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1 it wasn't contained in the report, like an expert would be,
2 isn't this just causation of a different kind. Exacerbation
3 is a different kind of causation. So his failure to put it
4 in his report, wouldn't you think that the same line of
5 cases would inure or militate against granting your
6 application here?

7 MR. ITZKOWITZ: I understand, Your Honor, but he
8 was not-- he wasn't produced as a treating physician by the
9 plaintiff. He was specifically produced as an expert. I
10 understand he is a treating physician. Obviously he
11 performed the knee surgery on the plaintiff at the physical
12 therapy office. I understand that but when it comes to his
13 report, which is a narrative report, not going into evidence
14 it has no mention of those triggers. So obviously I'll
15 leave it to The Court to make that determination. If The
16 Court declines my motion, I have the ability to cross
17 examine him on it as well.

18 THE COURT: Are his records not coming into
19 evidence?

20 MR. VARGAS: No. His records are coming in.

21 THE COURT: Meaning if he's a treating doctor, who
22 treated the plaintiff, his experts, not his report-- it's
23 funny because in the case where you have a doctor whose also
24 treated and testifying as an expert, generally speaking,
25 while the report doesn't come into evidence, his underlying

1 treatment records would, would they not?

2 Are they coming into evidence here?

3 MR. VARGAS: Yes. They are, Your Honor.

4 THE COURT: In light of that I'm going to deny the
5 application, you can cross examine him on this issue. I do
6 think that the failure to-- for Doctor Kaplan to state in
7 his report that these injuries were exacerbated versus being
8 directly caused by the injury is just a different species of
9 causation which is he's a treating doctor. He can,
10 nevertheless, testify about in this case. So that is The
11 Court's ruling. Okay.

12 MR. ITZKOWITZ: Thank you, Your Honor.

13 (Whereupon, the luncheon recess was taken.)

14 (TRANSCRIPT CONTINUED ON THE NEXT PAGE.)

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1 A F T E R N O O N S E S S I O N

2 (Plaintiff Exhibit No. 1, knee surgery
3 illustration, was marked for identification.)

4 (Plaintiff's Exhibit No. 2, blow up MRI 4/19 of
5 '18 of the knee, Kolb Radiology was marked and received
6 into evidence.)

7 (Plaintiff's Exhibit No. 3, Dr. Kaplan's file,
8 New York Ortho Sports Medicine and Trauma, was marked and
9 received into evidence.)

10 (Plaintiff's Exhibit No. 4, X-rays from New York
11 Ortho sports medicine Trauma from Dr. Kaplan, was marked
12 and received into evidence.)

13 THE COURT: Really quick, just to verify that the
14 items that have been premarked have in fact been agreed
15 upon.

16 So we have for Plaintiff's 1, a diagram marked
17 solely for ID and demonstrative evidence. True?

18 MR. ITZKOWITZ: Correct, Your Honor.

19 THE COURT: Plaintiff's 2 is MRI blow up of the
20 knee marked in evidence by stip?

21 MR. ITZKOWITZ: Yes, Your Honor.

22 THE COURT: Yes. Plaintiff's 3 are Kaplan's
23 office file in evidence per stip?

24 MR. ITZKOWITZ: Yes.

25 THE COURT: Plaintiff's 4 are X-rays in evidence

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1 per stip?

2 MR. ITZKOWITZ: Yes.

3 THE COURT: Okay.

4 COURT OFFICER: All rise. Jury entering.

5 (Jury enters courtroom; the following

6 occurred:)

7 THE COURT: Be seated. Good afternoon and
8 welcome back. I hope you guys enjoy your lunch. We're
9 going to continue.

10 We're going to ask the plaintiff to call his next
11 witness.

12 MR. VARGAS: Your Honor, I call Dr. Jeffrey
13 Kaplan to the stand.

14 THE COURT: Thank you.

15 Doctor, please approach.

16 COURT OFFICER: Remain standing. Please raise
17 your right hand.

18 J E F F R E Y K A P L A N, MD, a witness called on
19 behalf of the Plaintiff, having first been duly sworn, took the
20 stand and testified as follows:

21 COURT OFFICER: You could lower your hand. Have
22 a seat.

23 In a loud and clear voice, please state your name
24 and business address.

25 THE WITNESS: My name is Jeffrey Kaplan. My

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1 office is at 160 East 56th Street in Manhattan 10022.

2 THE COURT: Just a few preliminary instructions
3 with your testimony. First thing is to keep your responses
4 verbal, loud so the jury and the court reporter can hear
5 you. And endeavor to speak into the microphone so that the
6 reporter can also hear you.

7 Please wait until the question is fully asked
8 before you interpose an answer because the court reporter
9 will not be able to take people talking at the same time
10 and, of course, it goes without saying if, in fact, a
11 question is asked endeavor to only answer what was asked
12 and not inject anything more. Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: You may proceed.

15 MR. VARGAS: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. VARGAS:

18 Q. Good afternoon, Doctor.

19 Could you tell the jury how long you've been a doctor?

20 A. I've been a doctor since 1991.

21 Q. And could you tell us your educational experience?

22 A. Education. I went to college at Yale University.

23 When I graduated from college, I went to medical school here in

24 the city at Columbia University. I graduated from Columbia

25 University in 1989. I did a training program in orthopedic

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1 surgery. I did that in Memphis, Tennessee at a place called
2 Campbell Clinic which was the first orthopedic training program
3 in the United States. Following that, I moved back to New York
4 where I've been in private practice ever since.

5 Q. And are you board certified?

6 A. I am.

7 Q. And could you explain to the jury what board
8 certification is?

9 A. Right. Board certification is a qualification you can
10 get after you finish college, medical school and residency
11 training program. You basically take a series of examinations
12 over a number of years. They're given by an expert panel of, in
13 my case, orthopedic surgeons. It's called the American Board of
14 Orthopedic Surgery. If you pass all those exams and exhibit a
15 certain level of expertise and knowledge in the field, you
16 become board certified.

17 Q. And orthopedics, how would you explain that to the
18 jury? What is that?

19 A. Orthopedics is the study bones and joints and the
20 supporting structures of the bones and joints. So ligaments,
21 muscles, tendons, nerves. It has to do with injuries or
22 abnormalities to those structures, and then the treatment of
23 those injuries or abnormalities either with conservative,
24 meaning injections, physical therapy, medications. Are those
25 things that don't work or inappropriate, then surgical

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1 treatment.

2 MR. VARGAS: And, Your Honor, I would offer Dr.
3 Kaplan as an expert in orthopedic medicine.

4 THE COURT: Any objection?

5 MR. ITZKOWITZ: No objection.

6 Q. Doctor, were you compensated to come here today?

7 A. Yes.

8 Q. And how much were you paid?

9 A. A fee of \$7,500.

10 Q. And did there come a time when you examined Mr. Wilson
11 Mejia?

12 A. I've seen him many times.

13 Q. Do you remember the first time you've seen him?

14 A. First time ever?

15 Q. Ever?

16 A. Ever? I first saw him --

17 Q. And you're looking at Plaintiff's 3 which is your file
18 in your office; correct?

19 A. That's correct.

20 I first saw him on December 2nd of 2008.

21 Q. And back in 2008 -- well, let me back up.

22 When you see any patient for the first time, is there
23 a procedure you follow?

24 A. I usually review a history with him, find out what his
25 injuries were, what he's having trouble with now complaining

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1 about.

2 Q. And did you get a history from Mr. Mejia back in 2008?

3 A. I did. I reviewed a history of a work related injury.
4 And he had a -- he was working in construction and he sustained
5 injuries to his neck, his level shoulder, his back and his left
6 arm in a fall from a scaffold.

7 Q. And at that time, did you have recommendations for
8 treatment for him?

9 A. He was treated in the office numerous occasions. When
10 I first saw him, we requested authorization for some treatment
11 to include carpal tunnel surgery, a median nerve release and
12 some electrodiagnostic studies, meaning test the nerves.

13 Q. And you also had MRI's ordered; correct?

14 A. We did order some MRI's, yeah.

15 Q. Was that of the neck and the back?

16 A. Let's see. He had an MRI of the neck performed on
17 February 14th of 2009, an MRI of the low -- I'm sorry. There's
18 an MRI of the low back on February 14th of 2009 and an MRI of
19 the neck that was performed on February 13th of 2009.

20 Q. And after the MRIs and after you've taken the history
21 and examine him, did you have him return to your office?

22 A. Yes.

23 Q. And did you have a diagnosis for him back then in
24 2008?

25 A. At that time, he was diagnosed with a lumbar disc

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1 herniation and cervical disc herniations.

2 Q. And the carpal tunnel surgery, did you ultimately
3 perform that surgery?

4 A. I performed surgery on this gentleman on September 8th
5 of 2010. At that time, I performed a carpal tunnel release as
6 well as an aspiration of his radial nerve, both at the left
7 wrists and forearm.

8 Q. Also did your office refer him to any other doctors
9 for treatment in connection with that?

10 A. Yes. He was referred for pain management. I believe
11 he was referred to Dr. Gary Thomas at Comprehensive Pain
12 Management and I believe we referred to him to Dr. Paul Brisson
13 at that time as well.

14 Q. Did there come a time when Mr. Mejia stopped treating
15 with you for that accident 2008?

16 A. For that accident, let's see, I believe he was last
17 seen for that accident in -- for treatment in September of 2011
18 by me and then I saw him one additional time in June of 2016.

19 Q. And the next time that you saw Mr. Mejia, if ever,
20 after that?

21 A. The next time I saw Mr. Mejia was on 8/17 2017.

22 Q. And again when he came to your office you took a
23 history?

24 A. I did.

25 Q. And what was the history?

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1 A. The history were injuries from a work accident that
2 occurred several days earlier on 8/4 2017. He indicated that he
3 had a fall from a height, landed on an outstretched arm, told me
4 he was taken by ambulance to a hospital. He was placed in a
5 splint called a radial gutter splint to include the thumb,
6 radial gutter splint to include the thumb. And he was
7 complaining of pain and clicking in the thumb and at that
8 time --

9 Q. And in your note, you also noted that he had the prior
10 neck and lower back injuries; correct?

11 A. I did.

12 Q. And at that time, did you have recommendations for him
13 as far as treatment?

14 A. At that time, I advised him that he would require an
15 MRI of the wrist and I placed him in a splint.

16 Q. And the next time you saw him?

17 A. Let's see. I next saw him on 9/5 2017. He continued
18 complaining of pain at the thumb at that time.

19 Q. And again you talked to him and did you take any
20 complaints from him?

21 A. I did. Let's see. I reported the MRI of the thumb to
22 him. He was complaining of pain about his left knee and he was
23 complaining of severe -- what he described as severe low back
24 pain.

25 Q. And also notes he went to see Dr. Thomas regarding

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1 this?

2 A. That's right.

3 Q. And as far as the MRI for the hand and the wrist, what
4 were the findings?

5 A. the MRI of the wrist was reported to show what's
6 called a tear of the peripheral -- I'm sorry. That's the knee.
7 Sorry. There's his wrist. It shows a tear of the peripheral
8 foveal insertion of the Triangular Fibrocartilage Complex
9 extending to the body of the cartilage.

10 So there's a small piece of soft tissue in this area
11 just between the hand and the wrist. You can short of touch
12 that and punch on it, soft area. There's a cartilage in there
13 called the triangular fibrocartilage. Because if you look at it
14 from this way, it's sort of a triangle. It's wider on this side
15 than it is on this side. So it goes down like a triangle and
16 showed a tear in that structure.

17 Q. And did you have recommendations at that time for
18 treatment for him regarding the hand and the wrist?

19 A. Let's see. At that time, he was getting physical
20 therapy for the thumb and the wrist and his knee.

21 Q. Did you have other recommendations for the knee?

22 A. Therapy for the knee. As far as the back, continue
23 with Dr. Thomas.

24 Q. And did there come a time when you ordered an MRI of
25 the knee?

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1 A. Yes.

2 Q. And when was that?

3 A. MRI of the knee performed on 4/19/18.

4 Q. And after that MRI was performed, did you review the
5 film yourself?

6 A. I did.

7 MR. VARGAS: Your Honor, if I may approach the
8 witness to set up the easel?

9 THE COURT: Sure.

10 Q. I'm just going to show you what has been marked as
11 Plaintiff's 2.

12 Doctor, we haven't had a radiologist testify yet but
13 as far as MRIs, do you have an explanation for the jury as to
14 what an MRI is?

15 A. An MRI is a study that shows imaging of the body. It
16 uses differences in water concentration in the tissue that it
17 can take an image of. Those images can be seen in different
18 ways to show different water content in the body that allows us
19 to make a picture of structures in the body, unlike an X-ray
20 which just shows the bones. The MRI can show us any tissue that
21 has water. So muscles, tendons, ligaments, bones, cartilages,
22 nerves. It's a much more sophisticated test than a plain X-ray.

23 Q. And you yourself performed numerous X-rays on
24 Mr. Mejia before?

25 A. X-rays, yes.

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1 Q. But when you look at this MRI, what were your
2 findings?

3 A. So can I stand up?

4 Q. Yes.

5 A. So what you're looking at -- can I pull a model out of
6 my bag here?

7 Q. Sure.

8 A. What you're looking at here is an MRI picture of the
9 knee. The thigh is up here. This is the big muscle of the
10 thigh. This is the end of the thigh bone called the femur.
11 This is the stop of the shin bone called the tibia. That's the
12 calf muscle back there.

13 So you're looking, this being the knee joint, you're
14 looking at the femur, the thigh bone, the end of it here, and
15 the top of the shin bone here, the tibia.

16 In between the tibia and the femur again there's a
17 cartilage structure and this is also a triangle in shape. As
18 you can see, it's wider on the outside than it on the inside.
19 So it forms a triangle.

20 If you look inside the knee, it's this soft tissue
21 structure here and normally any tissue that's the same will be
22 the same color. So the bone is -- this is sort of stippled a
23 black and gray color.

24 Normally, the meniscus is completely black in this
25 particular scan. This is the back of the knee. So this is the

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1 piece of the cartilage in the back of the knee and you can see
2 it's black here and sort of gray there. That gray indicates
3 that there's some fluid inside the cartilage tissue. That means
4 that there's a tear there and the fluid has gotten into the
5 cartilage tissue. So this is a representation of a tear of the
6 meniscus of the knee.

7 Q. And once this was diagnosed, did you have a course of
8 treatment you recommended?

9 A. Yes.

10 Q. What was that?

11 A. Initially, as always, try some conservative treatment,
12 meaning physical therapy, oral medications. Having failed
13 conservative treatment with continued symptoms and symptoms of
14 catching and giving way of the knee, because of this meniscus
15 tear, we eventually recommended surgery which Mr. Mejia had.

16 Q. Now, while he's treating in the office, also he
17 treated with Matthew Grimm's office?

18 A. I think he saw Dr. Grimm on a couple of occasions,
19 yeah.

20 Q. And Dr. Grimm had a EKG performed; correct?

21 A. That's correct.

22 Q. Do you have findings in the EMG in your file?

23 A. Yes. The EMG that Dr. Grimm performed was done on
24 5/15/18 and that was of the low back and lumbar region. An EMG
25 is a nerve study. It traces the nerves throughout the body. In

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1 this case, it's what's called a lumbar MRI. It's from the low
2 back down to the feet, and it can see where there's a problem
3 with the nerve as you go down.

4 This MRI that was performed on 5/18 showed what's
5 called a left S1 radiculopathy. What that means is that there's
6 pressure on a nerve root in the low back at what's called the S1
7 level. That means the sacrum which is the lowest part of the
8 low back had pressure on the nerve root associated with that
9 level. And that nerve root goes all the way down the leg and
10 can be associated with pain, weakness, numbness, things like
11 that down the leg.

12 Q. And do you know if that EMG was shared with
13 Dr. Thomas's office at that time?

14 A. I would assume it was. I do not know the answer to
15 that with certainty but I believe it likely was.

16 Q. And after that EMG the following month is when you did
17 the surgery on his knee; correct?

18 A. Surgery on the knee was done on 6/22/18.

19 MR. VARGAS: If I may just approach, Your Honor?
20 This is Plaintiff's 1 for ID, illustration.

21 Q. Doctor, does this illustration accurately depict how
22 the surgery was performed on Mr. Mejia's knee?

23 A. It does depict how the surgery was performed, yes.

24 Q. And if you could take the jury through what you did
25 during this surgery?

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1 A. So this is an artist representation of what was going
2 on in Mr. Mejia's knee. Obviously, this is not a picture of the
3 inside of Mr. Mejia's knee but it does show the structures
4 inside the knee.

5 We look in the knee with a small telescope that we
6 place through incisions on the knee, two incisions, one on the
7 front outside, one on the front inside of the knee. A telescope
8 goes in one of those incisions and working tools go in the
9 other.

10 We look -- we make a stepwise inspection of the knee
11 joint. The primary problem that Mr. Mejia had was in the back
12 part of the meniscus. That structure inside the knee here he
13 had a tear on the undersurface which is what we saw on the MRI
14 finding which we then demonstrate or able to trim out with a
15 rotary tool which is what's shown up there. So we cut out that
16 portion of the meniscus that's damaged.

17 Additionally, Mr. Mejia had some overgrown tissue
18 called plica. We all have a plica in our knee. If you injure
19 your knee, you can get an overgrowth of that plica and that can
20 give you symptoms of pain. But as you flex and extend your
21 knee, this piece of tissue, this right here, flips back and
22 forth over the knee and can become painful called buckling and
23 symphysis.

24 Additionally, he had inflammation in the tissue called
25 the synovium which is the lining of the knee and that just

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1 indicates an ongoing problem in the knee. We take out part of
2 synovium to decrease the bulk so it doesn't get inflamed. So
3 that would be the procedures that he had, the partial medial
4 meniscectomy, an incision of the plica and a synovectomy.

5 Q. Thank you, Doctor.

6 What would be your expectations for a surgery like
7 this? For how long would it take a patient to heal from it?

8 A. Generally, we have the patients come back about a week
9 after the surgery. We take their stitches out. We then start
10 them in physical therapy, and people usually require about 12 to
11 16 weeks of physical therapy start to feel normal again. It can
12 take some time, even after that, before people feel normal.

13 Q. And I'm not going to go through every visit but he
14 next came to your office in June 26, 2018?

15 A. Okay.

16 Q. Then July of 2018?

17 A. Okay.

18 Q. October of 2018 and then November of 2018.

19 By this point in November of 2018, as far as the hand,
20 was there any different recommendations you had for him by that
21 point?

22 A. Because he was continuing to have symptoms of pain
23 about the left wrist with this tear of the triangular
24 fibrocartilage, I sent him to a hand specialist, someone who
25 only does upper extremity surgery, a Nelson Botwinick, to see if

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1 Dr. Botwinick felt he needed any additional treatment.

2 Q. And Mr. Mejia then came back in January of 2019. By
3 this point, would you expect someone who had the arthroscopic
4 surgery to have healed from it by then?

5 A. They would have healed from the surgery by that time,
6 yes.

7 Q. And when you saw him on June 3, 2019, can you tell the
8 jury what complaints, if any, he had?

9 A. I'm sorry. You mean January 3rd.

10 Q. I'm sorry. January 3rd.

11 A. So at that time, he was complaining of low back pain.
12 He had seen Dr. Paul Brisson, who's a specialist in spinal
13 surgery who apparently was recommending surgery at that time.

14 He'd also seen Dr. Botwinick, the specialist in wrist
15 and hand surgery, who he was waiting for and recommended surgery
16 at that time.

17 As far as the knee, he was complaining of stiffness on
18 initiating motion and pain climbing stairs. That's not an
19 unusual finding in someone who has undergone -- had an injury to
20 the knee and has undergone arthroscopy. It indicates the early
21 development of some arthritis in the knee associated with the
22 pain in the joint.

23 Q. And you put in your note also, objective note,
24 crepitus and positive patellar grind at the left knee?

25 A. That's correct.

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1 Q. Can you explain what that is?

2 A. Sure. Normally, our joints are very smooth and they
3 move without any motion. As we injure joints, as we age, as the
4 joints become less smooth, you can get cracking and popping as
5 joints move. That's an early sign of arthritis. And so he's
6 starting to develop some arthritic changes of the knee joint.

7 Q. And you also noted crepitus in the wrist?

8 A. Yes.

9 Q. And why did you put it under what's called an
10 objective note? What does that mean?

11 A. Sure.

12 Notes are divided into general subjective findings,
13 objective findings and then an assessment and plan.

14 The subjective findings are what the subject tells me,
15 meaning things like pain. I can't judge his pain. I can only
16 listen to what he says to me. There's no way to measure pain.
17 There's no way to take an MRI of pain. So that's a subjective
18 finding. It comes from the subject of the questioning.

19 Objective findings are repeatable findings that if I
20 examine his knee, I'm going to hear crepitus. I'm going to hear
21 cracking and popping. If you examine his knee, you're going to
22 hear the cracking and popping. Those are repeatable things that
23 are not in the patient's control.

24 Q. You next saw him on February 5, 2019 and March 20,
25 2019 and then April 8, 2019. I want to draw your attention to

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1 that.

2 A. Okay.

3 Q. Could you tell the jury first the subjective note?

4 A. Subjectively he was complaining of worsening knee
5 pain. He had an exacerbation of his pain in his knee. He was
6 not buckling which is one of the things that we worry about with
7 a meniscus tear. He also indicated to me that he was following
8 with Dr. Botwinick and was planning some surgery to the wrist.

9 Q. And then the objective note?

10 A. The objective findings included again crepitus of the
11 knee and a positive patella grind. The patella is the kneecap
12 grinding. He had flexion of the knee to 130 degrees. Normal is
13 135 to 144 in most people. He had full extension. He had
14 tenderness at the joint line. I also noted can crepitus at the
15 wrist. So at that time, I thought he had exacerbation of his
16 knee trouble, likely some synovitis, the inflation of synovium
17 so. I advised him to have an injection in his knee, some
18 steroid and we did that steroid injection at that time.

19 Q. When you give the steroid injection, what's your
20 expectation for patients?

21 A. Hopefully, it's going to decrease the inflammation,
22 give them some, at least temporary sustained relief.

23 Q. And do you know if it did help with his stiffness and
24 pain?

25 A. When I saw him again about the following month, about

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1 six weeks later, he did indicate the steroid had helped.

2 Q. And you then saw him again in August of 2019?

3 A. Right.

4 Q. And I want to draw your attention to that, August 19,
5 2019, and first the subjective note.

6 A. Subjectively, he was complaining of low back pain,
7 continued to have stiffness in the knee with initiating motion
8 meaning starting to walk, getting up out of a chair, things like
9 that. Getting up in the morning, he was using a cane at that
10 time primarily he told me for back pain and he was still seeing
11 Dr. Botwinick regarding his wrist surgery.

12 Q. And then the objective note?

13 A. Objectively, he had -- I just noted -- limited lumbar
14 motion, tenderness over the lower lumbar processes, meaning the
15 bony parts that you can feel in the low back.

16 Lumbar flexion was to 30 degrees. Normally, it's
17 about 75 to 90. And he was complaining of pain. With attempts
18 of doing that, he was at 30 degrees. At the wrist, he continued
19 to show crepitus at the knee. He continued to show some limited
20 motion of 130 degrees and crepitus present again.

21 Q. You next saw him in November 2019 and then February 4,
22 2020, if I can draw your attention to that.

23 A. Okay.

24 Q. And again starting with the subjective note.

25 A. He was complaining of neck and low back pain. He was

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1 complaining of pain radiating in his shoulders on both sides.
2 He was complaining -- I'm sorry. He had undergone lumbar
3 surgery with Dr. Brisson approximately a year before that,
4 February of 2019. And apparently Dr. Brisson was talking about
5 it to him about some neck surgery.

6 Q. And your objective note?

7 A. My objective note showed some findings referable to
8 his neck called a positive Spurling maneuver. That's when you
9 put the neck in extension, the one side then the other.

10 If you got a nerve problem, doing this can pinch the
11 nerve and send signals down the arm or at least into the
12 shoulder girdle and he had a positive Spurling maneuver on both
13 the right and the left indicating his complaints of neck pain
14 and pain into both shoulders was likely from the neck.

15 He had scars associated with lumbar surgery. He had
16 40 degrees of forward flexion. He was leaning heavily on his
17 cane, and he walked with an antalgic gait. He had an antalgic
18 stance and antalgic posture. What that means, the way he sat,
19 the way he stood, and the way he walked all showed changes in
20 those things associated with the discomfort or pain.

21 Q. And next was May 6, 2020. It's hard for me to tell.
22 This was telemedicine; correct?

23 A. Let's see, yes.

24 Q. And so you weren't able to have patients in your
25 office. You were only able to do it over a video monitor?

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1 A. That's correct.

2 Q. So for these types of visits, you weren't able to
3 examine him. You just had to base what he was telling you?

4 A. Complaints and recommendations, that's correct.

5 Q. Next was July 24, 2020. This looks like it is an in
6 office?

7 A. Yes.

8 Q. And could you start with the subjective note?

9 A. I did. I just noted that since my last visit with him
10 he had had hand surgery with Dr. Botwinick, that he had had
11 lumbar surgery with Dr. Brisson on 12/13/19 as well.

12 He continued to complain of low back pain and pain
13 radiating into the left lower extremity meaning the leg. He
14 complained of pain about the knee, localized to the area of the
15 thigh. He had intermittent giving way in the knee without
16 buckling symptoms, meaning I felt it was from weakness of the
17 muscle rather than the problem inside the knee that was
18 responsible for the buckling.

19 Again, he was ambulating with a cane which he
20 indicated was for back pain. He complained of neck pain
21 radiating into the shoulders and posterior arms on both the
22 right and the left.

23 Q. And objective note.

24 A. The objective note, which is the physical exam, he had
25 tenderness and withdraw on palpation of the knee. Cervical

Dr. Kaplan - Plaintiff - Direct (Vargas)

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1 muscles that means when I touched his neck muscles it hurt him.
2 He pulled away. The same was true in the low back muscles. He
3 had some limited cervical motion, neck motion, limited low back
4 motion as well.

5 At the knee, he continued to show 130 degrees of
6 flexion and full extension. He did have crepitus, cracking and
7 popping of the knee with motion and tenderness at the place
8 between the kneecap and the thigh bone called the patellofemoral
9 groove.

10 There was no ligamentous laxity, and testing for a
11 torn cartilage was negative.

12 At the right hand, he was wearing a custom molded
13 splint. He was noted to have good sensation but limited motion
14 of the index and thumb, index finger and thumb on that day.

15 Q. And then you next saw him in October of 2020 and then
16 next was October 18, 2021, if I can draw your attention to that.

17 A. October 18, 2021, yes.

18 Q. And on that visit, could you tell the jury the
19 subjective note?

20 A. At that time, he had a second lumbar surgery. That
21 was on 9/16/21. Let's see. He had been cleared to return to
22 physical therapy. He continued to complain of pain. He noted
23 some improvement since the surgery, but he was still using the
24 cane to walk because of pain. He was awaiting authorizations
25 for some surgery with Dr. Brisson for the neck, he tells me.

Dr. Kaplan - Plaintiff - Direct (Vargas)

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1 And at the knee, he continued to have pain and he was having
2 some buckling symptoms.

3 Q. Now, the knee with the continued pain and buckling, at
4 this point, three years after the surgery?

5 A. Sure.

6 Q. What does that tell you, if anything, is that
7 significant?

8 A. I believe he's developed some posttraumatic arthritis
9 of the knee. I discussed that with him. He had an injury to
10 the knee. That was significant enough to require surgery.
11 Arthritis takes time to form. Arthritis simply means
12 inflammation in the joint because of an abnormality which causes
13 pain and limited function and motion. And so he's got some
14 posttraumatic arthritis in the knee which I think is part of the
15 accident.

16 We corrected the reason for initial buckling. Now, I
17 think he's buckling likely from some weakness from the lumbar
18 problem, but I think that's a permanent continue, the
19 posttraumatic arthritis of knee, and I think he'll always have
20 some discomfort in the knee along with the crepitus and limited
21 motion.

22 Q. And do you know the last time you saw Mr. Mejia?

23 A. I last saw him on March 9th of 2023.

24 Q. And could you tell the jury at that time your physical
25 findings?

Dr. Kaplan - Plaintiff - Direct (Vargas)

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1 A. Yeah. At that time, physical findings included noting
2 multiple well healed incisions about the wrist. He had
3 3-centimeter scar at the CMC joint of the right thumb. That's
4 here. And a 5-centimeter scar over the wrist here from the
5 first wrist surgery and, additionally, a three-and-a-half
6 centimeter scar over the dorsal surface of the hand, meaning
7 this part of the hand.

8 Wrist flexion on the right was to 55 degrees, so about
9 here, versus 85 on the uninvolved side. Wrist extension was to
10 50 degrees on the right versus 85 degrees on the uninvolved
11 side.

12 He had limited turning of the wrist over like this.
13 So supination, which is to turn the wrist up, was 80 degrees and
14 on his uninvolved side was 90 degrees which is normal, flat.

15 And the same was true with pronation, which is turning
16 the wrist down on the involved side 80 degrees, on the
17 uninvolved side 90 degrees, flat, which again is normal.

18 He had marked crepitus, that's cracking and popping
19 inside the joint, on the right wrist, not there on the left
20 wrist and he continued to show some tenderness at the area of
21 the triangular fibrocartilage where he had the repair performed.

22 He was also tender at the base of the thumb, which
23 means complained of pain when you touch it again where he had
24 the stabilization surgery with Dr. Botwinick.

25 Q. Now, this office visit is after his three surgeries:

Dr. Kaplan - Plaintiff - Direct (Vargas)

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1 two on the wrist and one on the thumb?

2 A. That's right.

3 Q. And the last one being in December of 2020. By this
4 time, what would be your expectation for a patient after those
5 three surgeries?

6 A. Well, I think at that point, whatever he's complaining
7 about at that point is permanent. Like a lot of patients still
8 have some discomfort. I think he had some improvement following
9 the surgeries but clearly not normal.

10 Q. And as far as the knee at this visit?

11 A. With regard to the knee, he had healed arthroscopic
12 incisions called portals. His knee flexion was to 115 degrees
13 actively, meaning that's where he was comfortable, and then I
14 did passively, meaning pushing him as far as I could and that
15 was to 125 degrees.

16 He had knee flexion to 140 degrees on the uninvolved
17 side. I flipped these here. Extension was full on both the
18 right and the left. He had crepitus with motion on the involved
19 side, not on the uninvolved side. Again I flipped these
20 unfortunately.

21 He had patellofemoral grinding. It was negative on
22 the uninvolved side, positive on the involved side. He had a
23 negative McMurray's test, meaning no evidence of a cartilage
24 tear visible on that side.

25 Q. And again same kind of question regarding the wrist.

Dr. Kaplan - Plaintiff - Direct (Vargas)

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1 Five years now after the knee surgery, these findings
2 you would expect to be permanent. True, Doctor?

3 A. Certainly, the findings I would expect to be
4 permanent. The crepitus that's there, which is the indication
5 of posttraumatic arthritis, is permanent. It also indicates a
6 problem that gets worse over time.

7 We all, with aging, have a form of arthritis. That's
8 called osteoarthritis. He's got posttraumatic arthritis, which
9 means he starts to have this at the time of the accident, and it
10 gets worse over time, just like osteoarthritis.

11 Q. And as far as the neck and the back at this visit.

12 A. As far as the neck and the back at this visit, he's
13 got some limited lumbar motion with flexion to 45 degrees.
14 Again, normal is 75 to 90. Extension of the back, meaning going
15 back this way, it was to 5 degrees. Normal is 25 to 30. He's
16 got lateral flexion to the right of 5 degrees and 5 degrees to
17 the left. Normal is about 30. So that's a significant loss of
18 motion.

19 As far as his neck, he had tenderness in the
20 musculature, and cervical flexion, meaning flexion of the neck
21 forward to 30 degrees and extension to 30 degrees. Normally,
22 you can touch your chin to your chest. So 30 degrees is about
23 here, about two fingerbreadths away from that.

24 Q. And, Doctor, do you have an opinion with a reasonable
25 degree of medical certainty as to whether the torn meniscus and

Dr. Kaplan - Plaintiff - Direct (Vargas)

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1 subsequent surgery you performed are causally connected to this
2 accident of August 4, 2017?

3 A. It is my opinion that the injury to the knee and the
4 need for surgery are causally related to this accident, yes.

5 Q. And do you have an opinion with a reasonable degree of
6 medical certainty as to future prognosis for the knee?

7 A. I do. Again, we have corrected the meniscus tear, but
8 he is showing signs of posttraumatic arthritis of knee, very
9 common when you injure your knee badly enough to have surgery.
10 And that's a permanent problem that progressing over time or
11 gets worse over time. It's got a poor prognosis.

12 Q. And do you have an opinion with a reasonable degree of
13 medical certainty as to the injuries to the wrist and right
14 hand, the tear of the ligaments in that area and the subsequent
15 surgeries, if they are causally connected to the accident of
16 August 4, 2017?

17 MR. ITZKOWITZ: Objection, Your Honor.

18 THE COURT: Sustain.

19 Q. Do you have an opinion with a reasonable degree of
20 medical certainty as to the injuries to the wrist and the hand
21 being causally connected to the accident of August 4, 2017?

22 MR. ITZKOWITZ: Objection, Your Honor.

23 THE COURT: Sustained.

24 MR. VARGAS: If I may approach, Your Honor?

25 THE COURT: Yes. Let's go in the back.

Dr. Kaplan - Plaintiff - Direct (Vargas)

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1 (A side bar conference took place on the record
2 outside the hearing of the jurors:)

3 THE COURT: So we're on the record.

4 The reason we're on the record is that there was
5 an objection raised by counsel for the defense related to a
6 prior ruling the Court made, and that prior ruling, which I
7 believe is on the record, was that because there's going to
8 be testimony in this case from the doctors who performed
9 neck and back surgery and the three wrist surgeries, that
10 Dr. Kaplan's testimony here be limited to mostly inquires,
11 specifically about opinions relating to causation and
12 permanency limited to the knee. Because anything that he
13 would testify to would be subject to what other people
14 coming in who did those procedures who testified to would
15 be cumulative.

16 So counsel for plaintiff was eliciting some
17 testimony that I, based on the objection, felt was running
18 foul of the agreement that we had in court and I'm going to
19 let counsel for plaintiff articulate his position. I'm
20 going to let the defense counsel rearticulate his position,
21 then I'm going to make a ruling.

22 MR. VARGAS: So my understanding of the previous
23 ruling was Dr. Kaplan wasn't to get into the details of the
24 surgeries that Dr. Botwinick performed. And my last
25 question was only trying to elicit from him the diagnosis

Dr. Kaplan - Plaintiff - Direct (Vargas)

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1 of the wrist injury that ultimately lead Dr. Kaplan to
2 refer him to Dr. Botwinick. And so I feel it should be
3 allowed.

4 MR. ITZKOWITZ: Based on Your Honor's ruling
5 earlier, when we had -- without the reporter present,
6 earlier today --

7 THE COURT: We had a reporter.

8 MR. ITZKOWITZ: No. I apologize.

9 THE COURT: Michele did get that on the record.

10 MR. ITZKOWITZ: Based on the earlier ruling, I
11 believe that the testimony of Dr. Botwinick is salient to
12 the condition of the wrist, his findings for the wrist for
13 causation purposes and for the surgeries.

14 So Dr. Kaplan did not perform the surgeries. He
15 sent him to a specialist to have the plaintiff examined,
16 treated and ultimately operated on. So for Dr. Kaplan to
17 render an opinion now, not just on the surgeries, but on
18 the causation, would be again cumulative. Because you're
19 going to be getting that specifically from the doctor who
20 performed the three surgeries on the plaintiffs hand.

21 So I feel that it would be cumulative and that it
22 should not be raised during the question of Dr. Kaplan, who
23 performed knee surgery and referred him out to other
24 doctors, and I feel if you're having Dr. Botwinick come to
25 court he's going to testify to everything, the history he

Dr. Kaplan - Plaintiff - Direct (Vargas)

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1 took, the information he got, the MRI's he reviewed, and
2 the surgeries he performed. Now, I think it is best left
3 to the hand surgeon. Otherwise, it's going to be getting
4 repetitive.

5 THE COURT: Okay. I mean there was, of course,
6 an understanding previously that the testimony that
7 Dr. Kaplan would be providing to the jurors would be solely
8 related to the knee particularly when it came to issues of
9 causation and permanency. So if that wasn't clear, I'll
10 make it clear now.

11 There's no prejudice to the plaintiff here
12 because the doctors who performed those very surgeries are
13 going to come in and they're going to testify, undoubtedly,
14 that the conditions here are permanent, that they were
15 caused by the accident in question, or at least exacerbated
16 by the accident in question, because that was kind of what
17 the opening statement alluded to, and so subsequently I'm
18 going to limit the testimony here solely to permanency and
19 causation questions regarding the knee.

20 I know you have an objection. You can take it.

21 MR. VARGAS: Yes. I'll take my --

22 THE COURT: You'll take your objection and your
23 exception.

24 MR. VARGAS: Yes.

25 THE COURT: Very good. Thank you.

Dr. Kaplan - Plaintiff - Direct (Vargas)

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1 (The following proceeding takes place in the
2 courtroom in the presence of the jury.)

3 THE COURT: So that last objection was sustained.
4 So, Counsel, you may interpose some other
5 questions right now.

6 MR. VARGAS: Thank you, Your Honor.

7 Q. Doctor, as far as the neck and the back that you
8 treated Mr. Mejia for back in 2008, do you have an opinion with
9 a reasonable degree of medical certainty as to whether his back
10 and neck injuries were exacerbated from this accident of
11 August 4, 2017?

12 MR. ITZKOWITZ: Objection, Your Honor.

13 THE COURT: Sustained.

14 MR. VARGAS: Your Honor, I believe we had a
15 ruling on that before; correct?

16 THE COURT: We're going to have to go in the
17 back.

18 MR. VARGAS: Sorry.

19 (A side bar conference took place on the record
20 outside the hearing of the jurors:)

21 THE COURT: So the ruling of the Court previously
22 was that to the extent that Dr. Kaplan did not include in
23 his report any indication that the injuries alleged to have
24 been caused by plaintiff were exacerbated or that the
25 accident exacerbated injuries that the plaintiff previously

Dr. Kaplan - Plaintiff - Direct (Vargas)

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1 had, that in and of itself wouldn't a bar to him testifying
2 about that because that was akin to testifying about
3 causation. But I believe then the motion came that his
4 testimony would be so limited because it would be
5 cumulative because again and, correct me if I'm wrong, Mr.
6 Itzkowitz, when Dr. Botwinick and Dr. Brisson come, they're
7 going to testify that the back injuries in this case as
8 well as the back and the neck were exacerbated by the
9 accident here.

10 MR. ITZKOWITZ: I believe it was primarily for
11 Dr. Botwinick.

12 However, Your Honor, based on the fact that
13 Dr. Botwinick is coming in, Dr. Brisson is also coming in,
14 who was the surgeon that performed the lumbar surgeries on
15 two occasions on to the plaintiff, he's going to be able to
16 testify within a reasonable degree of medical certainty if
17 there was any exacerbation of any previous injury to his
18 back or neck because he treated him for that.

19 Now, Dr. Kaplan's office did provide physical
20 therapy for the plaintiff's back and neck. I will tell the
21 Court that, he did. But I also feel that the question, in
22 light of the fact that if there wasn't a foundation for it
23 set by plaintiff, he asked about exacerbation, do you have
24 an opinion with a reasonable degree of medical certainty
25 what your opinions were with regard to his neck and back in

Dr. Kaplan - Plaintiff - Direct (Vargas)

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1 relation to the prior injuries he had, he just asked right
2 away was there an exacerbation of the prior surgeries. I
3 felt that's a very leading question in light of the fact
4 that there was no mention in the narrative report from 2023
5 of any exacerbation.

6 THE COURT: Well, he did testify that plaintiff
7 gave him a history when he first saw him of a host of
8 injuries resulting from a 2008 accident. So isn't that
9 enough of a foundation?

10 MR. ITZKOWITZ: Well, that was from his original
11 treatment back in 2008.

12 THE COURT: Right. But then he also testified as
13 a result of that accident the plaintiff went back to
14 work --

15 MR. ITZKOWITZ: That's true.

16 THE COURT: -- and for any further treatment.

17 So to me the record seems to be clear that
18 there's at least a basis there. If you want him to tie it
19 into a bun, you can do that, but I think there's enough
20 there.

21 MR. ITZKOWITZ: Okay, Your Honor.

22 THE COURT: All right.

23 MR. ITZKOWITZ: Yes. Thank you.

24 (The following proceeding takes place in the
25 courtroom in the presence of the jury.)

Dr. Kaplan - Plaintiff - Direct (Vargas)

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1 THE COURT: Did you want him to lay a further
2 foundation?

3 MR. VARGAS: I'll lay a foundation.

4 THE COURT: I'll sustain the objection. You're
5 going ask him some more foundational question, okay.

6 Q. Doctor, back in 2008, you mentioned earlier you had
7 treated Mr. Mejia for neck and back injuries; correct?

8 A. Yes.

9 Q. And those are herniations at C3-C4, C5-C6?

10 A. I believe that's correct, yes.

11 Q. L5-S1?

12 A. Yes.

13 Q. And when you saw him again for the August 4, 2017
14 accident, again, you treated him for both neck and back as well?

15 A. Initially, yes.

16 Q. And it's for the same levels, the same herniations;
17 correct?

18 A. Essentially, the same levels. The herniations have
19 changed a bit yeah.

20 Q. And for treating him over all those years all the way
21 up to 2023, do you have an opinion with a reasonable degree of
22 medical certainty as to whether these herniations at those
23 levels were exacerbated by this accident in August 4, 2017?

24 A. I do have an opinion.

25 Q. And what is that opinion?

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 A. My opinion is that this injury did exacerbate the disc
2 herniations and, in fact, I last treated him in 2011 for those
3 injuries. He never had surgery for those injuries, never
4 required surgeries for those injuries. The MRI shows a
5 difference in the disc herniations and the amount of disc
6 herniation that I believe lead to his surgery.

7 MR. VARGAS: Thank you. No further questions.

8 THE COURT: Okay. Is everyone okay to proceed
9 with cross examination? Does any need a bathroom break of
10 some sort? You guys are good to go?

11 Are you good to go on?

12 THE COURT REPORTER: Yes, Judge.

13 You may proceed, Counselor.

14 MR. ITZKOWITZ: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. ITZKOWITZ:

17 Q. Good afternoon, Doctor.

18 A. Hawaii.

19 Q. Now, you obviously treated Mr. Mejia for both
20 accidents that he was involved in; correct?

21 A. Yes.

22 Q. And you were aware of the other case, the other
23 accident as well as this one, he had brought a lawsuit for that
24 matter as well?

25 A. Yes.

Dr. Kaplan - Plaintiff - Cross (Iitzkowitz)

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1 Q. Now, for all your patients when you see them, whether
2 they come in for accidents or they come with sports injuries or
3 the like, you keep records on all of your patients; correct?

4 A. Yes.

5 Q. And you make sure that you put everything important
6 inside those records; correct?

7 A. I try to sure.

8 Q. Because you can't remember everything for every
9 patient?

10 A. I try to put the important things in.

11 Q. You also rely on the patient to be a reliable
12 historian to give you as much information that you get so you
13 can treat your patient; correct?

14 A. Yes.

15 Q. Now, let's go back to your first visit with Mr. Mejia
16 on August 17, 2017.

17 A. Okay.

18 Q. It's also on the screen as well.

19 THE COURT: Let the record reflect defense
20 counsel is projecting some of the documents that are in
21 evidence from I believe Dr. Kaplan's file on to the screen
22 for the jurors to see.

23 Q. Now, when he came to you that first time, he made
24 complaints to you regarding his right thumb; correct?

25 A. Yes.

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 Q. He also made complaints about the back and neck;
2 correct?

3 A. Let's see. At that time, just his thumb.

4 Q. I'm sorry?

5 A. I believe at that time just his thumb.

6 Q. Okay. So you don't mention anything about the prior
7 accident inside that record; correct?

8 A. Let's see. I do say he has a history of low back
9 problems. Neck and back pain. I'm sorry. He is complaining of
10 neck and back pain today which is not severe.

11 Q. Right, but you don't mention that October 10, 2008 he
12 had hurt his back and neck; correct? That's not in your report?

13 A. That's in my file. I do indicate he had prior back
14 problems.

15 Q. But at that time everything he told you was about --
16 primarily your assessment was for the thumb and you sent him for
17 the -- you were going to send him for a MRI; correct?

18 A. His major complaint at that time was thumb. That's
19 right.

20 Q. Now, with regard to the 2008 accident, you had MRI's
21 ordered of the lumbar spine, the cervical spine -- correct? --
22 the neck and the back?

23 A. They were done, yes.

24 Q. And you also had physical therapy provided for him in
25 your office; isn't that correct?

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 A. I'm not sure where he did physical therapy. It's very
2 possible it was in our office.

3 Q. Well, is that Adrian Puie.

4 A. That's my physical therapist, yes.

5 Q. And Miss Puie or is it a female or male?

6 A. Adrian is a male.

7 Q. He's still in your office; correct?

8 A. Yes.

9 Q. As a matter of fact, he did physical therapy on the
10 plaintiff after the 2017 accident; isn't that correct?

11 A. I don't recall. If you tell me, sure.

12 Q. But Adrian Puie had numerous sessions with Mr. Mejia
13 for the injuries from the 2008 case.

14 A. Okay.

15 Q. And there were constant complaints by Mr. Mejia of
16 pain in his lumbar and cervical spine.

17 A. Okay.

18 Q. If we could put up the next one.

19 This is from a 2011 physical therapy session on. I
20 believe that's February 3, 2011; is that correct?

21 A. Yes.

22 Q. And that Adrian Puie performed physical therapy that
23 day?

24 A. Okay.

25 Q. And Mr. Mejia made complaints of persistent low back

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 and neck pain?

2 A. Yes.

3 Q. And that would be a history that we were taken by the
4 physical therapist; correct?

5 A. Yes, not myself.

6 Q. That's the practice?

7 A. He's a physical therapist, yeah.

8 Q. Okay. And then the objective findings that day were
9 tenderness with PV. Is that paravertebral cervical, thoracic
10 lumbar muscles. Lumbar motion is greatly restricted. Cervical
11 motion is greatly restricted; isn't that correct?

12 A. That's what he reports, yes.

13 Q. And that's something of -- and that was towards the
14 end of the physical therapy that that physical therapist was
15 given. So he was still having complaints several years after
16 the 2008 accident regarding his neck and back; correct?

17 A. Yes. He still had complaints, for sure.

18 Q. Now, you reviewed records I believe in a narrative
19 report which you prepared in March of 2023 -- correct? --
20 March 9, 2023?

21 A. Yes.

22 Q. Were you provided with records by the attorneys for
23 Mr. Mejia?

24 A. I'm not sure where we got our records. Either from
25 the attorneys from the hospitals where he had surgeries, things

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 like that, and sometimes from the patient even.

2 Q. Did you ever have an opportunity to review the
3 Bellevue Hospital records from Bellevue Hospital for the records
4 from the day of the accident August 4, 2011?

5 A. Let's see. I don't believe I reviewed those. I don't
6 recall.

7 Q. Well, when Mr. Mejia came to you, he told you that he
8 had an accident while working on August 4, 2017; correct?

9 A. That's correct.

10 Q. And Mr. Mejia, being a lay person, could only give you
11 certain information. He told you what things hurt him. But
12 wouldn't it had been beneficial for you to be able to see what
13 kind of treatment he had at the hospital initially?

14 A. It certainly helps to have all the records. I don't
15 know if any of you dealt with Bellevue Hospital. It's not easy
16 to get records.

17 Q. When he went to the hospital that day, he was taken in
18 and had CAT scans of many parts of his body?

19 A. I don't have those records, so I don't know.

20 Q. Wouldn't that had helped in an assessment of Mr. Mejia
21 based on the complaints he was making at that first visit back
22 on August 17, 2017?

23 A. I record what he was complaining to me about and we go
24 from there. That's the information I have. Sure.

25 Q. Well, Doctor, he had a full examination at the

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 hospital.

2 And can you put that up, please?

3 Now, at the hospital, they examined him from head to
4 toe, Doctor. In particular with his head, they found no scalp
5 hematoma, no depressed skull fracture. Obviously, a good sign
6 for the patient who had fallen; correct?

7 A. It's a good sign.

8 Q. With regard to his neck, they found no bruises, no
9 lacerations or swelling. That's a good sign; correct?

10 A. They found none of those things. You're correct.

11 Q. Okay. And with regard to his back, they found no
12 bruising or deformity. Again that's a good sign that he didn't
13 sustain any injury that they documented; correct?

14 A. They don't say any deformity. That's a gross finding,
15 yeah.

16 Q. Okay. And they found -- that day there was no
17 complaint at all about his wrist. They referred to the right
18 thumb pain flexion meaning he had full range of motion, ROM with
19 pain. But you could see there, Doctor, there was no complaint
20 of the wrist at that time; correct?

21 A. At that time, they don't note the wrist. That's
22 correct.

23 Q. Just the thumb at that time?

24 A. That's right.

25 Q. And, lastly, with regard to his skin, they found no

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 abrasions?

2 A. That's what they report, yes.

3 Q. Are you aware, Doctor, that the medical records from
4 Bellevue Hospital and from the EMS medic that came that day
5 found no signs of exterior injury to him, no cuts, no bruises,
6 no abrasions, no nothing?

7 A. Yes. That doesn't surprise me.

8 Q. Now, he didn't tell you the mechanism of how he fell
9 at that first visit, did he?

10 A. Only that he fell.

11 Q. Only that he fell?

12 A. Um-hum.

13 Q. So you don't know how he fell. You don't know how he
14 landed. You don't know what parts of his body hit the ground
15 first; correct?

16 A. He indicated to me again complaining of thumb pain
17 that he landed on the outstretched hand.

18 Q. Okay. Well, Doctor, there was deposition testimony in
19 this case by Mr. Mejia and I want to read from it now regarding
20 how he fell.

21 Your Honor, I have a copy for you as well.

22 THE COURT: I'll take that if you have it.

23 MR. ITZKOWITZ: It is in a binder with all the
24 depositions. It's Exhibit A, his deposition, instead of
25 ripping it apart.

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 THE COURT: Thank you.

2 Counsel, while you look for that, I'm just going
3 to read the jury instruction about depositions.

4 You're about to hear the lawyer for the defendant
5 read portions of a document refer to as an examination
6 before trial. You may hear the lawyers refer to this
7 document as an EBT.

8 At some point before this trial began, the
9 plaintiff, under oath, answered certain questions put to
10 him by the lawyers for the defendants. A stenographer
11 recorded the questions much like we have here in this court
12 today and transcribed them into a document which the
13 plaintiff later signed before a notary public.

14 The portions of the transcript of the examination
15 before trial that you will hear are to be considered as if
16 the plaintiff were testifying from the witness stand as to
17 those portions.

18 You may proceed, sir.

19 MR. ITZKOWITZ: Page 61, line 10.

20 "As you fell, did you try to grab on to
21 anything?"

22 "Yes."

23 "What did you try to grab on?"

24 "Well, I tried to grab the wall itself,
25 scratching with the building."

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 "With which hand? Your right? Your left? Both
2 hands?"

3 "ANSWER: Right."

4 "Were you able to grab on to something when you
5 fell?"

6 "No, no. I fell like piece of metal all the way
7 down."

8 "QUESTION: Then what did your body make contact
9 with?"

10 "I made contact with the fountains that were
11 downstairs. I fell on another (indicating) on another
12 fountain that was down there."

13 "What portion of your body made contact with the
14 fountain?"

15 "My entire body."

16 "The front of your body, the side of your body,
17 your back or something else when you first made contact
18 with the fountain below?"

19 "My back."

20 Q. So, Doctor, based on that, when he told you he fell on
21 an outstretched hand, that would mean the hand going down like
22 this; correct?

23 A. Or forward like this when he fell backwards.

24 Q. Or he landed on his back?

25 A. When you land on your back.

Dr. Kaplan - Plaintiff - Cross (Iitzkowitz)

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1 Q. Okay. But the injuries he had were to his neck and
2 back.

3 At the time that he went to the hospital, there was no
4 complaint about the wrist; correct?

5 A. There's no complaint recorded. You're correct.

6 Q. And going back to your first visit, there was no
7 complaint about the wrist on the pinky side where the TFCC is
8 located, fibrocartilage?

9 A. There's tenderness on the dorsum of the wrist.

10 Q. That's the opposite side.

11 A. The dorsum is here. It encompasses the whole thing.

12 Q. Okay. Now, for the back injuries from 2008, you're
13 aware that Dr. Thomas and Dr. Mandelbaum treated the plaintiff
14 for epidurals, weren't you?

15 A. I believe they did, yeah.

16 Q. And epidurals are given if a back -- if there's a
17 problem with the back that physical therapy isn't helping,
18 medications isn't helping. The treatment isn't helping. So
19 they try to use epidurals to stem the pain; correct?

20 A. Epidurals is another type of treatment. All right?
21 It's like an injection.

22 Q. But that's not just a simple injection. It's
23 fluoroscopically put in. It's not put in just like a regular
24 inject. They find a spot where they have to put it in, then
25 they check; correct?

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 A. It's a simple injection. It's done with a needle or a
2 syringe just like any other shot.

3 Q. That's supposed to be given in a series; correct?

4 A. You give one as a test then up to three as needed
5 usually. It's not my area of specialty but that's what they do.
6 So I suggest you ask them.

7 Q. Right. He had them -- in 2011, and he had them after
8 the 2017 accident as well; correct?

9 A. Again, you would have to ask those doctors that did
10 it.

11 Q. Now, you had an MRI done for the lumbar spine and the
12 cervical spine as well in 2009 that were done by Dr. Kolb; isn't
13 that correct?

14 A. In the first accident, that's right.

15 Q. The first accident?

16 A. Yes.

17 Q. And in that first accident, the lumbar spine -- well,
18 I'll start, Doctor.

19 In the 2009 MRI, there was a disc herniation at L4-L5
20 impinging upon the thecal sac. I don't believe you mentioned
21 that earlier in your testimony. You mentioned L5-S1.

22 A. You're not correct. I mentioned both of those. I
23 think Mr. Vargas only mentioned the L5-S1.

24 Q. Okay.

25 A. Yeah.

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 Q. And for the one in 2017, do you have that in front of
2 now?

3 A. I can certainly get it. Okay.

4 Q. 2017, you had an L4-L5 broad disc bulging impinging
5 upon the thecal sac.

6 So, once again, eight years later there was still an
7 impingement at L4-L5 on the thecal sac; correct?

8 A. The thecal sac is the sac of fluid around the spinal
9 cord, not impinging on nerve roots.

10 Q. Right. But there was a similar finding?

11 A. It's actually less on the second MRI called a disc
12 bulge and that may just be from some loss of water, some
13 desiccation, but that's because of the first injury, yeah.

14 Q. Now, you could have degeneration of disc as time goes
15 on. Correct, Doctor?

16 A. Absolutely.

17 Q. Part of the aging process?

18 A. It can be aging. It can be injuries. It can be
19 anything.

20 Q. All right. Someone who had an injury such as
21 Mr. Mejia back in 2008 who had injuries to his lower back and
22 his neck could have degeneration as time went on; correct?

23 A. A hundred percent.

24 Q. Now, your last form of treatment I believe of him was
25 in 2011 you said?

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 A. That's right.

2 Q. And the last time you saw him before you saw him for
3 the first time after the accident in 2017 was in I believe it
4 was June 9th of 2016; is that correct?

5 A. That's correct.

6 Q. And you did that I believe in connection with an
7 examination which you put into what's called a narrative report?

8 A. That's correct.

9 Q. The narrative report is not something for treatment
10 purposes. That's something a lawyer requests usually for it's a
11 report from you based on the treatment?

12 A. That's correct.

13 Q. It wasn't addressed to a doctor. It was addressed --
14 if it was addressed at all, it was not for anything but
15 litigation purposes; correct?

16 A. It's not for treatment. That's correct.

17 Q. At the time you saw him in 2016, you know that at that
18 point he was already starting to experience -- he started to
19 have continued problems with his back and neck; correct?

20 A. He was, yes.

21 Q. So you started treating him roughly in the year 2008.
22 I believe it was Dr. Krone, your colleague, first saw him for
23 the very first time?

24 A. Correct.

25 Q. Do you know how he fell in the prior accident?

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 A. I don't recall. He died --

2 Q. Well, if I told you --

3 A. -- 15 years ago.

4 Q. -- in the prior accident -- I'm sorry?

5 A. He died many years ago.

6 Q. Yeah, I know, but sometimes they become relevant
7 again.

8 So on October 10, 2008, he fell roughly 8 to 9 feet on
9 to his head, neck and back. So he fell again on his back just
10 like he did in 2017?

11 A. Right.

12 Q. And based on the treatment that you had provided, I
13 believe you did trigger point injections, cervical branch block
14 injections, referred him to physical therapy in your office,
15 then referred him to pain management with Dr. Thomas and Dr.
16 Mandelbaum, that by 2016, he was still having problems with his
17 lower back and his neck; correct?

18 A. That's correct.

19 Q. As a matter of fact, you also referred I believe to a
20 record in your 2016 narrative report from Dr. Thomas?

21 A. Okay.

22 Q. It's on page 3 of your report --

23 A. Okay.

24 Q. -- towards the bottom, Comprehensive Pain Management.
25 Gary Thomas, M.D. records from December 22, 2011.

Dr. Kaplan - Plaintiff - Cross (Iitzkowitz)

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1 A. Okay.

2 Q. Now, those records that you reviewed from that date
3 noted degeneration of cervical intervertebral disc?

4 A. Okay.

5 Q. Degeneration means it's changing and it's
6 degenerating; correct?

7 A. That's a process over time, that's right.

8 Q. So it's in the process -- it's part of the
9 degenerative process that you just said people could have as
10 time goes on?

11 A. It can also be a degeneration of the injury, yeah. It
12 can be either of those.

13 Q. Right.

14 A. Yeah.

15 Q. So he had the accident 2008. By 2011, Dr. Thomas
16 found that he had degenerative conditions in his vertebrae for
17 the intervertebral disc for the cervical spine?

18 A. That's right.

19 Q. He also found that he had degeneration of his
20 lumbosacral intervertebral disc; correct?

21 A. Yes.

22 Q. So again that's degeneration that he found based on
23 his treatment of Mr. Mejia?

24 A. Yeah.

25 Q. Now, Dr. Thomas provided a report that was addressed

Dr. Kaplan - Plaintiff - Cross (Iitzkowitz)

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1 to you in 2012. Do you have that with you?

2 A. I don't. I never received that report.

3 Q. Okay. Well, it was addressed to 160 East 56th Street.

4 Is that your address, Doctor?

5 A. That is our address.

6 Q. Was that your address back on February 21, 2012?

7 A. It would have been, yes.

8 Q. And at that time, Dr. Thomas sent out -- now, he was a
9 mutual patient of both you and Dr. Thomas correct?

10 A. I'm sorry. Would you repeat that question?

11 Q. Mr. Mejia was obviously a mutual patient of you and
12 Dr. Thomas at that time?

13 A. He was. He did not send me the note though.

14 Q. He didn't send that to you?

15 A. I didn't receive that note.

16 Q. Okay. Well, if I told you that Dr. Thomas at that
17 point in time found Mr. Mejia disabled from being able to work
18 in the field of construction, based on his injuries, would you
19 accept that based on the complaints that he was making about his
20 back and neck at that time?

21 A. You would have to ask Dr. Thomas. He was treating
22 him.

23 Q. Okay. But he was making complaints to you in the 2016
24 visit about cervical motion was painful and limited in all
25 planes?

Dr. Kaplan - Plaintiff - Cross (Iitzkowitz)

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1 A. That's correct.

2 Q. That means every which way he turned he had pain;
3 correct?

4 A. Flexion, extension, rotation, bending, yeah.

5 Q. And he also had what's called a positive Spurling test
6 to his left shoulder?

7 A. That's correct.

8 Q. Is that related to impingement?

9 A. It's related to nerve irritation. Like I said, when
10 you tilt the head, you can pinch a nerve.

11 Q. Isn't it true, Doctor, in your 2023 narrative report
12 you also found that he had positive Spurling?

13 A. That's correct.

14 Q. So you found it in 2016 and you found it again after
15 this accident?

16 A. That's correct.

17 Q. Now, Mr. Mejia hadn't seen you in over about 13 months
18 after your last visit with him; correct?

19 A. That's correct.

20 Q. In that visit with him, back in June of 2016, you
21 examined him?

22 A. Um-hum.

23 Q. You reviewed records?

24 A. Yes.

25 Q. Like I said, you reviewed the record from Dr. Thomas.

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 And you came to an opinion about Mr. Mejia --

2 A. Um-hum.

3 Q. -- that his prognosis was poor?

4 A. That's correct.

5 Q. And a poor prognosis is not something you want to tell
6 a patient; correct? That's pretty dire?

7 A. No. You tell a patient what you believe.

8 Q. Now, on the range of prognoses, the best you could
9 tell a patient is excellent. You have an excellent prognosis
10 meaning very likely you're going to recover from your condition?

11 A. That's correct.

12 Q. And again if it's a good prognosis, it still stands a
13 very good chance of recovering?

14 A. That's right.

15 Q. But a poor prognosis is it's not likely that he's
16 going to recover. He's going to be living with issues related
17 to the injuries that he sustained and the problems, the
18 complaints that he's making.

19 A. But he's not going to be normal; correct.

20 Q. I'm sorry?

21 A. That he's not going to be normal.

22 Q. Not going to be normal?

23 A. Sure.

24 Q. As of 2016, after eight years from the first time your
25 office treated him, and he was treated by you, Dr. Thomas, Dr.

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 Mandelbaum had epidurals, had trigger point injections, had
2 physical therapy. In June of 2016, his prognosis was just poor?

3 A. His prognosis was poor meaning he would never be
4 normal again. That's correct.

5 Q. And that was based on a reasonable degree of medical
6 opinion based as an orthopedic surgeon; correct?

7 A. That's right.

8 Q. You're not going to put anything into a report for
9 anybody that's not accurate; correct?

10 A. He's got herniated discs. He's got injuries to the
11 hand. I thought he had a poor prognosis. That's correct.

12 Q. Now, you looked at an MRI that Dr. Kolb did in 2016 --
13 correct? -- for the cervical spine?

14 A. No.

15 Q. You got the report I believe.

16 A. I got a report, yes.

17 Q. You brought the report. I meant the report, you
18 reviewed the report, not the actual film; correct?

19 A. That's correct.

20 Q. And that film showed herniations in the cervical
21 spine; correct?

22 A. Let's see.

23 Q. Now, I believe in your 2023 report it showed
24 herniations at C3-4, C5-6 and C6-7; correct?

25 A. Sorry. Tell me the date of the cervical MRI you're

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 looking at.

2 Q. Well, you need your report, Doctor?

3 A. I got them here. We're going through two charts here.
4 So if you could be kind enough to tell me the date that you're
5 talking about I would appreciate it so I could answer your
6 question for you.

7 Q. Okay. The MRIs from October 16, 2017 from Dr. Kolb.
8 I apologize. That's the lumbar. I'm sorry.

9 The cervical was from the same day October 16, 2017.

10 A. I'm just having trouble finding that CT scan or that
11 MRI scan, rather. Let me go to my report from there. Okay.
12 Got it.

13 Q. All right. And I believe at one point in 2020 you had
14 examined Mr. Mejia and you were anticipating the possibility of
15 cervical surgery with Dr. Brisson; correct?

16 A. I was anticipating nothing. That is what the patient
17 advised me that he was -- had been in discussion with Dr.
18 Brisson.

19 Q. Now, with Dr. Brisson?

20 A. Yeah.

21 Q. When you prepared your report in 2023, did you have
22 any other cervical MRI's other than the one from 2017?

23 A. Just one that I have.

24 Q. Okay. Were you aware that Dr. Brisson had sent
25 Mr. Mejia for another MRI at SimonMed?

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 A. I'm not aware of that. Don't have that record anyway.

2 Q. And it now, based on this MRI, it didn't show the
3 herniations that were shown in the 2017 MRI report that you
4 reviewed?

5 A. I can't read that.

6 Q. Could you make that larger, please?

7 A. It does indicate a disc protrusion at multiple levels
8 and that's a -- a herniation is a protrusion of the disc. He
9 doesn't use the word "herniation." I can't speak for that
10 radiologist.

11 Q. If I told you Dr. Brisson -- you wouldn't know that
12 when Brisson reviewed this film he said that surgery was not
13 needed for the cervical spine?

14 A. I would suggest that you ask Dr. Brisson that.

15 Q. Now, you talked earlier about an EMG that Dr. Grimm
16 did in your office; correct?

17 A. Yes.

18 Q. In 2018 May of 2018?

19 A. Yes.

20 Q. Now, that EMG noted that Mr. Mejia had told Dr. Grimm
21 that he had been feeling the pain of radiculopathy since the
22 accident; is that correct?

23 A. That's what he indicates. That's what Dr --

24 Q. I'm sorry?

25 A. That's what Dr. Grimm indicates, yes.

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 Q. Now, when you saw him for the first very visit on
2 August 17, 2017, he made no complaints of radicular pain that
3 day; correct?

4 A. He complained to me about his thumb that day.

5 Q. If he had made complaints of that nature, you would
6 have documented it in your report; correct?

7 A. He complained of low back pain.

8 Q. He didn't say it was -- he didn't tell you he was in
9 pain, tingling or pins or needles or anything like that. That's
10 radicular pain; correct?

11 A. That's what radiculopathy is, yes.

12 Q. Okay. If he had told you I felt pins and needles in
13 my arms or my legs, you would have documented that; right?

14 A. I would.

15 Q. He just told you he had some back pain which I believe
16 you said in your record you didn't think it was severe?

17 A. I did not think it was severe.

18 Q. Okay. Now, in your first record from that August 17
19 date --

20 A. Um-hum.

21 Q. -- is there any mention in that record of any kind of
22 a knee problem?

23 A. No.

24 Q. So that day when Mr. Mejia came in you documented all
25 the complaints that he made that day and at that day he made no

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 complaints about his knee; correct?

2 A. Correct. He was primarily focused on his right upper
3 extremity.

4 Q. Now, he didn't come in limping or anything like that;
5 right?

6 A. Not that I noticed but I often don't see a patient
7 except on the table.

8 Q. Again if there was an antalgic gait, you would have
9 documented it in your report?

10 A. If I would have seen him walk.

11 Q. But you didn't see that?

12 A. I didn't examine his knee.

13 Q. Now, a meniscus injury can be degenerative at times or
14 it could be caused by a trauma. It could be caused by a
15 twisting; correct?

16 A. It can be caused by any of those things, yes.

17 Q. Okay. Yes. But in this particular instance if a man
18 falls flat on his back and his legs are in front of him, there's
19 no twisting; correct?

20 A. There's no twisting in that scenario, that's correct.

21 Q. Okay. But Mr. Mejia didn't tell you at that visit
22 that he twisted his knee or anything like that; correct?

23 A. Again, twisting is one way that you can get a meniscus
24 tear and I'm not aware of a twist injury here.

25 Q. Now, at your second visit with him on September 5,

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 2017, you documented a complaint about his knee at that time?

2 A. That's correct.

3 Q. Now, in that particular visit, you noted that he's
4 making a complaint about his knee again; correct?

5 A. Yes.

6 Q. But there was no mention of the knee in the first
7 visit; correct.

8 A. That's correct.

9 Q. And, Doctor, if I told you that in Bellevue Hospital
10 there was no complaints by Mr. Mejia about the knee?

11 A. Okay.

12 Q. So we're talking about the accident was on August 4th.
13 So it was two months and a day later he's making a very first
14 complaint about the knee at that time; correct?

15 A. First complaint to a doctor, yes.

16 Q. Now, at that second visit, did he have any evidence of
17 swelling to his knee?

18 A. I did not see swelling.

19 Q. Did you see whether he could fully extend or bend his
20 knee?

21 A. I would have noted he had limited motion at that time.

22 Q. You would have noted it but it's not there?

23 A. It's not there.

24 Q. Okay. So he didn't have limited motion. He didn't
25 have swelling. That was the first time that he made the

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 complaint to you about his knee?

2 A. That's correct.

3 Q. And you didn't order a knee MRI until April of 2018;
4 correct?

5 A. I'm sorry. What's a EMI?

6 Q. You ordered a knee MRI for him in April of 2018;
7 correct?

8 A. MRI?

9 Q. MRI.

10 A. Yeah. That's correct.

11 Q. Okay. Now, with regard to his wrist regarding the
12 surgery he had with the TFCC that you mentioned that
13 Dr. Botwinick performed?

14 A. Yes.

15 Q. He made no complaint at the September 5th visit
16 regarding his wrist -- correct? -- on that side of the wrist?

17 A. Again, he had complaints on the dorsum of the wrist
18 which does stretch the entire part of the wrist, yeah.

19 Q. But he wasn't evidencing any symptoms of a tear at
20 that time, was he? There was no reason for you to believe at
21 that time that he had any issue even though you had found --
22 read the report of Dr. Kolb that showed a tear; correct?

23 A. There was no symptom of pain or clicking that's
24 normally associated with it, that's correct.

25 Q. As a matter of fact, Doctor, if you look at your

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 records, there was no complaint about his wrist on the side
2 where the TFCC was located specifically with pain being made
3 until October 11, 2018; correct?

4 A. Yeah. I got to look through the whole record but I
5 will take your word for that. That's not unusual.

6 Q. On October 11, 2018, he made complaints about
7 gastritis.

8 A. Tenderness over there, sure.

9 Q. Now, you never saw any swelling at any time before
10 that time to his wrist; correct, Doctor? You would have
11 documented that in your records?

12 A. You don't normally get swelling initially with a TFCC
13 tear. TFCC is a cartilage that has no good blood supply. So it
14 doesn't really swell. It doesn't show many symptoms except for
15 pain.

16 Q. So there was no formal treatment for that well over a
17 year after the accident; correct?

18 A. Correct.

19 Q. All right. And, again, you don't know, other than
20 what Mr. Mejia told you about the accident, and you didn't have
21 any records from any other source from the hospital from the day
22 of the accident as we went over; correct?

23 A. I was certainly not at the accident, and as we talked
24 about, I don't have the Bellevue reports, unfortunately.

25 Q. Now, Dr. Thomas put forth a plan for the rest of

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 Mr. Mejia's life as a result of the accident, the injury he
2 sustained in the 2008 accident. Were you ever made aware of
3 that?

4 A. I don't have that.

5 Q. Are you familiar with what a life care plan?

6 A. I know what a life care plan is.

7 Q. So when Mr. Mejia came to you, in the very first visit
8 there was no mention of him taking any medications; is that
9 correct?

10 A. That's correct.

11 Q. So according to Dr. Thomas, Mr. Mejia, based on the
12 injuries to his neck and back from the 2008 accident, was
13 supposed to be on a lifetime regiment of medications. Were you
14 aware of that?

15 A. You would have to discuss that with Dr. Thomas.
16 That's Dr. Thomas's report.

17 Q. And that he also recommended in the future after the
18 2008 accident lumbar epidural steroid injections in the future,
19 and this was in 2012 he made that recommendation.

20 A. Again, that's Dr. Thomas's area of expertise.

21 Q. But with regard to your treatment of Mr. Mejia, again
22 you found because of his back and neck after 2017 he had another
23 poor prognosis; correct?

24 A. Yes.

25 Q. You didn't expect Mr. Mejia to be able to go back to

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 work and do construction after you saw him for the last time in
2 2016, did you, based on your examination of him and your finding
3 of a poor prognosis?

4 A. With regard to his knee, absolutely he could.

5 Q. I'm talking about from the 2008 case. I'm sorry if I
6 didn't make myself clear. But with regard to the injuries from
7 the 2008 case with regard to his neck and back, did you believe
8 when you gave him a poor prognosis that he would be going
9 back -- he would be able to work in construction?

10 A. I would have certainly, had I been asked, put some
11 restrictions on the amount of lifting and things that he could
12 do but he could go back to work, yeah.

13 Q. But the only person that told you that he was able to
14 recover from the prior injury he sustained to his neck and back
15 was Mr. Mejia when he came to you that he was no longer having
16 problems he said with his neck and back from the prior accident;
17 correct?

18 A. I'm not sure you're using the right word. I don't
19 think he's recovered from it. I think he's doing much better,
20 but he had permanent injuries.

21 Q. Okay. But that was only a year after you saw him for
22 the last time when you gave that poor prognosis; correct?

23 A. He had permanent injuries. He didn't have surgery.
24 He didn't require additional treatment.

25 Q. Now, I believe in your 2016 examination of him you

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 found that he had low back pain that radiated into his lower
2 extremities both legs; is that correct?

3 A. Let's see what he told me.

4 Q. Page 5 of your -- well, I think it was page 4 of your
5 report.

6 A. Yes. He had pain radiating from the low back to the
7 lower extremities on both the right and the left.

8 Q. Okay. So when he left your office that day, he was
9 suffering from radiculopathy into his legs; correct?

10 A. He had symptoms of radiculopathy, yes.

11 Q. Okay. Now, in your 2023 report, you talked about
12 range of motion for the cervical spine flexion was to 30 degrees
13 and extension was to 30 degrees; is that correct?

14 A. Yes.

15 Q. He was suffering from loss of range of motion to his
16 cervical spine as a result of the 2008 accident; is that
17 correct?

18 A. He did have some loss of motion, yes.

19 Q. So if Dr. Thomas had found in 2012 cervical flexion
20 was 30 degrees in 2012. That was a similar finding to what you
21 found in 2023?

22 A. Absolutely.

23 Q. And normal is 60 degrees; correct?

24 A. Normal is 60, yeah.

25 Q. Now, when you saw Mr. Mejia, you had an interpreter

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 for him?

2 A. Yes.

3 Q. At every visit; correct?

4 A. Absolutely.

5 Q. And when he told you at the first visit on -- he told
6 you at the first visit that he had hurt his hand, he had no
7 fracture to his hand; correct?

8 A. Correct.

9 Q. He didn't have a hard cast. He had a spica splint on.

10 A. That's a hard splint, yeah, A cast simply means it
11 wraps all the way around. A splint is a hard cast material. It
12 just goes on one side of the arm.

13 Q. And it was for the thumb, wasn't it?

14 A. It was for the thumb and wrist and forearm.

15 Q. Okay. And after you saw him in June of 2016, you had
16 no way of knowing what his condition was until he came back to
17 you in August of 2017; correct?

18 A. I'm sorry?

19 Q. Once you saw him in 2016 for the last time for the
20 prior injuries, you had no idea what his condition was going to
21 be until he came back to you; correct?

22 A. In 2017?

23 Q. Correct.

24 A. Yes. That's correct.

25 Q. He didn't come back at any time between your last

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 visit in June of 2016 and the visit on August 17, 2017 because
2 of any complaints of radiculopathy related to his neck or back;
3 correct?

4 A. I was not treating him for radiculopathy at that time.

5 Q. But you were his treating physician at one point for
6 his injuries. You referred him to other doctors?

7 A. I referred him to other doctors, right.

8 Q. But he never came back to you on his own for his
9 complaint about his neck or back as a result of the 2008
10 accident; correct?

11 A. Correct.

12 Q. Now, Doctor, you noted a history in your 2016 report
13 of visits that he made to you when he made complaints from about
14 his persistent neck pain; correct?

15 A. Direct me to what you're --

16 Q. You documented office visits in your narrative report
17 from 2016?

18 A. Okay.

19 Q. I believe there was a visit from a visit on
20 December 2, 2008?

21 A. Yes.

22 Q. Where he had persistent neck and persistent back pain;
23 correct?

24 A. Yes.

25 Q. He also had on, for instance, March 19, 2009

Dr. Kaplan - Plaintiff - Cross (Itzkowitz)

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1 persistent neck pain radiating into the left upper extremity;
2 correct?

3 A. Neck pain radiating in the left upper extremity,
4 that's correct.

5 Q. That means it's going into his left arm?

6 A. Yes.

7 Q. And for that particular visit you gave him cervical
8 branch block injection?

9 A. Not by me. He was given trigger point injections.

10 Q. Okay. And then you saw him on March 26, 2010. Under
11 your assessments, you noted cervical and lumbar radiculopathy;
12 correct?

13 A. Yes.

14 Q. You also noted he's also fixated on pain in the disc
15 in his neck; correct?

16 A. Yes.

17 Q. Now, when you saw him in 2016 for that visit, did he
18 make mention to you that he was working. Is that in your
19 report?

20 A. I'm sorry. For which visit?

21 Q. The narrative report from 2016.

22 A. Let's see. I don't believe I noted that he was
23 working or not. I don't recall. I do not have a record of
24 whether he was working or not.

25 Q. Okay. Now, you found in your narrative report from

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1 2013 on page 4 that he had no further buckling in his knee;
2 correct?

3 A. 2013?

4 Q. No, no. Your 2023 narrative report. I'm sorry.

5 A. That's okay.

6 Yes. We've diminished the buckling from the knee.
7 That's correct.

8 Q. That's a good finding, isn't it?

9 A. That was the goal of the arthroscopic surgery, yes.

10 Q. And full extension was noted in your report, that's a
11 good finding as well -- correct? -- of his knee?

12 A. He's had normal full extension all along, yes.

13 Q. Now, you noted that at that time 115 degrees active
14 flexion and 125 degrees passive.

15 Now, he had increased his flexion of his knee as time
16 went on after the surgery; correct?

17 A. After the surgery, yeah.

18 Q. And there was no need for you to do any further
19 surgery; correct?

20 A. I don't plan any surgery on him, that's correct.

21 Q. Now, when you saw him in 2023, did he make mention of
22 the medications he was taking?

23 A. I don't think I recorded that he was taking
24 medications at that time. Let's see. I do not have a list of
25 the medications that he's taken.

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1 Q. Are you aware that at one time after this accident he
2 took tramadol for a period of time?

3 A. Yes.

4 Q. Are you aware that he also took tramadol as a result
5 of the injuries from the prior accident to his back and neck?

6 A. I believe that was in Dr. Thomas's record, yeah.

7 Q. So when you saw him the last time when you did your
8 narrative report in 2023, your findings with regard to his neck
9 and back were herniations, again, similar to your findings of
10 herniations from 2016 when you did your narrative report;
11 correct?

12 A. He did have herniations again. They're different in
13 their description and the treatment that was necessary.

14 Q. But they could be different but they could also change
15 as time goes on without trauma being involved; correct?

16 A. You expect different symptoms.

17 Q. Okay. So when you last saw him in 2016, he was having
18 symptoms; correct?

19 A. He was having back pain with some neck pain.

20 Q. And some back pain as well; correct?

21 A. That's correct.

22 Q. You indicated before that he had trouble turning his
23 head in all different planes?

24 A. Yes.

25 Q. When you saw him for the last time 13 months before

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1 his accident, he was having pains in his neck and his back
2 similar to the pains he'd been having over the years since
3 October 10, 2008 accident; is that correct?

4 A. They were described as the same in the report because
5 there's a limit to what you can describe, but the quality was
6 clearly different. He had surgery on his low back from this
7 accident, in my opinion.

8 Q. Understood. But as of the 2016 report that you did
9 based on a poor prognosis, he didn't have a good quality based
10 on that finding of poor; correct?

11 A. He didn't have a good prognosis you mean?

12 He was never going to be normal from the first
13 accident, but he didn't need surgery and he's in my opinion
14 exacerbated the back pain, the back problems with this fall.

15 Q. But at the same time, Doctor --

16 A. It's my opinion, sir.

17 Q. That's your opinion but it could be that other
18 doctors --

19 MR. VARGAS: Objection. He's answered this
20 question, Your Honor. This is now badgering.

21 THE COURT: Are you saying it's argumentative?

22 MR. VARGAS: Yes.

23 THE COURT: Sustained.

24 Q. But different doctors could have different opinions;
25 correct?