

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF KINGS: CIVIL TERM: PART 113
 3 - - - - -X
 4 ROBERTO ABREU PEREZ,
 5
 6 PLAINTIFF,
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 8 -against-
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 10 176 EAST 116 LLC, and LUXURY HOME
 11 IMPROVEMENT CORP.,
 12
 13 DEFENDANTS.
 14 -----X
 15 176 EAST 116 LLC,
 16
 17 THIRD-PARTY PLAINTIFF,
 18
 19 -against-
 20
 21 178 JJH, Inc.,
 22
 23 THIRD-PARTY DEFENDANT.
 24
 25 - - - - -X
 26
 27 Supreme Court
 28 360 Adams Street
 29 Brooklyn, New York 11201
 30 January 23, 2026
 31 B E F O R E :
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 33 HONORABLE LISA LEWIS,
 34 Justice of the Supreme Court
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 36 A P P E A R A N C E S :
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 45 (Appearances Continued on Next Page.)

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

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LAURA DELVAC
SENIOR COURT REPORTER

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Proceedings

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

3 THE CLERK: From the trial calendar, Calendar
4 Number One, Index Number 515104 of 2017, Roberto Abreu Perez
5 versus 176 East 116th Street, LLC.

6 Counsel, your appearances.

7 MR. KELLY: Frank Kelly for the Plaintiff.

8 MR. ALVARADO: Good morning, Alfredo Alvarado,
9 Lester, Schwab, Katz & Dwyer, attorney for the
10 Defendant/Third-Party Plaintiff, 176 East 116th Street, LLC.

11 MR. FRITTOLA: Good morning, your Honor, Lester,
12 Schwab, Katz & Dwyer, counsel for Defendant/Third-Party
13 Plaintiff, 176 East 116th Street, LLC, and counsel for the
14 Third-Party Defendant is not here yet, I'm going to give him
15 a call right now.

16 MR. JOHNSON: Good morning, C. Briggs Johnson from
17 Gallo, Vitucci & Klar, appellate counsel, for Lester,
18 Schwab, Katz & Dwyer.

19 MR. FRITTOLA: Excuse me, your Honor.

20 (Pause in the proceedings.)

21 THE COURT: I just want to let the attorneys know,
22 Alternate Number 2 had a dental emergency, and is not going
23 to be in today.

24 So do you want to excuse her or him?

25 MR. KELLY: I think we kind of have to at this

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1 point, Judge, I mean, are we going to adjourn to Tuesday to
2 wait for her, I think we have to.

3 THE COURT: Okay.

4 MR. ALVARADO: I'm sorry, so, Alternate Number 2,
5 you have to let go, my understanding Juror Number 6 is
6 running late.

7 THE COURT: Yes.

8 With respect to the issues that we discussed at the
9 end of the day yesterday, I did review Plaintiff's Counsel's
10 request to charge with respect to pain and suffering,
11 Plaintiff's Counsel requested PJI 2:280.1 for pain and
12 suffering, and 2:284, emotional distress and physical
13 consequences thereof.

14 You did anyone send me anything last night.

15 MR. JOHNSON: We filed two motions, competing
16 motions.

17 MR. KELLY: I had some technical challenges, I
18 filed on NYSCEF last night, I filed my memorandum.

19 MR. JOHNSON: We didn't file our instructions
20 though.

21 MR. ALVARADO: That wasn't requested, it was a
22 motion.

23 MR. JOHNSON: Right.

24 THE COURT: So I see the two, one moment, I see
25 Mr. Kelly filed something, it's like this morning.

Proceedings

1 MR. KELLY: I don't think it was that late, it
2 might have been.

3 THE COURT: That's when it was uploaded, I mean.

4 MR. KELLY: Okay.

5 MR. JOHNSON: Third-Party Defendant is here.

6 THE COURT: Okay, you said Number 6 is running
7 late, Juror Number 6 is running late.

8 THE CLERK: Well, I left a voicemail, he's not
9 picking up, I don't know if that means he's in the subway
10 and he can't pick up, but he didn't call to say he's not
11 coming in. At this point we have him as just running late,
12 we will keep you posted.

13 THE COURT: Alright, give me a moment, let me
14 review this.

15 MR. JOHNSON: Sure.

16 (Pause in the proceedings.)

17 COURT OFFICER: All rise, The Honorable Lisa Lewis
18 presiding.

19 THE COURT: You can have a seat.

20 MR. ALVARADO: Your Honor, while we wait before any
21 oral argument, we had asked you, we had been informed you
22 that you know we need to subpoena the police officer for
23 next week, we're thinking Wednesday afternoon, because that
24 seems to be a short window, and we have no witnesses for
25 that day.

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1 THE COURT: Okay.

2 MR. ALVARADO: But should I wait, we may have to
3 adjust scheduling depending on the snow.

4 THE COURT: Yes.

5 MR. ALVARADO: If we're okay for next Wednesday, I
6 have to ask you to sign it and take it.

7 THE COURT: That's fine.

8 MR. ALVARADO: That's what I have to give the desk
9 sergeant.

10 THE COURT: That's fine, you can hand it up.

11 COURT OFFICER: (Hanging.)

12 MR. ALVARADO: I have a copy, this is the original.

13 THE COURT: So all of the jurors are here, before
14 we bring the jurors in, I just want to talk about the
15 memorandums and the charge.

16 So with respect to 2:280, 2:280.1 was the requested
17 charge, and that's consistent with what has been testified
18 to thus far, and it's consistent with the Bill of
19 Particulars in the claim.

20 With respect to 2:284, counsel, I didn't see in
21 your memorandum any argument with respect to 2:284, which is
22 emotional distress and physical consequences.

23 MR. KELLY: That's because --

24 THE COURT: No, no.

25 MR. KELLY: Him --

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1 THE COURT: Yes.

2 MR. KELLY: Okay.

3 MR. ALVARADO: What was the first charge?

4 THE COURT: 2:280.1.

5 MR. ALVARADO: Yes.

6 THE COURT: There's no objection to that one?

7 MR. ALVARADO: No objection.

8 MR. JOHNSON: No objection to that.

9 THE COURT: Moving on to 2:284, I didn't see any in
10 your papers, responsive papers, I didn't see any comment on
11 2:284.

12 MR. JOHNSON: Right.

13 THE COURT: Emotional distress.

14 MR. JOHNSON: My motion was filed before Plaintiff,
15 but you know, I think my motion addresses the argument, he's
16 entitled to a motion on psychology injury, he hasn't treated
17 for those injuries, he doesn't have a doctor for those
18 injuries and without any such expert testimony with
19 regarding anxiety and depression, his subjective beliefs
20 aren't enough, and that's all of the case law on pages three
21 and four of my memo of law, and also, you know, when you
22 talk about fear of falling, and those type of emotional
23 claims, they need to be tethered to a cognizable cause of
24 action, which is pre-impact terror, which you can't do,
25 because he's alive, and infliction of emotional distress,

1 which is not pled, and also this Court already ruled we
2 weren't negligent in connection with the contractual
3 indemnity claim, so negligence is off the table at this
4 point, and he withdrew his loss of consortium claim.

5 When you look at the definition of pre-impact
6 terror, it's emotional pain and suffering and suffering,
7 right, doesn't have that claim, and it's only recoverable in
8 connection with a pre-impact terror claim.

9 Now, or negligent infliction of emotional distress,
10 again, are not pled. So when you look at PJI, and if you
11 want, then I'm going to kind of segue quickly to the fear of
12 the falling off of a ladder.

13 If you look at the plain language of PJI 2:284,
14 it's emotional and psychological injury and any physical
15 consequences thereof resulting from the emotional distress
16 caused by the wrongful act of the defendant, that's
17 post-accident, it's not the fear on the way down from the
18 ladder, it's the emotional sequelae after you get the
19 physical injuries when you're on the ground.

20 So his fear of falling without a pre-impact terror
21 or negligent infliction of emotional distress claim just
22 can't come in, and again, back to the first point, you know,
23 you have to first prove that we breached a negligent duty of
24 care and proximally caused those injuries. You can't do
25 that if you don't plead that claim and if you can't prove

1 negligence, again, in connection with the contractual
2 indemnity claim, one of the prerequisites which we made the
3 showing on the directed verdict motion is that we weren't
4 negligent in this case. You already ruled on that, that's
5 the law of the case.

6 So I don't understand how he gets around that,
7 without a doctor to say he has depression and anxiety,
8 without pleading the proved claims.

9 MR. ALVARADO: One other thing, Judge, so I
10 think --

11 MR. JOHNSON: I think that was the thrust of my
12 motion, even though I didn't specifically cite 284 in the
13 motion papers.

14 MR. KELLY: The Court is not limited to talking
15 about pre-impact terror and his fear of falling off the
16 ladder. He's entitled to testify with respect to his
17 feelings of dread, anxiety, emotional upset, and that's not
18 out of the cannon of an ordinary juror and doesn't require
19 any expert testimony. If I asked him how did you feel, I
20 was scared, we don't need expert testimony to say yeah,
21 that's scared alright, it's not appropriate.

22 The ordinary juror can make the evaluation of
23 emotional trauma, anxiety, fear and dread including his
24 feelings about his future, his feelings about his inability
25 to work and things likes that, they're all adjacent to the

1 damages under 2:280, which allows for anxiety and emotional
2 trauma, it's part and parcel of the personal injury damages.

3 We're not limited, they would like us to be only a
4 wrongful death case, and for some reason they claim it has
5 some things to do with a derivative action for loss of
6 consortium, none of those things apply. The Plaintiff is
7 testifying as to his feelings with respect to the injuries
8 he suffered, he's entitled to talk to the jury about his
9 feelings from the injuries he suffered.

10 I mean physical injury isn't even required, but he
11 suffered a physical injury in this instance and the physical
12 injury has manifestations insofar as he doesn't, he has
13 never undergone surgery before, he doesn't know what surgery
14 is going to entail, he's entitled to he tell the jury about
15 his apprehension with respect to surgery, it's not limited
16 to falling off of a ladder, it's not limited to pre-impact
17 terror.

18 MR. JOHNSON: Look at the cases cited in his memo,
19 they took about negligent infliction of emotional distress.
20 Page two, Plaintiff may recover damages for negligent
21 infliction of emotional distress, anhedonia, didn't bring
22 that claim.

23 Page three, again, two, he's talking about PJI
24 2:284, even on page three in the middle, even without
25 evidence of physical injury or fear of personal harm,

1 recovery for negligent infliction or emotional distress may
2 be allowed, it's not a claim and, again, we weren't
3 negligent, and furthermore, how are you going to talk about
4 depression and anxiety when you don't have a psychologist to
5 get on the stand who says these are the elements accepted in
6 the scientific community, okay, and any line of professional
7 medical expertise that say this is what happens, this is
8 what is required for me to say that this person has anxiety.

9 It's just him up there saying I have anxiety, I
10 have depression. While that may be true, you don't have a
11 medical expert, and that's, you know, I know I cited serious
12 injury law, but that's where we talk about, you know, making
13 proof on whether or not you have a serious injury, right,
14 you need a doctor, to say yeah, I actually do have range of
15 motion issues.

16 If Plaintiff says I have range of motion or I have
17 a torn shoulder, it's irrelevant without a medical doctor.

18 MR. KELLY: Absolutely not required, he's talking
19 about threshold actions for automobile cases.

20 THE COURT: Okay.

21 MR. KELLY: Apples and oranges.

22 THE COURT: One moment, with respect to depression
23 and anxiety, I did say yesterday that some of the things
24 that were pled in the Bill of Particulars have medical
25 terms, the same way there are certain terms that have a

1 legal significance that separate from what a layperson's
2 understanding is.

3 So with respect to the terminology that has or have
4 medical definitions, those things cannot be testified to,
5 without a medical doctor to explain those definitions to the
6 jury.

7 Plaintiff can testify as to his activities, and his
8 limitations on, with respect to the injuries he suffered,
9 and how those limitations affect his life. He can also
10 testify as to how that impacted him, how his state of being,
11 his state of mind with how that impacted his life.

12 He's not going to be able to talk about the fear of
13 falling, as it was contemporaneous with the accident and
14 he's alive, so he's not going to be able to talk about the
15 fear of falling. He can talk about how he felt about his
16 treatment and things of that nature, but he's not going to
17 be able to talk about psychological medical conditions.

18 MR. JOHNSON: Your Honor --

19 MR. KELLY: Judge, I am sure he will not say
20 anhedonia, but we will talk about his treatment, his dread
21 and emotional trauma. He's not going to cite, I don't know
22 if he can spell it, he's not going to cite any clinical DSM
23 manual designation. He will talk about what regular jurors
24 know about, I was anxious, I felt scared.

25 MR. JOHNSON: He would be precluded.

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1 THE COURT: One moment, counsel, that's what he,
2 counsel, has to be careful of.

3 MR. KELLY: Obviously.

4 THE COURT: There were objections to leading and
5 things like that, so while the answer might be permissible,
6 the question may not be, so just be aware of, so yeah, he
7 can talk about those things.

8 MR. JOHNSON: Your Honor, I'm reading directly from
9 PJI, and I will close with it, it says the charge should not
10 be given.

11 THE COURT: Which charge are you referring to?

12 MR. JOHNSON: PJI 2:284, the one we're talking
13 about emotional distress and physical consequences, and it
14 says, "the charge should not be given in the absence of any
15 evidence that Plaintiff's injuries caused emotional
16 neurological sequelae," and that's taken from a case of
17 Kelly versus Tarnowski, 213 AD 2d 1054 Fourth Department
18 1995, so, again, we understand your ruling, you know, and.

19 THE COURT: Well --

20 MR. JOHNSON: And we agree with you, but if he's
21 going to get up here today and ask leading questions and
22 allow him to talk about anxiety and all of these feelings
23 you just precluded, we will have to move for a mistrial, so
24 you know, that's all I'm going to say on the matter.

25 MR. KELLY: I can assure you based on the ruling

1 and how I was doing it yesterday, I will ask how he felt, it
2 doesn't require a DSM diagnosis.

3 MR. JOHNSON: Then he should talk to his client
4 about what is permitted about the ruling, because we have
5 this information now, and so if you get up here and you ask
6 him the question and he talks about anxiety, you're on full
7 notice that the Judge just precluded.

8 MR. KELLY: Anxiety is certainly within the cannon
9 of ordinary juror, anhedonia, anything with a DSM
10 designation is not, but things like I was scared and I felt
11 anxious and that's perfectly within the cannon of an
12 ordinary juror, that's exactly what you ruled and.

13 MR. JOHNSON: My understanding of the ruling is
14 anxiety doesn't come in.

15 THE COURT: Not anxiety, the terminology doesn't
16 come in, he can talk about how he felt. He can't use the
17 term I had anxiety, because that is a medical condition.

18 MR. KELLY: An ordinary person would say I was
19 anxious, I don't see anything wrong with that, but I guess
20 we will deal with that.

21 The other thing, I don't know if you're going to
22 get it, the second part they kept talking about hearsay when
23 the witness in court is talking about his observations and
24 he's subject to cross-examination.

25 THE COURT: With respect to that, that's what I

1 meant when I said so he can't talk about like there was
2 testimony that his wife had things that his wife was doing.

3 MR. KELLY: Right, what she had to do for him.

4 THE COURT: Those things he can't talk about, but
5 when I said him limitations when he was saying he used to go
6 to work and he used to help around the house, he can't do
7 those. He's entitled to talk about his limitations, and you
8 can ask if someone else did it.

9 MR. KELLY: Okay.

10 THE COURT: To go into detail about what she did,
11 that's the part that's limited, he can talk about his
12 limitations.

13 MR. JOHNSON: In the memo, we talk about he
14 withdrew the loss of consortium claim and the wife's not
15 here to be cross-examined, and we have a constitutional
16 right to cross-examine people.

17 MR. KELLY: Not for a party that's not in the case.

18 MR. JOHNSON: You withdrew the loss of consortium
19 claim.

20 THE COURT: There was no testimony.

21 MR. JOHNSON: It was never pled, I'm sorry.

22 THE COURT: About physical relationship.

23 MR. KELLY: That is they're not talking about a
24 physical relationship. I'm simply asking, what couldn't you
25 do for yourself, who had to do it for you, how did you feel

1 about it.

2 MR. ALVARADO: One point of clarification, you said
3 there's no testimony about his physical relationship, the
4 very thing I objected to is he said this accident ruined his
5 marriage.

6 MR. KELLY: Right.

7 THE COURT: The marriage can be ruined for other
8 things besides that.

9 MR. ALVARADO: He said this accident ruined his
10 marriage.

11 THE COURT: You're talking about loss of
12 consortium.

13 MR. KELLY: We're not talking about loss of
14 consortium.

15 MR. ALVARADO: He said that already.

16 MR. KELLY: He didn't say loss of consortium.

17 THE COURT: He didn't say loss of consortium, he
18 said the accident ruined his marriage. He didn't say why it
19 ruined his marriage, he said it ruined his marriage, there
20 could be other things, and the other things, there could be
21 other things that she, maybe she was resentful she had to do
22 the work or maybe she was upset because he wasn't the same
23 person. It did not have to be loss of consortium is what
24 I'm saying, that's all he said, and counsel did not ask for
25 any further detail about what caused the ruination of their

1 marriage.

2 MR. KELLY: I would only ask him his perspective.
3 I'm not asking into the mind of the wife or anything like
4 that, I don't care about that all. It's only the person
5 whose subject here in court making the declaration here in
6 court subject to cross-examination about his observations,
7 by defense counsel, it's not hearsay at all.

8 MR. JOHNSON: Your Honor, can we mark the motions
9 as Court exhibits?

10 THE COURT: Yes.

11 MR. JOHNSON: Thank you.

12 MR. KELLY: Motions meaning the memo?

13 MR. JOHNSON: Yes, I'm sorry.

14 THE COURT: The memorandums of law.

15 Again, I received Plaintiff's request to charge the
16 2:284 is not going to be given, but the 2:280 is going to
17 be, yes.

18 We're down a juror, we're down an alternate, we
19 have everyone else.

20 MR. KELLY: Mine also, I had technological
21 challenges last night.

22 THE COURT: Next time you bring, it we can mark it.

23 MR. ALVARADO: I don't know if Mr. Kelly will be
24 done before lunch with his client. If I can't cross today,
25 it's fine, I don't care, but if he finishes and you want me

1 to start, I need a couple of minutes to kind of organize
2 things.

3 THE COURT: Okay.

4 MR. ALVARADO: It will go faster, if we don't have
5 time, we don't have time.

6 THE COURT: That's fine, we have the doctor coming
7 this afternoon.

8 MR. ALVARADO: The doctor takes priority.

9 (Pause in the proceedings.)

10 THE COURT: One thing before the jurors come in,
11 I'm going to ask counsel to keep their arguments civil in
12 front of the jurors, I know, you know we argue where it can
13 be very adversarial when arguing, but the jurors may not
14 understand that but litigation --

15 MR. KELLY: I'm not wrestling with Mr. Alvarado.

16 MR. ALVARADO: I will not insult Mr. Kelly anymore,
17 and I take his comments as just, you know, we're just
18 battling, that's all.

19 THE COURT: I'm saying for the jury.

20 MR. ALVARADO: We're just battling, my partner came
21 and tapped me on my shoulder, your Honor.

22 For the record, we're handing you up the deposition
23 transcripts of the Plaintiff, should be about four or five.

24 COURT OFFICER: All rise, jury entering.

25 (Whereupon, the jury entered the courtroom.)

1 THE COURT: Alright, everyone can be seated,
2 welcome back. We're going to continue where we left off
3 yesterday with Mr. Kelly's witness.

4 MR. KELLY: Thank you.

5 Q Mr. Abreu Perez, kindly take the stand.

6 (Whereupon, Mr. Roberto Abreu Perez took the
7 witness stand.)

8 THE CLERK: Sir, you can have a seat, just remember
9 you're still under oath.

10 Can you just state your name for the record?

11 THE WITNESS: Roberto Abreu Perez.

12 THE CLERK: Spanish Interpreter is required and
13 present state your name?

14 THE INTERPRETER: Alicia Chiesa-Robetto Ferrari.
15 Your Honor, good morning.

16 CONTINUED CROSS-EXAMINATION

17 BY MR. KELLY:

18 Q Good morning, sir, how are you doing today?

19 A Until now not well, we're at the end of this process
20 but thinking always, thanking always to God because we're here.

21 Q We'll get there, sir, we'll get there, little by little
22 we'll get there.

23 Sir, we talked a lot yesterday, but I want you to just
24 express to the jury how did your life change between the time of
25 the happening of the accident in June of 2017, we only got up to

1 2018 to talk, how did your life change during that time period,
2 tell the jury?

3 A My life changed because I used to work well before the
4 accident, and after the accident, I couldn't work the way I
5 wanted to work in order to earn more money for my family.

6 Q And how did that make you feel about your inability to
7 earn money for your family?

8 A I wasn't feeling well.

9 Q Were you taking any medications prescribed for you by
10 doctors in that timeframe of 2017 to 2018?

11 A Yes, I was taking medicine, I was doing therapy, I
12 would go to every appointment with my doctors.

13 Q How did that make you feel, your personality, how did
14 that make you feel?

15 A I was -- I wasn't feeling well, because I needed to
16 help my family and I couldn't help my wife, I was feeling bad
17 because she needed to do anything bring the earning to the
18 house.

19 MR. ALVARADO: Note my objection based on the
20 motions we discussed, Judge, that last portion of the
21 accident.

22 MR. KELLY: I'm not going to talk anymore about
23 earnings, Judge.

24 THE COURT: Overruled.

25 Q So how did your injury affect your marriage?

1 A It affected me because I couldn't work, she was the
2 support of the home. Sometimes I would feel frustrated because
3 it was her to who had to cover with the expenses and I needed to
4 send to my children, sometimes I would wake up angry because of
5 so many things I could do before and now I couldn't do.

6 Q Was that different than from before you were before the
7 accident, would you wake up angry?

8 A Never.

9 Q The question was, was that different now that you woke
10 up angry than before the accident?

11 A Before I was happy, we were well, I used to sleep with
12 her, I could do every chore with her together, I could go
13 shopping before the accident, all of that.

14 MR. ALVARADO: Note my objection, could we approach
15 again, Judge, I'm sorry?

16 MR. KELLY: The question is not going to be
17 discussed.

18 (Whereupon, an off the record bench discussion was
19 held.)

20 MR. ALVARADO: So we're clear, you're overruling my
21 objection.

22 THE COURT: Yes. Madam Reporter, can you read the
23 question back.

24 (Whereupon, the record was read back by the
25 reporter.)

1 THE COURT: Objection overruled, counsel.

2 MR. KELLY: Okay.

3 Q Did there come a time when your marriage ended?

4 A Yes.

5 Q Do you feel that's because of the accident?

6 MR. ALVARADO: Judge.

7 THE COURT: Sustained, don't answer that.

8 Q Why did your marriage end?

9 MR. ALVARADO: Judge.

10 THE COURT: Sustained.

11 Q Did the nature of your relationship with your wife
12 charge during the course of your marriage?

13 A Yes, it changed.

14 Q How did it change?

15 A It changed because I couldn't help her, it had changed
16 because I couldn't provide her whatever she needed and wanted,
17 from the little money I would earn, I had to send to my
18 children, and that cause that our marriage ended up in a
19 separation.

20 Q So let's talk about 2018 and what was going on with
21 your neck and back at that time.

22 What was your feelings were, let's talk about your
23 back, tell us in 2018?

24 A I would feel with a lot of pain in my back, my neck,
25 Dr. Grimm was treating me because my back, my neck and my cramps

1 in my -- and in my arms, and in my hands.

2 Q We're talking about 2018, you were getting treatment
3 for your neck; is that correct?

4 A Correct.

5 Q Tell us what your complaints were with respect to your
6 neck around 2018?

7 A I couldn't turn my head, I couldn't lower my head too
8 much, I couldn't sleep well nor sleep well with a lot of pain in
9 my neck and in my back for which I was referred to
10 Dr. Weinstein, and Dr. Brisson, in order to get a second opinion
11 due to my opinion.

12 Q The second opinion was Dr. Brisson; is that correct?

13 A Dr. Weinstein, I do not remember if it was Dr.
14 Weinstein.

15 Q So you went to Weinstein for treatment; is that
16 correct?

17 A For the second opinion to see whatever they talked or
18 whatever they thought, in order to see if I needed the surgery,
19 which he confirmed that yes, I needed the surgery.

20 Q So in addition to Dr. Weinstein, did you go to some
21 other kind of doctor for complaints about your back and neck?

22 A I went to several doctors, which were not mine and
23 they, I made a consultation with them, and they approved of my
24 treatment, due to these injury that I --

25 MR. ALVARADO: Note my objection, Judge.

1 THE COURT: Overruled.

2 Q So the Dr. Brisson that you went to, he didn't treat
3 you or did he, let us know?

4 A I only saw him two times or three, I do not remember.

5 Q Okay.

6 A Then the pandemic came, and they wouldn't take anymore
7 patients there.

8 Q During this time, how were you doing with your
9 expenses, your rent and your food and things like that?

10 A The little that I could earn I would give it to my
11 wife, and she would bring to whatever she had to spend.

12 Q Did there come a time that you went back to work?

13 A Yes in 2019, I started to work because, because it was,
14 it was like a demand on myself because I needed to help in the
15 house, and to help my children, they were in college also.

16 Q Were you still in pain when you went back to work?

17 A Yes, I would work two, three, four hours, some other
18 days I could not work, if I could have, if I could downloaded
19 this appear from Uber, I could have worked, but I couldn't work
20 at a job full-time, I would work part-time.

21 Q Okay. Do you remember when in -- withdrawn.

22 Do you remember when you went back to work?

23 A That was 2019.

24 Q Do you remember when in 2019, you went back to work?

25 A I don't know if February or March, around that.

1 Q During this time period, were you continuing to see
2 Dr. Grimm and Dr. Weinstein?

3 A Yes, I would always go to their appointment.

4 Q What complaints did you make to Dr. Weinstein when you
5 saw him?

6 A I tell him I had fallen from a 15-foot height, that I
7 fell from 15 feet to 16 feet, and from there I bounced and then
8 I fell to the floor.

9 Q So I meant what physical complaints did you make to
10 Dr. Weinstein about what was going on with your body.

11 A That my back hurted (sic.) a lot, my back, my
12 shoulders, my two legs, cramps, my two arms, my two hands and
13 elbow.

14 Q Did you make a plan about what you were going to do
15 with Dr. Weinstein?

16 A No, that's why if he was recommended because he was a
17 specialist regarding that.

18 Q Did he make a plan for you -- let me put it that way,
19 did he tell you what he was going to do with you?

20 A He explained to me what I had, he gave me treatment, he
21 gave me medicine, injections, he gave me therapy.

22 Q When you say "therapy," is that physical therapy, where
23 you had to do exercises and got heat and cold and things like
24 that?

25 A Correct.

1 Q Did you discuss surgery?

2 A He referred me to the second opinion.

3 Q After you had the second opinion, did you and
4 Dr. Weinstein discuss surgery?

5 A Dr. Weinstein send me for CAT scans and X-rays, and he
6 said that I required surgery.

7 Q Do you remember about when he told you that you needed
8 surgery?

9 A I do not remember now the day he told me that.

10 Q How did you feel about the fact that you were going to
11 have to have surgery?

12 A Well, I thought that was the best solution, if that's
13 what I needed, he suggested that, and I said yes, I could accept
14 it, because I was in a lot of pain in my back and my neck.

15 Q Okay.

16 A That's what he suggested.

17 Q Did Dr. Weinstein talk to you about neck surgery in
18 2021 or 2022?

19 A Yes.

20 Q Were you actually scheduled for back surgery January 3,
21 2023?

22 A Correct, yes.

23 Q Now, six days before that, did you have a motor vehicle
24 accident?

25 A Yes.

1 Q Tell the jury what happened?

2 A That day I was working for Uber, but that day I was not
3 working for worker, I was bringing, I was taking a niece of mine
4 to the airport, and I was -- I was parked at 125 between
5 Morningside around St. Nicholas, a young lady came and hit my
6 vehicle, since then, she hit my car, and since then she left,
7 and we don't know.

8 Q Were you hurt in that accident?

9 A No.

10 Q Why did you go to the hospital?

11 A Because I had something bothering me in my back and I
12 had scheduled surgery, I wanted to know and see that I was well
13 in order to have the surgery, but then when I arrived to the
14 hospital, it was bothering, yes, this side over here, because
15 the belt pressed that part here, but, pressed that part here on
16 my left shoulder.

17 Q So when you said it hurt here, is that your left
18 shoulder that you're talking about?

19 A My left shoulder, yes.

20 Q Did they take any X-rays or do any tests when you went
21 to the hospital?

22 A No.

23 Q Did you make any claims or anything with respect to
24 this automobile accident?

25 A No.

1 Q Tell us a little bit about the back surgery?

2 A The back surgery was suggested after a long time, they
3 approved it, they, these doctors, doctors were not my doctors
4 and they perform it, they performed it, I got a little better,
5 but the pain kept on and on.

6 Q Let's talk about when you're in the hospital for the
7 surgery, how long were you in the hospital?

8 A I believe three days, I believe.

9 Q Did the surgery hurt?

10 A Yes, yes, it hurt, of course, I couldn't sit down, I
11 couldn't be standing up, it's not easy that kind of surgery.

12 Q How long did the discomfort from surgery last?

13 A An average of almost three months.

14 Q When they left you go from the hospital, did you have
15 any badges or braces or anything like that?

16 A Yes, they gave me.

17 Q How was your sleep when you got back from the back
18 surgery?

19 A I would lean on the side and face down I couldn't sleep
20 face up, I had to move every two or three hours, because I
21 couldn't bear to be on one side.

22 Q So during that couple of weeks, couple of months right
23 after the back surgery, what were your limitations, could you do
24 things for yourself?

25 A Yes, my limitations were that I couldn't go down, at

1 the time I couldn't do anything, I couldn't walk, I couldn't do
2 almost anything at home.

3 Q What do you mean by that, you said you couldn't do
4 anything, there are a list of things we do in our life, and I
5 can't tell it you and then you tell me yes or no, because that's
6 a leading question, and I can't do that, tell me the things you
7 couldn't do?

8 A I couldn't dance, I couldn't do anything at home like
9 cleaning the bathroom, cleaning the toilet, I couldn't, I
10 couldn't sweep, I couldn't take the clothes to the laundry, I
11 couldn't go shopping.

12 Q I'm talking about the couple of weeks you got out of
13 the hospital, could you use the restroom, could you bathe
14 yourself, that kind of thing?

15 A Oh, no, I couldn't go to the bathroom only because my
16 son would take me there, I couldn't do anything.

17 MR. ALVARADO: Note my objection, Judge.

18 THE COURT: Overruled.

19 Q How did you feel about that?

20 A I wasn't feeling, I wasn't feeling well because I
21 didn't know what the future had to me if I would be able to go
22 back to work where I used to work, I didn't know in the state
23 that I would end up, if I could ever go back to work normally
24 and do whatever I used to do before that.

25 Q So did you have to stop your driving work after the

1 lumbar surgery for a while?

2 MR. ALVARADO: Objection.

3 THE COURT: Sustained, rephrase question.

4 Q Did you have to stop work after the accident for a
5 while?

6 MR. ALVARADO: Note my objection to the form.

7 THE COURT: Overruled. You can answer.

8 Q You can answer.

9 THE INTERPRETER: Can you read back the question.

10 (Whereupon, the record was read back by the
11 reporter.)

12 A Yes.

13 Q Did you follow-up with Dr. Weinstein after the surgery,
14 the back surgery?

15 A Yes.

16 Q Did you continue to take medications after the back
17 surgery?

18 A Yes, I still take them.

19 Q Did you do any surgery after the back surgery?

20 A Yes.

21 Q After all of that, did the pain go away?

22 A The pain, would go one day, would come another day, it
23 depended on the day, it depended on the weather, depended what
24 kind of exercise I would do, depending on the medicine, what
25 time I would take that medicine.

1 Q Do you still have that low back pain even today?

2 A I have the pain, I, once in a while, I feel it when it
3 comes.

4 Q Within the last, let's call it a week, on a scale of
5 one to ten, how has your pain been?

6 A Today?

7 Q Let's take today, sure.

8 A A three.

9 Q Has it ever been higher than that in the last week or
10 month?

11 A Sometimes it would go up to a six.

12 Q Does it ever completely go away where you don't feel it
13 at all?

14 A It is difficult for, it's difficult for it to go away,
15 even a little bit I will feel it.

16 Q Let's talk about your neck surgery, did you have neck
17 surgery?

18 A Yes.

19 Q Where did they go in to do the neck surgery, can you
20 just point?

21 A Where it enter --

22 Q Where on your body did they do the neck surgery; the
23 front, the back the side or somewhere else?

24 A Here in the front (indicating).

25 THE COURT: One moment, let the record reflect that

1 the witness is pointing to the left front side of his neck.

2 MR. KELLY: Thank you, Judge.

3 Q Do you remember when you had that surgery?

4 A The specific day I do not remember, no.

5 Q Tell the jury a little bit about your complaints of
6 pain leading to the surgery, where were they, how significant
7 were they, things like that?

8 A I didn't understand well.

9 Q What kind of complaints did you have before you had the
10 surgery for your neck?

11 A Oh, a lot of pain in my neck, pins and needles in my
12 hand, a cramps, in my legs also.

13 Q So when you went in for the surgery, how long did you
14 stay in the hospital?

15 A Three days also.

16 Q And did they knock you out for that surgery?

17 A Yes.

18 Q When you woke up, how did you feel?

19 A At the time I wouldn't feel anything, I was under
20 anesthesia.

21 Q Right.

22 After you came out of anesthesia, how did you feel?

23 A There, I felt I couldn't move my neck, I couldn't move
24 anywhere.

25 Q Were you in pain?

1 A A lot of pain, after the anesthesia wore off.

2 Q Did they give any braces or anything to put on your
3 body after the neck surgery?

4 A Yes, they give me a neck to wear.

5 Q And how long did you have to wear that neck device?

6 A It was told for 15 days, two three weeks, they told me.

7 Q Did you have -- withdrawn.

8 How is your sleep when you got home after the neck
9 surgery?

10 A I spent almost one, for one week sleeping sitting up, I
11 couldn't lay down because it hurt a lot.

12 Q How did your -- how was your breathing during that
13 time?

14 A I could breathe a little, and little by little, but I
15 couldn't move a lot, because the pain was strong.

16 Q Did you follow-up with the doctor after your neck
17 surgery?

18 A Yes.

19 Q Did you continue to take medicines?

20 A Yes, all that they prescribed.

21 Q Do you still take medicines?

22 A Correct.

23 Q For this accident; right?

24 A Correct, for this accident.

25 Q Tell us what the medicines are for, if you recall?

1 A It's for the pain for muscle pain, and a cream for the
2 pain, everything is for pain.

3 Q After you were released from the hospital for the neck
4 surgery, could you care for yourself or do things for yourself
5 at home?

6 A No, I couldn't do anything for some time.

7 Q Did your pain ever completely go away from your neck
8 surgery?

9 A Until today, it hurts, it bothers me, even a little bit
10 until today, it continues.

11 Q So before the surgery, to the neck, describe your pain
12 level between one and ten, if you can?

13 A A six, a seven.

14 Q And after the surgery, can you describe your pain
15 levels after your neck surgery?

16 A It went down to a four, to a three.

17 Q Do you have that pain every day?

18 A Depends sometime on the weather, if it's too cold, if I
19 turn my head too much, it hurts, if I go down it hurts.

20 Q Despite the pain, did you return to work?

21 A Yes, I had to go back, I didn't have anything to eat, I
22 needed to pay rent and by something, I was starving because I
23 had to go back to work to support myself.

24 Q Do you have any current limitations today as a result
25 of the accident?

1 A Yes, I have limitations, I have many.

2 Q Can you tell the jury what the limitations are?

3 A Going shopping, going to do the laundry, do the chores
4 at home, cleaning the bathroom, clothing the toilet, walk,
5 walking, work, driving this limits me, there are many things
6 that even limit me more.

7 For example, before I would run, now I cannot run, I
8 would like to walk, sometimes I get tired and I cannot walk a
9 lot.

10 Q Do you have any scars as a result of the surgeries?

11 A Yes.

12 Q I think you told us about your neck scar, can you tell
13 us where the back scar is?

14 A Yes.

15 Q Tell us please.

16 A Can you I show it to you?

17 MR. KELLY: Your Honor, can we show the jury to the
18 jury?

19 MR. ALVARADO: Objection.

20 MR. KELLY: The best evidence of his scars are his
21 scars.

22 THE COURT: Come up.

23 (Whereupon, an off the record bench discussion was
24 held.)

25 THE COURT: Overruled. The witness can show the

1 scar on his neck and back.

2 Q Kindly come down and show the jurors your neck scar
3 first, and just walk down the line here, and then show the back
4 scar next?

5 (Whereupon, Roberto Abreu Perez exited the witness
6 stand around stood in front of the jury.)

7 Q Kindly show them the back scar?

8 A It's right there "indicating".

9 Q Show everybody.

10 Thank you.

11 (Whereupon, Mr. Roberto Abreu Perez resumed the
12 witness stand.)

13 MR. KELLY: Sir, I have no further questions for
14 you, thank you very much.

15 THE WITNESS: Okay, thank you.

16 THE COURT: Members of the jury, we're going to
17 take a brief recess, use the restroom, stretch your legs and
18 we will come back in about ten minutes.

19 COURT OFFICER: All rise, jury exiting.

20 (Whereupon, the jury exited the courtroom.)

21 (Whereupon Mr. Roberto Abreu Perez exited the
22 witness stand and the courtroom.)

23 (Whereupon, a short break was taken.)

24 (Whereupon, Mr. Roberto Abreu Perez resumed the
25 witness stand.)

1 COURT OFFICER: All rise, come to order.

2 MR. KELLY: Judge, we have one issue before we
3 start and there's a raft, they have a raft of items with
4 respect to the Workers Compensation Board, and it's improper
5 to discuss Workers Compensation in this regard, I have a
6 brief if the Court would like to take it.

7 THE COURT: What are the questions counsel tends to
8 ask?

9 MR. ALVARADO: Mr. Abreu Perez was --

10 THE COURT: I'm going to ask the witness step down
11 and exit the courtroom.

12 (Whereupon, Roberto Abreu Perez exited the witness
13 stand and the courtroom.)

14 THE COURT: Counsel, what I'm asking specifically
15 about Workers Compensation.

16 MR. ALVARADO: No, I'm not, according to the Comp
17 records, they're redacted, he signed a C3-4 as to when he
18 actually started treating with a doctor which is
19 inconsistent with what he said here. He has been found by
20 the Comp Board there's a decision about defrauding him about
21 his earnings his ability to work, double dipping, he lied to
22 the Board about when he started working which is
23 inconsistent with what he said here.

24 So to the extent they're applicable here and
25 relevant, and I say they are, it goes to his credibility, I

1 want to question him about it, you know, and you heard,
2 Judge, that he has mentioned on numerous times, including
3 his doctors, where the things we're going to prove, I put my
4 objections on the record.

5 THE COURT: So where things --

6 MR. ALVARADO: If things are being approved, he had
7 doctors that were getting approved, his doctor actually
8 referred to it as a gatekeeper, I will call it a gatekeeper,
9 I will use his doctor's own words, I had an objection, I
10 think he kind of open the door. I'm not going to dive too
11 much into the Workers Compensation area.

12 There are things he signed, things where he
13 testified to at the Comp Board and I have your transcript, I
14 have, I have the oral testimony, I have the written
15 transcript which I gave to Mr. Kelly and he admitted, he
16 admitted that he defrauded the Board, and that's an
17 affirmative defense we have.

18 MR. KELLY: I have a copy of the transcript, not
19 from counsel, but I have a copy of the transcript, he didn't
20 admit to fraud, first of all, the Plaintiff did not.

21 THE COURT: One moment, one moment. When you say
22 "transcript," are you talking deposition?

23 MR. KELLY: The findings by the Workers
24 Compensation Board, which are not applicable in this venue
25 under 118(a) of the Workers Compensation law, the only

1 findings applicable in this venue from the Workers
2 Compensation Board is a finding of employment or no
3 employment. There's no other finding including what they
4 purported to be fraud or when, in fact, and I will give you
5 a copy of the transcript, but at the hearing, Plaintiff
6 basically said I told my doctors, and I told my attorney
7 that I was going back to work, and they failed to tell him
8 anyone else, and Comp just sending him checks, he cashed a
9 couple of checks thereafter, it's hardly fraud.

10 MR. ALVARADO: Well --

11 MR. KELLY: And any finding with respect to that,
12 and I appreciate some decency and decorum from the peanut
13 gallery that keeps intervening.

14 MR. JOHNSON: Your Honor --

15 THE COURT: I don't think that's correct, but --

16 MR. FRITTOLA: A couple of things, Judge, there are
17 specific items of evidence that we can go into, but just
18 generally about the testimony that's come in, I think it's
19 prejudicial at this point for the jury not to hear that the
20 Plaintiff has received Workers Comp benefits to a limited
21 extent.

22 Plaintiff counsel asked him were you ever made
23 aware of how your medical bills were going to get paid, his
24 answer was no.

25 That leaves a wide open question for the jury, to

1 make the assumption that he is entirely on the hook for his
2 medical bills, and they're still outstanding. Dr. Grimm
3 mentioned authorization and suggested that he would have
4 done more PT, if the Workers Compensation carrier would have
5 authorized it, and Dr. Kaplan mentioned authorization for a
6 specific course of treatment, each of these things, and the
7 specific items of evidence they have, and evidentiary basis
8 and disability basis individually, but just based off the
9 testimony that we've heard, he has opened the door just to
10 at least some comment about it.

11 MR. KELLY: Absolutely.

12 MR. FRITTOLA: Or at least cross-examination.

13 MR. KELLY: Absolutely, nobody said Workers
14 Compensation by the Plaintiff or the Plaintiff's experts,
15 nobody said the words the Workers Compensation at any time.

16 With respect to the C3, there was no testimony
17 about my client on the stand about the date that the C3 was
18 discussed authored, created, dated, anything else, there was
19 discussion with Dr. Kaplan about the date of his first visit
20 whether it was the 25th or the 23rd, I think it was, but
21 that's not the cross-examination of the Plaintiff, what's
22 the difference.

23 MR. JOHNSON: Your Honor, I have case law from the
24 Court of Appeals, that says obviously prior inconsistent
25 statements given under oath can be used for impeachment

1 purposes for a witness just for the credibility purposes.

2 Also, remember, this is Plaintiff's case, right,
3 he's saying to the jury that I'm in all of this pain and
4 suffering and that I cannot work and I can't do things I
5 used to do, and we have evidence that directly contradicts
6 that claim.

7 So it is not a collateral issue in this case, and
8 we are allowed to prove it by extrinsic evidence under
9 People versus Knight, Court of Appeals 1992. If he's going
10 to get up here, as Mr. Kelly just elicited testimony, saying
11 I can't sit for more than 20 minutes, but we have tax
12 records showing that you drove 20,000 miles for Uber last
13 year, that's a contradiction, it's not collateral.

14 THE COURT: Let me see.

15 MR. ALVARADO: For the record, I will hand you up a
16 decision from the Comp Board, and wait, I'm giving you the
17 redacted C3, because it eliminates any references to Comp,
18 and you'll see he signed it himself.

19 MR. KELLY: If the Court would like to see the
20 transcript of the hearing.

21 THE COURT: Yes.

22 MR. KELLY: Hand up the transcript of the hearing.

23 MR. ALVARADO: We gave you the transcript the
24 hearing as well?

25 MR. JOHNSON: It was under oath.

1 MR. ALVARADO: No, I gave.

2 MR. KELLY: There should be testimony from
3 October 5, 2020, it should be, I believe it's a --

4 THE COURT: I don't have a transcript.

5 MR. KELLY: I didn't think you did.

6 MR. ALVARADO: Look at the transcripts I gave you,
7 I handed up.

8 MR. KELLY: There's a 13-page transcript of the
9 hearing.

10 THE COURT: What is the date?

11 MR. ALVARADO: It should be at the end.

12 MR. KELLY: August 5, 2020.

13 MR. ALVARADO: It should be there, at the very end,
14 do you have it, yeah, see.

15 MR. KELLY: Workers Compensation, Judge Cook.

16 THE COURT: Yes.

17 MR. ALVARADO: Judge, you will see that the
18 findings at the end are consistent with the Workers
19 Compensation Board decision, and it found him specifically
20 to have violated --

21 MR. KELLY: The findings aren't against him. The
22 findings are --

23 MR. ALVARADO: Let me finish, let me finish. We're
24 getting along fine today.

25 The Workers Compensation law, because he was double

1 dipping essentially into the Workers Compensation area.

2 MR. KELLY: Not only, he's still on Comp for heaven
3 sake.

4 MR. JOHNSON: He was disqualified at that time
5 making a false statement of misrepresentation of material
6 fact.

7 MR. KELLY: Nobody said he couldn't work, he's back
8 to work, it's a salacious argument.

9 MR. ALVARADO: I understand Mr. Kelly's argument,
10 we know, your Honor, he's back to work, we're talking about
11 his ability to work, and his earnings specifically which, by
12 the way, I have his tax return, I hope he doesn't object to
13 that, that's his tax return.

14 MR. KELLY: According to Uber on his website,
15 20,000 miles is light part-time employment.

16 MR. ALVARADO: You can call somebody from Uber.

17 MR. KELLY: So can you.

18 MR. ALVARADO: I have your client.

19 MR. FRITTOLA: You said it's what?

20 MR. KELLY: Light.

21 MR. FRITTOLA: Light?

22 MR. KELLY: Light duty part-time employment.

23 MR. ALVARADO: You can call somebody from Uber.

24 MR. JOHNSON: If you look at 15, from one of the
25 intake forms, from the IME doctors, he indicated he hasn't

1 worked since of 2019, and even though he was working for
2 Uber since 2019.

3 MR. KELLY: He didn't fill it out. There was a
4 translator or a representative that filled it out.

5 MR. JOHNSON: There are medical records from March
6 of 2019 from Dr. Kaplan and Dr. Grimm and Plaintiff told
7 them, he was not working, so the judge discontinued
8 Plaintiff's Workers Compensation benefits, because he
9 continued to cash the checks from Workers Compensation from
10 April 17th, implying a representation or fraud had been
11 committed.

12 MR. KELLY: The finding at the Comp Board which is
13 again in the transcript shows that the Plaintiff told
14 Dr. Grimm, and Dr. Grimm told the Board. He told Dr. Grimm
15 in March of 2019, and Dr. Grimm told the Board in April of
16 '19. The fact that the Board failed to act upon being told
17 by Dr. Grimm is to no fault of the Plaintiff's.

18 MR. JOHNSON: Even better, Plaintiff's own medical
19 records in evidence include false statements that he made to
20 a treating physician Dr. Weinstein since Dr. Weinstein's
21 evaluation is from --

22 THE COURT: What page is that?

23 MR. JOHNSON: 25.

24 THE COURT: I didn't get there yet.

25 What did you want to say about page 25?

1 MR. JOHNSON: In the transcript, we're talking, so
2 we have 22, the judge talks about how the medical reports
3 from March of 2019 for Dr. Kaplan and Dr. Grimm, he didn't
4 tell them, he lied and told them he was not working, so the
5 judge discontinued Plaintiff's Workers Comp benefits because
6 he continued to cash the checks until April 17th, implying
7 he made at least a misrepresentation to the Court.

8 THE COURT: Well --

9 MR. KELLY: That's not what he said.

10 THE COURT: Well --

11 MR. JOHNSON: That's the purpose of the hearing,
12 that's what was being decided.

13 THE COURT: Except that he decided the
14 determination is based on a number of factors, the Court
15 does acknowledge that the Plaintiff said he told his
16 doctor -- no, he told his, he testifies on page 21, he
17 testified, page 21, sorry, line, starting at line 11, he
18 only testified that he told his attorneys's office it would
19 have been incumbent upon the attorney's office if they were,
20 in fact, told that he did return to work that they should
21 pass that on.

22 MR. KELLY: Later on in the transcript, Mr. Forman
23 his attorney, admits that and said they should have done it
24 and failed.

25 THE COURT: Then on the same, page line 22, but

1 "what's important here is whether or not anybody told
2 carrier, the person who was, that was, that was the
3 claimant," and continuing on it says "the only evidence,"
4 page 22, line one, "the only evidence -- or I'm sorry, I
5 should say, "the earliest evidence that I have, that the
6 carrier could have gotten wind of the fact that the claimant
7 actually did return to work, was the medical report on" --
8 let me just get my date straight so I don't mess that up --
9 "3/28 of 2019. That is the report of Dr. Grimm. Prior to
10 that, on 3/18, he was seeing Dr. Kaplan, but Dr. Kaplan
11 continued to indicate that the claimant was not working."

12 So these statements are attributed to what other
13 people did, it's clear that the --

14 MR. JOHNSON: Because Plaintiff failed to inform
15 them.

16 THE COURT: Well, he --

17 MR. KELLY: He told them.

18 THE COURT: He says he told his attorney, so, what
19 does, there's no indication here that that, he was told who
20 to tell. It simply says he informed certain people, mainly
21 the attorney's office, and the doctor. There is no
22 indication that there was a finding against him because he
23 knew he should have told the carrier and failed to do so, so
24 there's not an impeachable statement.

25 MR. KELLY: Thank you.

1 THE COURT: With respect to what he told the
2 Workers Compensation Board, that's the transcript.

3 Then with respect to the notice of decision where
4 "the claimant should be disqualified from receiving
5 compensation directly but attributed a false statement or
6 misrepresentation of material fact made for purpose of
7 maintaining wage replacement benefits," and it says, "in
8 addition determined by the Board, the Plaintiff should be
9 subject to an additional penalty for qualification."

10 The transcript doesn't indicate a determination
11 that the Plaintiff intentionally lied to the Board, there's
12 no indication that he made any statement to the Board, but
13 there is a statement, there's a determination that he did
14 tell the doctor, and the attorney.

15 If that statement to the doctor and attorney is
16 incorrect or false, that means something different, but as
17 to whether or not he mislead the Workers Compensation Board,
18 I'm not going to allow that, Judge.

19 MR. KELLY: Thank you, Judge.

20 MR. ALVARADO: Judge, the one thing you ruled on
21 was the decision, but also I handed you a redacted copy of
22 the C3 which he signed, wherever he is.

23 THE COURT: He stepped out, he was on the stand.

24 MR. ALVARADO: It says when he first started
25 treating which is inconsistent with what he's testified.

1 THE COURT: Okay, right.

2 MR. KELLY: He didn't testify when he started
3 treatment, Judge. Dr. Kaplan testified when he started
4 treatment, they crossed him on it, my client didn't talk
5 about when he started treatment at all.

6 MR. ALVARADO: He did.

7 MR. KELLY: He didn't say the date he started the
8 treatment.

9 MR. ALVARADO: Then we have a statement of him as
10 to when he started.

11 THE COURT: Okay. One moment.

12 MR. ALVARADO: I mean how am I not --

13 THE COURT: It is a statement, but I don't remember
14 if he testified to the date he started treatment.

15 MR. KELLY: He certainly did not.

16 MR. ALVARADO: Isn't it relevant that in his own
17 handwriting, his own information, he says when he started
18 treating; how is that not relevant?

19 THE COURT: You can ask him when he started
20 treating and see what the answer is, but you can't just
21 introduce that before giving him the opportunity.

22 MR. ALVARADO: Of course, Judge, of course, and I
23 redacted it.

24 MR. KELLY: Can I understand the opportunity to
25 what, Judge?