

**In The Matter Of:**  
*Denis Leandro Moreira Ribeiro vs.*  
*1111 Fulton Realty, LLC*

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*Dr. Gbolahan Okubadejo*  
*February 18, 2026*

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*Vera Monaco*  
*Kings County Supreme Court*

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF KINGS: CIVIL TERM: PART 9

3 -----X  
DENIS LEANDRO MOREIRA RIBEIRO, :

4 Plaintiffs, :

5 -against- :

Index No.  
523843/2020

6 1111 FULTON REALTY, LLC, WATERMARK CAPITAL  
7 GROUP, LLC, B CONTRACTORS GROUP, LLC and  
8 LIGHTSTONE MANAGEMENT, LLC, :

Defendants. :

9 -----X

10 360 Adams Street  
Brooklyn, New York

11 February 18, 2026

12 B E F O R E: HONORABLE STEVEN Z. MOSTOFSKY  
13 Justice of the Supreme Court and a jury of six  
14 and three alternates.

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

16 LAW OFFICES OF MICHAEL S. LAMONSOFF  
Attorneys for the Plaintiffs  
17 32 Old Slip, Eighth Floor  
New York, New York 10005

18 BY: BRENDAN O'MEARA, ESQ.  
19

20 FULLERTON BECK, LLP  
21 Attorneys for the Defendants  
4 W. Red Oak Lane, Suite 203  
22 White Plains, New York 10604

23 BY: SUSAN SCARIA, ESQ.

24 VERA MONACO, RPR  
25 Senior Court Reporter

1 THE COURT: Okay. Let's call the case.

2 COURT CLERK: This is the matter of Denis  
3 Leandro Moreira Ribeiro versus 1111 Fulton Realty, LLC, et  
4 al. Index 523843/2020.

5 Attorneys, please put your appearance on the  
6 record.

7 MR. O'MEARA: Brendan O'Meara for the plaintiff.

8 MS. SCARIA: Susan Scaria for the defendants.

9 THE COURT: Okay. You want to say something?

10 MR. O'MEARA: Your Honor, I just want to --  
11 there was two third action lawsuits brought against  
12 Dr. Okubadejo, but both of them were dismissed and  
13 discontinued with prejudice. So I just want to make sure  
14 he's not asked any questions about them.

15 MS. SCARIA: Those are the RICO suits, Your  
16 Honor. The courts have already ruled on that. Those are  
17 the RICO suits.

18 THE COURT: Right. So you're not going to bring  
19 it up.

20 MS. SCARIA: No.

21 THE COURT: Okay.

22 MR. O'MEARA: We're ready, Your Honor.

23 THE COURT: Let's call the doctor.

24 MS. SCARIA: The jury, Judge?

25 THE COURT: Oh, the jury.

1 (Whereupon, there was a pause in the  
2 proceedings.)

3 MR. O'MEARA: Your Honor, I have four blown ups  
4 two of the x-ray after the surgery was done and two of the  
5 MRI that I want to introduce into evidence.

6 THE COURT: Any objection?

7 MS. SCARIA: Absolutely, Your Honor. I don't  
8 object to using a demonstrative. I thought that the  
9 doctor was going to be bringing in some sort of model or  
10 something.

11 MR. O'MEARA: He's bringing --

12 MS. SCARIA: But the witness is going to be  
13 discussing, to my understanding, MRIs that the witness  
14 will be displaying the actual MRIs on the TV, which is  
15 quite large, as the jury has already been looking at  
16 everything on the TV. There's no reason to inflame the  
17 jury with this giant spine with giant screws that is  
18 absolutely not representative of what Mr. Ribeiro has. I  
19 think it's sensational.

20 THE COURT: That's the spine of about a  
21 seven-foot person.

22 MR. O'MEARA: Your Honor, I've never actually  
23 had anybody object to blown ups of pictures that are going  
24 to be in evidence. This is the first time. It's a fair  
25 and accurate representation in regards to helping a jury

1 see what's there.

2 I'm not going to start opening up x-rays and CDs  
3 during a close. This is what is there. They're going to  
4 be looking at it from about seven to eight feet.

5 This is the first time I've ever -- this is the  
6 second time in this case where a blown up has gotten  
7 objected to this. This is the first time in a trial I've  
8 ever heard anybody objecting to what's --

9 THE COURT: What are they?

10 MS. SCARIA: Your Honor, I'm sorry?

11 THE COURT: What are they?

12 MR. O'MEARA: That is a fusion. That is the  
13 mechanisms they put inside you when you get a fusion.

14 THE COURT: And the other one?

15 MR. O'MEARA: It's the side view.

16 THE COURT: It's the?

17 MR. O'MEARA: Side view.

18 THE COURT: I'll allow them.

19 MS. SCARIA: I'm sorry?

20 THE COURT: I'll allow them.

21 MS. SCARIA: Your Honor, just for the record,  
22 there is nothing true and accurate about these blow-ups of  
23 the spine. I think it's prejudicial, and frankly,  
24 cumulative to have the witness testify about the actual  
25 films as well as these giant blow-ups.

1           Again, the defendants don't object to it as a  
2 demonstrative, but strenuously object to any of the  
3 blow-ups being put in evidence.

4           THE COURT: Is he going to be testifying about  
5 the MRI and --

6           MR. O'MEARA: Yes.

7           THE COURT: On the screen?

8           MR. O'MEARA: Yes.

9           THE COURT: You could show this to the jury.  
10 Just give them an idea of what they're seeing.

11          MR. O'MEARA: Yes.

12          THE COURT: I'm not putting it in evidence.

13          MR. O'MEARA: Your Honor, I object. I feel that  
14 if the defense keeps objecting, you kind of agree with  
15 them, Your Honor. These are routinely admitted in --

16          THE COURT: But they're humungous.

17          MS. SCARIA: I'm going to have to disagree.

18          THE COURT: Stop. They're not representative of  
19 a regular five-foot tall person.

20          MR. O'MEARA: Is the TV?

21          THE COURT: Yes.

22          MR. O'MEARA: No, it's not. I don't know --

23          THE COURT: That's going to be an MRI.

24          MR. O'MEARA: And these are MRIs and these are  
25 x-rays, and the x-rays will also be on the TV, and they

1           wouldn't be the --

2                       THE COURT: I've had MRIs, and none of them are  
3           that big.

4                       MR. O'MEARA: Your Honor, this is -- but what's  
5           the difference between showing it to them now and showing  
6           it to them in a closing as an exhibit? If you can explain  
7           the difference to me --

8                       THE COURT: It's not evidence in the closing.

9                       MS. SCARIA: Not to mention the fact --

10                      MR. O'MEARA: But it is. It is in evidence.  
11           The x-rays are in evidence. It's a photograph of the  
12           x-rays.

13                      MS. SCARIA: Your Honor --

14                      THE COURT: One second.

15                      MS. SCARIA: Sorry.

16                      THE COURT: What's the prejudice?

17                      MS. SCARIA: The prejudice is when the -- if the  
18           jury goes back with these three screws on each side that  
19           measure two or three inches in length in a spine that's as  
20           tall as me -- granted I'm short -- it's going to look --  
21           it's so -- it so inflames the jury because it looks so  
22           horrible on a blow-up.

23                      The doctor can clearly explain by using --

24                      THE COURT: That's the question I have. It's  
25           really large, and it's not representative of what a real

1 spine will look like. Nobody's spine is that big.

2 MR. O'MEARA: Your Honor, do you think the jury  
3 is going to think that the spine is that big?

4 THE COURT: Yeah.

5 MR. O'MEARA: You don't think they could figure  
6 it out?

7 THE COURT: I'm not sure.

8 MR. O'MEARA: I have no problem saying that it  
9 was blown up. We're also going to be showing it to them  
10 anyway, so they're going to see it.

11 MS. SCARIA: But they don't need to bring it  
12 into the jury room.

13 THE COURT: You need to give an explanation that  
14 this is a blow-up of the spine and that the spine is not  
15 actually that large.

16 MR. O'MEARA: Yeah, that's fine.

17 MS. SCARIA: More importantly, the hardware Your  
18 Honor. That's the --

19 THE COURT: Well, the hardware is fine. They're  
20 allowed to see the hardware.

21 MS. SCARIA: I just mean that the prejudice is  
22 not just that it's the spine of a giant but also that the  
23 hardware looks much worse. I'm not discounting the  
24 surgery.

25 THE COURT: Well, because if he's going to

1 explain to the jury that this is a blow-up and it's not  
 2 representative of what the regular spine looks like, it's  
 3 just to give them a view of the surgery and what it does,  
 4 but obviously, that they should realize that this is not  
 5 the spine of a regular person. This is a blow-up of what  
 6 actually happens and that the screws and everything might  
 7 look much larger, and that this is just to give a  
 8 representation of what happened and what the surgery is,  
 9 I'll be okay with that.

10 MR. O'MEARA: If you want to give them an  
 11 instruction at the time, Judge, I don't have a problem  
 12 with that either.

13 THE COURT: Okay.

14 MS. SCARIA: Your Honor, I --

15 THE COURT: I'll give them an instruction.

16 MS. SCARIA: And then it's not going into  
 17 evidence, though?

18 THE COURT: No, I'll let it into evidence --

19 MS. SCARIA: Your Honor, again --

20 THE COURT: -- with an instruction.

21 MS. SCARIA: Your Honor, again --

22 THE COURT: Listen, the jury has been here long  
 23 enough. They could probably be charged and come to a  
 24 decision today.

25 MS. SCARIA: I understand that, Your Honor, but

1           there's no reason the jury needs to look at a blow-up.

2                     THE COURT:   And they're going to see the spine.

3                     MS. SCARIA:   They can see the spine on a film,  
4           Your Honor.  There's no reason for the jury to ask for  
5           this giant board so they could look at the screws and feel  
6           sympathy for the plaintiff.

7                     THE COURT:   That's the surgery he had.

8                     MS. SCARIA:   That's -- yeah, but that blow-up is  
9           not the surgery he had.

10                    THE COURT:   But I could explain that to the  
11           jury.  Listen, they've heard so much already.  I think  
12           they're pretty smart, and they've been listening to the  
13           case.  And honestly, they've been suffering in here.

14                    MS. SCARIA:   I agree, Your Honor.  They've been  
15           diligent enough to ask for notes and for evidence to come  
16           back to them.  So that's the reason --

17                    THE COURT:   I think I could explain to them that  
18           we're going to put several photographs into evidence which  
19           are enlargements but don't represent the size of the  
20           spine.  But I want you to have your doctor explain the  
21           spine on the model so they could see what the size of the  
22           spine is, and the doctor could testify that that's  
23           generally the size of the area.  And I'll give them an  
24           instruction that the jury is -- that the pictures that  
25           they're going to be seeing is a blow-up of that area and

1 not representative of what it actually looks like, and  
2 it's an enlarged picture, just to let them see what the  
3 hardware is and where it was put in.

4 MR. O'MEARA: Okay.

5 MS. SCARIA: Your Honor, I would also ask that  
6 Your Honor, if you're going to give this charge, that the  
7 charge should also relate specifically to the hardware  
8 because that's the part that is --

9 THE COURT: Okay. So let me mark it down. That  
10 would go in as what, J?

11 MR. O'MEARA: No, I think it was -- it's  
12 Plaintiff's, so it's Number 8, 9, 10, 11.

13 THE COURT: I don't have Number 8, 9, 10, 11. I  
14 only have one --

15 COURT CLERK: I have it, Judge. I have eight as  
16 MRI.

17 THE COURT: Can you make me a copy?

18 COURT CLERK: Sure.

19 THE COURT: By the way, your doctor can use them  
20 also.

21 MS. SCARIA: I'm sorry?

22 THE COURT: Your doctor can use these.

23 MS. SCARIA: You thank you, Your Honor. But I  
24 mean, they're in evidence, so I would presume as much.

25 THE COURT: I'm saying, but if you want your

1 doctor to explain it.

2 MS. SCARIA: Thank you, Your Honor.

3 THE COURT: Off the record.

4 (Whereupon, there was a discussion held off the  
5 record.)

6 THE COURT: Let's bring in the jury.

7 COURT OFFICER: All rise. Jury entering.

8 (Whereupon, the jury enters the courtroom.)

9 THE COURT: Good morning, everybody. Have a  
10 seat.

11 Okay. Counsel, call your witness.

12 MR. O'MEARA: Calling Dr. Okubadejo.

13 COURT CLERK: Please raise your right hand. Do  
14 you affirm that the testimony that you're about to give  
15 this Court is the truth under penalty of perjury?

16 THE WITNESS: Yes.

17 COURT CLERK: You may be seated.

18 THE WITNESS: Thank you.

19 D R . G B O L A H A N O K U B A D E J O ,

20 a witness called on behalf of the plaintiff, having  
21 been first duly sworn or affirmed, took the witness  
22 stand and was examined and testified as follows:

23 COURT CLERK: Please state your name.

24 THE WITNESS: Dr. Gbolahan Okubadejo.

25 COURT CLERK: Spell it.

1 THE WITNESS: First name is G-B-O-L-A-H-A-N.  
2 Last name is O-K-U-B-A-D-E-J-O.

3 COURT CLERK: Your title and your county of  
4 business.

5 THE WITNESS: I'm an orthopedic spine surgeon  
6 MD. County, both New York and New Jersey.

7 THE COURT: Go ahead, Counsel.

8 MR. O'MEARA: Thank you.

9 DIRECT EXAMINATION

10 BY MR. O'MEARA:

11 Q. Doctor, can you give us some of your educational  
12 background?

13 A. Absolutely. I was born in Brooklyn. I went to high  
14 school in Brooklyn. I went to Tilden High School. From there  
15 I went to Brown University in Providence. Then I went to Johns  
16 Hopkins in Baltimore. I did a residency in orthopedic surgery  
17 at Washington University in Saint Louis, and I did a fellowship  
18 specifically in spine surgery at the University of Pittsburgh.

19 Q. And can you tell us what your practice consists of  
20 now?

21 A. My practice consists primarily of orthopedic spine  
22 surgery.

23 Q. Can you give us a little bit of your work history?

24 A. Yeah, so I've been in practice since 2008. I tend to  
25 see patients who have conditions of the spine, typically neck

1 and back. A lot of patients have injuries relevant to those  
2 regions, and that's what I really focus on.

3 Yeah, so that's generally the scope of my practice.

4 Q. And how long have you been a doctor?

5 A. I finished med school in 2002. I completed my  
6 fellowship in 2008. And I've been in practice now for 18  
7 years.

8 Q. And are you board certified?

9 A. Yes, orthopedic surgery.

10 Q. Can you tell us what that entails?

11 A. Board certification means that I have my peers --  
12 first you do exams to make sure that you have the knowledge of  
13 your field and the proper expertise to make good decisions, and  
14 then I have my peers do a case review. So they look at a group  
15 of cases that you've done. You present your cases to make sure  
16 that they're generally in agreement with how you treat  
17 patients. So I'm board certified, that means they're in  
18 agreement with my approaches to patients and, yeah, certified.

19 Q. And approximately, how many surgeries do you perform  
20 a year?

21 MS. SCARIA: Your Honor, I have an objection to  
22 the extent that the witness doesn't need to be qualified.

23 THE COURT: I can't hear you.

24 MS. SCARIA: The defendants object to the extent  
25 that the witness doesn't need to be qualified as an

1 expert. He's simply a treating physician; so the scope of  
2 Dr. Okubadejo's background is not really relevant.

3 THE COURT: Overruled. He can explain who he  
4 is.

5 A. Repeat the question.

6 Q. I think I asked about how many spine surgeries --

7 THE COURT: Yeah, that's unnecessary. I'll  
8 sustain that objection.

9 Q. Do you know who Denis Leandro Moreira Ribeiro is?

10 A. Yes.

11 Q. And who is he?

12 A. He's a patient that I treated for an injury to his  
13 back.

14 Q. Do you remember when you treated him?

15 A. Yeah, I treated him between 2020 through I believe  
16 2024.

17 Q. And do you have your file with you?

18 A. Yes.

19 MR. O'MEARA: Judge, would you allow him to  
20 review it, not read from it, but review it, if he needs to  
21 to answer any questions?

22 THE COURT: Yes, he can refresh his recollection  
23 and then close the file and testify, if need be.

24 MR. O'MEARA: Thank you.

25 Q. And do you know who recommended Mr. Ribeiro to you?

1           A.    He came to me through an attorney's office, I  
2 believe.

3           Q.    Does that happen -- do attorneys' office refer cases  
4 to you?

5           A.    Patients come from a variety of sources. They can  
6 come from attorneys' offices, other physicians, physical  
7 therapy. Yeah, so it's a variety.

8                    Any context in which patients get injured or have  
9 issues with their neck or back, those are the context in which  
10 they get referred to me for my expertise diagnosis and  
11 treatment.

12          Q.    Do you remember when they first contacted you?

13          A.    I first assessed him on October 20, 2020.

14          Q.    October 20th?

15          A.    I'm sorry. October 6, 2020.

16          Q.    But prior to that, you had ordered an MRI?

17          A.    Actually, I did not order the MRI, but my office  
18 ordered the MRI.

19          Q.    Is that normal?

20          A.    No, actually --

21                   MS. SCARIA: Objection.

22                   THE COURT: Sustained.

23          Q.    How does an MRI normally -- how would this -- how did  
24 this MRI end up getting order?

25          A.    So typically, I order MRIs myself.

1 MS. SCARIA: Objection, Your Honor.

2 THE COURT: Overruled.

3 A. Typically, I order MRIs myself after assessing  
4 patients. In this particular case, my office ordered the MRI  
5 before the patient saw me, probably anticipating what I would  
6 need.

7 Q. Did they also order MRIs for different parts of his  
8 body?

9 A. In this case they did, yes.

10 Q. Do you know why they did that?

11 A. No. No. I would imagine because those body  
12 parts were involved --

13 MS. SCARIA: Objection, Your Honor.

14 THE COURT: Sustained.

15 A. Okay.

16 Q. Did you ever find out specifically why they ordered  
17 those parts?

18 A. No. I can surmise after reviewing the chart  
19 afterwards, but at the time I was not aware that they ordered  
20 MRIs.

21 MS. SCARIA: Objection.

22 THE COURT: Sustained.

23 Q. Did you personally order the MRIs?

24 A. No.

25 Q. But your office did?

1 A. My office did, yes.

2 Q. Did you eventually meet Mr. Ribeiro?

3 A. I did. I met him on October 6, 2020.

4 Q. How did he first present to you?

5 A. He presented with a chief complaint, from my  
6 perspective as a spine surgeon, of a back pain.

7 THE COURT: You can't read from your report.  
8 You can look at it.

9 Q. Doctor, you can look at it and then tell us.

10 A. He presented with complaints of back pain after  
11 having an injury at work. I know he also had injuries to his  
12 knee and his ankle, but he was -- I was assessing him for his  
13 back, his lumbar spine.

14 Q. Did you treat or look at any of the material from his  
15 other body parts?

16 A. The non-spine body parts?

17 Q. Yes.

18 A. No.

19 Q. And did you get a history?

20 A. I did. I did. He stated that he was lifting a heavy  
21 object at work I think with another one of his colleagues and  
22 fell and had injury to his back.

23 Q. Do you know if he was receiving physical therapy at  
24 this time?

25 A. By the time he came to see me?

1 Q. Yes.

2 A. I believe so, yes.

3 Q. Do you review the physical therapy notes yourself?

4 A. Did I for this case?

5 Q. Yes.

6 A. Currently for today?

7 Q. No, just do you, before he comes, do you get a copy  
8 of the --

9 MS. SCARIA: Objection.

10 A. I have the reports available.

11 MS. SCARIA: It's just not clear whether counsel  
12 is asking about the general procedure or what  
13 Dr. Okubadejo did with Mr. Ribeiro.

14 MR. O'MEARA: I'll rephrase.

15 THE COURT: Rephrase.

16 Q. Did you look at Mr. Ribeiro's PT records before  
17 October 6th?

18 A. I can't recall specifically, no.

19 Q. As part of your -- as part of a spinal surgery, do  
20 you often connect the mechanisms of accident to a particular  
21 injury?

22 MS. SCARIA: Objection, Your Honor, beyond the  
23 scope.

24 THE COURT: Sustained.

25 MR. O'MEARA: Your Honor, he's the treating

1 physician. He can testify to that.

2 MS. SCARIA: But he's not a --

3 THE COURT: But he can't match it up to what  
4 caused it.

5 MR. O'MEARA: Why not? Can we approach?

6 THE COURT: That's my ruling.

7 MR. O'MEARA: Okay.

8 Q. As part of your history, was there any -- did  
9 Mr. Ribeiro discuss how he hurt his back?

10 A. He stated that he was injured at work, as I stated.

11 Q. Did he give you any other indication of any other  
12 accident that might have hurt his back?

13 A. No.

14 Q. And in your experience, when individuals carry heavy  
15 objects, is it detrimental to your back?

16 MS. SCARIA: Objection, Your Honor.

17 THE COURT: Sustained.

18 Q. Do you know who gave your name to the plaintiff to go  
19 to your office?

20 A. No.

21 Q. And did you eventually conduct an MRI?

22 I'm sorry. Did you eventually review the MRI?

23 A. I did. I did.

24 Q. Do you know when you reviewed the MRI?

25 A. He didn't have it during his first visit, so some

1 time after his first visit.

2 Q. Okay. And do we have a copy of -- do we have that  
3 MRI here?

4 A. Yes.

5 Q. And did you take a diagnosis off of that MRI?

6 A. Yes.

7 Q. And do you remember what it was?

8 A. He had herniated disc, lumbar spine, multi-level.

9 MR. O'MEARA: Your Honor, I would ask if the  
10 doctor can go up to the computer screen.

11 A. Yeah, first put something on it.

12 MR. O'MEARA: Yes, I think he has to. It's his  
13 computer. herniated disc.

14 THE COURT: Okay. Why doesn't the doctor  
15 explain the model that he has?

16 MR. O'MEARA: Okay.

17 Q. Can you describe what the model -- actually, why  
18 don't you just describe what is in your hand.

19 A. This is a model of the lumbar spine of the lower  
20 back. The lower back has five vertebra. In between each  
21 vertebra is a disc. The function of the disc is to act as a  
22 cushion in order to help the body absorb axial load.

23 Sometimes when patients have injuries to their  
24 back -- you've heard of patients having a herniated disc, that  
25 means that the disc gets injured and pushes towards the nerve.

1 And when it happens, that tends to be what causes pain, and  
2 that's where a lot of my focus on what I treat in the back  
3 lies, treating these problems that occur in the lower back when  
4 I'm focused on the lumbar spine?

5 I also do neck surgery, but that's a separate body  
6 part. In this case his injury was attributed to his lower  
7 back.

8 Q. And can you describe, using the model if you can,  
9 what you found in -- after you are reviewed Mr. Ribeiro's MRIs?

10 A. I think it's better if I have the imaging.

11 MR. O'MEARA: Your Honor, I would ask him to  
12 approach.

13 A. Better context.

14 Q. Yes.

15 A. Thank you.

16 So this is my patient's spine. So the first thing I  
17 do when I look at a back is I look at the disc. I look at the  
18 health of the disc. The best way to determine the health of  
19 the disc is the color. When a disc is nice and bright, like  
20 these ones, that means it has a lot of fluid, and it's able to  
21 absorb an axial load. When a disc starts to turn dark like  
22 this, that means it's lost fluid; so it's stiffer, and the risk  
23 of injury is much higher.

24 So in this case, he has three discs, and it's changed  
25 color, it's stiffer, and he has a large herniation here and

1 another herniation here. So that explains why he got injured.

2 The first thing I ask myself is, why does someone get  
3 injured? Are there any factors that could potentially make  
4 them vulnerable to injury? In this case --

5 MS. SCARIA: Objection, Your Honor. May we  
6 approach?

7 THE COURT: Sustain the objection.

8 MS. SCARIA: Your Honor, can we approach?

9 (Whereupon, there was a discussion held off the  
10 record at sidebar outside the presence of the jury.)

11 THE COURT: Back on the record.

12 Q. Doctor, can you just simply tell us what you seen --  
13 what your diagnosis was when you looked at Mr. Ribeiro's MRI?

14 A. My diagnosis is that he had herniated disc stemming  
15 from his injury.

16 Q. And can you point out to the jury what led you to  
17 that?

18 A. So the changes on the MRI, especially these bulges.  
19 So as I mentioned, whenever there's a herniated disc, it bulges  
20 beyond this column into the nerves, and that tends to be what  
21 causes pain; so it's my job to figure out what the best  
22 solution would be to get them out of pain.

23 Q. And did you know if you had an opportunity to see any  
24 other prior MRIs of Mr. Ribeiro?

25 A. No.

1 MS. SCARIA: No you don't know, or no you --

2 THE WITNESS: I'm not aware of any other MRIs  
3 prior.

4 Q. And you can sit down now, if you want.

5 A. All right.

6 Q. Did you also do an objective test of -- or did you do  
7 any physical exam of Mr. Ribeiro?

8 A. Yes.

9 Q. What was the result of that physical exam?

10 A. His main finding was pain with range of motion and  
11 limited range of motion.

12 THE COURT: Doctor, can you try to move up and  
13 use the microphone?

14 Q. Can you tell us what the difference between  
15 subjective and objective components are?

16 MS. SCARIA: Objection, Your Honor, beyond the  
17 scope.

18 THE COURT: Overruled.

19 A. Subjective is what the patient states they're  
20 feeling, and then objective is what I assess based on my  
21 determination on exam.

22 Q. And did you make a determination about the injuries  
23 that Mr. Ribeiro had?

24 A. Yes.

25 Q. And did you come up with a treatment plan?

1 A. Yes.

2 Q. And what was the treatment plan?

3 A. Physical therapy and epidural steroid injection.

4 Q. And do you know if he followed through with the  
5 physical therapy and the injections?

6 A. I believe he followed through with physical therapy,  
7 and I performed the injection myself.

8 Q. So he had injections?

9 A. He definitely had an injection, yes.

10 Q. And after that what happened?

11 A. So after the injection he came back. He said he had  
12 transient benefit, so he felt better for a short period of  
13 time, then his pain returned. At that point we then discussed  
14 a permanent solution to his problem.

15 Q. Okay. And what was the next step?

16 A. So the next step for me was to look at the imaging  
17 and determine what would give him the best long-term solution.  
18 Since he had -- I could use the MRI or no?

19 Q. Yes.

20 A. Okay. So he had herniation at this level, herniation  
21 at this level, and he also had desiccation at this level. So I  
22 wanted to give him a solution that would give him the best  
23 long-term relief of pain. So my option at this point would be  
24 either to take out the disc or provide something that would  
25 stabilize his entire spine.

1           Because of the fact that he had the vulnerability  
2 from the changes in the disc --

3           MS. SCARIA: Objection, Your Honor, to the term  
4 vulnerability.

5           THE COURT: Sustained.

6           A. So in my assessment, in order for a patient to have  
7 long-term relief, I would like them to have a solution that  
8 would prevent them having recurring injury. So I felt the best  
9 solution for him would be to remove the disc that are  
10 potentially causative of injury again and give him a long-term  
11 solution.

12           So my solution was to perform what is called a  
13 laminectomy where I take out these bones to remove the pressure  
14 of the nerves from here, remove the discs that were injured and  
15 then do a fusion, which is by placing cage devices and then  
16 placing screws in these bones, and that gives him a long-term  
17 solution to prevent future injury and also resolve the problem  
18 that he currently has.

19           Q. Can a patient have a herniated disc without having  
20 pain?

21           MS. SCARIA: Objection, beyond the scope.

22           THE COURT: Sustained.

23           Q. Do you know how long he spent in the hospital for the  
24 surgery?

25           A. Typically, after a procedure like this --

1 MS. SCARIA: Objection, Your Honor.

2 THE COURT: Overruled.

3 MS. SCARIA: Your Honor, the witness is  
4 testifying about typically rather than about Mr. Ribeiro.

5 THE COURT: Okay. I'll take that and sustain  
6 the objection.

7 Q. How long did Mr. Ribeiro stay in the hospital?

8 A. I would have to look at the specific hospital records  
9 to see. So I don't think I have his hospital stay records in  
10 my chart.

11 Q. Did you see him after the surgery?

12 A. Yes.

13 Q. And did you take an x-ray of the mechanisms you  
14 installed?

15 A. Yes.

16 THE COURT: Hold on. You are going to use the  
17 chart?

18 MR. O'MEARA: Yes.

19 THE COURT: Okay. So I just want to explain to  
20 the jury, you're going to be seeing a number of blow-ups  
21 of the spine. As you can tell from the doctor's model,  
22 that's more or less the size of the area where he did the  
23 surgery and where the injuries might have occurred.

24 The blow-ups are going to be much larger than  
25 what the spine is. So I don't want you to think that

1           you're seeing the spine of a regular person. The spine,  
2           if it belonged to somebody, would be about a seven-foot  
3           tall person.

4                     The purpose of these exhibits are to show you  
5           the mechanism and what the doctor did, not the size of the  
6           surgery and of any instruments that the doctor used to  
7           fuse the spine. So I want you to understand that it's for  
8           that limited purpose to make you be able to see what  
9           occurred, not that it should look like this horrible,  
10          terrible, gigantic change in the person's spine.

11                    So I hope you could understand from my  
12          explanation what I mean. But as you could see, this does  
13          not look like the typical size of somebody's spine,  
14          especially only a section of the spine.

15                    Go ahead.

16                    MR. O'MEARA: Okay.

17          Q. Do you see the exhibit in front of you?

18          A. Yes.

19                    MR. O'MEARA: I'm sorry. I believe it's  
20          Exhibit 9, Your Honor.

21                    THE COURT: Okay.

22          Q. Doctor can you describe what you see in Exhibit 9?

23          A. Can I stand up?

24                    THE COURT: Counsel, do you agree that's  
25          Exhibit 9; right?

1 MS. SCARIA: Your Honor, I don't know which  
2 number it was, but I trust that counsel is right.

3 THE COURT: Okay. Is says MRI Number 2.

4 MS. SCARIA: I'm sorry? Did you say MRI?

5 MR. O'MEARA: I'm sorry. I apologize. This is  
6 Exhibit 11. I'll change it.

7 THE COURT: Okay. So that's x-ray Number 2?

8 MR. O'MEARA: Yes.

9 THE COURT: Okay.

10 A. So what you're seeing here is there is a dark shadow  
11 in the middle here, and that shows the area where the spine was  
12 decompressed. That's where these bones called the lamina were  
13 removed, and that takes the pressure off the backside of the  
14 spine.

15 And these cages here represent what's in the spaces  
16 where the disc was. So from the back, I work around the  
17 nerves. I remove each disc. I place these cages. Within the  
18 cage is graft, and that graft is what helps to unite these two  
19 bones together. So this construct ensures that he has a nice,  
20 stable spine and should prevent him from having any injury to  
21 the areas that were vulnerable.

22 Q. Doctor, I'm going to show you one more. It's x-ray  
23 Number 1. Can you describe --

24 THE COURT: Okay. What is that in evidence?

25 MR. O'MEARA: Ten, Your Honor.

1 THE COURT: Ten.

2 A. So this --

3 THE COURT: One second. One second. We have to  
4 mark it.

5 A. These x-rays represent a side view of the spine. So  
6 these are the screws within the bones called the pedicles, and  
7 then the cages are within the disc spaces. The cages replace  
8 the disc that had been there. That ensures that you can't have  
9 any future injuries. This provides a nice construct for him  
10 and get back to being active.

11 Q. Doctor, I'm just going to ask you to stand -- I don't  
12 really need you to explain these. I just want to confirm.

13 MR. O'MEARA: I'm just showing him what's  
14 Plaintiff's Exhibit 8, Your Honor.

15 THE COURT: Is it marked?

16 MR. O'MEARA: Yes.

17 Q. Is that just a photograph of the MRI we were just  
18 looking at?

19 A. Yes.

20 MR. O'MEARA: And now I'm just showing him  
21 what's been marked Number 9, Plaintiff's 9.

22 Q. Is that just another view of the MRI we previously  
23 looked at?

24 A. Yes.

25 THE COURT: And how long did you -- is that a

1 presurgery or a post surgery MRI?

2 THE WITNESS: Presurgery.

3 Q. And the x-rays are post surgery?

4 A. Post surgery; correct.

5 Q. How long after the surgery did you see Mr. Ribeiro?

6 A. May I look at my notes?

7 THE COURT: Yes, just don't read from it.

8 (Witness reviewing document.)

9 A. March 9, 2021.

10 Q. 2021 or --

11 A. Yes, that's the first report I have.

12 Q. I'm sorry. When was the last time you seen him?

13 A. Oh, the last time I saw him. I'm sorry. I thought  
14 you asked the first time I saw him after surgery. The last  
15 time I saw him was February 28, 2024.

16 Q. Do you have any future appointments with him?

17 A. Yeah, he was asked to follow up with me as needed.

18 Q. And would this surgery put him back to how he was  
19 before the surgery?

20 MS. SCARIA: Objection.

21 THE COURT: Sustained.

22 Q. And in your opinion, does this limit any -- does this  
23 put any limitations on Mr. Ribeiro?

24 MS. SCARIA: Objection, Your Honor.

25 THE COURT: Sustained.

1 Q. Did you have any conversations with Mr. Ribeiro about  
2 his ability to go to work?

3 A. Yes. I recommended that he go back to work. I would  
4 like him not to lift as heavy as probably he was doing before  
5 in order to prevent putting too much stress on his construct,  
6 but he could certainly go back to work.

7 Q. And did you give him an amount of pounds he shouldn't  
8 lift?

9 A. Yeah, I think I stated somewhere between five to  
10 ten pounds. Don't go beyond that. Something like that.

11 Q. And do you consider this acute trauma?

12 MS. SCARIA: Objection, Your Honor.

13 THE COURT: What?

14 MR. O'MEARA: Acute trauma.

15 MS. SCARIA: Objection, Your Honor. Beyond the  
16 scope.

17 THE COURT: Sustained.

18 MR. O'MEARA: Nothing further, Your Honor.

19 MS. SCARIA: Your Honor, can we take five  
20 minutes?

21 THE COURT: We'll take a five-minute break.

22 COURT OFFICER: All rise. Jury exiting.

23 (Whereupon, the jury exits the courtroom.)

24 (Whereupon, a brief recess was taken.)

25 COURT OFFICER: Ready, Judge?

1 THE COURT: Yes.

2 COURT OFFICER: All rise. Jury entering.

3 (Whereupon, the jury enters the courtroom.)

4 THE COURT: Everybody, have a seat.

5 Counsel, go ahead with cross.

6 MS. SCARIA: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. SCARIA:

9 Q. Doctor, I'm going to do your cross-examination from  
10 here because I have too many papers, so forgive me. And also  
11 forgive the lack of jacket because it's very hot in here.

12 Good morning, sir.

13 A. Good morning.

14 Q. Nice to see you again. We met once before; is that  
15 correct?

16 A. We have.

17 Q. That's when you testified before for a plaintiff in  
18 another case?

19 A. Correct.

20 Q. The spine surgery that you performed, Dr. Okubadejo,  
21 on Mr. Ribeiro, that was February 15, 2021; correct?

22 Feel free to look at your notes, if you need to  
23 refresh your recollection.

24 A. Correct.

25 Q. And then you followed him, but then one year after

1 the back surgery, in February of 2022, you had advised  
2 Mr. Ribeiro that he had reached maximum medical improvement  
3 with respect to his back condition; is that right?

4 A. Correct.

5 Q. And maximum medical improvement basically means, from  
6 a medical perspective, that there is no more further treatment  
7 that can be done to improve the condition of his back; correct?

8 A. Correct.

9 Q. And at that time you also told Mr. Ribeiro back in  
10 February of 2022 that he need only see you -- he only needs to  
11 come see you if he needs it; correct?

12 A. Correct.

13 Q. You didn't specifically schedule any future  
14 appointments with him as of February 2022?

15 A. Correct.

16 Q. The next appointment that Mr. Ribeiro actually came  
17 to you for -- because we know you saw him through '24 -- wasn't  
18 until almost one year later in April of 2023; right?

19 A. Correct.

20 Q. When Mr. Ribeiro came to you in April of 2023,  
21 another year later, he wanted to discuss returning to work with  
22 you; is that right?

23 A. Again, feel free to look at your notes.

24 A. That was part of the conversation; correct.

25 Q. And at that time, if you recall, or if it's

1 documented in your notes, did Mr. Ribeiro tell you that he had  
2 already applied to several jobs?

3 A. Not that I documented.

4 Q. In April of 2023, when Mr. Ribeiro came to you to  
5 discuss returning to work, did he tell you that he had already  
6 returned to the workforce delivering packages?

7 A. What I have in my records does not include that.

8 Q. So we're at April of 2023. And the next time  
9 Mr. Ribeiro sees you again is almost a year later in February  
10 of 2024; correct?

11 A. I don't have that specific note, but I can answer  
12 questions as you present them.

13 Q. I have the note, if you would like a copy. Of  
14 course, mine are not in color like yours. I'll ask the  
15 question, and we'll see if you need the note.

16 A. Oh, yeah, I see it now. Yes.

17 Q. So when he returned to you again almost a year later  
18 in April, specifically April 18, 2023, at that time Mr. Ribeiro  
19 told you he did go back to work; correct?

20 I'm sorry. On March. Forgive me. I'll withdraw the  
21 question.

22 When Mr. Ribeiro came to visit you in February of  
23 2024, that's the note I'm looking for.

24 A. Yes.

25 Q. Sorry to confuse you.

1           In February of 2024 when Mr. Ribeiro came to see you,  
2 at that time he told you he had returned to the workforce;  
3 correct?

4           A.    I don't have specific documentation of what work he  
5 was doing.

6           Q.    I'm asking not what he was doing. I'm just asking  
7 you isn't it true that in February of 2024 Mr. Ribeiro told you  
8 that he had returned to the workforce?

9           A.    I don't have a record of what work -- if he was  
10 working. I don't have that specifically written here.

11          Q.    At some point didn't Mr. Ribeiro tell you that he had  
12 started working delivering packages after you had told him that  
13 he had reached maximum medical improvement?

14          A.    I don't have specific records of him delivering  
15 packages.

16          Q.    But my question is a little different, sir. At some  
17 point after you had told Mr. Ribeiro that he had reached  
18 maximum medical improvement with respect to his spine  
19 condition, isn't it true that he did discuss with you the fact  
20 that he returned to work already?

21          A.    I don't have documentation of him returning to work  
22 in my notes.

23          Q.    So do you remember one way or another, sir?

24          A.    No. No.

25          Q.    You can't be expected to remember all of this. You

1 need to rely on your chart; right?

2 A. I have a lot of patients too, so I can't remember  
3 everyone's detail.

4 Q. Understood. Thank you.

5 The last visit I believe you said Mr. Ribeiro had  
6 with you was March of 2024, again -- March of 2024, the  
7 following month. So March 5th specifically; is that right?

8 A. Yes.

9 Q. There are no more visits after March 5, 2024, with  
10 you; correct?

11 A. Correct.

12 Q. And in fact -- again, please look at your records if  
13 you need to -- the day before Mr. Ribeiro had gone for an MRI  
14 of his spine that you discussed with him at the  
15 March 5th visit; is that right?

16 A. On March 5th we reviewed MRI and CT of his lumbar  
17 spine; correct.

18 Q. And following your examination and your discussions  
19 with Mr. Ribeiro in March of 2024 -- so we're talking about two  
20 years ago now -- you didn't recommend that Mr. Ribeiro continue  
21 with any physical therapy; is that right?

22 A. We didn't specifically discuss therapy.

23 Q. And also at that last visit with you in March of  
24 2024, you didn't recommend that Mr. Ribeiro undergo any spine  
25 injections; correct?

1           A.    Correct.

2           Q.    And the last visit you did not in fact document any  
3 discussions about weight limitation; isn't that true?

4           A.    Correct.

5           Q.    So when you said in response to Mr. O'Meara's  
6 question there was a weight limitation of about ten or  
7 20 pounds, were you testifying based on generalizations?

8           A.    Based on the C4.3 that I completed in 2022.

9           Q.    What is C4.3?

10          A.    C4.3 is the permanency form with regards to what  
11 activity I recommend that he can perform going forward.

12          Q.    That permanency form is not a record of any  
13 examination or discussions that you had with Mr. Ribeiro  
14 regarding his treatment; isn't that true?

15          A.    Correct.  It's more focused on what activities he can  
16 do going forward.

17          Q.    And that document that you filled out that you're  
18 referring to, the C4.3, does not document the discussions that  
19 you had or any questions Mr. Ribeiro asked you at a visit.  
20 It's simply to document his level of injury; correct?

21          A.    Level of injury and also what activities he can  
22 engage in.

23          Q.    But you didn't have a discussion with Mr. Ribeiro on  
24 March 5th of 2024 specifically about what activities he can  
25 engage in; isn't that true?

1           A.    I reassured him that he could increase activities.  
2    That's what I have in my summary.

3           Q.    But I'm asking you a very specific question, Doctor.  
4    On March 5, 2024, the last visit with Mr. Ribeiro, isn't it  
5    true that you did not have any specific discussions with him  
6    about what specific activities he can and cannot do?

7           A.    Correct. I don't have documentation of specific  
8    activities.

9           Q.    And, Doctor, again, at the visit on March 5, 2024,  
10   the last visit, you told Mr. Ribeiro that he should return to  
11   you or actually follow up with you as needed; is that right?

12          A.    Correct.

13          Q.    So on March 5, 2024, you did not schedule any future  
14   appointment with him; correct?

15          A.    Correct.

16          Q.    And you had no idea at that time that whether he was  
17   going to return to you or not; isn't that true?

18          A.    Correct.

19          Q.    And certainly, as his treating spine doctor, you  
20   would welcome him back if he wanted to make an appointment?

21          A.    Absolutely.

22          Q.    Okay. And if he had any increasing problems, he was  
23   free to come see you?

24          A.    Absolutely.

25          Q.    But he never returned to see you, his spine surgeon,

1 after March 5, 2024; right?

2 A. Correct.

3 Q. Doctor, let's talk about diagnostic testing. When  
4 patients come to you for a consultation, they're looking for a  
5 solution to back pain; right?

6 A. Correct.

7 Q. Because that is your practice is -- well, not  
8 necessarily that but treating the spine; correct?

9 A. Correct.

10 Q. And you examine the patient in order to provide them  
11 a care plan; correct?

12 A. Yes.

13 Q. A physical examination of them?

14 A. Yes.

15 Q. If they come in with records, would you review those  
16 too before you give them any kind of treatment recommendations?

17 A. Correct.

18 Q. In addition to your examination, you rely on what the  
19 patient tells you in terms of pain in any part of the spine;  
20 correct?

21 A. Yes.

22 Q. Doctor, just last month you were interviewed for a  
23 podcast with Becker's Hospital Review; right?

24 A. Yes.

25 Q. And that's an online media for hospital stuff in

1 general?

2 A. Yes.

3 Q. You provided, like, a 15-minute interview; is that  
4 right?

5 A. Yes.

6 Q. In that interview on the podcast, you discuss the  
7 process -- your process of assessing patients and determining  
8 whether they need surgery or not?

9 A. Correct.

10 Q. You told your listeners of the podcast that your  
11 practice is to have a patient see you, come see you, once they  
12 have pain, and then you'll order diagnostic testing; isn't that  
13 true?

14 A. Correct.

15 Q. And that is your practice?

16 A. That is my practice when I'm in control of what I --  
17 yes, that's what I do. Yes. Yes.

18 Q. So we can agree that -- well, we can agree that your  
19 practice follows good and accepted medical practices generally;  
20 right?

21 A. Yes.

22 Q. So we can agree then that good and accepted medical  
23 practices involves you speaking and examining a patient before  
24 determining a course of treatment for them?

25 A. Before determining the treatment plan, absolutely.

1 Q. Okay. And good -- isn't it true that good and  
2 accepted medical practices also dictate that you examine and  
3 speak to the patient about their complaints before ordering any  
4 diagnostic testing?

5 A. Before I order -- typically, before I order advanced  
6 diagnostics, I like my staff to get x-rays prior to visits.  
7 But before I order advanced imaging, typically, my preference  
8 is to examine the patient; correct.

9 Q. In fact, you said in your podcast, and I believe you  
10 testified before, that before you make any recommendations for  
11 something like surgery, you always review an MRI yourself;  
12 correct?

13 A. Absolutely.

14 Q. And an MRI is a type of advanced diagnostic?

15 A. Absolutely.

16 Q. So then in your practice, good and accepted medical  
17 practices, you examine and discuss with the patient their pain  
18 or complaints about the spine before you order advanced  
19 imaging; correct?

20 A. That's my preference. Absolutely.

21 Q. But in Mr. Ribeiro's case, you testified that your  
22 office ordered MRIs before you saw him; isn't that right?

23 A. Yes.

24 Q. And in fact, your office ordered MRIs that were taken  
25 on September 10th of 2020; is that right?

1           Please feel free to look at your notes.

2           A.    I see MRI of the knee and ankle on September 10th,  
3 an MRI of the lumbar spine on September 10th.

4           Q.    Those are part of your chart?

5           A.    Yes.

6           Q.    So let's take a look at the MRI of September 10,  
7 2020. You ordered two MRIs; correct?

8           A.    My staff ordered two MRIs.

9           Q.    Well, when you say your staff, you just testified  
10 that you would be the one to order advanced imaging; isn't that  
11 true?

12          A.    I order advanced imaging when I assess a patient;  
13 correct.

14          Q.    Do you let your staff order advanced imaging for  
15 you --

16          A.    That's --

17          Q.    -- before you assessing a patient? Yes or no,  
18 Doctor.

19          A.    That's not my preferred protocol, no.

20          Q.    Can we agree that it would not be appropriate for  
21 your staff to order advanced imaging for a patient, especially  
22 if you've never even seen them or talked to them before?

23          A.    Absolutely. It's not my preference.

24          Q.    And yet, you still --

25                   MS. SCARIA: Withdrawn.

1 Q. And in fact, in order to order advanced imaging like  
2 an MRI, there has to absolutely be a prescription pad?

3 A. Yes.

4 Q. So the prescription pad that was used to order the  
5 MRIs on September 10, 2020, two days after the accident, were  
6 on your prescription pad; isn't that true?

7 A. Electronic.

8 Q. Okay. I know we're in the age of electronics. So  
9 the prescription was on your electronic prescription pad?

10 A. Correct, my staff ordered them electronically;  
11 correct.

12 Q. Your staff -- and when you say your staff, you're not  
13 talking about other spine surgeons; correct?

14 A. No, my admin staff.

15 Q. Did you reprimand them for ordering MRIs without you  
16 ever speaking to the plaintiff?

17 A. Absolutely.

18 Q. Are those people fired now?

19 A. Are they fired?

20 Q. Yes.

21 A. They're not fired currently, but they have signed a  
22 form -- now that I'm aware they were ordering, they signed a  
23 form stating that if they do, they will be fired immediately.

24 Q. And yet, you did not order any additional MRI testing  
25 before you recommended spine surgery; right? Yes or no,

1 Doctor.

2 A. Correct. I did not order any additional lumbar MRIs.  
3 It was already done.

4 Q. Doctor, I think you also testified that you get -- I  
5 don't know how frequently -- referrals from attorneys and other  
6 people to see patients; is that right?

7 A. Correct.

8 Q. In this case you got the referral to see Mr. Ribeiro  
9 from his attorneys; correct?

10 A. Correct.

11 Q. Do you recall that Mr. Ribeiro's attorneys -- he had  
12 different attorneys before Mr. O'Meara's office. They were the  
13 Law Office of Wingate, Shapiro, Russotti & Halpern. I think I  
14 got that right.

15 A. Correct.

16 Q. You know people at Wingate's office; right?

17 A. Correct.

18 Q. So Wingate's office, what? Called your office and  
19 told your office to order MRIs?

20 A. They contacted my office, and I would imagine in  
21 doing the intake, they discussed what imaging -- what body  
22 parts were injured, and, you know, imaging got ordered from  
23 there, yes. That's my understanding, yes.

24 Q. Thank you. You don't treat ankle complaints and  
25 injuries; isn't that true?

1 A. Absolutely. Absolutely.

2 Q. You do or you don't?

3 A. I do not.

4 Q. Okay. And you do not treat knee pains or complaints;  
5 isn't that true?

6 A. Correct.

7 Q. So we can then agree your practice at least wasn't  
8 following good and accepted medical practices when they ordered  
9 MRIs on your electronic pad for body parts that you don't even  
10 treat?

11 A. Absolutely. I'm not happy about that.

12 Q. Is it your testimony that you had no idea that your  
13 staff was using your electronic prescription pad without your  
14 knowledge?

15 A. At the time, yes.

16 Q. Do you have to notify any kind of grievance committee  
17 or anything like that?

18 A. No, but staff education. We transferred from paper  
19 charts to electronic some time around 2019. That's when  
20 electronic became a possibility.

21 Q. And even if your staff ordered these MRIs without  
22 your consent, why in the world would your staff order MRIs for  
23 body parts you don't treat?

24 A. In my discussions with them, they were trying to help  
25 because those body parts were part of what was injured, and

1 they felt they were helping the patient.

2 Q. Isn't it true when Wingate's law firm told your staff  
3 to order MRIs, they did not ask your office to order MRIs of  
4 the spine, which is your facility's practice?

5 A. That they did not discuss MRI of the spine?

6 Q. Yes.

7 A. My staff ordered an MRI of the lumbar spine and of  
8 the ankle and of the knee.

9 Q. Yes. Right. They were not all ordered at the same  
10 time; isn't that right?

11 A. They were all ordered within --

12 Q. That's not my question, sir.

13 A. -- time frame.

14 Q. I understand that. But isn't it true that the MRIs  
15 of the left knee and the left ankle were ordered before your  
16 office ordered any lumbar spine MRIs?

17 A. I don't know. I don't know the mechanics of how it  
18 was ordered.

19 Q. Why don't you take a look at the chart?

20 A. I see the dates when they were done.

21 Q. In fact, actually, does your chart there have copies  
22 of a record called final report issued by Dr. Kolb, the  
23 radiologist who performed these MRIs?

24 A. Yes.

25 Q. And does it say anywhere on this final report with

1 the order number for the ankle and knee MRIs that somebody  
2 besides you ordered those MRIs?

3 A. No.

4 Q. And then the next time -- the next MRI -- forgive  
5 me -- that was ordered, as you mentioned, was for the lumbar  
6 spine, the body part that you actually treat; correct?

7 A. Correct.

8 Q. And that lumbar spine MRI was performed on  
9 September 15, 2020; correct?

10 A. Correct.

11 Q. You have the report with you?

12 A. Yes.

13 Q. And it says your name at the top; isn't that right?

14 A. Yes.

15 Q. And in fact, at the top above where it says your  
16 name, it says, exam requested by; isn't that true?

17 A. Correct.

18 Q. And says exam requested by Dr. Okubadejo?

19 A. Correct.

20 Q. And it has the same language in the MRIs that were  
21 ordered of the ankle and the knee; isn't that true?

22 A. Absolutely.

23 Q. So, again, was the lumbar MRI ordered because  
24 Wingate's attorneys told you that Mr. Ribeiro's attorneys told  
25 your office to order now a lumbar MRI?

1           A.    I don't know the mechanics of how the studies were  
2 requested, but I know the injuries were to his lumbar spine,  
3 his knee, and ankle; so I can only extrapolate that that's how  
4 the order was made.

5           Q.    Doctor, you would agree that it's certainly sloppy  
6 practice to have your office staff order three different MRIs  
7 on two different occasions without talking to you about it;  
8 right?

9           A.    I don't know the mechanics of how they ordered, but  
10 I'm very unhappy that they were ordered. Absolutely.

11          Q.    Well, when you say you don't know the mechanics, you  
12 already testified that Wingate's office referred Mr. Ribeiro to  
13 you; correct?

14          A.    Correct.

15          Q.    So then I think it's -- then wouldn't it be true that  
16 Mr. Ribeiro's attorneys, Wingate's office, told your staff what  
17 MRIs to order?

18          A.    I would imagine that discussion occurred. I wasn't  
19 involved in the discussion.

20          Q.    And isn't it true that your staff told -- excuse  
21 me -- that Wingate's office, the law firm, told your staff to  
22 order all these MRIs almost a month before you saw Mr. Ribeiro  
23 or even met him?

24                   MR. O'MEARA: Your Honor, I'm going to object.

25                   He's not part of any of these conversations.

1 MS. SCARIA: It's his practice.

2 THE COURT: Overruled.

3 A. I would imagine that they conversed about what  
4 studies or what body parts were injured and what studies should  
5 be assessed when they made contact with my office. That's all  
6 I can surmise. I can only surmise. I wasn't involved in the  
7 conversations.

8 Q. So you have no idea whether the people that you  
9 employed back in September of 2020 were taking directions from  
10 Mr. Ribeiro's attorneys about what body parts to order  
11 diagnostic testing for before the patient ever even met you?  
12 You have no idea?

13 A. No. But what I'm stating is --

14 Q. You answered the question. Thank you, Doctor.

15 Doctor, I believe you said you've been a spine  
16 surgeon for 18 years?

17 A. Yes.

18 Q. A long time. You're very experienced; is that right?

19 A. Yes.

20 Q. But your goal as a spine surgeon is to help patients,  
21 treat for pain; correct?

22 A. Absolutely.

23 Q. You want to get them out of pain.

24 A. Yes.

25 Q. And that doesn't always involve having surgery;

1 correct?

2 A. Absolutely.

3 Q. And in fact, isn't it true that of your patients in  
4 your thriving practice, only about ten to 20 percent of your  
5 patients actually undergo surgery?

6 A. Overall.

7 Q. And isn't it true that it's because with those other  
8 80 to 90 percent of patients who do not undergo the surgery are  
9 getting relief from pain with conservative treatment?

10 A. It depends on the pathology, mechanism of injury.  
11 It's hard to generalize. It's very specific to each patient;  
12 so I can't really generalize like that.

13 Q. Can we agree that based on your practice, that you do  
14 not recommend any type of spinal surgery for a patient who is  
15 receiving pain relief from other modalities such as physical  
16 therapy; right?

17 A. If a patient feels they're improved and they can  
18 return to their normal lives without limitation, then, correct,  
19 they don't need surgery.

20 Q. And if a patient's pain levels are getting -- are  
21 lessening, so in other words, they're not in as much pain after  
22 conservative treatment, you wouldn't recommend that they  
23 undergo such serious surgery that you were talking about  
24 before, would you?

25 A. It's individual. It depends on their pathology. It

1 depends on their activities, so it's a science. It's not cut  
2 and dry. It's not absolute that way.

3 Q. What's not cut and dry about it? If they're getting  
4 better without surgery, what do they need surgery for?

5 A. It depends on the pathology. It depends on what  
6 activities they engage in. It depends on their anticipated  
7 activities. It depends on how they feel when I see them and  
8 what they anticipate doing and if they feel they'll be limited  
9 going forward. So it's a science. There's no absolute when it  
10 comes to determination who needs surgery. It depends on each  
11 individual.

12 Q. Did you say it was a science?

13 A. Yes, an individual -- each practitioner determines  
14 what works best based on their experience and based on what  
15 gets their patient the best long-term relief.

16 Q. Are you telling this jury even if one of your  
17 patients came to you and told you they are getting relief from  
18 conservative treatment, you may still recommend spine surgery?

19 A. No, I'm not saying that at all.

20 Q. The approximately ten to 15 percent of your overall  
21 patients who you actually perform spine surgery on, isn't it  
22 true that most of those people have pending lawsuits?

23 A. No.

24 Q. Isn't it true that most of those people out of the  
25 ten to 15 percent of people that you actually recommend and

1 perform surgery on are actually clients of the Wingate firm?

2 A. Absolutely not.

3 Q. Well, Doctor, do you recall treating Mr. Luiz Portes?

4 MR. O'MEARA: Objection.

5 THE COURT: Overruled.

6 A. He's a patient. I don't have his chart.

7 Q. Do you recall you treated him in 2019 and that he was  
8 a client of the Wingate firm who brought a lawsuit in Brooklyn?

9 A. I can't comment without his chart. Honestly, I don't  
10 know.

11 Q. So you don't --

12 A. I don't remember details about his case.

13 Q. So you don't recall that Mr. Portes -- I hope that  
14 I'm pronouncing it properly -- that you performed two  
15 surgeries, one for the neck and one for the back, of Mr. Portes  
16 after he started his lawsuit with the Wingate firm?

17 A. I don't have his chart. I can't comment on him.

18 Q. Do you remember a Mr. Jose Fabiano Dosantos?

19 A. I don't have a chart. I can't comment on him.

20 Q. Well, let me see if I can refresh your recollection.

21 Mr. Dosantos you treated in 2019. He also had a pending  
22 lawsuit in Brooklyn, and you also performed a cervical surgery  
23 on April 25, 2019. Does that refresh your recollection?

24 A. I don't have a chart. I can't speak on patients  
25 without charts.

1 Q. Do you remember -- let's just see if we can jog your  
2 memory. Do you remember a patient of yours by the name of  
3 Fernando Leopoldino?

4 A. His name sounds familiar, but I don't have his chart.  
5 I don't remember his details.

6 Q. Let me refresh your recollection.

7 Do you recall that you treated Mr. Leopoldino in 2019  
8 when he also had a pending lawsuit in Brooklyn, and after the  
9 lawsuit, you performed lumbar fusion surgery on Mr. Leopoldino  
10 on June 3, 2019?

11 A. I don't have his chart.

12 Q. Do you recall treating a Mr. Ataydes Luiz, Junior, in  
13 2020?

14 A. His name sounds familiar, yes.

15 Q. Do you recall that he was also a client of the  
16 Wingate law firm who also had a lawsuit pending in Brooklyn and  
17 that you performed cervical fusion surgery for Mr. Junior on  
18 July 6, 2020?

19 A. I don't have his chart. I don't have specifics.

20 Q. Do you recall Mr. Diogo Conceicao Ribiero -- no  
21 relation -- Dosantos?

22 A. The name sounds familiar. I don't have his chart.

23 Q. Do you recall that he was also a client of the  
24 Wingate firm and that you performed -- with a lawsuit in  
25 Brooklyn, and that you performed a fusion surgery on him as

1 well on May 17, 2021?

2 A. I don't have the details of his case.

3 Q. What about Mr. Josemar Demorais? Do you recall that  
4 patient?

5 A. I don't have the details.

6 Q. So far -- again, Mr. Demorais you treated in 2022,  
7 and he was also a client of the Wingate firm who had a pending  
8 lawsuit in Brooklyn when you performed a surgery on May 18,  
9 2022. Does that refresh your memory?

10 A. I don't have his details.

11 Q. Do you recall treating Vinicius Carvalho in 2023?

12 A. His name sounds familiar, but I don't have his  
13 details.

14 Q. Do you recall that he was also a client of the  
15 Wingate firm that you treated and performed with a pending  
16 lawsuit in Brooklyn and that you performed a cervical fusion  
17 surgery, two levels, on February 6, 2023?

18 A. I don't have his chart.

19 Q. That's a lot of patients you don't remember.

20 Do you recall --

21 MR. O'MEARA: Objection. Was that a question?

22 THE COURT: Sustained.

23 Q. Do you recall a patient by the name of Edvaldo Nunes  
24 Olivera who you treated in 2020?

25 A. His name sounds familiar.

1 Q. Do you recall that he was also a client of the  
2 Wingate firm who had a lawsuit now pending in Manhattan for  
3 whom you performed a cervical fusion surgery on after the  
4 lawsuit started on March 4, 2020?

5 A. I don't have his details.

6 Q. Well, let me see if this refreshes your recollection.

7 With respect to this patient, Mr. Olivera, the client  
8 of the Wingate firm, isn't it true that attorney Eric Horn  
9 from the Wingate firm back in 2019 referred Mr. Olivera to your  
10 office?

11 A. I can't speak on a patient without his chart. I have  
12 to have specific details.

13 Q. If I were to tell you that your office also ordered  
14 MRIs for that patient before examining him, would that refresh  
15 your recollection?

16 A. As I stated, we switched to electronic in 2019; so it  
17 wouldn't surprise me.

18 Q. So you're telling me that now two different times in  
19 two different years your staff, who are not surgeons, not spine  
20 surgeons, ordered MRIs for clients of the Wingate firm before  
21 you ever met them; is that true?

22 A. Correct. We switched to electronic in 2019.

23 Q. Dr. Okubadejo, the fact that you switched to EMR,  
24 electronic medical records, that has nothing to do with whether  
25 you, as a spine surgeon, is the one recommending testing and a

1 care plan; isn't that true?

2 A. That's incorrect.

3 Q. The Wingate office here also told your office to  
4 order the MRIs of the body parts you don't treat and then later  
5 of the spine; correct?

6 A. I have already given my answer as to what I think  
7 occurred with the mechanism of the images being ordered in this  
8 case.

9 Q. But that wasn't the question, but that's okay we'll  
10 move on.

11 The MRIs that were performed on Mr. Ribeiro about a  
12 month before you saw him were performed at Kolb Radiology?

13 A. That's correct.

14 Q. And your office is in --

15 MS. SCARIA: Well, let me withdraw this.

16 Q. If you recall, or if you want to look at your chart,  
17 you treated Mr. Ribeiro in your New Jersey office; right?

18 A. Yes.

19 Q. And again, I don't know if you recall or if you need  
20 to look at your chart, Mr. Ribeiro lived in New Jersey at that  
21 time; correct?

22 A. Correct.

23 Q. So your office, despited the fact that Mr. Ribeiro  
24 lived in New Jersey, your office, without telling you, sent  
25 Mr. Ribeiro to Kolb Radiology before seeing you, which is all

1 the way in midtown Manhattan?

2 A. Yeah, that's where it was done. That's where the MRI  
3 was done; correct.

4 Q. Dr. Okubadejo, you use MRIs facilities closer to your  
5 own practice in New Jersey?

6 A. Yes.

7 Q. For Mr. Ribeiro, you had ordered an MRI for  
8 Mr. Ribeiro at Hudson River Radiology, which is in Jersey City?

9 A. Yes.

10 Q. And yet, your staff didn't use the facility that was  
11 closer to Mr. Ribeiro's home, made him go all the way to  
12 midtown Manhattan and you had no idea?

13 A. I was not involved in the MRI process before the  
14 patient saw me.

15 Q. Have you talked to the Wingate firm about all these  
16 problems with your staff?

17 A. I don't engage with the Wingate firm.

18 Q. Well, your office does.

19 A. Yes. Well, at the time, yeah.

20 Q. So have you told -- as the owner of the New Jersey  
21 Comprehensive Spine Institute -- did I get the name right?

22 MS. SCARIA: Withdrawn.

23 Q. As the owner of the New Jersey Comprehensive Spine  
24 Care Facility, did you tell Wingate's office to stop telling  
25 your staff to order MRIs for their clients before you even see

1 them?

2 A. Once I was aware that this was occurring, there was a  
3 stop to -- that relationship. There was no need. I was not  
4 really -- there was no need to have the conversation. I wasn't  
5 really working with them.

6 Q. Are you saying that after you learned that Wingate's  
7 office was telling your office staff what kind of MRIs to  
8 order, you stopped having any relationship with the Wingate  
9 firm?

10 A. I'm saying once I was aware that MRI imaging was  
11 being performed prior to my patients being seen that I was not  
12 actively working or taking care of any clients from the Wingate  
13 firm.

14 MS. SCARIA: Can I have that answer read back,  
15 Your Honor?

16 THE COURT: Yes.

17 (Whereupon, the requested portion of the record  
18 was read by the reporter.)

19 Q. Well, you've testified -- you told the jury that you  
20 learned that your office staff was doing something that they  
21 were not supposed to be doing with your prescription pad around  
22 the time you were treating Mr. Ribeiro; correct?

23 A. I discovered that they were electronically sending  
24 prescriptions out after. It was some time after that process  
25 began that I understood that that's what was happening, yeah.

1 Q. And as you testified, your electronic record system  
2 started in 2019.

3 A. Yes.

4 Q. And Mr. Ribeiro treated with you in the beginning in  
5 2020; correct?

6 A. Correct.

7 Q. Another client of the Wingate firm that we mentioned,  
8 Mr. Carvalho, your office staff ordered MRIs for that man  
9 before you ever saw him, and that surgery was in 2023. Do you  
10 recall that?

11 A. Correct.

12 Q. So clearly, you should have spoken to the Wingate  
13 firm to tell them to stop ordering MRIs for you, don't you  
14 think?

15 A. I did not become aware that they were ordering. My  
16 staff was ordering MRIs prior to visits until 2024.

17 Q. That's not what you just said, Doctor. You just  
18 said -- isn't it true you just said around the time that you  
19 were treating Mr. Ribeiro in 2022, after your electronic  
20 record -- you changed to the electronic records system, that's  
21 when you learned that your staff, without your permission, was  
22 using your prescription pad to order MRIs for all body parts  
23 without your knowledge?

24 A. No, that is absolutely incorrect, actually.

25 Q. Oh. We can read the record later.

1           Doctor, looking at your records again, the medical  
2 records that you have in your file, these are documents -- this  
3 is part of your electronic medical record file?

4           A.    These are printouts of the electronic medical record;  
5 correct.

6           Q.    Okay.  So when you -- you put in the information  
7 that's in the printouts; right?

8           A.    My staff puts some information in.  Some of this is  
9 automatically generated electronically, then I put some  
10 information in; so it's a combination.

11          Q.    Certainly with respect to the impression or plan,  
12 meaning recommendation, that's based on your examination?

13          A.    The impression, yes.

14                THE COURT:  Counsel, we're going to take a  
15 ten-minute break.  I think the jury needs a break.

16                MS. SCARIA:  Okay.

17                COURT OFFICER:  All rise.  Jury exiting.

18                (Whereupon, the jury exits the courtroom.)

19                THE COURT:  Everybody can take a break.

20                (Whereupon, a brief recess was taken.)

21                THE COURT:  Okay.  Let's call the jury.

22                COURT OFFICER:  Ready, Your Honor?

23                THE COURT:  Yes.

24                COURT OFFICER:  All rise.  Jury entering.

25                (Whereupon, the jury enters the courtroom.)

1 THE COURT: I don't know what the weather is  
2 like in the jury room, but I hope everybody had a chance  
3 to take a drink and cool off a little bit.

4 Have a seat, everybody.

5 Counsel, whenever you're ready.

6 MS. SCARIA: Thank you, Your Honor.

7 Q. All set, Doctor?

8 A. Yes, ma'am.

9 Q. Okay. Thank you.

10 Doctor, as part of your standard practice like with  
11 Mr. Ribeiro, you take a history of your patients before you  
12 provide any recommendations for them or assess them; right?

13 A. Correct.

14 Q. And that history that you take of whatever they're  
15 coming in for, whatever treatment they've had for the spine,  
16 that's documented in the beginning part of your note; correct?

17 A. Yes.

18 Q. And on the first visit by Mr. Ribeiro to your office  
19 on October 6th, in fact, you documented some specific  
20 treatment Mr. Ribeiro had before coming to you; isn't that  
21 true?

22 A. Correct.

23 Q. You documented the fact that Mr. Ribeiro treated with  
24 physical therapy already; right?

25 A. Yes.

1 Q. And that he had already used medications before  
2 coming to see you.

3 A. Yes.

4 Q. And you also noted that Mr. Ribeiro had been  
5 complaining of back pain for one year as of this October 6,  
6 2020, appointment. Did Mr. Ribeiro tell you he had been having  
7 back pain for one year?

8 A. That's probably an error.

9 Q. Well, how do you know it's an error now?

10 A. Based on his date of injury.

11 Q. So when you treated Mr. Ribeiro on October 6, 2020,  
12 were you focusing on the fact that he had an injury on  
13 September 8th?

14 A. I was focused on when he sustained injury, yeah. I  
15 mean, it was the mechanism of his injury.

16 Q. Doctor, were you aware of the fact that Mr. Ribeiro  
17 suffered a work accident in 2017 when he was carrying something  
18 heavy, that he received medical treatment on the day of that  
19 accident, that Mr. Ribeiro's already explained the intake form  
20 that he filled out and his complaints, and that back then, the  
21 doctor's record indicates that Mr. Ribeiro at that time was  
22 complaining of pain rated out of an eight out of ten that  
23 radiated into his hips? Did you know that?

24 A. I don't have details of his prior injury.

25 Q. Well, we can agree that such a similar and specific

1 instance of prior injury should be relevant to your assessment  
2 for a plan; right?

3 A. What's relevant is what I'm being presented with  
4 currently because his current state is what matters.

5 Q. So if Mr. Ribeiro didn't have an accident but he told  
6 you he was in pain, would that not be relevant?

7 A. The fact that he's in pain is what is relevant, yeah.

8 Q. So the fact that he had been complaining of pain to  
9 you for a year, that's relevant; right?

10 A. As I stated, I'm not sure if that year is correct.

11 Q. You're not sure?

12 A. No.

13 Q. Because you have no memory of that specific  
14 conversation; right?

15 A. I see a lot of patients.

16 Q. That's fair. I don't expect you to --

17 A. I see a lot of patients.

18 Q. I would not expect you to remember specific  
19 conversations.

20 A. Yeah, yeah. In 2020, no.

21 Q. I would think that if Mr. Ribeiro came to you and  
22 told you he had an accident a month earlier, you would remember  
23 if he told you that he had been complaining of back pain for a  
24 year, wouldn't you?

25 A. What I remember is what I documented. I can't give

1 you details beyond what's documented.

2 Q. Well, when Mr. Ribeiro came to see you on that first  
3 visit of October 6th, that was about three weeks after you or  
4 your office ordered the lumbar spine MRI; right?

5 A. Yes.

6 Q. And did he tell you at that time that he went to the  
7 emergency room on September 8th, the date of his accident?

8 A. The details that are documented here is really --  
9 it's what I can go on.

10 Q. Okay. So you don't remember one way or another?

11 A. As I said, I see a lot of patients; so it's  
12 impossible to remember every single detail of every patient  
13 that's why I have my medical record.

14 Q. Okay. Based on your review of your own records, you  
15 didn't -- isn't it true that you didn't have any documentation  
16 or information -- objective information -- about the condition  
17 of Mr. Ribeiro's spine before the MRI done on September 15,  
18 2020?

19 A. I don't have any records of his spine before this  
20 visit in my chart. So what I have in my chart is what I have.

21 Q. Doctor, when a patient goes to an emergency room with  
22 complaints of back pain, you would certainly expect the ED  
23 doctor, emergency department doctor, to examine the patient's  
24 back; right?

25 A. Yes.

1 Q. That would certainly be good and accepted medical  
2 practice.

3 A. Yes.

4 Q. And the examination would involve what? Palpating,  
5 pushing the back and doing range of motion testing, would you  
6 agree?

7 A. Whatever the ER doctor does.

8 Q. Can we agree that if a patient comes in complaining  
9 of back pain after a trauma, you would expect to see a  
10 limitation in the range of motion of his back, that he couldn't  
11 move his back as well? Do we agree on that?

12 A. Yes.

13 Q. Shouldn't the fact that the ER doctors performed  
14 range of motion testing on September 8, 2020, the date of  
15 Mr. Ribeiro's accident, and found that he had no limitations  
16 and had no significant injury to his back, shouldn't that be  
17 relevant to your recommendations for plan and future care?

18 A. I don't have those records. I don't know what the ER  
19 had.

20 Q. I'm not asking you what the ER had. Don't you think  
21 you should know that information?

22 A. All I have is the history I'm given when a patient  
23 sees me. And that's --

24 Q. So if the patient stopped giving you all the --

25 A. When I --

1 Q. -- information, then you --

2 A. When I see patients in the office, the history is  
3 what I obtain from the patients. I see a lot of patients, and  
4 I get a history from them.

5 Q. I believe that you testified before -- and forgive  
6 give me, you may have said it on direct -- you always review  
7 diagnostic testing, advanced imaging before you make any  
8 recommendations for surgery; right?

9 A. Absolutely.

10 Q. And is that because you want to see the condition of  
11 the back?

12 A. Yeah, I have to see the anatomy. I have to see what  
13 I'm treating, see if the pathology explains why they're having  
14 pain and come up with a solution.

15 Q. Okay. So the pathology, meaning what you're seeing  
16 on the film, is important to your assessment; is that true?

17 A. Absolutely.

18 Q. So, Doctor, what are osteophytes?

19 A. Osteophytes are bone spurs.

20 Q. And isn't it true that bone spurs -- well,  
21 specifically osteophytes on the vertebra, that can happen;  
22 right?

23 A. Yes.

24 Q. In other words, that model that you showed us, bone  
25 spurs would be like extra bone growth on the vertebra; right?

1 A. Yes.

2 Q. Isn't it true that osteophytes, bony growths, take  
3 years to form?

4 A. Typically they occur over time, yes.

5 Q. They certainly wouldn't occur in a couple of hours.  
6 Could we agree on that?

7 A. That's correct. Yes.

8 Q. And so if you had known that the lumbar spine x-ray  
9 done at the emergency room on the date of the accident within  
10 hours of the accident revealed that Mr. Ribeiro had osteophytes  
11 at the same levels where you performed your surgery, L3 through  
12 L5, don't you think that that should be relevant to your plan  
13 care and treatment of Mr. Ribeiro?

14 A. Absolutely. I would assume he had osteophytes based  
15 on the MRI. That's -- I actually went through that.

16 Q. Right. So osteophytes -- and again, the MRI you're  
17 talking about was September 15, 2020; right?

18 A. Yes.

19 Q. So you also found bony growths that took years to  
20 develop in the area that you said he needed surgery for; right?

21 A. Yeah, he had bony growths and herniations. Both.

22 Q. Were you aware of the fact that at the emergency  
23 room -- whether from reviewing notes or having any  
24 conversations with the attorneys -- that Mr. Ribeiro on  
25 September 8, 2020, was diagnosed at the ER with degenerative

1 disc disease?

2 A. I don't have his ER records.

3 Q. Don't you think that would be relevant to what your  
4 opinions were and plan is for future treatment, especially if  
5 you were basing something on the date of the accident as you  
6 testified to?

7 A. That's a factor. Patients with osteophytes get  
8 injured all the time. If you're 60 years old, I imagine you  
9 have osteophytes; right? And you get injured, you still have  
10 an injury; so you have your underlying pathology in addition to  
11 your injury. That's literally what I see in the office every  
12 single day.

13 Q. Okay.

14 A. It's part of regular practice.

15 Q. Right. And if the osteophytes are causing the pain,  
16 that would be important to know?

17 A. He had herniations and osteophytes.

18 Q. That wasn't the question. Let me ask it again.

19 Doctor, if the patient that you see, you knew from  
20 reviewing objective testing, had osteophytes in the same areas  
21 of the back that he was complaining of pain about, that would  
22 be relevant to your plan care; right?

23 A. Osteophytes are not assessed in isolation. It's just  
24 a part of the back. It's a part of the bony anatomy. You  
25 assess a spine through the bony anatomy, through the discs,

1 through the alignment. You can't pick out just one piece.

2 That's why it's a science. I specifically said it's  
3 a science; right? So it's my job to put the puzzle together to  
4 figure out what may be causing pain and come up with a  
5 solution.

6 Q. Did you say it was a science or it's not a science?

7 A. I believe you know I said it's a science.

8 Q. No, I really didn't.

9 A. You did. You heard me earlier, and I'll say it  
10 again. It's a science.

11 Q. Okay. So let's talk about that, the whole picture.

12 A. Correct.

13 Q. At your initial examination on September --

14 MS. SCARIA: Withdrawn.

15 Q. At your initial examination on October 6, 2020, about  
16 a month after the accident, you document your physical  
17 examination; correct?

18 A. Correct.

19 Q. And in the printout of your electronic record you  
20 have a section called general appearance.

21 A. Yes.

22 Q. And that's your impression of Mr. Ribeiro's general  
23 appearance when he presented to you at that time.

24 A. Yes.

25 Q. And you documented that he appeared well developed

1 and nourished.

2 A. Yes.

3 Q. And that he walked with a stooped forward gait.

4 A. That's default in the EMR that -- yeah, that's a  
5 default in the EMR. The things that were changed from the  
6 defaults are the ones in red. Anything that's a default beyond  
7 exam is just a default.

8 Q. So the --

9 A. That's a nuance of the EMR.

10 Q. So the jury doesn't know what you mean, I'm sure, by  
11 in color. The records that you have printed out are in color.  
12 They're not black and white; correct?

13 A. Correct. Yes.

14 Q. And some of the headings are in, like, a light blue  
15 color.

16 A. Yeah. The headings have different colors, but  
17 anything that's changed off of what the default -- every EMR  
18 system has defaults when it comes to the exam, and anything you  
19 change off of the defaults would be in red. Anything in black  
20 is what was already in the system. So our system had this  
21 default where it saved the stooped forward, and so there are  
22 probably a lot of notes that have that. But that's a nuance of  
23 the system.

24 Q. Doctor, isn't it true that you testified before that  
25 the defaults in your EMR program are for normal findings, not

1 abnormal findings?

2 A. Defaults are normal findings; correct.

3 Q. So the walk with a stooped gait, is that a default or  
4 you have no idea why it says that?

5 A. No, it's a default in -- there's a section where, if  
6 you save it, it populates, and it's going to show up in every  
7 note. That's something I noticed afterwards. It's just a  
8 nuance of the system.

9 Q. You noticed that when?

10 A. Some time in the past. Years ago. Yeah, that's just  
11 a default in the EMR. I have a lot of notes that have that.  
12 Any time -- probably most notes around a certain range will  
13 have it. I have to make sure that's not the case currently,  
14 but it's a nuance of the EMR.

15 Q. So Mr. Ribeiro did not walk with a stooped gait?

16 A. No. No. No. In this case, yeah, that's a default  
17 because I've seen that many times. That's a default of the  
18 EMR.

19 Q. Okay. And then the other areas of the examination  
20 that are documented in your record, even though they have  
21 defaults, you go through the examination about that stuff;  
22 right?

23 A. Yeah, we don't always go through every single detail  
24 every time because the EMR has a lot of detail.

25 Q. Well, let's --

1 A. We tend to change the relevant findings.

2 Q. Did you say you tend to change the relevant findings?

3 A. Yeah. Like whatever is off the default, that's where  
4 we make the changes off of defaults, but most of it populates  
5 with defaults.

6 Q. And in the sections that have the default  
7 information, if you found an abnormality, you would change that  
8 from the default and document the abnormality you find; right?

9 A. Usually, usually.

10 Q. Well, that would certainly be good and accepted  
11 medical practice to document any abnormalities you find in a  
12 patient who is coming to you with complaints of back pain;  
13 isn't that true?

14 A. Correct.

15 Q. So looking at the comprehensive -- well, the section  
16 of your exam note that reads, "comprehensive lower extremity  
17 neurovascular," that has a bunch of stuff in there that is a  
18 part of your examination?

19 A. Those are all defaults.

20 Q. I'm not asking about defaults, Doctor. I'm asking  
21 you, is this section, the stuff in there, is it part of your  
22 physical examination?

23 A. It's part of the default and the physical exam, yes.

24 Q. So during the physical examination, regardless  
25 whether there is defaults on your computer or not, you do

1 actually check for how the patient is walking and any kind of  
2 sensation testing; correct?

3 A. Yes, absolutely.

4 Q. By sensation testing we mean you're testing to see if  
5 he has lack of sensation in any body part?

6 A. Any alteration -- what the patient's perceived  
7 alteration and sensation.

8 Q. Kind of like the patient --

9 MS. SCARIA: Withdrawn.

10 Q. So in Mr. Ribeiro's initial note from October 6,  
11 2020, all of the sensory testing in this section is listed as  
12 normal; correct?

13 A. Yeah, he didn't specifically have any major -- at  
14 least that he testified to during the exam -- that he felt was  
15 abnormal; correct.

16 Q. So he didn't tell you that anything was abnormal with  
17 the sensation?

18 A. With the sensation, yes. Yup, yup.

19 Q. And the next section in your note says, lumbosacral;  
20 right?

21 A. Yes.

22 Q. And that's the back?

23 A. Yes.

24 Q. The lower back. And in this section you document  
25 testing of range of motion and motor strength testing; correct?

1 A. Yes.

2 Q. And you did in fact perform motor strength testing on  
3 October 6, 2020?

4 A. Yes, absolutely. Yeah, yeah.

5 Q. So the range of motion, that's the part you said is  
6 in red; correct?

7 A. Yes.

8 Q. On your record?

9 A. Yeah.

10 Q. It's in red because you found abnormalities?

11 A. Yes, that's what we changed off of defaults.

12 Correct.

13 Q. Range of motion testing, that's how much the patient  
14 can move their spine; right?

15 A. Yes.

16 Q. So moving forward, side to side, that kind of thing?

17 A. Yeah. I tend to really focus on flexion, extension,  
18 and rotation. Those are the ones that I usually focus on in my  
19 notes, yeah.

20 Q. When you see a patient, you tell them, listen, don't  
21 let me do anything that's going to hurt you when I'm doing any  
22 testing; right?

23 A. Yeah.

24 Q. So when you did this range of motion testing, it's  
25 based on --

1 MS. SCARIA: Withdrawn.

2 Q. When you do the range of motion testing, the results  
3 are based on what Mr. Ribeiro tells you he can and cannot do;  
4 correct?

5 A. Yeah. The examination is viewer assessment along  
6 with the patient giving you feedback as well. Yeah, it's a  
7 combination. Yeah.

8 Q. So Mr. Ribeiro told you about limitations in the  
9 spine that you documented here.

10 A. Yeah.

11 Q. The next section is the strength testing, and there  
12 is strength testing listed in this section for the upper  
13 extremities and the lower extremities; correct?

14 A. Yes.

15 Q. In other words, you were checking the strength of his  
16 arms and his legs?

17 A. If we specifically documented cervical, I'm not  
18 sure if we have -- no. So here we focused on his lumbar spine  
19 because we weren't really focused on the cervical; so I don't  
20 have any cervical exam. I don't have an exam of his neck.

21 Q. Thank you.

22 A. He wasn't there for his neck.

23 Q. So this part of the examination of Mr. Ribeiro on  
24 October 6th for strength testing was just for the back;  
25 correct?

1 A. For his lumbar spine; correct.

2 Q. You were testing the strength of his legs then;  
3 correct?

4 A. Yes.

5 Q. And that's because an injury or pain in the back  
6 could affect your strength in your legs; correct?

7 A. Yes.

8 Q. Is that because of the nerves and they run down and  
9 all?

10 A. Yes.

11 Q. And in this strength section, all of your findings  
12 were normal; isn't that true?

13 A. Yeah, yeah. I didn't see any distinct deficits that  
14 were notable.

15 Q. So the only abnormal finding you reported the first  
16 time you actually met Mr. Ribeiro was that he had limitations  
17 moving his back; right?

18 A. Yes.

19 Q. Nothing about traveling pain into the legs; right?

20 A. He said he did have radiating pain down his left leg,  
21 but he didn't have any necessary loss of sensation, but he did  
22 state that he had radiating pain, yes.

23 Q. But all the sensation examinations were normal;  
24 right?

25 A. Yes.

1 Q. The strength testing of the legs was normal; right?

2 A. Yes. That's what we documented.

3 Q. And the next visit after October 6th was  
4 December 15th at your office; right?

5 A. Yes.

6 Q. Mr. Ribeiro -- you said that you performed a spine  
7 injection?

8 A. Yeah. He had a spine injection prior to the second  
9 visit, yeah.

10 Q. Again, look at your notes if you need to, you  
11 performed a spine injection of Mr. Ribeiro on  
12 December 2nd before your second office visit with him;  
13 correct?

14 A. Yes.

15 Q. Take a look at your October 6th note. Isn't it  
16 true that you made no recommendation at that time for any type  
17 of pain injections?

18 A. Yeah, I hadn't seen his imaging. I stated that  
19 patient's imaging unavailable for review, so I couldn't really  
20 come up with a plan.

21 Q. Why didn't your office have the MRI imaging that your  
22 office ordered?

23 A. At that time the facility had the images on CD; so  
24 you can't -- you couldn't go online to access them. So if the  
25 patient doesn't have the CD, then I can't really have an idea

1 what it looks like.

2 Q. Despite the fact that Wingate's office told your  
3 office to have Mr. Ribeiro go to midtown Manhattan to Kolb  
4 Radiology, your office didn't call Kolb to get the MRIs before  
5 you saw him?

6 A. Usually the patient comes in with the CD. That's all  
7 of our -- well, at that time, before we had more electronic  
8 access, a lot of facilities only had them on CD, and the  
9 patient is responsible to bring the CD with them to the visit.

10 Q. Doctor, if a patient has never seen a spine surgeon  
11 before, he would have no way of knowing to bring a CD of  
12 imaging to you before he met you. Do we agree on that?

13 A. I guess.

14 Q. So your office could have asked for Kolb to Fed Ex  
15 the MRI imaging up to you; right?

16 A. Usually the facility doesn't -- for the CDs, usually  
17 the patient brings the CD. The facilities don't send the CDs  
18 to us.

19 Q. I think you said on direct you think your office  
20 staff ordered the MRIs without your knowledge.

21 A. Right.

22 Q. Because they were trying to help you; correct?

23 A. Help the patient, yeah. Help the patient's care;  
24 correct.

25 Q. Even though you don't treat two of the bodies parts

1 that they ordered the MRIs for, with respect to the lumbar  
2 spine MRI, are you saying that your office ordered that to help  
3 you but then never got the films for you before you saw him?

4 A. As I stated, the patient brings the CD in. I would  
5 imagine my staff told the patient to bring the CD in. It's not  
6 uncommon for patients to show up without CDs at that time.

7 It's easier now to image things because most MRI  
8 places have PACS systems that we can just go online. At the  
9 time Kolb did not have a PACS system that was easily  
10 accessible.

11 Q. How did you know Kolb didn't have a PACS system in  
12 2020?

13 A. Because if they did, I would have been able to go  
14 online.

15 Q. So you're making that assumption.

16 A. Yeah, I mean, things evolved. You know, like, we're  
17 in 2026 now. I know there was a period of time where certain  
18 facilities didn't have good PACS systems; so you couldn't  
19 access online. Patients had to bring their CDs in. That  
20 changed somewhere along the line. I don't know when.

21 Q. But you never told your office to make sure he  
22 brought the CD in; correct?

23 A. I told my office to make sure every single patient  
24 brings their CD.

25 Q. I'm asking you, with respect to Mr. Ribeiro, isn't it

1 true that you never told your office staff to tell Mr. Ribeiro,  
2 or you never told Mr. Ribeiro, to bring in the MRI of the  
3 lumbar spine that your office ordered in order to assess the  
4 patient; yes or no, sir?

5 A. I didn't have conversations about him before his  
6 visit.

7 Q. You didn't have a conversation with who?

8 A. With my staff, with anyone, before his visit.

9 Q. You had no conversation with anyone before you saw  
10 Mr. Ribeiro in October 6th?

11 A. Yeah.

12 Q. Okay. Doctor, is it your practice to document in an  
13 exam note any time you see a patient?

14 A. Yeah.

15 Q. Can we agree that that is standard practice for  
16 doctors to document any visits they have with a patient?

17 A. Yes.

18 Q. If you had seen Mr. Ribeiro just to have a  
19 conversation with him about what the next steps were, is that  
20 something that you would document in your chart?

21 A. If I speak to him myself directly?

22 Q. Yes.

23 A. Yeah.

24 Q. And if you had told your staff what recommendation  
25 you were going to make, does your staff sometimes call the

1 patient to let them know Dr. Okubadejo wants you to do this?

2 A. Yes.

3 Q. Isn't it true there is nowhere in your chart -- and  
4 again, feel free to look at it -- where you document any  
5 recommendation that Mr. Ribeiro undergo the lumbar spine -- the  
6 lumbar injections, the pain injections that he underwent on  
7 December 2, 2020?

8 A. Correct.

9 Q. Is that because the attorneys told you to make sure  
10 he underwent a spine injection?

11 A. No. Absolutely no.

12 Q. Do you know if the Wingate's attorneys told your  
13 office that Mr. Ribeiro needed a spine injection?

14 A. Attorneys don't determine what procedures a patient  
15 gets; that's my call.

16 Q. Okay. So attorneys just refer you patients.

17 A. Attorneys, physical therapists, other doctors refer  
18 patients, then my assessment is what determines their  
19 treatment. I'm the spine surgeon. I'm the spine specialist;  
20 so it's me who determines what the treatment is, no one else.

21 Q. Again, your treatment that you're recommending is  
22 based on the patient's complaints of pain, any kind of  
23 limitations; right?

24 A. Yeah, pain, whatever their imaging shows, if it  
25 correlates. I mean, that's the practice of medicine of

1 orthopedic surgery, spine surgery.

2 Q. We can agree then that it would be relevant for you  
3 to know what a patient's limitations and pain actually is;  
4 correct?

5 A. Yes.

6 Q. What he's experiencing on a regular basis; right?

7 A. Yes.

8 Q. And Mr. Ribeiro's visit with you on September 15,  
9 2020, did you note anywhere in there or did you know that  
10 Mr. Ribeiro had a physical therapy visit that same day?

11 A. All I have is what is documented.

12 Q. So that's not documented in your note; correct?

13 A. I have a lot of patients. I can't remember every  
14 detail from 2020.

15 Q. So we're almost done. I just want --

16 A. I don't know what to tell you.

17 Q. I'll ask it again. Isn't it true that there's  
18 nowhere documented in your December 15, 2020, note that  
19 Mr. Ribeiro had gone to physical therapy that same day; yes or  
20 no?

21 A. I don't have that documented, no.

22 Q. At the visit on December 15, 2020, you documented the  
23 complaints of pain that Mr. Ribeiro made to you; correct?

24 A. On October 6, 2020; correct.

25 Q. No, on December 15th.

1           A.    Oh, December 15th, yes, yes, yes. His next visit,  
2    yes.

3           Q.    And on the December visit Mr. Ribeiro told you that  
4    he had some benefit from the epidural but only for a few days.

5           A.    Yes.

6           Q.    And it's at that visit you extended your discussions  
7    with Mr. Ribeiro that you had a conversation with him about him  
8    undergoing this three-level fusion surgery; correct?

9           A.    Yes.

10          Q.    Did you know at that point that Mr. Ribeiro had been  
11    undergoing physical therapy?

12          A.    Yeah, I recommended therapy, yes. Absolutely. Yeah.

13          Q.    And obviously, you knew that he had the pain  
14    injection because you did it.

15          A.    Yes.

16          Q.    Wouldn't it have been important to know that  
17    Mr. Ribeiro was going to physical therapy on a weekly basis  
18    between September 14th and this visit on December 15th and  
19    that after the pain injection you gave him, he reported to his  
20    physical therapist that his pain was reducing? Wouldn't that  
21    be important in terms of whether you should recommend surgery  
22    or not?

23          A.    No, it's all relevant. It's the patient's assessment  
24    of what he's feeling, and like I said, his pathology. It's a  
25    combination of things.

1 Q. Well, you certainly don't think Mr. Ribeiro should  
2 undergo a surgery if he's starting to feel better; correct?

3 A. Yeah, if he stated when he came in that he felt  
4 better, he was not having pain, then, yeah, there's no need to  
5 talk about surgery.

6 Q. So if Mr. Ribeiro had told you what he told his  
7 physical therapists, that his pain levels were between a four  
8 and a six out of ten in the time frame after physical therapy  
9 and the one injection, that would impact your recommendation;  
10 isn't that true?

11 A. What he tells me when I see him is what impacts my  
12 recommendation. What I documented is what he told us.

13 Q. And if he didn't tell you that his pain levels were  
14 actually improving with the treatment that he had been  
15 receiving, that would be important to you in terms of your  
16 recommendation for surgery; isn't that true?

17 A. Yeah, if he reported that he was feeling better,  
18 then, yeah, there would be no need to push forward with  
19 anything more.

20 Q. So if he was improving, you wouldn't have recommended  
21 the surgery?

22 A. Yeah, if he told me that he was feeling better;  
23 correct.

24 Q. So, Doctor, if the documentation of Mr. Ribeiro's  
25 treatment outside of your facility he saw physical therapists,

1 orthopedists, indicate that Mr. Ribeiro reported most  
2 improvement of back pain conditions between the date of your  
3 injection and the date of your surgery, and that every  
4 complaint of pain after your surgery was worse than any pain he  
5 had ever had, wouldn't you agree that Mr. Ribeiro didn't need  
6 that lumbar fusion surgery that you performed?

7 A. Can you repeat the question?

8 MS. SCARIA: Can we have it read back?

9 THE COURT: Yes.

10 (Whereupon, the requested portion of the record  
11 was read by the reporter.)

12 A. No, I disagree.

13 Q. That's all I have. Thank you, Doctor.

14 THE COURT: Any redirect?

15 MR. O'MEARA: Very quickly.

16 REDIRECT EXAMINATION

17 BY MR. O'MEARA:

18 Q. Let me show you what has been previously marked as  
19 eight and nine. Doctor, you were asked a lot of questions  
20 about a lot of different people. Did any of those questions  
21 change the results of that MRI?

22 A. No.

23 MR. O'MEARA: Nothing further, Your Honor.

24 THE COURT: Okay. We were supposed to go all  
25 day today. The afternoon doctor cancelled; so I will see



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