

1	SUPREME COURT OF THE STATE OF NEW YORK	
2	COUNTY OF KINGS: CIVIL TERM: PART 113	
3	-----X	:
4	ROBERTO ABREU PEREZ,	:
5		:
6	PLAINTIFF,	:
7		:
8	-against-	:
9		:
10	176 EAST 116 LLC, and LUXURY HOME	:
11	IMPROVEMENT CORP.,	:
12		:
13	DEFENDANTS.	:
14	-----X	:
15	176 EAST 116 LLC,	:
16		:
17	THIRD-PARTY PLAINTIFF,	:
18		:
19	-against-	:
20		:
21	178 JJH, Inc.,	:
22		:
23	THIRD-PARTY DEFENDANT.	:
24	-----X	:
25		:

  

	Supreme Court
	360 Adams Street
	Brooklyn, New York 11201
	January 20, 2026

B E F O R E :

HONORABLE LISA LEWIS,  
Justice of the Supreme Court

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BY: FRANK KELLY, ESQ.

(Appearances Continued on Next Page.)

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LAURA DELVAC  
SENIOR COURT REPORTER

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(Pause in the proceedings.)

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COURT OFFICER: All rise, The Honorable Lisa Lewis  
presiding, please be seated and come to order.

1 in my reports show any impingement upon the spinal cord, and I  
2 said no.

3 MR. ALVARADO: I said reports.

4 MR. KELLY: Right, your Honor, it is my turn, why  
5 is he standing in the way?

6 Q From the X-rays; right?

7 MR. ALVARADO: Leading.

8 THE COURT: Overruled.

9 A On all of my reports.

10 MR. KELLY: Very good, thank you.

11 THE COURT: Alright, doctor, you may step down.

12 (Whereupon Dr. Kolb exited the witness stand.)

13 THE COURT: Mr. Kelly, you can call your next  
14 witness.

15 MR. KELLY: Dr. Kaplan.

16 MR. FRITTOLA: Can we take a two-minute recess?

17 MR. KELLY: Do you want to switch?

18 THE COURT: Yes, real quick.

19 (Pause in the proceedings.)

20 THE COURT: What is her name?

21 MR. KELLY: Dr. Kaplan, Jeffrey Kaplan.

22 THE COURT: Counsel you can call your witness.

23 MR. KELLY: Dr. Kaplan, please.

24 (Whereupon, Dr. Kaplan took the witness stand.)

25 THE CLERK: Good afternoon, can you remain standing

Dr. Jeffrey Kaplan - Plaintiff - Direct

1 and raise your right hand, after you put that down.

2 Do you swear or affirm that the testimony you're  
3 about to give in this Court is the truth and nothing but the  
4 truth?

5 THE WITNESS: Thank you.

6 THE CLERK: State your full name and address for  
7 the Court Reporter?

8 THE WITNESS: My name is Jeffrey Kaplan,  
9 K-A-P-L-A-N. My office is 160 East 56th Street, Manhattan,  
10 10022.

11 DIRECT EXAMINATION BY

12 MR. KELLY

13 THE COURT: Dr. Kaplan, just make sure you speak  
14 into the microphone. If there's a question you don't  
15 understand, just ask for it to be repeated.

16 THE WITNESS: Thank you.

17 THE COURT: You may inquire, counsel.

18 MR. KELLY: Thank you.

19 Q Good afternoon, Dr. Kaplan.

20 A Hi.

21 Q Tell the jury what is your profession, please?

22 A I'm an orthopedic surgeon.

23 Q Tell us a little bit about your professional education?

24 A I went to college at Yale University, when I graduated  
25 from college I went to medical school here at Columbia

1 University. Following that, I did a training program in  
2 orthopedic surgery, and I did that at the place called the  
3 Campbell Clinic in Memphis, Tennessee.

4 Actually, that was the first orthopedic training  
5 program in the United States at the Campbell Clinic. I  
6 practiced in Memphis for a short period of time and then moved  
7 back to New York in 1994, where I have been in practice ever  
8 since.

9 Q Are you licensed to practice medicine in the State of  
10 New York?

11 A Yes.

12 Q Are you board certified, doctor?

13 A I am.

14 Q Tell the jury what it means to be board certified in  
15 your profession?

16 A Board certification is an additional qualification you  
17 can receive after college/medical school and residency training  
18 program. It basically involves taking a series of examinations  
19 over a number of years, and it's given by a panel of expert  
20 physicians, called in my case called the American Board of  
21 Orthopedic Surgeons.

22 If you demonstrate expertise and knowledge in the field  
23 of orthopedics, you're deemed board certified, you have to re-up  
24 that every couple of years and I have remained in good standing  
25 since.

1           Q     Tell us a little bit about your current professional  
2 affiliations, doctor?

3           A     I'm on the staff of New York Presbyterian Hospital, and  
4 Mount Sinai systems here in the City, and I work for New York  
5 Ortho Sports Medicine & Trauma, which is my orthopedic practice.

6                     I'm a member of the New York Athletic Commission and  
7 the boxing division, so I'm an orthopedic for the Boxing  
8 Division, and then a number of organizations that having to do  
9 with orthopedics and trauma study.

10          Q     What is orthopedic medicine, can you explain that to  
11 us, please?

12          A     Orthopedics is the study of bones and joints and the  
13 supporting structures to the bones and joints, so muscles,  
14 tendons, ligaments, cartilage, nerves, it has to with injuries  
15 or abnormalities to those structures and then the treatment of  
16 those injuries or abnormalities, either with conservative  
17 measurements. Meaning recommendations for therapy, injections,  
18 medications, and things like that, or, if those things don't  
19 work, inappropriate, the surgical treatment of those problems.

20          Q     Do you regularly see patients in the private practice  
21 or orthopedics?

22          A     I do.

23          Q     In our case, Mr. Roberto Abreu Perez, he suffered a  
24 back injury, neck injury and fractured ribs due to a fall from a  
25 height?

1           A     Yes.

2           Q     Do you have any experience of applying your  
3 professional skills to problems of Mr. Abreu Perez's kind?

4           A     Yes.

5           Q     Have you been previously qualified as an expert witness  
6 in the State of New York?

7           A     I have.

8                     MR. KELLY: Your Honor, I offer Dr. Kaplan as an  
9 expert witness in orthopedic surgery.

10                    MR. FRITTOLA: No objection, your Honor.

11                    THE COURT: Dr. Kaplan is deemed an expert.

12                    MR. KELLY: Thank you.

13                    THE COURT: In this case.

14           Q     Doctor, I will be asking you for a series of opinions  
15 this afternoon. All of the opinions that I ask you for are to a  
16 reasonable degree of medical certainty; is that okay with you?

17           A     Sure.

18           Q     Even if I don't say those magic work, your opinion  
19 needs to meet those standards.

20                    Did there come a time when you encountered Mr. Abreu  
21 Perez as a patient?

22           A     Yes.

23           Q     Can you describe that for us, please, and you can refer  
24 to your records.

25           A     I'm going to pull my chart out to get some dates, so

1 let's see, I first saw Mr. Abreu Perez, on 7 -- yes, 7/25/17,  
2 took a history of an injury that occurred on 6/27/17, involving  
3 a fall from a ladder at work. He told me he struck an iron beam  
4 and fell to the floor. He was taken by ambulance to New York  
5 Presbyterian Hospital, he was seen and treated there initially.

6 He initially presented to Harlem Hospital because of  
7 consistent pain. At Harlem Hospital, he was diagnosed with  
8 multiple rib fractures and when I saw him, he was complaining of  
9 pain in his ribs and his low back, he was having difficulty  
10 sleeping, sitting and standing, and he was complaining of pain  
11 radiating in his right chest and his -- pain with lifting his  
12 arm.

13 Q Are those complaints consistent with rib fractures?

14 A They are.

15 Q And doctor, at New York Presbyterian, some radiology  
16 was performed, but it was called preliminary radiology, at New  
17 York Presbyterian, did they miss the rib fractures?

18 A They did not see the rib fractures, they weren't  
19 reported apparently.

20 Q Tell us about that, though, if you have a rib fracture  
21 and -- and tell us about that, tell us how rib fractures  
22 develop, not how they cause, what happens if you're suffering  
23 from them?

24 A Any fracture, you try to see on an X-ray, an X-ray is a  
25 shadow image of the -- in this case the bones of the rib, and



1 there are cases that I've seen many times with specifically rib  
2 X-rays, but also with other bones, where the bone does not  
3 initially displace, not initially out of place, and a fracture  
4 is overlooked, it's not seen.

5 This specifically happens with a rib, because there are  
6 multiple shadows of the lungs, and other soft tissues that have  
7 multiple -- if you've ever seen a chest X-ray, have multiple  
8 overlays with the ribs, so things are not recognized as a crack  
9 in the bone, because you don't see displacement.

10 With a rib fracture, since you can't immobilize it,  
11 because you're breathing, these often will displace, and they're  
12 apparent later, and I believe that's what happens here.

13 Q Did that cause Mr. Abreu Perez to go to Harlem Hospital  
14 disc two weeks later?

15 A His pain caused him to go to Harlem Hospital,  
16 persistent pain, at that point they were able to recognize rib  
17 fractures.

18 Q Doctor, did you perform a physical examination of  
19 Mr. Abreu Perez at your encounter with him?

20 A I did.

21 Q Describe for us what you do, sort of why you do it and  
22 your findings?

23 A So on an initial visit we do what's called a triage,  
24 which means you try to figure out what's going on, what the most  
25 important things are, and what needs follow-up in terms of

1 imaging studies or immediate treatment.

2 Mr. Perez on exam, which is how we start to define  
3 these things, had tenderness at the right side of the ribs along  
4 the eighth and ninth rib anteriorly, anteriorly means the front,  
5 and he had axillary tenderness on the right, axillary means the  
6 armpit in this area down the front of the chest, and he had no  
7 crepitus, that means cracking that you can hear sometimes if  
8 bones are moving. I didn't feel that, I didn't feel any  
9 crepitus, cracking that would be indicated here, that he  
10 punctured a lung and there was air in the soft tissues which can  
11 happen. He was breathing okay, he was not labored with  
12 breathing, and he had tenseness at the lower lumbar area in the  
13 musculature, the lumbar area is the lower back.

14 He had limited motion forward flexion of the lumbar  
15 spine which demonstrated 60 degrees, normal 85 to 90, he had  
16 limited extension to five degrees, that's normally up to  
17 45 degrees, so that was quite limited, right and left lateral  
18 flexion means bending the spine, was about 15 degrees and that's  
19 quite limited, normal about 30 to 45.

20 His straight leg raising test was positive on the left,  
21 that's an indication that he was having pain radiating down his  
22 leg, at this time on the left, but from not the leg, from a  
23 source in the back. What we do in a straight leg raising is  
24 pull the leg out straight and it stretches the nerve all the way  
25 from the spinal column, spinal cord, rather, into the leg.

1 I took some X-rays as part of the exam, the X-rays of  
2 the ribs did show fractures of some right-sided ribs, eight and  
3 ninth rib. They were nondisplaced which means you could see it,  
4 but they weren't separated much, they're sort of turned down.

5 X-rays of his lobe showed no acute bony change means no  
6 fracture and no dislocation.

7 Q These findings from your initial -- initial exam, are  
8 they the competent producing cause of Mr. Abreu Perez's pain?

9 A I believe they were.

10 MR. FRITTOLA: Note my objection, Judge, leading  
11 question.

12 THE COURT: One moment.

13 (Pause in the proceedings.)

14 THE COURT: Overruled.

15 Q Did you form an initial diagnosis with respect to Mr.  
16 Abreu Perez?

17 A I did.

18 Q Tell the jury what your initial diagnosis was?

19 A The initial diagnosis was right eighth and ninth  
20 anterior rib fractures and lumbago means low back pain.

21 Q Did you form a treatment plan for Mr. Abreu Perez?

22 A I sent him for an MRI of his low back and I sent him  
23 some Lidocaine patches, which are usually pretty good for  
24 decreasing rib fracture pain, because the ribs are superficial  
25 and a patch with lidocaine a numbing medicine can help with that

1 discomfort.

2 Q I would like you, doctor, to assume that Mr. Abreu  
3 Perez had no problems with inspiration or breathing in, didn't  
4 have right upper quadrant pain or pain in the area of the ribs  
5 and no pain in his low back pain prior to the accident, low  
6 back, that we're here about today.

7 Do you have an opinion, to a reasonable degree of  
8 medical certainty, whether Mr. Abreu Perez's complaints were as  
9 a result of the accident?

10 A I believe they were, yes.

11 Q And did you get the result of the diagnostic testing?

12 A I did.

13 Q Can you tell us what the result of the diagnostic  
14 testing was diagnostic testing.

15 A So an MRI of his low back, lumbar spine was performed  
16 on 7/29/17, and was said to show, what's called a small  
17 subligamentous disc herniation at L5-S1, which is the lowest  
18 segment of the low back, and impinging on the anterior epidural  
19 fat, that's the fat which protects the spinal cord, and he was  
20 also said to have a disc bulge at L4-5, which is the level just  
21 above that impinging on the thecal sac, the thecal sac is the  
22 fluid filled sac that, again, protects the spinal cord.

23 Q Are those findings consistent with Mr. Abreu Perez's  
24 complaints to you?

25 A Yes, they are.

1           Q     Are those findings consistent with the history of  
2 falling from a height at a construction site?

3           A     Certainly can see that from a fall, yes.

4           Q     Do you have an opinion, to a reasonable degree of  
5 medical certainty, whether the fall that Mr. Abreu Perez  
6 complains of was the cause of these findings?

7           A     It is my opinion that if he had no problems prior to  
8 this, and he had problems following this, it's likely these are  
9 from the accident, these findings.

10          Q     It's likely to a reasonable degree of medical  
11 certainty?

12          A     Yes, exactly.

13          Q     So what, what else did you do in respect to the  
14 treatment plan other than send him for diagnostic testing?

15          A     Once we got the testing back and once some time had  
16 gone by, he started some physical therapy, started him on some  
17 antiinflammatory medications, which are medications that  
18 decrease pain by decreasing the inflammatory response associated  
19 with an injury.

20                I also had him see Dr. Matthew Grimm, whose a  
21 specialist in pain management, for further treatment.

22          Q     Is this treatment conservative treatment, would you  
23 call it?

24          A     Yes.

25          Q     I why do you do -- withdrawn.

1           Mr. Abreu Perez was 44-years-old at the time of the  
2 happening of the accident?

3           A     Right.

4           Q     Is there a particular reason you would do conservative  
5 treatment at that time?

6           A     Everybody gets conservative treatment, initially,  
7 unless there's an emergency for surgery, and with these findings  
8 we want to give some time for the ribs to knit together, and we  
9 want to keep him moving, which is what physical therapy does,  
10 keeps him moving, keeps him strong, decrease his pain, that's  
11 the reason for medications as well.

12          Q     Did Mr. Abreu Perez follow with you in the course of  
13 his treatment?

14          A     Yes, I've seen him multiple times over the course of  
15 the years.

16          Q     Was Mr. Abreu Perez diligent in his course of  
17 treatment?

18          A     He appears to be, yeah, he did his physical therapy, he  
19 took medications, he had multiple injections.

20          Q     And did you follow -- how long a period of time did you  
21 follow him for as a treating physician?

22          A     I saw him treating physician, intermittently through  
23 2017, '18, '19, and '20 and '21, and then I saw him recently for  
24 reevaluation in the beginning of 2025.

25          Q     Can you tell us a little bit about your 2025, I don't

1 want to go through years and years he followed up with you.

2 Let's talk about 2025, did you take a history at that  
3 time again?

4 A I caught up my going through the medical record, I was  
5 seeing him for pain management coverage, at that time he was  
6 complaining of neck pain and low back pain, I noted that he had  
7 had surgery, he had a cervical fusion, which is an operation on  
8 the neck in 2024, and then he had had a low back fusion  
9 operation on the low back in 2023, and he had had some physical  
10 therapy, he was complaining of stiffness of the neck, and of the  
11 upper extremities, the arms, and he was complaining of low back  
12 pain and stiffness and pain associated with activities and  
13 weather changes.

14 Q What was the date of this?

15 A That was 3/4/25.

16 Q Doctor, do you have an opinion, to a reasonable degree  
17 of medical certainty, whether the complaints made by Mr. Abreu  
18 Perez at the 2025 examination were as a result of the accident  
19 of Mr. Perez on June 27th, 2017?

20 A I do.

21 Q Can you tell the jury what it is, please?

22 A My opinion is that these complaints were related to the  
23 accident, they were sort of the natural sequelae of an injury  
24 like this, and these were accepted sites of the injury, so it is  
25 my opinion they were related to the accident.

1           Q     Now, was Mr. Abreu Perez referred to surgery to someone  
2 else for the neck and back surgery?

3           A     I believe he had surgery with doctor, let's see, I  
4 believe he had surgery with Dr. Joseph Weinstein.

5           Q     You don't do that kind of surgery?

6           A     No, I'm not a spine surgeon, yeah.

7           Q     Do you have an opinion, to a reasonable degree of  
8 medical certainty, whether the treatment by Dr. Weinstein was  
9 the direct result of Mr. Abreu Perez's accident --

10          A     I believe it was.

11          Q     -- to a reasonable degree of medical certainty?

12          A     Yes.

13          Q     Now, Mr. Abreu Perez, prior to the date of the  
14 accident, was working full-time without any restrictions?

15          A     Yes.

16          Q     He had no history of neck, back or rib fractures.

17                 Do you have an opinion, to a reasonable degree of  
18 medical certainty, whether that accident was the causal  
19 connection to the back, neck and rib complaints?

20                 MR. FRITTOLA: Note my objection, Judge, he took a  
21 history from the patient himself, he doesn't need the  
22 narrative from the attorney.

23                 THE COURT: Overruled.

24          Q     You may answer that.

25          A     I do believe, as we stated, that the injuries were



1 related to the accident and that the treatment that was  
2 necessitated was causally related to the accident as well.

3 Q What are Mr. Abreu Perez's injuries, are they  
4 permanent?

5 A Yes, the -- certainly, the cervical and lumbar injuries  
6 are permanent, the rib fractures have healed.

7 Q What can we expect of Mr. Abreu Perez in terms of  
8 prognosis?

9 A I would suspect that he would continue to have  
10 symptoms, A, at the neck and the back. Again, I haven't seen  
11 him since last year, and I would certainly defer to the  
12 physician who operated on him as to what his restrictions and  
13 things would have definitively.

14 Q Well, were -- nine years after the accident, Mr. Abreu  
15 Perez continues to complain of pain?

16 A Yes.

17 Q Do you have an opinion, to a reasonable degree of  
18 medical certainty, whether that system of complaints will  
19 continue?

20 MR. FRITTOLA: Note my objection.

21 THE COURT: Sustained.

22 Q Do you have an opinion whether Mr. Abreu Perez will  
23 stay in pain for the rest of his life?

24 A As I said, I think he's still continuing to complain of  
25 pain, and I think that's probably permanent, likely permanent.

1           Q     Tell us a little bit about, well, I asked you about  
2 prognosis before, tell the jury, what does prognosis mean?

3           A     Prognosis is looking into the medical future, based on  
4 the history that you have, and trying to decide whether things  
5 will improve, stay the same or get worse over time, and that  
6 would translate into a prognosis of poor, if things were going  
7 to progress or stay the same, you know, and I believe this  
8 gentleman has a poor prognosis, because his cervical spine and  
9 lumbar spine are permanently changed as a result of this  
10 accident, and over time we all age to some degree.

11                     We all get degenerative changes. When you change the  
12 working or the mechanics of the spine, whether the neck or back  
13 or both, you expect to have an increased rate of degenerative  
14 change, and I think that will bother him always.

15           Q     Will that increase his pain level?

16           A     His pain level will certainty be present, he will have  
17 days that are bad and days that are okay, I think.

18           Q     There was a lot of discussion about -- well, withdrawn.

19                     So can a person have a degenerative conditions like  
20 arthritis and be pain-free?

21           A     Absolutely, anyone over the age of 30 has likely some  
22 degenerative change. It's a harsh reality, but it's true, a lot  
23 of times it doesn't bother you.

24           Q     In our case, go ahead?

25           A     I was going to say it does set you up for a problem if

1 you have an injury on top of that. Often, a lot of times we  
2 witness, will see some changes, degenerative changes they  
3 haven't complained about, then they get knocked around and  
4 things change rapidly.

5 Q I don't think there's any question that Mr. Abreu Perez  
6 had certain degenerative conditions in his neck and back prior  
7 to the accident, but he had no complaints and no limitations.

8 Do you have an opinion, to a reasonable degree of  
9 medical certainty, whether the fall from a height resulted in  
10 Mr. Abreu Perez's complaints of pain and subsequent medical  
11 treatment?

12 A It is my opinion, the symptoms in my mind that he was  
13 complaining about following the accident, the findings that  
14 brought him to have treatment and required surgery are related  
15 to the accident, yes.

16 Q Will Mr. Abreu Perez require future treatment for the  
17 balance of his life?

18 A I believe he will certainly will require ongoing  
19 treatment with an orthopedist, pain management.

20 Q Is Mr. Abreu Perez disabled in any way?

21 A He's partially disabled, yes.

22 Q When he went to you, he had last been a construction  
23 worker.

24 He has gone back to work driving Uber?

25 A Yes.

1           Q     Does that cause you any concern that he's gone from  
2 construction work to driving an Uber?

3                     MR. FRITTOLA:  Objection.

4                     THE COURT:  Sustained.

5                     MR. KELLY:  Sorry.

6                     THE COURT:  Sustained.

7                     MR. KELLY:  Okay.

8           Q     Can he drive an Uber with his disability?

9           A     I believe he can, yes.

10          Q     Can he return to construction work?

11                     MR. FRITTOLA:  Objection.

12                     THE COURT:  Sustained.

13          Q     Well, would Mr. Abreu Perez's disability prevent him  
14 from returning to construction work in your opinion, to a  
15 reasonable degree of medical certainty?

16                     MR. FRITTOLA:  Objection.

17                     THE COURT:  Sustained.

18                     MR. KELLY:  Judge, can we approach on that?  I  
19 can't imagine, I'm asking for an opinion as to his ability  
20 to work in a certain practice.

21                     (Whereupon, an off the record bench discussion was  
22 held.)

23          Q     Doctor, is Mr. Abreu Perez disabled from certain kind  
24 of work?

25          A     I certainly would think he was, yeah.

1 Q And that opinion is to a reasonable degree of medical  
2 certainty?

3 A Yes.

4 Q And that disability is caused by the accident?

5 A I believe it is, yes.

6 Q And do you believe that he can do other kind of  
7 sedentary work?

8 A Yes.

9 Q Would that include something like driving a vehicle?

10 A Yes.

11 Q Doctor, I forgot if you said it, did you refer  
12 Mr. Abreu Perez to Dr. Grimm?

13 A I did.

14 Q And what is Dr. Grimm's role, what does he do?

15 A Dr. Grimm is a pain management specialist, he primarily  
16 treats pain associated with injuries, but also some degenerative  
17 type of conditions, things like that.

18 He does that through what's called interventional pain  
19 management, meaning not only conservative treatment, but also  
20 with injections and medications for certain conditions.

21 Q And did Mr. Abreu Perez have those modalities of those  
22 treatments?

23 A He did.

24 Q And were those modalities and treatments the result of  
25 the accident to Mr. Abreu Perez of June 27, 2017?

1 MR. FRITTOLA: Objection. He's asking for a  
2 yes-or-no response, it's a leading question.

3 THE COURT: Sustained, just rephrase.

4 Q Tell us, doctor, do you have an opinion, to a  
5 reasonable degree of medical certainty, whether or not the  
6 accident of June 27th, 2017, caused Mr. Abreu Perez to endure  
7 the treatments by Dr. Grimm?

8 MR. FRITTOLA: Objection.

9 THE COURT: Overruled.

10 Q You may answer.

11 A Yes.

12 Q What is that opinion?

13 A My opinion is that yes, those things were necessitated  
14 because of the accident.

15 MR. KELLY: Doctor, I have no further questions for  
16 you. Thank you.

17 THE COURT: Counsel, cross.

18 CROSS-EXAMINATION BY

19 MR. FRITTOLA:

20 Q Good afternoon. Dr. Kaplan my name is Michael  
21 Frittola. I represent one of the parties in this case.

22 Did you bring with you a file to court today, sir?

23 A Yes.

24 MR. FRITTOLA: Your Honor, may we take a two  
25 minutes to take a look at the file that the doctor has

1 brought in?

2 THE COURT: Sure.

3 MR. FRITTOLA: Maybe a chance for the jury to  
4 stretch as well.

5 THE COURT: I'm sorry.

6 MR. FRITTOLA: Maybe it is an opportunity for the  
7 jury to stretch as well.

8 THE COURT: Pass counsel the documents.

9 COURT OFFICER: (Hanging.)

10 All rise, jury exiting.

11 (Whereupon, the jury exited the courtroom.)

12 THE COURT: Five minutes, counsel.

13 MR. FRITTOLA: Yes, thank you, Judge.

14 COURT OFFICER: All rise, jury entering.

15 (Whereupon, the jury entered the courtroom.)

16 THE COURT: Okay, everyone you may be seated.

17 Counsel, you may inquire.

18 MR. FRITTOLA: Thank you, Judge.

19 Q Good afternoon, Dr. Kaplan.

20 A Hi.

21 Q Doctor, is that your entire file for Mr. Roberto Abreu  
22 Perez?

23 A This is my medical record, and some additional things  
24 on disk, yes, outside records.

25 Q You specified medical record, is there a different part

1 of the record that is not included in that?

2 A Billing records are not here.

3 Q Why not?

4 A They're not part of the medical record.

5 Q Okay, how about referral correspondence, anything like  
6 that?

7 A I don't --

8 Q Is that in the medical record?

9 A I don't know what you mean by that, what's "referral  
10 correspondence"?

11 Q Did you refer Mr. Roberto Abreu Perez to any other  
12 medical providers; yes or no?

13 A Dr. Grimm.

14 Q Okay. So is the referral to Dr. Grimm part of your  
15 medical record?

16 A No, what's part of my medical record is the note that  
17 says that I'm going to ask him to see, I've given him a  
18 prescription for diclofenac, he's to see Dr. Grimm.

19 Q So the prescriptions are in there?

20 A It's not a prescription, it's part of my note. I don't  
21 think you understand how medicine works.

22 Q That's fine, doctor, I'm asking the questions.

23 MR. KELLY: He has to phrase it a certain way if he  
24 wants it asked answered a certain way.

25 MR. FRITTOLA: I'm not asking for explanations.



1 Q So is there anything related to, physical paperwork  
2 related to a referral in that file?

3 A There's no physical paper anywhere.

4 Q Did you write any prescriptions for Mr. Roberto Abreu  
5 Perez?

6 A On paper?

7 Q Or electronically.

8 A Yes.

9 Q Are they in the medical record?

10 A No, they're kept in an electronic record by the state.

11 Q So is a prescription part of the medical record?

12 A A handwritten prescription traditionally was, but  
13 they're no longer used.

14 Q Did you receive a subpoena in connection with your  
15 appearance here, doctor?

16 A I'm sure I did, I don't receive those.

17 Q If you looked at it, if you received it, you didn't  
18 look at it?

19 A Those are received by my office, they're taken care of  
20 by the office.

21 Q You don't realize that a subpoena is a legal document?

22 MR. KELLY: Objection.

23 THE COURT: Sustained.

24 A I know what a subpoena is here.

25 MR. KELLY: Sustained.

1 THE COURT: You don't have to answer it.

2 Q So the subpoena directed you to bring your entire file  
3 for Mr. Roberto Abreu Perez to court today; am I correct that  
4 you didn't do that?

5 MR. KELLY: Objection.

6 THE COURT: Overruled.

7 A I brought the relevant record and everything that I  
8 could bring today, the rest of it, again is electronic, and I  
9 don't have anyway to print the documents out.

10 Q You couldn't print the documents out?

11 MR. KELLY: Objection.

12 THE COURT: Overruled.

13 A Print what documents out? I'm not sure what you're  
14 asking me.

15 Q The electronic records, doctor.

16 A The electronic prescriptions.

17 Q Whatever you have that's on electronic file, how come  
18 you didn't print everything out and bring it to court for us?

19 A I brought what I traditionally bring. I have never  
20 been asked to bring the electronic documents.

21 Q You've never been asked to bring your entire file when  
22 you come to court to testify?

23 A I have never been questioned like this in court about  
24 it, yes.

25 Q That wasn't my question.

1           A     I mean I'm trying to answer your question, as I  
2 understand it.

3           Q     So we agree, that this, the documents that you've  
4 brought is not your entire file; correct?

5                     MR. KELLY:  Objection.

6                     THE COURT:  Overruled.

7           A     This is my entire medical record which is what I'm  
8 understood was asked for to bring today.

9           Q     Okay.

10          A     The other stuff is sent in, I have his bills here, but  
11 again, that's not part of my medical record, the electronic  
12 part, which is the prescriptions, that's pharmacy record, not  
13 mine.

14          Q     Where are the original records that were created in  
15 connection with your treatment of this gentleman?

16          A     Those are electronic.

17          Q     Did you create any handwritten records at any point?

18          A     The only thing I would have written would be a physical  
19 therapy note, and those usually are in the chart, like this  
20 (indicating).

21          Q     Doctor, the intake form --

22          A     Yes.

23          Q     -- is that part of your medical record?

24          A     I believe it is, yes.

25          Q     So when you are seeing a new patient, the first thing

1 that happens when they come into your office, they fill out an  
2 intake form; is that correct?

3 A They usually sign in the front desk, is the intake  
4 form, the front desk gives them a sign-in, yeah.

5 Q Can you confirm that intake form is part of your file?

6 A It is.

7 Q Does the intake form indicate a referral source, how  
8 the patient was referred to your office?

9 A It does not.

10 Q Can you take it out?

11 A I'm looking right at it.

12 Q Do you see the name Gorayeb & Associates on that  
13 document?

14 A I do.

15 Q What is the significance of Gorayeb & Associates in  
16 entering that info into the intake form?

17 A So that's under a thing that says "doctor, lawyer or  
18 other," and that's who we can send medical records to if ask.

19 We have to be very careful with HIPAA violation,  
20 meaning sending medical records to unauthorized people, so that  
21 just indicates whose attorney is, they usually ask us for  
22 medical records.

23 Q Doctor --

24 A If we are referred to by a doctor, same thing goes  
25 there.

1 Q Is that intake form a HIPAA authorization?

2 A No, it is not.

3 Q Was Mr. Abreu Perez accompanied by anyone when he  
4 presented to your office for the first time?

5 A Not that I recall.

6 Q Did he personally fill that document out?

7 A I don't know the answer to that. Some of it looks like  
8 it was filled out by my office which would be the pharmacy  
9 information. The rest of it looks consistent like handwriting I  
10 don't recognize.

11 Q Did the Plaintiff's legal representation, whoever that  
12 might be, fill that form out?

13 A Not that I know of.

14 Q But you don't know?

15 MR. KELLY: Objection.

16 THE COURT: Overruled.

17 Q You can't say one way or another at this point?

18 A I would have no way of knowing.

19 Q I would like to direct your attention to some of your  
20 reports in the file.

21 A Sure.

22 Q Do you have a 2018 narrative report that's included in  
23 there?

24 A Okay.

25 Q I think you have September 4, 2018.

1 A Yes.

2 Q Just put that to the side for a second.

3 You also have a 2021 narrative report in there?

4 A Yes.

5 Q You have them there?

6 A Yes.

7 Q What does the 2018 report say about the first day Mr.  
8 Roberto Abreu Perez weren't to your order?

9 A It says he was seen for orthopedic reevaluation on  
10 September 4, 2018, for injuries sustained in an work-related  
11 accident of June 27, 2017, he had a fall from a height, while  
12 working.

13 Q What does it say about the first time he presented to  
14 the office, does it have a date in there about his initial date?

15 A Let's see, it looks like 7/25/17.

16 Q Is that consistent with your intake form?

17 A Yes.

18 Q Can you take a look at the 2021 report, please.

19 A 2021, okay.

20 Q What is the date of the initial presentation of  
21 Mr. Roberto Abreu Perez as documented in that report?

22 A It says he was initially treated on 8/8/17, that's  
23 clearly a typographical error I missed.

24 Q So that's a typo in your report?

25 A I believe so, it's not accurate.

1 Q It's not accurate, right.

2 So which date was correct, where was the typo, which  
3 date is correct?

4 A I think you're trying to confuse me and so just spell  
5 it out for me.

6 Q Sure.

7 A I said the 8/8/17 was a typo.

8 Q Okay. Got it, that's all?

9 A And every other note indicates the correct date.

10 Q So the correct date would be July 25, 2017?

11 A I believe so.

12 Q Did you ever communicate with Mr. Roberto Abreu Perez  
13 before he first presented to your office?

14 A Not that I recall.

15 Q Did you ever communicate with any of his legal  
16 representatives before he presented to your office?

17 A Definitely not.

18 Q Were you treating Mr. Roberto Abreu Perez as of  
19 July 13, 2017?

20 A No.

21 Q Are you sure about that?

22 A Before the first day I saw him?

23 Q Yes.

24 A I don't believe I was.

25 Q Has it ever happened that you would be identified as

1 treating someone before you actually see them?

2 A I don't identify myself as treating someone before  
3 seeing them, I don't know what you're asking me.

4 Q Sure?

5 MR. FRITTOLA: I have a document I would like to  
6 mark for identification, Judge.

7 MR. KELLY: Objection, we're going to need to  
8 approach on this.

9 THE COURT: It is for identification.

10 MR. KELLY: Sorry?

11 THE COURT: It's for identification.

12 MR. KELLY: I'm aware of that.

13 THE COURT: We can step outside.

14 (Whereupon, an off the record bench discussion was  
15 held.)

16 MR. ALVARADO: That B.

17 MR. FRITTOLA: Yes, B.

18 THE COURT: Defendant's Exhibit B for  
19 identification. Counsel, you may continue.

20 Q Dr. Kaplan, if there's a document that indicates that  
21 you were treating Mr. Roberto Abreu Perez as of July 13, 2017,  
22 would you agree that document is false?

23 A I was not treating him at that time.

24 MR. FRITTOLA: Can I ask you to hand it to the  
25 witness.



1 COURT OFFICER: (Hanging.)

2 Q Do not read this document at all, it's marked for  
3 identification, I'm going to ask you a specific question.

4 A Yes.

5 Q I will direct your attention to the second page of that  
6 document.

7 A (Witness complies.)

8 Okay.

9 Q Dr. Kaplan, does that document refresh your  
10 recollection as to whether or not you were treating Mr. Roberto  
11 Abreu Perez, as of July 13, 2017?

12 A I was not.

13 Q So if there's a document that indicates that your were,  
14 that document is false; correct?

15 MR. KELLY: Objection.

16 THE COURT: Overruled.

17 A I don't know this document, but I was not treating him.

18 Q I'm asking about a hypothetical document.

19 MR. KELLY: Objection.

20 A I told you I wasn't treating him.

21 Q You weren't treating him at that time?

22 A Right.

23 Q Were you referred this case, the care of the Plaintiff,  
24 by his lawyers?

25 A I don't know the answer to that, but that would not be

1 unusual if someone has, if Mr. Abreu said that's the way it  
2 went, probably went that way.

3 Q It's possible that a law firm assigned the case to you  
4 before Mr. Roberto Abreu Perez set foot in your office?

5 MR. KELLY: Objection.

6 THE COURT: Overruled.

7 A I don't know what you mean by being "assigned." If  
8 they referred a case to me, people refer cases to me.

9 Q So the Plaintiff, is it correct to say, it's possible,  
10 you don't know, one way or the other; is that what you're  
11 saying?

12 MR. KELLY: Objection.

13 THE COURT: Overruled.

14 Q You can't say where the referral came from?

15 A Right, I don't know where he was referred to from,  
16 right.

17 Q Often times, what happens, you're referred cases by law  
18 firms?

19 A I am referred cases by law firms, yes, part of  
20 orthopedics.

21 Q So it's very possible that in this case, you were  
22 earmarked by the Plaintiff's lawyers to be in charge of his  
23 orthopedic care; is that correct?

24 MR. KELLY: Objection.

25 THE COURT: Sustained, rephrase.

1           Q     How often do lawyers pick the doctors for their  
2 patients?

3           A     Not that they're picking the doctors for the patients,  
4 they are referring them to me. I often will see a patient and  
5 say I can't take care of this patient, but it's part of the  
6 orthopedic surgery.

7                     I treat people who are injured some of them end up in  
8 lawsuits and often times, an attorney will help the patient find  
9 a doctor, they've had experience with that, so it happens.

10          Q     Does the law firm get compensated for the referral?

11          A     Do I compensate them?

12          Q     Yes. Do you compensate them?

13          A     No.

14          Q     Have you ever paid money to Gorayeb & Associates for a  
15 referral?

16          A     Never.

17          Q     When a patient comes to you, you do an initial  
18 interview with the patient; is that correct?

19          A     I take a history, yeah.

20          Q     At in that history you rely on the patient to be  
21 truthful to you?

22          A     Yes, that and the medical record.

23          Q     What did you say, the last thing?

24          A     That and the medical record.

25          Q     So you take a history from every single patient that

1 comes to your office?

2 A Initial history, yes.

3 Q You would agree that initial history is critical to  
4 your assessment of a prospective injury?

5 A It's certainly helpful.

6 Q The history is essentially the mechanism of injury; is  
7 that correct?

8 A The history is how a patient got hurt, what happened  
9 after that, what they're still having problems with.

10 Q So you kind of explained it, why is that important?

11 A Helps me get oriented to the patient, decide whether  
12 what he's complaining about makes sense with how he got hurt,  
13 whether things are new or old, things like that.

14 Q What was the history provided by Mr. Roberto Abreu  
15 Perez?

16 A He indicated that he had an injury at work, and let's  
17 see, that he sustained, that he sustained a fall from a ladder,  
18 striking an iron beam and falling to the floor.

19 Q What did he say about the height of the fall?

20 A I didn't ask him the height of the fall. Often, people  
21 who fall don't really know the exact height.

22 Q You made an assessment about trauma he may or may not  
23 have sustained; correct?

24 A Yes.

25 Q But you don't know how far he fell from?

1           A     The fact is he had a fall from a ladder, so you can get  
2 injuries from that, and --

3           Q     Would you agree, doctor, would you agree there's a  
4 difference between a two-foot fall and 20-foot fall?

5           A     Yes, and I would expect different types of injuries.

6           Q     Yes, that makes sense; right?

7           A     Yes.

8           Q     In certain instances the height of a fall is material,  
9 it's important to you; correct?

10          A     It can be. Again, there are certain instances where it  
11 is, certain instances where it really doesn't make a difference.  
12 I have seen people fall from a standing position and fracture a  
13 rib.

14                   MR. ALVARADO: Judge, could I just have the witness  
15 speak into the microphone, use those pipes.

16                   THE WITNESS: You got it.

17          Q     What was the height of the fall that Mr. Roberto Abreu  
18 Perez fell from?

19          A     I don't recall.

20          Q     Do you have anything in your medical file that would  
21 suggest it was 15 feet?

22          A     I've seen, as I recall, I went through the  
23 medical record the other day, it was reported, I think four to  
24 six feet, at one place it was recorded 15 to 20 feet, maybe, so  
25 it's different, and that's the reason I don't often put it in.

1 Q So there are varying narratives that you reviewed in  
2 connection with your assessment here?

3 A Yeah.

4 Q One says that he fell six feet you said?

5 A These are not things that I wrote down, these are  
6 things that were noted, and again, I wasn't there for those, I  
7 didn't note them, it's hard to know what was said, it's hard to  
8 know what was interpreted, I don't pay a lot of attention to  
9 that, unless it's significant.

10 In this case he had a fall from a height, he had  
11 appropriate injuries, rib fractures in this case, injury to the  
12 neck and low back, and that's where we went.

13 Q What did the ambulance call report say about how high  
14 he fell from?

15 A I don't recall, which one that was?

16 Q It's in evidence.

17 A Let's look at it.

18 Q Can we pull up New York Presbyterian records, they are,  
19 we have, hold on a second, just a second, Brian.

20 MR. FRITTOLA: Your Honor, can I ask that we put  
21 the New York Presbyterian records that are in evidence and  
22 included with that is the ambulance call report.

23 THE COURT: Sure, you want to show it on the  
24 screen?

25 MR. FRITTOLA: Because it hasn't been redacted and

1        maybe things that should be redacted in there, I'm going to  
2        ask that we show it to the witness.

3                THE COURT:    Okay, you can show it to the witness.

4                COURT OFFICER:    (Hanging.)

5                THE COURT:    Let the record reflect the document is  
6        in evidence subject to redaction.

7        Q        Doctor, do you see a narrative about how high Mr.  
8 Roberto Abreu Perez fell from?

9        A        This one indicates from approximately six feet.

10       Q        Okay.    So ambulance call report would be EMT's that  
11 showed up on the scene; correct?

12       A        Usually, yes.

13       Q        Is there an indication in there, the patient states, is  
14 there an indicia of reliability there?

15       A        A what?

16       Q        Is there an indication of reliability, does it  
17 attribute the height of the fall to the patient?

18       A        It says "patient was lying supine on a board.    He  
19 states that he walked, fell from a ladder at work from  
20 approximately six-foot height, hitting his stomach and right  
21 side against equipment."

22       Q        Thank you, doctor.

23                You have no direct knowledge to dispute that narrative  
24 that he fell six feet?

25       A        That's correct.

1           Q     Would you agree that a 15-foot fall is different from a  
2 six-foot fall in terms of the fall or the kinetic energy that a  
3 body experiences; just yes or no?

4           A     It is not a yes-or-no question.

5           Q     Would you agree there's a difference between 15 feet  
6 and six feet?

7           A     That for sure.

8           Q     Would you agree there's a difference in the force,  
9 that's applied to a body depending on the difference, you know,  
10 depending on the actual number; correct?

11          A     No, that's a portion of the formula.

12          Q     Okay.

13          A     Hence, if he's holding on to the ladder, depends if he  
14 had a free fall, depends how much clothing he was wearing,  
15 things like that, there are so many factors that can be factored  
16 into this, and all of those things affect it.

17          Q     Did you get those factors to Mr. Abreu Perez?

18          A     No, no, I'm just worried about treating his injuries  
19 that he's complaining about, that's my -- what I'm asked to do.

20          Q     Doctor, you came up here and you talked about the cause  
21 of those injuries, didn't you; yes or no, didn't you say?

22          A     What they were caused by absolutely, what they were  
23 caused by. I believe they were caused by the fall, because  
24 that's when he started having symptoms.

25          Q     Correct.



1           A     So then I treat those symptoms.

2           Q     But you didn't have all of the information about the  
3 fall when you made that assessment; correct, when you made that  
4 assessment, you can't say for sure what the height of the fall  
5 was; correct?

6           A     I don't care what the height of the fall is --

7           Q     I'm not asking if you care or not.

8                     MR. KELLY:  Objection, in the middle of an answer,  
9 Judge.

10                    THE COURT:  Overruled.

11                    THE WITNESS:  May I answer that question?

12                    THE COURT:  I don't think -- ask the question.

13           Q     Dr. Kaplan, when you made the assessment, you did not  
14 have all of the information about the height of the fall; is  
15 that correct?

16           A     I don't recall what the specific conversation was.  
17 What I put down was what I thought was important, I had the  
18 hospital record eventually, so I knew about what the fall was,  
19 someone between six and 15 feet, I still think he had symptoms  
20 that began at the time of the fall, and that's what I'm  
21 treating.

22           Q     You said you didn't ask him what the height of the fall  
23 was; correct?

24           A     I don't recall.

25           Q     You said --

1           A     I don't recall what I -- whether I asked him or not,  
2     that's what I said, I certainly didn't put it in his note, which  
3     is what I think you asked me.

4           Q     In your June 2021 report, you made an opinion that  
5     there was a severe and permanent disability; is that correct?

6           A     Yes.

7           Q     You noted in that report that he had difficulties  
8     sitting and standing for long periods of time?

9           A     That's correct.

10          Q     Did he tell you that he was driving for Uber at that  
11     time?

12          A     I don't recall, that was five years ago.

13          Q     That's not in your report?

14          A     It's not in my report.

15          Q     Did you ask him if he was working?

16          A     I would have likely asked him if he was working, but I  
17     did not put it in my report.

18          Q     So you made an assessment about his disability?

19          A     Yes.

20          Q     But you didn't even ask him if he was working?

21          A     That's not going to affect his disability, he still has  
22     a disability, a lot of people work with disability. This is a  
23     partial disability not a permanent, not a full disability, not  
24     100 percent disability.

25          Q     Do you think someone's activities of daily living are

1 relevant to determine their level of disability; yes or no?

2 A I think --

3 Q Yes or no, doctor?

4 THE COURT: Yes or no?

5 A I don't think that's a yes-or-no question.

6 Q I'm asking you for a yes or no.

7 MR. KELLY: He said he can't answer it yes or no.

8 A I can't answer it then.

9 THE COURT: Overruled.

10 Q Is someone's activities of daily living relevant to  
11 their degree of disability; yes or no?

12 A That's not a yes-or-no question.

13 Q Is someone's ability to work relevant to their degree  
14 of disability; yes or no?

15 A Again, that's not a yes-or-no question.

16 Q Is the amount of time that someone spends working  
17 relevant to someone's disability assessment?

18 A Again, it's not a yes-or-no question, you're leaving  
19 out too many factors.

20 Q So in this scenario, that 2021 report, you made an  
21 assessment about the level of disability?

22 A That's right.

23 Q Your record doesn't say anything about how much he  
24 worked; correct?

25 A That's correct.

1           Q     Your record doesn't say anything about what his  
2 activities of daily living were; is that correct?

3           A     Let's see, that's correct.

4           Q     You rely on patients to give you accurate information  
5 when you make an assessment?

6           A     I do.

7           Q     Did you ask him if he was working; yes or no?

8           A     Again, that's not a yes-or-no question, I answered that  
9 question, that was five years ago, and I don't recall whether I  
10 asked him or not.

11          Q     Hypothetically, in 2019 he drove nearly 20,000 miles  
12 for work for Uber; is that something you think would be  
13 relevant, something you would consider about his degree of  
14 disability?

15          A     I think he has --

16          Q     Just yes or no?

17          A     Well --

18          Q     It's a yes or no.

19                 MR. KELLY: You didn't phrase it yes or no.

20                 MR. FRITTOLA: I did.

21                 MR. KELLY: You can't just --

22                 THE COURT: Overruled, you can answer the question.

23                 MR. FRITTOLA: I will.

24          Q     It's a yes-or-no question, doctor.

25          A     I don't know what to do here.

1 THE COURT: You can answer.

2 THE WITNESS: Do I have to answer yes or no?

3 THE COURT: If you can.

4 THE WITNESS: I don't know, can you read the  
5 question back?

6 Q I will just ask it again.

7 A Okay.

8 Q Hypothetically, if I told you that the Plaintiff drove  
9 over 20,000 miles in one year --

10 A Okay.

11 Q -- driving for Uber, is that something that you would  
12 think was relevant to your assessment of his disability; yes or  
13 no?

14 A It would not change what I said, which is that he has a  
15 permanent partial disability.

16 Q Doctor, please, it's a yes-or-no question, I didn't ask  
17 if it would change your analysis, it is yes or no, is it  
18 relevant?

19 A But the way you're asking it is not a yes or no in this  
20 context, that's you know, there are multiple questions. I can  
21 ask you a question and I can say it yes or no, and you wouldn't  
22 be able to answer it that way.

23 The man is not totally disabled, we've made that clear,  
24 he does --

25 Q Doctor, doctor, I have to stop there --

1           A     He has a permanent --

2           Q     Because that's not what it says in your report, please,  
3 where do you say in your report he's partially disabled, your  
4 report from 2021, partially disabled?

5           A     I'm not obligated to say he's partially disabled.

6           Q     You're not obligated, but you have to be consistent,  
7 doctor.

8                     MR. KELLY:  Objection.

9                     THE COURT:  Overruled.

10          A     I'm consistent, he's still being treated at that point,  
11 correct, he's still being treated.

12          Q     Can you agree that you've now changed the narrative  
13 from a total disability to a partial disability now that you  
14 have all of facts?

15                     MR. KELLY:  Objection.

16          A     I never ever stated he's totally disabled.

17          Q     You didn't use the conditional --

18          A     Correct.

19          Q     So, you left the word "partially" out, so you didn't  
20 mean it; is that what you're saying?

21                     MR. KELLY:  Objection.

22                     THE COURT:  Overruled.

23          A     No, there's a difference between disabled and totally  
24 disabled.  I didn't say he was totally disabled.  He has a  
25 disability.

1 Q Would you agree with me in 2021, you didn't say he was  
2 partially disabled?

3 A I did not say he's partially disabled.

4 Q Thank you, that was the answer, that's a separate  
5 question.

6 A He has a severe disability, it doesn't say he has a  
7 total disability, right? There's a difference.

8 Q As an orthopedic surgeon, if someone drives 20,000  
9 miles in the course of their employees, is that consistent in  
10 your mind with a disability?

11 A Yes, he's disabled from certain things. I'm not a  
12 lawyer you, and so you and I are speaking different languages.  
13 He has a disability, he injured his back in a permanent way. He  
14 cannot do construction work in my opinion, there are lots of  
15 things he can't do.

16 Q Thank you, doctor.

17 A Driving is essentially --

18 MR. FRITTOLA: Objection.

19 THE WITNESS: I can't finish my answer?

20 THE COURT: No.

21 Q It's not responsive to the question.

22 So the assessment of a disability, does that have  
23 anything to do with whether or not someone can hold down a job?

24 A No.

25 Q Entirely irrelevant?

1           A     Not in this context, that's right. I'm asked if he has  
2 a permanent disability related to the accident, and I believe he  
3 does.

4           Q     You also said he had difficulty sitting for extended  
5 periods of time?

6           A     Correct.

7           Q     You have no idea when you made that assessment how much  
8 time he had spent in the car driving for Uber?

9           A     I don't know when he stops, when he gets up, when he  
10 sits down, I don't know, I don't -- I'm not opining that. I'm  
11 opining he has a partial disability which is severe.

12          Q     You said he has an inability to sit for a period of  
13 time, is that part of your assessment?

14          A     That's what he told me.

15          Q     Wouldn't you agree someone who drove over 20,000 miles  
16 or close to 20,000 in one year doesn't have an inability to sit  
17 for an extended period of time; would you agree with that?

18          A     Again, he can stand, he can stop, he can walk around.  
19 He's certainly sitting in the car a long time, but in what  
20 increments, you don't know that.

21          Q     You said he has a sitting tolerance of 20 minutes?

22          A     I don't recall if that's what my notes said, sure.

23          Q     Did you do anything to independently verify that, did  
24 you ask for any documentation for that?

25          A     Documentation, that's not part of my treatment, I asked



1 him.

2 Q So if a patient comes to you and makes a representation  
3 about their ability to work or not, do you just follow it  
4 blindly?

5 A Blindly? I'm not sure what you mean.

6 Q If someone comes to you and says I'm not working, do  
7 you just take their word for it or do you ask them to confirm  
8 that before you make a determination that they're actually  
9 disabled?

10 A My disability is not based on whether or not they're  
11 working like this. My disability is based on if he has an  
12 injury that's permanent, and what I know about that injury.

13 So I do tend to believe my patients, absolutely, unless  
14 there's something egregious, I don't usually ask them for  
15 independent thing, I don't know if you have you ever had a  
16 doctor ask you that, it's not part of medicine.

17 Q Doctor, Dr. Kaplan, would you agree your assessment is  
18 only as good as the information provided to you by the patient?

19 A As far as whether he's working or not, yes.

20 Q So if a patient misrepresents to you their physical  
21 activities, their ability to do things on a day-to-day basis,  
22 would you agree that undermines your opinion?

23 A It can certainly affect my opinion, absolutely, sure.

24 Q If a patient makes a misrepresentation to you, it  
25 compromises your opinion, or it could, depending --

1 MR. KELLY: Objection, Judge, this is the fifth  
2 time he's trying to push it over the barrel.

3 A It can compromise a portion of my opinion, it will not  
4 affect whether he has a disability, based on his injuries and  
5 treatments.

6 THE COURT: Overruled.

7 Q Did you communicate with his law firm in the course of  
8 your treatment?

9 A No.

10 Q Did they make any representations to you about his  
11 ability to work?

12 A Not that I recall.

13 Q Possibly?

14 MR. KELLY: Objection.

15 A I mean that would be very unusual, I think I would  
16 recall it.

17 Q Am I correct you're distinguishing the disability based  
18 off of employment versus a disability from something else?

19 A Yes, he has a disability, and I'm not sure what you're  
20 asking, let me try, cut me off like you have been, if you don't  
21 understand me.

22 Q I can rephrase the question if it's confusing. I don't  
23 want to confuse you.

24 A Yeah, sure. He does have a disability, he has a back  
25 injury and neck injury that are permanent, that have permanent

1 consequences that will affect his ability to work but what I'm  
2 asked, does he have a permanent disability, yes, he does.

3 Q In 2021, when you made the assessment, what was he  
4 disabled from?

5 A Construction work, from heavy lifting, things that  
6 caused him significant amount of pain or damage to the spine.

7 Q But not from other forms of employment?

8 A Certain forms of employment, sure.

9 Q You ultimately made the recommendation for him to see a  
10 surgeon?

11 A Yes, I believe my recommendation was to Dr. Grimm, and  
12 I believe Dr. Grimm sent him to a surgeon.

13 Q Okay. Was your recommendation either to Dr. Grimm or  
14 just general assessment of the case, based off of the  
15 conservative treatment schedule he went through?

16 A Yes, after having physical therapy and injections and  
17 things, yeah.

18 Q I want to be clear, Dr. Grimm performed the injections;  
19 is that correct?

20 A I believe so, yeah.

21 Q So before there was a referral to Dr. Grimm, was there  
22 an assessment of the success or failure of his conservative  
23 treatment?

24 A You would have to ask Dr. Grimm that.

25 Q You recommended him to Dr. Grimm; correct?

1 A Yeah.

2 Q So before you recommended him to Dr. Grimm, did you  
3 make an assessment of the recommendations or failure of his  
4 conservative treatment?

5 A No, it was early on, I usually try to get them to the  
6 pain management guy pretty early so they can get started.

7 Q Did he do physical therapy?

8 A I believe he did, yeah.

9 Q Where?

10 A I don't know, I don't recall.

11 Q Do you have a physical therapy office in your facility,  
12 New York Sports Ortho?

13 A We do.

14 Q You don't know if the patient did physical therapy?

15 A I don't recall, I believe he did, my recollection is he  
16 did.

17 Q So can you tell me how much physical therapy he did --

18 A No.

19 Q -- in the year 2018?

20 A No.

21 Q How about the year 2019?

22 A I don't have that record with me, I don't know.

23 Q What was the result of the physical therapy?

24 A He had continued symptoms of neck and back pain. I can  
25 tell you that, he eventually had additional treatments, and the

1 ribs got better.

2 Q Okay. So he had a surgery in 2023; correct?

3 A Yes, I believe so.

4 Q When was last time he did physical therapy before that  
5 surgery?

6 A I wasn't treating him for that, I don't know.

7 Q Your assessment is that conservative treatment failed;  
8 is that correct, that was part of your assessment in this case?

9 A That's based on the fact he eventually had surgery  
10 based on doing some conservative treatment, requests were made  
11 for surgery to be done, those requests were approved and surgery  
12 was done.

13 Q What was the extent of the conservative treatment?

14 A It would have been the standard, which is usually some  
15 physical therapy, some injections, some oral medications, and  
16 time.

17 Q How much physical therapy did he have?

18 A You would have to ask the doctors who were treating  
19 specifically the back and neck and recommending additional  
20 treatment. I don't have the treatment, I was treating primarily  
21 his ribs and following along as necessary.

22 Q You noted in your report, it says "extensive  
23 conservative treatment"; right?

24 A Right.

25 Q How much physical therapy did he have?

1           A     "Extensive" simply means he has done the appropriate  
2 amounts and that surgery was recommended by another physician,  
3 surgery was approved by an authorizing entity, and everyone felt  
4 it was appropriate and it was done.

5           Q     You said "the appropriate amount," what is the  
6 appropriate amount, I'm not getting it?

7           A     I don't have an answer for you. It's something up to  
8 the authorizing board, authorizing entity and the doctors  
9 treating him and recommending the surgery.

10          Q     So I'm correct to say you can't make an assessment  
11 whether the conservative treatment failed, you don't know the  
12 appropriate amount of conservative treatment necessary for the  
13 patient at the time; correct?

14          A     You're asking me what I consider a question that  
15 doesn't follow up. He would not have had surgery approved if  
16 conservative treatment did not fail, there's a system.

17          Q     Okay, you didn't make an assessment about that; right,  
18 is that what you're saying?

19          A     I didn't recommend surgery, that was not my call.

20          Q     When you saw him between 2018 and 2021, did he tell you  
21 that he was actively doing physical therapy?

22          A     At times, yes.

23          Q     When?

24          A     I don't recall. I mean it's in my notes. You want me  
25 to go through every one of my notes?

1 Q I want to know if he told you the truth, doctor?

2 MR. KELLY: Objection.

3 Q Did he tell you he was doing physical therapy when he  
4 was not?

5 MR. KELLY: Objection.

6 THE COURT: You can answer.

7 THE WITNESS: Answer.

8 A Let's see, what were the dates that you asked me, sir?

9 Q Any time between 2018 and 2021, when you had that 2021  
10 report.

11 A Let's see, looks like I was primarily treating him for  
12 other things, he had elbow pain at one time, he had shoulder  
13 pain at one time, so the topic of therapy to those we didn't  
14 even recommend therapy for that, let's see --

15 Q Let me ask you a quick question. We may be able to  
16 streamline this.

17 A Okay.

18 Q Your direct testimony you said from the initial time  
19 you treated him from say 2017 and 2021, then it was 2025 after  
20 that?

21 A That's right.

22 Q You said he was diligent doing conservative treatment?

23 A That's right.

24 Q You don't actually know, you don't know the dates that  
25 he did conservative treatment?

1           A     I know he that.

2           Q     Physical therapy?

3           A     Well, physical therapy isn't the only conservative  
4 treatment.

5           Q     Well, I'm just talking about physical therapy.

6           A     Well, then you and I --

7           Q     Am I correct?

8           A     -- are speaking different languages.

9           Q     Let me clarify, am I correct, as you sit here now, you  
10 can't say whether or not he was diligent doing physical therapy  
11 between 2018 and 2021?

12          A     What I would say to you is he followed recommendations  
13 of the authorizing entity, he followed recommendations of his  
14 surgeons. I don't have the exact dates, you're absolutely right  
15 in pointing that out, I don't have the exact dates. I wasn't  
16 his primary treater, so I don't have it, but the primary treater  
17 followed the rules, did the appropriate treatment that are  
18 outlined, what are called guidelines, by an authorizing entity,  
19 the authorizing entity agreed with that and eventually  
20 authorized surgery.

21                   So from what I can tell going over the notes, he did  
22 what he was supposed to do.

23          Q     But you don't know what the appropriate timeframe for  
24 physical therapy for the Plaintiff in this case was; correct,  
25 just yes or no?



1           A     I wasn't treating that primarily, so he, it seems  
2 appropriate to me, do I have a number, no.

3           Q     What seems appropriate, you don't even know how much he  
4 did, doctor?

5           A     I know that it was authorized, I know that it was  
6 requested, I know that it was approved.

7           Q     That's not what I'm asking.

8           A     But that's the realty.

9           Q     Doctor, doctor?

10          A     You're asking me the same, sir.

11          Q     Finish your response.

12          A     You're asking me the same question over and over and  
13 you, and I again, you're speaking as a lawyer, I'm speaking as a  
14 doctor who treats patient. Did he do appropriate treatment? It  
15 seems to me he did.

16          Q     Okay, but you don't know what that entails, how many  
17 months of physical therapy, how many days per week of physical  
18 therapy; yes or no, you don't know?

19          A     I said that I don't know.

20                   MR. KELLY: Objection.

21          Q     Okay, that's fine.

22          A     Yeah, but I said that three times, I mean.

23                   THE COURT: How much time?

24                   MR. FRITTOLA: About another half-hour.

25                   MR. KELLY: Geez.

## Proceedings

1 THE COURT: Members of the jury, we're going to  
2 break here for today, you have to come in tomorrow morning.  
3 Wednesday morning you do not have to be here, I will ask you  
4 to return to the courthouse tomorrow at 2:30 in the  
5 afternoon.

6 COURT OFFICER: All rise, jury exiting.

7 (Whereupon, the jury exited the courtroom.)

8 THE COURT: Mr. Kelly, what is your schedule for  
9 tomorrow?

10 MR. KELLY: Tomorrow is Dr. Grimm and Dr. Goldman  
11 and now Dr. Kaplan, but now we have three people.

12 THE WITNESS: I'm not here tomorrow, I can be here  
13 in the morning, but I can't be here in the afternoon.

14 MR. KELLY: Okay. We have Dr. Grimm and  
15 Dr. Goldman tomorrow afternoon.

16 MR. ALVARADO: Thursday morning maybe?

17 THE WITNESS: No, tomorrow morning is not, that's  
18 why.

19 THE COURT: No.

20 MR. ALVARADO: Friday morning?

21 THE COURT: I have a calendar.

22 THE WITNESS: I have a full calendar.

23 THE COURT: When is the next day you can be in  
24 court?

25 THE WITNESS: I can do Friday afternoon, next

## Proceedings

1 Monday morning.

2 THE COURT: Friday afternoon.

3 MR. KELLY: That's fine.

4 THE COURT: Friday afternoon.

5 THE WITNESS: You got it.

6 THE COURT: 2:30 Friday.

7 MR. ALVARADO: 2:30 Friday.

8 THE COURT: Thank you, doctor.

9 (Whereupon Dr. Kaplan exited the witness stand).

10 THE COURT: Mr. Kelly, you said Grimm and  
11 Weinstein.

12 MR. KELLY: Grimm and Goldman.

13 MR. JOHNSON: Your Honor, can we mark the pretrial  
14 motions in limine as Court exhibits, just for the record, do  
15 you mind?

16 THE COURT: They're in evidence.

17 MR. JOHNSON: We don't need to mark them?

18 THE COURT: They're in evidence.

19 MR. KELLY: What happened?

20 THE COURT: Counsel requested the pretrial motions  
21 to be marked in evidence.

22 MR. JOHNSON: No, just as Court exhibits.

23 THE COURT: Oh, Court exhibits?

24 MR. JOHNSON: Yes. For the record, is that cool?

25 THE COURT: That's fine. Tomorrow afternoon.

## Proceedings

1 MR. JOHNSON: We will do it tomorrow afternoon,  
2 that's fine.

3 (Whereupon, the trial was adjourned to January 21,  
4 2026, at 2:30.)

5 \*\*\*\*\*  
6 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL  
7 MINUTES TAKEN OF THIS PROCEEDING.

8 *Laura Delvac*  
9 \_\_\_\_\_  
10 LAURA DELVAC  
11 SENIOR COURT REPORTER  
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<b>\$12,000</b> [2] - 211:6, 220:20 <b>\$20,000</b> [1] - 211:6 <b>\$33,333</b> [1] - 271:5 <b>\$500</b> [2] - 211:15, 221:1 <b>'17</b> [1] - 228:4 <b>'18</b> [2] - 228:4, 287:23 <b>'19</b> [1] - 287:23 <b>'20</b> [2] - 228:4, 287:23 <b>'21</b> [1] - 287:23 <b>'79</b> [1] - 176:2 <b>1</b> [6] - 194:18, 194:21, 194:24, 194:25, 207:25, 208:17 <b>1/24/20</b> [1] - 260:24 <b>10/23/19</b> [1] - 260:5 <b>100</b> [7] - 171:22, 172:4, 178:16, 220:5, 221:7, 241:15, 315:24 <b>10001</b> [1] - 175:9 <b>10005</b> [1] - 172:4 <b>10022</b> [1] - 277:10 <b>10038</b> [1] - 171:23 <b>106</b> [1] - 217:13 <b>1099</b> [1] - 231:5 <b>11</b> [1] - 174:13 <b>11201</b> [1] - 171:15 <b>113</b> [1] - 171:1 <b>11361</b> [1] - 172:10 <b>116</b> [3] - 171:6, 171:8, 172:3 <b>116th</b> [3] - 173:2, 173:9, 173:12 <b>11797</b> [1] - 172:14 <b>12/1/2022</b> [1] - 262:8 <b>12/1/22</b> [2] - 262:2, 263:4 <b>120</b> [1] - 271:2 <b>1205</b> [1] - 171:22 <b>13</b> [3] - 304:19, 305:21, 306:11 <b>13th</b> [1] - 197:23 <b>140</b> [1] - 172:13 <b>15</b> [6] - 201:7, 283:18, 310:21, 310:24, 313:5, 314:19 <b>15-foot</b> [1] - 313:1 <b>16</b> [1] - 174:13 <b>160</b> [1] - 277:9 <b>17,000</b> [1] - 177:10 <b>176</b> [6] - 171:6, 171:8, 172:3, 173:2, 173:8, 173:12 <b>178</b> [3] - 171:11, 172:9, 173:15 <b>18</b> [1] - 235:11 <b>19</b> [1] - 183:21	<b>1983</b> [1] - 176:3 <b>1990</b> [2] - 176:9, 176:10 <b>1994</b> [1] - 278:7 <b>1st</b> [3] - 193:23, 196:21, 262:4 <b>2</b> [3] - 187:4, 204:19, 221:23 <b>2-3</b> [1] - 256:1 <b>2.003</b> [1] - 270:25 <b>2/3/22</b> [1] - 195:19 <b>20</b> [17] - 171:16, 182:5, 186:10, 186:11, 189:13, 189:24, 190:2, 194:13, 194:17, 211:16, 230:20, 236:16, 239:2, 272:8, 310:24, 321:21 <b>20,000</b> [5] - 317:11, 318:9, 320:8, 321:15, 321:16 <b>20-foot</b> [1] - 310:4 <b>2000</b> [1] - 228:4 <b>2006</b> [1] - 213:9 <b>2012</b> [1] - 173:2 <b>2017</b> [28] - 182:5, 182:8, 186:10, 186:11, 186:15, 189:13, 204:9, 205:12, 205:22, 207:19, 232:7, 236:11, 236:16, 236:17, 236:20, 239:2, 244:9, 261:10, 287:23, 288:19, 294:25, 295:6, 303:11, 304:10, 304:19, 305:21, 306:11, 328:19 <b>2018</b> [10] - 217:18, 258:25, 302:22, 302:25, 303:7, 303:10, 325:19, 327:20, 328:9, 329:11 <b>2019</b> [2] - 317:11, 325:21 <b>2020</b> [1] - 207:18 <b>2021</b> [19] - 184:25, 193:23, 194:7, 194:21, 194:24, 194:25, 303:3, 303:18, 303:19, 315:4, 316:20, 319:4, 320:1, 324:3, 327:20, 328:9, 328:19, 329:11 <b>2022</b> [20] - 191:7,	192:2, 193:10, 193:13, 194:5, 194:6, 194:18, 194:19, 194:20, 196:21, 196:22, 198:22, 200:25, 201:9, 208:5, 208:17, 240:4, 262:4, 262:18, 263:3 <b>2023</b> [8] - 194:13, 194:17, 210:6, 210:7, 232:9, 232:11, 288:9, 326:2 <b>2024</b> [5] - 194:16, 201:3, 201:7, 201:22, 288:8 <b>2025</b> [5] - 287:24, 287:25, 288:2, 288:18, 328:19 <b>2026</b> [2] - 171:16, 333:4 <b>21</b> [6] - 203:14, 204:8, 246:4, 246:5, 333:3 <b>22</b> [1] - 206:13 <b>23</b> [1] - 207:21 <b>24</b> [4] - 194:16, 208:16, 208:21, 209:22 <b>240</b> [2] - 253:23, 254:17 <b>25</b> [7] - 203:19, 203:20, 203:21, 210:9, 210:10, 235:15, 304:10 <b>26</b> [2] - 210:5, 210:10 <b>26th</b> [1] - 236:10 <b>27</b> [4] - 236:20, 263:3, 294:25, 303:11 <b>27,000</b> [2] - 177:9, 177:20 <b>27th</b> [4] - 236:11, 262:18, 288:19, 295:6 <b>29</b> [6] - 182:8, 204:8, 205:21, 236:17, 244:9, 258:25 <b>29th</b> [1] - 244:8 <b>2:30</b> [6] - 252:4, 252:13, 331:4, 332:6, 332:7, 333:4 <b>2nd</b> [1] - 172:9 <b>3</b> [13] - 185:13, 187:4, 191:7, 192:2, 193:10, 193:13, 194:6, 194:19, 194:20, 198:22, 204:19, 204:20 <b>3-4</b> [1] - 256:1 <b>3/29</b> [2] - 251:1, 251:2 <b>3/29/18</b> [2] - 250:9,	258:22 <b>3/29/2018</b> [3] - 248:24, 249:3, 251:23 <b>3/4/25</b> [1] - 288:15 <b>30</b> [15] - 193:8, 219:7, 219:8, 219:9, 219:10, 219:21, 221:9, 221:18, 230:20, 230:24, 270:24, 271:2, 271:5, 283:19, 291:21 <b>3101</b> [4] - 192:3, 192:18, 199:12, 268:13 <b>34</b> [3] - 219:9, 219:10, 219:22 <b>34th</b> [1] - 175:8 <b>35</b> [1] - 179:22 <b>360</b> [1] - 171:15 <b>37</b> [1] - 175:8 <b>3D</b> [1] - 213:9 <b>3rd</b> [1] - 196:22 <b>4</b> [7] - 185:13, 187:4, 204:20, 207:24, 302:25, 303:10 <b>4-5</b> [2] - 204:25, 256:1 <b>40</b> [3] - 212:20, 224:6, 226:22 <b>40-21</b> [1] - 172:9 <b>44</b> [1] - 201:20 <b>44-years-old</b> [1] - 287:1 <b>45</b> [3] - 212:20, 283:17, 283:19 <b>45-year-old</b> [2] - 242:14, 242:16 <b>5</b> [6] - 185:13, 187:4, 207:24, 207:25 <b>5-1</b> [1] - 204:25 <b>5-6</b> [1] - 256:1 <b>50</b> [1] - 220:3 <b>500</b> [1] - 221:9 <b>51</b> [2] - 201:21 <b>511147</b> [1] - 232:6 <b>515104</b> [1] - 173:2 <b>515104/2017</b> [1] - 171:5 <b>55</b> [2] - 232:20, 235:11 <b>56th</b> [1] - 277:9 <b>6</b> [3] - 185:13, 187:4, 213:9 <b>6-7</b> [1] - 256:1 <b>6/27/17</b> [2] - 255:15, 281:2 <b>6/27/2017</b> [1] - 255:18 <b>6/8/21</b> [2] - 261:14, 261:18 <b>60</b> [3] - 271:2, 274:9, 283:15	<b>61</b> [4] - 224:1, 224:2, 226:19, 270:24 <b>61st</b> [1] - 217:13 <b>636</b> [1] - 213:9 <b>7</b> [3] - 185:13, 210:7, 281:1 <b>7/25/17</b> [2] - 281:1, 303:15 <b>7/29/17</b> [1] - 285:16 <b>7/29/2017</b> [1] - 246:1 <b>73</b> [1] - 201:20 <b>8/8/17</b> [2] - 303:22, 304:7 <b>85</b> [1] - 283:15 <b>8th</b> [2] - 232:9, 232:11 <b>9/20/2017</b> [2] - 239:7, 239:15 <b>90</b> [1] - 283:15 <b>900</b> [2] - 211:14, 220:25 <b>99</b> [2] - 220:14, 220:18 <b>ability</b> [7] - 199:19, 293:19, 316:13, 322:3, 322:21, 323:11, 324:1 <b>able</b> [4] - 185:15, 282:16, 318:22, 328:15 <b>abnormal</b> [2] - 248:20, 270:17 <b>abnormalities</b> [2] - 279:15, 279:16 <b>abnormality</b> [1] - 242:2 <b>Abreu</b> [76] - 173:2, 179:23, 180:11, 181:5, 181:11, 181:25, 182:9, 191:5, 200:12, 200:18, 201:11, 203:4, 207:8, 213:23, 222:6, 235:25, 236:13, 236:20, 236:24, 237:18, 238:4, 239:25, 244:21, 264:13, 274:10, 279:23, 280:3, 280:20, 281:1, 282:13, 282:19, 284:8, 284:16, 284:21, 285:2, 285:8, 285:23, 286:5, 287:1, 287:12, 287:16, 288:17, 289:1, 289:9, 289:13, 290:3, 290:7, 290:14, 290:22, 292:5, 292:10,
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<p>292:16, 292:20, 293:13, 293:23, 294:12, 294:21, 294:25, 295:6, 296:21, 297:11, 298:4, 299:3, 302:3, 303:8, 303:21, 304:12, 304:18, 305:21, 306:11, 307:1, 307:4, 309:14, 310:17, 312:8, 313:17</p> <p><b>ABREU</b> [1] - 171:3</p> <p><b>absolutely</b> [6] - 226:18, 291:21, 313:22, 322:13, 322:23, 329:14</p> <p><b>absorber</b> [2] - 202:8, 246:14</p> <p><b>absorbers</b> [3] - 185:18, 185:22, 186:21</p> <p><b>accepted</b> [1] - 288:24</p> <p><b>accident</b> [40] - 181:7, 236:6, 236:8, 240:4, 249:23, 254:3, 255:1, 256:12, 256:24, 261:9, 261:10, 262:18, 262:19, 263:3, 263:7, 285:5, 285:9, 286:9, 287:2, 288:18, 288:23, 288:25, 289:9, 289:14, 289:18, 290:1, 290:2, 290:14, 291:10, 292:7, 292:13, 292:15, 294:4, 294:25, 295:6, 295:14, 303:11, 321:2</p> <p><b>accidents</b> [1] - 239:25</p> <p><b>accompanied</b> [1] - 302:3</p> <p><b>according</b> [3] - 231:8, 239:18, 251:7</p> <p><b>account</b> [1] - 247:10</p> <p><b>ACCURATE</b> [1] - 333:5</p> <p><b>accurate</b> [5] - 184:6, 213:7, 303:25, 304:1, 317:4</p> <p><b>actively</b> [1] - 327:21</p> <p><b>activities</b> [5] - 288:12, 315:25, 316:10, 317:2, 322:21</p> <p><b>actual</b> [2] - 270:12, 313:10</p> <p><b>acute</b> [8] - 256:20,</p>	<p>256:22, 257:4, 257:8, 257:12, 257:17, 258:9, 284:5</p> <p><b>Adams</b> [1] - 171:15</p> <p><b>adding</b> [1] - 257:13</p> <p><b>addition</b> [2] - 179:9, 182:10</p> <p><b>additional</b> [4] - 278:16, 296:23, 325:25, 326:19</p> <p><b>address</b> [3] - 175:6, 217:14, 277:6</p> <p><b>adhere</b> [1] - 253:2</p> <p><b>adjourned</b> [1] - 333:3</p> <p><b>admissibility</b> [1] - 197:18</p> <p><b>admit</b> [1] - 192:9</p> <p><b>admitted</b> [1] - 181:22</p> <p><b>advisory</b> [4] - 199:15, 199:16, 253:10</p> <p><b>affect</b> [5] - 313:16, 315:21, 322:23, 323:4, 324:1</p> <p><b>affidavit</b> [6] - 193:16, 193:19, 196:1, 196:6, 197:19, 198:15</p> <p><b>affidavits</b> [2] - 195:4, 195:5</p> <p><b>affiliations</b> [1] - 279:2</p> <p><b>affirm</b> [2] - 175:2, 277:2</p> <p><b>afternoon</b> [16] - 173:14, 174:3, 175:21, 276:25, 277:19, 280:15, 295:20, 296:19, 331:5, 331:13, 331:15, 331:25, 332:2, 332:4, 332:25, 333:1</p> <p><b>age</b> [4] - 202:3, 291:10, 291:21</p> <p><b>aging</b> [1] - 202:18</p> <p><b>ago</b> [9] - 192:22, 196:16, 213:3, 214:7, 217:18, 234:22, 235:7, 315:12, 317:9</p> <p><b>agree</b> [27] - 214:25, 228:16, 228:24, 230:10, 230:12, 235:18, 242:5, 248:20, 258:14, 258:15, 258:17, 300:3, 305:22, 309:3, 310:3, 313:1, 313:5, 313:8, 319:12, 320:1, 321:15, 321:17,</p>	<p>322:17, 322:22</p> <p><b>agreed</b> [2] - 192:9, 329:19</p> <p><b>agreeing</b> [3] - 229:7, 235:22</p> <p><b>ahead</b> [3] - 224:17, 274:4, 291:24</p> <p><b>aid</b> [1] - 184:9</p> <p><b>aids</b> [7] - 183:8, 183:13, 183:20, 184:2, 184:4, 190:23, 203:7</p> <p><b>aim</b> [1] - 210:15</p> <p><b>air</b> [1] - 283:10</p> <p><b>Albert</b> [1] - 176:4</p> <p><b>Alfredo</b> [2] - 173:7, 173:19</p> <p><b>ALFREDO</b> [1] - 172:5</p> <p><b>alleged</b> [1] - 226:20</p> <p><b>allegedly</b> [1] - 239:22</p> <p><b>allow</b> [1] - 229:22</p> <p><b>allowed</b> [1] - 198:21</p> <p><b>almost</b> [1] - 185:23</p> <p><b>alright</b> [12] - 174:18, 190:13, 199:1, 200:3, 210:4, 212:11, 214:20, 221:17, 252:1, 252:13, 274:4, 276:11</p> <p><b>Alvarado</b> [10] - 173:20, 194:22, 194:23, 195:1, 195:6, 195:21, 196:24, 198:10, 198:24, 203:15</p> <p><b>ALVARADO</b> [101] - 172:5, 173:7, 174:8, 180:3, 180:5, 180:15, 180:18, 181:12, 181:21, 183:10, 183:15, 183:23, 184:1, 186:7, 190:25, 191:2, 191:10, 191:17, 191:25, 192:14, 193:1, 193:14, 193:18, 193:22, 193:25, 194:4, 194:7, 195:8, 195:11, 195:22, 196:7, 196:10, 196:25, 197:6, 197:13, 197:25, 198:5, 198:11, 198:16, 198:25, 199:8, 199:11, 199:16, 203:16, 205:23, 207:1, 207:9, 208:20,</p>	<p>208:22, 212:4, 212:16, 212:20, 213:18, 213:22, 214:1, 214:4, 214:10, 214:16, 214:22, 217:5, 218:22, 229:3, 233:1, 233:4, 233:9, 239:5, 246:4, 249:8, 249:11, 250:7, 251:23, 252:2, 254:23, 262:24, 263:25, 264:3, 265:4, 266:13, 266:18, 267:3, 267:10, 267:14, 267:18, 268:11, 268:19, 269:8, 269:14, 269:19, 271:9, 271:11, 275:11, 275:15, 275:17, 275:20, 276:3, 276:7, 305:16, 310:14, 331:16, 331:20, 332:7</p> <p><b>Alvarez</b> [1] - 173:7</p> <p><b>ambulance</b> [4] - 281:4, 311:13, 311:22, 312:10</p> <p><b>amend</b> [2] - 228:22, 265:2</p> <p><b>American</b> [2] - 177:22, 278:20</p> <p><b>amount</b> [7] - 179:17, 209:6, 316:16, 324:6, 327:5, 327:6, 327:12</p> <p><b>amounts</b> [2] - 272:16, 327:2</p> <p><b>analysis</b> [1] - 318:17</p> <p><b>anatomy</b> [4] - 184:21, 185:1, 186:4, 203:23</p> <p><b>AND</b> [1] - 333:5</p> <p><b>annotate</b> [1] - 265:2</p> <p><b>annulus</b> [8] - 187:1, 187:19, 201:14, 205:3, 205:4, 205:5, 205:7, 211:24</p> <p><b>answer</b> [56] - 181:2, 215:5, 216:14, 217:6, 218:10, 218:12, 218:15, 218:23, 219:2, 220:2, 220:4, 220:6, 221:6, 221:8, 221:24, 222:19, 224:24, 225:15, 225:19, 225:23, 229:22, 231:8,</p>	<p>231:15, 238:17, 241:12, 272:1, 272:3, 273:9, 273:25, 274:3, 274:5, 275:9, 275:10, 275:17, 289:24, 295:10, 299:1, 300:1, 302:7, 306:25, 314:8, 314:11, 316:7, 316:8, 317:22, 318:1, 318:2, 318:22, 320:4, 320:19, 327:7, 328:6, 328:7</p> <p><b>ANSWER</b> [2] - 235:14, 235:17</p> <p><b>answered</b> [4] - 237:10, 266:2, 297:24, 317:8</p> <p><b>answering</b> [2] - 220:17, 272:14</p> <p><b>answers</b> [2] - 215:7, 273:13</p> <p><b>anterior</b> [6] - 204:22, 245:2, 259:6, 260:16, 284:20, 285:18</p> <p><b>anteriorly</b> [2] - 283:4</p> <p><b>antiinflammatory</b> [1] - 286:17</p> <p><b>anyway</b> [1] - 299:9</p> <p><b>apologize</b> [1] - 227:10</p> <p><b>apparent</b> [1] - 282:12</p> <p><b>Appeals</b> [2] - 213:10, 265:8</p> <p><b>appear</b> [1] - 220:20</p> <p><b>appearance</b> [2] - 173:5, 298:15</p> <p><b>Appearances</b> [1] - 171:25</p> <p><b>appellate</b> [1] - 173:18</p> <p><b>APPELLATE</b> [1] - 172:12</p> <p><b>applied</b> [1] - 313:9</p> <p><b>apply</b> [1] - 272:11</p> <p><b>applying</b> [2] - 181:10, 280:2</p> <p><b>appreciate</b> [1] - 214:22</p> <p><b>approach</b> [6] - 191:11, 223:3, 233:5, 269:16, 293:18, 305:8</p> <p><b>appropriate</b> [11] - 311:11, 327:1, 327:4, 327:5, 327:6, 327:12, 329:17, 329:23, 330:2, 330:3, 330:14</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p><b>approved</b> [4] - 326:11, 327:3, 327:15, 330:6</p> <p><b>area</b> [5] - 210:11, 283:6, 283:12, 283:13, 285:4</p> <p><b>areas</b> [3] - 186:18, 204:11, 248:17</p> <p><b>argue</b> [1] - 191:17</p> <p><b>argument</b> [3] - 229:1, 264:19, 271:17</p> <p><b>arm</b> [1] - 281:12</p> <p><b>armpit</b> [1] - 283:6</p> <p><b>arms</b> [2] - 187:13, 288:11</p> <p><b>arteries</b> [3] - 178:20, 179:3, 268:1</p> <p><b>arthritis</b> [8] - 201:17, 202:4, 202:5, 243:17, 251:13, 260:19, 291:20</p> <p><b>artifacts</b> [2] - 256:2, 256:5</p> <p><b>assessment</b> [23] - 309:4, 309:22, 311:2, 314:3, 314:4, 314:13, 315:18, 316:17, 316:21, 317:5, 318:12, 320:22, 321:7, 321:13, 322:17, 324:3, 324:14, 324:22, 325:3, 326:7, 326:8, 327:10, 327:17</p> <p><b>assigned</b> [2] - 307:3, 307:7</p> <p><b>assist</b> [1] - 203:7</p> <p><b>associate</b> [1] - 232:13</p> <p><b>associated</b> [3] - 286:18, 288:12, 294:16</p> <p><b>ASSOCIATES</b> [1] - 171:21</p> <p><b>Associates</b> [13] - 260:11, 261:1, 261:17, 261:21, 262:3, 264:21, 266:12, 266:15, 271:14, 273:17, 301:12, 301:15, 308:14</p> <p><b>Association</b> [1] - 177:23</p> <p><b>assume</b> [4] - 181:5, 262:17, 263:2, 285:2</p> <p><b>assumption</b> [1] - 234:24</p> <p><b>Athletic</b> [1] - 279:6</p> <p><b>attached</b> [1] - 195:6</p> <p><b>attention</b> [4] - 174:5, 302:19, 306:5, 311:8</p>	<p><b>Attorney</b> [1] - 172:8</p> <p><b>attorney</b> [4] - 232:14, 289:22, 301:21, 308:8</p> <p><b>attorneys</b> [1] - 193:2</p> <p><b>Attorneys</b> [2] - 171:22, 172:3</p> <p><b>attribute</b> [1] - 312:17</p> <p><b>August</b> [1] - 197:14</p> <p><b>authenticating</b> [1] - 268:25</p> <p><b>authorization</b> [3] - 193:5, 196:15, 302:1</p> <p><b>authorizations</b> [2] - 192:21, 192:22</p> <p><b>authorized</b> [2] - 329:20, 330:5</p> <p><b>authorizing</b> [6] - 327:3, 327:8, 329:13, 329:18, 329:19</p> <p><b>average</b> [3] - 221:5, 226:4, 226:5</p> <p><b>Award</b> [1] - 177:23</p> <p><b>aware</b> [10] - 215:6, 216:22, 217:1, 217:8, 217:19, 217:21, 239:25, 240:3, 263:24, 305:12</p> <p><b>axial</b> [2] - 188:16, 256:4</p> <p><b>axillary</b> [2] - 283:5</p> <p><b>background</b> [1] - 254:2</p> <p><b>bad</b> [2] - 185:20, 291:17</p> <p><b>balance</b> [1] - 292:17</p> <p><b>banter</b> [1] - 215:4</p> <p><b>bar</b> [2] - 174:8, 180:18</p> <p><b>barrel</b> [1] - 323:2</p> <p><b>base</b> [1] - 242:12</p> <p><b>based</b> [18] - 242:3, 249:25, 254:8, 262:20, 263:4, 263:6, 263:10, 263:16, 263:17, 291:3, 322:10, 322:11, 323:4, 323:17, 324:14, 326:9, 326:10</p> <p><b>basis</b> [2] - 269:18, 322:21</p> <p><b>Bayside</b> [1] - 172:10</p> <p><b>BE</b> [1] - 333:5</p> <p><b>beam</b> [4] - 256:2, 256:4, 281:3, 309:18</p> <p><b>became</b> [2] - 176:5, 176:9</p>	<p><b>become</b> [1] - 176:18</p> <p><b>becomes</b> [1] - 196:5</p> <p><b>began</b> [1] - 314:20</p> <p><b>beginning</b> [2] - 174:20, 287:24</p> <p><b>behind</b> [1] - 206:15</p> <p><b>Bell</b> [1] - 172:9</p> <p><b>bench</b> [5] - 180:20, 191:12, 233:6, 293:21, 305:14</p> <p><b>bending</b> [1] - 283:18</p> <p><b>better</b> [9] - 187:6, 190:12, 208:24, 218:10, 218:12, 218:15, 231:17, 272:3, 326:1</p> <p><b>between</b> [33] - 178:17, 185:14, 185:24, 186:1, 186:2, 186:17, 187:4, 204:6, 204:11, 204:18, 204:19, 204:20, 204:23, 206:14, 207:24, 207:25, 208:18, 208:24, 209:1, 210:15, 216:9, 218:5, 251:21, 310:4, 313:5, 314:19, 319:23, 327:20, 328:9, 329:11</p> <p><b>beyond</b> [9] - 205:10, 215:11, 215:12, 220:1, 268:21, 268:23, 269:2, 269:19, 270:2</p> <p><b>big</b> [1] - 187:8</p> <p><b>bigger</b> [2] - 191:9, 201:1</p> <p><b>bill</b> [1] - 220:20</p> <p><b>billed</b> [1] - 220:23</p> <p><b>billing</b> [6] - 215:20, 215:21, 215:22, 218:2, 220:24, 297:2</p> <p><b>bills</b> [1] - 300:10</p> <p><b>biopsies</b> [1] - 177:6</p> <p><b>bit</b> [18] - 175:24, 177:1, 178:13, 182:2, 184:13, 184:17, 184:22, 186:4, 191:9, 200:23, 204:22, 207:17, 208:2, 209:4, 277:23, 279:1, 287:25, 291:1</p> <p><b>blindly</b> [2] - 322:4, 322:5</p> <p><b>blow</b> [1] - 210:20</p> <p><b>blowups</b> [1] - 214:5</p>	<p><b>board</b> [10] - 176:5, 176:9, 176:13, 176:19, 278:12, 278:14, 278:16, 278:23, 312:18, 327:8</p> <p><b>Board</b> [2] - 176:19, 278:20</p> <p><b>body</b> [12] - 178:9, 179:13, 189:2, 189:4, 189:5, 202:21, 203:4, 237:11, 238:9, 255:21, 313:3, 313:9</p> <p><b>bone</b> [33] - 178:18, 178:25, 179:9, 185:3, 185:8, 185:9, 185:12, 185:19, 185:20, 186:1, 186:3, 187:3, 202:15, 204:4, 204:18, 205:10, 206:15, 209:4, 209:10, 210:13, 242:1, 242:9, 246:15, 251:11, 251:18, 282:2, 282:9</p> <p><b>bones</b> [36] - 178:19, 178:22, 185:2, 185:3, 185:4, 185:5, 185:6, 185:14, 185:15, 185:16, 185:24, 186:17, 186:18, 202:13, 202:14, 202:16, 203:24, 204:5, 204:9, 204:11, 204:19, 205:9, 208:19, 208:23, 208:24, 210:7, 267:22, 267:23, 279:12, 279:13, 281:25, 282:2, 283:8</p> <p><b>bony</b> [1] - 284:5</p> <p><b>born</b> [2] - 185:22, 201:20</p> <p><b>bother</b> [2] - 291:14, 291:23</p> <p><b>bottom</b> [6] - 188:12, 247:3, 247:8, 248:6, 248:15, 248:19</p> <p><b>Boulevard</b> [1] - 172:9</p> <p><b>boxes</b> [1] - 186:12</p> <p><b>boxing</b> [1] - 279:7</p> <p><b>Boxing</b> [1] - 279:7</p> <p><b>brain</b> [4] - 179:14, 187:11, 188:4, 242:12</p> <p><b>breach</b> [1] - 253:23</p> <p><b>bread</b> [10] - 188:6, 188:7, 188:8, 188:9, 188:13, 188:14, 188:15, 188:23, 208:1</p> <p><b>break</b> [5] - 212:12, 212:23, 252:3, 252:15, 331:2</p> <p><b>breast</b> [10] - 177:4, 177:5, 177:12, 177:13, 177:14, 177:17, 177:18, 177:21, 177:22</p> <p><b>breathing</b> [4] - 282:11, 283:11, 283:12, 285:3</p> <p><b>Brian</b> [11] - 239:2, 244:8, 248:24, 249:8, 250:7, 250:14, 251:24, 260:23, 261:14, 262:2, 311:19</p> <p><b>Bridge</b> [1] - 172:13</p> <p><b>brief</b> [1] - 212:11</p> <p><b>briefly</b> [2] - 173:19, 211:21</p> <p><b>Briggs</b> [1] - 173:17</p> <p><b>bring</b> [28] - 184:18, 199:22, 199:23, 202:23, 215:25, 216:3, 216:19, 217:9, 217:24, 217:25, 218:1, 218:4, 218:5, 218:7, 218:8, 218:16, 237:7, 237:15, 295:22, 299:2, 299:8, 299:18, 299:19, 299:20, 299:21, 300:8</p> <p><b>bringing</b> [1] - 206:12</p> <p><b>Bronx</b> [1] - 176:4</p> <p><b>Brooklyn</b> [2] - 171:15, 176:2</p> <p><b>brought</b> [11] - 174:5, 215:16, 218:11, 237:1, 255:8, 268:12, 292:14, 296:1, 299:7, 299:19, 300:4</p> <p><b>bulge</b> [18] - 205:1, 205:2, 205:13, 206:18, 207:24, 208:3, 211:21, 211:24, 240:12, 240:13, 245:13, 259:16, 259:23, 268:9, 269:12, 270:5, 270:18, 285:20</p> <p><b>bulges</b> [3] - 205:2,</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p>248:1, 267:13  <b>BY</b> [12] - 171:23,  172:5, 172:5,  172:10, 175:10,  175:18, 214:15,  264:9, 271:10,  275:12, 277:11,  295:18  <b>C3</b> [2] - 185:9, 240:12  <b>C3-C4</b> [1] - 240:20  <b>C4-C5</b> [1] - 240:22  <b>C6-7</b> [14] - 187:5,  187:24, 189:11,  191:9, 201:1, 201:3,  201:8, 201:16,  242:19, 256:2,  256:5, 258:18, 268:9  <b>C6-C7</b> [2] - 186:3,  240:24  <b>calendar</b> [2] - 331:21,  331:22  <b>Campbell</b> [2] - 278:3,  278:5  <b>cancer</b> [3] - 177:4,  177:5, 177:12  <b>cancers</b> [1] - 177:17  <b>cannot</b> [5] - 205:20,  242:16, 242:18,  253:11, 320:14  <b>car</b> [2] - 321:8, 321:19  <b>care</b> [9] - 192:18,  200:17, 272:13,  298:19, 306:23,  307:23, 308:5,  314:6, 314:7  <b>careful</b> [1] - 301:19  <b>cartilage</b> [1] - 279:14  <b>case</b> [44] - 179:23,  181:2, 211:8, 213:8,  213:10, 213:20,  213:21, 213:22,  216:17, 216:18,  219:18, 222:6,  222:13, 222:20,  224:8, 225:21,  226:17, 230:19,  235:4, 244:6, 252:9,  253:5, 254:3, 268:6,  269:11, 270:13,  270:15, 270:24,  278:20, 279:23,  280:13, 281:25,  291:24, 295:21,  306:23, 307:3,  307:8, 307:21,  311:10, 311:11,  324:14, 326:8,  329:24  <b>cases</b> [21] - 211:17,  214:10, 223:2,</p>	<p>223:22, 224:8,  225:14, 225:17,  226:6, 226:9,  226:22, 227:15,  227:22, 233:12,  253:21, 270:25,  271:3, 274:6, 282:1,  307:8, 307:17,  307:19  <b>CAT</b> [28] - 177:2,  178:6, 178:12,  179:5, 179:6, 179:9,  182:22, 201:2,  203:6, 208:17,  208:18, 208:24,  209:3, 209:13,  209:14, 209:16,  211:14, 236:19,  237:18, 237:23,  238:4, 255:9,  255:10, 255:17,  255:18, 262:9,  263:14  <b>caught</b> [1] - 288:4  <b>causal</b> [1] - 289:18  <b>causally</b> [1] - 290:2  <b>causation</b> [1] - 199:12  <b>caused</b> [10] - 180:1,  180:13, 199:18,  282:15, 294:4,  295:6, 313:22,  313:23, 324:6  <b>causes</b> [5] - 189:25,  206:21, 270:9,  270:17, 270:19  <b>Center</b> [2] - 176:3,  176:9  <b>certain</b> [16] - 179:8,  182:25, 183:4,  211:7, 225:22,  292:6, 293:20,  293:23, 294:20,  297:23, 297:24,  310:8, 310:10,  310:11, 320:11,  324:8  <b>certainly</b> [10] - 202:3,  286:3, 290:5,  290:11, 292:18,  293:25, 309:5,  315:2, 321:19,  322:23  <b>certainty</b> [15] - 183:5,  280:16, 285:8,  286:5, 286:11,  288:17, 289:8,  289:11, 289:18,  290:18, 291:16,  292:9, 293:15,  294:2, 295:5</p>	<p><b>certification</b> [1] -  278:16  <b>CERTIFIED</b> [1] - 333:5  <b>certified</b> [7] - 176:6,  176:10, 176:13,  176:19, 278:12,  278:14, 278:23  <b>cervical</b> [36] - 182:5,  182:24, 185:9,  186:10, 191:4,  191:5, 191:8,  193:10, 194:20,  195:18, 196:21,  201:2, 201:7,  201:18, 207:22,  239:2, 239:15,  242:10, 244:3,  255:11, 255:18,  256:4, 256:12,  256:20, 256:22,  257:8, 257:12,  257:16, 257:17,  258:12, 258:16,  275:5, 288:7, 290:5,  291:8  <b>chambers</b> [1] - 252:24  <b>chance</b> [1] - 296:3  <b>change</b> [12] - 198:1,  201:12, 207:19,  208:5, 264:16,  284:5, 291:11,  291:14, 291:22,  292:4, 318:14,  318:17  <b>changed</b> [3] - 262:13,  291:9, 319:12  <b>changes</b> [15] - 201:4,  201:6, 202:15,  209:12, 260:16,  260:18, 260:19,  260:20, 261:23,  262:13, 262:21,  288:13, 291:11,  292:2  <b>changing</b> [1] - 229:5  <b>characterization</b> [2] -  180:9, 254:4  <b>charge</b> [3] - 211:10,  254:1, 307:22  <b>charging</b> [1] - 211:2  <b>chart</b> [2] - 280:25,  300:19  <b>check</b> [1] - 197:2  <b>chest</b> [3] - 281:11,  282:7, 283:6  <b>choose</b> [2] - 221:11,  221:14  <b>chronic</b> [1] - 245:23  <b>circle</b> [2] - 187:1,  188:2</p>	<p><b>cite</b> [1] - 213:11  <b>cited</b> [1] - 239:12  <b>City</b> [3] - 176:1,  274:15, 279:4  <b>CIVIL</b> [1] - 171:1  <b>clarify</b> [2] - 199:5,  329:9  <b>clear</b> [4] - 180:15,  238:13, 318:23,  324:18  <b>clearly</b> [5] - 195:14,  195:15, 196:2,  196:13, 303:23  <b>CLERK</b> [5] - 173:1,  175:1, 175:6,  276:25, 277:6  <b>clients</b> [2] - 227:3,  227:17  <b>Clinic</b> [2] - 278:3,  278:5  <b>clinical</b> [1] - 250:5  <b>clinician</b> [2] - 207:4,  207:7  <b>clip</b> [1] - 194:11  <b>close</b> [1] - 321:16  <b>closed</b> [1] - 270:17  <b>closer</b> [3] - 184:18,  202:13, 202:16  <b>clothing</b> [1] - 313:14  <b>cocktail</b> [1] - 215:4  <b>coil</b> [3] - 247:3, 247:8,  247:9  <b>coincidentally</b> [1] -  224:6  <b>college</b> [3] - 176:1,  277:24, 277:25  <b>College</b> [2] - 176:1,  176:5  <b>college/medical</b> [1] -  278:17  <b>colloquial</b> [1] - 273:1  <b>Columbia</b> [2] - 176:8,  277:25  <b>Columbia-</b>  <b>Presbyterian</b> [1] -  176:8  <b>column</b> [1] - 283:25  <b>coming</b> [1] - 204:14  <b>Commission</b> [1] -  279:6  <b>common</b> [1] - 214:3  <b>communicate</b> [3] -  304:12, 304:15,  323:7  <b>communications</b> [1] -  216:9  <b>compare</b> [2] - 184:2,  184:3  <b>compared</b> [1] - 207:18  <b>compensate</b> [2] -</p>	<p>308:11, 308:12  <b>compensated</b> [2] -  228:15, 308:10  <b>competent</b> [4] -  189:25, 206:2,  210:1, 284:8  <b>complain</b> [2] - 290:15,  290:24  <b>complained</b> [1] -  292:3  <b>complaining</b> [8] -  281:8, 281:10,  288:6, 288:10,  288:11, 292:13,  309:12, 313:19  <b>complains</b> [1] - 286:6  <b>complaint</b> [1] - 179:24  <b>complaints</b> [13] -  201:23, 207:8,  208:10, 208:12,  281:13, 285:8,  285:24, 288:17,  288:22, 289:19,  290:18, 292:7,  292:10  <b>complete</b> [4] - 192:18,  205:7, 211:25,  215:18  <b>completely</b> [4] -  246:22, 246:24,  246:25, 254:4  <b>complies</b> [1] - 306:7  <b>compromise</b> [1] -  323:3  <b>compromises</b> [1] -  322:25  <b>computer</b> [1] - 179:18  <b>concept</b> [2] - 177:14,  186:25  <b>concern</b> [1] - 293:1  <b>condition</b> [11] - 190:2,  190:3, 201:24,  202:1, 202:2,  202:24, 206:5,  208:13, 209:22,  242:20, 263:12  <b>conditional</b> [1] -  319:17  <b>conditions</b> [17] -  190:5, 190:7,  202:20, 210:1,  235:25, 242:19,  254:11, 261:25,  262:15, 263:4,  263:5, 263:13,  265:15, 291:19,  292:6, 294:17,  294:20  <b>conducted</b> [1] -  176:23</p>
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<p><b>confirm</b> [2] - 301:5, 322:7</p> <p><b>conform</b> [1] - 180:13</p> <p><b>confronted</b> [1] - 273:2</p> <p><b>confuse</b> [2] - 304:4, 323:23</p> <p><b>confused</b> [3] - 272:4, 272:5, 272:7</p> <p><b>confusing</b> [1] - 323:22</p> <p><b>congenital</b> [3] - 243:19, 243:20, 243:22</p> <p><b>connected</b> [2] - 185:16, 210:14</p> <p><b>connection</b> [4] - 289:19, 298:14, 300:15, 311:2</p> <p><b>consecutive</b> [2] - 177:9, 177:10</p> <p><b>consent</b> [1] - 197:18</p> <p><b>consented</b> [1] - 197:21</p> <p><b>consequences</b> [1] - 324:1</p> <p><b>conservative</b> [18] - 279:16, 286:22, 287:4, 287:6, 294:19, 324:15, 324:22, 325:4, 326:7, 326:10, 326:13, 326:23, 327:11, 327:12, 327:16, 328:22, 328:25, 329:3</p> <p><b>consider</b> [4] - 228:23, 230:19, 317:13, 327:14</p> <p><b>consistent</b> [12] - 189:14, 205:22, 269:6, 281:7, 281:13, 285:23, 286:1, 302:9, 303:16, 319:6, 319:10, 320:9</p> <p><b>constitute</b> [1] - 181:2</p> <p><b>constitutional</b> [1] - 253:4</p> <p><b>construction</b> [9] - 181:6, 242:14, 286:2, 292:22, 293:2, 293:10, 293:14, 320:14, 324:5</p> <p><b>contains</b> [2] - 187:18, 245:16</p> <p><b>context</b> [2] - 318:20, 321:1</p> <p><b>continue</b> [6] - 174:20, 233:8, 239:24, 290:9, 290:19,</p>	<p>305:19</p> <p><b>Continued</b> [1] - 171:25</p> <p><b>continued</b> [1] - 325:24</p> <p><b>continues</b> [1] - 290:15</p> <p><b>continuing</b> [1] - 290:24</p> <p><b>continuum</b> [2] - 192:17, 200:17</p> <p><b>contradict</b> [1] - 198:7</p> <p><b>contrive</b> [1] - 197:23</p> <p><b>control</b> [2] - 264:24, 265:15</p> <p><b>conus</b> [1] - 248:13</p> <p><b>conversation</b> [1] - 314:16</p> <p><b>conveying</b> [2] - 184:9, 203:8</p> <p><b>cool</b> [1] - 332:24</p> <p><b>copy</b> [1] - 194:22</p> <p><b>cord</b> [23] - 187:10, 187:12, 187:13, 188:2, 188:21, 188:22, 189:1, 204:12, 241:21, 242:1, 242:4, 248:15, 270:9, 270:12, 270:20, 275:3, 275:7, 276:1, 283:25, 285:19, 285:22</p> <p><b>Corp</b> [1] - 232:6</p> <p><b>CORP</b> [1] - 171:6</p> <p><b>correct</b> [124] - 173:24, 173:25, 174:4, 207:5, 207:6, 207:15, 207:16, 209:18, 209:21, 217:14, 218:3, 219:5, 219:13, 219:19, 220:10, 220:11, 223:21, 224:5, 224:11, 224:13, 225:25, 226:1, 226:10, 226:11, 226:13, 226:14, 226:18, 227:3, 227:17, 227:19, 229:11, 234:23, 235:23, 236:23, 236:25, 237:16, 237:17, 237:20, 238:7, 238:25, 239:1, 239:20, 239:23, 240:25, 241:2, 241:7, 242:19, 244:18, 245:2, 245:5, 245:18, 245:19, 245:21,</p>	<p>248:1, 248:5, 248:6, 248:10, 249:18, 249:24, 251:6, 251:8, 251:15, 256:12, 259:3, 259:16, 259:18, 260:8, 260:14, 260:16, 261:8, 262:21, 263:10, 263:18, 263:19, 266:12, 267:13, 270:13, 270:25, 273:17, 274:7, 275:3, 299:3, 300:4, 301:2, 304:2, 304:3, 304:9, 304:10, 306:14, 307:9, 307:23, 308:18, 309:7, 309:23, 310:9, 312:11, 312:25, 313:10, 313:25, 314:3, 314:5, 314:15, 314:23, 315:5, 315:9, 316:24, 316:25, 317:2, 317:3, 319:11, 319:18, 321:6, 323:17, 324:19, 324:25, 326:2, 326:8, 327:10, 327:13, 329:7, 329:9, 329:24</p> <p><b>corrected</b> [2] - 227:9, 261:22</p> <p><b>correcting</b> [1] - 240:17</p> <p><b>correctly</b> [1] - 240:8</p> <p><b>correspondence</b> [3] - 218:5, 297:5, 297:10</p> <p><b>counsel</b> [30] - 173:4, 173:18, 174:10, 174:12, 174:21, 180:23, 181:4, 193:20, 203:12, 213:14, 229:22, 231:20, 232:24, 233:8, 245:25, 253:1, 254:12, 254:13, 264:4, 266:20, 267:2, 268:2, 271:4, 276:22, 277:17, 295:17, 296:8, 296:12, 305:19, 332:20</p> <p><b>Counsel</b> [5] - 196:19, 214:6, 214:21, 264:20, 296:17</p> <p><b>COUNSEL</b> [1] - 172:12</p>	<p><b>counsel's</b> [1] - 254:10</p> <p><b>count</b> [4] - 220:25, 223:9, 223:10, 223:22</p> <p><b>country</b> [1] - 253:5</p> <p><b>country-wide</b> [1] - 253:5</p> <p><b>COUNTY</b> [1] - 171:1</p> <p><b>couple</b> [2] - 193:19, 278:24</p> <p><b>course</b> [8] - 184:25, 192:10, 225:13, 287:12, 287:14, 287:16, 320:9, 323:7</p> <p><b>court</b> [19] - 182:3, 192:24, 199:14, 215:16, 219:3, 219:24, 220:21, 228:8, 229:10, 230:19, 233:2, 271:25, 273:21, 295:22, 299:3, 299:18, 299:22, 299:23, 331:24</p> <p><b>COURT</b> [226] - 171:1, 172:19, 172:24, 173:23, 174:2, 174:10, 174:14, 174:16, 174:18, 175:12, 175:16, 180:4, 180:8, 180:19, 180:23, 181:14, 181:22, 183:12, 183:17, 183:22, 183:25, 184:20, 186:8, 190:15, 191:1, 191:11, 191:15, 191:19, 191:24, 192:13, 193:20, 193:23, 194:3, 194:6, 194:8, 194:11, 195:5, 195:10, 195:12, 195:13, 195:17, 195:21, 195:25, 196:5, 196:9, 196:17, 197:1, 197:4, 197:12, 198:10, 198:12, 198:14, 198:21, 198:24, 199:1, 199:6, 199:20, 199:22, 200:1, 200:3, 203:12, 203:15, 205:25, 206:11, 207:2, 207:10, 208:21, 212:5, 212:11, 212:14, 212:18,</p>	<p>213:1, 213:14, 214:9, 214:17, 214:20, 215:5, 216:14, 217:6, 218:14, 218:18, 219:2, 223:7, 223:16, 223:20, 224:4, 224:19, 224:25, 226:25, 229:14, 229:18, 229:21, 230:14, 231:20, 232:24, 233:8, 233:21, 239:11, 239:14, 245:25, 246:3, 246:5, 247:17, 249:7, 249:13, 250:25, 252:1, 252:3, 252:5, 252:7, 252:11, 252:13, 252:18, 252:20, 252:23, 254:10, 254:21, 257:19, 257:21, 257:24, 258:3, 263:1, 264:4, 264:8, 265:9, 266:14, 266:20, 266:22, 267:2, 267:4, 267:11, 267:15, 267:20, 268:15, 268:21, 268:23, 269:2, 269:15, 269:18, 270:2, 271:19, 272:15, 274:1, 274:13, 274:18, 274:22, 274:25, 275:19, 275:23, 276:8, 276:11, 276:13, 276:18, 276:20, 276:22, 277:13, 277:17, 280:11, 280:13, 284:12, 284:14, 289:23, 290:21, 293:4, 293:6, 293:12, 293:17, 295:3, 295:9, 295:17, 296:2, 296:5, 296:8, 296:9, 296:12, 296:14, 296:16, 298:23, 299:1, 299:6, 299:12, 300:6, 302:16, 305:9, 305:11, 305:13, 305:18, 306:1, 306:16, 307:6, 307:13, 307:25, 311:23, 312:3, 312:4, 312:5,</p>
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<p>314:10, 314:12, 316:4, 316:9, 317:22, 318:1, 318:3, 319:9, 319:22, 320:20, 323:6, 328:6, 330:23, 331:1, 331:6, 331:8, 331:19, 331:21, 331:23, 332:2, 332:4, 332:6, 332:8, 332:10, 332:16, 332:18, 332:20, 332:23, 332:25, 333:8</p> <p><b>Court</b> [23] - 171:14, 171:18, 175:3, 175:7, 193:17, 193:18, 194:22, 196:20, 199:17, 200:5, 200:10, 213:10, 229:17, 253:15, 254:14, 265:7, 266:23, 271:15, 277:3, 277:7, 332:14, 332:22, 332:23</p> <p><b>courthouse</b> [2] - 231:21, 331:4</p> <p><b>courtroom</b> [11] - 174:17, 191:16, 191:23, 200:2, 212:15, 214:18, 252:6, 254:22, 296:11, 296:15, 331:7</p> <p><b>courts</b> [1] - 181:17</p> <p><b>cover</b> [2] - 216:17, 274:19</p> <p><b>coverage</b> [1] - 288:5</p> <p><b>crack</b> [1] - 282:8</p> <p><b>cracking</b> [2] - 283:7, 283:9</p> <p><b>cranial</b> [1] - 242:10</p> <p><b>create</b> [1] - 300:17</p> <p><b>created</b> [1] - 300:14</p> <p><b>crepitus</b> [2] - 283:7, 283:9</p> <p><b>critical</b> [1] - 309:3</p> <p><b>criticism</b> [1] - 272:13</p> <p><b>cross</b> [9] - 193:7, 213:5, 213:8, 214:1, 264:6, 268:17, 270:11, 273:19, 295:17</p> <p><b>CROSS</b> [2] - 214:15, 295:18</p> <p><b>cross-examination</b> [4] - 213:5, 213:8, 268:17, 270:11</p>	<p><b>CROSS- EXAMINATION</b> [1] - 295:18</p> <p><b>cross-examine</b> [1] - 214:1</p> <p><b>CT</b> [7] - 178:13, 182:24, 194:18, 196:20, 201:1, 221:1, 255:22</p> <p><b>current</b> [2] - 234:2, 279:1</p> <p><b>cut</b> [5] - 188:8, 188:12, 207:25, 231:16, 323:20</p> <p><b>cutting</b> [1] - 188:17</p> <p><b>Dadamaya</b> [1] - 232:6</p> <p><b>daily</b> [4] - 179:22, 315:25, 316:10, 317:2</p> <p><b>damage</b> [1] - 324:6</p> <p><b>damages</b> [1] - 253:7</p> <p><b>Damon</b> [2] - 232:13, 232:15</p> <p><b>dare</b> [1] - 254:6</p> <p><b>data</b> [1] - 177:21</p> <p><b>date</b> [21] - 182:7, 182:8, 193:22, 236:8, 239:12, 249:17, 255:12, 255:14, 255:17, 255:21, 262:11, 288:14, 289:13, 303:14, 303:20, 304:2, 304:3, 304:9, 304:10</p> <p><b>dated</b> [13] - 192:2, 193:10, 194:18, 194:19, 194:20, 194:21, 194:24, 196:20, 196:22, 255:18, 258:25, 261:18, 263:4</p> <p><b>dates</b> [5] - 280:25, 328:8, 328:24, 329:14, 329:15</p> <p><b>David</b> [1] - 243:24</p> <p><b>day-to-day</b> [1] - 322:21</p> <p><b>days</b> [3] - 291:17, 330:17</p> <p><b>December</b> [8] - 194:18, 196:21, 197:23, 208:17, 240:4, 262:4, 262:18, 263:3</p> <p><b>decide</b> [2] - 291:4, 309:11</p> <p><b>decided</b> [1] - 218:16</p> <p><b>decrease</b> [2] - 286:18, 287:10</p>	<p><b>decreasing</b> [2] - 284:24, 286:18</p> <p><b>deemed</b> [2] - 278:23, 280:11</p> <p><b>defend</b> [2] - 269:10, 269:11</p> <p><b>Defendant</b> [7] - 172:8, 173:8, 173:15, 253:7, 264:6, 268:5, 268:16</p> <p><b>DEFENDANT</b> [1] - 171:12</p> <p><b>defendant's</b> [1] - 305:18</p> <p><b>Defendant's</b> [1] - 196:19</p> <p><b>Defendant/Third</b> [3] - 172:3, 173:8, 173:12</p> <p><b>Defendant/Third- Party</b> [3] - 172:3, 173:8, 173:12</p> <p><b>DEFENDANTS</b> [1] - 171:7</p> <p><b>Defense</b> [1] - 264:20</p> <p><b>defense</b> [6] - 213:4, 220:12, 220:13, 268:6, 269:5, 274:15</p> <p><b>defer</b> [1] - 290:11</p> <p><b>define</b> [2] - 228:14, 283:2</p> <p><b>defined</b> [1] - 230:25</p> <p><b>definitely</b> [3] - 196:15, 199:12, 304:17</p> <p><b>definition</b> [3] - 229:19, 271:22, 271:23</p> <p><b>definitions</b> [3] - 272:2, 272:11, 273:2</p> <p><b>definitively</b> [1] - 290:13</p> <p><b>degenerate</b> [2] - 201:17, 202:4</p> <p><b>degenerated</b> [1] - 246:6</p> <p><b>degeneration</b> [8] - 202:21, 208:6, 208:8, 208:9, 209:8, 242:22, 245:23, 251:13</p> <p><b>degenerative</b> [19] - 202:1, 202:2, 202:19, 209:11, 243:15, 243:16, 260:19, 260:20, 262:13, 263:5, 263:13, 263:23, 291:11, 291:13, 291:19, 291:22, 292:2, 292:6, 294:16</p> <p><b>degenerative</b> [3] - 261:25, 262:15,</p>	<p>262:21</p> <p><b>degree</b> [19] - 183:5, 205:11, 280:16, 285:7, 286:4, 286:10, 288:16, 289:7, 289:11, 289:17, 290:17, 291:10, 292:8, 293:15, 294:1, 295:5, 316:11, 316:13, 317:13</p> <p><b>degrees</b> [4] - 283:15, 283:16, 283:17, 283:18</p> <p><b>dehydrated</b> [1] - 247:14</p> <p><b>Del</b> [1] - 213:10</p> <p><b>delivered</b> [1] - 192:20</p> <p><b>DELVAC</b> [2] - 172:19, 333:8</p> <p><b>demonstrate</b> [1] - 278:22</p> <p><b>demonstrated</b> [1] - 283:15</p> <p><b>demonstrative</b> [11] - 183:8, 183:13, 183:20, 184:2, 184:4, 190:23, 203:7, 213:4, 213:6, 214:7, 214:8</p> <p><b>denied</b> [1] - 254:18</p> <p><b>dense</b> [3] - 177:17, 177:18, 177:22</p> <p><b>denseness</b> [1] - 177:12</p> <p><b>density</b> [2] - 177:12, 177:14</p> <p><b>describe</b> [3] - 202:1, 280:23, 282:21</p> <p><b>desiccation</b> [1] - 246:12</p> <p><b>designed</b> [1] - 213:12</p> <p><b>desk</b> [2] - 301:3, 301:4</p> <p><b>determination</b> [1] - 322:8</p> <p><b>determine</b> [1] - 316:1</p> <p><b>develop</b> [1] - 281:22</p> <p><b>developed</b> [4] - 183:8, 184:4, 265:23, 268:16</p> <p><b>diabetes</b> [2] - 179:24, 180:12</p> <p><b>diagnosed</b> [2] - 177:5, 281:7</p> <p><b>diagnosing</b> [1] - 262:12</p> <p><b>diagnosis</b> [4] - 177:4, 284:15, 284:18, 284:19</p> <p><b>diagnostic</b> [10] -</p>	<p>175:23, 176:7, 176:10, 236:19, 250:5, 263:22, 285:11, 285:13, 285:14, 286:14</p> <p><b>diclofenac</b> [1] - 297:18</p> <p><b>difference</b> [12] - 178:17, 208:18, 210:11, 238:11, 238:12, 310:4, 310:11, 313:5, 313:8, 313:9, 319:23, 320:7</p> <p><b>differences</b> [1] - 247:9</p> <p><b>different</b> [18] - 179:12, 179:16, 179:19, 182:8, 186:5, 186:6, 210:8, 214:9, 234:5, 238:15, 246:7, 270:23, 296:25, 310:5, 310:25, 313:1, 320:12, 329:8</p> <p><b>differently</b> [2] - 230:2, 234:10</p> <p><b>difficulties</b> [1] - 315:7</p> <p><b>difficulty</b> [2] - 281:9, 321:4</p> <p><b>diligent</b> [3] - 287:16, 328:22, 329:10</p> <p><b>dimensionally</b> [1] - 187:20</p> <p><b>direct</b> [8] - 219:14, 219:17, 264:17, 289:9, 302:19, 306:5, 312:23, 328:18</p> <p><b>DIRECT</b> [3] - 175:10, 175:18, 277:11</p> <p><b>directed</b> [1] - 299:2</p> <p><b>directions</b> [1] - 249:1</p> <p><b>directly</b> [2] - 227:3, 231:19</p> <p><b>disability</b> [37] - 293:8, 293:13, 294:4, 315:5, 315:18, 315:21, 315:22, 315:23, 315:24, 316:1, 316:11, 316:14, 316:17, 316:21, 317:14, 318:12, 318:15, 319:13, 319:25, 320:6, 320:7, 320:10, 320:13, 320:22, 321:2, 321:11, 322:10, 322:11, 323:4, 323:17, 323:18, 323:19, 323:24,</p>
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<p>324:2</p> <p><b>disabled</b> [16] - 292:20, 292:21, 293:23, 318:23, 319:3, 319:4, 319:5, 319:16, 319:23, 319:24, 320:2, 320:3, 320:11, 322:9, 324:4</p> <p><b>disagree</b> [5] - 247:5, 247:14, 247:18, 247:19, 254:4</p> <p><b>disc</b> [74] - 179:2, 186:2, 186:3, 187:1, 187:2, 187:17, 187:24, 187:25, 188:18, 189:7, 191:8, 201:18, 202:7, 202:10, 202:11, 204:17, 204:21, 204:23, 204:25, 205:1, 205:4, 205:6, 205:7, 205:10, 205:12, 205:13, 206:14, 206:16, 206:17, 206:18, 207:23, 208:3, 208:25, 209:1, 209:14, 211:21, 211:22, 211:25, 240:12, 240:13, 240:24, 243:15, 243:16, 243:22, 245:1, 245:23, 246:6, 246:9, 246:11, 246:16, 246:21, 246:22, 247:10, 247:11, 247:13, 259:5, 259:16, 259:23, 267:12, 267:13, 267:16, 268:9, 269:12, 270:4, 270:5, 270:18, 282:14, 285:17, 285:20</p> <p><b>disclose</b> [1] - 193:6</p> <p><b>disclosed</b> [2] - 192:2, 192:3</p> <p><b>disclosure</b> [1] - 268:22</p> <p><b>discomfort</b> [1] - 285:1</p> <p><b>discs</b> [21] - 178:19, 179:14, 185:15, 185:17, 185:22, 185:23, 185:25, 186:1, 186:16, 186:19, 186:20, 204:7, 204:10, 204:12, 208:24,</p>	<p>241:18, 241:20, 248:6, 267:25</p> <p><b>discuss</b> [2] - 190:19, 190:20</p> <p><b>discussed</b> [1] - 237:5</p> <p><b>discussion</b> [6] - 180:20, 191:12, 233:6, 291:18, 293:21, 305:14</p> <p><b>disease</b> [2] - 243:15, 243:16</p> <p><b>disk</b> [1] - 296:24</p> <p><b>dislocation</b> [1] - 284:6</p> <p><b>displace</b> [2] - 282:3, 282:11</p> <p><b>displacement</b> [1] - 282:9</p> <p><b>displaying</b> [1] - 183:22</p> <p><b>dispute</b> [1] - 312:23</p> <p><b>distinguishing</b> [1] - 323:17</p> <p><b>division</b> [1] - 279:7</p> <p><b>Division</b> [1] - 279:8</p> <p><b>dizziness</b> [1] - 178:5</p> <p><b>doctor</b> [103] - 175:8, 178:3, 181:5, 181:24, 182:9, 183:3, 183:8, 183:14, 184:2, 184:12, 189:14, 191:11, 191:18, 192:1, 198:21, 200:11, 200:17, 205:16, 206:10, 206:19, 208:20, 210:4, 210:19, 210:22, 212:9, 216:6, 216:21, 219:4, 222:7, 222:8, 222:9, 222:14, 225:21, 228:7, 231:21, 233:10, 234:7, 236:14, 237:17, 245:22, 246:6, 248:1, 249:1, 251:4, 252:7, 256:15, 259:1, 259:15, 260:7, 260:13, 260:25, 262:5, 263:21, 264:11, 264:19, 268:3, 269:5, 270:22, 271:7, 271:12, 276:11, 278:12, 279:2, 280:14, 281:15, 282:18, 285:2, 288:16, 289:3, 293:23, 294:11,</p>	<p>295:4, 295:15, 295:25, 296:21, 297:22, 298:15, 299:15, 300:21, 301:17, 301:23, 301:24, 308:9, 310:3, 312:7, 312:22, 313:20, 316:3, 317:24, 318:16, 318:25, 319:7, 320:16, 322:16, 322:17, 328:1, 330:4, 330:9, 330:14, 332:8</p> <p><b>doctor's</b> [1] - 212:16</p> <p><b>doctors</b> [16] - 173:24, 222:3, 222:19, 224:13, 224:16, 224:17, 224:22, 225:2, 227:5, 227:12, 238:3, 250:20, 308:1, 308:3, 326:18, 327:8</p> <p><b>document</b> [15] - 213:15, 298:21, 301:13, 302:6, 305:5, 305:20, 305:22, 306:2, 306:6, 306:9, 306:13, 306:14, 306:17, 306:18, 312:5</p> <p><b>documentation</b> [2] - 321:24, 321:25</p> <p><b>documented</b> [1] - 303:21</p> <p><b>documents</b> [11] - 174:10, 184:4, 184:7, 196:18, 200:6, 296:8, 299:9, 299:10, 299:13, 299:20, 300:3</p> <p><b>dollars</b> [2] - 221:21, 271:4</p> <p><b>done</b> [27] - 184:25, 186:12, 208:17, 210:6, 210:17, 211:19, 220:16, 227:6, 228:5, 238:14, 251:5, 255:20, 260:10, 260:25, 261:17, 261:19, 261:20, 262:3, 263:9, 263:17, 263:23, 264:1, 326:11, 326:12, 327:1, 327:4</p> <p><b>door</b> [2] - 269:17, 269:23</p> <p><b>dormant</b> [1] - 202:24</p>	<p><b>double</b> [1] - 197:1</p> <p><b>doughnut</b> [1] - 185:24</p> <p><b>down</b> [34] - 184:12, 185:18, 187:11, 187:13, 187:14, 188:1, 188:5, 188:19, 189:3, 197:17, 202:8, 202:11, 202:12, 203:10, 204:2, 204:13, 204:14, 204:15, 204:20, 246:13, 247:8, 251:20, 252:7, 275:24, 276:11, 277:1, 283:6, 283:21, 284:4, 311:5, 314:17, 320:23, 321:10</p> <p><b>Downstate</b> [1] - 176:3</p> <p><b>dr</b> [1] - 268:5</p> <p><b>Dr</b> [107] - 173:20, 174:2, 174:23, 174:24, 175:20, 181:19, 181:22, 184:15, 190:24, 191:19, 191:22, 192:4, 192:23, 192:24, 197:7, 197:22, 199:2, 199:10, 199:25, 200:15, 210:21, 212:22, 214:19, 214:23, 222:10, 222:11, 222:14, 222:18, 222:25, 223:12, 223:13, 225:3, 225:5, 225:7, 226:16, 227:22, 233:13, 236:15, 236:16, 236:18, 238:22, 239:8, 239:19, 243:24, 244:5, 244:17, 247:13, 252:14, 252:17, 254:23, 257:14, 258:12, 268:3, 268:8, 268:12, 269:21, 270:1, 276:12, 276:15, 276:21, 276:23, 276:24, 277:13, 277:19, 280:8, 280:11, 286:20, 289:4, 289:8, 294:12, 294:14, 294:15, 295:7, 295:20, 296:19, 297:13, 297:14, 297:18,</p>	<p>305:20, 306:9, 314:13, 322:17, 324:11, 324:12, 324:13, 324:18, 324:21, 324:24, 324:25, 325:2, 331:10, 331:11, 331:14, 331:15, 332:9</p> <p><b>drafted</b> [1] - 224:16</p> <p><b>dramatically</b> [1] - 243:7</p> <p><b>Dreyfuss</b> [1] - 213:9</p> <p><b>dries</b> [2] - 202:7, 246:12</p> <p><b>drive</b> [1] - 293:8</p> <p><b>drives</b> [1] - 320:8</p> <p><b>driving</b> [7] - 292:24, 293:2, 294:9, 315:10, 318:11, 320:17, 321:8</p> <p><b>drove</b> [3] - 317:11, 318:8, 321:15</p> <p><b>due</b> [2] - 180:1, 279:24</p> <p><b>duplicate</b> [3] - 194:17, 194:25, 195:13</p> <p><b>duplicates</b> [1] - 195:2</p> <p><b>during</b> [4] - 183:3, 184:25, 197:25, 252:8</p> <p><b>DWYER</b> [2] - 172:2, 172:13</p> <p><b>Dwyer</b> [3] - 173:8, 173:11, 173:18</p> <p><b>early</b> [2] - 325:5, 325:6</p> <p><b>earmarked</b> [1] - 307:22</p> <p><b>earned</b> [1] - 221:19</p> <p><b>earth</b> [1] - 271:14</p> <p><b>East</b> [5] - 173:2, 173:8, 173:12, 217:13, 277:9</p> <p><b>EAST</b> [3] - 171:6, 171:8, 172:3</p> <p><b>edema</b> [3] - 243:2, 243:4, 248:22</p> <p><b>editorial</b> [1] - 231:18</p> <p><b>education</b> [2] - 175:25, 277:23</p> <p><b>egregious</b> [1] - 322:14</p> <p><b>eight</b> [1] - 284:2</p> <p><b>eighth</b> [2] - 283:4, 284:19</p> <p><b>Einstein</b> [1] - 176:5</p> <p><b>either</b> [9] - 178:6, 198:19, 202:17, 210:13, 226:17, 227:3, 236:12, 279:16, 324:13</p> <p><b>elbow</b> [1] - 328:12</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p><b>electronic</b> [8] - 298:10, 299:8, 299:15, 299:16, 299:17, 299:20, 300:11, 300:16</p> <p><b>electronically</b> [1] - 298:7</p> <p><b>elements</b> [2] - 265:6, 265:7</p> <p><b>elicited</b> [1] - 192:1</p> <p><b>eliciting</b> [1] - 268:13</p> <p><b>eliminated</b> [1] - 263:23</p> <p><b>emergency</b> [1] - 287:7</p> <p><b>employed</b> [4] - 271:13, 271:21, 272:2, 273:7</p> <p><b>employee</b> [5] - 266:8, 266:9, 266:11, 266:15</p> <p><b>employees</b> [1] - 320:9</p> <p><b>employer</b> [4] - 260:10, 261:1, 261:18, 261:20</p> <p><b>employers</b> [1] - 259:2</p> <p><b>employment</b> [4] - 273:1, 323:18, 324:7, 324:8</p> <p><b>EMT's</b> [1] - 312:10</p> <p><b>encounter</b> [1] - 282:19</p> <p><b>encountered</b> [2] - 181:24, 280:20</p> <p><b>end</b> [4] - 192:21, 196:16, 266:6, 308:7</p> <p><b>ends</b> [1] - 204:13</p> <p><b>endure</b> [1] - 295:6</p> <p><b>energy</b> [2] - 178:15, 313:2</p> <p><b>engage</b> [1] - 177:25</p> <p><b>entails</b> [1] - 330:16</p> <p><b>entered</b> [5] - 174:17, 200:2, 214:18, 254:22, 296:15</p> <p><b>entering</b> [6] - 174:16, 200:1, 214:17, 254:21, 296:14, 301:16</p> <p><b>entire</b> [6] - 217:9, 296:21, 299:2, 299:21, 300:4, 300:7</p> <p><b>entirely</b> [1] - 320:25</p> <p><b>entity</b> [5] - 327:3, 327:8, 329:13, 329:18, 329:19</p> <p><b>epidural</b> [4] - 204:22, 245:2, 259:6, 285:18</p> <p><b>equal</b> [1] - 241:20</p> <p><b>equipment</b> [1] - 312:21</p> <p><b>error</b> [1] - 303:23</p>	<p><b>ESQ</b> [4] - 171:23, 172:5, 172:5, 172:10</p> <p><b>essentially</b> [2] - 309:6, 320:17</p> <p><b>established</b> [4] - 177:16, 184:3, 253:14, 254:15</p> <p><b>evaluation</b> [2] - 256:2, 256:5</p> <p><b>eventually</b> [4] - 314:18, 325:25, 326:9, 329:19</p> <p><b>evidence</b> [30] - 173:22, 181:2, 181:3, 192:24, 197:22, 198:4, 198:5, 213:4, 213:6, 214:5, 214:7, 214:8, 223:24, 239:6, 256:20, 256:22, 256:23, 257:8, 257:12, 257:16, 258:11, 258:16, 268:24, 311:16, 311:21, 312:6, 332:16, 332:18, 332:21</p> <p><b>exact</b> [4] - 273:20, 309:21, 329:14, 329:15</p> <p><b>exactly</b> [1] - 286:12</p> <p><b>exaggerate</b> [1] - 205:18</p> <p><b>exaggerated</b> [2] - 189:22, 209:19</p> <p><b>exam</b> [6] - 250:21, 261:18, 261:19, 283:2, 284:1, 284:7</p> <p><b>examination</b> [13] - 176:17, 182:14, 183:3, 184:13, 213:5, 213:8, 219:17, 256:3, 264:17, 268:17, 270:11, 282:18, 288:18</p> <p><b>EXAMINATION</b> [8] - 175:10, 175:18, 214:15, 264:9, 271:10, 275:12, 277:11, 295:18</p> <p><b>examinations</b> [2] - 176:18, 278:18</p> <p><b>examine</b> [1] - 214:1</p> <p><b>examining</b> [1] - 267:7</p> <p><b>example</b> [3] - 178:17, 178:19, 185:7</p> <p><b>exception</b> [3] - 223:8, 269:4, 270:3</p> <p><b>exchange</b> [10] - 193:3,</p>	<p>193:16, 193:21, 193:24, 194:12, 194:15, 196:8, 196:11, 196:12, 196:18</p> <p><b>exchanges</b> [2] - 192:4, 192:11</p> <p><b>excuse</b> [4] - 193:12, 224:20, 250:12</p> <p><b>exhibit</b> [3] - 186:7, 190:14, 246:2</p> <p><b>Exhibit</b> [9] - 174:13, 189:24, 190:2, 203:13, 203:14, 203:20, 246:3, 305:18</p> <p><b>exhibits</b> [5] - 214:3, 214:4, 332:14, 332:22, 332:23</p> <p><b>exist</b> [1] - 208:10</p> <p><b>exited</b> [11] - 184:15, 191:16, 191:22, 212:15, 212:22, 252:6, 252:14, 276:12, 296:11, 331:7, 332:9</p> <p><b>exiting</b> [9] - 191:15, 212:14, 240:14, 245:6, 245:17, 248:3, 252:5, 296:10, 331:6</p> <p><b>expect</b> [10] - 201:23, 242:14, 242:15, 243:6, 267:12, 267:16, 267:19, 290:7, 291:13, 310:5</p> <p><b>experience</b> [4] - 181:10, 253:21, 280:2, 308:9</p> <p><b>experiences</b> [1] - 313:3</p> <p><b>expert</b> [12] - 181:16, 181:19, 181:22, 195:17, 195:19, 196:2, 196:13, 268:22, 278:19, 280:5, 280:9, 280:11</p> <p><b>expert's</b> [1] - 195:15</p> <p><b>expertise</b> [1] - 278:22</p> <p><b>explain</b> [4] - 183:9, 183:14, 251:10, 279:10</p> <p><b>explained</b> [1] - 309:10</p> <p><b>explanations</b> [1] - 297:25</p> <p><b>exquisitely</b> [1] - 179:13</p> <p><b>extended</b> [2] - 321:4, 321:17</p> <p><b>extension</b> [1] - 283:16</p>	<p><b>extensive</b> [2] - 326:22, 327:1</p> <p><b>extent</b> [1] - 326:13</p> <p><b>extremities</b> [1] - 288:11</p> <p><b>facility</b> [1] - 325:11</p> <p><b>fact</b> [7] - 185:12, 192:20, 251:14, 273:5, 273:6, 310:1, 326:9</p> <p><b>factored</b> [1] - 313:15</p> <p><b>factors</b> [3] - 313:15, 313:17, 316:19</p> <p><b>facts</b> [4] - 273:3, 273:6, 319:14</p> <p><b>fail</b> [1] - 327:16</p> <p><b>failed</b> [4] - 253:7, 254:7, 326:7, 327:11</p> <p><b>failure</b> [8] - 253:2, 253:12, 253:18, 253:24, 254:5, 324:22, 325:3</p> <p><b>faintly</b> [1] - 188:1</p> <p><b>fair</b> [4] - 184:6, 213:7, 253:4, 255:5</p> <p><b>fall</b> [33] - 180:1, 180:2, 180:13, 279:24, 281:3, 286:3, 286:5, 292:9, 303:11, 309:17, 309:19, 309:20, 309:21, 310:1, 310:4, 310:8, 310:12, 310:17, 311:10, 312:17, 313:1, 313:2, 313:14, 313:23, 314:3, 314:4, 314:6, 314:14, 314:18, 314:20, 314:22</p> <p><b>falling</b> [2] - 286:2, 309:18</p> <p><b>false</b> [2] - 305:22, 306:14</p> <p><b>far</b> [3] - 244:19, 309:25, 322:19</p> <p><b>FARZAD</b> [1] - 172:10</p> <p><b>Farzad</b> [1] - 173:14</p> <p><b>fat</b> [10] - 204:22, 204:24, 206:15, 208:4, 209:2, 245:2, 259:6, 285:19</p> <p><b>February</b> [9] - 191:7, 192:2, 193:10, 193:13, 194:6, 194:19, 194:20, 196:22, 198:22</p> <p><b>fee</b> [3] - 211:2, 211:5, 211:10</p> <p><b>feet</b> [11] - 188:5, 310:21, 310:24,</p>	<p>311:4, 312:9, 312:20, 312:24, 313:5, 313:6, 314:19</p> <p><b>fell</b> [9] - 181:7, 281:4, 309:25, 310:18, 311:4, 311:14, 312:8, 312:19, 312:24</p> <p><b>felt</b> [1] - 327:3</p> <p><b>few</b> [3] - 177:24, 251:25, 271:12</p> <p><b>field</b> [2] - 176:24, 278:22</p> <p><b>fifth</b> [2] - 185:8, 323:1</p> <p><b>figure</b> [1] - 282:24</p> <p><b>file</b> [25] - 196:10, 212:17, 215:18, 215:23, 216:2, 217:9, 217:24, 235:24, 236:5, 236:23, 237:24, 238:2, 256:8, 295:22, 295:25, 296:21, 298:2, 299:2, 299:17, 299:21, 300:4, 301:5, 302:20, 310:20</p> <p><b>files</b> [2] - 225:10, 239:6</p> <p><b>fill</b> [3] - 301:1, 302:6, 302:12</p> <p><b>filled</b> [2] - 285:22, 302:8</p> <p><b>film</b> [20] - 194:5, 199:7, 236:1, 239:2, 239:16, 240:9, 242:3, 244:8, 244:20, 246:7, 248:24, 249:24, 250:9, 262:20, 263:4, 263:6, 263:9, 263:10</p> <p><b>films</b> [23] - 178:11, 197:15, 199:3, 219:23, 220:13, 222:3, 227:19, 228:4, 238:9, 244:3, 244:6, 249:14, 249:15, 250:1, 250:21, 251:2, 251:5, 255:5, 255:7, 255:8, 260:4, 262:6, 267:7</p> <p><b>findings</b> [35] - 182:25, 183:9, 184:14, 189:10, 189:13, 189:14, 189:21, 189:22, 189:25, 191:4, 198:22,</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p>200:24, 205:14, 205:16, 206:2, 209:14, 238:19, 238:20, 240:6, 244:23, 259:14, 259:22, 262:12, 263:22, 263:23, 269:6, 269:7, 282:22, 284:7, 285:23, 286:1, 286:6, 286:9, 287:7, 292:13</p> <p><b>fine</b> [11] - 173:23, 183:25, 196:7, 249:13, 262:24, 273:13, 297:22, 330:21, 332:3, 332:25, 333:2</p> <p><b>fingers</b> [3] - 187:13, 189:4, 205:9</p> <p><b>finish</b> [8] - 176:14, 176:16, 212:20, 217:13, 274:3, 274:4, 320:19, 330:11</p> <p><b>finished</b> [3] - 176:9, 275:19, 275:20</p> <p><b>finishing</b> [1] - 247:25</p> <p><b>fire</b> [1] - 265:18</p> <p><b>Firm</b> [1] - 216:10</p> <p><b>firm</b> [51] - 192:5, 197:11, 197:15, 211:19, 219:12, 219:25, 220:1, 220:15, 220:19, 221:4, 221:19, 222:7, 222:14, 222:15, 222:17, 222:18, 222:24, 223:13, 224:7, 225:12, 226:6, 226:9, 227:2, 227:16, 228:2, 228:3, 228:11, 228:13, 228:21, 229:8, 229:9, 230:1, 230:6, 230:15, 230:23, 231:14, 232:2, 232:14, 233:13, 235:1, 235:13, 251:3, 264:24, 265:2, 271:16, 272:23, 274:15, 307:3, 308:10, 323:7</p> <p><b>firms</b> [9] - 219:22, 220:9, 220:12, 220:13, 222:2, 274:15, 307:18, 307:19</p>	<p><b>first</b> [29] - 174:21, 183:20, 186:13, 199:23, 201:20, 202:7, 203:19, 204:4, 204:18, 214:25, 219:3, 219:11, 233:19, 234:16, 239:21, 240:9, 244:19, 246:11, 247:4, 254:25, 268:13, 278:4, 281:1, 300:25, 302:4, 303:7, 303:13, 304:13, 304:22</p> <p><b>five</b> [16] - 185:5, 203:24, 208:19, 211:17, 212:13, 219:15, 219:18, 219:24, 220:7, 220:8, 226:2, 273:21, 283:16, 296:12, 315:12, 317:9</p> <p><b>flexion</b> [2] - 283:14, 283:18</p> <p><b>Floor</b> [1] - 172:9</p> <p><b>floor</b> [2] - 281:4, 309:18</p> <p><b>fluid</b> [6] - 187:9, 187:18, 188:1, 204:23, 285:22</p> <p><b>follow</b> [6] - 282:25, 287:12, 287:20, 287:21, 322:3, 327:15</p> <p><b>follow-up</b> [1] - 282:25</p> <p><b>followed</b> [4] - 288:1, 329:12, 329:13, 329:17</p> <p><b>following</b> [4] - 278:1, 286:8, 292:13, 326:21</p> <p><b>foot</b> [3] - 307:4, 310:4, 313:2</p> <p><b>foramen</b> [17] - 188:25, 189:7, 189:12, 189:17, 189:19, 201:4, 201:9, 240:14, 241:4, 245:6, 245:17, 245:21, 248:3, 259:8, 259:9, 259:13, 259:20</p> <p><b>foraminal</b> [2] - 242:25, 243:13</p> <p><b>force</b> [1] - 313:8</p> <p><b>forget</b> [1] - 247:23</p> <p><b>forgot</b> [3] - 244:15, 247:24, 294:11</p>	<p><b>form</b> [14] - 202:25, 266:11, 272:9, 284:15, 284:21, 300:21, 301:2, 301:4, 301:5, 301:7, 301:16, 302:1, 302:12, 303:16</p> <p><b>formed</b> [2] - 251:12, 251:13</p> <p><b>forming</b> [1] - 202:15</p> <p><b>forms</b> [3] - 201:15, 324:7, 324:8</p> <p><b>formula</b> [1] - 313:11</p> <p><b>forth</b> [1] - 184:19</p> <p><b>forward</b> [2] - 208:5, 283:14</p> <p><b>foundation</b> [1] - 199:19</p> <p><b>four</b> [5] - 176:6, 176:16, 186:12, 186:15, 310:23</p> <p><b>fourth</b> [2] - 185:8, 252:25</p> <p><b>fracture</b> [11] - 178:25, 179:1, 242:7, 248:9, 281:20, 281:24, 282:3, 282:10, 284:6, 284:24, 310:12</p> <p><b>fractured</b> [2] - 181:8, 279:24</p> <p><b>fractures</b> [11] - 281:8, 281:13, 281:17, 281:18, 281:21, 282:17, 284:2, 284:20, 289:16, 290:6, 311:11</p> <p><b>framing</b> [1] - 254:13</p> <p><b>Frank</b> [1] - 173:6</p> <p><b>FRANK</b> [1] - 171:23</p> <p><b>free</b> [2] - 291:20, 313:14</p> <p><b>French</b> [1] - 188:6</p> <p><b>frequency</b> [1] - 179:20</p> <p><b>frequently</b> [1] - 177:17</p> <p><b>Friday</b> [6] - 331:20, 331:25, 332:2, 332:4, 332:6, 332:7</p> <p><b>Frittola</b> [2] - 173:11, 295:21</p> <p><b>FRITTOLA</b> [31] - 172:5, 173:10, 173:19, 174:1, 174:12, 276:16, 280:10, 284:10, 289:20, 290:20, 293:3, 293:11, 293:16, 295:1, 295:8, 295:19, 295:24, 296:3,</p>	<p>296:6, 296:13, 296:18, 297:25, 305:5, 305:17, 305:24, 311:20, 311:25, 317:20, 317:23, 320:18, 330:24</p> <p><b>front</b> [12] - 174:7, 174:11, 187:8, 209:2, 209:10, 215:17, 253:1, 253:25, 283:4, 283:6, 301:3, 301:4</p> <p><b>Frye</b> [1] - 253:21</p> <p><b>full</b> [5] - 175:6, 277:6, 289:14, 315:23, 331:22</p> <p><b>full-time</b> [1] - 289:14</p> <p><b>fused</b> [1] - 210:12</p> <p><b>fusion</b> [3] - 210:17, 288:7, 288:8</p> <p><b>future</b> [2] - 291:3, 292:16</p> <p><b>Gallo</b> [1] - 173:17</p> <p><b>GALLO</b> [1] - 172:12</p> <p><b>games</b> [1] - 234:10</p> <p><b>geez</b> [1] - 330:25</p> <p><b>general</b> [9] - 178:4, 178:8, 178:9, 190:6, 190:7, 201:18, 201:19, 273:21, 324:14</p> <p><b>generally</b> [1] - 270:4</p> <p><b>generates</b> [1] - 179:18</p> <p><b>gentleman</b> [2] - 291:8, 300:15</p> <p><b>given</b> [6] - 225:22, 230:25, 263:22, 270:24, 278:19, 297:17</p> <p><b>glasses</b> [1] - 241:24</p> <p><b>God</b> [1] - 213:18</p> <p><b>Goldman</b> [3] - 331:10, 331:15, 332:12</p> <p><b>GORAYEB</b> [1] - 171:21</p> <p><b>Gorayeb</b> [54] - 192:5, 216:9, 219:12, 219:22, 219:25, 220:1, 221:4, 221:19, 222:7, 222:13, 222:14, 222:17, 222:18, 222:24, 223:13, 225:12, 226:6, 226:9, 227:2, 227:16, 228:2, 228:3, 228:11, 228:13, 228:21, 229:7, 229:9, 230:1,</p>	<p>230:15, 230:23, 231:13, 232:2, 233:11, 233:13, 235:1, 235:13, 250:22, 251:3, 260:10, 261:1, 261:17, 261:19, 261:21, 262:3, 264:20, 266:12, 266:15, 271:14, 271:16, 272:23, 273:17, 301:12, 301:15, 308:14</p> <p><b>Gorayeb's</b> [1] - 222:2</p> <p><b>graduated</b> [3] - 176:2, 176:3, 277:24</p> <p><b>gray</b> [6] - 187:8, 187:9, 188:1, 189:1, 204:12, 204:14</p> <p><b>greater</b> [4] - 241:4, 241:5, 242:24, 243:13</p> <p><b>Grimm</b> [33] - 199:10, 200:15, 222:10, 222:11, 222:14, 222:25, 223:12, 225:5, 226:16, 227:22, 233:13, 236:15, 236:18, 239:19, 286:20, 294:12, 294:15, 295:7, 297:13, 297:14, 297:18, 324:11, 324:12, 324:13, 324:18, 324:21, 324:24, 324:25, 325:2, 331:10, 331:14, 332:10, 332:12</p> <p><b>Grimm's</b> [1] - 294:14</p> <p><b>growth</b> [2] - 201:12, 202:16</p> <p><b>guess</b> [4] - 193:1, 230:20, 231:8, 259:1</p> <p><b>guidelines</b> [1] - 329:18</p> <p><b>guy</b> [2] - 268:2, 325:6</p> <p><b>guys</b> [1] - 193:7</p> <p><b>half</b> [1] - 330:24</p> <p><b>half-hour</b> [1] - 330:24</p> <p><b>hallway</b> [1] - 191:20</p> <p><b>hand</b> [6] - 175:1, 192:11, 195:11, 198:20, 277:1, 305:24</p> <p><b>handed</b> [3] - 194:14, 195:7, 196:23</p> <p><b>handing</b> [1] - 296:9</p> <p><b>Handing</b> [5] - 184:20, 195:12, 257:3,</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p>306:1, 312:4  <b>handle</b> [1] - 173:20  <b>handwriting</b> [1] - 302:9  <b>handwritten</b> [2] - 298:12, 300:17  <b>happy</b> [6] - 192:12, 224:22, 228:16, 230:3, 230:10, 230:11  <b>hard</b> [5] - 178:17, 178:18, 178:23, 311:7  <b>hardy</b> [2] - 256:2, 256:4  <b>Harlem</b> [4] - 281:6, 281:7, 282:13, 282:15  <b>harsh</b> [1] - 291:22  <b>head</b> [3] - 184:24, 218:19, 218:22  <b>heal</b> [2] - 190:5, 190:6  <b>healed</b> [1] - 290:6  <b>health</b> [4] - 179:24, 180:12, 236:6, 237:13  <b>hear</b> [5] - 205:2, 219:16, 249:1, 250:7, 283:7  <b>heard</b> [3] - 177:15, 264:11, 275:25  <b>heavy</b> [1] - 324:5  <b>height</b> [22] - 180:2, 181:7, 202:10, 241:18, 241:20, 248:7, 279:25, 286:2, 292:9, 303:11, 309:19, 309:20, 309:21, 310:8, 310:17, 311:10, 312:17, 312:20, 314:4, 314:6, 314:14, 314:22  <b>Heights</b> [1] - 176:8  <b>held</b> [7] - 180:21, 186:19, 186:22, 191:13, 233:7, 293:22, 305:15  <b>help</b> [4] - 178:2, 183:13, 284:25, 308:8  <b>helpful</b> [1] - 309:5  <b>helping</b> [1] - 183:9  <b>helps</b> [2] - 213:7, 309:11  <b>hence</b> [1] - 313:13  <b>Hentel</b> [3] - 256:16, 257:14, 258:12  <b>herniation</b> [30] -</p>	<p>189:7, 189:11, 191:8, 201:1, 201:3, 201:8, 201:12, 201:19, 202:25, 205:6, 205:9, 205:13, 206:14, 206:17, 207:23, 208:3, 209:2, 211:22, 211:25, 240:13, 240:24, 242:19, 243:22, 245:1, 259:5, 259:23, 270:4, 270:18, 285:17  <b>herniations</b> [6] - 201:15, 205:2, 209:14, 248:1, 267:13, 267:16  <b>hero</b> [1] - 188:8  <b>hi</b> [2] - 277:20, 296:20  <b>high</b> [3] - 177:5, 311:13, 312:7  <b>Hill</b> [1] - 244:1  <b>himself</b> [1] - 289:21  <b>Hinlicky</b> [1] - 213:9  <b>HIPAA</b> [2] - 301:19, 302:1  <b>hire</b> [1] - 265:18  <b>history</b> [19] - 189:14, 199:13, 236:24, 237:6, 250:1, 281:2, 286:1, 288:2, 289:16, 289:21, 291:4, 308:19, 308:20, 308:25, 309:2, 309:3, 309:6, 309:8, 309:14  <b>hitting</b> [1] - 312:20  <b>hold</b> [6] - 180:8, 194:8, 245:25, 250:13, 311:19, 320:23  <b>holding</b> [1] - 313:13  <b>holds</b> [2] - 187:2, 211:24  <b>hole</b> [1] - 201:5  <b>HOME</b> [1] - 171:6  <b>Honor</b> [18] - 173:10, 173:14, 174:22, 175:17, 180:7, 191:25, 192:12, 195:14, 212:25, 231:18, 252:21, 264:7, 276:4, 280:8, 280:10, 295:24, 311:20, 332:13  <b>Honorable</b> [2] - 172:24, 252:18  <b>HONORABLE</b> [1] - 171:17</p>	<p><b>Hospital</b> [7] - 255:1, 279:3, 281:5, 281:6, 281:7, 282:13, 282:15  <b>hospital</b> [3] - 255:13, 256:16, 314:18  <b>hour</b> [1] - 330:24  <b>housekeeping</b> [1] - 200:5  <b>hurt</b> [2] - 309:8, 309:12  <b>hypertension</b> [2] - 179:25, 180:12  <b>hypertrophic</b> [4] - 201:4, 201:6, 202:15, 209:12  <b>hypothetical</b> [4] - 223:12, 254:13, 261:23, 306:18  <b>hypothetically</b> [3] - 269:10, 317:11, 318:8  <b>hypotrophic</b> [1] - 260:16  <b>idea</b> [4] - 225:15, 225:20, 274:17, 321:7  <b>identification</b> [5] - 305:6, 305:9, 305:11, 305:19, 306:3  <b>identified</b> [1] - 304:25  <b>identify</b> [1] - 305:2  <b>image</b> [5] - 193:11, 206:10, 228:15, 238:17, 281:25  <b>images</b> [5] - 189:23, 205:18, 207:15, 227:6, 227:9  <b>imagine</b> [1] - 293:19  <b>imaging</b> [5] - 190:19, 190:21, 201:20, 238:14, 283:1  <b>immediate</b> [1] - 283:1  <b>immobilize</b> [1] - 282:10  <b>impartial</b> [1] - 253:5  <b>impingement</b> [5] - 260:2, 260:4, 261:6, 275:7, 276:1  <b>impinging</b> [11] - 189:11, 205:13, 212:2, 212:6, 241:2, 242:4, 245:1, 259:6, 259:18, 285:18, 285:21  <b>implication</b> [1] - 270:8  <b>imply</b> [1] - 253:7  <b>important</b> [6] - 238:18, 249:16,</p>	<p>282:25, 309:10, 310:9, 314:17  <b>importantly</b> [1] - 177:18  <b>imposition</b> [2] - 269:12, 270:12  <b>impression</b> [1] - 256:3  <b>improve</b> [1] - 291:5  <b>improvement</b> [1] - 179:10  <b>IMPROVEMENT</b> [1] - 171:6  <b>inability</b> [2] - 321:12, 321:16  <b>inappropriate</b> [3] - 275:15, 275:17, 279:19  <b>Inc</b> [3] - 171:11, 172:9, 232:6  <b>include</b> [3] - 257:14, 257:15, 294:9  <b>included</b> [4] - 263:23, 297:1, 302:22, 311:22  <b>includes</b> [1] - 194:17  <b>including</b> [1] - 274:10  <b>incorrect</b> [1] - 234:24  <b>increase</b> [1] - 291:15  <b>increased</b> [1] - 291:13  <b>increasing</b> [1] - 201:23  <b>increments</b> [1] - 321:20  <b>indentation</b> [3] - 268:9, 270:7, 275:2  <b>independent</b> [1] - 322:15  <b>independently</b> [2] - 265:23, 321:23  <b>INDEX</b> [1] - 171:4  <b>Index</b> [2] - 173:1, 232:6  <b>indicate</b> [1] - 301:7  <b>indicated</b> [3] - 200:25, 283:9, 309:16  <b>indicates</b> [5] - 301:21, 304:9, 305:20, 306:13, 312:9  <b>indicating</b> [1] - 300:20  <b>indication</b> [4] - 239:21, 283:21, 312:13, 312:16  <b>indicia</b> [1] - 312:14  <b>individual</b> [1] - 243:9  <b>induced</b> [1] - 249:25  <b>inference</b> [1] - 180:25  <b>inflammatory</b> [1] - 286:18  <b>info</b> [1] - 301:16</p>	<p><b>information</b> [5] - 302:9, 314:2, 314:14, 317:4, 322:18  <b>initial</b> [13] - 184:16, 282:23, 284:7, 284:15, 284:18, 284:19, 303:14, 303:20, 308:17, 309:2, 309:3, 328:18  <b>injections</b> [6] - 279:17, 287:19, 294:20, 324:16, 324:18, 326:15  <b>injured</b> [8] - 181:8, 181:9, 220:10, 226:19, 256:12, 256:23, 308:7, 320:13  <b>injuries</b> [13] - 279:14, 279:16, 289:25, 290:3, 290:5, 294:16, 303:10, 310:2, 310:5, 311:11, 313:18, 313:21, 323:4  <b>injury</b> [28] - 181:8, 227:16, 256:20, 256:22, 257:8, 257:12, 257:16, 257:17, 258:11, 258:12, 258:16, 264:12, 267:17, 279:24, 281:2, 286:19, 288:23, 288:24, 292:1, 309:4, 309:6, 309:16, 311:11, 322:12, 323:25  <b>inquire</b> [4] - 175:16, 214:21, 277:17, 296:17  <b>inside</b> [2] - 178:9, 188:25  <b>inspiration</b> [1] - 285:3  <b>instances</b> [3] - 310:8, 310:10, 310:11  <b>instead</b> [2] - 179:6, 188:20  <b>instructed</b> [1] - 180:25  <b>instruction</b> [1] - 228:18  <b>intake</b> [10] - 218:4, 237:6, 300:21, 301:2, 301:3, 301:5, 301:7, 301:16, 302:1, 303:16  <b>intend</b> [1] - 213:16  <b>intention</b> [3] - 213:3, 213:25, 214:1</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p><b>intentionally</b> <sup>[1]</sup> - 263:21</p> <p><b>intentions</b> <sup>[1]</sup> - 193:3</p> <p><b>intermittently</b> <sup>[1]</sup> - 287:22</p> <p><b>internship</b> <sup>[1]</sup> - 176:4</p> <p><b>interpret</b> <sup>[2]</sup> - 230:4, 262:6</p> <p><b>interpretation</b> <sup>[1]</sup> - 261:20</p> <p><b>interpreted</b> <sup>[2]</sup> - 230:2, 311:8</p> <p><b>interpreting</b> <sup>[1]</sup> - 240:10</p> <p><b>intervention</b> <sup>[2]</sup> - 206:6, 209:23</p> <p><b>interventional</b> <sup>[1]</sup> - 294:18</p> <p><b>interview</b> <sup>[1]</sup> - 308:18</p> <p><b>introduced</b> <sup>[1]</sup> - 177:21</p> <p><b>involved</b> <sup>[9]</sup> - 225:14, 225:16, 225:21, 227:15, 239:22, 240:1, 240:3, 249:23, 263:3</p> <p><b>involvement</b> <sup>[1]</sup> - 225:24</p> <p><b>involves</b> <sup>[1]</sup> - 278:18</p> <p><b>involving</b> <sup>[2]</sup> - 254:11, 281:2</p> <p><b>iron</b> <sup>[2]</sup> - 281:3, 309:18</p> <p><b>irrelevant</b> <sup>[1]</sup> - 320:25</p> <p><b>issue</b> <sup>[4]</sup> - 174:5, 225:17, 228:8</p> <p><b>issuing</b> <sup>[4]</sup> - 225:11, 225:12, 225:13, 225:25</p> <p><b>Italian</b> <sup>[1]</sup> - 188:7</p> <p><b>Jacobi</b> <sup>[1]</sup> - 176:5</p> <p><b>January</b> <sup>[6]</sup> - 171:16, 194:13, 194:17, 201:2, 201:7, 333:3</p> <p><b>jargon</b> <sup>[1]</sup> - 186:24</p> <p><b>Jeffrey</b> <sup>[3]</sup> - 250:23, 276:21, 277:8</p> <p><b>jelly</b> <sup>[1]</sup> - 185:23</p> <p><b>JJH</b> <sup>[3]</sup> - 171:11, 172:9, 173:16</p> <p><b>job</b> <sup>[1]</sup> - 320:23</p> <p><b>jogs</b> <sup>[1]</sup> - 221:10</p> <p><b>JOHNSON</b> <sup>[9]</sup> - 173:17, 252:21, 252:24, 254:20, 332:13, 332:17, 332:22, 332:24, 333:1</p> <p><b>Johnson</b> <sup>[1]</sup> - 173:17</p> <p><b>joint</b> <sup>[1]</sup> - 201:16</p>	<p><b>joints</b> <sup>[2]</sup> - 279:12, 279:13</p> <p><b>Joseph</b> <sup>[1]</sup> - 289:4</p> <p><b>judge</b> <sup>[10]</sup> - 183:23, 191:17, 195:24, 197:20, 263:25, 268:16, 269:16, 269:25, 271:15, 293:18</p> <p><b>Judge</b> <sup>[29]</sup> - 174:4, 186:7, 193:22, 195:20, 196:7, 197:7, 198:11, 198:17, 198:25, 203:16, 213:17, 214:22, 217:3, 232:18, 232:22, 262:25, 265:7, 269:9, 271:15, 273:25, 274:12, 284:10, 289:20, 296:13, 296:18, 305:6, 310:14, 314:9, 323:1</p> <p><b>judicial</b> <sup>[1]</sup> - 229:17</p> <p><b>July</b> <sup>[12]</sup> - 182:7, 182:8, 197:14, 204:8, 205:21, 236:17, 244:8, 244:9, 304:10, 304:19, 305:21, 306:11</p> <p><b>jump</b> <sup>[3]</sup> - 185:18, 202:8, 204:7</p> <p><b>junction</b> <sup>[1]</sup> - 242:10</p> <p><b>June</b> <sup>[15]</sup> - 193:23, 194:16, 194:17, 194:21, 194:24, 194:25, 236:10, 236:11, 236:20, 239:2, 288:19, 294:25, 295:6, 303:11, 315:4</p> <p><b>jurors</b> <sup>[3]</sup> - 180:25, 199:22, 199:23</p> <p><b>jury</b> <sup>[62]</sup> - 174:7, 174:16, 174:17, 174:19, 175:22, 175:24, 176:12, 177:1, 178:2, 183:14, 184:10, 184:13, 191:15, 191:16, 198:1, 200:1, 200:2, 200:4, 203:8, 212:14, 212:15, 213:12, 214:17, 214:18, 215:17, 217:7, 224:15, 228:10, 228:20, 229:2,</p>	<p>229:25, 230:12, 231:19, 233:16, 234:21, 240:7, 250:10, 251:10, 252:1, 252:5, 252:6, 252:22, 253:1, 254:1, 254:21, 254:22, 261:6, 277:21, 278:14, 284:18, 288:21, 291:2, 296:3, 296:7, 296:10, 296:11, 296:14, 296:15, 331:1, 331:6, 331:7</p> <p><b>jury's</b> <sup>[1]</sup> - 234:20</p> <p><b>Justice</b> <sup>[1]</sup> - 171:18</p> <p><b>K-A-P-L-A-N</b> <sup>[1]</sup> - 277:9</p> <p><b>Kaplan</b> <sup>[30]</sup> - 174:2, 222:18, 222:25, 223:12, 225:3, 226:16, 227:22, 233:13, 236:16, 236:18, 244:17, 250:23, 276:15, 276:21, 276:23, 276:24, 277:8, 277:13, 277:19, 280:8, 280:11, 295:20, 296:19, 305:20, 306:9, 314:13, 322:17, 331:11, 332:9</p> <p><b>KATZ</b> <sup>[2]</sup> - 172:2, 172:13</p> <p><b>Katz</b> <sup>[3]</sup> - 173:8, 173:11, 173:18</p> <p><b>keep</b> <sup>[5]</sup> - 175:12, 218:19, 257:13, 273:12, 287:9</p> <p><b>keeping</b> <sup>[2]</sup> - 191:6, 198:13</p> <p><b>keeps</b> <sup>[3]</sup> - 218:20, 287:10</p> <p><b>Keith</b> <sup>[1]</sup> - 256:16</p> <p><b>Kelly</b> <sup>[22]</sup> - 173:6, 175:12, 192:1, 194:14, 195:3, 196:18, 197:10, 198:12, 198:18, 198:20, 199:14, 217:22, 219:14, 219:17, 249:14, 252:8, 273:9, 274:6, 275:1, 276:13, 331:8, 332:10</p> <p><b>KELLY</b> <sup>[153]</sup> - 171:23, 173:6, 173:25, 174:4, 174:22, 175:11, 175:17,</p>	<p>175:19, 180:7, 180:17, 181:19, 183:19, 192:16, 193:11, 193:15, 194:10, 195:4, 195:14, 195:18, 195:24, 196:1, 196:13, 197:21, 198:4, 198:13, 198:23, 199:5, 199:9, 199:15, 203:14, 206:12, 207:11, 212:9, 212:25, 213:2, 213:16, 213:21, 213:24, 214:3, 214:6, 214:12, 215:3, 216:11, 217:3, 218:13, 218:17, 218:20, 218:24, 223:5, 223:8, 223:15, 223:19, 223:23, 224:3, 224:18, 226:24, 229:1, 229:13, 229:16, 229:19, 230:5, 230:13, 231:15, 231:18, 232:21, 232:25, 233:3, 233:5, 233:20, 239:4, 239:8, 239:12, 241:11, 246:2, 247:16, 253:18, 264:5, 264:10, 265:6, 266:19, 266:21, 266:25, 267:19, 268:16, 268:20, 268:22, 268:24, 269:4, 269:9, 269:16, 269:25, 270:3, 271:7, 271:17, 272:9, 272:14, 273:24, 274:3, 274:12, 274:16, 274:21, 274:24, 275:13, 275:16, 275:21, 275:24, 276:4, 276:10, 276:15, 276:17, 276:21, 276:23, 277:12, 277:18, 280:8, 280:12, 293:5, 293:7, 293:18, 295:15, 297:23, 298:22, 298:25, 299:5, 299:11, 300:5, 302:15, 305:7, 305:10,</p>	<p>305:12, 306:15, 306:19, 307:5, 307:12, 307:24, 314:8, 316:7, 317:19, 317:21, 319:8, 319:15, 319:21, 323:1, 323:14, 328:2, 328:5, 330:20, 330:25, 331:10, 331:14, 332:3, 332:12, 332:19</p> <p><b>Kelly's</b> <sup>[1]</sup> - 218:5</p> <p><b>kept</b> <sup>[2]</sup> - 197:25, 298:10</p> <p><b>kind</b> <sup>[12]</sup> - 178:11, 181:11, 187:21, 193:1, 196:3, 202:5, 253:22, 280:3, 289:5, 293:23, 294:6, 309:10</p> <p><b>kindly</b> <sup>[4]</sup> - 175:22, 184:12, 184:16, 203:10</p> <p><b>kinetic</b> <sup>[1]</sup> - 313:2</p> <p><b>KINGS</b> <sup>[1]</sup> - 171:1</p> <p><b>KLAR</b> <sup>[1]</sup> - 172:12</p> <p><b>Klar</b> <sup>[1]</sup> - 173:18</p> <p><b>knit</b> <sup>[1]</sup> - 287:8</p> <p><b>knocked</b> <sup>[1]</sup> - 292:3</p> <p><b>knowing</b> <sup>[2]</sup> - 226:23, 302:18</p> <p><b>knowledge</b> <sup>[3]</sup> - 210:22, 278:22, 312:23</p> <p><b>known</b> <sup>[3]</sup> - 178:15, 235:12, 238:8</p> <p><b>knows</b> <sup>[2]</sup> - 174:12, 192:19</p> <p><b>Kolb</b> <sup>[27]</sup> - 173:20, 174:2, 174:23, 174:24, 175:8, 175:20, 181:19, 181:22, 184:15, 190:24, 191:19, 191:22, 192:4, 192:23, 192:24, 195:18, 199:2, 199:25, 210:21, 212:22, 214:19, 214:23, 239:6, 252:14, 252:17, 254:23, 276:12</p> <p><b>Kolb's</b> <sup>[1]</sup> - 239:8</p> <p><b>L-spine</b> <sup>[2]</sup> - 260:23, 262:2</p> <p><b>L1</b> <sup>[1]</sup> - 204:1</p> <p><b>L1-L2</b> <sup>[2]</sup> - 248:1, 259:22</p> <p><b>L2</b> <sup>[1]</sup> - 204:1</p>
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<p><b>L2-L3</b> [2] - 247:25, 259:22</p> <p><b>L3-L4</b> [2] - 247:25, 259:22</p> <p><b>L4</b> [3] - 208:1, 251:19, 251:22</p> <p><b>L4-5</b> [9] - 205:13, 208:2, 209:15, 245:12, 251:7, 261:23, 262:20, 263:6, 285:20</p> <p><b>L4-5/L5-S1</b> [2] - 262:13, 263:13</p> <p><b>L4-L5</b> [3] - 247:25, 259:15, 260:16</p> <p><b>L5</b> [6] - 206:15, 209:1, 209:5, 210:13, 251:19, 251:22</p> <p><b>L5-1</b> [1] - 204:21</p> <p><b>L5-S1</b> [13] - 205:13, 208:4, 209:9, 209:15, 245:4, 245:22, 245:23, 246:22, 251:17, 251:20, 262:20, 263:6, 285:17</p> <p><b>label</b> [2] - 185:7, 186:16</p> <p><b>Labor</b> [2] - 180:13, 253:3</p> <p><b>labored</b> [1] - 283:11</p> <p><b>ladder</b> [6] - 253:25, 281:3, 309:17, 310:1, 312:19, 313:13</p> <p><b>laid</b> [1] - 215:17</p> <p><b>languages</b> [2] - 320:12, 329:8</p> <p><b>laptop</b> [1] - 197:17</p> <p><b>large</b> [2] - 177:9, 179:16</p> <p><b>largest</b> [1] - 177:24</p> <p><b>Larry</b> [1] - 232:18</p> <p><b>last</b> [15] - 179:22, 200:8, 200:9, 210:5, 211:16, 219:21, 221:9, 221:18, 256:18, 270:23, 274:23, 290:11, 292:22, 308:23, 326:4</p> <p><b>latent</b> [1] - 208:13</p> <p><b>lateral</b> [1] - 283:17</p> <p><b>LAURA</b> [2] - 172:19, 333:8</p> <p><b>Law</b> [3] - 180:14, 216:10, 253:3</p> <p><b>law</b> [15] - 192:19, 220:9, 220:15, 220:19, 222:2,</p>	<p>235:13, 251:3, 253:6, 254:6, 274:15, 307:3, 307:17, 307:19, 308:10, 323:7</p> <p><b>lawsuits</b> [2] - 227:16, 308:8</p> <p><b>lawyer</b> [4] - 217:4, 301:17, 320:12, 330:13</p> <p><b>lawyers</b> [5] - 198:8, 259:2, 306:24, 307:22, 308:1</p> <p><b>leading</b> [14] - 183:10, 183:11, 183:15, 265:4, 265:5, 266:18, 267:3, 267:10, 267:14, 267:18, 276:7, 284:10, 295:2</p> <p><b>learn</b> [1] - 184:22</p> <p><b>least</b> [3] - 227:21, 238:19, 253:11</p> <p><b>leaving</b> [1] - 316:18</p> <p><b>left</b> [16] - 189:5, 189:6, 189:12, 189:18, 189:20, 204:16, 241:4, 241:5, 242:24, 243:13, 258:23, 283:17, 283:20, 283:22, 319:19</p> <p><b>leg</b> [6] - 283:20, 283:22, 283:23, 283:24, 283:25</p> <p><b>legal</b> [8] - 228:8, 229:19, 271:22, 271:23, 272:2, 298:21, 302:11, 304:15</p> <p><b>legally</b> [1] - 273:2</p> <p><b>legs</b> [2] - 187:14, 204:15</p> <p><b>Lenox</b> [1] - 244:1</p> <p><b>less</b> [1] - 242:17</p> <p><b>lesser</b> [2] - 205:11, 206:17</p> <p><b>Lester</b> [3] - 173:7, 173:11, 173:18</p> <p><b>LESTER</b> [2] - 172:2, 172:12</p> <p><b>letter</b> [1] - 216:17</p> <p><b>level</b> [13] - 188:18, 204:13, 204:16, 242:22, 243:22, 256:3, 256:5, 261:7, 285:20, 291:15, 291:16, 316:1, 316:21</p> <p><b>levels</b> [3] - 189:2,</p>	<p>210:16, 260:16</p> <p><b>Lewis</b> [3] - 172:24, 252:18, 271:15</p> <p><b>LEWIS</b> [1] - 171:17</p> <p><b>liability</b> [3] - 253:6, 253:13, 254:15</p> <p><b>licensed</b> [2] - 176:20, 278:9</p> <p><b>Lidocaine</b> [1] - 284:23</p> <p><b>lidocaine</b> [1] - 284:25</p> <p><b>lie</b> [1] - 179:17</p> <p><b>life</b> [2] - 290:23, 292:17</p> <p><b>lifting</b> [2] - 281:11, 324:5</p> <p><b>ligament</b> [5] - 179:3, 186:23, 186:25, 201:14, 205:3</p> <p><b>ligaments</b> [6] - 178:20, 179:15, 186:20, 186:23, 268:1, 279:14</p> <p><b>likely</b> [5] - 286:8, 286:10, 290:25, 291:21, 315:16</p> <p><b>limine</b> [3] - 232:22, 253:9, 332:14</p> <p><b>limit</b> [2] - 215:7, 256:5</p> <p><b>limitation</b> [1] - 181:6</p> <p><b>limitations</b> [1] - 292:7</p> <p><b>limited</b> [10] - 192:18, 256:2, 256:3, 256:13, 258:18, 283:14, 283:16, 283:17, 283:19</p> <p><b>line</b> [1] - 235:11</p> <p><b>lines</b> [1] - 204:14</p> <p><b>lineup</b> [1] - 209:5</p> <p><b>liquid</b> [1] - 204:23</p> <p><b>Lisa</b> [2] - 172:24, 252:18</p> <p><b>LISA</b> [1] - 171:17</p> <p><b>list</b> [15] - 182:21, 214:10, 223:2, 233:11, 233:14, 233:17, 234:3, 234:12, 234:13, 234:19, 270:24, 274:6, 274:14, 274:19</p> <p><b>listhesis</b> [3] - 242:7, 242:8, 248:9</p> <p><b>litigation</b> [2] - 192:21, 196:16</p> <p><b>living</b> [3] - 315:25, 316:10, 317:2</p> <p><b>LLC</b> [6] - 171:6, 171:8, 172:3, 173:3, 173:9, 173:13</p> <p><b>LLP</b> [2] - 172:2,</p>	<p>172:12</p> <p><b>loaf</b> [2] - 188:7, 208:1</p> <p><b>lobe</b> [1] - 284:5</p> <p><b>longitudinal</b> [1] - 186:23</p> <p><b>look</b> [25] - 178:9, 178:16, 179:8, 187:3, 187:20, 188:14, 190:14, 190:18, 196:23, 203:10, 203:19, 203:21, 204:20, 205:8, 209:1, 212:16, 213:19, 228:5, 234:13, 251:3, 295:25, 298:18, 303:18, 311:17</p> <p><b>looked</b> [6] - 199:6, 215:16, 235:23, 255:22, 255:24, 298:17</p> <p><b>looking</b> [22] - 173:21, 178:25, 179:1, 179:2, 179:13, 179:14, 184:21, 188:19, 199:15, 204:17, 207:23, 246:1, 247:10, 247:11, 251:1, 262:7, 262:8, 291:3, 301:11</p> <p><b>looks</b> [9] - 179:12, 194:25, 197:4, 204:17, 210:17, 302:7, 302:9, 303:15, 328:11</p> <p><b>loss</b> [1] - 246:10</p> <p><b>loud</b> [1] - 224:25</p> <p><b>low</b> [12] - 281:9, 284:20, 284:22, 285:5, 285:15, 285:18, 288:6, 288:8, 288:9, 288:11, 311:12</p> <p><b>lower</b> [5] - 182:7, 182:23, 247:8, 283:12, 283:13</p> <p><b>lowest</b> [1] - 285:17</p> <p><b>lumbago</b> [1] - 284:20</p> <p><b>lumbar</b> [34] - 182:6, 182:23, 190:18, 194:18, 194:19, 196:20, 196:21, 203:25, 204:1, 205:21, 207:23, 208:9, 210:6, 244:8, 244:20, 246:1, 246:16, 248:24, 250:9, 258:22,</p>	<p>258:23, 260:5, 261:14, 261:17, 263:5, 263:12, 275:5, 283:12, 283:13, 283:14, 285:15, 290:5, 291:9</p> <p><b>lumbars</b> [1] - 203:11</p> <p><b>lunch</b> [4] - 212:21, 252:3, 252:8, 252:15</p> <p><b>lung</b> [1] - 283:10</p> <p><b>lungs</b> [1] - 282:6</p> <p><b>LUXURY</b> [1] - 171:6</p> <p><b>lying</b> [1] - 312:18</p> <p><b>ma'am</b> [1] - 175:15</p> <p><b>machine</b> [2] - 179:17, 187:22</p> <p><b>Madam</b> [1] - 200:8</p> <p><b>magic</b> [1] - 280:18</p> <p><b>magnetic</b> [3] - 179:11, 179:12, 179:17</p> <p><b>major</b> [2] - 179:10, 205:14</p> <p><b>majority</b> [2] - 220:18, 225:20</p> <p><b>male/female</b> [1] - 203:24</p> <p><b>mammograms</b> [3] - 177:5, 177:11</p> <p><b>man</b> [3] - 242:14, 272:5, 318:23</p> <p><b>management</b> [6] - 286:21, 288:5, 292:19, 294:15, 294:19, 325:6</p> <p><b>managing</b> [1] - 253:21</p> <p><b>Manhattan</b> [2] - 176:8, 277:9</p> <p><b>manipulate</b> [1] - 205:18</p> <p><b>manipulated</b> [2] - 189:22, 209:17</p> <p><b>March</b> [3] - 210:6, 210:7, 258:25</p> <p><b>margin</b> [2] - 187:3, 205:10</p> <p><b>mark</b> [4] - 185:12, 305:6, 332:13, 332:17</p> <p><b>marked</b> [6] - 192:24, 198:4, 198:5, 214:4, 306:2, 332:21</p> <p><b>marker</b> [1] - 185:10</p> <p><b>marking</b> [1] - 210:7</p> <p><b>marrow</b> [4] - 241:23, 241:24, 248:11</p> <p><b>Martin</b> [1] - 232:18</p> <p><b>material</b> [11] - 182:20, 183:1, 187:25, 205:4, 205:10, 206:20, 208:25,</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p>212:1, 254:2, 310:8</p> <p><b>math</b> [1] - 271:1</p> <p><b>matter</b> [7] - 184:16, 192:20, 197:14, 232:5, 249:22, 270:15, 272:21</p> <p><b>matters</b> [1] - 270:16</p> <p><b>Matthew</b> [1] - 286:20</p> <p><b>mean</b> [37] - 176:12, 190:11, 198:16, 202:2, 206:22, 211:1, 211:22, 213:17, 219:1, 228:23, 228:25, 231:4, 231:11, 240:15, 241:19, 241:22, 242:11, 243:22, 245:7, 246:20, 251:10, 256:21, 256:23, 258:9, 263:14, 272:2, 272:3, 272:12, 291:2, 297:9, 300:1, 307:7, 319:20, 322:5, 323:15, 327:24, 330:22</p> <p><b>meaning</b> [4] - 201:11, 279:17, 294:19, 301:20</p> <p><b>means</b> [20] - 176:14, 216:24, 240:19, 242:1, 242:15, 245:20, 248:14, 256:22, 260:18, 264:24, 278:14, 282:24, 283:4, 283:5, 283:7, 283:18, 284:3, 284:5, 284:20, 327:1</p> <p><b>meant</b> [2] - 179:10, 227:7</p> <p><b>measurements</b> [1] - 279:17</p> <p><b>mechanics</b> [1] - 291:12</p> <p><b>mechanism</b> [1] - 309:6</p> <p><b>medical</b> [54] - 176:2, 183:5, 186:24, 190:6, 192:4, 192:11, 193:3, 193:16, 193:21, 193:24, 194:12, 194:15, 196:17, 206:6, 209:23, 218:11, 237:1, 237:3, 277:25, 280:16, 285:8, 286:5, 286:10,</p>	<p>288:4, 288:17, 289:8, 289:11, 289:18, 290:18, 291:3, 292:9, 292:10, 293:15, 294:1, 295:5, 296:23, 296:25, 297:4, 297:8, 297:12, 297:15, 297:16, 298:9, 298:11, 300:7, 300:11, 300:23, 301:18, 301:20, 301:22, 308:22, 308:24, 310:20, 310:23</p> <p><b>Medical</b> [4] - 176:3, 176:5, 176:8, 177:22</p> <p><b>medications</b> [7] - 279:18, 286:17, 287:11, 287:19, 294:20, 326:15</p> <p><b>Medicine</b> [2] - 176:5, 279:5</p> <p><b>medicine</b> [7] - 176:20, 217:11, 278:9, 279:10, 284:25, 297:21, 322:16</p> <p><b>medullaris</b> [1] - 248:13</p> <p><b>meet</b> [2] - 214:23, 280:19</p> <p><b>meeting</b> [2] - 215:1, 215:6</p> <p><b>member</b> [2] - 176:18, 279:6</p> <p><b>members</b> [4] - 174:19, 200:4, 252:1, 331:1</p> <p><b>memory</b> [4] - 220:24, 221:10, 223:4, 234:20</p> <p><b>Memphis</b> [2] - 278:3, 278:6</p> <p><b>mention</b> [3] - 202:1, 236:24, 254:16</p> <p><b>mentioned</b> [2] - 235:7, 248:17</p> <p><b>messy</b> [1] - 174:7</p> <p><b>met</b> [4] - 214:25, 215:2, 222:11, 222:12</p> <p><b>metal</b> [1] - 237:11</p> <p><b>methods</b> [1] - 264:24</p> <p><b>MICHAEL</b> [1] - 172:5</p> <p><b>Michael</b> [2] - 173:10, 295:20</p> <p><b>microphone</b> [3] - 175:13, 277:14, 310:15</p> <p><b>mid</b> [1] - 187:12</p>	<p><b>mid-back</b> [1] - 187:12</p> <p><b>middle</b> [9] - 184:25, 185:23, 187:16, 188:11, 189:9, 231:15, 241:11, 273:24, 314:8</p> <p><b>might</b> [2] - 174:6, 302:12</p> <p><b>Milbauer</b> [1] - 243:24</p> <p><b>mild</b> [4] - 209:7, 260:15, 260:18, 262:13</p> <p><b>mildly</b> [3] - 189:11, 189:17, 259:5</p> <p><b>miles</b> [4] - 317:11, 318:9, 320:9, 321:15</p> <p><b>million</b> [3] - 221:21, 221:23, 271:4</p> <p><b>mind</b> [5] - 183:23, 249:22, 292:12, 320:10, 332:15</p> <p><b>mine</b> [2] - 220:12, 300:13</p> <p><b>minimal</b> [1] - 261:23</p> <p><b>minute</b> [3] - 174:6, 224:10, 276:16</p> <p><b>minutes</b> [10] - 184:19, 212:13, 212:20, 213:3, 234:22, 235:7, 272:8, 295:25, 296:12, 321:21</p> <p><b>MINUTES</b> [1] - 333:6</p> <p><b>mislead</b> [1] - 229:2</p> <p><b>misleading</b> [1] - 265:25</p> <p><b>misrepresentation</b> [1] - 322:24</p> <p><b>misrepresents</b> [1] - 322:20</p> <p><b>miss</b> [3] - 177:11, 234:17, 281:17</p> <p><b>missed</b> [3] - 177:18, 234:16, 303:23</p> <p><b>misstatement</b> [1] - 192:19</p> <p><b>mistrial</b> [2] - 253:17, 254:18</p> <p><b>modalities</b> [2] - 294:21, 294:24</p> <p><b>moment</b> [13] - 180:8, 194:12, 195:25, 203:13, 206:11, 207:2, 216:14, 245:25, 274:1, 284:12</p> <p><b>Monday</b> [1] - 332:1</p> <p><b>money</b> [2] - 221:19, 308:14</p> <p><b>months</b> [4] - 243:8,</p>	<p>243:11, 261:9, 330:17</p> <p><b>morning</b> [13] - 173:1, 173:10, 174:2, 175:20, 253:19, 258:23, 331:2, 331:3, 331:13, 331:16, 331:17, 331:20, 332:1</p> <p><b>most</b> [4] - 177:18, 267:22, 272:1, 282:24</p> <p><b>mostly</b> [1] - 220:9</p> <p><b>motion</b> [7] - 210:15, 232:21, 252:22, 253:9, 253:16, 254:18, 283:14</p> <p><b>motions</b> [2] - 332:14, 332:20</p> <p><b>motor</b> [2] - 240:3, 263:3</p> <p><b>Mount</b> [1] - 279:4</p> <p><b>mouth</b> [1] - 184:24</p> <p><b>move</b> [10] - 185:15, 185:18, 186:20, 186:21, 187:14, 192:15, 193:9, 203:15, 207:21, 208:5</p> <p><b>moved</b> [1] - 278:6</p> <p><b>moving</b> [3] - 283:8, 287:9, 287:10</p> <p><b>MR</b> [293] - 173:6, 173:7, 173:10, 173:14, 173:17, 173:19, 173:25, 174:1, 174:4, 174:8, 174:12, 174:22, 175:11, 175:17, 175:19, 180:3, 180:5, 180:7, 180:15, 180:17, 180:18, 181:12, 181:19, 181:21, 183:10, 183:15, 183:19, 183:23, 184:1, 186:7, 190:25, 191:2, 191:10, 191:17, 191:25, 192:14, 192:16, 193:1, 193:11, 193:14, 193:15, 193:18, 193:22, 193:25, 194:4, 194:7, 194:10, 195:4, 195:8, 195:11, 195:14, 195:18, 195:22, 195:24, 196:1, 196:7,</p>	<p>196:10, 196:13, 196:25, 197:6, 197:13, 197:21, 197:25, 198:4, 198:5, 198:11, 198:13, 198:16, 198:23, 198:25, 199:5, 199:8, 199:9, 199:11, 199:15, 199:16, 203:14, 203:16, 205:23, 206:12, 207:1, 207:9, 207:11, 208:20, 208:22, 212:4, 212:9, 212:16, 212:20, 212:25, 213:2, 213:16, 213:18, 213:21, 213:22, 213:24, 214:1, 214:3, 214:4, 214:6, 214:10, 214:12, 214:16, 214:22, 215:3, 216:11, 217:3, 217:5, 218:13, 218:17, 218:20, 218:22, 218:24, 223:5, 223:8, 223:15, 223:19, 223:23, 224:3, 224:18, 226:24, 229:1, 229:3, 229:13, 229:16, 229:19, 230:5, 230:13, 231:15, 231:18, 232:21, 232:25, 233:1, 233:3, 233:4, 233:5, 233:9, 233:20, 239:4, 239:5, 239:8, 239:12, 241:11, 246:2, 246:4, 247:16, 249:8, 249:11, 250:7, 251:23, 252:2, 252:21, 252:24, 253:18, 254:20, 254:23, 262:24, 263:25, 264:3, 264:5, 264:6, 264:10, 265:4, 265:6, 266:13, 266:18, 266:19, 266:21, 266:25, 267:3, 267:10, 267:14, 267:18, 267:19, 268:11, 268:16, 268:19, 268:20, 268:22, 268:24, 269:4,</p>
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<p>269:8, 269:9, 269:14, 269:16, 269:19, 269:25, 270:3, 271:7, 271:9, 271:11, 271:17, 272:9, 272:14, 273:24, 274:3, 274:12, 274:16, 274:21, 274:24, 275:11, 275:13, 275:15, 275:16, 275:17, 275:20, 275:21, 275:24, 276:3, 276:4, 276:7, 276:10, 276:15, 276:16, 276:17, 276:21, 276:23, 277:12, 277:18, 280:8, 280:10, 280:12, 284:10, 289:20, 290:20, 293:3, 293:5, 293:7, 293:11, 293:16, 293:18, 295:1, 295:8, 295:15, 295:19, 295:24, 296:3, 296:6, 296:13, 296:18, 297:23, 297:25, 298:22, 298:25, 299:5, 299:11, 300:5, 302:15, 305:5, 305:7, 305:10, 305:12, 305:16, 305:17, 305:24, 306:15, 306:19, 307:5, 307:12, 307:24, 310:14, 311:20, 311:25, 314:8, 316:7, 317:19, 317:20, 317:21, 317:23, 319:8, 319:15, 319:21, 320:18, 323:1, 323:14, 328:2, 328:5, 330:20, 330:24, 330:25, 331:10, 331:14, 331:16, 331:20, 332:3, 332:7, 332:12, 332:13, 332:17, 332:19, 332:22, 332:24, 333:1</p> <p><b>MRI</b> [46] - 178:7, 178:14, 182:4, 182:6, 186:10, 186:11, 187:19, 191:7, 192:2, 193:10, 193:13,</p>	<p>194:19, 194:21, 195:9, 195:18, 196:21, 200:25, 201:7, 204:8, 205:12, 205:15, 205:21, 208:8, 209:4, 209:17, 213:19, 220:16, 220:25, 228:23, 242:23, 244:3, 246:1, 251:23, 258:22, 258:23, 258:25, 259:1, 259:4, 261:15, 263:14, 267:24, 270:5, 284:22, 285:15</p> <p><b>MRI's</b> [1] - 177:6</p> <p><b>MRIs</b> [21] - 177:3, 178:12, 179:11, 179:16, 182:14, 182:22, 182:24, 189:21, 191:6, 203:6, 208:18, 211:1, 211:13, 211:14, 224:12, 228:7, 236:19, 237:18, 237:23, 238:4</p> <p><b>multiple</b> [10] - 194:9, 194:11, 194:14, 281:8, 282:6, 282:7, 287:14, 287:19, 318:20</p> <p><b>muscle</b> [2] - 178:20, 179:3</p> <p><b>muscles</b> [2] - 268:1, 279:13</p> <p><b>musculature</b> [1] - 283:13</p> <p><b>must</b> [1] - 183:4</p> <p><b>N.Y</b> [1] - 213:9</p> <p><b>name</b> [11] - 175:6, 187:17, 225:6, 233:24, 256:18, 268:3, 276:20, 277:6, 277:8, 295:20, 301:12</p> <p><b>names</b> [8] - 223:9, 223:14, 223:18, 224:1, 226:19, 233:17, 270:24, 274:10</p> <p><b>narrative</b> [6] - 289:22, 302:22, 303:3, 312:7, 312:23, 319:12</p> <p><b>narratives</b> [1] - 311:1</p> <p><b>narrow</b> [3] - 189:18, 189:20, 241:21</p>	<p><b>narrowed</b> [4] - 189:7, 201:4, 201:6, 201:8</p> <p><b>narrowing</b> [6] - 189:12, 209:7, 209:9, 241:4, 242:25, 243:13</p> <p><b>narrows</b> [1] - 246:13</p> <p><b>natural</b> [1] - 288:23</p> <p><b>nature</b> [1] - 267:7</p> <p><b>nearly</b> [1] - 317:11</p> <p><b>necessary</b> [2] - 326:21, 327:12</p> <p><b>necessitated</b> [2] - 290:2, 295:13</p> <p><b>neck</b> [33] - 181:8, 182:5, 182:24, 184:23, 185:2, 185:4, 185:6, 185:14, 185:16, 185:17, 185:18, 189:3, 190:17, 190:21, 203:5, 203:22, 255:21, 269:6, 279:24, 288:6, 288:8, 288:10, 289:2, 289:16, 289:19, 290:10, 291:12, 292:6, 311:12, 323:25, 325:24, 326:19</p> <p><b>need</b> [10] - 208:15, 215:3, 215:11, 221:14, 231:11, 238:16, 250:1, 289:21, 305:7, 332:17</p> <p><b>needs</b> [4] - 200:5, 212:19, 280:19, 282:25</p> <p><b>negatively</b> [1] - 190:11</p> <p><b>nerve</b> [21] - 188:25, 189:5, 203:1, 204:14, 204:16, 206:23, 209:2, 240:7, 240:14, 245:6, 245:16, 245:18, 248:3, 259:23, 260:2, 260:3, 261:7, 270:10, 270:21, 283:24</p> <p><b>nerves</b> [7] - 187:12, 188:25, 201:5, 204:15, 245:9, 245:20, 279:14</p> <p><b>neural</b> [14] - 188:24, 189:12, 201:4, 201:9, 240:14, 241:4, 245:6,</p>	<p>245:17, 245:21, 248:3, 259:8, 259:9, 259:13, 259:20</p> <p><b>never</b> [14] - 192:6, 218:7, 222:12, 228:10, 228:20, 229:25, 231:11, 231:13, 255:22, 299:19, 299:21, 299:23, 308:16, 319:16</p> <p><b>NEW</b> [1] - 171:1</p> <p><b>new</b> [3] - 202:15, 300:25, 309:13</p> <p><b>New</b> [32] - 171:15, 171:23, 172:4, 172:10, 172:14, 173:22, 175:9, 176:1, 176:21, 181:16, 229:20, 253:5, 254:6, 255:1, 255:15, 257:15, 265:6, 278:7, 278:10, 279:3, 279:4, 279:6, 280:6, 281:4, 281:15, 281:16, 311:18, 311:21, 325:12</p> <p><b>next</b> [8] - 204:8, 206:10, 248:24, 251:20, 276:13, 331:23, 331:25</p> <p><b>Next</b> [1] - 171:25</p> <p><b>nice</b> [1] - 214:23</p> <p><b>nicely</b> [3] - 204:11, 206:14, 209:13</p> <p><b>nine</b> [1] - 290:14</p> <p><b>ninth</b> [3] - 283:4, 284:3, 284:19</p> <p><b>nondisplaced</b> [1] - 284:3</p> <p><b>noninvasive</b> [1] - 178:8</p> <p><b>nonsense</b> [2] - 196:4, 197:24</p> <p><b>normal</b> [29] - 187:2, 201:16, 202:17, 204:17, 204:19, 204:20, 240:19, 241:18, 241:20, 241:21, 242:1, 242:12, 245:8, 247:5, 247:10, 247:11, 248:7, 248:16, 248:17, 248:20, 248:21, 256:1, 259:12, 259:13, 259:20, 283:15, 283:19</p> <p><b>normally</b> [1] - 283:16</p>	<p><b>note</b> [21] - 180:3, 181:12, 183:10, 183:15, 191:10, 207:9, 265:4, 266:13, 266:18, 267:14, 269:8, 269:14, 284:10, 289:20, 290:20, 297:16, 297:20, 300:19, 304:9, 311:7, 315:2</p> <p><b>noted</b> [4] - 288:6, 311:6, 315:7, 326:22</p> <p><b>notes</b> [6] - 213:19, 321:22, 327:24, 327:25, 329:21</p> <p><b>nothing</b> [12] - 175:3, 212:9, 214:11, 235:24, 236:5, 242:3, 242:5, 245:20, 251:21, 264:3, 271:7, 277:3</p> <p><b>notice</b> [14] - 192:11, 193:15, 193:20, 193:23, 194:11, 196:17, 199:6, 213:24, 214:1, 214:11, 229:17, 268:14, 269:24, 269:25</p> <p><b>notices</b> [3] - 192:4, 193:3, 194:15</p> <p><b>November</b> [2] - 232:9, 232:11</p> <p><b>nowadays</b> [1] - 177:14</p> <p><b>Number</b> [9] - 173:1, 203:13, 206:13, 207:21, 208:16, 210:5, 232:6, 246:3, 269:24</p> <p><b>number</b> [30] - 176:14, 185:7, 186:10, 190:16, 203:13, 203:25, 204:8, 204:10, 206:11, 208:19, 208:20, 210:9, 211:18, 221:3, 221:11, 221:14, 221:18, 223:6, 226:7, 226:11, 235:17, 246:2, 246:14, 270:22, 271:4, 273:20, 278:19, 279:8, 313:10, 330:2</p> <p><b>NUMBER</b> [1] - 171:4</p> <p><b>numbering</b> [1] - 204:10</p> <p><b>numbers</b> [3] - 177:16, 186:16, 210:7</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p><b>numbing</b> [1] - 284:25</p> <p><b>object</b> [6] - 193:9, 196:11, 199:8, 199:11, 199:17, 223:23</p> <p><b>objection</b> [87] - 173:21, 180:3, 180:15, 181:12, 181:21, 183:10, 183:15, 191:10, 191:25, 205:23, 207:1, 207:9, 212:4, 213:2, 215:3, 216:11, 217:3, 218:13, 218:17, 218:24, 223:5, 223:15, 223:19, 224:3, 224:18, 226:24, 229:13, 229:16, 230:5, 230:13, 231:15, 232:21, 233:20, 239:4, 239:9, 241:11, 247:16, 265:4, 266:13, 266:18, 266:25, 267:2, 267:10, 267:14, 267:18, 268:11, 269:8, 269:14, 269:18, 271:17, 272:9, 273:24, 274:12, 274:16, 274:21, 274:24, 280:10, 284:10, 289:20, 290:20, 293:3, 293:11, 293:16, 295:1, 295:8, 298:22, 299:5, 299:11, 300:5, 302:15, 305:7, 306:15, 306:19, 307:5, 307:12, 307:24, 314:8, 319:8, 319:15, 319:21, 320:18, 323:1, 323:14, 328:2, 328:5, 330:20</p> <p><b>objections</b> [1] - 180:17</p> <p><b>objective</b> [5] - 189:21, 205:16, 207:15, 209:19, 256:11</p> <p><b>objectively</b> [1] - 256:24</p> <p><b>obligated</b> [2] - 319:5, 319:6</p> <p><b>obtain</b> [1] - 197:9</p> <p><b>obvious</b> [3] - 209:16, 234:4, 234:18</p>	<p><b>occasionally</b> [2] - 265:20, 273:16</p> <p><b>occurred</b> [3] - 236:9, 255:13, 281:2</p> <p><b>OF</b> [5] - 171:1, 171:1, 333:5, 333:6</p> <p><b>offer</b> [2] - 181:19, 280:8</p> <p><b>office</b> [37] - 182:4, 182:6, 182:10, 182:17, 193:6, 193:12, 211:2, 211:7, 216:21, 216:22, 217:1, 217:2, 217:8, 217:17, 218:5, 222:2, 223:11, 233:12, 239:16, 264:22, 265:10, 271:25, 273:10, 277:9, 298:19, 298:20, 301:1, 301:8, 302:4, 302:8, 303:14, 304:13, 304:16, 307:4, 309:1, 325:11</p> <p><b>OFFICER</b> [17] - 172:24, 174:16, 183:22, 184:20, 191:15, 195:12, 200:1, 212:14, 214:17, 252:5, 252:18, 254:21, 296:9, 296:14, 306:1, 312:4, 331:6</p> <p><b>officer</b> [3] - 194:2, 195:11, 223:3</p> <p><b>often</b> [12] - 177:11, 177:17, 273:19, 282:11, 292:1, 307:17, 308:1, 308:4, 308:8, 309:20, 310:25</p> <p><b>old</b> [5] - 201:20, 201:21, 217:14, 309:13</p> <p><b>older</b> [1] - 202:19</p> <p><b>oldest</b> [1] - 178:16</p> <p><b>once</b> [5] - 199:15, 201:14, 271:25, 286:15</p> <p><b>one</b> [78] - 177:2, 177:24, 179:6, 180:8, 183:20, 185:2, 185:6, 186:13, 186:23, 187:4, 188:7, 189:17, 194:12, 194:13, 194:15, 194:16, 194:24,</p>	<p>195:25, 198:13, 198:14, 201:6, 203:13, 204:2, 204:8, 204:14, 204:16, 204:24, 206:11, 207:2, 207:18, 208:16, 210:5, 210:9, 210:10, 211:15, 216:14, 229:18, 229:21, 230:6, 230:8, 231:20, 233:19, 234:12, 234:16, 235:7, 236:10, 237:5, 242:9, 243:22, 245:25, 249:16, 249:23, 251:2, 251:20, 256:15, 269:24, 272:15, 274:1, 284:12, 295:21, 302:17, 307:10, 310:24, 311:4, 311:15, 312:9, 318:9, 321:16, 327:25, 328:12, 328:13</p> <p><b>One</b> [1] - 172:13</p> <p><b>ones</b> [2] - 196:19, 250:20</p> <p><b>ongoing</b> [1] - 292:18</p> <p><b>open</b> [2] - 188:8, 269:23</p> <p><b>opened</b> [1] - 269:17</p> <p><b>operated</b> [1] - 290:12</p> <p><b>operation</b> [2] - 288:7, 288:9</p> <p><b>opining</b> [2] - 321:10, 321:11</p> <p><b>opinion</b> [33] - 253:4, 253:10, 253:11, 264:16, 265:3, 265:20, 265:23, 268:14, 280:18, 285:7, 286:4, 286:7, 288:16, 288:22, 288:25, 289:7, 289:17, 290:17, 290:22, 292:8, 292:12, 293:14, 293:19, 294:1, 295:4, 295:12, 295:13, 315:4, 320:14, 322:22, 322:23, 322:25, 323:3</p> <p><b>opinions</b> [4] - 183:4, 280:14, 280:15</p> <p><b>opportunity</b> [2] - 215:12, 296:6</p>	<p><b>oral</b> [2] - 176:17, 326:15</p> <p><b>order</b> [3] - 172:25, 253:20, 303:8</p> <p><b>Order</b> [1] - 253:14</p> <p><b>organizations</b> [1] - 279:8</p> <p><b>oriented</b> [1] - 309:11</p> <p><b>ORIGINAL</b> [1] - 333:5</p> <p><b>original</b> [3] - 184:4, 184:7, 300:14</p> <p><b>Ortho</b> [3] - 173:22, 279:5, 325:12</p> <p><b>orthopedic</b> [11] - 277:22, 278:2, 278:4, 279:5, 279:7, 279:10, 280:9, 303:9, 307:23, 308:6, 320:8</p> <p><b>Orthopedic</b> [1] - 278:21</p> <p><b>orthopedics</b> [5] - 278:23, 279:9, 279:12, 279:21, 307:20</p> <p><b>orthopedist</b> [1] - 292:19</p> <p><b>osteophytes</b> [7] - 201:13, 209:11, 246:15, 251:8, 251:10, 251:17, 251:18</p> <p><b>otherwise</b> [1] - 202:23</p> <p><b>outlined</b> [1] - 329:18</p> <p><b>outside</b> [4] - 192:14, 252:22, 296:24, 305:13</p> <p><b>overlays</b> [1] - 282:8</p> <p><b>overlooked</b> [1] - 282:4</p> <p><b>Overruled</b> [1] - 319:9</p> <p><b>overruled</b> [39] - 181:14, 183:17, 205:25, 207:3, 207:10, 215:5, 217:6, 218:14, 223:7, 223:16, 223:20, 224:4, 224:19, 226:25, 229:14, 229:21, 230:14, 231:20, 247:17, 265:9, 267:11, 271:19, 274:13, 276:8, 284:14, 289:23, 295:9, 299:6, 299:12, 300:6, 302:16, 306:16, 307:6, 307:13, 314:10, 316:9, 317:22, 319:22,</p>	<p>323:6</p> <p><b>own</b> [2] - 195:19, 195:22</p> <p><b>P.C</b> [1] - 171:21</p> <p><b>Page</b> [1] - 171:25</p> <p><b>page</b> [8] - 184:22, 185:1, 195:18, 200:7, 208:7, 232:20, 235:11, 306:5</p> <p><b>pages</b> [2] - 193:19, 223:10</p> <p><b>paid</b> [5] - 228:24, 231:9, 266:6, 272:1, 308:14</p> <p><b>pain</b> [52] - 178:5, 189:25, 201:23, 202:20, 202:22, 202:23, 203:2, 206:3, 208:10, 208:12, 210:2, 212:2, 212:6, 237:10, 281:7, 281:9, 281:10, 281:11, 282:15, 282:16, 283:21, 284:8, 284:20, 284:24, 285:4, 285:5, 286:18, 286:21, 287:10, 288:5, 288:6, 288:12, 290:15, 290:23, 290:25, 291:15, 291:16, 291:20, 292:10, 292:19, 294:15, 294:16, 294:18, 324:6, 325:6, 325:24, 328:12, 328:13</p> <p><b>pain-free</b> [1] - 291:20</p> <p><b>painful</b> [1] - 185:20</p> <p><b>panel</b> [1] - 278:19</p> <p><b>paper</b> [2] - 298:3, 298:6</p> <p><b>paperwork</b> [1] - 298:1</p> <p><b>paralegal</b> [2] - 197:8, 197:16</p> <p><b>parlance</b> [1] - 211:23</p> <p><b>part</b> [27] - 177:2, 177:3, 179:12, 185:17, 202:21, 215:23, 225:19, 255:21, 256:8, 267:22, 284:1, 296:25, 297:4, 297:14, 297:16, 297:20, 298:11, 300:11, 300:12, 300:23, 301:5,</p>
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<p>307:19, 308:5, 321:13, 321:25, 322:16, 326:8</p> <p><b>PART</b> [1] - 171:1</p> <p><b>partial</b> [6] - 205:3, 211:24, 315:23, 318:15, 319:13, 321:11</p> <p><b>partially</b> [9] - 204:25, 205:5, 292:21, 319:3, 319:4, 319:5, 319:19, 320:2, 320:3</p> <p><b>particular</b> [6] - 187:16, 188:11, 222:6, 250:21, 258:1, 287:4</p> <p><b>parties</b> [1] - 295:21</p> <p><b>partner</b> [1] - 173:19</p> <p><b>parts</b> [5] - 177:2, 179:12, 201:18, 203:4, 238:9</p> <p><b>party</b> [1] - 215:4</p> <p><b>PARTY</b> [2] - 171:9, 171:12</p> <p><b>Party</b> [6] - 172:3, 172:8, 173:8, 173:12, 173:15, 264:6</p> <p><b>party's</b> [1] - 213:8</p> <p><b>pass</b> [3] - 176:17, 176:18, 296:8</p> <p><b>past</b> [2] - 228:5</p> <p><b>patch</b> [1] - 284:25</p> <p><b>patches</b> [1] - 284:23</p> <p><b>patient</b> [60] - 178:4, 178:6, 182:11, 187:10, 188:11, 188:17, 188:24, 190:19, 191:7, 201:17, 201:19, 202:20, 205:8, 205:18, 205:20, 206:22, 210:17, 215:22, 216:4, 216:7, 216:12, 216:13, 222:4, 227:13, 228:1, 228:3, 234:2, 234:4, 234:12, 234:18, 237:6, 238:14, 249:17, 262:5, 270:8, 270:10, 270:21, 280:21, 289:21, 300:25, 301:8, 308:4, 308:5, 308:8, 308:17, 308:18, 308:20, 308:25, 309:8, 309:11, 312:13, 312:17, 312:18, 322:2, 322:18,</p>	<p>322:20, 322:24, 325:14, 327:13, 330:14</p> <p><b>patient's</b> [5] - 184:24, 188:4, 206:24, 247:4, 255:21</p> <p><b>patients</b> [12] - 177:20, 182:14, 216:4, 225:10, 227:2, 234:19, 250:20, 279:20, 308:2, 308:3, 317:4, 322:13</p> <p><b>pattern</b> [1] - 225:9</p> <p><b>Pause</b> [13] - 172:23, 174:15, 180:22, 191:14, 197:3, 199:21, 203:18, 212:24, 214:14, 249:10, 264:2, 276:19, 284:13</p> <p><b>pause</b> [1] - 174:9</p> <p><b>pay</b> [6] - 231:5, 231:7, 265:11, 266:5, 266:7, 311:8</p> <p><b>payroll</b> [5] - 231:1, 231:3, 231:4, 231:9, 231:10</p> <p><b>pediatrician</b> [1] - 176:6</p> <p><b>pediatrics</b> [2] - 176:4, 176:15</p> <p><b>people</b> [8] - 224:2, 301:20, 307:8, 308:7, 309:20, 310:12, 315:22, 331:11</p> <p><b>People</b> [1] - 213:9</p> <p><b>per</b> [5] - 220:8, 226:2, 271:3, 273:21, 330:17</p> <p><b>percent</b> [4] - 220:14, 220:18, 241:15, 315:24</p> <p><b>Perez</b> [67] - 173:2, 179:23, 180:11, 181:5, 181:25, 182:9, 200:12, 200:18, 201:11, 203:4, 207:8, 213:23, 216:3, 222:7, 236:13, 236:20, 236:24, 237:18, 238:4, 239:25, 244:21, 264:13, 274:10, 279:23, 280:21, 281:1, 282:13, 282:19, 283:2, 284:16, 284:21, 285:3, 286:5, 287:1,</p>	<p>287:12, 287:16, 288:18, 288:19, 289:1, 289:13, 290:7, 290:15, 290:22, 292:5, 292:16, 292:20, 293:23, 294:12, 294:21, 294:25, 295:6, 296:22, 297:11, 298:5, 299:3, 302:3, 303:8, 303:21, 304:12, 304:18, 305:21, 306:11, 307:4, 309:15, 310:18, 312:8, 313:17</p> <p><b>PEREZ</b> [1] - 171:3</p> <p><b>Perez's</b> [11] - 181:11, 191:5, 235:25, 280:3, 284:8, 285:8, 285:23, 289:9, 290:3, 292:10, 293:13</p> <p><b>perfect</b> [1] - 258:23</p> <p><b>perform</b> [2] - 179:20, 282:18</p> <p><b>performed</b> [3] - 281:16, 285:15, 324:18</p> <p><b>period</b> [6] - 201:10, 274:19, 278:6, 287:20, 321:12, 321:17</p> <p><b>periods</b> [2] - 315:8, 321:5</p> <p><b>permanent</b> [18] - 190:3, 206:5, 209:22, 209:25, 290:4, 290:6, 290:25, 315:5, 315:23, 318:15, 319:1, 320:13, 321:2, 322:12, 323:25, 324:2</p> <p><b>permanently</b> [1] - 291:9</p> <p><b>permission</b> [1] - 223:3</p> <p><b>persistent</b> [1] - 282:16</p> <p><b>person</b> [2] - 269:12, 291:19</p> <p><b>personal</b> [1] - 227:16</p> <p><b>personally</b> [1] - 302:6</p> <p><b>persons</b> [1] - 220:10</p> <p><b>pharmacy</b> [2] - 300:12, 302:8</p> <p><b>phase</b> [3] - 209:8, 246:15, 253:12</p> <p><b>phrase</b> [2] - 297:23, 317:19</p> <p><b>physical</b> [28] - 282:18,</p>	<p>286:16, 287:9, 287:18, 288:9, 298:1, 298:3, 300:18, 322:20, 324:16, 325:7, 325:11, 325:14, 325:17, 325:23, 326:4, 326:15, 326:17, 326:25, 327:21, 328:3, 329:2, 329:3, 329:5, 329:10, 329:24, 330:17</p> <p><b>physician</b> [12] - 178:4, 182:11, 192:16, 199:4, 199:10, 200:13, 200:20, 207:11, 287:21, 287:22, 290:12, 327:2</p> <p><b>physicians</b> [4] - 182:10, 182:15, 192:17, 278:20</p> <p><b>pick</b> [1] - 308:1</p> <p><b>picking</b> [1] - 308:3</p> <p><b>picture</b> [23] - 179:6, 186:5, 186:6, 187:7, 187:16, 187:22, 187:23, 188:4, 188:5, 188:10, 188:16, 188:20, 188:21, 188:22, 189:8, 189:9, 189:10, 207:22, 207:25, 210:8, 210:9, 210:10</p> <p><b>pictures</b> [4] - 179:7, 179:18, 188:17, 209:24</p> <p><b>piece</b> [4] - 188:10, 204:21, 205:3, 206:16</p> <p><b>pieces</b> [2] - 188:9, 209:10</p> <p><b>pipes</b> [1] - 310:15</p> <p><b>place</b> [7] - 186:19, 186:22, 187:2, 211:25, 278:2, 282:3, 310:24</p> <p><b>placed</b> [1] - 201:16</p> <p><b>PLAINTIFF</b> [2] - 171:4, 171:9</p> <p><b>Plaintiff</b> [13] - 171:22, 172:3, 173:6, 173:12, 174:22, 199:13, 254:25, 262:18, 263:2, 306:23, 307:9, 318:8, 329:24</p> <p><b>Plaintiff's</b> [13] -</p>	<p>174:13, 189:24, 190:2, 203:14, 203:20, 220:15, 220:19, 227:2, 253:1, 253:22, 302:11, 307:22</p> <p><b>plaintiffs</b> [2] - 223:3, 223:10</p> <p><b>plan</b> [2] - 284:21, 286:14</p> <p><b>play</b> [1] - 224:17</p> <p><b>playing</b> [1] - 234:10</p> <p><b>PLLC</b> [2] - 172:8, 173:15</p> <p><b>plus</b> [4] - 177:20, 219:9, 219:21, 221:18</p> <p><b>point</b> [7] - 189:17, 210:16, 238:15, 282:16, 300:17, 302:17, 319:10</p> <p><b>pointing</b> [1] - 329:15</p> <p><b>poor</b> [2] - 291:6, 291:8</p> <p><b>portion</b> [3] - 179:8, 313:11, 323:3</p> <p><b>portions</b> [1] - 216:2</p> <p><b>position</b> [1] - 310:12</p> <p><b>positioning</b> [1] - 247:4</p> <p><b>positive</b> [7] - 210:13, 263:22, 268:10, 269:5, 269:13, 270:5, 283:20</p> <p><b>possible</b> [6] - 201:25, 203:2, 223:1, 307:3, 307:9, 307:21</p> <p><b>possibly</b> [1] - 323:13</p> <p><b>post</b> [2] - 239:22, 261:9</p> <p><b>post-accident</b> [1] - 261:9</p> <p><b>posterior</b> [4] - 186:23, 240:24, 259:5, 259:15</p> <p><b>practice</b> [13] - 176:20, 177:2, 177:4, 177:25, 178:3, 211:3, 217:11, 265:18, 278:7, 278:9, 279:5, 279:20, 293:20</p> <p><b>practiced</b> [1] - 278:6</p> <p><b>practicing</b> [1] - 176:11</p> <p><b>pre</b> [1] - 236:6</p> <p><b>pre-accident</b> [1] - 236:6</p> <p><b>precipitate</b> [1] - 202:23</p> <p><b>precipitates</b> [1] - 208:12</p> <p><b>preclude</b> [2] - 192:15,</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p>193:9</p> <p><b>preexisting</b> [6] - 241:7, 241:10, 241:14, 242:19, 242:25, 243:14</p> <p><b>prejudice</b> [1] - 196:14</p> <p><b>prejudicial</b> [2] - 192:7, 213:12</p> <p><b>preliminary</b> [1] - 281:16</p> <p><b>Presbyterian</b> [10] - 176:8, 255:1, 255:16, 257:15, 279:3, 281:5, 281:15, 281:17, 311:18, 311:21</p> <p><b>prescription</b> [4] - 297:18, 297:20, 298:11, 298:12</p> <p><b>prescriptions</b> [4] - 297:19, 298:4, 299:16, 300:12</p> <p><b>presence</b> [1] - 252:22</p> <p><b>present</b> [4] - 202:20, 213:8, 237:12, 291:16</p> <p><b>presentation</b> [1] - 303:20</p> <p><b>presented</b> [5] - 281:6, 302:4, 303:13, 304:13, 304:16</p> <p><b>presiding</b> [2] - 172:25, 252:19</p> <p><b>pressing</b> [4] - 206:20, 245:9, 245:15, 245:20</p> <p><b>pressure</b> [9] - 203:1, 206:21, 206:23, 270:9, 270:17, 270:19, 270:20, 275:2</p> <p><b>presume</b> [1] - 192:23</p> <p><b>pretrial</b> [2] - 332:13, 332:20</p> <p><b>pretty</b> [4] - 243:23, 253:6, 284:23, 325:6</p> <p><b>prevent</b> [1] - 293:13</p> <p><b>previous</b> [1] - 180:24</p> <p><b>previously</b> [3] - 181:16, 208:5, 280:5</p> <p><b>primarily</b> [4] - 294:15, 326:20, 328:11, 330:1</p> <p><b>primary</b> [2] - 329:16</p> <p><b>print</b> [4] - 299:9, 299:10, 299:13, 299:18</p> <p><b>private</b> [2] - 177:25, 279:20</p> <p><b>probing</b> [1] - 221:14</p>	<p><b>problem</b> [9] - 178:5, 178:6, 178:9, 178:10, 179:2, 179:3, 195:23, 291:25</p> <p><b>problems</b> [7] - 181:11, 279:19, 280:3, 285:3, 286:7, 286:8, 309:9</p> <p><b>procedure</b> [1] - 216:23</p> <p><b>PROCEEDING</b> [1] - 333:6</p> <p><b>proceedings</b> [14] - 172:23, 174:9, 174:15, 180:22, 191:14, 197:3, 199:21, 203:18, 212:24, 214:14, 249:10, 264:2, 276:19, 284:13</p> <p><b>process</b> [1] - 202:18</p> <p><b>produce</b> [1] - 217:2</p> <p><b>producing</b> [4] - 189:25, 206:2, 210:1, 284:8</p> <p><b>profession</b> [4] - 175:22, 176:13, 277:21, 278:15</p> <p><b>professional</b> [8] - 175:24, 181:10, 198:19, 265:2, 265:15, 277:23, 279:1, 280:3</p> <p><b>prognosis</b> [6] - 290:8, 291:2, 291:3, 291:6, 291:8</p> <p><b>program</b> [4] - 176:9, 278:1, 278:5, 278:18</p> <p><b>progress</b> [3] - 190:8, 190:11, 291:7</p> <p><b>pronounce</b> [1] - 244:24</p> <p><b>proper</b> [2] - 198:19, 200:7</p> <p><b>prosecuted</b> [1] - 192:23</p> <p><b>prospective</b> [1] - 309:4</p> <p><b>protect</b> [1] - 196:10</p> <p><b>protects</b> [2] - 285:19, 285:22</p> <p><b>protrude</b> [1] - 205:10</p> <p><b>proved</b> [1] - 271:18</p> <p><b>provide</b> [4] - 196:20, 265:10, 268:5, 269:11</p> <p><b>provided</b> [8] - 194:22, 195:1, 195:3, 200:11, 244:6, 309:14, 322:18</p>	<p><b>providers</b> [1] - 297:12</p> <p><b>proving</b> [1] - 268:25</p> <p><b>Publication</b> [1] - 177:23</p> <p><b>publications</b> [2] - 177:7, 177:24</p> <p><b>published</b> [3] - 176:23, 177:9, 177:20</p> <p><b>pull</b> [4] - 188:14, 280:25, 283:24, 311:18</p> <p><b>pulsed</b> [1] - 179:18</p> <p><b>punctured</b> [1] - 283:10</p> <p><b>purpose</b> [1] - 183:9</p> <p><b>purposes</b> [4] - 213:12, 223:11, 262:17, 263:2</p> <p><b>push</b> [3] - 205:10, 270:18, 323:2</p> <p><b>pushes</b> [3] - 205:4, 205:7, 212:1</p> <p><b>pushing</b> [17] - 187:5, 187:6, 187:17, 187:25, 189:11, 204:21, 204:24, 204:25, 205:14, 206:16, 206:17, 208:2, 208:4, 209:2</p> <p><b>put</b> [20] - 198:8, 206:23, 207:25, 210:12, 213:11, 249:9, 250:14, 250:18, 250:21, 257:1, 268:14, 269:23, 275:2, 277:1, 303:2, 310:25, 311:20, 314:17, 315:2, 315:17</p> <p><b>putting</b> [1] - 188:19</p> <p><b>quadrant</b> [1] - 285:4</p> <p><b>qualification</b> [1] - 278:16</p> <p><b>qualified</b> [2] - 181:16, 280:5</p> <p><b>qualifying</b> [1] - 253:20</p> <p><b>Queens</b> [1] - 176:1</p> <p><b>QUESTION</b> [2] - 235:12, 235:15</p> <p><b>questioned</b> [3] - 268:2, 274:7, 299:23</p> <p><b>questioning</b> [4] - 213:20, 254:10, 254:11, 264:15</p> <p><b>questions</b> [13] - 183:11, 183:16, 199:12, 216:5, 234:7, 237:10,</p>	<p>265:5, 271:12, 273:11, 273:12, 295:15, 297:22, 318:20</p> <p><b>quick</b> [6] - 240:6, 252:21, 252:23, 259:15, 276:18, 328:15</p> <p><b>quicker</b> [1] - 260:23</p> <p><b>quickly</b> [2] - 261:5, 261:15</p> <p><b>quiet</b> [1] - 184:1</p> <p><b>quite</b> [4] - 202:9, 235:13, 283:17, 283:19</p> <p><b>radiating</b> [2] - 281:11, 283:21</p> <p><b>radiological</b> [3] - 200:12, 203:3, 211:22</p> <p><b>radiologist</b> [7] - 175:23, 176:19, 210:25, 211:1, 238:15, 238:19, 265:21</p> <p><b>radiologist's</b> [1] - 238:16</p> <p><b>radiologists</b> [3] - 178:8, 237:17, 238:9</p> <p><b>radiology</b> [15] - 176:7, 176:10, 176:11, 176:15, 177:25, 178:3, 181:20, 181:23, 184:10, 210:4, 265:18, 281:15, 281:16</p> <p><b>Radiology</b> [3] - 176:19, 195:19, 244:1</p> <p><b>raise</b> [2] - 175:1, 277:1</p> <p><b>raised</b> [3] - 198:18, 253:25, 270:11</p> <p><b>raising</b> [2] - 283:20, 283:23</p> <p><b>ramifications</b> [1] - 231:7</p> <p><b>RAMIN</b> [4] - 172:8, 172:10, 173:14, 264:6</p> <p><b>Ramin</b> [2] - 173:15</p> <p><b>rapidly</b> [1] - 292:4</p> <p><b>rate</b> [1] - 291:13</p> <p><b>rather</b> [1] - 283:25</p> <p><b>ray</b> [37] - 178:6, 178:13, 178:15, 178:22, 179:3, 184:23, 185:3, 185:24, 186:14, 186:17, 187:20, 203:22, 203:23,</p>	<p>204:7, 210:5, 210:6, 210:18, 221:2, 250:12, 251:1, 251:15, 260:5, 261:14, 261:16, 261:20, 262:2, 262:8, 262:11, 263:14, 263:18, 281:24, 282:7</p> <p><b>rays</b> [34] - 177:3, 178:12, 178:24, 179:5, 179:10, 179:11, 182:22, 182:23, 203:5, 203:6, 208:25, 211:1, 211:15, 237:18, 237:23, 238:4, 263:17, 264:11, 264:12, 264:15, 264:16, 267:12, 267:16, 267:21, 275:14, 275:18, 275:22, 276:6, 282:2, 284:1, 284:5</p> <p><b>re</b> [1] - 278:23</p> <p><b>RE</b> [1] - 275:12</p> <p><b>RE-REDIRECT</b> [1] - 275:12</p> <p><b>re-up</b> [1] - 278:23</p> <p><b>reaction</b> [1] - 202:16</p> <p><b>read</b> [33] - 179:20, 200:8, 200:9, 223:5, 224:17, 224:21, 224:22, 224:25, 228:6, 228:23, 233:19, 233:21, 233:22, 233:23, 234:3, 236:23, 238:5, 238:15, 240:8, 240:24, 241:18, 248:12, 256:18, 258:5, 259:4, 260:1, 266:21, 266:22, 266:23, 273:6, 306:2, 318:4</p> <p><b>reading</b> [4] - 211:1, 249:24, 256:11, 256:25</p> <p><b>ready</b> [2] - 198:24, 198:25</p> <p><b>real</b> [2] - 240:6, 276:18</p> <p><b>reality</b> [1] - 291:22</p> <p><b>realize</b> [2] - 252:2, 298:21</p> <p><b>really</b> [7] - 178:24, 185:3, 204:6, 204:10, 208:23, 309:21, 310:11</p>
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<b>realty</b> <sup>[1]</sup> - 330:8 <b>Realty</b> <sup>[1]</sup> - 232:6 <b>reason</b> <sup>[5]</sup> - 197:7, 272:20, 287:4, 287:11, 310:25 <b>reasonable</b> <sup>[15]</sup> - 179:23, 183:5, 280:16, 285:7, 286:4, 286:10, 288:16, 289:7, 289:11, 289:17, 290:17, 292:8, 293:15, 294:1, 295:5 <b>reasonably</b> <sup>[1]</sup> - 180:11 <b>receive</b> <sup>[3]</sup> - 278:17, 298:14, 298:16 <b>received</b> <sup>[2]</sup> - 298:17, 298:19 <b>recent</b> <sup>[3]</sup> - 258:10, 258:11, 258:16 <b>recently</b> <sup>[1]</sup> - 287:23 <b>recess</b> <sup>[1]</sup> - 276:16 <b>recognize</b> <sup>[8]</sup> - 223:14, 223:18, 233:16, 233:24, 234:12, 274:9, 282:16, 302:10 <b>recognized</b> <sup>[1]</sup> - 282:8 <b>recollection</b> <sup>[4]</sup> - 213:13, 223:24, 306:10, 325:15 <b>recommend</b> <sup>[2]</sup> - 327:19, 328:14 <b>recommendation</b> <sup>[3]</sup> - 324:9, 324:11, 324:13 <b>recommendations</b> <sup>[4]</sup> - 279:17, 325:3, 329:12, 329:13 <b>recommended</b> <sup>[3]</sup> - 324:25, 325:2, 327:2 <b>recommending</b> <sup>[2]</sup> - 326:19, 327:9 <b>record</b> <sup>[42]</sup> - 180:6, 180:10, 180:16, 180:20, 180:24, 191:12, 191:18, 192:1, 197:6, 197:13, 212:25, 233:6, 252:22, 254:14, 288:4, 293:21, 296:23, 296:25, 297:1, 297:4, 297:8, 297:15, 297:16, 298:9, 298:10, 298:11, 299:7, 300:7, 300:11, 300:12, 300:23,	305:14, 308:22, 308:24, 310:23, 312:5, 314:18, 316:23, 317:1, 325:22, 332:14, 332:24 <b>recorded</b> <sup>[1]</sup> - 310:24 <b>records</b> <sup>[37]</sup> - 182:3, 192:9, 192:23, 192:24, 193:4, 193:11, 197:1, 197:9, 197:17, 212:18, 215:20, 215:21, 215:22, 217:25, 218:1, 218:2, 218:8, 218:9, 218:11, 220:24, 237:1, 237:3, 239:6, 239:8, 244:19, 280:24, 296:24, 297:2, 299:15, 300:14, 300:17, 301:18, 301:20, 301:22, 311:18, 311:21 <b>recross</b> <sup>[2]</sup> - 271:9, 273:16 <b>RECROSS</b> <sup>[1]</sup> - 271:10 <b>redacted</b> <sup>[2]</sup> - 311:25, 312:1 <b>redaction</b> <sup>[3]</sup> - 192:10, 198:6, 312:6 <b>redactions</b> <sup>[1]</sup> - 198:3 <b>redirect</b> <sup>[4]</sup> - 264:4, 264:8, 273:16, 275:1 <b>REDIRECT</b> <sup>[2]</sup> - 264:9, 275:12 <b>reduced</b> <sup>[1]</sup> - 243:7 <b>reevaluation</b> <sup>[2]</sup> - 287:24, 303:9 <b>refer</b> <sup>[7]</sup> - 182:2, 195:9, 213:22, 280:23, 294:11, 297:11, 307:8 <b>reference</b> <sup>[2]</sup> - 193:9, 253:23 <b>referral</b> <sup>[10]</sup> - 227:12, 297:5, 297:9, 297:14, 298:2, 301:7, 307:14, 308:10, 308:15, 324:21 <b>referrals</b> <sup>[3]</sup> - 222:1, 222:3, 224:13 <b>referred</b> <sup>[16]</sup> - 182:9, 182:11, 182:15, 192:17, 236:13, 236:14, 236:15, 236:16, 289:1,	301:8, 301:24, 306:23, 307:8, 307:15, 307:17, 307:19 <b>referring</b> <sup>[3]</sup> - 199:10, 232:24, 308:4 <b>refers</b> <sup>[1]</sup> - 178:4 <b>reflect</b> <sup>[1]</sup> - 312:5 <b>refresh</b> <sup>[4]</sup> - 213:13, 223:24, 234:20, 306:9 <b>refreshes</b> <sup>[1]</sup> - 223:4 <b>refused</b> <sup>[1]</sup> - 197:16 <b>regard</b> <sup>[1]</sup> - 253:16 <b>registration</b> <sup>[2]</sup> - 216:4, 216:7 <b>regular</b> <sup>[3]</sup> - 179:10, 187:20, 216:23 <b>regularly</b> <sup>[1]</sup> - 279:20 <b>regulations</b> <sup>[1]</sup> - 253:3 <b>rehabilitate</b> <sup>[1]</sup> - 268:17 <b>reimbursed</b> <sup>[2]</sup> - 272:16, 273:5 <b>related</b> <sup>[10]</sup> - 177:12, 288:22, 288:25, 290:1, 290:2, 292:14, 298:1, 298:2, 303:10, 321:2 <b>relevant</b> <sup>[8]</sup> - 299:7, 316:1, 316:10, 316:13, 316:17, 317:13, 318:12, 318:18 <b>reliability</b> <sup>[2]</sup> - 312:14, 312:16 <b>rely</b> <sup>[2]</sup> - 308:20, 317:4 <b>remain</b> <sup>[1]</sup> - 276:25 <b>remained</b> <sup>[1]</sup> - 278:24 <b>remarkable</b> <sup>[1]</sup> - 240:15 <b>remember</b> <sup>[13]</sup> - 181:1, 186:24, 215:1, 215:2, 221:5, 221:11, 221:12, 221:13, 224:2, 230:9, 232:18, 235:1, 236:8 <b>remembered</b> <sup>[1]</sup> - 197:7 <b>remind</b> <sup>[1]</sup> - 270:7 <b>remove</b> <sup>[1]</sup> - 210:20 <b>render</b> <sup>[1]</sup> - 182:18 <b>rendered</b> <sup>[1]</sup> - 268:8 <b>repeat</b> <sup>[5]</sup> - 246:10, 262:22, 262:23, 270:16, 275:25 <b>repeated</b> <sup>[2]</sup> - 175:14, 277:15 <b>rephrase</b> <sup>[10]</sup> -	180:23, 181:4, 212:5, 266:20, 267:4, 267:15, 267:20, 295:3, 307:25, 323:22 <b>rephrased</b> <sup>[1]</sup> - 254:14 <b>report</b> <sup>[59]</sup> - 193:19, 194:21, 195:15, 195:17, 195:19, 197:22, 228:7, 238:16, 239:3, 239:5, 239:15, 239:18, 244:9, 248:22, 248:24, 249:6, 250:21, 255:20, 255:24, 256:11, 257:1, 257:2, 257:8, 257:10, 257:22, 257:25, 258:4, 258:5, 258:18, 260:1, 260:4, 260:7, 260:25, 262:6, 263:16, 268:8, 270:1, 275:25, 302:22, 303:3, 303:7, 303:18, 303:21, 303:24, 311:13, 311:22, 312:10, 315:4, 315:7, 315:13, 315:14, 315:17, 316:20, 319:2, 319:3, 319:4, 326:22, 328:10 <b>reported</b> <sup>[6]</sup> - 196:2, 255:7, 261:23, 281:19, 310:23 <b>REPORTER</b> <sup>[2]</sup> - 172:19, 333:8 <b>Reporter</b> <sup>[5]</sup> - 175:7, 200:8, 200:10, 266:24, 277:7 <b>reports</b> <sup>[20]</sup> - 182:18, 199:9, 211:7, 213:19, 214:2, 224:12, 224:15, 225:2, 225:11, 225:13, 225:17, 225:25, 227:23, 237:23, 238:24, 275:5, 276:1, 276:3, 276:9, 302:20 <b>represent</b> <sup>[4]</sup> - 220:9, 223:11, 254:12, 295:21 <b>representation</b> <sup>[4]</sup> - 184:6, 213:7, 302:11, 322:2 <b>representations</b> <sup>[1]</sup> -	323:10 <b>representatives</b> <sup>[1]</sup> - 304:16 <b>represented</b> <sup>[1]</sup> - 274:14 <b>request</b> <sup>[8]</sup> - 200:13, 250:21, 259:1, 260:10, 260:13, 261:1, 261:17, 261:19 <b>requested</b> <sup>[6]</sup> - 239:18, 250:22, 251:4, 251:5, 330:6, 332:20 <b>requests</b> <sup>[2]</sup> - 326:10, 326:11 <b>require</b> <sup>[2]</sup> - 292:16, 292:18 <b>required</b> <sup>[2]</sup> - 192:22, 292:14 <b>research</b> <sup>[2]</sup> - 176:23, 177:15 <b>reserved</b> <sup>[1]</sup> - 254:8 <b>residency</b> <sup>[2]</sup> - 176:4, 278:17 <b>respect</b> <sup>[18]</sup> - 181:1, 184:9, 190:21, 191:3, 191:4, 200:11, 200:18, 200:21, 201:12, 201:24, 203:4, 216:2, 244:21, 246:9, 254:2, 254:10, 284:15, 286:13 <b>response</b> <sup>[4]</sup> - 192:3, 286:18, 295:2, 330:11 <b>responsibility</b> <sup>[5]</sup> - 253:2, 253:8, 253:19, 254:6, 254:7 <b>responsive</b> <sup>[1]</sup> - 320:21 <b>rest</b> <sup>[5]</sup> - 184:18, 245:12, 290:23, 299:8, 302:9 <b>restrictions</b> <sup>[2]</sup> - 289:14, 290:12 <b>restroom</b> <sup>[1]</sup> - 212:12 <b>result</b> <sup>[9]</sup> - 256:24, 285:9, 285:11, 285:13, 288:18, 289:9, 291:9, 294:24, 325:23 <b>resulted</b> <sup>[1]</sup> - 292:9 <b>resumed</b> <sup>[5]</sup> - 190:24, 199:25, 210:21, 214:19, 252:17 <b>retain</b> <sup>[4]</sup> - 190:22, 210:19, 227:21,
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>265:20</p> <p><b>retained</b> [23] - 211:7, 214:11, 219:22, 220:14, 221:4, 221:5, 222:13, 222:14, 222:17, 222:18, 222:21, 222:24, 222:25, 223:13, 224:6, 226:10, 226:16, 226:22, 227:22, 233:12, 268:5, 269:5, 273:17</p> <p><b>retains</b> [1] - 227:17</p> <p><b>return</b> [2] - 293:10, 331:4</p> <p><b>returning</b> [1] - 293:14</p> <p><b>review</b> [15] - 174:11, 182:18, 182:25, 203:3, 216:17, 216:18, 219:22, 228:15, 238:16, 251:5, 262:3, 263:17, 269:20, 271:24</p> <p><b>reviewed</b> [14] - 182:20, 182:22, 182:23, 191:3, 199:3, 200:23, 201:1, 203:5, 211:14, 215:18, 238:14, 268:11, 269:20, 311:1</p> <p><b>reviewing</b> [1] - 195:15</p> <p><b>reviews</b> [1] - 271:25</p> <p><b>rib</b> [20] - 281:8, 281:13, 281:17, 281:18, 281:20, 281:21, 281:25, 282:1, 282:5, 282:10, 282:16, 283:4, 284:3, 284:20, 284:24, 289:16, 289:19, 290:6, 310:13, 311:11</p> <p><b>ribs</b> [12] - 181:8, 279:24, 281:9, 282:8, 283:3, 284:2, 284:24, 285:4, 287:8, 326:1, 326:21</p> <p><b>right-sided</b> [1] - 284:2</p> <p><b>rise</b> [12] - 172:24, 174:16, 191:15, 200:1, 212:14, 214:17, 252:5, 252:18, 254:21, 296:10, 296:14, 331:6</p> <p><b>risk</b> [1] - 177:5</p>	<p><b>ROBERTO</b> [1] - 171:3</p> <p><b>Roberto</b> [20] - 173:2, 200:18, 201:11, 213:23, 236:19, 279:23, 296:21, 297:11, 298:4, 299:3, 303:8, 303:21, 304:12, 304:18, 305:21, 306:10, 307:4, 309:14, 310:17, 312:8</p> <p><b>rods</b> [1] - 210:14</p> <p><b>role</b> [2] - 207:4, 294:14</p> <p><b>rooms</b> [2] - 197:9, 197:17</p> <p><b>root</b> [2] - 206:23, 260:3</p> <p><b>roots</b> [13] - 204:14, 209:2, 240:7, 240:14, 245:6, 245:16, 245:18, 248:3, 259:23, 260:2, 261:7, 270:10, 270:21</p> <p><b>Rosales</b> [3] - 232:5, 235:4, 235:6</p> <p><b>roughly</b> [2] - 220:8, 221:1</p> <p><b>round</b> [4] - 187:22, 187:23, 188:15, 188:22</p> <p><b>rule</b> [5] - 197:20, 198:16, 198:17, 254:8</p> <p><b>ruled</b> [5] - 232:23, 232:25, 233:3, 233:4, 253:11</p> <p><b>rules</b> [2] - 268:24, 329:17</p> <p><b>ruling</b> [1] - 199:15</p> <p><b>rulings</b> [1] - 199:16</p> <p><b>S1</b> [7] - 204:2, 206:15, 207:24, 209:1, 209:5, 210:14, 251:22</p> <p><b>sac</b> [21] - 187:17, 189:12, 201:8, 205:14, 206:17, 206:20, 208:3, 209:3, 240:7, 241:2, 245:15, 245:16, 268:9, 269:12, 270:7, 270:19, 275:2, 285:21, 285:22</p> <p><b>sacrum</b> [2] - 204:3</p> <p><b>safety</b> [2] - 253:3, 253:12</p>	<p><b>sandwich</b> [1] - 188:8</p> <p><b>Saul</b> [1] - 232:5</p> <p><b>saw</b> [15] - 204:12, 207:22, 209:3, 210:8, 236:1, 244:23, 251:18, 263:5, 263:12, 281:1, 281:8, 287:22, 287:23, 304:22, 327:20</p> <p><b>scan</b> [21] - 178:6, 179:5, 188:11, 194:18, 196:20, 201:1, 201:2, 208:17, 209:3, 209:13, 209:14, 209:16, 255:9, 255:10, 255:17, 255:18, 255:23, 256:13, 262:9, 263:14</p> <p><b>scans</b> [15] - 177:3, 178:12, 179:5, 179:7, 179:9, 182:22, 182:24, 203:6, 208:18, 208:24, 211:14, 236:19, 237:18, 237:23, 238:4</p> <p><b>scenario</b> [1] - 316:20</p> <p><b>scene</b> [1] - 312:11</p> <p><b>schedule</b> [2] - 324:15, 331:8</p> <p><b>school</b> [3] - 176:2, 277:25, 278:17</p> <p><b>SCHWAB</b> [2] - 172:2, 172:12</p> <p><b>Schwab</b> [3] - 173:7, 173:11, 173:18</p> <p><b>Scientific</b> [1] - 177:23</p> <p><b>scope</b> [5] - 268:21, 268:23, 269:3, 269:19, 270:2</p> <p><b>screen</b> [4] - 213:15, 213:17, 239:10, 311:24</p> <p><b>screening</b> [1] - 177:21</p> <p><b>screens</b> [1] - 213:11</p> <p><b>screws</b> [2] - 210:13, 210:14</p> <p><b>script</b> [1] - 244:15</p> <p><b>seat</b> [4] - 190:22, 210:19, 214:20, 252:20</p> <p><b>seated</b> [4] - 172:25, 174:18, 200:3, 296:16</p> <p><b>second</b> [11] - 187:23, 202:10, 203:21, 204:18, 209:8,</p>	<p>236:10, 246:13, 303:2, 306:5, 311:19</p> <p><b>seconds</b> [2] - 214:6, 263:25</p> <p><b>secretary</b> [1] - 216:16</p> <p><b>Section</b> [1] - 180:14</p> <p><b>section</b> [1] - 256:4</p> <p><b>sedentary</b> [1] - 294:7</p> <p><b>see</b> [112] - 177:3, 178:9, 178:22, 178:23, 184:23, 185:25, 186:5, 186:12, 186:18, 187:5, 187:6, 187:24, 188:1, 188:4, 188:20, 188:21, 188:23, 189:8, 189:19, 193:7, 194:8, 194:21, 195:10, 195:21, 198:16, 201:24, 204:5, 204:7, 204:9, 204:10, 205:9, 205:11, 206:14, 206:16, 206:17, 207:17, 207:20, 207:21, 208:1, 208:6, 208:8, 208:15, 208:18, 208:23, 208:25, 209:1, 209:10, 209:12, 210:4, 210:11, 221:10, 223:4, 225:2, 225:3, 226:8, 227:1, 228:22, 228:25, 229:4, 234:13, 235:25, 237:23, 240:12, 242:14, 243:6, 243:16, 245:12, 245:22, 246:6, 246:9, 246:17, 247:3, 249:14, 249:24, 251:8, 251:17, 256:6, 257:2, 258:5, 258:19, 258:21, 260:3, 260:20, 261:6, 261:22, 279:20, 281:1, 281:18, 281:24, 282:9, 284:3, 286:3, 286:20, 289:3, 292:2, 297:17, 297:18, 301:12, 303:15, 305:1, 308:4, 309:17, 312:7, 317:3, 324:9, 328:8, 328:11,</p>	<p>328:14</p> <p><b>seeing</b> [10] - 187:10, 188:12, 189:6, 209:24, 225:10, 238:8, 244:20, 288:5, 300:25, 305:3</p> <p><b>seem</b> [4] - 198:1, 209:16, 272:4, 273:9</p> <p><b>segment</b> [1] - 285:18</p> <p><b>selection</b> [1] - 198:1</p> <p><b>self</b> [2] - 268:25</p> <p><b>self-authenticating</b> [1] - 268:25</p> <p><b>self-proving</b> [1] - 268:25</p> <p><b>semantic</b> [1] - 264:19</p> <p><b>semantics</b> [3] - 229:1, 271:17, 272:21</p> <p><b>send</b> [7] - 227:6, 227:12, 227:19, 228:7, 250:20, 286:14, 301:18</p> <p><b>sending</b> [1] - 301:20</p> <p><b>sends</b> [2] - 225:21, 227:2</p> <p><b>SENIOR</b> [2] - 172:19, 333:8</p> <p><b>sense</b> [2] - 309:12, 310:6</p> <p><b>sensitive</b> [1] - 179:13</p> <p><b>sent</b> [23] - 182:4, 182:6, 195:16, 216:16, 220:13, 221:1, 222:2, 222:4, 222:6, 227:3, 227:9, 227:12, 228:4, 238:5, 238:6, 238:17, 244:16, 251:3, 262:5, 284:22, 300:10, 324:12</p> <p><b>sentence</b> [4] - 256:18, 257:22, 257:24, 258:1</p> <p><b>separate</b> [1] - 320:4</p> <p><b>separated</b> [1] - 284:4</p> <p><b>September</b> [10] - 182:5, 182:7, 186:10, 186:11, 186:15, 189:13, 236:15, 236:16, 302:25, 303:10</p> <p><b>sequelae</b> [1] - 288:23</p> <p><b>series</b> [2] - 278:18, 280:14</p> <p><b>serve</b> [8] - 193:2, 193:4, 193:5, 194:7, 195:23, 197:8, 197:15, 213:24</p> <p><b>served</b> [21] - 192:4,</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

192:6, 192:15,  
193:23, 194:13,  
194:15, 194:16,  
194:21, 194:24,  
194:25, 196:7,  
197:19, 216:21,  
217:1, 217:3, 217:8,  
217:20, 217:22,  
268:25, 270:1  
**service** [8] - 193:16,  
195:4, 195:5, 196:1,  
196:6, 197:20,  
198:15, 265:16  
**services** [1] - 200:11  
**set** [4] - 265:7, 265:13,  
291:25, 307:4  
**setting** [1] - 254:3  
**seven** [8] - 185:4,  
185:14, 201:10,  
201:21, 211:17,  
217:18, 227:25,  
228:6  
**seven-year** [1] -  
201:10  
**seventh** [1] - 186:3  
**severe** [5] - 242:16,  
242:17, 315:5,  
320:6, 321:11  
**shaded** [3] - 246:22,  
246:25, 247:1  
**shading** [2] - 246:18,  
247:6  
**shadow** [1] - 281:25  
**shadows** [1] - 282:6  
**shaking** [2] - 218:19,  
218:22  
**shallow** [2] - 259:5,  
259:15  
**shape** [1] - 266:11  
**sharing** [1] - 210:22  
**sheet** [1] - 237:6  
**sheets** [2] - 216:4,  
218:4  
**Sherman** [9] - 197:7,  
238:22, 247:13,  
268:3, 268:5, 268:8,  
268:12, 269:21,  
270:1  
**Sherman's** [1] -  
197:22  
**shock** [5] - 185:18,  
185:22, 186:21,  
202:8, 246:14  
**short** [2] - 212:23,  
278:6  
**shoulder** [1] - 328:12  
**show** [33] - 179:9,  
186:13, 190:15,  
192:5, 193:17,  
193:18, 193:25,

203:12, 213:14,  
213:17, 213:18,  
223:2, 223:6, 239:4,  
239:9, 239:14,  
244:19, 249:8,  
250:9, 255:9,  
264:12, 267:12,  
267:16, 267:21,  
267:22, 267:23,  
267:24, 276:1,  
284:2, 285:16,  
311:23, 312:2, 312:3  
**showed** [8] - 186:13,  
191:8, 201:3, 201:7,  
203:22, 262:20,  
284:5, 312:11  
**showing** [3] - 177:11,  
237:3, 260:7  
**shown** [6] - 189:24,  
190:2, 205:19,  
205:21, 206:5,  
209:22  
**shows** [5] - 185:3,  
209:3, 209:4, 209:6,  
267:25  
**sic** [2] - 240:15,  
241:21  
**sick** [1] - 265:13  
**side** [15] - 174:8,  
180:18, 180:19,  
188:24, 189:2,  
189:4, 189:5,  
189:17, 189:18,  
205:8, 210:13,  
283:3, 303:2, 312:21  
**sidebar** [1] - 174:6  
**sided** [2] - 189:12,  
284:2  
**sides** [1] - 201:6  
**sign** [4] - 242:22,  
256:11, 301:3, 301:4  
**sign-in** [1] - 301:4  
**signal** [6] - 241:21,  
241:24, 242:2,  
247:9, 248:11  
**significance** [2] -  
206:19, 301:15  
**significant** [2] - 311:9,  
324:6  
**signs** [2] - 245:9,  
248:22  
**similar** [1] - 207:21  
**simply** [1] - 327:1  
**Sinai** [1] - 279:4  
**single** [1] - 308:25  
**sit** [6] - 190:25, 198:7,  
275:24, 321:12,  
321:16, 329:9  
**site** [1] - 286:2  
**sites** [2] - 259:14,

288:24  
**sits** [2] - 204:23,  
321:10  
**sitting** [5] - 281:10,  
315:8, 321:4,  
321:19, 321:21  
**six** [19] - 186:3,  
219:15, 219:18,  
220:7, 220:8, 226:2,  
227:25, 228:6,  
251:6, 258:1,  
273:21, 310:24,  
311:4, 312:9,  
312:20, 312:24,  
313:2, 313:6, 314:19  
**six-feet** [1] - 312:20  
**six-foot** [1] - 313:2  
**skill** [1] - 181:11  
**skills** [1] - 280:3  
**sleeping** [1] - 281:10  
**slice** [2] - 188:7,  
188:23  
**slices** [2] - 188:13,  
188:14  
**slicing** [1] - 188:17  
**slightly** [1] - 189:7  
**slippage** [1] - 242:9  
**slipped** [3] - 209:5,  
209:6  
**small** [6] - 189:10,  
205:12, 208:3,  
209:6, 244:23,  
285:16  
**smart** [1] - 272:5  
**soft** [12] - 178:17,  
178:21, 178:23,  
179:9, 179:13,  
243:5, 246:17,  
264:12, 267:17,  
267:25, 282:6,  
283:10  
**solely** [1] - 213:12  
**solicited** [1] - 192:1  
**someone** [11] -  
269:10, 289:1,  
305:1, 305:2, 307:1,  
314:19, 316:16,  
320:8, 320:23,  
321:15, 322:6  
**sometimes** [9] -  
200:5, 225:17,  
227:1, 238:5,  
266:17, 267:1,  
267:5, 283:7  
**somewhat** [1] -  
189:20  
**SONG** [1] - 172:8  
**Song** [1] - 173:15  
**sorry** [32] - 182:7,  
193:13, 197:6,

198:18, 203:16,  
228:2, 228:25,  
232:10, 234:5,  
234:6, 235:5, 236:1,  
236:12, 236:15,  
236:22, 241:24,  
244:9, 244:12,  
250:14, 250:19,  
257:7, 257:17,  
257:23, 261:16,  
264:5, 274:4,  
275:15, 293:5,  
296:5, 305:10  
**sort** [3] - 282:21,  
284:4, 288:23  
**sounds** [1] - 271:22  
**source** [2] - 283:23,  
301:7  
**space** [2] - 209:9,  
246:13  
**spaces** [3] - 185:25,  
204:6  
**spacing** [1] - 259:8  
**speaking** [6] - 180:17,  
231:19, 320:12,  
329:8, 330:13  
**specialist** [2] - 286:21,  
294:15  
**specializing** [1] -  
177:4  
**specialty** [1] - 184:10  
**specific** [2] - 306:3,  
314:16  
**specifically** [4] -  
196:19, 282:1,  
282:5, 326:19  
**specifics** [1] - 253:24  
**specified** [1] - 296:25  
**spell** [1] - 304:4  
**spending** [1] - 184:19  
**spends** [1] - 316:16  
**spent** [1] - 321:8  
**spinal** [25] - 187:10,  
187:12, 187:13,  
188:1, 188:2,  
188:21, 188:22,  
189:1, 204:12,  
204:23, 242:1,  
242:4, 248:15,  
270:9, 270:12,  
270:20, 275:3,  
275:7, 276:1,  
283:25, 285:19,  
285:22  
**spine** [69] - 182:5,  
182:6, 182:23,  
182:24, 185:9,  
186:10, 190:18,  
191:4, 191:5, 191:8,  
193:10, 194:18,

194:19, 194:20,  
195:18, 196:20,  
196:22, 201:2,  
201:7, 201:18,  
202:6, 203:25,  
204:1, 205:21,  
208:9, 209:9,  
209:11, 210:6,  
239:2, 239:16,  
244:3, 244:8,  
244:20, 246:1,  
246:17, 248:24,  
250:9, 255:11,  
255:18, 256:4,  
256:12, 256:20,  
256:22, 256:23,  
257:8, 257:12,  
257:16, 257:17,  
258:11, 258:12,  
258:16, 258:22,  
258:23, 260:5,  
260:23, 261:14,  
261:17, 262:2,  
263:5, 263:12,  
283:15, 283:18,  
285:15, 289:6,  
291:8, 291:9,  
291:12, 324:6  
**split** [1] - 177:2  
**Sports** [2] - 279:5,  
325:12  
**spring** [1] - 202:9  
**spurs** [3] - 202:15,  
246:15, 251:11  
**spurt** [1] - 186:21  
**square** [1] - 188:15  
**squares** [2] - 185:2,  
204:9  
**staff** [1] - 279:3  
**stages** [1] - 202:5  
**stand** [20] - 173:4,  
174:23, 174:25,  
175:1, 183:24,  
184:15, 190:24,  
191:22, 198:8,  
199:25, 210:21,  
212:22, 214:19,  
227:9, 252:14,  
252:17, 261:22,  
276:12, 276:24,  
321:18  
**stand** [1] - 332:9  
**standard** [2] - 216:23,  
326:14  
**standards** [1] - 280:19  
**standing** [6] - 276:5,  
276:25, 278:24,  
281:10, 310:12,  
315:8  
**start** [4] - 183:20,



<p>199:17, 202:14, 283:2</p> <p><b>started</b> [4] - 286:16, 313:24, 325:6</p> <p><b>starting</b> [1] - 260:20</p> <p><b>starts</b> [1] - 187:11</p> <p><b>State</b> [3] - 176:20, 278:9, 280:6</p> <p><b>STATE</b> [1] - 171:1</p> <p><b>state</b> [7] - 173:4, 175:6, 179:24, 180:11, 277:6, 298:10</p> <p><b>statement</b> [9] - 180:5, 229:3, 229:5, 229:6, 257:14, 257:16, 266:6, 266:8, 266:10</p> <p><b>statements</b> [1] - 198:1</p> <p><b>States</b> [1] - 278:5</p> <p><b>states</b> [2] - 312:13, 312:19</p> <p><b>status</b> [1] - 239:21</p> <p><b>stay</b> [4] - 190:7, 290:23, 291:5, 291:7</p> <p><b>step</b> [4] - 191:18, 252:7, 276:11, 305:13</p> <p><b>stick</b> [1] - 228:18</p> <p><b>stiffness</b> [2] - 288:10, 288:12</p> <p><b>still</b> [11] - 186:12, 208:4, 217:15, 228:2, 233:14, 290:24, 309:9, 314:19, 315:21, 319:10, 319:11</p> <p><b>stipulate</b> [1] - 198:3</p> <p><b>stomach</b> [1] - 312:20</p> <p><b>stop</b> [5] - 187:3, 197:2, 231:18, 318:25, 321:18</p> <p><b>stops</b> [2] - 204:18, 321:9</p> <p><b>straight</b> [4] - 242:13, 283:20, 283:23, 283:24</p> <p><b>straightforward</b> [1] - 234:11</p> <p><b>streamline</b> [1] - 328:16</p> <p><b>street</b> [1] - 175:9</p> <p><b>Street</b> [9] - 171:15, 171:22, 172:4, 172:13, 173:3, 173:9, 173:12, 217:13, 277:9</p> <p><b>stress</b> [1] - 201:15</p> <p><b>stretch</b> [3] - 212:12, 296:4, 296:7</p> <p><b>stretches</b> [1] - 283:24</p>	<p><b>stricken</b> [5] - 180:6, 180:9, 180:24, 181:3, 218:20</p> <p><b>strike</b> [5] - 184:3, 222:23, 236:12, 236:22, 256:10</p> <p><b>striking</b> [1] - 309:18</p> <p><b>stripe</b> [6] - 187:6, 187:7, 187:8, 187:9, 204:13</p> <p><b>strong</b> [1] - 287:10</p> <p><b>struck</b> [1] - 281:3</p> <p><b>structure</b> [2] - 187:18, 189:1</p> <p><b>structures</b> [9] - 178:18, 178:21, 178:24, 179:14, 212:3, 212:7, 267:25, 279:13, 279:15</p> <p><b>studies</b> [5] - 179:21, 182:18, 200:12, 203:3, 283:1</p> <p><b>study</b> [5] - 177:9, 177:10, 238:14, 279:9, 279:12</p> <p><b>stuff</b> [1] - 300:10</p> <p><b>sub</b> [1] - 244:23</p> <p><b>subject</b> [6] - 192:9, 198:3, 198:6, 213:8, 232:21, 312:6</p> <p><b>subligamentous</b> [3] - 244:25, 245:1, 285:17</p> <p><b>subpoena</b> [9] - 216:21, 217:2, 217:9, 217:20, 217:22, 298:14, 298:21, 298:24, 299:2</p> <p><b>subpoenaed</b> [3] - 192:8, 197:9, 197:17</p> <p><b>subsequent</b> [1] - 292:10</p> <p><b>success</b> [1] - 324:22</p> <p><b>suffered</b> [3] - 179:24, 181:8, 279:23</p> <p><b>suffering</b> [2] - 180:12, 281:22</p> <p><b>suggest</b> [1] - 310:21</p> <p><b>Suite</b> [2] - 171:22, 172:13</p> <p><b>summary</b> [1] - 248:19</p> <p><b>superficial</b> [1] - 284:24</p> <p><b>supine</b> [1] - 312:18</p> <p><b>supporting</b> [1] - 279:13</p> <p><b>supposed</b> [3] - 213:24, 239:9,</p>	<p>329:22</p> <p><b>SUPREME</b> [1] - 171:1</p> <p><b>Supreme</b> [3] - 171:14, 171:18, 271:15</p> <p><b>surgeon</b> [7] - 210:12, 210:17, 277:22, 289:6, 320:8, 324:10, 324:12</p> <p><b>Surgeons</b> [1] - 278:21</p> <p><b>surgeons</b> [1] - 329:14</p> <p><b>surgeries</b> [1] - 237:12</p> <p><b>surgery</b> [22] - 278:2, 280:9, 287:7, 288:7, 289:1, 289:2, 289:3, 289:4, 289:5, 292:14, 308:6, 326:2, 326:5, 326:9, 326:11, 327:2, 327:3, 327:9, 327:15, 327:19, 329:20</p> <p><b>surgical</b> [1] - 279:19</p> <p><b>suspect</b> [1] - 290:9</p> <p><b>sustained</b> [28] - 180:4, 183:12, 218:18, 218:24, 218:25, 219:1, 249:17, 254:12, 266:14, 267:15, 268:15, 269:15, 274:18, 274:22, 274:25, 290:21, 293:4, 293:6, 293:12, 293:17, 295:3, 298:23, 298:25, 303:10, 307:25, 309:17, 309:23</p> <p><b>swear</b> [2] - 175:2, 277:2</p> <p><b>swelling</b> [1] - 243:5</p> <p><b>switch</b> [1] - 276:17</p> <p><b>symptoms</b> [10] - 203:2, 206:24, 270:10, 270:21, 290:10, 292:12, 313:24, 314:1, 314:19, 325:24</p> <p><b>system</b> [3] - 270:17, 290:18, 327:16</p> <p><b>systems</b> [1] - 279:4</p> <p><b>TAKEN</b> [1] - 333:6</p> <p><b>talks</b> [1] - 195:15</p> <p><b>tall/short</b> [1] - 203:24</p> <p><b>tax</b> [2] - 231:7, 266:7</p> <p><b>taxed</b> [1] - 231:9</p> <p><b>taxes</b> [1] - 266:5</p> <p><b>teaching</b> [1] - 183:9</p> <p><b>tear</b> [5] - 187:19, 205:3, 205:7, 211:24, 211:25</p>	<p><b>ten</b> [4] - 212:13, 234:22, 235:7, 263:25</p> <p><b>tend</b> [1] - 322:13</p> <p><b>tenderness</b> [2] - 283:3, 283:5</p> <p><b>tendons</b> [2] - 268:1, 279:14</p> <p><b>Tennessee</b> [1] - 278:3</p> <p><b>tenseness</b> [1] - 283:12</p> <p><b>TERM</b> [1] - 171:1</p> <p><b>terms</b> [7] - 211:22, 213:4, 272:1, 273:1, 282:25, 290:7, 313:2</p> <p><b>test</b> [7] - 177:19, 178:16, 179:16, 250:5, 253:21, 283:20</p> <p><b>testified</b> [19] - 192:16, 219:3, 219:11, 219:15, 219:18, 220:7, 222:23, 226:2, 226:5, 226:12, 226:15, 229:10, 231:21, 232:2, 232:15, 233:1, 270:23, 275:1</p> <p><b>testify</b> [11] - 198:21, 219:24, 220:8, 220:9, 232:5, 232:9, 232:11, 232:13, 271:14, 271:15, 299:22</p> <p><b>testifying</b> [8] - 199:2, 212:18, 219:6, 221:19, 225:14, 232:18, 235:8, 267:8</p> <p><b>testimony</b> [10] - 173:20, 174:20, 175:2, 183:14, 184:9, 203:8, 233:11, 252:9, 277:2, 328:18</p> <p><b>testing</b> [7] - 236:19, 250:5, 285:11, 285:14, 286:14, 286:15</p> <p><b>tests</b> [2] - 178:8, 263:22</p> <p><b>THE</b> [241] - 171:1, 173:1, 173:23, 174:2, 174:10, 174:14, 174:18, 175:1, 175:5, 175:6, 175:8, 175:12, 175:15, 175:16, 180:4, 180:8, 180:19, 180:23, 181:14, 181:22, 183:12, 183:17,</p>	<p>183:25, 186:8, 190:15, 190:17, 191:1, 191:11, 191:19, 191:21, 191:24, 192:13, 193:20, 193:23, 194:3, 194:6, 194:8, 194:11, 195:5, 195:10, 195:13, 195:17, 195:21, 195:25, 196:5, 196:9, 196:17, 197:1, 197:4, 197:12, 198:10, 198:12, 198:14, 198:21, 198:24, 199:1, 199:6, 199:20, 199:22, 200:3, 203:12, 203:15, 205:25, 206:11, 206:13, 207:2, 207:10, 208:21, 212:5, 212:11, 212:18, 213:1, 213:14, 214:9, 214:20, 215:5, 216:14, 216:15, 217:6, 218:14, 218:18, 218:25, 219:2, 223:7, 223:16, 223:20, 224:4, 224:19, 224:25, 226:25, 229:14, 229:18, 229:21, 230:14, 231:20, 232:24, 233:8, 233:21, 239:11, 239:14, 245:25, 246:3, 246:5, 247:17, 249:7, 249:13, 250:25, 252:1, 252:3, 252:7, 252:10, 252:11, 252:12, 252:13, 252:20, 252:23, 254:10, 257:19, 257:20, 257:21, 257:23, 257:24, 258:1, 258:3, 258:4, 263:1, 264:4, 264:8, 265:9, 266:14, 266:20, 266:22, 267:2, 267:4, 267:11, 267:15, 267:20, 268:15, 268:21, 268:23, 269:2, 269:15, 269:18, 270:2, 271:19, 272:15, 274:1, 274:13,</p>
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<p>274:18, 274:22, 274:25, 275:19, 275:23, 276:8, 276:11, 276:13, 276:18, 276:20, 276:22, 276:25, 277:5, 277:6, 277:8, 277:13, 277:16, 277:17, 280:11, 280:13, 284:12, 284:14, 289:23, 290:21, 293:4, 293:6, 293:12, 293:17, 295:3, 295:9, 295:17, 296:2, 296:5, 296:8, 296:12, 296:16, 298:23, 299:1, 299:6, 299:12, 300:6, 302:16, 305:9, 305:11, 305:13, 305:18, 306:16, 307:6, 307:13, 307:25, 310:16, 311:23, 312:3, 312:5, 314:10, 314:11, 314:12, 316:4, 316:9, 317:22, 318:1, 318:2, 318:3, 318:4, 319:9, 319:22, 320:19, 320:20, 323:6, 328:6, 328:7, 330:23, 331:1, 331:8, 331:12, 331:17, 331:19, 331:21, 331:22, 331:23, 331:25, 332:2, 332:4, 332:5, 332:6, 332:8, 332:10, 332:16, 332:18, 332:20, 332:23, 332:25, 333:5</p> <p><b>thecal</b> [15] - 187:17, 189:11, 205:14, 209:3, 240:7, 241:2, 245:15, 268:9, 269:12, 270:7, 270:19, 275:2, 285:21</p> <p><b>theoretically</b> [1] - 269:9</p> <p><b>therapy</b> [27] - 279:17, 286:16, 287:9, 287:18, 288:10, 300:19, 324:16, 325:7, 325:11, 325:14, 325:17, 325:23, 326:4,</p>	<p>326:15, 326:17, 326:25, 327:21, 328:3, 328:13, 328:14, 329:2, 329:3, 329:5, 329:10, 329:24, 330:17, 330:18</p> <p><b>they've</b> [1] - 308:9</p> <p><b>thickness</b> [2] - 202:11</p> <p><b>thin</b> [3] - 179:7, 189:1, 256:4</p> <p><b>thinner</b> [1] - 189:19</p> <p><b>third</b> [5] - 185:8, 185:9, 185:12, 202:13, 246:15</p> <p><b>THIRD</b> [2] - 171:9, 171:12</p> <p><b>Third</b> [3] - 172:8, 173:15, 264:6</p> <p><b>THIRD-PARTY</b> [2] - 171:9, 171:12</p> <p><b>Third-Party</b> [3] - 172:8, 173:15, 264:6</p> <p><b>THIS</b> [1] - 333:6</p> <p><b>Thomas</b> [3] - 174:23, 174:24, 175:8</p> <p><b>three</b> [16] - 176:15, 187:20, 195:7, 195:8, 195:18, 202:5, 207:19, 243:8, 243:11, 246:14, 261:12, 261:13, 263:8, 263:9, 330:22, 331:11</p> <p><b>three-dimensionally</b> [1] - 187:20</p> <p><b>threw</b> [1] - 271:4</p> <p><b>Thursday</b> [1] - 331:16</p> <p><b>tie</b> [1] - 253:25</p> <p><b>tightly</b> [2] - 186:19, 186:22</p> <p><b>timeframe</b> [1] - 329:23</p> <p><b>tissue</b> [6] - 179:9, 179:13, 243:5, 264:12, 267:17, 267:25</p> <p><b>tissues</b> [2] - 282:6, 283:10</p> <p><b>TO</b> [2] - 172:12, 333:5</p> <p><b>today</b> [24] - 173:24, 174:20, 176:11, 177:3, 210:22, 215:16, 217:9, 217:24, 219:18, 220:20, 220:21, 220:23, 234:2, 234:5, 235:22, 237:1, 237:15, 252:25, 285:6,</p>	<p>295:22, 299:3, 299:8, 300:8, 331:2</p> <p><b>today's</b> [1] - 234:18</p> <p><b>toes</b> [1] - 187:14</p> <p><b>together</b> [4] - 181:1, 211:17, 259:4, 287:8</p> <p><b>tolerance</b> [1] - 321:21</p> <p><b>tomorrow</b> [9] - 331:2, 331:4, 331:9, 331:10, 331:12, 331:15, 331:17, 332:25, 333:1</p> <p><b>tone</b> [1] - 254:3</p> <p><b>took</b> [12] - 174:24, 188:22, 197:13, 207:24, 237:18, 238:4, 257:15, 276:24, 281:2, 284:1, 287:19, 289:20</p> <p><b>top</b> [4] - 188:12, 188:21, 242:9, 292:1</p> <p><b>topic</b> [1] - 328:13</p> <p><b>torn</b> [5] - 179:15, 201:14, 205:5</p> <p><b>total</b> [2] - 319:13, 320:7</p> <p><b>totally</b> [4] - 318:23, 319:16, 319:23, 319:24</p> <p><b>touch</b> [1] - 185:19</p> <p><b>touches</b> [1] - 185:19</p> <p><b>touching</b> [3] - 242:3, 242:5, 270:12</p> <p><b>traditionally</b> [2] - 298:12, 299:19</p> <p><b>training</b> [5] - 176:7, 176:15, 278:1, 278:4, 278:17</p> <p><b>TRANSCRIPT</b> [1] - 333:5</p> <p><b>transcript</b> [1] - 233:1</p> <p><b>translate</b> [1] - 291:6</p> <p><b>transmitted</b> [1] - 270:20</p> <p><b>trauma</b> [18] - 189:15, 199:18, 202:3, 202:17, 202:23, 202:25, 205:22, 208:12, 239:22, 243:8, 243:12, 249:15, 249:17, 249:18, 279:9, 309:22</p> <p><b>Trauma</b> [1] - 279:5</p> <p><b>traumatically</b> [1] - 249:25</p> <p><b>traveling</b> [1] - 186:15</p> <p><b>treat</b> [2] - 308:7, 314:1</p> <p><b>treated</b> [5] - 281:5,</p>	<p>303:22, 319:10, 319:11, 328:19</p> <p><b>treater</b> [2] - 329:16</p> <p><b>treating</b> [22] - 192:16, 199:4, 200:20, 287:21, 287:22, 304:18, 305:1, 305:2, 305:21, 305:23, 306:10, 306:17, 306:20, 306:21, 313:18, 314:21, 326:6, 326:18, 326:20, 327:9, 328:11, 330:1</p> <p><b>treatment</b> [43] - 185:1, 190:5, 225:22, 269:11, 279:15, 279:19, 283:1, 284:21, 286:14, 286:21, 286:22, 287:5, 287:6, 287:13, 287:17, 289:8, 290:1, 292:11, 292:14, 292:16, 292:19, 294:19, 300:15, 321:25, 323:8, 324:15, 324:23, 325:4, 326:7, 326:10, 326:13, 326:20, 326:23, 327:11, 327:12, 327:16, 328:22, 328:25, 329:4, 329:17, 330:14</p> <p><b>treatments</b> [5] - 294:22, 294:24, 295:7, 323:5, 325:25</p> <p><b>treats</b> [2] - 294:16, 330:14</p> <p><b>triage</b> [1] - 282:23</p> <p><b>trial</b> [10] - 173:20, 174:20, 197:14, 253:5, 253:7, 253:13, 254:9, 272:20, 272:22, 333:3</p> <p><b>Trial</b> [1] - 171:6</p> <p><b>TRUE</b> [1] - 333:5</p> <p><b>true</b> [2] - 207:12, 291:22</p> <p><b>truth</b> [7] - 175:3, 175:4, 230:15, 241:9, 277:3, 277:4, 328:1</p> <p><b>truthful</b> [1] - 308:21</p> <p><b>try</b> [7] - 210:16, 215:12, 260:23, 281:24, 282:24, 323:20, 325:5</p>	<p><b>trying</b> [8] - 196:3, 203:16, 221:9, 229:1, 291:4, 300:1, 304:4, 323:2</p> <p><b>turn</b> [1] - 276:4</p> <p><b>turned</b> [2] - 208:3, 284:4</p> <p><b>twice</b> [2] - 253:11, 253:15</p> <p><b>two</b> [18] - 173:24, 177:2, 185:13, 188:7, 188:9, 210:15, 214:6, 223:10, 249:23, 251:21, 271:2, 271:3, 274:23, 276:16, 282:14, 295:24, 310:4</p> <p><b>two-foot</b> [1] - 310:4</p> <p><b>two-minute</b> [1] - 276:16</p> <p><b>type</b> [1] - 294:17</p> <p><b>types</b> [1] - 310:5</p> <p><b>typing</b> [1] - 248:12</p> <p><b>typo</b> [3] - 303:24, 304:2, 304:7</p> <p><b>typographical</b> [1] - 303:23</p> <p><b>Uber</b> [7] - 292:24, 293:2, 293:8, 315:10, 317:12, 318:11, 321:8</p> <p><b>ultimately</b> [1] - 324:9</p> <p><b>ultrasound</b> [3] - 177:19, 177:21, 178:7</p> <p><b>ultrasounds</b> [2] - 177:6, 178:12</p> <p><b>unauthorized</b> [1] - 301:20</p> <p><b>unchanged</b> [1] - 201:9</p> <p><b>under</b> [5] - 253:3, 253:20, 268:24, 272:24, 301:17</p> <p><b>undermines</b> [1] - 322:22</p> <p><b>understood</b> [3] - 235:21, 273:10, 300:8</p> <p><b>unfair</b> [1] - 268:17</p> <p><b>unfortunately</b> [1] - 202:19</p> <p><b>uniform</b> [1] - 253:6</p> <p><b>United</b> [1] - 278:5</p> <p><b>University</b> [2] - 277:24, 278:1</p> <p><b>unless</b> [5] - 220:13, 225:11, 287:7, 311:9, 322:13</p> <p><b>unlikely</b> [3] - 243:8,</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------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<p>243:12, 243:23  <b>unremarkable</b> [11] -  240:16, 240:17,  240:18, 242:10,  245:7, 245:18,  248:4, 248:12,  259:10, 259:20,  259:24  <b>unsafe</b> [5] - 180:1,  180:9, 253:23,  254:11, 254:16  <b>unusual</b> [2] - 307:1,  323:15  <b>up</b> [36] - 175:1,  175:12, 185:18,  187:11, 188:8,  192:11, 194:1,  196:23, 202:8,  210:10, 210:14,  210:20, 213:11,  217:18, 220:25,  242:13, 247:25,  249:9, 250:15,  250:18, 258:17,  265:7, 278:23,  282:25, 283:16,  288:1, 288:4,  291:25, 308:7,  311:18, 312:11,  313:20, 321:9,  327:7, 327:15  <b>upper</b> [3] - 186:8,  285:4, 288:11  <b>uses</b> [2] - 178:15,  179:5  <b>vacation</b> [1] - 265:13  <b>Val</b> [1] - 217:15  <b>various</b> [2] - 201:17,  259:14  <b>varying</b> [1] - 311:1  <b>vehicle</b> [3] - 240:4,  263:3, 294:9  <b>veins</b> [3] - 178:20,  179:3, 268:1  <b>Velardi</b> [3] - 232:13,  232:15, 235:8  <b>verify</b> [1] - 321:23  <b>Vermo</b> [1] - 213:10  <b>versus</b> [6] - 173:2,  178:14, 210:10,  211:21, 232:5,  323:18  <b>vertebra</b> [2] - 185:7,  210:13  <b>vertebrae</b> [1] - 186:17  <b>victims</b> [1] - 226:20  <b>views</b> [1] - 256:4  <b>violate</b> [1] - 253:19  <b>violated</b> [2] - 253:4,  253:14</p>	<p><b>violation</b> [2] - 254:17,  301:19  <b>visit</b> [1] - 282:23  <b>VITUCCI</b> [1] - 172:12  <b>Vitucci</b> [1] - 173:17  <b>voice</b> [2] - 175:12,  198:18  <b>W-2</b> [5] - 231:5, 266:4,  266:8, 266:9, 273:10  <b>wait</b> [3] - 182:11,  191:20, 224:10  <b>walk</b> [2] - 194:1,  321:18  <b>walked</b> [1] - 312:19  <b>Wall</b> [1] - 172:4  <b>wants</b> [2] - 257:24,  297:24  <b>Washington</b> [1] -  176:8  <b>water</b> [4] - 246:11,  246:14, 246:21,  246:22  <b>waves</b> [1] - 179:18  <b>ways</b> [1] - 188:7  <b>wearing</b> [1] - 313:14  <b>weather</b> [1] - 288:13  <b>Wednesday</b> [1] -  331:3  <b>week</b> [2] - 197:23,  330:17  <b>weekly</b> [1] - 265:10  <b>weeks</b> [3] - 263:8,  263:9, 282:14  <b>Weinstein</b> [10] -  200:15, 222:25,  223:13, 225:7,  226:16, 233:13,  244:5, 289:4, 289:8,  332:11  <b>welcome</b> [1] - 174:19  <b>West</b> [1] - 175:8  <b>white</b> [9] - 187:6,  187:7, 187:8,  204:11, 210:11,  246:17, 246:25,  247:1  <b>whole</b> [4] - 175:3,  178:20, 179:6,  179:16  <b>wide</b> [1] - 253:5  <b>William</b> [1] - 171:22  <b>wish</b> [1] - 234:18  <b>withdrawn</b> [4] - 266:3,  270:4, 286:25,  291:18  <b>witness</b> [30] - 174:21,  174:24, 184:15,  190:24, 191:22,  199:2, 199:22,  199:23, 199:25,</p>	<p>210:21, 212:22,  213:14, 214:19,  249:12, 252:14,  252:17, 253:20,  276:12, 276:14,  276:22, 276:24,  280:5, 280:9, 292:2,  305:25, 306:7,  310:14, 312:2,  312:3, 332:9  <b>WITNESS</b> [28] - 175:5,  175:8, 175:15,  190:17, 191:21,  206:13, 216:15,  218:25, 252:10,  252:12, 257:20,  257:23, 258:1,  258:4, 277:5, 277:8,  277:16, 310:16,  314:11, 318:2,  318:4, 320:19,  328:7, 331:12,  331:17, 331:22,  331:25, 332:5  <b>witnesses</b> [1] - 173:24  <b>women</b> [4] - 177:5,  177:10, 177:22  <b>women's</b> [1] - 177:17  <b>won</b> [1] - 177:22  <b>word</b> [11] - 198:2,  228:12, 228:14,  229:16, 229:19,  230:2, 242:15,  244:24, 271:21,  319:19, 322:7  <b>words</b> [5] - 183:6,  238:13, 247:4,  257:13, 258:2  <b>work</b> [2] - 228:12,  229:16  <b>work-related</b> [1] -  303:10  <b>work/employed</b> [1] -  272:12  <b>worker</b> [2] - 242:14,  292:23  <b>workplace</b> [5] - 180:1,  180:9, 180:13,  253:24, 254:16  <b>works</b> [3] - 217:15,  227:1, 297:21  <b>worried</b> [1] - 313:18  <b>worse</b> [2] - 206:8,  291:5  <b>worsening</b> [1] -  201:24  <b>worthy</b> [1] - 174:6  <b>write</b> [7] - 255:20,  256:15, 257:7,  257:10, 257:11,</p>	<p>275:6, 298:4  <b>writes</b> [1] - 182:5  <b>writing</b> [1] - 227:23  <b>written</b> [2] - 176:17,  300:18  <b>wrote</b> [7] - 256:10,  256:16, 256:19,  258:12, 258:15,  258:17, 311:5  <b>X-ray</b> [37] - 178:6,  178:13, 178:15,  178:22, 179:3,  184:23, 185:3,  185:24, 186:14,  186:17, 187:20,  203:22, 203:23,  204:7, 210:5, 210:6,  210:18, 221:2,  250:12, 251:1,  251:15, 260:5,  261:14, 261:16,  261:20, 262:2,  262:8, 262:11,  263:14, 263:18,  281:24, 282:7  <b>X-rays</b> [34] - 177:3,  178:12, 178:24,  179:5, 179:10,  179:11, 182:22,  182:23, 203:5,  203:6, 208:25,  211:1, 211:15,  237:18, 237:23,  238:4, 263:17,  264:11, 264:12,  264:15, 264:16,  267:12, 267:16,  267:21, 275:14,  275:18, 275:22,  276:6, 282:2, 284:1,  284:5  <b>Yale</b> [1] - 277:24  <b>year</b> [18] - 201:10,  220:7, 220:8, 221:5,  226:2, 226:13,  228:6, 266:6,  270:25, 271:3,  271:5, 273:21,  274:23, 290:11,  318:9, 321:16,  325:19, 325:21  <b>Year</b> [1] - 177:23  <b>years</b> [46] - 176:7,  176:14, 176:15,  176:16, 178:16,  179:22, 186:13,  186:15, 192:21,  193:8, 196:15,  201:20, 201:21,  207:19, 211:16,</p>	<p>217:18, 219:7,  219:8, 219:9,  219:22, 221:9,  221:18, 227:25,  228:6, 230:20,  230:24, 235:15,  251:6, 261:12,  261:13, 270:24,  271:2, 271:5,  274:23, 278:19,  278:24, 287:15,  288:1, 290:14,  315:12, 317:9  <b>yes-or-no</b> [9] - 295:2,  313:4, 316:5,  316:12, 316:15,  316:18, 317:8,  317:24, 318:16  <b>YORK</b> [1] - 171:1  <b>York</b> [32] - 171:15,  171:23, 172:4,  172:10, 172:14,  173:22, 175:9,  176:2, 176:21,  181:17, 229:20,  253:5, 254:6, 255:1,  255:16, 257:15,  265:6, 278:7,  278:10, 279:3,  279:4, 279:6, 280:6,  281:4, 281:15,  281:17, 311:18,  311:21, 325:12  <b>young</b> [1] - 177:4  <b>yourself</b> [3] - 225:1,  233:21, 233:22  <b>Zeida</b> [1] - 232:6</p>
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