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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index #: 153179/19

- - - - -x
JOSE GARCIA,

Plaintiff,

-against-

122-130 EAST 23RD STREET LLC
AND CM AND ASSOCIATES
CONSTRUCTION MANAGEMENT LIMITED
LIABILITY COMPANY,

Defendants.

- - - - -x
570 Lexington Avenue
4th Floor
New York, New York 10022
October 10, 2024
10:05 a.m.

VIDEO RECORDED DEPOSITION of
JONATHAN FORMAN, a Non-Party witness in
the above-entitled action, held at the
above time and place, taken before
SAMUEL HITTIN, a Notary Public of the
State of New York, pursuant to order and
stipulations between Counsel.

Job No. CS6962267

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APPEARANCES:

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122-130 EAST 23RD STREET LLC AND CM
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BY: SCOTT GLAZER, ESQ.

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LLP
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JONATHAN FORMAN
7 Skyline Drive
Hawthorne, New York 10532
(914)347-2600

BY: J. PATRICK CARLEY, III, ESQ.

ALSO PRESENT:

VERITEXT
Videographer

BY: DANNY ORTEGA

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STIPULATIONS

IT IS HEREBY STIPULATED, by and among the attorneys for the respective parties hereto, that:

All rights provided by the C.P.L.R., and Part 221 of the Uniform Rules for the Conduct of Depositions, including the right to object to any question, except as to form, or to move to strike any testimony at this examination is reserved; and in addition, the failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such motion at, and is reserved to, the trial of this action.

This deposition may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so or to return the original of this deposition to counsel, shall not be deemed a waiver of the rights provided by Rule 3116, C.P.L.R., and shall be

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controlled thereby.

The filing of the original of this deposition is waived.

IT IS FURTHER STIPULATED, a copy of this examination shall be furnished to the attorney for the witness being examined without charge.

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J. FORMAN

COURT REPORTER: Please state your full name for the record?

THE WITNESS: Jonathan Elliot Forman.

COURT REPORTER: Please state your address for the record.

THE WITNESS: 100 Duffy Avenue, Suite 510, Hicksville, New York 11801.

THE VIDEOGRAPHER: We are now on the record.

MR. KELLY: Just a statement on the record that the plaintiff has not waived any privileges with respect to attorney-client privilege.

THE VIDEOGRAPHER: We are now on the record. My name is Danny Ortega and I am the legal videographer from Veritext Legal Solutions. Today's date is October 10, 2024 and the time is 10:05 a.m. This video deposition's being held at 570 Lexington Avenue, New York, New York, Matter of Garcia, Jose versus 122-130th East 22nd Street LCC, et al. The deponent today is

1 J. FORMAN

2 Jonathan Forman.

3 Counsel, please identify
4 yourselves for the record.

5 MR. CARLEY: Patrick Carley with
6 Traub, Lieberman, Straus &
7 Shrewsberry, LLP for the non-party
8 witness Jonathan Forman.

9 MR. KELLY: Frank Kelly for
10 Plaintiff Jose Garcia.

11 MR. GLAZER: Scott Glazer,
12 Fabiani, Cohen & Hall for the
13 defendants.

14 MR. KELLY: Once again -- was
15 that on the record, my statement?

16 THE VIDEOGRAPHER: Yes.

17 MR. KELLY: Okay.

18 MR. CARLEY: Just a quick
19 clarification: I'm here on behalf of
20 Fogelgaren and Forman & Bergman and
21 it's designated representative to
22 Mr. Forman.

23 THE VIDEOGRAPHER: The court
24 reporter today is Sam Hittin and will
25 now swear in the witness.

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J O N A T H A N F O R M A N, the
Witness herein, having first been duly
sworn by the Notary Public, was examined
and testified as follows:

EXAMINATION BY

MR. GLAZER:

Q. Good morning, Mr. Forman. My
name is Scott Glazer, I represent the
defendants in this litigation. We're
today to conduct your non-party
deposition.

You're an attorney, I think we
can probably forgo with preliminary
instructions.

MR. GLAZER: Would that be okay,
Gentlemen, or do you want me to go
through it?

MR. CARLEY: I'd appreciate it
if you went through it.

MR. GLAZER: Okay. Fine.

Q. I'm going to ask you a series of
questions today. I ask that you wait for
me to complete my question entirely before
you begin to provide your answer, that's

1 J. FORMAN

2 so that you hear my question completely
3 and also so that the court reporter gets
4 my question down accurately and your
5 answer down accurately, it'll also give
6 your attorneys an a opportunity to voice
7 their objections if there needs to be any.

8 If you need to take a break, as
9 long as there's not a question pending,
10 I'll ask that -- I'll give you whatever
11 time you need. If there is a question
12 pending I'm going to ask that you first
13 provide the answer and then we'll take
14 whatever time you need.

15 If you don't understand my
16 question, please let me know, I'm not here
17 to trick or confuse you, I'll change my
18 question or reword it if necessary. If
19 you provide an answer I'll take that to
20 mean you understood the question and we'll
21 keep the day moving; fair enough?

22 A. Yes.

23 Q. Your answers need to be verbal,
24 while a nod or a gesture may be understood
25 today by the people in the room, the

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J. FORMAN

record's only going to indicate nodding or gesturing, none of us will know what your gesture meant, hopefully it would have been something polite, but we won't know what your gesture was so please provide verbal answers. And obviously, yes, no, I don't know, other intelligible words, things like uh-huh or uh-uh will not suffice for an answer today, all right?

A. Okay.

Q. We've already got your name on the record. What's your date of birth, sir?

A. March 23, 1948.

Q. Are you currently employed?

A. Yes.

Q. By whom are you employed?

A. Fogelgaren, Forman & Bergman.

Q. And what is your role with that firm?

A. I'm a partner, attorney.

Q. How long have you been a partner at that firm?

A. I think we got together around

1 J. FORMAN

2 1998, best educated guess.

3 Q. In 1998 when the firm was
4 established were you a partner?

5 A. It was Fogelgaren & Bergman, and
6 then I merged my practice with the two of
7 them.

8 Q. And when approximately did you
9 merge with the two of them?

10 A. That would have been around
11 1998.

12 Q. Okay. Do you represent Jose
13 Garcia, the plaintiff in the litigation?

14 MR. CARLEY: Just note my
15 objection.

16 MR. GLAZER: Okay.

17 A. Workers' Compensation attorney.

18 Q. Okay. How did you come to
19 represent Mr. Garcia?

20 A. He was referred to us by another
21 law firm.

22 Q. What firm referred him to you?

23 A. Gorayeb & Associates.

24 Q. And what is that process in
25 which the -- Mr. Garcia was referred to

1 J. FORMAN

2 you?

3 MR. CARLEY: Objection.

4 A. Someone from their office would
5 either escort the client to our office or
6 they would call to say that they were
7 referring somebody to come to our office,
8 we would meet with the claimant.

9 Q. Do you know the date of
10 Mr. Garcia's accident that forms the basis
11 of his lawsuit?

12 A. Offhand I don't have any of the
13 documents with me, I believe it was in
14 2019, I believe it might have been in
15 April or May of '19 to the best of my
16 recollection.

17 Q. If I told you March 14, 2019,
18 does that help refresh your memory?

19 A. Yes, it does.

20 Q. Okay. On March 14, 2019 did
21 Fogelgaren, Forman & Bergman have a brick
22 and mortar office somewhere?

23 A. Yes.

24 Q. What was the address of that
25 office?

1 J. FORMAN

2 A. We were at 100 William Street,
3 Manhattan, New York 10038.

4 Q. And did you -- was there a suite
5 number, a floor designation, something
6 else?

7 A. Initially it was on the 19th
8 floor.

9 Q. And on March 19 -- I'm sorry.
10 On March 14, 2019 what was the
11 -- what floor was your firm on?

12 A. The 19th floor.

13 Q. You said that someone from
14 Gorayeb's office would escort the client
15 into your office; was Gorayeb's office
16 also on the 19th floor in March of 2019?

17 A. Yes.

18 MR. CARLEY: Just note my
19 objection.

20 A. Yes.

21 Q. Did you have a shared space with
22 that law firm?

23 A. No. We had our own suite, our
24 own offices.

25 Q. Okay. And yours was on the same

1 J. FORMAN

2 floor as theirs?

3 A. At that time, yes.

4 Q. Do you recall what their suite
5 number was?

6 A. Might have been 1900.

7 Q. Did Fogelgaren, Forman & Bergman
8 rent their office space from Gorayeb's
9 office?

10 A. Yes, we did.

11 Q. When did you stop renting office
12 space from them?

13 MR. CARLEY: Just note my
14 objection.

15 A. As of October 1st of this year.

16 Q. Why did you stop renting office
17 space from them?

18 A. We decided to retire my partner
19 and I.

20 Q. So you're no longer practicing
21 law?

22 A. We are still practicing, we are
23 still servicing the clients that we still
24 have, we are assisting our old clients in
25 obtaining new attorneys, so we are still

1 J. FORMAN

2 practicing. I might have made it not too
3 clear the way -- with my prior answer, so
4 we have a virtual -- we have an office
5 that we're maintaining and we still seek
6 to assist any of the claimants if hearings
7 come up.

8 Q. Are you taking on new clients at
9 this time or only assisting with the
10 clients that you had established as of
11 August -- October 1st, sorry?

12 A. No new clients, only with the
13 existing clients as of that time.

14 Q. Okay. Did you stop taking on
15 new clients prior to October 1st?

16 A. Yeah. Pretty much once we
17 realized that we were going to start
18 scaling back we stopped --

19 Q. I'm sorry.

20 A. -- we stopped taking in new
21 clients.

22 Q. Approximately when was that?

23 A. A few months prior I would
24 guess.

25 Q. Okay. So sometime in perhaps

1 J. FORMAN

2 the summer of 2024?

3 A. That's approximately.

4 Q. Okay.

5 A. I can't give you an exact date.

6 Q. In March of 2019 how many
7 attorneys were employed by Fogelgaren,
8 Forman & Bergman, Bergman?

9 A. Bergman, yes. Mr. Bergman is
10 retired about seven years so he would
11 still have been there, so it would have
12 been four. Four attorneys, three partners
13 and one other attorney.

14 Q. And who are the other lawyers
15 aside from yourself?

16 A. Eric Fogelgaren, Robert Bergman
17 who's been retired as I said, and my son
18 Adam Forman.

19 Q. And yourself?

20 A. And myself.

21 Q. Did you have any other
22 associates aside from Adam?

23 A. No.

24 Q. Okay. Did the firm have any
25 support staff?

1 J. FORMAN

2 A. Yes. Such as paralegals.

3 Q. How many paralegals?

4 MR. CARLEY: At what time period
5 are we talking about?

6 MR. GLAZER: I'm sorry,
7 Counselor.

8 Q. As of March -- in March 14,
9 2019, around that point in time.

10 A. I'm going to guess around six or
11 seven.

12 Q. Other than the six or seven
13 paralegals were there secretaries or other
14 office staff?

15 A. Well, they had
16 secretaries/paralegal, there was a
17 receptionist, there was a file clerk --

18 Q. Okay.

19 A. -- and then there were the
20 others, they like to be called
21 paralegals/secretary.

22 Q. Did anybody other than the
23 attorneys meet were clients?

24 A. Yeah. They would assist us.

25 Q. Okay.

1 J. FORMAN

2 A. They would, you know, introduce
3 us to the clients and they would speak to
4 the clients and we would speak with the
5 clients.

6 Q. Okay. How many languages do you
7 speak?

8 A. I speak English and I can speak
9 some pretty decent Spanish.

10 Q. Can you just give me like an
11 understanding of the lay of the land of
12 the office; do you have a waiting room,
13 does each attorney have their own office
14 space?

15 A. Sure. There's a -- there is a
16 waiting room, each attorney has his own
17 office, the secretary/paralegal each has a
18 station and at that station there is
19 obviously a chair for them, a chair for a
20 client and a computer and telephone.

21 Q. And are there any conference
22 rooms?

23 A. Initially we had but thereafter
24 no.

25 Q. So as of March of 2019 did you

1 J. FORMAN
2 have a conference room?

3 A. When we moved -- in '19 we
4 probably did have a conference room. I
5 can't give you with a hundred percent
6 certainty but I don't remember exactly.

7 Q. When a new client is brought in
8 from Gorayeb's office to introduce them to
9 you guys -- to your firm where does the
10 initial introduction take place?

11 MR. CARLEY: Just note my
12 objection.

13 A. It would be brought to the
14 waiting room and then they would be
15 brought to see one of the attorneys and we
16 would speak with them and then if
17 appropriate we would pass them to one of
18 the paralegals.

19 Q. Before they are brought to one
20 of your attorneys is there a sign-in that
21 they fill out in the waiting area or any
22 other paperwork?

23 A. Not really paperwork, they would
24 give their name to the receptionist.

25 Q. Okay. And is that the process

1 J. FORMAN

2 that Mr. Garcia went through?

3 A. I would assume so.

4 Q. Did you meet Mr. Garcia when he
5 was brought to your firm?

6 MR. KELLY: Objection.

7 A. I believe he -- that I did speak
8 with him.

9 MR. CARLEY: Just note my
10 objection as well.

11 A. Again, we're going back five --

12 MR. CARLEY: One second. Are
13 you -- what time period are you
14 talking about?

15 MR. GLAZER: When he came to
16 their office to be signed up as a
17 client.

18 MR. CARLEY: Okay. So March
19 2019?

20 MR. GLAZER: (No verbal
21 response).

22 MR. CARLEY: Okay.

23 Q. So after the new perspective
24 client is in the waiting room they're
25 brought to one of the attorneys that are

1 J. FORMAN

2 in the office or is it the attorney that
3 they're going to meet with already been
4 determined?

5 A. No. Whoever is available would
6 speak to the client.

7 Q. And does the initial
8 conversation take place in your own office
9 or if you had the conference room would it
10 be at that location or somewhere else?

11 A. Generally in the office.

12 Q. In the attorney's office?

13 A. In the attorney's office.

14 Q. About how long does that take?

15 A. Every case is different. I
16 can't give you -- you know, depending on
17 documents that the client might bring to
18 look at, depending on responses to
19 questions, every case is different.

20 Q. Do you -- when the perspective
21 client is -- speaks a second language --

22 MR. GLAZER: Strike that.

23 Q. When the perspective client's
24 language, first language that is, is not
25 English do you have somebody come in to

1 J. FORMAN

2 translate for you?

3 A. Yes.

4 Q. Is that person the same person
5 each time or do you have different people
6 translate?

7 A. Different people, depends who's
8 available at the time.

9 Q. Are there people that you use to
10 translate always one of the paralegals?

11 A. Yes.

12 Q. Do you recall your meeting
13 with Mr. Garcia?

14 MR. KELLY: Objection.

15 A. Honestly I don't.

16 Q. Customarily when you meet with a
17 perspective client is any paperwork filled
18 out?

19 A. If we're going to accept a case
20 we would do a -- what's called a C-3, a
21 claim form.

22 Q. Is that the only document
23 prepared?

24 A. And a retainer.

25 Q. How many documents are signed by

1 J. FORMAN

2 the perspective client during that initial
3 meeting?

4 A. If we accept the case and
5 complete the C-3 and retainer he would
6 sign the C-3 and the retainer.

7 Q. Okay. And if you don't accept
8 the case does he sign anything?

9 A. No.

10 Q. If you don't accept the case
11 does he prepare anything?

12 A. No.

13 Q. When you met with Mr. Garcia did
14 you take notes during your initial
15 meeting?

16 MR. KELLY: Objection.

17 MR. CARLEY: Note my objection.

18 A. No.

19 Q. When you meet with new
20 perspective clients do you ever take
21 notes?

22 A. Normally no.

23 Q. Do you maintain a copy of the
24 C-3 after it's prepared?

25 A. Yes.

1 J. FORMAN

2 Q. Were is it maintained?

3 A. In a database.

4 Q. Electronic?

5 A. Yeah.

6 Q. Do you keep hardcopies of files
7 in your office?

8 A. Up to a period of time we used
9 to keep hardcopies and then everything
10 went paperless at the board.

11 Q. In 2019 were you keeping
12 hardcopies?

13 A. I believe we still had
14 hardcopies, yes.

15 Q. Do you have the hardcopies
16 stored somewhere?

17 A. Right now, yes, they are stored.

18 Q. Where are they stored?

19 A. At a self-storage facility.

20 Q. Do you know the address of that
21 facility?

22 A. I can get in from my cell phone.
23 It's in Melville, New York.

24 Q. We'll leave a blank line in the
25 transcript and you can perhaps fill that

1 J. FORMAN

2 information in.

3 MR. GLAZER: And I'm
4 naturally -- we're going to request a
5 copy of the file pertaining to this
6 case. I'm sure there's privileged
7 aspects that pertain, but for now I'm
8 just going to put on the record that
9 we ask that it be preserved and that
10 you secure it so that we can, you
11 know, go through the process of
12 discovering what we're capable of
13 discovering.

14 MR. CARLEY: Sure. I'll -- you
15 know, if you put it in writing, you
16 know, we'll take it under advisement
17 but I will obviously inform you that
18 we will take steps to preserve the
19 file.

20 MR. GLAZER: Thank you.

21 MR. CARLEY: And I have already
22 done so.

23 MR. GLAZER: I appreciate that.

24 MR. CARLEY: And we'll await --
25 we'll fill in the blank on the storage

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J. FORMAN

space and we'll await your written demand.

(Insert) _____

MR. GLAZER: Thank you, Counselor.

MR. KELLY: Objection. The plaintiff has not waived any privileges under 4503 with respect to any consultation with this witness including any retention of any papers, any documents, et cetera.

Q. Who puts the information into the C-3 when you are the attorney who meets with the perspective client?

A. Generally one of the paralegals completes the C-3 with the claim.

Q. And is that completed with the attorney in the -- in the presence or is that done -- does the attorney leave the room and that's done by the paralegal with the client only?

A. The client would go with the paralegal to the paralegal's work station and prepare the C-3 with the paralegal.

1 J. FORMAN

2 Q. After the C-3 is completed by
3 the paralegal is it then submitted to an
4 attorney for a review?

5 A. Yes.

6 Q. Is any portion of the C-3 filled
7 out by the attorney after the paralegal
8 enters their information?

9 A. If necessary, yes.

10 Q. What would the attorney put in?

11 A. For example, on this particular
12 claimant --

13 MR. KELLY: Objection. The
14 client has not waived any aspect of
15 his consultation with you including
16 what he may have told you, anything
17 filled in to any documents or anything
18 else. There's no waiver of that
19 privilege and the privilege resides
20 with the plaintiff and not with you.
21 You can't now tell somebody of your
22 consultations or your directions or
23 any of your marks -- or any marks you
24 made on the paper with respect to your
25 retention for purposes of legal

1 J. FORMAN

2 advice.

3 MR. GLAZER: This is not
4 attorney-client privilege. What
5 Mr. Forman put on to a C-3 document is
6 what an attorney did, that's not a
7 consultation, that's not anything
8 communicated by a plaintiff, that's
9 not a privileged area.

10 MR. KELLY: Yeah. I appreciate
11 your comments but they're wrong.

12 MR. GLAZER: Your his attorney,
13 what's your direction?

14 MR. CARLEY: Well, the plaintiff
15 holds the privilege and the plaintiff
16 has -- plaintiff's counsel has --

17 MR. KELLY: Asserted the
18 privilege.

19 MR. CARLEY: Invoked the
20 privilege, and I'm bound to follow
21 the --

22 MR. GLAZER: Well, we'll mark it
23 for a ruling and we'll address it in a
24 motion practice after today.

25 MR. CARLEY: Can you read back

1 J. FORMAN

2 the question?

3 [Whereupon, a portion of the
4 testimony was read back.]

5 MR. CARLEY: So I'm going to
6 instruct my client.

7 To the extent you can answer
8 that question without divulging any
9 attorney-client or potentially
10 attorney-client or work product
11 privileged information relating to
12 Mr. Garcia specifically you can do so.

13 MR. KELLY: No. I'm instructing
14 him not to, the privilege is not
15 waived, the privilege is owned by the
16 client and it's not waived at this
17 time, and any answer will be under
18 peril of I think a violation.

19 MR. CARLEY: No. Well, what I'm
20 saying is the question that was asked
21 was not related specifically to
22 Mr. Garcia.

23 MR. KELLY: The question was
24 with respect to this client is what he
25 said.

1 J. FORMAN

2 MR. CARLEY: No. Was it this
3 client? Can you reread that question?
4 I thought the question was more broad
5 and the answer started to divulge into
6 specifics of this client.

7 [Whereupon, a portion of the
8 testimony was read back.]

9 MR. KELLY: No. I object to
10 that question because it didn't
11 concern --

12 MR. CARLEY: This client.

13 MR. KELLY: -- this client. I
14 don't care what the normal standard of
15 practice is.

16 MR. CARLEY: So to the extent
17 you can answer that question.

18 MR. KELLY: He did answer it.

19 MR. CARLEY: Okay. Is there a
20 pending question? I don't --

21 MR. GLAZER: I was just
22 waiting --

23 MR. CARLEY: At this point I'm
24 confused. Maybe re-ask the question
25 and/or a question.

1 J. FORMAN

2 MR. GLAZER: I'll just keep
3 moving forward. I got the -- I marked
4 it, I mean I can argue on the client.

5 Can we mark that Exhibit A
6 please. Can we go off the record with
7 the camera for a moment.

8 [Whereupon, document was marked
9 as Defendants' Exhibit A for
10 identification, as of this date.]

11 THE VIDEOGRAPHER: The time
12 right now is 10:29 p.m., we're off the
13 record.

14 [Discussion held off the
15 record.]

16 THE VIDEOGRAPHER: The time
17 right now is 10:40 a.m., we're back on
18 the record.

19 Q. All right. What portion,
20 generally speaking -- generally speaking
21 when you enter information into a C-3 what
22 do you personally put down?

23 A. Well, I can refer --

24 THE WITNESS: Can I mention this
25 particular --

1 J. FORMAN

2 MR. KELLY: No.

3 MR. GLAZER: Pull the doc away.

4 A. Anything that may not have been
5 responded to I would ask a client, you
6 know, to try to get the missing
7 information I think that would make -- you
8 know, just to make sure that the form is
9 completed, in general terms that would be
10 what I would look for.

11 Q. Are the C --

12 MR. GLAZER: Strike that.

13 Q. At what point in time do you
14 sign your name to the C-3?

15 A. Once it has been completely
16 completed and the information confirmed
17 with the claimant.

18 Q. Are drafts of the C-3 prepared
19 that are never filed with the Workers'
20 Compensation board?

21 A. No.

22 Q. Is any portion of the C-3
23 entered into the document before the
24 paralegal begins meeting with the
25 perspective client?

1 J. FORMAN

2 A. No.

3 Q. Is the retainer agreement signed
4 before the C-3 is prepared?

5 A. No.

6 Q. Are they signed concurrently; in
7 other words, the C-3 is prepared and then
8 both the C-3 and retainer are signed at
9 the same time?

10 A. Generally. That would be the
11 general procedure. We would complete the
12 C-3, we would explain the retainer to the
13 claimant and ask them to sign both
14 documents.

15 Q. All right. I would like you --
16 I'd like you to take a look at what we've
17 marked as Defendants' Exhibit A and just
18 review the two pages and let me know when
19 you're done please.

20 A. (Witness complies).

21 Okay.

22 Q. On the second page, is that your
23 signature at the very bottom of the page
24 above Fogelgaren, Forman & Bergman, LLP?

25 A. Yes.

1 J. FORMAN

2 Q. And the attorney number
3 indicates 440009; is that your attorney
4 number or is that for your law firm?

5 A. That is for the law firm.

6 Q. Above your signature is Jose
7 Garcia's name and -- appears to be his
8 signature; do you see that?

9 MR. KELLY: Objection. Don't
10 answer the question. No privilege has
11 been waived.

12 MR. GLAZER: There's nothing
13 privileged about seeing the signature
14 on a page, there's no communication
15 involved, I'm asking if he sees a
16 portion of the page.

17 MR. KELLY: Once again, I
18 appreciate your comment but privilege
19 has not been waived and I'm directing
20 him not to answer on behalf
21 Mr. Garcia.

22 MR. GLAZER: We'll mark that for
23 a ruling.

24 Q. Did Mr. Garcia sign this
25 document in your presence?

1 J. FORMAN

2 MR. KELLY: Objection. Don't
3 answer the question.

4 MR. GLAZER: There's no
5 privilege here.

6 MR. KELLY: Once again, I
7 appreciate your comment but the
8 objection stands. I'm directing him
9 not to answer.

10 MR. GLAZER: Counsel, we're
11 going to mark all this for a ruling
12 and we're going to make another motion
13 and we're going to bring your client
14 back to complete the deposition on all
15 the questions that we're being blocked
16 on today, I'm making it very clear.

17 MR. KELLY: That's fine.

18 MR. CARLEY: I understand. And
19 if plaintiff's counsel is taking this
20 position I -- there's nothing I can do
21 about it at this time, I mean I
22 recognize that this is a document that
23 was filed with the Workers'
24 Compensation board but I can't risk my
25 client -- expose my client to

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J. FORMAN

potential liability from the plaintiff
in light of plaintiff's counsel's
objection and instruction.

Q. After you signed the C-3 was it
filed with the Workers' Compensation
board?

MR. KELLY: Objection. You can
answer that question.

A. Yes, it was.

MR. GLAZER: Just so we're
clear, you're representing Mr. Forman
today?

MR. CARLEY: Yes. Yeah.

MR. GLAZER: Okay. I'm not
comfortable with plaintiff's counsel
determining when your client's going
to answer questions and when he's not.

MR. CARLEY: Sure. I don't
disagree.

MR. GLAZER: You are here today
and this is your witness. I don't
know that both of you are representing
Mr. Forman at this point and I don't
think that's appropriate.

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J. FORMAN

MR. KELLY: So to be utterly clear, I represent Jose Garcia, the person that owns the privilege. The privilege may not waived by anybody but Mr. Garcia and the privilege is not waived.

MR. CARLEY: So I will say this: I don't disagree with anything you just said, Mr. Glazer.

Mr. Kelly, to the to the extent that you want to issue and objection you can do so and then I will, in light of your objection, instruct or not instruct my client to answer the question.

MR. GLAZER: Thank you.

Q. After this document was filed with the Workers' Compensation board did you have a conversation with Dr. Kaplan about your referring Mr. Garcia?

MR. KELLY: Objection.

MR. CARLEY: You can answer.

A. No.

Q. Did anybody from Fogelgaren,

1 J. FORMAN

2 Forman & Bergman have a conversation with
3 Mr. -- with Dr. Kaplan about Mr. Garcia?

4 MR. KELLY: Objection.

5 MR. CARLEY: Note my objection.

6 A. No.

7 MR. CARLEY: Well, with respect
8 to what period of time?

9 Q. After the C-3 was filed with the
10 Workers' Compensation board did anybody
11 from Fogelgaren, Forman & Bergman have a
12 conversation with Dr. Kaplan or anybody
13 from Dr. Kaplan's office about Mr. Garcia?

14 MR. KELLY: Objection.

15 A. Yeah. If we needed a current
16 medical report from his office for an
17 upcoming hearing we would reach out, we
18 would either send an e-mail or most likely
19 just a phone call saying, "We have a
20 hearing coming up. We need a current
21 medical report. Please send us a current
22 medical report if you have one."

23 MR. KELLY: Move to strike.

24 Q. If Dr. Kaplan had not yet
25 evaluated Mr. Garcia after the C-3 had

1 J. FORMAN

2 been filed with the Workers' Compensation
3 board did somebody from Fogelgaren, Forman
4 & Bergman have a conversation with
5 Dr. Kaplan or somebody from his office
6 prior to his seeing Mr. Garcia for the
7 first time?

8 MR. KELLY: Objection.

9 MR. CARLEY: Just note my
10 objection.

11 A. No. We would not reach out to
12 the doctor.

13 Q. At some point before
14 Dr. Kaplan's initial evaluation of Mr.
15 Garcia did somebody from Fogelgaren,
16 Forman & Bergman schedule him an
17 appointment?

18 MR. KELLY: Objection.

19 A. Our office did not schedule an
20 appointment, to my knowledge. I
21 believe --

22 Q. On page two of the C-3 under
23 paragraph F, item number 4, it states the
24 question, "Are you still being treated for
25 this injury illness," the box "yes" is

1 J. FORMAN

2 checked; do you see that?

3 A. Yes.

4 Q. Beneath that it says, "Give the
5 name and address of the doctors treating
6 you for this injury illness," and the name
7 Jeffery Kaplan and an address follows; do
8 you see that?

9 A. Yes.

10 Q. Why would somebody from your
11 office enter Jeffery Kaplan's name as
12 treating Mr. Garcia on March 15, 2019?

13 MR. KELLY: Objection.

14 MR. CARLEY: You can answer.

15 MR. KELLY: You can't answer but
16 go ahead --

17 MR. CARLEY: Hold on.

18 MR. KELLY: -- if your
19 attorney's going to let you answer.

20 MR. CARLEY: You're not -- you
21 just said "objection" so I assumed it
22 was an objection to form as it relates
23 to --

24 MR. KELLY: No. It's not an --
25 all my objections are to privilege

1 J. FORMAN

2 that -- any questions concerning the
3 C-3, any conversations, any ancillary
4 items with respect to the C-3, any
5 contemplative procedures, any
6 auxiliary procedures that go into the
7 mind of this witness concerning the
8 entries in the C-3 are objectionable,
9 they are matters of attorney-client
10 privilege and they are not waived by
11 Mr. Garcia. You are at your peril to
12 answer including peril for ethical
13 violations.

14 MR. CARLEY: Well, in light of
15 your expounding on the basis for your
16 objection with respect to that last
17 question I'm going to instruct my
18 client not to answer that question in
19 light of the indication of the
20 attorney-client privilege by the
21 plaintiff.

22 MR. KELLY: Move to strike. And
23 further -- any further questions with
24 respect to the content, the creation
25 or anything ancillary to the creation

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of the content of the C-3 is violative
of CPLR 4503-A1.

MR. CARLEY: Moving forward, to
the extent, Mr. Kelly, that you assert
an objection I would like you to
clarify whether that objection is on
the grounds of attorney-client
privilege or on the grounds of simply
form.

MR. KELLY: I just have and I
rarely make form objections unless I
say they're form objections.

MR. CARLEY: Well, I just met
you this morning so I don't know your
standard practice so I would
appreciate if moving forward you would
delineate the basis for your
objections to the extent that you
assert one.

MR. KELLY: Every objection I
make in this case will be pursuant to
CPLR 4503, attorney-client privilege.

MR. CARLEY: Same request.

MR. GLAZER: I'm going to mark

1 J. FORMAN

2 all of that for a ruling, and then I'm
3 going to take a five-minute break.

4 THE VIDEOGRAPHER: The time
5 right now is 10:52 a.m., we are off
6 the record.

7 [Whereupon, a short break was
8 taken.]

9 THE VIDEOGRAPHER: The time
10 right now is 11:07 a.m., we are back
11 on the record.

12 Q. When the C-3 forms are completed
13 by your firm who at your firm enters
14 doctors' names in the section of the form
15 that pertains to medical treatment?

16 MR. KELLY: Objection, 4503-A.

17 MR. GLAZER: I'm talking about
18 his firm's practice not Mr. Garcia.

19 MR. KELLY: Maintain the
20 objection. I guess you can answer if
21 he tells you you can answer.

22 MR. GLAZER: Well, there's no
23 privilege in the practice of
24 Mr. Forman. You might be asserting a
25 privilege as it pertains to your

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client but his general practice is his practice.

MR. KELLY: Appreciate the comment but I'm not withdrawing the objection.

MR. GLAZER: That's fine.

MR. CARLEY: I am going to instruct my client that to extent you can answer that question without disclosing any attorney-client or work product privileges specifically relating to Mr. Garcia you can do so.

THE WITNESS: Well, can I answer who would input the information on the C-3?

MR. CARLEY: To the extent you can do so without implicating any sort of attorney-client privilege or work product, communications relating specifically Mr. Garcia you can do so.

THE WITNESS: It would always pertain to Mr. Garcia so I guess I shouldn't answer it.

MR. GLAZER: So you're

1 J. FORMAN

2 instructing him not to answer.

3 MR. CARLEY: To the extent he
4 can answer it without -- I'm
5 instructed my client --

6 MR. GLAZER: Just so that we're
7 clear, this record -- this question is
8 not about Mr. Garcia.

9 MR. CARLEY: I understand.

10 MR. GLAZER: Okay. I'll ask a
11 different question.

12 Q. Mr. Forman, have signed C-3s in
13 -- with any of your other clients or is
14 Mr. Garcia's case the only instance that
15 you've signed a C-3 that was submitted to
16 the Workers' Compensation board?

17 A. No. I've signed many of these
18 for other clients.

19 Q. And in other instances when
20 you've signed the C-3 did you also put
21 other information into the C-3? Without
22 telling me what that other information is
23 but did you put other information in?

24 MR. KELLY: Objection.

25 A. If warranted to complete the

1 J. FORMAN

2 form, yes.

3 Q. Okay. And you recognize that
4 the form contains various sections that
5 call for different types of information;
6 you have one that pertains to the personal
7 information, a section for the employer,
8 so on and so forth; you recognize that?

9 A. Yes.

10 Q. Okay. Section F of the form is
11 titled Medical Treatment for this Injury
12 or Illness; is that correct?

13 MR. KELLY: Are we talking about
14 Defendants' A?

15 MR. GLAZER: We're talking about
16 the blank C-3 form.

17 Q. Before any information comes on
18 it it has pre-printed information that
19 calls for information to be filled into
20 it, correct?

21 A. Yes.

22 Q. Now, your firm doesn't type out
23 the entire form, everything that's on
24 there; you just put in the information
25 that's germane to the particular client,

1 J. FORMAN

2 right?

3 A. Right.

4 Q. Okay. And so the forms are
5 all --

6 MR. GLAZER: Bad question,
7 strike that.

8 Q. Where does the blank C-3 form
9 come from; how do you get a copy?

10 A. The blank form?

11 Q. Yeah.

12 A. On the Workers' Compensation
13 board web site.

14 Q. Does your office keep a stack of
15 them ready to go so that you can prepare
16 it when a new client comes in or do you go
17 to the web site each time and print out a
18 new blank form?

19 A. Generally we do it off the web
20 site.

21 Q. Okay. And from 2000 -- March of
22 2019 up until today, from your knowledge,
23 has the form changed at all?

24 A. I think it's pretty much
25 basically the same information.

1 J. FORMAN

2 Q. There's a section called Medical
3 Treatment for this Injury or Illness and
4 it's under part F, correct?

5 A. Correct.

6 Q. Is that information customarily
7 entered by a paralegal at your office or
8 by an attorney at your office?

9 A. It can be entered by either.

10 Q. Have you personally ever entered
11 that information?

12 A. If I have personally done the
13 input on the C-3 I would put it in.

14 Q. And under paragraph F the C-3
15 calls for two different places for medical
16 treatment; is that correct?

17 MR. GLAZER: Let me ask a
18 different question, maybe that one
19 didn't come out too clear, I'll
20 withdraw that.

21 Q. Does the C-3 under paragraph F
22 have a place where it asks for what the
23 first date of medical treatment was and a
24 second place where it asks for where the
25 injured worker is continuing to treat?

1 J. FORMAN

2 A. Yes.

3 Q. Okay. Generally speaking, after
4 the C-3 is completed does somebody from
5 Fogelgaren, Forman & Bergman schedule a
6 medical appointment for the client?

7 A. Most of the time the
8 appointments are scheduled by the
9 referring attorney.

10 Q. Okay.

11 A. They do the scheduling of the
12 appointments and we're provided with
13 information.

14 Q. So if doctors' names are
15 indicated under paragraph F next to, "Are
16 you still being treated for this injury
17 illness," that's paragraph F, part four,
18 any information that's entered there is
19 provided by Gorayeb's office to your law
20 form?

21 MR. KELLY: Objection.

22 MR. CARLEY: Attorney client
23 privilege?

24 MR. KELLY: Yeah.

25 MR. GLAZER: That's attorney to

1 J. FORMAN

2 attorney, where's the privilege in a
3 conversation between Chris Gorayeb's
4 office and Fogelgaren, Forman,
5 Bergman's office?

6 MR. CARLEY: Well, you're -- two
7 attorneys representing a single client
8 would maintain the privilege.

9 MR. KELLY: For purposes of
10 legal advice.

11 MR. CARLEY: Purposes of legal
12 advice.

13 MR. GLAZER: Information entered
14 into the C-3 is public information
15 once the C-3 is filed, there's no
16 privilege in that information.

17 MR. KELLY: I appreciate your
18 comments again but I'm not changing my
19 objection.

20 MR. CARLEY: So in light of
21 plaintiff's -- in light of Mr.
22 Garcia's counsel's objection on the
23 grounds of attorney-client privilege
24 and work product privilege I'm
25 instructing you not to answer that

1 J. FORMAN

2 question.

3 If you want to rephrase the
4 question so it's a general question --

5 MR. GLAZER: Can I hear the
6 question again please?

7 THE VIDEOGRAPHER: The time
8 right now is 11:15 a.m., we are off
9 the record.

10 [Discussion held off the
11 record.]

12 THE VIDEOGRAPHER: The time
13 right now is 11:17 a.m., we are back
14 on the record.

15 [Whereupon, a portion of the
16 testimony was read back.]

17 Q. And just so we're clear, I'm
18 asking generally right now, I'm not asking
19 about Mr. Garcia.

20 MR. KELLY: I'm still objecting.

21 MR. CARLEY: In light of the
22 objection by Mr. Garcia's counsel,
23 same instruction.

24 MR. KELLY: Objection.

25 MR. GLAZER: There's no

1 J. FORMAN

2 attorney-client privilege here. I
3 don't know what's going on but
4 communications between lawyers that
5 assist in filling out paperwork is not
6 attorney-client privilege, it's not
7 attorney work product, there is no
8 privilege being asserted here and we
9 will make a motion. We're marking
10 this for a ruling as with every other
11 objection. We'll make our motion and
12 we'll come right back. We are here
13 today pursuant to a motion, there's an
14 order of -- we have another motion for
15 contempt that was filed for failing to
16 -- for failing to honor the first
17 court order.

18 MR. CARLEY: With respect to --

19 MR. GLAZER: So if -- we're
20 going to make our record and we'll --

21 MR. CARLEY: We'll make the
22 record, you make your motion, I've
23 spoken with Mr. Fabiani about the
24 motion to -- for contempt, we're
25 here --

1 J. FORMAN

2 MR. GLAZER: No. I appreciate
3 that --

4 MR. CARLEY: The motion to
5 contempt is, as far as I'm concerned
6 no longer applicable because we are
7 here. Granted, you're going to make a
8 -- as you've indicated, a new motion
9 -- motion to compel.

10 MR. GLAZER: I think the history
11 -- the history though is pertinent
12 here, we had to fight to get here
13 today and now 90 percent of my
14 questions are being obstructed on a
15 privilege basis where there's no clear
16 privilege, it's creating a lot of
17 extra effort to get --

18 MR. CARLEY: For the record we
19 never -- we did not move to quash the
20 original subpoena, that was
21 plaintiff's firm that did that, we
22 never objected to appearing -- to
23 appearing for the deposition
24 subsequent to the court order denying
25 the motion to quash. We've at all

1 J. FORMAN

2 times been ready, willing and able to
3 appear.

4 MR. GLAZER: I appreciate that,
5 and we're here today, and I would like
6 it if your client would be ready and
7 willing and able to answer, not just
8 appear.

9 MR. KELLY: So we won't be back.
10 You won't be able to overcome U.S.
11 against Coal, People against Osorio,
12 or People against Harris. You can try
13 and bully the witness into thinking so
14 but won't, you'll fail.

15 MR. GLAZER: I'm glad you're
16 confident, Frank.

17 MR. KELLY: Do you have any
18 reason I shouldn't be, like a case or
19 something or are you just spit
20 balling?

21 MR. GLAZER: I'm not going to
22 get into case law right now. I'm just
23 going to finish my deposition and
24 we'll put the case law in our motion.

25 Q. Before you submit a signed C-3

1 J. FORMAN

2 to the Workers' Compensation board do you
3 verify if the treatment information that
4 you've entered is accurate?

5 A. Yes. Yes. We would confirm
6 with the claimant just as it indicates on
7 the form.

8 MR. KELLY: Objection. Move to
9 strike.

10 Q. How else would you --

11 MR. GLAZER: Strike that.

12 Q. Would you verify with the
13 doctors that they have been treating the
14 claimant?

15 MR. KELLY: Generally?

16 MR. GLAZER: Yes. Strike it.

17 Q. Any time it you signed a C-3 and
18 submitted it to the Workers' Compensation
19 board would you verify with the doctors
20 before submitting the C-3 that they have
21 been treating the plaintiff?

22 MR. KELLY: If any time includes
23 Mr. Garcia's C-3, same objection.

24 MR. CARLEY: So to the extent
25 you can answer that question without

1 J. FORMAN

2 specifically implicating Mr. Garcia
3 you can do so.

4 A. Well, it would be our practice
5 to put down the information as provided by
6 the claimant as to who -- what doctors
7 he's seeing, and then when the case gets
8 assembled by the Compensation board and
9 opened we would review the board file to
10 see what medical reports are there.

11 Q. And what if the -- you're
12 informed of doctors that the claimant is
13 seeing but he has not yet been seeing
14 them?

15 MR. CARLEY: Note my objection.

16 MR. KELLY: Objection. I don't
17 know if I understand that question.

18 A. We would confirm to see if the
19 claimant in fact has an appointment with
20 the doctor and has an intention to keep
21 the appointment with the doctor.

22 Q. How do you confirm that
23 appointment?

24 MR. KELLY: Objection to the
25 extent this implicates Mr. Garcia's

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J. FORMAN

filing C-3 or meeting with you for purposes of litigation consultation.

MR. CARLEY: In light of Mr. Garcia's counsel's objection I'm going to instruct the client -- or the witness that to the extent he can answer without implicating any sort of attorney-client or product privilege with respect to Mr. Garcia he can do so.

THE WITNESS: No. I don't think I can answer that.

Q. Does Fogelgaren, Forman, Bergman refer their clients to doctors ever?

A. On occasion.

Q. What doctors do you refer clients to?

A. Depends on the type of an injury. Most of the -- most of our clients are referred to us by other attorneys, these other firms generally have doctors that they work with so they'll -- the -- by time the client comes to us they usually already have a doctor

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J. FORMAN

that they would be either having already seen or have an appointment to see that might have been set up by the referring attorney, that goes for all of the different attorneys that we would work with.

Q. What law firms refer cases to you other than Gorayeb & Associates?

MR. CARLEY: Just note my objection.

A. What other firms?

Q. Mm-hmm.

A. Will Kakani & Associates used to be -- I'm trying to think of the names of the firms offhand right now. Queller, Fisher; Mark Seitelman. Off the top of my head I can't just think of the actual names of the firms but there are several firms.

Q. When was the last time that a firm other than Gorayeb & Associates referred a case to you?

MR. CARLEY: Just note my objection.

1 J. FORMAN

2 Q. You can give me the year.

3 MR. CARLEY: Just note my
4 objection. This is far adrift of the
5 subpoena.

6 MR. GLAZER: Fair enough. It's
7 the last question on it, it's
8 following the answers he's just
9 recently provided me. If you'll allow
10 a little brevity here on this one
11 question?

12 MR. CARLEY: Well, I mean the
13 subpoena specifically states to give
14 -- quote, to give testimony in this
15 action on the part of the defendant
16 regarding the Workers' Compensation
17 proceedings in preparation of the C-3
18 regarding Jose Garcia, end quote.

19 I mean now we're diving into
20 other law firms that Fogelgaren,
21 Forman & Bergman received referrals
22 from.

23 MR. GLAZER: He's already told
24 me who they are.

25 MR. CARLEY: I understand.

1 J. FORMAN

2 MR. GLAZER: I'm just asking
3 when the last time any firm -- what
4 year was it that someone other than
5 Gorayeb's office referred them a case.

6 MR. CARLEY: I mean to the
7 extent you can answer that that's fine
8 but I mean after that I'm going to
9 have to shut down --

10 MR. GLAZER: That's fine.

11 MR. CARLEY: -- because again,
12 we're going by your deposition.

13 MR. GLAZER: I appreciate that
14 and I appreciate you letting him
15 answer.

16 A. I would assume earlier this
17 year.

18 Q. Okay, so it was active.

19 Before you filed Mr. Garcia's
20 C-3 with the Workers' Compensation board
21 did you request medical records from
22 Dr. Kaplan's office?

23 MR. KELLY: Objection with
24 respect to anything concerning the
25 advice, consultation, requests or any

1 J. FORMAN

2 actions you took with respect to
3 Mr. Garcia. No privileged is waived.

4 MR. CARLEY: In light of Mr.
5 Garcia's counsel's objection I'm going
6 to instruct the client not to answer
7 that question.

8 Q. Have you ever, as an attorney
9 who represents Workers' Compensation
10 claimants, had a conversation with Jeffery
11 Kaplan after you signed a C-3 before you
12 filed it with the Workers' Compensation
13 board?

14 A. Before we filed a claim?

15 Q. Yes.

16 A. No. We would wait to get the
17 medical reports. We would have no reason
18 -- yeah. We would wait to get the medical
19 reports.

20 Q. When you personally signed a C-3
21 that indicates a claimant is treating,
22 quote, is still being treated by a
23 physician, do you ever make it a practice
24 to contact that physician to verify that
25 active treatment before filing the C-3

1 J. FORMAN

2 with the Workers' Compensation board?

3 A. No. Not in advance, no. The
4 claimant provides us with the information
5 and we put that information down.

6 Q. When the C-3 contains more than
7 one doctor's name as still treating a
8 claimant for an injury or illness and the
9 C-3 also contains a signature that bears
10 the same date as the alleged accident do
11 you, in those circumstances, contact the
12 physicians to verify that they're actively
13 treating the claimant?

14 MR. KELLY: Objection.

15 MR. CARLEY: I'm going to
16 object. Again, that is far adrift
17 from the scope of the subpoena here
18 which is limited to this particular
19 action and there's no indication that
20 I'm aware of that the Form C-3 here
21 was signed on the same day as the
22 accident so I don't believe that that
23 question has any applicability here.

24 MR. GLAZER: I'm just trying to
25 get past the first level of objections

1 J. FORMAN

2 and getting a question answered. I
3 asked a question about the C-3 here
4 which I'm prepared to do now, the
5 counsel to your left is going to
6 object and then you're going to adopt
7 his objection, so however I ask the
8 question your client's still not going
9 to give me an answer but there should
10 be an answer.

11 MR. CARLEY: No, but you asked
12 -- you asked a hypothetical -- you
13 asked a --

14 MR. GLAZER: I'll mark another
15 C-3 on another case and we could go
16 right to the specific.

17 MR. CARLEY: You asked a
18 hypothetical -- you asked a question
19 about a hypothetical situation that is
20 not applicable here. Your question
21 was about a Form C-3 signed on the
22 same day as the accident, that is not
23 what has occurred here, and therefore,
24 it is a hypothetical situation that is
25 outside the scope of the deposition

1 J. FORMAN

2 subpoena that you issued.

3 MR. GLAZER: You'll let me mark
4 a few other C-3s?

5 MR. CARLEY: No. Those are
6 outside the scope of your subpoena.
7 You want to ask him a question about a
8 hypothetical situation where the
9 injury occurred the day before, the
10 Form C-3 was signed --

11 MR. GLAZER: No. I'll go there
12 too, but yeah. There's a lot
13 questions here that need to be
14 answered.

15 MR. CARLEY: I understand but I
16 mean you're asking hypothetical
17 situations that are not applicable to
18 the scenario here and we have -- you
19 have a limited deposition.

20 MR. GLAZER: They're not
21 hypothetical though, Counsel, they're
22 actually factual situations, they're
23 just other examples that are not this
24 specific case. There's plenty of
25 examples to draw from and I assure you

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2 none of them are hypothetical. I'll
3 ask a different question though.

4 Q. When a client informed you they
5 were injured the day before they met with
6 you and a C-3 contains a date that's a day
7 after the date that they've informed you
8 they were injured and they've told you
9 that they have already received treatment
10 from two different locations, do you make
11 it a practice to verify with those two
12 separate locations that the treatment has
13 actually taken place before you submit the
14 signed C-3 to the Workers' Compensation
15 board?

16 MR. KELLY: Objection, CPLR
17 4503. This is just a sham masking of
18 the direct question with respect to
19 his counsel for Mr. Garcia.

20 MR. CARLEY: So I'm going to
21 object for the same -- almost the same
22 reason as I objected to the prior
23 question. You're asking about a
24 hypothetical situation where a
25 claimant has treated with two

1 J. FORMAN

2 different doctors. The Form C-3 here
3 does not indicated that the claimant
4 treated with two different doctors.

5 MR. GLAZER: It says CityMD and
6 Jeffery Kaplan. I adopted the
7 question you recommended I ask as
8 well. I'm just trying to get answers,
9 Gentlemen, I don't want to be here all
10 day either.

11 MR. CARLEY: Your questions
12 asks --

13 MR. GLAZER: It says paragraph
14 one under -- under F1.

15 MR. CARLEY: I don't see any
16 indication in the Form C-3 that you
17 introduced as Exhibit A where it says
18 he still treating with CityMD.

19 MR. GLAZER: I -- can you read
20 back my question because I think that
21 I -- you want me to change the
22 verbiage, I think that my question was
23 pretty clear but I can change the verb
24 tense if it'll make it a little bit --

25 MR. KELLY: I'm still going to

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2 make the same objection so you're
3 wasting your breath and your time.
4 The privilege has not been waived
5 despite the fact that you seem to
6 think that if you ask the question
7 with different pronouns as opposed to
8 the actual names it makes a
9 difference, it doesn't make any
10 difference. I'm advising the witness
11 that the client, Mr. Garcia, has not
12 waived the privilege and you are in
13 peril in waiving the privilege for
14 him.

15 MR. GLAZER: I need to check
16 something. Let's go off the record
17 for a minute.

18 THE VIDEOGRAPHER: The time
19 right now is 11:34 a.m., we are off
20 the record.

21 [Whereupon, a short break was
22 taken.]

23 THE VIDEOGRAPHER: The time
24 right now is 11:39 a.m., we're back on
25 the record.

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2 MR. GLAZER: Can I hear back,
3 please, the last question I asked that
4 was objected to?

5 [Whereupon, a portion of the
6 testimony was read back.]

7 Q. On the C-3 form under F4 where
8 it indicates, "Are you still being treated
9 for this injury or illness," would the
10 name of a doctor that a claimant had not
11 yet begun to treat with customarily be put
12 on that line?

13 MR. CARLEY: Just note my
14 objection.

15 A. If the claimant tells us that
16 he's going to see that doctor and has an
17 appointment with that doctor to be fully
18 opened to court -- to the compensation
19 board and everyone we would list the
20 doctor the claimant is scheduled to be
21 treated with.

22 Q. Who schedules the initial
23 appointment with Jeffery Kaplan for a
24 claimant when it's indicated that he's
25 treating a claimant on the C-3?

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2 MR. KELLY: Objection. Two
3 things: Asked and answered but also
4 to the extent that you're talking
5 about Defendants' A no privilege has
6 been waived.

7 MR. CARLEY: In light of
8 Mr. Garcia's counsel's objection, to
9 the extent you can answer that
10 question without specifically
11 disclosing any attorney-client
12 communications or work product with
13 respect to Mr. Garcia you can answer
14 that question.

15 THE WITNESS: Well, I don't know
16 how I can answer the without giving
17 information that I shouldn't be
18 giving.

19 Q. Was Gorayeb's office referring
20 cases to your law firm when you first were
21 established in 1998?

22 MR. CARLEY: Just note my
23 objection.

24 A. Yes. I believe they were giving
25 -- referring cases to us before.

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2 Q. And have you had a relationship
3 with them --

4 A. Excuse me, are you talking about
5 prior to 1998 when I merged with Mr. --

6 Q. No. When Fogelgaren, Forman &
7 Bergman became a firm in 1999 did
8 Gorayeb's office begin giving cases to --
9 or referring cases to your firm at that
10 point in time?

11 A. I can't remember the exact time
12 when they started to refer cases to us.

13 Q. Okay. Could it have been prior
14 to 1998 in one of your other law firms
15 that you worked for?

16 A. No. Not for me, no.

17 Q. Okay. Was Eric Fogelgaren, or
18 Robert Bergman receiving cases by referral
19 from Gorayeb's office when you merged with
20 them in 1998?

21 MR. CARLEY: Just note my
22 objection.

23 A. Not to my knowledge, I believe
24 the referrals started after that time.

25 Q. Customarily, in cases that

1 J. FORMAN

2 Gorayeb's office refers to you do they
3 refer the clients to the first medical
4 treatment?

5 MR. KELLY: Objection. Now
6 you're imposing on privileges of a
7 raft of unnamed clients so I'm -- no.
8 You want to know about legal
9 consultations but you're seeking of
10 legal advice for now an unnamed raft
11 of clients who I guess will be
12 disclosed by you at some point in time
13 later but none of those clients, if
14 they're Gorayeb clients, have waived
15 the privilege.

16 MR. CARLEY: In light of
17 plaintiff's counsel -- in light of
18 Mr. Garcia's counsel's objection to
19 the extent you can answer that
20 question without implicating the
21 attorney-client relationship or work
22 product with respect to Mr. Garcia or
23 any clients -- any claimants that you
24 represented or that Fogelgaren, Forman
25 & Bergman represented you may do so.

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2 MR. KELLY: And he exceeds the
3 scope of the subpoena, so further
4 objection there.

5 THE WITNESS: I don't see how I
6 can answer that question.

7 MR. GLAZER: Read that one back
8 for me please.

9 [Whereupon, a portion of the
10 testimony was read back.]

11 Q. Okay. As an attorney if you
12 sign a C-3 and submit it to the Workers'
13 Compensation board and some of the
14 information on the C-3 is false are you
15 subject to penalties?

16 MR. CARLEY: Just note my
17 objection. My client is here as a
18 fact witness not an expert.

19 MR. GLAZER: Well, he's been
20 practicing law and we're all officers
21 of the court and we know what, you
22 know, we're up against if we -- you
23 know, this is his field of practice.
24 I think he can answer.

25 MR. CARLEY: That's to the

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2 extent he can answer and making it
3 clear that he's not answering that
4 question as an expert he's entering
5 it --

6 MR. GLAZER: His own knowledge.

7 MR. CARLEY: -- you know, in his
8 experience.

9 MR. GLAZER: Yeah.

10 A. Well, we're not to be submitting
11 false information to the compensation
12 board, knowingly submitting false
13 information; however, if you read the full
14 box there --

15 MR. CARLEY: Just note the
16 client's referring to page two of
17 Exhibit A.

18 MR. KELLY: I'm going to object
19 to the reading of Exhibit A. If he
20 wants to talk about his general
21 knowledge about the C-3 and what it
22 says and whether or not it gives you
23 an opportunity to supplement or
24 whatever I guess that's fine.

25 A. Exactly. It gives you the

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2 opportunity to submit additional
3 information if it becomes available.

4 Q. If I were to tell you that the
5 doctors indicated as treating the claimant
6 had not yet begun to treat the claimant
7 would that give you pause about submitting
8 this document, Exhibit A, with
9 Dr. Kaplan's name on it to the Workers'
10 Compensation board.

11 MR. KELLY: Objection.

12 Mr. Garcia's not waived any privilege
13 with respect to his consultation, the
14 creation of this document, the
15 information in the document, any
16 advice given by counsel at any time or
17 any appearance before the Workers'
18 Compensation board.

19 MR. CARLEY: In light of
20 Mr. Garcia's counsel's indication of
21 the attorney-client or work product
22 privileges I'm instructing my client
23 not to answer that question.

24 MR. GLAZER: I'd like the
25 question read back. I'd like you to

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2 listen to this one because this is not
3 about a privilege as it pertains to
4 the plaintiff, this is about the
5 attorneys placing his name on a legal
6 document that gets submitted to the
7 Workers' Compensation board.

8 MR. CARLEY: I understand but I
9 think the problem with your question
10 was that you specifically referenced
11 Exhibit A opposed to generally Form
12 C-3.

13 MR. GLAZER: Are you going to
14 let me ask it general or are you going
15 to tell me that's a field of the scope
16 of my subpoena.

17 MR. CARLEY: Well, I need to
18 hear the question again phrased
19 properly but I -- if you want to ask
20 -- I mean it's about Form C-3s,
21 correct? I believe that's what your
22 subpoena specifically notes.

23 MR. GLAZER: Yes. That's right.

24 MR. CARLEY: If you want to ask
25 the question you can.

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2 MR. GLAZER: Mm-hmm.

3 [Discussion held off the
4 record.]

5 THE VIDEOGRAPHER: The time
6 right now 11:53 a.m., you're off the
7 record.

8 [Whereupon, a short break was
9 taken.]

10 THE VIDEOGRAPHER: The time
11 right now is 12:03 p.m., we are back
12 on the record.

13 MR. GLAZER: (Handing).

14 [Whereupon, document was marked
15 as Defendants' Exhibit B for
16 identification, as of this date.]

17 Q. Mr. Forman, I've marked this
18 second C-3 exhibit as Defendants' Exhibit
19 B; can you take a look at the document
20 please.

21 MR. CARLEY: Do you have a copy
22 for the witness?

23 MR. GLAZER: I made three.

24 MR. CARLEY: I have one, counsel
25 has one.

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2 MR. KELLY: I have one.

3 MR. GLAZER: You need me to make
4 another copy?

5 MR. CARLEY: Where's the
6 original.

7 MR. GLAZER: In my hand.

8 MR. CARLEY: Oh, I see. Yeah.
9 I mean -- do you mind sharing that one
10 or just putting it in between?

11 MR. KELLY: Here.

12 Q. Do you recognize the handwriting
13 on Exhibit B?

14 A. No, I do not.

15 Q. Would C-3s be filed by your law
16 firm from time to time that are not signed
17 by the attorney?

18 MR. CARLEY: Just -- I just want
19 to note my objection to the
20 introduction of this Exhibit B, this
21 is a C-3 for a claimant name Nilson
22 Ortez, this obviously, in my opinion,
23 is outside the scope of the non-party
24 deposition subpoena dated April 25,
25 2024. I also note that, Counsel, your

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firm recently issued a subpoena on my client with respect to Mr. Ortez and obviously this is not the Ortez matter.

MR. GLAZER: Well, Mr. Ortez is a client of both Gorayeb's office and Fogelgaren & Forman's & office, and this C-3 contains an example of something that I want to ask your client a question about today. You can object after I ask my question --

MR. CARLEY: That's fine.

MR. GLAZER: -- and make your record but I'd like to ask my question.

MR. KELLY: So I'm going to --

MR. CARLEY: You could ask a question. I issued an objection.

MR. KELLY: So to the extent that any questions are asked with respect to this C-3 for a Mr. Ortez who is punitively represented by Gorayeb. I will make the same 4503 objection with respect to anything

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2 concerning the creation of this
3 document or any representation by this
4 witness or Mr. Ortez or any
5 representation by the Gorayeb firm for
6 Mr. Ortez.

7 Q. Take a look at page two of the
8 document if you would, sir. Under
9 paragraph F, number four, document
10 indicates, "Are you still being treated
11 for this injury illness." This document
12 contains the name Weinstein, Boccia, Grim
13 and Kaplan; do you see that, sir?

14 MR. KELLY: Objection.

15 A. Yes, I see that.

16 Q. The document is signed by
17 Mr. Ortez dated June 4, 2021; do you see
18 that, sir?

19 MR. KELLY: Objection.

20 A. June 4, 2021, yes.

21 Q. If I were to tell you that
22 Mr. Ortez had not been treating with any
23 of those four doctors listed under
24 paragraph four -- paragraph F, number
25 four, would that explain why this document

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wasn't signed by an attorney at your law firm?

MR. KELLY: Objection.

MR. CARLEY: Note my objection on several grounds, primarily the fact that this is a Form C-3 related to a plaintiff who is not the plaintiff in -- or withdrawn.

Objecting on the grounds that Exhibit B relates to a claimant who is not the plaintiff in this lawsuit and is therefore outside the scope of this subpoena. I'm going to direct my client, in light of the fact that this is -- Exhibit B is outside the scope of the subpoena, not to answer that question.

Q. How many times does -- has Fogelgaren, Forman, Bergman submitted a C-3 to a Workers' Compensation board indicating that there is ongoing treatment which has not yet commenced?

MR. KELLY: Objection.

A. I can't answer it.

1 J. FORMAN

2 Q. Is it -- is it something that's
3 occurred more than once?

4 MR. KELLY: Objection.

5 A. I can't answer that question
6 either, I don't know the answer to that.

7 Q. Why can't you answer that
8 question?

9 MR. KELLY: Objection.

10 MR. CARLEY: Just note my
11 objection.

12 A. First of all, this doesn't have
13 an attorney's signature on it, I have no
14 idea who submitted this at all. I can't
15 say that this was in fact submitted by my
16 office, I don't know.

17 Q. Well, I'll represent that the
18 plaintiff has testified already in that
19 case that you are his attorney as is the
20 Gorayeb law firm?

21 MR. KELLY: Objection.

22 MR. CARLEY: Again, I'm -- look,
23 I'm going to object to the asking of
24 question relating to Nilson Ortez or
25 Claimants' B as outside the scope of

1 J. FORMAN

2 the subpoena pursuant to which --

3 MR. GLAZER: That's fine.

4 MR. CARLEY: -- the client is
5 here and I'm going to note that there
6 is another subpoena issued to
7 Fogelgaren, Forman & Bergman relating
8 to Mr. Ortez and you could ask those
9 questions at that deposition.

10 MR. GLAZER: Will you agree to
11 bring him back for a deposition on
12 Mr. Ortez's case?

13 MR. CARLEY: You subpoenaed him
14 for documents and a deposition.

15 MR. GLAZER: Okay. So we could
16 talk about that after today then?

17 MR. CARLEY: Yeah.

18 MR. GLAZER: Let me ask another
19 question.

20 MR. KELLY: So same objection on
21 behalf of Mr. Ortez as apparently
22 brought out of the clear blue sky into
23 a case here today but he's represented
24 by counsel. Mr. Ortez has not been
25 contacted to waive his privilege much

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2 less has he waived the privilege.

3 Q. How many times has Fogelgaren,
4 Forman, Bergman submitted a signed C-3 to
5 the Workers' Compensation board indicating
6 ongoing treatment of a claimant that has
7 not yet begun? And I'm not speaking about
8 the document in your hand, sir, I'm
9 talking about the practice of your law
10 firm.

11 A. I can't answer that. I have no
12 idea.

13 Q. Is it more than say 50?

14 MR. CARLEY: Objection.

15 A. I can't answer that.

16 Q. Is the number too large for you
17 to be able to answer that?

18 MR. KELLY: Objection.

19 MR. CARLEY: Objection. Asked
20 and answered.

21 A. I can't answer that.

22 Q. Why can't you answer that?

23 MR. CARLEY: Objection.

24 MR. KELLY: Objection, it's not
25 a proper question.

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2 A. I have no information to be able
3 to formulate a response for you.

4 Q. Are you aware that some of the
5 C-3s that you have signed contain
6 information that a claimant is treating
7 with a doctor but the treatment has not
8 yet begun?

9 MR. CARLEY: Objection.

10 MR. KELLY: Objection.

11 A. We would list information
12 concerning any treatment in order to
13 present the clearest possible history for
14 the board to have and for the parties to
15 have. If in fact we are told that the
16 gentleman or lady has -- that the claimant
17 is scheduled for treatment with a specific
18 doctor and we know that the claimant has
19 got this appointment and is going to keep
20 the appointment we might list that doctor
21 and then get -- reach out to the doctor
22 for the report for the treatment that has
23 been rendered.

24 Q. And when that first doctor who
25 has an appointment already scheduled

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refers the claimant to a second doctor during that first appointment how is it known when the C-3 is prepared that that second doctor is going to begin treating the plaintiff?

MR. KELLY: Objection.

MR. CARLEY: Just note my objection. Known to who?

MR. GLAZER: To the attorney who's filling out the C-3 and submitting it to the Workers' Compensation board --

MR. KELLY: During the course of --

MR. GLAZER: -- with that information contained on the C-3.

MR. KELLY: In the course of that consultation for purposes of legal advice, objection.

MR. GLAZER: Not in the course of a consultation, in the course of signing a document, a formal pleading that's submitted to initiate a legal proceeding with the Workers'

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2 Compensation board.

3 MR. KELLY: Right. So same
4 objection.

5 Q. How is the information known to
6 the attorney who signs and submits the
7 document that a second doctor is going to
8 begin treating when that second doctor is
9 only known after the initial appointment
10 with the first doctor?

11 MR. KELLY: Objection, CPLR
12 4503.

13 MR. CARLEY: Just objection in
14 light of Mr. Garcia's counsel's
15 indication of the attorney-client
16 privilege and work product for which
17 to the extent you can answer that
18 question without disclosing any
19 attorney-client or work product
20 privilege relating specifically to Mr.
21 Garcia --

22 MR. KELLY: Or Mr. Ortez at this
23 point or any other client who's
24 represented by Gorayeb.

25 MR. GLAZER: If the information

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conveyed by the client to Mr. Forman during that process of preparing the C-3 is false then there is no privilege.

MR. KELLY: Objection.

MR. CARLEY: Well I --

MR. GLAZER: There is no privilege in a false statement being made to institute a proceeding, if it's not the truth the crime fraud exception applies and the privilege is waived and your client can answer the question.

MR. KELLY: Objection. You can't answer the question.

MR. CARLEY: I -- I have no indication of the crime fraud exception being established here, you're also, I know, asking a question about a second doctor who had been referred to the first doctor. I don't see any indication of that as having occurred in Mr. Garcia's case.

MR. GLAZER: We can refer to

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2 Exhibit B for that example where
3 there's four doctors and that timeline
4 bears out.

5 MR. CARLEY: I know nothing
6 about that, that's a case unrelated to
7 the purpose for which we are here
8 today under the limited circumstances
9 of the deposition subpoena that your
10 firm issued here.

11 MR. GLAZER: I can appreciate
12 that. I'm trying to understand what
13 the general practice of Fogelgaren,
14 Forman & Bergman is. And now we can
15 bring Mr. Forman in and issue
16 subpoenas on each and every case and
17 do this in a very long arduous process
18 or we can go through some of the
19 general practice questions today which
20 is what I'd really hope to do.

21 MR. CARLEY: Well, first of all,
22 I had a conversation with Mr. Fabiani
23 about three weeks ago regarding a meet
24 and confer on the scope of the
25 subpoena and Mr. Fabiani did not

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2 indicate that that was going to be the
3 purpose of today's deposition at all.
4 He indicated that the sole purpose of
5 this deposition was going to be very
6 limited to this particular C-3 in the
7 Garcia case.

8 MR. GLAZER: Well, I didn't
9 anticipate the level of objections and
10 stifling of the witness that has
11 occurred today based on clear
12 non-privileged issues but a privilege
13 is being asserted. There is attorney
14 to attorney communications, there's
15 attorneys that are recommending
16 medical treatment and telling other
17 lawyers about that. There's no client
18 involvement here and so those
19 questions aren't being allowed to be
20 answered under the shield of
21 attorney-client privilege so I'm
22 trying to go general to get the
23 information.

24 MR. CARLEY: I understand but
25 you're -- again, you're asking

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2 questions about situations that aren't
3 pertinent to Mr. Garcia's here.

4 There's no indication that there were
5 subsequent second, third referral
6 doctors here. If you want to ask
7 those questions at Mr. Ortez, if
8 that's your position, I suppose we can
9 address it at that particular
10 deposition but now you're asking even
11 more generalized questions about
12 things that are completely unrelated
13 to the scope of this subpoena and --
14 look, I don't -- and I can't speak for
15 my client but I'm sure he doesn't want
16 to have to appear for God knows how
17 many depositions, and perhaps we can
18 discuss that at a later time on how to
19 address that, but we're here today for
20 the purpose of the Jose Garcia
21 lawsuit, and we have a specific
22 subpoena here that's limited to the
23 scope and I would prefer to stay
24 within the scope of that subpoena --

25 MR. GLAZER: I will try my best.

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2 MR. CARLEY: And I -- granted, I
3 understand that you will be moving to
4 compel answers to some of these
5 questions, and if we have to come back
6 we will.

7 MR. KELLY: Objection. CPLR
8 4503. No privilege has been waived
9 concerning consultation, creation of
10 this document, any litigation advice,
11 any Workers' Compensation board
12 advice, any treatment advice, any
13 future treatment or anything else with
14 respect to Mr. Ortez or Mr. Garcia.
15 You are at your peril to answer those
16 -- those privileges have not been
17 waived.

18 Q. Are you aware of a fee
19 arrangement between Gorayeb's office and
20 Dr. Kaplan's office whereby they refer new
21 patients or new clients to Dr. Kaplan?

22 A. Absolutely not.

23 MR. KELLY: Objection.

24 Q. Does anybody, to your knowledge,
25 from Gorayeb's office check with

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2 Dr. Kaplan to see if he's available to
3 evaluate the new client before that
4 person's name is -- before the doctor's
5 name rather is put on the C-3?

6 MR. KELLY: Objection.

7 A. I can't speak for the Gorayeb
8 office.

9 Q. Does anybody check with
10 Dr. Kaplan to see if he's on vacation or
11 still seeing patients before putting his
12 name down as someone who's treating the
13 claimant before that treatment has begun?

14 MR. KELLY: Objection.

15 MR. CARLEY: When you say
16 "anyone," are you referring to anyone
17 at the Fogelgaren firm?

18 MR. GLAZER: Yes. I'll adopt
19 that, yes. Thank you.

20 A. No.

21 MR. KELLY: Same objection.

22 A. No. If we are told that the
23 claimant has an appointment to see a
24 doctor we list the doctor, okay? The
25 claimant confirms that he's going to see

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the doctor, that he's got an appointment to see the doctor, we take it at face value that he going to see the doctor. Now, if the doctor's not available for whatever reason, there are times where there are emergency surgeries, something might pop up. I can't answer that.

Q. Is a perspective client given any other options for an orthopedic surgeon or is Dr. Jeffrey Kaplan the only one that it's referred to?

MR. KELLY: Objection.

MR. CARLEY: Note my objection and again, it appears that you're asking questions relating to claimants other than Mr. Garcia.

But to the extent you can answer that question.

And another, just, clarification, are you inquiring as -- when you say -- as to Fogelgaren giving other options or the referring attorney or someone else?

MR. GLAZER: Whoever is telling

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him to go to Dr. Kaplan, is the guy given other choices? Has he given options closer to his home or is he told, "This is where you're going and go here"?

MR. KELLY: So essentially you'd like to know what goes on between the attorney and the client with respect to --

MR. GLAZER: Well, attorneys aren't doctors, so medical advice from an attorney to his client is not legal advice and that wouldn't be privileged, that's friendly advice, the offering up of medical treatment to somebody is not privileged.

MR. KELLY: The objection is 4503-A1 and you are at your peril to answer.

A. Yeah.

MR. CARLEY: In light of Mr. Garcia's counsel's indication of the attorney-client work product privilege, to the extent you can

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J. FORMAN

answer that question -- without disclosing attorney-client privileged communications between or -- between or with Mr. Garcia or relating to any other client, you can do so.

MR. KELLY: No, you can't. But go ahead. If you want to --

A. No, I can't. I don't see that I can answer the question.

MR. CARLEY: Please let him answer that question.

A. I don't see that I can answer the question.

Q. Earlier you told me that there are other doctors you refer clients to; who are they?

MR. KELLY: Objection. Mischaracterization of testimony.

MR. CARLEY: Same objection.

A. Depending on type of injury.

Q. Can you tell me the names of the physicians?

A. Well, CityMD I believe is somebody that we send people to, Dr. Perez

1 J. FORMAN

2 we refer clients to.

3 Q. What's Dr. Perez' first name?

4 A. I think it's Edwin, I'm not
5 sure.

6 Q. What type of doctor is he?

7 A. Offhand I'm not -- I can't give
8 you an answer as to --

9 Q. Mm-hmm. Who are the other
10 doctors?

11 A. Offhand I can't answer that
12 question. I wasn't prepared to answer
13 those types of questions today.

14 Q. Have you ever had a conversation
15 with Dr. Kaplan?

16 MR. KELLY: Objection.

17 A. What type of conversation?

18 Q. You ever talk to the doctor?

19 MR. KELLY: Objection.

20 A. Yeah, I've spoken with him.

21 Q. You know who he is, he knows who
22 you are?

23 A. Through our professional
24 physicians, yes.

25 Q. Have you ever had a conversation

1 J. FORMAN

2 with Dr. --

3 MR. GLAZER: Strike that.

4 Q. Prior to you becoming
5 Mr. Garcia's attorney did you ever have a
6 conversation with Dr. Kaplan about sending
7 him new patients?

8 MR. KELLY: Objection.

9 A. About referring new patients to
10 him?

11 Q. Yes.

12 MR. CARLEY: Just note my
13 objection. You know what, if you --
14 you can answer.

15 MR. KELLY: Objection.

16 A. If a client comes in
17 unrepresented, looking for a Workers'
18 Compensation claim, and if it's an
19 orthopedic injury, and there is no
20 referring attorney we might, in the past,
21 reach out to Dr. Kaplan to see if he's
22 willing to see the claimant and he can
23 either say yes or no obviously.

24 Q. Have you spoken to Dr. Kaplan
25 about specifically stating that he's

1 J. FORMAN

2 treating a patient before that relation --
3 that doctor-patient relationship begins?

4 MR. CARLEY: Note my objection.

5 A. Absolutely not.

6 Q. Does Fogelgaren, Forman, Bergman
7 have an arrangement with Dr. Kaplan to
8 send him clients?

9 A. No, absolutely not.

10 MR. CARLEY: Just note my
11 objection.

12 A. Absolutely not.

13 Q. Does anybody from Dr. Kaplan's
14 office give money to anybody from your
15 office for the referral of new patients?

16 MR. CARLEY: Note my objection.

17 THE WITNESS: I'm sorry.

18 A. Absolutely not.

19 Q. Are you aware of Dr. Kaplan's
20 office making a practice of paying other
21 law firms to send new patients to them?

22 MR. CARLEY: Note my objection.

23 A. Absolutely not. Not aware of
24 anything -- to anything like that at all.

25 Q. Who at Fogelgaren, Forman &

1 J. FORMAN

2 Bergman signs the C-3s other than
3 yourself?

4 MR. KELLY: Objection. This has
5 already been gone over.

6 MR. CARLEY: Note my objection.

7 A. Any of the attorneys can sign.

8 Q. Is it only the attorneys?

9 A. Oh, yeah. The C-3s?

10 Q. Mm-hmm.

11 A. Yeah.

12 Q. Are there some of your
13 paralegals that only prepare the C-3s in
14 longhand and others that only type them
15 out?

16 A. No. We try to do every one on
17 the typewriter -- or on the computer. I'm
18 dating myself.

19 Q. Has anybody from Gorayeb's
20 office told you to use specific doctors
21 when preparing C-3s?

22 MR. KELLY: Objection.

23 MR. CARLEY: Just note my
24 objection.

25 A. No.

1 J. FORMAN

2 Q. Have you had conversations with
3 Gorayeb's office about the C-3 process?

4 MR. KELLY: Objection.

5 MR. CARLEY: Objection.

6 A. Such as what?

7 Q. How information is entered into
8 the document.

9 A. No. No.

10 MR. CARLEY: Objection.

11 THE WITNESS: Yeah, same
12 objection.

13 Q. Are the C-3s provided to
14 Gorayeb's office to review before they're
15 submitted to the Workers' Compensation
16 board?

17 MR. KELLY: Objection.

18 MR. CARLEY: Objection.

19 A. No.

20 Q. Is there an -- you said you
21 mentioned earlier that there's the
22 retainer agreement and the C-3; is there
23 an intake form or a new client
24 questionnaire or anything like that
25 prepared?

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A. No, we generally use the C-3.

MR. GLAZER: Okay. All right.
I'm going to request a copy of the
retainer agreement, we'll follow up in
writing.

I have no further questions
subject to, you know, the variety of
questions marked for a ruling and, you
know, we'll address that after today.
Thank you for your time, Gentlemen.

MR. CARLEY: Thank you.

THE WITNESS: Thank you.

MR. KELLY: Very good.

THE VIDEOGRAPHER: The time
right now is 12:29 p.m., we are off
the record.

MR. KELLY: I'd like an
expedited copy please.

[TIME NOTED: 12:29 p.m.]

JONATHAN FORMAN

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BEFORE ME THIS _____
DAY OF _____, 2024.

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I N D E X

WITNESS
JONATHAN FORMAN

EXAMINATION BY PAGE(S)
SCOTT GLAZER 7

E X H I B I T S

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EXHIBIT A -	JOSE GARCIA'S C-3 FORM	30
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I N S E R T I O N S

LOCATION OF SELF-STORAGE UNIT WHERE
HARDCOPIES OF FILES ARE KEPT

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RETAINER AGREEMENT

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CERTIFICATION

I, Samuel Hittin, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 13th day of October,
2024.



SAMUEL HITTIN

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ERRATA SHEET
VERITEXT/NEW YORK REPORTING, LLC

CASE NAME: JOSE GARCIA VS. 122-130 EAST
23RD STREET LLC, ET AL
DATE OF DEPOSITION: OCTOBER 10, 2024
WITNESS' NAME: JONATHAN FORMAN

PAGE/LINE(S)/	CHANGE	REASON
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JONATHAN FORMAN

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OF _____, 2024.

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New York Code
Civil Practice Law and Rules
Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

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VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored

in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.