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

----------X

INOCENCIO MARTINEZ,

Plaintiff,

-against- Index No: 21590/2018E

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

Defendants.

----------X

Bronx Supreme Court
851 Grand Concourse
Bronx, New York 10451
January 30, 2025

**B E F O R E:**

HONORABLE ALISON Y. TUITT,
Justice of the Supreme Court

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

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SIOBHAN LYONS
Senior Court Reporter

THE COURT: Please be seated.

Okay, and I'm not sure what number we're are at.

MR. VARGAS: For Plaintiff, we're at 22 and FOR Defendant we're at X.

THE COURT: But I think this is going to be marked as a Court Exhibit. So, V and VI are the proposed handwritten interrogatories, VIIA and B are the Defendant's request to charge and proposed verdict sheet and VIII is the Plaintiff's request to charge and verdict sheet, VIII-A and B.

MR. VARGAS: Okay.

THE COURT: And now IX-A will be, no, just IX, is Defendant's motion to preclude the testimony of Dr. Grimm and to strike the claim for future medicine expenses. That's gonna be IX and this is gonna be X, which is opposition with case law. It's gonna be Plaintiff's opposition.

(Whereupon, the Defendant's Motion to Preclude was marked as Court's Exhibit IX for identification by the Reporter)

(Whereupon, the Opposition with Case Law was marked as Court's Exhibit X for identification by the Reporter)

THE COURT: I didn't change anything on the verdict sheet. This is just something you can use to --

MR. VARGAS: The name of Jose Del --

THE COURT: Yeah, I didn't change it, but you guys know. I will print it out before I give it to the actual jurors. This is just for demonstrative purposes, something to use. I know some attorneys like to go through it with the jurors.

So, you just found that one, and that shouldn't be question seven, it should be question one, two, three, four, correct?

MR. VARGAS: Correct.

THE COURT: Correct, Counsel?

MR. DANIELSEN: Yes.

THE COURT: And his name should be Inocencio Martinez and I will make those changes, okay?

With respect to the motion, Defendant's motion to preclude the testimony of Dr. Grimm, as well as the future pain and suffering, I have read both the motion papers with exhibits, as well as Plaintiff's motion papers, and I agree with Defendants, to the extent that Dr. Grimm did not make the best witness with respect to his knowledge of the statistics or the cost of various procedures and or modalities.

However, he did testify as to what those costs would be, notwithstanding he didn't make an accurate or an assessment to check the veracity of the physicians or the others that he consulted with, namely ^ Jode Galfin, I

believe that was her name.

He did, nonetheless, have enough, I believe, to not grant your application to preclude his testimony, nor to preclude the submission of the future pain and sufferings to the jury. It's great fodder for summations, but I don't think that it is speculative at this time and not with -- or, more notable, there is no objection.

There was no objection to his testimony and he was certified as physiatrist and someone who does life care plans. So, for those reasons, that is going to be my ruling with respect to Defendant's motion and, of course, you have exception to it.

MR. DANIELSEN: Your Honor, in light of the Court's ruling, we would request the inclusion of a missing witness charge for the economist that was designated by Plaintiff and was subsequently not called following Dr. Grimm's testimony.

THE COURT: Counsel?

MR. VARGAS: Well, then I would ask for a missing witness for their vocational rehab person who wasn't called and I would say Dr. Goldman was cumulative as far as what he would offer for testimony.

MR. ZIZZAMIA: Judge, the vocational rehabilitation expert was retained in connection with the Plaintiff's lost wage claim, which was withdrawn. We had no reason to put on

a witness to rebut a claim that's not been made or has been or has withdrawn, discontinued, in the case.

The claim for future medicine expenses has not been withdrawn. That was the purpose of the economist testimony and it wouldn't be cumulative, unless the economist was going to testify, but the cost of future medical expenses are exactly the same cost that Dr. Grimm says they are. A quick review of 3101D shows that's anything but the case.

THE COURT: Counsel?

MR. VARGAS: Their vocational rehab person should have been called, my -- the Plaintiff was still testifying as to how he would -- he was trying to go back to work and it would have been relevant to cross-examine him with vocational rehab person to say he can go back to work and this is what he's qualified to do.

THE COURT: Well, in light of the fact that there is no lost wages claim in this case, I believe that the life care planner was sufficient to make out the claims of future medical expenses and there will be no necessary need for the economist and it would have been somewhat cumulative.

I have not gotten a chance to read this CV of the economist, it hasn't been provided to the Court, but I would imagine that his predictions or his opinions go towards the future wages or the opportunity that Plaintiff would be able to work.

MR. ZIZZAMIA: No, it actually only speaks to the cost of future medical care. The 3101-D is limited to that exclusively.

THE COURT: I have not had the opportunity to see it, that what I'm saying, so I can't necessarily speak to it.

MR. ZIZZAMIA: That's the whole thing, he's not just drawing a straight line of projection, like Dr. Grimm did in his testimony, but he's indexing it to his own recommended inflation rates to reach a, you know, to further increase its overall value. So, it's specifically with respect to future meds that Dr. Goldman was scheduled to testify.

THE COURT: Again, I do not have Dr. Goldman's report. I don't have his CV, I don't know what Dr. Goldman was supposed to testify to. So, I can't speak to it and make a missing witness charge, because I don't have any of the papers to review.

MR. ZIZZAMIA: Can we have an opportunity to provide it to you and you can take a look? I can ensure you of what I'm representing as to what his claim 3101-D claim is accurate.

THE COURT: I'm sure, Counsel, that what you are saying as an Officer of the Court, that you are making a correct representation, but this is all new with respect to

a missing witness charge. You knew they weren't going to call the economist, they had no intention of calling him. We've been going through our witnesses since last week.

A missing witness charge was supposed to be brought before the Court. The intention of asking for the missing witness charge is supposed to be brought as soon as the movant is ready or knows that it would come up as an issue.

Now, on the day of summations, that you're going to ask for a missing witness charge, is a little untimely, I think.

What do you want to say?

MR. DANIELSEN: Your Honor, the outcome of the motion that we brought to the Court's attention, obviously, would heavily impact upon the request for the missing witness charge. So, putting the missing witness charge before that motion would be sort of like putting the cart before the horse.

I understand in the typical case, when a jury is allowed to opine on future meds, they hear from both a life care planner and an economist and a life care planner, any time I've seen them on the stand, Your Honor, future meds able to talk about their methodology, you know, they're able to talk about how they arrive at the numbers, they're able to site to reliable sources. We didn't get any of that from Dr. Grimm here. He told us he went to a government website

and he also told us that he spoke with Jodi Gelfand, this other alleged life care planner that we know nothing of.

THE COURT: As well as, he spoke with the other physicians that were treating.

MR. DANIELSEN: He testified that he spoke with them about the care and you'll note, Your Honor, we're not seek to preclude his testimony with respect to the items of care that he outlined. That wasn't the basis at all. He's a doctor, he certainly can opine with his training and expertise on the need for future care. I could disagree with it, as I did, I cross-examined him on it and, of course, that's proper, but this motion, our motion here, limited to just one issue and that's the price points.

It's a very, very, very narrow issue and the price points here, this witness that was sat on the stand, he was cross-examined, he was given an opportunity to speak to his expertise, he was given an opportunity to speak to how he arrived to -- how he arrived at his conclusions. He was he was quizzed on it and he could not provide the name of the website. He only could say it was a government website, he listed Jodi Gelfand. He was able to -- he had not seen any of the medical bills in the case and, so, Your Honor, at that point, you know, we continued the cross-examination and then we find out, later on, that in a case just a year later, he set a completely different price point for the

same item of care. The standard that --

THE COURT: Well, I remember you asking that and I don't know the particulars of that case. It was just a hand surgery. I don't know if the surgery --

MR. DANIELSEN: Granted --

THE COURT: -- or the treatment was the same, but I will say that all of this that you are arguing is something that you could argue on summation. I don't think that it has met the standard of being precluded, as a matter of law.

I believe that it is something -- fodder for argument on summations, but, however, I do not think that it's proper to preclude his whole testimony based on the argument of speculation.

MR. DANIELSEN: Your Honor, and I'll rest on the last point here, if I just may, Your Honor.

THE COURT: Surely.

MR. DANIELSEN: So, you know, the standard that the cases that we cited speak to is reasonable certainty and reasonable certainty is understood to be higher than preponderance of the evidence. It is akin to clear and convincing evidence. That is the standard that the testimony is supposed to reach before it goes to the jury and the purpose of that is so that the Court, as a gatekeeper, can avoid, avoid, having the jury opine on issues that are purely speculative and the cases that we

site are almost exclusively cases in which the Court permitted the jury to opine on speculative testimony from a life care planner in which the Appellate Division subsequently reversed on that issue, because there was insufficient basis for the opinion from the expert.

And, again, Your Honor, I have seen a lot of life care planners on the stand, I've crossed life care planners in the past. I have, in my career, never seen a life care planner that was as ill prepared as Dr. Grimm to speak to how he arrived at his conclusions. The methodology of an expert is central, it is critical, to their role as an expert. Otherwise, we could just have a lay person sit on the stand and recite something that they read somewhere and that's effectively what he did.

Effectively, he sat on the stand and said, I don't have any expertise in this area, I conducted no independent research, I have no training in economics or price points, I have taken no steps to look at the veracity of the data that I'm bringing to the jury. None. I've done none of that. What I did was I looked at a website that is book marked in my browser and I spoke to someone else who was an expert.

By that standard, I could call a college student or a high school student. I could ask this them to look at a website, pick out some price points and then they could sit on a stand and say to the jury, a hand surgeon costs $500.00

or it costs $250.00 or it costs anything, and that's the problem, Your Honor, because we, by allowing this to go to the jury, we are allowing the jury to opine on something for which there was no actual expert testimony given. It was a lay person on that particular issue.

Dr. Grimm is a doctor. He is an expert in medicine, but is not an expert on this and he proved that while he was on the stand.

THE COURT: Thank you, Counsel. However passionate you are about this issue, I did take a look at his testimony and it's not controverted, no one said he wasn't an expert. We knew he was going to be testifying with respect to future medicine costs. You could have done a voir dire when we were going through the process of letting him testify as an expert witness, you could have voir dired him to see what his qualifications were. You had his report ahead of time.

So, we knew what he was going to testify to and what his standards were and his methodology. So, as much as I agree with you on his sparseness of credibility, I don't think that it rises even to the clear and convincing standard for me to take it away from the jury's purview.

So, like I said, you have an exception to my ruling.

MR. DANIELSEN: Thank you, Your Honor.

THE COURT: And is there anything further that we

need to clean up before we let our jurors come down?

MR. DANIELSEN: Your Honor, we didn't formally rest, but I do intend to publish three pleading items to the jury.

THE COURT: Three?

MR. DANIELSEN: Three items from the docket, I intend to publish.

THE COURT: Okay. Have you shown them to Mr. Vargas?

MR. DANIELSEN: I haven't, but I can, and I have the original summons, the amended verified complaint and the request for the preliminary conference. I just intend to publish them as electronically filed documents in the case.

I'll hand them over to Mr. Vargas.

MR. VARGAS: I would object.

THE COURT: What's your objection?

MR. VARGAS: Well, none of these were prepared by the Plaintiff, future meds legal documents, they can be misconstrued from a lay person reading them, they add nothing to the case.

THE COURT: I don't know. I mean, they are the basis of your lawsuit.

MR. VARGAS: Did you want to see them?

THE COURT: Yes. These are pleadings, right? What are these?

MR. VARGAS: A request for a preliminary conference, a verified complaint and a summons.

THE COURT: I don't know. By what basis would you like these to be introduced into evidence?

MR. DANIELSEN: Your Honor, both complaints set forth -- the two complaints cited set forth a different version of the events. In the first version, a scaffolding hit the Plaintiff's hand, and in the second version, the Plaintiff fell from a height off of the scaffold.

So, we would like to publish those to the jury. They are pleadings in the case.

THE COURT: They are pleadings.

MR. DANIELSEN: So, I mean, I think it's -- it would be hard to under -- it would be hard to comprehend that the Defendants couldn't show the two complaints, the two operative complaints, in the case to the jury.

And then the preliminary conference request, there's no -- there was another Plaintiff's firm that was in this case, they never filed a motion to withdraw his counsel, they never filed consent to change attorneys. The first appearance of the Gorayeb firm in this case is by way of this filing of the preliminary conference and I don't think that I have to fully explain why I might want to comment on that in my closing, Your Honor, but I think it's fair to do so.

THE COURT: Well, I think the testimony was that he was unsatisfied with his prior counsel and then he elicited counsel from the Gorayeb firm. So, I think that that's fair comment. That's not a problem. I don't see that a request for a preliminary charge would be necessary.

MR. DANIELSEN: It just shows, Your Honor, again without giving too much away, it shows the timing.

THE COURT: Well, you can say September 4th was the first time that we heard from the Gorayeb firm.

MR. DANIELSEN: Okay, Your Honor, as long as I can comment upon that.

THE COURT: That I don't see a problem with commenting on at all.

However, the verified complaint amended, I don't see the first one.

MR. DANIELSEN: Oh, I handed up both. Did I not hand up both, Your Honor?

THE COURT: I did read a summons. Maybe it was a complaint that --

MR. DANIELSEN: I apologize. Your Honor, so, I handed you one --

THE COURT: Oh, yes, I see. I have the summons and you are wanting to do that because it says he --

MR. DANIELSEN: Yeah, so, Your Honor, if you look through the first -- if you look at the original summons

dated February 2, 2018, paragraph 37 reads in sum and substance:

Plaintiff was carefully working on the premises. He was caused to be struck by --

THE COURT: Slow it down.

MR. DANIELSEN: Sorry about that, Your Honor.

Paragraph 37, Your Honor, of that document reads:

That on September 6, 2016, while Plaintiff, Inocencio Martinez, was lawfully and carefully working upon said premises, he was caused to be struck by a scaffold that fell on him by reason of the negligence of the Defendants.

And then the amended verified complaint that was filed in June of 2019, if you go down to paragraph 36, it then says:

That on September 6, 2016, while Plaintiff, Inocencio Martinez, was lawfully and carefully working on a scaffold at said premises, he was caused to fall from said scaffold.

A complete change and, so, Your Honor, these are pleadings that were filed in the case. I believe that it's fair to publish the operative pleadings in the case to the jury.

THE COURT: Mr. Vargas?

MR. VARGAS: The same objections I stated earlier. A lay person interpreting what's in a legal document that

wasn't prepared by our client, I think it's prejudicial to my client. He didn't verify it and what the attorney puts in the complaint is not definitive as to how the accident occurred. It's an allegation that started the lawsuit.

It kind of reminds me of a lawsuit we started this case arguing about, a RICO lawsuit, where there's just allegations, unproven.

THE COURT: I didn't go there. So, you did, okay?

MR. VARGAS: It just reminded me.

MR. DANIELSEN: Which lawsuit is that?

THE COURT: Okay. I didn't go there and I've been very careful not to.

However, the complaint is not verified by the Plaintiff, the complaint is verified by the attorney, and I just think that what someone brings in a lawsuit, you can plead various different allegations, so, I'm not gonna allow you to say that. There's been plenty of testimony that contradicts what how the accident happened and I don't think this is necessary.

However, you will be able to allowed to speak on it or comment on that, that the Gorayeb firm was not introduced into this case until September 4, 2018.

MR. DANIELSEN: Thank you.

THE COURT: And these are part of the marked pleadings. Do we have the marked pleadings?

MR. ZIZZAMIA: I believe they're marked Court Exhibit A.

THE COURT: Oh, they are? Is that what A is, marked pleadings? Okay. Great.

All right. Is there anything else?

MR. DANIELSEN: Your Honor, I have to make a few adjustments to my closing, based on courts rulings.

THE COURT: Okay.

MR. DANIELSEN: And I also have to change a couple of slides in a PowerPoint that I was going to run while I close. So, I don't mind if we charge the jury, but would it be permissible if I were to start my closing after lunch so that I have the opportunity to do that?

THE COURT: Is there any problem with that?

MR. VARGAS: I think we should get going. By the time we get to closings, it's time to go, if we start after lunch.

THE COURT: You can start this morning, unless you're gonna have more than an hour.

MR. VARGAS: No, no, I'm saying starting after lunch is the bad idea.

THE COURT: No, no, no, I'm not gonna start after lunch.

MR. DANIELSEN: Can I have a brief fifteen minutes to work on this then, Judge?

THE COURT: Absolutely. Well, you're gonna take more than an hour. We might have to start after lunch.

MR. DANIELSEN: Yeah.

THE COURT: Yeah, I believe, actually, I know that you're gonna take more than an hour.

MR. DANIELSEN: I don't know why you'd say that, Your Honor.

THE COURT: The technology is just gonna take more than an hour. Why don't we allow you to put your --

MR. DANIELSEN: I don't need much time.

THE COURT: Did you have something else that you wanted to say?

MR. DANIELSEN: No, Your Honor. That was what we were seeking, to offer those three documents.

THE COURT: So, there's nothing else that you wanted to state or say to the jurors?

MR. DANIELSEN: Nothing that's not, of course, in the record already, Your Honor. I think, at this point, the defense, with exceptions on the prior ruling, we rest.

THE COURT: You rest, okay.

So, we want to start after lunch with respect to -- because it's now 11:35. You're gonna need until 12 to make your adjustments?

MR. DANIELSEN: Yes.

THE COURT: If that long. I don't see if you're

gonna be able to finish before lunch.

MR. DANIELSEN: No, I doubt it, Judge.

MR. VARGAS: Now he admits he'll go longer.

THE COURT: I know it's not going to take an hour. Okay. I'm gonna let the jurors go to lunch then. I'm sure they're gonna appreciate that.

MR. DANIELSEN: Thank you, Your Honor.

THE COURT: Two o'clock, Counsel. Two o'clock Counsels. Mr. Danielsen, two o'clock?

MR. DANIELSEN: Absolutely, Your Honor. I'll be ready to go right at two.

THE COURT: Okay. All right.

MR. DANIELSEN: Thank you, Your Honor.

THE COURT: Thank you, Counselors.

(Whereupon, a lunch recess was taken)

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A F T E R N O O N S E S S I O N

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COURT OFFICER: Come to order.

THE COURT: Can we mark Court's Exhibit XI?

(Whereupon, the Verdict Sheet was marked as Court's Exhibit X1 for identification by the Reporter)

COURT OFFICER: So marked.

THE COURT: Okay. Thank you so much.

We're gonna let them in.

COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury entered the courtroom)

THE COURT: Good afternoon, members of the jury. Please be seated.

I apologize for this morning. I thought we would be ready to start this morning, we had some more housekeeping matters to attend to, but now we're ready to go.

So, Defendants, have you rested?

MR. DANIELSEN: Yes, Your Honor, the Defendants rest.

THE COURT: Okay.

Now, the Plaintiff has rested, as well as the Defendants. We are now going to hear summations of the parties.

Counsel?

MR. DANIELSEN: Thank you, Your Honor.

Ladies and gentlemen --

THE COURT: Are you mic'd up?

MR. DANIELSEN: Yes, I am, Your Honor.

Ladies and gentlemen, Madame Court Reporter, Your Honor, I always like to start this out by saying thank you. This is not easy, you know? You guys gave up about three weeks of your life. You came here, you were attentive and you really helped us in this process and we, the attorneys

in this case, the parties, we need you. And, so, sincerely, thank you. It's not easy to do this, so, thank you.

This was a long trial. It took time to get through, okay? It took a long time to hear the testimony of the Plaintiff. We submit to you that the Defense's case was maybe a bit shorter. We had our doctors over the course of a day, day and a half, and now we've rested and we're here to speak to you, you know, and, I'll admit, I may be a little long wined today, but I'm going to try to rein it in a bit.

Two themes in this case. Two themes in this case that I would ask you to focus on, from here straight through into the deliberation room, and at the point when you return a verdict to the courtroom.

Truth and common sense. There are a lot of doctors that came in here. There were a lot of paid witnesses that sat on the stand. They gave you their expert opinions. Not I'm not suggesting that you discredit them, but I am suggesting that, at the end of the day, why you were picked for this jury and what we need of you is for you to utilize your common sense in rendering the verdict.

Now, before I get ahead of myself, I am going to just take a second and I'm going to set this timer here and it's set for thirty minutes and we'll talk about why I set that timer for thirty minutes when it goes off, okay?

THE COURT: Mr. Danielsen, just make sure that your mic is picking you up.

MR. DANIELSEN: Now, in this case, Plaintiff had some different attorneys earlier on. There was another firm involved in this case before the Gorayeb firm took over and I would submit you to that at that point in time, consistent with what we saw in the emergency department records from North Central Hospital, this case was about a bump on the hand, a laceration, okay? It wasn't about a fall from a height, okay? It wasn't about a knee injury, it wasn't about a back injury.

When the Plaintiff appeared in that -- in that emergency department, he had a Glasgow coma score of fifteen out of fifteen. You heard testimony about what that means. Fully neurologically intact. Totally inconsistent with someone who had been unconscious for thirty minutes.

This case started out as a case about a simple bump on the hand and a superficial laceration. That's where we started and then, after, after that, there was a course of treatment of -- a two year course of treatment at CityMD. You've seen me hold these records up many times during this trial. CityMD records seem to be the forgotten piece of the case by the Plaintiffs. It's the part of the case that they seem to want to walk away from.

Doctor Dr. Grim never saw the CityMD records. Dr.

Kaplan, it wasn't in his report and then when he showed up, he had a CD with the records on it. It's been a long time since I've seen a CD. He had a CD with him, okay? Dr. Weinstein didn't see these records. These doctors came here, Plaintiff's doctors came here, to offer an opinion to you on causation, having not taken those records into consideration. I submit you to that common sense will help you find an answer as to why.

They also seem to be very willing to ignore the emergency department records. They seem to be very willing to ignore the records that are on the screen in front of you right now. Two years of treatment in a very clear emergency department record, all seemingly ignored. Again, why?

Perhaps a good reason why might be the list of the version of events that we found through the review of those CityMD records.

On 9/6/16, North Central Hospital, we have our record. At work, reaching for a scaffold, when a piece of sharp metal hit the top of his hand.

Then, 9/13/16, at Jacobi Hospital, scaffolding fell on hand at work, not experiencing pain, patient has taken off the splint prior to today. This last one has the jury scoffing, us and the jury, scoffing together. You have to be kidding me, right?

One week later, one week later, the splint is off,

he's not experiencing pain. That's ignored. That's ignored.

10/27/16, a platform fell on me while I was working.

10/24/16, CityMD, scaffold fell on my hand, fell backwards.

11/7/16, pushing the scaffold when the metal part fell on his right hand and patient fell backwards.

11/7/16, CityMD, a metal plank swung loose and struck his hand causing him to land on the scaffold.

2/1/17, CityMD, patient states that a wheelbarrow fell, moved to get out of the wheelbarrow and sustained a blow to his right hand. Now there's a wheelbarrow.

4/3/17, CityMD record, pushed the scaffold that fell on his right hand.

5/5/17, scaffold fell on the right hand.

10/16/17, Worker's Comp IME, climbed the scaffold, which was not properly attached and fell backward and a metal cable snapped and hit my right hand.

2/2/18, caused to be struck by a scaffold that fell.

9/12/18, Dr. Grimm, a piece of construction debris hit him, causing him to fall backwards.

And then 11/5/18, Worker's Comp IME, fell from a scaffold 16 feet and lost consciousness for thirty minutes.

And then, finally, he came here and testified that he fell 17 feet. That is the progression. He started out with a bump on the top of the hand and we ended up, two years later, with a fall from 17 feet and a thirty minute loss of consciousness.

None of this, none of this, was significant to the Plaintiff's experts that came and sat here. This was all discounted. Totally unimportant. Then, a funny thing happened. In the summer of 2018, something happened that reshaped this case.

In the summer of 2018, Mr. Martinez found his way to the office of Dr. Kaplan and within twenty days of that, he was now represented by a different law firm with the Gorayeb firm. The first firm, Bisogno and Meyerson, they're gone, never to be heard from again. Plaintiff had some story about this. They weren't getting it right, they weren't listening to him.

What does that mean? New lawyers knew doctors and, now, Mr. Martinez is free to tell a whole new story. He's free to tell the story that he came here and sat on that stand and told you all. He was free to abandon the two years of CityMD records rife with inconsistencies, free to walk away from that 2016 MRI that we never got to see. No one's seen it, not Dr. Kolb, no one. It's just gone, free to walk away from it. Free to walk away from the initial

emergency department record, which has this as a very minor incident, treated and released the same day with some over-the-counter medication. A non-event. A non-event. He was free to abandon all of that with new lawyers and new doctors. Off to the races, never to look back.

And after a switch to the new lawyers and after the switch to Dr. Kaplan, then we have the rest of the team come in. We've got Dr. Weinstein, Dr. Grimm and Dr. Kolb, who were all set to testify on yet another case involving another injured worker for the Gorayeb firm, just a week after this one, until it was adjourned.

You heard Dr. Weinstein on the stand say, yeah, I think I remember something about that. The rest of the doctors denied it, but Weinstein seemed to recall it and we walked through, with each of these doctors, their interrelationship and we walk through, with each of these doctors, just how many cases, miraculously, they seem to have with all the same Plaintiff's firm.

With Mr. Zizzamia's small defense firm, there are huge defense firms in this city, hundreds of lawyers. Mr. Zizzamia's firm is a fraction in size. Just a quick review of their active cases when we questioned these doctors about them; Dr. Kaplan, sorry, Dr. Weinstein, saw 50 of the 95 active Gorayeb cases in Mr. Zizzamia's office. Dr. Grimm saw 69 of those 95 cases, Dr. Kolb saw 79 of 95 and,

finally, Dr. Kaplan saw an astounding 90 out of 95. 90 out of 95.

I'm not a big believer in coincidences. That's an astounding number and, while Dr. Grimm admitted on the stand that he knows those other doctors, that he, quote, the words he used were, cross refers to them, well, Dr. Kolb said, I don't know those guys. Imagine that?

Just with this small sampling, 95 cases, where -- or 90 cases where Dr. Kaplan is involved, 79 of them, Dr. Kolb is involved. 38 cases where they all overlap and Dr. Kolb's testimony was, I don't know those guys.

Something that I thought was noteworthy and I wanted to sort of bring to your attention, because you all know who you got to hear from in this case, you all saw the witnesses that the Plaintiff chose to bring in. There is another significant list and it's the people that the Plaintiff chose not to bring to court, the People that the Plaintiff decided not to put on the stand, the People that the Plaintiff elected not to have speak to you about this case.

Toni Palmiotto, she's a physician's assistant at North Central Hospital. Her name appears all over the records. I checked, she still works there. We didn't hear from her.

Angela Frazier, she's a medical doctor, also still

works at North Central Hospital, has for the last twenty years. We didn't hear from her.

Carol Ellings, the court reporter from the first deposition that Mr. Martinez gave in this case, remember her? She got it wrong. She was another person that heard his version of events an got it wrong. That one is particularly noteworthy to me.

I've been a lawyer for some time and I've been to a lot of depositions, probably a thousand, in my, career maybe more, and I've stood up in front of juries in the past, like I'm doing here today, and there is always a court reporter sitting there and, I'll tell you, these folks are some of the most professional people I've ever come across. They run the courtroom. They're keeping the exhibits straight, they're keeping the testimony straight, they're producing transcripts that are critical to the cases that are in front of them. These folks are very good at what they do. They are highly trained and they take they jobs very seriously and I submit to you that it's insulting, it's insulting, to infer that Ms. Ellings didn't do her job properly and, of course, she wasn't brought in here to defends herself. She wasn't brought in here to explain her apparent lack of ability to take down what was said at that deposition. So, no, we didn't hear from her. Her name was assailed without her even being given the opportunity to sit on the stand and

say, no, that's not the case, that's not the case, I take my job seriously, I went to school for two years and I had to pass tests and it's difficult, it's hard work and I take it seriously.

You know who else we didn't hear from? Margarita Arias. She was the interpreter at that deposition. She didn't come here. Plaintiff didn't ask her to come to the stand. I wonder why?

You know who else wasn't brought in here? The helper, who apparently stood by while Mr. Martinez was unconscious for thirty minutes. A friend, someone he worked with, someone who could corroborate the whole story, someone who could come here and tell you yeah, that happened. Records be damned, that happened. Nope, he wasn't here.

I don't he represent the employer in this case. I know sometimes that can be a little confusing. I represent a school, my client is a school. My client hired Mr. Martinez's company to come and do some work, okay? So, I've got no control over the employer. That's not my client, okay? We didn't hear from them.

We heard a lot about how -- we heard a whole story about how, after this seventeen foot fall and thirty minutes of loss of consciousness, this heartless employer, who's never been brought before you, sent him on his way and said, don't dare file a claim and don't get medical attention. We

heard that whole story, but, again, we didn't hear from that person. That person wasn't brought in here to tell their side of it. They weren't brought in here to potentially corroborate what's in all of the medical records, okay?

And, perhaps, maybe the biggest one of all that we didn't hear from, I also thought was pretty noteworthy, two years CityMD, I don't want to bother you and run you through the list again, but all the versions of the events that apparently those folks got wrong, all those medical professionals at CityMD that got it wrong, you didn't hear from them. They weren't ask today take the stand. They weren't asked to defend this. They weren't asked to offer their testimony, given the opportunity to clear their names, because, apparently, they're making it up or not doing their jobs and recall taking proper histories. Apparently they're not doing what they're supposed to either, but they weren't given the chance to clear their name either.

I submit you to you, that if Mr. Martinez wanted the truth to come out here, we might have heard from someone who was involved in this case before the big shift in the summer of 2018. We might have heard from someone on the original crew, okay? We might have heard from one of those doctors that treated him for those two years, we might have heard from the helper, we might have heard from the court reporter, we might have heard from somebody from the

hospital. We didn't hear from any of them.

The only story, the only presentation that the Plaintiff wanted you to have is from the summer of 2018 forward, when Kaplan, Grimm, Kolb and Weinstein were on the case. The four doctors who had no problem ignoring two years of history and the very clear medical records from the hospital on the date of the accident. That's who was brought here.

I'd like to give the Plaintiff the benefit of the doubt for a moment here. He says that he fell 17 feet. I brought with me a telescopic pole to show you all exactly how high 17 feet is. I measured this out last night my wife thought I was crazy. 17 feet. Hold on. I'm not quite there. That's 17 feet in the air.

If Mr. Martinez is to be believed, he was at a height at or about the top of this pole. He then fell down on his back, he lost consciousness for thirty minutes, which was observed by a helper, and no one called an ambulance, no one was concerned that someone was unconscious for thirty minutes. Imagine that. We've all watched football games or sporting events where someone' unconscious for a minute or two, okay? Thirty minutes. Thirty minutes, from this height, way up there. That's the story that he came here to tell.

Then he goes to the hospital. Goes to the

hospital, is treated and released the same day. No workup of any kind for his back, no work up of any kind for his -- for his head, for his brain, where he just, allegedly, suffered a fall significant enough to knock him out for thirty, thirty minutes.

I brought up on this screen, because I've shown you the records from the emergency department on the day of so many times that I feel like if I show it to you again, you guys will, like, turn the screens off on me, but the Jacobi records are up here now and, within a week, he's fine. Within a week he's fine and, somehow, two separate hospitals, North Central and then Jacobi, he went in he told them all about his injured knee. He told them all about his seventeen foot fall where he lost consciousness for thirty minutes. He told them all that all of these body parts were in pain, but, for some reason, they selectively -- there's two options. They either selectively didn't treat anything but his hand, why? Why? Or they decided to ignore. Why?

We heard from doctors that testified in this case, okay? We heard from Dr. Weinstein, who conceded that, if someone were to fall from that sort of height, there would be an immediate workup protocol that, at the very least, would have required imaging to be taken into consideration. None of that was done.

You heard it, even further, from some of the

witnesses that appeared here on behalf of the Defendants, Dr. Klein, who spent many years working in affiliation with an emergency department at a Level One Trauma Center that we're bringing in injured people by medi-vac helicopters, explaining what sort of protocol would be required, standard of care required, required, not -- not if you feel like it, required, under the law.

Apparently, North Central Hospital said nah, we're not gonna make sure that this guy's head is intact after a thirty minute loss of consciousness, we're not gonna make sure that he didn't injure his back significantly in a seventeen foot fall, we're just gonna send him on his way with some over-the-counter medications. We're not gonna note it in the records.

And then a week later, Jacobi Hospital, a different hospital, is gonna do the same thing? Why? Over and over and over again in this case the question comes up, why? Why? Why? Why? There's no good reason for that and, certainly, no one was brought hereby the Plaintiff to help shed any light on that.

I'm gonna put this giant pole down for a moment.

In this case, we all have our roles. I'm one of the lawyers. I get to make arguments to you and I get to help present the evidence in the case, that's my job. Her Honor will tell you what the law is, that is her job. She

is the final say, as far as what the law is, and I am in no way, shape or form gonna step on her toes, but I am gonna preview for you one of the charges that she will read in this case and I'm gonna tell you what it means or how to apply it.

It's kind of a funny sounding word, falsus in uno, falsus in omnibus. That charge will be read today and what it means, in really simple terms, is if somebody lies about one thing, you can assume that they lied about everything else. It's really plain. Think about that for a minute, if somebody lied about one thing, you can assume that they lied about everything else.

How many times in this case, while the Plaintiff was on the stand, were you left scratching your head? How many times in this case, while the Plaintiff was on the stand, were you left wondering how could that possibly be, the testimony I'm hearing right now? How many times did we see the Plaintiff contort and change the story? How many times did we see him adopt a new reality when it suited him? Over and over and over again. Falsus in uno, falsus in omnibus. You are permitted you will be instructed on this, and it will be your responsibility to take that into consideration when you're reaching a verdict in this case.

Mr. Vargas is a very good lawyer, and I have no ill will towards him. You know, you see us fighting in court

and we get up and object and we yell, but that's part of the job, and I tell you that he's a good lawyer because I know that he's gonna have to come up here afterwards and it's sort of a funny thing. Defendants always speak last, except the one time we want to speak last, which is on closing arguments, then we speak first. It seems unfair, but it's the way it is.

So, I have to sort of take a guess and wonder what Mr. Vargas will say on closing and I have some ideas of some of the things that he may come up here to tell you to try to explain away what happened with Mr. Martinez on the stand and what happened with all the records in the case and all the versions of events and the, you know, countless different changes, how we're gonna explain away how the Court reporter got it wrong and the law firms got it wrong and the two different emergency departments got it wrong. He's gonna tell you, well, the forms are written in English, the forms are written in English and Mr. Martinez, he just doesn't read English. You'll recall that he tried to bring some letters into court and he testified that he knew what those letters in English said, but, when it came to the forms, his English wasn't there.

You're gonna hear that he has only a grade school education and that's not a sophisticated man. I submit to you that the lessons of truthfulness and honesty are taught

very early in grade school. Very, very early. I believe they start that one in pre-K and kindergarten and, by fifth grade, it's solidly embedded. You do not need an advanced degree to know how to be truthful. You don't need a high school degree to do that. That is not something that you need education for. Truthfulness, honesty, those are traits that someone with no education can have.

You're gonna hear that he's not articulate, you're gonna hear that he gets confused, you're gonna hear that, somehow, no one else could understand him, except for Kaplan, Kolb, Grimm and Weinstein, although, sometimes, according to him, even they got it wrong. Okay.

He's gonna get up here and he's gonna tell you that he did what he had to do. He's got some stuff to explain away about working, right, working on those videos? He did what he had to do, he didn't want to feel like a loser in front of his family, he wanted to provide for his kids. You're gonna hear about all of those things and, that may all be true, that may be the case, but it's no substitute for honesty. It's no substitute for honesty.

I submit to you that there were multiple acts of dishonesty that were shown to us here in this case, okay? Multiple. I'm not gonna go through the whole list, because I don't want to keep you here for another day. So, let's just move through them quickly.

Mr. Martinez admitted that he submitted a fake ID to his employer. He told you he's got two names. Sometimes it's Jose, sometimes it's Inocencio, okay? He's gonna tell you that the reason for all of his -- or he's told you that the reason for all of his failings with the truth here are because of the doctors, translators, court reporters, lawyers or his Worker's Compensation attorneys, all of them, he'll tell you, and tell you that that's the reason why, right, and we're supposed to just go with that.

That's thirty minutes. That's thirty minutes. That's how long. That's how long. If Mr. Martinez is to be believed, that's how long he was unconscious for. That's how long the helper saw him lay on the floor and did nothing for him. That amount of time. We never heard from him, but that's Martinez's story.

I started to say it before, you know, I don't begrudge Mr. Martinez for needing to earn a living. However, the fact remains that he tried to tiptoe around this issue. He wasn't working when he was out on street, he was just helping. I think, in a company, those who help are called employees, but that was -- that was the distinction that he tried to draw there; standing outside and moving the boxes up and down and setting up the tables and standing there all day, that was not working, it was helping.

However, the fact remains, that while he was doing

that, he was also collecting Worker's Compensation benefits from his employers policy and, I submit to you, it's pretty clear that you're not supposed to be double dipping. Again, honesty.

And then, of course, the ultimate -- the ultimate acts of dishonesty in this case. The videos. We've seen these videos many times. I'm gonna speed them up a little bit here for you.

(Whereupon, a video was played for the Court and the jury)

MR. DANIELSEN: The videos. You watched Mr. Martinez on the stand try to twist and contort around the truth that these videos bring to bare. You watched him try to explain all of this away. You watched Mr. Martinez, over the course of many days, try to impart upon you that this, this isn't his reality. This is not his reality. His reality is the in-court reality. That's the reality that he tried to sell you, okay? That's what he wanted you to believe. The in-court Mr. Martinez, not the video Mr. Martinez, not the guy who can run across the street and run back no problem. The person who doesn't have the antalgic gait, okay? The person who has, pretty clearly, excellent mobility, terrific range of motion. He didn't want you to see that guy and apparently he didn't want his doctors to see that guy either, all right?

Dr. Grimm didn't see that guy, Dr. Weinstein didn't see that guy, Dr. Kaplan didn't see that guy. No one saw that guy. No one saw the guy that can flip this table around and set it up no problem. What we got was the in-court Mr. Martinez, not video Mr. Martinez. We didn't get that guy. We didn't get Mr. Martinez with a nice T-shirt, a side satchel, earring and jewelry. We didn't get him. Fresh T-shirt, new shoes. We didn't get that. Nope. We got the glove and the back brace protruding through. That's what we got. We didn't see this guy in court. That's not who we saw.

We never saw the guy who can carry a bin out of his house, over his head, with one hand, while holding a cellphone, walking down the stairs, cooly, with no signs of pain, no signs of struggle whatsoever. We did not see him, he didn't show up in court. That Mr. Martinez never came to court. He wasn't here. And when he sat on the stand, he tried to disavow video Martinez in favor of courtroom Martinez.

We never saw Mr. Martinez with perfect lifting form. Certainly didn't see that Mr. Martinez in the courtroom. We never saw cold-whether-ready Mr. Martinez, okay? We did hear, from Dr. Grimm, who tried to explain away these videos by saying he has good days and bad days and some times cold whether is worse and ex cetera, and

you'll recall I redirected Dr. Grimm on that point and I invited him to show us in his records where he had notations that Mr. Martinez has worse days when it's cold and, on the stand, he sat there and he was able to find none of those notations for you, okay? We didn't get cold-whether-ready Mr. Martinez. That guy never showed up in court.

We didn't get the Mr. Martinez that can flip a table around no problem and set it up. We didn't get Mr. Martinez who can walk down the stairs with a bin, with a smile on his face, no problem. We never saw a smiling Mr. Martinez in this courtroom. Nope. We didn't see Mr. Martinez who can jog across the street with ease with, as I admit, I even missed it the first time around, as Dr. Bazos pointed out, his incredibly well defined calf muscle, despite his complaints of ongoing problems with his back and knees, right? We didn't see that Mr. Martinez in court.

You know who else didn't see these many versions of Mr. Martinez? The doctors. Not the defense doctors, they didn't get to see that version. Not his own doctors. Luckily, you, the jury, you got to see out-of-court Mr. Martinez. You got to see what he really looks like in the real world. You got to see why the Defendants are standing here defending this case.

And, interestingly, you know, when we asked Dr. Weinstein about the video and out-of-court Mr. Martinez, he

said something interesting. He said he moved differently when he was in my office and he conceded that he looks pretty good. He looks pretty good.

Dr. Kaplan stood alone, amongst all the doctors, and told you, from the stand, as he sat here and testified, that he saw some problems with the way Mr. Martinez was ambulating. I won't even attempt to try to roll back the video and break down or ascertain how it is that Dr. Kaplan watched that video and saw some kind of a problem with the way Mr. Martinez was moving around and the other doctors, they also seemingly chose not to do that, but, Dr. Kaplan, he did.

And, of course, Dr. Grimm talked about the cold whether problems. He summed it up, I believe my patients. I believe my patients. Does he believe his patients? Or does he just choose not to look to where the contradictions might lie? Does he choose to turn a blind eye to the uncomfortable evidence? Does he choose to turn a blind eye to that, that he cannot explain away?

The Plaintiff's experts, as they came here and testified, and I've said it you to many times, CityMD records, I know you're sick of hearing it, they also largely ignored the preposterousness of this concept that he fell 17 feet. They ignored that. They ignored how injured someone would be if they fell 17 feet onto their back and lost

consciousness for thirty minutes, in favor of moving forward with the narrative. In favor of finding a way to causally relate all of these injuries back to what we know from the Bronx Central records was, effectively, a non-event.

You know, Dr. Kolb testified in this case and, Dr. Kolb, who, of those 95 cases in Mr. Zizzamia's firm, he's on 79 of them. He came here and he was the only doctor that seemed to find any sort of nerve impingement and, you'll recall, he didn't use the MRIs, which were the gold standard, right? You heard that the MRI is the gold standard for imaging when you're looking at soft tissue structures like nerve roots and spinal cords and discs. He didn't use that. He used the CT scan. Do you remember that? And I asked him why. Put it up on the screen, he said, put it up on the screen, put the MRI on the screen.

Well, we had it up on the screen, put it up on the screen with our doctors and, frankly, you know, a funny thing about the spine is, it's not so hard to look at, a spinal MRI, and I think, with the expert testimony that you heard here and the balance of everyone else that took the stand, it's pretty clear that those are pretty clean MRIs, okay?

Dr. Kolb is sort of a funny witness in this case. I think you might all recall that I'd asked him some questions about his prior partner and he told you all that,

if his prior partner, the person who can't speak for himself, if his prior partner was alive today, they'd be practicing in harmony. I think you all remember some of the things that his former partner said about him. We read them into the record fro his -- from the affidavit from his deceased partner.

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, in the summer of 2015, 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 and retiring. Indeed, one of the referring attorneys thought that I had retired.

And, then, finally, Dr. Kolb modified MRI reports generated more than six months before to include non-substantive modifications in order to enhance their value in personal injury litigation, in order to ingratiate himself with referring attorneys at the expense of my reputation.

Dr. Kolb, the only doctor in this case that seems to have found impingement on the nerve root that would explain the pain in Mr. Martinez's back, the only doctor, not Dr. Sherman, no one else, no one else could crystalize

that for you. Dr. Kolb, who used a CT scan instead of an MRI to make that call, is the same guy who sat up here and told you, thinking that he wouldn't be challenged on it, that he would be practicing with his former partner in harmony, despite those things. Pretty shocking.

Dr. Klein came in here and testified. I thought Dr. Klein -- I'm glad that we had him on the stand for you. I would submit to you that Dr. Klein gave very honest testimony in this case and I submit to you that you don't need an MD or a nursing degree or any sort of degree to follow the things that Dr. Klein said you to. All you need for that is common sense, because what he told you, though there was a lot of medical terminology and though he took the time to explain the medicine to you, was really rooted in common sense, right?

No MRIs to look at from the time of the incident, no contemporaneous complaints of back pain in any of these early records, right? No clear compression on the nerve root that would explain the radiating pain. Inconsistent EMG results where Mr. Martinez goes in and subjectively complains about left sided pain but, then, somehow, the EMG performed by Dr. Grimm shows bilateral pain. A discogram. A discogram performed by Dr. Grimm, which, again, requires subjective measures which, again, requires truthfulness from the Plaintiff. That, that's pretty clear. It's pretty

clear. A complete absence of any real evidence of contemporaneous back pain, back issues, at the time of MRI studies way after, way after, which don't show impingement on the nerve roots.

The knee. The knee is truly wild. CityMD records show absolutely no complaint of knee pain for months and months and months. Months and months and months. Dr. Bazos was on the stand and he explained, sure, you can have some degeneration in the knee and that could explain it, or you could have a traumatic event, but if you had a traumatic event, it would be incredibly painful, fast, you'd know about it right away. It' a weight bearing joint. You can't walk around on it easily. Where is the contemporaneous notices in these records of the knee pain and an MRI study literally gears afterwards where every doctor on the stand, you heard me use the snapshot, you heard me use the snapshot comparison, it's the way the joint looks on the day that the imaging was taken.

You heard Plaintiff's witnesses ignore, ignore, that gap. Ignore the lack of contemporaneous complaints. Ignore the lack of contemporaneous imaging studies and ignore the very, very questionable nature of the Plaintiff's testimony in favor of simply causally relating the knee to this incident. That, to me, was astounding.

Remember, falsus in uno, falsus in omnibus. That

doesn't just apply to the Plaintiff, it applies to every witness in the case. It applies across the board. Across the board.

The wrist. A bump on the top of the hand. A bump on the top of the hand and a surgical procedure that, Dr. Bazos explained, was related to a long-term, degenerative type situation in this man's wrist. Completely explainable. Completely explainable by the type of work that he did for years or months or however long it was. Yet, another straight answer we couldn't quite get from the Plaintiff.

The injuries in this case that the Defendants, that my client, the school, is here defending themselves about are not, I submit to you, not causally related to this non-event, this treated and released within a few hours, this trip back to Jacobi a week later with no problems, brace off, splint off, no complaints of pain. These things are not causally related.

We had a lot of testimony from Dr. Grimm on the future care plan and, you know, at the beginning of the case, Mr. Vargas, during his opening, he told you that you would hear from a Dr. Goldman, an economist. We didn't hear from him. Dr. Goldman wasn't called. Dr. Grimm's testimony went in, the Plaintiff's testimony went in. Dr. Goldman never took the stand. I wonder why. I wonder why.

Let's look maybe a little closer at Dr. Grimm's

testimony and see if we can figure out why Dr. Goldman might not have taken the stand in this case. First, he got on the stand and, there's not a lot of funny moments in court, but I thought this one was funny. He got on the stand and he told you, he told you that his expert opinion, his expertise in setting the cost of future care, setting the cost of medical treatments, it was based on two things, Jodi Gelfand, someone else, we don't know her qualifications, she wasn't brought here to testify. Jodi Gelfand and a government website. Remember that, the government website? Whatever that means. Who knows? Who knows? A government website that is saved as a bookmark on his browser that's the basis of his expertise.

I submit to you that that is no greater expertise than my ten-year-old at home who knows how to work a computer and can read numbers off of a screen. Anyone could have came here, sat in that chair and told you a future surgeon will cost this much and some knee injections will cost this much and, yeah, believe me, I looked at a website, it's from the government, it's good, it's a government website. I talked to Jodi, it's all good. It's all good, trust me. That's what he brought here, that was the expertise that he testified with. Jodi and an unnamed, unverified government website. No training in economics, no studies conducted in pricing for medical care, nothing.

Jodi and the government, that's what we got from him.

It was interesting, you know, Dr. Grimm does this a lot. He fought me a little bit on the stand, but I think you sort of got a flavor for just how often he writes these life care plans, and he certainly writes a lot of them for Mr. Martinez's attorneys. He writes so many of them, it seems, that he can't even keep his numbers straight. Because, in this case, in this case, he sat up there reading from his report, telling you that it was going cost $500.00 for a hand surgeon. Do you remember this? $500.00 for a hand surgeon.

Then we handed him a life care plan that he prepared, actually, after the life care plan in this case, and in that life care plan the hand surgeon wasn't $500.00 anymore, now it was $300.00. And then when I asked him how that could be he said, get this, prices, sometimes, they're going down. I'm not sure where -- I'm not sure where Dr. Grimm is shopping, I'm not sure what place he's living, I don't know where he is going to procure goods and services, but I don't think that prices have been going down. I think that prices have, at best, are staying the same and probably going up. I would submit to you all that you're probably paying more for milk and eggs and things like that than you were a few years ago, okay? I think that's pretty much the case universally. Prices go up, always. They never go

down. When was the last time that you walked in the store and said, oh, jeez, this is awesome, everything's cheaper today than it was last week, a month ago, two years ago? Would you look at that, my grocery bill is half, this is awesome. When was the last time?

That was his explanation. He could have just said what the truth was. I picked these numbers out of a hat, Jodi tells me something and I go look at the website, I talk to a few people, I throw some numbers down and I was a little sloppy on this one, I was a little sloppy on this one and I -- I just -- I threw five hundred on yours and threw three hundred on theirs. It seems a little unfair to me. I don't know why I didn't get the discount. Why didn't my client get the discount on that one?

Another interesting thing. He came here to testify. He came here to testify about the cost of medical care, but he didn't show up with his medical bills. He didn't have the bills for his own care, despite the fact, despite the fact, that he's been treating Mr. Martinez since 2018. It would seem to me, pretty reasonable, if we wanted to figure out how much the care in the future might cost, we could look at what the care is costing today. That would be a pretty good place to start. Except, that wouldn't work. Because, when we really got into it, we found out that, though a pain management doctor in Dr. Grimm's report and

what he told you cost $250.00, actually, what he was accepting for that was significantly less.

All these years, he was taking significantly less money to see Mr. Martinez and we certainly can't give you the lower number or even a fair number, we just gotta go with the biggest number we can find, the biggest number Jodi can come up with or the biggest number that the government website might have to offer. That what's what got here. That was the expertise that Dr. Grimm brought.

He testified about all of these injections. You heard point about the injections. Knee injections, trigger point injections, sacroiliac joint injections, epidural injections in the lumbar spine. According to Dr. Grimm, Mr. Martinez is going to live the rest of his life as a human pincushion, getting injections virtually daily. The numbers, the numbers, are shocking.

It's particularly shocking when Mr. Martinez testified that the injections aren't really helping and that he's not interested in getting any more. Yet, there are hundreds and hundreds and thousands of dollars of injections on this life care plan. The number is mind boggling.

The knee injections alone, okay? In six years, he's gotten one knee injection. One. According to Dr. Grimm, he's gonna get a 180 of them. 180. He's had one knee injection in six years. He testified it didn't work,

it didn't do anything for him, but Dr. Grimm is gonna give him 180 of them and ask you to provide $680,000.00 so he can go and get those injections.

You heard Dr. Bazos on the stand, when I told him about the $680,000.00 worth of injections and 180 injections, and you saw Dr. Bazos' look of shock and, frankly, horror, unequivocally, and these doctors, you know, all of them are pretty professional when it comes to one another. They try to be differential, they don't try to take shots.

You didn't hear me eliciting testimony from these doctors that Dr. Weinstein performed some wildly unnecessary surgery and you didn't hear that Dr. Kaplan's surgery wasn't necessary. My doctors came and, I submit to you, they told you the truth that the surgeries weren't related to incident, okay, but they didn't come up here and shoot at the other doctors, but that one, the injections in the knee, Dr. Grimm's 180 injections in the knee, Dr. Bazos almost fell out of his chair on that one. He couldn't hold it together and I believe he said something to the effect of, it might take over 100 patients or more to need 180 injections. That was shocking.

It went on from there. Trigger point injections, he's had twelve of them in nine years. Twelve of them in nine years. Dr. Grimm wants him to have four year -- 144

over the course of the rest of his life. This is a guy who said he's not interested in more injections. Sacroiliac joint, same deal. He wants him to have 260 of them or 216 of them. He's had three of them. He's had three of them in nine years. 216. Why? Because the numbers are staggering, we didn't get to hear how staggering they are because, after Dr. Grimm's testimony, we never heard from Dr. Goldman, never heard from him, but the numbers, they are staggering, and then in the lumbar spine, epidural injections, he's had two. He's had two. But he needs 40 more, according to Dr. Grimm.

I think, though, we don't know why for sure Dr. Goldman didn't take the stand, but I think we all have a pretty good idea why he didn't get up here.

And, again, I'm not gonna step on Your Honor's toes, again, but I think you are going to hear a charge that's going to ask you to exclude sympathy in this case, okay? When you go into the jury room, that charge, in simple terms, is they ask you to make your decision based on the evidence, based on the facts, based on what you saw here. You can take into consideration the things I say, but, you know, the real evidence, the testimony, that's what you focus on.

I'll tell you, it's sort of shocking to me here, the really poor effort put forth by the Plaintiff to conceal

what this is about and, one of the ways that I think he's hoping to conceal it, is through sympathy. What it's all about is money and greed, money and greed, and it's about securing a bigger score than he did from the Worker's Compensation payments he was obtaining while working and he's hoping, he's hoping, that, by showing you a different Mr. Martinez in court than the one that we see out in the world on video, you will feel sympathy.

I submit to you that's why he's doing it. I submit to you that's why he's had his children sitting in this courtroom throughout much of this trial, instead of having them in school. I submit to you that that is an attempt to elicit sympathy from you. A really, really poorly veiled one at that. And I would ask, I would ask, that you focus, not on the sad, in-court version of Mr. Martinez, and I would ask you to focus on the video Mr. Martinez, dressed nicely, walking around, smiling, laughing, running and living his best life. Exude sympathy. When you reach your verdict, I ask you, please, exclude sympathy.

You know, I said at the beginning of this case that it comes down to, or at the beginning of my closing here, that it comes down to truth and common sense. You heard from a lot of smart doctors in this case. Really good, really good, backgrounds, you know, Yale, Harvard, every Ivy League school known to man. You heard from these guys and

that's great, but this case really does boil down to common sense. It really does boil down to common sense and, after two or three weeks here together, all of the medical evidence, all of it, that's fine, but what this case comes down to is common sense, truth, honesty.

At the beginning, when Mr. Zizzamia opened, he told you two things. I wrote them down when he said them and I'm glad that he said them. He said that the records will show Plaintiff was not truthful about the accident. I think that the Defendants delivered on that promise over and over and over again.

Of course, you're the jury, all right? I said before, it's Her Honor's job to handle the law. It is your responsibility to handle the truth and facts. So, I can make my suggestions to you, but it's ultimately your job, your purview. Truth, facts, that's you guys, not me, but I submit to you that, the Defendants, we delivered on that.

The other promise that Mr. Zizzamia made was that the video will show that the Plaintiff is not being forthright, not being honest, about his true, physical condition, and what you saw here in the courtroom versus what he looks like on the outside. I submit to you we did that also.

There's gonna be a verdict sheet in this case. It's a piece of paper and, again, you know, Her Honor will

tell you precisely what to do with it and she's gonna go through what the questions are and I'm calling your attention to the first question on that verdict sheet and that first question is, was the accident of September 6, 2016 a substantial factor in causing Plaintiff's injuries?

The judge is gonna tell you, Her Honor will tell you, how to apply the law in this case and that will help you in answering this question. I am only showing you one of the questions, because, I submit to you, that there's only one question that should be answered in this case and it's question number one; was the accident on September 6, 2016 a substantial factor in causing the Plaintiff's injuries that he came here and told you about and, I submit to you, the answer is no. It is a resounding no.

I wasn't there for jury selection, but Mr. Zizzamia mentioned to me that he spoke to you and every lawyer probably asks this of a jury, they say, you know, are you a jury of people that can hear a case, hear from the judge what the burden of proof is, set a line and, if the Plaintiff gets 99 percent of the way to that line, but doesn't get the 100 percent that puts them over the line, can you send the Plaintiff home? Can you send the Plaintiff home? Everyone on this jury answered that question yes, I believe.

That's precisely what we're asking you, my client,

myself, Mr. Zizzamia, that's what we're asking you to do today. Send the Plaintiff home. Not because they got 99 percent of the way there, but because, I submit to you, they didn't even get close to 99 percent of the way there. Not even close. Not even close. Maybe further than 17 feet away, okay? Not even close.

Mr. Vargas goes last, I told you that before. I don't get to speak you to at the end, but, I submit to you, remember this image. Remember laughing, out-of-court Mr. Martinez. No issues, running around, happy as can be. Now, I suspect, again, Mr. Vargas is going to explain away all of these things. He's gonna have an answer for everything and then he's gonna ask you for millions of dollars.

He is going to ask you, on the record, in this case, because that's his job, on the record that was made before you, he is going to ask you for millions of dollars. I submit to you, in fact, I implore you, don't reward the dishonesty and award money in this case. Answer the first question in the negative, award zero, because that's what's fair and that's what's just. That's what's honest.

I'd really like to, again, thank you one more time. I appreciate it and thank you for listening to me today.

Thank you, Your Honor.

THE COURT: Thank you so much, Counsel.

Members of the jury, are you okay?

Mr. Vargas, do you want a moment?

MR. VARGAS: Yes, please, Your Honor.

THE COURT: Okay. Let's take a ten minute recess.

COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exits the courtroom)

THE COURT: Please step out.

(Whereupon, a short recess was taken)

COURT OFFICER: Come to order.

All rise. Jury entering.

(Whereupon, the jury entered the courtroom)

THE COURT: Please be seated.

We're he now going to hear from the Plaintiff, their summation.

Counsel?

MR. GORAYEB: Hi, everyone. If you recall, my name is /SKWRAEU /TKPWOER. I represent the Plaintiff and, before I begin, I just want to say thank you for being here and you're the reason why we get to do this kind of work and, honestly, it's kind of a dream to be before you right now talking. So, thank you.

So, you heard Defense Counsel say non-event. Whether or not Defense Counsel likes it, there's been an elephant in this room sitting right next to that desk casting a pretty large shadow, an elephant they haven't said or told you about, and that elephant is this, that their

client, not mine, their client, was found -- not found ten percent, not 20 percent, not 50 percent, but 100 percent responsibile for his accident. That is a fact.

An accident that caused him to go to the hospital on September 6, 2016 for treatment for his wrist. A hospital visit that was delayed because his boss told him don't go, don't get treatment, don't go to the hospital. I wonder why.

Now, you've heard all of these different accident histories. There's a lot of them. Okay. But what are the three things that remain consistent in every single accident history? That Mr. Martinez was working in construction, that Mr. Martinez was working at a site owned by their client and he was injured while working and he received medical treatment for an accident their client was responsible for. Now, that's a fact.

Now, it's no secret that Mr. Martinez is not an educated man. That's not his fault. He got six years of education in Mexico. He's not articulate, he has a hard time explaining himself. I've worked with him for some time and, it's hard to see, but, in this country, what's so great is that justice isn't just for the educated. Justice isn't for people with doctor degrees or for people with college degrees or people with high school degrees. Justice is for everyone. For people who don't look like Mr. Martinez and

for people who do. Justice is for everyone.

So, don't let people over here, who confuse him on the stand, making him contradict himself, saying all these things. Don't let them use his confusion as a shield.

So, let me say this. Let's let the medical records speak for themselves. Mr. Martinez, on the day of the accident, he went to the hospital. The hospital reported the injury to his wrist hand when a scaffold slammed into him, causing him to fall. Mr. Martinez, as I said, isn't educated, he doesn't understand the difference between a meter, a foot, a yard, no.

We don't have to live in a world of extremes. Whether he fell 17 feet or he fell right over. They want you to live in that world. If it's not 17 feet, what happened? He has trouble expressing himself. That doesn't mean he didn't fall over.

So, he went to the hospital and he had his wrist worked on. Now, in an ideal world, would he have had treatment to his back and knee? Yeah. But, we don't live in an ideal world. We fix people up the best we can and we send them out to specialists and that's exactly what they did, they sent him to doctors to treat his back, his knee, and, eventually, he made his way to Dr. Kaplan, Dr. Grimm, Dr. Weinstein and Dr. Lenzo and they found all of these minute injuries.

Why did they find them? Because they are specialists. Because they found these small, minute tears in his ligaments that are very hard to find. These are not tears that you can just look at something and, boom, it's there. They're hard to find. Now, they'll have it that it's just a coincidence that after the accident, that he, all of a sudden, all of these degenerative conditions came to be, a man who stopped working after September 6, 2016 and, all of a sudden, when he was recovering, these tears just appear?

You know, it's no secret that their doctors and our doctors, they're all paid to be here. That's not a secret. But, there's one essential difference between those two groups of people, that Mr. Martinez's doctors have treated him for years and years and years.

Their doctors were picked out of a catalogue, brought here to see Mr. Martinez for a few minutes, maybe an hour, given cherry-picked records from the defense to say, no, it's degenerative, not a big deal. Well, I'll tell you what, if the wrist injury wasn't documented at the hospital, they'd say that's degenerative too.

You heard from Dr. Kaplan about his knee injury. Dr. Kaplan testified that he re-tore his knee. His injuries were kind of like a piece of paper that you rip and you tape it up, right? Now, where that rip is, it's more likely that

it's gonna be re-torn again, and that's exactly what happened to him, it got re-torn twice. So, is it impossible it happened again?

So, what I really want to talk about, that defense has brought up throughout this case, is that there's been this video, right, this video you've seen of Mr. Martinez. And in this video you see five minutes, five minutes, of Mr. Martinez bending, lifting, helping his wife, helping his family. Would it surprise anyone that, of that video, that video is five hours long? Five hours long. And that video was taken in 2023 and 2024, seven and eight years after the accident.

Where's the video of Mr. Martinez the day he was injured? Where's the video of him coming from the hospital? Where's the video of him coming home from his surgeries? Where's the video of him waking up in the middle of the night, screaming in pain because of all of those injuries in his knee, in his wrist, his back? Where are those videos? Well, if they were in existence, you wouldn't see them.

You know, when someone has invasive surgery, whether it's on their wrist, their knee, their leg or somewhere else, no matter what, the pain is always going to be there. You can try physical therapy, you can try injections, but it's always going to be there, because the scar tissue that's there, the inflammation, is always going

to stay with you, no matter how much you do. You can look like you're in the pinnacle of shape, but the pain is going to be there no matter what. You can't change that.

So, what does Mr. Martinez do in the future when a gallon of milk costs $50.00 and eggs will cost $40.00? He's got 35 more years to live. What's he gonna do when Tylenol costs X amount of dollars in the future? What's he to do?

You know, of the video that you saw, you only saw Mr. Martinez helping his family. Where are the videos of him playing soccer? Where are the videos of him pulling a 300 foot hose up a construction site? Where's the video of him carrying debris down? Where is it?

You know, it's not -- it's not that Mr. Martinez is a liar. It's that the man has very -- has trouble expressing himself and, honestly, I'm having trouble expressing myself, but, I will say this, that from the time of the accident to today, there's been this cascade of events. There's been this snowball effect that, without the accident, Mr. Martinez never would have received those four surgeries. He never would have gone to physical therapy. He never would have received all those injections, taken all these medications. None of that would have ever happened.

All of that time lost that he spent -- that he spent going to those appointments, when he could have been with his family or he could have been working, it's gone and

it's gone forever. Whether or not those surgeries were necessary, the disc bulge in his back, it caused him so much pain that he needed surgery. You heard a doctor saying that he wouldn't have performed surgery, but then you heard a doctor say he would have. That wasn't his choice. He just had to have it happen, a surgery that wouldn't have happened, but for the accident.

So, unlike what the Defense said, I'm not going to get up here and ask you for millions and millions of dollars. I'm not going to do that. But, what I am going to ask you is to consider what pain is worth, because pain, no matter who you are, it's like a spectre, it's like an uninvited guest in your home that you can't get rid of it.

So, to that I say, consider the chain of events that brought Mr. Martinez to this courtroom. Consider what he would have been doing, but for the accident. Look at the medical records that show his wrist injury. Think about that when you think, was it causally related to the accident that their client was responsible for? Just think of that. Think of what pain's worth. Think about the future. Because, right now, he can't afford medications, he can't afford the future treatment, the future tears that could happen in his wrist, because, like I said, everyone has degenerative problems, but degenerative problems don't just appear and, how convenient that degenerative problems

appeared right after his accident.

Where are the medical records of the problems to his back, to his knee to his wrist, before the accident? They even showed you medical records of him going to the hospital for a cold. If the medical records exists of him having pain in those body parts, they would have found them and they would have provided them to you, but they're not there.

So, to that I say, when they say use common sense, I say, please, use common sense. Please think, how could it be possible? How is it such a coincidence that all these tears, all these injuries, just occurred right after the accident? Where is the history? Because, when we leave this room today, Mr. Vargas is going to go home, I'm gonna go home, you all are gonna go home, the defense attorneys are gonna go home. But, when Mr. Martinez goes home and his family goes home, this isn't the end for them. He's still gonna be in pain and there's still going to be a wrist that he needs future treatment for.

So, for the accident that their client was 100 percent responsible for, I just say, doesn't he deserve something? Just something. Because that's not up for question. It's not. We're not asking for tax payer dollars, we're not asking for money from anyone but their client, who's responsible for the accident. That's it. Not

millions and millions and millions of dollars, just something. Something for those four surgeries, something for the pain, something for the future, something so that he can support his family. Just, please, think of that. I implore you to.

Thank you.

THE COURT: Thank you so much.

Members of the jury, due to the lateness of the hour, we are going to adjourn for today. I'm going to ask you to come back tomorrow morning at ten a.m. and we will have my instructions to you on the law and then you will have an opportunity to deliberate on the case.

Please remember my admonitions, please do not speak amongst yourselves or with others about the case and, finally, since you are going to go home this evening, please do not go to or past the incident site.

Have a great night and we'll see you in the morning.

COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exits the courtroom)

THE COURT: You can be seated. I don't think we need do anything else? Do you have anything?

MR. VARGAS: No.

MR. DANIELSEN: No.

THE COURT: Have a great night, all.

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