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SUPREME COURT STATE OF NEW YORK
COUNTY OF BRONX: CIVIL TERM: PART 20

----- X

HENRY ESPACIA,

Plaintiff,

Index No.
816345/2021E

-against-

EMERALD 2727 UNIVERSE, LLC, AND RESIDENTIAL MANAGEMENT LLC,

Defendant.

----- X

851 Grand Concourse
Bronx, New York

February 26, 2026

B E F O R E:

THE HONORABLE VERONICA HUMMEL,

Justice

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

LIPSIG, FREUND AND WISELL, PLLC
For the Plaintiff
40 Fulton Street
New York, New York 10038
By: MICHAEL A. MARANDO, ESQ.

GARTNER & BLOOM, PC
For the Defendants
801 Second Avenue
New York, New York 10017

By: BRIAN FRANKLIN, ESQ.
GAIL GOODE, ESQ.

Lauren A. Fitzgerald
Senior Court Reporter

1 COURT OFFICER: All rise. Part 20 is now in
2 session, Judge Veronica Hummel is presiding. Index number
3 816345 of 2021, Henry Espacia V. Emerald 2727 Universe, LLC
4 and Residential Management. Plaintiff counsel, state your
5 name and appearance for the record.

6 MR. MARANDO: Good afternoon, everyone. Good
7 afternoon, Your Honor. Mike Marando on behalf of the
8 Plaintiff Henry Espacia from the Law Firm Lipsig, Freund and
9 Wisell, PLLC, 40 Fulton Street, floor 24, New York, New York
10 10038. Good afternoon, everyone.

11 COURT OFFICER: Defense counsel?

12 MR. FRANKLIN: Good afternoon, Your Honor. Brian
13 Franklin on behalf of Defendants, Emerald 2727 and
14 Residential Management.

15 THE COURT: Thank you.

16 MS. GOODE: Gail Goode also on behalf of
17 Defendant.

18 THE COURT: Good afternoon. You may be seated, and
19 if you could please use the microphones until the jury is
20 getting in. I will put some administrative things on the
21 record, and then I will issue my ruling on the most recent
22 motions in limine. We will move forward from there.

23 So just as an order of administration, this trial
24 was assigned in this part on Tuesday February 17th. At that
25 time, the attorneys met at 2 p.m. with my Court attorney,

1 and there were approximately ten motions in limine pending.

2 On Wednesday February 18th, we began jury selection
3 and had oral arguments on the motions. On February 19th,
4 this part was down because it was my motion day and inquest
5 day. On Friday February 20th, counsel picked a number of
6 jurors and put over the panel until Monday. On Monday
7 February 23rd was the snowstorm and the New York State
8 Courts were closed. On Tuesday February 24th, while the
9 Courts were technically open, I adjourned the jury selection
10 to Wednesday in light of the conditions outside and the
11 likelihood that the jurors may be unable to get in the
12 courthouse, as well as attorneys.

13 On that date we had oral arguments on a number of
14 issues on motions in limine on the record. That was held
15 virtually. On Wednesday February 25th, only a limited
16 number of the jurors from the original panel actually
17 returned, so counsel did their best to select from that
18 group, and thereafter, received a new panel and was able to
19 finish selections on that day, but we had to postpone the
20 openings. This was done with -- the parties all stipulated
21 that in light of the new panel and the weather, three
22 alternates would be selected rather than two, as long as the
23 selection could be completed by 4:30 p.m., and it was
24 completed by that time.

25 Thursday this part was down this morning. Does

1 anyone have any objection to the timelines so far?

2 MR. MARANDO: No, Your Honor.

3 MR. FRANKLIN: No, Your Honor.

4 MS. GOODE: No, Your Honor.

5 THE COURT: And then openings are prepared to start
6 today this afternoon. I believe counsel during jury
7 selection Defendants had an objection to a juror, which I
8 ruled on over the phone, but I want to give counsel an
9 opportunity to record that objection on the record.

10 MS. GOODE: May I have the opportunity now, Your
11 Honor?

12 THE COURT: You can stay seated.

13 MS. GOODE: It was to juror number one. His name
14 was Dante Welsh.

15 THE COURT: Do you have a date for that?

16 MS. GOODE: That would have been the 25th
17 yesterday, Your Honor, Wednesday, and it was during the
18 morning session jury selection and Mr. Dante was quite
19 active throughout the jury selection. At one point when
20 counsel gave the Plaintiff's injuries that the ceiling fell
21 on him his words well, the corporation they have to be at
22 fault, they have to pay. At that point I objected, and I
23 told counsel I wanted to discuss the panel. We went before
24 the Judge, and it was denied. Another thing that I didn't
25 get a chance to say was that the same juror indicated that

1 the corporation, I guess it will just fly down on top of the
2 roof whoever the president is and appear, and Plaintiff's
3 counsel said we'll see, and again, I said I objected to
4 that, and that tainted the jury, as if we are supposed to
5 put on a witness, and as you know as the Defendants, we are
6 not obligated to put on the case. Those are my two
7 objections, Judge, and why I wanted to bust the panel
8 because it was tainted.

9 THE COURT: Okay. I had denied the agreement that
10 the juror who spoke -- I think it was juror number one?

11 MS. GOODE: Yes.

12 THE COURT: Should be removed and removed from the
13 room. I denied the remaining request, and so you may note
14 your objection.

15 MS. GOODE: May I ask for curative instructions,
16 Your Honor, in the sense that the jurors heard that the
17 Defendant should pay curative instructions that everyone
18 should start at the same line.

19 THE COURT: I believe you made that at that time,
20 and I am going to renew and deny that. So any other issues
21 on jury selection.

22 MS. GOODE: No.

23 MR. MARANDO: No, Your Honor.

24 THE COURT: So in addition Defendant filed a motion
25 number, sorry Letter H, which Plaintiff was given until this

1 morning to reply to so the papers were uploaded to NYCEF. I
2 have read them, and I will give my decision on the motion
3 now.

4 Defendant's Motion H to preclude Plaintiff's
5 economic expert from testifying at trial and to limit the
6 testimony of Dr. Macagno.

7 MR. MARANDO: Yes, Judge.

8 THE COURT: The Court has previously denied
9 Defendant's motions to preclude Plaintiff's economist based
10 on the timeliness of the expert exchange. In addition the
11 TAP judge suggested Defendant's arguments that the discovery
12 remained outstanding and this Court denied all arguments
13 seeking preclusion in other relief based on said grounds.

14 Defendants were granted limited leave to argue the
15 sole remaining issues before this Court, which is
16 Defendant's contention that the economist opinions
17 concerning future medical costs lack sufficient foundation
18 and are speculative. Hence to the extent that the Defendant
19 seeking to expand the motion to preclude to limit the
20 testimony of the doctor, it is denied.

21 But in the any event, Defendants continue
22 reiteration of the same discovery-based arguments concerning
23 untimely disclosure discovery deficiency and other discovery
24 issues in the most recent motion, issues that have already
25 been definitively ruled on by the Appellate Judge Capella

1 and this Court is inappropriate and borderline frivolous.
2 Counsel shall respect the law of the case and henceforth set
3 forth only legitimate legal arguments on any objection or
4 motion made in this action.

5 As for Defendant's Motion H, it is denied. The
6 economists were entitled to rely on the treating physicians
7 report in calculating future medical expenses and the
8 economist's report is therefore not speculative. A treating
9 doctor may provide expert testimony concerning future
10 medical expenses and no notice pursuant to CPLR 3101(d) is
11 required. *Butler V. Grinds* 40 A.D.3d 569 2nd Dept (2007)
12 *Logan V. Roman* 58 A.D. 3d 810 (2d Dept. 2009).

13 The Plaintiff may establish future medical expenses
14 with the reasonable degree of reasonable specialty through
15 the testimony of treating surgeon who testifies to each of
16 the treatment that Plaintiff will require explaining in the
17 approximate cost of such treatments, *Louis V. Ganesh* 242,
18 A.D.3d 548 (1st Dept. 2025) *Morrobelt V. Alicia* 236, A.D.3d
19 571 (1st Dept. 2025.) It was within the jury's province to
20 credit this testimony in making its award a future medical
21 expense, see *Louis V. Ganesh*. The Defendants argued that
22 Plaintiff has not received treatment in the event that
23 merely goes to the weight of the testimony. The issues
24 raised by Defendants do not warrant preclusion in the
25 subject of future medical expenses is an appropriately

1 addressed with cross-examination. The motion is denied.
2 Furthermore, this is the 14th motion in limine filed in
3 NYCEF in this case. The trial is now starting.
4 Accordingly, henceforth, motions may only be made orally
5 before the Court on the record at which point the Court will
6 either hear oral arguments and rule on the issue or will
7 request schedule brief matters, motion papers filed, motions
8 papers filed without Court approval will be null and void
9 and will not be considered by this Court. You can note your
10 objections.

11 MR. MARANDO: Note, Your Honor.

12 THE COURT: According to my understanding, I have
13 one motion in limine to rule on. That has to do with the
14 video, and I am going to have to put that off for now, and I
15 believe that is all I have for the record until we get the
16 jury set. Okay. Thank you. Off the record.

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

18 COURT OFFICER: All rise as the jury is entering
19 (The jury has entered the room.)

20 THE COURT: Good afternoon everyone. Go ahead and
21 be seated, and if you all want to take your coats off, it
22 gets kind of warm in here or it's ice cold. It's hard to
23 tell which. I'm Judge Hummel. I want to thank you for your
24 service today on this trial. You play a very important role
25 in the trial and we couldn't do it without you frankly, so

1 welcome. I will allow the attorneys to briefly introduce
2 themselves to you.

3 MR. MARANDO: Hello, everyone. Good afternoon
4 again. It's good to see you all. I know it's been a few
5 days since the storm. We are happy to have you back. As a
6 reminder, I am Mike Marando on behalf of the Plaintiff. I
7 actually have the Plaintiff Henry Espacia here today in the
8 courtroom, but more importantly, thank you for coming back

9 MR. FRANKLIN: Good afternoon. Brian Franklin
10 again on behalf of Emerald 2727 and Residential Management.
11 Thank you for being here. I'll let my colleague introduce
12 herself.

13 MS. GOODE: Hello, all. I am Gail Goode and I'm
14 the senior trial counsel for the Defendants.

15 THE COURT: Okay. So this is a trial that is
16 scheduled to go everyday hopefully for a full day or when
17 possible. Sometimes there are scheduling issues that come
18 up with witnesses or legal issues that require us to perhaps
19 do not a full day, but generally, it will be a two-week
20 trial full day, so plan on that, and it will be everyday all
21 day. I'm going to give you now what is called the opening
22 instructions and that can be a little repetitive but they
23 are really important, and it will give you a map to follow
24 for the rest of the trial. Okay. So I am going to give you
25 that now, and I will start now and here we go.

1 Members of the jury, we are about to start the
2 trial of this case about which you have heard some details
3 during jury selection. Before the trial begins, however,
4 there are certain instructions that you should have in order
5 to understand what you will hear, see and how you should
6 conduct yourself during this trial. The party who brings a
7 lawsuit is called the Plaintiff. In this action the
8 Plaintiff is Henry Espacia who is suing to collect and
9 recover damages as a result of injuries that he allegedly
10 sustained in a ceiling collapse. The parties against whom
11 the suit is brought are called the Defendants. In this
12 action the Defendants are Emerald 2727 University LLC and
13 Residential Management New York Inc. They are the landlord
14 and management company.

15 When I have completed these instructions, the
16 attorneys will make opening statements in which each will
17 outline for you what he or she expects to prove. The
18 purpose of an opening statement is to tell you about the
19 party's contentions, so that you will have a better
20 understanding of the evidence as it is introduced. What is
21 said in opening statements is not evidence.

22 The evidence upon which you will base your decision
23 will come from the testimony of the witnesses here in the
24 courtroom or in the testimony given before you in Court or
25 in forms of photographs, documents or other exhibits that

1 are actually admitted into evidence here.

2 In this case, the Plaintiff makes the opening
3 statements first and is followed by Defendant. After the
4 opening statement, Plaintiff will introduce evidence in
5 support of his claim. Normally a party must produce all his
6 or her witnesses and complete their entire case before the
7 opposing parties may submit any evidence, although
8 exceptions are sometimes made.

9 After the opposing party has completed instruction
10 of all of his evidence, the other party may but is not
11 required to present evidence and exhibits. If he or she
12 does so, then the other party may but is not required to
13 offer additional evidence for the purposes of rebuttal a
14 witness is examined by a party that calls that witness to
15 testify and may be questioned by the opposing party in
16 cross-examination.

17 At times during the trial, an attorney may object
18 to a question or to the introduction of an exhibit or make
19 motions concerning legal questions that apply to this case.
20 Arguments in connection to such objections or motions are
21 sometimes made out of the presence of the jury. Any ruling
22 objections or motions will be based solely upon the law, and
23 therefore, you must not conclude from any such ruling or
24 from anything that I say during the course of this trial
25 that I favor either party to this lawsuit. After such a

1 ruling, you may hear one of the attorneys taking what we
2 call an exception to it. Exceptions have nothing do with
3 your rule in this case, and I only mention the procedure, so
4 you will not be confused if you hear that word during the
5 trial. Upon the completion of the introduction of evidence
6 the attorney's will again speak with you in a closing
7 statement or summation.

8 In summing up the lawyers will point out what they
9 believe the evidence has shown what inferences or
10 conclusions they believe you should draw from the evidence
11 and what conclusions they believe you should reach as to
12 your verdict. What is said by the attorneys in summations,
13 like what is said by them in the opening arguments or in the
14 making of objections or motions in trial is not evidence.
15 Summations are intended to present the evidences of parties
16 based on the evidence. In our system the Defendants sum it
17 up first and then followed by the Plaintiff.

18 After summations, I will instruct you on the rules
19 of law applicable to the case and then you will be retire to
20 your deliberations. Your function as a juror is to decide
21 what has or has not been proven and to apply the rules of
22 law that I give you to the facts as you find them to be.

23 The decision you reach will be your verdict. Your
24 decision will be based on the testimony that you hear and
25 exhibits that will be received in evidence during trial.

1 You are the sole and exclusive judges of the facts, and
2 nothing I say or do should be taken by you as any indication
3 of my opinion as to the facts. As to the facts, neither I,
4 nor anyone else may invade your province. I will preside
5 impartially and not express any opinion concerning the
6 facts. Any opinions of my mine on the facts would in any
7 event be totally irrelevant because the facts are for you to
8 decide.

9 On the other hand and with equal emphasis, I
10 instruct you in accordance with your oath that you took as
11 jurors, you are required to accept the rules of law that I
12 give you whether you agree with them or not. You are not to
13 ask anyone else about the law. You should not consider or
14 accept any advice about the law from anyone but me, and as
15 the sole judges of the facts you must decide which of the
16 witnesses you believe, what portion of their testimony you
17 accept, and what weight you give it as.

18 At times during the trial I may sustain an
19 objection to questions, and you may hear no answer or where
20 an answer may be made, I may instruct that it be stricken or
21 removed from the record and that you disregard or dismiss it
22 from your minds. You may not draw any inference or
23 conclusions from unanswered questions, nor may you consider
24 testimony that has been stricken or removed from the record
25 in reaching your decision.

1 The law requires that your decision be made solely
2 on the evidence before you. Such items as I exclude from
3 your consideration will be excluded because they are not
4 legally admissible. A lawsuit is a civilized method of
5 determining disputes. It is basic to the administration of
6 of any system of justice that the decisions on both the law
7 and the facts be made fairly and honestly.

8 You, as jurors, and I as the Court, have a heavy
9 responsibility to act in impartially and to ensure a just
10 result is reached in deciding the dispute between the
11 Plaintiff and the Defendant in this case. As a fair and
12 impartial jury you must guard against the application of any
13 stereotypes or attitudes about people or groups that may
14 lead you to render a decision based on those stereotypes and
15 those attitudes. P.

16 Keep in mind that bias is not always obvious or
17 even conscious, and in assessing the testimony and other
18 evidence in this case, you may not be swayed by stereotypes
19 or attitudes. The law does not however require you to
20 accept all of the evidence that I shall admit.

21 In deciding what evidence you will accept, you must
22 make your on evaluations of the testimony given by each of
23 the witness and decide how much weight you choose to give
24 that testimony. The testimony of a witness may not conform
25 with the facts as they occurred because he or she is

1 intentionally lying, because the witness did not accurately
2 see or hear what he or she is testifying about, because the
3 witness's recollection is faulty or because the witness has
4 not expressed himself clearly in testifying. There is no
5 magical formula by which you evaluate the testimony. You
6 bring with you to this courtroom all of the experience and
7 background of your lives.

8 In your everyday affairs you decide for yourselves
9 the reliability or unreliability of things people tell you.
10 The same test that you use in your everyday dealings are the
11 test which you apply in your deliberations. Such things as
12 the interest of or lack of interest of any witness in the
13 outcome of the case. The bias of prejudice of the witness,
14 if there be any, the age, the appearance, the manner in
15 which the witness gives the testimony on the stand, the
16 opportunity that the witness had to observe the facts about
17 which he or she is testifying, the probability or
18 improbability of the witness's testimony when considered in
19 light of all of the other evidence in the case. These are
20 all items to be considered by you in deciding how much
21 weight, if any, you will give a witness's testimony.

22 If it appears that there is a conflict in the
23 evidence, you will have to consider whether the apparent
24 conflict could be reconciled by fitting the different
25 versions together. If however, that is not possible, you

1 will have to decide which of the convincing versions you
2 will accept.

3 To help make sure a just result is reached when you
4 decide this case, consistent with the oath you took as a
5 juror, there are several rules that must govern your conduct
6 during the trial. Because this case involves something that
7 happened at a particular location, you might be tempted to
8 visit the location. You may not do so, even if you live
9 near the location. You must not go by it or pass it until
10 the case is over.

11 In addition, do not attempt to view the scene by
12 using computer programming. Viewing the scene either in
13 person or through a computer program will be unfair to the
14 party because the location as it looked at the time of the
15 accident and how it looks now might be very different. This
16 case involves a location as it existed at the time and not
17 as it exists today. Also in making unauthorized visits or
18 viewing you might get a faulty impression leading to
19 unfairness to the party who needs you to decide this case
20 solely on the evidence that I admit for your consideration.
21 Thus, you must rely only on the evidence admitted here in
22 the courtroom to determine the circumstances and conditions
23 under which the accident occurred.

24 In fairness to the parties and the lawsuit, it's
25 also very important for you to keep an open mind during the

1 trial. You must reach your decision and verdict on the
2 evidence only as admitted during the trial, and only after
3 you heard the summations of each attorneys and my
4 instructions to you on the law, only then you are to
5 exchange your views and opinions with the other members of
6 the jury to reach your verdict. While it is human nature
7 for you to form tentative opinions about the witnesses
8 testimony and other evidence as the trial progresses and
9 there is a strong temptation to discuss the opinions during
10 the Court course of the trial, the law does not permit it.

11 The reason for this is that if you engage in
12 premature discussions without the benefit of all of the
13 evidence, the summations by the lawyers and my instructions
14 on the law, your discussions will not be fully informed and
15 that would be unfair to the parties. For this reason, among
16 others do not any independent research on any topic that you
17 may hear on this case, whether by consulting others, reading
18 material or conducting internet searches. Some of the
19 topics that you are not to discuss or research are the law
20 or any of the issues in this case. You must not discuss or
21 research about the parties, the lawyers, the witnesses or
22 me. After you have rendered your verdict and have been
23 discharged, you will be free to do any research you choose
24 or to share your experiences. Remembering these rules while
25 you're serving as a juror whether in the courtroom or

1 elsewhere including when you're using a computer, it is
2 vital that you carefully follow these instructions. As I've
3 said, the law requires you to consider only testimony and
4 other evidence admitted in trial. Not only does the law
5 mandate it, the parties are depending on you to fairly and
6 impartially consider only the admitted evidence. To do
7 otherwise by allowing outside information which may be
8 incomplete, inaccurate or otherwise unreliable to effect
9 your judgment, it would be unfair and prejudicial to the
10 parties and could require a retrial of the case. All cell
11 phones, laptops and other electronic devices must be turned
12 off while you are in the courtroom and while you're
13 deliberating. Do not talk amongst yourselves or with anyone
14 else about this case. You may tell people you're juror and
15 give them information about when you're required to be in
16 Court but you must not talk to anyone about any other
17 matters related to this case.

18 You must not provide any information about this
19 case to anyone by any means whatsoever. This means you must
20 not disclose or give or get information about any manner
21 related to this case by telephone, text, internet, social
22 media or any other electronic or other platform. You must
23 not permit any person who is not a juror to talk about this
24 case in your presence, and if anyone does so, despite you
25 telling that person not to report to me as soon as you are

1 able. However, you must not discuss with your fellow jurors
2 to fact or other facts that you feel necessary to bring to
3 my attention. Although it is normal human tendency to talk
4 to people about with whom you come in contact during the
5 time that you serve on this jury, do not talk about whether
6 in or out of the courtroom with any of parties, the
7 attorney's or the witnesses.

8 By this I mean not only do not talk about the case,
9 but don't talk to them at all, even to pass the time of day,
10 and in no other way can all of the parties be assured of the
11 absolutely impartially they are entitled to expect from you
12 as jurors. If a lawyer, party or witnesses does not
13 acknowledge you, that person is not being rude, but is
14 merely following my instructions not to speak with you.

15 The parties and attorneys involved in this case or
16 the people working with them on this case may properly look
17 at a juror's public website, social media sites, blogs or
18 any of your social media profiles that are publically
19 accessible. This may have occurred during jury selection
20 and also may occur during the course of the trial during
21 deliberations and after the trial has ended. While the
22 parties and attorneys may look at your public media. They
23 may not communicate with you through public media and any
24 other way during the trial, and in fact, no one may
25 communicate with you about this case for any reason and any

1 manner during the course of this trial or during the time
2 that you deliberating. If you believe that someone has
3 attempted to communicate with you in any manner, let me know
4 as soon as possible. You should not communicate about the
5 case with anyone other than me and the court officer.

6 During the trial, circumstances may arise when a
7 juror has the need to bring a matter to attention. Should
8 any of you feel that you find yourself in that situation,
9 please notify our court officer, either orally or through a
10 note that you need to speak to me and I will instruct you
11 further. Do not tell other jurors or anyone else about the
12 matter that you seek to bring to my attention. Under the
13 law, only six jurors will deliberate on this case. We have
14 selected additional jurors because sometimes during a trial
15 a juror may suddenly be unable to continue service due to
16 some emergency. All of you are required to pay the same
17 careful attention during the trial so that each of you will
18 be fully familiar with the case. The fact that there are
19 additional jurors does not mean that any juror is free to
20 excuse himself or herself from the case.

21 As a dually sworn juror, your obligation is to be
22 available and attentive to trial. The rules governing your
23 conduct and the legal principles as I discussed with you
24 will be I believe make it easier for you to understand the
25 trial as it goes on to reach a just conclusion. Counsel.

1 MR. MARANDO: Thank you, Your Honor. Hello,
2 everyone, good afternoon, Members of the Jury, Your Honor,
3 Madame Reporter, defense counsel, Mr. Espacia, your family
4 members. As I mentioned before, I want to thank all of you.
5 I know earlier in the week, even last week when we started,
6 we were speaking before the storm, so it feels a lot longer
7 than that because of the storm, but we cannot be here
8 without you all. We appreciate your time, your schedule and
9 your punctuality and we thank you in advance from both
10 sides.

11 During jury selection, we were not able to mention
12 much about the facts of the case, but we can speak now. A
13 property owner and the management company of the building
14 should not and cannot needlessly endanger the lives of their
15 tenants when they are on notice of a condition. If a
16 ceiling in particular are not maintained and they have
17 notice and as a result a ceiling collapses, and as a result,
18 someone is injured, they should be responsible. Now, let's
19 talk about specifically the things that we may have not been
20 able to mention during jury selection. April 21st 2021,
21 it's a point in time where we can all remember maybe very
22 thoroughly where Covid was maybe exiting or entering a new
23 chapter. It was 7 a.m. The building was 2727 University
24 Avenue in the Bronx, specifically, a apartment 4F. The
25 building was owned by the property owner, Emerald 2727

1 University LLC. On their behalf it was managed by a company
2 called Residential New York Management Incorporated that
3 company employed the superintendent. That company employed
4 the handyman. Now, 7 a.m., the ceiling of the bathroom,
5 apartment 4F, it gives way. It gives way, and it collapses
6 and as a result someone underneath that ceiling is injured
7 and that person was Mr. Henry Espacia, who is sitting in the
8 second row. Now, who here is suing and why is based on one
9 simple rule. We are suing the owner of the property, the
10 entity, the corporation I just mentioned and the management
11 company because of that one rule. Maintain the ceilings
12 especially in the bathroom where not only men, not only
13 woman, children, elderly people of all ages utilize, that if
14 you have notice of something and you don't fix it, you
15 should be responsible.

16 Now, the evidence will show in this case that there
17 were complaints made for at least two months prior to
18 April 21, 2021 and the complaints were of cracking, leaking,
19 discoloration, and you will hear those complaints, and you
20 will evaluate them. You will hear from testimony on behalf
21 of the management company from the superintendent and from
22 the handyman and the evidence may show that they would deny
23 those complaints, and just like before, you will evaluate
24 that.

25 The evidence will show two videos taken by the

1 superintendent. You have one video and then you have a
2 second video that the evidence will show. The evidence will
3 show that the second video was taken at a later time and you
4 will evaluate that. And within that video, the second video
5 the evidence will show that the superintendent denied a
6 shower may have even taken place and you will evaluate that.
7 You may hear from someone on behalf of the actual owner of
8 the building or you may not, but you will evaluate that.

9 You will hear about the procedure, the specific
10 procedure for making complaints, and more importantly, for
11 documenting complaints. If you're a tenant in a property,
12 they tell you what to do, if you have a complaint, but when
13 it comes to procedure, it's their procedure, and the
14 evidence will show that some complaints were written down on
15 a white board and then wiped away. Other complaints maybe
16 too small, they did not write them down at all. You will
17 evaluate that. You will also learn through the evidence
18 that before this took place, before the ceiling collapsed
19 that there was an issue in this apartment. This is not a
20 five story apartment in the Upper East Side or a two story
21 apartment. This is a two bedroom, one bathroom, one half
22 bathroom.

23 Before this occurred, before April 21, 2021, the
24 superintendent and the evidence will show that they came to
25 this specific apartment because of yellow mold in one of the

1 ceilings on the apartment, and for whatever reason, the
2 evidence will show that the only thing that was done was
3 stain remover. The evidence will not show that the ceiling
4 was opened up, inspected, repaired, anything other than
5 stain remover.

6 Now, for whatever reason, the evidence will show
7 there is no document for that. There is no documents for
8 the complaints relating to the yellow mold. There is no
9 documents as to the work that was done for the yellow mold
10 on the ceiling in the same apartment, 4F. You will see
11 through the evidence a video, a third video, which is the
12 first video, a video that was taken by Henry's son because
13 on April 21, 2021, Henry and his family had begun their day.
14 His wife had gone to work, and he will talk about that, how
15 his wife is a school teacher and she left early. His two
16 daughters, his two eldest daughters had already left. Both
17 of which used the same shower.

18 At this point, it was Henry and his son. His
19 teenager son who is 13 years old. In the midst of the
20 ceiling collapse Henry yells out to the son and the son
21 comes. After the ambulance is quickly called Henry's son is
22 directed by his father to take a video before the ambulance
23 arrives but after they are called. You will watch the
24 video, and you will evaluate that. You will hear about the
25 before and the after. You will hear about Henry's job and

1 what he was doing, maybe how he enjoyed his time, things
2 that he was passionate about, like we talk about during jury
3 selection, and you will hear about the accident through
4 doctors, but more important, through Henry.

5 You will also hear that 16 years ago from today,
6 10 years before this took place, Henry was involved in a
7 motor vehicle accident. You will hear about treatment. You
8 will hear about limited treatment. You will hear how he
9 returned to work for a decade without seeing one doctor and
10 in connection with anything of that motor vehicle accident,
11 and in that same decade, he went back to work and continued
12 to work at full capacity, and he will testify about his work
13 and exactly what he was required to do with his body. This
14 case is not about sympathy. This case is not about
15 punishment. This case is about responsibility, that when
16 you have a building of people of all ages, not just men, not
17 just woman, the elderly children everyone, that there is a
18 complaint and you know about it and you do not respond to
19 it, you should be held accountable.

20 You will be asked to measure responsibility, fault,
21 causation, loss of function, loss of normal life and at the
22 end of the case, the evidence will show that there was a
23 duty on behalf of the property owner and the management
24 company that was violated, that there is damages and you
25 will evaluate those damages, but more importantly, I want to

1 thank you in advance, each and every one of you for your
2 time, for your listening through witnesses, for coming early
3 for staying late. I know everyone has a schedule, and on
4 behalf of the Court, my client, myself, even Defendants, we
5 share the same opinion that we cannot be here without you
6 all through your schedules so thank you in advance, and I
7 look forward to the end of the case.

8 THE COURT: Counsel.

9 MR. FRANKLIN: Good afternoon, Members of the Jury,
10 Your Honor. I am counsel for the Defendant. My name is
11 Brian Franklin. I'm a partner at a law firm, Gartner &
12 Bloom. You have met my trial colleague, Senior Trial
13 Attorney at the firm, Gail Goode. I have been waiting for
14 an opportunity to address you as well.

15 You're the most important part of this process.
16 Every party is entitled to have a dispute decided in an
17 orderly fashion, and then ultimately, it comes down to you,
18 so we thank you and especially for giving your time here
19 today.

20 Now, this case is about someone with preexisting
21 conditions who claims that the ceiling fell on him while he
22 was taking a shower. You are going to see some evidence in
23 this case. Some people are going to take the stand, and
24 you're going to see some stuff on the screen. Again, the
25 evidence will come from here, and the evidence will come

1 from here, and you will have the opportunity to see that
2 evidence and judge for yourselves. I am going to ask you to
3 pay very close attention to that evidence because we think
4 there is go to be clues. There is going to be key
5 information. Counsel is going to tell you what he thinks he
6 sees. I will tell you what I think I see or my colleague
7 when we do our closings, and as we go through and show the
8 witnesses, we will try to point things out.

9 Now, as an attorney with over 20 years experience
10 as both a public defender handling criminal cases and as a
11 defense attorney handling civil cases, if there is one thing
12 that I've learned, every case no matter how complex or how
13 simple, keep your common sense when you're looking at the
14 evidence. This building 2727 University Avenue is a six
15 story building with about 55 units and built around 1937, so
16 roughly, 89 years old. It's in the Kingsbridge area of the
17 Bronx, studios, one bedrooms, two bedrooms, and you're going
18 to hear there was a property management company, and the
19 building is owned by Emerald 2727 and there is a property
20 management company, Residential Management, and they manage
21 a few buildings. You are going to hear that Mr. Espacia
22 lived in unit 4F for 15 years.

23 You are also going to hear that Mr. Espacia for 8
24 to 10 years worked for a company by the name of American
25 Draft Systems and what he did for that company was he is

1 installed, he serviced, and he repaired draft beer
2 equipment, so what he had do as part of his job is to move
3 around kegs of beer and he had to carry a heavy toolbox.
4 Imagine that? 8 or 10 years constantly moving around kegs
5 and carrying heavy tools. The evidence is going to show
6 that it wore on him, and you're going to hear things about
7 labral tears in the shoulders, and you're going to hear
8 things about spinal issues and you're going to hear from a
9 number of medical professionals. You are going to hear
10 terms like acute. I'll tell you acute, like something that
11 happened immediately after something, after something
12 happens and you have an acute injury, and you will hear
13 about something called chronic, something that is long-term,
14 and something that is developed over time like arthritis.

15 Now, you're also going to hear about a prior motor
16 vehicle accident and maybe you will hear some information
17 about treatment or lack thereof. Now, this is the
18 opportunity where I get to tell you what I believe the
19 evidence is going to show. We think the evidence is going
20 to show a series of inconsistencies. You're going to see
21 that there was one witness to this incident, only one,
22 because it happened in the privacy of someone's bathroom,
23 and that individual is seated over here. You are going to
24 hear that that this accident happened in the bathroom that
25 he has used for ten years prior to this incident. You are

1 going to hear that on that morning after Mr. Espacia's wife
2 and others had left the apartment, and it was just him and
3 his son, he called out to his son to call 911 or emergency.

4 Before first responders arrived, a video is taken.
5 Now, you may see footage from the superintendent and
6 handyman, they came up when saw FDNY and senior care enter
7 the building and head upstairs. They came up right behind
8 them. The first thing they found is that FDNY opened up the
9 ceiling further because the FDNY was looking for anything
10 structurally wrong, and you will hear from the Plaintiff
11 that FDNY said it's safe. Nothing is going to fall, and
12 then you are going to see that after FDNY had opened up the
13 ceiling to the point where it was the span of the entire
14 bathtub, the super then took out his video camera and
15 started filming and looking up in the ceiling. That is not
16 all he did. He went to the upstairs -- well, first he
17 touched the area and found nothing was wet. He looked
18 around the bathroom. He saw that there were dry pieces of
19 material all over the place, the tub where the Plaintiff
20 said he was taking a shower and the super and the handyman
21 both went up together and spoke with the Plaintiff, and he
22 said what happened, and he said he was taking a shower and
23 this happened.

24 They looked and the bathtub is filled with water
25 and a lot of evidence is soaking in that water, and they

1 also noticed that the shower curtain is dry, which to them
2 seems like an inconsistency and we are going to suggest to
3 you that that is an inconsistency. Now, we don't have to
4 present any evidence. As my colleague said, the burden of
5 proof is on the Plaintiff, but we are going to try to bring
6 it, because we think we've got a good case.

7 Let's start with the Plaintiff. Now, the Plaintiff
8 is going to testify that he is standing up in the shower and
9 he turns on the water and hears a noise, and then the next
10 thing he knows the ceiling is falling, and he falls into the
11 bathtub into a seated position and when he falls into the
12 bathtub, he doesn't strike his head on the sink which is
13 right next to the bathtub. He doesn't fall out of the
14 bathtub, he falls into a seated position.

15 Now, he doesn't recall how long he is in that
16 bathtub before he calls out to his son, and his son comes
17 over and then there is a video taken, and then at some point
18 after that FDNY and senior care arrive, and time permitting,
19 we will try to bring you a witness from the EMS. Now,
20 Plaintiff is also going to tell you that he noticed an issue
21 with the ceiling for sometime but it wasn't until a couple
22 of weeks before the incident that he ever voiced any
23 complaint and he voiced it verbally, nothing in writing, and
24 he is not going to be able to show you any pictures of the
25 before. No pictures.

1 You are just going to see the big hole after, and
2 we submit that that is going to be one of those
3 inconsistencies because if the ceiling is so damaged to the
4 point that it's about to fall on you, then you are going to
5 take a picture. Now, the superintendent is going to tell
6 you by the time they got up there because FDNY they
7 hightailed it up there and they came up after. The
8 Plaintiff is already out of the bathtub and seated in a bath
9 robe, and as they take the Plaintiff out, the superintendent
10 and the handyman, they go to work, they inspect, they go to
11 the upstairs unit, they don't see that any water was even
12 used, they go back down, they get the materials that they
13 need, some sheet rock and they fix this big hole before
14 Plaintiff comes back home and they get it fixed.

15 They put the drywall, spackle, excuse my lack of
16 terminology, they put it up there and all that is left is
17 for them to come back and paint, and you will hear that they
18 could never seem to find a convenient time that was
19 convenient for the Plaintiff for them to come in and do this
20 last bit of finishing.

21 Now, one more thing about Fatlum Malouku, who you
22 are going to hear from. He is the superintendent. He
23 lives in the building. He is in the basement apartment. He
24 is getting ready in the morning, and he is going out to do
25 the rounds at around 8 a.m. and handyman Justin Malloy, who

1 is now a porter in this building to this day, he is coming
2 in to punch in and that is when they meet the FDNY. They
3 are going to tell you that they had no complaints from the
4 tenant in 4F about the bathroom ceiling, but they were up in
5 4F in November of 2020, December, January, February, March,
6 April, that's five months before this incident to fix
7 something unrelated, and they have a receipt. We are going
8 to show it to you, and Fatlum Malouku, when this happened,
9 he typed up a report, send it via e-mail and you will see
10 the e-mail.

11 Now, we are going to point out things to you in
12 videos. There may be some pictures, and you are going to
13 hear testimony from the superintendent. He has a license as
14 a home improvement sales person, a little bit of knowledge
15 about building materials and he will tell you that he found
16 no evidence of a leak. He looked up at the plumbing, and it
17 wasn't leaking. There was nothing. Now, again, you are
18 going to hear a lot of circumstantial evidence, testimonial
19 evidence, and you are going to hear medical evidence, and we
20 want you to use your common sense to see if the medical
21 evidence lines up with the circumstantial evidence, because
22 the two of them need to match. We are going to ask you if
23 the injuries that happened to the shoulders and the back are
24 consistent with something falling on someone, which would
25 have caused an acute injury or is it consistent with

1 something chronic, something that developed over time, and
2 for that, we are going to need medical doctors, and we are
3 going to have defense medical doctors. You are going to
4 hear from a Dr. Steven Lastick a board certified radiologist
5 who examines films, and he is going to tell you that he
6 couldn't find evidence of tears in the shoulders, and you
7 know, sometimes there is things that don't show up on the
8 radiology and you won't see until you get in there and
9 operate.

10 He will tell you that it wasn't significant enough
11 to show up on the radiology and he is going to tell you that
12 even if there was something he missed, that the Plaintiff's
13 doctor, Dr. Berkowitz, who went in there and did the
14 operations on the shoulders, he is going to tell you that
15 that is common for someone of that age, especially someone
16 who has spent years lugging kegs and carrying heavy tools.

17 He is going to tell you that he saw osteophyte
18 formation consistent with arthritis. He is going to tell
19 you that he found multi-level degenerative disk disease in
20 the neck and lumbar back, again, something chronic, and he
21 is going to tell you that this is perfectly consistent with
22 someone in their 50's. I mean, as we age, these things
23 happen. You are going to here from a Dr. John Bendo, NYU
24 director spine cervical and clinical professor, who
25 physically examined the Plaintiff. The Plaintiff came in,

1 and they had a physical examination, and this was done in
2 January of 2024, so a few years afterwards, and he is going
3 to tell you that he could find nothing objective, no
4 objective evidence of an orthopedic or neurological
5 disability. There is the subjective complaints and then
6 there is objective evidence.

7 He is going to tell you that following Plaintiff's
8 elective surgery, that is a surgery that you can elect to
9 get to the neck, that Plaintiff is cleared to return to
10 regular activities. He is going to tell you that the
11 Plaintiff can return to his previous level of activity as
12 prior to this incident, and he is going to tell you that at
13 most based on his physical examination of the Plaintiff,
14 where he makes him stretch out his arms and checks the
15 shoulder rotation and the Plaintiff's flexion and he checks
16 the knees and he checks the back and the posture and does
17 all of these things. He will tell you that at most the
18 Plaintiff sustained soft tissue strain. You're going to
19 here from an Andrew Bezo, also an orthopedic surgeon, and he
20 is going to tell you that Plaintiff's complaints are
21 subjective and that they were minor, and that they were soft
22 tissue and that he couldn't find any objective evidence, and
23 he did an examination of the Plaintiff in July of 2023, a
24 physical examination where, again, the two met, and he did
25 the examination. He is going to tell you that the surgery

1 to the Plaintiff's shoulders, that wasn't related to the
2 accident that happened in his bathroom. That's for
3 something that is chronic, and he is also going to tell you
4 that although the Plaintiff walked slowly into his doctors
5 office that he happened to notice him walk perfectly normal
6 when he left.

7 Now, we know that the Plaintiff is going to present
8 a case that the building owner was nonresponsive. I
9 complained and they did nothing. We plan to present
10 evidence that the superintendent responded to complaints,
11 that the superintendent that day of this incident fixed that
12 gaping hole that FDNY left the sides of the entire bathtub,
13 and we are going to show you that he was in the Plaintiff's
14 apartment five months prior to this. Plaintiff didn't
15 mention a thing about that bathroom, and he was there for an
16 unrelated fix and not one mention.

17 Plaintiff is going to tell you that about two
18 months before this incident happened. That's when he made a
19 verbal complaint, but five months before, no mention.

20 Now, the Plaintiff is going to tell you that his
21 neck, his shoulders, his back, they have been rendered
22 useless due to pain. Again, we plan to present evidence,
23 and we don't have to, but we plan to the present some
24 evidence from medical doctors that he can -- that there is
25 no limitations in his abilities. We also plan to present

1 evidence that Plaintiff hasn't been in treatment for over a
2 year.

3 Now, you are going to see evidence that the
4 Plaintiff was not working at the time, and indeed, he is not
5 claiming wage loss in this case. After listening to the
6 Plaintiff's doctors to the defense doctors about what they
7 think, it is going to be up to you who you find more
8 credible.

9 During the jury selection when we asked you can you
10 also waive the credibility of the doctors. Some doctors are
11 very convincing. So you are going to have to use your
12 common sense and treat them just like everybody else.
13 Again, the Plaintiff has the burden of proof. You, alone
14 get to decide this case, and when you decide this case, I am
15 going to ask you to decide this case as to both Defendants
16 because you have an owner and then you have a property
17 manager.

18 If the Plaintiff doesn't prove the case against the
19 owner, no money against the owner. If he doesn't prove the
20 case against the property manager, no money against the
21 property manager, so my colleague, again, she asked you to
22 bring three things into the courtroom, logic, reason and
23 common sense. She asked you to leave three things outside
24 of the courtroom, bias, prejudice and speculation. It has
25 to come from here or it has to come from here(indicating.)

1 You all said that you could put aside sympathy as
2 well, and that you could judge this case based on the facts,
3 so we are going to challenge you to put aside sympathy, to
4 look at the evidence very critically, as anyone should, and
5 decide the case based on the evidence that the Plaintiff has
6 the burden to present.

7 Plaintiff gets to go first. Defense has to wait
8 and go second. Plaintiff has the the option of calling some
9 of the defense witnesses out of turn, so you may hear from
10 the handyman and the superintendent early, and if you do, so
11 that we don't have to bring them back, we may just go ahead
12 and ask our questions at the same time, which is perfectly
13 fine with me, and I think it will move things faster.

14 We have no problem with that. We are here to tell
15 truth. Again, we thank you for taking your job so
16 seriously. This is the process -- you are the most
17 important part of the process. Without you, there couldn't
18 be a resolution to this dispute. We are confident that
19 after you seen all of the evidence, you will return a
20 verdict for the defense. Thank you.

21 THE COURT: Okay. Thank you. We are going to take
22 a break, so let's give the jurors a break.

23 COURT OFFICER: All rise the jury is exiting.

24 (The jury has exited the room.)

25 THE COURT: Just one administrative thing before we

1 go, I need the proposed charges uploaded to NYCEF by Monday
2 March 2nd at 10 a.m.

3 MR. MARANDO: March 2nd, Judge.

4 THE COURT: Yes, Monday, and the proposed verdict
5 sheet should be uploaded as well, uploaded Monday March 2nd
6 by 10 a.m. Also, I am going to ask you to e-mail a copy of
7 the verdict sheet to my Court attorney in word or edited,
8 and his e-mail is CPERSO@nycourts.gov.

9 MR. FRANKLIN: Sorry, was that T like Tom?

10 THE COURT: C as in Cat, P as in Peter, E as in
11 elephant, R as in rat, S, as Sam, O as in Ostrich,.

12 MR. FRANKLIN: And that's at?

13 THE COURT: That is @nycourts.gov. It allows
14 husband to work on it in real-time. Off the record.

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

16 THE COURT: We are discussing the witness's
17 scheduling for tomorrow. I will ask you to restate what you
18 said summarize it, if you would.

19 MR. MARANDO: Yes, Your Honor. Plaintiff would
20 have liked to call the two individuals on behalf of
21 Residential Management, the management company of the
22 Defendant, Justin Malloy and Fatlum Malouku for five months,
23 periodically and on the subpoena to them it mentioned that
24 they will be required to testify on day one and they must be
25 here on day one, subject to any adjournment. Every single

1 day I have notified defense counsel, Brian Franklin, of that
2 requirement that they needed to be testifying on day one.
3 It just became known to Plaintiff's office as of late last
4 night that there is a conflict with respect to a scheduling
5 issue with Mr. Malouku, the superintendent to accommodate
6 that because if it was a doctor's appointment with the
7 storm, I understand.

8 I have made arrangements to call two doctors
9 tomorrow morning starting with Dr. Dov Berkowitz, followed
10 by Dr. Dr. Angel Macagno. Then in the afternoon, if we have
11 time to get things rolling and to stack them for the Court
12 to get things rolling and I would like to call Professor
13 Debra Dwyer. Plaintiff would like to call Justin and Fatlum
14 on the same day and not have Justin's testimony on Friday
15 and that Fatlum's testimony on Monday.

16 THE COURT: Counsel, can they be here on Monday?

17 MR. FRANKLIN: Yes, Your Honor. I have a conflict,
18 well, I can address this however you would like.

19 THE COURT: I would like to know if you can get
20 your witnesses here Monday.

21 MR. FRANKLIN: Mr. Malouku has committed to being
22 here Monday and Mr. Malloy has committed to being here
23 tomorrow, and I feel, Your Honor, with all of the various
24 changes and counsel, he may think that he's keeping me up to
25 date as best that he could but I've also been keeping the

1 witnesses up to date the best that I could.

2 THE COURT: Are you telling me your second witness
3 is not available Monday?

4 MR. FRANKLIN: Well, I have to let him know,
5 because as of yesterday, he says yes I will be here tomorrow
6 and Friday I told him you have to be. That's what I was
7 told.

8 THE COURT: Okay. We are going to take a break,
9 and I will ask you to find out. Actually, I will rule on
10 the record. Go ahead. What else do you want to say?

11 MR. FRANKLIN: What I want to say Your Honor is
12 this. We have all been through a lot of changes in the
13 scheduling, and as of yesterday, I was told get these
14 witnesses here Friday. That was the communication from
15 Mr. Marando to me yesterday, so yesterday I got a hold of
16 both of my witnesses. One witness committed to being here
17 Friday morning. As of now, that is what he understands is
18 when he needs to be here. Now, I am told both witnesses
19 need to be at here the same time, so it's like herding cats.
20 I don't know if Malloy, who is committed to being here
21 tomorrow morning is going to have an issue with being here
22 on Monday until I get on the phone with him. I would prefer
23 to leave him on Friday morning per our conversation
24 yesterday. It's too much jerking back and forth, and I
25 understand why there is some sort of angst and disagreement

1 by witnesses who are being yanked back and forth. Mr.
2 Malouku informed me yesterday, I previously told you Fridays
3 aren't good for me. I understand that the previous Friday
4 there was a religious reason, please tell me what the issue
5 is with this Friday, he told me I have an ultrasound and is
6 taking his wife to the ultrasound on Friday morning. He had
7 issues with -- he had to deal with his children in the
8 afternoon. He said he will be here on Monday. I would
9 prefer not to make him change his schedule yet again because
10 Plaintiff's counsel prefers to call these two witnesses in
11 such a specific order that we are constantly changing the
12 schedule.

13 THE COURT: Okay. I am going to rule on this to
14 this extent. I think the Plaintiff has the right to call
15 the witnesses in the order that he wants. Your clients have
16 been subpoenaed to be here. I think yesterday when we
17 directed you to produce them, you were asked to produce them
18 and you only reported back that only one of them was here
19 despite being under subpoena to appear, and so if you cannot
20 produce them both tomorrow then you produce them both on
21 Monday.

22 MR. FRANKLIN: Your Honor, as far as the subpoena
23 goes, I haven't seen proof of service of any subpoena.

24 THE COURT: Well, I don't know. You didn't raise
25 that. That's not before me now. What I have is what was

1 just argued before in front of me. You know, you are not
2 entitled to -- I get that there has been a storm, and I get
3 counsel is willing to put it over to Monday but he has the
4 right to the call the witnesses in a certain order. He has
5 decided a strategy, and he needs them together. I think
6 that is reasonable. You were able to produce one today and
7 you haven't been able to produce the other. Did you serve
8 subpoenas?

9 MR. MARANDO: Yes, Judge, traditional and
10 individual and pursuant to the CPLR on NYCEF, defense
11 counsel must accept service upon a named party. These
12 individuals work for Residential Management. There has been
13 no objection, no notice of objection or motion to squash the
14 subpoena. This is the first time that we are hearing it
15 less than 24 hours before they are supposed to testify.

16 THE COURT: Go ahead.

17 MR. FRANKLIN: And Your Honor, I'm taking my best
18 effort to try and accommodate, and we do have a request to
19 take a witness out of turn because it's just not convenient
20 for Dr. Benzo to change his schedule tomorrow. He is
21 available tomorrow.

22 THE COURT: But Counsel, Plaintiff is putting his
23 case in. He gets to go. He needs your witnesses. You have
24 spoken to your witnesses on the subpoena, I'm sorry about
25 the weather, but we all knew this was coming. He is

1 entitled to call them together. He has agreed to wait until
2 Monday, so either produce them tomorrow or produce them
3 Monday. You can let them know that they have to be produced
4 together, and it has to be tomorrow or on Monday. You can
5 note your objection.

6 MR. FRANKLIN: I note it, Your Honor, and I will
7 make my best efforts.

8 THE COURT: Again, I encourage you all to work this
9 out together. I will ask -- what I would suggest in terms
10 of the scheduling, we will have the jury back at 9:30
11 tomorrow, and one way or another, we will either have --
12 well, let's talk about that. The doctors, you said you have
13 two doctors tomorrow?

14 MR. MARANDO: Yes, Judge. I tend to be quick. I
15 don't think that will be the issue, and I have Dwyer in the
16 afternoon, the economist. I didn't want to file a motion of
17 of limine, Judge. I don't think it's necessary. There was
18 been so many since I pulled back on the lost wage claim. I
19 spoke with Mr. Franklin and I said, listen, we may have one
20 less witness because your economist, only commented on the
21 lost wages. There is no testimony in the four corners of
22 their report as to anything relating the future healthcare.
23 The only thing they say is we are not going to comment on it
24 because the doctors for the Defendants say he doesn't need
25 it, it's 0. They don't comment on the growth rate numbers.

1 They don't comment on anything. He is saying they are going
2 to have a lot to say on that, and that's not in their
3 report. I haven't seen any report that's subject to
4 cross-examination. So with respect to one less witness, I
5 thought we were in the clear. I just wanted to put that on
6 the record. I don't want to file a motion in limine.
7 There's just been so many.

8 THE COURT: I don't know what you're asking. What
9 are you asking?

10 MR. MARANDO: Just so I can compare it. I haven't
11 seen anything.

12 THE COURT: What are you asking.

13 MR. MARANDO: Is Defendant still intending to offer
14 as a witness the economist who doesn't comment on the items
15 of my economist's report that are leftover.

16 MR. FRANKLIN: Your Honor, I haven't seen a motion
17 to preclude my expert. I don't even know what his expert
18 and what evidence is going to come in.

19 THE COURT: As I said, motions will be made orally,
20 and you can make that next week. Right now I want to figure
21 out scheduling for tomorrow ask and Monday.

22 MR. FRANKLIN: Your Honor, may I be heard on
23 defense is requesting to call Dr. Bendo when he is available
24 on Friday out of turn.

25 THE COURT: I thought you were heard, Counsel,

1 frankly. I am going to -- Plaintiff has a full list of
2 witnesses he has prepared to try tomorrow and he is going to
3 go first unless but I will hear you if you want to say more,
4 go ahead.

5 MR. FRANKLIN: Well, Your Honor, we've all been
6 trying to do our best to accommodate all of the mini-changes
7 in the schedule, and as I mentioned to Your Honor, the
8 doctors have charged cancellation fees. My clients have
9 incurred or their carriers have incurred cancellation fees.
10 Dr. Bendo is going to be unavailable. He said Friday is
11 pretty much he said that's when if he could be called out of
12 turn.

13 THE COURT: Just so I understand, are you talking
14 any Friday or he is just available one date and that one
15 date is tomorrow?

16 MR. FRANKLIN: He is available this Friday, and I
17 believe possibly the next Friday I don't know if the trial
18 will go that long.

19 THE COURT: I don't know what to say to that. I
20 mean, you should figure out if you are going to need to call
21 them next Friday. I don't know the schedule of the
22 witnesses.

23 MR. FRANKLIN: We do want to put the doctor on. We
24 have every intention of putting him on, and what we are
25 asking is to take him out of turn, simply because of the

1 availability and because of all of the changes in the
2 schedule and because we cancelled and because we incurred
3 cancellation fees for him to clear his schedule.

4 THE COURT: Counsel?

5 MR. MARANDO: Judge, on the very first day of my
6 case in chief, I would object to having a defense doctor
7 testify on day one of my case in chief. That is where I
8 have my witnesses, and I had the same effect, in terms of my
9 doctors perform surgeries and the storm put all of the
10 surgeries on Friday, which now there is testimony taking
11 over, my firm has incurred our own fees, but the Court gave
12 us strict guidelines when it comes to scheduling to make
13 sure, and I had to bang on tables to get those witnesses in
14 Court, pursuant to Your Honor's directive. I would object
15 entirely to the defense doctor.

16 THE COURT: Based on the record I will deny
17 Defendant's request. The Plaintiff is entitled to put his
18 case-in-chief first. At this point I will not allow the
19 witnesses to be taken out of order. Plaintiff has arranged
20 three witnesses to come in tomorrow and Defendant has yet to
21 produce, well, has only one produced tomorrow.
22 Unfortunately, it's a very unfortunate situation in which we
23 are in this situation, but balancing the equities, plaintiff
24 is right. He has a right to put his case-in-chief first
25 before having Defendant's doctor testify about medical

1 conditions. It's just unfortunate, so I am going to direct
2 that Defendant produce both subpoenaed witnesses tomorrow or
3 Monday, and I am going to tell the jury to come back at 9:30
4 and tell them to be prepared to hear witnesses all day.

5 Counsel for Defendant, when would you know whether
6 you would want to produce your witnesses tomorrow?

7 MR. FRANKLIN: As soon as I can get a hold of them,
8 Your Honor.

9 THE COURT: What's that?

10 MR. FRANKLIN: As soon as I get a hold of them.

11 THE COURT: Well, what time is it now?

12 MR. FRANKLIN: 3:38.

13 THE COURT: So what I will propose is we tell the
14 jury to come back in at 9:30, we will release them now, and
15 then you will all sit here and make calls and let's see if
16 we can schedule the witnesses for next week. Let's work
17 together and see if we can get a schedule together. It's
18 I'm sorry about this and it's really very unfortunate for
19 everybody.

20 MR. MARANDO: Yes, Judge.

21 THE COURT: Let's see if we can let's get the jury
22 back.

23 COURT OFFICER: All rise as the jury enters.

24 (The jury has entered the room.)

25 THE COURT: You could be seated. So many winter

1 coats and it makes it harder in the jury box. I'm sorry
2 about that. I hope you found the cases interesting. Thank
3 you again for your service, and I know its been a while
4 getting here. We appreciate you showing up to do your part
5 today. We are done with witnesses for the day. We have a
6 number of witnesses for tomorrow, so we are going to go all
7 day tomorrow, and so we would just ask you to be here at
8 9:30, please remember we cannot begin until you are all
9 here, so if you are late, you actually hold everybody up, so
10 I really encourage you, even though I know it's tough, to be
11 here at 9:30.

12 In addition, please remember, do not discuss the
13 case with anyone else, and we will see you in the morning.
14 Thank you.

15 COURT OFFICER: All rise the jury is exiting.

16 (The jury has exited the room.)

17 THE COURT: Okay. Be seated. So I am going to ask
18 you to pull out your list of witnesses and try to put
19 together a tentative schedule of who is coming when everyday
20 and henceforth, and you know, Counsel try to reach out and
21 see if you can get Defendant and try to work it out. I
22 mean, I can't say it stronger, I really feel that showing
23 courtesy to each other only benefits all of us. Although I
24 understand strategy is important. I understand you have the
25 time in the courtroom, so let's see what you can do, so

1 let's puts together a tentative schedule, and I will come
2 down in about half an hour, and we will see where we are at
3 okay. Thank you

4 * * * *

5 I, Lauren A. Fitzgerald, hereby certify that the
6 foregoing transcript is a true and accurate record of the
7 proceedings.

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LAUREN A. FITZGERALD
Senior Court Reporter

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