

In The Matter Of:
Segundo Fabian Lluilema Villa v.
West 38 RES LLC, SITE C GC LLC

Dr. Brisson/Dr. Goldman
October 10, 2025

Michael Ranita

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Min-U-Script® with Word Index

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK : PART 57

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3 SEGUNDO FABIAN LLUILEMA VILLA,

4 Plaintiff(s),

5 - against -
6

7 WEST 38 RES LLC, SITE C GC LLC,

8 Defendant(s).

9 -----X

10 Index No. 151515/2020

11 October 10, 2025
12 60 Centre Street
New York, New York

13 B E F O R E: HONORABLE SABRINA KRAUS, JSC, and a Jury

14
15 A P P E A R A N C E S:

16 GORAYEB & ASSOCIATES, PC
17 Attorneys for Plaintiff(s)
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18 BY: DAMON VELARDI, ESQ.

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22 BY: SUSAN APRIL SCARIA, ESQ.
ALEXANDRA ANDREA SUED, ESQ.
23
24
25

1 THE COURT: Let's go on the record.

2 Good morning, everyone.

3 MR. SCARIA: Your Honor, my office just received
4 from --

5 THE COURT: I think you need to speak into the
6 mic.

7 MR. SCARIA: My office just received from
8 plaintiff's counsel's office a notice of an examination
9 performed by Dr. Brisson, who is expected to take the stand
10 in a few minutes, of an examination performed on October 3,
11 which was a day after the 3101(d) disclosure was served. I
12 have never seen the note before. Based on this late
13 disclosure, defendants are renewing their application to
14 once again preclude the testimony of the late-disclosed
15 expert Dr. Paul Brisson particularly in light of the fact
16 that the plaintiff was examined by Dr. Brisson after the
17 3101(d) was disclosed by plaintiff's counsel's office
18 without a narrative report. 3101(d) makes mention of an
19 examination. I did ask Mr. Velardi yesterday about it. I
20 believe he was uncertain but did send over this morning the
21 report which I have not even had an opportunity to review
22 yet because I was driving here, but my colleague informed me
23 that it was sent. So we again renew our application to
24 preclude the expert.

25 In addition to the fact that we just received that

1 disclosure, again we reiterate the fact that the 3101(d)
2 that was drafted by the attorney's office, albeit detailed,
3 was detailed based on the narrative report issued by the
4 treating surgeon, Dr. Weinstein, who we know is not test --
5 well, so far is not testifying, and expounds beyond the
6 scope of the expert disclosure of Dr. Weinstein in that the
7 Brisson 3101(d) talks about review of medical -- excuse me,
8 MRI reports from 2018 related to a motor vehicle accident
9 which none of the treating doctors had reviewed. And the
10 defendants were never on notice of any witnesses prior to
11 October 2, 2025 intending to take the stand to testify about
12 a review of those.

13 MR. VELARDI: Your Honor, similar to my opposition
14 to the last application on Dr. Brisson, it's a last minute
15 situation. He is replacing Dr. Weinstein. My disclosure
16 went out as soon as possible in order to provide as much
17 notice in advance as I could to the defendants --

18 THE COURT: As soon as possible was when?

19 MR. VELARDI: October 2, I believe.

20 THE COURT: What about this October 3 examination?

21 MR. VELARDI: Well, he saw the patient so that,
22 you know, he could at least have that opportunity to see the
23 patient and examine the patient. He developed his note not
24 immediately because he has a staff that has to put it
25 together and, you know, it takes time. Again, this is last

1 minute because Dr. Weinstein was unavailable and we needed
2 to find a replacement for Dr. Weinstein very, very quickly.

3 The note is a two-and-a-half page, maybe three
4 page total note. It's not complicated. It -- you know,
5 essentially it indicates this was a physical exam. You
6 know, it's what he observed when he met the client on
7 October 3.

8 MR. SCARIA: Your Honor, if I may say one other
9 thing?

10 Plaintiff's counsel's disclosure served on
11 October 2 in the evening indicates that the -- that in part
12 Dr. Brisson intended to testify based on an examination
13 performed. According to the examination note disclosed this
14 morning, the examination was performed on October 3.

15 MR. VELARDI: Yeah, because my disclosure is in
16 anticipation of what the witness will testify. It's my
17 disclosure. It's just like a pleading, essentially, where
18 I'm making -- this is what I intend to prove through
19 Dr. Brisson. This is what his basis of testimony will be.
20 Then, you know, the examination occurs, it occurs the next
21 day. It's not like I was, you know, making false statements
22 in the 3101(d).

23 THE COURT: Okay. I've heard enough from both
24 sides. I understand your positions.

25 I am granting the application only to the extent

1 of precluding any testimony or reference to the 10/3 exam.
 2 And as far as Dr. Brisson testifying about the 2018 films,
 3 we went over that. That was pursuant to a stipulation that
 4 the parties made on the record, so I'm not going to preclude
 5 that testimony. I also previously ruled I'm going to allow
 6 Dr. Brisson to step in in place of Weinstein in light of
 7 what happened. But I agree that the 10/3 exam is not fair
 8 game, and I am precluding any testimony about that
 9 examination.

10 MR. VELARDI: Okay. So I will have to notify the
 11 witness that he is not going to testify about that before we
 12 call him to the stand.

13 THE COURT: Understood.

14 MR. SCARIA: Thank you, your Honor.

15 I want to make one exception to your Honor's
 16 ruling only to the extent that your Honor referenced the
 17 stipulation regarding the 2018 motor vehicle accident.
 18 Although there was a stipulation to allow Dr. Brisson and
 19 plaintiff's treating physicians to review the 2018 medical
 20 records and films, there was no stipulation as to any
 21 damages witness by plaintiff testifying as to causation
 22 based on that review.

23 THE COURT: My understanding and it seemed to me
 24 that the clear intent of the parties when they entered that
 25 stipulation was to allow plaintiff's experts to review and

1 comment on it. So that's how I'm looking at it.

2 Thank you.

3 MR. SCARIA: Thank you, your Honor.

4 MR. VELARDI: I will be right back, your Honor?

5 THE COURT: Yes. And let's please get going.

6 (Brief pause)

7 MR. VELARDI: Your Honor, just note my exception
8 to the ruling on the preclusion of the report.

9 THE COURT: So noted. And I always say that I
10 assume everybody has an exception to every adverse ruling.

11 COURT OFFICER: All rise. Jury entering.

12 (Jury enters courtroom.)

13 THE COURT: Good morning. Please be seated.

14 I see you are all dressed for fall today.

15 Okay. We are ready to hear from plaintiff's next
16 witness.

17 MR. VELARDI: Thank you your Honor. Plaintiff
18 calls Dr. Paul Brisson.

19 (Paul-Marie Brisson, MD takes the
20 witness stand and is duly sworn/affirmed.)

21 THE CLERK: State your name and business address
22 for the record.

23 THE WITNESS: Paul-Marie Brisson, 51 East
24 25th Street, 6th floor, New York, New York, 10010.

25 PAUL-MARIE BRISSON, MD, having been called on behalf of

1 Plaintiff, first having been duly sworn, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. VELARDI:

5 Q Good morning, Dr. Brisson. Thank you for being here
6 this morning.

7 A Also good morning to you.

8 Q If you could, please pull that mic a little closer or
9 put your face a little closer to the microphone because the
10 acoustics here are not good.

11 A Use my nice microphone voice?

12 Q Yes. Perfect.

13 Dr. Brisson, are you a physician licensed to
14 practice medicine in the State of New York?

15 A Yes, I am.

16 Q How long have you been licensed to practice medicine in
17 the State of New York?

18 A 1992.

19 Q Since 1992? Okay.

20 A So a while back, yeah.

21 Q Are you licensed to practice medicine in any other
22 state?

23 A Yes, I am.

24 Q What state?

25 A Quite a few, actually, but more local in Jersey. In

1 the last two years I have obtained licenses in other states
2 including Florida in the southwest.

3 Q How long have you been licensed in New Jersey?

4 A Since 2005.

5 Q What is your medical specialty?

6 A I am a board certified orthopedic surgeon and I do
7 spinal care.

8 Q And can you tell the jury what that means in terms of
9 what type of doctor that is?

10 A Well, orthopedic surgeon is bone and joint and
11 articular pain, bone pain, bone disease in general, especially
12 when it comes to function.

13 An individual like myself subspecializes in spinal
14 care assessment and, of course, surgery if needed to cervical,
15 thoracic, lumbar segments; corrective surgeries, pain surgeries
16 if there is entrapment of roots of nerves, so on and so forth.

17 Q Where did you earn your medical degree?

18 A I went to the University of Montreal, so that's the
19 accent, from there. I did my internship at McGill and then went
20 three years in a remote location in Canada where I was a family
21 practitioner in a very far, far remote community, a lovely place,
22 and then came back to McGill in Montreal for orthopedic surgery.
23 And then two years of spinal surgery fellowship --

24 THE COURT: Dr. Brisson, I am having a very hard
25 time understanding what you are saying, so louder and slower

1 would be helpful. Thank you.

2 THE WITNESS: I think I would do better without
3 the microphone.

4 A I did two years of spinal surgery fellowship, one here
5 in New York at Joint Disease and one in upstate New York in
6 Buffalo where I moved from Toronto.

7 Q Are you board certified?

8 A Yes, I am, sir.

9 Q In what?

10 A Orthopedic surgery.

11 Q When did you receive your board certification?

12 A My first cycle, which is ten years for us, was 1993.

13 Q Can you tell the jury generally about your work
14 experience?

15 A My work experience?

16 Q Yes.

17 A Well, I have been involved with seeing patients and
18 proceeding to evaluation and assessment, in some cases surgeries
19 for all the time I mentioned, which is since the early 1990s,
20 first at the Hospital for Joint Disease and thereafter in private
21 practice at other institutions. I ran a -- I do run a pretty
22 significant practice performing quite a bit of surgery, a lot of
23 revisions, among other things. So I have been at it and like
24 what I do ever since.

25 Q And do you have a private practice currently?

1 A Correct.

2 Q How long have you been in private practice?

3 A When I joined Disease -- Hospital for Joint Disease I
4 was in a hybrid practice which had a private practice component,
5 but in full private practice since 1997.

6 Q And do you have privileges at hospitals?

7 A I do.

8 Q Can you tell the jury what hospitals?

9 A New York presbyterian lower Manhattan nearby and three
10 hospitals in New Jersey.

11 Q Do you or have you performed any spine surgeries?

12 A Excuse me?

13 Q Have you performed any surgeries for the spine?

14 A That's what I do for a living.

15 Q That's what you do for a living.

16 Can you tell the jury what types of surgeries you
17 performed for the spine?

18 A In the field I'm in there are some major chapters. So
19 the one I happen to fall into over the years is away from
20 deformity and more of the common -- the commoner which is back
21 pain, neck pain, neurological dysfunction from disc changes, disc
22 herniations; so essentially painful conditions with loss of
23 function.

24 MR. VELARDI: Your Honor, I offer Dr. Paul Brisson
25 as an expert in orthopedic spine surgery?

1 MR. SCARIA: No objection, your Honor.

2 THE COURT: So deemed.

3 Q Doctor, the plaintiff in this case is Segundo Fabian
4 Lluilema Villa. Has he ever been your patient?

5 A Never.

6 Q Have you testified for your own patients who have also
7 been represented by my law office in the past?

8 A Yes, I have.

9 Q And has my law office ever referred clients to you in
10 the past?

11 A They have, correct.

12 Q Are you being paid for your time testifying today?

13 A I am.

14 Q What are you being paid?

15 A I am paid 30,000.

16 Q That's a lot of money, doctor. Could you explain to
17 the jury why you are being paid that amount?

18 A Because you asked me last week to come. I had to
19 change my whole office life, my whole practice life and look at
20 the file. And there is a basic testimony fee plus a so-called
21 emergency fee was considered.

22 Q Did you have to cancel any surgeries for patients?

23 A I had to cancel a lot of things in my office, and I had
24 to spend two weekends -- last weekend on it.

25 Q Did we provide you with any records to review?

1 A Yes, you did.

2 Q What records did we provide to you?

3 A Of course I don't have in front of me the listing in
4 detail, but you provided me medical history from treating
5 surgeons, orthopedic surgeons. You offered me the imaging that
6 is, apparently, in your file systems. And I believe I have seen
7 a couple of opinions by experts regarding the care rendered to
8 your client.

9 Q And you reviewed all of those records?

10 A I did.

11 Q All right.

12 So what I am going to do now is I am going to hand
13 you Plaintiff's Exhibit 5. These are the records of Dr. Joseph
14 Weinstein, the plaintiff's spinal surgeon in this case.

15 Now, doctor, those records are double-sided. I
16 don't think that they are in chronological order, so it will be a
17 little difficult for you to find office notes by date, but we
18 will do the best we can.

19 Doctor, were the records of Dr. Weinstein provided
20 to you by my office to review before today?

21 A Yes, sir.

22 Q Did those records include some operative reports by
23 Dr. Weinstein?

24 A I know I reviewed an operative report. For expediency,
25 I'm assuming you have them here.

1 Q Yeah, they should be in there, but there are other
2 exhibits that will have them.

3 A Yes, I have seen all the reports.

4 MR. SCARIA: Your Honor, I didn't get whether he
5 said "I did" or "did not" review the operative reports.

6 THE WITNESS: I did, counsel.

7 MR. SCARIA: Thank you.

8 THE WITNESS: I did.

9 Q All right.

10 So, if you could turn to Dr. Weinstein's -- if you
11 can turn to November 2 of 2020 in the records, find that, please?
12 It is not easy to find.

13 A Is it a note or surgical report?

14 Q It's a note?

15 A The date again?

16 Q November 2, 2020.

17 A Lucky.

18 Q You got it? Okay.

19 Doctor, is this the date that Dr. Weinstein saw
20 Mr. Lluilema Villa for the first time?

21 A Again, I assume the answer is yes. I know I reviewed
22 that note.

23 Q Okay. And can you --

24 MR. SCARIA: Sorry, your Honor. I didn't
25 understand.

1 THE COURT: He said he assumes that the answer is
2 yes. He reviewed that note.

3 MR. SCARIA: Thank you.

4 Q Doctor, on that particular date did Dr. Weinstein take
5 a history from the patient?

6 A Yes, he has.

7 Q And can you tell the jury what history was provided to
8 Dr. Weinstein on that date?

9 A It's an eight-line paragraph describing the fact that
10 he is consulting -- a patient 36-years-old is consulting him for
11 a history of pain following an accident dated 12/18/19. The
12 issue is pain and stiffness to his neck and low back. There's
13 function questions regarding sitting, standing, walking,
14 repetitive motion, additional ones that all cause exacerbation.
15 There is a statement regarding the fact that those symptoms did
16 not exist prior to trauma. He rates his pain at 9 over 10. He
17 was not working on that day, that period of time. The patient
18 was subject to physical therapy, taking antiinflammatory
19 medication without specifying which type he had received. I
20 don't know --

21 THE COURT: It is very difficult to understand the
22 witness.

23 Doctor, again, if you could try to speak slowly so
24 that we are getting your words.

25 THE WITNESS: I will do better without the mic.

1 THE COURT: It's not the microphone, sir. It is
2 the annunciation, I think.

3 Q Why don't we give it another try, doctor.

4 So in addition --

5 MR. VELARDI: And this mic is no longer working.
6 Our technology is all over the place today.

7 A So do you want me to say it?

8 Q Yes. So in addition to the fact that he had been doing
9 physical therapy as well as taking antiinflammatories, what else
10 had the patient received as of the date of November 2 of 2020?

11 A He mentioned he received epidural injections without
12 relief. The point I was going to make as a physician is he
13 didn't specify cervical, lumbar, or both. That's a comment of
14 mine.

15 Q Okay.

16 Can you explain to the jury the anatomy of the
17 cervical spine?

18 A Counsel, which aspect do you want me to explain to
19 them?

20 Q The aspect of just what's relevant to the patient's
21 conditions here with respect to discs and, you know, what they
22 are and things like that?

23 A The main role of a disc is a combination of protection
24 and motion. So the protection is in regard to neural tissue.
25 And the neck structure or the cervical spine is remarkably small

1 knowing the critical nature of the anatomy that carries through
2 the tube. But a disc allows motion of the vertebrae between
3 themselves and yet also, if intact, provides protection of the
4 neural tissue when it comes to the spinal cord itself, the main
5 cable that goes through our body with all the nerves and
6 especially the roots that affect the upper extremities in this
7 case mainly.

8 Q And can you do the same thing for the jury but with
9 respect to the anatomy of the lumbar spine?

10 A Again, we have five lumbar vertebrae. Purpose is
11 structure. We can stand on our feet because we have a God-given
12 function of anatomy, yet those discs as well allow the fact that
13 we can move. And we have, as well, protection of our neural
14 tissue that has roots, as we call, nerves that come out of the
15 bony structure of the lumbar spine and go into our limbs, lower
16 limbs.

17 Q On November 2 of 2020 did Dr. Weinstein perform a
18 physical examination of Mr. Lluilema?

19 A Yes, he did.

20 Q What did he examine?

21 A He examined the cervical and lumbar segments of the
22 spinal anatomy.

23 Q And can you describe for the jury based on the record
24 what Dr. Weinstein's findings were with respect to Mr. Lluilema's
25 cervical spine?

1 A So, the key elements of the physical examination are
2 that he noted a loss -- a decrease in sensation over a specific
3 distribution to cervical root in the so-called C5-6 distribution.
4 He also noted the presence of what we call a Spurling sign. It's
5 a specific physical testing sign that if positive suggests
6 inflammation of a cervical root which often means entrapment,
7 disc herniation, or both. So that was positive, but I don't have
8 the sides. Left or right is not mentioned here.

9 He also described range of motions which are, for
10 the sake of this testimony, relatively accurately half of what it
11 should be in pretty much every direction of neck motion.

12 Q I'm sorry, did you say it was half the normal?

13 A Yes. For example, flexion is said to be 50, but it's
14 described as being 30; extension is 60 and it's described as 30,
15 and so on and so forth.

16 Q Now, can you tell the jury so that they understand the
17 movement of the cervical spine when the doctor uses the word
18 "flexion" or "extension"? We will start with flexion. What does
19 that mean in terms of movement of the cervical spine?

20 A (Demonstrating) Flexion of the neck is chin on chest
21 when we go down. Extension is when we go up.

22 Q And what is right lateral bending?

23 A (Demonstrating) Right lateral bending and left lateral
24 bending is, more or less, like holding your phone in one
25 direction or the other.

1 Q And what is rotation?

2 A (Demonstrating) Rotation is turning your head left and
3 right.

4 Q Now, can you describe for the jury the findings --
5 Dr. Weinstein's findings of his examination of the lumbar spine?

6 A It was true also for the upper extremity. No loss of
7 power, so the patient is having normal strength; but he has
8 decreased sensation over a specific root distribution, lumbar
9 L4-L5-S1. Site not specified. And he had a positive straight
10 leg raising test, which is a test where if positive it's
11 indicative of root inflammation. That was described as being
12 positive both sides, right and left.

13 Q And did he also perform a range of motion tests for the
14 lumbar spine?

15 A He did.

16 Q What were his results?

17 A The results were, actually, a little deeper in terms of
18 loss of range. Flexion was 40 degrees instead of 90, extension
19 was 5 instead of 20, right bending was 10 instead of 25, and left
20 bending was 5 instead of 25.

21 Q What is flexion of a lumbar spine?

22 A It is forward flexion like if you flex forward to, say,
23 grab something that fell on the floor.

24 Q And what is extension?

25 A Going backward like in a good arch.

1 Q (Demonstrating) And is right and left bending simply
2 bending to the right or the left?

3 A That's rotation. (Demonstrating) Bending is bending.

4 Q Does it appear he did rotation tests?

5 A Not specified, sir.

6 Q Did Dr. Weinstein reach any diagnoses following his
7 very first appointment with the patient?

8 A Yes.

9 Q What were they?

10 A His diagnoses are cervical radiculopathy, lumbar
11 radiculopathy.

12 Q Can you explain to the jury what that means, what each
13 of those terms mean?

14 A The root is the neurological neuro structure emerging
15 from the spinal cord itself, and as it goes into plexus it
16 becomes a nerve; so we are still next or close into the spinal
17 anatomy. So radiculopathy means dysfunction, some dysfunction of
18 the root itself which can result in either pain, numbness,
19 weakness, symptoms usually of that domain.

20 Q On November 2 of 2020 did Dr. Weinstein give any
21 recommendations to the patient?

22 A He did.

23 Q What were they?

24 A He mentioned the fact that he had a conversation
25 regarding to commit full treatment which in most cases is

1 surgery, for example, or less in terms of pain management or
2 rehabilitation. So, in other words, he is having a conversation
3 with the individual.

4 Two, he had further conversation regarding
5 clarifying the diagnosis regarding the lumbar dysfunction, the
6 low back dysfunction. And he did recommend that the patient
7 follow up after discography is done at the lumbar spine.

8 Q Can you tell the jury what that is, discography of the
9 lumbar spine?

10 A It is a provocative test. It's a test whereby you
11 literally insert a needle in the disc space and pressure with dye
12 with saline, fluid, in the disc to see if you provoke the same
13 pain that one has by virtue of having half his body weight
14 applying gravity on it.

15 Q And what parts of the lumbar spine did you recommend
16 that test be performed on?

17 A He mentioned L3 to S1, which means three discs.

18 Q You just answered my next question.

19 (Continued on next page)
20
21
22
23
24
25

1 Q If you could turn now to October 13th of 2021. This is
2 jumping ahead quite a bit.

3 A October what?

4 Q October 13th of 2021.

5 A Got it.

6 Q Now, on this date, what if any recommendations did
7 Dr. Weinstein provide for the patient?

8 A The recommendation consult is for a cervical discectomy
9 fusion.

10 Q Did he also recommend an MRI of the cervical spine?
11 You could look at page two of the note.

12 A Correct, he did.

13 Q Give me one moment? By the way, doctor, I neglected to
14 ask you earlier, do you know Dr. Joseph Weinstein?

15 A Absolutely not. I don't know.

16 Q Now that we are on the topic of MRIs, I would like to
17 show you the MRI of plaintiff's cervical spine dated March 17th
18 of 2020. This is Plaintiff's Exhibit 4. We are going to put
19 that up on the screen.

20 A Will I see it here?

21 Q You will see it there.

22 (Whereupon, the monitor was turned on.)

23 A Wow, look at this. Fancy.

24 THE COURT: I'm sorry, could you give me the date
25 again?

1 MR. VELARDI: March 17th of 2020.

2 THE COURT: Thank you.

3 Q Doctor, you could direct my IT assistant as to where to
4 go, unless you want to have a wireless mouse and do it yourself.

5 A Maybe I could have a mouse.

6 Q Sure.

7 A It would be easier.

8 Q Okay.

9 A Are we supposed to see something already?

10 Q It's going?

11 THE COURT: No, not yet.

12 THE WITNESS: Sorry.

13 THE COURT: Now we should be seeing something. Is
14 it -- which one is the Elmo, is the Elmo plaintiff or
15 defense?

16 THE COURT CLERK: Plaintiff's.

17 MR. VELARDI: So it has to be defense side.

18 THE COURT: There you go.

19 A Okay. Can I have the mouse, please.

20 (Whereupon, the exhibit was displayed on the
21 screen.)

22 MR. VELARDI: Officer, we have a wireless mouse to
23 be handed to the witness.

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

25 Q Doctor, did you review this MRI before today?

1 A Yes.

2 Q And can you review the MRI now with the jury and
3 explain to the jury what you have found by -- based on your
4 review.

5 A Okay. First you are seeing the lateral view of an MRI.
6 And -- sorry. You see the cursor moving? Okay. So of course
7 the name of the patient, date of birth. You have the technology
8 used, a T2 weighted image, date of the study, and we have a side
9 view.

10 Um, discs are named by the bone that sandwiches them.
11 So the cursor is on C2, cervical 2, 3, 4, 5, 6, 7, T1. So
12 between the cervical three and the cervical four, cervical four
13 and cervical five, cervical five and cervical six, primarily you
14 see a darker structure in this case, and that's the disc that we
15 have between the bone.

16 Based on the sagittal view, that's the lateral view,
17 these discs show what I call, in simple terms, a mass effect.
18 They show that there's loss of containment. And first
19 indication is to try to look down at those levels, and that's
20 when we use an axial view, which -- can I get to it? Can I go
21 to the axial view, or I could do that?

22 Q You could do that.

23 A I do this for a living folks. So here you have the
24 axial view; that's the look down. We have a spine, which is
25 cervical spine in this case, and we have what's in the pipe.

1 And the center structure is the spinal cord.

2 Can I have the comparable where I have the reference
3 line, yeah, please.

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

6 A Okay. And we'll bring the side-view, again, here.

7 (Whereupon, the exhibit was displayed on the
8 screen.)

9 A Perfect. So the yellow line you see is in reference to
10 where the imaging slicing is. So that's the part of anatomy
11 that is depicted on, say, the left -- the left line shows what
12 you have on the right. And if I move the cursor -- okay. So
13 this -- okay. So now we are scrolling up and down.

14 (Whereupon, the exhibit displayed on the screen was
15 scrolled through.)

16 A For example, this view that you have on your left would
17 be a normal view. That's the size of the spinal cord. The
18 white around it is the loose space. So we are leaving the
19 thoracic spine. We are making way to the cervical segment, the
20 one in question.

21 Again, loose space (indicating), the cord is there
22 (indicating). And then around C5-6, there is some early
23 indentation, self confinement. And at C4 you have contact of
24 the disc against the spinal cord itself. And at C3-4, you have
25 a mass effect with a slight indentation on the thecal sac. So

1 looking at this, to me at least C4-5 is more abnormal than the
2 other two.

3 Q Okay.

4 And do you have an opinion, in reviewing this, as to
5 whether or not those discs C3-4, C4-5, C5-6 that you determined
6 are abnormal, are either bulged or herniated?

7 A These are terms that are used loosely. Bulged and
8 herniation. They are certainly, from a standpoint of
9 herniation, more shallow than large. Definitely you can have
10 larger discs. So if I have to label them subjectively from my
11 own experience, I would say that C5-6 is a bulge; C3-4 is
12 possibly a herniation; C4-5 is definitely herniated.

13 Q And you mentioned that C4-5 is touching the spinal
14 cord?

15 A Yes.

16 Q And what, if any, significance does that have with
17 respect to the patient?

18 A I look at imaging as a map as to what is the cause of
19 the symptoms, because we don't treat films, we treat human
20 beings.

21 So an individual -- in this case this patient went to
22 see the other physician and had a set of complaints which he
23 referred to the imaging as being possibly, or in this case
24 possible to correlate with.

25 Q I'm going to hand you the radiologist's report for this

1 film and ask that you tell the jury what the radiologist found?

2 THE COURT: Just for the record, that's part of
3 Exhibit 4 or?

4 MR. VELARDI: This is still part of Exhibit 4.

5 THE COURT: The report.

6 MR. VELARDI: The reports and the disks is all
7 Exhibit 4.

8 THE COURT: Great. Thank you.

9 (Whereupon, the radiologist report was handed to
10 the witness.)

11 A You want me to read "impression"?

12 Q Yes.

13 A The impression by the radiologist, the people who spend
14 their days looking at imaging, is "cervical 3-4, cervical 4-5,
15 cervical 5-6, central and foraminal narrowing due to disc
16 herniation." And he comments the same way as I have to you
17 about the fact that the "C4-5 disc abuts on the spinal cord."

18 Q Okay. Thank you. You could return that to me.

19 MR. VELARDI: Thanks officer.

20 (Whereupon, the radiologist report was handed to
21 the witness.)

22 Q So I'm now going to show you a disc that was -- I'm
23 sorry, an MRI study that was performed prior to the plaintiff's
24 fall from the ladder, but after he was involved in a car
25 accident that occurred on October 24th of 2018.

1 MR. VELARDI: Your Honor, I would have this marked
2 for identification as Plaintiff's Exhibit -- I'm sorry, let
3 me see what exhibit.

4 THE COURT: Isn't it -- it's not already?

5 MR. VELARDI: It's not been. This is a copy that
6 was provided to me by the defense, and this would be.

7 THE COURT: You are up to 16.

8 MR. VELARDI: Plaintiff's Exhibit 16. That will be
9 the C spine. Thank you, officer.

10 THE COURT: You are marking this for
11 identification?

12 MR. VELARDI: Yes.

13 THE COURT: Okay.

14 MR. VELARDI: And I'll move to have it admitted
15 because this was based on the stipulation.

16 THE COURT: So it's being marked in evidence. 16
17 in evidence, please.

18 (Plaintiff's Exhibit 16 was marked in evidence.)

19 MR. VELARDI: Thank you. So I'm handing Exhibit 16
20 to IT.

21 (Whereupon, the exhibit was displayed on the
22 screen.)

23 Q Doctor, can you just tell the jury -- identify for the
24 jury the patient's name and the date that this study was
25 performed.

1 A Okay. The name that I see on the -- for our jurors,
2 the name is here (indicating). It's Lluilema, Segundo, date of
3 birth 4/20/1984. Study done 11/12/2018.

4 Q Is this study of the cervical spine?

5 A Correct.

6 Q Okay.

7 Now, just like you did with the other MRI that we just
8 looked at, can you tell the jury what you see on this MRI?

9 A Again, we have what we call a sagittal view, the
10 side-view, and let me get the actual in right away.

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

13 A Here's are where we have the look down view. So the
14 sagittal view, at first, compared to the first study we looked
15 at, although dated after, I don't -- I don't see necessarily the
16 same amount of mass effect of compression, particularly when it
17 comes to C4-5. We are at the C4-5 here and I don't see the same
18 amount of herniation or mass effect -- that's the term I use in
19 the office -- and C3-4 and C5-6. I'm not even sure if I would
20 dare to mention the word bulging.

21 Q Okay.

22 So in comparing this MRI study to the other MRI study
23 that we looked at before, would you agree, is it your opinion
24 that the MRI study of March 17, 2020 indicates the patient's
25 condition of these spinal discs as being worse than the

1 patient's condition as shown in this study?

2 MS. SCARIA: Objection.

3 Q November 12th of 2018?

4 THE COURT: Sustained.

5 MR. VELARDI: Okay. You can remove that.

6 (Whereupon, the exhibit displayed on the screen was
7 taken down.)

8 MR. VELARDI: And I'm going to have the report for
9 this study marked as Plaintiff's Exhibit 17. And again,
10 based on the stipulation, this would go into evidence, your
11 Honor.

12 (Whereupon, Plaintiff's Exhibit 17 was marked in
13 evidence and was handed to the witness.)

14 Q Looking at Exhibit 17, can you tell the jury what the
15 original reading radiologist found on this film?

16 A "Impression", which is what I'm asked to comment to you
17 about, "C4-5 C5-6 posterior bulges with regional nerve root
18 encroachment with foraminal narrowing."

19 Q And you had indicated just before that you would --
20 what was it that you said -- barely say that there was a bulge
21 at C5-6, C3-4, was it?

22 A Correct. It reads as being less significant anatomical
23 variation to what normal should be.

24 Q Okay. You could return that note to me -- I'm sorry,
25 that report to me.

1 (Whereupon, Plaintiff's Exhibit 17 was handed to
2 Counsel.)

3 Q So what you'll do is I'm going move on to the next set
4 of MRI studies of the lumbar spine. We'll do the same thing
5 that we had just done with the cervical spine.

6 So back to Exhibit 4, Kolb Radiology. And I'll have
7 you look at an MRI of the lumbar spine that was done on
8 January 8, 2020.

9 (Whereupon, the exhibit displayed on the screen was
10 taken down.)

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

13 Q Doctor, had you had the opportunity to he review this
14 study before today?

15 A Yes, I have.

16 Q Please explain to the jury what you see in this study?

17 A Okay. Members of the jury, again, the right frame is
18 the sagittal view, the side-view of the lumbar anatomy. And the
19 left pane is the look down view, what we call axial. The
20 reference line you are aware of the purpose now.

21 And here we are scrolling down -- sorry. Let's go --
22 okay, so we are starting with L5-S1. The L5-S1 disc, at the
23 very bottom of it you see a clear signal right behind it
24 (indicating). And that's suggestive of some annular tear and
25 local inflammation.

1 And as we scroll up the L4-5 is near normal with
2 minimal bulging. The L3-4, um, is as expected -- not as -- they
3 are to be expected to be seen normal. The L2-3 has a right
4 sided -- excuse me -- has a right sided disc herniation in the
5 foraminal site. If you look at the area where the arrow is
6 (indicating), is patent. The right side has some mass effects
7 that occupy it. And at L1-2, you have here, on the left side, a
8 disc herniation in the foraminal space.

9 Q And I heard you use a term that hasn't been used yet
10 this morning, "annular tear." Can you explain to the jury what
11 that is?

12 A A disc will herniate because containment is lost. The
13 disc material is composed of a thick fibrous layer, the one that
14 we call the annulus. So for the disc material to loss (sic) its
15 containment, you need to have a tear. You need to have loss of
16 containment. And that's what it means.

17 MR. VELARDI: All right. And now I'm going to have
18 this marked as Plaintiff's Exhibit 18, a 2018 MRI of the
19 lumbar spine, of November 24, 2018.

20 THE COURT REPORTER: Evidence or ID?

21 THE COURT: In evidence.

22 MR. VELARDI: ID. MRI of the Lumbar spine,
23 11/24/18 --

24 THE COURT: In evidence.

25 MR. VELARDI: In evidence.

1 (Whereupon, Plaintiff's Exhibit 18 was marked in
2 evidence.)

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

5 (Whereupon, the Exhibit 18 was displayed on the
6 screen.)

7 Q Now, please explain to the jury what you see on this
8 film?

9 A Okay. Let me see if I could do a little better here.
10 Let me use this one.

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

13 Q Okay. Same concept. We are familiar with it at this
14 point in time. So the name is Lluilema, Segundo; 4/20/1984,
15 date of birth --

16 THE COURT: Please don't say the date of birth on
17 the record. Thank you.

18 THE WITNESS: I'm sorry, your Honor.

19 THE COURT: That's okay.

20 A Study date 11/24/2018. In the medical word, the date
21 of birth is essential. It's a habit. Sorry. You can't get in
22 a hospital without giving your date of birth and name.

23 Okay. So the study points out -- okay five, four,
24 three, two, one -- okay, okay. So we'll go from up -- down, I
25 mean, up, down in this case. So the L1-2 disc that we talk

1 about, we don't see the herniation, left side, that I commented
2 before -- sorry it's the way the cursor works.

3 The L5-S1, which is shown by the reference
4 (indicating), here, lines, does not have the signal of a clear
5 signal indicating possibly tear inflammation.

6 The L4-5 disc is, from my viewpoint, essentially
7 normal. The L3-4 is definitely normal. And L2-3 may have a
8 little bit of that right side, a herniation that I mentioned
9 from the study subsequently, but there seems to be, compared to
10 the ones prior, done a few years later, more space.

11 Q And did you see an annular tear at L5-S1 on the study?

12 A I did not comment on that.

13 MS. SCARIA: Objection.

14 THE COURT: Sustained.

15 THE WITNESS: Sorry.

16 THE COURT: The jury will disregard the question
17 and answer.

18 Q I'm going to show you the report from the radiologist
19 on this study, Plaintiff's Exhibit 19, to be admitted.

20 MR. VELARDI: It needs to be marked and admitted.

21 (Whereupon, Plaintiff's Exhibit 19 was marked in
22 evidence and handed to the witness.)

23 Q Looking at Exhibit 19 what was the impression of the
24 reading radiologist regarding the November 24, 2018, MRI of the
25 lumbar spine?

1 A So the impression by the radiologist is "L5-S1 diffuse
2 right posterolateral disc bulge with regional nerve
3 encroachment." And he makes mention about the facet -- sorry,
4 let me just show them for you. So the facet would be these
5 structures around here (indicating). So these are the lumbar
6 facets. So he is making a comment about them regarding the fact
7 that there's a little gaping opening of those joints. And that
8 could indicate ligamentous laxity.

9 Q What is that?

10 A Indirect sign of maybe early sign of stretching. It's
11 not a very specific sign. It's part of a constellation or
12 observation you could make. But in and of itself it's not
13 sufficient in this context to pose a statement of great clinical
14 value.

15 Q Okay. You could hand that back now.

16 (Whereupon, Exhibit 19 was handed to Counsel.)

17 MR. VELARDI: And Andrew, we are done with this
18 study. Thanks.

19 (Whereupon, the exhibit displayed on the screen was
20 taken down.)

21 MR. VELARDI: I want to move on to Dr. Weinstein's
22 first surgery but, your Honor, could we have a very quick
23 side bar?

24 THE COURT: Yes.

25 MR. VELARDI: Thank you.

1 (Whereupon, there is a discussion held off the
2 record, at the side bar, among the Court and all Counsel.)

3 THE COURT: We are going to take a five-minute
4 break. All rise. Jury exiting.

5 (Whereupon, the jurors exited the courtroom and
6 went into the jury room.)

7 (Continued on the next page.)
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1 COURT OFFICER: All rise. Jury entering.

2 (Jury enters courtroom)

3 THE COURT: Please be seated.

4 Continued direct examination.

5 MR. VELARDI: Thank you, your Honor.

6 BY MR. VELARDI: (CONTINUING)

7 Q Doctor, I am going to ask that you turn to the
8 operative report of January 4 of 2022. This is the surgical.

9 A I remember. I just have to find it. (Brief pause) I
10 don't find it.

11 Q I just checked. It's in there somewhere.

12 A I am sure it is. I will get it. Sorry everyone.
13 Okay. I think I got it now. Yes. I apologize.

14 Q It is double-sided, so it makes it a lot more
15 difficult.

16 A Yes.

17 Q First of all, what was the date -- sorry, I already
18 said the date. Where was that surgery performed?

19 A The surgery was conducted at Lenox Hill Hospital.

20 Q What type of surgery was done, generally?

21 A Cervical discectomy fusion, what we call ACDF, anterior
22 cervical discectomy fusion.

23 Q And who was the surgeon?

24 A Dr. Weinstein with an assistant, Dr. Castro.

25 Q And did you have a chance to review that operative

1 report before today?

2 A I saw it, correct.

3 Q And so what I would like you to do is I would like you
4 to explain to the jury the surgery in total from start to finish.
5 Tell them how it was done. And I have a demonstrative aid to
6 help the jury understand your testimony. Would a demonstrative
7 aid help you understand the testimony?

8 THE COURT: Really, they first have to be marked
9 for identification as Court exhibits.

10 MR. VELARDI: Yes. So this will be Court
11 Exhibit III.

12 THE COURT: If you want, you could do III A, B --
13 how many do you have?

14 MR. VELARDI: Two.

15 THE COURT: So let's do III A and III B.

16 (Exhibits marked as Court's Exhibit III A and B.)

17 MR. VELARDI: III A is cervical, and III B is
18 lumbar.

19 THE COURT: Okay. Thank you.

20 MR. VELARDI: With your Honor's permission, can
21 the witness come down from the witness stand to utilize the
22 demonstrative?

23 THE COURT: Yes.

24 Q Doctor, go ahead.

25 A Okay. So it's a standard operation. It's done

1 commonly. It's well devised. It works well. It's a 1950-era
2 design, so someone like Dr. Weinstein and others --

3 THE COURT: I mean, we're clearly having
4 difficulty with your testimony. That's problematic.

5 THE WITNESS: Okay. Let's make a go again.

6 A What I meant to tell you is that it's a common
7 operation. It's standard in a certain way. And, God willing,
8 the anatomy to get to the bony part of our neck, the cervical
9 vertebra, is not that treacherous.

10 So the surgeon in question decided to proceed with
11 a left-sided approach, transverse incision to the neck -- again
12 standard -- and created the plane between the sternocleidomastoid
13 muscle carotid sheath, jugular vein pushed laterally. Medially
14 you have the esophagus and the airway, the trachea. Standard, of
15 course, you have to avoid hurting the structures. It does
16 happen. One risk is the laryngeal nerve, the voice box nerve
17 which you have to pay attention to.

18 After the exposure is obtained you need to secure
19 the levels. There is no way to know looking at the bone which
20 level you are at, so you do radiology. And upon identification
21 of these two discs C4-5, C5-6 the gentleman, the surgeon
22 proceeded to a discectomy. I don't think he uses the microscope.
23 So they proceed to a discectomy, and with discectomy at C4-5 he
24 encountered a broad based disc tear, and at C5-6 he found out
25 that there was disc material in the neural canal, penetration in

1 the annulus and disc in the canal based on this finding reviewing
2 the note.

3 So you have here depiction using what we call
4 pituitary instrument of disc removal. And you have to go dorsal,
5 get as much as you can, and then proceed to fill the space where
6 the disc was removed which was causing the compression symptom by
7 a spacer which is depicted here (indicating). In his case he
8 used titanium implant. It's a material that is commonly used in
9 orthopedics now. The titanium is here. And here you have a
10 depiction of power equipment, a burr to rough up the endplates
11 because ultimately what you want to get is biological success.
12 The bone has to unite to the implant to get a really solid
13 fixation.

14 Upon completion of two implantation, the first one
15 indicated and the second done but not depicted, you put what is
16 called a buttress plate. The buttress plate has a purpose to
17 buttress the implant to prevent them from moving out, okay? And
18 that was depicted here, the plate, the little screws in the
19 vertebrae. And by the time you are done, you have this
20 image.(Indicating) The plate is here, screws in the vertebra,
21 and then you have the little titanium cages which are filled --
22 they are hollow and are filled with graft material, bone graft
23 material.

24 So that's what he did.

25 Q Is there any indication where the bone graft material

1 came from?

2 A Let me see, counsel. I don't remember that offhand.

3 (Brief pause) He does not specify specifically. Most likely
4 allograft bone, which means not from the patient himself. It is
5 not specified.

6 Q Okay. Thank you. You can take the seat again, but we
7 are going to have you come back momentarily.

8 Just so we can keep up with what we are doing
9 here, I would like you to turn to the second operative report
10 within Plaintiff's Exhibit 5. This, I believe, 10/25/22.

11 A I found it right away.

12 Q Okay.

13 So doctor, hold on to that operative report, set
14 it to the side for a moment, and please turn to Dr. Weinstein's
15 office note dated 4/11/22.

16 A Got it.

17 Q Okay.

18 On Page 2 of the report it indicates that
19 Dr. Weinstein was recommending decompression and fusion L5-S1.
20 Can you explain to the jury as to what Dr. Weinstein stated as to
21 why he was recommending that surgery?

22 MR. SCARIA: Objection.

23 MR. VELARDI: I's stated within the records, which
24 are in evidence.

25 THE COURT: What is the basis of the objection?

1 MR. SCARIA: It's not clear whether Mr. Velardi is
2 asking the witness to opine on Dr. Weinstein's opinion or to
3 merely read --

4 THE COURT: Let's ask him to just rephrase the
5 question.

6 MR. SCARIA: Thank you.

7 MR. VELARDI: I wasn't asking that.

8 Q Tell the jury what Dr. Weinstein said when he
9 recommended the lumbar surgery.

10 A Can I just verify and make sure I have everything here?
11 I'm not sure. I apologize, everyone.

12 It is a two-page note or more than two pages?

13 Q What is the date again?

14 A You said 4/11/22, correct?

15 Q I lost it on my end. I apologize.

16 A I have other notes more detailed.

17 Q (Brief pause) It is a two-page -- no, it's a three-page
18 note, and what I'm asking you to do is look at Page 2 at the
19 bottom.

20 A Well, then, I am missing one page.

21 THE COURT: Doctor, he is specifically asking you
22 to read on the page that you have what Dr. Weinstein said.

23 MR. VELARDI: Right, but I think he is missing a
24 page.

25 THE COURT: Oh, okay.

1 Q Why don't we have me take a quick look and see if I can
2 locate it for you. (Brief pause)

3 It's right here, doctor. It's the one on the top
4 at the bottom of that page.

5 A Thank you. Okay. I mean, this is not even dated here.
6 Okay.

7 So your question is what did he say?

8 Q Correct.

9 A He commented on the positive discography, which is a
10 provocative test, that the disc is sensitized, pathological or
11 source of pain upon pressuring. He commented on the fact that
12 nonoperative treatments had failed. Those were physical therapy,
13 antiinflammatory medication, and multiple epidural injections.
14 It's epidural, so they had to be lumbar. He commented on his
15 functional limitations, and then went on to describe the risk of
16 surgery -- proposed surgery, decompression and fusion L5-S1.

17 Q Now taking the operative report for the surgery, I
18 would ask that you come down again from the witness stand and
19 explain to the jury the procedure making use of the demonstrative
20 aid, Court Exhibit III B.

21 A Okay.

22 So from reading the report, for your information
23 Dr. Weinstein proceeded to a microsurgical decompression
24 laminectomy at L5-S1. In other words, he did a bone shaving
25 decompression of the root. He did bilateral fusion. So with

1 lumbar spine, if you do dorsal approach you put bone graft
2 material both sides right and left. And affixed his fusion with
3 instrumentation that I will comment on in a second.

4 In this particular case, he used allograft bone,
5 which is industrial bone, if you will, with also iliac crest, the
6 patient's own bone. So that's the procedure described. Pretty
7 standard.

8 Midline incision is depicted, that goes without
9 saying, and you expose the bony elements. You expose the part of
10 the spine where you put your finger in your back you and feel the
11 spinal process. So he exposed that anatomy and the one next to
12 it.

13 He proceeded to identify the level that the
14 procedure was to be performed on, in this case L5-S1.

15 The widening of what we call the interlaminar
16 space, between the lamina, which is the access to the neural
17 canal, was widened. And that's because he wanted to do a
18 decompression, he wanted to remove. And that's depicted by this
19 view here. This instrument is called Kerrosin. It is an
20 instrument that is designed for protection of the neural tissue
21 as you do a bone cut. So he nibbled away the area where he felt
22 pressure existed or compression existed.

23 Then after his decompression, at one point he put
24 screws in the vertebrae, what we call pedicle screws. There is a
25 bone tube, if you want, or bone structure that connects the back

1 of the vertebrae to the front. It's called a pedicle. You can
2 put a screw in the pedicle. It's pedicle screws depicted here
3 with attachments to the rods that you have. And this bone graft
4 material we know from his report is made of iliac crest bone,
5 which is his bone, and allograft bone, industrial bone as well.

6 Here you have the side view, fixation to the
7 pedicle intervertebral body at L5, intervertebral body at S1, the
8 sacrum.

9 You have the x-ray here, and you have imagery of
10 that procedure here by the medical artist.

11 That's it.

12 Q Thank you. Take the witness stand and take the report
13 with you.

14 Doctor, I would like you to assume that on
15 December 18, 2019 the plaintiff fell five to six feet from a
16 ladder and his body struck the hard surface of the floor of an
17 excavated trench. He developed pain in his neck and back over
18 the following weeks and months. And then, as you know, he came
19 under the care of various treatment providers including
20 Dr. Weinstein seen. Assume further that the plaintiff had a
21 prior car accident in which he suffered pain in his neck and
22 back. MRIs showing bulges at C4-5 and C5-6 and L5-S1, but the
23 pain, according to the plaintiff, resolved by the summer of 2019
24 which is about five months before the fall from the ladder.
25 Assume further that the only treatment he received for the neck

1 and back was physical therapy and acupuncture. No injections and
2 no surgeries. Assume further that after his pain resolved he
3 resumed working as a construction worker full-time with no
4 restrictions. Assume further that the plaintiff testified
5 following his resolution of his neck and back pain, he never had
6 any complaints or issues with his neck or back again even while
7 working until his fall from the ladder.

8 Based on your experience, your knowledge, as well
9 as your review of the records, do you have an opinion within a
10 reasonable degree of medical certainty whether the plaintiff's
11 fall from the ladder on December 18, 2019 was the cause of the
12 cervical spine injuries he sustained?

13 MR. SCARIA: Objection.

14 THE COURT: Basis?

15 MR. SCARIA: I'm sorry to do this with such a long
16 question, but a part of it was a mischaracterization of the
17 plaintiff's testimony.

18 THE COURT: Which part?

19 MR. SCARIA: The part about when plaintiff stopped
20 complaining of pain in conjunction with when he returned to
21 work.

22 THE COURT: I'm going to overrule the objection.
23 It's an assumption, a hypothetical question. I am going to
24 allow it.

25 MR. SCARIA: Thank you, your Honor.

1 A Based on my review of his chart, his file, and the long
2 history of care that he had rendered to him, and given knowledge
3 of the fact that he could work strenuously without limitations
4 after the motor vehicle accident, I would say yes to the question
5 you raised to me.

6 Q Okay. And the same question, same set of assumptions
7 that I won't repeat, do you have an opinion within a reasonable
8 degree of medical certainty whether the plaintiff's fall from the
9 ladder on December 18, 2019 was the cause of the lumbar spine
10 injuries he sustained?

11 A Correct. I will say the same thing to the jurors.
12 Yes.

13 Q For the same reasons?

14 A Same reasons. No care after the motor vehicle
15 accident, full work, strenuous work as far as I understand he
16 did, and the subsequent review of his chart.

17 MR. SCARIA: Your Honor, I missed the beginning of
18 that.

19 THE COURT: I'll ask the reporter to read it back.
20 (Requested portion was read back.)

21 Q Now, based upon your review of the MRI from 2018 of the
22 cervical spine and your MRI of the cervical spine after the fall
23 from the ladder as well as your review of the records, and based
24 on this hypothetical assumption that I have provided to you, do
25 you have an opinion within a reasonable degree of medical

1 certainty whether the plaintiff's fall from the ladder aggravated
2 or worsened the prior condition of his cervical spine which
3 existed after the car accident of October 24, 2018?

4 MR. SCARIA: Objection.

5 THE COURT: Basis?

6 MR. SCARIA: I am objecting to the witness
7 commenting on causation regarding the prior.

8 MR. VELARDI: That's by stipulation.

9 THE COURT: The objection is overruled. The
10 witness may answer the question.

11 Q What is that opinion?

12 A Based on the review, the imaging is worse subsequently
13 to the work-related accident, the fall.

14 Q I'm sorry. It's worse after the fall than after the
15 car accident?

16 A Correct.

17 MR. SCARIA: Objection.

18 THE COURT: Sustained. The objection is
19 sustained.

20 MR. VELARDI: Fine.

21 Q Did the aggravation of the prior condition of the
22 cervical spine cause increased pain and suffering to the
23 plaintiff?

24 MR. SCARIA: Objection.

25 Q Based on the records.

1 THE COURT: Sustained.

2 Q Do you have an opinion within a reasonable degree of
3 medical certainty whether the plaintiff's fall from the ladder
4 aggravated the prior condition of his lumbar spine which existed
5 after the car accident of October 24, 2018?

6 MR. SCARIA: I am just noting my objection on the
7 same basis with respect to the prior accident.

8 THE COURT: Overruled.

9 A Based on the history I know, the answer is yes to that
10 question.

11 Q Do you have an opinion within a reasonable degree of
12 medical certainty whether the plaintiff's prior condition of his
13 lumbar spine following the car accident of October 24, 2018 was a
14 condition that made him more susceptible to injury than a normal
15 healthy person?

16 A Well, that's the risk this comes from just living. We
17 all have at one point anatomical changes. And, I mean, by virtue
18 of that statement you made, the answer is yes, there is an
19 aggravation.

20 Q Same question. Do you have an opinion within a
21 reasonable degree of medical certainty whether the plaintiff's
22 condition of his cervical spine which existed after the car
23 accident of October 2018 was a condition that made him more
24 susceptible to injury than a normal healthy person?

25 A I would say yes to that.

1 Q Was the treatment that Mr. Lluilema Villa received
2 including the physical therapy, medications, epidural injections,
3 and, of course, the cervical fusion and the lumbar fusion
4 surgeries medically necessary due to the injuries from the fall
5 from the ladder?

6 A The history of his care is related to the trauma that
7 we are discussing. Based on that linear understanding, the
8 answer is yes.

9 Q Do you have an opinion within a reasonable degree of
10 medical certainty as to whether his cervical injuries are
11 permanent?

12 A Yes, they are.

13 Q And can you explain to the jury why you hold that
14 opinion?

15 A He went from -- his condition or his situation prior to
16 surgery was a more mobile level and now they are fixed. So there
17 are elements of risk regarding junctional levels for further
18 deterioration in time, and the anatomy is changed unquestionably.

19 Q What are those elements of risk that you speak about?

20 A The common one we talk about is called junctional disc
21 break down like spondylosis, degeneration, herniation. That's
22 what we talk about.

23 Q That would occur when?

24 A Well, the when is not predictable, the --

25 MR. SCARIA: Objection.

1 THE COURT: Sustained.

2 Q Do you have an opinion within a reasonable degree of
3 medical certainty as to whether the plaintiff's lumbar injuries
4 are permanent?

5 A Yes, they are.

6 Q And explain to the jury why you hold that opinion?

7 A Again, the individual had a lumbar fusion at L5-S1
8 which takes away some motion and puts the rest of his lumbar
9 spinal mechanics at risk, especially at L4-5.

10 Q What risk does the fusion put the rest of his lumbar
11 spine at risk of?

12 A We consider a fusion is a treatment that helps when it
13 comes to neurological irritation but puts the junctional disc,
14 the one next to the one that's fused, at risk of a faster disc
15 degeneration.

16 Q Now, do you have an opinion within a reasonable degree
17 of medical certainty as to whether Mr. Lluilema Villa has a total
18 disability of his cervical spine?

19 A In regards to what?

20 Q In regards to being able to work.

21 A --

22 MR. SCARIA: Sorry, your Honor. Would it be okay
23 if I had the question read back before the witness answered?

24 THE COURT: The question is whether the witness
25 has an opinion as to whether the plaintiff has a total

1 disability at this time in regards to his ability to work.

2 MR. SCARIA: Objection.

3 THE COURT: Sustained.

4 MR. SCARIA: Thank you.

5 Q Do you have an opinion within a reasonable degree of
6 medical certainty as to whether the plaintiff's loss of range of
7 motion of the cervical spine is permanent?

8 A Yes, it is.

9 MR. SCARIA: Objection.

10 (Continued on next page)

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1 THE COURT: Basis?

2 MS. SCARIA: The doctor -- there's no facts in
3 evidence as to the plaintiff's current range of motion.

4 THE COURT: Overruled.

5 MR. VELARDI: I believe he answered the question.
6 The answer was yes.

7 THE COURT: The question and answer stand.

8 Q And do you have an opinion within a reasonable degree
9 of medical certainty as to whether the loss of range of motion
10 of his cervical spine is permanent?

11 MS. SCARIA: Objection. Same basis, your Honor.

12 THE COURT: Overruled.

13 A He had two level fusions. The range of motion is
14 changed, that's for sure.

15 Q What is Mr. Villa's prognosis for the future?

16 A Counsel, prognosis in which way again? Sorry.

17 Q Just with respect to -- just in general, with respect
18 to his cervical spine and lumbar spine, what, if anything, may
19 the plaintiff face in the future --

20 MS. SCARIA: Objection.

21 Q -- with regard to his neck and lower back.

22 MS. SCARIA: Objection.

23 THE COURT: Sustained. The witness has already, I
24 believe, testified to these.

25 MR. VELARDI: Yeah, he has. I'm just trying to

1 make it clear, but, um --

2 Q What I'll do lastly -- second to last question -- is
3 one more set of assumptions. I want you to assume that the
4 plaintiff testified at this trial that he still experiences pain
5 in his neck and lower back, his leg is still numb, and he
6 requires a massage device. He still occasionally uses a cane.
7 He says he can't work because he can't lift things and do heavy
8 moving. And when trying to help his family, he can only do
9 light tasks. And he can't drive all the time, and not for much
10 time, maximum 30 to 45 minutes to, and 30 to 45 minutes back.

11 Assume further they're his wife testified at this trial
12 that he can't exert much strength or force. He can't put his
13 shoes or socks on by himself, and basically can't do anything.
14 He has a lot of pain in his knee, shoulder, back, his arms, he
15 can't bend over, and she has to put cream on him every night,
16 and that he has trouble sleeping through the night and has a lot
17 of pain in his waist. In addition, he can no longer play with
18 his young child or go to the park with his children.

19 Do you have an opinion within a reasonable degree of
20 medical certainty whether what the plaintiff and his wife have
21 described regarding his condition, his pain and his limitations,
22 is consistent with what you reviewed in the medical records and
23 the radiological evidence you have reviewed?

24 A The answer is, yes, clearly so.

25 Q Now, based upon your professional experience, as well

1 as your review of the plaintiff's medical treatment, and based
2 upon the injuries he sustained to his neck and his back, and the
3 plaintiff's and his wife's description as I've just explained to
4 you of his pain, daily conditions and limitations, do you have
5 an opinion within a reasonable degree of medical certainty
6 whether Mr. Lluilema Villa is capable of working?

7 A Not at the capacity that he had before, no way.

8 MR. VELARDI: I have no further questions.

9 MS. SCARIA: Your Honor, may we take one minute for
10 technological set up here.

11 THE COURT: When you say "one minute", I mean I'm
12 not going to exclude the jury. You just want a minute or do
13 you want -- if we are breaking, I can't take a one-minute
14 break. If you just need to --

15 MS. SCARIA: Yeah, it might be a little bit more
16 than a minute.

17 THE COURT: All right. We'll take a five-minute
18 break.

19 MS. SCARIA: All right. Thank you.

20 THE COURT OFFICER: All rise. Jury exiting.

21 (Whereupon, the jurors exited the courtroom and
22 went into the jury room.)

23 THE COURT OFFICER: All rise. Jury entering.

24 THE COURT: Be seated.

25 (Whereupon, the jurors entered the courtroom and

1 were properly seated in the jury box.)

2 THE COURT: Cross examination.

3 MS. SCARIA: Thank you, your Honor.

4 CROSS EXAMINATION

5 BY MS. SCARIA:

6 Q Good morning, Dr. Brisson.

7 A Good morning.

8 Q How are you?

9 A Not too bad.

10 Q I don't know if you remember, I think we've met before
11 a couple of years ago. Nice to see you again.

12 A We did? I can't remember.

13 Q Doctor, you've been on the stand a few times before
14 today; right?

15 A Of course. I'm here.

16 Q So you know during cross examination I'm going to ask
17 you a series of questions that are going to require, to the
18 extent that you are able, yes or no answers. And if you can't
19 answer in that manner I would ask that you let me know so I
20 could rephrase. It okay?

21 A Very well.

22 Q Thank you very much.

23 Doctor, you said you are still in private practice;
24 right?

25 A Yes.

1 Q Does that mean you are working 40 hours, probably more
2 than that a week?

3 A Correct.

4 Q And the law firm of Gorayeb & Associates, they got in
5 touch with you when to testify this week?

6 A Last Thursday.

7 Q Last Thursday.

8 So you've had this file of all of these records since
9 last week?

10 A Correct. In the digital format, not in paper format.

11 Q Oh, thank God.

12 A Yeah.

13 Q And you spent the weekend reviewing all these records?

14 A Correct.

15 Q Did you have to take time out of your practice to also
16 review all these records?

17 A Certainly today, that's for sure.

18 Q I'm sorry?

19 A Certainly today, yesterday afternoon for sure.

20 Q Doctor, forgive me. My hearing is not that great and
21 you speak kind of fast, so I'm going to ask you to take the
22 microphone and have it close to you.

23 A Let me try this again. I'll pay attention.

24 Q Okay, but I'll still ask you to use the microphone.

25 THE COURT REPORTER: It looks like the microphone

1 fell off.

2 A That's the reason you couldn't hear me, it fell off.

3 If I held it, is that better.

4 Q That's perfect.

5 A Okay. Let's do that.

6 Q Okay. And if you could speak slower, that would be
7 great.

8 A I'll try.

9 Q I understand.

10 So you worked over the weekend reviewing the records;
11 right?

12 A That's correct.

13 Q Did you take time out of your practice during the week
14 to review the records as well?

15 A Well, today is one day. Yesterday as well. The
16 evening this week. I worked. I did some surgeries and I
17 worked, so I had to do my work, plus that work.

18 Q So did you have to cancel any surgeries to do this
19 litigation work?

20 A No, I did not cancel surgery, but I had to reshuffle my
21 schedule.

22 Q About how many hours do you think you put into this?

23 A I would say to you I spent about -- probably 15 hours.

24 Q Okay, 15 hours. And that's what you got paid the
25 \$30,000 for?

1 A Correct.

2 Q I understand.

3 And was it \$30,000 for your review, or did that include
4 your emergency fee?

5 A Emergency fee, review, because typical testimony fee is
6 20,000.

7 Q Did you say 20,000?

8 A Pardon me?

9 Q I'm sorry, I didn't hear the amount?

10 A Typically, when I'm asked to testify, it's 20,000.

11 Q So you tack on another ten for the last minute; is that
12 right?

13 A Yeah, and this patient is not known to me. I'm not the
14 caring physician, so I had to go through all of this, yes.

15 Q When you testify as an expert for Gorayeb & Associates
16 or other clients of theirs that are not your patients, do you
17 charge a lesser fee?

18 A Yes. I told you, 20.

19 Q Mm-hmm, mm-hmm. But it has nothing to do with whether
20 it's last minute or not?

21 A Typically, I know much in advance if I have to testify.

22 Q When you were provided these thousands of pages of
23 medical records by Gorayeb's office last week, did that include
24 records from the motor vehicle accident in 2018?

25 A I did not get to see those records. I only saw

1 writings about it.

2 Q I'm sorry, did you say "writings"?

3 A Writings. In other words -- let me rephrase. I'm
4 aware of a motor vehicle accident by virtue of the notes of this
5 particular physician. I did not get the medical notes of the
6 accident.

7 Q The notes of which particular physician?

8 A Weinstein, the spine surgeon.

9 Q Okay. We'll get into that in a minute.

10 Based on your review of all of these documents from the
11 construction site accident, you learned that Mr. Lluilema Villa
12 treated with pain management doctor, Dr. Matthew Grimm; right?

13 A I did see some notes mentioning his name, correct.

14 Q Okay.

15 I know it was a lot in a short period of time, but you
16 certainly know that Mr. Lluilema Villa started treating with
17 Dr. Weinstein about a year after the construction accident;
18 right?

19 A Correct.

20 Q And the first visit that you went through with
21 Mr. Velardi, that was almost a year after the construction
22 accident; correct?

23 A I believe so, correct.

24 Q That was on -- do you have the note there, that was on
25 November 2nd, 2020?

1 A Correct.

2 Q And at that -- as of that first visit with
3 Dr. Weinstein, and if you don't recall, please feel free to
4 check your records or let me know, Mr. Villa had already
5 undergone a lumbar spine MRI; is that right?

6 A Correct.

7 Q And as of that first visit with Dr. Weinstein,
8 Mr. Villa had undergone two lumbar spine epidural injections?

9 A I remember that, correct.

10 Q Okay.

11 As of that first visit with Dr. Weinstein about a year
12 after the accident, after the construction accident --
13 withdrawn. I'm sorry.

14 After the initial -- at that initial examination, the
15 initial visit with Dr. Weinstein on November 2nd, 2020,
16 Dr. Weinstein performed an examination. You reviewed that in
17 the records; right?

18 A Yes.

19 Q Oh, in addition to that, as of that first visit,
20 plaintiff had also undergone a cervical spine MRI already?

21 A I believe so, correct, yes.

22 Q And as of that visit he had also undergone two cervical
23 spine epidural injections; correct?

24 A Correct.

25 Q So Mr. Villa had a lot done already to the neck and

1 back as of the first visit with Dr. Weinstein a year after the
2 construction accident; right?

3 A That's correct.

4 Q Okay.

5 And isn't it true that when Dr. Weinstein examined --
6 after Dr. Weinstein examined Mr. Lluilema Villa on November 2nd,
7 2020, he made no recommendations for neck surgery at this time;
8 is that right?

9 A Correct.

10 Q But he did recommend the discogram that you discussed
11 at that first visit; correct?

12 A Lumbar discography, L3 through S1.

13 Q And the discogram, I think you may have explained this
14 on direct, is it -- forgive. Me withdrawn.

15 Is a discogram or discography, is that a diagnostic
16 tool?

17 A Correct. It's a provocative test that -- with purpose
18 of diagnostics.

19 Q So we can reasonably conclude, then, from that -- from
20 the fact that Dr. Weinstein recommended Mr. Lluilema Villa
21 undergo a discogram or discography, that he was seeking to
22 further assess Mr. Lluilema Villa's lumbar injury; right?

23 A You mind rephrasing your question, because "further
24 assess" means what here, Counsel?

25 Q Thank you for telling me you don't understand it.

1 Based on your expertise as a spine surgeon, if a spine
2 surgeon is ordering a discogram, is the purpose of that to
3 figure out what's going on?

4 A At least in my experience, discography is a test you
5 ask for to clarify an indication for surgery.

6 Q Okay.

7 So as of November 2nd, 2020, Dr. Weinstein wasn't sure,
8 yet, if Mr. Lluilema Villa needed a spine surgery; is that
9 right?

10 A I don't know if I could answer yes or no. I know I
11 could answer, but I don't know if it's yes or no.

12 Q Okay. That's fine.

13 After -- the next time after that first visit with
14 Dr. Weinstein that Mr. Lluilema Villa goes to see him is not
15 until almost a year later; correct?

16 A Right, correct.

17 Q And I think Counsel referred to it as "jumping ahead",
18 but there's no visits between November 2nd of 2020 and
19 October 13th of 2021, is there?

20 A I'm not aware of any.

21 Q Okay.

22 And so as of this second visit with Dr. Weinstein, and
23 now we are talking about almost two years after the accident,
24 Mr. Lluilema Villa hadn't undergone the discography yet;
25 correct?

1 A I would have to check the date.

2 Q Please do.

3 A I know Dr. Grimm did it, but I'm not sure about the
4 date. I cannot recall. I would have to go through the file.

5 Q Well, if I were to represent to you that it was in --
6 he underwent the discogram in 2022, would that refresh your
7 recollection?

8 A I'm sure you are right. I can answer it, yes.

9 Q Okay. As of the second year -- withdrawn.

10 As of that second visit in October of 2021,
11 Dr. Weinstein made no recommendations for the back; is that
12 right?

13 A No specific recommendation, correct.

14 Q So now we are at almost two years past the construction
15 accident in November of 2021, and still no recommendations
16 regarding the back by Dr. Weinstein, the spine surgeon; correct?

17 A Correct.

18 Q It wasn't until April 11th, 2022, one of the visits
19 that you've already discussed, almost two-and-a-half years after
20 the construction accident, that Dr. Weinstein finally made a
21 recommendation for the lumbar surgery; is that right?

22 A Correct.

23 Q Doctor, we can agree that the passage of time between a
24 traumatic event and a surgery makes it difficult to determine
25 whether the event caused the need for the surgery; right?

1 A I see your point.

2 Q Okay.

3 So based on a review of Mr. Villa's treatment records,
4 you are aware of the fact that Mr. Villa made no complaints of
5 neck pain on the date of the accident when he went to the
6 walk-in clinic?

7 A I would not be surprised if he did not make any; that's
8 for sure, also. This is not uncommon in spinal pain case to
9 have symptoms develop thereafter the day of the accident, but
10 you are right, no complaints were made.

11 Q Let me just be clear. Did you review the CitiMed
12 walk-in clinic records for treatment on the date of the
13 accident?

14 A I don't remember seeing this one, but I'm not surprised
15 to hear what you just said.

16 Q Well, I'm glad you are not surprised to hear what I'm
17 saying, but more importantly, were you provided the treatment
18 notes for the very first visit on the date of this construction
19 accident by the lawyers that hired you last week?

20 A You know, I did see quite a bit. I'm not going tell
21 you I recall this document particularly well.

22 Q Don't you think it's important, for you providing your
23 opinion to this jury, to know what complaints were made on the
24 date of the accident?

25 A Um, in the context of spinal pain, spinal trauma, maybe

1 less than you think.

2 Q Hmm. Well, I'm not a spine surgeon, so it doesn't
3 matter what I think. But certainly, Doctor, if you are going to
4 tell this jury what your opinion is about the need for surgery
5 in relation to the construction accident, it's important to know
6 what complaints the patient made on the day of the trauma; yes
7 or no?

8 A I cannot answer the question.

9 THE COURT: You can't answer the question? Is that
10 what you said?

11 THE WITNESS: I can't answer, your Honor, yes or
12 no. I can answer it, but not in a yes or no.

13 THE COURT: All right.

14 Q You mentioned something about knowing about the motor
15 vehicle accident based on review of Dr. Weinstein's records.
16 Dr. Weinstein -- withdrawn?

17 Based on your -- I would like you to take a look at the
18 Weinstein records. You have them all in front of you. Take
19 your time. Isn't it true that there is no indication, in any of
20 the records from Dr. Weinstein, that he was informed that
21 Mr. Lluilema Villa was involved in a motor vehicle accident the
22 year before the construction accident?

23 A Counsel is correct. Dr. Weinstein does not mention
24 anything about the car accident.

25 Q Okay. So you didn't learn about the car accident from

1 review of Dr. Weinstein's records; is that right?

2 A The answer is yes to that question.

3 Q Okay.

4 Isn't it true that Dr. -- excuse me. Isn't it true
5 that Mr. Lluilema Villa denied any complaints -- withdrawn.

6 Isn't it true that Mr. Lluilema Villa denied prior neck
7 injury when he saw Dr. Weinstein a year after the construction
8 accident?

9 A He did not mention about his neck, correct.

10 Q That's not my question. Maybe it was unclear. And
11 please feel free to refer to the November 2nd, 2020 note.

12 Dr. Weinstein performed a physical examination and
13 presumably spoke to the patient. And isn't it true that
14 Dr. Weinstein reported Mr. Lluilema Villa denied prior neck
15 injury?

16 A So the specific line you are quoting, which I have no
17 doubt is accurate, I can find it if you want, but --

18 Q If you believe me, that's fine, but you can look for
19 it, too.

20 A Why would I end up believing you?

21 Q So isn't it also true, then, that Mr. Lluilema Villa
22 denied having a prior back injury when he saw Dr. Weinstein?

23 A I think the gist of your question is accurate
24 whereby --

25 THE COURT: I'm going to remind you, sir, that

1 these are yes or no questions and you are supposed to answer
2 yes or no, or tell us that you can't answer yes or no.

3 A Okay. I'll say, yes.

4 Q Doctor, you would agree, right, that the -- that best
5 practice before making any recommendations towards surgery would
6 be to review MRI films, not the reports, but the films; right?

7 A You cannot opine without the films, correct.

8 Q In fact, you would say it's impossible to propose
9 surgery without reviewing diagnostic films; right?

10 A The actual studies themselves?

11 Q Yes.

12 A Yeah, correct.

13 Q Are you aware of the fact that Dr. Weinstein
14 recommended cervical and lumbar fusion surgery without having
15 had the opportunity to review the lumbar and cervical spine MRIs
16 from 2018?

17 MR. VELARDI: Objection, your Honor. I don't know
18 where she gets that information from. We haven't heard from
19 Dr. Weinstein.

20 THE COURT: Well, Dr. Weinstein's records are in
21 evidence.

22 Counsel, what is the good faith basis for the
23 question?

24 MS. SCARIA: There's no mention of the motor
25 vehicle accident or reference to any of the records in

1 Dr. Weinstein's, um, chart, or in the narrative reports that
2 were exchanged by plaintiff's Counsel.

3 THE COURT: Are you referencing only the motor
4 vehicle accident films, or all of the films?

5 MS. SCARIA: No, just the 2018 motor vehicle
6 accident.

7 MR. VELARDI: I withdraw my objection. I didn't
8 realize that's what she was asking.

9 THE COURT: Yeah. I think the question sort of
10 suggested that he hadn't seen any films at all.

11 MS. SCARIA: I will withdraw the question and
12 rephrase it then.

13 Q Dr. Brisson, are you aware of the fact that when
14 Dr. Weinstein recommended the cervical and lumbar fusion
15 surgeries, he had not reviewed the MRIs of the lumbar and
16 cervical spines taken in 2018 following a motor vehicle
17 accident?

18 A If you ask it really if I was aware or not, or if he
19 was, the answer is, no.

20 Q So because you agree that you have to review the actual
21 -- you have to review films before you make a recommendation for
22 surgery, we can agree, then, that Dr. Weinstein couldn't have
23 concluded within a reasonable degree of medical certainty that
24 the need for the surgeries after the construction accident were
25 caused by this construction accident; right?

1 MR. VELARDI: Objection, your Honor. She's asking
2 for him to comment on Weinstein's expert opinion.

3 MS. SCARIA: I'm not, actually.

4 THE COURT: That's what it sounded like to me,
5 Counsel.

6 MS. SCARIA: Okay. I'll rephrase it.

7 Q Doctor, would you agree that it would be unreasonable
8 to comment on whether the construction accident was the cause of
9 the need for the lumbar and the cervical spine fusion surgeries
10 without having reviewed the lumbar and cervical films that were
11 taken the year before the construction accident?

12 MR. VELARDI: Objection, your Honor. Who is saying
13 the --

14 THE COURT: Overruled.

15 MR. VELARDI: -- car accident --

16 THE COURT: Overruled. There is nothing wrong with
17 that question.

18 A Counsel, I know how to answer this question, but I
19 cannot say yes or no to that. It's a lot more complicated. If
20 my life was a yes or no life, I don't know if I would be a spine
21 surgeon.

22 THE COURT: Sir --

23 A I mean, that's not --

24 THE COURT: -- we are not asking for you to opine
25 or various things in your life. Yes or no, or I can't

1 answer yes or no?

2 THE WITNESS: You heard my answer.

3 THE COURT: Yes.

4 THE WITNESS: I cannot answer it.

5 THE COURT: Okay. Thank you.

6 Next question.

7 Q Doctor, were you made aware of the fact that as a
8 result of this motor vehicle accident that you found out from
9 some notes that you mentioned, that Mr. Lluilema Villa filed a
10 lawsuit?

11 A No.

12 Q So you weren't aware of the fact that Gorayeb &
13 Associates, Mr. Velardi's firm, represented Mr. Lluilema Villa
14 for that car accident?

15 MR. VELARDI: Objection. Relevance.

16 THE COURT: Sustained.

17 Q Did you see, in your review of Dr. Weinstein's notes,
18 any mention of the motor vehicle accident notes?

19 A I told you, no.

20 Q I'm sorry?

21 A I said, no. I told you, no.

22 Q Were you told why you were asked to come here at the
23 last minute?

24 A I didn't ask those questions.

25 Q Have you spoken to Dr. Weinstein about his review of

1 the records?

2 A Himself?

3 Q Yes.

4 A I told you, I don't even know what the guy looks like.
5 I don't know. I don't know this fellow.

6 Q So you have no idea what Dr. Weinstein thinks about any
7 of this?

8 A I don't know about what?

9 Q So you don't know what Dr. Weinstein thinks about any
10 -- thinks about -- withdrawn.

11 So you had no idea what Dr. Weinstein's opinions are
12 about the prior motor vehicle accident; correct?

13 A That's true, I don't.

14 Q And you have no idea whether Dr. Weinstein ever
15 reviewed any records relating to the prior motor vehicle
16 accident; is that correct?

17 A Correct.

18 Q Do you think Dr. Weinstein is not here today because he
19 didn't review any of the prior motor vehicle accident stuff?

20 MR. VELARDI: Objection.

21 THE COURT: Sustained.

22 MS. SCARIA: That's all I have.

23 Q Thank you, Doctor?

24 THE COURT: Redirect?

25 MR. VELARDI: Yes, your Honor.

1 REDIRECT EXAMINATION

2 BY MR. VELARDI:

3 Q Doctor, you were asked about an amount of time that
4 passed after the accident and before Dr. Weinstein performed his
5 surgeries, two years for the discography; two-and-a-half years
6 for the lumbar surgery.

7 Based on your review of the records, what treatment was
8 being provided to the patient during that period of time before
9 he was recommended for surgery?

10 A He was given the typical supportive care, pain
11 management, to address his condition and hopefully improve him.

12 Q And what was the reason that that care was provided
13 instead of surgeries over that period of time after the
14 accident?

15 A Surgery should not be the first recommendation. It
16 should be the last one, after so-called time and exhaustion of
17 services.

18 Q And do you think that two years to two-and-a-half years
19 is an unusual amount of time to pass between an accident and a
20 surgery where there's this other treatment being performed
21 before the surgery?

22 A It's a good period of time. It's a long enough period
23 of time to pause judgment and determine the best option, when it
24 comes to surgery.

25 Q Based on everything that you saw that Dr. Weinstein did

1 in his records and the MRIs that he ordered of the neck and the
2 back, and when he came to the conclusion that he would recommend
3 the surgeries, do you believe, in your opinion, within a
4 reasonable degree of medical certainty, whether he would have
5 needed the prior MRIs from the car accident in order to come to
6 the conclusions and recommendations that he had?

7 MS. SCARIA: Objection.

8 THE COURT: Basis?

9 MS. SCARIA: Counsel is asking the witness to opine
10 on what Dr. Weinstein would or would not have done.

11 THE COURT: Overruled.

12 A My answer to the jurors is you want to know everything.
13 You really want to know as much as you can. I can't speak for
14 Mr. Weinstein, Dr. Weinstein, but the point of view that comes
15 from knowing the past does not necessarily, although it can -- I
16 don't think it would here -- determine what you would do.
17 Because when I see somebody two, three years after a particular
18 study was done before something, I'm not making a judgment,
19 like, three years in the past. I'm making a judgment on the day
20 of, based on the fact that the patient is in front of me.

21 I mean, I think most of you make the lack of
22 distinction between condition versus x-ray finding. An x-ray
23 finding doesn't mean you have symptoms. If I got an MRI today I
24 would be scared of findings, because of age. It doesn't mean we
25 have conditions.

1 What matters is the patient with his symptoms. Imaging
2 does to a point, but three years before would that change my
3 decision three years after? I don't believe so.

4 Q And the symptoms are determined in the clinical
5 setting?

6 A Right. That's what it is, patient-physician care.

7 MR. VELARDI: Thank you. Nothing further.

8 MS. SCARIA: Brief recross, you Honor?

9 THE COURT: On what?

10 MS. SCARIA: On the timing and treatment of
11 patients.

12 THE COURT: That's granted.

13 MS. SCARIA: Thank you.

14 THE COURT: Recross is granted.

15 RE CROSS EXAMINATION

16 BY MS. SCARIA:

17 Q Doctor, as a surgeon, your focus -- as a surgeon, your
18 focus is treating patients' symptoms; correct?

19 A Can I say more than just yes or no?

20 Q No.

21 A Can I just --

22 Q Was my question unclear?

23 A No. I -- some people --

24 THE COURT: No, you cannot give a story.

25 A I don't operate patients --

1 THE COURT REPORTER: I'm sorry, I didn't hear you
2 after you said, "I don't operate" --

3 A Everyone I see. I offer opinions, and most don't need
4 surgery.

5 Q Okay.

6 So in your offering of opinions regarding surgery or
7 patient care, your goal is to treat a patient's pain conditions;
8 can we agree on that?

9 A "Pain condition", you said?

10 Q Yes.

11 A Pain is one of them. The answer is yes.

12 Q Okay.

13 So your primary focus isn't necessarily what caused the
14 pain, but rather how to address the pain; correct?

15 A The angle is correct. I agree.

16 Q And you mentioned that two-and-a-half years following
17 an injury is a good amount of time to wait to have surgery;
18 correct?

19 A Hopefully to make the right decision, correct.

20 Q Because you are having treatment in between, and if it
21 doesn't alleviate the pain, then you have surgery; right?

22 A Correct.

23 (Continued on the next page.)
24
25

1 RECROSS-EXAMINATION (CONTINUING)

2 BY MR. SCARIA:

3 Q So we can also agree that three-and-a-half years after
4 something happens is a good amount of time to wait to have
5 surgery if you are having treatment as well, is that right?

6 A The answer is yes to that.

7 Q Thank you.

8 THE COURT: Anything further?

9 MR. VELARDI: No, your Honor.

10 THE COURT: The witness is excused. Thank you,
11 doctor.

12 (Witness excused)

13 THE COURT: All right. I don't believe we have
14 any further witnesses before lunch, is that right?

15 MR. VELARDI: Correct, your Honor.

16 THE COURT: All right. So the jury is excused. I
17 am going to ask you to come back at 2:15.

18 COURT OFFICER: All rise. Jury exiting.

19 (Jury steps out of courtroom.)

20 THE COURT: Just to be clear, I am going to need
21 counsel and the reporter at 2:00 for the motion.

22 MR. SCARIA: When you say "the motion," your
23 Honor, do you mean the motion to quash?

24 THE COURT: Right.

25 Before we break, your Honor, I wanted to place

1 what we had a sidebar about on the record.

2 The defendants made an objection to Dr. Brisson in
3 response to Mr. Velardi's question about a review of films.
4 Dr. Brisson referenced an annular tear at, I believe, L4-L5,
5 I am not sure, but it was lumbar spine. And there is no
6 mention in the 3101(d) served on October 2, 2025 about any
7 opinion regarding the finding of an annular tear.

8 This is the first time that the defendants were
9 made aware of the fact that Dr. Brisson intended to testify
10 that he observed an annular tear when he reviewed the actual
11 MRI, so it's late disclosure to us of some opinion he has,
12 and we didn't have the opportunity to have our expert review
13 this and provide an opinion on it. Based on that, we seek
14 to strike Dr. Brisson's testimony.

15 THE COURT: As we discussed at the sidebar, the
16 witness defined an annular tear as a loss of containment.
17 Counsel for plaintiff argued that an annular tear is,
18 essentially, the same as a herniation. The witness's
19 testimony is consistent with that, so I denied or overruled
20 the objection without prejudice to renewal if counsel comes
21 forward to show me that an annular tear is substantially
22 different than a herniation or loss of containment, which is
23 what I understood the witness to say.

24 MR. SCARIA: Your Honor, just to be clear, when
25 your Honor says that I need to come forward, is that like

1 with a Google search or do I need something from my expert?

2 THE COURT: I mean --

3 MR. SCARIA: Because if it's Google search, we
4 looked it up.

5 THE COURT: I mean, I'm happy to hear what your
6 Google search showed.

7 MR. SCARIA: An annular tear is different than a
8 herniation.

9 THE COURT: In what way?

10 MR. SCARIA: I can read it from Google, but,
11 anyway, to my understanding, a herniation can just be the
12 disc actually pushing out. A tear is an actual tear.

13 THE COURT: What the witness said was that the
14 gelatinous material between the discs was susceptible to
15 coming out because of the tear, which was the loss of
16 containment, which is exactly the testimony I hear over and
17 over again when doctors testify about herniations.

18 MR. SCARIA: But there's no tear in the MRI.
19 There's no evidence in the record --

20 THE COURT: Well, that wasn't the witness's
21 testimony.

22 MR. SCARIA: The basis of my objection is that
23 there is no evidence in the record ever before Dr. Brisson
24 said the word "tear" on the stand that anybody saw a tear.
25 So for --

1 THE COURT: Unless they are using "tear" and
2 "herniation" to be similar.

3 MR. SCARIA: Understood. What I am saying is that
4 your Honor --

5 THE COURT: Actually, you could have asked the
6 witness on cross-examination but elected not to, so at this
7 point I guess --

8 MR. SCARIA: I'm sorry, your Honor --

9 THE COURT: -- I'm denying your request to strike,
10 which is really the only thing it could be at this point. I
11 don't see a basis for it.

12 MR. SCARIA: Okay. I just wanted to make one more
13 note.

14 THE COURT: Yes.

15 MR. SCARIA: The reason why I did not cross the
16 witness about the annular tear is because, as I said off the
17 record at the sidebar, I don't have the knowledge to
18 cross-examine the witness about what he meant about an
19 annular tear because it is the first time I'm hearing
20 reference to an annular tear seen --

21 THE COURT: But you had enough knowledge to argue
22 in front of me that it's different from a herniation. If
23 that's enough to make an argument before the Court, it's
24 certainly enough to attempt cross.

25 In any event, my ruling stands. The testimony

1 stands.

2 MR. SCARIA: I'm sorry, could I have that read
3 back? I didn't hear what you have said.

4 THE COURT: I said my ruling stands ant the
5 testimony stands. Thank you.

6 Is there anything else we can accomplish between
7 now and later? Is there anything that came in going into
8 evidence?

9 MR. VELARDI: Yes, your Honor.

10 There's some stuff that came in for the defendants
11 that they've subpoenaed, but, also, I finally got a response
12 from plaintiff's former employer with business records,
13 certified W-2s, which the witness this afternoon needs to
14 rely on. So literally I was waiting for this and it
15 happened before the witness is going to testify.

16 MR. SCARIA: Also --

17 THE COURT: Wait.

18 My first question to counsel is, and I don't know
19 what the answer is, do we wish to put any other exhibits
20 into evidence at this time?

21 MR. VELARDI: Yes, we can do that now.

22 THE COURT: Great. Let's do that. So let's go
23 off the record for counsel to look at the documents and then
24 we will go back on.

25 (Off-the-record discussion held.)

1 THE COURT: Back on the record.

2 We have some W-2s being marked into evidence as --

3 MR. VELARDI: As Plaintiff's Exhibit 20.

4 THE COURT: -- Plaintiff's Exhibit 20 on consent,
5 correct?

6 MR. SCARIA: Yes, your Honor.

7 (Exhibit received and marked in
8 evidence as Plaintiff's Exhibit 20.)

9 THE COURT: Any further exhibits that we need to
10 address at this time?

11 MR. VELARDI: None from me.

12 THE COURT: Okay. Let's go off the record again.
13 (Off-the-record discussion held.)

14 THE COURT: Let's go on the record.

15 Plaintiff's counsel has stipulated that he is
16 withdrawing any claim for medical costs in this action.

17 MR. VELARDI: Correct.

18 THE COURT: Anything else that either party wants
19 to add?

20 MS. SUED: And any claims for past cost.

21 THE COURT: I said "all."

22 MS. SUED: Okay.

23 THE COURT: I did it all encompassing.

24 MS. SUED: Thank you, your Honor.

25 MR. SCARIA: For the record, as we discussed off

1 the record, the defendants object to and seek to strike the
2 testimony from any of plaintiff's doctors with respect to
3 the need for future -- specific future medical care in light
4 of the fact that there are no medical costs. We are not
5 arguing that plaintiff isn't allowed to assert a claim for
6 pain and suffering, but that should be based on the
7 testimony of plaintiff and not the testimony of the doctors
8 about what medical care he may or may not need.

9 Furthermore, none of the doctors established any reasonable
10 certainty as to any future medical care.

11 THE COURT: First of all, I don't know how
12 plaintiff would testify about his future pain and suffering.
13 The Court did rule, though, that there was clearly testimony
14 that while it is uncertain how much he is going to need and
15 what he is going to need, he is definitely going to need
16 ongoing care. And because future pain and suffering does
17 not have the same stringent standard as medical costs do,
18 the Court will allow plaintiff's counsel to make that
19 argument to the jury over objection.

20 MR. SCARIA: Thank you.

21 With respect to the witness expected to testify
22 this afternoon, Dr. Fred Goldman, the economist, the
23 defendants received plaintiff's 3101(d) timely. However,
24 there was no report exchanged with it, which is fine. The
25 plaintiff has subpoenaed the W-2s for 2017, 2018 and 2019

1 that I understand are marked in evidence now. To the extent
2 that Dr. Goldman relies on -- attempts to rely on any
3 documentary evidence to support his opinions regarding
4 plaintiff's earnings capacity beyond those documents in
5 evidence, the defendants object.

6 MR. VELARDI: That's fine. Dr. Goldman will only
7 be relying upon documents that are in evidence, and that
8 would include the W-2s; any indications within the medical
9 records that he was unable to work from the date of accident
10 up to the present time, you know, as mentioned in the
11 medical records in various portions; and then, of course,
12 that he is unable to work into the future based upon
13 Dr. Brisson's very last answer in my direct examination that
14 he is unable to work.

15 THE COURT: Okay.

16 Thank you. Have a nice lunch. I will see you at
17 2:00.

18 MR. VELARDI: Thank you, Judge.

19 (L U N C H E O N R E C E S S)
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1 (Jury not present.)

2 THE COURT: Let's go on the record.

3 Prior to the lunch break, the Court had
4 anticipated hearing a motion at 2:00. However, after
5 additional conferencing with counsel, the Court learned that
6 the motion was unopposed, and the motion has since been
7 denied and an order uploaded to NYSCEF to that effect.

8 MS. SUED: Denied?

9 THE COURT: I'm sorry. Granted. It was granted.
10 All right. Let's bring in the jury.

11 COURT OFFICER: All rise. Jury entering.

12 (Jury enters courtroom.)

13 THE COURT: Good afternoon. Welcome back. Please
14 be seated.

15 We are ready to hear from plaintiff's next
16 witness. Plaintiff is calling Dr. Fred Goldman who is going
17 to be testifying virtually, so you will be using the screen
18 for this. And I am going to have the clerk swear in
19 Dr. Goldman at this time.

20 THE CLERK: Dr. Goldman, please stand and raise
21 your right hand.

22 (Fred Goldman, PhD, is duly sworn/affirmed.)

23 THE CLERK: State your first and last name for the
24 record.

25 THE WITNESS: Fred Goldman. G-O-L-D-M-A-N.

1 THE CLERK: Your address, please.

2 THE WITNESS: Well, I'm currently at 1316
3 Bourgogne Avenue in Bowling Green, Ohio.

4 THE CLERK: Thank you.

5 THE COURT: Dr. Goldman, you gave us the address
6 where you are located. Can you tell me what kind of
7 building you are in?

8 THE WITNESS: I am in a house. My office in a
9 house.

10 THE COURT: So you are at your home at your home
11 office, is that correct?

12 THE WITNESS: That's correct.

13 THE COURT: And are you in a room with anybody
14 else at this time?

15 THE WITNESS: Just me.

16 THE COURT: And is anybody able to hear your
17 testimony at this time from your house?

18 THE WITNESS: No.

19 THE COURT: Okay.

20 And you understand that even though you are not
21 physically present in the courtroom with us today all the
22 same rules apply to your testimony as if you were physically
23 present, meaning you can't be communicating with anyone else
24 while you are testifying, or looking at your phone, or
25 referencing anything else like that. Do you understand

1 that, sir?

2 THE WITNESS: Yes.

3 THE COURT: Okay.

4 So if you are going to refer to something in the
5 course of your testimony, please let us know you are doing
6 that so that we are all on the same page, okay?

7 THE WITNESS: Yes.

8 THE COURT: Thank you, sir.

9 You may inquire.

10 MR. VELARDI: Thank you, Judge.

11 FRED GOLDMAN PhD, having been called on behalf of
12 Plaintiff, first having been duly sworn, was examined and
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. VELARDI:

16 Q Good afternoon, Dr. Goldman. How are you today?

17 A Good afternoon. So far, so good.

18 Q Good.

19 Can you tell the jury what is your profession?

20 A Sure. I'm an economist.

21 Q What is an economist, or what do you do as an
22 economist?

23 A Well, I view economic status as, really, a subset of
24 psychology. It's the study of behaviors and the outcome of the
25 behaviors.

1 As an example, if the price of apples goes up,
2 people tend to buy fewer apples, a behavior. They may buy more
3 pears, a behavior. Also, if wage rates were to change, it's the
4 price of labor and people respond to that.

5 So people respond to red lights and green lights
6 and crossing streets. They make decisions about how they are
7 going to incorporate the information they get. And in economics,
8 what we do is look at various behaviors and try to estimate their
9 impact.

10 An example is smoking. For the longest time
11 people felt people are addicted to tobacco and we're stuck with
12 that. Well, there are studies, many good studies that show that
13 people who smoke cigarettes were responsive to the price of
14 cigarettes. So a policy that came out of that was to tax and
15 increase tax on cigarettes which produced --

16 Q I'm sorry. Repeat what you said after "which
17 produced."

18 A Which produced a reduction in the use of cigarettes.
19 Fewer people smoked. And when they smoked, they smoked less.

20 So economics is revolving around behaviors, but
21 then there's the outcome of behaviors. And an outcome of work is
22 income. And we look at income itself, the distribution of income
23 and so forth. So as far as the economic component goes, we carve
24 out the areas of interest, so output such food output, clothing
25 output, and so forth.

1 The one thing that recently -- well, I mean, it's
2 no longer recent, but one thing has been taking place within
3 economics is that it is moving into areas that previously it
4 hadn't been in such as births and what determines the rate of
5 births in the country, also various types of medical health
6 diseases and so forth.

7 So economics really looks at behaviors and
8 outcomes of behaviors.

9 Hopefully that's enough.

10 Q It is. Tell me -- tell the jury, I should say, what is
11 your educational background in order for you to have gained all
12 that knowledge?

13 A I have a degree in economics from Queens College, City
14 University of New York. I have a master's degree in economics
15 from Brown University. I have a doctoral degree in economics
16 from the City University of New York. The only other education
17 is that I did a post-doctoral fellowship in philosophy and ethics
18 sponsored by the National Endowment for the Humanities. So
19 that's pretty much the education. And following my doctoral
20 degree being completed, I began my work as an academic.

21 Q Okay. I will ask you about the work experience your
22 professional experience in just a moment.

23 So you have a PhD, and that entitles you to be
24 called a doctor, is that right, but not a doctor of medicine?

25 A You know, I get called a lot of things.

1 Q I will call you "Dr. Goldman," okay?

2 A Okay. Yes.

3 Q So, Dr. Goldman, please explain to the jury your
4 professional experience in economics.

5 A Sure.

6 I did a doctoral dissertation on the economics of
7 child health. Actually, it was a study looking at different
8 income groups in Bronx, New York. I do empirical studies. I
9 take the work which requires the collection of data and analysis
10 of data, large bodies of data; so I generally need funding in
11 order to carry out my work. I received a grant from one of the
12 federal agencies. Then I began at the Center for Policy Research
13 housed at Columbia University.

14 When I completed my doctoral degree, I joined the
15 faculty of the medical school at Columbia University where I
16 taught economics to people in the health field but also from the
17 business school. I continued there until I got my post-doctoral
18 fellowship. There I was in residence at a bioethical center, The
19 Hastings Institute. I focused on various areas, but the main
20 focus for me was ethical issues in the treatment of high blood
21 pressure.

22 So, when I completed my post-doctoral fellowship,
23 I went to Lehman College, the senior college in New York City,
24 part of the City University. I was there in the economics
25 department, and I chaired their health services department. I

1 eventually left Lehman College and went to the graduate school at
2 the New School for Social Research. There I chaired the
3 economics department, another department in gerontology. I also
4 ran their off-campus programs throughout New York State
5 undergraduate and master degree programs which were situated on
6 various health centers throughout the State of New York.

7 The only thing I would add and then we can close
8 on this is that for roughly 30 years I was an associate with the
9 National Bureau of Economic Research, which is a major
10 organization, a collection of almost exclusively economists, but
11 also political scientists, attorneys, physicians. I worked there
12 and did much research there as well. And I even eventually
13 concluded my academic career and became what is called emeritus,
14 which means I received a degree -- a position for life but no
15 paycheck.

16 Q Have you ever conducted an economic --

17 A I'm not hearing you. I see your lips moving, but I
18 don't hear you.

19 Q Can you hear me now?

20 A Now I have it, yes.

21 Q Have you ever conducted an economic loss analysis in a
22 personal injury case?

23 A Many times.

24 Q Okay. That was my next question, so I will move on to
25 my next question.

1 Have you ever testified as an expert economist in
2 court before?

3 A Yes, I have.

4 Q And approximately how many times have you done that?

5 A Over the years, no idea. I would say as far as
6 testimony, it's roughly -- if I had to pick a number over all the
7 years, on average I'd say ten times a year, maybe twelve, maybe
8 nine.

9 MR. VELARDI: Your Honor, I offer Dr. Goldman as
10 an expert in economics.

11 MR. SCARIA: No objection, your Honor.

12 THE COURT: So deemed.

13 Q Dr. Goldman, when did you first become involved in
14 Mr. Lluilema Villa's case approximately?

15 A Well, it was several months ago. Around February --

16 Q Are you finished with your answer?

17 A I think around February of this year.

18 Q Okay. Thanks.

19 And did my law firm hire you?

20 A Yes, they did.

21 Q And have you reviewed any materials to help you with --
22 actually, withdrawn.

23 What did my law firm hire you to do in this case?

24 A Well, I was asked to estimate economic loss to
25 Mr. Lluilema as a result of an accident that he was in. I

1 learned later that there were two accidents. At any right, the
2 accident that I was asked to investigate was the one in 2019,
3 December 2019.

4 Q And have you reviewed any materials to help you with
5 your analysis of this case?

6 A I have.

7 Q And what materials did you review?

8 A Well, I received materials and I have them with me on
9 my desk. I have --

10 Q We are only talking about a wage loss analysis in this
11 case at this time, okay?

12 A Yes, that's correct.

13 Q Okay.

14 A I will tell you the materials that were forwarded to
15 me. I am sure I have them here somewhere.

16 Okay. I received a bill of particulars dated
17 August 10, 2020. I received a supplemental bill of particulars
18 dated December 12, 2023. I received a deposition testimony of
19 Mr. Lluilema dated November 16, 2020, another transcript of a his
20 deposition dated November 20, 2020, another deposition dated
21 December 21, 2021, another deposition dated March 21, 2023,
22 another deposition dated July 17, 2023, another deposition dated
23 December 1, 2023, another deposition dated February 26, 2024. I
24 received a report by a physician, Dr. Grimm, and a report --
25 actually two reports of Dr. Grimm. One was May 20, 2022, and the

1 other August 25, 2025. Lastly, I received a notice of expert
2 witness which concerns me, a notice that was a disclosure of me
3 as an expert witness and what my opinion was.

4 Q Now, did you also receive some W-2s that were of
5 Mr. Lluilema Villa's employment with ECD NY?

6 A Yes. I had a second package of what I received. I
7 received a lot of materials. I received tax returns with
8 enclosed W-2 forms for the year 2015, for the year 2016, for the
9 year 2017, for the year 2018, for the year 2019, and the last one
10 for the year 2020. It was the tax return along with the W-2.

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1 Q All right. So I'm going to ask you to only refer to
2 the 2017, 2018 and 2019 W-2s?

3 MS. SCARIA: Your Honor, may we have a side bar?

4 THE COURT: Yes.

5 Sir, I'm going to mute you for a minute, so you are
6 not going to hear anything.

7 I'm going to ask the jury to step out for a few
8 minutes.

9 (Whereupon, there is a discussion held off the
10 record, at the side bar, among the Court and all Counsel.)

11 THE COURT OFFICER: All rise. Jury exiting.

12 (Whereupon, the jurors exited the courtroom and
13 went into the jury room.)

14 THE COURT: Okay. The jury has been excluded,
15 because at the side bar with Counsel, defense Counsel raised
16 an objection because the tax records that the witness
17 referenced reviewing are beyond what it was agreed could be
18 serving as the basis for the witness's testimony. So
19 defense Counsel made an application for voir dire outside
20 the jury's presence in order to explore that issue, and the
21 Court granted that application without objection from
22 plaintiff's Counsel.

23 MS. SCARIA: Thank you, your Honor.

24 VOIR DIRE EXAMINATION

25 BY MS. SCARIA:

1 Q Good afternoon, Dr. Goldman. How are you?

2 A Good afternoon.

3 Q I just wanted to clarify some issues you mentioned that
4 you had in terms of the records that you have reviewed in
5 preparation for providing your testimony today. Did you say
6 that you had 2015 W-2s?

7 A Let me make sure. Yes, I had -- well, let me --
8 opening up. I had the -- a W-2 from a company called SSC
9 High-Rise Construction for the year 2015.

10 Q Dr. Goldman, would you mind holding that up to the
11 screen so I can see what you are looking at.

12 A Of course.

13 (Whereupon, the witness held up the requested
14 items.)

15 Q Thank you so much.

16 A How are we doing? Yes?

17 Q Not bad. Okay, thank you.

18 MS. SCARIA: Your Honor, for the record that is a
19 former employer that Mr. Lluilema testified about both at
20 trial and at the deposition.

21 Q You also mentioned some tax returns. Can you just
22 clarify what year tax returns you have?

23 A Yes. Now, I don't know whether they are complete or
24 not, but they are pages certainly from a tax return.

25 Q Okay. So --

1 A I have.

2 Q -- if you could, when you go through the tax returns,
3 just let us know what pages you are looking at, either
4 identifying them by some title, or page number, or whatever you
5 think is appropriate.

6 A Sure. Of course. Okay. The 2015, I have the face
7 page of the return, the second page of the return, and that's
8 all.

9 Q Okay.

10 A For 2016, I have the face page of the return, I have
11 the second page of the return, I then have a Schedule C-EZ,
12 which is net profit from a business, um, when it's a sole
13 proprietorship, and that's all.

14 For 2017, I have the face page of the return, the
15 second page of the return, I have another Schedule C-EZ, again,
16 net profit from business, sole proprietorship.

17 For 2018, I have just the face page of the return.

18 For 2019, I have the face page of the return, I have
19 the second page of the return, and that's it.

20 And for 2020, I have the face page of the return, I
21 have the second page of the return, and that's it -- oh, no,
22 that's not it. Then I have a Schedule C profit or loss for
23 business, again, self proprietorship.

24 Q Okay.

25 Now, referring to the first Schedule C from 2016, what

1 is the sole proprietorship? Is it in the name of Mr. Lluilema
2 Villa, or somebody else?

3 A The first sole proprietorship is in the year 2016, and
4 it is -- yes, in Mr. Lluilema's name. And it's -- his principal
5 business is maintenance.

6 Q And does the sole proprietorship income reflect
7 something different than what's reflected in the ECD W-2 for the
8 year 2016?

9 A Oh, um, yes, I treated separately.

10 Q It would have to be, right?

11 A As an additional -- yes, it's additional. I mean, I
12 could tell you it's -- the exact amounts.

13 Q Yes, please.

14 A Yes, it's \$6,092 in revenue, expenses of \$950, and
15 profit of \$5,142. And I'll tell you, I disregarded all of these
16 sole proprietorships. The only thing I relied on in what I did
17 were the W-2 forms.

18 Q What was the reason that you disregarded the sole
19 proprietorship income?

20 A Well, because I didn't know if it would continue on a
21 regular basis, um, what was profit -- I didn't know enough about
22 it. I thought it was prudent to just not include it.

23 Q So you disregarded it because you didn't have
24 sufficient information about the longevity of that
25 proprietorship; is that correct?

1 A That's correct.

2 Q Okay.

3 A I didn't know much about it. I didn't know how it was
4 being performed, at any rate, okay.

5 Q That's fair.

6 What was the total gross reportable income from 2016 on
7 the tax returns?

8 A The total gross was \$42,855, consisted of the W-2 wages
9 of \$37,713, and then the business income, which we've been
10 discussing, which is a net amount of \$5,142.

11 Q I'm sorry, what was W-2 income from 2016?

12 THE COURT: 37 -- I thought he said 37.

13 MS. SCARIA: I thought so, too.

14 A Yes.

15 Q How many W-2s do you have from 2016?

16 MR. VELARDI: It's probably more than one.

17 A From 2016, there are two W-2s.

18 Q And from what entities are they?

19 A I'm going to tell you.

20 Q Sorry.

21 A From SSC High-Rise, which is the first of the companies
22 that you have on W-2s, and it is for a total of \$27,025, and
23 then it is for ECD New York. And that one is for \$10,688. And
24 since the following tax returns and W-2s would be ECD New York,
25 I viewed it as -- and since the earlier one, the very first one

1 was for SSC, I saw that as the transition to ECD. It was the
2 beginning, and I ignored that -- those W-2s.

3 Q Okay.

4 And can you also tell me what the amount of the
5 Schedule C was for the sole proprietorship for 2017?

6 A Sure. 2017, the gross receipts were \$2,230. He had
7 \$436 in expenses, and the net profit was \$1,794. And, again, I
8 disregarded all of that.

9 Q And, again, was the type of work listed as maintenance,
10 or something else?

11 A Yes, maintenance.

12 Q And was there any -- there was no Schedule C for 2015;
13 is that correct?

14 A That's correct.

15 Q In order to file a Schedule C, what, if any, type of
16 documentation needs to be submitted to the government along with
17 the returns?

18 A Oh, I'm not an expert on that. I have an opinion, but
19 I'm not --

20 Q Okay.

21 I'm sorry, you also mentioned there was a Schedule C
22 for 2020. Can you tell us the total of that, please.

23 A Yes. That is for Maria Paola Bargas, and it's not for
24 Mr. Lluilema, and it's for janitorial services.

25 Q What's the total amount on that?

1 A Her, um, \$11,200.

2 Q Is there any reportable income listed for Ms. Bargas in
3 any of the other tax returns?

4 A I don't believe so, but I'm going to just -- we are
5 going to make sure.

6 Q Thank you.

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

9 A No.

10 Q Finally, Dr. Goldman, if you could just give us the
11 totals on the tax returns for the gross adjustable income for
12 the remaining years, 2017, '18, '19 and '20?

13 MR. VELARDI: Are you asking for Mr. Lluilema?

14 Q I'm sorry, just for Mr. Lluilema Villa?

15 A Okay. '17, '18, '19, '20, the gross -- the gross,
16 which consists of his W-2 forms and the -- and the Schedule C,
17 is \$78,332, 2017. The gross in 2018 is just the \$85,125. In
18 2019, the gross is 49,200 -- \$49,234. And in 2020, it's the --
19 there's, um, he didn't have any income. It's just blank.

20 Q Okay.

21 Can you tell us what other documentation, besides what
22 you've already explained, that you were provided by Gorayeb &
23 Associates to give your opinions to the court?

24 A Just the materials that I mentioned before on my
25 direct.

1 Q Okay. Thank you very much, Dr. Goldman.

2 A Nothing else.

3 MS. SCARIA: Okay. Thank you very much.

4 THE COURT: Okay. I'm just going to mute us again
5 for a second, sir. I don't know why I'm not seeing my mouse
6 on the -- oh, wait, there it is.

7 THE COURT CLERK: Do you want me to do it?

8 THE COURT: Oh, I'm using the wrong mouse.

9 THE COURT CLERK: You want to mute?

10 THE COURT: I just want to mute him. Okay, great.

11 (The courtroom Teams microphones were muted.)

12 THE COURT: Okay, yes, all right. How shall we
13 proceed.

14 MR. VELARDI: Your Honor, so, I don't think there's
15 going to be any allegation that we didn't provide an
16 authorization for employment records for SSC, but in any
17 event, everything that the Doctor will be relying upon for
18 his opinions and what has been disclosed is the income from
19 ECD in 2016, '17, '18 and '19. I don't think he used his
20 2016 because he only made \$10,000 from ECD in 2016. So
21 there is no prejudice or anything like that. And, as a
22 matter of fact, I think this is a more conservative view on
23 his part. He is discounting other income that he made here
24 because he doesn't have any evidence to come to conclusion
25 that that would continue, just that, you know, he was a

1 construction worker, he got a new job, he was, you know,
2 able to work as a construction worker, and presumably would
3 have been able to continue if his accident hadn't occurred.

4 So, I mean, if we asked -- my position is that we
5 ask the witness to remove all -- anything that he is not
6 relying on, get it out of the room, since he is remote, and,
7 you know, rely upon only what has been admitted into
8 evidence here, which are 2017, 2018 and 2019 W-2s for ECD,
9 and his conclusions will remain the same.

10 MS. SCARIA: Your Honor, my only concern is -- we
11 may be able to reach some sort of compromise. My concern is
12 the -- not so much -- number one, I would need some
13 clarification from Dr. Goldman, to the jury, or your Honor,
14 however or whatever is best, that -- and this could come
15 through his testimony that what specifically Dr. Goldman
16 relied on in order to come to his final numbers. I don't
17 think it's entirely clear from the 3101(d).

18 It's my understanding, and maybe that's another
19 voir dire question for Dr. Goldman, or it's something we
20 deal with on examination, but my understanding is, based on
21 the 3101(d), is that Dr. Goldman's totals were based on the
22 W-2s from ECD only for 2017 and 2018, not that he didn't
23 have W-2s for 2016, but that when he did the calculations,
24 for a variety of reasons, he based them off of just those
25 two. With respect to what Dr. Goldman had, according to the

1 3101(d), he only had the W-2s for 2016, 2017 and 2018.

2 Now, with respect to the tax returns themselves,
3 I'm not concerned about the totals, because as Dr. Goldman
4 explained, the numbers appear to be the same, or possibly a
5 little bit more on the tax returns in light of the sole
6 proprietorship, but the sole proprietorship issue lends to
7 the issue of plaintiff having other work outside of
8 construction that he failed to testify about, and leads me
9 to seek -- maybe call plaintiff to the stand or -- it just
10 opens up another can of worms about something that was not
11 disclosed either during discovery or --

12 THE COURT: That sounds like a separate
13 application, so right now what I want to deal with is what
14 is immediately in front of us, which is Dr. Goldman's
15 testimony.

16 So what I think I understand you to be saying is as
17 long as it's clarified that his conclusions are based solely
18 on the 2017 and 2018 W-2s, you are good to go forward; is
19 that correct?

20 MS. SCARIA: I'll say it this way. If -- I have no
21 problem with Dr. Goldman saying when he came to the
22 conclusion for a base salary to formulate calculations into
23 the future for his projections, that he relied only upon
24 2017 W-2s from ECD and 2018 W-2s from ECD, I don't have a
25 problem with that.

1 MR. VELARDI: I think she's correct about that, and
2 I think perhaps we should ask the doctor that question
3 outside of the jury just to ensure that she's correct.

4 MS. SCARIA: I just --

5 MR. VELARDI: Because I think she is correct.

6 MS. SCARIA: I just want to be further -- I just
7 want to be extra clear about this, since I was unclear about
8 something before.

9 I do not want to be precluded from asking
10 Dr. Goldman about earnings in other years, particularly in
11 light of the fact that he obviously reviewed these earnings,
12 and according to the 3101(d), there was only wages of
13 \$10,000 in 2016. I do not want to be precluded from cross
14 examining --

15 THE COURT: Why would you be precluded from cross
16 examining --

17 MS. SCARIA: I'm just making -- I just wanted to be
18 sure.

19 THE COURT: All right. So it sounds to me like you
20 both just want to make one additional clarification and then
21 we'll bring back the jury and continue; correct?

22 MS. SCARIA: Yes.

23 MR. VELARDI: Yes, I believe so.

24 THE COURT: All right.

25 (The courtroom Teams microphones were unmuted.)

1 THE COURT: Okay. Dr. Goldman, one more question
2 for you from Counsel before we bring back the jury.

3 VOIR DIRE EXAMINATION

4 BY MR. VELARDI:

5 Q Doctor, what -- of the documents that you listed that
6 you reviewed, on what documents are you relying upon to come to
7 your conclusions regarding Mr. Lluilema's future wage loss? Is
8 it only the 2017 and 2018, or is it for ECD, or something else?

9 A I'm relying only on two W-2 forms, one from 2017, one
10 from 2018.

11 MR. VELARDI: Okay.

12 A And I left out -- any other income, um, played no role
13 in what I did.

14 MR. VELARDI: Okay.

15 THE COURT: All right. So we are good to go?

16 MS. SCARIA: Yes. And either Mr. Velardi could
17 clarify that for the jury, or I will.

18 THE COURT: All right. We are ready to bring the
19 jury back, Mike.

20 MS. SCARIA: Thank you, Judge. Thank you,
21 Dr. Goldman.

22 THE COURT OFFICER: Ready, Judge.

23 THE COURT: Yes.

24 THE COURT OFFICER: All right. Jury entering.

25 THE COURT: Please be seated.

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

3 THE COURT: Continued direct examination.

4 MR. VELARDI: Thank you, your Honor.

5 DIRECT EXAMINATION

6 BY MR. VELARDI:

7 Q Okay.

8 So, Doctor, we had just finished with regard to what
9 you reviewed in your analysis of this case, so I'm going to move
10 on from there.

11 Have you ever testified for other clients represented
12 by my law firm?

13 A Um, well, I've spent a lot of years doing this. I
14 can't be sure if I testified. I certainly had cases and worked
15 with them.

16 Q Have you ever testified for clients represented by
17 Ms. Scaria's law firm, Fullerton Beck?

18 A I don't remember testifying for their firm.

19 Q And are you being paid for your time today?

20 A I hope so. Eventually, I hope so.

21 Q How much are you hoping you are being paid?

22 A I'm hoping to be paid \$4,000 for a court appearance,
23 which is what I charge.

24 Q Okay.

25 Now, Doctor, I would like to ask you, with respect to

1 the records that you reviewed and that you told the jury that
2 you reviewed, which of those records did you actually utilize to
3 come to your conclusions in your economic loss analysis of
4 Mr. Villa?

5 A Well, for the earnings amounts specifically, the W-2
6 forms from 2017 and 2018. Those forms.

7 Q Okay.

8 A Of course, I learned of other aspects of the case by
9 reading the rest of the file.

10 Q Okay.

11 And with respect to the 2017 W-2, can you -- first of
12 all, tell the jury who was the employer on that W-2 form.

13 A The employer was ECD New York Incorporated.

14 Q And what was the total wages -- what were total wages
15 earned by Mr. Villa for that year, 2017?

16 A Yeah, \$76,538.

17 Q And who was the employer listed on the 2018 W-2 for
18 Mr. Villa?

19 A Also ECD New York Incorporated.

20 Q And what was the total income for Mr. Villa for the
21 year of 2018?

22 A \$85,125.

23 Q Okay.

24 Now, in preparing your economic loss analysis, did you
25 rely upon any other sources, including statistical data or

1 economic projections?

2 A Yes. Well, first, my decision to use 2017 and '18 came
3 from reading some of the transcripts and the Bill of
4 Particulars.

5 There was an automobile accident that preceded the
6 accident in the case that brings us here, and then there was the
7 surgery that took place after that, or was part of that
8 automobile accident case, and there was testimony in the
9 transcript that, um, that those were taking place at the same
10 time in 2018, in the period of 2018. So I felt that it was
11 reasonable that it would be a conservative estimate since he was
12 going through whatever the throes of the automobile accident
13 were at the same time that we were looking at the year 2018, and
14 continued on into 2019.

15 Q Is that why you did not utilize the 2019 income?

16 A That's correct. I didn't have enough information that
17 would allow me to see how his earnings might have been in the
18 absence of the automobile accident.

19 The automobile accident was playing a role in my
20 decision, certainly that it couldn't make him, um, provide more
21 hours of work and earn more money, and to discount the decrease.

22 Q What was the reason you didn't utilize the 2016 income
23 from ECD?

24 A Well, it wasn't -- again, it wasn't something that
25 listed the entire year for him. Now, I didn't know how much of

1 the year was being -- he was working under ECD.

2 Q Okay.

3 And then to get back to my question, what sources of
4 statistics and data did you utilize to prepare your economic
5 loss analysis for Mr. Villa?

6 A Sure. Well, that gets us to the methodology for doing
7 the work. We've already discussed the source information for
8 the earnings is the W-2 forms.

9 Now the question begins, how long would he work and how
10 would his wages likely change over time. So really you could
11 think of it as taking it in parts. There's an amount of money
12 that we are going to start out with based on the W-2 forms, then
13 on a year by year by year by year continuing basis, there is the
14 expectation that those earnings can change. They could change
15 by -- well, it's generally a growth rate. We've had moments in
16 the economy over the years where wages could've declined, but,
17 um, we had a pattern of increasing growth rates, um, so I had to
18 get statistics on how those growth rates would have -- how large
19 they would be or how small they would be, what they would be.

20 There's -- specifically I went to the Employment Cost
21 Index of the US labor statistics, and they have introduced
22 statistics, many statistics for the changes in the wages and
23 salaries of workers in private industry in construction. And
24 that's Mr. Villa, private industry in construction.

25 So I had wage growth through the Employment Cost Index.

1 The Employment Cost Index was historical data, because it's
2 already been determined, when they publish the document, that
3 time has gone by, and we know what occurred. But going forward
4 over time, and I'll get to how long we go forward over time, but
5 going forward over time, I relied on two organizations, the
6 Congressional Budget Office, which produced -- produces on an
7 annual basis, 30 years, or a 30-year estimate of how our wages
8 will change, how workers wages will change, and the Social
9 Security Administration, which does the same thing, only they go
10 out to the turn of the century, and they make guesses.

11 (Continued on the next page.)
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1 DIRECT EXAMINATION (CONTINUING)

2 BY MR. VELARDI:

3 A (Continuing) So I have the past. And I go there from
4 2019 straight through to the present. Then I have the future
5 based on Social Security Administration estimates and the
6 Congressional Budget Office.

7 So we have a starting dollar amount. We have how
8 it is likely to change over time. Then the question becomes for
9 how long.

10 There we look at retirement data, to begin with.
11 And there is an economics journal, Journal of Forensic Economics,
12 that has done in the past and updates a study of separation from
13 the labor force, which is retirement. It's based on gender, age,
14 education, and whether or not the person is in the labor force at
15 the time or not in the labor force.

16 So at the time of his accident, I know what his
17 exact age is. He --

18 Q What I'm going to do, doctor, is I'm going to give you
19 assumptions based on the evidence that has been presented in this
20 case as to his age, his education level, and everything like
21 that. I will do that now so you can proceed with your opinions
22 based upon that information, okay? Before I was just asking
23 about the sources that you used.

24 A Okay.

25 Q So, I want you to assume that on December 18 of 2019

1 the plaintiff was involved in an accident, that he was 35 years
2 of age at that time, and that he had a sixth grade education. I
3 want you to further assume that Mr. Lluilema was a construction
4 worker at ECD NY at the time of his accident. I want you to
5 further assume that Mr. Lluilema was involved in a motor vehicle
6 accident on October 24, 2018 after which he was able to resume
7 his normal work schedule at ECD NY in or around the summer of
8 2019 or into September 2019. Assume further that according to
9 the testimony from Mr. Lluilema and his wife and according to
10 medical records of his treatment following his December 18, 2019
11 work accident, Mr. Lluilema was not able to work from that point
12 up to the current date. And finally, assume that according to
13 the testimony of Dr. Paul Brisson Mr. Lluilema is not able to
14 work in the future, okay?

15 Based on those assumptions, have you arrived at an
16 opinion within a reasonable degree of economic certainty as to
17 Mr. Lluilema's lost earnings due to the accident of December 18,
18 2019?

19 A Yes.

20 Q And so I would now like you to go step by step with the
21 jury as to how you calculated the lost earnings?

22 A Okay.

23 There are three component parts to the analysis.
24 There's a starting annual amount. How much was he earning at the
25 time of the accident? That's straightforward. I believe we

1 covered it. I used the W-2 form for the year 2017, W-2 form for
2 the year 2018, and I divided by two. I simply took the average
3 between those.

4 Q And what was the average?

5 A The average was -- I didn't memorize all the numbers.
6 Can I refer to --

7 MR. VELARDI: Your Honor, may he refer to the
8 report containing the numbers since I'm sure he can't
9 remember these?

10 THE COURT: Yes.

11 A Well, we don't even have to go as far as the report. I
12 jotted down the key numbers that I would have to say to explain
13 it.

14 The average between the two years was \$80,832. In
15 2017 the W-2 earnings was \$76,538, in 2018 it was \$85,125. And
16 when you divide by two, I get \$80,832. So that's our starting
17 annual amount. And I would just caution that it includes a
18 period of time that was being affected by the automobile
19 accident, so, you know, basically I would say that makes it
20 reasonable and conservative.

21 Q Okay.

22 A That's the start. Then we have how is that likely to
23 change over time. So before I give those growth rates, let me
24 say what "over time" means. "Over time" means until he would
25 retire. And there is the Journal of Economics, a peer-reviewed

1 journal, with studies that I believe is well regarded and used
2 regularly by economists, and it provides the number of years
3 until retirement for individuals by their gender, by their age,
4 by their education, and by whether or not they are active in the
5 labor force. And the labor force consists of two groups of
6 people, those who are employed and those unemployed. So we have
7 the pool of people and whether or not they are in the labor
8 force.

9 At the time of his accident he was 35.66 years
10 old. That's his age. His gender is male. He was active in the
11 labor force. He had a sixth-grade education. And based on those
12 tables, he had until his retirement age, statistical retirement
13 age, he had 26.56 remaining years until retirement. Now I know
14 how many years out into the future I will need to go. So I have
15 a starting annual amount, how far I am going into the future, and
16 now the question is how might that average earnings, \$80,832, how
17 might it change over time. As I said, there are growth rates.
18 Up until today everything is in the past. From today on
19 everything is in the future.

20 So as far as the past went, I have data from the
21 employment cost index for private industry workers in
22 construction, and I used the growth rates year by year by year up
23 until this year, 2025. So I had it through the year 2024.

24 Now, starting with 2025 I assume that wages would
25 increase on average by 3.5 percent per year. Actually, thus far

1 based on the last twelve months that's a little low because
2 currently the statistics that came out for the first half of this
3 year have it increasing at approximately 4.2 percent, but, you
4 know, we are close. So going forward I am going to use
5 3.5 percent based on two organizations, the Social Security
6 Administration and Congressional Budget Office with what they
7 produce when they make estimates about how future issues will
8 take place in the economy and what it means for statistics such
9 as unemployment, such as interest rates, and such as wage
10 increases in the population.

11 Okay. So now I have growth rates going forward.
12 I have a starting amount, how it is going to change over time,
13 and how many years it's for. I took those numbers and I
14 generated a table showing year by year by year amounts of what is
15 called an expected value of what would take place absent the
16 accident.

17 Q Can you provide those year by year amounts to the jury,
18 and then let the jury know what did you calculate Mr. Lluilema's
19 average annual earnings after his accident of December 18, 2019
20 up to now?

21 A Yes, I can do that and I will do that. I wish it were
22 only that simple, because we are not going to end there.

23 Q Okay.

24 A So I will need to -- do you want me to read them on a
25 year-by-year basis? Do you want me to actually read them? I

1 can.

2 THE COURT: I'm sorry, what was that?

3 MR. VELARDI: He is asking should he read them
4 year by year.

5 Q Doctor, yes, read them year by year.

6 A Okay.

7 In the year 2019, the total earnings loss that I
8 have estimated is \$31,598. That is the amount that is left over
9 after I deduct what was actually earned on the W-2 format for the
10 year 2019, okay? So that's to start with 2019.

11 In the year 2020 I have \$41,547. Now that's for
12 only a half year. I made the assumption that because of COVID
13 there needs to be taken into account in some way, so I cut the
14 amount in half that he would have earned.

15 Q Okay.

16 A Going forward in 2021 it's \$86,253. In 2022 it's
17 \$90,393. In 2023 it's \$94,461. In 2024 it's \$96,728. In 2025
18 it's \$100,113. In 2026 it's \$103,617. In 2027 it's \$107,244. In
19 2028 it's \$110,997. In 2029 it's \$114,882. In 2030 it's
20 \$118,903. In 2031 it's \$123,065. In 2032 it's \$127,372. In
21 2033 it's \$131,830. In 2034 it's \$136,444. In 2035 it's
22 \$141,220. In 2036 it's \$146,162. In 2037 it's \$151,278. In
23 2038 it's \$156,573.

24 Q I'm sorry. Repeat that last one, doctor.

25 A In 2038 it's \$156,573. In 2039 it's \$162,053. In 2040

1 it's \$167,725. In 2041 it's \$173,595. In 2042 it's \$179,671.
2 In 2043 it's \$185,959. In 2044 it's \$192,468. In 2045 it's
3 \$199,204. Finally in 2046 it's \$111,335 [sic]. And the total
4 over the period from 2019 through to the time of his statistical
5 retirement it's \$3,582,690.

6 Now, that means that each and every year he would
7 work and he would earn the amount of money with the increase of
8 each succeeding year. However, that's not where we ended because
9 that assumes that for that 26-year period of time he would have
10 year by year by year continued to work. That's where we bring
11 into account what is called work life statistics.

12 Now, there is some possibility, for example -- as
13 we see, there was an automobile accident, another accident at
14 work -- that there could be periods of disability. There also
15 may be long periods of vacation. He might choose to go to school
16 and study for a year. People do all these things. So what we
17 are missing, if we were to look at this, we would be missing the
18 kind of way in which individuals behave and the things that they
19 face in the workforce over time. So there we go to what are
20 called work life statistics.

21 Now, the work life of a man his age that we
22 discussed at the time of the accident, 35.66 years old with his
23 sixth-grade education, male, active in the labor force; the
24 remaining years of work life are not 26.56 years to retirement,
25 but they are 19.7 years. So, in other words --

1 Q So you are reducing it, doctor, the work life?

2 A No. I'm reducing the amount of money he would have
3 earned each year to take into account that he may not have in
4 that particular year actually worked all of the year.

5 So, using work life tables we have to reduce
6 everything by approximately 25 percent. The work life 19.7 years
7 divided by the 26.56 years until retirement is 74.12 percent. So
8 in each and every year, the likelihood he actually would get this
9 money is only roughly 75 percent. Still we have to take more off
10 because the work life includes periods of unemployment. So I
11 then took the 74.12 percent and reduced it by another 3 percent
12 to account for potential unemployment that he would have.

13 Q Okay.

14 A On top of that, all of this money wouldn't have gone
15 into his pocket for his own use. He might have had unreimbursed
16 job expenses. For instance, transportation costs, clothing costs
17 and so forth. So I deducted another 5 percent of each year's
18 income to account for unreimbursed job expenses. To cut to the
19 chase, I took the numbers we just discussed on a year-by-year
20 basis and reduced them by 31.7 percent. So 31.7 percent comes
21 off, roughly one-third comes off to account for the fact that
22 yes, the statistics say this is when you are going to retire, but
23 in each and every year until then you shouldn't expect you are
24 going to be sitting there at work pulling in the whole paycheck.

25 So now I can give you, if you would like, what the

1 past amount of economic loss would be taking this into account,
2 also what the future amount would be taking this into account.

3 Q Yes. Doctor, I would like you to tell the jury that.
4 And past amount is date of accident up to now, and future is now
5 to statistical end of work life, correct?

6 A Well, now for me is through the entire month of
7 October.

8 Q Okay.

9 A So, basically, the past is up until November 1. Then
10 the future starts November 1 and goes through retirement.

11 Q Okay. And what is the past number?

12 A So the number as far as economic loss that I am
13 suggesting as his loss for the past through October of 2025 is
14 \$358,139, and through the future it's \$2,008,838. In total, the
15 past plus the future, the earnings lost is \$2,446,977 of what
16 would otherwise have been potential amount of \$3.58 million.

17 Q Thank you. I have no further questions, doctor.

18 THE COURT: Thank you.

19 Cross-examination.

20 MR. SCARIA: Thank you, your Honor.

21 CROSS-EXAMINATION

22 BY MR. SCARIA:

23 Q Good afternoon, Dr. Goldman.

24 A Good afternoon.

25 Q Dr. Goldman, Mr. Velardi had asked you about who you

1 testified for. One of the questions was whether you testified
2 for my firm, Fullerton Beck. You may have not testified for my
3 firm, but do you recall that my firm has hired you to provide
4 consultation on cases?

5 A Yes, that I know.

6 Q In fact, you and I have worked together before. I
7 don't know if you remember.

8 A Way back when.

9 Q That's right. Good to see you. And I learned
10 everything I know from you. Hopefully I get this right.

11 You have testified in court before and today about
12 the -- well, withdrawn.

13 The reason I use you so much is you sound very
14 reliable. You have testified in the past about reliable
15 assumptions that you use, is that right?

16 A Yes.

17 Q And you have testified that reliable assumptions means
18 assumptions that are plausible, is that right?

19 A That's correct, yes.

20 Q So, in other words, your calculations in terms of
21 Mr. Lluilema's future losses are based on the reliable
22 assumptions by whoever says he can't work anymore, is that
23 correct?

24 A Well, that's correct, yes. Sure.

25 Q The numbers are the numbers. You have his earnings

1 numbers, right? That doesn't change, right?

2 A That's correct.

3 Q Whether he can work again, you don't have any idea of
4 that one way or another, is that right?

5 A No, that's not my area of expertise.

6 Q You did consider the fact that Mr. Lluilema Villa had
7 lost time from work as a result of the motor vehicle accident,
8 correct?

9 A Yes.

10 Q And you factor that into your calculations?

11 A Well, I factor it in the way -- since it's not a
12 statistical factoring, it's simply the fact that the automobile
13 accident and the surgery that followed and all didn't improve his
14 ability to earn more money, it detracted from him possibly
15 earning more money to make me feel comfortable that my initial
16 estimate is reasonably conservative.

17 Q Okay.

18 Also as part of your calculations did you
19 review -- withdrawn.

20 As part of your calculations you reviewed reports
21 by Mr. Lluilema Villa's pain management specialist, Dr. Grimm?

22 A That's correct.

23 Q So in coming to your conclusions about future lost
24 earnings, the approximate \$2 million that you calculated, that is
25 based on the assumption that the testimony and opinion of

1 Dr. Grimm is reliable, is that correct?

2 A Well, I understand there are other doctors that
3 testified concerning that, but yes. When I first did my work, I
4 had a report of Dr. Grimm. And based on his report, I assumed
5 that, yes, he wouldn't return to work.

6 Q But the calculations you just testified to now were not
7 based on the reports of any other doctors besides Dr. Grimm,
8 isn't that right?

9 A That's correct. Yes, I didn't have any information on
10 how those doctors would testify.

11 Q Were you aware of the fact that Dr. Grimm in testifying
12 yesterday testified that he had two different sets of medical
13 records and he couldn't figure out which was which?

14 MR. VELARDI: Objection to the relevancy as to
15 this witness on that.

16 THE COURT: Overruled.

17 A I don't know how Dr. Grimm testified. I just -- at the
18 time I prepared my work I had a report prepared by Dr. Grimm
19 which I used to make estimates of medical care costs. And in his
20 report based on what he indicated were the problems, I simply
21 assumed that Mr. Lluilema would not return to work.

22 Q Of course, because you relied on Dr. Grimm, correct?

23 A Yes, at that particular time. If there is additional
24 information that comes out -- I mean, I don't have all the
25 transcripts, and I don't know what else was testified to. But at

1 the time I prepared my report, he was the person who had prepared
2 a report that I used to make the assumption.

3 Q So because the entirety of your calculations is based
4 on your reliance on Dr. Grimm's report, if Dr. Grimm is not
5 reliable, then your numbers are not correct; is that right?

6 A Well, no. It's not for the following reason: What I
7 have done is tell you absent the accident how much would he have
8 earned had he continued on in the way he was working. What to
9 deduct, if anything at all, depends on whether or not he could
10 work. And only one person had indicated, that's Dr. Grimm, in
11 the report information that I used to assume he would not --
12 Mr. Lluilema would not return to work. But I have given you in
13 my numbers that we just discussed the estimate of what the
14 earnings would have been, what he would have earned if he did not
15 go back to work.

16 Whatever took place at this trial is going to take
17 place at this trial. I can't tell you about his future based on
18 his medical. That would be up to someone else to provide a
19 vocational analysis or some other assumption. I can tell you I
20 am very comfortable what I produced as an estimate of
21 pre-accident potential earnings. As for post-accident potential
22 earnings, I am not your expert on that.

23 Q Well, doctor, thank you, but my question was with
24 respect to future earnings. I think you answered it, but just to
25 clarify; since your future calculations are based solely, as you

1 said, on the information about Mr. Lluilema's capability as
2 reported by Dr. Grimm, if Dr. Grimm is not reliable, then your
3 numbers are wrong?

4 A No. My numbers concerning pre-accident earnings are --
5 I am very confident in the pre-accident earnings.

6 Q Not the post-accident, though?

7 A As far as post-accident goes, if we disregard
8 Dr. Grimm, it still leaves my pre-accident estimate and whatever
9 a jury thinks or whatever the other evidence is concerning
10 post-accident concerning his opportunity to work post-accident.

11 All I am saying is there are two sides,
12 pre-accident earnings from which you deduct post-accident
13 earnings. I provided you with pre-accident earnings. I had
14 concluded they are not to be reduced because Dr. Grimm had said
15 that he wasn't going to -- he hadn't said it, but I took from
16 what he put in his report that Mr. Lluilema would not be
17 returning to work.

18 Now, again, my side, the pre, I am comfortable.
19 What takes place post, obviously, you are saying to me that
20 perhaps Dr. Grimm's presentation doesn't provide that information
21 about what is going to take place post-accident. That leaves it
22 up to the jury and any other witnesses about what will take place
23 post-accident.

24 Q So we can agree everything that happens post-accident
25 is up to the jury. Nobody is saying that any of your numbers

1 pre-accident are wrong. The numbers are in the W-2s, is that
2 correct?

3 A That's correct.

4 Q So anything that happened after the accident, of your
5 calculations are based on Dr. Grimm's opinions, correct?

6 A I think we are going in a circle here. I'm saying --

7 THE COURT: All right. I agree.

8 Counsel, you are asking him the same question and
9 getting the same answer. This is now the third time.

10 Essentially, what I understand the witness to be
11 saying is --

12 MR. SCARIA: Forgive me, your Honor, but if you
13 are asking me to discontinue, I can.

14 THE COURT: Okay.

15 Q Thank you very much, Dr. Goldman.

16 THE COURT: Any redirect?

17 MR. VELARDI: Just one question.

18 REDIRECT EXAMINATION

19 BY MR. VELARDI:

20 Q Doctor, you may have been using Dr. Grimm's report
21 previously, but is it true that now today you are also relying
22 upon Dr. Brisson who says that Mr. Lluilema Villa cannot work
23 either, as I presented to you in the assumption that I asked you
24 to assume?

25 A Yes. I mean, as I said, whatever has taken place in

1 front of the jury, including Dr. Brisson -- and you are telling
2 me that so for the first time I am hearing that -- then I
3 would -- you know, I don't have any opinion about what would be
4 taking place post-accident. I leave it to the other expert. If
5 it's Dr. Brisson, fine. I thought it might have been Dr. Grimm,
6 fine. I don't have any information that will allow me to say
7 that he could work post trial -- sorry, post-accident.

8 Q Okay. No further questions. Thank you.

9 MR. SCARIA: One question, may I?

10 THE COURT: Yes.

11 RECROSS EXAMINATION.

12 BY MR. SCARIA:

13 Q Just to be clear, Dr. Goldman, you don't have any idea
14 what Dr. Brisson testified to on the stand, is that correct?

15 A Yes, that is correct.

16 Q Thank you.

17 THE COURT: Okay. Thank you, Dr. Goldman. You
18 are excused. Thank you.

19 THE WITNESS: I can disconnect?

20 THE COURT: You are all done. I am about to sign
21 you off, sir.

22 THE WITNESS: Please do that.

23 THE COURT: So that concludes our work here for
24 this week.

25 (Continued on next page)

1 THE COURT: So that concludes our work here for
2 this week. Enjoy a nice long weekend. Please remember not
3 to discuss the case, not to look anything up about the case,
4 and we will see you Tuesday morning at 9:30. Thank you.

5 THE COURT OFFICER: All rise. Jury exiting.

6 (Whereupon, the jurors exited the courtroom.)

7 THE COURT: Is there anything further that we need
8 to put on the record?

9 MS. SCARIA: No, I was just wondering, are we doing
10 the charge conference on Tuesday.

11 THE COURT: Let's go over that again. Off the
12 record.

13 (Whereupon, the case on trial was adjourned to
14 Tuesday, October 14, 2025 at 9:30 a.m.)
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