

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

3 NORMAN RIVERA,

4 Plaintiff,

5 -against-

Index No: 28368/2018E

6 454 WEST 57TH STREET HOLDING

7 & T&K PROPERTIES, LLC

TRIAL

8 Defendants.

9 TESTIMONY

Dr. Matthew Grimm

Norman Rivera

Bronx Supreme Court

851 Grand Concourse

Bronx, New York 10451

May 19, 2025

11 B E F O R E:

12 HONORABLE BIANKA PEREZ,  
13 Justice of the Supreme Court

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

15 GORAYEB & ASSOCIATES

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23 Official Spanish Language Interpreter

24 SIOBHAN LYONS

25 Senior Court Reporter

1                   (Whereupon, the C-4 Report of Dr. Grimm was marked  
2 as Defendant's Exhibit C for identification, by the  
3 Reporter)

4                   (Whereupon, the C-4 Report of Dr. Kaplan was marked  
5 as Defendant's Exhibit D for identification, by the  
6 Reporter)

7                   COURT OFFICER: All rise. Jurors entering.

8                   (Whereupon, the jury entered the courtroom)

9                   THE COURT: Good morning, everyone. You may be  
10 seated while we wait for Plaintiff's Counsel and his next  
11 witness.

12                   You can let him know the jurors are here, Officer.  
13 Thank you.

14                   MR. VAN ETTEN: Your Honor, may I go get him?

15                   THE COURT: I'm sorry?

16                   MR. VAN ETTEN: May I go to the men's room and get  
17 him? I think he's in the men's room.

18                   THE COURT: No. You don't need to get anyone.  
19 Thank you. You may be seated.

20                   MR. VAN ETTEN: All right.

21                   MR. VARGAS: Ready when you are, Your Honor.

22                   THE COURT: You may call your next witness.

23                   MR. VARGAS: I call Dr. Matthew Grimm to the stand.

24                   THE COURT: Doctor, you may take the witness stand.  
25 Remain standing for the officer to swear you in. Thank you.

1 COURT OFFICER: Raise your right hand. Do you  
2 swear or affirm that the testimony you're giving today is  
3 the truth, the whole truth and nothing but the truth, under  
4 penalty of perjury?

5 THE WITNESS: Yes.

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

9 COURT OFFICER: Please be seated.

10 State your name and address for the record.

11 THE WITNESS: Matthew Grimm. My office is 160 East  
12 56th Street, New York, New York.

13 THE COURT: You may inquire.

14 MR. VARGAS: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. VARGAS:

17 Q Good morning, Doctor. Can you start off by telling the  
18 jury your educational experience?

19 A I went to college at Penn State University, graduating  
20 in electrical engineering. I then went to medical school at  
21 Jefferson Medical College in Philadelphia. I did my residency  
22 in physical medicine and rehabilitation at the University of  
23 California Irvine in William Beaumont Hospital in Michigan. I  
24 then did a fellowship in interventional pain management at  
25 Nonsurgical Orthopedics in Marietta, Georgia, and then I started

1 working for New York Ortho Sports Medicine & Trauma, PC, in  
2 2011.

3 Q Doctor, are you board certified?

4 A Yes, in physical medicine and rehabilitation.

5 Q And what would you usually be doing today, on a Monday?

6 A I had to cancel my patients for the morning.

7 Q Are you being compensated for your time?

8 A My office is being compensated for my time. I'm an  
9 employee.

10 Q And how much are they being compensated for?

11 A I believe they -- eighty-five hundred for -- to cancel  
12 my patients.

13 Q And, Doctor, did there come a time when you treated --

14 MR. VARGAS: I'm sorry, Your Honor, I would ask  
15 that Dr. Grimm be found an expert in pain, physical medicine  
16 and rehabilitation.

17 THE COURT: Although that's no longer required  
18 under the law, do you have an objection, Counsel?

19 MR. VAN ETEN: I believe he said he was only board  
20 certified in rehab medicine, not pain management, so --

21 THE COURT: What's your certification on?

22 THE WITNESS: Yeah, I'm board certified in physical  
23 medicine and rehabilitation and I subspecialize in pain  
24 management.

25 THE COURT: Any other objection?

1           MR. VAN ETTEN: I believe he's also going to talk  
2           about a life care plan and I don't think I heard  
3           qualifications of a life care plan expert.

4           MR. VARGAS: It's not a life care plan.

5           MR. VAN ETTEN: He's not a life care plan expert?

6           MR. VARGAS: No. He's giving future treatment  
7           recommendations.

8           THE COURT: No objection as to physical medicine  
9           and rehab and pain management?

10          MR. VAN ETTEN: No objection, Judge. I'll let it  
11          go. We'll speed it along. To those two, I have no  
12          objection.

13          THE COURT: Okay.

14          So, noted for the record, although you don't need  
15          to move anymore.

16          MR. VARGAS: I know, Your Honor.

17          THE COURT: When you ask your opinion question, it  
18          should be based on his board certification only.

19          MR. VARGAS: Okay.

20          THE COURT: You may continue, Counsel.

21          Q     Doctor, did there come a time when you treated Norman  
22          Rivera for the first time?

23          A     Yes.

24          Q     When was that?

25          A     His first visit with me -- well, he was referred to me

1 by my colleague, Dr. Jeffrey Kaplan, and I saw him on April 10,  
2 2018.

3 Q And, Doctor, you brought a copy of your chart with you  
4 today, correct?

5 A Yes.

6 Q And this chart, it has every visit with Mr. Rivera?

7 A Yes. It has my visits and his procedures and his MRI's  
8 and testing.

9 Q And this chart was maintained at your office from the  
10 first time you treated him until the day you brought it here  
11 today?

12 A Yeah, it's electronic medical records, so, my assistant  
13 printed out for me.

14 MR. VARGAS: And, Your Honor, I ask that his chart  
15 be moved into evidence.

16 THE COURT: Any objection?

17 MR. VAN ETEN: I have not seen his chart, Your  
18 Honor. I know we subpoenaed the records, but I have not  
19 seen his chart.

20 THE COURT: Is he a treating physician?

21 MR. VARGAS: Yes.

22 THE COURT: You have the authorization?

23 MR. VAN ETEN: Yes, I just have not seen the  
24 chart. I don't know if there's any records that we hadn't  
25 gotten, not gotten. I don't know if there's any hearsay

1 statements in there.

2 MR. VARGAS: Subject to redaction.

3 THE COURT: What number is it?

4 MR. VARGAS: We would be up to number 18.

5 THE COURT: Plaintiff's 18 in evidence, subject to  
6 redaction.

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

8 Q At the first visit, Dr. Grimm, did you take a history  
9 from Mr. Rivera?

10 A Yes.

11 Q And what was the history?

12 A He was reporting a work-related accident, March 15,  
13 2018, through a translator, that my office has on staff. He  
14 stated construction piping material fell on him, causing  
15 injuries to his head and neck, lower back and nose. Was driven  
16 to Mount Sinai West Hospital and was treated, following release,  
17 with Dr. Kaplan, as well as the clinic, to remove nasal sutures.  
18 He denied any prior injuries to the spine and was complaining of  
19 pain up to a seven, eight out of ten on the VAS pain scale and  
20 pain radiating to his right lower extremities to the foot,  
21 associated numbness in the same distribution. Neck pain, five  
22 to six out of ten on the VAS pain scale and pain radiating to  
23 his right upper extremity to his medial fingers. Also  
24 complaining of frontal lobe headaches and the numbness in the  
25 same distrubution as his pain.

1           Q     And you had mentioned that he had seen Dr. Kaplan prior  
2 to seeing you?

3           A     Yes. I believe he saw Dr. Kaplan roughly a week prior  
4 to me.

5           Q     And do you know what Dr. Kaplan recommended?

6           A     I do have Dr. Kaplan's notes. He had -- on that date,  
7 he had recommended an appointment with myself, pain management,  
8 he fit him for a lumbosacral orthosis, he made -- he recommended  
9 an MRI of the cervical spine and lumbar spine, as well as follow  
10 up with his oral surgeon due to, I believe, dental damage and a  
11 plastic surgeon.

12          Q     And, by the time you had seen him, had he had the  
13 MRI's?

14          A     Yes.

15          Q     And what were -- and did you review the MRI's?

16          A     Yes, I got the -- yeah, I would look at the pictures,  
17 but I also just reviewed -- I relied on the reports that were  
18 given to me.

19          Q     And what were the findings of the MRI's?

20          A     The MRI of the cervical spine that was done on 4/7/2018  
21 and showed the impression, disc herniations, C4/5, C5/6 and C6/7  
22 with central and foraminal narrowing, large herniations at that  
23 C4/5, impingement upon the spinal cord at each of the herniated  
24 levels, disc bulging at C3/4.

25                 The lumbar spine MRI performed on 4/7/2018 showed disc



1    herniations at L2/3 and L5/1 with central and foraminal  
2    narrowing with a disc bulge at L4/5.

3           Q     And, going back to your first visit of April 10th, did  
4    you do an exam of Mr. Rivera after taking a history and  
5    recording his complaints?

6           A     Yes.

7           Q     And what were the results of your exam?

8           A     He showed -- with the cervical spine, he showed some  
9    mild to moderate decreased ranging with a pain at extension.  
10   So, bending his head back at 40 degrees, he was able to fully  
11   flex his chin to chest. So, that was within normal limits, but  
12   he did note some pain when he reached the end ranging. Right  
13   and lateral flexion of the neck, 35 degrees, normal is roughly  
14   45 degrees. And then rotational movement, left and right, to  
15   about 65 degrees, with pain at end range. Normal was  
16   approximately 80 degrees.

17                He had maintained his upper extremity strength. He was  
18   displaying some decreased sensation to the right upper extremity  
19   and then he had a positive Sperlings sign, that's a provocative  
20   test we'll do where we put some downward force, extension, back  
21   of the head, and then a little bit of rotation and lateral  
22   flexion movement and point of it is to try and reproduce any  
23   pain that may be occurring, if it is some narrowing where the  
24   nerves come out of the spine.

25                So, we're trying to do sort of a provocative maneuver

1 to make that area smaller where, if there is no issue, you  
2 shouldn't have any pain, just discomfort. If there is an issue,  
3 the patient will say they're having pain radiating into the arm  
4 in a certain distribution, depending on which levels are  
5 effected. So, we are relying on the patient's response for  
6 that, and then he was displaying some muscular spasms felt in  
7 the cervical regions.

8           The lumbar spine, he was walking with an antalgic gait,  
9 like, a painful walking pattern. He was wearing a lumbosacral  
10 orthosis, which I removed or he removed for examination. He  
11 showed more significant range deficits in the lumbar spine than  
12 the neck. Extension, he would go from roughly neutral to  
13 negative five degrees. Normal is 25 degrees. Flexion was  
14 better. He had approximately 75 degrees of flexion. Normal  
15 would be 85 to 90 degrees. Left and right lateral flexion of  
16 the spine, 15 degrees. Normal is 25 degrees. His reflexes were  
17 intact and symmetrical.

18           He did show some decreased sensation to his right leg  
19 and he had a positive straight leg raise on the right. Straight  
20 leg raise is sort of the provocative test we use for the lumbar  
21 spine to see if there's any -- possibly some issues, again, with  
22 the nerves being pinched or something where they're coming out  
23 of the spine. So, you'll have them lay down on their back and  
24 then you'll raise the leg. Again, you're relying on their  
25 response. If they just say they're feel a sort of stretching

1 pain, muscular pain, because they're not limber, that's not a  
2 positive response. We'll ask them to describe the pain and if  
3 it's a sort of electrical, radiating pain into the leg that  
4 follows a specific distribution, then we'd consider that a  
5 positive test. Usually, if it's past 30 degrees up to 60  
6 degrees. He was describing that on right, past 45 degrees, and  
7 it was negative on the left. He had intact strength and he was  
8 displaying some spasm palpated in the paraspinal muscles of his  
9 low back.

10 Q And, Doctor, on Friday when we had Dr. Weinstein here,  
11 we were talking about subjective and objective results during an  
12 exam. I think you mentioned both here. The spasm, how would  
13 you characterize that?

14 A Spasm would be an objective finding. Like, I'm just  
15 palpating it and relying on feeling the muscle, banding in the  
16 muscle.

17 Q And as far as subjective?

18 A The subjective, the ranging, is somewhat subjective.  
19 I'm viewing it, I'm measuring it. Again, the provocative tests  
20 are the sort of subjective and objective. I'm relying on his  
21 response, which would be subjective, but I'm also trying to use  
22 my medical knowledge to determine if it's in a specific pattern.  
23 It's just a tool we use, it's not perfect, and then strength,  
24 I'm relying on him giving me his maximal strength, which it was  
25 full. So, he wasn't being weak.

1           Q     And you mentioned numbness and tingling in the upper  
2     extremities of the hand to the medial digits?

3           A     Yes.

4           Q     What's the significant of that?

5           A     It can -- I mean, it can be multiple things. You can  
6     have an impingement of the nerves somewhere along the line or  
7     something effecting the neck. So, it's a question of if they  
8     start to feel the tingling when we're doing that provocative  
9     maneuver and they oftentimes will.

10          Q     And, same question for the right leg, pain and numbness  
11     down the leg, shooting, significance of that?

12          A     Yes. It can be a symptom of an issue in the back. I  
13     mean, it's certainly a symptom of some type of nerve issue.

14          Q     I saw you brought a model here today, correct?

15          A     Yes.

16          Q     And that's a model of the human spine?

17          A     This is the lumbar spine. It's not to scale, but it's  
18     just to better explain things.

19          Q     And it will help you explain some of the procedures and  
20     treatment of Mr. Rivera today?

21          A     Yes, I hope so.

22                   MR. VARGAS: And, if we could, just mark it for ID  
23     as Plaintiff's 19 If Your Honor's -- are you okay with that,  
24     Your Honor?

25                   THE COURT: Any objection?

1 MR. VAN ETTEN: For an ID? No.

2 THE COURT: Okay. For identification purposes  
3 only, Plaintiff's 19. My clerk has to get it before I get  
4 it.

5 Did you get it, 18 and 19?

6 THE CLERK: Yeah, it's for identification.

7 THE COURT: Okay, great. Sorry.

8 Q Doctor, after doing the exam, history and taking his  
9 complaints, did you have recommendations for Mr. Rivera on that  
10 first visit?

11 A Yes.

12 Q What were they?

13 A I was recommending physical therapy, treatment for the  
14 neck and the lower back, I was recommending medication,  
15 antiinflammatory medication, as well as antispasm medication,  
16 which was prescribed, and I was also recommending EMG, nerve  
17 conduction studies of the upper and lower extremities, which  
18 would better help us determine if there is some type of process  
19 going on causing the numbness and the ridiculous symptoms and  
20 where it's coming from.

21 Q And we'll start with the physical therapy. Did they do  
22 it?

23 A Yes. He went through, I believe, extensive physical  
24 therapy, both before and after surgery.

25 Q And the antiinflammatory medication, do you know the

1 name of it?

2 A Originally, the first one I was giving him, was called  
3 Meloxicam. I believe, presently, he is taking diclofenac.  
4 They're both just different antiinflammatory medications.

5 Q And, as far as antispasm medication?

6 A The last prescription I gave him, I think, was at the  
7 end of 2023. It's often used on an as-needed basis. So, if  
8 they are having spasms at night, they'll take it, but they often  
9 don't use it on a daily basis.

10 Q What is the name of that one?

11 A Cyclobenzaprine.

12 Q And the EMG you mentioned, can you explain to the jury  
13 what an EMG is?

14 A An EMG is a test to sort of test the nerves and the  
15 muscles. There's two portions to it. One is nerve conduction  
16 velocities where you'll stimulate a nerve and see the speed at  
17 which it travels to see if there's any blockage along the  
18 nerve anywhere and then there is a second part, a pin exam,  
19 where you're inserting the pin into different muscles that  
20 correspond to different nerves in the back to see if we're  
21 getting -- if there's any degeneration occurring in the muscles.

22 So, the way I describe it to patients is, if you think  
23 of your nerves as a water hose, if it's being kinked, everything  
24 downstream will start to die. So, this is picking up on sort of  
25 muscular damage that, even if he has full strength, it will pick

1 up on that and you'll start to see some degeneration of the  
2 muscle.

3 Q And did he have an EMG?

4 A He did have an EMG.

5 Q And when was that performed?

6 A June 13, 2018.

7 Q And did you perform that test?

8 A Yes.

9 Q And was it in your office?

10 A Yes.

11 Q And what were the results of that test?

12 A It showed, of his upper extremities, evidence of a C5  
13 to C7 radiculopathy, and then bilateral S1 radiculopathies.  
14 Meaning, so, it shows some damage to muscles involving the S1  
15 nerves and some damage to muscles involving the C5 to C7 nerves.

16 Q Is this an objective test?

17 A It's an objective test.

18 Q And what's the significance of the findings?

19 A It's just another tool we use for diagnosis. It,  
20 alone, I wouldn't say it ever firmly confirmed to diagnosis, but  
21 if you use it along with his complaints and the MRI's and his  
22 examination, it helps. And, so, it sort of was fitting together  
23 like a puzzle, showing diagnosis of radiculopathy.

24 Q And you next saw him on August 1, 2018?

25 A I saw him --

1 Q Or, correct me if I'm incorrect.

2 A I mean, I saw him on May 16, 2018.

3 Q Okay. Oh, well, I was doing after the EMG, I'm sorry.

4 A Okay. Yes.

5 Q And, at that time, you did an exam of Mr. Rivera?

6 A Yes.

7 Q And did you have any recommendations for him at that  
8 visit?

9 A Yes. At that time he was still complaining of the  
10 radiating symptoms, despite having the antiinflammatory  
11 treatment, and although he said therapy helped, he was still  
12 having the pain. So, I recommended epidural injections.

13 Q What is an epidural injection?

14 A An epidural injection is where I will utilize live  
15 x-ray from a fluoroscope where I'll petal to take a live picture  
16 and then I guide a needle, a four inch needle or so, down to the  
17 epidural space, which -- at the region of where the pathology is  
18 for the lumbar spine, and will inject medication and then I'll  
19 -- a steroid to take the swelling down and the inflammation down  
20 and then the same thing for the cervical spine, using an x-ray  
21 machine, with life guidance to inject medication around the area  
22 where the nerves will be inflamed, and then it's helpful for two  
23 purposes. Sometimes you take the inflammation down and they do  
24 physical therapy and it can be sort of a less invasive  
25 treatment, but it can also be helpful for diagnosis if we do an



1 injection and the patient gets relief, but then the pain  
2 returns, we can be confident that it's the nerve and disc issue  
3 causing the pain. Whereas, if we did an injection and the  
4 patient says he didn't get any relief, we may need to look at  
5 other sources of the pain.

6 Q Did he have the epidurals?

7 A Yes.

8 Q What was the first one?

9 A He had an epidural to his lumbar spine on 8/13/2018 and  
10 then he had one to his neck on 8/20/2018.

11 Q And these epidurals, are they performed in your office  
12 or somewhere else?

13 A These are performed at Manhattan Surgery Center.

14 Q And why is that?

15 A Sometimes, if they need sedation or a more controlled  
16 environment, it'll be done at the surgery center. Then they  
17 also have the fluoroscope there, which allows the imaging to be  
18 done live.

19 Q And is the -- is the patient unconscious or awake for  
20 epidurals?

21 A They'll often get what's called conscious sedation,  
22 where they're just -- they're not put under general anesthesia ,  
23 they're just given medicine to make them loopy.

24 Q All right. And on 8/13, where was the injection  
25 performed?

1           A     It was performed at L5/S1.

2           Q     And on 8/20, where was that injection performed?

3           A     That was in his neck at C7/T1, the medication goes in  
4 and it spreads proximally. It's dangerous to inject at a level  
5 higher than C7/T1, because, as you're going up the spine, the  
6 epidural space becomes much, much narrower and one of the risks  
7 of the injections is what's called a dural puncture where the  
8 cerebral spinal fluid can leak out and it can cause severe  
9 headaches and bad outcomes. So, you generally enter at C7/T1  
10 and it's the industry standard and it could be considered  
11 malpractice entering higher.

12          Q     And, so, when you say it travels proximally, it goes up  
13 the spine?

14          A     Yes. There's been studies done that show it will enter  
15 and reach up to C2/3.

16          Q     And, then, after these epidurals you saw Mr. Rivera  
17 again on September 4, 2018?

18          A     Yes.

19          Q     And, at that time, did Mr. Rivera report back on the  
20 effect of the epidurals?

21          A     Yes. He -- for his cervical spine, he was reporting  
22 approximately sixty to seventy percent improvement, still with  
23 some residual discomfort, with the pain radiating to the right  
24 arm, but noted improvement in his headaches and in his lumbar  
25 spine he reported greater than eighty percent improvement in his

1 symptoms, reporting that his -- although some residual pain, his  
2 pain was presently at a tolerable level.

3 Q And, him reporting this, is that significant to you?

4 A Yes. Like I said before, it can just not for  
5 treatment, it can also be used diagnostically. So, having a  
6 very good response and still having some prolonged response  
7 would tell us that, at least a large portion of his issues, are  
8 coming from the disc and nerve issues.

9 Q And at that visit you also performed a cervical  
10 trigger?

11 A Yes. I palpated muscular trigger points. Trigger  
12 points are just type -- bands of muscle can form, especially  
13 with stress or pain, oftentimes in the shoulder areas and the  
14 paraspinals, and the trigger point injection is just the  
15 needling the nerve, not the nerve, the muscle band, to try and  
16 get it to react and respond and it will -- that will cause it to  
17 break up and relieve the discomfort.

18 Q And a cervical trigger or trigger shots, that's not  
19 something you have to do at a facility, correct?

20 A No, you do that in the office. I'm palpating it, I'm  
21 feeling it, I'm marking it with a marker and then I go around  
22 and hit each one I feel.

23 Q And, as far as your expectations for epidurals, we'll  
24 start with the cervical epidurals. What's your expectation for  
25 how long the pain relief should last?

1           A     Every patient is different. There are some patients  
2     that have one epidural and they say, wow, that felt great and  
3     they don't need another one, they follow up with physical  
4     therapy. I have some patients that do it and they say wow, I  
5     felt great for a week and now the pain's back and that's when we  
6     discuss further treatment with further injections or possibly a  
7     surgical referral.

8           Q     And you next saw him on or he had another cervical  
9     epidural on September 24, 2018?

10          A     Yes.

11          Q     And is there a reason you did it on September 24, 2018  
12     after doing the last one on August 20th?

13          A     At the followup, again, he -- we discussed his low  
14     back, he said that was tolerable. He was still having a little  
15     bit more residual pain in the upper, so we -- and, again, you  
16     don't do an additional injection just to do it. So, the back we  
17     were just monitoring. The neck, we felt we could get a little  
18     more relief, so we proceeded with another.

19          Q     And, again, was that at a surgical center?

20          A     Yes.

21          Q     And then you saw him after that?

22          A     Yes.

23          Q     October 11, 2018?

24          A     Yes.

25          Q     And, well, did he report back on how the epidural

1 effected him?

2 A Yes. Following that one, again, he was reporting a  
3 greater than eighty percent improvement with the cervical pain,  
4 was reporting pain at a tolerable level with the lumbar spine.  
5 Again, he continued noting greater than eighty percent  
6 improvement and pain is tolerable at the time.

7 Q Did you have any other recommendations for him at that  
8 visit?

9 A I recommended continued physical therapy post-injection  
10 to assist with, hopefully, long term efficacy following the  
11 injections.

12 Q And then you next saw him on November 30, 2018, January  
13 29, 2019 and then I want to draw your attention to February 7,  
14 2019.

15 A Okay. February 7th or February 27th?

16 Q 7th. There should be a surgical center again?

17 A Oh, okay.

18 Q Sorry.

19 A Okay.

20 Q And, on that day, it was another lumbar epidural,  
21 correct?

22 A Yes.

23 Q And same procedure at the surgical center?

24 A Yes.

25 Q And then you saw him after that at on February 27,

1 2019, correct?

2 A Yes.

3 Q And, at that time, did he report back on the effect of  
4 the epidural?

5 A Yes.

6 Q And what was it?

7 A He had reported that, following the additional  
8 injection in February, symptoms were presently at a tolerable  
9 level.

10 Q And did you have recommendations at that time?

11 A On that date, again, I just recommended further  
12 physical therapy. He was prescribed medication, the  
13 antiinflammatory, diclofenac, 70 milligrams, and more physical  
14 therapy for the cervical spine and then he was given muscular  
15 trigger points as well on that date.

16 Q I also saw a bilateral greater ancipital nerve block.

17 A Yes.

18 Q What exactly is that?

19 A So, he was -- oftentimes, with head injuries and with  
20 spasm in the neck, that will pull down on occipital nerves in  
21 the back of the head that run up the skull and patients get  
22 complaints of headaches that go around to the eyes. That's just  
23 an injection where you put medication around the occipital  
24 nerves to take the inflammation down, to help with the  
25 headaches.

1 Q What kind of medication is used?

2 A A very small amount of dexamethazone, which is a  
3 steroid, and lidocaine.

4 Q And do -- you also said he was given a trigger point  
5 that day, as well, correct?

6 A Yes. That just utilizes lidocaine and the actual value  
7 of the trigger point is actually the needling of the muscle and  
8 that's what helps it release.

9 Q Next you saw him on 4/10/19.

10 A Okay.

11 Q And this is now one year post-accident, correct?

12 A Yes.

13 Q And you did an exam at this visit?

14 A Yes.

15 Q And what were your findings?

16 A So, the cervical spine, he had shown some improvement.  
17 He had some mild deficits in range of motion, maybe about five  
18 to 10 degrees less than normal. He had intact strength. Still  
19 displaying some decreased sensation to the right, still had the  
20 right sided positive Sperling sign from the provocative  
21 maneuvers. He did note muscle spasm and trigger points, but  
22 focussed mostly to the right side of his body. Lumbar exam,  
23 still ambulating with the antalgic gate pattern, walking  
24 pattern. Range of motion had improved following the injections,  
25 now still more of a mild deficit. So, 15 degrees extension, 65

1 degrees flexion and 15 degrees lateral flexion, still with some  
2 decreased sensation. Intact reflexes. Right sided straight leg  
3 raise and intact strength. Spasm was still appreciated.

4 Q So, out of those findings, what was significant to you?

5 A He had shown that he had been responding to treatment.  
6 I'm not saying he's back to normal, but he had been responding  
7 well and it was -- he was trending better.

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

9 A Just monitoring, but, he did rate that, following the  
10 epidural, he did feel the symptoms returning and I imagine we  
11 had a discussion of another injection versus surgical referral,  
12 and, so, we elected to refer him to a surgeon.

13 Q And who was the surgeon?

14 A I referred him to Dr. Joseph Weinstein.

15 Q And the next time you saw him was July 1, 2019 and then  
16 September 12, 2019. Let me draw your attention to December 11,  
17 2019.

18 A Okay. Okay.

19 Q On this date, you examined him again, correct?

20 A Yes.

21 Q And what treatment, if any, did you provide him that  
22 day?

23 A That day, he had undergone cervical fusion surgery with  
24 Dr. Weinstein. October 24, 2019, we were holding --  
25 recommending holding physical therapy, at least three months



1 post-surgery, per Dr. Weinstein's recommendations, and then he  
2 had stated that he was following up with Dr. Weinstein with  
3 regards to possible lumbar surgery and then he was given, again,  
4 additional occipital blocks due to headaches.

5 Q Again, for the neck area?

6 A Yeah, in the sort of -- its -- it's sort of in the base  
7 of the skull, is what's it's going in, around the nerves.

8 Q And, next, we have January twenty -- January 29, 2020,  
9 May 4, 2020. By then we have COVID, correct, Doctor?

10 A Yes.

11 Q Were patients coming into your office?

12 A Not for about six to eight weeks. I don't remember  
13 exactly.

14 Q And then the next time he actually came into your  
15 office, was it August 12, 2020?

16 A Yes.

17 Q And, during that time, while they weren't coming into  
18 the office, were you doing Telemedicine?

19 A Yes. We would definitely get a translator on the phone  
20 and myself and I was doing it in my home with my kids running  
21 around.

22 Q And on August 12, 2020, did you examine Mr. Rivera?

23 A Yes.

24 Q And did you take any complaints from him at that time  
25 as well?

1           A     Yes.

2           Q     And what did he report?

3           A     He reported, with the neck, he stated that his,  
4 postsurgically, the surgery helped him a great deal with his  
5 radicular symptoms. For his low back, symptoms, although he had  
6 improvement following the epidurals, his symptoms had returned  
7 and he reported Dr. Weinstein had requested -- had recommended  
8 surgery.

9           Q     And you next saw him September 30, 2020?

10          A     Okay.

11          Q     And, at that time, what were his complaints?

12          A     He had been, I believe, waiting to get the surgery done  
13 for his lower back and, so, we discussed at that point doing a  
14 palliative injection, just to treat the pain while he awaits  
15 surgery. Sometimes patients will do that, if they'd rather be  
16 in comfort while they wait. We weren't necessarily thinking it  
17 would be treating at this point, just comfort. So, we had  
18 discuss it and he wished to proceed with an injection for that.

19          Q     What was the injection?

20          A     We proceeded with an epidural. On that date he also  
21 was complaining about some pain about his right sacroiliac  
22 joint. So, in your spine, the coccyx attaches to your pelvis  
23 and there's a small joint here called the aside joint. It can  
24 become inflamed, like any joint in the body. Oftentimes, if  
25 patients are walking unevenly, the body is sort of meant to

1 distribute force evenly amongst the joints, but if one side is  
2 painful and the patients walk in an uneven pattern, it can  
3 inflame this joint and, so, I did give him an injection into the  
4 joint at that visit.

5 Q And, next, you saw him on November 3, 2020, which was  
6 another surgical visit?

7 A Yes.

8 Q A surgical center visit?

9 A That was, I believe, for the epidural injection for the  
10 L5/S1.

11 Q And that was the lumbar again?

12 A Yes.

13 Q And then you saw him on February 8, 2021?

14 A Yes.

15 Q And, at that time, what treatment, if any, did you  
16 provide him?

17 A So, he reported that the SI pain improved following the  
18 last visit, and I did give him some -- he had some trigger  
19 points appreciated in his neck and he was given some trigger  
20 point injections and a prescription for medication.

21 Q And a bilateral occipital block again?

22 A Yes, that as well.

23 Q And then he then had a lumbar fusion on February 18,  
24 2021?

25 A Yes.

1 Q And then you saw him on May 3, 2021?

2 A Yes.

3 Q And, at that time, what did he report to you?

4 A Okay. He had the fusion. He had not been cleared for  
5 physical therapy yet. He reported that it had helped with his  
6 radiating low back pain. He did note that, postsurgically, he  
7 was having a -- receiving assistance with his activities and  
8 daily living, dress, pants, shoes, socks, due to the difficulty  
9 bending, and then they were helping him shop.

10 Q And this is -- now, that visit was three years  
11 post-accident, correct, Doctor?

12 A Yes.

13 Q And he then had an operation on his nose on June 12,  
14 2021, correct?

15 A Yes.

16 Q You saw him July 7, 2021, September 8, 2021. If I can  
17 draw your attention to December 15, 2021.

18 A Okay.

19 Q And, at that time, what complaints, if any, did he  
20 still have?

21 A That he was doing well, postsurgically, in physical  
22 therapy, which was helping him postsurgically, that it helped  
23 with his radiating back pain. He was still receiving some  
24 assistance with his ADLs.

25 Q ADLs stands for?

1           A     Activities of Daily Living.

2                     In regards to his neck, he reported he was continuing  
3 to show improvement, postsurgically.

4           Q     And what about the sacroiliitis joint? Did I say that  
5 correct?

6           A     Yes. I mean, he displayed some tenderness on  
7 examination, but I don't think -- we didn't do any injections,  
8 nothing that warranted any intervention at that time, other than  
9 medication.

10          Q     The next visit was February 16, 2022?

11          A     Yes.

12          Q     And, at this visit, what complaints, if any?

13          A     New complaints? I mean, again, he was doing well  
14 postsurgically following his fusion. He reported his pain was  
15 tolerable. It seems like he was doing better with his ADLs,  
16 Activities of Daily Living. I just noted he gets help for  
17 exacerbations for his neck. He continued to report that he was  
18 doing quite well after the surgery. Pain was tolerable and he  
19 had been doing home exercises and physical therapy.

20          Q     And on page three of this report, disability?

21          A     Yes.

22          Q     It states patient has met maximum medical improvement.  
23 Can you tell the jury what that is?

24          A     That's just meaning that, essentially, they're  
25 undergoing palliative treatment at this point. No major

1 surgical interventions were recommended, so he was just sort of  
2 treated and monitored generally by someone in physical medicine  
3 and rehabilitation, a sort of nonsurgical treatment. So, just  
4 medications, periodic injections, but no major surgical  
5 intervention was being recommended.

6 Q And what would be your expectations for someone such as  
7 Mr. Rivera after undergoing these fusions to the neck and the  
8 back? What would be your expectations as far as how long it  
9 would take to recover, where they would see the full benefits of  
10 the surgery?

11 A I mean, generally, a year postsurgery is where you --  
12 is what they've taught us in medical school is where you can  
13 sort of expect your best improvement, and then, after that, it  
14 progresses over time, just due to the effects of the mechanics  
15 involved following putting metal in your spine. So, usually  
16 you'll note some improvement and then hopefully it lasts for  
17 years, multiple years, but when you're fusing joints that used  
18 to be freely mobile and now it's fused, they're not mobile  
19 anymore. So, that does put greater force on the joints above  
20 it, the SI joints, and it can have -- you can have adjacent disc  
21 disease, breakdown, or adjacent facet breakdown, but that  
22 generally occurs over time and that's why we monitor it, but he  
23 was doing quite well at that visit.

24 Q You then saw him on June 15, 2022, September 14, 2022  
25 and then, if I could, draw your attention to January 18, 2023.

1           A     Okay.

2           Q     At that time you did an exam?

3           A     Yes.

4           Q     And your findings?

5           A     He was still -- again, I would place his cervical range  
6 deficits in the mild level. Still was having intact strength,  
7 his sensation had improved. So, after the surgery, when they  
8 decompressed the nerves, some people won't regain their  
9 sensation if it's too far damaged. Fortunately, he did regain  
10 the sensation both in his upper and lower extremities. He could  
11 still aggravate some of the nerve issues to the right and he  
12 still had some muscular spasm appreciated.

13                 With the lumbar spine, he had probably placed his  
14 deficits more in the mild range. Still had some SI tenderness,  
15 still had a positive straight leg raise, but he was only talking  
16 about complaints passed 60 degree. Like I said, he had -- the  
17 sensation had improved as well and still had some mild spasm.

18          Q     And, Doctor, could you draw your attention next to June  
19 14, 2023?

20          A     Okay.

21          Q     And, at this visit, you examined him as well. Did you  
22 have different additional recommendations for medication at that  
23 visit?

24          A     I had prescribed muscle relaxer and diclofenac.

25          Q     Was this because of spasms?

1 MR. VAN ETTEN: Objection. Leading.

2 THE COURT: If you could try not to lead the  
3 witness.

4 Objection is sustained.

5 Q And what was the medication for, Doctor?

6 A Yeah. I'll give patients cyclobenzaprine to take  
7 as-needed, usually at night, because it does sedate you. So, it  
8 will help you sleep, but it will also help your back get more  
9 comfortable. If you're having spasms at night, it's sometimes  
10 difficult to sleep.

11 Q Then you saw him August 30, 2023. And, Doctor, at this  
12 visit, what did he report regarding his cervical spine?

13 A Cervical spine, again, he said he still has some  
14 residual radicular symptoms at times, which you can expect  
15 following anybody who had neck surgery and fusion, but he was  
16 doing well, still some pain with right rotational movements,  
17 primarily was doing home exercises. So, he was doing well after  
18 surgery still.

19 Q And then you saw him on December 13, 2023?

20 A Yes.

21 Q And, at this time -- on the first page of -- can you  
22 tell us what he reported regarding the lumbar?

23 A Okay. He was doing home exercises that had been  
24 instructed to him with a home exercise program by his therapist,  
25 due to resources which were available to him. He reported the



1 surgery had helped with his back pain. The pain was tolerable.  
2 Still was having some ridiculous symptoms. He was reporting an  
3 increase in axial pain. So, not pain that was radiating, but  
4 more of an aching pain, at regions above the fusion and it's  
5 gotten worse with the colder weather.

6 So, that's sort of what I was talking about earlier.  
7 After a fusion surgery, not all patients, but many patients,  
8 will develop some arthritis, essentially, at the joints  
9 surrounding the fusion, because of increased strain, just due to  
10 the physics of the metal being there now, being placed on those  
11 joints. It's nothing that's dangerous, nothing that's surgical,  
12 but if it gets too painful, it is something that we can treat  
13 symptomatically for the pain.

14 Q And, Doctor, that was the last visit, correct?

15 A Yes.

16 Q And, Doctor, do you have an opinion, with a reasonable  
17 degree of medical certainty, as to the future treatment Mr.  
18 Rivera will need in the future?

19 A Yes.

20 MR. VAN ETTEN: Note my objection.

21 THE COURT: What's the basis again? What was the  
22 question?

23 MR. VARGAS: Do have you an opinion, with a  
24 reasonable degree of medical certainty, as to the future  
25 treatment Mr. Rivera will need in the future?

1 MR. VAN ETTEN: Form.

2 THE COURT: Overruled. You may respond.

3 A Yes. I'm -- as part of my field of physical medicine  
4 and rehabilitation, we've been asked to sort of predict  
5 educationally with an educated prediction of future treatment  
6 based on their current state.

7 Q And is this based on, not only the treatment you've  
8 given him?

9 A Yes.

10 Q And also have you consulted any other doctors in coming  
11 up with this future treatment plan?

12 MR. VAN ETTEN: Objection.

13 THE COURT: Can you repeat it again?

14 MR. VARGAS: Sure.

15 Have you consulted any other doctors also with  
16 coming up with this future treatment plan?

17 MR. VAN ETTEN: Objection. May we approach?

18 THE COURT: Yeah. Is it as to form?

19 MR. VAN ETTEN: Form and, I guess, foundation.

20 MR. VARGAS: I can rephrase it, if that will help  
21 speed it up.

22 (Whereupon, a discussion was held at the bench)

23 THE COURT: Objection sustained.

24 Q When you came up with this future plan, are there  
25 prices attached to the treatment?

1           A     Yes.

2           Q     How did you come to those prices?

3           A     Prices are calculated a few different ways. There is a  
4 website called FairConsumerHealth.Org, and it was made to -- by  
5 a non-profit, so that we can have transparency in pricing. It's  
6 been recognized by the Whitehouse Forum on Transparency in  
7 Healthcare in 2012, it's also won awards for transparency in  
8 healthcare pricing. So, that's where our -- you can put in a  
9 zip code and they can give you, sort of, pricing, averages for  
10 cash prices, for insurance prices. They utilize that for  
11 certain of them. Others are what our office will charge for a  
12 visit. So, if it's a pain management visit, then that's what  
13 our office's charge. Same thing for an orthopedic surgeon  
14 office visit. So, just those various factors.

15          Q     When you say orthopedic surgeon visit, for example, in  
16 this case, that would be?

17          A     Dr. Weinstein, he's an orthopedic spine surgeon.

18          Q     Okay. And what was the future treatment plan that you  
19 came up with?

20          A     So, like I said, it's just an educated prediction of  
21 the future care. So, it could be you need more care, less care,  
22 depending on how he progresses, recommended pain management --

23                   MR. VAN ETEN: Just note my objection.

24                   THE COURT: Can you approach. I didn't hear.

25                   (Whereupon, a discussion was held at the bench)

1                   (Whereupon, an on-the-record discussion was held  
2 chambers)

3                   THE COURT: Okay. I'll hear you objection,  
4 Counsel.

5                   MR. VAN ETTEN: Sure, Your Honor. There was a  
6 general question about his opinion as to what future care,  
7 and then he just said, and I think he indicated projection,  
8 he may need this, he may not need this, he may need more, he  
9 may need less, it all depends on his future condition.

10                  I don't think that that is now giving a definitive  
11 statement as to a reasonable degree of medical certainty as  
12 to what he actually needs for this plan. This has to be to  
13 certainty and, in this particular field, he has to be able  
14 to do something that is more likely than not, which is not  
15 what he had just said on the record. That's why I objected.

16                  MR. VARGAS: I disagree. The question was with a  
17 reasonable degree of medical certainty. Do you have a plan  
18 and he said yes.

19                  THE COURT: The objection is overruled, Counsel.  
20 In fact, it sounds like a question for cross-examination of  
21 a witness.

22                  MR. VAN ETTEN: I understand.

23                  THE COURT: And he just set himself up for that  
24 question.

25                  MR. VAN ETTEN: I understand. I just wanted to

1       make sure.

2               THE COURT:   The record is made.

3               MR. VAN ETTEN:   Thank you, Judge.   That's all I  
4       needed.   Thank you.

5               THE COURT:   You're welcome.

6               (Whereupon, testimony resumed in front of the jury)

7               THE COURT:   Okay.   The objection is overruled.

8       Q       You may continue, Doctor.

9       A       So, first recommendation, cost of his medications, the  
10   diclofenac, these antispasm agents, came to a cost of  
11   approximately \$50.00 to \$100.00 a month for a lifetime duration.  
12   Pain management office visits, cost of --

13              These are cash prices.   Some of you are aware of, when  
14   I'm making these plans, that I just put the cash price, because  
15   I don't know what type of insurance they may or may not have.

16              Pain management office visits at a cost of \$250.00.  
17   Orthopedic spinal surgeon office visits at a cost of \$500.00,  
18   once a year for a lifetime duration.

19              So, again, this is something that, as he would progress  
20   in the future.

21              Possible lumbar and cervical epidural steroid  
22   injections, cost of \$1,200.00 per injection and a \$2,000.00  
23   facility cost for anaesthesia and the fluoroscopy and, you know,  
24   up to three injections every two years.   Again, depending on how  
25   he does.

1           For lifetime trigger point injections, at a cost of  
2     \$300.00 per set of injections, up to one set of injections every  
3     three months for a lifetime duration, and then physical therapy  
4     to help, any sort of a maintenance program once or twice a month  
5     to oversee and instruct his home exercises; it's important, just  
6     so that he doesn't cause any damage or anything to the hardware  
7     in his back, at a cost of \$100.00 to \$150.00 a month, once or  
8     twice, for a lifetime duration.

9           He's a questionable candidate for a revision or  
10    extension of his lumbar fusion surgery at a cost of \$100,000.00,  
11    which would be facility cost, anesthesia and equipment cost, and  
12    then just monitoring of his condition with MRI's of the lumbar  
13    spine at a cost of \$1,300.00 every five years, lifetime  
14    duration. MRI of the cervical spine, cost of \$1,300.00, every  
15    five years, lifetime duration. X-ray films of the lumbar spine  
16    every six months, cost of \$400.00 for a lifetime. X-ray films  
17    of cervical spine every six months, cost of \$400.00 for a  
18    lifetime. EMG studies of the upper and lower extremities, cost  
19    of \$2,000.00 every five years for a lifetime duration.

20           And, then, again, as to the possible future treatment,  
21    he is displaying some degeneration of the joints proximal to his  
22    fusion. So, there's something called a radio frequency  
23    ablation, where the pain generating nerves to the joint, called  
24    medial branch nerves, you can heat them up so you don't need to  
25    use steroid and it will just denervate them, so they're not

1 conducting the pain signal anymore. This is purely for pain  
2 control, it's not -- it's -- so, it's nothing dangerous if he  
3 doesn't have it done, but it can really relieve the pain for up  
4 to six months at a time, so he'd be a candidate for that. At  
5 his last visit he was tolerating it, but we did discuss it and I  
6 think it's something he would benefit from as this condition  
7 progresses. The cost for that is \$2,000.00 for the procedure,  
8 \$1,000.00 for anesthesia services and then \$2,500.00 facility  
9 fee for the fluoroscopic guidance and that can be done every six  
10 to nine months, depending on how fast the nerves grow back, and  
11 then the same thing for the occipital nerves. In lieu of  
12 putting steroid around the nerve, those can be ablated too,  
13 which would last longer and not expose you to the steroid,  
14 which, that can be done every six months as well, so, he would  
15 be a candidate for that, since he responded well to the  
16 injections, which, you know, same cost, at approximately  
17 \$2,000.00 for the procedure and then \$1,000.00 for the  
18 anesthesia services and a \$2,500.00 facility fee.

19 Q Are you aware that Mr. Rivera's diabetic?

20 A Yes, I believe he was diagnosed with diabetes  
21 throughout his treatment, which was, again, a rationale to be  
22 careful with steroid injections. Being diabetic does not  
23 preclude you from getting steroid injections, it just needs to  
24 be done in a supervised setting where we check the blood sugar  
25 before. If it's high, the procedure would be cancelled if

1 they're getting steroid. But, epidural injections, steroid,  
2 there have been studies that show it doesn't cause much systemic  
3 raising of the medication as it would be taking oral steroids,  
4 and, again, it's done in a supervised setting to monitor it to  
5 make sure it's safe.

6 Q And, Doctor, I want you to assume that the Plaintiff,  
7 Mr. Rivera, testified that while he was working on March 15,  
8 2018, a pipe, approximately twenty pounds, fell, striking his  
9 head, causing him to twist his neck and fall to the ground. I  
10 want you to further assume that in the following weeks after the  
11 accident, he was diagnosed with herniations at C4/C5, C5/C6 and  
12 L5/S1. Do you have an opinion, with a reasonable degree of  
13 medical certainty, as to whether the injuries to the neck and  
14 the back and the subsequent treatment you provided him is  
15 causally connected to the accident of March 15, 2018?

16 MR. VAN ETTEN: Note my objection.

17 THE COURT: I just need the basis.

18 MR. VAN ETTEN: Based on the lack of qualifications  
19 as a pain and rehabilitative doctor to establish causation  
20 based on the lack of the full history and the assumptions  
21 being made, which is inconsistent with his records.

22 THE COURT: Overruled.

23 You may answer the question, Doctor.

24 A Yes. With a reasonable degree of medical certainty, I  
25 would find that his injuries and symptoms are causally related



1 to the accident.

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

5 A I would say his future prognosis is guarded. This is a  
6 progressive condition that generally will get worse over time.  
7 So, it's just something that needs to be monitored.

8 Q And why will it get worse?

9 A He's getting older. Like I said, the physics involved  
10 with putting more pressure on the joints and just, I believe,  
11 his joints and body will age at a faster degree than if not  
12 having the hardware in there.

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

15 A Yes, his injuries are permanent.

16 Q And, as far as the treatment plan you provided the  
17 jury, that's within a reasonable degree of medical certainty as  
18 well, correct?

19 A Yes.

20 MR. VAN ETTEN: Objection. Asked and answered.

21 THE COURT: Can you repeat your question?

22 MR. VARGAS: The treatment plan he gave the jury,  
23 that is within a reasonable degree of medical certainty?

24 THE COURT: I'll allow it. It's a different  
25 question. Now it's with a reasonable --

1 MR. VAN ETTEN: -- be able to get those in, so.

2 Okay.

3 THE COURT: Now the question is within a reasonable  
4 degree of medical certainty. I'll allow it. Overruled.

5 Q And you said yes?

6 A Yes.

7 MR. VARGAS: No further questions, Your Honor.

8 THE COURT: Do you need a break, Counsel?

9 MR. VAN ETTEN: I don't. I do need to look at his  
10 chart, though. I don't know about the jury or the witness.

11 THE COURT: We'll take a break so you can look at  
12 the chart.

13 MR. VAN ETTEN: Thank you.

14 THE COURT: Five minutes.

15 MR. VAN ETTEN: Thank you, Doctor.

16 THE COURT: Now we'll take five minutes.

17 COURT OFFICER: All rise. Jury exiting.

18 (Whereupon, the jury exits the courtroom)

19 THE COURT: You can step down, if you wish. When  
20 we resume, I just need you back on the witness stand.

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

22 (Whereupon, the Chart of Dr. Grimm was marked as  
23 Plaintiff's Exhibit 18 in evidence, subject to redaction, by  
24 the Reporter)

25 (Whereupon, the Spine Model was marked as

1 Plaintiff's Exhibit 19 for identification, by the Reporter)

2 (Whereupon, a short recess was taken)

3 THE COURT: You can bring the jury down.

4 COURT OFFICER: All rise. Jurors entering.

5 (Whereupon, the jury entered the courtroom)

6 THE COURT: You may be seated.

7 Okay. You may inquire, Counsel, when you're ready.

8 MR. VAN ETTEN: Thank you.

9 CROSS-EXAMINATION

10 BY MR. VAN ETTEN:

11 Q Good morning, Dr. Grimm.

12 A Good morning.

13 Q First thing that happened for you with Mr. Rivera was  
14 getting a referral from Dr. Kaplan, correct?

15 A Yes.

16 Q And, so, when you got that referral, you had Dr.  
17 Kaplan's records available to you because you're in the same  
18 office?

19 A Yeah, I had his first note available to me.

20 Q Okay. And the first thing you and Dr. Kaplan do are  
21 take histories, fair?

22 A Yes.

23 Q And that's important for you, as a treating doctor, to  
24 get a history from your patient?

25 A That's one of the aspects, yes.

1           Q     First thing you do, right, is you ask them questions  
2 about what happened, why they're there and you go from there?

3           A     Yes.

4           Q     Okay. And you would agree that getting an accurate  
5 history is one of the most important things, then, for you as a  
6 treating physician?

7           A     It's -- it's an important thing, yes.

8           Q     Okay. You have to treat your client's conditions that  
9 he complains of and you also have to do it in relation to his  
10 overall medical condition, fair?

11          A     Yes.

12          Q     And, in this instance, you did not get a full history  
13 from Mr. Rivera, correct?

14          A     I would not agree with that.

15          Q     Okay. In your first note, does it list prior medical  
16 history?

17          A     Yes.

18          Q     All right. Does it have the word diabetes there?

19          A     Not at his first visit, no.

20          Q     And, in fact, right at the end you were asked by Mr.  
21 Vargas, and you're aware, that Mr. Rivera has diabetes, correct?

22          A     Like I said, I became aware of his diabetes during his  
23 treatment, I believe.

24          Q     And can you show me anywhere in any of your notes that  
25 you marked that down?

1           A     I mean, it's just -- I was made aware at the surgery  
2 center, because they would check his blood sugar.

3           Q     In your notes, do you have it written down anywhere  
4 that he's a diabetic?

5           A     I'm not sure if I have it in my reports written down.

6           Q     And, so, in fact, even though steroids can be bad for a  
7 diabetic, you administered steroids to him without knowing he  
8 was a diabetic, true?

9           A     I believe he was -- did not become aware that he was  
10 diabetic until later on in his treatment.

11          Q     In fact, would that have been when the first surgery  
12 was postponed, because they found that out?

13          A     Yes.

14          Q     And, still, even though they had to postpone a surgery,  
15 you still didn't record that anywhere in your chart?

16          A     I was aware.

17          Q     And you indicated before about studies and doing  
18 epidurals under controlled circumstances where they would do  
19 blood tests before, correct?

20          A     They do a spot test in the surgical center, yes.

21          Q     Do you have any records showing any spot blood tests  
22 being done for Mr. Rivera by you?

23          A     The surgical center is run by Surgicore, so, that's  
24 their records. I don't get their records. The nurses do the  
25 testing beforehand and report to me.

1 Q But did you ask them to do that spot testing?

2 A Yes, they do it for all the patients that come in.

3 Q But --

4 A And if it comes back above, approximately, 170, the  
5 procedure is cancelled.

6 Q And, in this instance, if you're administering  
7 steroids, can that increase a diabetic -- a diabetic's blood  
8 glucose level?

9 A Usually, for approximately 1.5 days.

10 Q And did you speak to your patient before you gave him  
11 and recommended epidurals and say, hey, you're a diabetic, we  
12 have to be careful about that?

13 A Once I became aware of him being diabetic, yes, I would  
14 always tell all my patients to watch what they eat, check their  
15 blood sugar and be aware. So, no sugars, no carbs for a few  
16 days after the procedure.

17 Q I may not have been clear, then, in my question,  
18 Doctor. You learned about it, I think we've agreed, was right  
19 around when the first surgery was going to be done, true?

20 A Yes.

21 Q And you had already administered four epidurals before  
22 that, true?

23 A Yes.

24 Q So, you never gave informed consent to your patient  
25 about the risks he might have as a diabetic by taking steroids,

1 because you didn't know, true?

2 A I'd have to go back and --

3 Q Well --

4 A I mean, I tell all the patients the risks.

5 Q Well, Doctor, what I'm kind of confused with, you and  
6 Dr. Kaplan both took histories and neither one recorded that on  
7 the initial intake, correct?

8 A Yes, the patient was not aware of it.

9 Q And then the rest of your records never make a  
10 recording of that, correct?

11 A I had discussed the surgery being postponed --

12 Q And at some point --

13 A -- in connection to the issue.

14 MR. VARGAS: Objection. He's not letting him  
15 finish his answer.

16 MR. VAN ETTEN: I thought he had finished, I'm  
17 sorry.

18 MR. VARGAS: No, he was still talking.

19 MR. VAN ETTEN: Well, I couldn't hear over the  
20 sneezing.

21 THE COURT: Do we need a break? You all good,  
22 Juror? It's more important than choking. It's allergies?  
23 All right. Let me know if you need a break. Yeah, yeah,  
24 let's take a break. Sorry, guys.

25 COURT OFFICER: All rise. Jurors exiting.

1 (Whereupon, the jury exits the courtroom)

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

3 THE COURT: Let me know when the jurors are ready.

4 COURT OFFICER: All rise. Jurors entering.

5 (Whereupon, the jury entered the courtroom)

6 THE COURT: All right. You may be seated. Don't  
7 be afraid to ask me for a break, okay? That's what we're  
8 here for, okay?

9 If the doctor can please finish his response to the  
10 question.

11 A Yeah. I was just saying that I did make note of the  
12 surgery being postponed.

13 Q And in that note for being postponed, you didn't say  
14 because of diabetes?

15 A We -- I'm not treating for diabetes. I'm focussed on  
16 his neck and his back.

17 Q Now, the day after Dr. Kaplan saw Mr. Rivera, he had --  
18 or Mr. Rivera actually went to a plastic surgeon that Dr. Kaplan  
19 had referred him to, you're aware of that, Sr. Sieczka?

20 A I'm aware he was seeing a plastic surgeon, yes.

21 MR. VAN ETTEN: Your Honor, may I get the records  
22 from the plastic surgeon?

23 THE COURT: They're already in?

24 MR. VAN ETTEN: Yes, they're already in,  
25 Defendant's A is in evidence.



1           Q     I'm just going to show you, Doctor, Defendant's A in  
2 evidence, Dr. Sieczka's records. Can you just, on her date of  
3 treatment, April 4, 2018, just look at the note where it says  
4 past medical history?

5           A     Okay. Previous treatment for diabetes but stopped  
6 taking metformin, as he had no new prescription. Denies  
7 hypertension.

8           Q     All right. So, then, a plastic surgeon knew to get a  
9 history complete from Mr. Rivera and got one the day after Dr.  
10 Kaplan about the diabetes, you would agree with that?

11                   MR. VARGAS: Objection. Form.

12                   THE COURT: What is the question again, Counsel?

13                   MR. VAN ETTEN: I said, the plastic surgeon who  
14 treated a day after Dr. Kaplan knew to get a full history  
15 that included -- ultimately included diabetes.

16                   THE COURT: Sustained.

17                   What does he know about the plastic surgeon?

18           Q     Well, Doctor, you would agree that that record from the  
19 day after Dr. Kaplan saw Mr. Rivera confirms the diabetes, fair?

20           A     I couldn't say that, no.

21           Q     It doesn't have that recorded, that there's a diabetes  
22 history?

23           A     I don't know this doctor, I don't know what translator  
24 they were using.

25           Q     So, you're saying --

1           A     I'm saying this record says that, yes, but I'm not  
2 gonna confirm their --

3           Q     Can I have the record back, please, then?

4           A     Yeah.

5           Q     So, you're not gonna confirm that she learned that he  
6 had diabetes?

7           A     Yes, her record says that.

8           Q     Okay. Now, go back to your record again from the 10th,  
9 please. Okay, and, in that record, you put in there, denies any  
10 prior injures to the lumbar spine, correct?

11          A     Yes, that's --

12          Q     Okay. And you didn't put denies any injuries to the  
13 neck, just only the lumbar spine, correct, on that section right  
14 there?

15          A     Denies any history of neck pain.

16          Q     I'm asking, right there, where you said prior injuries  
17 to the lumbar spine, did you ask about prior injuries to the  
18 neck?

19          A     That's what I mean by denies any history of neck pain.

20          Q     Now, Mr. Rivera came to your firm on the referral of  
21 his lawyers, correct?

22          A     I actually don't know that, but I -- it's possible.

23          Q     Well, there's intake sheets that your patients fill out  
24 when they come in, correct?

25          A     Yeah.

1 Q And you brought those in with the records you brought  
2 in?

3 A I don't think the intake sheets are with these records.

4 MR. VAN ETTEN: And, may I just get the records  
5 that were subpoenaed from his office, please, Your Honor?

6 THE COURT: Yes.

7 MR. VAN ETTEN: I believe these are Plaintiff's  
8 Nine in evidence.

9 Q And that's the records that your office served pursuant  
10 to my office's subpoena?

11 A Okay.

12 Q And that asked for the intake sheets?

13 A Okay.

14 Q And did you include the intake sheets with the  
15 subpoenaed records that were brought to court?

16 A I don't know. I'm not --

17 Q If I told you they're not there, would that surprise  
18 you?

19 A I don't know. I'm not in charge of records.

20 Q Okay.

21 A I just work there.

22 Q Well, the intake sheet would indicate whether or not a  
23 patient may have been referred to a law firm, as opposed to  
24 another doctor, fair?

25 A I don't know. I never view the intake sheets, because

1 it's just insurance and that.

2 Q Well, aren't intake sheets where a patient tells you  
3 what their problems are and they write that type of information  
4 down, they write their weight, they have their prior medical  
5 history, they do things like that on an intake sheet, correct?

6 A Our intake sheets don't have that. I get that myself.

7 Q So, you only concern yourselves on maybe who they come  
8 and whether or not, as you said, they have financial means to  
9 pay?

10 MR. VARGAS: Objection.

11 A I don't care. I'm an employee.

12 THE COURT: Hold on a second. There's an  
13 objection. When there's an objection, you have to wait  
14 before you answer.

15 What is the basis?

16 MR. VARGAS: Form, again, Your Honor.

17 THE COURT: What was the question again? If you  
18 don't remember, she'll read it back.

19 MR. VAN ETTEN: Sure. Could you read it back for  
20 me? I apologize.

21 (Whereupon, at this time the testimony was read  
22 back by the court reporter)

23 THE COURT: Sustained as to form.

24 Q Well, what is the purpose of an intake sheet then?

25 A I think it's their name, address, whether they need a

1 translator. Like I said, I don't -- I don't get the intake  
2 sheets, because the staff puts them in. They're typing the  
3 information in the computer. Usually it's just their address  
4 and everything and then I go back and I have an assistant who  
5 speaks Spanish who would then start asking them questions.

6 Q Okay. And then you record that into your reports,  
7 fair?

8 A I type them. I'm a fast typer.

9 Q And the initial information you recorded, as it applies  
10 to this incident, was that Mr. Rivera sustained a work-related  
11 accident on March 15, 2018, correct?

12 A Yes.

13 Q And you state piping material fell onto him, causing  
14 injuries to his head, neck, lower back and nose?

15 A Yes.

16 Q And do you have any other recordings of how the  
17 incident took place in that note?

18 A No.

19 Q And do you have any other recordings of how the  
20 incident took place in any of the other notes for the next five  
21 years of treatment?

22 A No. That is all I need.

23 Q And did Dr. Kaplan have any other history of how the  
24 incident occurred?

25 A I believe Dr. Kaplan only saw him once.

1 Q And that was on April 3rd?

2 A Hold on, maybe he saw him -- let me see. April 3rd,  
3 yes.

4 Q And his notation was only that a water pipe fell onto  
5 him, correct?

6 A It says a water pipe fell onto him, yes.

7 Q And there was no other factual information as to how  
8 Mr. Rivera was injured, fair?

9 A Correct.

10 Q And Dr. Kaplan also noted that initial treatments were  
11 at Mount Sinai Hospital, but you were not in receipt of those  
12 records, correct?

13 A Correct.

14 Q And have you ever seen the records from Mount Sinai  
15 Hospital?

16 A I saw them quickly at some point, yes.

17 Q Would that have been in preparation of this trial  
18 appearance?

19 A Yes.

20 Q Okay. Because you did, before you gave your plan,  
21 review various records for the purpose of supporting your plan,  
22 fair?

23 A Yes.

24 Q Okay. Because you drafted a report, correct?

25 A Yes.

1 Q And, in that report, you state the records that you  
2 reviewed?

3 A Yes.

4 Q And that was in 2023?

5 A Yes.

6 Q And, in that report, you made no mention of Mount Sinai  
7 Hospital, correct?

8 A I don't know. I mean, let me -- I would -- generally,  
9 these plans are made, I review the records that are made  
10 available to me. So, if they weren't made available to me at  
11 that point, I could not have reviewed them.

12 Q Okay. Well, the first record that you said you  
13 reviewed is Dr. Kaplan's initial note, correct? That's on page  
14 two?

15 A Review of records, yes.

16 Q And then the next note, remarkably, is Dr. Sieczka's  
17 report of April 4, 2018 where she lists the diabetes?

18 A Okay.

19 MR. VARGAS: Objection. To form again. He's  
20 adding words like remarkable and he's just adding.

21 THE COURT: Can you rephrase, Counsel?

22 MR. VAN ETEN: Sure.

23 Q And the next note is Dr. Sieczka's April 4, 2018 note  
24 that we just looked at that had the history of diabetes,  
25 correct?

1           A     Yes.

2           Q     And you make no reference of the diabetes in your note  
3 at that time, correct?

4           A     Correct.

5           Q     And, again, in that report, you made no reference of  
6 the diabetes in 2023, correct?

7                   MR. VARGAS:  Objection.  This has been asked and  
8 answered now several times.

9                   MR. VAN ETTEN:  I'm asking specifically as to the  
10 report, for which he based his -- outlined his plan.

11                  THE COURT:  You already asked him that.

12                  MR. VARGAS:  He's previously asked if any of his  
13 notes had diabetes and he already said no.

14                  THE COURT:  It's sustained as to asked and  
15 answered, Counsel.  Move on.

16                  MR. VAN ETTEN:  Okay.

17           Q     Let's just jump ahead real quick before I get back to  
18 those records.  Isn't it, in fact, true, sir -- I withdraw that.

19                   Are you aware that Dr. Weinstein testified on Friday?

20           A     Yes.

21           Q     Did you hear about any of his testimony?

22           A     I mean, I've talked to Dr. Weinstein.  We're friends,  
23 so, I asked him how it went.

24           Q     Okay.

25                   THE COURT:  That's not the question, right?



1 Q Did he discuss any of his testimony with you?

2 A No.

3 THE COURT: Doctor?

4 THE WITNESS: I'm trying to think of what we talked  
5 about. I mostly asked --

6 THE COURT: Did you hear him testify on Friday, yes  
7 or no?

8 THE WITNESS: No.

9 THE COURT: Move on.

10 MR. VAN ETTEN: All right.

11 Q I want you to assume that I asked Dr. Weinstein about  
12 the issue of diabetes of Mr. Rivera and on three occasions he  
13 could not remember that until I told him that the initial  
14 surgery had to be cancelled, okay? I want you to assume that  
15 and I want to ask you one next question.

16 Isn't it true that you became aware of the diabetes and  
17 the issue with your epidural usage after you learned that we  
18 retained a life care plan expert that said it was inappropriate  
19 for you to be prescribing and treating with epidurals, due to  
20 the diabetic condition?

21 A I became acutely aware of it then, but, my treatment  
22 was very careful and we did not do many injections, only when  
23 needed, after his diagnosis.

24 Q Okay. Now, let's go back to these records, which are  
25 the -- would you agree those records that you reviewed are the

1 foundation for your plan of future treatment?

2 A No.

3 Q Well, because, during the course of treatments, Mr.  
4 Rivera had multiple diagnostic testing films, correct?

5 A Pardon?

6 Q Mr. Rivera had multiple diagnostic testing films,  
7 correct?

8 A He's had multiple, yes.

9 Q Okay. And the only diagnostic testing films that you  
10 refer to when you were preparing your plan were the initial  
11 films from Kolb Radiology on April 7, 2018, correct?

12 A Those are the only ones made available to me, correct.

13 Q So, you just talked to this jury and said one of the  
14 reasons you do a plan is because of potential future  
15 degeneration and other issues. So, you have to monitor the  
16 patient, fair?

17 A Yes.

18 Q And during the five years in which you treated him, he  
19 went to Lennox Hill Hospital on and had over a dozen tests, are  
20 you aware of that?

21 A No. They were not made available to me and if I had  
22 been aware I would not have requested to update his studies in  
23 2021, I believe, that was denied.

24 Q So, were you aware that, postoperatively, Dr. Weinstein  
25 got x-rays of Mr. Rivera?

1           A     I mean, I know that Dr. Weinstein regularly gets  
2 x-rays, because I'm familiar with his treatment, but he -- they  
3 were not provided to me.

4           Q     And don't you consult with Dr. Weinstein and refer him  
5 patients?

6           A     I do, yes.

7           Q     So, all you have to do is say -- by the way, you said  
8 you're friends; Joe, Joseph, whatever you may call him. Can you  
9 send me the records of my patient so I can see how he's doing?  
10 You can do that, right?

11          A     I -- I can do that. I didn't get them.

12          Q     You never thought to go check on any postoperative  
13 x-rays or MRI's or other tests of Mr. Rivera, fair statement?

14          A     I didn't receive them, no.

15          Q     I'm not asking if you received them. You never  
16 followed up with Dr. Weinstein and asked for them, did you?

17          A     No, because I was treating the patient.

18          Q     Okay. Well, you're talking about segmental disc  
19 injuries, correct?

20          A     Yes.

21          Q     And x-rays could tell you if there's been any ware and  
22 tear of the segmental disc, correct?

23          A     That's one of the things that tell it, yes.

24          Q     And you just made projections about treatments needed  
25 for segmental disc issues, yet you've never gotten an x-ray,

1 you've never gotten a diagnostic testing film to actually see if  
2 that's happening, true?

3 A I was recommending that they be done and they were done  
4 and they would be evaluated --

5 Q Sir --

6 A -- by Dr. Weinstein.

7 Q I don't want to interrupt you. My question is not  
8 about what Dr. Weinstein was doing, because you, obviously, were  
9 not following with him, true?

10 A I mean, if something would come up. I mean, we have  
11 multiple patients, so I don't get every patient's records.

12 Q Okay. But, in this instance, you prepared a report to  
13 say that future plan of care was needed, but you didn't get any  
14 of the additional diagnostic testing films, which might support  
15 your opinion that there is segmental disc injuries?

16 MR. VARGAS: Objection. Asked and answered now  
17 several times, as well.

18 THE COURT: What's the question again?

19 MR. VAN ETTEN: I'm sorry?

20 THE COURT: What's the question again, Counsel?

21 MR. VAN ETTEN: I had asked the one question, he  
22 did not answer it, so I tried to steer him to the answer I  
23 was looked for, Judge.

24 MR. VARGAS: No, he asked the question several  
25 times about the diagnostic films.

1 THE COURT: I want to know what the question is.

2 MR. VAN ETTEN: I'm sorry, Siobhan, can yo please  
3 do that for me? I apologize.

4 (Whereupon, at this time the testimony was read  
5 back by the Reporter)

6 THE COURT: I'll allow it. Overruled. If it was  
7 asked and answered, my apologies, I didn't hear it.

8 A I'm making a recommendation that those would be helpful  
9 and they were done and, so, I think it was followed, my  
10 recommendation.

11 Q The plan that you prepared was in contemplation of this  
12 litigation, true?

13 A It was -- I don't know what it's used for, because I  
14 generally don't go to court, but I know it's used, they exchange  
15 them back and forth, for -- with the other attorneys.

16 Q You wrote the plan and gave it to Mr. Rivera's  
17 attorneys, correct?

18 A Yes.

19 Q And you were paid over a \$1,000.00 to write that plan,  
20 correct?

21 A My office is paid and I don't think it's over a  
22 \$1,000.00.

23 Q \$850.00 to \$1.250.00, depending on the plans, that's  
24 what you usually charge, correct?

25 A Yes, I think that's -- I'm not exactly sure, because

1 I'm not part of the finances. I just work there.

2 Q So, that plan was not written on behalf of Mr. Rivera  
3 for his ongoing treatment, it was written for his attorneys to  
4 present to this jury, true?

5 A Yes. They asked me for it.

6 Q And, in fact, you stopped treating him eighteen months  
7 ago?

8 A I made a followup appointment, but, yes, he had stopped  
9 coming to me.

10 Q And I want you to assume, because you didn't recall  
11 whether you and Dr. Weinstein talked about any of the substance  
12 of his testimony, that he testified that he hasn't seen Mr.  
13 Rivera in more than three years and has no need to see him,  
14 unless something happens to the worsening of Mr. Rivera's  
15 condition. Can you make that assumption?

16 A Okay.

17 Q Would that be proper for an orthopedic surgeon who does  
18 surgery that is successful, not to have to see the patient  
19 anymore, unless there's a problem?

20 A Yeah.

21 Q Yet, you made recommendations for the orthopedic spinal  
22 surgeon to see Mr. Rivera every year, at least, right?

23 A I say for the future. It's an educated prediction, but  
24 as, it gets worse, he may need more treatment.

25 Q In the future, as an educated projection, and you wrote

1 this on August 4, 2023, correct?

2 A Yes.

3 Q And, during that time, there were no treatments with  
4 Dr. Weinstein, correct?

5 A Correct.

6 Q So, your educated projection was wrong?

7 A For the time being, but this is asked for his lifetime,  
8 not right now, for this very moment.

9 Q And you have no way of knowing that he will actually  
10 need those, because you don't know that his condition will  
11 worsen, correct?

12 A It's with a reasonable degree of medical certainty that  
13 his condition will worsen with that hardware in his back, based  
14 on my past patients.

15 Q And didn't you state, in fact, that a number of these  
16 recommendations that are if the condition worsens, then he  
17 becomes a candidate for the various treatments?

18 A Yes.

19 Q Okay. So, it is not a certainty, true?

20 A There's no certainties in life, except death.

21 Q And being a candidate does not mean that the person  
22 will actually undergo the treatments, true?

23 A True.

24 Q In fact, again, assume Dr. Weinstein may have discussed  
25 that, if, in fact, there would be a need at some point for

1 future surgery, he and Mr. Rivera would have to talk about it,  
2 discuss the benefits and lack of benefits, and whether or not  
3 they go forward with it, true?

4 A Hence the need for a visit in the future.

5 Q But it would be the decision of Dr. Weinstein on future  
6 surgery for Mr. Rivera, correct?

7 A Yes, doctor -- well, or whatever surgeon he's seeing.

8 Q And I want you to assume -- well, in fact, you don't  
9 have to assume that Dr. Weinstein testified on Friday that, on  
10 page 209 of the trial transcript, I don't think he needs further  
11 surgery right now.

12 A Yeah, neither do I.

13 Q Okay. So, his surgeon doesn't think he needs future  
14 surgery and doesn't think he needs to come back, unless a  
15 problem develops, fair?

16 A Yes.

17 Q And, if no problem develops, then a lumbar revision  
18 surgery would not be needed, correct?

19 A Again, yes.

20 Q And, if no problems develop, the use of a spinal cord  
21 stimulator would not be needed, correct?

22 MR. VARGAS: Objection. There was no mention of a  
23 spinal cord stimulator.

24 Q You didn't testify to that when you were reading your  
25 plan in?



1           A     No.

2           Q     Did you delete various items from your plan?  You  
3  didn't do all twenty six items?

4                   MR. VARGAS:  Objection to form.

5                   THE COURT:  Did you withdraw your last question?

6     I'm sorry, I haven't --

7                   MR. VARGAS:  You were here listening, weren't you?

8                   THE COURT:  Let's not go there.  Come on.  He  
9  withdrew it?  I just want to know if he withdrew his  
10 question so I don't have to rule on the objection.

11                  MR. VAN ETTEN:  No, I'm not withdrawing the  
12 question, because I don't know.

13                  MR. VARGAS:  Objection.  It was not testified to,  
14 so this question is completely improper.

15                  THE COURT:  Can I get the transcript?  Do you have  
16 it?  Can you read back the question?

17                   (Whereupon, at this time the testimony was read  
18 back by the Reporter)

19                  MR. VAN ETTEN:  Sir, that's not from Dr. Weinstein.

20                  THE COURT:  Hold on a second.  I'm still ruling on  
21 an objection, because you haven't withdrawn your question.

22                  MR. VAN ETTEN:  I'll withdraw the question then,  
23 Your Honor.

24                  THE COURT:  Perfect.  Move on.

25                  MR. VAN ETTEN:  Thank you, Judge.

1           Q     Doctor, let me just jump ahead then. You had made,  
2 originally, 26 recommendations of future care?

3           A     Yeah, approximately a year ago, in August of '23.

4           Q     Okay. So, again, I may have then zoned out when you  
5 were giving that laundry list of --

6                     MR. VARGAS: Objection. Laundry list? Again, he's  
7 adding.

8                     THE COURT: Sustained.

9                     MR. VAN ETTEN: Sorry.

10          Q     I may have zoned out when you were giving your list of  
11 possible future treatment needs. Did you eliminate some of  
12 those 26?

13          A     Yes, I have modified it, based on that he's doing well  
14 a year later.

15          Q     Okay. And when you modified it, did you send a report  
16 to Mr. Rivera's attorney?

17          A     No. It's -- I just -- we just looked at the report.  
18 There are things that I don't think he may necessarily need.  
19 Again, it's an educated prediction and I took some things and  
20 removed them, based on his current condition.

21          Q     So, in August of 2023, you thought all these things  
22 were going to be needed and then a little more than a year later  
23 you already started eliminating what you thought he needed a  
24 year ago, fair?

25                     MR. VARGAS: Objection. Form.

1 THE COURT: What's the problem with the form?

2 MR. VARGAS: I disagree with the form of the  
3 question.

4 THE COURT: You don't like the question? It's  
5 overruled. There's nothing wrong with the question.

6 MR. VARGAS: Okay.

7 A Like I said, it's a fluid prediction, it's not a  
8 perfect thing and, so, it's -- it can change. A year later, if  
9 a patient's doing well, if he was doing poorly a year later,  
10 then he may need greater treatment. So, it's one point in time.

11 Q Well, you're aware, as well, from either this  
12 litigation by preparing the report, or from other matters that  
13 you've testified on, that after you testify to cost, that an  
14 economist is going to come in to talk to the jury about your  
15 projections, correct?

16 A Okay.

17 Q You're aware of --

18 A I've never seen them, but I know that they do that.

19 Q Okay. So, since you were revising and shortening the  
20 list, would you agree that Mr. Vargas and myself should have  
21 known about that and, possibly, their expert?

22 MR. VARGAS: Objection. What the expert should  
23 know. Improper.

24 THE COURT: What is the question again?

25 MR. VAN ETTEN: Sure.

1                   You are aware that the expert's gonna come in, but  
2                   shouldn't Mr. Vargas, myself and the expert know if you're  
3                   eliminating things he's already given us an opinion on?

4           A       Okay.

5                   THE COURT: Sustained.

6                   I'm trying to rule on an objection.

7                   THE WITNESS: I didn't know there was an objection,  
8                   I'm sorry.

9           Q       All right. Can you tell me by numbers, then, which  
10           ones you're taking out?

11          A       Yes.

12          Q       Sure.

13          A       Eight, 11, 12, 13, 14, 15, 16, 17, and then 24.

14          Q       24?

15          A       And seven.

16          Q       So, 10 of the 26 items are no longer -- you're no  
17           longer saying that you believe, at this time, he will need them  
18           in the future, fair?

19          A       Fair.

20          Q       Okay. So, we just discussed, then, that at this point  
21           he's not a candidate for a lumbar fusion, according to the  
22           testimony of Dr. Weinstein, and what you now know, right now,  
23           he's not a candidate for -- I withdraw that. He does not need a  
24           revision surgery right now, true?

25          A       You mean today?

1 Q Today.

2 A True.

3 Q And you don't know what -- whether he'll need it in six  
4 months, true?

5 A True.

6 Q All right. You talked about MRI's, correct?

7 A Correct.

8 Q And MRI's are not monitoring tests, correct?

9 A They can be.

10 Q Are they supposed to be?

11 MR. VARGAS: Objection. He just answered that,  
12 yes, they are. So, why supposed to?

13 MR. VAN ETTEN: They can be.

14 MR. VARGAS: It's like asking the same question  
15 over again.

16 THE COURT: Can you explain your response to the  
17 question?

18 How's that?

19 Okay, explain it.

20 A Yes, in a patient who has symptoms -- I would say they  
21 are not supposed to be monitoring. If it's a patient that has  
22 absolutely zero symptoms, like a person who comes in off the  
23 street with no symptoms, you're not gonna do an MRI to monitor  
24 their lungs. Now, he has complaints of pain still, albeit less,  
25 after his surgery. So, he's not an asymptomatic patient coming

1 in off the street that we're just monitoring their back with an  
2 MRI, he's a symptomatic patient who had a fusion and metal put  
3 in his back. Now, it helped, but he still has symptoms to this  
4 day. So, I think an MRI, as long as he still has symptoms,  
5 every five years, is reasonable. I think I would want it if I  
6 had symptoms with hardware in my back. So, that's how my  
7 recommendation is made. Again, in five years he says I'm not  
8 having any symptoms whatsoever, then no, he wouldn't need it,  
9 but I don't believe that to be likely.

10 Q Doctor, you and I met on one occasion previously?

11 A I.

12 Q If you don't recall me, that's okay, I won't take  
13 offense.

14 A I don't. I mean, actually, now that you mention it, I  
15 do remember the same cadence of questioning a little bit.

16 Q Touche, Doctor. Touche.

17 A I remember you were kind of mean last time, too.

18 Q Mean? Doc, you haven't seen mean.

19 A I did, my six-year-old this morning. I just looked at  
20 her and she said, stop.

21 Q Doctor, there was a case, Louis Almonte versus Pearson  
22 Capital Partners, LLC and Congress Builders. It was tried on  
23 July, part of the trial, on July 10, 2018 before Judge Catherine  
24 King in Supreme Kings. Mr. Almonte was represented by a  
25 handsome guy by the name of Chris Vargas and I happened to be

1 representing the defendants in that case and you gave testimony  
2 about MRIs back then. Do you have any recollection about that?

3 A I remember Louis Almonte. I wouldn't remember my  
4 testimony word-for-word, no.

5 Q I'm just going to read you, real quick, on page 1,094  
6 of the trial transcript, question --

7 MR. VARGAS: Objection.

8 Q -- line two --

9 MR. VARGAS: I have an objection, Your Honor. I  
10 don't understand. Is this for inconsistent statement? Are  
11 we just reading a statement?

12 MR. VAN ETTEN: It's an inconsistent statement.

13 THE COURT: Yeah.

14 MR. VARGAS: I was just making sure.

15 THE COURT: That's the only reason to read from a  
16 transcript.

17 Q Sir, and, question, you don't just go get MRI's to  
18 check on people, there has to be a reason for it in order to  
19 sends a person for an MRI, correct?

20 Answer, yes.

21 MR. VARGAS: That's not inconsistent. He just  
22 testified, Your Honor, there has to be symptoms.

23 MR. VAN ETTEN: That's for them to decide.

24 THE COURT: No, it's not.

25 You're supposed to give me a copy of the

1 transcript.

2 MR. VAN ETTEN: I e-mailed it to you, Judge.

3 THE COURT: I'm on the record. You e-mailed it to  
4 me? Did you give Counsel a copy?

5 MR. VAN ETTEN: He has it. He was on that trial.

6 MR. VARGAS: I don't have it. I was on that trial,  
7 though, that's correct.

8 MR. VAN ETTEN: I did bring an extra.

9 MR. VARGAS: Thank you.

10 THE COURT: What is the name of the case again?

11 MR. VAN ETTEN: Almonte, A-L-M-O-N-T-E.

12 THE COURT: I'm looking for the transcript. I  
13 don't know if it is an inconsistent statement, I didn't  
14 hear, but it's not for the jury to decide, let's make that  
15 clear, all right?

16 If you're reading from a prior transcript, I have  
17 to rule on whether I believe it's inconsistent and only then  
18 you can ask the question. So, can you just read it back?  
19 Read it back.

20 MR. VARGAS: May we approach, Your Honor?

21 THE COURT: You can and you tell me if you still  
22 have an objection.

23 MR. VARGAS: I do.

24 THE COURT: Okay.

25 (Whereupon, a discussion was held at the bench)



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

3                   THE COURT: The objection is sustained. The  
4           portions of the transcript read on the record are stricken  
5           from the record.

6                   Move on.

7           Q     Let me ask you this then, Doctor, would you agree,  
8           then, that if a patient has no active change in condition, there  
9           is no need for an MRI to be done?

10          A     An active change in condition? I mean, I think it  
11          would be patient dependent, but if they're asymptomatic and  
12          there's no worsening, an asymptomatic patient with no symptoms,  
13          yes, I don't think they would need an MRI.

14          Q     But the question I'm asking, sir -- you're familiar  
15          with the National Academy of Medicine, the Health and Medicine  
16          Division?

17          A     I -- I don't -- I guess. I wouldn't say I'm familiar.

18          Q     Well, you're not familiar? Okay. Page 1,104.

19                   Question, and are you aware of the national Academy of  
20          Medicine, the Health and Medicine Division?

21                   Answer, yes.

22          A     I've forgotten in these seven years, then.

23          Q     And do you ever read their articles to update on things  
24          you need to know as a physician?

25          A     I read various articles every year. I couldn't tell

1 you right now if I read any articles from them right now, after  
2 the last seven years.

3 Q Again, line twelve. Okay. Do you ever read any of  
4 their articles, treatises or writings that they put out to  
5 promote better medical care for patients?

6 Answer, yes.

7 Does that refresh your recollection that you have done  
8 that?

9 A That was a long time ago. I must have remembered it  
10 then and I've read various articles. I couldn't tell you every  
11 publication I've read.

12 THE COURT: Counsel, when you say page 104, is --

13 MR. VAN ETTEN: 1,104.

14 THE COURT: 1,104.

15 MR. VAN ETTEN: My bad, Judge. I wasn't clear.

16 Q And are you aware that they recommend against getting  
17 MRI's to check on the status of a patient?

18 A Okay.

19 Q So, and would you then agree, if there's no change in  
20 condition of Mr. Rivera, he will not need MRI's in the future?

21 A He's not having symptoms, correct.

22 Q Okay. And when Dr. Weinstein testified, I want you to  
23 assume that he said that when he last saw Mr. Rivera, the  
24 original strength loss was no longer there, his strength had  
25 returned fully. Would you agree with that?

1           A     Yes.

2           Q     And that the sensation deficits were no longer present.  
3     Would you agree with that?

4           A     Yes.

5           Q     And the ridicular symptoms were no longer present and  
6     there was just some occasional axial pain in the area?

7           A     No. He talked to me about ridicular symptoms at my  
8     most recent visit and I was still able to elicit with the  
9     provacative maneuvers some ridicular symptoms. Again, relying  
10    on his discussion.

11          Q     And when you say elicit, that's when you were talking  
12    before about you move things and then you have to rely on the  
13    patient's subjectively to tell you if they're feeling pain or  
14    restriction, fair?

15          A     Yes.

16          Q     So, that's a subjective complaint by him?

17          A     That's a subjective component of an objective test.

18          Q     And when Dr. Weinstein had last saw him and done those  
19    tests, he didn't have those subjective complaints. You would  
20    agree with that, if that was Dr. Weinstein's testimony?

21          A     If that was his testimony, yes.

22          Q     Okay. So, now I lost track. Sorry. And then, of your  
23    recommendations, you also recommended both the lumbar and  
24    cervical spine, correct?

25          A     Yes.

1           Q     And, right now, you just said before, a couple minutes  
2 before we took our break into the back room that, in five years,  
3 if there's no change in condition, then you would not be making  
4 those recommendations, would that be fair?

5           A     Yes. If he's stable then --

6           Q     Okay.

7           A     -- you don't do stuff if he's doing well.

8           Q     And the same would apply for x-rays, then, correct?

9           A     X-rays? Again, if he's having symptoms, then you want  
10 to monitor the hardware to look for loosening.

11          Q     But when have you x-rays, you're subjecting your body  
12 to radiation, correct?

13          A     It's -- one x-ray isn't tremendous radiation.

14          Q     But you don't want to do it if you don't have to, fair?

15          A     If he was asymptomatic, but if I had hardware in my  
16 back, I would want to do one x-ray, once or twice a year.

17          Q     You're friends with Dr. Weinstein, but you have also  
18 met him, obviously, professionally, correct?

19          A     Yes.

20          Q     You make recommendations and referrals to him for  
21 patients such as Mr. Rivera, correct?

22          A     Yes.

23          Q     So you trust his judgment?

24          A     For the most part, yes.

25          Q     You trust his surgical skills?

1           A     Yes. I think he's an excellent surgeon, yes.

2           Q     So, if he does a surgery and says it is successful, he  
3     thinks the patient got the optimal relief and he doesn't believe  
4     he needs to see the patient again unless there is a worsening of  
5     the condition, you would agree that that is a proper course of  
6     treatment for Mr. Rivera?

7           A     Yes, if it's not worsening. Then he needs to be  
8     following up with pain management.

9           Q     Okay. And that if Dr. Weinstein then said my  
10    instructions to him is I don't need to see you anymore unless  
11    you have a problem, then, please, come back to me. Is that  
12    proper means of treatment for an orthopedic spinal surgeon?

13          A     That's fine.

14          Q     Okay. And, so, for three years, Mr. Rivera has not  
15    gone back to Dr. Weinstein. So, we can assume his symptoms have  
16    not gotten worse, correct?

17          A     Right. I've been treating him up until the end of last  
18    year and I didn't recommend it.

19          Q     Okay. And you also made recommendations for EMG's  
20    nerve conduction studies?

21          A     Yes.

22          Q     And you've performed how many in the last seven years  
23    on Mr. Rivera?

24          A     I performed one on the upper and lower, I requested to  
25    perform additional, but they were denied. So, due to resources,

1 we weren't able.

2 Q Okay. So, there's only been one in seven years and  
3 that was before the surgeries, correct, when you were first  
4 looking to find out what was going on?

5 A Yes. I think another one would be helpful, but we had  
6 not been able to do it.

7 Q Well, EMGs are usually done by specialists in the  
8 electrodiagnostic field, you would agree with that, right?

9 A They're done usually by people who are in my field of  
10 physical medicine rehabilitation or neurology.

11 Q But you're not certified in doing electrodiagnostic  
12 tests, correct?

13 A Right. I'm looking for basic radiculopathies. I'm --  
14 if someone's coming in needing -- looking for, like, Lou  
15 Gehrig's disease or neurologic issues, then, I refer them out.

16 Q And, actually, you mentioned just then before you said  
17 neurologists do those tests, correct?

18 A Some neurologists, not all.

19 Q And when Mr. Vargas asked you to tell the jury about  
20 the plan you had for Mr. Rivera on that first visit, you read  
21 out various portions of your plan. Did you read the jury the  
22 entirety of your plan?

23 A The first visit?

24 Q Yeah.

25 A I don't know.

1 Q Okay.

2 A He had a head injury and, so, I was recommending  
3 neurological evaluation.

4 Q Correct. You didn't tell the jury that, correct?

5 A No, because I was discussing his neck and his back.

6 Q Okay. Well, a neurologist can look at both the neck  
7 and the back as well, too. Don't they look at nerve injuries?

8 A He was specifically due to the head injury.

9 Q Okay. And you made that recommendation in that report  
10 and a dozen or more reports going forward, correct?

11 A Okay. Yes.

12 Q Yes? And who did you refer him to?

13 A I believe it was likely -- I'm not sure if I referred  
14 him to a specific doctor or if I gave him a script saying you  
15 need to find a neurologist.

16 Q Well, are you aware that your records show no  
17 indication that he ever saw a neurologist, fair?

18 A Okay.

19 Q And are you aware that, during the course of this  
20 litigation, we've never learned of the identity of any  
21 neurologist that have ever treated him, are you aware of that?

22 A Yeah. His head injury got better. His headaches got  
23 better.

24 Q Well, if you gave him -- well, he got better? You said  
25 he had headaches, right? You were treating him for headaches?

1           A     I gave him injections for his headaches.

2           Q     So, did you do anything to followup to make sure you  
3 took that script to go to see a doctor that you were  
4 recommending him to go to?

5           A     I did not, as he was not complaining of the issue as  
6 much and we were actively treating the headaches properly.

7           Q     When you made the recommendation for the neurologist,  
8 that was to give him optimal care, fair?

9           A     Yes.

10          Q     And that's your plan in the future, to give optimal  
11 care?

12          A     Yes. I don't feel he needs to treat with a neurologist  
13 any longer.

14          Q     Yeah, I understand that, but when he was actively  
15 treating immediately after the incident, you thought he needed  
16 to go to a neurologist and he didn't, even though you gave him a  
17 script, true?

18               MR. VARGAS: Objection. Asked and answered several  
19 times. It's repetitive.

20               THE COURT: Can you move on, Counsel? It's  
21 sustained.

22               MR. VAN ETTEN: Sure.

23          Q     My point is, sir, you gave your patient a script and  
24 made a recommendation and he didn't fulfill it. These  
25 recommendations in your report --



1 MR. VARGAS: Objection. Same question.

2 MR. VAN ETTEN: I'm asking it as a foundation, Your  
3 Honor, to my next question. Can I finish the question?

4 THE COURT: I'm waiting for you to finish. I'm not  
5 listening to him.

6 MR. VARGAS: Sorry.

7 Q Doctor, you gave your patient a recommendation to see  
8 another physician and a script and he did not fulfill it. The  
9 recommendations in your plan, did you give these to Mr. Rivera?

10 A In which plan?

11 Q The plan that you just talked about with all these  
12 future treatments.

13 A I mean, I have discussed -- I mean, he's either  
14 received or -- yes, we've discussed -- yeah, we've talked about  
15 all those; the ablations, the adjacent level or adjacent level  
16 facet, we've gone over trigger points, we've discussed cervical  
17 epidurals. I would say we've talked about all those treatments.

18 Q And he has not had any ablations, true?

19 A No, he -- as I said, he doesn't need them right now.

20 Q And you can't project into the future that he will need  
21 them, correct?

22 A I can give an educated prediction, based on my training  
23 and treatment of other patients like him, that, as it  
24 progresses, these are treatments he --

25 Q And, again, you said, if symptoms persist, he becomes a

1 candidate for, not that he will actually go forward and do those  
2 treatments, fair?

3 MR. VARGAS: Objection. This has been asked and  
4 answered several times as well.

5 MR. VAN ETTEN: This is on radio frequency  
6 ablation, which had not been --

7 MR. VARGAS: On all the treatment plan, he was  
8 asked that question, as needed, and he has answered it  
9 several times. He's just not breaking it down to each one.

10 THE COURT: Sustained, Counsel.

11 Q Well, sir, ultimate choice, you would agree, for going  
12 forward with any medical treatment, is the patient's?

13 A Pardon.

14 Q Ultimate choice, going forward with any medical  
15 treatments, that is the patient's choice, correct?

16 A Should be, yes.

17 Q Okay. And the patient hasn't seen you for eighteen  
18 months, correct?

19 A Yes. I believe he's been treating with another doctor,  
20 closer to home.

21 Q I'll get to that too. And he hasn't treated with Dr.  
22 Weinstein for three years, correct?

23 A Correct.

24 Q Okay. So, the projections on pain management that you  
25 talked about, those costs have not been incurred in the answer

1 months since you've seen him, fair?

2 A I don't know. I know he's been being treated.

3 Q Interesting thing that you just raised about treating  
4 someone locally, correct? You're aware that Mr. Rivera lives in  
5 the Bronx?

6 A Yes.

7 Q And when he first started treating with you, he lived  
8 in the Bronx, correct?

9 A Yes.

10 Q And, in order to get his initial physical therapy, he  
11 would travel all the way from the Bronx to your offices in  
12 midtown Manhattan, correct?

13 A I guess. I haven't looked at it, but, yes.

14 Q You have physical therapy treatment records in your  
15 office notes, too?

16 A Yes, he was -- we have -- we offer physical therapy as  
17 a service to patients if they --

18 Q And, are you aware, in his location, he lived within a  
19 few blocks of Lennox -- I'm sorry, Lincoln Hospital?

20 A Yes.

21 Q And there are many, many physical therapy centers right  
22 in the area of Lincoln Hospital in the Bronx?

23 A They may not -- again, I don't remember. I don't know  
24 if he had any type of resources that those places would take.  
25 So, we will offer it for patients without insurance, so that

1 they can start therapy sooner, rather than latter, while they  
2 wait for it. So, oftentimes, patients choose our therapy, but I  
3 would say only a few percentage of patients will use our therapy  
4 location and it's usually out of need.

5 Q Well, sir, if a person is in any type of significant  
6 pain, wouldn't it be easier for him to treat locally, rather  
7 than to have to travel into New York City all of the time?

8 A It would depend.

9 Q Well, are you aware, though, at times, that, in order  
10 to go treat in your office, Mr. Rivera would get car service  
11 from his attorneys?

12 A I -- you're telling me now, so, okay.

13 Q Well, don't you have various recordings in your notes  
14 that he came to treatments via car service?

15 A Yes. I didn't know where he was or how he was getting  
16 that, I just said he was driven to his appointment and --

17 Q And, doing this, did you tell him that it would be best  
18 for him to treat with your offices and your physical therapists  
19 because he was coming to you on the referral of his attorney?

20 A Absolutely not. My office staff, they laugh at me,  
21 because I usually will -- I don't sell our therapy --

22 Q Now --

23 A -- and I tell them to go, where it's convenient or  
24 able, but to make sure they're doing real therapy, because,  
25 that's the other thing, some of these places where the patients

1 go in, they slap them on the table and put electrodes on them  
2 and heating and then they never touch them and they don't have  
3 them do any active exercises or anything like that and then they  
4 bill them for all the -- everything, and the patient will say,  
5 oh, I've been going to therapy for six months and I find out  
6 that they've gotten none. So, sometimes it's better when they  
7 give actual workouts and stretching, rather than just modalities  
8 where they just put them on a table.

9 Q And those modalities where they just put them on a  
10 table that you just discussed, with a little bit of  
11 electro-stimulus and massage, that would be palliative care,  
12 correct?

13 A That can be helpful, but, yes, that's not healing.

14 Q Isn't that what that's described as, that's palliative  
15 care? You know that as a rehab physician.

16 A That's not physical therapy.

17 Q I'm not saying that. I said it's palliative care.

18 A Yeah. I'm not saying it doesn't feel good.

19 Q Isn't that what you said he's doing now is palliative?

20 A He's getting -- he needs to maintain his range of  
21 motion, he needs to maintain his endurance, he needs to maintain  
22 his strength, but, he also needs palliative treatment.  
23 Palliative care can encompass physical therapy. It's just  
24 meaning he's not getting surgeon right now, he's not getting  
25 anything major done, he's just getting ongoing maintenance

1 treatment.

2 Q And he does home exercises for that maintenance,  
3 correct?

4 A Yes.

5 Q And, as we saw, the strength had returned to where it  
6 was before, correct?

7 A Yes.

8 Q Are you aware that he does work where he helps clothe  
9 people?

10 A I -- I'm not aware of that.

11 Q Are you aware that he does work where he helps feed  
12 people?

13 A Wonderful. Good.

14 Q Are you aware that he goes out and hands out flyers and  
15 stuff like that?

16 A That's -- I'm glad he's keeping active.

17 Q All these things are active things, which will help him  
18 in the future, fair?

19 A Absolutely.

20 Q Gotcha. But when you make this plan -- by the way, you  
21 first started seeing Mr. Rivera as a treater, correct?

22 A Yes.

23 Q Okay. And then the plan you are making was for, as we  
24 said, the purposes of litigation, correct?

25 A Yes.

1 Q Okay. And you are aware of that distinction, correct?

2 A I mean, I actually -- I mean, I only view myself as a  
3 treating physician. I offer coming in for testimony as a  
4 service, but, I would say that they both mesh together in  
5 treating someone who's injured.

6 Q Were you aware that?

7 A I didn't think that's there's a distinction.

8 Q Do you not think that's a conflict of interest?

9 A No.

10 Q Are you aware of AMA code of ethics as it applies to  
11 conflicts of interest?

12 A I could not read it off -- I don't think I've probably  
13 read it, no.

14 Q Are you aware of the Stark Law or physicians  
15 self-referral laws?

16 A Something with Medicare.

17 Q But, are there laws where they preclude physicians from  
18 providing treatments that are not immediately necessarily?

19 MR. VARGAS: Objection, Your Honor.

20 THE COURT: Sustained.

21 Q Sir, when you make this recommendation for these  
22 trigger points, the other injections, those recommendations will  
23 ultimately financially benefit your firm, because he's gonna  
24 come to you for those treatments, true?

25 A He can. I'm not sure where he's going. These are just

1 a recommendation. If he comes to treat with me, I'd love to  
2 treat him and they would, the office would, get paid. I'm an  
3 employee there. They make my schedule.

4 Q So, then, only Dr. Kaplan would benefit, not you?

5 A Again, I enjoyed treating Norman, because he got  
6 better. So, I would welcome him in and, if he needed these  
7 treatments, I'd be welcome to provide them to --

8 Q Sir, you're not a certified life care planner, are you?

9 A No. These are just future medical costs. I'm not a  
10 life care planner.

11 Q And you're only board certified in physical medicine  
12 and rehabilitation, correct?

13 A Yes.

14 Q You're not a vocational rehab expert?

15 MR. VARGAS: Objection. We went over the  
16 credentials.

17 THE COURT: That is the job he does for cross. Is  
18 it ask and answered?

19 MR. VARGAS: Asked and answered, yes.

20 THE COURT: Oh, okay.

21 MR. VARGAS: Because he mentioned what he was board  
22 certified in.

23 THE COURT: I don't remember.

24 But, Counsel, did you already ask this?

25 MR. VAN ETTEN: No, I have not, yet. You told me



1       it was for cross.

2               THE COURT: That was during direct and that's why  
3 we saved it for cross.

4               MR. VARGAS: We went over the CV, he objected to  
5 him, whether or not he was an expert --

6               THE COURT: That was during your direct, correct,  
7 Counsel?

8               MR. VARGAS: Correct.

9               THE COURT: And I told him to save it for cross.

10              MR. VARGAS: Okay.

11              THE COURT: So, let him cross the witness.

12              MR. VARGAS: Sorry.

13              THE COURT: Continue, Counsel.

14              Objection overruled.

15              MR. VAN ETTEN: Thank you.

16       Q     You're only board certified in physical medicine and  
17 rehabilitation, correct?

18       A     Yes.

19       Q     And we just said, you're not a life care plan expert,  
20 you're not a vocational rehabilitation expert, right? You're  
21 not certified as a vocational rehabilitation expert?

22       A     I mean, vocational rehabilitation -- physical medicine  
23 and rehabilitation encompasses some treatment as sort of, we  
24 view in our field, as field of function, trying to get people  
25 back, but, no, I'm not certified in any vocational, but it is

1 part of physical medicine and rehabilitation.

2 Q And, so, basically, in this instance, you were seeing  
3 Mr. Rivera as his pain management doctor, true?

4 A Yes.

5 Q And you primarily provide pain relief to patients  
6 before surgery, correct?

7 A Before and after.

8 Q But, the after is only if the surgery doesn't work,  
9 correct?

10 A I would say -- I would say, more often than not, I  
11 rarely have a patient that I don't treat after surgery, to some  
12 extent.

13 Q Right.

14 A Because, if he's successful, he's not back to normal  
15 and still has limitation and still has metal in his back.

16 Q He'll always have the metal in the back. Nobody's  
17 disputing that, correct, Doctor?

18 A Unless, I mean, people, at times, have gotten it taken  
19 out, but, no one's recommending that.

20 Q Now, forgetting for a second -- in this instance,  
21 though, the treatments have decreased, because, as you just said  
22 a couple minutes ago, he had been getting better, correct?

23 A Yeah. A lot of times in surgery, as I discussed in my  
24 original -- earlier, you get an improvement with the surgery and  
25 then, over -- so, it's kind of like, you're doing well and then,

1 as you age and the effects of having the hardware in your back  
2 progress, you sort of age at a faster rate and, so, then you'll  
3 start to have problems later down the line. Again, it's an  
4 educated prediction.

5 Q And you had talked before about, with the EMGs and  
6 identifying the nerves, that was the purpose of the surgeries  
7 with Dr. Weinstein, was to address the nerves that there had  
8 been an impingement on, correct?

9 A Yes.

10 Q And, once that surgery is done, that is to relieve the  
11 pressure on the nerve?

12 A Yes.

13 Q And, so, if all goes well, as Dr. Weinstein has  
14 mentioned, that would put Mr. Rivera in a better position,  
15 correct?

16 A Yes, but then --

17 Q Thank you.

18 MR. VARGAS. Wait, wait.

19 MR. VAN ETTEN: He answered it. If he wants to  
20 explain --

21 MR. VARGAS: He had more to say and he's cutting  
22 him off.

23 MR. VAN ETTEN: He's starting to pull up a model.  
24 I didn't ask him to look at the model.

25 MR. VARGAS: He can object when he starts

1 explaining.

2 THE COURT: What is the question?

3 MR. VARGAS: Ms. Lyons, can you repeat the  
4 question?

5 (Whereupon, at this time the testimony was read  
6 back by the Reporter)

7 Q And the answer was?

8 A I was saying yes, initially.

9 MR. VARGAS: Was there anything else?

10 THE WITNESS: I was gonna say but, and then I was  
11 interrupted.

12 THE COURT: Yeah, we don't like buts in the  
13 courtroom, just because "but" can lead to a lot.

14 Did you finish the response to your question? We  
15 prefer a yes or no.

16 MR. VARGAS: You had, but, what? Did you have  
17 something else to say?

18 THE WITNESS: I did, but I don't need to --

19 MR. VAN ETTEN: Okay. Thank you.

20 THE WITNESS: I had something else to say.

21 MR. VARGAS: Can the witness say what he had to  
22 say?

23 MR. VAN ETTEN: He can ask on redirect.

24 MR. VARGAS: He interrupted, that's what my point  
25 was. If he didn't like what he had to say, he can object

1       and it can be stricken, but he didn't wait. Instead, he  
2       interrupted him.

3               THE COURT: Yeah, and we can resume after lunch, so  
4       he can ask all the questions and give a lot of buts.

5               Move on.

6       Q     Sir, in fact, there are times when injuries to the  
7       spine can be degenerative and times traumatic, would you agree  
8       to that?

9       A     Yes.

10      Q     And, so, that purpose for that surgery was to repair  
11     the conditions, whether they were degenerative or traumatic,  
12     fair?

13      A     Yes.

14      Q     Getting close. I did not ask you about the epidurals.  
15     Again, even though Counsel will be mad at me, the epidurals, if  
16     there is no change in condition, there would be no need for  
17     epidurals in the future, you would agree with that?

18             MR. VARGAS: Objection. Same grounds as before.  
19     He asked about the entire plan, same question. He's now  
20     breaking it down to each number.

21             THE COURT: Sustained. Asked and answered. That's  
22     all I need.

23             MR. VAN ETTEN: Okay.

24             THE COURT: I remember the epidural question.

25      Q     Now, the numbers that you gave, just in general, where

1 you talked about you looked at an outside source, correct?

2 A Yes.

3 Q Okay. And the rates that you quoted, for the past  
4 seven years, you've been getting less than rates that you  
5 quoted, correct?

6 A It depends on -- I mean, for the most of them, yes, I  
7 think we've -- for -- in general, yes, we get -- or, actually,  
8 some of them for -- my cost is the same for some. It depends on  
9 the number.

10 Q Okay. A lot of them were less and that's because you  
11 took cash value and cash value is higher than in a circumstance  
12 like Mr. Rivera's when he had a work, on-the-job, injury,  
13 correct?

14 A Yes.

15 Q Okay. So, you don't know what the circumstances might  
16 be in the future if, the big if word, if those treatments are  
17 needed in the future, fair?

18 A Yes.

19 Q All right. Let me just go real quick here.

20 MR. VAN ETTEN: I have copies for you, as well.

21 Q All right. I'm gonna show you two documents that have  
22 been marked Defendant's C and D for ID.

23 A Okay.

24 Q Do you know what those documents are?

25 A It's a --

1 Q Just, do you know what they are? I'm just asking you  
2 that one yes or no, because we have to be careful here.

3 A I know the numbers. I've seen it in -- the C-4, I know  
4 what that is, but I actually don't know what it is, but --

5 Q Is that a document that both you and Dr. Kaplan signed  
6 off on?

7 A This is the information from the intake that the office  
8 would put in the computer, but, I never signed anything related  
9 to this.

10 Q Can you look to page four?

11 A Yeah. So, I mean, that is not -- yeah, so, this --

12 THE COURT: You can't testify to what's in the  
13 document, because it's not in evidence.

14 MR. VAN ETTEN: I'm just asking. I'm trying to set  
15 the foundation. That's why, if it's the document, he signed  
16 it and he knows what it is.

17 A Yeah, it's the C-4.

18 Q Right. And is that a document that you prepared in the  
19 regular course of business while treating a patient like Mr.  
20 Rivera, whose been injured in an on-the-job accident?

21 A Yeah. My office prepares this.

22 MR. VAN ETTEN: I offer that into evidence and it's  
23 been redacted by our office.

24 MR. VARGAS: I object.

25 THE COURT: It's not coming in. Why would it come

1 in? Let's make a record.

2 I think we have to bring him back after lunch,  
3 because, I mean, it's already 12:38. We only have ten more  
4 minutes and you have a lot of redirect.

5 THE WITNESS: I need to make some arrangements.

6 THE COURT: We'll talk about it.

7 THE WITNESS: Okay. My kids and my office and my  
8 patients.

9 (Whereupon, an on-the-record discussion was held in  
10 chambers)

11 THE COURT: So, what is it that you have there?

12 MR. VAN ETTEN: Sure. These are C-4 reports that  
13 are the initial report of the doctors, Grimm and Kaplan,  
14 that they submitted to Worker's Compensation. I've redacted  
15 out all the references to -- I've redacted all the  
16 information that says Worker's Compensation. It's being  
17 used for limited purpose of some of the diagnosis or  
18 complaints that they referenced.

19 THE COURT: All right. Let me look at them.

20 MR. VAN ETTEN: Okay.

21 THE COURT: When you say C-4, you have to tell me  
22 it's a Worker's Comp form.

23 MR. VAN ETTEN: Yeah, well, I didn't want to say  
24 Worker's Comp, that's why I asked him to be careful. We're  
25 not supposed to technically let them know that Worker's Comp



1       been paying, that's why I was being careful.

2               THE COURT:   Okay.

3               So, what's your objection, Counsel?

4               MR. VAN ETTEN:   The Worker's Comp documents.   I  
5       don't want to bring in Worker's Comp into this at all.   They  
6       have a whole chart.

7               THE COURT:   Right.

8               MR. VARGAS:   They have a whole chart of everything.

9               MR. VAN ETTEN:   These are records that are in their  
10       file that was sent into court that's in evidence.

11              MR. VARGAS:   And they're subject to redaction.

12              THE COURT:   Right.   When are you going to let me  
13       talk, Counsel?

14              MR. VARGAS:   I'm sorry.

15              THE COURT:   Look, the doctor's report comes in  
16       evidence.

17              MR. VARGAS:   These aren't reports, though.   These  
18       are made for Worker's Comp.   He has his own separate reports  
19       in his charts.   Those I have no problem with.

20              THE COURT:   He just laid the foundation.

21              MR. VARGAS:   He said his office prepared them,  
22       first of all.

23              THE COURT:   That's the problem.   His office  
24       prepared them.

25              MR. VARGAS:   I object to them.   If you want to let

1       them in, Your Honor, then -- but I think it's improper to  
2       let the Worker's Comp documents come in.

3               THE COURT: Not if the doctor's office who's  
4       testifying just said they prepared it.

5               MR. VARGAS: Well, of course they prepared any  
6       Worker's Comp document for the doctor to fill out to  
7       prepare, that doesn't mean every Worker's Comp document  
8       comes in.

9               THE COURT: Subject to redaction, I don't see why  
10      not.

11              MR. VARGAS: Okay.

12              THE COURT: Especially if they're inconsistent.

13              MR. VARGAS: They're not inconsistent, that's the  
14      other problem.

15              MR. VAN ETTEN: I'll --

16              THE COURT: That's why he wants them in, obviously.  
17      I mean, I'm assuming that's why he wants them in. I haven't  
18      read them, but I --

19              MR. VAN ETTEN: It's very quick, three questions.

20              THE COURT: It's subject to redaction, because we  
21      can't have the Worker's Comp board information on it  
22      regarding insurance, but, who signed it? It's his office.

23              MR. VAN ETTEN: Both of them signed it and Dr.  
24      Grimm signed it.

25              THE COURT: Yeah. Your objection is overruled.

1 (Whereupon, testimony resumed in front of the jury)

2 THE COURT: In evidence, subject to redaction, the  
3 objection is overruled.

4 How much longer do you have, Counsel?

5 MR. VAN ETTEN: I'm trying to get it done, like, in  
6 ten minutes, if I can, Judge. I'm really trying to get to  
7 it done.

8 THE COURT: We don't have ten minutes.

9 MR. VAN ETTEN: Then I won't get to it. Let me  
10 finish with this and then, if you want to break --

11 THE COURT: Yeah. Okay. Finish your thought on  
12 this one.

13 Q Doctor, look at either yours or Dr. Kaplan's report on  
14 either page, I believe it's two.

15 A Okay.

16 Q And, in this report, based on the examination that was  
17 done, did you not say that Mr. Rivera had psychological injuries  
18 from this accident?

19 MR. VARGAS: Objection. What does this have to do  
20 with anything? There's no psychological claim here.

21 MR. VAN ETTEN: Exactly.

22 THE COURT: But he's not an expert on that or in  
23 that field.

24 MR. VAN ETTEN: This is the basis.

25 THE COURT: Yeah, we're definitely taking a break

1 and saving this objection to make a record and you're gonna  
2 talk to Counsel about your availability, because you have to  
3 come back. I'll see everyone at two. Have a nice lunch,  
4 everyone.

5 COURT OFFICER: All rise. Jury exiting.

6 (Whereupon, the jury exits the courtroom)

7 THE COURT: Two p.m. and we'll discuss this  
8 objection.

9 MR. VARGAS: Your Honor, just real quick.

10 Are you going to be able to be here in the  
11 afternoon or are you going to have to come back a different  
12 day.

13 THE WITNESS: I need to see. One, I have to -- I  
14 have patients that I can see if I can move and I have to  
15 pick my kids up.

16 THE COURT: Figure it out. Figure it out and we'll  
17 know by two o'clock.

18 MR. VARGAS: If he's not here, we'll put the  
19 Plaintiff on. I just want to know what the contingency plan  
20 is.

21 THE COURT: If he's not available, we'll come back  
22 and, of course, put in the Plaintiff.

23 MR. VARGAS: And Wednesday, would that be an  
24 option?

25 THE WITNESS: I think I just need to make sure my

1       wife can get the kids at three and I will tell you an answer  
2       to that.

3               MR. VARGAS: I know, but, if need be Wednesday, so  
4       we can let everyone go --

5               THE WITNESS: I think I should be able to, yes.

6               MR. VARGAS: Thank you, Your Honor.

7               THE COURT: Which Wednesday?

8               MR. VARGAS: This coming one.

9               THE COURT: You have the plastic surgeon in the  
10       morning.

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

12               THE COURT: See you at 2 p.m.

13               (Whereupon, a lunch recess was taken)

14               (Whereupon, the following was recorded by Senior  
15       Court Reporter Rene Scott)

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

2                   THE COURT: What I said on the record is the  
3 objection that remained outstanding, I was going to address  
4 after lunch.

5                   MR. VAN ETTEN: Okay.

6                   THE COURT: The objection is overruled. The  
7 report is coming in.

8                   MR. VARGAS: Okay.

9                   THE COURT: Everything in the report is coming  
10 in.

11                  MR. VARGAS: Okay.

12                  THE COURT: Your doctor laid a foundation. I  
13 don't see how it doesn't go in. You could do what you have  
14 to do on redirect.

15                  MR. VARGAS: Okay.

16                  COURT OFFICER: All rise. Jury entering.

17                  (Jury enters courtroom; the following  
18 occurred:)

19                  THE COURT: Good afternoon.

20                  THE JURORS: Good afternoon.

21                  THE COURT: Hopefully, after lunch, we all feel  
22 better. I know I do.

23                  You may continue with your cross, Counsel.

24                  MR. VAN ETTEN: Thank you.

25                  THE COURT: I overruled the prior objection that

1 I had before lunch.

2 MR. VAN ETEN: Thank you.

3 CROSS EXAMINATION (CONTINUED)

4 BY MR. VAN ETEN:

5 Q. So, Doctor, do you have those in front of you?

6 A. Yes.

7 Q. Am I correct on the initial reports that you prepared,  
8 because of this being a work-related incident, both you and  
9 Dr. Kaplan said that Mr. Rivera had psychological injuries?

10 A. Again, this is something that's prepared by my staff.  
11 And for head injury, they checked off psychological when it  
12 shouldn't -- I mean it's an error.

13 Q. Well, you signed it; correct?

14 A. Yes.

15 Q. You have not reviewed these documents before they go  
16 out?

17 A. VC force? No. These are billing documents that they  
18 send out for billing. So I think this is signed with like an  
19 office autopen.

20 Q. Because we talked earlier before lunch about  
21 neurological referrals which never took place.

22 Is the reason you were saying there were neurological  
23 injuries involved because you were making a claim, as you just  
24 said, for billing because of a psychological injury that never  
25 existed?

1           A.    No.

2           Q.    Okay.  You would agree with recordkeeping whether it's  
3 your actual office notes or even something like a C4, you have  
4 to keep accurate records; correct?

5           A.    As accurate as reasonably possible, yes.

6           Q.    Okay.  Because one of the things we talked before --  
7 now, I spent a lot of time discussing your plan, and I'm not  
8 going to belabor that any more, at least I hope not, but your  
9 plan also involved, before lunch, when you were asked questions  
10 about causation.  Do you remember that?

11          A.    I guess no.

12          Q.    Well, in your office records, per se, you're looking  
13 to treat the patient not discuss the mechanism and the causes  
14 and everything else like that.

15                You were having somebody who comes in for an injury  
16 and you're treating for the injury; correct?

17          A.    Yes.

18          Q.    Because you were asked an opinion question by  
19 Mr. Vargas about whether or not these were causally related from  
20 the incident of March 15, 2018; correct?

21          A.    Yes.

22          Q.    And when you are giving an opinion involving this  
23 issue, causation, you would agree that there are certain  
24 guidelines that you have to live by as a doctor?

25          A.    Well, I would state it, it's a cause and effect.  I'm



1 treating the patient. He is reporting to me no prior history of  
2 neck or back pain, an incident occurs, and he's describing  
3 symptoms of radicular. So I'm basing it on my patient as well  
4 as evaluating and -- so I take everything into account.

5 Q. Would you agree with this, Doctor again, and this is  
6 where I'm going to try to start asking you yes or no because I  
7 said this to some people last week.

8 I have the utmost respect for any witness that comes  
9 in here and I let you explain your answers. I don't try to cut  
10 you off, but sometimes you've done that before. You know you  
11 have to -- if you can answer a question yes/no.

12 A. Yes.

13 Q. Is that fair?

14 A. Yes.

15 Q. Would you not agree when you're making a causal  
16 connection opinion that you should have all the factual  
17 information available to you so that you can make that causal  
18 connection?

19 A. I mean I don't think that's a yes-or-no question.

20 Q. Well, do you think you need all the pertinent facts?

21 A. All that's available.

22 Q. Okay. And the available facts in this instance would  
23 have been the Mount Sinai Hospital records; correct?

24 A. Yes.

25 Q. You would agree with that?

1           A.     Sure.

2           Q.     And you did not review them before you made your  
3     causal connection in your report of 2023?

4           A.     They weren't available.

5           Q.     Okay. Well, you know how litigation works where an  
6     injured party gives authorization to the other side so that they  
7     could get records; correct?

8           A.     I'm not dealing with record requests of my office, so  
9     no.

10          Q.     You've come in here before, Doctor. This is not the  
11     first time you testified. True?

12          A.     True.

13          Q.     And you've come in and you've had another occasion  
14     where people talk to you about various records of your patient  
15     'cause you know during the litigation process, these records get  
16     produced and exchanged so that everybody's on a level playing  
17     field. True?

18          A.     Yes.

19          Q.     Okay. So all you had to do when you did your report  
20     in 2023 for the lawyers was say can I get the Mount Sinai  
21     hospital records because Dr. Kaplan even mentioned that he  
22     treated there, but we don't have them yet; right? Is that fair?  
23     You could have done that?

24          A.     I could have done that.

25          Q.     Okay. In the Mount Sinai Hospital records were the

1 first records close in time to this incident. Fair statement?

2 A. Yes.

3 Q. Okay. And those could be relevant as it applies to  
4 how the accident occurred and whether the injuries were or were  
5 not caused by the incident. Fair statement?

6 A. Sure.

7 Q. Okay. For example, you have nothing in your records,  
8 as we kind of discussed before, about Mr. Rivera telling you  
9 that after he was struck in the nose by the pipe -- in fact, it  
10 doesn't even say he was struck in the nose directly by the pipe,  
11 does it? I think it says falling pipe and then injuries to four  
12 different parts of his body. Fair?

13 A. Yes. He struck -- a pipe being -- yes, pipe falling  
14 on him causing injuries to his head, neck, lower back and nose.

15 Q. So you have no idea other than a pipe falling what the  
16 actual mechanisms were that caused the injuries to Mr. Rivera  
17 from your history notes. Fair?

18 A. No.

19 Q. Well, do you know whether the pipe hit him on the top  
20 of his head?

21 A. I know I believe it's a 20-to-30 pound pipe struck him  
22 with enough force to break his nose and teeth.

23 Q. Now, you're getting -- jumping ahead but okay.

24 Break his nose and teeth. Where did you see the  
25 X-rays that say he broke his nose?

1           A.    I don't know.

2           Q.    Okay.  Have you ever seen an X-ray that said he broke  
3 his nose?

4           A.    I just know he got surgery on his nose at some point.

5           Q.    That was years later; correct?

6           A.    I believe so, yes.

7           Q.    Do you know what type of surgery he had?

8           A.    No.

9           Q.    Okay.  So back to my question.

10                Do you know if he ever had X-rays on the day of the  
11 incident for his nose?

12           A.    I'd have to review the records.  I don't have them in  
13 my report.

14           Q.    That is a record, you would agree, that you could have  
15 reviewed but didn't.  Fair?

16           A.    If it was available to me, I would have reviewed it.

17           Q.    And, again, my point being is you don't know if that  
18 pipe struck him in the neck.  True?

19           A.    Struck him in the head and I was seeing him with  
20 damage to say nose.  So I -- it obviously struck him in the head  
21 area which is connected to the neck.

22           Q.    Well, struck him in the head, I understand that.

23                But he had part of his nose cut.  Could you have seen  
24 that when you saw him?

25           A.    You could still see it.

1 Q. So you saw that.

2 So if he's struck in the nose on a pipe that was  
3 hanging vertically coming straight down, right, it was the tip  
4 of his nose that was cut; correct?

5 A. Yes.

6 Q. Okay. Do you know whether it struck him in the neck?

7 A. Yes.

8 Q. Okay. And --

9 A. I do.

10 Q. -- do you believe that it struck him in the neck?

11 A. I believe it struck him -- a downward force struck him  
12 in the head, and then I'm worried about his symptoms because  
13 that is what's important.

14 Q. Fine. But my question, Doctor, again, goes to  
15 mechanism.

16 You don't know whether he got struck and then twisted.  
17 You don't know if he got struck and fell to the ground.

18 It is not in your notes or Dr. Kaplan's notes. True?

19 A. I know he got struck and the cause of his injuries  
20 based upon his responses to me and in evaluating his symptoms.

21 Q. Because that's the history he gave you?

22 A. Yes.

23 Q. By the time he came to see you, he gave you an  
24 indication that he was struck by a pipe and that he injured four  
25 parts of his body. Fair?

1           A.    Yes.

2           Q.    And when he saw you, it was after he retained a lawyer  
3 to prosecute this litigation; correct?

4           A.    I guess, yes.

5           Q.    Now, I want you to assume, since you haven't seen  
6 them, that the records from Mount Sinai are in evidence and  
7 Dr. Weinstein was questioned on them in detail and that they  
8 show that plaintiff made no complaints of pain to his neck or  
9 back on three visits to Mount Sinai Hospital.

10                   Can you assume that?

11           A.    Okay.

12           Q.    And I want you to assume that plaintiff also testified  
13 that he was never struck on the neck or struck on the back by  
14 the pipe.

15                   Can you assume that?

16           A.    Okay.

17           Q.    And that the pipe, when it hit him in the nose, fell  
18 off to the side?

19           A.    Okay.

20           Q.    Would that had been relevant information for you to  
21 have before making a decision on causation?

22           A.    It could be a piece, but I would not change my  
23 opinion.

24           Q.    Okay. So you don't recall the amount of force because  
25 you don't know the amount of force because you don't know how it

1 struck him; right?

2 MR. VARGAS: Objection to form.

3 THE COURT: Are you withdrawing your objection?

4 MR. VAN ETEN: I'll withdraw the question, Your  
5 Honor.

6 Q. What I'm saying, sir, are you aware that it was the  
7 end of the piece of pipe that struck him on the nose?

8 A. I don't know.

9 Q. Okay. Again, whether a heavy 20-pound piece of pipe  
10 falls on you square or just the edge of it hits that can be a  
11 big difference, would it not?

12 A. No. I'm basing it on his symptoms that he's telling  
13 me.

14 Q. And the symptoms when he first comes in are subjective  
15 for the most part because you hadn't done any diagnostic testing  
16 yet; correct?

17 A. He had an MRI --

18 Q. That was after. When you first --

19 A. -- after I found out he had the MRI.

20 Q. Fair.

21 Dr. Kaplan when he first saw him, though, he hadn't  
22 had any diagnostic test, correct, until --

23 A. Dr. Kaplan likely took X-rays.

24 Q. And they were negative; correct?

25 A. Maybe he didn't take X-rays. I don't see it in here.

1 Q. Let's say that it says in your record, since you don't  
2 have them, that they were negative for any fractures?

3 A. Oh, here we go. X-rays, okay, X-rays taken show no  
4 acute bony changes.

5 Q. So there were no fractures; correct?

6 A. Correct.

7 Q. That would be indicative to you that there was no  
8 fracture to the neck or back from that pipe falling. Fair?

9 A. Oh, yeah, fracture bone, yeah.

10 Q. But my question is, you just gave an opinion earlier  
11 this morning to Mr. Vargas, but here you had to either go and  
12 look to your own partner's records to even know if he had an  
13 X-ray; correct?

14 MR. VARGAS: Okay. Form.

15 THE COURT: I don't see a problem. Overruled.

16 A. I don't remember what I had for breakfast this morning  
17 right now after being on the stand for four hours.

18 Q. Okay. So obviously you were not considering all the  
19 pertinent details when you gave your causation opinion; correct?

20 MR. VARGAS: Objection.

21 THE COURT: As to form?

22 MR. VARGAS: As to form.

23 THE COURT: Because of the word "obviously"?

24 MR. VARGAS: Yes.

25 THE COURT: Sustained.



1           Q.    You weren't considering all of the pertinent details  
2 when you gave your causation opinion this morning. True?

3           A.    What's the question? I didn't hear it.

4           Q.    When you gave your opinion this morning, you were not  
5 considering all of the pertinent details about what happened to  
6 Mr. Rivera. Isn't that true?

7           A.    No. The word pertinent.

8           Q.    Well, would the emergency room records be pertinent?

9           A.    If they are available but I don't think they would  
10 change my opinion.

11          Q.    Would the version of whether or not he twisted, fell  
12 on his butt be pertinent?

13          A.    No, because I'm worried about his symptoms before and  
14 after.

15          Q.    So you are basing your causation opinion only on  
16 symptoms, not facts for the accident. Fair?

17          A.    No.

18          Q.    Okay. By the way, disc bulges can be caused by  
19 degeneration. Is that correct?

20          A.    Yes.

21          Q.    And disc bulges can result in impingement upon the  
22 spinal cord, can it; correct?

23          A.    Yes.

24          Q.    And degeneration can cause herniations; correct?

25          A.    Yes.

1 Q. And they can impinge upon the spinal canal; correct?

2 A. Yes.

3 Q. And so the symptoms that you were considering could  
4 have been degeneratively caused were it not for Mr. Rivera  
5 telling you that a pipe fell. Fair?

6 A. I don't quite understand.

7 Q. Well, if you looked at the actual diagnostic testing  
8 films, which I think you said you looked and you saw the  
9 reports; correct?

10 A. Yes.

11 Q. Did you do both?

12 A. I don't remember. So I usually will try to bring the  
13 films up with the patient if they're available. Sometimes  
14 there's glitches. So I've been -- I couldn't tell you right  
15 now, but I will try to review it with the patient and show them.

16 Q. Well, are you aware that one of the reasons we are  
17 here and the dispute is that the defense say that the injuries  
18 to the back and the neck were degenerative and preexisting and  
19 were not caused by the pipe striking Mr. Rivera in the nose?

20 A. Am I aware?

21 Q. Yes.

22 A. No, I guess not.

23 Q. Okay. In considering a causation opinion, do you not  
24 have to rule out other possible causes?

25 A. Yes.

1 Q. And one of those possible causes would be degenerative  
2 disc disease; correct?

3 A. No.

4 Q. So degenerative disc disease can't cause bulges or  
5 herniations?

6 A. It can.

7 Q. So you would have to rule that out in this instance as  
8 one of the causes. True?

9 A. This is not a yes-or-no question.

10 Q. Okay. But if you're going to consider ruling out  
11 degenerative disc disease as a cause, you would need to review  
12 the diagnostic testing films. True?

13 A. Yes.

14 Q. Okay. And as we found out earlier this morning, you  
15 didn't review any of the Lenox Hill radiology films. True?

16 A. Yes.

17 Q. So you never considered those films either when making  
18 your causation opinion. True?

19 A. They weren't pertinent.

20 Q. They weren't pertinent?

21 A. There's something that can be used but they are not  
22 necessarily needed. His symptoms and taking it altogether like  
23 a puzzle would be needed.

24 Q. And, right, to put together a puzzle, you need all the  
25 pieces. True?

1           A.    As many as are available.

2           Q.    Okay.  But we already know now of the missing puzzle  
3 pieces.  We have the Mount Sinai records, the Lenox Hill  
4 radiology records, a full history of how the incident occurred  
5 and possibly you've been looking at the films of Dr. Kolb.  
6 Fair?

7           A.    I guess.

8           Q.    So you didn't have all the pieces of the puzzle when  
9 you gave your causation opinion this morning; isn't that true?

10          A.    No.

11          Q.    Okay.  By the way, you did talk about some things like  
12 spasms this morning?

13          A.    Yes.

14          Q.    And spasms can be many different causes of spasms;  
15 correct?

16          A.    Yes.  Pain.

17          Q.    Pain can cause it.  I think you've testified before  
18 stress can cause it?

19          A.    Stress can cause it.

20          Q.    Degeneration can cause it?

21          A.    Yes.

22          Q.    So there are many potential causes for spasms besides  
23 trauma.  Fair statement?

24          A.    Yes.

25          Q.    Okay.  I very well may be done, Doctor.  Give me two

1 seconds.

2 Did you, when you saw the films, were the reports from  
3 Kolb Radiology, that were 23 days after the incident, see that  
4 there were osteophytes in plaintiff's neck? I'm asking you --  
5 don't look at your records because you gave an opinion.

6 Did you see that there are osteophytes present in the  
7 neck or back of Mr. Rivera?

8 A. I don't remember right now.

9 Q. And osteophytes are bony growths?

10 A. Yes.

11 Q. And they take time to develop?

12 A. Yes.

13 Q. And you did review Dr. Weinstein's operative report?

14 A. I have seen his operative report, yes.

15 Q. And he did a foraminotomy, I think it's called. I used  
16 to always say it wrong.

17 A. Yes.

18 Q. And that is the removal of the osteophytes?

19 A. Yes. It's clearing out the foramen.

20 Q. And if I osteophytes were seen in the cervical spine  
21 23 days after the incident, you would agree with me they would  
22 have preexisted the incident?

23 A. Yes.

24 Q. Yet you chose not to rule that out. True?

25 A. He didn't have symptoms prior to the accident.

1 Q. And you know that only by his history. True?

2 A. He never had any -- sought any treatment for it, yes.

3 Q. And what did you do to verify that?

4 A. I have to believe my patients. I'm not there to  
5 investigate them.

6 Q. Except for when you give an opinion to come in here  
7 and testify; right?

8 MR. VARGAS: Objection.

9 MR. VAN ETEN: Withdraw it.

10 Q. Doctor, thank you for coming back this afternoon. I  
11 appreciate that patience.

12 THE COURT: Redirect?

13 MR. VARGAS: Just a couple, Judge.

14 REDIRECT EXAMINATION

15 BY MR. VARGAS:

16 Q. Doctor, do you know when Mr. Rivera was diagnosed with  
17 diabetes?

18 A. From what I was aware that he was diagnosed when he  
19 went was preoperative testing for his surgery.

20 Q. So it was after the accident to your knowledge?

21 A. Yes.

22 Q. And could it possibly had been he was prediabetic  
23 prior to that?

24 A. Possibly.

25 MR. VAN ETEN: Note my objection.

1 THE COURT: I'm sorry?

2 MR. VAN ETEN: I said note my objection --

3 A. Yes.

4 THE COURT: Wait, wait.

5 THE WITNESS: Oh, sorry.

6 MR. VAN ETEN: Is it possible that he was.

7 THE COURT: What was the question?

8 MR. VARGAS: Is it possible that he's prediabetic  
9 before the accident?

10 THE COURT: Again, as to form, it's sustained,  
11 Counsel.

12 Q. Do you know was he taking diabetic medication before  
13 he saw you?

14 A. Not that he -- he told me when I asked him.

15 Q. As far as the osteophytes, do you know if they were  
16 formed before or after accident?

17 A. The osteophytes were likely there before the accident,  
18 but people can go through life with osteophytes. They could go  
19 through life with disc herniations, disc bulges. So that you  
20 can't tell but the symptoms, that's why I keep saying it, if  
21 there's issues in the spine, pathology, that are not causing any  
22 problems, you can just live your life with them.

23 If you have an accident that then causes it either to  
24 occur or to worsened or to cause impingement on the nerve,  
25 that's what is requiring treatment, and so what I can say with

1       certainty is that's what I'm basing my opinion on, the  
2       causality, is that he did not have symptoms prior and he had  
3       symptoms after.

4           Q.     And, Doctor, does it change your opinion at all  
5       whether his body fell to the ground or his neck twisted after  
6       being hit by the pipe?

7           A.     No.    Because something either herniation formed during  
8       that or if there was something there it got worse and then  
9       started to impinging the nerve.   Or if there are osteophytes and  
10      herniations there, I mean there's no preaccident MRI.

11                 So could the accident had caused the herniations?  
12      Yes.    Could the herniations had been there before the accident?  
13      Yes.    But if they weren't hitting on the nerve, they weren't  
14      causing any issue.

15                 If the accident strikes him in any manner, just  
16      sometimes bending over can cause a nerve impingement or  
17      something to happen him.   But if a pipe hits him with enough  
18      force to cause his injury to his nose, the way that I read  
19      about, and he then starts describing pain radiating in a  
20      specific pattern, just in one extremity, the right side in his  
21      right arm and right leg, then I feel there's enough findings  
22      where I feel the accident is causally related to his symptoms.

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

24                 MR. VAN ETTEN:   I may just have one, Your Honor.

25                 Just bear with me.



1 THE COURT: Recross on redirect.

2 MR. VAN ETTEN: Only on that, Your Honor.

3 RECROSS EXAMINATION

4 BY MR. VAN ETTEN:

5 Q. You just said it was only on one side, the  
6 radiculopathy; correct?

7 A. That's where his complaints were but the EMG did find.

8 Q. Okay. So if only he injured the one side, yet he has  
9 bilateral radiculopathy, as your EMG report said, then the other  
10 side is because of those preexistings. True?

11 A. No.

12 MR. VAN ETTEN: Thank you.

13 MR. VARGAS: Nothing further.

14 THE COURT: No further questions.

15 Dr. Grimm, you may step down. That concludes  
16 your testimony. Thank you again for coming back after  
17 lunch.

18 THE WITNESS: No problem.

19 THE COURT: We will continue with the cross of  
20 Mr. Rivera.

21 You need a break?

22 MR. VARGAS: No, I just didn't know the  
23 translation.

24 THE COURT: You need a break, Counsel?

25 MR. VAN ETTEN: I just want to set up the

1 computer. It will take me two minutes to do that, I think  
2 three minutes.

3 THE COURT: All right. We'll take a break.

4 We're going to take a quick break and then  
5 continue with the plaintiff's cross.

6 MR. VAN ETEN: Thank you, Your Honor.

7 COURT OFFICER: All rise. Jury exiting.

8 (Jury exits courtroom.)

9 (A recess was taken.)

10 (Defendant's Exhibit E was marked and received  
11 into evidence.)

12 COURT OFFICER: All rise. Jury entering.

13 (Jury enters courtroom; the following  
14 occurred:)

15 THE COURT: You may inquire, Counsel?

16 MR. VAN ETEN: Thank you, Your Honor.

17 CROSS EXAMINATION (CONTINUED)

18 BY MR. VAN ETEN:

19 Q. Good afternoon, Mr. Rivera.

20 A. Good afternoon.

21 Q. I'm going to start the day easier, I hope, if I do  
22 this right.

23 Sir, I'm going to show you right now some video, okay?

24 A. Okay.

25 Q. And have you seen videos of yourself that the defense

1 investigators had taken?

2 A. No.

3 Q. Okay. And this is going to be from Defendant's  
4 Exhibit 5 in evidence, Your Honor.

5 MR. VARGAS: E?

6 MR. VAN ETEN: Oh, I'm sorry. E. Thank you,  
7 Counsel.

8 THE COURT: Is it in evidence?

9 MR. VAN ETEN: Yes.

10 Q. Do you know who that gentleman is, sir?

11 A. It looks like me.

12 Q. Sir, this video is taken as it says on this  
13 November 9, 2022. That's about two and a half years ago, maybe  
14 a little bit off.

15 Is that about how you looked two and a half years ago?

16 A. Yes.

17 Q. And there, sir, we'll wait until it turns around. I'm  
18 sorry. I hit the wrong thing.

19 You mentioned when we're looking at this about getting  
20 your haircut on Thursday. Do you remember that?

21 A. Yes.

22 Q. And is that you?

23 A. Yes.

24 Q. Is that you getting your hair cut at your barbershop?

25 A. Yes.

1 Q. And right there, do you see that the barber had you  
2 moving your head back?

3 A. It seems like it, but I'm not sure about it.

4 Q. Well, I mean, sir, when you first were sitting there  
5 in the chair, you were sitting upright with your head straight  
6 ahead; is that correct?

7 A. Yes, that's correct.

8 Q. And then the barber asked you to move your head back  
9 and you went with your neck extending backwards; correct?

10 A. Could I give an explanation about that?

11 Q. Sure. I don't mind.

12 A. The barber's chair has a pillow in the back that  
13 supports under the back part of the neck then the barber  
14 inclines the chair. He leans it back and that gives the  
15 impression that it's me that's putting my head back like that,  
16 but it's not me. It's the barber.

17 Q. Well, sir, are you saying then that you haven't tilted  
18 your neck backwards as shown in that video?

19 A. Perhaps a bit, but not totally leaning back, because  
20 it's stuck to the pillow behind me in the seat.

21 Q. And this is about three years after your surgery for  
22 your neck?

23 A. It's possible.

24 Q. And when you talked on Thursday about getting a shave  
25 at the barber, is this what you were referring to?

1           A.    I hadn't seen the video, no.

2           Q.    And you have a dancing barber, I see.

3           A.    My barber dances well, yes.

4           Q.    You said the same thing. We had the same thought.

5           Good, sir.

6                   Now, having just asked you about putting your head  
7           back, would you agree that right there your chin is up in the  
8           air?

9           A.    It's not in the air. I'm supported by the pillow.

10          Q.    And right there, did you mark -- move back and forth  
11       forward and backwards?

12          A.    Like you can see but just a little and only to support  
13       myself on the pillow and back.

14          Q.    Okay. I apologize, sir. I am of the wrong  
15       generation.

16                   I'm going to show you the next one which was also on  
17       May -- I'm sorry -- on November 9, 2022.

18                   THE COURT: Is it also Defendant's E?

19                   MR. VAN ETEN: Yes, it is all part of the same  
20       one.

21                   Thank you, Judge.

22          Q.    And, sir, apologize because I messed up.

23                   This one was at 10:33. So this was before you got  
24       your shaving, your haircut.

25                   Is that you, sir?

1           A.    Yes.

2           Q.    This one is shorter.

3                   Now, sir, is that you in the gray sweatshirt walking  
4 out on the street?

5           A.    Yes.

6           Q.    And that's why you're on your way to the barbershop, I  
7 expect?

8           A.    It's possible. I don't know.

9           Q.    Is that you still walking there at a different angle?

10          A.    Yes.

11          Q.    I think you're going into your apartment, is that  
12 correct, your building?

13          A.    Yes.

14          Q.    Sir, now I'm going to show you another video from  
15 November 12, 2022. That's three days later.

16                   Is that you again?

17          A.    Yes.

18          Q.    And is that you -- sorry. I'll let it go for a  
19 second.

20                   Were you able to just turn your head and speak to  
21 somebody at your side?

22          A.    Seems like it. I am, in fact, talking to someone.

23          Q.    I think that's the gate leading to your building, sir?

24          A.    Yes, that one.

25          Q.    And now this is a little bit later in that day.

1                   Is that you now wearing a hat. Is that you?

2           A.    Seems like it.

3           Q.    And now you're walking and you're carrying the phone  
4 while you're walking.

5           A.    Um-hum by.

6           Q.    Uh-huh, do you mean yes?

7                   THE COURT: Well, if you could have him give  
8 verbal responses only?

9                   THE WITNESS: Yes.

10                  MR. VAN ETTEN: Thank you.

11                  THE WITNESS: You're welcome.

12           Q.    And now you've got your phone in one hand and you're  
13 carrying a small bag of groceries or food; is that correct?

14           A.    Yes. It depends on the time. If it's in the morning,  
15 then it would be a tasty breakfast that I'm carrying.

16                  MR. VAN ETTEN: I love your adjective, sir.  
17 Thank you.

18           Q.    That's -- again, I'm going back to November 12 at  
19 2:04.

20                   Is that you in the little deli or restaurant that we  
21 just saw you come out of?

22           A.    Oh, yes.

23           Q.    I take it, you're ordering food?

24           A.    That's right.

25           Q.    Is that you looking down at your feet?

1 A. Um-hum.

2 Q. Yes or no?

3 A. Yes.

4 Q. You had no problem looking down?

5 A. But I go back with my body in order to see.

6 Q. Same thing there.

7 Are you bending forward to look at your food and  
8 choose it?

9 A. That's right.

10 Q. And after having looked down once and then bending  
11 down once, there was no frown or grimace or pain on your face.

12 Is that true, sir?

13 A. That doesn't mean that I don't have it.

14 THE INTERPRETER: The interpreter did not hear  
15 what he said.

16 A. You can't determine through technology if pain exists.

17 Q. Is that you walking back to your apartment after  
18 having purchased food?

19 A. Yes. That's right.

20 Q. I'm almost done.

21 This is November 13, the next day, and I don't know if  
22 you had a chance, because I just did it quickly, is that you  
23 again in the gray sweatshirt and the hat again?

24 A. Yes.

25 Q. Is that you again?



1           A.    Yes.

2           Q.    And on the last one, sir, is that you, sir?

3           A.    Yes, heading to my apartment.

4           Q.    Okay.  Thank you, sir.

5           A.    You're welcome.

6           Q.    Now, I will ask a few follow ups.

7                    You talked on Thursday a little bit about your  
8 injuries and the surgery and that it had helped you.

9                    Remember giving that testimony on Thursday?

10          A.    Yes.

11          Q.    And on those three different days that we just saw,  
12 would that be consistent with the fact that after your surgery  
13 you started to do better than before the surgery?

14          A.    Yes.

15          Q.    Now, sir, when we ended on Thursday, we were just  
16 talking about -- okay.  When I had talked -- when I was asking  
17 you questions on Thursday on page 116, line 16, I asked you "And  
18 it was the lawyer that told you to go to Dr. Kaplan?" and your  
19 answer was "it's possible."

20                   Do you remember giving that testimony?

21          A.    Yes.

22          Q.    And the question I have for you, sir, up you said it  
23 was possible.

24                   Isn't it true that it was the lawyers that told you to  
25 go to Dr. Kaplan?

1           A.    Yes, for sure.

2           Q.    Okay.  Now, was Dr. Kaplan's office close to your home  
3 in the Bronx?

4           A.    No, no.

5           Q.    Were his offices in midtown?

6           A.    Yes, in Manhattan.

7           Q.    Did your attorneys send you car service to take you to  
8 Dr. Kaplan?

9           A.    It's a private car and I paid for it.

10          Q.    Do you have the receipts for that?

11          A.    It's through the Uber app.

12          Q.    And did you ever go to Dr. Kaplan's office via bus or  
13 subway?

14          A.    Sometimes I did and sometimes I didn't.

15          Q.    And when you 1st started to get physical therapy, that  
16 was at Dr. Kaplan's office in Midtown Manhattan?

17          A.    It's in the same building.

18          Q.    And, again, you just said that you paid for the  
19 transportation; is that correct?

20          A.    Yes, I paid for that transportation.

21          Q.    On November 12, 2021, you testified in this action and  
22 I'm going to read to you from that transcript starting on  
23 page 25 to page 27, line 22.

24                   "QUESTION:  What mode of transportation do you  
25 take to get to these physical therapy sessions?

1                   "ANSWER: Sometimes transportation provided by my  
2                   lawyers and sometimes public transportation if I have no  
3                   other option."

4                   MR. VARGAS: I object, Your Honor. That's not  
5                   inconsistent. It doesn't say who paid.

6                   THE COURT: Okay. So next time, if you can  
7                   object before.

8                   Sustained. Stricken from the record.

9                   Q. Well, sir, when -- did your attorneys provide you with  
10                  transportation to your doctor's offices?

11                  A. It's through the Uber which I have to paid.

12                  Q. Did they make the appointments for you?

13                  A. I don't understand the question.

14                  Q. Well, you testified on Thursday that you went to Mount  
15                  Sinai Hospital on those three occasions and then before you went  
16                  to Dr. Kaplan you hired a lawyer; correct?

17                  A. No.

18                  Q. Did you go to Dr. Kaplan before you went to the  
19                  lawyer?

20                  A. No, but you were asking me about Mount Sinai.

21                  Q. I understand that, sir.

22                         But after you went to Mount Sinai and you had the  
23                  problem with getting the stitches out.

24                         Do you remember that; right?

25                  A. Yes, I remember.

1 Q. Okay. And then because of that you went to a lawyer;  
2 correct?

3 A. The third time when they did not attend to me at Mount  
4 Sinai I had to look for legal help.

5 Q. And I believe -- I know you don't speak English, sir,  
6 or very well.

7 Did you hear Mr. Vargas on his opening when he said  
8 that you came to say offices and he sent you to Dr. Kaplan?

9 MR. VARGAS: Objection, Your Honor.

10 THE COURT: Sustained.

11 Q. Do you have a recollection going to the Gorayeb office  
12 before you went to Dr. Kaplan, Dr. Grimm or any of the doctors  
13 who have treated you?

14 A. Yes, before them, yes.

15 Q. And so when you went to see the lawyers before them,  
16 did they make an appointment for you to see Dr. Kaplan while you  
17 were in their offices?

18 A. Of course, yes.

19 Q. Now, did your attorneys also refer you to Dr. Sieczka?

20 A. No.

21 Q. On your second deposition, May 17, 2021, page 25 to  
22 26. Let me know when you get there.

23 MR. VARGAS: Okay.

24 Q. Line 23.

25 "QUESTION: Did those attorneys refer you to

1 another physician for purposes of having those stitches  
2 removed?

3 "ANSWER: Affirmative.

4 "QUESTION: Line 3, page 26.

5 Do you remember the name of your physician that  
6 you were referred to by your attorneys?

7 "ANSWER: Line 6, the name is Dr. Sieczka."

8 A. I don't remember that.

9 Q. Okay. When you testified four years ago, was your  
10 memory better then than it is today?

11 A. It's possible. Time does it work.

12 Q. You also testified Thursday about seeing a Dr. Katz?

13 A. Yes.

14 Q. And did your attorneys also tell you to go see  
15 Dr. Katz?

16 A. Yes.

17 Q. And did your attorneys also tell you to go see  
18 Dr. Tornambe?

19 A. Tornambe, yes.

20 Q. And when you went to see Dr. Tornambe, was the  
21 transportation you took provided by your attorneys?

22 A. That transportation, I have to pay for.

23 Q. Now, sir, when you first started going to Dr. Kaplan,  
24 did he take X-rays of your neck and back?

25 A. He sent me to get the MRI's and the -- they don't that

1 at his clinics.

2 Q. Did he tell you the results of those tests?

3 A. I don't remember. I don't recall that.

4 Q. You don't recall.

5 Sir, I'm going to ask you on May 17, 2021, page 33 of  
6 your second deposition?

7 THE COURT: What date?

8 MR. VAN ETEN: May 17, 2021 starting on line 18.

9 THE COURT: Thirty-three.

10 MR. VAN ETEN: Page 33.

11 MR. VARGAS: I object. That's not exactly  
12 contradictory.

13 THE COURT: Can you read back the Q and A?  
14 Sustained.

15 MR. VAN ETEN: May we approach?

16 THE COURT: You can.

17 (Discussion off the record.)

18 THE COURT: Objection sustained.

19 Q. Sir, after you got tests taken, did Dr. Kaplan explain  
20 what those tests meant before you went to Dr. Weinstein for  
21 surgery?

22 MR. VARGAS: Objection. Well, first of all, he  
23 only saw Kaplan once.

24 THE COURT: I'm not asking for a whole  
25 explanation of your -- what's the basis?

1 MR. VARGAS: The basis is that he never saw  
2 Kaplan again, so how could he explain?

3 THE COURT: Overruled.

4 THE INTERPRETER: Could you please repeat the  
5 question? The interpreter needs a repetition.

6 MR. VAN ETEN: Sure.

7 Q. After you got the various tests, the MRI's or X-rays,  
8 did Dr. Kaplan ever tell you what they said and why you had to  
9 go to Dr. Weinstein?

10 A. Yes.

11 Q. And when he told you that, did you understand why you  
12 were going to Dr. Weinstein?

13 A. Yes.

14 Q. Did you understand all of the medical issues?

15 A. I understood that he was the correct specialist in  
16 order for me to know.

17 Q. Page 33 to 34, same deposition. May 17, 2021.

18 THE COURT: You're back in the same place?

19 MR. VAN ETEN: Yes.

20 THE COURT: Is there an objection?

21 MR. VARGAS: There's an objection, Your Honor.

22 THE COURT: Sustained.

23 Q. When you went to Dr. Katz, did you understand all of  
24 the issues that he told you about your nose?

25 A. Yes.

1 Q. And what did he tell you?

2 A. That it was internal problem in my nose, that it was  
3 an obstacle in terms of me breathing deeply. The test said  
4 that. That my nostrils were obstructed. I understood that that  
5 was the result of the blow that I had received to my nose.  
6 That was a -- and with over time, it was accumulating, turning  
7 into an internal deformity inside my nose.

8 Q. Did he make recommendations for treatment?

9 A. Did I answer your question?

10 Q. You did.

11 Did he make recommendations for your treatment?

12 A. Yes.

13 Q. And what kind of treatment did he recommend?

14 A. He explained that we needed to do an intervention in  
15 order to clean or clear out what was obstructing my nostrils. I  
16 would have to look for a specialist. I don't know what it's  
17 called, that specialty. Something that has to do with the nose,  
18 the face, the throat. I'm not sure. I don't know.

19 Q. Did you understand the medical terms that Dr. Katz  
20 gave you?

21 A. Some.

22 Q. Page 47, May 17, 2021 line 17 to 24.

23 MR. VARGAS: I object, Your Honor. That's not  
24 contradictory.

25 THE COURT: I'll allow it.



1 Q. Line 17.

2 "QUESTION: Do you know -- sorry. I'll read the  
3 lines starting at 13, just so it's in context, Your Honor.  
4 I'm sorry I didn't say that.

5 THE COURT: Hold on. I got to read it.

6 MR. VAN ETEN: I apologize.

7 THE COURT: That's okay. That's fine.

8 MR. VAN ETEN: Thank you.

9 "Question: Line 13.

10 Did Dr. Katz make any recommendations in terms of  
11 future treatment for that particular complaint you're  
12 making?

13 "ANSWER: He did recommend treatment.

14 "QUESTION: Do you know what kind of treatment  
15 was recommended?

16 "ANSWER: I really don't know because those are  
17 medical terms, and I don't know how to use them or explain  
18 them."

19 Q. Did you give that testimony back on May 17, 2021?

20 A. Yes. Yes, but in normal terms. It could be  
21 understood.

22 Q. But at that time, you said you didn't understand the  
23 medical terms. Fair?

24 MR. VARGAS: Objection. He's also asked this  
25 question. It's been answered. He had the transcript.

1           It's argumentative.

2                   THE COURT: I'll allow it.

3                   MR. VAN ETTEN: Thank you.

4           A. I understood it in a normal way. I'm not at doctor to  
5 be able to totally understand it, but I do understand some of  
6 it.

7           Q. When you spoke to these doctors, were there times you  
8 didn't understand what they were recommending to you?

9           A. Very few. They gave me very few recommendation or  
10 actually I did not hear correctly.

11                   I don't understand all of the medical terms.

12           Q. Okay.

13           A. But I do understand in a more easy way and with an  
14 interpreter. That's my language.

15           Q. When you didn't understand the medical terms, would  
16 you go to your attorneys and ask them to explain them to you?

17           A. Yes.

18           Q. So your attorneys told you who to go to when you first  
19 treated and without saying what they said after that, they would  
20 also tell you about the doctor's treatments or recommendations?

21                   MR. VAN ETTEN: I guess I can't ask that.

22                   MR. VARGAS: Objection and the terminology is  
23 incorrect also.

24                   THE COURT: It's sustained.

25                   MR. VAN ETTEN: I was withdrawing it. I

1           acknowledged my mistake. Sorry.

2           Q.    When you were treating with your doctors when you  
3           didn't understand the medical terms, you relied on your  
4           attorneys to help you.

5                    Is that fair?

6           A.    Not always.

7           Q.    But sometimes?

8           A.    Sometimes.

9           Q.    And before you met your attorneys, you did not know  
10          Dr. Kaplan or treat with him and you did not know Dr. Grimm or  
11          treat with him and you did not know Dr. Sieczka or treat with  
12          her and you did not know Dr. Tornambe and treat with him and you  
13          did not know Dr. Katz or treat with him. Is that true?

14          A.    I didn't know any of them.

15          Q.    And in the area where you lived, at Lincoln Hospital,  
16          there were multiple locations for you to have gotten physical  
17          therapy?

18          A.    It's possible.

19          Q.    Did you ever see the signs for All Boro Rehab at 369  
20          East 149th Street?

21          A.    I have no idea.

22          Q.    Did you ever see Central Park Physical Medicine at  
23          2825 3rd Avenue?

24                   THE COURT: Central Park in the Bronx?

25          Q.    Central Park Physical Medicine. It's the name of the

1 company.

2 THE COURT: Okay.

3 THE COURT: It happens.

4 MR. VAN ETEN: It does.

5 A. I'm not familiar with it.

6 Q. And are you family with JAG Physical Therapy at 326  
7 east 149th Street?

8 A. No, I don't remember. I don't remember that.

9 Q. Well, would you agree with me, sir, it would be easy  
10 for you to go to a local physical therapist close by your  
11 apartment instead of having to take public transportation to  
12 Midtown Manhattan or car service?

13 A. I needed medical attention and I don't know anybody.  
14 And I needed some place to be able to help me with therapy. I  
15 didn't know anyone in the Bronx.

16 Q. Is it a reason that you didn't go to the local  
17 therapists or even Lincoln Hospital after Mount Sinai -- I'm  
18 going to finish my question. I just want to help you. Because  
19 those locations and facilities were not recommended to you by  
20 your attorneys?

21 A. I would have but it was also great that they helped me  
22 in this way.

23 Q. Thank you, sir. I appreciate it

24 A. I didn't care.

25 Thank you very much.

1 MR. VAN ETEN: You're welcome.

2 THE COURT: Any redirect?

3 MR. VARGAS: A few, Your Honor.

4 THE COURT: You may inquire.

5 REDIRECT EXAMINATION

6 BY MR. VARGAS:

7 Q. Mr. Rivera, were you happy with the doctors and the  
8 treatment they gave that we were talking about here today?

9 A. Yes.

10 Q. Satisfied with the care they gave you?

11 A. Yes, up until now.

12 Q. And you're currently treating at Lincoln Hospital?

13 MR. VAN ETEN: Objection. Beyond scope.

14 A. Yes.

15 THE COURT: I will allow it.

16 A. Yes.

17 Q. What kind of treatment did you get at Lincoln  
18 Hospital?

19 MR. VAN ETEN: Objection. Beyond scope.

20 THE COURT: I'll allow it.

21 A. When I was diagnosed with Type II diabetes.

22 Q. And what kind treatment did they give?

23 A. Treatment to normalize my diabetes and blood glucose.  
24 My doctor is Dr. Chang.

25 THE COURT: I don't think we asked the name of

1 the doctor, so I will sustain the objection. Moving  
2 forward.

3 Anything else, counsel?

4 Q. Does the doctor provide any other treatment there at  
5 Lincoln without mentioning his name?

6 MR. VAN ETEN: Objection. Never gotten this in  
7 discovery.

8 THE COURT: Sustained.

9 MR. VARGAS: There's authorizations provided for  
10 Lincoln Hospital all through discovery.

11 THE COURT: for the treating -- they're treating;  
12 right?

13 MR. VARGAS: Yes.

14 THE COURT: Okay. So overruled.

15 Q. Any other treatment they provided at Lincoln beyond  
16 the diabetes?

17 A. Yes, because he's my primary care doctor. He knows my  
18 physical condition.

19 MR. VAN ETEN: Objection.

20 A. The pains caused to my body, and he recommend to me  
21 the pain killer that Dr. Green had recommended me. Tek --

22 MR. VARGAS: Diclofenac.

23 Q. What was the other name?

24 THE COURT: Counsel, you can't do that.

25 MR. VARGAS: I'm sorry. I was just having him

1 repeat it. I'm sorry, Your Honor.

2 THE COURT: If she doesn't understand, she has to  
3 get a clarification from the witness, not from you.

4 THE COURT: Objection sustained.

5 Any other questions?

6 Q. If you could repeat the name of the medicines.

7 A. There are two versions of this medicine called --

8 THE INTERPRETER: And I cannot understand it.

9 A. And a pill form and a gel form with the commercial  
10 name Voltaren. It's similar except one is applied as a gel and  
11 the other one is a pill.

12 Q. And prior to this accident, did you ever have a  
13 primary care doctor?

14 A. No, I don't recall.

15 Q. Did you have any aches or pains to your neck or back?  
16 Anything that would require you to go to the doctor?

17 MR. VAN ETEN: Objection.

18 THE COURT: Why.

19 MR. VAN ETEN: Because I didn't ask that  
20 question on cross. It's beyond my scope.

21 MR. VARGAS: I think it's within the scope. I  
22 disagree.

23 THE COURT: Me too. Overruled.

24 MR. VARGAS: Can I ask it?

25 THE COURT: Yes.

1 MR. VARGAS: I didn't get the overruled part.

2 THE COURT: I just want to know if I'm doing  
3 something wrong here because it's like really?

4 Okay. Overruled. move on.

5 You can answer the question.

6 MR. VARGAS: Miss Scott, can you repeat the  
7 question?

8 THE COURT REPORTER: Did you have any aches or  
9 pains --

10 THE COURT: Any prior treatment for the neck and  
11 back. Come on.

12 MR. VARGAS: I just wanted to get the exact same  
13 question.

14 A. Not prior to the accident.

15 MR. VARGAS: No further questions.

16 Thank you, Your Honor.

17 THE COURT: All right.

18 MR. VAN ETEN: Yes, please.

19 THE COURT: You may.

20 MR. VAN ETEN: Thank you, Your Honor.

21 THE COURT: Limited to the redirect.

22 RECROSS EXAMINATION

23 BY MR. VAN ETEN:

24 Q. Sir, before this accident, did you ever wake up in the  
25 morning and say I don't feel good and I've got pain in my back?



1           A.    No, just normal days.

2           Q.    When you say just normal days.  Some days you might  
3 wake up and feel stiff and not feel good.  Fair?

4           A.    After a good day at work, it's possible.

5           Q.    Exactly.  You'd have days before the accident where  
6 you have a hard day at work, your back might bother you a little  
7 the next day.  True?

8           A.    I don't really remember that.  Because if you get good  
9 sleep, good rest and have a good supper before, it relieves  
10 everything.  You're like new the next day.

11          Q.    So you'd come home from work and that's where you  
12 would have sometimes where you wouldn't feel good but then the  
13 next morning you feel better.  Fair?

14          A.    No.  It's body fatigue, tiredness.

15          Q.    Good enough, sir.

16                Thank you very much.

17                THE COURT:  That concludes your testimony,  
18 Mr. Rivera.  You may step down.

19                We're going to resume tomorrow morning, 9:30  
20 sharp.  Have a good evening everyone.

21                COURT OFFICER:  All rise.  Jury exiting.

22                (Jury exits courtroom.)

23                       \*   \*   \*   \*   \*

24                (Trial adjourned to Tuesday, May 20, 2025 at 9:30  
25 a.m.)

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