

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CIVIL TERM PART 52

-----X

3 SALOME VEGA and JOSEFINA OLIVERA,

4 Plaintiffs,

5 -against-

Index No.
512829/2015

6 NEW YORK CITY TRANSIT AUTHORITY, NEW
7 YORK CITY TRANSIT, MANHATTAN AND BRONX
8 SURFACE TRANSIT, OPERATING AUTHORITY,
9 METROPOLITAN TRANSPORTATION AUTHORITY,
10 MTA NEW YORK CITY TRANSIT, MTA BUS,
11 METROPOLITAN TRANSPORTATION AUTHORITY
12 BUS COMPANY and JASHUA AMI,

13 Defendants.

Jury Trial

-----X

14 360 Adams Street
15 Brooklyn, New York 11201
16 March 12, 2024

17 B E F O R E:

18 HON. FRANCOIS A. RIVERA,
19 Supreme Court Justice.

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

21 FOR THE PLAINTIFFS:
22 GORAYEB & ASSOCIATES
23 100 William Street
24 New York, New York 10038
25 BY: DAMON VELARDI, ESQ.

FOR THE DEFENDANTS:
KRITZER LAW GROUP
180 Main Street, Suite 204
Smithtown, New York 11787
BY: ROCCO IERVASI, ESQ.

ROBERT FRANKEL, CSR
Senior Court Reporter

Proceedings

1 THE CLERK: In the matter of Vega versus New York
2 City Transit Authority, index 512829 of 2015.

3 Counselor, your appearances.

4 MR. VELARDI: Good morning.

5 Damon Velardi of Gorayeb and Associates appearing
6 for the plaintiffs.

7 MR. IERVASI: Good morning.

8 Rocco Iervasi from The Kritzer Law Group
9 appearing for the defendants, 180 East Main Street, Suite
10 204, Smithtown, New York 1-1-7-8-7.

11 THE COURT: You said Velardi; right?

12 MR. VELARDI: Velardi.

13 THE COURT: Oh, Velardi.

14 MR. VELARDI: V-E-L. Right.

15 THE COURT: V-E-L.

16 And, your last name is?

17 MR. IERVASI: Iervasi. You want me to spell it?

18 THE COURT: Iervasi?

19 MR. IERVASI: Yes.

20 THE COURT: Okay.

21 Now, one of the plaintiff's settled. Which one?

22 MR. VELARDI: Salome Vega, your Honor.

23 THE COURT: Should we take her name off verdict
24 sheets and jury sheets?

25 MR. VELARDI: We could take his name off; yes.

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1 THE COURT: Okay.

2 MR. VELARDI: Yes.

3 THE COURT: So, we'll do that later. All right.

4 So the only remaining plaintiff is

5 Josefina Olivera?

6 MR. VELARDI: That's correct.

7 THE COURT: And, the Defendant's I have is:

8 Transit Authority, New York City Transit, Manhattan and

9 Bronx Surface Transit. Any of these folks been removed

10 from the case?

11 MR. IERVASI: No, your Honor.

12 THE COURT: And, you represent all of them?

13 MR. IERVASI: I represent all of them, yes.

14 THE COURT: Okay. Good. We're ready to go.

15 We could bring the jury out.

16 MR. VELARDI: Your Honor, before we do that.

17 MR. IERVASI: Do we want to put anything on the
18 record from yesterday?

19 THE COURT: Oh, yes. Sure. Correct.

20 MR. VELARDI: Your Honor, I would like that to be
21 put on the record.

22 THE COURT: Okay. Let's do that.

23 So, yesterday evening there were motions in
24 limine presented to the Court, off record, which we'll
25 clarify on the record now.

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1 The first is: Plaintiff's counsel had indicated
2 that he's calling a physician -- who's a treating
3 surgeon -- as a fact witness to the surgeries. But, will
4 not be eliciting any expert opinion regarding causations
5 from the treating physician; correct?

6 MR. VELARDI: That's correct, your Honor.

7 THE COURT: And, the treating physician is whom?

8 MR. VELARDI: Dr. Howard Baum, B-A-U-M.

9 THE COURT: And, he's an orthopedic surgeon, I
10 think?

11 MR. VELARDI: That's correct. He's an orthopedic
12 surgeon.

13 THE COURT: But, you would be calling a separate
14 orthopedic surgeon to offer opinions that is not a fact
15 witness.

16 MR. VELARDI: He's also a fact witness, this
17 second orthopedic surgeon.

18 THE COURT: Did he also do surgeries?

19 MR. VELARDI: He didn't do surgeries. But, he
20 did treat my client.

21 THE COURT: Oh, okay.

22 So, meaning he's a surgeon. But, he did some
23 treatment. So, he's also a treating physician?

24 MR. VELARDI: That's correct.

25 THE COURT: Okay.

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1 And, I believe it was the defendant who
2 indicated: 1. That that's cumulative. And, that he
3 objected to the fact that it was cumulative. I think, that
4 was the extent of the objection.

5 MR. IERVASI: Yes.

6 And, I also believed that Dr. Kaplan -- who did
7 not perform the surgery -- should not be discussing the
8 surgery during his testimony; since, the surgeon who
9 actually performed the surgery is going to be testifying in
10 this matter.

11 THE COURT: Right.

12 So, another rubric of the motion in limine was
13 that you didn't exchange 3101D exchanges under the CPLR.

14 But, 3101D exchanges are not necessary for
15 treating physicians. Only for expert non-treating
16 physicians. So, that objection doesn't hold to bar with
17 witnesses from testifying. That takes care of that.

18 The second thing is: You apprized the Court
19 that, I believe, your law firm -- and perhaps some of the
20 doctors you're calling -- are the subject of a civil
21 lawsuit?

22 MR. VELARDI: That's correct, your Honor.

23 THE COURT: And, that civil lawsuit is being
24 brought by insurance companies. And is, actually, a
25 lawsuit that's pending now.

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1 MR. VELARDI: That's correct, your Honor.

2 The lawsuit was filed in Federal Court Eastern
3 District of New York on March 1st of 2024.

4 THE COURT: Got it.

5 And, you wanted that lawsuit not to be a part of
6 this case; correct?

7 MR. VELARDI: That's correct.

8 And, any questions regarding -- of any of the
9 expert witnesses that the plaintiff will be producing with
10 regard to any of the allegations set forth in the federal
11 lawsuit is what I'm asking to be precluded.

12 THE COURT: Right.

13 And, counsel you indicated that you had some
14 authority which allowed this to be permissible inquiry
15 under potentially bad acts?

16 MR. IERVASI: Correct, your Honor.

17 THE COURT: On the issues of credibility?

18 MR. IERVASI: Correct. Only for impeachment
19 purposes of the experts.

20 According to the Court of Appeals decision in
21 2016. The case is The People vs. Smith, 27 N.Y.3d 652.

22 THE COURT: Right.

23 MR. IERVASI: Basically: "Subject to the trial
24 court's discretion, defense should be permitted to ask
25 questions based on the specific allegations of the lawsuit

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1 if the allegations are relevant to the credibility of the
2 officer as a witness."

3 THE COURT: Understood.

4 And, I am barring any inquiry regarding the
5 lawsuit, in its totality in this case, for either direct
6 evidence or for impeachment purposes.

7 And, your exception is noted.

8 MR. IERVASI: Thank you, your Honor.

9 MR. VELARDI: Thank you, your Honor.

10 THE COURT: Anything else?

11 MR. VELARDI: That's it, your Honor.

12 THE COURT: Okay. Good. Ready for the jury?

13 MR. VELARDI: Sure.

14 MR. IERVASI: Yes.

15 And, maybe just for clarification. And, this
16 could go off-the-record. I just want to make sure that I
17 understand. I want to make sure I don't do anything.

18 I can't ask a general question if there's been
19 any complaints filed against any of the witnesses? Not
20 asking about a lawsuit filed.

21 Just a general question: Has there been any
22 allegations of fraud?

23 THE COURT: I'm sorry. You have to be more
24 specific. I'm not understanding what you're asking me.

25 MR. IERVASI: Say there's an expert witness on

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1 the stand.

2 THE COURT: You want to ask him if there's a
3 complaint against him?

4 MR. IERVASI: A complaint of fraud. Fraudulent
5 diagnosis.

6 THE COURT: Fraud? A fraudulent diagnosis.

7 MR. IERVASI: Correct.

8 THE COURT: That would be the equivalent of
9 somebody asking you in the past if you ever had a bad
10 review on Yelp. I find that to have absolutely no
11 relevance to the case.

12 MR. IERVASI: Okay.

13 THE COURT: Thank you.

14 I'm glad you asked. A question like that would
15 be in violation of the Court order, subject to immediate
16 sanctions.

17 MR. IERVASI: Okay.

18 THE COURT: So, stay away from that area in its
19 totality.

20 MR. IERVASI: I got it.

21 THE COURT: Don't even try to get close to it.

22 MR. IERVASI: Okay.

23 THE COURT: Yes. Anything else?.

24 MR. VELARDI: That's it, your Honor. You covered
25 it. Thank you.

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1 THE COURT: Okay. Good.

2 So, counsel should be aware that from this point
3 forward any discussions or potential negotiations is going
4 through the Court. Not to each other.

5 And, secondly: I made a recommendation to
6 defense counsel; which, I suppose will run up the chain of
7 whoever else is in charge and will get back to me.

8 And, I expect if there's something to be
9 reported, you'll let me know. And, I'll speak to each of
10 you separately about it; okay.

11 MR. IERVASI: Yes, your Honor.

12 THE COURT: Okay?

13 MR. VELARDI: Yes, your Honor.

14 THE COURT: Okay.

15 Let's get the jury out.

16 (Awaiting the jury.)

17 THE COURT: Will your client be speaking through
18 the services of the Spanish interpreter?

19 MR. VELARDI: Yes, that's correct, your Honor.

20 THE COURT: And, she will be your first witness?

21 MR. VELARDI: She will not be my first witness.

22 THE COURT: Who is your first witness?

23 MR. VELARDI: My first witness is

24 Dr. Jeffrey Kaplan, the orthopedic surgeon expert.

25 THE COURT: Will he be speaking through the

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1 interpreter?

2 MR. VELARDI: He will not. No.

3 THE COURT: So, when do you anticipate having
4 your client testify?

5 MR. VELARDI: So, because of the change in
6 schedule on Wednesday.

7 THE COURT: Right.

8 MR. VELARDI: I was going to have my client
9 testify on Friday. Actually, her husband first and her in
10 the afternoon.

11 THE COURT: Do they both need interpreters?

12 MR. VELARDI: They both need Spanish
13 interpreters.

14 THE COURT: So, I just need to know when we need
15 to summon an interpreter. So, the earliest would be on
16 Friday then?

17 MR. VELARDI: The earliest would be on Friday.
18 However, I'm trying to get the doctors who were scheduled
19 for tomorrow to testify on Friday.

20 THE COURT: Okay.

21 MR. VELARDI: And, I just don't know the answer
22 to that question yet. I should know by the end of the day.

23 THE COURT: The thing about Spanish interpreters
24 is: We kind of have them on staff. So, that's not as
25 difficult to obtain as it would be a more esoteric

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1 language.

2 MR. VELARDI: Right.

3 THE COURT: So, I don't think it's an issue.

4 And, as long as we know by -- you should try to alert the
5 Clerk of the Court the day before; so, that we can be sure
6 to have an interpreter ready when we need it.

7 MR. VELARDI: I will, your Honor.

8 THE COURT: Okay. Great.

9 MR. VELARDI: Thank you.

10 (Awaiting the jury.)

11 THE COURT: I'm ready for the jury. Thank you.

12 COURT OFFICER: All rise. Jury entering.

13 (Jury enters at 10:43 AM.)

14 THE COURT: Good morning, jurors.

15 THE JURY: Good morning.

16 THE COURT: You could all be seated.

17 THE JURY: Thank you.

18 THE COURT: Thank you. We're getting started a
19 little late. I'm sorry about that. I need to watch my
20 time better. I'm not good at -- I'm getting better. So,
21 just bear with me. Thank you. Because your convenience is
22 important to me; all right? Good morning to you all.

23 Did we ever swear the jury in Maureen?

24 THE CLERK: I did not.

25 THE COURT: Okay. So, what we're going to do is:

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1 The Clerk of the court, Ms. Lawton, is going to call out
2 your names to make sure you're seated in the right place.

3 And, after she calls out your names she's going
4 to try to get your oath, a promise from you. That promise
5 is that you are going to hear this case and decide it only
6 on the evidence that you see and hear in this courtroom,
7 and the law that I give you. And, we have to get that
8 commitment before you could actually sit as jurors.

9 All right. You may begin Ms. Lawton.

10 THE COURT: Once you hear your name called,
11 please state in a loud clear voice that you are present:

12 Juror number 1: Jordan Capellino.

13 JUROR: Present.

14 THE CLERK: Juror number 2: Madelena Fontanez.

15 JUROR: Present.

16 THE CLERK: Juror number 3: Bridgette Hannibal.

17 JUROR: Present.

18 THE CLERK: Juror number 4: Vicky Milord.

19 JUROR: Present.

20 THE CLERK: Juror number 5: Lori Andrews.

21 JUROR: Present.

22 THE CLERK: Juror number 6: Deborah Blake.

23 JUROR: Present.

24 THE CLERK: Alternate number 1: Christina
25 Roundtree.

Judge's Charge

1 JUROR: Present.

2 THE CLERK: Alternate number 2: Emily Harris.

3 JUROR: Present.

4 THE CLERK: And, alternate number 3: Brian
5 Thomas.

6 JUROR: Present.

7 THE COURT: You are all here. And, you are all
8 in the right place.

9 THE CLERK: If you will all please rise. Please,
10 raise your right hands.

11 (Jurors comply.)

12 Do you and each of all of you swear that you will
13 well and truly try the issues joined herein, and a true
14 verdict render in accordance with the evidence and charge
15 of the Court?

16 THE JURY: Yes.

17 (JURY SWORN.)

18 THE CLERK: You may be seated. Thank you.

19 THE COURT: Okay. We have sworn jurors now.
20 Now, the work begins. All right.

21 So, we are going to start the trial. You may
22 have heard a little bit about it through the lawyers when
23 they were choosing you. They can't really tell you too
24 much. They kind of leave that up to the Court to give you
25 and idea of what's going on.

Judge's Charge

1 So, I'm going to provide for you what's going on,
2 and some instructions to help you understand what you're
3 going to be seeing.

4 So, first, let me tell you who's suing who?
5 Okay. The one who sues -- brings the case is called the
6 plaintiff. And, in this case the plaintiff is
7 Josefina Olivera. Josefina Olivera has brought the lawsuit
8 against these defendants. I'm going to read these
9 Defendant's names to you. It's New York City Transit
10 Authority. The Manhattan and Bronx Service Transit
11 Operating Authority. They sometimes call them MaBSTOH.
12 The MTA, New York City Transit MTA, MTA Bus. And, the
13 Metropolitan Transportation Bus. And, also an individual
14 named Jashua Ami.

15 Now, the plaintiff, Ms. Olivera is being
16 represented by Mr. Velardi. Mr. Velardi, could you just
17 stand so they know who you are?

18 (Attorney complies.)

19 THE COURT: He's the attorney for the plaintiff.
20 And, the defendants are represented by
21 Mr. Iervasi.

22 (Attorney stands.)

23 THE COURT: Good morning, counsels.

24 So, we know that the plaintiffs are the ones who
25 brings the lawsuit. The defendants are the ones that are

Judge's Charge

1 being accused.

2 Now, in this trial you will be deciding the issue
3 of damages. There's already been a determination made,
4 even before you came here, that the defendants are solely
5 responsible for the occurrence that brings us here today.
6 So, the issue for the jury will be: What amount of damages
7 can fairly and justly compensate the plaintiffs for any and
8 all injuries caused by the defendants, for the occurrence,
9 that the defendants are responsible for. That's the issue
10 that we're dealing with. So, this is not about, how did
11 this happen case. This is about: What is the injury?
12 What caused that injury? And, what amount is fair and
13 reasonable. That's what you'll be deciding; okay?

14 So, when I complete my instructions to you the
15 lawyers will get a chance to talk to you. When they talk
16 to you they call that opening statements. And, the purpose
17 of the opening statement is so that the party can try to
18 give you an idea of what they expect to show you. Almost
19 like an outline.

20 The purpose is to tell you what their contentions
21 are. What they intend to show you. You'll hear things
22 like, I'm going to call this person to do this. And I'm
23 going to do that. So, that's the kind of stuff you'll hear
24 in opening statements.

25 Now, what the attorneys say in opening statements

Judge's Charge

1 is not evidence. I'm going to tell you what evidence is in
2 a second. But, what you should know now is that the one
3 who gets to talk to you first is the plaintiff. So, the
4 plaintiff does the opening first. And then that's followed
5 by the defendant; who, could also do the opening. And,
6 when the defendant does the opening, and so they both
7 finish, then you'll start hearing evidence presented by the
8 plaintiff.

9 Now, what is evidence? Evidence -- oh, and by
10 the way, nothing the lawyer says in opening statement is
11 evidence.

12 Evidence comes from only one of three possible
13 sources. It's only three possible sources. And, in no
14 particular order let's take source number 1: A live person
15 comes into the witness stand. They swear, or affirm they
16 are going to tell the truth. So, they're sworn. They're
17 asked a question. And, they answer it. Once they answer a
18 question, and they're under oath, you now have an answer
19 that is evidence. And, we call that testimonial evidence.
20 And because it's evidence, those answers are things you
21 could base your decision on.

22 A second sources of evidence is what we call
23 documentary evidence. And, documentary evidence is things
24 such as a map, photographs, hospital records. These are
25 things that are documentary evidence. It's things you

Judge's Charge

1 could, actually, touch.

2 Now, because we're a court -- oh, there's a third
3 source of evidence. The third source of evidence we call
4 them "Examinations Before Trial". They're also called
5 "EBTs", you know Examination Before Trial. And, they are
6 also called "Depositions". They're all, really, the same
7 thing. And, I want to explain that to you.

8 Under our system of justice, the parties are
9 permitted to examine each other before the trial begins.
10 So, the examination will occur with a lawyer doing the
11 examination. The party being examined has their own
12 lawyer. And, it's usually done in a lawyer's office.

13 So, let's say the defendant is examining the
14 plaintiff. The plaintiff will have their lawyer there.
15 The defendant will have their lawyer asking questions.
16 And, there's someone like our court reporter who is there
17 also. And, the court reporter is also, usually, a notary
18 public. So, they're permitted to take the oath of the
19 party. Now, the party is going to be asked a bunch of
20 questions. They'll answer those questions. And, there's a
21 back and forth going on until the one doing the examination
22 says: Okay. I'm done. No more further questions.

23 At that point, the entire question and answer
24 session is reduced to a typed transcript by the reporter,
25 the one who swore the witness in. And, that typed

Judge's Charge

1 transcript we call it an "Examination Before Trial" or
2 "EBT" or "Deposition".

3 Now, that's how it's created. And, here's how it
4 sometimes comes into play. By the way, I'm not certain
5 that it will happen here, but it could potentially. So,
6 what happens is: The lawyer gets up and says, I'm going to
7 read from the transcripts of the other side.

8 Question:

9 Answer:

10 Question:

11 And, they go right through, 'Q' and 'A'.

12 Now, if that occurs, and that happens in front of
13 you, you could treat it as if that witness was being
14 examined -- when those questions and answers are being read
15 to you -- as if they are testifying live in front of you.
16 And, you could treat it the same as live testimony. You
17 could give it greater weight, or lesser weight than a live
18 witness. But the important thing is that, that is evidence
19 that which you're permitted to consider. So, those are
20 your three sources:

21 Live witness. Sworn. Answer and question.

22 Documents admitted into evidence.

23 And, Examinations Before Trial read to you.

24 Now, I wanted to talk to you about the fact that
25 we're a court of record. Since we're a court of record

Judge's Charge

1 everything I say is being written down. Everything that
2 the lawyers say is written down. Every question. Every
3 answer. It's all written down.

4 So, what I do to keep order is if: Let's say the
5 plaintiff has a witness on the stand and wants to ask him
6 to look at something. The first thing they show that
7 witness, I'll mark it in some way. I usually mark it in the
8 order that's presented. So, if it's the first thing I'll
9 call it plaintiff's 1 for identification. Notice I said
10 "identification". Not in evidence; right? So, that might
11 happen with a bunch of exhibits. And, I'll use numbers for
12 the plaintiff. And, I'll use letters for the defendant.
13 And, as we all know there's only 26 letters in the
14 alphabet. So, if they introduce 27 items, the 27th I'll
15 call it double 'A', and so on. So, I mark it.

16 Now, let's say they say: Well, your Honor, I now
17 want to introduce Exhibits 1, 2, 3. If I agree, I'll say
18 Plaintiff's 1, 2, 3 for Identification are now Plaintiff's
19 1, 2, 3 in Evidence.

20 Once it's in evidence, it can be shown to you.
21 It can be read out loud to you. When you're deliberating,
22 it could be sent into you; so, you could see it. But,
23 something that's marked, you don't get to see. You can't
24 read from it. However, you can hear the answers of the
25 witness under oath who's testifying about it. But, you

Judge's Charge

1 just can't see the thing because it's not admitted; okay?
2 So, those are your three sources of evidence.

3 Now, let's get back to the sequence. Plaintiff
4 opens. Defendant opens. Then plaintiff starts introducing
5 evidence. Now, normally, a party must produce all their
6 witnesses and complete their entire case before the
7 opposing party, you know, gets a chance to present
8 anything. So, in this case plaintiff -- since they go
9 first -- they normally would present all of their evidence
10 and say; okay. We're done.

11 And, then the defense -- if they want to
12 introduce evidence -- can do so. And, let's say the
13 defense introduces witnesses or documents. Then, I will
14 actually let the plaintiff introduce additional evidence
15 for the purpose of rebutting the evidence introduced by the
16 defense. So, that's the sequence of how it goes.

17 And, there's some things you should know about
18 through the process. At times during the trial an attorney
19 might object to a question. Or, to the attempt to
20 introduce something, I object to Exhibit 1 for ID going
21 into evidence. So, you have might hear that during the
22 trial.

23 And, sometimes lawyers may want to make legal
24 arguments. Some of these arguments might be done outside
25 of your presence. Some might be done right in front of

Judge's Charge

1 you. What I want you to know is that I'm going to rule on
2 objections. When hear an objection made I'll either say
3 something like "sustained"; meaning: Yeah, I agree with
4 you. Or, "overruled". No. That could be admitted or that
5 question could be asked. That's what overruled means.

6 And, what I'm doing when I'm making these rulings
7 is I'm applying something called The Rules of Evidence.
8 And The Rules of Evidence come from certain sources. Some
9 of them come from statute, a certain statute of New York
10 State. Some come from decisions that have been written
11 over the years that's called Case Law. Some of them you
12 could either trace the derivation going back to English
13 Common-Law. Hundreds of years ago. I'm not trying to bore
14 you.

15 But, the point really being is this: When the
16 objections are made, I'm going to rule. And, I'm going to
17 call it like I see it, as they come, case by case. So, for
18 example, let's say the plaintiff made three objections.
19 And I said: Sustained. Sustained. Sustained. Meaning
20 he's right on all three. I don't want you to infer from
21 that that I favor the plaintiff. There's not tally sheet.
22 I'm applying the law, as it applies, each time it comes up.
23 And, how the chips fall is just, you know, coincidence. I
24 favor no side in this case. So, don't defer from my ruling
25 that I favor one side or the other. That's that, for now.

Judge's Charge

1 Also, you're supposed to decide this case on
2 things properly admitted in front of you. So, there's two
3 points I want to make. If a lawyer asks a question. It's
4 objected to and I sustain it. That question has no
5 evidentiary value. It's like, who cares you asked a
6 question. There's no answer. So, ignore questions that
7 have no answer; all right?

8 Second, I'm going to tell every witness that
9 comes on the stand the following instruction: The lawyer
10 who's questioning you will be standing. If you see the one
11 sitting down get up, it's because he's going to object.
12 So, when that happens stop and look to me. And, I'll let
13 you know whether you should answer that question.

14 Do they follow every time? Most of the time.
15 But, sometimes they don't. So, what might happen -- and so
16 I'm giving you a heads up -- if I sustain an objection, but
17 the person blurts out an answer; I'm going to strike the
18 answer. Striking the answer means, I don't care that it
19 was said. Ignore it as if you never heard it. Because,
20 you can only base your decisions on things that are
21 properly before you. So, a question with no answer has no
22 value. And, an answer that I struck has no value. So,
23 that's what I want to tell you about that.

24 Now, after all the evidence is in -- and, you'll
25 know that point came because the plaintiff will say, I

Judge's Charge

1 rest. The defendant will say, I rest. They both rested.
2 At that point, they get another chance to talk to you.
3 That second opportunity we call closing arguments, or
4 summations.

5 Now, in summations the lawyers will get to point
6 out to you what they think the evidence has proven or what
7 its shown. What inferences they want you to draw from the
8 evidence. What conclusions they think you should reach
9 regarding your verdict.

10 What the attorneys say to you in summations is
11 not evidence. What the attorneys tell you in openings is
12 not evidence. We already discussed what are the three
13 sources of evidence; right? So, here's what I want you to
14 keep in mind. If when the attorney is giving his
15 summation, he makes references to the evidence that are
16 different from what you saw and what you heard; be guided
17 by what you saw, and what you heard. Because nothing an
18 attorney says is evidence; okay? So, that's the point I
19 want to make about that.

20 And, under our system -- remember I told you the
21 plaintiff opens first? Well, under our system also when
22 all of the evidence is in, the defendant sums up first.
23 And, then the plaintiff sums up last. So, the plaintiff is
24 first in openings and last in summations.

25 So, after the summations I'm going to then

Judge's Charge

1 instruct you on the law applicable to the case. Now, just
2 like you, I don't know anything about this case. It's
3 going to unfold before us at the same time. So, I have to
4 give you the law in this case. But, I don't know what law
5 I'm going to give you yet. Because, I don't know what the
6 evidence is yet. But, there is a point that I will be
7 giving you the instructions in the law that applies to this
8 case. And, then you'll have to decide what your verdict
9 is.

10 I'll instruct you on what that law is. And,
11 according to the oath that you took, you promised that
12 you'll follow it whether you agree with it or not. Whether
13 you like it or not. That's your commitment. And, we hope
14 that you'll do exactly that.

15 So, what is it that do you as a juror? As a
16 juror your job really is to pay attention to what you're
17 seeing and what you're hearing. Because, at some point,
18 you will be called upon to decide what witnesses you
19 believe. What part of their testimony you want to accept.
20 What weight do you want to give to that testimony. So, how
21 do you do that? How do you have figure that out? Is there
22 some rule? Some formula by which you do that?

23 Well, the short answer is: There is no formula.
24 There is no rule. What we want you to do as jurors is just
25 use your common sense and your good judgment. And the same

Judge's Charge

1 kind of thing that you do in your everyday affairs to
2 decide whether somebody is telling you the truth or not; we
3 want you to use that same common sense as jurors.

4 There's two examples that I like to fall on
5 because they're so easy to understand. Anybody here ever
6 get lost and have to ask for directions? Anybody get those
7 directions and says: Ahhh, let's ask somebody else? As
8 soon as you said, "let's ask somebody else", you decided
9 you don't believe these directions are correct. Well, it's
10 something that was going on in your head, the common sense
11 of it, that made you ask somebody because you don't want to
12 get more lost. And, normally, it's something like the
13 delivery. The way they described it. They seemed
14 uncertain. Their saying this street, but their pointing to
15 that one. You know that common sense analysis is what we
16 use as jurors. And, not one of you has any super ability
17 to do that. I don't care what your backgrounds are. If
18 there's lawyers here. If there's engineers. If there's
19 accountants, or doctors. Your brought here for your common
20 sense only. There's no super juror. Use the common sense
21 you use in your everyday life.

22 The other thing I want to tell you is this: Did
23 you ever have a situation where you have to put down a good
24 chunk of money? Like, let's say, to buy a car? To rent a
25 room? Or, you know, even now to buy a mattress is actually

Judge's Charge

1 a couple of grand. Well, before that money goes down;
2 right? You're making a decision. Does this person have
3 the authority to give me what I'm asking for? And, you
4 don't part with that money until you size that up; right?
5 Because otherwise your money is gone and you don't get what
6 you want.

7 Well, this case is like that. Before you put
8 your money down to decide, use your common sense to say,
9 what is it that I believe here? Why do I believe it? Why
10 does this make sense to me? So, use the same common sense.
11 And, treat it as importantly as you would do anything else
12 that's important in your life. Because it is important and
13 we need you.

14 All right. Now, I'll tell you more about this
15 later. You know, some tips for assessing credibility.
16 But, for now be confident that you're fully equipped to do
17 this.

18 Now, what was I going to tell you? We've been
19 learning a lot lately. I don't know if you've heard this
20 before. Anybody heard about implicit bias? Implicit bias?
21 Sometimes, you may unconsciously feel a certain way that if
22 you thought about it, it's not really fair. So, what I
23 want you to do is: Here, do your very best to be fair.
24 And, if you find that you have a bias, do what you can to
25 reverse it. Don't let your biases decide the case. Let

Judge's Charge

1 your common sense decide the case. So, I want you to keep
2 that in mind. Because, most of us are trying to be good
3 and do our best. So, as long as you try to stick to that.
4 If you sense that you're being bias in someway, do what you
5 can to reverse it. Yeah, we want to give these folks a
6 just result. What it really kind of means is, like, try to
7 stay away from stereotypes and generalizations.

8 Now, when you're assessing a witness' credibility
9 think of this: A witness' testimony may not conform to the
10 truth of how things actually happened for a bunch of
11 reasons.

12 One reason: Their actually lying on purpose.

13 The second: Well, their not lying. They just
14 didn't accurately see or hear what their testifying
15 about.

16 Or, it's not even that. It's just that their
17 recollection is faulty.

18 Or, maybe it's not even that. Maybe they just
19 don't impress themselves well. They can't deliver what
20 they're trying to say.

21 So, how do you sort through all of that? How do
22 you figure out which one it is? Like I said, that's where
23 your common sense, and good judgment, and life experiences
24 is when you apply it. The kind of things you could
25 consider is, for example, is whether the witness has a bias

Judge's Charge

1 in some way in the case. Whether they have an interest in
2 the outcome of the case. Whether you sense a prejudice in
3 the witness. Even something like the age of the witness.
4 Some folks think a certain way from different generations.

5 The appearance of the witness. Their demeanor on
6 the stand. You know, when you're looking at them. You're
7 kind of sizing them up; right? So, those things.

8 And also the opportunity the witness had to see
9 and hear the things about which they're testifying about.
10 These are all the kind of things that you could look into.
11 And, what's the probability that what they are saying is
12 correct in light of all the other evidence in the case?
13 Those are the assessments you're making. So, I'll explain
14 that to you more when you get the case at the end. And,
15 just remind you that we talked about it.

16 Now, there are rules governing your conduct as
17 jurors. Some of it is pretty easy:

18 1. Until the case is given to you to deliberate,
19 don't discuss the case. Whatever goes on in this room
20 stays in the room. You know how they say, what happens
21 in Vegas stays in Vegas? What happens in here, stays in
22 here; until, you're in the room deliberating.

23 So, what happens if someone says; hey, you know
24 that witness? I thought, yada yada. And, they start
25 talking to you about the case. If you remind them that you

Judge's Charge

1 were instructed not to talk about it, and they stop:

2 You're done. You don't have to do anything else.

3 If they continue to talk about it after you
4 reminded them that they shouldn't, then you have to let me
5 know. And, the way you could let me know is you could tell
6 the officer first. And, then I'll hash it out with you
7 later. Or, you could just raise your hand and let me know,
8 and I'll discuss it with you. But, make sure you let me
9 know. Okay. So, that's the first thing: Don't talk about
10 the case.

11 The other is -- this sounds a little vague, but
12 I'll clarify it. I want to you keep an open mind
13 throughout the trial. What does that mean exactly? Okay.
14 You got a witness on the stand. You're listening to them
15 and you go; huh. And, you get an emotional reaction to it.
16 Well, that's perfectly okay. These trials are not decided
17 by computers. They're by people. Feel what you need to
18 feel. Be you. But, don't close your mind.

19 So, you know you're closing your mind if you say,
20 I believe everything that they're saying. Or, I don't
21 believe a word she's saying or he's saying. Because then
22 you're already prejudging. So, what I want you to do is
23 keep an open slate and listen. Listen. Listen. And, then
24 don't make decisions about what you believe until you've
25 had a chance to deliberate and discuss it with your fellow

Judge's Charge

1 jurors. Keep the mind open. Do you understand what I'm
2 getting at.

3 JUROR: Yes.

4 THE COURT: The other thing I want to tell you is
5 this: Not every judge is the same. This is the way I do
6 it. I love my jurors. I want to take care of my jurors.
7 Jurors, you could keep your phones. Just keep them on
8 silent mode. And, if you need to have someone be able to
9 reach you, for like child care what have you, we'll work
10 out a signal with the officer if you need to take a call.
11 And, we'll take a break so you could take that call. They
12 don't have that privilege. You do. Okay?

13 So, what I ask is make sure it's silent so it
14 doesn't disrupt the proceedings. Okay? Are we good with
15 that?

16 THE JURY: Yes.

17 THE COURT: Okay.

18 Secondly, as I get older I'm learning all these
19 things that phones do besides you being able to talk into
20 them. You could go anywhere in the world. You could look
21 at the stars. You could find any block. You could look up
22 everybody's history. You could know their mornings. It's
23 just crazy what you could do on the phone without leaving
24 the room; right? So, I have to give these instructions,
25 even though I don't know how to do all of these things.

Judge's Charge

1 The instruction is simple: If you're really good at
2 researching things, you're going to feel a little
3 frustrated because I'm asking you not to research anything
4 about this case. Don't look me up. Don't look them up.
5 Don't look up the witness. Zero. Do not research this
6 case. Let the case come to you.

7 Another thing, let's say a lawyer gets fancy and
8 starts using all of these big words like, subsequent to the
9 occasion. And, you know, they start -- they're trying to
10 sound like those big SAT words. If I don't understand a
11 word, I'll ask what the word means. So, I'll be looking
12 out. But, if they ask something you don't understand,
13 shame on them. Because, you can't look it up; right?
14 Okay? Take it as you see it. And, I'll be here trying to
15 make sure that they don't get too fancy on us. Okay. So,
16 we're not using our phones for any research; right?

17 JUROR: Right.

18 THE COURT: Good. But, you could keep them ons
19 silent; right? And, you'll work out, I guess, a message
20 with the -- like a signal with the officer if you need to
21 handle something.

22 Also, I take usually a break about an hour or so
23 for, you know, for nature. But, if you need a break
24 sooner, once again, just signal to the officer and we'll
25 take it.

Judge's Charge

1 There's something else I wanted to tell you. I
2 think I've covered mostly everything. Oh, yes. Each day
3 I'm going to tell you to keep an open mind and don't
4 discuss the case. It's not because I'm being repetitive.
5 I'm required to do that every time there's a recess. And,
6 what I'll do each day also is: I'll let you know what time
7 we're recessing for the day. And, you could literally plan
8 that we are not working past 5:00 o'clock, in case you have
9 to handle an issue, like, a car in a parking lot or a
10 pickup. We're not working past 5:00.

11 There's only one way possible that we work past
12 5:00. Only one way. I will literally ask you: Does
13 anyone have a problem if we work until 5:15? Show of
14 hands.

15 If even one of you have a problem, it's not
16 happening. So, count on that; okay? And, the best we
17 could do is -- even though you may have to wait a little
18 bit -- when I give you the time to come, do your best to
19 come; so, we could get the case to you as quickly as
20 possible.

21 Good. I think that covers everything. Let me
22 check my notes.

23 Oh, I should talk to you about taking notes.
24 Sometimes jurors like to take notes. You could if you want
25 to. If you're on the fence, here's what you should

Plaintiff's Opening

1 consider: You can't take your notes with you to the jury
2 room when you're deliberating. You can't share your notes
3 with any other juror. And, you should not be using your
4 notes to refresh your memory. So, if you're debating
5 whether or not to do it -- for me, I want you comfortable.
6 So, if you feel like it, go ahead.

7 But, I want to throw something your way if you're
8 on the face. Remember I said one of the ways to assess
9 credibility is just look at the witness? Sizing them up?
10 Sometimes if you're taking notes it might split your
11 attention. But, that's your call to make. And, I'm okay
12 with whatever you decide; okay?

13 All right. I think that covers everything I
14 wanted to tell.

15 Counsels, are you ready to open?

16 MR. VELARDI: Ready your Honor.

17 MR. IERVASI: Yes, your Honor.

18 THE COURT: So, please, give your attention to
19 plaintiff's counsel. He's going to give you his opening
20 statement. That's Mr. Velardi.

21 MR. VELARDI: Thank you, your Honor.

22 THE COURT: You're welcome.

23 MR. VELARDI: Thank you Mr. Reporter,
24 Mr. Iervasi, ladies and gentlemen of the jury:

25 I first want to thank you very, very much. Many

Plaintiff's Opening

1 of you I met as much as two weeks ago and, I know you had
2 to be patient. And, I want to thank you very much for your
3 patience.

4 I also want to thank you not only for myself, but
5 on behalf of my client, Ms. Olivera, for you allowing the
6 duty of serving on a jury to interrupt your lives. I've
7 explained it in jury selection how important it is what
8 you're doing today, and over the next few days, few weeks.
9 And, I just want to make sure that you understand that I
10 thank you very much. And, my client is also very
11 appreciative as well.

12 My client, Josefina Olivera is sitting behind me
13 right here. Ms. Olivera -- her husband is not here. He
14 works everyday. He's going to testify in this case and
15 he'll be here, obviously the day that he testifies. But,
16 he's not going to be here everyday. Ms. Olivera will be
17 here everyday.

18 Ms. Olivera, as could you see her sitting here,
19 does not have a neck brace on. She has no braces or casts.
20 She is not using a cane. Now, I want you to understand
21 what the evidence will show is that that does not
22 necessarily mean that she is very seriously injured and has
23 suffered debilitating injuries over the many, many years.
24 So, keep in mind that it's been nine years since the
25 accident. The evidence will show that, at times, she did

Plaintiff's Opening

1 use a cane, or crutches, or has had to wear a neck brace
2 from time to time over the years. But, we are nine years
3 out now. So, this is Ms. Olivera as she looks from the
4 outside.

5 Injuries, as she suffered, are inside her body.
6 Those injuries can be seen -- as will be explained to you
7 by various doctors -- by the use of MRIs, and CAT Scans,
8 and x-rays. So, those injuries are inside of her body.
9 You'll have of the opportunity to hear and to see what
10 those injuries look like. Now, they appear the way they
11 appear on radiology films. And, none of us in this room, I
12 believe, are doctors. There will be doctors coming in to
13 testify, as I just said. They will explain to you what is
14 seen on the films. And, they will testify regarding every
15 aspect of what is on those films; so, that you could
16 understand. And, you could see it and understand it.

17 Ms. Olivera is, originally, from Mexico. She was
18 born and raised in Mexico. The same thing with her
19 husband. They're both from a small town called Morelos.

20 She is currently 49, or at least she's going to
21 be 49 years old soon. I just don't remember her date of
22 birth. She was either 40, or 41 at the time of the
23 accident; okay?

24 Her husband is from the same town. They were
25 married here in the United States. They have three

Plaintiff's Opening

1 children, ages: 21. 30. And, 31; okay?

2 Ms. Olivera was educated in Mexico. Her highest
3 level of education is what is equivalent to the 6th grade
4 here in the United States. She cannot speak English. As a
5 matter of fact, she understands very little English. She
6 probably doesn't understand much of what I'm saying right
7 now; okay? Spanish is her language. And, you will have a
8 Spanish interpreter to translate her Spanish into English.

9 The same thing goes for Mr. Vega, her husband.
10 You will hear from Mr. Vega. I can't tell you what day is
11 yet because that's still being worked out. But, I'm going
12 to try to, you know, make it so that you hear from both of
13 them on the same day. I'll give that a try; okay?

14 They came to the United States in the year 2000.
15 She will explain that she did so to seek a better life and
16 to find work. Speaking of work, in the United States --
17 before the accident occurred -- she cleaned houses. She'll
18 explain to you everything that she did. A variety of
19 things. A bunch of things. I'll leave it for her to
20 explain it to you; okay?

21 After the accident, she was unable to work. And,
22 she's unable to work because of the pain that she
23 experiences on a daily basis. And, she's been unable to
24 work for all of those nine years.

25 Now, even though she's unable to work, we're not

Plaintiff's Opening

1 making a claim for lost wages in this case. I'm not going
2 to be asking for that as a damage; okay? But, she will
3 explain to you why she can't do what she used to do when
4 she used to clean houses. She'll explain to you what she
5 can't do, or what she has limitations doing, as well that
6 doesn't involve work. That involve her daily work. Her
7 ordinary tasks, things that we all take for granted every
8 single day; from waking up in the morning to going to sleep
9 at night; okay?

10 Now, the accident occurred on April 30th of 2015.
11 It occurred, approximately -- they don't really remember,
12 8:40, 8:45, maybe 9:00 o'clock in the morning. It's in
13 that range; okay? That's the best they can do based on
14 their memory from nine years ago.

15 Mr. Vega was driving a 2007 Honda Odyssey mini
16 van. Ms. Olivera was the front seat passenger of the
17 vehicle. There was no one else in the vehicle. They were
18 driving on the Belt Parkway coming from Staten Island.

19 Now, both of them lived in Brooklyn when they
20 first came to the United States. And, they lived in
21 Brooklyn for a while. But, they currently live in Staten
22 Island. Now, the reason why they were coming from Staten
23 Island to Brooklyn, and they crossed the Verrazzano Bridge
24 onto the Belt Parkway is because they were picking up their
25 youngest son from a school where he attended in Brooklyn;

Plaintiff's Opening

1 okay? Now, let me tell you what happened.

2 Not long after the --

3 (Mr. Iervasi stands up.)

4 MR. VELARDI: I'll stop talking.

5 MR. IERVASI: The accident has already been
6 decided. He's going into the facts of how the accident
7 happened are not relevant to this portion of the trial.

8 THE COURT: The objection is overruled.

9 You may continue.

10 MR. VELARDI: Thank you, your Honor.

11 They cross the Verrazzano Bridge. They're on the
12 Belt Parkway and they hit traffic. The traffic is on all
13 three lanes. It's a three lane highway. And, Mr. Vega is
14 in the right lane. And, he stops his vehicle in traffic.
15 He comes to a complete stop.

16 Behind them is coming a city bus, New York City
17 bus, driving also in the right lane. Now, Mr. Vega will
18 testify that he saw the bus in his rear view mirror for
19 some period of time before he came to a stop. He didn't
20 think that the bus was going to strike the back of his
21 vehicle. But, he's at least aware. You know, he's got
22 some awareness of the bus. Ms. Olivera is sitting in her
23 passenger seat looking straight forward, and has no idea
24 that this bus is coming at her vehicle. So, this was a
25 surprise to her. Now, that's important. And, it will be

Plaintiff's Opening

1 explained to you why that has some bearing, some importance
2 in this trial.

3 Both of them were wearing their seatbelts. And,
4 the bus was not driving fast. It struck the rear of
5 Ms. Olivera's and Mr. Vega's vehicle. But, it didn't crush
6 the vehicle; okay? Thank G-d that didn't happen. Because
7 Ms. Olivera wouldn't be sitting here today. She would be
8 somewhere else.

9 But, what did happen is that it struck the rear
10 of the vehicle. It caused minimal damage to the rear of
11 the vehicle. But, that's not miniscule damage. There's a
12 difference between those two words. The reason why I use
13 those words is because the minimal damage is that it wasn't
14 crushed. There was some damage to the vehicle. But, it
15 wasn't miniscule. Because the damage that occurred to the
16 vehicle establishes -- among other things that you'll hear
17 about -- that the vehicle was pushed forward. And, changed
18 in its velocity from zero miles per hour in a stopped
19 position, to some speed forward due to the impact from the
20 bus.

21 Now, keep in mind that you'll hear about the bus
22 being a very large vehicle. Much larger than the mini van
23 that was being operated by Ms. Olivera and Mr. Vega. Much
24 heavier. So, the force of the impact is dependent upon
25 those various factors, mathematical factors. Things that

Plaintiff's Opening

1 you'll hear about from a biomechanic engineer who will
2 testify in this trial.

3 The damage to the vehicle consisted of, like, a
4 pushing in, or a denting of the bottom of a hatchback door.
5 A pushing in of the bumper; which, resulted in somewhat of
6 a detachment between the rear, you know, surface of the
7 door and the bumper from the rear fenders. You know,
8 there's some separation there. One of the headlights --
9 sorry not headlights. One of the rear lights, sort of,
10 popped out of position because the door itself is being
11 pushed in. So, there's that damage.

12 The force of the impact, sort of, caused a -- I
13 guess you could maybe call it -- a chain reaction moving up
14 towards the front of the vehicle. Because Ms. Olivera will
15 testify that when the ambulance paramedics arrived they
16 tried to open up her passenger door. And, they couldn't
17 open it up. It was jammed. Now, that wasn't a problem
18 that they experienced in that vehicle beforehand. So, you
19 know, it was caused by the accident. That's what we
20 allege.

21 The paramedics couldn't open the door. So, they
22 had to go to the sliding door behind the passenger seats,
23 the rear passenger seats and open that up. They pulled the
24 seat down. Put a collar on Ms. Olivera and pulled her out
25 of the car and put her on a stretcher.

Plaintiff's Opening

1 Now, Mr. Vega will testify that there was some
2 damage to the sliding doors on both sides. It was not, you
3 know, the same. They were difficult to open. So, the
4 point I'm trying to make is that when the bus hit the car
5 it caused a reaction from the force that pushed in the rear
6 of the vehicle to some degree. And, caused additional
7 damage that went all the way up to the front of the car.
8 That goes to the level of the force of the impact.

9 Now, Mr. Vega had his foot on the brake the
10 entire time he'll testify. So, when the bus hit the car,
11 the car didn't just start moving and keep moving. It moved
12 forward. But he had his foot on the brake; so, it didn't
13 move forward very far. He'll testify, approximately,
14 2 feet after the impact is, what he believes, the car
15 moved.

16 Both Mr. Vega and Ms. Olivera will describe the
17 impact as very heavy. And, they will tell you what
18 happened to their bodies inside the vehicle when the impact
19 happened. We'll start with -- I mean, Mr. Vega will talk
20 about it. But, Mr. Vega is not the subject of this case.

21 So, let's talk about Ms. Olivera. Ms. Olivera's
22 body went forward. But, she was wearing her seat belt.
23 She will describe how her body went forward quickly. I
24 don't know what words she'll use. But, she'll use some
25 words to describe how her body went forward. Like an

Plaintiff's Opening

1 instinctive manner she put her right hand out to brace
2 herself. And, her right hand hit the glove compartment.
3 Now, that's important. There was a force into the glove
4 compartment which transferred all the way up to her
5 shoulder. And, she has a right shoulder injury as a
6 result.

7 Her body went forward, as well as the right hand,
8 including down at the bottom. And, her feet went into the
9 floor of the vehicle; which, transferred some energy up to
10 the knees. But, her right knee also struck the right door,
11 the inside of the passenger door. So, she's got a right
12 knee injury as a result of that.

13 Now, her head went forward in a whiplash motion.
14 And, because she had the seatbelt on, and because Mr. Vega
15 had her foot on the brake, her body then went right back
16 into the back of the seat and the headrest. So, we have a
17 bending of the waist into the waistband. We have a
18 whiplash motion of the head. We have right hand hitting
19 the dashboard. We have right knee hitting the door, the
20 inside of the door. We have both feet going into the floor
21 of the vehicle. And, the head hitting the headrest. And,
22 her back going into the backseat. That's what happened to
23 her body following the impact.

24 She's 5-feet tall. At the time of the accident
25 she was 153 pounds. Sorry, I have to put my glasses on so

Plaintiff's Opening

1 I could read this a little bit better.

2 Ms. Olivera will tell you that after the impact
3 she couldn't move because she was in pain throughout her
4 body. Mr. Vega exited the vehicle. He was able to do so.
5 He checked the damage to the vehicle. He spoke to the
6 driver of the bus. He waited for the first responders to
7 arrive.

8 The paramedics took Ms. Olivera into the
9 ambulance and they transported her to Lutheran Hospital in
10 Brooklyn; okay? It's now known as NYU Langone. That's
11 only because they changed the name.

12 In the ambulance she road alone. Her husband
13 took the car -- was able to drive the vehicle way from the
14 scene of the accident; okay? So, it wasn't massively
15 damaged, like I said before. One of the paramedics could
16 speak a little bit of English (SIC) according to
17 Ms. Olivera. So, there's a language barrier and that's
18 important. She complained in the ambulance of pain to her
19 head, her neck, her back. And, the ambulance call report
20 says the right side of her body. It doesn't really give
21 specifics to that.

22 Now, keep in mind she speaks Spanish only; okay?
23 Now, the right side of her body: Well, we know she
24 experienced pain. And, she'll explain to you in her right
25 shoulder and right knee at the time of the accident. Her

Plaintiff's Opening

1 biggest complaint, however at the time of the accident was
2 her neck and her lower back, as well; okay? And, I guess
3 her head. She considered that to be very, very significant
4 at the beginning of this accident.

5 In Lutheran Hospital, essentially, the records
6 indicate that she complained of pain to her head, neck, and
7 back. There's no mention of right shoulder or right knee.
8 There's no interested mention of lefter shoulder and lefter
9 knee either. You'll learn from the evidence that there are
10 some injuries to the left knee and left shoulder as well.
11 But, those are minor compared to the injuries on her right
12 side dealing with the shoulder and the knee; okay? They
13 are there, but they don't really bother her that much
14 compared to the other side of the body.

15 Now, there's a notation in one of the pages of
16 the hospital records -- that you'll have the opportunity to
17 see -- that says that she didn't complain about neck and
18 back pain. Where as other pages say that she did complain
19 about neck and back pain. And, it just so happens that the
20 page that says she didn't complain about neck and back pain
21 also indicates that there was a language barrier. That
22 there was no medical language interpreter provided at that
23 time. So, again keep in mind that there's a language
24 barrier here. If there's a contradiction in those medical
25 records I argue that the evidence will prove that this is

Plaintiff's Opening

1 just because there's a language barrier; okay?

2 Now, she had a lot of treatment. And, I'm
3 talking about nine years here. And, she saw a lot of
4 doctors. So, I'm not going to go through all of that now.
5 You'll hear all about that. But, suffice it to say that
6 she has seen: Orthopedic treatment providers, orthopedic
7 surgeons. Pain management specialists. She's had
8 radiology done. MRIs. CAT Scans to her neck, her back,
9 her right shoulder, her left shoulder, her right knee, her
10 left knee, other areas of the body, you know, including the
11 mid-back.

12 She, ultimately -- let me say, ultimately it was
13 determined that her injuries include -- now, this is going
14 to be a lot of medical terms. And, I'm not going to
15 explain what any of those mean because I'm not a doctor.
16 The doctors will explain what they mean. So, don't worry
17 if you don't know what these words mean. But, the
18 diagnosed injuries in this case are: Disc herniation at
19 the C4-5 level impinging the spinal cord. Disc herniation
20 at the C3-4 level impinging the thecal sac and then later
21 abutting the spinal cord. Disc bulge at C5-6. That's all
22 the cervical spine; which, is the neck. Disc bulge in the
23 lumbar L5-S1 level impinging the thecal sac. You'll hear
24 what all of this means. A rotator cuff tear of the right
25 shoulder. A tear of the medial collateral ligament of the

Plaintiff's Opening

1 left knee. A tear of the anterior horn and body of the
2 lateral meniscus in the right knee. A rotator cuff tear
3 also in the left shoulder. And, you'll hear doctors use
4 the term cervical radiculopathy and persistent radiculitis.
5 Weird terms. Lumbar radiculopathy as well. Okay?

6 Now, she treated continuously throughout those
7 nine years all the way up to the present time, more or less
8 in terms of the present time. It's been nine years.

9 During that treatment she's had four surgeries.
10 She had a surgery to her right shoulder. That was
11 performed by Dr. Howard Baum, we'll hear from him. A
12 surgery to her right knee, also performed by
13 Dr. Howard Baum. You'll hear from him, as well. Dr. Baum
14 had to do a second right shoulder surgery to go in there a
15 second time to do some things. He'll explain to you what
16 he did. And then finally Dr. Weinstein, an orthopedic
17 spinal surgeon; who, you will hear from, did a neck surgery
18 which is called a fusion surgery.

19 Now he's going to explain, I'm going to have him
20 go step-by-step through the process of this surgery. But,
21 let me just tell you right now it involves going in there.
22 Putting in metal hardware. And, it's a serious surgery.
23 It's a significant undertaking. And, Ms. Olivera had to
24 have that performed in a hospital. And she had, you know,
25 quite a period of recovery from that surgery.

Plaintiff's Opening

1 Now, I'm also going to have Dr. Matthew Grimm
2 come in and testify. Dr. Matthew Grimm was her pain
3 management specialist sort of for the second half. There
4 was a transfer between one pain management specialist to
5 Dr. Grimm. And, he's going to talk about all his pain
6 management procedures and treatment that he performs. He's
7 also going to talk to you about what type of future medical
8 treatment she is likely to need. And, he is going to talk
9 about the costs of those items of medical treatment are in
10 current dollars.

11 Because we are talking about the future, and you
12 know Dr. Grimm is going to talk about current dollars, I'm
13 going to have an economist come on the stand. And, the
14 economist is going to explain how those costs change over
15 time due to inflation. And that will give you a better
16 picture of the type of medical costs that she's going to be
17 facing in the future due to the need for future treatment.

18 Finally, let's talk about -- just before I finish
19 the very -- not the last witness. Just for scheduling
20 purposes this may not be the last witness that you'll hear
21 from. But, I talk about this witness last. This is a
22 biomechanical engineer. And, the reason for having a
23 biomechanical engineer testify is so that he can explain
24 how the force of the impact caused the movement of her
25 body. And, how the movement of her body caused the

Plaintiff's Opening

1 injuries that she sustained.

2 Because, granted, we are talking about a rear-end
3 collision in this case where the speed of the bus is very
4 low. And, the damage to the vehicle is not that much. I
5 called it minimal before, but not miniscule. Minimal
6 damage to the vehicle. So, we need somebody to explain how
7 it is that she could have suffered these injuries from a --
8 you know, I'll be the first to admit that it's a low impact
9 in terms of what could have happened. But, it's a heavy
10 impact in terms of what Ms. Olivera felt when it happened;
11 okay? And what happened to her as a result of this impact.

12 And, that brings me to what I anticipate the
13 defendants case, or position will be in a nutshell.

14 They will have their own biomechanical engineer
15 to testify, as well. And, they're going to take the
16 position that the damage to the vehicle was so minimal that
17 it was a minor accident. And, it couldn't have caused
18 these injuries. These injuries must have had some other
19 cause.

20 I'm not a fortune teller. I don't know what they
21 are going to say. But, I could anticipate that they're
22 going to claim that the injuries were the result of time
23 and age, Ms. Olivera. Wear and tear on the body.
24 Preexisting. Arthritic conditions that resulted from wear
25 and tear on the body from her job as a -- cleaning houses.

Plaintiff's Opening

1 Things like that I anticipate the arguments will be made.

2 Keep in mind that she was 40 or 41 at the time of
3 the accident. Do you think that's old? I don't think
4 that's old.

5 We have photographs of the damage to the vehicle.
6 But, unfortunately, they're not good. They're not good
7 quality. We don't have professional photographs that were
8 taken by a professional photographer. We don't have a
9 movie that we could show you of the accident. We have some
10 photographs that her husband took at -- not at the time. I
11 think it was the next day after he had the opportunity.
12 You know, once things settled down and she was out of the
13 hospital, using an old phone. Not even a smart phone. A
14 phone he paid, like, about 50 bucks for. They are poor
15 quality. But, they are good enough to see the damage that
16 I described before.

17 Now, the defense has some photographs. And,
18 those are also poor quality photographs. And, those were
19 taken, I believe, by a member of one of the defendants in
20 the case, possibly at the scene of the accident. We'll
21 find out when the evidence is presented.

22 The difference between the two biomechanical
23 engineers comes down to different approaches. Two
24 different ways that they analyzed this case. Our
25 biomechanical engineer uses a calculation of the change in

Plaintiff's Opening

1 velocity due to the impact from the bus; which, is based on
2 a couple of scientific factors: The weight of the bus.
3 The weight of the vehicle. The speed of the bus being, you
4 know, fairly slow. But, the ability of the bus being
5 multiple times heavier than the small mini van to cause a
6 change in velocity; which, he calculates to be between 5
7 and 9 miles per hour. So, from 0 to 5 -- or, between from
8 0 to five and from 0 to 9. Not a crazy change of velocity.
9 But enough to cause Ms. Olivera's body to go forward like
10 that.

11 (Indicating.)

12 MR. VELARDI: Now, he basis his conclusion on
13 what I anticipate the bus driver would say regarding the
14 speed of the vehicle at the time of the impact. And, he
15 basis his conclusion on weights of vehicles, as well as
16 some crash tests, results of crash tests. The types of
17 things that, you know, biomechanical engineers investigate,
18 you know, as part of their being a scientist and, you know,
19 in terms of how they explain. How they come to their
20 conclusions in physics and in mathematics. And, he'll
21 explain all of that to you.

22 The defense biomechanical engineer on the other
23 hand uses the photographs to assume -- I argue without any
24 scientific basis -- that the impact was so light that it
25 couldn't have caused the motion that occurred to

Plaintiff's Opening

1 Ms. Olivera's body. Because there's very little damage.

2 The interesting and the important thing about
3 that though is, like I said, these photographs are very
4 poor quality. They're taken from different angles. The
5 lighting conditions, you know, who knows what they were.
6 We all know that when we take selfies of ourselves we could
7 look good in one photo, and not look so great in another
8 photo. Because it just depends on angle, lighting.
9 There's a lot of things that go into this.

10 What she didn't do is go to the car and see the
11 damage. And, take measurements of the damage. Depth
12 measurements. Movement of the fender in measuring the
13 distance in order to use that kind of data to base her
14 conclusions on.

15 I would argue that: That type of data would be
16 far more reliable, not just looking at photographs that
17 were taken by the defendants in this case.

18 In the end, when I give my closing statement
19 after all the evidence is presented to you, I'm going to be
20 asking you for damages. Damages for: Past pain and
21 suffering. Future pain and suffering. Past medical costs.
22 And for future medical costs.

23 And, I ask you, just as I said in jury selection:
24 Please, keep an open mind. Use your common sense. And,
25 weight until you've heard all of the evidence before you

Defense's Opening

1 make your decisions.

2 Thank you, ladies and gentlemen.

3 THE COURT: Mr. Iervasi, are you ready to open?

4 MR. IERVASI: I am.

5 THE COURT: Please give your attention to

6 Mr. Iervasi.

7 MR. IERVASI: May it please the Court, counsel,

8 members of the jury:

9 I know it's already been a long morning. I know
10 a lot was just said. I'm going to do my best to try not to
11 bore you anymore and keep it moving smoothly; okay?

12 As you already know my name is Rocco Iervasi and
13 I represent Mr. Jashua Ami and The New York City Transit
14 Groups.

15 Now, this is a case where the plaintiff wants you
16 to believe that she sustained injuries to: Her neck. Her
17 back. Her shoulders. And, her knees. And, underwent
18 several surgical procedures, including spine surgery, as a
19 result of a fender bender. The plaintiff wants to seize
20 this opportunity and have you award her a sum of money.
21 That's what this is.

22 Plaintiff's counsel is going to tell you that the
23 plaintiff suffered various injuries as a result of a
24 rear-end car accident that happened on April 30th of 2015;
25 almost nine years ago. Following the accident, the

Defense's Opening

1 plaintiff was taken by ambulance to Lutheran Hospital;
2 where, she was treated and released that same day, within a
3 few hours.

4 However, 11 days later -- after meeting with an
5 attorney -- she went to DHD Medical; where, she began
6 complaining of pain to: Her neck. Her back. Her
7 shoulders. And her knees. All of which she relates to
8 this fender bender.

9 Thereafter, plaintiff began receiving a course of
10 physical therapy and underwent: Two right shoulder
11 surgeries. Right knee surgery. And, cervical spine
12 surgery.

13 Plaintiff's counsel will tell you that now --
14 well, he just did -- almost nine years ago, that plaintiff
15 is and will remain disabled. However, the evidence is
16 going to show you something entirely different.

17 On April 30th of 2015 at approximately 4:00 p.m.,
18 I think it was stated earlier that it may have been earlier
19 in the day. That's not what the evidence shows. The
20 plaintiff was a front seat passenger in a mini van that was
21 being driven by her husband. And, was involved in a
22 rear-end car accident involving a The Transit Authority
23 driven by Mr. Ami.

24 The evidence will show that this was an extremely
25 minor impact. A tap.

Defense's Opening

1 (Indicating.)

2 MR. IERVASI: The evidence will show that the
3 only damage to plaintiff's mini van was a small dent on the
4 back under the trunk. The evidence will show that the
5 plaintiff's vehicle's airbags did not deploy. None of the
6 vehicle's windows or windshield shattered or cracked. The
7 vehicle didn't need to be towed. It was drivable right
8 after the accident, drivable from the scene.

9 After the accident the police and an ambulance
10 was called to the scene. And, the plaintiff complained of
11 pain solely to her neck and her back.

12 The evidence will show that from the scene the
13 plaintiff was taken to Lutheran Hospital, as I mentioned.
14 She arrived at the hospital at, approximately, 4:42 p.m.
15 and complained to hospital staff of pain to only her neck
16 and back.

17 The evidence will demonstrate that at no time
18 while the plaintiff was at the hospital did she ever make
19 any complaint of pain to her shoulders or to her knees.
20 While at the hospital the plaintiff was examined by a
21 physician; who, found that she had full range of motion in
22 her neck, in her arms, in her legs. Everything was fine.
23 She could move everything.

24 The evidence will show that while she was at the
25 hospital she underwent: An x-ray of her back. A CAT Scan

Defense's Opening

1 of her neck. And a CAT Scan of her head. All of which
2 showed no fractures, and no injuries related to this
3 accident.

4 The evidence will show that by 8:18 p.m., only a
5 few hours after she arrived at the hospital, the plaintiff
6 told the emergency room nurse that she no longer had neck
7 pain or back pain.

8 Now, we've obviously heard what their case is.
9 They're going to say that there's a language barrier. This
10 is New York City. Spanish speaking. I mean, where's the
11 language barrier? The hospital provided somebody to assist
12 the plaintiff with translation. Let's be real here.

13 Shortly there after, the plaintiff was released
14 from the hospital that same evening. The evidence will
15 demonstrate that when the plaintiff was released she didn't
16 even receive a prescription for any pain medication.
17 Somebody so seriously injured, and all of these complaints
18 of pain, and the hospital wouldn't give her pain medication
19 if she's complaining of that?

20 The evidence will demonstrate that also while at
21 the hospital she under went a CAT Scan of her chest. And,
22 she was informed that there was an unclear finding; for
23 which, she should followup with her primary care doctor to
24 see what was going on. In other words, they were concerned
25 that maybe something is wrong with heart, or something in

Defense's Opening

1 her chest. And, it was completely unrelated to the
2 accident. But, just followup. Get it checked out.

3 However, the evidence will demonstrate that after
4 leaving the hospital she didn't followup with a primary
5 care doctor for her heart. Instead, she met with an
6 attorney. And, she went to DHD Medical. And, complained
7 of pain from, virtually, her entire time body. All of
8 which she attributed to the accident.

9 The heart wasn't from the accident. It was an
10 unrelated finding. It wasn't going to get her here to this
11 courtroom. The other stuff did.

12 Now, during the course of this trial you're going
13 to hear testimony from the plaintiff and various medical
14 experts. Now, again, I don't want to bore you, you've
15 already heard it. But, the anticipated testimony is going
16 to be, and I'll save you the suspense: That the
17 plaintiff -- all of her injures -- were related to this
18 accident. Were caused by this minor accident.

19 However, during the course of the trial you're
20 also going to hear testimony from Mr. Ami and various
21 medical experts who examined the plaintiff on behalf of my
22 clients.

23 Mr. Ami will tell you that this was an extremely
24 minor accident. And, that he saw the plaintiff exit her
25 vehicle after the accident. And, only when the emergency

Defense's Opening

1 personnel arrived did she get back into her vehicle and
2 start complaining of all this pain.

3 Additionally, the testimony of the various
4 experts who examined the plaintiff on behalf of my clients
5 will explain how this minor accident could not have caused
6 the plethora of injuries that she's claiming.

7 As such, the evidence -- including the medical
8 records that you'll have access -- will show that the
9 plaintiff did not sustain any injuries related to this
10 minor car accident.

11 Now, members of the jury, I also ask that during
12 this trial you rely on your own common sense. If something
13 doesn't seem believable, that's because it's not
14 believable. And, you guys all have that capability to do
15 so.

16 So, you're going to see for yourself that this
17 was a minor accident. And, even though you're going to
18 hear testimony from these so called "experts", I'm
19 confident that your common sense will be the thing that
20 leads you to the truth in this case.

21 Now, at the end of this case it's going to be
22 clear to you that the plaintiff did not, and cannot prove
23 her claims to you. It will be clear to you that the
24 plaintiff did not sustain any injuries in relation to this
25 minor fender bender.

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1 At the end of the case I'm going to come back up
2 here. And, I'm going to ask that you find that none of the
3 plaintiff's injuries were related to this accident. And,
4 that her award for compensation is nothing.

5 Thank you. I appreciate your time.

6 THE COURT: All right. We will take a short
7 break for a moment. Follow the officer and I'll bring you
8 back out in a couple of minutes. It's a nature stretching
9 kind of break; okay?

10 Please, don't talk about the case and keep an
11 open mind.

12 COURT OFFICER: All rise. Jury exiting.

13 (Jury exits at 11:48 AM.)

14 THE COURT: So, am I correct in assuming that we
15 have nothing to do until after lunch?

16 MR. VELARDI: Well, slightly correct.

17 The one thing that we have to do is to go through
18 the pre-marked exhibits and decide on what we would agree
19 on being admitted.

20 THE COURT: Okay.

21 MR. VELARDI: That would be helpful to do that
22 before the lunch break; so, that Dr. Kaplan -- when he
23 comes in the afternoon -- will have evidence.

24 THE COURT: So, how much time do you think you'll
25 need to do that?

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1 MR. IERVASI: What time is it? Half an hour
2 maybe; right?

3 THE COURT: So, why don't you work on that now.
4 I'll let the jury break for, like, 15 minutes or so. And,
5 if you are going to take longer than 15 minutes I'll let
6 them know. I'll bring them out and tell them to go to
7 lunch early.

8 MR. VELARDI: Okay. Sound good.

9 THE COURT: By the way, that clock back there is
10 just wrong. And, it's been confusing me for days.

11 MR. VELARDI: Okay.

12 THE COURT: And, I'll make a suggestion also.
13 You might take a chance and make a call. And let me know
14 what your thoughts are.

15 MR. IERVASI: Sure.

16 THE COURT: Okay? Good.

17 So, do you need The Clerk to give you access to
18 something for the marking?

19 MR. IERVASI: Yes. We gave them to you; right?

20 THE COURT: What is it that you need?

21 THE CLERK: Yes, those have all been pre-marked.

22 MR. VELARDI: We just need to look at the actual
23 documents themselves. And, we have the list of what's
24 pre-marked.

25 THE COURT: Okay.

Proceedings

1 So, you want to look at things that you've
2 already marked already?

3 MR. IERVASI: I think. Yeah, it was marked;
4 right?

5 THE CLERK: Everything was marked for ID.

6 THE COURT: All right. If you could do it in a
7 way that it doesn't come out of order, and we get it all
8 back; I'm okay with you doing that now.

9 MR. VELARDI: Of course.

10 THE COURT: So, we'll bring the pile to your
11 table. And you two you could work together. And, you
12 could speak to each other while you do it.

13 MR. VELARDI: Okay. Thank you, your Honor.

14 MR. IERVASI: Thank you, your Honor.

15 (Recess taken.)

16 THE COURT: Did you workout the evidence?

17 MR. IERVASI: Yes.

18 MR. VELARDI: We did. We came to an agreement on
19 most of everything, as for enough. And, there's a couple
20 of items that we'll save for a later time.

21 THE COURT: Okay.

22 So, should I the jury to go have a nice long
23 lunch?

24 MR. VELARDI: I think they deserve it.

25 THE COURT: What time did you tell the doctor to

Proceedings

1 come in?

2 MR. VELARDI: To be here at 2:00. To be on the
3 stand at 2:00. So, I told him to come at 1:30, during
4 lunch.

5 THE COURT: So, that's what we'll work with.
6 We'll start, precisely, at 2:00 then.

7 MR. VELARDI: Right at 2:00. Okay.

8 THE COURT: So, I'll tell the jury we have a long
9 lunch. And, that sometimes these thing happen.

10 MR. VELARDI: Okay. Good.

11 THE COURT: Let's get the jury then.

12 COURT OFFICER: Yes, Judge.

13 (Awaiting the jury.)

14 THE COURT: Ready for the jury. Thank you.

15 COURT OFFICER: All rise. Jury entering.

16 (Jury enters at 12:11 PM.)

17 THE COURT: Please take your seats, jurors.

18 Thanks.

19 Please be seated counselors.

20 MR. VELARDI: Thank you.

21 THE COURT: So, jurors we are expecting a
22 witness. But, the witness was told to be here at 2:00
23 o'clock. So, we are going to have, like, a big gap. I'll
24 try to fix it so that it doesn't happen often.

25 So, you have a long lunch hour. By the way,

Proceedings

1 that's not the right time. The clock has not been moved
2 forward.

3 So, what I do want you to do though is: Since I
4 want to start precisely at 2:00. Just be back in the jury
5 room, like, try to get back, you know, five minutes before;
6 so, I could bring you back out and start at 2:00 o'clock
7 sharp. Okay?

8 Between now and then don't discuss the case.
9 Keep an open mind. Form no judgments about the case. And,
10 we'll see you at 2:00 o'clock in the courtroom later; okay?
11 Enjoy your lunch.

12 THE JURY: Thank you.

13 COURT OFFICER: All rise. Jury exiting.

14 (Jury exits at 12:12 PM.)

15 THE COURT: I'm going to be in the building. If
16 anyone needs to talk to me, you could just let The Clerk
17 know and she could contact me.

18 MR. IERVASI: Okay.

19 MR. VELARDI: Okay.

20 THE COURT: Let me think.

21 And, let's start promptly at 2:00. So, counsel
22 should try to get here -- be outside so I could bring you
23 in at 2:00 o'clock sharp.

24 MR. IERVASI: No problem, your Honor.

25 MR. VELARDI: Okay. So, now your Honor should we

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1 put the items that we are agreeing to put into evidence on
2 the record now?

3 THE COURT: Well, do you already know what the
4 exhibit numbers are?

5 MR. VELARDI: Yes.

6 MR. IERVASI: Yes.

7 THE COURT: Okay. So, then if you know it, you
8 could just recite, right now on the record, what items you
9 agree to put in evidence. And, you don't have to identify
10 them. You could just use the exhibit numbers.

11 MR. VELARDI: Okay. Great.

12 I could take care of it, if that's okay with you.

13 MR. IERVASI: Yeah. Yeah. That's fine.

14 MR. VELARDI: Okay.

15 So, we've consenting to admit into evidence
16 Plaintiff's Exhibit: 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 15,
17 16, 17, 18, and 19.

18 MR. IERVASI: And, the defense consents to that.

19 THE COURT: All right. Anything else then,
20 counsel?

21 MR. VELARDI: That's it, your Honor.

22 THE COURT: All right. Enjoy your lunch. We'll
23 see you back here and get started at 2:00.

24 MR. VELARDI: Thank you.

25 MR. IERVASI: Thank you.

Proceedings

1 (Lunch recess taken.)

2 * * * * * *A F T E R N O O N S E S S I O N* * * * *

3 THE COURT: Everybody ready for the jury?

4 MR. VELARDI: Yes.

5 MR. IERVASI: Yes.

6 THE COURT: Your doctor is here?

7 MR. VELARDI: He is. He's outside.

8 THE COURT: All right. Let's bring them in.

9 (Awaiting the jury.)

10 THE COURT: We're ready for the jury, yes.

11 Thank you.

12 COURT OFFICER: All rise. Jury entering.

13 (Jury enters at 2:05 PM.)

14 THE COURT: Please, take your seats jurors.

15 Thank you.

16 JUROR: Thank you.

17 THE COURT: All right. All members of the jury
18 panel are present.

19 Do you wish to offer some evidence, at this time?

20 MR. VELARDI: Yes, your Honor. Thank you.

21 The plaintiff calls Dr. Jeffrey Kaplan.

22 THE COURT: Kaplan?

23 MR. VELARDI: Kaplan.

24 THE COURT: Yes, sir.

25 (Witness takes the stand at 2:06 PM.)

Proceedings

1 THE CLERK: Good afternoon.

2 THE WITNESS: Hi.

3 THE CLERK: Please, raise your right hand.

4 (Witness complies.)

5 Do you swear or affirm that the testimony you
6 shall give in this case now on trial will be the truth, the
7 whole truth, and nothing but the truth?

8 THE WITNESS: Yes.

9 THE CLERK: Can you please state your name in a
10 loud, clear voice, and your professional address.

11 THE WITNESS: My name is Jeffrey Kaplan. My
12 office is at 160 East 56th Street in Manhattan, 1-0-0-2-2.

13 THE CLERK: Thank you. You may be seated.

14 DR. JEFFREY KAPLAN, a witness called on behalf of the Plaintiff
15 after having been first duly sworn and having stated his
16 address as 160 East 56th Street, Manhattan, New York 10022,
17 took the witness stand and testified as follows:

18 THE COURT: All right. Good afternoon, sir.

19 THE WITNESS: Good afternoon.

20 COURT OFFICER: Doctor, just move a little
21 closer.

22 THE COURT: Yes, the microphone works.

23 So, you're going to be asking some questions.

24 The lawyer standing is going to ask you questions first.

25 The one who is sitting down will ask you next.

Dr. Kaplan - Plaintiff - Direct

1 MR. IERVASI: Okay.

2 THE COURT: If you see a lawyer sitting down get
3 up, it's because they're going to say, objection.

4 THE WITNESS: Okay.

5 THE COURT: So, when you see that just pause.
6 Because, they might not get the question out. And, I don't
7 want you to answer it. I'll let you know whether you
8 should; okay?

9 THE WITNESS: Okay. Yep. Thank you.

10 THE COURT: All right. You may inquire.

11 MR. VELARDI: Thank you, your Honor.

12 DIRECT EXAMINATION

13 BY MR. VELARDI:

14
15 Q. Doctor, thank you for being here. And, good afternoon
16 to you.

17 A. Hi.

18 Q. Are you licensed to practice medicine in The State of
19 New York?

20 A. Yes.

21 Q. And, when were you licensed?

22 A. In New York in 1994.

23 Q. Okay.

24 And, what type of doctor are you?

25 A. I'm an orthopedic surgery.

Dr. Kaplan - Plaintiff - Direct

1 Q. Could you tell the jury what an orthopedic surgeon is?

2 A. Sure.

3 Orthopedic surgery is the study of bones and joints,
4 and injuries or abnormalities to the bones and joints. And,
5 then treatment of those injuries or abnormalities either with
6 conservative measures -- meaning advise, prescriptions for
7 medication, prescriptions for physical therapy, injections,
8 things like that.

9 Or, if those things don't work or are inappropriate
10 then surgical treatment for the injuries or abnormalities.

11 Q. Great.

12 And, tell the jury a little bit about your educational
13 background, please.

14 A. Education: I went to college at Yale University.

15 When I graduated from college I went to medical school
16 here in The City at Columbia University.

17 When I graduated medical school I did a training
18 program in orthopedic surgery. I did that at a place called The
19 Campbell Clinic; which, is in Memphis, Tennessee.

20 THE COURT: Which is where, sir?

21 THE WITNESS: Memphis, Tennessee.

22 THE COURT: Gotcha.

23 A. Campbell Clinic was actually the first orthopedic
24 training program in the United States.

25 Following that I moved back to New York in 1994;

Dr. Kaplan - Plaintiff - Direct

1 where, I've been in private practice ever since.

2 Q. Are you board certified in any area?

3 A. I am.

4 Q. What area?

5 A. I'm board certified in orthopedic surgery.

6 Q. Okay.

7 When did you first become board certified?

8 A. 1997.

9 Q. Could you tell the jury what were the requirements for
10 you to become board certified?

11 A. Sure.

12 Board certification is just an extra qualification you
13 can get after college, and medical school, and a residency
14 program.

15 And, you take a number of examinations over a number
16 of years. And, it's given by a panel of expert physicians, in
17 my case the American Board of Orthopedic Surgeons. They have
18 the opportunity to test you, both written tests and oral
19 examinations. If they feel you've reached a certain level of
20 expertise and knowledge then they deem you board certified.

21 Q. And, do you hold any appointments in any hospitals or
22 institutions?

23 A. Yeah. I'm on the staff of New York Presbyterian
24 Hospital, Mt. Sinai Hospital systems, and Lenox Hill Hospital.

25 Q. And, do you have any honors or awards?

Dr. Kaplan - Plaintiff - Direct

1 A. Over the years I was given grants to do research,
2 specifically on antibiotics targeted for bone infection.

3 I've done some research on anatomics and
4 reconstruction.

5 I'm the orthopedist for the New York State Athletic
6 Commission, for the Boxing Division.

7 THE COURT: So, you get to see fights?

8 THE WITNESS: I'm in the ring, yeah.

9 THE COURT: Okay.

10 Q. And, you mentioned private practice earlier. How long
11 have you been in private practice?

12 A. Since 1994.

13 Q. Do you have a name for your private practice?

14 A. My office is called NY Ortho Sports Medicine and
15 Trauma.

16 Q. And, currently -- besides yourself -- are there any
17 other doctors that practice at your office?

18 A. My associate is Dr. Matthew Grimm; who, is a pain
19 management specialist.

20 Q. And, just generally -- in terms of you not
21 Dr. Grimm -- what types of conditions do you treat in patients
22 at your office?

23 A. Sure.

24 So, as I said orthopedics s is the study of bones and
25 joints. And I, usually, tell my patients that I can take care

Dr. Kaplan - Plaintiff - Direct

1 of anything from the neck down -- from the head down rather. No
2 skull bones. No facial bones. But, you know, peripheral
3 treatment of the spine, initial treatment. And then any bone
4 and joint besides that: Shoulders, knees, ankles, hips, hands.

5 Q. And, have you ever performed any surgeries on
6 patient's shoulders before?

7 A. I frequently perform shoulder surgery, at least two or
8 three times a week.

9 Q. What about knees?

10 A. Same.

11 Q. Okay.

12 Did you bring anything with you today?

13 A. I have my chart. I've got some anatomic models of the
14 shoulder and the knee.

15 Q. Okay.

16 Did you bring your report with you?

17 A. Yeah, a ha.

18 Q. Okay. Great.

19 MR. VELARDI: Your Honor, with your permission,
20 if he could refer to his report from time to time? I'll
21 make sure he doesn't read from it.

22 THE COURT: Sure.

23 We would like you to testify from memory. But,
24 if you something that could help you remember, you're free
25 to use it.

Dr. Kaplan - Plaintiff - Direct

1 THE WITNESS: Okay.

2 THE COURT: And, just let us know that that's
3 what you're doing.

4 THE WITNESS: Okay.

5 THE COURT: Okay. Please continue.

6 Q. Now, you said you bought your original chart?

7 A. Yes.

8 Q. And, does that contain office notes just for you? Or,
9 does it also contain office notes for Dr. Grimm?

10 A. It contains my office notes. My report. Dr. Grimm's
11 notes. And, I have some outside records on disks.

12 Q. Okay.

13 With respect to your original chart, I'm going to just
14 ask you a few questions specific to the original chart.

15 A. Sure.

16 Q. First of all, is it in the regular course of the
17 business and practice of your medical office to make, keep, and
18 maintain medical records of the treatment provided to the
19 office's patients?

20 A. Yes.

21 Q. The medical records that you brought with you, the
22 original chart, were they kept in the ordinary course of the
23 business and practice of your medical office with I respect to
24 the treatment of Ms. Olivera at the time treatment was provided,
25 or of reasonable time thereafter?

Dr. Kaplan - Plaintiff - Direct

1 A. Yes.

2 Q. Okay.

3 And those records which were authored by you, were
4 they written upon your own personal knowledge or from
5 information given to you by someone with personal knowledge?

6 A. Yes.

7 Q. Okay.

8 And with respect to the portions of the records that
9 were authored by Dr. Grimm, with respect to those records; did
10 he have a business or medical duty to record the information
11 contained therein accurately?

12 A. Yes. A ha.

13 Q. Okay.

14 MR. VELARDI: Your Honor, given the witness'
15 answers I would have that marked as Plaintiff's 20 and
16 moved into evidence?

17 THE COURT: His records?

18 MR. VELARDI: His records.

19 THE COURT: Any objection?

20 MR. IERVASI: No objection, your Honor.

21 THE COURT: All right.

22 Would you mind handing your records to the
23 officer. And, we are going to mark that in evidence as
24 Plaintiff's Exhibit 20.

25 (WHEREUPON, the item previously received and

Dr. Kaplan - Plaintiff - Direct

1 marked for identification is received and marked in
2 evidence as Plaintiff's Exhibit 20 in Evidence.)

3 (WHEREUPON, Plaintiff's Exhibit 20 in Evidence is
4 handed back to the witness.)

5 THE WITNESS: Thank you.

6 Q. Now, prior to coming in today to testify, did you
7 review any medical records regarding Ms. Olivera's treatment?
8 Not your own, but by other person's or medical providers that
9 may have treated her in the past?

10 A. I have reviewed medical records from other treating
11 physicians and some imaging studies.

12 THE COURT: I'm sorry.

13 MR. VELARDI: I'm sorry?

14 THE COURT: "I reviewed", and what was the last
15 thing you said?

16 THE WITNESS: Some records from other treating
17 physicians, as well as some imaging studies.

18 THE COURT: Okay. Thank you.

19 Q. Okay.

20 Now, I know this may be a long list. But, can you
21 please tell the jury everything that you reviewed?

22 A. So, I noted that I reviewed records which included the
23 discharge summary from Lutheran Hospital on the date of her
24 accident, 4/30/15.

25 I reviewed visits from Dr. Howard Baum from 11/16/15

Dr. Kaplan - Plaintiff - Direct

1 as well as some operative notes from Dr. Baum from 2/12/16, as
2 well as 6/24/16.

3 I reviewed office notes of Dr. Joseph Weinstein, Dr.
4 Carlos Castro of Comprehensive Orthopedics and Spine Care.

5 I reviewed an operative report from Dr. Weinstein of a
6 surgery performed on the cervical spine, the neck.

7 I reviewed MRI reports of the cervical spine. MRI
8 reports of the thoracic spine. MRI reports of the lumbar spine.

9 I reviewed MRI report of the left knee, as well as the
10 left shoulder, and the right knee, as well as the right
11 shoulder.

12 It looks like there were followup MRIs of the cervical
13 spine, as well as the lumbar spine that were also reviewed.

14 I reviewed electro diagnostic studies; which, are
15 studies of the nerves and muscles as they are effected by
16 injuries of the spine.

17 And, I reviewed some CAT Scan report of the cervical
18 spine.

19 Q. Great. Thank you.

20 Now, just to back track, I forgot to ask you, or I
21 forgot to ask the Judge.

22 MR. VELARDI: Given his experience, and
23 background, and education; I would move to have Dr. Kaplan
24 qualified as an expert in orthopedic surgery.

25 MR. IERVASI: No objection.

Dr. Kaplan - Plaintiff - Direct

1 THE COURT: He's an expert in orthopedic surgery;
2 which, means he can give us opinions in that field for our
3 assistance.

4 You may inquire.

5 Q. Okay.

6 Going back to where we left off, did there come a time
7 were my client, Josefina Olivera, became a patient at your
8 office?

9 A. I first saw her on 10/10/2017.

10 Q. Okay.

11 And, do you know how Ms. Olivera was referred to you?

12 A. I believe she was referred by your office --

13 Q. Okay.

14 A. -- for a second opinion regarding some continued pain
15 she was having.

16 Q. Okay.

17 And, on that first visit was it you who saw her, or
18 anyone else from your office?

19 A. No, it was me.

20 Q. You? Okay.

21 And, did you take a history from the patient, at that
22 time?

23 A. I did.

24 Q. What was the history?

25 A. The history is that she was involved in a motor

Dr. Kaplan - Plaintiff - Direct

1 vehicle accident on 4/30/15. She was in a car that was
2 rear-ended on that day.

3 She indicated to me that she had injuries to her neck,
4 her mid-back, and her low back, as well as her right shoulder
5 and right knee.

6 She had come under the care of an outfit called DHD
7 Medical; which, is a physical therapy and rehabilitation center.

8 And, that she had had surgery to her shoulder, as well
9 as her knee, prior to seeing me.

10 She came and she was still having persistent pain.
11 She felt the shoulder surgery had been somewhat helpful,
12 although she was still having pain in activities which required
13 use of the shoulder. And, she continued to have pain at the
14 knee; which, she described as daily pain and burning.

15 She was using a cane to help her walk. She was having
16 mid-back pain, pain radiating to her legs, worse on the left
17 than the right. She was having neck pain, and pain radiating to
18 the back of the shoulders.

19 Q. Now, do you know who it was that performed those two
20 surgeries that you just mentioned of the right knee and the
21 right shoulder?

22 A. Yeah. She had had surgery with Dr. Baum.

23 Q. Okay.

24 Now, what I'm going to do is ask the Court's
25 permission to hand you Plaintiff's Exhibit 10 admitted into

Dr. Kaplan - Plaintiff - Direct

1 Evidence.

2 (WHEREUPON, Plaintiff's Exhibit 10 in Evidence is
3 shown to Mr. Iervasi.)

4 MR. IERVASI: Thank you.

5 (WHEREUPON, Plaintiff's Exhibit 10 in Evidence is
6 handed to the witness.)

7 THE WITNESS: Thank you.

8 COURT OFFICER: You're welcome.

9 Q. Now, Doctor, these are the records of Dr. Howard Baum;
10 who, you just spoke about. And, the first few pages contain
11 some operative reports.

12 I would just ask, if you could just let the jury know,
13 what were the surgeries that were performed? I'm not asking you
14 to give details.

15 A. A-ha.

16 Q. Dr. Baum could give those details.

17 Just what were the surgeries that were performed to
18 the right shoulder and the right knee?

19 A. Sure.

20 So, she had a surgery called an arthroscopy.

21 MR. IERVASI: I object to this line of
22 questioning. As already stated, Dr. Baum will be here to
23 testify. There's no need for another orthopedic surgeon,
24 who did not perform the surgery, to testify as to anything
25 done by Dr. Baum.

Dr. Kaplan - Plaintiff - Direct

1 THE COURT: "There's no need for." Overruled.

2 You may answer.

3 THE WITNESS: Okay.

4 A. She had an arthroscopy performed. That's a surgery
5 that's done through a small telescope called arthroscope.
6 "Arthro" means joint, like an arthritis. And, scope, obviously,
7 is a little telescope. But, you could do big surgeries through
8 that. In fact, the surgery she had is a rotator cuff repair.
9 And, several other related procedures that are required when
10 doing that type of surgery.

11 Additionally, she had an arthroscopy of her right
12 knee. The type of surgery done with the arthroscopy, it is
13 called a chondroplasty. "Chondro" means the cartilage surface
14 of the joint. And, she had had an injury to the cartilage
15 surface to the joint, consistent with a cartilage fracture.

16 She had an additional surgery with Dr. Baum to the
17 shoulder. And, again, that was a right shoulder arthroscopy
18 with what's called a debridement. And, again, a rotator cuff
19 repair.

20 Q. Okay. That's all I knee, doctor.

21 A. Okay.

22 MR. VELARDI: We can take Exhibit 10 from him, at
23 this point.

24 (WHEREUPON, Plaintiff's Exhibit 10 in Evidence is
25 handed to the court officer.)

Dr. Kaplan - Plaintiff - Direct

1 THE WITNESS: Thank you.

2 COURT OFFICER: Thank you, Doctor.

3 Q. Okay.

4 Now, Doctor, what I would like you to do is, at this
5 point, is -- starting with the right shoulder. If you could
6 explain the anatomy of the right shoulder to the jury?

7 And, I understand that you may have a model of the
8 right shoulder?

9 A. I do.

10 Q. And, before you pull that out, I would ask whether or
11 not your use of the model would assist the jury to understand
12 your testimony?

13 A. I believe so. It's easier to see it.

14 MR. VELARDI: Your Honor, with your permission as
15 a demonstrative, may the witness use the right shoulder
16 model?

17 THE COURT: May I see it?

18 THE WITNESS: Yes.

19 (WHEREUPON, a model is shown to the Court.)

20 THE COURT: Any objection, counsel?

21 MR. IERVASI: I object to the fact that there's
22 no way to know if that model accurately describes -- or
23 shows Ms. Olivera's shoulder.

24 So, it's not helpful for the jury to see a
25 demonstrative figure of the shoulder that we don't know if

Dr. Kaplan - Plaintiff - Direct

1 it's the same as Ms. Olivera's.

2 THE COURT: I see.

3 You may use it for demonstrative purposes.

4 THE WITNESS: Thank you.

5 THE COURT: This is not meant to demonstrate her
6 shoulder. Just to demonstrate any shoulder on Earth.

7 All right. Please, continue.

8 MR. VELARDI: Thank you, your Honor.

9 Q. With that, could you explain to the jury the anatomy
10 of the right shoulder?

11 A. Sure.

12 So, this is a standard model of a standard right
13 shoulder. The shoulder is made up, generally, of three bones:
14 The collar bone, called the clavicle. The shoulder blade, it's
15 called the scapula. And, the humerus; which, is the arm bone.

16 When we think about the shoulder we, generally, think
17 about what's called the glenohumeral joint. That's the joint
18 between the shoulder blade and the arm bone. It sits in there
19 like that.

20 (Indicating.)

21 Q. The arm is held in place by several structures. One
22 is a cartilage ring inside called the labrum. And, that acts
23 sort of like an 'O' ring to go around the humeral head and hold
24 it in place. Make a deep dish for the ball and socket.

25 And, then it's held in place by four muscles. And,

Dr. Kaplan - Plaintiff - Direct

1 these muscles's are called the "rotator cuff muscles". And,
2 they've all got names depending on where they sit on the
3 scapula. The one that sits under the scapula is called the
4 subscapularis. The one that sits above the spine of the scapula
5 is called the supraspinatus. The one that sits below the spine
6 of the scapula is the infraspinatus. And, then there's a small
7 one here called the teres muscle; which, also helps rotate the
8 shoulder.

9 So, the rotator cuff muscles -- depending on which one
10 or which combination of the muscles contracts -- causes the arm
11 to rotate, causes the shoulder to rotate. That all sits within
12 the shoulder blade. And, it's protected by what's called the
13 chromium; which, is this top of the shoulder blade; which, you
14 could feel here on the top of your arm.

15 (Indicating.)

16 A. Which, as I said, normally protects that area. But,
17 also could be a problem if there's an injury to this rotator
18 cuff. Because if there's any injury to the rotator cuff it's
19 usually accompanied with inflammation and swelling. And, then
20 you form a tight space in between the hard bone above and the
21 hard bone below.

22 And, you could develop what's called impingement
23 syndrome; meaning, when you move the swollen or the injured
24 tendon it impinges, or is impinged upon by the hard bone above.
25 And that could perpetuate a problem. Because, as you have an

Dr. Kaplan - Plaintiff - Direct

1 injured tissue that swells, it bumps up against the bone. It
2 gets irritated. It swells more. It stays swollen. It
3 continues to bump up against the bone. And, it becomes a
4 vicious cycle that you have to break somehow. Normally, we try
5 conservative measures like therapy, injections. But, sometimes
6 those don't work.

7 Q. What bodily system does the right shoulder belong to?

8 A. As I described it, this is part of the musculoskeletal
9 system; meaning, it's part of the bones and joints system. And,
10 it helps hold together the body with muscles, ligaments,
11 tendons, and the joints holds the limbs on to the body.

12 Q. Okay.

13 Now, before we move on to the right knee, going back
14 to your first appointment with Ms. Olivera.

15 A. Yeah.

16 Q. Did you perform a physical examination?

17 A. Yes.

18 Q. And, can you explain to the jury what was performed?
19 And, what were the results of that examination?

20 A. Yeah.

21 I performed a triage, an initial examination to look
22 at her areas of complaint. And, so, I noted that she was tender
23 in her cervical: Which, means the neck. Thoracic: Which is
24 the upper back. And, the lumbar spine: Which is the lower
25 back.

Dr. Kaplan - Plaintiff - Direct

1 Tenderness means that she complains of pain when you
2 touch it, when you palpate it, especially in the musculature.

3 She had pain with the palpation or touching the bony
4 prominences of the spine, as well. She had limited motion. I
5 noted she had about 50 percent, what I would expect from neck
6 motion, cervical motion.

7 And, her lumbar motion included 15-degrees of flexion;
8 which is bending forward. Normally, it's about 75 to 90
9 degrees.

10 Extension she could not do comfortably. Extension is
11 leaning back at the lumbar spine.

12 I noted she was ambulating or walking with a cane.
13 And, she was bearing heavily on it. And, she used it in a way
14 that she switched from hand-to-hand to try to unload her lower
15 back pain.

16 I noted, when I examined her shoulder, that she had
17 crepitus with motion. Crepitus is cracking and popping that you
18 hear inside an abnormal joint.

19 And, then her range of motion included abduction --
20 which, is to take the arm away from the body -- to 160 degrees.
21 Her external rotation was to 85 degrees. And, her internal
22 rotation was to 45 degrees. Normal motion would be 180 degrees
23 of abduction. Ninety to 100 degrees of external rotation. And,
24 90 to 100 of internal rotation.

25 At the knee, on the right she had marked crepitus,

Dr. Kaplan - Plaintiff - Direct

1 again the popping or clicking of an abnormal joint; usually a
2 damage to the joint surface. And, her flexion was to 140
3 degrees on the right -- I'm sorry, 120 degrees on the right, and
4 140 degrees on the left. Normal is about 140 to 145 degrees.
5 So, she had lost 20 degrees of motion.

6 She had full extension. I was able to straighten her
7 knee. And, she had arthroscopic scars visible on the front of
8 the knee, on the right.

9 Q. Okay.

10 Now, you had mentioned earlier that you had reviewed
11 some MRI reports?

12 A. Yes.

13 Q. We'll start with the right shoulder.

14 Can you please tell the jury what was the diagnosis to
15 the right shoulder based on the -- any one of the MRI's of the
16 right shoulder that you reviewed?

17 A. Sure.

18 The right shoulder MRI that was performed on 6/6/15
19 showed what is called a high grade, partial thickness,
20 interstitial tear of the anterior fibers of the supraspinatus
21 tendon.

22 So, what that means is: This is the supraspinatus
23 tendon; right? The one that goes above the spine of the scapula
24 and hooks into the shoulder. That's the major player of the
25 rotator cuff. It's responsible for moving the arm up, as well

Dr. Kaplan - Plaintiff - Direct

1 as external rotation.

2 (Indicating.)

3 And, they're saying that there was high grade tear of
4 this tendon. So, when you look at it on an MRI it doesn't look
5 fully torn, not divided. But, it's torn enough that it's high
6 grade as opposed to moderate, mild, or normal.

7 Q. Are you able to approximate how many patients you've
8 had that have had similar injuries as the one you just stated?

9 A. I couldn't approximate, but it's a fair number.

10 Q. It's a large number?

11 A. It's a large number; yeah.

12 Q. Have you ever had any patients, other than
13 Ms. Olivera, who have had similar injuries that was the result
14 of a low impact rear-end collision?

15 A. I have.

16 Q. Okay.

17 Let's move on to the right knee then.

18 A. Okay.

19 Q. So, I would like you to go through the same process.
20 And begin by explaining the anatomy of the right knee.

21 And, do you have a model for that, as well?

22 A. I do.

23 THE COURT: Can I see it?

24 (WHEREUPON, a model is shown to the Court.)

25 THE COURT: Any objection.

Dr. Kaplan - Plaintiff - Direct

1 MR. IERVASI: No objection.

2 A. This is a model of a right knee. The knee joint also
3 has three bones. We, primarily, think of: The thigh bone. The
4 femur. And the shin bone -- the tibia -- making up the knee
5 joint. But, there's also the kneecap, the patella.

6 The knee joint, like all joints, is made up of bone
7 and cartilage. Cartilage is the smooth, sliding, gliding cells
8 that live on the end of the bone. You all look at the end of a
9 chicken bone and see that pearly, bright cap on the bone.
10 That's the cartilage. And, that's responsible for allowing the
11 joint to move smoothly.

12 In addition, you have a different type of cartilage
13 that's represented here in blue.

14 (Indicating.)

15 A. And that's called the meniscus cartilage. And, that
16 basically acts like a centering device; so, the thigh sits on
17 top of the shin bone and holds it in plates. That's augmented
18 or helped out by the ligaments as well.

19 On the front of the knee is the patella; which, sits
20 in what's called the patellofemoral groove. And, as you
21 straighten your knee by firing your quadriceps, the knee
22 straightens out.

23 (Indicating.)

24 A. That's true when you standup, or when you go upstairs,
25 or any time you straighten your knee. So, that's a joint

Dr. Kaplan - Plaintiff - Direct

1 between the kneecap and the thigh bone.

2 Q. And, did you come to a diagnosis of what had occurred
3 with Ms. Olivera's right knee?

4 A. Yes.

5 Q. What was that diagnosis?

6 A. After reviewing the MRI findings, as well as the
7 operative findings, it appears she had a fracture of the
8 cartilage, the lining of the knee; which, is, again, has to be
9 smooth in order for the knee to slide and glide. And, she had
10 an area of impaction of that cartilage consistent with a
11 fracture that required a surgery called a chondroplasty; which,
12 is to try to plane out that area to make it as smooth as you can
13 once it's damaged.

14 Q. Now, what part of the cartilage -- or, what's the name
15 of the cartilage that was fractured?

16 A. It's the articular cartilage; meaning, the joint
17 surface cartilage of the patella.

18 And, she apparently had what is called a kissing
19 lesion of the patellofemoral groove; which, means that it's
20 normally an -- (snaps) -- impaction fracture; so, that you
21 damage both sides of the joint, as opposed to just one side or
22 the other.

23 Q. Okay.

24 MR. VELARDI: Now, if I may have him look at
25 Exhibit 10 again? Your Honor?

Dr. Kaplan - Plaintiff - Direct

1 THE COURT: Yes. We'll give it to him.

2 MR. IERVASI: I already saw it.

3 (WHEREUPON, Plaintiff's Exhibit 10 in Evidence is
4 handed to the witness.)

5 THE WITNESS: Thank you.

6 Q. Now, if you could go to the operative report for the
7 right knee from Dr. Baum?

8 A. Okay.

9 Q. Again, without any major details as to what Dr. Baum
10 performed. But, based on your review of the operative report,
11 are there any other diagnosis relative to the right knee injury,
12 other than what you've already stated?

13 A. Let's see.

14 There's also a note that there's a fraying tear of the
15 lateral meniscus. Again, the meniscus is the mobile cartilage
16 inside the knee that helps center the joint.

17 She had a fraying tear of the lateral meniscus, the
18 outside; which, required a partial meniscectomy. Meaning taking
19 out that frayed and torn part.

20 Q. Okay.

21 And, did you have any recommendations for Ms. Olivera
22 after your first appointment with her?

23 A. So, when I first saw her I advised her to continue
24 with pain management for treatment of the cervical spine, as
25 well as additional conservative treatment.

Dr. Kaplan - Plaintiff - Direct

1 Q. Did you recommend a pain management specialist for
2 Ms. Olivera?

3 A. I did recommend that she see my associate, Dr. Grimm;
4 yeah.

5 Q. Okay.

6 And, do you know whether or not she, eventually, saw
7 Dr. Grimm?

8 A. She did, eventually, see Dr. Grimm; yes.

9 Q. Okay.

10 Now, when is the next time that you saw Ms. Olivera?

11 A. Let's see. I next saw her on, it looks like 7/11/19.

12 Q. And, did Ms. Olivera have any complaints on 7/11/19?

13 A. She continued to complain of stiffness about the
14 shoulder. She was complaining of neck pain with pain radiating
15 to her head and her ears bilaterally, both sides.

16 She was complaining of low back pain with pain
17 radiating to the lower extremities.

18 She was complaining of stiffness of her shoulders,
19 both on the right and the left.

20 And, she continued to complain of -- let's see, pain
21 at the knee with stair climbing and stair descent.

22 As well as pain with weather changes.

23 Q. Now, that was a break in time of approximately
24 two years from when you first saw her. And then you saw her the
25 second time.

Dr. Kaplan - Plaintiff - Direct

1 Did she see Dr. Grimm in between those two
2 appointments?

3 A. I believe she was seeing Dr. Grimm during that time,
4 2018 and 2019; yes. A ha.

5 Q. Okay.

6 And, just generally, since we'll be hearing from
7 Dr. Grimm at this trial. But, just generally, what was she --
8 what was Dr. Grimm doing for Ms. Olivera over that period of
9 two years?

10 THE COURT: If you know.

11 Do you know?

12 THE WITNESS: Generally, yeah.

13 THE COURT: Okay. You could answer.

14 A. Generally doing pain management; which, is working
15 with patient's level of pain either with oral medications.
16 Dr. Grimm had given some injections called trigger-point
17 injections. Things like that.

18 Q. And, why didn't she see you for approximately
19 two years?

20 A. Well, she was seeing Dr. Baum for her shoulder and
21 knee; which, is primarily my area of specialty: The joints.
22 The extremities.

23 And, as I say, I don't really do extensive treatment
24 of the cervical and lumbar spine. Dr. Grimm (SIC) does do
25 extensive treatment of the cervical and lumbar spine.

Dr. Kaplan - Plaintiff - Direct

1 So, I basically had seen her for a second opinion
2 regarding her discomfort, the discomfort. And, I advised her
3 that I thought she was in good hands. I don't know Dr. Baum
4 personally. But, he has a very good representation.

5 Q. Okay. Great.

6 And, did you perform another physical examination on
7 that date, on the second date?

8 A. I did.

9 Q. And, could you tell the jury what you performed? And,
10 what were the results thereof?

11 A. Sure.

12 She continued to have tightness and tenderness in the
13 muscles about the neck.

14 She had some limited motion, including flexion to 40
15 degrees. Extension to 10 degrees. Rotation to the right and
16 left was 35 degrees. All of that is some what limited.

17 She had what's called a positive Spurling Maneuver.
18 Spurling Maneuver is tilting the head back.

19 (Indicating.)

20 A. And, that gave pain radiating into her shoulder
21 girdles, both on the right and left.

22 She continued to have lumbar tenderness, tenderness to
23 the lower back.

24 She continued to have an antalgic, or painful gate,
25 and posture.

Dr. Kaplan - Plaintiff - Direct

1 Shoulder abduction -- motion of taking the shoulder
2 away -- was 120 degrees on the right, and 140 on the left. With
3 external rotation to 65 degrees on the right, 85 degrees on the
4 left. And internal rotation to 45 degrees on the right and the
5 left.

6 She also had crepitus, cracking and popping with
7 shoulder motion, both right and left.

8 Her knee flexion was: On the right was to 120
9 degrees.

10 And, she continued to have a negative what's called
11 McMurray Test; meaning, the meniscus was no longer exhibiting
12 symptoms. On the right she had 140 degrees of flexion still.
13 And, there was no ligamentous instability.

14 Q. Now, you mentioned the word crepitus again. And, I
15 would just like to ask you: Do you know what were the causes of
16 the crepitus that you found in Ms. Olivera's joints?

17 A. Crepitus is an indication of an abnormal joint. It
18 either has to do with abnormality of the joint surface,
19 smoothness of the joint surface is abnormal. That's the primary
20 cause of it.

21 There are secondary causes; which, could be fluid in
22 the joint that's abnormal. Or, scar tissue that pops over the
23 joint. But, it's an indication of an abnormal joint.

24 Q. And, did you have any recommendations for Ms. Olivera
25 following your second appointment with her?

Dr. Kaplan - Plaintiff - Direct

1 A. Again, I asked her to continue with pain management.
2 I encouraged her to followup with a spinal surgeon who she had
3 seen. And, we went over her oral medications; which, had been
4 prescribed.

5 Q. And, first who was the spinal surgeon that she had
6 been seeing?

7 A. She had seen Dr. Joseph Weinstein.

8 Q. Okay.

9 At the point in time that you saw her the second time,
10 had she had any additional surgeries, besides the two that you
11 mentioned earlier?

12 A. Dr. Weinstein had performed a surgery on her cervical
13 spine. He had done what is called an anterior -- meaning,
14 that's from the front.

15 He had done a discectomy, taking out an abnormal disc
16 and fused two of her cervical bones, two of her cervical
17 vertebra between the 4th and the 5th vertebra. And, he put a
18 plate, and some screws in there to hold it in place.

19 Q. You had also mentioned medications, prescriptions.
20 Could you tell the jury what medications were prescribed?

21 A. I don't recall off the top of my head. So, I would
22 have to dig for that. But, usually antiinflammatory medications
23 and muscles relaxer type medications are provided.

24 MR. VELARDI: May I hand Plaintiff's Exhibit 6 to
25 the witness?

Dr. Kaplan - Plaintiff - Direct

1 THE COURT: Is that your own copy of it?

2 MR. VELARDI: No, this is Exhibit 6.

3 THE COURT: Okay.

4 The officer will take it from you.

5 (WHEREUPON, Plaintiff's Exhibit 6 is shown to

6 Mr. Iervasi.)

7 (WHEREUPON, Plaintiff's Exhibit 6 is handed to

8 the witness.)

9 Q. Dr. Kaplan, I've just handed you -- you've just been
10 handed Plaintiff's Exhibit 6; which, is a second copy of your
11 office's records. Towards the very end of it, prior to the
12 billing records, are a list of medications. And, perhaps you
13 could use that list to refresh your recollection as to what
14 medications were prescribed to Ms. Olivera?

15 A. This is a complete list of medications over multiple
16 days. It does include, as I said, antiinflammatory medications
17 called --

18 (Court reporter clarification requested.)

19 THE COURT: You said myclofenac?

20 THE WITNESS: Diclofenac, D-I, clofenac.

21 A. As well as a medication called Gabapentin. And, a
22 medication called amitriptyline. Another antiinflammatory
23 medication was used at other times called Nabumetone,
24 N-A-B-U-M-E-T-O-N-E.

25 That looks like -- and, the muscle relaxant that I

Dr. Kaplan - Plaintiff - Direct

1 indicated prior called Cyclobenzaprine.

2 Q. What's the purpose of the Gabapentin?

3 A. Gabapentin is used for nerve irritation. It helps
4 quiet the nerve, is a good way of saying it, to try to decrease
5 pain.

6 Q. And, what is the next time you saw Ms. Olivera?

7 A. I next saw her on 12/29/20.

8 Q. Okay.

9 And, did she have any new complaints on that date?

10 A. She was having increasing pain in her right shoulder.

11 And, Dr. Grimm had actually asked me to see her regarding that.

12 Q. And, did you perform an examination?

13 A. I did.

14 Q. And, could you tell the jury about that?

15 A. At that time I learned that she had had a second
16 surgery with Dr. Baum to the right shoulder in 2019.

17 And, the physical exam showed that she was globally
18 tender about the shoulder. She had very limited motion and pain
19 with attempts at testing. She had pain with any types of
20 testing of rotation, internal and external. Or, what is called
21 speed sign; which, is lifting the arm forward.

22 So, she was globally tender about the shoulder with
23 all tests.

24 Q. Did you perform any radiological exams on that date?

25 A. I did take an x-ray just to -- because she was so

Dr. Kaplan - Plaintiff - Direct

1 painful. And, it simply showed the shoulder with the surgical
2 anchors in place, anchoring the rotator cuff into place; which,
3 is part of the surgery.

4 And, I diagnosed her with a soft tissue inflammation
5 called a tendonitis or bursitis about the shoulder.

6 Q. And, did you perform any procedure for -- or what, if
7 any, procedures were performed for Ms. Olivera on that date?

8 A. At that time, I gave her an injection of a steroid
9 preparation at the shoulder to try to calm down the inflammation
10 that I felt was causing her significant pain.

11 Q. When, if ever, is the next time you saw Ms. Olivera?

12 A. I saw her February 1st of 2022.

13 Q. Okay.

14 And, again, going through your appointment on that
15 date; what, if any, complaints did she have?

16 A. Sure.

17 She had complaints of right shoulder pain, right knee
18 pain and neck pain, at that time.

19 She complained of right shoulder pain with any
20 attempts at overhead activity.

21 She was having pain in the neck; which, was radiating
22 to the arms on both sides, to the shoulders.

23 She had had some buckling at her knee again. But,
24 that had been occurring for about four months prior to this
25 visit.

Dr. Kaplan - Plaintiff - Direct

1 And, she indicated that, you know, in the past the
2 arthroscopy that she had had improved that buckling, but not her
3 pain associated with the knee problem.

4 Q. And, did you perform an examination on that date as
5 well?

6 A. I did.

7 On exam, her knee flexion was to 125 degrees on the
8 right. She had full extension. She was tender about the knee
9 pretty much anywhere you touched: Front. Sides. Back.

10 She had what I noted as significant lateral joint line
11 pain. That's over on the side where she had the meniscal tear
12 and fraying.

13 She had crepitus with motion. She continued to show a
14 negative McMurray's; meaning, the meniscus did not clinically
15 seem return.

16 She continued to show this positive Spurling Maneuver
17 in her neck -- which, is tilting the neck back -- which
18 irritates the nerve roots if you do it and hold it. And, she
19 had pain radiating into the shoulder on the right.

20 Her shoulder abduction, at that point, was just to 90
21 degrees. So, just up to here.

22 (Indicating.)

23 A. And, she had signs of weakness of her testing of her
24 rotator cuff tendons. And, she had an antalgic or painful
25 appearing gait.

Dr. Kaplan - Plaintiff - Direct

1 Q. Okay.

2 And, just for in layman's terms, what does that mean
3 "antalgic gait"?

4 A. Painful appearing gait. Yeah, like a limp.

5 Q. "Like a limp"?

6 A. A ha.

7 Q. Okay.

8 And, what if any procedures did you perform on this
9 date?

10 A. At that time -- because of her relatively new onset of
11 knee pain -- I gave her an injection of a steroid preparation in
12 the knee. The medication is called Celestone to help decrease
13 inflammation if that's the source of the pain.

14 Q. Did you see Ms. Olivera again after that appointment?

15 A. I did. I saw her on 5/3/22.

16 Q. Okay.

17 And, did you see her again after 5/3/22?

18 A. I saw her, for a report, on March 30th of 2023.

19 Q. Okay.

20 So, going back to 5/3/22.

21 A. A ha.

22 Q. What was her condition, at that time?

23 A. At that time, the condition was that she had
24 posttraumatic arthritis of her knee.

25 That she had shoulder pain.

Dr. Kaplan - Plaintiff - Direct

1 And, she had had a rotator cuff tear and a repair.

2 And, I advised her to continue pain management.

3 Q. Okay.

4 And, does she have any future appointments with you?

5 A. Not that I'm aware with.

6 Q. Okay.

7 Does she have any future appointments with Dr. Grimm's
8 office?

9 A. I wouldn't be able to answer that question.

10 Q. Okay. That's fine.

11 Now, do you have any records with you, in your chart,
12 that would indicate what the total cost of all of the treatment
13 that you and Dr. Grimm provided from your office for
14 Ms. Olivera?

15 MR. IERVASI: I object solely to the providing of
16 billing for Dr. Grimm. He's going to testify. He could do
17 that himself.

18 THE COURT: Sustained.

19 Q. Fine.

20 Before you look at that, Dr. Kaplan, is Dr. Grimm your
21 partner? Or, is he your employee? Or, something else?

22 A. He's an employee of NY Ortho Sports Medicine and
23 Trauma; which, I'm the owner.

24 Q. Okay.

25 So, let me re-phrase the question. Could you provide

Dr. Kaplan - Plaintiff - Direct

1 the jury with the total amount of cost of treatment for New York
2 Ortho Sports and Trauma Medicine, PC with regard to the
3 treatment that was provided to Ms. Olivera?

4 A. Yeah.

5 Primarily, based on Dr. Grimm's treatment and multiple
6 injections, and radio frequency injections, and things like
7 that, the total cost is Simplet \$66,612.76.

8 Q. Okay.

9 Any exhibits that you have in front of you, we could
10 take those back at this time.

11 (WHEREUPON, the court officer takes back exhibits
12 from the witness.)

13 THE WITNESS: You want my chart too?

14 Q. You don't mind parting with your chart; right?

15 (Pause.)

16 Q. Okay.

17 Doctor, at this time, I'm going to ask you some
18 hypothetical questions?

19 A. Okay.

20 Q. Beginning with the right shoulder.

21 Dr. Kaplan, I would like you to assume we will be
22 hearing the testimony of Ms. Olivera later in this trial. And,
23 she will state that she was the front seat passenger in a mini
24 van wearing her seatbelt; which, was then rear-ended by a City
25 bus while her vehicle was stopped in traffic.

Dr. Kaplan - Plaintiff - Direct

1 Assume further that she will describe the impact as
2 very heavy. And, that her body was caused to move forward such
3 that her right arm and right hand went forward striking the
4 glove compartment in front of her, in her effort to brace
5 herself.

6 Further assume that Ms. Olivera felt immediate pain to
7 her right shoulder. And, that she complained of pain to her
8 right shoulder at her first orthopedic visit. Or, I should say
9 her first visit with DHD Medical on May 11th, 2015, 11 days
10 after the accident.

11 And, assume further that she has never complained of
12 right shoulder pain. Or had any accident or condition involving
13 her right shoulder prior to the rear-end accident with the bus.

14 Do you have an opinion, within a reasonable degree of
15 medical certainty, as to whether the injuries to the right
16 shoulder -- which you have diagnosed -- were caused by the
17 accident?

18 MR. IERVASI: Objection.

19 He's testifying on behalf of the plaintiff; who,
20 hasn't yet appeared.

21 And, assuming it's already evidence established.

22 MR. VELARDI: It's an assumption, your Honor.

23 Sorry.

24 THE COURT: Your motion is overruled.

25 You may answer.

Dr. Kaplan - Plaintiff - Direct

1 A. So, yes.

2 My opinion is -- given the medical records that I have
3 reviewed and having seen Ms. Olivera over the course of time --
4 that her shoulder injury is caused by her motor vehicle
5 accident.

6 Q. Okay.

7 And, why do you hold that opinion?

8 A. Just as stated: She's had pain since around the time
9 of the accident. She had appropriate conservative treatment.
10 She had appropriate surgical treatment. Her response has been
11 less than perfect. But, well within what we see frequently with
12 this type of injury.

13 And, so it's my opinion that this all clinically
14 correlates that she would have this injury at the time of the
15 accident.

16 This is the way that people often get shoulder
17 injuries. Force is transmitted up the arm to the shoulder;
18 where it stops. And, the force impact occurs at the shoulder.

19 Q. Now, if you could assume further that Ms. Olivera did
20 not complain about right shoulder pain in the hospital on the
21 day of the accident. But, only first complained about it
22 11 days after the accident.

23 Does that change your opinion on causality?

24 A. It doesn't change my opinion.

25 I think I talked to you earlier about the fact that if

Dr. Kaplan - Plaintiff - Direct

1 you get the swelling in a tissue, in this space between the two
2 bones. And, there's no room to swell in there. So, that you
3 get an impingement. It irritates. It can damage the tendon
4 further. As it swells it damages it more because of the
5 swelling. It irritates it more. You get more swelling. You
6 get more irritation. You get this vicious cycle that you have
7 to break; hopefully, with conservative treatment. But, often
8 times it doesn't correct itself.

9 So, no. That does not surprise me. And, that again
10 it goes along with this type of injury.

11 Q. Okay.

12 Now, do you have an opinion within a reasonable degree
13 of medical certainty as to whether the treatment Ms. Olivera
14 received by you, at your office, as well as the treatment
15 received by Dr. Baum -- including the surgeries he performed to
16 the right shoulder -- were medically necessary due to the
17 injuries she sustained to the right shoulder?

18 A. I think the need for surgery was because of the
19 injuries. And, I think that all of the treatment that was done
20 was appropriate.

21 Q. Do you have an opinion, within a reasonable degree of
22 medical certainty, as to whether Ms. Olivera's right shoulder
23 injury is permanent?

24 A. Portions of it are permanent. She has limited
25 motion. She has continued pain.

Dr. Kaplan - Plaintiff - Direct

1 The rotator cuff -- which was the big injury -- was
2 fixed initially at surgery. But, like a large number of these
3 it retore. She required an additional surgery. And, you know,
4 it's possible that it will tear again.

5 So, yes. At this point, you know, several years later
6 I believe that the symptoms she's having are permanent.

7 Q. Now, do you also agree, within a reasonable degree of
8 medical certainty, that the loss of range of motion that you
9 detected on your examinations are permanent?

10 A. They wax and wane. But, she's always had loss of
11 motion since I've seen her. And, some days are better than
12 others.

13 The general trend though, in my notes, has been a
14 worsening of her range of motion. I do believe that's
15 permanent.

16 Q. Okay.

17 Now, another question: Do you have an opinion, within
18 a reasonable degree of medical certainty, whether Ms. Olivera's
19 injury to her right shoulder has resulted in a limitation of her
20 ability to use her right shoulder based on its ordinary
21 function?

22 A. Absolutely. Yeah.

23 Q. And, what is that opinion?

24 A. She doesn't have normal function in her shoulder, at
25 this point. She's got limited motion. She's got pain that

Dr. Kaplan - Plaintiff - Direct

1 prevents her from doing certain things.

2 So, yes. I believe that it is limited.

3 Q. Okay.

4 This is a similar question: Do you have an opinion,
5 within a reasonable degree of medical certainty, whether
6 Ms. Olivera's right shoulder can only operate in a limited way?

7 A. I believe her symptoms prevent her from being normal
8 with that shoulder.

9 So, yes. I think I would answer yes to that question.

10 Q. Now, going back to the limitation of her ability to
11 use her right shoulder that you just testified that she has.

12 Do you have an opinion, within a reasonable degree
13 ever medical certainty, whether her limitation of use of her
14 right shoulder is significant?

15 A. It appears significant to me. Yes. I believe it is.

16 Q. And, why do you say it's significant?

17 A. She has abnormal functions. She cannot -- as of the
18 last time I saw her -- get her arm well above her head. She has
19 pain with motion testing. All of those things are abnormal.

20 Q. And, do you have an opinion, within a reasonable
21 degree of medical certainty, whether the limited way in which
22 Ms. Olivera can operate her right shoulder is a permanent
23 problem?

24 A. It appears to be permanent, at this point. It's been
25 many years.

Dr. Kaplan - Plaintiff - Direct

1 Q. And, do you have an opinion, again within a reasonable
2 degree of medical certainty, whether that permanent, limited way
3 in which her right shoulder operates is significant, or of
4 consequence?

5 A. Is that a different question?

6 Q. It's a different question with respect to the --

7 THE COURT: Objection is sustained.

8 MR. VELARDI: Okay. That's fine.

9 Q. With respect to the right shoulder, what's your
10 prognosis for Ms. Olivera?

11 A. I think she has a poor prognosis; meaning, going
12 forward I don't think this is going to get a lot better. And, I
13 think she's got limitations of motion. She's got pain.

14 And, as I said, I think that's permanent and
15 significant.

16 Q. Okay. Now moving to the right knee.

17 The same hypothetical situation. I'll repeat it this
18 one time. But, you know, I won't repeat it; unless you need me
19 to.

20 Assume, again, that Ms. Olivera will be testifying at
21 this trial at a later date. She'll state, again, that she was
22 the front seat passenger with her seatbelt on. The car was
23 struck in the rear by a bus. Her body moved forward. When her
24 body moved forward, assume that she will testify that her right
25 knee struck the inner part of the right door, the passenger

Dr. Kaplan - Plaintiff - Direct

1 door.

2 Assume further that she felt immediate pain to her
3 right knee. She complained about right knee pain at DHD 11 days
4 post accident.

5 And, assume, finally, that she's never complained of
6 right knee pain. Or, ever had any accident, or prior condition
7 effecting her right knee, or any complaints of pain before the
8 rear-end accident.

9 Do you have an opinion, within a reasonable degree of
10 medical certainty, as to whether the injury to the right knee --
11 which you have diagnosed -- was caused by the accident?

12 A. I believe the injury to the right knee likely occurred
13 at the time of the accident.

14 Again, under direct examination on the arthroscope she
15 had what is called a kissing lesion. That, generally, is when
16 one bone strikes another. It causes an impaction type of
17 injury; which, is what was documented.

18 So, it appears to me that that occurred at the time of
19 the accident.

20 Q. And, do you have an opinion as to whether the
21 treatment she received for her right knee -- provided by you,
22 provided by Dr. Grimm, provided by Dr. Baum -- was necessary?

23 A. I believe it was appropriate for her complaints. And,
24 that it was necessary to treat her symptoms of pain and the
25 diagnosis that were made.

Dr. Kaplan - Plaintiff - Direct

1 Q. Does that include the right knee surgery performed by
2 Dr. Baum?

3 A. Yeah.

4 Q. Okay.

5 Do you have an opinion, within a reasonable degree
6 ever medical certainty, whether her right knee injury is
7 permanent?

8 A. Definitely. Yes.

9 Q. And, why do you hold that opinion?

10 THE COURT: Do you have an opinion?

11 Yes. Definitely.

12 What is the opinion?

13 THE WITNESS: Yes.

14 A. The opinion is that it is permanent.

15 Anytime you damage the joint surface, the cells of the
16 cartilage, they don't grow back. So, you can plane them down as
17 we talked about, try to smooth them out. But in doing so, you
18 thin out the cartilage.

19 Normally, in the body, that cartilage -- over time --
20 wears out anyway. We all get a little arthritis as we get
21 older.

22 This is a different type of arthritis with joint
23 injury called posttraumatic arthritis. And, not only is that
24 permanent. But, it will get worse over time with use of the
25 joint. Just like anybody's arthritis will get worse over time.

Dr. Kaplan - Plaintiff - Direct

1 But, hers is posttraumatic in nature.

2 Q. Posttraumatic as opposed to what?

3 A. As opposed to old age arthritis. Osteoarthritis.

4 Wear and tear.

5 Q. Is that also true for the right shoulder?

6 A. She has a different type of symptoms in the shoulder.

7 But, she has permanent stiffness and pain.

8 Q. Do you have an opinion as to whether the injury to the
9 right knee has resulted in a limitation of her ability to use
10 the right knee for its ordinary function?

11 A. Yes. I think her pain and her limited motion, again,
12 make normal function not possible for her.

13 Q. And, is that limitation significant, in your opinion?

14 A. Yes.

15 Q. What's your prognosis for Ms. Olivera's future with
16 respect to her right knee?

17 A. She would have a similar prognosis: A poor prognosis.

18 Because, again, not only is the injury to the joint
19 surface permanent, but it's progressive or will worsen over
20 time. It's not going to, you know, suddenly dropoff a cliff.
21 But it, over time, gets worse and worse and worse.

22 Q. Okay. Now, just a couple of final questions and then
23 I'm finished, Doctor.

24 Doctor, have you testified regarding other persons who
25 have treated -- who you have treated that were also clients of

Dr. Kaplan - Plaintiff - Direct

1 my office, Gorayeb and Associates?

2 A. Yes.

3 Q. And, are you being paid for your time today.

4 A. I am.

5 Q. What are you being paid?

6 A. Well, my office receives a fee of \$7,500. I get a
7 portion of that. A portion goes to pay the office.

8 Q. Okay.

9 MR. VELARDI: I have no further questions.

10 Q. Thank you, Dr. Kaplan?

11 THE COURT: All right.

12 We'll take a five-minute recess between direct
13 and cross. You could follow the officer.

14 Please don't discuss the case. Keep an open
15 mind. Form no judgments about the case.

16 You may follow the officer.

17 COURT OFFICER: All rise. Jury exiting.

18 (Jury exits at 3:04 PM.)

19 THE COURT: Consider it like a nature break,
20 Doctor. So, we'll resume in about five minutes.

21 THE WITNESS: Does anybody know if this is clean?

22 THE COURT: It is. It was just poured.

23 THE WITNESS: Thank you.

24 THE COURT: The doctor's records, are we going to
25 give them back to him?

Dr. Kaplan - Plaintiff - Direct

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MR. VELARDI: Do you need them, Doctor?

THE WITNESS: I don't need them.

THE COURT: All right. We'll pickup in cross in about five. Everybody take five.

(Recess taken.)

THE COURT: Counsels ready?

MR. VELARDI: Yes.

THE COURT: All right. We'll bring the jury back in.

(Awaiting the jury.)

COURT OFFICER: Are you ready?

THE COURT: Yes, we are ready.

COURT OFFICER: All rise. Jury entering.

(Jury enters at 3:13 PM.)

THE COURT: All right. Please, be seated jurors.

All right. All the jury panel is present. You're still under oath.

You may conduct your cross-examination.

MR. IERVASI: Thank you, your Honor.