

B E F O R E .

18 HONORABLE LISA LEWIS,
Justice of the Supreme Court

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25 (Appearances Continued on Next Page.)

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LAURA DELVAC
SENIOR COURT REPORTER

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COURT OFFICER: All rise, Honorable Lisa Lewis
presiding.

THE COURT: Have a seat. We have one juror who
said she would be here at 3:00, but she's actually early, so

1 we have no issues, we can bring the jurors in.

2 MR. KELLY: Ready to go, Judge.

3 THE COURT: Sorry, Mr. Kelly?

4 MR. KELLY: Ready to go.

5 THE COURT: Okay.

6 THE CLERK: Good afternoon, this is Index Number
7 515104 of 2017, Perez Roberto Abreu versus 176 East 116 LLC.

8 One second. Counsel, please stand and state your
9 appearance for the record.

10 MR. KELLY: Frank Kelly for the Plaintiff.

11 MR. FRITTOLA: Michael Frittola, Lester, Schwab,
12 Katz & Dwyer, for the Defendant/Third-Party Plaintiff, 176
13 East 116th Street, LLC.

14 MR. ALVARADO: Alfredo Alvarado from Lester,
15 Schwab, Katz & Dwyer, for Defendant/Third-Party Plaintiff,
16 176 East 116th Street, LLC.

17 MR. RAMIN: Farzad Ramin, Song Ramin, PLLC for
18 Third-Party Defendant, 178 JJH, Inc.

19 THE COURT: Alright. So we are just waiting for
20 the jurors to come back in.

21 (Pause in the proceedings.)

22 THE COURT: We're ready.

23 COURT OFFICER: All rise, jury entering.

24 (Whereupon, the jury entered the courtroom.)

25 THE COURT: Good afternoon everyone, you can have a

Dr Grimm - Plaintiff - Direct

1 seat.

2 MR. KELLY: Your Honor the Plaintiff calls
3 Dr. Matthew Grimm. He's out in the hall.

4 (Whereupon, Dr. Grimm entered the courtroom and
5 took the witness stand.)

6 THE COURT: Matthew what?

7 MR. KELLY: Grimm G-R-I-M-M.

8 THE CLERK: Raise your right hand, good afternoon,
9 you can put your stuff down and raise your right hand.

10 THE WITNESS: Okay.

11 THE CLERK: Do you swear or affirm that the
12 testimony you're about to give the Court is the whole truth
13 and nothing but the truth?

14 THE WITNESS: Yes.

15 THE CLERK: Thank you.

16 State your full name and address for the Court
17 Reporter?

18 THE WITNESS: Matthew Grimm, 160 East 56th Street,
19 New York, New York 10022,

20 THE COURT: Dr. Grimm, just make sure you keep your
21 voice up. If you don't understand a question, just ask for
22 it to be repeated.

23 THE WITNESS: Okay.

24 THE COURT: You may proceed, counsel.

25 MR. KELLY: Thank you.

1 DIRECT EXAMINATION BY

2 MR. KELLY:

3 Q Good afternoon, Dr. Grimm.

4 A Hi.

5 Q Can you tell the jury your profession?

6 A I'm a physician.

7 Q Do you have a certain specialty?

8 A I'm -- I specialize in physical medicine and
9 rehabilitation, which is sort of the nonsurgical orthopedic
10 treatment of the spine and joints.

11 Q Tell the jury a little bit about your education and
12 professional?

13 A I graduated with a degree in electrical engineering
14 from Penn State. I then went to medical school at Thomas
15 Jefferson University in Philadelphia, I then did a preliminary
16 year of medicine at Graduate Hospital in Philadelphia, and then
17 I did specialize in physical medicine and rehabilitation, doing
18 my residency years at University of California, Irvine, as well
19 as William Bowman Hospital in Michigan.

20 I then did a fellowship, which is another year of
21 training in interventional pain at Nonsurgical Orthopedics in
22 Marietta, Georgia, then I got hired by New York Ortho Medicine
23 and Trauma, and I started in 2011.

24 Q Are you licensed to practice medicine in the State
25 of New York?

1 A Yes, since 2011.

2 Q Are you board certified?

3 A I'm board certified in physical medicine and
4 rehabilitation.

5 Q Explain to the jury what that means in your specialty?

6 A Being board certified in my field, there's both oral
7 and written boards, and tests that you'll take, the oral boards
8 give you mock patients, see how you treat them and then the test
9 is a couple of days of testing to make sure you're proficient in
10 your area of expertise.

11 Q Do you engage in the private practice of medicine?

12 A Yes, I am an employee at New York Ortho Sports Medicine
13 and Trauma.

14 Q Tell the jury a little bit about the discipline you
15 practice, what is it that you do for patients, what is the
16 theory behind it?

17 A I treat sort of acute and chronic pain primarily of the
18 spine, and neck and in doing so -- in doing so utilizing various
19 modalities, physical therapy, medications, and then conservative
20 treatments don't work, I utilize some treatments including
21 injections into the spine.

22 Q In our case, Mr. Abreu Perez fell from a height during
23 the course of his employment and suffered rib pain, rib
24 fractures, neck and back, cervical spine and lumbar complaints.
25 Prior to the fall from a height, he had not had any physical

1 complaints.

2 Do you have experience in treating patients like
3 Mr. Abreu Perez in your practice?

4 A Yes, I treat patients similar on a regular basis.

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

7 A Yes.

8 MR. KELLY: I move Dr. Grimm as an expert in pain
9 management.

10 MR. FRITTOLO: No objection, your Honor.

11 THE COURT: Dr. Grimm is admitted as an expert in
12 pain management.

13 Q Doctor, during the course of your testimony, you can
14 refer to your notes, the complete set of notes for both
15 Dr. Kaplan and you, New York Ortho are here as Plaintiff's
16 Exhibit 11. If you need to refer to that exhibit, you can do
17 that or you can use the printout, if you want during the course
18 of your testimony.

19 I will ask you about certain opinions, and I'm going to
20 ask you about some things you did for Roberto Abreu Perez. When
21 I ask you for your opinions, they all need to be to a reasonable
22 degree of medical certainty whether I say that or not; okay?

23 A Okay.

24 Q Did there come a time when you encountered Mr. Abreu
25 Perez for treatment, as a treating physician?

1 A Yes.

2 Q Tell us a little bit about that, how did that come to
3 pass?

4 A He was referred to me by, it looks like Dr. Kaplan, to
5 evaluate his spine.

6 Q And when was that?

7 A That was on September 12, 2017.

8 Q And when you met Mr. Abreu Perez, did you take a
9 history from him?

10 A Yes.

11 Q Tell the jury what the history entailed?

12 A The note states that the patient sustained an accident
13 while at work on the 6/27/2017. He sustained a fall of a
14 distance off a ladder striking first an iron beam and then to
15 the floor, taking via ambulance to New York Presbyterian
16 Hospital.

17 Q Did you perform physical examination at that time?

18 A Yes.

19 Q Tell the jury what it is that you do during your
20 physical examination and why you do the certain things you do,
21 then we will ask about your findings?

22 A I generally treat the spine, the neck and the back, so
23 I perform examination primarily of those areas and maneuvers to
24 try to elicit and figure out where possibly the pain is come
25 from.

1 Q Did you do that in this case?

2 A Yes.

3 Q So tell us what you did?

4 A I performed range of motions, and he had decreased
5 ranging with extension at 35 degrees and normal would be 60, he
6 had full flexion, chin to chest, so that was within the normal
7 range and he had pain with left and right lateral flexion at
8 25 degrees, the normal is to 45 degrees and he had pain at
9 65 degrees of rotation, right and left, and normal would be to
10 approximately 80 degrees. His upper extremity strength was in
11 take, and he had a normal sensation at his initial visit.

12 He did have normal reflexes, I did a maneuvers called
13 Spurling's sign, which is putting downward compression on the
14 head, some rotation to the right or the left, and then backwards
15 extension, and the point of that test is just a provocative
16 maneuver to try to elicit pain if it's coming from nerves
17 exiting the spine, they come out of this hole here called a
18 foramen.

19 If the nerves are irritated or there are issues there,
20 it can be compressing the nerve or causing irritation, we're
21 trying to irritate it during that maneuver.

22 He did show a positive sign both to the right and the
23 left. I also palpate the musculature, often times people in
24 pain, their muscles tense up and you can feel that.

25 For the lower back, I'll just monitor their walking

1 pattern coming into the office. He was walking with antalgic
2 gait, just meaning a painful walking pattern. I will assess the
3 lower back to see possibly where the pain may be coming from,
4 and then I check for tenderness over the sacroiliac joints and
5 with maneuvers, he didn't have any pain coming from those areas,
6 that's the joint, your coccyx attaches to your pelvis, and I
7 tested range of motion.

8 He did have decreased ranging in all planes, pain at
9 extension of five degrees, normal would be 25, pain at flexion
10 at 60 degrees, normal would be 85 to 90 and pain with left and
11 right lateral flexion at 15 degrees, normal would be 25 degrees.

12 He had normal deep tendon reflexes, meaning the
13 reflexes where you bang on the knee, that will test to see if
14 there may be issues in the L2-L4 nerves in the back, also those
15 are normal, but did he have a depressed ankle jerk reflex, left
16 worse than his right. That's where you tap the Achilles' tendon
17 if their ankle is depressed, you should get a real jerk down, it
18 can signify S1 nerve root issues in the back.

19 Sensation, he did show some decreased sensation to
20 light touch involving his left leg, and he was showing then, for
21 the lower back, there's a test called a straight leg raise, sort
22 of like the Spurling's for the neck, it's to try to test the
23 nerve issues in the back, you lift the leg up, and you're
24 stretching the sciatic nerve.

25 If there elicits pain, shooting radiating pain, past

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1 30 degrees, it's considered positive. He did describe radiating
2 pain to the left past 45 degrees, and did not describe pain on
3 the right with testing.

4 And his strength was intact, in all muscles tested and
5 he did show some spasm in his lower paraspinals --

6 MR. FRITTOLOA: Your Honor, the witness is using a
7 model for his testimony.

8 Can you just explain to the jury that would be for
9 demonstrative purposes only and not for evidence.

10 THE COURT: Oh, okay.

11 MR. KELLY: We can mark it.

12 MR. FRITTOLOA: You want to mark it?

13 THE WITNESS: It's not to scale.

14 MR. KELLY: Can we mark it?

15 THE COURT: Let the record reflect I want the
16 jurors to understand that the demonstrative evidence, the
17 witness is using is not to scale, and it's only to assist
18 you in understanding the test and examination that he
19 performed on the Plaintiff.

20 MR. FRITTOLOA: Can we mark that for identification,
21 Judge?

22 MR. KELLY: Plaintiff's Exhibit 28 is fine. I
23 think we're up to 28.

24 THE COURT: 28.

25 So the model of the spine will be marked

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1 Plaintiff's Exhibit 28, the model is --

2 THE CLERK: 27.

3 THE COURT: -- 27.

4 MR. KELLY: 27.

5 THE COURT: Plaintiff's Exhibit 27. You can
6 continue.

7 Q So we're all clear, that's not Mr. Abreu Perez's actual
8 spine?

9 A No, it's just a plastic model we had in the office that
10 I grabbed.

11 Q What portion of the spine is that?

12 A That is the lower lumbar spine, the back, low back.

13 Q And so when you talked about a lot of findings at that
14 initial encounter, did you get to review any records?

15 A He had had an MRI that was done at that time, that I
16 was able to review the report, which showed bulging at L4-5 and
17 a herniation at L5-S1.

18 Q And what is the significance to Mr. Abreu Perez of
19 these findings?

20 A The findings on --

21 Q Is it, are your findings consistent with Mr. Abreu
22 Perez's complaints of pain?

23 A Yeah, I mean, so the examination isn't perfect, so it's
24 sort of I describe it as sort of using different pieces of a
25 puzzle, so that's one piece, but the findings of his radiating

1 pain in the leg, as well as the decreased sensation and the
2 decreased ankle jerk reflex would be consistent with an issue at
3 the lower lumbar level we see on the MRI, so the puzzles are
4 sort of going together.

5 Q Would the findings be consistent with a trauma?

6 A It can be.

7 Q Consistent with Mr. Abreu Perez's history of trauma
8 from a fall from a height?

9 A Yes.

10 Q And so did you form an initial diagnosis or assessment?

11 A Initially, I came up with a diagnosis of lumbar
12 radicular pain, cervical radicular pain, cervicalgia, and
13 lumbago and a -- lumbar radicular pain means pain shooting into
14 the leg from the back, and cervical radicular pain is shooting
15 pain from the neck into the arms, and then cervicalgia and
16 lumbago are fancier words for neck pain and back pain that's
17 musculoskeletal or nonradiating.

18 Q So the word you used "radiculopathy," what's involved
19 in causing radiculopathy, is that the bones or the nerves or
20 what is it?

21 A Radiculopathy is meaning it's generally caused from a
22 nerve irritation, the nerve gets inflamed, and then it will
23 shoot down in the arms or the legs in a specific pattern,
24 depending on which nerves they are, they can be compressed for
25 any number of reasons.

1 The discs can be compressing it, where the nerve is
2 coming out, there can be bone growth in that area that can be
3 hitting it, it can be a mass, like a cancer striking it or fluid
4 collections of blood, so just anything that's causing nerve
5 inflammation or impingement.

6 Q Okay. Did you form a treatment plan for Mr. Abreu
7 Perez at this time?

8 A For his, for his low back pain lower back, I was
9 recommending something called an EMG, which sort of tests to see
10 if there's any muscular damage that may be arising from a nerve
11 being impinged.

12 For the neck we had not had any imaging yet, so I was
13 recommending an MRI, so I was recommending an MRI as well as an
14 EMG, again, to determine if there was any impingement since he
15 was complaining of pain going to the arms and the compression
16 test, and also I was recommending additional, some physical
17 therapy to the neck and the back and some antiinflammatory
18 medication.

19 Q Did the patient actually have an EMG?

20 A Yes, he underwent an EMG.

21 Q Describe for the jury, please, what is entailed in an
22 EMG, and how it's performed?

23 A There are two parts to an EMG; one is a stimulation of
24 the nerve, to see if there's any blockages of the nerve say
25 along the arm or leg, sometimes you can get something at the

1 elbow it's blocked. If you ever heard of carpal tunnel
2 syndrome, it can be compressed at the wrist, this will test it
3 to see if the nerve is damaged from something blocking it along
4 the way.

5 Then there's another portion of it, a pin exam where a
6 pin is put in specific muscles that are innervated by specific
7 nerves in the back. The way I describe the nerve is, it's
8 kinked, then things downstream may start to dry and this sort of
9 picks up on that, and depending on which muscle may be affected,
10 you'll see the findings on the test, and you can, it helps
11 determine which levels may be affected.

12 Q Is that kinking and the death, is that painful?

13 A Pardon?

14 Q The kinking you talked about and the death, is that
15 painful to the patient?

16 A Usually, the muscle, you have pain first, and then, if
17 it continues for a timeframe then the muscles will start to
18 deteriorate, so you can have pain without deterioration, and
19 generally you don't have deterioration without pain.

20 Q And what were the findings with respect to Mr. Abreu
21 Perez's EMG?

22 A His EMG, he had evidence of a left C6 radiculopathy,
23 for his upper, for his arms, and then he did not show any
24 evidence of a lumbar radiculopathy, and then noted that does not
25 rule out to a mild to moderate radiculopathy and if symptoms

Dr Grimm - Plaintiff - Direct

1 persists, consider another study in six to 12 months.

2 Q Was an MRI performed?

3 A He had MRIs performed, he had an MRI of the
4 cervical spine done on September 20, 2017.

5 Q What were the results of the findings?

6 A That one showed a broad posterior disc herniation at
7 C6-C7, with central and left foraminal greater than right for
8 foraminal narrowing.

9 Q Were any other diagnostic tests performed during the
10 course of your treatment?

11 A He did have an MRI, that was done, we had previously
12 said it was done on 7/29/2017, which again showed the L4-5
13 bulging and the L5-S1 herniation.

14 Q Okay. And did there come a time when Mr. Abreu Perez
15 made complaints of lower extremity radiculopathy?

16 A Yes, at his initial visit, he was complaining.

17 Q And did Mr. Abreu Perez continue to treat with you?

18 A Yes.

19 Q And during -- with what kind of frequency?

20 A At the beginning, initially he was treating, during the
21 acute phase, he'll treat much more often, because you're
22 undergoing treatment trying to diagnose things, he was probably
23 being seen every four to six weeks and then when his issue
24 became more chronic, he was being seen more like every three
25 months.

1 Q I would like you to assume, doctor, Mr. Abreu Perez had
2 no prior neck or back complaints and no prior rib fractures
3 before the date of the accident that we're here about, June 27,
4 2017.

5 Do you have an opinion, to a reasonable degree of
6 medical certainty, whether Mr. Abreu Perez's complaints and
7 treatment up to this time were causally related to that
8 accident?

9 A Yes, I would agree.

10 Q Tell the jury what your opinion is?

11 A So so my opinion, yes, his treatment, symptoms and
12 injuries would be considered causally related to that accident.

13 Q Tell us, please, what kind of therapeutic
14 interventions, what are the things you did for Roberto Abreu
15 Perez while you were treating him?

16 A I prescribed significant physical therapy for both his
17 neck and his back, and when he had continued pain from that, we
18 then did proceed to doing epidurals for his lumbar spine, and
19 which did show relief, which the epidurals can be helpful with
20 both diagnosis and treatment, because if we do an epidural,
21 which an epidural is, using about a four-inch needle using an
22 X-ray guidance, which is live, and we guide it down into the
23 epidural space, which is the space in between the ligaments
24 here, and then the spinal cord, and you're injecting, I inject
25 steroid and a anesthetic mixture, a cocktail sort of, you want

1 to bathe the nerve and take the swelling down. So if you do
2 that and don't get relief, you start to wonder if it can be
3 something else causing the pain.

4 There are other things in the back that can cause pain,
5 the facet joints, which is the joints in between each of the
6 vertebrae, or the sacroiliac joint or just muscular pain that is
7 very severe, but in his case the epidurals did provide up to
8 70 percent relief for a timeframe of it.

9 I think he underwent approximately three sets of those
10 epidurals over a span of years, so three sets of three over a
11 span of years while he was awaiting surgery for the lower back,
12 for the neck, because we're getting authorizations or approvals,
13 we never were able to do the epidurals, and then by the time
14 authorizations would come through, it had been years, so the
15 surgeon felt that the epidurals weren't necessary proceeded
16 provided on with surgery.

17 Q At what levels were the epidurals performed on the
18 lumbar spine?

19 A They were done primarily focusing at, some were done at
20 L4 and L5, and then subsequent ones were done at just L5.

21 Q Is that consistent?

22 A S1, sorry. It's L5-S1, two level, that's how you
23 describe it.

24 Q Was that how you describe it, the placement of those
25 epidurals, was that consistent with Mr. Abreu Perez's history of

1 complaints of pain?

2 A Yes, like I said, he described at some point getting
3 many months of relief following the injections, but then the
4 pain came back, so that tells me that there's issues going on at
5 those levels that is causing his pain, but the offending agent
6 that's causing the irritation of the nerve is still there. So
7 in therapy or conservative efforts didn't fix that, so it's
8 still irritating it, so the pain comes back.

9 Q Did you prescribe any oral or topical medications for
10 Mr. Abreu Perez?

11 A He had been prescribed a lot of antiinflammatory
12 medications that then eventually one of the side effects it did
13 cause gastritis, he was switched to one that didn't cause as
14 much issue with the stomach.

15 He's also been prescribed neuropathics, so medications
16 that help just mask nerve pain called gabapentin, you take on a
17 regular basis and you have to continuously take it, if it's
18 helpful. He's also been prescribed topical antiinflammatory
19 creams and neuropathic creams as well.

20 Q So in your practice, I guess I neglected to ask you
21 this at the beginning, so when you provide pain management
22 treatments, does that just shut the pain off, just describe for
23 the jury what you're attempting to accomplish with pain
24 management?

25 A I'm attempting to do, diagnose, Number one, find out

1 Number one where the pain is, and then Number two, it's -- it
2 would be some patients do great with just the epidurals, take
3 the inflammation down, combine with some therapy, sometimes can
4 help open the space up where the nerve is coming out, and that
5 can be treated.

6 In his case, it helped with diagnosis, but it didn't
7 give him long-term treatment, just transient improvement for
8 months, then he had to go ahead with the surgery and then even
9 after that, you still have chronic pain, often times at a lesser
10 degree.

11 Q You didn't perform the surgery?

12 A No.

13 Q Did you refer Roberto Abreu Perez for the surgery?

14 A Yeah, he was referred, he referred to Dr. Joseph
15 Weinstein.

16 Q And why Dr. Weinstein?

17 A I personally know Dr. Weinstein, and I was actually
18 friends with him, even before I referred patients, I liked him
19 and he had good outcomes with surgery, and I felt some patients
20 respond well to him, I do refer him patients.

21 Q Okay. And would you characterize your treatment as
22 conservative treatment versus the surgery?

23 MR. FRITTOLA: Objection.

24 A Yes.

25 THE COURT: Overruled.

1 A Yes.

2 Q Tell us why you would engage in the course of
3 conservative treatment for a 44-year-old man?

4 A Well, as I said earlier, some patients can get the
5 issue resolved with conservative treatment, so the injections
6 itself can take the inflammation down, and patients, some
7 patients do respond positively to physical therapy. When you're
8 strengthening your core muscles, and you're sometimes they can
9 get some traction, which is just some extension of the spine or
10 pulling the spine out, and sometimes that can sort of help open
11 this space up, so the nerves isn't being actively compressed and
12 they do well with just that type of treatment, some patients do
13 well with just the therapy even without the injections.

14 It's sort of a step-wise process, it starts with the
15 antiinflammatories and therapy, and then consider the injections
16 and then talk with the patient, in his case he still had the red
17 flags of flaccid weakness, that would be an emergency, you
18 pretty much go to surgery; otherwise, quality of life, if you
19 did well with the injections, often times patients do well with
20 surgery.

21 Patients that don't do well with the injections, I
22 explain sometimes it can be a toss up as to whether the surgery
23 will help.

24 Q So up to this time, was Mr. Abreu Perez's medical
25 condition, to a reasonable degree of medical certainty, caused

1 by the accident?

2 A Yes, in my opinion.

3 Q Mr. Abreu Perez's pain up to this time caused by the
4 accident?

5 A Yes.

6 Q So Mr. Abreu Perez's need for treatment caused by the
7 accident?

8 A Yes.

9 Q And the symptoms expressed by Roberto Abreu Perez
10 caused by the accident?

11 MR. FRITTOLA: Objection.

12 THE COURT: Sustained.

13 MR. FRITTOLA: Leading.

14 MR. KELLY: I'm asking causation question.

15 THE COURT: Rephrase.

16 MR. KELLY: Okay.

17 Q Mr. Abreu Perez presented to you with certain symptoms;
18 is that correct?

19 A Yes.

20 Q I would like you to assume those symptoms were not
21 present prior to the happening of the accident.

22 A Right.

23 Q Do you have an opinion, to a reasonable degree of
24 medical certainty, whether those symptoms were caused by the
25 accident?

1 A Yes, in my medical opinion, within a reasonable degree
2 of medical certainty, yes, I found they were caused by the
3 accident.

4 Q Alright, was Mr. Abreu Perez compliant with your
5 treatment plan?

6 A Yes.

7 Q Did he follow-up with you during the course of your
8 treatment plan?

9 A Yes, he followed up regularly.

10 Q Did you -- did you make any significant findings during
11 the course of his follow-up, after surgery, before surgery,
12 anything like that?

13 A I mean he -- he had a positive response to the
14 injections with the pain returning with his lower back, like I
15 said, we did, I think he didn't have the surgery until 2023, so
16 to sort of treat his pain over the years, we did do subsequent
17 injections at multiple times. Generally safe on the body to do
18 approximately three injections to a given area every one to two
19 years. You need to worry about the steroids, he has diabetes,
20 you have to be cognizant of that.

21 So we were able to palliatively treating his condition
22 for a time, then he had the surgery, and he did very well after
23 the surgery, so he had, we haven't had to do any of the
24 epidurals; yet, he still has pain, but it's been at a level he's
25 able to tolerate it with the medications, postsurgically thus

1 far.

2 Q Mr. Abreu Perez's condition, he had diabetes.

3 Can you tell the jury, what, how that works out into
4 the calculus of what's going even with Mr. Abreu Perez, in terms
5 of his prognosis for the future, things like that?

6 A I mean his diabetes is controlled he, as far as I'm
7 aware, when we do injections, his blood sugar would be taken
8 because the steroid used in those injections can increase the
9 blood sugar, we need to be aware of that. Studies show it goes
10 down after a day and a half to two days after and so we just
11 educate him on making sure he watches what he eats, it shouldn't
12 have any effect on his.

13 Q Did you, first of all, tell the jury what is a
14 prognosis?

15 A A prognosis is his expected course of life, I guess,
16 good, bad.

17 Q Well, did you form a prognosis with respect to
18 Mr. Abreu Perez?

19 A Yes.

20 Q Tell the jury, if you would, what was that prognosis?

21 A Well, his, I would say his prognosis, I would call it
22 guarded.

23 Q Tell us what that means?

24 A Guarded means, I mean he has these issues in his spine,
25 he has hardware in his spine, it's a condition that is

1 progressive, just to, I would say with the hardware in the
2 spine, it would cause the joints to the adjacent to the hardware
3 to age in a faster way, meaning arthritis can form, it can also
4 cause break down of the discs adjacent to the hardware.

5 If you think of the human body before hardware is
6 implanted from a mechanical standpoint, any force that's put on,
7 distributed amongst many joints. Now when you put this hardware
8 in there making it fixed, it's not supposed to be there in terms
9 of -- the way you were born, it's not that, that force is now
10 the levels adjacent to the hardware, putting more force on it.

11 So patients, I would say their spinal age at a faster
12 rate, and they also develop a lot of times arthritis in their
13 sacroiliac joints as well.

14 Q The future ramifications and your prognosis, would they
15 cause an increase to Mr. Abreu Perez's pain?

16 MR. FRITTOLA: Objection, it's leading and
17 suggesting a response to the witness.

18 THE COURT: Sustained, rephrase it.

19 Q What can we anticipate in the future with respect to
20 Mr. Abreu Perez, just tell us what we can except?

21 A I would say what I've seen, they have patients who will
22 have the surgery, they do quite well. Like I said, as things
23 age, so it's an an progressive issue, so further down the line
24 he will require more treatment.

25 Q Will Mr. Abreu Perez require continuing medical care

1 over his lifetime?

2 A Yes.

3 Q Does that continuing medical care have a cost?

4 A Yes.

5 Q Do you expect Mr. Abreu Perez to suffer from some level
6 of pain for the rest of his life?

7 A Absolutely.

8 Q And doctor, did you make a future treatment plan for
9 Mr. Abreu Perez to, during the course of his lifetime?

10 A Yes.

11 Q Doctor, did you set, what's the purpose of making that
12 plan, tell the jury?

13 A I just, as part of my duties of my practice, I will get
14 asked at times to make a future treatment plan, and so I will
15 determine based on the patient's condition, his injuries, sort
16 of what he's likely to need as he ages for the rest of his life.

17 Q When you say "likely," is that to a reasonable degree
18 of medical certainty?

19 A Yes.

20 Q And these treatment plans are drafted in the course of
21 your work as a physician; correct?

22 A Yes.

23 Q And the treatment of the patient; correct?

24 A Yes.

25 Q Does your treatment plan in this case include a

1 prescription for medications including antiinflammatory, muscle
2 relaxants, things of that nature?

3 MR. FRITTOLE: Objection.

4 || THE COURT: Sustained.

5 Q Alright, doctor, tell us what the treatment plan is, I
6 and I guess you're going to have to read it?

7 A So for medications, he's currently being prescribed
8 Celebrex, gabapentin, some neuropathic creams, that help with
9 nerve pain, some topical antiinflammatory creams, the
10 approximate cost of the medication is \$210 a month, and then
11 he's -- he's recommending future care with pain management
12 office visits.

13 Q Hold on, medications, is that over the balance of his
14 lifetime?

15 A Yes.

16 Q I'm sorry to interrupt you.

17 A Pain management, office visits, cost of it \$250 per
18 visits. I would say once per three months to monitor his
19 medications, make sure he's performing well on them and make
20 adjustments as needed for his pain.

21 Q Is that a lifetime duration as well?

22 A Yes, and then with the hardware in his back, often
23 spinal surgeons will like to see them once a year, to monitor
24 the spine to take X-rays, because what can happen at time the
25 hardware can loosen and become loose, so they take X-rays just

1 to make sure the screws aren't coming loose, and the spine
2 visits would be \$500 a visit, once a year lifetime duration.

3 As he ages, like I said, the -- with the, since the
4 spine is aging at a faster rate, you can expect possibly to need
5 the lumbar steroid injections, the epidural injections, I would
6 say reasonable to expect an average of up to three injections
7 every two years, based on, based on his symptoms.

8 We don't automatically do them if he's coming in
9 complaining of shooting pain not responding to medicine or
10 exercises, then we would talk about doing it, and the cost is
11 \$1200 per injection and \$2,000 facility cost for the X-ray,
12 anesthesia.

13 Q That's every two years for lifetime?

14 A Up to three every two years based on his symptoms for
15 lifetime, and then the neck, he's still complaining of some
16 radiating pain, I see injections have been discussed, the pain
17 hasn't reached to a level he needs it. As he ages, the same
18 thing, cost of \$1200 per injection, \$2,000 facility cost up to
19 three every two years based on his symptoms for lifetime, and
20 then he also over time, because when you're in pain, and he
21 received quite a few of these when, before his surgeries when
22 the muscle tenses up and tightens, it will form something called
23 a trigger point, it's a very distinct muscle band, it's very
24 painful to touch.

25 Trigger point is just needing of the muscle to try to

1 get it to loosen up, to release, stress, pain and various things
2 can cause it. He responded positively to those, so he can have
3 up to approximately a set of injections every three months based
4 on his symptoms for the lifetime cost of \$300 per set of
5 injections.

6 And then with the hardware in his back, I feel I always
7 recommend patients if they can have maintenance therapy going to
8 physical therapy to be overseen by a licensed therapist, once a
9 month, just to instruct on their home exercise program, making
10 sure they're not doing exercises that could be causing loosening
11 of the hardware at a cost of 100 to 150 visit for the lifetime
12 at once a month.

13 And then MRIs of the lumbar and cervical spine based on
14 his symptoms, and if he has, he has the hardware in there, he's
15 coming in complaining of increased pain, it's not going away for
16 multiple weeks' duration, even if -- even in an emergency room
17 or in an office, the recommendation will be an MRI as he ages, I
18 think the average could be possibly one every five years, at a
19 cost of \$1300 for the lifetime duration.

20 And the X-ray films that I mentioned earlier, the
21 spinal surgeon to check to make sure the loosening isn't
22 happening with the hardware, again, based on his symptoms, once
23 a year at a cost of \$400, and then the EMG studies, which doing
24 them chronically can help determine if, if there is some
25 adjacent level disc issues happening, he's developing an

1 increase in symptoms that may be out of the ordinary or even the
2 ordinary radiating pain, and this test can determine whether
3 there's -- it's acute or if it's just chronic findings where the
4 muscle may be dead for a long time, you can help determine that
5 with that test and it can help diagnose new things, and that
6 would be every five years based on his symptoms, for a lifetime
7 duration at cost of \$2,000.

8 Q Okay. Did you also prescribe X-rays films?

9 A Yes.

10 Q X-ray films of the lumbar and cervical?

11 A Didn't we --

12 Q Is there a cost to that?

13 A \$400.

14 Q What's the frequency?

15 A Once a year when the -- as I said earlier, with his
16 spine surgeon will often get those to test for the hardware
17 loosening.

18 Q This therapeutic plan, did you create that, to a
19 reasonable degree of medical certainty?

20 A Yes.

21 Q Is the therapeutic plan that you created is that
22 causally related to the accident Mr. Abreu Perez suffered on
23 June 27, 2017?

24 A Yes.

25 Q Mr. Abreu Perez's physical -- withdrawn.

1 Is the physical condition for which Mr. Abreu Perez
2 suffers permanent?

3 A Yes.

4 Q And you said progressive; does progressive mean
5 negatively progressive or worsen?

6 A No, something that will usually get worse over time.

7 Q And the therapeutic plan that you drafted, to a
8 reasonable degree of medical certainty, will Roberto Abreu Perez
9 require these in good practice of medicine during the course of
10 his lifetime?

11 A Yes.

12 Q Is Mr. Abreu Perez disabled?

13 A Yes.

14 Q Tell the jury what you mean when you say Mr. Abreu
15 Perez is disabled?

16 A I think he's what I would call a temporary disability.
17 Permanent, I would say is you're bed bound, you can't do
18 anything. He used to be hard laborer, now I think he's working
19 as an Uber driver, so I would say he's capable of light work,
20 sedentary work, work where he can offload his spine when needed,
21 but I would not recommend he go back to anything hard labor or
22 heavy labor putting a great amount of strain on his spine, so I
23 place him with a temporary partial disability, not a 100 percent
24 total where he's incapable.

25 Q Mr. Abreu Perez had surgery to his lumbar spine on

1 January 3, 2023.

2 He had a motor vehicle accident on December 27, 2022,
3 five days, six days before the lumbar spine.

4 Were you made aware of Mr. Abreu Perez's motor vehicle
5 accident?

6 A Yeah, I was made aware maybe four days ago, you sent me
7 some records.

8 Q Did you get a chance to look at the records?

9 A Yes.

10 Q Is there anything significant in them?

11 A I mean it just, I think I called it, whiplash and a
12 mild or, I can't remember, like a mild accident or something
13 like that.

14 Q Does it say "no significant injury"?

15 MR. FRITTOLA: Objection.

16 THE COURT: Sustained.

17 Q Do you recall it says "no significant injury"?

18 MR. FRITTOLA: Objection.

19 MR. KELLY: We can read it, it's in evidence.

20 THE COURT: Sustained.

21 MR. KELLY: It doesn't matter.

22 THE COURT: It's in evidence.

23 MR. KELLY: Yes.

24 THE COURT: Okay. You can ask him.

25 MR. KELLY: Okay. Can I have the Mount Sinai,

1 please?

2 THE COURT: The Mount Sinai?

3 MR. KELLY: Mount Sinai.

4 THE COURT: What number is that?

5 THE CLERK: What number?

6 MR. KELLY: Yeah, good question.

7 (Pause in the proceedings.)

8 MR. KELLY: It should be, that's the radio.

9 MR. FRITTOLOA: I'm not sure it's in evidence, I
10 believe Mr. Kelly objected to.

11 MR. KELLY: Defendant's Exhibit D, I believe if
12 it's not in evidence, I will move Defendant's Exhibit into
13 evidence.

14 THE COURT: Defendant's Exhibit D.

15 MR. KELLY: D as in dog.

16 MR. ALVARADO: You're moving my exhibit as D
17 defendant?

18 MR. KELLY: Why not?

19 MR. ALVARADO: I didn't know you're for the
20 defense.

21 MR. FRITTOLOA: We did D yesterday, it was, where's
22 the list, that was the list that was shown to Dr. Kaplan.
23 I know there were some exhibits that were subject to
24 redaction, is this one?

25 MR. ALVARADO: I couldn't hear you, Judge.

Dr Grimm - Plaintiff - Direct

1 MR. FRITTOLO: No, your Honor.

2 Q Doctor, did you bring a copy of the Mount Sinai records
3 with you?

4 MR. FRITTOLO: I have them in my bag back there.

5 THE COURT: Let's take a little break, take them
6 out.

7 COURT OFFICER: All rise, jury exiting.

8 THE COURT: One moment, never mind, he has it.

9 MR. KELLY: Can we make this Plaintiff's
10 Exhibit 28, I guess we're up to.

11 THE CLERK: It's not Defendant's Exhibit D.

12 MR. KELLY: Apparently, we don't have it, I have a
13 copy of it, if we can move it as a Plaintiff's exhibit at
14 this point.

15 MR. ALVARADO: Can we see it?

16 THE CLERK: It was marked, it's only ID, that's
17 okay.

18 THE COURT: Yes, it was theirs, Mr. Kelly.

19 MR. ALVARADO: You never marked it?

20 MR. FRITTOLO: No.

21 MR. KELLY: Mount Sinai Morningside.

22 THE CLERK: You said the wrong number.

23 MR. KELLY: That's what was written on my document
24 here, the day before we started trial.

25 THE COURT: Is it in evidence or not?

Dr Grimm - Plaintiff - Direct

1 MR. KELLY: It was for ID.

2 MR. ALVARADO: No.

3 MR. KELLY: That's why I didn't move it into
4 evidence.

5 THE COURT: Show it to him.

6 MR. ALVARADO: Which one are we marking it?

7 MR. KELLY: You can make it Plaintiff's, they can
8 have Defendant's Exhibit when they want.

9 MR. ALVARADO: Plaintiff's Exhibit 28, what?

10 THE COURT: Plaintiff's Exhibit 28.

11 THE CLERK: Yes.

12 THE COURT: Counsel, is there any objection to
13 moving it into evidence?

14 MR. FRITTOLO: No, your Honor.

15 THE COURT: Plaintiff's Exhibit 28 is in evidence.

16 Counsel, you said these are Mount Sinai.

17 MR. KELLY: Yes, Mount Sinai, correct.

18 (Pause in the proceedings.)

19 A Here we go.

20 Q Tell us what it says?

21 A It says MVC, which I think is motor vehicle, no serious
22 injury to neck strain sprain strain, for back sprain strain for
23 shoulder sprain.

24 Q Did they do any radiological studies, CT, MRIs?

25 A Not that I see, I just see they evaluated and

1 prescribed baclofen, which is an antispasm agent and ibuprofen.

2 Q Did you see Mr. Abreu Perez after his lumbar surgery?

3 A I saw him in, I believe, March.

4 Q His lumbar surgery was six days after this accident; is
5 that correct?

6 A Yes.

7 Q Was there any complications to the surgery as a result
8 of this accident?

9 A Not that I'm aware of.

10 Q Did you have to alter your course of treatment in any
11 way with respect to this accident for Mr. Abreu Perez?

12 A No, I wasn't aware of the accident.

13 Q Doctor, are you currently treating Mr. Abreu Perez?

14 A I am not.

15 Q Do you know who is?

16 A Dr. Mandelbaum.

17 Q During the course of your work as a physician, do you
18 often times review the records of other physicians?

19 A I review the records that I was asked to prepare a
20 summary of his treatment and the future care or future care
21 treatment, so I did review his treatment over the last years.

22 Q Dr. Mandelbaum's treatment?

23 A Yes.

24 Q Did any of that, did any of those records go into
25 forming your future treatment plan, future treatment plan with

1 respect to Mr. Abreu Perez?

2 A Yes, some of them I would take some of it into account,
3 but I didn't go, I believe he's seeing him every six weeks.

4 MR. FRITTOLA: Objection, your Honor, strike that
5 portion --

6 THE WITNESS: Sorry.

7 MR. FRITTOLA: I just want to be clear,
8 Dr. Mandelbaum has not been identified as a witness in this
9 case, he's going to try to incorporate --

10 MR. KELLY: None of that is going to happen.

11 THE COURT: Sustained, sustained.

12 Q In the course of your work as a physician, do you often
13 times look at the reports and tests of other physicians?

14 A Yes.

15 Q Did you look at the reports and tests of
16 Dr. Mandelbaum?

17 A Yes.

18 Q Did you incorporate that into your treatment plan?

19 A Yes.

20 Q Doctor, over the last 14 years, you and I have appeared
21 together in a case like five to seven times?

22 A A handful of times, I couldn't give you a number.

23 Q And you're not being paid; is that correct for your
24 appearance today?

25 A My office is being paid for my time, they originally

Dr Grimm - Plaintiff - Direct

1 had patients, they cancelled my patients and last, I think I
2 found out last Saturday or Friday, when my assistant told me I
3 was going to come here, and I was thrilled.

4 Q Would you prefer to be with patients rather than being
5 subject to this?

6 A Absolutely.

7 Q I'm going to kindly take a look at what we have marked
8 as Plaintiff's Exhibit 1.

9 MR. KELLY: May I approach, your Honor?

10 THE COURT: Yes.

11 MR. KELLY: (Approaching.)

12 Q There's a number of -- there's a number of tabbed items
13 in Plaintiff's Exhibit 1, that's the New York Presbyterian
14 Hospital medical record, which is in evidence.

15 Can you read the history in the medical record?

16 A Is that --

17 Q With respect to the fall from a height, can I approach?

18 THE COURT: Yes. Do you know what page?

19 MR. KELLY: Yes, I tabbed it already.

20 (Indicating.)

21 THE WITNESS: Sorry.

22 Q Trauma flow sheet?

23 A It says "BIBA, ten to 20 fall from ladder on right
24 side.

25 Q What does "BIBA" mean, recorded by ambulance?

Dr Grimm - Plaintiff - Direct

1 MR. FRITTOLO: Objection, Judge.

2 THE COURT: Sustained.

3 Q That's fine.

4 Doctor, I ask you to kindly read the history provided
5 to New York Presbyterian Medical --

6 A "44-year-old male with history of hypertension and
7 diabetes," and then the "BIBA for evaluation of fall, patient
8 works at a construction site and states he was standing in a
9 ladder about between ten to 20 feet height, and fell when the
10 ladder slipped, patient landed against steel beam on to his
11 right side. Patient complaining of pain to right side of
12 abdomen, and chest wall area plus SOB" -- short of breath --
13 "plus back pain, denies LLC" -- loss of consciousness --
14 "patient states he was wearing a helmet."

15 Q Doctor, I ask you to kindly read from the nursing note,
16 last entry 1654?

17 A Again, "BIBA, ten to 20 fall from ladder on right
18 side," I think, "denies hitting head, no LOC" -- loss of
19 consciousness -- GCS" which is Glasgow Coma Scale "15".

20 Q That's enough, that's the last one I got, cursory
21 review. Thank you, doctor.

22 The entries in the New York Presbyterian Hospital
23 record, are they consistent with Mr. Abreu Perez's discussion
24 with you, respecting the cause of the accident or the happening
25 of the accident?

1 A Yes.

2 Q Is there anything in the Presbyterian Hospital record
3 which causes you to alter your opinions with respect to the care
4 and treatment of Mr. Abreu Perez?

5 A No.

6 Q Doctor, there may be some discussion about, there have
7 been some discussion with Mr. Abreu Perez about a spinal
8 stimulator.

9 Can you tell what a spinal stimulator is?

10 A A spinal cord stimulator is a device often placed in
11 patients who have had surgery, who have nerve issues that are
12 causing pain, on the count if it's given to when patients have
13 surgery if they had worsening pain or continuing pain that is
14 chronic, and is -- they can't tolerate it, there's a trial
15 that's done where using needles, you insert electrodes into the
16 spine, and the electrodes fire in a very fast rate to try to
17 stimulate the nerves centers in the brain, sort of
18 overstimulate them, so they're not feeling the pain in
19 distribution of whatever area in the spine you're stimulating.

20 And often times, you'll map it, and you have the
21 patient sort of, you can turn the stimulation down to a level so
22 you will feel sort of a buzz, and you tell the patient is it
23 covering your pain, and when they say yes, it's mapped and
24 covering my pain, you turn it up, and it's at level where they
25 hopefully don't perceive it. Well, some of those patients like

Dr. Grimm - Plaintiff - Cross

1 that sort of buzzy feeling instead of the pain, and then one is
2 a trial you wear it for a week. If patients get a positive
3 response to the trial, then they will get a permanent
4 implantation of the device where it's essentially the same
5 thing, except you have a battery put under your skin that gets
6 recharged periodically and needs to be replaced every five to
7 ten years.

8 Q Do you do this surgery, doctor?

9 A I do.

10 Q With respect to Mr. Abreu Perez, is that not scheduled
11 for him, or is it not anticipated for him, something else?

12 A It's been discussed, right now it's not something I
13 would recommend in the near future, he's -- he's been doing well
14 after the surgery, it's something that is open to him and it is
15 an option for him in the future as his pain progresses, I didn't
16 put it in. I -- I considered it in the plan, but I wouldn't say
17 it's likely, but it's certainly not unlikely, it's hard to
18 determine right now if he will need it or not.

19 MR. KELLY: Doctor, I have further questions for
20 you. Thank you very much.

21 CROSS-EXAMINATION BY

22 MR. FRITTOLA:

23 Q Good afternoon, doctor, my name is Michael Frittola, I
24 have a couple of follow-up questions for you.

25 Did you bring your medical file with you to court

1 today?

2 A I brought records that pertained to my treatment of the
3 patient, and our whole medical file has been subpoenaed and
4 given to the Court.

5 Q Can we take a short break just to look at, I want to,
6 even what's in your bag, anything that relates to Mr. Roberto
7 Abreu Perez, okay, whatever you brought to court today?

8 A Okay, I mean, you want, I can --

9 THE COURT: Take the jury out.

10 COURT OFFICER: All rise.

11 (Whereupon, the jury exited the courtroom.)

12 THE COURT: Do you have additional records in your
13 bag?

14 THE WITNESS: One hospital record I printed out.

15 MR. FRITTOLA: If you want to take a break also and
16 use the restroom.

17 THE COURT: That's fine, let him get the document
18 first.

19 (Whereupon, Dr. Grimm exited the witness stand.)

20 THE COURT: Counsel, you need 45 minutes?

21 MR. FRITTOLA: Yes, Judge.

22 COURT OFFICER: All rise, jury entering.

23 (Whereupon, the jury entered the courtroom.)

24 THE COURT: Alright, everyone can have a seat.
25 Counsel, you may inquire.

1 MR. FRITTOLO: Thank you, Judge.

2 Q Dr. Grimm, thank you again for your time. My name is
3 Michael Frittola, I have follow-up questions for you.

4 You said that you brought your entire medical file with
5 you; is that correct?

6 A No, I said I brought the records that pertained to my
7 treatment --

8 Q Okay.

9 A -- for the patient.

10 Q You testified just now that your treatment and your
11 assessment included a review of Dr. Mandelbaum's records; is
12 that correct?

13 A In doing a report, I did look over his records, yes.

14 Q And how come you didn't include Dr. Mandelbaum's
15 records?

16 A My assistant is in preparing it, she generally puts my
17 treatment records and Dr. Kaplan's treatment records.

18 Q Were you served with a subpoena in connection with your
19 appearance here?

20 A I don't think I was served with a subpoena.

21 Q Was it possible that New York Ortho, your facility was
22 served with a subpoena?

23 A Possibly, I don't know.

24 Q Did you ever see a subpoena that required your
25 appearance here?

1 A No.

2 Q I want to get right into it with you, some of the more
3 meet and potato substance of your assessment of the injuries in
4 the case.

5 In the course of your review of the medical evidence,
6 did you see reference to degeneration?

7 A There may have been some, I have to look for it, there
8 may have been some on some of the imaging studies.

9 Q I saw a reference to osteophytes?

10 A Likely on the X-rays, yes.

11 Q Is that an indication of degeneration generally?

12 A Yes.

13 Q You saw reference to hypertrophy?

14 A Probably around the joints, yes.

15 Q Is that an indication of degeneration?

16 A Yes.

17 Q And have you seen a reference to disc desiccation?

18 A Yes.

19 Q Is that a degenerative issue?

20 A Yes.

21 Q How about loss of disc hydration?

22 A Yes.

23 Q Is that a degenerative?

24 A Yes.

25 Q So you would agree, there are some references in this

1 medical evidence to degenerative issues?

2 A Yes.

3 Q That's consistent with a 44-year-old manual laborer,
4 Mr. Kelly made the representation that he started doing work in
5 the field before he was a teenager, so it would not be something
6 you would expect to see?

7 A It can be.

8 Q And someone that performed manual labor, drove for an
9 extended period of time, that generally, would you see
10 degeneration?

11 A May or may not, I mean, I wouldn't be surprised if I
12 didn't, but you may not see it.

13 Q Fair.

14 If I told you that Dr. Kaplan, let me ask you,
15 Dr. Kaplan, what is your relationship with Dr. Kaplan?

16 A He's my boss.

17 Q Okay.

18 A And colleague.

19 Q And so the -- and he referred Mr. Abreu Perez to you?

20 A Yes, he, if someone has neck or back pain, he will
21 often, not always, but often send them to me.

22 Q He's not some independent treating provider, he's your
23 boss; right?

24 A Yes.

25 Q And you share an office space?

1 A We share, yeah, I mean I'm on a different -- yes, the
2 same, 160 East 56th street.

3 Q Do you share staff?

4 A Yes.

5 Q When New York Ortho gets paid for the work you do, it
6 goes into one single account?

7 A I have no idea. You would have to ask him.

8 Q And if Dr. Kaplan came in and testified that it's
9 common for someone to have an asymptomatic degenerative
10 condition, that isn't activated by trauma, would you agree with
11 that?

12 A Yes.

13 Q Can an asymptomatic condition be aggravated or
14 degenerative asymptomatic condition can be aggravated or
15 exacerbated by a trauma?

16 A Yes.

17 Q Is that what happened here?

18 A I don't believe so.

19 Q Are you familiar with the term black disc disease?

20 A The hydration leaves the disc.

21 Q Are you familiar with the term; is that synonymous with
22 degenerative disc disease?

23 A It may or may not.

24 Q And if Dr. Weinstein came in here and testified that
25 the Plaintiff had black disc disease, would that surprise you?

Dr. Grimm - Plaintiff - Cross

1 MR. KELLY: Objection, he didn't testify yet.

2 MR. FRITTOLO: What does that tell you?

3 THE COURT: Overruled.

4 Q It wouldn't surprise you?

5 A I mean, if he -- if he's diagnosed that on other
6 patients, so that's an indication for surgery on patients, so it
7 would not surprise me.

8 Q Did you see that Roberto Abreu Perez had degenerative
9 disc disease at any time during the course of your treatment?

10 A May have, I would have to look through the records, if
11 you can point me to one.

12 Q There are reference with respect to Mr. Roberto Abreu
13 Perez and degeneration; correct?

14 A Yes.

15 Q Do your reports, I saw your file, you have a couple of
16 narrative reports right at the front?

17 A Yes.

18 Q Do they address degeneration?

19 A I -- probably, probably not.

20 Q Probably not, because that's not something that the
21 Gorayeb firm asked you to look at?

22 MR. KELLY: Objection.

23 THE COURT: Sustained.

24 Q What makes you think probably not; isn't that part of
25 his medical condition a degenerative issue?

1 A It's part of his chronic issue, but I don't have any
2 preinjury studies, I -- he has findings, so it's a part of the
3 study, I don't feel that's relevant in current treatment.

4 Q What do you mean pre-studies, pre-incident studies for
5 to assess the level of degeneration he had after the incident?

6 A Well, you're asking me if, if that's the cause, I said
7 the cause of his issue is nerve inflammation, irritation, and
8 that's what I feel it is, could it be, could it be an
9 exaggeration of degenerative issues combined with the
10 herniation, yes, could it be just the herniation; yes, it's hard
11 to -- I couldn't say with 100 percent certainty either one is
12 the primary, but I can say, that the accident would be the cause
13 of his symptoms in asymptomatic patients, accident symptomatic
14 patient.

15 Q How come you didn't say it in any of your reports that
16 the condition could be caused by an underlying degenerative that
17 was aggravated or exacerbated, how come do you didn't say that
18 if that's the truth?

19 MR. KELLY: Objection to the form of the question.

20 THE COURT: Sustained.

21 Q Is it the truth you're under oath, is it?

22 MR. KELLY: Same objection.

23 THE COURT: Overruled.

24 Q Let me just finish the question.

25 Is it the truth that a degenerative issue could have

1 been exacerbated or aggravated because of the trauma that is the
2 subject of this case?

3 A If that degenerative issue was causing foraminal
4 narrowing.

5 Q That's truth, it's possible; right?

6 A Usually degeneration if it's not causing foraminal
7 narrowing, it will cause axial pain, which means low back pain,
8 so it's possible, but in my medical opinion, not likely.

9 Q How come you did not reference any of the degenerative
10 issues that we talked about, that I went through the list,
11 osteophytes, hypertrophy, any of that stuff, none of that stuff
12 is mentioned in your reports?

13 A Because I'm writing this report as a medical record for
14 me, I'm not writing it from a lawyer standpoint for court.

15 Q Who were those reports sent to?

16 A Just the narrative is sent to the attorneys, the other
17 reports are in my medical records for my treatment, it would be
18 Dr. Kaplan will again see it's going for patient treatment.

19 Q Doctor, your narrative reports are prepared for
20 purposes of litigation; is that correct, are they used in
21 litigation?

22 A Yes.

23 Q Does Gorayeb's office ask you to prepare reports?

24 A Yes.

25 Q And so the reports that you prepare are not to help him

1 get better, it's to document your assessment; correct?

2 MR. KELLY: Objection.

3 THE COURT: Sustained, you don't have to answer
4 that. Rephrase, counsel.

5 MR. FRITTOLOA: Sure.

6 Q Was there an intake form that was created when Mr.
7 Roberto Abreu Perez initially came to your office?

8 A Yes.

9 Q What did it look like?

10 A I don't ever look at the intake forms. I mean it's --
11 it's got a bunch of information on it.

12 Q That's not included in your medical file?

13 A I don't use it for treatment, so it's not in this file,
14 I'm sure it's in the whole file.

15 Q Are you sure, have you looked at the whole file,
16 doctor?

17 A I have not.

18 Q So you don't know if it's there or not?

19 A If it was, if you subpoenaed our whole file, it should
20 be there.

21 Q Well, you were directed via subpoena, right, to bring,
22 I have a copy of the subpoena, if you want to take a look at?

23 MR. KELLY: He said he didn't receive the subpoena.

24 Q You were directed to bring a copy of your entire file?

25 MR. KELLY: Objection, he didn't receive it.

1 A My office did provide me, I forgot, I didn't give that
2 to you during the break, a CD, I know, of our entire record.

3 MR. KELLY: Objection, doctor, the entire file is
4 already here in evidence as Plaintiff's Exhibit 11, they
5 know that, they agreed to that.

6 THE COURT: Overruled.

7 Q Is there anything else in your bag that you want to
8 tell us about this case?

9 MR. KELLY: Objection.

10 THE COURT: Overruled.

11 A My scrubs.

12 Q Now, you have a CD also; what was the joke? I'm sorry.

13 A My scrubs, I had to change.

14 Q How come the intake form did not make its way into the
15 file that you brought into court here today?

16 A It's not used for treatment.

17 Q So what else is in your file that you didn't bring?

18 MR. KELLY: Objection, it's right here, Judge.

19 It's Plaintiff's Exhibit 11, they can go through it.

20 THE COURT: Overruled.

21 A It's got the EMR, the electronic medical records, it's
22 thousands of pages.

23 Q Did you review the intake form before you came here to
24 testify today?

25 A No, I have never looked at the intake form.

1 Q Do you have, what I would call an original file, the
2 file that you brought, seems to be a printout; is that correct?

3 A Yes.

4 Q Do you have any documents that you know, have a wet
5 signature, an actual signature that you signed?

6 A No, I type everything in the room, I'm a fast typer, I
7 type while the patient is in the room, telling me things.

8 Q You type or do you dictate?

9 A I type (indicating).

10 Q Does anyone assist you while you're examining a patient
11 and typing up a note?

12 A I have a translator, that's it, but I type everything
13 and I examine the patient.

14 Q Did you have a translator with Mr. Roberto Abreu Perez?

15 A Yes.

16 Q Do you read the chart or documents after you type them
17 up?

18 A I try to, I mean I'm typing them, generally, or I, in
19 terms of the EMR with the follow-ups, we just go over it, and I
20 I adjust as needed.

21 Q New York Ortho gets paid for the work you do?

22 A Yes.

23 Q You did not bring the billing records to court with
24 you?

25 A No.

1 Q I saw that there are prescriptions in the file?

2 A Yes.

3 Q And those are electronic prescriptions; correct?

4 A Yes.

5 Q And so would you consider electronic prescriptions part
6 of your relevant medical file?

7 A Yes.

8 Q There was a reference to a referral, Dr. Kaplan, your
9 boss?

10 A Yes.

11 Q Referred this patient to you; is that correct?

12 A Yes.

13 Q How is that done?

14 A He will, the patient will generally be treating with
15 Dr. Kaplan, or and he will tell the front desk to make an
16 appointment with Dr. Grimm.

17 Q And is there any paper trail of that?

18 A I don't know, they might have just, he was referred and
19 on their intake it will say "eval back".

20 Q Just yes or no, have you ever turned down a patient
21 that Dr. Kaplan referred to you for pain management?

22 A Yes.

23 Q Do you know when was the first time Mr. Roberto Abreu
24 Perez presented for treatment with you?

25 A September 12, 2017.

1 Q Would he have filled out an intake form on that date?

2 A I don't know.

3 Q Do you know if he was accompanied to the appointment
4 with a legal representative, a lawyer?

5 A I have no idea.

6 Q Can you take a look at your 2020 report, or just, you
7 have a report from August of 2020 in there?

8 A What report are we talking about?

9 Q There's narrative report that you prepared August 18,
10 2020.

11 A Okay, okay.

12 Q Does that include a history that you took from
13 Mr. Abreu Perez?

14 A Yes.

15 Q What does it say about the height of the fall?

16 A It says fall of a distance off a ladder.

17 Q A distance of what?

18 A A distance.

19 Q So it doesn't say the height of the fall in your
20 history?

21 A I didn't document the height of the fall.

22 Q Did you ask him the height of the fall?

23 A Often times, if a patient comes in, and if they give me
24 a range, I mean, height is a very difficult thing, like, so, I
25 just often times will write a height. I'm more concerned with

1 the injuries in his case, fell far enough to break some ribs,
2 sustained neck and back symptoms, so, I will often just write a
3 distance.

4 Q For what your specialty is, is the height of the fall
5 something that you consider when make your assessment?

6 A It's something, not the most important.

7 Q But it's important, you said "not the most important,"
8 that suggests it's important; right?

9 A If it's a height that can cause injuries of rib
10 fractures, yes, it's important that it's a height.

11 Q So why was the height, the actual height, you would
12 agree there's a difference between say two feet and 20 feet;
13 right?

14 A Yes.

15 Q And it could have different injuries or different
16 pathologies based off of the severity of the fall, the height,
17 the actual height; is that correct?

18 A I think the height can often times can misconstrue
19 injuries. A small height can cause serious injuries, a tall
20 height can cause less, so I'm more concerned with symptoms and
21 injuries.

22 Q It's not dispositive, but it's important?

23 A It's a part, like I said earlier, everything is a
24 puzzle.

25 Q Okay, it's a part, it's not identified in your report?

1 A I just wrote a distance.

2 Q Mr. Kelly asked you to read a portion of the New York
3 Presbyterian records, and it had an indication of a height in
4 there; correct?

5 A Yes.

6 Q Did you see any other indications in there about a
7 height that he fell from?

8 A I think one listed it of, lesser of six to eight or six
9 seven.

10 Q Six feet?

11 A Something like that.

12 Q In the ambulance call report?

13 A Something like that.

14 Q Alright, you would agree that's inconsistent, a height
15 of six feet versus a height of ten to 20 feet?

16 A Those are different.

17 Q Makes sense.

18 So did you actually ask Mr. Roberto Abreu Perez what
19 height he fell from?

20 A I mean this is 2017, I went through a translator, it
21 may have been given me, maybe he didn't or they didn't hear,
22 again, I don't recall this date, I don't know what was told to
23 me exactly, just he fell from a height of a distance causing
24 those injuries.

25 Q Okay. It's been noted that Mr. Roberto Abreu Perez

1 drives for Uber; are you aware of that?

2 A I think he started driving, I think back in 2018 or so
3 or '19, something like that.

4 Q Do you know how much time he spent in the car in the
5 year 2019, just yes or no off the top of your head?

6 A How much, I mean it's a gig, I think he told me off the
7 top of my head, it was three to four hours.

8 Q During what time period, just so I'm clear?

9 A I don't know what you mean.

10 Q He told you three to four hours, when was he driving
11 three to four hours per day?

12 A I would have to look at the records. Off the top, you
13 want off the top of my head, I don't remember exactly.

14 Q Do you know how many miles he drove, driving for Uber
15 in the year 2019?

16 A No.

17 Q Do you know how many fares he had in 2019?

18 A No.

19 Q Do you know how much money he earned driving for Uber
20 in 2019?

21 A Not probably not a lot.

22 Q You don't know?

23 A No.

24 Q What was your answer, "probably not a lot"?

25 A I don't know.

1 Q What did you say?

2 A For Uber?

3 Q Yes. What was your answer?

4 A If he's working a couple of hours.

5 Q You said probably, not a lot?

6 A Not as much as he made working construction.

7 Q Do you think \$73,000 is a lot of money?

8 MR. KELLY: Objection.

9 THE COURT: Sustained.

10 Q You said part of what you treated, your treatment
11 regimen for Mr. Abreu Perez had to do with conservative
12 treatment; correct?

13 A Yes.

14 Q And does that include physical therapy?

15 A Yes.

16 Q And why do you recommend physical therapy?

17 A Physical therapy you want to help range of motion,
18 strengthening, and you want to keep patient's active, you can
19 try to do some modalities to help take inflammation down, do
20 traction to try and decompress the spine. I mean there are
21 various reasons to do physical therapy, and it can help with
22 pain, acutely.

23 Q Anything else? It was your testimony on direct
24 examination that Mr. Roberto Abreu Perez was compliant with the
25 physical therapy regimen that you suggested; is that correct,

1 that's what you said?

2 A He went to --

3 Q Yes or no, is that the correct testimony; you used term
4 "compliant"; right?

5 A Yes.

6 Q Based off of, you can refer to your 2020 report, if you
7 like, were you recommending him to continue physical therapy in
8 2020?

9 A I generally recommend patients continue some sort of
10 the therapeutic exercise, be it at the office or at home.

11 Q Can you pull up your 2020 report, doctor.

12 A The August one?

13 Q Yes, August 18, 2020.

14 A Okay.

15 Q I'm looking at the third paragraph.

16 A Third paragraph.

17 Q And just so we're clear, is that a true and accurate
18 copy of your August 18th, 2020 report that you have in your
19 file?

20 A Yes.

21 Q The third paragraph, I will read a portion of it, it
22 starts with at his visit on October 18th, October 23, 2018; do
23 you see that?

24 A Yes.

25 Q Can you read the last sentence in that paragraph?

1 A "He was advised to continue with physical therapy to
2 the cervical and lumbar spine."

3 Q Did he do that?

4 A If it was available, he would, I know we were having
5 some issues getting approvals.

6 Q Approval of what?

7 A For therapy, for structured therapy.

8 Q I'm not -- doctor, did he do it or not; yes or no, did
9 he continue with physical therapy as you advised, just yes or
10 no?

11 A Yes.

12 Q Okay. Where?

13 A He could have been doing it at home, as far as or at a
14 therapy location if he had authorization.

15 Q Did he do it; yes or no, doctor?

16 A I would discuss home exercise programs with patients
17 which would be consider therapy, so I would consider that
18 compliant, if it wasn't structured at a structured therapist
19 place.

20 Q Where was he doing physical therapy in 2019?

21 A 2019, I believe he did not have approval, so he did
22 therapy in '17, '18, and then it was home exercise.

23 Q You're mentioning "approval," doctor, what are you
24 mentioning?

25 A There's gatekeeper to things, we need to get paid, and

1 he was unable to continue due to that.

2 Q How do you know that, what are you relying on to make
3 that assessment?

4 A My treatment of patients.

5 Q How much physical therapy did he do in 2020?

6 A Again, structured, he may not have, I think the next
7 time was after his surgery.

8 Q So he did not do physical therapy in 2021, '22 or '23?

9 A Not with a structured therapist.

10 Q Okay. Between the office visit on October 23, 2018,
11 where he was advised to continue with physical therapy, can you
12 say for sure that he did?

13 A Meaning do exercises?

14 Q Physical therapy.

15 A Yes, that's physical therapy, doing it at home.

16 Q So --

17 A It's not structured with someone overseeing it, which
18 would be beneficial, but you do what's available.

19 Q So did he receive structure, as you described it,
20 physical therapy between the 2018 visit, that's referenced in
21 your note, and the 2020 report here?

22 A I think from a -- I don't have it exactly, so I don't
23 know, I can't give you an exact answer.

24 Q There was a reference to a motor vehicle accident.

25 When did you learn about that accident, doctor?

1 A I -- I was forwarded reports, I believe over the
2 weekend.

3 Q By whom?

4 A By -- well, not Mr. Kelly, by my assistant actually.

5 Q Did Mr. Kelly provide you anything else to review?

6 A No.

7 Q Did you speak with Mr. Kelly about the 2022 motor
8 vehicle accident?

9 A Just before court today.

10 Q What did you talk about?

11 A He said did you look over the 2020 accident, and I said
12 oh, yes.

13 Q Did you meet with Mr. Kelly to prepare for today's
14 examination other than that conversation?

15 A No.

16 Q Not at all?

17 A Zero, he sent me a text last night.

18 Q We don't need to know the details.

19 MR. KELLY: Objection. He asked about the details.

20 Now he's going to get an answer and cut him off.

21 Q Go for it.

22 A He sent me a text last night and he said "hey, can we
23 talk about it?" I said I was in the middle of taking my kids to
24 bed and reading to them and putting them to sleep. I said no,
25 can we do it tomorrow, because it's not happening, and he said

1 "sure."

2 Q Did you speak with Dr. Kaplan in the past 24 hours?

3 A I saw him this morning in the office.

4 Q Did you talk to him yesterday afternoon?

5 A No.

6 Q Any text message or email communication yesterday
7 afternoon?

8 A Yes.

9 Q You saw him in the office this morning; that's what you
10 said?

11 A Yes.

12 Q Did you talk about the case?

13 A Yes.

14 Q What did he tell you?

15 A He said you're a prick.

16 Q Yeah

17 A Yeah.

18 Q So you're telling me that while the doctor is still --

19 A That's usually what I'm interested in.

20 Q Well, I'm not surprised, I'm not surprised.

21 While the doctor is still sworn, he talked to you about
22 the case?

23 MR. KELLY: Objection, he's not a lawyer, there's
24 no admonition in New York that you don't talk to people.

25 A I just asked him about you.

Dr. Grimm - Plaintiff - Cross

1 Q Did he talk about the substance of it?

2 A I asked because I was concerned, and I was seeing
3 patients, so we didn't talk much more than that, that's usually
4 what I'm concerned about.

5 Q So there was nothing else you talked about in terms of
6 your prospective testimony here or what he testified to
7 yesterday?

8 A No.

9 MR. FRITTOLO: Judge, tell me when we need to wrap
10 up.

11 THE COURT: 4:45, 15 minutes.

12 Q You saw the record from Mount Sinai hospital that was
13 created in connection with the 2022 motor vehicle accident that
14 Mr. Abreu Perez was involved in?

15 A Yes.

16 Q Did Mr. Abreu Perez tell you about that accident?

17 A At the first visit after the accident, he did not tell
18 me about it.

19 Q At any point, doctor, at any point while you were
20 treating him, did Mr. Roberto Abreu Perez tell you that he was
21 involved in a motor vehicle accident in 2022; just yes or no?

22 A I don't remember it.

23 Q Is that something that's important?

24 A I mean if it wasn't -- didn't cause much of an injury,
25 then I wouldn't consider it that important.

1 Q Did you see the ambulance call report for that motor
2 vehicle accident?

3 A No.

4 Q Did you see the NYPD report for that motor vehicle
5 accident?

6 A No.

7 Q Did you see the photos of the vehicle for that
8 accident?

9 A No.

10 Q Can you say at this point whether it was a minor or
11 major accident?

12 A Just based on, I can only say it based on the hospital
13 records.

14 Q Okay.

15 A He didn't tell you anything about his condition related
16 to the motor vehicle accident.

17 A Not at the first visit and I don't recall, I would have
18 to go through every visit thereafter if we ever brought it up.

19 Q Have you ever testified in a case involving a motor
20 vehicle accident, doctor?

21 A Probably, I can't think of one right off the top of my
22 head.

23 Q Can a motor vehicle accident be a competent cause of a
24 spinal pain?

25 MR. KELLY: Objection.

1 THE COURT: Overruled.

2 A Yeah.

3 Q Have you ever testified that a minor motor vehicle
4 accident can cause a permanent disability?

5 A I don't know.

6 Q Your testimony on direct was the 2025 complaints that
7 Mr. Abreu Perez had were the natural sequelae and related to the
8 accident.

11 A Based on the records, and him not telling me about it,
12 I would say it's not that significant, so I wouldn't think that
13 it had much of an effect.

14 Q What impact did it have on his need for surgery?

15 A Again, he had --

16 Q You can't say?

19 THE COURT: Sustained.

20 MR. KELLY: You can answer.

21 THE COURT: You can answer. One moment.

22 Counsel's comment at the end of the question is
23 stricken from the record, you can answer the question.

24 A Again, like I said, previously, he had these neck
25 symptoms from 2017, on, we had attempted to try to do other than

1 physical therapy injection treatments, we couldn't get them
2 approved, so he had severe enough symptoms where we wanted, we
3 wished to do the epidurals, and again, with him not telling me
4 about it, I wouldn't -- and the records saying no significant
5 injury, I wouldn't feel in my opinion that accident really had a
6 significant impact on his need for surgery.

7 Q You mentioned that Mr. Perez had an antalgic gait?

8 A Yes.

9 Q What is that in laymen's terms?

10 A A painful gait, painful walking pattern.

11 Q You observed that based off of when he walked into the
12 office or what?

13 A Walked into the office, and walked into the exam
14 room -- not into the office, we usually walk out the hallway or
15 down the hallway.

16 Q Is that subjective or an objective analysis, in your
17 mind?

18 A Subjective.

19 Q And subjective is something that you can't test using
20 objective measures; right, a measurement of some kind?

21 A Correct.

22 Q And that leaves it open to be exaggerated possibly?

23 A Sure.

24 Q And if someone has a limp, is that consistent with them
25 driving for an extended period of time for a living?

Dr. Grimm - Plaintiff - Cross

1 A Not the -- that I have ever noticed.

2 Q You said not that you've ever noticed?

3 A I never had anyone come in, not in my experience.

4 Q How many referrals have you gotten from your own boss,
5 Dr. Kaplan, over the years, you have been there since 2012?

6 A 2011.

7 Q 2011?

8 A A lot.

9 Q Has there ever been paper trail of those referrals?

10 A Again, he would tell the front desk this patient, have
11 this patient see Dr. Grimm, and then they put them on my
12 schedule.

13 Q You use electronic medical records?

14 A Yes.

15 Q How come you didn't bring a copy of your digital file?

16 MR. KELLY: Objection.

17 THE COURT: Overruled, you can answer.

18 A I believe the file is made available, full file in
19 court.

20 Q And every time you make an edit to an electronic file,
21 is there a revision history?

22 A I'm not IT, you would have to ask David, he's our IT
23 guy.

24 Q When you create the electronic medical record, is there
25 a software program you use?

1 A I think it's called Allscripts.

2 Q Is there a template that you use to create a
3 medical record?

4 A I free hand all of the subjective components, like I
5 type, as he's telling me, and the past medical history, past
6 surgical history, that stuff I type all into the individual
7 spot.

8 The plan I type everything in, and then the physical
9 examination, I type it all in at once and then everything gets
10 pulled forward. Every patient, I type everything in the first
11 time and then every time thereafter it's much easier.

12 Q Is there any type of drop down menu to let you chose
13 any portion of the record?

14 A I don't use it.

15 Q But there is?

16 A There is, but it's -- when I first started there, it
17 was so cumbersome and annoying, I found it faster for me to type
18 everything in than click on "past pain, right knee," this and
19 that. It's for people who can't type.

20 Q Can you take a look at the 2020 report again?

21 A Yep.

22 Q At the bottom, it has your signature; correct?

23 A Yes.

24 Q There's an an indication of initials under it; correct?

25 A MG.CBS/GS.

1 Q Yeah, what is that?

2 A I have no idea.

3 Q Is there anyone in your office with the initials CBS?

4 A No.

5 Q Is there anyone in your office with the initials MMD?

6 A Wait what, MD?

7 Q MMD?

8 A Where do you see MMD?

9 Q MG:CBS/MMD?

10 A Mine says /GS.

11 Q Are you looking at the August 18, 2020, report?

12 A No, I'm looking at October 18, 2018, sorry.

13 Q That's fine.

14 You can work off of that one.

15 A MMD, I don't know what MMD is, no.

16 Q Did anyone review this report or the report that you're

17 looking at before it was sent out?

18 A I mean I edit, I reviewed it.

19 Q Nobody else?

20 A No, I send -- I review it, send it to my assistant, my

21 assistant sends it in.

22 Q You talked a little bit about the Plaintiff's diagnosis

23 of diabetes and the significance of that in this case.

24 Where is his blood sugar level documented in his file?

25 A At the surgical center.

1 Q Where specifically in your notes, does it make its way
2 into the record?

3 A No, I'm not treating his diabetes.

4 Q Is it correct to say that someone's sugar level or
5 glucose level can spike because of a steroid epidural injection?

6 A Yes.

7 Q Someone can go into a diabetic coma because of an
8 epidural steroid injection?

9 A If it was given when the patient has an elevated level
10 of blood sugar, it could.

11 Q Do you have an epidural steroid, a record for one of
12 the injections that you did?

13 A I have just the op report.

14 Q Okay. Does it include the A1C level or the blood sugar
15 level?

16 A No.

17 Q Before you administer those epidural steroid
18 injections, do you talk to the Plaintiff's primary care
19 physician?

20 A No, it's a standard of care, patient --

21 Q Did you talk to the patient's endocrinologist?

22 A No.

23 Q Did you talk to the Plaintiff's primary care physician
24 about the life care plan that you provided?

25 A No.

1 Q Do you think they might have relevant information about
2 the treatment he'll need as his preliminary care physician?

3 A No.

4 Q Did you talk to his endocrinologist about the life care
5 plan that you prepared?

6 A No.

7 THE COURT: Counsel, it's almost quarter to.

8 MR. FRITTOLO: I do have a few more questions, your
9 Honor, not necessarily about this substance but some other
10 stuff, at least 15 more minutes.

11 THE COURT: Alright. Members of the jury, we're
12 going to stop here for today, come back tomorrow at 10:30
13 a.m., okay.

14 COURT OFFICER: All rise,.

15 (Whereupon, the jury exited the courtroom.)

16 THE COURT: So, doctor, can you come back tomorrow?

17 THE WITNESS: I'm going out of town.

18 THE COURT: Until when?

19 THE WITNESS: Saturday.

20 THE COURT: So Monday is the 26th, can you come
21 back on --

22 THE WITNESS: I would have to, I mean, my office
23 would, I would have to talk to them.

24 THE COURT: There's a subpoena in this case;
25 correct?

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1 MR. FRITTOLA: That's correct.

2 MR. KELLY: Not served on him, they served it on my
3 office, I don't represent him.

4 MR. FRITTOLA: We did serve one on New York Ortho.

5 MR. ALVARADO: Can we stop saying we didn't serve
6 these doctors. I will go on the record, I served him and
7 his office, here is the subpoena so he stops playing games.

8 MR. KELLY: With an affidavit of service of
9 attached.

10 MR. ALVARADO: With an affidavit of service
11 attached, let's mark it.

12 MR. KELLY: Should have been the first thing you
13 do.

14 THE COURT: Mr. Kelly, you're not representing him,
15 it doesn't matter if you saw it. It's the point is whether
16 the person who was subpoenaed saw it.

17 MR. ALVARADO: I will be very clear with Dr. Grimm,
18 if he's coming back, I want his complete file. I don't want
19 no shenanigans about electronic.

20 MR. KELLY: It's here, it's Plaintiff's 11, they
21 already agreed it.

22 MR. ALVARADO: No, no.

23 MR. KELLY: Plaintiff's Exhibit 11, you already
24 agreed to it.

25 MR. ALVARADO: I'm not representing that's his

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1 file. You can do that. I want this subpoena.

2 MR. KELLY: It is your file.

3 MR. ALVARADO: Okay, I have it here, I'm not doing
4 it, comply with my subpoena; otherwise, I will move to hold
5 him in contempt.

6 THE COURT: Counsel, he's unavailable until Monday,
7 and I guess you're going to have to reach out to whoever was
8 subpoenaed, I guess I don't know if it was him personally or
9 the office, but to make sure he's here on Monday to
10 continue.

11 MR. ALVARADO: Okay.

12 THE COURT: So we're back tomorrow at 10:30, we
13 will do --

14 THE WITNESS: Morning or afternoon?

15 MR. KELLY: Dr. Goldman tomorrow.

16 THE COURT: He's talking about Monday.

17 MR. ALVARADO: Morning morning 10:30.

18 THE COURT: That's what he's asking, he's not
19 worried about anything.

20 THE WITNESS: I need them to cancel whether to
21 cancel my morning or afternoon.

22 THE COURT: Monday morning.

23 THE WITNESS: Okay.

24 THE COURT: You're free to go.

25 THE WITNESS: Thank you.

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1 Can I bring my file, it's thousands of pages, on a
2 CD.

3 THE COURT: He's asking the form of his file, paper
4 or CD?

5 MR. ALVARADO: CD.

6 THE WITNESS: That's fine.

7 MR. ALVARADO: I will make it easier for you.

8 THE WITNESS: That's fine.

9 THE COURT: Thank you, doctor.

10 MR. ALVARADO: Or thumb drive if that's easier.

11 THE WITNESS: CD is easier.

12 THE COURT: Monday morning, CD.

13 MR. ALVARADO: Judge, for the schedule, we have the
14 economist and the Plaintiff, then Friday we have Dr. Kaplan.

15 MR. KELLY: Based on how this is going, we may
16 doctor Dr. Goldman all day.

17 THE COURT: So Dr. Goldman is tomorrow at 10:30,
18 virtual.

19 MR. KELLY: That's the plan.

20 THE COURT: Then the plan is after Dr. Goldman will
21 be the Plaintiff.

22 MR. KELLY: That is correct.

23 THE COURT: Okay.

24 MR. ALVARADO: Just, for the record, Judge, I'm
25 cross-examining the Plaintiff. I will request that my cross

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1 not be stopped in the middle, so if I don't have enough time
2 to finish my cross, then I will say let's just start Friday
3 morning with him, because I may be long.

4 THE COURT: And we need the Spanish Interpreter for
5 tomorrow?

6 MR. KELLY: Correct.

7 THE COURT: I will say tomorrow afternoon.

8 MR. KELLY: I would say that.

9 MR. ALVARADO: Yeah, I would say that.

10 THE COURT: And possibly Friday.

11 MR. ALVARADO: I would say that.

12 THE COURT: And Dr. Kaplan is coming Friday after?

13 MR. KELLY: 2:30.

14 MR. ALVARADO: Judge, I have to lineup the police
15 officer who investigated this quote/unquote minor accident,
16 which I'm going to line her up for next Wednesday afternoon,
17 is that okay? We need to have a subpoena so ordered.

18 THE COURT: So you want what date?

19 MR. ALVARADO: Wednesday afternoon, we have to
20 serve --

21 THE COURT: The 28th?

22 MR. ALVARADO: Yes.

23 THE COURT: That's the 28th?

24 MR. ALVARADO: Yes yes, but I have to serve her
25 with a so-ordered subpoena.

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1 MR. ALVARADO: We will bring it in, we just needed
2 the date.

3 THE COURT: Okay.

4 MR. ALVARADO: When you serve it with a date, she
5 has to be here, that's --

6 MR. KELLY: Judge, if they're going to use the body
7 cam video that also has audio, we will need an interpreter
8 for that.

9 THE COURT: Oh the audio is, okay.

10 MR. KELLY: They served it on us, so I assume they
11 intend to use it.

12 THE COURT: It's Spanish.

13 MR. KELLY: Yes.

14 MR. ALVARADO: Just for the record, the Officer
15 Linares is bilingual.

16 MR. KELLY: That's fine, she's not a court
17 certified interpreter.

18 THE COURT: I want to get the schedule clear on the
19 26th, is, that's Monday, that's Dr. Weinstein.

20 MR. KELLY: No, 27th is Dr. Weinstein, Tuesday he's
21 out of town on the 26th.

22 THE COURT: Okay, I have Dr. Weinstein on the 26th,
23 and Dr. Spivak on the the 27th, what's happening on Monday?

24 MR. KELLY: We already change it, Monday is
25 Dr. Grimm, isn't that what you said, in the morning,

1 Dr. Grimm?

2 MR. ALVARADO: Initially, when we discussed the
3 schedule, you and I have it right, Mr. Kelly had said 26th,
4 and then I guess there were some scheduling issue which he
5 then told us, we'll do, and the 27th, but I already lined up
6 Spivak for the same date, so I don't know if you remember,
7 if we start him, Weinstein in the morning, maybe I will have
8 Spivak here back by 11:30/12:00, we start him at least and
9 get him done.

10 THE COURT: Wasn't that on the 26th again?

11 MR. ALVARADO: The 26th again is Dr. Grimm.

12 MR. KELLY: Grimm in the morning.

13 THE COURT: Okay. That's what I have.

14 What about Dr. Sherman and Dr. Fuentes?

15 MR. ALVARADO: Doctor Dr. Sherman and the
16 economist.

17 MR. FRITTOLO: Fuentes can be on Thursday, Sherman,
18 I have to confirm his availability for that day, I don't
19 know about doctor Dr. Sherman.

20 THE COURT: That's the 29th.

21 MR. ALVARADO: We will let you know about
22 Dr. Sherman, we can have the economist here next Thursday.

23 THE COURT: So I guess either tomorrow or Friday,
24 bring me the subpoena, the witness subpoena.

25 MR. ALVARADO: Yes, tomorrow.

Proceedings

1 THE COURT: Okay, thank you.

2 (Whereupon, the proceedings were adjourned to
3 January 22nd, at 10:30 a.m., 2026.)

4 *****

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

7 Laura Delvac

8 LAURA DELVAC

9 SENIOR COURT REPORTER

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