In The Matter Of:

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

Dr. Kolb
January 16, 2025

Siobhan Lyons
851 Grand Concourse - Room 807
Bronx Civil Supreme
Bronx, New York 10451

Min-U-Script® with Word Index

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

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INOCENCIO MARTINEZ,

Plaintiff,

-against- Index No: 21590/2018E

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

Defendants.

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

B E F O R E:

HONORABLE ALISON Y. TUITT,
Justice of the Supreme Court

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SIOBHAN LYONS
Senior Court Reporter

THE COURT: Morning, Counsel.

MR. VARGAS: Good morning.

MR. ZIZZAMIA: Good morning.

THE COURT: Morning. Everyone be seated, please. Okay, Counsel, I believe we have something to put on the record before we start?

MR. VARGAS: Yes

THE COURT: Yes? Is the witness here?

MR. VARGAS: Dr. Kolb, yes. Do you want him to step out?

THE COURT: Please.

MR. VARGAS: Okay.

COURT OFFICER: Step out, please.

THE COURT: Okay, Counsel, you had an application?

MR. VARGAS: Yes, Your Honor. My motion was to prevent defense counsel from, on cross-examination, bringing up the RICO lawsuit as I laid out in my papers, according to Exhibit One, and do you want me to go through all the cases or --

THE COURT: No, I don't want you to go through all the case law, I want you to make whatever argument for the record that you need to make.

MR. VARGAS: Okay. So, Your Honor, one second, let me just find my paperwork here.

THE COURT: Go ahead.

MR. VARGAS: So, to start out, the reason the RICO lawsuit shouldn't be brought up during cross-examination, to start with, the treatment and the surgeries in this action involving Mr. Martinez were all proved by Worker's Compensation. There's been no disciplinary proceedings or medical board actions, there's only been allegations. This lawsuit is collateral and prejudicial. It's only bearing is on reputation and character and I cited to a case, which I provided to the court, Badr -- one second.

THE COURT: What was the name of the case, Counsel?

MR. VARGAS: B-A-D-R, and --

THE COURT: Here it is.

MR. VARGAS: Badr V Hogan, 75 N.Y.2d 629 1990, and in that case Plaintiff sued over Defendant failing to repair windows. Defendant, during cross-examination, brought up whether she had received money from social services and she denied ever receiving it and, even though -- and then the next day, on further cross-examination, they brought up that she had a judgment against her for receiving social services and the Court found that was a collateral matter that shouldn't have been allowed to be brought up during cross-examination.

The other case was Mazella V Beals, and I'm just looking for the cite for the record, 27 N.Y.3d 694, and in this case the Plaintiff alleged medical malpractice. The

Plaintiff committed suicide. The Court allowed a consent decree of the doctor, who had admitted negligent treatment to other patients, but not the patient involved in that action, and the Court allowed that in and that was considered reversible error.

Now, in those two cases, those were proven acts, unlike what we have here where there's been absolutely nothing proven. There's only an allegation. There's absolutely no facts, even in the complaint, that proves there was any kind of collusion between the doctors and the law firms or between the doctors for providing unnecessary surgical procedures.

Further, going on, there's been several cases, as I cited to, where the same issue in the motion in limine before the Court, before Courts, has been precluded from being brought up and we started with Jersey, which was Exhibit Two, which was a Lenny Rodriguez versus Cano, which was a case that involved a Dr. Merola, who's named in the lawsuit, and it was considered reversible error that it was allowed to be brought up or even questioned about.

There was a case in Westchester, Exhibit Three, which was Roberto Mercedes. Again, bringing up this particular lawsuit of only allegations regarding the RICO, and it was considered -- the Court precluded it from being offered.

We have a case, Exhibit Four, from Olvera in Brooklyn, Judge Francois Rivera, who precluded it from being brought up at trial and we have a Salome Vega, and that was in Kings as well, where it was precluded from being brought up, and, finally, at the end of this motion, we talk about how only allegations, unproven, being brought up, and I cited to the Sandoval case, which was 34 N.Y.2d 376, 1974, and, mere accusations of guilt being used for impeachment of witnesses has been found to be improper.

And that pretty much covers the cases and the argument.

THE COURT: Thank you so much, Counsel.

Defendants?

MR. DANIELSEN: Good morning, Your Honor.

THE COURT: Can you state your appearance for the record? I don't know if it's on.

MR. DANIELSEN: Of course, Your Honor. Kenneth B. Danielsen of Cipriani & Werner, here on behalf of the Defendants.

Your Honor, very briefly, with respect to Plaintiff's application, in the first instance there was a motion made in this court that was heard by Justice Capella, which was decided on November 25, 2024, wherein the Defendants had moved to amend to add a counter claim for fraud to the answer. That motion was denied.

However, Justice Capella did indicate that in his decision that the underlying facts, giving rise to the Plaintiff's or to the Defendant's application seeking the amendment were, quote, rise for cross-examination.

That being said, I think that this is a slightly different issue. What we're talking about here is Dr. Kolb and the Defendant's ability to question Dr. Kolb with respect to, not the existence of the RICO suit, which we readily concede would be improper, there's no basis for me or for any attorney to question Dr. Kolb about the existence of a pending litigation, which, counsel points out correctly, at this point are allegations. I would characterize it as allegations supported by facts and annexed to that complaint, ex cetera, but, at this stage, they are allegations.

Nevertheless, a good faith basis exists, visa vi the existence of the lawsuit and the underlying documentation provided therein to inquire as to the underlying facts of the case without reference to the existence of the RICO action, and that is the fine distinction that I believe exists here and that distinction was articulated quite clearly in the Suffolk County Supreme Court in a case, Ildo Lopes against County of Suffolk and Gibson and Cushman Contracting, a decision authored by Justice Franetti very recently and the order is executed on,

I apologize, June 10, 2024.

In that case, unlike the cases cited by Plaintiff's Counsel, the precise issues that we are discussing here, the precise issues that are raised on Plaintiff's motion and in opposition by the Defendants, was clearly addressed in what is a six page, single spaced job, very well reasoned decision and the line in the sand that Justice Franetti drew in that case was precisely the line in the sand that the Defendants have proposed here, which is, ask about some allegations, no reference to the RICO suit and, should Dr. Kolb respond on the stand no to one of those question, well, then I'm stuck with his answer. I can't collaterally attack him, I'm not looking to make this a trial within a trial.

However, the ability to simply ask the questions with the good faith basis that arises out of the filing of the RICO case, I believe, is very clear. Thank you, Your Honor.

THE COURT: Counsel, what question would you ask him?

MR. DANIELSEN: So, with respect to -- with respect to Dr. Kolb, Your Honor, questions would be along the lines of, Dr. Kolb, in your career, have you, on any occasion, engaged in the practice of over-reading x-ray films or MRI films in furtherance of a position taken on behalf of Plaintiffs?

THE COURT: Over-reading, is that what you said?

MR. DANIELSEN: Over-reading, meaning reading more into the films than what is actually shown on the study.

THE COURT: And if he says yes, what will you -- what does that mean?

MR. DANIELSEN: Well, if he says yes, I think I can inquire about it. Well, when did that happen, Doctor? What were the circumstances of this?

THE COURT: Well, then it goes into --

MR. DANIELSEN: It goes to weight and credibility and it goes to bias. Weight, credibility and bias are always issues that are ripe for cross-examination, outside of the context of a RICO case or not, and, to be very clear, I'm not drawing any connection. You know, the Gorayeb firm was suited in this RICO, they're defending themselves, I heard from Counsel that they're moving to dismiss.

The papers that we filed, by the way, on the motion that Judge Capella decided, very specifically indicated, I believe right out of the gate, that the Defendants were taking no position that the Gorayeb firm had anything to do with the allegations of fraud perpetrated by the Plaintiff. We were very, very careful in our papers to make that distinction very clear.

We made no allegations against the Gorayeb firm of any kind. The allegations that we made were limited and

restricted specifically to the conduct of Mr. Martinez and in no way, shape or form even articulated criticism of the Gorayeb firm here and that's not what I'm seeking to do. I'm not seeking to put the Gorayeb firm on trial here. I'm seeking to ask questions of a witness who is coming here as an expert being paid regarding his credibility and regarding bias, the most quintessential function of a cross-examination.

THE COURT: Well, Mr. Vargas, let me ask, the question posed by Counsel doesn't seem like it even goes specifically to a lawsuit, a particular lawsuit, it just seems like a question, a general question.

MR. VARGAS: Your Honor, he can ask all the general questions he wants about the treatment, his interpretation of the films, just don't bring up anything about the RICO lawsuit. It's very simply. There's plenty of questions to ask on cross-examination.

THE COURT: Well, that's the question I'm asking about.

MR. VARGAS: As long as it has absolutely nothing to do with RICO, I have no problem with that.

THE COURT: You have --

MR. VARGAS: And, if I may --

THE COURT: Wait one second, please. We both can't speak at the same time. Specifically with the question

posed by Counsel, does the doctor have an instance in his career that he over-read an x-ray or a radiological study?

MR. VARGAS: If anything is alluding to the RICO, then no. It must be precluded. He can ask all the questions he wants about this case, about Mr. Martinez and --

THE COURT: Well, let me say, that question, that doesn't necessarily have to pertain to the RICO case, that could be in general.

MR. VARGAS: Okay. So, if you grant my motion, preclude him from mentioning RICO --

THE COURT: Yes.

MR. VARGAS: -- and if he asks questions about the reading of the film, that's fine.

THE COURT: The reading of the film in general in his career, that's what I'm saying.

MR. VARGAS: And I'm saying, Your Honor, if you grant the motion and you say --

THE COURT: Yes.

MR. VARGAS: -- you're precluded from mentioning RICO, those are questions on a basis of you deciding whether it's allowable on cross-examination. As long as it's not bringing up RICO, I don't have a problem with that.

THE COURT: Okay. So, the Court is going to rule accordingly that the motion to preclude the introduction or

the questioning by Defense Counsel of Dr. Kolb, or any other physician in this case, because there are two other physicians that this goes to, is granted to the extent that no mention will be alluded to in the questioning by Defense Counsel as to the RICO federal lawsuit against the doctors.

The Defendant, however, will be able to ask whether or not, in the doctor's career, whether or not he has asked or over-read or explicitly had any bias towards a Plaintiff in a particular matter.

The ruling is based upon, not that the doctor is involved in any lawsuit, but that it goes to the credibility of the doctor's testimony and whether he has any bias in the case and --

MR. VARGAS: And, Your Honor, if I may ask one question?

THE COURT: Yes.

MR. VARGAS: I'll be allowed to ask their doctors the exact same question, right?

THE COURT: Their doctors?

MR. VARGAS: Yeah.

THE COURT: Yes.

MR. VARGAS: Okay. Just wanted to make sure.

THE COURT: Yes. Okay. Thank you for interrupting during my ruling.

MR. VARGAS: I'm sorry.

THE COURT: But I think that it's clear what the permitters are for cross-examination of both the Plaintiff's and the Defendant's doctors.

So, Counsel, you can step up and that's gonna be the ruling of the Court.

MR. DANIELSEN: Thank you, Your Honor.

MR. VARGAS: Thank you.

THE COURT: And both sides have exceptions?

(Whereupon, a discussion was held at the bench)

MR. VARGAS: Your Honor?

THE COURT: Yes, Counsel?

MR. VARGAS: There's one more issue that I want to bring up that I forgot to mention.

THE COURT: Okay.

MR. VARGAS: It's a different matter, but it involves Dr. Kolb. He had a lawsuit where him and his partner had broken up their practice in 2015 and it's also a collateral matter and I would ask the Court also to prevent Defendant from cross-examining on that.

THE COURT: Counsel?

MR. DANIELSEN: Your Honor, this is well-known. Counsel and -- actually, the last cross-examination of Dr. Kolb on this issue, which was permitted, actually occurred on a trial with the Gorayeb firm on it. If they were going to move in limine on this issue, it should have been done a

lot sooner than when we're standing here, because they were certainly aware of it and there is nothing, there is nothing in that transcript that could even remotely be considered anything other than cross-examination and I understand why they're seeking to have it precluded now, because in that transcript Dr. Kolb flatly contradicts a written affidavit that he had submitted to the Supreme Court in another case. That is classic cross-examination. It has nothing to do with RICO and this court has already permitted that line of cross-examination, without appeal, by the way.

THE COURT: Well, let me just understand what you're saying. In the case, the affidavit said one thing and Dr. Kolb testified in court to something else?

MR. DANIELSEN: Mm-hmm.

THE COURT: And the Court sanctioned him or what happened?

MR. DANIELSEN: The Court didn't sanction him, it just went in as fodder for cross-examination in front of the jury. There was no objection to it, there was no appeal. It was just classic cross-examination, like anything else. You challenge a doctor on past transcripts all the time. All the time. That is absolutely common practice and it would be highly prejudicial, highly prejudicial, to now bar that. A substantial portion of my cross-examination is on that topic. This is something that happened with the

Gorayeb firm a year ago. They knew about this. If they were going to make this application, it aught to have been made sooner.

THE COURT: Counsel?

MR. VARGAS: There's no disciplinary proceeding involving that lawsuit. It's two partners breaking up a partnership. It has absolutely nothing to do with Mr. Martinez or any of the cases involving Gorayeb. It's simply a partnership being split up and there's a stipulation of discontinuance for the case. There was no finding of wrongdoing by either party. It was simply one partner was sick and they had a dispute about how to break up the partnership.

THE COURT: Well, Counsel, I don't see this being any different than any other cross-examination. It goes to your client's credibility or, not your client, the doctor that you chose to use on this matter. It goes to his credibility, so I'm going to allow that line of questioning in.

MR. VARGAS: Okay.

THE COURT: Okay.

MR. VARGAS: I'm just gonna tell Matt and then I'm ready to go, Judge.

THE COURT: Okay, then you have an exception.

Mr. Danielsen, are you ready?

MR. DANIELSEN: Absolutely, Your Honor.

THE COURT: Okay. Can we have Mr. Martinez on the stand?

(Whereupon, the witness takes the stand)

COURT OFFICER: Okay. He's under oath.

THE COURT: Mr. Martinez, I want to remind you that you're still under oath.

THE WITNESS: Yes.

THE COURT: Please be seated.

Counsel, you may inquire.

MR. VARGAS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. VARGAS:

Q Mr. Martinez, picking up where we left off yesterday, I'm gonna ask some of the questions over again, just so we can get some clear answers.

A That's fine to me.

Q To start with, today, have you taken any prescription or unprescribed medications or consumed any alcohol, anything that would prevent you from making a clear, reasoned decision?

A No.

Q And you understand this interpreter, correct?

A Yes.

Q And you understand that the Defendants have offered you two million dollars to settle this case?

A Yes.

Q And you understand that, out of that two million, you would have to pay back any loans, liens or moneys owed in connection with this lawsuit? Do you understand that?

A Yes.

Q And are you accepting or denying that offer of two million dollars?

A No.

Q No, you do not want the settlement?

A No.

Q Can you expand a little bit, just so we have it nice and clear? No, you don't want the settlement? Is that what you're saying or something else?

A Something else.

Q Okay. So, you don't want the settlement, correct?

THE COURT: What is the something else?

A It's a confusing situation for me, because I am enduring a lot of pain. I have difficulties sleeping. I am only able to sleep for four hours. I'm suffering a lot of pain and I have three children to support.

Q All right. We understand all that, Mr. Martinez, but what we're trying to get to the bottom of here is we need a nice, clear record of that you don't want the money or you do want the money and then when you testify on Tuesday you can tell us all about those injuries.

A I want zero.

Q Okay. You don't want the settlement?

A No.

Q Okay. And you understand that, by allowing the jury to decide this case, if we go through the full trial, that you could come out of this case with nothing or something between zero and two million, or even probably -- or something more than two million? You understand that, right?

A Yes.

Q Okay. And do you make this decision on -- on your own freewill? Has anyone coerced you or told you not to settle, including my firm or anyone else, or is anyone forcing you to make this decision or are you making it under your own freewill?

A Yes.

Q You have to wait for the full question.

A No.

Q Okay. So, no one's influenced you, you're making it on your own? If you could, just say it out loud, that way we have a nice, clear record, because some people are concerned that someone is trying to influence you.

A No. No one is forcing me.

Q Okay.

THE COURT: Okay. Counsel for the Defendants, do you have anything that you'd like to question Mr. Martinez about?

MR. ZIZZAMIA: I do not, Judge.

THE COURT: Thank you so much.

You can step down, please.

THE WITNESS: Thank you.

(Whereupon, the witness steps down from the stand)

THE COURT: Okay. Thank you so much.

THE INTERPRETER: Mm-hmm.

THE COURT: All right. At this point I think we've dealt with all the housekeeping issues and we're ready for our witness.

MR. VARGAS: Your Honor, I just want to mark some things into evidence. I want to show Dr. Kolb the screen also, so he knows how to annotate when he gets up there real quick.

THE COURT: Okay. You have things that you want to mark into evidence?

MR. VARGAS: On consent with Defendant.

THE COURT: On consent, surely, and if you'd like to bring Dr. Kolb in and explain to him how to use the technology, sure. Somebody's got to explain to him how to do it.

(Whereupon, a short recess was taken)

(Whereupon, the Lennox Hill MRI CD was marked as Plaintiff's Exhibit Three in evidence by the Reporter)

(Whereupon, the Kolb Radiology CD was marked as

Plaintiff's Exhibit in evidence by the Reporter)

(Whereupon, the lumbar CAT scan of 7/18/19 was marked as Plaintiff's Exhibit Five in evidence by the Reporter)

(Whereupon, the left knee MRI of 8/27/18 was marked as Plaintiff's Exhibit Six in evidence by the Reporter)

(Whereupon, the blown-up lumbar x-ray of 7/7/24 was marked as Plaintiff's Exhibit Seven in evidence by the Reporter)

(Whereupon, the blown-up lumbar x-ray of 7/7/24 was marked as Plaintiff's Exhibit Eight in evidence by the Reporter)

THE CLERK: All rise.

COURT OFFICER: Jury entering.

(Whereupon, the jury entered the courtroom)

THE COURT: Please be seated. Good morning, members of the jury. Thank you for your time and attention and I appreciate everyone coming on time, just about.

I like to call these things housekeeping matters and sometimes we have things we need to do outside of the presence of the jury and we take the time to do them before we invite you, our guests, in. So, sometimes if you're sitting upstairs in the jury room and you say, why did she tell us to come here at 9:30 and we ain't starting at 9:30? That's not because we're not mindful that you're here, it's

just that sometimes we need to clean up our stuff and make sure that we have all of our things appropriate so when you come down here, we're ready to start going right away.

So, that's what we were doing this morning and now we have a witness by the Plaintiff. We're going to take this witness, not withstanding that we had a witness yesterday, Dr. Grimm. We're going to adjourn his testimony and we'll have him back next week and we're going to take another doctor out of turn.

Now, Counsel, you have a witness you'd like to call?

MR. VARGAS: Yes, I call Dr. Thomas Kolb to the stand.

THE COURT: Dr. Kolb, if you would join us, please.

COURT OFFICER: Please remain standing. Raise your right hand. Do you solemnly swear or affirm that the testimony you're about to give today is the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes, I do.

T H O M A S K O L B, called as a witness by and on behalf of the Plaintiff, after having been first duly sworn, was examined and testified as follows:

COURT OFFICER: State your name and occupation for the record in a loud, clear voice, please.

THE WITNESS: Dr. Thomas Kolb, MD. I'm a

physician.

COURT OFFICER: Okay.

THE COURT: Counsel, you may inquire.

MR. VARGAS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. VARGAS:

Q Good morning, Doctor. If could you, start out by telling the jury your educational experience.

A Yes. I went to college here at Queens College City of New York. I graduated a long time ago, in 1979. I then went to medical school in Brooklyn at Downstate Medical Center, graduated in 1983, and then I became a pediatrician. I did three years internship and residency here in the Bronx at Montefiore Hospital and Jacobi Hospital and graduated in 1986 and became board certified as a pediatrician. I then went back and did another four years of training in Washington Heights at Columbia Presbyterian Medical Center in radiology and I became board certified in radiology. That's my educational background.

Q And, Doctor, diagnostic radiology, what is that, exactly?

A So, it's using x-rays, CAT scans, MRIs, mammograms, ultrasounds to look inside the body and diagnosing a problem.

Q And do you have a specialty within the field of diagnostic radiology?

A Yes, I specialize in two areas.

Q What are those two?

A So, I specialize in reading x-rays, CAT scans, MRI's of the spine and the joints and I've been doing that -- I've been a radiologist for over thirty years. I've been doing that all the time for the last thirty years. I also specialize in breast cancer detection. I specialize in young, high-risk women with dense breasts. I've been doing that also for many, many years. I see many, many women every year. I teach the breast surgeons at Memorial Sloan Kettering that come through my practice to learn how to diagnose breast cancer. I do biopsies myself for diagnosis and so on. I've written papers and published. One of my papers won the American Medical Association Scientific Publication of the Year on over twenty-seven thousand women. So, that's another part of what I do. So, my practice is split into these two different area.

Q And, Doctor, can you move that microphone a little closer, or, yeah just move the chair closer. Thank you. And, Doctor, could you tell us to start out with the difference between -- well, let me back up. You have your own practice, correct?

A I do.

Q And you took time away from your practice today, correct?

A I did.

Q And are you being compensated for that time?

A I am.

Q How much?

A Twelve thousand dollars.

Q And can you start out by explaining to the jury the difference between MRIs, CAT scans and x-rays?

A Sure, x-rays had been discovered many, many years ago, over a hundred years ago. It's an energy and we pulse it into the body and we take pictures. We've all seen x-rays. So, x-rays tell the difference between soft things and hard things. So, if you're looking at something that's hard like a bone, you're gonna see that very well. If you're looking for a, fracture, an x-ray is a really good test. But if you're look at soft structures, like muscles or tendons or ligaments or discs, that we'll talk about, those are soft, and x-rays can't see that, and you'll see what I mean when I show a picture of that.

MRIs use a different technology. They're not x-rays, they use magnetic waves. That's why it's MRI, for Magnetic. Magnetic waves are pulsed into the body and then we produce pictures that tell the difference between all these soft tissues, soft structures, and we get a beautiful picture of what we're looking at. So, when we're looking at the back, not only will we see the bones in the back, we also see the discs, we'll see muscles, we'll see nerves, we'll see spinal fluid, all these things you can see on MRI that you can't see on an x-ray.

Q And, Doctor, did there come a time when you reviewed

some films involving Inocencio Martinez?

A Yes.

Q And can you tell us what kind of -- what type of films did you review or which ones?

A Well, I reviewed a number of studies on the lumbar spine, which is the lower back.

Q And we'll start with that --

A Okay.

Q -- which is marked into evidence as Plaintiff's Three, Lenox Hill Radiology Films of the Lumbar?

MR. VARGAS: And I just want to step over to see if the jury can see. Okay.

Q Now, this --

THE COURT: Wait one second, Counsel.

Im m just making sure that everybody sees the film that's on the screen. Attorneys, you guys have it?

MR. DANIELSEN: Yes, Judge.

THE COURT: Okay. Thank you.

Q Tell us, Doctor, what are we looking at here?

A So, we're looking at one picture from the very middle of the lower back, which is called the lumbar spine, and what you're looking at --

THE COURT: Oh, Jordan could you allow him to annotate?

A Okay, I can.

Q Okay.

A So, you see the squares here, right?

THE COURT: Go ahead.

A Oh. So, you see the squares here? One of them I made a square around. There are one, two, three, four, five of these squares and the reason there are five is because we're talking about the bones in the lumbar spine. So, if I want to talk about this fifth, the number five, the one over here, I'm gonna call that L, for lumbar five. Just so we're all on the same page, it's the same thing the doctors do. We call it the same anatomy. So, there are five bones and the one underneath here is called S, because that is the sacrum, S-1, the sacrum, and if you see these squares here, those are the bones, the gray squares.

Now, in between the squares you'll see these more football shaped, ovoid structures, they're between each bone, that's the disc, and those are the discs in the back and the function of the disc is to keep the bones away from each other, because bone touching bone at any joint in the body, including the back, is painful and a bad thing. So, we are born with shock absorbers. These discs are like shock absorbers. So, when you jump up and down, the disc compresses and then it goes back to the way it was. They're like jelly doughnuts with fluid inside the middle of them, so that they are able to compress and then go back to where they were.

So, if you look at each one of these discs here, they're the same size and the same color. The reason they're white like this is because there's water in them. Now, so, what holds these discs in place is really what's important. I just told you these are shock absorbers. What holds them in place is ligaments. Ligaments run down the back of the spine here and in the front of the spine here. This one in the back is called the post longitudinal ligament. There's also a ligament that runs around the disc called the annulus. You don't have to remember anything medical, you just have to know the discs are held in place by ligaments.

Now, what happens if these ligaments or the annulus tears? Well, it's not a good thing. They can partially tear and, if it partially tears, then the disc will start pushing out behind the bone and that's call a disc bulge. A bulging disc in your neck or back is when there's a partial tear of the annulus or ligament and the disc starts pushing out. If there's a complete tear of the ligament or annulus, both, then the disc pushes through completely and that's called a disc herniation, a herniated disc. So, that's the difference.

If you look at an MRI -- one second. If you look at an MRI, how do you know what's going on? It's actually pretty simple. The disc, this structure here, goes to the margin of the bone here and stops. It doesn't push on anything behind it over here, because it's being held in place and it's normal.

So, this disc and this disc and this disc and this disc, which is L1-2, L2-3, L3-4 and L4-5, are all normal, because the disc in the back comes to the very margin of the bone and stops.

Well, what happens to this disc over here? If we look in the circle that I made here, this disc actually pushes beyond the margin of the bone. Here's the bone, and you can see that the disc in there, I don't know how to magnify this, but you get the idea. I'll clear it. This disc here looks different than the disc above it, because you see that it goes beyond this gray box.

Q Doctor, I think we can magnify it, if you give us a minute.

A Okay. Magnify away. Great. Now pan up, so it's in the middle. Yeah, great. Okay. So, you get the idea that this disc here looks different than all the other discs.

Now, what is going on behind here in the back behind the bones? Behind The bones is spinal fluid. This white area back here is spinal fluid, because inside the spinal fluid are the nerves. The nerves are these gray structures coming down that come from the spinal cord, which starts in our brain, goes all the way down our back and then the nerves have to come out to your legs and they come out of holes in the spine, which you'll see in a little bit. They come out on the side, because we're looking at a picture down the middle and the holes are on the side. So the nerve comes down, goes out towards your left

leg and goes down to your right leg. At each level a nerve comes out to the left and a nerve comes out to the right, but we we're not looking at this here, we're just looking at if there's a problem with the disc. So, this here.

And, also, one other thing you have to know is that it's not just liquid that's here. This area in here is fat and the fat protects the spinal canal, the liquid here, by being also a little bit of a buffer zone. But, the point is, this patient has a disc bulge a, partial tear of the annulus, which is pushing out onto his fat that's called the epidural fat, and that's the finding on this MRI right here, a disc bulge pushing on the fat in front of the thecal sack. The sack is what contains all the liquid, spinal fluid. If we wanted to do a spinal tap, we put a needle in here, right there, and draw this fluid out.

Q And, Doctor, just so we're clear for the record, with an opinion -- with a reasonable degree of medical certainty, your diagnosis of this film is what?

A A disc bulge pushing on the anterior epidural fat at the L5-S1 level.

Q Thank you. And we're going to move on to the next film, unless there's something else you want to show us on this film.

A Nope, that it's.

Q The next one is also on the Lenox Hill CD, Plaintiff's

Three, and that is July 18, 2019.

A Yeah. Okay. So, we have to make a -- can we show the sagittal one first? That's good. Any sagittal in the middle. Yeah, just show the middle. A little more to the middle. So, let's stop right there. This has different coloring, but it's pretty similar to the one I just showed you.

What do I mean? There are five boxes, right? Right? There are five boxes. One, two, three, four five. It's hard to write on this.

Q And, sorry, Doctor, is this an MRI or a CAT scan?

A So, this is a CAT scan.

Q Okay.

A When I say it looks similar, it's not the same thing at all, but the anatomy is the same. Everyone's anatomy is the same. Tall, short, male, female, it doesn't matter. All the same. This is a CAT scan. So, just to show you that the anatomy's the same here, and in between here are the discs. Now, you don't see them as well, they look like spaces, because, I told you before that x-rays, and CAT scans x-rays, don't show you the soft tissue very well, MRIs show them better, but they do show them somewhat on a CAT scan, but not a regular, plain x-ray.

So, this is where I told here there was a disc bulge and you can see a little bit of soft tissue pushing out right inside there, but now there's two ways to look at the patient as

a radiologist. If you had a long loaf of bread like Italian bread or French bread, and you made a long cut, like a subway sandwich, like a hero, you would have one long sandwich. That's what we're doing here, looking at the top of the patient to the bottom of the patient. The patient's head is up here, the patient's legs are down here and you're looking at a lot of bones in one picture, just like opening up a sandwich, but, you can take that same piece -- and that's called the sagittal view.

Now, you can take that same loaf of bread and make slices and you can have many sandwiches from that one loaf of bread and you can pull the slice out and look at it and it won't be long, it's gonna be round or square, it's a sandwich, and that is called the axial view and what we're gonna look now at is we're gonna take a picture through this level right here, right, and I'm gonna pull it out, put it up on the screen and you'll see that everything now is round instead of long.

So, let's -- beautiful. So, all of a sudden we have this picture. This, here, is the disc that we were talking about. This here is the disc bulge, that's too far back, and it's pushing on the fat. The fat is black in this picture. The spinal canal with the fluid is here, but there are two dots, one here and one here. You see these two dots, right? One here and one here. Those are nerves that are ready to come out of the spine and go towards the legs.

So, what we see on this picture right here, is that

this disc bulge is touching this nerve here, the right L-5 nerve root, extra thecal, in other words it's come out of the sack, right, L-5 nerve root. So, that's the finding on this MRI here. What was the date? It's here. It's --

Q July 18, 2019.

A Right. July -- it's right here, July 18, 2019.

Q And, just so we're clear for the record, with a reasonable degree of medical certainty, what is your diagnosis of this film?

A So, there's a disc bulge at L5-S1 and it's pushing on -- let me make sure I say this correctly, the right S-1. Right S-1, extra thecal nerve root.

Now, as we go up, we don't need to go up, but, you'll see other bulges at other levels. This one was taken in 2019 and the other MRI that we looked at was taken in 2018, about a year and a half later. This patient formed three bulges in 2019 between L3-4, L4-5 and the one that the patient had originally at L-5-S-1. So, on this CAT scan there are three bulges.

Q And, next, I believe we are going to go to the knee and that would be Plaintiff's --

A I think there's more on the spine.

Q What?

A I think --

Q Was there another film you wanted to look at?

A The pictures, the blowups.

Q I was going to do those next, after we do the knee.
A Whatever you say. Okay.
Q Because it involves turning on the lights and everything.
A Beautiful.
Q I'm sorry, Plaintiff's Four, let's start with eight -- the MRI, left knee, 8/27/18.
A Yeah.
Q And, if you could, start out by telling the jury what we're looking at here.
A Let's go to the middle for one second, so we see what we're looking at.

So, the knee -- we're switching gears here and talking about the knee for a minute. The knee has three bones that come together. There's your thigh bone, which is the femur, there's the tibia, which is your shin bone, and your fibula, which is the thin bone here. Three bones come together to form a joint so that you can go like this with your knee.

Now, again, since they're bones coming together, there has to be a shock absorber to keep the bones apart or else they touch and you're in a lot of pain. So, if we go out laterally now, the shock absorbers in the knee are called the menisci. The meniscus is one and we have two meniscus, which is the menisci. Stop there. Yeah, stop there. This black triangle and this black triangle in the back is the meniscus that is

running along the inside of the knee that separates the femur from the other bones below it. There's also a meniscus on the other side, the lateral part of the knee here, which looks just like this one. Now, the thing and the purpose is, when you jump up and down and play sports or just walk around, your bone doesn't get too close to the other bone. But, unfortunately, sometimes bad things can happen to the meniscus too.

So, this is a -- this is the front of the patient here, this is the back of the patient and the kneecap would be up here. This is not the kneecap, this is a marker. The kneecap is in the front. So, we're looking at the inside of the knee, between this bone right here and this bone right here, where the black area here is, the meniscus. The front is normal. It should be completely black with no line in it at all, no whiteness in it. If you look here, and you can even make it bigger or magnify it, you will see that there's this long, thin line.

Q Do you want it bigger?

A Sure. Yeah, great. Look at the front versus the back. There's a long line running right here in the middle, right? That is a tear of the meniscus. This is now fluid that entered the meniscus and that's why its white and the tear goes down like that and touches the inferior articular surface or the bottom of the meniscus here, and where it's located here is the posterior horn of the meniscus. So, there's a tear of the

posterior horn, the back, of the meniscus in this patient, the medial meniscus, and that's the finding, the major finding, on this MRI.

Q And, for the record, do you have an opinion with a reasonable degree of medical certainty as to this film, the diagnosis?

A Yeah, there's a flap tear. This type of tear is called a flap tear of the posterior horn of the medial meniscus. There's fluid behind it back here that shouldn't be there. There's a small cyst on a different view, a small popliteal cyst, because fluid is escaping in this area where there's a tear of the meniscus.

The second finding on this, if you go towards the middle, is there's a partial tear. So, there are two ligaments in the middle of the knee. Let's clear the screen and I'm going to keep it simple here. Can you go back and forth a little bit? Yeah, okay.

So, you see here that this is -- this line right here is the posterior cruciate ligament. There are two ligaments in the knee that crisscross, that keep your knee stable, and one ligament is the front one, the anterior cruciate, the back one, is the posterior. Again, you don't have to remember any names. But, if you go to the front one -- go forward a little bit. A little bit the other way. Nope, the other way. Yep. All of this is supposed to look like the one I showed you before, a

dark line, like that, and we lost it, because there's a partial tear of the anterior cruciate ligament, because it's right in there. So, that's a partial ACL tear and a tear of the posterior horn of the medial meniscus. Those are the two main findings on this.

Q And then if we could next go to, still on Plaintiff's Four, MRI, 9/16/21 of the left knee.

A So, this was done September 16, 2021, which is about three years later, and I believe the patient had surgery of the meniscus here and you still see that it's not dark like the front one. See the front one here is a black triangle? You can make the picture a little darker and you'll see what I mean. You'll see there's -- here is that dark triangle in the front, which is normal, but here there's still abnormal signal.

Now, there's two reasons for that signal. One is that the patient could have re-torn it, if the surgeon fixed it. The second is the patient could have gone in there to fix it and you'll see a line there from the surgery. So, I can't tell by looking at these pictures if it's a new tear or from the surgery itself. The doctor who examines the patient has to make that decision and that is the major finding on -- on this finding. There's still abnormality in the ligament of the anterior cruciate ligament.

Now, in the front of the knee, this white area here in the front, is because there is -- there is what's called

chondral tissue in the front that protects the front of the knee, that protects the bone. There's a defect now in there. Again, it could be from a true abnormality of the knee or it could be because the doctor went in there and tried to fix that front part of the femoral condyle as well.

So, anyway, the bottom line is, the doctor who examined this patient has to decide what to do with these findings.

MR. VARGAS: And, next, with Your Honor's permission, we are going to turn on the lights and we have some blowups to show the jury.

THE COURT: Yes. Can you please turn on the lights? Thank you so much.

Q And, Doctor, if you could, please step down.

MR. VARGAS: Is it okay if I put it this way?

THE COURT: It's up to the jury, so they can see. Can everyone see the easel?

MR. VARGAS: And that's number Five.

Q Doctor, what is Plaintiff's Five?

A This is a CAT scan and it's actually a CAT scan of the lumbar spine, July 18, 2019. We looked at this level here with these fancy screens here and I showed you the disc bulge. This is 5-1, but on this picture here you can also see that, when we -- this is the sagittal view, the long view where you see all the bones, and this is the round view where you only see one area and here we took a slice through 4-5 and we put it up and,

remember I told you about these nerve roots? So, these nerve roots here, I also told you there were three bulges on this CAT scan and this bulge at this level comes in contact with the right and left L-5 nerve roots.

THE COURT: Doctor, please keep your voice up.

A The right and left L-5 nerve roots. Anyway, we're just building off of what we saw before, okay?

THE COURT: Doctor, we're gonna give you a mic.

THE WITNESS: Oh, wow.

Q You feel like a rock star?

A Oh, okay.

Q What are we looking at here? This is Plaintiff's Seven.

A Seven, yes. This is -- so, this is an x-ray. I promised I'd show you some x-rays. So, but, you see the boxes here? These are the bones. Just like the MRI, just like the CAT scan, but here you don't see the disc on the x-ray. I mean, you couldn't tell there's a disc there and you couldn't tell if it was abnormal or normal, it's an x-ray.

So, what happened here is that their patient had surgery at the L-5 S-1 level, which is the level we first started looking at, and the surgeon put in screws and connecting rods here in the back. So, that fused the patient, meaning, that the patient now -- when we move our back, our back actually moves, right? I mean, each one of these spaces moves, because

the disc is a shock absorber, but the purpose here is the patient had surgery in order to fix, to fuse, these two levels so that there would be no movement, okay? That was the purpose of the surgery.

So, that's what it looks like on an x-ray when you're look at the side view, and if you're looking at the front view, same patient, same day. Yeah, same patient, same day. It's an x-ray, but now we're looking at the front of the patient. The pelvis is here, the legs are here, head is here. Front view, legs are down here, head is up here, here are the vertebra, okay? But, we're looking towards the front of the patient and this is what the fusion screws and rods look like here, okay?

So, that's just another way of looking at it and this is what's in the patient, what's done by the surgeon and what was in the patient. So, that's what x-rays now look like after the surgery.

Q And that was Plaintiff's Eight?

A That was Plaintiff's Eight, yes.

Q And we have one more board.

A So, this is Number Six and it's the left knee MRI in 2018 and it's what I showed you previously. This long, abnormal white line is a tear of the posterior horn of the medial meniscus. So, that we just discussed previously on the smart screen.

Q Thank you, Doctor. You may take the stand.

Now, Doctor, beyond the films you read for patients of your own, do you review films for Plaintiffs involved in litigation?

A Plaintiffs and defense, yes.

Q And when you're reading those films, does it effect your interpretation or do you have any kind of bias, whether it's a Plaintiff or Defendant, when you're reading the film?

A No. Whatever is there goes in my report.

Q And, Doctor, at some point back in 2015, were you practicing with another doctor?

A Yes.

Q And who was that doctor?

A Doctor Jacob Lichy.

Q And did that practice -- were you practicing with Dr. Lichy? Did that eventually dissolve?

A Yeah. I was with Dr. Lichy for over twenty-three years and that, unfortunately, dissolved because he took ill and he was very sick and he eventually passed away.

Q And during that dissolution of that partnership, was there a lawsuit?

A Yeah. I mean, when we had to break apart, I didn't realize it at the time, actually, I was pretty naive, but there was a lawsuit, or at least a complaint against me by him, but he didn't want the practice to -- to go apart, but, he was sick. I mean, it was impossible to stay together. So, you know,

unfortunately, that was settled and we broke apart and we agreed. Soon after, at some point, he passed away. I think that if he was still alive, for sure, and he wasn't sick, we'd still be practicing together. We had been together for many years and we were working together harmoniously for many, many years.

Q And during that lawsuit, did he make allegations against you?

A I suppose so, yeah. Yeah.

Q Did he ever -- you said the suit settled. Did he ever attempt to prove those allegations against you?

A No. No. It was in the heat of the battle where he said something and I guess my lawyer said something else and soon after we just settled and agreed to drop the whole thing. No, there was no proof and, like I said, if he was still alive, I'd probably be practicing with him and, of course, there would be no lawsuit. So, very unfortunate situation.

Q Thank you, Doctor.

MR. VARGAS: I don't have any further questions.

THE COURT: Thank you so much, Counsel.

Are you okay, Madame Reporter? Jurors? Okay.

MR. DANIELSEN: Your Honor, I have an application I'd like to make outside of the jurors presence.

THE COURT: Okay. Let's take them out. Just leave them there in the hallway. Don't let them go upstairs

unless they need to.

COURT OFFICER: All rise.

MR. DANIELSEN: It's a short application.

COURT OFFICER: Jury exiting.

(Whereupon, the jury exits the courtroom).

THE COURT: Go ahead, Counsel.

MR. DANIELSEN: Yes, Your Honor. I apologize, I'm just looking up an obscure CPLR provision here. Just one second.

THE COURT: Do you want the doctor to step out?

MR. DANIELSEN: I think so, Judge.

THE COURT: Step out.

(Whereupon, the witness is asked to step down from the stand & leave the courtroom)

THE COURT: Okay.

MR. DANIELSEN: Your Honor, CPLR 4519, which is not an often cited CPLR provision, is a dead man's statute and it prohibits eliciting testimony from a witness on topics of -- on topics regarding statements and testimony made by a party that's now deceased.

THE COURT: Right.

MR. DANIELSEN: In an attempt to defuse the cross-examination, counsel has asked for characterization and impressions of Dr. Lichy's testimony and allegations, ex cetera, that were made. I would ask that they either be

stricken or that the jury be permitted to hear the allegations directly from the affidavit, which I have, that was submitted by Dr. Lichy in that case.

THE COURT: Counsel?

MR. VARGAS: I don't think it needs to be stricken. All he did was talk about the dispute. He didn't say specifically what was said, what the allegations were, and I believe 4519 has to do with executors and we're not -- this is not a probate hearing or a will contest or --

THE COURT: Well, it's an evidentiary statute, so it doesn't necessarily limit it to probate.

MR. VARGAS: He didn't say anything about anything specifically that Dr. Lichy said.

THE COURT: Well, he did say that they would be harmonious and they would probably continue on in the future.

MR. DANIELSEN: Which is directly contradicted by Dr. Lichy's statute. It's actually pretty -- sorry, Dr. Lichy's affidavit, which is pretty damning.

THE COURT: Why don't we mark that? What is it, the affidavit?

MR. DANIELSEN: I have the affidavit. I could show you what it says.

THE COURT: Let's mark it.

MR. DANIELSEN: Your Honor, this is an affidavit

from Dr. Lichy. It is dated signed and subscribed to on December 3, 2015 before a notary public. It is from the case Thomas M. Kolb, petitioner, for the judicial dissolution of Precision Imaging of New York, PC. Affidavit of Jacob Lichy, MD, in opposition. Index Number 653464/2015.

THE COURT: We're gonna mark it for identification.

(Whereupon, the document was marked as Defendant's Exhibit A for identification, by the Reporter)

THE OFFICER: So mark.

MR. VARGAS: Your Honor, if I may?

THE COURT: I'm sure he wants to read from it.

Yes?

MR. VARGAS: This 4519, the person has to be interested in this litigation and Lichy is not interested in this litigation.

THE COURT: Well, what does the actual statute say?

MR. VARGAS: It's quite long. I mean, I never looked it up, I'm just looking at a portion. It says, upon the trial of an action --

THE COURT: Wait one second, I can read it.

Counsel, what could you say with respect to the provisions of the statute?

MR. DANIELSEN: Generally speaking, Your Honor, and I admit it's an obscure one, I haven't cited it --

THE COURT: Since law school.

MR. DANIELSEN: Funny enough, one time after law school, when I was first admitted, many years ago.

I'm just going to pull up the text of it so I don't butcher it, Your Honor. There we go. It's very long. Okay.

Upon the trial of an action or the hearing upon the merits of a special proceeding, a party or a person interested in the event, or a person from, through or under whom such a party or interested person derives his interest or title by assignment or otherwise, shall not be examined as a witness in his own behalf or interest, or in behalf of the parties succeeding to his title or interest against the executor, administrator or survivor of a deceased person, or the committee of a person with a mental illness, or a person deriving the title or interest from, through or under a deceased person or a person with a mental illness, by assignment or otherwise, concerning a personal transaction or communication between the witness and the deceased person or person with a mental illness, except where the executor, administrator, ex cetera. Person shall not be deemed interested for the purposes of this section by reason of being a stock holder, ex cetera.

It goes on for a very long time, Your Honor, and my position is very, very, very limited and simple. We've got

what we marked as Defendant's Exhibit A as Dr. Lichy's affidavit. It directly contradicts the testimony that was just elicited from Plaintiff's Counsel from Dr. Kolb.

Dr. Kolb said that they would be practicing harmoniously together if he was still here, that was his belief, ex cetera. A fair reading of that affidavit, signed under oath by Dr. Lichy, who is now dead and cannot speak for himself, directly contradicts the testimony elicited by Plaintiff and that's it, Your Honor.

THE COURT: Thank you.

MR. VARGAS: Your Honor, I would add, also, that the affidavit from Dr. Lichy was before the case was settled, too. So, if this was in the heat of litigation, whatever they said, it was allegations to each other and, ultimately, the case settled. This statute clearly doesn't apply, because Lichy just has zero interest in this litigation. Lichy has been deceased for more than twenty-five years. He couldn't possibly have a connection to this case and my co-counsel wants to add something too.

MR. GORAYEB: And, Your Honor, I actually studied this statute last year in law school. So, the entire idea of the statute, the reason why it was brought into law, was because it was to prevent unfair litigation tactics where a party may be suing a party who then becomes deceased. So, the party suing may not speak communications with that

deceased party because, obviously, that deceased party couldn't defend themselves in court.

Now, here, in this case, we're not putting the case between our witness and Dr. Lichy. That has nothing to do here. In fact, that case was settled. So, we don't want to have a mini trial on their issues because this case is completely different and, again, this statute here, I believe Defense Counsel's misreading it and that it purely has to do with when your interest in the litigation prevents unfair litigation tactics against a deceased adversary. Thank you.

THE COURT: Thank you, Counsel.

MR. DANIELSEN: Your Honor, then, I believe, that the the appropriate remedy would be then to permit a question or two regarding Dr. Lichy's allegations against Dr. Kolb and whether or not that comports with his testimony that they would be harmoniously practicing together, as he just testified.

THE COURT: So, you're saying to question the credibility of the --

MR. DANIELSEN: Plaintiff opened the door to this, Your Honor.

THE COURT: -- the witness?

MR. DANIELSEN: Mm-hmm. Plaintiff opened the door to this. He did not have to elicit that testimony. He did

not have to elicit testimony from the witness with respect to the witnesses impressions of Dr. Lichy's view of the allegations that were made against him.

MR. VARGAS: No, actually, I asked, did he make allegations against you and he said yes and I asked, did he ever pursue proving those allegations and he said, no, the matter settled.

MR. DANIELSEN: And then went on to say that they would be practicing harmoniously together.

THE COURT: He did say that, he did. Go on.

MR. DANIELSEN: And that statement, in the context of what that affidavit says, is very hard to believe and it goes to the weight and the credibility of this witness.

THE COURT: I believe, Counsel, that the door is open and that Defense Counsel can ask him whether or not he stands by that proposition that he and Dr. Lichy would be practicing together if he had not passed away.

MR. DANIELSEN: Thank you, Your Honor.

THE COURT: Okay. Let's bring the jurors back.

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

(Continued on next page)

* * * * *

THE COURT: Thank you so much, Mr. Danielsen.

MR. DANIELSEN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. DANIELSEN:

Q Good morning, Dr. Kolb.

A Good morning, sir.

Q Dr. Kolb, I'm going to address this first.

I guess, it was --

THE COURT: Counsel, would you like to stand at the podium, because you have a whole lot of papers there.

MR. DANIELSEN: I can do that.

THE COURT: And, Counsel, Mr. Tech guy.

THE TECHNICIAN: Yes.

THE COURT: Maybe you can let him use the mic.

Does it stretch?

We used to have one.

MR. VARGAS: Maybe the magic mic?

MR. DANIELSEN: I can try to keep my voice up.

THE COURT: No.

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

Q So, Doctor, a few moments ago there was some testimony that you gave with respect to your former partnership with Dr. Lichy.

Do you recall that testimony?

A Yes, sir.
Q I think you said that if Dr. Lichy was still here today, had he not died --
A Yeah.
Q -- that you two might be harmoniously practicing together; is that correct?
A That's correct. I think we'd still be in practice together.
Q That's your belief?
A That's my belief, yes.
Q Did you have an occasion to read Dr. Lichy's affidavit --
A No.
Q -- from the litigation?
A No.
Q Never?
A I don't recall reading it. I've been asked questions about it in the last couple of years. Since it was over ten years ago, no.
Q You had counsel in that case, right?
A I'm sorry.
Q You had counsel in that case, right?
A Yes.
Q And, in fact, you put in an affidavit in response to this affidavit, didn't you?

A I'd imagine I did. Again, I don't remember reading it, but I'm sure since we were breaking apart it happened, yes.

Q On the topic of the potential harmonious continuation of the practice had he not died --

A Had he not been sick.

Q I'm going to --

THE COURT: Wait, one second.

You we're going to say, had he not been sick or ill?

A My testimony was that we were practicing together for many years, over 20 years without any issues whatsoever. He got seriously ill and soon died after that, and the practice fell apart because of that.

Yes, so my testimony is, directly, if he had not gotten sick, we would not have had to have broken apart, and we would not have been in a suit against each other because of breaking apart, yes.

Q Okay. So, Doctor, I'm going to read from Dr. Lichy's affidavit.

A Sure, of course.

Q At Paragraph 3, Dr. Lichy states: "The petition represents the culmination of Dr. Kolb's plan to misappropriate the medical practices that I built up over 35 years. Dr. Kolb, who wanted to withdraw from the practices, embarked on a course of conduct of which dissolution proceeding is a part to both

abscond with the radiological practices and to be paid for doing so by creating artificial causes to the liquidation of Precision."

He then went on, on Paragraph 21(d) to state: "In the summer of 2015, Dr. Kolb began reading substantially more MRIs to the point that there were no MRIs for me to read. Kolb was using his time to 'get his name out there' in front of referring physicians and lawyers and to create an impression that I was reducing my practice or retiring. Indeed, one of the referring attorneys thought that I had retired because he had not seen any report from me in such a long time."

He then went on to state: "Dr. Kolb modified MRI reports generated more than six months before to include nonsubstantive modifications in order to enhance their value in personal injury litigation in order to integrate himself with referring attorneys at the expense of my reputation."

And then he stated at Paragraph i of that same paragraph: "In the summer of 2015, Dr. Kolb began, on a daily basis, to photograph radiological reports with his unencrypted iPhone and send them by e-mail insecurely through the Internet to his personal e-mail account. He also faxed reports to his residence. The methods of transmission used by Dr. Kolb violated HIPAA rules. Dr. Kolb was asked to stop such activities, to no avail."

And then finally, at Paragraph 22, he states in his

affidavit: "By engaging in the actions set forth above, Kolb engaged in a personal misconduct of such a material nature as to render his presence professional and detrimental to LK Precision, the partnership, and their employees; failed to work harmoniously with the other employees of LK, Precision."

So the question I ask you now, Doctor: Do you stand by your testimony before, that had Dr. Lichy not passed away, that you two would be working together harmoniously, despite the salacious allegation, very serious litigation set forth in this affidavit?

A 100 percent.

Remember, I don't think you mentioned that he actually was not in practice more than six months, didn't, because he was sick and in the hospital. That was the beginning of the end of the practice because he actually wasn't practicing.

And maybe you have my response to that or my attorney's response to that and you can read that to the jury, to just be evenhanded here.

And none of these allegations were ever proven. They weren't -- they weren't even sought to be proven. They didn't even try to prove any of that. This was a shock in order to -- almost like a cry for help at the very end of his life.

I mean, let's no forget what the reality was of what was going on. And then the two of us got together and settled it, and that was it. So, of course, he was angry because he was

fatally ill. I mean, none of the stuff that you read was ever in the remotest way was true or proven.

So, yes, you can read it, and read the response to it. But there was no truth to it.

Q So it's your position --

A Yes.

Q -- that the statements made by Dr. Lichy in this affidavit, sworn and subscribed under oath, they are all false, no truth to any of them; that's the position?

A 100 percent.

Q And, of course, Dr. Lichy is deceased and not here to speak for himself, correct?

A 100 percent.

Q Thank you, Doctor.

Dr. Kolb, is it your testimony that you've never engaged in the practice of overreading films on behalf of plaintiffs or on behalf of attorneys; is that your position?

A What does "overreading" mean?

Q Meaning, reading a film for the purposes of seeing something that is not necessarily proveable by the image that's before you.

A Absolutely not.

Q You've never done that?

A That's right. If that's what you define as "overreading."

I read whatever I see and that's the end of it.

Q Irrespective of who it's for?

Irrespective of who asks you to read it?

A Yes, of course.

Q Now, would you agree with the proposition that you, over the course of your life, have marketed yourself to attorneys, made yourself available to provide services in litigation?

A Well, I haven't marketed myself in -- putting myself in, you know, hiring firms or anything like that. Attorneys generally call me.

What generally happens, I read films. I do the films. I'm the treating doctor. In this case I actually read one body part of this patient, the knee as the treating doctor.

Q So, Doctor, that lawsuit that you had with Dr. Lichy --

A Yes.

Q -- you mentioned the affidavit that you were -- that you gave in that case, and you had invited me to sort of read from that --

A Sure.

Q -- to give your side of the story.

So in that affidavit, you stated at Paragraph 10: "After we formed Precision, I was the primary instrument of regaining the MRI business lost when Lenox Hill terminated its

relationship with us. I personally visited many doctors and referral sources to explain our capabilities and solicit their business. These efforts proved highly successful."

A Yes.

Q So do you stand by your testimony that you were not actively soliciting work from lawyers over the course of your career?

A Yes. It doesn't say in there that I was, what you just said.

Q That's precisely that --

THE COURT: Please don't talk at the same time.

A Go ahead and read it again.

Q Okay.

THE COURT: Mr. Danielsen, slow down a little bit, please.

Q I asked you -- Dr. Kolb, I asked you: Have you engaged, over the course of your career, in the practice of soliciting work from attorneys --

A Right.

Q -- in litigation?

A Right.

Q You said, no, they come to you.

That was what you just said to us, right?

A Right.

Q Okay. At Paragraph 10 of the affidavit from the Lichy

litigation -- this is your affidavit.

MR. DANIELSEN: And, Your Honor, maybe if I could mark this. I'd like to have Dr. Kolb identify his signature at the bottom.

THE COURT: Surely. It will be marked as Defendants' Exhibit B.

THE COURT OFFICER: So marked.

(Defendants' Exhibit B, Affidavit, for identification as of this date.)

MR. VARGAS: Your Honor, I got to object, first of all.

THE COURT: You want to approach?

MR. VARGAS: Yes.

Q Dr. Kolb, one more question on this affidavit, Defendants' Exhibit B.

MR. DANIELSEN: Show that to the doctor, please.

A All right. Let me read this.

MR. VARGAS: Just in the interest of time, can we just have the question so he knows what he's looking for.

THE COURT: Yes.

Q Very, very simple question, Doctor. At the end of this affidavit, there appears a signature in a signature block.

Can you please flip to that and tell us, is that your signature that appears at the bottom.

A Can I read this.

I just want to say, my answer to you still remains the same answer.

THE COURT: No.

Q There's no pending question other than --

A That is my signature.

Q Wait.

THE COURT: Okay.

A And this is my signature.

THE COURT: Thank you, sir.

A And you can read the whole document to the whole jury if you want to.

THE COURT: Doctor, this is Mr. Danielsen's examination.

THE WITNESS: You're right about that.

THE COURT: Please just answer the question.

THE WITNESS: So sorry.

THE COURT: Continue, Mr. Danielsen.

MR. DANIELSEN: Thank you, Your Honor.

Q Dr. Kolb, you work with a lot of law firms; is that fair?

A I guess you can say that. People call me to review films, yes.

Q You work with the Shuman [phonetic] firm?

A I've worked for -- the Shuman firm has sent me films, yes.

Q You work with the Gorayeb firm?

A I would say I've worked with dozens and dozens of firms, both on the plaintiff side and the defendant side that sends me films, yes.

Q And as far as working with the Gorayeb firm, with respect to Mr. Zizzamia'S firm, we went through the files and found that you're actually involved in 70 -- 78 active cases with his firm.

Does that sound about right?

A "Active cases" means?

Q Active cases where you've read films and you're acting as an expert on behalf of the Gorayeb firm?

A Over the last 30 years.

Q No, no, no. Active cases.

A I don't know what "active" means. Like five years, ten years, 15 years, yeah. I mean, 70 cases, yeah. I would say five cases a year, maybe.

I mean, I testify about that much. So I would think that it's around that. I don't know the numbers. I can't tell you if that's correct or not correct.

I'll accept it, if that's what you saw.

Q And you said five or six cases a year you testified in.

Five or six cases a year, that's how many times you testified, right, in court?

A Right.
Q A lot of cases don't go to trial; you know that?
A Yes, I would assume so.
Q It's a lot more than just five cases a year that you're involved in with the Gorayeb firm; you would agree with me on that?
A I don't know the answer so I'm going to accept whatever you say about this because I just don't know the answer.
Q Actually, on those 78 active cases, some of the other doctors that are involved in this case, Dr. Kaplan, Dr. Weinstein and Dr. Grimm, 38 of those cases, those doctors are involved.

Do you find yourself working in connection with those doctors on a regular basis on behalf of the Gorayeb firm?
A So I have no idea who other doctors are unless it was sent to me by a physician and I read it.

In other words, if I'm looking at a film that I didn't do, I have no idea who the doctor is who sent the patient.

In this case, it was one doctor who sent the patient.
Q Who was that?
A Dr. Kaplan.
Q And Dr. Kaplan works with Dr. Grimm, right?
A Yes.
Q And you know those two guys, right?
A I don't know them. I never met them. I couldn't even

tell you what Dr. Grimm looks like.

Q You've done other cases where Dr. Grimm and Dr. Kaplan are involved, correct?

A I assume so. It's the same answer I just told you before.

Q Dr. Weinstein, who is the spinal surgeon in this case, same thing with him?

A It's the same answer, I don't know these people.

Q Now, you've read a number of films in this case, right?

A Yes.

Q And you're here serving as an expert; is that correct?

A Yes.

Q You're not a treating physician, you're not actually treating Mr. Martinez, right?

A I am not.

Q Okay. So I believe you said you're being paid $12,500 to be here today?

A I believe it's 12,000.

Q I apologize, 12,000.

And then you would have also charged for reading these films; is that right?

A I would have.

Q What's the fee per film to read?

A It's around $400 per x-ray, around $800 for an MRI.

Q About how many films did you look at in this case?
A Many.
Q You have a chart in front of you?
A Yes.
Q Can you take a look at that and tell us about how many you looked at.
A Sure.
THE COURT: I'm going to demark the chart for the doctor as Plaintiff's Exhibit -- what number are we?
MR. VARGAS: For identification?
THE COURT: Yes.
MR. VARGAS: Plaintiff's Exhibit 9.
THE COURT: What number are we up to?
MR. VARGAS: Nine.
THE COURT: Plaintiff's 9 for identification purposes.
(Plaintiff's Exhibit 9, Chart, for identification as of this date.)
A Around 20 or so x-rays, maybe 23, I'm not sure. And about ten MRIs or CAT scans.
Q So about 400 per, 20 more. Oh, boy, that's a lot of math.
We're looking at, what, another $8,000, something like that?
A Whatever it comes out to, yep.

Q On top of the 12,000.

So that's closer to 20,000, correct?

A Yes. If that's what it comes to, that's what it comes to, yes.

Q And then you charge for prep time or anything like that?

A I don't.

Q So in this case, Doctor, when did you first become involved?

A Well, I -- you mean medically, or when someone contacted me about being here today?

Q Medically.

When was the first instance in time where you became engaged in this case, not asked to come here today, but engaged?

A Medically, I did the MRI on this patient's left knee on September 16, 2021. About three and a half years ago.

Q So you've been engaged in this case for about that long?

A Well, I don't know what you mean by "engaged." I read the MRI and sent the report to Dr. Kaplan, if that's what you mean, yes.

Q Yes, that is what I mean.

So what did you bring here with you today, Doctor?

A Medical reports.

Q Doctor, my office served a subpoena on you earlier

this week.

MR. DANIELSEN: Your Honor, with your permission, I'll mark this for ID only.

THE COURT: Yes. Let's deem it marked at this time. Let's just deem it marked as Defendants' C, for identification purposes.

(Defendants' Exhibit C, Subpoena, deemed marked for identification as of this date.)

Q Doctor, do you recall receiving the subpoena from my office?

A No.

Q The subpoena from my office, I have here an affidavit of service attached to it, and it requests that there be certain things brought with you to court.

We asked that reports --

MR. VARGAS: Objection.

Q To bring medical records.

MR. VARGAS: Your Honor, who was it served on? When?

MR. DANIELSEN: It was electronically filed with the affidavit of service.

THE COURT: Why don't you show it to him.

MR. DANIELSEN: Sure.

Q And there's an affidavit of service on the back.

MR. VARGAS: It doesn't state --

THE COURT: Wait.

Counsel, you want to talk, you have to step up.

(Whereupon, a off-the-record discussion was held.)

Q Doctor, the subpoena that I sent had a very long rider asking for a number of documents. I'm not going to ask you every document in the rider because I want to move this along and be respectful of everyone's time.

MR. VARGAS: I want to object, Your Honor. He's already stated he hasn't seen it.

THE COURT: Wait one second.

Why don't you show it to him.

MR. DANIELSEN: Sure.

A Okay.

Q So, Doctor, this was served on your office, and it was served on by someone by the name of Maria, Maria Bueno, [phonetic] a receptionist at your office.

A I don't know who the receptionist is.

Q How many receptionists do you have at your office?

A Many.

Q So is it possible that there's a Maria who works for you?

A Anything is possible. I don't know her.

Q So, Doctor, I asked you to bring a number of things. I'd asked you to bring your billing records with respect to this

case.

Do you have any billing records here?

A No.

Q And I also asked you to bring any communications, e-mails, anything back and forth between you and the plaintiff's attorneys in this case.

Do you have any of that stuff here with you today?

A No, sir.

Q Okay. Now, Doctor, you were identified as an expert in this case by the plaintiff's. And in so doing, we were told that you were going to give certain opinions today. And one of the opinions I believe we were told that you would give would be as to the causation in this case.

Are you aware of that?

A No.

Q You're not aware that you were going to testify on this topic?

A Correct.

Q Okay. Well, in the expert disclosure that we have from you, it says you are prepared to opine on this topic.

Are you prepared to opine on the topic of causation today, with respect to the incident of record?

A Sure. If you ask me a question, I'll opine on it.

Q Have you seen the emergency room records in this case?

A No.

Q Have you read the plaintiff's deposition testimony?
A No.
Q Do you know how the plaintiff claims that he was injured?
A No.
Q Do you know when the plaintiff first made complaints of pain to his lumbar spine?
A No.
Q Do you know when the plaintiff first made complaints with respect to the knee in this case?
A No. I'm sorry, no.
Q Do you know whether or not the plaintiff made any of those complaints in the emergency room?
A No, I don't know.
Q So without that information, you would be in a position to opine on whether or not there was a causal link between the incident of record and the injuries that the plaintiff is claiming today; is that your testimony?
MR. VARGAS: Objection to form.
THE COURT: Sustained as to form.
Q With the very long laundry list of things that I just listed, you have not seen --
A Correct.
Q -- do you have that in mind, Doctor?
A Yes.

Q Without those things, are you -- is it still your testimony that you are in a position to make an opinion to a reasonable degree of medical certainty on the issue of causation in this case?

MR. VARGAS: Objection. He's already asked and answered this. If he wants to ask him whether it's caused or not, ask him that question.

THE COURT: Overruled.

You can answer.

A I don't know. My answer is I don't know. That's my opinion that I opined. You asked me if I opined, and I did. My opinion is I don't know.

You don't read those records. I can't tell you without looking at the film. Without clinical correlation from the people who examined him. I can't tell you an answer "yes" or "no." That's my opinion.

Q So irrespective of the fact that your expert disclosure says that you're prepared to issue an opinion with respect to medical causation, you don't have all of the information that you would need available to make that determination before you; is that correct?

MR. VARGAS: Objection. He's answered this question.

THE COURT: Overruled.

A Yes. My answer is that, looking at these films, I

don't know.

Q Okay.

A You need clinical correlation, it's the same answer.

Q Do you know the date of the accident?

A I don't have the date of the accident.

Q If I were to tell you that the date of the accident was in September of 2016.

A Mm-hmm.

Q And the first MRI that you spoke about with the jury today of the knee was in 2018.

A Mm-hmm.

Q Would that help you make any determination with respect to causation?

A No.

Q It would not, right?

A I don't know. I mean, we should be asking the people that ordered the MRIs two years later and ask them their opinion.

I'm looking at a film. I see what I see and I report it. You're asking me whether it's causally related to something else, I don't know.

Q And so in a vacuum, you would agree with me it would be impossible, impossible, for you to issue any kind of -- opinion of any kind on causation with respect to a knee injury, when the films that you looked at were some 15 to 18 months after the incident of record.

Would that be a fair statement, Doctor?

A No.

Q No?

A I gave you an opinion. I think you're miscommunicating it. My opinion is I don't know. That is an opinion, I don't know.

Q You don't know, right?

A I don't know. It could be it, it may not be. I don't know how much more clearly I can be.

Q I'm going to ask you another question, Doctor.

A Yes.

Q So in this case, what MRI of the knee did you look at?

A I looked at -- the first one was September 16, 2021.

Q September '16 --

A I'm sorry. I looked at one in '18. I'm so sorry. Sorry about that.

The first MRI was done, when I looked at it, it was August 27, 2018.

Q Okay. So August of 2018, and the plaintiff's incident in this case, I want you to assume, occurred in September of 2016.

So that is effectively, what, about 18, 19 months afterwards.

Does that sound about fair to you?

A However, you calculate, yes.

Q So 18 or 19 months after that.

With an MRI of the knee taken 18 or 19 months afterwards, after the incident of record, would it be fair to say that would not be enough information for you to determine whether or not something that happened 18 or 19 months before is what you're seeing on the MRI film?

A Of course it wouldn't be, of course.

Q And you've seen no MRIs in this case that predate that September -- excuse me, that August 2018 MRI of the knee; is that correct?

A That's correct.

Q So no radiological correlation of a knee injury from any point in time, from September of 2016 all the way up to August of 2018; is that correct?

A I haven't seen any.

Q And you also looked at some studies with respect to the spine, right?

A Yes.

Q We'll get into those in a little bit.

But, Doctor, what's the earliest spinal film that you looked at?

A I think it was January 25, 2018. January 25, 2018.

Q Okay. So January.

And before I ask you another question, Doctor, you would agree with me that an MRI, a CT scan, an x-ray, those are

effectively -- they're -- it's like a snapshot in some ways, right, it's the way something looks on a particular day; is that fair?

A Sure, of course.

Q Okay. So with that in mind now, Doctor, September -- September of 2016, date of accident, right, and the first film that you looked at with respect to the back is January of 2018. So that's about 15 months later.

Does that sound right?

A It sounds right.

Q So same question with respect to the knee: You would not be able to form any opinion on causation with that information in mind, right?

A The opinion is I don't know. That is an opinion. It may be. It may not be. I don't know.

Q Okay. Now, Doctor, earlier, you had testified, and I think we're going to come to some stuff that we agree on here.

MRIs are really good at seeing soft tissue type things; is that correct?

A Correct.

MR. DANIELSEN: Your Honor, I'm going to step over here if that's okay for a moment.

THE COURT: Sure.

MR. DANIELSEN: Sorry. I keep bumping into you. I apologize.

Can I deem this marked. This is an example. I'll show it to counsel.

THE COURT: Please.

Okay, we'll deem it marked as Defendants' Exhibit D for identification purposes. It's a model.

MR. DANIELSEN: I can hand it up.

THE COURT: No, he's coming.

MR. DANIELSEN: Thank you.

(Defendants' Exhibit D, Model, for identification as of this date.)

Q Doctor, I'm going to call you what I effectively call Vinny the vertebrae here, okay. This is a model I keep in my office.

What is that, Doctor?

A It's a model from your office.

Q That's a good one.

Forget I told you it's a model from my office.

What is it really?

A It looks like it's a vertebra, two vertebra and two discs with nerve roots coming out of the sides and a spinal cord going down the middle.

Q And this was effectively what we were looking at on all of those studies before, right?

A Effectively.

Q And, obviously, of course, this is just a model, it's

not Mr. Martinez's spine.

But this, anatomically, does this model look correct to you?

A It does.

Q So, Doctor, on that piece of spinal segment that you're looking at there, can you identify for the jury where the never roots are?

A Nerve roots are orange.

Q And they come out of the canal that in cases, the thecal sac which holds the spinal cord; is that fair?

A Yes.

Q Okay. And the little hole that they come out of, that's the -- to the side there, what is that?

A That's the neuroforamen.

Q Now, Doctor, you talked a little bit about intervertebral discs.

Can you point that out to the jury on there.

That's the little rubbery cushioning, correct?

A Correct.

Q So on that model that you're holding, we've got some bony structures, right.

And what are those, the bony structures in between the discs?

A They are vertebral bodies.

Q Literally just bone, right.

A Literally bone.

Q So when you've got a CT scan, CT scan, you would agree with me, like x-rays, are really, really good at seeing bony structures, things like that, correct?

A Yes, that's correct.

Q And would you also agree with me that MRIs are significantly better at seeing soft tissue sort of things, like intervertebral discs, like the components of the spinal cord, like the nerves that come out through the foraminal openings, right, all of that stuff, the soft tissue stuff, the MRI is much better at seeing that, correct?

A I agree.

Q Okay. Now, Doctor, we had looked at before, and I'm going to come grab one of these.

MR. DANIELSEN: Your Honor, if I may. I'd like to make reference to one of the blowups.

Would that be okay?

THE COURT: Yes.

MR. DANIELSEN: Thank you. I have to find it here.

Q We looked at it. Doctor, I'll preface it for you.

We looked at before, the CT of the lumbar spine from 8/12/20?

A Yes. Whatever the date was, we did look at it.

MR. DANIELSEN: Let's see if we can find that

down here.

THE COURT: Just tell us what it's marked.

MR. DANIELSEN: I will.

It's marked Plaintiff's 3.

MR. VARGAS: That's the CD.

MR. DANIELSEN: Can we bring that back up, Plaintiff's 3. Guess we're not using the easel.

MR. VARGAS: What date?

MR. DANIELSEN: 8/12/20, Plaintiff's 3. Apologies.

THE COURT: Do you have much more, Counsel?

MR. DANIELSEN: No, I do not, Your Honor, actually.

THE COURT: They want to see Plaintiff's 3.

MR. DANIELSEN: And if we can, can we switch to the sagittal view.

Q All right, Doctor.

So you recall looking at this study before with plaintiff's counsel?

A Yes, sir.

Q And now, there's blowups here in the courtroom, and we've got a whole bunch of these on the computer.

Would I be correct in assuming that you had some conversations with plaintiff's counsel about which films you wanted to show today in court to the jury?

A I had a conversation with that gentleman there about five minutes before walking in.

Q And you told him which particular views you'd like to look at, so you chose them?

A Yes, sir.

Q So one of the films or the film that you chose to show us was the CT scan of 8/12/20, correct?

A Yes, sir.

Q All right. And when you reviewed that CT scan, and I've got your report, I think you had indicated that you saw a disc bulge, correct?

A Yes, three disc bulges.

Q And particularly at L5-S1?

A It doesn't say "particularly." It just says three disc bulges.

Q So I'm going to ask you to ignore the other bulges for a moment.

L5-S1 you found a disc bulge, right?

A Yes.

Q And a disc bulge is when that little jelly material is bulging outward and making contact with the nerve; do we agree with that?

A No, it doesn't have to make contact with the nerve. It just has to have a partial tear so the jelly material is pushing against the annulus.

Q I apologize. And I agree with you.

The bulge would be that jelly material kind of bulging outward, correct, beyond the confines of bony structure, right?

A Yes.

Q And instead of being concave, it's sort of oval, at that point?

A I'm not sure about that terminology.

Q Well, the material that we're talking about bulging, you'd call that soft tissue material, correct?

A Yes.

Q The type that MRIs are really good at seeing?

A Yes.

Q And then the thecal sac and the nerve roots, those are also soft tissue materials, correct?

A Yes.

Q The kind that MRIs are really good at seeing?

A And CT. But, yes, MRIs are better.

Q MRIs are better, we would agree?

A Yes.

Q And things like blood vessels and the like, also consider those soft tissue?

A Yes.

Q And, again, MRIs would be better at seeing that sort of stuff, you would agree, than a CT or an x-ray?

A Yes.

Q Okay. So there is also an MRI from 8/12/20.

Are you aware of that?

A Yes.

Q Okay. And on that MRI, as opposed to finding nerve root impingement or finding any impingement on the nerve root, it just simply says, "impinging upon the anterior epidural fat" --

A Yes.

Q -- "and thecal sac."

A Yes.

Q So we didn't see that MRI, did we?

A No, we didn't.

Q Okay. So --

A We can.

Q If the MRI is better at seeing all of those structures, right, and why did we see the CT scan for that as opposed to the MRI?

A I don't know. We can show the MRI right now. I'm here to show it. I'm here. Let's show it.

Q So the question I have is --

A Let's show it.

Q The question I have is: On the CT scan, okay, what do you say for 8/12/20 with respect to L5-S1, what do you say, in your report?

A I say there's a disc bulge impinging on the anterior

epidural fat abutting the bilateral extrathecal" --

THE COURT REPORTER: Excuse me.

THE WITNESS: Oh, sorry. I'm sorry.

Q No, no. I'm asking about the CT scan.

What do you say from the CT scan, Doctor?

I apologize.

A That's where I'm reading from.

Q Okay, go ahead. Read that, Doctor.

A Disc bulge -- "at L5-S1, disc bulge impinging upon the anterior epidural fat abutting the bilateral extrathecal S1 nerve roots, right grant and left."

Q Okay. And then what do you say on the MRI?

A "Disc bulge moderately impinging upon the anterior epidural fat."

Q So slightly different, right?

A Yes, slightly different. But I'll show it here on the nerve root.

Q That's okay, Doctor.

MR. DANIELSEN: I have nothing further, Doctor. Thank you.

THE COURT: Thank you so much, Mr. Danielsen.

Counsel?

MR. VARGAS: No further questions, Judge.

THE COURT: Thank you so much, Doctor.

You may step down.

Can you step up, Counsel, please.

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

THE COURT: Okay. Members of the jury, I am aware that we have scheduling issues, and we are finished for the day, actually.

So I am going to allow you to go, dismiss you with the directive to return Tuesday morning at 9:30. So that means we're going to be off tomorrow. Monday is a holiday. And so I'll see you Tuesday morning, 9:30.

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

(Continued on the following page...)

THE COURT: Have a great weekend, and I'll see you on Tuesday.

If you have any questions you can tell the court officer. She'll relay them.

THE COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exists the courtroom.)

(Whereupon, Court is recessed and the case is adjourned to Tuesday, January 21, 2025.)

* * * *

Certified to be a true and accurate transcript of the stenographic minutes taken within.

_____

Michelle Cox
Official Court Reporter
Bronx County