

1	SUPREME COURT OF THE STATE OF NEW YORK	
2	COUNTY OF KINGS: CIVIL TERM: PART 113	
3	-----X	:
4	ROBERTO ABREU PEREZ,	:
5		:
6	PLAINTIFF,	:
7		:
8	-against-	:
9		:
10	176 EAST 116 LLC, and LUXURY HOME	:
11	IMPROVEMENT CORP.,	:
12		:
13	DEFENDANTS.	:
14	-----X	:
15	176 EAST 116 LLC,	:
16		:
17	THIRD-PARTY PLAINTIFF,	:
18		:
19	-against-	:
20		:
21	178 JJH, Inc.,	:
22		:
23	THIRD-PARTY DEFENDANT.	:
24	-----X	:
25		:

  

	Supreme Court
	360 Adams Street
	Brooklyn, New York 11201
	January 28, 2026

B E F O R E :

HONORABLE LISA LEWIS,  
Justice of the Supreme Court

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(Appearances Continued on Next Page.)

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LAURA DELVAC  
SENIOR COURT REPORTER

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THE COURT: Mr. Frittola, you wanted to question  
Dr. Grimm about his voluntary resignation from the Workers'  
Compensation board?

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## Motions

1 MR. FRITTOLA: That is correct, your Honor.

2 THE COURT: So my understanding is that on the  
3 Workers Compensation Board, there's information that states  
4 that Dr. Grimm has voluntarily resigned from submitting  
5 documents with respect to injured workers, but that's all it  
6 says; correct?

7 MR. FRITTOLA: Yep, yep.

8 THE COURT: Okay. Mr. Kelly.

9 MR. KELLY: Yes, your Honor, that's designed only  
10 for prejudicial value. There's no probative value to making  
11 the remark. The intimation will be something wholly  
12 prejudicial to the Plaintiff and has nothing to do with this  
13 case, there can be no response from the doctor, insofar as  
14 they came to an agreed settlement, which is confidential,  
15 he's not allowed to talk about it, there's no -- there  
16 there's no thing that they're trying to prove, there's no  
17 probative value of this alleged thing from the Workers  
18 Compensation website that was not served in accordance with  
19 the similar, which requires service of downloaded items from  
20 the internet, ten days -- 30 days prior to trial, that has  
21 not been done, and I object to the entire line of  
22 questioning, and so, when we are off the record,  
23 Mr. Frittola said that he's going to ask if he resigned and  
24 he was going to say --

25 THE COURT: I was going to get to that part.

## Motions

1 MR. KELLY: It's utterly collateral to the case.

2 THE COURT: What's the, so, right, so I did off the  
3 record if he says yes, the follow-up question, Mr. Frittola  
4 said would be why, and what's the purpose of eliciting this  
5 testimony?

6 MR. FRITTOLA: Your Honor, I would just like to  
7 note on the printout that we have from the Board, the  
8 specific language at the conclusion from the -- this is an  
9 authored by the Chair, Frieda Foster, request to  
10 cross-examine the provider for services rendered prior to  
11 July 23, 2025, should not be denied due to their  
12 resignation.

13 So, it's already being contemplated that this does  
14 not in certain respects limit cross-examination. If I may  
15 just address some of the points that were previously made,  
16 what is the point of it? Why are we offering it? We have  
17 an affirmative defense of fraud we're prosecuting, the  
18 allegations in our third-party answer are very clear, the  
19 medical professionals in this case worked it hard to  
20 maximize their own reimbursements.

21 We heard from Dr. Weinstein specifically, he, there  
22 was a discussion on the record in evidence about the  
23 findings of the Workers Compensation Board with their  
24 decision not to renew his application, that he exposes  
25 patients to risks of injuring and complications for

## Motions

1 unnecessary procedures, lacks medical justification, et  
2 cetera, et cetera, this is a pattern among the medical  
3 professionals that have treated this man, Mr. Abreu Perez,  
4 and the point of the -- of asking Dr. Grimm about the  
5 resignation is it fits within the pattern that is already  
6 been identified with Dr. Weinstein, his resignation is  
7 evidence in and of itself, and it should be able to be  
8 cross-examined, if he can talk about it, he can talk about  
9 it.

10 If he chooses not to talk about it, because he  
11 voluntarily entered into a confidentiality agreement, he  
12 should say that I'm not able to talk about it.

13 THE COURT: But the impression that leaves is that  
14 it is related to these fraud allegations against  
15 Dr. Weinstein. Which may or may not be true, because he may  
16 say there's some other reason why he voluntarily resigned.

17 MR. FRITTOLA: It's clear, if I may, your Honor,  
18 Dr. Grimm could have -- Dr. Grimm could have voluntarily  
19 resigned to avoid having to submit his recertification,  
20 reapplication paperwork, that's significant.

21 MR. KELLY: The jury would be left to speculate  
22 about that, and this entire thing is a collateral matter,  
23 violative of Badr against Hogan, the Court of Appeals says  
24 we're not supposed to engage in mini-trials that not on the  
25 issue involving the parties in the case.

## Motions

1           With respect to their fraud allegations, I move to  
2       dismiss them here, based on Breton against Dish, a 2025  
3       case, which basically says that fraud allegations are  
4       patently devoid of merit where the counterclaim is based on  
5       allegation which seeks to recover damages, personal injuries  
6       based on misrepresentations, and that the plaintiff intended  
7       to adduce the defendant to rely on those misrepresentations  
8       so that the parties would settle the action.

9           The Defendant has not according to this case has  
10      not, in fact, relied on Plaintiff's alleged  
11      misrepresentations, but has denied them in his answer and  
12      continues to deny them throughout the litigation. Thus, an  
13      assertion of fraud is patently without merit.

14           If the Court wants, I will hand this case up,  
15      Breton against Dish.

16           THE COURT: I will take a copy.

17           MR. ALVARADO: Can I see it real quick, Frank?

18           THE COURT: Yes, he can read it.

19           COURT OFFICER: (Hanging.)

20           THE COURT: Mr. Kelly.

21           MR. KELLY: Yes.

22           THE COURT: You turned your laptop off.

23           MR. KELLY: Yes, it's, oops, what happened, I think  
24      they pulled my thing out and put theirs in, no, whose  
25      shining this, oh, that's --

## Motions

1 THE COURT: Just make sure it's connected.

2 COURT OFFICER: It's in.

3 MR. KELLY: You're right, I'm going to let it go  
4 quiet now, we don't need this until the next witness.

5 MR. FRITTOLA: Regarding the case, your Honor, that  
6 case addresses a counterclaim --

7 THE COURT: Well, let's focus on Dr. Grimm's  
8 testimony first.

9 MR. FRITTOLA: Okay.

10 THE COURT: With respect to asking about the  
11 voluntary resignation, I will not allow it. I deem it to be  
12 too speculative with respect to what the reasoning is. We  
13 don't have a situation where there's a finding or anything  
14 of that nature, any thought that he resigned to avoid the  
15 same fate as Dr. Weinstein would be speculative, and it's  
16 very unlikely that's what he's going to say and it will  
17 leaves the jurors with a prejudicial impression of the basis  
18 of his resignation.

19 MR. FRITTOLA: In the alternative, may we conduct a  
20 voir dire of Dr. Grimm to examine that issue outside the  
21 presence of the jury?

22 MR. KELLY: No, to engage in a collateral hearing  
23 which the Court of Appeals says you're not supposed to  
24 engage in.

25 THE COURT: What would be the purpose?

## Motions

1           MR. FRITTOLA: I want to ask him why he resigned.  
2           He voluntarily resigned, he's in the prime of his career,  
3           and he voluntarily resigned from treating Workers  
4           Compensation patients, why?

5           MR. KELLY: He still practices medicine quite  
6           actively, he's not obliged to take Workers' Compensation  
7           patients, they don't pay anything for heaven's sake.

8           MR. FRITTOLA: Then he can get up there and say  
9           that.

10          MR. KELLY: Why should we have a collateral  
11          hearing?

12          THE COURT: I agree. We're not going to do that, I  
13          agree, just testify without respect to the resignation.

14          MR. KELLY: Can I tell him he doesn't have to call  
15          his lawyer anymore?

16          THE COURT: Mr. Kelly.

17          MR. FRITTOLA: While we're talking about this,  
18          Dr. Grimm's understanding of Dr. Weinstein's current status.

19          MR. KELLY: For God's sake.

20          MR. FRITTOLA: Based off of what he testified  
21          yesterday, I would like to ask him that, are you still  
22          referring patients to Dr. Weinstein.

23          MR. KELLY: Utterly anecdotal, if he's going to  
24          preface are you aware of Dr. Weinstein current vicissitudes,  
25          whatever, where are we going?



## Motions

1           If he says he still refers to Dr. Weinstein, that's  
2           fine, he can say that, fine.

3           THE COURT: Because the issue is, that is one  
4           method of receiving patients, he should not be, and most  
5           likely is not referring workers for Workers Compensation to  
6           Dr. Weinstein.

7           MR. KELLY: That's correct.

8           THE COURT: But that does not mean he can't refer  
9           or is not referring other patients because if he says yes,  
10          he's referring other patients not related to the Workers  
11          Compensation Board to Dr. Weinstein, then what, where are  
12          you going with that?

13          MR. FRITTOLA: That's his answer, there is no  
14          issue.

15          MR. KELLY: Trying to cast the brush.

16          THE COURT: Yeah.

17          MR. KELLY: Prejudicial.

18          THE COURT: I think it's too prejudicial, so I'm  
19          not going to allow that.

20          Anything else with respect to Dr. Grimm and the  
21          Workers Compensation Board?

22          MR. KELLY: No, Judge.

23          THE COURT: You can speak to your client.

24          MR. KELLY: Yes, thank you.

25          THE COURT: And we can get the jurors.

## Motions

1 MR. ALVARADO: Judge, yes, I informed you what we  
2 raised with you yesterday, the motion.

3 MR. KELLY: Can you wait until I come back?

4 MR. ALVARADO: Before you get the jury.

5 THE COURT: Okay, you want to make an oral  
6 argument.

7 MR. ALVARADO: Yes, Briggs said he was going to  
8 give you the cases.

9 MR. DREXLER: I don't have anything here.

10 MR. ALVARADO: I'm yelling at him, you can give it  
11 to the Judge, it has the reference, but --

12 THE COURT: I have it from yesterday.

13 MR. DREXLER: I have the reference here.

14 MR. ALVARADO: That has the actual citation for  
15 her.

16 MR. DREXLER: I have the same thing.

17 MR. ALVARADO: She wanted the cases, at least give  
18 her that, I listened to you.

19 THE COURT: So, I have it, you want to make your  
20 argument now, because, before we get to that, when is  
21 Dr. Weinstein testifying again?

22 MR. KELLY: I didn't, I didn't harden it up with  
23 him, I suppose the next available date may be Friday, I will  
24 ask him.

25 THE COURT: Okay.

## Motions

1           MR. KELLY: But he has not completed his testimony,  
2 my understanding if there's going to be motions about his  
3 testimony.

4           THE COURT: That's what we're doing right now.

5           MR. KELLY: Okay, well, we're not finished yet.

6           THE COURT: You can make your oral argument.

7           MR. DREXLER: Good afternoon, your Honor.

8           The first motion is to strike Dr. Weinstein's  
9 testimony regarding possibility of future surgeries from the  
10 record, it shouldn't be mentioned again, it should be  
11 precluded from being mentioned again.

12           He testified, there's a cite to the record that  
13 there was a, quote, 20 to 30 percent chance that the  
14 Plaintiff will possibly need future surgery to address a  
15 disc disease in the future.

16           This evidence is not supported by a rational basis  
17 and it's not a definite opinion. The citations we have here  
18 Court of Appeals Miller v. National Cabinet, a physician's  
19 opinion must signify a probability supported by some  
20 rational basis and must be convey assurance that it is not  
21 based on either supposition or speculation. Recovery for  
22 future medical expenses should be limited to those which are  
23 necessary and reasonably certain to be included.

24           The courts are clear, that any evidence on the  
25 record must be devoid of any evidence that is devoid of a

## Motions

1 definite opinion with respect to the need for surgery should  
2 be precluded.

3 The Appellate Division in this department, the  
4 Second Department in Kun Sik Kim, K-U-N S-I-K K-I-M, the  
5 trial court or the Appellate Division ruled that the trial  
6 court erred in permitting the plaintiff's treating physician  
7 to testify regarding future surgery, although the  
8 plaintiff's treating physician testified that the surgery he  
9 performed on the plaintiff's shoulder was successful and  
10 that the shoulder was stable, he nonetheless indicated that  
11 plaintiff would require a shoulder replacement in the  
12 future. However, the court notes the plaintiff's physician  
13 failed to state a basis for such opinion and failed to  
14 indicate with any degree of certainty that the Plaintiff  
15 would require that.

16 The same is true here, your Honor, a 20 to  
17 30 percent chance that a Plaintiff possibly needs future  
18 surgery does not rise to the standards and the threshold set  
19 by the courts.

20 THE COURT: One moment, just hold them out there.  
21 Anything else?

22 MR. DREXLER: One other motion it's to move the  
23 Workers Compensation Board findings into evidence. And  
24 essentially the findings were already read into evidence by  
25 Dr. Weinstein, but given the fact that Plaintiff's

1 credibility is the central issue of this trial, we need to  
2 be able to prove that he's not credible with extrinsic  
3 evidence and there's case law to support this.

4 First, there are medical evidence already in  
5 evidence and Plaintiff's own testimony that he went to the  
6 hospital and had no complaints of pain regarding the areas  
7 that he's alleging in his suit, and the Workers Compensation  
8 Board findings effectively hold that Dr. Weinstein regularly  
9 treated patients with unnecessary surgeries, that's relevant  
10 to Plaintiff's credibility, and the Court can take judicial  
11 notice of undisputed court records and files.

12 We would argue that the findings of the Workers  
13 Compensation Board are highly relevant to both Plaintiff and  
14 Dr. Weinstein's credibility, it's probative because they  
15 both have a particular interest as witnesses in the outcome  
16 of this case. There's an incentive for Dr. Weinstein to  
17 shield himself from additional liability, and he can do that  
18 by stretching the truth on the witness stand. Thus, the  
19 Workers Compensation Board materials and findings should be  
20 submitted into evidence.

21 THE COURT: Do you have a certified copy?

22 MR. DREXLER: I do not.

23 THE COURT: Okay, I see the attorneys looking  
24 around while you do that.

25 MR. ALVARADO: I didn't bring the decision with me,

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1 judge. It was definitely --

2 THE COURT: Do you have a -- I mean he's not  
3 testifying today.

4 MR. ALVARADO: He is not, it was actually filed  
5 with the court in Schenectady.

6 MR. DREXLER: Right.

7 MR. ALVARADO: So it's part of the court docket.

8 THE COURT: The decision.

9 MR. ALVARADO: It's on it, and I mean Dr. Weinstein  
10 himself said that is the decision.

11 THE COURT: Do you have a certified copy?

12 MR. ALVARADO: Again, I don't have the copy with  
13 me, the one I was cross-examining, I don't know if it was  
14 certified or not, I didn't see it.

15 THE COURT: You didn't see it.

16 MR. ALVARADO: Yeah, I don't have it with me today.

17 THE COURT: So the witness is not coming back  
18 until, at the earliest Friday, so we will address that issue  
19 at that time.

20 Mr. Kelly, do you want to respond; yes?

21 MR. KELLY: Yes, they want to put in something that  
22 is utterly the subject of a collateral hearing against  
23 somebody whose not a party in the case to use it to impune  
24 the credibility of the party in this case.

25 This is the most egregious bootstrapping I've ever

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1 heard of, it goes it's in violation of Badr against Hogan,  
2 which was our original motion, our first motion, we cannot  
3 have this continuation collateral hearings, and you can't  
4 use extrinsic proof to impune the credibility, that's black  
5 letter law in New York, and you cannot use extrinsic proof  
6 to impune credibility of a witness.

7 Now they not only want to impune the credibility of  
8 the witness, they want to bootstrap that and impune the  
9 testimony of the Plaintiff, this is completely outrageous,  
10 and talk about their first motion, Dr. Weinstein isn't done  
11 yet. I don't see how they can propose to have a motion with  
12 respect to that.

13 THE COURT: Okay. With respect to, you want to say  
14 something else?

15 MR. DREXLER: Our motion would be to preclude him  
16 from talking about future surgeries. We want it stricken  
17 from the record. We want to preclude him from talking about  
18 it.

19 MR. KELLY: What school of evidence is that?

20 MR. DREXLER: It's completely speculative.

21 MR. KELLY: That's ridiculous.

22 MR. DREXLER: It's not based on rational basis.

23 MR. KELLY: Completely ridiculous.

24 So in the middle of their cross.

25 THE COURT: One moment, one moment, let me see

## Motions

1 something.

2 So that was on direct, there's, he's currently on  
3 cross, Mr. Kelly will have the opportunity to redirect, and,  
4 I think we need to see where he's finished as much as his  
5 testimony is still ongoing, Mr. Kelly will have the  
6 opportunity to do a redirect on that issue.

7 MR. KELLY: Thank you, Judge.

8 THE COURT: Let me see, with respect to the Workers  
9 Compensation Board, Mr. Alvarado, you will let me know.

10 MR. ALVARADO: Yes, yes, unfortunately, Judge, I  
11 didn't, that's in my Weinstein folder, I didn't bring it,  
12 he's not testifying.

13 THE COURT: That's fine.

14 Anything else?

15 MR. KELLY: Just that that's not, it's good if the  
16 Court wants it, but it doesn't make any difference, they're  
17 using extrinsic evidence to impune the credibility of a  
18 witness which you cannot do in New York, and now they want  
19 to bootstrap to impune the credibility of the Plaintiff,  
20 they're taking an egregious jump that's not contemplated in  
21 any school of evidence across the 50 states.

22 MR. ALVARADO: Judge, I will bring the decision  
23 tomorrow, we should probably mark it for ID, I was going to  
24 do it before I'm finished questioning Dr. Weinstein on  
25 Friday, if he comes in on Friday, I should mark that for ID.



## Motions

1           MR. KELLY: Also, yesterday I moved to strike all  
2 of that testimony. I'm going to renew my motion to strike  
3 all of the testimony with respect to the Workers  
4 Compensation Board's 19-page letter, and any responses with  
5 respect to that.

6           THE COURT: Okay.

7           MR. ALVARADO: It wasn't a letter, it wasn't a  
8 letter, it was a 19-page decision.

9           THE COURT: Decision.

10          MR. ALVARADO: Which he authenticated and he said  
11 it was attributed to him.

12          MR. KELLY: It violates the law to introduce it.

13          MR. ALVARADO: It is a decision.

14          MR. KELLY: Badr against Hogan.

15          THE COURT: We will address that before he  
16 testifies.

17          MR. DREXLER: If I may respond to Mr. Kelly's last  
18 statement with a few cases, People v. Webster, 1893,  
19 evidence of a witness's interest in the outcome of a case or  
20 bias towards one of the parties involved provides grounds  
21 for impeachment and is, quote, always of importance in  
22 determining credibility. For this reason, interest or bias  
23 may be established by extrinsic proof if available, that's  
24 People v. Hudy, H-U-D-Y.

25          MR. KELLY: Did you say "1893"? The law changed.

## Motions

1 MR. DREXLER: People versus Hudy is 1988.

2 MR. KELLY: The law changed since 1988.

3 MR. ALVARADO: Judge --

4 MR. KELLY: Drayton against Putnam is this  
5 department, decided 13 months ago, 13, maybe 11 months ago.

6 THE COURT: What case?

7 MR. KELLY: Which says you can't do it.

8 THE COURT: What case?

9 MR. KELLY: Drayton D-R-A-Y-T-O-N against Putnam  
10 Hospital, it's the lead case in my initial --

11 THE COURT: I remember, I just didn't hear the  
12 whole thing.

13 MR. ALVARADO: I thought we briefed these issues  
14 already at the start, and we said we were going to  
15 cross-examine Dr. Weinstein --

16 THE COURT: Right.

17 MR. ALVARADO: -- on his Workers Compensation Board  
18 decision, and you allowed it based on the reading of all of  
19 the cases.

20 THE COURT: I just want to get the decision into  
21 evidence, that's what we're doing.

22 MR. ALVARADO: If I don't, then I will finish -- I  
23 will mark it for appellate purposes, I will mark it for ID.

24 THE COURT: That's why we are getting the decision  
25 in.

## Motions

1 MR. ALVARADO: Yes, okay.

2 MR. DREXLER: Thank you.

3 THE COURT: Mr. Kelly, your witness is outside?

4 MR. KELLY: He's outside.

5 THE COURT: You can have the jurors come in.

6 COURT OFFICER: All rise, jury entering.

7 (Whereupon, the jury entered the courtroom.)

8 THE COURT: All right everyone, you can have a  
9 seat, welcome back, members of the jury, I apologize for the  
10 delay, we had to take care of some housekeeping issues.

11 Mr. Kelly, you want to recall your witness, oh,  
12 that's right, we never called the case.

13 THE CLERK: Calling on the record, Roberto Abreu  
14 Perez versus 176 East 116th Street, LLC, Index Number 515104  
15 of 2017.

16 Counselor, please give your appearances.

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 afternoon, everybody, Michael  
22 Frittola, Lester, Schwab, Katz & Dwyer for  
23 Defendant/Third-Party Plaintiff, 176 East 116th Street, LLC.

24 MR. RAMIN: Good afternoon, Judge, Farzad Ramin,  
25 Song Ramin LLC for Third-Party Defendant, 178 JJH, Inc.

1 THE COURT: Mr. Kelly, do you want to recall your  
2 witness to the stand?

3 MR. KELLY: Yes, Dr. Grimm, he's in the court, so  
4 he can take the stand.

5 (Whereupon, Dr. Grimm resumed the witness stand.)

6 THE COURT: Alright, Dr. Grimm, welcome back.

7 THE WITNESS: Thanks.

8 THE COURT: Remember you're still under oath.

9 Mr. Frittola will continue the questioning, if you  
10 don't understand, just say so, if you need it repeated, just  
11 ask, or if you don't know the answer, just say you don't  
12 know.

13 THE WITNESS: All right.

14 THE COURT: Counsel, you may inquire.

15 MR. FRITTOLA: Thank you, your Honor.

16 CONTINUED CROSS-EXAMINATION BY

17 MR. FRITTOLA:

18 Q Good afternoon, Dr. Grimm.

19 A Hi.

20 Q So did you bring your entire file with you today?

21 A I have the all of the records on these disks, and then  
22 my records pertaining to me in the chart.

23 Q Alright, how many disks do you have?

24 A Two.

25 Q What was the second thing you said, all the records?

1           A     No, all of the records pertaining to my treatment is  
2 the ones that I brought last time in this chart.

3           Q     Alright, do you have your narrative reports with you?

4           A     Yes, yes.

5           Q     Have you reviewed your testimony from the last time you  
6 were here a week ago?

7           A     No.

8           Q     Did you speak with anybody about the case?

9           A     No.

10          Q     Did you speak with Mr. Kelly?

11          A     Briefly outside, but mostly not about the case.

12          Q     Dr. Grimm, I want to ask you about your August 18th,  
13 2020, report.

14          A     August 18th, okay.

15          Q     Alright, and looking at, do you have it available?

16          A     Yes.

17          Q     Alright, looking at page one it talks about a visit on  
18 October 23, 2018; correct?

19          A     Yes.

20          Q     And in that there's a narrative here that says at his  
21 visit on October 23, 2018, dot dot dot.

22                   Did you write that?

23          A     Yes.

24          Q     It continues talking about cervical and lumbar spine,  
25 and it talks about his, in the middle of the paragraph, his MRI

1 of the cervical spine showed herniation at C6-C7; do you see  
2 that?

3 A Yes.

4 Q And then it continues on to say, his MRI of the lumbar  
5 spine showed bulging at L4-L5 and herniation at L5-S1; do you  
6 see that?

7 A Yes.

8 Q Can you briefly explain what the difference between a  
9 bulge and a herniation is?

10 A The way I usually describe it to patients, is a bulge  
11 is when the disc is being compressed down, but the fibers on the  
12 outside are mostly intact, but it's like a hamburger coming out  
13 of the bun, so if it's coming around it's more of a diffuse but  
14 the fibers are mostly intact so the compression, but it's still  
15 pushing out into the space a certain amount.

16 Whereas a herniation, I usually describe it as tread on  
17 a radial tire or something, where there's a defect in it, so  
18 instead of just bulging out sort of all over, it's more of a  
19 direct pushing out, where the fibers are breaking out, almost  
20 like it's going to pop, so they both are generally pushing out  
21 into the disc just in a different nomenclature.

22 Q Is a herniation more likely to cause pain than a bulge?

23 A It depends on if it's coming in close proximity to  
24 nerves.

25 Q Is a herniation more likely to be an indication for

1 surgery versus a bulge?

2 A It always depends on symptoms.

3 Q They're different things though; right?

4 A Yes, like I said, they're both protrusions, so I guess  
5 they both protrude, but one is the -- like I said, the  
6 fibers, the annulus fibrosis, which is the covering or the jelly  
7 on the inside is, is more intact versus the herniation where  
8 there's a defect.

9 Q Alright. Your report from August 18, 2020, continues  
10 on to talk about the review of additional records?

11 A Okay.

12 Q Alright.

13 And on page two, you go through some of the radiology  
14 images; do you see that?

15 A Yes.

16 Q And now, there were radiology images taken at Lenox  
17 Hill Radiology in March of 2018; correct?

18 A Yes.

19 Q And the impression from the first one for the  
20 cervical spine, March 29, 2018, minimal disc bulge at C6-C7; do  
21 you see that?

22 A Yes.

23 Q And the second also 3/29/18, MRI of the lumbar spine  
24 performed at Lenox Hill Radiology?

25 A Yes.

1 Q Disc bulges noted at L4-L5 and L5-S1; correct?

2 A Yes.

3 Q In 2019, there's an MRI of the cervical spine, it's  
4 next listed from June, from Lenox Hill Radiology; do you see  
5 that?

6 A Yes.

7 Q It says disc bulge at C6-C7; right?

8 A Yes.

9 Q And it says not significantly changed from the 2018  
10 reading?

11 A Yes.

12 Q They were both performed at the same facility?

13 A Yes.

14 Q And then in January of 2020, there was an MRI of the --  
15 of the lumbar spine performed at Lenox Hill Radiology, and it  
16 indicates mild posterior disc bulging again noted at L4-L5,  
17 L5-S1; correct?

18 A Yes.

19 Q How come the first page of your report says herniations  
20 and not bulge?

21 A Were those the -- the first MRIs that were taken? The  
22 nomenclature may have been on an older MRI.

23 Q You agree that the first page of your report says  
24 bulge, it says "herniations at C6-C7 and L5-S1"; correct?

25 A Yes.



1 Q That's not what the Lenox Hill Radiology report read;  
2 correct?

3 A What those reports, yes.

4 Q Did you explain the discrepancy there, let me ask you  
5 this, in your report, do you explain why you ignored the  
6 March 2018 findings from Lenox Hill Radiology?

7 A I wouldn't say.

8 Q Just yes or no, do you explain in your report why your  
9 assessment is ignoring the March 2018 Lenox Hill Radiology  
10 findings?

11 A No.

12 Q There is, if you can move on to the diagnoses, that is  
13 page four?

14 A (Witness complies.)

15 Okay.

16 Q Number four, you identify L5-S1 disc herniation; right?

17 A Yes.

18 Q That's not what the Lenox Hill Radiology report from  
19 2018 says; correct?

20 A Yes, it's in an earlier report says.

21 Q Yes or no, doc, is it correct what I said?

22 A Yes.

23 Q But then you also note that the 2020 MRI of the lumbar  
24 spine, you said January 24, 2020, reveals disc bulges at L5-S1?

25 A That's how it's interpreted by the radiologist on that

1 one.

2 Q So are you telling the jury that a herniation reverted  
3 to a bulge between 2018 and 2020; yes or no?

4 MR. KELLY: Objection.

5 THE COURT: Yes or no, one moment, Madam Reporter,  
6 read the question back.

7 (Whereupon the question was read back by the  
8 reporter.

9 THE COURT: Rephrase.

10 MR. FRITTOLA: Okay.

11 Q Your diagnosis, number four, on the -- on the list,  
12 says there was a disc herniation in 2017; correct?

13 A Yes.

14 Q But then says at the same level, there was a disc bulge  
15 in 2020; correct?

16 A Yes.

17 Q So are you telling the jury that a herniation reverted  
18 to a bulge between 2017 and 2020?

19 MR. KELLY: Objection.

20 Q Yes or no?

21 MR. KELLY: It's the same exact question.

22 THE COURT: That's the same, rephrase.

23 Q Well, there was -- okay, that's fine.

24 Do you explain the discrepancy between one film having  
25 a herniation, in 2017, and the other film having a bulge in

1 2020; do you explain in your report?

2 MR. KELLY: Objection.

3 THE COURT: Overruled.

4 MR. KELLY: Come on.

5 A Yes.

6 Q Yes or no?

7 A That's the impression from the radiologist, so it's  
8 impression, so that's the explanation.

9 Q Do you explain in your report how in 2017 there can be  
10 a herniation, but in 2020, it reverts to a bulge; do you explain  
11 how that happens?

12 A The interpretation by a radiologist.

13 Q Did you review the films yourself?

14 A No.

15 Q None of the films?

16 A I relied on the radiologist's reading, my wife is a  
17 radiologist, so I trust her reads, as a radiologist, so I, they  
18 were trained in it, I was not.

19 Q You trust the reading of Dr. Kolb?

20 A He's a radiologist, I trust it.

21 Q Do you trust the reading of the folks at Lenox Hill  
22 Radiology?

23 A Again, part of the picture --

24 Q Do you trust of the reading of the radiologists at  
25 Lenox Hill Radiology?

1           A     For my field, yes.

2           Q     Would you agree that the independent radiologists at  
3     Lenox Hill Radiology, identified a bulge whereas Dr. Kolb  
4     identified a herniation; is that correct?

5           A     They're interpretations, yes.

6           Q     That's correct?

7           A     Yes.

8           Q     Why don't you explain it, why don't you say one  
9     radiologist says it's a bulge, our radiologist, the radiologist  
10    that's in our referral pipeline says it's a herniation; how come  
11    that's not in your report?

12                     MR. KELLY:  Objection, it's ridiculous.

13                     THE COURT:  Sustained.

14           Q     Would you, are you saying, which of those do you agree  
15    with, Dr. Kolb and his interpretation of a herniation or the  
16    Lenox Hill Radiology's findings that it was a bulge?

17           A     I agree there's both protrusions, that correlate with  
18    the symptoms.

19           Q     But you didn't read the films?

20           A     I did not.

21           Q     Number nine, same thing with the cervical spine?

22           A     Okay.

23           Q     How is there a herniation identified in 2017, but a  
24    bulge identified at the same exact level in 2020?

25           A     It's a protrusion and that's the interpretation of the

1 radiologist.

2 Q Where in your report does it explain that discrepancy,  
3 there can be a reversion from a herniation to a bulge?

4 A I don't believe it was a reversion, it was their  
5 interpretation and they're both protrusions.

6 Q You would agree that a bulge develops into possibly a  
7 herniation; correct?

8 A It can.

9 Q Can a herniation revert, is the term I'm using, if  
10 that's accurate?

11 A Yes, there has been evidence of spontaneous reverting  
12 completely within a herniation being read, and then years later  
13 they're not even being a herniation present.

14 Q So is it your assessment that your assessment that the  
15 disc herniation in the cervical spine for Mr. Abreu Perez  
16 spontaneously reverted to a bulge by 2020?

17 MR. KELLY: Objection, that's not what he said.

18 THE COURT: Sustained.

19 Q In your diagnoses, you focus on L5-S1 herniation, and  
20 C6-C7 herniation; right, you look at its -- that's from the 2017  
21 films?

22 A I don't know where you're looking.

23 Q I'm looking at the diagnosis section.

24 A Yes, I have, both of them in there.

25 Q How come you didn't mention the Lenox Hill Radiology

1 films from 2018 in your diagnosis?

2 A I mean, I thought you just read it says the 2020 disc  
3 bulges L4-5 and L5-S1.

4 Q Where in your diagnosis section does it talk about the  
5 Lenox Hill Radiology findings for March of 2018?

6 A I just -- it's -- I don't know.

7 Q It's not in there; correct?

8 A No, the later ones are the 2020.

9 Q So why are you ignoring the lesser findings in your  
10 diagnosis, why are you referring to it as a bulge, and why are  
11 you referring to it as a herniation and not a bulge when the  
12 later in time, the 2018 MRI, that was read by an independent  
13 facility refers to it as a bulge?

14 MR. KELLY: Objection.

15 THE COURT: Overruled.

16 A I don't understand your question, because I have the  
17 latter ones where it's referring to them as bulges in here.

18 Q But you don't have the 2018 reference in there; right?

19 A They're both bulges, no, I do not have it in there.

20 Q So why did you leave the March of 2018 findings out of  
21 your diagnosis section?

22 A I guess because it's the same diagnoses as the later  
23 ones.

24 Q But it's not the same as the earlier one; correct?

25 A That's why I put the earlier one in.

1 Q Okay, why wouldn't you compare them, doctor?

2 A I believe, I did with the later ones referring to them  
3 as bulges.

4 Q Do you perform any surgeries, doctor?

5 A No.

6 Q Do you care about all of your patients' outcomes?

7 A Yes.

8 Q Would you refer a patient to a surgeon that exposes  
9 patients --

10 MR. KELLY: Objection.

11 Q -- to risks and complications?

12 MR. KELLY: Objection to the form. We already  
13 talked about this, there's a ruling, I would like counsel  
14 admonished.

15 THE COURT: Sustained, don't, we already had a  
16 conference about that.

17 Q Are you currently treating Mr. Roberto Abreu Perez?

18 A No.

19 Q Where did he get the injections that he got?

20 A I believe he got them primarily at various surgical  
21 centers.

22 Q What at a surgical center and not at New York Ortho?

23 A Surgical centers, generally, if he wanted, he may have  
24 wanted anesthesia sedated.

25 Q Does Dr. Jeffrey Kaplan own any interest in Manhattan

1 Surgical Center?

2 A Yes.

3 Q And that's where Roberto Abreu Perez was referred for  
4 his injections?

5 A I have to look, see where he -- but yes, I believe he  
6 had some done there, yes.

7 Q Does Dr. Jeffrey Kaplan own an interest in Fifth Avenue  
8 Surgery Center?

9 A No.

10 Q Who made the decision about where those injections were  
11 going to be held or administered?

12 A I did.

13 Q So let me get this straight, Dr. Kaplan, your boss,  
14 referred Mr. Roberto Abreu Perez to you; correct?

15 A Yes.

16 Q And you, in turn, referred him to have injections at a  
17 different facility that your boss owns; is that correct?

18 A What's your question?

19 Q Your boss owns Fifth Avenue Surgical Center; correct?

20 A No, Fifth Avenue Surgical Center.

21 Q Manhattan Surgical Center?

22 A He owns some shares in Manhattan Surgery Center, he  
23 doesn't own it.

24 Q So it's Manhattan, where he got the injections, was  
25 Manhattan Surgical Center; correct?



1           A     I think he may have some at both, it depends on the  
2 day.

3           Q     It depends on the day if he has an ownership interest  
4 in the facility you're referring to him?

5                     MR. KELLY:  Objection.

6                     THE COURT:  Sustained.

7                     MR. KELLY:  The day of the surgery, it's obvious?

8                     THE WITNESS:  Yes.

9           Q     Let me break this down again, your boss, Dr. Kaplan,  
10 referred Roberto Abreu Perez to you for pain management;  
11 correct?

12          A     Yes.

13          Q     And then you referred Mr. Roberto Abreu Perez to a  
14 facility that your boss has an ownership in to have more  
15 invasive procedure, the epidural steroid injections; is that  
16 correct?

17                     MR. KELLY:  Objection.

18                     THE COURT:  Overruled.

19          A     Yes, I did do some there, if he needed anesthesia.

20          Q     And what's your -- the layout or structure of your  
21 compensation with New York Ortho?

22                     MR. KELLY:  Objection.

23                     THE COURT:  Sustained.

24          Q     How much were you paid in the year 2024 by New York  
25 Ortho?

1 MR. KELLY: Objection.

2 THE COURT: Sustained.

3 Q And do you get a billing bonus for the number of  
4 procedures that you perform where money is collected --

5 MR. KELLY: Objection.

6 Q -- as part of your compensation package?

7 THE COURT: Overruled.

8 A No.

9 Q That's not what Dr. Kaplan said?

10 MR. KELLY: Objection.

11 Q Dr. Kaplan said --

12 THE COURT: Overruled.

13 MR. FRITTOLA: Judge.

14 MR. KELLY: I can't wait, this is outrageous.

15 MR. FRITTOLA: Can we wait until I finish the  
16 question before there's an objection?

17 THE COURT: The objection is overruled.

18 Q Dr. Kaplan said you have a complicated bonus structure;  
19 do you get a bonus from New York Ortho?

20 A Sometimes.

21 Q And what is the bonus based on?

22 A It's not based on the number of procedures which is  
23 what you asked.

24 Q I also asked about collections from procedures?

25 A It's -- actually, I don't get a rundown of how I get

1 it, so, I just -- they give me a number.

2 Q Let me break it down.

3 The more injections that you do, the more you get paid  
4 by New York Ortho; correct?

5 MR. KELLY: Objection.

6 THE COURT: Overruled.

7 A No, it's not tied to the number, it would be tied to  
8 collections.

9 Q Okay. So the more injections that you perform, that  
10 New York Ortho is able to collect money for, the more you get  
11 paid; correct?

12 A It depends, it's a complicated thing like Dr. Kaplan  
13 said.

14 Q Can you simplify it for us, what is your bonus  
15 structure?

16 MR. KELLY: Objection.

17 THE COURT: Overruled, if you can answer.

18 A I actually even don't understand it, I describe it as a  
19 black box.

20 Q So am I wrong to say that the more New York Ortho  
21 collects for procedures that you do, the more you get out of it?

22 MR. KELLY: Objection.

23 THE COURT: Overruled.

24 A You can be wrong, because there are lots of overhead,  
25 which is what is always the complicating thing, so some years

1 there's a lot more -- it doesn't matter about collections, some  
2 years there's less, and again, I'm not privy to all of that.

3 Q How long have you been working for New York Ortho?

4 A 2011.

5 Q And you're telling these jurors that you don't know the  
6 details of your compensation package; correct?

7 MR. KELLY: Objection, he just said that.

8 THE COURT: Overruled.

9 A I said it's like a black box, I don't know the details.

10 Q Yes or no, am I correct to say you're telling the jury  
11 that you don't truly understand the details of your compensation  
12 package for New York Ortho?

13 MR. KELLY: Objection.

14 A No.

15 THE COURT: Overruled.

16 A That would be true.

17 Q Have you ever been subject to any professional  
18 discipline, doctor?

19 A No.

20 Q How many patients have you treated that are represented  
21 by the Gorayeb firm?

22 A I don't have any idea.

23 Q Alright. Have you treated patients that are  
24 represented by the Gorayeb firm?

25 A Yes.

1 Q We know at least one?

2 A Yes.

3 Q Can you tell me any others offhand?

4 A I mean I treat many, but I couldn't give you a number.

5 Q Who is the last Plaintiff you testified for in court  
6 that was also a client of the Gorayeb firm?

7 A What was his name, I can't think of his name.

8 Q When was testimony?

9 A It was, three, four weeks ago.

10 Q And you don't remember your patient's name that you  
11 testified on behalf of three or four weeks ago; yes or no?

12 A No, I don't remember his name offhand, I know his face.

13 Q Okay. Was that an immigrant laborer also?

14 A Yes.

15 Q And did he fall from a height?

16 A Yes.

17 Q And how many times have you testified in your career,  
18 just generally?

19 A I couldn't give you a number, but I would say it's not  
20 a major portion of my practice, so it's a handful of times,  
21 probably starting in 2015, '16, so a handful of times every  
22 year, after that, because at the beginning, I didn't start  
23 testifying for the first few years of my practice.

24 Q Are you able to tell the jury, how many times you  
25 testified for the Gorayeb firm last year?

1           A     I don't know a number.

2           Q     And in the last, since you have been testifying, how  
3 many times have you testified for the Gorayeb firm?

4           A     I, again, handful of time every year, probably.

5           Q     And how many times cases, am I correct to say that you  
6 don't know how many patients you treated that are represented by  
7 the Gorayeb firm?

8           A     An exact number, no.

9           Q     What's an approximation?

10          A     Again, I don't even know who the patients are being  
11 represented by when I'm treating them in the room.

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

13          A     Over.

14          Q     Way over?

15          A     No, over my 15 years of practicing?

16          Q     Yes.

17          A     It's over 50.

18          Q     Over 500?

19          A     That, I don't know.

20          Q     How many patients that you see are also being seen by  
21 Dr. Kaplan, and there's also been a referral to Dr. Kolb?

22          A     I don't know.

23          Q     Would you say hundreds?

24          A     I -- over 15 years?

25          Q     Yes.

1           A     It might be in the hundreds, over 15 years.

2                     MR. FRITTOLA: Your Honor, I would like to mark  
3     this for ID and ask the witness a question if this refreshes  
4     his recollection.

5                     THE COURT: What number are we up to, what number  
6     is it?

7                     MR. FRITTOLA: Defendant's Exhibit F.

8                     THE COURT: Letter, sorry.

9                     MR. FRITTOLA: For ID.

10                    THE COURT: F, I think that's right.

11                    Counsel, is that a list.

12                    MR. FRITTOLA: Yes, it is.

13                    THE CLERK: E is the last one I have as the  
14     defendant.

15                    THE COURT: So Defendant's Exhibit F for  
16     identification.

17                    MR. FRITTOLA: I also have Defendant's Exhibit G, a  
18     different document.

19                    THE COURT: Do you want to do that now?

20                    MR. FRITTOLA: Yes.

21                    THE COURT: It's F and G.

22                    THE CLERK: F and G.

23                    THE COURT: For identification.

24                    COURT OFFICER: (Hanging.)

25                    THE CLERK: It doesn't matter which one is which.

1 THE COURT: Counsel, I think the list is F.

2 MR. ALVARADO: I have E.

3 MR. FRITTOLA: Yes, the way I handed it would be  
4 better.

5 MR. KELLY: Can I see it, Judge?

6 COURT OFFICER: (Handing.)

7 MR. KELLY: I didn't see either one.

8 (Pause in the proceedings.)

9 MR. KELLY: Thanks.

10 COURT OFFICER: (Handing to the witness.)

11 MR. FRITTOLA: It's just ID for now.

12 Q Dr. Grimm, before you take a look at that, I just, just  
13 quick follow-up questions from what you said before, you said  
14 your wife is a radiologist?

15 A Yes.

16 Q Where does she practice?

17 A Lincoln Hospital.

18 Q Did she look at the films, you said you trust her  
19 opinion, did she look at the films for Mr. Roberto Abreu Perez?

20 A No, I didn't have them.

21 Q You can take a look at those documents, I will ask you  
22 a question.

23 A Okay.

24 Q The first one, Defendant's Exhibit F for ID, do you  
25 recognize any of the names that are identified on that list?



1 A Yes, I recognize some of them.

2 Q Do you recognize them as patients of yours?

3 A Yes.

4 Q Approximately how many would you say you recognize?

5 A I -- a handful of them.

6 Q So I asked you before how many patients you have  
7 treated that were also represented by the Gorayeb firm; do you  
8 remember that question?

9 A Yes.

10 Q You said you couldn't give me an exact number?

11 A No.

12 Q I'm representing to you that that is a list of cases  
13 from our office, Lester, Schwab, Katz & Dwyer, where you are  
14 treating the Plaintiff, and they're also represented by the  
15 Gorayeb firm; do you have any reason to disagree with that based  
16 off of that list?

17 MR. KELLY: Objection. He marked something for ID  
18 to refresh his recollection. Now he's describing and  
19 reading the whole thing. I ask it be stricken.

20 THE COURT: Sustained. Sustained.

21 MR. KELLY: Can I get an instruction to the jury to  
22 disregard it?

23 THE COURT: The jurors are instructed to disregard  
24 the description of what the document is.

25 Q So is it -- is it fair to say that you are treating the

1 Plaintiff or have treated the Plaintiff in at least 60 cases  
2 involving the Gorayeb firm?

3 A Oh, I mean I think I do, but I don't recognize all of  
4 the names on here, but that doesn't --

5 Q But is it fair to say at least 60 cases?

6 A Over my 15 years, yes.

7 Q And add to that Dr. Kaplan and Dr. Kolb, is it at least  
8 60 cases that Gorayeb's office represents the Plaintiff,  
9 Dr. Kaplan is involved, you are involved, and Dr. Kolb is also  
10 involved?

11 A I guess over, yeah, over my span of practice, sure.

12 Q Now, how about Dr. Weinstein, with respect to  
13 Dr. Weinstein, how many cases or how many plaintiffs have you  
14 treated that are represented by Gorayeb's office that have also  
15 treated with Dr. Weinstein?

16 A I couldn't give you a number.

17 Q Okay, would it be over or under 50?

18 A That, I don't know.

19 Q No idea?

20 A I couldn't give you a number.

21 Q And take a look at Defendant's Exhibit G?

22 A Okay.

23 Q Do you recognize any of the names I listed on there?

24 A I recognize some of them.

25 Q Did you refer those individuals to Dr. Weinstein for a

1 surgical consult?

2 A I may have.

3 Q Well --

4 A Again, I would have to look in their charts to see to  
5 make sure I was treating him. I don't recognize all of these  
6 patients, but I recognize some of them.

7 Q Did you ever treat an individual by the name of Dolan  
8 Gabrielle Rios (phonetic)?

9 A Yes.

10 Q And were you subject to any professional discipline in  
11 connection with that individual?

12 MR. KELLY: Objection.

13 THE COURT: Sustained.

14 Q Is that individual or is that individual referred to  
15 New York Ortho by the Gorayeb firm?

16 A I'm not -- I think so, but I'm not exactly.

17 Q What makes you think so?

18 A Because I have seen him for, going on probably ten  
19 years.

20 Q You've seen that person as a patient for ten years?

21 A Yes.

22 Q I will refer to him as Mr. Rios?

23 A Yes.

24 Q Is Mr. Rios represented by Gorayeb firm?

25 A Yes.

1 Q Did Mr. Rios fall from a height?

2 A I would have to get his chart.

3 Q Is Mr. Rios treating with Dr. Kaplan?

4 A I would have to get his chart.

5 Q Was Mr. Rios treating with, or did you refer him to  
6 Dr. Kolb?

7 A Again, I would have to get his chart.

8 Q Did Mr. Rios, was he referred to any surgeon by you?

9 A Again, I don't know the intricate details of my  
10 hundreds of patients, I would need to get their chart, which I  
11 don't have on me today.

12 Q And with respect to Dr. Kaplan, is Mr. Rios treating  
13 with Dr. Kaplan?

14 A I don't know.

15 Q Was there ever a determination, have you ever been  
16 determined to have committed medical malpractice in any context?

17 MR. KELLY: Objection.

18 A No.

19 Q I want to ask you about your life care plan, Dr. Grimm?

20 A Okay.

21 Q How many life care plans have you put together for  
22 Roberto Abreu Perez?

23 A Multiple, in my recent was September of 2025.

24 Q Was there also a life care plans that was included in  
25 your 2018 report that we went through?

1           A     Yes, that would be considered an old one, the life care  
2 plans are fluid.

3           Q     I'm sorry I misspoke, I meant to say your August 18th,  
4 2020, report?

5           A     Yes.

6           Q     There is one in there, but I've I said 2018, so my  
7 question is was there a life care plan included in your to 2020  
8 report?

9           A     Yes.

10          Q     How many life care plans have you put together for the  
11 Gorayeb firm?

12          A     I don't know.

13          Q     Do you have an template that you use for the life care  
14 plans?

15          A     I wouldn't call it a template.

16          Q     What would you call it?

17          A     I mean it's a -- I have different, I will use similar  
18 things, but it's not a template that I take stuff out and put  
19 stuff in, I will, sort of find what I need in a life care plan,  
20 and include it or not include it.

21          Q     When you say "include it," are you talking about copy  
22 and paste?

23          A     Sometimes.

24          Q     You would copy and paste from one life care plan to the  
25 next?

1           A     Not one life care plan, but if, I mean if everything  
2 is, I don't type it all out every single time, if it's the same  
3 stuff that I --I've used in the past.

4           Q     When you prepare a life care plan, is it according to  
5 the individual needs of the person you're treating?

6           A     Yes.

7           Q     When you prepare the life care plan, does it assess  
8 generally the cost that they are expected to incur in the  
9 future?

10          A     Yes.

11          Q     For Mr. Roberto Abreu Perez, did you prepare a life  
12 care plan?

13          A     Yes.

14          Q     What percentage of the future costs are attributed to  
15 the accident?

16          A     I couldn't give you a -- he -- most of them would be  
17 considered attributed to the accident.

18          Q     So 100 percent of the costs that are included in the  
19 life care plan that you prepared attributed to the accident;  
20 correct, just yes or no?

21          A     Yes.

22          Q     And is that the same for every case that you do?

23          A     No.

24          Q     And have you written a life care plan where you  
25 actually break out the cost that someone would be expected to

1 incur without this accident having happened?

2 A No.

3 Q So do you want to revisit that answer?

4 MR. KELLY: Objection.

5 Q 100 percent of the costs in every single life care plan  
6 attributed to an accident?

7 MR. KELLY: Objection.

8 THE COURT: Overruled.

9 A Yes, I've never been asked to break them up.

10 Q You wouldn't, asked by who, the lawyers in the case?

11 A Anybody, this is the first time I have ever been asked  
12 that question.

13 Q But the lawyers when they ask, Gorayeb's office  
14 contacts you and says we need a life care plan for this  
15 Plaintiff; is that correct?

16 A Future care, I'm not doing the life care, I do the  
17 future care, future costs.

18 Q How many of these clients for Gorayeb have you said  
19 they do not need lifetime costs -- lifetime care?

20 A Well, I'm treating them for injuries, I have not said  
21 that.

22 Q Well, in every single one of them, you said they need  
23 lifetime medical care?

24 A At some level, yes.

25 Q So when you say you're not asked to, and let me get

1 this straight, you're not asked to consider what costs someone  
2 would have otherwise incurred; do you understand the question?

3 A I guess, I have never, I don't completely understand  
4 it, like if they had not gotten injured what costs?

5 Q Yes, exactly.

6 A No, I have never been asked that.

7 Q You would agree that if he had not fallen in 2017, Mr.  
8 Roberto Abreu Perez would have had future medical costs on some  
9 level; yes or no?

10 MR. KELLY: Objection, this is way beyond.

11 THE COURT: Overruled.

12 A I would have to evaluate him at that time before the  
13 accident, to comment, to give an accurate comment on that.

14 Q So because, are you able to give an educated comment on  
15 causation in this case?

16 A Yes.

17 Q And how is that possible if you didn't examine him  
18 before the accident?

19 MR. KELLY: Objection.

20 THE COURT: Sustained.

21 Q Where are the costs that he would have otherwise been  
22 expected to incur if this didn't happen?

23 MR. KELLY: Objection.

24 THE COURT: Sustained.

25 Q You would agree that you attribute 100 percent of



1 Mr. Roberto Abreu Perez's future costs to the accident in this  
2 case; correct?

3 MR. KELLY: Objection. Three times he said the  
4 same thing, trying to talk --

5 THE COURT: Overruled.

6 A Yes.

7 Q Are you aware that the Bill of Particulars in this case  
8 that's dated October 24, 2017, includes allegations of  
9 aggravation and exacerbation of preexisting conditions; are you  
10 aware of that?

11 A No.

12 Q So that was not included in your life care plan, what  
13 treatment he would have otherwise needed for those preexisting  
14 conditions; correct?

15 A Correct.

16 MR. FRITTOLA: I would like to show these to the  
17 doctor.

18 THE COURT: Show them to Mr. Kelly, show them to  
19 Mr. Kelly.

20 COURT OFFICER: (Hanging.)

21 MR. KELLY: Are we going to mark them or something?

22 THE COURT: Are they marked already?

23 MR. FRITTOLA: They're not marked already. If you  
24 want to mark them, we can mark them for ID.

25 THE COURT: Mark them for ID, mark them for ID.

1 MR. FRITTOLA: If you want to do H-1, 2, 3, 4, 5.

2 THE COURT: There are five of them?

3 THE CLERK: H-2 and what?

4 MR. FRITTOLA: However many there are, I believe  
5 there are five.

6 THE COURT: H-5, Defendant's Exhibit 1 through H-5  
7 for identification.

8 THE CLERK: Medical evidence.

9 MR. FRITTOLA: Life care plans.

10 Q Dr. Grimm, take a look at those documents, please take  
11 a look at the names of the individuals identified therein, and I  
12 will ask you some follow-up questions.

13 A (Witness complies.)

14 Okay.

15 Q Do you recognize those documents as life care plans  
16 that you have put together for litigation purposes?

17 A Yes.

18 Q Do you recognize each of the individuals named in those  
19 plans?

20 A Most of them.

21 Q Are they clients of the Gorayeb firm?

22 A I don't know.

23 Q And each of those individuals, do they have their own  
24 unique medical history?

25 A Yes.

1           Q     Each of those individuals, do they have their own  
2 unique injuries that they sustained?

3           A     Yes.

4           Q     Yes or no, did you use a template to complete the life  
5 care plans for each of those individuals?

6           A     Again, it's not an exact template, but I do copy and  
7 paste things.

8           Q     So am I correct for each of those individuals, each of  
9 the life care plans, it's of lifetime duration; correct?

10          A     Yes.

11          Q     Each of them start with the same item, "All  
12 Medications"; correct?

13          A     Yes, that's what I start with.

14          Q     Each of them starts with the second same item, "Pain  
15 Management Office Visits"; correct?

16          A     Yes.

17          Q     And each of them have the same third item, "Orthopedic  
18 Surgeon Office Visit"; correct?

19          A     Yes.

20          Q     Those are the same items that are identified in the  
21 Roberto Abreu Perez's life care plan; correct?

22          A     Not the most recent one.

23          Q     Well, I'm looking at the 2021 one?

24          A     I mean the most recent one would be the September 9th,  
25 2025.

1           Q     Do each of those life care plans that you have  
2 previously prepared have the fourth item "Orthopedic Spinal  
3 Surgeon Office Visit"?

4           A     Yeah, but it's the third in Abreu.

5           Q     Do each of those have the same line item -- well,  
6 withdraw the question.

7                     Do each of them have the same next item, "Lumbar  
8 Steroid Injections"?

9           A     Yes.

10          Q     Do any of those reports account for preexisting  
11 injuries?

12          A     No.

13          Q     So were each of those persons that are identified in  
14 those life care plans perfectly healthy before whatever accident  
15 they were involved in?

16                     MR. KELLY: Objection.

17                     THE COURT: Overruled.

18          A     They were reported no symptoms and no injuries prior to  
19 the accident.

20          Q     So for each of those individuals with a life care plans  
21 that we showed you, you're attributing 100 percent of their  
22 future lifetime medical costs to whatever accident is the  
23 subject of a litigation; correct?

24          A     Yes.

25          Q     And for Roberto Abreu Perez, you're attributing

1 100 percent of all future medical treatment to the accident?

2 A Not all medical treatment, all treatment related to his  
3 injuries to his neck and his back.

4 Q Well, the first one?

5 A Not medical treatment.

6 Q The first line item on the Abreu Perez list is "All  
7 Medications"; correct?

8 A Again, that's related to the accident.

9 Q Can you read the Roberto Abreu Perez where it says  
10 related to the accident, it says "All Medications"?

11 MR. KELLY: Objection.

12 THE COURT: Sustained.

13 MR. KELLY: It's marked for identification, it's  
14 not in evidence.

15 MR. FRITTOLA: I asked that about the Roberto Abreu  
16 Perez report, not any of the other ones.

17 MR. KELLY: Objection.

18 THE COURT: You're talking about the Plaintiff's  
19 report?

20 MR. FRITTOLA: That is correct.

21 MR. KELLY: If he wants to read stuff not in  
22 evidence, can we just do it right.

23 THE COURT: Is that in evidence?

24 MR. FRITTOLA: It is his file.

25 A It is in evidence.

1 THE COURT: It is in evidence, okay. You can  
2 answer the question.

3 A It says, "all medications including antiinflammatories,  
4 muscle relaxants, neuropathic pain medications and topical  
5 medications," which is, which are his medications related to the  
6 accident.

7 If I was saying all, then I would say diabetic  
8 medications, hypertensive medications, high cholesterol  
9 medications.

10 Q Okay, but you don't break out those costs in your  
11 report, do you?

12 A Because I'm not recommending those for the accident.

13 Q But you know he's going to incur them in the future;  
14 right?

15 A But I'm not including.

16 Q But you don't take them into account?

17 A No.

18 MR. FRITTOLA: No further questions, thank you,  
19 Judge.

20 MR. KELLY: I would be happy to stipulate to that  
21 last several questions.

22 REDIRECT EXAMINATION BY

23 MR. KELLY:

24 Q Hi, Dr. Grimm, how are you doing?

25 A I'm okay.

1 Q It will be over soon, I hope.

2 Dr. Grimm you work in an orthopedic office; is that  
3 correct?

4 A Yes.

5 Q You get referred orthopedic patients; right?

6 A Yes.

7 Q So you wouldn't be expected to make a life care plan  
8 that includes drilling for cavities, optometry, new glasses,  
9 anything like that?

10 MR. FRITTOLA: Objection, your Honor, leading.

11 THE COURT: Overruled.

12 A Correct.

13 THE COURT: Sustained as to leading.

14 Q Okay. So, again you worked in an optometrist office --  
15 ha, you work in an orthopedist's office; correct?

16 A Yes.

17 Q Tell the jury what do orthopedists or orthopods do?

18 A I deal with the joints and bones of the body.

19 Q And do they tend to deal with traumatic injuries?

20 A Yes.

21 Q And you would not be asked to create a life care plan  
22 related to this accident, which included things like tooth  
23 extraction, new glasses, a podiatry --

24 MR. FRITTOLA: Objection.

25 Q -- anything like that, would you?

1 MR. FRITTOLA: Leading question.

2 THE COURT: Leading.

3 MR. KELLY: Okay.

4 Q What other kind of things would be in your life care  
5 plan that's proximately caused or related to the accident other  
6 than bony injuries?

7 MR. FRITTOLA: Again, objection, it's leading, it's  
8 suggesting an answer to the witness.

9 MR. KELLY: I asked all.

10 THE COURT: Sustained. It's leading.

11 Q Doctor, you created your treatment plan in accordance  
12 with the standards of care; correct?

13 A Yes.

14 Q And it's the standard of care for orthopedic injuries;  
15 is that correct?

16 A Yes.

17 Q And you testified on direct that it's your opinion, to  
18 a reasonable degree of medical certainty, that Mr. Abreu Perez's  
19 orthopedic injuries were caused by the accident; is that  
20 correct?

21 MR. FRITTOLA: Objection. He's just reading from  
22 his direct examination.

23 MR. KELLY: I'm not reading anything.

24 THE COURT: Overruled.

25 MR. KELLY: You can answer.



1           A     Yes.

2           Q     You also testified, doctor, that Mr. Roberto Abreu  
3     Perez's injuries were permanent; is that correct?

4           A     Yes.

5           Q     And thus, in accordance with the standard of care of  
6     your practice, did you create a treatment plan?

7           A     Yes.

8           Q     Now, you were questioned a lot about interpretations of  
9     MRIs.

10                     Dr. Spivak, the Defendant's paid for doctor, when he  
11     was here, said reading a radiology is a matter of  
12     interpretation; do you agree with that?

13                     MR. FRITTOLA:  Objection.  It's beyond the scope of  
14     the cross-examination.

15                     THE COURT:  Sustained.

16                     MR. KELLY:  It's not beyond the scope.  He asked  
17     about interpretation of radiology.  I'm asking him their  
18     doctor said reading radiology is a matter of interpretation.  
19     I'm simply asking whether he agrees with that or not.

20                     MR. FRITTOLA:  He's referencing Dr. Spivak's  
21     findings, it's outside the scope.

22                     THE COURT:  Overruled, you may answer.

23           A     Yes, it's different, different set of eyes will  
24     interpret different things or phrase things differently.

25           Q     We talked about interpretation -- well, we didn't talk

1 about, in response to the Defendant's questions, you talked  
2 about interpretation.

3 Do you treat MRIs?

4 A No.

5 Q Okay. Is MRI simply one of the components of the  
6 variables in the formula that you put together?

7 MR. FRITTOLA: Objection, leading.

8 THE COURT: Sustained, just rephrase, question.

9 Q You talked about reading radiology, tell us, doctor,  
10 how is it that you come to form an assessment or a diagnosis  
11 with respect to your patients?

12 A Yeah, one of the first things that they told us in  
13 medical school is you don't treat the pictures, you treat the  
14 patient.

15 So I think when I was testifying last time, I described  
16 everything as a piece of the puzzle. So if you don't have the  
17 MRI, you can have pathology, but the patient isn't telling you  
18 they're having shooting, shooting symptoms or the exam isn't  
19 giving it to you, so you wouldn't treat it, but if you have the  
20 pictures, and you have the symptoms, and the exam and the  
21 puzzles fits together, that is what you decide to treat.

22 Q Doctor, this was some discussion with respect to  
23 physical therapy undergone by Mr. Abreu Perez, tell us how that  
24 works, how do people, your patients get assigned to physical  
25 therapy or recommended for physical therapy?

1           A     Well, it's, depends, in his case, postfusion patients,  
2 will have an acute phase, which is two or three times a week for  
3 six to 24 weeks, and then more of a chronic phase, which is six  
4 months onward, and where it's generally, you get like sort of a,  
5 instruction session, one to two times a month for home exercise  
6 program.

7           Q     And with respect to physical therapy, did they, is  
8 physical therapy just prescribed forever, just take physical  
9 therapy from the beginning of your accident through the end?

10          A     Not in, like I said, not in the manner of doing it two  
11 or three times a week, but you're, I mean, I would say home  
12 exercise program is indefinitely, and then there's a monitoring,  
13 again, which the recommendation is oversight of one two to times  
14 a month.

15          Q     During the conservative treatment phase, prior to  
16 Mr. Abreu Perez's surgeries, was the physical therapy prescribed  
17 in six-weeks block, eight-week blocks, things like that?

18          A     Usually, it is, six- to eight-week blocks.

19          Q     And there was a question about physical therapy in  
20 2020, why would someone not appear at physical therapy in 2020?

21                   MR. FRITTOLA:  Objection, leading question.

22                   MR. KELLY:  He asked the question.

23                   THE COURT:  Overruled, you can answer.

24          A     I mean just 2020, I just have bad memories of it,  
25 that's when the pandemic was, I know our office was closed for a

1 few months.

2 Q So you wouldn't expect anybody to go to physical  
3 therapy; would you?

4 MR. FRITTOLA: Objection.

5 THE COURT: Sustained.

6 Q Would you expect people to go -- were physical therapy  
7 offices even opened during that time period?

8 MR. FRITTOLA: Objection.

9 THE COURT: Overruled.

10 MR. KELLY: He brought it up.

11 Q You can answer.

12 A No, most weren't, I don't think they were allowed to be  
13 open for a long time.

14 Q Now, with respect to your treatment plan concerning  
15 Mr. Abreu Perez's cervical epidurals --

16 MR. FRITTOLA: Objection. Outside the scope of the  
17 cross-examination.

18 THE COURT: Sustained.

19 Q Did he need the cervical epidurals?

20 MR. FRITTOLA: Objection.

21 THE COURT: Sustained.

22 Q Did he need cervical epidurals prior to the happening  
23 of the surgeries?

24 MR. FRITTOLA: Objection.

25 THE COURT: Sustained.

1 MR. KELLY: He talked about treatment prior to the  
2 surgery, he asked about that.

3 THE COURT: Outside the scope.

4 MR. KELLY: Sorry.

5 THE COURT: Counsel, do you have an objection?

6 MR. FRITTOLA: Just to the last question.

7 Q So cervical epidurals prior to the surgery --

8 MR. FRITTOLA: Objection.

9 Q -- is that recommended for Mr. Abreu Perez?

10 THE COURT: Sustained.

11 Q Tell us what treatment was recommended for Mr. Abreu  
12 Perez's neck complaints prior to the surgery?

13 MR. FRITTOLA: Objection, your Honor, can we  
14 approach on that?

15 THE COURT: Okay.

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

18 THE COURT: So the objection to the last question  
19 was sustained.

20 Q So, doctor, with respect to the epidurals, tell us how  
21 those are conducted and why they're conducted in the surgical  
22 center as opposed to your office?

23 A If a patient needs to sedation, they will be done in a  
24 surgical center for more closely monitored.

25 Q Most of us are not familiar with what a surgical center

1 is as opposed to a doctor's office, what is the difference?

2 A A surgical center is a place where more minor surgeries  
3 or in my case injections are done in a closely monitored though  
4 with nurses, and anesthesia, and whereas a doctor's office, at  
5 least my office, doesn't have anesthesia for procedures.

6 Q Tell us how this referral thing works with respect to  
7 orthopedic injuries that you get in your office, tell us how it  
8 works; do you refer to your friend, do you refer people in the  
9 phone book, what do you do?

10 A I mean -- I mean, the way I would refer out, I sort of  
11 categorize it, based on the patient, based on, I have numerous  
12 surgeons I will refer to, I think some people may not like the  
13 personality of one, and all of the certain that I do refer to, I  
14 feel have good outcomes, because I wouldn't refer to someone who  
15 I thought was crappy, and it's various number of things,  
16 resources, whether they're in town is another thing, if it's  
17 difficult to get to the office, just various factors.

18 Q Is that normal in your practice?

19 A It's normal in all practices.

20 Q And every doctor does it?

21 A Yes.

22 MR. KELLY: Nothing further, doctor.

23 MR. FRITTOLA: One follow-up.

24 THE COURT: One moment. Let's take a break.

25 COURT OFFICER: All rise, jury exiting.

1 (Whereupon, the jury exited the courtroom.)

2 THE COURT: Doctor, one of the doctors asked you to  
3 see your CD's.

4 MR. ALVARADO: We have it.

5 (Whereupon, a short break was taken.)

6 THE COURT: You can bring the jurors back.

7 COURT OFFICER: All rise jury entering.

8 (Whereupon, the jury entered the courtroom.)

9 RECROSS EXAMINATION BY

10 MR. FRITTOLA:

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

12 MR. FRITTOLA: Thank you, your Honor.

13 MR. RAMIN: Your Honor, no questions from the  
14 Third-Party Defendant.

15 Q Just a quick follow-up, following up on the  
16 re-examination, doctor, quick yes or no, was there a pandemic in  
17 2019 that would have affected Mr. Roberto Abreu Perez's ability  
18 to go to a physical therapy facility?

19 A No.

20 MR. FRITTOLA: Thank you.

21 RE-REDIRECT EXAMINATION BY

22 MR. KELLY:

23 Q What would affect his ability to go to physical therapy  
24 in 2019; approvals?

25 MR. FRITTOLA: Objection.

1 A Yeah.

2 THE COURT: Overruled.

3 A Yeah, it was resources.

4 Q By "resources," you mean money?

5 A Yes.

6 MR. KELLY: Thank you, nothing further.

7 THE COURT: Alright, your testimony is concluded.

8 THE WITNESS: Sorry.

9 THE COURT: You can step town, thank you.

10 (Whereupon, Dr. Grimm exited the witness stand and  
11 courtroom.)

12 THE COURT: Alright, we're going to end for the  
13 day, members of the jury, return tomorrow at ten a.m., and  
14 we will be taking testimony on Thursday, Friday we will be  
15 ending early, so we will not have any testimony Friday  
16 afternoon, so we're just going to do Friday morning, no  
17 testimony Friday afternoon, and then I will let you know the  
18 schedule for next week.

19 We are coming to the end, so you will be getting  
20 the case for deliberations, you are to keep an open mind,  
21 you do not do any research, you are not to deliberate or  
22 discuss the case until after you've heard all of the  
23 testimony, the exhibits, as well as heard the closing  
24 arguments from the attorneys and the instructions on the law  
25 from the court.



## Proceedings

1 Have a good night, I will see you tomorrow morning.

2 COURT OFFICER: All rise, jury exiting.

3 (Whereupon, the jury exited the courtroom.)

4 THE COURT: Let me just make sure, so tomorrow  
5 morning we're having Plaintiff testify.

6 MR. ALVARADO: Yes.

7 THE COURT: We need the Spanish Interpreter.

8 MR. KELLY: Yes.

9 THE COURT: Then we're going to have Dr. Fuentes.

10 MR. FRITTOLA: That should be requick, like I have  
11 probably a ten-minute direct with him, so we which may able  
12 to get the Plaintiff back on the stand.

13 MR. ALVARADO: I think I will finish in the  
14 morning.

15 THE COURT: Then Friday we will have Dr. Weinstein  
16 at ten a.m., and we're going to stop at 11:30 for the juror  
17 who has the virtual.

18 MR. ALVARADO: Well, I can't guarantee Weinstein,  
19 that's not my witness.

20 THE COURT: I'm asking.

21 MR. KELLY: Did you finish? You're done with him?

22 MR. ALVARADO: I'm not done with him. You're  
23 brining him back for my cross.

24 MR. KELLY: Is that true? I thought you were  
25 finished. You're not finished?

## Proceedings

1 MR. ALVARADO: No, why would you bring him back  
2 then?

3 MR. KELLY: He's coming back. I thought he was  
4 done though.

5 THE COURT: Okay, he's coming back, from 10:00 to  
6 11:30 on Friday.

7 MR. ALVARADO: Off the record.

8 (Whereupon, an off the record discussion was held.)

9 THE COURT: So Monday, we're going to have  
10 Dr. Sherman at 10 a.m.; is that correct?

11 MR. ALVARADO: Is that what you want, yes.

12 THE COURT: And then Tuesday, we're going to have  
13 the police officer at ten a.m.

14 MR. ALVARADO: Ten a.m.

15 THE COURT: We need the Spanish Interpreter on  
16 Tuesday morning.

17 With respect to documents, are there any other  
18 documents that the parties want to show for identification  
19 or enter into evidence that have not been reviewed, so we  
20 can do that, so we don't have to slow down to look at the  
21 documents.

22 MR. FRITTOLA: Tomorrow morning, if we can do if we  
23 can come in a little earlier, like 9:30, because there are  
24 some things for the Plaintiff's cross that I would expect.

25 THE COURT: Okay.

## Proceedings

1 MR. ALVARADO: What time do we have to be here?

2 THE COURT: We will have the jurors here at 10:00,  
3 but the courtroom will be open at 9:30. Hopefully, that  
4 will expedite that.

5 MR. ALVARADO: Yes, sure.

6 THE COURT: Mr. Alvarado, are you going to have  
7 that document for Dr. Weinstein?

8 MR. ALVARADO: I heard you, Judge, I was the one  
9 that reminded you, photos, police report.

10 THE COURT: Okay.

11 (Pause in the proceedings.)

12 THE COURT: The officer said, one of the jurors,  
13 Juror Number 5 has a trip planned for Wednesday the 4th,  
14 he's not going to return to Sunday the 8th, he just told me  
15 this.

16 MR. KELLY: This Friday.

17 THE COURT: No, next Wednesday, the 4th, he has a  
18 trip planned, and he's not returning until Sunday,  
19 February 8th.

20 MR. KELLY: We're supposed to be finished Tuesday,  
21 sum and charge in the afternoon.

22 THE COURT: He's leaving Wednesday or?

23 COURT OFFICER: He's leaving Wednesday, he's not  
24 going to be here on Wednesday.

25 MR. ALVARADO: We will be left with one more

2 MR. KELLY: Let's keep him until we have to let him  
3 go.

4 THE COURT: Yes. No, I'm just saying, I will let  
5 you know when I know.

6 MR. KELLY: Thank you, Judge.

7 MR. ALVARADO: Thank you, Judge.

8 THE COURT: Okay, I'm just saying, I will let you  
9 know when I know.

10 MR. KELLY: Thank you.

11 (Whereupon, the proceedings were concluded until  
12 January 29, 2026, at 9:30 a.m.)

13 \*\*\*\*\*  
14 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL  
MINUTES TAKEN OF THIS PROCEEDING.

15	<i>Laura Delvac</i>
16	LAURA DELVAC SENIOR COURT REPORTER

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