SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BROOKLYN: TRIAL TERM PART 41

- X

SAUL ROSALES,

Plaintiff,

- against -

INDEX NUMBER:
511147/2017

ZEIDA REALTY CORP. AND DADAMAYA INC.

Defendant.

- X

360 Adams Street
Brooklyn, New York 11201
November 8, 2023
PROCEEDINGS

BEFORE:

HONORABLE LARRY D. MARTIN, Justice
(A jury of 6 and 2 alternates.)

APPEARANCES:

GORAYEB & ASSOCIATES
Attorney for the Plaintiff
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New York, NY 10038
BY: Damon J. Velardi, ESQ., Of Counsel

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BY: Lawrence J. Buchman, ESQ., Of Counsel

CASSANDRA JOHNSON,
GABRIELLE CARLETTI,
Senior Court Reporter

THE COURT: Good morning all.

THE SUPREME COURT CLERK: Good morning, this is index number 511147 of 2017 Rosales Saul verses Zeida Realty Corp. Counsel, your appearance for the record.

MR. VELARDI: Damon Velardi for the Law Firm Of Gorayeb & Associates for the plaintiff.

MR. VELARDI: Larry Buchman for the defendant by Pillinger, Miller.

THE COURT: We ready for the jury?

MR. VELARDI: I don't believe we're ready for the jury yet. There's a matter we need to take care of.

MR. BUCHMAN: Oh, yes there is, Your Honor.

MR. VELARDI: So there's one matter. I've got some things for the court that Your Honor asked for. The copies of the pleadings, the marked pleadings. We have the proposed charges. The proposed verdict sheet that we can submit now. We also have to mark the subpoenaed records, but the most important issue --

MR. BUCHMAN: There is a little house cleaning Your Honor. The plaintiff in his opening statement Counsel made reference to the plaintiff's marriage being ruined.

THE COURT: We have a doctor here?

MR. BUCHMAN: We can do that afterwards.

THE COURT: We will hear from the doctor now.

MR. VELARDI: Okay. Your Honor, the only other

thing is that we're hoping to get a T.V. that we can project the films on to the television and we're still waiting for that at the moment.

THE COURT: Okay. Well we can at least get through his background.

MR. VELARDI: Okay.

THE COURT: Jury.

THE COURT OFFICER: All rise. Jury entering.

THE COURT: You can be seated. Good morning ladies and gentlemen.

THE JURORS: Good morning, Your Honor.

THE COURT: Good to see you again. We're going to continue our trial. At this time, does the plaintiff have a witness to call?

MR. VELARDI: Yes, Your Honor. Plaintiff calls Dr. Thomas Kolb.

THE SUPREME COURT CLERK: Good morning. Raise your right hand. Do you swear or affirm that the testimony you're about to give to the court is the whole truth and nothing but the truth?

THE WITNESS: I do.

THE SUPREME COURT CLERK: Thank you. Can you please state your name and address for the Court Reporter.

THE WITNESS: Dr. Thomas Kolb, K-O-L-B 257 West 34th Street New York 10001.

DIRECT EXAMINATION BY MR. VELARDI:

Q Good morning Dr. Kolb. It's a pleasure to have you this morning. Doctor, are you licensed to practice medicine in the State of New York?

A I am.

Q Okay. And could you explain to the jury what type of doctor you are?

A Sure, I'm a diagnostic radiologist.

Q And what is a diagnostic radiologist?

A So radiologist uses CAT scans, X-rays, MRI's to look inside the body to see if there's a problem as to why the patient is having some symptoms like pain for example. So we use all these different tests to look for things. We also screen patients for disease, like mammograms, ultrasound. We use all these different types of methods to look inside the body.

Q Before we get into what are these various tools that you use as a diagnostic radiologist, I would ask are you board certified in any area?

A I am.

Q And what are you board certified in?

A I'm actually board certified in both pediatrics and in radiology.

Q And just of you can explain to the jury briefly, what you had to do to become board certified in radiology?

A First of all so a little bit of my education I went to

college here, Queens College City of New York. I graduated in 1979. And then I went to medical school here in Brooklyn, DownState Medical Center. Graduated in 1983, became a physician. I then did an internship and residency in pedestrics in the Bronx at Montefiore Medial Center Jakobi Hospital. And I became board certified in pediatrics. I then went back and did another four years of training in radiology here in Manhattan at Columbia Presbyterian Medical Center in Washington Heights. And I did four years of study in radiology. In order to become board certified you have to finish a number of years of training. In pediatrics it's three years. So it was three years, then I went back and did another four years. You have to take a written examination. If you pass that, you take an oral examination. And if you pass that you become a member of the board or a diplomat of the Board of Radiology which is called board certified.

Q By the way, I neglected to ask you, when did you become licensed to practice medicine?

A 1983.

Q Okay. Do you have any awards or honors?

A Yes.

Q Could you explain to the jury what you have?

A So my practice is split into two parts. One part of my practice is breast cancer diagnosis. I specialize in young high risk women, women with dense breast. I see many, many patients each year for almost 30 years. That consist of doing mammograms,

ultrasounds, MRI's, biopsies. All of those I do myself. Personally, do everything myself. Physical examination. And so that's one part of my practice. And to answer your question, I belong to a number of organizations, but also I've published and one of the papers I published in that breast cancer group was on over 27,000 consecutive women which showed how frequently mammograms found and missed in breast cancer, and what you could do about it. And that's how screening, ultrasounds became to be with breast cancers in women with dense breast. So that paper won the American Medical Association Scientific Paper of the year award. Not just for the radiology, but for all medicine it's a very highly cited paper. I've gotten a few papers for that regard. Part of what I do every day is breast cancer diagnosis. The other part of what I do is utilizing the X-rays, MRI's, and CAT scans for people that have symptoms often pain and doing very typical studies, like MRI's of the back, and of the neck, the shoulder, the knee, X-rays, CAT scans, different parts of the body. As a typical radiologist would do to look for abnormalities. So those are very two different parts of my practice that I do about half time for each.

Q And Doctor speaking of your private practice, do you have an office, do you have locations, multiple locations? Just tell the jury a little bit about your private practice and professional experience.

A So I was an assistant voluntary clinical professor of

radiology for many years at Columbia University Medical Center Department of Radiology. Now I'm in totally private practice as I have been before and I see breast imaging patients in Manhattan, Midtown Manhattan. But I also have imaging centers that do CAT scans, MRI's, and X-rays as I told you about in Manhattan and in the Bronx, as well. So those are -- that's how I'm set up to do my work every single day.

Q Now Doctor you mentioned that you performed the breast mammograms and other examinations yourself. Do you also perform the MRI's of for example the spine, other areas of the body yourself, or do you have technicians or something else?

A So switching over to -- so just to finish up, there's two very different parts of what I do, the breast cancer which we'll talk about right now. The rest of looking at the spine and everything to answer your question, and there are, I was just told there are websites that explain this to you, but if want I'll go into more depth for both things that I do. To answer your question directly, for doing MRI's let's see like CAT scans, the patient comes, the technologist sets the patient up in the MRI scanner. We can talk about what MRI's are, in a CAT scanner pushes the buttons and generates the film and I look at the films with those patients. I do not physical examination. For those patients that have MRI's of their parts of the body for fractures or for tears, the referring doctor's who send the patient in with complaints of pain in general, they're the one's who do the physical examination on

the patient. So it's different in that way.

Q Now when patients are sent to one of your locations by another doctor to have a study performed, do you or someone else obtain a history of that patient, or do you review medical records?

A If something is available it will be put in the report. If something -- sometimes we have the bare bones that the patient just woke up one day with a headache and so we do an MRI of the brain, or the patient fell down and had some trauma. That's the history we'll have. Whatever we have, we have. We often don't get complete histories.

Q Now Doctor I know we're talking about a long period of time, but are you able to estimate for the jury how many MRI's of the lumbar sign you've read in your career?

A Oh, maybe tens of thousands of the MRI of the lumbar spine. That's very common.

Q What about the cervical spine?

A Same.

Q And what about shoulders?

A Same.

Q Knees?

A Same.

Q Feet or ankles?

A Same. Those are all very, very common procedures to look at for abnormalities.

MR. VELARDI: Your Honor, at this time I would

offer Dr. Thomas Kolb as a qualified expert in the field of radiology.

MR. BUCHMAN: No objection.

THE COURT: So moved.

Q Okay Doctor. Could we start by explaining to the jury what is an X-ray?

A So an X-ray, X-ray is an energy. It was discovered over 100 years ago. And nowadays it's a crude way of looking into the body. X-rays are very good to tell the difference between something that's hard and something that's soft. If you want to look for fracture of the bone X-rays wouldn't do. If the bones are hard an X-rays see the bones really well. But there aren't just bones in the body, for example in the neck or the back there are discs, there are ligaments, there are muscles, there are tendons. There are all different types of structures that are soft. X-rays can't see those. If you look at the X-rays of the back you'll see a bone and you'll see another done next to the disc. But you won't see the disc. X-rays don't see those soft tissues. That's what X-rays are good for. And that's what their uses for nowadays.

Q Is there, other than to locate fractures, is there anything else that can be located on an X-ray, I understand not soft tissue, but besides fractures, is there any other purpose or use of an X-ray?

A You can look a chest X-ray to look for cancers and that's soft, not hard that's cancers. That's in the past when they

only had X-rays. You could look for arthritis or degenerative changes in the bones which are parts of the bones. As we age we unfortunately gets some arthritis. So you could use X-rays for that, too. You can use X-rays to look at bones or other things besides the fractures, but that's general.

Q Why don't we move onto CAT scans. Explain to the jury what a CAT scans is?

A CAT scans are using the X-rays. And instead of taking one picture, for example if you do a CAT scan of the foot. I give you an X-ray of the foot, you take one picture and you see all those different bones on one picture of the foot. If I gave you a book, I would take an X-ray of the book I would see hundreds and thousands of words and I'd have to tell the difference between all those. But a CAT scan is taking an X-ray which are very, very thin slices really get slices just pictures on a computer. Some very, very thin slices let's say of the foot we take 10, 20, 30 pictures and each one we can take out and look at. And we get regular information. It's using X-ray technology but since they're very, very thin slices we get more information. Like a CAT scan for the lung for cancer, you could do an X-ray, its not a great way for looking at cancers, but you can gets a CAT scan of your chest. And that shows little parts of the chest in thin slices which are much more accurate. But CAT scans uses X-rays just in a different way.

Q And then finally if you can explain to the jury what an MRI is?

A So an MRI is a totally different thing. An MRI is a magnetic wave, relatively new. Meaning it's been around for 30 years, maybe 40 years. It's a really big machine, it's a huge magnet. You lie in the machine. The computer pulses the magnetic waives in to your body. Your protons in your body and all of cells move in a certain way and there's a very strong computer that is able to hear these movements of the protons and make pictures of your body. Those pictures are, as you'll see, are really, really extensive. Not only does it see the bone, it sees inside of the bone. Not only does it see the bones, but it highlights the ligaments, the tendons, arteries, veins, the nerves, the spinal cord. All these things that are soft that you will not see on an X-ray and not see well on a CAT scan. So MRI's are really a powerful test and they're used pretty commonly nowadays.

Q Now Doctor, I've heard you mention before arthritis and degeneration. Can you explain to the jury a little bit more about what that is, what those conditions are?

A Well it varies in different parts of the body, right, whether it's your spine, whether it's your shoulder, or your knee. But in general, as we get older we become more arthritic or we degenerate a little bit. What does that mean, in every part of the body it's a little different. In the neck and the back there are three stages to arthritis. I have to talk a little bit about anatomy, maybe I'll talk about that when I show you pictures, but the disc between the bones are like shock absorbers. And the first

thing that happens is with arthritis is you lose its fluid inside. Like a jelly donut, in the inside it's like jelly. You still are releasing that fluid and the fluid changes. And on an MRI it changes color and we can see that. When it loses its ability to be a shock absorber and that can happen if the bones get closer together and the disc get thinner. So one important part of arthritis is disc getting thinner or losing height when the disk lose their height, the bones gets closer together, and the bones never want to be close together in a joint. That's a very bad thing and it can be painful. So the body itself tries to repair it by forming bone spurs, or ridges, or osteophites. So as the bones get closer we'll see bones spurs. So those are just as an example different stages of arthritis in the spine, in the knee. There's a different structure which we'll talk about, it's not a disc. It's called a meniscus. You don't have to remember any of these medical terms. The meniscus keeps the bones apart. With arthritis the bones gets closer. And in the shoulder there are different parts of the anatomy which also can form these bone spurs. In any case, it's all parts of the aging process.

Q Okay. And what are the ways from a radiological standpoint that a doctor like yourself has to diagnosis degenerative conditions in arthritis?

A You can see all of this on MRI's. You can see it differently on a CAT scan. And can you see it differently on an X-ray. On all three types of the imaging you can find degenerative

changes for sure.

Q And can you also use MRI's to find changes that are not degenerative in nature, but are rather caused by some traumatic event?

MR. BUCHMAN: Objection leading question.

THE COURT: Rephrase, please.

Q What else besides degenerative conditions can you find by use of an MRI?

A So we don't do MRI's. I don't get a referal that says do an MRI to look for arthritis. I get an MRI report that says do an MRI because the patient has pain, or the patient has trauma, or the patient has something. When you do the MRI looking for the cause of whatever is bothering them, you may see arthritis. So it's not like you do the MRI for their arthritis. It's a finding you may or may not find.

Q Okay. Now Doctor did there come a time that some radiological studies with performed on certain parts of Mr. Rosales's body at one of more of your locations?

A Yes.

Q Let's start with the first study that was performed. Okay so Mr. Rosales came to one of your locations to have an MRI performed of one of his parts of his body at some point in time, correct?

A Yeah, many parts.

Q What was the first part of his body that he had

studied?

A I guess the first one was his left knee on June 20, 2017.

Q Okay. Who, if anyone referred Mr. Rosales to have that study performed?

A Dr. Kaplan.

Q And what location did that study take place?

A Left knee.

Q Well, what I mean what location of your various offices?

A One of my MRI sites.

Q Now did you know that at the time that Mr. Rosales was referred for the MRI on the left knee that he was in a lawsuit or anything like that?

A No. There's no way for me to know that. This is 2017.

MR. VELARDI: Your Honor, do you want to take a break while this T.V. gets setup so there will be no distraction to Dr. Kolb's testimony?

THE COURT: You're going to need it shortly?

MR. VELARDI: Yes.

THE COURT: All right. Let's do that. Members of the Jury, we're going to take a brief recess in order to setup the screen for you. Once again, please do not discuss anything concerning the case among yourselves or

with anyone else during the break.

THE COURT OFFICER: Jury exiting.

(Off-the-record discussion.)

THE COURT: Ready for the jury?

MR. VELARDI: We are.

MR. BUCHMAN: Your Honor, are you okay if when he's talking about it I come right here?

THE COURT: Yes.

THE COURT OFFICER: All rise. Jury entering.

THE COURT: Be seated. Counsel.

MR. VELARDI: Thank you, Your Honor.

Q Doctor, before we get to what's on the television screen here, were you Mr. Rosales's treating physician?

A Yes.

Q And what was the purpose that you took the various studies that we've begun to discuss?

A So the patient was sent to me by a referring physician back in early in 2017 and going forward for multiple studies of different part of the patient's body, was sent to me and my MRI site to do MRI's and the CAT scans of different parts of the patient's body. So I was the treating the physician from the radiology perspective for this patient.

MR. VELARDI: Thank you, Doctor. Your Honor, what's contained on the television screen and what we will see going forward is what is contained on the CD-ROM which

came in through a subpeonaed records. I'd have this marked for identification as Plaintiff's Exhibit Two.

MR. BUCHMAN: There's no objection I agree that everything is right.

MR. VELARDI: Furthermore, with respect to the various radiology reports that coincide with the various films, I would have these marked as Plaintiff's Exhibit Three.

MR. BUCHMAN: The doctor is here. Doctor is going to the talk about them. I think we discuss this later about what's on the paper.

MR. VELARDI: I was going to move them into evidence on the business record but.

THE COURT: Is there an objection?

MR. BUCHMAN: To the extent that the doctor is here to testify, if the jury hears him testify, just as my doctor's read of the films are not necessarily admissible, I don't know why this doctor's would. So I would object Your Honor.

MR. VELARDI: So I don't need to move them into evidence.

MR. VELARDI:

Q Okay. Doctor, looking at the t.v. screen what are we seeing here?

A We're seeing a very thin sliced picture of the

patient's knee. It's the left knee.

Q Can you explain to the jury the anatomy of the left knee?

A Sure.

MR. VELARDI: Would you like to step down to -- Your Honor does he have permission to step down?

THE COURT: Yes.

A So since we have -- so first of all let me explain what an MRI scan is. You see I can move through the knee and I'll explain to you what I'm doing. You see how many pictures I'm showing you all different pictures they're all slices through the knees done on the computer and only two or three millimeters. So we take a lot of pictures. I'm going to show you just pictures where the abnormalities are. I'm just going to explain the anatomy where the abnormalities are. But we're going to focus on what we need to focus on. So this is a single picture through the middle of the left knee. This big bone here, these gray areas the bone. This bone here is your thigh bone, your femur. This bone here is your shin bone. Well so looking at your knee, you know that your knee can do this, right, it can move. So we have a shin bone and another bone on the side. The shin bone is called the tibia. This bone is called the femur. And we also have the kneecap here, which is what of course you feel with your finger here in front. This is the front of the patient. This is the back of the patient and we have these two bones here across with the patella for the kneecap

right here. Now everything has to stay together. In other words when you move your knee or you jump up and down, everything is held together with ligaments. The muscles are held with tendons, bones are held with ligaments. They're held in place. If things aren't held in place, when you move your head or when you move your knee everything would just go whichever way it wants to go. We all have the same anatomy. It doesn't matter if you're tall, or short, or male, or female we all have the same anatomy. When you move your knee front and back like this, the structure of the knee stays fixed. The only thing you can do is move it, the tibia, the lower bone doesn't shoot forward and the femur, the thigh bone doesn't shoot back, because there are two ligaments that criss cross in the middle of the knee right here. And they're called the cruciate ligament. There's an ACL of the knee aka the cruciate ligament and the PCL, proper cruciate ligament. This is a piece here of the PCL, and the PCL we call it PCL because it's the posterior which is the back of the patient. See there's a P. So this is the back of the patient. This ligament runs this way and attaches to this bone, and if we move it a little bit boom, you see here it attaches right here to the bone. And that's the way it's suppose to look. The ACL is suppose to look exactly like the PCL. This is the ACL. So one ligament runs this way, the other ligament runs that way. So no matter what you do with your knee it's not going to slide over each other. But that's what this patient did. This ACL, anterior cruciate ligament, is normal here. But you see all this

white stuff here, that white stuff here is fluid in the joint. And the reason the patient has fluid in the joints here is because there's only a thin piece of ligament that's left attached to this bone, the tibia right here. There are a bunch of fibers that connect here up to this bone, but to this bottom part of the bone there's a partial tear. It's not completely torn. It's a partial tear of the ACL and there's fluid. So the entire knee MRI, I'm focusing you on the finding and that's really the finding on this study.

Q Thank you. Now can we move on to the lumbar spine, please. Okay Doctor, what are we looking at now?

A So again, a lot of pictures. Same pictures. And here we are looking at the lumbar spine. This is -- you're looking at the MRI, the date is 6/21/2017, okay.

Q And can you explain the anatomy of the lumbar spine please?

A So a little bit of anatomy. Each one of these squares, grey again are bones. In our back, in our neck we have bones. There are three different parts to the spine. I'm explaining this all, because we're going to see all three parts. There's the cervical parts of the neck which is called the upper neck, which is called the cervical spine. And that's C. And there are seven bones. We all have the same anatomy. And it starts from C1, first bone to C7. The seventh bone. Now, I'm going to talk about the lumbar first, because we have the picture. In the lumbar

spine in the back there are five bones and we call them L for lumbar, one through five. And after the fifth bone there is another part of the spine called the sacrum. And we call that S for sacrum, one. And there are bones there too. Why am I telling you this, this is L5 the fifth bone in the lumbar spine. This is the fourth bone. So this is the fourth bone, this is the fifth bone, and this is the sacrum or S1. Now not only do you see these squares which are the bones, you see these structures here in between the squares. Those are discs. Those are the discs in your back. Now when you move around and do any motion at all your back moves. What I told you before is that these discs, the function of these discs are to be shock absorbers. They could compress, but then they'll spring right back just like a spring, because they have jelly material in them like a jelly donut, fluid. And around -- and so that is everything has a fancy medical term and you don't have to remember any of these medical terms. This is called the nucleus pulposus. This contains the gelatinous material. Now the discs have to be in a very particular place. And they don't move, meaning each one of these discs goes to the margin of the bone, the back of the bone. This is the back of the patient. This is the front of the patient. It stops at the back here because there's two ligaments that hold it in place. One ligament is called the anulus which wraps around the disc. And another ligament is called the posterior longitudal ligament, or ligament toward the back. You don't have to remember the names. The bottomline is these

ligaments hold the bones in place so that they don't go beyond the margins of the bone tight here from bone to bone. Now what could go wrong, these ligaments could tear. What happens if it's partially tears, here's the disc, here is my finger as the disc, here is the bone behind the disc. I told you that it would stop at the edge of the bone it doesn't. But if there is a partial tear of the ligament the disc starts pushing through a little bit. And what we will see, you'll see the disc go beyond the margin of the bone, because there's a partial tear of the ligament. What happens if the ligament and the anulus completely tears, the disc will go right through that hole. Now why do we care that discs, and that's called a disc herniation, a herniated disc in the back. When the ligament and the anulus are completely torn. So why do we care, the reason we care about the disc herniations is because they could cause pain. The way they do that is, because these are actually very small spaces. But this here is just one sonometer, and that's less than half an inch near here. So you can see that this space is less than half an inch from here to here. This gray structure here is the spinal cord. It's coming down from our brain, down to the back. This is the spinal cord. And all of the nerves that go to your buttocks, to your legs, to your lower legs, your feet, all come off the spinal cord here and come down your spine and go out of holes on the side. So this picture that I just showed you here is called a staginal picture. It's a long picture. You see all the bones. This picture is a round picture. Now the reason this

on the same patient on the same day, same time. The reason we take these pictures, you could have a long loaf of bread, like an Italian bread or a French bread. And can you cut it long and make a subway sandwich. And when you eat that sandwich you can see the whole bread at the same time. But you can cut the bread if you like a different way. You can make slices. And what happens if you slice a long loaf of bread and you take it out, you have a round or square slice of bread. You don't see the whole bread. You only see part of the bread. What's in the bread, whatever is in the bread turkey, tune whatever it is you're going to see that slice. On one picture you can see the spinal cord on all the nerves. But here we take a picture just through this disc right here at 5-1 and we get a round picture. This now is the disc and all of these nerve roots that is were coming down here that I showed you these little lines that were coming down here and I'll show you again, are these little dots, because all we have is a slice of the sandwich. Why is this important, because I told you that all of the nerves coming down from the spinal cord have to go out of our back, down our legs to our feet. How does is do that, there are holes on the side of our spine. It's a hole on the right. It's a hole on the left. And between every single bone there's a hole. So, for example at the L5-S1 level which is a disc I'm going to show you, there are two holes. There's the left L5-1 hole which is called the neuroforamon. And through that hole, to the left, a nerve goes down to your right. And to your right the

nerve goes down on the left. This picture here shows you those holes. These are the nerve roots, these dots. They are suppose to be a space between these bones here, a space here, and here. And this here is the right L5 nerve root. That use to be in here, but as we go down, the nerve roots comes out. And what happens is because of this disc herniation that's pushing back, not only is it I pushing on this fecal sack, it's also narrowing the holes called foramina that contain the nerve roots. If we go back to the staginal, what you saw on this long picture, number 11, what you're seeing are all the bones. And look on the side here, again this slide like you were. Let's go to the middle again, remember I told you there were disc bulges and herniations. Remember I told you. You'll see that the disc goes to the margin of the bone and stops. It goes to the margin of the bone and stops. Here is pushing out a little bit more than the bone. Here there's a big piece of it that extends beyond the bone on both sides. That is a tear of the ligament anulus, right in here. And you can see it's being pinched over right there, and that's a disc herniation because of a hole or a tear in the anulus ligament. Not only is it pushing back on this white stuff which is the spinal fluid which contains all these nerve roots. All these little thin gray lines, not only does it push back on there, but also narrows the holes where the nerve roots comes out. So that's the major finding, there's a smaller herniation at L4-5. You see this also pushes out but it doesn't push out as much as this larger herniation at L5-S1. So the

findings on this MRI, a disc herniation at L5-S1 pushing out impinging on, or pushing on the fecal sack which contains the spinal fluid, and also on the hole that contain the nerve roots. That's the major finding on the MRI of the lumbar spine.

Q Now Doctor is there any evidence of arthritic changes or degenerative conditions?

A No.

Q How do you know that?

A Well I told you there were three signs of arthritis. First is that the fluid in the disc is lost. That's the first sign. Now as you get to the lower part of the spine, you start losing space. The signal here because the space in a coil in an MRI. So you start losing a little bit of signals here. But all of the disc still contains white signal showing you that the disc still has fluid. The second thing that you can actually measure the height of the disc. The second sign of arthritis is that the height of the disc will get thin and the bones will be close together, and that we do not have here. The third sign of arthritis are bone ridges or bone spurs, because the bones get too close to each other. And that we don't have here, as well. So we don't have the signs of arthritis on the lumbar spine MRI.

Q Okay. Now can we just quickly go back to the left knee just for a moment. Now Doctor, on the left knee looking at the MRI films whichever one you need to, is there any evidence of arthritis or degenerative conditions in the left knee?

A So the answer is no. One of the first things you see when you look at a knee is you look at the distance, I didn't show you this picture before because the finding is deep inside there, the ACL. If you want to talk about arthritis, the most common appearance of arthritis in the knee is just like the back, we're going to lose that shock absorber in the bones. Now in the knee, the shock absorbers are called meniscii. Now this is called the compartment this is the one side of the patient. This is the medial side of the patient. The bottomline is with arthritis the bones get closer together. Here we see the bone of the femur and the bone of the tibia and both sides of the knee are the same distance away from each other. So there's no narrowing. So there's no real arthritis in this patient who is 31 years old. So this 31 year old patient doesn't haven't signs of the arthritis on the MRI.

Q Okay, now before we move on to the next body part let me just ask you quickly, who requested the MRI of the lumbar spine?

A Dr. Kaplan.

Q Moving on to the right foot.

A So, stop one second. Let me give you a little anatomy. Let me give you some quick anatomy here. This is a portion, again a slide of the patient's foot. This we can see here is the heel. That's the heel. That's the back. The toes are here. So here's the heel. So this bone is called the calcaneus, the heel bone. Every bone articulate, or is joint adjoined with

another bone next to it. So we're only go to focus on what we need to know. The calcaneus, the bone in front of it here is called the cuboid, C-U-B-O-I-D. So that's all you need to know, is that this bone -- and then there's another part of the bone that you need to know, the calcaneus. There's different parts. This is the body of the calcaneus. The back, and the front is called the anterior process of the calcaneus. This point here is the anterior process of the calcaneus, because I'm going to show you other pictures now in a second. So let's go to the picture. This, you have to use a three dimensional to look at this. This is the calcaneus that bone on the side that I showed you here. Now the bone in the back is your heel. And this is the cuboid. Calcaneus, cuboid bones. What's different on this picture, all the bones are suppose to be grey. Obviously, there's a big white blotch right here. As you go forward into the calcaneus, there's a big white area. You don't see it in the cuboids. You don't see it in the back of the calcaneus, but you see it here. This area you see here is swelling in the bone. The bone inside the bone, there's bone marrow. And the bone marrow is held in place by things called tribeculii. What's happened here is that this patient has fractured it, that's why there's swelling in the bone. The front part of the calcaneus, or the anterior process of the calcaneus. You can see it here. The picture before was made, where everything was white on the bones, because in that picture everything that's white on picture that will take -- sorry, everything is that is watery is black.

The fracture has a lot of water in it. The first picture I showed you you saw it wasn't meant to look for the fracture. But now when I show you a picture of everything that is watery it's brighter you can now make out the fracture here. That's why we take a lot of pictures in a lot of different ways. This is the fracture of the anterior process of the calcaneus. And you can see the swelling in the bone and the swelling around the bone, as well.

Q When was this film taken, Doctor?

A This was taken on June 21, 2017.

Q And who requested that these films be taken?

A Dr. Kaplan. So the other finding here is that not only is there a fracture, but in between the bones. Again, we've talked about the discs. We talked about meniscii. Bone never touches bone. They never touch. And the reason why they never touch is because in between the bones there is a space, and that space is filled with cartilidge. And the cartilidge here is damaged because of the fracture. So that's the second major finding to tell the surgeon when you read an MRI like this. Those are the major findings.

Q Now is there any evidence of arthritis on these films?

A No, not at all. There are no bone spurs. There's nothing to suggest there's arthritis on the MRI.

Q Okay. Moving on to the cervical spine. We'll go in chronological order,

A So again, a lot of pictures, right. Moving on to the

middle here. This is the center picture like this of your neck. This is the patient's neck. Here is the brain on top. The feet will be down here. This is the front of the patient here. The back of the patient is here. When you feel your bones in the back of your neck, again the bones are all grey. You feel these grey structures here pushing in. There are seven bones C for cervical two, three, four, five, six seven. So I told that all the discs have to come to the margins of the bones. Look at this here between C5 to C6, this disc is starting to push out. It's not herniated, but there's a partial tear of the anulus that allows, you see how the white line comes down into the front of the spinal cord. You see how tight everything is. This is less than half an inch. And you can see from here to here it's like that much room. So we have a disc bulge, which is a partial tear of the C5-6 disc that's pushing on the sack, the fecal sack that holds the spinal cord. So there's not a herniations here. It's a bulge, partial tear, not a complete tear like there was in the lower leg. And that's the major findings here.

Q When was that film taken?

A It was taken on 12/14/2018.

Q And who requested these films?

A Dr. Grimm.

Q That's Dr. Matthew Grimm?

A Yes.

Q And again, are there any arthritic changes that you

can see on those studies?

A You can see beautifully here in the record each one of these discs are the same height. They're all the same color. There are no bone spurs, no pieces of grey that are pushing out. There's no evidence at all of the MRI of the neck.

Q Okay. Now moving to the CAT scan of the foot. So we're going to shift back to the foot. Remember what you saw.

A So this was done, the CAT scan of the foot was done after the MRI. The CAT scan was done 5/15/18. The MRI was done 6/21/17, June 2017, and this skips forward about a year, May 2018. So this is what happened over a year after the fracture. So remember that heel bone, this is the calcaneus you're looking at. Here is the heel bone. Here is the calcaneus. Here is the cuboid, but now we have an abnormality of the projection. It should not look like this. This is markedly abnormal. The reason it looks abnormal is because there was a fracture through the anterior process that I showed you on the MRI with the white signal. And now there is the heel, the foot tried to heal itself. And it became fused, the bones started fusing together, but it fused in an abnormal way. So this is post-traumatic deformity. It means after a trauma, in this case a fracture, there's now a deformity of the piece of the bone here. And remember why it's important is because this bone talks to, or articulates with the bone in front of it and the bone above it. In this case, the cuboid. And the bone above it here. This entire joint space is now unstable, and it's

unstable because this is suppose to stop right by the edge of that bone, but it projects out because of the fracture. So it's healed in a typically deformed way after a fracture. In other words, this picture was not the way the patient looked before there was a fracture.

Q And who requested this exam?

A This is from Dr. Kaplan.

Q Okay. Let's move on to the right shoulder.

A So a lot of stuff going on in the shoulder, but we're not going to talk about it. We're going to talk about the problem in the shoulder. A lot of tendons, ligaments. But what's most important is the bones. Here is the grey bone. Here, and here is the triangle bone here. This bone is the humurus, the ball of your shoulder when you touch your shoulder that's what you're touching here. And this bone allows your shoulder to move around, because this bone articulates with the bone next to it so you can move your shoulder. More in a circular motion. You can't move your shoulder like you need it. Now, bone can never be next to bone it's very bad, very painful. The knee, neck, back, discs cartilidge in the foot we looked at. Well there's also cartilidge between these two bones and it's called the labrum in the shoulder. A labral tier. So this is a normal labrum. This is the back of the patient. The posterior. This is the front of the patient, anterior. It looks round. I could also show you a long picture like this one here. See, that's the bone you feel when you touch your shoulder and it's

round. But this is a hole and that's what happens if you cut the sandwich longer. This is as coronal view. And this is the triangle. But when I take a picture like that which is this picture, go back to. I'm taking a picture through here, and I pull it out, now the bone is round and the triangle right. It's the same analogy as the sandwich. The point is that this is the posterior labrum that looks like a triangle. And here, you lose the black triangle, because there's a signal. This white stuff is a tear. So this patient has a tear of the anterior labrum, and that's the major finding on this MRI here.

Q Okay, Doctor when was this exam taken?

A It was done January 31, 2019.

Q And who requested the exam?

A Dr. Kaplan.

Q And do you see any evidence of arthritic changes or degenerative changes on this exam?

A No, all of the joints; including, the joint on top here is normal. The gleno humural joint between these two bones show no arthritic changes on the MRI.

Q Okay. Let's move on to the thoracic spine?

A Okay.

Q Doctor, what do we see?

A So now we're looking at the middle of the back. Up here is the neck with the seven bones. Down here is the lumbar spine with the lower back with the five bones. And from here to

here is the middle of your back and that has 12 bones. And again it's the same analogy. All of these grey squares are bones. All of these long areas between the bones are the discs. The discs are held in place by an anulus and a ligament, bulges, and the herniations. All the same anatomy. This grey stripe coming down the back is the spinal cord. So you see the space here is very, very small between the bones and the discs in the spinal cord. Look at every the disc goes to the margin of the bone it stops. This one right here and more importantly this one right here. These two levels are T7-A because the seventh bone and the eighth bone. So T for thoracic, 7-8. T9-10 have disc herniations. You can see it peeking outside of here and pushing the fecal sack. So those are the findings on this. At two levels, these two levels there are disc herniations that push on the sack that contains the spinal fluid. The other levels look very good. You can compare normal to abnormal. So that's the finding on the thoracic.

Q And when was that study taken?

A It was taken in March 2019. =.

Q And who ordered the study?

A Dr. Grimm.

Q Okay. Did there come a time that you reviewed some X-rays from Kings County Hospital Center?

A I did review a number of X-rays, yes.

Q Okay. Let's have a look at the X-rays from the hospital center.

MR. VELARDI: Your Honor, I would identify the CD- ROM disc of the Kings County Hospital radiology film as Plaintiff's Exhibit Three.

Q Okay. Doctor, on the T.V. screen what do we see?

A So, this is an X-ray of the right shoulder and we'll talk about that. It was done on 5/15/2017. Okay. The humurus we just looked at it, the triangle bone. It's not really a triangle. An X-ray is one picture of the whole shoulder. So you can see how little we can see. We did the MRI which we showed you the labrum which you can't see here. There's a lot of stuff that you can see. But you can see the bones very well. The humurus is the long bone and this is the prenoid which is the triangle. Everything is normal here. The space between the glunoid, humurus and the glunoid. There's a space there. All you can see is the space. The space between the clavicle which is the collar bone. So this is a normal X-ray of the right shoulder, no fracture.

Q Now you mentioned earlier that you could detect arthritic changes on X-rays?

A Yes.

Q Are you able to detect any arthritic changes on this X-ray?

A There are no arthritic changes on this X-ray.

Q Okay. And the left knee.

A So here is the picture we saw before. In order for it to be arthritis, here's the tibia, our thigh -- sorry, femur which

is our thigh bone, the tibia our shin bon, and the space between the two bones are identical and there's no arthritis there. And if we look at the side view which is two pictures down, that is the picture, it's the picture we saw for the MRI. A picture was taken this way. It's exactly what we saw on the MRI. The kneecap, bone, thigh bone, shin phone. Remember I told you the two ligaments are in between there. You can't see it on here so you won't see it. But in terms of arthritis I showed the joint spaces on the other picture, the other joint spaces between the kneecap and this long bone the femur. To answer your question, there's no arthritis. It's fluid in the joint space which we saw in this MRI also, but there's no arthritis.

Q Was there a cervical and lumbar X-ray done at the hospital?

A No.

Q All right, that's it for films. Now Doctor, just to avoid having the jury look at more films, because they've seen so many, let me ask you, were there any other radiological studies performed on Mr. Rosales by you at a later time after what we've seen?

A Yes.

Q And what were those?

A There was an MRI of the brain that was done. I'll give you the date. An MRI of the brain was done in July 2019, July 10, 2019.

Q Okay. Any other body parts?

A Yes, an MRI of the right elbow was done on May 15, 2017. An X-ray -- no, that was an X-ray. You asked what I did. I did the brain also. I think that's it from what I did.

Q Were there any other studies done of the cervical spine by you?

A Yes. There was also an MRI of the cervical spine I showed you the one from -- I'll give you the date. I showed you the one of 12/14/2018. And I did another MRI of the cervical spine in January 2020.

Q What, if any findings appeared on the 2020 MRI to the cervical spine?

A So there was as disc bulge in 2018 and that didn't change. It was the same, nothing changed.

Q Did you perform any later MRI's of the lumbar spine?

A Yes.

Q When did you perform that?

A So on the lumbar spine, the first one was June 21, 2017 which we reviewed together. And the next one after that was January 2020.

Q What, if any findings were on the January 2020 lumbar spine MRI?

A So, a part of the herniation that we saw at L5-S1 enlarged compared to the one from 2017. And the herniations at L4-5 was not seen on that scan.

Q What, if any significance -- what, if any medical significance is there that the L5-S1 herniation increased?

A It now pushed on the left L5 nerve root. So that's the significance of that.

Q Okay. All right Doctor a few more questions. So let's just begin with the left knee. Now regarding the left knee Dr. Kolb I want you to assume that Mr. Rosales will testify in this trial that he fell from a ladder on to a floor. That when he fell from the ladder he fell to his right side. The ladder came down also to his right with him. He'll testify or assume that he'll testify that his left leg was tangled in between two rungs of the ladder as it came down while he went down. He will testify that he felt his leg twist, and he will testify that he complained about pain to his left knee at the hospital, as well as to the ambulance crew, and then he complained about increased or worsening pain to the left knee in the weeks that followed his discharge from the hospital. Okay, now do you have an opinion within a reasonable degree of medical certainty as to whether these complaints of pain that I have just told you in the assumption of Mr. Rosales's testimony would be consistent with what you saw on the MRI of the left knee which was a tear of the tibial insertion, the anterior of the ACL associated joint effusion?

A Yes, they would be.

Q What is that opinion?

A That a partial tear of an ACL can cause pain.

Q Okay. Moving on to the right knee. I'd like you to now assume that Mr. Rosales will testify that when he landed on his right side as he fell from the ladder, as he struck the floor, his right foot struck the floor. He felt pain to his right ankle and foot when he was leaving the hospital, and he'll testify that he attempted to stand on his two feet for the first time while he was leaving the hospital. In the four weeks after his discharge from the hospital ER he felt increasing and worsening pain to his right foot and ankle, and then he complained about such pain to Dr. Kaplan when he saw him for the first time. Do you have an opinion within a reasonable degree of medical certainty as to whether those complaints of pain would be consistent with what you saw on the MRI of the right foot?

A Yes, of course.

Q Yes, you have an opinion. What's the opinion?

A That the fracture of the bones was causing him the pain.

Q Okay. With respect to the right shoulder, again I'd like you to assume that you'll be hearing the testimony of Mr. Rosales -- sorry, not that you'll be hearing it. I would like you to assume that Mr. Rosales will testify that he fell from the ladder on to his right side and his struck his shoulder on the floor. He felt pain to his right shoulder which he complained about to the paramedics, he also complained in the emergency room at Kings County Hospital, and he complained to physicians that he

treated with over the years following the about pain to his right shoulder. Do you have an opinion within a reasonable degree of medical certainty as to whether those complaints of pain would be consistent with what you saw on the MRI of the right shoulder?

A Yes, the tear of the anterior superior labrum would be the cause of that pain.

Q Okay. We did the foot. With respect to the lumbar spine. Again, same assumption. He fell from a ladder. He fell on to his right side and he'll testify in a very forceful manner. He'll testify that he was standing with one foot on the fifth this step of the ladder, with the other foot on the sixth step of the ladder, and he fell on to his right side. After his discharge from the hospital he felt pain to his lower back and he complained about pain to his lower back to Dr. Kaplan when he first saw him after the accident. Do you have an opinion within a reasonable degree of medical certainty as to whether these complaints of pain to his lumbar spine are consistent with what you saw on the lumbar MRI of June of 2017?

A Yes.

Q Are they consistent with the MRI of January 2020?

A Yes.

Q Again, with the cervical spine assume that Mr. Rosales will testify that when he fell from the ladder on to his right side he also hit his head. And within a year after the accident he'll testify that he began to feel pain to his neck. And he complained

about that pain to Dr. Grimm, Dr. Matthew Grimm. Do you have an opinion within a reasonable degree of medical certainty as to whether his complaints of pain to his neck were consistent with what you saw on the MRI of the cervical spine?

A It could be.

Q Okay. With respect to the thoracic spine, assume again that Mr. Rosales will testify that at some point after the accident within approximately a year he received some injections to his lumbar spine from Dr. Matthew Grimm. It provided him some relief to his lower back and then he started feeling pain to his middle back. Do you have an opinion within a reasonable degree of medical certainty whether the complaints of pain to the middle of his back are consistent with the findings that you found on the MRI of the thoracic spine?

A Yes, it could be.

Q Okay. Now Doctor, I'd like you to assume again -- well, not again. I'd like you to assume that the Defense is going to call an expert radiologist to testify in this trial. And I would like you to assume that he will testify that he reviewed the June 20, 2017 MRI of the left knee. And he will testify that he saw no evidence of internal derangement of the knee. Do you have an opinion within a reasonable degree of medical certainty whether that is correct?

MR. BUCHMAN: Objection, Your Honor.

THE COURT: Approach.

(Off-the-record discussion.)

THE COURT OFFICER: Come to order.

THE COURT: The objection is sustained. Let's continue.

Q Doctor, I'm going to just concentrate on the lumbar spine, and the cervical spine, and the thoracic spine. I'm not going to ask you anymore questions about the other joints because there will be another expert that's going to testify about that. So I'd like you to assume the same assumption that I said before that Mr. Rosales is going to testify that he fell from a ladder from a height of approximately five to six feet. His left foot was on the fifth step and his right foot was on the sixth step. He will testify he landed forcefully on the ground. He will also testify that he has never had any prior accidents involving his lower back. And he's never had any complaints of pain or conditions to his lower back before the accident of May 15, 2017. Do you have an opinion within a reasonable degree of medical certainty as to whether that accident of 5/15/2017 caused the conditions you found on the MRI films of the lumbar spine?

A Yes.

Q What is that opinion?

A If he wasn't complaining of pain, he wasn't getting MRI's, he wasn't getting treated, wasn't seeing doctor's, fell offer a ladder complained of pain of the lower back found to have a herniation on the MRI. Then the herniation is causally related to

the trauma that this patient suffered.

Q Again, going back to the same assumption regarding the fall from the ladder, Mr. Rosales will also testify that he never felt any -- first of all, he never had any prior accidents to his neck, he never had any prior complaints of pain to his neck, he never had any prior medical conditions regarding his neck. Do you have an opinion within a reasonable degree of medical certainty as to whether that accident of 5/15/2017 caused the conditions you found on the MRI films of the cervical spine?

A So the same answer, this MRI was done a little later. It was done December of 2018. But if the patient never felt any pain, never had any problems, and didn't have a trauma after the trauma that you described and had a disc bulge, it's logically it's from the trauma even though the MRI was done at the same time after the lumbar spine was. Yeah, it was.

Q Now same exact assumption, except that assume also that Mr. Rosales will testify that he never had any pain to the middle of his back, never had a medical condition regarding the middle of his back, never had a prior accident where he injured the middle of his back. Do you have an opinion within a reasonable degree of medical certainty as to whether or not the accident of 5/15/2017 caused the conditions you saw on the MRI of the thoracic spine?

A So again, it's the same answer. This MRI was done even later, March 12, 2019 with two herniations. There are reasons

for there being herniations there on the MRI that are post-traumatic from a trauma. So logically, yes. But again, taking in to account this MRI was done later in time.

Q Okay. Do you have an opinion within a reasonable degree of medical certainty as to any other possible causes for the herniations of the thoracic spine besides the accident?

A Not if there wasn't any other trauma after the first trauma. I don't have a reason that he would have thoracic disc herniations other than from the trauma. I don't.

Q Just a couple of more questions. Doctor, how many times have you testified in court approximately?

A So I testified in court around four to five times a year for a number of years now.

Q Well, you obviously know my law firm Gorayeb & Associates represents Mr. Rosales now sitting here, when did you first learn that Mr. Rosales was being represented by the Office of Gorayeb & Associates?

A I learned about it in June of 2023 just like four months ago.

Q And when did you first learn that you had to testify in this case?

A Yesterday.

Q How do you market yourself?

A I don't to any marketing. I mean, my staff created websites, you know that exist on the internet. That's the extent

they're not actively. I don't actively market myself.

Q Are you being paid for your testimony today?

A I am.

Q How much are you being paid?

A $9,500.

Q And how do you come to that amount?

A I'm out of my office for half a day. I mean things come to a relative stop.

MR. VELARDI: Thank you Doctor, I have no further questions.

MR. BUCHMAN: We can jump right in.

THE COURT: Very well.

CROSS-EXAMINATION BY MR. BUCHMAN:

Q Doctor, let's start with that second to last answer. It's fresh in everybody's mind so let's jump to it. You don't market yourself at all?

A I said I know there are websites that my staff put up, but you know they set this .

Q So that means you don't do any soliciting of business to say you solicit to lawyer's or anything?

A I don't solicit to lawyer's.

Q You don't have any main referal sources as lawyer's?

A You mean for legal?

Q No, no I'm talking about lawyer's referring business to you directly like hey, can you review this patient's film?

A Absolutely I don't solicit.
Q Well, now Doctor you've been involved in litigation, haven't you?
A I've been involved in litigation?
Q Litigation, yes, with your old partner?
A My partner?
MR. VELARDI: Objection, relevance.
MR. BUCHMAN: Oh, I've got a contradicting statement.
THE COURT: Approach.
(Off-the-record discussion.)
THE COURT OFFICER: Come to order.
Q Back to my question. So Dr. Kolb, you were involved with litigation with your ex-partner Jacob Lichee, correct?
A That's correct.
Q And you did give an affidavit in a related case for the dissolution of the business between you and Dr. Lichee isn't that correct?
A I don't know, but I'm more than happy to have you read it.
Q You are Thomas M. Kolb M.D., correct?
A I am.
Q And you were the partner of Persistent Imaging with Dr. Lichee, correct?
A Yes, before Dr. Lichee died, yes.

Q And section 18 of your affidavit says here was regarding about Dr. Lichee's ability to perform duties. But it says in particular several of Persistent, that's your company, most valuable attorney referral sources expressed concerns. So now you just told us a few minutes ago you have no real lawyer referral or attorney referral sources, but it says right here you do?

A Correct. What's the date of that?

Q Notarized and sworn on December 11, 2015.

A Eight years ago that's when he died.

Q So now getting back to the question, you said a couple of minutes you have no lawyer attorney referral sources, but in this affidavit you swore to tell the truth and you said you did, correct?

A Obviously, I didn't write it. An attorney wrote it, but I signed it apparently.

Q Well, you want to take a look at your signature and see if it's yours?

A I'm telling you I didn't write it. An attorney wrote it. My partner was dying and there was an issue with his estate and this came to a resolution. I can't say anything more than that, but I don't solicit. If you want to say that I signed something I'm not going to disagree with something I signed.

Q Are you saying that this document that you signed that is notarized, is false?

A I don't know whether you can consider something false.

I don't solicit to any lawyer's. That's as much as I can tell you as I sit here today, I don't.

Q Now Doctor a couple of those articles or published articles that you wrote were with Dr. Lichee?

A Yes, I put his name on the paper.

Q But he's there, correct?

A His name is on the paper.

Q I understand your first and he's second and we know the significance to first. So the two of you had a business for how long?

A More than 20 years we were together.

Q And in part of that litigation didn't he allege that you violated HIPPA by changing his reports and giving more favorable languages to plaintiff's and you would be more egregiated to them?

A I'm totally unaware of that. Again, if you want to read it that's fine with me. But that's his contention.

Q And then the second one is that you took pictures of reports and films and then you e-nailed and faxed them to yourself in violation of HIPPA. Is that also another allegation noted?

A I don't know if it's an allegation. I'm not aware of that, but if somebody alleges you can read it. It's nothing that I did.

Q So you're denying it?

A Absolutely.

Q Okay. So even if you wrote it here and swore to its truth?

A One hundred percent.

Q So if it says her "Dr. Kolb modified MRI reports generate more than six months before to include non-subsequent modifications in order to enhance their value in personal injury litigation in order to egragiate himself with referring attorney's at the expense of my reputation." You say that's false?

MR. VELARDI: Objection. Can I find out what he's reading from please.

MR. BUCHMAN: This is actually Dr. Kolb's -- sorry this is Dr. Lichee's affidavit from the same case that I was just referring to before.

A Yes to answer your question it's completely false and I didn't write that.

Q And then in the Summer of 2015 "Dr. Kolb began on a daily basis to photograph radiological reports with his unincripted I-phone and send them by e-mail insecurely through the internet to his personal e-mail account. He also faxed reports to his residence through methods of transition used by Dr. Kolb violated the HIPPA rules." Did you do that?

A Absolutely not. And I assume I responded that way to that eight or nine years ago.

Q Yes, you denied it but your partner of 20 years alleged it, correct

A Well, we can talk about my partner if you want. But there's no question that it's not true and we denied it. You can read anything I want.

Q Now did you review the ER records or the EMS records in this case?

A No.

Q Did you have any discussions with Counsel about what the emergency room records and the EMS records say?

A No. The first time I spoke to Counsel was this morning driving here. No.

Q Has anybody told you about the emergency room records and the EMS records in evidence in this case?

A No.

Q Fractured calcaneus, it's a painful injury isn't it?

A Should be.

Q Yes. And traumatically induced or traumatic calcaneul fracture is very painful, right?

A It should be.

Q Yes. And if someone has a traumatically fractured calcaneus, are they generally just able to walk like it's nothing?

A Well I don't know what else is going on with this patient I can't really answer that. But in general, there could be a limb if he's having pain.

Q And if it's a significant fracture like the one in this case, would you say he'll probably be unable to walk?

A No I couldn't say that. I think most people could walk. There may be limbing, but I don't know.

Q And if he were asked about making complaints of pain, do you think he would include the foot in this one?

A I can't answer for the patient.

Q Well assume for the purposes of this question, because Counsel opened on this that the plaintiff is going to come in here and say that he explained of pain in his right foot with a fractured calcaneus. I want you to assume that. Now if he says he told them. I'm going to tell you what the records says, EMS says there's no mention of any complaints of pain of the foot.

MR. VELARDI: Objection he didn't review the EMS records.

THE COURT: Is the record in evidence?

MR. BUCHMAN: Can we move them in evidence right now. Your Honor at this time we have the subpoenaed records from the EMS, as well as the emergency room record and I'd like them to moved into evidence.

MR. VELARDI: No objection.

THE COURT: Then it's moved into evidence.

MR. VELARDI: So we need to identify them first. I guess Defendant's A and B.

MR. BUCHMAN: Well subject to redactions like we discussed, Your Honor.

THE COURT: Very well.

MR. BUCHMAN: Well take them all as Defendant's A, please. Thank you very much.

Q Doctor, if we look at the records from the FDNY/EMS there's a section about narratives, history, test. And it says here that, just cutting right to it, "plaintiff states he hit the right side of his head, right shoulder, and left knee, denies chest pain, denies LLC, denies any other symptoms and made complaints of pain of his shoulder. If you go to the first page injury head, shoulder, knee. There's no mention of the foot. Is that odd to you that if somebody traumatically fractured their calcaneus that they would not tell EMS that their foot hurts?

A Well I certainly can't tell you what the patient said or didn't say. And I can't tell you whether it's odd or not. All I can tell you is on the pictures there's an obvious fracture. That's all I could say.

Q And then as far as the hospital records go, Doctor are you aware that the plaintiff told the hospital that he remembered the whole accident, that he was ambulatory walking at the scene, and that the hospital states he was ambulatory in the hospital. And states that he was ambulatory at discharge and there was never a complaint of pain in the right foot. Is that something that is odd to you from a man that claims that he traumatically fractured his calcaneus?

A It's the same answer, I can't tell you what's odd or not. The MRI shows an obvious fracture.

Q Does it pass the Smith Test?

MR. VELARDI: Objection.

THE COURT: Sustained.

Q Doctor, when you look at MRI's do you take in to consideration a person's history?

A Most times I don't get history. Sometimes I do.

Q And other than your, what I would consider your practice your known for, your mammography, and your ultrasounds, and your publications; you don't examine -- you've never examined Mr. Rosales, correct?

A That's correct.

Q So although I note Counsel referred to you as the treating radiologist, I mean you could have been in Florida and they could have securely sent you the digital and you could have read it from there, correct?

A Correct. I don't think he meant that I laid hands on the patient.

Q All right. I just want to make sure. Now let's talk about, now isn't it true that 99 percent of the time that you testify in court, not just, but 99 percent you testify it's for the plaintiff's in personal injury cases?

A It is a large number, because if it's a good case it illustrates. I would send somebody in 2017 MRI findings. I was just sent the brain which I read was normal, but the patient had a fracture and the tears. So of course someone is going to call me.

It's going to the plaintiff's side and not the Defense side. I've done defense side and if you have a case you let me know.

Q Now you did the defense side, but isn't that mostly for doctor's that in their malpractice cases where whether they've deviate from the accepted standard of care in their reading of films, isn't that a good chunk of that defense work?

A Some of it. Exactly for what I told you. I didn't know it was a legal case until seven years later.

Q You never read a film from our firm Pillinger, Miller, Tarralo, correct?

A Not to my knowledge.

Q Now let's move on to, your practice when your on the stand, I was doing some of special mathematics. Now according to your website, tell me if it's wrong, that it says you evaluated over 150,000 women?

A Over 30 years.

Q Is that correct?

A Yeah.

Q Do you think it's higher, do you think it's like 160, 170, or is 150 about right?

A I don't know whatever if says it says. I didn't create the website. I see thousands of patients. I publish papers with exact numbers. There was one paper that says 27,800.

Q I saw that. It's impressive.

A I don't mean it that way.

Q So this is the web page. That's you correct?
A Yeah.
Q It looks like your website?
A It looks like one of my websites.
Q Yeah, one of your websites, okay. And do you know, so this is the website where it says over 150,000 women. Do you know when that went up, is that like a year old, five years old?
A I can't tell you when it was updated.
Q I'm just going to do the math a little bit. But if we do the math, if you have 150,000 patients over 30 years that's like 5,000 patients a year, that sound about right the math?
A That's exactly what I published in the literature, yes.
Q And you don't work 50 weeks a year. Let's just assume 45 weeks a year you work. You take off six, seven weeks?
A I don't. I don't have a vacation schedule here.
Q So now if it's 45 say, that would be 111 patients a day?
A Well, it's more than 45 first of all.
Q So then let's say it's 100 or let's say it's 48, it's 105?
A Yeah, I can do that many exams a day. I'm blessed for sure.
Q Now your exams, your mammography it's just mot two seconds in and out, I mean you're with them for a while, correct?

A Sometimes short, sometimes long. It depends on the patient and what she has.

Q And sometimes you have to do the mammography, and if there's some questions you'll do the ultrasound?

A Yes.

Q And even if there's a further question you'll do a biopsy right there, right?

A Sometimes. There's different types of biopsies. Some biopsies you can do at the time. The biopsies that are quick that take a minute or two those you can do right there.

Q And the great thing about the service you give is that somebody walks out of your office knowing that day what their results are, as opposed to going to someplace and finding out a week later?

A Yes.

Q So you give these people time. So what do you see, how many patients a day will you see?

A My numbers are published so instead of me telling you they're actually published out there a peer review in society telling you how many patients I've seen and human exams I've done over a course of a five year period in which I published. So I can't guesstimate.

Q And do you spend a full day in that office examining all those patients?

A Pre-COVID I did that.

Q And then Post-COVID, I mean now?
A Post-COVID it's less than that.
Q And when exactly do you review these tens of thousands of other films?
A I do them on weekends, I do them during the day.
Q Does Mr. Gorayeb's Office plaintiff's Counsel here, are they one of your preferred attorney referral sources that you were mentioning in that affidavit?
A So I told you and it's the same answer, I have no recollection of that being written or signed. That was under duress with my partner who had a severe illness and ended up dying soon after. I'm not sure why I'm mentioning that here but I'm sitting here and I'm telling you I don't solicit any lawyer's, never sent me cases. And in this case Mr. Gorayeb who I think I met once in 30 years by the way. He didn't send me this patient. Dr. Kaplan, Dr. Grimm sent me the patient. I have nothing to do with this law firm as I sit here today.
Q No, no I understand. But you've known the Gorayeb Law Firm for quite some time?
A For sure.
Q Like over 25 years or so you've been working for them?
A Whatever the number is, for sure.
Q Because I mean I have, now I wish I could whip them all out now, but 175 testimonies and things I found. I can go back to 1999 and you certainly met Mr. Gorayeb on that date because he

was the lawyer questioning you.

A Like I said to you and nothing is changing here, I don't solicit to anyone. If no one is callings me or sends me anything I don't ask them to. It doesn't make any difference at all to me. It's the same answer.

Q So now before you answered the question Counsel asked you about the left knee MRI, and he gave you a date and he asked you which facility, which one and you said one of them?

A Yeah.

Q Can you look at your reports and say which one?

A I can look at the films and tell you.

Q But not from the reports?

A On the reports it's not put on which facility. But it's specifically designated on the films.

Q Now would you agree with me that if somebody is a heavy smoker that's not good for the health of their spine or for healing?

A I'm not aware of whether somebody who is a heavy smoker and it impacts upon them or not.

Q Well it's funny I asked Dr. Grimm last time he was in on Monday. He had it up on his website, excessive smoking could lead to coughing, pressure on the cervical disc, decreases blood flow. Do you have any reason to disagree with him on that?

A I don't know the answer. I can't agree or disagree. If I knew more I would tell you.

Q Okay. Very good. We know that Mr. Rosales was only 31 years old at the time and I've read lots of your testimony and someone around that age really should have much degeneration in your testimony?

A My testimony is he didn't have any. I say someone his age shouldn't have. I didn't say he didn't have specifically.

Q Would you agree with me that if somebody were a painter and would mover their arm in the painting position overhead like on a ceiling for ten or twelve years that might cause some wear and tear on their shoulder?

A I can't give you an answer to that. A person can type away and have back pain and shoulder pain. I don't have an answer for that. Every patient is individual.

Q How about someone who is 13 and stopped going to school and started working as a bricklayer, as a painter, and in construction for 18 to 19 years. Do you think -- would you agree with me, that that could lead to wear and tear on their knees from bricklaying, and their shoulder for painting, and their neck for all that kind of heavy work?

A Well the answer to the question is pretty clear. We have a lot of pictures. We have X-rays, we have CAT scans that don't show any degeneration.

Q That's your testimony. What I'm asking you are those types of things that could lead to degeneration?

A Anything could lead to anything. It's the same answer

I'm looking at pictures I could tell you what I see.

Q Are you aware that -- well, you said he had a normal brain MRI, correct?

A Yes.

Q And what kind of MRI was that? Was that a straight MRI, a 3T, a DTI MRI, something like that?

A Sure I'll check it for you. The MRI that was normal was one submitted to me. So I can't tell you. I didn't do the MRI.

Q Was that the DTI MRI?

A I'm looking at 7/10/2019. That's the only one I have.

Q And where is the facility?

A It was a review that was submitted from somewhere else. So I don't know.

Q And that's normal, correct?

A My reeding of it was that it was totally normal.

Q Okay. You know what doctor I don't want to disappoint you, but I think I'm almost done here. You know you mentioned something maybe I missheard you. You took two MRI's of the lumbar spine and you gave us the two dates 6/21/17 and January of 2020. And you said one of them the herniation was enlarged at L5-S1 and that the L4-5 was not seen.

A Yes.

Q Did the film not pick it up, was there artifact, what happened?

A It wasn't an artifact. I can't tell you. I can't explain to you very well. It is very od. You would expect it to be there. I remember in my report saying that it wasn't there. I think I did that MRI myself back in 2020 and I'm just being honest about it I don't see it.

Q And with that I mean sometimes things just kind of go back in place?

A No, they don't. I report it as normal just to be very honest. But I can't explain to you why.

Q Okay. And I'll give you one more chance. Do you want to change your opinion about you seeking referrals from lawyer's?

A Correct.

Q You're sticking with your answer?

A You asked me.

MR. BUCHMAN: I have nothing further.

MR. VELARDI: One or two on the redirect. Is it Dr. Lichee or Dr. Licky?

THE WITNESS: Lichee.

Q Doctor, we heard from a reading of an affidavit by Dr. Lichee who made some allegations against you. Were those allegations ever proven in court?

A No.

Q And you deny those allegations?

A Dr. Lichee passed away. This is a very sad situation where we had to break up, because of the health issues. It's

unfortunate that we're here. I disagree with those allegations I probably said so at the time. It never went to court. We came up with a resolution and unfortunately soon after he passed away. I think this is really beyond everything here.

Q And was that action, that case discontinued?

A I don't know the legal language, but we came to an agreement. We all agreed at the end of lawyer's arguing with each other. We all agreed it's a sad situation.

MR. VELARDI: No further questions.

MR. BUCHMAN: Is there a confidentiality or non-disclosure in that lawsuit now that you bring it up?

THE WITNESS: I have no idea.

MR. VELARDI: Nothing further.

THE COURT: Thank you Doctor, you may step down.

THE WITNESS: Thank you.

THE COURT: Approach.

(Off-the-record discussion.)

(Case continued on the next page.)

THE COURT: Members of the Jury, we're going to break for lunch. We'd like you to return this afternoon at 2:30. I'm sorry, make that 2:15 this afternoon. You know the rules by now, right. We'll see you at 2:15.

THE COURT OFFICER: Jury exiting.

THE COURT: All right. Approach.

(Off-the-record discussion.)

(Cassandra Johnson is relieved by Gabrielle Carletti as the official court reporter.)

(Continued on the next page.)

(Cassandra Johnson is relieved by Gabrielle Carletti as the official court reporter.)

THE COURT: Okay, are you ready for the jury?

MR. VELARDI: We are. We're ready.

MR. BUCHMAN: We're ready. I need time, your Honor, for our conversation we had in the back. I need time tomorrow if we will be able.

THE COURT: In the meantime.

MR. BUCHMAN: In the meantime we should continue, yes.

THE COURT OFFICER: Jury entering.

(The jury enters the courtroom.)

THE COURT: You can be seated.

Does the plaintiff have a witness to call?

MR. VELARDI: I do, your Honor. Plaintiff calls Saul Rosales, plaintiff.

E D N A M. P I Z A R R, a Spanish interpreter, after having been first duly sworn by the Clerk of the Court, translated as follows:

THE CLERK: Can you give your information to the court reporter?

THE INTERPRETER: My name is Edna M. Pizarr, Spanish court interpreter.

S A U L R O S A L E S, a witness, called on behalf of the Plaintiff, after having been first duly sworn

by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: Give your full name for the Court, please.

THE WITNESS: Saul Andres Cardona Rosales.

DIRECT EXAMINATION

BY MR. VELARDI:

Q Good afternoon, Mr. Rosales.

A Good afternoon.

Q Please speak up. Make sure that the interpreter can hear you, okay?

A Very well.

Q Mr. Rosales, why are you here today?

A Well, the reason why I'm here finally the -- finally the trial that is going to take place is in regards to the accident that I suffered.

Q Okay, and what was the date of that accident?

A May 15, 2017.

Q Now before we get into details of the accident I'm going to ask you some questions about your background. Where were you born and raised?

A I was born in Honduras in the Olancho Department in a town called de la Paz, very humble place.

Q What is your highest level of education?

A Unfortunately I was able to attend school up to the 6th

grade.

Q How old were you when you stopped going to school?

A I was about to turn 13.

Q What, if anything, did you do after you stopped going to school?

A Well, at that time I was barely 13-years old, very young. My family was very humble, barely have any kinds of means. Being that they would not -- they don't have the means to help me continue on with my education, I decided to work and help the family out.

Q What type of work did you do when you first started at the age of 13 or almost 13?

A Well, I work doing construction work and the also worked with my family with my father.

Q What type of work did you do with your father?

A My father used to work in agriculture out in the fields and during my free time I worked with him.

Q So starting with the work that you did in construction at that age, can you be a little bit more specific about the type of construction work you performed?

A Yes. I worked as a helper to a --

MS. RENELLA: Cohort.

MS. PIZARR: I cannot hear you from here.

MR. VELARDI: We have one interpreter only.

MS. PIZARR: No, we have two.

MR. BUCHMAN: I'm confused.

MS. PIZARR: We have two interpreters.

MR. BUCHMAN: I understand, but Your Honor, we usually have one at a time.

THE COURT: Approach.

(A sidebar was held in the Court's chambers.)

R I N A R E N E L L A, a Spanish interpreter, after having been first duly sworn by the Clerk of the Court, translated as follows:

THE CLERK: Please give your information to the court reporter.

THE INTERPRETER: Rina Renella, court interpreter, Spanish.

MR. VELARDI: Ms. Carletti, if I can have the last two questions and answers so I can get back on track.

(The requested portion of the record was read back by the Reporter.)

Q Mr. Rosales, when you worked in construction with your father what did you work as a helper? What type of work did you do as a helper?

MR. BUCHMAN: Objection only because he said the agriculture work was with his father. The construction work was --

MR. VELARDI: That's fine.

THE COURT: Rephrase.

MR. VELARDI: I'm withdrawing. I just a little confused. I just have to get back on track.

Q Mr. Rosales, when you worked as a helper in construction can you be a little more specific as to the type of work you did as a helper?

A Yes. I was a simple helper. All I had to do was to mix and make bricks.

Q And when you testified that you would help your father in agriculture, can you be a little bit more specific for the jury about the type of work you did in agriculture?

A Yes. My father would work planting corn, beans, rice, and that's what I would help him with.

Q While in Honduras how long did you work as a helper in construction?

A Until I came over here.

Q When you say over here, do you mean the United States of America or something else?

A The United States.

Q What year did you come to the United States?

A The end of 2016.

Q Do you remember what month?

A The month of December.

Q How old were you at the time you came to the United States?

A I think it was 30, 31.

Q Before coming to the United States had you ever suffered an injury to any part of your body?
A No.
Q In Honduras before coming to the United States did you ever seek medical treatment at any hospital or by any doctor?
A No.
Q While in Honduras did you ever suffer from any pain in your lower back?
A No.
Q What about your neck?
A No.
Q What about your right shoulder?
A No.
Q What about your left knee?
A No.
Q What about your right foot?
A No.
Q What about any other part of your back?
A Headaches, something normal.
Q In Honduras did you ever have any problems with your memory?
A No.
Q When you came to the United States did you come directly to the State of New York or somewhere else?
A Yes, New York state.

Q Where did you first live at that time?
A In Brooklyn, 3802 12th Avenue.
Q At the time who did you live with?
A With my cousin.
Q Where do you live now?
A 8431 B16, Brooklyn.
Q Do you have any children?
A Yes.
Q How many?
A 3.
Q What are their ages?
A 21, 18, and one is about to be 9.
Q Mr. Rosales, can you speak any English?
A No.
Q Do you understand any English at all?
A Certain words.
Q Are you a U.S. citizen?
A No. I'm in the legal process.
Q What are you working on in the legal process with respect to your immigration?
A I'm waiting for my residency.
Q When you came to the United States, what, if anything, did you do for work?
A I started looking for a job.
Q Did you eventually find a job?

A Yes.
Q What type of job?
A Construction.
Q Who did you work for?
A For a guy whose name is Noel Medina.
Q Did he have a company or did you work for a company?
A All I know is I used to work for Noel.
Q Was Noel Medina your boss?
A Yes.
Q Do you recall approximately when you first started working for Noel Medina?
A Yes.
Q When?
A January 4th.
Q Of what year?
A 2017.
Q What type of work? I know you said construction work but to be more specific what type of work did you perform when you were working for Noel Medina?
A Remodeling apartments.
Q Just if you can be more specific even than that. What type of remodeling work did you do in the apartments?
A Painting, Sheetrock put up, floors we lay down, and the ceiling.
Q So let's go back to your accident. Where did your

accident occur?

THE INTERPRETER: Excuse me, where?

MR. VELARDI: Where.

A In a building.

Q Do you know where that building was located?

A I don't remember.

Q Not the address but do you recall what part of New York City the building was in?

A Yes, Brooklyn.

Q How long had you been working at that building where your accident occurred before your accident happened?

A If I remember correctly, days or a week I think.

Q During the days to a week you were working at the building, can you tell the jury what type of work you remember performing in that particular job?

A Painting.

Q What time of day did your accident occur?

A Between 3 and 4:00 in the afternoon.

Q Now, on that May 15, 2017, what time did you arrive at the building for work that day?

A At 8 in the morning.

Q Can you tell the jury generally what kind of work you were performing between 8:00 a.m. and let's say 2:30 shortly before the accident occurred?

A Yes, I was painting.

Q Where were you painting in the building?
A I was doing the ending of the corners.
Q Sorry, I didn't hear.
A I was doing the ending of the corners.
Q The corners of what?
A The ceiling.
Q What was the height of the ceiling?
A I don't remember how high it was.
Q What, if any, equipment did you need to perform the work you were conducting on the date of your accident?
A A ladder, a brush, and a bucket for the paint.
Q Do you recall the height of the ladder?
A About -- it had about eight steps.
Q What type of ladder was that?
A It was the type A.
Q In the moments just prior to your accident were you standing on the ladder?
A Yes.
Q On what part of the ladder were you standing the moments before the accident occurred?
A I was between the fifth and sixth step.
(Cellphone interruption in the proceedings.)
MR. VELARDI: Was that Siri?
THE INTERPRETER: I thought it was on mute. I'm so sorry.

MR. VELARDI: Just let me know when you're ready.

THE INTERPRETER: Go ahead.

Q Mr. Rosales, tell me how your accident happened?

A Okay, I was painting when all of a sudden the ladder moved. That was when I couldn't maintain an equilibrium and that's when I fell down.

Q And when you fell, in what direction did you fall?

A On the right side.

Q Did the ladder also fall?

A Yes.

Q In what direction did the ladder fall?

A The right.

Q Did your body hit the floor?

A Yes.

Q What was the floor made out of?

A Of wood, very hard, very, very hard.

Q Were you wearing a hard hat?

A No.

Q Why not?

A Because my boss did not tell us to use one.

Q What parts of your body struck the hardwood floor?

A My head, my shoulder on the right side, my ankle, my right leg, and my left knee was bent over on the ladder.

Q Did you lose consciousness when you fell?

A For a couple of seconds.

MR. BUCHMAN: Could we just read back the question and the answer?

(The requested portion of the record was read back by the Reporter.)

MR. BUCHMAN: Thank you.

Q Did you feel pain in your body?

A Yes.

Q In what parts of your body?

A My right shoulder, my hip, my left knee, and my right foot.

Q Can you describe the pain?

A Well, I'm sorry, I forgot. My back it was hurting a lot because I hit it.

Q Can you describe -- and with respect to each of those body parts can you describe the pain?

A It was a really, really hard pain, irresistible pain.

Q Were you able to get up?

A No.

Q As you were laying there after falling, what happened next?

A They called the ambulance.

Q Do you know who called the ambulance?

A Well, I remember hearing some voices saying call the ambulance. I think it was Noel's son who called the ambulance.

Q When you heard voices saying call the ambulance, in

what language were those voices speaking?

A When they said call the ambulance, it was in Spanish.

Q Did there come a time the paramedics actually arrived at the building?

A Yes. The ambulance people and the firefighters too.

Q Did they take you out of the building?

A Yes.

Q How did they take you out of the building?

A They carried me on a chair.

Q Was there an elevator in the building?

A Yes.

Q Did the paramedics take you down the elevator?

A Yes.

Q How did the paramedics -- well, let me ask you, did the paramedics put you in an ambulance?

A Yes.

Q How did they get you into the ambulance?

A In a stretcher.

Q Where did the ambulance take you?

A To the hospital. I don't know how is the pronunciation, Kings County from Brooklyn.

Q Did you speak to any of the paramedics?

A Yes.

Q Did any of paramedics speak Spanish?

A Yes.

Q Did anyone ride with you in the ambulance?
A Yes.
Q Who?
A Noel Medina.
Q Did you hear whether Noel Medina spoke to either of the paramedics?
A Yes.
Q Do you know what he said?
MR. BUCHMAN: Objection. Hearsay.
THE COURT: Sustained.
MR. VELARDI: Withdrawn.
Q Did Noel Medina witness your accident?
A No.
Q How do you know that?
A Because at that moment he was outside the apartments.
Q Did there come a time he entered the apartment after your accident occurred?
A Yes.
Q Now, at Kings County Hospital were you able to communicate with hospital staff, nurses or doctors?
A Yes but I had a translator.
Q Where was the translator at the time you were speaking in the hospital?
A It was over the phone.
Q Did you have a translator available to you over the

phone during the entire course of your stay at the hospital?

A No.

Q By the way, how long were you at the hospital?

A Between eight to nine hours.

Q In the hospital were you laying in a hospital bed?

A Yes.

Q Did you ever get out of that bed before leaving the hospital?

A Just when they told me I could leave.

Q In the eight to nine hours you were there did you ever have to go to the bathroom?

A Well, I did feel like going to the bathroom but I couldn't move from the bed.

Q Did you go to the bathroom at some point?

A A paramedic helped me to pee.

Q Did you have to get out of the bed when the paramedics helped you to do that?

A No. He gave me the bottle.

Q What, if any, complaints did you make to doctors at the hospital?

A I told them that my head was hurting. My right shoulder and also my knee, my left knee and my back.

Q What did they do for you at the hospital?

A They gave me medication.

Q Did they do anything else besides give you medication?

A They did some x-rays. I don't know what the name of it.

Q Do you know what they x-rayed?

A Yes, the parts where I had injured.

Q Did they tell you the results of the x-rays?

A No.

Q Did they give you any instructions before you left?

A Yes.

Q What did they say? What did they instruct?

A See if I was still in pain to come back to the hospital.

Q How did you get from your hospital bed -- withdrawn.

How did you get home?

A In a taxi.

Q How did you get from your hospital bed to the taxi?

A Well, limping and holding onto the walls.

Q Why were you limping?

A Because at that moment when I got out of bed my right foot was hurting a lot and also my left knee.

Q Did you tell anyone at that moment at the hospital about the pain you were feeling in your right foot?

A No.

Q Why not?

A Because I didn't think it was a big deal. I thought it was just the pain and all I wanted was to go and rest. It's

been eight to nine hours that I was at the hospital.

Q Where did you go or where did the cab take you?

A My cousin's house.

Q What did you do when you got to your cousin's house?

A Well, laid down.

Q I'm sorry, when you say your cousin's house, do you mean your home where you were living at the time or separate from your home?

A No, that's the house where I was living.

Q Do you recall approximately what time it was when you got home?

A I don't remember.

Q Did you return to work?

A No.

Q Did there come a time you contacted a lawyer?

A Yes.

Q Who did you contact?

A The attorneys at Gorayeb.

Q That's my firm?

A Yes.

Q Why did you contact my law firm?

A Because a person came to the house and told me that if -- why I don't look for an attorney so they can help me with the medical.

Q Did there come a time that you sought medical attention

again after you were discharged from the hospital?

A Only after I went to Gorayeb.

Q And did you see a doctor?

A Yes.

Q What was the name of that doctor?

A Dr. Kaplan.

Q How were you referred to Dr. Kaplan?

A The Gorayeb people sent me to see Dr. Kaplan.

Q Do you recall the approximate date or how long after the accident you first saw Dr. Kaplan?

A I think it was a month after the accident.

Q When you first saw Dr. Kaplan, did you make any complaints about your body?

A Yes.

Q What complaints?

A When I went to see Dr. Kaplan I told him about the pain in my head, the pain in my back and my knee and my right foot.

Q Now, you said before that you complained about pain to your right shoulder when you were in the hospital. Why didn't you complain about right pain to your right shoulder to Dr. Kaplan when you first saw him?

A Well, at that moment the pain on my right shoulder went down. I focus on the other pains because I couldn't walk. I couldn't walk. I was limping.

Q When was the last time that you saw Dr. Kaplan from

today?

A I don't remember.

Q Was it this year?

A Yes.

Q Over the years when you first saw Dr. Kaplan up to the last time you saw him, what did Dr. Kaplan do for you?

A Well, Dr. Kaplan he did the surgery on my knee, my right foot, and on my right shoulder.

Q Just so we're clear, are you saying Dr. Kaplan did a surgery on your right foot?

A On my right foot, on my left knee, and on my right shoulder.

Q During those years that you saw Dr. Kaplan besides the surgeries he performed, did he make any recommendations to you?

A Yes.

Q What types of recommendations did he make to you?

A He recommended for me to go with Dr. Grimm. I don't know how is the pronunciation.

Q Do you mean Dr. Grimm?

A Yes.

Q We'll get to Dr. Grimm in a moment. Did he make any other recommendations such as physical therapy or anything else like that?

A Yes, he recommended some therapy.

Q Did you do therapy?

A Yes.
Q Approximately how long did you do therapy?
A I don't remember correctly if it was two or three years. I don't remember well.
Q I know this it going back some time. Do you remember the dates of any of your surgeries?
A No.
Q Do you know approximately when you first saw Dr. Grimm?
A No, I don't remember.
Q Let me ask you this: When was the last time you saw Dr. Grimm?
A I believe it was two to three months.
Q Two to three months?
A Ago.
Q Ago?
A Yeah, two or three months ago this year.
Q Did you first see Dr. Grimm in the same year of your accident which would be 2017?
A I think so.
Q Over the years that you saw Dr. Grimm what did he do for you?
A He would give me injections.
Q Where would he give you injections?
A My back.
Q Anywhere else?

A Yes. There was once where he put one on my knee.
Q Did Dr. Grimm refer you to any doctors?
A Yes.
Q The name or names of the doctors?
A I don't remember where. I think the first one was Dr. Bhatia. I don't know the pronunciation. And then the next one was Dr. Merola.
Q What did Dr. Bhatia do for you?
A Well, he gave me medications.
Q What type of medications?
A Ibuprofen.
Q Anything else?
A Yes, just the ibuprofen.
Q Before we get to Dr. Merola, did Dr. Bhatia refer you to any doctors?
A He referred me to another doctor.
Q Do you remember that doctor's name?
A I don't remember because the name is kind of difficult.
Q Okay. What did that doctor, whose name you don't remember, do for you?
A He gave me therapy.
Q What type of therapy?
A Well, therapy for the head.
Q Okay. What did Dr. Merola do for you?
A Well, Dr. Merola said my back was bad and that he

needed to perform surgery and he also said my neck was bad.

Q Did you ever have that back surgery that Dr. Merola recommended?

A No.

Q Why not?

A Because I did not have money for the surgery.

Q If you are able to have the means to have that surgery, do you intend to have it?

A Of course I would that way I wouldn't be wearing this thing.

Q What you say wearing this thing, what are you talking about?

A So this belt.

Q Who provided that to you?

A Dr. Merola.

Q How often do you wear that?

A Always when I'm going to be sitting down for too long or standing up for too long.

Q By the way, I forgot to ask you, did you ever smoke cigarettes?

A Yes.

Q When?

A A long time ago.

Q When you used to smoke, how much would you smoke per day?

A Just occasionally.

MR. BUCHMAN: Sorry, I missed that.

A Occasionally.

MR. VELARDI: Occasionally, just occasionally, that's what you said?

THE INTERPRETER: Yes.

Q How do you feel now?

A With pain.

Q What hurts you?

THE INTERPRETER: Excuse me?

Q What hurts you?

A My back. Being here my knee too because it's cold. When I walk, my ankle. And if you can notice my right shoulder, I can't move it too much because it hurts.

Q Anything else?

A Yes, the head is hurting me. It's been hurting me for a while.

Q What, if anything, do you do when you feel pain in parts of your body now?

A Well, when my head hurts I take a pill.

Q What about the other parts of your body?

A For the knee I put on some ice. For my ankle I also use -- put on ice. For my knee I have a bracelet [sic] and that helps me a lot with the pain?

Q Going to each of the body parts that you injured in

this case. Now on a scale of 1 to 10 with 10 being the worst pain and one being --

THE INTERPRETER: Just go slow so I can --

MR. VELARDI: Go ahead.

Q One being the least amount of pain, where would you rate your pain on average to your -- I guess we will start with your right shoulder.

A Well, for the shoulder I would say 6.

Q Same scale 1 to 10, what about your left knee?

A About 5.

Q Scale of 1 to 10 what do you feel on average to your right foot, ankle?

A That one I give a 7 because when I walk it bothers me.

Q What about your lower back?

A That one I gave an 8.

Q What about your neck?

A I would say a 5 when I make any certain movement.

Q When you're not making certain movements, do you feel pain in your neck?

A 2 to 3.

Q What about scale of 1 to 10 for the middle of your back?

A 8.

Q Could you tell the jury a little bit about how, if at all, your life has changed since your accident occurred?

A My life has changed drastically. I can't work in construction anymore. I can't play soccer, football.

MR. BUCHMAN: Objection, your Honor. Moving back two questions. They are talking about work. There is no claim for wages in this case.

MR. VELARDI: That's true. There is no claim for lost wages but this is something that he can't do anymore. It doesn't go to lost wages.

MR. BUCHMAN: Okay. Then I withdraw my objection.

Q You can continue.

A I can't ride a bike. I can't run. I can't play with my kids in certain ways. For example, in the summertime I was with my kids. He took my phone and a person came and took it away from him. I couldn't go after him, after the person because I couldn't run.

Sleeping I have difficulties. Sometimes I'm really sleepy but the pain attacks me, even more so when it's cold. Sometimes during the day when I make certain movements that's when the pains at night do not let me sleep. In other words, sometimes it comes to mind that I'm good for nothing for a lot of things. My life has changed a lot.

MR. VELARDI: I have no further questions.

MR. BUCHMAN: I have a few. Your Honor, you have one of the deposition transcripts I will be using. I forgot to bring a copy of the second one. There are only a couple

of questions that I have.

MR. VELARDI: The second one?

MR. BUCHMAN: Yeah, the second one.

Can you pass this up to the, Judge? I may refer to it.

(The Court Officer complies.)

CROSS EXAMINATION

BY MR. BUCHMAN:

Q Good afternoon, Mr. Rosales.

A Good afternoon.

Q We're going to jump around a little bit. Let's start though with an answer you just gave to your counsel about this surgery you would have liked to have had with Dr. Merola. You just told us all that you would have that surgery if you had the money, correct?

A Yes.

Q And if you did have the money, you would have gotten the surgery, correct?

A Yes.

Q Isn't it true, Mr. Rosales, that in the last couple of years you received cash advances against this case in excess of $350 to $370,000? Isn't that true?

MR. VELARDI: Objection. What is the relevancy?

THE COURT: Approach.

In fact, members of the jury, we're going to take a

brief recess. And once again, please do not discuss anything concerning the case during the break.

THE COURT OFFICER: Jury exiting.

(The jury exits the courtroom.)

THE COURT: You can step down.

Approach.

(A sidebar was held in the Court's chambers.)

(The matter was adjourned until 11/09/2023, in Part 41.)

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CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL MINUTES TAKEN OF THIS PROCEEDING.

CASSANDRA JOHNSON
Senior Court Reporter

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GABRIELLE CARLETTI
Senior Court Reporter

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