

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CIVIL TERM: PART 113
3 - - - - -X
4 :
5 ROBERTO ABREU PEREZ, :
6 :
7 PLAINTIFF, :
8 : INDEX NUMBER:
9 -against- : 515104/2017
10 :
11 176 EAST 116 LLC, and LUXURY HOME :
12 IMPROVEMENT CORP., : Trial
13 DEFENDANTS. :
14 -----X
15 176 EAST 116 LLC, :
16 :
17 THIRD-PARTY PLAINTIFF, :
18 -against- :
19 :
20 178 JJH, Inc., :
21 :
22 THIRD-PARTY DEFENDANT. :
23 - - - - -X
24 :
25 Supreme Court
360 Adams Street
Brooklyn, New York 11201
January 27, 2026
B E F O R E :
HONORABLE LISA LEWIS,
Justice of the Supreme Court
A P P E A R A N C E S :
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BY: FRANK KELLY, ESQ.
(Appearances Continued on Next Page.)

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

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LAURA DELVAC
SENIOR COURT REPORTER

* * * *

THE COURT: Before we get started, when we are here
on Friday, there is a juror that indicated they had a
meeting between 12:00 and 1:00, they have to go to, so I

Proceedings

1 want to make sure I did mention it on Friday, and everyone
2 thought we would be good, we were okay for scheduling
3 purposes, but I want to make sure there are there are no
4 issues have come up.

5 MR. KELLY: We should be fine.

6 (Pause in the proceedings.)

7 COURT OFFICER: All rise, jury entering.

8 (Whereupon, the jury entered the courtroom.)

9 THE COURT: Everyone you can have a seat, good
10 morning.

11 THE CLERK: This a case on trial of Roberto Abreu
12 Perez versus 176 East 116th Street, LLC, and a third-party
13 action, 176 East 116th Street, LLC against Third-Party
14 Defendant, 178 JJH, Inc., Index Number 515104 of 2017.

15 Counselor, please state your appearance for the
16 record indicating who you represent?

17 MR. KELLY: Frank Kelly for the Plaintiff.

18 MR. ALVARADO: Alfredo Alvarado Lester, Schwab,
19 Katz & Dwyer for Defendant/Third-Party Plaintiff, 176 East
20 116th Street, LLC.

21 MR. FRITTOLA: Good morning, everyone, Michael
22 Frittola, Lester, Schwab, Katz & Dwyer, for
23 Defendant/Third-Party Plaintiff, 176 East 116th Street, LLC.

24 MR. RAMIN: Good morning, your Honor, Farzad Ramin,
25 Ramin Song, LLC, 178 JJH, Inc.

Dr. Spivak - Deft/Third-Party Plf- Direct/Mr. Alvarado

1 THE COURT: Thank you. Counsel, you can call the
2 witness to the stand.

3 MR. KELLY: Doctor, if you instruct them it's an
4 out of order witness, this is a defense witness.

5 THE COURT: Okay.

6 MR. ALVARADO: I was going to say if you can give
7 the instruction, do you want me to tell you who I'm calling
8 first?

9 THE COURT: Yes.

10 MR. ALVARADO: The Defendant/Third-Party Plaintiff
11 calls Dr. Jeffrey Spivak, he's outside.

12 THE COURT: Members of the jury, as I indicated
13 during the opening instructions, there are times when
14 witnesses will be called out of order, and this is done for
15 the Court's convenience, it does not reflect on either of
16 the parties or any matter in the case.

17 MR. ALVARADO: He's outside.

18 THE COURT: The officer is going to get him.

19 (Whereupon, Dr. Jeffrey Spivak took the witness
20 stand.)

21 THE CLERK: Raise your right hand. Do you swear or
22 affirm that the testimony that you're about to give will be
23 the truth, the whole truth and nothing but the truth.

24 THE WITNESS: Yes, yes, I do.

25 THE CLERK: In a loud clear voice, please state

Dr. Spivak - Deft/Third-Party Plf- Direct/Mr. Alvarado

1 your name and address for the record?

2 THE WITNESS: Jeffrey Michael Spivak.

3 THE CLERK: Your address?

4 THE WITNESS: NYU Langone Orthopedic Hospital, 301
5 East 17th Street New York, New York 10003.

6 THE CLERK: Thank you, you may be seated.

7 THE COURT: Doctor, make sure you keep your voice
8 up. If, if you don't understand the question, ask for it to
9 be repeated or for clarification.

10 THE WITNESS: Absolutely.

11 THE COURT: Counsel, you may inquire.

12 MR. ALVARADO: Thank you, Judge.

13 DIRECT EXAMINATION BY

14 MR. ALVARADO:

15 Q Dr. Spivak, good morning.

16 A Good morning.

17 Q Could you please give the jury some information about
18 your educational background, we will start there and go from
19 from?

20 A Sure I am an orthopedic surgeon, specializing in spine
21 surgery, I can go back to my bachelor's and master's degrees,
22 which was in neuroscience both obtained in four years at
23 Massachusetts Institute of Technology. After that, I went to
24 medical school at Cornell Medical College which is on the East
25 Side of Manhattan, not in Ithaca.

1 Following that, I did my residency training and, well,
2 my internship was at Mount Sinai in general surgery, and then
3 residency training was in orthopedic surgery, and what was then
4 the Hospital For Joint Diseases, now it's combined with NYU,
5 part of the NYU Langone Orthopedic Hospital or orthopedic
6 department.

7 Following that I did a fellowship in spinal surgery --
8 I'm sorry, let me backtrack, during that I did an extra year of
9 a bioengineering fellowship and postponed my residency back one
10 year in between after I started my residency training.

11 After completing residency in orthopedics, I did an
12 fellowship in spinal surgery, it's spinal disease at Thomas
13 Jefferson University in Philadelphia. Ever since then I have
14 been back at the Hospital For Joints Diseases and now NYU
15 Orthopedics, practicing spinal surgery.

16 Q Doctor, are you licensed to practice medicine?

17 A Yes.

18 Q What states?

19 A Licensed to practice medicine in New York and I have a
20 telemedicine license in Florida, as well.

21 Q Are you certified, board certified in any area of
22 specialty?

23 A Yes, in orthopedic surgery.

24 Q Could you explain to the jury, what it means to be
25 board certified?

1 A To be board certified, you have to go through a process
2 it may be different for different boards and different
3 specialities in medicine, orthopedics, it's taking a written
4 exam. Again, upon graduation from residency, then after that,
5 and two years of being in practice, you do an oral exam, and you
6 do that in Chicago, with examiners specifically, either doing
7 general orthopedics or if you're a specialist like myself, your
8 examiners were spine surgeons and passing the oral board at that
9 point gets you board certified.

10 Q Do you have any academic appointments?

11 A Yes.

12 Q Where?

13 A At NYU Medical Center, I'm the Director of Spine and
14 Orthopedic Spinal Surgery for Innovation and Technology.

15 Q Have you received any awards or honors?

16 A Yes, I have.

17 Q Could you please tell the jury some that you've
18 received?

19 A Just he over the years I received a number of honors,
20 probably the one I'm most -- it's called a Hibbs award, it's a
21 spine award from the Scoliosis Research Society, about specific
22 research done regarding the spine.

23 Q Doctor, how long, how long have you practiced medicine
24 in the State of New York?

25 A I'm in my 33rd year right now in practice.

1 Q Is that 33 years also in private practice or is that
2 something else?

3 A It's always been through the NYU Hospital for Joint
4 Diseases, there was, sort of initially a private practice
5 modeled but joined the faculty group practice there, thinking
6 about 12 years ago.

7 Q Have you authored any articles, before you give us a
8 laundry list, let's try to focus on trauma to the cervical spine
9 and lumbar spine.

10 If you want to give the jury some other articles that
11 are relevant, that's fine too?

12 A Not specific, my CV has 60 original reports and
13 original articles of research, many of which relate to the
14 cervical and lumbar spine with regard to traumatic injury, also
15 done, I think about 20 review articles that are seated in cited
16 in two books and 20 book chapters as well, all regarding the
17 spine.

18 Q Are you familiar with spinal fusions?

19 A Yes, I am.

20 Q Have you written anything in that on that lecture or
21 actually performed any of that them?

22 A That's a good buck of my practice, as it would be any
23 part of spinal surgeon's practice, as well lectured on it,
24 aspects of it, and done research papers as well.

25 Q Are there any other spinal surgeries I haven't asked

1 you about that you performed or no?

2 A I perform spinal surgeries on adults, I don't operate
3 on children ten and under, it's a combination of degenerative
4 problems or traumatic problems or posttraumatic problems, most
5 commonly, a spattering, there are other reasons we operate on
6 the spine for deformity, for scoliosis and also for infections
7 in the spine or tumors in the spine, but those are much less
8 common.

9 Q Are you able to tell the jury, how many spinal
10 surgeries you performed as a doctor, I guess in your 33 years of
11 practice?

12 A I have never counted them all up but over the 33 three
13 years, it's probably amounts to more than 5,000 surgeries,
14 certainly.

15 MR. ALVARADO: Your Honor, at this time I would
16 offer Dr. Spivak as an expert in spinal medicine and
17 surgery.

18 MR. KELLY: No objection.

19 THE COURT: Dr. Spivak is admitted as an expert in
20 spinal surgery.

21 Q Doctor, have you ever been precluded testifying as an
22 expert?

23 A No.

24 Q If you weren't here today with us today, and you
25 weren't shoveling snow like the rest of us, where would you be?

1 A Plenty of shoveling snow over the last few days,
2 Tuesday a typical day is a patient day or operative day, it's a
3 swing day in my week to do a variety of different things, but
4 those are the two main things I would be doing.

5 Q Are you testifying today for us for free?

6 A No, I'm compensated.

7 Q What is your compensation for today's testimony?

8 A \$20,000.

9 Q Doctor, let's talk about just your history with me.
10 Have you testified for me in any one of my cases?

11 A Not that I can recall, no.

12 Q Have you ever testified for my law firm Lester, Schwab,
13 Katz & Dwyer?

14 A It's certainly possible I have, I don't keep a record
15 of who I testify or what firm has hired me for testimony, I do
16 have a copy, a list of all testimonies I've done in the last
17 dozen years or so, it amounts to one a year, I don't know what
18 firm I'm representing.

19 Q Okay, if I asked you to tell us your practice between,
20 let's hope I ask you the right way for firms that represent
21 injured victims versus firms that do defense work, can you tell
22 us the percentage?

23 A The independent exam work is that I do is really the
24 vast majority of the work that I do as an expert independent.

25 Typically, the way it would work is, if I had a patient

1 who was injured and I took care of them, I would be their expert
2 on the Plaintiff's side, but that leaves the insurance companies
3 and the defendants of lawsuits without specific experts, so when
4 you do independent work for that, you're generally doing work
5 for the defense.

6 Q Did there come a time, doctor, that you were retained
7 by my law firm, specifically in connection with the matter
8 involving Mr. Abreu Perez?

9 A Yes.

10 Q I want to clear up another thing, you and I before
11 today, how many times have we met?

12 A We met on a Zoom call on Sunday, and I believe you
13 recall having met me before, and I think we did prepare for one
14 other, in one other case, but never actually met.

15 Q Okay. I'm sorry, I'm not sure if I, do you remember
16 the date, more or less, again when you were retained by my law
17 firm in connection with this matter involving Mr. Abreu Perez?

18 A I don't know the date I was retained, I know the date I
19 first saw him and typically, it might be six or eight months
20 before that, that I was retained, I'm not sure in this specific
21 case.

22 Q In connection with your work in this matter, did you
23 prepare any narrative reports?

24 A Yes.

25 Q Did you bring those with you today?

1 A Yes.

2 Q I'm going to ask you just to pull them out, don't read
3 from them, okay, to the extent that you need to refer to them,
4 please refer to them, I don't want you guessing so the jury
5 understands, just tell us the dates of the three reports and
6 that's it?

7 A I saw Mr. Abreu Perez twice, one was on January 18,
8 2022, that was before he had had any spinal surgery.

9 Q Just tell us the dates of the three reports, I know
10 you're going to refer to them, let's make sure they know the
11 dates?

12 A That was the first.

13 Q Okay.

14 A The second one was on January 28, 2025, about a year
15 ago.

16 Q Okay.

17 A The third September 28, 2025.

18 Q Continue with your answer.

19 A All I was saying I saw him twice personally in person,
20 one was for an examination before his surgeries, and the more
21 recent one in January of 2025, was after his surgeries.

22 Q Was that important at least for purposes of your
23 opinions that you saw him before the surgery and after the
24 surgeries?

25 A It's helpful because seeing someone before the surgery

1 or planned surgery, let's me be able to assess things beforehand
2 to know whether I actually agree if I think someone needed or
3 would benefit from surgery or if that person I'm examining if
4 they were part of my practice of spinal surgery and medicine if
5 I would consider them surgical candidates or recommend surgery
6 for them, if I have seen them only after, then I don't have that
7 benefit.

8 Q Okay. I notice your voice is soft, I want to make sure
9 everyone can hear.

10 THE COURT: Doctor, you can bring, pull microphone
11 towards you.

12 THE WITNESS: I would love to move this unnecessary
13 screen away.

14 Q That's better, actually.

15 I'm going to start with your first report, and then we
16 will try to go in order. If you need to jump around, we will
17 jump around, I want to make sure the jury under your testimony;
18 okay?

19 A Sure.

20 Q When did you see Roberto Abreu Perez in connection with
21 this accident, this matter?

22 A The first examination was as I said, on January 18,
23 2022.

24 Q Doctor, before you examined him, and again, you can
25 refer to your report, did our office provide you with any

1 medical records, legal papers for you to review?

2 A Yes.

3 Q And you don't have to go in detail, just summarize,
4 please, for the jury, more or less, what we've provided you?

5 A There was some element of paperwork regarding the
6 initial ER visits, some records of care, and reports of various
7 MRIs, and scans of the spine, some treatment records from
8 physicians that have been taking care of him, like Dr. Grimm,
9 and Dr. Weinstein, and I believe, maybe not Dr. Kaplan
10 originally, but later I had records from him as well, as well as
11 reports as I said about imaging and electrodiagnostic studies
12 that were done as well.

13 Q Okay. When you saw him, "him" being Mr. Abreu Perez,
14 did he come accompanied with someone or by himself, according to
15 your report?

16 A He came accompanied by a gentleman from his law firm, I
17 believe, but he had a legal representative with him.

18 Q Okay. You were able to speak to him through an
19 interpreter?

20 A There was a third -- well, a fourth person there as
21 well, an interpreter from an interpreting service.

22 Q I should have asked you, how did you speak to him, did
23 you get a history from Mr. Abreu Perez?

24 A Yes, I did.

25 Q And just briefly summarize, what was the history you

1 obtained?

2 A He recorded a work incident, which occurred on June 27,
3 2017, and so that was four and a half years earlier, when he
4 reported falling from a ladder, he said he fell about 15 feet,
5 initially landing on to a seven-foot high wall and then falling
6 off that wall to the ground. He denied hitting his head, he
7 denied loss of consciousness at that time but reported the
8 immediate onset of both neck and lower back pain.

9 Q Can you keep that distance in your mind, the 15 feet,
10 I'm going to come back and ask you about that in terms of your
11 impressions and how it led to you formulating your opinions;
12 okay?

13 A Sure.

14 Q Keep that in mind, we will come back to that.

15 A Okay.

16 Q So what else did you, besides the history, did you
17 examine him at all or review records, which one do you want to
18 deal with first?

19 A Well, we examined him, certainly.

20 Q Okay.

21 A As the next step after discussing the various, the
22 inner aspects of the incident itself, and the treatment to date.

23 Q And do you want to give the jury a flavor of what your
24 examination was, your findings?

25 A Sure. He was alert and oriented walked with a normal

1 gait. First we watch somebody watch and see how they're moving,
2 after that, we check to see them from a variety of ways, looking
3 at their spine itself and then looking at the neurology that
4 comes from the spine, because everything you move, your arms and
5 legs, all comes from signals from your brain that pass through
6 your spine.

7 So examining the upper extremities gives us the ability
8 to assess the neurological or neurologic issues associated with
9 the neck or cervical spine, and the lower limbs, the legs allow
10 us a little more detail regarding neurology of both the upper as
11 well as the lower back, because the lower back has nothing to do
12 with the arms, but the neck or lower back could affect the legs.
13 So we're watching somebody walk, he had a normal gait, we're
14 watching to see how they bend, and bending, to bend your lower
15 back or bend your neck is a subjective thing so I can sit here
16 and just go like this, or I can sit here and really give it my
17 best effort, and so it's a bit effort dependent, it's a bit pain
18 dependent, it is not what we call an objective finding.

19 An objective finding on exam is something that's
20 measurable, I hit a reflex and it goes, that's an objective
21 finding, I measure the circumference of an arm or leg to compare
22 one side to the other to look for elements of atrophy or loss of
23 bulk, those are things that are objective, they can be compared,
24 a lot of the aspect of the exam are subjective, and by
25 "subjective," I mean they're under patient's control, I can give

1 you the best effort of pulling or I can kind of give up or have
2 pain associated with it, and there are reasons where something
3 may feel weak but not be true weakness on exam.

4 So the ability to move and the range of motion for the
5 neck or the low back pain is lower back is one of those
6 subjective findings, I digressed a little bit, I apologize.

7 Q Please.

8 A After we watch somebody walking and moving, we palpate
9 and feel if they're areas of tenderness, Mr. Abreu Perez, barely
10 touching, bearing putting a touching on him, complained of
11 significant pain. That's not something that's very typical or
12 anatomically mediated, it's not considered a true neurologic
13 finding, that type of hypersensitivity, although we see it
14 sometimes, it shouldn't be associated with a case like this,
15 where, where we're talking about potential disc injuries and as
16 we will talk about later, without significant pressure on the
17 nerves, in my opinion at least.

18 After we do that and palpate, we watch them move and
19 examining neurologically the arms and the legs in terms of the
20 sensation in various areas of arms and legs, the strength of all
21 of the muscles of the arms and legs and reflexes, which really
22 get a sense of whether there's any neurologic issues and in Mr.
23 Abreu Perez's examination that day, there were no neurologic
24 issues, I believe, let me review, he had limitation of that
25 range of motion we talked about, which is again, a subjective

1 finding, there was a normal contour to the neck and back, we
2 look for different areas of curvature that are supposed to be
3 there, and look for areas that respect, like scoliosis or
4 curving of the spine abnormality, we're measuring his
5 circumference of his arms and legs, looking for areas of atrophy
6 or weakness, there was none, and then we did that neurologic
7 exam, that I mentioned looking for areas of decreased strength,
8 decreased or abnormal sensation or abnormal asymmetric reflexes,
9 there was none of that, it was all normal.

10 Q Doctor, as part of your examination, now part of your
11 retention, did you also review some records that, and discussed
12 those reports in your initial report?

13 A Yes.

14 Q Again, I'm going to refer to records that you mentioned
15 in your report, they were marked here, for give me, I will go
16 back and forth, I need that thing, I will ask you some
17 questions, but when you refer to them, I may have to show the
18 jury over here, what I'm referring to; okay?

19 A Sure.

20 Q It will be a little bit awkward.

21 The first one I think you mentioned, was the records
22 from New York Presbyterian; right?

23 A Yes, Weill Cornell, yes.

24 Q Now, if you need to see the records, that's fine, just
25 tell the jury what you've found in terms of your review of the

1 records, briefly?

2 A Well, for the report, I only was able to review records
3 that were sent, which included the reports of the scans and
4 X-rays that had been done, he had had scans of the
5 cervical spine, and that was, and the thoracic spine, and that's
6 the neck part and the mid-back, the thoracic area where the ribs
7 are, and both of those CAT scan reports reported, quote, no
8 evidence of acute, either thoracic or cervical injury, so they
9 were normal with respect to any traumatic findings at that time.

10 There was some findings of the mid-back the thoracic
11 spine of reported degenerative disc disease or osteophytes or
12 bone spurs associated with that, obviously unrelated to any
13 incident occurring that same day.

14 Q Okay. As part -- are you done, doctor, I have a
15 question?

16 A Well, I also had a chance only briefly recently to
17 review, not for this report, but to review the written records
18 of that emergency room visit.

19 Q They're subpoenaed in the courtroom, Judge, they're
20 marked as Exhibit 1.

21 (Pause in the proceedings.)

22 Q I will put just a couple of slides up on the screen and
23 ask you about them.

24 A Sure.

25 Q Doctor, is your screen working?

1 A No, it's just blocking me from everyone else.

2 THE COURT: The screens for the jurors are working.

3 A I can turn, it's not problem.

4 Q But --

5 A Mine just went on.

6 Q Something is magic.

7 Now, doctor, in the -- in the New York Presbyterian
8 records, there's an EMS report.

9 What is your experience in terms of the EMS reports, do
10 they ask patients what's wrong with them, how the accident
11 happen; is that fair to say?

12 A Yes.

13 Q Brian, if you can bring that up, the one I have is
14 tagged, sorry, do you mind turning around?

15 A I have it on my screen. It's on his screen.

16 Q This is part of the EMS report?

17 A Yes.

18 Q Summarize for the jury, what exactly is going on here,
19 explain to the jury?

20 A In terms of the bottom paragraph, it describes the -- I
21 guess reported incident, that falling from a ladder at work from
22 approximately six feet high, hitting his stomach and right side
23 against equipment, and then landing on his side on the floor,
24 not hitting his head, and that was it, basically in terms of the
25 fall, that we see there.

1 Q Is there any mention there that Roberto Abreu Perez
2 claimed that he injured his neck and back, his lower back?

3 A No, what we're looking at now, type EMS worker would
4 ask about various things that might be involved, might be
5 patient, et cetera, and painful, it specifically says on the
6 top, negative neck and back pain at this time.

7 Q Just so the jury understands, do you see the other
8 areas, they ask other complaints, you can explain, LOC, SOB,
9 negative bleeding, explain why they ask that and why is that
10 important?

11 A There was a fall you want to know if someone hit their
12 head or lost consciousness, LOC, loss of conscious, CP, chest
13 pain, may be a reason somebody fell, having had some kind of
14 neurologic or cardiac issue, and negative SOB is shortness of
15 breath, typically, no bleeding no nausea, no vomiting. As I
16 said neck or back pain, no dizziness or blurry vision, something
17 that can happen with a fall especially hitting your head, but
18 there's no report here of hitting your head.

19 Q One minute, doctor.

20 (Pause in the proceedings.)

21 Q Jump out, first, this is from the New York Presbyterian
22 records, would you explain to the jury what's going on here?

23 A Well, it looks like this is a record documenting
24 various aspects of the care, in terms of the prehospital, mode
25 of transport, things like that, primary survey, what was found

1 on examination, a secondary survey more detailed findings things
2 like the motor and sensory exam being intact, related to this or
3 the extremities, and also the injury diagram, it would look like
4 a pain diagram in the center on the bottom, showing some pain in
5 the anterior, the front of the chest on the right side, maybe
6 the right hip is circled as well, and on the back, you're seeing
7 some circling in the thoracic area, not in the neck or cervical
8 spine, not in the lower back, but in the mid-back.

9 Q Do you see the little figure to the right, do you see
10 that -- I mean to my left but to your right?

11 A That's what I was just describing in terms of the pain
12 diagram and the thoracic area.

13 Q That would be kept with the right side, the right side
14 would be, I guess, where he had rib fractures; correct?

15 A I think that was later diagnosed.

16 Q Doctor, but they, correct me if I'm wrong, they did ask
17 him as well if he had any neck or lower back pain?

18 A I think there are various areas in that record that
19 refer to kind of negative neck or lower back pain. I think I
20 saw it in one area where there was positive back pain, I'm not
21 sure if it was referring to this thoracic pain.

22 Q Here is an example of the entry, doctor, it look like,
23 go up, Brian, come back, June 27, 6/27/17, the day of the
24 incident, 1641, is 4:41, military time?

25 A That's the reporting of the triage nurse it looks like,

1 so they do their own initial assessment, and talking about the
2 fall here listed as a 20 -- from a 20-foot ladder, it doesn't
3 say falling to feet, but it seems unclear all around, but
4 denying loss of consciousness, or head or neck or pain.

5 Q Go up, Brian.

6 A There was pain in the right flank and chest, again,
7 consistent with that rib fracture, and it says bruising was
8 noted as well.

9 Q And then you see where it talks about history of
10 present illness?

11 A Yes.

12 Q Could you please explain to the jury what his complaint
13 were there?

14 A I was just looking to try to see who was given this
15 history, but it looks like it might be the medical staff
16 specifically, it was a 41-year old Spanish speaking male with
17 past medical history of high blood pressure, and high lipids,
18 cholesterol probably and diabetes, brought in by EMS, cervical
19 collar for fall of 20 feet from a building while working as a
20 construction worker. Trauma Level 2 activated at 1653, met on
21 arrival. He was working on the ladder that fell out underneath
22 him striking right flank on a steel beam, no head strike or loss
23 of consciousness, unable to stand or ambulate after, and now
24 complaining of pain in the right pelvis, right chest wall and
25 right side of the abdomen, denied neck pain, back pain or chest

1 pain and no short of breath.

2 Q The shortness of breath, I want you to assume that the
3 Plaintiff testified that he didn't know if he could speak or
4 breathe, that would be inconsistent with what the doctors found
5 at the hospital when they examined him; right?

6 A That is correct, they noted that he was not short
7 of breath.

8 Q Again, I'm going to go by your report again, forgive
9 me, we will go step-by-step, there are records I want to show
10 you.

11 The next after New York Presbyterian, in your report,
12 what is the next hospital record you reviewed?

13 A Two weeks later, I think or so, he was seen at Harlem
14 Hospital center.

15 Q Keep moving.

16 And what were your findings there based on your review?

17 A Again, all I had initially was to review the record
18 report of the imaging done which were, I think rib X-rays, and
19 they noted two rib fractures in the right anterior, the front
20 right eighth and ninth rib consistent very much with that pain
21 diagram we saw two weeks earlier.

22 Q Now, again before you testified, we provided you with
23 the Harlem Hospital records, what exhibit is it, Plaintiff's
24 Exhibit 8, was there any mention of any neck pain or back pain
25 complained by Mr. Abreu Perez?

1 A I did get a chance to review those records recently,
2 there was no report of any, at least I didn't see any report of
3 any complaints of neck or lower back pain.

4 Q And he was seeing, I think you said on July 11th lower
5 back?

6 A That was just 11, I said two weeks later, but that was
7 11.

8 Q July 11th?

9 A Yes.

10 Q I asked Mr. Abreu Perez, if, when he went to Harlem if
11 he had an attorney already, I don't know if you remember, let me
12 bring it up on screen.

13 Now, again, Mr. Abreu Perez, said he didn't retain a
14 lawyer yet, but I'm showing you the records in evidence, Judge,
15 from Harlem Hospital, does he have a lawyer already?

16 A Well, it seems that he reported at least to whoever
17 wrote this done that he had a lawyer, arranging the orthopedic
18 doctors and follow-up instructions.

19 Q So according to this entry here, his lawyer, not his
20 doctor, was arranging for him to see whatever type of doctor, he
21 was an orthopedist I guess in this entry; correct?

22 A Yes, correct.

23 Q Doctor, going back to your report, if you can briefly
24 summarize or summarize as best as you want, what your findings
25 were based on your review of the record that we provided you at

1 that point?

2 A Various reports of the neck or the cervical spine, and
3 back or lumbar spine, MRIs, and CAT scans indicated findings of
4 sort of mild degenerative issues of the neck or lower back which
5 may be common in anyone.

6 He was 45 or so at the time, any 45-year old,
7 especially a laborer, there was no evidence of any traumatic
8 structural issues to the neck or lower back, and I felt that
9 both of those areas of pain might be related to muscular strains
10 or sprains but not any structural issues per se.

11 Also, the report specifically indicated no evidence of
12 any nerve compression, when you have kind of mild degenerative
13 findings and no evidence of nerve compression, there really is
14 no good surgical indication, and I felt he was not a good
15 surgical candidate for either neck or low back surgery.

16 Q When you say "nerve compression," why is that important
17 for you to say, what does that tell you?

18 A People can complain of leg pain or arm pain, sometimes
19 it's from pressure on the nerves, sometimes there's no pressure
20 on the nerves and it's unclear why they have these complaints
21 ever neck and arm pain.

22 As a surgeon looking at things, we can only correct
23 things that we can see, and if we don't see any real evidence of
24 significant compression of the nerves, we can't predictively fix
25 somebody's complaints of neck -- of arm or leg pain, by doing

1 surgery involving decompressing nerves, because there's no
2 appearance of compression, and that's why I felt in his case in
3 addition to the fact there was no traumatic findings and no
4 evidence of any progressive degeneration over the scanned
5 reports over that, four and a half years, I think it was since
6 the incident, that he was not a good surgical candidate.

7 Q Do the opinions that you just told this jury, in pretty
8 good detail I would say, were they to a reasonable degree of
9 medical certainty?

10 A Yes, they were.

11 Q Are there any opinions there, I'm sorry that you told
12 this jury that you have not told them about that's in your
13 report, just go to your report of your summary and opinions?

14 A Well, I also gave an opinion on both the disability at
15 that time with regard to the neck and lower back and felt based
16 on my examination that date and the reports reviewed, that there
17 was no evidence that he was, you know, significantly disabled
18 with respect to the neck or lower back specifically.

19 Q Was this, and you mentioned in your report, I can
20 direct you, was this a gentleman that was working as an Uber
21 driver at the time that you saw him?

22 A Yes, he reported that he was working, part-time, I
23 think he told me three or four hours a week -- a mean a day, I
24 have to look back and see.

25 Q Please.

1 A Three hours a day seem three too little, three to four
2 hours a day, yes.

3 Q That was from his sworn deposition testimony, I think
4 you referred to?

5 A I'm referring to what he told me specifically in the
6 office that day.

7 Q Alright.

8 Did you formulate an opinion, as to whether, I want to
9 tie it up, I know you mentioned it before, whether he could
10 return to work in any capacity?

11 A Yes, I did have an opinion.

12 Q What was that opinion, to a reasonable degree of
13 medical certainty?

14 A Yes, and not being disabled with respect to his neck
15 and back, at least with respect to the neck and back at least at
16 that point he could be working full-time as a driver, or there
17 was no reason I could find that he could not go back to work in
18 construction doing his pre-incident occupation.

19 Q Do you remember when I asked you, when I first started
20 questioning you before the jury, that in your report you took a
21 history, and it said 15 feet, I know it said 20 feet at the
22 hospital, we can use 15 or 20 feet, it didn't remember.

23 Do you remember I asked you that?

24 A Yes, and the hospital varies from six feet to 20 feet.

25 Q Now we will come back to that, was there any importance

1 that you gave or didn't give to the fact that he told you that
2 he fell 15 feet, he told the hospital 20 feet, did that raise
3 any alarms in terms of the injuries he claims to have sustained?

4 A Well, without any structural injuries except for rib
5 fractures based on everything that I had evaluated at that time,
6 the only structural injury were rib fractures and that was from
7 a direct injury or hitting something directly which could be
8 from a fall from a standing height as opposed to any height at
9 all.

10 There was no evidence of any real injuries resulting
11 from a fall of a significant height, certainly not 15 feet,
12 15 feet or 20 feet is sort of falling through the ceiling from
13 one floor to the next, it's the height of most, maybe not this
14 ceiling, that's not fair, but in a typical building, it's
15 falling from one floor to the next, about that height, and
16 typically with that, not always, but typically, we would see
17 some evidence of fractures, either ankle injuries or someone
18 fell and landed directly on their butt, they may fracture a
19 vertebrae in their spine, they may not, there are crazy cases of
20 people falling without their parachute opening and surviving
21 with minimal injury, and there are people that have a relatively
22 mild fall from a standing position without a height and break
23 something, that can happen frequently, but more typically the
24 higher you fall from, especially if it's a free fall, the more
25 trauma you would expect.

1 Q Did there come a time that you then examined Mr. Abreu
2 Perez?

3 A For a second time.

4 Q For a second time?

5 A Yes.

6 Q When was that?

7 A On January 28, 2025.

8 Q And now we're on to your second report?

9 A Correct.

10 MR. ALVARADO: Sorry, Judge, does everyone need a
11 break?

12 THE COURT: Does anyone need a break, no, we can
13 continue.

14 MR. ALVARADO: Good.

15 Q What was the reason you saw Mr. Abreu Perez?

16 A I was asked to see him and do a follow-up exam, I
17 believe because he since had surgical surgery to both his
18 cervical and lumbar spine, the neck and lower back.

19 Q Again, when you saw him this time and again you can
20 have your report in front of you, who came with him to the
21 examination, to the appointment?

22 A He had a legal representative, I believe also from his
23 law office, as well as an interpreter, interpreting for us in
24 Spanish.

25 Q Did you take another history from him?

1 A An interval history in the follow-up visit, I don't go
2 back to the beginning, but I take an interval history as to
3 what's happened since he saw me last.

4 Q What was that history, the interval history, please?

5 A He mentioned having had the surgery to both the neck
6 and the lower back, with respect to the lower back, he had had
7 additional pain management in injections prior to the surgery,
8 and for the neck, he stated that before his surgery, he had just
9 some physical therapy he reported as the only real treatment in
10 addition to the continued use of Tylenol, and I believe
11 diclofenac gel as well.

12 The lumbar surgery was done in January of 2023, and so
13 that was about a year after seeing me initially, and the
14 cervical spine surgery was done in June, June 18th of 2024, so
15 more than six months prior to seeing me for the second time.

16 Q Did you conduct a physical examination during this
17 visit?

18 A Yes, I did the exact same exam I do for all of my
19 patients in the office and all of the claimants that I see,
20 since he had issues with both the cervical and lumbar spine, it
21 takes a little longer, we have to examine both aspects of
22 things. It's interesting he continued to have a normal gait,
23 normal walking, he had an active voluntary range of motion that
24 was slightly, I would say more normal or less restricted
25 voluntarily than it was before his fusion surgeries, and he had

1 a fusion of one disc in his neck, which is limiting the motion
2 of one disc and one disc in his lower back, and despite that, he
3 had a similar or improved range of motion in all aspects of
4 motion of his neck and lower back, was pretty much within normal
5 range.

6 Neurologically we evaluated the arms and legs like we
7 did before, there was no new positive findings, he continued to
8 have a normal neurologic exam with no evidence of any focal
9 weakness or deficits, and no evidence of any tension on the
10 nerves which would cause continued arm or leg pain.

11 Q In your physical examination, before I get to the
12 records, the first paragraph, you said about antalgic gait,
13 there were some other findings regarding his heel and toe walk;
14 do you see that, and things he was able to do in front of you,
15 can you tell the jury, then I will ask you why?

16 A He didn't have antalgic gait, he had a normal symmetric
17 gait, which is what I wrote, and he was able to heel and toe
18 walk. We watch someone walking on their heels with their toes
19 up, and on then someone on their tippy toes.

20 The reason for that is there are different muscles that
21 support those, this is more for, balance is one issue, but there
22 is more muscle function, and we look to see if someone, if I
23 tell them to push down like pushing on a gas pedal, you can tell
24 someone resisting and get some sense of their strength, but you
25 can have slight weakness and still appear to push down pretty

1 hard, but if you have to lift up and hold your whole body weight
2 on your tippy toes, then you're really testing those muscles
3 better and get a sense whether you can continue to walk on your
4 tippy toes or walk on your heels, because that's holding up your
5 whole body weight in those positions.

6 Q There were other things I think you mentioned, taking
7 off his shoes?

8 A Yes, functionally he was normal, he was able to change
9 positions without difficulty, between sitting, standing, lying
10 down, didn't need or ask for any assistance, and didn't appear
11 to have any difficulty, he also had no difficulty removing or
12 replacing his shoes and jacket.

13 There are some claimants I see that have the appearance
14 or the reality of being significantly limited in those respects
15 and have loved ones with them helping them put their shoes on
16 and such, and that is not one of those cases.

17 Q So this was a gentleman that was able to literally do
18 things on his own right in front of you?

19 A Yes, I would say other than the scars on his neck, the
20 one-inch incision, I think it was, and the - incision in his
21 lower back, he was normal, he had a normal exam.

22 Q I forgot to ask you this, so bear with me, be patient,
23 I didn't ask you, whether we, our office provided you with
24 additional records, and I'm going to be brief here, if you can
25 just tell the jury, again, briefly summarize, I don't want you

1 to go line by line, what record we gave you to look at, and then
2 I have another question, once you answer that?

3 A Yeah, there were additional records given for this
4 review, certainly some interim treatment records during that
5 time, the operative reports, for example, which would be
6 important to look at, as well as some additional treatment
7 records from even prior to my first visit, lumbar discogram
8 report for the record, other records of MRIs and CAT scans and
9 such, involving the cervical or lumbar spine I didn't have
10 before.

11 Q I'm -- we're going to come back to that discogram, I
12 think you mentioned it when you asked this question, just tell
13 the jury, I want you to, just assume that we're going to call
14 Dr. Sherman, I don't know if you know Dr. Craig Sherman?

15 A I don't know him, no.

16 Q He's a neuroradiologist, I don't want you to go into,
17 because we will be here all day, with the films, but I do want
18 you to talk about them to the extent they were relevant and your
19 findings based on those films were relevant to your opinion;
20 okay?

21 A Sure.

22 Q So, I'm going to ask you, tell the jury what records
23 you reviewed, including the films, and then briefly summarize
24 what your findings were?

25 A So not to confuse things, but the films were reviewed

1 later, after this report.

2 Q That's right.

3 A That's part of my third report.

4 Q I stand corrected.

5 A Reviewing the films, that just, but my conclusions
6 there were pretty much the same, so, having looked at all of the
7 reports, and all of the records, and all of the images of the
8 various spine studies, I believe, all of them, you know, I
9 looked at that, and I saw clearly signs of kind of mild to
10 moderate, degenerative issues in the neck and back, unrelated to
11 any specific traumatic findings dating back up until essentially
12 the time of the injury, without really significant progressive
13 change over time, and I believe, I also had a chance, so,
14 Dr. Sherman, it was, I looked at his report, and I think his
15 findings and opinions on this are pretty consistent with mine.

16 Q If I understand, forgive me I'm jumping around here,
17 this examination, we gave you records, you reviewed the records
18 that included MRIs, reports, X-rays, again reports?

19 A Correct.

20 Q And it was the next time I will ask you again we will
21 finish up with that, you read the reports, and you read the
22 films later, because we didn't have the films, we gave them to
23 you later, that was mentioned in your third report?

24 A Yes, it was.

25 Q Now, based on this report here, did you come up with

1 any opinions, to a reasonable degree of medical certainty, based
2 on your review of the additional records and now your second
3 examination of Mr. Abreu Perez?

4 A Yes, I did.

5 Q What were those opinions?

6 A My opinions sort of as expressed in my first report
7 really hadn't change in terms of the fact that the incident
8 itself did not cause any significant structural injury to the
9 neck or the lower back.

10 The additional MRI reports to the neck and lower back
11 didn't show any evidence of any different findings. In fact,
12 the other ones that I reviewed from Lenox Hill Radiology, talk
13 more about bulges, but the ones from Kolb Radiology talk about
14 herniations, and we can talk about the difference of these
15 things, but in realty, they -- they didn't actually agree with
16 one another, and I had a chance, as I said, not to jump the gun
17 to look later at all of the imaging and I certainly agree with
18 Lenox Hill Radiology, there were no focal herniated discs or
19 anything, and nothing compressing the nerves in either of the
20 neck, the cervical or the lower back the lumbar spine.

21 My opinions didn't really change in terms of the fact
22 that I thought the surgeries that were done did not need to be
23 done and? My opinion, I would not have done them if Mr. Abreu
24 Perez was my patient, instead of being a claimant that I was
25 independently examining at the time.

1 He had reported some mild or, I forget the words
2 specifically that we used some improvement following each
3 surgery, but still complained of significant symptoms, and if
4 you're fixing the problem, while there can be some mild
5 continued symptoms just from the trauma of surgery, you would
6 expect some significant increase in improvement overall in
7 symptoms if you were really getting to the heart of the problem.

8 Q You keep saying the word "degenerative findings,"
9 degenerative findings, tell us, what is the significance of the
10 degenerative findings you saw in his cervical and lumbar spine?

11 A I think the significance is more, not in the fact
12 they're present, it's more in the fact, there are no traumatic
13 findings present. We all have degenerative findings. I have
14 had MRIs of my neck and back, having to stand and look down for
15 eight hours at a time to operate for the last 30 years.

16 I have degenerative problems, I have degenerative
17 findings I should say, I have occasional neck or back pain
18 associated with that, I'm able to function and continue to
19 function normally. I would venture to say anyone over age 40
20 is going to start showing wear and tear changes and liken them
21 to sort of the wrinkles of the skin, you can, no dermatologist
22 is going to say you have wrinkle disease, you have wrinkles,
23 because we all are out in the sun and we work hard, gain weight,
24 lose weight and these things happen, and our skin is necessarily
25 not as soft and wrinkle-free as they are when we're 15 or

1 20 years old.

2 That being said the spine wears over time as well, and
3 these were more typical normal physiologic wear and tear
4 changes, which is why I didn't feel they were in any way sort of
5 indicative of the need for surgery.

6 Q Okay. That leads us right to your third report and
7 we're going to just refresh the jury's memory in terms of your
8 findings with respect to the films, but there's something I want
9 you to focus on?

10 MR. ALVARADO: Judge, I would need that easel, can
11 I get it.

12 THE COURT: Yes.

13 MR. ALVARADO: If you want me to get it, there's an
14 exhibit right in front of the part clerk's desk, that one,
15 if you can turn it around, I want to see if that's it,
16 that's it, sir.

17 THE COURT: What number is that?

18 MR. ALVARADO: I don't see it, hold on.

19 THE CLERK: That 29.

20 MR. ALVARADO: That 29, I think it's 29.

21 MR. FRITTOLA: Sure.

22 MR. ALVARADO: It's on my list.

23 THE COURT: Plaintiff's.

24 COURT OFFICER: Plaintiff's Exhibit 29.

25 THE CLERK: Economic chart.

1 I had it for ID.

2 THE COURT: One moment, that's in evidence.

3 MR. ALVARADO: This is in evidence, no it's ID.

4 MR. KELLY: You can put it in evidence, if you
5 want.

6 THE COURT: If you're showing it to the jury.

7 MR. KELLY: I showed it already to the jury.

8 THE COURT: Okay.

9 MR. KELLY: As a demonstrative aid on my case.

10 MR. ALVARADO: This would be demonstrative.

11 MR. KELLY: I move it into evidence.

12 MR. ALVARADO: I object.

13 THE COURT: Demonstrative ID. We will address it
14 later.

15 COURT OFFICER: It's good there.

16 MR. ALVARADO: It's good there.

17 Q I will ask you some questions about Dr. Grimm's
18 findings to the extent, and I will ask you to come down when
19 you're ready with your report to that section of the report
20 where you talked about Dr. Grimm's findings; do you remember
21 this?

22 A Yes, my third report was just an additional review of
23 records and images, and of those records, many, many images of
24 all of the studies of the cervical and lumbar spine, in terms of
25 medical records, there was a report from Dr. Mandelbaum, as well

1 a narrative report from Dr. Grimm, which also included his
2 opinions on what would be needed for sort of life care
3 treatment, for the cervical and lumbar spine for Mr. Abreu
4 Perez.

5 Q Before, tell me when you're ready?

6 A I'm ready.

7 Q And again, you know, just like you summarized before
8 for the jury, just summarize again what additional report were
9 you given, so they are aware at least some idea what you're
10 referring to?

11 A The records I mentioned in terms of the images,
12 everything going back, even to the CT scans of the initial day
13 of injury, from 6/27/17, through up until, I think the most
14 recent one was the cervical fluoroscopy images from surgery for
15 the neck surgery done in June of 2024, all of the MRIs, CAT
16 scans and X-rays read to the cervical and lumbar spine, as well
17 as some other various like elbow X-rays, and things I didn't
18 review, that's out of my area of expertise, including the ribs,
19 everything relevant to the spine, which forms the bulk of my
20 report, but also, kind of point by point, giving my opinions
21 about what Dr. Grimm opined regarding the future care and needs
22 for Mr. Abreu Perez.

23 Q Let's go line by line, and there's a couple of other
24 things, I will ask you about his accident I won't get there yet,
25 unless you want to do this first, Dr. Grimm's?

1 A I think this is fine.

2 Q Now, Dr. Grimm testified before the jury, I want you to
3 assume that, and he gave some projections as to future medical
4 costs.

5 The numbers may differ obviously, the doctor got on the
6 stand, let's go line by line, relating that, can you see this,
7 do you want to step down?

8 A I can see it from here, and I'm fine with that.

9 THE COURT: If you need to step down.

10 Q If you need to step down, bring your report.

11 Assume that Dr. Grimm said that he needs medications,
12 and it will cost \$2520 and his future care is 96,542.

13 Do you have an opinion whether the Plaintiff will
14 require the medications and if so, what is your opinion, again,
15 all of the questions I'm asking are what your opinions are to a
16 reasonable degree of medical certainty; okay, doctor?

17 A Yes, absolutely, in Dr. Grimm's narrative report he
18 talked about using variety of different medicines, including
19 antiinflammatory medicines, muscle relaxants medicines,
20 neuropathic medicines and topical medicines, at least the entire
21 time before both and after the surgery that Roberto Abreu Perez,
22 that I saw him, he was only using Tylenol and diclofenac gel,
23 both of which are over-the-counter other generic type
24 preparations, I can't comment specifically on the costs, I don't
25 have that information, but those would be all of the -- there's

1 no reason to assume he would need additional future meds.

2 Q Assume that Dr. Grimm testified before this jury that
3 the Plaintiff requires pain management visits, annual cost of
4 \$1,000, and a total cost of 38,866, and he talked about the
5 number of visits he would need.

6 Could you comment on that, doctor?

7 A Yeah, again, Dr. Grimm reported the need for visits
8 every three months with a pain management, I think that's
9 definitely true if someone is taking narcotics or those types of
10 medicines much less frequent visits for someone taking
11 essentially over-the-counter medicines, and I think rather than
12 every three months, I thought it would be every four to six
13 months, very small difference might add up over the years.

14 Q Assume, again, that Dr. Grimm testified that the
15 Plaintiff would require, Mr. Abreu Perez would require
16 orthopedic spinal surgeon visits, can you comment on that,
17 doctor?

18 A Yes, as spinal surgeons, we don't follow and X-ray
19 people every year, and there's no kind of continued regular
20 surveillance.

21 We follow fusions regularly at longer and longer
22 intervals to about two years after surgery, after two years,
23 basically patients are discharged from our care, from regular
24 care and told to come back any time there's an issue, and that
25 would be true for both the neck for the cervical and lumbar

1 spine, and it's been well beyond two years since the lumbar
2 spine, and we're approaching two years now for the
3 cervical spine surgery.

4 So assuming that heals as it has been healing and heals
5 well, there's no need for regular yearly visits, no need for
6 regular yearly X-rays, no need for surveillance or follow-up
7 MRIs, no need for surveillance or follow-up EMG tests, all of
8 these things that probably are listed over there, that Dr. Grimm
9 opined on, really are only done sporadically over the years if
10 there are new issues, and I think I estimated that there would
11 be two or three visits for cervical and lumbar spine for the
12 spine surgeon over the years, not every year, and no need for
13 regular or surveillance MRIs, or electrodiagnostic testing, but
14 may be once or twice over the course of his lifetime, with new
15 or some kind of different symptoms, they may want to evaluate
16 that, not on a regular basis.

17 He also talked about needing cervical and lumbar
18 surgery epidural injections, I don't think he has ever had a
19 cervical epidural injections. I don't know why there would be a
20 new need for that in the future, and the lumbar epidural
21 injections didn't seem to be effective, probably because as I
22 mentioned, none of the scans have showed any nerve pressure, and
23 the reasons epidurals work is because it puts steroid medicine
24 right in the area of compressed nerves to try to decrease
25 inflammation. If there's no compressed nerves, it's unlikely to

1 be helpful, so I didn't feel there would be any need for future
2 cervical lumbar spine or cervical epidural injections, I don't
3 know if I covered everything on that list.

4 Physical therapy as well, which is often a big ticket
5 item from a financial standpoint from the future. Typically,
6 patients are discharged from physical therapy visits for a
7 course of therapy of about 12 visits for a home exercise, people
8 do the exercises at home, people needing regular exercise over a
9 lifetime and Mr. Abreu Perez certainly falls into that, but
10 needing sort of a full course of therapy every year, I think I
11 estimated that he would need potentially refresher courses of
12 physical therapy of 12 visits every three or four years, so it
13 amounted to basically, I think calculated math-wise to about
14 three and a half visits a year or something like that, as
15 opposed to 12 visits a year if he had a full courses of therapy
16 every year, which would not be really appropriate or needed.

17 Q Two things I thought we would discuss, Number one,
18 trigger point injections, does he require those, I'm not sure
19 you discussed those?

20 A That's another type of pain management injection done
21 just into the -- locally painful muscles, and I think Dr. Grimm
22 had opined on the need for the trigger point injections, every
23 three months for lifetime, and that would be an excessive number
24 of injections over the course of a lifetime, and I have never
25 seen a patient having had so many, but I estimated a total of

1 five or six trigger point injections for each the cervical and
2 lumbar spine, and again, for pain exacerbations, that might
3 occur occasionally over the course of his lifetime.

4 Q You also, I'm not sure we discussed electrodiagnostic
5 studies, can you comment on that?

6 A I did mention that briefly as we were talking about
7 this kind of laundry list of things would he need, and Dr. Grimm
8 opined on the need for electrodiagnostic studies, the EMG and
9 nerve conduction tests for the nerves, every, every five years
10 for his lifetime, and there's -- there's nowhere in medicine
11 have we ever done surveillance EMGs every five years. They're
12 done as needed for new complaints of pain or questions that need
13 to be answered, and I don't think there's a need having had no
14 evidence of nerve compression, that he would need any further
15 electrodiagnostic testing for the neck or upper back, certainly
16 anything that would be causally related to everything based to
17 date.

18 Q The other one I'm not sure we discussed, then I will
19 move on, did you comment on the amount of MRI visits, MRIs that
20 the Plaintiff would need according to Dr. Grimm, then I'm done
21 with this chart?

22 A Yeah, Dr. Grimm again opined on the need to, for
23 surveillance or follow-up MRIs every five years, and as I said,
24 just like electrodiagnostic testing MRIs are not done for
25 surveillance, unless we're following the size of a tumor or

1 progressive compression of nerves, but none of that is relevant
2 to this case, and since there's no element of any nerve
3 compression, his fusions have gone on to heal, there's no
4 evidence or need for any surveillance MRIs, and I opined maybe
5 again associated with a new pain complaint sometime in the
6 future, two or three, I think I wrote, might be appropriate for
7 the neck and back but certainly not every five years, I think I
8 wrote two each other the course of his lifetime.

9 Q Did you come to learn, I'm not done with the report,
10 but it's part of the report, that the Plaintiff, Mr. Abreu
11 Perez, was involved in an accident in December 27, 2022?

12 A I was only told about that seem, I don't think that's
13 in any of my reports, maybe I'm wrong.

14 Q Look at page, that's okay, look at page six of your
15 report.

16 A Oh, I'm sorry, I did have a police accident report from
17 that accident, yes.

18 Q What did you learn from that?

19 A That he was is involved in a motor vehicle accident on
20 12/27/22, stating that he was rather ended while traveling east
21 best on West 125th Street and that the vehicle, the other
22 vehicle fled the scene apparently, and he was complaining of
23 pain in his back, and was taken to St. Lukes Hospital for
24 further evaluation.

25 Q I'm going to show you, if you need to see it, that

1 there was testimony that he suffered a whiplash injury, and
2 again, I will show you, it turns out it's really Mount Sinai
3 Sinai Morningside Hospital, Plaintiff's Exhibit 28 in evidence.

4 I want you to explain to the jury, what is a whiplash
5 injury?

6 A A whiplash injury, typically describing a neck injury,
7 although people sometimes describe with the -- to the lower back
8 as well, it's typically a rapid stop causing a forward and back
9 motion of the neck which may, may strain the neck or lower back
10 at the extremes of flexion or at the extremes of extension, so
11 it's a potential type of ligamentous type of incident or
12 muscular incident resulting from typically a rapid
13 decelerations.

14 Q So the neck goes forward and back, snaps forward, snaps
15 back; is that correct?

16 A Sometimes it can be the other way, but it's back and
17 forth, typically.

18 Q Looking at that Mount Sinai Hospital, doctor, tell me
19 what Mr. Abreu Perez complained of at the hospital as a result
20 of this accident, and I'm talking about the motor vehicle
21 accident?

22 A In the triage note it indicated left shoulder and upper
23 back pain, and in terms of his diagnoses after evaluation, it
24 indicated a neck sprain or strain or back sprain or strain, and
25 a whiplash injury as well and back strain.

1 Q Showing you another entry from the hospital, and tell
2 me what's the significance of what he complained about at the
3 hospital following that motor vehicle accident?

4 A Well, there were clearly complaints of lower back and
5 neck pain if he was diagnosed with a whiplash injury and a back
6 strain, potentially as well as injuries to his shoulders as
7 well, which could be -- that shoulder pain could be related to
8 neck issues.

9 Q Okay. Any significance where here is a gentleman
10 whose, I think you said he had lumbar spine, I think in January,
11 a week out, they examined him, I guess they examined him, they
12 found no serious injury?

13 A That is correct.

14 Q Does that surprise you, here is a guy one week from the
15 surgery and he claims he's disabled?

16 A Just based on my exam a year earlier, it does not
17 surprise me.

18 Q Doctor, before I ask you to wrap it up and ask you what
19 is your opinion in the last report, I just want to ask you
20 something.

21 Spinal surgery, the ones he had here, do you know how
22 much they typically cost?

23 MR. KELLY: Objection, he said he doesn't know the
24 charges, Judge.

25 THE COURT: Overruled, if you know.

1 A Well, none of those things on the board had anything to
2 do with surgery, so I don't know medication charges and
3 electrodiagnostic testing study or MRI charges.

4 Surgeries have a variety of charges, depending on what
5 the insurance company is, and whether the surgeon is out of
6 network, and I'm only talking about the surgeon's charge.

7 For example, for a lumbar fusion if operating on a
8 Medicare patient you might charge and be able to collect about
9 four or \$5,000, if that same patient has good insurance, you
10 might be able to bill the insurance company and collect \$50,000,
11 and that's a crazy difference, right, and I think that points to
12 the strangeness and problems associated with our medical
13 insurance industry, but that's the realty of the situation, and
14 patients who have surgery done for cash, who have no insurance
15 or against a lien for an accident, the surgeon can charge
16 whatever they want to charge.

17 Q If Dr. Weinstein billed Mr. Abreu Perez in excess of
18 \$300,000 for one surgery, would that be something that's, you
19 know, excessive?

20 MR. KELLY: Objection.

21 THE COURT: Overruled.

22 A I never heard of something like that from a single
23 level cervical or lumbar fusion, that might be the whole cost of
24 care with hospitalization and even a hospital billing \$300,000
25 expects to collect about \$80,000, so I've never heard of a bill

1 that high for any spinal surgery, let alone, the basic fusion
2 surgery Mr. Abreu Perez had.

3 Q When you typically perform these fusion surgeries, do
4 you do them yourself or do you do them accompanied by another
5 doctor?

6 A I work in a teaching hospital, so I work with residents
7 and fellows that I'm training, so it's with other doctors, but
8 I'm -- more typically than not, the only billing surgery as
9 part of everything.

10 Q Thank you.

11 Let's wrap this up.

12 Going to, again, the third report, what were your
13 findings, at least based on that, based on review the records,
14 if you presume to examine, just tell us what your findings were,
15 your opinions, to a reasonable degree of medical certainty?

16 A After reviewing the actual images of the MRIs, it
17 confirmed my opinions based on my prior opinions on the reports
18 of the MRIs, and other scans, and you know I would never operate
19 on somebody, no surgeon should or would, based on reading
20 reports. You have to be looking at the images themselves, and
21 sometimes as an expert, I would be up here and questioned about
22 how could you make an opinion when you didn't actually look at
23 the images.

24 So you make an opinion as an expert based on all of the
25 information that you have for yourself at that moment, and that

1 new information may change that opinion, and the new information
2 of looking at these images only further confirmed my opinion,
3 that there were no significant findings on these scans, they
4 were mild, kind of age appropriate, degenerative changes, and
5 that, he should not have had surgery to his neck or lower back,
6 I would not have done that surgery.

7 MR. ALVARADO: Thank you, doctor.

8 THE COURT: Counsel, it's 12:30, do you want to
9 start?

10 MR. KELLY: I prefer to start, if you don't mind.

11 THE COURT: Okay.

12 MR. KELLY: We can knock off at 12:45, that's fine.

13 THE COURT: Yes.

14 CROSS-EXAMINATION BY

15 MR. KELLY:

16 Q Good afternoon, doctor.

17 A Good afternoon.

18 Q So where Dr. Sherman disagrees with you, is he right or
19 are you right?

20 MR. ALVARADO: Objection to the form of the
21 question.

22 A I don't understand the question.

23 THE COURT: Sustained.

24 Q So you read some films, and you didn't find any
25 imposition on any nerves or anything like that; right?

1 A That's correct.

2 Q And if Dr. Sherman does find that, is he right or are
3 you right?

4 A It's a difference of opinion, it's not a math question,
5 two plus two doesn't always equal four, it's not that kind of
6 thing. I'm asked for my opinion and you get my opinion.

7 Q Okay. So doctor, you've given testimony a number of
8 times before; right?

9 A Yes.

10 Q The record I have, I have you at 244 prior, either
11 appearances -- 435 prior appearances or affidavits in something
12 in court; is that correct?

13 A No, that's not correct at all.

14 Q Okay, well there, there's a picture of you here, we
15 have, let's see?

16 A I have gave the other counsel, and I'm happy to give
17 you my list of testimony in court which amounts to 12 over the
18 past 12 years.

19 Q And earlier you said you didn't know Dr. Sherman, but
20 you appear on an expert witness exchange, Carlos Cordero against
21 the City of New York, November 16, 2021, in which you worked
22 with Dr. Sherman; do you remember that?

23 A Do you mean like in this case where we both worked on
24 the same case, but I don't know Dr. Sherman, he could be sitting
25 out there, I have never spoken to Dr. Sherman.

1 Q Doctor, you would have remembered him, he has a pretty
2 significant mustache, you would remember him.

3 Doctor, you've done this before, I will ask you
4 questions, they will be yes or no. If you can't answer the
5 questions yes or no, tell the Judge you can't answer yes or no,
6 and we will figure out something else to do; okay?

7 A Okay.

8 Q Now, doctor, you gave a report on 1/18/22; is that
9 correct?

10 A Yes.

11 Q In your report you indicate that Mr. Perez reports he
12 fell from a ladder approximately 15 feet falling on to a
13 seven-foot height wall and falling off the wall to the ground;
14 yes or no?

15 A Yes.

16 Q And you also said that with regard to the neck,
17 Mr. Abreu Perez, or you called him Mr. Perez, has physical
18 therapy which stopped prior to the pandemic; is that correct?

19 A Yes.

20 Q And you said that he used a brace about every three to
21 four days; is that correct?

22 A Yes.

23 Q He uses medication provided by Dr. Grimm, including
24 diclofenac pills and gel; is that correct?

25 A Yes.

1 Q And you recorded current symptoms for Mr. Abreu Perez
2 included posterior neck pain and stiffness, as well as pain
3 cramping and tingling in the left greater than right upper
4 extremity; is that correct?

5 A Yes.

6 Q And by "upper extremity," we're talking about arms?

7 A Yes.

8 Q Regarding to the lower back, Mr. Abreu Perez has had
9 physical therapy; is that correct?

10 A Yes.

11 Q And he had that for eight months following the
12 accident; is that correct?

13 A That's what he told me.

14 Q And he's had --

15 A Everything there that we've --

16 Q Yes or no, doctor, you're a professional at this,
17 doctor, yes or no, if you can't answer it yes or no, just tell
18 the Judge, and I will be governed accordingly, not you; got it;
19 yes or no?

20 A Yes.

21 Q And alright, we're talking about Mr. Abreu Perez's
22 lower back, he had physical therapy for the first eight months
23 following the incident there; correct?

24 A That's what he told me, yes, I want to make it clear
25 that the whole first part of this report --

1 Q You will get plenty --

2 MR. ALVARADO: Objection.

3 Q -- when they redirect you?

4 THE COURT: Sustained, sustained.

5 Alright, doctor.

6 A You're implying everything I wrote there is a fact.

7 THE COURT: Both of you stop.

8 Q Enough.

9 THE WITNESS: It is noted a fact, it is what he
10 told me.

11 THE COURT: Doctor, doctor, if you need the
12 question rephrased, just say you need it rephrased;
13 otherwise, just answer yes or no.

14 Q Mr. Abreu Perez had no prior history of upper back
15 pain, injury or neck pain prior to his accident of June 27th,
16 2017; yes or no, it's in your report; right?

17 A You're reading my report, yes.

18 Q Now, you did a straight leg raising test, and you said
19 on page three of your report, that when supine, there was
20 complaint of lower back pain at 60 degrees bilaterally; yes or
21 no?

22 A Yes.

23 Q And then you found also on your detailed neurologic
24 evaluation, there's decreased sensation around the left upper
25 shoulder compared to the right; correct?

1 A Yes.

2 Q Mr. Abreu Perez had -- withdrawn.

3 You reviewed the New York Presbyterian report of his
4 accident on June 27, 2017; is that correct?

5 A The report, I don't know what you mean by "the report".

6 Q The records available for your review did not include
7 any history of physical examination, only imaging studies and
8 discharge instructions, you had imaging records and discharge
9 instructions from the New York Presbyterian Weill Cornell
10 Center, June 27th, 2017 accident; is that correct?

11 A Correct.

12 Q Images including X-rays of the chest; right?

13 A Yes.

14 Q Pelvis, right femur and right hip; correct?

15 A Yes.

16 Q CT scans were done of the head, cervical spine, chest,
17 thoracic spine, abdomen and pelvis; is that correct?

18 A Yes.

19 Q And he was discharged on 6/27/17, with instructions on
20 postconcussion syndrome; is that correct?

21 A Yes.

22 Q He was given Percocet and ibuprofen; is that correct?

23 A Yes.

24 Q And Percocet is a narcotic medication; is that correct?

25 A Yes, it is.

1 Q And Mr. Abreu Perez was seen on July 11, 2017, at
2 Harlem Hospital Center; correct?

3 A Yes.

4 Q X-rays done showed bilateral rib with minimally
5 displaced fractures of the anterior right eighth and ninth rib;
6 is that correct?

7 A Yes.

8 Q And the diagnosis was multiple fractures, rib right
9 side; correct?

10 A Yes.

11 Q And on July, electrodiagnostic studies of the upper and
12 lower extremities done 10/17/17 by Matthew Grimm showed left C6
13 radiculopathy; right?

14 A Yes.

15 Q That was well before the motor vehicle accident of
16 December 2022; right?

17 A Yes.

18 Q And Mr. Roberto Abreu Perez underwent three epidural
19 steroid injections performed by Dr. Grimm at Manhattan Surgery
20 Center; is that correct?

21 A Yes.

22 Q He had one on November 20, 2017; right?

23 A Yes.

24 Q And another one on January 8, 2018; right?

25 A Yes.

1 Q And he had lumbar interlaminar epidural steroids at
2 L4-5 and L5-S1 levels; is that correct?

3 A Yes.

4 Q And on February 2nd, he had a -- February 2nd of 2018,
5 he had a third interlaminar epidural injection at the L5-S1
6 level; correct?

7 A Yes.

8 Q On March 21, 2018, Mr. Abreu Perez saw Dr. Weinstein;
9 correct?

10 A Yes.

11 Q And doctor, you had -- someone.

12 Dr. Weinstein performed straight leg raising test
13 reported as positive on the left; correct?

14 A Yes.

15 Q On March 29, 2018, Mr. Abreu Perez had an MRI of the
16 cervical spine at Lenox Hill Radiology; correct?

17 A Yes.

18 Q And they found a disc bulge at C6-7; correct?

19 A Yes.

20 Q And MRI done of the lumbar spine done on March 29,
21 2018, at Lenox Hill Radiology, noted bulges at L4-5 and L5-S1;
22 is that correct?

23 A Yes.

24 Q On April 18, 2018, Dr. Weinstein recommended cervical
25 surgery, ACDF at C6-7; is that correct?

1 A Yes.

2 Q And that's four years prior to the automobile accident
3 in which the whiplash injury was suffered?

4 A Yes, more than four years.

5 Q And ACDF is an anterior cervical decompression and
6 fusion; is that correct?

7 A Close; anterior cervical discectomy and fusion.

8 Q And that's the entry meaning "anterior" it goes through
9 the front?

10 A Correct.

11 Q And that's consistent with the scarring he has?

12 A Yes.

13 Q On June 7, 2019, an MRI of the cervical spine was done
14 at Lenox Hill Radiology that showed a disc bulge at C6-7;
15 correct?

16 A Yes.

17 Q And on January 24th, an MRI of the lumbar spine was
18 done at Lenox Hill Radiology ordered by a Dr. Paul Brisson,
19 which found bulging at L4-5 and L5-S1; is that correct?

20 A Yes.

21 Q Did you review the records of Dr. Brisson; just yes or
22 no?

23 A I don't believe so, but I would have to look at check.

24 Q This one we're limited to the January 18th, 2022
25 report?

1 A No, I did not.

2 Q On March 21, 2020, Mr. Abreu Perez was seen at Harlem
3 Hospital Center with back pain, allergic reaction; does that
4 have something to do with this case as far as you know?

5 A He was there for allergic reaction, complaining of back
6 pain as well. I don't know if it's anything different than his
7 complaints over time.

8 Q He had itchy hands it says, and he was given
9 Diphenhydramine?

10 A Yes.

11 Q And in January of -- January 18th, 2022 report,
12 Mr. Abreu Perez reported to you that he was working as an Uber
13 driver three to four hours a day; right?

14 A Yes.

15 Q He had been doing so since February of 2019?

16 A Yes -- no, that's incorrect, sorry.

17 Q It says in your report it notes Mr. Perez reported he
18 had been driving for Uber since February of 2019; yes?

19 A Yes.

20 Q You found in your January 18th, 2022 report, regarding
21 the cervical spine, Mr. Abreu Perez sustained a cervical strain;
22 correct?

23 A Yes.

24 Q And MRIs noted bulging at -- bulging disc at C6-7; is
25 that correct?

1 A Yes.

2 Q With respect to the lumbar spine, your January 18th,
3 2022, report, you find that Mr. Perez sustained a lumbar strain
4 injury resulting from the fall; is that correct, fourth line
5 down?

6 A Yes, that's correct, that's correct.

7 MR. KELLY: Do you want to break now?

8 THE COURT: That's fine, this is a good time for
9 you?

10 MR. KELLY: Yes, if you don't mind, then I will
11 move on.

12 THE COURT: Members of the jury, we're going to
13 break for lunch, and I'm going to ask you to return back at
14 2:30.

15 COURT OFFICER: All rise, jury exiting.

16 (Whereupon, the jury exited the courtroom.)

17 THE COURT: Dr. Spivak, I ask you to return at
18 2:30. Do not speak to counsel about the case during the
19 break, you can speak to them, but not about the case and
20 your testimony.

21 THE WITNESS: Absolutely, no problem.

22 (Whereupon, Dr. Spivak exited the witness stand
23 and the courtroom.)

24 THE COURT: Everyone 2:30.

25 (Whereupon, a lunch break was taken.)

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

2 (Pause in the proceedings.)

3 COURT OFFICER: All rise, jury entering.

4 (Whereupon, the jury entered the courtroom.)

5 THE COURT: Everyone have a seat, Dr. Spivak, you
6 may return to the witness stand.

7 (Whereupon, Dr. Spivak resumed the witness stand.)

8 CONTINUED CROSS-EXAMINATION BY

9 MR. KELLY:

10 THE COURT: I will remind that you're still under
11 oath. Again, if you don't understand the question or need
12 clarification, ask for it to be, the question to be
13 repeated.

14 Counsel, you may inquire.

15 MR. KELLY: Thank you, your Honor.

16 Q Dr. Spivak, I invite your attention to your report of
17 January 28th, 2025, tell me when you're there.

18 A Yes, I have it.

19 Q And I'm going to skip, we will go to page five, if you
20 don't mind.

21 A Yes.

22 Q Just yes or no, again, at that time, meaning the
23 January 28th, 2025, report, you had the opportunity to review
24 additional records of Dr. Joseph Weinstein; is that correct?

25 A I apologize, I have the September report out, let me

1 just change to page five.

2 Q January 28, 2025?

3 A Yes, that's correct.

4 Q And Mr. Abreu Perez had a follow-up visit on
5 February 29, 2022, is that in your report?

6 A Yes.

7 Q Dr. Weinstein indicated Mr. Abreu Perez had a lumbar
8 decompression and fusion surgery at L5-S1; is that correct?

9 A Yes.

10 Q And going to page six of your report, six paragraph
11 down your report includes, I will wait for you, that Roberto
12 Abreu Perez had an initial physical therapy evaluation on
13 July 3, 2023; is that correct?

14 A Yes.

15 Q At Park Physical Therapy?

16 A Yes.

17 Q And that he continued treatment for low back and neck
18 from July 3, 2023, through June 5, 2024; is that correct?

19 A Yes.

20 Q And in this January 28, 2025, report, at page eight of
21 your report, second paragraph, you indicate that Mr. Abreu Perez
22 sustained a cervical strain resulting from the June 27th, 2017,
23 incident; is that correct?

24 A Yes.

25 Q With respect to the lumbar spine, you said Mr. Abreu

1 Perez sustained a lumbar sprain strain following the fall; is
2 that correct?

3 A Yes.

4 Q I want to invite your attention to your September 28th,
5 2025, report, let me know when you're there.

6 A Yes.

7 Q At page three, fourth paragraph down, your report
8 contains this notation, an MRI of the lumbar spine was done
9 7/29/17; is that correct?

10 A Yes.

11 Q And indicates the impression there was for disc
12 herniation at L5-S1; is that correct?

13 A Yes.

14 Q Impinging the anterior epidural fat; correct?

15 A Yes.

16 Q Your report also says you reviewed the images and study
17 shows a disc bulge at L4-5; is that correct?

18 A Yes.

19 Q Bilateral facet arthrosis at L2-3, L3-4, L4-5 and
20 L5-S1; is that correct?

21 A Yes.

22 Q And MRI of the cervical spine done September 20, 2017,
23 at Kolb Radiology shows an anterior spondylosis at C5-6, C6-7;
24 is that correct?

25 A Yes.

1 Q And MRI done at Lenox Hill on March 29, 2018, shows a
2 disc bulge at C6-7; correct, it's in your report?

3 A Yeah, I was looking, lumbar report, I apologize, yes,
4 minimal disc bulge, at C6-7, was the impression, correct.

5 Q Okay. And MRI of the lumbar spine done March 29, 2018,
6 at Lenox Hill Radiology, the impression there was disc bulge
7 noted at L4-5 and L5-S1; is that in your report?

8 A Yes.

9 Q I'm just going to skip, it's superfluous, page six of
10 the report of September 28, 2025, you have a section called
11 "Report, Review of Additional Records"; is that correct?

12 A Yes.

13 Q And May 8, 2025, Mr. Abreu Perez saw Chaim Mandelbaum,
14 M.D. for consultation; is that correct?

15 A Yes.

16 Q Dr. Mandelbaum's diagnosis was fusion of spine and
17 lumbar region and consideration made for spinal cord stimulator;
18 is that correct?

19 A Yes.

20 Q He also noted a fusion of the cervical spine and
21 consideration for lumbar and cervical epidural injections going
22 forward; correct?

23 A Yes.

24 Q On page eight of your report you indicate in your
25 summary and opinion regarding the cervical spine, Mr. Abreu

1 Perez sustained a cervical strain resulting from the June 27th,
2 2017 incident; is that correct?

3 A Yes.

4 Q And you also indicate in this September 28th, 2025,
5 report, that Mr. Abreu Perez sustained a lumbar sprain and
6 strain following the fall; is that correct?

7 A Yes, correct.

8 Q Doctor, these reports that we have gone through,
9 they're rendered by you for purposes of defending a lawsuit;
10 correct?

11 A Ultimately, I guess that's why I'm hired, yes.

12 Q But they're not for treatment for Mr. Abreu Perez; is
13 that correct?

14 A I can be asked, that's not correct.

15 Q Well, doctor, did you form a doctor/patient
16 relationship with Mr. Abreu Perez?

17 A No.

18 Q Can he sue you for malpractice should anything in your
19 report deviate from the standard?

20 A Yes.

21 MR. ALVARADO: Note my objection.

22 A I believe he can actually.

23 THE COURT: Sustained, don't answer.

24 THE WITNESS: I'm sorry.

25 Q You never consulted with Mr. Abreu Perez's treating

1 physicians; correct?

2 MR. ALVARADO: Note my objection.

3 THE COURT: Sustained.

4 Q You're not in the continuum of care, are you, doctor?

5 A That's correct, I'm not.

6 Q You don't provide any care and treatment to Mr. Abreu
7 Perez; is that correct?

8 A Correct.

9 Q You don't prescribe for him; is that correct?

10 A Yes.

11 Q You don't make a treatment plan for his future or do
12 you?

13 A I have not made a treatment plan for him, that is
14 correct.

15 Q And Mr. Abreu Perez cannot rely on anything in your
16 reports in terms of obtaining continuing treatment; isn't that
17 correct?

18 A Not from me, that's correct.

19 MR. KELLY: I have nothing further, thanks.

20 THE COURT: You can redirect.

21 REDIRECT EXAMINATION BY

22 MR. ALVARADO:

23 Q Just a couple of questions, doctor, if, you were asked
24 about, you know, whether you were a treating doctor.

25 If Mr. Abreu Perez came to you and you were treating

1 him, would you prepare a treatment plan?

2 MR. KELLY: Objection, if, this is all speculation.

3 THE COURT: Overruled.

4 Q Would you prepare a treatment plan as part of your
5 treating of this patient?

6 A Yes.

7 Q And but you were hired here by us, a defense firm;
8 correct?

9 A Yes.

10 Q And are you only allowed to examine him based on court
11 orders?

12 MR. KELLY: Objection.

13 THE COURT: Overruled.

14 A I don't understand the question "based on court
15 orders". I'm not a lawyer.

16 Q Okay.

17 You can't just go call Mr. Abreu Perez and say come on
18 in?

19 A That is correct.

20 Q And he can call you, if you are a treating doctor
21 though; correct?

22 MR. KELLY: Objection.

23 THE COURT: Overruled.

24 A He can call any doctor, including myself.

25 Q Since you're not his treating doctor, are you generally

1 or can you even call his treating doctors; do you have that
2 authority?

3 MR. KELLY: Objection.

4 THE COURT: Overruled.

5 A As far as I know, I don't.

6 MR. ALVARADO: I have nothing further.

7 THE COURT: Any further questions?

8 RECROSS EXAMINATION BY

9 MR. KELLY:

10 Q You're hired by the defendants to defend a lawsuit;
11 correct?

12 A That's not correct, that's not how I look at it.

13 Q You weren't hired by the defendants to provide services
14 or care to Mr. Abreu Perez, were you?

15 A That is correct.

16 MR. KELLY: Nothing further.

17 MR. ALVARADO: No further questions.

18 THE COURT: Thank you, Dr. Spivak, you can step
19 down.

20 THE WITNESS: Thank you.

21 (Whereupon Dr. Spivak exited the witness stand.)

22 MR. KELLY: Plaintiff calls Dr. Joseph Weinstein.

23 (Whereupon, Dr. Weinstein entered the courtroom and
24 took the witness stand.)

25 THE CLERK: Doctor, raise your right hand. Do you

1 swear or affirm that the testimony you're about to give will
2 be the truth, the whole truth and nothing but the truth,
3 before this court?

4 THE WITNESS: Yes.

5 THE CLERK: Thank you, you can lower your hand and
6 be seated.

7 Please state your full name and address for the
8 record?

9 THE WITNESS: Joseph Eliot Weinstein, 62-54 97th
10 Place, 2C, Rego Park, New York 11374.

11 THE CLERK: Thank you.

12 THE COURT: Alright, Dr. Weinstein

13 THE WITNESS: Good afternoon.

14 THE COURT: Good afternoon, I'm going to ask you to
15 speak into microphone.

16 THE WITNESS: Yes, your Honor.

17 THE COURT: Now if you don't understand the
18 question, just ask for it to be repeated.

19 THE WITNESS: No problem.

20 MR. KELLY: I can inquire?

21 THE COURT: Yes, sorry.

22 DIRECT EXAMINATION BY

23 MR. KELLY:

24 Q Good afternoon, Dr. Weinstein.

25 A Yes.

1 Q How are you doing today?

2 A I'm okay.

3 Q Tell the jury kindly what is your profession?

4 A I'm an orthopedic surgeon.

5 Q Tell us a little bit about your professional education
6 and background?

7 A I'm from Queens, New York, local guy, I went to Queens
8 College, complete my undergraduate there, then I went to New
9 York College of Osteopathic Medicine four year medical school in
10 Long Island, and I completed medical school there four years,
11 and then I did an orthopedic surgery residency at the Northwell
12 Health System, and in various hospitals of Northwell Health and
13 that was five years, the last year and a half, I served as the
14 chief resident, making all of the schedules, dealing with all
15 issues, and resident problems, as well as patient issues.

16 After five years of orthopedic residency, which is
17 general orthopedics in all different fields of orthopedics, I
18 did a one year subspecialty training fellowship at the Hospital
19 for Special Surgery in spine surgery.

20 After that, I opened my own practice, called
21 Comprehensive Orthopedic & Spine Care based in Queens, primarily
22 then.

23 Q Are you board certified, doctor?

24 A Yes, I am.

25 Q Describe for the jury what it means to be board

1 certified in your profession?

2 A So board certification is an extra certification that a
3 doctor takes. In my case, it was three tests we had to take, it
4 was a -- a written exam, then we had an oral exam where you had
5 to go into a room with like 50 tables and there were two
6 orthopedic surgeons who were board certified and they can ask
7 you any question under the sun, and I passed those and then the
8 final one is you have two orthopedic surgeons that are pretty
9 advanced orthopedic surgeons and they come and you prepare
10 charts for them, and they go over the charts and they actually
11 watch you do surgery, so I passed all of those on the first
12 time, in order to be board certified, you have to pass all of
13 those three tests, as well as yearly updates, you have to do as
14 well.

15 Q Are you licensed to practice in the State of New York?

16 A Yes, I am.

17 Q Do you engage in the private practice of your
18 profession?

19 A Yes, I do.

20 Q And do you regularly see patient?

21 A Yes.

22 Q Tell us a little bit about your practice?

23 A Sure, so, I treat spine surgery, primarily, and I also
24 do shoulder and knee surgery, I do some generally orthopedics as
25 well, but primarily I do a lot, I did a lot of spine surgery,

1 and seen patients from all walks of life, I saw patients or see
2 patients from regular patients that get injured in accidents
3 such as ski accidents or basketball or just a trip and fall or
4 just someone whose back hurts them when they stood up, and I see
5 also people who are injured in car accidents, and I sued to see
6 patient who were injured at work as well.

7 Q Have you been previously qualified as an expert witness
8 in New York courts?

9 A Yes.

10 MR. KELLY: I offer Dr. Weinstein as an expert in
11 spinal surgery.

12 MR. ALVARADO: No objection.

13 THE COURT: Dr. Weinstein is admitted as an expert
14 in spinal surgery for this proceeding.

15 Q Doctor, your subpoenaed records are here in court, but
16 you can refer to your notes to give testimony, should you
17 require it.

18 A Sure.

19 Q Did there come a time when you encountered Mr. Abreu
20 Perez as a patient?

21 A Yes, I did.

22 Q Tell us a little bit about the nature of that
23 encounter?

24 A Sure, I believe he was referred to me by Dr. Matthew
25 Grimm, the first time I saw him was on 3/21/2018.

1 Q Did you take a history at that time?

2 A Yes.

3 Q Tell the jury a little bit about what the history
4 entailed?

5 A Well, he was seen for his neck and his low back pain,
6 he was injured while at work on 6/27/2017, he complained of pain
7 and stiffness in the cervical spine and the low back,
8 lumbar spine, he stated that his issue was worsening.

9 Q Did you perform a physical examination at that time?

10 A Yes.

11 Q Tell us a little bit why you performed the physical
12 examination and what things you did?

13 A Well, when we see a patient, you take what the patient
14 says, how they're doing, their history of present illness,
15 what's going on, what brings them to you, what has occurred
16 since they have gotten injured, what their symptoms are, their
17 pain scale, and then we examine them, we examine the tissue, you
18 want to see if the skin, how that looks, the musculature, there
19 are various tests that we do, in order to check regarding the
20 spine, there's tests that we do regarding sensation, two-point
21 discrimination and pinprick to see if there are differences in
22 the way someone perceives feelings or touch, there are motor
23 strength, basically, there's five levels of motor strength from
24 zero to five, and that's resistance of people push against you,
25 for instance, for the triceps, push against you, and that is

1 grated on different scales.

2 There's also reflexes, we check with a reflexes hammer
3 to check if the reflex arc is intact, this can show certain
4 compression on nerves, or difficulties with the spinous system,
5 and we check also various tests including there's a test in the
6 neck called Hoffman's sign that tests for severe spinal cord
7 compression. We also test or measure the range of motion to see
8 how much the patient can move, if there's any restrictions.

9 Q Doctor, throughout this examination, I'm going to ask
10 you for certain opinions, which all need to be to a reasonable
11 degree of medical certainty; is that okay?

12 A Sure.

13 Q And what is the significance, or withdrawn.

14 Did you look at any radiology upon your first
15 examination with Mr. Abreu Perez?

16 A I recommended X-rays and MRIs of the cervical spine and
17 lumbar spine.

18 Q Did Mr. Abreu Perez actually go for that diagnostic
19 study?

20 A Yes.

21 Q What were the findings from that diagnostic study?

22 A There's an MRI from Lenox Hill Radiology on 3/29/2018,
23 that's after my first visit of a minimal disc bulge at C6-C7,
24 and a lumbar MRI of the same date of minimal posterior disc
25 bulges noted at L4-5 and L5-S1.

1 Q Are your findings from your initial encounter with
2 Mr. Abreu Perez consistent with the competent producing cause of
3 pain in Mr. Abreu Perez?

4 A Yes, it can.

5 Q Upon Mr. Abreu Perez's clinical description of pain to
6 you, do you have an opinion, to a reasonable degree of medical
7 certainty, whether or not the accident was the cause of
8 Mr. Abreu Perez's complaints?

9 A If the history provided to me was correct, within a
10 reasonable degree of medical certainty, as you said, yes.

11 Q Did you form an initial diagnosis at this time?

12 A Yes.

13 Q Tell us what it is?

14 A Cervical radiculopathy and lumbar radiculopathy.

15 Q Tell the jury a little bit what that means,
16 radiculopathy?

17 A Radiculopathy is any sort of issue with the nerves, any
18 sort of shooting pain, any numbness, weakness, anything of that
19 sort, and any sort of compression on the nerves, that's
20 radicular pain.

21 Q Is that something different than a muscular type of
22 pain?

23 A Yes.

24 Q Did you form a treatment plan with respect to Mr. Abreu
25 Perez?

1 A After the second time, it was reported to me that he
2 had, that he had been in physical therapy since his accident, in
3 2017, taken antiinflammatories, as well as received epidural
4 injections, so I recommended a lumbar discogram for his back, as
5 well as an anterior cervical dissection and fusion C6-7 for his
6 neck.

7 Q Tell us what is a discogram?

8 A A discogram is a test that is done by -- usually a pain
9 management doctor, what it does is confirms there's discogenic
10 pain. If there's discogenic pain depending on the outcome of
11 the test, what it is the patient is mildly sedated, so they
12 still remember -- not remember, but they are still able to
13 answer, they're not under general anesthesia, and what they're
14 blinded to the test, so they have no idea what's happening, the
15 drapes are up, no one tells them what's going on.

16 Basically what happens is a needle is put into multiple
17 discs and in his case, it was put into L4-5 and L5-S1, those are
18 the lowest discs in the spine, and what happens is, that there's
19 pressure put in, there's like saline put in or just like water
20 that put into the disc and what happens is, there's a control
21 level and there's a different level, so the control level would
22 be any level that would say doesn't cause the same reproducible
23 pain, that the patient has when they have pain, and then the
24 other level, the level that is injected as well, is, can cause
25 pain as well, so that can cause the pain that the patient is

1 having, basically what it is, I don't know if I'm confusing you
2 guys, but the discs are both injected the same, okay, and the
3 patient doesn't know which level, and they're asked, does this
4 hurt, like the pain that you have, and if they say no, that disc
5 is fine, and then another disc is. If they say no, that's fine,
6 but if it is causing pain when the injection happens, then
7 that's the discogenic back pain that's basically unrelenting,
8 that's the way to diagnose it.

9 Q What was the result of the discogram in this case?

10 A He had a positive discogram at L5-S1.

11 Q And that means, that means what?

12 A That means that that disc is damaged, and there's
13 discogenic pain or pain that comes from the actual discs, that
14 means that disc when it moves, he has pain and that's confirmed
15 by a blind study, basically.

16 That means that the patient cannot, and they will tell
17 you that, they can't sit, stand, be in any position more than
18 15 minutes moving around, people have this, and don't know about
19 it, I see a lot of people nodding, basically you can't sit in a
20 position without saying oh, my back hurts, I have to move or I
21 need some treatment.

22 Q I would like you to assume, doctor, that Mr. Abreu
23 Perez had no prior neck or back radicular pains, no back or neck
24 complaints of any kind prior to the accident of June 27, 2017.

25 Do you have an opinion, to a reasonable degree of