

Exhibit 1

In The Matter Of:

*Wilson Mejia v.
Japan Society, Inc.*

*Preliminary Instructions, Openings, Wilson Mejia & Dr. Jeffrey Kaplan
January 16, 2024*

*Michele Henley
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1 SUPREME COURT OF THE STATE OF NEW YORK
2 TRIAL TERM PART IA-32 : COUNTY OF BRONX

3 -----X

4 WILSON MEJIA,
5 Plaintiff(s), Index # 28455/2017E

6 -against-

7 JAPAN SOCIETY, INC.,
8 Defendant(s).

9 -----X
10 851 Grand Concourse
11 Bronx, New York, 10451
12 January 16, 2024

13 B E F O R E:

14 HON. FIDEL E. CASTRO, and a jury.
15 J U S T I C E.

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

17 GORAYEB & ASSOCIATES
18 100 William Street
19 New York, New York 10038
20 Attorneys for Plaintiff
21 BY: CHRISTOPHER VARGAS, ESQ.,

22 WEISER & McCARTHY
23 17 State Street-8th Floor
24 New York, New York 10004
25 Attorneys for Defendants
BY: ROY ITZKOWITZ, ESQ.,
BY: VANESSA FUERTH, ESQ.,

26 Michele Henley,
27 SENIOR COURT REPORTER

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1 (Whereupon, the following proceedings take place
2 on the record, in open court, out of the hearing and
3 presence of the jury:)

4 THE COURT: All right. So we're just going to go
5 briefly on the record, just a few housekeeping. Today we're
6 starting the trial and one thing that I wanted to make sure
7 that we have two attorneys representing the defendant in
8 this case and my rule is generally that you guys agree among
9 each other whose going to be doing a particular witness,
10 whose going to be doing an opening and closing and that any
11 objections with respect to that particular witness be
12 relegated to the person who agreed to do that witness so
13 that I don't have people standing up and interjecting over
14 one another. Whatever you guys agree to, that's entirely up
15 to you. Okay.

16 MR. ITZKOWITZ: Okay.

17 THE COURT: We spoke off the record. Today we're
18 anticipating to have the plaintiff testify and Doctor Kaplan
19 as well. The court normally goes to 4:30, anything beyond
20 goes beyond overtime which is the death knell as far as all
21 are concerned. I hope you guys keep to that particular
22 schedule so that I don't get fired.

23 Anything else, any motions in limine?

24 MS. FEURTH: Just to put on the record that
25 plaintiff's counsel has withdrawn the psychiatric claims?

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1 MR. VARGAS: Sure. Yes, Your Honor.

2 THE COURT: So at this point you've withdrawn any
3 psychiatric injuries and you're limiting it all to physical
4 pain and suffering for past and future?

5 MR. VARGAS: Yes, Your Honor. And I have a marked
6 pleadings for the Court.

7 THE COURT: I'll take those as well, if you have
8 them.

9 Anything else before we get started?

10 MR. ITZKOWITZ: No, Your Honor.

11 THE COURT OFFICER: All rise, jury entering.

12 (Whereupon, the following proceedings take place
13 on the record, in open court, in the hearing and presence of
14 the jury:)

15 THE COURT: Good morning, folks. My name is Fidel
16 Gomez and I am the Judge presiding over this case. This
17 case is expected to last the rest of this month and possibly
18 the beginning of the next, maybe a week or two into it,
19 depending on scheduling.

20 So it's going to be a long trial and I just ask
21 you guys pay attention, make an effort to stay alert. If at
22 any time during the course of the trial you have to use the
23 bathroom or you have to get some accommodation, please
24 either let me know, let the court officer know or let the
25 clerk know that you guys want to take a break rather than be

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1 uncomfortable or fall asleep.

2 We're going to get started right now. I'm going
3 to read you some instructions. They're a little bit lengthy
4 but the instructions are designed to enable you to kind of
5 receive the evidence and deal with the evidence as it is
6 coming in. Okay.

7 Members of the jury, we're about to start the
8 trial of this case about which you have heard some details
9 during jury selection. Before the trial begins however
10 there are certain instructions you should have in order to
11 understand what you will hear and see, how you should
12 conduct yourselves during the trial.

13 The party who brings a lawsuit is called the
14 plaintiff and in this action the plaintiff is Wilson Mejia
15 who is suing to recover for personal injuries and he is
16 represented by Chris Vargas, and you met Chris Vargas during
17 jury selection.

18 The party against whom the suit is brought is
19 called the defendant. In this case the defendant is the
20 Japan Society and it is represented by Roy Itzkowitz and
21 Vanessa Fuerth who I'm sure you also heard from during jury
22 selection.

23 In this part of the case you will decide only
24 whether the plaintiff should or should not recover money and
25 if so what amount of money will fairly and justly compensate

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1 the plaintiff for all loss resulting from the injuries he
2 sustained.

3 The question of liability has already been
4 decided. Should there be any mention of how the accident
5 happened, you will consider such evidence only in deciding
6 the amount of money, if any, that will fairly and justly
7 compensate the plaintiff.

8 When I have completed these opening instructions
9 to you, the attorneys will make opening statements to you in
10 which each will outline for you what he or she expects to
11 prove. The purpose of such opening statements is to tell
12 you about each party's claims so that you will have a better
13 understanding of the evidence as it is introduced. What is
14 said in such opening statements is not evidence. The
15 evidence upon which you will base your decision will come
16 from the testimony of witnesses, here in court, or in
17 Examinations Before Trial. I'll explain what those are when
18 they become relevant, or in the form of photographs,
19 documents or other exhibits introduced into evidence.

20 Plaintiff makes an opening statement first and is
21 followed by defendant. After the opening statements
22 plaintiff will introduce evidence in support of his claim.
23 Normally a plaintiff must produce all of his witnesses and
24 complete his entire case before defendant introduces any
25 evidence, although exceptions are sometimes made to that

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1 rule in order to accommodate a witness. That could
2 conceivably happen here.

3 After plaintiff has completed the introduction of
4 all of his evidence, the defendant may present witnesses and
5 exhibits. If he did, plaintiff may be permitted to offer
6 additional evidence for the purpose of rebutting the
7 defendant's evidence.

8 Each witness is first examined by the party who
9 calls that witness to testify and then the opposing party is
10 permitted to question the witness. Additional examination
11 and questioning of a witness may occur and you'll hear it
12 either be referred to as redirect or recross. When you hear
13 that, that's what we're referring to.

14 At times during the trial an attorney may object
15 to a question or to the introduction of an exhibit, or make
16 motions concerning legal questions that apply to this case.
17 Arguments, in connection with objections or motions,
18 sometimes are made outside the presence of the jury.

19 Any ruling I make will be based solely on the law
20 and, therefore, you must not conclude from any ruling or
21 from anything that I say during the trial that I favor
22 either party to this lawsuit.

23 Upon completion of the introduction of evidence,
24 the attorneys will again speak to you in a closing statement
25 or summation. In summing up the lawyers will point out what

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1 they believe the evidence has shown, what inferences or
2 conclusions they believe you should draw from the evidence
3 and what conclusions they believe you should reach as your
4 verdict.

5 What said is by the attorneys in summation, like
6 what is said by them in their opening statement, or in the
7 making of any objections or motioning during the trial, is
8 not evidence. Summations are intended to present the
9 arguments of the parties based on the evidence.

10 Under our system the defendant sums up first
11 followed by the plaintiff.

12 After summations I will instruct you on the rules
13 of law applicable to the case and you will then retire for
14 your deliberations.

15 Your function as jurors is to decide what has or
16 has not been proven and apply the rules of law that I give
17 to you to the facts as you find them to be. The decision
18 you reach will be your verdict. The decision will be based
19 on the testimony that you hear and the exhibits that will be
20 received in evidence during the trial. You are the sole and
21 exclusive judges of the facts and what you believe to be the
22 facts and nothing I say or do should be taken by you as any
23 indication of my opinion as to the facts.

24 As to the facts, neither I nor anyone else may
25 invade your province. I'll preside impartially and not

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1 express any opinion concerning the facts. Any opinions of
2 mine on the facts would, in any event, be totally irrelevant
3 because the facts are for to you decide.

4 On the other hand and with equal emphasis, I
5 instruct you that in accordance with the oath that you took
6 as jurors you're required to accept the rules of law that I
7 give to you whether you agree with them or not. You are not
8 to ask anyone else about the law, you should not consider or
9 accept any advice about the law from anyone else but me.

10 As the sole judges of the facts, you must decide
11 which of the witnesses you believe, what portions of the
12 testimony you accept and what weight you give to it.

13 At times during the trial I may sustain objections
14 to questions, and you may hear no answer and where an answer
15 has been made, I may instruct that it be stricken and
16 removed from the record and that you disregard and dismiss
17 it from your minds.

18 You may not draw any inference or conclusion from
19 an unanswered question. Nor may you consider testimony
20 removed from the record in reaching your decision. The law
21 requires that your decision be made solely upon the evidence
22 before you.

23 Such items as I exclude from your consideration
24 will be excluded because they are not legally admissible. A
25 lawsuit is a civilized method of determining disputes. It

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1 is basic to the administration of any system of justice that
2 the law be made fairly and honest.

3 You as jurors and I as the Court have a heavy
4 responsibility to act impartially and ensure a just result
5 is reached in deciding the dispute between the plaintiff and
6 the defendant in this case.

7 As a fair and impartial juror you must guard
8 against the application of any stereotypes or attitudes
9 about people or groups that might lead you to render a
10 decision based on those stereotypes or attitudes.

11 Keep in bias that bias is not always obvious or
12 conscious. In assessing the testimony and other evidence in
13 the case you must not be swayed by those stereotypes or
14 attitudes.

15 The law does not, however, require you to accept
16 all the evidence that I shall admit. In deciding what
17 evidence you will accept, you must make your own evaluation
18 of the testimony given by each of the witnesses and decide
19 how much weight you choose to give to that testimony. The
20 testimony of a witness may not conform to the facts as they
21 occurred because he or she is intentionally lying, because
22 the witness did not accurately see or hear what he or she is
23 testifying about, because the witness' recollection is
24 faulty or because the witness has not expressed himself or
25 herself clearly in testifying.

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1 There is no magical formula by which you evaluate
2 testimony. You bring with you to this courtroom all of your
3 experiences and backgrounds of your lives. In your everyday
4 affairs you decide for yourselves the reliability or
5 unreliability of things people tell you. The same tests
6 that you use in your everyday dealings are the very same
7 tests you will apply in your deliberations.

8 The interest or lack of interest of any witness in
9 the outcome of this case, the bias or prejudice of a
10 witness, if there be any, the age, the appearance, the
11 manner in which the witness gives testimony on the stand,
12 the opportunity that the witness had to observe the facts
13 about which he or she testifies, the probability or
14 improbability of the witness' testimony when considered in
15 light of all the other evidence in the case are all items to
16 be considered by you in deciding how much weight, if any,
17 you will give to that witness' testimony.

18 If it appears that there is a conflict in the
19 evidence you will have to consider whether the apparent
20 conflict can be reconciled by fitting the different versions
21 together. If, however, that is not possible you will have
22 to decide which of the conflicting versions you will
23 accept.

24 To help make sure that a just result is reached
25 when you decide this case, consistent with the oath that you

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1 took as a juror, there are several rules that must govern
2 your conduct during the time you serve as a juror.

3 Because this case involves something that happened
4 at a particular location, you may be tempted to visit the
5 location. You may not do so. Even if you live near the
6 location, you must not go to it or pass by it until the case
7 is over.

8 In addition, do not attempt to view the scene by
9 using any computer programs. Viewing the scene either in
10 person or through a computer program would be unfair to the
11 parties because the location, as it looked at the time of
12 the accident, and as it looks now may be very different.
13 This case involves a location as it existed at the time of
14 the accident, not as it exists today.

15 Also in making an unauthorized visit, or viewing,
16 you might get the mistaken impression which would lead you
17 to be unfair to the parties who need you to decide this case
18 solely on the evidence.

19 Thus, you must rely only on the evidence admitted
20 here in court to determine the circumstances and conditions
21 under which this accident occurred. In fairness to the
22 parties to this lawsuit, it is very important for you to
23 keep an open mind throughout the trial. You must reach your
24 decision and verdict on the evidence only as it is admitted
25 during this trial and then only after you have heard the

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1 summations of the attorneys and my instructions to you on
2 the law. Then you will exchange your views and opinions
3 with the other members of the jury to reach your decision
4 and your verdict.

5 While it is human nature for you to form tentative
6 opinions about the witnesses' testimony and other evidence
7 as the trial progresses, and there is a strong temptation to
8 discuss those opinions during the course of the trial, the
9 law does not permit it.

10 The reason for this is if you engage in premature
11 decisions, without the benefit of all the evidence, the
12 summations by the lawyers and my final instructions on the
13 law, your discussions would not be fully informed. That
14 would be unfair to the parties. For this reason, among
15 others, do not do any independent research on any topic you
16 might hear about in this case whether by consulting others,
17 reading any material or conducting internet searches of any
18 kind.

19 Some of the topics you are not to discuss or
20 research are the law or any of the issues in this case. You
21 also must not discuss the issues with the parties, the
22 lawyers, the witnesses or me.

23 After you have rendered your verdict and have been
24 discharged, you will be free to do any research you choose
25 or to share your experiences.

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1 Remember these rules as you are serving as a
2 juror, whether in the courtroom or elsewhere, including
3 whenever you use the computer or personal electronic
4 device. It is vital that you carefully follow these
5 instructions.

6 The law requires that you consider only the
7 testimony and other evidence admitted during this trial.
8 Not only does the law mandate it but the parties depend on
9 you to fairly and impartially consider only the admitted
10 evidence.

11 To do otherwise, by allowing outside information,
12 which may be incomplete, inaccurate or otherwise unreliable,
13 to effect your judgment would be unfair and prejudicial to
14 the parties and could require a retrial of this case.

15 All cell phones, smart phones laptops, tablets or
16 other electronic devices should be turned off while you're
17 in the courtroom and while you are deliberating.

18 Do not talk either among yourselves or with anyone
19 else about anything related to this case. You may tell
20 people you are a juror and give them information about when
21 you will be required to be in court but you must not talk
22 with anyone about any other matters related to this case.

23 You must not provide any information about this
24 case to anyone by any means whatsoever. This means you must
25 not discuss or give or get information about any matter

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1 related to this case by telephone, text message, email or
2 any internet services or social media including, for
3 example, blogs, chat rooms, Google, Facebook, LinkedIn,
4 Tiktok or any other platform.

5 You must not permit any person who is not a juror
6 to talk about this case in your presence. If anyone does
7 so, despite your telling that person not to, report that to
8 me as soon as you are able. However, you must not discuss
9 with your fellow juror either that fact or any other fact
10 you feel necessary to bring to my attention.

11 In other words, if you got to communicate with the
12 court about an issue, just come to the court, just keep it
13 to yourself. Okay.

14 Although it is a normal human tendency to talk
15 with people with whom you come into contact, during the time
16 you serve on this jury, do not talk whether in or out of the
17 courtroom with any of the parties or attorneys or
18 witnesses.

19 I mean not only do not talk about the case but do
20 not talk to them at all, even to pass the time of day. In
21 no other way can all parties be assured of the absolute
22 impartiality they're entitled to expect from you as jurors.

23 If a lawyer, party or witness does not know
24 you, that person is not being rude but is merely following
25 my instructions not to speak to you. The parties and the

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1 attorneys involved in this case, or people working with them
2 on this case, may properly look at a juror's public website,
3 social media, posts or blogs or your social media profiles
4 that are publicly accessible. This may have occurred during
5 jury selection and also may occur during the course of this
6 trial, during deliberations and after the trial has ended.

7 While the parties and attorneys may look at your
8 public media, they may not communicate with you through
9 public media or any other way during the trial and
10 deliberations.

11 In fact, nobody may communicate with you about
12 this case for any reason, in any manner, during the course
13 of this trial or during the time that you are deliberating.

14 If you believe anyone has attempted to communicate
15 in any manner about the case, let me know as soon as
16 possible. You should not communicate about this case with
17 anyone other than me or the court officer or our part
18 clerk.

19 During this trial circumstances may arise when a
20 juror has the need to bring a matter to my attention.
21 Should anyone of you find yourselves in that situation,
22 please notify the court officer, either orally or through a
23 note, that you need to speak to me and I will then instruct
24 you further. Do not tell any other juror, or anyone else
25 about this matter when you seek to bring it to my

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1 attention.

2 Under the law only six jurors will deliberate on
3 this case when it is submitted for consideration. We have,
4 however, selected additional jurors. Alternate jurors are
5 selected to serve because a regular juror may be prevented
6 from continuing to serve by some emergency such as a serious
7 illness or death. Although this seldom happens during a
8 trial, there are cases where we do call on services of
9 alternates. Alternates also are required to pay the same
10 careful attention to the trial as the regular jurors, so
11 that if needed they will be fully familiar with the case.

12 The fact that there are alternate jurors does not
13 mean that any regular juror is free to excuse himself or
14 herself from the case. As a duly chosen juror it is your
15 obligation to be available throughout the trial.

16 The description of trial procedures, the rules
17 governing your conduct and the legal principles I have
18 discussed with you will, I believe, make it easier for you
19 to understand the trial as it goes on and to reach a just
20 result at its conclusion.

21 Without further ado, we're going to hear opening
22 statements and first we're going to hear opening statements
23 from plaintiff's counsel.

24 MR. VARGAS: Thank you, Your Honor.

25 Good morning, ladies and gentlemen of the jury.

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1 THE JURY: Good morning.

2 MR. VARGAS: Thank you for braving the weather to
3 be here on time today. I thank you, Mr. Mejia, sitting in
4 the front, thanks you. He's in the white shirt.

5 So this is a preview of what you'll hear during
6 the course of the trial. It's a construction accident, as
7 you already know from jury selection, and it involves
8 injuries to his neck, his back, his right arm and his left
9 knee but, as I also mentioned in jury selection, he had a
10 prior accident back in 2008 and so the claim in this case,
11 for some of the injuries, is it was an exacerbation, or the
12 injury that he had back in 2008 was made worse in this
13 accident, and I'll explain more here.

14 So back in 2008, October 10th, 2008 was that prior
15 accident. He's working for a company called New Force and
16 he's doing-- he's cutting brick up on a scaffold with what
17 is called a grinder which is kind of like a saw and the
18 grinder gets stuck, kicks back, knocks him off the
19 scaffold. He falls down to the ground. The grinder cuts
20 his left arm and he injures his neck and his back with what
21 are called herniations of his spine.

22 Now, for anyone unaware of herniations, I'll give
23 you my undocter explanation. So you have your spine going
24 all the way down to your tailbone. Up here is the cervical
25 spine. You have C1 through C7. So you hear a lot of

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1 doctors refer to a vertebra in your spine by letter and
2 number, depending on how far down the spine. You go from
3 cervical, in the mid back is thoracic, in the lower back is
4 lumbar.

5 In the prior accident Mr. Mejia had herniations at
6 C-3, C3-4, C5-6. He also had herniation down at L5 S1.
7 Those are the exacerbated discs that we're talking about and
8 when you talk about a herniation you got the two vertebra,
9 you know, stacked on each other and at each level there's
10 like a jelly cushioning, right, so that your bones aren't
11 knocking together and there's the-- it's like a shock
12 absorber. And you have a herniation, that jelly breaks out
13 and sometimes it puts pressure on the nerves that are going
14 through your vertebra.

15 And what does this pressure do, it causes
16 symptoms, like people usually describe it as radiating pain
17 or shooting pain or numbness. Right. So any time that you
18 have pressure on a nerve, it's pinching it and that then
19 causes symptoms in other parts of your body.

20 And, as you'll hear from many of these doctors who
21 testify, when you have a herniation, a lot of times the
22 shooting pain-- for example, if you have it in the neck, it
23 goes down into the arms because that's where the nerves from
24 the cervical vertebra run into. And when you have
25 herniations in your lumbar spine-- Mr. Mejia had one down by

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1 his tailbone, that shoots down into your legs. So you hear
2 about shooting, radiating pain.

3 So he has the accident 2008. Goes to Lenox Hill.
4 He's treated for his arm injury. My office then represents
5 him in the construction accident. That's our speciality and
6 he then goes to a Doctor Kaplan, an orthopedic surgeon who
7 you'll hear from later today, if everything goes as
8 planned.

9 Doctor Kaplan examines him, refers him to a Doctor
10 Thomas, a pain management doctor who handles back injuries
11 as far as controlling the pain, the radiating pain, the
12 numbness, I just described.

13 He also eventually recommends a surgery on his
14 left arm that he has in September of 2010. Doctor Kaplan
15 does that surgery. Mr. Mejia goes to Doctor Thomas and he
16 treats with Doctor Thomas, pain medications. He ends up
17 getting what are called epidural injections where the doctor
18 will put a needle into your spine and shoot in steroids to
19 bring down the inflammation so that the herniation is not
20 impinging on the nerves.

21 He also gets things that are called trigger point
22 injections, and tomorrow you'll hear from a Doctor
23 Mandelbaum who will explain more about what goes into this
24 pain management.

25 He treats with Doctor Thomas for several years and

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1 Doctor Thomas eventually refers him to a Doctor Brisson
2 whose a spinal surgeon, who you'll hear from on Friday.
3 Doctor Brisson, for this accident, the herniations. The
4 ones that were bothering him the most were the neck ones and
5 so when he sees Doctor Brisson, back in 2009 or '10, Doctor
6 Brisson mainly focuses on the neck.

7 He examines him, sends him for more MRIs which
8 you'll hear about what those are from a Doctor Kolb, a
9 radiologist, and he decides he doesn't need surgery. He
10 continues on with conservative treatment, continue with the
11 pain management, and we'll take a look at it down the road
12 but for now no surgery.

13 Mr. Mejia continues treating with him. Eventually
14 he feels good enough to go back to work. In 2011, '12, he
15 goes back to doing construction work. Not for the same
16 company but he starts working for Escalade.

17 They do like demolition work, construction work.
18 Same stuff he was doing before. Climbing, working on
19 scaffolds, picking up debris when they're tearing down
20 buildings and he works for them for about four, five years
21 and then he gets a better job working for a company called
22 Best Line. And Best Line, he's working for them on the day
23 of this accident, August 4th, 2017 and on that day he's
24 working at 333 East 47th Street, a building owned by the
25 Japan Society.

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1 And, as the Judge already told you, this accident
2 has already found that it's not Mr. Mejia's fault. It is
3 the liability is completely on the Japan Society, so we're
4 just talking about damages. On that day he's inside the
5 building, working on the second floor, and he's up on a wall
6 that will eventually be a foundation and he's up there
7 tearing up stones with a crowbar and he's also working next
8 to a scaffold, and as he's kind of crouched over, he trips
9 backwards and falls between a gap between the wall and the
10 scaffold down to the first floor.

11 As he's falling, he puts his right arm out trying
12 to grab on to something to stop himself from falling and his
13 arms just ends up hitting the scaffold as he goes down. He
14 lands on his back, his neck and ultimately injuring his left
15 knee.

16 He then goes to Bellevue Hospital, by ambulance,
17 with one of his coworkers, Roberto, and at the hospital he's
18 complaining about pain, mainly his arm at that time, and
19 they check him out. They discharge him. They put a cast on
20 the arm, the right arm this time, and they tell him to
21 follow-up with his family doctor or a hand surgeon and he
22 then goes home. As the days goes by, his neck, back and
23 left knee start hurting more, and because he had treated
24 with Doctor Kaplan before he goes back to Doctor Kaplan
25 about two weeks after this accident.

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1 He sees Doctor Kaplan. Doctor Kaplan refers him
2 for physical therapy, refers him to Doctor Thomas. At this
3 time Doctor Thomas is getting sick. He's got his own
4 illness and he ends up passing away and his partner Doctor
5 Mandelbaum then starts treating him, pain management, and
6 that's why you'll be hearing from Doctor Mandelbaum and not
7 Doctor Thomas.

8 He starts treating with Doctor Mandelbaum. He
9 also continues treating for the left knee with Doctor Kaplan
10 who ultimately will recommend a surgery on his knee for his
11 injury and the injury is described as a torn meniscus, kind
12 of similar to a herniation of a spine but with your knee.
13 You have a padding that's between the joint of the knee that
14 is called the meniscus, and it's like a ring that goes
15 around and it's a cushion to prevent your bones from rubbing
16 together.

17 Well, when you have a torn meniscus, a piece of
18 that gets cut and that piece will then irritate the knee.
19 It will cause buckling. It will cause pain. It will cause
20 your knee just not to function normally. So they go in, as
21 Doctor Kaplan will describe to you, and they cut that torn
22 piece out.

23 Now, it's not a hundred percent fix of your knee
24 because you're still going to be missing a piece of that
25 meniscus. It doesn't go back after it's been cut out but it

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1 did help as far as pain and the motion of the knee. So it
2 did-- as Mr. Mejia will tell you, the surgery did help.
3 That's surgery was in June of 2018.

4 Also because of the arm injury, MRIs from Doctor
5 Kolb, he noticed that there was torn ligaments in his wrist
6 and in his thumb. He was having trouble as far as strength
7 in his right arm. He's right hand dominant and he's having
8 a hard time holding on to things, lifting things and the
9 functioning of his fingers.

10 Doctor Kaplan had done the previous arm surgery on
11 the left arm but this was a little more complicated for him
12 so he referred it out to a hand specialist, Doctor Nelson
13 Botwinick, who you will hear from the following week
14 Thursday and Doctor Botwinick will describe to you he ended
15 up doing three surgeries. Two of them on the wrist. The
16 first one was to help him with the strength of lifting.
17 That didn't work out as well. So then he had to go back in
18 and do another one and the dates on those were April of 2019
19 was the first surgery and then February of 2020 was the
20 second surgery and, then, the thumb was still bothering him
21 and they did a third surgery on the thumb in December of
22 2020.

23 And after each surgery, more physical therapy
24 prescribed which Mr. Mejia will describe for you. At the
25 same time as he's treating at Doctor Mandelbaum, Doctor

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1 Mandelbaum doesn't see improvement, especially in the lower
2 back this time around compared to the previous time as far
3 as conservative treatment. He's been giving him epidural
4 pain management, physical therapy and his back is not
5 getting better. So he's referred, again, to Doctor
6 Brisson. He sees Doctor Brisson. Doctor Brisson has more
7 MRIs done of his lower back. He decides that, yes, he needs
8 surgery on his lower back. They do fusion of vertebra L5
9 S1. Again, not a doctor, Doctor Brisson can describe this a
10 lot better but they go in and they remove that herniated
11 disc and then they put like a filler in between so that the
12 bones are still at the same level and then they put plates
13 and screws into your vertebra to lock it into place. And he
14 had this surgery in December of 2019.

15 He has this surgery. The pain is still
16 excruciating. He's still having trouble sitting, standing.
17 He goes back to Doctor Brisson. They do some more MRIs and
18 ultimately, about a year and a half later, it's determined
19 that when the surgery was done it didn't fuse properly. So
20 the body just didn't heal. Sometimes the body doesn't
21 cooperate with these surgeries and the screws didn't fuse
22 into the bone properly, so it had to be done again, a
23 revision of the lumbar surgery, and this time it's done in
24 September of 2021 and, again, you have more physical
25 therapy, still treating with Doctor Mandelbaum for the pain

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1 and present today.

2 You'll hear from Doctor Mandelbaum tomorrow. He's
3 still treating with Doctor Mandelbaum, still has to take
4 pain medications such as tramadol. He has to use flexor
5 patches for the pain. He has to use a brace for his back,
6 especially on days such as this, when it's cold out.

7 Ultimately almost all of these surgeries did help
8 him but they did not make him a hundred percent. So that is
9 what we're asking of you, as the jury, as we listen to the
10 evidence.

11 We're going to be asking for compensation for the
12 injuries, and compensation for the injuries that were made
13 worse from the previous accident and with that I believe by
14 the end you'll find that all these injuries and surgeries
15 are connected to this accident, and I look forward to
16 talking to you at the end. Thank you.

17 THE COURT: Now, we're going to hear the opening
18 from the defendant.

19 MR. ITZKOWITZ: Thank you, Your Honor.

20 Your Honor, fellow counsel, good morning.

21 As you know, I represent Japan Society along with
22 Vanessa Fuerth in this action and they are the defendant,
23 and today we have in court two people from Japan Society,
24 Lisa Bermudez and John Agapeto, right there. Now Japan
25 Society is located at 333 East 47th Street in Manhattan.

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1 They have a long history.

2 It's an organization that shares Japanese culture,
3 art, business with the City of New York and the world.
4 They've been around a very long time and back in 2017, in
5 August, there was work going on in the lobby of their
6 building. It was a renovation taking place inside the lobby
7 to a waterfall that is located inside the lobby, and Japan
8 Society hired contractors and the contractors hired other
9 contractors, such as the plaintiff's employer, Best Line, to
10 do work on that waterfall. Yes. An accident did occur on
11 August 4th, 2017.

12 Now, there has already been a decision on
13 liability in the case and my client accepts that but there's
14 a distinguishment here between liability and now proving
15 damages. The plaintiff has to make a case using what I
16 called during jury selection credible evidence, believable
17 evidence that shows that the injuries that he's claiming and
18 the accident that occurred on August 4th, 2017 came from
19 that accident.

20 Now, we also know that he had a prior accident,
21 and Mr. Vargas, plaintiff's attorney, brought out some
22 information to you earlier about the accident that he had
23 when he was working for New Force.

24 An accident occurred at 740 Park Avenue when he
25 was on a scaffold on the 16th floor terrace and fell down to

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1 the 15th floor terrace landing on his back, neck and head.
2 And you heard he had treatment, MRIs and then he went back
3 to work.

4 The evidence in this case is going to tell you
5 that the most significant treatment for his injuries came
6 from that 2008 accident, that the accident from 2008 was the
7 reason for his neck and back problems that he's making claim
8 for in this case.

9 You're going to be hearing from medical experts,
10 not just the plaintiff's medical experts. You're going to
11 be hearing from orthopedists, neurosurgeons, emergency
12 medical doctors.

13 You're going to be hearing from radiologists, that
14 the defendant is going to put on the stand, because there's
15 two sides to every story, and the credible testimony is
16 going to come from the witnesses for the defendant, pointing
17 out that the injuries that he had were continuous to his
18 neck and back and had nothing to do with the accident, and
19 what is important is you heard on the day of the accident he
20 was taken by ambulance to Bellevue Hospital.

21 Those records from that case are very significant
22 and I'm not going to talk about them now. I'm going to let
23 it come out during the testimony, during the case, but that
24 treatment he had there is significant to tell you that the
25 injuries that he had did not come from this case.

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1 The neck and back, you heard, were hurt in the
2 prior case. You heard about treatment. You'll hear about
3 treatment from the prior case again but the injuries to the
4 back and neck were not made worse by the accident that
5 occurred at the Japan Society.

6 With regard to the wrist thumb and knee, the
7 evidence is also going to show you that those were not
8 injured as a result of this accident.

9 Again, I'm not a doctor. I'm not going into
10 medical testimony and what I say is not evidence but when
11 the evidence is heard from the witnesses and you're going to
12 hear from documentation and you're going to come to a
13 conclusion that the plaintiff has failed to produce credible
14 evidence to show that any of the injuries occurred on the
15 date of the accident that is the subject of this lawsuit.

16 Now, I'm going to speak to you at the conclusion
17 of the case and I'm going to point out the credible evidence
18 that shows why the plaintiff has not been able to make out a
19 case for his back, neck, wrist, thumb or knee.

20 Thank you.

21 THE COURT: Thank you.

22 So we're going to hear plaintiff. You're going to
23 call your first witness?

24 MR. VARGAS: Yes, we need an interpreter.

25 THE COURT: So let's take a break while we get in

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1 the interpreter down here and then we're going to call you
2 back.

3 (Whereupon, the jury exited the courtroom.)

4 (Whereupon, a recess was taken.)

5 THE COURT OFFICER: All rise, jury entering.

6 (Whereupon, the following proceedings take place
7 on the record, in open court, in the hearing and presence of
8 the jury:)

9 THE COURT: All right, folks. You can have a
10 seat. So we left off, the plaintiff was going to call his
11 first witness.

12 MR. VARGAS: Yes, Your Honor.

13 I call Mr. Wilson Mejia to the stand.

14 THE COURT: Okay. So Mr. Mejia and the
15 interpreter, if you can please step up.

16 W I L S O N M E J I A,

17 a witness called by and on behalf of the Plaintiff, having
18 first been duly sworn, testified as follows:

19 THE WITNESS: My name is Wilson Mejia. I live in
20 apartment 1H at Stratford Avenue, Bronx, New York.

21 THE CLERK: Let the record reflect the presence of
22 the official Spanish language interpreter.

23 THE COURT: Mr. Mejia, let me give you some quick
24 preliminary instructions to insure your testimony is
25 properly understood.

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1 So the first order of business, make sure you keep
2 all your responses verbal. That will enable the interpreter
3 to interpret your testimony and in turn the court reporter
4 to transcribe it into the record.

5 THE WITNESS: Okay. Very well.

6 THE COURT: This is very important, I don't know
7 how much English you speak or do not speak but you have an
8 interpreter here today. As a result, when you're being
9 questioned by either one of the attorneys, make sure that
10 you wait for the interpreter to interpret the question and
11 that you then respond and only respond in Spanish.

12 Do you understand?

13 THE WITNESS: Okay. Very well.

14 THE COURT: If you understand some English, please
15 don't anticipate what the question is going to be before you
16 start speaking. Let the attorney get the entire question
17 out and then let the interpreter interpret that question and
18 give your response.

19 Okay?

20 THE WITNESS: Okay.

21 THE COURT: Counsel, you may proceed.

22 MR. VARGAS: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. VARGAS:

25 Q Good morning, Mr. Mejia. Can you start out by telling

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1 the jury, do you understand English?

2 A I do speak English but for a matter of this importance
3 I need the help of an interpreter.

4 Q And can you tell the jury when and where were you born?

5 A In Honduras. I was born in Honduras on October 18,
6 '85 in a small town called Tocoyna Colon.

7 Q And what is your highest level of education?

8 A I started first and second grade. Up until my 6th
9 year.

10 Q Until you were 6 years old?

11 A Yes.

12 Q After the second grade, what did you do?

13 A Since I was the eldest son in my family, my father and
14 grandfather had me work in agriculture and being that I was the
15 eldest I had to do so.

16 Q And how long did you work in agriculture with your
17 grandparents and parents?

18 A Approximately seventeen, eighteen years.

19 Q And then what did you do?

20 A I came to the United States seeking a better life.

21 Q And what did you come to the United States?

22 A By the grace of God, when I arrived I found a job at a
23 bus depot washing buses and cleaning buses.

24 Q Approximately what year was this?

25 A Approximately I arrived in 2005, 2006. After I left

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1 that job and I went to work at a different company called-- a
2 construction company named New Force, looking for a better
3 life.

4 MR. VARGAS: I think he's trying to say New
5 Force. The last part is hard for him to say.

6 Q And how long did you work for New Force?

7 A It was a very strong company, very hard to work for. I
8 worked there. I used to do demolition work. I would do
9 cleaning. I would throw out the debris. I would carry heavy
10 objects and bricks and I would cut-- I used to use a grinder to
11 cut bricks. I would cut bricks with a grinder.

12 Q And, Mr. Mejia, also take your time, wait for the
13 translation and then speak. When you both speaks it starts to
14 get chaotic.

15 A Okay.

16 Q How long were you working at New Force?

17 A I worked there until I had an accident which was on
18 October 10th, 2008.

19 Q And can you tell the jury what were you doing that day
20 when the accident occurred?

21 A Correctly at that moment I was cutting with a grinder
22 on top of a scaffold and I was cutting with a machine which got
23 stuck and then it loss control and it kicked back. It cut my
24 arm and I fell, and I fell in between the scaffold. It cut my
25 left arm.

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1 Q Did you have any other injuries other than your left
2 arm in that accident?

3 A Yes. I received an injury on my neck, my back and my
4 left arm and my hand was the one that was bleeding profusely and
5 it was very swollen.

6 Q And after that accident, did you go treat with any
7 hospital or doctor on the date of the accident?

8 A They took me to Lenox Hospital in Manhattan.

9 Q And what kind of treatment did they give you there?

10 A They washed my arm with oxygenated water. They gave me
11 approximately 25 stitches and I had told the doctor I had
12 injured my back, my neck, my shoulder and it was my hand that
13 the tendons were showing and it was bleeding mostly.

14 Q Were you discharged from the hospital that day, from
15 Lenox?

16 A Yes. Correctly. They did discharge me and I went
17 home.

18 Q And did you treat with any other doctors for the
19 injuries in that 2008 accident?

20 A Yes. I went to see my lawyers and I asked him if he
21 knew of any doctors, if I should go back to see the doctors at
22 Lenox Hospital or if he could refer me or recommend a doctor I
23 may go to, and he gave me a definite list of doctors and then
24 I-- and then I came and I decided to see Doctor Kaplan.

25 Q When you saw Doctor Kaplan, what did you complain about

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1 to him for that 2008 accident?

2 A I complained of my neck, of my back, of my left
3 shoulder, and it was my hand that hurt the most. He removed the
4 stitches. He send me for therapy. He also did a surgery on my
5 left hand. He also sent me to Doctor Thomas and Doctor Thomas
6 did acupuncture on my back and my neck and then he gave me a
7 referral to Doctor Brisson.

8 He did MRIs. And I told Doctor Brisson that I
9 needed therapy and then he told me I didn't need surgery because
10 I had nothing in my back nor in my neck, that my pain was mostly
11 in my hand. Left.

12 Q And did there come a time when you stopped treating
13 with Doctor Kaplan, Thomas and Brisson for that 2008 accident?

14 A Yes. There came a time when I stopped treatment.

15 Q And approximately when was that?

16 A Approximately in 2011.

17 Q And why did you stop treating?

18 A Because I felt very good to work. And since I didn't
19 need any surgery and I was doing very well to go to work, I went
20 to work at a company called Sky Line.

21 Q And when you went to this company, what kind of work
22 was it?

23 A It was a construction company, heavy work and I would
24 also do demolition there. I would go up and down scaffolds, I
25 would cut bricks with grinders, I would carry heavy things on my

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1 back and I would do everything that had to do with mechanics.
2 Everything that was related to construction I would do. I felt
3 very good.

4 Q Now the job, was it pretty much the same kind of work
5 you were doing before that 2008 accident?

6 A Correct. It was a Sky Line Construction Company.

7 MR. VARGAS: Is he saying Escaline or Sky Line?

8 THE INTERPRETER: Sky Line. It's that I cannot
9 pronounce it correctly.

10 Q How long did you work at that company after the
11 accident?

12 A Approximately I worked there and then I left the job
13 because looking for a better life I went to work at--

14 Q Say the name one more time?

15 A I went to work at Best Line.

16 THE COURT: Would it be helpful if he could spell
17 out these names. If he can't, that's fine.

18 MR. VARGAS: Okay.

19 THE COURT: But since you're having trouble
20 figuring out what he's referring to, it might be helpful.

21 Q What kind of work was it at Best Line?

22 A It was a construction and demolition company. And I
23 worked there. I would do demolition of walls, demolition of
24 floors. I would carry heavy things to fill up garbage trucks.
25 I would also throw out buckets full of garbage, to throw it to

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1 the garbage bin.

2 Q And how long did you work for Best Line?

3 A I worked there until the 4th of August of 2017 until I
4 had the accident.

5 Q And on the day of the accident, what were you doing?

6 A The day of the accident I was demolishing on the second
7 floor. I was using a hammer, a crowbar and I was demolishing
8 some rocks. At the time I was there they installed a scaffold
9 and I was demolishing rocks. I tripped with my left leg-- with
10 my left foot. I tripped with my left foot on the rocks and then
11 I tripped on the wall of the floor, on the second floor where I
12 was.

13 There was a space from the scaffold that they
14 placed there and the bridge. I had demolished rocks for three
15 days prior. The day of the accident that I had. And then I
16 went down, I fell on the first floor. While I was falling down,
17 I was trying to grab with my right hand, as I was going down and
18 then I hit myself against the scaffold and the wall and then I
19 fell on the first floor. On my left side.

20 Q And after landing on the ground, what happened next?

21 A I loss consciousness for approximately five or six
22 minutes, not sure. I fell on my back. It was a strong blow. I
23 was seeing lights of every color. The building was spinning
24 around.

25 The building personnel called the ambulance and I

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1 felt the ambulance would never arrive. For me it took an
2 eternity for the ambulance to arrive. Since they saw I could
3 not move, they put me on top of a gurney and they took me to
4 Bellevue Hospital.

5 Q Can you approximate for the jury how far you fell from
6 the top of that wall?

7 A I approximately fell from 10 to 12 feet.

8 Q And when you went to the hospital in the ambulance, did
9 anyone go with you?

10 THE INTERPRETER: Could you repeat that.

11 Q When you left in the ambulance, did anyone go with you?

12 A Yes. There was a young man, a coworker that
13 accompanied me in the ambulance to the personnel staff that was
14 there, they asked them from how high did I fall and he said that
15 I fell from 20 feet and he went with me to the ambulance--

16 MR. ITZKOWITZ: Objection.

17 THE COURT: Sustained. Sustained. Hearsay. When
18 your attorney makes an objection, if I sustain the
19 objection, the things that you were discussing you cannot
20 continue to discuss. Your attorney will move on to another
21 question and then you can answer.

22 Okay?

23 THE WITNESS: Okay.

24 A Okay.

25 Q What was the name of the gentleman that went in the

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1 ambulance with you?

2 A Alberto.

3 Q And what hospital did you go to?

4 A They took me to Bellevue Hospital in Manhattan.

5 Q And when you went to Bellevue, did you make complaints
6 to the hospital personnel?

7 A Yes. I told them that I had injured my neck, my low
8 back, my knee, both arms and my whole body. And my right hand.

9 Q And what kind of care did they give you, if any?

10 A They took a look and my hand was very swollen. They
11 put some apparatus and it seemed like my thumbs were like
12 crackling totally. They casted my hand. Like I left with a
13 cast. They put on a neck brace and they kept me in observation,
14 and after they put the cast they gave me a brace and they sent
15 me home. They discharged me.

16 Q After the day of the accident, did you treat with any
17 other doctors for these injuries?

18 A Yes. Approximately two weeks I treated with another
19 doctor. Because I felt I was feeling strong pains in my entire
20 body but since I remembered of Doctor Kaplan, that he did a job
21 from the first accident that I had, I went to Doctor Kaplan.

22 And he sent me to do therapy and he sent me to do
23 therapy and he recommended I see a doctor named Thomas. I also
24 told him what happened to my neck, my back, low back, both arms,
25 both shoulders-- I'm sorry-- the right hand and my left knee.

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1 He took x-rays and he did a surgery in my left knee.

2 Q Let's start with, when was the surgery to your left
3 knee?

4 A The left knee surgery was done in June 2018.

5 Q And who did the surgery?

6 A Doctor Kaplan.

7 Q And where was the surgery done, if you remember?

8 A I don't remember.

9 Q Was it in his office or some medical facility?

10 A No, it was in the hospital. But I don't remember the
11 hospital name.

12 Q And was it a surgery where you left the same day or did
13 you have to stay over night or something else?

14 A It was a surgery, he told me that my knees were
15 collapsing together and the bones were rubbing and that's why he
16 told me that I had to have a surgery because they would hit each
17 other, the bones like this.

18 Q And before you had that surgery on the knee, did you do
19 physical therapy?

20 A Yes, I did physical therapy. I did physical therapy.
21 He also put injections in my knee. When he saw that it wasn't
22 doing anything good for my knee, he did an MRI, and he
23 determined that it wasn't doing well.

24 Q And where did you do the physical therapy?

25 A I did it on the 10th floor with Doctor Kaplan, his

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1 office.

2 Q And you went to Doctor Thomas again?

3 A Yes. Doctor Kaplan sent me with Doctor Balti-- more--

4 Q You mean Mandelbaum.

5 A Nelson Botwinick.

6 Q Botwinick.

7 A And he also did three surgeries in my right hand.

8 Q When you went to Doctor Thomas and Doctor Mandelbaum,
9 did they practice in the same office?

10 A He works at a different office. I visited Doctor
11 Thomas and he also sent me to do some therapy with a pain
12 management doctor. I believe it was a pain management doctor.
13 He did-- he put injections, puncturely--

14 Q He doesn't understand what you're saying. Point to
15 what you mean?

16 A When they put you under and they inject you.

17 Q Epidural?

18 A Yes, something like that. I'm sorry.

19 Q And how many epidural shots did you have?

20 A Four times. I don't recall. It was different dates.
21 They put injections on my neck, in my upper back and in my lower
22 back.

23 Q And those shots, those epidurals, would they help with
24 the pain?

25 A No, they did not help. They sent me to Doctor

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1 Brisson.

2 Q And when you went to Doctor Brisson, what did he
3 recommend?

4 A He told me to continue doing therapy and he sent for me
5 to do MRIs, and I told him that I had received a lot of therapy
6 and the injections, and he sent me to take MRIs.

7 Q And after those further MRIs, did he have a
8 recommendation for you?

9 A He told me that I needed a surgery in my low back.

10 Q And did you have that surgery?

11 A Yes, I did have the surgery.

12 Q And when did you have that surgery?

13 A I had it on December-- December 2019 or December 2020,
14 something like that.

15 Q And was that surgery in a hospital or a doctor's office
16 or something else?

17 A That surgery was done at the hospital. The name is--
18 it's nearby. I don't recall the name of the hospital.

19 Q And was it a surgery where you left the same day or did
20 you have to stay over night or something else?

21 A No, I don't recall exactly. Approximately four days or
22 five days.

23 Q And do you know why you were there three or four or
24 five days?

25 A Yes, because I was like a child. I had a lot of tubes

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1 in my body. I felt-- I don't know, I was overwhelmed. I didn't
2 know why the accident happened, I was crying inside. I was
3 crying for my family because I was everything--

4 THE COURT: Wait. Wait.

5 MR. ITZKOWITZ: Objection.

6 THE COURT: Overruled.

7 Q After you got out of the hospital-- I'm sorry.

8 After you got out of where you had the surgery,
9 did you continue treating with Doctor Brisson?

10 A Yes. I kept treating with Doctor Brisson.

11 Q And did the first surgery on your lower back, did that
12 help with your injury?

13 A It helped me a little bit.

14 Q Tell the jury how it helped.

15 A Well, the surgery helped me a bit but when I would
16 climb stairs, my legs, they would collapse. They would swell.
17 They would go to sleep. I wasn't the same as before. To climb
18 subway stairs, I do climb them but I have to do it slowly. If I
19 go up or I come down, I climb the building staircase very
20 slowly. There are streets that are not level, there are no
21 lines, so I walk slowly.

22 So Doctor Brisson sent me to get therapy. At that
23 time I used a walking cane due to the pain in my back all the
24 time and then I had another surgery with Doctor Brisson.

25 Q And do you know why you had to have that second

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1 surgery?

2 A I understood that the surgery didn't come out well due
3 to some fluids. I'm not sure exactly. Something of the sort.
4 That's why they did the other surgery in my low back.

5 Q And when was that second surgery?

6 A That was done in September 2021.

7 Q And, again, was it at the same facility or somewhere
8 different?

9 A No. It was at the same hospital.

10 Q And do you know how long you were in the hospital, did
11 you get out the same day or just stay over night?

12 A Approximately, I don't recall exactly. I'm not sure if
13 it was four, five or three days.

14 Q And do you know why you were in the hospital for those
15 four or five days?

16 A Also because I had to be under observation, taking
17 medication.

18 Q You mentioned a Doctor Botwinick.

19 MR. VARGAS: You know, I'm sorry. I got one more
20 question about Brisson then we'll move on to Botwinick.

21 Q Did that second surgery help?

22 A The surgery on the back helped me a little but I still
23 have a lot of problems with a-- for a lot of things.

24 Q So for the jury, why don't you tell them what it was
25 like before the two surgeries on your lower back and how it

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1 helped you after the two surgeries?

2 A Okay. With the other surgery it was the same, I had
3 the same problem, I couldn't sleep. I had pains like needles
4 and pins all the time. And the second one, it helped me a
5 little bit but I always have problems going up the staircase to
6 carry things, to cook, to sit on the toilet, to wash the
7 dishes. I have problems for everything. I need help from
8 everyone. I'm 38 years old. Right now I feel like I'm 65 years
9 old.

10 Q Now, on to Doctor Botwinick. When you saw Doctor
11 Botwinick for the first time, what complaints did you make to
12 him?

13 A I also complained about my arm which was very swollen.
14 I told him I'm right-handed, I do write. I couldn't hold the
15 pen. Until now I can't hold a pencil. I had issues buttoning
16 my shirts. I had issues with holding a cup of coffee because it
17 would drop. The plates, they would drop. I would grab anything
18 and it would fall off and I had no strength for anything. So he
19 came and injected me with epidurals. He sent me to get therapy
20 and then he did some MRIs and he told me that I needed a
21 surgery.

22 Q And did you have the surgery?

23 A Yes. A Doctor Nelson Botwinick did the surgery on my
24 wrist, on my right wrist.

25 Q And when was that surgery?

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1 A The first surgery was done April 1st, 2018.

2 Q And do you know where that surgery was done, at the
3 hospital or something else?

4 A It was done in a hospital but, you know, I don't
5 remember.

6 Q And were you in and out the same day, discharged from
7 the hospital or you had to stay over night, or something else?

8 A I was discharged the same day.

9 Q And did that surgery help with the problems you were
10 having with your arm?

11 A Yes. It helped a little bit but with time it started
12 to get worse.

13 Q How did it start to get worse?

14 A It started to get worse. They sent me for therapy. My
15 hand would swell. I had no strength in my right hand.
16 Everything would fall out of it. I couldn't button my shirt. I
17 couldn't put on my brace, wash the dishes. I had a lot of
18 problems. My fingers-- my fingers, they would still ache. I
19 had a second surgery.

20 Q And when was that second surgery?

21 A That was done February 20th, 2020, approximately.

22 Q And again, same hospital, somewhere else?

23 A I don't remember. I do know that it was a hospital.

24 Q And the second surgery, was it on your wrist again?

25 A Yes. They also did it here on my hand, my wrist. They

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1 also sent me for therapy and it did help me a little but it
2 started getting worse because I couldn't bend this finger.
3 Equally this finger. I couldn't bend my thumb. It was very
4 stiff, and I had a third surgery on my hand.

5 Q When was that third surgery?

6 A It was done approximately in December 2020.

7 Q And, again, was it the same hospital?

8 A Oh, I don't remember. I know it was in the hospital.

9 Q Okay.

10 And the third surgery, did it help your hand?

11 A Yes, it did help a little but I still have aches. I
12 have pain. I still have issues buttoning up my shirt, to write,
13 to wash the dishes, to bath myself. I have problems in a lot of
14 areas. I can't carry anything over one pound, everything falls
15 off my hand. I'm not the same as before.

16 Q The three surgeries on your right arm, did they help
17 with the mobility of your fingers?

18 A No. It did help a little but they're still fragile. I
19 know it's due to the change in the weather, I have issues. I'm
20 not the same as I was before. Then before I could grab heavy
21 things and carry heavy things and now I have issues buttoning my
22 shirt and soaping myself.

23 Q And the brace you're wearing today, how often do you
24 wear that brace?

25 A I use this brace, not all the times. Sometimes I use

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1 it, sometimes I don't. It all depends on the weather but I do
2 always use it and there are moments that I don't use it.

3 Q And when you say it depends on the weather, what about
4 the weather that effects you?

5 A Well the weather causes a lot of pain due to the
6 surgery. For what I know, I don't know I feel like I have
7 hardware in my hands and it causes a lot of pain.

8 Believe me, sometimes I can't sleep because, you
9 know, it hurts, because it hurts. My hand aches and as well as
10 and it hurts all the time, my back.

11 Q Is it hot weather that bothers you more or cold weather
12 or something else?

13 A All the time it bothers me.

14 Q And do you take any medications for your pain?

15 A Yes. I take a medication call Tramadol.

16 Q And how often do you take that?

17 A Sometimes I take it three times per day or once a day.
18 Depending on the pain and depending on the weather.

19 Q And on a cold day like today, how often would you
20 usually take Tramadol?

21 A I would say three times a day.

22 Q And do you take any other medications for-- in
23 connection to your injuries in this accident?

24 A No. Not that I remember.

25 Q And these medications are prescribed by?

Mejia - Plaintiff - Direct

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1 A This medication is prescribed by Doctor Thomas-- well
2 Doctor Thomas changed to Doctor Mandelbaum.

3 Q As you sit here today, are there activities you can
4 still do but with difficulty because of your injuries?

5 A Yes. For example, since I had the accident I haven't
6 had any good nights sleep. I have difficulties when I go to
7 take a bath, to take a shower, when I go to the toilet. I don't
8 feel the same as I used to. I feel slow and if it's to rise up,
9 I rise up with a lot of pain. If I'm laying down it hurts, if
10 I'm sitting down it hurts. There's not one moment that I don't
11 feel pain. It hurts to put on my shirt, to put on my pants, to
12 put on my socks, to put on my shoes. It pains me to climb
13 stairs. I'm not the same as before. Before I could do
14 everything. Now, now I need help from everyone. I have 38
15 years and I feel like I'm 65 years old.

16 Q Do you have anyone that helps you out?

17 A I can't work any longer.

18 Q Do you have anyone that helps you out with your daily
19 things you need to do?

20 A Yes. Yes, I have my cousin. She did the grocery
21 shopping, she cleans the apartment and I pay her and she does
22 the cooking. She helps me in everything.

23 Q How much do you pay her?

24 MR. ITZKOWITZ: Objection, Your Honor.

25 THE COURT: Sustained.

Mejia - Plaintiff - Direct

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1 Q How long has your cousin been helping you out?

2 A All the time since I have been living here.

3 Q And who do you live with?

4 A First, I moved from where I used to live and then I
5 moved to Bedford Avenue. First I lived at 740 Hunts Point and
6 then I moved to Bedford apartment. I always lived in the same
7 area in the Bronx, very close. And I live with Sabino
8 Hernandez.

9 MR. ITZKOWITZ: Objection. He wasn't answering
10 the question, Your Honor.

11 THE COURT: Are you moving to strike as not
12 responsive?

13 MR. ITZKOWITZ: Yes.

14 THE COURT: I'm going to sustain that and the
15 nonresponsive portion is stricken from the record.

16 Listen to the question that's being asked, process
17 that and only answer that question. Do not offer anything
18 beyond the question and do not offer less than the
19 question. Your attorney is a very competent man. If he has
20 to ask you further questions, he will do that.

21 Okay?

22 THE WITNESS: I'm sorry.

23 THE COURT: Thank you.

24 Q The name of the person you live with?

25 A Sabino.

Mejia - Plaintiff - Direct

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1 Q And did Sabino help you with things?

2 A Yes. I share the apartment with had him.

3 Q And what does he help you with?

4 A He helps me by sweeping, by washing the dishes.

5 Sometimes he help me to put on my shoes, to do the cooking, to

6 clean, to mop. Sometimes he--

7 THE INTERPRETER: He said that whenever the lady

8 doesn't show, he helps.

9 Q You mentioned earlier, trouble sleeping. What is the
10 problem with sleeping?

11 A Well, I repeat again, since I had the accident I
12 haven't had the best sleep at night. I have difficulty
13 sleeping.

14 For example, if I'm laying down, my back hurts and
15 my neck, Doctor Brisson-- approximately he had done a surgery
16 and I didn't want to do it in my neck--

17 MR. ITZKOWITZ: Objection--

18 A Because I had already had many surgeries.

19 THE COURT: Sustained.

20 Q You said you had trouble sleeping. What is difficult
21 about sleeping?

22 A Every time I lay down to sleep, I have this pain. It's
23 a sensation like pins and needles.

24 Q How many hours of sleep do you usually get a night?

25 A Approximately that's the reason why I can't sleep.

Mejia - Plaintiff - Direct

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1 Sometimes I get up an hour or two hours later or three hours
2 later to take my medication.

3 Q You mentioned your roommate helps you put on your
4 shoes. What is difficult about putting your shoes on?

5 A No. Sometimes he did.

6 Q Well, sometimes why is it difficult for you to put your
7 shoes on?

8 A Sometimes the shoelaces on my shoes I cannot loosen
9 them up. With difficulty but I always dress myself.

10 Q And you mentioned showering. Why is that difficult?

11 A It's difficult for me because I go into the bathtub to
12 take a bath and I have to get in very carefully. So when I go
13 to wash my feet it's very complicated for me to bend down, to
14 bend down to wash my feet or my toes. It's very complicated.

15 MR. VARGAS: Thank you, Mr. Mejia. No further
16 questions.

17 THE COURT: We'll take five and then we'll start
18 the cross examination.

19 MR. ITZKOWITZ: May we approach?

20 THE COURT: Yes, you may.

21 (Whereupon, the jury exited the courtroom.)

22 (Whereupon, a recess was taken.)

23 THE COURT: Bring the jury in, please.

24 MR. ITZKOWITZ: Motion in Limine with regard to
25 Doctor Kaplan's testimony.

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1 THE COURT: Okay.

2 THE COURT OFFICER: All rise, jury entering.

3 (Whereupon, the following proceedings take place
4 on the record, in open court, in the hearing and presence of
5 the jury:)

6 THE COURT: All right. You guys may have a seat.
7 I just wanted to bring you guys back in. We're going to be
8 breaking for lunch a little early today. We have some
9 housekeeping matters to do. We're going to come back in the
10 afternoon with a different witness and then tomorrow we'll
11 hear from Mr. Mejia again. We'll start back up today at 2
12 o'clock.

13 I just wanted to insure that you guys are aware of
14 the instructions that I read to you guys, keep them in mind
15 during lunch. Don't talk to anybody about this case or
16 discuss the case amongst yourselves. Don't do any research
17 and don't go to the site. In the event you had an
18 inclination, don't go to the site. Thank you. See you guys
19 at 2.

20 (Whereupon, the jury exited the courtroom.)

21 THE COURT: All right. So I understand that there
22 is a Motion in Limine being made by the defendants here?

23 MR. ITZKOWITZ: Yes, Your Honor.

24 THE COURT: You may proceed.

25 MR. ITZKOWITZ: Yes.

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1 With regard to the anticipated testimony of Doctor
2 Jeffrey Kaplan this afternoon, based on the notice of expert
3 witness exchanged by the plaintiff in this case, that is
4 dated March 30th, 2023, I'm making an application that any
5 testimony regarding doctor-- the plaintiff's three surgeries
6 for his wrist and thumb by Doctor Kaplan, who did not
7 perform the surgery, will be cumulative to the actual
8 testimony of Doctor Botwinick, who is coming to testify,
9 regarding the two surgeries he did to the thumb, the wrist
10 and he'll be testifying next week.

11 So being that plaintiff's counsel pointed out
12 today that the surgeries for the wrist and thumb were beyond
13 Doctor Kaplan, and he referred him to Doctor Botwinick, I'm
14 requesting that there be no testimony by Doctor Kaplan
15 regarding the wrist and the thumb surgeries because those
16 were done by Doctor Botwinick.

17 He is coming to court to testify and it would just
18 be cumulative because he didn't do any treatment for the
19 wrist or thumb, Your Honor. He reviewed records.

20 You're going to get the actual doctor in who did
21 the surgery. So I'm requesting first, that I have another
22 application to make on this motion.

23 THE COURT: Okay. I'll hear from you, counsel.

24 MR. VARGAS: He was only going to mention that he
25 referred him to and briefly talk about them but he's not

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1 going into detail that he performed anything.

2 I think he should be able to talk about them.

3 He's a treating doctor. He did hand surgeries himself, he
4 just didn't do those, so I'm not going to go into the nitty
5 gritty of each surgery.

6 THE COURT: In any event, that would have been The
7 Court's ruling, he saw him, referred him and limit his
8 testimony to that with respect to the hand because, if my
9 understanding is correct, that Doctor Kaplan performed the
10 knee surgery in this case.

11 MR. VARGAS: That's correct.

12 MR. ITZKOWITZ: Thank you, Your Honor.

13 My next part of the motion is that the opening
14 statement by plaintiff's counsel was that this was an
15 exacerbation or a worsening of the prior injuries that were
16 sustained as a result of the 2008 accident.

17 Based on that same expert exchange and a narrative
18 report prepared by Doctor Kaplan, on March 9th, 2023, there
19 is no reference to it being an exacerbation. I point to
20 Paragraph 10 of the Notice of Expert Exchange which states,
21 the expert will testify that the plaintiff's past medical
22 history is noncontributory. That's first, Your Honor.

23 And, then, when you go into the narrative report,
24 on the very last page, his conclusion, the accident of
25 August 4th, 2017 is the competent producing cause of the

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1 above mentioned diagnoses as well as the need for extensive
2 treatment and multiple surgeries as outlined above.

3 There's no mention of exacerbation anywhere in
4 Doctor Kaplan's narrative report. He finds that it is
5 related only to the injuries he sustained in this accident,
6 Your Honor.

7 So he can't testify as to aggravation or
8 exacerbation based on the report that was exchanged by the
9 plaintiff's attorneys in the Notice of Expert Exchange that
10 I just referred to.

11 THE COURT: What does the report say, though?

12 MR. ITZKOWITZ: I'm sorry?

13 THE COURT: What does the report that was
14 exchanged say, does it talk about exacerbation?

15 MR. ITZKOWITZ: No. It did not, Your Honor.

16 THE COURT: Okay.

17 MR. ITZKOWITZ: It says, if I may, he goes over
18 the history of reviewing medical records, Your Honor. He
19 goes over his examination of the plaintiff but there is
20 nothing in his report-- oh, yes.

21 In Doctor Kaplan's report, on page 4, past medical
22 history is noncontributory. He has no medical illness, no
23 known drug allergies. Past, has no known drug allergies.
24 He has a past history of injury to the neck, low back, left
25 forearm, left wrist and left shoulder. He has required

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1 carpal tunnel surgery in the past. He has a history of
2 injury to the lower back.

3 There is nothing in the report, Your Honor-- I
4 could provide the court an exhibit that says anything about
5 aggravation or exacerbation from the prior accident.
6 There's nothing in this report or the expert exchange by
7 plaintiff that said he reviewed any records related to the
8 2008 treatment that he provided to the plaintiff or any
9 other records, to any other doctors who provided treatment,
10 and those are the same doctors that you are going to hear
11 that treated him after the accident that is the subject of
12 this lawsuit.

13 THE COURT: If I understand your application, and
14 I want to make sure that I do, is that you want to limit his
15 testimony to just causation, that this accident caused the
16 injuries but did not exacerbate preexisting injuries.

17 MR. ITZKOWITZ: No. I'm asking that he should be
18 precluded--

19 THE COURT: Precluded from testifying.

20 MR. ITZKOWITZ: Because the opening said it was
21 exacerbation of the prior injuries. There's nothing in the
22 report, and I would like to provide the court with a copy of
23 that report, for Your Honor to review, if he so chooses.

24 THE COURT: Let me ask you another question
25 because obviously a large part of your application is

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1 resting on the opening statements made by plaintiff's
2 counsel.

3 Were there pleadings here that the injuries here
4 were directly caused by the accident and/or also exacerbated
5 by the accident because the pleadings are what control
6 ultimately for purposes of testimony.

7 MR. VARGAS: The marked pleadings.

8 THE COURT: And lesser what he might have said
9 during opening statements, which is not evidence. So I just
10 want to know what the pleadings were.

11 While you look it up, what is your position?

12 MR. VARGAS: I disagree strongly.

13 Doctor Kaplan as treating physician for both
14 accidents and defendants plan on crossing on everyone of
15 these accidents that I put up here about the prior
16 accident. The prior accident, this accident.

17 Now, of course, he didn't treat him mainly for the
18 back but he clearly states it in his report. He had a past
19 history of neck, lower back. Left wrist and left shoulder.
20 I mean that's no secret and that's not contributory.

21 That is just preposterous because they're going to
22 ask him about the prior treatment. And as far as the
23 pleadings, the very first Bill of Particulars we put
24 exacerbation of lower back. The last Bill of Particulars of
25 the 12th has exacerbation of the surgery.

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1 THE COURT: That wasn't my question because his
2 question is that if you only pleaded exacerbation, and
3 during opening statements you limited your theory of the
4 damages in this case to exacerbation--

5 MR. VARGAS: Only for the neck and the back.

6 THE COURT: And again, not that it was very
7 artfully done. My understanding was that a lot of the
8 exacerbation claims were for the neck and back and not for
9 the knee and wrist. At least that's kind of what I gather.
10 Go ahead, sir.

11 MR. ITZKOWITZ: Your Honor, I was just referring
12 to the neck and back, and I will agree there is, in the Bill
13 of Particulars, a boilerplate that talks about exacerbation
14 or systemic condition complained of and it did say about all
15 the above injuries are permanent in nature and duration and
16 were caused precipitated exacerbation, about the incurrence.
17 So it is in there but it is not in his narrative report. No
18 particulars is in evidence. It's not going in as evidence.

19 THE COURT: No. It's not going in as evidence.

20 And normally, as you guys know, the narrative
21 reports are generally covered by 27 NYCRR 2 or 217H, and
22 generally speaking a doctor's limited to the four corners of
23 his report but on the issue of causation, treating doctors
24 are not so limited. So if a treating doctor is not so
25 limited, or precluded, from testifying about causation, if