



1 THE OFFICER: All rise. Jury entering.

2 (Whereupon, the jury entered the courtroom.)

3 THE COURT: Be seated. Welcome back, ladies and  
4 gentlemen of the jury. I'm so glad to see you. Did you  
5 miss us? Okay. That's good. That means you're engaged.  
6 We have three witnesses on today. They should be  
7 presenting evidence or testimony in rapid succession. We  
8 are going to try to keep it fluid and moving.

9 First of all, I want to thank you for your  
10 commitment and dedication to this process. You have no  
11 idea how important it is that you continue to appear.  
12 Clearly, our judicial system, which is still one of the  
13 best in the world, really depends on you. You are the  
14 foundation of it. So I can't thank enough for being here  
15 and without further ado, we'll have plaintiff call his next  
16 witness.

17 MR. VARGAS: Your Honor, I call Dr. Thomas Kolb  
18 to the stand.

19 THE OFFICER: Raise your right hand.

20 T H O M A S K O L B, a witness called on behalf  
21 of the Plaintiff, after having been first duly sworn, testified  
22 as follows:

23 THE OFFICER: In a loud and clear voice, state  
24 your name, profession, and business address for the record.

25 THE WITNESS: My name is Dr. Thomas Kolb,

1 K-O-L-B, 257 West 34th Street, 10001.

2 THE COURT: The witness has been sworn. You may  
3 inquire, Counsel.

4 MR. VARGAS: Thank you, Your Honor.

5 DIRECT EXAMINATION BY

6 MR. VARGAS

7 Q Good morning, Doctor. Can you start by telling the  
8 jury your educational background.

9 A Sure. I went to college here at Queens College, City  
10 of New York. I graduated a long time ago in 1979 I went to  
11 medical school in Brooklyn, Downstate Medical Center and  
12 graduated in 1983. I then became a pediatrician. I did three  
13 years of training here in the Bronx at Jacobi Medical Center in  
14 Montefiore Hospital from 1983 to 1986 in pediatrics. I became  
15 board certified as a pediatrician.

16 I then went back and did another four years of  
17 training in diagnostic radiology here in Washington Heights at  
18 Columbia Presbyterian Medical Center. In 1990 I became board  
19 certified again in diagnostic radiology and since 1990 until  
20 today I have been practicing radiology.

21 Q Doctor, you are licensed to practice in New York?

22 A I am.

23 Q Do you have any specialty within the field of  
24 diagnostic radiology?

25 A I have two specialties. My practice is divided into

1 two parts. One part is breast cancer diagnosis. I specialize  
2 in young high-risk women, women with dense breasts. I have  
3 been doing that for 30 years. I see many patients, thousands  
4 of patients a year. I do their mammograms, their ultrasounds,  
5 their biopsies. I physically examine them and speak to every  
6 patient.

7 I have written papers in the field. One of my papers  
8 was on over 27,000 consecutive women determining how often  
9 mammograms find and miss breast cancer and it depends on breast  
10 density, which we may all have heard about at this point, but  
11 it was something I was able to describe for the first time in  
12 the early 2000s and one of my publications won the American  
13 Medical Association Publication of the Year Award and that was  
14 for breast cancer detection.

15 My other part of the practice involves reading X-rays,  
16 CAT scans, MRIs on patients who have symptoms. In other words,  
17 that are sent to us by doctors because the patients are  
18 complaining of a problem. And so I interpret the those  
19 studies. I perform and interpret those studies as well.

20 MR. VARGAS: Your Honor, I offer Dr. Thomas Kolb  
21 as an expert in diagnostic radiology.

22 MR. ROSENZWEIG: No objection.

23 THE COURT: He is so recognized by this Court.

24 Q Doctor, do you have your own private practice?

25 A I did until recently.

1 Q And now --

2 A I'm sorry. I do have my private practice in breast  
3 cancer diagnosis. When I do X-rays, CAT scans, MRIs I now work  
4 for Lenox Hill Radiology.

5 Q And when did that start?

6 A July 1st.

7 Q And are you being compensated for your time today?

8 A My office is.

9 Q How much?

10 A \$12,0000.

11 Q Have you ever testified on behalf of patients you've  
12 treated before?

13 A Yes.

14 Q Have you ever testified on behalf of patients being  
15 represented by my firm prior to today?

16 A Yes.

17 Q Did there come a time when you treated a Mr. Jesus  
18 Buestan?

19 A Yes.

20 Q When was that first time?

21 A The first time I treated this patient was in October  
22 9, 2019. I did an MRI of the lumbar spine referred by Dr.  
23 Kaplan and on the same day, October 9, 2019, an MRI of the  
24 cervical spine. That was the first date that I treated this  
25 patient.

1 Q And Dr. Kaplan referred him to you?

2 A Yes.

3 Q And then at some later date, did my office hire you as  
4 an expert to testify in this trial?

5 A Yes.

6 Q And so we referred other films that you didn't take  
7 for you to review; is that correct?

8 A Other films I did not take is what you said. Yes.

9 Q When did we hire you?

10 A That would be in and around October 2025, so about six  
11 years after I first saw this patient.

12 Q And before we get into the films, can you give the  
13 jury -- they've had some background, but a basic explanation as  
14 to the difference between X-rays, CAT scans, and MRIs?

15 A Sure. X-rays we have been using for over 100 years.  
16 X-rays is the name of the energy. We pulse that energy into a  
17 patient's body and we are able to see inside the body with  
18 X-rays. But X-rays are very crude. They can only tell the  
19 difference between things that are hard and soft. So it's very  
20 good for a fracture. If you're looking for a fracture of a  
21 part of the body, since bones are hard, you would see the  
22 fracture pretty easily on X-rays.

23 But there's a lot of structures in the body that are  
24 not hard. They're soft. There's ligaments, there's tendons,  
25 there's arteries, veins, muscles, nerves, discs. All of those

1 structures are soft. So if you were to take a picture of  
2 someone's back or neck, you would see all the bones if you took  
3 an X-ray, but you wouldn't see the discs in between the bones;  
4 you wouldn't see the ligaments; you wouldn't see the nerves;  
5 you wouldn't see the spinal cord, because they are all soft.  
6 So that's what an X-ray is.

7 A CAT scan takes X-rays one step further. You are  
8 able to take very thin slices -- nobody is actually cutting the  
9 patient, right; we're just doing it on a computer. You take  
10 very thin slices of the area, let's say of the neck or the  
11 back, and when you take it out and look it, you can start  
12 seeing all of these soft tissue structure. You don't see them  
13 as well as we can on a MRI scan which I will tell you about,  
14 but you can start seeing the discs and the muscles and those  
15 parts of the body. And you can also see the bones.

16 MRI is a totally different technology. It uses  
17 magnetic waves. We pulse. You go into this big machine, you  
18 lie down, there is a magnet around you and it pulses magnetic  
19 waves into your body. There's an alteration which we can -- in  
20 atoms in your body, and we can actually look at pictures which  
21 show us great detail of all these soft tissue structures. We  
22 can look at discs; we can see if ligaments are torn; we can see  
23 muscles; we can see tendons. We can see that in addition to  
24 the bones. So MRIs are a very powerful test to look inside the  
25 body and are used commonly nowadays.

1 Q Doctor, for Mr. Buestan, today I will be directing you  
2 to focus on the lumbar spine, the cervical spine, and the left  
3 wrist as far as films to review.

4 MR. VARGAS: If Your Honor would allow, if the  
5 witness can step down. We have some easels to show the  
6 jury or some blowups to show the jury.

7 THE COURT: Sure. He may step down.

8 A This is Plaintiff's 35, I believe. Before we start,  
9 let's look at Plaintiff's 27. This I put up here which is  
10 Number 27, because this is an X-ray. So let's start with the  
11 basics. Let's get on the same page of anatomy and what we are  
12 looking at. So this is the patient's head obviously. The  
13 patient's feet are down here and here you see these square  
14 blocks. Each of these squares is a bone. This is an X-ray and  
15 we're only going to see bones. We're not going to see any  
16 other things that we're going to talk about on the MRIs.

17 So in the neck, there are seven bones whether you're  
18 tall or short or male or female. We all have the same anatomy.  
19 There's seven bones. Each one of these bones is called C  
20 because we are looking at the cervical spine; C1, C2, C3, and I  
21 will mark them for you because we're going to get to that.  
22 This is 2; this is 3; this is 4; this is 5, 6, 7. Each one of  
23 these bones has a number called C. When we get to the back,  
24 they're just going to be called L because L is lumbar spine.  
25 So here in this neck, we're talking about C.

1           So these are the vertebrae or the bones, and you can  
2 see there's bones all around in the front of the patient and  
3 the back, because very importantly, as you will see in a  
4 minute, the spinal cord and all the nerves come from the brain  
5 and down your back, come out to your arms, fingertips, legs,  
6 and toes.

7           Q     That's from September 10, 2020.

8           A     Yes. Just put up so we get a little anatomy going.  
9 Now we are going to switch to this is Number 35. This is a CAT  
10 scan. CAT scans are using X-ray, but we take very thin slices.  
11 So before you saw one picture of the whole neck. Now, there  
12 are many pictures. I have only taken out two to show you, but  
13 there are many pictures. This is the middle of the patient.  
14 The patient's head is here; the front is here; his back was in  
15 the X-ray I showed you. I will talk about this picture for one  
16 second. This picture is a long picture. Again, I am going to  
17 put numbers on the bones; 2, 3, 4, 5, 6, 7.

18           These are the seven bones of your neck. There are  
19 seven bones in the cervical spine. There are bones in the back  
20 that I showed you before also. What you're going to see on the  
21 MRI, which you're not seeing here, is the spinal cord coming  
22 down behind these bones from the brain here.

23           THE COURT: Doctor, you did mean the CT scan and  
24 not the MRI, correct?

25           THE WITNESS: Which I said you're not going to

1 see here, but you will see on the MRI is the spinal cord  
2 coming down.

3 A Now, the reason we give these numbers is because when  
4 I want to talk to you about a certain level -- let's say if I  
5 want to talk to you about the space between the C4 and the C5  
6 bone, that's going to be called the disc, which is the disc is  
7 in between the bones and we will talk about that in a minute.  
8 And that would be the C4-C5 disc. Just like if I want to talk  
9 to you on the level below, this would be the C5-C6 disc. Se we  
10 all have the same numbering system right here.

11 Now, just one minute about anatomy. The bones are  
12 there in our neck, protects our nerves and our spine, but we  
13 are still able to move are neck all over the place. The reason  
14 for that is because we have discs in between these bones.  
15 Discs are little shock absorbers that we are born with, so  
16 when you jump up and down and move around, your bones don't  
17 touch each either.

18 Bones that touch each other are not a good thing.  
19 They're painful, and that's a problem. So we are born with  
20 discs that separate the bones and they are little shock  
21 absorbers. We will talk more about them in a second. Just to  
22 get one thing out of the way, because we talked about how we  
23 are born, you see here between C3 and C4, there's no space.  
24 There's a space, a space, a space, but no space between C3 and  
25 4.

1           This patient was born without a disc between C3 and C4  
2 and that happens very rarely, but it happens in this patient.  
3 So you're not going to see a space between there. So the  
4 function of the disc is to be a shock absorber. So why doesn't  
5 the disc, just when you move around, just spurt out? What  
6 holds the disc in place?

7           And the answer is that there are ligaments that run  
8 down the back of the spine and also a ligament that's called  
9 the annulus. You don't have to remember anything that's  
10 medical. Just the concept is all we are talking about here,  
11 which is there is a ligament that wraps around the disc that  
12 hold it in place. But two things can happen to that annulus,  
13 to that ligament. You can either partially tear that ligament.

14           So if you have a ligament -- let's say this is the  
15 bone that you are looking at from the side, the back of the  
16 bone here, and this is the disc right there. If there is a  
17 partial tear of the annulus, the disc will start pushing out  
18 and that's called a disc bulge, a bulging disc in the neck.  
19 Bulging disc in the neck.

20           If there is a complete tear of the ligament, the disc  
21 will push out completely and that's a herniation, disc  
22 herniation. And you can tell a disc herniation pretty easily,  
23 because if you look at the bone from the side, the disc should  
24 come to the edge of the bone and stop, because the ligament or  
25 the annulus is holding it tightly in place.

1           But if there is a tear, the disc pushes through and  
2 you will see the disc that goes beyond the margin of the bone,  
3 and you're going to see that. So that's important to know,  
4 disc bulges and herniations. Why do we care about bulges and  
5 herniations? Because, as I told you, the spinal cord and all  
6 of its nerves come down. This is a very small space. This is  
7 enlarged. It's much smaller in real life. It's a very small  
8 space, and anything that pushes into the spinal canal causes  
9 pressure on nerves and it's possible to have symptoms like pain  
10 because of disc bulges or disc herniations. You can have pain  
11 from that. So that's what can happen.

12           So in this particular case, in this CT scan, we see  
13 two pictures. One is a long picture and one is a round  
14 picture. So let me just stop for one second and explain to you  
15 what that means. Let's say you have a loaf of bread. There's  
16 two ways you can cut it. If you have a loaf of bread, you can  
17 cut lengthwise and make two pieces of bread and open. It will  
18 be a hero sandwich. You only see two pieces, but it would be  
19 the entire length of the bread, like a French bread or an  
20 Italian bread.

21           That's what we are doing here. You are seeing the  
22 entire spine, all seven bones in one shot because we are  
23 looking at it lengthwise. But there is another way of cutting  
24 bread. You can make slices and when you take a slice of bread  
25 out, it's now either round or square, but it's not long. And

1 you can make many slices. And that's what we're doing here.

2 We're taking a slice through this level on a computer  
3 and we're looking at all the anatomy right here on this yellow  
4 line. Now, if you look at this here, you see there is white  
5 and that's the bone. All of the white here is bone and this  
6 you can see right here, this is gray, not white. This is a  
7 disc herniation that's pushing back on the thecal sac here.

8 You'll see it better on an MRI, and that's why we do  
9 MRIs, but on this CT scan that was done on this date of  
10 September 2019, there is a disc herniation which means, by  
11 definition, the ligament is torn, disc herniation pushing back  
12 into an abnormal space. There is also a disc herniation at  
13 this level, C2-3 which I'm not going to go into now. So the  
14 major finding here is this disc herniation that was here on  
15 September 27, 2019.

16 Q And that's at C4-C5?

17 A Yes. So that's at C4-5.

18 Q That's within a reasonably degree of medical  
19 certainty?

20 A That's what's there. Yes. Now, if we move on --  
21 sorry. I have limited movement. So if you look at Number 34.  
22 Number 34. This is October 9, 2019.

23 Q This is an MRI you performed, correct.

24 A Yes. The patient was sent to my office. I did this  
25 MRI, Kolb Radiology, on this date, October 9th, which is two

1 weeks after the CAT scan and here let's talk about MRIs for a  
2 second, because you can see. It's much easier to look at an  
3 MRI than a CAT scan. Here are the bones. I will number them.  
4 Again, I told you before on a CAT scan -- it wasn't so easy to  
5 see, but I showed you a CAT scan, a herniation at C4-5.

6           Look at C4-5 here. You see this disc material coming  
7 out here? This is a large herniation that's pushing on the  
8 spinal cord. So let's talk anatomy. Brain up here. This gray  
9 stripe is the spinal cord. At every level of the spine, the  
10 spinal cord gives off nerves that come out to the rest of our  
11 body. This is the spinal cord coming down. In front of it is  
12 a white stripe. In back of it is a white stripe. That's  
13 spinal fluid. You put a needle in the back and do a spinal  
14 tap, that's what this is.

15           This is the fluid coming out from here. But this gray  
16 is the spinal fluid. So on this MRI, which is superior to look  
17 at the anatomy than a CAT scan, you can now see this large disc  
18 herniation at C4-5 pushing on the spinal cord. It also narrows  
19 the foramina which contain the nerve roots going out to the  
20 sides. You can also see there's a herniation that I told you  
21 previously on the CAT scan. You can now see it here at C2-3.

22           This herniation -- for example, look at a normal disc.  
23 Here. This disc between these two bones goes to the very  
24 margin of the bone here and stops. It doesn't push on the  
25 white stripe, but look here. This disc herniation pushes on

1 the white stripe at 2-3. This disc herniation at 4-5 actually  
2 pushes on the spinal cord and narrows the neural foramina and  
3 there are also smaller posterior disc herniations at C5-6 and  
4 C6-7.

5 So that's the finding or these are the findings on the  
6 MRI of October 2019. There are multiple herniations, the  
7 largest of which is C4-5, pushing on the spinal cord.

8 Q And that's also with a reasonable degree of medical  
9 certainty?

10 A Yes. And then as we move on, you will see more of the  
11 same. Here is Number 33. So here are those two pictures that  
12 I showed you previously on the CAT scan, the long picture and  
13 the round picture. This was, again, the same day, October 9  
14 that I just showed you before. Here is the herniation at C4-5  
15 pushing on the spinal cord. Here is the spinal cord and here  
16 is the gray structure and this here is the herniation right  
17 here.

18 You are looking at the same thing, just in two  
19 different views and these are called the neural foramina. This  
20 contains the nerves that come out to the left of the patient  
21 and to the right of the patient and you see they are narrowed  
22 as well. The major finding is the herniation at 4-5 pushing on  
23 the cord, narrowing the foramina, which contain the nerve roots  
24 and then smaller herniations in the cervical spine. So that  
25 was the same picture, just showing you two different views.

1           We can go on and we will see that this patient had a  
2 CAT scan, the Number 32, and this was done September 15, 2020,  
3 a year later. Remember I showed you a picture that looked just  
4 like this? Here it is again. This is the herniation that's  
5 pushing on the spinal cord, because we have the MRI to show it,  
6 and here is the C4-5 disc that's being pushed out. The same  
7 level. So just to show you that things don't just go away.  
8 They are still there. It is possible they can get bigger, but  
9 it just shows you a similar appearance on this CAT scan.

10           The patient also had -- I just showed you a CAT scan  
11 from September 2020 that we just looked at together. Patient  
12 also had MRIs on the same day which showed the exact same  
13 findings that's I showed you previously. And that's a year  
14 later. Those findings are still there.

15           And then finally, I'm going to show you Number 29. So  
16 something has changed. This is an MRI done November 21, 2023  
17 and you see what's changed is that there is a big black area  
18 right there. This big black area is a surgeon going in and  
19 fusing the spine and you'll see now that the purpose of the  
20 surgery was to take away this herniation that was pushing on  
21 the spinal cord, which looks like they have done because before  
22 you remember it was pushing on the cord and now you see there  
23 is still a white stripe there at this level.

24           The herniations we talked about at this level, 2-3, at  
25 5-6, at 6-7, they are still there. They weren't touched and

1 they're all still there. 4-5, where the surgery was, the  
2 herniation is not there anymore and that was the purpose. The  
3 purpose of the surgery is so that the patient shouldn't be able  
4 to move their spine at this level, 4-5, in order for the  
5 herniation not to get larger and cause more damage or cause  
6 more symptoms to this patient. That's the purpose.

7 So that's what it looks like when the surgeon went in  
8 and did surgery. If you remember, I initially showed you an  
9 X-ray of the patient's neck just to go over some anatomy. Now  
10 I'm going to show you an X-ray after the surgery, which is  
11 Number 28.

12 Q Quick question, Doctor. Why doesn't the fused  
13 hardware show up on the MRI?

14 A It does. It's all black, because there's artifact  
15 from the metal. All that black area was the hardware, the  
16 hardware on Number 28 looks like. All of this -- on the X-ray  
17 it's white; on the MRI it's black. It's all the same thing.  
18 All of this, all this, these are surgical screws and surgical  
19 plates and a disc stabilizer that was all put into this patient  
20 at C4-5 in order to fuse the patient. The herniation was  
21 coming out this way. The films are turned that way.

22 This is the back of the patient. The spinal cord is  
23 here. And so this is what it looks like on an X-ray. So  
24 that's what happened. That's the story or the history of this  
25 patient from 2019 through 2020 when he had surgery.

1 Q And, Doctor, quick question. You've heard the term  
2 anterior and posterior, correct?

3 A Yes.

4 Q On this film, can you point out to the jury what is  
5 anterior and what is posterior?

6 A So this is anterior, which is the front. Posterior is  
7 back. Patient's face is this way. The patient's mouth and  
8 teeth. So looking this way. The MRIs I showed you, for  
9 example, Number 29, just to hold it up. This patient is  
10 looking this way. This is the patient's face. So it's  
11 opposite, but that's just clicking a button on the computer and  
12 flipping it. The front is where the patient had the surgery  
13 and the back is where the spinal cord is and there is a disc  
14 herniation.

15 Q And if we could -- I think that sums up the cervical.  
16 If we can move onto the lumbar.

17 A Now we're going to look at the back. The first thing  
18 we're going to look at the back is just a regular X-ray. We're  
19 all on the same page and that's Number 37. This is just an  
20 X-ray of the back. Again, you just see bones. We know now  
21 that there are discs. We know that there is an annulus or  
22 ligament in the back. You're not going to see any of that on  
23 the X-ray. You're only going to look for fractures or if  
24 there's any arthritis that has to do with the bones, you will  
25 see that.

1           There are five bones in the back for all of us. This  
2 is five, four, three, two, one. The one underneath 5 is called  
3 the sacrum and these five bones are the lumbar, all L; L1, L2,  
4 L3, L4, L5. Cervical, lumbar. That's just to get us oriented  
5 so we now know what the back looks like.

6           All right. So the first thing that happened with this  
7 patient that I seen is, again, on September 27, 2019,  
8 Plaintiff's Number 44, patient had a CAT scan. It's all going  
9 to look very similar. Now that we learned everything, the  
10 things will look pretty similar. This is a CAT scan. Middle  
11 of the body, one slice, the long slicing. All five bones in  
12 one picture, called sagittal. The round slice, slices of  
13 bread, round, and this was taken by L4-5, the yellow line.

14           Same idea. Bone comes like this. All of this right  
15 here underneath, I will put a arrow. That is disc material.  
16 You will see it better on an MRI. This shows a disc herniation  
17 at L4-5 and also at L3-4 and L5-S1. So the findings on the CAT  
18 scan also include disc herniations at three levels; L3-4, L4-5,  
19 L5-S1. On the CAT scan, we can see there is foraminal  
20 narrowing at two levels, at 4-5 and 3-4, which narrow the areas  
21 where the nerve roots come out.

22           So let's jump to the MRI. Here is another CT scan the  
23 same day. This is Number 43. Same pictures, except the yellow  
24 line now goes between 3 and 4 instead of 4 and 5 and, again,  
25 you can see all of this right here is disc herniation that is

1 pushing on the right side. This is the right side of the  
2 patient. There is a L for left side. This is a disc  
3 herniation pushing on the right and the problem here is that  
4 the nerve root, the L3 nerve root, this gray thing right there,  
5 the neural foramen, which is being pressed on by this  
6 herniation at L3-4. Those are herniations that you can see on  
7 the CAT scan.

8 Q Doctor, is there any significance to whether it is  
9 pressing on the right or left?

10 A You can have pain either to the right or the left.

11 Q Whether it's pressing on the right, does that mean  
12 that pain will be on the right or it can be both?

13 A You would think so based on the imaging. Whenever  
14 there's pictures that I look at or any radiologist looks at, we  
15 can just tell you what the anatomy is. The doctor who is  
16 examining the patient and taking a history of the patient and  
17 has to take all this information and put it together and make a  
18 diagnosis as to why the patient is having symptoms and what to  
19 do about it.

20 The answer to your question is if you see a herniation  
21 more towards the right at that particular level, the right L3  
22 level, you wouldn't be surprised if there were symptoms  
23 attributing to the right L3 nerve root.

24 Q Your opinion, with a reasonable degree of medical  
25 certainty, as to the CAT scan images 43 and 44 is, just for the

1 record.

2 A On the CAT scan of September 27, 2019, there are disc  
3 herniations at L3-4, L4-5, and L5-S1, central and foraminal  
4 narrowing. If we move forward to the MRI scan, which is number  
5 42.

6 Q This is the MRI you took, correct?

7 A Yes?

8 Q So Number 42, you will see this is one picture through  
9 the middle of the spine. Again you see all these structures  
10 are a lot better on an MRI than a CT. This is 5, 4, 3, 2, 1.  
11 That's S1. These are all L. You'll see here there is the  
12 herniation that we talked about before in the CAT scan.

13 This herniation of 3-4 is going toward the right of  
14 the patient and you will see it better when we look toward the  
15 right side and the same; there is a broad herniation here at  
16 4-5. So you see the herniations much better. Look how normal  
17 all of these discs are; 1-2, 2-3. They come to the edge of the  
18 bone and stop and you see look; the bone stops here, the bone  
19 stops there, and all this material comes out. Same here. The  
20 bone stops here, bone stops here at 4-5 and the material comes  
21 out.

22 That's what I showed you on the CAT scan. You can see  
23 it better on the MRI as we move along. And that's exactly what  
24 I am going to show you here. Same MRI, October 9, 2019, Number  
25 41. So here at 4-5, just like on the CAT scan we took a

1 picture and we saw all this material coming down here beyond  
2 the level of the bone and also this little white areas is the  
3 actual annulus tear, which allows the disc material to go  
4 through. So that's the same date, October 2019. Showing you  
5 the herniation at 4-5.

6 Q And for the record, with a reasonable degree of  
7 medical certainty, your diagnosis for this film?

8 A The diagnosis for the MRI of October 9, 2019, disc  
9 herniations at L3-4, L4-5, and L5-S1. The herniation at L3-4  
10 is right paracentral impinging upon the right lateral recess  
11 interior aspect of the right-sided neural foramen. You also  
12 saw that on a CAT scan.

13 So if we move to Number 38, which is an MRI of the  
14 lumbar spine done on November 21, 2023, you will see and I will  
15 show you an X-ray also that there are these screws now here at  
16 these levels. I will show you the X-ray first. So the surgeon  
17 went in trying to fix the herniations at 4-5 and 5-1. Number  
18 36. It's pretty obvious what happened. The surgeon went in  
19 and put screws here, here, and here between 4-5 and 5-1 and  
20 fused the patient because of the herniations at these two  
21 levels. That's what it looks like on an X-ray. All this was  
22 put in by a surgeon to stabilize the spine at these levels.

23 Q Next we will go to the TV. We will show you an MRI of  
24 the wrist marked into evidence already as Plaintiff's 4.

25 A Okay. One picture. So this is an MRI of this

1 patient's wrist done on 12/8/2019. Now let's talk about the  
2 wrist for one minute. In the wrist, there are a lot of bones.  
3 There are two long bones going down the arm called the radius  
4 and the ulna. You don't need to remember any of the names.  
5 Two long bones. Then in our wrist, there are eight bones. All  
6 of these bones are the wrist bones. There are eight of them,  
7 and then after these bones come the bones in your hand, the  
8 back of your hand. You can feel them. Those are metacarpals.  
9 Those are five bones for five fingers. We are looking here  
10 because they asked us to look at the wrist.

11 Now, the main finding in this wrist is, in between  
12 this long bone and the these carpal bones here is cartilage so  
13 there is a shock absorber so that this bone doesn't touch these  
14 bones. And this is called the triangular fibrocartilage,  
15 because it's shaped like a triangle. It's supposed to be  
16 completely black and large.

17 In this particular wrist, there is a white line going  
18 through and the rest of it is thinned down. So in this wrist,  
19 the most important finding is a tear of the ulnar side body and  
20 peripheral insertion of the triangular fibrocartilage. This is  
21 the tear, linear tear, and then it's supposed to attach if you  
22 go back to that original picture. Now you see a little better,  
23 but the attachment to the bone here is pulled off and this is  
24 called the peripheral foveal insertion of the triangular  
25 fibrocartilage.

1 Bottom line is there is a complex tear of this  
2 cartilage right here. There is also a tear of a tendon called  
3 the extensor carpi ulnaris tendon, which I am not showing you  
4 on these pictures, because this is the main finding here. So  
5 that's the main finding on the wrist.

6 Q And, for the record, with a reasonable degree of  
7 medical certainty, your diagnosis for this film?

8 A Yes. There's a triangular fibrocartilage tear.  
9 There's also a tear of the extensor carpi ulnaris tendon.

10 MR. VARGAS: I have no further questions, Your  
11 Honor.

12 THE COURT: Thank you very much. Jury, do you  
13 need a minute? Let's go right into cross-examination then.

14 CROSS-EXAMINATION BY

15 MR. ROSENZWEIG:

16 Q Good morning. Remind the jury how much you are  
17 charging for your time today please.

18 A \$12,000.

19 Q You also charge for review of your films?

20 A Yes, sir.

21 Q How much do you charge for review of films.

22 A Films that I didn't do that were sent to me done  
23 elsewhere, the MRIs and CAT scans are roughly \$900 and the  
24 X-rays are about \$500.

25 Q In this case, approximately how many films did you

1 review?

2 A Twenty were sent to me and a bunch I did myself, my  
3 own scanners.

4 Q Can you give the jury a ballpark of how much are you  
5 charging the Gorayeb firm for your entire involvement in the  
6 case?

7 A You can add it up. \$12,000 to my office. It goes to  
8 my office obviously. And 20 were sent in. Let's say on the  
9 average -- most of them are X-rays; 600, 700. I'm just giving  
10 ballparks. You can actually do the numbers. Whatever it comes  
11 out to.

12 Q So I think you said \$2,000 a film?

13 A \$2,000 a film?

14 Q How much do you charge per film?

15 A \$900 for the MRI or CT and most of these are X-rays,  
16 which are \$500.

17 Q And then we just multiply that out times the 20 films  
18 you reviewed?

19 A Yes.

20 Q So around 20 grand? Does that sound right?

21 A No. It would be less. Probably closer to ten.

22 Q Well, you charge 12 for your testimony. That's what  
23 I'm saying. In total, about \$20,000?

24 A I would think so. My office would charge about  
25 \$20,000.

1 Q How many times have you testified in court for  
2 plaintiffs in personal injury cases?

3 A About five times per year on the average.

4 Q Times how many years?

5 A Oh. Many years. More than 20 years.

6 Q About a hundred times?

7 A I would think so.

8 Q How many times have you testified since COVID? So in  
9 the last five years.

10 A Again, it's probably a little less because I don't  
11 think the courts were functioning, but on the average, I go to  
12 court around five to six times a year.

13 Q You review MRI films for a living. That's what you  
14 do, correct?

15 A I'm sorry.

16 Q You review MRI films for a living?

17 A I do MRI -- no. I review MRI films for a living. The  
18 vast majority, the vast, vast majority are the ones I actually  
19 do and report. Like some in this case.

20 Q You are not a treating doctor in terms of treating the  
21 condition, like you said before. You're taking the film,  
22 giving that film to a doctor to make a diagnosis?

23 A I am in the treating physician chain. I give the  
24 results to the doctors and they base the treatment partly on my  
25 readings.

1 Q It's very important that those readings are accurate  
2 so the doctors can make an accurate determination, correct?

3 A Yes, and they would look at the films themselves also  
4 to make sure they agree, yes.

5 Q How many films do you review on an average day?

6 A Oh, many. Many, many dozens.

7 Q Can you quantify it for the jury, a range?

8 A I can't say more than that, but many dozens of films I  
9 read every day.

10 Q More than 50?

11 A I'd be guessing. I don't want to guess. Many dozens  
12 of films.

13 Q According to your website, you spoke about a little  
14 with Mr. Vargas, that a big portion of your practice is breast  
15 imaging, correct?

16 A Yes. I split it into two parts. One part is breast  
17 imaging. That's correct.

18 Q I've read in transcripts over 150,000 patients in your  
19 career for breast imaging. Is that fair?

20 A Oh, yes. For sure.

21 Q What percentage of your practice back in 2019 was  
22 devoted to the breast imaging portion?

23 A So I say, you know, how do you measure that? I mean  
24 I've seen, I speak to patients and I sit down and talk to them  
25 and that takes time and for breast imaging, and reading an MRI

1 takes less time, because I don't actually meet the patient or  
2 talk to the patient. So there's two parts to my practice. I  
3 can't quantify a number for you what percent is more than the  
4 other. I do two different things each day.

5 Q Did you ever meet Mr. Buestan?

6 A No.

7 Q Is today the first time you are meeting him?

8 A I still haven't met him.

9 Q Again, Mr. Vargas touched on this a little bit, but in  
10 this case you did two different things. You reviewed the films  
11 of Mr. Buestan's back from 2019, correct.

12 A Yes.

13 Q And then you were more recently contacted by Mr.  
14 Vargas' firm to review a bunch of different films not taken at  
15 your office, correct?

16 A That is true and I also -- yes. Yes. That is true.  
17 That is true.

18 Q How long does it take you to review an MRI, for  
19 example, of the spine or the neck?

20 A Depends how complicated it is. A simple, it can take  
21 a few minutes to read one. And then when you have to compare  
22 it to others and it gets more complicated, it can take much  
23 longer than that.

24 Q How about in this case. How long did it take you to  
25 review the MRIs of the spine?

1           A     I can't tell you, because I reviewed them already. I  
2 don't remember how long it took me to review it.

3           Q     Have you testified for the Gorayeb firm before?

4           A     I have.

5           Q     Would you admit that you testify for them frequently?

6           A     I testified for them multiple times, yes.

7           Q     Have you reviewed films for the Gorayeb firm before?

8           A     Yes.

9           Q     On how many occasions?

10          A     A few times per year for sure.

11          Q     You have testified for the Gorayeb firm before?

12          A     Yes.

13          Q     You've served as an expert witness for the Gorayeb  
14 firm before?

15          A     Yes.

16          Q     Would you consider the Gorayeb firm a valuable  
17 attorney referral partner?

18          A     I don't know what that means, referral partner. I  
19 mean they don't refer me MRIs to read, because only a doctor  
20 can refer patients for MRIs.

21          Q     In your practice, it's fair to say you have different  
22 types of referral sources?

23          A     There are many different doctors who refer patients to  
24 me, yes.

25          Q     Doctors are one source of referral, right?

1           A       Doctors are the only ones that can refer patients for  
2 scans, yes, by law.

3           Q       How about on the internet? Can people find you on the  
4 internet?

5           A       Not that I'm aware of.

6           Q       Do plaintiff personal injury attorneys refer you  
7 patients?

8           A       I have gotten -- yes. I'm sorry. The answer to your  
9 question is yes. I'm sorry. The answer to your question is  
10 yes.

11          Q       Would you consider plaintiffs' personal injury  
12 attorneys who refer workers to you to be a valuable part of  
13 your practice?

14          A       A valuable part of my practice? I don't know. You  
15 know, my partner, who unfortunately is deceased, dealt with  
16 that part of the practice back then. So it is what it is  
17 today. I'm sent cases by the plaintiffs and by the defense to  
18 review. I don't know how much more I can really say about  
19 that.

20          Q       You solicit business from attorneys?

21          A       I do not.

22          Q       You mentioned your partner was Dr. Lichy?

23          A       Yes.

24          Q       He's deceased now?

25          A       Yes.

1 Q When the practice ended, there was litigation between  
2 you and Dr. Lichy?

3 A Yes, sir.

4 Q As part of that litigation, you both signed  
5 affidavits?

6 A Yes.

7 Q On December 11, 2015 you signed an affidavit, right?

8 A Yes.

9 Q That was in response to an affidavit that Dr. Lichy  
10 served, correct?

11 A Yes.

12 MR. VARGAS: I am going to object.

13 THE COURT: Let's have a sidebar.

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

16 THE COURT: Objection sustained.

17 Q You agree that attorneys are a source of business for  
18 your firm, correct?

19 MR. VARGAS: Objection.

20 THE COURT: Overruled. It's cross-examination.

21 A Yes. Just like I'm sitting here and I was hired as a  
22 consultant to show the films in this case, the answer to your  
23 question is -- your question was -- they are a source.

24 Q They are a referral source for your business?

25 A They are a referral source for my business?

1 Q Correct.

2 A I wouldn't consider it a referral source, but they  
3 hire me as a consultant to look at films. Sometimes they end  
4 up in court and sometimes they don't.

5 THE COURT: In other words, Doctor, they are a  
6 source of business for you, that being attorneys?

7 THE WITNESS: Yes. Since they pay, I would  
8 consider that business.

9 Q Now, you have some papers in front of you. What are  
10 the papers you are looking at?

11 A They are my medical reports and the reports of the  
12 review of MRIs, CAT scans, X-rays done elsewhere.

13 Q Is it fair to say that any time you review an MRI, you  
14 generate a report?

15 A Yes.

16 Q That's contemporaneous with the review, right? Within  
17 minutes, hours of that review?

18 A Yes.

19 Q Same thing for when you serve as an expert. You  
20 prepare a report on that film, correct?

21 A Yes.

22 Q So I know you showed the jury some findings, but you  
23 also prepared a written report of your findings; is that  
24 correct?

25 A Right.

1 Q The doctor refers you the film. In this case you're  
2 getting it from Dr. Kaplan?

3 A Yes.

4 Q You review the film?

5 A Yes.

6 Q You prepare a report?

7 A Yes.

8 Q You send it to the doctor?

9 A Yes.

10 Q When it's an attorney who is referring you the work,  
11 you review the film, you prepare a report, and you send it to  
12 the attorney?

13 A Yes.

14 Q And we can tell because on the top of the report it  
15 says who it is being sent to, correct?

16 A Yes, and the date of exam which is far in the past.  
17 Correct.

18 Q So, for example, I am looking at one of the reports.  
19 It says exam requested by Gorayeb and Associates, 100 William  
20 Street. That tells us that that's an expert review, correct?

21 A Yes?

22 Q If it said exam requested by Dr. Kaplan or some other  
23 doctor, that tells us that was during the course of treatment  
24 of Mr. Buestan, correct?

25 A Yes.

1 Q Your report is one data point for the actual treating  
2 doctor, correct?

3 A My original reports, the reports that were done on  
4 scans that were done years earlier is not a point of treatment  
5 for the doctor.

6 Q The scan that's done say back in October 2019, you  
7 would send the report back to Dr. Kaplan or Dr. Weinstein,  
8 right?

9 A Whoever the doctor is.

10 Q And they make a determination about what to do,  
11 correct?

12 A Yes.

13 Q You're aware that your reports are used by attorneys  
14 in litigation, correct?

15 A Yes.

16 Q Even the report that you're doing as part of treatment  
17 of the plaintiff or patient, you know those reports may one day  
18 come up in a courtroom, right?

19 A I have no idea whether they will come up in a  
20 courtroom or not. I mean we sit here six years after 2019.  
21 When I read the film in 2019, there is no way for me to know  
22 that it would be used for lawyers or litigation or anything  
23 like that.

24 Q Well, you testify five to six times a year, right?

25 A Yes.

1 Q You consult in multiple cases?

2 A Yes.

3 Q You know that these MRI reports may show up in court  
4 one day, correct?

5 MR. VARGAS: Objection. He just answered.

6 THE COURT: Overruled. Go ahead.

7 A Yes. Of the many, many, many thousands of MRIs that I  
8 do read, I do know that five or six may end up in court at one  
9 point during a year.

10 Q Do you agree that when you can look at a diagnostic  
11 film, you could see, observe evidence of recent trauma on those  
12 films, correct?

13 A It's possible. It's possible.

14 Q Things like a fracture, bruising, correct?

15 A Yes. Fracture would be the most important thing you  
16 can tell that it was a recent trauma. As long as it's not a  
17 healing fracture.

18 Q You can look for evidence for degenerative change  
19 also, correct?

20 A Yes.

21 Q Can you explain to the jury what degenerative change  
22 is?

23 A So degenerative changes are arthritis. As we age, we  
24 degenerate unfortunately.

25 Q Things like osteophytes show degenerative change?

1 A That's one form of degeneration is osteophytes.

2 Q Can you explain to the jury what osteophytes are?

3 A They're bone spurs, little pieces of bone that stick  
4 out from where they wouldn't have been earlier when you were  
5 younger.

6 Q Now, it's not just you who writes reports on the MRIs  
7 or scans you review, correct? You are not the only person who  
8 writes reports. Anybody who reviews a film, any doctor, is  
9 going to write a report after the film, correct?

10 A That's standard. Yes. That's correct.

11 Q So, for example, I want to take you back to September  
12 27, 2019. You reviewed the CAT scans from that day?

13 A Yes.

14 Q There was also a report generated by the radiologist  
15 in the hospital who reviewed those films, correct?

16 A I would imagine so. Yes.

17 Q Did you review that report?

18 A No.

19 Q Why not?

20 A Most of the times I am not provided with the report  
21 and I'm asked to report what I see on the film. So it doesn't  
22 really make a difference what another doctor read. I am  
23 reading what I see on the film and I stand by what i read.

24 Q A radiologist can disagree?

25 A That's a possibility. Within reason. Within reason.

1 Q I would like to talk about the CT of the lumbar. If  
2 you have your report available.

3 A Sure.

4 Q I also have the report from Lenox Hill Greenwich  
5 Village Hospital from September 27, 2019 as well and I want to  
6 compare the two with you.

7 The physician at the hospital said that the CT exam  
8 demonstrates the lumbar alignments to be intact. Are you  
9 looking at the lumbar report?

10 A I am looking at my report.

11 Q I am reading you the report from Lenox Hill which is  
12 in evidence. It says the CT exam demonstrates the lumbar  
13 alignment to be intact. Do you agree with that finding?

14 A Yes.

15 Q The vertebral body heights and intervertebral disc  
16 spaces are maintained. Would you agree with that finding?

17 A Yes.

18 Q There's an incomplete fusion anomaly involving the  
19 lamina and spinous process of S1 compatible with spina bifida  
20 occulta, Series 3, Image 80. Would you agree with that  
21 finding?

22 A Possible.

23 Q There is a nine-millimeter, well-circumscribed lucency  
24 within the left sacrum with well-circumscribed margins which is  
25 nonspecific. Do you agree with that finding?

1           A     I don't have the films in front of me to see that, but  
2 I'll accept that.

3           Q     The rest of the structures are intact without  
4 fracture. Would you agree with that finding?

5           A     Yes.

6           Q     In the conclusion, it says there is no disc  
7 herniation, spinal canal stenosis, or neural foramina  
8 narrowing. Would you agree with that finding?

9           A     No.

10          Q     So the doctor in the hospital read that film on the  
11 day of the accident, correct?

12          A     Yes.

13          Q     Found no disc herniation at all.

14          A     Okay.

15          Q     Now, you're coming in here and telling the jury that  
16 there are disc herniations.

17          A     Yes. I am showing the pictures and showing what the  
18 herniations look like, yes.

19          Q     The doctor also looked at the pictures at the  
20 hospital, correct?

21          A     I am agreeing that I disagree with him and that's why  
22 I came here to show the pictures.

23          Q     The doctor would have looked at the film at the  
24 hospital, right?

25          A     I can't say what the doctor did an didn't do. I can

1 assume the doctor looked at the pictures and wrote a report,  
2 yes. I mean you can ask the doctor if there are herniations  
3 there.

4 Q You agree that there are congenital conditions though  
5 in the lumbar spine. You talked about that a little with the  
6 jury, correct?

7 A Yes.

8 Q Things that have nothing to do with any accident,  
9 correct?

10 A Correct.

11 Q I want to direct your attention to the cervical spine  
12 CT, your report on that.

13 MR. VARGAS: Which day?

14 MR. ROSENZWEIG: Of 9/27/19, the original CT from  
15 Lenox Hill Greenwich Hospital, again, in evidence I believe  
16 as Exhibit 1.

17 Q I'm sorry, Doctor. My fault I want to just go back to  
18 the lumbar spine for a second. Your report of the lumbar  
19 spine, it says mild degenerative changes. Do you see that?

20 A Yes.

21 Q Where in the body were the mild degenerative changes?

22 A It says in the body. Minimal anterior osteophyte  
23 formation at L3-4 and L5 levels.

24 Q The L4-5 is the level where the surgery was performed,  
25 correct?

1 A It was the level. Not the after, but that was the  
2 level, yes.

3 Q The same levels, the same letters you told the jury  
4 about, that's where the surgery was performed, correct?

5 A Yes.

6 Q Now back to the cervical spine.

7 A What was the date of the date of the lumbar spine that  
8 you wanted --

9 Q 9/27/19. Same as the hospital. We talked about the  
10 lumbar. Now we're talking about the cervical.

11 A Okay. I'm trying to find the cervical. Okay. Got  
12 it.

13 Q Again, I'm looking at the Lenox Hill Greenwich Village  
14 report of that same CT scan. It says alignment of the cervical  
15 spine shows nonspecific straightening of lordosis. Would you  
16 agree with that finding?

17 A I don't disagree with it.

18 Q No spondylolisthesis?

19 A There is a spondylolisthesis at C4 upon C5.

20 Q This report says no spondylolisthesis?

21 A Okay.

22 Q You disagree with that finding?

23 A For sure.

24 Q It says no prevertebral swelling or other acute extra  
25 spinal soft tissue anomaly. Would you agree with that finding?

1 A Yes.

2 Q What does that mean in layman's terms?

3 A No soft tissue swelling.

4 Q No bruising, no swelling?

5 A No swelling.

6 Q It also said the cervical vertebral bodies show no  
7 compression deformity. Do you agree with that finding?

8 A Yes.

9 Q What does that mean in layman's terms?

10 A No fracture.

11 Q No compression injury?

12 A Right.

13 Q What does compression mean?

14 A A fracture.

15 Q Does it mean something pushing down on the spine?

16 A Causing a fracture.

17 Q There is a congenital anomalous fusion of C3 and C4  
18 vertebral bodies. Do you agree with that finding?

19 A Yes.

20 Q The C5 to 7 vertebral bodies are somewhat small in  
21 height which may be congenital as well. Would you agree with  
22 that finding?

23 A I'm not sure if they're congenital or degenerative. I  
24 put in my report that they're degenerative.

25 Q No acute or displaced fracture, correct?

1 A Yes.

2 Q No lytic or blastic lesion?

3 A Yes.

4 Q There is no boney spinal canal or neuroforaminal  
5 narrowing aside from mild right boney neuroforaminal narrowing  
6 at C4-C5. Would you agree with that finding?

7 A Yes.

8 Q There is a mild disc height loss at C4-C5 with a small  
9 central disc herniation and sclerotic cystic change of the  
10 superior C5 end plate. Do you agree with that?

11 A I would agree with that.

12 Q What is sclerotic cystic change.

13 A Sclerotic cystic changes are where the bone thickens  
14 and forms little cyst.

15 Q That's over time, correct?

16 A It takes over time.

17 Q Degenerative finding; fair

18 A Yes.

19 Q Is that the level of the surgery, C4-C5, correct?

20 A Yes.

21 Q Otherwise disc height preserved in height aside from  
22 rudimentary C3-C4, correct?

23 A Correct.

24 Q The impression is no acute osseous abnormality or  
25 malalignment of the cervical spine. Do you agree with that?

1           A       I do see a mild alignment when I say mild grade one  
2       retrolisthesis of C4 upon C5. So no. I do think there is mild  
3       malalignment.

4           Q       You disagree with the hospital, correct?

5           A       With the one you asked me before. I still disagree.

6           Q       And finally the finding is mild disc degeneration at  
7       C4-C5 below congenitally-fused C3-C4. Would you agree with  
8       that finding?

9           A       I do see degenerative changes at C4-C5.

10          Q       The word degenerative doesn't appear?

11          A       It says in my report osteophyte formation and changes.

12          Q       Does it say degenerative?

13          A       You want me to use -- I'm explaining it more  
14       specifically.

15          Q       I want to know if you avoid using the word  
16       degenerative in cases --

17          A       No. I'm more specific. I'm saying what they are  
18       rather than just paintbrush as degenerative.

19          Q       You're not giving an opinion today on the causation of  
20       Mr. Buestan's injuries?

21          A       Correct.

22          Q       You don't know whether or not it preexisted or was  
23       caused by the accident?

24          A       No. I don't think anyone can know that. It's  
25       impossible to know.

1 Q You reviewed the 2019 MRI you took in your office,  
2 correct?

3 A Yes.

4 Q From Dr. Kaplan and Dr. Hausknecht, fair?

5 A Yes.

6 Q They are a repeat source of referral to you?

7 A They do send me cases. Extremely infrequently, but I  
8 do see cases.

9 Q How about Dr. Kaplan? How often do you --

10 A Pretty infrequently.

11 Q Put a number?

12 A I can't put a number.

13 Q Would you have reviewed the films in October 2019?

14 A Yes.

15 Q Less than a month after the accident?

16 A Yes.

17 Q You prepared a report?

18 A Yes.

19 Q The word degenerative never appears on that lumbar  
20 spine MRI of October 9, 2019, correct?

21 A October 9 lumbar spine?

22 Q Correct.

23 A No. That word doesn't appear. Same answer as before.  
24 I didn't use the word degenerative.

25 Q Discs were of normal height.

1 A Discs were of normal height.

2 Q Marrow signal was unremarkable?

3 A Yes.

4 Q No fractures?

5 A No fractures.

6 Q No listhesis?

7 A No.

8 Q What is listhesis?

9 A Slippage of bone.

10 Q Did you see any bruising or swelling?

11 A No.

12 Q The CT scan we just discussed from the hospital showed  
13 no evidence of disc herniation. Your report found three  
14 levels, correct?

15 A One of the reports they say no herniation and one of  
16 the reports you read to me didn't discuss herniations at all or  
17 I missed it.

18 Q It had one at C4-5?

19 A The CT scan of September 27, 2019 of the cervical  
20 spine showed a herniation at C4-5.

21 Q Just so we all can remember what it said --

22 A I agree.

23 Q Mild -- at C4-5, small central disc herniation and  
24 sclerotic cystic changes. Does your report mention those  
25 findings?

1           A       It shows a disc herniation and it says osteophyte  
2 formation.  So yes.

3           Q       Does the word sclerotic changes appear in the report?

4           A       No.  The word osteophyte formation appears, bone  
5 spurs.

6           Q       You also reviewed a brain CT scan.

7           A       I agree normal.

8           Q       As far as the MRI of the wrist, you are not making an  
9 opinion on causation?

10          A       I am not.

11          Q       You have reviewed subsequent X-rays of the spine, neck  
12 and back?

13          A       Yes.

14          Q       On multiple X-rays you found degenerative changes,  
15 correct?

16          A       Yes.

17          Q       Degenerative changes is one of the most common causes  
18 of disc herniation, correct?

19          A       A degenerative change can be associated with disc  
20 herniation or there may be no disc herniation.  Can go either  
21 way.

22          Q       Other than your review of the films, are you aware of  
23 any of Mr. Buestan's other medical history?

24          A       No.

25          Q       You don't know if he had injuries before the accident?

1 A No.

2 Q You don't know if he had after?

3 A I just read the films. That's it.

4 THE COURT: Any redirect?

5 MR. VARGAS: Just a couple, Your Honor.

6 REDIRECT EXAMINATION BY

7 MR. VARGAS:

8 Q Doctor, you were questioned about your report not  
9 saying degenerative, but instead you put osteophyte. In the  
10 realm of radiologists, is it understood when you are talking  
11 about degeneration, osteophytes means the exact same thing?

12 A No question osteophyte means degeneration. I am just  
13 being more specific.

14 Q Also bone spur can mean the same thing.

15 A Bone spur is an osteophyte, which is a degenerative.

16 Q Is it possible that someone can have degeneration,  
17 osteophytes, and not have pain?

18 A For sure.

19 Q Is it possible someone can have degeneration and  
20 osteophytes and have pain?

21 A Yes.

22 Q Is it possible to have osteophytes and degeneration,  
23 but not a herniation?

24 A Sure.

25 Q Is it possible to have osteophytes and degeneration

1 and a herniation and no pain?

2 A Yes.

3 Q And is it possible after a trauma if you had disc  
4 herniation, osteophytes and a trauma, it could then cause pain?

5 MR. ROSENZWEIG: Objection.

6 MR. VARGAS: I will rephrase.

7 Q Is it possible someone has a disc herniation,  
8 osteophytes or degeneration with no pain and then they suffer  
9 trauma and then they can have pain at the exact same place  
10 where they had the disc herniation?

11 A Yes.

12 RECROSS-EXAMINATION

13 MR. ROSENZWEIG:

14 Q You are not making a opinion as to Mr. Buestan's pain  
15 here, correct?

16 A Correct.

17 THE COURT: Doctor, we thank you for your  
18 testimony. You may step down now. Now I will ask my jury  
19 how are they feeling. Are you ready for a break? Let's  
20 take a 15-minute break. At about 11:50 let's get ready to  
21 be back.

22 THE OFFICER: All rise. Jury exiting.

23 (Whereupon, the jury exited the courtroom.)

24 (Whereupon, a short recess was taken.)

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\*\*\*\*\*AFTERNOON SESSION\*\*\*\*\*

Q Ms Buestan, before lunch we were talking about your husband's treatment prior to September 27, 2019. For how long a period of time did your husband have acupuncture before September 27, 2019?

A I'm not sure how long, how often it was because I did not go with him every time he went to get acupuncture treatment.

Q Did you go some of the time.

A Yes, because I would also get acupuncture treatment because it is beneficial for the body.

Q So how many -- was it years that your husband went to acupuncture?

A I'm not sure, as I said, because I didn't go with him all the time.

Q It wasn't just once, correct?

A It was not just once.

Q More than ten times.

A I'm not sure, sir.

Q Do you remember coming to the deposition on June 14, 2021?

A Yes.

Q Do you remember swearing to tell the truth just like you did today?

A Yes.

1 Q In June of 2021, you had been to acupuncture with your  
2 husband, but you told me he had never been to acupuncture,  
3 correct?

4 A To get acupuncture?

5 Q Correct.

6 A The questions that were made to me were about pain and  
7 comfort, and my husband felt discomfort.

8 Q I'm going to read you again your deposition  
9 transcript, page 36 line 4.

10 "Question: How about in the year prior to the  
11 accident? Did he go for any physical therapy to his lower  
12 back?

13 "Answer: No.

14 "Question: Any acupuncture or physical therapy  
15 for two years prior to his accident of September 27, 2019  
16 to his lower back and neck?

17 "Answer: No."

18 A I'm not sure you.

19 Q You've been to acupuncture with your husband before  
20 September 27, 2019, correct?

21 A Before, yes, but I just don't remember what dates.

22 Q That's fine. And I asked you at the deposition has  
23 your husband been to acupuncture and you told me no. Why were  
24 you untruthful with me back in 2021?

25 MR. VARGAS: Objection.

1 THE COURT: Sustained.

2 Q After the deposition, did you get a booklet like this  
3 to review?

4 A Which one, sir?

5 Q A copy of your deposition transcript.

6 A No.

7 Q Did your attorneys ever give you a copy to look over  
8 and make any corrections if you felt any needed to be made?

9 A Yes.

10 Q Did you make any changes?

11 A No, sir.

12 Q Prior to the accident, your husband was working full  
13 time, correct?

14 A Yes, sir.

15 Q Sometimes he was working up to 50 hours a week,  
16 correct?

17 A Yes, sir.

18 Q That's a demanding job, correct, working demolition?

19 A A lot of movement, as he explained to me.

20 Q He was tired when we he came home to you?

21 A What's normal after work. Uncomfort, discomfort after  
22 work.

23 Q He wanted to come home and relax after work, fair?

24 A Yes. Like it's normal. As we all do when we come  
25 home from work. We just want to get home and rest.

1 Q How many hours a week before the accident did he spend  
2 doing chores around the house.

3 A On the weekends, we were both off from work.

4 Q On the weekends -- on the weekdays, he didn't do  
5 chores, correct?

6 A No, because during the week he would help me cook as a  
7 loving couple would do.

8 Q Anything else?

9 A He would help me with chores; picking up the garbage,  
10 checking if the bathroom was dirty, things like that.

11 Q Before the accident, did you pay anyone to do chores  
12 around the house?

13 A No.

14 Q After the accident, did you have to pay anyone to come  
15 do chores around the house?

16 A No, sir. My son would help me around with the chores  
17 and when I would come home, I would do them as well.

18 Q Just to make sure the jury understands. Since the  
19 accident, you have not had to pay anyone to do chores around  
20 the house, correct?

21 A No, sir. I have not had to pay anyone because I am  
22 taking care of doing the chores on my own.

23 Q You are the one who does the cleaning?

24 A Before the accident or after the accident?

25 Q After the accident.

1           A       After the accident, I am the one that is in charge of  
2 doing everything in my house.

3           Q       And now I want to turn you're attention to the day of  
4 the accident, okay?

5           A       Yes.

6           Q       How did you get home from the hospital that day with  
7 your husband?

8           A       By subway. The train.

9           Q       Were you present for your husband's testimony about  
10 what happened to the hard hat?

11          A       Yes.

12          Q       Is it accurate that the hard hat was left on the  
13 subway?

14          A       Yes. He was carrying his bookbag as well as a bag of  
15 clothes he would carry to work. He picked those up, but, yes,  
16 he did leave the hard hat behind.

17          Q       Do you know what became of that hard hat after it was  
18 left behind.

19                   THE INTERPRETER: I'm sorry. The interpreter  
20 needs to clear something up.

21          A       No. I do not know what happened to the hard hat, but  
22 it was left behind with a bag of clothes.

23          Q       You told the jury your husband went to his primary  
24 doctor, correct?

25          A       Yes, sir.

1 Q And after that, he did his research and found the  
2 Gorayeb firm, correct?

3 A Yes, sir.

4 Q Did your husband go back to any of the doctors or  
5 acupuncturists that were treating him before the accident?

6 A No, sir.

7 Q Since your husband's surgeries, he has made  
8 significant progression in his physical condition, correct?

9 A After the surgeries?

10 Q After the surgeries, correct.

11 A Yes sir.

12 Q He is in much less pain, correct?

13 A Less pain, yes, sir.

14 Q He has more range of motion?

15 A He has more flexibility and more mobility, yes.

16 Q Did you hear him testify when he takes his Gabapentin,  
17 his pain level is two of ten?

18 A Yes, sir.

19 Q Your husband still performs his home exercises?

20 A What do you mean by exercises? For me, exercise is  
21 like lifting weights.

22 Q Let me ask you. What does your husband do at home as  
23 far as physical exercise?

24 A They asked him to do stretches.

25 Q Did he do those stretches?

1 A Yes.

2 Q In 2024, your husband went to Ecuador,  
3 correct?

4 A Yes, sir.

5 Q He went by himself, correct?

6 A No.

7 Q Who did he go with?

8 A With me.

9 Q You went to Ecuador with your husband?

10 A Yes, sir.

11 Q On both occasions or just once?

12 A Just once.

13 Q Once he went on his own and once he went with you,  
14 correct?

15 A Yes, sir.

16 Q How long is the flight?

17 A About seven hours.

18 Q After you went to Ecuador, you had to travel by car to  
19 your husband's family, correct?

20 A Yes. To the family, yes.

21 Q How long did you spend in Ecuador with your husband?

22 A I think like two weeks. I'm not really sure.

23 Q In 2024, you and your husband went to Dominican  
24 Republic together, correct?

25 A Yes.

1 Q In Defendants' E-1, do you see your husband in that  
2 photograph?

3 A Yes, sir.

4 Q Can you describe for the record what he is wearing?

5 A It is family that is around. There is a photographer  
6 taking the picture that asked us to take a fun picture and  
7 raise your hand this way.

8 Q Where is this picture taken?

9 A By a cafe.

10 Q In the Dominican Republic?

11 A Yes.

12 Q This was a trip you guys took to see your family,  
13 correct?

14 A Yes. I took him because he had never met my family.  
15 So I took him so he can meet them in the Dominican Republic.

16 Q How long did you spend in the Dominican Republic?

17 A Five days.

18 Q This shows you either before or after dinner?

19 A After the meal.

20 Q You all had a family dinner together, correct?

21 A We had lunch, the family.

22 Q Did you post this picture on the internet?

23 A I did 't. My husband did.

24 Q Did you post pictures of your trip to the Dominican  
25 Republic on your social media?

1           A     No. No. No. I'm not sure, because I don't really  
2 use social media. I view them once in a while.

3           Q     Did you take any of the pictures or have any other  
4 pictures of your husband in the Dominican Republic?

5           A     Yes. On my cell phone.

6           Q     What other activities are you and your husband doing  
7 in those photographs?

8           A     Pictures are going out with my family, having meals  
9 with my family. Just sharing family tim with my family.

10          Q     Did you all get along?

11          A     Yes is.

12          Q     Back in New York, your husband just recently passed  
13 his road test, correct?

14          A     Yes, sir.

15          Q     He passed his road test?

16          A     Yes.

17          Q     He drives your family car?

18          A     One time he drove it.

19          Q     Were you in the car when he drove?

20          A     Yes.

21          Q     There's no restrictions on his license, correct?

22          A     No, sir, that I know of no, but I'm not sure.

23          Q     You don't have a handicap parking permit, correct?

24          A     No, sir.

25          Q     No, you do not, correct?

1 A No. I don't have a permit, no.

2 Q Does your husband have a handicap parking permit?

3 A No, sir.

4 Q Does your husband still take subways and buses?

5 A Yes, sir.

6 Q And that involves making transfers, correct?

7 A Yes, sir, because I am working and I can't take him  
8 everywhere.

9 Q He goes shopping with you?

10 A Yes, sir. I take him out so he can distract himself.

11 Q He helps you load and unload the groceries?

12 A Yes. He helps me I pick up the heavier items and he  
13 helps me with what he can, yes.

14 Q He goes to church with you?

15 A Sometimes.

16 Q You guys have been together sight-seeing in Manhattan  
17 to South Ferry?

18 A My husband commented he had been up there seeing those  
19 views, but I was working at the time.

20 Q Have you ever gone the him to South Ferry?

21 A No, sir.

22 Q Other than the trips to the Dominican and Ecuador, any  
23 other trips outside of the tristate area, outside of New York  
24 New Jersey, and Connecticut?

25 A No, sir.

1 Q Your husband has applied for jobs in 2025?

2 A Yes, sir.

3 Q He applied as a hotel doorman ande FreshDirect  
4 employee, correct?

5 A Yes. He has made comments to the effect, but I am not  
6 really sure which ones, but he has mentioned doorman and  
7 FreshDirect.

8 Q Has he mentioned any other jobs?

9 A He mentioned he had also been to the union to ask for  
10 work, but they told him that the jobs they could offer him were  
11 of high -- demolition, of that type that were too much for him.

12 Q He is taking YouTube classes in English, correct?

13 A Yes, sir.

14 Q One of the reasons he took his road test is to help  
15 his job applications, correct?

16 A Yes.

17 Q Do you sleep in the same bedroom still?

18 A Yes.

19 Q Have you had to make modifications or changes to the  
20 apartment for Mr. Buestan's?

21 A No, sir.

22 Q Other than Dr. Grimm, is your husband seeing any  
23 doctors at the present time?

24 A He commented about seeing that doctor. He hasn't  
25 commented about seeing other doctors.

1 Q Have you been to any formal couple therapy with your  
2 husband since the accident?

3 A A couple therapy?

4 Q Yes.

5 A No.

6 Q Has your husband tried any of the activities he says  
7 he can't do?

8 MR. VARGAS: Objection to form.

9 THE COURT: To the extent she knows.

10 A Can you repeat please?

11 Q You gave testimony about things your husband couldn't  
12 do. Do you remember that testimony?

13 MR. VARGAS: That wasn't her testimony. It was  
14 things she helped him with. That's kind of different.

15 Q Are there things your husband used to do but can't do  
16 today?

17 A Things before he can -- things he could do before that  
18 he can't do now are very limited.

19 Q I am asking if you have seen him try any of those  
20 things now?

21 A Yes.

22 Q What types of things have you seen him try?

23 A He tried to help me to wash the toilet, but the  
24 movement, as he tried to bend over, as you can see his movement  
25 is very limited. He could not do it.

1 Q When was that?

2 A Months ago. I can't remember.

3 Q Do you know whether your husband is waiting for this  
4 lawsuit to be over before he takes another job?

5 A Please.

6 MR. ROSENZWEIG: Nothing further, Your Honor.

7 THE COURT: Any redirect?

8 MR. VARGAS: Just a couple, Your Honor.

9 REDIRECT EXAMINATION BY

10 MR. VARGAS:

11 Q The pain or discomfort your husband complains about  
12 after the accident, is it the same or something different from  
13 what he told you he went to acupuncture for?

14 MR. ROSENZWEIG: Objection.

15 MR. VARGAS: I will rephrase it.

16 THE COURT: Thank you. Sustained. Go ahead.

17 Q The complaints that your husband had after this  
18 accident for his injuries, were those complaints any different  
19 compared to the complaints he went to get acupuncture for?

20 A What he had before was discomfort.

21 Q And compared to after this accident?

22 A What was after the accident was something very painful  
23 is how it can be described.

24 Q And before the accident, when he was going to  
25 acupuncture, did he miss any time from work?

1           A     No.  Actually, even with the discomfort he felt, he  
2 would continue working.

3           Q     Do you have -- you were asked about have you paid  
4 anyone to do household work around the house.  Do you have the  
5 money to pay someone to do household work around the house?

6           A     No.  Impossible, sir.  That's why I had to go out to  
7 get work in order to help out.

8                     MR. VARGAS:  No further questions.

9                     MR. ROSENZWEIG:  Briefly.

10           RECROSS-EXAMINATION BY

11           MR. ROSENZWEIG:

12           Q     Did you ever go to see Dr. Lal before the accident?

13                     THE INTERPRETER:  Can you repeat that?

14           Q     Did you ever go to see Dr. Lal, Integrative Spine?

15           A     No.  I can't remember.  No.

16                     THE COURT:  Okay.  Thank you, Ms. Buestan.  That  
17 concludes your testimony.  You may step down from the  
18 witness stand.

19                     (Whereupon, the next witness was recorded and  
20 transcribed by Official Court Reporter Joanna Garcia.)

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