

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

3 -----x
4 NORMAN RIVERA,

5
6 Plaintiff,

7 -against-

Index:
25689/2016E

TRIAL

8 454 WEST 57TH STREET HOLDING, LLC and
9 T&K PROPERTIES LLC

10 Defendants.
11 -----x

12 851 Grand Concourse
13 Bronx, New York 10451
14 May 28, 2025

15 **TESTIMONY**

16 Dr. Fred Goldman
17 Norman Rivera
18 Dr. Marc J. Katzman

19 **B E F O R E :**

20 THE HONORABLE BIANKA PEREZ,
21 Justice of the Supreme Court & Jury

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

23 GORAYEB & ASSOCIATES
24 Attorneys for the Plaintiff
25 100 William Street, 19th Floor
New York, New York 10038
BY: CHRISTOPHER VARGAS, ESQ.

PERRY, VAN ETEN, RAINIS & KUTNER, LLP
Attorneys for the Defendants
14 Wall Street
New York, New York 10005
BY: JEFFREY VAN ETEN, ESQ.

Maggie J. Klasen
Senior Court Reporter

1 (Whereupon, Plaintiff's Exhibit 32 is marked for
2 Identification.)

3 (Whereupon, Plaintiff's Exhibit 33 was received in
4 Evidence.)

5 (Whereupon, Plaintiff's Exhibit 34 was received in
6 Evidence.)

7 (Whereupon, Defendant's Exhibit I was received in
8 Evidence.)

9 (Whereupon, Defendant's Exhibit I-1 was received in
10 Evidence.)

11 (Whereupon, Defendant's Exhibit J was received in
12 Evidence.)

13 (Whereupon, Defendant's Exhibit J-1 was received in
14 Evidence.)

15 THE COURT: On the record.

16 MR. VARGAS: So, after Dr. Goldman testifies as
17 expected, then we were going to put plaintiff on. I just
18 wanted to bring up the issue. I don't want to be -- I want
19 to be able to ask any questions that Mr. Van Etten doesn't
20 cover because I didn't have the benefit of these photos on
21 my direct. So I want to either hold off on resting until
22 after we are done with plaintiff and the pictures, or, if
23 Your Honor has a different suggestion, I am --

24 THE COURT: Any objection?

25 MR. VAN ETEN: No.

1 THE COURT: You haven't rested. You can do
2 whatever you want.

3 MR. VARGAS: Okay. I was just bringing it up so --

4 THE COURT: You can recall your client whenever you
5 want, as long as you didn't rest.

6 Anything else?

7 MR. VAN ETEN: The only issue I have, though, is
8 -- and I appreciate this. I have the next witness's file,
9 which is fine. He did not bring the prior report that he
10 did for the expert disclosure. It's not in there.

11 MR. VARGAS: I thought he said he mentioned --

12 MR. VAN ETEN: Unless I missed it, but --

13 MR. VARGAS: This?

14 MR. VAN ETEN: Back page. Thank you. Never mind.
15 I'm good. Are you marking this for ID?

16 MR. VARGAS: 34 -- 35 for identification.

17 (Whereupon, the item referred to is marked
18 Plaintiff's Exhibit 35 for Identification.)

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

20 COURT OFFICER: All rise. Jurors entering.

21 (Whereupon, the sworn jurors enter the courtroom
22 and take their respective seat.)

23 THE COURT: Good morning. You may be seated.

24 The plaintiff may call the next witness.

25 MR. VARGAS: Yes, Your Honor. I call Dr. Fred

1 Goldman to the stand.

2 THE COURT: Mr. Goldman, you may take the witness
3 stand. Remain standing for the officer to swear you in. Be
4 careful with the wires.

5 COURT OFFICER: Just remain standing. Raise your
6 right hand.

7 D R . F R E D G O L D M A N, a witness called
8 by and on behalf of the Plaintiff, upon being duly sworn,
9 took the witness stand, and testified as follows:

10 COURT OFFICER: Please be seated. Please state
11 your name and address for the record.

12 THE WITNESS: Sure. My name is Fred, F-R-E-D,
13 Goldman, G-O-L-D-M-A-N. 10 West 66th Street, New York, New
14 York, 10023.

15 THE COURT: You may inquire, Counsel.

16 MR. VARGAS: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. VARGAS:

19 Q Good morning, Doctor.

20 A Good morning.

21 Q Can you tell the jury your educational background.

22 A Sure. I have a -- well, you don't want my high school.

23 But I have a bachelor's degree from Queens College in the City

24 University of New York. I have a master's degree from Brown

25 University in economics, and so is the bachelor's degree in

1 economics, and I have a doctoral degree in economics from the
2 graduate school of the City University of New York.

3 And the only other education I have had is I did a
4 postdoctoral fellowship in philosophy and ethics for the
5 National Endowment for the Humanities. And there, I was in
6 residence at a bioethics institute, the Hastings Center.

7 Q Have you published anything?

8 A I have.

9 Q And can you give the jury some examples.

10 A Oh, sure. Well, I published out of my doctoral
11 dissertation. I'm published in internal and political economy,
12 study of child health, the economics of child health. I had
13 interest in drug abuse, but I should preface it by saying one of
14 my principal areas is health economics. So I do work in what's
15 called human capital, which is some labor economics and so
16 forth, but most of my work is in the field of health economics.

17 So, I have published in the Journal of Health
18 Economics, the Journal of Urban Economics, perhaps ten, 15
19 different journals, articles, and they're generally the outcome
20 of research that's been done.

21 Q And for the jury, could you explain, in the most
22 succinct way possible, what is economics?

23 A Nothing I do is succinct. I do economics as a subset
24 of psychology. Why? Because it's a study of behavior and the
25 outcomes of behavior. Concrete example, behavior. When the

1 price of apples goes up, people buy fewer apples, and they buy
2 more pears. I mean, that's, you know, high school economics.
3 That's behavior. You react to the price of the apples in the
4 very same way with other items that have prices; wages, other
5 items, the prices of cars. So, people respond.

6 So the economic studies, the way in which people
7 respond -- and I will be very brief. For example, which turned
8 out to be important was the issue over smoking, and their
9 studies showed that if you put taxes on cigarettes, that
10 actually, even though it's addictive, that there would be a
11 response to it. So part of the health policy that we developed
12 was to tax cigarettes to try and reduce the amount of smoking
13 that would take place.

14 So, what is economics? It's the study of the various
15 behaviors and then the outcomes. Now, as for outcomes, what are
16 the outcomes? We study income in the population. We study the
17 number of houses that are bought. We study the number of cars
18 that are bought. We study all of the various items, and we see
19 the outcome of how people act because that's what we're doing.

20 This was manufactured. It was purchased. We have an
21 outcome. It provided income to the manufacturer and somebody
22 paid for it. On the other hand, people produced it and they
23 responded to the wages in whatever environment this was
24 produced. Sorry to use this. I was better off using the water
25 bottle. But that's it, in a nutshell, what I view economics

1 as.

2 Q And, Doctor, did my firm hire you for this case -- for
3 the trial?

4 A Yes.

5 Q And do you know when we hired you?

6 A Oh. Probably around 2023.

7 Q Okay. And you have your records in front of you,
8 correct?

9 A Oh. I do, yes.

10 Q And those are numbered Plaintiff's 35. If you need to
11 refer to them while you testify, you may.

12 A Okay.

13 Q And, Doctor, you are being compensated for your time
14 here today, correct?

15 A I hope so.

16 Q And how much?

17 A I bill \$4,000 for a court appearance.

18 Q And, Doctor, have you ever testified for Mr. Van Etten
19 or have you ever worked for Mr. Van Etten's firm?

20 A Yes.

21 Q Approximately, how many times?

22 A Oh. Over the years, various partners and associates.
23 I wouldn't know the number, but a few weeks ago, I did a life
24 care plan, just like this, for one of the partners of the firm.

25 Q But not Mr. Van Etten?

1 A No, no, no.

2 Q Okay. And what were you hired to do on this case?

3 A Well, I was hired to determine the costs of a life care
4 plan for the plaintiff, where the life care plan consisted of
5 various medical items, and they were to be provided over a
6 period of time. In his case, a life expectancy.

7 Q Okay. And what do you take into account when you're
8 coming up with a plan such as this?

9 A Well, there are three -- I will succinct. There were
10 three components. Each item that a physician or some other
11 expert has indicated is necessary, but each item, there's a
12 price or it can be converted to an annual amount. So there's an
13 annual amount for the item. Then there's, how will that change
14 over time? That's a growth rate. So each item, say physician
15 visits, has a growth rate, how it's expected to change over
16 time.

17 And then finally, how long will this go on? Well, if
18 it's over a lifetime, there's a measure of lifetime called life
19 expectancy. So I look at the various available materials on
20 life expectancy, for instance, the United States Life Tables,
21 which I used, growth rates, how these might change over time,
22 and there, I relied on statistics from the United States Bureau
23 of Labor Statistics, which publishes Consumer Price Index. And
24 I'm going to come back to that, but leave that aside for the
25 moment. And then the Congressional Budget Office, which makes

1 projections out into the future of how inflation will change.

2 The Congressional Budget Office produces a ten-year
3 projection. I believe it's three times a year -- two or three
4 times a year. A ten-year projection for prices, for changes in
5 wage rates, for changes in various economic variables. And
6 also, the Social Security Administration produces estimates out
7 into the future that cover -- go into the end of the century for
8 how prices are expected to change, how wages are expected to
9 change, how interests rates are expected to change.

10 So I have the data from the United States Bureau of
11 Labor Statistic, which is in the past. They look at how
12 doctor's prices have changed. They've looked at how the price
13 of medications have changed. They looked at how the prices of
14 physical therapists have changed, so they are in the past. And
15 in the life care plan that I have, I have items such as doctor's
16 visits, such as physical therapy, such as outpatient department
17 services. So I have all of those, and the Bureau of Labor
18 Statistics -- and by the way, I have with me the documents that
19 I used.

20 The Bureau of Labor Statistics has all of this history
21 that goes back, in some cases, a hundred years. It's just a
22 wonderful database. But that's the past. And what we're trying
23 to do is predict the future. So, I look at the way of all
24 inflation is related to these various items, like the price of
25 doctor's visits, the price of medications, the price of visits

1 to the hospital, and so forth. I look at how inflation is
2 related to those in the past.

3 And then, I look at the expectation for inflation in
4 the future, where the Congressional Budget Office turns out its
5 ten-year projections for items, such as inflation. And once a
6 year, it turns out a 30-year projection. So I have their
7 projection on inflation. I also have the Social Security
8 Administration's projections. So if I can get a sense of how
9 these items were related in the past, and I have some sense of
10 what the future is likely to look like for inflation in the
11 future, I can make an association of what I expect will happen
12 to the price of physician services, therapies, imaging services,
13 medications, and so forth. And pretty much, that's it.

14 Q To go back, you mentioned, first, life expectancy.

15 Did you come to a number for life expectancy for Mr.
16 Rivera?

17 A I did. And the current life expectancy, and I -- you
18 know, I did it as of today. But, you know, we can change it by
19 very slight amounts. As of today, it's 25.25 future years, and
20 that's based on the very latest United States Life Tables, which
21 came out this past April.

22 Q And why is that number important?

23 A Well, because the medical care, as I understand it, is
24 over a lifetime. And so how are we going to measure a lifetime?
25 I need a statistical measure, like the word lifetime, has some

1 suggestion to it of years, but the measure of it is
2 statistically life expectancy, which changes over time.

3 Q And then the next thing you mentioned was the growth
4 rates.

5 Could you explain to the jury what a growth rate is.

6 A Sure. Well, since we tend to live in apartments in New
7 York City, you can imagine what the rent in your apartment was
8 ten years ago, and what it is today. And I take it that for
9 most of us, maybe all of us, the price went up. So the growth
10 rate is simply, how did that change over time? Did it change by
11 an average of 2 percent, 2 and a half percent, 3 percent, and so
12 forth? So the growth rate means how the prices will change.
13 How will the price of an apple change? How will the price of a
14 car change? How will the price -- these are expectations about
15 the future.

16 Is there uncertainty in it? Yes. But also, there is
17 patterns that show how we can make reasonable predictions about
18 what's likely to take place, which you need to do. I mean, we
19 live that way, on what we expect to happen. When the light
20 turns red, we have the expectation that if we ignore it and step
21 out in the middle of traffic, it's going to hurt. So we have an
22 expectation, and of course, it changes on behavior.

23 Q And in preparation for your testimony today, did you
24 review any documents from this trial?

25 A I did. I mean, I had the -- my pile.

1 Q And did you review any of the trial testimony in this
2 case?

3 A I did. I reviewed the trial testimony of Dr. Grimm.

4 Q And from originally when you were hired back in 2023,
5 did your opinions change at all from after reading Dr. Grimm's
6 testimony?

7 A Yes. They are -- well, my -- let me put it in a
8 different way. It didn't change my methodology. It didn't
9 change anything, other than we have the three factors I talked
10 about, from 2023 to the latest testimony, the various items that
11 changed. There was a different growth rate, that changed. And
12 life expectancy changed, so those three variables changed over
13 time.

14 Q How much did life expectancy change?

15 A Well, let me look. The life expectancy was 25.9 years.
16 It was 25.9 years, and now it's 25.25. Now, one of the things
17 to be aware of is that we are looking, in part, at the impact of
18 COVID, which affected life expectancy.

19 Q And, Doctor, could you tell us, other than the growth
20 rates, life expectancy, you mentioned the Congressional Budget
21 Office.

22 What information did you get was significant to you
23 from that?

24 A Well, the Congressional Budget Office provides their
25 estimates of future inflation, along with other statistics, such

1 as future expectation of future wages, future interest rates,
2 and so forth. So they're one organization that is actually
3 where there was some reviews of the rate of accuracy there.
4 They do a very good follow up of how close they came to what
5 turned out to be, from their prediction, a result when it
6 becomes a number in the past.

7 So I relied for the future -- for the future. The
8 inflation in the future, I relied on the Congressional Budget
9 Office and the Social Security Administration, both of them
10 making predictions. The Social Security does it because they
11 have to make estimates of how much Social Security will cost the
12 country in the future, and how much money is going to come in in
13 the form of the taxes that pay for Social Security.

14 Q And, Doctor, do you have an opinion within a reasonable
15 degree of economic certainty as to the future cost of medical
16 care for Mr. Rivera?

17 A I do.

18 MR. VARGAS: And with Your Honor's permission, if
19 Mr. Goldman could step down to the easel.

20 THE COURT: Yes, of course.

21 MR. VARGAS: I will grab it.

22 Q And, Doctor, the best way we found is if you keep the
23 microphone on this side, so there is no feedback for the
24 reporter.

25 A Okay.

1 MR. VARGAS: I think I just have to move it closer,
2 with Your Honor's permission. Some of the jurors are having
3 a hard time. Can everyone see?

4 We can mark that for ID.

5 MR. VAN ETTEN: Do you mind if I mark it as mine
6 for ID?

7 MR. VARGAS: Sure.

8 (Whereupon, the item referred to is marked
9 Defendant's Exhibit K for Identification.)

10 A All right. So, just starting at the top, obviously,
11 there is plaintiff's name and date of birth. And as of May 28,
12 2025, he is 54.68 years old, and that's the age that I used with
13 the life tables in order to establish life expectancy, which is
14 25.25 future years. And again, that's based on the life tables.
15 I can give you the actual citation if it turns out we need that.

16 Okay. So, as for the items, the items came from the
17 testimony of Dr. Grimm, and I have that testimony with me if we
18 need to look at that. The first item is medications, and the
19 annual amount of medications is \$900, and the growth rate of the
20 medications is 2.6 percent per year. And if you would take the
21 2.6 per year and use the \$900 as an annual amount, and increase
22 it year by year at 2.6 percent, the result is \$31,571, which is
23 sitting on the chart.

24 Q And, Doctor, I noticed some of the growth rates are
25 different from the others.

1 A Yes.

2 Q Why are the growth rates different for different
3 categories?

4 A Okay. The items that we have as categories, which will
5 have their own growth rate, such as medications, and you see
6 that here. The second are physician services, and that's a
7 separate item, and it has a growth rate over time of
8 2.5 percent. Then if we go down, and you say -- down you go and
9 see physical therapy, now that's neither. It's not a
10 medication. It's not a doctor visit, but it's physical therapy.

11 There is a category that the US Bureau of Labor
12 Statistics has that's called services by other medical
13 professionals, nonphysician medical professionals, and they have
14 definitions of these. I don't choose what a physical therapist
15 is going to go into as a category. So I have with me the
16 definitions for all of these items. So, physical therapy falls
17 under services by other medical professionals. As it turns out,
18 it has the same growth rate that physician services do, but I
19 didn't get that from the physician services. I got it from the
20 services by other medical professionals.

21 And then if we go and look at -- there is only one more
22 growth rate to talk about. You will see there is facility
23 services in some of the items, and the growth rate for the
24 facility services is 4.9 percent. And there is, again, another
25 item that the US Bureau of Labor Statistics has, which is for

1 outpatient services for -- outpatient in freestanding
2 institutions and within institutions, and it has a growth rate
3 of 4.9 percent over the period that we are estimating. So,
4 those are the various growth rates, and they're going to be
5 applied, year by year by year, for 25 and quarter years to each
6 of the annual amounts that Dr. Grimm testified to. Okay?

7 Q Yes. Thank you. And the next category was pain
8 management?

9 A Yes. The next is pain management visits, a physician
10 service, \$1,000 as a current annual amount, growing at
11 2.5 percent per year, and the total is \$34,621. And then you
12 have a physician visit, orthopedic spinal surgeon visits, and
13 that's \$500 for the year. And that also has the 2.5 percent
14 growth rate, and its total is \$17,311.

15 Q And the next --

16 A And then there is a category called lumbar steroid
17 injections, and they have a physician component and a facility
18 component. And the physician component is \$1,800 annually, with
19 the growth rate at 2.5 percent, so that its total over the 25
20 and a quarter years is \$62,318. And then there is a facility
21 components, since it's performed in outpatient setting, and the
22 facility component is \$3,000, with a growth rate of 4.9 percent,
23 and its total is \$143,703.

24 Then, the next item is cervical steroid injections, and
25 it is, for the economic component, identical to the lumbar

1 steroid injections. I mean, it's different medically, but it is
2 same in the economics. There's a physician component and a
3 facility component. The physician component is \$3,000. The
4 facility component is -- the facility component is -- I'm sorry.

5 The facility component is \$3,000. The physician
6 component is \$1,800. The physician component at \$1,800, and a
7 growth rate of 2.5 percent is \$62,318. And the facility
8 component at \$3,000 is \$143,703. Now, we come to a physician
9 component, trigger point injections. The annual amount is
10 \$1,200 at a physician growth rate of 2.5 percent, and its total
11 is \$41,545. That's followed by the physical therapy. Physical
12 therapy is \$2,250 per year, at a growth rate of 2.5 percent,
13 which is based on services by other medical professionals, and
14 its total is \$77,898.

15 Then, there is a one-time revision lumbar fusion
16 surgery of \$100,000. That's a standalone item for one time, so
17 I didn't apply a growth rate. Then we had the MRIs. Now, just
18 to explain the growth rate, it's going be the tame 2.5 percent
19 that you see for physicians, and that you see for services by
20 other medical professionals, but that's not the reason it's the
21 2.5 percent. Within the category, by definition of services by
22 other medical professionals, there is a separate indication, a
23 sentence, that says that this is for -- this is what you use for
24 imaging services in various diagnostic procedure. So the MRI
25 also has those, x-rays, any kind of imaging services, has a 2.5

1 growth rate.

2 Okay. So, the MRIs -- MRIs, lumbar and cervical spine
3 MRIs, are \$520 as an annual amount, growth rate at 2.5 percent,
4 and the total is \$18,003. Then we have x-rays, lumbar and
5 cervical spine, \$1,600, and that's 2.5 percent, and that's
6 \$55,394. Then we have the diagnostic category, EMG, NCV,
7 whatever that is, and those are upper and lower extremities, and
8 they have an annual amount of \$800 at 2.5 percent growth rate,
9 for a total of \$27,697.

10 And then we have a candidate for radiofrequency
11 ablation lumbar medial nerve, okay? It has a physician
12 component and it has the facility component. The physician
13 component is \$4,800 on an annual basis. The facility component
14 is \$4,000 on an annual basis. The physician component has the
15 physician growth rate of 2.5 percent, so that the total, over
16 the 25 and quarter years, is \$166,182. And then the facility
17 component, at a 4.9 percent growth rate, the \$4,000 becomes
18 \$191,604.

19 And then we have a candidate for radiofrequency
20 ablation occipital nerve. It has a physician component and a
21 facility component. The physician component is \$4,800, growing
22 at the 2.5 growth rate, the total is \$166,182. And finally, we
23 have the facility component, \$4,000 on an annual basis, growing
24 at the 4.9 percent to the outpatient department service, and
25 that's a total of \$191,604. And then I added them all up

1 correctly. I checked it. I have confidence in it, it's
2 \$1,531,654.

3 Q Thank you, Doctor. You can take the stand.

4 A Thank you.

5 Q And, Doctor, these are all within a reasonable degree
6 of economic certainty?

7 A Oh, yes.

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

9 THE COURT: Cross?

10 MR. VAN ETEN: Yes.

11 THE COURT: You may.

12 MR. VAN ETEN: Maybe if I bring my notes.

13 CROSS-EXAMINATION

14 BY MR. VAN ETEN:

15 Q Good morning, Doctor.

16 A Good morning.

17 Q So who is my partner that hired you a couple of weeks
18 ago?

19 A Matt Rainis. He and I have worked together for years.
20 And also, Jeff and I have worked together -- any way.

21 Q They joined our firm about three months ago.

22 A Yes, yes, yes.

23 Q You said you read Dr. Grimm's testimony, correct?

24 A Well, I -- yes. I read his direct and I skimmed, very
25 briefly, all the pages of cross.

1 Q Okay. And did you see the part where he said that he
2 remembered my cadence and I was mean? No? That happened to me
3 on a trial where I met you on Elmonte in 2018 in Kings with Mr.
4 Vargas. So if I was mean in 2018, I will promise you that won't
5 happen today. Fair? Okay.

6 Also, to be fair, I will promise you, I am not
7 going to discuss any issues, per se, about economics, and how
8 you interpret statistics, because you did a dissertation on
9 that, correct?

10 A Yes.

11 Q My eldest did a dissertation on gene transfers. I
12 didn't understand that, and I'm sure as heck not going to
13 understand economics either. But I want to go to some basic
14 issues, okay?

15 A Okay.

16 Q One of the things you just said on your direct was when
17 you are providing these numbers, you said you are giving an
18 opinion for information as you understand it.

19 I think you said "as I understand it", correct?

20 A That's correct.

21 Q And the "I understand" comes from Dr. Grimm?

22 A That's correct.

23 Q Okay. That is the only source of information which
24 allowed you to put those numbers in front of the jury?

25 A That's correct, as well.

1 Q Okay. And one of the interesting things you talked
2 about, apartment rates, and again, and I said I wasn't going to
3 do economics. Shoot. You said about apartment rates and how
4 they go up. Apartments in New York, rent control, they're
5 regulated, right? So those rates are regulated, fair?

6 A Yes.

7 Q Okay. The growth rate studies aren't regulated, that's
8 just a study by history and when you're making your projections?

9 A Yes. Well, they are -- actually, the growth rate
10 studies are all based on sampling procedures from the United
11 States Bureau of Labor Statistics.

12 Q Right. So when you get these numbers and you do that,
13 you're using a formula to compute them, fair?

14 A Yes.

15 Q Okay. But the foundation of that formula is the
16 information that you receive from Dr. Grimm?

17 A Yes, that's correct.

18 Q Okay. And you did a report, I believe you said in
19 2023?

20 A Yes, we have that.

21 Q Okay. And when you did that report, you did that, and
22 you gave an opinion as to what you thought the future medical
23 care costs for Mr. Rivera would be?

24 A Yes. Again, based on the same three factors and Dr.
25 Grimm.

1 Q And Dr. Grimm. And that report, from two years ago,
2 was \$2.7 million total for all of those three factors, correct?

3 A Well, I mean --

4 Q Take a look.

5 A Yeah. I'm certain that we both had the reports, so
6 it's correct, but let me -- yeah. Here it is. Yes. Yes, the
7 total -- yes. 2.7 million, yes. That's correct.

8 Q Okay. So at that point, had the trial gone forward two
9 years ago, you would have come in and told the jury -- it
10 wouldn't be these seven people.

11 But you would have told them that the future medical
12 care costs of Mr. Rivera were \$2.7 million, fair?

13 A Yes, that's correct.

14 Q And now, two years later, you have come in and you have
15 told them it's 1.5 and change, correct?

16 A That's correct.

17 Q And that's because Dr. Grimm's opinion changed in the
18 last two years?

19 A That's correct.

20 Q And, in fact, he deleted at least ten items of what he
21 thought Mr. Rivera needed two years ago, correct?

22 A Yes.

23 Q Okay. And do you know if Dr. Grimm is going to change
24 his opinion tomorrow?

25 A I don't know whether he is going to lower it or

1 increase it or add things. I do not know.

2 Q When you gave that opinion, two years ago, that totaled
3 up to the higher number -- I will stop using that number.

4 But the higher number, there were various treatments
5 that Mr. Rivera was being predicted to get back in 2023,
6 correct?

7 A Yes.

8 Q Some of those are even on your chart now, like
9 radiofrequency ablations, you weren't really sure what they
10 were, correct?

11 A I'm still not sure what they are.

12 Q Okay. And EMGs, I think you said you didn't know what
13 an EMG is, right?

14 A I do not.

15 Q Okay. So in 2023, your initial opinion said there were
16 going to be radiofrequency ablations every year, and EMGs every
17 year, correct?

18 A Well, that was Dr. Grimm's opinion. I basically took
19 his -- he didn't testify at that point. It was a report. So
20 you're describing Dr. Grimm's opinion, not my opinion.

21 Q But you read his transcript from his testimony, and you
22 know that he has had no EMGs in the past two years, fair?

23 A I -- I did not read that. I read the part of the
24 transcript that would be pertinent for my testimony.

25 Q Well, the same thing with radiofrequency ablations,

1 because he said something about needing them in the future, and
2 that's why it's on your board, correct?

3 A That's correct.

4 Q But are you aware that since this incident on March 15,
5 2018, there has never been a radiofrequency ablation performed
6 for Mr. Rivera?

7 A But we are talking about the future. We are not
8 talking about the past. We are talking about how he will age
9 over time, and what will happen as he ages over time. That's
10 Dr. Grimm's area of what takes place to a person with whatever
11 kind of injuries he has as they change over time, and --

12 Q When you -- sorry. But when you are giving your expert
13 opinion on these growth rates, you are relying on past history,
14 fair?

15 A That's on economic growth rates. That's correct.

16 Q So you would then, if you want to give this jury a
17 reasonable and accurate opinion, wouldn't you want the
18 treatments that you're making the projections for to be
19 reasonably anticipated in the future?

20 A That is the role of Dr. Grimm, not me. I'm just -- I'm
21 just a simple economist, and --

22 Q I get that. But you also said what you were trying to
23 do with your plan is to predict the future, correct?

24 A No. What I'm saying is the only predictions that I'm
25 making, and it's basically -- predictions may be a poor term.

1 Forecasting is better. But, in any way, the only items I am
2 forecasting in the future, the only ones, are the growth rates.

3 The life expectancy has been handled, as of this point,
4 by the US Life Tables. The medical items have been handled by
5 Dr. Grimm, who's telling us what he thinks about the future.
6 All Fred Goldman needs to do is -- needs to say is, how do I
7 expect these prices, which are current, to change over 25 and a
8 quarter years?

9 Q All Fred Goldman has to do is take the numbers that Dr.
10 Grimm gives, plug them in, apply a growth rate, multiple it, and
11 add it, correct?

12 A Well --

13 Q That's what you did?

14 A That's precisely what I did.

15 Q And are you aware that Dr. Jennifer Canter, a life care
16 plan expert for the defense, testified last Thursday?

17 A I understand that, yes. She's an expert in this case.

18 Q And did you read her transcript?

19 A No, I did not.

20 Q For predicting the future, did you think another
21 expert's opinion on the life care plan might be relevant to the
22 numbers?

23 A No. Well, you know, you have an opportunity to put an
24 economist on who will provide different numbers, if that's the
25 case.

1 Q Are you aware that her numbers for the future life care
2 prediction were less than \$80,000?

3 A Is that right? No.

4 Q And are you aware that her predictions or projections
5 or plans encompass the fact that the majority of Dr. Grimm's
6 treatments were not going to be required in the future?

7 A Well, that's her opinion.

8 Q Okay. So, the only opinion you care about is Dr.
9 Grimm's, fair?

10 A No. What I'm -- no. What I'm asked to do is to say I
11 received a life care plan. And I am asked what is the
12 consequence, in economic terms, of this life care plan. The
13 life care plan I received was the life care plan of Dr. Grimm.

14 Q And that was something that was given to you by
15 plaintiff's attorney, correct?

16 A That's correct.

17 Q And you are coming in here on behalf of Mr. Rivera
18 through plaintiff's attorney, correct?

19 A And that's correct.

20 Q And did you get Dr. Canter's life care plan before you
21 revised your numbers last week?

22 A No. I don't have a life care plan and --

23 Q Okay. And did you speak with Dr. Grimm before you came
24 in to testify about what he was projecting?

25 A No, I did not.

1 Q So, if I understand this correctly then, when you
2 prepare your plan on what the economic cost is, you do not know
3 if those treatments and care will actually be required by Mr.
4 Rivera?

5 A I don't know anything about the medicine in this case.

6 Q And you don't know if he will actually undergo those
7 treatments in the future either, correct?

8 A I don't know if he will undergo them or other
9 procedures. I do not know.

10 Q So for that purpose then, you don't know if those
11 future medical expenses will actually be incurred in the future,
12 fair?

13 A Or more expenses will be incurred in the future. I
14 don't know whether it will be more, whether it will be less, or
15 whether this is, you know, precisely the amount.

16 Q And also, you are here for Mr. Rivera, correct?

17 A I am here because I provided an analysis of a life care
18 plan.

19 Q Did you interview Mr. Rivera as part of your life care
20 plan?

21 A No, of course not, as I don't interview physicians. I
22 wouldn't know what questions to ask a physician. I don't know
23 medicine.

24 Q I understand that, as well. And again, like I don't
25 necessarily know the economics.

1 But one of the line-item costs that didn't require a
2 growth rate, that was for a future lumbar fusion surgery,
3 correct?

4 A That's correct.

5 Q Okay. And are you aware that Dr. Weinstein, Mr.
6 Rivera's orthopedic spinal surgeon, testified in this lawsuit?

7 A No, I am not aware.

8 Q And I just want you to assume that he testified, and
9 that he told this jury that he did not think that Mr. Rivera
10 needed a future surgery.

11 Would that be something that would impact your
12 projections if that was information given to you by plaintiff's
13 attorney?

14 A No. I can't take all the testimony of the physicians
15 on the plaintiff's side, on the defendant's side, and then Fred
16 Goldman make an independent decision on what do I include, what
17 do I not include. That heads in the direction of madness. All
18 I -- what I have is the ability, based on my economics, of
19 taking the life care plan I was provided with, and telling the
20 jury precisely what I believe the cost would be of providing for
21 those services over the life expectancy of the plaintiff.

22 Q But Dr. Grimm, you're aware then from reading his
23 testimony, hasn't seen Mr. Rivera for the past 18 months,
24 correct?

25 A Well, I don't know that. But that would be an issue

1 for Dr. Grimm, not for me.

2 Q Well, you put in your plan that he needs future pain
3 management visits. If he is not seeing a future pain management
4 doctor, and this is between your 2023 report and your 2025
5 report, wouldn't that be relevant to give this jury accurate
6 information?

7 A Well, the jury will, I'm sure, take into consideration
8 anything that they hear, but I am not in a position to say that
9 the services that are in a life care plan are too little or too
10 much.

11 Q And so then, as you just said, it becomes incumbent
12 upon the jury then if they do not believe Dr. Grimm, then those
13 projections, other than medicines, would be zero, fair?

14 A Well, no. They might not believe Dr. Grimm because
15 they think that things that are degenerative get worse over
16 time, and there would be more services needed. I mean, I'm just
17 not in a position that -- first of all, they are the jury. They
18 decide everything. Not me. I am just grateful to get up and go
19 back home.

20 Q Well, guess what, Doc? I'm going to let you get up and
21 go back, unless Mr. Vargas has a couple more questions for you.
22 That's all I needed to ask you, okay?

23 And was I mean?

24 A Not at all.

25 MR. VAN ETEN: Okay.

1 THE COURT: Redirect?

2 MR. VARGAS: No, Your Honor.

3 THE COURT: That concludes your testimony, Dr.
4 Goldman. You may step down. Thank you.

5 (Whereupon, the witness was excused from the
6 stand.)

7 THE COURT: Any other witnesses?

8 MR. VAN ETEN: Can we take a break and we'll
9 discuss how we're going to do the next witness?

10 THE COURT: Yes.

11 COURT OFFICER: All rise. Jurors exiting.

12 (Whereupon, the sworn jurors exit the courtroom.)

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

14 COURT OFFICER: All rise. Jurors entering.

15 (Whereupon, the sworn jurors enter the courtroom
16 and take their respective seat.)

17 THE COURT: You may be seated.

18 Counsel, you may call your next witness.

19 MR. VARGAS: Your Honor, I am recalling Mr. Rivera
20 to the stand.

21 THE COURT: Interpreter, can you tell Mr. Rivera he
22 may take the witness stand.

23 We just need your name for the record.

24 THE INTERPRETER: Marcos Melendez, official Spanish
25 language interpreter.

1 THE COURT: Thank you. You may be seated. Please
2 remember, Mr. Rivera, you are still under oath.

3 You may inquire.

4 MR. VARGAS: Thank you.

5 DIRECT EXAMINATION

6 BY MR. VARGAS:

7 Q Mr. Rivera, I am recalling you to the stand. We're
8 going to show you some photographs. I want to start out with
9 Plaintiff's 33. First, I will show it to you.

10 Mr. Rivera, do you recognize what's in this photograph?

11 A Yes.

12 Q And what does this picture depict?

13 A It's the rear part of a building.

14 Q And do you know which building?

15 A It's the building that the pipes were installed.

16 Q Okay. Is it the building where your accident occurred?

17 A Yes.

18 Q Do you know who took this picture?

19 A No.

20 MR. VARGAS: And, Your Honor, if I may, if the
21 plaintiff could step down to the easel.

22 THE COURT: Yes. This is Plaintiff's 33 in
23 evidence, no objection?

24 MR. VAN ETEN: No objection.

25 Q If you could step down. I'm going to ask you some

1 questions. Try to keep this microphone close to you, okay?

2 To start with, on the day of the accident, before your
3 accident occurred, I believe you testified that you and Segundo
4 were up on the fire escape installing a drainpipe, correct?

5 A Yes.

6 Q Do you see the fire escape in the picture?

7 A Apparently, but you can barely see it because it is
8 obstructed by some trees. But yes, it's right there. You can
9 see that's the fire escape, right there, and that's where I was
10 standing.

11 Q Indicating where the leaves are and the tree is,
12 correct?

13 A Yes. This part, right here. And this part, right
14 here, you can see the fire escape.

15 Q And the drainage pipe that you were installing, do you
16 see it in the photograph?

17 A Affirmative. It was the one on this side.

18 THE COURT: When you testify, Mr. Rivera, can you
19 tell us what side of the picture you are pointing to.

20 Q So the pipe --

21 THE COURT: Verbally.

22 THE WITNESS: Okay. On the left-hand side of the
23 picture.

24 Q And before your accident, I believe you also testified
25 you would finish installing a pipe, and then you came down to

1 the ground, correct?

2 A Yes.

3 Q And where -- the pipe you had last installed, can you
4 see where that pipe stopped before your accident?

5 A Yes.

6 Q You have to take a break for him to catch up.

7 A Yes, it's right here. It's on the left line. If you
8 can see it, it's with the window. That was the second to last
9 pipe that we installed.

10 Q And how do you know -- where you pointed to, how do you
11 know that's where?

12 Remember to take breaks.

13 A You can see it, right here, on the joint on the
14 left-hand side of the building, you can see where that joint is.
15 You can see it clearly that there is a clamp right there on the
16 left-hand side of the pipe.

17 Q And after -- and when you came down, was there any pipe
18 below where that clamp was on the day of the accident?

19 A No.

20 Q And how did you get down from up where you were on the
21 fire escape?

22 A In this area, in the dark area, which you can't really
23 see, there was a vertical ladder in which you were able to come
24 down.

25 Q And where the clamp was, where the pipe was installed,

1 going up, that was ten feet up, correct?

2 I'm asking from the clamp.

3 A Yes.

4 THE COURT: The interpreter has to interpret what
5 he's saying before you continue. We don't know what he
6 said.

7 MR. VARGAS: I'm sorry.

8 A Yes, correct. Affirmative. From what I can see,
9 though, it's higher.

10 Q And when the pipe fell, did it fall from where the
11 clamp was, down?

12 A Yes, the clamp. From here to here.

13 Q And in this photograph, can you approximate for the
14 jury where you were standing when the pipe fell?

15 THE INTERPRETER: Interpreter would like to
16 interject.

17 THE COURT: The problem is the interpreter has
18 never interpreted what you said. So, Mr. Rivera, if you may
19 only speak in short versions to allow the interpreter to
20 interpret. Just slowly.

21 A So, yes. You can't really see it that well here in the
22 image, but it's on the left line of where the window is. It's
23 right here on the left line, over the white part area is. I
24 can't see it very well because I can't see the floor.

25 Q Okay. And I will show you the next photograph. You

1 can stay right there. The next photo is Plaintiff's 34.

2 Do you recognize what's in this photograph?

3 A Yes.

4 Q What do you recognize it as?

5 A It is the same rear building.

6 Q And in this photograph, can you point out to the jury
7 where you were standing when the pipe fell.

8 A Yes. In this picture, you can see it better and I can
9 explain it better. I was standing right here on this line, the
10 windows. I was in the front looking at this direction.

11 Q And where was --

12 MR. VAN ETEN: Can you show where he's indicating?
13 Can you ask him to describe it. He used his hands.

14 A I'm standing right here on this side, on the left side
15 of the building, on the left side of the window. And I'm
16 standing vertically, looking at my right-hand side.

17 Q And what are you looking at?

18 A I'm standing right there, looking at the wall. And I
19 was also looking at my colleague and my co-worker, Chano. I was
20 looking at the right-hand side, looking at my colleague, Chano.
21 And he was preparing the last segment for this area, which you
22 do not see it on the picture.

23 Q And when the pipe hit you, if I remember correctly, you
24 testified that you fell, correct?

25 MR. VAN ETEN: Objection. Leading.

1 THE COURT: Sustained.

2 Q When the pipe fell, can you tell the jury what
3 happened.

4 MR. VAN ETEN: Objection. At this point, it's
5 asked and answered.

6 THE COURT: Was it asked and answered, Counsel?

7 MR. VARGAS: I want to show where he fell.

8 THE COURT: Pointing to the picture, you want him
9 to show where he fell in the picture?

10 MR. VARGAS: Yes. That is what I was leading to
11 when he objected. I will do it the hard way.

12 THE COURT: Overruled.

13 Q What happened when the pipe fell?

14 A I'm standing right here, on the left side -- on the
15 left side of the window, and on the left side of the building,
16 and I am standing right here, where that clamp is. And this
17 pipe, from here and above, is the one that collapsed. And it
18 fell down on me, on my face, and that's where it fell on me. It
19 hit me hard. It hit my nose, my lip, my teeth, my neck. I fell
20 backwards on my bottom. I'm sorry to say that, that I fell on
21 my butt. But the impact was hard and I fell back.

22 Q And can you show the jury where you landed?

23 A Just right here. Yes. I fell backwards, about one,
24 two feet after the gate. Yeah. The gate right there, it's a
25 wooden gate, about two feet.

1 MR. VARGAS: No further questions.

2 CROSS-EXAMINATION

3 BY MR. VAN ETEN:

4 Q I'm going to quickly show you two other photographs,
5 Defendant's J-1 and I-1 in evidence.

6 And are those the same photographs as the ones you just
7 identified, but those are of better quality?

8 A Yes.

9 Q They both show the same accident location, correct?

10 A Yes.

11 Q And more importantly, they show the material that
12 struck you?

13 A The pipe.

14 Q Okay. And when I ask you about that, with the pipe,
15 because last week, there was testimony of tube and then pipe,
16 and I want to ask you another question.

17 Are you familiar with the term gutter?

18 A Yes. I'm familiar with that because in Spanish, we
19 call it cuneta.

20 Q You call it what in Spanish?

21 A Cuneta. It's called cuneta. It has different terms in
22 Spanish.

23 Q Correct. And that pipe that's running up the wall
24 vertically, that white pipe, that connected to the gutter on the
25 top of the roof, correct?

1 A Yes. It's connected to something -- something that's
2 connected to where the water can be placed so it can go down.

3 Q And that building was only about four or five stories
4 tall; is that correct?

5 A Yes.

6 Q And there were four or five or maybe even six sections
7 of pipe or gutter or tubes used; would that be fair?

8 A Maybe you're not understanding what I said because
9 that's not just a tube. It's a drainage pipe, in which it's
10 different than a gutter. Gutter is usually used for a
11 residential. This one is used for a bigger building.

12 Q Well, this isn't a high-rise building, correct?

13 A Of course.

14 MR. VAN ETEN: Okay. Your Honor, if I may, I have
15 something in the back of the courtroom I would like to mark
16 as an exhibit.

17 MR. VARGAS: Your Honor, I would object.

18 MR. VAN ETEN: Can I mark this, please.

19 THE COURT: Let's go in the back.

20 (Whereupon, the following discussion takes place in
21 the robing room among the Court and Counsel, outside the
22 hearing of the sworn jury.)

23 THE COURT: Okay. Note your objection for the
24 record, plaintiff.

25 MR. VARGAS: So, Your Honor, I am objecting to him

1 bringing in this pipe. First of all, we don't know the make
2 and model of it. We don't know where it came from. We
3 can't equvalate, you know -- it can't be considered equal
4 to what's on that building because we don't know what was on
5 that building, what was installed. There's been no
6 testimony. There's never been a site inspection. And until
7 a couple days ago, there was no pictures of the -- of this.

8 So I object to any introduction of whatever counsel
9 brought in this morning.

10 THE COURT: Counsel, did you show plaintiff's
11 counsel what you were planning to show the jurors this
12 morning?

13 MR. VAN ETEN: The pipe itself, no. Not until he
14 identified it. As counsel said, there was no identification
15 of this before. One of the things that got me on this
16 trial, which unfortunately, I came in late in the game on,
17 was the description between tube and pipe, and the record
18 from Dr. Katz that said gutter. And then I realized gutter
19 pipe.

20 So, as I indicated to everybody when I sent the
21 photographs, I had somebody from my client go take a picture
22 of the back yard, take those photos. I asked them because
23 it's the same person who was the witness. I said, is that
24 the same pipe that was installed before? He said yes. I
25 showed it to everybody. And now I've looked at it, and Home

1 Depot has these pipes that they sell for the purposes of
2 using gutter drains.

3 And I am bringing it in for an exemplar. Whether
4 he can identify it as the exact same type or not, that's up
5 to him. But as an example for them to now see what a
6 ten-foot long pipe, four inches wide, which is what it is,
7 they have an idea now and an understanding. So whether it
8 gets in as evidence, it certainly can be as an exhibit to be
9 able to utilize and question the witness on.

10 MR. VARGAS: I disagree. It's never been
11 exchanged. It was never shown to me. This is just ambush,
12 pulling a stunt, pulling a pipe in here. It is completely
13 improper and it should be stricken from the record. The
14 jury should disregard any reference or him picking up the
15 pipe.

16 THE COURT: That's going to be hard, but I agree
17 with plaintiff's counsel.

18 MR. VAN ETEN: Your Honor, this is the -- the
19 opportunity to inspect, request an inspection of the
20 premises, or anything else like that, would have been in
21 discovery previously. The plaintiff never asked for or
22 requested. The opportunity, that there had been no
23 photographs before, which is why I did it. Plaintiff agreed
24 to and put the photographs into evidence of this condition
25 of the pipe, and now I am following up on it now that it's

1 put into evidence so the jury can see it and explain it
2 further.

3 THE COURT: You didn't have these pictures before?

4 MR. VAN ETTEN: I did not have these pictures
5 before.

6 THE COURT: Where did they come from?

7 MR. VARGAS: He just did it in the last couple
8 days.

9 MR. VAN ETTEN: I had somebody take a picture so we
10 would understand and the jury would understand --

11 THE COURT: This is my point, plaintiff. I said,
12 where did these pictures come from? And I said, you consent
13 to them? And you consented to bring them in.

14 MR. VARGAS: Yeah, but I don't consent to the pipe.

15 THE COURT: If you objected to them, I wouldn't
16 have let them in. They were never exchanged prior to trial,
17 and at the eve of trial, we don't do this, right? We just
18 don't do this. They don't go in unless he consents.

19 MR. VAN ETTEN: Exactly.

20 THE COURT: Your pipe is not going in. So I am
21 sustaining his objection.

22 MR. VAN ETTEN: Your Honor, part of this issue here
23 goes to this as to the testimony as to the size and the
24 weight, and I have a pipe that matches his description, and
25 I'd like to have him look at and discuss the weight of this

1 pipe.

2 THE COURT: You should have disclosed it before.
3 Your objection is noted. Your exception is noted. Your
4 exception to my ruling is noted. The objection is
5 sustained. Move on.

6 MR. VARGAS: And I would ask Your Honor that they
7 remove the pipe immediately from the courtroom and out of
8 the hallway. It's prejudicial.

9 THE COURT: Bring the -- I've got to get the jurors
10 out so we can do it when the jurors are gone.

11 (Whereupon, the following takes place in open
12 court, in the presence of the sworn jury.)

13 THE COURT: We're going to take a break.

14 COURT OFFICER: All rise. Jurors exiting.

15 (Whereupon, the sworn jurors exit the courtroom.)

16 MR. VAN ETEN: Your Honor, I believe that under
17 the circumstances of how this information has come to light
18 and been put forward, that I have the right to be able to
19 bring up something that we just uncovered. If we had taken
20 surveillance of Mr. Rivera yesterday, and brought that in
21 without disclosure, Court would allow us to do that. We
22 would be able to do that and just do a witness disclosure.

23 We got this thing. I worked with an investigator
24 who then brought them to court today, and I checked them out
25 today, looked at the photos, and identified them.

1 THE COURT: Where is your investigator?

2 MR. VAN ETEN: He left. I can bring him in.

3 That's fine. I'll bring him back in to identify --

4 THE COURT: If you want it on your case in chief,
5 you need to lay a foundation. The objection continues to be
6 sustained, Counsel.

7 MR. VAN ETEN: Okay. And then I will do that when
8 --

9 THE COURT: Will you please just put the pipe
10 somewhere where the jurors won't see it.

11 MR. VAN ETEN: Absolutely, Your Honor. And again,
12 I will renew that application once I do that, and then I
13 will also renew my application to recall plaintiff on my
14 case in chief.

15 THE COURT: That's your case in chief. We will
16 decide it when we get there.

17 You can bring the jurors down.

18 COURT OFFICER: All rise. Jurors entering.

19 (Whereupon, the sworn jurors enter the courtroom
20 and take their respective seat.)

21 THE COURT: You may be seated. The objection is
22 sustained. The jurors are to disregard whatever it is that
23 counsel was carrying. It's not in evidence, and the Court
24 instructs the jury to disregard it.

25 You may continue, Counsel.

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

2 Q I'm just going to turn it to a little bit of an angle
3 for you, sir.

4 And the pipe that struck you was white; is that
5 correct?

6 A There, it's white.

7 Q Was it white on the day of the accident?

8 A Yes.

9 Q And you said, when you first testified, that it was
10 four inches wide, correct?

11 A Yes.

12 Q Okay. And can you see in the photograph that there are
13 various ridges on the surface area of the pipe?

14 THE INTERPRETER: Interpreter would like to
15 interject, as interpreter would like to inquire "ridges" in
16 Spanish.

17 MR. VARGAS: Your Honor, can he back up, please.

18 MR. VAN ETTEN: I'm showing the interpreter.

19 THE INTERPRETER: It's not the picture. It's the
20 word.

21 THE COURT: It's not the picture. Yeah, just
22 figure it out. He has to find a translation of a word.

23 MR. VAN ETTEN: Got it.

24 THE INTERPRETER: The interpreter would like the
25 question repeated, please.

1 MR. VAN ETTEN: Maggie, please? Thank you.

2 (Whereupon, the Court Reporter read back the
3 requested testimony.)

4 A You can see a few.

5 Q Okay. I'm going to show you Defendant's I in evidence,
6 which is a smaller size of that, and Defendant's Exhibit J in
7 evidence.

8 And in looking at those, are you able to see the
9 ridges?

10 A Some are visible.

11 Q I'm sorry.

12 A Some are visible.

13 Q And are there at least six ridges going across the
14 pipe?

15 A A few can be seen.

16 Q And I'm going to go back and show you, now,
17 Plaintiff's 33. And I ask you if you could come down, please.

18 THE COURT: You may step down, Mr. Rivera.

19 MR. VAN ETTEN: I'm sorry.

20 THE COURT: It's okay.

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

22 Q When you talked about the clamp on the left-hand side
23 of this photo -- I'm going to point to it right now.

24 Is that the clamp?

25 A This was installed after the accident. That's the pipe

1 that was installed later.

2 Q Okay. So when you said before, when you were
3 describing where the pipe came from, you had identified this
4 clamp, correct?

5 A I didn't say the clamp. I said the pipe, that it
6 didn't exist. That pipe didn't exist. It's a newer picture.

7 Q When you were working on the section of pipe before you
8 came down from the fire escape -- do you remember that?

9 A Yes. It's the one that's on the left, going up.

10 Q Right there. So from the clamp going up; is that
11 correct?

12 A No, where the joint is going up.

13 Q And when you say the joint, that's where the two pieces
14 of the drainpipe connect?

15 A That's correct.

16 Q And when you installed the section above, you would
17 have put that section into the pipe above that, correct, in that
18 joint line?

19 A That's the work that my colleague, Segundo, was doing.

20 Q Right. But you can see, here, in the photograph, here,
21 that the bottom section of pipe goes into the section above it,
22 true?

23 A You can't see it.

24 Q Okay. When you did the work, sir, isn't it true that
25 when you would connect the pipes, before you put the clamps on

1 them, you would take one section to the pipe, and you would put
2 the other into it so that they would attach -- they would go
3 into each other?

4 A My job wasn't to connect them. My job was only to hold
5 it. I can't give you an explanation about the connecting of the
6 pipes. I can only say about what I do, which is holding it.

7 Q You know that these pipes were for water to run
8 through, true?

9 A This is a pipe for water to go down, a drainage, but
10 it's different. It's not for a building. It's not a normal
11 house. It has different floors.

12 Q I understand that, sir. But in order for this pipe to
13 have water run through without leaking, would you agree that
14 they have to be put inside each other?

15 A Yes, of course.

16 Q And in order for them to be put inside each other, they
17 have to be light enough and flexible enough to put the bottom
18 one into the top one and push it in, true?

19 A Most pipes come in a different type of material and
20 shape. Some, you can already put them together, one having been
21 wider than the other one, and that's what we are seeing right
22 here.

23 Q And so you take the bottom one and you put in inside
24 the top one, fair?

25 A Yes. That's what my colleague, Segundo, did.

1 Q Right. And in order for those pipes on the building to
2 be put up in the way they were, you had lifted them up before
3 your accident, correct?

4 A No. My colleague, Chano, he was here on a pulley. It
5 was brought with a pulley and a rope, and that was the rope that
6 my co-worker, Chano, did, and I waited for it on the upper part,
7 and it was lifted up through a pulley.

8 Q You were on the fire escape before your accident?

9 A Yes. Before installing the second to last, I was on
10 the fire escape, which you can't see right here.

11 Q And the purpose of you being there was to help put
12 those pipes together, true?

13 MR. VARGAS: Objection. Asked and answered several
14 times now.

15 THE COURT: Sustained. Asked and answered.

16 Q At any time when you did work at that location, did you
17 pick up any of these pipes that were put together?

18 A No.

19 Q So, if you never -- did you pick up the pipe after your
20 accident?

21 A Neither.

22 Q So if you never touched them before, and you never
23 touched them after, you do not know how much they weighed; do
24 you, sir?

25 A I'm talking about an approximation, sir, just like

1 you're asking about an approximate. And with the injury
2 received --

3 MR. VAN ETTEN: I move to strike.

4 MR. VARGAS: I object. He has to let him answer.

5 THE COURT: If the court reporter could repeat the
6 Q and A.

7 (Whereupon, the Court Reporter read back the
8 requested testimony.)

9 THE COURT: Objection overruled. There is no
10 testimony to be stricken from the record.

11 MR. VARGAS: Can the interpreter finish the answer?

12 THE COURT: Yes, you may finish.

13 A With the hit that I received, I'm approximating that
14 the pipe weighed anywhere from 15 to 20 pounds.

15 MR. VARGAS: And, Your Honor, I would ask -- my
16 client shouldn't have to be standing here.

17 MR. VAN ETTEN: He can sit back down. That's fine.

18 THE COURT: No more referring to the picture?

19 MR. VAN ETTEN: I don't know, but if he wants his
20 client to sit down --

21 THE COURT: Okay. For now, he can sit down. If he
22 has to stand up --

23 MR. VARGAS: I mean, if you have a specific
24 question about the picture. You're not answering that, so
25 that's why --

1 THE COURT: Just let him sit down for now.

2 Q So, sir, when I just asked you if you knew what the
3 weight was -- and can you answer this, please, yes or no.

4 You don't know the weight, you could only approximate,
5 yes or no?

6 A Just like you asked me before about the height of the
7 pipe, I didn't have a measuring tape to measure how high it was.
8 The same thing, I didn't have a scale to weigh the pipe.

9 THE COURT: Mr. Rivera, do you know the exact
10 weight of the pipe; yes or no?

11 THE WITNESS: No.

12 THE COURT: The answer is no. Move on.

13 MR. VAN ETEN: Thank you.

14 Q And, sir, having worked construction before, you had
15 worked with drainpipes, and you know that a ten-foot section of
16 drainpipe only weighs about two to three pounds?

17 MR. VARGAS: Objection.

18 THE COURT: I will allow it. You can answer if you
19 know the answer.

20 A Not this one.

21 Q And, sir, when you talked with Mr. Vargas a few moments
22 before about what happened when you were struck by the pipe, do
23 you remember when you testified last week that you said that the
24 pipe had fallen off to the side?

25 A It's possible, yes.

1 Q And the reason it fell off to the side after just
2 striking your nose is because it was so light; isn't that true?

3 A No. That's not why.

4 MR. VAN ETEN: Okay. Your Honor, I will end it
5 there, and just reserve the right as we discussed on the
6 record, but outside the presence of the jury.

7 THE COURT: I don't know that you have to reserve
8 your right to call him on your case in chief, but it is
9 noted for the record.

10 Any redirect?

11 MR. VARGAS: Yes.

12 REDIRECT EXAMINATION

13 BY MR. VARGAS:

14 Q Before, you had testified that the pipe fell seven to
15 eight feet, correct?

16 A Approximately.

17 Q Now, looking at the photographs, is that still your
18 answer?

19 A Looking at that picture and looking at that tube and
20 its painting, it seems like it's 12, 14 feet.

21 MR. VARGAS: No further questions.

22 THE COURT: Any cross on the redirect?

23 MR. VAN ETEN: No, Your Honor.

24 THE COURT: Great. Mr. Rivera, you may step down.
25 That concludes the morning's witnesses, correct?

1 MR. VARGAS: Correct.

2 THE COURT: We will resume after lunch at 2:00.

3 Thank you.

4 We don't need an interpreter this afternoon. Thank
5 you.

6 COURT OFFICER: All rise. Jurors exiting.

7 (Whereupon, the sworn jurors exit the courtroom.)

8 THE COURT: So, as far as some of the issues we
9 discussed yesterday off the record in the virtual
10 conference, were the -- I'm sending my verdict sheet. I
11 know defense counsel wants the Court to have two separate
12 questions on the substantial factor or the proximate cause.
13 The Court will not have two separate questions. It is one
14 questions.

15 There is no itemized verdict going to be on the
16 verdict sheet. Just one question, future medical expenses.
17 And I know the defense counsel requested it, and you can
18 make a record on the basis for your request for an itemized
19 verdict. I don't see that it's required in this case.

20 MR. VAN ETEN: And, Judge, you want us to make
21 that record when you put the ruling on the record, correct,
22 not now?

23 THE COURT: I just put the ruling. We are on the
24 record.

25 MR. VAN ETEN: All right. So, Your Honor, just on

1 the issue of the itemized verdict, as we have in this case
2 is the issue of whether or not some, all, most, whatever, of
3 the future medical specials are causally related to the
4 incident. They just put a life care plan projection of \$1.5
5 million. Let's say, hypothetically, the jury comes back
6 with a decision for \$700,000.

7 Without an itemized verdict, we do not know what
8 the jury awarded or didn't award for, so we are unable to
9 then say whether or not the jury's decision was against the
10 weight of the evidence because we don't have an idea of what
11 they excluded. So unless it's full, and it's all for the
12 1.5, which we could then argue that all of it was against
13 the weight of the evidence, if it's any number less than
14 1,500,321, we lose the ability to then appeal to you in a
15 posttrial motion or on appeal that the jury award was
16 against the weight of the evidence because we don't know
17 which ones they decided to exclude, and that's why you need
18 an itemized verdict.

19 THE COURT: My charge to the jury would be 2:285.
20 As you know, the issue of defendant's liability has already
21 been decided. If you find that plaintiff is entitled to
22 recover from the defendants, plaintiff will be entitled to
23 recover the amount of reasonable expenditures for medical --
24 it says and dental services, but I can take out -- do we
25 need --

1 MR. VARGAS: Yeah, we can take it out.

2 THE COURT: For medical services and medicines,
3 including physician's charges, nursing charges, hospital
4 expenses, diagnostic expenses, and x-ray charges. Thus, you
5 will find -- you would include in your verdict the amount
6 that you find from the evidence to be the fair and
7 reasonable amount of the medical expenses necessarily
8 incurred. This is for past.

9 MR. VAN ETEN: That's past, yeah.

10 THE COURT: Yeah. Did somebody request past?

11 MR. VARGAS: No. The one I sent was all about
12 future. I sent over a version yesterday.

13 MR. VAN ETEN: Past had been put in originally
14 before we knew that they weren't going to be making a claim
15 for the past.

16 THE COURT: What's the future one?

17 MR. VARGAS: I e-mailed it. I just took "past" out
18 and used "future".

19 THE COURT: Since you never asked for future, it's
20 not in the draft my law clerk did. I don't have the book in
21 front of me.

22 You sent me the specific charge?

23 MR. VARGAS: I did. I typed it out as to future
24 medical expenses. But I just wanted to get on the record
25 real quick about Dr. Katz's records. We had discussed that

1 whether --

2 THE COURT: Let's finish the basis for an itemized
3 verdict.

4 What's your position, Counsel?

5 MR. VARGAS: We -- I don't think there is any right
6 to it. It's unnecessary. The defendants, they want to add
7 as many questions as they can to the verdict sheet to make
8 it confusing for the jury. CPLR 4111, which covers general
9 special verdicts and written interrogatories, it does not
10 mention anything about itemizing injuries or the treatments.
11 All it sets forth is the amount for future damages, past,
12 and if it's future medical expenses, and how many years it's
13 to cover. Any other questions is just extra fillers that
14 the defendants are asking for.

15 MR. VAN ETEN: I believe, Your Honor, that in the
16 various special interrogatories, particularly, also when you
17 look at it with the Carl Schwartz's (ph.) Rule, which I
18 believe, which I had put in the original charges, they
19 addressed, and just from when you read the 2:285 charge,
20 they addressed vocational rehabilitation, medical, x-ray,
21 and hospital. They break it down on various special
22 charges.

23 What we did is take those and just broke it down
24 further to the exact claims that were being made by
25 plaintiff, which were the exact claims that Dr. Grimm

1 testified and Dr. Goldman testified to, and asking the jury
2 to say yay or nay to those exact claims. That's why we
3 broke it down on the itemized verdict.

4 And I don't know why they wouldn't want the jury to
5 address and determine what the actual values of the itemized
6 ones were.

7 MR. VARGAS: I already stated why I don't want it.
8 And the cases that were cited by defendant, most of them
9 were motor vehicle cases, which we discussed yesterday, it
10 is not motor vehicle case. There is no threshold law. That
11 would be the only time I could see that it was necessary to
12 set us -- or separately put the injuries or whether there
13 was treatments for those body parts, but we are not dealing
14 with that here.

15 THE COURT: How did we jump from --

16 MR. VARGAS: That's the cases he sent you. I was
17 just --

18 THE COURT: For the itemized verdict request?

19 MR. VARGAS: Yes. That's the cases I saw him
20 e-mail to your chambers. They were all regarding motor
21 vehicle. And there was a couple of cases on aggravation,
22 but we aren't to that point yet.

23 THE COURT: Okay. So I note your objection. The
24 Court will not have an itemized verdict sheet. It would
25 just be past pain and suffering, future pain and suffering,

1 and future medical expenses. That's it. I sent you a copy
2 of my verdict sheet. Your objection is noted for the
3 record.

4 MR. VAN ETEN: Thank you, Your Honor.

5 THE COURT: You're welcome. As to the issue of a
6 missing witness charge, I will hear defense counsel, who is
7 requesting the charge.

8 MR. VAN ETEN: Sure, Your Honor. As we had
9 discussed yesterday, though it was without the court
10 reporter, Dr. Katz was one of -- I will say treating
11 physicians of plaintiff. He was a treating physician. And
12 during the course of the trial, his records were marked into
13 evidence, and the Court had actually cited a case on that
14 issue, which stood for not only if you mark them into
15 evidence, then if that person doesn't come in, you can get a
16 missing witness charge.

17 THE COURT: I cited Bodian for the purpose of
18 allowing treating physician's records in evidence.

19 MR. VAN ETEN: Correct. And what happened here
20 not only was that he was a treating physician record, they
21 did not call him. He is an otolaryngologist. He is not a
22 plastic surgeon. Dr. Tornambe is a plastic surgeon. Dr. --

23 THE COURT: Say it again.

24 MR. VAN ETEN: He is an otolaryngologist.

25 THE COURT: Dr. Katz?

1 MR. VAN ETTEN: Sure.

2 THE COURT: Devito versus Feliciano, Court of
3 Appeals 2013, the standard for a missing witness charge, the
4 witness's knowledge is material to the trial. That's not an
5 issue. We know it's material. The witness is expected to
6 give noncumulative testimony. That's one of the issues we
7 have to address. Is it cumulative or not? Okay? That's
8 what I want to hear. And I know you said a little bit about
9 it.

10 MR. VAN ETTEN: Sure.

11 THE COURT: Is the witness under the control of the
12 plaintiff? Since you are requesting the charge, you have to
13 tell the Court or plaintiff can tell us why he is not in
14 control of Dr. Katz or Dr. Sieczka, right? The witness is
15 available to the party.

16 So the problem I have is -- look, I know he is an
17 otolaryngologist. I haven't looked at the records. You
18 both have looked at the records.

19 MR. VARGAS: If I may speak, Your Honor.

20 THE COURT: You may. I will hear you.

21 MR. VARGAS: So, originally, defense counsel
22 objected to his records coming in because there was Dr.
23 Katz's interpretation of the CAT scan, which I am more than
24 willing to redact because, first of all, that diagnosis
25 never came up in Dr. Tornambe's testimony. The only thing

1 that came up in Dr. Tornambe's testimony is he examined the
2 plaintiff.

3 THE COURT: We did allow it into evidence, subject
4 to redaction. And yes, the x-rays, I believe, I agreed are
5 double hearsay and will be redacted.

6 MR. VARGAS: And those records could have come in
7 -- if you had ruled that they can't come in, I could have
8 had a records keeper come down here and put the records in.
9 It has no bearing on whether the treating physician's
10 records came in though 3122 or whether the records keeper
11 came down here. He keeps trying to cite --

12 THE COURT: Are the records cumulative?

13 MR. VARGAS: They are definitely cumulative. Dr.
14 Katz says broken nose, deviated septum. Dr. Tornambe says
15 the exact same thing, except Dr. Tornambe is the surgeon.
16 So we told him, Dr. Katz is not under our control. It would
17 cost more money to call Dr. Katz to come in here and say the
18 exact same thing that Mr. Tornambe testified to. And I
19 have --

20 THE COURT: Stop.

21 MR. VARGAS: Okay.

22 THE COURT: Tell me how they are not cumulative.
23 It's a broken nose and a deviated septum. You have the
24 surgeon testifying about it. Why do we need Dr. Katz to say
25 the same thing?

1 MR. VAN ETTEN: Because the radiologist that they
2 brought in said that he looked at the films and he saw no
3 evidence of there being a fractured nose or a deviated
4 septum.

5 THE COURT: Which radiologist?

6 MR. VAN ETTEN: Dr. Kolb.

7 THE COURT: We're talking about Dr. Katz.

8 MR. VAN ETTEN: But you're asking whether they are
9 cumulative. I'm saying because they brought in a
10 radiologist who looked at the films that said this. He
11 addressed what the films said. Dr. Tornambe, in his
12 testimony, on Dr. Katz's records, and they were there and
13 they addressed it. He was there and he had the films and
14 they said they needed surgery. That was the testimony.

15 He is a different field, and he's trying to say,
16 essentially, that he got recommended to me from me from
17 surgery from Dr. Katz. That's why -- why did the
18 otolaryngologist recommend him for surgery to him? That's
19 why it's not cumulative.

20 THE COURT: Can I see Dr. Katz's records? I will
21 review the records and I will make my ruling.

22 MR. VAN ETTEN: It's Plaintiff's 31 in evidence.

23 THE COURT: And have you decided what to redact or
24 no?

25 MR. VARGAS: I am willing to take out any diagnosis

1 about the CAT scan. That is the only thing that I think is
2 controversial.

3 THE COURT: But I want to know what's noncumulative
4 in here. You're going to have to look through them. I am
5 not looking through them, and we will discuss it again.

6 What about Dr. Sieczka?

7 MR. VAN ETEN: I will withdraw Dr. Sieczka. She
8 is a plastic surgeon and --

9 THE COURT: Okay. Withdrawn.

10 MR. VAN ETEN: Thank you.

11 THE COURT: We have to go to the records to see.

12 MR. VARGAS: And then there was a missing document
13 charge that defendant was asking for.

14 THE COURT: I will hear, whenever you're ready, on
15 the missing document charge.

16 MR. VAN ETEN: Yes, Judge. As I indicated, we had
17 subpoenaed both Dr. Weinstein and Dr. Grimm, and had asked
18 them to bring in the full copies of the records, including
19 intake sheets, billing records, and additional
20 documentation. Forgetting for the moment that there were no
21 billing records, I guess that becomes moot since they
22 withdrew their past medical expense claim, but we did ask
23 for the intake sheets.

24 And when we were asking the doctors on their
25 histories and what they took, they discussed on how the

1 patient would come in, and the procedures of their offices,
2 and they would fill out -- these patients would fill out
3 intake sheets. That's part of their record. Neither one of
4 them brought them in.

5 Plaintiff was aware of these issues. We had
6 discussed these issues. We talked about that in advance,
7 they're going to have to bring in their complete set of
8 records, and they knew that, and they came in and they
9 didn't bring in their complete set of records, specifically,
10 those intake sheets where there is history, whether there's
11 prior injuries or not, and as to the accident, the mechanism
12 of the accident, and things of that nature. And because we
13 subpoenaed it, they asked it, they were shown it. It's --
14 the subpoenas are attached to the records, themselves.

15 Those records are not there, so we are asking for a
16 missing document charge for the specific intake sheet
17 records. Those are plaintiff's records. We got the
18 authorization. We subpoenaed them, and they were not
19 produced. I can't do anything beyond that because they are
20 not my records. I don't control them. The plaintiff can go
21 to these doctors and bring them in. I mean, the doctors can
22 bring them in because they are coming in to testify for
23 them.

24 THE COURT: Counsel, where is the intake sheets?
25 Does anybody have the intake sheets?

1 MR. VARGAS: I haven't seen them through the entire
2 litigation. This was never an issue until he decided to
3 bring it up in the last couple days. The only thing I told
4 the doctors is bring your chart in, and usually, that's
5 sufficient because they just print out what's ever on their
6 computer, which is what the doctors testified to.

7 THE COURT: What's the subpoenaed records have?
8 Have you looked through them?

9 MR. VARGAS: I had never seen an intake sheet in
10 any of the records before this trial. Anything in our
11 records, the defendants --

12 THE COURT: What's the indication that they exist,
13 the intake sheets?

14 MR. VARGAS: Exactly. They are not under my
15 control. I simply tell the doctor, "bring your chart." I
16 have no control what -- whether they print it out correctly.
17 The original problem with Dr. Weinstein's records, they're
18 double sided. So I said, please bring your chart. The ones
19 you sent are double sided and they are poor quality ink.
20 There was no mention that the intake is not in there. The
21 whole case is going to go down the drains because the intake
22 form isn't in there. There was no mention of that.

23 So it is not under my control, and this is an issue
24 that defendant has just dreamt up in the last couple of days
25 as a distraction.

1 MR. VAN ETTEN: That's why I asked him and crossed
2 him on the existence of the documents.

3 THE COURT: Counsel, what did he testify would be
4 in the intake sheet? Did he tell --

5 MR. VAN ETTEN: I believe it was how the incident
6 happened. It could be a history of --

7 THE COURT: Who was the doctor?

8 MR. VAN ETTEN: Dr. Weinstein and Dr. Grimm both
9 talked about that.

10 MR. VARGAS: I don't think they testified to what
11 -- that was in the intake format. It was simply pointed out
12 they didn't see the intake form.

13 THE COURT: Is there anything in the intake form
14 that would be relevant to your defense?

15 MR. VAN ETTEN: Yes.

16 MR. VARGAS: We don't know. We've never seen it.

17 THE COURT: What did they testify to?

18 MR. VAN ETTEN: Judge --

19 THE COURT: Listen to me. You said the intake
20 sheet would have the history, any priors.

21 When the doctors testified, what did they say was
22 the history?

23 MR. VAN ETTEN: All they -- that's the point,
24 Judge, and that's exactly the issue. All they said is he
25 had an on-the-job work-related accident. The initial

1 reports didn't say a pipe fell, didn't say he twisted his
2 neck, didn't say that he fell to the ground. None of those
3 fact issues --

4 THE COURT: That's not an issue for trial. We are
5 beyond liability. This is a damages trial.

6 MR. VAN ETEN: No. But it is an issue on
7 causation, Judge. And that's the thing because we have
8 somebody who testified that he never was struck by the pipe,
9 whatever, as we got out from Mr. Rivera. Now, Mr. Rivera,
10 we had the whole twisting and falling, when that came up for
11 the first time, I asked the doctors if they got a history of
12 him twisting or falling, and the didn't. Would it be in
13 your intake sheet if they did it? That was the way the
14 question was being asked of them. And they didn't know
15 because they didn't see the intake sheets because somebody
16 does it, and then they funnel it into these prepared
17 reports.

18 And that's where we are entitled to these things.
19 And the fact that counsel just said I just asked them to
20 bring in the same chart and not comply with what the
21 entirety of the subpoena is, I just got chastised about
22 bringing in a last minute document that we -- exemplar that
23 we brought in last minute. Counsel knew about the subpoena,
24 spoke to the doctors, and didn't tell them to bring in the
25 intake sheets, only the charts that you print out.

1 MR. VARGAS: Because you told me, tell Weinstein to
2 bring his chart because it's double sided. Those were your
3 exact words. Don't try to the change the story now.

4 MR. VAN ETEN: I'm not.

5 MR. VARGAS: You are.

6 THE COURT: Listen to me, I am not charging a
7 missing document charge. I will go through Dr. Katz's
8 records to see if a missing witness charge is required.

9 MR. VAN ETEN: And I have one other quick --

10 THE COURT: There is no basis to charge a missing
11 document charge for a missing intake sheet.

12 MR. VAN ETEN: Okay. I have one other missing
13 document that just popped into my head as I was looking at
14 Dr. Katz's records, Your Honor, and I apologize. But Dr.
15 Tornambe, the plastic surgeon, when I asked him, because he
16 said that he can just know by looking or touching or
17 feeling. I said, well, didn't you take any photographs?
18 Because I know plastic surgeons take before and afters. And
19 he said, oh, yes. I had photographs where Mr. Rivera had
20 shown me photographs of what his nose looked like before,
21 and that was the basis of his opinion.

22 There have not been productions of any
23 photographs of plaintiff's nose as it looked before. I
24 asked Dr. Tornambe, did you bring those in? Did you bring
25 in any photographs? And he did not. So I am asking for a

1 missing document charge as to any preaccident photographs
2 that plaintiff showed or used as part of his treatments for
3 his nose in the subsequent surgery.

4 THE COURT: Are there any?

5 MR. VAN ETEN: Dr. Tornambe testified to it, yes.

6 MR. VARGAS: What you're missing there is he could
7 have shown him photos, like, here's my face before the --
8 there is no testimony that he has them.

9 THE COURT: I want to read -- let him read from the
10 transcript where it says there are photographs.

11 MR. VAN ETEN: Pulling it up, Judge.

12 MR. VARGAS: It's page 441, line 9.

13 MR. VAN ETEN: Thank you. Page 441, line 5:

14 "QUESTION: Do you know what the condition was
15 prior to March 15, 2018?

16 "ANSWER: Yes.

17 "QUESTION: Okay. And have you seen the records
18 for that?

19 "ANSWER: No. But I asked to look at the
20 photographs of him before the injury.

21 "QUESTION: Do you have the photograph with you?

22 "ANSWER: I do not.

23 "QUESTION: Is it part of your records?

24 "ANSWER: No. It's just -- it's part of my usual
25 routine."

1 THE COURT: You don't have to keep reading.

2 MR. VAN ETEN: What's that?

3 THE COURT: You don't have to keep reading. He
4 doesn't have the photos.

5 MR. VAN ETEN: But the plaintiff does. He's the
6 one that showed him and that's the basis upon which he gave
7 his opinion.

8 THE COURT: I am not charging a missing document
9 charge, Counsel. Let's move on. The demonstrative exhibit
10 for your request PJI 1:90.2. What would be the -- I need to
11 identify the demonstrative exhibit. If you can send me the
12 identification, whoever requested that charge. I believe it
13 was defense counsel.

14 MR. VAN ETEN: It was what I was trying to
15 introduce into evidence.

16 THE COURT: The big pipe? We don't know if that's
17 coming in yet. Is that it?

18 MR. VAN ETEN: That's it. That's what it would
19 be.

20 THE COURT: Okay. We will get to that when you
21 present your case in chief.

22 MR. VARGAS: And, Your Honor, I have an objection
23 to counsel e-mailing you stuff and not me. It's not -- I've
24 let it go a couple of times. It's really kind of annoying.

25 THE COURT: I don't know that I got anything

1 without you copied.

2 MR. VAN ETEN: I e-mail everybody.

3 MR. VARGAS: Yeah. Well, I didn't see that charge
4 in the one you sent me.

5 THE COURT: What charge?

6 MR. VARGAS: The one you just mentioned. I didn't
7 see that in his request to charge, like he didn't show me
8 the pipe this morning.

9 MR. VAN ETEN: I actually didn't even know I did
10 that charge, Counsel. It caught me by surprise.

11 THE COURT: I don't know either. Let me look at
12 it. I am just reading from my law clerk's notes before she
13 went on vacation. Hold on. Request to charge --

14 MR. VAN ETEN: That might have been for the
15 original one from before, Judge. I don't know.

16 THE COURT: I don't know either. Hold on a second.

17 MR. VARGAS: Which I never received, also.

18 MR. VAN ETEN: Just since we --

19 THE COURT: If it wasn't requested, we don't have
20 to deal with it. Let me see.

21 MR. VAN ETEN: I reforwarded you the e-mail that
22 you were --

23 MR. VARGAS: That was after a week.

24 MR. VAN ETEN: But you were CC'd on --

25 MR. VARGAS: I never received that original one.

1 MR. VAN ETTEN: But if you look at the e-mail, you
2 were CC'd on it.

3 THE COURT: I have defense request to charge. Hold
4 on a second. It is the expert witness supplemental charge,
5 so that's another thing.

6 MR. VAN ETTEN: I'm sorry. That was demonstrative
7 evidence when they showed the bones and stuff like that.
8 That's why we had requested it. That's not for what we were
9 talking about. That's like when --

10 THE COURT: Whatever it is --

11 MR. VAN ETTEN: When he showed the spine.

12 THE COURT: It's dated May 5th, 2025. I don't know
13 how I got it. My law clerk gave it to me, so I don't know.

14 MR. VAN ETTEN: So, that was supplementing the
15 experts. When we talked about it, I wasn't sure what that
16 one was. When the expert came in, the one expert -- and I
17 think it was Grimm. He brought up a little section of the
18 spine. He brought a little exemplar and he marked it as an
19 exhibit. That's demonstrative evidence. That's why we
20 asked for that charge. My experts will be doing the same
21 thing.

22 MR. VARGAS: It was just marked for identification.

23 THE COURT: But it is demonstrative evidence.

24 MR. VAN ETTEN: Exactly. That's why we asked --

25 THE COURT: So what are we identifying that as?

1 MR. VARGAS: Lumbar spine.

2 MR. VAN ETEN: Models of lumbar spines or whatever
3 my guys end up bring in.

4 THE COURT: Models of lumbar -- well, whatever it
5 is that you want, you have to tell me specifically what to
6 insert in the language under that specific Patent Jury
7 Instruction 190.2. Models of the lumbar spine, if you have
8 models of the cervical spine, or models of the nose,
9 whatever it is, I need you to tell me what you want.

10 Moving on. Do you still want direct and
11 circumstantial evidence or are you still thinking about it?
12 We will hold off on it.

13 MR. VAN ETEN: I don't think, at this point, that
14 it's relevant at this point. I don't think it will be, but
15 I don't think it's been relevant at this point, Judge.

16 THE COURT: Okay. Let me know if you change your
17 mind.

18 MR. VAN ETEN: Thank you.

19 THE COURT: It's a long charge, too.

20 MR. VAN ETEN: Do you still do it with the glass
21 that the court officer always knocks over?

22 THE COURT: My clerk. The clerk, not the court
23 officer. I think I covered all the controversial ones.

24 MR. VARGAS: The aggravation?

25 THE COURT: Right. So the aggravation is another

1 one, yeah, we have to go over. The burden of proof, do you
2 agree it's 1:23, not 1:60, as there is no comparative on
3 this 241-case?

4 MR. VARGAS: Yes.

5 MR. VAN ETEN: Yes.

6 THE COURT: Okay. So we have that one. So let me
7 look at it again -- your charges.

8 Because you had no objection to any of the charges
9 of the plaintiff?

10 MR. VAN ETEN: No. We had basically the same
11 ones.

12 THE COURT: Right. So as far as yours, which we
13 will put in as a Court Exhibit when I figure out how to
14 print it. Maybe I can forward it to my clerk to print. We
15 are taking out 1:60.

16 You withdrew clear and convincing evidence, or have
17 you? 1:64, the burden of proof, clear and convincing
18 evidence?

19 MR. VAN ETEN: Can -- I don't have that. I didn't
20 print that out with me, Judge.

21 THE COURT: How does clear and convincing evidence
22 charge apply to a civil damages trial?

23 MR. VAN ETEN: Can I look at it or do you have it
24 in front of you? Off the top of my head, I am blanking on
25 what it says. I don't --

1 THE COURT: No, I don't have it in front of me.
2 But I know it doesn't apply.

3 MR. VAN ETEN: I did not think it applied
4 yesterday, Judge, but I am just trying to put my hands
5 around it, off the top of my head, because I did not print
6 that one out as one that we were going to talk about.

7 THE COURT: All right. Because I think you agreed
8 yesterday that it doesn't apply.

9 MR. VAN ETEN: I had it in front of me yesterday,
10 Judge.

11 THE COURT: Okay. Look, if you are not ready to go
12 over all the requests to charge that you have on your
13 two-page document that you requested, when you are ready,
14 we'll go over them.

15 MR. VAN ETEN: Okay. I think we've covered every
16 one but --

17 THE COURT: I have my notes upstairs. I feel like
18 you withdrew that request because it's a preponderance of
19 evidence in all civil tort trials. Clear and convincing
20 evidence is not applicable to this case.

21 MR. VAN ETEN: Okay.

22 THE COURT: I don't know how else to say it, but
23 you can definitely tell me the reasons you believe they are
24 applicable, when you are ready.

25 MR. VAN ETEN: Thank you, Judge.

1 THE COURT: You're welcome. Moving on. I am just
2 going through your requests. That's it. I think we have
3 them all.

4 Oh. We have the aggravation of a pre-existing
5 injury. So the question is, because there was testimony, he
6 sent me the transcripts and the pages that he believes are
7 applicable to the aggravation charge. The degeneration or
8 disc disease that was testified to by the -- your expert,
9 would that substantiate a charge for a an aggravation of a
10 pre-existing injury? That's the question.

11 MR. VARGAS: And I disagree that it does. First of
12 all, the films that the expert was talking about when he
13 looked at that was films one year after the accident, after
14 he has been injured. My radiologist, Dr. Kolb, looked at
15 the films 23 days after the accident and found no
16 degeneration.

17 THE COURT: But it is a question of fact as to
18 whether this is a traumatic injury or a degenerative
19 condition.

20 MR. VARGAS: But the charge is meant for when you
21 have an accident and some kind of incident, otherwise,
22 they'd get aggravation charged in evidence case just because
23 their expert comes in and says it is degenerative, which
24 they say in every case, of course.

25 THE COURT: I know. I understand that. But, I

1 mean, if there's a reason that you believe a charge of an
2 aggravation of a pre-existing injury applies, I will hear
3 you.

4 Did you give me a case law?

5 MR. VAN ETTEN: Judge, what I think the issue here,
6 which is the interesting dichotomy I'm in, I don't think
7 there was an aggravation because I don't think the cervical
8 or lumbar spine were injured in this incident. So it's not
9 that there's an aggravation. His doctors said that he was
10 asymptomatic and they judge on symptoms. And that's why
11 they were, in a sense, saying the underlying degenerative
12 that they acknowledge was there was aggravated.

13 They are the ones that made that statement based on
14 their causation opinions, not me. I would have said there
15 is no cervical or lumbar injury caused. Their experts, in
16 providing their causation opinion, as weak as it was, was
17 based on that, that they had underlying degenerative, and it
18 got aggravated by this. The symptoms -- they were
19 asymptomatic, and became symptom, I believe, was Grimm's
20 testimony.

21 So that is what they caused and created by it,
22 because other than that, had he not said something to that
23 effect, and I will still probably do it, I'm going to ask to
24 dismiss the claims for the neck and back as not being
25 related to the incident because they didn't prove it with

1 any sufficiency. I don't think that they proved it. They
2 barely got the opinions in. Their radiologist didn't do an
3 opinion on any causation.

4 That was the problem. And even Dr. Weinstein said
5 that this was plaque disease, and this stuff was here, the
6 cervical spine had everything throughout the cervical spine,
7 throughout, whether it's a year later, whatever. The same
8 findings are there. You will see that.

9 THE COURT: Look, you sent me Bhan, B-H-A-N, versus
10 Data Pro. I don't know how that case helps you right now
11 because it is actually helping plaintiff, that an
12 aggravation charge is not applicable to these set of facts.

13 MR. VAN ETEN: Right. I understand that, Judge.
14 That's what I just said. They did their causation opinions
15 -- was based upon a history of no symptoms. Now he has
16 symptoms afterwards. That's basically what they're saying
17 that it was caused or aggravated. They testified to that.

18 THE COURT: Did you allege a pre-existing injury in
19 your bill of particulars?

20 MR. VARGAS: No.

21 THE COURT: You want to look at Paragraph 2 of your
22 BP?

23 MR. VARGAS: The original BP?

24 MR. VAN ETEN: Aggravation, activation, and
25 precipitation of underlying hypertrophic degenerative

1 arthritic circulatory arterial venous and systemic
2 conditions.

3 MR. VARGAS: Well, I'm assuming what we are talking
4 about here is boilerplate language, which I will withdraw
5 then. As you see in the BP, the way we set up the BPs, the
6 actual injuries are in caps, the first three pages. And
7 then the boilerplate language about limitations, anxiety,
8 all the things that are not different claims in this case.

9 THE COURT: Is there a specific question in the
10 bill of particulars regarding aggravation?

11 MR. VARGAS: I don't have the demand for bill of
12 particulars in front of me. I would assume it does, but I
13 don't have it in front of me. I just have their answer
14 there, I think. Unless I got it -- there has never been any
15 mention of a pre-existing condition, accident, injury,
16 anything even close to it in this entire case.

17 THE COURT: Other than your BP.

18 MR. VAN ETEN: And the expert responses that were
19 served from the defense experts addressed those very issues.

20 THE COURT: I will have to look at the case for the
21 defense counsel to decide on the aggravation charge.

22 Anything else?

23 MR. VAN ETEN: The only thing I wanted to just add
24 on the one thing, on the causation, which you already ruled
25 about. I know counsel addressed the cases on auto

1 accidents. Off the top of my head, I don't remember which
2 one it was. The one auto case -- it might have been with a
3 D.

4 It was not a threshold question. It was two
5 different separate and distinct injuries, including whether
6 or not the lumbar injuries were causally related. It was
7 not for no-fault threshold purposes. It was for the
8 purposes of distinguishing between two separate and distinct
9 injuries. And if I look at it real close, I might be able
10 to tell you exactly what case that was. So that's just a
11 general response that his saying they were all auto and it's
12 no fault. They weren't all auto no fault. They were auto
13 cases, but not no-fault based issues.

14 THE COURT: I already ruled on that, and I --

15 MR. VAN ETEN: I was just making the record,
16 Judge. As I said, just for making a record to respond
17 because we moved on from it. I just wanted to make my
18 record so I had my argument there. That's it. I understand
19 your ruling.

20 THE COURT: Your objection is preserved for
21 purposes of appeal.

22 Anything else?

23 MR. VAN ETEN: Thank you. Nope.

24 THE COURT: Okay. I will look at my notes to see
25 if I forgot anything, and we will discuss it after lunch.

1 MR. VAN ETTEN: Thank you, Judge.

2 THE COURT: Have a good lunch.

3 (Whereupon, a lunch recess was taken.)

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

5 THE COURT: For the future, if there's any
6 demonstrative evidence you want to show the jurors, please
7 give me a heads up. Do not bring it from the back of the
8 courtroom without me knowing.

9 MR. VAN ETTEN: Okay.

10 THE COURT: And to my clerk, if you see him
11 bringing in anything that's out of the ordinary, please
12 advise the Court.

13 You can bring them down.

14 THE COURT: You withdrew juror use of professional
15 expertise. That's the one you withdrew?

16 MR. VAN ETTEN: Correct. That was mine.

17 THE COURT: And you did withdraw the supplemental?

18 MR. VAN ETTEN: The supplemental --

19 THE COURT: The one about demonstrative evidence.

20 MR. VAN ETTEN: Yeah, but I think we do use it with
21 the things. That was -- we miscommunicated on that. I
22 think that should be in just because they used, like you
23 said, the lumbar spine model. I don't know if my expert
24 will or will not be using one today.

25 THE COURT: Okay. That was it. Okay.

1 COURT OFFICER: All rise. Jurors entering.

2 (Whereupon, the sworn jurors enter the courtroom
3 and take their respective seat.)

4 THE COURT: Good afternoon. You may be seated.
5 Plaintiff, do you have any further witnesses?

6 MR. VARGAS: No further witnesses. I rest.

7 THE COURT: Okay. The plaintiff now rests, and
8 officially, it's the start of defense case, although there
9 was one witness, Dr. Canter, out of turn.

10 You may call your next witness, defense counsel.

11 MR. VAN ETEN: Defense calls Dr. Marc Katzman.

12 THE COURT: Dr. Katzman, you may take the witness
13 stand. Please remain standing for the officer to swear you
14 in.

15 COURT OFFICER: Please raise your right hand.

16 D R. M A R C J. K A T Z M A N, a witness
17 called by and on behalf of the Defendant, upon being duly
18 sworn, took the witness stand, and testified as follows:

19 COURT OFFICER: Please be seated. State your name
20 and address for the record.

21 THE WITNESS: Dr. Marc Katzman, 175 Great Neck
22 Road, Great Neck, New York, 11021.

23 THE COURT: You may inquire.

24 MR. VAN ETEN: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. VAN ETTEN:

2 Q Good afternoon, Dr. Katzman.

3 A Good afternoon.

4 Q Doctor, are you duly licensed to practice medicine in
5 the State of New York?

6 A Yes.

7 Q When did you achieve your licensing?

8 A I believe it was 2010.

9 Q And can you tell the jury a little bit about your
10 educational background, please.

11 A Sure. Let me just clear my voice. So, after college,
12 I went to medical school at the Albert Einstein College of
13 Medicine in the Bronx. I did the typical four years of medical
14 school education, and then graduated in 2005 with my MD. Then I
15 did a required one-year internship at New Rochelle Hospital in
16 Westchester, and that was a combination of internal medicine and
17 surgery.

18 Then I returned back to Albert Einstein's campus to do
19 four years of radiology residency training to become a
20 radiologist at one of Einstein's hospitals called Jacobi Medical
21 Center. In my senior year, I was elected to be the chief
22 resident, which is an elevated position of responsibility for
23 helping to train the lower classmen, and also acting as a
24 go-between between liaison between the professors and the other
25 residents. I graduated my residency training program in 2010.

1 And then after completing and passing multiple exams, I received
2 my first board certification in the field of diagnostic
3 radiology.

4 And just for a little background, that encompasses all
5 of noninvasive imaging of the entire body, from head to toe, and
6 all of the different types of modalities, x-rays, ultrasound,
7 CAT scan, MRI, et cetera.

8 Q Okay. Let me stop you there. So you just indicated
9 that you went and took your residency and training in radiology?

10 A Correct.

11 Q Can you tell the jurors what the field of radiology
12 entails.

13 A Sure. So radiology or -- a radiologist is a type of
14 doctor that is able to tell you what's going on inside -- deep
15 inside your body, where a regular general practitioner or other
16 type of doctor cannot see with their eyes or feel with their
17 examining hands. So radiologists tell those doctors what's
18 going on inside of the patient's body using technologies, like
19 x-ray, CAT scan, MRI, ultrasound, and we interpret those images
20 and tell the doctors who order it whether everything looks okay,
21 everything looks reasonably healthy, or there is something
22 wrong. And this is what may be going on or this is what's
23 definitely going on inside of the body.

24 Q Okay. Now, you started to talk about some of the
25 certifications you got after that.

1 But what did you do once you graduated school, got your
2 residency, and did that? Did you go into any practice?

3 A Well, first, I decided to subspecialize after my
4 residency in a field of radiology, a subspecialty of it called
5 neuroradiology. And neuroradiology is basically brain and spine
6 imaging. So I wanted to become more of an expert in imaging of
7 the brain and spine, and so I did another year of training in a
8 -- what's called a fellowship in that field at Columbia
9 Presbyterian Hospital in Manhattan.

10 Q And what did you do after you left Columbia
11 Presbyterian Hospital in Manhattan?

12 A Then I took another board certifying exam in the
13 subspecialty, passed it, and now I became double board certified
14 in radiology -- general radiology and neuroradiology. And then
15 I started working full time in a couple of hospitals and
16 outpatient practices as a radiologist and a neuroradiologist.

17 Q Can you just briefly tell the jurors what it means to
18 get a test in-- to be board certified. Some of the other
19 doctors addressed it.

20 Can you address it for a radiologist.

21 A In the United States, in order to become designated as
22 an official type of doctor who has undergone the appropriate
23 education and training, and has passed their tests and is
24 competent, it's called board certification. I needed to do my
25 training at specially designated hospital training programs. I

1 had to do all of the training and the hours of onsite learning
2 and reading books and lectures and courses and hands-on training
3 and take certain tests to prove that I knew what I was talking
4 about. So in the United States, when you become board
5 certified, that designates you as competent in your field.

6 Q Okay. And where did you then begin practicing after
7 you received your certifications?

8 A I started working for a hospital, for the emergency
9 room at Jacobi Medical Center, on the weekends reading the films
10 for the are emergency room, and during the week, I would work at
11 an outpatient private practice called Zwanger-Pesiri.

12 Q And have you continued working to private facilities
13 since that time?

14 A I've continued working at both private and public
15 facilities since that time.

16 Q Okay. And where are you presently employed?

17 A I now work at two hospitals and two outpatient
18 practices. My -- I work at -- I'm an assistant professor of
19 radiology in the new radiology department at Columbia
20 Presbyterian Hospital, and I also helped to train the fellows
21 and residents there. I still, to this day, work at Jacobi on
22 the weekends in the ER. I work for a large outpatient private
23 practice called Ragnant (ph.). And lastly, I work part time for
24 an old student of mine who has a small radiology practice in
25 Florida, and I do that remotely.

1 Q Okay. And are you a practicing neuroradiologist?

2 A Yes.

3 Q Okay. And do you also do work with consulting for
4 matters in litigation?

5 A Yes.

6 Q And what percentage of your practice is for consulting?

7 A A relative minority of my time and effort is doing --
8 is getting assignments from lawyers to review cases, and find
9 out whether there are injuries related, possibly, to an
10 accident.

11 Q Have you done that -- for how many years have you done
12 that?

13 A About ten years.

14 Q Okay. And have you done that for only defendants, only
15 plaintiffs, both? What is that?

16 A Both.

17 Q Is it predominantly for the defendants?

18 A I get assignments from defense attorneys about 65 to 35
19 relative to plaintiff attorneys.

20 Q Have you worked with my firm before?

21 A Yes.

22 Q And do you know on how many occasions?

23 A A bunch.

24 Q Bigger than a breadbasket? No.

25 More than ten?

1 A I really don't recall how many.

2 Q Have you testified in cases in which my firm has been
3 representing a party?

4 A I can remember at least another one.

5 Q With me?

6 A I think so.

7 Q Okay. And do you remember what, at least one, with one
8 of my partners Tom Marr out in Queens back in 2018, if you
9 remember?

10 A Kind of.

11 Q Kind of. Okay. Were you retained by my firm to
12 conduct a review of diagnostic firm studies of Norman Rivera?

13 A Correct.

14 Q And were you compensated for conducting those reviews?

15 A I think I was.

16 Q Okay. And do you know how much your compensation was
17 for the reviews?

18 A I think it was something about \$9,000.

19 Q Okay. And are you being compensated for appearing
20 today?

21 A Yes.

22 Q And how much are you being compensated for appearing
23 today?

24 A About \$10,000.

25 Q And what's the basis of your compensation for today?

1 A I had to clear my schedule for today, so that I
2 couldn't take any work for the hospital or on-call schedule, so
3 it took me away from doing regular type of work.

4 Q And did you and I speak last night?

5 A Yes.

6 Q And have we spoken at some point prior during this
7 litigation or at other times?

8 A Yes.

9 Q And is that part of your compensation?

10 A Correct.

11 Q Okay. So going back to your review of the films of Mr.
12 Rivera. Can you tell the jury what films you reviewed.

13 And by the way, did you bring anything in with you,
14 before I get to that?

15 A I brought my reports.

16 Q Okay.

17 A I brought my laptop.

18 Q And what's on your laptop?

19 A The films -- copies of the films.

20 Q Okay. And would those films be from Lenox Hill
21 Radiology?

22 A Are they from Lenox Hill?

23 Q Maybe I did it in the wrong order. Are they from Kolb
24 Radiology first?

25 A They are from a bunch of facilities.

1 Q Okay. Which facilities?

2 A They are from a -- many are from Lenox Hill Radiology,
3 some are from Kolb Radiology, some are from Lincoln Hospital,
4 some are from Lenox Hill Hospital, some are from Dr. Weinstein's
5 office, and some are from New York Ortho Sports Medicine and
6 Trauma.

7 Q Okay. And I -- so, can you tell the jury, then, which
8 films were the initial films that you reviewed?

9 A Sure. So I reviewed films that span from April of
10 2018, to -- all the way to June 16th of 2022, so about four
11 years of films.

12 Q Okay.

13 A And the first set start in 2018 -- in April of 2018.

14 Q Okay. And where those -- I will go back.

15 Were those, the first set, from New York Ortho?

16 A Correct.

17 Q All right. And, Doctor, is it necessary for you, as a
18 neuroradiologist, to examine a person in order to comment upon
19 their diagnostic testing films?

20 A No.

21 Q Okay. Did you also review any medical records as part
22 of your review?

23 A I believe I had access to the original facility reports
24 for many of the studies.

25 Q Okay. Now, again, after you did your review, you

1 provided reports to my firm?

2 A Correct.

3 Q Okay. Now, do you need to rely on them at any point
4 during the testimony? I'd ask, with the Court's permission and
5 counsel's, that you do so.

6 But are you also going to be showing the jury any of
7 the films?

8 A Yes.

9 Q Okay. And by the way, did I tell you that the films
10 from Lenox Hill Radiology and Kolb Radiology are in evidence?

11 A Okay.

12 Q Okay. Before you discussed the films themselves, can
13 you tell the jury a little bit about the structure of the spine.

14 A Sure. It might be helpful to actually show it while I
15 am explaining, if that's okay.

16 Q That's fine by me.

17 A So, just a little bit of an anatomy lesson. So this is
18 one of the first x-rays that I reviewed, and it will sort of
19 help us get a bearing of what's going on internally.

20 Q Just, if I may then, Doctor, just one quick thing.

21 On that x-ray film, does it have identifiers?

22 A Correct.

23 Q Can you tell the jury what the identifiers are.

24 A Patient's name, birthday, the facility that it was done
25 at, and the date of the study, and the time.

1 Q And what is the date of that study?

2 A 4/3/2018.

3 Q And the name of the facility?

4 A New York Ortho Sports Medicine and Trauma.

5 Q Are you aware that that's where Dr. Caplin and Dr.
6 Grimm are affiliated?

7 A I am.

8 Q Okay. Go ahead. I apologize.

9 So what type of film is this?

10 A This is just an x-ray. And so, just for orientation
11 purposes, we are looking at a side view of the patient's neck.
12 This is a part of their skull. This is their jaw bone, and then
13 let's just focus on the spine, which has seven bones or
14 vertebrae. The top one is a short ring of bones, C1. The next
15 one down is more triangular shaped, and it's C2, and then the
16 rest of them are more square shaped, C3, C4, C5, C6, and C7.

17 And these bones actually -- we are looking at them on
18 side view, but they actually wrap -- they become a ring of a
19 bone that protects a tunnel, which is invisible on the x-ray,
20 but we will show it later on a MRI. And there is a tunnel
21 that's running from here, down the inside of this, between --
22 inside of the ring of those bones, and that's where the spinal
23 cord lives. But you can't see it on an x-ray. We will get
24 there, though.

25 Q Can you tell the jury what the purpose of x-rays are

1 for, generally.

2 A X-rays are other technology from the late 1800s, but
3 still useful today, to get a sense of are the bones fractured?
4 Are they slipped out of their normal alignment? And you can
5 also get a sense of the relative health of the discs between the
6 bones, which, again, on an x-ray, are invisible. But over time,
7 even the bones start to change, the way they look, if a disc is
8 starting to wear out.

9 Q And can you just briefly -- again, when we are talking
10 about the structure, tell the jurors what the discs are in
11 relation to the spine and the vertebrae.

12 A So, between the bones, from C2 downwards, are spaces
13 between the bones. And although invisible on an x-ray, there's
14 actually soft tissue that sits inside -- between these bones.
15 And those are called the discs or intervertebral discs. And
16 those are cushions, and I have a model here -- a plastic model,
17 if you like, to explain the point of the disc.

18 MR. VAN ETEN: Can we just mark it as ID, just
19 since we are going to be showing it to them. We will mark
20 them both now, so we don't have to do it twice.

21 Can I approach and have them marked for
22 identification?

23 THE COURT: Any objection?

24 MR. VARGAS: No, Your Honor.

25 THE COURT: You may.

1 MR. VAN ETTEN: Thank you. I believe that will be
2 L and M.

3 THE COURT: Defendant's Exhibits L and M for
4 identification purposes only.

5 (Whereupon, the item referred to is marked
6 Defendant's Exhibit L for Identification.)

7 (Whereupon, the item referred to is marked
8 Defendant's Exhibit M for Identification.)

9 Q Sorry for my interruption. Could you please show L to
10 them, as you had started out doing.

11 A Okay. Is it okay if I walk down and get a little
12 closer?

13 MR. VAN ETTEN: Judge?

14 THE COURT: Yes. You may step down if you wish.

15 THE WITNESS: Thank you.

16 THE COURT: Get a mic.

17 MR. VAN ETTEN: I'll get the mic for him.

18 Q Try to just do it close, here, near the middle.

19 A Okay. So, between the bones in the neck and even in
20 the lower back, there are these spaces that are invisible on an
21 x-ray, but on an MRI, you can actually see that there's tissue
22 that is acting as a spacer between the bones. These are the
23 discs. Now, this is just rubber with jelly inside and a little
24 mesh, but in reality, the discs have two components to them.
25 There is a liquid portion in the center of the disc, and then a

1 shell around it.

2 And the disc in our neck and our back act as shock
3 absorber so that the bones are not just a rigid pole of bone,
4 because then we couldn't move our necks. So they act as sort of
5 a soft cushion, and also allow for flexion, extension, and
6 movement, but also act as a shock absorber so we're not banging
7 the bones against each other every time we walk around. So a
8 shock absorber, and also flexibility, and resilience.

9 And the discs have, again, two major components. There
10 is jelly inside called the nucleus pulposus, and then a shell
11 around them. And so this is just another model of the spine in
12 the neck where we have multiple bones, and starting at C2 and
13 downward, we have these discs, which are the shorter soft tissue
14 structures between the bones.

15 Q And, Doctor, are you aware that in this case, Mr.
16 Rivera is claiming injuries from March 15, 2018, while he was
17 working as a laborer?

18 A Okay.

19 Q Okay. If you weren't aware, can you assume that for
20 us?

21 A Will do.

22 Q Okay. And can you tell the jury what the first set of
23 films are then that you reviewed.

24 A So the first set that I received was an x-ray of the
25 cervical spine, and an x-ray of the lumbar spine, the spine in

1 the lower back.

2 Q Okay.

3 A And they were both performed on April 3rd, 2018.

4 Q And after reviewing those films, did you come up with
5 impressions as to what you observed in those films?

6 A Yes.

7 Q And can you tell the jury what you observed with the
8 cervical spine.

9 A So in the cervical spine x-rays, there were actually
10 two films that were taken, front and side. They show a nice,
11 normal curvature of the spine, normal alignment of the bones.
12 They were stacked up neatly on top of each other with a gentle
13 curvature, which is normal in the spine. And there were no
14 fractured or collapsed bones or vertebrae, and there were no
15 slipped vertebra slipped out of alignment. That's important.

16 And there were some degenerative changes at multiple
17 levels, particularly worse at C4-5 and C5-6, where you can see
18 that there are some bone spurs sticking out, both in front and
19 back of the spine, at both C4-5 in back of the bones, in back of
20 the vertebrae. And you see the bone is sort of puckering out,
21 instead of being sharp and straight, and you can see that the
22 bones are also puckering out in the front. These bones are
23 called bone spurs or osteophytes.

24 Q So on that first film from April 3, 2018, the x-rays
25 themselves, do you have an opinion as to whether they showed

1 osteophytes being present?

2 A Yes. There were osteophytes, particularly at C4-5 in
3 the back of the spine, and particularly in the front of the
4 spine at C5-6. And there were even smaller ones, very tiny ones
5 at C3-4, and maybe even also at C6-7. If you look really
6 carefully, you can see tiny, little bone spurs, but the bigger
7 bone spurs are at C4-5 and C5-6.

8 Q And how do those come to be?

9 A It's a chronic compensatory process by the body to
10 compensate for the disc getting worn down. So the disc is
11 supposed to act as a nice shock absorber. But when that disc
12 starts to dry out and lose its bounciness as we get older, which
13 is a common process, it's just a part of aging, as we get older,
14 certain parts of our body get older with us, unfortunately. And
15 in the spine, the discs, which are the soft parts of the spine,
16 start to dry out centrally, and start to shrink down and lose
17 some of their resilience.

18 And the bones are not dumb. The bones actually have
19 little nerves inside of them, and they can feel when that disc
20 is not as bouncy as it used to be, and the bones try to
21 compensate by doing what bones do best, which is grow more bone.
22 So when bones feel that they are being overly stressed, they
23 start growing more bone. They try to reinforce themselves, like
24 laying down more concrete, they lay down more bone at the edges.
25 And sometimes, they grow out little bone spurs to dissipate the

1 forces over a larger surface area.

2 So that's why we get bone spurs in different parts of
3 our bodies because the bones feel, over years of time, too much
4 stress and try to reenforce it by growing more bone.

5 Q Okay. Those films were 21 days after the accident.

6 Are bone spurs or osteophytes something that would
7 develop in a period of time of 21 days?

8 A No, it takes much longer.

9 Q Okay. Can you also discuss what you saw in the lumbar
10 films from April 3, 2018.

11 A Sure. So there were also x-rays on the same day that
12 were taken of the lower back, and there were, again, a nice,
13 normal C shape curvature of the bones. The bones were not
14 fractured or collapsed. There was no dislocation of the bones,
15 but again, we do see some early degenerative changes with a
16 little bit of bone spurring, particularly at L2-3, the disc
17 between L2 and L3. And also at L5-S1, we can see that the bones
18 are a little whiter, which means that the body is trying to lay
19 down a little bit more extra bone at the edges, and there's some
20 arthritis in the back of the facet joints, the joints in the
21 back of the spine.

22 But, you know, not a bad looking lumbar spine. A
23 little bit healthier looking lumbar spine than in the neck.

24 Q Okay. Now, did you see any example -- can you
25 determine from an x-ray whether somebody has sustained trauma?

1 A To a certain degree, on an x-ray, you can tell. You
2 can rule certain things out, but you can't rule out everything.

3 Q What would be an example of acute trauma that you can
4 see in an x-ray?

5 A A fractured bone, a collapsed bone, a dislocated bone.
6 Those are the main things you are looking for on an x-ray in the
7 sense of trauma.

8 Q Was there any evidence of any acute trauma in either
9 the cervical spine or the lumbar spine from the April 3, 2018,
10 films?

11 A No.

12 Q Now, you had mentioned some of the degenerative
13 changes.

14 What is multilevel endplate spondylosis?

15 A So spondylosis is a fancy term that sort of encompasses
16 those bony changes that you get when the discs start to wear
17 out. So you get whitening of the edges of the bones. You get
18 bone spurs in the front and back of the spine, and you get
19 arthritic changes in the joints of the back of the spine. Just
20 a fancy term.

21 Q Okay. And what about endplate sclerosis?

22 A The whitening of the edges of the bones.

23 Q And disc space narrowing?

24 A When the disc is wearing down so much that it's -- and
25 its lost enough of its internal fluid that the disc starts to

1 flatten itself out.

2 Q And did you record those findings -- withdrawn.

3 When you saw those films, did you see evidence of
4 multilevel endplate spondylosis, disc space narrowing, endplate
5 sclerosis, and the bone spurs or osteophytes that you talked
6 about before?

7 A At various levels in the neck and the lower back, yes.

8 Q And those are the ones you showed the jury?

9 A Correct.

10 Q All right. And do you have an opinion within a
11 reasonable degree of certainty as an neuroradiologist whether
12 these conditions were caused by trauma 21 days earlier on
13 March 15, 2018?

14 MR. VARGAS: Objection.

15 THE COURT: What's the basis?

16 MR. VAN ETEN: He's a radiologist. He has no
17 correlation of examining a patient to give an opinion.

18 THE COURT: What was the question again?

19 MR. VAN ETEN: Whether he had an opinion within a
20 reasonable degree of neuroradiological certainty whether
21 those conditions that we just identified had been caused by
22 a trauma from 21 days earlier.

23 THE COURT: What's wrong with that?

24 MR. VARGAS: As I said, no correlation or
25 examination of a patient to give a causation as a

1 radiologist.

2 THE COURT: Can I see the expert disclosure. You
3 were supposed to give me a copy before.

4 MR. VAN ETEN: I sent you a copy, but I'll give
5 you another copy. I have extras, Judge.

6 THE COURT: I don't have a clerk this week.
7 Whatever you're sending to the part, I'm not getting.

8 MR. VAN ETEN: I'm sorry. That's the first one.
9 I will get the second one, too.

10 THE COURT: Can you approach.

11 (Whereupon, a discussion took place at sidebar
12 among the Court and Counsel, outside the hearing of the
13 sworn jurors.)

14 THE COURT: You can step back. Thank you.
15 Perfect. Objection sustained.

16 Q Doctor, you said that you saw various conditions in the
17 neck and lumbar spine in those initial x-ray films, correct?

18 A Yes.

19 Q And do you, as an neuroradiologist, have the ability to
20 determine from looking at those the length of time that they may
21 or may not have existed?

22 A Sure.

23 Q And can you do that within a reasonable degree of
24 neuroradiological certainty?

25 A Yes.

1 Q And do you have an opinion within a reasonable degree
2 of neuroradiological certainty if those conditions that you
3 observed and showed to the jury existed before March 15, 2018?

4 MR. VARGAS: Objection. Same.

5 THE COURT: The question is neuroradiological
6 certainty?

7 MR. VAN ETEN: I said it before,
8 neuroradiological. Yes, both times.

9 THE COURT: So what's the -- can you approach,
10 counsel.

11 (Whereupon, a discussion took place at sidebar
12 among the Court and Counsel, outside the hearing of the
13 sworn jurors.)

14 THE COURT: We are going to take a break. Let's
15 take five minutes.

16 COURT OFFICER: All rise. Jurors exiting.

17 (Whereupon, the sworn jurors exit the courtroom.)

18 THE COURT: Doctor, if you can wait outside while
19 we deal with the standing objection. Thank you.

20 So this is not an IME doctor, right, he is just
21 reviewing films?

22 MR. VAN ETEN: Correct.

23 THE COURT: Okay. And what's the basis of your
24 objection again?

25 MR. VARGAS: I have no objection to him saying what

1 he sees in the film, but when he starts talking about when
2 it occurred or causation, that's when I have an objection.
3 It's beyond his expertise. He is just reading films. He
4 hasn't examined the patient.

5 THE COURT: Right. So his expert disclosure that
6 he gave you said he was going to testify as to there being
7 no traumatic or posttraumatic injury to the cervical spine.

8 So why didn't you make this objection before he got
9 on the witness stand?

10 MR. VARGAS: I figured since counsel objected, he
11 wouldn't be going there, but he is, so that's why I'm
12 objecting. He objected to Dr. Kolb giving causation. I am
13 objecting, as well. He is just a radiologist. He can just
14 talk about the films. He doesn't have to talk about
15 causation.

16 THE COURT: Right. So you can't use the word
17 causation, remember? That's the ultimate trier of fact.

18 MR. VAN ETEN: You allowed him to ask Dr. Kolb
19 that, and Dr. Kolb responded that he could not opine to it.
20 But you did, over my objection, allowed Dr. Kolb to be asked
21 what I just asked. And I also asked Dr. Kolb about
22 osteophytes during my cross, and if there was a presence of
23 an osteophyte, would you agree that that would have existed
24 before, and that's what I --

25 THE COURT: Counsel, I was speaking.

1 MR. VAN ETTEN: I'm sorry.

2 THE COURT: I didn't want to yell, but I guess I
3 have to.

4 MR. VAN ETTEN: Please do.

5 THE COURT: Do not use the word causation when
6 asking the question. Objection sustained as to form. You
7 can ask him about traumatic or nontraumatic injuries. You
8 cannot ask him as to the ultimate issue for the trier of
9 fact. We've gone over this.

10 MR. VAN ETTEN: A, if you are done, Your Honor, I
11 believe that I can ask that from this witness, and he's
12 qualified to do it, and he said so on the foundation
13 questions. B, after the first objection, I went back and
14 asked him if he could determine that these conditions
15 existed before, and he said that he could, and that was the
16 question, did he have an opinion if they did exist before.

17 So I didn't ask causation. I asked if those
18 conditions existed before March 15, 2018. That is what I
19 was asking when you objected to the last question because I
20 changed it from the original cause.

21 THE COURT: So what's wrong with the second
22 question, Counsel?

23 MR. VARGAS: Getting into when it occurred is
24 pretty much asking causation. If he just talked about
25 what's on the film, I have no objection. If he says there

1 is an osteophyte there, then he can talk about how long it
2 takes them to form or --

3 THE COURT: How long it existed. Why can't he ask
4 how long it existed?

5 MR. VARGAS: I think it's improper, but that's my
6 objection.

7 THE COURT: It's his opinion.

8 MR. VAN ETEN: Right. That's what I was asking.

9 THE COURT: Yeah. That question is fine. Just
10 don't use the word causation because it's the question on
11 the jury verdict for the jurors.

12 MR. VAN ETEN: Okay.

13 THE COURT: Anything else? Anything else you want
14 to go over that you want to object to regarding the expert
15 disclosure? There is a lot in there.

16 MR. VARGAS: At this point, no.

17 THE COURT: Okay. You can have the expert come
18 back in, and you can bring the jurors back down.

19 COURT OFFICER: All rise. Jurors entering.

20 (Whereupon, the sworn jurors enter the courtroom
21 and take their respective seat.)

22 (Whereupon, the Court Reported read back the
23 requested testimony.)

24 THE COURT: That's fine. I'll allow it.

25 A Yes.

1 Q And what is your opinion?

2 A Those are changes -- typical changes that you get over
3 years, if not decades of time, that didn't happen in just a
4 couple of weeks.

5 Q Okay. And did you review additional diagnostic film
6 studies for Mr. Rivera?

7 A Many.

8 Q Okay. And did you also review films from April 7,
9 2018?

10 A Yes.

11 Q And which films were those?

12 A The MRIs of the cervical and lumbar spines.

13 Q Okay. And can you tell the jury what, either with your
14 films, reports, or off the top of your head, what your findings
15 were from the cervical films first.

16 A Sure. So in the cervical spine, we can now see a
17 little bit more anatomy because of the more-advanced type of
18 technology in an MRI machine than an x-ray. And we can see the
19 spinal cord. Now, we can finally see the discs between the
20 bones, and we can see the spinal nerve roots as they come out of
21 the cord, and go into the extremities. And we can see more of
22 the tissues -- the soft tissues, the muscles, the ligaments, the
23 superficial tissues underneath the skin, you can see a lot more
24 detail, a lot more of the anatomy.

25 And overall, again, I didn't see fresh trauma to the

1 spinal cord, the spinal nerve roots, the bones, the discs, the
2 joints, the muscles, the ligaments, the superficial tissues.
3 There were abnormalities, but these were, again, age related and
4 wear and tear related.

5 Q Okay. Just before you go into that. You said that you
6 saw no trauma.

7 Just for reference, this is approximately 23 days after
8 the incident?

9 A Correct.

10 Q Okay. Now, what I would ask you just so you can
11 explain to the jury, with looking at an MRI film, are there
12 types of trauma that can be seen on an MRI film?

13 A Certainly.

14 Q And can you tell the jury what would be the type of
15 trauma that you could see on an MRI film if there had been a
16 recent trauma.

17 A You can see trauma into any of the components of the
18 spine, whether the bones, the joints, the muscles, the
19 ligaments, the soft tissue, the superficial tissues, the skin.
20 You can look at the spinal cord. You can look at the spinal
21 nerve roots. You can evaluate for trauma to the discs. So any
22 component could potentially be injured in a traumatic event, and
23 that's why we look at the MRI to look at all of those
24 structures.

25 Q Can you see fractures from an MRI?

1 A Yes.

2 Q Did you see any evidence of fractures in the MRIs from
3 April 7, 2018?

4 A I didn't.

5 Q Did you see any -- can edemas be seen on an MRI?

6 A Yes.

7 Q Would edemas be evidence of trauma?

8 A It could be.

9 Q And do you see any evidence of edemas?

10 A No, no edema.

11 Q Can you tell the jury what an edema is.

12 A Swelling. A fancy word for saying swelling. You can
13 get swelling in the bones and in the soft tissues.

14 Q Is hemorrhage something that would be relevant to
15 recent trauma?

16 A It could be, yes.

17 Q And did you see any evidence of hemorrhage?

18 A No bleeding.

19 Q And what about subluxations?

20 A No dislocations or subluxations, correct.

21 Q And that could also be seen on an MRI?

22 A Sure.

23 Q And is there something called the instability of the
24 ligamentum?

25 A There is something called that.

1 Q What is that?

2 A Well, there are different ligaments holding the spine
3 together. Ligaments are the structures that hold bone to bone.
4 So there are multiple ligaments in the spine, in front of the
5 spine, in back of the spine, between the bones, et cetera.
6 There is no obvious instability in any of those ligaments
7 because the bones are -- don't look like they are slipping out
8 of place.

9 Q And if there had been recent trauma, could that cause
10 an instability of the ligament?

11 A Potentially.

12 Q Okay. And again, did you see any evidence of that?

13 A No.

14 Q Okay. So then you said -- so what were your findings
15 for the cervical spine that you observed?

16 A Well, again, like the x-ray, there was good alignment
17 of the bones and the joints. There were no fractures or
18 dislocations. We've been through that. The spinal cord, we
19 really -- the most important part of the whole spine is the
20 spinal cord. It's the major pathway of information from your
21 brain to the rest of your body. So that's really the reason why
22 we do an MRI, to evaluate the spinal cord. But the spinal cord
23 looks good. There is no signs of spinal cord swelling, edema,
24 or contusion, or bleeding, or any spinal cord injury. So that's
25 an important negative.

1 The next thing I notice was that, again, there are some
2 typical, degenerative changes that you get when you are getting
3 older. All the discs in his cervical spine are starting to get
4 dark gray or black, and that is a sign of the jelly inside of
5 the discs starting to dry out. And I noticed, also, that there
6 was some bone spurring in the cervical spine that we saw on the
7 x-rays, particularly at C4-5 and C5-6 in front of the spine.
8 And also in the back of the spine, you can see that there is
9 actual lipping of the bone. It's kind of flaring out beyond its
10 normal boundaries.

11 Let me show you that on a T1, another type of MRI
12 sequence, where you can see that the bones are sort of flaring
13 out, puckering out like a little break beyond their normal
14 boundaries. And again, that is another form of bone spurring.

15 Q And is that an osteophyte?

16 A Correct. We'll see them to better advantage on a CAT
17 scan soon.

18 Q Okay. But an osteophyte, again, would that be a
19 condition that would have developed within 23 days?

20 A No.

21 Q Would the discoloration of the discs going darker to a
22 grayish color occur within 23 days?

23 A No.

24 Q And is that to a reasonable degree of neuroradiological
25 certainty?

1 A Correct. Just like your hair doesn't turn gray in a
2 couple of days, okay? It's another classic degenerative pattern
3 of disease -- not really disease in the beard, but it's just a
4 thing that you can visualize. You don't go gray in a couple
5 days or a couple of weeks. It turns gradually over years.

6 Q Okay. You had mentioned degeneration before, okay?
7 Can you tell the jury what you mean by degeneration.

8 A It's a natural degradation of a body part over years of
9 time, either just from natural aging or wear and tear. You
10 overusing that particular body part can wear out your tendons in
11 your shoulders. You can wear of out the cartilage in your
12 knees. And over time, the discs between the vertebrae in your
13 neck and lower back start to degenerate. They get naturally
14 worn down. They lose their structure that they were when they
15 were healthy and you were younger.

16 Q I should have asked before when I asked you about
17 evidence of trauma.

18 What is the difference then between degeneration and
19 trauma?

20 A Trauma is something that occurs unnaturally. Something
21 -- some accident happens, somebody gets hurt in some sort of
22 injury event or something, and you are overputting some extra
23 energy into a body part and causing it to fail. And usually, in
24 a moment.

25 Q Now, when you said that there was some degeneration

1 there in the osteophytes there, did that have any impact on the
2 spinal canal?

3 A The osteophytes and the degenerating discs are leaking
4 out in a way beyond their normal boundaries, and starting to
5 encroach on the spinal canal where the spinal cord lives. So
6 disc material and bone spurs are getting -- are sort of
7 encroaching or getting out beyond their normal boundaries and
8 pinching off the spinal cord, particularly at C4-5, where there
9 was normally more space for that spinal cord to live.

10 Q And is there a term that you use when that happens?

11 A It's called spinal stenosis.

12 Q And are you familiar with the term disc bulge or disc
13 herniation?

14 A Yes.

15 Q Can you tell the jury what disc bulges and disc
16 herniations are.

17 A So as the disc is drying out over time, the jelly,
18 again, is just sort of going away somewhere. The disc loses
19 some of its natural height and it starts to squash down. And as
20 it's squashing down, the edges start to sag out beyond their
21 boundaries. So if it occurs slowly and gradually, the disc --
22 and you have an equal amount of force on it, the disc will start
23 to sag out all the way around or nearly all the way around its
24 edges, and that is a bulging disc.

25 A bulging disc is a disc that's sagging out equally or

1 uniformly or nearly uniformly around its edges, and that's,
2 again, a chronic process, like sleeping on an old mattress over
3 years of time, the mattress starts to shrink down, and it does
4 not bounce back in the morning. And when you look at the edges,
5 they are sort of sagging out. So a bulging disc is like an old,
6 sagging mattress that you have been living on for decades.

7 Q And again, is that something that occurs, as you said,
8 kind of immediately or does that take time?

9 A It takes years.

10 Q And do you have an opinion within a reasonable degree
11 of neuroradiological certainty whether the findings in the
12 cervical spine from April 7, 2018, existed before the date of
13 the accident, March 15, 2018?

14 A I do.

15 Q And what is your opinion?

16 A So I find some small bulging discs at C3-4, C6-7, and
17 C7-T1. They are slightly sticking out beyond the normal
18 boundaries at those three levels, and those bulging discs
19 predate the accident.

20 Q And that is from a review of the films?

21 A Yes.

22 Q And you said before -- withdraw that. Okay.

23 And the osteophyte complex, okay, did you find an
24 osteophyte complex?

25 A Two osteophyte or disc osteophyte complexes at the C4-5

1 and C5-6 disc levels.

2 Q And what type of time period would it take for those
3 osteophyte complexes in those films to develop?

4 A They take years, also. It takes years for the body to
5 grow extra bone around the edges of bulging discs and create a
6 sandwich of bone spur, disc material, and bone spur, such that
7 it's a disc osteophyte complex.

8 Q And these films were taken at which facility?

9 A Kolb.

10 Q And that's Kolb Radiology, the records that are
11 Plaintiff's 5 in evidence. I want you to assume that Dr. Kolb
12 testified in this trial to the jury, and that Dr. Kolb testified
13 that he saw no evidence of any osteophytes in the cervical spine
14 when he took the films on April 7, 2018.

15 Can you make that assumption?

16 A Okay.

17 Q Do you agree with Dr. Kolb's impression that there is
18 no osteophytes in the cervical spine?

19 A I disagree.

20 Q And can you tell the jury why.

21 A Well, there are clearly bone spurs that are occurring
22 at several levels in the cervical spine. We saw it on the x-ray
23 from right after the accident, and we can see it -- see these
24 bone spurs are poking out beyond the normal boundaries at
25 multiple levels. We see it on the MRI as little extra lips of

1 extra bone. And furthermore, we have a very nice picture of the
2 bone spurs on a CAT scan from 2019, which really shows the bone
3 spurs to a very clear detail.

4 Q Is that the June 27th, 2019?

5 A 2019.

6 Q Okay. And I believe this was Plaintiff's -- this one
7 may not have been marked. Okay. Now, we will go to those CAT
8 scans.

9 Were they taken at Lenox Hill Radiology?

10 A Yes.

11 Q And that's Plaintiff's 8 in evidence. And can you show
12 the jury in those films, three and a half months postincident,
13 where the osteophytes were.

14 A Sure. So on this CAT scan, again, the bones should be
15 sharp. Sharp, flush surfaces, and we can see clearly at C4-5
16 that this bone is puckered all the way out here, with disc
17 material in the center, and more bone spurring. This is a
18 classic disc osteophyte complex, a sandwich of bone spur, disc
19 material, and bone spur. And this is the largest really one in
20 the spine, and there is another one at C5-6, a little bit
21 smaller, but again, we can see that the bone is puckering out on
22 top and bottom, and between it is disc material. So there were
23 two --

24 Q Can you just go back right there for a second.

25 A Sure.

1 Q Is that squeezing the disc?

2 A It's not squeezing the disc. The disc -- it's wrapping
3 itself around the disc. So the bone feels the disc not behaving
4 like it should, and it's trying to reinforce it by growing more
5 bone gradually over time, and sort of grasping around it.

6 Q And based on your review of the x-rays from 21 days
7 after, the MRI films from 23 days after, and then three and a
8 half months later with these CAT scan films of the cervical
9 spine, do you have an opinion within a reasonable degree of
10 certainty as a neuroradiologist whether those osteophytes were
11 caused by trauma?

12 A I do.

13 Q And what is your opinion?

14 A They are not related to the trauma from March of 2018.
15 They are a chronic process that took years to develop, and
16 didn't show up just right then.

17 Q Okay. Can we move to the lumbar spine, the initial
18 ones, the MRIs from April 7th, please.

19 And did you review these films at my request?

20 A Yes.

21 Q And can you tell the jury what you found.

22 A So, a fairly healthy looking lower back spine. The
23 spine in the lower back is better looking than the spine in his
24 neck. Again, no fractured bones, no slipped bones, no
25 significant narrowing or stenosis of the spinal canal, no

1 significant narrowing where the spinal nerve roots are exiting
2 the spine and going into the legs. Just really two levels of
3 the five levels in the spine are, again, showing that classic
4 drying out or darkening of the discs.

5 Now, we can really see a nice internal exam, sort of an
6 internal reference of what a normal disc looks like, and a
7 degenerating disc looks like. So the discs at L1-2, L3-4, and
8 L4-5, those look healthy. They are bright in the center, dark
9 at the edges, the jelly inside of those at shell, and you can
10 run your finger down the back of these discs, and there is no
11 bumps or areas that are poking out beyond the normal boundaries.

12 But at L2-3 and L5-S1, those discs look different.
13 They are clearly darker discs. There is a little bit of
14 narrowing of the discs. There's a little bit of bone spurring
15 puckering in the front of the discs. And if you look three
16 dimensionally at those discs -- sorry. One sec.

17 Q Just while you are doing that, Doctor, these are also
18 from Kolb Radiology from April 7, 2018, correct?

19 A Correct. So here is a normal disc at L1-2. Here is a
20 normal disc, now with a bird's-eye view of the disc at L3-4 and
21 L4-5. At L2-3, if you look very carefully, the disc is slightly
22 -- ever so slightly bumping out around its edges, front, back.
23 And if you look three dimensionally at it, it is smoothly and
24 uniformly bulging just a trivial amount, just ever so slightly.
25 It is not a perfect straight line. It's got a slight bump to

1 it. Nothing really significant. And so what I termed in my
2 report, a minimal bulging disc without any stenosis.

3 Q And do you have an opinion whether a minimally bulging
4 disc without stenosis, as seen in that film, is something that
5 was present prior to March 15, 2018?

6 A I do.

7 Q And what is your opinion?

8 A It was before the accident.

9 Q And why is that?

10 A Well, it's got -- it's a bulging disc, which, again,
11 occurs slowly and gradually over years. So time wise, it
12 doesn't make sense. Two, bulging discs are not traumatically
13 ruptured in an accident. They are, again, a type of condition,
14 like an old mattress that's slightly sagging out around its
15 edges. Three, or whatever number we are up to, it's got all the
16 other classic signs of a degenerating disc, where you have a
17 darkened disc or a disc that's drying out, a disc that's
18 slightly narrower or shorter than the other discs. You have
19 little bone spurs. We've got all the classic trimmings of a
20 degenerating discs at L2-3, and also at L5-S1.

21 Q And are you familiar with the term degenerative disc
22 dehydration?

23 A Yes.

24 Q And what is that?

25 A That's the darkening of the discs on the MRI when the

1 jelly starts to dry out over time.

2 Q Is that also known as disc desiccation?

3 A Correct.

4 Q And do you see evidence of that in those films?

5 A Yes, at two levels.

6 Q And what's the second level, since you already
7 addressed L2-L3?

8 A The last level in the spine, at L5-S1, also is dark
9 from that desiccation or dehydration process.

10 Q And the same question that I asked you before, within a
11 reasonable degree of certainty, do you have -- a degree of
12 certainty as a neuroradiologist, as to whether the condition at
13 L5-S1 was present prior to March 15, 2018?

14 A I do.

15 Q And what is your opinion?

16 A It predates the accident.

17 Q Now, you talked about some of the things with
18 fractures, so I will ask you the same question more quickly.

19 Did you see any evidence of fractures, edemas,
20 hemorrhages, subluxations, or instability of the ligamentum in
21 these films?

22 A There weren't any signs of fresh trauma in this MRI.

23 Q Is that to an opinion within a reasonable degree of
24 certainty as a neuroradiologist?

25 A Yes.

1 Q Now, I want to ask you, again, an assumption here, that
2 Dr. Weinstein, though I think he may have been referring to the
3 May 2019 films, discuss with this jury seeing a bright spot in
4 looking at the films and discussing whether or not there may
5 have been trauma to the L5-S1 disc space.

6 Can you make that assumption, please?

7 A Okay.

8 Q Do you see any evidence of bright spots in these films?

9 A So, at L5-S1, which I didn't get to describe --

10 Q Okay. Go ahead.

11 A I will just sort of backtrack a little bit. So, we
12 talked about the normal disc levels at L1-2, L3-4, and L4-5.
13 And at L2-3, we found that this disc was degenerating, darkened,
14 shrunken down, bone spurs, and a very trivial bulging disc. It
15 turns out that you also have a degenerating level at L5-S1.
16 It's got some slightly different features than L2-3. One is
17 that at L5-S1, there was a herniated disc. Not just -- not a
18 bulging disc, but there's a small -- a very small or subtle
19 herniated disc at L5-S1.

20 So this area, you can see, is sticking out a little bit
21 eccentric, whereas the bulging disc at L2-3 is more smooth and
22 uniform. So it's just another type of condition of a disc where
23 it's sticking out beyond its normal boundaries. But in a
24 herniated or protruding disc, it kind of sticks out a little bit
25 more lopsided or a little bit more in one spot than the others.

1 So that's what's going on here at L5-S1, and that's that little
2 bump, here, at L5-S1. It's not large. It's not significantly
3 narrowing the spinal canal, which would normally go from front
4 to back is about 16 millimeters. This disc herniation is only
5 narrowing it by about two millimeters.

6 So it's not a significant herniated disc, but there is
7 a herniated disc at L5-S1. And more to the point of what you
8 said about a bright spot. So there is a little bit of brighter
9 signal in the edge of this herniated disc at L5-S1. And if you
10 were -- to the untrained eye, you might say, well, that's an
11 annular tear or a defect that occurred, you know, at some point
12 in the recent past. But in you look carefully at another
13 sequence on the same MRI scan, we can see that at the edge of
14 that disc, it's also bright on T1.

15 Now, what that means chemically is that this is not an
16 annular tear. It is bright -- brighter than the rest of the
17 disc edges, but it is bright on two types of chemical sequences
18 that indicate that this bright spot actually represents what's
19 called dystrophic calcification of the annulus. What that means
20 is that --

21 Q Can you tell the jury what that means.

22 A What that means is that at some point --

23 MR. VARGAS: Objection.

24 THE COURT: What did I miss?

25 MR. VARGAS: It's not in his report. It's beyond

1 his expertise.

2 THE COURT: What was the question?

3 MR. VAN ETEN: I asked him to tell them what it
4 means. I asked him before, based on the testimony of Dr.
5 Weinstein --

6 THE COURT: You didn't ask him, so he was
7 responding -- it was nonresponsive?

8 MR. VARGAS: No. It's not in his report, this
9 diagnosis he's bringing up about this particular film. It's
10 something completely --

11 MR. VAN ETEN: In our disclosure, Your Honor, we
12 did say that the witness would be able to address testimony
13 from other witnesses, and this was something that Dr.
14 Weinstein testified to that had not been disclosed by him
15 previously. That's why I'm having him respond.

16 THE COURT: Is that correct?

17 MR. VARGAS: Whether or not Dr. Weinstein disclosed
18 it, he was talking about the films.

19 THE COURT: No. Did Weinstein testify to what he
20 just --

21 MR. VARGAS: He testified to evidence of trauma.

22 THE COURT: I need Weinstein's transcript. He can
23 refer to prior testimony.

24 MR. VARGAS: It was a diagnosis that wasn't
25 exchanged in the doctor's report here.

1 THE COURT: Can you repeat what you said, Counsel.
2 What are you getting at?

3 MR. VAN ETTEN: I had asked him about whether or
4 not -- about a white spot, and he explained to the thing to
5 go to the white spot that Dr. Weinstein had mentioned, and
6 he led up to it and showed the jury all the films to what it
7 was. And then he defined what that spot was, and was just
8 about to tell the jury what that spot was that is seen on
9 the films. And I do believe it is in his report, and if I'm
10 not mistaken, I will show it to counsel. Right there,
11 because he just said the calcification.

12 MR. VARGAS: That's not what he's talking about. I
13 disagree with that.

14 MR. VAN ETTEN: I believe that it is. If we want,
15 Judge, we can do it out the presence of the jury and I'll do
16 it. But I believe it's, A, in his report, and, B, it's
17 responsive of the testimony of his witness.

18 THE COURT: What's the question? Ask him a
19 question.

20 Q Doctor, the white spot that we were talking about, what
21 is what you called it, the definitional name?

22 A It is a calcification in the annulus fibrosis.

23 Q Okay. And can you tell the jury what that is.

24 A It's a deposit of calcium in the edge of the disc that
25 occurs years after a herniated disc has initially developed, and

1 the body is trying to scar the tissue closed. And this is a
2 common finding on an MRI, and also on CAT scan. And I can show
3 you an example of that on the --

4 Q We will get to it.

5 A But when you have a bright spot on T2 and T1, it's not
6 an annular fissure. It's an annular calcification.

7 Q And does calcification occur immediately, take time, or
8 something else?

9 A It takes time.

10 Q And that's like when we talk about calcification in an
11 ankle or a knee or something like, that takes time to develop?

12 A It takes time for enough crystals to be deposited in
13 the tissues.

14 Q Okay. And did you reference that in your report?

15 A I did.

16 Q Okay. And so I ask you again, assuming that Dr.
17 Weinstein pointed out to a white spot and said that was evidence
18 of trauma -- I want you to make that assumption.

19 Do you have an opinion within a reasonable degree of
20 radiological certainty whether the white spot in the area of the
21 L5-S1 that you just described is, as Dr. Weinstein said,
22 evidence of trauma?

23 A I do have an opinion.

24 Q And what is your opinion?

25 A It's not a sign of fresh trauma. When you have bright

1 signal on T2 and bright signal on T1, there is a sign of an
2 older herniated disc.

3 Q All right. And you said there's also a CAT scan that
4 showed, as well. Can you show the jury that.

5 A Sure. So getting calcium in the -- inside of the disc
6 is not that uncommon. I think -- no, there's the lumbar. Hold
7 on. Here is a good example.

8 It's not that uncommon for an old herniated disc to
9 start getting mineral deposits in it over years of time. Here
10 is a great example. This is the patient's own lumbar spine, and
11 in the L2-3 disc level, in the front of its -- the disc at L2-3,
12 there is a little calcium deposit. And if you look at the MRI
13 on that level, it also has some faint but perceptible -- let me
14 just find the best sight of that. Wow. Here we are.

15 At L2-3, also a bit bright right where there is
16 calcium. Let's look at the T1, also bright. Bright. Bright.
17 And then we saw on the CAT scan that that was a calcific deposit
18 inside of the edge of the disc. So when you have calcium
19 mineral deposits in the disc, it's going to be bright on T2 and
20 T1. I know this is getting a little bit in the weeds, but this
21 is part of my practice.

22 Q And based on the combination then of the x-ray films,
23 the initial MRIs, as well as that CAT scan film, does that -- do
24 you have an opinion within a reasonable degree of certainty as a
25 neuroradiologist whether or not that disc herniation existed

1 before March 15, 2018?

2 A I do have an opinion.

3 Q And what is your opinion?

4 A It means -- those chemical signatures mean that is an
5 old herniation from prior -- from significantly, you know,
6 earlier than March 15th of 2018.

7 Q Okay. Now, I want you to go, if you could, because
8 there were also films taken immediately before the surgeries.

9 The CAT scans were taken before both surgeries; is that
10 correct, Doctor?

11 A The CAT scans were taken before the surgery, correct.

12 Q Okay. And there were also MRIs taken in May of 2019 at
13 Lenox Hill Radiology?

14 A MRIs, yes.

15 Q May 1 of 2019; is that correct?

16 A May 1, 2019, MRIs of the cervical and lumbar.

17 Q And can you just take a look, again, please, and tell
18 us your impression with them.

19 A Sure. Very simply, no change. Here is the MRI from
20 May 1st of 2018. Here is the MRI cervical spine, May 1st, 2019.
21 No change when you are comparing it to those -- that first set
22 from April of 2018.

23 Q And the fact that there is no change, would you have an
24 opinion within a reasonable degree of certainty as a
25 neuroradiologist, that that would be consistent with the fact

1 that the degeneration that you saw predated March 15, 2018?

2 A Right. So when you see a disc that really doesn't
3 change over time, that's a good piece of evidence that it's been
4 sitting there and it ain't budging. When you traumatize a disc
5 and you rupture it for the first time, it's going to start
6 changing over the next couple of months as the body tries to
7 soak up some of the jelly that has leaked out.

8 It's going to start evolving over time. So the fact
9 that the 2018 looks no different from 2019, and it doesn't look
10 any different from 2020, that's a good piece of evidence that
11 whatever has been there is just sitting the way it's been for
12 years.

13 Q And do you have an opinion within a reasonable degree
14 of certainty as a neuroradiologist, would that advise you
15 whether or not the condition existed as a result of what was
16 related to trauma?

17 A It's a good piece of evidence that it wasn't related to
18 this trauma.

19 Q So it would be unrelated?

20 A Unrelated.

21 Q Okay. Can you now just do the lumbar spines real quick
22 so the jury can see that, as well.

23 A Lumbar?

24 Q Yes, from May 1 -- or did you just --

25 A Yeah, I did both at the same time.

1 Q You did the cervical and the lumbar?

2 A Yes.

3 Q You went so fast I missed it. All right. That's good.

4 You also looked at Lincoln Hospital, correct?

5 A Lincoln Hospital, yes.

6 Q And those films were unrelated to the neck or lower
7 back, correct?

8 A Apparently.

9 Q So we are not going to discuss those?

10 A Let's leave them out.

11 Q You got it. Okay. Okay. We did that. Sorry. We
12 went faster than I thought, Doc.

13 So again, when we were just talking before about that,
14 and you had talked about tears in the annulus?

15 A Right.

16 Q And is that -- can a tear in an annulus be
17 representative of a traumatic change?

18 A Technically, it could be.

19 Q And did you see any evidences of tears in the annulus
20 to the neck, to the low back, from the 2018, 2019 films?

21 A No.

22 Q All right. Now, was there also, Doctor, films that you
23 reviewed of Mr. Rivera's face?

24 A Yes.

25 Q Okay. What films did you review?

1 A There was one CAT scan from 2020, over two years after
2 the accident.

3 Q Okay. Now, I want you to assume that at least -- that
4 the claims in this matter because, again, I think you said you
5 weren't really familiar with that, was that Mr. Rivera had been
6 struck in the nose by a falling tube, pipe, and that there is a
7 claim that he suffered a nasal fracture.

8 Can you make that assumption?

9 A Okay.

10 Q And at least two doctors testified that they had
11 records or films that showed that the nasal fracture was caused
12 by the trauma of May 15, 2018. Just make that assumption.

13 A Okay.

14 Q In those CAT scan films, which were August 14, 2020,
15 did you find any evidence of a fracture?

16 A There were no recent fractures in the facial bones.

17 Q What did you find?

18 A So, I was looking very carefully at all of the bones of
19 the face. On the left side of the screen is a bird's-eye view
20 of the facial bones. Here, we can see the eyes, the nose, the
21 ears, because we are looking at it bird's-eye view. And then
22 the CAT scan also produces images like we're looking straight at
23 his face, from the tip of his nose, all the way back to the --
24 to the back of his head.

25 And there was a very subtle deformity of the nasal

1 bones that I described in my report. It's subtle and it's there
2 on both sides of the nasal bones. It's not really deformed in a
3 significant way. It's just, instead of being perfectly
4 straight, it's slightly, slightly curved. But there is no fresh
5 fracture lines. There is no swelling. There is nothing to
6 suggest any sort of age relationship to this subtle finding.

7 Q You wouldn't expect, though, Doctor, isn't it true that
8 there would be no swelling over two years later?

9 A I wouldn't expect so, correct.

10 Q Okay. All right. So with that in mind, is there --
11 were you able to reach a conclusion as to what those subtle
12 deformities were?

13 A I wasn't sure exactly because they are -- it was so
14 subtle, without any fracture line, that it could be an old prior
15 injury from who knows when. And it could be some sort of --
16 just the way his nose developed. Possible. Hard to tell. I
17 even seen it sometimes in people who have had rhinoplasty,
18 surgical cosmetic correction of their nose, and they get this
19 little --

20 MR. VARGAS: Objection.

21 THE COURT: What's the basis?

22 MR. VARGAS: He's going off on a story that has
23 nothing to do with Mr. Rivera. Someone with rhinoplasty?

24 MR. VAN ETEN: It's his experience.

25 MR. VARGAS: It's nothing to do with what's in his

1 report. Nothing to do with Mr. Rivera.

2 THE COURT: It hasn't been disclosed?

3 MR. VARGAS: It hasn't been disclosed.

4 THE COURT: Sustained. Move on.

5 MR. VAN ETEN: All right, Judge.

6 Q Is there anything that would be a better diagnostic
7 tool for determining if there had been a fracture to Mr.
8 Rivera's nose on March 15, 2018?

9 A If we had a CAT scan closer to that time.

10 Q Would an x-ray from around that time also have been
11 able to diagnose a fracture?

12 A Potentially, if it was -- the fracture was visible.
13 Potentially.

14 Q Okay. Now, did you also review films that were taken
15 after the surgeries?

16 A Of the spine?

17 Q Yes, of the neck and the lumbar spine. Yes.

18 A Yes.

19 Q Okay. And what films did you review?

20 A A lot.

21 Q Okay. And by the way, because you mentioned Lenox Hill
22 Hospital, did you review intraoperative films?

23 A Correct.

24 Q Okay. And those films, what did the intraoperative
25 films tell you, if anything of relevance, for this jury?

1 A They took some x-rays while the surgeon was doing the
2 operation in the operating room, and guiding themselves to make
3 sure that they were operating on the levels they were intending
4 to.

5 MR. VARGAS: Your Honor, I would just object to --
6 which film are we talking about?

7 THE COURT: Can you tell us which film you're
8 discussing?

9 THE WITNESS: Oh. Me?

10 MR. VAN ETEN: Yes, you.

11 THE WITNESS: This is a fluoroscopic x-ray from
12 October 24th of 2019.

13 Q And what's the purpose of that?

14 A It helps the surgeon guide them when they -- to operate
15 on the level that they intended to. So they put, like, a probe,
16 they take an x-ray, they make sure the probe is at the level
17 that they want to operate on, and then they dig deeper, and take
18 more x-rays to make sure that they are going in the right spot.
19 And then they put in the hardware, and then they make sure that
20 the hardware is in the right spot.

21 Q And from reviewing those films, could you determine
22 within a reasonable degree of radiological certainty that they
23 had put the hardware in the right spot?

24 A Assuming that they were -- he was planning to operate
25 at C4-5 and C5-6, then yes.

1 Q Let's go to the films afterwards. Were there x-rays
2 taken afterwards as part of the follow-up for those surgeries?

3 A Yes.

4 Q And did you review those films?

5 A Yes.

6 Q What is the purpose of taking x-rays after a surgery?

7 A To make sure that the hardware hasn't slipped out of
8 place or failed.

9 Q Okay. And what types of things are you looking for to
10 see -- would that be a complication?

11 A If it slips out of place or it fails, yes.

12 Q What other types of complications would there be that
13 would be something that you are looking for postoperatively?

14 A Excessive swelling of the tissues in front of the --
15 what's called the paravertebral soft tissues, an abscess, a
16 break in the metal, a break in the screw, the interbody cage
17 slipping out of its expected location.

18 Q And in reviewing of the films of which you reported on
19 and we've exchanged with plaintiff's counsel, did you see any
20 evidence of that?

21 A No.

22 Q All right. Are there other complications or things
23 that you -- not necessarily complications, but risks that you
24 looked for postsurgically?

25 A Those are the big ones. You now, somehow fracturing

1 the bone, the metal breaking afterwards, things like that.

2 Q Are you familiar with the term rapid developing
3 arthritis?

4 A Yes.

5 Q What is rapid developing arthritis?

6 A Well, that's something that's not really appropriate
7 right after the surgery. That's something that can occur months
8 or years later, where the levels above or below the operation
9 start to degenerate on a more aggressive timeline.

10 Q Is that also segmental disease?

11 A Right, adjacent segmental disease.

12 Q Okay. There were cervical spine x-rays taken of Mr.
13 Rivera. The last one, I think, is possibly June 16, 2022?

14 A Correct.

15 Q All right. Can you look at that.

16 A Sure.

17 Q And I want you to assume that the surgery was in
18 October of 2019, if I am correct.

19 A Which body part?

20 Q The neck. The neck.

21 A Okay. Sure.

22 Q Cervical, neck.

23 A Sure.

24 Q So this would be at least two and a half to almost
25 three years postsurgery?

1 A Right. The operation was on February 18th, 2021.

2 Q For the neck?

3 A Sorry.

4 Q The neck.

5 A I've got a lot of reports here. Hold on.

6 Q Sure.

7 A So 10/24/2019. So, yes. It's a good two years and
8 change after the operation.

9 Q And would that be a time when -- if there was a problem
10 with adjacent segmental disease, that that would occur?

11 MR. VARGAS: Objection. Beyond his report again.

12 (Whereupon, a discussion took place at sidebar
13 among the Court and Counsel, outside the hearing of the
14 sworn jurors.)

15 COURT OFFICER: All rise. Jurors exiting.

16 (Whereupon, the sworn jurors exit the courtroom.)

17 THE COURT: Doctor, you can step out while we
18 figure this out.

19 What's the objection, Counsel?

20 MR. VARGAS: So his question is asking pretty much
21 for a future prognosis as to whether he's going to have
22 segmental adjacent problems in his cervical spine. Now, I
23 have no problem with him reading his diagnosis on the film
24 that he exchanged, where, at that point in time, in June of
25 2022, there was no complications or adverse features. Right

1 now, he is talking about in the future, which is not in his
2 report.

3 THE COURT: Where is it in the report?

4 MR. VAN ETEN: That is 100 percent inaccurate.

5 THE COURT: Show me.

6 MR. VAN ETEN: Judge, may I please? The witness
7 had just said, two or three questions before, I had asked
8 him about what segmental disease was so they would
9 understand it. He said that that's not something that we
10 would develop in the first few months. So I went to the
11 last report, and I just was asking him if he was seeing
12 segmental in the last report. That's it. Not in the
13 future. Not asking a future opinion on it. I don't know
14 where he's getting that from.

15 THE COURT: Me either.

16 You didn't want him to get there; is that it?

17 MR. VARGAS: Exactly.

18 MR. VAN ETEN: I wasn't going there.

19 THE COURT: Okay. So to the extent of you going
20 there, don't go there.

21 MR. VAN ETEN: Was never planning on it.

22 THE COURT: Perfect.

23 You can bring the jurors back down, Officer. Thank
24 you.

25 COURT OFFICER: All rise. Jurors entering.

1 (Whereupon, the sworn jurors enter the courtroom
2 and take their respective seat.)

3 THE COURT: You may be seated. You may continue,
4 Counsel. Objection overruled at this time.

5 Q In the last x-ray, did you see any evidence of adjacent
6 segmental disease?

7 A No.

8 Q Are you familiar with the term pseudoarthrosis?

9 A Yes.

10 Q I said it right this time?

11 A Yes.

12 Q Okay. What's pseudoarthrosis?

13 A Failure for a fused segment -- surgically fused segment
14 to fuse.

15 Q Would that be something postsurgical x-rays are used
16 for, to determine if it exists?

17 A Partially.

18 Q Okay. Now, Doctor, having looked at the films -- and I
19 will try to speed it up -- of the cervical spine from after the
20 surgery, those multiple x-ray films, there were at least a half
21 dozen, correct?

22 A Yes.

23 Q Okay. And having looked at those films, do you have an
24 opinion within a reasonable degree of certainty as a
25 neuroradiologist whether there was any postoperative arthritis,

1 rapid developing arthritis, pseudoarthrosis, or failures of the
2 fusion that had develops in the cervical spine following the
3 surgery?

4 A Nothing obvious on this x-ray -- on these x-rays.

5 Q Okay. Did you also do the same review of the lumbar
6 spine films up until the last film?

7 A Correct.

8 Q And was that film also on June 16, 2022?

9 A Yes.

10 Q And when you looked at those films, did you provide
11 opinions on what you saw in the films?

12 A Yes.

13 Q All right. And did you see any evidence to a
14 reasonable degree of certainty as a neuroradiologist whether
15 there was any evidence of postoperative arthritis, rapid
16 developing arthritis, pseudoarthrosis, or failures of the
17 fusion?

18 A There weren't any signs of those.

19 Q Okay. And by the way, all of these opinions, when you
20 talk to the jury and told them what you saw, those are all
21 opinions to a reasonable degree of neuroradiological certainty;
22 is that correct?

23 A Correct.

24 Q Okay. Was there any abnormality that you did actually
25 observe in the post-operative films?

1 A Yes.

2 Q And what was that?

3 A I noticed that there was a subtle halo of lucency
4 surrounding one of the screws, in particular, the right S1
5 screw. When I say right, you are probably looking at me crazy,
6 but this is the patient's right. So when you look at an x-ray,
7 it's as if we are looking at them. So their right side is on
8 your left side.

9 So this is the patient's right-sided hardware, and
10 there is thin, lucency surrounding the right S1 screw. I
11 mentioned it in my report. And I said that that looks like it
12 might be -- that screw looks like it might be loosening.

13 Q Okay. And you also -- when you said before you looked
14 at various records and reports in addition to the films,
15 correct?

16 A Yes.

17 Q And you looked at Dr. Kolb's reports, correct?

18 A Yes.

19 Q And did Dr. Kolb ever mention the presence of a loose
20 screw?

21 A I don't believe so.

22 Q Okay. And I want you to assume that Dr. Weinstein had
23 talked to the jury and told them that he thought that he saw
24 something about a screw possibly loosening, but since the bone
25 looked to be fusing, and the other screws were in place, that

1 unless there was a complication, he did not express a concern
2 for it.

3 MR. VARGAS: Objection. Beyond the report.

4 MR. VAN ETEN: I'm just asking him to make an
5 assumption of the testimony. I haven't even asked him a
6 question.

7 MR. VARGAS: Anything about whether or not there is
8 future surgery, that is not up to the radiologist to
9 comment.

10 THE COURT: What was the question?

11 MR. VAN ETEN: I hadn't asked it yet.

12 MR. VARGAS: I know. That's where you're going.

13 MR. VAN ETEN: No, it wasn't. I guess we're
14 predicting in the future.

15 THE COURT: What was the question?

16 MR. VAN ETEN: I asked him to make an assumption
17 that Dr. Weinstein had also discussed the fact that he saw a
18 loosening of a screw, but because that there had been some
19 fusion taking place in the other screws in place, that
20 wasn't a concern to him unless there was a change of
21 condition. I was going to ask him to make that assumption.
22 And then I was going to ask a question, which I haven't
23 asked yet.

24 THE COURT: Okay. Make that assumption. What's
25 the question?

1 Q With the surgeon stating that, would you have to act on
2 your own if you saw a loose screw?

3 MR. VARGAS: Objection to form.

4 THE COURT: Sustained.

5 Q Is there any -- when you take films yourself, do you
6 have any interaction with the surgeons?

7 A Do I have an interaction with the surgeons on a regular
8 basis regarding my interpretation, not regularly.

9 Q Do surgeons at times come to you if they have an issue
10 and bring it up to you and say, hey, I saw this or you saw this,
11 what do you think?

12 A Sure.

13 Q Is that commonplace?

14 A It happens.

15 Q You have interactions, surgeons and radiologists?

16 A It happens.

17 Q Right. So a loosening screw, would that be a
18 circumstance where if there was a concern that that would be
19 something a radiologist and a surgeon could have a conversation
20 about?

21 A Potentially.

22 Q Okay. Last question here, Doctor. You testified
23 before about your opinions to the degenerative conditions in the
24 spine involving the osteophytes, I believe the facet
25 arthropathy, hypertrophy, some other issues, endplates

1 sclerosis, and all of those degenerative issues, and you opined
2 and told this jury that that all preexisted March 15, 2018.

3 And you also testified that the films, over a year,
4 later showed no change?

5 A Correct.

6 Q Do you have an opinion within a reasonable degree of
7 neuroradiological certainty then whether the trauma that Mr.
8 Rivera sustained on March 15, 2018, made the pre-existing
9 degeneration worse?

10 MR. VARGAS: Objection.

11 THE COURT: What's the basis?

12 MR. VARGAS: It's causation question.

13 THE COURT: Didn't we go over this already?

14 MR. VAN ETEN: It wasn't causation. I didn't ask
15 causation. I asked if it made the condition worse, which I
16 think we discussed on something else earlier today.

17 THE COURT: Sustained. You said you only had one
18 more question.

19 MR. VAN ETEN: That was it. I'm trying to see if
20 I can rephrase it in a manner that will not upset my
21 attorney or the Judge.

22 MR. VARGAS: I'm not upset.

23 THE COURT: I am. Move on.

24 MR. VAN ETEN: I'm sorry. I will let it go, Doc.
25 Thank you very much.

1 THE COURT: Cross-examination?

2 MR. VARGAS: Thank you.

3 THE COURT: You only have a half hour.

4 MR. VARGAS: I think I can do it.

5 THE COURT: Hopefully less.

6 CROSS-EXAMINATION

7 BY MR. VARGAS:

8 Q Good afternoon, Doctor.

9 A Good afternoon.

10 Q My name is Chris Vargas. I represent Mr. Rivera in
11 this matter. I have a few follow-up questions for you.

12 When were you hired to testify at this trial?

13 A Within the past couple of weeks.

14 Q All right. I saw a report. I think it was an exchange
15 from Mr. Van Etten's office from April 3rd.

16 Does that sound right?

17 A Regarding?

18 Q Your testimony and what you planned to come and say at
19 this trial.

20 A I -- perhaps.

21 Q You have your records right there. Did they tell you
22 when you read these films?

23 MR. VAN ETTEN: Objection. Form of question.

24 THE COURT: Overruled.

25 A Please restate it.

1 Q When did you read these films or when were you hired?
2 Your choice.

3 A Oh, that's easy. Because your first question was about
4 when I was --

5 THE COURT: Just answer the question.

6 A I was first assigned this project to look at all these
7 films, approximately, in March of 2025.

8 Q Okay. And then when did you actually issue a report?

9 A I did a report in March of 20 -- my first report is
10 March 25, 2025.

11 Q Okay. And when you did this report, you knew you were
12 doing it for Mr. Van Etten's office, you've worked with him
13 several times, you knew he represented the defendants, correct?

14 A Yes.

15 Q And you addressed the reports in Mr. Van Etten's
16 office, right?

17 A Yes.

18 Q Now, how many years have you been testifying in --
19 well, let me back up.

20 What you are doing here today, the reading of the
21 films, the testifying, would you call that medical legal work?
22 Is that the term you use?

23 A Sounds good.

24 Q Okay. How many years have you been testifying in these
25 medical legal reviewing of films?

1 A About ten years.

2 Q Didn't you actually start around 2014, right?

3 A Yes.

4 Q Okay. And you were licensed in 2010?

5 A Yes.

6 Q And you have a brother who is an orthopedist, correct?

7 MR. VAN ETEN: Objection. Relevancy.

8 THE COURT: Sustained.

9 Q So when you came out of school, you started being a
10 radiologist -- a neuroradiologist. And you talked to your
11 brother and eventually wanted to get into this type of medical
12 legal work, correct?

13 MR. VAN ETEN: Objection.

14 THE COURT: Sustained.

15 Q And you started handing out your cell number and e-mail
16 addresses to lawyers around 2012; isn't that correct?

17 A No.

18 Q No?

19 A No.

20 Q You don't remember ever testifying to that?

21 A I never testified that I gave out my business card. I
22 don't even have a business card.

23 Q I didn't say business card. I said you gave out your
24 e-mail and your cell number to lawyers telling them you would be
25 willing to do IMEs, court hearings, depositions.

1 Does that refresh your recollection or should I get the
2 transcript?

3 A Well, when you're bringing up the transcript --

4 Q So you don't remember?

5 A No, I know what you're referring to, but you're
6 misquoting my statement.

7 Q Well, let's start with this. Did you, in 2012, start
8 handing out information to lawyers regarding you testifying?

9 A No.

10 MR. VARGAS: Okay. I have a copy here for counsel.

11 MR. VAN ETEN: Thank you.

12 MR. VARGAS: And the Judge.

13 Q Case called Linda Merritt against AZ Villas Realty,
14 LLC, and Garden Gourmet Market, Bronx Court, Judge Naita Semaj,
15 S-E-M-A-J. This is November 8th, 2024, and page 377. I'm
16 sorry, 376. I will read from the transcript of Wright versus
17 Katz on January 20th, 2016, on page 5, line 13.

18 "QUESTION: And in 2012, you were giving out to
19 lawyers your cell number, your e-mail address, and saying
20 that you were available for IMEs, arbitrations, court
21 hearings, depositions, correct?

22 "ANSWER: Correct."

23 And then there is some colloquy, and then you
24 answer, "okay, right, so."

25 MR. VAN ETEN: Please read the full thing if you

1 are going to read this.

2 MR. VARGAS: Sure. All right.

3 "QUESTION: And in 2012, were you giving out to
4 lawyers your cell" --

5 A Slow down. Slow down and read it very carefully.

6 Q Okay. I will.

7 MR. VARGAS: "QUESTION: In 2012, were you giving
8 lawyers your cell number, your e-mail address, and saying
9 that you were available for IMEs, arbitrations, court
10 hearings, depositions, correct?

11 "ANSWER: That's correct."

12 Then answer, you said, bring it up.

13 "QUESTION: See if I read it right that time."
14 That's the lawyer speaking to you.

15 And then you answered, okay, right, so.

16 MR. VAN ETEN: Which page are you on?

17 MR. VARGAS: 377, the next page.

18 A Can I have a copy of that?

19 Q Okay.

20 A Because I would like to clarify it for the record.

21 Q Doctor, the question is: Do you remember being asked
22 that question and giving that answer? It starts right down
23 there, and goes to page 377.

24 A Right. So you kind of slurred over an important --

25 Q No, I didn't, Doctor. I read exactly what's on that

1 page.

2 So do you remember being asked that question and giving
3 that answer?

4 A Let me read it directly from the transcript, okay?

5 Q Which is what I did, as well, Doctor.

6 A "You were giving out" --

7 THE COURT: Doctor, listen to me. You are not
8 reading from the transcript. You are here to answer
9 questions only. So can you just answer his question.

10 THE WITNESS: Yes.

11 THE COURT: Do you remember being asked that
12 question and giving that answer; yes or no?

13 THE WITNESS: It's a complex question. It's got
14 quotes of quotes of quotes. So I can't answer it just yes
15 or no.

16 Q It's not that complicated, Doctor. You either did it
17 or didn't do it in 2012.

18 A So, the answer is no. I never gave out -- started
19 going around giving out my contact information to lawyers. I
20 did --

21 Q Well, then why did you answer in that, okay, right, so?
22 Why did you say that on the next page?

23 MR. VAN ETEN: Objection.

24 A My --

25 THE COURT: What's the basis, Counsel?

1 MR. VAN ETTEN: It's argumentative. He's now
2 answered the question.

3 THE COURT: I'll allow it.

4 MR. VAN ETTEN: He's answering again.

5 THE COURT: I'll allow it.

6 MR. VAN ETTEN: And it's out of --

7 THE COURT: Overruled. Do not speak over me. Move
8 on.

9 Q Doctor, why did you give that answer then if it's
10 incorrect? You said, right, okay, so.

11 A Where?

12 Q Page -- Doctor, are you having trouble reading now?

13 MR. VAN ETTEN: Objection. Argumentative.

14 Q Let's see. Page 377, line 1.

15 "ANSWER: Okay, right, so."

16 Do you see that? You can't see that?

17 THE COURT: Your objection is noted. It's
18 overruled. Counselor, you cannot approach the witness
19 without my permission.

20 MR. VARGAS: I'm sorry, Your Honor.

21 THE COURT: It's 9-1 on the top, okay, right, so.
22 Did you say that, Doctor? Do you remember giving that
23 testimony; yes or no?

24 THE WITNESS: Your Honor, respectfully --

25 THE COURT: Yes or no?

1 THE WITNESS: To the question right before it?

2 THE COURT: Yes.

3 THE WITNESS: I read it right that time, and he
4 handed it to me, and I said, okay, right, so.

5 Q Okay. So you agree you said that. We are getting
6 somewhere now.

7 MR. VAN ETEN: Objection.

8 THE COURT: Counsel, I heard your objection. I
9 know you said it's argumentative. I am allowing it. It's
10 overruled again. This is called cross-examination.

11 MR. VAN ETEN: I understand, Judge.

12 THE COURT: Arguments are allowed.

13 MR. VAN ETEN: And it's asked and answered.

14 THE COURT: He hasn't answered anything. That's
15 the problem.

16 MR. VAN ETEN: He just did.

17 THE COURT: I will allow it.

18 Q So you said that, Doctor, correct?

19 A I was not answering the question when I said, okay,
20 right, so. To yes, I gave out information because that's not
21 true. I was answering some question, does it say -- hold on.

22 Q Doctor, I read the question.

23 THE COURT: The answer is no. Please move on.

24 A The answer is no.

25 THE COURT: It's 4:05.

1 MR. VARGAS: Okay.

2 Q Now, we are in the year 2025. You have been testifying
3 for 13 years. And overwhelmingly, when you come to court, you
4 are testifying for the defendants, correct?

5 A Statistically, when I am called to court, it is more
6 often at the request of defendants. That's true.

7 Q 90 percent of the time?

8 A Yes.

9 Q Okay. That sound like overwhelmingly, right?

10 MR. VAN ETTEN: Objection.

11 Q I have actually seen you on several trials --

12 THE COURT: What's the basis of your objection,
13 Counsel?

14 MR. VAN ETTEN: Argumentative again.

15 THE COURT: Overruled again. Move on, Counsel.

16 Q I have seen you at several trials for clients of
17 mine --

18 THE COURT: And don't forget to stand up when you
19 make an objection for the third time. You may continue,
20 Counsel.

21 Q I first saw you on a trial back on October 11th, 2017,
22 a Henry Calderon versus LSG Sky Chefs and Antonio Rosario in
23 Queens County before Judge Carman Velasquez.

24 Do you remember that trial?

25 A Not particularly.

1 Q In that trial, you were given the diagnosis of -- he
2 had a lumbar injury, just like we're talking here, and you said
3 Mr. Calderon had pre-existing degenerative changes of facet
4 joints unrelated to the accident.

5 Sound like something you would say?

6 MR. VAN ETTEN: Objection form. Objection form.

7 THE COURT: Can you repeat your question.

8 MR. VARGAS: Sure.

9 Q For Mr. Calderon's trial, you testified that his
10 injuries were pre-existing degenerative changes of the facet
11 joints unrelated to the accident.

12 Does that sound like something your diagnosis would be?

13 A Well, degeneration --

14 THE COURT: Give me a second. Who is Mr. Calderon?

15 MR. VARGAS: This is other trials I have seen him
16 on with a similar diagnosis.

17 THE COURT: It's sustained, but not as to your
18 basis.

19 How is this relevant?

20 MR. VARGAS: I am getting to my point, Your Honor.

21 THE COURT: Get there, please.

22 MR. VARGAS: Okay.

23 Q I've also seen you on another trial with Mr. Van Etten
24 of Mr. Almonte, where you had the exact same multilevel
25 degenerative disc disease, lumbar spine without evidence of

1 recent posttraumatic injury.

2 Again, similar to what you're saying here?

3 A Well, degenerative disc disease is common.

4 Q Right. But this seems to be your diagnosis every
5 single time, Doctor.

6 MR. VAN ETEN: Objection.

7 THE COURT: Sustained.

8 Q There is another trial, Jensen Rodriguez versus Transit
9 Authority. Again, multilevel disc disease, cervical spine,
10 nontraumatic, chronic, no annular tear.

11 Sound familiar to today?

12 MR. VAN ETEN: Objection.

13 THE COURT: Sustained.

14 Q And of course, in this trial, you are saying chronic
15 degenerative, preexisting, disc dehydration, anterior bone spur
16 formations, lack of an annular tear, secondary degenerative
17 changes of the facet joints, correct?

18 A What was the question?

19 Q That's what you're saying in this trial. You just said
20 it over the last hour, right? Do you remember?

21 A Yes. Mr. Rivera?

22 Q Okay. We are back to Mr. Rivera, yes.

23 Is that why the defendants keep calling you to testify
24 90 percent of the time because you come up with these disc
25 degeneration, nontraumatic?

1 Is that maybe why they hire you all the time?

2 MR. VAN ETEN: Objection.

3 THE COURT: What's the basis?

4 MR. VAN ETEN: I do not know it would be within
5 the witness's knowledge as to why anybody --

6 THE COURT: I'll allow it. Overruled.

7 Q Doctor, what do you think?

8 A Well, to be honest, if you allow me to elaborate, a lot
9 of the times when I am called to court, and testifying about
10 spinal injuries, the answer really and truly is that these
11 patients or these claimants often have degenerative disc
12 disease. It's super common. Everybody gets it at a certain
13 age. So is it common for me to say this patient has a bulging
14 disc and this person has arthritis in the facet joints? These
15 are common findings, just like gray hair, right?

16 Does that mean that I am purposely finding these
17 abnormalities? No. They're common in middle-aged people. And
18 I work in the emergency room, and I look at people's spines when
19 they come in from motor vehicle accidents, motorcycle accidents,
20 and most are negative, and that's good. We want our spines to
21 not break every time we get into a minor accident. Otherwise,
22 we, as humans, would not exist. So it's good that our spines
23 are fairly rugged, and can sustain even mild accidents without
24 crumbling or leaving us paraplegics. So the vast majority of
25 the scans I read at Columbia Presbyterian Hospital or Jacobi

1 Medical Center are, thankfully, negative.

2 Q But we're not talking about that. We are talking about
3 what you do for the lawyers. We're not talking about what you
4 do at Columbia Presbyterian.

5 So, are you saying it's just a coincidence, 90 percent
6 of the time, they call you to court?

7 MR. VAN ETEN: Objection.

8 THE COURT: Asked and answered. Sustained.

9 Q Now, Doctor, if we could go to the MRI of 4/17/18, the
10 cervical one. Now, you diagnosed it and it wasn't exactly clear
11 from your report. You didn't say it was a bulge. You didn't
12 say it was a herniation for C4-5 and C5-6; am I correct? Or did
13 I miss something?

14 A In my report?

15 Q Yes.

16 A I said there was a disc osteophyte complex.

17 Q Correct. So you didn't say whether it was a bulge or
18 herniation, correct?

19 A Well, it's neither of those two.

20 Q Okay. So all the surrounding vertebrae in the neck
21 either had bulges or herniations, but the two levels that
22 surgery was performed on, you couldn't come to a diagnosis
23 whether it was a bulge or herniation; is that correct?

24 MR. VAN ETEN: Objection.

25 THE COURT: What's the basis, Counsel?

1 MR. VAN ETTEN: Form of the question, compound.

2 THE COURT: I will allow it.

3 A What you're saying --

4 THE COURT: Is it a compound question?

5 MR. VARGAS: I don't think it is.

6 THE COURT: What was the question, again?

7 (Whereupon, the Court Reporter read back the
8 requested testimony.)

9 THE COURT: Sustained. You have to break it down,
10 Counsel.

11 Q Okay. So you didn't diagnose either a bulge or a
12 herniation at C4-C5, correct?

13 A Correct.

14 Q And same for C5-C6, correct?

15 A Correct.

16 Q And instead, you just stated in the report osteophyte
17 complexes?

18 A No.

19 Q Disc osteophyte complexes at C4C5, I believe that's in
20 your report, unless there is a different report.

21 A No, that's correct.

22 Q Okay. So, are you aware that Dr. Kolb, who wasn't
23 hired to testify in this trial back in April 7, 2018, when he
24 performed this MRI, he saw no osteophytes, and he clearly
25 diagnosed herniations at C4-C5, C5-C6, and C6-C7; are you aware

1 of that?

2 A I think so.

3 Q Okay. So, there is a vast discrepancy here, right?

4 You don't even see a bulge or herniation, the treating
5 radiologist clearly sees them on the film, correct?

6 A Well, he's not an neuroradiologist.

7 Q Oh. So he's unqualified to read those films. Is that
8 what you're trying to say?

9 A His -- he doesn't have the training certification and,
10 you know, specificity about the findings. You know, just
11 calling everything herniations or bulges doesn't really do it
12 justice.

13 Q But he didn't call everything herniations and bulges.
14 He clearly said those three levels, herniations. And he didn't
15 see any osteophytes like you either.

16 A I believe that.

17 Q And he wasn't hired to testify at that time, he was
18 doing it as a treating radiologist. Unlike you who was just
19 hired in March of this year, correct?

20 A I was assigned in, approximately, March.

21 Q Okay. And are you aware that the defendants are going
22 to be calling a Dr. Kim, a spinal surgeon tomorrow?

23 A No.

24 Q And that Dr. Kim is going to come in based on his
25 report and say there is a herniation at C4-C5.

1 Are you aware of that?

2 MR. VAN ETTEN: Note my objection.

3 THE COURT: What's the basis?

4 MR. VAN ETTEN: He said he was not aware that Dr.
5 Kim was coming in, so how would he know what Dr. Kim is
6 going to testify to.

7 THE COURT: He can say that. Let him testify.
8 Overruled.

9 A No. I am not aware of -- that Dr. Kim was coming or
10 what he was going to say.

11 Q And Dr. Kim, being a spinal surgeon, not qualified to
12 read the film, are you also saying that?

13 MR. VAN ETTEN: Objection.

14 THE COURT: The same basis that I just overruled?

15 MR. VAN ETTEN: No, different basis. He is saying
16 -- again, he is saying that Dr. Kim is not qualified.
17 Again, he has to set a foundation to some degree, I believe,
18 of what he's asking.

19 THE COURT: Are we talking about Dr. Kim?

20 MR. VARGAS: Yes.

21 THE COURT: What's the question?

22 MR. VARGAS: The question is: Are you aware that
23 he found a herniation in C4-C5, and he said no. And I asked
24 him, is he not qualified to read the films because he made
25 the same comment about Dr. Kolb.

1 THE COURT: Sustained.

2 MR. VAN ETEN: He doesn't know Dr. Kim's
3 qualification are. There was no foundation to it.

4 THE COURT: I said sustained. Didn't you listen?

5 MR. VAN ETEN: I didn't hear you, Your Honor.

6 THE COURT: That's the problem. You talk over me.
7 You don't listen. I sustained the objection.

8 MR. VAN ETEN: Thank you.

9 THE COURT: I'm on your side right now. Next
10 question.

11 Q Next question is: The MRI of 4/7/18 of the lumbar,
12 now, there, you found degenerative, no annular tear, no evidence
13 of trauma, stop me if I'm incorrect.

14 You testified to all that today, correct?

15 A Yes.

16 Q Okay. And secondary degenerative changes with anterior
17 bone spurs, correct?

18 A Yes.

19 Q Bone spurs being osteophytes again, right?

20 A Yes.

21 Q And anterior being the front of the body, correct?

22 A Yes.

23 Q And if you have anterior osteophytes, that's usually
24 not a cause of symptoms; can we agree on that?

25 A True.

1 Q And so that wouldn't be the cause of his pain in his
2 lumbar spine if that is what he was reporting, the patient, it
3 wouldn't be the anterior osteophytes?

4 MR. VAN ETEN: Objection. He is being called as a
5 radiologist, not as a treating doctor.

6 THE COURT: Sustained.

7 Q And again, are you aware that Dr. Kolb didn't find any
8 osteophytes in the lumbar spine?

9 A I believe it.

10 Q And then the MRI of 5/1/19 of the cervical --

11 A Okay.

12 Q Again, you didn't find a herniation. You said it was
13 the same as April 7th, 2018, correct?

14 A Right.

15 Q Again, are you aware or would it surprise you that Dr.
16 Kim was going to testify tomorrow that he found a herniation at
17 C4-C5?

18 A I am unaware what Dr. Kim is planning or will do.

19 Q But I asked would it surprise you if he found a
20 herniation.

21 A I don't even know who Dr. Kim is.

22 Q I know. But would it surprise you that a doctor found
23 a herniation there? You clearly say no herniation, right,
24 osteophyte complex?

25 A Yes, disc osteophyte complex.

1 Q Okay. So would it surprise you that these other
2 doctors are finding herniations there?

3 A He hasn't even testified yet.

4 Q We are also talking about Dr. Kolb. Dr. Kim, Dr. Kolb
5 both found a herniation there. You are the only one who doesn't
6 see it. That's what I'm trying to get at, Doctor.

7 A I'm the only neuroradiologist there.

8 Q Okay. So you're the only one who can see the
9 herniation, or if they do diagnose them, they're incorrect
10 because you didn't see them.

11 Is that what you're telling us?

12 A I mean, I don't want to pat myself on the back, but I
13 am the most qualified of those three to describe MRI findings of
14 the spine.

15 Q Okay. Same with Dr. Weinstein, he found herniations at
16 C4-C5, C5-C6, pushing into the spinal cord. Again, he's
17 unqualified to make that diagnosis, correct, Doctor?

18 A I agree that there is pushing on the spinal cord at
19 C4-5.

20 Q But the herniation, no?

21 A Technically, it's not a herniation. It's a disc
22 osteophyte complex.

23 Q Even though he's the surgeon, he opened up Mr. Rivera,
24 he put his eyes on that herniation, you're saying he's still not
25 qualified because you read the film?

1 A That's a wonderful discussion. I would like to
2 elaborate on it.

3 Q No. If you can answer the question.

4 A A surgeon who did an ACDF coming from the front of the
5 spine cannot see what the disc looks like on the back edge of
6 the spine.

7 Q Okay. Well, how many spinal surgeries have you
8 performed?

9 A I have assisted in many.

10 Q What's many?

11 A I don't know. 20, 30.

12 Q When was this?

13 A Both as a medical student at the Hospital For Special
14 Surgery with Dr. Frank Cammisa, and with -- during the
15 internship when I was rotating through neurosurgery.

16 Q Okay. So you were not a practicing doctor, you were a
17 resident or an attending at that time, at most, correct?

18 A An intern.

19 Q Okay. An intern?

20 A Correct.

21 Q So you're assisting -- you are in the operating room,
22 but I doubt you were cutting the patient, correct?

23 MR. VAN ETEN: Objection.

24 Q Next was the lumbar MRI of 5/1/19. Here, you do agree
25 with Dr. Weinstein, herniation at L5-S1, correct?

1 A Yes.

2 Q But you disagree that there's signs of trauma?

3 A I don't know what his, you know -- what doctor -- what
4 that doctor said.

5 Q He said there was evidence of an annular tear, and that
6 it was still there.

7 A Okay. So I disagree.

8 Q Okay. Signs of an annular tear can exist for up to two
9 years, correct?

10 A That's true.

11 Q And so this was May 1st, 2019, that's within the two
12 years of the accident, correct?

13 A Is May 1st, 2019, within two years of the accident,
14 that's true.

15 Q Okay. And this MRI, as well, Dr. Kolb found a
16 herniation at L5-S1.

17 You agreed with him on this one?

18 A Okay.

19 Q Is he qualified to read this film, since he agrees with
20 you?

21 A Is he qualified -- like, the same qualification I have
22 or is he just a general radiologist?

23 Q He agrees with you, right?

24 A If he said there's a herniation of L5-S1, then I agree,
25 technically.

1 Q Okay. And the original radiologist at Lenox Hill
2 Radiology, Dr. Milbar, he also found a herniation at L5-S1.

3 A Okay.

4 Q Are you aware of that?

5 A I think so.

6 Q Well, you read all the reports, right, when you looked
7 at the films?

8 A Yes.

9 Q So you knew what everyone was going to say as you read
10 these films, correct?

11 MR. VAN ETEN: Objection.

12 THE COURT: What's the basis?

13 MR. VAN ETEN: He said you knew what everybody is
14 going to say. Dr. Milbar is not one of the witnesses coming
15 in, so I don't think he would know what he's going to say
16 since he's not coming in.

17 THE COURT: This is the same objection you made
18 earlier, and I said he can answer the question.

19 MR. VAN ETEN: It's a different doctor.

20 THE COURT: It doesn't matter. Overruled. I'm
21 assuming it's the same answer.

22 You may answer the question, Doctor.

23 A Can you repeat the question.

24 Q Are you aware of what Dr. Milbar had diagnosed in that
25 film?

1 A Give me the date again, one more time.

2 Q 5/1/19, lumbar.

3 A Let me check. I will just presume that -- yes.

4 Q And were you aware that Dr. Milbar also found
5 herniations in the neck at C4-C5, C5-C6, unlike you?

6 A C4-5 and C5-6, he said that there were herniations.

7 Q Right. So he also sees them, everyone else sees them,
8 except for your, correct, Doctor?

9 A Again, Dr. Milbar is not a neuroradiologist.

10 Q Right. He's not qualified to make that diagnosis, only
11 you are. You are the special doctor here, correct?

12 MR. VAN ETEN: Note my objection. I don't know
13 what the term "special" -- form.

14 THE COURT: Sustained.

15 Q Now, regardless whether it's a herniation or a bulge
16 that we have been talking about, as far as the spine, cervical,
17 and lumbar, a bulge can cause pain, correct?

18 A It depends.

19 Q Well, you've testified before that it certainly could.
20 Do you remember ever saying that?

21 A Today?

22 Q No, not today. In the past, you have said certainly
23 could.

24 A It certainly might.

25 Q Okay. How about -- can trauma cause a bulge?

1 A No, not in an acute way. No.

2 Q And why is that?

3 A Because the definition of a bulging disc is a
4 degenerating disc that is flattening out and sagging around its
5 edges. That doesn't happen in an acute trauma.

6 Q And do you know if your opinion is a common opinion
7 among radiologists?

8 A Yes.

9 Q Okay. How about with spine surgeons?

10 A I'm not a spine surgeon. I don't know what spine
11 surgeons think.

12 Q And are you aware that Dr. Kim found disc bulging at
13 L5-S1?

14 A No. I don't even know who Dr. Kim really is.

15 Q Would it surprise you that he found a disc bulge and
16 you found a disc herniation?

17 MR. VAN ETEN: Objection. Form.

18 THE COURT: What's the question?

19 MR. VARGAS: Would it surprise you that Dr. Kim
20 found a disc bulge at L5-S1 and you found a disc herniation?

21 THE COURT: I will allow it. Overruled.

22 A I don't have any surprise.

23 Q Okay. Could you confuse a herniation with a bulge; do
24 you think?

25 A Not typically.

1 MR. VARGAS: Okay. No further questions.

2 THE COURT: Redirect?

3 MR. VAN ETEN: No. I will give everybody the rest
4 of the day off.

5 THE COURT: Okay. Dr. Katzman, that concludes your
6 testimony. You may step down.

7 Tomorrow, we are going to resume at 9:30 for the
8 continued witnesses of the defense. And we are hoping to
9 sum up and charge the jury tomorrow for your deliberations.
10 Have a good evening.

11 COURT OFFICER: All rise. Jurors exiting.

12 (Whereupon, the sworn jurors exit the courtroom.)

13 (Whereupon, the proceedings were adjourned until
14 Thursday, May 29, 2025, at 9:30 a.m.)

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