

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CIVIL TERM: PART 30

3 -----X

4 KELVIN COLINDRES FLORES,

5 PLAINTIFF,

6 - against -

7 IRE-NG 1715 E. 13TH STREET, LLC and MJM
8 ASSOCIATES CONSTRUCTION,

9 DEFENDANTS.

10 -----X

11 Supreme Court
12 360 Adams Street
13 Brooklyn, New York 11201
14 August 12, 2025

15 B E F O R E :

16 HONORABLE MENACHEM MIROCZNIK,
17 Justice of the Supreme Court, and a jury,

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

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LAURA DELVAC
SENIOR COURT REPORTER

* * *

THE CLERK: Case on trial continues, all
appearances remain the same.

MR. VARGAS: It is my understanding the Defendants
will be calling two doctors this afternoon, one of them one
of them is Dr. Cohen.

(Pause in the proceedings.)

THE COURT: I will deny your applications for now,
if it goes into Monday, we will go into Monday, I have no
regret trying to settle the case, I like this trial, I'm
learning a lot from this trial, this guy is a bulldog, I a
learned a lot from him, he's excellent.

The realty happens to be, as much as I'm enjoying
this, I have a responsibility to all of you to do the right
thing in this case.

1 Off the record.

2 (Whereupon, an off the record discussion was held.)

3 MR. AARON: Quickly based on the discussion we just
4 had --

5 THE COURT: You will get your ruling for the
6 verdict.

7 MR. AARON: I want to address the testimony from
8 the doctor, I will read directly from his report based on
9 the Plaintiff's case of left sided -- this goes to exactly
10 what he just said.

11 THE COURT: You don't have to read it quickly,
12 unfortunately it goes on the record.

13 MR. AARON: "Based on Plaintiff's complaints of
14 left-sided pain following the fall, this is not acute
15 causally related disc herniation following the subject
16 accident in March of 2018," he's saying it's not causally
17 related.

18 MR. VARGAS: That is not clear.

19 THE COURT: He can testify to what he writes in his
20 report.

21 MS. SUED: Yes.

22 THE COURT: You can read the record, well, it's not
23 a record, he can say his conclusion, but be careful with the
24 word "causally related," that term of art, it is a term of
25 art.

1 MS. SUED: He says it, your Honor, causally related
2 literally.

3 THE COURT: Show me --

4 MR. AARON: Disc herniation is with a reasonable
5 degree of medical certainty degenerative and preceded the
6 subject accident.

7 THE COURT: It does use the words causally related.

8 MR. VARGAS: Yeah, he didn't say it was causally
9 related.

10 MR. AARON: I'm going to read the entire
11 conclusion.

12 "Based on review of the additional material, there
13 is evidence of a right sided L5-S1 disc herniation. Based
14 on the patient's complaints of l-e-f-t sided pain following
15 the fall, this is not consistent with an acute causally
16 related disc herniation following the subject accident in
17 March of 2018. Similarly, the patient's weakness in both
18 knee extension and knee flexion is not consistent with an
19 L5-S1 nerve root compression. The disc herniation is with a
20 reasonable degree of medical certainty, degenerative and
21 preceded the subject accident.

22 There is, therefore, no radiological evidence of a
23 casually related lumbar disc herniation following the
24 accident of March 224, 2018."

25 MR. VARGAS: The way he records it "radiological

1 evidence," I --

2 MR. AARON: These are issues for cross-examination.
3 The expert is going to testify what's in his report, just
4 because he's not using the specific language that he wants
5 to use.

6 THE COURT: Try to phrase it how he said it in the
7 report, if you can.

8 MR. AARON: He's going to testify to as to what he
9 puts in his record, that's what his testimony will be, I
10 will not have him tailor his testimony to make him happy.

11 THE COURT: Well, the realty happens, to be, I
12 didn't hear.

13 MR. AARON: He uses it twice causally related.
14 It's not causally related, there's no radiologic evidence
15 it's causally related, he says it twice.

16 MR. VARGAS: First, he says there's a herniation
17 and second, he says there's no evidence of a herniation.

18 THE COURT: That's why you hit him on the cross.

19 MR. AARON: Your Honor, I don't think there's any
20 dispute --

21 THE COURT: It's close enough in the verbiage
22 looking for the magic term "causally related," Chris will
23 hit him on what he can hit him on, it's fair game.

24 MS. SUED: He will hit him?

25 MR. VARGAS: These four we agreed can go into

1 evidence.

2 THE COURT: Evidence or just for ID purposes?

3 MR. VARGAS: For evidence, they're blow-ups of the
4 CD from Dr. Kolb's office.

5 THE COURT: That was Friday in congruence of
6 Friday's conversation, we didn't want the ID you said the,
7 the, this would be --

8 MS. SUED: Illustration, only for ID.

9 THE COURT: This you said Friday you would have no
10 issue with that Friday, I remember that.

11 Let's just go on the record and start this on --

12 MS. SUED: This has all been on the record.

13 THE COURT: I wanted this part on. Before we go
14 on, I will grant it, it was causal.

15 On the record.

16 MR. VARGAS: Your Honor, we've -- we were on
17 consent, we have blowups of MRIs Dr. Kolb will be talking
18 about today, they're already evidence on CD version, these
19 are board versus for blowups. My understanding is
20 Defendants argue they are not going into evidence.

21 THE COURT: All I ask please consult with the clerk
22 the proper markings or designation to be made so we can
23 forthwith, move on the trial without having to worry about a
24 recess over it.

25 MR. VARGAS: And you gave Dr. Kolb back his notes,

1 I will mark those for ID.

2 THE COURT: There was a second issue, Mr. Vargas,
3 regarding a physician report, do you have an application,
4 sir?

5 MR. VARGAS: For Dr. Cohen?

6 THE COURT: Yes.

7 MR. VARGAS: Yes, in Dr. Cohen's report, the
8 language that doctor uses in coming to his conclusion does
9 not definitively state whether or not the injuries to the
10 back suffered by Mr. Flores are causally connected to the
11 accident or not causally connected.

12 I'm an objecting to him giving that opinion now,
13 since it's not conclusively in his report.

14 MR. AARON: I disagree entirely and I just read
15 from the doctors's conclusion where he says that "the
16 herniation is not acute causally related injury," he says it
17 twice, and I think, and the problem is that the Plaintiff's
18 counsel has a problem with the way the expert phrases his
19 opinion, he can cross-examine him on it, and what his
20 conclusions are, but it's written twice it's not causally
21 related.

22 THE COURT: Mr. Minero.

23 MR. MINERO: I agree that's what it says, Judge.

24 THE COURT: Miss Sued.

25 MS. SUED: Agree, your Honor.

1 THE COURT: Mr. Vargas, any rebuttal?

2 MR. VARGAS: No.

3 THE COURT: The Court denies Plaintiff's motion,
4 because the Court is satisfied with the terms, the term
5 again says causally related was the term.

6 MR. AARON: Yes, I can read it again for the
7 record.

8 THE COURT: Read that line one more time.

9 MR. AARON: I will.

10 "Based on the review of the additional material,
11 there is evidence of a right-sided L5-S1 disc herniation.
12 Based on the patient's complaints of left-sided pain
13 following the fall, this is not consistent with an acute
14 causally related disc herniation following the subject
15 accident in March of 2018.

16 Similarly, the patient's weakness in both knee
17 extension and knee flexion is not consistent with an L5-S1
18 nerve root compression. The disc herniation is, with a
19 reasonable degree of medical certainty, degenerative and
20 preceded the subject accident.

21 There is, therefore, no radiologic evidence of a
22 casually related lumbar disc herniation following the
23 accident on March 24, 2018."

24 THE COURT: Based upon the verbiage back and forth,
25 the Court is satisfied with the phrase causally related for

1 the purposes of this trial.

2 Mr. Vargas, you took your exception.

3 MR. VARGAS: Yes.

4 THE COURT: We have one more application regarding
5 the video.

6 MR. VARGAS: Yes.

7 (Pause in the proceedings.)

8 THE COURT: Wait for him to get back and make the
9 final application.

10 (Pause in the proceedings.)

11 THE COURT: I think we have one more motion to put
12 on the record with the video trial.

13 Mr. Vargas we will put their motion for the video
14 on the record, let her make the formal application, it is
15 her motion.

16 MS. SUED: Your Honor, we heard yesterday from
17 Noreen Bruen, the investigator who did the surveillance,
18 that she had a death in her family, it's not in New York,
19 and she is available to come in person on Monday; however,
20 we're trying to wrap this up by Friday, so we're asking,
21 your Honor, to allow her to appear via Zoom, she can be
22 available Thursday, I believe, this is routinely done, and
23 experts are allowed to do it, and I advised Mr. Vargas who
24 asked me for her file, we have her invoices, and we will
25 provide that to him for review prior to any testimony.

1 So I don't think there's any prejudice to Mr.
2 Vargas to have this surveillance prior to trial, so, we ask
3 that you allow her to appear via Zoom.

4 THE COURT: Any objection, counsel, Mr. Vargas?

5 MR. VARGAS: Yes, your Honor, I think she should be
6 forced to be here, but I don't want the trial being delayed
7 to Monday, so my solution would be we just don't have the
8 video.

9 THE COURT: Understood.

10 Mr. Minero.

11 MR. MINERO: Judge, I mean, I obviously agree with
12 my colleagues here, you know, she had an unfortunate
13 situation in her family, the courts have gotten very good at
14 Zoom, maybe because of Covid, if Mr. Vargas has her file
15 here in front of him and the video is here, there's really
16 nothing different other than in instead sitting in the box,
17 she will be on the screen.

18 THE COURT: Mr. Aaron.

19 MR. AARON: I agree with my colleagues, Judge.

20 THE COURT: Mr. Vargas, any rebuttal?

21 MR. VARGAS: No, your Honor.

22 THE COURT: So the Court at this time is granting
23 the motion for the video, for the Zoom evidence, the
24 technology or whatever the technology.

25 THE CLERK: Zoom.

Dr. Thomas Kolb - Plaintiff - Direct

1 THE COURT: Whatever Zoom technology is, subject to
2 furnishing Mr. Vargas with whatever documentation, exhibits
3 he's entitled to.

4 MS. SUED: Yes, sure.

5 THE COURT: And that's my ruling, you take
6 exception.

7 MR. VARGAS: Yes, your Honor.

8 THE COURT: Are there any other issues before the
9 Court?

10 MS. SUED: No, thank you, your Honor.

11 MR. AARON: No, your Honor.

12 THE COURT: We are ready for the jury?

13 MS. SUED: Yes.

14 MR. AARON: Yes.

15 MR. VARGAS: Yes.

16 THE COURT: Good luck to everybody.

17 (Pause in the proceedings.)

18 COURT OFFICER: All rise, jury entering.

19 THE COURT: Good morning members of the jury,
20 please be seated. Plaintiff, which witness are you calling
21 right now?

22 MR. VARGAS: Thomas Kolb.

23 THE COURT: Dr. Thomas Kolk please approach and
24 remain standing by the witness seat.

25 (Whereupon, Dr. Kolb took the witness stand.)

Dr. Thomas Kolb - Plaintiff - Direct

1 THE COURT: Thank you, doctor.

2 THE WITNESS: Thank you.

3 THE CLERK: Raise your right hand. Do you solemnly
4 swear or affirm that the testimony you're about to give
5 before this court will be the truth, the whole truth and
6 nothing but the truth?

7 THE WITNESS: I do.

8 THE COURT: Please be seated. Please state and
9 spell your full name for the record address and occupation?

10 THE WITNESS: Dr. Thomas Kolb K-O-L-B, 257 West
11 34th Street, New York, 10001, I am a physician radiologist.

12 DIRECT EXAMINATION BY

13 MR. VARGAS:

14 THE COURT: Counselor, you may inquire.

15 MR. VARGAS: Thank you, your Honor.

16 Q Good morning, doctor, could you start out by telling
17 us, are you licensed to practice medicine in New York?

18 A I am.

19 Q And how long have you been doing that?

20 A Since 1983.

21 Q And can you tell the jury your educational background?

22 A So I went to college here at Queens College City of New
23 York, I graduated a long time ago in 1979, and I then became I
24 went to medical school from '79 through '83 here in Brooklyn
25 Downstate Medical Center, I then became a pediatrician, I did an

1 internship and residency in the Bronx, Jacobi Hospital, the
2 Einstein Medical Center, Montefiore and became board certified
3 in pediatrics.

4 I went back did another four years of training from
5 1986 through 1990, at Columbia-Presbyterian Hospital in
6 Washington Heights, and did four years in diagnostic radiology
7 and became board certified in radiology.

8 Q Do you have your own practice?

9 A I do.

10 Q What is the name of it?

11 A Thomas -- it's called Kolb Radiology, I have also
12 Thomas M. Kolb MDPC and Kolb Radiology.

13 Q And are you being compensated for your time here today?

14 A I am.

15 Q How much?

16 A \$12,000.

17 Q And what is diagnostic radiology?

18 A It's the use of MRIs, CAT scans, X-rays, mammograms,
19 ultrasounds to look inside the body, and see if there's a
20 problem or not a problem.

21 Q And doctor, can you tell the jury something about your
22 professional background?

23 A My practice is split into two parts, one part of my
24 practice is breast cancer diagnosis, I see many, many thousands
25 of women a year for diagnosing breast cancer, mammograms,

1 ultrasounds, MRIs, biopsies, all of that I do personally, and I
2 have been doing that since 1992, to today.

3 The other, I specialize in young high risk women, and
4 I've published papers in the field and describing how accurate
5 mammograms and how they miss cancers especially in women in
6 dense breasts, which is, we may have heard a lot about that now,
7 but these papers were one of the source papers describing that,
8 and the application won the American Medical Association
9 Scientific Publication of the Year Award, so I've done a lot of
10 work in breast cancer diagnosis.

11 The other part of my practice is doing CAT scans, MRIs,
12 and X-rays on patients that are sent to me by physicians for
13 complaints, often pain, but for whatever the complaint is.

14 Q And, doctor, do you regularly testify on behalf of your
15 patients?

16 A No, I wouldn't say regularly. I come to court maybe
17 four to five time per year, whatever you mean by the word
18 "regularly," I come to court maybe four to five times a year,
19 sometimes four, sometimes six, and I'm asked to explain my
20 findings.

21 Q And doctor, could you explain to the jury the
22 differences between MRIs, X-rays and CAT scans?

23 A Sure, so X-rays were discovered a long time ago, more
24 than 100 years ago and X-rays are very common tests, so we use
25 X-rays nowadays to tell the difference between things that are

1 hard and things that are soft.

2 For example, if you wanted to take an X-ray of the
3 spine or an X-ray of your hand, you would see the bones really
4 well, because the bones are all hard, if you're looking for a
5 fracture, that would be a really good test, because fractures is
6 a break of the bone, but there are a lot of other structures in
7 all different parts of the body, the shoulder, the knee, the
8 back, that are not just bones. In fact, they're all joints,
9 where the bones move on each other and in between these bones
10 are cartilage, discs in the back, and arteries, veins, nerves,
11 tendons, ligaments, muscles, all of that, all of those
12 structures are soft, and you can't see any of that on x-ray.

13 So you can see the space between the bones where
14 there's a lot going on, you can't see the structures on the
15 X-ray.

16 CAT scans take X-rays, and its instead of just being
17 one picture let's say of the back, and seeing bones, it takes
18 many little thin pictures, from one side to the other side, and
19 you can open it up like a book and the book has different pages.

20 And now you can see a better idea of what's going on in
21 those soft tissue structures, but since it's still X-rays, it's
22 not as good as a test. For example, like an MRI which uses a
23 totally different technology, M stands for magnetic waves. MRIs
24 are done to look at the back knee and the shoulder and really
25 show you all of the soft tissue structures you want to see the

1 discs and the muscles, and tendons and ligaments and so on.

2 So MRIs have become very common tests to do, CAT scans
3 are very quick test, you can do a CAT scan in less than a minute
4 on any of your body parts, but MRIs take much longer to do, they
5 can take anywhere from ten minutes to 30 minutes to do and it's
6 a large machine with a large magnet.

7 So both have their place, but MRIs are is a better test
8 to look for abnormalities in general.

9 Q And, doctor, did there come a time when you treated a
10 Mr. Kelvin Flores?

11 A Yes.

12 Q And when was that first time?

13 A So, on April 6, 2018, I think is the first time.

14 Q And how did Mr. Flores come to you for treatment?

15 A Patient was referred by a Dr. Jeffrey Kaplan.

16 Q And what was he referred for?

17 A An MRI of the lumbar spine.

18 Q After treating Mr. Flores, at some point my firm hired
19 you to review some films; is that correct?

20 A That would be in June, I think June 4th, or sometime in
21 June 2025, which is last month or the month before, two months
22 ago, I was approached, to look at this case again which I first
23 did the films on in 2018.

24 Q Can you tell the jury, either, well, we can start with
25 which parts of Mr. Flores's body did, of what films did you

1 review?

2 A I looked at the lumbar spine, which is the back, and I
3 looked at the left foot/ankle, and I looked at the left
4 shoulder, and I looked at the thoracic spine which is the
5 mid-back, I looked at the neck, which is the cervical spine, and
6 then I looked at X-rays, which included the left elbow, the left
7 wrist, the chest, and there may be a couple of other facial
8 bones, and that's basically all of the body parts.

9 Q For your testimony today. We're going to focus on the
10 lumbar, left ankle and which one would you like to start with?

11 A Whatever you want.

12 Q We can start with the lumbar.

13 Can you tell me other than the MRI you took on 4/16/18,
14 was there another film that predated that?

15 A Yes.

16 Q What was that film?

17 A A CAT scan of the lumbar spine lower back done on
18 March 24, 2018.

19 Q Was that at Maimonides Hospital?

20 A I don't have the name of the hospital here, it was done
21 in a hospital, I believe --

22 MR. VARGAS: And with your Honor's permission, if
23 we could start off by putting on the screen and doctor, if
24 you want to, you can step down, to point out any relevant
25 facts.

Dr. Thomas Kolb - Plaintiff - Direct

1 THE COURT: Permission granted, I want to make sure
2 the jury can see the scene, and your colleagues can observe
3 from an appropriate distance, subject to the rules of the
4 Court Officer.

5 (Whereupon, Dr. Kolb exited the witness stand.)

6 Q Try to keep this close by.

7 THE COURT: You can position yourself in any
8 position you like.

9 (Pause in the proceedings.)

10 THE COURT: Even up here, whatever is easier for
11 you, go ahead.

12 Q Okay.

13 A So this is a CAT scan, to show one, just so, this is
14 the first picture we're looking at, we will get together on the
15 same page here, right in the middle, good, fine, so this is a
16 CAT scan of the back and I'm just going to teach a little bit so
17 we're all on the same page, they all have medical terms, you
18 don't have to remember my of these medical terms, this is all
19 just common sense, each one of these squares here is called a
20 vertebra, which is a broken in the back, and we're only going to
21 look at the lower back right now and there are five of these,
22 and we all, whether we're male, female tall or short, we have
23 the exact same anatomy. Each one of these squares is a
24 vertebral body and there are five of them, so let's say this is
25 Number 5, right, so four, he three, two, one, three, five boxes

1 here are the bones of the spine, this is a different part of the
2 spine called the sacrum, you can feel in your back, we give them
3 numbers.

4 For example in the lumbar spine, with five bones we
5 call them L for lumbar spine, so this is the fifth bone, so if I
6 were to tell you there's something at L5, I would be looking at
7 this bone right here, but this one here is called S1 for sacrum,
8 and it's the first bone.

9 So if I want, if I want to show you something between
10 L5 and S1, I would be looking right here. If I want to show you
11 something between L4 and L5, I would show you here.

12 Okay, so there are spaces, we talked about spaces,
13 before, and on CAT scans, there are these spaces here between
14 the bones, so those spaces occupied by structures called discs,
15 and discs are little gelatinous structures so that when you move
16 around and turn and jump up and down, these bones don't touch
17 each other, very important thing in the body, bone should not
18 touch bone, if it does, very painful, the body doesn't want
19 that, we're born with discs in our bodies and they separate the
20 bones from each other.

21 So when you jump up and down, the bones can come closer
22 together, but then will spring back into the normal position so
23 there's a space between each of these bones.

24 So these discs, how do they stay in position? There
25 are ligaments that hold the discs in place, there's a ligament

1 that runs down and these ligaments are very tough coverings,
2 they hold things in place, there's a ligament that runs down the
3 back of the spine, they all have fancy names, you don't have to
4 remember them, posterior longitudinal ligament and then there's
5 another ligament in the front and there's another ligament that
6 goes around like a circle around the disc all over the place and
7 that's called, and that's called the annulus.

8 So what could go wrong? What could go wrong in the
9 back is these ligaments can tear. What happens with that when
10 they tear? So the disc is sitting right here and it stops right
11 at the edge of the bone, because we have the ligaments that are
12 holding it in place and the annulus, so if this is the disc, and
13 this is the ligament here, holding it in place, when you're
14 looking at it from the side like that, you're going to see an
15 MRI in another minute and see all of these structures much
16 better, the disc comes to the end of the bone and stops. If
17 there's a partial tear of the ligament, the disc will start
18 going through and that's a disc bulge, a bulging disc. If the
19 ligament tears completely, then the disc will go straight
20 through, and that's called a herniation, a disc herniation of
21 the back.

22 So this is a tear will allow the disc to go into a
23 place it's not supposed to go. Why do we care whether the disc
24 is held in a normal place or whether there's a disc herniation,
25 because behind here, behind these bones all of the nerve roots

1 come down and go out of holes on the side of the spine, one to
2 the right, one to the left, and these nerve roots go down your
3 legs, all the way down to your toes, and they allow you to feel
4 pain, they allow you motion of your muscles, sensation and so
5 on.

6 So anything that presses back here can cause pressure
7 on a nerve root, so anything that causes abnormal pressure on
8 the space, which is the thecal sac, that contains these
9 nerve roots can cause patients to have pain, so that's all we
10 need to see here.

11 Now going to the one you had before, so we're on the
12 same page, so here, you have a -- let me explain one more thing,
13 we just saw all of the bones of the spine in a CAT scan, right,
14 there's two ways to make a sandwich, you can have a long loaf of
15 bread, Italian breast or French breed, cut this way, make a
16 subway sandwich or hero, what happens when you do that? You
17 have two slices, each one is very long, you can see if I were to
18 take a picture straight up and down and give it to you, you
19 would see all five of the bones and that's what I just showed
20 you and that's again, called the sagittal, side view, but you
21 can take that same loaf of bread and cut it like sandwiches,
22 right, and you have many slices and when you pull it out, it's
23 either going to be round or square, so this round circle, that
24 I'm pointing to here is that sac that holds all of the
25 nerve roots here, but instead of seeing it long, we've now taken

1 the bread and making sandwiches and pulling it out and looking
2 at it, becomes a circle that's broken, I showed you before
3 that's square, because I showed you all of the bones were only
4 taking a picture at one level, and it will be clear in a second
5 what I'm talking about.

6 But this picture shows a piece of soft tissue that's
7 pushing out and this is a disc herniation, this round structure
8 contains all of the nerves, and this piece over here, and you're
9 going to see it in one second, it will be even easier to see in
10 the disc herniation, meaning that the ligament that ran around
11 the back of the bone here has torn and the disc has pushed
12 through just like that, and it's pushing on the that's sac that
13 contains the nerves.

14 These are the holes on the side where other nerves will
15 come out, that's all you need to see here, there's a disc
16 herniation on the examination of whatever the date is, it's
17 here, March 24, 2018.

18 If you go to the MRI --

19 Q Wait a minute, doctor, one second.

20 A Don't go.

21 Q Did you observe any calcification in this CAT scan?

22 A No, I didn't.

23 Q Doctor, if I can show you something that's already in
24 evidence, Plaintiff's Exhibit 11, contained in Plaintiff's
25 Exhibit page 28 of 41, if you can just read that real quick?

1 A All right, you want me to read the whole page?

2 Q Just the result of the CAT scan of the lumbar.

3 A The findings, on image 26 of series three, there's a
4 well corticated lucency through the base of the left L1
5 transverse process which has the appearance consistent with a
6 rudimentary rib, that's normal, just an extra rib, a less well
7 developed right rudimentary rib is also identified in image 24,
8 series three, the usual lumbar lordosis is preserved, which
9 means there's a normal curvature of the spine, the alignment is
10 within normal limits, the vertebral bodies heights are
11 maintained, the disc space is are maintained, there is no
12 aggressive osseous lesion seen, the caliber of the lumbar spine
13 is developmentally normal. Evaluation of the individual lumbar
14 levels demonstrates no disc herniation or foraminal stenosis.
15 Evaluation of the paraspinal soft tissue is unremarkable.

16 Impression: No acute fracture or a dislocation
17 identified, well corticated rudimentary ribs at L1.

18 Q And, doctor, does it mention calcification?

19 A No.

20 Q And it also mentions no disc herniation?

21 A Right.

22 Q How would you describe that?

23 A Well, I think that's a disc herniation right there.

24 Q It is -- it is just something the radiologist missed?

25 A I'm not going to say anybody missed anything,

1 radiologists can read things the way they want to read them, we
2 have an MRI done soon after showing some thing, so we can show
3 that too.

4 Q And the next film in order from the lumbar would be
5 4/6/18.

6 A Okay, so you see these boxes here, those are the same
7 boxes we saw on the CAT scan, but now this is an MRI, and you
8 can get a lot more information, so, each one of these squares is
9 a bone, and this is between L4 and L5, which is where I showed
10 you there was a herniation before and this is a similar picture
11 that I showed you before, where you see the disc, which is
12 supposed to go smoothly like that, and stop, actually there's a
13 big piece of the disc here, pushing down on the sac, and each
14 one of these little dots are nerve roots, right here.

15 Also, the side foraminal the nerves where nerve roots
16 coming out are narrowed as well, this is as you can see, pretty
17 much the same picture as I showed you previously given this is
18 an MRI, and that's a CAT scan. There's that herniation right
19 there.

20 Now if you look at the long view, you can see what I
21 told you before, each one of these discs if they're normal has
22 to stop at the edge of the bone here. For example, between L3
23 and L4, there's a disc and it stops here is the bone, here is
24 the bone here is the disc, disc stops, disc stops, it doesn't
25 push on this white line here, which is the fluid, the spinal

1 fluid next to the nerves, the spinal nerves, but look what
2 happens right here, is you have an obvious pushing out of the
3 disc, that is the disc material goes beyond the margins of the
4 bone, all of that disc material is outside of the bone, meaning
5 that the, meaning that it's torn, and if you take a picture
6 right through this yellow line here, and I put it up, this is
7 the long view, and this is the axial view, and you put it up,
8 you're seeing exactly what we're seeing here, this extra piece
9 of disc has pushed through a tear of the annulus, right there,
10 indicating, and it's pushing right there.

11 So it's a very similar to what it was a few weeks ago
12 on the CAT scan, but now you see it much better because it's an
13 MRI.

14 Q And on this MRI, do you see any calculation?

15 A No, I don't, no, I don't see any calculation here, now
16 you can see it, we took the yellow line off, the point, that you
17 can see the herniation really well right there, I mean you can
18 see it better here than you can on a CAT scan, and that's what I
19 meant by MRIs are show you things better than CAT scans.

20 Q And the next film, I believe is February 2019,
21 February 19, 2019, and these are, for the record, all on
22 Plaintiff's Exhibit 1.

23 A So, this is less than a year later, 2019, and you can
24 see how obvious it is, look at all of the others, they all stop,
25 it is a beautiful picture, they go to the margin and stop, then

1 you have this abnormal piece of disc here coming out, it is
2 exactly what a disc herniation looks like. We can look at it
3 any which way we want on MRI, but just showing you where the
4 pathology is, where the disc herniation shows it best.

5 Q And was the herniation a different size by this time?

6 A Yes, if you go back and forth to the pictures I believe
7 in '19, it enlarged from the one from 2018, and I believe that's
8 in my report also, in 2019 where in my report, it just says in
9 my report says large central posterior disc herniation.

10 Q And doctor, just so we have it for the record, your
11 diagnosis, with a reasonable degree of medical certainty?

12 A Well, there's a disc herniation, that's pushing back on
13 this picture here, 2019, there's a -- I -- right here there's a
14 large focal central posterior disc herniation, at L5-S1, with
15 central, meaning it's pushing back centrally and bilateral
16 meaning it's pushing on the holes that contain the nerve roots,
17 foraminal narrowing.

18 Herniation impinges upon the bilateral lateral
19 recesses, you can see that on the other picture, and herniation
20 appears to abut the bilateral exiting L5 nerve roots, clinical
21 correlation is in order, that's from March 19, 2019.

22 Q And doctor, we have two blowups of the lumbar, we will
23 come back to the screen in a second; okay.

24 MR. VARGAS: With your Honor's permission.

25 THE COURT: Yes, okay with the officer.

Dr. Thomas Kolb - Plaintiff - Direct

1 Q The blowups here --

2 THE COURT: Give me a second to come down.

3 Q Plaintiff's Exhibit 13.

4 A So this is a CAT scan, so CAT scan picture, but this is
5 from, this is the original, I showed you this already, this is
6 March 24th, 2018, and, and all of this here, that I'm outlining
7 here should be there, the disc should come to this dotted line
8 and stop, but it's pushing through right there, that's a disc
9 herniation, that's what I just showed you before.

10 Q And Plaintiff's exhibit, wait, that was Plaintiff's
11 Exhibit 19, I said the wrong number.

12 But now we have Plaintiff's Exhibit 20.

13 MR. AARON: Doctor, if I can ask you not to write
14 anything on these, these are marked into evidence.

15 MR. VARGAS: I would object, he's marking for the
16 jury, so if they want to review them afterwards, they can
17 see.

18 THE COURT: We need an unadulterated case so not to
19 use them.

20 MR. VARGAS: Your Honor, can we have a side bar.

21 (Whereupon an off the record side bar discussion
22 was held.)

23 THE CLERK: Doctor, you can sit in the witness
24 booth.

25 (Whereupon Dr. Kolb resumed the witness stand.)

Dr. Thomas Kolb - Plaintiff - Direct

1 THE COURT: I just made a ruling that both sides
2 have an equal right to markup the evidence in two different
3 colored inks.

4 Q Doctor, continuing with Plaintiff's Exhibit 2.

5 MR. VARGAS: For the record, Kolb is using red.

6 Q Plaintiff's Exhibit 1?

7 A We have seen this, here, on the sagittal view, all of
8 this coming out here is a disc herniation, and all of this
9 coming here is a disc herniation, and it's all depends on how
10 you slice it, we're not actually slicing a patient, it's a
11 computer that's giving us the pictures, here we look at
12 length-wise, you see it there, that's the same thing you're
13 seeing there, if you take a picture, just here, take it out, and
14 look at it, you see this coming down here, that's it.

15 Q Plaintiff's Exhibit 1?

16 A So on this picture, October 6, 2021, you can see pretty
17 obvious, right we all know now this is a large herniation, you
18 can see it's there, and we only took a picture from the center
19 of the patient; in other words, if the patient had anything to
20 be done to them or anything else off to the sides, you're not
21 going to see on this one picture.

22 So we all understand ourselves, radiologists just
23 don't look at this picture, we look at many pictures, like we
24 saw on the computer screen, we can scroll through from left to
25 right, from top to bottom, from front to back, this is one

1 picture, this is the herniation here, still there, after all of
2 these years.

3 Q Plaintiff's Exhibit 2?

4 A This is an X-ray, we haven't talk about X-rays, it
5 looks like a CAT scan, a little bit on a CAT scan we can scroll
6 through and see many, many pictures, this is one picture, and
7 this is what you get, this is an X-ray we took it from the side,
8 here are your vertebrae and bone, there are five of them, so
9 this is Number 5 and this is four, and this is three, this is
10 S1, but something has changed, we have these white objects going
11 through here, and since we're looking at it, we have one picture
12 from the side, there are actually two screws that are going into
13 the patient one on the left side and one on the right at L5,
14 there are two screws here going into the patient from the left
15 and the right, at S1 and then there are connecting rods that
16 hold the screws like that, and what's happening here is that a
17 surgeon has fused the patient and the point is not to allow this
18 patient to move at this area, so that, there shouldn't, so that
19 by diminishing the amount of movement at this area, hopefully
20 the patient's symptoms will get better.

21 The patient now has to move using all of these spaces
22 here, which they would anyway, but it takes away their ability
23 to use L5-S1.

24 Q And while we're on the subject of a surgeon, I want you
25 to assume that Dr. Weinstein who performed this surgery

1 testified when he did the surgery he found calcification at
2 L5-S1.

3 Doctor, do you have an explanation as to why on the
4 original CAT scan of 3/24/18, the MRI of 4/6/18 and the MRI of
5 2/19/19 calcification wasn't seen.

6 A There are two points; one is the tests are not picking
7 up calcium, he's seeing something, I'm not sure exactly what
8 he's seeing, he can talk about what he saw, none of these tests
9 are picking up the other possibility is the patient forming
10 calcium from the last procedure that was done, and the surgery,
11 in other words, whatever the amount of time was, whether it was
12 months or so on, things have changed once the herniation
13 happens, things degenerate and start breaking down because the
14 ligaments are torn.

15 So those are possible reasons for Dr. Weinstein, but
16 I'm not one to speak for Dr. Weinstein, those are possible
17 reasons why imaging is not going to show calculation.

18 Q So a trauma could cause a calcification?

19 A No, a trauma doesn't cause calcification unless the
20 trauma causes something which causes instability, to the spine
21 and time passes, because it takes time for calcium to form, it
22 doesn't happen at the time of trauma, you can form calcium at
23 other joints without trauma too, but it takes time to form, so,
24 I can't tell you when it started forming.

25 Q A better way to phrase it, the trauma caused the

1 herniation and the herniation could have caused the
2 calcification?

3 A It is a possible explanation for what's going on.

4 Q And going back to the screen, I forgot to mention also
5 the right knee, I believe we have an MRI of 6/8/18, which is
6 also on Plaintiff's Exhibit 1, if you want, I have a copy here.

7 A Okay, that's quickly, let's do your copy, we're done,
8 so let's talk about the knee for one second, let go to the
9 middle for one second, so there are these two gray things here,
10 okay, this is your thigh bone, right here, and this is your shin
11 bone, right here, and this is your kneecap right in front you
12 can feel, we have three bones on this picture. Now I told you,
13 let's go back to the one we want to show, so I told you that any
14 time there are two bones close to the body to each other,
15 there's always a shock absorber holding them apart, bone touches
16 bone painful not good, in the knee they're not called discs,
17 they're calls menisci, you don't have to remember the words,
18 there's a meniscus on the inside of the knee called the medial
19 meniscus, medial means inside, lateral meniscus on the outside
20 of the knee and this here is the meniscus and it has three
21 parts, it has the front, it has the middle, it has the back and
22 the back is called the posterior horn, and normal is back, it
23 should look like a beautiful black triangle with really no
24 signal or no whiteness in it, compare the front one to the back
25 one, and you see there's a lot of white area here that shouldn't

1 be here, that's meniscal signal, it's going towards an articular
2 surface here and that's a finding that has to be evaluated by a
3 doctor to see if it's causing the patient pain or not.

4 Q With a reasonable degree of medical certainty, your
5 diagnosis of this film?

6 A Well, in my report it says there's intrasubstance means
7 in the middle of the meniscus posterior horn, within the
8 posterior horn of the medial meniscus, that's this right here,
9 the patient also had a partial tear of a ligament that connects
10 the kneecap to the femur and tibia, that's retinaculum, there is
11 two findings, this is the major finding.

12 Q Doctor, I want you to assume that Dr. Kaplan performed
13 a surgery on this knee in May of 2021, and when he looked at
14 opened the knee, he saw a medial meniscus tear; is that
15 consistent with your finding?

16 A When did he do surgery?

17 Q May 26, 2021.

18 A That's three years later, the question is what does
19 this meniscal signal and could it be a tear, yeah, exactly, it's
20 what the doctor has seen and correlated, you're also talking
21 three years later, I don't know what this look like the day the
22 patient had an MRI, I don't know, this could have worsened and
23 the patient needed surgery, that is as much as I can say based
24 on this picture from 2018.

25 Q Next left ankle, MRI of June 8, 2018, the same date as

1 the --

2 A So, let's get to the side view, pull this out, put it
3 in the middle, okay.

4 So, this looks like ankle, right here is the heel, just
5 to start off, so we understand things, here with the heal here
6 is your Achilles tendon, this black line here, again, it's
7 normal ankle tendon is normal, and there are a lot of
8 structures, this is your shin bone coming down towards your knee
9 here called the tibia, another bone here and the ankle, and the
10 foot are filled with bones, and they're filled with ligaments
11 and tendons and muscles, we're not going to go through all of
12 that, we're going to go to the picture that shows a couple of
13 the tears, this patient had a few tears.

14 So there is a lot going on here, this is one ligament
15 that connects this bone fibula total talus, it's called the
16 talofibular ligament, in front of the patient, anterior, that's
17 lot of words, but the point is, there's attenuation and partial
18 tear of this ligament, also partial tear of this ligament back
19 here, there are two other.

20 Q Are we looking at the foot from top, bottom?

21 A What are we looking at, you just drag it on, and let's
22 see it, what we're doing we took this picture, which is the long
23 subway sandwich seeing all of the bones from here to here. Now
24 we're just going to take a picture right here, because we know
25 the ligament that we're looking for, we take pictures not right

1 here, we take pictures all the way across like that, and then we
2 look at all of them, let's scroll through the two, two axials
3 like this, we can scroll through, very slowly, you can see all
4 of these bones, and all of these ligaments and these tendons
5 right here and we see a lot of stuff.

6 If you go back to the tear, we go back to that number,
7 going back, and we see a lot of stuff going on here, there's the
8 partial tear of the anterior talofibular ligament, partial of
9 the anterior talus ligament, partial tear of the posterior tear,
10 there's a partial tear of the anterior talofibular ligament, and
11 there's a partial tear of the posterior talofibular ligament and
12 then there are two other tears elsewhere on this scan, and
13 there's a partial tear of the anterior inferior talofibular
14 ligament and partial tear of the deltoid ligament and there's a
15 joint effusion, meaning there's fluid in the joint space.

16 Q You also had edema listed?

17 A Yeah, edema means swelling, it's swelling, swelling in
18 the, swelling in the ankle.

19 Q What is the significance of edema and joints fusion?

20 A So, your body reacts if it, if something is wrong, if
21 there is a tear or partial tear of a ligament or a tendon, your
22 body will react to that by swelling, if you, if something
23 happens to your knee, you can feel your knee getting swollen or
24 your ankle sprain, you can have a swelling of your ankle, so
25 that's what soft tissue edema is, it's swelling or fluid, which

1 is actual collection of fluid in the joint space that's called a
2 joint effusion.

3 Q Would those be, edema and joint effusion be indicative
4 of a trauma to the body?

5 A There's indicative to the tears, the body reacting to
6 those tears and that can be caused by trauma.

7 Q And with a reasonable degree of medical certainty, I'm
8 sorry, you have to repeat it again, but, what was your diagnosis
9 of the film?

10 A Well, okay.

11 Q I didn't ask before you said it.

12 A Partial tears of the anterior and posterior talofibular
13 ligaments with associated soft tissue edema and joint effusion,
14 partial tear of the anterior inferior talofibular ligament and
15 partial tear of the deltoid ligament, joint effusion.

16 Q Thank you.

17 Next, the left shoulder, 4/6/18.

18 A Okay, in the shoulder, it's another joint, we're not
19 going to go through all of the anatomy, but this here is your
20 humerus, which is this bone right here in your arm, and it comes
21 up to your shoulder, and it looks like a round ending here, like
22 a ball here, and there's another ball, another bone called the
23 glenoid, and this is the shoulder joint, the glenoid, humerus,
24 you don't need to know any of the medical terms here, the
25 clavicle, your bone right here is right here, and this is

1 another bone that it connects with here.

2 Now, what holds the joint together, so when you
3 move your shoulder, it just doesn't fall out, are muscles and
4 tendons that go around the entire joint, and those are called
5 the rotator cuff muscles and rotator cuff tendons, the shoulder
6 has rotator cuff anatomy.

7 Each one of these muscles attaches to the bone by a
8 tendon and there are four of them, they're called the
9 supraspinatus, infraspinatus, subscapularis and the teres minor,
10 in this particular patient, now, in this, and again, just like
11 the meniscus, these tendons should be totally black, they should
12 have no signal in them. This is the muscle here going around,
13 and then there should be a totally black tendon attaching the
14 tendon to the bone, here we see signal in both the supraspinatus
15 and infraspinatus tendons, it's on the articular side of the
16 joint, which is this side not that side you see, the nice black
17 line right there, this is a partial tear or a partial rotator
18 cuff tear of the supraspinatus, and infraspinatus tendon only
19 showing you one picture, both supraspinatus and infraspinatus
20 tendons are partially torn.

21 Q That's with a reasonable degree of medical certainty?

22 A Yes, sir.

23 Q Anything else that you want to point out to the jury?

24 A No.

25 Q You may take the stand.

Dr. Thomas Kolb - Plaintiff - Cross/Mr. Minero

1 (Whereupon, Dr. Kolb resumed the witness stand.

2 MR. VARGAS: No further questions.

3 THE COURT: Any cross?

4 MR. MINERO: Yes, your Honor.

5 CROSS-EXAMINATION BY

6 MR. MINERO:

7 THE COURT: Give it a quick second.

8 Q Good morning, doctor.

9 A Good morning, sir.

10 Q Doctor, do you know what happened to Mr. Flores?

11 A No.

12 Q Were you ever told that he apparently fell from a
13 15-foot height?

14 A No.

15 Q You didn't know that he fell unexpectedly from 15 feet
16 onto concrete?

17 A Maybe he told me today or this morning, no, I had no
18 knowledge of this while reading the findings, no.

19 Q But it does say in your report?

20 A Uh-huh.

21 Q That, his injuries are, I will quote you, a permanent
22 injuries related to his accident of March 24th?

23 A It says that in my report?

24 Q I'm reading number 17.

25 A Can I see that?

Dr. Thomas Kolb - Plaintiff - Cross/Mr. Minero

1 MR. VARGAS: I object, that's our expert exchange.

2 MR. MINERO: It's in the expert exchange, it's
3 something he's going to testify about.

4 MR. VARGAS: You said report.

5 MR. MINERO: I'm sorry.

6 Q In the expert exchange, I'm sorry you're right, are you
7 aware it's in the expert exchange?

8 A I would have to read it, if you don't mind.

9 MR. MINERO: Chris, are you okay?

10 MR. VARGAS: Yes, this is the expert exchange of
11 what date, June 6, 2025.

12 THE COURT: Thank you, counselor.

13 MR. MINERO: May I, your Honor?

14 THE COURT: Yes, sir.

15 Q (Handing.)

16 A Number 17, okay.

17 Q Do you want it back, did you ever do an examination of
18 the Plaintiff?

19 A No.

20 Q Did you ever make any --

21 A I mean I never did a physical examination of the
22 Plaintiff, right.

23 Q Right. Did you ever make any conclusions that the
24 injuries he suffered was related to an incident that took place
25 March 24th of 2018?

1 A No, never made that.

2 Q I'm going to represent to you in this case, Mr. Flores
3 is alleging that he did fall 15 feet on to concrete.

4 A Okay.

5 Q In addition to reviewing the CAT scan and the MRI from
6 March 24th, you also reviewed an X-ray of his pelvis; correct?

7 A Yes, I believe so.

8 Q Is it true that the X-ray was normal?

9 A I believe so.

10 Q In your experience as a radiologist, do you find it
11 normal that if someone fell from 15 feet, they would have no
12 injuries to their pelvis?

13 A I don't see how you can answer that yes or no. Someone
14 can fall 15 feet and have a fracture, or somebody can fall
15 15 feet and not have a fracture, I don't know.

16 Q If I told you he claims he fell on his left side, would
17 that change your opinion?

18 A No.

19 Q You also reviewed his X-ray from the left elbow that
20 day, that was also normal?

21 A Yes.

22 Q Again, is that consistent with someone who falls
23 15 feet onto concrete?

24 A It is for the same answer.

25 Q And the same about his X-ray of his left wrist, is that

1 consistent with somebody who falls 15 feet onto concrete?

2 A Yes, sir.

3 Q Is it your opinion, though that the disc herniation we
4 saw, that is the result of the March 24th, 2018, incident?

5 A No, I didn't say that.

6 Q Okay.

7 A You need clinical correlation for that, you need a
8 doctor who have examined him, take a history and put together
9 the MRI results, no one can look at the MRI and say exact time
10 and date and minute that it happened.

11 Q So as you sit here, you cannot tell me or this jury
12 that the March 24th, 2018, incident is the cause of that
13 herniation?

14 A I can just tell you that if there's clinical
15 correlation, that the patient had no symptoms, wasn't having
16 problems, wasn't change, wasn't seeing doctors, wasn't getting
17 MRIs and tests, and that the patient fell and now has a
18 herniation on the single MRI, you can form a conclusion based on
19 that, but just in a vacuum looking at the picture, I can't tell
20 you the time and date that the herniation occurred.

21 Q Okay. Let me ask you this, I know that you have
22 testified that you did not see any calculation on that original
23 MRI?

24 A No.

25 Q Or on the original CAT scan; correct?

1 A That is correct.

2 Q What is calcification a symptom of?

3 A So I'm not really sure exactly, we have been talking
4 about calcium, I'm not really sure what it is a symptom of.

5 Q Is it something that you would if a disc was
6 degenerative?

7 A Discs are calcified rarely. If they're degenerative,
8 as a general answer, yes, they can.

9 Q Most often, they don't?

10 A Okay.

11 Q If you see calcification on a disc, what is that
12 typically an indication of?

13 A You mean if you see it on a disc on MRI or if you open
14 the patient and look in.

15 Q Let's start with if you see on an MRI?

16 A What is an indication of?

17 Q Yes.

18 A Calcification takes a long time to form it could take
19 months to form, so is it an indication that something happened
20 to that disc which caused it to form calcification, possible.

21 Q Is it fair to say that if there had been calcification
22 shown on that disc in the March 24, 2018, MRI, there would have
23 been an injury to that disc sometime prior thereto; correct?

24 A I can't answer that question, I have no idea, I mean
25 when calcium forms, what it forms to, I can't -- I can tell you

1 if you see it, to even your question.

2 Q Yes.

3 A If you see it today in this minute, it didn't occur on
4 this minute.

5 Q Okay.

6 A It occurred at some point prior to that.

7 Q Right, if you were to take an MRI of my back today?

8 A Yes.

9 Q And you noticed there was calcification, and he clearly
10 didn't get hurt today?

11 A No, that's a very false statement. You can have
12 calcification there, you can have a lot of calcification there,
13 but no herniation, and then fall down today and have a
14 herniation from the fall, the two are separate things.

15 Q In your review of the and CT or CAT scan from March 24,
16 2018, other than this one herniation, were there any indications
17 of either disc or spine injuries noted?

18 A I believe not, if I'm correct, we can go on; otherwise
19 I will look, and make sure.

20 Q I want you to be correct, so please take your time.

21 A Yeah, sorry, a lot of reports, CT scan March 24, 2018,
22 no so on the CAT scan of March 24, 2018, there's disc herniation
23 at that one level at L5-S1, the other levels were normal.

24 Q There's also no evidence of any injury to the spinal
25 calcium itself; correct?

1 A Spinal column?

2 Q Yes, the spinal cord.

3 A The spinal cord ends way above the lumbar spine, you
4 wouldn't see a spinal cord on this MRI.

5 Q Okay. Was there any evidence of any burst disc?

6 A What is a burst disc?

7 Q A burst vertebra?

8 A You mean a fracture?

9 Q A fracture, sure.

10 A No, no fracture.

11 Q Are there any fractures of any of the vertebrae that
12 you saw on any of the images from March 24, 2018?

13 A I saw no fractures.

14 Q Doctor, was there the image earlier that you looked at
15 where you saw the beginning of the herniation on March 24, 2018,
16 there's another one that's better?

17 A The axial.

18 Q I believe it's this one, sorry, I think it's the six
19 range X-ray, there we go.

20 A It's definitely not this.

21 Q Doctor, I want to show you what has already been marked
22 as Plaintiff's Exhibit 19, and I believe that you have already
23 testified that there is evidence of a herniation at L5-S1;
24 correct?

25 A Correct.

1 Q And there's some black or dark matter near the
2 herniation; is that correct?

3 A I don't see any.

4 Q You don't see any?

5 A Maybe if you point it out, do you want me to stand up,
6 whatever you want me to do, I will do.

7 MS. SUED: Your Honor, why don't we use it so the
8 jury can see it.

9 THE COURT: So the jurors can see it.

10 Q Doctor, is it your opinion, that there is no black
11 material in or around where the herniation is?

12 A I have no idea where you're pointing to or what is
13 black.

14 Q This area here.

15 A Yes, right, you mean this little black area right
16 there?

17 Q Yes.

18 Is that -- what is that an indication to you, if
19 anything?

20 A That is fat, you see the blackness there, same
21 blackness, there, that is the fat on his skin and fat on his
22 bone.

23 Q Do you know if there is a T1 or T2 MRI?

24 A This is not an MRI.

25 Q This is the CAT scan?

1 A That is correct.

2 Q So there's no, in your opinion, there's no indication
3 of any disc material?

4 A There's lot of disc material.

5 Q Black disc material?

6 A Black disc material?

7 Q Yes.

8 A Well, first of all, as I say, you don't see the disc on
9 the picture, you see the disc here, the entire disc is what I
10 pointed out in my left --

11 MR. VARGAS: If Mr. Minero, if he's going to point
12 to it.

13 A So the disc herniation is around these red marks, this
14 gray area right here, the black is fat.

15 Q Okay.

16 A Epidural fat.

17 Q And it is your opinion there's no evidence of any disc
18 degeneration in this picture?

19 A Yes.

20 Q Doctor, of the X-rays, CAT scans and MRIs that you've
21 reviewed of Mr. Flores, is there any indication of any crush
22 injuries on any of them?

23 A What is a crush injury?

24 Q A fracture.

25 A As I said, there is no fracture.

Dr. Thomas Kolb - Plaintiff - Cross/Mr. Aaron

1 MR. MINERO: Thank you.

2 THE COURT: Counselor, is there any questions?

3 MR. AARON: Thank you, Judge.

4 CROSS EXAMINATION BY

5 MR. AARON:

6 Q Good morning, doctor.

7 A Good morning, sir.

8 Q The first films you took were 13 days after the
9 accident?

10 A Yes.

11 Q That's pretty close in time to the accident; right?

12 A 13 days.

13 Q One of the MRIs that you took 13 days later was of the
14 right knee?

15 A Yes, I believe so without going through my notes, yes.

16 Q Are you aware that a CAT scan of the right knee was not
17 done at the hospital?

18 A I'm not aware, but I will accept that.

19 Q Are you aware not even an X-ray was done at the
20 hospital of the right knee?

21 A Not aware.

22 Q There was a CT of the cervical spine from the day of
23 the accident?

24 A Yes.

25 Q I also believe there was a CT of the lumbar spine as

1 well?

2 A Yes.

3 Q And thoracic spine?

4 A Yes.

5 Q And of the head?

6 A Yes.

7 Q And of the pelvis?

8 A Yes.

9 Q Did you review the one of the pelvis?

10 A I believe I did.

11 Q I believe there was also an MRI done of the pelvis as

12 well?

13 A Yes, there was.

14 Q The X-ray that was done, was, did you order that or was
15 that done at the hospital?

16 A No, I think these are all of the same date in the
17 hospital, I didn't order any of these, I'm the radiologist, I
18 just read them.

19 Q Right, they send you the films and you read them?

20 A I do the films and read them or they're sent to me and
21 I read them, I can't yeah -- you're right.

22 Q In any of the films you reviewed, doctor, did you see
23 any evidence of suspected L1 pedicle fracture?

24 A I didn't see one.

25 Q Did you review just the films from the hospital or did

1 you review all of the hospital records from Maimonides Hospital?

2 A Just the films that I was sent that I put reports on,
3 no hospital records.

4 Q In any of the films, withdrawn.

5 In any of the reports that you did review, did you see
6 any mention of a suspected left L1 pedicle fracture?

7 A I didn't.

8 Q And so if there was testimony here that Mr. Flores was
9 told that he had a fracture of his back, would that be
10 incorrect?

11 A I didn't see one.

12 Q Okay. Doctor, before Mr. Vargas was asking you
13 questions, you said you testified maybe four or five times a
14 year?

15 A Correct.

16 Q And how long have you been doing this?

17 A Well, more than 20 years.

18 Q Okay. Is it fair to say you've probably testified over
19 100 times?

20 A Fair.

21 Q And the fact you testified just a few months ago in May
22 of Mr. Vargas?

23 A It could very well be.

24 Q That was on behalf of a Norman Rivera?

25 A I don't have the name, but whatever you have, I accept.

Dr. Thomas Kolb - Plaintiff - Cross/Mr. Aaron

1 Q And do you recall whether Mr. Norman Rivera also
2 claimed to have been injured in a construction accident?

3 A I don't.

4 Q You also testified for Mr. Vargas earlier in January of
5 this year?

6 A I don't know the date, but whatever you have on record,
7 that's fine.

8 Q If I mention the name Mr. Asencio Martinez, would that
9 refresh your recollection?

10 A No, sir.

11 Q And so, at least as far as I know, this would be number
12 three for Mr. Vargas's firm just for this year?

13 A If that's what it says, yes.

14 Q Who referred Mr. Mr. Flores to you?

15 A Dr. Jeffrey Kaplan.

16 Q Are you aware that Mr. Flores was referred to
17 Dr. Kaplan by his attorneys?

18 A I have no idea what Dr. Kaplan does or doesn't do.

19 Q Okay, he's just a referring physician to you?

20 A He is not referring physician.

21 Q You talked with Mr. Minero about degeneration.

22 Degenerative changes, those can be seen on tests like
23 MRIs, CAT scans, CT's things like that?

24 A Yes.

25 Q And just, I don't know if it was covered, but

1 degeneration is basically just the aging of the spine; correct?

2 A Yes.

3 Q And on the film you can see defined features, that
4 would tell you whether or not there is degeneration?

5 A Yes.

6 Q Things like osteophytes?

7 A Yes.

8 Q And end plate changes?

9 A Yes.

10 Q Discs desiccation?

11 A Yes.

12 Q And I apologize if I'm mispronouncing spondylolytic
13 ridging or spondylolytic ridging?

14 A Like spurs, osteophytes.

15 Q And osteophytes and that kind of ridging would be kind
16 of same thing?

17 A Similar.

18 Q And that, it is a bony overgrowth in a way?

19 A Yes.

20 Q The overgrowth that's caused by bones rubbing together?

21 A Yes, correct.

22 Q And all of those things we just talked about, the
23 osteophytes, end plate changing, desiccation and ridging, those
24 are all examples of degeneration?

25 A They can be.

1 Q If there's evidence in the films from April of 2018 of
2 desiccation being there, would you agree that that would have
3 been something that would have existed before the accident?

4 A Yes, again, desiccation takes a long time to happen,
5 yes.

6 Q Typically, how long would desiccation typically take?

7 A It could takes months to years, it would depend on the
8 patient.

9 Q Are things like a person's age or their occupation
10 relevant to whether something like disc desiccation or
11 degeneration would be present on the film?

12 A Everybody is individual, it may be relevant, may not be
13 relevant.

14 Q Now, when you look at a diagnostic test like an MRI or
15 CAT scan, you can see evidence of a recent trauma?

16 A You can, it's possible.

17 Q So, for example, one of the ways you can see recent
18 trauma, let's say on an X-ray, would be like a fracture or
19 subluxation?

20 A Yes.

21 Q And a fracture or subluxation, that would also be
22 viable been a CT scan?

23 A Yes.

24 Q And the CT scan of the lumbar spine from the day of the
25 accident didn't show any fractures or evidence of subluxation?

1 A Correct.

2 Q You can also see edema on an MRI?

3 A On MRI, yes.

4 Q I know you said before edema, that's soft tissue
5 swelling?

6 A Yes.

7 Q And in your report from April 6, 2018, there was no
8 reference to edema?

9 A Right.

10 Q So when, at least when you saw the films from 13 days
11 after the accident, you saw no evidence of edema; is that fair?

12 A Right.

13 Q And a hemorrhage, can that also be an example of a
14 traumatic event seen on an MRI?

15 A Yes, rare, but the answer to the question is yes, it
16 can be.

17 Q It could be seen, but it's rare to see them; is that
18 you're saying?

19 A These are uncommon things to be soft tissue and to be
20 investigated with disc herniation but it is possible you can see
21 them, much like a fracture would be, unlikely but possible.

22 Q Those would be independent findings aside from a
23 herniation?

24 A Yes.

25 Q There was no evidence of a hemorrhage on the CAT scan

1 taken on the day of the accident?

2 A Correct.

3 Q In your report you don't make any mention to a
4 traumatic event, you just read the image?

5 A Right.

6 Q Would you agree with me, doctor, that the April 2018
7 MRIs did show evidence of degeneration in the lumbar spine?

8 A April 2018, March, April, hold on, I see -- no, not
9 really. I want to take a look at the blowups to see what I'm
10 talking about.

11 MR. VARGAS: I don't think the 4/6/18 is there, I
12 think it's on CD.

13 MR. AARON: Okay. If it's possible, can we have
14 that one put up?

15 MR. VARGAS: Yes, 4/6/18?

16 MR. AARON: Yes, thank you, I appreciate that.

17 Q That's good actually, doctor, are you able to see, you
18 can come on down, if you like?

19 A I'm good.

20 Q With these we're still looking at the lumbar spine?

21 A Yes.

22 Q Is it fair to say that a normal healthy disc would
23 appear as white?

24 A It depends where in the spine and how the picture is
25 taken.

1 Q And so this would be L1?

2 A Five, four, three, two, one, you're pointing to the
3 disc.

4 Q I'm pointing to the disc, correct?

5 A Yes.

6 Q Uh-hum?

7 A That's T12-L1.

8 Q Would the disc here be between?

9 A One and two, two and three, three and four, four and
10 five, and five and one.

11 Q Five and one, this is where Mr. Flores had his
12 herniation?

13 A Correct.

14 Q And we can see that the color of this disc is different
15 than the other ones in the lumbar spine?

16 A You can see T12/L1 is also darker than L1-2, depends
17 where the picture was taken and the coil placed on the MRI
18 machine.

19 Q Typically, if there was disc desiccation in the disc,
20 it would appear as black like this film here?

21 A Yes.

22 Q If there's no disc desiccation, it would appear white
23 as we see here?

24 A It depends how the picture is taken and what part of
25 the spine you're looking at, it depends.

Dr. Thomas Kolb - Plaintiff - Cross/Mr. Aaron

1 Q When you say that's how the picture is taken, is that
2 how the patient is positioned on the table or?

3 A Where the coil is how low the image, for example, the
4 top disc at L2, one is darker than the one below it, where are
5 we discussing T12-L1, we're not -- it is where the disc is.

6 Q Based on your review of this film, do you see
7 desiccation within L5-S1?

8 A I didn't mention it.

9 Q Thanks, I appreciate that.

10 Sir, did you read Dr. Weinstein's testimony from
11 Friday?

12 A No.

13 Q And you are aware that he performed the surgery on
14 Mr. Flores?

15 A I'm sorry.

16 Q You are aware he performed the surgery on Mr. Flores at
17 L5-S1?

18 A I'm aware that he performed the surgery, yes.

19 Q Did you review his operative report?

20 A I didn't review his operative report, even the answer
21 to the question before, I don't know that I knew that he did
22 surgery when I was sent those pictures showing surgery, I don't
23 know what I was told, I certainly didn't see his operative
24 report.

25 Q But you are aware that a surgery was done at some

1 point?

2 A Yes, yes, yes.

3 Q You saw the hardware from the X-ray?

4 A Yes, correct.

5 Q I'm going to represent to you, sir, that the operative
6 report from Dr. Weinstein, a note in his own words when he found
7 the disc at L5-S1, it was mostly calcified, I just want to talk
8 about calcification just a little bit more, I don't want to
9 bother anybody else.

10 Calcification in a lumbar disc that means that deposits
11 have built up in the disc tissue; right?

12 A Yes, reasonable.

13 Q And not something that develops overnight?

14 A Correct.

15 Q And it can take years to develop?

16 A Months, years, yes.

17 Q That calcium is part of the degenerative process?

18 A It can be.

19 Q We also heard from Dr. Weinstein last week,
20 calcification is the body trying to stabilize an area of
21 abnormal tissue; do you agree with that?

22 A I think that's a bone spur or osteophyte that you were
23 talking about before. I don't think can calcium in a disc is
24 trying to stabilize in; in fact, I'm sure it isn't stabilizing
25 it.

Dr. Thomas Kolb - Plaintiff - Cross/Mr. Aaron

1 Q You would disagree with Dr. Weinstein?

2 A I don't know if I can disagree or agree without reading
3 everything he said and hearing everything he said. Just to
4 answer your question, calcium in the disc itself is different
5 than bone spurs which are calcification, two different reasons
6 for forming.

7 Q So let's take Dr. Weinstein's testimony, he did the
8 surgery?

9 A Sure.

10 Q If a disc was found to be mostly calcified at the time
11 of the surgery, which is 15 months after the accident, isn't it
12 possible that the calcification existed at the time of accident?

13 A Well, we have a lot of pictures that don't show calcium
14 read by other doctors, in pictures no one mentions calcium.
15 Anyway the doctor says he sees it in there.

16 Either none of these pictures are showing it, which is
17 unlikely they can show calcium or it formed after the pictures
18 were taken.

19 Q Sir, did you read any reports that were prepared by Dr.
20 Evan Mayer?

21 A No.

22 Q We have the MRI from February 19, 2019, and we have the
23 CT scan from March 19, 2019?

24 A Yes.

25 Q All prior to his back surgery?

1 A Yes.

2 Q And in any of those, you did not identify any
3 disc desiccation or calcification?

4 A Correct.

5 Q The postoperative X-ray taken of Mr. Flores's spine is
6 part of the reason to show there was a successful fusion?

7 A I believe so.

8 Q Were you aware of any other films taken of his spine
9 after the surgery or just the X-ray?

10 A I just, I think there was an MRI after the surgery,
11 but, again I would have to take time and look.

12 Q What was the date of the surgery?

13 A I believe it was, the surgery was in June of 2019.

14 Q You would know whether he had, I thought he had an MRI,
15 it was in June of '19?

16 A So he had, yeah, he had an MRI of his lumbar spine in
17 October of 2021, yes.

18 Q You reviewed that MRI?

19 A I did.

20 Q And based on what you saw from the X-ray and the X-ray,
21 did you see evidence of a successful fusion?

22 A My report says status post posterior fusion at L5-S1 as
23 described above. There is recurrent or residual disc at L5-S1
24 impinging upon the anterior fat, bilateral recesses, mild
25 narrowing of the inferior aspects bilaterally, that's as much as

1 I can tell from this MRI.

2 Q So if there's evidence of a residual disc herniation,
3 would that indicate to you that the surgery that Dr. Weinstein
4 had done was improper?

5 A I don't see how you can say that, I don't do the
6 surgeries, I don't see how that statement is a reasonable
7 statement.

8 Q What is the point of a fusion?

9 A Point of a fusion is to decrease the patient's
10 symptoms.

11 Q Are you aware whether or not Mr. Flores has ever gone
12 back to Dr. Weinstein following the surgery?

13 A No, I have no idea.

14 Q Based on your review of the X-rays, did you see any
15 complications with respect to the hardware, the screws,
16 anything?

17 A No.

18 Q And that would be something you would look for as a
19 radiologist to make sure that the screws were in place and that
20 the hardware hasn't moved?

21 A Yes.

22 Q And can you also tell on the X-ray, whether a fusion is
23 starting to begin?

24 A You can tell, yes.

25 Q And based on your review of the X-ray that we looked at

1 before, are you able to tell whether the fusion was beginning?

2 A I didn't -- I don't know how soon after it was, you
3 mean X-ray or the MRI?

4 Q The X-ray.

5 A I don't know the date of the X-ray, if you can tell me
6 or I will find it, but I didn't note that the fusion was
7 beginning or not beginning, that I remember.

8 Q Typically, would a fusion take maybe around a year
9 before you can see whether it was successful or not?

10 A Again, it would take months to years.

11 Q The first time Mr. Flores had an MRI of the knee was
12 June 28, 2018?

13 A Yes.

14 Q In your report you state there's intrasubstance signal
15 in the posterior horn of the medial meniscus?

16 A Yes.

17 Q Intrasubstance that means within the substance of the
18 tendon or cartilage, rather than a tear that extends to the
19 surface?

20 A Yes.

21 Q On the MRIs 13 days after the accident, you didn't see
22 any evidence of a surface tear?

23 A The clinician or whoever examined him would have to put
24 the findings together with their examination to know whether it
25 was a tear or not. I don't know.

Dr. Thomas Kolb - Plaintiff - Cross/Mr. Aaron

1 MR. VARGAS: It's not 13 days after the accident,
2 June 8, 2018, would be months after the accident.

3 MR. AARON: You're right, April would be 13 days.

4 Q About three months after the accident?

5 THE COURT: Thank you, Mr. Vargas.

6 MR. AARON: Thank you.

7 Q Sir, you also testified a little bit about what you saw
8 on imaging of the left ankle?

9 A Yes.

10 Q In any of the films that you reviewed, did you see any
11 evidence of any fractures of his left knee?

12 A I did not.

13 Q Again, ligament tears can be called by degenerative
14 changes?

15 A Ligament tears, I guess, yeah, I would say yes.

16 Q And the same thing with the left shoulder, if you saw
17 there was evidence of rotator cuff tear?

18 A Can you have a rotator cuff tear with degenerative
19 changes, yeah, it's possible, sure, yes.

20 Q And I know you didn't review any of the actual hospital
21 records, you don't know whether there was any documented
22 findings as to bruising, lacerations, bleeding upon either
23 Mr. Flores's left ankle or his left shoulder; correct?

24 A Yes.

25 MR. AARON: Thank you, doctor.

Proceedings

1 THE COURT: Mr. Vargas, any redirect?

2 MR. VARGAS: Just a few, your Honor.

3 REDIRECT EXAMINATION BY

4 MR. VARGAS:

5 THE COURT: Please proceed.

6 Q I think spondylitic ridging, bone spurs and osteophytes
7 were brought up with you about the lumbar spine, did you see any
8 of those in any of the films that you reviewed?

9 A No.

10 Q And you were just asked about ligament tears being
11 caused by degeneration, you also saw the ankle edema and joint
12 effusion, edema and joint effusion caused by degeneration?

13 A Any time there's a tear of the ligament, you can form
14 edema or effusion.

15 Q But it's also indicative of something recently
16 happening; correct?

17 A You can have edema or fusion for a long time, you can't
18 be sure.

19 Q Desiccation you did not see in the lumbar films?

20 A Correct.

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

22 MR. MINERO: Nothing further, your Honor.

23 THE COURT: We're finished with this witness, any
24 questions?

25 MR. AARON: No, your Honor, thank you.

Proceedings

1 THE COURT: So, doctor you're free to go, we will
2 take a five-minute break.

3 MR. VARGAS: Yes.

4 THE COURT: Have a good day, doctor.

5 THE WITNESS: Thank you.

6 COURT OFFICER: All rise, jury exiting.

7 (Whereupon, the jury exited the courtroom.)

8 (Whereupon Dr. Kolb exited the witness stand.)

9 (Whereupon, a short break was taken.)

10 (Whereupon, Interpreter Jacobo Lipshitz was the
11 Spanish interpreter.)

12 COURT OFFICER: Ready for the jury?

13 THE COURT: Yes, officer.

14 COURT OFFICER: All rise, jury entering.

15 (Whereupon, the jury entered the courtroom.)

16 THE COURT: Good morning, you may be seated, the
17 trial resumes.

18 The Court recalls the Plaintiff to the stand.

19 (Whereupon, Mr. Flores resumed the witness stand.)

20 MS. SUED: Your Honor, I am done with my cross,
21 obviously subject to any recross, and we reserve our right.

22 THE COURT: First, let him go to the stand first,
23 and --

24 MS. SUED: And we reserve our right to bring
25 Mr. Flores after the surveillance.

Kelvin Flores - Plaintiff - Cross/Mr. Minero

1 THE COURT: Mr. Minero, any questions?

2 MR. MINERO: Yes.

3 THE COURT: Before you do so, we have to swear the
4 interpreter in.

5 THE INTERPRETER: Sorry for my back.

6 THE CLERK: Please raise your right hand. Do you
7 solemnly swear or affirm that you will truly interpret from
8 Spanish to English and English to Spanish to the best of
9 your ability?

10 THE INTERPRETER: I do.

11 THE CLERK: State your name and title for the
12 record.

13 THE WITNESS: Jacobo Lipshitz, Court Officer,
14 Spanish, good afternoon.

15 THE CLERK: Mr. Flores, please, be reminded you're
16 still under oath.

17 CROSS-EXAMINATION BY

18 MR. MINERO:

19 MR. MINERO: May I inquire, your Honor?

20 THE COURT: Yes, sir.

21 Q Good afternoon, Mr. Flores.

22 A Good afternoon.

23 Q Mr. Flores, it is your testimony that on March 24,
24 2018, you fell approximately 15 feet off of a ladder on to
25 concrete; correct?

1 A Yes.

2 Q And you fell on the left side of your body?

3 A Yes, when I, when I fell down, I fell on the left side.

4 Q And after your accident, you were taken to Maimonides
5 Hospital; correct?

6 A Yes, yes, after I fell, I was taken to Maimonides
7 Hospital.

8 Q And you were treated in the emergency room?

9 A Treatment, no, they X-rayed, they did some X-rays.

10 Q Okay, did they perform a series of tests on you;
11 correct?

12 A I don't recall because the accident just happened, and
13 I was in pain.

14 Q Did you undergo X-rays at the hospital?

15 A In the papers that they gave me from the hospital,
16 there are some X-rays.

17 Q Okay, and there's also some MRIs?

18 A In the papers it says I have an fracture in the lumbar
19 vertebrae.

20 Q Moving on, do you remember if you underwent any scans
21 besides X-rays?

22 A Yes, they did a review of what I had in the accident,
23 they saw my elbow, my left ankle, and my shoulders, and they
24 reviewed, the part that I had an accident.

25 Q And you also underwent a blood test too; correct?

Kelvin Flores - Plaintiff - Cross/Mr. Minero

1 A I don't recall truly.

2 Q When you left the hospital -- strike that.

3 When did you leave the hospital?

4 A If they let me leave about three hours after I was
5 taken, and they just told me to take Tylenol for the pain and
6 they, they let me out, and I think they took me -- they -- they
7 took out, because I didn't have the money for the treatment.

8 Q And you were there for a workplace accident; correct?

9 A Exactly, and -- and when I fell, and when I fell down
10 in the building, where I was working.

11 Q Did you tell anyone at the hospital that you had gotten
12 hurt while working?

13 A That -- that the ambulance picked me up in the work
14 area in the building, they knew where they were taking me to the
15 hospital.

16 Q Are you aware that it's illegal in the State of New
17 York for a hospital to refuse treatment to an injured worker?

18 A I don't, no, I don't know about it, but that's what
19 they did with me.

20 Q When you left the hospital that day, did they provide
21 you with copies of results of all of the tests that were taken
22 of you?

23 A I don't recall, because that time my wife and my
24 stepchild, my stepson arrived, to pick me up, and maybe, maybe
25 my wife pick it up, maybe there was a report and my wife picked

1 it up.

2 Q While you were at the hospital, did anyone who treated
3 you ever tell you the results of the tests that were performed
4 on you?

5 A I don't recall, they put me on a bed, and I had a thing
6 on my neck.

7 Q Okay. Did anyone ever tell you that you did not suffer
8 a concussion as a result of the accident?

9 A I don't understand.

10 Q Did you suffer a concussion as a result of the
11 incident?

12 A I don't know what "concussion" means, what's exactly
13 that?

14 Q Do you remember at your deposition you were asked a
15 question of whether you suffered a concussion and you said no.

16 A I don't understand "concussion".

17 Q Head trauma?

18 THE INTERPRETER: I'm going to ask Mr. Flores to
19 let me finish, interpret and before, if that's okay, sorry.

20 A I don't understand exactly the word that you're
21 referring to.

22 MR. VARGAS: I have to object, in transcript I
23 think it was "loss of consciousness".

24 MR. MINERO: Okay, I'm sorry.

25 A No.

1 Q You did not lose your consciousness?

2 A No, I didn't lose my consciousness, I didn't faint,
3 nothing like that.

4 Q Did you suffer any lacerations?

5 A Maybe I had something, some scratches on my elbow, on
6 my left ankle, when I had the implant, it was swollen.

7 Q I didn't ask you about swelling.

8 Right now, I asked you, did you suffer any lacerations?

9 A It's not a cut, it's a scrape where I have the impact.

10 Q If I tell you that your medical records from Maimonides
11 did not have any indication about any lacerations or cuts, would
12 you have a reason not to agree with that?

13 A For me a cut is a deep wound.

14 Q Okay, did you have any stitches after this incident?

15 A No.

16 Q Did you have any broken bones?

17 A As, as -- as the report says in the X-rays, if you cut
18 me, I cannot express myself. According to the X-rays, it says
19 that, that whatever they did to me and the deep pain that I had,
20 the results show a fracture in the -- in the lumbar vertebra.

21 Q So you have reviewed the records from your trip to
22 Maimonides Hospital that day; is that correct?

23 A I didn't review it, I'm just telling you what I went
24 through, maybe they put something in there, it's not what part,
25 it's because I didn't write it.

1 Q Okay, but you just said that, the X-ray report showed
2 that you had a fracture.

3 So my question again, sir, is have you reviewed your
4 records from Maimonides that day?

5 A It's in English and it cost me.

6 Q Did someone tell you that you suffered a fracture that
7 day?

8 A In the papers as I understand, as little as I
9 understand, there's a fracture in the lumbar vertebrae, because
10 of the impact due to the accident.

11 Q Isn't it true that Dr. Kaplan advised you that you did
12 not suffer a fracture in your vertebra; is that correct?

13 A When they did the MRI, for me the result, because of
14 the impact, what I understand there is that herniation in my
15 disc.

16 Q Understood.

17 Remember Dr. Kaplan was on the stand earlier last week;
18 correct?

19 A Yes, correct.

20 Q And you recall that you testified that you did not
21 suffer a vertebrae fracture?

22 A If they made a mistake, if they made the mistake in the
23 hospital, and they put that thing there, whatever they can put
24 that I didn't write.

25 Q One of the tests they gave you was a blood test; are

1 you aware of that?

2 MR. VARGAS: Your Honor --

3 A I don't recall, I --

4 MR. VARGAS: -- I want to object, I know where this
5 is leading to, and we had lengthy discussions about it,
6 there has been no foundation, it doesn't go to diagnose and
7 treatment.

8 MR. AARON: There has to be questions to get a
9 foundation, you can't pull it out of thin air.

10 MR. VARGAS: You have to call an expert if you want
11 a foundation like that.

12 MS. SUED: That's exactly what I tried to do.

13 MR. AARON: Your Honor, we need a side bar, before
14 Mr. Minero continues.

15 (Whereupon, an off the record side bar discussion
16 was held.)

17 (Pause in the proceedings.)

18 MR. MINERO: May I inquire?

19 THE COURT: Yes, sir.

20 Q Mr. Flores, are you aware that your blood tests taken
21 at Maimonides that day showed an alcohol serum level of 12?

22 MR. VARGAS: Objection.

23 THE COURT: Overruled.

24 A I don't recall that.

25 Q Okay.

Kelvin Flores - Plaintiff - Cross/Mr. Minero

1 Do you recall being dizzy while in the hospital?

2 A No, I arrived to the hospital, I was conscious and I
3 just felt the pains because of the accident. I didn't lose any
4 consciousness in any minute.

5 Q I understand you didn't lose consciousness. Were you
6 dizzy, did you complain of dizziness?

7 A I was just complaining about the pain in my lower back.

8 Q Did you make any complaints of being lethargic?

9 A What do you refer as "lethargic"?

10 Q Tired, sleepy, lack of energy.

11 A I was just complaining about the pain in my back.

12 Q I believe earlier you said you left the hospital, the
13 only prescriptions that you were provided with was ibuprofen,
14 Advil; is that correct?

15 A They just told me to take ibuprofen and Tylenol for
16 pain.

17 Q Did you leave with any type of cane or crutches?

18 A They gave me up so, absolutely nothing, go to your
19 house and take Tylenol, for the pain.

20 Q No braces, no casts, no bandages, nothing?

21 A Nothing.

22 Q Did they recommend that you follow-up with any doctors?

23 A I went to my house and, so when, so, and I went to my
24 house, they didn't tell me to do any follow-ups, they just told
25 me go to your house, as I told you, take Tylenol, ibuprofen for

1 your pain and out.

2 Q That was the sole advice that they gave you was to just
3 take ibuprofen; correct?

4 A They didn't give it to me, they told me to take it.

5 Q At some point you did call a doctor; correct?

6 A Yes, after the accident, Dr. Kaplan examined me.

7 Q Now, did you call Dr. Kaplan on your behalf or did
8 someone else arrange for your appointment?

9 A When I was in pain, after my accident, and being
10 trapped because of my economy of not having the money for the
11 treatment as I told you beforehand, I went to see the lawyers.

12 Q So you were already concerned about not having money
13 for treatment the day of your accident?

14 A The day of the accident, no, you're not indicating the
15 day of the accident. When I was at home and I felt pain, I went
16 to the lawyers, and they recommended Dr. Kaplan.

17 Q Is it fair to say your first call wasn't to a doctor,
18 it was to an attorney?

19 A You're asking me about the doctor, and I'm telling you
20 who recommended me the doctor.

21 Q No, I understand that, but I was asking, the first call
22 that you had --

23 MR. VARGAS: Objection.

24 Q -- wasn't to a doctor, it was to an attorney; is that
25 correct?

1 MR. VARGAS: Objection, he has answered the
2 questions, and it's argumentative and it's an improper
3 question, form.

4 THE COURT: Rephrase the question, let's try to
5 wrap it up, move to another point.

6 Q Did you call a doctor or an attorney first?

7 A I, I went to the lawyers first and then the lawyers
8 told me to go and see Dr. Kaplan.

9 Q Did the lawyers also tell you to go see Dr. Grimm?

10 A What I just said, they recommended Dr. Kaplan.

11 Q And Dr. Grimm works with Dr. Kaplan; correct?

12 A Dr. Kaplan did some examination and he recommended me
13 certain things, he recommended Dr. Grimm.

14 Q Did Dr. Kaplan and Dr. Grimm also recommend
15 Dr. Weinstein?

16 A Dr. Grimm recommended Dr. Weinstein.

17 Q Did Dr. Grimm also recommend which physical therapist
18 for you to go to?

19 A He recommended physical therapy, he recommended, he
20 recommendations medication for the pain, medication for muscle
21 relaxants.

22 Q And my question though was, did Dr. Kaplan or Dr. Grimm
23 recommend which physical therapist you should go see?

24 A I was going to a clinic which was in Jamaica.

25 Q I understand that. Did anyone, did Dr. Grimm or

1 Dr. Kaplan recommend that you go to that physical therapist in
2 Jamaica?

3 A The clinic I saw, I looked for that clinic, because it
4 was close to my house.

5 Q So you came up with that clinic on your own?

6 A I went to the clinic and I took the doctor's
7 recommendation, someone said I had reviewed that and had been
8 accepted.

9 Q What is your pain level today, sir, out of ten?

10 A I have to tell you this pain is constant, I always have
11 it, and if I'm sitting here or standing going from there to
12 here, so.

13 THE INTERPRETER: Okay.

14 A So sometimes the pain goes up, it goes, it goes up, it
15 goes down, I cannot give you an exact number, but it's a
16 constant pain.

17 Q Okay, would you agree with the statement that the, that
18 your back pain is preventing from you living the life that you
19 were living before the accident?

20 A Of course, before the accident I used to work, I used
21 to do a perfect job for the company, I was a good worker. After
22 this accident, I don't enjoy working as I used to do before.

23 Q Okay.

24 A Do you understand?

25 Q I do, but it's also true that you haven't treated with

1 Dr. Weinstein since 2020; is that correct?

2 A I understand Dr. Weinstein was my surgeon, but the
3 treatment for my surgery to check the pains that I have, it was
4 Dr. Grimm.

5 Q So the answer is no, you have not treated with
6 Dr. Weinstein since 2020; correct?

7 A I don't recall, I don't recall the last time I saw
8 Dr. Weinstein, but he was a surgeon.

9 THE INTERPRETER: May I please remind Mr. Flores to
10 speak in pauses, so the interpreter can do his job.

11 Can I say it in Spanish?

12 THE COURT: Any objection to saying it in Spanish?

13 MS. SUED: That's fine.

14 MR. MINERO: We don't understand the Spanish, so.

15 A But I'm giving you short phrases.

16 Q Just, sir, yes or no, have you treated with
17 Dr. Weinstein at any time since 2020?

18 A He was my surgeon.

19 Q If I tell you that the record, the medical record shows
20 you have not treated with Dr. Weinstein since 2020, would you
21 have any reason to not believe me?

22 A It is because I don't recall the last time that I saw
23 him, we're talking many years back, four, five years back.

24 Q Okay.

25 A And I've seen many doctors.

1 Q Have you seen any doctors since 2020, other than
2 Dr. Grimm regarding the pain in your back?

3 A Dr. Grimm is the one that recommended and saw me
4 regarding the pains, and months back, I have been checked by
5 Dr. Mandelbaum.

6 Q And have you been, other than Dr. Weinstein, have you
7 ever been treated by any other spine doctor, with respect to the
8 pain in your back?

9 A No, I don't recall.

10 Q And isn't it also true that you have not gone for
11 physical therapy since 2023; correct?

12 A I don't recall when I stopped going, but I stopped
13 going because I thought it was not going to be covered, and
14 that's a lot of money that has to be paid for surgery, and I owe
15 the therapies for years, and it's not 100 or 200, I owes
16 hundreds of thousands of dollars for -- for therapies,
17 surgeries, treatments, it's hundreds of thousands, I cannot go
18 on, I'm in debt, I cannot getting more in debt, that's a lot of
19 money.

20 Q So you have received bills from your physical
21 therapists that you have to pay?

22 A It's a lot of money.

23 Q That's not my question.

24 My question is, have you received bills from your
25 physical therapists that you have to pay?

1 A When I felt trapped and I didn't have money.

2 MR. MINERO: Move to strike the portion that's not
3 responsive.

4 Q My question is very clear. My question is, sir, have
5 you been given bills by your physical therapists that you must
6 pay?

7 A I was going to tell you that whenever I close a
8 Compensation, when I felt trapped and I don't have the money, I
9 got the bills, bills that I have to pay, for Compensation, that
10 money that Compensation gave me, I have to pay it, I got the
11 bills for therapies, hundreds of thousands of dollars, not a
12 thousand or two thousand dollars, I have to pay those bills. If
13 I have to pay those invoices, which I am in, which I am in debt
14 by, how would I continue having treatment that I need but I
15 don't have it, by getting more into debt?

16 Q Sir, your testimony, as you sit here today, is that
17 your physical therapists that you went to following your
18 workplace accident are billing you for the treatment that they
19 provided to you?

20 A They're charging me, I owe money, I owe money.

21 Q They're sending collection notices to you?

22 A No, I have to pay it, because clearly we know, that I
23 closed Compensation, and that money have to return it.

24 Q I understand you closed the Compensation in 2024; is
25 that correct?

1 A Approximately one year.

2 Q My question was, you stopped going for physical therapy
3 in 2023; is that correct?

4 A My answer is yes, because, because I didn't have the
5 money to keep going, and I think I went through the batch.

6 Q In 2023, my question was your physical therapist
7 charging when you went for visits?

8 A I had, I have all of the bills when I started going to
9 therapy, they won't do it for free, they have to charge me.

10 Q Sure.

11 As you sit here, how much money have you paid to the
12 physical therapists that treated you?

13 A I haven't paid, I owe.

14 Q You have paid zero; correct?

15 A I haven't paid.

16 Q Okay.

17 A Because, because I owe it.

18 Q Okay, is it also fair to say that you haven't paid
19 Dr. Kaplan any money in connection with the treatment that he
20 has provided; is that true?

21 A I'm so in debt right now, I don't know what to do,
22 trust me I'm honest it's hundreds of thousands of dollars that I
23 owe, this surgery.

24 Q Sir --

25 A This surgery --

1 MR. MINERO: Move to strike the part that's not
2 responsive.

3 MR. VARGAS: We have covered this for three days.

4 MR. MINERO: We have tried to cover it for three
5 days, my question is very simple, I would like the answer to
6 the question.

7 MR. VARGAS: His question isn't simple, it is a
8 complicated --

9 Q How much money have you paid out of your pocket to your
10 physical therapist today?

11 A I haven't paid because, and I owe that money.

12 Q The answer is zero; yes?

13 MR. VARGAS: Objection, this is the fifth or six
14 time, and this is how many times.

15 THE COURT: I think we elicited a response.

16 MR. MINERO: Okay.

17 Q And the same goes true for all of your providers;
18 correct?

19 MR. VARGAS: Objection.

20 THE COURT: You may respond, let's move on.

21 Q Have you paid any money out of your pocket to any of
22 your doctors, sir?

23 A No, I don't have it, I have to pay, but I haven't paid.

24 MR. MINERO: No further questions, thank you.

25 THE COURT: Any redirect?

1 MR. VARGAS: Just a few.

2 REDIRECT EXAMINATION BY

3 MR. VARGAS:

4 Q So when you were getting Worker's Compensation, they
5 would approve your treatments; correct?

6 A Yes.

7 Q And that included physical therapy; correct?

8 A Yes, correct, but, and did they always approve it or
9 did they deny it sometimes. Sometimes it is denied, sometimes
10 they send me something, but it was, it was little money what
11 they paid, and sometimes three months went by, I didn't receive
12 a thing, how was I going to cover those therapy?

13 Q Everything you got from Worker's Compensation,
14 including your lost wages, you have to repay that, don't you?

15 MS. SUED: Objection, your Honor.

16 MR. VARGAS: They asked him all about it for the
17 last couple of days.

18 MS. SUED: And the objection was sustained.

19 MR. VARGAS: You know what, they keep asking about
20 wages.

21 MS. SUED: The objection was sustained, your Honor.

22 MR. VARGAS: I'm getting to the point what he has
23 to pay back, which they keep asking about.

24 THE COURT: Overruled, limited for the purposes of
25 inquiry.

1 Q Everything that you got from Worker's Compensation, you
2 have to pay that back if you're awarded money here, correct; yes
3 or no?

4 A Yes.

5 Q And that includes surgeries, physical therapy,
6 injections, everything?

7 MS. SUED: Objection, your Honor.

8 THE COURT: Overruled, you opened the door by
9 making the inquiry before.

10 Q Correct?

11 A Yes.

12 Q And if you didn't settle your Worker's Comp case, they
13 were eventually going to cut you off; correct?

14 MR. MINERO: Objection.

15 MS. SUED: Objection, your Honor.

16 MR. AARON: Objection.

17 MS. SUED: That's nowhere in the Worker's Comp
18 records.

19 THE COURT: Overruled.

20 Q Were they going to cut you off if you didn't settle
21 your Worker's Comp case?

22 A It had been months before they didn't give me.

23 Q Right, and you weren't going to get Worker's
24 Compensation for the rest of your life; right?

25 A Of course.

1 Q You weren't going to get it for life, of course?

2 A Correct.

3 Q And when you chose not to get the spinal stimulator,
4 you knew you wouldn't have Worker's Comp to replace the battery?

5 MS. SUED: Objection, in 2023.

6 THE COURT: Overruled, please specify the year.

7 Q When Dr. Grimm recommended the spinal cord stimulator,
8 before you saw Dr. Mandelbaum, you didn't get that procedure
9 done because you knew you wouldn't have Worker's Comp in the
10 future to replace the batteries?

11 MR. AARON: Objection.

12 MS. SUED: Objection.

13 THE COURT: Overruled, this is recounting the
14 previous testimony.

15 A I -- in the future I wouldn't have, I wouldn't have the
16 money to pay for that, and Comp -- the Compensation wasn't going
17 to pay it for life.

18 MR. VARGAS: Thank you, no further questions.

19 THE COURT: Okay, members of the jury, we're now at
20 12:45, we have this afternoon, two physicians, we ask
21 everybody to be present 2:15, two physicians testifying this
22 afternoon, enjoy your lunch.

23 COURT OFFICER: All rise, jury exiting.

24 (Whereupon, the jury exited the courtroom.)

25 THE COURT: Two things I wanted to address, you

1 mentioned before off the record.

2 (Whereupon, an off the record discussion was held.)

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

4 THE COURT: Make your application, counselor.

5 MR. VARGAS: I just found out Dr. Kuflik whose next
6 to testify has some kind of intake form.

7 THE COURT: Defendants's expert, make more precise.

8 MR. VARGAS: Sorry, Defendant's expert, spinal
9 surgery, neurosurgeon, whatever he is, has some kind of
10 intake form that wasn't attached to his expert exchange, it
11 was never provided to me, and I hadn't seen it until two
12 minutes ago, I object to it being offered or even discussed.

13 MR. AARON: No objection, your Honor, we will not
14 discuss the intake form.

15 THE COURT: Mr. Minero.

16 MR. MINERO: Not going to discuss it.

17 THE COURT: On consent no one will bring it up.
18 Any other procedural matters?

19 MS. SUED: No.

20 THE COURT: Any other motions? Keep your peace.

21 MR. AARON: We may have an application, but we will
22 wait until today's testimony to do that.

23 THE COURT: Fair enough.

24 (Pause in the proceedings.)

25 COURT OFFICER: All rise, jury entering.

Dr. Kuflik - Defendant - Direct/Mr. Aaron

1 THE COURT: You may be seated, good afternoon,
2 okay, whose witness is it, yours, Mr. Aaron?

3 MR. AARON: Defendants call Dr. Paul Kuflik to the
4 stands.

5 THE COURT: Doctor, come up, wait to be sworn by
6 the clerk.

7 (Whereupon, Dr. Kuflik took the witness stand.)

8 THE CLERK: Raise your right hand. Do you solemnly
9 swear or affirm that the testimony you're about to give this
10 court will be the truth, the whole truth and nothing you
11 about the truth?

12 THE WITNESS: I do.

13 THE CLERK: Thank you, please be seated. Please
14 state and spell your full name for the record, address and
15 occupation?

16 THE WITNESS: Doctor, my name is Paul P-A-U-L,
17 Kuflik K-U-F-L-I-K. My address is, my office address 955
18 Fifth Avenue, New York City, New York 10075, I am an
19 orthopedic spinal surgeon.

20 DIRECT EXAMINATION BY

21 MR. AARON:

22 THE COURT: Counsel, you may inquire.

23 MR. AARON: Thank you, Judge.

24 Q Good afternoon, Dr. Kuflik.

25 A Good afternoon.

1 Q Sir, are you licensed to practice medicine in the State
2 of New York?

3 A Yes, I am.

4 Q What is your medical specialty?

5 A Orthopedic surgery.

6 Q If you can tell the jury about your academic background
7 and training?

8 A I went to medical school in Syracuse at Upstate Medical
9 Center, and I did an internship in general surgery and then I
10 did a residency in orthopedic surgery at the Hospital For Joint
11 Diseases, I did then did a fellowship in spine surgery at
12 Toronto General Hospital in Toronto, Ontario.

13 Following that, I was, initially employed by
14 Mount Sinai, I was the chief of the spine service there, and
15 then I was at the Hospital For Joint Diseases, where I was at
16 the head of the scoliosis service, a branch of spine surgery,
17 then I went, I went to Beth Israel to the -- to -- they started
18 a spine service together with a colleague of mine, Dr. Michael
19 Neuwirth, then was recruited by Mount Sinai in 2013 or '16, to
20 go back to Mount Sinai, I was in, I was, I was in practice
21 full-time in Mount Sinai until 2020, and have been in private
22 practice since then.

23 Q Doctor, are you board certified?

24 A I am.

25 Q And what does that mean?

1 A Board certification is a test that is given, the board
2 certification test in orthopedics has evolved over the years
3 from when I first did it, when it was a -- there was a written
4 component and then two years later, you did an oral component,
5 and it's somewhat different now, I don't know exactly, how it's
6 done now, and now, you have to recertify and that's done by a
7 computerized test, and you recertify every ten years, I'm
8 currently certified until 2029.

9 Q And as an orthopedic spinal surgeon, what types of
10 condition do you treat?

11 A I treat conditions of the spine, degenerative
12 condition, deformity condition, traumatic conditions, infection,
13 all of those various aspects of the spine.

14 Q And if you can approximate how many patients you've
15 operated on in your career?

16 A I would say, I certainly don't have an exact number, I
17 didn't keep track, for probably approximately 25 years I did
18 somewhere in the order of 200, 250 cases a year, so that would
19 be upwards of 5000.

20 Q Do you currently have any teaching responsibilities?

21 A I'm part of the teaching service, I'm an associate
22 professor of orthopedic surgery at the Mount Sinai School of
23 Medicine.

24 Q Did you recently stop performing surgery?

25 A Excuse me?

1 Q Did you recently stop performing surgery?

2 A Yes, I stopped operating this past January.

3 Q Any particular reason why?

4 A I just had enough, and quality of life.

5 Q And doctor, have you been certified in the courts
6 before as an expert in the field of orthopedic spinal surgery?

7 A Yes.

8 Q Did you rely on an examination and review of
9 Mr. Flores's treatment records regarding his condition and
10 prognosis?

11 A I did.

12 Q Are you prepared to give the jury your opinions within
13 a reasonable degree of medical certainty?

14 A I am.

15 Q Based on your review of his treatment records and your
16 examination of him?

17 A Yes.

18 MR. AARON: I move to qualify Dr. Cohen as an
19 expert in orthopedic surgery.

20 THE COURT: The Court qualifies the witness as an
21 expert; any objection?

22 MR. VARGAS: No, your Honor.

23 Q Dr. Kuflik, you're not Mr. Flores's treating physician?

24 A Correct.

25 Q You were hired by the Defendants to examine him to

1 provide an opinion in this case?

2 A That is correct.

3 Q At some point did you meet with Mr. Flores?

4 A I did.

5 Q When was that?

6 A That was on December 15, 2021.

7 Q And when you met with him did you also have the
8 opportunity to examine him?

9 A I did.

10 Q When you met with him, was he accompanied by anyone?

11 A He was accompanied by a woman name Maritza Collado who
12 was a representative of his attorney's office, and there was a
13 Spanish Interpreter there as well.

14 Q Was your entire meeting with Mr. Flores and examination
15 of him performed with the use of a translator?

16 A Yes.

17 Q Doctor, you and my office have worked on legal matters
18 before?

19 A Yes, we have.

20 Q My office hired you had on prior occasion to provide
21 opinions?

22 A I'm sorry, I can't, could you just go a little slower.

23 Q My office hired you to provide opinions in cases like
24 this before?

25 A Yes.

1 Q Have you testified for my office in court before?

2 A Not to my recollection.

3 Q Sir, are you being compensated for your review and
4 examination of Mr. Flores?

5 A Yes.

6 Q And how much were you compensated?

7 A I believe it was \$8500.

8 Q And you also being compensated for being here today?

9 A I am.

10 Q And how much?

11 A \$20,000.

12 Q And does the fact that you're paid for your time change
13 the way you approach your opinions?

14 A No.

15 Q Are your opinions influenced in any by the amount
16 you're paid?

17 A No.

18 Q How often do you testify in court?

19 A I think this is the third time this year, I think last
20 year, I can't say 100 percent, I think I testified three, maybe
21 four times, and probably the year before, was reasonably
22 similar.

23 Q And how long had you been testifying in court?

24 A Well, a long time, I mean the first time I testified in
25 court, I can't remember the exact time, it was probably, it was

1 more than 15 years ago, I can't say exactly.

2 Q So would it be fair to say you have done very well as
3 an expert testifying in court?

4 A Yes.

5 Q And you testified on behalf of defendants?

6 A Yes.

7 Q Is there any particular reason you tend to be contacted
8 by defense attorneys more than plaintiff's attorneys?

9 A Plaintiff's attorneys don't call me. They typically
10 have the treating physician testify for them. When I was the
11 treating physician of a plaintiff, I would testify for them.

12 Q In the course of your career, doing these evaluations
13 and testifying, have you ever reached an opinion that an injury
14 was causally related to an accident?

15 A Sure.

16 Q And in some of those cases, where you have come to that
17 conclusion, it has been the defendants who have hired you;
18 correct?

19 A That is correct.

20 Q Currently, doctor, how do you spend your workweek?

21 A Well, now I have stopped operating, I have a little
22 more free time. Generally in the office always Wednesdays and
23 Thursdays, sometimes on Mondays, and I do paperwork, typically
24 on Tuesdays and I no longer work on Fridays.

25 Q And doctor, I'm going to ask you some questions about

1 your review of Mr. Flores's records?

2 A Yes.

3 Q Based on your review of his treatment records, when was
4 first time he sought treatment after this accident?

5 A He was seen in the emergency room.

6 Q Okay, where did he go?

7 A Maimonides Hospital.

8 Q Did you review the records from Maimonides?

9 A I did.

10 Q And did you see whether any testing was done on his
11 lumbar spine?

12 A Yes.

13 Q What testing was that?

14 A He had a CT scan, performed, I don't recall if he had
15 X-rays also.

16 Q Did you review the CT scan of his lumbar spine?

17 A I did.

18 Q What did you see?

19 A I saw that he had a herniated disc at the L5-S1 level.

20 Q After the ER, did Mr. Flores seek any further
21 treatment?

22 A He did.

23 Q And did you review records from that visit?

24 A Yes.

25 Q Did you come across when it was that Mr. Flores first

1 had a diagnostic test performed on his lumbar spine after the CT
2 scan of the day of the accident?

3 A He had an MRI performed, let me get the date, he had an
4 MRI of his lumbar spine performed on April 6, 2018,
5 approximately two weeks following the alleged accident.

6 Q And did you review that MRI?

7 A I did.

8 Q And what were your findings?

9 A Again, I found a herniated disc at the L5-S1 level.

10 Q Did you see any other pertinent findings?

11 A The disc space was degenerative, which is typical, but
12 otherwise, I didn't see anything of consequence.

13 Q Do you also review an MRI that was done on June 8,
14 2018, you know, I will withdraw that question, because it was
15 April 6, 2018, that the MRI was done?

16 A I'm sorry, again?

17 Q The MRI that was done was April 6, 2018?

18 A That is correct.

19 Q And based on your review of that MRI, was there any
20 objective evidence that the herniation was caused by this
21 accident?

22 A No.

23 Q And what would be an example of an objective indication
24 that the herniation was caused by the accident?

25 A It's very rare that you see that piece of information,

1 but if you saw bleeding around the disc space, around the
2 herniation, if you saw swelling immediately in that area, either
3 right there or in the soft tissues behind it, blood, those would
4 be findings consistent with saying that it's acute.

5 Q That April 6th, 2018, MRI, that was only 13 days after
6 the accident?

7 A Yes, correct.

8 Q Would you expect to see bleeding, swelling in the soft
9 tissues on that MRI if it was an acute herniation?

10 A No, not typically.

11 Q Is a herniated disc at L5-S1 a common finding?

12 A Yes.

13 Q How so?

14 A Well, it's -- it's estimated that if you took 100
15 asymptomatic people off the street and did MRIs on them --

16 MR. VARGAS: Objection, your Honor, we're not
17 talking about one hundred other people, we're talking about
18 Mr. Flores.

19 THE COURT: I think he's giving a background to his
20 medical knowledge. We will accept it for now subject to
21 connection where it goes.

22 A The incidence of asymptomatic disc herniations in the
23 population is between 30 and 40 percent. So if you look to your
24 right and you look to your left, one of the three of you likely
25 has a disc herniation on an MRI, without necessarily having any

1 symptoms.

2 Q Just before you mentioned the word "degeneration," can
3 a herniated disc be caused by degeneration of someone's spine?

4 A Yes.

5 Q And is that true for the L5-S1 level like in this case?

6 A Yes, degeneration is the most common cause for a disc
7 herniation.

8 Q So is it common to see a herniation at L5-S1 even if
9 someone is not involved in an accident?

10 A Well, I don't know if I would say common, it is not
11 uncommon.

12 Q Doctor, are you aware that Mr. Flores underwent a
13 surgery on his back following the accident?

14 A I am.

15 Q When was that surgery done?

16 A June 25, 2019.

17 Q Did you review the operative report from that surgery?

18 A Yes.

19 Q What did the surgery consist of?

20 A The surgery consisted of what we would call a
21 decompression, taking the pressure off of the nerves, that's a
22 laminectomy, lamina is the bone that covers the spine, ectomy is
23 removal, so it consisted of a laminectomy and a fusion, a fusion
24 is not a welding together of bone you don't -- you --
25 essentially what a fusion is, a way to trick the body into

1 growing bone together similar to what happens when you break a
2 bone, and a fusion and bone graft and hardware was put in to
3 hold everything in place and stabilize that level of the spine.

4 Q In your report you mentioned that the decision to do
5 that surgery was based on Mr. Flores's subjective complaints?

6 A That is correct.

7 Q And what do you mean by that?

8 A Meaning surgery didn't have to be done, I mean nothing
9 would have happened if the surgery was not done. He was not at
10 risk for, to have some sort of catastrophic event happen. The
11 surgery was done because he was complaining of pain, and
12 Dr. Weinstein did the surgery in an effort to alleviate his
13 complaints.

14 Q And did you review any postoperative scans of the
15 spine?

16 A I did.

17 Q And things like an X-ray?

18 A I reviewed X-ray and a postoperative MRI of the spine.

19 Q What did you see based on your review of the films?

20 A You could see -- on X-ray, you could see the hardware,
21 which was in appropriate, in appropriate position, and you could
22 see on the MRI that the spine was well decompressed, there was
23 no -- excuse me, there was no residual compression of the
24 nerves, which is what Dr. Weinstein dictated in his operative
25 report as well.

1 Q Are you aware that Mr. Flores hasn't returned to
2 Dr. Weinstein since 2020?

3 A I'm aware of it now.

4 Q Well, as an orthopedic spinal surgeon yourself, what
5 significance, if any, would the fact that Mr. Flores hasn't seen
6 Dr. Weinstein for treatment since 2020 have on your opinion for
7 this case?

8 A I would assume if someone doesn't come back, unless
9 they've gone to another doctor, that they're doing well.

10 Q And you had the opportunity to examine Mr. Flores in
11 addition to reviewing his medical records?

12 A I did.

13 Q When was your examination of him?

14 A It was on December 15, 2021.

15 Q At that time of your examination, were you able to
16 observe the way that Mr. Flores moved around the examination
17 room and the examination table?

18 A Yes.

19 Q And what did you observe?

20 A He appeared to be quite -- to be mobile and moved
21 around the room without difficulty, got up and down from the
22 examination table on his own, he was able to go sitting, lying,
23 to back to sitting position on his own.

24 Q Were you able to do an examination of him?

25 A Yes.

1 Q What were your findings on the examination?

2 A Well, so the examination starts really just with
3 observation, you just look at the person and see, you know, if
4 they appear to be in distress, what their general condition is,
5 I asked him to ambulate, to walk, and he walked with a normal
6 gait, he -- part of the exam normally is to ask someone to walk
7 on their toes and walk on their heels, he refused to do that,
8 claiming it would hurt his knee, and then asked for tandem gait,
9 tandem gait is walking one foot in front of the other, what a
10 police officer might ask you to do if they thought you had too
11 much to drink, and he was able to do that, then test for range
12 of motion.

13 So before all of that happens, the person you're
14 examining is advised not to do anything that they think they're
15 uncomfortable with or think will hurt them, just to say, just to
16 say no.

17 So active range of motion of testing means he was asked
18 to bend forward, he bent forward ten degrees, and bend
19 backwards, he would not bend backwards at all, to bend to the
20 left and bend to the left, he did less than five degrees, which
21 is essentially a tiny jog of motion in each direction and to
22 twist, what is called lateral rotation, and again, he had really
23 just a slight jog of motion. The motion of his cervical spine
24 was much better essentially, close to being normal.

25 Q And go ahead, I didn't mean to cut you off, go ahead?

1 A Then the next part of the exam is, what's called motor
2 testing, test the function of each group of muscles, so if we
3 want to test this muscle, for example, I would say resist my
4 being able to straighten it out, you do that with each muscle
5 group and his, we did the -- both upper extremities which were
6 normal, the left lower extremity was normal, and in the right
7 lower extremity, he demonstrated what is called give-way
8 weakness, which is I would go like that and he would go like
9 that, which is a typical finding of someone exaggerating their
10 findings, something we call symptom amplification.

11 We then tested for reflexes, there were no abnormal
12 reflexes called clonus, Hoffman's, Babinski Spurling signs,
13 which are signs of spinal cord or nerve root compression, his
14 reflexes were normal, although they asked me not to test his
15 right knee, he said it would be painful, I didn't test the right
16 knee.

17 Then we test for sensation, which he claimed was
18 diminished in the left third and fifth digits, these two digits,
19 the ring finger and your pinky, and on the lateral aspect of his
20 right foot.

21 The next is called Faber's test, Faber's test is done
22 with your lying on your back and one leg is put into a figure of
23 four. Imagine you take your right knee, your right ankle put it
24 on top of your left knee and then you roll it out, I can't
25 really demonstrate it here, but he would not allow that to be

1 done.

2 Then test for straight leg raising which is
3 straightening out the leg and we do it in two ways, one with him
4 seat and when he was seated, he had no complaints, it was
5 negative but when he was lying down, he wouldn't allow the test
6 to be done.

7 The right thigh was noted to be two centimeters smaller
8 than the left, and he had a well healed incision in his lower
9 back in the middle in the midline, that was nine centimeters in
10 length, roughly four and a half five inches in length.

11 Q Some of the things you just talk about, the active
12 range of motion, the flexion, the bending, rotation, are the
13 results of those tests based on a patient's effort?

14 A Correct.

15 Q So are those subjective exams?

16 A Yes, there was no anatomical reason, he should have
17 such restricted range of motion, the surgery that was done, does
18 not do that.

19 Q The motor exam, is that also subjective?

20 A Correct.

21 Q By "subjective," that means the result of that exam are
22 based entirely on the effort given by a patient?

23 A That is correct.

24 Q What was your findings on the motor examination of
25 Mr. Flores?

1 A He had what I said was called give-way weakness of his
2 right lower extremity.

3 Q Your examination was about two years after Mr. Flores's
4 back surgeries, two and a half years?

5 A That is correct.

6 Q Have you ever performed the same type of surgery that
7 Mr. Flores received?

8 A I have.

9 Q Can you approximate how many times you have done that?

10 A I don't know, probably a thousand.

11 Q Based on your experience performing these type of
12 surgeries, what kind of healing and recovery would you expect to
13 see two and a half years after the operation?

14 A I would expect someone to be fully recovered way before
15 two and a half years, but certainly by two and a half years,
16 they should be fully recovered.

17 Q Based on your examination of Mr. Flores and your review
18 of his records and films, did you come to an opinion as to
19 whether he would require any future treatment for his back as a
20 result of the accident?

21 A I did.

22 Q What's that opinion?

23 A I don't believe he does, he requires any.

24 Q Do you have an opinion, within a reasonable degree of
25 medical certainty, as to whether the surgery he received was

1 needed as a result of the accident?

2 A I don't have an opinion as to whether it was a
3 consequence of the accident or not. I can't, I can't say that
4 the pathology was a consequence the accident. Similarly, I
5 can't say it wasn't a consequence of the accident.

6 Q Right, that's because you did see a herniation on the
7 film?

8 A That is correct.

9 Q And do you have an opinion, within a reasonable degree
10 of medical certainty, as to whether Mr. Flores sustained a
11 permanent injury to his back?

12 A Again, I don't have an opinion in that area, I don't
13 know if -- what we see there is a consequence of the accident or
14 something that was there from before.

15 Q Do you have an opinion, within a reasonable degree of
16 medical certainty, as to whether the surgery that he did receive
17 prevents him from engaging in his daily activities?

18 A I do, it does not.

19 Q Doctor, I want you to assume that Dr. Mandelbaum whose
20 a pain management physician, opines that Mr. Flores is going to
21 need future epidural steroid injections for his back as a result
22 of the accident.

23 Do you have an opinion, within a reasonable degree of
24 medical certainty, as to whether Mr. Flores will require --

25 A He will not.

1 Q Do you have an opinion, within a reasonable degree of
2 medical certainty, as to whether he'll require physical therapy
3 in the future for his back?

4 A He does not.

5 Q The same question for visits to see orthopedic
6 specialists, pain management specialist?

7 A With regard to his spine, he does not.

8 Q Doctor, based on your years performing this exact same
9 type of surgery, do you have an opinion, within a reasonable
10 degree of medical certainty, as to whether the surgery was
11 needed as a result of this accident?

12 A As I mentioned, I don't have an opinion, I can't say
13 that it was needed as a result of this accident. Similarly, I
14 can't say that it was not needed, that, I can't say that it was
15 needed, I cannot say it was not needed.

16 MR. AARON: That's all I have, doctor, thank you.

17 CROSS-EXAMINATION BY

18 MR. VARGAS:

19 THE COURT: Counsel, you may inquire.

20 MR. VARGAS: Thank you, your Honor.

21 Q Good afternoon, doctor, my name is Chris Vargas.

22 A Good afternoon.

23 Q I represent the Plaintiff, Mr. Flores, I have a few
24 follow-up questions for you.

25 Now, I've heard you mention that after the surgery, he

1 can return to work?

2 A That is correct.

3 Q And do you know what kind of work he did?

4 A He did construction.

5 Q And typically people who have fusions to their back,
6 you would say they can return to construction work?

7 A For a single level fusion, that's correct.

8 Q That's lifting any type of weight?

9 A Unrestricted activity.

10 Q 50, 60, 100 pounds?

11 A Unrestricted activity.

12 Q You said that the surgery was performed based on
13 subjective complaints; correct?

14 A That is correct.

15 Q And have you ever performed surgeries based on
16 subjective complaints?

17 A Certainly.

18 Q And so if I understood your opinion, correctly, correct
19 me if I'm wrong, simply because he has pain and he had the
20 surgery to alleviate that pain, you don't have a disagreement
21 with that; correct?

22 A Correct.

23 Q And you're just saying that it wasn't an emergency
24 surgery that he had to have to save his life; correct?

25 A Well, that's not only what I'm saying but that

1 statement is true, yes.

2 Q And I saw that, in your report that you reviewed
3 Dr. Kolb's MRIs where he mentioned the 4/6/18 and you also
4 reviewed the February 19th, 2019 MRI, and the March 19, 2019,
5 CAT scan; correct?

6 A That is correct.

7 Q And you agreed with Dr. Kolb's diagnosis?

8 A I agreed that the disc herniation, I would not have
9 characterized it myself as large, these are very -- these are
10 subjective terms, there's no -- there are no guidelines as to
11 what is small, medium and large, but that's otherwise I would
12 agree there was a -- with a finding of a disc herniation at that
13 L5-S1 level.

14 Q Sometimes when doctors are talking about herniations,
15 if they're small, they would refer to them as a bulge; correct?

16 A That's an inappropriate characterization.

17 Q What would you consider a bulge?

18 A A bulge is a circumferential bulging of the disc, it is
19 not a focal herniation.

20 Q This is clearly a focal herniation?

21 A Yes.

22 Q Now, if I told you that or would you assume, doctor,
23 that tomorrow, the Defendants are going to call a radiologist
24 whose going to say that the L5-S1 herniation that you agree with
25 Dr. Kolb about is a bulge, would you disagree with that?

1 A I would.

2 Q Why?

3 A Because I think it's a herniation.

4 Q Okay. Not even a close call; right?

5 A I -- I would call a herniation, I --

6 Q And as far as objective findings, that led to the
7 surgery, there was objective findings, right, by the doctors
8 along the way?

9 A Such as?

10 Q There was EMGs; right?

11 A I mea an EMG is a -- the numbers that are generated by
12 an EMG is an objective finding, the interpretation of what that
13 shows is not objective; meaning two people looked at the same
14 EMG results and come to different conclusions.

15 Q Okay.

16 A So I wouldn't characterize it as an objective finding.

17 Q Usually when doctors, such as yourself, are trying to
18 come to a decision whether to operate or not, they take many
19 different factors right, they take many different tests, they
20 look at a lot of different things; correct?

21 A Correct.

22 Q EMG would be one of them?

23 A I don't use EMGs, but yes.

24 Q And MRIs?

25 A Correct.

1 Q And some of the exam measurements you talked about;
2 correct?

3 A Yes.

4 Q He had abnormal range of motion; right?

5 A I don't remember what the range of motion was when
6 Dr. Weinstein examined him, but yes.

7 Q And you would look at the complaints of pain; right?

8 A Yes, as I said counselor, I don't have an objection to
9 the surgery.

10 Q I know I'm just pointing out different things.

11 A Yes.

12 Q You would also look at the onset of the complaints
13 started; correct?

14 A Correct.

15 Q And on the day of the accident, you reviewed the
16 Maimonides record; correct?

17 A Yes.

18 Q Immediately after the accident, he started complaining
19 about back pain; correct?

20 A Correct.

21 Q That's all very consistent down the line, the test, the
22 complaints, everything; right?

23 A Consistent with what?

24 Q That he needed the surgery.

25 A That the surgery was an appropriate suggestion,

1 correct.

2 Q And when you examined him, you put in your report that
3 he was cooperative; correct?

4 A Well, as best as I can determine, he was cooperative, I
5 can't, I can't get into his head as to why he didn't move at
6 all, or why he had weak, give-way weakness.

7 Q Okay.

8 A I mean he was cooperative does not mean, is not the
9 same as credible.

10 Q Okay. Now, he didn't want to walk on his toes because
11 of his knee pain, right, you don't consider that as something,
12 it's against him for being credible, do you?

13 A I take him at his word.

14 Q Okay.

15 You noted that the right thigh was to be two
16 centimeters smaller than the left?

17 A That is correct.

18 Q And what's, why is that significant?

19 A Well, it would indicate that he is not using his right
20 lower extremity to the extent of his left.

21 Q And that can be indicative of an injury to the right
22 leg?

23 A It can be.

24 Q And when you reviewed the CAT scans, and the MRIs of
25 Dr. Kolb, did you see calcification?

1 A I did.

2 Q Why didn't you note it in your report?

3 A I don't know that I did. I don't know that it made any
4 difference.

5 Q Okay.

6 If I --

7 A I think it was already documented by Dr. Weinstein,
8 that he saw the calcification.

9 Q That's the operative report, I'm talking about the
10 films.

11 A I can't answer as to why I didn't document it, but I
12 recall seeing it.

13 Q Okay. So it would be important though if you saw it to
14 document it; correct?

15 A I don't know how it would have changed things here.

16 Q Okay, I want you to assume defense counsel has been
17 making an argument because there's calcification, that this
18 injury or herniation preexisted.

19 What do you think about?

20 MR. AARON: Objection to the form.

21 A I already said with or without the calcification it
22 could have preexisted.

23 Q Would a radiologist usually note if there's
24 calcification?

25 A Really variable by one radiologist to the next.

1 Q Did you see osteophytes?

2 A I don't recall seeing osteophytes.

3 Q Did you see bone spurs?

4 A Well, osteophytes are bone spurs.

5 Q I'm just making sure we're covering all of the terms.

6 A Sure.

7 Q You didn't see them?

8 A I don't recall seeing them.

9 MR. VARGAS: Thank you, I have no further
10 questions.

11 THE COURT: Any redirect?

12 MR. AARON: No, Judge, thank you.

13 THE COURT: Okay, we're finished with the doctor?

14 MR. VARGAS: Yes, your Honor.

15 MR. AARON: Yes.

16 THE COURT: Doctor, you're free to go, have a great
17 day.

18 THE WITNESS: Thank you.

19 (Whereupon, Dr. Kuflik exited the witness stand.)

20 MR. AARON: Can we have two minutes?

21 THE COURT: We will take a two minute recess.

22 (Whereupon, a short recess was taken.)

23 COURT OFFICER: All rise, jury exiting.

24 (Whereupon, the jury exited the courtroom.)

25 (Whereupon, Dr. Kuflik the witness stand.)

1 THE COURT: Thank you for being timely, we
2 appreciate your service.

3 (Pause in the proceedings.)

4 THE CLERK: Come to order.

5 THE COURT: You may be seated.

6 Any other issues before you proceed?

7 MR. VARGAS: No, I think we worked it out.

8 COURT OFFICER: Are you ready for the jury?

9 THE COURT: Yes.

10 COURT OFFICER: All rise, jury entering.

11 (Whereupon, the jury entered the courtroom.)

12 THE COURT: You may be seated.

13 MR. MINERO: The Defendants call Dr. Cohen to the
14 stand.

15 THE COURT: Please come up Dr. Cohen and wait for
16 the Court clerk to swear you in.

17 (Whereupon, Dr. Cohen took the witness stand.)

18 THE CLERK: Good afternoon. Please raise your
19 right hand. Do you solemnly swear or affirm that the
20 testimony you're about to give this court will be the truth,
21 the whole truth and nothing but the truth?

22 THE WITNESS: Yes.

23 THE CLERK: Thank you, please be seated. Please
24 state and spell your full name for the record, address and
25 occupation?

Dr. Douglas Cohen - Defendant - Direct/Mr. Minero

1 THE WITNESS: Douglas Cohen, 355 Bard Avenue,
2 spelled D-O-U-G-L-A-S C-O-H-E-N, Staten Island,
3 neurosurgeon.

4 MR. MINERO: May I inquire, your Honor?

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION BY

7 MR. MINERO:

8 Q Good afternoon, Dr. Cohen.

9 A Good afternoon.

10 Q Dr. Cohen, are you licensed to practice medicine in New
11 York?

12 A Yes.

13 Q What is your specialty?

14 A Neurosurgery.

15 Q Can you please tell us including the jury about your
16 academic background and training?

17 A Sure I went to college at Cornell, I did medical school
18 at Harvard, and then I did any neurological training at
19 Columbia.

20 Q What is your current job?

21 A I'm -- I run the Division of Neurosurgery at Richmond
22 University Medical Center.

23 Q And are you board certified?

24 A Yes.

25 Q And what disciplines?

1 A Neurosurgery.

2 Q And what does it mean to be board certified?

3 A It's kind of dual process, you have to take a written
4 exam that takes a day or two, and actually have to practice
5 neurosurgery for about six months to a year, accumulate cases,
6 submit those cases to the Board, and they review your cases,
7 make sure you know if there's any questions, then you actually
8 have to sit for a verbal interview, involve both of those cases
9 and any kind of model cases they try to test your knowledge on.

10 Q Approximately how many patients have you treated or
11 operated on in your career?

12 A Tens of thousands, thousands.

13 Q As a neurosurgeon, what types of conditions do you
14 treat?

15 A I mean broadly it's either intracranial brain issues or
16 mostly spine.

17 Q Do you currently have any teaching responsibilities?

18 A I -- we don't have neurological residents, we have
19 general surgery residents, but there are medical students and
20 PA's that I teach.

21 Q And do you personally perform the same type of surgery
22 that Mr. Flores received back in June of 2019?

23 A Yes.

24 Q Can you approximate how many of them per year you
25 perform?

Dr. Douglas Cohen - Defendant - Direct/Mr. Minero

1 A I would say several dozen per year.

2 Q And have you ever been previously certified in New York
3 courts to serve as an expert in the field of neurosurgery?

4 A Yes.

5 Q Did you rely on an examination or review of
6 Mr. Flores's treatment records regarding his condition and
7 prognosis?

8 A Yes.

9 Q Are you prepared to give this jury your opinions,
10 within a reasonable degree of medical certainty, based on your
11 review of Mr. Flores's treatment records and your examination of
12 him?

13 A Yes.

14 MR. MINERO: Your Honor, I move to have Dr. Cohen
15 qualified as an expert in neurosurgery.

16 THE COURT: Any objection?

17 MR. VARGAS: No, your Honor.

18 THE COURT: The Court certifies him as an expert.

19 MR. MINERO: Thank you, your Honor.

20 Q Dr. Cohen, you were not Mr. Flores's treating
21 physician; correct?

22 A No.

23 Q And were you hired by the Defendants to examine
24 Mr. Flores in order to provide an opinion in this case?

25 A Yeah, I'm not sure who I was hired by, but yes.

1 Q At some point did you meet with Mr. Flores?

2 A Yes.

3 Q And do you recall when that was?

4 A Can I refer to my report?

5 Q Absolutely.

6 A Okay so my initial evaluation would have been on
7 August 23, 2021.

8 Q When you did meet with him, did you have an opportunity
9 to examine him?

10 A Yes.

11 Q And when you met with Mr. Flores, was there anyone
12 accompanying him?

13 A Yes.

14 Q Do you know who was he was accompanied by?

15 A Yes, there was a representative from his attorney's
16 office, and there was also a translator.

17 Q Was the whole examination, was it conducted with a
18 translator present?

19 A Yes.

20 Q And now, have you and I personally worked on legal
21 matters before?

22 A I don't think so.

23 Q And have you ever worked on legal matters for my firm
24 which is Bartlett, LLP?

25 A I do have some familiarity with that, I'm not sure, but

1 I probably have at some point in the past.

2 Q My colleagues are with the Fullerton Beck firm.

3 Have you ever on prior occasions worked with the
4 Fullerton Beck firm to provide opinions?

5 A Yes, definitely.

6 Q Have you ever testified in court for the Fullerton Beck
7 firm?

8 A I believe I have.

9 Q What would you be doing today, if you were not here in
10 court?

11 A Today is an OR day, I would be in the operating room.

12 Q Are you being compensated for your review and your
13 examination of Mr. Flores?

14 A Yes.

15 Q Do you recall how much you were paid for that?

16 A I think it was \$6500.

17 Q And is it fair to say you're also being paid here for
18 your time in court today?

19 A That's what I was answering, that's what I'm getting
20 paid.

21 Q You also were paid for your review and examination of
22 Mr. Flores earlier?

23 A Yes.

24 Q Do you recall how much that was?

25 A I don't.

1 Q But you were compensated; correct?

2 A Yes.

3 Q How often do you testify in court?

4 A I would say probably three or four times a year, I
5 would guess.

6 Q And do you know for how long you have been doing that?

7 A Well, I have been doing that for probably ten or
8 15 years, there was a break around Covid where I don't think I
9 testified at all for a couple of years, but it's pretty much at
10 about that rate for about that long.

11 Q And you testify on behalf of Defendants?

12 A Yes.

13 Q Is there a particular reason why you testify on behalf
14 of defendants more than plaintiffs?

15 A Yeah, my experience is that generally plaintiffs are,
16 the person who testifies on behalf of plaintiffs are the
17 treating doctors, so when I have been a treating doctor for an
18 individual who sustained an injury, then I testify on that
19 patient's behalf.

20 It's just -- I have never been asked by an outside firm
21 to assess a patient from the Plaintiff's perspective, I don't
22 know if it's done, but I have never seen it.

23 Q Have you, in fact, testified on behalf of plaintiffs
24 that you have treated?

25 A Yes.

1 Q Does the fact you're being paid for your time in any
2 way change your opinions of Mr. Flores?

3 A No.

4 Q Can you tell us how you spend your workweek?

5 A So I have two to three operating days a week, and two
6 to three patient days a week essentially.

7 Q I would like to ask you some questions about your
8 review of Mr. Flores's records.

9 Based on your review of Mr. Flores's treatment records
10 when was the first time he sought any treatment after his
11 March 24, 2018, accident?

12 A Well, I think he was seen in the emergency room so he
13 received medical care that day.

14 Q Do you recall which emergency room he was seen at?

15 A Maybe it was Maimonides, but I'm not sure.

16 Q Did you review Mr. Flores's emergency room records?

17 A Yes.

18 Q Was any testing done on his lumbar spine at the
19 emergency room that day?

20 A Yes.

21 Q Do you recall what type of testing that was?

22 A CT scan.

23 Q And did you review that film?

24 A Yes.

25 Q And what did you see?

1 A That there was a disc herniation, asymmetric to the
2 right at L5-S1.

3 Q Is that the scan that's up on the board right now?

4 A I can't tell because it's blocked.

5 MS. SUED: Yes.

6 Q Would you like to come --

7 THE COURT: By all means.

8 Q Would you like to down.

9 THE COURT: Counsel also may come to watch or
10 observe, get to a comfortable spot and the questions will
11 resume.

12 Counsel, do you want to come around or that's okay?

13 (Whereupon, Dr. Cohen exited the witness stand.)

14 Q Doctor, can you tell the jury what we're looking at
15 here?

16 MS. SUED: Exhibit 12 in evidence.

17 Q Doctor, can you tell the jury what we're looking at
18 here, please?

19 A So, this is what is known as a sagittal series, so
20 there are different planes, and when you do a CT scan and a MRI,
21 sagittal series is if you kind of cut the person right in half,
22 and open them up and then the axial is kind of more if you put
23 them like in a deli slicer, kind of just slices like this, so
24 it's kind of two different appreciations of the same anatomy, in
25 three-dimensional space.

1 Q What is the aim of showing, what does the image show?

2 A So, these are the lumbar vertebra, and this is what's
3 known as the sacrum this is L5 vertebrae, this is the L4
4 vertebrae, this is the L5-S1 disc space, and CT scans are not
5 great at showing soft tissue, which is what a disc is made of,
6 but you can get the sense that there is a little bit of a
7 disc bulge.

8 There's probably a way that I could, let me see, yes,
9 if you look really close, you can actually see the disc bulge,
10 the disc herniation, and that's the disc herniation at L5-S1,
11 what you can also see is that there's a little sprig of calcium
12 called an osteophyte, so that's kind of a bony spur, that the
13 body sometimes produces in reaction to things like degenerative
14 changes, joint laxity, and instability.

15 Q Let me stop you right there for a second.

16 Doctor, would that be something that would appear
17 immediately after an incident or something that would develop
18 over time?

19 A No, that takes usually years to develop.

20 Q What else do you see on the screen?

21 A Well, let's see, these images, okay, you can also see
22 right up there, again, kind of a bright spot right there, so
23 what in addition to the plane, there's also something in a scan
24 called a window, so these are what are known as bone windows, so
25 really they're just kind of looking at bone, almost an X-ray,

1 almost an X-ray in 3-D.

2 So the things you see bright here are only bone, and
3 essentially calidum, and that's why you know, this little kind
4 of disc herniation that I'm outlining you can't see, what you
5 can see is there a bright spot in it, again, that's a fleck of
6 calidum, an indication of some kind of longer process or
7 degenerative process that is coincident with the disc
8 herniation.

9 Q Thank you, doctor.

10 (Whereupon, Dr. Cohen resumed the witness stand.)

11 Q Now, doctor, did you also review an MRI of Mr. Flores's
12 lumbar spine that was taken in April of 2018?

13 A Yes.

14 Q And do you recall what your -- strike that.

15 Before I ask you this, sir, approximately how many MRIs
16 have you reviewed during your career?

17 A A gillion, I mean you know, tens of thousands.

18 Q And is the same true for CT scans?

19 A Yes.

20 Q And what about X-rays, same gillion?

21 A Yeah, I don't rely on them much.

22 Q Half a gillion?

23 A Yes.

24 Q What were your findings on the April 28th, 2018, MRI?

25 A That there was a disc herniation, with disc desiccation

1 at L5-S1, that it was asymmetric to the right side.

2 Q Is there any objective indication that the herniation
3 was caused by the March 24th, 2018, accident?

4 A No.

5 Q What would be an example of an objective indication
6 that the herniation was caused by the accident?

7 A Well, lack of calidum. The truth is, sometimes you
8 can't really tell if a disc herniation has been acutely or if
9 it's long-standing.

10 I would say in a jury of eight right now, we did your
11 lumbar MRI, there would be disc herniations seen in many of,
12 including myself, they're not always symptomatic, but when you
13 look at a particular disc herniation, and then you look at what
14 nerve that compressions, if a person's complaints are consistent
15 with what that disc looks like, it's pushing, then that is a
16 good indication that it's occurred at that time when those
17 complaints started.

18 So in this circumstance, Mr. Flores complained largely
19 of left-sided complaints and this disc herniation is more
20 asymmetric to the right side, so not likely to have been present
21 or at least occur at the time of the accident.

22 Q Did you take into account Mr. Flores's past history in
23 coming up with your opinions here today?

24 A I'm not sure that I was provided anything in particular
25 in terms of his past history. I can review my report, but

1 I'm -- I'm pretty certain, other than what he may have mentioned
2 during his deposition, which I reviewed, I'm pretty certain that
3 all of the records that I reviewed all occurred after the
4 accident.

5 Q And are you aware that Mr. Flores was a construction
6 worker?

7 A Yeah, I think he told me a carpenter, but yeah.

8 Q And was significance, if any, does his occupation have
9 on the condition of his back?

10 A Well, you know, anything that is a little bit more kind
11 of strenuous, potentially can put more pressure on somebody's
12 spine, that having been said, I'm not really convinced that that
13 is a good thing or necessarily a bad thing.

14 In other words, if you do it the right way, then
15 essentially you're strengthening those structures and making
16 them more resilient, on the other hand, if you don't, then you
17 can develop degenerative processes and more problematic issues
18 in the future as a result.

19 Q Is a herniated disc a common finding?

20 A Relatively common, yeah, much more common than a
21 specific complaint associated with it, yes.

22 Q And can a herniated disc be caused by degeneration in
23 someone's spine?

24 A Yes.

25 Q Now, Mr. Flores has the herniation at the L5-S1 level.

1 Is that true in those cases that degeneration can cause
2 a herniated disc at that level?

3 A Yes.

4 Q Now, is it common to see a herniation at the L5-S1
5 level even if a person has never been in an accident?

6 A Yes.

7 Q Now, you are aware of the fact that Mr. Flores
8 underwent a surgery on his back following the accident; is that
9 correct?

10 A Yes.

11 Q Do you recall what surgery he had done?

12 A Yeah, he had L5-S1 discectomy and instrumentation and
13 fusion.

14 Q Do you recall when that was done?

15 A It was 2019, but I'm not sure exactly.

16 Q Did you have an opportunity to review the operative
17 report from that surgery?

18 A Yes.

19 Q And you mentioned that it was a fusion, what exactly
20 does that consist of?

21 A So when you remove a disc, a disc is an essentially
22 kind of a fancy joint in the spine, and what you're trying to do
23 is take that disc away as a potential source of pain. So what
24 you're doing, everybody hears about the screws and rods which
25 sounds kind of dramatic, what you're trying to do, you're trying

1 to get those two pieces of bone in this case L5 and S1 to grow
2 into one piece of bone.

3 When you break your arm and you put a cast on what the
4 cast is doing is keeping those two pieces of bone together so
5 they can knit together and essentially fuse. As a spinal
6 surgeon what you're trying to do is produce that between two
7 bones not normally fused, but since you're removing the disc,
8 you're causing that fusion, those two bones to grow together and
9 that stabilizes the spine at that level and essentially
10 eliminates it as a source of pain, because most of our movement
11 when we bend forward and bend our neck doesn't actually come
12 from our spine, it comes from your hips and it comes from where
13 your skull goes to your spine, it doesn't cause you to actually
14 reduce any range of motion.

15 So there's not really any significant disability with
16 that fusion, but it does remove that disc as a potential source
17 of pain.

18 Q The decision by Dr. Weinstein who was the surgeon to
19 perform this surgery, was that based on Mr. Flores's subjective
20 complaints of pain?

21 A Yes, and the findings on the CT scan, I would believe.

22 Q Is the findings on the CT scan, would that be
23 considered an objective indication for the surgery?

24 A I mean yes, that is objective data.

25 Q What else would be considered objective?

1 A Deficits, specific kind of neurologic deficits whether
2 that's weakness, sensory deficits or reflex abnormalities on the
3 examination.

4 Q Now, did you review any postoperative scans of
5 Mr. Flores's spine?

6 A Yes.

7 Q And what did you see?

8 A That the instrumentation appeared in good position.

9 Q You're talking about hardware that was inserted as part
10 of the fusion procedure?

11 A Yes.

12 Q Now, as a neurosurgeon, what significance, if any,
13 would the fact that Mr. Flores hasn't been seen by Dr. Weinstein
14 for treatment since 2020 have on your opinion in this case?

15 A I don't think it actually does have an effect.

16 Q Did you review Mr. Flores's deposition testimony?

17 A Yes.

18 Q And did you review the part where he discussed how he
19 fell on March 24th of 2018?

20 A Yes.

21 Q Do you recall which part of his body struck the ground?

22 A I think his left side, I think he landed on his left
23 side.

24 Q What significance, if any, does the testimony that he
25 fell on his left side have on your opinion regarding what you

1 saw on the MRI of April 6, 2018?

2 A It does not.

3 Q You mentioned that the disc was out of place to the
4 right; is that correct?

5 A Yes.

6 Q Is that consistent with a fall on the left?

7 A Yeah, it's not the side that he fell, on it's the side
8 that he's having complaints on. So after the accident, he was
9 complaining of more pain on the left side. If you had an acute
10 disc herniation at L5-S1, asymmetric to the right side, then
11 what the patient is going to get up complaining about, if that
12 disc herniation is causing nerve root compression is complaints
13 of pain down the right side, and that's not what I saw, so it's
14 the complaints not so much the mechanics of the fall.

15 Q In your review of this April 6th, 2018, MRI have any
16 impact on your opinion with respect to Mr. Flores's undergoing
17 surgery in 2019?

18 A Yes.

19 Q What impact did it have?

20 A Just that I did not think that the disc herniation was
21 causally related to the accident in 2018.

22 Q Now, in addition to reviewing his records, you also had
23 an opportunity to examine Mr. Flores; correct?

24 A Yes.

25 Q Do you recall when that was?

1 A Yeah, it would have been the one day that I saw him,
2 the date of the report, which was August 23, 2021.

3 Q As part of your examination, were you able to observe
4 Mr. Flores move around the examination room, the examination
5 table?

6 A Yes.

7 Q And what did you observe?

8 A That he was able to get up to and down from the table,
9 he was able to remove and replace his clothes, that was about
10 it.

11 Q Were you able to do a complete examination of
12 Mr. Flores?

13 A I did a focused examination, neurologic examination,
14 yes.

15 Q What were your findings on examination?

16 A That he did have some weakness in his right knee, but
17 other than that, had full motor strength, symmetric reflexes,
18 and he did have some sensory asymmetry as well, but it was
19 reduced in a kind of non-neuroanatomic distribution; in other
20 words, he had decreased sensation throughout the entire right
21 leg.

22 There are particular distributions of sensation that
23 occur with nerve roots, there's a name for it called dermatomes
24 and the sensory deficits did not follow those dermatomes.

25 Q And now, were you able to take Mr. Flores through range

1 of motion, flexion, bending rotation tests?

2 A Yeah, I don't actually do range of motion, but I did
3 kind of flex and extend him, so-called, you know, provocative
4 maneuvers to see if it generated pain.

5 Q Those tests are for subjective than objective?

6 A It is a combination of both, I'm doing something
7 objectively, but I'm depending upon the patient's complaints, so
8 I think there's certainly a subjective component to it.

9 Q To some extent those tests are dependent on the effort
10 being given by the patient and the complaints?

11 A Telling me whether it hurts or not, yes.

12 Q In your examination, was two years post the surgery;
13 correct?

14 A I believe so, about that, yes.

15 Q And now, had you ever performed the type of surgery
16 that Mr. Flores underwent?

17 A Yes.

18 Q Can you give us an estimate of how many times?

19 A I think I said probably hundreds, total.

20 Q Now, based on your experience in performing hundreds of
21 these surgeries, what kind of healing and recovery process would
22 you expect to see of a patient two years post this operation?

23 A Generally, when you do a spinal fusion, what I tell my
24 patient is you haven't settled out to where you're going to
25 until about a year. You can hope for fusion sometimes in six

1 weeks, three months, sometimes six months, but really, within a
2 year, you're going to be pretty much where you're going to be
3 absent anything else going on.

4 Q Based on your examination and review of the records,
5 did you come to an opinion as to whether Mr. Flores would
6 require any future treatment to his lumbar spine?

7 A I mean I can conclude, I'm not sure I actually, you
8 know, mention that in the report.

9 Q Now, in addition to your review of the records and your
10 examination, you reviewed a video of Mr. Flores; is that
11 correct?

12 A Yes.

13 MR. VARGAS: Objection, your Honor. This is isn't
14 in his report, the video is not in evidence, so I would
15 object to this.

16 THE COURT: Is it beyond the scope of what's in
17 evidence?

18 MR. VARGAS: Yes.

19 MR. AARON: It's not beyond the scope of what he
20 viewed in forming his opinion.

21 MR. VARGAS: It is not in the opinion.

22 THE COURT: Is the report or is it in the evidence?

23 MR. AARON: Well, his report is not evidence.

24 MR. VARGAS: Is the looking at surveillance video
25 in his report, I think that's what the Judge is asking, and

1 it's not.

2 THE COURT: Beyond the scope.

3 MS. SUED: Your Honor, he couldn't because his
4 report was issued prior to the surveillance.

5 THE COURT: It's beyond the scope for this
6 testimony.

7 MR. AARON: He can move on.

8 MR. MINERO: We will move on, Judge.

9 Q Dr. Cohen, do you have an opinion, within a reasonable
10 degree of medical certainty, as to whether the spine surgery
11 performed on Mr. Flores was needed as a result of the
12 March 24th, 2018, accident?

13 A Yes.

14 Q What is that opinion?

15 A That it was not.

16 Q Do you have an opinion, within a reasonable degree of
17 medical certainty, as to whether Mr. Flores sustained a
18 permanent injury to his lumbar spine?

19 A A permanent objective injury, yes.

20 Q And based on your experience performing these
21 surgeries, do you have an opinion, within a reasonable degree of
22 medical certainty, as to whether this procedure prevents
23 Mr. Flores from engaging in his daily activities?

24 A Yes.

25 Q And what is that opinion?

1 A That it should not.

2 Q And I want you to assume that Dr. Mandelbaum opines
3 that Mr. Flores is going to require future steroid injections
4 for his lumbar spine as a result of the March 24, 2018,
5 incident.

6 Do you have an opinion, again, within a reasonable
7 degree of medical certainty, whether Mr. Flores will require
8 steroid injections for his lumbar spine as a result of this
9 accident?

10 A Yeah, I saw Dr. Mandelbaum's report, and his --

11 MR. VARGAS: Objection, this is not in his report
12 as well.

13 THE COURT: An expert can review all types of
14 medical records, I have no issue with that.

15 Q Please continue, sir.

16 A And you know, his predictions for future care are so
17 far afield of what, I mean, I did calculations, something like
18 60 or 80 epidural steroid injections over a lifetime.

19 I have been doing neurosurgery and spinal surgery for
20 30 years, I don't think I've ever seen a patient requiring more
21 than ten or 15, and that's a lot, that would be like the far far
22 end.

23 The fact that he's making a report that essentially
24 implies more likely than not that this gentleman is going to
25 require, again, I forget the exact calculations, something like

1 60 epidural steroid injections over his lifetime is just so
2 incomprehensibly outside of what would be expected, you know, I
3 think it's -- it's a made up prediction.

4 Q I also want you to assume that Dr. Mandelbaum here in
5 court testified that Mr. Flores needs physical therapy on his
6 lumbar spine for the remainder of his life.

7 Do you have an opinion, within a degree of medical
8 certainty, as to whether or not he'll need physical therapy on
9 his lumbar spine for the rest of his life?

10 A Yeah, I mean again, I've seen patients who have had
11 physical therapy, certainly for, you know, months and even
12 years, but to imply you need it for 40 years, in fact, I think
13 the other thing that I thought when I saw Mandelbaum's
14 predictions about frequency of epidural steroid injections, I
15 think a set of three like every year or two.

16 If I go back over the last five years for Mr. Flores,
17 during, you know, up to this trial, he hasn't even received
18 those injections at that frequency during the past five years
19 let alone is a prediction for the last 40, it was so far afield,
20 it was just made up numbers.

21 Q Dr. Mandelbaum had similar testimony about the need to
22 treat with orthopedic specialists for the rest of his life.

23 Do you have an opinion, within a degree of medical
24 certainty, about that?

25 A So I'm not an orthopedic surgeon, but I assume that

1 that was a discussion about spine, orthopedic surgeons, which is
2 what I am as a neurosurgeon, but again, you know, I see
3 patients, you know sometimes for several years after a fusion,
4 you know if they're specific issues, again within three to five
5 years, it's a waste of time for the most part. Those -- the
6 prediction about the regular routine MRIs, I don't remember
7 every three to five years, needing to see a surgeon, it's just
8 not the case.

9 I mean if there's complications, then sure, things have
10 to happen, but you have a patient who has preceded to a good
11 fusion, they just don't require any of that in the future.

12 Q Then also, Dr. Mandelbaum also testified in court that
13 Mr. Flores is going to require a spinal cord stimulator as a
14 result of the accident.

15 Do you have an opinion on that, within a reasonable
16 degree of medical certainty, as to whether Mr. Flores will need
17 a spinal cord stimulator?

18 A Yes.

19 Q What is your opinion?

20 A That he will not.

21 Q And finally, just sir, based on years of performing
22 spine surgeries, do you have an opinion, within a reasonable
23 degree of medical certainty, as to whether the back surgery that
24 was performed on Mr. Flores was needed as a result of the
25 March 24th, 2018, accident?

1 MR. VARGAS: Objection, asked and answered, he
2 already asked this.

3 MR. MINERO: My last question.

4 THE COURT: He can answer even though it was asked
5 already. Is it your concluding question?

6 MR. MINERO: Yes, as soon as I get an answer.

7 A Yes.

8 Q What is your opinion?

9 A That it was not.

10 MR. MINERO: Thank you, no further questions,
11 Judge.

12 THE COURT: Any cross?

13 MR. VARGAS: Yes, your Honor.

14 CROSS-EXAMINATION BY

15 MR. VARGAS:

16 Q Good afternoon, doctor.

17 A Good afternoon.

18 Q My name is Chris Vargas, I represent the Plaintiff, a
19 few follow-up questions.

20 You mentioned, there was no complaints to the right leg
21 after the accident, you said it was mainly to the left side; is
22 that correct?

23 A That is my recollection, I think there were some knee
24 complaints, so I'm kind of not counting orthopedic injuries.

25 Q Were you provided Dr. Kaplan's records the month after

1 the accident March of 2018, I didn't see them in your report?

2 A I don't recall seeing that name, so I think the answer
3 is no.

4 Q I want you to assume that Dr. Kaplan when he was
5 testifying here talked about that if there were complaints to
6 the pain radiating down the right leg immediately on the first
7 visit, would that change your opinion?

8 MR. AARON: Note my objection, Judge, to the
9 mischaracterization of the testimony from the expert.

10 THE COURT: Overruled.

11 Q Would it change your opinion?

12 A Not in so far as the degenerative characteristics of
13 the disc appear on the CT scan.

14 Q And I believe, correct me if I'm wrong, on your
15 opinion, but you were talking about, you looked at the MRIs, and
16 you came to the conclusion that it was, let me read from your
17 report, it was right sided L5-S1 disc herniation, and based on
18 his complaints to the left side, it doesn't match up; right?

19 A Yes.

20 Q So if I understand you correctly, if the herniation was
21 on the left side, that would change your opinion; correct?

22 A I think there certainly is a possibility where a
23 degenerative process can become symptomatic and that may be, but
24 again, the presence of the calcification in the disc clearly
25 indicates that it was present prior to the fall.

1 Q Well, that's a different issue, but you didn't list any
2 calcification in your report; correct?

3 A I don't think I did, no.

4 Q Why not?

5 A I think I reached my conclusions based on a reasonable
6 level of medical certainty.

7 Q Would you consider it a coincidence that the whole
8 Defendant's theory is about calcification is not in your report
9 but all of a sudden it comes up in your testimony?

10 MR. MINERO: Objection, your Honor.

11 MR. AARON: Objection.

12 MS. SUED: Objection, your Honor.

13 THE COURT: Overruled.

14 A I don't know if I call it a coincidence.

15 Q What would you call it?

16 MR. AARON: Same objection.

17 THE COURT: It's in the realm of a medical expert's
18 field, overruled.

19 MR. AARON: Your Honor, he's asking about what our
20 legal theory is in the case.

21 THE COURT: Strike any portion regarding legal
22 theory, please rephrase the question.

23 Q Would you find it to be a coincidence that the
24 Defendants, Defendant's attorneys have been talking about
25 calcification and how that leads to a preexisting injury, and in

1 your report there's no mention of calcification, but low and
2 behold today, you're talking about calcification; how would you
3 explain that?

4 MR. AARON: Objection, it is the same question.

5 MR. MINERO: Objection.

6 THE COURT: Overruled, there's no mentioned legal
7 reference, it was focusing purely on the medical testimony,
8 medical expertise of the expert.

9 Q Doctor --

10 A I can only tell you that I re-reviewed the CT scan from
11 the emergency room, and noticed it.

12 Q So today you noticed it?

13 A No, actually, yeah, I kind of re-reviewed it today.

14 Q All of a sudden, it magically popped up to you and you
15 didn't see it the first time you saw it?

16 A I don't know if I didn't see it, I didn't mention it in
17 your report.

18 Q Don't you think it would have been important to mention
19 it in your report?

20 A It would have been not as important as mentioning it
21 when I'm on the stand, but yes.

22 Q True. When you're on the stand in front of the jury,
23 you want to make sure you mention it?

24 MR. AARON: Objection.

25 Q In your report, you don't want to mention it?

1 THE COURT: Counselor, move on.

2 Q Doctor, back to my original question, doctor, your
3 theory it is a right-sided herniation and complaints on the left
4 side, my question was if it was a left-sided herniation, would
5 that change your opinion at all?

6 A I think I answered the question again with the
7 calcification not that the disc herniation occurred at the time
8 of the accident.

9 Q I guess my question is, you're talking about the right
10 side, the left side, without the calcification. I'm asking if
11 there was a herniation on the left side, left-sided herniation
12 with the left-sided complaints, would that have changed your
13 opinion regardless of the calcification?

14 MR. AARON: Objection to the form.

15 THE COURT: Please rephrase.

16 Q I want you to assume that instead of a right-sided
17 herniation, it was a left-sided herniation, would that have
18 changed your opinion?

19 A And you want me to discount the?

20 Q Calcification.

21 A The calcification, so there was no calcification?

22 Q Yes.

23 A And the patient complained, it would depend upon what
24 the distribution of the pain was, but yes, that could be more
25 consistent with a left-sided disc herniation.

1 Q The same hypothetical now, let's go with central
2 herniation, the same result, change your opinion?

3 A It really depends if there's mass effect on nerve roots
4 as a result of the central disc herniation.

5 Q Right, and as it stands now, on the right side, would
6 you consider a mass effect on the nerves?

7 A I think if there's any mass effect it would be on the
8 right side, yes, as it stands now.

9 Q As it stands now.

10 Would you be surprised to know that the Defendants are
11 going to call a radiologist tomorrow whose going to diagnose
12 this herniation that you've seen as a herniation, Dr. Kuflik has
13 seen as a herniation, Dr. Kolb has seen as a herniation, he's
14 going to call it a bulge, and he's going to say it's a mild
15 central protrusion; would you agree with that?

16 A Yeah.

17 Q So why are you now telling us that it's predominantly
18 right sided when you agree it's a mild central protrusion?

19 A Well, you know, protrusion, bulge herniation, those are
20 not really quantitatively specifically different, I think you
21 will get a lot of overlap in the utilization of those terms. In
22 terms of the lateralization of this, there is a central
23 component to it, there's no doubt, but it's slightly asymmetric
24 to the right.

25 Q So it is plausible then, that his complaints on the

1 left side predominantly and his complaints on the right leg are
2 all caused by this right-sided herniation; correct?

3 A No.

4 Q Even though we've gone through the hypotheticals, if it
5 was left side or central, that might change your opinion?

6 A No, because it's -- this is not based on what the disc
7 herniation looks like, this is based on what his complaints are,
8 and what the distribution of the pain is.

9 Q Doctor, I think you also put in your report page, the
10 last page of the first page report before your addendum, second
11 paragraph down, "as a result of continuing complains of pain, he
12 eventually underwent surgical fusion L5-S1 in June of 2019. By
13 his own report, the intervention did not alleviate the pain or
14 discomfort from which he was suffering"; correct?

15 A Yes.

16 Q Now, you did read his deposition; correct?

17 A Yes.

18 Q And when you read his deposition, you outlined several
19 things that you found pertinent, I'm guessing, I don't know why
20 you listed some of them?

21 A Yeah, you know, it's not always necessarily what's
22 pertinent, I try to distill out things that are going to be
23 relevant, I can't always predict that in advance, but yes.

24 Q One of them you listed was the back surgery alleviated
25 some but not all of the pain; correct?

1 A That's what he said in his deposition, yes.

2 Q So that's by his own report; correct?

3 A Yeah, the report that I was discussing is when I had
4 spoken to him on the day of the exam, he told me that it did not
5 help his back pain.

6 Q Now, with pain to the back, herniations, pain
7 fluctuates; would you agree with that?

8 A To a certain extent yes.

9 Q You have good days, you have bad days; yes?

10 A Sometimes, yes.

11 Q And in his deposition, that you read, you saw that he
12 testified that a surgery took his pain down from a ten to a six
13 or seven; correct?

14 A I don't have that mentioned in my kind of bullet
15 points, but I would not find that difficult to believe.

16 Q As far as what you reported how his accidents occurred,
17 he fell from approximately 15 feet, falling at a height of
18 15 feet, that's enough to call a herniation; correct?

19 A Oh, yes, absolutely.

20 Q In fact, a sneeze or getting up from a chair can cause
21 a herniation; correct?

22 A It sounds like something a smart person would say.

23 Q You yourself have said it before.

24 A I have said it.

25 Q I heard you say he doesn't need a spinal stimulator,

1 but you didn't say why?

2 A Right, so spine, would you like me to tell you why?

3 Q Sure.

4 A So spine stimulators tend to be more effective in
5 patients that have very specific radiculopathy; in other words,
6 they have a nerve root that's irritated and scarred and just
7 always painful.

8 What he most had complaints of what is known as axial
9 pain, which is back pain. Spinal stimulators don't work for
10 that, even accepting those complaints as absolutely valid,
11 spinal cord stimulators are not an effective treatment for that.

12 Q Now, other than Dr. Mandelbaum's report that you've
13 told us you reviewed, based on your report, I don't see any
14 records after 2019, or am I incorrect on that?

15 A No, I think you're correct.

16 Q And did you review his trial testimony?

17 A I did not.

18 Q Did you review Dr. Weinstein's trial testimony?

19 A I did not.

20 Q Did you review Dr. Kaplan's trial testimony?

21 A I did not.

22 Q Did you review Dr. Mandelbaum's trial testimony?

23 A I did not.

24 Q So you have no idea the treatments, the complaints, and
25 the limitations that Mr. Flores has had since the date of your

1 exam on August 23, 2021; correct?

2 A Other than the surveillance videos that I saw from -- I
3 am allowed to say that?

4 Q Doctor, you know you're not allowed to.

5 THE COURT: It is outside the purview.

6 A Other than the report, I do not, I do not.

7 Q And so, you examined him for, I think you put in your
8 report, 15 minutes?

9 A Yes.

10 Q Seven years and from that you can come to the
11 conclusion he doesn't need a spinal stimulator, no pain, no need
12 for further treatment; right?

13 A I don't think I said that, no.

14 Q Well, you said he doesn't need physical therapy; right?

15 A I don't think I said. Did I say that in my report?

16 Q You just said that today.

17 A No, what I said was I don't think he's going to need
18 physical therapy for the rest of his life.

19 Q Okay.

20 A He's not getting epidural steroid for the rest of his
21 life.

22 Q So wait, for's physical therapy, let's stay on physical
23 therapy, not the rest of his life, so what, ten years, 20 years?

24 A No.

25 Q Two years, five months?

1 A Again --

2 MR. AARON: Judge, you have to let him answer the
3 question.

4 MR. MINERO: Objection.

5 MR. VARGAS: I'm just giving him options A, B. C.

6 MR. AARON: You're not letting him answer.

7 THE COURT: Let the witness respond.

8 MR. VARGAS: Okay.

9 A Again, I have been doing this 30 years, I have never
10 seen a patient require physical therapy for ten years, 15 years
11 or 40 years.

12 Q Doctor, then the question is how long, if it's not his
13 lifetime, what are you saying?

14 A Again, you just said to me you said that he doesn't
15 need physical therapy.

16 Q No, you said that, I'm asking why, and if?

17 A No.

18 Q That's what I heard, if you're saying no to physical
19 therapy or if you are saying physical therapy, how long?

20 MS. SUED: Objection, your Honor, it is a
21 mischaracterization of the testimony.

22 MR. VARGAS: I heard no physical therapy.

23 Q So, maybe I misunderstood you, so go ahead and tell us,
24 physical therapy yes and how long, please?

25 A Okay, that's not the question that I was kind of

1 discussing on direct, it was whether or not he would need
2 physical therapy for the rest of his life.

3 Q Okay.

4 A And I said no.

5 Q Okay, so, and I followed that up and I said if not the
6 rest of his life, how long?

7 A Again, I haven't seen him in four years, so based on
8 his lack of response in the physical therapy that I had seen
9 him, I don't think that he would necessarily benefit from any,
10 which is not to say it is not possible or he couldn't benefit
11 from some, but if you're asking me to reach a conclusion --

12 Q Yes.

13 A -- to a reasonable level of medical certainty, what I'm
14 saying he will not need physical therapy for the next 40 years.

15 Q Okay, but that wasn't my question.

16 My question was if not for his lifetime, and you're not
17 ruling it out completely, how long then, doctor?

18 MR. AARON: Objection.

19 MS. SUED: Objection.

20 Q Ten years, five years, I didn't get an answer to the
21 question?

22 MS. SUED: Objection, your Honor.

23 MR. AARON: Objection.

24 MR. MINERO: The precedence has been set on issues
25 like this, he has already answered the question, he didn't

1 like the answer, that was the answer.

2 MR. VARGAS: I didn't get an answer.

3 MR. MINERO: We have been through this earlier.

4 THE COURT: Let's respond to the question, and then
5 move on after this.

6 Q Doctor, one more time, please, and then we can move on,
7 I understand you're saying he doesn't need it for the rest of
8 his life.

9 I then asked you does that mean not at all, you said
10 no, so there must be somewhere in between 36 whatever years of
11 his lifespan is and today, right, if it's not at all, so that's
12 all I'm asking, how long?

13 A And what I'm saying is based on the information that I
14 have in front of me, I cannot reach a conclusion to a reasonable
15 level of medical certainty.

16 Q Yet, you're coming to a conclusion he doesn't need it
17 for the rest of his life?

18 A Yes, because --

19 MR. AARON: Objection.

20 MR. MINERO: Objection, Judge.

21 A -- I have been doing this for 30 years and never seen a
22 patient require that.

23 Q You don't know, you haven't seen him in four years just
24 like you said?

25 MR. MINERO: Objection.

1 MR. AARON: Objection, Judge.

2 A I'm comfortable, with a reasonable medical of
3 certainty, he will not need it for 40 years and not for 30 years
4 and not for 20 years. If you're going to ask me if he needs it
5 for a couple of months or year, again, I do not have the
6 information to reach a reasonable level of medical certainty on
7 that timeframe.

8 Q So you're saying at a max a year, correct, is what I'm
9 hearing?

10 A I don't think so you're hearing what I'm saying.

11 Q Okay.

12 THE COURT: Let's move on, counselor.

13 Q You also said he doesn't need orthopedic visits; right?

14 A Assuming that spinal surgery orthopedic visits, those
15 are the kind I can comment on.

16 Q Well, what if we assume they were visits for his knee?

17 A Then --

18 MR. MINERO: Objection.

19 MS. SUED: Objection.

20 MR. AARON: Objection, beyond the scope of his
21 report.

22 MR. VARGAS: He's assuming one thing, I'm saying
23 what if we assumed it for the knee.

24 MR. AARON: No, you're assuming something that's
25 based on outside the scope of his report, we had a big

1 conversation on before the doctor took the stand.

2 MR. VARGAS: He was allowed to give opinions
3 whether he could have orthopedic visits.

4 MR. AARON: He's just answered your question
5 talking about orthopedic spine visits, if you want to limit
6 to ask that.

7 MR. VARGAS: I'm asking about the knee.

8 THE COURT: This is sustained, beyond the scope.

9 Q I want you to assume those orthopedic visits are for
10 his knee not his spine.

11 MR. MINERO: Objection.

12 MR. VARGAS: It is the same objection.

13 THE COURT: Sustained.

14 Q Did you review any records about his knee?

15 MR. AARON: Objection.

16 THE COURT: Answer that question.

17 A I think I did.

18 Q Are you aware that he had injections to his knee, joint
19 lubrication?

20 MS. SUED: Objection, this is a neurosurgeon
21 expert, not an orthopedic, why are we talking about the
22 knee?

23 MR. VARGAS: Because he's talking about orthopedic
24 visits, and how he doesn't need them.

25 MR. AARON: We just established that he's talking

1 about spine visits.

2 MR. VARGAS: That's why I'm asking it.

3 THE COURT: Look, look he's an expert in the field,
4 he did respond he did see the knee, objection overruled for
5 now, let's see where it goes.

6 Q Are you aware he got joint lubrication shots in his
7 knee?

8 MR. AARON: Same objection.

9 THE COURT: Overruled, you opened the door by
10 responding he examined the knee which, as an expert, he can
11 respond to.

12 THE WITNESS: I'm sorry, your Honor, I did not
13 examine the knee. What I said was I examined medical
14 records about the knee.

15 Q Yes.

16 THE COURT: Then it's sustained.

17 Q In your report, the ambulance call report, you listed,
18 pertinent facts, again; right?

19 A Can you, yes --

20 THE COURT: One second, I got a request from the
21 jury to use the restroom.

22 JUROR NO. 1: Can I please run?

23 THE COURT: Sure, not a problem.

24 COURT OFFICER: All rise, jury exiting.

25 (Whereupon, the jury exited the courtroom.)

Dr. Douglas Cohen - Defendant - Cross/Mr. Vargas

1 (Whereupon, a short break was taken.)

2 THE COURT: Come to order.

3 COURT OFFICER: All rise, jury entering.

4 (Whereupon, the jury entered the courtroom.)

5 THE COURT: You may be seated, now the trial
6 resumes.

7 Counselor, please, continue your question.

8 Q I only have one more question for you, doctor.

9 Under the ambulance call report you stated or you found
10 it significant, that he states he fell 12 feet off a ladder, he
11 was alert and oriented number two, number three sensation and
12 motor function were intact in all four extremities?

13 A Yes.

14 Q But in that same ambulance call report, there was
15 mention of back complaints; correct?

16 A That I don't recall, it's certainly possible.

17 Q Wouldn't that have been significant to put that in the
18 report?

19 A I don't think it would have changed my conclusions, no.

20 Q Even though you're here to testify about the back?

21 A Yeah, again, it doesn't affect the conclusions that I
22 reached.

23 MR. VARGAS: No further questions.

24 THE COURT: Any redirect?

25 MR. AARON: Yes, Judge.

1 REDIRECT EXAMINATION BY

2 MR. AARON:

3 Q Good afternoon, Dr. Cohen.

4 A Good afternoon.

5 Q Talking a little bit about before calcification, that's
6 what you pointed out to the jury on the CT of the lumbar spine
7 taken on the day of the accident?

8 A Yes.

9 Q And calcification that's the builds up of calcium
10 deposits within a tissue; right?

11 A Yes.

12 Q That takes time to develop?

13 A Yes.

14 Q Years, in fact?

15 A Yes, generally.

16 Q So we just saw it on a CT scan taken on the day of the
17 accident, it didn't happen that day; right?

18 A No.

19 Q It would have had to have preceded the accident by a
20 year or more?

21 A Or more.

22 Q You didn't review Dr. Weinstein's operative report?

23 A Yes.

24 Q And you are aware that he upon doing the surgery, he
25 encountered what he called a mostly calcified disc; do you

1 recall that?

2 A I don't recall the extent of the calcification, I
3 recall he found the calcified disc.

4 Q And calcification, is that the body's response to try
5 and stabilize damaged tissue?

6 A That's one way to look at it in that case, yes.

7 Q Is the presence of calcification there on the day of
8 the accident, and then that means just by it being there, the
9 tissue is damaged; right?

10 A I guess that's one way you can kind of back reason it,
11 yeah.

12 Q Can you explain it a different way?

13 A Well, it's you know, it's a degenerative process, I'm
14 not sure you have to assume a prior injury, but it is the body's
15 way, at least in the spine, to kind of stabilize things that are
16 on a microscopic level unstable.

17 Q So say a herniation, that could be a degenerative
18 process?

19 A Yes.

20 Q So the body's reaction to that herniation, would be to
21 calcify the disc; right?

22 A That's one way it would react to it, yes.

23 MR. AARON: That's all I have, doctor, thank you.

24 THE COURT: Counselor, any further questions?

25 MR. VARGAS: No, your Honor.

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1 MR. MINERO: No, your Honor.

2 THE COURT: Are we done with this witness for this
3 afternoon?

4 MR. MINERO: Yes, your Honor.

5 MR. AARON: Yes, your Honor.

6 THE COURT: Doctor, you're free to go.

7 (Whereupon, Dr. Cohen exited the witness stand.)

8 THE COURT: Members of the jury, the Court is in
9 recess until 2:15 tomorrow. We plan on having at least two
10 witnesses tomorrow, so I appreciate the jury's cooperation,
11 and I respectfully respect that you try to make it at 2:15
12 so we can start the proceedings then.

13 Have a wonderful night, again, thank you for your
14 service.

15 COURT OFFICER: All rise, jury exiting.

16 (Whereupon, the jury exited the courtroom.)

17 THE COURT: Are there any motions before the Court?

18 MR. AARON: There may be, your Honor, I'm just
19 going to what was decided with respect to exploring the RICO
20 issues, it has come to the attention that one of the
21 treating physicians, someone who has testified in this case
22 already, his bad acts was actually adjudicated already, it's
23 no longer --

24 THE COURT: Was there a finding?

25 MR. AARON: There's a finding in an Article 78

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1 proceeding, so it is just not an allegation, it was
2 adjudicated.

3 THE COURT: Are you aware of that, counsel?

4 MR. VARGAS: It wasn't adjudicated, so a finding
5 by the Worker's Comp, that's what they're talking about, it
6 is a renewal application for to treat Worker's Comp
7 patients. It's not a disciplinary finding, it is not an
8 adjudication finding that he did something wrong. It's
9 simply Worker's Comp not allowing him renewal to work on, to
10 treat Worker's Comp's patients.

11 He has an Article 78 proceeding, where he's
12 appealing that, he's saying they wrongly denied his renewal,
13 but it is not --

14 THE COURT: Are you talking about Dr. Grimm?

15 MR. VARGAS: Dr. Weinstein.

16 THE COURT: Are there any case law on this? I'm
17 serious right now.

18 MR. MINERO: Okay.

19 THE COURT: Does the decision give a reason, it
20 just says denies his application, it's a big difference.

21 MR. AARON: Well, I think the issue is we're
22 allowed to explore why he's no longer allowed to treat
23 Worker's Comp patients, I need to see the decision.

24 THE COURT: The decision would be helpful, two
25 things mainly guidance of the decision would say it, a

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1 negative finding or just simply a two line denied.

2 MR. VARGAS: I would also add, your Honor, it has
3 nothing to do with my client, Mr. Flores is not mentioned in
4 any of those proceeding or anything about this Article 78 or
5 why his renewal was denied, I would say it's prejudicial on
6 that level as well.

7 THE COURT: Possibly, I just need to have some case
8 law on this.

9 MR. AARON: I would say then, your Honor, the
10 entire process of impeachment through a prior bad act would
11 never be accurate, because it is not about the one
12 particular patient, that's the whole process of impeaching
13 someone from a prior bad act, because it goes to their
14 credibility as a testifying expert, and so while it may not
15 have nothing to do with Mr. Flores, the fact that we're
16 allowed to impeach him using a prior bad act.

17 MR. VARGAS: I would add in my motion in limine,
18 there's plenty of cases there, where they have prior proven
19 acts that they're not allowed to cross-examine him about,
20 just because you did a bad act here doesn't mean you did it
21 over here with this patient.

22 THE COURT: Counselor.

23 MR. AARON: I mean, I disagree with the process by
24 which he's referring to using, in part, prior bad acts as
25 impeachment but your Honor, if we can find an appellate

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1 authority or a case.

2 THE COURT: Get me an authority that shows it is
3 proper, and I will follow to the letter of the law with
4 appellate authority is, provided there is a logical
5 argument, a balancing act.

6 MR. AARON: Thank you, Judge.

7 THE COURT: First, I need a copy of what the
8 article said; two, I need to have some authority, and I will
9 reserve decision now and revisit the issue.

10 MR. VARGAS: I would add one more time, it's a
11 denial of renewal to treat Worker's Comp patients. So he's
12 applying, it's not that they found something wrong and said
13 you are now being disciplined, it's an application.

14 THE COURT: Okay, the question is what's the
15 verbiage in that language, if it's a mere denial by itself
16 may not sufficiently ratchet to the level of --

17 MR. AARON: I agree with that, Judge.

18 THE COURT: That's what I'm trying to say.

19 MR. AARON: I agree with that, I think the
20 rationale or the reasoning behind that denial, I think could
21 be relevant, but we will find the case law to support the
22 position.

23 MR. MINERO: Your Honor, I can send you the
24 decision from --

25 THE COURT: Send it to everybody.

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MR. MINERO: Yes, give me a second.

THE COURT: Also, please let's work on the damages portion if we can.

MR. AARON: Yes, your Honor.

MS. SUED: Thank you, your Honor.

THE COURT: Thank you, Mr. Vargas.

Anything else? I wish everybody a wonderful night.

MR. VARGAS: Thank you.

MR. MINERO: Thank you.

MR. AARON: Thank you.

(Whereupon, the trial was adjourned to August 13, 2025, at 2:15.)

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL MINUTES TAKEN OF THIS PROCEEDING.

Laura Delvac
LAURA DELVAC
Senior Court Reporter

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