

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

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3 HENRY ESPACIA,

Index:
816345/2021E

4 Plaintiff,

5 -against-

TRIAL

6 EMERALD 2727 UNIVERSE LLC and RESIDENTIAL
7 MANAGEMENT (NY) INC.,

8 Defendants.

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9 851 Grand Concourse
10 Bronx, New York 10451
11 March 3, 2026

12 **TESTIMONY OF HENRY ESPACIA**
13 **TESTIMONY OF DR. ANDREW BAZOS**

14 **B E F O R E:**

15 THE HONORABLE VERONICA HUMMEL,
16 Justice of the Supreme Court & jury

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

18 LIPSIG, FREUND & WISELL, PLLC
19 Attorneys for the Plaintiff
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21 New York, New York 10038
22 BY: MICHAEL MARANDO, ESQ.

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BY: BRIAN FRANKLIN, ESQ
YOLANDA GAIL GOODE, ESQ., OF COUNSEL

Joanna Garcia
Senior Court Reporter

1 M O R N I N G S E S S I O N

2 COURT OFFICER: Part 20 is now in session, the
3 Honorable Veronica Hummel presiding. Plaintiff's Counsel,
4 state your name and appearance for the record.

5 MR. MARANDO: Good morning, Your Honor. Good
6 morning, everyone. Michael Marando on behalf of the
7 plaintiff from the Law Offices of Lipsig, Freund and Wisell,
8 40 Fulton Street, New York, New York 10038, Floor 24. Good
9 morning.

10 THE COURT: Good morning.

11 MS. GOODE: May I go out and get Mr. Franklin?

12 THE COURT: Give your identification for the record
13 and then go get him.

14 MS. GOODE: I'm representing the defendants, and I
15 work for the firm of Gartner and Bloom, senior partner. The
16 address is 801 Second Avenue, 11th Floor, New York, New York
17 10017.

18 THE COURT: Good morning. You can be seated.
19 Counsel, if you can give your appearance for the record
20 using the mic please.

21 MR. FRANKLIN: Yes, Brian Franklin from Gartner and
22 Bloom on behalf of defendants, Emerald 2727 Universe LLC and
23 New York Inc. and residential Management New York, Inc.

24 THE COURT: So, we had a conversation off record.
25 We have received notification that two jurors are -- have

1 expressed concerns as to whether they will be able to serve
2 throughout the entire trial. One is Juror Number 6, who has
3 expressed to the court officer that she has travel plans for
4 this Friday, that she can prove with documentation. The
5 other is Alternates Number 1, who says, as of next Tuesday,
6 she's is going out for her uncle's service.

7 I spoke with the attorneys, off line, as to how
8 they might -- how we might manage the situation. There was
9 some disagreement, which you can put on the record.
10 Plaintiff's counsel believes that we should wait until
11 tomorrow, which is Wednesday, to address the issues, and
12 keep the jurors -- I'm sorry.

13 Defendant's counsel feels that we should keep the
14 jurors to at least tomorrow, and have the conversation in
15 the morning. Plaintiff's counsel has proposed, I believe,
16 that, no, we should do it after lunch today, and get a
17 decision made. I'm going to think on that, and you can put
18 your arguments on the record, and I'll reserve decision
19 right now.

20 Counsel for plaintiff, obviously, you must use the
21 mics. You can stay seated as, well.

22 MR. MARANDO: With respect to the Juror Number 6,
23 Your Honor?

24 THE COURT: Yes. So Juror Number 6 would be the
25 this Friday issue, and then Alternate Number 1. I think we

1 all agreed that could wait, so I guess you're right.

2 We're just discussing Juror Number 6.

3 MR. MARANDO: Yes, Judge. So, on the record, I
4 think that, on behalf of plaintiff, this is the reason why
5 we have three alternates, and we have proof from the juror
6 that she cannot be here. Not only that she will not be here
7 physically on Friday, but from now until Friday, I'm worried
8 about her being here mentally with respect to the evidence,
9 the testimony, and the exhibits.

10 If she has the documents, she could get frustrated,
11 thinking about, well, now I can't go to my trip, and she
12 could take it out on the case itself. This is the reason
13 why we have three alternates. The alternates have, besides
14 one, have not expressed any other conflicts.

15 So, for that reason, Your Honor, I would request
16 Juror Number 6, if it happens, to be let go and switched out
17 with the next alternate.

18 MS. GOODE: May I be heard, Your Honor?

19 THE COURT: Of course. And please use the mic
20 because its hard to hear you.

21 MS. GOODE: Okay. Your Honor, as I indicated
22 before, this juror was fully vetted by both sides. This
23 particular juror is a registered nurse, so she knows, as far
24 as confidentiality. She made no indication that she would
25 have problems yesterday, that she wasn't following along

1 with what was going on, that she was sleeping. That she was
2 paying attention throughout the course of trial. I say we
3 wait until Wednesday, and see what happens.

4 THE COURT: Okay. Thank you. I'm going to reserve
5 decision on that until after lunch.

6 We have a second issue, which I'm going to allow
7 defense counsel to put on the record, concerning her request
8 that her co-counsel be entitled to pick up the
9 cross-examination of the plaintiff, as to issues of -- as to
10 separate issues. So I'll let her put the application on the
11 record.

12 MS. GOODE: Yes, Your Honor. As I indicated, off
13 of our discussion off the record, is that I cancelled my
14 appointment for this morning, and that I do have an
15 appointment this afternoon, and that I said that I would
16 finish liability, and ask that plaintiff allow the
17 co-defendant -- co-counsel to handle damages. It would be
18 -- there's no -- stop at liability, and then another
19 attorney would pick it up.

20 I understand the Judge said it has to be the same
21 person. That's fine. That means I will cancel the entire
22 day, and I will not receive treatment today probably, and I
23 have to have treatment every two weeks, but counsel said no.
24 That's fine. We'll take it from there.

25 THE COURT: Counsel?

1 MR. MARANDO: Judge, I am sympathetic, but I
2 represent a client. And in terms of the case, my position
3 doesn't mean anything, other than me not being sympathetic,
4 but when it comes to a witness, it's just improper to have
5 two attorneys cross-examine the same witness. It's never
6 been done like that. I cannot consent for that reason. I'm
7 by myself. I'm completely prejudiced, Judge.

8 MS. GOODE: Your Honor, may I be heard on that, as
9 far as being prejudiced?

10 THE COURT: Of course.

11 MS. GOODE: Thank you. Counsel is an able
12 attorney. It's just a different attorney crossing. It's a
13 different subject. It's not as if it's the same subject.
14 Plaintiff, himself, knows that he's going to be crossed on
15 damages. So how this that any different if I continue the
16 session? Damages is damages. It doesn't matter who's
17 asking the questions, but, counsel, I understand you have a
18 client, and I have to protect myself so, as I indicated, I
19 won't get treatment, that's fine.

20 THE COURT: Okay. I mean, the Court is very, very
21 sympathetic to counselor. I'm sorry it's worked out this
22 way. I did set down the rules from the very beginning of
23 the trial, that it would be one witness, one attorney for
24 the defense part, and that was set forth from the beginning.
25 Counsel for defendant started the cross-examination

1 yesterday, without making this request until this morning,
2 so the cross-examination has begun by her, a thorough
3 cross-examination yesterday, very effective, I thought.

4 So, at this point, you know, counsel for plaintiff
5 -- in fact, actually yesterday, I did stop before the
6 cross-examination started, and I believe it started at 4:15
7 p.m. At that time, I asked if counsel wanted to wait until
8 this morning to be in cross, and defense counsel said, no,
9 she wanted to begin cross immediately, and so it was begun
10 then.

11 And so now, in light of all the factors, I'm going
12 to have to rule against the application with request to be
13 allowed to switch counsel for cross-examination on the
14 plaintiff.

15 MS. GOODE: So noted, Your Honor.

16 THE COURT: Okay. I believe we're ready.

17 COURT OFFICER: All rise. Jury entering.

18 (Whereupon, the sworn jurors enter the courtroom
19 and take their respective seat.)

20 THE COURT: All right. Good morning. Be seated.
21 Congratulations on finding your way here today. It was a
22 little tough for me, too. It's my first time in this
23 courtroom. And like you guys finding your seats, if you
24 hear us stumbling a bit today, hopefully you have some
25 patience with us. All right. Thank you.

1 Counsel, when you're ready.

2 MS. GOODE: Yes. I ask Mr. Espacia to retake the
3 stand, please.

4 (Whereupon the witness takes the stand.)

5 COURT OFFICER: As a reminder, Mr. Espacia, you
6 were previously sworn in, so you are still currently under
7 oath.

8 THE COURT: You can be seated.

9 Counsel, when you are ready.

10 MS. GOODE: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. GOODE:

13 Q I'm just going to get a little closer, Mr. Espacia, if
14 that's okay.

15 Are you ready?

16 A Yeah.

17 THE COURT: Is your mic on, sir?

18 THE WITNESS: Yes.

19 THE COURT: Can you pull it closer. Okay, great.

20 Q Okay. So, we left off yesterday, Mr. Espacia, with you
21 in the bathroom, before you turned the water on.

22 Now, when you walked into the bathroom, the question I
23 asked, did you hear anything unusual, you said, no, correct?

24 A Yeah, before --

25 Q Before the issue with the ceiling, when you walked into

1 the bathroom, you didn't hear anything unusual?

2 A Yes.

3 Q And when you walked into the bathroom, you didn't see
4 anything unusual?

5 A I -- when, you mean?

6 Q Okay, I'll tell you. When you walked into the bathroom
7 -- now, you've told us about this leak that's been going on for
8 months, correct?

9 A Yes.

10 Q And the leak would start from the tub to the sink,
11 correct?

12 A From -- well, by the door, I had said.

13 Q You mean the bathroom door?

14 A By the bathroom door, to my left is the sink. By the
15 end of the sink, all the way to inside the tub.

16 Q Okay. So almost the length of the bathroom?

17 A Yes.

18 Q Okay. And because you had told us that it would start
19 with Juror Number 6, and end with Juror Number 5 -- remember we
20 did that measuring, when we were talking about the length?

21 A Yes.

22 Q Okay. Now, when you entered, this leak had been going
23 on, you said, for the two months before it had gotten worse,
24 correct?

25 A Yes.

1 Q Okay. When you walked into that bathroom, you didn't
2 see anything unusual, meaning you didn't see the ceiling
3 sagging, filled with water, correct?

4 A Correct.

5 Q So --

6 MS. GOODE: Do we have pictures of the inside of
7 the bathroom?

8 MR. FRANKLIN: Yes.

9 Your Honor, may I approach and set up?

10 THE COURT: Sure.

11 MR. FRANKLIN: Okay.

12 MS. GOODE: But as he' setting up, let's -- so we
13 don't waste the jury's time.

14 Q You told us, when you walked into the bathroom, the
15 sink would on the left side of the bathroom, correct?

16 A Yes.

17 Q And in front of the sink would be the bathtub?

18 A No, to the side.

19 Q Okay. So we have the sink, then we have the tub.
20 There's a little space between the tub and the sink?

21 A Yeah, little.

22 Q Okay. And then where -- the tub is rectangular, and
23 you have a front and a back?

24 A Long.

25 Q Long, right. I said rectangular. It's not square,

1 it's more like this, pointing to counsel's table.

2 The tub is more shaped like your attorney's table,
3 correct?

4 A Yes.

5 Q Okay. And when you stepped into the tub, if you're
6 looking at this table, the showerhead would be on the left-hand
7 side, correct?

8 A The showerhead?

9 Q Yes. The head of the shower.

10 A It would be on my right.

11 Q Okay. It would be on your right?

12 A Yes.

13 Q Okay. And so if you're stepping in the tub, it would
14 be on this side, by the floor, or it would be on the left side,
15 by the wall?

16 A What was that?

17 Q If we are stepping into the tub -- this is tub. I step
18 in. This is the wall.

19 There's a wall on the outside of the tub, right, next
20 to the tub there's a floor?

21 A I don't get the question.

22 Q Okay. Then let's take it back.

23 We've already established that this table is the tub,
24 correct?

25 A Yes.

1 Q Okay. Now -- and this is the sink, where I'm pointing
2 to, the podium, correct?

3 A Okay.

4 Q All right. Now, when you're looking at the tub, I'm
5 standing in front of the counsel's table, on the right-hand side
6 would be the floor outside the tub, correct?

7 A On my right side?

8 Q Yes.

9 A No, its not the floor.

10 Q What's on the right side?

11 A On the right side is the wall to the window.

12 Q The wall to the window, okay. And there's a floor,
13 right?

14 A No.

15 Q There's no floor?

16 A No.

17 Q So that's just the shower -- the showerhead?

18 A It's the showerhead, and the wall to the window.

19 Q Okay. And so then on the left side would be the floor?

20 A On the left side, yeah, is the little floor.

21 Q Okay. And when you walked in -- when you got into the
22 tub, and you were on the right side, had you turned -- and you
23 step in.

24 You step into the tub, what's the first thing you do?

25 A Bend my knee a little bit, and turn on the water.

1 Q Now, there are four knobs, right? One, two, three,
2 four?

3 A Yes.

4 Q And those knobs would be on the right side then, right,
5 if it's on the showerhead?

6 A No.

7 Q No. Where are the knobs, on the left-hand side?

8 A Left-hand side.

9 Q Okay. So the knobs on the left-hand side, and the
10 showerhead would be under the knobs, correct?

11 A No.

12 Q The shower head is not under --

13 A No.

14 Q Where is the shower head?

15 A The showerhead is to my right.

16 Q Well, the pictures that you took, do they show the
17 showerhead?

18 MR. MARANDO: Objection. He didn't take the
19 photos.

20 MS. GOODE: I'm sorry.

21 Q The pictures that were introduced --

22 THE COURT: I'm just going to rule on that.
23 Overruled.

24 MS. GOODE: I'll withdraw the question. No
25 problem.

1 Q The pictures that were shown to the jury yesterday, did
2 any of them show the showerhead?

3 A I don't remember.

4 Q All right. So you get in the tub --

5 THE COURT: Hang on one second. Let's make sure
6 the jury can actually see that.

7 MR. MARANDO: Counsel, that's not in evidence right
8 now. We shouldn't talk about that.

9 THE COURT: That's not in evidence?

10 MR. MARANDO: This is the still?

11 MR. FRANKLIN: It's a still, but it's from the
12 video.

13 MR. MARANDO: Okay.

14 THE COURT: As importantly, let's try not to make
15 it so everybody has to, like, turn backwards to see it.

16 Members of the jury, can you raise your hand if you
17 cannot see it. Okay. How about we move it backwards.
18 Everyone can see it? Okay.

19 Let the record reflect everyone can see it.

20 So, are you okay?

21 MS. GOODE: I have a picture of it. This is the
22 same picture.

23 THE COURT: And still, everyone can see it? Okay.
24 Excellent.

25 MS. GOODE: Let the record reflect I gave Mr.

1 Espacia a cover of the same picture.

2 Q Is that the same picture that you have in your hand,
3 that's on the screen, Mr. Espacia?

4 A Yes.

5 Q Okay. Now, taking a look at the video screen, Mr.
6 Espacia, you can see the four knobs; one, two, three, four?

7 A Yes.

8 Q And you see the spout? I guess that's the tub spout.

9 A Yes.

10 Q And there's a button there, too. Is that a button to
11 pull up or pull down to turn the shower on?

12 A I think so.

13 Q Okay. Now, looking at this picture, can you tell me,
14 where is the showerhead? Is it by these towels, you see,
15 hanging on the left-hand side of the picture or is it somewhere
16 else?

17 A Yeah, to my right.

18 Q When you say to your right, is it by the shower curtain
19 or is it by the towels?

20 A The towels.

21 Q Okay. So I'm looking at -- if I'm facing it, I'm
22 looking at the left-hand side, right, Mr. Espacia?

23 A Yeah.

24 Q If I'm looking at it, this would be the left side of
25 the picture?

1 A Yes.

2 Q And so you said the showerhead would be above the
3 towels, correct?

4 A Yes.

5 Q Okay. And there are four knobs, correct?

6 A Yes.

7 Q Now, when you got into the tub, did you turn on any of
8 these knobs?

9 A When I --

10 Q When you entered the tub.

11 A Yes.

12 Q Okay. What knobs did you turn on; the top, the bottom
13 or something else?

14 A The top.

15 Q Okay. And the top knob, does that turn on the bathtub
16 or does that turn on the shower?

17 A The shower.

18 Q Okay. And did you turn on the bottom knobs? Does that
19 operate the bath -- yeah -- the spigot for the bathtub or for
20 the shower?

21 A Okay. This is --

22 Q When you say this, you mean the bottom one?

23 A The bottom one should be for the bottom.

24 Q It should be for the bath?

25 A Yeah, for the bottom thing.

1 Q Okay. When you say -- I just want to make sure it's
2 clear, Mr. Espacia.

3 So when we talk about the two bottoms that's closest to
4 you, that would be to turn on the water for the bathtub?

5 A Yeah, the bath.

6 Q Okay. And the ones that are above you, that would be
7 the one to turn on the showerhead?

8 A Yes.

9 Q And so when you got into the tub, you were standing up?

10 A No. I was -- when I went inside, I had to turn it on.
11 I had to bend myself.

12 Q Okay. And when you turned it on, you told us you
13 turned on the top ones?

14 A Yes.

15 Q Okay. Now, did you turn on the bottom ones, also?

16 A No.

17 Q Okay. Just the top ones?

18 A Yes. Normally, I just do the top one.

19 Q Okay. Now, when you turned on this showerhead, were
20 you facing the knobs or were you standing to the side?

21 A Facing the knobs.

22 Q Okay. And when I say facing, taking a look, you would
23 have been standing this way, facing the knobs?

24 A Yes.

25 MS. GOODE: Let the record reflect that the witness

1 said that he would have been facing this way, standing in
2 front of the knobs.

3 Q All right. And did you bend down a little bit or could
4 you just stand up?

5 A No, I bend down a little bit.

6 Q Okay. Now, as you're bending down, what happened, at
7 that point?

8 A I just, tut-tut-tut-tut-tut-boom.

9 Q Okay. And when you heard that boom-boom-boom-boom,
10 were you standing up, at that point, or were you still bending?

11 A When I heard the noise, I was -- I was -- hold my
12 position. No, I think I was still a little bent.

13 Q Still a little bent?

14 A Yeah, because I heard tut-tut-tut-tut-tut.

15 Q Okay. And then from the moment you heard that
16 tut-tut-tut-tut, did something happen?

17 A Everything hit me. Something hit me.

18 Q Okay. So immediately after you heard the noise, then
19 something hit you?

20 A Yeah, that's what I -- I feel that tut-tut-tut-tut. I
21 heard the noise, and then something boom.

22 Q Okay. And when that happened, you were facing the
23 wall, correct?

24 A Yes.

25 Q Okay. Now, what -- your body, at that point, something

1 made contact with your body?

2 A Yes.

3 Q What part of your body did this make contact with
4 first? Was it your head, your neck, your shoulders or something
5 else?

6 A I think it was the whole body. It's, like, boom.

7 Q So we're like this, we're turning on, you hear the
8 noise, and I'm facing the wall, and something hit you.

9 What does your body do, at that point?

10 A What do you mean, what my body do?

11 Q Okay. Did you fall down immediately? You said you
12 fell down. Did your body turn around? Did you fall out the
13 tub? What happened?

14 A I fall inside the tub, like, my body fall down and
15 twist.

16 Q Okay. And now, you see yourself in this position,
17 right? Your back -- this the sink, where we see all the rocks,
18 right?

19 A Uh-huh.

20 Q That's the sink?

21 A Yes.

22 MS. GOODE: Let the record reflect, when I said the
23 rocks, that would be behind the plaintiff.

24 Q And then the plaintiff is in front, correct? This is
25 the sink with the rocks on it, correct?

1 A Yes.

2 Q And that's behind you, correct?

3 A Yes.

4 Q And you're sitting in the tub, correct?

5 A Yeah. That's what way I -- yeah.

6 THE COURT: I'm sorry, sir. I could not hear that
7 response.

8 THE WITNESS: I said yes.

9 THE COURT: All right. Pull the mic closer,
10 please. You hear how loud my voice is? If you speak into
11 it, that's how we should hear you.

12 Go ahead.

13 A I said yes.

14 Q Okay. And, Mr. Espacia, when you're sitting, is this
15 the position you landed in once you said you heard the noise?

16 A No.

17 Q Okay. How did you land?

18 A I land, like, I twist myself, like, down. I was down
19 in the tub.

20 Q All right. When you said you land, you're facing the
21 wall. Do you fall back? You're leaning.

22 Did you lean to the right or the left?

23 A I think more to my left.

24 Q Okay. And then when you -- at some point, you ended up
25 in the tub, correct?

1 A Yes.

2 Q Now, when you ended up in the tub, where was your body?
3 Was it in this position or something else?

4 A It was something else.

5 Q What was that something else?

6 A Like, in the side. Like I said, it was like this
7 position.

8 Q And when you're on the side -- when you're on your
9 side, where is your head? Is your head still facing the wall or
10 is your head facing something else?

11 A Still facing the wall.

12 Q Okay. So you're facing the wall, you turned on the
13 knob, and where is the rest of your body? Is the rest of your
14 body still facing the wall or is the rest of your body in
15 another position?

16 A In the tub.

17 THE COURT: I'm sorry?

18 THE WITNESS: I said inside the tub.

19 Q I know it's inside the tub. That, I got, but what I
20 want to know is, you're inside the tub. You said this, what we
21 see now, wasn't the position of your body right after the
22 incident, so your head is still facing the wall.

23 Where does the rest of your body go? Does it go down?
24 Do you go on your knees? Where does the rest of your body go?

25 A Inside the tub.

1 Q Okay, inside the tub. All right.

2 Now, you're inside the tub. Is your body still facing
3 the wall as you go inside the tub?

4 A When they hit me? When I fell in?

5 Q Yes.

6 A I could say, yeah.

7 Q Okay. And so when you fall inside the tub, do you fall
8 on your knees? Do you fall on your thighs? Do you fall on your
9 buttocks, meaning your bottom?

10 A I fell completely.

11 Q Okay. So you fell completely, and you're facing the
12 wall still?

13 A Yeah.

14 Q Okay. But you didn't fall out the tub?

15 A Excuse me?

16 Q I said, you said you're facing the wall. You fell, and
17 your head is still facing, your body is still facing, you say
18 you fall down.

19 Now, do your legs come under you as you fall down or do
20 your legs come back? How is that you fall?

21 A I told you, like, I heard the thing, and most of the
22 thing was in the, like, facing to the thing to my left side.

23 Q Okay. Now, how did you get into the position we see
24 here?

25 A Try myself to do --

1 THE COURT: I'm sorry, sir. I can't hear what
2 you're saying.

3 How did you end up in the position there?

4 THE WITNESS: I tried to pushing myself, like,
5 moving around.

6 Q Okay. So, right after the incident, you weren't in
7 this position, and you were able to move yourself so that your
8 head is behind the -- we have the sink, we have your head, and
9 we have your feet in front of you, correct?

10 A Yes.

11 Q Okay. Now, the water, was the water that came from the
12 shower, was it that color, meaning the dark water that we see?

13 A No.

14 Q Okay. Did that happen over time? When the water came
15 out, did it come out clear or did it come out brown?

16 MR. MARANDO: Which water are we talking about?

17 MS. GOODE: We're talking about the water in the
18 tub. That's the only water we see.

19 MR. MARANDO: The water coming down --

20 THE COURT: I'm sorry. Counsel, do you have an
21 objection?

22 MR. MARANDO: Yes, just to the form.

23 THE COURT: Just to form. I'm going to overrule.
24 Go ahead.

25 Q Now, you told us -- let's step it back a bit. You said

1 where the towel is is where the shower is, and you said that you
2 started to turn on the shower.

3 And my question is, did the water come out the shower?

4 A Yes.

5 Q Okay. And as the water came out the shower, was it
6 dark brown, like the water that you're sitting in?

7 A No.

8 Q Okay. And when you turned on the shower, was there
9 water coming out the tub -- the spigot of the tub?

10 A I don't remember that.

11 Q Okay. So the water came out of the shower. It was
12 clear.

13 But you would agree, this water is dark and brown,
14 correct?

15 A Yes, that's what I see.

16 Q And you didn't turn off -- you did not turn off the
17 showerhead as you're sitting in that tub, right?

18 A No.

19 Q Okay. And you can see these three towels, correct?
20 Are they wash cloths?

21 A Yeah.

22 Q Okay. And theres a shower brush or a scrubber thing
23 for your back or something?

24 A Yes.

25 Q And do they appear to be dry?

1 A But that's not mine.

2 Q That's not the question. The question was, do they
3 appear to be dry; yes or no?

4 A I don't know.

5 Q You don't know. Do the walls -- let's look at the
6 picture. You've got one in your hand.

7 Do the walls appear to be dry? And that's where the
8 spigots are.

9 A To me, they're wet.

10 Q Now, let's look at -- you see the particles? Is that
11 your left shoulder or right shoulder?

12 A That's my right shoulder.

13 Q And those particles, do they appear to be dry or wet?

14 A Between.

15 Q And your hair -- you see your hair? You have the
16 shower cap on.

17 Do you see any water hanging off the shower cap? It
18 looks dry, right?

19 A It's still wet.

20 Q And on your hair, your hair looks dry, right? It's not
21 -- it's a little fuzzy, sticking up.

22 If it were wet, it would be kind of slicked back,
23 right?

24 A It is wet. That's my wet hair.

25 Q Okay. And let's look at the rocks behind you.

1 Those are dry, correct?

2 A Yeah.

3 Q Okay. Now, when we heard that loud boom, was the
4 bathroom door open or closed?

5 A Probably closed.

6 Q Okay. Now, where is your son's bedroom, in
7 relationship to the large bathroom?

8 A Like, you come out from the -- from that door --

9 Q When you say that door, you mean the bathroom door?

10 A When you come out from the bathroom door, to -- if you
11 come out of the bathroom door, to my right, right away, right
12 there. So it's no, like -- it's maybe, like, three inches or
13 something, and the next door is there.

14 Q It's his bedroom?

15 A Yeah.

16 Q Okay. And where is his bedroom in comparison to the
17 small bathroom? Because I know you said we have the large
18 bathroom, and right next to it is the small bathroom. So where
19 is the son -- where the son sleeps?

20 By the way, does he sleep in a bedroom, the living
21 room, or somewhere else?

22 A He sleeps in with me in my bedroom.

23 Q Okay. He sleeps with you in your bedroom. Okay.

24 And where is that bedroom, in relationship to the small
25 room -- the small bathroom?

1 A To the small bathroom, he's just sleeping next to that
2 small bathroom, like, its an a wall there. Yeah.

3 Q Okay. And that sound you told us about, it was loud,
4 right?

5 A Yeah.

6 Q Boom, hard, right?

7 A Yes.

8 Q And the ceiling, when it landed, can you tell me the
9 force? Was it a heavy force? Was it a light force? Was it a
10 medium force?

11 A It was heavy force.

12 Q Heavy force. And you could hear it, right?

13 A Like, what do you mean I could hear?

14 Q I mean, when the ceiling fell, you described it as a
15 boom and then a plop, right?

16 A I heard that, boom, hit me. No, like -- the noise, I
17 heard it before. When I say boom, it hit me, and knock me down.

18 Q Okay. So, at the time, you were 5'11?

19 A Well, that's what everybody tole me.

20 Q Okay. 5'11, approximately, 200 pounds?

21 A 5'11, 200 pounds, yeah.

22 Q Okay. Now, the ceiling that fell, pointing to the top
23 of the courtroom, did it come from the distance from the top of
24 the courtroom to hit you or is it lower?

25 A Lower.

1 Q Is it -- the beam that's over you, was it this height
2 or lower?

3 A I would say lower.

4 Q Okay. Let's look at this screen. At the top of the
5 screen, there's a camera.

6 Would it be the height of the camera, to the bottom, to
7 you? Would that be the height?

8 A No, bigger.

9 Q Bigger. All right. So when you say bigger, five feet,
10 six feet? I have my arm up, would it be above my arm?

11 A I say it's, like, the ceiling should be, like, from me
12 -- let me see. I would say -- well, I don't want to -- I would
13 say, like -- how I would say that? Well, I would say, like,
14 from me standing up, it should be, like, probably a foot.

15 Q A foot?

16 A Yeah.

17 Q Okay. So you're stand 5'11, and so if it's a foot,
18 that would be 6 feet, right?

19 A Something like that.

20 Q So the ceiling traveled six feet, hit you, and then hit
21 the tub and everything else?

22 A Yeah, I guess so.

23 Q Okay. And at the time that this happened, were your
24 eyes open?

25 A That's --

1 Q Yes or no, were your eyes open when the ceiling came
2 down? Were your eyes open?

3 A When the ceiling came down, like I said, it knocked me
4 down.

5 Q I didn't ask you about knock you down. My question is,
6 when the ceiling fell, were your eyes open; yes or no?

7 A When I realized I --

8 Q That's not the question. When you had just turned the
9 knob on, did you turn the knob on with your eyes closed?

10 A No.

11 Q Okay. And then, obviously, you turn the knob on, and
12 the ceiling goes down, correct?

13 A Yes.

14 Q And your eyes are open at that point, correct?

15 A Yeah.

16 Q Okay. And you told us where your son's bedroom was,
17 and there's -- we saw a picture. There's a shower rod, right?

18 When the ceiling came down, it didn't knock the shower
19 rod down, correct?

20 A I don't recall that.

21 Q So, you told us yesterday or before, that your son came
22 with the camera, right, after the ceiling fell?

23 A I didn't say my son came with the camera. I called my
24 son. I called my son. I called my son, and he come, and I say
25 call 911, I'm hurt.

1 Q Well, turning to Page 391 from yesterday's testimony.

2 "QUESTION: Okay. And in that moment, what
3 happened next?"

4 He withdrew that question.

5 "QUESTION: Why don't you share with us what
6 happened next after that?"

7 "ANSWER: After that, I called my son. When I went
8 down, I called my son, and I said, come home. And when my
9 son come up, I tell him that I call 911, I'm hurt."

10 Do you remember testifying to that yesterday?

11 A No.

12 MS. GOODE: Okay. Counsel, would you stip that
13 this is the official transcript?

14 MR. MARANDO: Judge, I mean, is there a question to
15 me or --

16 MS. GOODE: Yes, counsel. Will counsel stip --

17 THE COURT: I'm sorry. What's the question,
18 counselor?

19 MS. GOODE: The question, Your Honor -- I'm reading
20 yesterday's transcript, and plaintiff just said, no, he
21 didn't say that, and I asked counselor to stip that that's
22 an official transcript that was recorded yesterday.

23 THE COURT: A transcript of yesterday?

24 MS. GOODE: Yes, yesterday's testimony.

25 THE COURT: Oh, okay. I'm sorry.

1 Sir, so do you have an objection to that?

2 Is it from the reporter?

3 MS. GOODE: Yes.

4 THE COURT: Any objection?

5 MR. MARANDO: I haven't seen it, Judge, but the
6 question is for the plaintiff, not for --

7 THE COURT: Can you just lay a foundation for it.

8 MS. GOODE: Sure.

9 THE COURT: Go ahead. So the reporter recorded it
10 yesterday, and --

11 MS. GOOD: Yes. The reporter recorded it
12 yesterday. It was reported, on March 2nd, 2026, in the
13 courtroom of 408. It was during the questioning by Mr.
14 Marando. He asked his client the following question, I just
15 read.

16 THE COURT: And page and line, please.

17 MS. GOODE: Yes. It's page 391, Your Honor, and I
18 started with line 15, and I stopped at line 20.

19 THE COURT: Okay. So I'm going to take judicial
20 notice that that is a transcript of yesterday's hearing.

21 Go ahead, counselor.

22 MS. GOODE: Thank you.

23 Q So, in any event --

24 MR. MARANDO: Judge, I would object, to the extent
25 that as long as we lay a foundation on the specific time of

1 each still, because -- so when I redirect, that I can go
2 accordingly, because the record, right now, hasn't reflected
3 any seconds, so when I go back and redirect, I won't know
4 which part of the video.

5 THE COURT: Okay. Please identify which picture
6 you're using for the record.

7 MS. GOODE: Yes, the first picture, Your Honor.

8 THE COURT: Right. I'm sorry. I just lost track
9 of it. Okay.

10 MS. GOODE: Can you just put that up again, so we
11 can see the showerhead.

12 MR. FRANKLIN: Let me find which one. So this is
13 from the video --

14 THE COURT: Hang on. If you are not -- only one
15 person on the record.

16 MS. GOODE: So it's from the video. It's from the
17 video, Plaintiff's 1. It's the beginning, so that would be
18 the first pause, I guess.

19 MR. MARANDO: Okay.

20 THE COURT: Okay. So Plaintiff's Exhibit 1, first
21 five seconds. Go ahead. I'm just making note of it.

22 Q Mr. Espacia, can you see this?

23 A It's blurry.

24 THE COURT: You have to speak into the mic, sir.

25 THE WITNESS: It's blurry.

1 Q But, certainly, you recognize this spigot, correct,
2 this showerhead?

3 A Yes.

4 Q Okay. That's from your bathroom, right?

5 A Yes.

6 Q And underneath that, there is, I guess, conditioner,
7 hair stuff, a basket, correct?

8 A Yes.

9 Q And then there are more stuff that people always have
10 in their bathrooms, conditioner, hair shampoo, right?

11 A Yes.

12 Q And below that, we see the towels. There's a blue
13 towel, a gray towel, and looks like a beige towel.

14 Those are the towels we saw in the picture that you
15 have in your hand now, right?

16 A Yeah, it looks like it.

17 Q Okay. Well, let's take a look and make sure we're not
18 -- okay.

19 Now, counsel is holding the photograph, and there's a
20 blue towel on the left-hand side, correct?

21 A Yes.

22 Q And there's a blue towel in this picture, correct?

23 A Yes.

24 Q And then there's sort of a grayish towel in the middle,
25 and there's a grayish towel here, correct?

1 A Yeah.

2 Q And then there's a beige towel here, correct? And
3 there's a beige towel in the --

4 A You could say that.

5 Q Thank you. And now, taking a look, again, this
6 curtain, meaning the shower curtain, its a dry, correct? It's
7 dry?

8 A That's not the shower. That's the outside one. That's
9 not the inside one.

10 Q Well, is this inside one --

11 A No, it's --

12 Q Excuse me, sir. This inside one, is it touching your
13 shoulder?

14 A Looks like, but it's a plastic one.

15 Q That was not the question. The question is --

16 THE COURT: Hang on, counsel. I'm sorry. We're
17 having trouble -- you should publish, to the jury, what
18 you're asking about, as well.

19 Q So, looking at this picture --

20 MR. FRANKLIN: That's from Plaintiff's Video 3,
21 Plaintiff's 3, just for the record.

22 MR. MARANDO: Just for the record, so when I go
23 back.

24 THE COURT: So it's Plaintiff's Exhibit 3.

25 MR. MARANDO: Just the seconds, Your Honor?

1 MR. FRANKLIN: I don't know what seconds are. We
2 can put Plaintiff's 3 up on the screen, if you'd like.

3 MR. MARANDO: That would be great.

4 THE COURT: Yeah, let's do that.

5 MS. GOODE: And may I still question --

6 THE COURT: Let's give him a second. I want to
7 keep the record clear.

8 MS. GOODE: I understand, Your Honor.

9 MR. MARANDO: Judge, may we approach?

10 THE COURT: Sure.

11 (Whereupon, at this time, a discussion was held at
12 sidebar.)

13 THE COURT: We're going to give counsel a moment to
14 set up the media, and make sure we're getting the right
15 exhibit numbers, so give him a second, everyone, please.

16 (Whereupon, the item referred to is marked
17 Defendant's Exhibit J for Identification.)

18 THE COURT: I'm marking Defendant's Exhibit J for
19 ID, and can you just give a brief description of it.

20 MS. GOODE: Certainly, Your Honor. It's a
21 photograph of plaintiff sitting in the tub, and there is a
22 sink behind him, with looks like debris, rocks.

23 THE COURT: And the source?

24 MS. GOODE: I'm going to ask the plaintiff now, to
25 make sure.

1 Q Mr. Espacia, do you recognize this picture?

2 A Yes.

3 Q And was this one of pictures your son took on the day
4 of the incident?

5 A I think so.

6 Q And is that you sitting in the tub?

7 A Yes.

8 Q And this is how you -- this is how you sat in the tub
9 after the incident? After the incident, were you sitting in the
10 tub like this?

11 A When I sitting, when I try myself, yes.

12 Q Okay. And you have a shower cap hanging off the side
13 of your head, blue with white stars?

14 A Yes.

15 MS. GOODE: Your Honor, I'd ask, at this time, that
16 this be marked as Defendant's J.

17 THE COURT: Any objection?

18 MR. MARANDO: No, Your Honor.

19 THE COURT: Okay. That's admitted into evidence.
20 Please have the court reporter mark it.

21 (Whereupon, the item referred to previously,
22 Defendant's Exhibit J, was received in evidence.)

23 MS. GOODE: Handing the plaintiff, Mr. Espacia,
24 Defendant's J, that's just been put into evidence.

25 Q Now, Mr. Espacia, you're looking at the picture. We

1 were asking about the curtain. I don't care if it's plastic. I
2 don't care the material.

3 All I'm asking is that on the right-hand side, from
4 where I'm standing, there's a curtain, correct? Yes or no?

5 A Its a curtain. I see it, yes.

6 Q Yes, okay. And part of the curtain is on your
7 shoulder, correct, on your right shoulder?

8 A (Speaking Spanish language.)

9 Q You have to speak -- I understood what you said, but
10 maybe not everyone else.

11 A That's why -- I'm sorry. I'm sorry.

12 Q It's okay.

13 A That's why I'm speaking Spanish because I feel maybe
14 even when you ask me the question later on my thing, I said to
15 call my kid come home.

16 Q That wasn't the question. That wasn't the question.

17 A Okay, okay. I'm sorry. Sorry. My English is not very
18 well. I'm trying to do the best I can.

19 Q Mr. Espacia, you don't get to do that. Mr. Espacia --

20 MR. MARANDO: Judge.

21 THE COURT: Just ask him a question, please,
22 counselor.

23 MR. MARANDO: Judge.

24 MS. GOODE: Okay.

25 Q Mr. Espacia, you had an interpreter, correct, at the

1 time of the deposition?

2 A Yes.

3 Q Okay. And you could have had an interpreter at the
4 trial, correct?

5 A Yes.

6 Q And you chose not to have one, correct?

7 A Yes.

8 Q Okay. Now, let's move on.

9 When we look at this curtain, it's dry, correct, Mr.
10 Espacia?

11 A Yes.

12 Q Okay. Thank you.

13 A That day I was --

14 Q Mr. Espacia, there's no question. Yes or no, remember?
15 Yes or no.

16 A Yes.

17 Q Thanks. Now, how long did it take for EMS to arrive in
18 your apartment?

19 A I don't know.

20 Q More than ten minutes or less than ten minutes?

21 A I don't know. I couldn't tell you that.

22 Q Was it less than five minutes or --

23 A I don't have time with me. I don't know.

24 Q Okay. But the entire time before EMS arrived, you sat
25 in this water, correct?

1 A Yes.

2 MS. GOODE: And I'd ask that we mark this for K,
3 for identification, Your Honor.

4 THE COURT: Okay. Can you give me a description of
5 it.

6 MS. GOODE: Sure. It's the second picture of Mr.
7 Espacia in the bathtub.

8 THE COURT: Okay. Is that admitted into evidence?

9 MR. MARANDO: No objection.

10 THE COURT: Thank you. Okay.

11 (Whereupon, the item referred to previously,
12 Defendant's Exhibit K, was received in evidence.)

13 Q Mr. Espacia, this is you still sitting in the tub?

14 A Yes, that's me.

15 Q Yes. And, as we look, we have a full view of the sink,
16 correct, meaning here, behind you?

17 A That's not full, but yeah.

18 Q I said fuller, not the entire sink. But you have a
19 better view of part of the sink, correct?

20 A Yes.

21 Q And the rocks or debris, it's dry, yes?

22 No, no. Here.

23 A Yes.

24 Q Okay. And your son took this picture, correct?

25 A Yes.

1 Q Okay. And now, if we look to where the knobs are --
2 you see where the knobs are? You see where there's a soap dish,
3 right under the knobs, where you put soap?

4 A Yes.

5 Q Okay. That's dry, too, correct? It's not -- it's dry?

6 A Look like dry.

7 Q Okay. And then a little debris upon where you're
8 resting, you're leaning on one side by the wall where the knobs
9 are, there's debris starting from the beginning, from the front
10 of the picture, all the way to the end, and that's dry also,
11 correct?

12 A Debris by the tub --

13 MS. GOODE: Okay. I should -- let the record
14 reflect that I'm pointing to the left-hand side, and that's
15 the back of the bathtub.

16 Q Because your feet are facing, hitting the end of the
17 bathtub, right?

18 A Yes.

19 Q Okay. And so if we start -- see where the curtain is
20 on the right-hand side?

21 A Right-hand, yeah.

22 Q Yeah. And you see that corner, if we trace that whole
23 corner, and come right up to where you're leaning, that area is
24 dry; isn't it?

25 A Well, it's not --

1 Q The question is, yes or no, is it dry?

2 A It look to me between -- between dry.

3 Q Okay. But there's -- now, you're a workman, right? I
4 mean, you worked with your hands for a living, right?

5 A Yes.

6 Q And you've worked with wet stuff before?

7 MR. MARANDO: Objection to form.

8 THE COURT: Overruled.

9 A What you mean?

10 Q For example, did you ever have to mix anything that was
11 wet? Did you ever have to fix something?

12 A Yes.

13 Q Okay. And when water gets on dirt, dirt will clog up
14 and it will drip down, correct?

15 A Depends on what kind of water you use.

16 Q Okay. But regular water -- regular water, it will drip
17 down?

18 A It depend. If it's cold, it's wet more time. If it's
19 hot, it dry right away.

20 Q Okay. Well, this happened right after the incident,
21 correct? Either your son came from somewhere else or you called
22 him or whatever.

23 He took these pictures right away, right? Yes or no,
24 did he take the pictures right away?

25 A No because I don't think so. He had the phone right

1 there. I don't know. I don't know if he did it right away, but
2 when I call him, I call him, and then he went, and I say, call
3 911. I don't know if he had, at that moment, had the phone or
4 if he went to get it.

5 Q But it didn't take a long time, right? And the water
6 was still running, wasn't it, because you said you never cut the
7 water off, correct?

8 A My son --

9 Q No. The question --

10 A Excuse me. When my son come over me, and close it.

11 Q Oh, really?

12 A Yes.

13 Q You didn't say that before; did you?

14 A I didn't say that before, but my son --

15 Q Okay.

16 A I was --

17 Q Let's take a step back a little bit.

18 THE COURT: Again, one at a time, please.

19 MS. GOODE: I'm sorry.

20 THE COURT: And also, counsel, I'm not sure if the
21 jurors can see everything you're doing.

22 MS. GOODE: I'm sorry, because I'm standing in
23 front of it. I'm sorry.

24 Q Now, Mr. Espacia --

25 A Yes.

1 Q As I said, your son either came from somewhere else or
2 he left his bedroom -- by the way, if he was in his bedroom, he
3 didn't hear the noise, right? You had to call him?

4 A He was sleeping.

5 Q Uh-uh.

6 MR. MARANDO: Objection, Judge.

7 THE COURT: Overruled.

8 Q That wasn't the question. You said it was boom. It
9 was loud. And your son's bedroom was right there, but he didn't
10 hear it, you had to call him?

11 A I had to call him.

12 Q Yes or no? Oh, okay. You had to call him. All right.

13 And your son comes in, he sees you, you say call 911.

14 Is that what you're saying?

15 A Yes.

16 Q And he calls 911 immediately?

17 A I think so.

18 Q And then he takes a camera from his phone --

19 A Uh-huh.

20 Q -- he takes the camera from his phone, he videos, and
21 he takes pictures, right?

22 A Yeah, I tell him to took a picture.

23 Q Right. And he takes those pictures, and then after
24 that, he cuts the water off?

25 A I don't know what order it was. I know he came over to

1 me, and closed the -- he was touching those -- the knob.

2 Q Okay. Now, if your son came in less than -- you would
3 say it was less -- after the incident, it was less than ten
4 minutes, right?

5 A After the incident?

6 Q Right. Less than ten minutes?

7 A I don't know.

8 Q Two minutes?

9 A I don't know.

10 Q One minute?

11 A I don't know.

12 Q It wasn't an hour, right?

13 A I don't know.

14 Q Wasn't an hour; was it?

15 A I don't know if --

16 Q So this water just accumulated in a minute, two
17 minutes, three minutes?

18 A I don't know the time.

19 Q How did all this water get there?

20 A I don't know.

21 Q And you sat there the entire time, correct? Were you
22 wearing any boxer shorts or anything as you sat in that water?

23 A No.

24 Q And you waited, and you waited until your son took the
25 pictures, right? And you sat in that water, correct? Yes or

1 no, you sat in that water?

2 A I was in the water.

3 Q Yes, you sat in that water, correct?

4 A Yes.

5 Q And then you didn't leave that water until EMS arrived,
6 correct?

7 A Yes.

8 Q And then EMS arrives, and then -- your son was 12?

9 A Yes.

10 Q Okay. And then you're able to -- your 12 year old son
11 is able to get you out of the tub?

12 A No, my son and the EMS. If I recall, the ambulance
13 people help me, too, because my son tried to do that, and we
14 both tried to take me out with the --

15 Q Nothing more. This is not --

16 MS. GOODE: Your Honor, may I have a moment just
17 to --

18 THE COURT: Yes.

19 MS. GOODE: Thank you. Page 55, everyone.

20 THE COURT: Of?

21 MS. GOODE: Page 55 of the original transcript.

22 THE COURT: I'm sorry. The EBT transcript or --

23 MS. GOODE: Yes, the EBT transcript.

24 Q Now, Mr. Espacia --

25 MR. MARANDO: Judge, can we approach, actually, for

1 two seconds?

2 THE COURT: Sure.

3 (Whereupon, at this time, a discussion was held at
4 sidebar.)

5 Q Mr. Espacia, on March 27th, 2023, you were asked a
6 series of questions, correct?

7 A Yes.

8 Q It was video. There was a video?

9 A Yes.

10 Q And you had an attorney with you?

11 A Yes.

12 Q And you swore to tell the truth?

13 A Yes.

14 Q And do you remember being asked this question and
15 giving this answer? Starting from page 55, line 1.

16 "QUESTION: And who responded?

17 "ANSWER: The ambulance came first, and then the
18 fire department.

19 "QUESTION: And how long did it take for them to
20 arrive?

21 "ANSWER: We're back to the same thing. I don't
22 measure the time. I don't know.

23 "QUESTION: When the ambulance personnel arrived,
24 where were you?

25 "ANSWER: I was still in the bathtub.

1 "QUESTION: So did they help you out of the tub?

2 "ANSWER: No.

3 "QUESTION: How did you get out of the bathtub?

4 "ANSWER: When the ambulance arrived, they were
5 asking me questions. That is when my son helped me to get
6 out of the bathtub."

7 Do you remember being asked those questions, and
8 giving those answers?

9 A I remember, yeah. All --

10 Q Yes or no?

11 A Yes.

12 Q Okay. So it was your 12 year old son that was able to
13 get you out of the bathtub, correct?

14 A Like I say --

15 Q Question, it was your 12 year old son that was able to
16 get you out of the bathtub, correct?

17 MR. MARANDO: Objection, Judge.

18 THE COURT: Overruled. It's a yes-or-no question,
19 sir.

20 THE WITNESS: Yes. He was helping me out with
21 them.

22 Q Now, when the EMS arrived, you hadn't lost
23 consciousness, meaning that you were awake when the EMS arrived?

24 A Well, like I said --

25 Q Yes or no, were you awake?

1 A Yes. Yes.

2 Q Thank you. And when the EMS arrived, you weren't
3 bleeding from any parts of your body, correct?

4 A I don't recall that.

5 Q Well, let's look at your shoulders. Any blood on your
6 shoulders, looking at this still?

7 A No.

8 Q Okay. Any blood on your head? Can you see?

9 A No.

10 Q Any blood coming out of your ears?

11 A No.

12 Q See any bruising, like black and blue, on your
13 shoulder?

14 A I see a red --

15 Q No, black and blue. Listen to the question.

16 A Black and blue?

17 Q No. Then you get into the ambulance, and you go to the
18 hospital, correct?

19 A You mean after they take me out of my apartment?

20 Q Yes, you go to the hospital. Right.

21 First, you put clothes on before you go?

22 A Yes. My son -- I remember my son say, he's naked, let
23 me help to put on clothes on him.

24 Q So now, you're dressed. They put you in a stretcher.
25 They take you to New York Presbyterian Hospital, correct?

1 A Yes.

2 Q And while you're in the ambulance, you're not bleeding
3 from your nose, you're not bleeding from your mouth, you're not
4 bleedings from your ears, correct?

5 A Yeah, I wasn't bleeding.

6 Q Okay. And then you get to the hospital, correct?

7 A Yes.

8 Q Okay. When you get to the hospital, they examine you,
9 correct?

10 A Yes.

11 Q Now, this ceiling that fell, nothing got in your eyes,
12 right? No dust, no debris, nothing, correct?

13 A I don't know.

14 Q Well, they didn't flush your eyes out. Your eyes were
15 fine. You could see, correct?

16 A Well, I could --

17 Q Yes or no?

18 A I could see.

19 Q Yes, okay. And this heavy ceiling that landed hard on
20 your body, they took x-rays, right?

21 A Yes.

22 Q Okay. There wasn't a broken --

23 A X-ray?

24 Q You know, x-rays --

25 A They did tests on me, but --

1 Q Okay.

2 A -- I don't know what kind of tests they did.

3 Q X-rays. They did x-rays. But there were no fractures,
4 correct? No broken bones? Your neck wasn't fractured, your
5 shoulder wasn't fractured, your nose wasn't fractured.

6 You didn't have a fracture on your head, right? No
7 fractures, meaning broken bones?

8 A I don't know. I don't know.

9 Q Did you leave the hospital with a cast on?

10 A No.

11 Q Okay. And they didn't just take one x-ray --

12 MR. MARANDO: Judge, can we approach?

13 THE COURT: Sure.

14 (Whereupon, at this time, a discussion was held at
15 sidebar.)

16 THE COURT: Okay.

17 Q And you didn't have a cast on your arm, you didn't have
18 a cast on your legs, you didn't have a cast on your ankles;
19 isn't that correct?

20 A Correct.

21 Q Okay. And you didn't have anything on your nose. Your
22 nose wasn't broken, correct?

23 A Correct.

24 Q And, in fact, when you did go to the hospital, you
25 brought a picture to show them what your son had just taken of

1 the bathroom?

2 A I don't remember that.

3 Q Okay. And now, you were treated that day, the day of
4 the incident, and then you were sent home?

5 A Yes.

6 Q And they told you to follow up, right?

7 A Yes.

8 Q Okay.

9 MS. GOODE: Can we have the other blow up.

10 MR. MARANDO: Which exhibit, so I know?

11 MS. GOODE: I'll show you.

12 MR. MARANDO: Judge, can we approach, please.

13 THE COURT: Yes.

14 (Whereupon, at this time, a discussion was held at
15 sidebar.)

16 THE COURT: I'm going to sustain that in a limited
17 way. Go ahead, counselor.

18 MS. GOODE: Should I have it marked for ID, Your
19 Honor, or no?

20 THE COURT: Let's see what he testifies first.

21 MR. MARANDO: If he reads English, as well,
22 foundation.

23 Q Mr. Espacia, do you recognize the handwriting?

24 A Yes, that's my handwriting.

25 Q And do you recognize this signature?

1 A Yes.

2 Q That's your signature?

3 A Uh-huh.

4 Q And before you signed this document, did you read it?

5 A No.

6 Q You didn't read it, you just signed it?

7 A Just signed it.

8 Q And when you signed this document, were you in a
9 lawyer's office?

10 A I don't remember.

11 Q When you signed this document, was it the next day
12 after the incident?

13 A I don't remember either. I don't know who I signed
14 that document, so.

15 Q Did you go to the attorneys at Harmon & Linder the next
16 day after the incident?

17 A I went -- the first thing I went, I went to -- after
18 that, when they told me follow up, get out, from my house, I
19 went the next day to physical therapy in the Palmer Avenue. I
20 went to physical therapy there, to check my body, because there
21 was a lot of pain all the time. I went there, and from there,
22 they -- I made contact with a lawyer.

23 Q Who told you to go to physical therapy?

24 A I just went to see because it was pain.

25 Q Do you remember being asked this question and giving

1 this answer? The EBT transcript, page 74, line 4.

2 MR. MARANDO: Hold on. Let me just catch up.

3 MS. GOODE: Sure.

4 MR. MARANDO: Okay.

5 Q "QUESTION: And where did you go at that time?

6 "ANSWER: To a therapeutic clinic.

7 "QUESTION: And who referred you to the clinic?

8 "ANSWER: A friend."

9 Who was that friend?

10 A We say friend, in Spanish, people. It's any people who
11 told you, oh, go to this, go to that. It was a guy I spoke
12 with, a guy in the hospital.

13 Q Oh. A guy in the hospital approached you and told you
14 to go?

15 MR. MARANDO: Objection. It's to form.

16 THE COURT: Overruled.

17 Q A guy in the hospital -- while you're in the hospital,
18 a guy approaches you?

19 A Yes, I was talking to --

20 Q Yes, okay. And while you're in the hospital, a guy
21 approaches you, and he tells you to go to a particular clinic?

22 A No.

23 Q Yes or no?

24 A No.

25 Q Does he tell you to go to a particular law firm?

1 A No.

2 Q And how do you end up going to -- you do go to a law
3 firm, though, correct?

4 A Yes.

5 Q And right -- shortly after the incident, correct?

6 A No. I told you, I went, that guy told me go. He told
7 me go and check yourself, like, go to a rehab, and so I went to
8 rehab.

9 Q Now, I'd like to refresh your memory. Mr. Espacia,
10 were you in -- you recognize your signature, correct?

11 A Yes.

12 Q Okay. And your signature was signed on the 22nd of
13 April, correct?

14 MR. MARANDO: Judge, reading what's not in
15 evidence.

16 MS. GOODE: I'm refreshing his memory.

17 Q Do you remember signing this document --

18 THE COURT: Overruled. Go ahead.

19 Q -- on the 22nd of April?

20 A I don't remember the date, but I remember that I
21 signed, but that's my signature. That's my signature.

22 Q Thank you. Thank you. And that would have been the
23 day after the incident, correct?

24 A If it's --

25 Q Yes or no, the 22nd would have been the day after the

1 incident?

2 A Like I said to you --

3 Q That's not the question.

4 A I don't remember the document.

5 Q I'm not asking about the document. You said that's
6 your signature, correct?

7 A I don't know.

8 Q That was your signature, correct?

9 A Yes.

10 Q Okay. And that signature, it indicated on the 22nd of
11 April, correct? You said, yes, correct?

12 A No, no, no, no. I didn't say, yes. You told me --

13 MS. GOODE: Can you read it back, please. Can you
14 read the question and answer back for me, Madam Reporter.

15 (Whereupon, the requested testimony was read back
16 by the Court Reporter.)

17 MS. GOODE: Thank you.

18 THE COURT: Counselor, are you moving to have that
19 admitted into evidence?

20 MS. GOODE: Yes, Judge, if I may.

21 THE COURT: You can move -- you know, let's take a
22 five minute break.

23 COURT OFFICER: All rise. Jury exiting.

24 (Whereupon, the sworn jurors exit the courtroom.)

25 THE COURT: So, counselor, let's get that marked

1 for identification.

2 MS. GOODE: Yes, Your Honor. And it's a two-page
3 document for identification, Your Honor.

4 (Whereupon, the item referred to is marked
5 Defendant's Exhibit L for Identification.)

6 THE COURT: I'll hear counsel on it.

7 Make note. I initially denied it, saying that she
8 can use it to refresh his recollection, but the client seems
9 to be denying the date on the document.

10 MS. GOODE: And that would be --

11 THE COURT: I want it on the record, please.

12 MS. GOODE: Certainly, Your Honor.

13 THE COURT: As I stated initially, I was allowing
14 it to refresh the recollection, but now, he seems to be
15 denying that that is the day he signed it, and I want to
16 hear counsel on it.

17 MS. GOODE: So I should be able to impeach him on
18 that issue, Your Honor, and he did indicate that the
19 printing on the front page was his, and the signature on the
20 back was his. He's now saying he didn't sign or he doesn't
21 remember the date, and so he didn't sign it on that
22 particular date.

23 THE COURT: And, counsel for plaintiff?

24 MS. GOODE: And we saw -- just a minute, Your
25 Honor.

1 THE COURT: I'm sorry.

2 MS. GOODE: That's okay, Judge. It's also a legal
3 document. The plaintiff also -- I'll ask him. He also
4 initialled it.

5 THE COURT: Counsel for plaintiff?

6 MR. MARANDO: I think, Judge, two points. One is
7 the proper foundation was not laid, with respect to, you
8 know, establishing the exact date in which this was signed
9 yet, although it may. But more importantly, the same way
10 that I can't bring up a document when it comes to the
11 insurance company hiring the -- working with the defendant's
12 case on that timeline, it's prejudicial. It focuses on
13 something that's not part of the case, that should be at the
14 fore-center of the case. It should be the negligence or, if
15 any, that occurred here.

16 That's the question. Not the timeline. Everyone
17 knows he has an attorney. What more do they need in terms
18 of timeline? And he said, I'm not sure, but it was
19 thereafter, at some point. They know he has counsel. Just
20 to have this in evidence is -- they know he has counsel
21 already, at some point, and he already testified to that
22 effect. He does not recall the date, so admitting this is
23 just extremely prejudicial, and -- to the jury. They
24 already know he has counsel. We do not need this in
25 evidence.

1 MS. GOODE: May I be heard, Your Honor?

2 THE COURT: Yes.

3 MS. GOODE: It goes, also, as far as Mr Espacia's
4 credibility, indicating that -- we know that part of the
5 defense is that this event didn't happen, and that it was
6 staged. We have, here, that the next day, there was an
7 attorney, signed documents giving him the right to do what
8 they wanted. I certainly can -- and the plaintiff, also, I
9 can impeach him on the date. He's saying he doesn't
10 remember the date or he didn't sign it. I certainly can
11 introduce --

12 THE COURT: I'm going to have to agree. Initially,
13 I wasn't going to allow it in, but he's denied a lot of the
14 information in the document, so I'm going to admit for
15 impeachment purposes.

16 Note your objection.

17 MR. MARANDO: Yes, Judge. Note my exception.

18 THE COURT: Okay. Let's mark Defendant's Exhibit
19 L. Counsel for defense, do you want to get this marked?

20 MS. GOODE: Yes, thank you.

21 (Whereupon, the item referred to previously,
22 Defendant's Exhibit L, was received in evidence.)

23 THE COURT: Let's come back at 11:30.

24 MS. GOODE: Thank you, Judge.

25 (Whereupon, a recess was taken.)

1 COURT OFFICER: All rise. Jury entering.

2 (Whereupon, the sworn jurors enter the courtroom
3 and take their respective seat.)

4 THE COURT: Be seated.

5 MS. GOODE: Your Honor, may I approach the witness?

6 THE COURT: Yes. And, again, I just remind you to
7 make sure that the jury can see the exhibit while you're
8 pointing to something, if you would.

9 MS. GOODE: Sure.

10 Q Mr. Espacia, I want you to take a look at what's been
11 marked into evidence as Defendant's L, the document we were
12 looking at before we broke for a break.

13 Now, this is the first page of the document, and on
14 that document, you said that's your handwriting, Henry Espacia,
15 right?

16 A Yes.

17 Q And you were living at 2727 University Avenue,
18 Apartment 4F, Bronx, New York, 10468?

19 A Yes.

20 Q Okay. Now, at the bottom of it, there are initials.
21 Are those your initials?

22 A Yes.

23 Q Okay. Now, reading into the top portion, it says,
24 Durable General Power of Attorney, New York Statutory Short
25 Form, the powers you grant below continue to be effective should

1 you become disabled or incompetent. Then we will see Mr.
2 Espacia's -- let the record reflect -- but that the attorney is,
3 turn the front page, and has walked over to the jury, and it's
4 Defendant's L, and it has Mr. Espacia's name, address, and then
5 the initials. Now, at the bottom portion, I'm going read,
6 paragraph, where Mr. Espacia's first initial, it says, all
7 manner and aspects of claims and litigation, including
8 settlement, execution of non-HIPAA authorizations, execution of
9 HIPAA medical records, authorizations, forms, pursuant to
10 New York Public Health Law Section 18(1)(g), as amended
11 10/26/04.

12 Now, the second page is up on the screen. You may see
13 that, Mr. Espacia.

14 And, again, Mr. Espacia, that is your signature,
15 correct?

16 A Yes.

17 Q Because you signed here, signature.

18 And the date of the document is the 22nd of April,
19 2021, which would have been the day after the incident. It
20 indicates that Mark Linder, esquire, attorney, identified herein
21 as the agent for the principal named herein.

22 So this is his agent, the next day, the attorney. And
23 that's your signature, correct, Mr. Espacia?

24 A That's my signature.

25 Q Thank you. Now, Mr. Espacia, you told us that there

1 were problems with the apartment before, correct?

2 A That what?

3 Q The apartment. You had problems -- there was a problem
4 with the kitchen, and there was a problem with the small
5 bathroom?

6 A Yes.

7 Q And the apartment -- the problem with the kitchen, you
8 signed a work order, correct?

9 A Yes.

10 Q Okay. And taking a look at Defendant's C-2 that's in
11 evidence, do you recognize this signature, Mr. Espacia?

12 A Yes.

13 Q Is that the same signature you see, here, on the
14 document that's still up on the board, Henry Espacia?

15 A Yeah, that's my signature.

16 Q Okay. And this was signed November 12th, 2020,
17 correct? It says November 12th, 2020?

18 A That's the date it says there.

19 Q And on that day, they repaired it, they had you look at
20 the repairs, correct, and make sure that you agreed that
21 everything had been fixed, correct? Yes or no? I'll break it
22 up.

23 The super went in and fixed the sink in the kitchen,
24 correct?

25 A Yes.

1 Q And then after he fixed the sink in the kitchen, you
2 took a look to make sure that everything was okay?

3 A No.

4 Q Okay. But you signed this document anyway?

5 A Yes.

6 Q And you said, that I agree that the above work was
7 completed to my satisfaction, correct?

8 A Well, if that's what it says there.

9 Q And that's your signature?

10 A Yes, that's my signature.

11 Q Okay. Now, as far as the small bathroom, you made
12 complaints, and that was repaired, correct?

13 A Yeah, it was repaired. Yeah.

14 Q Right. So, both times, the kitchen and the bathroom,
15 they were repaired?

16 A Yes.

17 Q Okay. And you said when you would see the super, he
18 would be downstairs, sweeping, working, correct?

19 A Yes. That's the way you see there.

20 Q Yes. Now, before this incident -- wait. Let's go
21 back. Let's take a look -- and while he's doing that, Mr.
22 Espacia, the picture of you sitting in the water, was the drain
23 broken? Is that why the water is so --

24 THE COURT: Counsel, can I ask you to publish to
25 the jury first.

1 MS. GOODE: Oh, sure. Let the record reflect that
2 the attorney is showing Defendant's J.

3 Q Now, you're sitting in water, correct?

4 A Yes.

5 Q And the water is high enough that only your toes are
6 sticking out, correct?

7 A Looks like.

8 Q Just your toes. So where did this water come from?
9 Did it come from the ceiling or did it come from the shower?
10 Where did all this water come from?

11 A I think both.

12 THE COURT: I'm sorry. What was the answer?

13 THE WITNESS: I think both.

14 THE COURT: I think both. Is that your answer?

15 THE WITNESS: Yes.

16 THE COURT: Okay.

17 Q And, again, looking at Defendant's K -- I'm sorry.
18 I'll show you first. Showing Mr. Espacia Defendant's K.

19 Again, you're sitting in brown water, correct?

20 A Yes.

21 Q And, again, only your toes are being shown, right? The
22 water covers --

23 A Okay.

24 Q And, again, when you were sitting in this tub, the
25 water was still on, correct? Is that what you claim?

1 A I don't recall if it -- when my son did that, it was
2 already on or off.

3 Q Okay. So, how long did it take your son -- when your
4 son arrived, was the water in this condition or was it just
5 below your ankles or something?

6 A I can't tell you that.

7 THE COURT: I cannot tell you that? Okay.

8 Q So, when your son arrived, you don't know where the
9 water was, at that point.

10 Was it covering your knees, at that point?

11 MR. MARANDO: Judge, can we see the photograph?

12 Because it's being referenced as an exhibit --

13 THE COURT: Okay. So sustained. Counsel, please
14 show him the photo.

15 MS. GOODE: Sure. Let the record reflect that
16 counselor is showing Defendant's J and Defendant's K.

17 Q Correct, Mr. Espacia? Say yes or no.

18 A Yes.

19 Q And in these two photographs, you're sitting in the
20 bathtub, correct?

21 A Yes.

22 Q And in these two photographs, you're surrounded by
23 brown water, correct?

24 A Yes.

25 Q And in these two photographs, the water goes over your

1 legs, correct?

2 A Over my leg, yeah.

3 Q And in both of these photographs, where your feet are
4 at the end the tub, you only see the top of your toes, correct?

5 A Yes.

6 Q You don't see your full feet?

7 A No.

8 Q Okay. And in this photograph, you can't see any other
9 parts of your body, right? Just your shoulders, that are back
10 against the tub, correct?

11 A Yes.

12 Q Okay. My question to you, when your son arrived in the
13 bathroom, was this what the condition was?

14 A It should be.

15 Q Okay. So, the water -- your son came in within, what,
16 an hour? How long did it take your son to come?

17 A Like I said to you, I don't know.

18 Q Okay. But it wasn't an hour; was it?

19 A I don't know.

20 Q Was it ten minutes?

21 A I don't know.

22 Q And you look at this, you see the water, but there's
23 nothing on the side, right? No water on the towels, no water on
24 the curtain, no water on your head, no water on your shoulders?

25 A I see water.

1 MS. GOODE: May I pass it down to the jury, so they
2 can get a better look?

3 THE COURT: Any objection?

4 MR. MARANDO: No, Judge.

5 MS. GOODE: Let the record reflect that the
6 defendant has given the jurors Defendant's J and K.

7 THE COURT: Counsel, can I take a moment to ask the
8 two of you to approach.

9 (Whereupon, at this time, a discussion was held at
10 sidebar.)

11 (Whereupon, the item referred to is marked
12 Defendant's Exhibit M for Identification.)

13 MS. GOODE: Let the record reflect that the
14 defendant has also put up Defendant's C-2 on the easel,
15 which is the blow up of the work order that was signed by
16 Mr. Espacia on November 12th, 2020.

17 Q Mr. Espacia, I'd ask you to take a look at what's been
18 marked as Defendant's M, as in Mary, for identification.

19 MS. GOODE: 2.93 seconds.

20 MR. MARANDO: Thank you.

21 Q Mr. Espacia, I ask you to take a look at what's been
22 marked as Defendant's M for identification.

23 Do you recognize this?

24 A That's my sink.

25 Q That's your sink, correct? You've got to say yes.

1 A Yes.

2 MR. MARANDO: Judge, I mean, come on. Objection.

3 THE COURT: Just for the court reporter, sir, just
4 say yes or no. It just makes the record clear.

5 MR. MARANDO: It could have been a no.

6 THE COURT: Okay. Ask the question again.

7 MS. GOODE: Sure.

8 Q Mr. Espacia, remember, you can't go uh-huh, you can't
9 shake your head because this nice lady over here has to take
10 everything down, okay? Makes sense?

11 A Okay.

12 Q All right. So I had you take a look at Defendant's M
13 for identification. I asked you, do you recognize it?

14 A Yes.

15 Q And what did you recognize it to be?

16 A The sink in my bathroom.

17 Q Okay. In the main bathroom. You mean the large
18 bathroom?

19 THE COURT: I'm sorry, sir. Can I ask you to speak
20 into the mic because I can't even hear you sitting here.
21 You can pull the mic closer. Try it out. Say your name,
22 please.

23 THE WITNESS: Henry Espacia.

24 THE COURT: Yes, that's much better. Then the jury
25 can hear what you want to say.

1 THE WITNESS: Yes.

2 Q Okay. And the picture that I have in my hand,
3 Defendant's M, is it the same picture that's on the big blow up
4 on the screen?

5 A Looks the same.

6 Q So, after the incident, Mr. Espacia, all these pieces
7 -- looking at the screen.

8 All these pieces, they're dry, correct?

9 A Looks like.

10 Q Okay. And the -- inside the sink, that's dry, also,
11 correct? There's debris inside the sink, and it's dry, correct?

12 A Let me see.

13 Q Sure.

14 A To me, it look wet.

15 MS. GOODE: Your Honor, I'd like to put this in, as
16 Defendant's M, into evidence.

17 MR. MARANDO: No objection, Judge.

18 (Whereupon, the item referred to previously,
19 Defendant's Exhibit M, was received in evidence.)

20 THE COURT: Okay. Can you just give me a title for
21 it.

22 MS. GOODE: It is bathroom -- the large bathroom,
23 with debris surrounding the right-hand side of the sink.

24 THE COURT: I just remind you to publish it to the
25 jury.

1 MS. GOODE: I'm going to now, once it's marked.
2 Your Honor, may I hand it to them now?

3 THE COURT: Yes. Hang on one second, Counselor.
4 All right. Go ahead, Counselor.

5 MS. GOODE: Thank you.

6 Q Mr. Espacia, I ask you to take a look at what's been
7 marked as N as in Nancy for identification, do you recognize it?

8 A Yes.

9 Q And what do you recognize it to be, sir?

10 A That's the door of the bathroom.

11 Q Okay.

12 A There's part of the sink. Here start at the top.

13 MS. GOODE: Let the record reflect that the witness
14 was pointing to the left side of the picture when he
15 indicated the door and he's pointing to the right side when
16 he's talking to where the tub starts.

17 MR. MARANDO: Judge, I would like to approach when
18 that happens when we're marking something for the record. I
19 wasn't in view of the photograph. I can't comment on the
20 accuracy of it.

21 MS. GOODE: I understand but I don't want the
22 record just say here and here and the jury doesn't
23 understand it.

24 THE COURT: I don't know what you guys are talking
25 about. Are you objecting to the admission?

1 MR. MARANDO: Just to her characterization without
2 me having a chance to see where his hands were so just to
3 strike that portion, Your Honor.

4 THE COURT: Okay. It's admitted into evidence.
5 Please mark it as Defendant's Exhibit N.

6 MR. MARANDO: Your Honor, if I could request to
7 strike the portion where I couldn't have access to her
8 characterization of, okay, your hand is here.

9 THE COURT: I'm going to strike that portion but
10 I'm going to find that the foundation was laid for
11 admission.

12 MS. GOODE: I'll do it over so we're all on the
13 same page.

14 (Whereupon, the item referred to, previously
15 Defendant's Exhibit N was received in evidence.)

16 Q Can you see it or is it better if you look at the
17 picture or can you see it on the screen?

18 THE COURT: I'm going to interrupt for a second.
19 Just a side issue, it feels a little warm in here for me so
20 I asked the court officer to open the window there. If any
21 of you are cold, raise your hand and we'll talk about it.
22 Apparently, the thermostats do not work. Is that enough or
23 should be try another window.

24 THE JURORS: We're fine.

25 THE COURT: Okay. Continue.

1 MS. GOODE: Thank you, Your Honor. Your Honor I'll
2 just hand it to the jury so they can follow along. That was
3 Defendant's N.

4 Q Now, Mr. Espacia, we're looking at the same thing on
5 the screen, a blow-up, correct, as the picture?

6 A Yeah.

7 Q Now, looking at what's on the screen, what is this area
8 here on the right-hand side?

9 A The door.

10 Q Okay. Indicating it's a white door?

11 A Off-white.

12 Q Okay. Off-white. Below the door, what is that?

13 A Behind?

14 Q No, below.

15 A That's the floor.

16 Q And on the floor, there's debris, correct?

17 A What is debris?

18 Q Pieces of whatever from the ceiling.

19 A Yes.

20 Q And it's dry, correct? The floor isn't wet and the
21 debris isn't wet, correct?

22 A Yes.

23 Q Okay. Now, is that a bathmat that's right under the
24 curtain, which is on the right-hand side of this depiction?

25 A No.

1 Q What is that?

2 A That's like a piece of thing, like a piece of wood

3 or --

4 Q And it's not wet, is it?

5 A No.

6 Q Okay. And the curtain is partially over it, correct,
7 the shower curtain?

8 A Can I explain something because you telling me the
9 curtain but it's two curtains. There's one plastic inside and
10 the one outside so I don't know.

11 Q Mr. Espacia, we only see one curtain in this picture,
12 correct?

13 A Yes.

14 Q So, when I ask you about the curtain, I'm only talking
15 about the curtain that we can see.

16 A Okay.

17 Q Makes sense?

18 A Now I understand. Before you telling me curtain.

19 Q You understand. That's enough, Mr. Espacia. You
20 understand. We're good.

21 A I'm sorry.

22 Q That's okay. Just be clear that the curtain that's
23 over this dry debris is not wet, correct?

24 A Correct.

25 Q And this debris, it starts at the door and then it goes

1 all the way back to the corner under the sink, correct?

2 A It's --

3 Q It starts at the door at the entrance of the bathroom?

4 MS. GOODE: Let the record reflect the lawyer is
5 pointing from the entrance on the right-hand side of this
6 blow-up.

7 Q Then it continues straight, then makes a turn left, and
8 then there is debris where you said is part of the dry ceiling,
9 and the curtain, and that whole area is dry, correct?

10 A Look like. Yes.

11 Q Okay. Thank you. Thank you. Now, you told us,
12 Mr. Espacia, that you worked as a beer distributor or something
13 prior to the incident, correct?

14 A Prior mean before or?

15 Q Yeah. When COVID ended, you were working, correct -- I
16 mean, when COVID -- let me back up.

17 When COVID started in 2020, you were working, correct?

18 A Yes.

19 Q What were you working as?

20 A Draft system, beer repair.

21 Q Okay. Beer repair. Did you have kegs of beer, you
22 know, those big metal things?

23 A No.

24 Q When you did those repairs, how did you repair them?

25 A It depends what is the problem.

1 Q You mean something with the spigot, something with
2 the -- is there like a tube or something?

3 A It's tube in there. Let me explain the way it work.
4 The system is coming from here. Depend where's the barrel are
5 so it could be -- the barrel could be behind that wall, behind
6 that wall, it could be in the basement, it could be in the
7 second floor. Depend.

8 Q Okay. And once you got to that barrel, did you have to
9 mover the barrel, did you have to -- what did you have to do?

10 A When I go to the barrel, I take the top off it --
11 depend what I'm going to do. The job depend what you have to
12 repair or what you have to clean so if the barrel is in the
13 middle, you moving it around. If it's not in the middle, you
14 could do the job. Depend what kind -- what you're going to
15 repair.

16 Q What the work is?

17 A Yes.

18 Q When you say you move it around, if it's not where it's
19 supposed to be, would you have to move it from one place to the
20 other place?

21 A Not really.

22 Q You just shove it?

23 A Shove it or you just making a path to go through.

24 Q So that you can move?

25 A Yeah.

1 Q Now, the barrels, did they have beer in them or were
2 they empty at the time?

3 A Sometimes. It depend how they sell it. Sometimes it's
4 empty, sometimes a quarter, sometimes it's full. Depending when
5 they put it in.

6 Q You would have to adjust this barrel depending how you
7 were going do repair it?

8 A I don't repair the barrel.

9 Q You repair the spigot?

10 A The cistern. The cistern is a tower at the top with a
11 lot of tube and they go into the barrel. The barrel is like if
12 you had a cistern with five line, it should be five barrel. If
13 you have a cistern with three, you would have three. If you had
14 a cistern, ten, it's ten. So when you go inside the fridge, it
15 depend how many line they have or how many barrel they using.

16 Q You say you go inside the fridge, is that where you do
17 the repairs, inside the fridge or somewhere else?

18 A When I do maintenance, I go inside the fridge. When I
19 do repair, I have to see where is the repair. It could be any
20 part so all depending.

21 Q Depending on where it is?

22 A Yeah. Because it's like -- like I say, it's a lot of
23 tube. I don't know -- whatever who told the thing it could be a
24 different way in different direction.

25 Q It could be upstairs, downstairs?

1 A Yeah, it could be any direction.

2 Q And when you did this work, you said it was on the top
3 because the cistern, you explained it as, would you have to
4 adjust the barrel in any way just so that you can maintain it or
5 repair it properly?

6 A Not really. You have to -- it's like, how you say
7 that, it's a like a click --

8 Q And you do it all the time?

9 A Yeah. You open it and if I connect -- if I'm going to
10 clean, I connect my cleaning stuff.

11 Q When you clean, you use your right arm or your left arm
12 or both?

13 A I could use both.

14 Q When you clean, do you have to go down and clean?

15 A No.

16 Q You stand up and clean?

17 A I just -- no, that's not the way it work.

18 Q Okay. Well, I don't do this stuff.

19 A Okay. Like I said to you, it's -- let's say I'm going
20 to clean, put it this way, I have -- right here is the tower.
21 Let's say it's behind the wall, I go behind the wall. It's
22 supposed to coming from somewhere and it's supposed to be coming
23 the five line, one, two three, five lines. So what I do is I
24 have connection, I take it out each barrel, the top of each
25 barrel, and I connect all of it together like a loop, then go

1 upstairs through the tower, pull my machine through.

2 Q And how do you pull your machine through?

3 A Through the tower.

4 Q I know, but do you physically pull it through?

5 A I just take one of the knobs. So, through there I send
6 the chemical or water, whatever, and then I open the other
7 faucet. Any time I'm going to clean one, I open it. When I
8 finish clean this one, I close it, open the other one.

9 Q Open and close. You just push open a lever?

10 A Open and close.

11 Q Nothing else, just open and close, open and close?

12 A Yeah.

13 Q And you drive there?

14 A Yes.

15 Q And when you're -- you just walk upstairs or you go
16 downstairs and you do what you have to do?

17 A Yes.

18 Q And you don't have to bend or anything like that?

19 A Depend. Like I said, depends what you're going to
20 repair or clean. It depends on the job.

21 Q And this job, how long did you do it? How many years?

22 A Ten.

23 Q Ten years. So for ten years, you had to do some
24 bending? Depending on what you were doing?

25 A Like I say, it depends on the job. Depends what you

1 supposed to do.

2 Q And in those ten years, how many days a week did you
3 work? Monday through Friday?

4 A I could say five, six days.

5 Q Was it 9:00 to 5:00 or something?

6 A No. It depend on the customer and depend on how they
7 open. So normally to do whatever who open first for lunch or
8 whatever, you do that first. Some business is open for dinner,
9 that you do it in the afternoon.

10 Q Whatever the restaurant or bar you go --

11 A Whatever the owner because sometimes the owner, even
12 what I say, sometimes the owner no want to see you. They just
13 want you do the job --

14 Q They just want the job done?

15 A Do the job and do the business.

16 Q Did you work overtime?

17 A It's no overtime.

18 Q You just go, the owner calls you, you report?

19 A Not the owner.

20 Q The company?

21 A The company -- no. Myself, I was like doing more
22 cleaning than anything and they give me, like, at least all the
23 business they had, like, could be, like, 40, 50 whatever. They
24 give a list of what they have the whole month.

25 Q And that business stopped once COVID started, right?

1 A Yes.

2 Q Because the bars were closed?

3 A Yes.

4 Q And the restaurants were closed?

5 A Yes.

6 Q And so at that point, you weren't working and, in fact,
7 on the day of the incident, you weren't working, yes or no?

8 A Yes, I wasn't working.

9 Q Okay. And this work that you would do, you would do
10 the same thing every day, Monday through Friday or whatever day
11 it was, the repetitiveness if you had to bend, that was what you
12 did for ten years?

13 A Yes.

14 Q Okay. Now, did you ever live at 569 West 182nd Street,
15 Apartment 4?

16 A 182nd? Yes. That was my -- yeah, me and my wife lived
17 when we get married.

18 Q Did you have any kids at that time?

19 A In that time, yes.

20 Q Your daughters, your two daughters and your son or just
21 your two daughters?

22 A The three of them.

23 THE COURT: I'm sorry, how many children at the
24 time, sir?

25 THE WITNESS: Three.

1 THE COURT: So, you had all three?

2 THE WITNESS: Yes.

3 Q But they were younger?

4 A Yeah, my daughter was like 12. Well, they only one
5 year apart so my daughter was like two, the one over here in
6 front was maybe one and the other one just born. That's why our
7 apartment was a little small. That's why I moved out.

8 Q And you moved to 2727 University Avenue because it had
9 more room?

10 A Yes.

11 Q It had a large bathroom and then it had a small
12 bathroom?

13 A It had two rooms and was bigger.

14 Q Did you have built-in bookcases in your apartment 2727
15 University Avenue? You know, bookcases and all that built in?

16 A What you mean bookcases?

17 Q Cutouts. Do you have high ceilings?

18 A My height?

19 Q No. Does your apartment have high ceilings at
20 University Avenue?

21 A I say regular ceiling.

22 Q Okay. Now, where you were when you were at -- July
23 22nd, 2010, were you still living at 569 West 1812 Street,
24 Apartment 4?

25 A My son born in -- no, I was already in 2727 University

1 Avenue.

2 Q And was -- on West 182 Street, is that near the Henry
3 Hudson Parkway?

4 A Hudson Parkway?

5 Q Henry Hudson.

6 A Well, if you put that would be like -- well, it's in
7 Manhattan. Yeah, I could say it's like maybe ten, fifteen
8 minutes.

9 Q Okay. And in 2010 and 2021 you were driving, correct?

10 A I've been driving before that.

11 Q Okay. No, I'm getting a time?

12 A Okay.

13 Q No trick question. Just asking.

14 MR. MARANDO: Judge, can we approach?

15 THE COURT: Yes.

16 (Whereupon, at this time, a discussion was held at
17 sidebar.)

18 THE COURT: I'm just going to say we reach a
19 consent about that one. Counselor, continue.

20 MS. GOODE: Thank you, Your Honor.

21 Q And do you recall what kind of car you were driving in
22 2010?

23 A No.

24 Q Now, in 2010, you were in a car accident?

25 A I think it's before that. Like between -- well, my son

1 born in 2008. I could say 2008.

2 THE COURT: I didn't hear what you said.

3 THE WITNESS: I could say like around 2009.

4 Q Okay. And at that time, you did go to the doctor,
5 correct?

6 A The day of the accident?

7 Q I'm not saying the day of the accident. I'm saying
8 after the motor vehicle accident. I'm saying you did seek
9 medical help after the incident in 2010?

10 A 2010. But the accident was in 2010?

11 Q 2009. Did you seek medical after the incident?

12 A I went to like a place like -- how you say that?
13 Therapy.

14 Q You went to physical therapy?

15 A Yes.

16 Q And you went for your neck and your back?

17 A Yeah. It was more like stretch.

18 Q And you went to -- did you go to H2O Physical Therapy?

19 A I don't remember the name. It was a long time ago.

20 Q And did you have any X-rays or MRIs?

21 A No. No.

22 Q Or that you don't remember or did you?

23 A No, I don't think so had.

24 Q And did you go for any psychological treatment?

25 A No, I don't think so.

1 MR. MARANDO: Judge, can we approach?

2 THE COURT: Overruled.

3 Q And you treated for a while, correct?

4 A No.

5 Q You treated for a few months?

6 A No, I don't think so.

7 Q You don't think so?

8 A No.

9 Q And the job that you were doing before, did you ever
10 have to squat?

11 A Before that?

12 Q No, the job that we were talking about, did you ever
13 have to squat?

14 A What you mean by squat?

15 Q Oh, squat like -- all right, you guys, just squat. Did
16 you have to squat like that?

17 MR. MARANDO: Bend down.

18 THE COURT: Let the record reflect you have to bend
19 knees. Did you have to bend your knees?

20 THE WITNESS: Yeah. It depends on the job. Depend
21 what you you're going to do on the job.

22 Q And you had to do that approximately for ten years, not
23 every day but you did the squat?

24 A Like I said, depend on the job, depend what I have to
25 do.

1 Q Right. And after your incident, the 2009, did you go
2 to Big Apple Chiropractic? Did you get your back adjusted?

3 A Can you repeat the question?

4 THE COURT: Okay.

5 Q Sure. We're talking about 2009 to 2010. Did you,
6 after that incident, because that was a car accident, correct?

7 A Yeah, but it wasn't like --

8 Q That was the question. It was a car accident, correct?

9 A Yes.

10 Q And you collided -- not you. There was a collision
11 between two cars, your car and another car, correct?

12 A Yes.

13 Q After that, my question is you went to Big Apple
14 Chiropractic for treatment to your back?

15 MR. MARANDO: Objection, Judge. Judge, can we
16 approach?

17 THE COURT: Approach.

18 (Whereupon, at this time, a discussion was held at
19 sidebar.)

20 THE COURT: Overruled.

21 MS. GOODE: Can you just read back my last question
22 and answer.

23 (Whereupon, the requested testimony was read back
24 by the Court Reporter.)

25 Q Did you go to a chiropractor?

1 THE COURT: It's a yes or no question or I don't
2 know.

3 A I don't remember the place.

4 Q But you did go?

5 A Like I said before --

6 Q Question: Yes or no, did you go?

7 A Yes, I went.

8 Q Okay. Thank you.

9 MS. GOODE: Your Honor, may we approach?

10 THE COURT: Okay.

11 (Whereupon, at this time, a discussion was held at
12 sidebar.)

13 THE COURT: First, we're going to take a five
14 minute break. Thank you.

15 COURT OFFICER: All rise. Jury exiting.

16 (Whereupon, the sworn jurors exit the courtroom.)

17 THE COURT: So on the record. I'm sorry, can you
18 give your name for the record.

19 JUROR NO. 6: Athena White, A-T H-E-N-A, W-H-I-T E.

20 THE COURT: So, I understand you have some sort of
21 conflict?

22 JUROR NO. 6: Yes, I do. Unfortunately, I did have
23 a preplanned PTO vacation time for March 6th to March 11th.
24 When we were going over this before, like, jury selection, I
25 believe one of the attorneys did say that this would go up

1 to Wednesday of this week so that's why my hand didn't raise
2 when there was a question about if this would create a
3 conflict. I didn't really know.

4 The first day when you did mention that this trial
5 could go up to two weeks, that's when, like, red flags
6 started going off in my head so I did mention it to the
7 officer yesterday. I understand I'm already sworn in so if
8 this is very crucial --

9 THE COURT: I understand the snowstorm has caused
10 problems for all of us. Do counsels have any questions?

11 MR. MARANDO: I have no questions, Judge. We did
12 mention those dates, that is accurate, and as Your Honor
13 mentioned, the snowstorm put us all in handcuffs with a
14 certain schedule and we don't want to burden anyone with --
15 there was a question we asked and based on that question, we
16 did let jurors go during jury selection so we would defer to
17 Your Honor and we're okay with anything.

18 MS. GOODE: Your Honor. I'm not going to interrupt
19 someone's vacation.

20 THE COURT: My suggestion counsel is we would have
21 Nick tell the others to go to lunch and I can have this
22 juror collect her things and I would give them the discharge
23 juror after they come back.

24 MS. GOODE: That's fine, Your Honor.

25 THE COURT: I know you're working on two things at

1 once. Can you let the jurors know they can leave and come
2 back and 2:00 and we will have this juror collect her
3 things.

4 JUROR NO. 6: I do apologize.

5 THE COURT: Usually I give a harder time, to be
6 frank, but the snowstorm wrecked everyone's schedule but I
7 appreciate you were committed.

8 JUROR. NO. 6: I did come on Tuesday thinking we
9 were going to --

10 MR. MARANDO: Thank you. Have a safe trip.

11 JUROR NO. 6: Thank you.

12 THE COURT: Sir, you can step down.

13 (Whereupon, the witness stepped down.)

14 THE COURT: When they're gone, this juror can
15 collect her things and when they come back I'll explain the
16 juror switched out. Thank you. Just sit over there.

17 (Whereupon, a lunch recess was taken.)

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

19 COURT OFFICER: All rise. Jury entering.

20 (Whereupon, the sworn jurors enter the courtroom
21 and take their respective seat.)

22 THE COURT: Okay. Be seated. Welcome back.

23 All right. So, let me start with, Jury Number 6
24 has been discharged due to a personal circumstance that made
25 it impossible for her to continue with her jury service. We

1 will move forward by replacing Juror Number 6 with Alternate
2 Juror Number 1, so the court officer will now tell Alternate
3 Juror Number 1 where to sit.

4 I'm sorry about the temperature. The thermostats
5 don't work. We'll continue to work on it. We're doing what
6 we can.

7 Okay. So, Counselor?

8 MS. GOODE: Your Honor, I'd ask that Plaintiff's
9 Video 24 be replayed for the jury.

10 MR. MARANDO: Judge, Plaintiff's Exhibit, but it's
11 defendant's video.

12 MS. GOODE: Right. It's my video, but it's
13 Plaintiff's 24.

14 THE COURT: We can Plaintiff's 24, yes.

15 (Whereupon, Plaintiff's Exhibit 24 was played.)

16 Q Is that you, Mr. Espacia?

17 A Yes, that's me.

18 MS. GOODE: And that's August 30th, 2025.

19 Q And is that you also walking up the stairs?

20 A Yes.

21 Q Okay. Can we just take that step by step.

22 Now, let's stop right there. That's -- who is behind
23 you, do you know?

24 A That's one of my friends.

25 Q Oh, that's your friend. All right. So you were

1 talking to your friend maybe, and then you turned away?

2 A I don't recall. I was talking with him. Yeah,
3 probably, I was talking with him.

4 Q Okay. And then you turn, and you turn, and then you're
5 walking, correct?

6 A Yes.

7 Q Okay. Walking, walking, 12:38, 37, and then you walk
8 up the stairs, correct?

9 A Yes.

10 MS. GOODE: How many -- can we just see -- see
11 where it started, and where he stopped, as far as walking.
12 So, let the reflect it's August 30th, 2025, the time is
13 12:37.23 p.m., so that would be the afternoon. Okay. It's
14 12:37.25, 26, 28, 38 and then the stairs. Stop right there.

15 Q Are there two stairs or one stairs leading into your
16 building, Mr. Espacia?

17 A Yes.

18 Q Is it two or one?

19 A No, it's one in front. Then -- right there, it's only
20 one.

21 Q Okay. And then there's a courtyard?

22 A It's, like, a little courtyard.

23 Q Not big?

24 A Not big, yes.

25 Q And then there's stairs to get there?

1 A Another stair.

2 Q How many?

3 A One.

4 Q Okay. And then once you get inside, is there an
5 elevator?

6 A Past the door, yeah.

7 Q And you take the elevator up to the fourth floor?

8 A Yes.

9 Q Okay. All right. Thank you. Now, at the time of the
10 incident, on April 21st, 2021, you told us that the ceiling made
11 contact with your head, your shoulder, correct?

12 A Yeah, and the back.

13 Q All right. But not your legs; yes or no?

14 A Well, it hit the whole body, so I don't know. What I
15 said in the moment, I feel pain in the body.

16 Q It was a yes or no, Mr. Espacia. When you -- you said
17 you were bending, you were turning the knobs, made contact with
18 your head, your shoulders, and neck, correct?

19 A Correct.

20 Q Now, after the incident, you went to New York
21 Presbyterian Hospital, correct?

22 A Correct.

23 Q That's the one uptown, correct?

24 A Yes.

25 Q Okay. But Plaintiff's 12, New York Presbyterian

1 Hospital --

2 MS. GOODE: In evidence, Your Honor.

3 Q -- on the 4th of April, two weeks before you went to
4 the hospital, correct?

5 MR. MARANDO: Judge.

6 A I don't remember.

7 Q You went for dizziness?

8 MR. MARANDO: Counsel, hold on.

9 THE COURT: Hold on. Objection. Step up.

10 (Whereupon, at this time, a discussion was held at
11 sidebar.)

12 THE COURT: Objection is overruled, but Counsel's
13 objection is noted.

14 MS. GOODE: Thank you, Your Honor.

15 Q You went in because you said you were feeling dizzy,
16 correct, Mr. Espacia?

17 A I don't recall that.

18 Q Okay. And you also went in because you said that you
19 were feeling dizzy, and you had problems, as far as breathing
20 and your heart?

21 A I remember one time. I don't know if that's day, but
22 yeah, I went to emergency because I feel like I'm going to get
23 sick, and that's why I went to.

24 Q And, now, you were suffering from dizziness for about a
25 year; isn't that correct, Mr. Espacia?

1 A No.

2 MS. GOODE: Okay. Your Honor, I'd like to read
3 into the record. It's certified from New York Presbyterian.

4 MR. MARANDO: It is in evidence, Counsel?

5 MS. GOODE: Yes. It's page, Your Honor, 370.

6 THE COURT: Okay.

7 MS. GOODE: And the date at the top is admission
8 date 4/4/21, that would be two weeks before the incident.

9 THE COURT: Okay.

10 MS. GOODE: And it says, chief complaints, patient
11 presents with dizziness, even in his sleep, since 8:00 p.m.
12 last night. Then, in the body of it, it says, 49 year old
13 male, history, here for evaluation of dizziness, and
14 epigastric, E-P-I-G-A-S-T-R-I-C, pain.

15 Q You had trouble with your stomach, Mr. Espacia?

16 A Yeah, I had problem with my stomach.

17 Q Yes. And it says, patient reports he has suffered with
18 this dizziness one year.

19 Do you remember telling them that, Mr. Espacia, you've
20 been suffering from dizziness for one year; yes or no?

21 A Not that I recall.

22 Q Okay. And they worked you up on that day, by a
23 neurologist, right?

24 A I don't know. That was emergency?

25 Q Yes, in the emergency room.

1 And did you also tell them that you had a feeling like
2 you were going to pass out on April 4th, 2021, two weeks before
3 the incident?

4 A I don't recall the conversation, the time that I went
5 there.

6 Q And did they decide, Mr. Espacia -- I mean they, the
7 medical staff, after examining you on April 4th, 2021, that you
8 suffered from chronic dizziness?

9 A You say that was when?

10 Q April 4th, 2021, two weeks before the incident, you
11 went to New York Presbyterian Hospital. You had complaints of
12 dizziness.

13 Were you diagnosed -- did the doctors find you had
14 chronic dizziness, chronic meaning you had it not just one time,
15 but you suffered for a period of time?

16 A No, I don't recall that.

17 Q Okay. At the time of April 4th, 2021 -- were you born
18 in 1971? I won't give the date.

19 A Yeah, that's my year.

20 Q Okay. And I ask you to take a look at the top.

21 Is that the correct birth year at the top?

22 A Yes.

23 Q So that's the correct birth year?

24 A Yes.

25 Q And that's the correct name?

1 A Oh. I didn't see the name, but yeah, that's my name.

2 Q I'll have you look to make sure. And it's the correct
3 name?

4 A Yes, that's my name.

5 Q So correct date for date of birth and correct name.

6 Now, on the day of the incident, two weeks later, you
7 go to the hospital. And you described to us earlier how the
8 ceiling fell on you. You heard a boom, it fell on you, it made
9 contact with your back, your shoulders, your neck, and because
10 of that, you had a CAT scan to your head.

11 Do you remember going into a machine, a CAT scan --

12 MR. MARANDO: Judge, objection. This was ruled on.

13 THE COURT: Step up.

14 (Whereupon, at this time, a discussion was held at
15 sidebar.)

16 THE COURT: Overruled. I'm going to overrule, and
17 ask everyone to keep in mind it's kind of warm in here, and
18 to try to stay cool.

19 MS. GOODE: Maybe take a water break.

20 Q So I was saying, Mr. Espacia, that -- do you remember
21 them taking a CAT scan, where you had to go into a machine, and
22 they checked your head?

23 A I don't remember what kind of test they did to me, but
24 yeah. I was there, and they -- I don't remember what they did
25 to me, but they did something.

1 Q Okay. And were you told that there was no bleeding
2 inside the brain? Because you said that the ceiling had made
3 contact with your head.

4 A That I told them?

5 Q Did the doctors or the nurses tell you there was no
6 bleeding inside your head?

7 A I don't recall if I spoke with a doctor or what they
8 say to me. What I do recall is I was there.

9 Q Okay. But you know that there was no bleeding on the
10 outside of your body. You had no bleeding out of your nose, out
11 of your mouth, out of your ears, your forehead or your head,
12 correct?

13 A Correct.

14 Q And they also did a test on your spine, cervical spine,
15 meaning the upper part of your neck where you had the surgery,
16 correct?

17 A I don't recall that.

18 Q Okay. But you do know that there was no fracture in
19 your neck?

20 MR. MARANDO: Judge.

21 THE COURT: Overruled.

22 A No. I don't recall. I don't recall or I don't
23 remember nothing, what they say.

24 Q Okay. But when you walked out, as you told us this
25 morning, you didn't have a cast on any part of your body?

1 A Yeah, they didn't put me nothing. I said they don't
2 put me -- yeah. They sent me home.

3 Q Right. And your son went with you? And your son went
4 home with you?

5 A Yes.

6 Q Now, at some point, you were receiving meds for
7 arthritis, correct, and that was before the incident?

8 A Before the incident? I don't think so.

9 Q Did you have a Dr. Rosario?

10 A Yeah, he checked me once.

11 Q That was your primary doctor before the incident?

12 A If I remember, yeah.

13 Q Okay. And then did they send you to another doctor
14 after that? Were you sent to a Dr. Vladimir?

15 A Yes, that's my primary doctor.

16 Q Okay. Was that your doctor at the time of the incident
17 or was that your doctor after the incident?

18 A I think it was after the incident.

19 Q And did you see him the next day after the incident, a
20 couple of days later, a year later? How long?

21 A I don't recall that.

22 Q Was it within the year of the incident?

23 A A year, no.

24 Q Huh?

25 A A year, no.

1 Q No. So it was within the time of the incident?

2 A After the incident, yeah.

3 Q And at that time, you were told you had arthritis?

4 A Huh?

5 Q Once you went to see Dr. Vladimir, some time within the
6 year of the incident, were you told you had arthritis?

7 A He prescribed me things for arthritis.

8 Q Okay. Meaning he prescribed medication for your
9 arthritis?

10 A Yeah, I think so. One of the medications was for that.

11 Q Okay. Now, when you had the incident in the motor
12 vehicle accident in 2010, it was also the neck and the back,
13 correct?

14 A Yeah.

15 Q Okay. And when you told us about you had gone to a
16 chiropractor, it was for treatment for the neck and the back?

17 A For stretch, yeah.

18 Q I didn't ask you that. Treatment for the neck and the
19 back.

20 Now, you went to -- your first surgery was to your
21 neck, correct? And that was November 19th, 2021, the same year
22 of the incident, within a couple of months --

23 A Well --

24 THE COURT: Hang on. You have to give him a chance
25 to answer so the reporter can get it.

1 MS. GOODE: Sure.

2 THE COURT: Go ahead.

3 A I don't -- to tell you the truth, I don't know the
4 exactly days, what happened, but yeah, my first surgery was the
5 neck.

6 Q Okay. And that was in the same year of the incident,
7 meaning it was -- it occurred in 2021?

8 A That's the part I don't remember, what was the --

9 Q Okay. And after you had the surgery, you were told to
10 go to physical therapy, correct?

11 A I was already in physical therapy.

12 Q Beforehand. But you were told to -- after you had the
13 surgery, you had a period of time where you weren't getting
14 physical therapy, and then you went back to physical therapy,
15 correct?

16 A Yes.

17 Q Okay. And you were cleared for physical therapy in
18 February of 2022?

19 A I don't know what was the year, but I think I was --
20 no. You said '22?

21 Q Right.

22 A Can't be. Can't be. It was more than that.

23 MS. GOODE: Plaintiff's Exhibit 13, Physical Med's
24 certified, Your Honor.

25 MR. MARANDO: They're in evidence?

1 MS. GOODE: Yes, they are in evidence.

2 THE COURT: Yes, 13 is in evidence.

3 MS. GOODE: Thank you, Your Honor.

4 And in March of 2022 -- let the record reflect that
5 the defendant is looking at the PT records, dated March
6 16th, 2022, and it says, history of present illness, this is
7 a 50 year old, right-handed gentleman, who presents today
8 post-personal injury on 11/21/21, ceiling falling on him, he
9 reported head trauma, denied loss of consciousness, there
10 was an ambulance presented at the scene, and he was taken to
11 New York Presbyterian Hospital where a CAT of his head was
12 performed, multiple x-rays were also performed, these were
13 all negative --

14 MR. MARANDO: Judge.

15 THE COURT: Sustained, Counselor. Sustained.

16 MS. GOODE: Sorry, Your Honor.

17 THE COURT: Sustained.

18 MS. GOODE: Sorry, your Honor.

19 Q So on March 16th, 2022, you went to Physical Medicine
20 Rehab of New York to start rehabilitation, correct?

21 A Physical?

22 Q Yeah, rehab.

23 A I went to rehab.

24 Q Okay. And you started rehab for after the neck on the
25 167th of March, 2022?

1 A Like I said, I don't recall no date.

2 Q Now, you had surgery to the left shoulder, and then you
3 had surgery to the right shoulder, correct?

4 A Yes.

5 Q And you had surgery to the left shoulder on September
6 21st, 2022?

7 A Like I said, again, I don't recall none of the surgery,
8 the time. I know I had it, but I don't recall the time.

9 Q And was the surgery in 2022? Do you recall that?

10 A No.

11 Q And did you start PT after the surgery in the shoulder
12 on October 19th, 2022?

13 A As to the surgery -- I start after the surgery.

14 Q We're talking about the shoulder, left shoulder.
15 You are started PT again, correct?

16 A For the surgery, yes.

17 Q Okay. And you went for that for a period of time,
18 correct?

19 A Yes.

20 Q And then you had surgery to the right shoulder in 2023,
21 that would be 2/15/2023?

22 A Like I said --

23 Q You don't remember?

24 A The dates.

25 Q But after you had the surgery to your right shoulder,

1 then you had physical therapy afterwards at the same facility,
2 which is Physical Medicine & Rehabilitation of New York,
3 correct?

4 A Yes.

5 Q Okay. And you continued to have surgery -- I mean,
6 excuse me. I'll rephrase that.

7 You continued to have physical therapy until the
8 following year, and that would be 1/31/24?

9 A If you say that's the date, it's the date, but I did --
10 yeah. Total, I did, like, three or four years.

11 Q Okay. So you went to PT for, approximately, two years?

12 A You could say that.

13 Q And so it wasn't like after the surgery, you had one
14 week of PT, and that was it. You had -- once you had the neck,
15 you had PT. Once you had the left shoulder, you had PT. Once
16 you had surgery to the right shoulder, you had physical therapy.

17 And that physical therapy ended in January of 2024,
18 correct?

19 A I said, again, I don't know the date, but I know I went
20 to therapy.

21 Q Right. And as I said, it wasn't, like, one week or two
22 weeks, right? It was years?

23 A Yes.

24 Q And did your doctor also, or your therapist, tell you
25 to do home exercises?

1 A Yes.

2 Q Okay. And while you're home, do you do those home
3 exercises?

4 A Yes.

5 Q Okay. Because the home exercises will help you get
6 stronger, correct?

7 A Yeah, maybe more mobile.

8 Q And you talked about that, you had to stop because they
9 weren't paying, correct? Is that what you testified to?

10 A Yes, I still have pain.

11 Q Excuse me?

12 MR. MARANDO: Judge. Judge.

13 A I still have pain.

14 THE COURT: Okay. Overruled.

15 Read the question back please.

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

18 MR. MARANDO: Just because what it was going into.
19 There was an answer, Judge.

20 THE COURT: Overruled. He testified to that.
21 Overruled.

22 Q Is that correct, sir?

23 MR. MARANDO: Could you repeat the question?

24 THE COURT: And only answer yes or no, please.

25 Q Sure. The question was, you testified yesterday that

1 you stopped physical therapy because they stopped paying for it.

2 Do you remember saying that; yes or no?

3 A Yes.

4 Q And so that's why you stopped physical therapy, because
5 they stopped paying for it?

6 A I couldn't afford it no more.

7 THE COURT: Yes or no, please.

8 A Yes.

9 Q But you had it for two years?

10 A I think it was more than two years.

11 Q Okay. Then you had it more than two years.

12 MS. GOODE: Just a minute, Your Honor.

13 Q Now, the first time you went to the Physical Medicine &
14 Rehabilitation of New York was April 28th, 2021.

15 Do you remember that?

16 A April 28th?

17 Q 2021, the same year as the incident, seven days later.

18 A Seven days later? No, I don't recall that.

19 MS. GOODE: May I approach the witness, Your Honor,
20 to refresh his memory.

21 THE COURT: Okay. Don't read it in or anything.
22 Just look at it.

23 MS. GOODE:

24 Q Just read it to yourself. Look here.

25 Is that your name?

1 A Yes.

2 Q And is that the date?

3 A I don't remember.

4 Q Okay. So you don't remember if you were seen on April
5 28th, 2021, seven days after the incident?

6 A No, I don't remember.

7 Q And do you remember telling them that you had multiple
8 x-rays, and nothing -- there was no fractures, everything was
9 negative?

10 A No, I never said that. I don't recall that.

11 MS. GOODE: Your Honor, may I approach the witness?

12 Q And I ask you to take a look, right here. Does this
13 refresh your memory? Don't read it out loud. Right there.

14 A Okay.

15 Q Does that refresh your memory, Mr. Espacia?

16 A No, but if that's the report, yeah. I know what he
17 said there.

18 Q So do you agree with what you read to yourself?

19 A No because I told you, I don't remember what the doctor
20 said to me in the hospital.

21 Q Okay. But do you remember speaking to -- when you did
22 go to Physical Medicine, did you talk to the people there at the
23 rehab place? You didn't just sit there, right?

24 A No, no.

25 Q And they asked you questions, right?

1 A That's --

2 Q Yes or no, did they ask you questions?

3 A I don't recall that.

4 Q You don't recall if they asked you questions?

5 A No.

6 Q Okay. So when you came in that day, the first time,
7 you just came into the room, and they just started treating you,
8 and you told them nothing?

9 A They tell you why you come here to do whatever, so you
10 -- they ask you if you're here to do therapy.

11 Q And you told them why you were there, correct?

12 A That's the point. I don't recall, did I say to that
13 people whatever.

14 Q Okay. All right. And when you traveled to this place,
15 did you travel alone or with someone?

16 A I think -- I don't recall that.

17 MS. GOODE: Okay. Your Honor, may we approach?

18 THE COURT: Yes.

19 (Whereupon, at this time, a discussion was held at
20 sidebar.)

21 THE COURT: Sustained.

22 Q Now, when you were doing physical therapy, Mr. Espacia,
23 they had you do certain things, correct?

24 A Yes.

25 Q Some was to help you with your strength, some was to

1 help with your balance, correct?

2 A Yes.

3 Q And do you recall what those exercises were?

4 A It was a bicycle. It was a ball.

5 Q To catch the ball?

6 A No. It was, like, a ball, you put it against the wall.

7 Q And your back against the wall?

8 A Yes, it was, like, the bicycle. It was, like, a
9 machine. It was, like, a couple of machines, like bicycle, then
10 -- oh. The one pushing.

11 Q Pushing out?

12 A Yeah.

13 Q Was it a rower or something?

14 A It's like -- it was, like, two -- how do you say that?
15 Like, two that you could push it. I don't know how to
16 explain --

17 Q One in one hand -- sorry. One in one hand and one in
18 the other hand?

19 A Uh-huh.

20 Q And then you would push it away from you?

21 A Yes.

22 Q Okay. And then you would bring it back to you?

23 A Yes.

24 Q Okay. And those were some of the exercises to
25 strengthen the upper part of your body, meaning your neck, your

1 shoulder, your arms?

2 A Yes.

3 Q Okay. Now, were you here on Monday, when your --

4 A This Monday?

5 Q Yeah.

6 A Yesterday?

7 Q No, yesterday was -- sorry about that, Mr. Espacia.

8 Were you hear here on Friday when your doctors

9 testified?

10 A No.

11 Q Well, I want you to assume that your doctors testified
12 that you weren't participating fully in PT, and that would have
13 helped you get stronger.

14 Did your doctors tell you that?

15 A Let me understand the question. Hold on. Repeat the
16 question.

17 Q No problem. You had two doctors. You had a doctor
18 that did surgery to your neck, correct?

19 A Yes.

20 Q And then you had a doctor who did surgery to both
21 shoulders, correct?

22 A Yes.

23 Q And I want you to assume that each doctor, just like
24 you, took the witness stand, and they testified about you. They
25 testified about the surgery, and they testified about physical

1 therapy.

2 A Okay.

3 Q And, both doctors, the one who did the shoulders, and
4 the one that did the neck, said that you weren't participating,
5 meaning you weren't doing all you could do, in physical therapy.

6 Did they tell you that?

7 A No, not that I recall.

8 Q And you do know -- let me finish. And you do know that
9 the more you do, the better you'll get.

10 Meaning if you walk more, if you move your arms more,
11 that will help you recover better, correct?

12 A I think so.

13 Q One thing, though, Mr. Espacia, just a little bit.
14 Your attorney talked about how your building, 2727, had to make
15 sure everything was safe, and it had to be safe for babies, it
16 had to be safe for children, it had to be safe for women.

17 But this incident that happened on April 21, '21, it
18 didn't happen to a baby, correct? No, correct?

19 A Sorry?

20 Q It didn't happen to a little kid, right?

21 A I'm not a little kid.

22 Q That's right. It didn't happen to your wife, and it
23 didn't happen to your two daughters, correct?

24 A Thank God.

25 Q No. The question was, correct, not thank God, correct?

1 A Correct.

2 Q And it didn't happen to your 12 year old son, correct?

3 A Correct.

4 Q And so it happened to you, you were 5'11, 200 pounds,
5 fell on you, and you didn't have a scratch on you, correct?

6 A Correct.

7 MS. GOODE: Thank you.

8 MR. MARANDO: Is that it?

9 MS. GOODE: That's it.

10 THE COURT: All right, Counsel. Go ahead.

11 MR. MARANDO: Thank you, Judge.

12 REDIRECT EXAMINATION

13 BY MR. MARANDO:

14 Q Mr. Espacia, how are you?

15 A Fine.

16 Q I want to go over a few things, and I'm going to start
17 with kind of where we left off, the physical therapy, okay?
18 Now, sir, before today -- let's talk about last night.

19 You didn't go through and refresh your memory of all
20 the specific dates of the physical therapy, right?

21 A No.

22 Q So if I told you that your first physical therapy date
23 was not 4/16/2022, that it was in April of 2021, would that
24 refresh your memory?

25 A No.

1 Q Okay. If I told you that the first time you went to PT
2 was not April 16th, 2022, that you had, by that date, had been
3 to physical therapy already 76 times, would you agree or
4 disagree with that statement?

5 MS. GOODE: Objection, Your Honor. Leading. This
6 is direct, not cross.

7 THE COURT: Overruled.

8 Q You can answer, sir.

9 THE COURT: I'm sorry. Can you answer again into
10 the mic. We didn't hear it.

11 A Can you repeat the question, please.

12 Q Yes. So if I told you that April 16th, 2022, was not
13 the first day of physical therapy, that, in fact, you had been
14 to physical therapy 76 separate times, up from the day this
15 happened, the ceiling collapsed, up until that day, would that
16 refresh your memory?

17 A Yes.

18 Q Now, from the same month this happened, until today, if
19 I told you that, in totality, there was 264 specific physical
20 therapy visits in evidence, would that refresh your memory as to
21 the amount of times that you went during that timeframe?

22 A Yes.

23 Q Okay. That's not missing treatment, would you agree
24 with that?

25 THE COURT: Counsel, you are leading at this point.

1 Q Now, if I told you, sir, that the specific timeframe
2 was from, approximately, two years and nine months, almost three
3 years, not maybe two years, would that refresh your memory of
4 the length of treatment that you sought out, physical therapy?

5 A Yes.

6 MR. MARANDO: Judge, I would like to connect my
7 laptop to the screen to go over Defendant's Exhibit --

8 THE COURT: I'm going to take a five-minute break.
9 Let's give everybody a five-minute break while you set that
10 up.

11 COURT OFFICER: All rise. Jury exiting.

12 (Whereupon, the sworn jurors exit the courtroom.)

13 (Whereupon, a recess was taken.)

14 COURT OFFICER: All rise. Jury entering.

15 (Whereupon, the sworn jurors enter the courtroom
16 and take their respective seat.)

17 THE COURT: Okay. Be seated.

18 Counsel, go ahead.

19 MR. MARANDO: Thank you, Your Honor. Thank you,
20 everyone.

21 Q Mr. Espacia, when you were asked questions by the other
22 attorney, starting yesterday, it was only about 20 minutes, but
23 do you remember those questions, more or less?

24 A Yesterday?

25 Q Yes.

1 A Yes.

2 Q Okay. You were shown an exhibit, DMV records. Do you
3 remember that?

4 A Yes.

5 Q Okay. When you were shown the DMV records, I know they
6 were not published on the big screen, but you were given a hard
7 copy, correct?

8 A Yes.

9 Q Okay. You were only shown a portion of the document,
10 but I want to show you the full document now, okay?

11 A Okay.

12 Q Okay.

13 MR. MARANDO: So, Judge, what's in evidence as
14 Defendant's Exhibit I.

15 Q So, sir, I'm going to blow up a portion of the DMV
16 record -- withdrawn.

17 Before I get there, sir, you were asked questions about
18 2025, and something about a Class E licence, correct?

19 A Yes.

20 Q And you were asked a few questions, I believe, about
21 how it expires in 2030, correct?

22 A Yes.

23 Q But I want to go over some things that you weren't
24 asked about in this document, okay? Now, if I have blown up
25 here, sir, do you see the word Class E?

1 A Yes.

2 Q Okay. Do you see 2025 to 2030?

3 A Yes.

4 Q But I'm going to show you something you weren't shown
5 yesterday. Predating that Class E, where it was from around
6 2021, do you see that?

7 A Class E, 2021.

8 Q Okay. Now, I'm going to keep going forward. Do you
9 see Class E, 2014?

10 A Class E, yeah.

11 Q 2014?

12 A Yes.

13 Q Now, going back, do you see Class E, 2012?

14 A Yes.

15 Q In around 2025, did you ever take any test involving
16 driving at all, either a physical test or an actual paper test?

17 A No.

18 Q Okay. Maybe, you know, ten years ago, did you take
19 something years before this accident?

20 A Before?

21 Q Before 2021, maybe around 2012?

22 A That was -- I don't remember. I took my test one time,
23 like, when I applied for my driver's license, and that's it.

24 Q Okay. Did you ever drive a limousine or a cab,
25 anything like that in 15, 20 years, or if at all?

1 A No, never.

2 Q Do you know why you were only shown a portion of the
3 document?

4 A No.

5 Q So, sir, can we agree that if you did have something
6 back in 2012, that it simply renewed every time you went back,
7 every five to ten years, correct?

8 A Yes.

9 Q Now, sir, when the ceiling fell, you mentioned, yes, I
10 had no scratches.

11 Did you feel pain?

12 A Yes.

13 Q Where did you feel pain?

14 A In whole my body, my back, my neck, my whole body. It
15 was painful. Sometimes, you have some more pain, and you don't
16 know exactly where it comes from.

17 Q Okay. I want to show you a different exhibit, what's
18 already in evidence as Plaintiff's Exhibit 1. It's a video --

19 MR. MARANDO: Withdrawn, Your Honor. I'm going to
20 double check. Okay. That is Video 1, Your Honor.

21 THE COURT: Okay, but it's off the screen.

22 MR. MARANDO: I'm going to play it now, Your Honor.
23 I apologize. Video 1, Exhibit 1, paused at 38 seconds.

24 Q Do you see that, sir?

25 A Yes.

1 Q Okay. I know the attorney who questioned you wasn't
2 here the day that this photograph came up, but I want to show
3 you again, because it's sort of related to her question.

4 You were asked a few questions about your height, and
5 the relation to the ceiling, correct?

6 A Yes.

7 Q Do you remember when the attorney asked you those
8 questions?

9 A Yeah.

10 Q And she was talking about the closeness of when the
11 ceiling fell to your body, that it was maybe a foot, maybe two
12 feet?

13 A Yes.

14 Q Okay. Do you see anything here, in relation to the --
15 well, what is this? What am I looking at in this portion of the
16 paused video at 38 seconds?

17 A The light on top of the --

18 Q I'll blow it up.

19 A That's the light. The light used to be on top of that
20 sink.

21 Q Okay. Does anything appear to be wrong with this light
22 -- withdrawn.

23 How many lights were there before April 2021?

24 A Three.

25 Q Okay. How many do you see now?

1 A One.

2 Q Let's look at the right one. If I were to tell you
3 this is a light bulb socket, does it appear to be in a normal
4 condition?

5 A No.

6 Q Okay. Do you know what caused that?

7 A Heat or something.

8 Q Okay. Do you see the ceiling -- where the portion of
9 the ceiling, of where it existed before April of 2021?

10 A Yes.

11 Q Okay. Do you see anything underneath the broken light?

12 A Yes.

13 Q Okay. Sir, when the ceiling collapsed on you, was it
14 as light as a feather? I know you heard the testimony from the
15 super, that he picked up a few of the debris.

16 Sir, looking at this, and based upon you being there
17 and what you felt, how did it feel when it came down on you?

18 A Like I said, it was hard. It hit me very hard.

19 Q Now, you were shown, multiple times, Defendant's
20 exhibit C-2 in evidence, a work order.

21 Do you remember seeing this?

22 A Yes.

23 Q Okay. This was a work order for the kitchen sink,
24 right?

25 A That's -- yes.

1 Q This is something that happened after they fixed it,
2 correct?

3 A Yes.

4 Q Okay. This is not a complaint that you made before the
5 kitchen sink was repaired, right?

6 A No.

7 Q Okay. Was there ever a work order in connection with
8 the issue with the mold on the ceiling in the small bathroom?

9 A No.

10 Q Okay. Was there ever a written complaint for that same
11 issue before it happened?

12 A No.

13 Q And I know you were asked questions about, does your
14 daughter have a phone, do you have a phone, does your other
15 daughter have a phone, and does your son have a phone.

16 Do you remember those questions?

17 A Yeah.

18 Q Okay. Did you ever see Fatlum or Justin in court when
19 you were here the same day? Did you see any photographs, that
20 you or your family took, of the issue with the other bathroom?

21 THE COURT: I'm going to have to ask you to
22 rephrase that.

23 MR. MARANDO: Yes, Your Honor. It was a compound
24 question.

25 Q Mr. Espacia, did you ever see any photograph, taken by

1 you or anyone in your entire family, in connection with that
2 September summer issue with the mold, that they had simply put
3 stain remover?

4 A No.

5 Q Okay. Why? Was there ever a photo that was taken by
6 you?

7 A Because, like I said, we don't take a photo. We just
8 told them, verbally, to the super or the handyman or whoever was
9 in charge, to go and fix it.

10 Q And why didn't you want to take a photo?

11 A You think this person is like your family. They're
12 going to go and fix it, whatever you have the need. That's what
13 you pay for.

14 Q And eventually -- maybe it took some time, but
15 eventually, they got it to, right?

16 A Yes.

17 Q Now, we spoke about the small bathroom. Now, we're
18 talking about the kitchen sink. Did you ever see a
19 photograph -- well, withdrawn.

20 Did you ever take a photograph of the issue with the
21 kitchen sink that you sent to Fatlum or the super?

22 A No.

23 Q You just told them?

24 A Just told them.

25 Q And the same question: Why didn't you take a photo of

1 the issue with the kitchen sink?

2 A Because that's the way it is. We do it all verbally to
3 them. Now, I call them because I want to have --

4 Q Because things are different now, right?

5 A Yes. Now, I think different than I was at that time.

6 Q I want to show you what's in evidence as Plaintiff's
7 Exhibit 2. Now, I know you were asked a bunch of questions
8 about the relation and distance between your knee, to the wall,
9 and your elbow, to Juror Number 3, but I'm going to show you a
10 video of your bathroom, okay? Because I don't want to mix
11 anyone's words, okay? So What's in evidence as Plaintiff's
12 Exhibit 2, and I'm going to pause the video at 12 seconds. I'm
13 going to pause it, first, at 11 seconds.

14 Sir, I have the video paused at 11 seconds. Do you see
15 that?

16 A It's blurry.

17 Q Okay. It's blurry, right?

18 A Yeah.

19 Q But you were asked questions before how this was one of
20 the towels, right?

21 A Yes.

22 Q And above this towel is the actual showerhead, right?

23 A Yes.

24 Q And the shower head -- we all have different shower
25 heads.

1 Some point outward, the water hits you, and some point
2 down, correct?

3 A Yes.

4 Q What kind of shower head did you have in this
5 apartment? Did it point at the actual shower curtain?

6 A No.

7 MS. GOODE: Your Honor, stop leading.

8 Q Well, sir -- I'll withdraw.

9 Sir, why don't you walk us through? The showerhead
10 that you had in your apartment, did it -- in what direction did
11 it point to?

12 A Down.

13 Q Okay. It didn't point at the shower curtain?

14 A No.

15 Q Now, the knobs, are they located directly underneath
16 the shower head?

17 A No.

18 Q Where are they located? I'll withdraw. I'll show you
19 a portion of the video, sir, and my question will follow.

20 MR. MARANDO: Okay. I paused the video at 11
21 seconds.

22 Q Sir, do you see a portion of that towel that we were
23 just looking at?

24 A Yes.

25 Q Okay. So if the video continued, can we agree that the

1 showerhead was to the right, above this -- above the blue towel?

2 A Yes.

3 Q Okay. Now, in relation to where the showerhead is,
4 where are the knobs to the shower?

5 A To your left.

6 Q Okay. And, sir, you mentioned that when you were
7 actually going and bending down to turn on the shower, you're
8 not directly underneath the showerhead, correct?

9 A Correct.

10 Q Okay. Sir, before today, were you ever aware that the
11 defendants sent private investigators to follow you?

12 A No. Now, I know.

13 Q Now you know?

14 A Yeah.

15 Q Okay. How did you look in the video? Did you like the
16 way you looked?

17 A Yeah, I don't have nothing to hide. Yes. Yes.

18 Q In your 2727 University Avenue building, you've seen
19 surveillance cameras actually inside the building, correct?

20 A Everywhere.

21 Q Everywhere. And this case has been going on for about
22 five years, correct?

23 A Yes.

24 Q And you've lived there the entire time?

25 A Yes.

1 Q So do you have access to the surveillance cameras?

2 A No.

3 Q Have you seen any surveillance camera, from any of the
4 five years this has been going on, of you walking, doing
5 anything, that was provided by the defendants?

6 A No.

7 Q I know we spoke about it or you were asked questions
8 about your son's bedroom.

9 Sir, how many bedrooms are actually in your apartment?

10 A Two.

11 Q And your son's actual bed was physically located in
12 what bedroom?

13 A In my bedroom.

14 Q Okay. And your two daughters were in the other
15 bedroom?

16 A Yes.

17 Q Now, you couldn't give a time with respect to when your
18 son came. Is that because you don't want to guess or
19 guesstimate?

20 MS. GOODE: Objection, Your Honor.

21 THE COURT: Sustained. Rephrase.

22 Q Sir --

23 A I have --

24 THE COURT: Don't answer. Question, please.

25 Q Just because debris or some debris or maybe all debris

1 is not wet, does that still mean that the ceiling did not
2 collapse?

3 MS. GOODE: Objection, Your Honor.

4 THE COURT: Sustained.

5 MR. MARANDO: Judge, no further questions.

6 THE COURT: Okay. Thank you.

7 RECROSS-EXAMINATION

8 BY MS. GOODE:

9 Q Just a few questions, Mr. Espacia. We'll go back to
10 the DMV. And I showed all three pages, do you remember that
11 yesterday? I gave you the full document, correct?

12 A You gave me a paper, but --

13 Q With all three pages?

14 A Probably.

15 Q Yeah. I didn't just hand you one paper and try to hide
16 something, I gave you all three pages?

17 A Yeah, you gave me -- yeah.

18 Q Okay. And you have a Class E license from 2012, up
19 until 2030, correct?

20 A My driver's license?

21 Q Right, your driver's license. And there are different
22 classes of driver's license, and we will have the Judge,
23 later on, explain the differences.

24 But your driver's license, you would agree, gives you
25 permission to drive a limo, a cab, you can drive a bus, correct?

1 A I don't know.

2 Q Okay. But it's not a Class D license, like the regular
3 people have, who drive a regular car, correct?

4 A That, I don't know. That's the driver's license they
5 give me.

6 Q Right. And that's the one you applied for, correct,
7 all of those years ago?

8 A When you pass -- yeah, when you --

9 Q Right. And you apply for a certain license, and that's
10 the one you applied for?

11 A I think they give you the class when you pass the test.
12 I think so. That's the way it is.

13 Q And you never changed it, you kept that Class E
14 license?

15 A I never changed it. I never changed it. Any time they
16 send me one --

17 Q And you kept the Class E from period to period to
18 period?

19 A Whatever they send me, yes.

20 Q Thank you. Now, we talked about the PT, and Mr.
21 Marando said you went 274 times to PT, correct?

22 MR. MARANDO: 262.

23 MS. GOODE: 262, sorry.

24 Q 262?

25 A It looks like so.

1 Q And those 262 times that you went to PT, it was paid
2 for, right?

3 MR. MARANDO: Objection, Judge.

4 THE COURT: He brought it up. Overruled.

5 Q Correct?

6 A It had to be paid. I don't know.

7 Q Right, it had to be paid. Now, can you go back to the
8 light? You were shown a light, and that light was over the
9 sink? There was three -- remember, you were shown by your
10 attorney, there was a row of lights, and one was missing,
11 correct?

12 A Two were missing.

13 Q Two bulbs were missing. And when your son took the
14 pictures, he took the pictures just the way everything looked
15 when he entered the bathroom, correct?

16 MR. MARANDO: Judge, that's mischaracterization.

17 That's the wrong video.

18 THE COURT: Okay. Hang on. Sustained. Let's make
19 sure we have the right video.

20 Q I will ask this. When your son came in, he didn't move
21 anything, correct?

22 A I don't think so.

23 Q Okay. And when you were lying in the tub, and when you
24 got out of the tub, were there light bulbs broken on the floor?

25 A When I was --

1 THE COURT: I'm sorry, sir. I couldn't hear what
2 you said.

3 A I don't recall that.

4 Q Okay. Were there light bulbs resting in the sink?

5 A I don't recall that.

6 Q Okay. Any pictures that you were shown from yesterday,
7 to today, of your bathroom sink, did any of those pictures have
8 light bulbs in them?

9 A I don't know.

10 Q You don't remember seeing any light bulbs in the sink?

11 A I just see pieces there, so I don't know if there was a
12 light bulb there.

13 MR. FRANKLIN: Plaintiff's 1, Your Honor.

14 MS. GOODE: Okay. That's what I'm talking about.
15 Did you see -- we're looking at the Defendant's Exhibit 1.
16 The timeline, Your Honor, is 00.38.46.

17 Q And there are three missing -- it's a row of lights,
18 correct?

19 A Yes.

20 Q And there's one in the middle, correct?

21 A Yes.

22 Q And then there's one on the left, and there's one on
23 the right, correct?

24 A Three, yeah.

25 Q And did the one that's on the right, that would be on

1 the side next to the tub, correct?

2 A That's the sink, yes. Like, the edge of the sink --

3 Q So that have been close -- I'm sorry. I didn't mean to
4 cut you off.

5 So that would have been close to where you were
6 sitting?

7 A More closer, yeah.

8 Q And did that light bulb fall off, and hit you in the
9 head?

10 A I don't know.

11 Q Did you hear the light bulb crash to the floor?

12 A I don't know what was crashing or what was breaking. I
13 just heard the thing hit me in the thing, boom.

14 Q Right. You heard that loud sound?

15 A Like I said, no loud sounds -- well, you could say loud
16 sound. I say, boom, because it hit me, like knock me down.

17 MS. GOODE: Okay. Can we see one, Brian, blown up.

18 MR. FRANKLIN: I'll start it from the beginning.

19 MS. GOODE: Do we have a long shot? The shot where
20 we could see the towels?

21 MR. FRANKLIN: The towels are right there.

22 MS. GOODE: Okay. And can we pan down or is that
23 as low as it will go?

24 MR. FRANKLIN: That's as low.

25 MS. GOODE: Okay.

1 Q Now, I asked you this morning about where those towels
2 were.

3 Do you recall that?

4 A You told me those towels -- yeah. It was on that
5 thing.

6 Q Right. And I asked you about those towels, and when
7 you see the showerhead, it's right over the towels, correct?
8 That's the showerhead, correct?

9 A Yes.

10 Q Okay. And then we go straight down, there's the gray
11 towel in the middle, correct?

12 A Yes.

13 Q And there's a beige towel on the right, correct?

14 A Yes.

15 Q And do we have a picture where it's clear, and we
16 looked at that this morning, and none of those towels were wet,
17 correct?

18 A I think so.

19 Q You think so, that they were not wet?

20 A Yeah.

21 MS. GOODE: The one we showed this morning. It's
22 okay. People are tired. Let's just move on.

23 Q While he's getting that, Mr. Espacia, you talked about
24 when you got the small bathroom fixed, you didn't tell anyone --
25 I mean, you did tell them and they got it fixed, right?

1 A Yes.

2 Q And the kitchen, they fixed it?

3 A Yes.

4 Q And you signed the work order. Now, what you did say,
5 remember you just said that they were like family, you remember
6 just saying that, they were like family?

7 A I always think people -- I treat everybody like family.

8 Q No, no, no. That wasn't the question, Mr. Espacia.
9 You said on direct examine, yes or, no like family?

10 A Fatlum, we were like family.

11 Q That's it. Like family.

12 THE COURT: I'm sorry, you just have to speak one
13 at a time otherwise the reporter won't get down what's being
14 said.

15 MS. GOODE: Sorry.

16 Q So, you described Justin and the super like family,
17 correct?

18 A Yeah, that's what I thought.

19 Q And because you could tell them, listen, look what's
20 happening in the small bathroom, they come, they fix it,
21 correct?

22 A Not all the time.

23 Q That's wasn't the question. They came and they fixed
24 it, correct?

25 A Yes.

1 Q And the same thing for the kitchen, correct?

2 A Yes.

3 Q And the small bathroom, they fixed in 2021, the year of
4 the incident, correct?

5 A The small bathroom?

6 Q Yeah. The one that's connected.

7 A The small bathroom. You say the year what?

8 Q When did the incident happen, in 2021?

9 MR. MARANDO: Which one?

10 MS. GOODE: The small one. I said the small
11 bathroom.

12 Q When was it fixed?

13 A I don't understand the question. I don't understand
14 the time.

15 Q The small bathroom that's connected to the big
16 bathroom.

17 A Okay.

18 Q And you said that there was mold in the small bathroom?

19 A Yes.

20 Q And when you told them that there was mold in the small
21 bathroom, was that 2020, '21 or something else?

22 A It was before that year before. Had to be before.

23 Q So 2020?

24 A Yes.

25 Q And you said you didn't take pictures of the small

1 bathroom, correct?

2 A Yes.

3 Q But in the large bathroom you had a huge stain, do you
4 remember describing that to me, it was brown and yellow?

5 A It was brown.

6 Q And yellow on the outside?

7 A Yes.

8 Q And you had a nice long crack, correct?

9 A Yes.

10 Q And you also sometimes had to put something down
11 because water --

12 A Water was coming down.

13 Q And you took no pictures of that, no pictures and no
14 video, correct; yes or no?

15 A No.

16 Q All right. Now, let's take a look --

17 MS. GOODE: Your Honor, this is -- it's marked as
18 Defendant's J.

19 Q Same picture, right Mr. Espacia? Take a look.

20 MS. GOODE: I'm showing the witness Defendant J.

21 Q Do you see that?

22 A Yeah.

23 Q And we've already seen where the shower nozzle was
24 right over the towels, correct? The picture we just showed you,
25 right over, correct?

1 A Yeah.

2 Q And yet these towels are dry, correct? Yes or no,
3 Mr. Espacia, the towels are dry, correct?

4 A Look like.

5 MS. GOODE: Thank you, Mr. Espacia.

6 THE COURT: Counsel?

7 MR. MARANDO: Yes, Judge.

8 THE COURT: Brief, Counsel. Brief.

9 MR. MARANDO: Yes, Judge, of course. Maybe one
10 question, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. MARANDO:

13 Q Sir, just one question. You were asked about the issue
14 with the small bathroom?

15 A Oh, she just asked me. Yes.

16 Q I know the attorney who just asked you that question
17 wasn't here when this came out with Fatlum and Justin, but for
18 the purposes of the location, where is that in relation to the
19 big bathroom?

20 A The small bathroom?

21 Q Yes.

22 A It's behind that wall.

23 Q Okay. So, they share a wall?

24 A Yes.

25 Q So, the issue with the mold was probably five or six

1 inches away from the big bathroom?

2 MS. GOODE: Objection, Your Honor.

3 THE COURT: Sustained.

4 MR. MARANDO: Nothing else, Your Honor.

5 MS. GOODE: Just let the record reflect that I was
6 here for all the testimony.

7 THE COURT: Fair enough. The record will so
8 reflect. We are done with you, sir.

9 THE WITNESS: Thank you.

10 (Whereupon, the witness stepped down.)

11 THE COURT: Counsel, do you have any further
12 witnesses?

13 MR. MARANDO: No, Judge. Before the plaintiff
14 rests, I would like to mark, pursuant to the upcoming
15 requested charge, Plaintiff's Exhibit 6 into evidence.

16 THE COURT: You have to give me --

17 MR. MARANDO: That's the subpoena to Emerald 2727
18 University served on defense counsel prior to -- months ago.

19 THE COURT: Any objection?

20 MR. FRANKLIN: Yes, Your Honor. There's no proof
21 of service.

22 THE COURT: You know what, we're not going to have
23 this argument in front of the jury. We'll take a five
24 minute break.

25 COURT OFFICER: All rise. Jury exiting.

1 (Whereupon, the sworn jurors exit the courtroom.)

2 THE COURT: Use your microphones please so I can
3 hear you.

4 MR. MARANDO: Yes, Your Honor, it is the subpoena,
5 not on an individual, but it is a subpoena on the actual
6 named defendant.

7 THE COURT: Which one?

8 MR. MARANDO: It's Emerald 2727 University LLC and
9 pursuant to the CPLR, defense counsel as the attorney for
10 the party must accept service. Your Honor, on NYSCEF it's
11 been filed for eight months. I told him many times.
12 Individuals are not the story. When it comes to the named
13 defendant, Mr. Franklin must accept service. It's on
14 NYSCEF. If Your Honor would like the actual --

15 THE COURT: What statute are you relying on saying
16 that they must accept service?

17 MR. MARANDO: As the attorney, Judge, I would
18 probably need two minutes, Your Honor.

19 THE COURT: That's alright. Counsel, I thought
20 that was correct.

21 MR. FRANKLIN: Your Honor, my understanding is that
22 the attorney can accept service for an individual in lieu of
23 having the individual put their personal information on
24 record to the plaintiff or to the opposing party so that
25 they can effect personal service but there's no requirement

1 that an attorney accept service for a party, and before I'm
2 interrupted, this is a corporation. That subpoena is
3 facially deficient. You cannot serve process on a
4 corporation by filing it up on NYSCEF with electronic
5 service by an attorney. It's facially insufficient.

6 THE COURT: I don't understand that argument. What
7 do you mean facially insufficient? What are you saying they
8 had to do? Just for the record, be clear.

9 MR. FRANKLIN: For one, Your Honor, there's no
10 proof of service.

11 THE COURT: On who?

12 MR. FRANKLIN: On the corporation.

13 THE COURT: Who should they have served, that's my
14 question.

15 MR. FRANKLIN: They could serve the agent for
16 service of process for the corporation. They could serve
17 whoever corporate entity pursuant to, I'm forgetting the
18 cite to the specific rules for service on a corporation, but
19 it's not proper for them to just serve or place a document
20 on NYSCEF and say this constitutes service on a corporation.

21 Now, I would mind you, they never even deposed this
22 corporation. Not one single deposition. No discovery
23 whatsoever. Never even requested a deposition of the
24 corporate entity. Instead, they requested the deposition
25 and took one deposition in this case, Fatlum Maloku who

1 works for Residential Management. So, for them to attempt
2 to backdoor conduct discovery at trial, which is exactly
3 what they're attempting to do, to force the defense counsel
4 to designate for the first time an appropriate corporate
5 representative to come at trial and testify about subject
6 matter that's not even included in their subpoena, the
7 subpoena doesn't even specify what the subject matter of the
8 direct or cross examination would be. It's facially
9 deficient.

10 THE COURT: Counsel for plaintiff, what do you want
11 to add? Do you have some case law that says by uploading to
12 NYSCEF that it equals service of a subpoena?

13 MR. MARANDO: I know for a fact, Judge, it exists.
14 I just need two minutes.

15 THE COURT: I'm going to reserve decision on this
16 and we'll have further argument tomorrow morning. Do not
17 upload anything to NYSCEF. We'll do it on the record.

18 MR. MARANDO: Thank you, Your Honor.

19 THE COURT: So, I'm going to reserve decision on
20 that. Other than that, is plaintiff resting?

21 MR. MARANDO: Subject to Plaintiff's Exhibit 6,
22 Judge, yes, that's correct.

23 MR. FRANKLIN: And the defense has a motion.

24 THE COURT: Hang on. I think we need to move the
25 TV one way or another so I can see you both.

1 MR. MARANDO: Your Honor, I can put it back to the
2 original position.

3 THE COURT: Just out the way so I can see you both,
4 and you can make your arguments sitting down or wherever. I
5 think if you would argue from your tables each because it's
6 just up and down, up and down. I know that's how the
7 Appellate Division does it but we're not the Appellate
8 Division. Tell me when you're ready, Counselor.

9 MR. FRANKLIN: Ready, Your Honor.

10 THE COURT: What is your motion?

11 MR. FRANKLIN: The defense moves pursuant to CPLR
12 4401 for judgment dismissing the complaints based on
13 plaintiff's failure to prove a Prima Facie case. That's for
14 both defendants and I have an independent basis for each
15 defendant.

16 THE COURT: Okay. Go ahead.

17 MR. FRANKLIN: First, plaintiff has attempted to
18 prove a defect in the ceiling absent any expert or technical
19 evidence whatsoever through pictures, through sly arguments
20 to the jury that what appears to be discoloration may be
21 water, inviting the jury to speculate on evidence that does
22 not exist. But more to the point, Your Honor, plaintiff's
23 theory of liability as to both defendants rests on
24 speculation from lay witness testimony. Plaintiff attempted
25 to establish through lay witnesses that there may have been

1 mold in an adjacent bathroom and so an inference or pure
2 speculation that there may have been mold in a bathroom in
3 question.

4 Plaintiff attempted to establish through lay
5 witnesses when the plaintiff himself who controlled the
6 bathroom didn't even notice on the day of the incident any
7 issue with the ceiling. So --

8 THE COURT: I'm sorry, any issue with the sink or
9 ceiling?

10 MR. FRANKLIN: The ceiling.

11 THE COURT: Okay.

12 MR. FRANKLIN: The testimony that's been heard and
13 entered into the case is that, and it's entirely based on
14 the plaintiff, is he verbally complained to two individuals
15 at Residential Management. There's been no evidence or
16 testimony that he ever voiced a complaint verbally, in
17 writing, to the property owner, and that's a separate
18 independent basis as to the property owner.

19 There's no proof of notice that the property owner
20 was ever on notice because the plaintiff never bothered to
21 conduct discovery against the property owner, never
22 requested an EBT, served a -- or I shouldn't even say
23 served, filed a subpoena on NYSCEF that was facially
24 deficient and expected to conduct discovery during trial
25 having no proof whatsoever that there was ever notice

1 against the property owner.

2 Now, I cite the case of Villalba versus Baughney
3 214 A.D.3d 843, and that just generally for the proposition
4 that plaintiff cannot rely on speculative, subjective
5 characterizations of a ceiling that's cracked or defective
6 without competent evidentiary support that it's insufficient
7 as a matter of law to establishes the existence of a
8 dangerous condition I have additional cites. This gets
9 into --

10 THE COURT: Just give me a couple more cites.

11 MR. FRANKLIN: Okay. I've got plaintiff's
12 inability to provide specific nonspeculative testimony
13 concerning alleged condition and its duration is precisely
14 the type of conclusory proof rejected by the 1st Department.
15 See Brown V Howson, 129 A.D.3d 570, 2015, 1st Department;
16 Pintor versus is 122 Water Realty LLC, 90 A.D.3d 449.
17 That's a 2011 1st Department case.

18 THE COURT: 439 or 449?

19 MR. FRANKLIN: A.D.3d 449.

20 THE COURT: Okay.

21 MR. FRANKLIN: Then in addition, res ipsa is
22 inappropriate. Plaintiff's attempt to rely on and I realize
23 we haven't had our full --

24 THE COURT: I reserved on that until we go to the
25 charge conference. That part is reserved.

1 MR. FRANKLIN: Okay. And I do note that plaintiff
2 has cited some cases -- well, I will reserve those. They
3 deal with the res ipsa issue that I will be prepared to
4 discuss.

5 In addition to no evidence of notice to the owner,
6 it's disputed based solely on the plaintiff's own testimony
7 completely uncorroborated that he had ever even given notice
8 to the Residential Management Company so we feel as though
9 there's just been no proof of notice, there's been no proof
10 that the condition was actually defective.

11 The testimony from the plaintiff is that he heard a
12 noise and then I'm not sure because it was conflicting, at
13 one point it sounded like he was saying the water filled the
14 tub which is just circumstantially completely inconsistent
15 and cannot stand based on the documented and circumstantial
16 and physical photographic evidence that we've seen.

17 Plaintiff hasn't explained at all exactly how this
18 issue -- incident happened. There's just no evidence in the
19 record.

20 THE COURT: Okay. So, counsel for plaintiff.

21 MR. MARANDO: Judge, I did see that defense counsel
22 was reading from what looks like a ten-page motion of case
23 law. I don't have case law at this moment but what I do
24 have is the fact that the same reasons that defense counsel
25 did not file a summary judgment motion is the same reason

1 why it must be quickly denied.

2 With respect to actual notice and constructive
3 notice, there's been testimony which is evidence in this
4 case that Henry told the superintendent and foreman, both
5 who were employees of Residential Management. There's been
6 evidence that the same person who owns Residential
7 Management is the CEO of Emerald 2727 University.

8 Specifically when Henry said I told the super two
9 months before. When I asked Fatlum, his words were not he
10 never told me, his words were I don't remember. When
11 blatantly introduced with the question were you ever told by
12 Henry, I don't remember. We have the super saying I don't
13 remember, Henry saying, yes, I told him two months before,
14 leaking, cracking, discoloration. There's no requirement
15 for an expert.

16 With respect to constructive notice, Your Honor,
17 it's their admission that there was an issue with a bathroom
18 which, Judge, it shares the common wall between the main
19 bathroom. If this was a bathroom on the other side of the
20 apartment, that's an argument I cannot make, but when it's
21 here and we're talking about inches and his own testimony,
22 Justin, I said, Justin, is it possible or foreseeable that
23 this yellow mold came from a leaking, hazardous condition
24 from above the ceiling and the response was yes and could it
25 lead to the other bathroom and the answer was yes.

1 So, with respect to actual notice, constructive
2 notice and for the same reason they did not file an SJ
3 motion, it's an issue of fact. They could say A, I could
4 say B. The fact that he said A is still out there. My
5 client still says he made multiple complaints. The case law
6 is clear that I don't need to have ten cases in front of me.
7 If you have notice of a hazardous condition in a time that
8 the jury finds that was reasonable for them to jump in and
9 fix it, that is the definition of negligence, and that's a
10 question for the jury.

11 When it comes to the second issue against the owner
12 of the property, with respect to the same owner, the CEO of
13 the company for Residential, he actually owns Emerald as
14 well. You heard Fatlum and Justin say, yes, he actually
15 also owns the other building and there's a reason why the
16 PJI has a specific charge. If you don't produce a party,
17 you get this charge. For no good reason. We are not
18 talking about a nonparty. This is not a cute carve out of
19 the law. All I have to do is hopefully get a Judge that I
20 don't put a party on, I can argue we didn't have any notice
21 and then I can get my client dismissed.

22 Judge, I've had plenty cases at trial where there
23 is no depositions of the owner but the owner comes to court
24 and testifies. Never have I heard a scenario where an owner
25 is let out because I didn't prove my case or they failed to

1 show up. They are a named party, Judge, so besides that, I
2 rely on that.

3 MR. FRANKLIN: Your Honor if I may briefly.

4 THE COURT: Go ahead.

5 MR. FRANKLIN: I just heard opposing counsel say he
6 asked Fatlum and Justin Molloy is it possible. These are
7 witnesses who are not eyewitnesses. You are talking about
8 speculation. If's what their case is based on,
9 possibilities to lay witnesses, it's clear they have not
10 proven their case.

11 THE COURT: Okay. I'm going to reserve a decision
12 on a motion for directed verdict, which I assume that's what
13 you're making, right?

14 MR. FRANKLIN: We will be doing that motion
15 following our case but yes, we are doing --

16 THE COURT: Okay. I'm going to reserve decision on
17 this.

18 Who is the next witness?

19 MR. FRANKLIN: The defense's first witness is
20 Dr. Bazos.

21 THE COURT: We'll come back at 4:00.

22 (Whereupon, a recess was taken.)

23 THE COURT: What did you want to add to the record,
24 Counselor?

25 MR. MARANDO: Yes, Judge, per your instructions

1 with leave to renew when it comes to cumulative testimony,
2 this specific doctor comments on the cervical spine and
3 lumbar spine in addition to the shoulders simultaneously
4 while Dr. Bendo also comments on the physical limitations
5 and everything with respect to the cervical spine and lumbar
6 spine as well. So with respect to Dr. Lastig, who is the
7 third doctor, it's my understanding he will only be talking
8 about the films. So for today with Dr. Bazos, in terms
9 cumulative, I don't care what body parts he talks about just
10 so long as it's not every single one because then I would
11 move for cumulative testimony.

12 THE COURT: We'll worry about it the, motion
13 denied. Let's go.

14 COURT OFFICER: All rise. Jury entering.

15 (Whereupon, the sworn jurors enter the courtroom
16 and take their respective seat.)

17 THE COURT: You can be seated. Go ahead,
18 Counselor.

19 MR. FRANKLIN: Defense calls Dr. Bazos to the
20 stand.

21 (Whereupon, the witness takes the stand.)

22 D R. A N D R E W B A Z O S, a witness called by
23 and on behalf of the Defense, upon being duly sworn,
24 testified as follows:

25 COURT OFFICER: State your name and address and

1 address for the record.

2 THE WITNESS: Andrew Bazos, 244 West 54th Street,
3 New York, New York 10019.

4 THE COURT: Go ahead, Counselor.

5 DIRECT EXAMINATION

6 BY MR. FRANKLIN:

7 Q Good afternoon.

8 A Good afternoon.

9 Q Dr. Bazos, can you please, for the benefit of the jury,
10 tell us your area the specialty?

11 A Orthopedic surgery.

12 Q And are you a board certified orthopedic surgeon?

13 A I am.

14 Q Okay. And how long have you been practicing?

15 A Since 1993 so 30-plus years.

16 Q And what state licenses do you hold?

17 A New York, Connecticut, California, Pennsylvania and
18 Washington State.

19 Q Do you have any hospital positions or appointments?

20 A Yes. I'm an attending orthopedic surgeon in the
21 Northwell System in Danbury Hospital and in the Ridgefield
22 Orthopedic Surgical Center.

23 Q Can you please tell will us just briefly your
24 educational background?

25 A Sure. I went to public high school in Massachusetts.

1 I graduated in 1980. I then went to Harvard University for my
2 undergraduate degree, finished in 1983. I then went to Yale
3 University for my medical degree in 1987. I then came to the
4 city to Columbia Presbyterian Hospital, and I did my general
5 surgery internship, which is one year, uptown at Columbia. I
6 finished that in 1988. I then did my four years of orthopedic
7 training also at Columbia and Harlem Hospital uptown again. I
8 finished that 1992. Then did I did an extra year of sports
9 medicine surgery at Hospital for Joint Diseases which is now
10 part of NYU. I finished that in 1993.

11 Q All right. And in terms of your privileges, do you
12 have any institutions that you have privileges at to perform
13 procedures?

14 A Yes. In the Northwell System, at the Danbury Hospital,
15 New Milford Hospital and also Ridgefield Surgical Center.

16 Q If you weren't here today, what would you be doing?

17 A Seeing patients and doing surgery.

18 Q Are you being paid to come here today?

19 A I believe so. I hope so.

20 Q How much?

21 A I think it's \$6,000 for a half day.

22 Q All right. Let me just get -- oh, can you tell me
23 about some of your appointments?

24 A Sure. Well, in addition to seeing patients and
25 operating and taking calls at the emergency room, I run a

1 company called Crowd RX and we cover big sports and
2 entertainment facilities. The ones around here that I cover and
3 are in charge of are Madison Square Garden, Yankee Stadium, the
4 US Tennis Open, the New York Marathon, and nationally we do a
5 lot of vendors including Lincoln Field where the Eagles play.
6 Dallas, Buffalo, L.A., et cetera.

7 Q Do you have a particular interest or specialty in
8 sports medicine?

9 A Yes. Shoulder and knee surgery and all sports
10 injuries. A lot of spines as well.

11 Q Do you teach?

12 A I do.

13 Q And who do you teach?

14 A We have residents that cover the games for us. So, for
15 example, at a Ranger or Knick game, there will be residents from
16 the emergency room that are there to learn and actually work in
17 responding to on-court or on-field emergencies. Also
18 emergencies that come up in the stands in using ambulances to
19 transports after stabilization.

20 Q Who are you -- where are you a professor?

21 A I was a professor at NYU. I was an associate professor
22 in the sports medicine department at NYU until a few years ago
23 when I gave it up. My family in Connecticut became priority at
24 that point.

25 Q Okay. So, can you tell us when you first became

1 involved in this particular case?

2 A It looks like August of 2023.

3 Q Okay. And what were you engaged to do in connection
4 with this particular lawsuit?

5 A Well, I was asked to read all the records regarding
6 Mr. Espacia, examine him and then come up with an explanation
7 for what I thought the injuries were to explain to people that
8 aren't doctors what the injuries were.

9 Q Did you perform what's called an independent medical
10 evaluation?

11 A Yes. That's what that is.

12 Q Can you tell us the jury in general what an independent
13 medical evaluation is?

14 A It means it's not your patient. You're independent of
15 the doctor/patient relationship. You're also independent in the
16 outcome, in this case, the lawsuit. My job is to review the
17 records, examine the patient and explain what the injuries were
18 and what the treatment was and the outcome was.

19 Q And part of that process is you providing your own
20 opinion, right?

21 A It's my opinion.

22 Q All right. I want to first ask, did you review ER
23 records with New York Presbyterian?

24 A I did. There was a patient went to the emergency room
25 on the date of the injury for evaluation.

1 MR. FRANKLIN: And these are already admitted into
2 evidence I believe as Plaintiff's Exhibit 12, but I have a
3 set of the emergency department records which I'd like to
4 approach and show the witness.

5 MR. MARANDO: Can I see, Counsel.

6 MR. FRANKLIN: Sure.

7 THE COURT: What exhibit are they?

8 MR. FRANKLIN: Plaintiff's 12.

9 THE COURT: Okay.

10 MR. FRANKLIN: Plaintiff's 12 is New York
11 Presbyterian Hospital records.

12 MR. MARANDO: No objection, Judge, subject to
13 redaction with the respect to commentary.

14 MR. FRANKLIN: Counsel, you would agree the only
15 redaction is this portion here, right?

16 MR. MARANDO: Then the commentary. This is not
17 germane to medical diagnosis.

18 MR. FRANKLIN: May we approach, Your Honor?

19 THE COURT: Yes.

20 (Whereupon, at this time, a discussion was held at
21 sidebar.)

22 THE COURT: We're going to take a five minute
23 break.

24 COURT OFFICER: All rise. Jury exiting.

25 (Whereupon, the sworn jurors exit the courtroom.)

1 THE COURT: So, I don't know who wants this copy so
2 you can make the record clear. Counsel for defendant, tell
3 me what you want to do and, plaintiff, tell me what you are
4 objecting to.

5 MR. FRANKLIN: Yes. On April 21st, 2021, the
6 plaintiff presented himself to the ER department and he
7 stated the patient -- or he provided this following history:
8 The patient is a 49 year old complaining a ceiling fell on
9 him in bathroom. Picture of numerous pieces of plaster and,
10 question mark, submit in sink. Individual pieces relatively
11 small, few pieces but many.

12 Your Honor, it is the defense's position that this
13 was information he provided for purposes the medical
14 diagnosis. It should be part of the medical record and
15 permitted to be published to the jury.

16 THE COURT: Counsel for the plaintiff.

17 MR. MARANDO: Judge, just with respect to the
18 portion of that that says it's commentary from someone that
19 I don't have the ability to cross-examine and because it is
20 not germane to medical diagnosis with respect to the
21 commentary of how big or how small something is. With
22 respect to something happening, that is germane, and I
23 agree, something about a ceiling collapsed, but with respect
24 to something that is shown, we don't have the ability to
25 cross-examine, and it's case law that that portion is

1 absolutely not germane to medical diagnosis. That limited
2 portion, Counsel.

3 THE COURT: That issue, I'm going allow it in. I'm
4 going to say that the description of how the accident
5 happened that the plaintiff himself showed the doctor a
6 picture, that is germane to medical treatment. I'm going to
7 allow that. You can note your objection.

8 MR. MARANDO: Thank you, Your Honor. Note my
9 exception.

10 THE COURT: Is there another issue on that same
11 document?

12 MR. FRANKLIN: I believe that's it. The only other
13 one was the CT.

14 THE COURT: And you agree it needs to be redacted?

15 MR. FRANKLIN: Well, I don't agree, I still take
16 exception but for the purposes --

17 THE COURT: My ruling.

18 MR. FRANKLIN: Yes.

19 THE COURT: Okay. Let's bring the jury back in.

20 COURT OFFICER: All rise. Jury entering.

21 (Whereupon, the sworn jurors enter the courtroom
22 and take their respective seat.)

23 THE COURT: Be seated. Go ahead, Counselor.

24 MR. FRANKLIN: May I approach the witness?

25 THE COURT: Yes.

1 Q Doctor, I'm going to hand you several pages from
2 New York Presbyterian. If you could just take a quick scan and
3 tell me if this looks like documents that you reviewed as part
4 of your engagement this in this lawsuit?

5 A Yes, I have.

6 Q And with respect to -- we will just go one by one.
7 That first page, I'm going to show you an enlargement and tell
8 me if it appears to be the same document?

9 A Same document.

10 MR. FRANKLIN: Your Honor, permission to publish?

11 THE COURT: Yes.

12 Q Doctor, I'd like if you could just help us understand
13 this document by walking us through, this is an emergency
14 department record?

15 A Yes.

16 Q And the date of that is?

17 A April 21st, 2021.

18 Q Okay. This is for Mr. Espacia's visit that day?

19 A Yes.

20 Q So, tell me what's notable on the first page here?

21 A Well, it's New York Presbyterian Hospital. I actually
22 worked in this emergency room, and the first thing they ask you
23 in the emergency room is why you're there basically, and he said
24 neck pain and back pain. So, that's the first thing that gives
25 the doctor an idea of what to look for and then you get --

1 Q That's up here at the top?

2 A At the very top. The next important thing is a little
3 bit almost to the bottom where it says history of present
4 illness, that's where the doctor gets the story, like what
5 happened, and he said that a ceiling fell on him and showed him
6 pieces of plaster. It says numerous pieces of plaster. They
7 thought maybe it was cement in the sink and that the pieces were
8 many of them and small. He said a few inches. So, that gives
9 the doctor an idea how much trauma or how much force hit the
10 person, and then once again, we have a pain complaint. This
11 time it says head, neck, back, shoulders, and then we go to the
12 next page.

13 Q Okay. I'm going to approach and show you an
14 enlargement of what I believe is the second page. Can you
15 confirm?

16 A Correct.

17 MR. FRANKLIN: Permission to the publish, Your
18 Honor?

19 THE COURT: Yes.

20 MR. MARANDO: Did you redact what we spoke about?

21 MR. FRANKLIN: There's nothing on this page.

22 MR. MARANDO: Okay. Thank you.

23 Q Tell me what's notable on this page, Doctor.

24 A So we have the history again where the person was in
25 the shower and his complaints this time were neck and back pain

1 after the ceiling fell. I think the most important part of this
2 page is if you look about a quarter of the way down, that long
3 sentence under musculoskeletal, that's when they're looking at
4 bones, muscles, nerves tendons, it says FROM to BL shoulders.
5 That means full range of motion to both shoulders. That's
6 important because if you damaged your muscle, say your rotator
7 cuff, say you had a bad bruise even to those muscles, you can't
8 move your shoulder, you're weak, you're stiff, but what we see
9 here is full range of motion and that gives you an idea of how
10 much of an injury there was, which is not much.

11 Q Okay. Anything else?

12 A Again, the lower of the illness is neck pain and back
13 pain.

14 Q Under the history here, there's a part that says
15 patient reports, can you read that part?

16 A Patient reports falling backwards to the bathtub, did
17 not hit his head or lose consciousness. And, once again, he's
18 saying he's having neck pain and back pain without, without
19 upper or lower extremity weakness or numbness, meaning his upper
20 extremities were strong and full of range of motion.

21 Q Falling backwards, it's important to know whether the
22 patient struck their head?

23 A We always are worried about the head. The head is one
24 of the critical things you worry about in the emergency room
25 because the brain doesn't take a joke so it's important to find

1 out did you hit your head, did you get knocked out and
2 fortunately, this gentleman did not.

3 Q If you turn to the third page I'm going to approach
4 with an enlargement and tell me if that appears to the third
5 page?

6 A Yes.

7 MR. FRANKLIN: May I publish it to the jury?

8 THE COURT: Yes.

9 Q For the jury, as you go through this, if you can
10 interpret it for them.

11 A Nothing major here other than they checked all the
12 different systems out by talking to the patient and everything
13 was fine.

14 Q Can I ask you up at the top when they did the review of
15 symptoms?

16 A Yes.

17 Q You see somewhere down there there's skin, denies
18 rashes?

19 A Yes.

20 Q If there was anything like scrapes, cuts, bruises,
21 would that find it's way into an ER record?

22 MR. MARANDO: Objection.

23 THE COURT: Overruled.

24 A Yes. If there was a disorder noted in the skin, that
25 would be brought up by the patient. This section here is where

1 they're really talking to the patient. They haven't gotten to
2 the exam yet so the patient is denying any skin problems, which
3 is important and good.

4 Q Nothing with the eyes?

5 A Nothing with the eyes whatsoever, no.

6 Q Now, medical history, it doesn't look like there's a
7 whole lot there but there's something?

8 A GERD, which is like a reflux kind of problem when you
9 swallow and food goes into your stomach. That's really pretty
10 much it. Patient was taking Tylenol.

11 Q Okay. And then I've got another page which I'll
12 approach, an enlargement, you can confirm that that looks the
13 same as the one I handed you?

14 A Correct, sir.

15 MR. FRANKLIN: I'll publish that.

16 Q If you could just walk the jury through what's on this.

17 A Sure. Top to bottom, they checked out the head and
18 neck and found that there was some tenderness, meaning the
19 patient said it hurt when they pushed in some areas, but that
20 was the only finding there. And then, again, importantly, on
21 the extremities, this patient showed full range of motion and
22 strength in the shoulders and full nerve function to the
23 shoulders, again, reinforcing there wasn't a shoulder injury
24 here or anything even remotely significant.

25 You can't damage mechanically your shoulder and have

1 full range of motion. There's no delayed affect. If you tear
2 something, if you have even a deep bruise, it shuts down your
3 motion. So, we know the shoulders are out the picture here. We
4 know the nerves are fine and we know all the muscles are working
5 fine, meaning the signals from the neck and brain are getting
6 down to all the muscles and, you know, this is a minor contusion
7 basically and that was it.

8 Q Are acute care records the best, I guess, reliable
9 source of information for someone who's claiming an injury to
10 the shoulders or --

11 A Well, I think all records should be considered but
12 obviously if we're here discussing whether there was a cause and
13 effect, whether the small pieces that fell on this patient
14 affected his body in any way, you would expect to see that
15 effect at that time. There's no delayed effect if you tear a
16 muscle, rotator cuff or the rim of your socket or tendons or
17 break a bone or damage a disc. It happens right away and so
18 there's no way to show any effect on the body here from this
19 cause which is the chips falling on him.

20 Q Where it says nontoxic appearing, what's the import of
21 that?

22 A So, toxic is a general word for does somebody look sick
23 basically. They look like they have a problem, do they look
24 uncomfortable. Is there something going on here. Nontoxic
25 means they're just sitting there in no distress and moving

1 everything and doing everything okay and normally.

2 Q Okay. Then I have one additional blow-up. This one
3 has portions covered at the bottom. I'm approaching to show you
4 that. With the exception of what I covered on the bottom, does
5 that appear to be the same as what I've handed you?

6 A Yes.

7 MR. FRANKLIN: Okay. I'll publish this one.

8 Q What stands out on this document for you, Doctor?

9 A Once again, he reviewed that he complained of neck pain
10 and low back pain from the ceiling fall. He had his child with
11 him and they were sending him home. It said call the spine
12 clinic for an appointment and return to the emergency room if
13 you have worsening pain, arm weakness and numbness so it's just
14 a routine discharge.

15 Q Was he discharged the same day?

16 A Yes.

17 Q Okay. Thank you. Now, in connection with your
18 engagement in this case, did you also review some MRI records
19 from Stand-up MRI?

20 A Yes.

21 Q What were the dates of those?

22 A The left shoulder and the neck were from May 3 rd,
23 2021, the low back was from June 10th of 2021, the right
24 shoulder, May 4th of 2021.

25 Q Again, those were after the ER visit, right?

1 A Yeah. They were roughly three weeks to a month or two
2 later.

3 Q Did you review any records from the Physical Medical
4 Rehab?

5 A I did. For the really the first half the July.

6 Q Okay. Did you review any electrodiagnostic studies?

7 A I did.

8 Q What's the purpose of electrodiagnostic studies?

9 A That's where you -- they run electricity down your arms
10 and legs to see if there's any signal missing from a nerve being
11 squeezed at the level of the neck or the low back or even if in
12 your shoulder, wrist or elbow.

13 Q Do you recall reviewing any CT scans?

14 A Yes.

15 Q Which?

16 A They did CAT scans right away of the head --

17 MR. MARANDO: Judge, objection.

18 THE COURT: Approach.

19 (Whereupon, at this time, a discussion was held at
20 sidebar.)

21 THE COURT: We're going to take five minutes from
22 the jury. Five minute break please.

23 COURT OFFICER: All rise. Jury exiting.

24 (Whereupon, the sworn jurors exit the courtroom.)

25 THE COURT: Before we begin, Counsel, we're talking

1 about which records?

2 MR. FRANKLIN: It's a CT scan of -- it's on the
3 bottom of this document.

4 THE COURT: From the ER?

5 MR. FRANKLIN: From the emergency department of
6 New York Presbyterian to which the plaintiff already had put
7 testimony on.

8 THE COURT: I thought your expert testified that
9 those were relied on?

10 MR. MARANDO: Not to the actual reports, Judge.
11 Only anything where we have a CD, we're allowed to talk
12 about.

13 THE COURT: I'm not asking you that. I thought
14 your doctor testified he reviewed those records and relied
15 on them.

16 MR. MARANDO: Judge, I never inquired to anything
17 on my doctor. I don't recall the that testimony at all. We
18 can look at the transcript but I do know it's 1st Department
19 case law that even a doctor --

20 THE COURT: If your doctor testified to you, it
21 would be admitted so let's start with that. Your doctor
22 testified and had never looked at these, is that what you
23 are telling me?

24 MR. MARANDO: He never testified to anything not in
25 CD form. We only went over the CD, the films that we

1 actually had the ability to view.

2 1st Department case law says even doctors, IME
3 doctors that we have here, cannot comment simply on medical
4 reports because those CDs are not subject to interpretation
5 on our doctors.

6 THE COURT: Just to be clear, his doctor never
7 mentioned these?

8 MR. FRANKLIN: I can't recall.

9 THE COURT: I'm going to take counsel's
10 representation. Go ahead.

11 MR. FRANKLIN: I submit this all academic and
12 completely irrelevant. What counsel is relying is the best
13 evidence rule. He's saying --

14 THE COURT: No, he's relying on Wagner.

15 MR. FRANKLIN: Yes, which is an interpretation of
16 the best evidence rule. He's saying you don't have the film
17 so you can't discuss the review of the film but the best
18 evidence rule does not come into play pursuant to Evidence
19 Rule 10.03 when a party seeks to prove the contents of a
20 writing, recording or photograph that is in dispute, the
21 writing, recording or photograph must be proved by
22 production of the original. There's no dispute here.

23 THE COURT: Counsel, I'm going to disagree with you
24 right there. Wagner is very clear. You cannot
25 cross-examine or have testimony if you don't have the

1 original MRI in evidence.

2 MR. FRANKLIN: And then there's an additional
3 issue, Your Honor, besides that one. In addition, 10.07
4 exception when original missing or collateral. Evidence
5 other than the original of a writing, recording or
6 photograph may be admissible pursuant to Subdivision 2 when,
7 A, all originals are lost or destroyed --

8 THE COURT: You have no evidence.

9 MR. FRANKLIN: We subpoenaed all the records, Your
10 Honor.

11 THE COURT: That's not enough. When they say that,
12 you have to provide some sort of affidavit of someone who
13 says I searched records, it's lost or you have to have a
14 witness come in and testify that. It's not just they didn't
15 produce it.

16 MR. FRANKLIN: Your Honor, we have literally issued
17 subpoenas --

18 THE COURT: I'm going to reject that argument.
19 That is not the foundation. If you look at case law, people
20 who use that argument to get it in either submit an
21 affidavit with someone with knowledge saying a good faith
22 effort has been made to locate and it's been destroyed or
23 they put a witness on the stand and said I searched for the
24 records and it doesn't exist anymore so I'm rejecting that
25 argument. I'm more than concerned about whether plaintiff's

1 doctor relied on these reports. That's my question.

2 MR. MARANDO: No, Judge.

3 MR. FRANKLIN: Yes, I do have evidence of that,
4 Your Honor. I do have evidence of that.

5 MR. MARANDO: Judge, the MRI scan of the neck and
6 the back and shoulders is all we looked at, Judge. That's
7 all I went there and it never came out --

8 THE COURT: This is -- what's the difference with
9 this MRI?

10 MR. MARANDO: Is this a CT scan with no image.
11 This is just a report. We can't cross-examine the
12 individual who interpreted it. That's 1st Department case
13 law. He's trying to find some carve out and wrap around but
14 that's blatantly in opposite of what the case law says.

15 MR. FRANKLIN: So, two things, Your Honor. One, I
16 do believe Mr. Macagno, when I was cross-examining him, I
17 asked him about ER records and he said, yeah, they're all
18 negative. That's what I believe he testified to. He wasn't
19 specific to as to the CT but he said, yeah, they're all
20 negative. Then we have plaintiff's own admission in the
21 medical record from Physical Medicine and Rehabilitation,
22 which I believe plaintiff has entered into evidence.

23 MR. MARANDO: Subject to redaction, which we said.

24 THE COURT: That's correct.

25 MR. FRANKLIN: Where he says multiple X-rays were

1 also performed. All these were negative as per patient.
2 So, there's no dispute. The best evidence rule is designed
3 to address issues of where there may be a potential dispute.
4 Even plaintiff's testimony today, there's no dispute so --

5 THE COURT: What do you mean there's no dispute?

6 MR. FRANKLIN: Plaintiff has no basis for disputing
7 a CT scan.

8 THE COURT: And I've allowed you to ask whether
9 this was one yes or no but you want to go into the results;
10 is that correct?

11 MR. FRANKLIN: Well, to the extent that the doctor
12 relied on that, I think it's fair.

13 THE COURT: It may be fair but I don't believe
14 that's the law. Do not mention the scan. That's my ruling.
15 You can note your objection.

16 MR. FRANKLIN: Noted.

17 THE COURT: Okay. Let's get the jury back.
18 Actually, I'm going to hold that ruling and cite the case.
19 I'm just going to give you the A.D. cite because I don't
20 want to hold the jury up. It's 275 A.D.2d 387, 2nd
21 Department, 2000. But I've made my ruling on that so do not
22 mention that please.

23 COURT OFFICER: All rise. Jury entering.

24 (Whereupon, the sworn jurors enter the courtroom
25 and take their respective seat.)

1 THE COURT: Be seated. Thank you. We are going to
2 go ten more minutes and then we are letting you all go.

3 All right, Counselor.

4 Q Doctor, did you also review operative reports
5 concerning the Physical Medicine and Rehabilitation -- excuse
6 me, from Dr. Berkowitz?

7 A I did, yes.

8 Q And did you meet with Mr. Espacia?

9 A Yes, I did.

10 Q Okay. Did Mr. Espacia appear with an interpreter?

11 A Yes, there was a legal representative and an
12 interpreter.

13 Q Okay. Were you able to understand him when you met
14 with him.

15 A Yes, sir.

16 Q Did he speak English or Spanish?

17 A Spanish, I believe.

18 Q Can you tell me a little bit about the evaluation that
19 you performed?

20 A Sure. Just like a regular patient, you ask the person
21 what happened, what was the event and what hurt you. He told me
22 about the ceiling collapse and he told me that everything hurt
23 him. He told me he went by ambulance that day, that he had had
24 physical therapy and he had surgery to his neck and both
25 shoulders, which he thought was because of the accident.

1 He was taking pain medication at the time but he
2 couldn't remember what he was taking. He said he never hurt
3 these areas before. He said nothing got better despite the
4 surgery and that everything still hurt him. He came in wearing
5 a low back brace that was brand new and it was in the wrong spot
6 over his belly.

7 Q Okay. What type of tests did you perform?

8 A Basic range of motion tests. First, you watch the
9 person walk because you need to use lots of muscles to walk and
10 when I did so, he had a side to side slow gait when I was
11 directly looking at him. Later when I left, his gait became or
12 walking pattern became normal.

13 I then examined his neck and saw the incision on his
14 neck. I noted that his range of motion of his neck, he didn't
15 move it the same every time. Sometimes he moved it just a
16 little bit when I asked him to move it and later in the exam
17 when he was doing something else, he moved to a lot. So, it
18 wasn't consistent and there's no real medical explanation for
19 why that would be. He was doing it one way one second and
20 another way another second.

21 He did the same thing with his low back. When I asked
22 him to sit down or to bend forward, he bent forward just a
23 little bit but later when I saw him sit down, he bent forward
24 all the way which didn't make sense. He was also moaning at
25 timing during the exam and it didn't correlate to how his

1 position was. He just would moan at different times.

2 The shoulder exam was, again, very inconsistent. He
3 would raise his arms just a little bit and then he would move it
4 out just a little bit, and he would revisit with his muscles.
5 He told me he had a hard time taking his shirt off. At the same
6 time, he moved his shoulders out like there and behind his back
7 normally and that, again, doesn't make sense from a medical or
8 mechanical perspective.

9 Q If I could just briefly, Doctor, was there anything
10 about your examination that indicated he had a condition of the
11 spine that would effect his gait?

12 A No, sir.

13 Q What types of things would you be looking for for that?

14 A A nerve going to specific muscle that doesn't give you
15 balance or ability to push off. His gait was normal going to
16 the elevator, but when I was under direct observation, was
17 abnormal. Same with his neck motion and his back motion. It
18 didn't make sense from any medical perspective or specific nerve
19 being effected.

20 Q Now, I want to focus on the shoulders specifically.
21 Did you conduct some tests to evaluate Mr. Espacia's shoulders?

22 A Yes, I checked range of motion of his shoulders.

23 Q Okay. Do some of these test have names?

24 A Yes. There is an impingement test that you do where
25 you raise the arm up and see if the patient describes pain, and

1 I did that, and that was negative. I also looked for tenderness
2 pushing on different areas in the shoulder and there was no
3 tenderness. I noticed the holes from the surgery. Again, he
4 was moaning and wining throughout the exam without correlation
5 to where his shoulders were positioned or anything.

6 Q The date of your exam again, what was it?

7 A July 27, 2023.

8 Q Okay. Did he tell you that he had had surgeries to
9 both of his shoulders?

10 A Yes.

11 Q Okay. So, you were examining both shoulders
12 specifically?

13 A Yes, sir.

14 Q All right. Did you see any like surgical sites that
15 had healed?

16 A As I said before, I noticed two sets of holes, one on
17 each shoulder.

18 Q And I believe you said you tested his strength in the
19 shoulders?

20 A Yes, I did.

21 Q And what was it?

22 A So, his strength was completely normal in both
23 shoulders and everywhere as a matter of fact.

24 Q Okay. I want to ask about -- now, you did deep tendon
25 reflexes?

1 A Yes.

2 Q Can you explain to the jury what that is?

3 A It's where you tap the knees or elbows and it sends a
4 signal to the brain and comes back down and the patient jumps or
5 moves that muscle. It shows there's a good signal getting up to
6 the brain and back down.

7 Q Okay. Let me see what else. Did you notice anything
8 in any of the medical records that you reviewed that indicated
9 any sort of, you know, chronic conditions in the shoulders?

10 A This gentleman had the shoulders on his MRIs that any
11 active person over the age of 30 would have. You would get wear
12 and tear in your rotator cuff muscle. You would get thickening
13 of the tissues around the joint. You get some tearing in the
14 rim of the socket. These are all normal and I see them -- I do
15 lots of shoulders -- on virtually every shoulder in someone over
16 35. I believe this gentleman was closer to 50 maybe.

17 Q And, Doctor, do you, as part of your regular practice,
18 review films?

19 A Every day, yes.

20 Q Is it common to have some disagreement in, I guess,
21 depending on who is interpreting the films?

22 A Everybody reads their films differently. Generally the
23 main theme should be the same but occasionally there's a
24 disagreement.

25 Q Okay. Did you see that there was some conflicting

1 information in Mr. Espacia's films?

2 A Specifically I didn't see any major conflicting
3 information.

4 Q And did you see evidence of chondral lesions?

5 A That was in one of the reports, yes.

6 THE COURT: Okay.

7 MR. MARANDO: Objection.

8 THE COURT: We're going to call it a day. Thank
9 you, Doctor.

10 (Whereupon, the witness stepped down.)

11 THE COURT: Counsel, can you just approach for one
12 second?

13 MR. MARANDO: Sure.

14 (Whereupon, at this time, a discussion was held at
15 sidebar.)

16 THE COURT: All right, everyone. We are going to
17 call it a day. It was more than enough I think so I'm going
18 to ask you come back at 9:30 tomorrow and it will be a full
19 day. Thursday, just FYI, I have a full other calendar that
20 has nothing to do with this trial so Thursday we would be
21 down and Friday would be a full day so for your schedules, I
22 wanted to give you that information. Thank you and dress in
23 layers tomorrow.

24 COURT OFFICER: All rise. Jury exiting.

25 (Whereupon, the sworn jurors exit the courtroom.)

1 THE COURT: One more issue, Counsel, before you go.
2 Just an administrative thing. My thought is we do need to
3 get a charge conference in so I'm thinking Thursday
4 afternoon. I'm going to ask you to come in Thursday
5 afternoon and we'll have at least a preliminary charge
6 conference that day and talk about the verdict sheet.
7 Probably around 2:30 on Thursday.

8 MS. GOODE: Yes, Judge.

9 MR. MARANDO: Thank you.

10 THE COURT: Thank you.

11 (Whereupon, the trial was adjourned to Wednesday,
12 March 4, 2026 at 9:30 a.m.)

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