

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF KINGS: CIVIL TERM: PART 19

3 - - - - -X

4 JONATHAN PAULINO,

5 Plaintiff,

6 - against -

7 KOLA HOUSE, LLC; 408 WEST 15TH STREET  
8 OWNER, LLC, DUPRAT CONSTRUCTION CORP.,

9 Defendants.

10 - - - - -X

11 Supreme Court  
12 360 Adams Street  
13 Brooklyn, New York 11201  
14 June 6, 2025

15 B E F O R E :

16 HONORABLE HEELA D. CAPELL,  
17 Justice of the Supreme Court and a jury

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(Appearances Continued on Next Page.)

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SENIOR COURT REPORTER

\* \* \* \*

THE COURT: Good morning everybody, have seats,  
we're still missing two, two jurors.

(Pause in the proceedings.)

COURT OFFICER: All rise, jury entering.

(Whereupon, the jury entered the courtroom.)

THE COURT: Good morning, please be seated, I hope  
everybody is doing well today.

Counsel, do you have a witness to call?

MS. STAVRAKIS-HANSEN: Yes, your Honor, Plaintiff  
calls Dr. Joseph Weinstein to the stand.

(Whereupon, Dr. Weinstein took the witness stand.)

THE CLERK: Good morning. Raise your right hand.

Do you solemnly swear or affirm that the testimony  
you're about to give this jury will be the truth, the whole

Dr. Weinstein - Plaintiff - Direct

1 truth and nothing but the truth?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated.

4 In a loud clear voice, state your name and address  
5 for the record?

6 THE WITNESS: Joseph Weinstein, 1150 Park Avenue,  
7 New York, New York 10128.

8 THE COURT: Thank you.

9 DIRECT EXAMINATION BY

10 MS. STAVRAKIS-HANSEN:

11 THE COURT: Good morning.

12 THE WITNESS: Good morning, your Honor.

13 THE COURT: Your witness when you're ready,  
14 counsel.

15 MS. STAVRAKIS-HANSEN: Thank you.

16 Q Good morning Dr. Weinstein.

17 A Good morning.

18 Q Dr. Weinstein, can you please just tell the jury what  
19 your profession is?

20 A Sure I'm an orthopedic surgeon with a subspecialty in  
21 spine surgery.

22 Q Can you please tell us a little bit about your  
23 professional education?

24 A Sure I'm from Queens, New York, and I was born and grew  
25 up here, I went to Queens College, after Queens College I went

1 to New York College of Osteopathic Medicine in Long Island, four  
2 year medical school.

3 After graduating, I did a five-year residency in the  
4 Northwell System, in orthopedic surgery. At the end of the five  
5 years, the last year, I was elected the chief resident as well  
6 as chief executive resident making all of the schedules and  
7 basically in charge of all of the residents, and after doing a  
8 residency in orthopedic surgery.

9 I did, I went to the Hospital For the Special Surgery  
10 in the city, and I did a subspecialty training in spinal  
11 surgery.

12 Q Are you licensed to practice in the State of New York?

13 A Yes, I am.

14 Q Are you board certified?

15 A Yes, I am, I'm board certified in orthopedic surgery.

16 Q Can you please tell the jury what does it mean to be  
17 board certified in orthopedic surgery?

18 A To be board certified is an extra certification, in my  
19 case it's three exams, the first exam is a written exam. After  
20 that, after a person passes the written exam, they're to take an  
21 oral exam, so we go into a very big room, where there's about 50  
22 tables with two surgeons at each table, and basically they ask  
23 us any question on orthopedics under the sun.

24 After passing that, the third part is where they come  
25 to your office, they look at your charts, they go through the

1 patients you've seen and they actually watch you do surgery and  
2 I completed all of those, they came went through my charts,  
3 watched me do surgery, everything was good and I became board  
4 certified.

5 Q Dr. Weinstein, have you engaged in research or  
6 publications?

7 A Yes, I did research, I was also at Harvard Medical  
8 School for two summers, I did radiology research with a couple  
9 of publications, and I also published when I was at the Hospital  
10 For Special Surgery as well as I still collaborate with a  
11 fellow, one of the fellows that was with me whose the chief of  
12 spinal surgery in Israel actually, and we still collaborate on  
13 publications, and we're putting out another one right now.

14 Q Doctor, can you describe for the jury what your current  
15 professional affiliations are, any medical societies you're  
16 involved in?

17 A Sure, I have hospital affiliations at Mercy Hospital,  
18 as well as Hudson Regional Hospital. I have affiliations with,  
19 I'm a fellow of the AAOS, which is the American Academy of  
20 Orthopedic Surgery, it's also a distinction as well.

21 I have other various different societies that I'm part  
22 of it, the AOA, as well as other spine societies that I'm part  
23 of it as well.

24 Q Dr. Weinstein, are you engaged in private practice?

25 A Yes.

1 Q Do you regularly see patients?

2 A Yes.

3 Q Can you please tell us a little bit about your  
4 practice?

5 A Sure, after, after fellowship I opened private  
6 practice, starting in Queens and we've expanded to four  
7 locations at this point, and I primarily treat spine, at this  
8 point I also do some shoulder and knee, but mostly spine, and I  
9 see patients that are injured at work, I see patients that are  
10 injured in automobile accidents, I see patients that are injured  
11 playing basketball, any sort of orthopedic injury that a person  
12 can have.

13 I will see -- I also see degenerative situations in the  
14 elderly, such as degenerative discs or something of that sort,  
15 Medicare patients, I really see everything that has to do with  
16 orthopedic, which would be anything from the neck down.

17 Q And, Dr. Weinstein in this case, Mr. Paulino contends  
18 he suffered back injury and spinal injury as a result of a fall  
19 from a height.

20 Do you have experience in treating patients that have  
21 fallen from a height?

22 A Yes, I do.

23 MR. SHEEHAN: Objection to the preference, Judge.

24 THE COURT: Overruled.

25 A Yes, I do.

1 Q Thank you.

2 And doctor, have you been previously qualified as an  
3 expert in New York State courts?

4 A That is correct.

5 Q And doctor --

6 MS. STAVRAKIS-HANSEN: Your Honor, I offer  
7 Dr. Weinstein as an expert.

8 MR. SHEEHAN: Same objection, unnecessary, but I  
9 know how you're going to rule.

10 THE COURT: So he can be qualified as an expert and  
11 did you say what he was being qualified for?

12 MS. STAVRAKIS-HANSEN: Orthopedics, thank you.

13 Q Doctor, did there come a time that you encountered  
14 Mr. Paulino?

15 A Yes.

16 Q And you can take a look at your notes, if you have any  
17 with you?

18 MS. STAVRAKIS-HANSEN: Your Honor, that would be  
19 Exhibit 6 already in evidence.

20 THE COURT: Thank you.

21 Q Can you describe for us your first encounter with  
22 Mr. Paulino?

23 A Yes, I saw him on 7/26/2017.

24 Q And what was the nature of that encounter?

25 A He stated, well, he came in for low back pain, he was

1 34 years old at that time, and he stated that he was injured  
2 while at work on 9/4/2016 when he fell off a scaffold.

3 Q And did you take a history on that initial encounter?

4 A Yes.

5 Q What was that history?

6 A He fell off a scaffold, he had pain and stiffness in  
7 his lumbar spine, and he stated that the issue was worsening and  
8 the pain kept him up at night, and any exercise sitting,  
9 standing, walking, repetitive motion caused the pain to become  
10 worse, he states that he never had any problems with the lumbar  
11 spine prior to this injury, and he rated the pain as an eight  
12 out of ten, he had not worked since the accident, he stated that  
13 he had multiple epidural injections with relief, he also had  
14 been in physical therapy and taking antiinflammatories without  
15 relief. He stated he cannot sit, stand, or be in any position  
16 or do any work for more than 15 minutes.

17 Q When was your first initial encounter?

18 A 7/26/2017.

19 Q Did you make any significant findings as a result of  
20 your physical examination?

21 A Regarding the physical examination to the lumbar spine,  
22 there was pain to palpation at the paraspinal musculature, there  
23 was decreased sensation in the right L5-S1 distribution, and  
24 there was a positive straight leg raise test on the left and the  
25 right, and there was also decreased range of motion.



1 Q And did Mr. Paulino make any complaints to you during  
2 the examination?

3 MR. SHEEHAN: Objection, asked and answered.

4 MS. STAVRAKIS-HANSEN: Withdrawn.

5 Q Did you review any records of Mr. Paulino prior to your  
6 initial encounter?

7 A I reviewed his -- his MRI, and whatever records were  
8 sent over by Dr. Grimm.

9 Q And did you make any significant findings with respect  
10 to the history that you took, your examination and the review of  
11 the records that you just mentioned?

12 A Well, I believe he did injure his low back, and he had  
13 an injury to his low back.

14 Q Are those significant findings?

15 A I believe so.

16 Q And --

17 MS. STAVRAKIS-HANSEN: One second, your Honor.

18 Q You just indicated that the findings you found  
19 according to your physical examination, and history and review  
20 of the records were significant, but are they competent of  
21 producing pain?

22 A They can, yes.

23 Q And were your findings consistent with the pain  
24 reported by Mr. Paulino?

25 A I believe so.

1 Q And did you form an initial assessment of what your  
2 diagnosis was?

3 A Yes.

4 Q Can you please tell the jury what that was?

5 A I diagnosed him with lumbar radiculopathy and  
6 discogenic disease.

7 Q Is radiculopathy another name for painful symptoms?

8 A Yes.

9 Q Would you expect Mr. Paulino to be suffering of pain at  
10 the time that you saw him so long after the accident?

11 A No.

12 Q Why is that?

13 A He was a young guy, he was 34 years old when I saw him,  
14 and he underwent a lot of treatment, physical therapy,  
15 antiinflammatories and three lumbar epidural injections, which  
16 is a full course of nonoperative treatment, and he was still  
17 complaining of significant pain.

18 Q Did you form a treatment plan?

19 A Yes.

20 Q What was that?

21 A I recommended X-rays of his spine as well as discogram  
22 of L4-5/L5-S1 and to continue physical therapy and as well as to  
23 follow-up after the discogram.

24 Q Dr. Weinstein, from the question I previously asked and  
25 the questions that I'm going to ask going forward, I'm going to

1 ask for your opinion to a reasonable degree of medical  
2 certainty; is that okay?

3 A Sure.

4 Q So I would like you to assume that Mr. Paulino has no  
5 prior accidents involving his back, and no prior complaints of  
6 back pain before falling from the scaffold on September 14th,  
7 2016. He had no prior diagnostic films. Mr. Paulino was  
8 working in construction before the accident without any  
9 complaints of pain. He suffered a fall from approximately  
10 12 feet on to a hard surface, and he immediately complained of  
11 back pain, he was removed by ambulance to the hospital where he  
12 complained of back pain.

13 Do you have an opinion, to a reasonable degree of  
14 medical certainty, whether the fall was a cause of Mr. Paulino's  
15 condition?

16 MR. SHEEHAN: I'm going to object, Judge.

17 THE COURT: What are your grounds?

18 MR. SHEEHAN: I would like an instruction to the  
19 jury at the very least about hypotheticals and what the jury  
20 can do with the hypotheticals, if they turn out to be true  
21 or not.

22 MS. STAVRAKIS-HANSEN: There is no hypothetical, I  
23 asked him to assume.

24 MR. SHEEHAN: That's a hypothetical.

25 THE COURT: Come on up, please.

1 (Whereupon, an off the record bench discussion was  
2 held.)

3 Q Dr. Weinstein, based on your review of the records, you  
4 speaking to Mr. Paulino and seeing him and performing a physical  
5 examination, is it your opinion, to a reasonable degree of  
6 medical certainty, that the cause of Mr. Paulino's pain and  
7 condition was a fall from the scaffold on September 14th, 2016?

8 MR. SHEEHAN: Objection, leading.

9 THE COURT: Rephrase.

10 Q After your review of the records and physical  
11 examination, did you formulate an opinion?

12 A Yes.

13 Q As to what was the cause of Mr. Paulino's condition?

14 A Yes.

15 Q And what was that opinion?

16 A If the history provided by Mr. Paulino was, in fact,  
17 correct, within a reasonable degree of medical certainty, the  
18 injury was related to the fall from the scaffold.

19 Q And under the same premises, was Mr. Paulino's fall the  
20 cause of Mr. Paulino's medical treatment?

21 A Yes, I believe so.

22 Q Did Mr. Paulino follow-up with you after the first  
23 initial encounter?

24 A Yes.

25 Q Can you please tell us when he next came to visit you?

1 A He next saw me on 9/20/2017.

2 Q And at this time when you were treating Mr. Paulino,  
3 was he treating with other physicians as well?

4 A Yes, I believe so.

5 Q And at your next encounter with Mr. Paulino, can you  
6 please explain to us what complaints he made to you?

7 A He made the same complaints.

8 Q What, if any, did you perform an physical examination?

9 A Yes, it was the same.

10 Q And what was the treatment plan on that encounter?

11 A The treatment plan was the same, he was to get the  
12 discogram.

13 Q And did he do the discogram?

14 A On 10/18/2017 he came back with a discogram, yes.

15 Q And did you review the results of the discogram?

16 A I did.

17 Q Can you please tell the jury what the results were?

18 A Sure, he came back with a discogram from  
19 Dr. Schoenberg, and I did review the discogram, and I  
20 recommended that he return to pain management doctor for repeat  
21 discogram due to as it states in my notes in my opinion only one  
22 level was done with no control being tested.

23 Patient also stated that he had severe pain upon the  
24 injection into his back, which greatly differed from the report  
25 so I wanted another valid report.

1 Q Did you recommend another discogram?

2 A Yes, I did.

3 Q Did Mr. Paulino undergo the second discogram?

4 A Yes, he did.

5 Q Did you get the results of the discogram?

6 A Yes.

7 Q Where was that performed?

8 A That was done by Dr. Matthew Grimm, and the results  
9 were in summary the patient had positive discography finding  
10 with concordant pain involving the L5-S1 disc.

11 Q And does that have any significance to you?

12 A Yes, it does.

13 Q What significance?

14 A So, it is a lot of significance, there's something  
15 called discogenic pain. Discogenic pain means the disc is  
16 actually the pain generator. There's the vertebrae, the bone in  
17 between the is the shock absorber which is the disc and the disc  
18 is a very complexed thing like a jelly donut, there's jelly in  
19 the middle and a harder outer envelope.

20 So what a discogram does is basically it, a person  
21 injects the patient is blinded, meaning the patient doesn't know  
22 what's going on, they're under sedation, they're blinded and  
23 inject multiple levels, so the reason to inject multiple levels  
24 the doctor will say, you know, let's say, L4-5 they'll inject  
25 and say do you have pain, that's your regular pain, eight out of

1 ten pain, and they'll either say yes or no, and then they'll  
2 inject another level and they'll say do you have pain, is this  
3 your regular pain, and the patient will say yes or no, depending  
4 on -- it's patient response obviously, but it's blinded meaning  
5 the patient doesn't know what level you're injecting.

6           So it means that the disc could be a very large pain  
7 generator and if the discogram is positive and reliable, then  
8 that leads you to your treatment of lumbar fusion as the answer  
9 to the problem of what's going on here, how come this guy has so  
10 much pain.

11           Q     Dr. Weinstein, in your opinion, the first discogram you  
12 reviewed, was that reliable?

13           A     No.

14           Q     After your review of the second discogram, did you come  
15 up with a treatment plan for Mr. Paulino?

16           A     Yes, I did.

17           Q     What did you recommend?

18           A     I recommended a lumbar decompression fusion of L5-S1.

19           Q     Earlier you had testified that Mr. Paulino had  
20 undergone a lot of treatment prior to visiting with you; is that  
21 correct?

22           A     That is correct.

23           Q     Would you say that treatment was conservative?

24           A     I believe so.

25           Q     And in what cases does the doctor move on from

1 conservative treatment to surgery?

2 A It -- in a case where a person certainly in  
3 Mr. Paulino's case, he's a year plus after the accident, has  
4 gone through everything, I've seen him many times, he's a  
5 reliable person, he's tried everything, he wants to get better,  
6 and you find a diagnosis.

7 You just don't it, things for no reason, you find a  
8 diagnosis, how you can help this person and then you try to help  
9 them after all of the nonoperative treatments are finished, what  
10 are we going to do, let him be in pain, let him suffer; no, you  
11 want to treat him, you want to help him.

12 Q Did Mr. Paulino, was the surgery performed?

13 A Yes.

14 Q Doctor, we have developed a demonstrative aid which has  
15 been previously disclosed to opposing counsel which depicts the  
16 surgery and I've already sent it to you.

17 Would the blowup aid in the description of the surgery?

18 A Sure.

19 MS. STAVRAKIS-HANSEN: Your Honor, I present the  
20 demonstrative aid.

21 THE COURT: It's one that hasn't been marked yet?

22 MS. STAVRAKIS-HANSEN: It has not yet been marked.

23 Can I use the --

24 THE COURT: Sure, this will be 37.

25 MR. SHEEHAN: Marked for identification, Judge?



Dr. Weinstein - Plaintiff - Direct

1 THE COURT: For ID.

2 MR. SHEEHAN: Judge, do you mind if I go around?

3 THE COURT: No.

4 Q Dr. Weinstein, you need to step down.

5 MS. STAVRAKIS-HANSEN: Do you want me to turn it a  
6 little bit?

7 THE COURT: Yes.

8 THE WITNESS: I will step down.

9 MR. NAPOLI: What was this for ID?

10 THE COURT: 37.

11 (Whereupon, Dr. Weinstein exited the witness  
12 stand.)

13 A Can everyone see? So a couple of things, let's go  
14 through, let's go through this image, I guess, this is just a  
15 side view or sagittal view, the mock up of the MRI, this is the  
16 S1 level, this is the L5 level, L5-S1, lowest level of the  
17 spine, that's the area that we operated on so when a person  
18 undergoes spinal surgery, so they come in they get called the  
19 night before so stop whatever medication they're on to prepare  
20 them not to eat anything from midnight.

21 Then they come into the hospital, they go into the  
22 holding area where a bunch of people ask them the same question  
23 ten times to make sure that we're doing the right thing, and I  
24 come in and speak to the patient, get a consent, speak to them  
25 again, go over the risks, benefits and alternatives, any

1 questions that they have, and basically then the  
2 anesthesiologist speaks to the patient, we go inside into the  
3 operating room.

4           In the operating room, lines are put into the patient,  
5 IV access is made, different monitoring is put on the patient,  
6 there's a pulse oximetry, which is for the oxygen saturation, we  
7 look at that, and we put on EKG leads in order to see the heart,  
8 as well as blood pressure monitoring, and the patient is put to  
9 sleep, this is a general anesthesia surgery, so that means  
10 there's a tube that goes into the patient's throat, into the  
11 breathing tube, and that's also controlled by the  
12 anesthesiologist.

13           After everything is secured, the patient is then put on  
14 his belly, so it's sort of in the Superman position, we flip  
15 them over, and you know just like you see on TV, we wash, we  
16 prep and drape, we put on the blue gowns and the drapes and we  
17 just -- we just isolate the back.

18           So we take an X-ray making sure we're at right level  
19 and we make an incision through the skin, and then comes the  
20 subcutaneous tissue, the fat and then comes the muscle. In the  
21 back, there's a lot of muscle, this is called the spinous  
22 process, and then they're transverse process, there are a lot of  
23 bony points where muscle attaches and in a young man there's a  
24 lot of muscle, he's very strong, so we open this up, we have to  
25 open it very wide in order to get down to the spine, and to get

1 out to the sides of the spine.

2           So after that, we take off the laminae, this area here,  
3 (indicating) we take this off with a burr, high speed burr, it  
4 goes very, very fast as well as Kerrison's, different special  
5 instruments in order to get under the bone and to take it off.

6           After seeing the nerves and making sure the nerves and  
7 the spinal cord are all free of any sort of impingement or  
8 anything pushing on the nerves, we put these things called  
9 pedicle screws in. Pedicle screws are an engineering genius way  
10 in order to stabilize the spine, they go this the bone tunnel  
11 called the pedicle. Basically, the spine is like a circle,  
12 where the spine is encased and we have to put these pedicle  
13 screws in order to stabilize this L5 level to this S1 level  
14 because in this case, his disc is the main or a main pain  
15 generator, so we fuse this area in order that the disc does not  
16 move anymore, and hopefully does not cause any pain.

17           After putting in these pedicle screws, we put in the  
18 rods, and we tighten the rods, we take X-rays throughout this  
19 making sure everything is okay, and then we put bone graft on  
20 the side, again, we have to make the bone grow from here to here  
21 in order for this level to not move.

22           After that, we put a drain in, because we make a big  
23 cut take out a bunch of muscle, and there's empty space there,  
24 and close up the skin, close up the fascia, close everything up,  
25 put a dressing. Patient is then turned over, the tube is taken

1 out and the patient goes to recovery room and eventually to the  
2 floor.

3 Q Thank you.

4 Doctor, you mentioned something utilizing bone or  
5 taking out the bone; how is that done?

6 A Taking out the bone from where?

7 Q Earlier you had said I think in B?

8 A So when we take out the laminae --

9 Q Okay.

10 A -- in this area, this is the laminae, this is a normal  
11 laminae, it's like a curve-shaped object here, so what we do is  
12 take off the whole laminae in this area, and then we can see the  
13 spinal nerves, cause equina that's called as well as feeling the  
14 exiting nerves if they're being impinged by anything.

15 Q Can you please just tell us what the aftermath of the  
16 surgery is?

17 A Do you want me to --

18 Q You can sit.

19 MR. SHEEHAN: May I now return?

20 A The aftercare of this surgery in my hands, the patient  
21 stays in the hospital approximately two to three days, I like to  
22 have their pain controlled, they get physical therapy, and they  
23 get antibiotics in the hospital, and they have -- their pain  
24 controlled, their drain is evaluated to make sure it's not  
25 putting out too much, so we can take it out, then they go home.

1 Q Did Mr. Paulino follow-up with you after the surgery?

2 A Many, many times.

3 Q Can you please describe the nature of the follow-ups?

4 A Sure, he followed up postoperatively, first time on  
5 6/13/2018, he rated his pain as a seven out of ten; otherwise,  
6 there was no complaints, we took out, I put in staples, we took  
7 out the staples and recommended X-rays, as well as restrictions  
8 after the surgery, because we're trying to make a fusion, and  
9 we're trying to make it that there's no movement there, there's  
10 restrictions of no bending, lifting or twisting after the  
11 surgery, we recommended Percocet for pain and to follow-up.

12 Q Was there additional plan of treatment?

13 A Just that, no.

14 Q Doctor, what was your prognosis?

15 A My prognosis was fair.

16 Q And can you please describe to the jury what that  
17 means?

18 A Well, Mr. Paulino knowing him, he complained of pain,  
19 he kept complaining of pain, his pain did decrease at the -- at  
20 the next postoperative visit on 7/11/2018, and I recommended a  
21 cane for him, he was having some difficulty walking, and I did  
22 also recommend pain -- pain medication again, and I also  
23 recommended that he go back to his pain management doctor for  
24 pain control, and to follow-up with me, and throughout his time,  
25 his pain did get better; however, he was still complaining about

1 pain.

2 Q Doctor, are there any risks in Mr. Paulino's future as  
3 a result of having the surgery?

4 A Sure, yes.

5 Q What risks are those?

6 A Well, in his case, he already underwent one thing that  
7 the future could hold, he has a spinal cord stimulator that was  
8 put in, but in his case, as well, because he's so young there's  
9 a risk of what's called adjacent level disease, where the level  
10 above wears out.

11 So basically what happens is, we're making one level  
12 not move, right, L5-S1 not move, so that changes the dynamics on  
13 the spine, and it causes a the level above to have more stress  
14 than it would have regularly, and that is a risk of having  
15 surgery, especially at this young of having degenerative  
16 situation above, and also more propensity for injury, because  
17 that area is above a solid segment.

18 Q Doctor, do you expect Mr. Paulino to have future  
19 surgery for those adjacent vertebrae?

20 MR. SHEEHAN: Objection, it's leading.

21 THE COURT: Sustained.

22 Q What you mentioned earlier about the adjacent  
23 vertebrae, is there potential for surgery in the future?

24 A Yes.

25 Q One moment?

1 (Pause in the proceedings.)

2 And, doctor, you mentioned that after the surgery,  
3 Mr. Paulino was complaining of pain still; is that correct?

4 A Yes.

5 Q And is it your opinion, to a reasonable degree of  
6 medical certainty, that he will require medical care in the  
7 future?

8 A He will require what?

9 Q Medical care, medical treatment.

10 A I believe so, yes.

11 Q And who would he have to see in the future?

12 A I believe he would need physical therapy to continue  
13 seeing pain management and to see a spinal surgeon.

14 Q And can you tell the jury, other than physical therapy,  
15 is there anything else that he could possibly do to ensure he's  
16 better in the future?

17 A I'm sure there are a lot of things he can probably do,  
18 pain management doctor may be better in saying, in talking about  
19 that, but there's a lot of pain management things that they do.

20 Q And all of these things, do they have a cost?

21 A I'm sure they do.

22 Q Mr. Paulino's injuries and conditions including the  
23 pain, are they permanent in your opinion?

24 A They're certainly permanent, yes.

25 Q Is the condition that you were just describing for us

1 and you just showed us on the demonstrative aid, are they  
2 permanent?

3 A Yes.

4 MR. SHEEHAN: Objection.

5 MS. STAVRAKIS-HANSEN: Withdrawn.

6 Q Doctor, if you weren't here with us today, where would  
7 you be?

8 A I would be in my office doing work.

9 Q And have you and I met before?

10 A No.

11 Q And of course, do you know if your office is charging a  
12 fee for today?

13 A I believe I'm getting ten thousand dollars to be here  
14 today for my time.

15 MS. STAVRAKIS-HANSEN: No further questions, your  
16 Honor.

17 THE COURT: Cross-examination, do you want a few?

18 MR. SHEEHAN: I need a few to set up, if I could,  
19 Judge.

20 THE COURT: We will take a five-minute break.

21 COURT OFFICER: All rise.

22 (Whereupon, the jury exited the courtroom.)

23 (Whereupon, Dr. Weinstein exited the witness  
24 stand.)

25 (Whereupon, a short break was taken.)



Dr. Weinstein - Plaintiff - Cross

1 (Pause in the proceedings.)

2 (Whereupon, Dr. Weinstein resumed the witness  
3 stand.)

4 COURT OFFICER: All rise.

5 (Whereupon, the jury entered the courtroom.)

6 THE COURT: Please be seated. Counsel, whenever  
7 you're ready for cross.

8 MR. SHEEHAN: May I inquire, your Honor?

9 THE COURT: Yes.

10 MR. SHEEHAN: Thank you.

11 CROSS-EXAMINATION BY

12 MR. SHEEHAN:

13 Q Doctor we've never met before; correct?

14 A I don't think so.

15 Q I may ask you some questions, many or even most of them  
16 will require that you respond with a yes or no, and if you can't  
17 respond to a yes or no, will you let me know, and I will stumble  
18 around and try to ask another question?

19 A Of course, of course.

20 MR. SHEEHAN: Now, Judge, may I walk up to the area  
21 to show the exhibit?

22 THE COURT: Of course.

23 MR. SHEEHAN: Thank you.

24 Q Doctor I'm displaying for the jury, thank you for  
25 turning around, what was marked as Plaintiff's Exhibit 37 for

1 identification, and it depicts, I think you said, a sagittal  
2 view of the spine; is that correct?

3 A A side view of the spine, that is correct.

4 Q And so if the shot is being taken, it's being taken  
5 from this direction; right?

6 A Either way, it's a side view.

7 Q Or the other side?

8 A Correct.

9 Q Now, this depicts here, there is a disc here, L5-S1 and  
10 it is showing a herniation, correct, into the fat?

11 A I mean that's a demonstrative aid.

12 Q What I mean is this is just a general view of a  
13 disc herniation into the ventral fat as opposed to this specific  
14 case; right?

15 A Yes, of course.

16 Q And also there are nerves present here; correct?

17 A Those yellow lines are supposed to depict the nerves,  
18 correct.

19 Q Now, the spinal cord in adults exits and stops at  
20 around L1; correct?

21 A Correct, L1-L2, depending.

22 Q L1-L2; with children it can go down even further?

23 A Depending, yes.

24 Q But from this point where it terminates at L1 or L2,  
25 down all the way into the sacrum, at that point there is no more

1 formal spinal cord; correct?

2 A That is correct, as I said, it is the cauda equina or  
3 the horse's tail as it's called.

4 Q So there are nerve fibers that come out, but they're  
5 not contained within the spinal cord; correct?

6 A There's no spinal cord after, as you said, L1-L2, as is  
7 depicted over here.

8 Q But there is a thecal sac or a dura that's still  
9 protects the cauda equina or the horse's tail of nerves;  
10 correct?

11 A Yes, yes.

12 Q And the nerves that are displayed here, it looks like  
13 are both of them traversing nerve or one is exiting, and one is  
14 a traversing; can you tell us from this diagram?

15 A You can never tell on one view exactly what's going on,  
16 you need two views in order to see.

17 Q No, this is a two-dimensional depiction of a  
18 three-dimensional object meaning the body?

19 A Yes, it's just one picture in time, yes.

20 Q So while it's showing the nerves here, for lack of a  
21 better term, north to south perspective, it doesn't show them  
22 east to west; correct?

23 A That is correct, yes.

24 Q So, in other words, if you take a frontal view of at  
25 pregnant woman you will just see the outline of the body, if you

1 turn that person to the side and take a shot then, then you'll  
2 see the stomach coming out; correct?

3 A That's an excellent point, yes.

4 Q You've made the point before with pregnant women, I'll  
5 give it to you.

6 So when you're showing nerves in this area. That  
7 doesn't tell you where they are in an east to west direction;  
8 correct?

9 A Correct.

10 MR. SHEEHAN: Judge, if I can put this down?

11 THE COURT: Sure.

12 Q Now, doctor, am I correct that about 60 to 70 percent  
13 of your practice is based on patients with work-related  
14 accidents?

15 A I don't know if it's 60 or 70, it's probably around  
16 there.

17 Q And another ten to 15 percent of your patients are  
18 involved in car accidents; correct?

19 A I would say 60 to 70 would be personal injuries, such  
20 as, you know, work accidents or car accidents.

21 Q Do you recall testifying in the case of Castillo versus  
22 J.P. Morgan Bank, August 12, 2022, deposition in the Southern  
23 District of New York; do you recall testifying in that case?

24 A I don't have a specific recollection, no.

25 Q Okay. On page 28, line three:

1           "QUESTION: How much of your practice is based on  
2 work-related accidents?

3           ANSWER: A large percentage, 60 or 70 percent."

4           Do you remember giving that answer to that  
5 question?

6           A     As I said, I don't have an independent recollection  
7 of -- of 2022.

8           Q     Okay. But back then you said 60 to 70 percent?

9           MS. STAVRAKIS-HANSEN: Objection.

10          THE COURT: Overruled for a second, did you say  
11 this time it is an EBT, you spoke really quickly?

12          MR. SHEEHAN: It is a deposition in a Federal  
13 proceeding, experts are deposed in Federal cases.

14          THE COURT: I just want to know if I should read  
15 the charge, the EBT charge to the jury, that's all, and I  
16 missed it.

17          MR. SHEEHAN: He is not a party, but whatever you  
18 would like.

19          MS. STAVRAKIS-HANSEN: Yes, your Honor, I didn't  
20 even get that part, but --

21          THE COURT: It was quick, that's why.

22          MS. STAVRAKIS-HANSEN: Yes.

23          THE COURT: I generally do read the charge even if  
24 it's a non-party, as long as it is a witness on the stand,  
25 so let's just pause for a second, and I want to explain to

1 you all that what counsel is reading a portion of a document  
2 referred to as an Examination Before Trial or an EBT, I  
3 believe is what he said, it can also be referred to as a  
4 deposition, it is an EBT of the witness that's currently  
5 sitting here and you are -- this EBT occurred in a different  
6 case before this trial began, but it's where under oath  
7 where someone answers questions posed to them by a lawyer  
8 and just like we have here, a stenographer is going to  
9 record it, and that's what you're hearing, and it's later  
10 signed before a notary public, and the portions of the  
11 Examination Before Trial that you about to hear are sworn  
12 testimony, and you're supposed to consider it as if the  
13 witness is testifying from the stand.

14 Continue, counsel.

15 Q So at that time in 2022, you indicated that the  
16 work-related accidents just by themselves are 60 to 70 percent  
17 of your practice; correct?

18 MS. STAVRAKIS-HANSEN: Objection, he already said  
19 he doesn't recall.

20 Q Well, I just read you something, does that refresh your  
21 recollection that that's what it was?

22 A Again, as I stated I don't have a recollection of that  
23 exact testimony, but if that's what it says there, I certainly  
24 treat a lot of injured patients as I said before.

25 Q On page 29, line nine:

1           "QUESTION: How many of the patients you treat as a  
2 result of a car accident, let's say?

3           ANSWER: Maybe ten percent, 15 percent."

4           Do you remember giving that response to that  
5 question?

6           A     It would be the same answer.

7           Q     Taking in total, in September, in August of '22 at the  
8 time of your deposition, 75 -- 70 to 85 percent of your practice  
9 is involved in patients involved with work or auto accidents;  
10 correct?

11          A     Well, as I said, I can't tell you 100 percent at that  
12 time the exact numbers. Certainly, as I stated, I treat a lot  
13 of patients that are injured at work or injured in an automobile  
14 accident.

15          Q     Doctor, of the operations that you performed, is it  
16 safe to say that greater than 50 percent are fusions; correct?

17          A     I can't tell you that.

18          Q     Page 39 --

19                 MS. STAVRAKIS-HANSEN: Your Honor, is this the same  
20 thing that he's reading from, can you please tell us what  
21 you're reading from where it is, and what date it is?

22                 MR. SHEEHAN: Castillo again.

23                 MS. STAVRAKIS-HANSEN: What date?

24                 MR. SHEEHAN: August 12, '22, page 39, line ten.

25          Q     (Continuing:)

Dr. Weinstein - Plaintiff - Cross

1 "QUESTION: What percentage is fusions?

2 ANSWER: A high percentage.

3 QUESTION: When you say 'a high percentage,' more  
4 than 50 percent of those surgeries are fusions?

5 ANSWER: Yes."

6 Do you remember giving that testimony?

7 A Again, I don't have any independent recollection;  
8 however, if I was talking about a spine or a neck, it's possible  
9 that I do fusions, as I stated, I don't believe it's more than  
10 50 percent, I can't give an exact percentage, because as I  
11 stated, I also do shoulder and knee surgery and I don't do  
12 fusions in those surgeries.

13 I also do laminectomies, I also do micro discectomies,  
14 so I do disc replacement surgery, so, certainly I do fusions,  
15 yes.

16 MR. SHEEHAN: Judge, move to strike the  
17 nonresponsive portion of that answer.

18 MS. STAVRAKIS-HANSEN: Objection.

19 THE COURT: Can you read back the initial question  
20 read back the question?

21 (Whereupon, the question was read back by the  
22 Reporter.)

23 THE COURT: After "I don't have an independent  
24 recollection," I guess we can strike the rest of it, it is  
25 not responsive to the question, you can disregard everything



1 that can after that.

2 MR. SHEEHAN: Thank you, your Honor.

3 Q Doctor, there are law firms that refer patients to you;  
4 correct?

5 A Yes.

6 Q Including the Gorayeb firm on whose request you were  
7 here today; correct?

8 A Yes.

9 Q You have worked with the Gorayeb firm previously?

10 A Define "worked with"?

11 Q Do they send you patients?

12 A Yes.

13 MS. STAVRAKIS-HANSEN: Objection.

14 THE COURT: Overruled.

15 THE WITNESS: Sorry.

16 Q Other law firms send you patients as well?

17 A A lot of people send me patients.

18 Q And so when you see a patient that is sent to you by a  
19 law firm, you might examine them, you might operate on them,  
20 often times you end up having to participate in the legal  
21 proceedings, right, including testifying in court; correct?

22 A Thankfully, most of the time, I do not have to go to  
23 court. I have been in court in my career, and I have been in  
24 practice for 11 plus years, I believe less than 20 times, so,  
25 and I have thousands and thousands of patients, so I would say

1 most of the time thankfully I don't have to come to court.

2 MR. SHEEHAN: Judge, move to strike the  
3 nonresponsive portion.

4 THE COURT: I think the responsive portion was "I  
5 don't have to come to court a lot," so after that we can  
6 strike what was not responsive.

7 Q So on the cases where you come to court, would you  
8 agree that you're working with the firm that retains you;  
9 right?

10 MS. STAVRAKIS-HANSEN: Objection.

11 THE COURT: Sustained.

12 Q As a matter of fact, you just testified for the Gorayeb  
13 firm --

14 MS. STAVRAKIS-HANSEN: Objection.

15 Q -- this past May --

16 MS. STAVRAKIS-HANSEN: Objection.

17 Q -- in the Bronx?

18 THE COURT: Sustained.

19 Q Did you testify in May of this year in the Rivera case  
20 in the Bronx?

21 A I believe so.

22 Q And what firm called you to the stand?

23 A Gorayeb.

24 Q Do you know how many patients have been sent to you by  
25 the Gorayeb firm over the years?

1 A I can't give you an exact number.

2 Q My office did a search, and we revealed that there are  
3 17 active cases with just our firm where you were working with  
4 the Gorayeb firm; do you dispute that number?

5 A I mean I have no idea what your firm, who you  
6 represent, 17, that's -- that's fine, I mean I have no idea,  
7 you're just throwing a number out there. As you said, there are  
8 many lawyers that sent me cases, I'm sure a lot of people have a  
9 lot, you could say a lot of names.

10 Q But you don't work with defense firms, right, you don't  
11 do defense IME's; isn't that correct?

12 A First of all, I don't work with anyone, that's -- I  
13 don't know what "work" means, you still haven't defined that,  
14 and no, I do not, I do not do IME's, that is correct.

15 Q "Work" means reviewing cases for law firms, preparing  
16 reports for law firms, coming into court and testifying for law  
17 firms; correct?

18 MS. STAVRAKIS-HANSEN: Objection.

19 Q That's how I'm defining --

20 MS. STAVRAKIS-HANSEN: Objection.

21 THE COURT: She objected, I'm sustaining. If you  
22 want to rephrase, that's fine.

23 MR. SHEEHAN: Certainly.

24 Q If I give you this definition, reviewing, accepting  
25 patients from law firms, writing reports to law firms about

1 those patients, coming to court to testify for law firms for  
2 that patient, accepting that definition as work, do you agree  
3 that you have worked with the Gorayeb firm and other firms in  
4 the past?

5 A Yes, if you state that definition, certainly, yes.

6 Q Now, I just asked you a question, do you not do medical  
7 exams on behalf of the Defendants; is that correct?

8 MS. STAVRAKIS-HANSEN: Note my objection. Asked  
9 and answered already.

10 MR. SHEEHAN: You said you wanted to know what the  
11 definition of "work" was, I just gave him an definition.

12 MS. STAVRAKIS-HANSEN: He said IME's.

13 THE COURT: I will sustain it.

14 Q You do not do medical exams on behalf of Defendants; is  
15 that correct?

16 A That is correct.

17 Q Now, also get patients referred to you by other  
18 doctors; is that correct?

19 A That is correct.

20 Q Dr. Kaplan for one?

21 A I believe so.

22 Q Dr. Grimm for another?

23 A Yes.

24 Q Dr. Grimm is not only a professional colleague, he's  
25 also a friend as well; correct?

1 A Yes, he is.

2 Q And you know that Drs. Grimm and Kaplan are in the same  
3 office?

4 A Yes, that is correct.

5 Q Do you know how many patients Dr. Kaplan or Dr. Grimm  
6 have referred to you?

7 A I don't have a number.

8 Q And you've also worked in your practice and reviewed  
9 studies on your patients that have been done by Dr. Kolb as  
10 well; is that correct?

11 A Yes.

12 Q Now, I believe in one of your responses earlier when  
13 asking about how this accident may be related to the injuries  
14 that the patient suffered, you indicated that the patient  
15 complained of back pain; do you remember that testimony?

16 A Yes.

17 Q Did you have an opportunity to look at the Bellevue  
18 records?

19 A I believe so.

20 Q The Bellevue records are the hospital where the patient  
21 was first taken on the day of the accident; correct?

22 A That is correct.

23 Q And are you aware from reviewing those records that the  
24 patient complained of right scapular pain, but not low  
25 back pain; are you aware of that?

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

2 Q Let's look at the Bellevue records.

3 THE COURT: I believe it's Plaintiff's Exhibit 3 in  
4 evidence.

5 MR. SHEEHAN: Thank you, your Honor.

6 Q Let's start out with a triage note timed at 12:04 "ED  
7 triage note," this note was written by a nurse?

8 THE COURT: Can you just say the date, counselor, I  
9 can't see it?

10 MR. SHEEHAN: September 14th.

11 Q Right, so this is September 14th, this is an RN writing  
12 it, she is a triage nurse, triage nurses are often the first  
13 nurses that a patient encounters when they go to the emergency  
14 room?

15 A That is correct.

16 Q It is the job of the triage note, "triage" meaning a  
17 term of art like from the French battlefields; correct?

18 A I'm not an English major.

19 MS. STAVRAKIS-HANSEN: Objection.

20 THE COURT: Sustained.

21 Q "Triage" meaning to sort out whose in very serious  
22 shape, who is not in very serious shape; right --

23 MS. STAVRAKIS-HANSEN: Objection.

24 Q -- and try to direct them as to where they are supposed  
25 to go; correct?

1 THE COURT: Hold on, can you rephrase the question,  
2 counsel?

3 Q A triage nurse tries to assist in directing a patient  
4 who appears at the emergency room towards the right treatment  
5 location; is that true?

6 A That is correct.

7 Q Now, it says here "direct communication in English";  
8 right; do you see that?

9 A Where are you pointing to?

10 Q No.

11 A "Communication method, direct communication in  
12 English."

13 Q Do you see that?

14 A Yes.

15 Q For a Spanish Speaking fellow, that might not be the  
16 best way?

17 MS. STAVRAKIS-HANSEN: Objection.

18 THE COURT: Sustained.

19 Q Well, this patient was assigned to what the hospital  
20 deemed AES Team 1; correct?

21 A That's what it states there.

22 Q Now, now am I correct that you had previously  
23 maintained that ER providers often focused on the most pressing  
24 problem and that such problems can distract them from properly  
25 evaluating other portions of the body; isn't that right?

1           A     There's something -- well, I can't answer yes-or-no  
2 answer.

3           Q     Well, you've testified about the way that emergency  
4 rooms write down complaints based upon your prior work as an EMT  
5 or emergency medical technician also as a medical student and  
6 resident that rotated through hospitals; isn't that right?

7           A     What's the question again.

8                     MR. SHEEHAN: I'm sorry, could she read it back? I  
9 will screw it up, if I try to read it back.

10                    THE COURT: Can we have it read back.

11                    (Whereupon, the record was read back by the  
12 reporter.)

13           A     Yes.

14           Q     Now, as an emergency medical technician, would you  
15 agree that you are an ambulance or a rig as they call it, going  
16 out to see patients, treat them and bring them to the hospital  
17 if they need it?

18           A     That's one of the jobs, yeah.

19           Q     And when you do that, you bring the patient in on a  
20 stretcher with wheels and wheel them into the emergency room;  
21 correct?

22           A     That's one way, yes.

23           Q     And you turn the patient over to the hospital staff;  
24 correct?

25           A     Correct.



1 Q And then you take your stretcher back, if the patient  
2 is on one of your stretchers, and you go back to the ambulance  
3 and you go back to the next call; correct?

4 A Possibly.

5 MS. STAVRAKIS-HANSEN: Your Honor, can we have a  
6 side bar?

7 THE COURT: Yes.

8 (Whereupon, an off the record bench discussion was  
9 held.)

10 Q Doctor, as an EMT, am I correct that once you hand the  
11 patient off to hospital staff, you are not participating in  
12 their care inside the hospital; isn't that correct?

13 A That is correct.

14 Q Now, with respect to any rotations that you did as a  
15 medical student, that was during your four years of medical  
16 school; correct?

17 A Yes.

18 Q In this case, it's osteopathic school; correct?

19 A Correct.

20 Q At some point in time you might have had to have an  
21 rotation through an emergency room, and do you mean how many  
22 rotations there were and how long they were?

23 MS. STAVRAKIS-HANSEN: Objection.

24 THE COURT: Overruled.

25 A I can't give you an exact time, no.

1 Q How about as a resident, you were not training in  
2 emergency room medicine; correct?

3 A As an orthopedic resident, you're in the emergency room  
4 a lot.

5 Q Okay. How often as a resident were you in the  
6 emergency room during your years of training as a resident?

7 A I can't give you an exact date or time but a lot.

8 Q And while you were there, you were participating in  
9 some hands-on care of patients; correct?

10 A Yes, of course.

11 Q But as a resident, you were under the supervision of an  
12 attending physician; correct?

13 A Yes.

14 Q When it came to decision-making about what was  
15 happening with a patient, that would be up to the attending  
16 physician; correct?

17 A You would call the attending, and, you know, clear  
18 whatever you want to do or whatever the plan is with them,  
19 that's correct.

20 Q Now, are you aware that the patient was taken to  
21 Bellevue as opposed to some other hospital on September 4th of  
22 2016?

23 A I don't understand your question.

24 Q Well, Bellevue is a level one trauma center in  
25 Manhattan?

1 A Yes.

2 Q It's only one of two level one trauma centers for  
3 adults in Manhattan; correct?

4 A I can't tell you 100 percent.

5 Q There's one, New York Presbyterian Hospital on 68th  
6 Street, in correct?

7 MS. STAVRAKIS-HANSEN: Objection.

8 THE COURT: Sustained.

9 Q South of 68th Street, Bellevue is the only level one  
10 trauma center in Manhattan; true?

11 MS. STAVRAKIS-HANSEN: Objection.

12 THE COURT: Do you know?

13 THE WITNESS: How am I supposed to know all of the  
14 hospitals?

15 THE COURT: Sustained.

16 Q Bellevue is the designated hospital for when the  
17 president or the vice-president of the United States --

18 MS. STAVRAKIS-HANSEN: Objection.

19 Q -- visits Manhattan and requires medical care; true?

20 MS. STAVRAKIS-HANSEN: Objection.

21 THE COURT: Sustained.

22 Q The patient was seen by both emergency room and  
23 orthopedic physicians in the emergency room; correct?

24 A I believe so.

25 Q This is the orthopedic consult, Dr. Chenard and

1 Dr. Leucht, it says "Ortho Consult Note"; right?

2 A Okay.

3 Q Right?

4 A You're correct.

5 Q Basically, it talks about a history of a ten foot fall,  
6 and that orthopedic surgery was called to evaluate for level one  
7 trauma activation; correct?

8 A That is correct.

9 Q They talk in this note about the left upper extremity,  
10 that's where he suffered with his hand, at least an injury to  
11 his fifth metacarpal; correct?

12 A No response.

13 Q You agree he had a wrist fracture on his right;  
14 correct?

15 A That is correct.

16 Q And he had an injury to his fifth metacarpal on the  
17 left; correct?

18 A Yes.

19 Q Now, it says here "secondary exam negative for  
20 additional injuries"; right?

21 A Correct.

22 Q It also says when the orthopedist were paged at 12:10,  
23 that's six minutes after the nurse triaged him correctly;  
24 correct?

25 MS. STAVRAKIS-HANSEN: Objection.

1 THE COURT: Sustained.

2 Q Does it say here time page 12:10?

3 A Yes.

4 Q Is that not six minutes after the nurse triaged him at  
5 12:04?

6 A I believe so.

7 Q And they responded at 12:14; right?

8 A Yes.

9 Q The ER physician did examine the patient as well; did  
10 you see this note by Dr. Lee and Dr. Beck-Esmay?

11 A Yes, I see the note.

12 Q Right, and it basically says this history of "33-year  
13 old male who fell approximately ten feet, reports landing on it"  
14 says "race," but that should be face and arms; right?

15 MS. STAVRAKIS-HANSEN: Objection.

16 THE COURT: Sustained.

17 Q Do you not agree that this record says "reports landing  
18 on race and arms"; right?

19 A It says race and arms, yes.

20 Q You agree race should probably be face?

21 MS. STAVRAKIS-HANSEN: Objection.

22 THE COURT: Do you know?

23 THE WITNESS: I didn't write this.

24 Q So you didn't raise this, so race could mean a guy was  
25 running in a race?

1 MS. STAVRAKIS-HANSEN: Objection.

2 THE COURT: Sustained.

3 Q -- you're not willing to say as a physician?

4 MS. STAVRAKIS-HANSEN: Objection.

5 Q -- whose read many --

6 MS. STAVRAKIS-HANSEN: Objection to the form.

7 THE COURT: Sustained.

8 Q You're not willing to say that race should be face; did  
9 I hear that correctly?

10 MS. STAVRAKIS-HANSEN: Objection.

11 THE COURT: Sustained.

12 Q "Denies LOC," do you agree that "LOC" means loss of  
13 consciousness, or are you going to fight me on that one too?

14 MS. STAVRAKIS-HANSEN: Objection.

15 THE COURT: Sustained.

16 Strike that last comment from the record by  
17 counsel.

18 MS. STAVRAKIS-HANSEN: Side bar, please.

19 (Whereupon, an off the record bench discussion was  
20 held.)

21 (Pause in the proceedings.)

22 Q It says here "denies LOC," do you agree that means loss  
23 of consciousness?

24 A Yes, that is correct.

25 Q Right after that, "now with pain in upper back and

1 right arm/wrist: Correct, that's what it says?

2 A Correct.

3 Q It says here "GCS"; do you agree with me that refers to  
4 Glasgow Coma Scale?

5 A That is correct.

6 Q And a score of 15, in terms --

7 MR. SHEEHAN: I'm sorry, Judge can I withdraw that?

8 THE COURT: Yes.

9 Q The Glasgow Coma Scale accesses the patient's basically  
10 neurological intactness, are they with it; correct?

11 A Not really neurological intactness, it's -- it states  
12 their state of mind, it states their overall being.

13 Q A score of 15 is the highest score you can get; right?

14 A That's normal, yes.

15 Q Now, the exam is then split to primary, right, and you  
16 see primary talking about "intact, normal voice, in C-collar,  
17 that's how the patient appears"?

18 A That's what it states there.

19 Q "Normal, see normal heart tones, distal pulses, no  
20 external hemorrhage," these are things that are important to  
21 assess how is the patient doing in a metabolic sense; right?

22 A Okay, yes.

23 Q Then they go on to a secondary exam and they start with  
24 the head; right?

25 A That's what it states there, yes.

1 Q "No scalp hematoma," that would be a bloody scrape;  
2 right?

3 A Hematoma is not a scrape, it's a blood collection.

4 Q Under the skin?

5 A Correct.

6 Q "No palpable or depressed skull fracture"; right?

7 A That's what it states, yes.

8 Q "Palpable" means someone put hands on head as the note  
9 indicates and didn't find anything obvious in terms of  
10 depression to indicate that a skull fracture might be present;  
11 right?

12 A As the note indicates as you stated.

13 Q There are other sections here, face, eyes, ears, nose,  
14 mouth, things of that sort, there are findings listed there?

15 A Yes, there are.

16 Q Then for the neck, it says "no bruises, lacerations or  
17 swelling"?

18 A That is correct.

19 Q "Spine, no C/T/L step-off or tenderness?"

20 A That's what it states.

21 Q CT & L, does that not refer to thoracic and lumbar?

22 A That is correct.

23 Q "Step-off" meaning that if they palpated, they don't  
24 find something that tells them that a vertebra is significantly  
25 out of place, such that they could palpate it; right?



1 A That's one thing, correct.

2 Q The same thing with tenderness, they're palpating and  
3 pressing, as far as it's written here, no tenderness is noted;  
4 is that right?

5 A That is correct.

6 Q "The back, no bruising or deformity"; right?

7 A That's what it states.

8 Q "TTP," that's tenderness to palpation; right?

9 A Correct.

10 Q "Right scapula"; right?

11 A Correct.

12 Q And scapula is the shoulder blade?

13 A Laymen's terms, yes.

14 Q It says basically at the bottom, "patient taken to CAT  
15 scanner" -- I'm sorry, it says "CT scanner with trauma team for  
16 further imaging"; right?

17 A Yes, correct.

18 Q Then there is, on page, the next page, it says  
19 "attending present throughout"?

20 A That is correct.

21 Q And that means the attending physician; right?

22 A I believe so.

23 Q The attending down here is David Lee; right, noted?

24 A That's the person who signed, yes.

25 Q "Patient seen and examined by me," right, it says right

1 there?

2 A That is correct.

3 Q And also it says at the bottom "otherwise ortho at  
4 bedside evaluating the patient"; right?

5 A Correct.

6 Q And that means that when the emergency room physician  
7 was there, the ortho team was also there as well; correct?

8 A That's what it states.

9 Q And the patient was taken for various X-rays, and CAT  
10 scans, MRIs even; right? Are you aware from reading the  
11 Bellevue records that the patient was taken for multiple  
12 radiological studies?

13 A Yes.

14 Q "Left hand, left forearm, left wrist, left elbow";  
15 correct?

16 A I don't have the report in front of me, but I will  
17 believe what you're saying.

18 Q All in all, 17 radiological studies were done in of the  
19 patient during that admission; would you agree?

20 A If that's, again, I don't have the records in front of  
21 me. If that's what you're presenting to me, I will trust you as  
22 an officer of the court.

23 Q You will accept me representation?

24 A Yes.

25 Q If I'm wrong, shame on me; correct?

1 A (No response.)

2 Q Now, based on these notes, the exams of the orthopedic  
3 team, the exams of the emergency room team, would you agree that  
4 the Bellevue staff was not distracted or unduly focused on only  
5 the patient's wrist complaints?

6 MS. STAVRAKIS-HANSEN: Objection.

7 THE COURT: Sustained.

8 Q Looking through the records as we've seen it now, and  
9 if you've seen something else let me know, the patient made no  
10 complaints of lower back pain or neck in the emergency room;  
11 would you agree with that?

12 A I would not agree with that. As it's stated, he was  
13 complaining of neck pain as you read before to everyone.

14 Q Where did you see that the patient complained of neck  
15 pain?

16 A I don't have your records, but it stated now, now  
17 patient complains of neck pain, and some other pain --

18 Q Okay.

19 A -- or upper back pain.

20 Q Upper back.

21 In fact, doctor, when the patient first saw you in July  
22 of 2017, ten or 11 months or so after the accident, the patient  
23 made no complaints of neck pain to you at that time; is that  
24 true?

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

1 Q Here is your first note of July 26, '17; right?

2 THE COURT: We're looking at Exhibit 6.

3 MR. SHEEHAN: Yes, thank you, your Honor.

4 Q This first paragraph what the patient is telling you  
5 about what's bothering him it says "patient complains of pain  
6 and stiffness in the lumbar spine"; right?

7 A That is correct.

8 Q No mention of a complaint about neck pain in this  
9 portion of your note; correct?

10 A That is correct, if I'm allowed to answer, he came to  
11 me specifically for the back.

12 MR. SHEEHAN: Move to strike that last part, Judge.

13 THE COURT: Sustained, you can disregard the last  
14 part.

15 Q You examined his neck on that day; correctly -- I'm  
16 sorry, can I withdraw that, Judge?

17 Didn't you examine his neck on that day?

18 A I did, yes.

19 Q And didn't you note that it was supple; right?

20 A That is correct.

21 Q Supple means that there are no problems with neck  
22 muscles and that the tissues are flexible; correct?

23 A No, I believe supple is -- well, I can't answer that in  
24 a yes or no.

25 Q Supple is normal; right?

1 A Supple is normal, yes.

2 Q Now, the next part of your note diagnosed lumbar  
3 radiculopathy and discogenic disease; right?

4 A That is correct.

5 Q Am I correct that in that first note you didn't mention  
6 any studies done on the patient whether they be MRI, CAT scan or  
7 plain film?

8 A That is correct.

9 Q Doctor, would you agree that MRI is the gold standard  
10 when considering whether or not a patient has disc herniations?

11 A That is correct.

12 Q Am I correct you didn't mention an MRI in this note; is  
13 that correct?

14 A It's not documented in the note, that is correct.

15 Q Nor did you recommend that the patient have an MRI;  
16 correct?

17 A Again, I can't -- I did not recommend that, no.

18 Q But you did order a discogram and X-ray of the lumbar  
19 spine; correct?

20 A That is correct.

21 Q Now, would you agree that a discogram is somewhat of a  
22 controversial test, doctor?

23 A There is controversy behind a discogram, yes.

24 Q One of the problems with a discogram is the potential  
25 for false positive results; correct?

1 A It is possible.

2 Q The utility of a discogram, would you agree, is usually  
3 when a patient has persistent back pain with negative radiology  
4 tests; true?

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

6 Q Okay. You next saw the patient on September 20th;  
7 right, 2017?

8 A Yes.

9 Q Again, the chief complaint is the back pain; right?

10 A Yes, that is correct.

11 Q And again, you note that you performed a physical  
12 examination of the neck and that it was supple; right?

13 A That is correct.

14 Q And still in this note, no mention of an MRI being  
15 reviewed or a request for one; right?

16 A No mention in the note; correct.

17 Q At some point in time, you did look at the Stand Up MRI  
18 that was done in, on November 1st?

19 A It is a great point of course, the first visit I looked  
20 at it.

21 Q You just didn't make a note of it; right?

22 A That is correct.

23 Q And the discogram had not been done; correct?

24 A As of when?

25 Q As of this visit we're talking about now --

1 A Correct.

2 Q -- which is 9/20.

3 You saw the patient again on 10/18?

4 A Yes.

5 Q And pretty much the same complaints, he had the same  
6 neck exam was performed and the results are noted, and there was  
7 still no discogram done at that time; right?

8 A On, no, there was a discogram done 10/18/27 -- I'm  
9 sorry, 10/18/17, he came back after a discogram.

10 Q Yes, but as of the time of this visit, as far as you  
11 know, it's not yet been done, it was being done like around that  
12 time; correct?

13 A You're talking about the 10/18/17 visit; correct?

14 Q Yes.

15 A No, he already had a discogram at that point.

16 Q Hang on.

17 9/20 I'm showing for this note, I'm sorry, here we go,  
18 doctor, you are correct, on this visit you did note that you  
19 reviewed the discogram; right?

20 A Yes.

21 Q Now, two things, one you said the discogram only done  
22 at one level with no control level; right?

23 A You got it.

24 Q And am I correct that the problem with discograms that  
25 as you've already mentioned is the potential, is the potential

1 for false positive results; right?

2 A Yes.

3 Q So if you got a positive result, you would test an  
4 adjacent level to make sure the level you tested was not falsely  
5 positive; correct?

6 A No.

7 Q Doctor, you stated that the patient had severe pain  
8 upon discogram which differs from the report; is that correct?

9 A That's correct.

10 Q Now, "severe pain upon discogram," am I correct that  
11 for a discogram to be positive, the pain cannot stay in the  
12 back, it has to travel down the leg just as it reportedly did  
13 before; correct?

14 A I don't believe that to be true.

15 Q A positive discogram means that the patient's complaint  
16 of pain from the back radiating down to the leg is reproduced  
17 when the discogram is injected; true?

18 A I can't answer that in a yes or no, I have to explain.

19 Q Severe pain in and of itself is not a positive  
20 discogram unless it radiates down to the leg; isn't that true?

21 A I can't answer in a yes or no, I have to explain.

22 Q Okay. Doctor, did you call up the radiologist when  
23 there was this difference about pain and ask the radiologist  
24 about what the patient reported to him?

25 A Which radiologist?



1 Q Dr. Schoenberg.

2 A Is he a radiologist?

3 Q You didn't know he was a radiologist?

4 A Nope.

5 MS. STAVRAKIS-HANSEN: Objection.

6 THE COURT: Overruled.

7 Q You read his report; right, did you read his report?

8 A Yes.

9 Q Spine & Joint Services; right, that's the report;  
10 correct?

11 A Nowhere does it here say he's a radiologist.

12 THE COURT: I'm making sure we're still in six.

13 MR. SHEEHAN: Yes, we are, Judge.

14 Q Here, Norman Schoenberg.

15 A It doesn't say he is -- he's a radiologist.

16 Q Do you know how easy it is to look up a doctor and find  
17 out their specialty?

18 MS. STAVRAKIS-HANSEN: Objection.

19 THE COURT: Sustained.

20 Q Did you --

21 MS. STAVRAKIS-HANSEN: Objection.

22 MR. SHEEHAN: "Did you?"

23 THE COURT: Withdraw the objection?

24 MS. STAVRAKIS-HANSEN: I withdraw my objection.

25 THE COURT: Withdrawn, go ahead.

1 Q Did you take a look somewhere to see what kind of  
2 physician it was that signed this report?

3 A No, as I stated, I have no idea.

4 Q Did you assume he was a non-radiologist?

5 MS. STAVRAKIS-HANSEN: Objection.

6 THE COURT: Overruled.

7 A Usually, pain management doctors do discograms. I have  
8 no reason to believe he was a radiologist or not a radiologist,  
9 and well --

10 Q You sent the patient, if I can go back to what your  
11 note was, which was, let me go back.

12 So you say in your note "recommend patient return to  
13 pain management doctor as discogram," and then you say "in my  
14 opinion it was done only one level"; right?

15 A Correct.

16 Q So the pain management, the person who you were  
17 referring them back to was Dr. Grimm?

18 A I referred him to Dr. Grimm, that is correct.

19 Q 11/29 of '17 is your next visit; right?

20 A That is correct.

21 Q Chief complaint low back pain, same physical  
22 examination of the neck and results supple; right?

23 A Yes.

24 Q This is a little, this is more than a year after his  
25 accident; right?

1 A Yes.

2 Q You reviewed the discogram that Dr. Grimm had done with  
3 the patient; is that right?

4 A That is correct.

5 Q And you discussed it with him, and you said that the  
6 patient has a herniated disc at L5-S1; right?

7 A When you refer to "him," the first time, you mean the  
8 patient?

9 Q Well, it says "patient has a disc herniation".

10 A Oh, yes.

11 Q At this time when you say "patient has a  
12 disc herniation at L5-S1," are you referring to your review of  
13 the report or the films?

14 MS. STAVRAKIS-HANSEN: I mean objection.

15 MR. SHEEHAN: Judge, you know what, I will withdraw  
16 that question if I could.

17 THE COURT: Sure.

18 MR. SHEEHAN: Thank you.

19 Q Up until this point in time, right, which is  
20 November 29th of '17, the patient only had up until that point,  
21 as far as you know, one MRI of the lumbar spine done; correct?

22 A That is correct.

23 Q So I'm asking you with respect to that Stand Up MRI  
24 film from November 1st, did you just look at the report or did  
25 you actually get a chance to look at the films?

1           A     I always, and I'm sure going through my testimony from  
2 other people, no, I always go through and look at the report as  
3 well as the films, it's imperative.

4           Q     You would have taken a look at the films yourself;  
5 correct?

6           A     1,000 percent.

7           Q     Now, I'm going to go into the next year January 31st of  
8 '18, right, you saw the patient at that time, we're still preop,  
9 now?

10          A     You're correct.

11          Q     You had requested, I believe, authorization for  
12 surgery?

13          A     That is correct.

14          Q     Same indication with respect to your examination of the  
15 neck, it was supple report of same?

16          A     That is correct.

17          Q     I'm going to skip through this a little bit, you saw  
18 the patient February 14th, March 14th, and May 2nd; right?

19          A     That is correct.

20          Q     Am I correct that during those times, the same  
21 complaints were made, the same exams were done on the neck the  
22 same result of supple?

23          A     That is correct.

24          Q     Then the surgery was done in May at Lenox Hill  
25 Hospital; correct?

1 A 5/29/18; correct.

2 Q And your next visit with him was soon thereafter on  
3 6/13; right?

4 A Yes.

5 Q 2018?

6 A That is correct.

7 Q This is after the fusion surgery?

8 A Yes.

9 Q Again, same examination of the neck and the result that  
10 it is supple; right?

11 A That is correct.

12 Q And you then see the patient July, August, and the next  
13 visit is in October; right?

14 A That is correct.

15 Q October 11, 2018?

16 A That is correct.

17 Q We're now two-years post accident, and the same  
18 examination of the neck is done and recorded as being supple;  
19 correct?

20 A Correct.

21 Q You saw the patient in 2019, April 1st, June 3rd, and  
22 September 23, '19?

23 A 11/26/18, 2/4/19, 4/1/18, do you want me to just go  
24 through them?

25 Q No.

1 A Because I didn't hear the dates the same.

2 Q I'm sorry.

3 THE COURT: Do you want to withdraw and reask?

4 MR. SHEEHAN: That's the best way.

5 THE COURT: Yes.

6 MR. SHEEHAN: Thank you, your Honor.

7 Q Am I correct that you saw the patient February 4th,  
8 April 1st, June 3rd, and then he returned to you on  
9 September 23rd of 2019; does that sound about right to you based  
10 upon you looking at the notes?

11 A Okay, I have 2/4, 4/1, what was the other date?

12 Q 6/3, I think.

13 A 6/3.

14 MS. STAVRAKIS-HANSEN: 6/3.

15 A That is correct.

16 Q Did you see the patient again on September, when did  
17 you see the patient in September of 2019, did you see him then  
18 or not?

19 A I have 9/23/19.

20 Q Yes -- that's not it.

21 A No, that's not it, correct, can I help him?

22 THE COURT: Counsel, can you come up.

23 (Whereupon, an off the record bench discussion was  
24 held.)

25 THE COURT: Let's take a five-minute break and

1 stretch and then come back to finish the rest of the  
2 morning.

3 COURT OFFICER: All rise.

4 (Whereupon, the jury exited the courtroom.)

5 (Whereupon, Dr. Weinstein exited the witness  
6 stand.)

7 (Whereupon, a short break was taken.)

8 (Whereupon, Dr. Weinstein resumed the witness  
9 stand.)

10 COURT OFFICER: All rise, jury entering.

11 (Whereupon, the jury entered the courtroom.)

12 THE COURT: Please be seated.

13 Counsel, your cross.

14 MR. SHEEHAN: Thank you, your Honor.

15 THE COURT: Continue.

16 CONTINUED CROSS-EXAMINATION BY

17 MR. SHEEHAN:

18 Q Doctor, I'm going to skip ahead to December 18, 2019 --  
19 I'm sorry, December 18th.

20 Now, we did talk about some earlier visits February  
21 April, June of 2019, and then there was this visit of 12/18,  
22 would you agree that during those earlier visits in '19, and at  
23 this visit on 12/18 of 2019, you have the same recording of an  
24 examination of the neck being done and that it was found to be  
25 supple; true?

1 A Yes.

2 Q And at this point in time now, we are three years out  
3 from the patient's accident; is that correct?

4 A More than three years, yes.

5 Q I think that you're look at some films indicated in  
6 this visit, "X-ray lumbar spine, AP and lateral show  
7 postoperative fixation in good alignment"; correct?

8 A Correct.

9 Q And that's a good thing; right?

10 A Correct.

11 Q So would you agree that the operation was successful to  
12 the extent that the bone fusion, the hardware took and are fused  
13 and are in alignment; correct?

14 A Well, from the X-ray you may not necessarily see a  
15 fusion, but everything else was good.

16 Q Certainly, would you agree that although the patient's  
17 complaints were a little better, it was not totally successful  
18 in alleviating the patient's lower back pain?

19 A That is correct.

20 Q As far as you know, doctor, there was no intraoperative  
21 event of any kind?

22 A No.

23 Q And was there -- there was neuro monitoring done during  
24 the procedure?

25 A Of course.



1 Q And, for instance, I'm in the Lenox Hill chart.

2 MR. SHEEHAN: Judge, someone has the exhibit?

3 THE COURT: Two.

4 MR. SHEEHAN: Two, thank you, your Honor.

5 Q This is the operating room log sheet at Northwell,  
6 which was Lenox Hill; correct?

7 A Correct.

8 Q Nurses record information on this; right?

9 A Correct.

10 Q And it says "IOM," meaning intraoperative monitoring;  
11 right?

12 A Correct.

13 Q So there was a team of people in the room monitoring  
14 nerves and signals to help out and make sure if you're getting  
15 too close to a nerve, you have an opportunity to be advised  
16 about; correct?

17 A Correct.

18 Q That's a precaution you took; correct?

19 A Of course.

20 Q You also checked the patient afterward with a neuro  
21 check, to make sure there were no other problems with legs,  
22 bowel or bladder, because those could potentially be risks of  
23 that procedure; correct?

24 A Yes.

25 Q As far as you know, nothing happened?

1 A No, nothing happened.

2 Q Now, would you agree that in the event that there is no  
3 intraoperative complication, the fusion appears to be healing  
4 satisfactorily, and is in alignment with the patient's  
5 complaints persist, do you agree a surgeon must or consider the  
6 possibility that the reason that the patient's pain did not  
7 significantly improve was because the herniated disc was not the  
8 problem?

9 MS. STAVRAKIS-HANSEN: Objection.

10 THE COURT: Can you rephrase it?

11 Q Postoperatively, if the patient continues to complain  
12 of pain, don't you go through a differential diagnosis process,  
13 even informally, to try and ascertain what might be the cause of  
14 this continued pain?

15 A Yes.

16 Q I'm sure you did that for Mr. Paulino; right?

17 A Yes.

18 Q Would you agree one of the possibilities on that  
19 differential list might be that the patient's disc pain from the  
20 L5-S1 area was not the cause of his back pain; would you put  
21 that in the differential?

22 A I don't believe in his case that would be true.

23 Q Now, you then saw the patient in 2020; am I correct?

24 A Yes.

25 Q February 24th of 2020 is the time that you saw the

1 patient?

2 A That is correct.

3 Q You also saw the patient in a telehealth visit of  
4 May 27th, where the patient didn't come in, but you conversed  
5 with him; right?

6 A That is correct.

7 Q May of 2020, that was the height of Covid; right?

8 A That is correct.

9 Q And then you saw him again on 10/26; correct?

10 A That is correct.

11 Q And at that time here is the October 26th of 2020  
12 visit, again, you're recording that an examination of the neck  
13 was performed and that it was supple; right?

14 A Yes.

15 Q At this point we're now four years out from his  
16 accident; is that correct?

17 A Correct.

18 Q You then saw him again in January of '21, June of '21,  
19 and August of '21 -- I'm sorry, not August, July 19th of '21?

20 A Correct.

21 Q During those visits, would you agree the same thing,  
22 meaning examinations of the neck were done, found to be supple;  
23 correct?

24 A Yes.

25 Q Then you saw the patient November 1st; right?

1 A Correct.

2 Q And on that day November 1, 2021, again, same results,  
3 examination of the neck done, found to be supple; right?

4 A Yes.

5 Q Now we're five years post-accident; correct?

6 A Yes.

7 Q You also saw him January and May of 2022?

8 A Correct.

9 Q And November 30th as well; correct?

10 A Well, in January he was seen by Dr. Castro, but yes.

11 Q So November 30, 2022; again, like other exams earlier  
12 in that year, examination of the neck is done and it was written  
13 as supple; correct?

14 A Correct.

15 Q Now, doctor, do you remember or do you know that your  
16 office was served with a subpoena from my office to send certain  
17 records to court?

18 A No.

19 Q You didn't get a subpoena to serve and to --

20 MS. STAVRAKIS-HANSEN: Objection.

21 THE COURT: Sustained.

22 Q So you don't know that a subpoena was served, you deny  
23 that one was served on your office?

24 MS. STAVRAKIS-HANSEN: Objection.

25 THE COURT: Sustained.

Dr. Weinstein - Plaintiff - Cross

1 MR. SHEEHAN: I have a subpoena and affidavit of  
2 service that I would like to mark for identification, Judge.

3 THE COURT: Okay, 38.

4 MR. SHEEHAN: Judge, do you want me to have the  
5 officer hand it to the Court Reporter?

6 THE COURT: Yes, but it's actually the clerk.

7 MR. SHEEHAN: I'm sorry.

8 THE COURT: You can just give it to the officer.

9 MR. SHEEHAN: Sorry.

10 THE COURT: 38 for ID.

11 THE CLERK: Is it Defendants?

12 MS. STAVRAKIS-HANSEN: Yes.

13 THE COURT: It will be Defendant's Exhibit A for  
14 ID.

15 COURT OFFICER: Should I hand it to the witness?

16 THE COURT: Yes, you can hand it to the witness,  
17 would you like it handed to the witness?

18 MR. SHEEHAN: Yes, your Honor. Thank you, your  
19 Honor and thank you, Officer.

20 COURT OFFICER: (Handing.)

21 Q Do you see that there was a subpoena served on your  
22 office directing that certain treatment and billing records be  
23 produced in court?

24 A I see it, I don't handle the subpoenas in the office.

25 Q But that affidavit indicates somebody in the office was

1 served with it; correct?

2 A Yes, sure.

3 Q If you could put it or get it out of your way, we won't  
4 talk about it anymore. Thank you.

5 In that Castillo matter, from 2022, you also received a  
6 subpoena to provide billing records; do you remember that?

7 A Again, I don't handle the subpoenas in the office.

8 Q In any event, do you remember that billing records were  
9 produced and were actually talked about during that deposition?

10 MS. STAVRAKIS-HANSEN: Objection, I need  
11 information about what deposition he's referring to, is it  
12 the same one from before?

13 THE COURT: Counsel, is the same, if you can just  
14 give us the date?

15 MR. SHEEHAN: Yes, I'm sorry, your Honor,  
16 August 12th of 2022.

17 MS. STAVRAKIS-HANSEN: And the name of the case?

18 MR. SHEEHAN: Castillo versus J.P. Morgan Bank.

19 Q So do you remember discussing any aspects of your  
20 billing record during that deposition?

21 A No.

22 Q Doctor, in that case for that patient, you had actually  
23 placed a lien on the patient's claim?

24 MS. STAVRAKIS-HANSEN: Objection.

25 THE COURT: I'll allow it subject to some

1 connection. You can answer the question.

2 A Again, I don't have any independent recollection.

3 Q I can show you a copy of the lien if you would like?

4 MS. STAVRAKIS-HANSEN: Objection, side bar.

5 THE COURT: Yes.

6 (Whereupon, an off the record bench discussion was  
7 held.)

8 THE COURT: Can you step down for a minute.

9 THE WITNESS: Sure.

10 (Whereupon, Dr. Weinstein exited the witness stand.)

11 THE COURT: We're going to excuse the jury, we will  
12 excuse you and bring you back in a few minutes.

13 COURT OFFICER: All rise.

14 (Whereupon, the jury exited the courtroom.)

15 THE COURT: Off the record.

16 (Whereupon, an off the record discussion was held.)

17 THE COURT: So we're at a point in  
18 cross-examination where the issue of a prior lien is coming  
19 up, and as to the relevance of a prior lien that this  
20 particular witness had placed in a different case, the  
21 Castillo matter, and Plaintiff's Counsel is objecting to the  
22 introduction of any evidence on this issue; am I  
23 characterizing that correctly?

24 MS. STAVRAKIS-HANSEN: Yes.

25 THE COURT: Okay. And we just side barred and, of

1 course, you'll correct me if I'm wrong, defense counsel  
2 wants to mark the lien for ID as Defendant's Exhibit B based  
3 on the fact that it did happen in a prior case and because  
4 the witness did not bring the billing records pursuant to a  
5 subpoena, this is the way to try and refresh his  
6 recollection or have him testify about that matter, to see  
7 if he will then testify about having done it here.

8 MR. SHEEHAN: He didn't, Judge.

9 THE COURT: You can connect the dots.

10 MR. SHEEHAN: Judge, he said he didn't know if he  
11 did it, if I mark it, I can show him frankly anything to see  
12 if it refreshes his recollection, I presume he will admit  
13 that he did, in fact, do it, then we move on from there,  
14 what does that mean, explain that, and then we can, you  
15 know, move on.

16 THE COURT: Either way, I'm trying to characterize  
17 what it's being introduced for, and it's to refresh his  
18 recollection on an issue that he's testifying, I don't  
19 remember, because I'm trying to narrow down exactly what I'm  
20 ruling on, okay, so trying to refresh recollection, I'm okay  
21 with that.

22 As to whether it's relevant, it could be, it's not  
23 so out there that it's not relevant, because if there was a  
24 lien here, there is some relevance to that, he's saying I  
25 don't know, this is refreshing his recollection, so we're



1 narrowing down the point, but in saying that I just want to  
2 make clear by narrowing down the point, it will be quick,  
3 because we're not going to spend hours on this issue, it is  
4 not the main issue in this case, it is a possible issue, we  
5 don't even know, I don't want to stay here for very long, I  
6 don't mind if we come back in the afternoon, that's not the  
7 point, but the point is this will take away from the rest of  
8 the cross if we're not careful, and I will be careful about  
9 that.

10 We can mark it as Defendant's Exhibit B for ID,  
11 please, and I think in the interim, we can call in the jury,  
12 okay.

13 MR. MALECHI: Should we get the witness back?

14 THE COURT: Yes, get the witness.

15 MR. SHEEHAN: The witness is under cross, I hope no  
16 one is talking to him.

17 MS. STAVRAKIS-HANSEN: I am right here, I didn't  
18 even know.

19 THE COURT: I wouldn't think counsel would even  
20 talk to him.

21 MS. STAVRAKIS-HANSEN: Anything else?

22 (Whereupon, Dr. Weinstein resumed the witness  
23 stand.)

24 COURT OFFICER: All rise, jury entering.

25 (Whereupon, the jury entered the courtroom.)

Dr. Weinstein - Plaintiff - Cross

1 THE COURT: Please be seated.

2 Mr. Sheehan, you can continue.

3 MR. SHEEHAN: Thank you, your Honor.

4 Q Doctor, I show you what has been marked as Defendant's  
5 Exhibit B for identification, and have you had a chance to take  
6 a look at it?

7 THE COURT: I don't know that he has it.

8 MR. SHEEHAN: It hasn't been given to him, I'm  
9 sorry, because idiot me didn't ask for it, my bad, I'm  
10 sorry, Judge, can the Court Officer hand it --

11 THE COURT: Yes. Thank you so much, Officer.

12 COURT OFFICER: You're welcome.

13 (Handing.)

14 THE COURT: Would you like to ask the question  
15 again?

16 MR. SHEEHAN: Yes, thank you, Judge, I will  
17 withdraw that with your permission, of course, and ask.

18 Q I would like to show you what has been marked as  
19 Defendant's Exhibit B for identification.

20 Have you had a chance to look at it?

21 A Yes.

22 Q Does that refresh your recollection as to whether or  
23 not you had the patient signed a lien assignment agreement with  
24 respect to her case and her care and treatment with you?

25 A It appears there's a lien, yes.

1 Q What this means is that the patient is seen on a lien  
2 that you would provide care to the patient and then get paid at  
3 a later date; correct?

4 A That is correct.

5 Q And the form says that you will treat them at no cost  
6 and if they recover money in the lawsuit, then they will owe you  
7 that money, whatever is owed to you, correct?

8 A It states that they are directly, as you highlighted or  
9 someone highlighted is that, "that I understand that I, the  
10 person signing it, am directly and fully responsible to the  
11 provider for any remaining balances on all medical bills and  
12 services rendered to me that were submitted on my behalf to the  
13 responsible insurance carrier and applicable."

14 Q But essentially, the lien allows you to treat them at  
15 no cost and if they recover money in the lawsuit, that they  
16 have, then they will have to repay you that money --

17 MS. STAVRAKIS-HANSEN: Objection.

18 Q -- true?

19 THE COURT: You can answer it, is it true.

20 A I can't answer it true, it's -- it's exactly what it  
21 says there.

22 Q In the Castillo matter, August 12th of 2022, line 20,  
23 page 65, I would like to ask if you remember giving this  
24 testimony to this question --

25 MS. STAVRAKIS-HANSEN: Objection.

1 Q Doctor --

2 MS. STAVRAKIS-HANSEN: Can he ask if he remembers  
3 anything first before reading it?

4 MR. SHEEHAN: It doesn't have to be from memory, I  
5 don't want to talk --

6 THE COURT: He just said if he asked if he  
7 remembered, just ask if he remembers giving that testimony,  
8 right? If you want to ask --

9 Q You have been previously asked to define what this  
10 means in the Castillo case; isn't that true?

11 A I told you many times I don't have independent  
12 recollection of that case.

13 Q Okay. So now I will ask you, do you remember giving  
14 testimony on page 65, line 20:

15 "QUESTION: Doctor, this is the document that the  
16 patient signs saying you will treat them without any cost to  
17 them and that if they recover money in the lawsuit, that  
18 they have, that they will owe you money; is that correct?

19 ANSWER: That's what the lien is, correct."

20 Question, on line four of page 66:

21 "If they don't recover any money, then you don't  
22 recover any money; correct?

23 ANSWER: I guess so."

24 Do you remember giving that testimony?

25 A I've said many times, I don't have an independent

1 recollection of that testimony.

2 Q Do you deny giving the testimony?

3 MS. STAVRAKIS-HANSEN: Objection.

4 THE COURT: Sustained.

5 Q At the moment in time when Miss Castillo signed that  
6 lien agreement, you had an interest in that lawsuit, a financial  
7 interest?

8 MS. STAVRAKIS-HANSEN: Objection.

9 THE COURT: Sustained.

10 Q Now, with respect to this patient, Mr. Paulino, was he  
11 placed on a lien status as Miss Castillo was?

12 MS. STAVRAKIS-HANSEN: Objection.

13 THE COURT: To the characterization, sustained.

14 Q Was Mr. Paulino placed on a lien?

15 A I can't tell you 100 percent; however, I know that he  
16 was treated under Worker's Compensation.

17 Q So was Mrs. Castillo, wasn't she?

18 MS. STAVRAKIS-HANSEN: Objection.

19 A Again --

20 THE COURT: Sustained, you don't have to answer  
21 that.

22 Q Whether or not, whatever the insurance is, whatever it  
23 is, you can still place a lien on a patient's file for the  
24 portion that is not covered by insurance; correct?

25 A No.

1 Q You did it in the Castillo case?

2 MS. STAVRAKIS-HANSEN: Objection.

3 THE COURT: Ask it differently, counsel.

4 Q That's exactly what you did in the Castillo case?

5 MS. STAVRAKIS-HANSEN: Objection.

6 Q You put a lien --

7 THE COURT: Overruled.

8 Q -- on her office visits and for some of her surgery  
9 expenses; isn't that true?

10 A I am not sure. As I told you, I don't have independent  
11 recollection; however, I do not believe that it was a Worker's  
12 Compensation accident.

13 Q Regardless of what the source of payment is, other than  
14 the patient, if there are monies due and owing to you, you  
15 could, if you desire, put the patient on a lien; isn't that  
16 true?

17 MS. STAVRAKIS-HANSEN: Objection.

18 THE COURT: Can you answer it?

19 THE WITNESS: I don't understand his question.

20 THE COURT: Can you rephrase it?

21 MR. SHEEHAN: No, Judge, I will move on.

22 Q You saw the patient for the first time, I think we've  
23 already gone, July 26, 2017; right?

24 A That is correct.

25 Q So July 26, 2017, and down underneath at the bottom,

1 you list your office address, and you also list some of your  
2 hospital affiliations; correct?

3 A Yes, correct.

4 Q At that time you were an attending orthopedic surgeon  
5 at Mount Sinai and New York Hospital of Queens; correct?

6 A Mount Sinai Beth Israel.

7 Q Beth Israel, also New York Hospital of Queens?

8 A Correct.

9 Q You list there you're also on staff at Lenox Hill?

10 A That is correct.

11 Q Those are fairly large institutions with over 500 beds;  
12 right?

13 MS. STAVRAKIS-HANSEN: Objection.

14 THE COURT: Overruled.

15 A I don't know the bed counts.

16 Q By May 9th of 2022, you're still listing the same  
17 hospital affiliations; correct?

18 A Yes.

19 Q At the time of the Castillo deposition in August of  
20 2022, is it correct that time that your hospital connections  
21 with Lenox Hill were under review?

22 MS. STAVRAKIS-HANSEN: Objection.

23 THE COURT: Sustained.

24 Q Was an inquiry being conducted at Lenox Hill in 2022  
25 regarding whether or not you were going to continue at that

1 institution?

2 MS. STAVRAKIS-HANSEN: Objection.

3 THE COURT: Sustained.

4 Q By November 20th of '22 -- sorry, November 30th of  
5 2022, there are no longer those hospital affiliations at the  
6 bottom of your letterhead; correct?

7 A That is correct.

8 Q You are now at Mercy Hospital in Long Island --

9 A Yes.

10 Q -- with 375 beds; are you aware of that?

11 MS. STAVRAKIS-HANSEN: Objection.

12 THE COURT: Sustained.

13 Q And Hudson Regional Hospital in New Jersey with 102  
14 beds?

15 MS. STAVRAKIS-HANSEN: Objection.

16 THE COURT: Sustained.

17 Q Do you agree that Mercy Hospital and Hudson Regional  
18 Hospital are smaller hospitals than the ones that you were  
19 previously affiliated with?

20 MS. STAVRAKIS-HANSEN: Objection.

21 THE COURT: Sustained.

22 MR. SHEEHAN: Judge, I don't think I have anything  
23 further at this time.

24 THE COURT: Redirect.

25 MS. STAVRAKIS-HANSEN: Yes, briefly, your Honor.



1 REDIRECT EXAMINATION BY

2 MS. STAVRAKIS-HANSEN:

3 Q Dr. Weinstein, we saw counsel show you a bunch of  
4 reports saying neck supple; correct?

5 A Yes.

6 Q What does "supple" mean to you?

7 A Supple means appearance is normal, no tracheal  
8 deviation, that's it.

9 Q Does it have anything to do with pain?

10 A No.

11 Q The initial visit with Mr. Paulino, what was the reason  
12 he came to see you?

13 A He was referred, I believe by Dr. Grimm for his  
14 continuation of back pain despite failure of nonoperative  
15 treatment.

16 Q By "back pain," you mean the lumbar spine?

17 A Low back pain, lumbar spine.

18 Q One second, your Honor.

19 (Pause in the proceedings.)

20 Does the fact that in your notations you say the  
21 neck is supple, does that also mean Mr. Paulino wasn't  
22 suffering pain?

23 MR. SHEEHAN: Objection. Leading.

24 THE COURT: Sustained.

25 Q The -- when -- the physical examination that you do,

1 where the results show neck supple, what is the reason for that  
2 physical examination?

3 A It's an overview of the patient.

4 Q And an overview is not -- he wasn't treating for his  
5 neck, was he?

6 MR. SHEEHAN: Objection.

7 THE COURT: Sustained.

8 Q At the encounter, was he treating the initial  
9 encounter, was he is treating for his lumbar spine?

10 A Yes.

11 MS. STAVRAKIS-HANSEN: Objection.

12 THE COURT: Sustained.

13 MS. STAVRAKIS-HANSEN: Nothing further.

14 MR. SHEEHAN: Judge, just briefly.

15 RE CROSS EXAMINATION BY

16 MR. SHEEHAN:

17 Q This notation in your office record in the physical  
18 examination section, this is not an observation section, this is  
19 a physical examination; correct?

20 A It's under the physical examination heading, that is  
21 correct.

22 Q "Eyes clear and reactive to light," that means you have  
23 to shine some light in the patient's eyes; is that correct?

24 A That is correct.

25 Q "Abdomen soft nontender," that means you must, must put

1 hands on the abdomen; correct?

2 A That is correct.

3 Q What you're saying now is for the neck, you just took a  
4 peek but never touched it?

5 MS. STAVRAKIS-HANSEN: Objection.

6 THE COURT: Overruled.

7 A I'm saying that it's not a detailed physical  
8 examination.

9 Q So it was a kind of sort of an exam?

10 MS. STAVRAKIS-HANSEN: Objection.

11 THE COURT: Sustained.

12 MR. SHEEHAN: No further questions, your Honor.

13 MS. STAVRAKIS-HANSEN: Nothing further.

14 THE COURT: Thank you very much for your testimony,  
15 you can step down, I will take the exhibits that are in  
16 front of you.

17 (Whereupon, Dr. Weinstein exited the witness  
18 stand.)

19 THE COURT: Thank you.

20 THE WITNESS: Thank you.

21 THE COURT: Take care.

22 So we will break now for lunch, you have an hour  
23 and a half, come back at 2:15 for the afternoon session. I  
24 hope everyone has a wonderful lunch, don't look anything up,  
25 don't discuss anything about the case, okay.