuant [1] - 1:20

Q

qualifications [2] - 5:11, 5:19
Queens [1] - 4:13
questions [3] - 5:10, 5:19, 6:8

R

range [4] - 12:3, 12:10, 13:5, 13:6
rate [1] - 10:15
RCD [1] - 1:6
read [1] - 12:13
really [2] - 7:23, 12:14
reasonable [1] - 14:18
received [3] - 9:10, 9:13, 14:19
recent [1] - 10:3
record [3] - 4:9, 4:12, 17:10
records [1] - 14:19
REDIRECT [1] - 14:14
referred [1] - 9:7
reflexes [2] - 11:19, 13:8
regarding [3] - 5:10, 6:25, 8:10
related [1] - 17:13
relationship [1] - 14:17
release [1] - 14:4
reliant [1] - 12:16
remain [1] - 10:4
repeat [1] - 6:10
report [3] - 8:4, 9:14, 11:9
reported [1] - 11:11
REPORTER [1] - 4:7
Reporter [2] - 1:21, 17:4
represent [1] - 6:6
Representing [1] - 2:12
reserved [1] - 3:13
respective [1] - 3:7
response [1] - 12:17
response) [1] - 8:23
result [1] - 7:5
riving [1] - 11:3
room [2] - 10:14, 10:19

S

saw [2] - 6:15, 6:18
scaffold [1] - 9:3
sealing [1] - 3:8
Sean [1] - 6:5
SEAN [1] - 2:16
second [2] - 8:15, 11:16
sedentary [2] - 9:21, 13:10
see [5] - 11:11, 11:18, 11:20, 12:3, 12:8
sensation [1] - 13:9
sensory [1] - 11:20
set [1] - 17:8
shall [1] - 3:13
shoulder [5] - 7:13, 8:11, 12:9, 12:19, 13:7
signed [2] - 3:17, 3:20
sites [4] - 7:17, 7:19, 7:21, 8:2
slip [1] - 7:5
slipped [2] - 6:21, 7:4
sorry [4] - 8:24, 8:25, 10:24, 13:3
Spanish [2] - 10:12, 10:13
specifics [2] - 7:20, 7:22
spine [1] - 11:21
start [1] - 5:23
state [4] - 4:8, 4:11, 4:18, 4:23
STATE [2] - 1:2, 2:11
State [3] - 1:22, 4:5, 17:5
states [1] - 8:10
still [1] - 10:8
STIPULATED [3] - 3:5, 3:11, 3:16
Street [2] - 2:6, 2:13
strength [2] - 11:24, 13:8
struck [3] - 7:8, 7:11, 7:17
subject [1] - 5:2
subjective [2] - 11:7, 12:15
subjectivity [2] - 12:6, 12:12
Subscribed [1] - 15:21

Received by WCB Email on 8/11/2023 1:18:25 PM

surgery [1] - 5:8
sworn [5] - 3:18, 3:20, 4:4, 15:21, 17:8

T

TELECONFERENCE [1] - 1:13
testified [1] - 4:6
testimony [3] - 15:13, 17:7, 17:10
tests [4] - 12:9, 12:11, 12:16, 13:6
THE [4] - 4:7, 6:12, 15:5, 15:9
therapy [4] - 13:14, 13:15, 13:19, 13:22
today [1] - 15:13
totally [1] - 9:15
transcript [1] - 17:9
treating [1] - 1:19
treatment [1] - 13:16
trial [1] - 3:14
true [1] - 17:9
two [1] - 6:16
type [1] - 8:18

U

under [2] - 5:15, 7:16
unless [1] - 12:13
upper [1] - 11:25

V

Van [1] - 1:21
VAN [1] - 17:4
VECCHIONE [2] - 2:17
verbal [1] - 8:23
visual [1] - 10:18
vocalize [1] - 10:22
VOIR [2] - 4:15, 5:12

W

waived [1] - 3:9
WCB [1] - 1:9
Weinstein [1] - 4:10
WEINSTEIN [4] - 1:18, 15:16, 15:20, 16:5
wet [1] - 6:21
whole [1] - 13:12
WITNESS [4] - 6:12, 15:5, 15:9, 16:4
witness [1] - 4:3
witness(es [1] - 17:7
witness(es) [1] - 17:11
worker [2] - 13:25, 14:2
Workers' [1] - 5:4
WORKERS' [1] - 1:3
worst [3] - 10:16, 10:21, 11:2

Y

year [1] - 4:20
years [1] - 13:9
YORK [2] - 1:2, 2:11
York [8] - 1:23, 2:7, 2:15, 4:5, 4:13, 4:18, 17:6

Received by WCB Email on 8/11/2023 1:18:25 PM