

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF BRONX: CIVIL TERM: PART 1A-14

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3 JESUS BUESTAN and YOLANDA BUESTAN,

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Plaintiffs,

5

-against-

Index No: 31815/2019E

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550 WASHINGTON OWNER (DE) and TURNER CONSTRUCTION COMPANY,

7

AFTERNOON SESSION

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Defendants.

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TESTIMONY BY DR. KAPLAN

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Bronx Supreme Court
851 Grand Concourse
Bronx, New York 10451
January 15, 2026

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B E F O R E:

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HONORABLE JOHN A. HOWARD-ALGARIN,
Justice of the Supreme Court

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

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GORAYEB & ASSOCIATES, P.C.
Attorneys for the Plaintiffs
100 William Street, 19th Floor
New York, New York 10038

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BY: CHRISTOPHER L. VARGAS, ESQ.

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FUCHS ROZENWEIG PLLC
Attorneys for the Defendants
11 Broadway, Suite 570
New York, New York 10004

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BY: DOUGLAS ROSENZWEIG, ESQ.
BY: OLIVIA FINGER, ESQ.

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AMANDA ALVAREZ
Senior Court Reporter

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

MR. VARGAS: Your Honor, plaintiff moves for a mistrial at this point with the previous rulings that Dr. Weinstein was permitted to be questioned about the Workers' Compensation letter.

The ruling allowing and the curtailing of his redirect testimony, the plaintiff finds it egregious and highly prejudicial to the plaintiff and we don't feel he can get a fair trial now.

THE COURT: Opposition?

MR. ROSENZWEIG: I disagree.

THE COURT: So does the Court. Motion denied. You had an opportunity to rehabilitate your client on the issue. He seemed intent to want to drive home the existence or the impact of insurance in the case, which I didn't want him to do.

He opened the door in some respects when he started testifying about all the losses of privileges and that he was experiencing in different places. And he seemed to want to jump right into the litigation that he was challenging.

So, he, himself, was throwing these things out there before the cross-examination or early in the process.

Furthermore, what you wanted to do was endanger of distracting the jury and misleading and confusing them by

1 litigating the veracity of the findings of the Workers'
2 Comp. Board.

3 This Court stopped you from relitigating that issue
4 or attempting to appeal it here and also curtails some of
5 the statements made by the witness, Dr. Weinstein, that were
6 going beyond just saying he disagreed and he had another
7 opinion to wanting to bring in, I don't know, conspiracy
8 theories about insurance companies and the like that had no
9 place in this litigation.

10 You made your record. I made my ruling. Is there
11 anything else?

12 MR. VARGAS: No. Just need to mark the chart for
13 ID.

14 THE COURT: Okay.

15 MR. VARGAS: I should probably say I take
16 exception.

17 THE COURT: You've made that patently clear.

18 MR. ROSENZWEIG: Are we still on for tomorrow
19 afternoon at 2:15?

20 THE COURT: Are we going to attempt to resolve this
21 case tomorrow?

22 MR. VARGAS: I don't think so, Your Honor.

23 THE COURT: Okay. You guys requested it. I did
24 not.

25 MR. ROSENZWEIG: My client is still interested in

1 having the meetings that we discussed tomorrow. My adjuster
2 can't be here in person, but can be here via FaceTime on the
3 phone.

4 I told him noon was convenient for you. So, my guy
5 is all ready to talk, but if there's no willing partner,
6 there's nothing to talk about.

7 THE COURT: Let's pause the record for a second.

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

9 (Whereupon, Kaplan's chart was marked as
10 Plaintiffs' Exhibit 25 for Identification.)

11 COURT OFFICER: All rise. Jury entering.

12 (Whereupon, the sworn jurors enter the courtroom
13 and take their respective seat.)

14 THE COURT: Please be seated. I hope you had a
15 delicious meal in the vicinity. Let's try to finish up
16 strong with another witness called by the plaintiff.

17 MR. VARGAS: Yes. I call Dr. Jeffrey Kaplan to the
18 stand.

19 THE COURT: Good afternoon, Dr. Kaplan. Please
20 follow the instructions of the Court Officer.

21 COURT OFFICER: Please raise your right arm. Do
22 you swear or affirm the testimony you are about to give the
23 truth, the whole truth and nothing but the truth under
24 penalty of perjury?

25 THE WITNESS: Yes.

1 COURT OFFICER: State your name and address for the
2 record.

3 THE WITNESS: My name is Jeffrey Kaplan,
4 K-A-P-L-A-N. My office is at 160 East 56th Street in
5 Manhattan.

6 D R. J E F F R E Y K A P L A N, called as a witness by and on
7 behalf of the Plaintiff, after having been first duly sworn, was
8 examined and testified as follows:

9 COURT OFFICER: You can take a seat.

10 THE WITNESS: Thank you.

11 THE COURT: You may inquire.

12 MR. VARGAS: Thank you.

13 DIRECT EXAMINATION

14 BY MR. VARGAS:

15 Q Good afternoon, Doctor.

16 A Hi.

17 Q Could you tell the jury your educational background?

18 A Sure. I went to college at Yale University. When I
19 graduated from college, I went to medical school here in the
20 city at Columbia University.

21 When I graduated from medical school, I did a training
22 program in orthopedic surgery and I did that at a place called
23 the Campbell Clinic which is in Memphis, Tennessee.

24 Campbell Clinic was the first orthopedic training
25 program in the United States. Following that, I practiced in

B-take A. A.

1 Tennessee for a short period of time and then I moved back to
2 New York in 1994 where I have been in practice ever since.

3 Q And you have your own private practice?

4 A I do.

5 Q What's the name of it?

6 A NY Ortho Sports Medicine and Trauma.

7 Q And are you licensed to practice in the State of New
8 York?

9 A I am.

10 Q And you're board certified?

11 A I am.

12 MR. VARGAS: Your Honor, I offer Dr. Kaplan as an
13 expert in orthopedic surgery.

14 MR. ROSENZWEIG: No objection.

15 THE COURT: He is so recognized.

16 Counsel, let's have a sidebar for a second.

17 (Whereupon, at this time, a discussion was held at
18 sidebar.)

19 Q Doctor, in front of you is your chart marked as
20 Plaintiff's Exhibit 25 for ID.

21 A Right.

22 Q And for the record, it is a duplicate of what's in
23 evidence which is Plaintiff's Exhibit 5. If you need to refer
24 to it during your testimony, you may do so.

25 A Okay.

1 Q Did there come a time when you treated Mr. Jesus
2 Buestan?

3 A Yes.

4 Q And when was that first time?

5 A The first time I saw him was 10/3/19.

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

8 A I did take a history of a work-related accident that
9 occurred on September 27th of 2019. He indicated that a piece
10 of concrete fell, struck him on the head, neck and back. Forced
11 him to the ground.

12 He was taken to Northwell Greenwich Village Hospital
13 where he was worked up with some X-rays. He was advised to
14 follow-up with a physician, I believe and he was in my office
15 complaining of pain in his neck, mid back and low back.
16 Numbness and tingling in his fingers.

17 He was complaining of some numbness in his feet. He
18 had pain in his thighs and his knees. He was using Ibuprofen
19 for pain at that point.

20 Q And did you do an exam at that time?

21 A Yes, I did.

22 Q What were your findings?

23 A On exam, he had tenderness in his neck and low back, as
24 well as his mid back and the musculature.

25 He had muscular spasms present in the muscles and areas

1 of what's called trigger-point formation, which is a very
2 sustained and discrete muscle spasm in the back and throughout
3 his shoulder girdles. That's the shoulder muscles on both
4 sides.

5 He had tenderness in the thighs and the lateral legs
6 throughout the heel. He had a positive straight leg raising
7 test, which is a test for an injury to the back that causes pain
8 radiating to the legs along the nerve roots.

9 He had limited flexion of his neck as well as his low
10 back. Those were my findings at that time.

11 Q And Doctor, at that time, did you have a recommendation
12 for treatment for him?

13 A I did. I sent him for an MRI of his cervical and
14 lumbar spine. That's his neck and his low back. I placed him
15 in a back brace because of the muscle spasm. Sorry --

16 I advised him that I thought he would benefit and I
17 would make him one at the next visit. Let's see. That was --
18 and I indicated that -- well, observed for additional sites,
19 meaning seeing how things would progress over time.

20 Q And when did you next see him?

21 A I next saw him on 10/24/2019.

22 Q And by that time, had he had MRIs?

23 A Let's see. At that time, he had -- he had an MRI of
24 his lumbar spine on 10/9/19 and an MRI of his cervical spine
25 also on 10/9/19.

1 Q And do you know what the findings of those MRIs were?

2 A I do. The MRI of the low back showed a show disc
3 herniation at several levels in the spine. So, the levels of
4 the spine are named by the bones and the discs.

5 So, in the spine, there are -- in the lower back, there
6 are five vertebra starting with one down to five and that sits
7 on top of the tailbone called the sacrum.

8 So, he had a disc herniation between the 3rd and 4th
9 lumbar vertebra, the 4th and the 5th lumbar vertebra and the 5th
10 lumbar vertebra and the tailbone, the sacrum.

11 They noted that these impinged on what's called the
12 fecal sac and the neural foramen which is the outlet for the
13 nerves as they run down the legs at the L-3/4 level.

14 Q And did you perform an exam the next time you saw him
15 on 10/24?

16 A I did.

17 Q And what were your findings?

18 A He continued to show tightness and tenderness in the
19 cervical and lumbar paraspinal musculatures, the muscles of the
20 neck and the lower back.

21 At the knee, he had crepitus which is cracking or
22 popping when you move and he was guarding against passive
23 motion, meaning he would show me motion and he had cracking and
24 popping. When I tried to push him a little further, he had pain
25 and was guarding.

1 My assessment at the time was post-traumatic cervical
2 pain, lumbar pain, pain in both knees and weakness of his
3 quadriceps muscles of his thighs.

4 Q And did you have recommendations for him at that time?

5 A At that time, I did place him into a lumbar corset. I
6 also sent him for pain management.

7 Q And who did you send him for pain management to?

8 A At that time, I sent him to Dr. Mandelbaum.

9 Q And who is Dr. Mandelbaum?

10 A Dr. Mandelbaum is a gentleman who is an
11 anesthesiologist who performs pain management consultant here in
12 the city.

13 Q And we've already heard from Dr. Grimm who works at
14 your practice?

15 A Right.

16 Q Who treated him for pain management?

17 A Yeah.

18 Q Do you know how he ended up instead of going to Dr.
19 Mandelbaum to Dr. Grimm?

20 A I'm not sure exactly, but Dr. Grimm became employed by
21 my office at some point and we may have just shifted his care
22 over.

23 Q And the next time you saw Mr. Buestan?

24 A The next time I saw him was on 12/5/19. So, about two
25 months later.

1 Q And at that time, you examined him?

2 A I did.

3 Q And the findings?

4 A He was complaining of continued symptoms. He was
5 complaining of headaches, cognitive problems. He was
6 complaining of left wrist pain as well at that time and low back
7 pain, pain in the knees. He was not having any buckling of
8 knees, but having -- and no pain at the knees at that time.

9 So, on exam, he had some swelling about the left wrist
10 which I felt was what's called a ganglion cyst.

11 A cyst is a collection of fluid usually associated with
12 joint fluid from a joint which has become torn in some way and
13 the joint fluid sneaks out.

14 And he had pain with wrist flexion, which is this
15 motion which was to 70 degrees rather than the normal 90 degrees
16 as well as wrist extension which in his case was to 45 degrees
17 rather than the normal approximately 90 degrees.

18 He had pain complaints when making a fist. All the
19 muscles that work your hand are up here in the forearm so when
20 you make a fist and tighten these muscles here, it pulls the
21 hand and compresses the wrist and often times doing that and
22 having wrist pain is an indication of some injury to the wrist,
23 ongoing problem in the wrist.

24 Additionally, he had continued neck and low back
25 tenderness, had some spasms present. He continued to have a

1 straight leg raising. Again, that test for nerves with an
2 injury in the back giving you leg pain.

3 And the equivalent of that is calling the Spurling
4 Maneuver, which is testing the nerves coming out neck into the
5 upper extremities and he had a positive test for that as well.

6 Q And at that time, did you have recommendations for him?

7 A I did. At the time, I sent him for an MRI of his left
8 wrist seeing if we could explain the development of the pain as
9 well as the swelling that I noted.

10 Q And did he have that MRI?

11 A He had an MRI of the left wrist performed on 12/8/19.

12 Q And after he had that MRI performed, did you review it?

13 A Yes.

14 Q And what was your diagnosis?

15 A Diagnosis agreed with the report which was a tear of a
16 cartilage tissue in the wrist called a triangular fibrocartilage
17 complex.

18 And that little tissue of cartilage sits between the
19 hand and the forearm bone and acts like a dish to hold the hand
20 in place as you rotate and move. And it's made of cartilage.

21 Q And at the time, did you have recommendations for him?

22 A Let's see. At that time --

23 Q I'll ask you this question. Do you usually treat this
24 type of injury of a triangular fibrocartilage complex?

25 A I do not. I usually send those to one of the hand

1 surgeons we refer patients to.

2 Q You do surgeries; correct?

3 A I do.

4 Q And what kind of surgeries do you usually do?

5 A I do primarily arthroscopy of the large units. So, the
6 shoulders, the knees, the ankles, the hips.

7 Q And did you refer him to someone else for treatment on
8 this particular injury?

9 A I did.

10 Q And who did you refer him to?

11 A I referred him to Dr. Nelson Botwinick
12 B-O-T-W-I-N-I-C-K. He's a hand specialist that I refer patients
13 to.

14 Q And the next time you saw Mr. Buestan?

15 A It looks like it was 1/16/20. And that's when we
16 discussed the MRI results and he still had some swelling of the
17 wrist and he was given an injection of some steroids.

18 Q And as far as any treatments that Mr. Buestan had with
19 his neck and back, are you ever involved with those in your
20 practice?

21 A I am involved in that I did the triage which means sort
22 of making sure everyone is going to the right spot. I'm often
23 the first physician. People say I am a general orthopedist as
24 opposed to a neck specialist or a hand specialist.

25 So, the treatment that I would have done would have

B-take A. A.

1 been getting an MRI, sending him to the appropriate doctors.

2 Q And the next time you saw Mr. Buestan?

3 A I had a phone visit with him during COVID, at the
4 height of COVID 4/15/25. And he still had similar complaints.
5 Then the next time I actually had a visit with him would have
6 been 3/23/21.

7 THE COURT: Pause for a second.

8 MR. ROSENZWEIG: I wonder if the jury has the sun
9 in your eyes.

10 THE COURT: Are you having a problem with the
11 sunlight?

12 THE JURY: I am.

13 THE COURT: Okay. So, feel free to move to the
14 second tier.

15 Q And on 3/23/21 at that time, did you examine him?

16 A I did.

17 Q And this was more than a year later after the accident?

18 A Yes.

19 Q And what were your findings?

20 A At the time, he still had post-traumatic cervical pain.
21 He had undergone a surgery for his neck called an anterior
22 discectomy and fusion. And he still was having low back pain
23 with symptoms of what's called radiculopathy.

24 Radiculopathy is pain radiating in the nerves that run
25 from the back to the lower extremities. So, it indicates a

1 problem in the back even though most of what you feel or a lot
2 of what you feel can be in the legs.

3 Q And did you have any recommendations for him at that
4 time?

5 A At that time, it looks like I had a long talk with him
6 regarding what the usual steps of treatment were. He had some
7 injections in his back of a steroid preparation. He gotten what
8 I call fleeting relief, meaning it was not long lasting.

9 We talked about possible lumbar surgery maybe
10 recommended for him. We talked about doing exercises. That was
11 primarily what we talked about.

12 Q And then you next saw him July of 2021?

13 A I next saw him on July 27th of 2021.

14 Q And at that time --

15 A At that time, he was having neck pain and pain
16 continuing to bother him in the shoulders, the back part of the
17 shoulders called the posterior shoulder girdle meaning the
18 musculature of the shoulder.

19 Again, he had undergone a cervical surgery. He was
20 continuing to have low back pain, pain radiating in the legs and
21 additionally, he told me that he was scheduled for a repair of
22 this injury to his wrist called the triangular fibrocartilage
23 complex with Dr. Botwinick who I had sent him to.

24 Q And what did you attribute the shoulder pain to, if
25 anything?

1 A Yeah. The shoulder pain I felt was coming from the
2 source of his neck. I think his neck was irritating the nerves
3 that run down to the shoulders. I didn't believe that he had a
4 separate injury to his shoulders, but he was having the effects
5 of pain in the shoulders.

6 So, he had some limited motion because of pain in the
7 shoulders called capsulitis, meaning inflammation in the
8 covering of the joint, the joint capsule because of holding his
9 arm stiffer to try to decrease the amount of pain associated
10 with motion.

11 Q Did you have any treatment for the shoulder pain at
12 that time?

13 A I gave him an injection of an anti-inflammatory steroid
14 at the left shoulder. I did that with ultrasound guidance to
15 try to make sure that we were in the right spot and advised him
16 to continue following up with his other physicians.

17 Q And I want to next draw your attention to November 2,
18 2021.

19 A Okay.

20 Q And at the time, you did an exam?

21 A I did.

22 Q And the findings?

23 A At that time, he had had recent surgery with Dr.
24 Botwinick. He was in a splint at the wrist.

25 He had felt that the trauma of the surgery at the wrist

1 was making him feel a little more symptomatic at the neck and
2 low back which is not unusual.

3 He was having difficulty getting out of bed in the
4 morning. He was having pain with bending, lifting more than
5 five pounds in therapy, pain radiating in the legs again and
6 some muscular spasm.

7 And on exam, he still had neck and low back tenderness,
8 mid-back tenderness. He had spasm at the right low back, which
9 I said -- I noted was marked meaning, mild, moderate, marked,
10 severe. Marked muscular spasm.

11 He had trigger-point -- I'm sorry -- no trigger-points
12 were appreciated at that time in the neck, but in the low back,
13 he had trigger points.

14 And so, my assessment was status post-wrist surgery,
15 status post-anterior cervical discectomy, post-traumatic
16 cervical pain and post-traumatic lumbar pain.

17 I gave him a series of injections in the muscles of the
18 low back called trigger-points to try to relief those muscular
19 spasms.

20 Q And next, if I could draw your attention to October of
21 2022, October 24th, 2022.

22 A Okay.

23 Q And at that time , did you examine Mr. Buestan?

24 A I did. He was complaining of neck pain and low back
25 pain, complaining of stiffness in the wrist. Stiffness in the

1 wrist he noted was made worse with activities and weather
2 changes.

3 He had tenderness in the cervical and lumbar
4 paraspinous musculature. He has a positive straight leg raising
5 test bilaterally, positive Spurling maneuver. That's in the
6 neck bilaterally.

7 He had wrist pain with radial deviation which means
8 moving the wrist to the other side of the thumb side of your
9 hand. He was using a cane to help him walk at that time.

10 And I asked him to continue with pain management. He
11 was really just having pain problems at that point.

12 Q And you had him at a hundred percent temporarily
13 disabled?

14 A That's right.

15 Q And what does that mean?

16 A Well, we are required in certain cases to indicate how
17 much we feel this gentleman could tolerate work and given the
18 amount of pain that he was complaining of at that time and that
19 it involved the neck, the back, and his upper extremity, I felt
20 that he was not able to return to any gainful employment at that
21 time.

22 Q And also, I see in your report he was using a cane?

23 A That's right.

24 Q Do you know why he was using a cane?

25 A I believe he was using the cane because of increased

1 symptoms of low back pain.

2 Q And next if I could draw your attention to October 17,
3 2024.

4 A Right. At that time, he was complaining of low back
5 pain. He was complaining of pain in both shoulder girdles,
6 intermittent pain at the wrist is particularly with gripping.

7 He continued to see his spine surgeon regarding his
8 neck and low back complaints. He was seeing Dr. Botwinick who
9 had operated on his wrist.

10 And at that point, I just advised him to continue with
11 those physicians. Those were the majority of his problems. We
12 had covered his basis.

13 Q And the last time you saw Mr. Buestan, was that the
14 last time or did you see him --

15 A That was the last time that I saw him for any type of
16 treatment, yeah.

17 Q And prior to you testifying today, did I send you a
18 copy of the trial testimony of Mr. Buestan?

19 A A portion of it, yeah.

20 Q And did I also send you treatment records from 2014 to
21 2018?

22 A You did.

23 Q And upon reviewing those records, did it change any of
24 your opinions about his injuries?

25 A No.

1 Q And Doctor, do you have an opinion with a reasonable
2 degree of medical certainty as to whether the injury to the
3 wrist, the triangular fibrocartilage complex was causally
4 connected to the accident?

5 MR. ROSENZWEIG: Objection. Cumulative.

6 THE COURT: I'm going to allow it.

7 A My opinion since I was the first the one that really
8 documented, I believe the wrist problem was it was causally
9 related as part of my triage treatment of him. A triangular
10 fibrocartilage injury is an injury to cartilage, a piece of
11 cartilage.

12 Cartilage doesn't have nerve endings so it's not always
13 initially painful, but this guy within a reasonable time of
14 using and having mechanical symptoms from the cartilage that was
15 not attached the way it was normally developed mechanical
16 symptoms and pains.

17 And that's a very common story. So, yes. In my
18 opinion, it is causally related.

19 Q And was it a traumatic injury?

20 A I believe it was from the trauma. We actually have a
21 clue that it's a traumatic injury because people get tears of
22 the triangular fibrocartilage just from doing repetitive
23 motions, people that work with their hands a lot or heavy
24 things. That's usually a wear and tear sort of a grinding down
25 of that cartilage.

1 Mr. Buestan had a disruption between the cartilage and
2 the bone, the cartilage peels off of the bone where it's
3 anchored.

4 I know that from Dr. Botwinick's record as well as some
5 X-rays that I have where he has -- the cartilage has been
6 reanchored in the bone. And he still has a little anchored on
7 in the bone that you can see in the x-ray.

8 Q And you take your own X-rays in your office?

9 A I do, yeah. Well, I mean, I don't personally take
10 them. I order them. My X-ray technician takes them and I read
11 them.

12 MR. VARGAS: Thank you. No further questions.

13 THE COURT: Cross-examination?

14 MR. ROSENZWEIG: Thank you.

15 CROSS-EXAMINATION BY

16 MR. ROSENZWEIG:

17 Q Good afternoon, Doctor.

18 A Hi.

19 Q Picking up where we just left off with the wrist --

20 A Yeah.

21 Q Mr. Buestan first came to you in October of 2019;
22 correct?

23 A I believe that's correct, yeah.

24 Q And there were no complaints about left wrist pain in
25 October of 2019; correct?

B-take A. A.

1 A That's correct.

2 Q And did you review the hospital records?

3 A I have reviewed the hospital records. I don't recall
4 seeing any complaints at that time either.

5 Q Correct. You anticipated my question. No complaints
6 about left wrist pain at the hospital; correct?

7 A Correct, yeah.

8 Q And you saw him in November of 2019?

9 A I think I saw him twice in October. I don't think I
10 saw him in November.

11 Q Is it fair that the first complaint of left wrist pain
12 that you are aware would be in December of 2019?

13 A That's correct, yes.

14 Q About 60 days after the accident?

15 A If that is the math, yes. I agree with you.

16 Q And this kind of injury can have symptoms clicking;
17 yes?

18 A It can have pain, clicking swelling, yeah.

19 Q Okay. This is not the first time you've testified
20 today; correct?

21 A This is the first time today I've testified, yes.

22 Q You never know --

23 A Certainly not the first time I have been in court.

24 Q Last year, how many times did you testify?

25 A I think six, twelve, something like that.

1 Q And in the last five years, how many times have you
2 testified?

3 A You know, again, it's usually six to twelve times a
4 year. Once every two months or every month. It really depends.
5 I schedule on a regular basis. It's up to you guys really.

6 Q And a portion of your testimony is for the Gorayeb
7 Firm;, correct?

8 A I have a number of patients who are clients of Mr.
9 Gorayeb's Firm, yes.

10 Q Can you put a number on that, a ballpark estimates, how
11 many patients are also personal injury plaintiffs to the Gorayeb
12 Firm?

13 A It's really not something I look at on a daily basis.
14 I look at when I see the patient. I usually don't know until I
15 am asked to come in court.

16 Q Does it say on your referral slips who the referral
17 comes from?

18 A It doesn't. We do take a record usually if they are
19 represented by an attorney because sometimes we are asked for
20 records and we have to be careful about giving out records.
21 Let's see if he notes it. Yeah, he didn't even note it on his
22 initial intake.

23 Q As we sit here today, you do know it was the Gorayeb's
24 Firm that referred Mr. Buestan to your office; correct?

25 A I know he was represented by Mr. Gorayeb.

1 Q My question is, do you know if the Gorayeb Firm
2 referred him to you?

3 A I don't know. If you told me he did, I'd believe you.

4 Q Again, it's not me testifying. I am asking your
5 recollection.

6 A Yeah, I don't know. But that would not be unusual to
7 get a referral from an attorney.

8 Q So, in addition to Mr. Gorayeb's Firm, other plaintiff
9 personal injury firms refer you patients; correct?

10 A I'm an orthopedic surgeon. I treat injuries. So,
11 yeah.

12 Q Okay. What percentage of your business is treating
13 plaintiffs in personal injury litigation?

14 A I don't keep track of that.

15 Q More than 50 percent?

16 A It's probably around there.

17 Q Have you ever testified for Mr. Gorayeb's office as a
18 non-treating expert?

19 A I think so. I don't know. Not something I've done
20 frequently.

21 Q You understand what I'm saying now, you're not treating
22 the patient, but you're coming in particularly as an expert for
23 them?

24 A Yeah. I just don't recall.

25 Q Are you the owner of New York Ortho Sports Medicine and

1 Trauma?

2 A I am.

3 Q Dr. Grimm works for you?

4 A That's right.

5 Q Jodi Gelfand, the life care planner in this case worked
6 in your office?

7 A Years and years ago, yeah.

8 Q How long did you she work for you?

9 A A couple of years.

10 Q Did she work for you as a life care planner or
11 something else?

12 A A physician's assistant.

13 Q Okay. And you are charging for your testimony here
14 today?

15 A My office is, yes. And I get paid out of that, yeah.

16 Q How much does your office charge for your appearance
17 today?

18 A My office charges a fee of \$8,500. I get my regular
19 salary out of that.

20 Q Okay. And in addition to that, if you prepared a
21 narrative report like you did for this case, would you charge
22 for that as well?

23 A Of course. It's my time.

24 Q How much do you charge for a narrative report?

25 A \$450.

1 Q And did you meet with Dr. Vargas today to prep for your
2 testimony?

3 A No.

4 Q How about in the last week?

5 A No.

6 Q And you did review the plaintiff's deposition
7 transcript?

8 A It was sent to me --

9 Q I'm sorry. Not deposition transcript. The trial
10 transcript?

11 A It was sent to me, yes.

12 Q And any other documents other than the trial transcript
13 did you review other than the records to prepare for today?

14 A Outside medical records including the records from
15 previous treatment, yeah.

16 Q Okay. Have you reviewed any social media images of the
17 plaintiff?

18 A No.

19 Q Have you reviewed any surveillance video of the
20 plaintiff?

21 A No.

22 Q You've worked with Dr. Weinstein before?

23 A I don't work with Dr. Weinstein.

24 Q Do you refer patients to Dr. Weinstein?

25 A Dr. Grimm generally does. I refer to Dr. Grimm for

1 initial treatment and Dr. Grimm has a number of spine surgeons
2 that he refers to and Dr. Weinstein is certainly one of them.

3 Q Dr. Grimm testified that he and Dr. Weinstein are
4 friends. Are you aware of that?

5 A I am not friends with Dr. Weinstein. So, I don't know
6 the answer to that. But if he says that, I believe him.

7 Q That's not my question. Do you know if Dr. Grimm and
8 Dr. Weinstein are friends?

9 A I don't know that as a fact. If he testified to that,
10 I certainly would believe him.

11 Q Are you friends with Dr. Weinstein?

12 A I met Dr. Weinstein once in my life about 7 years ago.

13 Q All right. Are you friends with Dr. Kolb?

14 A I am not friends with Dr. Kolb.

15 Q You didn't perform any of the surgeries in this case;
16 correct?

17 A Correct.

18 Q You were not in the operating rooms when the surgeries
19 took place; correct?

20 A Correct.

21 Q When you first see a patient like Mr. Buestan, you take
22 a prior medical history?

23 A Yeah.

24 Q Ask if he had any injuries before?

25 A Correct.

1 Q Ask of any prior pains, symptoms in the low back and
2 neck?

3 A Generally, in the trauma setting, I asked if he's ever
4 had any injuries before in the areas that he's complaining
5 about.

6 Q Any pain pre-accident, that is something you ask?

7 A Not generally, no.

8 Q In this case, Mr. Buestan never told you that he had
9 this prior medical treatment that you have now reviewed records
10 from; correct?

11 A I was not aware initially that he had some acupuncture
12 and therapy to his low back and neck apparently.

13 Q Were you aware that he had four years of acupuncture
14 and physical therapy to his low back?

15 A I am now.

16 Q But when you treated him back in October of 2019 --

17 A When I first treated him, no.

18 Q He never told you about any this prior treatment;
19 correct?

20 A He did not. That's correct.

21 Q He never told you that he had four years of
22 acupuncture; correct?

23 A That's correct.

24 Q Everyone's spine degenerates over time; fair?

25 A To some degree, sure.

1 Q The older you get, the worse it gets; fair?

2 A In general, sure.

3 Q It could be more pronounced in blue color workers who
4 do repetitive motions; correct?

5 A It really depends on the person.

6 Q But that's one of the factors; correct? Repetitive
7 work?

8 A It can be. It can be, sure.

9 Q Sports like soccer also is something that can effect
10 degeneration of the spine?

11 A It can. It can also strengthen your spine. It's a
12 mixed bag.

13 Q The same thing with farming and physical activities,
14 that could put pain and strain on your back?

15 A Certainly it can put strain on your back, but it
16 doesn't necessary put pain on your back. It can strengthen your
17 back in some cases, you know.

18 Q Did you see Mr. Buestan at all in 2025?

19 A No.

20 Q How many times did him see him in 2024?

21 A I believe once.

22 Q Okay. You testified that an MRI was taken?

23 A Yes.

24 Q And that was Dr. Kolb who did that?

25 A It was Dr. Kolb's office, yeah.

1 Q With the herniation, you can't tell how long it
2 existed; correct?

3 A An MRI is a picture. It doesn't have a timestamp on
4 it. That's correct.

5 Q And you are not aware of any films from before the
6 accident; correct?

7 A I don't believe he had films before the accident, yeah.

8 Q You don't know how long these herniations existed;
9 fair?

10 A This is the first time he's had back pain that was
11 severe enough to need an MRI as far as I know, yeah.

12 Q But you don't know how long the herniations existed;
13 correct?

14 A That's what I just said, yeah.

15 Q You took X-rays of the spine back in 2019?

16 A I did.

17 Q There was a finding of congenital fusion at C3-C4. Are
18 aware of that?

19 A Yeah.

20 Q What does congenital mean for the jury?

21 A Congenital means that you were born that way.

22 Q So, these were conditions that were in his spine from
23 the day he was born?

24 A You are calling it a condition. It is a normal variant
25 that he's had since birth.

1 Q Did you review the CT Scans from the hospital?

2 A No.

3 Q Can you look at your narrative report from the 24th?

4 A Yeah.

5 Q Do you see the review of the CT Scans from the hospital
6 in there?

7 A That's the report. I thought you were asking me about
8 the film.

9 Q You did review the reports?

10 A Yeah. That's part of the medical records.

11 Q And what were the findings in the reports?

12 A CT Scan in the cervical spine from Northwell Health
13 indicated no acute osseus abnormalities. That means there's no
14 broken bones or no dislocation or malalignment. That's
15 dislocation. Mild disc degeneration at C4-5 below congenially
16 fused C3-4.

17 Q Were there any other findings?

18 A That's all I have reported.

19 Q Okay. Did you see the plaintiff at all in 2023?

20 A 2023?

21 Q Correct.

22 A Let's see. I did not see him in 2023 at all.

23 Q How many times in 2024?

24 A For treatment, one time.

25 Q And you saw him once at Mr. Gorayeb's office request

1 for a narrative evaluation; correct?

2 A Let me just make sure that I understood you. I
3 probably did. I saw him at my office.

4 Q At their request?

5 A They asked me to see him so that we can exchange a
6 report with you, yeah.

7 Q And you generated a narrative report that we spoke
8 about that you charged for?

9 A Correct.

10 Q And that's when you reviewed the medical records, the
11 CT reports; correct?

12 A Correct.

13 Q Can you explained to the jury what disc degeneration
14 is?

15 A Disc degeneration is -- degeneration is a process that
16 occurs over time. Degeneration means that something changes and
17 gets usually worse from a structural standpoint.

18 Q And that was found in the CT reports from the hospital;
19 correct?

20 A Mild degeneration, yeah.

21 Q You looked at some EG exams also?

22 A I saw the reports of those, yeah.

23 Q Those were normal?

24 A At that time, yeah.

25 Q And what is an SSEP study?

1 A SSEP is a similar study of the nerve innervation of
2 muscles.

3 Q That was normal?

4 A I don't recall. From what date are you asking me?

5 Q From your 12/24 report in the middle of the second
6 page.

7 A What's the date of the exam?

8 Q December 12, 2024?

9 A Let's see. I don't see that in my report.

10 Q I'll read it to you. SSEP of the median nerve by
11 Complete Care dated 11/4/19 reveals normal median nerve SSEP
12 study. Does that sound right?

13 A Yeah. That's the nerve in the hand, right.

14 Q Can you tell the jury what an SSEP study is?

15 A Nerve in the hand.

16 Q You tested his strength?

17 A Not specifically.

18 Q Okay. It reports in your 12/20/24 report that he had
19 five by five strength bilaterally?

20 A Yes.

21 Q You also measured the movement of the wrists?

22 A Yes.

23 Q And did you review Dr. Botwinick's records?

24 A I noted I read Dr. Botwinick's records, yeah.

25 Q Did you know that Dr. Botwinick had less degree of

1 flexion in the wrist than you did?

2 A I don't recall that but that's fine. He's got -- I am
3 reporting what I see.

4 Q So, it changes over time?

5 A It changes from person to person in examining you and
6 over time, sure.

7 Q You talked a little bit about your opinions on
8 causation and your opinions on causation. Do you remember that?

9 A Yes.

10 Q Dr. Weinstein in his report put if the history given by
11 the patient is accurate and then gave his causation, would you
12 agree with that caveat?

13 A That's always a caveat. If I don't feel a patient is
14 being honest with me, then I would certainly change my opinion.
15 That's not the case here I fell like. We have an accurate idea
16 of what's going on.

17 Q So, Mr. Buestan wasn't honest with you about his prior
18 history; correct?

19 A I am not sure what you mean.

20 Q You asked Mr. Buestan if he had prior problems with his
21 neck or back and he said no; correct?

22 A I think I was very clear. I asked him if he had prior
23 trauma to his back and he answered me no, which I think is
24 accurate.

25 Q Do you remember that from 2019?

1 A No, but that's my usually course.

2 Q So, you wouldn't ask someone if they had pain in their
3 lower back before they're about to treat you?

4 A Again, eighty percent of the population has pain in
5 their lower back.

6 Q Well, this was more than just pain, this was --

7 A You are right. This was more than just pain.

8 Q Correct. He had four years of treatment to his back
9 prior to 2019; correct?

10 MR. VARGAS: Objection to the form.

11 THE COURT: Overruled.

12 A He had general treatment. He had acupuncture. He had
13 some therapy.

14 Q He complained --

15 MR. VARGAS: Your Honor, he is cutting him off.

16 MR. ROSENZWEIG: Sorry. My fault.

17 THE COURT: Please don't do that.

18 A He didn't have any diagnosis that I am aware of a back
19 injury and this is a back injury.

20 Q He complained of 6 of 10 pain; correct?

21 A Yeah, sure.

22 Q Records said he failed physical therapy; correct?

23 A Sure.

24 Q Failed nonsteroidal anti-inflammatories?

25 A Sure.

1 Q All those things were something you wanted to know
2 before you treated a patient?

3 A It's a good question. Would I want to know it? Sure,
4 for completeness.

5 Is it necessary? It's not the same thing as having
6 radiculopathy which leads to surgery. It's not an injury to the
7 back. So, it doesn't change my opinion, I guess is what I am
8 saying.

9 Q And are you aware that Mr. Buestan has traveled to
10 Ecuador?

11 A Yes.

12 Q Are you aware that he has traveled to the Dominican
13 Republic?

14 A I don't recall the Dominican Republic.

15 Q Are you aware that he said to this jury that his pain
16 is now 2 of 10 with Gabapentin?

17 A That's fantastic.

18 Q Are you aware that the plaintiff has been applying for
19 jobs?

20 A Yes.

21 Q Are you aware this morning that Dr. Weinstein said that
22 Mr. Buestan could return to work in some capacity?

23 A I hope he finds a job.

24 Q Do you agree with that, Mr. Buestan could return to
25 work in some capacity?

1 A As you pointed out, I'm not his spine surgeon. So, if
2 Dr. Weinstein feels that way, I think that's reasonable, sure.

3 MR. ROSENZWEIG: Thank you, Your Honor. Nothing
4 further.

5 THE COURT: Any redirect?

6 MR. VARGAS: No, Your Honor.

7 THE COURT: Thank you, Dr. Kaplan, for your time
8 and testimony. You can step down.

9 (Whereupon, the witness was excused from the
10 stand.)

11 THE COURT: It is 3:22. We have no further
12 witnesses for you today. And it looks sunny and warm
13 outside, but that is not true. It's cold. I want you to
14 enjoy your afternoon.

15 Let's see what we have scheduled for tomorrow.
16 It's an interesting day for you tomorrow. We have another
17 witness coming, but he is not coming in until after lunch.

18 So, that means that you need to be here at 2:15.
19 You have the morning free.

20 Thank you for your attention and your dedication
21 during this case. We are almost at the halfway mark. You
22 may have the rest of the day.

23 COURT OFFICER: All rise. Jury exiting.

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

25 MR. ROSENZWEIG: Can I put a statement on the

1 record.

2 THE COURT: I don't know how it's relevant, but
3 okay.

4 MR. ROSENZWEIG: Just for the record, there was
5 talk about having settlement discussions or conferences
6 tomorrow at noon. My adjuster is ready, willing and able to
7 come and participate in those meetings.

8 However, based on the off the record conversation,
9 it appears that those meetings would not be fruitful.

10 I just want to again represent to the Court that my
11 adjuster is ready, willing and able to come and to try to
12 negotiate a resolution to the case.

13 THE COURT: Well, plaintiff's counsel has made it
14 very plain that they are have no longer interested in
15 engaging in settlement discussions. Although I would always
16 recommend it, one cannot settle with oneself.

17 That said, if their position changes in any way, we
18 will broach the issue again.

19 MR. ROSENZWEIG: Fair enough.

20 THE COURT: Otherwise, the record is closed. See
21 everyone tomorrow afternoon.

22 MR. VARGAS: Thank you.

23 (Whereupon, the trial will resume Friday, January
24 16, 2025 at 2:15 p.m.)

25

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