

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

-----X

NORMAN RIVERA,

Plaintiff,

-against-

Index No: 28368/2018E

454 WEST 57TH STREET HOLDING

& T&K PROPERTIES, LLC

**TRIAL**

Defendants.

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**TESTIMONY**

Dr. Robert Tornambe

Bronx Supreme Court  
851 Grand Concourse  
Bronx, New York 10451  
May 21, 2025

**B E F O R E:**

HONORABLE BIANKA PEREZ,  
Justice of the Supreme Court

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

GORAYEB & ASSOCIATES

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SIOBHAN LYONS  
Senior Court Reporter

1 - M O R N I N G S E S S I O N -

2 THE COURT: Juror Number Four is in the ICU. So,  
3 how would you like to proceed.

4 Do you have your expert here?

5 MR. VARGAS: I do, Your Honor.

6 THE COURT: Okay.

7 MR. VARGAS: We have a couple of issues before he  
8 goes on.

9 THE COURT: Well, the first issue is we don't have  
10 a juror.

11 MR. VAN ETEN: Right. We talked before, Judge,  
12 when we were informed by your clerk. I mean, obviously, the  
13 juror that is there with their child, we will excuse. I'm  
14 sorry, I'm not talking close enough. Obviously, if the  
15 juror's with their child in the hospital, we agree we would  
16 have to excuse the juror.

17 THE COURT: For Alternate Number One?

18 MR. VARGAS: Two, we're up to.

19 THE COURT: The new One.

20 MR. VARGAS: Oh, I'm sorry. Yes.

21 THE COURT: The old Two.

22 MR. VAN ETEN: Because the original Alternate  
23 Number One went to seat four. That's our jinxed seat.

24 MR. VARGAS: It should be Abigail Gonzalez.

25 THE COURT: Abigail Gonzalez will replace Juror

1 Number Four, okay?

2 THE CLERK: Okay.

3 THE COURT: Now let's hear the other issue.

4 MR. VARGAS: Okay. The next issue, it connects to  
5 the expert's records. I'm moving to enter Dr. Katzman's  
6 records into evidence.

7 MR. VAN ETEN: Katz.

8 MR. VARGAS: Or Katz, I'm sorry, yours is Katzman.  
9 Dr. Katz's records into evidence and the Defendant is  
10 objecting.

11 MR. VAN ETEN: I'm just turning my phone off,  
12 Judge. Excuse me one second.

13 THE COURT: That was yours?

14 MR. VAN ETEN: Wasn't mine, but I'm just making  
15 sure, because it reminded me.

16 Yes, Your Honor, it's kind of --

17 THE COURT: Is it a treating physician?

18 MR. VAN ETEN: That's a good question.

19 MR. VARGAS: Yes.

20 MR. VAN ETEN: As the testimony was, this was  
21 another person that Mr. Rivera had been referred to by  
22 counsel. Did he provide treatment? I know he saw him on  
23 four occasions and made recommendations. He did not perform  
24 the surgery. The person coming in is the one who did the  
25 surgery. There are some --

1 THE COURT: Listen to me, Counsel.

2 MR. VAN ETEN: Sure.

3 THE COURT: Did he treat the Plaintiff and did you  
4 receive authorizations for his medal records throughout  
5 discovery?

6 MR. VAN ETEN: Yes, Your Honor.

7 THE COURT: Then he's a treating physician.

8 MR. VAN ETEN: Then he's a treating physician, but  
9 his records and his opinions are all hearsay, including  
10 interpretations of diagnostic testing films that are in his  
11 records and reports and the doctor who's going to testify  
12 relied on those and, as I told Counsel, one of the things I  
13 was going to ask was to also preclude any reliance on the  
14 hearsay statements of Dr. Katz, because I don't believe that  
15 the surgeon who's coming in today actually reviewed any of  
16 the films and there was --

17 THE COURT: We've gone through this before. If  
18 they relied on the treating physician's records to render  
19 their opinion, it's an exception to the hearsay rule.

20 Am I wrong? Didn't we go over this before on  
21 another objection you made Friday?

22 MR. VAN ETEN: I don't recall, Judge, but --

23 THE COURT: Well, I have a good memory.

24 MR. VAN ETEN: You may. You may. I don't recall  
25 that, but that would be my position, because --

1 particularly, Judge, because you have Dr. Katz interpreting  
2 a diagnostic film from Lennox Hill Radiology, from the  
3 Lennox Hill radiologist, that this doctor is now looking.  
4 It's a double hearsay in this instance, because the films  
5 are from a different facility. The films are in evidence.  
6 I don't know if he saw or maybe he'll come in and tell me,  
7 hey, look, the films --

8 THE COURT: I'll rule on that objection when we get  
9 to it.

10 MR. VAN ETEN: Okay.

11 THE COURT: That's a different issue. That's it.

12 MR. VAN ETEN: That would be the issue.

13 THE COURT: Your objection is overruled at this  
14 point and --

15 MR. VAN ETEN: Thank you.

16 THE COURT: -- we'll see what he says.

17 MR. VAN ETEN: Okay.

18 MR. VARGAS: And Dr. Katz' records come in  
19 evidence?

20 THE COURT: Yeah, he's a treating physician.

21 MR. VARGAS: They'll be number 31.

22 Next is the last issue we had and that is an  
23 illustration. Defense Counsel is okay with all these,  
24 except for these two.

25 THE COURT: Of course Dr. Katz' records go into

1 evidence, subject to redaction.

2 MR. VAN ETEN: All the records he -- we agreed  
3 will be subject. There's a lot of Worker's Comp documents  
4 in there we have to pull.

5 THE COURT: You're objecting to?

6 MR. VAN ETEN: This and this. What I -- the issue  
7 is -- and can I ask that the doctor step out, please?

8 THE COURT: Of course.

9 MR. VAN ETEN: Thank you.

10 MR. VARGAS: Just step out into the hall, Doctor.

11 MR. VAN ETEN: I have no issue, Judge, with the  
12 surgeries and the description for the illustrative purposes.  
13 The issue I had was on the diagram of the nasal septal  
14 trauma and the crooked nose deformity trauma descriptions  
15 here. Again, it may be a foundation issue. If the witness  
16 says that this is what he observed during his surgery or  
17 something like that, or if it goes to the hearsay of the  
18 films, because we already had doctor --

19 THE COURT: What are you objecting to, Counsel?

20 MR. VAN ETEN: Sure. It's these two bottom boxes  
21 on the left side, because I believe -- I'm not sure if they  
22 come from surgery or what, because it's internal.

23 THE COURT: Your objection is sustained. Look, if  
24 you do not agree on the demonstrative evidence, it doesn't  
25 go in. It just doesn't go in. I'm not gonna decide what is

1 actually his nose or not.

2 MR. VAN ETTEN: Okay.

3 MR. VARGAS: Well, Your Honor he'll testify that  
4 from his physical exam, without even looking at the films.

5 THE COURT: That's why the films are in evidence.  
6 So, if you want his nose in evidence and the films in  
7 evidence, the doctor will testify as to the films. If you  
8 don't agree to that, it doesn't go in, because I don't know  
9 what that is. Objection sustained.

10 MR. VAN ETTEN: So, we'll just have to black that  
11 out.

12 MR. VARGAS: Okay.

13 THE COURT: You can bring the jurors down.

14 COURT OFFICER: All rise. Jurors entering.

15 (Whereupon, the jury entered the courtroom)

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

17 You're now Juror Alternate Number One. It's  
18 getting lonely back there.

19 MR. VAN ETTEN: Mr. Peter got a little bit shorter.

20 THE COURT: The jurors did ask me about the trial  
21 schedule. So, May 22nd we have a witness, we're off Friday,  
22 the 23rd, we're off Memorial Day, the 26th. Right now,  
23 we're still off May 27th in the morning, right?

24 MR. VAN ETTEN: Yes.

25 THE COURT: And we have a doctor in the or an

1 expert in the afternoon on May 27th. May 28th we have  
2 another -- we have the whole day, and then May 29th, which  
3 is Thursday, we have another witness and we're hoping to  
4 have closing arguments.

5 That's the schedule, okay? Hopefully nothing will  
6 happen from here to next Thursday.

7 You may call your next witness, Plaintiff.

8 MR. VARGAS: I call Dr. Robert Tornambe.

9 THE COURT: Dr. Tornambe, you may take the witness  
10 stand. Watch the wires and remain standing for the officer  
11 to swear you in.

12 COURT OFFICER: Please raise your right hand. Do  
13 you swear or affirm that the testimony you're giving today  
14 is the truth, the whole truth and nothing but the truth,  
15 under penalty of perjury?

16 THE WITNESS: I do.

17 R O B E R T T O R N A M B E, called as a witness by  
18 and on behalf of the Plaintiff, after having been first duly  
19 sworn, was examined and testified as follows:

20 COURT OFFICER: Be seated. State your name and  
21 address for the record.

22 THE WITNESS: Robert M. Tornambe, 815 Park Avenue,  
23 New York, New York, 10021.

24 THE COURT: You may inquire.

25 MR. VARGAS: Thank you, Your Honor.



1 DIRECT EXAMINATION

2 BY MR. VARGAS:

3 Q Doctor, good morning. Please start off by telling the  
4 jury your educational background.

5 A Yes. I went to medical school in the Dominican  
6 Republic for two years. That was from 1977 to '79. I graduated  
7 from med school in -- from, again, the Dominican Republic, but I  
8 did my clinical training in New York City. I then had a  
9 surgical residency from 1981 through 1985 in general surgery  
10 that included surgery internship and then three years of general  
11 surgery. I then did a one year hand fellowship also at Cabrini  
12 Medical Center in New York City. I then went to Houston Texas,  
13 University of Texas at Houston, where I did my residency in  
14 plastic surgery, and then I did a fellowship in breast  
15 reconstruction in Nashville, Tennessee and started my practice  
16 in 1988.

17 Q And, Doctor, are you board certified?

18 A I am.

19 Q What are you board certified in?

20 A In plastic and reconstructive surgery.

21 Q And, Doctor, you have a copy of your records in front  
22 of you, correct?

23 A I do. Yes, I do.

24 Q That's marked as Plaintiff's 11 and, during your  
25 testimony, if you need to, you can refer to that, okay?

1           Doctor, can we start out with, did there come a time  
2 when you treated a Mr. Norman Rivera?

3           A     Yes.

4           Q     And when was that?

5           A     My first visit with him was 11/12/2020.

6           Q     And, at that visit, did you take a history from Mr.  
7 Rivera?

8           A     Yes, I did.

9           Q     What was the history?

10          A     The history was essentially that he was injured on the  
11 job when a pipe fell, struck, hit him in the nose, causing  
12 severe trauma to his face where he then told me he was treated  
13 at Mount Sinai Hospital.

14          Q     And, if you could, just pull that microphone closer.  
15 If you could, scoot up. It's just that the acoustics, even by  
16 this point, get bad.

17                 And, after taking a history, did you examine Mr.  
18 Rivera?

19          A     Yes, I did.

20          Q     And what were the results of your examination?

21          A     Both physical examination by palpation, he had a  
22 palpable bony hump deformity on the dorsum of the nose, a  
23 classic finding where a nose is fractured and the body tries to  
24 heal it by throwing more bone on it.

25                 He had what's called a crooked nose deformity, which is

1 also very common when a nose is broken and it basically means,  
2 like, a twisted nose. It's very commonly seen in boxers, for  
3 instance.

4 Then, internal nasal exam, he had a significant  
5 deviated nasal septum, which was causing airway obstruction, and  
6 this is confirmed when you basically have a power light and you  
7 look up the nose.

8 The septum is the wall between the two nostrils and any  
9 kind of trauma can kick it one way or the other, because it's  
10 made up of cartilage, and, when you look inside, you can see  
11 that it's a sort of like -- it can either be an S shape where  
12 both sides are blocked or it can just be bowed out significantly  
13 and that will completely block one side and that is the case of  
14 Mr. Rivera.

15 He also had mucosal thickens. Mucosa is the lining of  
16 the nose and, again, that's very common in nasal fractures.

17 He had, as I said, numerous, numerous obvious signs  
18 that the nose was broken.

19 He also has what's called turbinates, which are --  
20 they're sort of like the humidifiers of the nose and, after  
21 trauma, they can be enlarged and, if they're enlarged, they also  
22 cause obstruction, and he had that as well.

23 Q And when you first saw Mr. Rivera, did you review any  
24 records?

25 A I did. He presented with a report from an

1 otolaryngologist from Mount Sinai. I don't know, I think he's  
2 from Mount Sinai, Dr. Katz, and in Dr. Katz' records he reviewed  
3 the CT scan, but, more importantly, on his physical exam, he had  
4 the exact same findings as I did and he also recommended  
5 surgery.

6 Q And do you know why Dr. Katz didn't do the surgery?

7 A I do not.

8 Q Okay. And, after taking a history and doing the exam,  
9 did you have recommendations for Mr. Rivera?

10 A Yes. I recommended nasal -- reconstructive nasal  
11 surgery and that entails fixing the septum, which is also  
12 re-breaking the nose, removing the bump, re-breaking the nose to  
13 reshape the -- the nasal bone is a pyramid, basically, like a  
14 teepee, a tent, and when it gets broken, the deformity is on the  
15 top. When you remove that deformity, you have what we call an  
16 open roof now. So, you have to fracture, break, the bone again,  
17 to basically give it the anatomy it had before the trauma.

18 He also needed -- I recommended to push the turbinates,  
19 those humidifiers, back, so he could breathe better, as well,  
20 and that was it.

21 MR. VARGAS: And, with Your Honor's permission, I  
22 was gonna put the illustration up.

23 THE COURT: Yes, of course. On the easel? Do you  
24 want to get the easel?

25 MR. VARGAS: Yeah, I'll grab it. Thank you.

1                   Plaintiff's 30 for ID.

2           Q     And, Doctor, if you could, just step down.  It's a  
3 little crowded, so be careful.  And for the reporter's sake, you  
4 can use that microphone.  Whatever works for you, whatever way  
5 you want to stand.

6                   And, if you could, proceed, Doctor.  What are we  
7 looking at?

8           A     So, the incision -- he had what was called an open  
9 nasal reconstruction or nasal surgery.  So, the incision starts  
10 at the tip of the nose, here, the bottom, the posterior part of  
11 the tip of the nose, and then the incision goes inside and the  
12 skin is actually peeled back.  This gives the surgeon an open  
13 view of the entire nasal anatomy.  That is what this is showing,  
14 the skin is pulled back.

15                   So, that's -- this photograph here in the middle shows  
16 the skin being pulled back.  The septum is right down here.  
17 This is the mucosa of the septum and that --- it's sort of like  
18 the wallpaper on a wall.  That has to be peeled back on both  
19 sides and, basically, to fix the septum, what has to be done is  
20 the part that's bowed out, we just cut it out, just remove it,  
21 because, as long as you leave a nice, hearty piece on the  
22 dorsum, the anatomy stays the same, but this let's him now  
23 relieve the significant airway obstruction.

24                   And then the -- so, the nose, this is the -- the nasal  
25 bone is very short, as you can see here, and, as I said, it

1 forms, like, a teepee. So, the bump was on top here. That's  
2 rasped down with basically a tool that, you know, sort of like a  
3 that you would see a carpenter use, and once that's down, the  
4 roof is open.

5 So, then you, basically, with a hammer and chisel, a  
6 fracture, it's called a greenstick fracture, and it basically  
7 allows the bone to be broken at its base and then pushed back  
8 together and that's the normal anatomy of the nose. Again, it's  
9 regaining that normal anatomy.

10 Then the mucosa gets sewn back together, the skin's  
11 brought back down, sutured and closed. A protective, like, cast  
12 or splint is put on the top of the nose, because the nose, it  
13 actually -- once you break it, it actually heals very fast. So,  
14 after a week, I then take the cast off.

15 Q Thank you. You can take the stand again.

16 After the surgery, did you see Mr. Rivera?

17 A Yes, I did.

18 Q And when was that?

19 A First of all, after the surgery -- okay, it's right  
20 here. I saw him one week after surgery. At that point, I  
21 removed that cast. I take out the -- almost all of the sutures  
22 on the inside dissolve, but the ones right on the skin here,  
23 those are removed at that visit.

24 And at the time of the physical -- I'm reading from my  
25 note. Physical examination, after removal of external splint,

1 reveals normal healing without signs of problems and internal  
2 splints were also removed.

3 Internal splints are put in, again, to keep the septum  
4 straight after I operated on it.

5 There's good healing and no signs of septal hematoma.  
6 All sutures removed and instructions given. Followup in one  
7 month.

8 Q For a surgery such as this, what would be your  
9 expectations on recovery?

10 A Hopefully improved shape of the nose and improved  
11 breathing through the nose.

12 Q How many more times after the surgery did you see Mr.  
13 Rivera?

14 A I saw him again on 8/19/21.

15 Q And, at that time, you did an exam?

16 A Yes. He was five weeks post-op.

17 Q And did he report back on how he was feeling after the  
18 surgery?

19 A He said that -- I'm just checking my notes, sorry. He  
20 -- in the note it says normal, returns for followup nearly five  
21 weeks post-op, pleased with the result and the fact that he can  
22 now breathe through his nose.

23 Q And did you see -- did you do an exam at that time?

24 A I did.

25 Q And your findings at that exam?

1 A All normal healing after the surgery.

2 Q And did you see Mr. Rivera after that?

3 A Yes, I did. I saw him again on 10/21/21. At that  
4 point he was three months after surgery. He -- he states that  
5 he was without complaints and significant improvement in  
6 breathing through his nose.

7 Q And did you see --

8 A My exam, again, noted that he was continuing to heal  
9 well. I also, at that point, recommended scar revision from --  
10 that -- that he got from the trauma, and we talked about that.

11 Q And is that something you would do or someone else or  
12 --

13 A I would do it.

14 Q And did you see Mr. Rivera after that?

15 A I did. I saw him last year on 3/14/24. At this point  
16 he was two years and eight months after surgery.

17 Q And, at that time, did Mr. Rivera report back on how he  
18 was recovering?

19 A He's saying -- according to the note, he's saying he's  
20 breathing reasonably well, but he still was not working at his  
21 job.

22 MR. VAN ETEN: Objection. Move to strike.

23 THE COURT: What is the basis?

24 MR. VAN ETEN: There's no claim for lost earnings  
25 here. I don't see the relevancy as to how --



1 THE COURT: I heard you.

2 Stricken from the record.

3 MR. VAN ETEN: Thank you.

4 MR. VARGAS: Well, Your Honor, we already talked  
5 about Mr. Rivera's going back to work also goes to loss of  
6 enjoyment. I agree there's no lost wage claim.

7 THE COURT: Yeah, we went over this already.

8 MR. VAN ETEN: This is a different issue with this  
9 witness for the nasal issues, as opposed to the issues of  
10 Dr. Grimm.

11 THE COURT: It's overruled as to the loss of  
12 enjoyment of life claims.

13 MR. VAN ETEN: Okay.

14 Q Did you do an exam on 3/14/24?

15 A I did.

16 Q And what were your findings?

17 A The overall shape of the nose is appropriate and  
18 straight and internal nasal exam reveals that the septum is now  
19 straight and there's no airway obstruction. Healing is  
20 complete, however, slight improvement of scar on the nasal stip  
21 might be improved with scar revision if he so desires.

22 Q Doctor, I want you to assume that the Plaintiff  
23 testified that, on March 15, 2018, he was working in the back of  
24 a building when a twenty-pound pipe fell, hitting him in the  
25 head, mouth, nose, causing his neck to twist and causing him to

1 fall to the ground. I also want you to further assume that he  
2 went to Mount Sinai following the accident and was treated for  
3 lacerations and injuries to his nose.

4 Do you have an opinion, with a reasonable degree of  
5 medical certainty, as to whether the nasal fracture that you  
6 have been talking about and the subsequent treatment you  
7 provided him is causally connected to the accident of 3/15/18?

8 MR. VAN ETEN: Objection. Form.

9 THE COURT: Can you approach?

10 (Whereupon, an off-the-record discussion was held  
11 at the bench)

12 THE COURT: Just rephrase. Sustained.

13 Q Doctor, do you have an opinion, with a reasonable  
14 degree of medical certainty, as to whether the nasal fracture is  
15 causally connected to the accident of March 15, 2018?

16 A I do.

17 MR. VAN ETEN: Note my objection.

18 THE COURT: Your objection is overruled, Counsel.

19 Q And, if you could, speak that louder.

20 A I do.

21 Q Okay. What is your opinion?

22 A It is my opinion that the blunt trauma, which occurred  
23 during the accident on-the-job was the cause of his nasal  
24 fracture and nasal -- soft tissue injury to the nose.

25 Q And do you have an opinion as to a future prognosis?

1           A     Right now, whatever he's left with now, I think -- I  
2     don't recommend any further surgery. With nasal surgery,  
3     moderate improvement is a win. I can speak from personal  
4     experience. I had a rhinoplasty myself.

5                     MR. VAN ETTEN: Objection.

6                     THE COURT: Sustained.

7           A     And you can --

8                     THE COURT: Doctor.

9                     MR. VARGAS: You can can't speak to your personal  
10    experiences.

11                    THE COURT: Any personal experiences of the Doctor  
12    are stricken from the record.

13                    THE WITNESS: Sorry, Your Honor.

14                    THE COURT: No problem.

15           Q     As far as Mr. Rivera's future prognosis, you were  
16    saying slight improvement is a win and?

17           A     And whatever he's left with now is what he's gonna have  
18    forever. I don't recommend any further surgery.

19           Q     And, Doctor, do you have an opinion, with a reasonable  
20    degree of medical certainty, as to whether the injury is  
21    permanent?

22           A     Yes, it is permanent.

23           Q     And when you say permanent, what do you mean by that?

24           A     Meaning that the scar on his face is permanent, it will  
25    not improve. Whatever degree of breathing -- if he doesn't have

1 100 percent breathing, that will not get any better at this  
2 stage. It's been over two years, healing is finished. So,  
3 that's what I meant by what he's got now is what he'll have for  
4 the rest of his life.

5 Q Thank you, Doctor.

6 MR. VARGAS: No further questions.

7 THE COURT: Okay. Give me a second.

8 We're gonna take a quick break, unless you have a  
9 short cross.

10 MR. VAN ETEN: We'll take a break.

11 THE COURT: Five minutes. We're gonna take a break  
12 between direct and cross.

13 COURT OFFICER: All rise. Jurors exiting.

14 (Whereupon, the jury exits the courtroom)

15 THE COURT: I just have to handle a couple of  
16 things and we'll resume.

17 (Whereupon, a short recess was taken)

18 COURT OFFICER: All rise. Jurors entering.

19 (Whereupon, the jury entered the courtroom)

20 THE COURT: You may inquire, Counsel.

21 MR. VAN ETEN: Thank you.

22 CROSS-EXAMINATION

23 BY MR. VAN ETEN:

24 Q Good morning, Doctor.

25 A Good morning.

1 Q And, though I said I wouldn't be five minutes, it's not  
2 gonna be too, too bad okay, all right?

3 I have one first, initial question for you, and I think  
4 when you first discussed your first visit with Mr. Rivera you  
5 said it was severe trauma on your testimony?

6 A Correct.

7 Q And, in your reports, it doesn't say the word severe,  
8 correct?

9 A It says trauma.

10 Q Right. It does not say the word severe.

11 A That's true.

12 Q Okay. And you didn't observe the incident, fair?

13 A That is true.

14 Q And did you observe any -- withdraw observe.

15 Did you observe any of the medical records for Mr.  
16 Rivera for his treatments at Mount Sinai West Hospital on the  
17 day of the incident?

18 A I did not.

19 Q So, the word severe is not something you learned from  
20 the medical records, fair?

21 A Fair.

22 Q Okay. Now, you mentioned a pipe that fell. Did you  
23 get that from the history of Mr. Rivera or from the report he  
24 gave you from Dr. Katz?

25 A From Mr. Rivera.

1 Q And was it also in Dr. Katz' report to you?

2 A I don't recall. I can look for it.

3 Q Well, let me ask you this, I have Dr. Katz' records  
4 that were marked into evidence.

5 MR. VAN ETTEN: Is that Exhibit 31, Chris?

6 MR. VARGAS: Yes.

7 MR. VAN ETTEN: All right.

8 Q I just had the page right there. Okay. Do you see the  
9 page I tabbed? And is that the first visit, I think, from the  
10 report you got from Dr. Katz for Mr. Rivera?

11 A I did not get this, no.

12 Q I understand that, but is it the same date?

13 A 12/20/18.

14 Q Right. And, in that note, does it state that, while at  
15 work installing gutter, a metal gutter fell eight feet?

16 A I -- unfortunately, Dr. Katz writes like I do. I see  
17 while at work.

18 Q You see the word gutter in the two places in that one  
19 line?

20 A I see a word. It could be gutter, but, again, I didn't  
21 write the notes. So, I can't interpret it. I don't know.

22 Q Are you familiar with gutters? I don't know if you  
23 live in city, I don't if you live in --

24 A I grew up in Queens, so I know what a gutter is.

25 Q You know what a metal gutter is, correct?

1           A     Yes.

2           Q     They're usually aluminum and that's used for water to  
3 drain off the side of your house, right?

4           A     Yes.

5           Q     And a metal pipe, such as water pipe, things like that,  
6 are much heavier items, true?

7           A     I guess so. I'm not a construction worker, though.  
8 So, I don't know.

9           Q     Do you know what the weight was, then, of the item that  
10 struck Mr. Rivera?

11          A     What the weight was of the item? I do not, no.

12          Q     So, now, you talked about a fracture?

13          A     Yes.

14          Q     Okay. And did you review any diagnostic testing films  
15 yourself that showed a fracture?

16          A     No.

17          Q     Did you inquire whether there were any diagnostic  
18 testing films at Mount Sinai West Hospital?

19          A     I believe I asked him if he had x-rays done and the  
20 report that I did have from Dr. Katz said that they were done  
21 and the report interpretation was in Dr. Katz' notes.

22          Q     That was from a CAT scan in 2020, correct?

23          A     Yes, correct.

24          Q     So, that was not something close in time, fair?

25          A     Correct.

1           Q     So, whatever observations there were done by a CAT  
2 scan, not x-rays, from the date of the incident, fair?

3           A     Yes.

4           Q     Okay. And, just in general, I mean, you are a plastic  
5 reconstruction surgeon, correct?

6           A     Yes.

7           Q     And when you do work for deviated septum, let's say,  
8 because part of this involved a deviated septum, correct?

9           A     Yes.

10          Q     And when you do work for a deviated septum, not all  
11 deviated septums are caused by trauma, correct?

12          A     Not all, correct.

13          Q     Right. Sometimes they can be caused by conditions  
14 present from birth, true?

15          A     Yes.

16          Q     And sometimes -- and, again, it can be trauma, it can  
17 be longstanding trauma from when a person was younger that they  
18 injured their nose and they have it?

19          A     True.

20          Q     And do you know what the condition of Mr. Rivera's nose  
21 was prior to March 15, 2020?

22          A     Yes.

23          Q     And you know this from --

24                   MR. VARGAS: Objection. I think he means March 15,  
25 2018.



1                   MR. VAN ETTEN: I'm sorry, March 15, 2018. What  
2                   date did I say?

3                   MR. VARGAS: You said March 15, 2020.

4                   MR. VAN ETTEN: Oh, sorry.

5           Q       Do you know what the condition was prior to March 15,  
6           2018?

7           A       Yes.

8           Q       Okay. And you've seen records for that?

9           A       No, but I asked to look at the photograph of him before  
10          the injury.

11          Q       And do you have that photograph with you?

12          A       I do not.

13          Q       Is it part of your records?

14          A       No. It's part of my usual routine.

15          Q       If it's part of your -- now, just out of curiosity,  
16          with the photographs, having looked at the surgery that you just  
17          showed us about in the illustration, are these photographs,  
18          Plaintiff's Exhibit Two in evidence, postoperative photographs?  
19          Does that show the nose after the surgery you did while he was  
20          recovering?

21          A       I don't remember. I don't know if he was recovering.  
22          He had a splint on his nose. I didn't open -- he has a  
23          laceration on the top of his nose, so that's not my surgery.

24          Q       Okay. So, this would be afterwards, correct?

25          A       I have no idea when that was. I have no idea.

1 Q So, you don't know when these photographs were taken  
2 and you don't have any photographs in your possession right now  
3 that show what his nose looked like before, fair?

4 A Correct.

5 Q Okay. And dorsal hump deformities, those are also  
6 conditions that can be congenital?

7 A Possibly, yes.

8 Q Yeah. So, people are born with them, correct?

9 A Some people.

10 Q Okay. I'm not asking you your personal -- I have a  
11 father-in-law with that and a little bit of it at the side that  
12 my wife got and my thirteen-year-old daughter and --

13 MR. VARGAS: Objection.

14 THE COURT: Sustained.

15 Q So, you would agree that not all dorsal humps or nasal  
16 deviations are caused by trauma, correct?

17 A Yes.

18 Q And I want you to assume now that a radiologist  
19 retained by the Plaintiffs came in and testified to this jury  
20 yesterday and they looked at the films that you talked about  
21 from 2020. So, can you just make that assumption first?

22 A Sure.

23 Q Okay. Were you aware of that?

24 A No.

25 Q Okay. All right. And that radiologist reviewed the

1 CAT scan films and said that there were no nasal fractures seen.  
2 Were you aware of that?

3 A No.

4 Q And, other than Dr. Katz' report, you've seen no  
5 diagnostic testing films or testing film reports that said Mr.  
6 Rivera had a nasal fracture, fair?

7 A Correct.

8 Q So, your statement of the presence of the nasal  
9 fracture was based upon information Mr. Rivera gave you, would  
10 that be one part of it?

11 A Say that again. That who gave me?

12 Q Mr. Rivera.

13 A I took from his history, yes.

14 Q Did he tell you he had a fracture?

15 A No. He told me that ever since the injury, he had very  
16 difficult -- a lot of difficulty breathing through his nose.

17 Q The report Doctor Katz gave you also indicated that he  
18 had no sinusitis, is that correct?

19 A I believe so, yes.

20 Q I want you to also assume that Dr. Kolb testified  
21 yesterday and, during his testimony as a radiologist, said that,  
22 in his review of those films, he saw extensive right maxillary  
23 sinus disease. Were you aware of that?

24 A No.

25 Q Okay. Were you aware of Mr. Rivera having sinus

1 disease problems prior to March 15, 2018?

2 A No.

3 Q Did you look at any medical records to address his  
4 prior medical condition before March 15, 2018?

5 A Only from his history. He was asked, did you have  
6 difficulty breathing or any other issues with your nose prior to  
7 the injury and he said no.

8 Q Okay. You did do the surgery, correct?

9 A I did the surgery, yes.

10 Q And before he had the surgery you had to do -- a pre-op  
11 had to be done of him for approval?

12 A Yes.

13 Q And, I believe it's in your records, that, in fact,  
14 because of his diabetic condition, there had to be various  
15 protocols for medicines, ex cetera, before you could do the  
16 surgery, because of diabetes, correct?

17 A Correct.

18 Q And that's something important, as a Doctor, to know,  
19 if your patient has diabetes?

20 A All aspects of a patient are important before any  
21 surgery.

22 Q Okay. And, by the way, you're aware that Mr. Rivera  
23 was referred to you by his lawyers, correct?

24 A That, I don't recall.

25 Q And that last examination in 2024, that was an

1 examination that was a legal examination, correct?

2 A I believe so.

3 Q Right. Because that's in your records. It says legal  
4 exam?

5 A If it says -- I'm sure it is, if you say so.

6 Q Okay. Because, at this point, you hadn't seen him for  
7 three years, four years?

8 A Just under -- no, I think I said two point -- two years  
9 eight months.

10 Q All right. And, also, when you were asked by Mr.  
11 Vargas about prognosis in that visit in 2024, you said good.  
12 You gave a lengthy explanation, but your prognosis in your  
13 report said good, correct?

14 A In comparison to his findings, yeah.

15 Q Okay. And, by the way, the side of his nose that was  
16 lacerated was the left side, correct?

17 A Yes.

18 Q And did you see any evidence of an injury to the right  
19 side of the nose?

20 A Just internally.

21 Q And, in taking the history -- again, just going real  
22 quick on the issue of the deform -- the dorsal hump deformity  
23 issue, did you ask Mr. Rivera when you saw him, did anybody in  
24 his family have any problems with a hump or condition on his  
25 nose?

1           A     In my history, I always ask about previous injuries,  
2 previous history and so on, yes.

3           Q     And did you record anything that they didn't have that?

4           A     I never do. If they don't have it, I don't report it.

5           Q     Now, forgetting for the moment that Dr. Kolb, as we  
6 asked you to assume, saw extensive sinus disease in the 2020 CAT  
7 scan, when you did your surgery, you corrected the condition  
8 that was impairing the breathing of Mr. Rivera?

9           A     I'm sorry, could you repeat that question?

10          Q     Sure. Forgetting that there might have been sinus  
11 disease, as testified by Dr. Kolb yesterday, when you did the  
12 surgery, you corrected the condition that may have been  
13 impairing the breathing of Mr. Rivera, correct?

14          A     Yes.

15          Q     And I think you indicated the surgery healed properly?

16          A     Yes.

17          Q     There were no complication?

18          A     No.

19          Q     You did a good job?

20          A     I try.

21          Q     And you don't believe that there's anymore treatment  
22 for the breathing that can be done for Mr. Rivera?

23          A     Yes, I -- that's what I believe, yes.

24          Q     Okay. And, sir, you would agree also that, in your  
25 line of work, there are studies that show that as many as 80

1 percent of people have some form of misalignment of the nasal  
2 septum?

3 MR. VARGAS: Objection.

4 THE COURT: Sustained.

5 Q Do you frequently come across people that have forms of  
6 misalignment of the nasal septum that is unrelated to trauma?

7 MR. VARGAS: Objection.

8 THE COURT: Sustained.

9 Q You've treated people with deviated septums or  
10 misalignments of the septum which are unrelated to trauma, is  
11 that true?

12 A Yes. Yeah.

13 Q And do you know the percentages of trauma?

14 A I can only speak from personal experience.

15 Q Okay. As in to the patients you have?

16 A As to the thousands of patients I've treated over 35  
17 years, yes.

18 Q And do you have a set percentage?

19 A I'm sorry?

20 Q Do have you a set percentage that you know?

21 A Yeah, I would say 10 percent didn't have trauma, 90  
22 percent usually there's a reason for that bad -- that  
23 significant amount of injury to the nose, the septum being so  
24 far over and so on.

25 Q Now, the laceration went deeply into the nose, correct?

1           A     Yes, it did.

2           Q     And the laceration going in -- so, when you say a  
3     deviated septum, I want to make this clear, that's not the bone,  
4     correct?

5           A     Correct.

6           Q     So, the bone would be where there would be a fracture,  
7     correct?

8           A     Yeah, the bone is this. You can feel it, right? It's  
9     just a very short bone right here.

10          Q     Right. That's the top of the nose, right between the  
11     eyes, essentially?

12          A     Yes.

13          Q     Okay.

14          A     I'm sorry, I should have --

15          Q     And the septum, where you're looking at that would be  
16     down below that, inside the nose?

17          A     No. Again, the septum is the wall between the two  
18     nostrils. It's a wall and that -- that starts at the tip of the  
19     bone and goes down and both deep into the nose and then towards  
20     the nostril. That's the -- it's a wall. Think of it as a wall  
21     that's made of cartilage, like the cartilage in your ear.

22          Q     So, yeah, this is the cartilage between -- there are  
23     times that -- I mentioned this before and I forgot to get to it  
24     at the time, but you can be born with it, I think we said there  
25     could be trauma that causes deviated septums, and isn't there



1 times that people themselves can do things that can cause  
2 deformities of their septums? I think there are things like  
3 where people pick and rub their nose and things like that.

4 A The only thing I can think of is cocaine use, it can  
5 eat up the septum, but I've never heard of someone getting a  
6 deviated septum from picking their nose.

7 Q I'll tell the websites that they're wrong.

8 A Well, there's a lot of stuff on websites that are  
9 untrue.

10 Q Fair enough, Doctor. That's why you're here. All  
11 right. Bottom line, though, Doctor, and I'll try to do this --

12 With this jury, so they know the injuries involved with  
13 this nose, okay, you did not look at the CAT scans from 2020,  
14 correct?

15 A Fair.

16 Q Do you -- before you perform surgery, if Mr. Rivera had  
17 come to you as a patient and said I'm having problems breathing,  
18 I have some issues with my nose trauma or, not trauma, whatever  
19 it is, would you refer him out for a diagnostic study before  
20 surgery?

21 A The only time I would refer him out is if the physical  
22 exam demonstrated the deformities. As in Mr. Rivera's, I would  
23 not have gotten it. The only reason I would have sent him is to  
24 get insurance to pay for the surgery. That's the only reason.  
25 My physical exam was obviously a positive that he needed the

1 surgery.

2 Q I understand that with the surgery part, but what I'm  
3 trying to get to and, again, I probably did it inartfully.

4 In order to determine the length of time in which that  
5 condition existed, would it not be better for you to have seen  
6 films?

7 A No.

8 Q So, you could tell just by looking at a nose that's  
9 deformed when it happened?

10 MR. VARGAS: Objection. This is the third version  
11 of that.

12 A My job is to fix the nose, not to --

13 THE COURT: One second, Doctor.

14 I'm sorry?

15 MR. VARGAS: It's the third version of same  
16 question. He's asked him about whether or not he needed to  
17 order a film and he's already told him that he didn't.

18 THE COURT: Overruled. I mean, it's a different  
19 version.

20 THE WITNESS: I'm sorry, can we --

21 MR. VAN ETEN: Siobhan, will you please repeat  
22 that?

23 (Whereupon, at this time the testimony was read  
24 back by the Reporter)

25 A As I said, my job is not to know when it happened, it's

1 to fix the deformity. The patient stated that he had  
2 significant trauma out on-the-job and my findings indicated that  
3 that was the case and my job is to fix the deformity.

4 Q Well, let's just clarify those two things. That's my  
5 point, thank you. Your job, you just said, is to fix the  
6 deformity, correct?

7 A Yes.

8 Q It's not to make the determination as to when the  
9 deformity occurred, correct?

10 A Yes.

11 Q And you're basing your opinion on the fact that you  
12 were told there was an incident that happened March 15, 2018,  
13 true?

14 A By the patient, yes.

15 Q Okay. And the fact that if the patient had a prior  
16 history and didn't tell you an accurate history, then your  
17 reference point to March 15, 2018 would be incorrect, true, just  
18 under that assumption if that history is wrong?

19 A Yes.

20 Q So, you have to rely on that history, because you had  
21 no records or documents to show you differently, fair?

22 A Different than what?

23 Q With the timing of this, because it was not your job to  
24 determine the timing, only to fix, correct?

25 A Yes.

1 Q Thank you.

2 THE COURT: Any redirect limited to cross?

3 MR. VARGAS: Yes, just a couple, Your Honor.

4 THE COURT: You may inquire.

5 REDIRECT EXAMINATION

6 BY MR. VARGAS:

7 Q Doctor, was there any indications that the injuries  
8 that you observed on Mr. Rivera were congenital?

9 A No.

10 Q Was there any indication that it was caused by trauma?

11 A Yes.

12 Q And what were those indication?

13 A The significance of the deviation, the bony hump  
14 deformity. After a bone is broken, the bodies reaction is to  
15 try to fix it fast. So, it throws, like, cement on it and that  
16 causes that bump, every fracture that occurs, and that was -- as  
17 I said, after examining his photographs from before the  
18 incident, there was none of these findings.

19 Q And, Doctor, regarding the CAT scan of 2020, does it  
20 surprise you that there was sinus disease found on that CAT  
21 scan?

22 A It does, because he got better after my surgery. If he  
23 had chronic sinusitis, he would have chronic difficulty  
24 breathing through his nose also. So, that is surprising to me,  
25 yes.

1           Q     Does it surprise you that there was no fracture of the  
2 nose found on the CAT scan?

3           A     It doesn't surprise me, because a lot of radiologists  
4 miss things. Very possibly, they got the CAT scan because of  
5 the trauma to the head, and I can't say what the radiologist was  
6 thinking, but it's very possible that he missed the fracture.

7           Q     What's the best diagnostic tool to diagnose a fractured  
8 nose?

9           A     I mean, it's usually a combination of simple x-rays in  
10 certain views. It's, like, nothing. And that's why it's  
11 usually done, that, and then if there's any doubt, they get a  
12 CAT scan or a so on. I think the fact they went straight to the  
13 CAT scan as they were worried about head trauma, but I can't  
14 speak for the radiologist.

15          Q     Thank you, Doctor?

16                   MR. VARGAS: No further questions.

17                   MR. VAN ETEN: Just briefly, Your Honor.

18 RECROSS-EXAMINATION

19 BY MR. VAN ETEN:

20          Q     Where you just said you were surprised, then, about the  
21 sinusitis or the sinus disease, I want you also to just assume  
22 that Dr. Kolb, again, in his MRI film study of April 7, 2018, 23  
23 days post-incident, he made comment that there was right  
24 maxillary sinus disease.

25                   MR. VARGAS: Objection.

1 Q Would that also surprise you then, Doctor?

2 THE COURT: Hold on a second.

3 MR. VARGAS: He's referencing an MRI of cervical  
4 lumbar. There was no sinus diagnosis from Dr. Kolb on that  
5 for an MRI. The only sinus --

6 THE COURT: That's what he testified to, right?  
7 I'll look at the transcript.

8 MR. VAN ETEN: I've got it.

9 THE COURT: What page?

10 MR. VAN ETEN: Finding it right now, Judge. Your  
11 Honor, sorry. Page 409, Your Honor.

12 THE COURT: Can you approach?

13 (Whereupon, an off-the-record discussion was held  
14 at the bench)

15 MR. VARGAS: I withdraw. I didn't hear that.

16 THE COURT: Okay. No problem. Objection  
17 withdrawn.

18 MR. VAN ETEN: Can I have the reporter read it  
19 back, please?

20 (Whereupon, at this time the testimony was read  
21 back by the Reporter)

22 Q Would that surprise you?

23 A Yes.

24 Q Because that would be inconsistent with the history you  
25 got from Mr. Rivera, true?

1           A     And many other reasons.

2           Q     Okay. And I want you also to assume that Dr. Kolb also  
3 said that sinus disease is not something caused by trauma and it  
4 is usually an inflammation. Would you agree with that?

5           A     I -- no, I disagree with that, actually. Trauma can  
6 cause sinus disease.

7           Q     If Mr. Rivera had sinus disease on the right nostril 23  
8 days after, would that be, to you, an indication that he may  
9 have had a sinus disease condition before the incident?

10          A     No.

11          Q     Okay. Thank you.

12                   THE COURT: All good?

13                   MR. VARGAS: One last.

14 REDIRECT EXAMINATION

15 BY MR. VARGAS:

16          Q     What are some causes of sinus disease?

17          A     Very often you can have chronic sinusitis after trauma,  
18 because you have what's called a postnasal drip. It drips down  
19 from the nose to the back of your throat or the sinuses drip  
20 down to the back of your throat. It's a -- the whole anatomy  
21 there is very complicated, but a blanket statement that he had  
22 chronic sinus disease. I'm not sure where he got that  
23 diagnosis.

24          Q     Thank you, Doctor.

25                   MR. VARGAS: No further questions.

1 THE COURT: Doctor, that concludes your testimony.  
2 You may step down.  
3 THE WITNESS: Thank you.  
4 THE COURT: You're welcome.  
5 (Whereupon, the witness steps down from the stand)  
6 THE COURT: So, we will, jurors, resume tomorrow  
7 morning, 9:30. Have a good day.  
8 COURT OFFICER: All rise.  
9 THE COURT: I run a tight ship.  
10 COURT OFFICER: Jurors exiting.  
11 (Whereupon, the jury exits the courtroom)  
12 THE COURT: Okay. All right. So, I'm not taking  
13 arguments today on your motion for the biomechanic. We'll  
14 do it tomorrow.  
15 MR. VARGAS: Okay.  
16 THE COURT: Okay. Have a good afternoon.  
17 (Whereupon, Court was adjourned to Thursday, May  
18 21, 2025 at 9:30 a.m.)  
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