

Roberto Abreu Perez - Plaintiff - Direct

1                   THE COURT: To ask him when he started treatment.

2                   MR. KELLY: Okay.

3                   MR. ALVARADO: Yes, yes.

4                   MR. KELLY: Still, it can't be shown to the jury,  
5 it's a work --

6                   THE COURT: No, no, no, I was going to say you can  
7 show it to the witness to refresh his recollection, but the,  
8 I want to see the documents.

9                   MR. ALVARADO: Yes.

10                  MR. KELLY: C3, Workers Compensation C3.

11                  MR. FRITTOLA: We have an affirmative defense of  
12 fraud in our case, what we have particularized in our answer  
13 the treatment by Dr. Kaplan specifically and these other  
14 medical professionals was predetermined by the legal  
15 representatives, and that's the significance of the fact  
16 that that document reflects I was treating, I am treating  
17 with Dr. Kaplan as of X date. Dr. Kaplan said that was not,  
18 that document is false, false, so that shows --

19                  THE COURT: Hold on. Dr. Kaplan says the C3 is  
20 false?

21                  MR. KELLY: No.

22                  MR. FRITTOLA: Remember I showed Dr. Kaplan.

23                  THE COURT: Yes.

24                  MR. FRITTOLA: If there's a document that says you  
25 were treating this patient as of July 8, 2017, would that be

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1                   false, he said I was not treating him as of that date.

2                   That document says he was, so it's material and  
3                   necessary for our fraud claim that shows the predetermined  
4                   course of treatment that he was set up for.

5                   THE COURT: What's the --

6                   MR. ALVARADO: I want to be very clear. I want to  
7                   answer your question when he's done.

8                   THE COURT: With respect to the fraud claim, you're  
9                   seeking a jury instruction on fraud.

10                  MR. FRITTOLOA: Absolutely.

11                  MR. KELLY: Your Honor --

12                  THE COURT: Do you know what the PJI section  
13                  you're --

14                  MR. FRITTOLOA: Off the top of my maid.

15                  MR. KELLY: I know it, it's 2:320, I included it in  
16                  my request to charge, one of the elements is reliance and  
17                  they can't show reliance by 176 East 116th Street, LLC on  
18                  any of this. They must show that entity relied, not  
19                  generally the insurance rule, not generally the defense bar,  
20                  not generally whatever nefarious conspiracies theorists are  
21                  out there, the Defendant, 176 East 116th Street, LLC, has to  
22                  show reliance which they cannot show in this case.

23                  THE COURT: So you're saying the fraud is on who,  
24                  the Workers Compensation Board or the --

25                  MR. FRITTOLOA: Not the Board, the Plaintiff in the

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1 case, the medical professionals that treated him, and the  
2 legal professionals that coordinated that course of  
3 treatment.

4 MR. KELLY: None of whom are parties in this case.

5 MR. ALVARADO: You asked me a question.

6 THE COURT: Yes.

7 MR. ALVARADO: We know Dr. Kaplan hasn't finished  
8 yet, and there were some inconsistency in terms of when he  
9 started treating with the Plaintiff, but I represented to  
10 you that the Plaintiff was asked when he started treating  
11 with Dr. Kaplan, and you said no, I'm afraid I don't recall  
12 that he said that, and there were specific testimony that he  
13 went to Columbia-Presbyterian, okay, and he was discharged  
14 from there, he went home, and then he told his wife, hey,  
15 I'm not feeling well, you have to call me an ambulance, he  
16 went to Harlem Hospital, and then the next question is,  
17 again, the dates are important because Harlem Hospital  
18 was -- which date is that, Brian?

19 MR. FRITTOLO: July 8th.

20 MR. ALVARADO: July 8th, and the Plaintiff,  
21 Mr. Kelly asked him today, when did you go see Dr. Kaplan  
22 and he said yeah, less than a month later for pain, and --

23 MR. KELLY: Less than a month after.

24 MR. ALVARADO: Less than a month.

25 MR. KELLY: After the date of the accident is what

1 I asked.

2 MR. ALVARADO: No, no, no, no, you see how he's  
3 answering.

4 MR. KELLY: It's exactly that.

5 THE COURT: Mr. Kelly, let him finish.

6 MR. ALVARADO: Come on, we're getting along today.

7 And he said less than a month later, he was going  
8 chronologically, I wrote it down, I said bang it, that's  
9 wrong, that's a lie, that's a lie.

10 THE COURT: So you can question him on that, yes.

11 MR. ALVARADO: Yes, but Judge, I want to -- if he  
12 authenticate that with his signature --

13 MR. KELLY: So?

14 MR. ALVARADO: -- I will offer it to him, I will  
15 show it to him, if he says the information, that that's my  
16 signature, the information on there is correct, I will put  
17 it in evidence.

18 THE COURT: Okay. So Mr. Kelly.

19 MR. KELLY: I will object unless the actual  
20 testimony is read back. The question I posed and the way I  
21 posed it, I wrote it down, everybody seems to say when did  
22 you see Dr. Kaplan after you got out of New York  
23 Presbyterian the date of the accident within a month, it  
24 doesn't talk about, I mean we can have it read back, that  
25 will be much better, I'm sure.

Roberto Abreu Perez - Plaintiff - Direct

1 MR. ALVARADO: Mr. Kelly, you're wrong.

2 MR. KELLY: And the C3, you're allowed to put  
3 scheduled dates of treatment down, you don't have to  
4 actually have been there. I mean there's testimony from a  
5 raft of Workers Compensation attorneys throughout. Every  
6 one of these people bring this up during the whole civil  
7 RICO and they're trying to find --

8 MR. ALVARADO: Well --

9 MR. KELLY: Mr. Fogelgaren testified, I can get the  
10 transcript, it's a case called Garcia against 122-130.

11 THE COURT: I will allow the document to come in,  
12 if it is, you know, if he lays the foundation, but first you  
13 have to ask him to see if his answers might be comport with  
14 what's said.

15 MR. ALVARADO: Okay.

16 MR. KELLY: When you say "come in," the C3 as  
17 evidence in the case subject to the jury to see it?

18 THE COURT: Yes.

19 MR. KELLY: I'm going to object to that, but okay.

20 THE COURT: We only have a few minutes, I won't get  
21 the read back for Mr. Kelly's questioning about the dates  
22 just yet, I'm going to have, we will start out with  
23 questioning, you're not going to go to that right now.

24 MR. ALVARADO: I don't know, I have a few  
25 preliminaries.

Roberto Abreu Perez - Plaintiff - Direct

1                   THE COURT: We will get that out of the way, we  
2 will send the jury to lunch, we will stop for lunch and try  
3 to get the read back for the date.

4                   MR. KELLY: We were talking about the issue for  
5 Monday.

6                   THE COURT: You can get the witness.

7                   MR. KELLY: Dr. Grimm texted me, he wants to know  
8 what he's supposed to do.

9                   THE COURT: So I signed the so order for whatever.

10                  MR. ALVARADO: Wednesday afternoon.

11                  THE COURT: So I just wanted from the attorneys a  
12 schedule for I'm trying to keep this on point, I don't want  
13 to have the jurors here, you know, too long, so we have --

14                  MR. KELLY: Dr. Weinstein Tuesday.

15                  THE COURT: Dr. Grimm is supposed to come back  
16 Monday, Dr. Weinstein, we have, do we have two witnesses  
17 on --

18                  MR. ALVARADO: Yes.

19                  THE COURT: -- on Tuesday?

20                  MR. ALVARADO: Yes.

21                  THE COURT: Dr. Weinstein and?

22                  MR. ALVARADO: I had penciled in Dr. Spivak.

23                  THE COURT: But I'm saying for Plaintiff, we  
24 have --

25                  MR. KELLY: Just the one.

Roberto Abreu Perez - Plaintiff - Direct

1                   THE COURT: -- Dr. Grimm and -- Grimm,

2                   Dr. Weinstein and?

3                   MR. KELLY: That's it, I'm done.

4                   THE COURT: Okay.

5                   MR. KELLY: I will do whatever you want, people are  
6                   talking about Monday being a problem, so.

7                   THE COURT: I, just for the record, I did get an  
8                   email from OCA, they're watching the weather, but they're  
9                   saying they're not going to tell us until this weekend, so,  
10                   right, we have to make a decision before that.

11                  MR. ALVARADO: We have witnesses.

12                  THE COURT: In anticipation of them, you know  
13                  making whatever decision that you know, over the weekend,  
14                  we're not going to come in on Monday, because we're not  
15                  going to be able to reach people, so we won't come in on  
16                  Monday, you can let your witness know that, then we will  
17                  continue on Tuesday, hopefully, and we will go from there,  
18                  just for scheduling, the witnesses that you have, and I will  
19                  let the jurors know they don't have to come back on Monday.  
20                  The Court won't let us know they're open until this weekend,  
21                  so that's not helpful.

22                  MR. JOHNSON: We have 491, line 22, the transcript  
23                  from yesterday.

24                  MR. KELLY: So it starts at line 20, 491.

25                  "What did doctor -- I'm sorry. How long after the

Roberto Abreu Perez - Plaintiff - Cross/Mr. Alvarado

1 accident was it that you saw Dr. Kaplan?

2 ANSWER: I don't think it came to be a month."

3 THE COURT: What's the page and line?

4 MR. KELLY: 491, 20 to 22.

5 THE COURT: So the question is specific, "how long  
6 after the accident was it that you saw Dr. Kaplan? I don't  
7 think it came to be a month."

8 MR. KELLY: Consequently I don't think they can use  
9 the C3 with this witness, they can use it with Dr. Kaplan,  
10 they already have it evidently.

11 MR. ALVARADO: I can still refresh his memory if he  
12 authenticates it, we're good.

13 THE COURT: He can ask.

14 MR. ALVARADO: I can ask, I will have it marked for  
15 ID.

16 THE COURT: We will see. Okay, we can bring them  
17 in.

18 COURT OFFICER: All rise, jury entering.

19 (Whereupon, the jury entered the courtroom).

20 CROSS-EXAMINATION BY

21 MR. ALVARADO:

22 THE COURT: Alright, everyone can have a seat.

23 Counsel you may start your cross-examination.

24 Q Mr. Roberto Abreu Perez, good afternoon.

25 A Good afternoon.

1 Q You and I have never met; right?

2 A No.

3 Q And you've said you have two or three kids?

4 A I have three, you know, now I have two.

5 Q Would you agree with me that when you raise your  
6 children, like any good parent, you taught them what's the  
7 difference between a lie and the truth?

8 MR. KELLY: Objection.

9 THE COURT: Overruled.

10 A Always.

11 Q Absolutely, and it's important, right that you taught  
12 them that, because you yourself learned that it's important to  
13 be accurate with what you say, it's important to be truthful?

14 A Yes.

15 Q Right. Would you agree with me that it's also  
16 important that when you come to court and you're asking this  
17 jury to compensate you, that your truthful in that; correct?

18 A That's what I'm doing, telling the truth.

19 Q I agree. It's important that you're accurate and  
20 truthful when you tell this jury what happened and if you were  
21 injured and how bad you were injured?

22 A That is what I'm saying.

23 Q Now, I'm going to give you a couple of preliminary  
24 instructions; okay, I'm on cross-examination, so I'm allowed to  
25 ask you leading questions.

1                   What that means I'm going to ask you to limit your  
2 answers to yes or no, and if you can't answer them yes or no,  
3 tell me I can't answer it yes or no; okay?

4                   A     But I understand with all due respect I have for you,  
5 all of the people who are here need an explanation in order for  
6 them to understand.

7                   Q     I'm actually trying to explain to you what my role is  
8 now and how I'm allowed to question you.

9                   THE COURT: Mr. Abreu Perez, on cross-examination  
10                   counsel is seeking yes or no answers. Your attorney,  
11                   Mr. Kelly, will have the opportunity to ask more questions,  
12                   if he feels further clarification is required.

13                   THE WITNESS: Okay.

14                   Q     Now, you've told this jury that your accident occurred  
15                   while you were working, I think in a Key Food supermarket;  
16                   right?

17                   A     No, I was working at a construction that they were  
18                   remodeling for a supermarket.

19                   Q     You didn't answer yes or no, that's okay, I let that  
20                   go.

21                   So you were working in a demolition or renovation and  
22                   they were, they were trying to construct a supermarket; is that  
23                   correct?

24                   A     Yes.

25                   Q     And I think that you, do you remember who your employer

1 was; I'm sorry?

2 A The person who took me there, yes.

3 Q You started working there in March of 2017; right; is  
4 that correct?

5 A Yes.

6 Q And your accident happened June 2017; is that correct?

7 A Yes.

8 Q During those few months that you worked there, you  
9 never knew who owned that building; correct?

10 MR. KELLY: Objection, we're long past liability,  
11 Judge. What are we doing?

12 THE COURT: Overruled, overruled, let's see.

13 A No.

14 Q You never met anyone who represented themselves to be  
15 the owner or to work with the owner?

16 MR. KELLY: Objection.

17 THE COURT: Overruled.

18 MR. ALVARADO: Last question.

19 A I met someone who went one day, and they said that they  
20 were, but I don't know if they were because I didn't know them.

21 Q So you met someone who, allegedly told you they either  
22 worked for the building or owned the building?

23 MR. KELLY: Objection again.

24 THE COURT: Overruled.

25 THE INTERPRETER: Allegedly worked?

**1** MR. ALVARADO: Or owned the building.

2 A Someone said I don't know, I don't even remember.

3 Q Now, Mr. Abreu Perez, before we were before this jury,  
4 we questioned you, right, at a deposition?

5 A      Correct.

6 Q In fact, I think you might know my partner, Mike  
7 Frittola; do you see him over there?

8 A Yes.

9 Q He questioned you; right?

10 A Yes.

11 Q And at those depositions, correct me if I'm wrong, you  
12 were provided with an interpreter, just like you have here;  
13 correct?

14 A Yes.

15 Q And so the interpreter would take the questions that  
16 Mr. Frittola asked and anything she or he would translate them  
17 into Spanish for you?

18 A Yes.

19 Q And you would then give your answers in Spanish, and  
20 the interpreter would repeat them in English; correct?

21 A Yes.

22 O Mr. Frittola gave you some preliminary instructions?

**23** A Repeat again.

24      ||      O      Yes.

25 Before the deposition started, Mr. Frittola gave you

1 instructions?

2 A I don't remember.

3 Q Didn't Mr. Frittola ask you or tell you if you ever had  
4 an issue with the question, that he would repeat it for you?

5 A Yes, any question that I do know, understand, I ask  
6 for.

7 Q Right. If you didn't understand the question, you  
8 would have told Mr. Frittola I don't understand the question,  
9 could you repeat it?

10 A Yes.

11 Q Okay. Were you deposed on January 23rd of 2020?

12 A I don't remember, I do not have that date.

13 MR. ALVARADO: Counsel, will you stipulate that's  
14 when the deposition occurred?

15 MR. KELLY: The date on the transcript says  
16 January 23, 2020, I don't know what that means there's an  
17 asterisk on it, I don't know that that means.

18 Sorry, it's just a spot, it's just a spot on it the  
19 cover.

20 MR. ALVARADO: Getting along better.

21 Q So your attorney just confirmed that's when you were  
22 deposed, at least that was your first deposition?

23 A Okay.

24 MR. ALVARADO: Your Honor, page 48, I'm going to go  
25 slow, line 18, to page 49, of line 11.

Roberto Abreu Perez - Plaintiff - Cross/Mr. Alvarado

1                   THE COURT: Okay.

2                   MR. ALVARADO: This is a deposition, for the  
3 record, dated January 23rd of 2021, when your Honor is  
4 ready, I will ask.

5                   THE COURT: One moment.

6                   Members of the jury, you're about to hear the  
7 lawyer for the Defendant read portions of a document  
8 referred to as an Examination Before Trial of the Plaintiff,  
9 and you may hear the lawyers refer to this document as an  
10 EBT.

11                  At some point before this trial began, the  
12 Plaintiff under oath answered questions put to him by  
13 lawyers for the parties, a stenographer recorded the  
14 questions and answers and transcribed them into a document  
15 which the Plaintiff later signed. The portions of the  
16 transcript of the Examination Before Trial that you will  
17 hear are to be considered as if the Plaintiff were  
18 testifying from the witness stand.

19                  Counsel, you may proceed.

20                  Q        Mr. Perez, I'm going to go slow, I realize there's an  
21 interpreter here, and I know it's important for her to take down  
22 and translate what I say and interpret for you as well.

23                  Page 48, line 18:

24                  "QUESTION: Do you know who or what company owned  
25 the building where the project took place?"

Roberto Abreu Perez - Plaintiff - Cross/Mr. Alvarado

1 MR. KELLY: Objection.

2 THE COURT: Overruled.

3 Q (Continuing:)

4 ANSWER: -- I'm skipping what the interpreter says,  
5 can you repeat it?

6 "QUESTION: Do you know who or what company owned  
7 the building where the project took place."

8 And your answer was "No."

9 "QUESTION: Did you ever interact with anyone at  
10 the job site that told you either they were the owner or  
11 owner or they worked for the owner of the building?" And  
12 your answer was "No."

13 "QUESTION: Did you ever see anyone on the job site  
14 that you believed worked for the owner or was the owner of  
15 the building? And your answer was, again, "No."

16 MR. KELLY: So Judge, he has to read it question  
17 and answer, line by line, that's the right way to do it.

18 THE COURT: Okay.

19 MR. ALVARADO: Going forward.

20 Q Were you asked those questions and did you give those  
21 answers?

22 A Yes, they posed them to me.

23 Q I asked you how important it was to be honest and  
24 that's what we taught our kids, and I'm going to ask you  
25 respectfully, were you lying today or were you lying at your

1 deposition?

2 MR. KELLY: Objection.

3 A I'm not lying.

4 Q So were you lying at the deposition --

5 MR. KELLY: Objection.

6 Q -- or were you lying today?

7 THE COURT: One moment, counsel, rephrase.

8 Q Would you agree with me that your memory back on  
9 January 23rd of 2020 is better than it is today?

10 MR. KELLY: Judge, I'm going to object, he's making  
11 a collateral attack on the Court's decision on liability  
12 already, we all know that.

13 MR. ALVARADO: We can't do it, Judge, we will go in  
14 the back.

15 THE COURT: Overruled.

16 MR. ALVARADO: Okay.

17 Q Did you answer?

18 MR. ALVARADO: Can I have the Court Reporter read  
19 it back.

20 (Whereupon, the question was read back by the  
21 Reporter.)

22 A I'm the same.

23 Q Your memory is the same?

24 A I believe so.

25 Q Were the answers that you gave back on January 23,

1 2020, truthful and honest?

2 A That is what I think so, yes.

3 Q Now, at this job site, where they were renovating a  
4 supermarket, isn't it true that you were working and part of  
5 your job was to clean shelves, mix cement, and remove iron  
6 parts?

7 A Yes.

8 Q Isn't it true that part of your job was that you lifted  
9 beams that weighed more than 300 pounds?

10 A No.

11 Q I want to be very clear with you, you needed help, in  
12 fact, you assisted others in lifting beams that were more than  
13 300 pounds?

14 A Correct.

15 Q And how many people would do that, you and how many  
16 others?

17 A The beam, we would lift it, three of us, but there was  
18 another person underneath.

19 Q Right, and --

20 MR. ALVARADO: Judge, when do I have to stop, it's  
21 12:45.

22 THE COURT: Okay, you can stop here, we can stop  
23 here.

24 Members of the jury, we're going to break for  
25 lunch, and we will continue with questioning this afternoon

Roberto Abreu Perez - Plaintiff - Cross/Mr. Alvarado

1 at 2:30.

2 So, I discussed with counsel, and with the Court  
3 Administration due to the weather, we're not going to be in  
4 session on Monday, alright, so you will return to, you're  
5 going to return this afternoon for more, but for next week,  
6 your next first day back will be Tuesday.

7 MR. ALVARADO: Ten o'clock, we have two witnesses  
8 Mr. Kelly has a witness, I have a witness.

9 THE COURT: Next week Tuesday at 10:00, but come  
10 back this afternoon, after lunch.

11 COURT OFFICER: All rise, jury exiting.

12 (Whereupon, the jury exited the courtroom.)

13 THE COURT: Mr. Abreu Perez, you can step down.

14 (Whereupon, Mr. Abreu Perez exited the witness  
15 stand.)

16 THE COURT: Anything for the record?

17 MR. KELLY: No, Dr. Kaplan will be here at 2:30, we  
18 will go from there.

19 MR. ALVARADO: We will go from there.

20 THE COURT: See everybody at 2:00.

21 MR. ALVARADO: Is it possible I can leave my stuff  
22 there?

23 THE COURT: Yes, the attorneys can leave, the  
24 attorneys can leave their documents.

25 (Whereupon, a lunch break was taken.)

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 A F T E R N O O N S E S S I O N

2 COURT OFFICER: All rise, jury entering.

3 (Whereupon, the jury entered the courtroom.)

4 THE COURT: Alright, everyone, you can have a seat.

5 Counselor, do you want to recall the witness to the  
6 stand?

7 MR. FRITTOLO: Thank you.

8 The defense calls Dr. Jeffrey Kaplan back to the  
9 stand for the continued cross-examination.

10 (Whereupon, Dr. Kaplan resumed the witness stand.)

11 CONTINUED CROSS-EXAMINATION BY

12 MR. FRITTOLO:

13 THE CLERK: You can have a seat, just remember  
14 you're still under oath.

15 THE WITNESS: Yes.

16 THE CLERK: State your name for the record?

17 THE WITNESS: My name is Jeffrey Kaplan.

18 THE COURT: Alright, members of the jury, there are  
19 sometimes when because of scheduling, witnesses cannot be  
20 here for consecutive days, but in order to move things along  
21 to be efficient, we sometimes take witnesses out of the  
22 turn.

23 We will continue with the cross-examination now of  
24 Dr. Kaplan.

25 You may inquire.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 Q Dr. Kaplan, did you bring -- good afternoon.

2 A Hi.

3 Q Did you bring the same file to court with you today  
4 that you brought the other day?

5 A Yes.

6 Q Anything else in there that wasn't in there the other  
7 day?

8 A No.

9 Q Did you read through your testimony from Tuesday of  
10 this week?

11 A No.

12 Q Were you provided with a copy of it?

13 A No.

14 Q Did you speak to Mr. Kelly when you were off the stand  
15 and when you're on the stand now?

16 A I spoke to him outside, briefly.

17 Q What did you guys talk about?

18 A Life.

19 Q Life?

20 A Yeah, we did not discuss testimony or anything.

21 Q Did you speak with anybody else about your experience  
22 here in court on Tuesday?

23 A About my, like my testimony, no, no.

24 Q You didn't speak to anybody about your testimony?

25 A About my testimony, no.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 Q Doctor, I'm going to give you one more chance --

2 MR. KELLY: Objection.

3 Q -- did you speak to anybody about your testimony?

4 THE COURT: Overruled.

5 A I'm not sure, maybe you and I are not speaking the same  
6 language again.

7 Q Doctor, I'm speaking English.

8 A I didn't speak to anybody about my testimony, what I  
9 said, if that's what you mean.

10 Q Okay. I -- the first question I had, did you speak to  
11 anyone about your experience in court here?

12 A Can you define that for me?

13 Q Did you speak with Dr. Grimm?

14 A Thank you. That's all I was wondering if you were  
15 asking, Dr. Grimm said how did it go, I said, you know, he  
16 usually asks me what can I expect or something like that,  
17 meaning, how are you guys, so.

18 Q What did you tell him?

19 A I told him, probably something like you were picky  
20 or --

21 Q Picky or a prick, doctor, you're under oath, tell us  
22 what you said?

23 MR. KELLY: Objection to the form, objection.

24 MR. FRITTOLE: He just lied, objection.

25 MR. KELLY: Objection.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 MR. FRITTOLA: He just lied, no.

2 || Q It's not --

3 A It's not a lie, trying to be a little nice. I mean if  
4 he testified that I said you were a prick, I probably said you  
5 were a prick.

6 Q Doctor, I want the truth. If you think I'm a prick,  
7 just say it.

8 A Oh, I think you're prick for sure.

9 Q I want the truth though.

10 MR. KELLY: Objection.

**11** Q I want the truth.

12 THE COURT: Counselor, he answered the question.

13 A Sir, you're asking me for my recollection, that was an  
14 off the cuff comment; yes, I think you're a prick.

15 Q You can say it to my face.

16 A I'm glad to say it again.

17 MR. KELLY: It has nothing to do with  
18 cross-examination.

19 MR. FRITTOLE: No problem.

20 Q Doctor, can you define what "whiplash" is?

21 A Whiplash is a term that generally means an injury to  
22 the neck, having to do with musculature being overextended.

23 Q Have you ever treated a patient that experienced  
24 whiplash?

25 A Yes.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 Q About how many would you say?

2 A I have no idea.

3 Q So would you agree that whiplash injury is legitimate  
4 injury?

5 A Yes.

6 Q It's a legitimate injury?

7 A Yes.

8 Q Would you agree whiplash injury can cause a significant  
9 spinal injury?

10 MR. KELLY: Objection.

11 A It can.

12 MR. FRITTOLO: There was an objection, Judge.

13 MR. KELLY: It's fine, he already answered, who  
14 cares.

15 Q Have you ever testified in a case involving a motor  
16 vehicle accident where an individual suffered whiplash?

17 A Probably, I don't recall.

18 Q Think about it, have you ever testified --

19 A I don't recall, sir. This is where -- this is where,  
20 you know, no, I don't recall.

21 Q Would you agree that even a minor fender bender  
22 accident could cause a whiplash injury?

23 A Again, it depends on the injury, it depends on the  
24 accident, there are a lot of factors.

25 Q Sure. Or would you agree that a minor say fender

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 bender accident can cause a significant spinal injury?

2 A I wouldn't think it would cause a significance spinal  
3 injury, it can cause a stretch of the muscles for sure.

4 Q And could a whiplash injury cause an exacerbation of a  
5 preexisting injury?

6 A It could, sure.

7 Q And have you been made aware of a motor vehicle  
8 accident that the Plaintiff in this case was involved in?

9 A I have.

10 Q And when did you first become aware of that?

11 A I don't recall, but recently, yeah, it wasn't while I  
12 was treating him. Again, I didn't treat his neck, so it's -- I  
13 didn't do significant treatment on his neck.

14 Q Do you recall the date of that accident?

15 A No.

16 Q I'm going to represent to you, it was December 22nd --  
17 27, 2022; okay?

18 A Okay.

19 Q You, I want to be clear, you said you were not aware of  
20 that motor vehicle accident while you were treating Mr. Abreu  
21 Perez?

22 A Not that I recall, yeah.

23 Q And that includes when you authored your 2025 report,  
24 at that time, you were not aware --

25 A I agree with you.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 Q -- of the motor vehicle accident?

2 A I agree with you.

3 Q And is it fair to say that the -- any record of any  
4 treatment for that motor vehicle accident was not included in  
5 your file that you brought to court with you here the other day;  
6 correct?

7 A Not that I recall, no.

8 Q When you examine patients, do you ask them if they've  
9 experienced any intervening or subsequent trauma of any kind?

10 A I will occasionally use that term. Mostly I will say  
11 is anything new, has anything happened.

12 Q Anything new since the last visit, anything like that?

13 A Yes.

14 Q Did you ask that to Mr. Abreu Perez when you examined  
15 him in 2025?

16 A I'm sure I said what's new, I had not seen him in a  
17 long time, I had not been treating him for quite a period of  
18 time.

19 Q Am I correct that he did not tell you about the motor  
20 vehicle accident when you asked him that question?

21 A Not that I recorded.

22 Q Your 2025 report attributes 100 percent of the  
23 Plaintiff's pain to the 2017 fall; correct?

24 A The -- certainly that's the causal event, yeah.

25 Q And when you were making that assessment of the causal

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 event, you were not aware of the motor vehicle accident;  
2 correct?

3 A That's correct, but I don't think that's a significant.

4 Q Just yes or no, doctor, please?

5 A Yes.

6 Q I'm not --

7 A Sure, that's correct, you're absolutely right.

8 Q And when you were making the assessment in 2025, you  
9 were not aware that he was diagnosed with a whiplash injury;  
10 correct?

11 A No, I wasn't aware of that.

12 Q Have you seen photos of the vehicle from the 2022  
13 accident?

14 A No.

15 Q Have you seen the police accident report from the 2022  
16 accident?

17 A I have no not.

18 Q Have you seen the officer's body cam from the 2022  
19 accident?

20 A I have not seen anything having to do with the 2022  
21 accident.

22 Q So your reports do not indicate what effect, if any,  
23 the whiplash injury had on the Plaintiff's lumbar spine?

24 A His lumbar spine, no.

25 Q And your reports do not indicate what effect the

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 whiplash injury had on his cervical spine; is that correct?

2 A That is correct.

3 Q I have a --

4 MR. FRITTOLO: I would like to ask the doctor to  
5 take a look at a document in evidence, the Mount Sinai  
6 records.

7 MR. ALVARADO: Which exhibit is that?

8 MR. FRITTOLO: That's Plaintiff's Exhibit 28.

9 COURT OFFICER: (Handing.)

10 THE WITNESS: Thank you.

11 COURT OFFICER: You're welcome.

12 Q Can you please look at page 25, doctor, it's 25 on the  
13 bottom right.

14 A Okay.

15 Q Can you please read the clinical impression, never  
16 mind, I'm sorry.

17 A Would you step up here? My 25 doesn't say anything.

18 Q Sure.

19 A Just help me here.

20 MR. FRITTOLO: Do you mind if I approach?

21 THE COURT: That's fine.

22 MR. FRITTOLO: (Approaching.)

23 A Page five?

24 Q Page five.

25 A Okay.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 Q I'm directing your attention to page five, doctor?

2 A Yes, okay.

3 Q And do you see there's a diagnosis section?

4 A Yes.

5 Q Can you read that please?

6 A Sure.

7 Q What's listed?

8 A It says "whiplash and initial encounter".

9 Q And okay, would you agree that type of injury, a  
10 whiplash injury could have exacerbated any preexisting injuries  
11 that Mr. Roberto Abreu Perez had at that time?

12 A It certainly can, sure.

13 Q Can you look at the bottom left corner, it has a date  
14 that the document was printed; can you see that?

15 A Yes, uh-huh.

16 Q What's the date?

17 A It looks like 6/28/24.

18 Q That's it.

19 The first page of those records, is a letter, and what  
20 is the letter dated, just the front page?

21 A Oh here, it looks like 6/25/24.

22 Q And there's an invoice on the third page from 2024 for  
23 those records?

24 A Yes.

25 Q And so does it appear, based off of those couple of

1 pages that those records were provided to Gorayeb & Associates  
2 in 2024?

3 A They were in 2024, yeah.

4 Q And you're telling us that Gorayeb & Associates did not  
5 provide you those records at any point before just recently;  
6 correct?

7 A Not that I recall.

8 Q From your prior testimony, and I'm done with that one,  
9 thank you.

10 From your prior testimony on page 291, for the record,  
11 you talked about the prognosis?

12 A Yes.

13 Q And you explained what prognosis is, and you said  
14 prognosis is looking into the medical future based off of the  
15 history that you have?

16 A That's right, based off.

17 Q You would agree if the history that you have is  
18 incorrect, that the prognosis could be affected by that?

19 A Could be, sure, "could" is a very open term.

20 Q And if the history is just flat wrong, the prognosis  
21 could be compromised, is that correct; is that fair to say?

22 A If the history is flat wrong?

23 Q Yes.

24 A You mean if there was no accident initially?

25 Q No, just generally, I'm not talking about an accident.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 I'm just saying if the history that is provided is wrong, could  
2 the prognosis be affected by that?

3 A Sure.

4 Q And if the history is incomplete, could the prognosis  
5 be affected by that as well?

6 A Could be.

7 Q And would that make the prognosis unreliable?

8 A Not necessarily.

9 Q But it could though?

10 A Anything could, sure. Yeah, "could," again, is very  
11 broad term.

12 Q You included in your reports and your direct testimony  
13 that this gentleman had a poor prognosis; is that correct?

14 A Yes.

15 Q And am I correct to say that you made the assessment  
16 that he had a poor prognosis without reviewing his employment  
17 records?

18 A I don't recall, yeah, I don't recall reviewing his  
19 employment records.

20 Q And so you did not review his employment records before  
21 making an assessment of the prognosis?

22 A My prognosis is not based on his employment records.

23 Q I didn't ask that judge -- doctor.

24 A That's my answer.

25 Q Is it correct you made the assessments of the prognosis

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 without looking at his tax records; am I correct?

2 A 100, one has nothing to do with the other in my mind,  
3 yes, absolutely.

4 Q You made that assessment of his prognosis without  
5 knowing anything about the subsequent whiplash injury he had;  
6 correct?

7 A That's correct.

8 Q So if I were to, you do other work for Gorayeb &  
9 Associates; correct?

10 A I have done define "work," it is not that I'm working  
11 for them. I have seen patients that are clients of theirs, I  
12 have done work for defense firms, it's part of being an  
13 orthopedic surgeon.

14 Q Okay, so if I pull say 50 of your reports for clients  
15 for the Gorayeb & Associates, would they have the same  
16 assessments of a poor prognosis?

17 A Some are guarded, some are good, some are poor.

18 Q When you were testifying, you referred to Dr. Grimm?

19 A Yes.

20 Q How come you didn't say you work with Dr. Grimm?

21 A I think someone did ask me if he worked for me. I  
22 think you asked me if he worked for me, I said yes.

23 Q Are you his boss?

24 A Yes.

25 Q You didn't call him a colleague, it sounded like you

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 were talking about an independent treating provider?

2 A He is an independent treating provider.

3 Q You both work for the same firm, New York Ortho, it's  
4 not independent?

5 MR. KELLY: Objection.

6 THE COURT: Overruled, you can answer.

7 Q Right?

8 MR. KELLY: Objection, he's asking for a legal  
9 opinion from the doctor.

10 THE WITNESS: He's also not letting me speak.

11 Q Go ahead, doctor.

12 THE COURT: No, no, he's asking him to explain the  
13 relationship.

14 THE WITNESS: Yes.

15 THE COURT: That you can do.

16 THE WITNESS: Yes.

17 A Dr. Grimm and I both work for New York Ortho Sports And  
18 Medicine and Trauma, we're independent physicians, we do our own  
19 treatment, we form our own opinions, and I happen to own the  
20 practice, so he's an employee of mine, but I don't tell him what  
21 to do, I don't interfere in his treatment, he doesn't interfere  
22 in mine.

23 Q Do you share an office space?

24 A Not our individual offices, but we share an office  
25 space.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 Q Do you share staff?

2 A Yes.

3 Q And you both get made salaries from New York Ortho?

4 A That is correct.

5 Q What percentage of your practice that you see do you  
6 refer to Dr. Grimm?

7 A I wouldn't even know how to answer that, I haven't  
8 looked at that.

9 Q Would you say it's more or less than 50 percent?

10 A It's probably around 50 percent, I do not heavily treat  
11 neck and back and he does that, if someone comes to me with a  
12 neck and back injury, I generally ask them to see a pain  
13 management guy and out of convenience mostly Dr. Grimm for sure.

14 Q Do you use Dr. Grimm to create a consensus or agreement  
15 for a plan of care for a patient?

16 A No.

17 Q When you need a positive finding for an EMG, do you use  
18 Dr. Grimm for that; just yes or no?

19 A I'm not sure I understand what you're asking me.

20 Q When you want to get a positive finding for an EMG, do  
21 you ask Dr. Grimm to do that?

22 A Again, can you define what you're asking me?

23 Q Yes. I will ask you a different question.

24 A No, no, ask me that question again, that's a question I  
25 think you're -- if I understand it, correctly.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 Q Yeah.

2 A If I understand it correctly, you're asking me do I  
3 send Dr. Grimm patients expecting an answer.

4 Q That is correct, doctor.

5 A Yes, that's a not, no, Dr. Grimm is an independent  
6 physician who does his own work and has his own opinions.

7 Q So you if you need a pretext radiculopathy, do you send  
8 him to Dr. Grimm?

9 MR. KELLY: Objection.

10 "Pretext," what is that?

11 THE COURT: Overruled.

12 A Absolutely not, that's absurd in my opinion.

13 Q If imaging studies in this case did not identify any  
14 cord compression, would that be consistent with Dr. Grimm's  
15 assessment of radiculopathy?

16 A That's a totally -- one doesn't follow the other.

17 Q It's a yes-or-no question.

18 A Yeah, but it's not a sensible question, in my opinion.

19 Q Alright.

20 A You're trying to put things together that don't, they  
21 don't follow logical sense if in my mind, I don't know how to  
22 answer that.

23 Q No problem, doctor.

24 A Okay.

25 Q When you fill out medical records at New York Ortho,

1 how do you do it, when you're in the exam room?

2 A I usually dictate mine, and then someone types them.

3 Q Do you have a clipboard or notepad of any kind?

4 A No.

5 Q Do you make any handwritten scribbles on a piece of  
6 paper?

7 A Occasionally, I will.

8 Q Did you do that with Mr. Roberto Abreu Perez?

9 A Not that I recall.

10 Q What happens with the dictation once you do it?

11 A It gets typed up by a typist, it gets put in the file.

12 Q Do you work off a software program?

13 A There's a software program, yeah.

14 Q Is that just -- is a template that's created for --

15 A No, no.

16 Q -- for a medical chart?

17 A No, the software program is a electronic medical  
18 record.

19 Q What's the program?

20 A It's call Allscripts.

21 Q So the final report, you know, your record of a  
22 specific visit, that's created by a software program; correct?

23 A No, it's something I dictate, it's then input into the  
24 electronic medical record.

25 Q But the electronic medical record is created by a

1 software program?

2 A No, again, I'm not sure what you're trying to ask me,  
3 but I'm being very specific here, I dictate my notes.

4 Q Okay.

5 A They get put into the electronic medical record, it's  
6 not generated, it's not created by, it's just part of.

7 Q Is there metadata associated with the electronic  
8 medical records that you retained for your office?

9 A So I'm a physician, I don't even know what the term  
10 "metadata" means. If you want to define it, let me know, I will  
11 happy to answer anything I know.

12 Q Do physicians have certain recordkeeping obligations,  
13 just generally?

14 A Yeah, I keep a record of the patients I see.

15 Q And have you ever been requested to see metadata for  
16 any of your medical records?

17 A I have no idea what the term "metadata" means.

18 Q Do you work with, you dictate, I get it, but do you  
19 work with the electronic medical records program at all?

20 A It's parts of our system, I call it up to read the  
21 notes that have been put in.

22 Q When you input notes?

23 A I don't input the notes.

24 Q That's my question.

25 A The stenographer does.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 Q Does your -- you said you brought your medical file?

2 A I brought the file that was given to me to bring, yes,  
3 it has my medical records in it so I can do this question and  
4 answer with you, yeah.

5 Q Got it. Does the New York Ortho generally have a  
6 correspondence folder?

7 A I don't know what you mean.

8 Q Have you received any letters or emails associated with  
9 Roberto Abreu Perez?

10 A I have not, no.

11 Q Has New York Ortho received any letters or emails  
12 associated with Roberto Abreu Perez?

13 A I'm sure there have been some requests for information  
14 and things like that, sure.

15 Q That's standard, right, request for information?

16 A Yeah.

17 Q They're requesting say like the 2025 report you put  
18 together?

19 A Sure.

20 Q It would have to be communicated to your office or your  
21 staff somehow that Gorayeb & Associates is requesting an update  
22 report for you; right?

23 A Yeah, that may be a phone call, you know it's -- I  
24 don't know if it's always a formal email or a note.

25 Q Sometimes it is?

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 A I don't know.

2 Q Have you ever seen any letters or email correspondence  
3 from anyone at the Gorayeb firm related to Mr. Roberto Abreu  
4 Perez?

5 A I don't think so.

6 Q How was it communicated to you that they needed an  
7 updated report in 2025?

8 A When I come into the office, I have a list of patients  
9 I'm seeing, and it will say "narrative requested".

10 Q Who prepares that?

11 A Who prepares what?

12 Q The piece of paper that you see that says "narrative".

13 A No, no, it's put into the computer by someone at the  
14 front desk.

15 Q Was there any, if you know, if you don't know, that's  
16 fine, was there any communications from the Gorayeb firm to your  
17 New York Ortho requesting a 2025 report?

18 A There must have been if I have one in there; right.

19 Q If you have one in where?

20 A If I have a report in here, which I believe do, right.

21 Q There's a 2025 report?

22 A So I guess so.

23 Q So can you say, one way or the other, whether there  
24 were written correspondence requesting that report?

25 A Again, I don't know how it was requested, it's not,

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 that's not part of my duties, I do the medicine.

2 Q Okay.

3 Did you speak with anyone from the Gorayeb firm before  
4 you prepared that 2025 report?

5 A No, not that I recall, and I generally don't.

6 Q How about the 2018 report and 2021 report --

7 A Same answer.

8 Q Just let me finish.

9 There was a 2018 report and 2021 report, did you speak  
10 with anyone from the Gorayeb law firm before you put, before you  
11 compiled those reports, finalized those reports?

12 A Not that I recall.

13 Q Your practice, orthopedic practice, that's different  
14 than from say a primary care physician or family practice?

15 A Generally, yes.

16 Q What percentage of the referrals that you get are from  
17 personal injury law firms?

18 A I don't really know the answer to that, but we get  
19 certainly more than a primary care doctor does.

20 Q Would you say it's more than 50 percent?

21 A No, I don't think it's more than 50 percent.

22 Q How many patients have you treated that were  
23 represented by the Gorayeb firm -- well, let me ask you this,  
24 how long have you been in practice with New York Ortho?

25 A 25 years.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 Q How long have you been working with the Gorayeb firm  
2 generally?

3 A I don't know when they started, sent their first  
4 patient to me, it had something to do with treating someone,  
5 Mr. Gorayeb's son actually.

6 Q Is it fair to say over the last decade that the Gorayeb  
7 firm has funneled over a thousand patients to your office in the  
8 last decade?

9 MR. KELLY: Objection to the characterization  
10 "funneled". He said over the last eight decades, I don't  
11 think it's that long.

12 MR. FRITTOLO: I said "the last decade".

13 THE COURT: Sustained as to "funneled".

14 MR. FRITTOLO: Good.

15 Q Is it fair to say that the Gorayeb law firm has  
16 referred thousands of patients to your law -- medical practice  
17 over the last decade?

18 A I don't think it's thousands, likely, but they  
19 certainly have sent us a number of patients, sure.

20 Q Would it be more or less than 500 patients?

21 A I don't know the answer to that, I never sat down and  
22 calculated that, I don't look at that when I'm treating a  
23 patient.

24 Q More or less than a thousand patients?

25 A I will give you the same answer, you keep asking the

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 same question. I don't look at that when treating the patient.  
2 I'm treating the patient not the law firm.

3 Q How often have you testified in court for a case  
4 involving an individual represented by the Gorayeb firm?

5 A Again, I don't know the answer to that question. I  
6 certainly have been here a number of times with patients who  
7 were represented by Mr. Gorayeb's firm, they tend to take cases  
8 to court.

9 Q Let me -- let me break it down like this, it's very  
10 early in 2026, have you appeared in court on behalf of the  
11 Gorayeb firm in 2026 other than this appearance?

12 A Yes, last week.

13 Q So one time?

14 A One time.

15 Q And in 2025, how many times did you appear in court on  
16 behalf of the Gorayeb firm?

17 A I will give you the same answer, I don't keep track of  
18 that, I don't know. I'm sure you have a list. If you want to  
19 show it to me, show it to me.

20 Q I don't have a list of cases.

21 A Okay.

22 Q You've appeared in court for the Gorayeb firm?

23 A I don't know either.

24 Q Are you able to approximate, just last year, how many  
25 times you appeared in court on behalf of the Gorayeb firm?

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1           A     Third time you've asked me that question, third time  
2 I'll answer it. I don't keep track, it's not a big part of what  
3 I do. I see a lot of patients in my office, I do surgeries, and  
4 I occasionally come to court.

5           Q     So your answer is you don't know?

6                    MR. KELLY: Objection, his answer is his answer,  
7 Judge, not something else he wants to him to say.

8                    THE COURT: Sustained.

9           Q     And for this appearance, and I don't know if you can  
10 break it down, the last couple of days, a couple of days ago,  
11 how much are you paid for your appearance?

12          A     I'm paid my regular salary, my office guess \$8500 for  
13 me to cancel me, that pays me, pays the rent, pays the people  
14 still working there, part of business.

15          Q     Was it the same in 2025?

16          A     I think so.

17          Q     Let me ask, has your fee changed in say the past ten  
18 years?

19          A     Yes.

20          Q     Just generally, how has it changed?

21          A     Ten years ago, it was probably \$5,000.

22          Q     Are you able to approximate how much New York Ortho was  
23 paid in last year of 2025 for your appearances?

24          A     No idea.

25          Q     And are you able to estimate how much New York Ortho

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 was paid for treating Gorayeb patients in 2025?

2 MR. KELLY: Objection.

3 A No idea.

4 MR. KELLY: I have to object to that.

5 We can approach on that, but that's --

6 THE COURT: Sustained.

7 MR. FRITTOLOA: Okay.

8 Q You get paid for the work you do?

9 A Sure.

10 Q When you examine a patient, you submit a bill and  
11 generally get paid?

12 MR. KELLY: We're going to have to approach, I know  
13 what he's trying to do, he's -- you already ruled on this,  
14 we have to approach.

15 MR. FRITTOLOA: We can approach, there's no problem.

16 (Whereupon, an off the record bench discussion was  
17 held.)

18 THE COURT: Objection overruled. You can answer,  
19 if you know the answer.

20 A Can you remind me of the question?

21 THE COURT: Madam reporter read back the question.

22 (Whereupon, the question was read back by the Court  
23 Reporter.)

24 A We get paid, some of our bills we get paid a portion of  
25 our bills.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 Q Are you able to estimate how much New York Ortho was  
2 paid in the year 2025 in connection with their treatment of  
3 Gorayeb patients?

4 MR. KELLY: Same thing, objection.

5 THE COURT: Overruled.

6 A No.

7 Q And how about the -- any of the years in the last  
8 decade, are you able to approximate how much New York Ortho has  
9 been paid in connection with their treatment of Gorayeb  
10 patients?

11 MR. KELLY: Objection.

12 A No.

13 THE COURT: Overruled.

14 Q And within New York Ortho, do you get paid a flat  
15 salary, or are you paid based off of the amount that you bill?

16 A I get paid a salary when there's money available to be  
17 honest with you.

18 Q How about Dr. Grimm, does -- and let me follow-up, so  
19 you're telling me that you do not get paid based off of how much  
20 you bill; is that correct?

21 A Off of, absolutely not.

22 Q Your personal salary, not the firm?

23 A Absolutely do not get paid by how much I bill.

24 Q Does Dr. Grimm make a flat salary, or does he get paid  
25 based of how much he bills, or how many injections he does?

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 A He does not get paid based on how much he bills. He  
2 does get a bonus, if that's available, yeah, but that's not  
3 based on billing, that's based on collections, right.

4 Q So what is the bonus structure for Dr. Grimm?

5 A It's very complicated, it's done by our accountants, I  
6 don't know the answer to that.

7 Q Let me simplify, the more injections he does, the more  
8 he gets paid; correct?

9 MR. KELLY: Objection.

10 THE COURT: Sustained.

11 Q What was the gross revenue of New York Ortho in to '25?

12 A I don't know.

13 Q You're the owner of the business and you don't know how  
14 much money it earned?

15 A We don't have those numbers, it's early in 2026.

16 Q What was the gross revenue of normal in 2024?

17 A It was about \$4 million.

18 Q And how much of that did you personally earn in 2024?

19 A Probably \$600,000, something like that.

20 Q And what was Dr. Grimm paid in 2024?

21 A I don't recall.

22 Q And how about 2023, what was the gross revenue, if you  
23 recall for New York Ortho?

24 A I don't recall.

25 Q What was your salary in 2023?

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 A I don't recall.

2 Q Specifically with respect to Roberto Abreu Perez, how  
3 much has New York Ortho been paid for treatment to Roberto Abreu  
4 Perez?

5 MR. KELLY: Objection.

6 THE COURT: Overruled, if you know.

7 A No, I don't know.

8 Q Are there any outstanding bills currently for Roberto  
9 Abreu Perez?

10 A Not that I know of.

11 Q You referred Mr. Roberto Abreu Perez to Dr. Kolb, the  
12 radiologist; correct?

13 A I referred him for an MRI, that was done at Dr. Kolb's  
14 office, yeah.

15 Q How many patients have you referred to Dr. Kolb's  
16 office?

17 A A lot.

18 Q Thousands, you would say?

19 A I have no idea, if it's thousands, but he's a  
20 radiologist, along with other radiologists that we use.

21 Q So could you say the number is more or less than a  
22 thousand patients that you've referred to Dr. Kolb Radiology's  
23 office?

24 A I haven't really thought of it in terms of numbers, so  
25 I don't know.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 Q So for how long have you had a business relationship  
2 with Dr. Kolb?

3 A I don't have a business relationship with Dr. Kolb,  
4 don't be absurd, don't be absurd.

5 Q Do you refer his facility patients?

6 A Excuse me?

7 Q Do you refer his facility patients?

8 A I refer the patients to Dr. Kolb, some for MRIs that's  
9 not a business referral, that is a doctor referral.

10 Q Have you received any compensation for referring  
11 patients to Dr. Kolb?

12 MR. KELLY: Objection.

13 THE COURT: Overruled.

14 A Absolutely not, that's absurd too.

15 Q How many patients do you have where you are the  
16 orthopedist, and you refer to Dr. Kolb Radiology radiological  
17 studies, and Dr. Grimm is treating them for pain management?

18 A Again, that's not something I keep track of, that's  
19 called a referral pattern, whether you go to New York  
20 Presbyterian Hospital whether you go to the hospital for Special  
21 Surgery, whether you go to NYU, people refer within their group,  
22 that's the way it works.

23 Dr. Kolb is a radiologist who used to have an office  
24 very close to mine, so I started referring patients to him, at  
25 some point.

1 Dr. Grimm is in my office, these are conveniences so I  
2 can get the information I need so I know who I'm dealing with.  
3 It's not something I keep track of as far as numbers, it's just  
4 a convenience.

5 Q So how many patients also involve the Gorayeb firm, you  
6 as the orthopedist, Dr. Kolb, Dr. Grimm?

7 A I don't know the answer to that.

8 Q Would you say it's more or less than 100?

9 A Probably.

10 Q Probably more?

11 A Yeah.

12 Q Would you say it's more or less than 500?

13 A That I couldn't answer.

14 Q Is it fair to say that the patients that you see from  
15 Gorayeb office follow a typical pattern where there's a fall  
16 from a height, Gorayeb's office is involved, you're the treating  
17 orthopedist, you refer to Dr. Kolb, Dr. Grimm does pain  
18 management; is that the standard pattern?

19 MR. KELLY: Objection.

20 THE COURT: Overruled.

21 A There's no pattern. Again, I don't look at who has  
22 sent me the patient, if it's a law firm, I don't put together,  
23 I've got patients who fall from heights, I have patients hit by  
24 trucks, I have patient who have glass fall on them, there are  
25 all kind of injuries in my practice.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 Q Do you or any family members own an interest in any  
2 legal funding companies?

3 MR. KELLY: Objection.

4 THE COURT: Sustained.

5 Q From your prior testimony, you mentioned degenerative  
6 changes, it came up in the course of the testimony, and talked  
7 about on page 291 of the prior transcript, there was a reference  
8 "we all get degenerative changes"; do you stand by that?

9 A Yes.

10 Q There was on page 292, the question was:

11 "QUESTION: So a person can have a degenerative  
12 condition like arthritis and be pain free?

13 That's the question.

14 "ANSWER: Absolutely, anyone over the age of 30 has  
15 likely some degenerative change, it's a harsh reality, but  
16 it's true, a lot of times it doesn't bother you."

17 Do you stand by that?

18 A I do.

19 Q Further on page 292, you said:

20 "Often, a lot of times we witness, we will see some  
21 changes, degenerative changes, they haven't complained  
22 about, and they get knocked around and things change  
23 rapidly."

24 Is that what you believe happened with Mr. Roberto  
25 Abreu Perez?

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 A No, I was simply answering a question of yours.

2 Q I'm asking you now, is that what you believe happened  
3 with Mr. Roberto Abreu Perez, that he had degenerative changes,  
4 that were activated?

5 A I don't think that's the basis of his injury, I believe  
6 his injury was from his fall.

7 Q Have you reviewed the Bill of Particulars for this  
8 case?

9 A No.

10 Q If I tell you that, Bills of Particulars dated  
11 October 24, 2017, claims aggravation, activation and/or  
12 precipitation of any hypertrophic degenerative conditions; all  
13 right?

14 A All right.

15 Q Does that change your assessment?

16 A No, I'm not here for the Bill of Particulars, I'm here  
17 for the treatment of the patient I provided.

18 Q Do you know Dr. Weinstein?

19 A I have met Dr. Weinstein once in my life.

20 Q If Dr. Weinstein came in here and testified that Mr.  
21 Roberto Abreu Perez had degenerative disc disease, would you  
22 agree with that assessment or would you disagree with that  
23 assessment?

24 MR. KELLY: Objection, Dr. Weinstein has not  
25 testified yet, Judge.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1                   THE COURT: Overruled.

2                   A    I wouldn't even know how to answer that.

3                   Q    You want me to rephrase it? You're a medical  
4 professional; do you agree or disagree?

5                   MR. KELLY: Objection.

6                   THE COURT: Overruled.

7                   A    I guess rephrase it then, I'm not sure exactly what  
8 I'm -- you are what you're asking, do I agree with  
9 Dr. Weinstein? I don't have an opinion, that's Dr. Weinstein's  
10 opinion.

11                  Q    Do you know what degenerative disc disease is?

12                  A    Yes, sure.

13                  Q    Give us a brief explanation?

14                  A    Degenerative disc disease is changes in the disc  
15 material which is the padding between the spinal bones that  
16 occurs over time. Again most people over the age of 25, 30 have  
17 some degenerative change, was it likely Mr. Abreu had some  
18 degenerative changes like you and I likely, probably, but it's  
19 not something that brings you to surgery.

20                  Q    Do you know what the term black disc disease is?

21                  A    No.

22                  Q    You just said something interesting, doctor, was it  
23 likely that Mr. Roberto Abreu Perez had degenerative changes,  
24 you said yes; right?

25                  A    Yes.

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 Q And so you think that to be the truth, the whole truth?

2 MR. KELLY: Objection.

3 THE COURT: Sustained, as to the whole truth.

4 THE WITNESS: What I am answering?

5 THE COURT: You can answer the first part of the  
6 question.

7 A Do I think he had some degenerative change?

8 Q Yes, that's you said.

9 A It's likely he had some degenerative change, sure, he  
10 was symptomatic. I don't think it would have brought him to  
11 surgery, yes.

12 Q Show me specifically in your reports, 2018, '21, '25,  
13 where does it talk about his degenerative changes?

14 A I don't talk about his degenerative changes.

15 Q Thank you, doctor.

16 A As I say --

17 MR. FRITTOLO: That's not responsive to the  
18 question, Judge, he answered it.

19 THE COURT: You answered it.

20 MR. KELLY: He didn't phrase it yes or no, Judge,  
21 it's in the report, he's explaining why it's not in the  
22 report.

23 MR. FRITTOLO: That's not what I asked.

24 THE COURT: Is it in the report?

25 THE WITNESS: No, it's not appropriate to be in the

Dr. Kaplan - Plaintiff - Cross/Mr. Frittola

1 report.

2 Q Does your -- do any of your reports identify the  
3 significance of osteophytes; yes or no?

4 A No.

5 Q Do any of your records identify the significance of  
6 hypertrophy?

7 A No.

8 Q Do any of your reports discuss either of those  
9 things --

10 A They do not.

11 Q -- with respect to Roberto Abreu Perez?

12 A That is not what my report is about, that's correct.

13 Q Do any of your reports address desiccation, disc  
14 desiccation; yes or no?

15 A No, no.

16 Q Have you read through the assessment of Dr. Jeffrey  
17 Spivak for this case?

18 A No.

19 Q So I am correct that nowhere in your reports do you  
20 address any degenerative condition that he may or may not have?

21 MR. KELLY: Objection, this is the fourth time it's  
22 asked.

23 THE COURT: Sustained.

24 MR. KELLY: We have to get out here at some point.

25 MR. FRITTOLO: We're done with this witness, thank

1                   you, Judge.

2                   REDIRECT EXAMINATION BY

3                   MR. KELLY:

4                   Q        Doctor, are you paid --

5                   MR. ALVARADO: I think that's an exhibit.

6                   MR. KELLY: I'm going to use it.

7                   Q        Doctor, are you paid by attorneys for treatment of  
8 patients?

9                   A        No.

10                  Q        You talked about the whiplash injury being a strained  
11 musculature; correct?

12                  A        Correct.

13                  Q        Mr. Roberto Abreu Perez has radiculopathy, cervical and  
14 lumbar; right?

15                  A        Yes, that's right.

16                  MR. FRITTOLA: Objection.

17                  THE COURT: What is the objection?

18                  MR. FRITTOLA: Leading.

19                  THE COURT: You can answer the question.

20                  A        He has cervical and lumbar spine radiculopathy.

21                  Q        Is that a nerve injury as opposed to a muscular injury?

22                  A        By definition "radiculopathy" is radiating pain along  
23 the nerve root, right.

24                  Q        So those two things don't have anything to do with each  
25 other necessarily; is that correct?

Dr. Kaplan - Plaintiff - Redirect

1 A That is correct.

2 Q I would like you to take a look at the exhibit shown by  
3 defense counsel.

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

5 THE COURT: Yes.

6 MR. KELLY: Thank you. (Approaching.)

7 Q I bring your attention to page five, second paragraph?

8 A Okay.

9 Q Can you read the top line there, it starts with "MVC"?

10 THE COURT: Counsel you're still referring to --

11 MR. KELLY: I'm sorry, Plaintiff's Exhibit,  
12 Plaintiff's Exhibit, what number?

13 THE WITNESS: 28.

14 MR. KELLY: 28.

15 A Yes.

16 Q Can you read that?

17 A Yes, it says "MVC" -- motor vehicle collision -- "no  
18 serious injury."

19 Q And from a quick review of that document, there's no  
20 X-rays or CT's or anything else that was done in that  
21 examination; correct?

22 A I don't see any X-rays being performed, that's correct.

23 Q Okay. Is it the normal practice for a physician to  
24 look at tax returns to determine a prognosis?

25 A I have never been asked that in my life.

Dr. Kaplan - Plaintiff - Redirect

1 Q Doctor, your main focus, in treating Mr. Abreu Perez  
2 concerned his fracture ribs; no?

3 A That's correct.

4 Q Does this degenerative nonsense that we have talked  
5 about however too long, does that have to do with fractured  
6 ribs?

7 MR. FRITTOLO: Objection.

8 THE COURT: Sustained.

9 Q So when they asked you about degenerative changes,  
10 osteophytes, hypertrophy, et cetera, does that have anything to  
11 do with your treatment with respect to his ribs?

12 A It does not.

13 Q So you wouldn't necessarily expect it to be in your  
14 report, would you?

15 A It certainly won't be in my report with regard to the  
16 rib, but also my reports, they're not going to be telephone  
17 books of information, they try to cut to the point and be  
18 specific, the reason this guy began having symptoms in my  
19 opinion and the reason he had surgery in my opinion was not the  
20 degenerative thing; otherwise, you and I and everybody in here  
21 would be having surgery, it's because of this accident, so  
22 that's what I put in my report.

23 Q When we say "this accident," we're talking about the  
24 June 27th, 2017, accident where he fell from a height?

25 A That is correct.

Dr. Kaplan - Plaintiff - Redirect

1 Q Is it your opinion, to a reasonable degree of medical  
2 certainty, that the motor vehicle accident, which have termed  
3 "no significant injury," and was only a musculature injury, had  
4 no role to play in Mr. Abreu Perez's complaints of pain and  
5 subsequent treatment?

6 A Prior to that or what brought him to surgery, correct.

7 Q Bear with me a second.

8 MR. KELLY: That's enough, thank you.

9 THE WITNESS: Thank you.

10 MR. FRITTOLO: Nothing further, Judge, thank you.

11 THE COURT: Dr. Kaplan. You're excused.

12 THE WITNESS: Thank you.

13 THE COURT: You don't have to return.

14 MR. KELLY: Thank you doctor, I appreciate it.

15 (Whereupon, Dr. Kaplan exited the witness stand and  
16 the courtroom.)

17 THE COURT: We're going to take a brief break, then  
18 we will continue with the questioning.

19 MR. ALVARADO: Yes, okay.

20 COURT OFFICER: All rise, jury exiting.

21 (Whereupon, the jury exited the courtroom.)

22 THE COURT: Counsel, you can recall the witness to  
23 the stand.

24 MR. ALVARADO: You want me do it?

25 MR. KELLY: I will do it, he's already on the way,

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1 Mr. Roberto Abreu Perez.

2 MR. ALVARADO: The defense recalls Mr. Roberto  
3 Abreu Perez for my continued cross-examination.

4 THE COURT: Counsel, you may inquire.

5 MR. ALVARADO: Thank you, Judge.

6 CONTINUED CROSS-EXAMINATION

7 BY MR. ALVARADO:

8 Q Good afternoon, Mr. Abreu Perez.

9 A Good afternoon.

10 Q I just want to remind you of the instructions you had  
11 this morning, you know it's important you be completely as  
12 accurate as possible in terms of what happened with your  
13 treatment; correct?

14 A Okay.

15 Q Do you have anything to change on your direct  
16 examination, now I'm giving you that opportunity before I start  
17 to question.

18 A No, the only thing is I have always told the truth.

19 Q Okay.

20 A Okay, good.

21 Q I want to go back, I just want to go back to when you  
22 had your accident; okay?

23 A Okay.

24 Q If I'm incorrect in what you said, please tell me;  
25 okay?

1 A Okay.

2 Q You said, you testified on direct examination you fell  
3 from a 20-foot ladder; right?

4 MR. KELLY: I believe, I believe he said a 15-foot  
5 ladder, I will read it back.

6 Q You testified you fell from a 15 foot?

7 A I fell from what I fell to the floor, there were  
8 15 feet, and the ladder where I fell, it had 20 feet, it was  
9 20 feet high.

10 Q I was correct you testified you fell from a 20-feet  
11 ladder?

12 A Yeah, but you said I fell from 20 feet, which is  
13 different falling from a ladder of 20-feet high.

14 Q I'm not trying to trick you here, I just asked you, I  
15 asked you if you fell from a 20-feet ladder, that's all I asked  
16 you; yes or no?

17 A The ladder was 20 feet, was 20 feet high.

18 Q You testified on direct examination that the ladder  
19 went to the right -- I have the interpreter, so I will go  
20 slow -- and then you went to the left?

21 A No.

22 Q How did it go?

23 A The ladder rolled to the left and I fell to the right.

24 Q Okay. And then you fell on top of the wall that was  
25 six feet below you, you fell first on the wall that was six feet

1 below?

2 A From where I was, I fell to a wall that was built at  
3 six feet, there I bounced, and then I'm falling, I manage to  
4 hold on, but I remain hanging, the wall was some eight or nine  
5 feet tall, then I remain some four feet from the floor, but a  
6 height to the floor from where I was, it was 15 feet.

7 Q Okay, do you remember those instructions I gave you  
8 earlier today, where I get to ask you questions, leading  
9 questions and the answer calls for a yes or no.

10 A But I say, I respect everything that you tell to me,  
11 but the jury and everybody present here, they need an  
12 explanation in order to understand.

13 Q Can you not answer any of my questions in a yes-or-no  
14 fashion? If you can't, I will tell the judge to tell you to  
15 answer it in a yes or no.

16 MR. KELLY: Objection.

17 THE COURT: Overruled.

18 A Okay.

19 THE COURT: So, remember Mr. Abreu Perez, your  
20 attorney will have a chance to ask you any questions if  
21 something needs to be clarified.

22 THE WITNESS: Okay.

23 Q Let's pick up where I was asking you questions, I want  
24 to be very clear with you, and I want you to be very clear with  
25 the jury; okay?

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1 A Me also I would like everything to get clarified.

2 Q Just yes or no, though; okay?

3 A Okay.

4 Q Isn't it true you fell from a 20-foot ladder; yes or  
5 no?

6 A Yes.

7 Q Isn't it true that the ladder fell to the left and you  
8 went to the right?

9 A Correct.

10 Q Didn't you testify on direct examination that you fell  
11 on to a wall that was six-feet high?

12 A No, I fell from six feet.

13 Q Yes.

14 A Which is different.

15 Q Yes, you fell six feet onto another wall; yes?

16 A I fell from a 15 height to a wall which was at a  
17 distance of six feet down.

18 Q Okay. Did you testify on direct, just yes or no, I  
19 want to be very clear, that you fell from this ladder six feet  
20 to that wall?

21 A Yes.

22 Q Okay, then you tried to grab on with your right hand to  
23 that wall; yes?

24 A Yes.

25 Q And then you couldn't hold on, and your workers

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1 couldn't hold onto you, and then you fell to the pavement below;  
2 correct?

3 A No.

4 Q Did you fall to the pavement below?

5 A No, I held on, I fell down not that I could not hold  
6 on, I held on the wall, and one of my co-workers, one of my  
7 co-workers came and he grabbed me by my feet underneath, he  
8 couldn't bear my weight and then I fell backwards.

9 Q So I'm glad you clarified, a worker came, grabbed your  
10 legs, and then you landed on your feet and you fell backwards,  
11 your back hit the pavement below; correct?

12 A Correct.

13 Q Has that always been your story?

14 MR. KELLY: Objection to the form of the question,  
15 "has been your story".

16 THE COURT: You can rephrase, counsel.

17 Q That is, that always been the story that you have said  
18 about how your accident occurred?

19 MR. KELLY: Same objection, same words, he's just  
20 putting them in a different order.

21 MR. ALVARADO: The Judge said rephrase it.

22 THE COURT: Overruled.

23 A I believe this is what I would say.

24 Q Well, we clarified this morning, you were deposed in  
25 this matter; right?

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1 A Yes.

2 Q He swore to tell the truth?

3 A Yes, and I've said it.

4 Q And just like you swore to tell the truth today before  
5 this jury?

6 A Yes.

7 MR. ALVARADO: Judge, the deposition I'm going to  
8 refer to is September 14, 2020, your Honor, can tell me to  
9 read it when you're there.

10 THE COURT: Page and line.

11 MR. ALVARADO: I'm going to start page 128, Judge,  
12 I'm going to start at line 15, and I'm going to work my way,  
13 Judge, and I will go page and line to page 132, line five,  
14 your Honor.

15 THE COURT: Okay.

16 MR. ALVARADO: I will proceed slowly because we  
17 have an interpreter, and I want Mr. Abreu Perez to hear the  
18 testimony that he gave in this matter carefully.

19 MR. KELLY: So I'm going to object here, because  
20 one of them concerns the mechanism of the happening of the  
21 accident which is a collateral attack on the finding of  
22 liability against this Defendant, concerns a slippery floor,  
23 it has nothing to do with the damages portion of the case.

24 THE COURT: Counsel.

25 MR. ALVARADO: I will eliminate those first couple

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1 of questions.

2 THE COURT: Go down lower.

3 MR. ALVARADO: I was trying to give some context, I  
4 was not trying to do anything, Judge, you have the  
5 testimony, I'm going to ask you if I can start at -- you  
6 want to start at --

7 MR. KELLY: Line 24.

8 MR. ALVARADO: Line 24, Mr. Kelly just pointed out  
9 the same page, Judge, page 128.

10 Q Mr. Abreu Perez, I'm going to read from your deposition  
11 transcript, and I want you to listen carefully because when I'm  
12 done, I'm going to ask you some questions about that; okay?

13 A Okay.

14 MR. KELLY: I hate the way you do it, did you give  
15 these answers to these questions, there's formal way to do  
16 it.

17 THE COURT: I don't think he got there, yet, so,  
18 counsel.

19 MR. ALVARADO: I can do it now or I can do it  
20 later. You want me to do it this way, I will do it this  
21 way, Mr. Kelly, I thought we were getting alone.

22 MR. KELLY: You're right.

23 Q Mr. Abreu Perez, were you asked these questions at your  
24 deposition of September 14, 2020, and did you give these answers  
25 which I'm about to read --

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1                   THE COURT: One moment, one moment, one moment,  
2 there's no question before you.

3                   MR. ALVARADO: This is why I didn't do it this way.

4                   Q     Line 24:

5                   "QUESTION: Did your body come in contact with  
6 anything before it hit the ground?"

7                   I'm up to page 129, line two:

8                   "Correct."

9                   QUESTION: Line three:

10                  "No. Did your body come in contact with something  
11 before or so -- I will rephrase the question.

12                  What did your body come in contact with before it  
13 ultimately came to rest on the ground?"

14                  ANSWER: Line nine, Judge:

15                  "On a wall, I fell on top of a seven foot wall."

16                  THE INTERPRETER: Interpreter needs the answer to  
17 the question.

18                  Q     (Continuing:)

19                  "QUESTION: Which portion of your body came in  
20 contact with the wall?

21                  ANSWER: My right side, my stomach with the ribs."

22                  Just the way I said it.

23                  "QUESTION: Did your head at any time?" There's a  
24 word missing.

25                  "ANSWER: No.

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1                   QUESTION: What position was your body when you  
2                   came to rest on the ground?

3                   ANSWER: I never landed, no.

4                   QUESTION: Where did your body ultimately come to a  
5                   rest?

6                   ANSWER: Well, once I fell on these walls, I kept  
7                   falling, I was able to grab on with my arm and I held myself  
8                   there until my co-workers arrived and brought me down, and  
9                   that's how I injured my neck."

10                  MR. KELLY: It's his "back".

11                  MR. ALVARADO: Question --

12                  MR. KELLY: Hold on, it's his back, not neck.

13                  THE COURT: Counsel, one moment.

14                  Q        "My back," I stand corrected, I need different glasses.

15                  "QUESTION: How did your co-workers assist you  
16                   getting down?

17                  ANSWER: Well, Charlie was above and he saw it, and  
18                   he like jumped down to get -- to go to get me, and then with  
19                   the other ones, that were already down there, they helped.

20                  QUESTION: Okay, so Charlie was able to jump from  
21                   the ceiling to the top of the wall area or something else?

22                  ANSWER: He jumped to the floor, to the floor.

23                  QUESTION: From the ceiling?

24                  ANSWER: Yes, correct.

25                  QUESTION: When you body came ultimately to a rest

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1 after falling from the ladder, you were on top of the seven  
2 foot wall?

3 ANSWER: I fell on the wall, yes."

4 Going now to page 131, Judge, line 20:

5 "QUESTION: How long did you remain on that  
6 ten-foot wall before Charlie came to your assistance?"

7 MR. KELLY: What line?

8 MR. ALVARADO: Line, 20.

9 QUESTION: Page 131, line 20:

10 "How long did you remain on the seven-feet wall  
11 before Charlie came to your assistance?

12 ANSWER: A minute, a minute and a half until he  
13 came down."

14 Line 25:

15 "QUESTION: Okay, what happened next after that?

16 Page 132 line three:

17 "ANSWER: They brought me down, then they called  
18 the ambulance, and they took me to the hospital."

19 Were you asked those questions and did you give  
20 those answers?

21 A I don't remember, I don't remember, because I gave the  
22 answers that I believe they were, but I don't know what they  
23 wrote over there.

24 Q Was your memory better back in 2020 than it is now?

25 A I feel it's the same, but there are things that, that I

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1 don't remember, but yes, I said the truth and this is the truth.

2 Q I didn't ask you yet what was the truth.

3 I asked you one simple question, was your memory better  
4 back in 2020?

5 MR. KELLY: Objection to do this, Judge, there has  
6 to be something inconsistent. There's nothing inconsistent  
7 with what he read to what he testified to.

8 THE COURT: Overruled.

9 Q Was your memory better in 2020 than it is now?

10 A It is the same thing, same thing.

11 Q Were you asked whether your body, any parts of your  
12 body came in contact with the ground and you said no, was that  
13 truthful then?

14 THE INTERPRETER: Contact with what, I lost that  
15 part. I'm sorry.

16 (Whereupon, the Court Reporter read back the  
17 answer.)

18 A I said, I said whatever they, about whatever they asked  
19 me, but I don't know whatever they wrote.

20 Q And I'm going to keep asking you to simply answer yes  
21 or no. If you can't, just say it, I can't say yes or no. Put  
22 it on me.

23 A I don't remember, I do not remember, but I know and,  
24 but you I do know.

25 THE COURT: One moment, one moment, sir. If you

Roberto Abreu Perez - Plaintiff - Cross/Mr. Alvarado

1 don't remember, say you don't remember. If any  
2 clarification is required, your attorney will address it.

3 Counsel, you may continue.

4 Q Isn't it a fact they helped you down from that wall and  
5 they brought you down and then they called an ambulance; just a  
6 yes or no?

7 A Yes, they helped me, they did help me, they tell me to  
8 hold on, but not to come down.

**9** Q Still going yes or no; okay?

10 A Okay.

11 Q So the ambulance arrived; right?

12 A It was called after 20 minutes, yes.

13 Q I understand, sometimes ambulances don't arrive quickly  
14 I get it.

15 You said on direct examination you were placed on a  
16 stretcher; correct?

17 A I do not remember.

18 Q And that you don't remember what was asked of you and  
19 what you said?

## 20 A At what moment?

21 Q You couldn't remember what you told the ambulance  
22 personnel who treated you at the scene?

**23** THE INTERPRETER: For the ambulance personnel?

**24** MR. ALVARADO: At the scene.

25 A I don't remember, because in the state I was, I do not

1 remember anything.

2 Q Okay, just yes or no, do you remember telling them how  
3 your accident happened, how far you fell; yes or no?

4 A If I told them, I do not remember.

5 Q Brian, can you put up the EMS report?

6 MR. FRITTOLO: That's Plaintiff's 1.

7 MR. ALVARADO: Judge, I'm referring to the exhibit,  
8 EMS, Plaintiff's Exhibit 1, okay, I placed it before the  
9 jury, I placed before Mr. Abreu Perez.

10 Okay, Brian, can you please lift the sheet so the  
11 bottom is seen.

12 Q Where is the next page where it talks about -- thank  
13 you very much.

14 THE COURT: For the record, the document is two  
15 pages, the first page was shown to the witness and the jury,  
16 the second page is now on the screen.

17 MR. ALVARADO: Actually, I have one correction, the  
18 EMS form may be two pages, it's part of the Exhibit 1 or  
19 part of New York Presbyterian records, I don't know, how  
20 many patients if you want to count, it's a few inches thick.

21 Q Mr. Abreu Perez, I'm going to refer you to, and I'm  
22 going to ask the interpreter to interpret as well.

23 It says, "44-year-old male laying supine on a board" --  
24 right -- "he states he walked fell from a ladder at work from  
25 approximately six-feet high hitting his stomach and right side

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1 against equipment finally landing on his side on the floor."

2 Do you recall giving that information to the  
3 paramedics?

4 A If I gave it at that time, I do not remember.

5 THE COURT: One moment, one moment, that's the  
6 answer.

7 Q Again, I remind you of the instructions; okay.

8 You did speak to the paramedics, does that refresh your  
9 memory that you spoke to them?

10 A I do not remember.

11 Q Then you were transported to New York Presbyterian  
12 Hospital?

13 A They took me there, yes.

14 Q And you were able to communicate with the doctors;  
15 right?

16 A I do not remember that I could communicate with them  
17 either.

18 Q Mr. -- again Mr. Abreu Perez, you were deposed in this  
19 matter over several days; correct?

20 A Yes.

21 Q And part, it was my partner, Mr. Frittola who  
22 questioned you, correct?

23 A Correct.

24 Q I'm not going to ask you again, for each deposition you  
25 were given an interpreter like you have today?

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1 A Yes, they put it to me.

2 Q I'm not going to ask you again for each deposition you  
3 were represented by Mr. Kelly, I don't know if it was somebody  
4 else, I can tell you who represented, but you were represented  
5 by counsel?

6 A At what time?

7 Q September 14, 2020, you were represented by Chris  
8 Vargas from Mr. Gorayeb's office?

9 A Yes.

10 Q By the way, before the accident you never knew  
11 Mr. Gorayeb; correct?

12 A No.

13 Q Did you meet someone from Mr. Gorayeb's office or an  
14 attorney when you were at New York Presbyterian Hospital? I  
15 remind you, you're under oath.

16 MR. KELLY: Objection, to his comment. I move to  
17 strike it.

18 THE COURT: Overruled.

19 THE INTERPRETER: Can I have repetition of the  
20 question, please, for the interpreter, thank you.

21 THE COURT: Madam Reporter, read the question back.

22 (Whereupon, the record was read back by the  
23 reporter.)

24 A Who is Mr. Gotler (sic.)?

25 Q Gorayeb.

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1 A No.

2 Q Did you speak to anyone on behalf of an attorney in  
3 this matter while you were at New York Presbyterian?

4 MR. KELLY: I'm sorry, I didn't hear the question.

5 Q Did you speak to anyone on behalf of an attorney when  
6 you were at New York Presbyterian Hospital?

7 A No.

8 Q When did you first speak with any attorney in  
9 connection with the injuries you claimed you sustained as a  
10 result of this accident?

11 A After I was released from Presbyterian, that supposedly  
12 I did not have any injuries. When I don't bear anymore, the  
13 pain, after I'm at home, I need to call another ambulance  
14 because I couldn't bear the pain, and I'm taken to hospital,  
15 Harlem Hospital where I'm done all of the studies and they gave  
16 me my medicines, and there it resulted that I had two broken  
17 ribs.

18 Q Are you done?

19 A Not yet.

20 Q You want to keep going?

21 A Yes.

22 Q Keep going.

23 A Then from there on, I was given treatment, I was sent  
24 home, and I was at home for some two weeks there.

25 THE COURT: One moment, one moment, the question

1 Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

2 was, when did you speak to an attorney about this case,  
3 when?

4 MR. ALVARADO: Thank you, your Honor.

5 Q That was my question, I let you talk, but please,  
6 please, I'm asking nicely, just follow my questions.

7 When did you first consult an attorney in connection  
8 with the injuries you claimed you sustained as a result of this  
9 accident?

10 A A month after, one or two days more than one month.

11 Q So if you're telling us, and telling this jury that  
12 this accident occurred on June 27th of 2017, you first consulted  
13 an attorney to represent you in connection with this accident  
14 more or less July of 2017; is that correct?

15 A In July, I know it was in July, on the 27th, I do not  
16 remember very well, but it was around there.

17 Q It was around there?

18 A Yes.

19 Q Let's go back to New York Presbyterian.

20 Isn't it true that you were able to communicate with  
21 the staff in Spanish?

22 A No, no, because the people who took me in the  
23 ambulance, okay.

24 Q Is that no, you didn't speak in Spanish to the doctors  
25 and staff at the hospital?

26 A If they put someone who spoke Spanish, I do not

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1 remember at that time.

2 Q Again, I'm going to read some questions to you and some  
3 answers, after I'm done, I'm going to come back and ask you,  
4 were you asked those questions and did you give those answers;  
5 okay?

6 A Okay.

7 MR. ALVARADO: Judge, do you have the transcript  
8 opened to September 14, 2020?

9 THE COURT: Yes.

10 MR. ALVARADO: Page 134, line 15, Judge.

11 THE COURT: Yes, you can proceed.

12 Q (Continuing:)

13 "QUESTION: What hospital were you taken to from  
14 the accident scene?

15 ANSWER: Presbyterian.

16 QUESTION: Did anyone accompany you in the  
17 ambulance as went to the ER?

18 ANSWER: Only the paramedics.

19 QUESTION: Did you have any issues communicating  
20 with the hospital staff when you got there?

21 ANSWER: I did not have any communications at any  
22 moment.

23 QUESTION: Were you able to speak in Spanish with a  
24 medical professional at Presbyterian at any time?

25 ANSWER: They asked me where it hurt, and I told

1 them.

2                   QUESTION: Was that conversation in English or  
3 Spanish?

4                   ANSWER: Spanish."

5                   Were you asked those questions and did you give  
6 those answers?

7                   A I do not remember.

8                   Q Was your memory better back in 2020 than it is now if  
9 you don't remember now?

10                  A The thing, I cannot remember, I cannot say a lie,  
11 because I don't remember.

12                  Q Forgive me, I understand.

13                  Was your memory better back in 2020 than it is now,  
14 regarding this accident?

15                  A Same.

16                  Q It's the same?

17                  A To me it's the same because I feel the same.

18                  Q Okay, so if you don't remember now, you're saying you  
19 didn't remember when you gave this deposition testimony?

20                  A If I did, I do not remember right now.

21                  Q That's the answers that you gave there 2020, would you  
22 agree with me they were truthful and honest then?

23                  A I am sure they were the truth, if I said them, but if I  
24 wrote them?

25                  Q I didn't ask you if you wrote them.

1           I asked you if you gave those answers. Again, listen  
2 to my questions.

3       A    I am listening, thank you.

4       Q    I want you to tell the jury, did you ever change that  
5 testimony from any time from 2020 to 2026, did you ever change  
6 that testimony?

7       A    That I know I said are the same.

8       Q    You've never changed testimony?

9                    MR. KELLY: Objection, argumentative.

10               THE COURT: Overruled.

11       Q    Did you ever correct your deposition testimony, please  
12 tell this jury?

13       A    I've always told the same.

14       Q    The answer is you didn't change the testimony?

15       A    That I know of no.

16       Q    Brian, put up the Columbia-Presbyterian.

17               Now, you told Mr. Kelly, your attorney, on direct  
18 examination that you were feeling pain.

19               I want to be very clear with you again, neck, back,  
20 arms, elbows, even your legs at the scene after you fell, you  
21 said that?

22       A    I've always told that.

23       Q    When you went to New York Presbyterian, Mr. Perez, I  
24 mean the doctors and the nurses asked you hey, what happened,  
25 what hurts?

1       A     I only know they would perform all of the studies where  
2 I was, they gave me medicine, that's all I remember.

3       Q     I understand that, but they asked you how were you  
4 feeling, how did the accident occur, and where were you feeling  
5 pain?

6       A     As I said, if I told them, I do not remember.

7       Q     I want you to tell this jury, was that the first time  
8 you were ever in a hospital; just yes or no?

9       A     What do you mean?

10      Q     Was that the first time you were ever examined in a  
11 hospital; yes or no?

12      A     By accident, yes, but I went to Harlem to have  
13 checkups, for sugar -- for my blood sugar, for blood pressure  
14 only.

15      Q     I'm going to ask you one favor, because you've done it  
16 multiple times, you keep looking over my right shoulder, I want  
17 you to look this way.

18            MR. KELLY: Objection, he can look whatever he  
19 wants, Judge.

20            MR. ALVARADO: I don't want any signals given.

21            MR. KELLY: Objection, I move to strike that.

22            That's absolutely outrageous. I'm looking at the ceiling,  
23 for the Christ's sake.

24            MR. ALVARADO: I'm not saying you Mr. Kelly, I want  
25 to be quite clear.

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1 MR. KELLY: I resent the implication.

2 MR. ALVARADO: I'm not talking about you,

3 Mr. Kelly.

4 THE COURT: It's not for you.

5 MR. ALVARADO: Judge, give me a couple, two more.

6 Q You were seen at Harlem Hospital -- is something funny?

7 MR. KELLY: What?

8 A No, but I'm looking -- the -- it's funny, because I'm  
9 not looking anywhere, I'm just looking that way.

10 Q You were seen in Harlem Hospital before; right?

11 A For my blood sugar, my high blood pressure and  
12 cholesterol.

13 Q So it wasn't the first time that doctors and nurses  
14 were asking you hey, how are you feeling, tell me what pains you  
15 have, and you injured yourself?

16 THE INTERPRETER: For the interpreter?

17 Q Have you injured yourself, were you injured?

18 A At that time I didn't go for any injury, I just went  
19 for that, they didn't have to ask me about anything because, I  
20 didn't have any injury.

21 Q Let me finish with this, we have to go.

22 Now that I show you this entry from New York  
23 Presbyterian, it's not only one, but we have to go.

24 Didn't you tell the doctors that you were not having  
25 any neck pain, any back pain any chest pain as a result of this

1 accident?

2 A Repeat again.

3 THE COURT: Madam Reporter.

4 (Whereupon, the question was read back by the  
5 reporter.)

6 A At Harlem Hospital?

7 Q At New York Presbyterian, that's right before you.

8 THE INTERPRETER: Sorry.

9 Q That's the entry right before you.

10 A This is from when?

11 Q June 27, 2017, so he understands Miss Interpreter  
12 please, it starts where it says "denies, denies," it should be  
13 there, you can see it on your screen?

14 COURT OFFICER: (Indicating.)

15 MR. ALVARADO: Thank you, Brian.

16 A I do not remember, I do not remember.

17 Q Are you saying that entry is a lie?

18 MR. KELLY: Objection.

19 THE COURT: Rephrase, question.

20 A I don't remember, which is different, I'm not saying,  
21 I'm not telling lies, I do not remember.

22 Q Is it fair to say that if the doctors and nurses took  
23 that down from you, that that was accurate when they wrote it?

24 MR. KELLY: Objection.

25 THE COURT: Overruled.

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1 A That was after I was released.

2 Q That was when you were in the hospital after the  
3 accident.

4 THE INTERPRETER: At the hospital?

5 MR. ALVARADO: After your accident.

6 A If I said that, that was because I was under the effect  
7 of the injection I was given. As I told you, I went home, and I  
8 wasn't feeling anything and after the anesthesia wore off, all  
9 of the pain start back up again.

10 Q This is my last question.

11 Are you telling this jury and there's more than one  
12 entry on this page, that if you denied all of that, it was  
13 because you were under some anesthesia; is that correct?

14 MR. KELLY: Objection, he answered with an answer,  
15 he can't rephrase it.

16 THE COURT: Overruled.

17 A Repeat that? Well, yes, yes.

18 Q So you were under anesthesia when you gave those  
19 answers?

20 MR. KELLY: Same objection.

21 THE COURT: Overruled.

22 Q I'm over here.

23 A May I answer?

24 Q Yes.

25 A I do not remember, that I was under that effect when

Roberto Abreu Perez- Plaintiff - Cross/Mr. Alvarado

1 I -- when I said about those effects that I -- check the time,  
2 about the record, about that entry if that was or not the time  
3 when I was released.

4 Q It's great that you asked that question, because right  
5 above it, it says "June 27th", the time is 1657, which is  
6 military time; do you know what time that was?

7 A No.

8 Q 4:57 in the afternoon.

9 You were just brought in, that's it.

10 A That can be, that can be happening. As soon as arrive  
11 there, I arrive there, I was in a state that I could not even  
12 breathe, I couldn't have said that nothing was hurting.

13 Q So the doctors lied?

14 MR. KELLY: Objection.

15 THE COURT: One moment.

16 A I don't know, I haven't said, I haven't said that.

17 Q We will start next week with the hospital.

18 THE COURT: Alright. No further questions for  
19 today. We're going to end today.

20 As a reminder, we're going to return on Tuesday at  
21 10 a.m., I want to thank the jurors for their patience, and  
22 commitment to this case, and remind you to be available, and  
23 present throughout the trial. Thank you.

24 Alright, have a good weekend.

25 (Pause in the proceedings.)

## Proceedings

1                   COURT OFFICER: All rise, jury exiting.

2                   (Whereupon, the jury exited the courtroom.)

3                   (Whereupon, the trial was adjourned to Tuesday,

4                   January 27, 2026 at 10 a.m.)

5                   \*\*\*\*\*

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

7                   *Laura Delvac*

8                   LAURA DELVAC  
SENIOR COURT REPORTER

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