In The Matter Of:

Inocencio Martinez v.
Yeshiva Kehilath Yakov, Inc., Yeshiva Headstart, et al.

Dr. Salvator Lenzo, Incencio Martinez and Dr. Matthew Grimm
January 23, 2025

Siobhan Lyons
851 Grand Concourse - Room 807
Bronx Civil Supreme
Bronx, New York 10451
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Min-U-Script® with Word Index

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

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INOCENCIO MARTINEZ,

Plaintiff,

-against- Index No: 21590/2018E

YESHIVA KEHILATH YAKOV, INC.,
YESHIVA HEADSTART,
NY DIMENSION BUILDERS, INC. TRIAL

Defendants.

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Bronx Supreme Court
851 Grand Concourse
Bronx, New York 10451
January 23, 2025

B E F O R E:

HONORABLE ALISON Y. TUITT,
Justice of the Supreme Court

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

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OBED CHERISE
Official Spanish Language Interpreter

SIOBHAN LYONS
Senior Court Reporter start

(Whereupon, the DDI MRI CD was marked as Plaintiff's Exhibit 15 in evidence by the Reporter)

(Whereupon, the Lenzo Chart was marked as Plaintiff's Exhibit 16 in evidence by the Reporter)

(Whereupon, the Illustration of the Right Wrist Surgery was marked as Plaintiff's Exhibit 17 for identification by the Reporter)

(Whereupon, the NY Ortho Sports Medicine & Trauma Records were marked as Defendant's Exhibit L in evidence by the Reporter)

(Whereupon, the Worker's Compensation Records were marked as Defendant's Exhibit M in evidence by the Reporter)

COURT OFFICER: Come to order. The Honorable Alison Y. Tuitt presiding.

THE COURT: Counsel?

MR. VARGAS: Good morning, Judge.

MR. ZIZZAMIA: Good morning.

THE COURT: Oh, boy. Thank you. Please be seated. Okay. It's my understanding that you have something that you'd like to put on the record this morning?

MR. VARGAS: No, I just wanted to follow up with the conversation we had yesterday.

THE COURT: Oh, you want to step up?

MR. VARGAS: Yes.

THE COURT: Okay, surely.

(Whereupon, a discussion was held at the bench)

THE COURT: I'm going to step out for a moment, before the jury comes in.

(Whereupon, a short recess was taken)

THE COURT: Counts, can I speak with the Plaintiff?

MR. DANIELSEN: Of course you can.

THE COURT: And the wife.

MR. VARGAS: Okay.

(Whereupon, an off-the-record discussion was held in chambers)

COURT OFFICER: All rise. Jury entering.

THE COURT: Please be seated.

Good morning, members of the jury. Good morning. I love it. We're going to continue on with Plaintiff's case at this time. Mr. Vargas, do you have a witness you'd like to call?

MR. VARGAS: Yes, Dr. Salvatore Lenzo.

THE COURT: Doctor, if could you join us, please.

COURT OFFICER: Raise your right hand. Do you swear or affirm that the testimony you're about to give is the truth, the whole truth and nothing but the truth under penalty of perjury?

THE WITNESS: Yes, I do.

S A L V A T O R E L E N Z O, called as a witness by and on behalf of the Plaintiff, after having been first duly

sworn, was examined and testified as follows:

COURT OFFICER: Please have a seat. Please state your name and business address for the record.

THE WITNESS: Salvatore Lenzo, L-E-N-Z-O, 9555th Avenue, New York, New York 10075.

THE COURT: You may inquire, Counsel.

MR. VARGAS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. VARGAS:

Q Good afternoon. Still morning. Good morning, Doctor.

A Good morning.

Q Can you tell the jury your educational experience?

A Sure. I received by BA from the University of Pennsylvania, I received my MD degree from NYU School of Medicine, then I did a year of general surgery training at Montefiore Hospital and then did four years of orthopedic surgery training at NYU and Bellevue Medical Center, then I did a fellowship in hand surgery for a year in hand surgery and microsurgery at NYU and Bellevue. I'm an associate professor of orthopedic surgery at NYU School of Medicine, I'm board certified in orthopedic surgery and hand surgery and I'm a member of the American Society For Surgery of the Hand.

Q And, Doctor, do have you your own practice currently?

A I do.

Q And, for you to come here, did you have to take time

out of your practice?

A Yes.

Q And are you being compensated for your time?

A I am.

Q And how much are you being compensated?

A $7,500.00.

Q Doctor, did there come a time when you examined a Mr. Inocencio Martinez?

A Yes.

Q And can you tell the jury, we put your chart in front of you, it's Plaintiff's 15, I believe. Yes. No, sorry, 16. If you need to, you can refer to it. Can you tell me the first time you examined him?

A In September of 2019.

Q And, at that time, did you take history from Mr. Martinez?

A Yes.

Q And what was that history?

A Well, that he was working as a foam sprayer and he had an injury where he was on a scaffolding and fell and a heavy metal object struck his right hand, wrist area.

Q And after taking the history, did you examine him?

A I did.

Q And what were your findings?

A Well, he had definitive tenderness in his wrist,

especially on the ulnar aspect of the wrist, in this area right over here. Initially, he was having complaints of some numbness within the fingers as well.

Q And did you come to a diagnosis at that time?

A Well, at that time I felt he most likely sustained a ligament tear within his wrist. The x-rays were negative on the initial assessment and he was tender in the area and this is a common area to have an injury to a ligament.

Q And did you have recommendations for treatment at that time?

A Well, initially, I gave him an injection of cortisone in an effort to decrease the inflammation around the injury site, but then, subsequently, because of continuing symptoms, we ended up getting an MRI of the wrist and an EMG study, which is a nerve test, to evaluate the function of the nerve within the hand.

Q And what were the results of the EMG test?

A The EMG found that he had compression of the nerve within his wrist and hand. So, the way I explain it to my patients is, what an E does is, if you think of the nerve like a telephone cable, and what the doctor does is to stimulate the nerve at one point, before the wrist joint, and then pick up the impulse after the wrist joint and we know that their normal value is to go from point A to point B. So, if there's a delay in conduction, which means a slowing of the electricity going

through, we know there's compression of the nerve and that's what was found in this gentlemen.

Q And was an MRI performed on that wrist?

A An MRI was also performed. So, an MRI is more valuable than an x-ray, because it images the soft tissues as well, whereas an x-ray may give you some inclination to that, but doesn't give you a full picture. So, the MRI confirmed my clinical suspicion that he had a tear within what we call the triangular fibrocartilage complex, but, basically, in simpler terms, it's a ligament. So, a ligament is like -- think of it like a rope that holds one bone to the other, and that's what was injured in this case.

MR. VARGAS: And, if we may, can we show the jury the MRI, with the Court's permission?

THE COURT: Absolutely.

MR. VARGAS: We just need the screen, Mr. Toomer.

THE COURT: Mr. Toomer?

THE CLERK: Okay.

Q And on that screen in front of you, Doctor, if you want to annotate it you can.

A Sure.

MR. VARGAS: May I approach the witness to show him the annotation?

THE COURT: Yes, you may.

Members of the jury, you have the screens?

THE WITNESS: So, I just use my finger?

MR. VARGAS: Yes.

Q So, just tell us what we're looking at here, Doctor.

A So, we're looking at an MRI film of Inocencio Martinez that's dated -- what is the date? October 14th of 2019.

MR. VARGAS: And this is in evidence as Plaintiff's 15, just for the record.

A Okay. So, everyone can see it?

Q Yes, they have a screen.

A Okay. Fine. So, to give you some bearing of what you're looking at, so, basically this is the picture of looking at the wrist like this and the MRI is looking at the wrist in the forearm and, so, this is the radius bone, the forearm bone, this is the ulnar bone on the outside over here and, as we get further on down to this area, this is the ligament, the triangular fibrocartilage ligament that connects the radius bone to the ulnar bone and then on to into the triquetral bone and there's an increased signal in there, because it's darker, and there it looks like there's some faint lines, which indicates there's a tear in the structure in the ligament. So, and this was -- this is what the radiologist interpreted it as and it was also, I might say, corroborated by the operative findings afterwards.

Q And, after this MRI, did you -- did you come to -- did you have any recommendations for Mr. Martinez?

A Well, I felt, since he really wasn't -- you know, he had the symptoms for several years now and he wasn't getting better. I gave him a shot and it really didn't help him. Then I felt that he would be a candidate to do an arthroscopy and this is a procedure I've done maybe probably close to a thousand times in a career and what it is, is basically we make two small little incisions on the back of the wrist and I put a scope into the wrist and this scope is narrower than the diameter of a pen and it allows me -- it's connected to a camera that I'm looking at a screen and it allows it me to view inside the joint and then I make another little incision and I put an instrument in and I, what you call, triangulate. So, I look at the instrument with my camera and, with that, I'm looking at the TV screen and this allows me then to basically clean out whatever was torn. So, we literally burn it away. So, luckily, in this case, he didn't need a major ligament reconstruction, but he did have a tear in the ligament.

Q Doctor, if I may interrupt, we do have an illustration.

MR. VARGAS: If we could turn the screen off and put the lights back on and if I may grab the easel, Your Honor?

THE COURT: Yes.

MR. VARGAS: And if the doctor may step down.

THE WITNESS: Sure.

(Whereupon, the witness steps down from the stand)

MR. VARGAS: And this is Plaintiff's 17 for ID.

A So, think of the ligament. Like I said, it's a rope that connects one bone to the other.

THE COURT: One second, Doctor. We have a microphone for you.

THE PLAINTIFF: Oh, thank you. I feel like I'm running for office here.

A Okay. So, think of the ligament like a rope that holds one bone to the other and what he had was a frayed rope and that was inverting into the joint and then it was irritating him that's why he was getting pain. So, what I found is that he had a tear within the triangular fibrocartilage complex, that ligament that goes from the ulnar to the radius, and then there's a -- it was a partial tear between the scaphoid bone and the lunate bone and that's the smaller bones of the wrist and, basically, this is showing what I did, where we have the -- this is the camera and then this is the instrument and then I'm looking -- there's a light source there and, so, it shines light inside the joint so I can see everything and this is the instrument shaving away the tear within the ligament.

Q And you can take the stand, thank you.

A Okay.

(Whereupon, the witness takes the stand)

Q And, Doctor, with a surgery like this --

A Mm-hmm.

Q -- what would be your expectations be for time and recovery?

A For time and recovery?

Q Yes.

A It really depends on the extent of the problem and each patient is unique, obviously, but, usually after we do this type of surgery, if I do this type of surgery, patients require several months of therapy subsequent to the procedure.

Q And, after this surgery, did you see Mr. Martinez?

A Several time, yes.

Q And, after the surgery, what were your recommendations at the next visit, post-op?

A Well, the next visit is usually within a week afterwards, probably two weeks in this case, to remove the stitches, so this way he can then get the hand wet and begin on the road to therapy.

Q And did he do therapy for the wrist?

A He did. Oh, yes.

Q And did you see him -- this surgery was on --

A It was in March of 2020.

Q And let's go to March of 2021. March 16th of 2021, if you could.

A Bear with me.

Q Sure. So, you're referring to March 23rd of 2021, correct?

A I saw -- I'm sorry, that's the date it was sent out. I'm sorry, excuse me. You're referring to March 16th of 2021?

Q Correct.

A Correct, yes.

Q And on that date you saw Mr. Martinez?

A I did.

Q And did you do an exam?

A I did.

Q And this was one year after the surgery, correct?

A Correct.

Q And what were your findings at that exam?

A Well, that he still had some inflammation within the hand, he had a tenosynovitis of the extensive tendons. That means inflammation of the tendons and -- but he had some mild stiffness and some pain within the wrist as well. So, I told him that he should use some antiinflammatory gel over the area of the inflammation.

Q And with this kind of injury and the kind of surgery you performed --

A Yes.

Q -- is that the type of finding you would expect to find a year post-op?

A It's possible. I mean, hopefully people get better before then, but it's possible to see some lingering symptoms.

Q And then the next time you saw him was -- oh, I'm

sorry, we'll jump ahead to September of 2021, September 9, 2021.

A Okay. September of '21, yes. September 9th of '21?

Q Yes.

A I have that.

Q And, at that time, did you do an exam of Mr. Martinez?

A I did.

Q And what were your findings?

A Bear with me, I'm sorry. Well, this was a TelMD call. So, he had some -- he had been attending therapy three times a week for his right hand still using the Voltaren gel, which is the antiinflammatory gel, but he had some swelling on the wrist at that time, so I told him at that time to continue with therapy at that juncture.

Q And, then, Doctor, next I would draw your attention to May 3, 2022.

A Yes.

Q And, on that date, did you do an exam on Mr. Martinez?

A Yes.

Q And what were your findings?

A On that date he was manifesting. He was having some pain within the proximal forearm, in the area over here in the forearm, some irritation of one of the nerves, but, otherwise, these findings weren't too bad. I felt he had a tendonitis still, which is inflammation of the tendons, and some irritation to one of nerves. So, I felt he would benefit from some

therapy.

Q And, so, then there was -- he did more therapy after?

A He did, and the therapy that I wanted him to do was approximately -- a process called iontophoresis. Basically, in laymen's terms, what the therapist does is the put a pad on the area that's inflamed, pulses medication through ultrasounds into the area of inflammation.

Q And then, if I could draw your attention to December 13, 2022.

A December 13th? Yes.

Q And you examined Mr. Martinez that day as well?

A I did.

Q And your findings at that visit?

A That he had inflammation of the second extensive compartment. Basically, inflammation of the tendons on the top that go into the wrist.

Q And, now, this is close to two years after the surgery. Is that a finding you would expect to find?

A It can happen. I mean, he had some manifestations. So, it can happen, you know? Hopefully it would calm down, but --

Q Now, when someone has an injury such as the tear of the fibrocartilage -- triangular fibrocartilage complex?

A Correct.

Q And you have that injury for several years.

A Mm-hmm.
Q And then do a surgery after three years post accident.
A Yes.
Q That you have an injury to the nerve for that long, does that effect the recovery time at all?
A Well, certainly it can, because it's a long time between the injury to the definitive surgery. So, it could make -- it aggravate things worse, yeah, especially when you have nerve compression. The longer you have that, the worse deterioration you do have within the nerve.
Q And then the next time you saw or the next visit I want to draw your attention to is August 4, 2023.
A Yes.
THE COURT: You said 2023?
MR. VARGAS: Yes.
A Hmm, I don't have that note, but, all right. I know what I did that day. I think that was last day I saw him.
Q Yes. I have a copy, if you want to see it.
A Okay. Sure.
THE COURT: Can you show it to, Counsel?
MR. VARGAS: Oh, sure.
THE WITNESS: Thank you, sir.
A Okay.
Q And you examined Mr. Martinez that day?
A I did. He was -- he was presenting with swelling from

the wrist and findings consistent with dorsal ganglion and that's like -- it's a cyst. Think of it like a balloon that emanates from the joint and has inflammatory fluid in it. So, I gave him a shot of cortisone that day in the wrist.

Q And what would cause this cyst?

A Well, it could be related to the inflammation that he had in his joints, because that often is a cause. Sometimes these things just happen spontaneously too, yeah.

Q Other than the cyst, was there any complaints he made at that time?

A Let's see. Mainly the pain in the wrist.

Q Okay.

A Yeah.

Q And that was the last time you saw him?

A It was, yes.

Q And, Doctor, do you have an opinion, with a reasonable degree of medical certainty, as to whether the tear to the triangular fibrocartilage complex is causally connected to his accident of September 6, 2016?

A Yes, I do.

Q What is your conclusion?

A I think it's related.

Q Do you have an opinion, with a reasonable degree of medical certainty, as to a future prognosis for Mr. Martinez?

A Well, look, he -- he might have -- he might have

flare-ups from time to time, for sure. I mean, I think the ganglion is probably related, it's manifesting like that. So, you know, we did the best that we could do for him, you know, and by cleaning away the inflamed tissue, debriding, I mean, removing the damaged ligament, decompressing the nerve, but, you know, I can't guarantee he wouldn't have flare-ups from time to time.

Q And you think these flare-ups will happen for the rest of his life?

A It's possible.

MR. ZIZZAMIA: Objection.

THE COURT: Sustained.

Do you want to rephrase that.

MR. VARGAS: Sure.

Q How long do you think these flare-ups will continue?

A I don't know. I can't say it's gonna end on January 1st of 2026. I didn't know, you know?

Q And, Doctor, would you have an opinion, with a reasonable degree of medical certainty, as to a recommendation for a future treatment for Mr. Martinez?

A Well, I would just try to treat him symptomatically and what I mean by that, okay, is if he has a flare-up from a ganglion cyst, give him an injection of cortisone, give him antiinflammatories, a brace, you know? Just try to treat his symptoms as best as possible.

Q Okay. Thank you, Doctor?

MR. VARGAS: I have no further questions.

THE COURT: Thank you so much.

Do you need a break or you're ready?

MR. ZIZZAMIA: No, we can keep going, I'm ready.

THE COURT: Ready, members of the jury? Okay.

Doctor, are you okay?

THE WITNESS: Oh, I'm just fine, Your Honor. Thank you.

CROSS-EXAMINATION

BY MR. ZIZZAMIA:

Q Good morning, Doctor. Just bear with me one moment while I try to figure out all the tech in here, okay?

A Yes, sir.

Q I won't be long. Let's see. Doctor, can you hear me okay?

A I can hear you fine.

Q Great. You met Mr. Martinez for the first time on September 3, 2019?

A That's correct.

Q All most three years to the date after the accident, is that right?

A Yes.

Q Okay. Had you ever seen him before that date?

A No, sir.

Q Had you ever treated him in connection with anything else?
A No, sir.
Q Okay. And at that time he made --
THE COURT: Counsel, if you could, speak up a little bit.
MR. ZIZZAMIA: Got you. Sorry.
Q At that time he made complaints of pain in his right wrist, correct?
A Correct.
Q Okay. Did he tell you why his wrist was hurting?
A I don't understand the question.
Q Did he tell what the cause of his wrist pain was?
A Yes.
Q Okay. And that's noted here in your report, correct?
A Correct.
Q Okay.
THE COURT: Counsel, we're gonna give you the mic.
MR. ZIZZAMIA: Yeah, okay. Thanks.
THE COURT: That one goes on your belt and the other one goes on your lapel.
MR. ZIZZAMIA: Okay. Great.
THE COURT: Much better.
Q Okay. And at the time of that visit, Mr. Martinez indicated to you that he hurt his wrist when a scaffold fell on

him, is that right?
A Yes.
Q Okay. You indicated earlier in your testimony that the accident involved Mr. Martinez falling from a scaffold, but that is not noted in your report here, is that right?
A Is that noted in the report?
Q Yes.
A No. I think it's kind of a basic -- no, it's not noted, to answer your question.
Q Okay. Thank you. So, the source of information for how the accident happened came from only Mr. Martinez, is that right?
A Correct.
Q Okay. That's what you mean in the sentence, history was provided by the patient, correct?
A Correct.
Q Okay. And on the first page of the report you also wrote, medical history unremarkable, right?
A Correct.
Q That just means that he had no prior injury to the wrist, right?
A And or other issues, you know, in general.
Q Okay. Basically it means his wrist was fine until the accident?
A Yes.

Q Okay. Did you have any reason to think, at the time of that visit, that Mr. Martinez was not being fully honest and forthcoming with you?

A No.

Q Okay. And you continued to treat Mr. Martinez for several years after the surgery, correct?

A I did.

Q Okay. You've discussed some of the postoperative visits. Do you also have in your file records of a visit from June 14, 2023? I have a copy, if you need it.

A Bear with me, I'm getting them. Hmm, just a second.

Q I'm happy to give you the copy, if it helps.

A If you could give me that, sir, I'd appreciate it. It's a big chart.

Q For sure.

A Thank you. Okay. Yeah.

Q Okay. Just for housekeeping purposes, do you see date and time listed at the top?

A Twelve p.m.?

Q Yeah.

A June 14th.

Q Do you know that -- obviously, that reflects the date that the accident -- excuse me, of the visit?

A Yes, it would.

Q Do you know, is the twelve p.m., is that just sort of a

default for your computer system, or is that the actual time of the visit?

A It's probably the actual time.

Q Okay.

A Maybe that was his appointment date and time.

Q Okay. According to this document, he saw you at twelve noon on June 14th of 2023, right?

A Yes.

Q Okay. Great. And in your report you mentioned, and I'll pronounce it wrong and I'm sorry, tenosynovitis and joint synovitis right?

A Yes.

Q And could you just briefly explain what that is to the jury?

A Synovitis means inflammation, basically, and teno refers to a tendon and when you say synovitis or synovitis of the join, that means inflammation inside the joint.

Q Okay. Are those conditions that you were treating him for at the time of this visit or does that reflect the prior history over the course of your treatment?

A Both.

Q Okay. And did he have any other complaints at the time of this visit?

A I think those would be the major complaints.

Q Okay. Can you describe what sort of impact those

complaints would have on the use of Mr. Martinez's wrist?

A Well, he could use the wrist, certainly, with these complaints. I mean, we're not precluding him from using the wrist. He just might have some pain or difficulty doing some real heavy lifting, but I don't think it would preclude him from normal activities.

Q Is it fair to say it would cause him some pain?

A Maybe, maybe not.

Q Okay. Could it cause some loss of motion of the wrist?

A It's possible.

Q Okay. Maybe stiffness?

A It's possible.

Q Numbness?

A The numbness, no. I don't think it would cause numbness.

Q Okay. Would it have any sort of impact on, you'll understand the terms better than I do, but fine motor skills, as opposed to gross motor skills or anything like that?

A I do not think this would have an impact on his fine motor skills, no.

Q And he also complained of the mass on his wrist that day or the --

A That was the main complaint, yes.

Q Okay. And he told you that the mass had been on his wrist for a month or so?

A Yes.
Q Would the -- would the -- what you called a cyst, would the cyst have caused any sort of impact on the use of his wrist?
A Sometimes it can, yes.
Q Okay.
A Yeah.
Q From -- as time goes on, from the time of the discovery of the wrist until the time that -- I believe you said that you aspirated it, right?
A I did.
Q From the time of the discovery to the time of aspiration, would the -- would the impact caused by the cyst have continued to get greater?
A These cysts can go up and down in size, so I analogy I make is think of it like a balloon that's lined by cells and makes fluid. So, sometimes the cyst can spontaneously rupture. In other words, that balloon sack ruptures and the fluid leaks out. These things can go up and down and it's unpredictable, to answer your question.
Q Okay. So, over the course of a month, the cyst might have been causing issues with the use of his wrist and, maybe so, it all depends?
A Right.
Q Okay. Fair enough. Have you had an opportunity to look at any video of Mr. Martinez taken in connection with this

case?
A Just for a minute. A few seconds this morning.
Q Okay.
A Yeah.
Q Did that have any impact on your assessment of his condition?
A No.
Q We'll take a look at it one more time and I'll ask you a couple questions, okay?
A Okay.
(Whereupon, a video was played for the Court and the jury)
Q First, sir --
A Yes.
Q -- in the bottom left, sort of partially obscured over the words video project, do you see the date there, June 13th --
A I do.
Q -- 2023? And do you see the time, basically a minute before ten a.m.?
A I do.
Q Right. Assuming the time of your exam was correct, as listed on your report, we're at just that twenty-four hours over the date of your exam of that day, right?
A Correct.
Q So, fair to say this is the day before?

A It's fair to say that.
Q Okay. Let's take a look. Now, again, you treated his injured right wrist, correct?
A The right wrist.
Q Okay. So, we'll focus obviously focus our attention on that. You see him? It looks like he's got hand sanitizer there, yeah? Does he appear to have any issue with his wrist while he's cleaning his hands?
A He seems to be moving it well.
Q Okay. And, now, do you see how his wrist is placed on the --
A Chair.
Q -- the chair there, right? It's -- I don't know if this is flexion or extension.
A Extended.
Q Extended, thank you. Does he have it extended normally, you would say?
A It's pretty close, yeah. Yes, I would.
Q And that is the hand or wrist where he complained of the mass the following day, right?
A Yes, sir.
Q Okay. It did not appear to be causing him any visible discomfort in this video, correct?
A Visibly?
Q Yeah, sure.

A I don't know. It's hard to say. I mean, he might be feeling some discomfort. I don't know.

Q Sure. But, if so, it's not observable by looking at him in this video?

A Correct.

Q Okay. Thank you. And I'll fast forward a little bit, but it looks like he holds the wrist in close to full extension for an extended period of time here, right?

A I would agree.

Q Okay. Does it seem that the mass on his wrist or the inflammation of the tendons or other complaints have any impact on his ability to hold or use his phone?

A No, they're not effecting his ability to do that.

Q Okay. Let me fast forward a bit for you. Okay. So, a little bit later in the day now. 5:15 p.m., okay? It looks like he's been out there for about maybe seven hours. Does he appear to be in pain when he lifts and lowers the umbrella?

A Well, I don't know if he's in pain, but it didn't preclude him from, you know, taking the umbrella down and closing it.

Q It doesn't look like he's having trouble holding it, right?

A No.

Q Okay. It doesn't appear to be getting in the way of his activities, correct, Doctor?

A I would agree.
Q Okay. And, just a little more. How about here? Just about there? This one is a little less carefully edited. There. Did you observe him sort of, yeah, twist the wrist, like so?
A I did.
Q I don't know what that is. Rotation?
A Pronation and supination.
Q Thank you. It doesn't appear to be problematic based on the complaints that he exhibited the following day, correct?
A I agree.
Q How about this particular motion right after the twisting, right there?
A Right.
Q Did have you a chance to observe that?
A I did. He was kind of jamming it forward.
Q Would you say it's a relatively forceful use of the wrist? Would you agree?
A Well, he's not jamming it into anything or hitting anything.
Q Okay.
A But --
Q Either way --
A -- he's holding the pole --
Q It doesn't appear ---

A -- pretty strongly.
Q Okay. But it doesn't appear that it's causing him any discomfort, right?
A No.
Q And about three weeks later --
MR. ZIZZAMIA: Here, I'm all set. Thanks.
(Whereupon, the video is turned off)
Q About three weeks later, at the next visit -- it was actually on July 5th of 2023. Do have you that one? Actually, Doctor, it's a narrative report that you prepared.
A Okay. Do have you that?
Q I do.
A I don't have it.
Q Okay. Sure.
A Yes, okay. I recognize this.
Q Okay. At that time, three weeks after the aspiration of the cyst and three weeks after the activities depicted in the video, Mr. Martinez told you that he still had stiffness and discomfort in the wrist, is that right?
A That's true.
Q And you concluded that he had a moderate, permanent disagree -- moderate, permanent degree of disability with regards to the right wrist, is that correct?
A Yes. Yes.
Q Is that based on the complaints he made during that

visit and other visits?

A It's based -- you know, it's based on the whole picture. He did have anatomical findings, as we delineated previously, and he had the residual swelling and the ganglion and he did have a little bit of stiffness. There's a typo here. He had about ten degrees of residual stiffness, as compared to a normal wrist.

Q Sure.

A But that's why I gave him a moderate. I felt that was fair.

Q Doctor, to your recollection, did Mr. Martinez move his hand and his wrist during your exams?

A Sure.

Q The way he's depicted moving them on the video?

A To the best of my recollection, yes.

Q Okay. And that, based on the movement that he showed at those exams, that led to your diagnosis of a partial disability, is that correct?

A Well, it's based on the surgery and the findings that I found there at surgery. It's based on the residual swelling, I mean, that was obvious that it's there for the eye to see, and, so, that's how I came up with it.

MR. ZIZZAMIA: I have no more questions.

Thank you, Doctor.

THE COURT: Thank you so much.

Any redirect?

MR. VARGAS: No, Your Honor.

THE COURT: Thank you so much, Doctor. I believe you have to leave that stuff.

THE WITNESS: I'm just going to give it to him. Thank you.

(Whereupon, the witness steps down from the stand)

THE COURT: Counsel, can you step up?

(Whereupon, a discussion was held at the bench)

THE COURT: Okay. Members of the jury, we're gonna have a brief recess until 11:30. So, we recess until 11:30.

COURT OFFICER: All rise. Jury existing.

(Whereupon, the jury exits the courtroom)

THE COURT: Okay. Would you like to put it on the record before we begin?

(Whereupon, an off-the-record discussion was held)

(Whereupon, the following was recorded and transcribed by Official Court Reporter Michelle Cox)

(Continued on next page)

* * * * *

THE COURT: Counsel, I understand that you want to put something on the record before we go forward.

MR. VARGAS: Yes, Your Honor.

So I just want to put on the record that I have and numerous representatives from my office has spoken to my client, Mr. Martinez, over and over about the --

THE COURT: Are you on?

MR. VARGAS: There it is, sorry.

We've spoke numerous times to him about settling the case. He has acted irrationally as far as his reasoning. And he refuses to settle the case even though his attorneys have repeatedly advised him we would work with him in trying to reduce liens, anything that he owe.

He is steadfast in wanting to find out what the jury is going to decide. And we've advised him that, you know, it could turn out very badly for him where he comes out with no money. And he still refuses to settle. And I just want to put on the record that the attempts have been made many, many times.

I can count myself talking to him, at least eight to ten times. Counsel next to me, Jay Gorayeb at least four or five times. Mr. Gorayeb, Chris Gorayeb, has spoke to him numerous times over the years about his irrational belief in how much he should get in this case. And no one has been able to get through to him, but we're ready to

proceed.

THE COURT: Thank you so much, Counsel.

Just for the record, the Court has spoken with both plaintiff and his spouse, also, in attempts to try to resolve this case.

At this time, we'll bring the jurors down.

Mr. Martinez.

THE COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: Good afternoon, Jurors.

As you can see, we are now going to go back to the plaintiff to have him continue his testimony.

Please let me remind you, Mr. Martinez, that you are still under oath.

And jurors, let me remind you that Mr. Martinez will be testifying, actually, on cross-examination through the aide of the official court interpreter, Obed Cherise.

MR. ZIZZAMIA: Thank you, Judge.

THE COURT: Counsel, you may inquire.

CROSS EXAMINATION

BY MR. ZIZZAMIA:

Q Mr. Martinez, are you ready to proceed?

A I would you like, Your Honor, and the Members of the jury to allow me to say something about some documents.

THE COURT: No.

Q The question is: Are you ready to proceed?

THE COURT: He'll have to answer the attorney's questions. If he needs to speak about some documents, he'll have to speak with his own attorney.

A Okay.

THE COURT: You may inquire, Counsel.

MR. ZIZZAMIA: Thank you, Judge.

Q Yesterday I asked you questions about contents of certain records, including medical records.

Do you remember that testimony yesterday?

A Yes.

Q Okay. Continuing where we left off, then, as you indicated yesterday, you received medical treatment after your accident at the facility called City Medical; isn't that right?

A Yes.

Q And yesterday I asked you questions about records from City Medical dated October 24, November 7th and December 19, 2016.

THE INTERPRETER: I'm sorry, you're saying November 7th?

MR. ZIZZAMIA: Yes, and 12/19.

A Yes.

Q The next report from City Medical is dated February 1, 2017.

If I tell you that it contains the name

Inocencio Martinez with your date of birth and the date of the accident, you'll agree this is referring to you; would you not?

A Yes.

Q Okay. This document says that "he" -- referring to you -- "has not been able to return to work since his injury."

Is that information that you gave to the doctor that day?

A Yes.

Q Okay. And the doctor got that information right in this report; isn't that right?

A Yes.

Q The report also said that you did not have any priors, meaning you had not injured yourself before the date of your accident.

Did you tell the doctor that, too?

A Yes, that's correct.

Q So far the doctor hasn't gotten any of those things wrong?

A That's correct.

Q Okay. The record indicates that you were receiving physical therapy.

That's not wrong, is it?

A Correct.

Q It says it was difficult for you to take stairs because that increased your pain.

Did you tell the doctor that that day?

A Yes.

Q Okay. That's what you told the doctor, that's what the doctor wrote down.

The doctor didn't get that wrong; is that right?

A That's correct.

Q Okay. This report indicates that you were injured while you were at work doing construction on September 6, 2016.

Is that what you told the doctor?

A Yes.

Q So the doctor got that right, right?

A Correct.

Q So far everything you told the doctor that day the doctor got right in this report; you would agree?

A Yes.

Q Okay. The report also states -- this is referring to you. "He states while at work doing construction on 9/6/2016 he was injured. He states that a wheelbarrow fell. He moved to get out of the wheelbarrow and sustained a blow to his right hand."

Did the doctor get that right?

A No.

Q Okay. That's not what you told the doctor that day?

A No.

Q The doctor got everything right that you told him in

this report except the description of the accident, right?

A Correct.

Q And that's seven consecutive sometimes since the date of the accident that everything you stated was recorded correctly in the reports, except for how the accident happened; isn't that right?

A Correct.

Q And it's still your testimony that you're right and these seven people are all coincidentally wrong; is that right?

A Can you repeat that, please?

MR. ZIZZAMIA: Could you read it back, please.

(Whereupon, the record was read.)

A No.

Q You're right, they are all wrong; that's your testimony, right?

A No.

Q Okay. So they're not wrong, they are actually right; they are right in describing how the accident happened?

A Yes.

Q Okay. You do understand that if they are right that means you're wrong because they are describing the accident differently than you; do you understand that?

THE INTERPRETER: I'm repeating.

MR. ZIZZAMIA: Sure.

A Yes.

Q Okay. Does that mean that the way you've been describing the accident here at this trial to this jury, is wrong?

A No.

Q The way you've described the accident to the jury is right, that you fell from the scaffold 17 feet, landed on your back and lost consciousness; that's still your testimony, right?

A That's correct.

Q And you understand that the seven sets of records that we've looked at so far all contain a different description of the accident that does not involve you falling from the scaffold or striking your head or striking your back; you understand that?

A Yes.

Q So it's still your testimony then that all seven of these sets of records are coincidentally wrong; is that right?

THE INTERPRETER: I'm repeating.

MR. ZIZZAMIA: Okay.

A No.

Q Okay. Do you think that -- again, this record says, "He states that a wheelbarrow fell. He moved to get out of the wheelbarrow."

Is that how your accident happened?

A No.

Q So you're saying this is wrong, aren't you?

A Correct.

Q Just like all the other records we've looked at so far, right?

A Correct.

Q Okay. That's seven so far.

You think there's any more?

MR. VARGAS: Objection.

MR. ZIZZAMIA: I'll withdraw the question. My apologies, Judge.

Q Are the records in evidence of City Medical include a report from April 13, 2017. So we're now a little over seven months after your accident.

Do you agree this record refers to medical treatment to you at City Medical?

A Yes.

Q And you gave the information that the doctor wrote down in this report; isn't that right?

A Correct.

Q Very good.

The record says that you complained of weakness in the right hand.

Did the doctor get that right?

A That's correct.

Q The report says that you had an occasional numbness in your right hand and wrist.

Did you tell the doctor that that day?
A Yes.
Q And the doctor got that right in this report; is that correct?
A Correct.
Q The report says activity aggravates your right hand and wrist pain.
Did you tell the doctor that that day?
A Yes.
Q And the doctor didn't get that wrong in the report; is that right?
A Correct.
Q It states that the doctor examined your right hand and wrist that day.
That's what happened, right?
A Yes.
Q The doctor -- excuse me.
The report says that you described your right wrist and right hand pain as an eight out of ten in severity.
That's what you told the doctor that day?
A Yes.
Q So the doctor got that right, too, in this report; isn't that right?
A Correct.
Q Okay. And the record says, "the patient," that's you,

"reports receiving physical therapy three times a week."

Is that what you told the doctor that day?

A Yes.

Q Okay. So far everything that you told the doctor that day the doctor got right in this report; you'd agree with that?

A Yes.

Q So far the doctor hasn't gotten anything wrong in this report, right?

A Correct.

Q The report describes the accident as occurring when "he," meaning you, "he pushed the scaffold that fell on his right hand."

Is that what you told the doctor that day?

A No.

Q The doctor got that wrong; that's your testimony?

A Yes.

Q Okay. That's the only thing you heard about this report that the doctor got wrong, right, just the description of the accident; is that right?

A Correct.

Q And that's -- we're seven months after the accident, and that's eight times in a row the record's got everything you said right about the accident, except for how the accident happened; isn't that right?

THE INTERPRETER: I'm going to repeat.

A Correct.

Q The next record from Med is dated May 5, 2017, now more than eight months after your accident.

You would agree this is a record of treatment that you received that day, right?

A Yes.

Q You said you presented for a follow-up visit.

So far so good, right?

A Correct.

Q And it describes chief complaint as right hand and wrist pain.

Is that what your complaint was that day?

A Yes.

Q That's what you told the doctor, that's what the doctor wrote down, the doctor got that right; is that right?

A Correct.

Q The record says you stated you were still going to physical therapy three times a week.

That's what you told the doctor that day, right?

A Yes.

Q The doctor got that right; is that right?

A Correct.

Q Okay. The record indicates that your accident occurred at work on September 6, 2016.

That's what you told the doctor happened that day,

right?

A Yes.

Q Okay. The record describes the accident as occurring when "he," meaning you, "states that the scaffold fell on his right hand."

Is that what you told the doctor happened that day?

A Yes.

Q Okay. Did the doctor get everything you told him that day right?

A Correct.

Q Okay. Did you tell the doctor you fell from the scaffold from 17 feet?

A Yes.

Q You understand that this document does not say anything about you falling 17 feet from the scaffold?

THE INTERPRETER: I'm going to repeat.

A Yes.

Q That's something that the doctor must have left out; is that right?

A Correct.

Q Because you definitely told the doctor that day that you fell 17 feet from a scaffold, lost consciousness for 30 minutes and landed on your back?

A Yes.

Q In connection with your workers' compensation case,

you were examined on one or more occasions by doctors; isn't that right?

A Correct.

Q And if I told you that according to the records in evidence that, the first of those exams took place on October 16, 2017; you wouldn't disagree with that, would you?

THE INTERPRETER: I'm repeating the question.

A Correct.

Q And according to the records of the visit that day, it described you as, Inocencio Martinez, at 15 East Mosholu, Date of Accident: 9/6/16, Date of Birth: 2/14/80, Employer: A-1 Sprinkle, your occupation insulator.

You agree with all of that?

A Correct.

Q So far all that information is correct, nothing on it is wrong, right?

A Correct.

Q Okay. And the records of that exam indicate that your accident occurred September 6, 2016 while you were at work as an installation installer.

Is that what you said happened that day?

A Yes.

Q Okay. So far everything in here is right, nothing in there is wrong; isn't that right?

A Correct.

Q Okay. The records of this exam indicate that you went to the North Central bronx Hospital on the date of the accident.

That's information that came from you that day, right?

A Correct.

Q Okay. And it said at the time of the exam, you were receiving treatment from Dr. Grossman who you mentioned yesterday.

That part's right, too; isn't it?

A Correct.

Q Okay. And the records don't -- that part is not wrong in the records; it's right, isn't it?

A Correct.

Q Okay. The records of this exam indicated you were going for physical therapy three times per week.

That's what you said that day?

A Correct.

Q The doctor didn't get that wrong, right?

A Correct.

Q Okay. And the records of the exam indicate that you were taking Ibuprofen, ointments and patches for pain.

That's what you said that day, right?

THE INTERPRETER: After Ibuprofen what did you say?

MR. ZIZZAMIA: Ointments and patches.

A That's what you said that day?

A Correct.

Q Okay. And the doctor didn't get that wrong; isn't that right?

A Correct.

Q The record describes the accident as follow: "Climbed the scaffold which was not properly attached and I fell backwards and made metal cable snap and hit my right hand."

Is that what you told the doctor that day?

A No.

Q Okay. Everything is right on this record except how the accident happened, right?

A That's correct.

Q And this is October 2017, more than a year after the accident, and this is now the tenth time in a row that everything is right in the records except how the accident happened; isn't that right?

THE INTERPRETER: I'm going to repeat.

A Correct.

Q At some point after your accident a lawsuit was commenced on your behalf; isn't that right?

A Correct.

Q And I'll represent to you that the lawsuit was commenced through the filing of a document called a complaint. Complaint dated February 2, 2018, and filed and served by the attorneys who were representing you at the time.

You don't disagree that this occurred, do you?

THE INTERPRETER: I'm going to repeat.

A No.

MR. ZIZZAMIA: Can I ask for the last question and answer to be read back, please.

(Whereupon, the record was read.)

MR. ZIZZAMIA: Thank you very much.

A Correct.

Q Thank you very much.

Now without getting into any details or any specifics, at some point before your lawsuit was filed a year and a half after your accident, you told your attorneys how your accident happened; isn't that right?

A Correct.

Q Okay. And at some point in that year and a half before your lawsuit was filed, you explained that you had falling from 17 feet from a scaffold, lost consciousness, landed on your back, right?

A Correct.

Q The content of your complaint describes the accident as follows: "On September 6, 2016, while plaintiff, Inocencio Martinez, was waffling and carefully working upon said premises, he was caused to be struck by a scaffold that fell on him."

That does not say anything about you falling 17 feet

from a scaffold, does it?

A Correct.

Q Your attorneys got the description of your accident wrong in this document, too; isn't that right?

A Correct.

Q Seven months later on September 12, 2018, a full two years after your accident you saw Dr. Grimm.

You remember treating with him, right?

A Yes.

Q And you remember him testifying at this trial, right; he was the first doctor that we heard from last week?

A Yes.

Q And you saw Dr. Grimm, you told him how your accident happened, right?

A Correct.

Q You told the truth when you did that, right?

THE INTERPRETER: Sorry.

Q And you told the truth when you did that, right?

A Correct.

Q Okay. The record indicates that "he," you, "did not like the care he was receiving at his prior pain management physician and wished to change offices."

Did you tell Dr. Grimm that that day?

A Yes.

Q Dr. Grimm didn't get that wrong, did he?

A Correct.

Q You told him that, he put that in this record and he got it right in this record; isn't that right?

A Correct.

Q Okay. This record says that you had no past medical history, meaning you had not hurt yourself prior to this accident.

You told the doctor that that day?

A Correct.

Q Dr. Grimm didn't get that wrong in this report, right?

A Correct.

Q This report indicates that you were injured while at work on 9/6/2016; is that what you told the doctor that day?

A Yes.

Q The record so far, everything you told to Dr. Grimm that today he got right; isn't that right?

A Correct.

Q He hasn't gotten anything wrong so far; you agree with that?

A Correct.

Q Okay. The report describes the accident as follows: "While working construction, was standing on a scaffold, a piece of construction debris struck him causing him to fall back."

Is that what you told the doctor happened that day?

THE INTERPRETER: I'm going to repeat.

A Yes.

Q Okay. So you told the doctor that day that the reason you fell was not because the scaffold collapsed, which is what you've been testifying to at this trial, but because you were hit about by a piece of construction debris.

Is that your testimony?

A No.

Q Okay. So you -- it's your testimony then that you didn't tell Dr. Grimm that that day?

A No. I told him I was on top of the scaffold. Maybe they didn't understand me well.

Q Could be like the prior ten, right?

A Correct.

Q But that's the only thing in this report that Dr. Grimm got wrong; is that not right?

A Correct.

THE COURT: Okay. Counselor, we're going to break for lunch now.

Okay, Members of the jury, please remember my admonitions about speaking among yourselves or with others about the case. Have a good lunch and we have a doctor this afternoon.

So we're going to work this afternoon. Be back 2:15. 2:15.

THE COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exits the courtroom.)

* *

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

* *

(Whereupon, the CityMD report was marked as Defendant's Exhibit N in evidence by the Reporter)

(Whereupon, the North Central Bronx report was marked as Defendant's Exhibit O in evidence by the Reporter)

(Whereupon, the Video Compellation was marked as Defendant's Exhibit P in evidence by the Reporter)

COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury entered the courtroom)

THE COURT: Please be seated. Please do take a mask, there are things out there.

Okay. So, we're going to suspend our Plaintiff's testimony again. As I told you before, we take witnesses out of turn to accommodate them. At this point, the Defendant is going to call a witness. So, that means they're out of turn and it's going to be on behalf of the Defendant.

MR. VARGAS: Your Honor, it's actually the cross of Dr. Grimm.

THE COURT: Excuse me, it's Dr. Grimm. Okay.

So, we had Dr. Grimm last week and we did not complete the cross-examination, so we're going to have the cross-examination of Dr. Grimm.

Step up, Doctor, please, and let me remind you, Doctor, that you're still under oath. You can just sit right there, okay?

M A T T H E W G R I M M, called as a witness by and on behalf of the Plaintiff, after having been previously duly sworn, was examined and testified as follows:

THE COURT: Counsel?

THE WITNESS: Sorry, my daughter gave me a stomach bug that I'm jut getting over.

MR. DANIELSEN: Your Honor, may I inquire?

THE COURT: Yes, you may.

MR. DANIELSEN: Thank you, Judge.

CROSS-EXAMINATION

BY MR. DANIELSEN:

Q Good afternoon, Doctor.

A Hello.

Q I won't ask you how you're doing and I apologize you're here under these circumstances.

A It's all right.

Q Doctor, you brought your chart back with you, is that correct?

A Yes.

Q Okay. And you have that in front of you, is that right?

A Yes.

Q Okay. Now, Doctor, I believe we might agree on a couple of quick points. You're here to testify on several issues and those include the cost of procedures in the future, is that right?

A Yeah, future -- estimated future medical.

Q Okay. And then you're also here to testify about the types of treatment that the Plaintiff may allegedly need and the frequencies of those treatments in the future, is that fair?

A Yes.

Q Okay. And you're also here to issue an opinion on causation and, in fact, I believe that you did that during your direct, is that also fair?

A Yes.

Q Okay. And then, finally, Doctor, are you here as both a treating doctor and as a retained expert? Is that fair?

A Yes.

Q Okay. Now, Doctor, in order to do the things that I just outlined right there, I think it's fair that you need a few things. You need to have examined the Plaintiff, is that fair?

A Yes.

Q Okay. And you would also need to review prior medical records, also fair?

A Whatever was available to me.

Q Okay. And you would also review some objective tests and even participate in administering some tests, is that fair?

A Yes.
Q And then a big one would be that you have to rely on some of the subjective complaints and the things that the Plaintiff has told you in order to form your opinions, is that fair?
A Yes.
Q Okay. And, you agree with me, general proposition, if the Plaintiff is not fully truthful with you when he is giving a history, when he's providing history, not just this Plaintiff, but any Plaintiff, that would necessarily impact your opinion, is that fair?
A Yes.
Q Okay. So, if you were to rely on information given to you by a patient that ultimately turned out to be not true, that would, of course, impact your opinion, fair?
A Yes, depending on what it was.
Q Okay. Now, Doctor, you first saw the patient on September 12, 2018, is that about right?
A Yeah, I believe so.
Q Take your time.
A Yeah, September 12th.
Q September 12, 2018. And, by the way, Doctor, if you need a break at any moment, let me know, we can work around that, okay?
A Yeah.

Q Okay. And then you also issued a report for this case in November of 2023, is that correct?

A Yes, November 1st.

Q Okay. And that report contains within it your future life care plan, is that right?

A Yes.

Q And it also references an examination you performed of Mr. Martinez on September 20, 2023, is that also correct?

A Yes.

Q Okay. Now, in that report, you -- strike that. In the report, with respect to that examination that occurred on September 20, 2023, you made certain notations with respect to your examination of Mr. Martinez, is that correct?

A Yes.

Q Okay. And I'll let you flip to that. Take your time. Just let me know when you're ready. I'll be asking you about your examination and observations, okay?

A Okay. Okay. Got it.

Q Got it? Okay. So, you indicated there -- first I saw in there a note that Mr. Martinez presented with an antalgic gate?

A Yeah.

Q I was a lawyer for, like, five years and I never knew what that meant and I finally looked it up. What does that mean?

A Altered pattern, altered walking pattern.
Q It's that you're walking kind of funny, is that right?
A A little bit, yeah.
Q And I read descriptions where it would be that you're walking and trying to almost get your weight off of one foot onto the next quicker, something along those lines?
A Just generally walking with a pattern that's not completely normal.
Q Okay. And then you also noted a number of ranges of motions, ranges of motion that you took for this Plaintiff, correct?
A Yes.
Q And, just generally, so we can move through this quickly, you tested multiple ranges of motion and flexion, is that correct?
A Yes.
Q And, with each one of those, you noted that there was some reduced range of motion exhibited by the patient, is that fair?
A Yeah, it -- I would say it was, like, a moderate reduction from normal.
Q Exactly. Some numbers less than normal, fair?
A A little bit, yeah.
Q And then there were also some complaints of continued pain. What were those?

A Where are we talking?

Q So, in your report --

A In the --

Q Around pages ten or eleven it indicated some continued pain.

A Yeah, he was talking about continued pain.

Q Okay. And then it also indicated in there, moving on to page eleven or so. I'll get the exact page, I'll turn to it. Oh, I apologize, page nine.

A Okay.

Q Okay. Complaining of increased pain and numbness to the left, greater than the right lower extremity. See that towards the very bottom, the last paragraph?

A Yes.

Q And then also lateral pain worse with sitting?

A Yes.

Q And then it notes that his wife is assisting him with daily living activities, including dealing with putting on shoes and socks and pants, also she's taking care of the shopping and home care and that the patient lives on the fifth floor and it's very difficult for him to leave the home due to the pain. You agree with all that?

A Well, I was just -- it says his wife helps him when his pain is increased. So, I think it was sort of a generalization. I ask at times if they get assistance and, on bad days, because

often times they have good days and bad days, so --

Q That's fair enough. So, would it be fair to say that he reported to you that on certain days he was requiring what would appear to be fairly significant assistance from his wife with daily activities of living and that he was having trouble coming in and out of his house because it's on the fifth floor, things of that nature, is that fair?

A I think on his bad days, yes.

Q Okay. And, again, it notes the antalgic gate and the physical exam and, so, that would be something you observed, correct?

A Yeah.

Q Okay. And he also told you he's not working, correct?

A Yes.

Q Okay. And it also lists limitations of what he should or should not do, should he attempt to work, and I think it was limiting his movement and not lifting more than about ten pounds, things of that nature, is that fair?

A Yeah. Usually we tell them to start with things as tolerated, that's what I recommended he start with, and to move on as tolerated.

Q Okay. And this is all from your examination of Mr. Martinez in September of 2023, correct?

A Yeah.

Q Now, Doctor, we have several -- I know that you

understand, or I'm assuming you understand, correct me if I'm wrong, that the Plaintiff was surveilled in this case and that there's some surveillance video of him and you understand that, right?

A Yes.

Q Okay. Have you seen the surveillance footage, Doctor?

A I've seen a few clips.

Q Okay. So, I am going to show you -- first I'm -- just stick with me here, because I did not use this yet, so I'm gonna hope for the best.

THE COURT: You're familiar with this, correct, Doctor?

THE PLAINTIFF: I haven't seen this video.

THE COURT: Okay. So, you haven't seen this one? I mean the technology.

THE WITNESS: Oh, yes.

Q All right. So, Doctor, if you note, there's -- in the lower left hand of the screen there is an indication of the day. Now, this is a June 8, 2024 video. I'm gonna show you a video that was actually taken on June 13, 2023. So, that's within about three months of your examination in September, okay?

A Okay.

Q Just give it a moment. Okay, here we go.

(Whereupon, a video was played for the Court and the jury)

Q All right. Now, you see Mr. Martinez jogging across the street. Okay. Certainly, no antalgic gate there, right?

A No, he looked okay there.

Q He looked pretty good, right?

A Yeah.

Q Okay. Certainly, wasn't exhibiting any classical signs of pain or discomfort in that clip? And I'm gonna show you more, but, that's fair to say, that he wasn't exhibiting any sort of classical signs of pain, discomfort, disability, correct? He was jogging across the street as a healthy person might, fair?

A Yeah, he looked okay.

Q Okay. Now, Doctor, I'm gonna show you another clip from -- this one is from November 3, 2023. So, now, this is just right after your examination in September. Coincidentally, it was right after when you were drafting your report for the case here and I'm gonna bring that up for you now and start watching right here. So, here we see Mr. Martinez walking out, he's holding a bin that looks to be loaded with all sorts of stuff , he's coming out, we see him holding it with his right hand, he's walking. Okay, now, in that clip, again, no antalgic gate? Looks pretty good?

A Yeah.

Q Fair? Not committing any classical signs of pain?

A Not in that clip, no.

Q Okay. Now, you'll also notice Mr. Martinez sitting in the front row. He has this black -- this black glove that he wears on his right hand for court. Do you see that?

MR. DANIELSEN: Can you raise your right hand, sir? No, the other one. Can you raise your right hand, sir? The other hand. Your right hand.

Q Do you see this black glove he wears in court? You got that?

A Okay.

Q Certainly no sign of that in the video, right?

A I didn't see it, no.

Q Okay. And, so, now I'm gonna run several days of video from the beginning and these are several dates, starting with one in June of 2024, so, much more recent than these last ones, okay? Here he is coming down the stairs, again holding another large bin, and here he's utilizing a cellphone with the hand that was injured, the right hand. Now we flip to another date. Again, carrying a very large bin.

Now, Doctor, we don't know exactly how much that bin weighs, but, I think we can safely guess it's more than ten pounds? You'd probably agree with me, right?

A I mean, I couldn't -- I wouldn't feel comfortable saying, unless I knew what was in it.

Q Okay. Certainly, it doesn't look like light duty or sedentary work that he's doing here, right? You wouldn't

classify that as light duty or sedentary work?

A I'd want to know the weight of the bin, but he looks okay.

Q You see this folding table that's over there?

A Yeah.

Q You ever lift one of those? Setting up for a party at the house, kids coming over?

A Probably.

Q Yeah. They're not super light. Certainly, forty, fifty pounds, thirty pounds, something like that. Definitely more than ten, right?

A I think fifteen, twenty pounds.

Q At least right, more than ten though right?

A Probably more than ten.

Q Okay. And, again, here he's manipulating the bags, he's moving them, and he appears to be in no discomfort, would you agree?

A Yeah, agreed.

Q Again, here we'll see him run across the street and here I believe --

MR. VARGAS: Your Honor, I object. We're re-watching the video now.

THE COURT: Yes, this is --

MR. DANIELSEN: It's gonna move through, Judge, to the last part of the video. We have not watched this

portion.

THE COURT: That portion was June?

MR. DANIELSEN: Yes, we're on to June 8, 2024. We have not watched this portion. I apologize.

THE COURT: Okay. This is new?

MR. DANIELSEN: This is new. Everything we see now is completely new, Your Honor.

THE COURT: Okay.

Q And, again, he's placing the bags onto the car, ambulating up and down the stairs with ease?

MR. VARGAS: Objection, Your Honor.

THE COURT: Sustained, as to characterization.

Q Now, I'd like you to focus here, Dr. Grimm, okay? Okay. You would agree with me, Doctor, that Mr. Martinez was able to open and, by himself, set this table up with ease, correct?

A Yeah.

Q Now, if you noticed there -- let's just back it up a smidge. As he's lifting this bin --

MR. VARGAS: Objection, Your Honor. We don't need his commenting on what he's seeing.

MR. DANIELSEN: I'm asking a question, Counsel.

THE COURT: Let's wait for the question, Mr. Vargas.

Okay. Go ahead, counsel.

Q So, I'd like you to pay particularly close attention to this portion of the video, Dr. Grimm. As the Plaintiff is picking up the bin, would you agree with me that it appears that he's smiling?

A Yeah.

Q Hold on.

A Yes.

Q Okay. So, in your experience as a physician, smiling and laughing is not generally consistent with someone being in extensive pain, would you agree with that?

A I mean, I wouldn't characterize it completely, but he didn't look like he was incredible pain there, but --

Q Didn't appear to be in any pain there, right?

A You can grimace or you can smile and be in pain.

Q Okay.

A Just like I'm smiling and I'm kind of sick, so.

Q Do you want to take a minute?

A No, I want to get it over with.

Q Okay. And, again, you notice no glove here?

MR. VARGAS: Objection. There's no question there.

MR. DANIELSEN: I just asked him, again, do you notice there's no glove here, correct? That's a question.

THE COURT: It's sustained now.

Q Do you see a glove in that photograph on the Plaintiff's hand, Doctor?

A I'm not seeing his hand in this picture.
Q I'll back it up, just a smidge.
A No, no glove.
Q No glove. And I'll represent to you that Plaintiff was under surveillance for the balance of this day. You'll note at the bottom there it's 17:58, which would make it, I believe, just about six o'clock. Doctor, would it be consistent with the presentation of Mr. Martinez in your office and the complaints that he had that he would be able to work an entire day without break, without -- without any obvious difficulty?
A I mean, he's a -- with regards to timeframes, colder weather, patients often have more pain, warmer whether, less pain, but, he looks okay right here.
Q Looks pretty good?
A Yes.
MR. DANIELSEN: I think we're done with the video.
(Whereupon, the video was turned off)
Q So, Doctor, as a general statement, would you agree with me that what was visible on these various dates in the video that you just watched is inconsistent with the history that was provided to you in September of 2023 by Mr. Martinez?
A I mean, these are two different days. So, on the --
Q Well, it's actually multiple days.
A Yes.
Q So, we've shown and we can --

A I mean, I can comment on the day I saw him. On those dates I was examining him, yes, I would describe it differently.

Q Different, fair?

A Yes, based on September and those dates.

Q Now, Doctor, let's talk a little bit about your causation opinion for a moment.

A Okay.

Q Okay. Your report indicates all the things that you reviewed in preparation of serving as an expert in this case, is that fair?

A Yes.

Q Now, can you turn to the portion of your report that indicates the documents you reviewed, please?

A Okay.

Q Thank you.

A Okay.

Q Okay. Now, it indicates that you saw the ER record, is that right?

A Yes.

Q And it also indicates that you saw some of Dr. Kaplan's records in the summer of 2018, is that right?

A Yes.

Q Okay. And it also indicates that you saw one MRI in January of 2018, is that correct?

A Yes.

Q What it doesn't indicate is whether you saw any of the records from the Plaintiff's treatment from September of 2016, when the incident occurred, up to when the Plaintiff was seen by your boss, Dr. Kaplan, in 2018, is that fair?

A Yes. I didn't have access to those records.

Q You didn't have access to them? So, that's the CityMD records that we have in evidence --

A Okay.

Q -- here, marked as Defendant's Exhibit N?

A Okay.

Q So, you've not seen any of these records in advance of coming here today?

A Correct.

Q Okay. And you've not seen any records of any treatment that occurred between September of 2016, up until when the Plaintiff appeared at Dr. Kaplan's office, correct?

A Right. I got the history from the patient.

Q And, so, your causation opinion, then, is based upon the emergency room records and the history that's given to you by the Plaintiff with respect to how the accident happened, how he was injured, all of those things, would that be fair?

A Those are parts of the puzzle. I also take into account objective findings that I did on exam, as well as my history in treating other patients.

Q According to your records, how did Mr. Martinez

describe his accident?

A He described it through a translator, and he's not always the most articulate person, as working construction, standing on a scaffold, a piece of construction debris struck him, causing him to fall back and the scaffolding to collapse, resulting in injury to his back, right hand and left knee.

Q Would it surprise you to know that before you came in here to testify this afternoon, that Mr. Martinez was asked if he agreed with the way you recorded the incident in your notes and he actually, in fact, testified that he didn't agree with the way that you recorded it?

A Okay.

Q Okay. And I know that you've not seen the two years of CityMD records that we have over there. However, on February 1, 2017, approximately five months after the accident, there's a note in the CityMD records that indicates, he, Mr. Martinez, states, while at work doing construction on 9/6/2016, he was injured. He states that a wheelbarrow fell, he moved to get out of the wheelbarrow and sustained a blow to his right hand.

Would you agree with me that that is a significantly different version of the accident than what is recorded in your notes, Doctor?

A Yes, it's different.

Q Okay. Then, of course, we have the emergency department records from September 6, 2016, correct?

A Yes.
Q And you've seen those?
A Yes.
Q Okay. And those records indicate that he suffered an injury to the right hand only, correct?
A Yes.
Q They don't mention any injury to the back, correct?
A Emergency rooms generally focus on the most pressing issue at the time.
Q I want you to assume that Mr. Martinez has testified that he fell 17 feet.
A Okay.
Q 17 feet. Now, I'm pretty short. I'm about 5'2, 5'3. I guess, on a good day, if I spike my hair, 5'4. So, three times my height. Three times higher than me. If he's to be believed, he fell three times my height down to the floor, he lost consciousness for thirty minutes, he then went to the emergency room and they focussed only on the injury to his left hand? That is the testimony that we have here.
So, Doctor, have you ever worked in an emergency room in rotation while completing your medical training?
A Yes.
Q Okay. I understand you're not an emergency medical doctor , but, is it fair to say that the standard of care, if someone comes in and reports a fall from 17 feet with a loss of

consciousness for thirty minutes, that, at the very least, there might be a CT scan taken of the back or the neck or the and, at the very least, there would be an indication in the chart notes?

A There's definitely a good chance that that would be done.

Q A very good chance, right?

A Yeah.

Q Interestingly, I noticed something else in these records. Glasgow Coma Score is noted to be 15 out of 15. What is a Glasgow Coma Score?

A It checks for a concussion and their cognition.

Q It would be fair to say it's a test to determine how with it you are?

A Yeah, cognition.

Q So, the lower the number, the less with it you are. So, something between one and three, you're pretty close to dead, and at 15 you are the highest level of cognition that the test grades, is that fair?

A I think so. Like I said, it's out of my field. So, I would have to read up on the different levels, but, yeah, 15 sounds --

Q 15 out of 15 is the highest, correct?

A Yes.

Q Okay. So, it would be fair to say that the emergency department records that we have here do not in any way, shape or

form demonstrate an injury to the back, a fall from 17 feet or an injury to anything else, other than the hand, based on what's in these records, that's correct?

A Yes, based on those records.

Q Okay. So, your causation opinion is made without the benefit of two years of CityMD records and without any other clinical correlation, other than what Mr. Martinez told you, is that correct?

A Again, the cause and effect, yes, what he told me and correlating factors on his imaging and his examination.

Q So, if he's not being truthful to you, if he's not being truthful to you, all you're left with, as far as -- as far as your causation opinion is concerned, all you're left with is your examinations that occurred more than two years after the accident, MRI studies that occurred two years after the accident and the emergency department record, which indicates a bruise on the hand, treated and released with over-the-counter medication, correct?

A Yes.

Q Okay. So, Doctor, with the knowledge of the testimony that Plaintiff has given so far and the fact that you've not reviewed the CityMD records, the two years of records existing before he came to you, and the emergency department records that indicate only an injury to the hand, do you stand by the causation opinion that you gave on direct or would you like to

amend it?

A No. I trust my patients. I believe them. I think some may exaggerate. He's not the most articulate man. I believe an accident did happen, he's reporting to me that he did not have pain before some type of accident happened, he had pain after, he responded to positive treatments. So, I stand by causation, but I don't believe he gave a perfect history.

Q So, the guy that gave you the history where he needs help putting on shoes and socks, getting help down the stairs and help with basic activities of daily living, that same person who told you that, who came in and walked with an antalgic gate and had reduced flexion in every measurable way in your office, that same person that you then saw in the videos, you still trust his history enough, in light of everything you've heard, to stand by your causation opinion? Is that your testimony?

A Yes. I'm not gonna start questioning all my patients. On specific days they'll be good, some days they'll be bad, and patients do get what they call white coat syndrome, where they do feel a little bit more symptoms when they go see their doctors sometimes as well.

Q So, Doctor, in this case you sent the Plaintiff to Dr. Weinstein for a spine surgical consult, correct?

A Yes.

Q We'll get to that in a little greater detail in a bit, but you send a lot of patients to Dr. Weinstein for spinal

surgical consults, is that fair?

A He's a colleague of mine, he's a friend of mine, he has good outcomes, I think he's a good surgeon.

Q You send over a hundred patients a year to him for spinal surgical consults, is that fair?

A I couldn't tell you a number.

Q You couldn't tell me a number? Okay. Well, Doctor, another piece of the puzzle, which I think is the word you used before, of figuring out causation is objective medical studies. Would you agree with me there?

A Yes.

Q Okay. And here we have an MRI of the spine. What's the date of the first MRI of the spine that you were able to review in this case?

A I had an MRI from August 27, 2018.

Q August 27, 2018. And the incident occurred when?

A It happened on September 12, 2016.

Q So, almost two full years before, correct?

A Yes.

Q So, you would agree with me that an MRI, like any imaging study, like a CT scan, like an x-ray scan, they are a snapshot of the way a particular body part looks on a particular day when it's taken, is that fair?

A Yes.

Q Okay. And you would also agree with me that in this

case, the closest MRI that we have of the spine to look at is two years after the incident, is that fair?

A Yes, that's the one I have.

Q So, at best, you were able to see, through that study, what the Plaintiff's spine looked like two years after the accident, isn't that fair?

A Yes.

Q So, you have no idea what his spine would have looked like on the date of the accident, on the day before the accident, the day after the accident, the month after the accident or any period of time from when the Plaintiff was born up until when that imaging study was taken in 2018, is that fair?

A Yes.

Q Okay. And a bulging disc is something that can occur traumatically, correct, from an incident?

A Yes.

Q And it can also happen by way of a degenerative process, isn't that also fair?

A Yeah, it can.

Q So, discs, and I know you have the little model up there.

A Yeah.

Q The intravertebral discs that sit between the bony structures that make up the vertebrae, those all breakdown over

time, is that fair?

A Depends on the person.

Q Most people, statistically, have some level of degeneration in the spine, would you not agree with that?

A As they get older, yes.

Q Okay. And, in particular, people who work in industries like construction and heavy manual labor, they also are often subject to that process on an even more accelerated pace, wouldn't that be fair?

A Depending on the patient.

Q Okay. And, so, the MRI study that we have in August of 2018, two years after the incident, okay, you can't tell us, by looking at that study, if that disk bulge is traumatic in nature or if it was degenerative, isn't that fair?

A An MRI can't tell you that. MRI, like you said, it gives you picture.

Q Not a time machine, right?

A Right.

Q So, we don't know -- we don't know what Mr. Martinez's spine looked like on the date of the accident, isn't that fair?

A I based my opinions on his symptoms generally.

Q Right. So, again, what it also all seems to come back to is, if Mr. Martinez, he's not in the room now, but if Mr. Martinez's history is inaccurate, there is a major, gaping hole in your causation opinion, isn't that fair?

A I mean, like I said, it's a piece, but, if his complaining symptoms correlate with MRI findings, I use all that.

Q But not -- there's no correlation of any of those symptoms seen in the emergency department record, is there?

A No.

Q All right. So, we're going on what he told you more than two years after the incident, correct?

A Yes, I'm using that.

Q And we're effectively ignoring the emergency department record, which has no clinical correlation of any injury to the spine, any injury to the knee, correct?

A I wouldn't say ignoring it, there was trauma involved, but, yes, there was no complains of his back, but oftentimes back injuries can take time to develop. I compare it to, like, say, if I go bowling, because I don't bowl that often. My back feels fine, I go to bed, I wake up, I'm aching all over. Same thing sometimes with nerve injuries, muscle injuries. The back feels fine and then they develop over time. Not always, sometimes it'S immediate, sometimes it's hours. So, I won't just rely on one thing.

Q Sort of like a fall from 17 feet in the air where you don't quite feel it immediately, but then you feel it a few years later when you show up in your doctor's office?

A If this was the first time he fell, a few years later

would be different.

Q Or it could be the wheelbarrow from the February of 2017 report. Maybe it could be the wheelbarrow?

A I don't know, yeah.

Q We just don't know, right?

A I think something traumatic happened that caused injury to his back.

Q Why?

A Because all the pieces have fit together in terms of treatment. He's responded appropriately to injections. I did do a test on him that he responded appropriately to and he has responded to surgery.

Q The MRI studies, in this case -- correct me if I'm wrong. The MRI studies, not one of them that we have here indicated impingement on a nerve root, isn't that fair?

A I mean, the first one --

Q Impinging of the epidural fat.

MR. VARGAS: Objection. He's not letting him answer. He asked a question.

THE COURT: Can you slow down and ask the question so the witness can answer, please?

MR. DANIELSEN: Sure.

A Like you said, this is a picture in time, but it says abutting the bilateral extra thecal L-5 nerve roots.

Q Yeah, abutting, not contacting, not impinging?

A Abutting, impinging, I think are sort of considered interchangable.
Q That's interchangable?
A To an extent.
Q That's interchangeable?
A Abutting is up against.
Q So, when you get an MRI report and there's clear evidence on the MRI report of the -- of a bulge or a herniation making direct contact with the nerve root, it doesn't usually say impinging, it doesn't say -- it says abutting up against, that's what it says, that's your testimony?
A It depends on the radiologist.
Q Why did you then do a discogram?
A Because he had issues at L4-5 and, again, these are bulges and Dr. Weinstein, who viewed the MRI, requested it.
Q You did an EMG in this case, too, right?
A And, actually, the discogram, I believe, was positive at five one, so.
Q We're gonna get back to the discogram. You did an EMG in this case, too, right, Doctor?
A Yes.
Q And you're not board certified in electrodiagnostic medicine, is that correct?
A I don't even -- I'm board certified in physical medicine rehabilitation.

Q So, you had some training on how to do -- about how to do -- conduct tests like EMGs, ex cetera, with your training, correct?

A Yes.

Q But you don't have the additional board certification that's available in electrodiagnostic medicine, isn't that right?

A I don't, no.

Q And you would agree with me that the American Association of Neuromuscular Electrodiagnostic Medicine would be an authoritative source for how to perform EMGs, isn't that right?

A Yes.

Q Okay. And would you also agree with me that, in not only their literature, but virtually any literature that discusses the appropriate and required methodology for conducting an EMG indicates that temperature for all sites tested should be recorded. Do you agree with that?

A I mean we take the temperatures as the patients come in, but, yes, I don't have them in my report.

Q Temperature is important, correct?

A Yes.

Q And temperature's important because it effects conductivity, correct?

A It effects conductivity, but it doesn't effect the

needle portion of the exam.

Q Okay. In your report, can you please tell us what Mr. Martinez's temperature was when you performed the study?

A Like I said, I don't have the temperature.

Q It's not recorded?

A No.

Q So, the American College of Neuromuscular Electrodiagnostic Medicine indicates it should absolutely be recorded in a proper EMG report. This report does not have it?

A It doesn't.

Q Okay. Now, interestingly, I was reading through the EMG report the other day, doctor, and I noted that the complaints made by the Plaintiff were of left-sided radiating pain, is that fair?

A Yes.

Q And the EMG actually confirms bilateral, bilateral pain, is that right?

A Yes.

Q So, bilateral is one-sided? I'm sorry, bilateral is both-sided, correct?

A Yes.

Q And left-sided is one side, left side?

A Yes.

Q So, the findings on the EMG, then, didn't actually correlate to the complaints made by the Plaintiff, which, again,

are subjective complaints, correct?

A It matched it. He just was complaining of one-sided pain that day and you can have degeneration in the muscles that doesn't go away immediately if the pain is feeling better.

Q You agree with me that pain is a subjective measure?

A Yes.

Q We don't have a device like a pain-o-meter or something that can tell us how much pain someone is in, right?

A No.

Q So, we've got to take the patient's word on pain, correct?

A Yes.

Q Okay. So, you gotta take the patient's word on pain before you conduct the EMG, right? Because he tells you that he's experiencing left-sided radiating pain, you take his word on that, right?

A Yes.

Q Because there's no way to tell if he's telling the truth or not, correct?

A Yes.

Q Okay. And then you conduct the test and it actually shows bilateral, correct?

A Yes.

Q Okay. Now, the discogram also has a subjective component to it, would you agree with that?

A Yes.
Q Okay. And, the discogram, discogram, requires that you're gonna stick a needle in to a few different levels of the intravertebral disc, right?
A Yes.
Q And you do that in a room with the patient, correct?
A There is the patient, an x-ray technician, a scrub technician, a nurse and myself.
Q And it requires that the --
A And an anesthesiologist.
Q And an anesthesiologist. And it require that the Plaintiff give honest feedback about when and where and how he's experiencing pain while you're conducting the test, isn't that correct?
A Yes.
Q Okay. And, so, again, in order to come to an opinion on causation, step, after step, after step requires that the Plaintiff, that the patient, Mr. Martinez, be truthful. Otherwise, each of these careful steps that you engage in can be negatively impacted, correct?
A Yes, I need the patient to be truthful.
Q Okay. Doctor, life care plans, that's something that's done for litigation, correct?
A Yes.
Q You don't have patients come in off the street who are

not involved in some manner of litigation asking you to put together a life care plan, right?

A No.

Q Okay. So, how many life care plans do you write a year?

A I couldn't give you a number. Multiple.

Q More than five hundred a year?

A I could give you a number, but I don't think -- no.

Q You also do a lot of work with Mr. Vargas's law firm is that correct, the Gorayeb firm?

A My office gets patients from a multitude of sources.

Q You get patients from multiple sources, but they are -- the sources are primarily Plaintiff's personal injury law firms and Worker's Compensation law firms, is that fair?

A I mean, in my field, I'm dealing with pain management. I mean, I actually have a couple -- the dichotomy. I have patients that are coming from Broadway performers that get injured, I have a few referrals from physical therapists and doctors who worked with Broadway and then I have the construction and, yes, I get a lot from construction that may come from attorneys.

Q It would be fair to say --

A And from doctors. I mean, I get referrals from patients who like me.

Q Is it fair to say that 70 percent of yours and Dr. Kaplan's practice is related in some way to a personal injury

litigation, Worker's Comp, no-fault, those sources?

A I couldn't give you a number. I just go in and see patients. I'm not an employee involved with the statistics. I get a schedule and I do it.

Q You've testified for the Gorayeb firm several times in the past, correct?

A Yes.

Q In fact, I read a recent transcript where you agreed that you testified for them probably twenty times in your career?

A Again, I don't want to give an exact number. I'm not sure of the exact number, but that sounds reasonable.

Q And, in fact, you were actually scheduled to testify in another case that was going to go forward for the Gorayeb firm in New York County next week, Mario R. Palacios-Duchi against Bowery Street Holdings. Are you aware of that?

A That's news to me. So, no, I was not aware.

Q Dr. Weinstein was also scheduled to testify in this case.

A Okay.

Q And, actually, Dr. Kolb was also scheduled to testify in this case and Dr. Kaplan is also scheduled to testify in this case. You aware of that?

A I am not. That sounds great.

Q And, so, I actually -- I went through, with the permission of Mr. Zizzamia, to look through the records of his

firm and we actually found that there are 62 pending litigation cases where you have authorized life care plans for the Gorayeb firm. Does that sound about right?

A If that's the case, okay.

Q And, interestingly enough, in 37 of those cases, Dr. Kaplan is the orthopedic surgeon, Dr. Kolb is the radiologist and Dr. Weinstein is the spinal surgeon.

A Okay.

Q Does that sound fair?

A Yeah, I work with all those people.

Q So, you guys all sort of cross refer to each other?

A I mean, that's medicine. That's how it works. You treat a patient and you refer them to someone you --

Q How is that -- sorry, I --

A No, you refer them to someone you trust.

Q How is it that it's come to be that -- and -- strike that. You work with the Subin Firm, correct? You work with Subin Associates? Do you work with them?

A No.

Q Do you work with Wingate, Russotti?

A I've had patients referred to me, I believe, from Dr. Weinstein that is associated with them.

Q And Fogelgaren & Forman, them too?

A They're Worker's Comp.

Q A Worker's Comp firm. What other law firms send you

cases?

A Again, I treat patients at the office. I don't see the law firms when they come in. I'm not involved in the -- in that aspect of the scheduling. I just work for New York Ortho.

Q What do you charge for each one of these life care plans, Doctor?

A My office sets the fees. I believe it's somewhere in the 850 to 1,250 range, something like that.

Q Let's call it a thousand bucks?

A Okay.

Q So, a thousand bucks for the life care plan, correct?

A Again, I don't know the exact -- my office sets the prices, I just work there.

Q And you also see the patients during the time period of the pendency of the lawsuit, correct?

A Yes.

Q And you don't work for free, right?

A I get a salary from New York Ortho.

Q So, every time a patient comes, New York Ortho, Dr. Kaplan's practice, earns money for them coming to see you, correct?

A They get a fee, yes.

Q Okay. And you get paid for each visit, right?

A Yes. They get paid for our service. My services. My expertise.

Q And then you prepare a life care plan, right?
A Yes.
Q And the life care plan indicates all manners of future care that you say that the Plaintiff in an individual case will need, correct?
A I'm trying to figure out the best future care, yes.
Q So, in this case, the number, when you add it all up, all the future care that you've said that Mr. Martinez will need, is over 2.5 million dollars when you add it all up. Would that surprise you?
A No.
Q No? That's the number?
A I mean, that could be for his lifetime. I mean, that could be at the top level. I didn't add it all up. Again, I'm asked to come up with a -- like I said, it could be a range. So, that could be the high-end or it could be less, depending on how he progresses.
Q And you and Dr. Kaplan and Dr. Weinstein and Dr. Kolb, in these cases where you're testifying where you're, you know, coordinating on care with one another, you're all treating physicians in those cases, right?
A Yes.
Q Okay. And, so, you profit from the ongoing care during the pendency of the case, but, by way of the life care plan, should the jury believe that the Plaintiff needs this future

care, they would also then, potentially, as much as two and a half million dollars in the future of care, that, in this case, would basically be care provided by Weinstein, Kaplan, you and Kolb, correct?

A Not necessarily. The patient can treat with whoever they'd like.

Q Well, they're established with you already --

A The patient --

Q Right?

MR. VARGAS: Your Honor, he's interrupting.

MR. DANIELSEN: I apologize.

Q Please, Doctor.

A No, the patient can treat with whomever they'd like.

Q You've been seeing Mr. Martinez here since 2018, right?

A Yes.

Q Six years?

A Yes.

Q He hasn't gone anywhere in that time, right?

A His frequency of visits have gone down as he's been doing better.

Q Dr. Weinstein, who's been treating with him, right, you have the records, you've seen he's been back for visits, right?

A Yes.

Q We'll go through line-by-line of his life care plan, but you've said that he needs to see Dr. Weinstein or a spine

care surgeon for life, right?

A Monitoring it once a year. That's the recommendation, depending on how he's feeling.

Q Right, so he's gonna see the spine surgeon for life, according to your life care plan, he's gonna see the hand surgeon for life, according to the life care plan, he's gonna see a pain management doctor, your specialty, for life, according to the life care plan. You would agree with all that, right?

A Yes, at various timeframes.

Q Okay. So, this is big business, wouldn't you agree?

A It's treatment. I wouldn't call it big business, no.

Q You wouldn't call it big business? How many visits have you had with Mr. Martinez?

A I couldn't give you an exact number.

Q If you could tally that up for us, I would appreciate that.

MR. DANIELSEN: Your Honor, I'm just gonna grab something from my bag here.

THE COURT: Just one second.

(Whereupon, a short recess was taken)

(Whereupon, the following was recorded and transcribed by Official Court Reporter Michelle Cox)

(Continued on next page)

* * * * *

CROSS-EXAMINATION

Q Doctor, you were counting the number of visits in your chart.

How many did you get up to?

A I got up into the high teens.

Q High teens. Let's use 20 as a round number.

And in your life care plan, I believe you indicate that a pain management doctor should cost $200 per visit.

A Cash price that they'll charge you is $250.

Q $250 times 20; that's about $5,000, correct?

A Yes.

Q And then there's also service fees for EMGs and for the discogram, correct?

A Yes.

Q And there is also service fees associated with the epidural injections and the trigger points; is that right?

A Yes.

Q Those are separate and apart?

A Yes.

Q And then there's also service fees associated with preparing a life care plan that we went through before, correct?

A Yes.

Q And how much are you being paid to be here today?

A My office is being paid 8,500 for my time.

Q So would it be fair to say, all in at this point,

total cost probably would be, to your office, or you and your office have made maybe 30,000?

A I don't know. Like I said, I work there.

Q I actually --

MR. DANIELSEN: I'm going to mark this for identification only.

THE COURT: We're up to Q. O, P, Q.

(Defendants' Exhibit Q, Subpoena, for identification as of this date.)

Q Doctor, I'll represent to you that that's a subpoena that my office served on your office.

A Okay.

Q And without belaboring it, there's a variety of documents that I asked you to bring.

I asked you to bring -- first of all, do you recall receiving a subpoena?

A I don't receive the subpoenas. So my office probably got it.

Q Okay. I asked you to bring your billing records with you. You have your chart with you, I know that.

Did you bring your billing records?

A Whatever my office prepared for me. I don't -- let me see if those are in here.

I think they gave me a CD, too, with stuff on it. So it possibly could be on the CD.

Q So the chart you have in front of you, does that have your billing records?

A No, this doesn't. I think I have a CD in my bag as well that could have them in it. My office just hands me this and says you're testifying.

Q Okay. And I also asked for all communications between yourself and the Gorayeb firm relative to this case.

Did you bring any communications that you had between plaintiff's counsel and you or your office with respect to this case?

A I myself haven't had any.

Q I'm sorry?

A I haven't talked to them until they told me I was testifying and they told me to come here and meet them at 12:45 the other day.

Q Well, was there any initial referral notes, an e-mail of some kind, any documents that were generated when you first established care of Mr. Martinez that followed him over to the office when he was referred to you?

A Again, I'm not -- I'm not privy to that type of thing. So I don't know. Not that I'm aware of.

Q When a patient comes to see you, do they fill out an intake sheet?

A They will fill out an intake sheet.

Q And that's a sheet when all of us go to a doctor you

sit in the waiting room and you fill out a sheet, you provide a written history, you talk about why you're there and past issues you've had, all that stuff, right?

A Yes. They would have filled that out when they came to see Dr. Kaplan.

Q Is that in your file?

A No.

Q That's not there?

A It might be on the CD.

Q You're also -- your office, Defendants' Exhibit L, this is what was sent to the Court for this case. Maybe it's in here.

MR. DANIELSEN: If it's okay, I'll hand this up to the witness.

Q Is there any copy in that stack over there?

A I mean, do you know --

Q I don't. I'm asking you. They are your office's records. So I'm assuming you have some familiarity with the way they were kept.

A I haven't seen it. It looks like there are some billing records in there.

Q There's billing records.

But is there anything in there with respect to his initial triage and handwritten assessment when he showed up?

A I can go through it. It may take a while.

Q Do you typically send those to the Court?
A I'm not in charge of that. I am told to go testify.
Q Well, I didn't see them in there.
But what sort of things are normally in there, in those questionnaires, Doctor?
A You know, I'm not in charge of that. That's the front desk.
Q You don't look at them?
A No.
Q So you don't look at them?
A No.
Q So the patient fills those out, the doctor doesn't see it?
A The patient fills it out, the front desk takes it and put it in the computer while the patient comes back, and I start seeing them in the room.
Q Okay. So --
A It's usually insurance information, Social Security, address, occupation. Just general information about the patient.
Q Okay. Well, I don't want to force the jury to watch us shift through those several hundred pages. So we can move on, Doctor.
A Okay.
Q I've gone through the life care plan, and I have a few questions.

A Okay.
Q But first, your educational background, does it include any economics training?
A Let me just -- basic economics courses in college.
Q And no -- and have you done any research or conducted any studies with respect to price of items of medical care?
A I mean, I've done that just in my treatment and care of patients and in performing these plans.
Q So your life care plan sets up a whole list of price points in it; is that fair?
A Yes.
Q So in preparing Mr. Martinez's life care plan, how did you come up with each individual price point; what was your methodology?
A There is literature on the Internet for different area codes in the country, which will give you prices and ranges of procedures, tests, in order to price things.
If you wish to pay in cash, what the average price of insurance is. So I generally will utilize the cash price for this area of the country.
Q What are those websites?
A I would have to go back. It's bookmarked.
Q And what steps did you take to determine if those websites were either peer-reviewed or --
A It's a government website.

Q It's a government website?
A I believe it's -- I couldn't -- I found it and/or I was told about it a while ago. It's open to the public.
Q Okay. And what steps did you take to verify it was a government website and the data was sound and accurate?
What independent steps did you take as the expert?
Because you are here testifying as an expert.
A Yes.
Q And one of the things your CV says, or your expert disclosure says you're an expert on is pricing of care.
So I'm asking: What independent steps did you take to verify the authenticity of the data that you found on this unnamed website from the government?
A Also discussed the prices with colleagues. And, again, it's a standard of -- I mean, I'll talk to other future care planners. Actually, that's where I got it and that's where it was found.
Q Who?
A Her name is Jodi Gelfand.
Q Who?
A Jodi Gelfand.
Q Jodi Gelfand, okay.
So Jodi Gelfand told you about this website?
A Yes.
Q Do you know what steps Jodi took?

A Again, it's a site available to the public, I think, for educational purposes to learn pricing for procedures.

Q So the short answer is, you didn't do anything to independently verify the authenticity of the data that is contained on that website; is that fair?

A I had no reason to question the data on the website.

Q Well, there's a lot of things on the Internet, Doctor; wouldn't you agree?

A This is, again, not a random website.

Q But it's not one that you can provide a name for, right?

A I haven't actually checked it. It's a bookmark.

Q So you came here to testify, in part, not only about causation, we went through all of that, but in part to provide expert testimony to the jury about the cost of medical care.

And the basis of that testimony is an unverified website that Jodi told you about; is that your testimony?

A I have -- it's a reputable website.

Q I'm sorry?

I didn't hear you.

A It's a reputable website that I have viewed. Again, I haven't been asked about it. And I -- again, it's a bookmark, so I don't -- I haven't been asked about it in the past. I don't have it, off the top of my head.

Q So, Doctor, one of the items of care that you have in

your life care plan is for a hand surgeon.

How much do you say a hand surgeon should cost?

A Approximately $500 per visit.

Q $500 per visit.

What was the date of your life care plan, sir?

A November 1, 2023.

Q November 1st?

A 2023.

Q 2023, okay.

MR. DANIELSEN: So I would like to mark another life care plan that you prepared for another Gorayeb case. This is a life care plan that you did in January of 2025.

Mark this here.

THE COURT: It's marked for identification.

(Defendants' Exhibit R, Life Care Plan, for identification as of this date.)

Q Doctor, this is Marco Reyes. This is a notice of medical exchange for the Gorayeb firm of a life plan prepared by you.

How much do you say in that case that the hand surgeon should cost?

A $300 per visit.

Q 300 per visit?

A Yes.

Q But in our case it's 500 per visit?

A Yes.
Q And this life care plan was written after our life care plan was written, correct?
A Yes.
Q So why did they get the discount and we don't?
A Prices change.
Q They go down?
A Patient could have been seeing a different surgeon. I don't know.
Q Well, you told me you go on a website that Jodi told you about to get cash prices a few moments ago, right?
A Yes.
Q And this life care plan was written a few weeks after the one in this case, correct -- or actually, a year after the one in this case, correct?
A Yes.
Q So are prices in the business of going down?
A Unfortunately, sometimes, yes.
Q So hand surgeons are getting less in 2024 than they were getting in 2023?
There's an explosion of hand surgeons on the market now?
A I mean, sometimes costs go down.
Q Doctor, are you just picking numbers out of a hat for this?

What is your explanation for a $300 hand surgeon in that life care plan and a $500 hand surgeon in our case?

A I don't know. I possibly talked to a hand surgeon as well. Again, I just don't use the website. I also discuss prices with colleagues.

Q So the methodology that you utilized allows for a hand surgeon in one case to cost almost 50 percent more than an hand surgeon in another pending case; is that your testimony?

A These two prices are different, yes.

Q How much have you been paid for your pain management visits?

A For what visits?

I'm not certain what your question is.

Q How much in this case have you been paid for your pain management business?

A I couldn't give you a number.

Q Not $250, though, is it?

A What do you mean?

Q It's not $250 that your office has been paid. I've looked at the billing records.

A Like, what do they pay?

Q I'm asking you -- here's the question: Your life care plan says that a pain management doctor costs $250.

However, your office has accepted much less than that to provide those services; is that fair?

A Cash price is $250. I believe the insurance price is roughly $130 or $127.

Q Actually, I see it at somewhere between 60 and 130 of what your office has been paid for a visit.

Does that sound about right?

A Generally, 130.

Q So not 250, right?

A Yes. We accept what the insurance pays. So if they have insurance, that's what we'll accept.

Q Now, Dr. Weinstein, he in fact has accepted for visits between 100 and $200 in this case. However, according to your life care plan, it's $500.

A If they don't have insurance, they pay cash, yes.

Q And physical therapy, between 100 and 150. However, here, you seem to accept it at $45.

A I don't know. I don't do the billing.

Q Now, I understand as part of your life care plan, irrespective of the videos that we have seen here, it is your contention that Mr. Martinez will actually need another lumbar surgery in the future. And your life care plan indicates a nice round number at $100,000 for that one.

Does that come from Jodi's website, or is that from talking to Dr. Weinstein or something else?

A I think I said it's likelihood is between 20 and 30 percent. It comes from -- again, it's a combination.

Q How much did Dr. Weinstein get paid for his -- the surgery he did here?

A I don't know.

Q How much did Dr. Lenzo get paid for the surgery?

A I don't know.

Q How much did Dr. Kaplan get paid?

A I don't know.

Q So would it be fair to say that in the six or so years that Mr. Martinez has been treated, where we have all sorts of billing records available, where we could look and see precisely how much his care has cost, that instead of doing that, you relied on Jodi's website and conversations with a few doctors; is that correct?

A I'm asked to do a future care based on cash price because we don't know if patients will have insurance. So that's for that basis, not insurance.

Q So you're asked to put together a future life care plan by the plaintiff's attorneys --

A Yes.

Q -- and you use the highest possible price you can, which is the cash price, correct?

A Yes. I believe when I testified I said the cash price would be.

Q And statistically speaking, the cash price is almost never paid anywhere; wouldn't that be fair?

A No.
Q No?
The cash price, the $250, that's routinely accepted by your office?
A I have cash patients on a weekly basis. I won't say I have more, but I have cash patients on a weekly basis.
Q Doctor, you have said that Mr. Martinez will need epidural injections for the rest of his life; is that correct?
A I said the potential.
Q Potential, okay.
It's a little confusing the way it's written there. Can you unpack that for me.
How many epidural injections are we talking about, potentially, over the course of his life?
I counted, maybe 45.
But if you would maybe do the math for me and make sure I'm right.
A When I testified I said depending on how he feels, it would be between 0 to one a year.
Q Between 0 to one a year, okay.
A Depending on his symptoms.
Q So it could be as many as 0; could be as many as -- you know, he's a 40-year-old guy, let's say, 30, 35?
A As he ages, condition worsens, and he could be a candidate for more injections.

Q How many injections has he had in the six years that you've been treating him, epidurals?

A Two post-surgically, and I believe two pre-surgically.

Q And when was his surgery?

A September 8, 2020.

Q September 8, 2020.

So he's had two in the last four years, correct?

A Yes.

Q So if we were to take the maximum number you're talking about, about 40, okay, at this rate, we're already about 50 percent of that, correct?

Well, he's had two in four years. So that's about half an injection a year, right. The life care plan is calling for as many as a full one a year.

How much do these things cost, the cash price from Jodi's website.

A This cash price would be what my office would charge. And I believe -- and what the surgical center would charge.

I think it's $1200 for the injection and then a $2,000 facility fee.

Q And, of course, those numbers only bear out if he actually gets those injections, right?

A Yes.

Q When was the last time he had one?

A I believe his last time was, I think, in 2023. But let

me verify that.

Yes, July 25, 2023.

Q Doctor, as part of your life care plan, I think you also indicated that the plaintiff would get a series of three knee injections every six months for life; is that correct?

A Yes.

Dr. Kaplan has been treating the patient, and he's done the reflex injections and made recommendations for additional injections.

Reflex injections last approximately six months, in general. So the recommendation is two a year for optimal treatment.

Q Two a year for optimal treatment?

A Two series.

Q Two series?

A Yes.

Q So how many is that per year, total?

A It's a series of three injections, because it's artificial viscosupplementation. So there would be a series of three, which are a week apart, six months later a series of three, at a week apart, provided they get improvement, if it helps.

Q So nine injections?

A No, six.

Q Six injections a year?

A Two sets.
Q Two sets. Six a year.
And do you charge for each one of those injections?
A The total cost, with the ultrasound guidance, I believe, is -- so for each set it's $3,830, for the series of three. That's including the cost of the medication.
Q So that's 180 injections roughly, over the course of his life.
Does that sound fair?
A Yes.
Q And times how much?
What's the cost you have here?
A $3,830.
Q Wow, that's $689,000 worth of knee injections that we've got on that life care plan.
Can I ask you, how many of these knee injections has Dr. Kaplan given the plaintiff so far?
A I know he's given him one set, and he's recommended further injections, but the patient didn't get them.
Q So in six years he's had one set --
A Yes.
Q -- correct?
Six years he's had one set, correct?
A Yes.
Q Okay. And you're saying that he's going to need as

many as 180 over the course of his life?

A I'm saying, for optimal treatment, if it helps, two a year will be beneficial.

Q I'm going to read to you from plaintiff's deposition, Page 103, Line 21 to Page 104, Line 5.

"QUESTION: Did Dr. Kaplan administer any injections into your knee on any occasion before you had surgery?

"ANSWER: Yes.

"QUESTION: What was the result of those injections?

ANSWER: They didn't help me either.

QUESTION: Did you tell Dr. Kaplan that?

ANSWER: Yes."

In light of that, do you stand by the $689,000 worth of knee injections that your life care plan is calling for, Doctor?

A And I think the reflexes were given post-surgically.

So, again, I'm saying up to two, if they help. So I'm still saying he would benefit from those injections. He may not get two a year, or two sets a year, but he would benefit from them.

Q So you're saying he would benefit from it, even though he testified he didn't benefit from it at all, and he hasn't had a single injection since that one; you're saying he would benefit from it and, therefore, the amount that should be ascribed to that in the life care plan is $689,400; is that your

testimony, Doctor?

A He's testifying that the Euflexxa injections that he received post-surgically did not help, then, no, I would not agree -- I would say, no, he would not benefit from them.

Q Doctor, the sacroiliac joints injections, how many are you calling for in your plan?

A I believe it's up to six a year. Like I said when I testified, he would not require that many at this time.

Q Up to six a year?

A Yes.

Q In fact, since he's been treating with you, and I could be wrong, please correct me if I am.

I counted that he had three sacroiliac joint injections in the entire time that he's been under your care. Six years, he's had three.

Does that look right, based on your records?

A Well, like I said, it's something that gets worse post-surgically, and it puts more pressure on the joints. So he got them post-surgically. And I'm reading one, two, three. He had three, yes, post-surgically.

Q So, Doctor, he's had three post-surgical in approximately four years since the surgeries was done; is that right?

A Yes.

Q Okay. And you're calling for up to six a year,

correct?

A Based on the symptoms. Like I said, it may be less.

Q Based on symptoms.

Would that be based on what we saw in the video of him jogging across the street and moving big bins around and setting up tables?

MR. VARGAS: Objection.

THE COURT: Sustained as to form.

Q So, Doctor, other than the website that Jodi told you about and calling around to some unnamed doctors, is there anything else that we need to know about your methodology that you utilized to come up with these price points?

A My history in treating of the patients.

MR. DANIELSEN: Okay. I have nothing further, Your Honor.

Thank you, Doctor.

THE COURT: Anything further?

MR. VARGAS: Yes, a few, Your Honor.

THE COURT: Quickly.

MR. VARGAS: I will be quick.

REDIRECT EXAMINATION

BY MR. VARGAS:

Q Doctor, what's not in your notes is, for your treatment of Mr. Martinez, it had to be approved by workers' compensations, right?

MR. DANIELSEN: Objection.

THE COURT: Sustained.

Q Doctor, if you gave any treatment to Mr. Martinez, was there any limitations on it?

A Yes. There is specific guidelines that need to be followed in order for the treatment to be paid for. Those were followed and treatment was paid for.

Q And do you agree with those guidelines?

A For the most part.

Q Do you think patients, when you're treating them, the doctor should make those decisions about the guidelines or the patient or should the guidelines rule over other treated --

MR. DANIELSEN: Objection.

THE COURT: Overruled.

A Again, I think they are guidelines. I don't think they would apply to every single patient. They're a framework for the general treatment, but some treatments -- some patients' treatment should vary from the guidelines, and that's the way it's set up.

Like with the discogram, it's not set forth within the guidelines, so we requested to get it authorized. And it varied from the guidelines and it was authorized, which is how we were able to proceed.

Q And, Doctor, when you have a patient such as Mr. Martinez, do you know, going forward, will he have to pay

cash or do you know if he has insurance?

MR. DANIELSEN: Objection.

THE COURT: Sustained.

Q Do you know how Mr. Martinez paid for his treatment?

MR. DANIELSEN: Objection.

THE COURT: Sustained.

Q Do you know, going forward, when you made these projections for Mr. Martinez, did it factor into how he paid you for his treatment?

A No.

Q And do you do that for any of the patients?

A No. I -- again, I make it cash price because I don't know, going forward, if the patients will be having means to pay other than cash.

Q And do you also know how much your office charges?

A Yes.

Q And do you take that into account when you come up with prices?

A Yes.

Q And does that also go to the medication?

A Yes.

Q And these are the medications you've been prescribing to Mr. Martinez since 2018, correct?

A Yes.

Q And these are the medications you've been

administering, such as the medications for the trigger point injections as well as?

A Yes, administering multiple trigger point injections.

Q Approximately how many trigger points?

A I don't know. It's approximately 12.

Q On average, how often would those be administered?

A I'd say, depends on the patient.

Q For Mr. Martinez.

A For Mr. Martinez, he's had 12. So probably in the range of two to four a year.

Q And what were the prices again for the trigger points?

A I believe the cash price is actually less than what we get paid by insurance.

THE COURT: I didn't hear you, Doctor.

THE WITNESS: I said the cash price is actually less than what we generally get paid for the insurance.

A We get $300 per set of injections.

Q And, Doctor, you were shown the video at the start of this cross-examination.

Did that video change your opinion at all as to whether Mr. Martinez was injured in this accident on September 6, 2016?

A No. I feel he was injured. He got treatment that he responded to, that he fortunately responded positively to.

Q And when you did your narrative that you were question

about, that was in November, I think, of 2023, correct?

A Yes.

Q And the videos you were shown were in June and September of 2023, correct?

A Yes.

Q Does weather ever play a factor in injuries to the people you treat?

A Yes. Colder weather would cause muscles and everything to tense up and increases pain, generally.

Q And do you usually find that patients complain more in colder months about limitations, pain?

A Yes.

Q And a lot was made of the glove Mr. Martinez is wearing. We are in the middle of winter. He testified that that helps him when it's cold out, dealing with pain.

Is that consistent with what you've heard?

MR. DANIELSEN: Objection, Your Honor. It's leading.

THE COURT: Sustained.

Q Have you ever seen that glove that Mr. Martinez wears?

A I mean, I'm not generally treating his hand. I would defer to an orthopedic who is treating the hand, what he had recommended.

Q Well, then we'll go to the back.

As far as the back, in the winter months, do you

notice a rise in complaints from Mr. Martinez compared to summer months?

A That's across the board with patients.

Q And so would it surprise you that in the video of the summer months, he's able to move a lot more freely, and in the winter when you examined him, he may have had more limitations?

A Yes.

MR. VARGAS: No further questions.

THE COURT: Any recross?

MR. DANIELSEN: Very brief.

RECROSS-EXAMINATION

BY MR. DANIELSEN:

Q Dr. Grimm --

A Yes.

Q -- what dates of service do you have for 2023 for the plaintiff?

I believe you saw him in February or March, and you also saw him in the summer and you saw him in September.

So pretty much covering all the seasons; is that correct?

A Yes.

Q Right?

A I don't know.

There's February, April, June, August, September. That's it.

Q Okay. So covering all four months, then, right, winter, spring, summer, fall, correct?

A Yes.

Q And you can correct me if I'm wrong, but I read these notes pretty closely.

The chief complaints and the complaints that Mr. Martinez made on each of those service dates are verbatim, the wording is verbatim, they are exactly the same.

Where in your notes does it indicate that he's having a harder time in the winter months as opposed to the summer and spring?

Where is that notation?

Please read it for us, Doctor.

A Let me see.

I don't see anything with regards to winter noted in the notes.

Q And so, Doctor, you conduct a thorough examination every time plaintiff comes to you, correct?

A I do an examination and I have my assistant who will adjust things, if needed.

Q Why is it that the notes with respect to the examinations, which match verbatim, word for word, each time; why don't they change?

If there's new examination done every single time, why are they the same?

A They're not the same.
Q Well, they are really close, Doc, take a look.
A I mean, in June we had ranging of 10 degrees, 55 degrees, 10 degrees, 15 degrees.
You've got an epidural.
Q The impressions, Doctor.
A Then his next visit, ranging was 15 degrees, 65 degrees, 15 degrees. We think he showed improvement following the epidural.
Q The general impressions and the complaints, do they remain the same in each one of those?
A It says, "Patient says post and make changes when noted when needed to convey what we did in the interval."
MR. DANIELSEN: Thank you, Doctor. Nothing further.
THE COURT: Thank you so much, Doctor.
You can step down. Feel better.
THE WITNESS: Do I leave my chart here?
THE COURT: Yes.
Counsel, you want to step up, please.
MR. VARGAS: Yes, Your Honor.
(Whereupon, an off-the-record discussion was held.)
THE COURT: Members of the jury, viewing the lateness of the hour, we are going to adjourn for today.

Thank you all for your patience and consideration because this was a tough day. We worked hard today.

Tomorrow we're going to have more of the cross-examination of Mr. Martinez in the morning, and then we have a doctor in the afternoon.

So please rest up and bring your lunch tomorrow because I'm sure it's going to be cold again. And we'll see you in the morning.

Please remember my admonitions about speaking among yourselves or with others. And since you are going home this evening, please do not go to or pass the accident location.

Have a good safe home.

THE COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exits the courtroom.)

(Whereupon, Court is recessed and the case is adjourned to Friday, January 23, 2025.)

* * * *

$

$100,000 (1)
488:21
$1200 (1)
491:19
$127 (1)
488:2
$130 (1)
488:2
$2,000 (1)
491:19
$200 (2)
477:8;488:11
$250 (7)
477:9,10;487:17, 19,23;488:1;490:3
$3,830 (2)
493:5,13
$300 (3)
485:22;487:1; 499:17
$45 (1)
488:15
$5,000 (1)
477:10
$500 (4)
485:3,4;487:2; 488:12
$689,000 (2)
493:14;494:13
$689,400 (1)
494:25
$7,500.00 (1)
391:6

A

A-1 (1)
430:11
ability (2)
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