

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CIVIL TERM: PART IA-8

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NORMAN RIVERA,

Plaintiff,

-against-

Index No: 28368/2018E

454 WEST 57TH STREET HOLDING

& T&K PROPERTIES, LLC

TRIAL

Defendants.

-----X

TESTIMONY

Dr. Joseph Weinstein

Bronx Supreme Court
851 Grand Concourse
Bronx, New York 10451
May 16, 2025

B E F O R E:

HONORABLE BIANKA PEREZ,
Justice of the Supreme Court

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

GORAYEB & ASSOCIATES

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SIOBHAN LYONS
Senior Court Reporter

1 (Whereupon, the Enlarged Lennox Hill Radiology
2 Lumbar Spine X-ray from October 12, 2021 was marked as
3 Plaintiff's Exhibit 8-A in evidence by the Reporter)

4 (Whereupon, the Enlarged Lennox Hill Radiology
5 Cervical Spine X-ray from November 11, 2020 was marked as
6 Plaintiff's Exhibit 8-B in evidence by the Reporter)

7 (Whereupon, the Enlarged Lennox Hill Radiology
8 Lumbar Spine X-ray from October 12, 2021 was marked as
9 Plaintiff's Exhibit 8-C in evidence by the Reporter)

10 (Whereupon, the Chart of Dr. Weinstein was marked
11 as Plaintiff's Exhibit 15 in evidence by the Reporter)

12 COURT OFFICER: All rise.

13 THE COURT: Good morning.

14 You can be seated. Good morning.

15 So, there's an application?

16 MR. VARGAS: I have these two illustrations for the
17 doctor to explain surgeries to the jurors and Counsel had a
18 problem with that and my suggestion was to just give a
19 statement to the jury that these are just illustrations.
20 It's not meant to -- you know, it's not the same as looking
21 at a film. It's just to explain the surgeries and steps and
22 what they were trying to correct.

23 THE COURT: Where's the actual films of his neck?

24 MR. VARGAS: They're gonna see those too, it's just
25 when we get to the surgery, we'll show the illustrations.

1 He doesn't have an objection as to the rest of this, just
2 these parts of the illustrations showing herniations.

3 THE COURT: I have a problem with them, too. We'll
4 hear it on the record.

5 MR. VAN ETEN: My objection is that, I mean, we
6 did not get the illustrations until this morning to know
7 they were going to be there. I have not had a chance, A, to
8 compare it to see the accuracy of those. I'm certainly
9 objecting to them getting into evidence.

10 I have no problem with the illustration for the
11 surgery part of it, I understand where that can help the
12 jurors. My suggestion had been that we just block out
13 everything about the films, because the better evidence are
14 the films that the doctor's gonna be showing, and these
15 illustrations are not -- they are potentially prejudicial
16 and are not probative and, for that reason, I object it to
17 it and, like I said, not having it in advance, I have to
18 have my experts look at it to see if they are actually
19 accurate.

20 MR. VARGAS: As I said --

21 THE COURT: Well, I agree with Defense Counsel.

22 MR. VARGAS: I'll block them out.

23 THE COURT: Okay. Do we have tape? Yeah, we have
24 Scotch tape and white paper, if you want.

25 MR. VARGAS: I have tape right here. If I block

1 this out right here, is that enough?

2 THE COURT: Just put the whole -- you don't want to
3 block it out with white paper, the entire thing? I have
4 blank paper in the back.

5 MR. VARGAS: It's not showing it. That covers up
6 any herniations.

7 I'll just mark these for ID and then I think we're
8 ready, Your Honor.

9 (Whereupon, the Cervical Spine Surgery Illustration
10 was marked as Plaintiff's Exhibit 16 in evidence by the
11 Reporter)

12 (Whereupon, the Lumbar Spine Surgery Illustration
13 was marked as Plaintiff's Exhibit 17 in evidence by the
14 Reporter)

15 COURT OFFICER: All rise. Jurors entering.

16 (Whereupon, the jury entered the courtroom)

17 THE COURT: There's no potential witnesses, right,
18 in the room?

19 MR. VARGAS: The doctor is. Do you want him out?

20 THE COURT: No. It's too late to take him out now.

21 Good morning. Okay. Plaintiff, you may call your
22 next witness.

23 We will take a break from the Plaintiff's
24 cross-examination to fill in a witness out of turn. Well,
25 not out of turn, but, due to availability.

1 MR. VARGAS: Plaintiff calls Dr. Joseph Weinstein
2 to the stand.

3 THE COURT: Dr. Weinstein, you can take the witness
4 stand. Remain standing for the officer to swear you in and
5 be careful with the wires.

6 THE WITNESS: Thank you.

7 THE COURT: You're welcome.

8 COURT OFFICER: Just raise your right hand.

9 Do you swear or affirm that the testimony you give
10 today is the truth, the whole truth and nothing but the
11 truth under penalty of perjury?

12 THE WITNESS: Yes.

13 J O S E P H W E I N S T E I N, called as a witness by
14 and on behalf of the Plaintiff, after having been first duly
15 sworn, was examined and testified as follows:

16 COURT OFFICER: Please be seated.

17 State your name and ADDRESS for the record.

18 THE WITNESS: Joseph Weinstein, 1150 Park Avenue,
19 New York, New York 10128.

20 THE COURT: Counsel, treating physician, no expert
21 disclosure, or you gave it to me?

22 MR. VARGAS: Yeah, I gave it to you. I e-mailed it
23 to the Court, at least.

24 THE COURT: Okay. You may inquire.

25 MR. VARGAS: Okay.

1 DIRECT EXAMINATION

2 BY MR. WEINSTEIN:

3 Q Good afternoon or morning, Doctor. Can you start by
4 telling the jury your educational experience?

5 A Sure. So, I went to -- first of all, I'm from New
6 York. Good morning. I went to Queens College in Queens and
7 then, after that, I went to New York College of Osteopathic
8 Medicine in Long Island, a four-year medical school.

9 After med school I did residency in orthopedic surgery,
10 which is five years, at North Well Health Consortium, North Well
11 Hospitals, multiple different North Well Hospitals on Long
12 Island. I served as a chief resident, chief executive resident.
13 I was in charge of all the residents in the fifth year and,
14 after the orthopedic residency, I did a fellowship training at
15 the Hospital for Special Surgery in the City in spine surgery.

16 Q And, Doctor, do you have a -- your own private
17 practice?

18 A Yes, I do.

19 Q And, being here today, did you have to take time off
20 from your practice?

21 A Yes.

22 Q Are you being compensated for your time?

23 A Yes, I am.

24 Q How much are you being compensated?

25 A Ten thousand.

1 Q And, Doctor, are you board certified?

2 A I'm board certified, yes.

3 Q Can you explain to the jury what a board certification
4 is?

5 A Board certification, okay. After residency, what --
6 what happens is you have to take a bunch of tests to be
7 recognized as board certification. It's a special, you know,
8 national certification.

9 Basically, in my case, it was three different tests. I
10 did a written test and then we do an oral test, where they
11 basically have fifty stations, approximately fifty stations,
12 with two doctors and they ask you a bunch of questions about any
13 subject in orthopedics and then, after that, the third part of
14 the test is I actually had someone go through all my charts and
15 watch a couple of surgeries and then they board certified me.

16 MR. VARGAS: And, Your Honor, I ask that Dr.
17 Weinstein be deemed an expert in spinal surgery.

18 THE COURT: Any objection?

19 MR. VAN ETEN: No objection.

20 THE COURT: So deemed.

21 Q Dr. Weinstein, did there come a time when you treated a
22 Mr. Norman Rivera?

23 A Yes.

24 Q And can you tell us the first time you saw him?

25 A Sure. I saw him on 4/17/2019.

1 Q And do you know how he came to be treating with you
2 that first time?

3 A He was referred to me by Dr. Matthew Grimm, a pain
4 management doctor.

5 Q And when you first met with Mr. Rivera, did you take a
6 history?

7 A Yes.

8 Q And, for the jury, who are unfamiliar with these
9 terminologies, I'm gonna ask you to define them, can you tell us
10 what a history is?

11 A Sure. It's basically why is he in my office, what
12 happened?

13 Q And what did he tell you?

14 A So, he said that he was injured while at work on
15 3/15/2018 and he injured his neck and back.

16 Q And --

17 MR. VAN ETTEN: Just objection, Your Honor, for
18 one, point of reference. Prior to appearing, we did mark
19 the doctor's chart into evidence and I believe he's
20 referring to it. So, we did mark the doctor's chart into
21 evidence before and it looks like he's referring to it, so
22 I'd like the jury to be aware of it.

23 THE COURT: Which exhibit?

24 MR. VARGAS: It's Plaintiff's 15.

25 THE COURT: Referring to Plaintiff's 15.

1 MR. VAN ETTEN: Thank you, Your Honor.

2 THE COURT: No problem.

3 MR. VAN ETTEN: Thank you, Counsel.

4 Q And after taking a history, did you examine Mr. Rivera?

5 A Yes, I did.

6 Q And what were your findings on exam?

7 A Regarding the cervical spine, there was pain to
8 palpation at the paraspinal musculature of the cervical spine,
9 basically touching the back of his neck caused him to have pain.
10 Power was intact, except for his right biceps muscle was --
11 seems like it was decreased. Sensation was decreased in the
12 bilateral C5 to C7 distribution, which would be the nerves that
13 enervate that area on the arms, so, that was decreased. His
14 reflexes were normal. He had negative testing for myelomalacia,
15 which is severe, severe compression of the cord, the spinal
16 cord, and he had decreased range of motion.

17 Q And you mentioned the decreased sensation in the
18 distribution of the nerves. What's the significance of that?

19 A Well, we test for fine touch and pinprick and basically
20 it means that there's something wrong with the nerves, something
21 is compressing it, something is causing the nerves not to act
22 normally, because, nerves, they provide a couple of things,
23 right? They provide motor.

24 So, the body is like an electrical system, the brain,
25 and then you have all these wires that come out and the nerves

1 could provide the movement, enervating the muscle to contract
2 and also sensation. So, if we're having a problem with
3 sensation, that means there's a problem with the nerve,
4 something's going on.

5 Q And did you review any documents when you examined him
6 at that time?

7 A I reviewed any documents that were sent by Dr. Grimm's
8 office at that time.

9 Q And were there any MRI reports?

10 A I believe, yes, there was an MRI report only of the
11 lumbar spine.

12 Q And do you know whether that was dated?

13 A Sorry?

14 Q The date of that MRI report?

15 A The date of the report was 4/7/2018.

16 Q And, after examining Mr. Rivera, after taking a
17 history, did you have any recommendations for Mr. Rivera?

18 A Sure. Because his MRI was more than one-year-old, I
19 ordered a new MRI of his cervical and lumbar spine and I wanted
20 to see him back after that.

21 Q Did he have those MRIs done?

22 A Yes, he did.

23 Q Do you know where they were performed?

24 A Lincoln Hill Radiology.

25 Q And after he had the MRI, did you review them?

1 A Sure. Yes, I did.

2 Q And what were your findings in those MRI's?

3 A MRI of the lumbar spine, dated 1/5/2019 is
4 predominantly midline posterior disc herniation at L5/S1,
5 diffused disc bulge at L2/L3, small disc bulges at L3/L4 and
6 L4/L5, mild scoliosis.

7 MRI of the cervical spine, dated the same date,
8 1/5/2019, with the impression of -- sorry, it seems like the
9 impression is not on my chart, but I can read from the body of
10 part --

11 MR. VAN ETEN: Can I note my objection here, Your
12 Honor? Counsel asked the witness what were his impressions.
13 I believe he's reviewing the reports from the doctors that
14 did the MRI's, not his impressions in his chart, and if I'm
15 wrong, he can tell us what he's looking at right now.

16 MR. VARGAS: Well, we'll put up the films.

17 THE COURT: What is the objection?

18 MR. VAN ETEN: He asked for his impressions and
19 he's reading from the radiologist's report, not his
20 impressions he recorded, because he asked him what he saw
21 and what his impressions were.

22 THE COURT: Save it for cross.

23 You may continue, Counsel.

24 Q Go ahead and answer, Doctor.

25 A At C2/C3, the intervertebral disc appears maintained.

1 At C3/C4 there's diffused posterior disc bulging, deforming the
2 thecal sack. The neuroforamina appear free of significant
3 compromise at this level.

4 At C4/C5, there is a midline posterior disc herniation
5 with accompanying osteophytes, resulting in moderate spinal
6 stenosis and impingement/deformity of the adjacent spinal cord.
7 There is moderately severe right C4/C5 neuroforamina stenosis.

8 At C5/C6, there's a broad-based posterior disc
9 herniation, larger to the right of the midline, resulting in
10 mild to moderate spinal stenosis with impingement of the
11 adjacent spinal cord. The C5/C6 neuroforamina appear to be
12 free of significant compromise, minimally narrowing on the
13 right.

14 At C6/C7, there's a posterior disc herniation to left
15 of midline, deforming the thecal sack and obliterating the
16 ventral subarachnoid space. The neuroforamina appear free of
17 compromise at this level.

18 At C7-T1, the intravertebral disc appears maintained.
19 At T1/T2 there's a posterior disc herniation larger to the right
20 of midline, deforming the thecal sack.

21 MR. VAN ETEN: And I renew my objection and move
22 to strike, as he is reviewing the reports of the doctor who
23 is not coming in to testify.

24 THE COURT: Overruled, Counsel. If he relied on
25 the records from other physicians, it's admissible.

1 MR. VAN ETTEN: And that foundation hasn't been
2 established yet, Your Honor.

3 THE COURT: Can we lay the foundation, Counsel?

4 Q Doctor, after you got those MRIs, did you review the
5 films yourself?

6 A Of course I did, yes.

7 Q After reading those reports?

8 A Yes.

9 Q And did you rely on them?

10 A Well, I always review the film before I review the
11 reports and that is because I want to be unbiassed, actually,
12 and, yes, I agree with the reports one hundred percent.

13 Q Okay.

14 A I can show you also, as well.

15 Q In a minute we'll put them up, Doctor, for the jury.
16 Can you describe -- we had disc bulge and disc herniations
17 described in these MRIs. Can you tell us the difference?

18 A Sure. I mean, in Mr. Rivera's case, it's -- there's no
19 question, but, in general, you know, obviously, if you have ten
20 people see a picture, you you're gonna have a lot of different
21 answers on what the picture is.

22 So, a bulge is sort of like a flat tire, a little flat
23 tire. A herniation could be where the disc is like a jelly
24 doughnut. There's a mushy inside, like a gelatin inside, with a
25 harder envelope. A herniation could be that that jelly is out

1 of the jelly doughnut, in a more pronounced. So, it all depends
2 on the person looking at the films and, you know, we don't
3 really just treat MRIs, we treat patients. So, you have to
4 correlate it with the patient and get the whole picture. It's
5 just a tool, a tool in the diagnosis.

6 Q And, Doctor, at this time --

7 MR. VARGAS: With the Court's permission, we'll put
8 up on the screen the MRI of the cervical dated 5/1/19 from
9 Lennox Hill, which is in evidence as Plaintiff's Eight, and,
10 with the Court's permission, if the doctor could step down
11 to the screen.

12 THE COURT: Yes. Just make sure there's a mic in
13 front of him.

14 MR. VARGAS: Yes.

15 THE COURT: You may step down, Doctor.

16 THE WITNESS: Thank you.

17 MR. VARGAS: I'll leave this microphone for you
18 here, Doctor.

19 THE WITNESS: Okay. Does it -- could everyone hear
20 me? Is this -- should I hold it like The Price is Right?
21 Okay.

22 Q If you could, Doctor, tell us what we're looking at.

23 A Sure, of course. I'll go through everything. So, I
24 read from the report and I agree with the radiologist that the
25 C2/C3 level is okay, there's no problems with that level, okay?

1 So, let me explain the MRI. First of all, what is an
2 MRI, right? So, there's basically two different studies that we
3 have, that we look at, bones and tendons and disks. So, one is
4 a CAT scan. This is not a CAT scan. Everyone knows what a CAT
5 scan is, it's a picture of the bones. It's bone, really.

6 Well, an MRI is different. A CAT scan is fast, you get
7 them in the ER. An MRI is something that takes, like, twenty,
8 thirty minutes to go in. It's a magnet that goes round, it's
9 very loud, and what this does is it shows -- it's a great
10 representation. You can see bone, this is bone, but you can see
11 the discs really well. You can see the discs really well, you
12 can see the ligaments really well. It shows the soft tissues
13 very, very nicely and the MRI is the gold standard whenever
14 you're talking about disc herniations or any pathology in the
15 neck. MRI is the number one, okay.

16 So, now, this is the MRI of Mr. Rivera's neck and
17 there's two views here. There's a rule in orthopedics that one
18 view is not a view. Basically, you know, there's -- I don't
19 know if anyone saw this video, but you see a pregnant woman and
20 you take a picture, like this, and she looks skinny, but, go to
21 the side and, all of a sudden, she has a baby inside. So, one
22 view is no view. You need two views in order to see anything,
23 right?

24 So, this view is, like, a side cut, cut right down the
25 middle, and then this view is a cut like this, straight across.

1 So, we're seeing the disks, we're seeing the -- his neck, in two
2 views. Also, mind you, that the MRI is done lying down, right?
3 So, things are different when we standing up and we're moving
4 around or when we're resting. The head is like a bowling ball
5 on a toothpick. It's like eighteen pounds. So, this is just
6 lying down at rest. So, this is, sort of, like, best case
7 scenario, unless you put them upside down, but we don't do that.

8 So, this the front, this is the back. Again, this is
9 the front, this is the back. These are the disks, these black
10 things are the disks. These are the bones, okay, it's gray, and
11 just move this forward. Let me come over here. If I'm blocking
12 anyone let me know.

13 This is the spinal cord, right here, okay? The spinal
14 cord, if it has more than four pounds per square inch, there is
15 damage to the spinal cord, okay? So, we want the spinal cord
16 just to sort of bathe in this fluid around here and not --
17 nothing's supposed to touch it. Like, here, very good example.
18 That's number one.

19 Number two is, here, you have these foramen.

20 Foramen, in Latin, means a hole, okay? So, the spinal cord
21 gives off nerves. It's faint, but you can maybe see here
22 there's a nerve that's coming off here and it's going out
23 through the foramen, okay? So, those nerves, again,
24 nothing's supposed to touch the nerve. I don't know if
25 anyone wakes up when they're sleeping and all of a sudden

1 their fingers are numb, but that is the nerve being
2 compressed, right?

3 So, same thing here. We don't want the spinal cord
4 to be touched, we don't want the nerves to be touched,
5 nothing, okay. So, that's normal. Okay. You could see
6 here also there's nice room here, spinal cord is good,
7 there's no -- this disc is flat, nice.

8 Then, I mean, now that you guys are now doctors,
9 you can see what the problems are, right?

10 So, we come down here. Let's go to the obvious
11 thing in the room, right? So, we come down here, this is
12 C2, okay? That's called the dens, otherwise -- I'm sure
13 people have heard dens fractures. It happens a lot with old
14 people.

15 Anyway, C3, C4, C5. So, we can see here right away
16 that there's a mountain here and, not only is there a
17 mountain here, it's pressing in the spinal cord, right?
18 Remember, the spinal cord is not supposed to be touched.

19 So, then we go here and we correlate this and we
20 say, here's basically the biggest part of this herniation,
21 what's caused the herniation, and it's going to into the
22 spinal cord here and here you can see that, right here, this
23 is also going right into the spinal cord. It's what's
24 called changing the morphology of the spinal cord, right?

25 What does that mean? That means, like, the spinal

1 cord -- here, we'll go back to the regular, the normal
2 level. This is, like, a round thing, a round -- maybe a
3 little bit, like, oblique, but sort of round, right, and
4 then you come down here and you see it's starting to look --
5 it looks like a jelly bean, right? That's not normal,
6 right?

7 And can you see that there's some -- this is the
8 right side. Even though that is left side, it's supposed to
9 be like the body is going like this, right? So, this is the
10 right side and you see that the area here on the right side
11 is narrowed, compared to this area, the foramen. So, the
12 nerve is -- is getting crushed there, right, and we can see
13 he has a big herniation here, right?

14 Then you come down here and this is C5/C6 and you
15 can also see, not as big as the other one, certainly, but
16 there's a herniation here and you can also see, on the right
17 side, it goes here. You see the herniation going into the
18 right foramen, left foramen's mostly open, right foramen a
19 little narrowed, okay?

20 And if you come down here, this is C6/C7. What do
21 we see here, guys, right? We see sort of a broad-based disc
22 herniation, narrowing, putting a little pressure on the
23 spinal cord, and that's basically the MRI of the neck.

24 MR. VARGAS: And, Andrew, if you can, do the lumbar
25 now. Same date, 5/1/19, Lumbar Plaintiff's Eight.

1 THE COURT: Is it also Plaintiff's Eight, the
2 lumbar?

3 MR. VARGAS: Yes, they're both from Lenox Hill,
4 which is Plaintiff's Eight, the films.

5 THE COURT: All the films are Plaintiff's Eight,
6 okay.

7 MR. VARGAS: Yes.

8 A Okay. So, this is the lumbar spine. So, this is, you
9 know, same thing, same thing as the neck, just a little bigger,
10 right, because the lumbar is our keystone, that's what supports
11 us, it needs to be bigger, stronger.

12 So, the bones are much bigger, we could see these big
13 boxes, the disks are here. I'll show you a couple things here
14 that are important. So, you can see herniation, right, we see
15 that the disc is out, it's not flat, like up here, okay?

16 And also something we see here is we see a couple
17 things here. This is the herniation. We see a herniation.
18 There's a little narrowing here, but we see the herniation here.

19 What else do we see? We see that there's a little
20 white in the herniation. What does that mean? We see there's
21 white over here. What does that mean? That there is a tear in
22 the disc, right? There's some trauma that happened there.

23 Another thing that we see is, you see that a normal
24 disc is, what color? It's white. What does white mean? White
25 means that there is water, because MRI's pick up water. It's

1 all based on water molecules and hydrogen and white is good,
2 white is young. You see an MRI of someone who's fourteen or
3 fifteen, it's gonna be all white.

4 What do you see here? His disc is black. He has some
5 sort of trauma, some sort of degeneration, for sure, some sort
6 of trauma, for sure. You see with the tear here that there was
7 some sort of trauma and this disc is different than -- this disc
8 is also black, but most of them are white, right? So, that's
9 another important thing.

10 So, we have the herniation, we have the tear, the
11 herniation and the tear and then we have the black disc
12 disease.

13 Q Doctor, you can take the stand.

14 So, after seeing Mr. Rivera on 4/17/19, and after he
15 got the MRI's, what was the next time you saw him?

16 A Say him on 5/8/2019.

17 Q And, at that time, did you have recommendations for
18 him?

19 A Yes. So, after reviewing all of his imaging studies,
20 doing an exam which showed, correlated to me, that he had
21 decreased strength in the muscle, the C4/5, 5/6 muscle. He also
22 did have decreased sensation, C5 to C7. He failed physical
23 therapy. He had antiinflammatories. He had an epidural to the
24 neck, right? So, he did all of his nonoperative treatment. It
25 was a long time since his accident. So, I recommended for him

1 to undergo anterior cervical diseconomy and the fusion, the
2 surgical procedure, at C4 to C6.

3 Q And, did Mr. Rivera do that surgery?

4 A Yes, he did.

5 Q And do you know when that surgery was?

6 A That surgery was on 10/24/2019.

7 Q And where was that surgery at?

8 A Lennox Hill Hospital.

9 MR. VARGAS: And, if I may, with the Judge's
10 permission, I'm gonna put a blowup if, I may.

11 THE COURT: Yeah.

12 Q Sorry to bring you back down, Doctor, but we have an
13 illustration of the surgery and I'll set it here and, Doctor, if
14 you could, just step down to explain the surgery to the jury.

15 MR. VARGAS: This is Plaintiff's 16.

16 THE COURT: For ID only.

17 THE WITNESS: Is it okay, Your Honor, to go down?

18 THE COURT: Yes, you may step down.

19 THE WITNESS: Okay.

20 A So, you saw -- you guys saw the MRI of the cervical
21 spine and you saw those two big disc herniations, one much
22 bigger than the other one, and, you know, he had multiple disc
23 herniations. In my view, I felt that this was necessary, you
24 know, not to do all of his neck, right, that would be a little
25 crazy, but to do the areas that are causing him an issue.

1 So, what the surgery is, is on the day of surgery, the
2 night before, there's no food, right, you want to have an empty
3 stomach. You come in, the patient comes into the hospital,
4 speaks to the nursing staff in the holding area. Again, I go
5 over everything with the patient and then the patient is
6 brought into the operating room. The anesthesiologist is there,
7 he's put to sleep, meaning he has a breathing tube put into his
8 mouth. He has other devices put on him to measure the hear
9 rate, to measure the blood pressure and to measure his pulse,
10 okay.

11 Then, after that, we get x-ray to see which level we're
12 gonna do. The area is prepped and draped, so that just that
13 area is open to me to see. Everything else is in back of that.
14 We want to keep the field as sterile as possible and make an
15 incision on the neck, okay? We go through the muscle, the soft
16 tissue in the muscle, that's right underneath there and there's
17 a lot of different dangerous structures that are there.

18 There's the esophagus, the trachea, the carotid artery,
19 there's the veins and other nerves. So, we have to go between
20 those very carefully, obviously, right, and then what we do is
21 find where the disc is and take an x-ray, make sure that's the
22 good level and, after that, what we do is we put these pins in,
23 in order to hold that area, because we're using these dangerous
24 devices. We're using these high-speed burrs, we're using
25 curettes, like a carpenter, basically.

1 So, we go in there, take out the whole herniation and
2 we actually -- you have to open it up in order to see the spinal
3 cord, so you can see what's going on over there, make sure
4 there's no pressure on the nerve at all or the exiting nerves
5 and, that's what we did. C4/5, C5/6. At C4/5 I found a huge
6 disc herniation that you saw over there, right, and C5/6 there
7 was a smaller herniation, but there was a herniation there as
8 well, pushing on the spinal cord. Both of them are pushing on
9 the spinal cord.

10 So, after that, we can't just leave these spaces empty,
11 so I put in this titanium cage with some bone graft in it, take
12 the patient's own bone graft and also a cadaver bone graft,
13 which is, like, a dead guy's bone graft, and put that in there
14 to secure it, make sure it doesn't move anywhere. We put a
15 plate on the front with multiple screws and that secures -- this
16 is a side view of the -- of the -- the interbody, as it's
17 called, and the anterior plate.

18 After that, I wash everything, make sure there's no
19 bleeding or anything like that. That's very important. I put a
20 drain in and, for this type of procedure, the patient stays in
21 the hospital. We close him up, patient stays in the hospital at
22 least overnight and we watch him and then he's taken to the
23 recovery room and eventually to the hospital floor.

24 Q And, while you're standing there, I'm gonna show a
25 post-op x-ray in evidence. This is Plaintiff's Eight-B in

1 evidence.

2 A Okay. So, here is a side view of the neck. This is an
3 x-ray. Again, look, you can see the bone really good. You
4 can't really see the discs. So, here's the discs at C4/5 and
5 C5/6 that we took out and the plate with the screws. Sometimes
6 you'll see it looks like there's one screw there, but there's
7 actually two, and this is -- we get regular postoperative x-rays
8 and everything here looks to be good, postoperatively.

9 Q Thank you, Doctor. You can take the stand again.

10 And, Doctor, with a surgery such as this, what would be
11 your expectations on the recovery time?

12 A The recovery time is anywhere between two and six
13 weeks, just to recover from the surgery, and to heal, it's
14 approximately one year.

15 Q And the next time you saw Mr. Rivera after the surgery,
16 was?

17 A The next time he was seen by my office was 11/8/2019.

18 Q And, at that time, did he have -- did he report back on
19 how he was feeling?

20 A He stated that he was happy, very happy, with the
21 outcome of the surgery. He denied any swallowing issues or any
22 hoarseness or any problems like that.

23 Q And did you have recommendations for him at that time?

24 A My recommendation was that he was seen by Dr. Castro,
25 he was to stay in the cervical brace, physical therapy and to

1 followup.

2 Q And did he followup?

3 A Yes, he did.

4 Q And you next saw him?

5 A I next saw him on 12/9/2019.

6 Q And, at that time, did he report how he was feeling?

7 A Well, he continued to complain about back pain. That
8 was an eight out of ten.

9 Q And was that the cervical or lumbar?

10 A Back pain, low back pain.

11 Q Okay. And did you eventually recommend a surgery to
12 the lumbar?

13 A Yes.

14 Q And when did you recommend that surgery?

15 A I recommended that surgery 1/27/2020.

16 Q And, again, did you order MRI's prior to the surgery?

17 A He had MRI's that we went over prior to the surgery,
18 yes.

19 Q And did he have another lumbar one on 5/28?

20 A He did have another MRI, yes.

21 Q And did you find any difference between the 5/28/20 and
22 the MRI you had reviewed earlier in 2019?

23 A No significant one, no.

24 Q Was there a reason you ordered another MRI?

25 A Yes, because we always want the most recent

1 information. So, if the MRI is about a year old or something
2 about that, we always order another MRI.

3 Q And did he have the lumbar surgery?

4 A Yes, he did.

5 Q And when was that surgery?

6 A The lumbar surgery was on 2/18/2021.

7 Q And I'll ask you to step down one more time.

8 MR. VARGAS: With Your Honor's, permission, I'd
9 like to show the witness the illustration of the surgery,
10 Plaintiff's 17 for ID.

11 Q There's your microphone, sorry.

12 A Okay. So, these are pictures of the lumbar surgery,
13 basically the same process as the cervical surgery. However,
14 this -- the patient comes in, is intubated, put fully to sleep,
15 and then is placed in the superman position. They go in a
16 special bed with their arms up and we go through the back. The
17 other one was from the front, this is from the back, and open up
18 the skin in a longitudinal incision and go through all --
19 there's a lot more -- the first one's like a sexy procedure,
20 this is more barbaric.

21 We have to take a lot of the muscle out and it's a
22 bigger surgery, because, in the first one, we move the muscle
23 aside. Here, we're actually cutting the muscle. So, it's a lot
24 more painful, yeah, and we take the muscles all the way out to
25 the sides of the spine and what we do is, with that herniation,

1 we want to take off the pressure from the nerves, okay? It's
2 what's called a laminectomy. We take off the area for the --
3 that's the spinal cord and the chorda equina, the area where the
4 nerves are, and in order to stabilize the spine, because he has
5 this black disc disease, we put these things called pedicle
6 screws. Those are screws that go in from the back. It goes in
7 from this narrow, basically bone island, from the back to the
8 front and it's like an internal cast.

9 What we do, in order for this to heal, is we have -- we
10 put bone graft, because the healing, the bones, need to, like,
11 jump from one another. So, it has to heal. Sometimes it
12 doesn't heal, but, most of the time it does, and this is like an
13 internal fixation. It's like having a cast or if someone breaks
14 a bone, same sort of thing, you get a plate and screws, this is
15 screws and a rod, same thing.

16 Also, we put a drain in, sew the patient up and usually
17 he stays in the hospital about two, three days. This is a
18 longer recovery, about three months, again, about a year to get
19 back to one hundred percent. So, six to twelve weeks to heal
20 from this and then about a year.

21 Q And, while you're standing there, I'll show you some
22 post-op x-rays, Plaintiff's Eight-A?

23 THE COURT: Say that again.

24 MR. VARGAS: Eight-A.

25 A All right. So, this is a side view and we can see at

1 this level, this is the L5/S1 level, and we can see the screws
2 that are going from the back to the front, these are the rods,
3 and this is the postoperative x-ray for Mr. Rivera after his
4 lumbar fusion surgery.

5 Q And Eight-C?

6 A So, you can see here this is another x-ray. This is a
7 front, back x-ray. So, you can see these are the holes, not the
8 holes, but these are the bones that we put the screws in. This
9 is what's called the pedicle and we put the screw through the
10 pedicle into the bone that holds the spine in a rigid construct.
11 Everything looks good here. Over here you can see, it's a
12 little faint, but you can see what's called a little loosensy
13 around this screw.

14 What does that mean? Now we have to have a fusion. A
15 fusion means the bone is rock solid. So, sometimes this
16 happens, where one of the screws, or even it could be all the
17 screws, because the person's living, right, they're bending,
18 they're lifting, they're twisting. So, before it heals,
19 sometimes there's an issue that the screw toggles a little bit.
20 Basically, it's like having a hinge for a door. If you use it
21 enough, the door will fall off at some point. So, he does have
22 some loosening here, but all the other screws look good.

23 Q And what's the likelihood that the loose screw will
24 cause him problems in the future?

25 MR. VAN ETEN: Objection. Objection. Sorry.

1 THE COURT: What was the question?

2 MR. VARGAS: What is the likelihood that the loose
3 screw will cause some problems in the future.

4 THE COURT: What is the objection?

5 MR. VAN ETEN: Form. I'm assuming this is an
6 opinion question.

7 THE COURT: Are you saying he's leading?

8 MR. VAN ETEN: Well, that would be part of it, but
9 if he's asking an opinion, he has to have the proper
10 foundation as to the opinion question.

11 THE COURT: Can we go to the back?

12 MR. VARGAS: I can rephrase it, Your Honor, to make
13 this quicker.

14 THE COURT: Great. Rephrase.

15 MR. VAN ETEN: Thank you.

16 Q Do you have an opinion, with a reasonable degree of
17 medical certainty, as to whether that loose screw will cause any
18 future problems for Mr. Rivera?

19 A Well, actually, there's a lot of medical literature, so
20 I don't have to state my opinion. The literature says that, you
21 know, about five, ten percent, it could be up to twenty percent,
22 have any misplaced screws or some loosening in the screws, okay?

23 Now, what does that mean? Again, we don't treat
24 x-rays, we don't treat MRIs, that's not what we do. We take it
25 as a whole. So, if I say to Mr. Rivera today, if I say to

1 anyone today who had a fusion, how do you feel and if they feel
2 better than they felt beforehand and they have some minimal pain
3 or whatever it is, obviously, we can investigate it and see what
4 the story is.

5 But, one screw on one view, on the other view it
6 doesn't have any loosensy, here -- I mean, there is a
7 possibility that it's not healed. That's for sure a
8 possibility. So, what do we do for that? We get a CAT scan, if
9 it was an issue, right, because a CAT scan is gonna show bone,
10 right, so it's gonna show if there's healing here. If it's not
11 healed, then what do we do? It's up to the patient, right? We
12 have a conversation. It's not just like you have to do this.
13 This is not cancer.

14 So, what it is, usually, if there is what's called a
15 pseudoarthrosis, meaning that the bones did not heal together,
16 then, what would be required is a secondary procedure. A
17 secondary procedure would be, in my opinion, a bigger procedure,
18 because you would have to go through the front and revise,
19 possibly revise, the screws in the back in order to make this
20 heal and maybe twenty, thirty percent that would happen.

21 Q Thank you, Doctor. You can take the stand.

22 After the surgery on 2/18/21, when was the next time
23 you saw Mr. Rivera?

24 A The next time he was seen was 3/3/2021.

25 Q And at that time did he -- did he report back how he

1 was feeling?

2 A He stated he felt better than preoperatively.

3 Q And you already told the jury that you would expect
4 about a year to see the full extent of healing for this type of
5 surgery?

6 A That's correct.

7 Q And I want to draw your attention to July 28, 2021.

8 A Go ahead.

9 Q You saw Mr. Rivera on that date, correct?

10 A That's correct.

11 Q And you did a physical exam?

12 A Yes.

13 Q And what were your findings?

14 A Regarding the cervical spine, there was spasm in his
15 muscles. Otherwise, his power was intact, five out of five, so
16 he had full power, the power that he had before was better.
17 That power decreased that he had was better. His sensation was
18 intact, he had no numbness. Everything else was normal in the
19 cervical spine.

20 Regarding the lumbar spine, there was pain to palpation
21 at the paraspinal musculature. So, if I touched the muscles,
22 there was some pain. His power was intact, sensation was
23 intact. Otherwise, his exam was normal.

24 Q And, as far as the spasm, sometimes there's terms of
25 objective and subjective findings, correct?

1 A Yes.

2 Q What's the difference between those two?

3 A Well, if it's -- objective is like it's really there.
4 Subjective means it's open to interpretation.

5 Q And what would you consider a spasm?

6 A A spasm is -- well, you feel a muscle, it's hard or
7 soft. So, it is what it is.

8 Q So, objective?

9 A It would be objective, yes.

10 Q And what is the significance of spasms?

11 A Spasms means there's some sort of inflammation, some
12 sort of process going on, in order to make the muscles contract.
13 It's like anything, you know? If you -- if your body - if you
14 hit your arm, right, what does your body want to do? You wanna
15 keep it to your side. You're not going bowling. So, the
16 muscles tense up. It wants to be in a position of comfort. It
17 doesn't want you to move in order to cause pain.

18 Q And then an example of subjective findings?

19 A Subjective is basically if I touched him and he said he
20 has pain. That's subjective. It's up to a patient to say what
21 their pain is.

22 Q And can you tell the jury how many times you saw Mr.
23 Rivera after the lumbar surgery?

24 A He was seen by my office nine times.

25 Q And the last time you saw him was?

1 A 6/22/2022.

2 Q An, at that time, did you examine him?

3 A Yes.

4 Q And what were your findings?

5 A Similar.

6 Q And had he improved since the lumbar surgery?

7 A He -- I believe he did, yes.

8 Q Okay. And, as far as his cervical surgery, by that
9 point that was three years?

10 A Yes.

11 Q And how was his cervical spine?

12 A Better than preoperatively, that's for sure.

13 Q And, Doctor, do you have -- I want you to assume that
14 Plaintiff has testified that he was working as a laborer on
15 March 15, 2018 when a fifteen to twenty pound pipe fell,
16 striking his head, twisting his neck, causing him to fall to the
17 ground, and I want you to assume that, after that accident, he
18 was diagnosed with herniations to C4/C5, C5/C6, L5/S1.

19 Do you have an opinion, with a reasonable degree of
20 medical certainty, as to whether those injuries and treatments
21 are causally connected to that accident?

22 MR. VAN ETEN: Just note my objection.

23 THE COURT: What's the basis?

24 MR. VAN ETEN: Form. Foundation.

25 THE COURT: Overruled.

1 Q Do have you an opinion, Doctor?

2 A If the history provided is correct, within a reasonable
3 degree of medical certainty, yes.

4 Q And, Doctor, do have you an opinion, with a reasonable
5 degree of medical certainty, as to his future prognosis for Mr.
6 Rivera?

7 A That's a good question. You know, certainly, as a
8 laborer, I would not recommend that he does any heavy labor
9 stuff. Certainly, he could do something that's light work,
10 sedentary, you know, answering a phone, office job, something
11 like that. Nothing -- nothing that's gonna cause a twenty pound
12 pipe to hit him in the head.

13 Q And do you have an opinion, with a reasonable degree of
14 medical certainty, as to whether his injuries are permanent?

15 A Certainly those screws are permanent.

16 Q And I have no further questions. Thank you, Doctor.

17 THE COURT: Do you want -- do you need a break or
18 do you want to go right into cross?

19 THE WITNESS: Do you mind if I go to the bathroom?

20 MR. VAN ETEN: He needs a break.

21 THE COURT: We'll take a five minute break.

22 Thank you very much.

23 COURT OFFICER: All rise. Jurors exiting.

24 THE COURT: You're having fun, that's a good thing.
25 Some jurors get bored, but you guys are having fun.

1 MR. VAN ETTEN: They doesn't get bored until I ask
2 the questions.

3 (Whereupon, the jury exits the courtroom)

4 (Whereupon, a short recess was taken)

5 THE COURT: Everybody's back? Okay.

6 We can bring the jurors down.

7 COURT OFFICER: All rise. Jurors entering.

8 (Whereupon, the jury entered the courtroom)

9 THE COURT: You may be seated.

10 Counsel, you may inquire, when you're ready.

11 MR. VAN ETTEN: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. VAN ETTEN:

14 Q We're still in the morning. Good morning, Doctor. How
15 are you?

16 A Good morning. Good. How you doing?

17 Q Good. Doctor, the first time you and I have met is
18 today?

19 A I think so.

20 Q And I introduced myself outside when Mr. Vargas was
21 there, just to say hello?

22 A Yes.

23 Q And I took a look at your chart that you brought in, is
24 that correct?

25 A That's correct.

1 Q Okay. I'm gonna ask some questions right now, and
2 Counsel has graciously agreed to put up the two films that you
3 looked at and, to make it easier, we'll start there and then go
4 in and talk to you about a few things. Is that okay?

5 A Whatever you'd like.

6 Q Can we start with the lumbar, please? Thank you. All
7 right, if you want to come down, that's fine. If not, I think
8 we can do it from this space. So, we can do this, these are the
9 lumbar spine films that we looked at before, correct?

10 A Um --

11 MR. VAN ETTEN: Can you go to six? I'm not sure if
12 it was six or seven. I'm not sure which is different.

13 THE COURT: The MRIs are all Plaintiff's Eight.

14 MR. VAN ETTEN: Yes, but, I mean, image seven of 15
15 or six of 15. I wrote down in my notes six, but I'm not
16 sure. I don't know if it matters.

17 Q Six or seven is pretty much the same images, correct?

18 A I don't know what you are referring to.

19 Q The lumbar, right here?

20 A Yes.

21 Q Okay. One of the things that you said before, and
22 correct me if I'm wrong, but you said that these discs -- there
23 was some discs that were white and there were some that were
24 black, is that correct?

25 A That's correct.

1 Q Okay. And the white, you said, was showing a good disc
2 because it had lots of fluid and water, correct?

3 A That's correct.

4 Q And that is how a disc would be in a normal
5 presentation when it hasn't been damaged, true?

6 A Yes.

7 Q All right. So, looking from this, and I'll go down
8 here, the disc down here, is that L5/S1 that is black?

9 A Yes.

10 Q And, so, that would be L4/L5 right above that, which is
11 predominantly white?

12 A Correct.

13 Q And then L3/L4, predominantly white?

14 A Mostly, yes.

15 Q And then at L2/L3, it's a little bit darker and gray
16 there, correct?

17 A That is correct.

18 Q Then the next two are all white?

19 A Correct.

20 Q Fair?

21 A Yes.

22 MR. VAN ETTEN: Can you go back to the seven out of
23 15, the next one? Thank you.

24 Q And right there, again, it looks here that they're a
25 little bit darker, just from that film image, fair?

1 A About the same.

2 Q Okay. And you said that was black disc disease that
3 you showed in the lumbar spine?

4 A Correct.

5 Q And black disc disease can be caused by degenerative
6 changes, correct?

7 A Yes.

8 Q And degenerative changes take years to develop,
9 correct?

10 A It depends. That's a good question. So, how does the
11 body respond? First of all, everyone is different, number one.
12 Can degenerative changes take years? Yes, of course they can.
13 Can, after a trauma, a disc change in six, twelve weeks? Yes,
14 of course it can. So, it can happen faster with a trauma.

15 It's sort of like -- I don't know, I like to use this
16 analogy. If you ever saw where there's water in a bottle,
17 right, and it's water, it's fine. And then, all of a sudden,
18 the water is spilled out and it turns to ice, right? So, what
19 happened? It didn't -- how long does it take water to freeze to
20 ice, right? We know how long it takes. But, if there's
21 something that happens to that water, can it freeze
22 instantaneously, someone slams that water? Of course it can.

23 So, same thing here. If someone has trauma in their
24 back -- I don't know what his disc looked like before. I don't
25 think he had an MRI before, as far as I know. So, can it be

1 that it's degenerative, that it took years? Of course. Did he
2 have a trauma that he told me about? Yes, he did, and it's
3 degenerative now. So, it's possible that that was the cause as
4 well.

5 Q When you -- and I appreciate your explanation, Doctor,
6 and, just by way of ground rule, when we go forward, I will
7 generally give doctors the opportunity to explain themselves,
8 kind of like I did, and you weren't here, but Mr. Rivera.

9 There may be times, though, that I specifically ask you
10 yes or no questions and if you can't answer those, I will let
11 you know on those questions, please, yes or no, and if you can't
12 answer it yes or no, just do that. Is that fair?

13 A Of course.

14 Q Okay. Because, didn't you also say when you first were
15 describing this, a fifteen-year-old would not have that?

16 A Yes, mostly not. I mean, I have seen it in some young
17 people, but most normal, young people would have nice, bright
18 discs.

19 Q And the reason you used age is because that is a fact
20 that happens and you frequently see that as a spinal surgeon
21 that younger people don't have degenerative changes, it takes
22 time. Is that a fair statement , yes or no?

23 A I can't answer it in the yes or no answer.

24 MR. VAN ETTEN: Can we just go now to the cervical
25 ones, please? Thank you. And I believe it was six or seven

1 on that one also. Okay.

2 Q Now, looking at the cervical films that you talked
3 about before with the jury, we have also the cervical levels
4 there and you discussed your findings there, correct?

5 A Yes.

6 Q And all of the cervical discs are black and not fully
7 white, correct?

8 A That is correct.

9 Q So, all of the cervical discs are showing evidence of
10 degenerative changes. You would agree with that, correct?

11 A That's correct.

12 Q All right.

13 MR. VAN ETTEN: Thank you for that. I appreciate
14 your help.

15 Q All right. Now, you just mentioned a couple things.
16 You mentioned you don't know if there were any films of Mr.
17 Rivera from before the incident, correct?

18 A That's correct.

19 Q Are you aware there were films taken within about 22,
20 23 days of the incident?

21 A I had the lumbar MRI. I believe that was right
22 afterwards, correct.

23 Q From Kolb Radiology?

24 A From Kolb, yeah.

25 Q All right. And you have those reports in your file,

1 correct?

2 A I have the report of the -- only the lumbar, as I told
3 you.

4 Q Okay.

5 A From 4/7/2018.

6 Q Okay. 22, 29 -- March has 31 days, so two more, so the
7 5th would be three weeks. So, again, that's about 23 days
8 afterwards. That would be fairly representative of the
9 condition of the lumbar spine before the incident, true?

10 A If there's a trauma, you really have to take into
11 account the trauma. So, it wouldn't be representative, right,
12 because there was a trauma. So, there can be differences before
13 an MRI that pre-trauma and after trauma.

14 Q Well, we'll get to the trauma in a little bit, but, do
15 you have the films in your records? In other words, the films
16 from Kolb Radiology, did you actually look at those films or
17 only the reports?

18 A At some point I probably looked at the films.

19 Q And how did you do that?

20 A Through their portal.

21 Q Okay. Sorry, through their?

22 A Their portal.

23 Q Through their portal, okay. And did you make any
24 comments on your thoughts of what they showed in any of your
25 records?

1 A I don't believe that I had the MRI films at that point.
2 I don't think I had access to the portal in 2019. So, probably
3 not at that visit.

4 Q And, Doctor, you gave, at some point, an expert
5 disclosure in this matter, correct?

6 A I'm sure my office did. I have no idea.

7 Q Well, you're aware that you've been brought in as an
8 expert, fair?

9 A Yes.

10 Q Okay. And, prior to coming in, did you see the expert
11 response that was served by Plaintiffs on behalf of you coming
12 in as an expert?

13 A What is that?

14 Q Okay. You don't know what that is? Did you do a
15 report for the attorneys before coming in?

16 A Yes, I did.

17 Q And did you know that that report was for the purposes
18 of you coming in as an expert?

19 A I would imagine so.

20 Q Okay. And, as part of that, did you discuss, in order
21 to provide the opinions that you gave, the records that you
22 reviewed as part of this litigation?

23 A Whatever's in the report, yes.

24 Q Okay. Do you know off the top of your head?

25 A I don't have the report with me, no.

1 Q Okay. So, you didn't bring the report in?

2 A No, it's not part of the chart.

3 Q Well, correct me if I'm wrong, but right at the end,
4 Mr. Vargas asked you three opinion questions, correct?

5 A Yes.

6 Q And the first opinion question he asked you at the end
7 on causation, you responded, if the history given to me was
8 accurate, correct?

9 A Of course, yes.

10 Q And, if I'm looking at your office note on the first
11 visit, right, do you have that, from April 17, 2019, in front of
12 you?

13 A Yes, I do.

14 Q Okay. The description of the incident you got was,
15 forty-eight-year-old male who was injured while at work on
16 3/15/18.

17 A That's correct.

18 Q That's the history you got?

19 A No, there's obviously more history, and in preparation
20 for the paper that I wrote, obviously I reviewed many, many,
21 many records as well.

22 Q Well, I'm just -- but throughout your -- the entirety
23 of all your office notes, that is the only description of the
24 incident you ever gave, fair?

25 A That's correct, yes.

1 Q Okay. When Mr. Rivera came to you, did he fill in an
2 intake sheet?

3 A Yes.

4 Q And is the intake sheet with your records?

5 A I'm not sure. I can go through it.

6 Q Please do.

7 A It's not here, no.

8 Q Okay.

9 MR. VAN ETTEN: Your Honor, may I please have this
10 marked, Your Honor, Defendant's Exhibit B for
11 identification, please?

12 THE COURT: Can I see it?

13 MR. VAN ETTEN: Oh, I'm sorry.

14 THE COURT: No problem. You can mark it.

15 MR. VAN ETTEN: Thank you, Your Honor.

16 THE COURT: Defendant's B for ID.

17 (Whereupon, the Subpoena Served on Comprehensive
18 Orthopedic & Spine Care was marked as Defendant's Exhibit B
19 for identification, by the Reporter)

20 Q Sir, I've just given you Defendants B for
21 identification. It's a subpoena that was served on
22 Comprehensive Orthopedic & Spine Care. Is that your office?

23 A Yes.

24 Q And that's a subpoena for the records to be brought
25 into court for testimony today?

1 A Yeah, they were sent in. This is not -- this I brought
2 in myself.

3 Q Okay. So, when you brought in that, we -- we -- did
4 Mr. Vargas ask you, because he told you that I was asking you to
5 bring in your full chart for Mr. Rivera?

6 A I was told to bring in my chart, yes.

7 Q All right.

8 A Full chart is like whatever was sent in here, I would
9 imagine. I don't handle subpoenas in my office, certainly.

10 Q So, when you brought in the chart, you did not bring in
11 the intake sheet for Mr. Rivera, fair?

12 A Certainly, I did not print this chart. It was printed
13 by my office staff. I just told them to print my chart.

14 Q Well, the subpoena requested intake information and new
15 patient information and documentation, did it not?

16 A Yes, but this was brought in by me. The subpoena --
17 you have records that were sent in by the subpoena, correct?

18 MR. VAN ETTEN: I'm sorry, Your Honor, may I go
19 over here, please?

20 Q I'll show you what's been previously marked as
21 Plaintiff's Four for identification.

22 A I'm happy you're showing this to me, because we
23 recently fired the person who handled medical records. So, this
24 is very poor quality printing. I would never send this to
25 court.

1 Q I'm not responsible for getting that person fired,
2 right?

3 A After today, I don't know, but, yeah, you know?

4 Q You can agree with me those were the records sent into
5 court by your office?

6 A If this was what was in this followed, I would imagine
7 so, yeah.

8 Q Okay. And that does not include the intake sheet,
9 correct?

10 A Yes, it does not. I mean, we can have it sent to you,
11 it's not an issue.

12 Q So, the only history we have from you for Mr. Rivera as
13 to how he was injured was that he was injured while at work,
14 correct?

15 A No.

16 Q Well, it does not make any notation in any of your
17 office notes how the accident occurred, true?

18 A Correct.

19 Q Okay. And you did not bring in a narrative report?

20 A That's correct.

21 Q So, the records that are in evidence for this jury from
22 -- you have no records as to how the accident occurred, fair?

23 A As I said, incorrect. As I showed you, these charts
24 and you went through before, there is -- and I stated before
25 that I had records from Dr. Grimm. Dr. Grimm, in his history of

1 present illness, and I had this at the first visit, stated that,
2 with a translator, he was referred by Dr. Kaplan for pain
3 management and evaluation. While working construction, patient
4 sustain a work related accident on March 15, 2018. Construction
5 piping material fell onto him, causing injuries to his head,
6 neck, lower back and nose. He was driven to Mount Sinai West
7 Hospital. Treatment following release.

8 Q Okay. Thank you. That was going to be my next
9 question, because the other opinion question asked of you by Mr.
10 Vargas was, I want you to assume that Plaintiff testified that
11 he was struck by the pipe and twisted his neck and then fell to
12 the ground.

13 Do you remember being asked that part of a precursor to
14 the first opinion question?

15 A I don't know. I don't remember if he said he twisted
16 his neck, but it's possible.

17 Q Okay. And you would agree with me that there's no
18 mention of a twisting of the neck or a falling to the ground in
19 the note of Dr. Grimm?

20 A It does not say anything about twisting of the neck,
21 no, or falling to the ground, no.

22 Q Correct. So, all you know is that a pipe fell and
23 struck Mr. Rivera, fair?

24 A I know that --

25 Q Is that true? Is that fair, I mean?

1 A No.

2 Q Okay. Because, you did say you reviewed records when
3 you did your narrative report and you said you reviewed Dr.
4 Grimm's records, Lennox Hill Hospital medical chart, MRIs and
5 CAT scans from Kolb Radiology, MRI and CAT scan from Lennox Hill
6 Radiology, correct?

7 A Correct.

8 Q Those are the only records you reviewed before you gave
9 a report to address causation, fair?

10 A Well, I -- in the course of treating him, obviously, I
11 reviewed insurance company documentation as well.

12 MR. VAN ETTEN: Move to strike, Your Honor, about
13 insurance company documentation.

14 THE COURT: Stricken from the record.

15 THE WITNESS: He asked the question.

16 Q Doctor --

17 THE COURT: I need objections when there's
18 questions about stuff that should not be discussed in front
19 of the jury. I didn't hear the question.

20 Try not to ask those types of questions.

21 MR. VAN ETTEN: Okay. Sure, Your Honor.

22 Q What I'm saying, Doctor, is when your narrative of
23 report of March 22, 2023 addressed the records that you reviewed
24 in preparation of your report on an opinion, it listed the
25 records that you reviewed, fair?

1 A Yes.

2 Q Okay. And we just said that those records were Grimm,
3 Lennox Hill Hospital, Kolb Radiology and Lennox Hill Radiology,
4 fair?

5 A For the narrative, yes.

6 Q Okay. Did you review Mount Sinai?

7 A Whatever I put down there, that's what I reviewed.

8 Q Well, do you remember seeing the Mount Sinai Hospital
9 records?

10 A I can't tell you. If it's not there, then I didn't
11 review it.

12 Q Okay. Well, if it's not there, you didn't review it.
13 I'm asking, from your memory, did you ever, during the 2019
14 treatments up until you ended your treatments in 2022, those
15 three years, did you ever review Mount Sinai Hospital records?

16 A I can't tell you one hundred percent that I did or did
17 not.

18 Q And Mount Sinai was, what, in relation to Mr. Rivera's
19 care?

20 A I believe he went to their emergency room.

21 Q How many times did he go to Mount Sinai?

22 A A couple of times.

23 Q Okay. And that would have been the initial treatments
24 he received?

25 A Correct.

1 Q And that would be where the mechanism of injury may be
2 discussed, fair?

3 A Is that a yes or no?

4 Q Yes. Would that -- I'll ask you yes or no, sure.

5 A I can't answer it in a yes or no answer.

6 Q And is one of the reasons you can't answer it yes or
7 no, because you never looked at those records and don't know
8 what they showed?

9 A No, that's not why. The reason why is, as we all know,
10 you go to ERs, right? I've been to an ER, I was an EMT in many,
11 many ERs, I did rotations in an ER, I worked in an ER. What
12 happens when someone is bashed in the face? Are they gonna talk
13 about his foot or his back? He was bashed in the face. They're
14 addressing the injury that happened to him. They may check off
15 a box that says his back is okay or his neck is okay, but
16 they're putting sutures in his face, they're fixing his nose and
17 that wasn't the focus of the emergency room record.

18 Q And you know that that's what was done here, that they
19 just checked off boxes, even though you didn't review the
20 records?

21 A Well, I can't tell you that's one hundred percent what
22 they did here. I can tell you, as a general rule, that I've
23 seen this many times in the emergency room, being in an
24 emergency room.

25 Q And you've been in the emergency room as an EMT,

1 correct?

2 A That's correct.

3 Q So, you're saying to this jury that when they go to the
4 emergency room, the emergency room doctors just check off boxes
5 and don't care about the patient that's coming in, is that true?

6 MR. VARGAS: Objection. That's a
7 mischaracterization of his testimony. He didn't say that.

8 THE COURT: Sustained.

9 MR. VARGAS: That they don't care.

10 THE COURT: Sustained.

11 MR. VAN ETEN: Sure.

12 Q You have absolutely no knowledge of what examination
13 was done of Mr. Rivera, true or false, at Mount Sinai West?

14 A No, I don't. I was not there. I don't know.

15 Q Okay. So, when you just made that long statement about
16 what they wouldn't have done at the emergency room, you have no
17 firsthand knowledge that they didn't examine Mr. Rivera
18 properly, true?

19 A I can't answer that as a yes or no question.

20 Q Well, you don't understand what I asked you about
21 firsthand knowledge?

22 THE COURT: Were you there?

23 THE WITNESS: No, of course not.

24 THE COURT: Do you have firsthand knowledge of what
25 happened?

1 THE WITNESS: No.

2 THE COURT: There you go.

3 Q As a physician, because you just talked before about
4 Lennox Hill Radiology, that you looked at those records,
5 correct?

6 A That's correct.

7 Q And, as a doctor, you have to look at records like Dr.
8 Grimm, who referred a patient to you, and you look at those
9 records and you trust the doctor that sent you the records,
10 true?

11 A Yes.

12 Q That's something doctors do, true?

13 A Yes.

14 Q And, if a patient treats at Mount Sinai Hospital and
15 you are going to come into court as an expert and give an
16 opinion, shouldn't you review the Mount Sinai Hospital records
17 before you give an opinion?

18 A I would like to see all the records.

19 Q And did you see them in this instance?

20 A Not that I can remember.

21 Q Okay. Did you see the Lincoln Hospital records for Mr.
22 Rivera?

23 A No.

24 Q Do you know that he treated at Lincoln Hospital after
25 this incident?

1 A I can't say that, no.

2 Q Were these the only records that were given to you by
3 Plaintiff's attorneys?

4 A I can't say one hundred percent.

5 Q I'll show you what's been marked into evidence as
6 Plaintiff's Exhibit Seven, the Mount Sinai Hospital records.

7 A Thank you.

8 Q Just looking at that quickly, does that refresh your
9 recollection if you ever saw those records before? That's my
10 first question.

11 A I don't believe I did.

12 Q Okay. And I will try to do this quickly. I mean,
13 unfortunately, they're in a different order than mine, but there
14 are three dates that Mr. Rivera was seen at Mount Sinai West
15 Hospital. It was March 15, 2018, the date of the incident,
16 March 23, 2018 and March 26, 2018. I know this is only a
17 cursory view. Would you have been able to see that fact?

18 A Is that a question?

19 Q Yeah, have you been able to see that just from that
20 quick look at that?

21 A I can't look quickly to give an opinion, but I'll trust
22 you that those are the three days that he went.

23 MR. VAN ETTEN: What I will then do, Your Honor, to
24 make this go a little bit quicker, if I can, is I'm gonna
25 take out some of the records that I have so that I can show

1 it to the witness so that he can see what it is and it will
2 move this along or, perhaps, I could use the ELMO, actually.
3 Now I just have to figure out how to turn this thing on.

4 A It's okay. I'll be done with this fairly fast.

5 Q Okay. Thank you. I appreciate that, Doctor.

6 A No worries. It's okay. You can go ahead. What
7 question would you like to ask?

8 Q All right. Do have you March 15, 2018 in front of you?

9 A Yes, I do.

10 Q Okay. And, at that time, was Mr. Rivera seen by three
11 different doctors or two doctors and a physician's assistant?

12 A It looks like Katherine Little, PA.

13 Q Mm-hmm. Was there a Vincent Chavanon, C-H-A-V-A-N-O-N,
14 a plastic surgeon?

15 A I'm looking here. A lot of Katherine Littles. Do you
16 have the page number?

17 Q Chavanon, the number I have is two of five on the
18 bottom. I don't know how it is on there.

19 A Let me look.

20 MR. VAN ETTEN: May I approach please, Your Honor?

21 THE COURT: Yes, of course.

22 MR. VAN ETTEN: Thank you.

23 Q I'm gonna show you?

24 A I trust you, okay? That's fine.

25 Q We'll do it from here. So, it's Katherine Little, PA,

1 Vincent Chavanon, plastic surgeon --

2 THE COURT: Just make sure the Court Reporter is
3 getting what you're saying, Counsel.

4 Q And Tommy Wong, the emergency medicine doctor?

5 A Yes. It looks like it -- those are different than
6 this.

7 Q Different order, I know.

8 A No, those are not the same. This is -- that's very
9 different.

10 THE COURT: If you want to make sure the record is
11 clear, do we know what we're referring to?

12 MR. VAN ETEN: Yeah, I will do that, Your Honor,
13 sure, but just the way they printed it out is --

14 THE COURT: Yeah, there's always a problem with the
15 way they print things out and it gets really confusing.

16 A Do you mind if I look at this?

17 Q Absolutely not. Sorry, they front and backed it,
18 Doctor. That's one of the things they did.

19 A Yeah.

20 Q Okay.

21 A Okay.

22 Q Okay. Thank you.

23 A No worries, I'm good.

24 Q Great. Thank you. So, first thing, Doctor, having
25 just had an opportunity to look at those records, would you

1 agree that there were two doctors and one physician's assistant
2 that examined Mr. Rivera on the day of his accident?

3 A That's correct.

4 Q Okay. And the physician's assistant, can you tell the
5 jury what that is?

6 A Physician's assistants are -- I don't think they want
7 to be called physician's assistant anymore. I think it's
8 physician's associate. It happened, like, this week.

9 Q It happened two months ago. My second eldest daughter,
10 yes, I know it quite well, Doc.

11 A So, I'll tell you, a physician's associate, a
12 physician's assistant, it is what it says. They like to call us
13 doctors now not doctors, they like to call us providers, okay?
14 We provide care. We're not physicians anymore.

15 Anyway, so, a physician's extender is basically where
16 you have one doctor and they are allowed, I believe, this is not
17 -- I don't know one hundred percent, but I think, because I
18 don't have any PA's that work for me, one doctor I believe can
19 have up to four PA's. Is that correct? Your daughter is a PA,
20 so, is it four PA's? Something like that. So, one doctor can
21 have four Pa's working underneath them.

22 Now, what does that mean, right? So, they trust these
23 extenders to provide care to patients and they sign off on it,
24 meaning the doctor takes responsibility and signs off on this
25 care and they, you know, have to obviously trust the PA. In

1 this case he says that he actually evaluated the patient
2 himself, but they're physician extenders, they're basically,
3 like, a junior doctor, I would say.

4 Q Okay. And, just in having the opportunity to review
5 those notes, at least two of them did a review of systems and
6 did physical examinations, correct?

7 A Yes.

8 Q Okay. And the history that was given, and this is in
9 evidence that the jury can look at, was forty-seven-year-old
10 male with no prior medical history presents status post
11 laceration of nose times twenty minutes ago, piece of insulation
12 fell from ceiling at work and cut his nose. Patient states that
13 the insulation cut the left side of his nose, there was a flap
14 that he put back and he has been holding pressure on the area
15 since. Patient denies taking any medication for pain.

16 Okay, that's in the note there that you just read?

17 A Yes.

18 Q And that is a different history than you got from Dr.
19 Grimm, true?

20 A Yes.

21 Q Okay. And then it also talks, patient denies
22 fever/chills, dizziness, loss of consciousness, head trauma, use
23 of blood thinners, nausea, vomiting, amnesia to event, neck
24 pain, numbness, tingling, weakness of the extremities.

25 Is that also what was recorded?

1 A That's what it says there, yes.

2 Q And, originally, Mr. Vargas asked you the first thing
3 you do when you saw a patient was take a history, correct?

4 A That's correct.

5 Q And that's what this would have been with taking a
6 history by the physician assistant at the hospital, fair?

7 A Yes.

8 Q And, also, as part of that, they have to review
9 systems. What's a review of systems?

10 A So, it's basically going over the systems and then
11 putting a check mark that it's either okay or there's an issue.

12 Q And on musculoskeletal they said it was negative,
13 correct?

14 A Musculoskeletal they said negative, correct.

15 Q And that would be that there are nothing abnormal
16 musculoskeletally being complained of, fair?

17 A As per them, yes.

18 Q And, also, there's a physical examination part of the
19 exam, correct?

20 A Yes, there is.

21 Q And that's where they made reference to the laceration
22 to the nose, correct?

23 A Yes.

24 Q And then they also have for the neck, normal range of
25 motion, neck supple. Is that correct?

1 A That's what it states.

2 Q And normal range of motion would mean that they checked
3 the range of motion, side-to-side, up and down and things like
4 that, correct?

5 A Well, I wasn't there. So, I can't tell you what they
6 did or how they measured normal range of motion.

7 Q Would that be the practice?

8 A Would what be the practice?

9 Q That if you're gonna do a range of motion examination
10 and record it in a hospital note, that you have to do the
11 examination?

12 A Well, if you look at my examination, per se, range of
13 motion, I have ranges, what normal is and abnormal is. There's
14 just says range of motion norma. I don't know what that means.
15 Compared to what? A stick? There's no context. This is what
16 I'm talking about with checking off boxes. Obviously there is
17 -- well, you could ask the questions, I'm not gonna.

18 Q No, that's fine. Neck supple. That's something you
19 referenced in your notes, correct?

20 A Correct. Supple means normal appearing.

21 Q So, then the neck was noted to be normal appearing, you
22 would agree with that?

23 A Correct.

24 Q And then it also says normal range of motion
25 musculoskeletal, he exhibits no tenderness or deformity,

1 correct?

2 A I don't know exactly where you are, but I'll trust you.

3 Q It's right where normal range of motion neck supple in
4 the examination part from Little.

5 A Okay.

6 Q Okay. And then he then saw the plastic surgeon and
7 then the ER doctor and was discharged, correct?

8 A I believe so, yes.

9 Q Okay. I want you to assume that Mr. Rivera testified
10 yesterday and, while testifying yesterday, he told this jury
11 that he only saw one doctor at the hospital. From a review of
12 the hospital records, you would agree then that that testimony
13 is inconsistent with the records?

14 A Is that a yes or no?

15 Q Yes.

16 A I can't answer that in a yes or no.

17 Q Okay. And then he also said to this jury yesterday
18 that he couldn't speak. Is there a recorded history that was
19 given by Mr. Rivera in these records?

20 A I don't see anything, but a good point would be, was it
21 English he couldn't speak? Because there's no translator noted
22 here.

23 Q Very good point. Mr. Rivera told this jury, because of
24 the injuries he sustained, he was unable to speak. There was an
25 interpreter, someone who interpreted from Spanish, but he

1 couldn't speak because of his injuries.

2 Was a history given describing the incident, describing
3 what he did with putting pressure onto the area, and describing
4 the lack of compliance given by Mr. Rivera in the note you just
5 read?

6 A One more time. I didn't hear the --

7 Q Was there a history given, was there a description as
8 to lack of complaints by the patient to the hospital from the
9 note you read?

10 A I didn't see it there, no.

11 Q All right. And he also went on to followup visits on
12 the 23rd and 26th, is that correct?

13 A I'll trust you with the dates.

14 Q Okay. And, at those times, they also did examinations
15 of both the neck and found that the range of motion was normal
16 and that the neck was supple on the 23rd and the 26th, correct?

17 A Yes, I will believe you.

18 Q And they also had musculoskeletal -- that there were no
19 complaints of pain to the neck during those two later visits,
20 true?

21 A Correct.

22 Q Would that have been something relevant to you from a
23 history as to how the incident occurred or the initial
24 manifestations from the accident?

25 A Is that a yes or no question?

1 Q Would that have been relevant to you?

2 A Right, I can't answer that in a yes or no question.

3 Q So, when you're giving an opinion, the initial
4 treatments, the initial complains, and the initial description
5 of the mechanism of the incident, you can't tell this jury that
6 that would be relevant to you?

7 A I said I can't answer yes or no. If you'd like me to
8 explain, I'd be more than happy to explain.

9 Q Okay. Also, on the note of 3/26/2018 from Dr. Felicia
10 Hercules, she also states on the musculoskeletal exam, negative
11 for back pain, correct?

12 A Okay.

13 Q So, at that point, eleven days after the incident, Mr.
14 Rivera was not complaining of back pain to the hospital, fair?

15 A As per the note.

16 Q Okay. Okay. You told the jury a little bit about your
17 background and we got your CV with from Plaintiff's attorney.
18 In your CV it says that you have hospital privileges at Lennox
19 Hill Hospital, Mount Sinai and New York Hospital Queens, is that
20 correct?

21 A The CV is an old CV. I don't go to those hospitals
22 anymore.

23 Q You're not affiliated with them anymore?

24 A No.

25 Q Did you resign in February of this year from them?

1 A February of this year? No.

2 Q When did you stop being affiliated with them?

3 A A couple of years ago.

4 Q Where are you affiliated now?

5 A I have hospital privileges at Hudson Regional Hospital
6 and Mercy Hospital.

7 Q Where's Hudson Regional?

8 A In Jersey.

9 Q And is Mercy the one out in Long Island?

10 A Yeah, it's in Rockville Centre.

11 Q Okay. When did you become affiliated with them?

12 A Mercy, I think, like 2018, 2019, something like that.
13 Hudson Regional Hospital was more recently. I don't know the
14 exact date.

15 Q Okay. I asked you briefly before about Dr. Kolb, the
16 Kolb Radiology films, and whether or not you reviewed the films
17 and you said you may have done that through the portal, correct?

18 A Correct.

19 Q But you don't always read the films, correct?

20 A What do you mean?

21 Q Well, when you get reports, sometimes you don't always
22 look at the films and make a reading of the film, correct?

23 A I don't understand the question.

24 Q Well, when you get a new patient and you get records or
25 documents, do you always look at the MRI's before -- again, the

1 original MRI's, like in this particular instance I'm talking
2 about Kolb. They were a year before, as you said, correct?

3 A Yes.

4 Q And then you thought new ones should have be gotten,
5 correct?

6 A Correct.

7 Q Do you have a specific recollection as to whether or
8 not you actually read those films to see if they, like Lenox
9 Hill, were accurate?

10 A That is an excellent question. So, in my practice, I
11 always -- like, I always look at the films. It's through my
12 eyes. Someone else says something, I listen, I look at it, but
13 I always look at the films.

14 Now, what does that mean, I always look at the films?
15 That's a great question. It frustrates me. A lot of times
16 people come with films from NYU, from wherever, and they don't
17 have -- they have their report there, like, doctor, they told me
18 to bring in the films, here's the report. I don't want to see
19 your report, I want to see the films. I want to see the
20 pictures. They speak for themselves. Certainly, I always,
21 always review the films, whether I have access to them or not is
22 a different story, but I always tell the patient to bring in the
23 films, come back with the films. I always want to see the
24 films.

25 Q Doctor, didn't you testify on January 22, 2025 for one

1 of your patients, Inocencio, I-N-O-C-E-N-C-I-O, Martinez?

2 A Inocencio.

3 Q Inocencio, okay.

4 A Could be. It's possible. I try not to remember these
5 times.

6 Q Well, that was in this courtroom?

7 A Different judge.

8 Q A different judge. Judge Tuitt?

9 A I believe so, yeah.

10 Q Very nice, better than this equipment there.

11 MR. VAN ETTEN: No offense, Judge. Judge Tuitt has
12 really nice equipment in her courtroom.

13 Q Correct? Do you remember that?

14 A I don't.

15 THE COURT: Apparently I didn't get the better
16 courtroom.

17 A The judge is very nice.

18 Q Well, Mr. Vargas was actually the attorney on that
19 case.

20 A That's very possible.

21 Q Do you remember him being the attorney for Mr. Martinez
22 when you testified?

23 A I mean, it's very possible. Yeah, sure. I'll trust
24 you.

25 Q Well, sir, I'm not asking you to trust me. I'm asking

1 if you can remember something from four months ago.

2 A I told you, this is not the point of my practice. I'm
3 a doctor, I like to treat patients. I do not like to come to
4 court, it's not my thing, but, if you're telling me that Mr.
5 Vargas was here, I definitely had a trial recently with Mr.
6 Vargas and, yeah, sure, I was there.

7 Q Well, sir, I'm just going to read for you from the
8 trial transcript of that trial from page two -- sorry, 272,
9 which is really brief, line 16-18.

10 The question to you was, and what was your reading of
11 that same MRI?

12 And your answer, I didn't document any reading. I
13 don't necessarily read MRI's.

14 Did you give that testimony?

15 A Well, I -- first of all, I don't go over these
16 transcripts. No one ever gives me the transcripts. I didn't --
17 maybe they asked it as, are you a radiologist? I don't read
18 MRIs for a living. Certainly, I'm an orthopedist and I review
19 MRIs. Do I read them and make reports as to what the MRI says?
20 No, I don't go every disc level, that's a radiologist's job, but
21 I review the MRI reports every single time.

22 Q And, again, you said you're a surgeon and a radiologist
23 is a radiologist, fair?

24 A That's correct.

25 Q And radiologists are -- where you may review, would it

1 be fair to say, you read hundreds of films a year?

2 A I would say thousands.

3 Q And radiologists would review many more than that,
4 because that's what they do everyday?

5 A Certainly, that's their field, one hundred percent.

6 Q And when it comes to reading films and interpreting
7 what are in the films, radiologists would be the proper party to
8 say what's in those radiology films?

9 A I don't really understand the question because --

10 Q That's fair. Bad question. Bad question. Appreciate
11 that. Well, you're board certified in orthopedic surgery?

12 A That's correct.

13 Q And radiologists are board certified in radiology?

14 A That's correct.

15 Q And some are even board certified in neuroradiology?

16 A That's correct.

17 Q And, so, they, like you, have to go through specialized
18 testing that make them a specialized expert in their field?

19 A Thousand percent.

20 Q And they would review more films than you and be more
21 familiar with films, fair?

22 A Certain radiologists. It depends. Like you said, they
23 do specialized training. So, a breast radiologist that just
24 reads breast films all day, his wheelhouse, per se, his
25 expertise, is not in the spine. Can he read a spine film, I

1 would imagine so, but is that his expertise?

2 I probably, not probably, I definitely read more or
3 look at more MRIs of the cervical, lumbar sign as opposed to
4 someone who specializes in the breast or belly or something like
5 that.

6 Q So, that could be sub-specialties?

7 A Okay.

8 Q Is that what you're describing?

9 A Well --

10 Q Some doctors look at spines, some look at breasts, some
11 may specialize on knees or ankles, things like that?

12 A Correct. There is subspecialization.

13 Q Spinal surgeons are spinal surgeons, there are
14 orthopedic surgeons that do shoulders or knees, fair?

15 A I do shoulders and knees as well, believe it or not.

16 Q So, what my question is to you, did you look at the
17 actual films from Kolb, taken 23 days after the incident, and
18 compare them to the new films from Lennox Hill Radiology that
19 you got on, I think it was, may 21st of 2019?

20 A I can't tell you if I put them side-by-side and did an
21 analysis.

22 Q Well, do you know if they showed any changes?

23 A Well, I could tell you that the MRI that I got him when
24 he first saw me and then a year later were approximately the
25 same.

1 Q And are you aware that there are going to be other
2 experts that testify in this case.

3 A Of course.

4 Q And have you reviewed any of the reports of any of
5 those experts?

6 A Yes, I did.

7 Q Whose reports did you review?

8 A Dr. Kim and, I believe, the radiologist.

9 Q Did you review Dr. Katzman or Dr. Kolb as the
10 radiologist?

11 A No, no, Dr. Katzman, I believe.

12 Q And I will get you to that in just a little bit, bur
13 right now we'll go back to some background. I jumped ahead, I
14 apologize.

15 A Not a problem.

16 Q You've testified before in court, correct?

17 A Yes.

18 Q And you know you didn't remember from four months ago.
19 Have you testified on cases involving the Gorayeb Firm?

20 A Oh, yes, sure.

21 Q Do you know on how many occasions you've testified on
22 their behalf?

23 A I can't give you an exact number, but I would say it's
24 less than ten, but I can't give you an exact number, you know?
25 I want to be accurate.

1 Q And how many -- for how many years have you actually
2 come into court and testified?

3 A Thank God, not often.

4 Q Okay. Because you're a little bit younger, at least,
5 younger than me.

6 A How old am I?

7 Q Have you been doing this for five years, ten years,
8 twenty years?

9 A I've been in private practice for -- I've been doing
10 orthopedics for a long time. I've been in private practice for
11 eleven years.

12 Q Eleven years. So, some time in the last eleven years
13 you've come to testify in court? For your patients?

14 A Sorry?

15 Q For your patients, when you've needed to?

16 A Yeah, when I've needed to, sure.

17 Q Okay. When you talked before about the checking of the
18 boxes and things like that, do you have -- can you go to your
19 notes for a second?

20 A Sure.

21 Q All right. You take, for example, your first note, you
22 take that initial history, past history, past surgical
23 medications, things like that, correct?

24 A Yes.

25 Q And when Mr. Vargas asked you questions, you talked a

1 little bit about the history and then you went straight to the
2 physical examination. There is a section in your report for
3 past medical history, correct?

4 A Correct.

5 Q Why do you ask that question?

6 A Well, it's a very important question. I want to know
7 what type of diseases or other issues a patient has. I have to
8 know the whole picture.

9 Q And what were you told on that first visit?

10 A Denies.

11 Q And there was nothing in the records from Dr. Grimm to
12 tell that you Mr. Rivera had any prior medical history, correct?

13 A Let me pull them up, so I'm accurate. I believe that's
14 correct.

15 Q And you know now that -- that the history of denying a
16 prior medical history is inaccurate, true?

17 A What, specifically, are you pointing to?

18 Q Past medical history. He denied having any past
19 medical history. You know that's not accurate, true?

20 A No. So, I'm asking, what are you saying is past
21 medical history?

22 Q What I'm trying to find out, sir, is if you remember,
23 having treated this patient for three years, that at some point
24 you learned that he did have a prior medical history?

25 A It's possible.

1 Q You don't remember?

2 A Not right now, no.

3 Q Didn't he have diabetes? Well, without looking at your
4 notes first. I'll let you go to your notes. Did he have
5 diabetes?

6 A Are you telling me he had diabetes? That's fine.

7 Q Wasn't his first surgery delayed because he had
8 diabetes?

9 A Yes. He eventually did tell me that he has diabetes,
10 yes.

11 Q Were you aware that he had stopped taking his diabetic
12 medicine prior to the incident?

13 A No.

14 Q Again, you say it's important to get a full history
15 from a patient, correct?

16 A One thousand percent.

17 Q So, the history you got was not a full history, fair?

18 A I did not get the history of diabetes, that's correct.

19 Q And you did not get a history on the mechanism of
20 incident on that first visit from the patient, other than what
21 you recorded fair?

22 A Well, it's possible that the patient told me, but I
23 definitely did not put it in my note.

24 Q Now, you made various recordings. You talked about
25 range of motion, correct?

1 A Yes.

2 Q And in the first report you have the range of motions
3 and then in the second report you have it again, correct?

4 A Yes.

5 Q Okay. And I note that, essentially, the language in
6 your reports are pretty much identical, unless something new
7 comes up. Would that be fair?

8 A I don't understand what you're saying.

9 Q Sure. If you read some of these reports back-to-back,
10 there's not a single change from one visit to the next, as to
11 what's being recorded by you?

12 A Well, it depends, right? So, if it's reported the
13 same, it gets reported the same. If there's differences, for
14 instance, in the first range of motion, you know, there is
15 rotation to the left was 65 degree, normal is 80 degrees. The
16 second time rotation to the left was 60 degrees, normal is 80
17 degrees. We change what is reported to us and if the similar
18 complaints are there, then that what's I document.

19 Q But on all the other parts, the past medical, past
20 surgical, everything else like that, stays the same, unless you
21 get new information, fair?

22 A Yeah, of course.

23 Q Okay. So, let's go real quick to your May 8, 2019
24 report. Do have you that there?

25 A Yes.

1 Q And that's the first comment you made about an actual
2 diagnostic testing film, correct?

3 A Yes.

4 Q Okay. So, you had the report from Lennox Hill
5 Radiology on the first visit, you may or may not have looked at
6 the portal, but you didn't record what was seen -- sorry, not
7 Lennox Hill Radiology, Kolb Radiology. I withdraw that entire
8 question, my apologies.

9 When you saw the patient on the first occasion, you had
10 the Kolb Radiology report and the Grimm report and you -- and
11 that was the only the lumbar and you may or may not have gone to
12 the portal and then the next report you did make a comment about
13 the cervical spine, correct?

14 A What comment would you be referring to?

15 Q In part of your plan three, you made comment about the
16 cervical --

17 A Yes, that he has a positive MRI.

18 Q Right. And that would have been the MRIs from Lennox
19 Hill Radiology, correct?

20 A That is correct.

21 Q All right. When you read that previously to the jury
22 and you were reading from that report, you mentioned a word
23 osteophyte?

24 A Yes.

25 Q What's an osteophyte?

1 A An osteophyte is a reactive bone formation or a spur
2 that happens, it could be after a trauma, it could be after an
3 age-related, that basically -- the osteophyte is growing down
4 and it wants to do to the body what we did in the surgery.
5 Basically, it's a spur that's trying to fuse that area.

6 Q Okay. And is it also described sometimes as a bony
7 growth?

8 A Yes, it is.

9 Q And that's sometimes -- and it's rubbing and it's,
10 like, it grows because of the way it rubs and at least in knees
11 that's what happens with osteophytes, correct?

12 A The way I explained it is just like how I was
13 explaining it now. Basically, what the body wants to do is not
14 move that disc, because it's causing problems. So, a lot of
15 times the disc calcifies and there's osteophytes that come down
16 and it sort of does what's called an autofusion, because the
17 body is hurting itself by moving. So, your body has a healing
18 mechanism that it doesn't want to move. So, that makes these
19 reactive changes to degeneration trauma, ex cetera.

20 Q And that calcification takes time to develop, true?

21 A It takes time, yes.

22 Q Okay. And the films from 23 days after, from Kolb
23 Radiology, did they show osteophytes in the cervical spine?

24 A In the cervical -- I don't have the report of the -- of
25 the films, so I can't reference what he said of osteophyte or

1 not.

2 Q You gave an opinion on causation. I think we
3 established that. It was one of the last three questions, fair?

4 A Yes.

5 Q And there was a film taken of Mr. Rivera's neck 23 days
6 after the incident and you did not look at it and you don't have
7 the report in your records?

8 A I didn't say I didn't look at it, I said in my
9 narrative, as you pointed out, that, certainly, I did look at
10 it. However, the report is not in my chart. But, I can tell
11 you, on the -- on the MRI and, more importantly, let's look at
12 the x-ray, that I have looked at, he has some degenerative
13 changes at C5/C6 at C4/C5 on the x-ray. I didn't see much
14 degenerative changes.

15 Q But, my question was, do the MRI films of the cervical
16 spine from 23 days after the incident show osteophyte and you do
17 not know, fair?

18 A I said I do not have the report and an MRI -- anyway,
19 an MRI, as I said before, what's an MRI for? Soft tissue. Not
20 to look at osteophytes. That would not be the exam of choice.

21 Q But, sir, you just said that osteophyte can take time
22 to develop, correct?

23 A Of course, yes.

24 Q And they wouldn't develop in 23 days, correct?

25 A Most probably not.

1 Q Okay. So, if there was osteophyte formation in the
2 neck 23 days after the incident, that would be a condition that
3 had been present before the accident, true?

4 A Most probably, yes.

5 Q In fact, sir, you talked about your surgery for Mr.
6 Rivera on the neck and you talked, in general, kind of what you
7 did, right?

8 A That's correct.

9 Q But you did a longer report discussing what you did?

10 A That's correct.

11 Q And one of the things you did, if I'm not mistaken, is
12 a foraminotomy?

13 A Foraminotomy.

14 Q Thank you. You did that, correct?

15 A Yes, correct.

16 Q And the foraminotomy was for the purpose of removing
17 the osteophytes that had developed in Mr. Rivera's spine,
18 correct?

19 A Specifically, it says disc material and osteophyte,
20 yes.

21 Q Okay. And when you were asked about what you did and
22 gave your causation, you made no reference to that, true?

23 A To what?

24 Q The osteophytes, the presence of osteophytes?

25 A I don't believe that was the question that was asked of

1 me.

2 Q And there is degenerative arthritis seen throughout the
3 cervical and lumbar spine in Mr. Rivera's films. You would
4 agree with that?

5 A I stated he has degeneration, yes.

6 Q And did he have black disc disease when he had the
7 MRI's on April 7, 2019?

8 A I can't tell you one hundred percent.

9 Q Shouldn't you know that before you give a causation
10 opinion?

11 A It's just a diagnosis. It doesn't have to do with
12 causation.

13 Q Well, it would, sir, if that black disc disease existed
14 before the incident, wouldn't it?

15 A Not necessarily. Let's say he had black disc disease,
16 let's say he even had the herniations before the accident,
17 right? If -- how many of you guys are here? Let's say there's
18 ten jurors, right, and you're forty-years-old and we get an MRI
19 and none of you have back pain, none of you have neck pain.

20 How many of you, do you think, out of ten people, would
21 have a positive MRI with herniations? The literature says about
22 ten percent per year. So, if there's ten people, four people
23 would have an MRI with positive findings.

24 Does that mean that, if you have an accident, those
25 degenerative findings are not -- it's not the accident's fault,

1 because those herniations are there? No, certainly not. It
2 means that those herniations there, there's degeneration, as far
3 as I know.

4 Again, this is only what I know. I don't know Mr.
5 Rivera from before 4/17/2019 and what he told me, and as far as
6 I know, is that he never had any issues with his neck or back
7 prior to this accident. So, even if he had degeneration, it
8 wasn't bothering him. Even if he had a herniation, there were
9 no issues. He didn't go to the hospital, which he knew how to
10 get to, right? He was there multiple times. He didn't go to
11 another doctor, unless you could tell me he went to another
12 doctor beforehand.

13 So, whether it's there were osteophyte there, I never
14 said that there weren't, there was degeneration, when I
15 explained the MRI I said there was degenerative disc disease.
16 Certainly, there was degeneration. He's not a twenty-year-old
17 guy, he has some degeneration.

18 Q But you just said, sir, that you got that information
19 because of the history he gave you about the lack of prior back
20 or neck problems, fair?

21 A That's correct.

22 Q And he also gave you a history that he didn't have
23 prior medical conditions like diabetes, correct?

24 A That is correct.

25 Q So, we now know that the history was inaccurate?

1 A Well, again, I'm only a doctor, I can only do what
2 people tell me and I'm sure if there were history that he had
3 neck or back issues beforehand, you would point it out.

4 Q Well, Doctor, I'm not the person who came in and gave a
5 causation opinion, you are, and you said specifically, if the
6 history is accurate, then your opinion is there and we now know
7 that part of his history is not accurate. So, isn't it true you
8 cannot then say that there was no prior problems?

9 MR. VARGAS: Objection.

10 THE COURT: Sustained.

11 Q Well, Doctor, if the history's inaccurate on prior
12 problems, then your opinion on causation may be inaccurate,
13 would that be fair?

14 A I think that if there's other history that anyone,
15 including yourself, would like to give, for instance, we can't
16 just, like, make up things, right? We can't make up, like, oh,
17 well, if he said -- if he didn't say one thing, then everything
18 is a lie, right? That doesn't make any sense, right? So, yeah,
19 we found out he has diabetes. Why he didn't tell me, I can't
20 tell you. Did he -- he told me he never had neck or back pain
21 beforehand. Did he? I'm sure he you did a very big review.
22 I'm not an investigator, I'm just a doctor, you know? If he
23 didn't have any neck or back pain and you can't show that he had
24 neck or back pain before, you know, what's the case?

25 Q Well, Doctor, by the time you saw Mr. Rivera, you are

1 aware that he was pursuing litigation against my client,
2 correct?

3 A I have -- I'm not involved with litigation. I'm not
4 involved -- I -- I told you that I don't want to be here. This
5 is not what I want to do. I'd rather be either working or with
6 my kids. This is not what I want to do. I get -- I don't get
7 one cent more. If he gets money, doesn't get money, it does not
8 effect my life at all. I'm here because he's my patient, he
9 asked me to come in and talk about what happened to him. That's
10 it.

11 Q I'm only, Doctor, asking you about what you just said,
12 though, because you are familiar with the terms secondary gain,
13 are you not?

14 A Of course I am.

15 Q Okay. What is secondary gain?

16 A Secondary gain is when someone has another alternative,
17 basically driving them in order to do something, okay? That's
18 what secondary gain is.

19 Q And, if a person is looking to put forward a lawsuit
20 and they have prior back pains, they may not be as candid in
21 discussing that, because it could negatively impact their
22 lawsuit, fair?

23 A Oh, one hundred percent, but we're not talking about
24 discussing if he had prior back issues. Is there anything
25 documented? Like, you know, did he see an orthopedist in 2016

1 that he had back pain? Did he go to the ER because he couldn't
2 walk? That's what we're talking about, not that one day he woke
3 up with back pain. I mean, who doesn't, you know?

4 Q And the only person who would be able to tell us that
5 would be Mr. Rivera, correct?

6 A No, that's not correct, because, and certainly on the
7 twinge, and you can ask him, obviously, but if there's any
8 documented medical visits regarding his neck or back beforehand,
9 and it doesn't seem to me like there is. So, I mean, that's
10 what we're basing -- we're basing what you're asking on facts.
11 If you could dispute the fact, go ahead, dispute the fact. But,
12 if you cannot dispute the fact, then it must be correct.

13 Q Well, Doctor, what's HIPAA?

14 A HIPAA is that you're not allowed to give out patient
15 information without consistent.

16 Q And, so, unless Mr. Rivera were to tell us in
17 litigation process that he had a prior back problem and he
18 treated for a prior back problem or a prior neck problem, we
19 would not be able to get those records you're telling us about,
20 true?

21 A Unless he had another lawsuit or -- I mean, I know that
22 there's been cases where there have been times where the patient
23 has not told me about all their accidents. This happens,
24 certainly, but, what happened? The lawyers, they brought it up
25 and they said well, what do you think about this? I said, this

1 is an issue, because they're not being honest. The fact he
2 didn't tell me about diabetes has nothing to do with his neck.
3 I'm sure he -- listen, Mr. Rivera is a really nice guy. I'm
4 sure that he gave a HIPAA release in order to have the -- for my
5 records he needed a HIPAA release from my office for you. So,
6 I'm sure he's not being just, oh, you can't go and -- I mean,
7 listen, I'm not going to speak for him, he can speak for
8 himself, but, I would imagine, legally, he would have to give
9 you a HIPAA release to everywhere and tell you whatever is
10 available and if he's not being truthful, obviously, that's an
11 issue. But, until a document can be given to us to see, we have
12 to say that it's the truth, right?

13 Q Well, sir, but this goes back total questions that I
14 asked you before with the Mount Sinai Hospital records then,
15 sir, and in that time he never once said that his neck twisted,
16 he didn't say he fell on his butt. It's not in your record,
17 it's not in Dr. Grimm's records, true?

18 A Dr. Grimm does talk about striking him and injuring his
19 neck and back, certainly, but, what you're saying is correct,
20 yes.

21 Q Okay. And then I want you to assume then that
22 yesterday he said that he fell on his butt and he twisted his
23 neck, yet, none of the records that we have in court say that.
24 I want you to assume that, okay? So, if that's the case, then
25 until we got here, he never told us about a prior injury or

1 accident, fair?

2 A Well, he told us or he told me and I'm sure he told Dr.
3 Grimm as well, because it's in his note, that he was injured at
4 work and he injured his neck and back.

5 Q All right. By the way, just on the issue of diabetes
6 again real quick, that can be somewhat relevant to you as a
7 spinal surgeon because, if a person is noncompliant with their
8 medicines, they can get neuropathies, correct?

9 A If a person is noncompliant with their medication or
10 doesn't tell me about their conditions, certainly, it doesn't
11 allow me to do my best job.

12 Q And neuropathy can be sometimes be numbness or tingling
13 in the extremities, correct?

14 A It can be, yes.

15 Q And that's one of the complaints made by Mr. Rivera,
16 true?

17 A I mean, yeah, you could see certainly, and I think the
18 jury are radiology experts at this point, that he had huge
19 herniations pushing on his spinal cord.

20 Q And they would have been pushing on his spinal cord
21 before the incident too, right?

22 A That I can't say, unless you can produce an MRI from
23 before the accident.

24 Q Well, one from 23 days afterwards that shows that, and
25 it was longstanding, degenerative disease that would show you

1 the pushing before, correct?

2 A Well, you cannot -- you tried to make this reference
3 before and I explained it.

4 Q And, by the way, we didn't mention it, disc
5 desiccation, what's disc desiccation?

6 A I believe I explained it to the jury, it was -- disc
7 desiccation is degenerative disc disease, when the water leaves
8 the disc, black disc disease.

9 Q So, that's the drying out of a disc?

10 A That's correct.

11 Q And that takes time, correct?

12 A I think we went over this already.

13 Q But you didn't say disc desiccation?

14 A Oh, yeah, that's fine.

15 Q I'm just trying to be thorough.

16 A I'm here, you know? They paid for it, so it's all
17 good.

18 Q And disc desiccation wouldn't take place in a month,
19 correct?

20 A Again, I think we -- disc desiccation, degenerative
21 disc disease, is the same. I've already testified to the timing
22 of that as well.

23 Q Now, you said you reviewed Dr. Katzman's reports?

24 A Yes, I did.

25 Q And, so, you're aware that Dr. Katzman will opine that,

1 in the lumbar spine, that there -- the films from 23 days after
2 showed no evidence of a recent traumatic injury?

3 A Okay. That's his opinion.

4 Q Okay. And he also said that there were degenerative
5 disc dehydration and degenerative disc height loss?

6 A That's exactly what I told the jury.

7 Q And there was anterior spur formation?

8 A I didn't see any anterior spur formation.

9 Q This was all within 23 days after the incident?

10 A I believe I showed where I thought the trauma was. I
11 was very clear with that. You can ask Dr. Katzman when he comes
12 in to explain that, if you'd like.

13 Q Well, Doctor, when you talk about that with trauma and
14 you're talking about trauma to the spine, an MRI is an objective
15 test, true?

16 A Yes, it is.

17 Q And Mr. Vargas asked you about objective and
18 subjective, correct?

19 A That's correct.

20 Q And, so, if you're looking at a trauma, an edema would
21 be an example of trauma to the spine?

22 A It can be.

23 Q What's an edema?

24 A Edema is a local surrounding swelling, basically an
25 increased -- remember the white is the fluid? So, an increase

1 in white.

2 Q And there were no edemas that you saw on any of films,
3 fair?

4 A No, there was. I pointed it out. There was a tear in
5 the disc with white area that is -- suggests that trauma.

6 Q And is that sometimes an extrusion? An extruded
7 fragment?

8 A Could be.

9 Q Because, didn't you, in your report from your lumbar
10 spine surgery in 2021, I believe it was, say there were no
11 extruded fragments seen during the surgery?

12 A That is correct.

13 Q Were there any hemorrhages also, examples of trauma?

14 A Depending on the trauma, yeah.

15 Q Were there any hemorrhages in the films?

16 A No.

17 Q Subluxations without evidence of trauma?

18 A Of course, yeah.

19 Q Were there any subluxations?

20 A No.

21 Q Instability of the ligamentum?

22 A That could be in trauma, yes.

23 Q Were there any instability of the ligamentum seen in
24 any of those films?

25 A No.

1 Q And you have no firsthand knowledge whether the pipe
2 that fell actually struck the lower back, fair?

3 A I was not at the accident.

4 Q And you have no actual knowledge whether the pipe
5 actually struck the neck, correct?

6 A I was not at the accident.

7 Q And have you no actual knowledge if there was a
8 twisting injury, correct?

9 A I was not at the accident.

10 Q So, when you're saying you're not, the answer would be
11 no, you don't know that, fair?

12 A Again, I can only tell you what was reported to me. I
13 was not at the accident. I'm a doctor.

14 Q Now, without -- I think I asked you that. I don't want
15 to belabor that point.

16 A You can ask whatever you'd like.

17 Q If the osteophytes in the neck were present prior to
18 the accident, you would agree, then, that they were not causally
19 related?

20 A If the osteophytes were present before then, certainly,
21 they would not be causally related, of course.

22 Q That would apply to all the disc degeneration seen in
23 the films, fair?

24 A No. You're asking two different questions.

25 Q Okay. Would you agree that, while herniations such as

1 what you described can be caused by trauma, the most common
2 cause of herniation is degeneration?

3 A I don't know about that. I think, you know, the most
4 common cause of herniation that I see is when someone twists,
5 low impact. It doesn't have to be them getting into a
6 forty-five-mile-an-hour car accident. That's when you see,
7 usually, these subluxations, these ligamentous injuries, these
8 heavy, heavy things. Usually, it's a thirty-five-year-old guy
9 who was trying to move a couch and threw out their back,
10 something like that.

11 Q But, that has -- that mechanism there that you just
12 talked about, the low impact car accident or that type of
13 twisting or the lifting activities, correct?

14 A It could be. It could be someone falls. You know,
15 there's many different mechanisms, most commons. There's all
16 different types of injuries that happen to people.

17 Q You mentioned scoliosis before. What's scoliosis?

18 A Scoliosis is a curvature of the spine.

19 Q And that is something that is congenital, correct?

20 A It could be congenital, it could develop.

21 Q And you saw that in these films?

22 A Yes, he has scoliosis.

23 Q In this instance, this was a congenital condition?

24 A I can't tell you that, again, unless you produce to me
25 an x-ray, MRI or CAT scan before the accident, I cannot tell you

1 that the way he's standing is from the way he was born. I can't
2 say that.

3 Q Scoliosis, as we more commonly know about it, that's
4 usually when we talk about a crooked spine, correct?

5 A Yes.

6 Q That's where our children, when they get them
7 sometimes, they have to have braces and stuff like that to
8 straighten them out and they even have kids now in schools get
9 checked on that regularly, correct?

10 A There is different types of scoliosis, yes.

11 Q Did you make any determination, when you were examining
12 him, about whether that scoliosis had anything to do with the
13 incident or congenital issues?

14 A Again, I cannot comment on congenital, unless I have
15 something to compare it to. Certainly, he's not -- his
16 scoliosis is not the type that needs to be treated surgically,
17 or even in a brace.

18 Q Other than your treatments after the surgery for pain
19 management, am I correct that you left all decisions on pain
20 management to Dr. Grimm?

21 A I'm a surgeon. I don't do any pain management. I do
22 suggest for people to see pain management, but I don't do
23 epidurals or anything like that.

24 Q I'm assuming, after surgery, he got pain meds?

25 A My protocol for pain medication, is that what you're

1 asking?

2 Q Yeah.

3 A Sure. My protocol for pain medication is I'm very anti
4 any sort of oxycodone or OxyContin or percocet or anything like
5 that. So, my rule is that you get a supply after surgery,
6 because, certainly, you're in pain, you get one refill and
7 that's it, and I know Dr. Grimm also is very, very --

8 Q I'm only asking about you. Grimm will come in here?

9 A Sure. No problem. That's my thing, I do not give -- I
10 do not give narcotics. I'm very tight with the narcotics.

11 Q I understand, but my point was, that was kind of my
12 point, you gave him pain meds after the surgeries, but, after
13 that, you left it up to Dr. Grimm?

14 A Yes, one hundred percent.

15 Q And that was the question, okay. Because he's the pain
16 management guy, correct?

17 A He's the pain management guy.

18 Q You're the surgeon?

19 A I'm the surgeon.

20 Q Yeah, and if a decision needs to be made on whether Mr.
21 Rivera would ever need a surgery in the future, that would be
22 your decision, along with Mr. Rivera, about that? I think you
23 talked about that with part of your discussion with Mr. Vargas,
24 fair?

25 A If he would need further surgery?

1 Q Yeah.

2 A I mean, Dr. Grimm can have whatever discusses he wants
3 with him. If he wants to discuss further surgery with me, I
4 don't think he needs further surgery right now.

5 Q Perfect. In fact, that's one of the reasons you
6 haven't seen him in the last three years, correct?

7 A I can't tell you that, I don't know.

8 Q Well, normally, when you do a surgery, you have a goal
9 in mind, fair?

10 A Of course, yes.

11 Q You try to get to the point where the patient will get
12 the optimal relief, fair?

13 A Yes.

14 Q And you did this surgery and you believe he got the
15 optimal relief, fair?

16 A I believe so.

17 Q And you gave the jury the timeframe for the recovery on
18 these things?

19 A Of course.

20 Q And even then you talked about that loosened screw that
21 was in October and that wasn't even a full year since the
22 surgery?

23 A That's correct.

24 Q And you said sometimes it takes time to heal and fuse?

25 A Yes.

1 Q Could take up to a year or more?

2 A Approximately about a year, yes.

3 Q Okay. So, all of these things are here and you did
4 this and once a patient reaches maximum benefit from your
5 surgeries, unless there's a problem or recurrence, you stop
6 seeing them, right?

7 A Well, my door is always open to patients. There's no
8 question about that.

9 Q Right.

10 A If someone wants to come back and talk about their pain
11 or if they have a pain, I'm not gonna tell them no, I'm not
12 gonna tell them don't come see me, but, yes, I hear what you're
13 saying.

14 Q Right. You saw him regularly for a period of time
15 prior to the surgeries, fair?

16 A Yes.

17 Q Since the surgeries and since the healing took place,
18 you stopped seeing him?

19 A I guess you're saying he's been treating with Dr.
20 Grimm, correct?

21 Q I don't know that yet, until Dr. Grimm comes in on
22 Monday.

23 A Okay.

24 Q But he hasn't come back to you with complaints that
25 there's something wrong?

1 A He has not, that's correct.

2 Q And if he doesn't, in your mind as a surgeon, you've
3 done your job and he's reached maximum medical improvement,
4 fair?

5 A He's as good as I can get him. As of the last time I
6 saw him, I would imagine, yeah.

7 Q Do you do surgeries on the spine for degenerative
8 conditions?

9 A Part of the reason why I did surgery on him was
10 degenerative disc disease, certainly. So, the answer is yes.

11 MR. VAN ETTEN: I may be done. Give me one second.

12 Well, Doctor, I appreciate your patience with me.

13 Thank you very much.

14 THE WITNESS: No problem.

15 THE COURT: Any redirect?

16 MR. VARGAS: A couple, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. VARGAS:

19 Q Doctor, earlier you were asked about answering yes or
20 no on the importance of the Mount Sinai records. In coming to a
21 causation opinion, can you tell the jury why you couldn't answer
22 yes or no?

23 A Sure. Okay. So, very simply, I'll explain how an ER
24 works, okay? Again, I was an EMT in the ER, I brought patients
25 in, I was on both sides and I was on the side of treating of

1 patients, you know? We do rotations in the ER as medical
2 students and as residents. We're in the ER all the time.

3 When a person comes in and it says here that there was
4 a flap on his nose, are they checking his range of motion of his
5 back, his arms, his neck even? When they're not documenting
6 what that range of motion is, normal, if you look at the
7 program, it's a check box. I'm not saying that the doctors
8 didn't do their job or they missed things. I'm not saying that.

9 Mr. Rivera came in with a piece of his nose,
10 essentially, off. They called a plastic surgeon in to reattach
11 his nose. It says here that he had no head trauma. As far as I
12 know, the last time I looked, the nose is part of the head. So,
13 certainly, he had head trauma. As far as I know, the neck is
14 attached to the head.

15 When someone has trauma to his -- just, like, thinking
16 -- forget about, you know, what everyone's saying, just think in
17 common sense, right? Someone has trauma to his nose. He goes
18 to the -- that means something hit him, sliced him, something.
19 The neck doesn't stay stable. He's saying that a twenty pound
20 thing hit him, that -- the neck certainly doesn't stay stable.
21 Is it possible that he had a herniation from something hitting
22 him that took off part of his nose, and I believe he broke a
23 tooth, and I believe he broke his nose even? Do you think
24 that's gonna cause a disc herniation in his neck? And then he
25 fell down? Is that gonna cause any pain to the spine? I mean,

1 I think so. So, there's no way that, in my opinion, that a
2 person comes into an ER with such a trauma and they document all
3 this stuff and without specificity.

4 There's also something called a distracting injury.
5 Again, he's bleeding from his nose. The head bleeds a lot.
6 It's a distracting injury. Let's say, okay, he said that he had
7 no neck pain. We're going either way here. His nose was off.
8 Are you gonna complain of neck pain if your nose is off? That's
9 a distract injury. He certainly saw me multiple times, we
10 certainly -- this is -- this is a year, more than a year after
11 his accident, more than a year and a half after his accident,
12 and he had surgery, like, almost two years after his accident,
13 right?

14 He saw multiple doctors, got multiple injections. I
15 mean, certainly, is it possible that when someone comes to the
16 emergency room with their nose off, are they gonna be
17 documenting about back pain and they're documenting that there's
18 no head trauma when there's clearly head trauma? Come to your
19 own decision about that.

20 Q And, Doctor, let's say he didn't twist his neck, let's
21 say the pipe just hit him. Is that enough force to cause a
22 herniation in the neck?

23 MR. VAN ETEN: Objection.

24 THE COURT: Sustained.

25 Q How much force would it take to herniate a cervical

1 spine?

2 MR. VAN ETEN: Objection.

3 THE COURT: Sustained.

4 Q Doctor, you were asked about the amount of force used
5 to herniate a spine, correct? Is that correct?

6 MR. VAN ETEN: Objection. I'm not sure I asked
7 that. So, objection two-fold.

8 THE COURT: If he was asked that during cross, you
9 should have objected and I would have sustained the
10 objection, Counsel. Did he answer it?

11 MR. VARGAS: I believe he did. We were talking
12 about the amount of the force it would take to herniate the
13 disc.

14 THE COURT: And what was the answer? That should
15 have been a sustainable objection. He's not a
16 biomechanical.

17 MR. VARGAS: Okay.

18 Q Doctor, it was also implied that Mr. Rivera was maybe
19 faking his symptoms or he exaggerating them. Did you ever have
20 any indication that he was faking or exaggerating his symptoms?

21 MR. VAN ETEN: Objection to form.

22 THE COURT: Overruled.

23 Q Go ahead, Doctor?

24 A No.

25 Q And what would be some signs of exaggeration?

1 A Well, there's Waddell's signs, there's signs that,
2 basically, if I would examine him and tell him to push out, he'd
3 be like, you know, a little exaggerating, you know? He wasn't
4 like that.

5 Q And after each surgery he actually reported
6 improvement, correct?

7 A That's correct.

8 Q And he's never wavered from that? Every time he's
9 asked about the surgery, he said it helped him, correct?

10 A As far as I know, yes.

11 Q And, usually, someone exaggerating would probably say
12 the opposite, correct?

13 A They probably want to make it the worst case scenario,
14 probably be wheeled in here with a wheelchair or something.

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

16 MR. VAN ETTEN: Just a couple brief ones, Judge.

17 RECROSS-EXAMINATION

18 BY MR. VAN ETTEN:

19 Q Sir, just when you said about the emergency room and
20 the lack of head trauma, that would be a finding from the
21 physical examination, and you can look and see if a pipe or the
22 insulation hit them by looking at the scalp and seeing if
23 there's trauma, true?

24 A Again, he had head trauma. His nose was off. That's
25 part of the head.

1 Q Well, the face, nose. Was he struck in the face? It
2 says no swelling in some of the records, correct?

3 A He was struck in the face. His nose was off.

4 Q Does it say no swelling in the records of Mount Sinai
5 the week after?

6 A No swelling where?

7 Q Face.

8 A If that's what you're saying it says, that's what it
9 says.

10 Q Yes, but they would examine for head trauma and that's
11 why it had the findings from the neck where range of motion was
12 normal and supple, correct?

13 A I think we've gone over this many times.

14 Q You just said that you did not think that they did
15 that, because they were distracted. Isn't that one of the
16 excuses you gave?

17 A I'm not giving anyone excuses. When it says range of
18 motion is full, that is not accepted medical -- you're supposed
19 to write the actual ranges of motions. You just don't write
20 that it's full. Again, we don't know what those ranges of
21 motion are. What standard did they use? What was it compared
22 to?

23 Q This is the last question I have. You mentioned
24 something about a broken nose. Did you ever see any x-rays or
25 testing, films, that showed a broken nose?

1 A No.

2 Q Where'd you pull that one out of?

3 MR. VARGAS: Objection.

4 THE COURT: Rephrase.

5 Q Where did you come up with a broken nose from?

6 A Well, was his nose not broken? Did he not have skin
7 off? Was there not a breakage in the nose?

8 Q I can drop a pipe on my hand and cut the skin on my
9 hand. That doesn't mean I broke it. If it's a glancing blow,
10 you would agree with that?

11 A I don't understand what you're saying.

12 Q Well, if someone had a piece of pipe that came back and
13 hit the edge of his nose on its way down and didn't hit any
14 other part of his body, that would be a glancing blow, correct?

15 A It would be a break in the skin.

16 Q Okay.

17 MR. VAN ETEN: Thank you.

18 THE COURT: Anything further?

19 MR. VARGAS: No.

20 THE COURT: Okay. You may step down, Doctor.

21 THE WITNESS: No problem, Judge. Just leave all
22 this stuff here?

23 THE COURT: Yes. Your testimony is completed.

24 (Whereupon, the witness steps down from the stand)

25 THE COURT: We are going to resume on Monday

1 morning, 9:30, for another one of Plaintiff's witnesses and
 2 then in the afternoon we'll continue with the
 3 cross-examination of the Plaintiff?

4 MR. VARGAS: That is correct, Your Honor.

5 MR. VAN ETEN: Yes, Your Honor.

6 THE COURT: Okay.

7 I'll see everyone Monday morning. Have a nice
 8 weekend.

9 COURT OFFICER: All rise. Jurors exiting.

10 (Whereupon, the jury exits the courtroom)

11 (Whereupon, Court was adjourned to Monday, May 19,
 12 2025 at 9:30 a.m.)

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