

In The Matter Of:
Segundo Villa v.
West 38 RES, Site C GC

Dr. Grimm/Dr. Kaplan
October 9, 2025

Michael Ranita

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NEW YORK : CIVIL TERM : Part 57M

3 -----x

4 SEGUNDO FABIAN LLUILEMA VILLA,

Index: 151515/2020

5 Plaintiff,

6 -against-

7 WEST 38 RES LLC, SITE C GC LLC,

8 Defendants.

9 -----x

10 60 Centre Street
New York, New York 10007
October 9, 2025

11 B E F O R E: HONORABLE SABRINA B. KRAUS, Supreme Court Justice

12
13 A P P E A R A N C E S:

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17
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BY: SUSAN APRIL SCARIA, ESQ.
21 - and -
22 ALEXANDRA ANDREA SUED, ESQ.

23
24 Michael Ranita
Rachel Simone
25 Senior Court Reporter

1 THE COURT: Good morning. Okay, so when we left
2 yesterday we discovered that the witness -- the office of
3 the witness has produced several different versions, or at
4 least two different versions, um, two different versions of
5 their records. Other than the initial discrepancy -- oh,
6 Chris, did we charge the mic? Oh, you got it? Other than
7 the one discrepancy that came up yesterday, were there
8 additional discrepancies between the two sets of documents?

9 MS. SCARIA: Yes.

10 THE COURT: How many, and what was the nature of
11 those discrepancies?

12 MS. SCARIA: One other visit whereby there was a --
13 well, there were many minor differences that I certainly
14 wouldn't call substantive, but there was one larger
15 difference, not commenting on the substance or not of
16 what's--

17 THE COURT REPORTER: I'm sorry, I'm not able to
18 hear.

19 (Whereupon, the court reporter read back the last
20 sentence stated by Ms. Scaria.)

21 MS. SCARIA: Of what's in the records, but rather
22 Dr. Grimm's note dated October 26th, 2020 includes, at the
23 bottom of page three, information under the plans section,
24 whereas the note that's included in the records provided in
25 response to the authorization from my office does not

1 include that plan note.

2 Does your Honor want me to read into the record
3 what difference is?

4 THE COURT: I mean, I don't know if you have to
5 read it into the record.

6 MS. SCARIA: Okay.

7 THE COURT: What does the note address?

8 MS. SCARIA: In the records that were received
9 through the authorization to my office, at the end of the --
10 (Dr. Grimm entered the courtroom.)

11 THE COURT: I'm going to ask you to wait outside,
12 please. Thank you.

13 (Dr. Grimm exited the courtroom.)

14 MS. SCARIA: At the end of the October 26th, 2020,
15 note -- your Honor, can we ask the plaintiff to step
16 outside?

17 MR. VELARDI: That's fine with me. I don't know
18 that he has to for this. He's already testified. He's
19 done, but it's fine with me.

20 THE COURT: I mean, normally a party has an
21 absolute right to be present for the entire proceeding.

22 MR. VELARDI: You are right.

23 THE COURT: I did exclude him once because his
24 Counsel consented, as he's doing now, but I'm not really
25 comfortable asking a party to be outside. It's his case.

1 He is entitled to be here.

2 MS. SCARIA: Okay.

3 MR. VELARDI: Thank you, your Honor.

4 MS. SCARIA: Thank you, your Honor.

5 So the records that's included in the pack that was
6 sent to the Court, that was sent to my office via
7 authorization in June of 2024, that note, on page three, has
8 -- ends at "continued treatment with orthopedics", and then
9 has a signature. The copy that's in Dr. Grimm's file ends
10 with "Plans" and then an entire paragraph about epidural
11 injections and a request for physical therapy.

12 THE COURT: All right. I understand.

13 MS. SCARIA: Just one other thing, your Honor. The
14 other thing that's -- that may be substantive, is that each
15 of the notes -- the difference amongst each of the dates of
16 notes is that in the copy from -- received by my office in
17 June of 2024, there are time stamps with Dr. Grimm's name
18 next to each of the headings in his exam note, whereas the
19 copy in his chart does not have any of the time stamps.

20 There's a bunch of other differences, but those are
21 the only two things that seem to be of most significant.

22 MR. VELARDI: And, your Honor, I would like to
23 respond.

24 THE COURT: You want to respond to what she was
25 just telling me what the differences were?

1 MR. VELARDI: I would like to respond regarding the
2 entire issue of the discrepancy between the records and put
3 my objection, or, you know, my statement on the record.

4 THE COURT: Well, so I don't remember if we said --
5 did we already say on the record that you are looking to put
6 in the different copies -- the copy that you received
7 pursuant to the authorizations?

8 MS. SCARIA: We had not made any decisions about
9 records on the record.

10 THE COURT: No, but that is what you are looking to
11 do; correct? You and Counsel apparently had a
12 conversation --

13 MS. SCARIA: No, we had no discussions about
14 records yesterday. I think what Counsel may have been
15 referencing was we were going to have -- I thought we were
16 going to have settlement discussions yesterday, but that did
17 not happen.

18 MR. VELARDI: No, I'm referencing the assumption
19 that she wants to question Dr. Grimm about her office's --
20 the records maintained by her office.

21 THE COURT: That's what I'm talking about. Are you
22 looking to put into evidence the records that you received
23 pursuant to the authorization that are different from the
24 records that are already in evidence?

25 MS. SCARIA: Yes.

1 MR. VELARDI: Right. So I have an objection that I
2 would like to put on the record.

3 THE COURT: I'll give you an opportunity to do
4 that, but might I suggest that you not object and you
5 consent, because right now I have records that were
6 testified to be maintained in the ordinary course of
7 business, and I have evidence that they were not, in fact,
8 maintained in the ordinary course of business.

9 One option would be to strike the records entirely,
10 in addition to the witness's testimony. I would suggest
11 that consenting to the admission of the differing records
12 and allowing Counsel to cross might be a more palatable
13 alternative to the plan.

14 MS. SCARIA: Your Honor --

15 MR. VELARDI: I appreciate your Honor's suggestion,
16 but I'm not gonna do that. I'm going to object to it.

17 MS. SCARIA: I was just going to say, your Honor,
18 that I -- well, thank you. And I actually was going to make
19 a decision as to whether the defendants would be requesting
20 that Dr. Grimm's version of the chart be -- forgive me, I
21 don't know even know what the word would be -- stricken from
22 the record, I suppose, since they are already in evidence,
23 depending on what Dr. Grimm's responses are to my questions
24 about the difference between the records.

25 THE COURT: All right. So for now there is no --

1 there is no -- okay, so for now I understand your
2 application to be pending to admit.

3 Let's mark the document, please, for
4 identification. So that would be Defendant's B for
5 identification.

6 MS. SCARIA: Yes, your Honor.

7 (Whereupon, the records referred to are marked
8 People's Exhibit B for identification.)

9 THE COURT: You could give them back to Counsel for
10 the defendant.

11 So I'll hear your objection to the offer of
12 admission.

13 MR. VELARDI: Thank you very much, your Honor.

14 MS. SCARIA: Your Honor, may I -- while Counsel is
15 doing that may I -- oh, wait --

16 THE COURT: You could do whatever you need to do
17 with the records while he is making his objection.

18 MS. SCARIA: Thank you.

19 MR. VELARDI: So, your Honor, the records that were
20 sent to the court in response by New York Ortho in response
21 to Fullerton Beck's subpoena, um, contains the information
22 of the 3/10/20 note by Dr. Grimm regarding the prior car
23 accident for the right shoulder --

24 THE COURT: Are you talking about Exhibit 12?

25 MR. VELARDI: -- surgery. I'm talking about

1 Exhibit 4.

2 THE COURT: Exhibit 4 is Dr. Kolb's --

3 MR. VELARDI: I'm sorry, Exhibit 3.

4 THE COURT: Okay. Exhibit 3. Go ahead.

5 MR. VELARDI: Exhibit 3 contains the note. It also
6 contains the note regarding the plans that'll Ms. Scaria
7 pointed out.

8 THE COURT: But Exhibit 12 does not, right?

9 MR. VELARDI: Exhibit --

10 THE COURT: Which is Grimm's file.

11 MR. VELARDI: 12 does as well.

12 THE COURT: Oh, it does.

13 MR. VELARDI: Right. So Exhibit 12 matches
14 Exhibit 3. In addition --

15 THE COURT: I don't understand your point. You
16 acknowledge these discrepancy, correct? You've looked at
17 the two sets?

18 MR. VELARDI: I'm acknowledging the discrepancy.

19 THE COURT: What is the basis for the objection
20 coming in? You are pointing out that there is other stuff
21 that is the same, but the stuff that is the same is not the
22 problem.

23 MR. VELARDI: What I'm pointing out, and in
24 addition, there's also a copy of these records that haven't
25 been admitted yet that were sent in response to our office's

1 subpoena, which I didn't seek their admission because they
2 are just a duplicate of what Fullerton's office subpoenaed.
3 But now --

4 THE COURT: You know that because you checked or?

5 MR. VELARDI: I checked them --

6 THE COURT: Okay.

7 MR. VELARDI: -- yes. They have a business records
8 certification. And now under the circumstances I seek to
9 have these admitted as Plaintiff's Exhibit 13, just so that
10 we have multiple copies --

11 THE COURT: I'm sorry, I just want to understand.
12 Your representation is your proposed Exhibit 13 is identical
13 to the Exhibit B that she is offering and you're objecting
14 to.

15 MR. VELARDI: No, no.

16 THE COURT: Okay.

17 MR. VELARDI: It is identical to Exhibit Number 3
18 and Exhibit Number 12. So that's three exhibits that were
19 sent either directly to this court from New York Ortho, or
20 brought into this courtroom by Dr. Grimm, that are
21 equivalent. The only ones that doesn't match are the ones
22 that have been in Fullerton Beck's law office for the last
23 year and a half; that's the odd man out, okay?

24 THE COURT: I'm sorry --

25 MS. SUED: That is the issue --

1 THE COURT: -- I don't understand. That's the
2 whole problem is that you gave your adversary a different
3 copy than everybody else got.

4 MR. VELARDI: We didn't give them anything.

5 THE COURT: Somebody.

6 MR. VELARDI: This is New York Ortho.

7 THE COURT: That the doctor -- it looks like stuff
8 was put in after it was sent to her; that's problematic.

9 MR. VELARDI: Or --

10 MS. SCARIA: Your Honor --

11 MR. VELARDI: Or --

12 MS. SCARIA: I just want to --

13 MR. VELARDI: Let me put my statement on the
14 record. I'm trying to put my statement on the record and
15 then you can respond.

16 MS. SCARIA: I'm trying to make sure there is no
17 disparaging of your office, Mr. Velardi.

18 THE COURT: No, no. When I said "you", I didn't
19 mean -- I wasn't referring --

20 MR. VELARDI: I understand.

21 THE COURT: -- to the law firm.

22 MS. SCARIA: Or the law firm.

23 THE COURT: No, I said, "When I said you, I did not
24 mean the law firm." I meant the doctor's office.

25 MS. SCARIA: Got it.

1 MR. VELARDI: Right. Your Honor, how is anyone,
2 especially Dr. Grimm, or anyone else from his office, to
3 know what the law office of Fullerton Beck did with the
4 copies of records that were sent to them and --

5 THE COURT: That is, that is nothing but wild,
6 random, unsupported speculation, Counsel. Dr. Grimm is to
7 know and be responsible for, and his -- I assumed his
8 testimony was reliable when he said these are records
9 maintained in the ordinary course of business. And if his
10 office produced to an officer of this court a differing
11 version of that, your wish list that maybe it wasn't the
12 doctor who did it, but without any support you are accusing
13 your of adversary criminal acts is -- it's not appropriate.

14 MR. VELARDI: What I'm saying is --

15 THE COURT: What you are saying is, how is the
16 doctor to know that the attorney didn't fudge it and is
17 making this all up, and I find that offensive. Unless you
18 have some good faith basis to make that assertion, Counsel,
19 I suggest you withdraw it.

20 MR. VELARDI: I'm not withdrawing it, your Honor.

21 THE COURT: Okay, then --

22 MR. VELARDI: Because the implication --

23 THE COURT: -- it stands where it stands.

24 MR. VELARDI: The implication is the implication.

25 THE COURT: The implication to me -- the first

1 thought to me is not that the attorney went and deleted
 2 those notes, okay? The implication to me is that the doctor
 3 has different versions of those notes. That is the most
 4 likely and rational conclusion. Now why that happened, how
 5 that happened, we can certainly explore with the witness.
 6 But to accuse your adversary of unethical, illegal conduct,
 7 and fabricating a whole thing is not going to help your --
 8 it's not going to help your cause.

9 MR. VELARDI: I'm not accusing her of that, okay?

10 THE COURT: What you just said is how is the doctor
 11 to know that the law firm didn't mess with the records;
 12 that's what you just said on the record.

13 MR. VELARDI: Multiple copies --

14 THE COURT: Do you understand that that is an
 15 accusation that goes to the ethical conduct of your
 16 adversaries?

17 MR. VELARDI: Your Honor, there's no way to prove
 18 that those records were sent in the condition that they were
 19 sent -- um, in the condition that they are claiming they
 20 were sent --

21 THE COURT: Okay.

22 MR. VELARDI: -- after a year and a half that
 23 they've been under the exclusive custody and control of
 24 them.

25 THE COURT: Your objection --

1 MR. VELARDI: And my objection --

2 THE COURT: Your objection is noted. I'm done.
3 Your objection is noted.

4 MR. VELARDI: Yeah, but my objection is with
5 respect to CPLR 3122-A, okay? So that CPLR section permits
6 admission of records, with a business certification, that
7 was sent to a party's law office.

8 THE COURT: No, I understand.

9 MR. VELARDI: Only when they serve a subpoena and
10 when the records arrive at their office, they are required,
11 30 days before trial, to make them available for the
12 opposing party to inspect, giving the opposing party the
13 option to object to them ten days before the trial. And
14 that's the only way that records that went to a law office,
15 even with a business certification, can be admissible.
16 So now when they --

17 THE COURT: Counsel, if these records don't come
18 in, this doctor's testimony and the records that are in are
19 getting thrown out. So right now I'm going with the lesser
20 penalty. I'm going to allow the records in, not because
21 they would come in under a normal CPLR certification, but
22 because of the highly unusual and continuing suspect
23 problems that are coming out of these offices with these
24 records, okay?

25 So right now I'm going to allow her to cross on it,

1 and we'll see where that takes us. And I'm going to allow
2 it in for the purposes of cross examination.

3 MR. VELARDI: Okay. Just note my exception. Thank
4 you.

5 THE COURT: So noted.

6 MS. SCARIA: I'm sorry, your Honor, so --

7 THE COURT: So B is in evidence, over objection,
8 and I'll ask that the reporter mark that in evidence over
9 objection.

10 And I don't have any particular reason why I
11 wouldn't accept his offer of Plaintiff's 13, if it's another
12 certified version.

13 Do you have any objection to Plaintiff's 13 coming
14 in?

15 MS. SCARIA: Your Honor, I haven't reviewed that
16 version, so I can't consent to it.

17 THE COURT: Okay. So I will hold off on making a
18 decision on that until after lunch when you've had an
19 opportunity to review it. I mean, I accept Counsel's
20 representation that he reviewed it and it's the same, but
21 I'll give you a chance to look for yourself before I make a
22 final decision on that.

23 MS. SCARIA: Thank you, your Honor.

24 THE COURT: All right. So that said, I think we
25 could call in the jury and bring up the witness and continue

1 cross examination.

2 THE COURT OFFICER: All rise. Jury entering.

3 THE COURT: Please be seated.

4 (Whereupon, the jurors entered the courtroom and
5 were properly seated in the jury box.)

6 THE COURT: Can we ask the witness to come in and
7 take the witness stand. He is in the hallway. His name is
8 Dr. Grimm, G-R-I-M-M.

9 (Whereupon, the witness stepped into the witness
10 stand.)

11 THE COURT: Good morning, Dr. Grimm. Please step
12 up to the witness stand. I see you came prepared with your
13 own water today.

14 THE WITNESS: I made sure I grabbed it.

15 THE COURT: All right. Sir, I'm just going to
16 remind you that as we resume your testimony this morning,
17 you remain under oath. Do you understand that, Doctor?

18 THE WITNESS: Yes.

19 THE COURT: Thank you. Cross examination --
20 continued cross examination.

21 MS. SCARIA: Thank you, your Honor.

22 CROSS EXAMINATION (Continued.)

23 BY MS. SCARIA:

24 Q Good morning, Dr. Grimm. Thank you for returning.

25 A Good morning.

1 Q I don't know, we may have been in the middle of a
2 question last week -- not last week, I mean yesterday.

3 Doctor, I'm going to ask the officer to present to you
4 three different sets of records that we've been talking about.

5 A Okay.

6 Q The first is what has been marked in evidence as
7 Plaintiff's Exhibit 3, which were -- are records that were
8 subpoenaed to the courthouse for this trial.

9 A Okay.

10 Q The second one is Defendant's Exhibit B, which are --
11 MS. SCARIA: Oh, I'm sorry. I gave them to you in
12 the wrong order.

13 (Whereupon, the Exhibits were handed to the
14 witness.)

15 Q The second one I want to give you is Plaintiff's
16 Exhibit 12, which is your chart.

17 A Yes.

18 Q And I'm just going to put a little fold here in
19 Defendant's Exhibit B so that you don't have to flip through
20 every single page. And those were marked in evidence today.

21 (Whereupon, the Exhibit was handed to the witness.)

22 A Okay.

23 Q So now you have all three sets of records in front of
24 you, right?

25 A Yes.

1 Q So I want you to take a look at -- if you could, pull
2 out your initial note for treatment for Mr. Lluilema Villa of
3 March 10, 2020, from the subpoenaed records.

4 A In these ones (indicating), or --

5 Q The one that is --

6 A Or these ones (indicating).

7 Q Yes, the yellow envelope. Let me know when you have
8 that in front of you.

9 A Okay.

10 Q And then I would like you to -- and take your time,
11 because I know it's a lot of paperwork.

12 A Oh, yes, the very last one.

13 Q Also, while you are doing that, in the front of that
14 set of records, Plaintiff's Exhibit 3, which are the records
15 that were sent to the -- I'm going to call them, for ease of
16 reference, the subpoenaed records. The subpoenaed records, at
17 page two --

18 A Okay, I have --

19 Q -- you see a document that appears to be a letterhead
20 of New York Orthopedics; is that correct?

21 A Yes.

22 Q And is that a one-page document with a signature on the
23 bottom?

24 A Yes.

25 Q So just if you could take that document and put it with

1 your initial note from the subpoenaed records, please.

2 A Put it down here (indicating).

3 Q I'm gonna have -- I mean, I want you to have them
4 altogether so that we don't get confused.

5 A Okay.

6 Q Now I want you to take your chart. You are going to
7 probably have to put your water and the spine down.

8 A Okay.

9 Q I would like you to pull out the same exam note,
10 March 10, 2020 --

11 A Okay.

12 Q -- and have it in front of you?

13 A Okay.

14 Q Now I would like you to pull out what is marked as
15 Defendant's Exhibit B in evidence, and I'm going to refer to
16 that as records that were sent to my office in June of 2024.
17 Okay?

18 A Okay.

19 Q And looking at those records, Defendant's Exhibit B in
20 evidence, the cover page on that, the first page on that, you
21 see it says something -- do you see it says a title iMed,
22 i-M-e-d?

23 A Yes.

24 Q I'm going to represent to you that that is a facility
25 that processes medical authorizations?

1 A Okay.

2 Q Okay. I'm also going to represent to you that my
3 office received the authorization to obtain your patient,
4 Mr. Lluilema Villa's, medical records as part of this
5 litigation. Okay?

6 A Okay.

7 Q So in response to sending the authorization, iMed
8 received those records that are in evidence, Defendant's Exhibit
9 B. Okay?

10 A Okay.

11 Q On the second page of Defendant's Exhibit B, is there a
12 letterhead from New York Orthopedics, your employer?

13 A Yes.

14 Q Is it one page?

15 A Yes.

16 Q Is there a signature from an employee of New York
17 Orthopedics on the bottom?

18 A Yes, Lynette.

19 Q And then I want you to then -- okay. That -- I will
20 also ask you, in a minute, to reference your initial note. And
21 since that is large and not tabbed, I have dog-eared it for ease
22 of reference.

23 A Right.

24 Q Looking at the one that you have now.

25 A Yes.

1 Q The records sent to my office in June of 2024.

2 A Yes.

3 Q Referring to the first page.

4 A Yes.

5 Q That is on New York Orthopedic and Sports Medicine
6 letterhead; correct?

7 A Yes.

8 Q And your name appears as one of the treating physicians
9 on that letterhead; is that right?

10 A Yes -- or, there's actually no names on the letterhead,
11 just the practice.

12 Q Okay.

13 MS. SCARIA: Your Honor, may I use the Elmo to
14 display this for the jury, now that I think about it, so the
15 jury can see what we are looking at.

16 THE COURT: Yes. The document is in evidence. You
17 can display it. You also have it digitally. You can
18 display it digitally.

19 MS. SCARIA: I'm sorry?

20 THE COURT: You also have it digitally.

21 MS. SCARIA: The copy that I have digitally --

22 THE COURT: You sent me a copy.

23 MS. SCARIA: -- that's my office one, but I also
24 need the other one.

25 THE COURT: Oh, I see. The Elmo is --

1 MS. SCARIA: I'll pull up my copy digitally.

2 Q You know what, Doctor, in order so that you can see one
3 of those copies, let me do this. I would like you to take a
4 look at the note from your chart, the initial note from your
5 chart, the March 10, 2020, and compare it to the note in the
6 subpoenaed records?

7 A This (indicating).

8 Q And tell me if they appear to be the same note?

9 A Yes.

10 (Continued on the next page.)

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1 CROSS-EXAMINATION (CONTINUING)

2 BY MR. SCARIA:

3 Q Okay. So, then, I would like to take that, if I may,
4 either one of those so that I can display it to the jury.

5 A Okay.

6 THE COURT: Officer, give the copy from the
7 witness to counsel.

8 Ms. Scaria, do you want the whole exhibit or one
9 page?

10 MR. SCARIA: One page.

11 (Brief pause)

12 THE COURT: So the ELMO is on now?

13 THE CLERK: I am just showing counsel before I
14 show everyone.

15 THE COURT: Yes. Thank you.

16 MR. SCARIA: Is there a way to show both at the
17 same time?

18 THE COURT: Well, we only have one screen.

19 Q Dr. Grimm, going back to the subpoenaed record one we
20 were just talking about, Page 2 of that being on New York Ortho
21 Sports Medicine letterhead; right?

22 A Right.

23 Q And it does have your name at the top of the
24 letterhead, correct?

25 A I mean, the letter just says New York -- which? This

1 letterhead?

2 Q Yes.

3 A Not on the note. Okay. Sorry, I thought you were
4 talking about the note.

5 Q I am talking about Page 2 of the subpoenaed records
6 that we were just looking at?

7 A This one?

8 Q I can't see that far doctor, sorry, but I can ask you
9 this. Does it say the words "Certification of Business Records"
10 on it?

11 A Yes.

12 Q And that's a letterhead, correct?

13 A Yes.

14 Q And above "Certification of Business Records" it says
15 the names of two doctors, one on the left and one on the right,
16 correct?

17 A Yes.

18 Q The one on the left is Dr. Jeffrey Kaplan, right?

19 A Yes.

20 Q That's your boss?

21 A Yes.

22 Q He is the owner of New York Ortho Sports Medicine?

23 A Yes.

24 Q And the name on the right is Matthew P. Grimm. That's
25 you, right?

1 A Yes.

2 Q You're not an owner, are you?

3 A Pardon?

4 Q You're not an owner, are you?

5 A No. I'm a W-2 employee.

6 Q And under "Certification of Business Records" there are
7 some statements, and below there is a signature with the name
8 Joyce T. Beaton. B-A-E-A-T-O-N.

9 A Yes.

10 Q Do you recognize that name?

11 A Yes. She is in medical records.

12 Q She an employee of New York Ortho Sports Medicine?

13 A Yes.

14 Q Do you personally know her, like you have seen her
15 before?

16 A Yeah. She actually has been a patient of mine because
17 she had a hip issue.

18 Q Oh, I don't think you can say that. I don't have her
19 HIPAA authorization.

20 A Oh.

21 Q Anyway, she works at your office, right?

22 A Yes.

23 Q How long has she worked there?

24 A She worked there before I worked there.

25 Q Oh, that's a long time.

1 A I came in 2011, and she had been an employee well
2 before that.

3 Q Okay.

4 And this "Certification of Business Records" that
5 she signed, I would like you to take a minute before I ask you
6 the next question and just read statements 1 through 4 on this
7 letterhead and let me know when you are done.

8 A "I am associated with" --

9 Q I'm sorry. Just read it to yourself so you know what
10 it says before I ask you a question.

11 A (Witness complies.) Okay.

12 Q After reviewing this, the statements in the
13 "Certification of the Business Records" on the New York Ortho
14 Sports Medicine letterhead signed by Joyce Beaton, your company's
15 employee, you understand this document to mean it is identifying
16 the medical records sent to the courthouse as accurate records
17 kept in the ordinary course of your company's business?

18 A Yes.

19 Q And that the employee that's here is -- withdrawn.

20 Joyce Beaton, did she have the authority to make
21 the statement on behalf of the company?

22 A I mean, I'm not involved in that part of the practice,
23 so if my office manager, which is Karen Knutsen, authorized that
24 then she would; but, again, that's not my realm. I am not the
25 medical records.

1 Q Don't worry. I'm not going to tell Dr. Kaplan you are
2 giving away orders.

3 And "Knutsen" is spelled K-N-U-T-S-E-N. How do I
4 know that? Because she notarized it.

5 Karen Knutsen is the office manager for New York
6 Ortho?

7 A Yes.

8 Q How many employees work at that office?

9 A Eleven, ten, twelve.

10 Q So you pretty much know, even if it's not well,
11 everybody in the office, right?

12 A Everybody predated me except for one.

13 Q Okay. So it's a place of longevity?

14 A Yes.

15 Q And do you see Karen everyday?

16 A Pardon?

17 Q Do you see Karen everyday?

18 A No. She works from home.

19 Q What about Joyce?

20 A Joyce I see most days but she is out on leave right
21 now. Medical leave.

22 Q You don't have to tell me.

23 A Oh, sorry. I don't see her every day anymore, but I
24 would see her every day.

25 Q She was still working at the office back in June of

1 2024, correct?

2 A Yes. She only recently went out.

3 Q And this document we are talking about, the
4 certification -- excuse me, may I have that certification back?

5 A (Handing)

6 THE COURT: That's going to be sideways.

7 MR. SCARIA: How do I turn on the display now?

8 THE COURT: Do you want to publish it to all now?

9 MR. SCARIA: Yes. Do I use this center thing?

10 THE COURT: The mouse that's on the table.

11 Q So this is the certification that we were just talking
12 about, correct?

13 A Yes.

14 Q That was signed by Joyce Beaton, an employee of your
15 office in July of this year, correct?

16 A Yes.

17 Q Now I would like you to take a look at -- I'm going to
18 the other display.

19 Now, doctor, you have the hard copy of what is now
20 shown on the screen for all of us to see. I am going to direct
21 your attention now to the records that were sent to my office via
22 iMED in June of 2024.

23 A Okay.

24 Q I want to draw your attention to the same -- to Page 2
25 of those records. That's a letterhead also. Now we're talking

1 about -- I want you to look at the records sent to my office.

2 THE COURT: The one that's on the screen in front
3 of you?

4 MR. SCARIA: I want him to look at his hard copy.

5 A Okay. Yes.

6 Q What is on the screen now is the same thing you are
7 looking at, doctor?

8 A Yes.

9 THE COURT: That's Exhibit B, for the record.

10 Q That is a certification similar to the one that was
11 contained in the subpoenaed records, right?

12 A Yes.

13 Q It's on New York Ortho Sports Medicine letterhead?

14 A Yes.

15 Q It also has your boss's name and your name on it?

16 A At the top, yes.

17 Q And it also says "Certification of Business Records,"
18 correct?

19 A Yes.

20 Q And it has handwritten Mr. Lluilema's name?

21 A Yes.

22 Q What's that reference number?

23 A I have no idea.

24 Q Does it have the same statements as the other one we
25 put up on the screen?

1 A I don't --

2 Q Let me show you so you can compare them. I'll have the
3 officer give you the "Certification of Business Records" that
4 were contained in the subpoenaed records. Don't worry, I know
5 how to distinguish the two.

6 A Other than the bottom --

7 Q Sorry?

8 A I mean, the first four numbers, 1 through 4, are the
9 same, and then it has another paragraph at the bottom and a
10 different employee.

11 Q And the paragraph at the bottom, that is not -- that
12 paragraph that starts with "I affirm this 13th day of June 2024
13 under penalties of perjury," that paragraph is not on the
14 certification contained in the records that were subpoenaed to
15 the courthouse?

16 A It is not on this one.

17 Q I am asking you. I don't have it in front of me.

18 A Yeah, it's not on this one.

19 Q Meaning the one subpoenaed to the courthouse?

20 A Right.

21 Q And the one that is on the screen right now that was
22 part of my office file is signed by Lynette Rowe. Who is Lynette
23 Rowe?

24 A Lynette is the oldest person working at the office.
25 She actually predates Dr. Kaplan, and she actually has a mug that

1 says "The Boss."

2 Q Is Lynette still there?

3 A She's still kicking.

4 Q I won't tell her you called her old, though.

5 A I didn't call her old.

6 Q Okay.

7 So is this certification, to your understanding,
8 also a document similar to the business certification in the
9 records subpoenaed to the courthouse identifying the records sent
10 to my office as being accurate records kept by New York Sports
11 Ortho?

12 A Yes. It's the same type of document.

13 Q Okay.

14 Now, if you can, you can put them back in the
15 respective files. If you can't, it's okay. I will figure it out
16 later.

17 A Okay.

18 Q So we have two sets of records, right? Each set of
19 records, the one that was subpoenaed to the courthouse -- well,
20 we've got three, but right now we're talking about two. We have
21 two sets of records, one subpoenaed to the courthouse with the
22 business certification by Ms. Beaton --

23 A Yes.

24 Q -- and the other sent via iMED to my office in June of
25 2024 certified by the boss, Lynette Rowe?

1 A Yes.

2 Q Now, I would like you to take your initial note -- oh,
3 I'm sorry. Before you do that, the chart that you have, the
4 third set of documents you have, that's your own chart?

5 A Yes.

6 Q That doesn't have a certification in it, right?

7 A No.

8 Q Because that's your own chart?

9 A Right.

10 Q Nobody asked you to certify it?

11 A No. My assistant printed it out for me.

12 Q You have your initial exam note in there?

13 A Not anymore. I gave it to you.

14 Q Sorry. (Handing) Now you have your exam note, right?

15 A Yes.

16 Q I think you already testified, forgive me if you
17 didn't, but the exam note from March 10, 2020 from your chart is
18 identical to the exam note in the subpoenaed records file,
19 correct?

20 A Correct.

21 Q Now I'm going to put up on the screen, and I would like
22 you to have in front of you, your exam note from my office's
23 chart?

24 MR. SCARIA: Can everyone see that?

25 THE COURT: It's a little small, I think.

1 MR. SCARIA: I can make it bigger.

2 Q Now, doctor, do you have in front of you the March 10,
3 2020 -- your initial exam note from March 10, 2020 of
4 Mr. Lluilema Villa?

5 A Yes.

6 Q Let's take a look at these notes side by side.

7 When I look at -- I wish there was a way to show
8 the jury both.

9 When I compare these two notes, both of the notes
10 at the top have the letterhead stamp that says "New York Ortho
11 Sports Medicine," correct?

12 A Yes.

13 Q It has the same address on both exam notes?

14 A Yes.

15 Q Same phone numbers?

16 A Yes.

17 Q And then there is that hardline. Then there is a block
18 on the left side of both notes that has Mr. Lluilema lieu Villa's
19 name, correct?

20 A Yes.

21 Q Then there is a block of personal information about
22 Mr. Lluilema Villa, correct?

23 A Yes.

24 Q So his name. Then it says the date and there is a
25 timestamp on both records. March 10, 2020, 12:17 p.m. Correct?

1 A Right.

2 Q The note that's sent to my office in June 2024 which is
3 up on the screen says 12:17:01. So that 12:17 and one second,
4 very precise, right?

5 A Yes.

6 Q It's not quite that precise in your note. It just says
7 12:17 p.m. on the record in your file, correct?

8 A Yes.

9 Q No big deal.

10 Then it says "Location," and both say "New York
11 Ortho," correct?

12 A Yes.

13 Q Then both say the same patient number?

14 A Yes.

15 Q Both of them say the same date of -- don't read the
16 date of birth out loud.

17 THE COURT: That should really be redacted.

18 MR. SCARIA: Yes. The personal information will
19 be redacted, your Honor.

20 Q Then the next line is identifying information about
21 Mr. Lluilema Villa's language, race, ethnicity?

22 A Yes.

23 Q Gender is male, the same on both?

24 A Yes.

25 Q In the record that's up on the screen and sent to my

1 office, there appears to be a number, 1439226. Any idea what
2 that is it?

3 A All I can guess is --

4 Q I don't want you to guess.

5 A It might be a patient number, like just the identifier
6 in our records; but I couldn't tell you for sure.

7 Q Okay. I think the patient number is a few lines up,
8 isn't it?

9 A Oh, then I have no idea what that is.

10 Q No problem.

11 When you make notes at the office -- and if it was
12 different then versus now, let me know that -- are you filling
13 out a form on a computer?

14 A I am physically typing it on a computer.

15 Q And when you are typing on the computer, is it into
16 some sort of program?

17 A EMR. I think it's called Scripps that our office uses.

18 Q EMR?

19 A Electronic medical records.

20 Q So that's some sort of medical record system, correct?

21 A Yes.

22 Q Are there different fields for entering different
23 information?

24 A Yes.

25 Q Is one of the fields "History of Present Illness"?

1 A Yes.

2 Q And is one of the fields "Physical Examination"?

3 A Yes.

4 Q And so these fields are premade by the program, then
5 you personally type in the information?

6 A Yes. I'm a very fast typist. My mom made me learn at
7 a very young age.

8 Q It's a good skill to have.

9 Then do you also personally put in timestamps or
10 is that part of the program?

11 A It's part of the program.

12 Q When the record is created, is it saved on some sort of
13 server or something else?

14 A That's above my pay grade.

15 Q You have an IT person at your office?

16 A His name is David. I mean, he is not a W-2 employee.
17 He is an independent contractor. He has his own business and
18 they hire him in.

19 Q So if you have issues with the program, you call David?

20 A I call Karen or Reyna, and they deal with it.

21 Q I understand.

22 And if you need to access the medical records,
23 what do you do, just log in?

24 A Yeah.

25 Q If you need to print out records, do you print them or

1 have somebody else print them?

2 A I don't even know how to print records. I have Reyna,
3 my assistant, she prints them.

4 Q So, in the ordinary course of your practice, you're not
5 looking at printed records?

6 A No.

7 Q Okay.

8 So going back to the records, then, I don't know
9 if you will know the answer to this, but maybe; the first
10 category is "History of Present Illness," is that right?

11 A Yes.

12 Q That's the same on both sets of records, correct?

13 A Yes.

14 Q In the record that's up on the screen and sent to my
15 firm in June of 2024, your name appears with the date and
16 timestamp under "History of Present Illness," correct?

17 A Yes.

18 Q But that same information and timestamp does not appear
19 on your chart version, is that correct?

20 A Correct.

21 Q Did the office change programming systems at some
22 point?

23 A No.

24 Q Okay.

25 Do you have any idea why the timestamp appears on

1 the copy sent to my office but not the subpoenaed records copy?

2 A I don't know what --

3 Q I don't want you to guess.

4 A Okay. Again, I don't know how to print stuff, if there
5 are different ways to print it or whatnot.

6 Q Understood.

7 Then substantively in the history of present
8 illness, the first line -- and I don't necessarily need to read
9 every line, but the first line reads: "The patient is a
10 35-year-old-male." It starts that way, is that right?

11 A Yes.

12 Q It starts the same way in both the copy that is on the
13 screen that was sent to my office in June of 2024 as well as the
14 copy that's in your chart, is that right?

15 A Yes.

16 Q Continuing down, the next field or section appears to
17 me looking at the copy that was sent to my office in June of
18 2024, "Additional Reasons for Visit," is that accurate?

19 A Yes.

20 Q I wasn't sure. I only said that because the font
21 appears larger in my copy --

22 A Yes, it looks different.

23 Q -- but you can confirm that, okay.

24 In the version from your office, the field on the
25 printed copy "Additional Reasons for Visit" is in the same font

1 as the other substantive information, correct?

2 A Correct.

3 Q So it's hard to tell that it's a different field?

4 A Correct.

5 Q Okay.

6 Let's go into -- and then would you say the third
7 category or field on the exam note received by my office from
8 iMED in June of 2024 says "Physical Exam," is that accurate?

9 A Yes.

10 Q That's the next field?

11 A Yes, on yours.

12 Q Okay.

13 Then underneath that is your name, correct?

14 A Yes.

15 Q The date, March 10, 2020, correct?

16 A Yes.

17 Q And a timestamp of 12:51 p.m., correct?

18 A Yes.

19 Q On your version -- excuse me. On your copy of the same
20 visit note, March 10, 2020, the next field appears to be
21 "Allergies," is that right?

22 A Yes.

23 Q And, in fact, there appears to be -- in your version
24 you do have a field called "Physical Examination," correct?

25 A Yes.

1 Q It's on Page 2, correct?

2 A Yes.

3 Q And the physical examination part is similar to the
4 physical examination part in the copy sent to my office in June
5 of 2024, correct?

6 A Yeah, just different spacing. One is double-spaced and
7 one looks like it's single-spaced.

8 Q And the one in my office copy is much smaller, right?

9 A It looks like that one is double-spaced, your copy.
10 Then the one that is in my exam is single-spaced. I don't know
11 why.

12 Q In terms of the information under the "Physical
13 Examination" section, again, the copy sent to my office has your
14 name and the timestamp, but the copy in your chart does not have
15 that particular information; is that correct?

16 A Correct.

17 Q But underneath that it starts with "Cervical
18 Examination." And it says that in both copies of the March 10,
19 2020 note, is that correct?

20 A Yes.

21 Q Then there appears to be different types of exams that
22 you perform, is that right?

23 A Yes.

24 Q Such as range of motion, muscle strength testing,
25 reflex testing; is that correct?

1 A Yes.

2 Q And you performed a visual inspection of the back,
3 correct?

4 A Yes.

5 Q And then you performed similar types of examinations
6 for the lumbar spine, is that correct?

7 A Yes.

8 Q That's the lower back?

9 A Yes.

10 Q Cervical exam is the neck, correct?

11 A Yes.

12 Q Then after the "Physical Examination" section on what
13 is your chart, Page 3, the next field or section is called
14 "Assessment and Plan," is that right?

15 A Yes.

16 Q And in the version that was sent to my office in June
17 of 2024 from iMED, the "Assessment and Plan" section also appears
18 after the "Physical Examination" section, correct?

19 A Correct.

20 Q Then in the "Physical Examination" section -- excuse
21 me, withdrawn.

22 In the "Assessment and Plan" section there's a
23 bunch of information. Is that information about diagnoses that
24 you provided to the patient?

25 A Yeah. But one has the ICD-10 codes that are for, like,

1 billing and paid from the insurance companies, and this one is
2 just without that.

3 Q You answered my next question. I was wondering about
4 that.

5 Just to explain to the jury since they can't see
6 both copies, the copy on the screen for the jury to see, which is
7 the copy sent to my office in June of 2024, includes codes next
8 to your diagnosis; is that what you are saying?

9 A Yes. Those are used for billing and insurance purposes
10 because the ICD-10 code corresponds to the diagnosis. That's
11 what insurance companies use for billing as to what gets paid and
12 if it's within the realm of what you can do and whether they will
13 pay for it.

14 Q Whether it's authorized or something like that?

15 A Yeah. Like lumbar radiculopathy is M54.16 or M54.17 or
16 M54.12.

17 Q Are you saying those numbers off the top of your head?

18 A I do know those, but they are right there.

19 Q That's impressive.

20 Those codes don't appear on the copy of your
21 examination note from the chart though, correct?

22 A No. This would be what we would send to -- that would
23 be, I guess, what they might send to billing whereas this is what
24 we send to, like, if I did a consultation for a doctor and I sent
25 them a note. They don't need the ICD-10 codes.

1 Q So is it accurate to say that your office does maintain
2 two sets of records?

3 A I have no -- on the computer -- actually, I don't want
4 to say anything. I'm hypothesizing.

5 Q I understand. So you're not sure why?

6 A I'm thinking of this right now after looking at that
7 with the coding.

8 Q I understand. I don't want you to guess.

9 A Okay.

10 Q Then towards the bottom -- sorry, withdrawn.

11 Again, in the assessment and plan, aside from the
12 billing codes the diagnoses -- well, withdrawn. It says "lumbar
13 radiculopathy" in the version that is on the screen for the jury
14 to see as well as the version that you are looking at, your chart
15 version, right?

16 A Yes. It says it twice on one.

17 (Continued on next page)

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1 Q On yours?

2 A No, on -- yes.

3 Q Yes, correct.

4 The copy that was sent to my office says, "Lumbar
5 radiculopathy" twice?

6 A Yeah.

7 Q Does it appear to be that that lumbar radiculopathy
8 paragraph on the version that is on the screen is just
9 duplicated?

10 A Yes.

11 Q Okay.

12 And then both the copy sent to my office in 2024, as
13 well as the copy in your chart, each say "cervical
14 radiculopathy"; correct?

15 A Yes.

16 Q And then as you move a few lines down, there appears to
17 be some recommendations you make; correct?

18 A Yes.

19 Q And if you move all the way down to the bottom of the
20 copy that's on the screen, which is the one sent to my office in
21 2024, the last word says "Headache." Is that one of your
22 diagnoses?

23 A Yes, he was complaining of headaches, so.

24 Q If you go to page three of the one on the screen.

25 (Whereupon, the exhibit displayed on the screen was

1 scrolled through.)

2 Q Which is, again, the one sent to my office in June of
3 2024, it just appears to have your signature; is that right?

4 A Yes.

5 Q But on the copy sent -- withdrawn.

6 On the copy that is a part of your chart, it says
7 something different; right?

8 A Yes.

9 Q And the copy that's in part of your chart, it says --
10 it puts a disability rating; is that right?

11 A Yes.

12 Q And it says that "Patient is not working"?

13 A Correct.

14 Q Do you have any idea why that information is not on the
15 copy that was sent to my office in June of 2024 that's up on the
16 screen?

17 A I do not.

18 Q Now, I would like you to go back to page one of your --
19 well, now I'm going to ask, actually, if you don't mind, since
20 we've already established that the copy that was subpoenaed to
21 the courthouse and the copy of your chart are the same, I'm
22 going to ask for the subpoenaed records back so that I could
23 display them to the jury. That is the copy that is in the
24 manila envelope.

25 THE COURT: It would be most helpful if we

1 reference the exhibits by their --

2 MS. SCARIA: I apologize, your Honor.

3 THE COURT: Exhibit number. So we are looking for
4 Exhibit 3 to be sent to the jury?

5 MS. SCARIA: Yes, your Honor.

6 THE COURT: Okay. So you have Exhibit 3 officer?
7 All right, you can give that to Counsel, I guess. You could
8 pull out what you want exhibited.

9 (Whereupon, Exhibit 3 was handed to Ms. Scaria.)

10 Q So, Dr. Grimm, I would like you to pull up your initial
11 note --

12 A Got it.

13 Q -- from your chart?

14 (Whereupon, the exhibit displayed on the screen was
15 taken down.)

16 Q You have yours in front of you; right?

17 A Yes.

18 Q And we are keeping -- so in front of you you have, for
19 the record --

20 THE COURT: Plaintiff's Exhibit 12.

21 Q -- Plaintiff's Exhibit 12, your chart records, and what
22 we have up on the screen is still Defendant's Exhibit B, the
23 initial exam note of March 10, 2020?

24 (Whereupon, the exhibit was displayed on the
25 screen.)

1 Q And I'm going to draw your attention back to the first
2 page?

3 (Whereupon, the Exhibit displayed on the screen was
4 scrolled through.)

5 Q And we are going to go back to the section that says
6 "Additional reasons for visit."

7 A Yes.

8 Q Again, that "Additional reasons for visit", that is a
9 field that you then type in the substantive information into;
10 correct?

11 A In the HPI, like, I'll click a subheading, like if
12 someone is coming in with multiple complaints that I'm covering,
13 I'll click back pain, and then that's -- I'll type everything
14 under back pain, so that's why it will say "presents with back
15 pain." That's automatically filled in. And then I'm done with
16 that with the patient, then I click "neck pain." And so then I
17 click everything else under that. So that's why then it will
18 say -- I mean, that's different here, whereas mine says, "Neck
19 pain is described as the following:", whereas I don't see that
20 on the records you were given.

21 Q I see. I understand what you are saying.

22 A So there are different -- it's in the same area, but
23 different subsets.

24 Q Okay.

25 So, in other words, the chart -- your chart version has

1 the fields from the computer differently than the version that
2 was served on my office, as it's printed out?

3 A As it's printed out. Yours doesn't have the "neck pain
4 is described as following:"

5 Q Meaning that exact language; correct?

6 A Yeah, it just starts "denies history of neck injury",
7 whereas mine starts -- under "additional reasons for visit"
8 there is another line on my notes that's not on yours.

9 Q Okay.

10 So after "additional reasons for visits", on your
11 version it says "neck pain", it's underlined, "is described as
12 the following:" And then under that, on your version, it says
13 "denied prior history of neck injury"; is that right?

14 A Correct.

15 Q Okay.

16 On the version that's up on the screen, sent to my
17 office by iMed in June of 2024, it says, under "additional
18 reasons for visit, denies history of neck pain"; correct?

19 A "Of neck injury."

20 Q "Neck injury." I apologize, neck injury?

21 A Yes.

22 Q It says -- both versions say "denies history of neck
23 injury"; correct?

24 A Correct.

25 Q Okay.

1 And then after -- then there's, again, we talked about
2 three more lines describing some information about the neck. In
3 my version -- excuse me, in Defendant's Exhibit B, records sent
4 to my office, on the screen, the next category is "Physical
5 examination"; correct?

6 A Correct.

7 Q However, and now I need to switch to the Elmo?

8 (Whereupon, there is a brief pause in the
9 testimony.)

10 MS. SCARIA: I don't know how to switch it.

11 THE COURT: Turn it on.

12 MS. SCARIA: It's on.

13 THE COURT: Oh, it's on. I'm sorry, you have to
14 switch from "plaintiff" to "defendant" as source, I think.

15 (Whereupon, the exhibit displayed on the screen was
16 taken down.)

17 (Whereupon, the exhibit was displayed on the
18 screen.)

19 THE COURT: There you go.

20 MS. SCARIA: Can everybody see this?

21 Q This is -- in your chart, after "additional reasons for
22 visit", and the information about "denies prior history of neck
23 injury", then the comments about the neck is the category
24 "Allergies", which was not in the version that was sent to my
25 office; is that right?

1 A Yes.

2 Q And there's a section called "Past medical history",
3 which is also not in the version sent to my office; is that
4 right?

5 A Correct.

6 Q And there's a section called "Family history" that is
7 also not in the version sent to my office; is that right?

8 A Correct.

9 Q And there is a section called "Social history", and
10 that is also not in the version that was sent to my office;
11 correct?

12 A Correct.

13 Q And there a section called "Past surgical" -- well, it
14 just says "Past surgical", but also not in the version sent to
15 my office; correct?

16 A Correct.

17 Q So yesterday when you testified when I asked you about
18 whether there was any notations in your chart about the motor
19 vehicle accident, you were looking at your chart and reading the
20 very last line that talks about "2019 right shoulder surgery
21 following a car accident." Is that correct?

22 A Correct.

23 Q And that notation, and, in fact, those five categories
24 are not in the version that were sent to my office; is that
25 correct?

1 A Correct.

2 Q So there are two versions of Mr. Lluilema's chart at
3 your office; is that correct?

4 A There's only one -- no. I mean, there's one EMR
5 version on the computer.

6 Q Are you saying "no" because you don't have hard copies
7 at your office?

8 A Yeah, we don't have hard copies.

9 Q So your copy -- your office doesn't have multiple
10 copies, but they send out multiple versions?

11 A Apparently.

12 Q Okay.

13 A You would have to talk to -- yeah, my office manager,
14 medical records. I'm not --

15 Q Okay. We'll subpoena her to the courthouse.

16 A Okay.

17 Q The information that's in these categories though,
18 allergies, past medical history, family history, social history,
19 past surgical, that information is stuff that you personally
20 typed?

21 A Yes. At the initial visit, like, again, when I go from
22 line to line, the next area is allergies and past medical and if
23 it's -- I type it in if they tell me, like the first visit in
24 the room.

25 Q Okay.

1 So, again, you may not know the answer to this, if
2 these five categories are missing from a copy sent to my office,
3 does that mean they were deleted?

4 A (Indicating.)

5 Q If you don't know, that's fine.

6 A I have no idea.

7 Q Okay.

8 As you sit here today, do you have any memory of
9 actually speaking with Mr. Lluilema Villa on March 10, 2020?

10 A No.

11 Q So you don't remember, one way or another, talking to
12 him about the prior motor vehicle accident?

13 A Not in 2020, no.

14 Q Okay.

15 And your -- but you documented in your records whatever
16 you discussed with him?

17 A Yeah, on the first day of the -- the first day I'll go
18 over all the past medical stuff, and it's typed in and put in a
19 note.

20 Q And who has access to those records?

21 A My office.

22 Q Who in your office has access to the records?

23 A I mean, everybody.

24 Q So anybody could've taken out that information and
25 printed a copy?

1 A Well, once it's in, you can't take it out.

2 Q Then how is it -- well, how do you know that?

3 A Um, because if -- you can edit, but if you edit, it
4 just goes in as an addendum into the chart.

5 Q Well, then how come it's not in the Defendant's Exhibit
6 B, the version sent in June of 2024 to my office?

7 A That's a medical records question.

8 Q Oh. I'll ask them.

9 Either way, in the two different versions, whatever
10 word you want to use, we can agree that Mr. Lluilema Villa
11 denied ever having any prior neck injury; is that correct?

12 A Yes.

13 Q And regardless of which version you are looking at, we
14 can agree that Mr. Lluilema Villa also denied any prior back
15 injury; is that right?

16 A Yes.

17 Q Are you aware of the fact, now, as you sit here, that
18 Mr. Lluilema Villa did, in fact, treat for neck injuries
19 following the motor vehicle accident that you may or may not
20 have known of, the year before the construction accident?

21 A Yeah.

22 Q How did you become aware of that?

23 A Yesterday.

24 Q Yesterday?

25 A Yeah.

1 Q Are you aware of the fact now, as you sit here, that
2 Mr. Lluilema Villa treated for his -- withdrawn.

3 Are you aware of the fact, as you sit here today, that
4 Mr. Lluilema Villa underwent MRIs of his neck and his back
5 following the motor vehicle accident one year before the
6 construction accident?

7 A Yeah. I was told yesterday.

8 Q Who told you?

9 A Um, just in consultation with the -- with Counsel.

10 Q Mr. Velardi told you that?

11 A Before coming in, he notified me that there was an old
12 injury.

13 Q What else did Mr. Velardi tell you?

14 A That's about it. He asked me if I ever talked about
15 it. I said, "No, it's not in my chart. I didn't note it."

16 Q Have you ever looked at any MRI reports from the prior
17 car accident?

18 A No, I never saw them.

19 Q So, as you sit here right now, you can't tell this
20 jury, with any reasonable medical certainty, as to what, if any,
21 impact the motor vehicle accident had on Mr. Villa's condition;
22 is that right?

23 A Yeah. I mean, the motor vehicle accident -- I guess I
24 don't quite understand your accident.

25 Q As you sit here right now, you have no idea what type

1 of injuries Mr. Villa suffered as a result of the car accident a
2 year before the construction accident; is that right?

3 A Yeah, right. I never talked to him about the car
4 accident.

5 Q Okay. So, yes or no -- withdrawn.

6 So isn't it true, then, you have no idea what impact,
7 if any, the car accident had on Mr. Villa's neck and back;
8 correct?

9 A Yeah.

10 Q Doctor, you talked about insurance and authorization
11 and things of that nature. Are you authorized by the Workers
12 Compensation Board to treat their patients?

13 A No. I resigned my ability to treat Workers'
14 Compensation patients.

15 Q Did you resign in lieu of being investigated for being
16 terminated from your authorization?

17 A No. I resigned because I was tired of dealing with the
18 bureaucracy of Workers' Comp, and I got tired of dealing with
19 them.

20 Q But you had been authorized by the Board for the last
21 12 years?

22 A Yes.

23 Q And many of your patients at your facility that are
24 referred by Gorayeb's office were treated through Workers'
25 Compensation; isn't that accurate?

1 A Some, yes.

2 Q And yet you decided to resign this year?

3 A Yes.

4 Q That's all I have. Thank you.

5 THE COURT: Thank you. Redirect?

6 MR. VELARDI: Yes. Thank you, your Honor. How
7 does this work?

8 THE COURT: You put it on your lapel and you put
9 that end in your pocket.

10 MR. VELARDI: I'll put it on my tie.

11 REDIRECT EXAMINATION

12 BY MR. VELARDI:

13 Q Can you hear me?

14 A Yes.

15 Q Doctor, do you -- you have -- do you have any idea why
16 the notation regarding the car accident in 2018 is not in the
17 copy of the records that were provided to Fullerton Beck?

18 A No.

19 Q Is it possible that the way they were printed up that
20 day it didn't print up for some reason?

21 A Again, I would ask medical records.

22 Q Okay. You still have all the records in front of you?

23 A Yes.

24 Q It doesn't matter which one you choose from. Can you
25 turn to Dr. Kaplan's record of January 2nd, of 2020.

1 A Yes.

2 Q Actually, you know what, why don't you just turn to
3 that note in every single one of them that you have in front of
4 you.

5 A Okay.

6 THE COURT: You said January 2nd, 2020?

7 MR. VELARDI: January 2nd, 2020.

8 A I'm sorry, this one is a little harder to get to.

9 Q Just take your time. Don't worry about it. We'll be
10 able to get lunch on time.

11 (Whereupon, there is a brief pause in the
12 testimony.)

13 A Got it.

14 Q Do you have it on all three?

15 A Two. I don't have the third one.

16 MR. VELARDI: Can I have Exhibit B.

17 MS. SCARIA: Did I take anything?

18 A Somebody took it back.

19 MR. VELARDI: That's Exhibit 3. Officer, could you
20 give Exhibit 3 to the witness. Thank you.

21 (Exhibit 3 was handed to the witness.)

22 A Okay. Let me find Dr. Kaplan's --

23 Q Yeah, January 2nd, 2020.

24 (Whereupon, there is a brief pause in the
25 testimony.)

1 A Okay. Got it.

2 Q Okay, great.

3 Now, that was the very first time that my client saw
4 anyone at your office; correct?

5 A Yes.

6 Q Okay. And that was Dr. Kaplan?

7 A Yes.

8 Q Okay.

9 And he has a history of present illness sort of similar
10 to what you have; right?

11 MS. SCARIA: Objection.

12 THE COURT: Basis?

13 MS. SCARIA: Beyond the scope of the direct, your
14 Honor.

15 THE COURT: I believe it may be connected. I'm
16 going to give him a little latitude.

17 MS. SCARIA: Thank you, your Honor.

18 MR. VELARDI: Okay.

19 A Yes.

20 Q Okay.

21 And in this record, does it not state that he did have
22 a motor vehicle accident several years ago and required a right
23 shoulder arthroscopy with Dr. Diwan. He recovered from that
24 injury.

25 A Yes.

1 Q Does it say it in all three?

2 A Yes. Dr. Kaplan does his notes a little differently.
3 He doesn't type as well as me, so he usually dictates into a
4 Dictaphone, and then someone else types.

5 Q Okay.

6 And so the notation of the car accident, as written by
7 Dr. Kaplan, appears in the one that you brought with you
8 yesterday and the one that was subpoenaed, as well as the one
9 that you provided -- that your office provided to Fullerton
10 Beck; correct?

11 A Yes.

12 Q Okay.

13 And do you, as part of your custom and practice, when
14 you are seeing a patient, do you review the records of the same
15 patient that Dr. Kaplan generates?

16 A Yeah. I usually look back at his last visit, or last
17 few visits, just to see what he was doing with Dr. Kaplan, and
18 treatment.

19 Q And Dr. Kaplan, January 2nd, 2020, um, visit with the
20 patient was about two months before you first saw him?

21 A Yes.

22 Q And do you have a recollection of having reviewed
23 Dr. Kaplan's January 2nd, 2020? I know it's going back a long
24 time.

25 A I don't have an independent recollection, but I would

1 look at his notes. I mean, that's my practice.

2 Q Okay. That's your practice. So you would have seen
3 that Mr. Lluilema was in a prior car accident?

4 MS. SCARIA: Objection.

5 Q By looking at Dr. Kaplan's note?

6 THE COURT: Sustained. The objection is sustained.

7 MR. VELARDI: Okay.

8 Q All right. That's all that I have on that. You could
9 put that down.

10 A Okay.

11 Q Yesterday during cross examination Ms. Scaria asked you
12 whether or not you had a reasonable degree of medical certainty
13 that my client would need to take anti-inflammatories for the
14 rest of his life. And you said, "Oh, I think he will." Do you
15 remember that yesterday?

16 A Yeah.

17 Q Okay.

18 So maybe I was confusing in the way I was questioning
19 you, and I apologize for that, but I would like to ask you if
20 you believe that he needs to take anti-inflammatories for the
21 rest of his life, um, do you know how often he would need to
22 take those medications for the rest of his life?

23 A I mean, I think he would need to take them on a regular
24 basis, um, but it will be as needed. Um, I would recommend,
25 generally, Tylenol and the anti-inflammatories, but I think

1 he'll -- he -- at his last visit he was having regular pains.
2 He said he was taking medication as needed, so I think it would
3 be a regular occurrence. Some days it would be more, some days
4 it would be less, but it would be a regular occurrence.

5 Q A regular occurrence. Okay, but can you be more
6 specific as to "regular." Is that monthly, yearly?

7 A I think it would be most days of the week.

8 Q Most days of week, okay.

9 Can you estimate -- what other medications would he
10 need, if any, most days of the week, besides
11 anti-inflammatories?

12 A Topical medication for his joints, and then I did, like
13 I said, I recently started him on Gabapentin. Um, if it is
14 helpful, he would take that daily, because that's a daily-use
15 medication. Like I said, it's a recent medication he started,
16 so I haven't learned the efficacy of it yet.

17 Q Any others?

18 A Those were the primary. He would utilize an antispasm
19 agent; that would be not a daily medication, um, that would be
20 more on occurrence, maybe a few times a month.

21 Q And he'll need these for the rest of his life?

22 A Yes.

23 Q And he'll need to take each one of these medications in
24 some frequency within a month, whether that's daily, whether
25 it's once a week, but it's within a month?

1 A Yes.

2 Q And can you estimate the cost of those medications per
3 month?

4 A Um.

5 MS. SCARIA: Objection.

6 THE COURT: Basis?

7 MS. SCARIA: Speculative.

8 MR. VELARDI: He's a doctor.

9 THE COURT: You would have to establish that there
10 is a foundation for his knowledge.

11 Q Do you know the cost of these medications as a
12 physician practicing medicine here in New York?

13 A Yes.

14 Q Okay.

15 MS. SCARIA: Your Honor, I apologize. The
16 speculation wasn't necessarily whether the doctor knew about
17 the cost. He is obviously familiar with the ICD codes.
18 What was -- it was on the basis of the --

19 THE COURT: Overruled.

20 MS. SCARIA: Okay.

21 Q And what is the estimated costs of the medications that
22 you are recommending that he take for the rest of his life, per
23 month?

24 A It's in the range of 30 to \$50.

25 Q And yesterday -- so, I just want to make sure that it's

1 clear and I ask you the question correctly. Do you have a
2 reasonable degree of medical certainty that Mr. Villa will need
3 to see a pain management specialist for the rest of his life?

4 A I think it would be helpful, yes.

5 Q But do you have a reasonable degree of medical
6 certainty that he will?

7 MS. SCARIA: Objection.

8 THE COURT: Sustained, Counsel.

9 MR. VELARDI: Okay.

10 Q And how often do you think that it would be helpful for
11 Mr. Villa to see a pain management specialist?

12 MS. SCARIA: Objection.

13 THE COURT: Sustained. This is all beyond the
14 scope of cross.

15 MR. VELARDI: Well, she brought it up.

16 THE COURT: She only went as far as the medical,
17 and I gave you the medical, but that's it.

18 MR. VELARDI: No MRIs, CAT scans?

19 THE COURT: No, sir. That was not covered on cross
20 examination.

21 MR. VELARDI: All right. In that case, I may have
22 just one or two questions. Let me take a quick look.

23 (Whereupon, there is a brief pause in the
24 testimony.)

25 MR. VELARDI: Yes, just a couple of more questions.

1 Q Yesterday you had indicated that you believed that the
2 pain he suffered from this fall from the ladder was a result of
3 the fall from the ladder, and I had indicated to you that
4 Mr. Lluilema testified that he was in a car accident previously
5 and that he had pain to his neck and his back, and that it
6 resolved. And you told me that yes, you believed it was the
7 cause.

8 Given what you know now about what you learned
9 yesterday, would your treatment that you performed for Mr. Villa
10 have changed had, before yesterday, you known about the car
11 accident?

12 A No, of course not. I treat the patient as they
13 presented to me.

14 MR. VELARDI: I have no further questions.

15 THE COURT: Thank you. The witness is excused.

16 Thank you, Dr. Grimm.

17 THE WITNESS: Thank you.

18 (Whereupon, the witness stepped down from the
19 witness stand.)

20 MR. VELARDI: Your Honor, I'm going to return the
21 narrative reports that he gave to me yesterday.

22 THE COURT: Okay.

23 MR. VELARDI: Thank you, Doctor.

24 MS. SCARIA: Thank you, Doctor.

25 THE COURT: Okay. Are we ready to hear from

1 plaintiff's next witness?

2 MR. VELARDI: Your Honor, Dr. Jeffrey Kaplan is the
3 plaintiff's next witness, but he is scheduled to testify in
4 the afternoon session. He is dealing with patients right
5 now and he'll be here after the lunch break.

6 THE COURT: Okay. We don't have anything else for
7 this morning?

8 MR. VELARDI: No.

9 THE COURT: Okay, I guess you get a super long
10 lunch today. Can we make sure that everybody is ready at
11 two o'clock.

12 MS. SCARIA: Yes, your Honor.

13 MR. VELARDI: Sure.

14 THE COURT: Great. Have a nice lunch. We'll see
15 you at two.

16 THE COURT OFFICER: All rise. Jury exiting.

17 (Whereupon, the jurors exited the courtroom and the
18 case was adjourned to 2:00 p.m. for the luncheon recess.)
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25

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

2 (Jury not present.)

3 THE COURT: Counsel for defendant, your proposed
4 charges and verdict sheet were due on the date of jury
5 selection. Every date since then we have asked you to
6 submit proposed charges and verdict sheet. As of today we
7 do not have proposed verdict sheet from your office. I'm
8 not sure what the delay is, but if you do not submit it by
9 the end of the day, you will have waived your right to do
10 so.

11 MR. SCARIA: I apologize, your Honor. I will do
12 so.

13 THE COURT: Thank you.

14 (Off-the-record discussion held.)

15 THE COURT: Let's mark the additional copy of
16 Dr. Grimm's records as Plaintiff's 13 for identification.

17 (Exhibit marked for identification
18 as Plaintiff's Exhibit 13.)

19 THE COURT: Next?

20 MR. VELARDI: Your Honor, as Plaintiff's
21 Exhibit 14 -- well, let me get the exact date. This is the
22 MRI, the film and report, of the October 19, 2011 of the
23 right knee.

24 THE COURT: That's in evidence as Plaintiff's
25 Exhibit 14 on consent?

1 MR. SCARIA: Yes.

2 (Exhibit received and marked in
3 evidence as Plaintiff's Exhibit 14.)

4 MS. SUED: Your Honor, Defendant's Exhibit C is
5 Queens Arthroscopy and Sports Medicine records. And that's
6 on consent.

7 THE COURT: Okay.

8 (Exhibit received and marked in
9 evidence as Defendant's Exhibit C.)

10 MS. SUED: And Plaintiff's Exhibit 15 is
11 Dr. Kaplan's chart that he brought to court today.

12 THE COURT: And that's in evidence on consent, 15?

13 MS. SUED: Yes.

14 THE COURT: Thank you.

15 (Exhibit received and marked in
16 evidence as Plaintiff's Exhibit 15.)

17 THE COURT: Anything else?

18 MR. VELARDI: Your Honor, you had signed the
19 so-ordered subpoena directing Dr. Joyce Goldenberg of
20 Central Park Physical Medicine to produce their records of
21 my client. They are not obeying the subpoena, for some
22 reason.

23 I have the process server here with me now, and,
24 you know, I'm going to have to make a motion to hold them in
25 civil contempt.

1 THE COURT: I don't want to deal with that now.
2 We have a jury waiting and a witness waiting. Let's talk
3 about that later. Let's move forward with what we have do
4 now.

5 MR. VELARDI: Okay.

6 THE COURT: Have you reviewed the evidence?

7 MR. SCARIA: Yes, your Honor. The defendants
8 object to the demonstrative that shows a preoperative
9 condition.

10 To the extent that the demonstrative is necessary
11 for the doctor to explain the procedure to the jury, I
12 understand that. However, the demonstrative is prejudicial
13 in that it shows alleged conditions that are not Mr. Villa's
14 conditions. There is no way to say that this is Mr. Villa,
15 so it prejudices the defendants to show this giant blow-up
16 of something called an overgrown medial plica with major
17 synovitis and tears of the undersurface. This is not the
18 plaintiff's knee.

19 MR. VELARDI: It is. It --

20 MS. SUED: Your Honor, we have the MRI.

21 THE COURT: I really need you all to speak one at
22 a time, please. So let counsel for defendant who started
23 with the objection to finish, then I will hear your
24 response.

25 MR. SCARIA: Your Honor, this can't be Mr. Villa's

1 knee because it is not an operative photo. I don't know if
2 it is a painting or how to phrase it, but this is not an
3 operative photo.

4 THE COURT: Right, but I don't know that it means
5 it can't be his knee. Okay, it's not a photo. I agree with
6 that.

7 So your objection is based on your assumption that
8 it is just a general picture of somebody and not the
9 plaintiff, correct?

10 MR. SCARIA: And the fact that it is a blow-up of
11 an alleged condition. It is prejudicial to the defendants.
12 This blow-up of this alleged condition in no way serves to
13 help the jury understand the surgery.

14 The purpose of a demonstrative is for the jury --

15 THE COURT: Let's focus not on whether you think
16 it's going to help the jury or not, but your legal authority
17 for the basis for the objection.

18 MR. SCARIA: My legal authority for the basis of
19 the objection, without being able to cite to specific case
20 law, is that a demonstrative should be used to aid the
21 witness in explaining something to the jury or to help the
22 jury understand something, not for purposes of salaciously
23 presenting something to the jury.

24 This blow-up of a condition serves to do nothing
25 but prejudice the defendants by putting big red things in

1 front of their face to suggest that this injury is bigger
2 than -- is a huge injury. The jury needs to hear the
3 witness testify about the surgery and hear the plaintiff
4 testify about his complaints of pain, which he has already
5 done. The jury does not need a poster-sized picture -- I'm
6 sorry, not a picture, a painting or digital image. I don't
7 know what this is.

8 THE COURT: All right. Let me hear from the other
9 side what it --

10 MR. SCARIA: Your Honor, I just want to state one
11 other thing.

12 I don't have an objection to those aspects of the
13 demonstrative that indicate the procedure of the surgery.
14 I --

15 THE COURT: You're okay with the right side but
16 not the left side? Is that basically it, the stuff to the
17 right?

18 MR. SCARIA: I have to see.

19 (Brief pause)

20 MR. SCARIA: Yes.

21 THE COURT: Okay. Let me hear from you, counsel
22 for plaintiff.

23 MS. SUED: Your Honor --

24 MR. VELARDI: This demonstrative is not a real
25 photo because it's a demonstrative, otherwise I would have a

1 photo. The demonstrative is built upon Dr. Kaplan's
2 operative report. This was provided to Medical Legal Art,
3 the report, and Medical Legal Art created the demonstrative
4 based on the information that's in the report which is now
5 in evidence. And the preoperative condition that is on the
6 left side is listed in the report at the very beginning of
7 the report.

8 THE COURT: You said it is plaintiff's knee. What
9 is that based on?

10 MR. VELARDI: This is an illustration, and it's
11 based entirely upon the operative report. It is not based
12 on any MRIs.

13 THE COURT: I'm going to sustain the objection as
14 to the left side. Can you get some papers, maybe, and just
15 cover the left side? You can use the right side.

16 MR. VELARDI: Okay. But what if Dr. Kaplan
17 testifies to the preoperative condition and it matches what
18 this says, then I put this up?

19 THE COURT: I'm going to allow the jury to rely on
20 the doctor's testimony in that regard or any other evidence
21 that you have regarding the preoperative condition.

22 MR. VELARDI: This is the operative report, and,
23 of course, there's the testimony of the surgeon.

24 MR. SCARIA: Just to be clear, not the left side
25 of the demonstrative; correct, your Honor?

1 THE COURT: Correct. I am going to have him cover
2 the left side. He could use the right side.

3 MR. SCARIA: Thank you.

4 MR. VELARDI: The left shoulder?

5 MR. SCARIA: Same objection, your Honor.

6 THE COURT: Can I see it?

7 MR. SCARIA: Similarly, your Honor, it appears
8 that the preoperative condition is on the left and the
9 operative procedure is demonstrated on the right.

10 THE COURT: So this is a little different. It's
11 not the whole left. It's, like, the upper left-hand corner,
12 right?

13 MS. SUED: Just this (indicating).

14 THE COURT: Okay. Same ruling. You can use the
15 rest of it, just not the upper left-hand corner.

16 MR. VELARDI: All right.

17 MR. SCARIA: Your Honor, it's actually not just
18 the left side. It's the top right photo as well. It says
19 "thickened inflamed bursa," and you see all that jagged
20 stuff in the center there.

21 MR. VELARDI: This is at the point that the doctor
22 enters the shoulder with the scope.

23 THE COURT: Let me step down there to see it
24 better.

25 Go off the record.

1 (Off-the-record discussion held)

2 THE COURT: We are now back on the record.

3 The Court went down and took a closer look and
4 adheres to its original determination as to the second
5 demonstrative exhibit. The upper left-hand corner will not
6 be permitted. The balance of it will be.

7 MR. SCARIA: Your Honor, if I may just note my
8 exception with regard to the second demonstrative, the
9 shoulder operative demonstrative. The two other parts of
10 the demonstrative appear to show a preoperative condition.
11 The defendants have the actual operative photos which is,
12 under the best evidence rule, the defendants' position,
13 should be submitted in place of --

14 THE COURT: The best evidence rule is irrelevant
15 to whether demonstrative evidence can be used.

16 Your objection is noted for the record.

17 MR. VELARDI: So we'll use the photos, then.

18 THE COURT: What was that?

19 MR. VELARDI: I mean, before this I agreed to take
20 the photos out, but now she is saying that best evidence --

21 THE COURT: It is close to 2:30. I would like to
22 get going with the witness, otherwise your doctor is going
23 to come back tomorrow.

24 Counselors, you had three hours to deal with all
25 this this morning, so let's get going.

1 MS. SUED: Your Honor, if I may, the operative
2 photos were brought for the first time and seen by the
3 defendants with Dr. Kaplan's chart. We just agreed to
4 remove them from his chart, so this demonstrative is like
5 putting those photos in. And the best evidence --

6 THE COURT: Counsel, I don't entertain reargument.
7 I've ruled on the demonstrative exhibit. That's it. As far
8 as him getting the photos in, that's another story.

9 MS. SUED: So the photos are not in?

10 MR. SCARIA: That's what we wanted clarified.

11 THE COURT: They're not in yet. I don't know if
12 they are coming in or not. I don't know if there is a basis
13 for them to come in or not. They are not in because that
14 was the agreement amongst yourselves which I had nothing do
15 with.

16 MR. VELARDI: I want to get this witness done
17 before the end of the day --

18 THE COURT: So do I.

19 MR. VELARDI: -- so the photos will stay out.
20 Let's make them happy.

21 MS. SUED: Thank you.

22 THE COURT: Let's call the jury in, please.

23 COURT OFFICER: All rise. Jury entering.

24 (Jury enters courtroom.)

25 THE COURT: Please be seated.

1 Welcome back. I hope you had a nice lunch. We
2 are ready to hear from plaintiff's next witness.

3 MR. VELARDI: Thank you, your Honor. Plaintiff
4 calls Dr. Jeffrey Kaplan.

5 (Jeffrey Kaplan, M.D. takes the
6 witness stand and is duly sworn/affirmed.)

7 THE CLERK: Please state your name and business
8 address for the record.

9 THE WITNESS: Jeffrey Kaplan, 160 East 56th Street
10 New York, 10k022.

11 THE COURT: You may inquire.

12 MR. VELARDI: Thank you, your Honor.

13 JEFFREY KAPLAN, M.D., having been called on behalf of
14 Plaintiff, first having been duly sworn, was examined and
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. VELARDI:

18 Q Good afternoon, Dr. Kaplan. How are you today?

19 A How are you?

20 Q Are you a physician licensed to practice medicine in
21 the State of New York?

22 A Yes.

23 Q How long have you been licensed to practice in the
24 State of New York?

25 A Since 1994.

1 Q What is your medical specialty?

2 A I am an orthopedic surgeon.

3 Q And can you explain to the jury what is an orthopedic
4 surgeon?

5 A Sure.

6 Orthopedics is the study of bones and joints and
7 the supporting structures of the bones and joints, so ligaments
8 cartilages, muscles, nerves. Orthopedics has to do with injuries
9 or abnormalities to these structures and the treatment of those
10 injuries or abnormalities either with conservative measures like
11 physical therapy, advice, medications, injections. If those
12 things don't work or are inappropriate, then surgical treatment
13 of those problems.

14 Q Where did you earn your medical degree?

15 A I went to Columbia University.

16 Q Did you complete an internship?

17 A I did.

18 Q Where did you complete your internship?

19 A I did my intern and residency at a place called The
20 Campbell Clinic in Memphis, Tennessee; the first orthopedic
21 training program in the United States.

22 Q Was your residency in orthopedics?

23 A Yes.

24 Q Are you board certified?

25 A Yes.

1 Q In what area?

2 A Orthopedic surgery.

3 Q When did you receive your board certification?

4 A 1997.

5 Q Have you maintained your board certification through
6 recertification over the years?

7 A Yes.

8 Q Do you have a private practice?

9 A I do.

10 Q And what is the -- well, how long have you been in
11 private practice?

12 A Since 1994.

13 Q And what is the name of your private practice?

14 A It's called NY Ortho Sports Medicine and Trauma.

15 Q Other than yourself are there any other doctors that
16 practice at that office?

17 A Dr. Matthew Grimm is a pain management physician that
18 works in that office.

19 Q And what types of patients do you see?

20 A I see anyone with orthopedic trouble. I treat
21 primarily --

22 THE COURT: I think counsel for defendant was
23 signaling that she is having a little difficulty hearing
24 you, so maybe you could just position yourself a little
25 closer to the mic.

1 THE WITNESS: Sure.

2 MR. SCARIA: Thank you, your Honor.

3 A So I treat orthopedic injuries primarily to the
4 extremities, meaning the arms and legs. I usually defer spinal
5 injuries if they need excessive treatment.

6 Q And do you treat conditions involving the shoulder?

7 A I do.

8 Q Do you treat conditions involving the knee?

9 A Yes.

10 Q Have you performed any surgeries involving the
11 shoulder?

12 A Many.

13 Q Approximately -- would you be able to estimate how
14 many?

15 A I really wouldn't be able to estimate.

16 Q It's a lot of years?

17 A Yeah, many years.

18 Q Have you performed surgeries for knees?

19 A Yes.

20 Q And, again, you wouldn't be able to estimate that? Too
21 many?

22 A It would be hard to estimate that, yeah.

23 Q As part of your -- when you're treating patients with
24 knee or shoulder issues, is it also your custom and practice to
25 refer patients to get MRIs?

1 A It's part of diagnosing patients, yeah.

2 Q And when you do that, do you also review the MRI films
3 yourself?

4 A Usually, yes.

5 Q And do you also sometimes rely upon the MRI reports of
6 the radiologist?

7 A I usually do it in combination, yeah.

8 Q In combination, okay.

9 Do you also perform x-rays of these various body
10 parts that you treat in patients?

11 A Yes.

12 Q Do you have an x-ray machine at the office?

13 A Yes, we do.

14 MR. VELARDI: Your Honor, I would like to offer
15 Dr. Kaplan as an expert in orthopedic surgery.

16 MS. SUED: No objection, your Honor.

17 THE COURT: So deemed.

18 Q Over the years would you be able to estimate how many
19 MRIs of shoulders you have read, or is that the same situation?

20 A It's a lot, yeah.

21 Q Would you say the same for knees?

22 A I would say the same for almost any body part, yeah.

23 Q Okay. Have you testified for other patients
24 represented by my law office?

25 A Yes.

1 Q And has my law office ever referred you clients in the
2 past?

3 A I believe so, yes.

4 Q And is your private practice being paid for your time
5 testifying today?

6 A They are.

7 Q How much are they being paid?

8 A A fee of \$8,500.

9 Q What does that payment cover?

10 A It covers -- I canceled my office to be here this
11 afternoon. It pays for our rent, pays for salary of the
12 14 people working there, electricity, cleaning. It's part of
13 overhead.

14 Q Now, did you bring some records with you today?

15 A I did.

16 Q So we have Exhibit 15 that has been marked in evidence.
17 I'm going to have the officer please hand that to Dr. Kaplan.

18 Dr. Kaplan, those have already been admitted into
19 evidence, so you can read from them and I'll ask you questions
20 about them, etcetera. First, just tell the jury, what is
21 contained in your chart?

22 A This is the medical record from our office on
23 Mr. Lluilema. It contains my notes, notes from Dr. Grimm,
24 operative reports, diagnostic radiology reports, and some testing
25 results. I also brought a CD with outside medical records and

1 studies, so MRI films.

2 Q Okay. You can set those discs aside because we have
3 other discs that have already been admitted into evidence.

4 A Okay.

5 Q So, was Mr. Segundo Lluilema a patient of yours at your
6 office?

7 A Yes.

8 Q When was the first time he became a patient at your
9 office?

10 A I first saw him on January 2, 2020.

11 Q And it was you who saw him?

12 A Yes.

13 Q And when you saw him did you take a history from him?

14 A I did.

15 Q What history did the patient provide?

16 A He provided a history of a work-related accident that
17 occurred on December 18, 2019. He indicated that he had a fall
18 from a height. He indicated he injured his right left, left leg,
19 left shoulder, and low back. He was initially treated, he told
20 me, at City MD, an urgent care facility. He had multiple x-rays
21 performed. I did have some discharge summary from there
22 indicating what had been done. And then, you know, told me he
23 was still having pain about the right leg, left shin. He also
24 had some pain at the left shoulder. And he indicated that it got
25 worse since the time of the accident.

1 That's pretty much the history.

2 Q And did he tell you on that date that he was involved
3 in a motor vehicle accident prior to that fall from the ladder?

4 A Let's see. He does indicate that he had no medical
5 illnesses, no history of allergies, and that he did have a motor
6 vehicle accident several years ago and required a right shoulder
7 arthroscopy performed by Dr. Diwan.

8 Q Did the patient indicate the status of that right
9 shoulder injury?

10 A He indicated he recovered from that. Obviously he had
11 returned to work.

12 Q I'm sorry. Did you say he was able to return to work?

13 A I said "obviously he had returned to work."

14 Q Okay.

15 And did you do a physical examination?

16 A I did.

17 Q And can you tell the jury what you did and what were
18 the results?

19 A Sure.

20 The physical examination that I perform on the
21 initial visit is observing the patient and asking them to do some
22 sort of functional things. So my physical exam notes that he had
23 bruising over the anterior portion of the right shin. The
24 "anterior" is front of the shin. I didn't find any bony
25 abnormalities, meaning there was no obvious fracture there. His

1 ankle and knee exam at that time were benign. At the right lower
2 extremity he did have tenderness over the thigh and a positive
3 straight leg raising test on the right. That's usually an
4 indication of a nerve irritation in the back that causes pain
5 into the lower extremities. I noted that he had limited motion
6 when I asked him to bend and extend his spine. I noted that he
7 had an antalgic gait and posture. "Antalgic" means a gait
8 pattern associated with pain. He also had limited motion and
9 tenderness about the left shoulder. And he had what I noted was
10 a positive drop arm test. That's usually an indication of an
11 injury to the rotator cuff, which is a cuff of muscles and
12 tendons that goes around the top of the shoulder and helps rotate
13 the arm. And he had some weakness with motion testing of his
14 musculature in the shoulder.

15 Q With respect to those particular findings, was that the
16 left side or the right side?

17 A That was the left side.

18 Q Okay.

19 And can you explain to the jury the anatomy of the
20 shoulder?

21 A Sure.

22 So the shoulder is made up primarily of the top of
23 the arm bone and the end of the shoulder blade. The shoulder
24 blade is sort of the cup, and the arm is a ball. That makes a
25 joint, a ball and socket joint.

1 There are multiple muscles about the shoulder.
2 The deepest muscles are a group of four muscles called the
3 rotator cuff. They attach to the top of the arm bone, the
4 humerus. So depending upon which of those four muscles fire, the
5 arm will move in different directions. The ones here fire it
6 pulls back. Here, rotate in either direction.

7 The ball and socket joint is held in place by the
8 architecture of the bones, meaning the shape of the ball and
9 socket. Also, some cartilage structures help stabilize and
10 deepen the socket, and that structure is called the labrum, as
11 well as the muscles around the arm which help pull the joint
12 together and hold it in place.

13 Q Now, on this first day of January 2, 2020, did he
14 complain about his right knee?

15 A He complained primarily to me about his right leg.

16 Q If you could jump -- I'm going to jump ahead and go
17 back to the January 2. So jump to March 6 of 2020.

18 A Uh-huh.

19 Q At this point in time had he complained about his right
20 knee?

21 A On March 6, which was the -- it looks like the third
22 visit, I noted that he was complaining specifically of pain about
23 the right knee. And that was in addition to the pain at the
24 lateral leg, the numbness associated with that straight leg
25 raising that I indicated.

1 I indicated that I reviewed his emergency room
2 record from the date of the accident, and he was diagnosed with a
3 right knee sprain.

4 Q Okay.

5 And so going back to January 2 of 2020 and before
6 I ask you further questions, I just want to establish that he did
7 complain about his right knee and have you explain to the jury
8 the anatomy of the right knee.

9 A Okay. He complained about his right leg at that time
10 including, you know, the bones that make up the knee.

11 To explain the anatomy of the knee, it's made up
12 primarily of the thigh bone and the shinbone that sit one on top
13 of the other. There's also the kneecap which sits in front and
14 connects the big muscle in the front of the leg, the quadricep,
15 to the lower leg and helps straighten and bend the knee as that
16 muscle fires.

17 The knee joint is not a ball and socket joint.
18 It's really, like, a shaft sitting on top of a table top. So
19 there are important cartilage structures that help stabilize that
20 and make what is, essentially, a ball and socket joint by
21 deepening the area that the thigh bone sits on top of the
22 shinbone. It's also held in place by a series of ligaments, and
23 the muscles that are the layer beyond that help stabilize things
24 by when they fire.

25 (Continued on next page)

1 Q Did you perform any x-rays on January 2nd of 2020?

2 A I did.

3 Q And what was the purpose of doing that?

4 A The purpose of doing an x-ray is just to familiarize
5 myself with his anatomy, um, to, again, confirm that there are
6 no fractures or dislocations of the bones.

7 Q And what did they show in this case?

8 A I x-rayed his left shoulder. He did not have any
9 fracture or dislocations. There was no acute bony change I
10 noted. That's usually a fracture or dislocation.

11 I x-rayed his low back because of continued complaints.
12 I did not see any fractures or dislocations. He did have
13 straightening of the normal curvature of the back. We normally
14 all have a little bit of a sway back, um, and that usually
15 indicates that there's some muscle spasm pulling the back
16 straight. The body is basically acting like a brace, the
17 muscles of body are acting like a brace to hold things tight,
18 and that could indicate some trauma.

19 Q And at the time of your January 2nd, 2020 examination
20 of the patient, did you come to any diagnoses?

21 A I did.

22 Q And what were they?

23 A I suspected, again, rotator cuff tear. I keep pointing
24 to the right, on the left shoulder. And he had, um, post
25 traumatic low back pain, lumbar pain, um, with symptoms of

1 radiculopathy. A "radiculopathy" is the radiating pain that one
2 feels in their extremities, which is really spinal in origin.
3 So a lumbar radiculopathy means the lower back, the lumbar area,
4 is responsible for the pain that's running down his legs that he
5 was complaining about. That was my initial opinion.

6 Q And what, if any, recommendations did you make after
7 that first visit.

8 A I sent him for an MRI of his low back, an MRI of his
9 shoulder. I asked him to begin some physical therapy. I gave
10 him a prescription for some anti-inflammatory medications, um,
11 advised him how to use that, and asked him to follow up with me.

12 Q Did there come a time that that MRI of the left
13 shoulder was done?

14 A Yes, mm-hmm.

15 Q And do you know what the date -- do you know what date
16 it was done?

17 A Um, let's see. Um, MRI of the left shoulder was done
18 on 1/8/2020.

19 Q And where was that MRI performed, according to the
20 record that you have in front of you?

21 A That was performed at a place called Kolb Radiology.

22 Q Did you refer the patient to Kolb Radiology?

23 A I would have given him a prescription for an MRI. I'm
24 not sure -- let me see if I have that prescription to see if it
25 was specifically Kolb Radiology. It looks like it was, yes.

1 Q Okay.

2 And do you have a copy of Kolb Radiology's report in
3 your chart?

4 A I do.

5 Q Okay.

6 And can you tell the jury what were the findings,
7 according to the Kolb report, of the MRI of the left shoulder?

8 A So the MRI of the left shoulder was reported to show a
9 partial rotator cuff tear involving the supraspinatus and
10 infraspinatus tendons, extending to the distal insertion within
11 the subdeltoid and subversal effusion.

12 What that means --

13 Q I was just about to ask you?

14 A Is that there was a partial tear of the tendons. I
15 have a model that might be helpful just to --

16 Q Will that help the jury understand your testimony?

17 A Yeah.

18 THE WITNESS: Is that all right?

19 THE COURT: Yes.

20 THE WITNESS: Thank you.

21 A So, just because there are so many medical terms, I
22 just thought it might be --

23 Q Doctor, that screen usually will block the view of some
24 of the jurors.

25 MR. VELARDI: Officer if you could. That would be

1 appreciated.

2 (Whereupon, the court officer removed the monitor.)

3 MR. VELARDI: Thank you.

4 THE COURT: I don't know, the other one tried and
5 was not able to -- there you go. Thank you.

6 THE COURT OFFICER: How long is your presentation?

7 THE WITNESS: Shouldn't be long.

8 A Your head is in the way. So this is a model -- this is
9 a right shoulder (indicating). We are talking about the left
10 shoulder on this guy. But this is the top of the arm bone,
11 called you are humerus (indicating). This the shoulder blade
12 (indicating). Inside the shoulder joint there's the what we
13 refer to as the glenoid, which is basically the cup that the
14 ball sits in. Again, it's not a very deep cup. So it has
15 cartilage there around it that's not pictured here. But what I
16 wanted to show you was this series of muscles that are around
17 the top of the humerus. They're -- they are all connected to
18 the scapula, the shoulder blade, and they all hook into the
19 humerus.

20 So if this muscle fires (indicating), obviously the arm
21 goes up. If this one fires (indicating), it goes back. And
22 they are named in relation to the scapula, in relation to the
23 shoulder blade.

24 So this the is spine of the scapula (indicating). This
25 would be the muscle above it called the supraspinatus

1 (indicating), above the spine. This is infraspinatus
2 (indicating), meaning below the spine. This would be the
3 subscapularis (indicating), meaning underneath the scapula. And
4 those are the rotator cuff muscles (indicating). The MRI noted
5 that the supraspinatus and the infraspinatus had partial tears
6 in them.

7 Q And what I'm going to have done now is I'm going to
8 show you Plaintiff's Exhibit 4, or at least a portion of
9 Plaintiff's Exhibit 4, um, which contains the MRI of the left
10 shoulder that you were just discussing.

11 MR. VELARDI: Andrew.

12 THE TECH ASSISTANT: The disk.

13 MR. VELARDI: We need Exhibit 4.

14 THE COURT: Counsel, you are probably more familiar
15 with the exhibits than the officer would be.

16 Q Doctor, while we get that set up, I'll give you a heads
17 up. I'm going to ask you to read the MRI film.

18 A Okay.

19 Q And tell the jury what you see.

20 (Whereupon, there is a brief pause in the
21 testimony.)

22 THE COURT: You can control it from Counsel table.
23 You don't need the clerk.

24 (Whereupon, there is a brief pause in the
25 testimony.)

1 THE COURT: Are you wanting to use the Elmo?

2 THE TECH ASSISTANT: No thanks. I'm just turning
3 it off.

4 THE COURT: So what you have to do is change the
5 source from the plaintiff to defense.

6 MR. VELARDI: Turn that off. Change it from
7 plaintiff to defense.

8 THE TECH ASSISTANT: I'm pulling it up.

9 MR. VELARDI: January 8, 2020, MRI of the left
10 shoulder.

11 (Whereupon, the exhibit was displayed on the
12 screen.)

13 Q Doctor, you can direct my IT assistant to the images
14 that you need him to focus on.

15 A All right. Where you have got the arrow, if you would
16 click on that, number 15.

17 (Whereupon, the exhibit was displayed on the
18 screen.)

19 A Right there.

20 THE COURT: I'm sorry, I'm not sure if you are
21 meaning to be heard, but I'm not hearing you.

22 THE WITNESS: I'm talking to --

23 Q You have to talk in a the microphone.

24 THE COURT: You really can't have like -- whatever
25 you say has to be out loud for the record, so there's no

1 private conversations. So whatever you were saying, we were
2 not hearing, so please say it in a way where we could hear
3 it. Thank you.

4 A Okay. If we could scroll through that just a little
5 bit slowly.

6 Q So I've just been told that we have a wireless mouse
7 that you can control. You can control his computer and go
8 through the images, and we could do this that way. Maybe that
9 will be the way we can --

10 (Whereupon, the mouse was handed to the witness.)

11 THE WITNESS: Thank you very much.

12 A So what we are looking at here is, um, this circle in
13 the middle is the ball of the top of the arm bone. Around it
14 are muscles, and the black areas that are encircled in white are
15 the tendons as you look at them this way (indicating). So you
16 are looking at the end of a tendon here (indicating).

17 And in this area on top is where the supraspinatus and
18 the infraspinatus live (indicating), primarily the
19 supraspinatus. And you could see that it's pretty flat here
20 (indicating). It doesn't have the integrity of a full tendon as
21 we go through. This is an abnormality within the tendon
22 (indicating); that is fluid, indicating a partial tear
23 (indicating). Let's see if we could look at this way.

24 (Whereupon, the Exhibit displayed on the screen was
25 scrolled through.)

1 A So this is looking more -- rather than looking this way
2 at the shoulder (indicating), we are looking this way at the
3 shoulder (indicating). So the arm bone is hanging down
4 (indicating).

5 This is the end of the shoulder blade, and these are
6 the muscles of the rotator cuff coming across (indicating). And
7 you can see, here is the muscle, here is the tendon. And there
8 is a gap here (indicating). That's a partial tear noted by MRI.
9 And in some areas it's a fairly significant partial tear,
10 meaning almost all the way through. And in some areas it looks
11 reasonably intact. So there's part of a tendon and part of a
12 tear here (indicating), um, in the musculature and the tendon.

13 Q And how, if at all, does your reading of this MRI
14 differ from the radiologist's reading that you told the jury
15 about earlier?

16 A Well, my reading is essentially the same, except that I
17 have the benefit of having actually looked at these tendons. So
18 I can look at this with some knowledge that there are areas
19 where it's partially torn, um, and an area where it's
20 significantly partially torn, meaning only a few fibers are
21 left. It's sometimes hard to see without -- this is sometimes
22 hard to differentiate because this is not a whole picture like
23 what I see. It's not looking at this. It's looking at
24 different slices if as if you were to look through the pages of
25 a book. It doesn't show, um, everything. The slices come at

1 intervals.

2 Q And you had just told the jury that you had the benefit
3 to actually see.

4 A Right.

5 Q Can you explain to them, how did you actually see these
6 tendons?

7 A Sure. This gentleman continued to have shoulder pain
8 despite conservative treatment, so I eventually felt that he
9 should have an arthroscopic surgery; that's looking inside the
10 joint with a telescope. So on 2/17/2021, about a year and some
11 time after the injury, having failed conservative treatment, I
12 did the surgery where I looked inside his shoulder. I noted
13 areas of really significant tearing of the supraspinatus tendon,
14 the infraspinatus tendon, which was partially torn, or was not
15 as significant a tear, um, so we cleaned that up. But the
16 supraspinatus tendon we had to debride, meaning clean, and then
17 tack, anchor back into the bone with some sutures done through
18 arthroscopy.

19 Q I'm going to have you explain in a little bit more
20 detail about the surgery momentarily, but for now -- before we
21 get there, I want to move onto the right knee.

22 A Okay.

23 MR. VELARDI: So you can take this out of the
24 computer, Andrew. Take it off the screen. We are done with
25 the left shoulder MRI.

1 (Whereupon, the exhibit displayed on the screen was
2 taken down.)

3 Q Did there come a time that he had an MRI of the right
4 knee?

5 A He did.

6 Q And when did he have that done?

7 A He had that done on 3/17/2020.

8 Q And who recommended that he have an MRI of the right
9 knee?

10 A I did.

11 Q And when did you recommend that?

12 A Um, I recommended that --

13 Q You could turn to March 6, 2020?

14 A I'm guessing on March 6, 2020, yes.

15 Q Okay.

16 A Yeah, I sent him an MRI for his knee, because his knee
17 was beginning to buckle, and he was having specific pain at the
18 knee.

19 Q What is the significance, if at all, of the buckling
20 that he --

21 A So "buckling" means the knee sort ever gives out as you
22 walk; that's a mechanical symptom. It's usually associated with
23 a tear of some cartilage called the meniscus that as the joint
24 moves, slips in between the moving parts of the joint. The body
25 feels that and reflexively gives out.

1 The "meniscus" is a cartilage structure. It doesn't
2 have any nerve endings in it, so people can feel buckling even
3 without pain from a tear in the meniscus. It usually is painful
4 if they buckle because it stresses the ligaments and muscles and
5 the joint capsule around it. But this is a specific mechanical
6 symptom of buckling.

7 Q And what was the reason that you recommended the MRI?

8 A Specifically, to see if he did have a meniscus tear.
9 Again, I also, when I first saw him, was more impressed that he
10 had this radiculopathy, which is the symptoms coming from the
11 back that actually affect the leg. And people can buckle
12 because of weakness from a nerve injury in the back.

13 So, um, the fact that he was having pain and buckling
14 specifically at the knee made me reconsider that he probably had
15 a meniscus tear.

16 Q Okay.

17 And do you have the report -- well, actually let me ask
18 you first, did you send him to the same facility to have the MRI
19 of the right knee?

20 A I did.

21 Q Do you have a copy of the MRI report in your chart?

22 A I do.

23 Q Can you tell the jury what was the findings of the
24 reading radiologist of the MRI of the right knee?

25 A Sure. The report notes a peripheral tear and

1 separation of the posterior horn of the medial meniscus, with
2 subcapsular fluid, and a three-centimeter thin popliteal cyst,
3 and a partial tear of the anterior cruciate ligament with a
4 joint effusion. I also have a knee model which probably will be
5 helpful.

6 Q Fantastic. And that will help the jury understand your
7 testimony?

8 A I'm just going to pull that out. So this is a knee
9 (indicating), thigh bone on top (indicating), shin bone on the
10 bottom (indicating), the kneecap in front (indicating).

11 Again, the thigh bone sits on top of the shin bone, and
12 it's like sitting on top of a table top (indicating). In order
13 to stabilize the joint, there are cartilages inside the joint.
14 These round structures (indicating). Those are call the
15 meniscus. There is also ligaments, two inside and two outside.
16 The ones inside are called the cruciate ligaments because they
17 cross one another. And there's one in front called the anterior
18 cruciate ligament, and one in back called the posterior cruciate
19 ligament, and there's some supporting ligaments on the side.

20 So this report noted a tear in the -- what they call
21 the posterior horn of the medial meniscus. If you look at these
22 this way they look like bull horns (indicating). So they call
23 these the horns (indicating). The one in back is posterior.

24 Also noted was some fluid in the back of the joint that
25 usually occurs when something is disrupted in the joint, um,

1 this popliteal cyst. Um, and they noted a partial tear of the
2 anterior cruciate ligament. The anterior cruciate ligament is
3 responsible for keeping the knee from sliding forward by acting
4 like a checkrein, like a seat belt, um, holding the bones
5 together.

6 Q What is a popliteal cyst?

7 A A popliteal cyst is some fluid that collects in the
8 back of the joint. Again, usually the joint is a closed
9 structure, sealed. If you tear the meniscus, you can get a
10 popliteal cyst, um, fluid in the back of the joint.

11 Q Does fluid like that, or a collection of fluid like
12 that eventually resolve on its own?

13 A It can. Sometimes it gets bigger.

14 Q Does that contribute in any way to the pain that the
15 patient is feeling?

16 A Again, it can.

17 MS. SCARIA: Objection, your Honor.

18 THE COURT: Sustained.

19 Q We are going to put the MRI film itself on the TV
20 screen?

21 A Okay.

22 Q Again, this is Plaintiff's Exhibit 4.

23 (Whereupon, the exhibit was displayed on the
24 screen.)

25 Q If you could explain to the jury what you see on this

1 film?

2 A Okay. So as I described it before, an MRI is taking a
3 solid structure and then taking slices through it so that you
4 could peel through it like a book.

5 So what we are looking at here is the side of the knee,
6 and we are going to open pages through the knee and we are going
7 to get to the center of the knee. And I know we are in the
8 center of the knee when we start to see the cruciate ligaments,
9 the ones that cross.

10 So here is the anterior cruciate ligament here
11 (indicating), and here is the posterior cruciate ligament here
12 (indicating). You could see the difference in the quality of
13 the ligament. I see it as fluid in the ligament. You'll see it
14 as the anterior cruciate ligament looking sort of whitish; that
15 has fluid in it.

16 This is the posterior cruciate ligament, which is very
17 dark (indicating), and that's a normal posterior cruciate
18 ligament, there it is there (indicating), as opposed to the --
19 this is the posterior cruciate ligament looking pretty normal
20 (indicating), as opposed to the anterior cruciate ligament,
21 which appears grayish and white and has streaks; that means
22 fluid. So that's a partial tear of the anterior cruciate
23 ligament.

24 We are then going to look at the meniscus on this view,
25 or way on the side, the outside part of the knee. And I know

1 that because we have this bone here called the fibula
2 (indicating), which is here (indicating), on the outside part of
3 the knee (indicating). And this is a relatively normal looking
4 meniscus.

5 This the anterior horn and the posterior horn
6 (indicating). They are dark black. I'm going to go over to the
7 inside part of the knee, the medial knee (indicating).

8 (Whereupon, the Exhibit displayed on the screen was
9 scrolled through.)

10 A And I'm scrolling through the meniscus here, and this
11 is the outside of it. As we scroll through, the posterior horn
12 and meniscus, you see a white streak here (indicating), which
13 blunts this normal structure (indicating), so that's a tear in
14 the posterior horn of the medial meniscus (indicating).

15 And they were saying there was some subcapsular fluid.
16 This is the joint capsule here (indicating). And this is
17 subcapsular fluid. That just indicates that there is some fluid
18 there (indicating), which is abnormal, um, in the joint.

19 You also see a popliteal cyst, which is the collection
20 of fluid, um, I'm just going to -- right there (indicating),
21 bright white fluid. It comes out near the meniscus, posterior
22 horn of the meniscus where it was torn.

23 Q And does what you see on this MRI film that you just
24 showed to the jury differ in any manner from what the MRI report
25 says?

1 A This is essentially the same.

2 MR. VELARDI: You could remove this from the
3 computer.

4 (Whereupon, the exhibit displayed on the screen was
5 taken down.)

6 Q Now, Doctor, I'm going to show you another disk.

7 A Okay.

8 Q This is Plaintiff's Exhibit 14. And this happens to be
9 an MRI of the plaintiff's right knee from 2011?

10 A Yeah.

11 Q Doctor, in Exhibit 14, there's also a report, and I'm
12 going to ask the officer to hand the report to you.

13 THE COURT: This is from 14? Is that what you
14 said?

15 MR. VELARDI: From 14.

16 (The report was handed to the witness.)

17 (Whereupon, the exhibit was displayed on the
18 screen.)

19 Q Now, Doctor, before today, have you ever seen this
20 before?

21 A This morning, yes.

22 Q Was that the first time you looked at it?

23 A Yeah.

24 Q Did you have this available to you at the time you saw
25 this -- treated this patient?

1 A No.

2 Q Okay. Can you tell the jury what you see on this MRI?

3 A Yeah. So, um, let me go back to where we were, looking
4 you across the knee, coming across the knee.

5 THE COURT: Um, perhaps for the jury's benefit, we
6 should indicate what the date of this MRI is.

7 MR. VELARDI: Sure thing.

8 Q Did you can you read the date of the MRI from the
9 report?

10 A Yes. It's from 10/9/2011 (sic).

11 MR. VELARDI: Thank you, your Honor.

12 THE COURT: Thank you.

13 A So, again, we are looking at the knee. There's the mid
14 portion of the knee, and this is the meniscus that we looked at
15 before, here and here (indicating).

16 In the previous MRI there was a tear through the
17 meniscus. This is a normal meniscus. Do you see how the
18 meniscus comes all the way down (indicating)? Before we had a
19 tear there. If you follow this across to the midline and look
20 at the anterior cruciate ligament and the posterior cruciate
21 ligament, they have similar qualities (indicating).

22 They do report on this a what they call a ganglion
23 cyst, which is different than a popliteal cyst. Um, that would
24 be this fluid here (indicating). That is within the capsule.
25 That is within the capsule of the joint and is a structure that

1 comes from the posterior cruciate ligament, likely, as opposed
2 to the popliteal cyst, which was outside of the capsule of the
3 joint, and likely from the meniscus tear. So don't be confused
4 by those two different types of cysts. A cyst is simply a
5 collection of fluid.

6 So this is a relatively normal MRI, except for this
7 popliteal -- this ganglion cyst, which, again, is intracapsular?

8 Q And in your experience, what typically causes a
9 ganglion cyst?

10 A A ganglion cyst can be from wear and tear, from some
11 tendonitis, things like that. And you could have them all over
12 your body. This is just one that happens to be in the knee.

13 Q Did there come a time --

14 MR. VELARDI: You could take this down.

15 (Whereupon, the exhibit displayed on the screen was
16 taken down.)

17 Q Did there come a time that you referred Mr. Villa to
18 your colleague, Dr. Matthew Grimm?

19 A Yes.

20 Q When did you first refer him to Dr. Grimm?

21 A Um, I've already gotten my own notes out of order here.
22 Let me see. That's from --

23 (Whereupon, there is a brief pause in the
24 testimony.)

25 A Here we go. Let's see, I had him see Dr. Grimm, it

1 looks like on 3/6/2020, I referred him to see Dr. Grimm.

2 Q What was the reason you referred him to see Dr. Grimm?

3 A He was having low back complaints. Um, I had obtained
4 this MRI of his low back that I had sent him for, and I wanted
5 him to be evaluated by Dr. Grimm who treats spinal injuries.

6 Q Okay.

7 Now, if you could turn to your office note -- actually,
8 before you do that, just because I don't want to have you go
9 through every single office note for this patient, can you tell
10 the jury approximately how often you saw Mr. Villa?

11 A I would have seen him approximately every six to
12 12 weeks.

13 Q Okay. When was the last time you saw him, by the way?

14 A I last saw him 7/17/25.

15 Q Does he have a -- um, currently have a future
16 appointment scheduled with you?

17 A I don't have that information with me.

18 Q Okay. That's fine.

19 Turn to December 15, 2020 of your office notes.

20 A Okay. All right.

21 Q On that date, at the bottom, it indicates that you are
22 seeking to have him undergo the left shoulder arthroscopy?

23 A Right.

24 Q And you began explaining it, but he eventually had that
25 done; right?

1 A He did.

2 Q So I'm going to ask that you turn to your operative
3 note for that procedure?

4 A Okay.

5 Q And can you tell the jury, please, why you recommended
6 to Mr. Villa that he have the left shoulder surgery done?

7 A Sure. He had had the appropriate conservative
8 treatment, he had undergone physical therapy, he had taken oral
9 medications, he had injection of steroid preparation at the
10 shoulder, and he continued to have pain. And after a period of
11 time, the next step, logically, is to look inside the shoulder.
12 The good thing about an arthroscopy is that it can be a
13 diagnostic tool, as well as a portal for treatment, um, so we
14 could do surgery through smaller incisions with specialized
15 equipment looking with a telescope.

16 Q Okay. And what was the date that that surgery was
17 performed?

18 A That was done on 2/17/21.

19 (Continued on the next page.)
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25

1 DIRECT EXAMINATION (CONTINUING)

2 BY MR. VELARDI:

3 Q Now, what I would like you to do, doctor, is I would
4 like you to explain to the jury, essentially, what you did when
5 you performed this surgery. And I have a demonstrative aid which
6 may assist the jury in understanding your surgery.

7 Have you had a chance to look at the demonstrative
8 aid? I will show it to you right now.

9 THE COURT: We should have -- I would like to mark
10 the demonstrative aid as Court Exhibit 1 for identification.

11 Q Doctor, will this demonstrative aid assist the jury in
12 understanding your explanation of the surgery?

13 A Yes.

14 MR. VELARDI: I would like to have that marked.

15 (Exhibit marked as Court's Exhibit I.)

16 Q Let's put this on the easel right here.

17 MR. SCARIA: Your Honor, may we stand over there
18 to see?

19 THE COURT: Yes.

20 Q Doctor, do you want to step down from the witness
21 stand?

22 THE WITNESS: Sure.

23 Q Just explain to the jury everything you did in your
24 surgery?

25 A Sure. And I'm going to use this model again because

1 it's just -- I think it's easier to look at.

2 Initially looking at the shoulder, there's a space
3 that can be entered with a telescope into the joint. We can look
4 all around the joint inside. We can also look all around the
5 joint on the outside.

6 What we found was tearing of the rotator cuff,
7 these tendons that come down onto the humerus. And what we could
8 do is clean them up with a special tool called an arthrocare
9 wand. That can help remove tissue, specifically soft tissue as
10 we are looking at it with a telescope. We can then prepare the
11 end of the bone, make it rough so it will stimulate to heal. We
12 can then pass a series of sutures or stitches through the end of
13 the tendon that was torn. Then we can connect the sutures to an
14 anchor which can then be anchored into the end of the bone
15 repairing the mechanism where the muscle and tendon are well
16 connected with some integrity to the bone. We also remove some
17 bone from the shoulder blade above. And that just gives more
18 room for this tendon unit to move because we've added some
19 stitches to it. Those are going to form some scar, and so we
20 need to allow a little more room for this to move without
21 impinging on the structure above and below.

22 So that's the surgery where we repair the rotator
23 cuff tendon to the bone and clean up the remaining structures so
24 that they are given the best opportunity to heal.

25 Q Okay. You can take the stand again.

1 Where was that surgery performed?

2 A That was performed at Manhattan Surgery Center, which
3 is Mount Sinai outpatient surgery center.

4 Q Was he able to go home the same day?

5 A Yes. That's an outpatient procedure.

6 Q And how did the surgery go in the end?

7 A The surgery went reasonably well. There were no
8 significant complications. He had the usual postoperative course
9 with some physical therapy, and he regained most of his motion.

10 Q Can you turn to your March 25, 2021 office note?

11 A Okay.

12 Q What were his complaints on that date?

13 A At that time, that was his second post-op visit. He
14 continued to complain of pain of the left shoulder. He also
15 complained of right knee pain and buckling. He had one incident
16 of locking of the knee. That's where the knee gets stuck and
17 won't straighten or bend without some manipulation.

18 With regard to the shoulder, he was more
19 comfortable postoperatively, but he still had limited motion and
20 still had pain over the lateral arm.

21 Q Is there anything unusual about the fact that he was
22 still experiencing pain?

23 A No. That's the second postoperative visit. Shoulders
24 take a long time to heal.

25 Q What, if any, recommendations were you making at that

1 time about the right knee complaints he had?

2 A Again, I advised that he was a candidate for right knee
3 arthroscopy. Again, a similar style of surgery, looking inside
4 with a telescope, the arthroscope, to address the buckling and
5 locking.

6 Q Is that the reason you recommended the surgery?

7 A Yes.

8 Q Did he eventually have that surgery?

9 A He did.

10 Q And did you perform that surgery?

11 A I did.

12 Q And when was that surgery performed?

13 A The knee surgery was performed on 9/1/2021.

14 Q Where was it performed?

15 A The same facility, Manhattan Surgery Center.

16 Q And I would like you to explain to the jury again the
17 surgery, and I have another demonstrative aid.

18 MR. VELARDI: And, your Honor, I would you like
19 this marked as Court Exhibit II.

20 THE COURT: Yes. Please.

21 (Exhibit marked as Court's Exhibit II.)

22 Q I will ask you to do the same thing, doctor, that you
23 did with the left shoulder surgery and explain -- oh, sorry, you
24 have to put on the mic again.

25 (Brief pause)

1 A Okay.

2 This is an artist's representation of the right
3 knee surgery. This is a arthroscope, a telescope that can be put
4 in the knee. It's connected to a camera so we watch on a monitor
5 as we are doing the surgery. The camera is put in through an
6 incision, and another incision is made for our instruments to be
7 put in.

8 Inside Mr. Lluilema's knee we did find a tear in
9 the posterior horn of the medial meniscus. We were able to take
10 out the torn portion of the meniscus to recontour the meniscus
11 with this device called the arthrocare wand which we can use to
12 ablate or remove tissue that's torn. It also stimulates healing
13 in tissue as well.

14 In addition to that finding which we saw on the
15 MRI, there was a radial tear in the lateral meniscus. A radial
16 tear means a tear that, sort of, cuts into the meniscus this way
17 (indicating) in this direction, radially. In order to address
18 that, we basically snip out from the tear to the sides to
19 recontour this meniscus, remove the part that will flip back and
20 forth into the joint to smooth that out.

21 Additionally, he had what is called synovitis.
22 Synovitis is inflammation in the joint capsule that's associated
23 with injuries to the joint, and it's just an indication that
24 there is swelling and redness in the joint. That can also get in
25 the way of functioning of the joint, so we take out the overgrown

1 portion of the synovium, the tissue inside the joint, in order to
2 make the joint function more smoothly.

3 Q Thank you. You can go back to the witness stand.

4 A Okay.

5 Q Is there anything more you wanted to say?

6 A No.

7 Q September 10 of 2021, please turn to that date.

8 A Okay.

9 Q Was this his first post-op visit?

10 A Following the knee arthroscopy, yes.

11 Q At the bottom under "Plan" it says: "I have encouraged
12 him to discontinue the use of the cane, as well as throw away the
13 ace bandage."

14 A Yes.

15 Q Do you recall how often he was using a cane at that
16 time?

17 A Well, in this postoperative period they are issued a
18 cane from surgery. This is a normal postoperative course. I
19 probably say a couple times a year to get rid of the cane and
20 throw away the ace bandage.

21 Q What's the reason that you would encourage him to
22 discontinue the use of a cane?

23 A I'm trying to increase the motion and strength to get
24 the best benefit from the surgery.

25 Q How did the surgery go?

1 A The surgery was without major complications. We did
2 have an additional finding of a torn medial -- sorry, a torn
3 lateral meniscus as well as medial meniscus tear, but I would say
4 the surgery for what we were trying to do was successful, which
5 is to recontour those tears.

6 Q And the lateral meniscal tear was not seen on the MRI?

7 A It wasn't well visualized on the MRI. It wasn't picked
8 up. That's right.

9 Q But the other findings that you saw in the knee when
10 you did the arthroscopic surgery, were there any surprises? Did
11 those match what you saw on the MRI?

12 A They did. And a radial tear at the periphery of a
13 meniscus, sometimes those are just not seen on MRI because of the
14 slice. Additionally, because he had continued buckling and
15 locking even after the MRI, that can result from a buckling
16 episode.

17 Q And I forgot to ask you after the left -- well, when
18 you went in for your surgery of his left shoulder, did you see
19 any surprises as compared to what you saw on the MRI of the left
20 shoulder?

21 A Not at all.

22 Q Essentially what you saw inside was what you saw on the
23 MRI?

24 A Yes.

25 Q And postoperatively what treatment did Mr. Villa

1 require for his right knee after surgery?

2 A Postoperatively he had some physical therapy, several
3 rounds of physical therapy. I believe he also -- after the
4 shoulder surgery he had some additional steroid injections trying
5 to move things along. I believe it was primarily physical
6 therapy.

7 Q Okay.

8 A And the use of antiinflammatory medications for
9 discomfort.

10 Q And can you turn to 4/12/22?

11 A Uh-huh. Okay.

12 Q What were his complaints on that date?

13 A Let's see. He was complaining of right knee and left
14 shoulder pain. He continued to have pain associated with those
15 areas of injury.

16 Q And how long after those surgeries are we at at this
17 point?

18 A We are about a year after the shoulder surgery, and
19 we're about a year -- sorry, about a half a year following the
20 knee surgery.

21 Q Please turn to September 15, 2022.

22 A Okay.

23 Q On this date, how was the patient's knee doing, the
24 right knee?

25 A Again, he still had some complaints of pain at the

1 knee. He still had some limited motion at the knee including
2 120 degrees of flexion. Normal is about 135 to 145. He did have
3 full extension. He had crepitus with motion, and that's the
4 cracking and popping you hear in an abnormal joint, at the knee.

5 Q And what is the significance, if any, of the crepitus?

6 A Crepitus usually indicates abnormality of the joint
7 surface, softening of the joint surface consistent with
8 arthritis, and in this case, posttraumatic arthritis from the
9 trauma.

10 Q Okay.

11 And is that something that's going to continue for
12 the plaintiff?

13 A Sure. Any type of arthritis is a permanent change, so
14 yes.

15 Q And did you perform any type of treatment for the right
16 knee on this date?

17 A Let's see.

18 Yes. He had an injection. He had a steroid
19 injection on that date on 9/15/22 to the right knee.

20 Q This is about a year after his surgery?

21 A Correct, about a year after the surgery.

22 Q Can you turn to June 8 of 2023. We are jumping ahead.

23 THE COURT: 2022?

24 MR. VELARDI: 2023.

25 THE COURT: Thank you.

1 MR. VELARDI: June 8, 2023.

2 THE COURT: Thank you.

3 A Okay.

4 Q What were the patient's complaints on this date.

5 A At the knee he had pain with kneeling. He indicated
6 his knee got stiff with long periods of sitting. He had no
7 further buckling or giving way of the knee which, as I told you,
8 was the goal of the surgery. He did complain of right shoulder
9 pain, particularly when reaching behind himself.

10 Q And it is says here: "We have discussed returning to
11 work capabilities in terms of the knee and the shoulder. He
12 should discuss job limitations with his spine surgeon as well."

13 Did you have a discussion with Mr. Villa about
14 returning to work?

15 A Yes.

16 Q And was he at a condition at this point to return to
17 work?

18 A From the standpoint of his knee, he could return to
19 doing some activities. I certainly would not recommend that he
20 do extensive stair climbing or ladder climbing, squatting,
21 kneeling, crawling. Those are things that are painful and
22 increase the pressure on the knee joint.

23 With regard to the shoulder I would not have him
24 do repetitive overhead motion or overhead lifting. I wouldn't
25 have him pushing or pulling significant weights, say greater than

1 20 or 30 pounds, because that puts undue pressure on the rotator
2 cuff which even after surgery is not a hundred percent normal.
3 This is sewn in place with anchors.

4 Then, you know, I thought the primary disability
5 at this point was likely due to his neck and back, particularly
6 his back, so I asked him to discuss those limitations with the
7 surgeon.

8 Q And that's the spinal surgeon?

9 A Yes.

10 Q Can you turn to September 7 of 2023?

11 A Okay.

12 Q And does your note reflect a discussion that you had
13 with the patient about returning to work again?

14 A It does.

15 Q Can you tell the jury what the note says about that?

16 A It says: "We have discussed attempting to return to
17 some form of employment with him. He obviously cannot do any
18 type of heavy lifting, climbing, or work at heights, crawling
19 kneeling, stooping, or working overhead."

20 Q It states here: "He is anxious to discuss returning to
21 some type of work today."

22 A That's correct.

23 Q That was the plaintiff who was anxious to return to
24 work?

25 A Yes.

1 Q At the bottom of this note it says: "He is certainly
2 approaching MMI."

3 A Yes.

4 Q What does that mean?

5 A MMI is the term for maximum medical improvement, which
6 simply means there would be no active treatment recommended at
7 this point, meaning no surgery, no frequent injections or
8 physical therapy at this point; have him do home therapy, the
9 exercises we discussed with him in the past, use oral
10 medications, and things like that.

11 Q Let's see if there is anything else I would like to
12 question you about before we move on to the next point.

13 Let me have you turn to the very last time you saw
14 him which, I believe, is July 17, 2025.

15 A 7/17/25?

16 Q Yes. Can you tell the jury what was his condition the
17 last time you saw Mr. Lluilema?

18 A Sure.

19 At that time he still had complaints of pain at
20 the knee and shoulder. He reported occasional buckling of the
21 knee, but he also reported numbness of the leg.

22 Again, there are multiple reasons that you can
23 have giving way of the leg. It could be a cartilage problem
24 which we addressed. It can also be weakness in the thigh, which
25 I believe is likely what's causing this, because he does have

1 numbness, so there is a nerve issue going on from the low back.
2 I did note, however, that it was difficult to discern from his
3 description whether it was mechanical or from weakness.

4 When I examined him, he still had some limited
5 motion of the knee. He was up to 125 degrees of flexion, and
6 again, full extension. His passive flexion, meaning I could push
7 him further, but he had significant complaints of anterior and
8 posterior pain, front and back pain.

9 He had a negative McMurray's test. That's a
10 physical exam test that we do to see if we can discern meniscus
11 tear. That was negative, so I feel some of the giving way that
12 he was having occasionally was likely due to weakness in the leg
13 from the back.

14 Let's see. He had some atrophy of the right
15 thigh, again an indication there's likely some weakness.

16 At the shoulder he could take his arm out to the
17 side to 160 degrees. I could push him a few more degrees, but he
18 would have what I call positive impingement, meaning that he was
19 having pain with the bones bumping up against one another,
20 impingement.

21 He had good strength.

22 He had pain when we did resisted motion testing.
23 When I tested the rotator cuff muscles for strength, he
24 complained of pain.

25 Q In your chart do you have any billing records for your

1 office?

2 A I have billing records, yes.

3 Q Is it included in your chart, because I do have it
4 here?

5 A It's part of our record, but not my medical record.

6 Q Just put that away. I will show you Exhibit 3, doctor.

7 This is another copy of your office records,
8 doctor. I believe in the rear section there may be some billing
9 records, correct?

10 A Yeah.

11 Q Can you tell the jury what was the total cost of the
12 treatment your office provided to Mr. Villa up until the present
13 time?

14 A Let's see. The total cost looks like \$10,310.13. I am
15 just looking -- oh, that may be the outstanding balance.

16 I don't know that I have it totaled on this. On
17 this record I don't think I have it totaled.

18 Q Okay.

19 THE COURT: Just to be clear, the \$10,000 figure
20 you gave is not the total? That is the outstanding balance
21 or you are not sure?

22 THE WITNESS: I will look right now.

23 THE COURT: Okay.

24 THE WITNESS: Yeah, that's the outstanding
25 balance.

1 THE COURT: Okay.

2 Q Okay.

3 A And that's as of that date, which looks like it was
4 July of 2025.

5 Q Hold on to that exhibit because I do have another
6 question for you relating to that exhibit relating to your chart.
7 And I also want to hand you a couple more exhibits, so just bear
8 with me.

9 A Okay.

10 Q I am now handing you Plaintiff's Exhibit 12, doctor,
11 and Defendant's Exhibit B.

12 (Brief pause)

13 Okay. So, doctor, I have given you Plaintiff's
14 Exhibit 3 which is the New York Ortho Sports and Medicine records
15 that were subpoenaed by the office of Fullerton Beck. I have
16 given you Exhibit 12, the chart that Dr. Matthew Grimm brought to
17 the courthouse yesterday. And I have given you Defendant's
18 Exhibit B, a copy of New York Ortho Sports and Medicine records
19 that were provided to Fullerton Beck about a year-and-a-half ago.

20 A Okay.

21 Q I would like you to turn to the note of March 10 of
22 2020, which is a note by Dr. Grimm, in each exhibit.

23 A Tell me the date again.

24 Q March 10, 2020.

25 A --

1 Q I know it is in there somewhere. We saw it earlier.

2 A I know. It's just that these are front to back which
3 is different than the way I'm used to looking at them.

4 Q I believe it may be dog-eared.

5 A I don't think it is in this copy.

6 Q On the bottom?

7 A I got it.

8 Q Okay. And at the bottom of Page 1 --

9 A Yes.

10 Q -- do you see where it says "Allergies, no known drug
11 allergies"?

12 A On 3/10/20?

13 Q Yes, 3/10/20 -- oh, which exhibit are you looking at?
14 I'm sorry?

15 A I'm looking at B.

16 Q So hold on to that page and just place it to the side
17 and start with Exhibit 3.

18 A Okay.

19 (Continued on next page)

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1 Q Okay. And go to 3/10/2020. And that one is dog-eared.

2 A Okay.

3 Q Okay. Bottom of the first page, do you see where it
4 says "allergies, past medical history, family history, social
5 history and past surgical." And then under "past surgical" it
6 says: "2019, right shoulder surgery following a car accident"?

7 A One second. I'm still not there.

8 Q I'm sorry.

9 A I thought I was, but I'm not.

10 Q Okay.

11 A I have these separated. Unfortunately, these are not
12 in order.

13 Q They are not in order?

14 A I think someone has gone through them.

15 Q Yeah, I'm sorry.

16 A Okay.

17 Q You could take your time.

18 A Okay.

19 Q Somebody ripped them apart.

20 A They are just not in any type of order here.

21 Q I wonder who did that?

22 (Whereupon, there is a brief pause in the
23 testimony.)

24 Q Ms. Scaria has been gracious enough to allow me to use
25 a copy so that we could just speed this up, unless you find it

1 real quick.

2 A I feel like I'm getting close here, but.

3 (Whereupon, there is a brief pause in the
4 testimony.)

5 A And I'm not.

6 Q Okay. Let's just use a copy.

7 A Okay.

8 Q And the question was --

9 (The witness was handed the copy.)

10 A Thank you.

11 Q At the bottom of that page, the very first page, do you
12 see where it says "allergies, past medical history, family
13 history, social history and past surgical"?

14 A Yes.

15 Q And below "past surgical" it says, "2019, right
16 shoulder surgery following a car accident."

17 A Correct.

18 Q Okay. Now, in your chart, go to 3/10/2020, and at the
19 bottom, that's Plaintiff's Exhibit 15, and let the jury know
20 what you see at the bottom of 3/10/2020 on your chart.

21 A Sure. 3/10/2020, Dr. Grimm reports, "No known drug
22 allergies. Noncontributory past medical history, family
23 history, social history," and he reports "2019, right shoulder
24 surgery following a car accident."

25 Q Okay. And that matches Exhibit 3?

1 A Yes.

2 Q Okay. And I'm not going to have you look at the chart
3 that Dr. Grimm used, even though you have it in front of you.

4 Now look at the bottom of the page -- actually, look at
5 the entire 3/10/2020 report in Exhibit B, the one that you set
6 aside there.

7 A Okay, right.

8 Q Do you find what you just read in Exhibit 15 in three
9 on that report?

10 A No.

11 Q No.

12 Do you have any reason to explain why that information
13 is not in that set of records, whereas it's in your set of
14 records and the other records?

15 A Um, the only explanation I can give is that, um, we, at
16 one time, employed a, um, a computer service to help get our
17 records out, and we discovered, at a certain point, that they
18 were missing what are called "sections." The fields were not
19 being sent out. So this must've been during that time.

20 Q And what does that mean that there were no fields being
21 filled out?

22 A That means that certain things like, you know, past
23 medical history or past surgical history would not have been
24 included in what was grabbed by the computer program and
25 generated as our records.

1 Q Okay. And --

2 A That's been corrected, but, um.

3 Q That was going to be my next question.

4 A Yeah.

5 Q Okay. All right.

6 I want you to assume that on December 18th of 2019 the
7 plaintiff fell five to six feet from a ladder and his body
8 struck the hard surface of the floor of an excavated trench. He
9 experienced pain in his right knee and couldn't bend it, and
10 then as you know he came under the care of various treatment
11 providers, including yourself.

12 Assume further that the plaintiff had a prior car
13 accident in which he suffered from pain in his right knee, but
14 he obtained no formal or objective diagnosis of his right knee.
15 And Mr. Lluilema said his pain resolved completely.

16 Assume further that he had the ganglion cyst that you
17 read on the 2011 MRI films that you explained before. Assume
18 further that the plaintiff testified following his resolution of
19 the right knee pain after the car accident, he never had any
20 complaints or issues with his right knee again until his fall
21 from the ladder.

22 Do you have an opinion within a reasonable degree of
23 medical certainty as to whether Mr. Villa's right knee injury,
24 or injuries, as you saw, were caused by the accident on
25 December 18th, 2019; that was the fall from the ladder?

1 A I do.

2 Q What is that opinion?

3 A My opinion is, given the MRI findings, the symptoms,
4 the failure to improve with conservative treatment, um, that
5 began and are documented in his initial emergency room or urgent
6 care notes, that the injury to the knee is causally related to
7 his accident of his fall.

8 Q Okay. Now same assumptions, I won't repeat the
9 beginning of the assumption unless you need me to, except I want
10 you to assume that the plaintiff did not complain about left
11 shoulder pain immediately after his fall, but began to
12 experience, as he stated on the witness stand, pain to his left
13 shoulder shortly after the accident, and that he reported his
14 complaints to his doctors, including yourself, January 2nd,
15 2020. Assume further that he never had any injury or condition
16 to his left shoulder before his fall from the ladder.

17 Do you have an opinion within a reasonable degree of
18 medical certainty as to whether Mr. Lluilema Villa's left
19 shoulder injuries were caused by the fall from the ladder on
20 December 18th of 2019?

21 A I do.

22 Q And what is your opinion?

23 A He was complaining about left shoulder pain when I
24 initially saw him, um, and it goes along with the history of a
25 fall. He certainly had findings on his MRI. He had findings at

1 the time of surgery, and is likely that his injury was related
2 to that fall.

3 Q Is there any explanation as to why he wasn't
4 experiencing that pain initially when he went to CitiMD on
5 December 18th of 2019?

6 A Sure. There are many explanations.

7 MS. SCARIA: Objection.

8 THE COURT: Basis?

9 MS. SCARIA: The doctor can't testify about the
10 plaintiff's subjective complaints of pain.

11 THE COURT: Overruled.

12 A I think there are many explanations. I wasn't there at
13 the emergency room or the urgent care facility. Um, it, it is
14 not infrequent that people who have multiple injuries complain
15 about one versus the other at the time of the accident. Um,
16 that would be my best guess.

17 Q Okay.

18 And you saw him approximately two weeks after the
19 accident?

20 A Right.

21 Q Do you have an opinion within a reasonable degree of
22 medical certainty as to whether Mr. Villa's left shoulder
23 injuries are permanent?

24 A I believe that the loss of motion, the pain, um, are
25 permanent, yes.

1 Q Do you have an opinion within a reasonable degree of
2 medical certainty as to whether his right knee injuries are
3 permanent?

4 A Yes. I believe the discomfort that he feels, the pain,
5 um, is permanent. I believe he has developed some
6 post-traumatic arthritis, not severe, but he has developed
7 post-traumatic arthritis. Um, that is not only permanent, but
8 that, like all arthritis, will get worse over time.

9 Q What is your prognosis for Mr. Villa in the future?

10 A So "prognosis" means to predict the medical future
11 based on the facts that you know. Um, he has had a permanent
12 change in his anatomy at the knee, with loss of some of the
13 padding and stabilizing cartilage. He has developed some signs
14 of post-traumatic arthritis, which is, as I said, not only
15 permanent, but progressive or worsens over time.

16 He has got continued pain in the shoulder associated
17 with weakness, um, pain with certain activities. So, you know,
18 that's -- it's not something that's going to get better. I
19 think that is a relatively poor prognosis.

20 Q Do you have an opinion as to whether Mr. Villa can work
21 as a construction worker now?

22 A Um, I had recommended that he doesn't do things that
23 include climbing stairs, climbing ladders, working overhead,
24 lifting heavy weights, pushing and pulling. Those are all
25 activities that are necessary for a construction worker.

1 MS. SCARIA: Objection.

2 THE COURT: Basis?

3 MS. SCARIA: The doctor is not a vocational
4 rehabilitation expert and cannot testify as to what types of
5 work -- what's involved in certain types of work.

6 THE COURT: That's sustained. The doctor has
7 already testified about the physical limitations.

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

9 Q And I have no further questions for you, Doctor. Thank
10 you very much.

11 A Sure.

12 THE COURT: Thank you.

13 Cross examination.

14 MS. SUED: We are ready to go, your Honor, unless
15 the jury needs a break.

16 THE COURT: What?

17 MS. SUED: We are ready to go.

18 THE COURT: Yeah, let's go.

19 (Whereupon, there is a brief pause in the
20 testimony.)

21 THE COURT: Do you need water, Doctor?

22 THE WITNESS: I'm okay. Thank you.

23 MR. VELARDI: I'm sorry, did the copy of the record
24 that I gave you, do you still have that? I would like to
25 give it back to Ms. Scaria. Did it get lost in the mix?

1 THE WITNESS: I think it's this one -- no, it's not
2 that one.

3 MR. VELARDI: We could do it afterwards, Doctor. I
4 don't want to waste time. I'll get it for you.

5 CROSS EXAMINATION

6 BY MS. SUED:

7 Q Good afternoon, Doctor. How are you today?

8 A Good. Thank you.

9 Q Please feel free to look at your chart if you need to?

10 A Okay.

11 Q To the extent that you could answer my questions yes or
12 no, that would be great, so we can move things fast.

13 You are here, Doctor, as a treating physician for
14 Mr. Lluilema, but also as an expert; correct?

15 A To be frank, yeah, I don't know the difference between
16 those two things.

17 Q Okay. That's fine. Fair.

18 A Um.

19 Q But you are hear to issue an opinion on causation;
20 correct?

21 A Yes.

22 Q And, in fact, I think you just did when Mr. Velardi
23 asked you those last few questions; right?

24 A Right.

25 Q And in order to come to that conclusion, is it fair to

1 say that you need to have examined Mr. Lluilema?

2 A Yes.

3 Q And is it also fair to say that you would have to
4 review some medical records?

5 A Things that are available to me, yes.

6 Q You also, to come to that conclusion, reviewed some
7 objective tests. And you did some of those tests yourself;
8 correct?

9 A I had some ordered, yes.

10 Q Okay.

11 And your causation opinion for this case is that the
12 injuries to the left shoulder and the right knee are -- were
13 caused by the construction accident on December 18th of 2019;
14 correct?

15 A From the things that I reviewed and the history that I
16 had, yes.

17 Q Okay.

18 In addition to everything that we just mentioned, you
19 also have to rely on some subjective complaints and the history
20 that the patient gives to you; is that correct?

21 A Always, yes.

22 Q Okay.

23 So is it fair to say that if Mr. Lluilema was not
24 truthful with his history, that may or may not impact your
25 opinion; correct?

1 A It would depend on what was not being truthful, yes.

2 Q So the answer is yes, it may or may not?

3 A It may or may not, yes, correct.

4 Q Okay. You also reviewed some MRIs to come to that
5 conclusion?

6 A I did.

7 Q And you reviewed an MRI of 2011 for the right knee;
8 correct?

9 A I did.

10 Q Okay.

11 And I believe, you just told this jury that you
12 reviewed that this morning?

13 A That's correct.

14 Q For the first time; is that correct?

15 A That's correct, yes.

16 Q Okay. Did Mr. Villa -- withdrawn.

17 Isn't it true that Mr. Villa did not tell you, on your
18 first visit, that he had had issues on his right knee prior to
19 this accident?

20 A That is correct.

21 Q Okay.

22 And other than the 2011 MRI of the knee, did you review
23 any other prior records for that right knee, the complaints of
24 that right knee?

25 A No.

1 Q So you are not aware as to whether Mr. Villa complained
2 about right knee, let's say, a year before the construction
3 accident?

4 A I don't know the answer to that, yes.

5 Q If I were to tell you that we have records in evidence
6 showing that Mr. Villa complained of right knee approximately a
7 year before this accident, would that make -- would that make
8 you reconsider your causation opinion?

9 A I would have to see the records.

10 Q Fair.

11 A I'm happy to look at them, yeah.

12 Q Okay.

13 Do you know how many times Mr. Villa has been seen at
14 your office over the past six years?

15 A I don't have an answer to the exact number.

16 Q Okay. I did count them.

17 A Great.

18 Q So it is a total of 28 visits --

19 A Okay.

20 Q -- over six years. Would that sound accurate, more or
21 less?

22 A I'm going to believe you.

23 Q In any of those 28 visits, did you document that you
24 reviewed any medical records from -- that predated the
25 construction accident?

1 A No, I didn't.

2 Q Okay.

3 And that includes records not only to the right knee,
4 which we have just established, but also records regarding the
5 lumbar spine and the cervical spine; correct?

6 A Yeah, I was not involved in the treatment of those.

7 Q Doctor, you are not a radiologist; correct?

8 A I'm not a radiologist.

9 Q And radiology is in a specific specialty to the
10 medicine?

11 A Sure.

12 Q And the radiologist that did most, if not all, of the
13 radiology tests for Mr. Villa was Dr. Kolb; correct?

14 A He -- they were done at his facility and he issued a
15 report, yeah.

16 Q Okay.

17 A But then I reviewed all those things.

18 Q You mentioned about -- that you found, in the MRIs that
19 we just saw, that you indicated there were tears; is that
20 correct?

21 A Which MRIs are we talking about?

22 Q Um, let's talk about the left shoulder MRI?

23 A Okay, yes.

24 Q Okay. Would those tears can also be caused by wear and
25 tear?

1 A They can be, sure.

2 Q What about the knee?

3 A Um, those also can be caused by other issues, sure.

4 Q Can you explain to the jury what is the difference
5 between wear and tear and an acute injury?

6 A Um, I mean it's fairly self-explanatory, but "wear and
7 tear" is something that occurs over time. An "acute injury",
8 like this, um, is something that occurs because of an acute
9 specific accident.

10 Q You just gave us the total outstanding bill for your
11 practice, which is approximately \$10,000, a little over?

12 A Yeah.

13 Q Does that bill include treatment provided by Dr. Grimm?

14 A I believe it does, yeah, if I'm reading that correctly.
15 Unfortunately, that's never going get paid. So it's just an
16 outstanding bill.

17 Q Okay.

18 Have you had -- since you reviewed that 2011 MRI of the
19 right knee this morning, have you had a chance to speak with
20 your patient about that MRI and what was the cause of him having
21 that MRI in 2011?

22 A I haven't had a chance to talk to him today.

23 Q Okay.

24 So it's fair to say that your causation opinion, at
25 least with respect to the right knee, is made without the

1 benefit of reviewing the prior medical records, the treatment
2 records for the right knee?

3 A The treatment records, correct. What I reviewed was
4 the anatomic record, which does not show a tear, versus the
5 record which, after the accident, does show a tear, yeah.

6 Q But you don't know what those records say because you
7 have not reviewed them.

8 A That's correct.

9 Q Okay.

10 Doctor, I believe you testified earlier that the office
11 of Gorayeb & Associates refers patients to you?

12 A They have, yes.

13 Q Do you know if Mr. Villa was referred to you by Gorayeb
14 & Associates?

15 A I don't know that for sure, but I'm assuming since the
16 question was asked, that he may have been.

17 Q Okay.

18 So I'll represent to you that Mr. Velardi told this
19 jury during openings that his office referred Dr. Villa (sic) to
20 you?

21 A Sure.

22 Q You have testified on behalf of Gorayeb & Associates
23 numerous times, have you?

24 A I have testified for my patients. Some of them have
25 been represented by the Gorayeb office, yes.

1 Q But you have testified for Gorayeb & Associates for
2 clients of theirs that are not your patients?

3 A That would be rare.

4 Q But you have in the past?

5 A Maybe, yeah.

6 Q Okay.

7 Do you know how many times you have testified for
8 Gorayeb & Associates?

9 A I don't.

10 Q Let's say in the last 18 months, do you know how many
11 times you have testified?

12 A Maybe twice.

13 Q Maybe?

14 A Maybe twice.

15 Q Okay.

16 So do you remember testifying about a month ago for
17 your patient Kelvin Colindres, who was represented by Gorayeb &
18 Associates?

19 A I don't specifically recall that, no.

20 Q I was the defense attorney on this case.

21 A Yeah, you look familiar.

22 Q And you were also paid \$8,500 for that testimony; is
23 that correct?

24 A My office is, yes.

25 Q Okay.

1 And Mr. Colindres was referred to you by Gorayeb &
2 Associates; is that correct?

3 A Again, I don't specifically recall that, but sure.

4 Q I'll represent to you that --

5 A I'm going to agree with you. If you tell me.

6 Q Okay.

7 A I mean, yeah. I don't know those things, but if you
8 tell me that and you represent it as truth, I'll agree with you,
9 sure.

10 Q Okay.

11 So the doctors who treated Segundo Villa, meaning
12 Dr. Weinstein, Dr. Grimm, Dr. Kolb and yourself --

13 A Mm-hmm.

14 Q -- also treated Mr. Colindres; correct?

15 A Sure.

16 Q Okay.

17 Within the last 18 months, did you also testify for
18 your patient John Mora?

19 A John Mora, yes, mm-hmm.

20 Q Okay.

21 And Mr. Mora was also represented by Gorayeb &
22 Associates?

23 A Okay. I don't recall that specifically, but sure.

24 Q And you were also paid \$8,500 by Gorayeb & Associates
25 to testify in court; is that correct?

1 A I'm not paid to testify. I'm paid to cancel my office.
2 I'm paid to come here and give my testimony.

3 Q That's fine. You are compensated for your time away
4 from your office.

5 A Exactly right.

6 Q Yes.

7 And Mr. Mora was referred to your office by Gorayeb &
8 Associates; correct?

9 A Again, if you are representing that as truth and you
10 are guaranteeing it, I'll agree with you.

11 Q Well, I have all the transcripts here --

12 A Right.

13 Q -- from all the cases.

14 A That's fine.

15 Q So I represent to you that I do know that, but.

16 A Okay, good. I'll agree with you.

17 Q The doctors who treated Segundo Villa, the doctors who
18 treated John, um --

19 A Mora.

20 Q -- Mora, and the doctors who treated Kelvin Colindres,
21 that means Dr. Weinstein, Dr. Grimm, Dr. Kolb and yourself, also
22 treated John Mora; is that correct?

23 A Sure. Every doctor has referral patterns. I refer
24 doctors -- patients, rather, to doctors who I know and who I
25 know do good work. Those include Grimm, those include

1 Weinstein. Dr. Kolb is just a facility, in my mind, that has an
2 MRI machine.

3 Q Okay. Fair.

4 A And I refer to other physicians as well.

5 Q Okay.

6 And John Mora also had a lumbar fusion, if you
7 remember.

8 A I don't.

9 Q As Mr. Villa had --

10 A Okay.

11 Q -- in this case. Was there an answer?

12 A I said, "Okay." Again, I think you are just telling me
13 that as a fact, and I'll agree with you. I don't recall exactly
14 what Mr. Mora's surgeries were. Again, I didn't do that
15 surgery, so it's not in my memory bank.

16 Q That's fine.

17 MS. SCARIA: Your Honor, if you could ask the
18 doctor to keep the mic closer.

19 A I'm leaning in as far as I can.

20 THE COURT: I think it might be on your end,
21 because I'm not having any problem hearing.

22 MS. SCARIA: It is on my end. And it would help me
23 if --

24 THE COURT: I'm saying there's other options
25 available to you, but he is literally up next -- unless the

1 microphone was in his mouth, he could not be much closer to
2 the microphone.

3 MS. SCARIA: I understand, your Honor. What was
4 trying to say was sometimes the Doctor leans back. When the
5 Doctor leans back I have trouble hearing. I'm happy to use
6 whatever assistive devices the Court has.

7 THE COURT: We'll get you that.

8 Just try to be mindful to stay close. Thank you.

9 Q Doctor, within the last 18 months, did you also testify
10 for one of your patients, Yester Castillo?

11 A I don't recall when that was. If you tell me it was
12 within 18 months, sure.

13 Q It will be easier, Doctor, if you say yes or no.

14 A But, again, you are asking the question, "do I
15 remember", and I don't necessarily remember. It's not a big
16 part of my practice. If you say to me you did, I'll agree with
17 you.

18 Q Okay.

19 And Mr. Castillo was also represented by Gorayeb &
20 Associates; correct?

21 A If you say so, yes.

22 Q Were you also paid \$8,500 to testify in court on behalf
23 of Yester Castillo?

24 A My office would have been paid for my time, sure.

25 Q Was Mr. Castillo referred to your office by Gorayeb &

1 Associates?

2 A I don't know the answer to that.

3 Q Okay.

4 So I have your testimony:

5 "As a matter of fact Mr. Castillo was referred to you
6 by the plaintiff's firm in this case; correct?

7 "ANSWER: I don't know about that. It's probable."

8 A Okay.

9 Q The doctors who treated Mr. Villa, Kelvin Colindres,
10 John Mora, and now Yester Castillo, that is Dr. Weinstein,
11 Dr. Grimm, and Dr. Kolb, who did the radiology studies, also
12 treated Yester Castillo; is that correct?

13 A If you say so, yes. That would not be unusual. Those
14 are doctors who I refer to frequently.

15 Q Within the last 18 months, did you also testify for
16 Wilson Mejia?

17 A Mr. Mejia is a patient of mine. I don't recall when
18 that was.

19 Q Okay.

20 Mr. Mejia was also represented by Gorayeb & Associates;
21 correct?

22 A Again, if you say so. That's not part of what I look
23 at when I'm treating a patient.

24 Q And you were also paid \$8,500 by Gorayeb & Associates
25 to testify in court on behalf of your patient, Wilson Mejia

1 correct?

2 A My office absolutely would have been paid for my time,
3 yes.

4 Q And Mr. Mejia was referred by your office by Gorayeb &
5 Associates; correct?

6 A If you say so. Again, I'm just -- you are --

7 Q That's fine. I understand, but I have to do this for
8 the record.

9 A If you could ask it by saying that he was, I'll agree
10 with you, but you are asking me for my memory, and I don't know.

11 Q That's fine.

12 The doctors who treated Mr. Segundo Villa, Kelvin
13 Colindres, John Mora, Yester Castillo, also treated Wilson
14 Mejia, and that is Dr. Grimm and Dr. Kolb; is that correct?

15 A Again, if you say so. That would not be Mejia. Those
16 are doctors that I would refer to frequently. They are not the
17 only doctors I refer to, but I do refer to them frequently.

18 Q So this is actually a great example for that, because
19 in the case of Wilson Mejia, surprisingly Dr. Weinstein did not
20 treat the plaintiff.

21 A Why is that surprising?

22 Q Instead Dr. Paul Brisson did the surgery for Wilson
23 Mejia. Do you also refer patients to Dr. Paul Brisson?

24 A I have, sure.

25 Q Are you aware that Dr. Paul Brisson is scheduled to

1 testify in this case tomorrow?

2 A I'm not aware of that.

3 Q Okay.

4 Within the last 18 months you testified for another
5 patient of yours, Pedro Martinez.

6 A Okay.

7 Q Mr. -- I'm sorry. Pedro Ramirez.

8 A Okay.

9 Q Mr. Ramirez was also represented by Gorayeb &
10 Associates; correct? Yes or no --

11 A I don't know.

12 Q -- or you don't remember?

13 A I don't remember. It's not part of what I look at.

14 Q And you were also paid \$8,500 by Gorayeb & Associates
15 to testify in court for Mr. Ramirez; is that correct?

16 A Again, my office absolutely would have been paid for my
17 time.

18 Q And Mr. Ramirez was referred to your office by Gorayeb
19 & Associates; correct?

20 A If you say so.

21 Q Okay. I didn't say it.

22 Mr. Gasman (phonetic) who worked, or used to work
23 because he is now retired, I believe, for Gorayeb & Associates
24 said it in that trial?

25 A I don't know who that is.

1 Q And the doctors who treated Segundo Villa, Kelvin
2 Colindres, John Mora, Yester Castillo, Wilson Mejia, Dr. Grimm
3 and Dr. Kolb, and yourself, also treated Pedro Ramirez; is that
4 correct?

5 A Again, it would not be unusual. I wouldn't disagree
6 with you if you told me it was correct.

7 Q Okay.

8 In this specific case, Dr. Weinstein did not perform
9 the lumbar spine surgery to Mr. Ramirez. In fact, it was
10 Dr. Paul Brisson; is that correct?

11 A Again, I don't know. If you tell me that's who it was,
12 I'll believe you. I refer some patients to Dr. Brisson as well.

13 Q Okay.

14 A There are a number of physicians that I refer to.

15 Q Within the last 18 months, did you also testify for
16 your patient, Jose Ballen?

17 A Oh, Ballen, yes.

18 Q Okay, Ballen, thank you.

19 Mr. Ballen, or I believe his estate, was represented by
20 Gorayeb & Associates; correct?

21 A Again, I don't recall.

22 Q Mr. Ballen was also referred to you by Gorayeb &
23 Associates; correct?

24 A Okay.

25 Q And the doctors who treated Segundo Villa, Calvin

1 Colindres, John Mora, Yester Castillo, Wilson Mejia, Pedro
2 Ramirez, and now Mr. Ballen, that is Dr. Weinstein, Dr. Grimm
3 and Dr. Kolb also treated Mr. Ballen; is that correct?

4 A I don't recall Mr. Ballen having lumbar surgery, but if
5 you tell me he did, I'll agree with you, if you'll represent
6 that. I don't know. I don't recall. Mr. Ballen unfortunately
7 died.

8 (Continued on the next page.)

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1 CROSS-EXAMINATION (CONTINUING)

2 BY MS. SUED:

3 Q That's fine. We can move on. Within the last 18
4 months you also gave testimony in a case involving Inocencia
5 Martinez, is that correct?

6 A I know Mr. Martinez.

7 Q Again, Inocencia Martinez was referred to you by
8 Gorayeb & Associates?

9 A Okay.

10 Q And you also -- you were also paid 8,500 by Gorayeb &
11 Associates to testify in court for Inocencia.Martinez, is that
12 correct -- for your practice, right, you were compensated for
13 your time?

14 A That's right, yeah.

15 Q Within the last 18 months you also testified for
16 another patient of yours, Josefina Olivera; is that correct?

17 A I don't recall that.

18 Q In fact, Mr. Velardi was the attorney for that?

19 A I don't recall that. If you tell me that's true, yeah.
20 I don't recall that. It must have been a while ago.

21 Q So that's a total of at least nine patients that you
22 have testified for Gorayeb & Associates within the last 18
23 months, right?

24 A Okay.

25 Q Having gone through this, does that refresh your

1 recollection or would you like to change your testimony as to
2 whether you have testified about twice within the last 18 months
3 for Mr. Velardi's office?

4 A It refreshes my recollection. Again, I don't really
5 involve myself who the attorneys are until you get to court, so
6 it's not something that's in my radar. So fine, nine times.
7 That's twice a month -- one time every two months, rather.

8 Q So if we count those nine times by 8,500, that's
9 approximately a little over \$70,000 for that testimony for the
10 last 18 months, is that correct?

11 A In the last year-and-a-half, sure.

12 Q You would not remember income that comes to your
13 practice which is approximately \$70,000 just from one firm, is
14 that correct?

15 A Not individually, no.

16 Q Okay.

17 Dr. Grimm who testified yesterday and this
18 morning, he works for your practice, is that correct?

19 A He does.

20 Q He testified he is salaried employee for you, is that
21 correct?

22 A That's correct.

23 Q And he gave that answer when Ms. Scaria, or maybe
24 Mr. Velardi, asked him about the fee that your office was
25 receiving for him being here away from the practice.

1 A Yes.

2 Q Does that mean that Dr. Grimm does not get that \$8,500
3 but your practice does as his employer?

4 A Of course. I don't get that and he doesn't get that.
5 The practice gets that, then we get paid our salary.

6 Q So if in all of these cases we just went through
7 Dr. Grimm also testified, that means that's an additional \$70,000
8 for your practice for testimony provided to Gorayeb & Associates?

9 A Sure.

10 Q Okay.

11 Would you agree that repeated testimony for the
12 same firm within the last 18 months in similar types of cases
13 which are all construction cases except for Ms. Olivera's case
14 which, I believe, was a motor vehicle accident, do you think that
15 that may raise concerns about your impartiality to give
16 testimony?

17 A No. I think I am very straightforward in my testimony.
18 I made it very clear that this gentleman got some real
19 improvement from our surgery. He still has ongoing permanent
20 problems. I don't think it raises a concern. It certainly
21 doesn't concern me.

22 Q Okay.

23 A As you said, these are construction accidents. There
24 are a limited number of doctors that treat construction
25 accidents, which is why we're referred in a similar group of

1 physicians at times. So no, that's not a concern of mine at all.

2 THE COURT: I'm sorry. I want to clarify, doctor.

3 Did you say there are only a limited number of
4 doctors that treat patients from construction accidents?

5 THE WITNESS: That's correct.

6 THE COURT: Thank you.

7 Q Do you recommend all of your patients, construction
8 accidents or not, for left shoulder surgery?

9 A Absolutely not.

10 Q Do you recommend all your patients for right knee
11 surgery despite whether they were involved in a construction
12 accident or not?

13 A If they don't have a right knee problem? I don't
14 understand the question.

15 Q Sure.

16 A Every single patient that comes to me? Someone with a
17 toe injury? No, absolutely not.

18 Q Is it all the patients that are referred to you by
19 Gorayeb & Associates?

20 A Absolutely not.

21 Q Doctor, you maintain your records in an electronic
22 system, correct?

23 A That's correct.

24 Q Is it fair to say that your practice sends records of
25 your patients to attorneys or anyone else who requests records

1 provided they have a proper authorization to receive them?

2 A Yes.

3 Q Who has access to that system?

4 A My office.

5 Q And would that be all the 14 employees in your office?

6 A Yes.

7 Q Okay.

8 Is it fair to say that if my firm, Fullerton Beck,
9 had a proper authorization to obtain those records, specifically
10 for Mr. Villa in this case, then your office would have provided
11 those records to us?

12 A To the best of our ability, yes, absolutely.

13 Q Is it fair to say that those records that would be
14 provided by your office to my office should be identical to the
15 ones that you have in your electronic system?

16 A Should they be? Yes. As I explained earlier, there is
17 occasionally a glitch. We had a glitch that has been corrected.
18 Every other copy has it. Unfortunately the one that you got at
19 the time does not. We have sent out multiple copies of the
20 records. Every other one has that, unfortunately yours did not.

21 Q Given your experience treating patients that have
22 injuries as a result of a construction accident who are also
23 involved in a lawsuit, you don't think it is critical that the
24 records that the defendants receive have a note as to whether
25 your office reviewed prior medical records for the same injuries

1 that they are claiming in the lawsuit?

2 A The only thing that was missing was a note about a
3 right shoulder surgery. That was in my note. Unfortunately,
4 because of a computer problem it wasn't in your note. Obviously
5 we corrected that problem because it is a problem. I agree with
6 you that it is a problem, but it's not nefarious. It's not
7 something we planned. It wouldn't do us any good to not give you
8 that.

9 Q Doctor, the last time you saw Mr. Villa was in July of
10 2025, is that correct?

11 A That's correct.

12 Q Okay. And do you know how many -- withdrawn.

13 Did you make any recommendations to Mr. Villa at
14 that appointment?

15 A Let's see --

16 Q Let me ask you another question.

17 Did you make any recommendations for a left
18 shoulder injection to Dr. Villa [sic] at that appointment?

19 A Mr. Villa.

20 Q Mr. Lluilema Villa, yes.

21 A No.

22 Q Did you make any recommendations at that visit of right
23 knee injection?

24 A Not at that time, no.

25 Q Did you make any recommendations to Mr. Lluilema Villa

1 to continue or have additional physical therapy?

2 A Not at that time, no.

3 Q Did you make any recommendations at that visit for
4 additional MRIs to the left shoulder or to the right knee?

5 A Not at that time, no.

6 Q Did you make any recommendations at that July 2025
7 appointment for any future surgeries to either the left shoulder
8 or the right knee?

9 A Not at that time, no.

10 Q So no injections, no follow-up MRIs, no physical
11 therapy, and no surgeries were recommended for either the left
12 shoulder or the right knee at that appointment in July of 2025;
13 is that correct?

14 A He didn't need them at that time. That's correct.

15 Q Doctor, for your causation opinion, do you now take
16 into account an attorney's statements to make them?

17 A I don't understand that question.

18 Q So, Mr. Velardi said here a few minutes ago and asked
19 you if you had an opinion with respect to the left shoulder and
20 the right knee within a reasonable degree of medical certainty
21 and he told you to assume several things. And we can go back to
22 the transcript if you don't remember. Do you remember that
23 question?

24 A I remember that question, yeah.

25 Q Those were assumptions given to you by Mr. Velardi.

1 A Correct.

2 Q Are you taking that into account now to make your
3 causation opinion?

4 A Am I -- I don't understand the question.

5 MR. VELARDI: Objection. I don't understand the
6 question either.

7 THE COURT: The objection is sustained. His
8 previous opinion rendered on causation was based on the
9 hypothetical provided to him.

10 MR. VELARDI: Right.

11 Q So if I were to tell you, Dr. Kaplan, that I want you
12 to assume that Mr. Villa had complaints of the right knee a year
13 prior to this accident, records you did not review, can you tell
14 within a reasonable degree of medical certainty whether that
15 right knee injury is related to the construction accident?

16 MR. VELARDI: Objection.

17 THE COURT: Overruled.

18 You can answer the question.

19 A I would have to see what those complaints were.
20 My concern --

21 Q So why if I'm asking you to assume some facts you tell
22 me that you need to review this record, but when Mr. Velardi
23 asked you to assume some facts, you said that you still had the
24 same opinion?

25 A Because the facts that he presented to me are things

1 that I am aware of. What you are asking me to do is to assume
2 something based on what I have not seen. And in order to make
3 the opinion whether the prior problems were buckling and giving
4 out of the knee versus just pain, that makes a huge difference in
5 my ability to discern those things. So I am asking you to be a
6 little more specific. That's all.

7 Q So is it your testimony that you cannot give at this
8 point a causation opinion within a reasonable degree of medical
9 certainty because there are records in evidence that show right
10 knee complaints a year before the accident? Is that your
11 testimony?

12 A No. My testimony is with a reasonable degree of
13 medical certainty, which is the standard we are held to, from
14 what I know, I believe that his symptoms that brought him to
15 surgery -- the buckling, the locking, the tear in the meniscus --
16 are likely, because I have not seen those things you are talking
17 about, but I'm glad to look at them if you show them to me, but
18 at this point my opinion is that it's from the accident.

19 Q Are you aware that those records that you are asking me
20 to provide to you now so you can make an opinion about them,
21 where in the possession of Gorayeb & Associates?

22 A I would have no way to know that.

23 Q Are you aware that Gorayeb & Associates represented
24 Mr. Segundo Lluilema Villa in the motor vehicle accident?

25 A No.

1 Q Are you aware they reached a settlement in that
2 lawsuit?

3 A It's not germane to me, no.

4 Q Okay.

5 A But I don't understand why --

6 Q Thank you, doctor. I have no further questions.

7 THE COURT: Thank you.

8 Redirect?

9 MR. VELARDI: Yes. Just a couple of things.

10 REDIRECT EXAMINATION

11 BY MR. VELARDI:

12 Q I think the only question I have, doctor, is with
13 respect to Ms. Sued's questions about your last appointment with
14 the plaintiff on July 17, 2025.

15 You had indicated at that time that there were no
16 recommendations for MRIs, injections, physical therapy, or future
17 surgery, correct?

18 A Sure.

19 Q But do you have any recommendations for -- well, let me
20 not ask that way.

21 Will Mr. Villa need treatment for his right knee
22 or left shoulder at some point in the future going towards the
23 remainder of his life?

24 MR. SCARIA: Objection.

25 THE COURT: Basis?

1 MR. SCARIA: Beyond the scope of cross.

2 THE COURT: No, it's not. Overruled.

3 A My opinion is that given what I know about his knee, he
4 will likely need injections every now and then. Sure.

5 Q Will he need MRIs in the future for that?

6 A Depending on his symptoms.

7 Q Will he need physical therapy in the future for that?

8 A Likely, yes.

9 Q And that's for both right knee and left shoulder?

10 A Yes.

11 Q Is there any other treatment he might need?

12 A Oral medications and, you know, I have him doing -- I
13 have recommended him doing home exercises and things like that.

14 Q Dr. Grimm testified yesterday he is going to see
15 Mr. Villa in the future, but I don't remember what date that was.
16 Will he need to see you again potentially?

17 A I assume he will, yeah. I don't know if we have any
18 appointments for him at this point, but yeah.

19 Q Will he need to see Dr. Grimm in the future?

20 A Probably, yes.

21 Q Is there any likelihood -- let's say more likely than
22 not that he will need a surgery to his right knee in the future?

23 MS. SUED: Objection, your Honor.

24 A I can't answer.

25 THE COURT: Basis?

1 MS. SUED: There are no recommendations of surgery
2 anywhere in the records.

3 MR. VELARDI: I am asking him now.

4 THE COURT: You crossed him on whether that was
5 his recommendation in July, so I am going to allow it.

6 MR. VELARDI: And he answered.

7 THE WITNESS: I said I can't answer that at this
8 point. He certainly doesn't have symptoms at this point
9 that need surgery.

10 THE COURT: Okay.

11 Q Is it possible?

12 A Of course it's possible.

13 Q What about for the left shoulder?

14 A I would have the same answer. He doesn't need it now.
15 I'm not recommending anything now. Is it possible? Sure.

16 Q And why is it possible?

17 A Any time you permanently change the anatomy of a body
18 part from an injury and then subsequent surgery, you have a
19 higher likelihood of needing a follow-up surgery than someone who
20 has not injured those areas.

21 Q I have no further questions. Thank you, doctor.

22 THE COURT: Is there an application for recross?

23 MS. SUED: Very brief on futures.

24 THE COURT: Okay.
25

1 RE CROSS-EXAMINATION

2 BY MS. SUED:

3 Q Do you know how many injections to the left shoulder
4 you did to Mr. Villa?

5 A I'm sorry?

6 Q How many injections to the left shoulder you did to
7 Mr. Villa?

8 A I don't recall exactly. I can go through the chart.

9 Q That's fine. I went through that. You did three
10 injections to the knee. Do you know when the last one was?

11 A I don't recall.

12 Q The last one was November 19 of 2021, is that right,
13 doctor?

14 A If you say so, yes.

15 Q So Mr. Villa has not had a left shoulder injection
16 since four years at this point, is that correct?

17 A If that's the math, yes.

18 Q Do you know how many right knee injections you did to
19 Mr. Villa?

20 A I believe only one.

21 Q It is only one.

22 Do you remember when that injection was performed?

23 A We said it earlier. I don't recall the exact date.

24 Q That's September 15, 2022. So it's fair to say that
25 Mr. Villa has not had a right knee injection since 2022, correct?

1 A Okay. Yes.

2 Q Approximately three years?

3 A Sure.

4 Q And do you know when was the last time that Mr. Villa
5 had physical therapy?

6 A I don't recall the last physical therapy visit, but,
7 again, he is doing home exercises because the therapy has been
8 discontinued.

9 Q It has been over five years since Mr. Villa did any
10 physical therapy to the left shoulder and the right knee, is that
11 correct?

12 A Again, I don't know exactly when, but there are limits
13 that can be approved.

14 Q Do you have any indication at this point that anything
15 was denied to him?

16 A That what?

17 Q That any treatment was denied to him at this stage?

18 A I am sure treatment was denied to him.

19 Q You are sure? Do you have any proof that any treatment
20 has been denied to him?

21 A I don't have anything in my notes.

22 Q Okay.

23 When you say "possibly," "might," that's not
24 within a reasonable degree of medical certainty, is that correct,
25 he might be okay like he was in July of 2025 when you saw him and

1 you did not recommend any future treatment; is that correct?

2 A The likelihood is that over time he will have problems.

3 Q So if --

4 A I can't predict whether he will require an injection.

5 Q Correct, but --

6 A The likelihood is he will have problems that will
7 probably need an injection.

8 Q If he goes tomorrow to your office and complains and
9 gives you the same complaints that he gave you just a few months
10 ago in July of 2025, there will be no recommendation for any
11 future medicals to Mr. Villa; is that correct?

12 A On that day that's correct, if it's the same.

13 Q Thank you.

14 THE COURT: All right.

15 Doctor, thank you, you are excused. Have a nice
16 day.

17 (Witness excused)

18 THE COURT: Ladies and gentlemen of the jury, that
19 concludes our work for today. Thank you very much for
20 putting in a full day. You are excused. Have a nice
21 evening. I will see you tomorrow at 9:30.

22 COURT OFFICER: All rise. Jury exiting.

23 (Jury steps out of courtroom)

24 THE COURT: Counsel, anything else? I know you
25 started to address something before we called the doctor.

1 Is it something that needs to be done on the record?

2 MR. VELARDI: I think it should be done on the
3 record. And there's also something else I was going to put
4 on the record this morning but your Honor asked me to wait
5 so that we could get the jury out and get going with the
6 trial.

7 THE COURT: Okay. So what would you like to
8 address at this time?

9 MR. VELARDI: Your Honor, with respect to
10 yesterday's granting of the missing witness charge --

11 THE COURT: That's deferred for the charging
12 conference.

13 Anything else?

14 MR. VELARDI: Okay.

15 THE COURT: That's really when we deal with that.
16 I put you on notice that it might be coming so that you
17 could do what you needed to do before closing, but I'm not
18 making a final decision before the charging conference.

19 MR. VELARDI: Okay. So I will save that, then.

20 The other thing I began to raise earlier was the
21 judicial subpoena that your Honor signed two days ago --

22 THE COURT: This needs to be on the record about
23 the subpoena?

24 MR. VELARDI: I don't know that it needs to be on
25 the record.

1 THE COURT: Because it's 20 minutes before 5:00.
2 I would like to let the reporters go if we don't need them.

3 MR. VELARDI: Well, I was going to make an
4 application with respect to it unless your Honor thinks I
5 should do it in writing --

6 THE COURT: Okay.

7 MR. VELARDI: -- but this facility, Joyce
8 Goldenberg, which is also called Central Park Physical
9 Medicine, has not responded to this judicial subpoena. I
10 don't know why. They are in violation of it. It's a
11 so-ordered subpoena by you.

12 THE COURT: Did you call and ask them why?

13 MR. VELARDI: Yes. The process server has been on
14 the phone with them or trying to get in touch with them and
15 is just not getting anywhere.

16 THE COURT: I don't know what that means.

17 So you called and said, Hey, why haven't you
18 complied with my judicial subpoena? And they said?

19 MR. VELARDI: Well, the process server is no
20 longer here. He --

21 THE COURT: He is right in back of you.

22 MR. VELARDI: He is? Okay. So if you give me
23 five minutes to talk to him --

24 THE COURT: I can't gave you five minutes and then
25 go back on the record. I can wait myself and you can talk

1 to me about it, but the reporters really have to go by 4:45.

2 MR. VELARDI: The bottom line is that they are not
3 complying with the subpoena. They are in contempt, civil
4 contempt. I want to enforce the subpoena. I could do so by
5 order to show cause or by verbal application, whatever your
6 Honor prefers.

7 THE COURT: I don't see how you can make an
8 application for relief without notifying them. That would
9 be a little due process problem, right?

10 MR. VELARDI: Okay. I will do it by order to show
11 cause.

12 THE COURT: Thank you. Have a nice evening.

13 (Proceedings adjourned to
14 Friday, October 10, 2025, 9:30 a.m.)
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