

B E F O R E . . .

**18** HONORABLE LISA LEWIS,  
Justice of the Supreme Court

19 A B B E A B A N C E S .

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25 (Appearances Continued on Next Page.)

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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.

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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: (Handing.)

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.

When you look at the definition of pre-impact  
terror, it's emotional pain and suffering and suffering,  
right, doesn't have that claim, and it's only recoverable in  
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 like 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 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.

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

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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.)

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.)

Roberto Abreu Perez - Plaintiff - Direct

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

Roberto Abreu Perez - Plaintiff - Direct

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?

Roberto Abreu Perez - Plaintiff - Direct

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?

Roberto Abreu Perez - Plaintiff - Direct

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

Roberto Abreu Perez - Plaintiff - Direct

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.)

Roberto Abreu Perez - Plaintiff - Direct

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

Roberto Abreu Perez - Plaintiff - Direct

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. FRITTOLO: 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

Roberto Abreu Perez - Plaintiff - Direct

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.

Roberto Abreu Perez - Plaintiff - Direct

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. FRITTOLO: You said it's what?

20                  MR. KELLY: Light.

21                  MR. FRITTOLO: 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 attorney'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.

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.

Roberto Abreu Perez - Plaintiff - Direct

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?