

**In The Matter Of:**

*Honorio Rosario-Silverio v.*

*PPC Commercial, LLC, 1489 Food Corp., d/b/a Foodtown  
Supermarket and Parkchester Perservation, Inc.*

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*Barbara Steele, M.D. and John Estevez*

*December 10, 2025*

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*Michelle Cox*

*Senior Court Reporter*

*Bronx Civil Supreme Court*

*851 Grand Concourse*

*Bronx, New York 10451*

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF BRONX: CIVIL TERM: PART IA-5

-----:

3 HONORIO ROSARIO-SILVERIO, :

4 -against- Plaintiff, :

5 PPC COMMERCIAL, LLC, 1489 FOOD CORP., :

6 d/b/a FOODTOWN SUPERMARKET and :

7 PARKCHESTER PRESERVATION, INC., :

-----:

8 Defendants. :

-----:

9 851 Grand Concourse

10 Bronx, New York 10451

11 December 10, 2025

12 B E F O R E:

13 HONORABLE WILMA GUZMAN,

14 Justice of the Supreme Court

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

16 PRONER & PRONER

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BY: EILEEN E. BUHOLTZ, ESQ.

ALSO PRESENT: Daisy Koch

Michelle Cox

Official Court Reporter

MC-A

1 MR. PRONER: It is hereby stipulated by and  
2 between counsel for the respective parties in this action  
3 that past medical records shall be -- I'm sorry, past  
4 medical expenses shall be deemed established at the amount  
5 paid out by Workers Comp. That amount is a currently  
6 \$161,146.35, that number may increase at the time of any  
7 payment or entry of judgment on this matter. That final  
8 amount paid out for the medical portion of Workers' Comp,  
9 not indemnity, just medical for Workers' Compensation is  
10 going to be increased to the amount of the verdict and  
11 would be reduced by any comparative negligence that the  
12 jury attributes to the plaintiff and wouldn't be payable at  
13 all if it's a defense verdict. But as far as the amount of  
14 the verdict, past medical expenses will be established by  
15 the amount paid out by the medical portion of Workers'  
16 Comp. It's not going to be referred to any further during  
17 the trial and will not be on any line in a jury verdict  
18 sheet, just for past medical expenses. And it's going to  
19 be the entire amount that's entered into the verdict,  
20 subject to any reduction for liability.

21 Is it so stipulated, Counsel?

22 MR. CALABRESE: So stipulated so long as a final  
23 figure is provided, written from New York State Insurance  
24 Fund for the carrier.

25 MR. PRONER: And, furthermore, that portion of

1 any verdict or entry of judgment is not going to be subject  
2 to appeal, just that portion.

3 MR. CALABRESE: I would say, and I consent to  
4 that portion not being appealed.

5 However, I would say, subject to any other  
6 appeals on this case, if and when that occurs, that  
7 enforcement of the judgment for that past figure,  
8 obviously, will be stayed with the totality of the case  
9 pending that appeal.

10 MR. PRONER: But that number will not be subject  
11 to appeal, agreed?

12 MR. CALABRESE: Correct. I agree.

13 MS. BUHOLTZ: Agreed, Your Honor.

14 THE COURT: So stipulated.

15 MR. PRONER: Secondly, we have received  
16 subpoenaed records, and I wanted to have those moved into  
17 evidence.

18 Would you like me to do that before the jury, or  
19 would you like me to do that now?

20 THE COURT: Are they going to be used with the  
21 witnesses we have this morning or not?

22 MR. PRONER: They may be.

23 THE COURT: All right. We might as well do it  
24 now.

25 MS. BUHOLTZ: Your Honor, this is subject to

1 redaction to any reference to insurance, and also as to any  
2 otherwise inadmissible reports.

3 THE COURT: Well, I haven't heard, first of all,  
4 what's going to be offered and what's being marked for ID.

5 So I guess once he offers it, then you make your  
6 objection, if any, or whatever else you want to add to it.

7 Until I can get it marked for ID. Until I know  
8 it's being offered into evidence. Until I hear either it's  
9 on consent or there's an objection, then I will hear  
10 everybody else out, okay.

11 MR. PRONER: Your Honor, pursuant to a judicial  
12 subpoena duces tecum returnable to this part, we received  
13 certified medical records from CitiMed. The subpoena is  
14 returnable to court, and the custodian has supplied the  
15 records directly in response.

16 Your Honor, I would like to have these records  
17 marked as Plaintiff's Exhibit 17 for identification?

18 THE COURT: All right. Where are they?

19 THE CLERK: Here's the box here, Judge, with the  
20 records.

21 THE COURT: Empty the box right there.

22 THE COURT OFFICER: There is a CD in there also.

23 THE CLERK: And there's three disks.

24 THE COURT: All I need is a certification.

25 Is a certification and a subpoena there?

1 MR. PRONER: It's actually double certified.  
2 There's a second certification in there.

3 THE COURT: I removed the subpoenas. I don't put  
4 subpoena in evidence. There are two certifications  
5 attached to each -- that were attached to each subpoena I  
6 will allow. I do let the certification come in. So based  
7 on the certifications that these are their base records,  
8 they will come into evidence as Plaintiff's 17, I believe.

9 THE CLERK: Seventeen, Judge.

10 THE COURT: Any objection?

11 MR. CALABRESE: No objection, Your Honor, subject  
12 to, of course, no other treating doctors' conclusions or  
13 summaries contained or being referenced.

14 THE COURT: Any objection as to the record?  
15 Anything else you can reserve at the time of  
16 trial.

17 MR. CALABRESE: No objection.

18 MS. BUHOLTZ: My position is the same as  
19 Mr. Calabrese.

20 THE COURT: So 17, admitted in evidence.

21 Hold on. They have to be so marked.

22 In the box there are also three disks that came  
23 in with the box. For the three disks will be marked  
24 separately as 17A, 17B and 17C.

25 What will be contained in that box.

1 MR. CALABRESE: Your Honor, are those disks  
2 identified as radiological study disks?

3 THE COURT: Let me see what they are; if I can  
4 read the handwriting. 17A, it appears MRI. It has dates  
5 of 4 -- I can't make it out. It's MRIs.

6 17B, it includes MRI and x-rays. It has dates of  
7 11/22/17, 1/22/19, 8/30/22. It has various dates,  
8 11/15/17. So it has a whole bunch of dates. So does --  
9 17A has a whole bunch of dates of MRI. And 17C appears to  
10 be a CAT scan, a date of 4/30/21.

11 MR. CALABRESE: A day before 4 --

12 THE COURT: 4/30, April 30 of 2021.

13 MS. BUHOLTZ: Are those the only disks in the  
14 box?

15 THE COURT: Those are the only disks in the box.

16 MR. CALABRESE: Thank you, Your Honor.

17 MR. PRONER: Your Honor, I'm ready.

18 THE COURT: You have to wait until everything  
19 gets marked.

20 MR. PRONER: I'm sorry. I apologize.

21 THE COURT: Give it to the reporter to mark those  
22 individually.

23 (Plaintiff's Exhibit 17, Box Containing  
24 Subpoenaed Items, marked for identification as of this  
25 date.)

1 (Plaintiff's Exhibit 17A, Disk, deemed marked for  
2 identification as of this date.)

3 (Plaintiff's Exhibit 17B, Disk, marked for  
4 identification as of this date.)

5 (Plaintiff's Exhibit 17C, Disk, marked for  
6 identification as of this date.)

7 MR. PRONER: Your Honor, while we're waiting,  
8 just a little practical advice.

9 CitiMed records are approximately 800 pages of  
10 records. The doctor works for CitiMed. She brought a  
11 copy --

12 THE COURT OFFICER: All rise. Jury entering.  
13 (Whereupon, the jury enters the courtroom.)

14 THE COURT: Please be seated.

15 Good morning, Ladies and gentlemen of the jury.

16 THE JURY: Good morning.

17 THE COURT: All right. We're ready to get  
18 started, without any further ado, plaintiff, next witness.

19 MR. PRONER: Call to the witness stand, the  
20 orthopedic surgeon, Dr. Barbara Steele.

21 THE COURT OFFICER: Ma'am, just hand up for me  
22 raise your right hand.

23 B A R B A R A S T E E L E, a witness called on  
24 behalf of the plaintiff after having been first  
25 duly sworn and took the witness stand and

1 testified as follows:

2 THE COURT OFFICER: Just have a seat. Try to get  
3 as close as possible to the mic.

4 Ma'am, I have to finish swearing you in.

5 Just state your name and professional address for  
6 the address.

7 THE WITNESS: Dr. Barbara Steele, 99-01 63rd  
8 Road, Park Rego, New York 11374.

9 THE COURT: You may inquire, Counsel.

10 DIRECT EXAMINATION

11 BY MR. PRONER:

12 Q Good morning, Doctor.

13 A Good morning.

14 Q Doctor, could you state your full name for the record  
15 please?

16 A Dr. Barbara steel.

17 Q Dr. Steele, what is your profession?

18 A Orthopedic surgeon.

19 Q Are you licensed to practice medicine in the State of  
20 New York?

21 A Yes.

22 Q Starting from college, could you tell the jury about  
23 your education please.

24 A Sure.

25 I went to Brown University. I majored with honors in

1 neuroscience. I then went to Cornell Medical School. I  
2 graduated with honors in research. I did my orthopedic surgery  
3 residency at Westchester Medical Center where I was chief  
4 resident last year. I did my sports medicine fellowship at  
5 University of Pennsylvania.

6 Q So part of your education you attended three Ivy  
7 League universities; is that correct?

8 A That's correct.

9 Q And medical school you learned all the basic subjects  
10 from childbirth to basic surgery; is that correct?

11 A Correct.

12 Q And after graduating from medical school, did you have  
13 any postgraduate education or training?

14 A That's where I did my residency and my fellowship.

15 Q Okay. And what subject was your residency?

16 A Orthopedic surgery.

17 Q And what do you study when you do a residency in  
18 orthopedic surgery?

19 A Orthopedic surgery is the study of bones, joints,  
20 ligaments, muscles, spine, is the majority of what we cover.

21 Q Now, does every orthopedist do surgery?

22 A Every orthopedist surgeon was trained in surgery.  
23 Whether they practice surgery or not would be at their  
24 discretion.

25 Q And after your residency, did you have a fellowship?

1           A     Yes.

2                     I did an orthopedic surgery sports medicine fellowship  
3 at the University of Pennsylvania.

4           Q     And what is a fellowship?

5           A     It's an additional year of training after you finish  
6 residency to specialize in a certain area of orthopedics.

7                     So my situation, it was sports medicine.

8           Q     And could you tell the jury about your professional  
9 practice after your training?

10          A     Yes.

11                    So I worked for one group in Long Island, initially  
12 after training. Then he transferred jobs to a group in  
13 Manhattan and then I transferred jobs to CitiMed, which I am  
14 currently working at now and then opened my open practice last  
15 year in Long Island.

16          Q     Do you routinely diagnosis and treat shoulder injuries  
17 including labral tears, rotator cuff tears, and traumatic  
18 shoulder pathology?

19          A     Yes.

20          Q     And have you done any research or received any awards  
21 as part of your medical profession?

22          A     Yes.

23          Q     And have you had publications and peer reviewed  
24 publications?

25          A     Yes.

1 Q Would that include publications in the field of  
2 arthroscopy rotator cuff repair?

3 A Yes.

4 Q Are you familiar with diagnostic tools used in  
5 evaluating shoulder trauma such as MRI studies arthroscopic  
6 evaluations and physical examinations and findings?

7 A Yes.

8 Q Are you able, to a reasonable degree of medical  
9 certainty, able to render opinions regarding the nature, cause,  
10 permanency, and prognosis of shoulder injuries?

11 A Yep.

12 Q Approximately how many patients have you treated  
13 shoulder injuries?

14 A Thousands.

15 Q Approximately how many surgical procedures have you  
16 performed on shoulders?

17 A Probably over a thousand.

18 MR. PRONER: Your Honor, I would ask the Court to  
19 recognize Dr. Barbara Steele as an expert in the field of  
20 orthopedics and a subspecialty as an expert in the field of  
21 shoulder injuries and have the Court recognize her  
22 testimony as expert testimony.

23 MR. CALABRESE: No objection, Your Honor.

24 MS. BUHOLTZ: No objection, Your Honor.

25 THE COURT: So qualified.

1           Q     Doctor, did there come a time that  
2     Honorio Rosario-Silverio presented as a patient in your  
3     practice?

4           A     Yes.

5           Q     Doctor, I understand you brought some medical records  
6     with you today?

7           A     Yes.

8           Q     And are those medical records from CitiMed?

9           A     Yes.

10          Q     The CitiMed records have been previously entered into  
11     evidence as Plaintiff's Exhibit's 17.

12                     So you may refer to them and read from them as  
13     necessary during your testimony.

14                     Is that understood?

15          A     Okay, sure.

16          Q     So doctor, did you evaluate  
17     Mr. Honorio Rosario-Silverio's shoulder condition?

18          A     Yes.

19          Q     Did you take a history from the patient about how his  
20     injuries occurred?

21          A     Yes.

22          Q     And what did that Mr. Rosario tell you about his  
23     accident of November 14, 2017?

24          A     I stated that he was in a work injury on October 14,  
25     2017. He fell down a ramp and landed on his left shoulder and

1 hit his forearm on a pipe. He said his shoulder dislocated and  
2 was reduced by the person who witnessed the injury.

3 Q And when did he first become your patient?

4 A January 23, 2018.

5 MR. CALABRESE: Your Honor, is she reading from  
6 the records? It looks like she's not reading from the  
7 court records.

8 THE COURT: Is she reading from the records, an  
9 exhibit?

10 Q Are those records that you're reading from CitiMed?

11 A Yes.

12 THE COURT: But we have the records in evidence.  
13 It has to be records in evidence at this point.

14 MR. PRONER: Okay.

15 THE COURT: You want to supply the records marked  
16 in evidence, 17.

17 MR. PRONER: Since there is --

18 THE COURT: If there is anything that needs to be  
19 said, we'll take it inside.

20 MR. PRONER: Your Honor, since we've got, looks  
21 like a thousand pages of records there, could the witness  
22 have a moment to go through them, put them in order to just  
23 save some time during her testimony.

24 THE COURT: If she's doing that, then I'm going  
25 to give the jury a five-minute break.

**B. Steele - Plaintiff - Direct**

1 THE COURT OFFICER: All rise. Jury exiting.

2 (Whereupon, the jury exits the courtroom.)

3 MR. PRONER: All right. Your Honor, while she's  
4 putting those records in order, I have three exhibits I'm  
5 going to be using as demonstrative.

6 Can we take this opportunity to mark them and  
7 show them to the Court.

8 THE COURT: You have to show them to counsel  
9 first.

10 MR. CALABRESE: No objection to two out of the  
11 three, Your Honor.

12 THE COURT: First of all, I just want to mark  
13 them for ID and they're going to be just for demonstrative  
14 evidence.

15 So which of the two you don't object and then  
16 we'll show the third one.

17 MR. CALABRESE: The first two, which are --

18 THE COURT: Just pull them out. Just pull out  
19 which of the two of those three you don't object.

20 MR. CALABRESE: No objection to those.

21 THE COURT: So this will be 18 and 19 ID, for  
22 demonstrative purposes only.

23 (Plaintiff's Exhibit 18, Demonstrative, marked  
24 for identification as of this date.)

25 (Plaintiff's Exhibit 19, Demonstrative, marked

1 for identification as of this date.)

2 THE COURT: Mr. Calabrese, we going to lay a  
3 foundation for No. 3. We don't need the jury to lay a  
4 foundation.

5 Go ahead.

6 MR. PRONER: May I show it to the witness?

7 THE COURT: Yes.

8 MS. BUHOLTZ: What's the exhibit?

9 THE COURT: No. 3.

10 MS. BUHOLTZ: 20.

11 Or is it 18-1, -2, -3.

12 THE COURT: No. 3 hasn't been marked, which will  
13 eventually be marked if -- it is 20.

14 Go ahead.

15 Doctor, we're going to give you a diagram. Just  
16 listen to the questions for a minute.

17 Q Doctor, I'm showing you what the Court's referring to  
18 as No. 3.

19 A Okay.

20 Q Do you recognize the scenes depicted in these images?

21 A Yes.

22 Q What do these illustrations show?

23 A They're an artistic demonstration of a shoulder  
24 arthroscopy.

25 Q Do the illustrations fairly and accurately depict the

1 anatomy of the shoulder and the surgical steps you performed  
2 during Mr. Rosario's operation?

3 A Yes.

4 Q Are these images consistent with what you observed  
5 inside the shoulder during surgery?

6 A Yes.

7 Q Would these illustrations help the jury understand the  
8 surgical procedure and the injuries you repaired?

9 A Yes.

10 Q Are the depicted structures such as labrum, rotator  
11 cuff tendon and synovial tissue accurately represented for  
12 teaching purposes?

13 A Yes.

14 MR. PRONER: Your Honor, please offer --

15 THE COURT: For demonstrative purpose.

16 MR. PRONER: -- for demonstrative illustration to  
17 assist the jury in understanding the surgical procedure and  
18 anatomy. It is not offered as a medical record but solely  
19 to illustrate Dr. Steele's testimony.

20 MS. BUHOLTZ: Your Honor, I object to the  
21 headline at the top with regard to Mr. Rosario-Silverio and  
22 related information. This is not his imaging. This is  
23 demonstrative.

24 THE COURT: All right. Let me see the top.  
25 That's all.

1 All right. If we could redact the top, because  
2 it's not his directly, then I'll allow it as a  
3 demonstrative. It's just a left shoulder arthroscopy.

4 MR. PRONER: So I'll show it to the attorneys.  
5 Your Honor, if I may.

6 THE COURT: I don't have to see it. They have to  
7 agree.

8 MR. PRONER: I could show it on my computer  
9 without the top.

10 THE COURT: If it's shown without the name of the  
11 plaintiff and that it's his left shoulder surgery because  
12 that's not the testimony, just a left shoulder arthroscopy,  
13 that's fine. It could be shown as a demonstrative.

14 MR. PRONER: Your Honor, if that's the only  
15 objection.

16 MS. BUHOLTZ: I think if we had a pair of  
17 scissors, we can cut off the top.

18 THE COURT: Excuse me?

19 MS. BUHOLTZ: If we have a pair of scissors, we  
20 can cut off the top of the page.

21 THE COURT: Yes, I can do that too.

22 MR. PRONER: I would like to use the digital.  
23 It's a better image.

24 THE COURT: All right. As long as -- I'll cut  
25 off the top. I'll mark as an ID for demonstrative purposes

1           only.

2                       MR. PRONER:   Okay.   Perfect.

3                       THE COURT:   That's what you're going to be  
4           showing in the digital, that's all.

5           Q     Doctor, that's surgery, is that  
6           Honorio Rosario-Silverio's surgery, the surgery that you saw in  
7           those images, the illustration?

8           A     That's a representation of his surgery.

9           Q     Right.

10                    And that's Honorio Rosario's left shoulder?

11           A     Yes.

12           Q     And that was the surgery on 1/14/2020?

13           A     Yes.

14           Q     And it was his left shoulder arthroscopy?

15           A     Yes.

16                    MR. PRONER:   Your Honor --

17                    THE COURT:   Okay.   I'll allow it for  
18           demonstrative purposes only, based on that testimony.

19                    MR. CALABRESE:   Same objection, Your Honor.

20                    THE COURT:   Over objection.   I'll allow it.  
21           Demonstrative purposes only.

22                    Mark it as 20.

23                    MR. CALABRESE:   Note my objection.

24                    THE COURT:   Yes.

25                    (Plaintiff's Exhibit 20, Demonstrative, marked

1 for identification as of this date.)

2 THE COURT: Ready to proceed now?

3 MS. BUHOLTZ: Yes.

4 THE COURT: Okay. Bring the jury out.

5 THE COURT OFFICER: All rise. Jury entering.

6 (Whereupon, the jury enters the courtroom.)

7 THE COURT: Please be seated.

8 You may continue, counsel.

9 Q So, Doctor, as you were saying before, what did the  
10 history reveal?

11 A The patient had a work injury on October 14, 2017. He  
12 fell down a ramp, landed on his left shoulder, and hit his  
13 forearm on a pipe. His left shoulder dislocated and was reduced  
14 by the person who witnessed the injury.

15 Q Did he report any prior injuries to the left shoulder  
16 before the October 17th accident?

17 A No.

18 Q Did you do a physical examination?

19 A Yes.

20 Q What were your findings?

21 A He had decreased range of motion; active forward  
22 flexion was 90 degrees with pain on the left compared to  
23 165 degrees on the right.

24 Active abduction was 80 degrees with pain on the left,  
25 compared to 165 degrees on the right. Internal rotation was

1 decreased on the left, the L3 vertebral body compared to the T9  
2 vertebral body on the right. External rotation was decreased at  
3 30 degrees on the left and 50 degrees on the right.

4 On the left shoulder, there was tenderness to  
5 palpation of the anterior shoulder, posterior shoulder, lateral  
6 shoulder, AC joint and trapezius.

7 On the left side, Jobe -- there's a shoulder-specific  
8 test of Jobe, caused pain, but no weakness. The other  
9 shoulder-specific test of O'Brien, Neer, Hawkins, Speed, Mayo  
10 Shear and Apprehension tests were positive.

11 Apprehension test caused instability, which was  
12 unchanged with a posteriorly directed force following the  
13 apprehension testing, and jerk test caused pain as well.

14 Q Do these findings indicate a structural injury inside  
15 the shoulder joint?

16 A Yes.

17 Q Can you explain to the jury why is that?

18 A Well, the difference tests test for different areas of  
19 the shoulder.

20 So Jobe test for rotator cuff pathology, in addition  
21 to forward flexion and abduction that tests for rotator cuff and  
22 labral pathology. The Apprehension test for labral pathology,  
23 which is often seen we a dislocation. The O'Brien in Mayo Shear  
24 test, test for labral pathology. The Hawkins and Neer test  
25 tests for bursitis. And the Speed test tests for biceps

1 tendonitis, biceps pathology. And the jerk test also tests for  
2 labral pathology.

3 Q Explain to the jury what all that means, in terms of  
4 how an arm works.

5 I'm not --

6 A Sure.

7 So when we do the exam, I position the shoulder in  
8 certain positions, in front, around, and aside of the patient.

9 And when I move the patient's arm in certain  
10 positions, if it causes pain in that position, that's testing  
11 that particular area of the shoulder.

12 If it causes pain, that's a significant finding, and  
13 that is a sign that that test is positive, indicating that there  
14 is pathology, which is a tear of that area of the shoulder.

15 Q When you say a tear of that area of the shoulder, what  
16 does a torn shoulder mean?

17 Is it like when you tear your jeans or is it something  
18 else?

19 A So the rotator cuff consists of four muscles that turn  
20 into tendons that's been attached unto the bone of the arm. The  
21 rotator cuff allows the arm to move side to side and up. The  
22 rotator cuff tendon of the supraspinatus tendon is the one that's  
23 on top. That's the one that is the most commonly torn in an  
24 injury.

25 A tear of the rotator cuff, whether it be a partial

1 tear or a complete tear, would cause pain with lifting the arm  
2 up to the side like this.

3 The test that I test for, looking to see if that is  
4 potentially the cause of the pain.

5 The labrum is on the inside of the shoulder. So the  
6 shoulder consists of a ball and a socket, but the socket is  
7 pretty shallow. It's flat like this. That's called a glenoid.

8 Around the socket is a rim of tissue called the labrum  
9 that deepens the socket to hold the ball in place.

10 When we have a tear of portion of the labrum that's  
11 where we can have a dislocation of the shoulder. That can cause  
12 pain in the shoulder.

13 When I do certain tests of the shoulder, I'm testing  
14 the ball against different areas of labrum to see what causes  
15 pain.

16 If there's a tear in that area of the labrum when I  
17 test it in those positions, it's going to elicit pain in the  
18 shoulder.

19 Q So all these tests that you did gave you the overall  
20 impression that there were tears?

21 A Yes.

22 Q Did you begin a conservative course of treatment for  
23 the patient?

24 A Yes.

25 Q Can you tell the jury about the treatment.

1           A     Physical therapy was ordered, and the patient was  
2 recommended and underwent a PRP injection. That's a  
3 Platelet-Rich Plasma.

4           Q     What is a Platelet-Rich Plasma injection?

5           A     So that's when we draw the patient's blood. We take a  
6 sample of the patient's own blood. We put it in a centrifuge  
7 machine and spin it off. We eliminate the red blood cells, and  
8 we just extract the platelet-rich portion of the blood. We take  
9 that portion of the blood and we inject it back into the injured  
10 body part to help stimulate healing and decreased pain.

11          Q     Why would you do that?

12          A     To help --

13          Q     -- help them decrease pain and increase healing?

14                Why would you do that with Mr. Honorio?

15                What was he going through that you thought that would  
16 help.

17          A     To try and decrease his pain. To try to simulate some  
18 healing in a conservative manner.

19          Q     And the physical therapy and the injection, how did he  
20 respond to these measures?

21          A     It did not help him, overall, unfortunately.

22          Q     And ultimately was there a surgery recommendation?

23          A     Yes.

24          Q     And did you perform a surgery on January 14th of 2020?

25          A     Yes.

1 Q And prior to the surgery, did you have an opportunity  
2 to look at MRI films?

3 A Yes.

4 Q Okay. I'm going to be showing you some MRIs and  
5 colorized versions of those MRIs that we previously marked as  
6 exhibits, and ask to show them to the jury, and have you  
7 explained to them what we're looking at to help them understand  
8 what the MRI showed.

9 A Sure.

10 Q Starting and Plaintiff's 18 in ID.

11 THE COURT: Well, this is for demonstrative  
12 purposes only.

13 MR. PRONER: Your Honor, can I have permission to  
14 publish Plaintiff's 18 ID for the jury and the witness,  
15 defense counsel, and the Court?

16 THE COURT: You may. That is for demonstrative  
17 purposes.

18 MR. PRONER: Demonstrative purposes only.

19 THE COURT: That could be published to the jury.  
20 For demonstrative purposes, it can be shown.

21 Published to the jury for demonstrative purposes  
22 only.

23 Q Doctor, I'm showing what has a premarked for  
24 identification as Plaintiff's Exhibit 18.

25 Do you recognize these films?

1 A Yes.

2 Q What are they?

3 A There's an image of the shoulder MRI and then a drawing  
4 demonstrating what is seen in that shoulder MRI.

5 Q And do these films represent the actual original MRI  
6 images taken of Mr. Rosario's left shoulder on November 7th of  
7 2017?

8 A Yes.

9 Q And are these the exact images that you relied upon in  
10 forming your opinions about the nature and extent of his  
11 shoulder injuries?

12 MR. CALABRESE: Objection. If we can bifurcate  
13 which is which.

14 THE COURT: Hold on.

15 The what?

16 Q The non-colored, are those the one you relied upon?

17 A Yes.

18 Q And do they accurately depict the internal structures  
19 of Mr. Rosario's left shoulder as it existed shortly after his  
20 October 14, 2017, accident?

21 A Yes.

22 Q And the MRIs that you read were the images sufficient  
23 to you as a treating orthopedic surgeon to rely upon them in  
24 rendering opinions regarding diagnosis, causation, and  
25 treatment?

1 A Yes.

2 Q All right. Please tell the jury what we're looking  
3 at.

4 A So on image that's completely black and white, the  
5 circle, the structure in the middle, that's the humeral head.

6 The white spot in the middle --

7 Q Wait a second.

8 What is the humeral head?

9 A That is the top part of your arm. That is the ball.

10 Q This bone here is the humerus?

11 A Yes.

12 Q And the humeral head is the top of it?

13 A The top part, yes.

14 Q So that's the top that goes into the shoulder?

15 A Yes.

16 MS. BUHOLTZ: Your Honor, I'm not seeing any  
17 pointing.

18 THE WITNESS: Is there a mouse?

19 THE COURT: Do you wish the witness to point  
20 somewhere?

21 MS. BUHOLTZ: Mr. Proner was pointing and I  
22 couldn't see the cursor.

23 MR. PRONER: No, I was pointing to my arm.

24 THE COURT: He was pointing to his arm.

25 MS. BUHOLTZ: Okay.

1 MR. PRONER: Sorry.

2 Q Pointing to my arm, this is the humerus?

3 A Correct.

4 Q The top is the humerus head?

5 A Correct.

6 Q And the top is the humeral head?

7 A Correct.

8 Q And you see that in the MRI?

9 A Yes.

10 Q Okay. If you can go on, please.

11 A So the white spot that's kind of in the middle. And to  
12 the right of the image is fluid within the humeral head that's  
13 called a bone contusion, a bruising within the bone.

14 Q Wait a second.

15 A bone contusion, a bruising of a bone?

16 A Yes.

17 Q Does that happen from an injury, or does that happen  
18 from aging?

19 A No, that's from an injury.

20 Q So in the MRI, you could see an injury?

21 A Yes.

22 Q And you see the jury to the shoulder?

23 A Yes.

24 Q Okay. Go ahead, please.

25 A On the top of that there's a dark structure -- I don't

1 know if there's a mouse -- that's coming across the top of the  
2 humeral head. That's the supraspinatus tendon. That is part of  
3 the rotator cuff. And we can see a little white line in there;  
4 that's the partial rotator cuff tear.

5 Q Okay. The contusion of the bone, does that cause  
6 pain?

7 A Yes.

8 Q Why is that?

9 A It's like a really deep bruise of your bone.

10 Q And the tear of the rotator cuff, does that cause  
11 pain, limitation of motion or anything else?

12 A Yes.

13 Q Why is that?

14 A Because the rotator cuff is what helps you move the arm  
15 around. And so when it's torn it's going to be painful, more  
16 difficult to move the arm.

17 Q So can that affect someone's ability to work in  
18 construction?

19 A Yes.

20 Q Why is that?

21 A You have to use your arm significantly for manual  
22 labor.

23 Q Okay. Doctor, in the colorized version, is there  
24 anything of significance you want to point out to the jury?

25 A The other thing you can see in this image, the white

1 C-shaped structure on the non-colored version, is a joint  
2 infusion. That corresponds to the pink C-shaped structure in the  
3 middle of the colored version that's fluid that's in the joint  
4 which occurs when you have an injury.

5 Q Okay. Anything else of significance that the jury  
6 should look at?

7 A Those are my main points on this MRI slide.

8 Q Thank you.

9 I'm going to pull up another MRI, which is Plaintiff's  
10 Exhibit 19.

11 Incidentally, before I pull up 19, what are MRIs?

12 Are they like different slices of a cake or something  
13 else?

14 A So an MRI uses magnets to assess the internal structure  
15 within the body. They're taken in different slices so that we  
16 can see the -- say, for example, from the shoulder, from  
17 different views, because it's still a 2D structure.

18 So we take slices going this way across the shoulder.  
19 We take slices going this way across the shoulder, and we take  
20 slices going this way across the shoulder.

21 Q Are they more sophisticated than an x-ray?

22 A Yes.

23 Q Why is that?

24 A They can show the soft tissue where the x-ray only  
25 shows the bones.

1           Q     Doctor, I'm showing you what's been marked as  
2     Plaintiff's Exhibit 19 for identification.

3                     THE COURT:   For demonstrative purposes.

4           Q     For identification, for demonstrative purposes only.  
5                 Is this another slice of the same study?

6           A     Yes.

7           Q     And this was done on November 7th of 2017?

8           A     Yes.

9           Q     Approximately three weeks after the accident of  
10    October 14th of 2017, correct?

11          A     Yes.

12          Q     And what is the significant findings in this different  
13    image from that MRI?

14          A     So we also see the white C-shaped structure in the  
15    middle of the image, which is the pink in the diagram that shows  
16    the joint effusion, the fluid in the shoulder.

17                 We still see a little bit of the bone contusion  
18    because we're moving a little bit in a different direction.

19                 But in the humeral head in that similar spot around  
20    two o'clock on that we do see the white spot in the middle,  
21    that's the bone contusion.  And then the rotator cuff, which is  
22    on top, we see the tendonitis, tendinosis of the rotator cuff  
23    which is inflammation of the tendon of the supraspinatus.

24          Q     Thank you.

25                 And so were these also signs of injury?

1           A     Yes.

2           Q     How do you know that it's injury rather than aging,  
3 normal aging?

4                     I want you to assume he was 37 years old at the time  
5 these studies were taken.

6           A     We don't expect to see normal aging signs in a  
7 37-year-old. That would be highly unusual.

8                     What you would see if there were a sign of aging,  
9 which would be arthritis in the shoulder, is you would see the  
10 joint space between the glenoid and the humeral head.

11                    So where that white structure is that we see the  
12 effusion, that area would be narrowed. The bones would  
13 essentially be touching. There would be osteophytes if you're  
14 looking for arthritis in the shoulder, which is basically the  
15 extra bone formation off the glenoid and the humeral head. We  
16 would see wear and tear of the cartilage of the glenoid and the  
17 humeral head if there were signs of arthritis.

18                    Again, that would highly unusual in a 37-year-old.

19           Q     Okay. Thank you.

20                    So subsequent to conservative treatment, you're review  
21 of the MRIs, your injections, physical therapy, eventually you  
22 did surgery?

23           A     Yes.

24           Q     Would it help the jury to understand the surgery if we  
25 could show them a demonstrative exhibit indicating the different

1 phrase of surgery?

2 A Yes.

3 MR. PRONER: For demonstrative purposes only, I  
4 offer to the jury Plaintiff's Exhibit 20.

5 THE COURT: I don't know what that is.

6 Do you know what that is?

7 MR. PRONER: It's not showing up.

8 THE COURT: Until we figure out.

9 (Discussion off the record.) Sinai.

10 MR. PRONER: I did the same steps I did the last  
11 time. The laptop is showing the same thing. So I'm not  
12 sure.

13 THE COURT: Try it again.

14 MR. PRONER: Okay.

15 THE COURT: And we'll see if it comes up in our  
16 monitors. That's kind of weird.

17 Q Doctor, do you recognize --

18 MS. BUHOLTZ: Your Honor?

19 THE COURT: Okay.

20 MR. CALABRESE: Judge, I thought we -- is this  
21 published to the jury?

22 THE COURT: Yes. This is 20, demonstrative  
23 evidence.

24 MR. CALABRESE: I thought --

25 THE COURT: No, because of what I already heard.

1 I allowed it.

2 Okay. Let's go.

3 Q Doctor, do you recognize what's depicted in  
4 Plaintiff's Exhibit 20?

5 A Yes.

6 Q Can you take the jury through the steps, the procedure  
7 as illustrated in the demonstrative aid, that is Plaintiff's  
8 Exhibit 20, please.

9 A Sure.

10 So during a left shoulder arthroscopy, which we say is  
11 a scope. We make small incisions around the shoulder, which is  
12 shown in the first picture, which is arthroscopic portal  
13 incisions. Typically it's three incisions, and you can see that  
14 in the diagram.

15 Through these incisions is where we insert our camera  
16 and our instruments in order to do the surgery itself. So  
17 that's Picture A.

18 Picture B is showing the labral tear that I did see in  
19 the shoulder in this surgery. It was on the top part of the  
20 shoulder called the superior labrum. There was torn labral  
21 tissue there. And so what I do is I remove the torn labral  
22 tissue to leave a stable base behind.

23 Q Doctor, let me stop you.

24 When you say you saw it, what do you mean?

25 Like you saw it on an MRI?

1 A No.

2 So we're actually looking with a camera inside the  
3 shoulder joint. And then we have a screen similar to this or  
4 even bigger in the OR.

5 And from the camera, it's projected onto the screen so  
6 I can see it magnified.

7 I take a probe and I probe the tissue to see what is  
8 intact and what is torn. And then I'm able to address it with  
9 removing the torn issue that way.

10 Q So with an MRI, you go into a machine, and you sit  
11 there for a while, and then afterwards an image is generated and  
12 somebody somewhere else looks at it?

13 A Yes.

14 So the MRI is a 2D structure of a 3D object like your  
15 shoulder. But it can only take slices that are printed on a  
16 page.

17 When I'm in there doing an arthroscopy, I can actually  
18 feel the actual structures, the tissues, and I can more clearly  
19 assess exactly what's going on.

20 Q So you can see it, touch it, and feel it with your own  
21 eyes in realtime, in 3D?

22 A Yes.

23 Q And you can manipulate it with your tools?

24 A Yes.

25 Q What tools do you use to manipulate it?

1           A     So typically, and in this situation, we use a shaver.  
2     So it's an instrument that's about the size of a pen.  But at the  
3     end of it is a little motorized shaver.  And so very precisely I  
4     can remove just the torn tissue, and I can leave the intact  
5     tissue that's there.

6           A     Also, I use a cautery device, which is kind of burning  
7     a little bit of the tissue that's there, kind of sealing it in  
8     place and also removing any inflammation by essentially burning  
9     off the inflamed tissue that's there.

10          Q     So you got something that cuts, something that burns,  
11     and you got something that sees?

12          A     Yes.

13          Q     And you use them, all three?

14          A     Yes.

15          Q     And this is something that you learned to do over  
16     years?

17          A     Yes.

18          Q     Okay.  So the picture you're getting is much more  
19     clear and live than any MRI; is that correct?

20          A     Yes.

21          Q     And did it look to you like an injury?

22          A     Yes.

23          Q     Why is that?

24          A     Because it was torn and frayed issue that occurs from  
25     an injury, typically seen after an injury.

1 Q It didn't look like just normal wear and tear for a  
2 guy that lived hard?

3 A No.

4 Like I said, if there's wear and tear, if this is a  
5 chronic thing, then we see signs of arthritis. That's typically  
6 what we see with chronic things. That would be the cartilage  
7 that would be worn.

8 There was no signs of cartilage damage in the  
9 shoulder.

10 Q Okay. So if you can continue to go through the -- so  
11 the labrum was damaged.

12 That's that ring of cartilage that holds the shoulder  
13 in place?

14 A Correct.

15 Q And the muscles were damaged, the muscles that move  
16 the arm?

17 A The tendon that attaches to the muscles, yes.

18 Q That was damaged also?

19 A Yes.

20 Q So if you could continue to go through the slides,  
21 please.

22 A Yes, so No. C or Picture C is showing the torn rotator  
23 cuff which was the supraspinatus tendon and that was shaved down  
24 to remove the torn aspect of that tendon.

25 And then the next picture which I believe would be

1 No. D shows the inflamed synovium. So the synovium is the  
2 tissue that lines the shoulder.

3 When there's an injury it gets inflamed, becomes  
4 thickened. It sticks out causing pain. So we remove the  
5 inflamed portion of synovium, that's what that picture is  
6 depicting.

7 And the next picture showing the inflamed bursa -- so  
8 in the top part of the shoulder now. Before we were looking  
9 between the two bones the glenoid and humeral head. When you  
10 have -- your shoulder moves like this, we were looking in  
11 between that space.

12 The next picture showing when we're looking on top of  
13 the shoulder. And there's another bone that comes on top here  
14 called the acromion. So we're looking at that space.

15 And there's a -- basically an area in that space  
16 that's called the bursa that's trying to keep a space between  
17 the humeral head and the acromion. That can get inflamed with  
18 an injury. And I removed the inflamed tissue that's there.

19 And lastly, we close the arthroscopic portal  
20 incisions.

21 Q And are these findings that you had when you did the  
22 surgery, were they consistent with the trauma mechanism  
23 described, the fall down a steel-covered stairway onto a cement  
24 flooring?

25 A Yes.

1           Q     Doctor, based on your examination, the review of the  
2     imagery, the performance of the surgery, do you have an opinion  
3     within a reasonable degree of medical certainty as to what  
4     caused Mr. Rosario-Silverio's injury?

5           A     Yes.

6           Q     What is that opinion?

7           A     The fall down the ramp.

8           Q     Doctor, the labral tear, even after repair, is it a  
9     permanent injury?

10          A     Yes.

11          Q     Doctor, do you have an opinion as to whether or not,  
12     even after the repair, is the rotator cuff tear a permanent  
13     injury?

14          A     Yes.

15          Q     What is his long-term prognosis?

16          A     At this point years after the surgery, I don't expect  
17     any improvement in the shoulder. It will stay, essentially, as  
18     if, or may have episodic flare ups or potentially could worsen as  
19     the shoulder has been damaged, it becomes weakened.

20          Q     And how does this injury affect his current ability to  
21     lift, reach, or perform overhead activities?

22          A     He's unable to do that.

23          Q     What about his ability to work in construction?

24          A     If -- no. He cannot do that because he cannot lift  
25     over his head. He cannot lift anything heavy.

1           Q     Doctor, based on the permanent damage you've  
2 identified, should he -- will Mr. Rosario-Silverio require  
3 ongoing orthopedic follow-up for the rest of his life?

4           A     He may get flare ups of the shoulder pain. And if he  
5 did, I would recommend additional treatment, with a follow-up  
6 orthopedic evaluation, potentially a new MRI, additional physical  
7 therapy, possibly another injection.

8                     And if none of those improve, possibly another  
9 surgery.

10          Q     How frequently should he be evaluated to manage  
11 chronic shoulder pain and progressive symptoms?

12          A     If he has an onset of pain, the pain is worsening, it's  
13 affecting his ability to function, we typically recommend  
14 treatments every two months to continue to monitor that.

15          Q     And those projections for future care, do you have an  
16 opinion within a reasonable degree of medical certainty whether  
17 or not these needs for future medical care were caused by his  
18 traumatic brain injury -- I'm sorry, trauma shoulder injury.

19                     MR. PRONER: Sustained. Let me rephrase that.

20                     THE COURT: You withdraw your question?

21                     MR. PRONER: The jump in the volume scared me, I  
22 apologize. Or it startled me. Let me try that again.

23          Q     Doctor, to a reasonable degree of medical certainty,  
24 were these projected future medical needs caused by his  
25 traumatic shoulder injury that was sustained by

1 Mr. Rosario-Silverio on October 14th of 2017?

2 A Yes.

3 Q And the future treatments, are they consistent with  
4 the nature and course of the injuries that you diagnosed and  
5 operated on?

6 A Yes.

7 Q Just to summarize, Mr. Rosario's shoulder injury is  
8 permanent; is that correct?

9 A Yes.

10 Q And he may require lifelong orthopedic care; is that  
11 correct?

12 A Yes.

13 Q And is it additional surgery possible or likely?

14 A It is possible.

15 Q And these were caused by the original accident?

16 A Yes.

17 Q Doctor, prior to today, had you and I ever met?

18 A No.

19 Q Doctor, are you being paid for your time away from  
20 your practice of medicine?

21 A Yes.

22 Q And, Doctor, do you know what that payment is?

23 A Yes.

24 Q What is that?

25 A \$7,500.

1           Q     And has your testimony been tailored in any way based  
2           upon that payment from your time away from your practice, or is  
3           this testimony strictly on your findings and opinion as to your  
4           patient, Honorio Rosario-Silverio and the treatment and surgery  
5           you rendered him?

6           A     Just my treatment and my findings.

7           Q     Thank you, Doctor.

8                         MR. PRONER:  Nothing and further.

9                         THE COURT:  Okay.  We'll take a five-minute break  
10           before we begin cross-exam.

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1 THE COURT OFFICER: All rise, jury entering.

2 (Whereupon, the sworn jurors enter the courtroom  
3 and take their respective seat.)

4 THE COURT: Please, be seated.

5 Cross examination, Mr. Calabrese.

6 CROSS EXAMINATION

7 BY MR. CALABRESE:

8 Q Doctor Steele, good afternoon.

9 A Good afternoon.

10 Q I think we're still in the morning. Good morning. My  
11 name is Rick Calabrese, okay. To the extent I ask you a yes or  
12 no question for time that I ask you, could I ask that you  
13 respond in a yes or no fashion, if you're capable of it. Fair?

14 A Yes.

15 Q Thank you before I get into the substance, just while  
16 it's fresh in my brain, the demonstrative things that we looked  
17 at, the three items, the first two were the actual MRI slices of  
18 Mr. Rosario's shoulder, yes?

19 A Yes.

20 Q And then one of the bigger picture was color added with  
21 arrows showing the body parts, correct?

22 A Yes.

23 Q Okay, that was added by you or someone on your behalf?

24 A Somebody else.

25 Q Okay. That last the cartoon one, the one with the

1 images that looked drawn, that was not Mr. Rosario's shoulder,  
2 correct?

3 A Correct.

4 Q That was an artistic rendering of a similar surgery  
5 performed that you use for teaching purposes or showing other  
6 people -- showing a jury how the surgery is performed, yes?

7 A Correct.

8 Q But it's not the exact surgery and it's not the exact  
9 bones or tissue of Mr. Rosario, in that last image?

10 A Correct.

11 Q Thank you. Doctor, like a rope tendons can fray,  
12 correct?

13 A Uhm.

14 Q Do you have a problem with the rope analogy? I'll move  
15 on?

16 A The whole thing, yeah. I'm not sure.

17 Q Tendons fray, yes?

18 A Yes.

19 Q They fray over time, correct?

20 A Uhm, not typically.

21 Q Okay. Fraying can be the result of over use or  
22 repetitive use yes?

23 A It can be.

24 Q Okay. Fraying doesn't happen overnight, does it? It  
25 takes sometime, correct?

1           A     A fray or torn tissue, depending on exactly what you're  
2 looking at, can be an acute thing or it can happen with  
3 repetitive use.

4           Q     Okay, so when we see fraying, it can be acute, and it  
5 can be overuse, repetitive use; yes?

6           A     Yes.

7           Q     There's two things that can bring us to fraying,  
8 agreed?

9           A     Correct.

10          Q     Okay. Would an MRI very close in time to an injury  
11 show fraying if, if it's caused by the actual incident; is that  
12 possible?

13          A     Yes.

14          Q     Is it possible for that MRI to show fraying, if it's  
15 also the result of overuse or repetitive use?

16          A     Yes.

17          Q     It can show both on an MRI, correct?

18          A     Correct.

19          Q     Okay. Symptoms of fraying present themselves as pain;  
20 yes, doctor?

21          A     Yes.

22          Q     Tenderness; yes, doctor?

23          A     Yes.

24          Q     Stiffness; yes, doctor?

25          A     Yes.

1 Q Weakness; yes, doctor?

2 A Yes.

3 Q You don't just operate on traumatically caused injuries  
4 on plaintiff's that were -- patients that are involved in  
5 accidents? You also do surgeries on people that have  
6 degenerative conditions, correct?

7 A Correct.

8 Q Okay. Degenerative meaning it occurred over a period  
9 of years, yes?

10 A Correct.

11 Q Okay. Doctor, I'm fine if you need to be looking down  
12 at something. I just need to know what you're looking down at?

13 A The operative report.

14 Q The operative report, okay. To the extent that you  
15 need to refer to it, to answer any of my questions that's fine.  
16 Just let us know you're referring to it, okay?

17 A Okay.

18 Q Degenerative can be just plain old wear and tear, yes?

19 A Yes.

20 Q Okay, and some people wear and tear differently than  
21 others?

22 A Yes.

23 Q Some people wear and tear quicker or slower than  
24 others, agreed?

25 A Yes.

1 Q Let's talk about tendinosis. Is tendinosis also a  
2 condition that can be associated with a longstanding condition?

3 A It can be.

4 Q Can be? But it could also be associated with a  
5 traumatic thing, correct?

6 A Correct.

7 Q So, tendinosis also can be associated with both  
8 traumatic and longstanding, agreed?

9 A Correct.

10 Q What are bones spurs, doctor?

11 A That is similar to an osteophyte, which is extra bone  
12 formation.

13 Q That was going to be my next question. Bone spurs we  
14 also hear the term osteophyte and like stalactite and  
15 stalagmite, it's a buildup of calcium on the bone, on top of the  
16 bone, correct?

17 A Correct.

18 Q And it creates like a little pick or spike or spur?

19 A Correct.

20 Q That doesn't happen overnight, correct?

21 A Correct.

22 Q That is by definition a degenerative longstanding  
23 condition. Would you agree?

24 A Yes.

25 Q Thank you. Orthopedic surgeons, like yourself, do

1 surgeries to remove those bone spurs, correct?

2 They shave down the bone, is that something that is  
3 done in orthopedic surgery?

4 A It can be done. I typically don't.

5 Q You don't? Have you ever done that type of surgery?

6 A Yes.

7 Q You have, okay? With the shaver instrument tools that  
8 you spoke about with Mr. Proner?

9 A I have.

10 Q Okay.

11 A Not to --

12 Q That type of a procedure is called an acromioplasty or  
13 a subacromial decompression, yes?

14 A Yes.

15 Q That's where you shave the bone. Subacromial  
16 decompression is shaving away of that bone, correct?

17 A But it's not for a spur.

18 Q Okay.

19 A The acromioplasty.

20 Q But you will see that? You're shaving the bone down on  
21 that, when you do an acromioplasty, yes?

22 A Yes, I don't do that typically.

23 Q Okay. Could a bone spur lead to fraying?

24 A So the whole concept of doing an acromioplasty and  
25 shaving down the bone was based on a posterior than an actual

1 article that was presented many years ago, and has subsequently  
2 been essentially debunked which is why I don't do that anymore  
3 and is why that's not commonly done any more. But it is done, I  
4 have done, I have done it in my training, I know how to do it.  
5 It's not typically done now, it's not done now.

6 Q Apologies, if any wording of my question implied that  
7 you didn't know how to do it. That's not my question. My  
8 question is can a bone spur cause fraying, yes or no?

9 MR. PRONER: Objection. Are we talking about the  
10 plaintiff or what are we talking about?

11 THE COURT: Sustained, sustained.

12 MR. CALABRESE: Judge, this is cross examination.

13 THE COURT: We have to also bring it back.

14 Sustained.

15 CROSS EXAMINATION

16 BY MR. CALABRESE: (Cont's)

17 Q You've done many orthopedic shoulder surgeries, yes?

18 A Yes.

19 Q Okay. You're familiar with bone spurs, yes?

20 STPHAO: Objection, Your Honor. Once again, we're  
21 not --

22 THE COURT: Sustained.

23 Q What are some causes of fraying?

24 A Uhm, you can have fraying from a tear, from a fall from  
25 an acute injury and from overuse.

1 Q Okay, have you -- how many shoulders have you operated  
2 on? Countless, right? Hundreds?

3 A Over a thousand.

4 Q Over a thousand, okay? Have you seen bone spurs and  
5 fraying, in a shoulder? Yes or no?

6 MR. PRONER: Objection, Your Honor.

7 THE COURT: Sustained.

8 MR. CALABRESE: Note my exception, Your Honor.

9 THE COURT: So noted, counsel.

10 Q When was your first time seeing Mr. Rosario?

11 A January 23, 2018.

12 Q 2018, what's the last time you saw him? When's the  
13 last time you saw him?

14 Just so we know what you're referring to, are you  
15 referencing the marked exhibits, the marked records, or are you  
16 referencing the file you brought?

17 THE COURT: No, she was given the marked records,  
18 counsel.

19 MR. CALABRESE: Okay.

20 THE COURT: The exhibit.

21 A I'm looking at the file that I was given and in that  
22 big box that I sorted through.

23 Q Okay.

24 A What it appears here from those records is January 6,  
25 2022. I'm not certain, if that's correct. That's just from the

1 box that I have in front of me now, I believe. I had to go  
2 through all of this.

3 Q Okay.

4 MS. BUHOLTZ: I'm sorry, Your Honor. What was the  
5 year?

6 MR. CALABRESE: '22.

7 MR. PRONER: Without reading from them Your Honor  
8 can she refer to her records?

9 THE COURT: No. If she needs to, you can do it on  
10 redirect, counsel.

11 Q So, to the best of your abilities here today, you're  
12 understanding, you last saw him in 2022, yes?

13 A Approximately, yes.

14 Q Approximately? Last time you gave him any type of  
15 treatment?

16 A Approximately, yes.

17 Q That's fair. You did a narrative report in 2023?  
18 November of 2023, yes?

19 A I believe so.

20 Q Okay. And you saw plaintiff at that time or was that  
21 narrative report generated without seeing him, in November of  
22 2023?

23 A I saw him.

24 Q You saw him at that time?

25 A Yes.

1 Q So, the last time you saw him was sometime in 2022, and  
2 then you saw him again, in November 2023, to prepare the  
3 narrative report for Mr. Proner, fair?

4 A Approximately, I don't have that report in front of me.

5 Q It's okay if we deal in approximates, right now. Thank  
6 you. Have you seen Mr. Rosario-Silverio, since November 2023?

7 A No.

8 Q You have any scheduled plans to see him?

9 A Not that I am aware of.

10 Q Wouldn't you be aware of, if you were going to see a  
11 patient?

12 A No.

13 Q So, okay? But as you sit here today, you're not aware  
14 of any future schedule appointments?

15 A Correct.

16 Q Okay. How many times did you see him following the  
17 January 2020 shoulder surgery?

18 A About 5 or 6 times.

19 Q Okay. That would have been through 2022, yes?

20 A But also then '23, for the narrative.

21 Q Okay, did you render any treatment at that time, in '23  
22 or was it just --

23 A No.

24 Q Looking at him and examining him for the purposes of  
25 narrative report, for Mr. Proner?

1 A That was just a narrative report.

2 Q So, the examination was just for the narrative? No  
3 treatment rendered?

4 A Correct.

5 Q No injections, no P. T., no nothing?

6 A Correct.

7 Q Thank you. How many times did you see him before  
8 conducting the surgery?

9 A About four times.

10 Q So, we have five times post surgery, four times before  
11 the surgery. Approximately nine times?

12 A Approximately.

13 Q Let's just call it ten because I like round numbers  
14 better?

15 THE COURT: Sustained.

16 MR. PRONER: Objection.

17 THE COURT: Sustained.

18 Q So, to date you've seen Mr. Roserio-Silverio nine  
19 times, yes?

20 A Correct.

21 Q Generally speaking, about your orthopedic surgeries --  
22 and I'll limit it to shoulders, since we're dealing with a  
23 shoulder here. Prior to undergoing a surgery, do you recommend  
24 patients undergo what was referred to as conservative treatment?

25 A Yes.

1 Q What were some concepts of conservative treatment?  
2 What are some of the things you would recommend as conservative  
3 treatment?

4 A Physical therapy, home exercises, injections,  
5 medications.

6 Q And you mentioned a PRP injection, that was  
7 administered, yes?

8 A Correct.

9 Q Did you administer it or is it administered by someone  
10 else?

11 A Physician Assistant.

12 Q Out of City Med?

13 A Yes.

14 Q And I failed to ask the question. You're with City  
15 Med, yes?

16 A Correct.

17 Q Still to date?

18 A Correct.

19 Q You mentioned you have your own private practice now.  
20 That's in addition to your practicing with City Med?

21 A Correct.

22 Q Were any steroid injections administered to Mr.  
23 Rosario's shoulder?

24 A No.

25 Q Is that because you determined, and I see in your

1 records you determined he has an allergy to steroid injections.

2 Of course, that was a concern, correct?

3 A Correct.

4 Q So, even post surgery, where his complaints of pain and  
5 limitation continue, he wasn't even -- he couldn't even undergo  
6 steroid injections because of his allergy?

7 A Correct.

8 Q He told you that he gets rashes on his body from  
9 steroid injections, yes?

10 A Correct.

11 Q So, steroid injections as a modality of treatment to  
12 you, for you, your opinion, were completely ruled out, correct?

13 A Correct.

14 Q Hard no on the steroid injection, agreed?

15 A I don't know what you mean by that.

16 Q Fair. Did you speak with the doctors or consult any  
17 records to determine his allergy to steroids?

18 A I speak to the patient.

19 Q His -- your understanding of his allergic reactions to  
20 steroid injection comes from him and no other source, correct?

21 A Correct.

22 Q Prior to conducting your surgery of Mr. Rosario  
23 Silverio, you reviewed MRIs, correct?

24 A Correct.

25 Q And I think your reporting says you agreed with those

1 MRI report findings conducted by a radiologist?

2 I'm not asking you to look at them yet. Just do you  
3 agree with the findings, did you not?

4 A I said my opinion is similar, interpretation is similar  
5 to the radiologist's interpretation.

6 Q Similar? So, if I understand correctly, surgeons like  
7 yourself, orthopedics doctors will send patients for  
8 radiological testing somewhere else to a radiologists for the  
9 imaging to be done here, an MRI, to look at the shoulder and see  
10 what's going on, and then you use that MRI interpretation as  
11 part of your assessment to treat the patient; is that accurate?

12 MR. PRONER: Objection.

13 THE COURT: Overruled. I will allow it.

14 A I always do the images myself and form my own opinion  
15 as to what the MRI shows.

16 Q Fair, but that's in an addition to sending him to a  
17 radiologist or sending a patient to a radiologist?

18 A You don't send to a radiologist, you send for MRI.

19 Q And a radiologist interprets that MRI?

20 A Correct.

21 Q And then you get the interpretation from the  
22 radiologist, you yourself get the film, compare your own  
23 interpretation of the film and the radiologist interpretation of  
24 the film and then you come to a conclusion this is the injury it  
25 substantiates subjective complaints and we should do some sort

1 of surgery or not, agreed?

2 A Correct.

3 Q That's typically how it works?

4 A Correct.

5 Q That's how it worked here?

6 A Correct.

7 Q For Mr. Rosario, yes?

8 A Correct.

9 Q Okay. But, of course, you're not a radiologist,  
10 agreed?

11 A Correct.

12 Q Okay, I understand you've look at films all day long  
13 probably and very, very often for these thousands of surgeries.  
14 But you were not trained in radiology study, correct?

15 A I am trained. It's part of orthopedic residency and  
16 fellowship.

17 Q Are you a board certified radiologist, yes or no?

18 A No.

19 Q Okay. You generate reports of your interpretation of  
20 radiologists or is it just for your own understanding when  
21 treating a patient?

22 A I put my interpretation of the MRI, in my reports.

23 Q Into your own notes? Your medical notes?

24 A Correct.

25 Q But you don't generate a standalone radiology

1 interpretation reports, yes?

2 A Correct.

3 Q The MRI that you looked at before undergoing, before  
4 doing the surgery to Mr. Rosario, was a November 7, 2017, left  
5 shoulder MRI, correct?

6 A Yes, he had that done.

7 Q Okay, and that's one of the images you relied upon?

8 A Correct.

9 Q And that's the image in your records you say you --  
10 for getting the terminology you used, but you agreed with?

11 A I thought similar.

12 Q Similar? Okay similar. And that study was conducted  
13 at City Med?

14 A Correct.

15 Q City Med is like a one stop shop. They got the  
16 radiologist, orthopedic, P.T., acupuncture. It's all there?

17 MR. PRONER: Objection.

18 THE COURT: Sustained.

19 A It's --

20 THE COURT: No, don't answer. When I sustain,  
21 don't answer the question.

22 THE WITNESS: Sorry.

23 THE COURT: Okay.

24 Q You can refer to your records. I think it's in there.

25 The November 17, 2017, -- excuse me. November 7, 2017, left

1 shoulder MRI at City Med. It should be in that packet, is it  
2 not?

3 A Yes.

4 Q Okay. It showed a bone bruise, correct?

5 A Yes.

6 Q Bone bruise to the posterior, posterior back, right.  
7 Humeral head?

8 A It says bone contusion at the greater tuberosity, if  
9 you're looking at the report and my interpretation was my -- so,  
10 the report says bone contusion of the greater tuberosity and my  
11 interpretation is bone contusion of posterior humeral ahead,  
12 that's also part of the greater tuberosity.

13 Q Posterior, back. Fancy word for back, yes?

14 A Yes.

15 Q Okay. It can be notices and fraying of the  
16 infraspinatus tendon, yes?

17 A So, are you talking about the -- their report or my  
18 interpretation?

19 Q Let's talk about their report, and then we'll see if  
20 you agree with it.

21 A Okay, so their report says partial tear of the  
22 posterior fibers of the supraspinatus tendon at the insertion  
23 with tendinosis and bursal surface fraying. Tendinosis and  
24 bursa surface fraying of the infraspinatus tendon.

25 Q And tendinosis and fraying of the supraspinatus,

1 correct?

2 A I just read it exactly as it's said.

3 Q So, the supraspinatus and infraspinatus -- I'm most  
4 terrible at pronouncing -- those are two separate tendons?

5 A Correct.

6 Q Okay, and they both, per this report, showed tendinosis  
7 and fraying, agreed?

8 A Correct, on the report.

9 Q Okay, and do you not agree with that?

10 A I did. I agreed.

11 Q You agreed? Tendinosis and fraying of both tendons?

12 A I said there was tendinosis at the supraspinatus from  
13 and infraspinatus tendons.

14 Q And those are located in the front and top, yes?

15 A No.

16 Q No? Where are they located?

17 A The front and the back.

18 Q Front and the back? Okay, and that's -- which one is  
19 in the back?

20 A Infraspinatus.

21 Q Infraspinatus, okay? Uhm, the bone bruise that we saw  
22 that a radiologist and you -- uh, let me backup.

23 Do you agree that there's a bone bruise shown?

24 A Yes.

25 Q In the 2017 films?

1 A Yes.

2 Q Okay. But you also looked at the 2021 films, yes?

3 A Yes.

4 Q Okay, that bone bruise went away, correct? That bone  
5 bruise was no longer in the 2021 films, right?

6 A That's not true.

7 Q It's still there?

8 A Correct.

9 Q Okay, so it's still showing up in 2021, right?

10 A Correct.

11 Q So, if a radiologist came in here and told this jury  
12 that there's no bone bruise for the humeral head should that  
13 radiologist be trusted?

14 THE COURT: I don't hear anything.

15 MR. PRONER: Objection.

16 THE COURT: Sustained.

17 Q You've dealt with multiple radiologists in your line of  
18 work, correct?

19 A Correct.

20 Q Okay, the bone bruise, would you trust a radiologist  
21 that came in here and said there's no bone bruise here?

22 MR. PRONER: Objection.

23 THE COURT: Same question. Sustained.

24 Q Have you ever sent a patient for an MRI, gotten that  
25 radiological interpretation of the MRI, and then disagreed with

1 it?

2 MR. PRONER: Objection.

3 THE COURT: I will allow that. Overruled.

4 A Yes.

5 Q Okay, and in that time, did you send that patient to a  
6 separate facility for same study, but now let me see what this  
7 radiologist has to say about it?

8 A No.

9 Q No?

10 A No.

11 Q Okay. So, what did you do when you disagreed with the  
12 radiologist's report that you saw?

13 A I would call the radiologist, speak to them directly  
14 and say this is what I see, this is what your report says and  
15 then we we'd discuss it.

16 Q Okay. Would you have the MRI redone by that same  
17 person?

18 A Doesn't need to be redone, if the images are of good  
19 quality. It's just the report may be inaccurate.

20 Q Okay, are you asking that radiologist to change his or  
21 her mind about their findings?

22 A We discuss it.

23 Q Okay.

24 A People make mistakes.

25 Q Okay. And some people have different interpretations,

1 agreed?

2 A Yes, that's why we discuss it.

3 Q When it comes -- so we can agree, in the medical field,  
4 when it comes to interpreting MRI and soft tissues, shown in  
5 those MRIs, that doctors can have differing opinions?

6 A That is correct.

7 Q Okay, you see that? You've seen that, yes?

8 A Correct.

9 Q It's not that common, but you've seen it?

10 A Correct.

11 Q Per your website the orthopedic -- the orthoscopic  
12 surgery that's a minimally invasive shoulder surgery, correct?

13 A Yes.

14 Q Okay. Uhm, your surgery, your January 2020 surgery,  
15 uhm, you did a subacromial decompression, right?

16 A Soft tissue subacromial decompression, yes.

17 Q City Med, the offices you practice out of, they consist  
18 of Bronx, Brooklyn and Queens, correct?

19 A Yes.

20 Q I know City Med has other and multiple offices  
21 throughout the state. Uhm, but the offices you practice at are  
22 primarily in the Bronx, Brooklyn and Queens; correct?

23 A Correct.

24 Q Okay. Out of the Bronx locations, you saw Mr. Rosario  
25 here, in the records before you, at the Grand Concourse City

1 Med, correct?

2 A Correct.

3 Q Did you ever see him at the Gun Hill Road City Med?

4 A I'm not sure.

5 Q You're not sure? Do you practice out of the Gun Hill  
6 Road?

7 A Yes.

8 Q You do have association at the Gun Hill Road facility,  
9 yes?

10 A Yes.

11 Q Okay. The shoulder surgery, okay, that was performed  
12 in New Jersey at Intergrade Specialty, yes?

13 A Yes.

14 Q Okay. Why did you make Mr. Rosario drive to New Jersey  
15 for the shoulder surgery?

16 A That's where I had blocked time, and where I was  
17 operating once per week.

18 Q Okay. City Med had surgery locations in Brooklyn,  
19 right? They have the Surgi-care in Brooklyn, they have City Med  
20 Surgery Center, in Queens, right?

21 A Uhm, I don't know if those were open in 2020.

22 Q Okay, but they have them, correct?

23 A They have them now. I'm not sure when they opened  
24 though.

25 Q Okay. Most of your surgeries, if not all of your

1 surgeries, are conducted out of the New Jersey locations,  
2 correct?

3 A Not anymore.

4 Q Not anymore?

5 A No.

6 Q But this one was?

7 A This one was. Yes.

8 Q How come you stopped doing it out of New Jersey?

9 A I moved and do my surgeries in Jamaica Queens, because  
10 that's closer, more central.

11 Q Okay. Does the regulations allow for you to bill more  
12 for surgery, if it's conducted in New Jersey verses New York?

13 MR. PRONER: Objection, objection, Your Honor.

14 THE COURT: Sustained.

15 Q Your records reference treatment for other body parts,  
16 but only -- but only -- you're only dealing with the shoulder,  
17 yes?

18 A Correct.

19 Q You're not dealing with the other injuries he's  
20 claiming, yes?

21 A Correct.

22 Q Okay. If you're only dealing, and here today to speak  
23 with us only the left shoulder, how come the narrative report  
24 that you prepared for Mr. Proner, references his other injuries  
25 and his back surgeries -- his neck surgery, excuse me?

1           A     I'd have to see that report which wasn't included in  
2 this.

3           Q     But do you recall, yes or no, that it was included in  
4 your narrative report?

5           A     I cannot comment until I'm looking at the report.

6           Q     Okay. But, would you want to see a complete picture of  
7 a patient? Would you want to see all the medical records, so  
8 you can get a totality of what, you know, the patient consist of  
9 his other medical treatment?

10          A     In regards to what?

11          Q     You tell me?

12          A     I don't understand the question.

13                   MR. PRONER: Objection.

14                   THE COURT: Sustained. It doesn't work that way,  
15 counsel. Either you have a question or move on.

16          Q     Did you ever come to learn that he told doctors in  
17 2020, at the Gun Hill Road City Med, that he injured his left  
18 shoulder?

19                   MR. PRONER: Objection.

20                   THE COURT: I'm not I didn't hear the end of the  
21 question, so.

22                   (Whereupon, the Court Reporter reads back the  
23 requested testimony.)

24                   THE COURT: Overruled.

25          A     I'm not sure.

1 Q You're not sure? You're familiar with Mark Levinson  
2 though your colleague at the Gun Hill Road City Med location?

3 A He is another doctor at City Med.

4 Q He's an orthopedic doctor?

5 A No, he's not.

6 Q What does he practice?

7 A I believe he's pain management.

8 Q Pain management. Okay? Did you ever consult with Mark  
9 Levinson at the Gun Hill Road City Med?

10 A No.

11 Q No? Did you ever see the November 18, 2020, left  
12 shoulder MRI that Mark Levinson sent him for at City Med?

13 A November 18th?

14 Q November 18th, 2020, left shoulder surgery referred by  
15 Doctor Mark Levinson?

16 A Surgery?

17 Q Left shoulder MRI? I apologize, doctor. Left shoulder  
18 MRI?

19 A No.

20 Q You've never seen it?

21 A 2018 MRI?

22 Q November 18, 2020, left shoulder MRI?

23 A Oh, 2020?

24 Q Have you seen it yes or no?

25 A No.

1 Q But you work for City Med that study was done at City  
2 Med too? Do you know, yes or no?

3 MR. PRONER: Objection.

4 THE COURT: Sustained.

5 MR. PRONER: Objection.

6 THE COURT: Sustained.

7 Q Do you know, yes or no?

8 MR. PRONER: Objection.

9 THE COURT: Sustained.

10 Q You don't know where that other study was?

11 MR. PRONER: Objection.

12 THE COURT: Sustained.

13 Q If it was done at City Med, you would have access to  
14 it, right?

15 MR. PRONER: Objection.

16 THE COURT: Sustained.

17 MR. CALABRESE: Note my objection, Your Honor.

18 Note my --

19 THE COURT: You mean exception?

20 MR. CALABRESE: Exception. Excuse me.

21 THE COURT: That's so noted.

22 Q So, you've seen none of the City Med Gun Hill Road  
23 records from the 2020 auto accident agreed?

24 A Uh, there's about 800 pages here.

25 Q You want to go through them?

1           A     Uhm, I don't know what's there.  If you want me to look  
2 through.

3           Q     Do me a favor, I'm sure you're used to going -- I'm  
4 sure you're used to going through medical records, doctor --

5                   THE COURT:  Counsel, again, your remarks, I said  
6 over and over and over again, are not required.  All you  
7 need to do is ask the question.

8           Q     Unfortunately, doctor, I'm going to ask you to quickly,  
9 to the best of your abilities, quickly thumb through that stack  
10 that Mr. Proner put in front of you?

11                   THE COURT:  No, he did not put them in front of the  
12 witness, I did as an exhibit.  I have control of all the  
13 exhibits.

14                   MR. CALABRESE:  You're right.

15                   THE COURT:  It was the Court that put it in front  
16 of her.  In front of the doctor, I apologize.

17                   MR. CALABRESE:  I stand correct.  I'm very sorry.

18           Q     The Court put in front of you, that Mr. Proner offered,  
19 as evidence, I'm go going to have to ask you to quickly thumb  
20 through them to see just the date of accident, because I know  
21 that's how you organize your records.  So, go and look.  There's  
22 an October 6, 2020 date of accident, MVA, in the Gun Hill Road  
23 location?

24                   THE COURT:  Doctor, I'm going to ask you.  Can you  
25 do that before we break for lunch or do you need all this

1 time? Because I'm going to break this jury, I'm not going  
2 to have them sit here while you're looking through all those  
3 records.

4 MR. CALABRESE: You know what, doctor --

5 THE COURT: No, I'm questioning because I'm asking  
6 the doctor the question.

7 MR. CALABRESE: I'm sorry.

8 THE COURT: Doctor, do you need time to go through  
9 those numerous, voluminous medical records, because the  
10 question was asked?

11 THE WITNESS: If he--

12 THE COURT: I'll break with the jury.

13 THE WITNESS: If he wants to give me a date, it  
14 would be a lot easier for me to find the report.

15 THE COURT: Either we break for lunch now or allow  
16 the doctor --

17 MR. CALABRESE: I'll withdraw the question, Your  
18 Honor.

19 THE COURT: Okay, thank you.

20 Q You left off with Mr. Rosario, in November 2023, when  
21 you examined him for that narrative saying that he has possible  
22 recurrent tears in his shoulder that may need another surgery,  
23 yes?

24 A That sounds right.

25 Q May? So, there's a possibility that he won't, yes?

1 A Correct.

2 Q There's a possibility that he will?

3 A Correct.

4 Q So, you're not telling this jury with certainty that  
5 he's definitely going to need that surgery?

6 A Correct.

7 Q Correct? So, you're telling them -- you can't say with  
8 certainty, agreed?

9 A Correct.

10 Q Thank you. When did you come to the conclusion that he  
11 may need additional surgery?

12 Would that have been in 2022 or 2023?

13 A In 2022, I was still treating him with physical  
14 therapy.

15 Q So, it would have been in 2022, when you made the  
16 determination that he may need future surgery?

17 A What I have documented in my note is therapy at that  
18 time.

19 Q Okay. Now, how long have you been affiliated with City  
20 Med, doctor?

21 A Eight and a half years, or so.

22 Q Okay. And the patients you've treated at City Med,  
23 what percentage of them have been involved in motor vehicle  
24 accidents?

25 A I don't know. Maybe 30.

1 Q Approximately?

2 A 30, 40 percent, something like that.

3 Q Okay. What percentage have been involved in  
4 construction accidents?

5 A Construction specifically? I don't know.

6 Q You don't know? Fair. What percentage have been  
7 involved in sidewalk trip and falls?

8 MR. PRONER: Objection.

9 THE COURT: Sustained. Sit down.

10 Q Doctor, you typically testify -- this is not your first  
11 time testifying, agreed?

12 A Correct.

13 Q Approximately how many times have you testified?

14 A I believe three times.

15 Q Three times? Okay, you sure it's not more than that?

16 A In a court.

17 Q In the courthouse, actually giving testimony. I'm not  
18 talking about just preparing narrative?

19 A This would be my fourth.

20 Q Fourth time, okay. So, just this April, April 2025, in  
21 the Maria Ocho-Coroso case, in Queens County, you testified for  
22 James Ford of Orian and Pall, a plaintiff's firm, right?

23 A I don't remember.

24 Q You don't remember? Do you have any reason to dispute  
25 it, if I have the transcript?

1 A Are you talking about in a courthouse?

2 Q In a courthouse before a Judge Lansell, Queens.

3 A I could go back in my calendar and see if that's  
4 correct.

5 Q But you're not challenging it, yes?

6 A If it's one of the three, then no.

7 Q Fair. And the times you've testified in court have all  
8 been for plaintiff, yes?

9 A Plaintiff is the person?

10 Q The injured party bringing the lawsuit seeking  
11 financial recovery?

12 A Yes.

13 Q Okay. You are testifying here on behalf of a  
14 plaintiff, yes?

15 A Correct.

16 Q And, in fact, tomorrow, Thursday, in Kings County,  
17 before for Edian Man-Gon-go (sic) before on a case Arthur Garcia  
18 Hernandez you're scheduled to testify in the afternoon, are you  
19 not?

20 A I'm scheduled, correct.

21 Q Okay. Are you aware that Mr. Rosario was sent to City  
22 Med by Mr. Proner?

23 A Uhm, possibly. I'm not sure.

24 MR. CALABRESE: I have no further questions. Thank  
25 you.

1 THE COURT: Cross?

2 MS. BUHOLTZ: Yes, Your Honor. I'm going to want  
3 to use the Elmo. May I use the one at plaintiff's station?

4 THE COURT: You want to use what?

5 MS. BUHOLTZ: Elmo, the camera.

6 THE COURT: That's why defense counsels have their  
7 own.

8 MR. PRONER: Can you identify what exhibit you're  
9 showing them.

10 MS. BUHOLTZ: I will.

11 THE COURT: Mr. Proner, you can sit. There's  
12 nothing being done yet, so. There's no question and there's  
13 nothing being shown, as yet.

14 MR. PRONER: Your Honor, she grabbed my  
15 demonstrative evidence. I'm not certain she's allowed to do  
16 that.

17 THE COURT: True, that's his demonstrative  
18 evidence. Not yours. He produced it, not you, counsel.

19 MS. BUHOLTZ: I will offer 18, 19, 20, in evidence.

20 THE COURT: They are all demonstrative evidence.

21 MR. PRONER: Do you want them in evidence?

22 MR. CALABRESE: Okay.

23 MR. PRONER: In evidence.

24 THE COURT: All right.

25 (Whereupon, the item referred to, previously

1 Plaintiff's Exhibits 18, 19, 20 was received in evidence.)

2 CROSS EXAMINATION

3 BY MS. BUHOLTZ:

4 Q Good afternoon. My name is Eileen Buholtz. I  
5 represent the owner of the property where Mr. Rosario's incident  
6 occurred. I'm showing you Plaintiff's Exhibit 18, in evidence.

7 With regards to the colorized image, and the area  
8 marked bone contusion, it has been colorized dark red. Do you  
9 see where I'm pointing?

10 A Yes.

11 Q And you said that that's posterior, what do you mean  
12 posterior?

13 A The back half it involved of the humeral head.

14 Q So, if you drew a line straight down the center of the  
15 side-view of the arm bone?

16 A Not from that view.

17 Q I'm sorry?

18 A You can't tell anterior/posterior from that cut.

19 Q All right.

20 A You have to look at a different view, sagittal axial.  
21 You can't look at the coronal for that.

22 Q Does Exhibit 19, in evidence?

23 A You can't tell anterior/posterior from that cut, that's  
24 just a slice. That's a coronal slice you have.

25 Q When you say posterior, it's more towards the back of

1 the upper arm bone than the front, is that right?

2 A Correct.

3 Q And that's where the impact was? That's where the  
4 impact was where the bruise is showing?

5 A I don't know. So, when the -- it could have occurred  
6 from direct impact onto the back, or it could come from a  
7 dislocation where the bone -- the humeral head bone hits into  
8 the glenoid, both could cause bone contusion.

9 Q If the impact was to the back and pushed, it would have  
10 pushed the humeral head forward towards the front of his body,  
11 correct?

12 A Correct.

13 Q And that's why there is the glenoid -- that's why the  
14 joint effusion in the glenoid portion of the scapular, on  
15 Exhibit 19, is that right?

16 A There is fluid there, yes.

17 Q All right. Showing you Plaintiff's Exhibit 16, in  
18 evidence, which is the Jacobi Hospital record, page 25  
19 assessment and plan.

20 37 year old male who was brought in by accident after  
21 fall four feet onto left chest and shoulder.

22 Did I read that accurately?

23 A Yes.

24 Q Now, if he had fallen onto the back of his --

25 THE COURT: You can't show exhibits and then cover

1           it with another exhibit. You have to remove the exhibit and  
2           if you're putting another exhibit -- because the jury are  
3           seeing that, I need to know what you're showing to the jury.

4                   MS. BUHOLTZ: Your Honor, I have removed page 25 of  
5           Exhibit 16, in evidence, totally.

6           Q       Now, if he had fallen --

7                   THE COURT: What exhibit are you now demonstrating  
8           to the jury? Remember the jury still has the monitor on,  
9           they could see everything you display on the table.

10                   MS. BUHOLTZ: Thank you, Your Honor. Exhibit 19,  
11           in evidence.

12           Q       If he fell onto his left shoulder, can you -- is it  
13           reasonable that he bruised the posterior head of his humerus, at  
14           the indication where you got bone contusion on Exhibit 19, in  
15           evidence?

16           A       So, like I said, depending on how he fell, the bone  
17           bruise could be from direct impact or it could be from a  
18           dislocation, where the humeral head hits into the glenoid.

19           Q       Right? And if his testimony is that he fell on his  
20           left side, his total left side, that indicates that he could  
21           have fallen on the bone in that be the result of the direct  
22           impact?

23           A       Right, either or both could cause that bone bruise.

24           Q       So, he didn't fall -- withdrawn.

25                   MS. BUHOLTZ: That's all I have, Your Honor.

1 THE COURT: Okay.

2 Any redirect?

3 MR. PRONER: Yes, sure.

4 REDIRECT EXAMINATION

5 BY MR. PRONER:

6 Q Doctor, you were asked questions by defense counsel,  
7 Mr. Cascone?

8 MR. CALABRESE: Mr. Calabrese.

9 THE COURT: Calabrese.

10 MR. CALABRESE: My name is Richard Calabrese.

11 Q Calabrese from Mr. Cascone's office. About  
12 degenerative changes, when you did the surgery you went in and  
13 you actually looked inside the shoulder?

14 A Correct.

15 Q Did you see degenerative conditions that needed repair  
16 or conditions from injury or something else?

17 A I saw tears, not degenerative changes.

18 Q Tears? And it's your opinion that these tears were  
19 from injury or degenerative?

20 A From injury.

21 Q What's the difference?

22 A Degenerative occurs through wear and tear overtime; and  
23 typically that's arthritis, we see signs of arthritis in the  
24 shoulder. But tear is in this situation from the acute injury.  
25 You're not going to see arthritis. You'll see acute tears in

1 the shoulder.

2 Q And that's what you saw is a tear from a trauma?

3 A Yeah, it looks different when you get in there.

4 Q Uhm, uhm, and you weren't looking at MRI studies, you  
5 were actually looking into the shoulder, correct?

6 A Correct.

7 Q Now, can steroid injections repair a labral tear?

8 A No.

9 Q So, even if he had the steroid injections, it wasn't  
10 going to repair his torn labrum, right?

11 A Steroid injections usually help decrease pain, decrease  
12 inflammation. They don't repair anything that's already torn  
13 and they do typically wear off after a few weeks.

14 Q So, getting the steroid injection that won't fix his  
15 labrum, wouldn't have fixed the torn rotator cuff, correct?

16 A That's correct.

17 Q And defense counsel gave the impression that because  
18 you're not a radiologist, that you aren't trained in reading and  
19 interpreting MRI's is that true?

20 A No, that's not true. We do a lot of reading of MRI  
21 during orthopedic surgery residency and we also have to review  
22 that for our written boards and oral boards.

23 Q So not only have you been trained in reading MRI, but  
24 you've been testified by others doctors in your reading of MRI  
25 and you've passed that test?

1 A Yes.

2 Q And that was part of your certification in orthopedic  
3 surgery?

4 A Yes.

5 Q So, the idea that you're somehow not qualified to read  
6 your own MRI, that's simply not true, correct?

7 A No, I read all the MRIs myself.

8 MS. BUHOLTZ: Form, Your Honor.

9 THE COURT: Sustained.

10 Q So, you do in fact read MRIs?

11 THE COURT: Counsel, finish.

12 MR. PRONER: Okay, yeah. Nothing further. Thank  
13 you, doctor.

14 THE COURT: Everybody jumping right in, jump right  
15 in. Okay, you finished.

16 MR. PRONER: I'm finished, Your Honor.

17 THE COURT: Okay. Any redirect?

18 MR. CALABRESE: Nothing further, Your Honor.

19 MS. BUHOLTZ: Nothing further, Your Honor.

20 THE COURT: Okay, thank you. Doctor, that's it.  
21 Just wait there, doctor. Let me dismiss the jury for lunch.

22 Ladies and gentlemen of the jury, we're taking our  
23 lunch break now. Remember you have heard some of the  
24 evidence, not all of the evidence. Keep an open mind till  
25 you hear all the evidence, you hear the summations by the

1 attorneys, my charge to you on the law and more importantly  
2 you get this case fore full deliberation.

3 Do not discuss the matter amongst yourselves or  
4 with anyone else. Enjoy lunch, I'll see you back here  
5 2 o'clock.

6 THE COURT OFFICER: All rise.

7 (Whereupon, the sworn jurors exit the courtroom,  
8 the courtroom for luncheon recess.)

9 THE COURT: 2 o'clock.

10 \*\*\*\*\*

11 A F T E R N O O N S E S S I O N  
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1 THE COURT OFFICER: All rise. Jury entering.

2 (Whereupon, the jury enters the courtroom.)

3 THE COURT: Please be seated.

4 Good afternoon, Ladies and Gentlemen.

5 THE JURY: Good afternoon.

6 THE COURT: Just so you know, our IT department  
7 are working on replacing those monitors. They were broken  
8 in the jewelry box.

9 We were able to replace one. That took a little  
10 longer because they are doing it during the lunchtime. So  
11 one of them is replaced, the one all the way at the end.

12 So we can use that one. The other two, they're  
13 going to try to replace them either tomorrow or the next  
14 day, okay.

15 All right. Mr. Proner, you want to call your  
16 next witness.

17 MR. PRONER: Call to the witness stand,  
18 John Estevez.

19 THE COURT OFFICER: Remain standing.

20 J O H N E S T E V E Z, a witness called on behalf  
21 of the plaintiff after having been first duly  
22 sworn and took the witness stand and testified  
23 as follows:

24 THE COURT OFFICER: Make sure you use the mic.

25 Just state your name and address for the record.

1                   THE WITNESS: John Estevez. Two Bayberry Drive,  
2                   Saddle River, New Jersey.

3                   THE COURT: You may inquire.

4                   DIRECT EXAMINATION

5                   BY MR. PRONER:

6                   Q       Good afternoon, Mr. Estevez.

7                   A       Good afternoon.

8                   Q       This is not the first time we're meeting?

9                   A       Not the first time.

10                  Q       As a matter of fact, you gave sworn testimony on this  
11                  matter less than two months ago, correct?

12                  A       Correct.

13                  Q       I'm going to be asking you some questions about some  
14                  of the subjects we covered, this time here in front of the jury  
15                  for their benefit.

16                  You're in the supermarket business; is that correct?

17                  A       Yes.

18                  Q       And one of the supermarkets you own is known as the  
19                  Foodtown Supermarket at 1489 West Avenue in the Bronx; isn't  
20                  that correct?

21                  A       Yes.

22                  Q       And your family has owned that supermarket for a long  
23                  time?

24                  A       Forty years.

25                  Q       It started out as your father's and then it came up

1 partner up with you, your father is no longer with us, it's  
2 yours, correct?

3 A My family business.

4 Q Well, you're the sole owner, correct?

5 A Yes.

6 Q And you've been the sole owner, correct?

7 A Yes.

8 Q You became the owner in 1989, correct?

9 A Yes, as a family business; but, yes, sir.

10 Q And you're 56 years old?

11 A Fifty-six years old.

12 Q And referring to the 1489 West Avenue Foodtown, in  
13 2017, you worked there, your father worked there, and your  
14 brother worked there, correct?

15 A Not full time; but, yes.

16 Q The three of you worked there, correct?

17 A Not full time; but, yes.

18 Q You know about the incident that arose out of the  
19 installation of the refrigerator equipment in the basement,  
20 correct?

21 A Yes.

22 Q And, by the way, the reason why you didn't work there  
23 full time is because you had multiple other supermarkets,  
24 correct?

25 A Yes.

1 Q And you had been involved in the decision to upgrade  
2 the refrigeration equipment, correct?

3 A Yes.

4 Q And you probably ordered the equipment and paid for  
5 it, correct?

6 A Sorry?

7 Q You probably ordered the equipment and paid for it;  
8 isn't that correct?

9 A Yes.

10 Q And you had a conversation about someone that it  
11 needed to be order, correct?

12 A I had a conversation?

13 Repeat please.

14 Q You had a conversation with someone that it needed to  
15 be ordered, correct?

16 A Yes.

17 Q And that would have been Andres Ruiz --

18 A Yes.

19 Q -- is that correct?

20 A Yes.

21 Q Andre was the refrigeration person?

22 A That was our refrigeration company, correct.

23 Q Well, it was Andre's company, correct?

24 A Correct.

25 Q He was the refrigerator person for all the stores?

1 A Yes.

2 Q And at that time you had nine stores, correct?

3 A Yes.

4 Q And Mr. Ruiz would maintain the refrigeration in all  
5 nine stores, correct?

6 A Mr. Ruiz had a company in which we were his clients, in  
7 nine stores, but he had multiple stores. Not only my nine  
8 stores. It was not only my nine stores.

9 Q Yes or no, did Mr. Ruiz maintain the refrigeration at  
10 all nine stores?

11 A Yes.

12 Q And that was Mr. Ruiz and two employees; is that  
13 correct?

14 A Whatever employees he had.

15 Q Page 27, line 15, do you recall giving this answer to  
16 this question.

17 "QUESTION: Let me finish. Let me rephrase the  
18 question. I asked you, Mr. Estevez, how many employees you had  
19 and you are going to testify what you observed. So I will  
20 continue to testify what you observed.

21 "ANSWER: What I observed as a, as a service, it was  
22 him and two employees."

23 So that's what you observed, correct?

24 MR. CALABRESE: At what point in time?

25 Q You were talking --

1 THE COURT: Hold on. You can't ask a question.  
2 It's only an objection.

3 MR. CALABRESE: Objection.

4 THE COURT: It's sustained.

5 Q Do you know the names of Mr. Ruiz's employees?

6 A I know one of them was called. We call him Chiquito,  
7 Luis.

8 Q Excuse me.

9 A One of them we call Chiquito, which was Luis. He's  
10 smaller. He's a smaller guy. And he had a cousin who worked for  
11 him. I can't remember his name. And he had him work for him. I  
12 don't think he was all the time. I don't know what his name. I  
13 don't know what his name is.

14 Q Was the cousin Jose Ruiz Tapia.

15 A Jose Ruiz, that's his name. I don't know his last  
16 name.

17 Q And the third one is who?

18 A The third one that I've seen in the store, the person  
19 behind you.

20 Q And what do you call him?

21 A I think we call him Milinga [phonetic] or something  
22 like that guy. I don't know his name. I don't know his name. I  
23 really don't relate to him.

24 THE COURT: You have to go a little slower, first  
25 of all so the reporter could get everything you have to

1 say. That's one. And speak louder into the mic so you  
2 could be heard clear.

3 MR. PRONER: I can spell it.

4 THE COURT: That's all right. We asked the  
5 witness to spell it, not you guys. Thank you.

6 MR. PRONER: It's a Dominican term, chief.

7 THE COURT: Again, we didn't ask for comments.

8 Q That's a Dominican term for chief; isn't that correct?

9 A A Dominican term is not chief. I don't know. It's  
10 like saying, what's up guy, or what's up dude.

11 Q From time to time as well as maintenance, you would  
12 have construction in the supermarkets; is that correct?

13 MR. CALABRESE: Objection.

14 THE CLERK: Sustained.

15 Q In 2017, as well as maintenance, you would have  
16 construction going on; isn't that correct?

17 MR. CALABRESE: Objection.

18 THE COURT: Objection.

19 Where?

20 Q Did the supermarket have other addresses?

21 A We know our supermarket as 1489 West Avenue.

22 MR. PRONER: Can you mark this, please.

23 THE COURT: For identification?

24 MR. PRONER: For identification.

25 THE COURT: That's 21?

1 MR. CALABRESE: Can I see it, Your Honor, before  
2 it's mark?

3 THE COURT: He's only marking it for  
4 identification. You can see it when it's offered into  
5 evidence.

6 MR. CALABRESE: Thank you.

7 (Plaintiff's Exhibit 21, Document, marked for  
8 identification as of this date.)

9 MR. PRONER: Can you show it to the witness?

10 THE COURT: You can look at it. Do not say  
11 anything else. There's no question being asked at this  
12 point.

13 Q Let me know when you've had a chance to look at it.

14 THE WITNESS: Just look at it.

15 THE COURT: Just look at it. Read it to  
16 yourself. There's no question pending.

17 A Okay.

18 Q You were shown that document at your deposition,  
19 correct?

20 A Yes.

21 Q And you recognize the document, correct?

22 A Yes.

23 Q And on page 4, you see where it says "page 4 of 4" on  
24 the lower right-hand corner?

25 A Yes.

1 Q It says, "Owner's Information" --

2 MR. CALABRESE: He's reading.

3 THE COURT: Sustained.

4 You can't read from the document. It's not in  
5 evidence, Counsel.

6 Q Does it indicate -- page 4 of 4, does it indicate your  
7 name on that document?

8 A Yes.

9 Q And does it indicate your relationship?

10 A Yes.

11 Q And what is that relationship?

12 A Owner.

13 Q And on the front page, page 1, where it says "location  
14 information" --

15 A Yes.

16 Q -- you see number one?

17 A Yes, yes. Found it.

18 Q Do you recognize that location?

19 A Yes.

20 Q And is that location the supermarket?

21 A Yes.

22 Q And on that same page, I'm sorry -- and that location  
23 information is 1489?

24 A 1489 West Avenue.

25 Q And on that same page, does it refer to a premise, at

1 the top?

2 A Yes.

3 Q And that premise has a different address on West  
4 Avenue, correct?

5 A Yes.

6 Q Is that 1473 West Avenue?

7 A That's what that says here, yes.

8 Q So do you know why 1473 West Avenue is on that  
9 application that lists you as the owner?

10 MR. CALABRESE: Objection.

11 THE COURT: Sustained.

12 I'm not sure -- we're talking about the same  
13 page?

14 MR. PRONER: Same page.

15 THE COURT: Listing him as the owner or it was  
16 the previous page listing him as the owner.

17 MR. PRONER: It's the same application.

18 Your Honor, they are marked page 1 of 4, 2 of 4,  
19 3 of 4 and 4 of 4.

20 THE COURT: I understand what they're marked. I  
21 just want to make sure.

22 This is what's on page 4, correct?

23 MR. PRONER: We're on page 1.

24 Page 4 has him as the owner --

25 THE COURT: I know exactly what page 4 has.

1 Q So you're following?

2 Page 4 has you as the owner, correct?

3 THE WITNESS: Can I answer?

4 THE COURT: Page four. We're referring to  
5 page 4.

6 A So page 4 has me as the owner name, John Estevez.  
7 Relationship --

8 THE COURT: Don't read from it. Just yes or no.

9 A Yes.

10 THE COURT: Does it have you as the owner?

11 THE WITNESS: Yes.

12 THE COURT: Okay. Next question.

13 Q And the location is 1489, correct?

14 MR. CALABRESE: Asked and answered.

15 THE COURT: Sustained.

16 Q So I'm asking you: Why is the premises listed as 1473  
17 West Avenue?

18 MR. CALABRESE: Objection.

19 Q If you know?

20 THE COURT: If you know?

21 A No, I don't know.

22 Q Is this your application?

23 A Yes, it is. But I'm part of a big building.

24 Q So you do know?

25 A Well, I'm part of a big building. My location is 1489

1 West Avenue. I don't know --

2 Q So this is your application, correct?

3 MR. CALABRESE: Objection. Asked and answered.

4 THE COURT: Sustained.

5 Q Okay. Now, on page 3 of 4?

6 A Three of four, yes.

7 Q Is there a job description?

8 A Yes.

9 Q And does that job description refer to replacement of  
10 refrigeration equipment?

11 A It says "replacement of refrigeration equipment" --

12 THE COURT: Without reading it. Without reading,  
13 does it refer.

14 A Yes, but it refers to some more stuff.

15 THE COURT: The question is: Does it refer to  
16 refrigeration equipment?

17 THE WITNESS: Yes.

18 Q Does it refer to the replacement of the refrigeration  
19 system?

20 A Yes. No, it says refrigeration equipment.

21 Q What does it say on 11?

22 Number 11, does it refer to replacement of  
23 refrigeration equipment?

24 A Yes. But you said "system" before.

25 So it says --

1 THE COURT: You can't read from it, sir.

2 Q So it does refer to replacement of refrigerator  
3 equipment?

4 A Yes.

5 Q And that's under the job description, correct?

6 A Yes.

7 Q So this is your application for the replacement of  
8 refrigeration equipment at 1489 West Avenue, correct?

9 A Yes.

10 Q And was that filed with the building department?

11 A Yes.

12 Q So you have in your hand an application that you filed  
13 for the replacement of refrigeration equipment at 1489 West  
14 Avenue, correct?

15 MR. CALABRESE: Objection.

16 THE COURT: Overruled.

17 A Yes.

18 Q And that was filed with the building department,  
19 correct?

20 A Yes.

21 MR. CALABRESE: Asked and answered.

22 THE COURT: Sustained.

23 Q Well, do you recall giving this answer to this  
24 testimony, page 33, line 12:

25 "QUESTION: Okay. Did there come a time that you were

1 aware you needed to do a filing?

2 "ANSWER: No."

3 I'm on page 31, line 15 to put that in context:

4 "QUESTION: Any type of construction, would you notify  
5 your landlord?

6 "ANSWER: Typically, the landlord has to give you  
7 permission and approve the job that you're doing.

8 "QUESTION: Okay.

9 "ANSWER: Because you cannot change. It's his  
10 building.

11 "QUESTION: Okay. So who would be the person who  
12 would tell the landlord you're going to do some construction,  
13 typically?

14 "ANSWER: I guess the architect.

15 "QUESTION: Well, for replacing the refrigeration, did  
16 you have an architect?

17 "ANSWER: We don't need that because -- it's not  
18 needed that I know.

19 "QUESTION: What about permits, you need permits?

20 "ANSWER: Yes, they do that. They're responsible for  
21 that.

22 "QUESTION: Who is "they"?

23 "ANSWER: Architects.

24 "QUESTION: Okay.

25 "Whatever they would require, they will come to me and

1 say this is required?

2 "QUESTION: Okay. First of all, you said an architect  
3 would do the filing.

4 "ANSWER: Yes.

5 "Okay. And you said to replace the refrigeration you  
6 would need to do a filing.

7 To replace the refrigeration was a filing needed?

8 "ANSWER: If the architect didn't recommend it, it  
9 wasn't needed.

10 "QUESTION: Did you have an architect to replace the  
11 refrigeration?

12 "ANSWER: No.

13 "QUESTION: Okay. Did there come a time that you were  
14 aware you needed to do a filing?

15 "ANSWER: No.

16 THE COURT: Did you give those.

17 Q So you recall giving that answer to that question?

18 A If it's there, yeah, I gave it.

19 Q So as a matter of fact, you did have to do a filing?

20 A Well, there is more -- can I answer this?

21 THE COURT: If you can't answer his question that  
22 way, then just say I can't answer the question.

23 Q Yes or no, you did a filing, correct?

24 MR. CALABRESE: Judge, the witness is trying to  
25 explain.

1 THE COURT: Right.

2 But the question is yes or no. If he can't  
3 answer yes or no, he can say I can't answer your question  
4 yes or no.

5 Q And under job description --

6 MR. CALABRESE: There's no answer to that  
7 question.

8 THE COURT: There's no answer, Counsel. You got  
9 to wait. You got to give him an opportunity to answer.

10 MR. PRONER: You're right.

11 THE COURT: If you can.

12 MR. PRONER: Of course.

13 THE COURT: Can you answer the last question yes  
14 or no. If you can't, just so indicate.

15 A What was the question again?

16 THE COURT: Read back the last question.

17 Q So your prior testimony --

18 THE COURT: Counsel, we're going to read back the  
19 last question.

20 Can you read back the last question.

21 (Whereupon, the record was read)

22 THE COURT: You want to withdraw that last  
23 question and start again.

24 Q So you have in your hand a building application for a  
25 replacement of refrigeration equipment, correct?

1           A     Yes.  But you're leaving some stuff out of the  
2 equipment --

3           Q     Okay.  Sure.

4           A     -- the refrigeration equipment.  There is also air  
5 conditioning equipment and other things like that that you're not  
6 stating.

7           Q     So let's read the entire job description.

8                   THE COURT:  No, it's not in evidence.

9           Q     Would you like to read the entire job description?

10                   THE COURT:  It's not in evidence.  Nobody gets to  
11 read it unless it's in evidence.

12          Q     At the time --

13                   MR. CALABRESE:  I'll stipulate it into evidence.

14                   MR. PRONER:  You'll stipulate it into evidence.

15                   MR. CALABRESE:  So stipulated.

16                   MR. PRONER:  Okay.  It's in evidence.

17                   THE COURT:  Hold on.  It's not in evidence until  
18 it gets marked in evidence.

19                   You're stipulating, Counsel, to No. 21 in  
20 evidence.

21                   MR. CALABRESE:  Yes.

22                   THE COURT:  Ms. Buholtz, so stipulated?

23                   MS. BUHOLTZ:  Yes, Your Honor, for what it's  
24 worth.

25                   THE COURT:  Let her mark it.  Hold on.  Let her

1 mark it.

2 You want to get it from the witness and let the  
3 reporter mark it.

4 (Plaintiff's Exhibit 21, Document, was admitted  
5 in evidence.)

6 MR. PRONER: Let me know when it's in evidence.

7 THE COURT: It's in evidence.

8 MR. PRONER: The exhibit number is 22?

9 THE COURT: It's 21 in evidence.

10 Q Referring to 21 in evidence, the job description on  
11 page 3 of 4 --

12 THE COURT: Counsel, we have a mic. You got to  
13 lower the volume of your tone just a little bit because the  
14 mic carries that loud.

15 MR. PRONER: You know what happens is the mic  
16 turn on and off.

17 THE COURT: That's okay.

18 MR. PRONER: I apologize.

19 Q So the job description, the entire job description  
20 says, "Replacement of refrigeration equipment and HVAC  
21 maintenance. No change in use, egress or occupancy."

22 That's the entire job description, correct?

23 A That's correct.

24 Q So you testified previously, page 33, line 12:

25 "Okay. Did there come a time that you were aware you

1 needed to do a filing?"

2 And you said, no.

3 Do you recall that?

4 A If I said it. I don't recall.

5 Q You said that, right?

6 A If I said it, it's there.

7 Q And as a matter of fact, this filing wasn't done until  
8 February of 2018, correct?

9 A I don't know when it was filed.

10 Q Well --

11 A It was filed -- what it says here, yes, that's what it  
12 says.

13 Q It says, "prefiled," what date?

14 A Prefiled?

15 Q Yes.

16 Under the first thing under "Plan."

17 A It says "approved" -- where does it say "prefiled," I'm  
18 sorry?

19 Q When was it approved?

20 A February of '18.

21 Q Give the exact date, please?

22 A February 21st of 2018.

23 Q February 21st of 2018?

24 A Mm-hmm.

25 Q So this application for permits wasn't done until four

1 months after the accident, correct?

2 A I don't remember when the accident was.

3 Q Well, I want you to assume that the accident happened  
4 in October of 2017.

5 A Correct.

6 Q So you were doing this job without permits, correct?

7 A I don't need a permit to change refrigeration.

8 Q So what do you need the permit for, to maintain your  
9 HVAC?

10 A Well, I don't know about this permit. Because in the  
11 supermarket there's HVAC, there's refrigeration, refrigeration  
12 equipment.

13 I don't know what this permit -- it's generalized.

14 Q I know. So we can only go by the job description,  
15 which it says replace refrigeration and HVAC maintenance?

16 A Correct.

17 I don't know what this permit is specifically for. I  
18 don't know how the law department works. I don't know. I don't  
19 know. I'm just saying I don't know.

20 Q Well, your name is on it, right?

21 A Yes, my name is on it.

22 Q I know you might think this is funny. I'm not making  
23 any jokes.

24 I'm saying to you, this was filed four months after  
25 the accident, correct?

1 A Yes.

2 Q And the accident happened replacing refrigeration  
3 equipment, correct?

4 A I don't know.

5 Q You're not aware of the accident itself?

6 A The accident happened when replacing refrigeration  
7 equipment, that's what you're asking?

8 Q That's what the job was, right?

9 A Yes.

10 Q Okay. And you're aware an accident happened?

11 A Yes.

12 Q Okay. Now you're aware that the refrigeration  
13 equipment was being installed in the basement of the Foodtown at  
14 1489 West Avenue in October of 2017, correct?

15 A Yes.

16 Q You know what day of the week it was being done?

17 A You told me it was being done on a Saturday.

18 Q I asked you what you knew. Not what I told you.

19 A Oh. Do I know, yes. Do I know, yes.

20 Q What day?

21 A No. Do I know? You told me it was a Saturday.

22 Q I'm not asking what I told you. I'm asking --

23 A I don't know. So I don't know.

24 MR. CALABRESE: He knows because you told him.

25 THE COURT: Counsel, again.

1 MR. CALABRESE: Sorry.

2 THE COURT: No comments in front of the jury.

3 Wow. Let the witness say he knows or doesn't  
4 know.

5 MR. CALABRESE: He just did.

6 THE COURT: No. Fine. Let counsel who's doing  
7 the examination handle it. You have cross. There are  
8 protocols.

9 MR. CALABRESE: Sorry, Your Honor.

10 Q But when they brought in the equipment, they would  
11 probably have to clear it with you; is that correct?

12 A Yes.

13 Q And you only heard about the metal ramp being  
14 installed from the lawsuit; is that correct?

15 A Yes.

16 Q You had no conversation with Mr. Ruiz about installing  
17 it, correct?

18 A Did I have a conversation with Mr. Ruiz about  
19 installing it, of course I did.

20 Q You did have a conversation with Mr. Ruiz about  
21 installing it?

22 A Where the equipment was going, yes.

23 Q Page 54, line 10:

24 "QUESTION: Do you know that a metal ramp was  
25 installed at the premises for the purpose of bringing it into

1 the basement, the equipment?

2 "ANSWER: Did I hear about it because I heard through  
3 this, yes. Do I know about it, no.

4 "QUESTION: And you weren't there on the day it was  
5 installed?

6 "ANSWER: No.

7 "QUESTION: Did you have any personal conversations  
8 with Mr. Ruiz about it?"

9 I'm sorry: "Did you have any personal conversations  
10 with Mr. Ruiz about installing it?

11 "ANSWER: No."

12 Do you recall giving that answer to that question?

13 A No.

14 Q Well, this was just a month ago. This was your sworn  
15 testimony. Your testimony was on October 7, 2025.

16 "QUESTION: Did you have any personal conversation  
17 with Mr. Ruiz about installing it?

18 "ANSWER: No."

19 Now you're saying you did talk about it with him,  
20 correct?

21 A Yes, because I have to tell him. I don't know how  
22 you're referring to the question. I have to tell him where the  
23 equipment is going. If you're having conversation. I don't know  
24 what part of the conversation you're asking.

25 If he's installing -- how to install. I don't --

1 Q So this is what --

2 THE COURT REPORTER: I'm sorry.

3 THE COURT: You both can't talk at the same time.

4 MR. PRONER: Move to strike as nonresponsive.

5 THE COURT: Sir, you can't talk at the same time.

6 It has to be one or the other.

7 THE WITNESS: Okay.

8 THE COURT: Otherwise, the court reporter is not  
9 going to take anything down. That's all.

10 MR. PRONER: I'm moving to strike his answer as  
11 nonresponsive because he started to give a speech.

12 THE COURT: Rephrase the question.

13 MR. CALABRESE: Your Honor, the witness is trying  
14 to explain.

15 THE COURT: It's interruption between the witness  
16 and the attorney and the attorney and the witness. Both  
17 are interrupting each other.

18 MR. CALABRESE: Mr. Proner was interrupting his  
19 response.

20 THE COURT: Both are interrupting each other.  
21 Okay. Let's go.

22 Q Mr. Estevez, this is not your first time testifying  
23 under oath, correct?

24 A Not my first time.

25 Q And the last time you testified, you swore to tell the

1 truth, correct?

2 A I swore to tell the truth.

3 Q And there was a court reporter there just like there's  
4 a court reporter today, correct?

5 A Yes.

6 Q And you were given instructions that if you didn't  
7 understand the question to let us know you didn't understand the  
8 question, correct?

9 A Yes.

10 Q And you were asked this question, page 54, line 20:

11 "QUESTION: Did you have any personal conversations  
12 with Mr. Ruiz about installing it?

13 "ANSWER: No."

14 THE COURT: And the only question after that is:  
15 Do you recall that being your testimony to that question  
16 and giving that answer?

17 Yes or no.

18 MS. BUHOLTZ: Your Honor, I have an objection to  
19 the question.

20 THE COURT: Well, it's already been asked,  
21 Counsel.

22 Your objection is noted. Overruled.

23 Yes or no, do you recall.

24 THE WITNESS: About installing?

25 THE COURT: No, sir.

1                   Yes or no, do you recall giving that answer to  
2                   that question?

3                   THE WITNESS:   Yes.

4                   THE COURT:    You recall?

5                   THE WITNESS:   Giving the answer now, no, I don't  
6                   recall.

7                   THE COURT:    No.

8                   Do you recall giving that answer to that  
9                   question?

10                  Yes or no.

11                  THE WITNESS:   No.

12                  THE COURT:    Okay.  That's his answer.  He doesn't  
13                  recall.

14                  Q     Page 56, line 22:

15                         "QUESTION:   Okay.  When it came to discussing the cost  
16                         of installation of equipment, what did you discuss other than  
17                         price with Mr. Ruiz?

18                         "ANSWER:   I did not discuss the installation of the  
19                         equipment.

20                         "QUESTION:   What did you discuss other than price?

21                         "ANSWER:   So I'll discuss with the refrigeration  
22                         company, this is what I need, and this is the equipment I need.  
23                         He scheduled his -- I don't know, his employees, scheduled  
24                         his -- he says we have to put it.  This is what I need.  He  
25                         orders the equipment.  The guy, I bought the equipment.  I had

1 to pay him and they figure out, I guess, how it's involved and  
2 delivering and all of that. That's not my responsibility.

3 "QUESTION: So what did you tell him you needed?

4 "ANSWER: I didn't tell him I needed anything. He  
5 told me that's what I need in equipment, that's what was  
6 ordered.

7 "QUESTION: So you negotiate" --

8 Page 58, line 23.

9 "QUESTION: So you negotiate with the supply guy, and  
10 then you negotiate with him. When you're negotiating with him,  
11 did you discuss the work?

12 "ANSWER: Describe work.

13 "QUESTION: The labor involved in installing the  
14 equipment.

15 "ANSWER: No."

16 "QUESTION: So what did you negotiate with him, just  
17 it's too much, charge me less, or something else?

18 "ANSWER: That's my -- that's my. That's what I have  
19 to worry about. I don't -- why I would need to worry about his  
20 labor."

21 Do you recall --

22 THE COURT: Follow up, Counsel.

23 Q Sir, do you recall that testimony?

24 A Do I recall it, I remember it, yeah.

25 Q There are no contracts for this work, correct?

1 A I don't recall.

2 Q But he got paid over \$100,000, Mr. Ruiz, correct?

3 A I don't recall. Whatever the check says.

4 Q Well, if Robin, your brother, testified that's  
5 approximately what it costs just for the labor, would you have  
6 any reason to disagree with him?

7 MR. CALABRESE: Objection. Mischaracterization.

8 THE COURT: Sustained.

9 MR. PRONER: Okay. I want to make sure the -- I  
10 want to show the witness Plaintiff's Exhibit 11 through 14.  
11 And there's an additional exhibit that doesn't appear to be  
12 marked. I would like this marked Plaintiff's 22 for ID.

13 THE COURT: Let's mark 22 for ID first.

14 (Plaintiff's Exhibit 22, Document, marked for  
15 identification as of this date.)

16 Q And if you can hand all five documents to the witness.

17 THE CLERK: Judge, Exhibit 22 has been marked as  
18 Plaintiff's ID.

19 THE COURT: Okay.

20 THE CLERK: Do I give it to the witness, Judge?

21 THE COURT: Yes.

22 THE CLERK: Judge, I have 11, 12, 13, 14, ID,  
23 will be marked for evidence.

24 THE COURT: They're in evidence. Hold on.

25 They're not.

1 THE CLERK: They're not.

2 THE COURT: They're ID also. They are not in  
3 evidence. They're only ID.

4 MR. PRONER: I know.

5 Q Mr. Estevez, you've seen those documents before,  
6 correct?

7 A Yes.

8 I don't recall seeing this.

9 THE COURT: Please don't show anything that's not  
10 in evidence. It's for you to look at and nobody else.

11 A I don't recall seeing that.

12 Q Well, do you recognize information on that?

13 A Yes.

14 Q What is that information?

15 A It's a bank wire, I guess.

16 Q Mm-hmm.

17 Do you recognize the account?

18 A No.

19 Q Okay. What about the other four?

20 I'm sorry, where it says, "Andres Ruiz," do you  
21 recognize the handwriting?

22 A Yes.

23 Q Whose handwriting is it?

24 A My brother.

25 Q Your brother's handwriting.

1                   Do you know why your brother's handwriting would be on  
2 the bank wire?

3                   A     Because he's the one in the office.

4                   Q     I'm sorry?

5                   A     He's the one in the office, usually.

6                   Q     Are these your business record for 1489 for this  
7 transaction involving the installation of the refrigeration  
8 equipment?

9                   A     I assume so, yes.

10                  Q     And that would be for all five documents?

11                  A     Look at these?

12                  Q     Take a look at all of them.

13                  A     Okay. Say the question again.

14                  Q     Those are the five documents that you have as your  
15 business records from 1489 Food Corp., doing business as  
16 Foodtown supermarket?

17                  A     Well, these are not all from one location.

18                  Q     But they are for -- they are for this transaction, the  
19 refrigerator with Andres Ruiz at the location of 1489; is that  
20 correct?

21                  A     1489, okay.

22                  Q     Is that correct?

23                  A     Well, there is one of them that doesn't say 1489.

24                  Q     Okay. May I see that.

25                                 THE COURT: Witness to counsel.

1 Q Regarding Exhibit 13, which doesn't say 1489, I want  
2 you to assume that your brother gave this testimony from his  
3 trial transcript, page 101, line 14, from Robin Estevez's  
4 testimony here in court.

5 THE COURT: What day was that?

6 MR. PRONER: You think I would know, but I'm  
7 looking for it in the transcript.

8 THE COURT: It's December 3rd.

9 MR. PRONER: December 3rd, thank you.

10 Q "QUESTION: Do you recognize your handwriting on the  
11 Resnick account?

12 "ANSWER: This is not my handwriting.

13 "QUESTION: Do you recognize whose handwriting this  
14 is?

15 "ANSWER: That's my handwriting.

16 "QUESTION: Why would your handwriting be on Resnick's  
17 checking account?

18 "ANSWER: I filled it out.

19 "QUESTION: If you have no relationship, why are you  
20 filling out checks for them?

21 "ANSWER: I don't recall.

22 "QUESTION: Was it an unusual occurrence that you  
23 would fill out a check for Resnick?

24 "ANSWER: I don't recall this.

25 "QUESTION: Do you recall a check for 25,000 that you

1 wrote to Mr. Ruiz on Resnick's account?

2 "ANSWER: I don't recall.

3 "QUESTION: That was 1489 West Avenue, correct?

4 "ANSWER: It says 1489 West Avenue.

5 "QUESTION: And you have no relationship with Resnick?

6 "ANSWER: That's our supply question.

7 "QUESTION: And you don't know why you're writing out  
8 checks to Mr. Ruiz on their checking account?

9 "ANSWER: I don't know.

10 "QUESTION: Are you now testifying that's not your  
11 handwriting on the check?

12 "QUESTION: This is absolutely not my handwriting.  
13 Maybe you had another check or something, but this is not my  
14 handwriting. Please compare it with the checks signed by me."

15 Then we marked the wire as Plaintiff's 14.

16 "QUESTION: Do you recognize that check?

17 "ANSWER: This is my handwriting.

18 "QUESTION: And that handwriting is on a check from  
19 Resnick?

20 "ANSWER: This is a check from Resnick.

21 "QUESTION: And the check is written out to  
22 Andres Ruiz; is that correct?

23 "ANSWER: That is correct.

24 "QUESTION: It and says final payment; is that  
25 correct?

1 "ANSWER: That's correct.

2 "QUESTION: And it says for 1489; is that correct?

3 "ANSWER: That's correct.

4 "QUESTION: And it's for 25,000?

5 "ANSWER: That's correct.

6 "QUESTION: So why were you writing out checks on  
7 Resnick account?

8 "ANSWER: More than likely I was directed to sign --  
9 not sign the check, fill it out with Andre Ruiz's information.

10 "QUESTION: Why?

11 "ANSWER: Because John and Resnick have a very close  
12 relationship.

13 "QUESTION: So John gave you Resnick's check?

14 "ANSWER: No. Resnick would have given me the check.

15 "QUESTION: Why?

16 "ANSWER: You would need to ask the parties who made  
17 the deal with Andre.

18 So do you know why your brother is writing checks to  
19 Andre from Resnick's account?

20 A I don't remember, recall. But this is what can happen.

21 We can be in the office. Andres is getting paid.

22 Butch is there; I'm there. And they hand the check to Robin and  
23 Robin fill it out and pay him.

24 I wasn't there. But I assume that was the scenario.

25 Fill out this check. He's getting paid. And I don't

1 know which one you're referring to. But the one that I have  
2 here is the one -- right here.

3 The one that -- that one, I didn't know what it was,  
4 so I gave it back. So I don't know what you're referring to.

5 This, what I have here is my brother's handwriting. I  
6 don't know whose signature, I assume it's Butch or Resnick to  
7 Andres final payment, 25. That's the one you just read.

8 We could have been all in the office. And he got paid  
9 and we still fill it out.

10 Q And all this is being done with no contracts?

11 A We know each other for 40 years. Butch and I are the  
12 same age. His father used to do business with my father.

13 Q So reading from the same transcript, from your  
14 brother's testimony, Page 193:

15 "QUESTION: We just have checks, right. We don't have  
16 any invoices?"

17 MS. BUHOLTZ: What line?

18 MR. PRONER: I'm sorry, 193, line 1.

19 You ready, Your Honor?

20 THE COURT: I'm ready.

21 MR. PRONER: I'm sorry.

22 Q "QUESTION: We just have checks, right? We don't have  
23 any invoices, no bills, no documentation of what was purchased,  
24 correct?

25 "ANSWER: Correct.

1           "Is that because Foodtown supermarket doesn't keep  
2 records of what they buy?

3           "ANSWER: There's not -- that's not true.

4           "QUESTION: So why are there no records for over  
5 100,000 in services.

6           "ANSWER: Andres Ruiz and John and Resnick have been  
7 working together for many, many, years. They have a word is  
8 bond relationship. They speak -- you know, they've done work  
9 together before. And if one says he's going to do something,  
10 it's as good as gold."

11           Is that true?

12           A     That's true.

13           Q     So Andres Ruiz's word is gold?

14           A     We're saying our handshake is what --

15           Q     We read Andres Ruiz's sworn testimony to the jury.

16                     Page 440, line 10, from the proceedings on  
17 December 8, 2025, here in this court.

18           "QUESTION: But he was going down ramp with the  
19 equipment?

20           "ANSWER: Lowering, lowering the equipment on the  
21 ramp. Yes, helping.

22           "QUESTION: So he would be on the stairway as it was  
23 coming down, correct?

24           "ANSWER: Yes.

25           "QUESTION: Okay. So he was going down, guiding the

1 compressor and on 1 foot if it's only 4 inches, only 1 foot  
2 could be where the step was, correct?

3 "ANSWER: Correct.

4 "QUESTION: Right. Did he have any sort of harness or  
5 security vest or anything?

6 "ANSWER: No.

7 "QUESTION: Did he at least have a security line to  
8 tie off on as he was going down the ramp?

9 "ANSWER: No, no, no, no, because normally the person  
10 who is to bring that was the guy from Chico Iron and he didn't  
11 bring it.

12 "QUESTION: What?

13 "ANSWER: He didn't take that. He only took the  
14 winch, the winch.

15 "QUESTION: How -- and remember -- and -- and  
16 remember, excuse me, it's not my job to do that work. I don't  
17 have the tools to do that work. It's not my job.

18 "QUESTION: So why did you have your employees do it?

19 "ANSWER: I was pressured by the owner of the  
20 supermarket to do that because if I had not done that, he would  
21 not pay me.

22 "QUESTION: John Estevez was pressuring; is that  
23 correct?

24 "ANSWER: Yes.

25 "QUESTION: So if.

1           "ANSWER: I have to explain how it happened.

2           "QUESTION: Okay. So if John Estevez was pressuring  
3 you, how did he do that if he wasn't there?

4           "ANSWER: John Estevez has his -- has this way in  
5 which, if you don't know, if you don't do what he says, he does  
6 not want to pay you. He becomes your enemy. He will not pay  
7 you on time. He is a monster.

8           "QUESTION: So I'm asking you, if he wasn't there, did  
9 you know you were going to have to do this work?

10          "ANSWER: Yes, yes. Because he coordinated this a  
11 week prior."

12          A     What's your question?

13          Q     Which one is it --

14               (Simultaneously speaking.)

15          A     Word is something else. A word, when you're going to  
16 shake your hand, that's my word.

17               And if he takes my word for doing the job, that means  
18 he trusts me, no?

19               So whatever he said there, that's not true. We  
20 haven't been in business 40 years by being like that. You would  
21 not be doing business with a lot of people by describing who you  
22 described there.

23          Q     So let me ask you something, 40 years of refrigeration  
24 now --

25          A     Where is Andres now?

1 THE COURT: It's not for you to ask questions,  
2 sir. You're here to answer question, not ask questions.

3 Q Well, before you said his world was gold?

4 A No. When we say a handshake, as a business.

5 Q Okay. Let's ask something else.

6 The Pocholo that he mentioned, you know him, right?

7 A He's another person that does business with us.

8 Q Pocholo does business with Foodtown, correct?

9 A He's a gate person that does gates.

10 Q His company name is Chico Ironworks, correct?

11 A Yes.

12 Q And you hired him, correct?

13 A For what?

14 Q He works for Foodtown, Chico Ironwork, Pocholo,  
15 correct?

16 A He doesn't work for Foodtown.

17 Q Didn't you just say he does gates?

18 A But he doesn't work for Foodtown.

19 You asked the question does he work for Foodtown.

20 Q Does he provide labor for Foodtown?

21 A No. He provides a service to Foodtown.

22 Q He provides a service for pay?

23 A Yes.

24 Q And that's as Chico Ironworks, correct?

25 A Yes.

1 Q So you pay for his services, for ironwork, correct?

2 A Yes, for gate work.

3 Q Now, you didn't go into basement while this job was  
4 going on?

5 A No.

6 Q Well, are you aware that this job took two and a half  
7 months?

8 A Well, you can go to the basement to do many things. I  
9 am not -- I'm not. I don't know how to install equipment. I  
10 could go and look at it. But I go to the basement to check  
11 inventory; to check is it clean; whose there.

12 You go to the basement, but for this job, I don't.

13 Q So you spent over 100,000 just to the services  
14 according to Robin.

15 How much did you pay for the equipment?

16 A Whatever much. According to Butch. I don't remember.

17 Q Well, we don't have any invoices, so you don't know.

18 You have any idea how much this equipment cost?

19 A No.

20 Do I have an idea?

21 Could be probably double that. 100,000. It probably  
22 could be another 100,000, that's depending how it is.

23 Q You're doing work, 200,000, no contract, no permits,  
24 and you're not checking to see how the work goes?

25 MR. CALABRESE: Objection. What do you mean, no

1           permits?

2                           It hasn't been established.

3                           THE COURT: Sustain. Sustained.

4           Q     The time this accident happened, there were no  
5 permits, correct?

6           A     I don't think -- we don't need permits to change one  
7 equipment for another. To replace equipment, we do not need a  
8 permit.

9           Q     So this equipment, it was damaged, who was paying for  
10 it?

11          A     That equipment is new equipment replacing old  
12 equipment.

13          Q     If during the delivery the equipment was damaged, who  
14 would pay for it?

15          A     Whoever was responsible to receive that equipment.

16          Q     But you didn't have any contracts.

17          A     It's never happened. So I don't know.

18          Q     Well, in all these years you've been in the  
19 refrigeration business, have you ever installed a rack  
20 refrigeration system before?

21          A     I have never been in the refrigeration business.

22          Q     Okay. In the supermarket business -- does every  
23 supermarket have a refrigeration system?

24          A     Typically, yes. It could have individual compressors  
25 as well.

1 Q Okay. Do all of your supermarkets have refrigeration  
2 systems?

3 A Yes.

4 Q Have you ever replaced one before?

5 A Yes.

6 Q Have you ever seen the equipment delivered to a  
7 basement before?

8 A Yes.

9 Q Is it always done with a steel plate on top of the  
10 steps?

11 A No.

12 Q How is it typically done?

13 A Depends on the location. Every location is different.

14 Q Well, how many times have you seen it?

15 A We have installed four rack systems.

16 Q Okay.

17 A All of them different.

18 Q So tell me those four times, how are they done?

19 A One of them was done and they brought in a lift, Andres  
20 brought in a lift. It was done on a roof.

21 The other one was done that we needed a permit in  
22 Yonkers. They had to break down the wall. That's construction.  
23 And they lifted it, they put it into a storage area, or into  
24 the -- how would I describe? You know, a second little tier.

25 And the one in the basement was brought in by pieces.

1 I don't recall how it was done, but I know it was pieces.

2 Q So you said Andres did one going on the roof, correct?

3 A When I say roof, think about one-tier, one-tier  
4 building, not roof like a highrise. Think about a single  
5 building.

6 Q So there's a hole in the floor and a crane?

7 A Hole on the floor.

8 Q The roof, whatever.

9 The hole in the roof and a crane?

10 A So, typically, if it's on the roof, you have to -- he  
11 has to hire, like, people to do work to sustain the equipment.  
12 Because equipment vibrates. They coordinate that, and equipment  
13 sits on that.

14 Q Well, Andres said he's never done this work before.  
15 He said you're the one that coordinates it.

16 A Andres has multiple -- I'm nine stores. Andres must  
17 have 100 stores or more that he serviced. I don't know where  
18 Andres is now, but he is describing something that is not true.

19 Q I see.

20 So he's not honest?

21 A He's not honest. I shouldn't say that.

22 He was not being honest with what he told you there.

23 Q I see.

24 But just a moment ago you and you brother said his  
25 word is bond. You don't need contracts. You don't need

1 agreements.

2 Which one is it?

3 A So I'm going to say it like this: Would you trust  
4 Andres today, no.

5 Q I'm not asking you if you trust him today.

6 You did work with him without contracts, correct?

7 A Yes.

8 Q So what you paid him was basically up to you, right?

9 A No.

10 Q Well, you had no agreement, correct?

11 A Yes.

12 But if I give somebody my word, and I'm in business  
13 for a long time and I'm still in business, I have to stick to my  
14 word. I have to pay my bills. I'm not going to get milk,  
15 potato chips, produce.

16 Q I'm not talking about buying milk.

17 A You're describing something that's not reality.

18 Q So you're not responsible for inspecting the area  
19 where this incident took place for safety and cleanliness?

20 A Yes, I'm responsible.

21 Why not?

22 Q Page 79 from your testimony. This is not Mr. Ruiz,  
23 not your brother's, your testimony sworn testimony a couple of  
24 months ago.

25 Page 79, line 8.

1 "QUESTION: Okay. Were you responsible for inspecting  
2 the area for safety and cleanliness?

3 "ANSWER: No?"

4 A Well, you asked a question and then you ask this. I  
5 don't know when you're referring to.

6 If it's at the specific time -- if it's at the  
7 specific time, I wasn't there. So am I responsible at that  
8 specific time? Am I responsible in general? If I go  
9 downstairs, that's what I go downstairs for.

10 How are you asking the question?

11 Q All right. I'll give you -- I'll give you prior  
12 questions.

13 "QUESTION: How often, referring to 2017, did you  
14 personally go into that area during a normal workday or week?

15 "ANSWER: That's our operation. That's our basement.  
16 We go up and down there often.

17 "QUESTION: I'm not asking we. I'm asking you.

18 "ANSWER: I would say once a week, twice a week I go  
19 in the basement.

20 "QUESTION: Okay. Were you responsible for inspecting  
21 the area for safety and cleanliness?

22 "ANSWER: No."

23 Do you recall giving that answer to that question?

24 A I don't recall. But I don't know -- are you referring  
25 to, am I responsible to -- cleaning for what? Cleaning of the

1 supermarket? I'm not running the supermarket; the managers are  
2 running the supermarket.

3 Am I responsible -- in theory, I am responsible, in  
4 theory. But am I doing, no.

5 Q So you don't care about safety, you just care about  
6 the prices, right?

7 MR. CALABRESE: Objection, Your Honor.

8 THE COURT: Sustained.

9 A Come on.

10 THE COURT: You don't have to answer.

11 Q You have cameras at that entrance above of the  
12 stairway for deliveries, correct?

13 MR. CALABRESE: At what point in time?

14 MR. PRONER: In 2017.

15 A I don't recall.

16 Q You got approximately 25, 30 employees there, correct?

17 A Approximately.

18 Q Valuable merchandise, correct?

19 A Yes.

20 Q You got people like Mr. Honorio Rosario-Silverio, who  
21 come in go in your supermarket; you don't even know their names,  
22 correct?

23 A Could be, yes.

24 Q And they come in and out of that entrance, correct?

25 A Yes.

1 Q And you got valuable merchandise in the supermarket,  
2 correct?

3 MR. CALABRESE: Asked and answered.

4 A Yes.

5 THE COURT: Sustained.

6 Q And you're saying you don't know if you had --

7 THE COURT: Hold on. Mr. Proner, she's not  
8 taking anything. I said hold on.

9 Mr. Estevez, if you hear an objection, the word  
10 "objection," can you just pause a minute until I rule on  
11 it.

12 THE WITNESS: Okay.

13 THE COURT: Whether you can answer or not.

14 Okay, thank you.

15 Now.

16 Q So you got 25 to 35 employees, valuable merchandise,  
17 people using that entrance to come and go in the supermarket,  
18 whose name you don't even know.

19 And you're saying in 2017, you don't know if you had  
20 security cameras there?

21 A What entrance? What entrance?

22 Q The one above the stairway where this incident took  
23 place?

24 A If the door is open and we're receiving merchandise,  
25 there's usually an employee that would receive merchandise for

1 our store or delivery, there's somebody receiving that. That's a  
2 receiving corridor.

3 So the person that is there -- let's suppose it's  
4 dairy. The dairy manager is there receiving the dairy. The  
5 meat manager is there receiving the meat. That's the way it  
6 works.

7 Do I need -- then I can't trust anybody. How can I  
8 trust --

9 Q That's how you do it, on a trust system, no security  
10 cameras?

11 A At the end of the day, when you're receiving  
12 merchandise, can I count through the camera every case that comes  
13 in and out of there or in the supermarket?

14 MR. PRONER: Nothing further.

15 THE COURT: Let me give of the jury five minutes.

16 THE COURT OFFICER: All rise. Jury exiting.

17 (Whereupon, the jury exits the courtroom.)  
18  
19  
20  
21  
22  
23  
24  
25

1 THE COURT: Back on the record.

2 (Mr. John Estevez, resumes with witness stand.)

3 THE COURT OFFICER: All rise, jury entering.

4 (Whereupon, the sworn jurors enter the courtroom  
5 and take their respective seat.)

6 THE COURT: Please, be seated.

7 Cross examination?

8 MR. CALABRESE: Yes.

9 CROSS EXAMINATION

10 BY MR. CALABRESE:

11 Q Mr. Estevez, good afternoon.

12 A Good afternoon.

13 Q I'm your attorney?

14 A Can you hear me?

15 Q I hear you. I was making sure the court reporter can  
16 hear me on the microphone.

17 I'm your attorney and you and I first ever met in  
18 person or virtually over --

19 MR. PRONER: Objection.

20 Q Zoom.

21 THE COURT: Hold on. Let me make sure I understand  
22 the objection. Sustained.

23 Q Resnick Supermarket supply. Can you, please, tell us  
24 what is Resnick Supermarket Supply in the business of doing?

25 A Resnick is the refrigeration company that supplies

1 refrigeration, coolers, rack systems. Rack system are the  
2 motor --

3 THE COURT: Time out. Slow. You have to go slow  
4 so the court reporter could get what you're saying.

5 A Okay. So Resnick is a supermarket equipment company  
6 which supplies from the shelving to the registers. All the  
7 cases that you see. They supply display cases and including the  
8 refrigeration, and rack systems to run the refrigeration.

9 Q Okay, you and your family grocery stores have a long  
10 standing business relationship with Resnick?

11 A Yes, my father started with his father 40 something  
12 years ago.

13 Q Butch is Resnick -- one of the owners of your point of  
14 contact now and long contact with Resnick?

15 A Butch is the son of like me the son of the older owner.

16 Q Have you, and to the extent you know your father in  
17 doing business on handshake deals without contracts?

18 MR. PRONER: Objection to form.

19 THE COURT: Sustained.

20 Q Have you long been doing deals with Resnick, buying  
21 equipment from them, on a handshake deal?

22 A Yes.

23 Q Okay. Do you typically not use contracts?

24 A Typically? With whom?

25 Q With Resnick. Sorry, I should have clarified. With

1 Resnick? Do you ever use contracts anymore?

2 A Do I use contracts?

3 Q With Resnick?

4 A Uh, no.

5 Q Okay. You still use Resnick?

6 A Still use Resnick.

7 Q Okay. You still order the equipment for this Food Town  
8 and other Food Towns?

9 A Still use Resnick.

10 Q Explain who AR Refrigeration is?

11 A AR Refrigeration was our company for many years. I'll  
12 say over 20 years, I think. Also came with my dad and we did  
13 business with him forever.

14 Q Okay. When you say our company, you mean a company  
15 that you --

16 A Our company, as our refrigeration company that we use  
17 to give our service to our refrigeration.

18 Q The company Food Town used?

19 A Resnick -- I mean Andres was our service refrigeration  
20 company don't put Food Town because there's many Food Towns.  
21 So, let's a say John Estevez or Estevez family Food Town. I  
22 don't want to be misunderstood. There's other Food Towns.

23 Q I understand that, fair. So, but my point is I want to  
24 make it clear that when you say our company, you have no  
25 interest in AR Refrigeration --

1           A     No interest?  When you say our meaning they was the  
2 company that was supply, would service us the refrigeration  
3 service to our stores.

4           Q     Understood.  And were there times at this store,  
5 separate and aside from the work that was being done back in  
6 October 17th, where you bought equipment from Resnick, that AR  
7 Refrigeration connected, serviced or what have you?

8           A     It's on a timeline that's how it usually works.  The  
9 refrigeration company, refrigeration company comes in,  
10 recommends -- you buy a store, they recommend this is the  
11 equipment that you have to buy, and he orders it through  
12 Resnick.

13                   THE COURT:  Is there an objection?  You're standing  
14 counsel is there an objection or not?

15                   MR. PRONER:  It's nonresponsive, but I didn't want  
16 to interrupt him because you before you said we can't speak  
17 over each other.

18                   THE COURT:  Once he's giving the answer, the answer  
19 stays.  Let's go there's an objection.

20                   MR. PRONER:  Objection.

21                   THE COURT:  All right.  Sustained nonresponsive.

22                   MR. CALABRESE:  Judge --

23                   THE COURT:  It's not responsive to the question,  
24 counsel.

25                   MR. CALABRESE:  How could it be with all fairness

1           how can it be determined.

2                   THE COURT:  Now you're beginning to argue with me.  
3           Nonresponsive.  Form the question, let him answer the  
4           question.

5                   MR. CALABRESE:  Can you let him finish his answer.

6                   THE COURT:  Counsel.

7                   MR. CALABRESE:  Judge, I'll move on, I'll move on.  
8           But the witness is trying to give clarity.

9                   THE COURT:  Counsel, counsel -- you know, it's very  
10          simple.  Sustained, overruled, next question, answer.  Let's  
11          go.  Okay.

12          Q        You've dealt with AR Refrigeration for a long period of  
13          time, yes?

14          A        Yes.

15          Q        Did you also deal with AR Refrigeration in a fashion  
16          that didn't require contracts or invoices?

17          A        Yes.

18          Q        Okay.  So, for the work that was being done on the date  
19          of this accident, the swapping out the old condensers and the  
20          installations of the new condensers, you operate in your normal  
21          custom and fashion for that work between Resnick and AR  
22          Refrigeration?

23          A        Yes.

24          Q        Okay.  Is it your understanding that Resnick  
25          Supermarket Supply Company, and AR Refrigeration, have a

1 business relationship outside of you or your stores?

2 A Yes.

3 Q They work together elsewhere?

4 A Yes.

5 Q And you're aware of this?

6 A Yes.

7 Q Okay. Anytime you need any type of refrigeration work  
8 done where equipment is supplied by Resnick, AR is involved,  
9 right?

10 A Yes.

11 Q And AR is under the Andreas Ruiz, yes?

12 A Yes.

13 Q You refer to him as the man, we refer to him as the  
14 company. But for purposes of today AR Refrigeration is Andreas  
15 Ruiz fair?

16 A Um hum. Yes.

17 Q Thank you. You were asked questions about your  
18 knowledge of the accident involving a ramp, okay. Did your  
19 first knowledge of this incident involving the ramp come before  
20 or after the lawsuit was filed?

21 A After.

22 Q So, your knowledge of the ramp being involved comes  
23 from the actual litigation?

24 A As I recall, yes.

25 Q Okay.

1           A     I don't know about, about a ramp. I don't know, I  
2 don't know when exactly, but it wasn't before. It was after the  
3 fact.

4           Q     Okay. Now, I want to clarify some issues about  
5 conversations had. Because there was some as you even took some  
6 issue with being asked a question and then cherry picking some  
7 testimony. So, I want to clarify that.

8                     MR. PRONER: Objection.

9                     THE COURT: Sustained to the cherry picking  
10           testimony, counsel. Do you want to rephrase your question.

11          Q     You were asked questions about conversations with Ruiz  
12 regarding installations, okay. Now, I want to limit it just to  
13 the condensers upgrade project that was being done in and around  
14 October 17th, okay?

15          A     Yes.

16          Q     I'm not talking about other work or thing. I'm talking  
17 about just that. Now, there came a period of time where it was  
18 determined that your rack refrigeration condensing system in the  
19 basement required upgrading, yes?

20          A     Yes.

21          Q     Okay. Who advised you -- did you by yourself before  
22 speaking with anybody else come to the determination that your  
23 system needed upgrading?

24                     MR. PRONER: Objection. Form.

25                     THE COURT: Sustained. Rephrase it.

1 Q How did you come to the conclusion that the  
2 refrigeration system in the basement needed to be upgraded?

3 A The conclusion comes about very easily the compressors  
4 that are old start messing up, right? So, you start your frozen  
5 food compressor doesn't work, you have to replace. So, the  
6 conclusion comes through the age of your equipment it's time to  
7 upgrade.

8 Q Okay.

9 A So I guess that's the answer and that would be Andreas.  
10 Your mechanic advises you it's time to upgrade.

11 Q Okay. So, service calls for that same equipment it  
12 happened more frequently and then at certain point Andreas Ruiz  
13 says --

14 MR. PRONER: Objection.

15 THE COURT: Sustained.

16 Q At a certain point you were advised by Andreas Ruiz  
17 that the equipment needed to be upgraded?

18 A Yes.

19 Q Okay. At that point, did you and Andreas Ruiz  
20 collectively, maybe not at the same time, walk into Resnick's  
21 office, but was there a sort of a three way conversation with  
22 Resnick about the equipment?

23 MR. PRONER: Objection.

24 THE COURT: Sustained to form. Rephrase it.

25 Q How did it come that you got the equipment?

1 A Okay --

2 Q For that refrigeration upgrade that Andreas Ruiz  
3 recommended?

4 A The way it works is not in the office. I don't have to  
5 be there by the way. Uhm, they go, they walk the store and they  
6 see the size --

7 MR. PRONER: Objection. Unless he was there it's  
8 speculation.

9 A I recall --

10 THE COURT: All right.

11 MR. PRONER: He hadn't established he was there.

12 THE COURT: Hold on. Are you talking about the day  
13 in question or before?

14 THE WITNESS: He asked me how does it come about.

15 THE COURT: Right, so you're talking before.

16 THE WITNESS: Yes, how did I order the equipment.

17 THE COURT: Yes, you ordered it.

18 THE WITNESS: That's how -- yeah.

19 THE COURT: I'm asking you, you ordered the  
20 equipment --

21 MR. CALABRESE: He's answering the question.

22 THE COURT: Okay, go ahead.

23 MR. CALABRESE: Can he answer the question?

24 THE COURT: Do you mind? I can inquiry, counsel.

25 It is the discretion of the Court to inquire to clarify. Do

1           you mind if I inquire?

2                   MR. CALABRESE: I do not mind at all, Your Honor.

3                   THE COURT: Thank you.

4                   MR. CALABRESE: It sounded like you were locking  
5           him into a yes or no by not that I remember answer.

6                   THE COURT: No, you weren't listening.

7                   MR. CALABRESE: I apologize.

8                   THE COURT: Thank you very much. So now you can  
9           answer, sir. Go ahead.

10           A        So, the way the equipment is ordered is basically by  
11           the square footage of the refrigeration that you have including  
12           walk in-box in the basement it or wherever your walk-in boxes  
13           are. Your refrigeration requires it. So they walk and they  
14           measure everything.

15           Q        Who's they. Let me interrupt you, who's they?

16           A        They is the your mechanic which in this case was Andrea  
17           Ruiz and your equipment person which in this case was Butch,  
18           which usually were. They walk the store and they make inventory  
19           of what is required.

20                   MR. PRONER: Objection.

21                   THE COURT: Overruled.

22           Q        And then you take that suggestion and make a business  
23           decision for the Food Town, yes or no, do I want to do this?

24           A        Yes.

25           Q        Okay. And let's say you say yes, and here in this

1 instance you actually did because the work eventually was  
2 underway, yes?

3 A Yes.

4 Q Okay. In saying yes to Resnick and AR refrigeration,  
5 are you getting involved of how far it's going to get put into  
6 the basement?

7 A The first thing is you don't know when it's going to  
8 be -- is this has to be built. So they order it and Butch may  
9 tell you 90 days, 120 days. So that's when I don't know when,  
10 how. Meaning then they come back to you this is going to come  
11 in six months.

12 Q Okay, Butch tells you, the supplier tells you --

13 A They communicate.

14 THE COURT: You can't talk at the same time.

15 THE WITNESS: Okay, sorry.

16 THE COURT: Not going to work.

17 Q So, if I understand correctly Butch tells you when it's  
18 coming?

19 A Not necessarily. He tells the mechanic. It's all  
20 mechanic. When I'm saying me, I'm relaying as us one at this  
21 point.

22 THE COURT: He can't testify to us, he can't  
23 testify to me, he can't testify to they.

24 THE WITNESS: Okay.

25 THE COURT: You got to testify to you, you're the

1 one here in court today to what you know, what you heard,  
2 what you -- no, what you observed, what you did.

3 THE WITNESS: Okay.

4 THE COURT: Okay, that's the problem. Let's go.

5 Q Attorneys have to ask questions in a silly fashion.

6 I'll -- gets through it.

7 A Okay, I got it.

8 MR. PRONER: Objection.

9 THE COURT: Sustained.

10 Q Did you get involved with price of the equipment?

11 A Yes.

12 Q Because you're paying for it?

13 A Yes.

14 THE COURT: You have to answer verbally.

15 MR. CALABRESE: Sorry, Your Honor.

16 Q Did you get involved with Mr. Ruiz, how much is this  
17 going to cost me whatever's happening here?

18 A Installing.

19 Q Yes?

20 A Yes.

21 Q Okay. Did you get involved with Andreas Ruiz, talk me  
22 through how we're going to connect the coupling condensers to,  
23 yada, yada, however it works?

24 A No.

25 Q You leave that to him, fair?

1 A Fair.

2 Q You have to give verbal --

3 A Fair.

4 Q Thank you. Do you get involved between Resnick and AR  
5 Refrigeration, how the units are getting, in this case at this  
6 store, down into the basement?

7 A No.

8 Q Okay. That's not something you concern yourself with  
9 because that's not your expertise, yes?

10 MR. PRONER: Objection.

11 THE COURT: Sustained. Form don't answer.

12 Q You don't know anything about moving this equipment?

13 A No.

14 Q Okay, you have to provide the store for the equipment  
15 to accept it?

16 A Yes, the space.

17 Q Okay. You were asked some questions about -- you were  
18 asked some questions about did you have a conversation about  
19 installing the ramp, and then counsel asked some questions about  
20 installing the equipment. So I want to clarify that, first.

21 A Um hum.

22 Q First. At any point before this work was being done,  
23 did Andreas Ruiz ever say I'm going to use a ramp to get it down  
24 your stairs?

25 A No.

1 Q At any point did you tell Andreas use a ramp to get it  
2 down the stairs?

3 A No.

4 Q At any point did you hire anybody else to put a ramp on  
5 the stairs?

6 A No.

7 Q Did your brother or anybody else on behalf of Food Town  
8 retain services of anybody to place a ramp?

9 A No.

10 Q Okay. And you never saw this ramp, correct?

11 A Never saw it.

12 Q Okay. When you learned that this incident involved  
13 ramp, did you make an assumption as to whose ramp that must  
14 have been, at the time?

15 A No.

16 Q Okay, but you knew who was installing the equipment at  
17 the time, correct?

18 A Andreas.

19 Q Okay.

20 A Yeah.

21 Q You were shown a permit, you were asked some questions  
22 about the date of this accident, the date of the filing of that  
23 permit? Look again at the description of work.

24 A Which?

25 Q I'm sorry it's the permit application?

1 A Okay.

2 Q It's a four page document that you were shown earlier?

3 A Yes.

4 Q Okay. I believe it was page 2 that said description of  
5 work?

6 THE COURT: Exhibit 21, in evidence.

7 MR. CALABRESE: Thank you, Your Honor.

8 A It's actually page 3.

9 Q Thank you for the corrections Mr. Estevez. Description  
10 of work, let's hear it, again, please?

11 THE COURT: Not let's hear it again. He could read  
12 it exactly as it's written in the document.

13 MR. CALABRESE: Of course.

14 Q Let's read it exactly how it is in the document?

15 THE COURT: Exactly how it's written.

16 A Replacement of refrigeration equipment, and HVAC  
17 maintenance and no changes to use or occupancy.

18 Q HVAC, H-VAC, do you know that to be H-VAC?

19 A Yes.

20 Q You have H-VAC vendors for your supermarket, yes?

21 A Yes.

22 Q The supermarket requires heating and cooling?

23 A Yes.

24 Q I'm not talking about the cooling of the refrigeration  
25 union for the milk and the eggs whatever. Just air

1 conditioning?

2 A Yes.

3 Q Those are separate systems?

4 A Yes.

5 Q Separate contractors?

6 A Yes.

7 Q Separate vendors?

8 A Yes.

9 Q Okay. Look at the name of the architecture filings of  
10 that. And while you do that I'm going to ask you a question?

11 A Sorry, look at what?

12 Q Before I direct you there, sir, do you yourself file  
13 permits or are these permits filed on your behalf?

14 A On my behalf.

15 Q Who are they filed on your behalf by?

16 A The architect.

17 Q So, you're not inputting this information?

18 A No.

19 Q Okay. So, go to the architects name, or is there  
20 anything on that that says Resnick or AR Refrigeration?

21 A No.

22 Q Do you know, sir, is this permit even related to the  
23 refrigeration condensing swapping that was going on in the  
24 basement, in October 2017?

25 A No, I don't know.

1 Q No you don't know or no it's not?

2 A I don't know.

3 Q You don't know. Fair. Okay. Last question, sir.

4 That loading dock, that rear loading area, the rollup doors, you

5 walk in, there's your concrete floor and then there's the

6 staircase down to the basement. There's two of those, right?

7 One on one side of the back, one on the other side of the back,

8 yes?

9 A Yes.

10 Q Okay. Looking at the back of the store, with your back

11 to the parking lot --

12 A Um hum, yes.

13 Q Let's talk about the left one. Let's assume that they

14 were bringing in the equipment on the left side, because there

15 has been testimony earlier about that, okay.

16 That internal platform that, that concrete floor from

17 the rollup gate to that first step before the stairs, what is

18 the approximate size of that distance? What's that length?

19 A I would say 10, 12 feet.

20 MR. CALABRESE: Okay. No further questions. Thank

21 you.

22 THE COURT: Okay, thank you.

23 Buholtz, cross exam.

24 CROSS EXAMINATION

25 BY MS. BUHOLTZ:

1 Q Mr. Estevez, did you discuss the change in the  
2 refrigeration system, in October of 2017, with the landlord at  
3 anytime?

4 A No.

5 Q Did you discuss the work being done on Saturday with  
6 anyone other than Andreas Ruiz?

7 A No.

8 Q Did you discuss this incident with the landlord at any  
9 time?

10 A No.

11 MS. BUHOLTZ: Thank you.

12 THE COURT: Nothing further?

13 Redirect?

14 MR. PRONER: Yeah.

15 REDIRECT EXAMINATION

16 BY MR. PRONER:

17 Q So, we can agree that this job, when Mr. Honorio  
18 Rosario-Silverio (sic) was injured involved replacement of the  
19 refrigeration equipment, correct?

20 A Yes.

21 Q Now, this permit says replacement of refrigeration  
22 equipment and HVAC maintenance?

23 THE COURT: Exhibit 21, you're talking about,  
24 counsel.

25 MR. PRONER: 21, in evidence.

1 Q It says the application says it followed Department of  
2 Buildings it says: Replacement of refrigeration equipment.  
3 Which we agree is the same type of work that Mr. Honorio  
4 Rosario-Silverio was injured doing. And HVAC maintenance.

5 Well, HVAC defense counsel referred to it also that  
6 also means HVAC. It's actually heating, ventilation, and air  
7 conditioning.

8 Well, do you know what type of heating ventilation and  
9 air conditioning maintenance requires building refrigeration?

10 A Do I know?

11 Q Yeah?

12 A No.

13 Q No? Now, you said that these equipment that had to be  
14 lowered, your words were, is has to be built. Construction?

15 A What do you mean has to be built?

16 Q That's your words, that's your words, that's your  
17 words, that's your testimony to this jury. You said it has to  
18 be built. So, don't ask me what I mean by it. I'm asking you  
19 what you mean by that?

20 A You asked me a question about different locations.  
21 Some of them come in as a puzzle, some of them have to be built  
22 at premises, some of them come built. I mean I've been doing  
23 this all my life, so it depends how it's ordered by the  
24 mechanic.

25 Q You've been doing it all your life, so you do know how

1 it works?

2 A Of course.

3 Q Okay, so tell the jury how it has to be built?

4 A No, I do not know how it's built but do I know how it  
5 works.

6 Q So, you're doing it all your life, you know it has to  
7 be built but you got no idea how it's built? You've never seen  
8 it?

9 A Do you know how to put up a T.V.?

10 Q Sure I do?

11 A I don't.

12 Q Okay. And I'm not even in the --

13 A I don't know.

14 Q I'm not even in the audio visual work. But I could --

15 THE COURT: All right. That's not part of this  
16 case.

17 MR. PRONER: Okay.

18 Q Now, you said you weren't involved in installing, you  
19 didn't know anything about a ramp. Well, you said you talked to  
20 him about the price of installing, correct? You're testimony  
21 was just now you were involved in talking to Mr. --

22 A What does it cost for him to do it.

23 Q Okay, and you're telling me when you were discussing  
24 the cost of what it was going to be to install it, he didn't say  
25 to you I have to charge this amount because this is the way it

1 gets installed. This is what I got to do. This is how many  
2 days it takes, this is the way we're going to do it. You didn't  
3 say anything. He just said, \$100 grand installations and you  
4 said why so much and he said that's what it costs and you said  
5 okay I'll pay. There was no discussion of how it was going to  
6 be installed?

7 A By the way, I don't like the way you talk. You, you,  
8 you, so I'm going to tell you the way it is. I'm going to tell  
9 you the way it is because you making like a joke out of this.  
10 The way it is is that you discuss it, you discuss the job. I  
11 don't know how many footage they need. I don't know how much  
12 freon is needed. I don't know that. It's basically they -- he  
13 does the projection, he does the analysis, and he tells me he  
14 says because that's what he needs. I don't know. I'm not a  
15 mechanic.

16 Q I didn't ask you?

17 A I'm not equipment guy. I don't know how much piping  
18 they need to run to the refrigeration, he knows.

19 Q I understand. And I didn't ask you if he discussed  
20 with you how much freon's needed. I said to you?

21 A But you're assuming I would know that.

22 Q Well, I'll ask that you don't interrupt me when I'm  
23 asking you a question, please?

24 THE COURT: All right, could you just listen to the  
25 question that's being asked and just answer that question.

1           And counsel, can you just be clearer in your question, so  
2           the witness could understand the question. Okay, let's go.

3 REDIRECT EXAMINATION

4 BY MR. PRONER:

5           Q       Once again, when you were discussing the cost of  
6           installations, are you telling this jury that he never discussed  
7           with you how the installation was going to take place? He only  
8           told you what it would cost?

9           A       Yes.

10          Q       And in negotiating the price, there was never any  
11          discussion about what it would entail, how many days, what type  
12          of labor? No discussion whatsoever of that?

13          A       No discussion about that.

14          Q       Did he tell you that or did you volunteer to have  
15          workers from the supermarket help him?

16          A       No.

17          Q       Would you be surprised to know that all the witnesses  
18          that have testified so far involved in the work said there were,  
19          in fact, supermarket workers helping him?

20          A       I would be surprise.

21          Q       And you had no involvement in that other than the  
22          price?

23                   THE COURT: He answered already.

24                   MR. PRONER: Okay.

25                   THE COURT: Move on.

1 Q I want you to assume that Andreas Ruiz gave this sworn  
2 testimony.

3 THE COURT: Counsel, page.

4 MR. PRONER: Page 437, line 2.

5 THE COURT: Hold on. Go ahead.

6 Q Question: But you don't remember who was there?

7 Answer: He had to be there because he worked on  
8 Saturdays. On Saturdays definitely he had to be there.

9 Question: Okay, now who is the one that you mentioned?  
10 You've got your company, you got iron workers Chico, you got  
11 electricians, you've got plumbers. Who is the one that  
12 organized, everything?

13 Answer: Allow me to explain this. I can, I can give  
14 details, right? Because I have to give them. Normally, John  
15 Estevez has his group of people who work independently. He has  
16 his plumbers, his plumbing company, electricians, carpenters,  
17 refrigeration team, computers, all of them. You understand? So  
18 he's in charge of forming a group, and then he hands this group  
19 to the architect, then he coordinates all these groups to work  
20 for the company.

21 Question: So the answer, John is the one that was  
22 organizing it, is that correct?

23 Answer: John Estevez is everything.

24 Question: Okay, all right. So it was John Estavez's  
25 plan to put this ramp in there, is that correct?

1 Answer: Can I speak?

2 Question: Sure.

3 Answer: Can I speak because I want to?

4 Question: Of course.

5 Answer: I have to provide a little bit of details of  
6 how all this started.

7 Question: Please.

8 Answer: It's because I would like to speak but that's  
9 fine, ask the question.

10 Question: Was it John Estavez's plan to put the ramp  
11 in?

12 Answer: John Estevez looked for the one who. John  
13 Estevez looked for the person who placed it there because he  
14 could not know about that, but he did find the person who placed  
15 it there.

16 Question: And you testified there were Unos, there was  
17 grease on the ramp, and you didn't know what kind of grease it  
18 was --

19 THE COURT: That's goes beyond.

20 MR. PRONER: Okay.

21 THE COURT: That was denied.

22 MR. PRONER: Okay.

23 REDIRECT EXAMINATION

24 BY MR. PRONER:

25 Q So, I want you to assume there was sworn testimony

1 given in this case. Did you, in fact, hire electricians to do  
2 the work --

3 A Do I have to hire electricians?

4 Q Did you hire --

5 A The company is SPRAIL separate company.

6 Q You hired electricians. Did you hire plumbers?

7 A Yes.

8 Q Carpentry?

9 A There's no carpentry.

10 Q The refrigeration team?

11 A That's Andreas Ruiz.

12 Q And then you formed a group and you handed it to the  
13 architect, is that correct?

14 A That's not true.

15 Q And you recorded all the groups to work four your  
16 company, is that correct?

17 A I don't have a construction company.

18 Q So, when he said John Estevez is the one that was  
19 organizing it, that you are everything. That's not true?

20 A That's not true. I'm the owner who's ordering from  
21 suppliers.

22 Q So you ordered all the different companies together,  
23 but you don't know who put in the ramp, correct?

24 A 100 percent, because I'm not the refrigeration company.

25 MR. PRONER: Nothing further.

1 THE COURT: Okay.

2 Anything.

3 MR. CALABRESE: Very briefly, Your Honor.

4 THE COURT: Very briefly.

5 MR. CALABRESE: Just to put that reading into  
6 context.

7 THE COURT: Okay.

8 MR. CALABRESE: I'll read up a little higher, than  
9 what was read.

10 RECROSS EXAMINATION

11 BY MR. CALABRESE:

12 Q Mr. Proner was reading starting from 437, line 3. No,  
13 no, no you had to be there on a Saturday. I'm going to go up a  
14 little bit higher before. Page 436, line 18.

15 Question: Okay. So, one second. So when you got  
16 there, were you greeted by anyone -- anybody from the store?

17 Answer, I don't remember. But he had a relationship?

18 MR. PRONER: Objection. Read it as it's written.

19 Q I, I don't remember. But we had a relationship in  
20 which we would see each other very often.

21 Question, who? Who's we?

22 Answer, the store managers. You understand.

23 Question: So, what's his name?

24 Answer: For example --

25 MR. PRONER: Question, so who what's his name.

1 Just read it. Slow down, read it right, please.

2 THE COURT: Mr. Proner, all you need to say is  
3 objection, that's all.

4 MR. PRONER: Just I'm --

5 THE COURT: All you need to say is objection.

6 MR. PRONER: You're right. Of course, I apologize.

7 MR. CALABRESE: Reading again.

8 Q Question: So who? What's his name?

9 Answer: For example, the store manager's name was  
10 Fausto, and it's most likely that he was there.

11 MR. CALABRESE: Starting where I read. Answer, he  
12 had to be there.

13 MR. PRONER: Question, objection.

14 Q Question: But you don't remember who was there?

15 THE COURT: Wait till I finish. Sustained. Read  
16 it again.

17 Q Question: But you don't remember who was there?

18 Answer: Where he picks up. He had to be there because  
19 he work Saturdays, on Saturdays definitely he had to be there.

20 MR. CALABRESE: Last question.

21 RECROSS EXAMINATION

22 BY MR. CALABRESE:

23 Q Sir, last question. The work AR Refrigeration was  
24 doing at the time the swapping of the condenser, from your  
25 prospective, construction or maintenance?

1 A Maintenance.

2 Q Thank you.

3 THE COURT: Any re-cross.

4 MS. BUHOLTZ: No, Your Honor.

5 THE COURT: Okay, thank you. You may step down.

6 Thank you.

7 THE WITNESS: Thank you.

8 THE COURT: Okay, ladies and gentlemen, that  
9 concludes for the day. I'm just going to ask you, please,  
10 wait in the jury room a minute because there is scheduling  
11 that I have, and I need to see for tomorrow exactly what  
12 time to bring you back. You know, I try not to make you  
13 wait. Unfortunately, things happen that are a little beyond  
14 my control right now, but I need to see that what exactly  
15 the circumstance are. Okay, so just wait a few minutes and  
16 I will let you know what time. The officer will inform you  
17 what time to come back tomorrow. Just remember you have  
18 heard some of the evidence, not all of the evidence.  
19 Please, keep an open mind, till you hear all the evidence,  
20 till you hear the summations, my charge to you on the law  
21 and more importantly you get this case for full  
22 deliberation. Do not discuss the case amongst yourselves or  
23 with anyone else. I'll see you tomorrow and you'll get the  
24 time in a few minutes.

25 THE COURT OFFICER: All rise. Jury exiting.

1 (Whereupon, there is a pause in the proceedings.)

2 THE COURT: All right, counsels, tomorrow 11:30.

3 There are A couple Article 81S that I must conduct the  
4 hearing I cannot adjourn. That's where I am tomorrow.  
5 11:30, I'm telling the jury 11:30 tomorrow.

6 MR. CALABRESE: While we have a moment, can we  
7 briefly discuss scheduling?

8 THE COURT: We've discussed scheduling ad nauseam,  
9 uhm, I am not going to discuss scheduling. I gave you up to  
10 the 19th, then we're in January. On the 19th, I'll give you  
11 the schedule for January.

12 MS. BUHOLTZ: Your Honor's we're not going to do  
13 January 2nd?

14 THE COURT: Not, the courts are closed. We don't  
15 open again January 2nd. I tell you right now, we're not  
16 coming back till January 7th.

17 MR. CALABRESE: Oh, good.

18 (Whereupon, the case is adjourned to December 13,  
19 2025, 11:30 a.m.)

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21 CONTINUED ON NEXT PAGE.....

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