

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

-----x

3 HENRY ESPACIA,

Index:
816345/2021E

4 Plaintiff,

5 -against-

TRIAL

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

Defendants.

8 -----x

851 Grand Concourse
9 Bronx, New York 10451
March 4, 2026

10 **TESTIMONY OF MANNY SILBERBERG**
11 **TESTIMONY OF NICHOLAS WARNER**
12 **TESTIMONY OF DR. JOHN BENDO**

B E F O R E:

13 THE HONORABLE VERONICA HUMMEL,
14 Justice of the Supreme Court & jury

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

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21 BY: BRIAN FRANKLIN, ESQ.

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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. You can be seated.
11 Counsel, if you can give your appearance for the record
12 using the mic, please.

13 MR. FRANKLIN: Yes, Brian Franklin from Gartner and
14 Bloom on behalf of defendants, Emerald 2727 Universe LLC and
15 New York Inc. and Residential Management New York, Inc.

16 THE COURT: Okay. Good morning. Be seated, and
17 you can argue seated, as well. Please make sure you have
18 your mic on, as always.

19 So, Counsel, I believe defendant has periodically
20 raised the issue that the corporate defendant was not
21 properly served with a subpoena. While we have this moment,
22 I would like to resolve that issue.

23 So, go ahead, Counselor. Wait, I think it's
24 defendant's motion; is it not?

25 MR. FRANKLIN: Yes, Your Honor.

1 THE COURT: Go ahead.

2 MR. FRANKLIN: So I am looking at a judicial
3 subpoena filed on NYSCEF on October 21st, 2025.

4 The subpoena says, to Emerald 2727 Universe LLC,
5 care of Gartner & Bloom. It says, we command you that all
6 businesses and excuses being laid aside, you, and each of
7 you, appear and attend before Honorable Justice presiding at
8 the courthouse, it's got the location, the time. Failure to
9 comply with the subpoena is punishable as a contempt. It
10 goes on. It contains no information about what -- who is
11 designated for the corporation or any topics of discussion.

12 Now, looking at the rules for proper designation of
13 a corporate designee, 3106, it says you should designate a
14 deponent, 3106(d), and per usual practice of discovery, you
15 provide a list of topics of what you're going to have the
16 corporate entity testify about, so that they can properly
17 designate an appropriate corporate representative, and as is
18 common practice in New York. There's always disputes over
19 whether the person so designated is the appropriate witness.
20 A corporation can designate whoever they so choose. It
21 doesn't need to be a corporate officer or a corporate
22 employee. The defense, in this case, has Manny Silberberg,
23 who is here. He's prepared today testify.

24 THE COURT: All right. You're on a different
25 issue, Counselor. The issue, as I understood it from

1 yesterday, and this the issue I want to address now, is that
2 you said service by NYSCEF was not valid on a corporation.
3 That's the only thing I have before me right now.

4 MR. FRANKLIN: I said the subpoena was not served
5 properly, and --

6 THE COURT: Okay. Talk to me about what -- you
7 expressed NYSCEF. To be accurate, you said uploading to
8 NYSCEF was not permitted under -- did not serve as good
9 service.

10 MR. FRANKLIN: That was one of the things I said,
11 Your Honor. I said --

12 THE COURT: Let's address that one first. Are you
13 still maintaining that, by uploading a subpoena to NYSCEF,
14 it does not constitute legitimate service on a corporate
15 defendant?

16 MR. FRANKLIN: I haven't researched the issue, but
17 I think that --

18 THE COURT: Okay. That's the issue I'm asking you
19 about. You made the argument. If you made the argument, I
20 assume you've researched it. We don't just throw arguments
21 up against the wall. You raised the argument. Actually,
22 I'm going to say on the record, more than once. I want law.
23 I want it now. If you don't have anything, you don't have
24 any, and we'll move on.

25 MR. FRANKLIN: Your Honor, I have CPLR 3106(d).

1 THE COURT: Okay. I'm not going to hear anymore
2 about that. You're not answering my question. I know what
3 that's about.

4 Counsel, what would you like to say?

5 MR. MARANDO: Yes, Judge. Judge, CPLR 2303, it's
6 one sentence, and I would like to read it into the record
7 verbatim from the CPLR.

8 Service of a trial subpoena, where the attendance
9 at trial of a party or person within the party's control,
10 can be compelled by a trial subpoena. That subpoena may be
11 served by delivery, in accordance of Subdivision B of Rule
12 2103, to the party's attorney of record. End quote. And
13 that's 2303-A, Judge.

14 THE COURT: Okay. So I'm going to read my decision
15 into the record.

16 Pursuant to CPLR 2303-A, where the attendance at
17 trial of a party or person within a party's control can be
18 compelled by trial subpoena. That subpoena may be served by
19 delivery, in accordance of Subsection B of Rule 2103, to the
20 party's attorney of record. You may serve a trial subpoena
21 on a party through their counsel of record. Smith versus
22 Usman, 218 A.D.3d. 705, Second Department, 2023. A
23 corporation doing business in New York may be subpoenaed to
24 produce a person under its control that has knowledge of the
25 transaction at issue. The matter of Standard Fruit S&S

1 versus Waterfront Commune of New York Harbor, 43 N.Y.2d 11,
2 1977. Here, defendant entities appeared through counsel,
3 who consented to e-file in this case, thus the service of
4 the subpoena on a defendant entity's corporate attorney of
5 record via NYSCEF, pursuant to CPLR 2103(b)(7), which allows
6 service on its attorney by an upload to NYSCEF is therefore
7 to sufficient.

8 So, to the limited issue, I have determined that
9 the subpoena was, in fact, duly and properly served on the
10 corporate defendant. Okay. As to the other issues raised,
11 that is not resolved here. That is just that the service by
12 NYSCEF was valid.

13 Okay. Counselor, do you have a witness?

14 MR. MARANDO: Your Honor, before we bring in the
15 witness, part of that motion by defendant was the
16 admissibility of Plaintiff's Exhibit 6, which the
17 admissibility was based upon your reservation of hearing his
18 argument this morning. At this point, I would like to --

19 THE COURT: You're going to have to give me a
20 second. I have to refresh my recollection.

21 MR. MARANDO: Yes, Your Honor.

22 MR. FRANKLIN: I would note my exception, Your
23 Honor.

24 THE COURT: Yes, of course.

25 You'll have to refresh my recollection, Counsel for

1 Plaintiff, and of course, I'll hear from defendant. What
2 are you talking about now?

3 MR. MARANDO: Before plaintiff was going to rest
4 Judge, it was subject to seeking to admit into evidence
5 Plaintiff's Exhibit 6, which is a subpoena on NYSCEF. It's
6 a one-page document that I served on NYSCEF. It's NYSCEF
7 Document 79, which was just the subject of our on-the-record
8 argument, pursuant to CPLR 2303-A.

9 Your Honor reserved ruling on the admissibility
10 pending today's morning discussion, so it's Exhibit 6. It
11 is the subpoena that I served on defendant counsel via
12 NYSCEF.

13 THE COURT: All right. So, Counsel, I will hear
14 you on your objections or your arguments.

15 MR. FRANKLIN: It's a collateral matter, Your
16 Honor, and the defense maintains that that subpoena is
17 facially invalid.

18 THE COURT: Okay. Now, put those arguments on the
19 record with legal -- not, it's unfair, we don't know. I
20 want to hear legal support for your arguments, and do not
21 bring up that there wasn't discovery.

22 MR. FRANKLIN: Well, my legal support is still CPLR
23 3106 because that is the only, as far as I know, within the
24 CPLR, description of how a corporate entity is to designate
25 an appropriate person to appear. The plaintiff has never

1 told the defense who they want, what they want them for,
2 what they expect to get from them, in terms of testimony, so
3 the defense has no idea. We cannot guess what the plaintiff
4 wants.

5 We offered to stipulate that he owned the building.
6 At one point, plaintiff's counsel seemed inclined to accept
7 the stipulation, and then the discussion ended. So, again,
8 the defense is prepared to stipulate that they owned the
9 building. Beyond that, I don't know what the plaintiff is
10 looking for.

11 THE COURT: Okay. Counsel?

12 MR. MARANDO: Judge, part of requirement for the
13 charge conference is I have to show that -- these sorts of
14 things. And the jury, they may think that, for some reason,
15 they're not in a lawsuit. That's something that I have to
16 tell them, that they actually were served with a subpoena,
17 they are represented by counsel. That goes to the ultimate
18 issues of this case. And because it's been deemed, pursuant
19 to CPLR 2303, that they were properly served, and for
20 whatever choice it was, they are not present in trial.

21 That's part of the case. It's just a one-page
22 document, the subpoena for defense counsel, that we had
23 already said on the record that has been sufficiently
24 served.

25 MR. FRANKLIN: There's no corporate entity or

1 person designee listed in that subpoena.

2 THE COURT: And you have a case that says you have
3 to name an officer?

4 MR. FRANKLIN: I have a CPLR section that says you
5 have to designate who it is.

6 THE COURT: Okay.

7 MR. MARANDO: I believe that's for depositions,
8 Judge, like a corporate defendant that, you know --

9 MR. FRANKLIN: And I would add that we were at the
10 TAP hearing, and Judge Capella specifically said that he
11 felt that this was latent discovery that the plaintiff was
12 attempting to do because plaintiff has never taken a
13 deposition of Emerald 2727, to this day, before they
14 declared ready for trial.

15 So it's not the defense's problem that the
16 plaintiff now wants us to designate a corporate
17 representative. Perhaps, if they had come to us and
18 explained who they want, what they want them for, we
19 wouldn't be in this position.

20 THE COURT: Okay. Well, I'm going to reserve
21 decision on this until tomorrow's charge conference. I
22 believe I gave you a PJI charge that you should read over.
23 I don't have the number in front of me. Be prepared to
24 argue that. I think I gave it to you guys at the beginning
25 of this, 1:75.1, I think.

1 Anyhow, it's a charge that, as far as I can tell,
2 says that the defendant is a party, they must appear, and
3 the failure to appear -- they must appear as a party, so we
4 will discuss that tomorrow. I'll put that on the agenda for
5 during the charge conference.

6 MR. MARANDO: Thank you, Judge. And I would just,
7 in terms of resting, that's the only thing left I'm seeking
8 to submit into evidence.

9 THE COURT: Just remind me tomorrow.

10 MR. MARANDO: I will, Your Honor.

11 MR. FRANKLIN: Plaintiff has already rested. I
12 don't understand that statement.

13 MR. MARANDO: Well, my comment on the record
14 yesterday was before I officially rested, was to put in this
15 document.

16 THE COURT: That is correct. That's my
17 recollection, as well. Your reserved that issue, which is
18 why I went home and studied the issue. Okay. So, rather
19 than try to hash that out now, we'll do that tomorrow when
20 we have more time, and we can all do our own research on it.
21 And it does seem pretty, obviously, tied into the request
22 for a missing witness charge, so I think it's more natural
23 to be dealt with tomorrow.

24 Okay. So do we have a witness?

25 MR. FRANKLIN: Manny Silberberg.

1 THE COURT: Okay. Great.

2 MR. FRANKLIN: Can have a moment with my witness?

3 THE COURT: Yes, of course.

4 (Whereupon, there was a brief recess.)

5 COURT OFFICER: All rise. Jury entering.

6 (Whereupon, the sworn jurors enter the courtroom
7 and take their respective seat.)

8 THE COURT: Good morning, everyone. Please be
9 seated. As always, I want to thank you for your timeliness
10 and your commitment to this trial. It allows us to keep it
11 moving, and we know your time is valuable, so let's start
12 right away.

13 Go ahead, Counselor.

14 MR. FRANKLIN: Defense calls Manny Silberberg to
15 the stand.

16 M A N N Y S I L B E R B E R G, a witness called
17 by and on behalf of the Defendant, upon being duly sworn,
18 took the witness stand, and testified as follows:

19 COURT OFFICER: Please state your name and business
20 address for the record.

21 THE WITNESS: Manny Silberberg, 1651 Coney Island
22 Avenue, Brooklyn, New York 11230.

23 THE COURT: Okay. You can be seated. I'm going to
24 ask you -- it sounds very simple, but it's really important.
25 Please speak into the mic. Otherwise, no one will be able

1 to hear what you're saying.

2 Go ahead, Counselor.

3 MR. FRANKLIN: Before I begin, Your Honor, I want
4 to read into the record a portion of the plaintiff's
5 deposition testimony.

6 THE COURT: What pages?

7 MR. FRANKLIN: It's page 58, lines 9 through 15,
8 that the defense now wishes to offer into evidence.

9 THE COURT: 9 through what?

10 MR. FRANKLIN: Through 15. Page 58 of the EBT
11 transcript from March 27th, the year 2023, lines 9 through
12 15.

13 MR. MARANDO: Okay. No objection.

14 THE COURT: Okay. Go ahead, Counselor.

15 MR. FRANKLIN:

16 "QUESTION: When the fire department arrived did
17 they take down anymore of the ceiling that had fallen?

18 "ANSWER: What I remember, the fire department
19 telling me as they were leaving was that it was safe, that
20 nothing else was going to fall on anybody.

21 "QUESTION: And do you know what they did to make
22 it safe?

23 "ANSWER: No. I was not mindful of that, no."

24 That's the testimony of the plaintiff.

25 DIRECT EXAMINATION

1 BY MR. FRANKLIN:

2 Q All right. Mr. Silberberg, thank you for being here
3 this morning. Let me start by asking: By whom are you
4 employed?

5 A Residential Management.

6 Q Okay. And how long have you been employed with
7 Residential Management?

8 A 13 years.

9 Q All right. And what's your position?

10 A Property manager.

11 Q Okay. How many properties do you manage?

12 A Approximately, at that time, ten.

13 Q Ten back in 2021?

14 A Maybe eight.

15 Q Okay.

16 THE COURT: I'm sorry, sir. What did you say?

17 THE WITNESS: Eight.

18 THE COURT: Eight, okay.

19 Q And those eight properties, they have various owners?

20 A Correct.

21 Q All right. Now, as to the property Emerald 2727
22 University, was that one of the properties that you managed back
23 in 2021?

24 A Yes.

25 Q All right. And can you describe for the jury the staff

1 that you had, Residential Management staff, at that building?

2 A So we had a superintendent who was on premises. Then
3 we had a porter and handyman helping out the super.

4 Q Okay. And do you recall the name of the
5 superintendent?

6 A Fatlum Maloku.

7 Q And the handyman?

8 A Justin Molloy.

9 Q How about the porter?

10 A I don't recall.

11 Q Does Tinaj sound familiar?

12 A I don't remember the last name. We don't really deal
13 with the porters so much. The super deals with the porter.

14 Q Okay. Now, are Justin Molloy and Fatlum Maloku still
15 employees of Residential Management?

16 A Yes.

17 Q Okay. And is Fatlum Maloku at a different building
18 now?

19 A Yes.

20 Q All right. How about Justin Molloy?

21 A He's still employed at this property.

22 Q Okay. And what's his role at the Emerald 2727?

23 A Handyman/porter.

24 Q Okay. All right. Let me start by asking: How did you
25 first get notice of this accident that happened in Apartment 4F?

1 A The super called me.

2 Q Fatlum Maloku?

3 A Correct.

4 Q Around what time of the day did you get that call?

5 A Approximately, 9:00.

6 Q In the morning?

7 A Yes.

8 Q And was that on April 21st, 2021?

9 A I believe so.

10 Q Okay. Would it -- well, do you recall him telling you
11 that this --

12 MR. MARANDO: Objection.

13 THE COURT: Sustained.

14 Q Okay. What instructions, if any, did you give to
15 Fatlum?

16 A Obviously, go to the apartment, make sure everything
17 was okay there, go upstairs. He said that, allegedly, there was
18 a leak or something. He said go upstairs, make sure if there
19 was a leak make, sure that the leak stopped, clean up
20 everything.

21 Q Did you instruct him to go up to 5F, the unit above?

22 A Correct, because he said it came from the ceiling.

23 MR. MARANDO: Objection. Hearsay.

24 THE COURT: Overruled. He's testifying what he
25 told him. Go ahead. And what he directed.

1 Q Okay. And to your knowledge, did Fatlum comply with
2 that?

3 A Yes.

4 Q Did you instruct him to clean?

5 A I instructed him to clean, go upstairs, take pictures,
6 send me reports of what happened, send the reports by e-mail,
7 and the he complied with all of it.

8 Q Okay. And now, I'm going to show you what's previously
9 been marked and admitted into evidence as Defense Exhibit B.
10 Let me know if that's the incident report that Maluku put
11 together.

12 A Yes, it is.

13 MR. FRANKLIN: All right. And I have the enlarged
14 version, Your Honor, which, if I haven't done it before, I'd
15 like to move it into evidence. It's B-2.

16 THE COURT: Let me just check my list, if you
17 would. B-2, I have as admitted into evidence already.

18 MR. FRANKLIN: Thank you.

19 Q If you would, Mr. Silberberg, just tell us when you
20 received this statement.

21 A 1:19 p.m.

22 Q Okay. Where were you when you received it?

23 A Most probably, my office.

24 Q And where is your office located?

25 A Brooklyn, New York.

1 Q All right, so you were in Brooklyn. I'm just going to
2 ask you a question about it.

3 Now, Maloku, he lives or -- back at the time, lived in
4 the same building, Emerald 2727 University?

5 A Yes.

6 Q Okay. At what point, during this timeline, did you get
7 the call?

8 A I don't remember exactly, but generally, I speak to all
9 of my supers between 9:00 and 9:30 in the morning.

10 Q Okay. All right. And, at some point, you instructed
11 him to take some of the actions listed here?

12 A Yes.

13 Q All right. Let me see. All right. Did Mr. Maloku
14 send you the video?

15 A Yes.

16 Q Did you have an opportunity to review it?

17 A Yes.

18 Q Okay. And do you recall what it depicted?

19 A Yes.

20 Q And what did it depict?

21 A A partially plaster of ceiling in a bathtub, just
22 showing me around the bathroom, showing me that a big part of it
23 was dry, and there was no actual leak coming from upstairs.

24 MR. FRANKLIN: Your Honor, the video has been
25 admitted into evidence as Plaintiff's Exhibit 1. I do have

1 a still shot from the same video, which I'd like to now have
2 marked as Defense Exhibit E. I apologize for marking it out
3 the turn, but I don't believe we've used that exhibit.

4 THE COURT: Okay. Any objection?

5 MR. MARANDO: No objection. Just as long as the
6 record had has an idea of the time of the still for the
7 record. Well, we have the --

8 MR. FRANKLIN: It's in the video.

9 MR. MARANDO: Okay, that's fine. No objection,
10 Judge.

11 COURT OFFICER: Defendant's Exhibit E marked for
12 evidence, so marked. Thank you.

13 (Whereupon, the item referred to is marked
14 Defendant's Exhibit E in Evidence.)

15 Q Now, Mr. Silberberg, there was some testimony the
16 other day that there's this big steel beam that goes across the
17 ceiling that is visible in this photograph.

18 Do you see it?

19 A This one?

20 Q The steel beam.

21 MR. FRANKLIN: May I approach?

22 THE COURT: Yes. Show the jury what you're
23 pointing at there.

24 MR. FRANKLIN: Yes. Let's hold it up. This steel
25 beam here.

1 Q Do you know how old the building is?

2 A I don't.

3 Q Can you provide an estimate?

4 A I would say it's --

5 MR. MARANDO: Objection.

6 THE COURT: Overruled.

7 A In the 50s.

8 Q Okay. And, to your knowledge, has there been any
9 renovations to that particular beam that we've -- that's shown
10 in this photograph?

11 A No.

12 Q So that's original?

13 A I don't know.

14 Q When you reviewed the video, did you see any evidence
15 of a leak?

16 A No.

17 Q And when you reviewed the video, did you -- were there,
18 in fact, two videos?

19 A I think so.

20 Q And did the second video depict the shower curtain?

21 A Yes.

22 Q When you viewed that video, how did the shower curtain
23 appear to you?

24 A Dry.

25 Q Okay. And did you have an understanding that there was

1 sort of an inconsistency between what the tenant was saying he
2 was doing before the accident happened, and what the video
3 showed?

4 MR. MARANDO: Objection. Leading.

5 THE COURT: I'm sorry could you read the question
6 back.

7 (Whereupon, the requested testimony was read back
8 by the Court Reporter.)

9 THE COURT: I'm going to sustain that.

10 Q Okay. Did you have an understanding that the tenant
11 was indicating that -- well, what did the tenant indicate, as
12 far as showering?

13 A That he was in the shower when this happened.

14 Q All right. Thank you. Now, did you have any follow-up
15 conversations with the tenant, you, yourself, personally, with
16 Mr. Espacia?

17 A Regarding this incident?

18 Q Correct.

19 A I don't recall.

20 Q All right. Have you ever spoken with Mr. Espacia?

21 A I believe so.

22 Q Okay. I don't want to know about anything recent that
23 you may have spoken to him about, but back in 2021, did you have
24 any conversations with him that related to repairs or things
25 like that?

1 A Yes.

2 Q Okay. What do you recall?

3 A After this incident, we obviously had our crew coming
4 in there to try to cover up the hole, and soon after that, we
5 had no access to finish the repairs.

6 Q Okay. And why is it that you had no access to
7 Apartment 4F to finish repairs?

8 A I don't know.

9 Q Okay.

10 A He wouldn't let us in.

11 Q The tenant would not let you in?

12 A Not us. I mean the super and handyman.

13 Q Okay. Did Mr. Espacia ever tell you why he would not
14 let the super or the handyman back into his apartment?

15 A No.

16 Q In this building, did you have your e-mail posted
17 somewhere in the lobby or anywhere in the building for tenants
18 to contact you?

19 A Yes.

20 Q Where did you have your e-mail posted?

21 A In the lobby, and in the mail room.

22 Q Was the e-mail that you posted in the lobby -- I don't
23 know if you recall what the e-mail address was.

24 A My e-mail address?

25 Q Yes.

1 A Yes.

2 Q What was it?

3 A M-A-N-N-Y @ R-E-S-I-M-G-T.com.

4 Q So Manny@ResidentialManagement.com?

5 A Correct.

6 Q Did tenants contact you?

7 A By e-mail, always.

8 Q Okay. Did you ever get e-mails from Mr. Espacia?

9 A I don't recall getting any.

10 Q Okay. Do you recall getting an e-mail from Mr. Espacia
11 about the ceiling of his bathroom?

12 A No.

13 Q Did you have posted somewhere in the lobby or somewhere
14 in the building your phone number for tenants to contact you?

15 A On the same letter, it has my e-mail and my phone
16 number.

17 THE COURT: Sir, if you could just speak a little
18 slower for the court reporter.

19 A All letter had my e-mail and my phone number.

20 Q And did tenants call you?

21 A Sometimes they would call, sometimes e-mail.

22 Q Did they sometimes leave a voice message?

23 A No.

24 Q When they called you, would you get back to them?

25 A Always.

1 Q All right. Do you recall ever -- well, let's just go
2 back to 2021.

3 Do you recall ever getting a phone call from Mr.
4 Espacia?

5 A No.

6 Q Following this incident in the bathroom of 4F, did
7 Residential Management or the owner receive any sort of
8 violations for the condition of that bathroom?

9 A No.

10 MR. FRANKLIN: That's all I have. Thank you.

11 THE COURT: All right. Counsel?

12 MR. MARANDO: Judge, just based on that last
13 question and the end, I may need two minutes now. I didn't
14 open up the door to bring up a document from NYSCEF. It's a
15 public, so I will request two minutes at end, just to rebut
16 that last question, but I can continue, Your Honor.

17 THE COURT: Start the cross, and then if we need a
18 break or something, we'll worry about it then.

19 MR. MARANDO: Okay.

20 CROSS-EXAMINATION

21 BY MR. MARANDO:

22 Q I'm going to stand right here. Sir, do you hear me
23 okay?

24 A Yes.

25 Q Okay. And so you mentioned your name was Manny

1 Silberberg, correct?

2 A Correct.

3 Q Okay. And the address you gave at the beginning was
4 1651 Coney Island Avenue, correct?

5 A Correct.

6 Q Okay. Now, that's the same address in connection with
7 Residential Management as an entity, correct?

8 A I don't understand the question.

9 Q Okay. Residential --

10 THE COURT: I'm going to ask you to speak slower
11 because I'm having trouble understanding you.

12 MR. MARANDO: I'm actually going to pull up the
13 podium, Judge. I'll slow it down.

14 THE COURT: Okay.

15 Q Now, sir, you mentioned that you're the property
16 manager for 2727 University Avenue, correct?

17 A Correct.

18 Q And how long, from today, have you been the property
19 manager for that building?

20 A 12 years.

21 Q For 12 years. And the individual that you were asked
22 about, Henry Espacia, even though you've been the property
23 manager there for 12 years, you never met Henry Espacia in
24 person, correct?

25 A I don't recall.

1 Q Okay. Well, as you sit here today, do you have any
2 reason to believe, if he were to testify that he never met you,
3 to dispute that?

4 A Can you explain the question.

5 Q Yes. Do you have any recollection of ever meeting
6 Henry Espacia; yes or no?

7 A I don't.

8 Q Okay. So, Manny Silberberg, do you know anyone named
9 Labe Twerski?

10 A No.

11 Q Do you know anyone named Ezriel Weinberger?

12 A I believe the entity owner of the 2727 University.

13 Q Okay. Now, sir, before today, for the purpose of the
14 question, I want you to assume that there's been records
15 admitted into evidence that show the same person, Labe Twerski,
16 is the CEO of the company you work for, and, in fact, he's also
17 a managing member of the ownership Emerald 2727 University LLC.

18 I see you're shaking your head. You can agree with
19 that, correct?

20 A I don't know.

21 Q You don't know?

22 A I work for Residential Management.

23 Q And you worked for that company for 14 years?

24 A Yes.

25 Q You mentioned that, after this occurred, there was

1 never a violation in connection with that specific unit?

2 A Not that I recall.

3 MR. FRANKLIN: Can we approach, Your Honor.

4 THE COURT: You can approach.

5 (Whereupon, a discussion took place at sidebar
6 among the Court and Counsel, outside the hearing of the
7 sworn jurors.)

8 THE COURT: We're going to take a five-minute
9 break.

10 COURT OFFICER: All rise. Jury exiting.

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

12 THE COURT: All right. So the jury has left.
13 Counsel, we're going to ask the court reporter to read back
14 defendant's last question, and then plaintiff's last
15 question, so let's start with defendant's last question.

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

18 THE COURT: Okay. So, Counsel for Defense?

19 MR. FRANKLIN: I'd just like to have an offer of
20 proof of what plaintiff seeks to impeach this witness with.

21 MR. MARANDO: Well, Judge, he just said that there
22 was not -- I don't know. On his question, no, there was no
23 violation with respect to this bathroom ceiling. There was,
24 in fact, a violation afterward, and it's a public record,
25 and it's on NYSCEF, and it was determined.

1 MR. FRANKLIN: I don't know which document you're
2 referring to.

3 MR. MARANDO: I can show you in two seconds. I
4 didn't think we were going to open up the door, but now --

5 MR. FRANKLIN: Can I see what he's referencing.

6 THE COURT: Of course. And give me the NYSCEF
7 number.

8 MR. MARANDO: Yes, Judge.

9 MR. FRANKLIN: If you got the NYSCEF number --

10 MR. MARANDO: I'll get it, just --

11 MR. FRANKLIN: I believe it's going to start with a
12 landlord/tenant number.

13 MR. MARANDO: Well, it's an exhibit in that action.
14 It doesn't talk anything about -- it's actually a separate
15 action, Counsel. It's a separate action, which my client
16 filed, and there was a determination not related to the
17 landlord-tenant issue, but with respect to violations in
18 this unit. The deponent just said there was no violation.
19 Not I don't know. So it goes directly against that. There
20 was a determination by the --

21 THE COURT: Before you continue, please give me the
22 NYSCEF number.

23 MR. MARANDO: I know. My internet -- even Brian
24 mentioned it today. I'm just try to log in, Your Honor.

25 Your Honor, the index number --

1 THE COURT: I have the index number. Do you mean
2 the document number?

3 MR. MARANDO: It's a public record. It was when
4 Henry Espacia filed an action against Residential
5 Management. It's a separate --

6 THE COURT: So it's not in our NYSCEF record?

7 MR. MARANDO: No, Judge. But it's a public record,
8 and it's the record of the -- in which Residential
9 Management had the violation sent to them, and there was a
10 decision for them to correct it. That index number, for the
11 record, is LT-001546-23/BX, and the NYSCEF document on that
12 is titled Inspection Report. It's NYSCEF Document 5, and I
13 just clicked it.

14 And it says, Violation Number 508, Section 27-2005,
15 admin code, repair the broken or defective plaster surfaces
16 and pain in a uniform color in the bathroom, apartment
17 located in apartment 4F.

18 MR. FRANKLIN: Which item is this?

19 THE COURT: What date is that?

20 MR. MARANDO: The date is July 14th, 2023.

21 MR. FRANKLIN: Can you tell me which item. Like,
22 there is numerous --

23 MR. MARANDO: I know, there's a lot of them for the
24 whole apartment, but that one is -- it's on Page 3.

25 MR. FRANKLIN: Which one?

1 MR. MARANDO: On Page 3. It's only --

2 MR. FRANKLIN: First, second, third.

3 MR. MARANDO: Right here. Violation --

4 MR. FRANKLIN: This one here?

5 MR. MARANDO: Yes.

6 MR. FRANKLIN: Repair the broken or defective
7 plaster surfaces, and paint in a uniform color the ceiling
8 of the bathroom. This is the very issue that the witness
9 was just talking about, how he wouldn't allow them entry to
10 do that, and this was after an eviction proceeding had been
11 instituted against him. We think it was retaliatory. Your
12 Honor has already previously ruled on that, and I think that
13 plaintiff is trying to open a wider door because it would
14 not be complete to allow him to cross the witness about a
15 landlord-tenant matter, which is totally collateral, and not
16 respond with the full context of what was going on.

17 THE COURT: Okay. I'm going to make a ruling. I'm
18 going to find you opened issue as to whether there was a
19 violation issued.

20 Counsel, you can cross him to the extent of -- only
21 with the violation. You may not go into the details as to
22 the proceeding.

23 MR. MARANDO: Yes, Judge.

24 THE COURT: And you can ask him about the
25 violation.

1 MR. FRANKLIN: And, Your Honor, is the defense
2 permitted to ask for issues of motive, such as --

3 THE COURT: Ask for what?

4 MR. FRANKLIN: Motive for the plaintiff seeking
5 this violation.

6 THE COURT: No. He said there were no violations.
7 You're going to say, actually, there was one. Cross him
8 with that only.

9 MR. FRANKLIN: Okay.

10 MR. MARANDO: Yes, Judge. Thank you.

11 THE COURT: All right. Let's bring the jury back.

12 MR. FRANKLIN: Can we have the date read into the
13 record.

14 THE COURT: Absolutely. The date of violation is
15 important.

16 COURT OFFICER: All rise. Jury entering.

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

19 MR. FRANKLIN: Okay.

20 THE COURT: Okay. You can be seated.

21 Go ahead, Counselor.

22 MR. MARANDO: Thank you, Judge.

23 Q Mr. Manny Silberberg, about five minutes ago, you told
24 this jury, no, there was never a violation ever following this
25 specific ceiling collapse in Apartment 4F after April 21st,

1 2021.

2 That was your testimony about five minutes ago,
3 correct?

4 A Correct.

5 Q Okay. Now, sir, I'm going to read for you, okay, a
6 violation after that occurred in 2023, and the violation date is
7 July 12th, 2023.

8 Before we get into it, we can agree that July 12th,
9 2023, is after April 21st, 2021, correct?

10 A Correct.

11 Q Okay. Not before. After, correct?

12 A Correct.

13 Q Now, sir, you're familiar that there was a violation,
14 specifically, Section 27-2005, Violation Number 508, for
15 Apartment 4F, Administrative Code, to repair the broken or
16 defective plaster surfaces and paint in a uniform color on the
17 ceiling in the bathroom.

18 Hearing that, does that refresh your memory, that there
19 was, in fact, a violation; yes or no or I don't know?

20 A I don't know.

21 MR. MARANDO: Your Honor, at this point, I would
22 like to move into evidence, redacting the entire document,
23 expect that portion of the violation. He said he can't
24 recall. He did not admit it. For that and for public
25 record, Judge, on NYSCEF, where the defendant is the

1 recipient of the violation.

2 THE COURT: Any objection?

3 MR. FRANKLIN: Yes, Your Honor.

4 THE COURT: Okay. I'm going to allow it in as
5 Plaintiff's Exhibit --

6 MR. MARANDO: I believe we're up to 26, Your Honor.

7 THE COURT: Over objection.

8 (Whereupon, the item referred to is marked
9 Plaintiff's Exhibit 26 in Evidence.)

10 Q Sir, now that we have the violation in evidence, okay,
11 I'm going to show it you to you, okay? I'm going to bring my
12 laptop over to you.

13 MR. MARANDO: May I approach?

14 THE COURT: Yes.

15 Q Okay. Sir, I'm going to zoom in if you need to, okay?
16 But I'm going to focus on this one, right here, this Violation
17 508, Section 27-2005.

18 Do you see where it says Violation 508, 16091201,
19 Administrative Code, repair the broken or defective plastered
20 surfaces and paint in a uniform color the ceiling in the
21 bathroom located in Apartment 4F? Do you see that?

22 A Yes.

23 Q Okay. Now seeing that, does it refresh your memory now
24 that there was, in fact, a violation ordered and issued
25 following this event; yes or no or I don't know?

1 A I don't know.

2 Q Sir, you told -- on direct, you mentioned that you told
3 Fatlum to go up and take pictures of the unit in 5F, correct?

4 A The unit 5F or 4F?

5 Q 5F, in relating to if there was any leak. And you told
6 him to take pictures, correct?

7 A I did not say that.

8 Q You didn't say that ten minutes ago, that you told
9 Fatlum to go upstairs to take pictures and see if there was a
10 leak?

11 A I told him to take pictures of the whole -- I didn't
12 specify where to take the pictures. There was no leak there, so
13 there was no --

14 Q I'm sorry?

15 A I told him to take pictures of the incident. I didn't
16 specify exactly where he should take pictures.

17 Q Okay. Sir, from April of 2021 to right now, you never
18 physically went to the apartment, you, yourself, correct?

19 A Correct.

20 Q You never touched anything, correct?

21 A I never?

22 Q You never touched anything in that bathroom following
23 that event, correct?

24 A I don't recall.

25 Q Well, did you ever go to the apartment?

1 A Me, personally?

2 Q Yes. You, personally, have you physically ever been to
3 Apartment 4F; yes or no?

4 A No.

5 Q Okay. And because you've never been to the Apartment
6 4F, we can agree that following this ceiling collapse, you never
7 touched any of the debris, correct?

8 A Me, personally, no.

9 Q You never touched the weight of it, correct, any of the
10 debris?

11 A Correct.

12 Q Okay. And we can agree that a ceiling doesn't have to
13 only fall from being wet, it can fall based on other reasons,
14 correct?

15 A No.

16 Q No? Can a ceiling fall from being deteriorated; yes or
17 no or I don't know?

18 MR. FRANKLIN: Your Honor, beyond the scope. No
19 foundation.

20 MR. MARANDO: He mentioned that it --

21 THE COURT: Overruled.

22 Q I'll reask my question, sir.

23 A What was the question again?

24 Q Okay. Can we agree that a ceiling, not only from water
25 -- but a ceiling can also collapse from simply being

1 deteriorated; yes or no?

2 A I don't know.

3 Q You don't know?

4 A No.

5 Q Your answer is no?

6 A I said I don't know.

7 Q You mentioned that you managed, in 2021, eight separate
8 properties, correct?

9 A Correct.

10 Q Okay. And you were doing so for Residential Management
11 New York Incorporated, fair?

12 A Correct.

13 Q And it was your testimony that these are various
14 owners, correct?

15 A I believe so.

16 Q Okay. Well, you know Ezriel Weinberger, right, you
17 mentioned before?

18 A No.

19 Q You don't know him?

20 A The name. He asked me the name.

21 Q Do you know Labe Twerski?

22 A No.

23 Q What if I told you their address is the same address
24 you gave, 1651 Coney Island Avenue? So you're telling us, that
25 even though they have the same address, you don't know them?

1 A We manage them, so all the mail comes to us.

2 THE COURT: I'm sorry. You have to repeat and
3 speak slower.

4 A Residential Management manages the property for them,
5 so all the mail comes to our address.

6 Q You mentioned for them, but they are them, because Labe
7 Twerski owns Residential Management and 2727 University Avenue,
8 true?

9 A I don't know.

10 Q You don't know. Okay. If you told you there was a
11 record in evidence --

12 THE COURT: Counselor, he's not an attorney. He's
13 given his answer.

14 MR. MARANDO: Judge, no further questions.

15 MR. FRANKLIN: Redirect, Your Honor?

16 THE COURT: Yes.

17 REDIRECT EXAMINATION

18 BY MR. FRANKLIN:

19 Q Mr. Silberberg, did you have any further complaints of
20 a leak from that bathroom, from 4F?

21 A No.

22 Q All right. Do you know why you weren't allowed
23 admittance back into that apartment to finish up what was
24 started?

25 A No.

1 MR. FRANKLIN: Nothing further.

2 THE COURT: Okay. Counselor?

3 MR. MARANDO: Nothing, Judge.

4 THE COURT: All right. Thank you.

5 (Whereupon, the witness stepped down.)

6 THE COURT: Let's take a five-minute break.

7 COURT OFFICER: All rise. Jury exiting.

8 Actually, we'll come back at 10:45.

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

10 (Whereupon, a recess was taken.)

11 (Whereupon, the item referred to previously,
12 Defendant's Exhibit H, was marked for identification.)

13 COURT OFFICER: All rise. Jury entering.

14 (Whereupon, the sworn jurors enter the courtroom
15 and take their respective seat.)

16 THE COURT: Okay. Be seated. Thank you.

17 Counselor, your next witness, please.

18 MR. FRANKLIN: The defense calls Nicholas Warner.

19 THE COURT: And the Court notes this is via Zoom.
20 Go ahead. He has to be sworn in.

21 N-I-C-H-O-L-A-S W-A-R-N-E-R, a witness called by
22 and on behalf of the Defendant, upon being duly sworn,
23 testified as follows:

24 COURT OFFICER: Please state your name title and
25 business address for the record.

1 THE WITNESS: Nicholas Warner. What was the second
2 part?

3 COURT OFFICER: Your name, your job title and
4 business address for the Court.

5 THE WITNESS: Nicholas Warner. At the time of this
6 incident I was an EMT and the billing address was 700
7 Havemeyer Ave.

8 THE COURT: Raise your hand if you cannot hear.
9 Okay. No one raised their hand.

10 DIRECT EXAMINATION

11 BY MR. FRANKLIN:

12 Q Mr. Warner, thank you for being here. First, you're
13 appearing via Zoom, can we have the city and state?

14 A Phoenix, Arizona.

15 Q We've asked you here today because back in 2021 I
16 believe you worked for Senior Care?

17 A That is correct.

18 Q Can you tell the jury what is Senior Care?

19 A Senior Care is a private ambulance organization in New
20 York City. They do inner facility care and also provide 911
21 services throughout the city.

22 Q Are they based in the Bronx?

23 A They are.

24 Q All right. And when did you first begin working for
25 Senior Care?

1 A I began working there in June of 2020.

2 Q Okay. And at the time that you were working there in
3 2020, did you have any years of experience under your belt?

4 A I had. I first became an EMT in 2017.

5 Q Okay. And the type of work that you did as an EMT, was
6 is like riding in ambulances or responding to emergencies, what
7 exactly?

8 A Correct. So, I did 911 ambulance responses, inner
9 facility. Yeah.

10 Q Did you have to have any particular training as an EMT
11 to respond to emergencies?

12 A Yes. You have to be State certified. You have to go
13 through a program and get credentials and everything.

14 Q They give you training such as CPR training?

15 A That's correct.

16 Q Did they gave you training on how to deal with a triage
17 type of incident?

18 A Correct. Yes.

19 Q How to respond to various types of emergencies?

20 A That is correct.

21 Q Did they tell you how to take blood pressure readings,
22 and how to assess a patient who's been involved in an incident?

23 A Yes.

24 Q All right. Are you familiar with what's called a
25 Glasgow Coma Scale?

1 A Yes.

2 Q Can you explain to the jury, what is the Glasgow Coma
3 Scale?

4 A The Glasgow Coma Scale or the GCS scale, it's a way for
5 us to determine the level of responsiveness of the patient and
6 to tell how serious an injury might be particularly when it comes
7 to head injuries and brain damage.

8 Q Okay. So, we've asked you here to discuss a report
9 that was produced by Senior Care, have you seen the report?

10 A I have.

11 Q Okay. Do you have a copy with you?

12 A Yes, I have it open.

13 Q Can you take a look at it and tell me how many pages it
14 is?

15 A So, I have four pages from the chart, and then there's
16 the header from the legal documents ahead of it.

17 Q Now, from the report itself does, it start at the top
18 with call information on the first page?

19 A Yes.

20 Q And on the second page, does it start at the top with
21 clinical?

22 A I guess a little further down. The first thing it says
23 is not a medical necessity is the first thing on that second
24 page.

25 MR. FRANKLIN: I'm going to share my screen with

1 the document -- let me continue this way because I don't
2 want to display it to the jury just yet.

3 THE COURT: Okay.

4 Q On the third page, does it start with the word success
5 yes?

6 A That is correct.

7 Q And then on the fourth page, does it have an electronic
8 signature scribble?

9 A It's a signature box, yeah.

10 MR. FRANKLIN: For the record, I believe the
11 witness has adequately described what has been premarked as
12 Defendant's Exhibit H, which is Senior Care EMS report
13 pertaining to the incident on April 21st, 2021.

14 THE COURT: Which defense exhibit is it?

15 MR. FRANKLIN: Defense Exhibit H.

16 THE COURT: Is there any objection?

17 MR. MARANDO: To the admissibility into evidence,
18 Judge?

19 THE COURT: Yes.

20 MR. MARANDO: Judge, just one second of voir dire
21 on one portion of the document.

22 THE COURT: Sure.

23 VOIR DIRE EXAMINATION

24 BY MR. MARANDO:

25 Q Mr. Warner, how are you?

1 A Good. How are you doing?

2 Q Good. I'm one of the attorneys here representing the
3 plaintiff. Just a few questions.

4 Sir, on the first page ever this document you mentioned
5 there is some times?

6 A Correct.

7 Q Did you specifically record those times into some sort
8 of system or that's done by someone else on your team?

9 A So, all of our dispatch times come from our dispatch
10 system. It will send that over through digitally into the
11 tablet so you're in route, on scene, left scene, destination
12 times, those are all put in not by me on the chart but through
13 digital stuff.

14 Q So, it's your testimony that these specific times that
15 were inputted were not done by you, it's done by someone else,
16 correct, yes or no?

17 THE COURT: Counsel, it's not cross-examination.
18 Just tell me what you need to know from him.

19 Q Were the times imputed specifically by you?

20 A Not specific -- well, the only time that I put in in
21 this chart which manually is my patient contact time and then my
22 transfer of care. Those are the times that I manually put in
23 but the other things come through our MDT that we manually put
24 our times in.

25 Q Okay. So, besides patient contact, what was the other

1 than that you specifically did yourself?

2 A The transfer of care time. That's when I get my
3 signature handing the patient off to a nurse.

4 MR. MARANDO: No objection to the document. Just I
5 would request because we don't have the person that actually
6 input the times to cross-examine that are besides patient
7 contact transfer of care that Mr. Warner did do himself, I
8 would request redaction based on reliability.

9 THE COURT: I'm going to deny that. It's admitted
10 into evidence.

11 MR. MARANDO: Note my exception, Judge.

12 THE COURT: Yes.

13 Q Now, Mr. Warner, if you have the document in front of
14 you --

15 THE COURT: Is there something the court reporter
16 needs to mark into evidence?

17 MR. FRANKLIN: Exhibit H has been premarked.

18 THE COURT: Let her mark it into evidence.

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

21 COURT OFFICER: Defendant's Exhibit H marked into
22 evidence so marked.

23 MR. FRANKLIN: Your Honor, I can either put the
24 document on the screen in which case the jury won't be able
25 to see the witness or I can use an enlargement.

1 THE COURT: Do you object to use the enlargement?

2 MR. MARANDO: The witness has it at home it sounds
3 like. It's been confirmed it's the same document.

4 THE COURT: Okay. Thank you.

5 MR. FRANKLIN: Permission to publish?

6 THE COURT: Yes. Set that up wherever you think is
7 appropriate.

8 MR. FRANKLIN: It's just the first two pages that
9 we have an enlargement for.

10 Q Mr. Warner, what I'd like to do is if you could walk
11 us through the information contained on the first page of this
12 Senior Care report?

13 A Okay. Where do you want me to start?

14 Q If you could start with the call information and
15 confirm the location where you did this call.

16 A Okay. So, you're talking about 27827 University
17 Avenue?

18 THE COURT: Sir, can you speak a little slower.

19 MR. FRANKLIN: Can you speak slower.

20 A Sure. Are you referencing the address 2727 University
21 Avenue?

22 Q Yes. Do you see that next to incident location?

23 A Yeah.

24 Q Okay. And just above that, there was a Unit Number
25 18E3; do you recognize that?

1 A Yes, I do.

2 Q How do you recognize that?

3 A That's our unit identifier.

4 Q And you said our, were you with someone?

5 A Yes, my partner.

6 Q What was his name?

7 A Alex Erdaide.

8 Q Now, who was the lead, if there was a lead?

9 A I was primary provider that day so I was the one in
10 back doing the charting.

11 Q Okay. So, yes, if you could tell us just go down the
12 document and let us know that the relevant information to your
13 response.

14 MR. MARANDO: Objection, Judge. Calls for a
15 narrative.

16 THE COURT: Yes. Ask him some questions. Let's
17 fine tune it.

18 Q First of all, how far did you have to drive to get to
19 this location?

20 A I do not recall where we were at the time we received
21 the dispatch.

22 Q There's a line there that says loaded mileage, does
23 that mean anything?

24 A Where do you see that?

25 Q It's top half of the document towards the middle or the

1 bottom?

2 A Okay. So that's our mileage from scene to hospital and
3 that's recorded for every patient that gets transported by an
4 ambulance.

5 Q Over on the right-hand side at the top of the document,
6 what was the time that the call was received?

7 A It states call is received at 07:46:03, I believe that
8 says.

9 Q So 7:46 a.m.?

10 A Yes.

11 Q And what time did you arrive on scene?

12 A We arrived as 7:50.

13 Q Okay. Four minutes?

14 A That would be correct.

15 Q And at the time you arrived on scene, how long did it
16 take to contact Mr. Espacia, the patient here?

17 A I have I recorded patient contact at 7:57 hours.

18 Q So, seven minutes later?

19 A That would be correct.

20 Q All right. I'm going to step away from this document
21 for a moment and ask you, do you have an independent
22 recollection of this incident?

23 A So, I do recall the event of just this call just
24 because it was unique situation --

25 Q If you could speak up. You said unique situation?

1 A I do recall this case because it was a unique case to
2 me. I have never seen something like that happen before so I do
3 remember the general call.

4 Q What do you recall from your own recollection about
5 this incident?

6 A I remember arriving there, and the individual was in
7 the tub and he was covered in debris, and I remember there was a
8 hole in the ceiling, and I remember we assisted him, got him out
9 and made sure everything -- he didn't have any immediate life
10 threats. We got him ready to get going to the hospital, and we
11 took him down, loaded him up, transported him. I believe his
12 son was there, but I don't remember much about him.

13 Q Okay. Do you recall if you had to assist him out of
14 the tub or do you recall if someone in his family assisted him
15 out of the tub?

16 MR. MARANDO: Objection. Leading.

17 THE COURT: Overruled.

18 A We were in the bathroom with him when he still there.
19 We assisted him out.

20 Q Did he have clothing?

21 A He didn't. To my recollection, based off what I've
22 written, I don't remember him having clothes on at the time we
23 initially showed up because we had to help him get dressed
24 before we were going to get going.

25 Q Do you recall him wearing a shower cap?

1 A I do not.

2 Q Okay. And what do you recall about the hole in the
3 ceiling?

4 A I just took a quick glance at it. My priority was on
5 patient, making sure he was okay. The Fire Department was there
6 with me. They were doing checks on the structure. That's their
7 thing, not my thing.

8 Q When you say the Fire Department was doing checks on
9 the structure, what did you see them doing?

10 A I remember them coming in with us. I don't remember
11 what kind of fire apparatus it was, whether it was an engine
12 company or ladder company, but I remember them talking and
13 looking up. I don't remember if they had a pike pole or
14 anything like that.

15 THE COURT: I didn't hear what he said.

16 MR. MARANDO: Pike pole.

17 THE COURT: P-I-K-E?

18 Q What's it called? A pike pole?

19 A Yeah. It's device firefighters use to pull ceiling
20 down if they're trying to access fire above and those types of
21 things, but I'm not qualified to speak on firefighting
22 equipment.

23 Q Do you recall seeing something like a stick with a
24 hook?

25 A Yeah. That would be a piece of equipment they would

1 bring with them on this type of call.

2 Q Do you recall seeing them use that stick with the hook
3 to pull down pieces of ceiling?

4 MR. MARANDO: Objection, Judge. Leading.

5 THE COURT: Overruled.

6 Q You can answer.

7 A I do not recall.

8 Q Okay. Do you recall seeing them using their hands to
9 pull down pieces of ceiling?

10 A I don't recall. I was focused on my patient.

11 Q Okay. So, you assist the patient out of the tub, you
12 assist him getting dressed, and then what's the next thing you
13 do?

14 A We got him on to our stair chair as he lives up on a
15 higher floor. We don't want him walking considering he may have
16 potential injuries to his neck and spine at that time, and we
17 can't rule that out in the field. So, we got him on the stair
18 chair to limit movement, got him downstairs and brought him to
19 the ambulance, transferred him from the stair chair to the
20 stretcher and got him loaded up.

21 Q This individual on the first page, did you indicate his
22 age?

23 A Yes.

24 Q What was his age?

25 A The age I have recorded here, it says 49 years.

1 Q Okay. If you turn to the second page of that document,
2 I want to have you go through that and I'm just going to publish
3 to the jury the second page.

4 Up at the top of that second page under clinical, you
5 have a time recorded, can you tell us what it is?

6 A It says 7:30.

7 Q What's the significance of that time, based on your
8 understanding?

9 A It says onset so typically that's our -- that's a time
10 that the -- we believe the injury or illness usually begins to
11 occur around that time.

12 Q Did he tell you that the injury happened 30 minutes
13 ago?

14 MR. MARANDO: Leading.

15 THE COURT: Sustained. That's sustained.

16 MR. FRANKLIN: Okay.

17 THE COURT: Don't lead the witness please.

18 Q You have underneath that, duration 30 minutes, can you
19 tell the jury what that means?

20 A Typically, it's used with -- I'm not sure how to
21 describe this. How long an issue has been going on. I don't
22 recall why -- what 30 minutes was. I don't recall if that was a
23 conversation we had had or not.

24 Q Okay. Next, you have organ system and you've got
25 musculoskeletal slash skin next to it?

1 A Yes.

2 Q Why is that there?

3 A Because -- so that's your -- we're looking at different
4 body systems or looking at different illnesses or injuries so
5 when he reported the ceiling falling on him, that's going to be
6 musculoskeletal or skin injury potentially.

7 Q Okay. Right below that it says anatomic location neck,
8 what does that mean?

9 A So, with the charting systems, they want a specific
10 location of site of injury or illness or something. Patient had
11 been complaining of pain to the neck after this incident so
12 that's why I reported that.

13 Q Next to injuries, can you tell the jury what you have
14 entered there?

15 A It says S19.9XXA, unspecified injury of neck, initial
16 encounter, S39.92XA, unspecified injury of lower back, initial
17 encounter.

18 Q Those letters and numbers, the S19.9XXA, is that some
19 code of some sort?

20 A That's above my pay grade.

21 Q Okay. And what is an unspecified injury of neck?

22 A So, it's just the way the charting software is
23 typically, they have certain drop-down menus that you're able to
24 access and if something doesn't quite line up with what you're
25 seeing, you go with the unspecified and then you can further

1 elaborate it in your chart.

2 Q Okay. Now, under assessments, the first time entered
3 there appears to be -- is it 7:59?

4 A That is the time that's recorded there.

5 Q Okay. Now your name is there, did you enter something
6 in a system?

7 A Yes. This is -- yeah. Yeah.

8 Q Can you tell the jury what you entered in the system?

9 A So this is your ABCs assessment. This is standard care
10 practice for every patient encounter you hit. These are the
11 things we look for immediate, serious conditions that require
12 either rapid intervention or what have you, but you make sure
13 the patient has a clear airway, able to speak, breathing
14 regularly and they have a good pulse and skin signs are good so
15 they're not pale or diaphoretic or whatever.

16 Q The ABCs, do they stand for airway, breathing and
17 circulation?

18 A That's correct.

19 Q Can you tell the jury what you recorded for airway?

20 A He had a patent airway.

21 Q What that does that mean?

22 A It means that he is able -- he has a clear airway no
23 obstructions, able to move air in and out and able to
24 communicate with me.

25 Q What did you indicate for breathing?

1 A His breathing was normal. He had no -- it says normal
2 breathing, unlabored, clear lung sounds.

3 Q The lung sounds were clear?

4 A That's what it says.

5 Q Okay. What did you have entered for circulation?

6 A General normal, yes. Skin capillary refill normal.
7 Skin color normal, temperature normal, condition normal.

8 Q If there were cuts or bruises, would you have listed
9 them in that location under circulation?

10 A No.

11 Q Would you have listed them somewhere else?

12 A That would have been down in the secondary assessment.

13 Q Okay. We'll get to that in the moment, but when you
14 say capillary refill normal, can you explain to the jury what
15 that means?

16 A So when you have a patient and you need to check for
17 fusion, capillary refill, you take a finger, you kind of press
18 on the finger a little bit and it rebounds and based on how
19 quickly it rebounds, it can tell you how the patient's ability
20 to profuse blood through their body.

21 Q Okay. And his was normal?

22 A Yes. That's what I recorded.

23 Q Skin color and skin temperature were normal?

24 A Yeah. I have everything recorded as normal in there.

25 Q What does skin condition refer to?

1 A So, that could be like -- I don't remember how their
2 drop-down menus work because every agency has a little bit of
3 differentiation how they describe it. I don't exactly remember
4 what other options Senior Care listed in there.

5 Q Okay. Now, below that, also at the same time, there's
6 a neurological assessment; is that right?

7 A Yeah. That's what it says.

8 Q What was the neurological assessment you gave?

9 A So, he was alert, he had -- it says he has normal
10 mentation at the time, and he had no obvious neurological
11 deficits at that time.

12 Q What would be a type of neurological deficit that you
13 would look for?

14 A You might look for one-sided weakness if you're looking
15 at a patient with a stroke. You could also look into -- like,
16 you want to be concerned about brain herniation so you want to
17 check the pupils and make sure one is not blown.

18 Q Would a concussion be something you would look for?

19 A So, there's like certain things that can -- certain
20 indicators for concussion. At that time, I don't recall if he
21 mentioned anything about loss of consciousness or anything but
22 typically also if you think about concussions, you would
23 probably see something different.

24 Q As far as your neurological assessment, everything was
25 normal?

1 A At the time, everything was normal, to my recollection.

2 Q Okay. Below that, did you do an assessment of his
3 neck?

4 A It says I have injury, neck.

5 Q Is there anymore information that you have there that
6 you gleaned from the patient?

7 A If I don't have anything extra added, I would assume at
8 the time that the patient didn't create -- or indicate anything
9 upon an assessment of the neck.

10 Q And then same for the back, what did you indicate?

11 A It says injury, back.

12 Q Okay. Nothing more?

13 A Nothing more.

14 Q Was he complaining of pain to the neck and the back?

15 A That is what I have recorded here.

16 Q Was there anything objective that you found with
17 regards to his neck and his back?

18 A I don't recall seeing anything obviously different. If
19 I had, I would have documented that.

20 Q Okay. Now, further down, you took vital signs?

21 A Yes.

22 Q Can you tell me about the vital signs, and it looks
23 like you took them at 8:15?

24 A That is what it says.

25 Q Can you tell the first vital sign?

1 A Blood pressure 134 over 78.

2 Q Is that in normal range?

3 A That is within normal stable range for an adult male.

4 Q What about the pulse?

5 A Pulse rate says 96.

6 Q Is that normal?

7 A That's within stable normal range.

8 Q And for respiratory, what did you indicate?

9 A Eighteen.

10 Q Is that normal?

11 A That is.

12 Q Efforts, what does that refer to?

13 A How the patient's breathing. Is it labored, is he like
14 keeled over or just breathing normally like you and me right
15 now.

16 Q And what did you indicate?

17 A It says effort normal there.

18 Q Now, next to pain, there's the number eight, explain
19 that?

20 A So, that would indicate to me at the time the patient
21 stated his pain was rated at an eight out of ten at the time of
22 the assessment.

23 Q Okay. You just ask the patient on a scale of one to
24 ten how would you rate your pain?

25 A Correct.

1 Q Now, we get to the Glasgow Coma Score, can you explain
2 what each section of the scale means and what grade you gave it?

3 A So, the Glasgow Coma Scale is five -- eyes, voice and
4 motor. These are different things that we check. Are the eyes
5 open, spontaneous, able to track me. Does he respond to pain?
6 If I pinch his trapezius muscle, if he was responsive or no
7 response. Are you able to have a normal conversation with me,
8 are you confused, are you just making sounds or nothing and then
9 the motor is like can you obey my commands or are you posturing
10 if he has potential brain injury. Those are kind of what those
11 mean.

12 The four is the highest, so that's for eyes
13 spontaneous, verbal, a five is the highest so he's able to have
14 a conversation, and then motor, six, he's able to move and
15 follow commands.

16 Q So, the Glasgow Coma Scale, does it go from one to
17 fifteen?

18 A No. So the lowest score you can get is a three on it.
19 Each section -- so, section one, one to four, section two, one
20 to five, section three, one to six.

21 Q Okay.

22 A So you add up the numbers you get and that gives you
23 your GCS.

24 Q What was his GCS?

25 A His GCS is recorded as 15.

1 Q That's the highest you can get?

2 A That would be correct.

3 Q What did that tell you about your patient?

4 A It tells me that his -- that there was no serious
5 neurological deficit noted at the time, and he was able to
6 communicate and still operate as a functional human being.

7 Q Now, next to that you have RTS12, what's that?

8 A It's been a long time since I worked there. I don't
9 know what that stands for anymore.

10 Q Okay. Right below that you have or it states method of
11 blood pressure measurement, can you explain what that means?

12 A Yeah. The blood pressure was assessed with manual cuff
13 so that's blood pressure cuff and then a stethoscope to
14 auscultate the artery.

15 Q And then the pulse type, you have regular, what does
16 that mean?

17 A I imagine that has to do with the pulse's regularity so
18 that would be just a regular pulse rate.

19 Q Okay. For method, it says palpated, is that a method
20 of checking the pulse?

21 A That's correct. You take your two fingers, you hold it
22 on the side of your wrist like so and you can feel a pulse.

23 Q Okay. Now, after you took the vitals at 8:15, at 8:26,
24 it looks like there were additional vitals?

25 A Yeah, it's a reassessment.

1 Q Do you do an assessment on scene and then an assessment
2 later at the hospital?

3 A Industry standard practice is always get at least two
4 sets of vitals. One is typically on scene and then follow-up
5 typically would be on transport.

6 Q Where did you transport this gentleman?

7 A We transported him over to Presbyterian Allen Hospital.

8 Q New York Presbyterian?

9 A New York Presbyterian Allen Pavilion.

10 Q Okay. When you transferred him, were his vitals just
11 the same as when you first took them?

12 A I'm not following your question.

13 Q Your second vitals reading at the time of transfer,
14 were they the same as first vitals that you took on scene?

15 A They're not identical.

16 Q Okay. What was the difference?

17 A I mean, it's -- do you want me to list all the vitals
18 out again?

19 Q Just what you have listed here in your second page of
20 your report at the bottom at 8:26?

21 A Yeah. Blood pressure is 130 over 86, heart rate is
22 90 --

23 Q Is 130 over 86 still within normal range?

24 A Absolutely.

25 Q Okay. What about pulse?

1 A Ninety.

2 Q Within normal range?

3 A Still, yes.

4 Q Respiratory, was that the same?

5 A Same.

6 Q Efforts was still normal?

7 A Yep.

8 Q Glasgow Coma Scale was still 15 out of 15?

9 A Correct.

10 Q So, he was still in good shape?

11 MR. MARANDO: Objection to form.

12 THE COURT: Overruled.

13 A Yeah.

14 Q Now, there is a narrative history on the next page, and
15 I'm going to share my screen and make that a little larger so
16 that the jury can see it so just bear with me a moment?

17 A Okay.

18 Q I'm going to share the screen with you so you can also
19 see it and I'm going to show you an enlarged portion of this
20 next page so you can see it but the jury can't. Let me grab it
21 and put it over.

22 THE COURT: I don't think the jury can see that.

23 MR. FRANKLIN: Yeah, it's not big enough, but I
24 will try to make it a little bigger. Let me see if I can
25 also move this down or move it up. No.

1 Q All right. Can you tell what you have listed first
2 under narrative history text?

3 A It says unit 18E3 dispatched to injury at 2727
4 University Avenue.

5 Q Okay. If you could read what you have after that.

6 A Upon arrival we made entry with Fire to the apartment.
7 Patient was found laying in bathtub with ceiling debris around
8 the bathtub and on top of patient. Patient stated he was
9 experiencing pain in neck lower back and right knee. Patient
10 was assisted out of the tub and to room to put on clothing.
11 Patient was seated on a stair chair and brought down to
12 ambulance where he sat on stretcher, vitals assessed in the back
13 of the ambulance and found to be within normal range, cervical
14 collar was placed on patient neck to stabilize, patient remains
15 stable for the duration of transport and was received by triage
16 RN at NYP Allen Pavilion Emergency Department.

17 Q Now, the placement of a cervical collar, is that more
18 of a precautionary step?

19 MR. MARANDO: Objection.

20 THE COURT: Sustained. Sustained. Don't answer
21 that question.

22 Q Why is the cervical collar placed?

23 A The patient was reporting pain to his neck. At that
24 time, it was standard industry practice to place a cervical
25 collar on the patient when they complained of that.

1 Q Okay. Did you note anything as far as stability of the
2 neck?

3 A If I don't anything written to the contrary. I don't
4 recall a hundred percent.

5 Q Now, after this portion of your report, is there any
6 further assessment in this document? I'm going to stop sharing.

7 A No.

8 Q Did you note anything as far as scrapes, cuts or
9 bruises?

10 A Not that I can recall, and I don't have anything in my
11 chart that would indicate that I did see that.

12 Q Do you recall seeing the debris around Mr. Espacia?

13 A I do recall that.

14 Q Can you describe it?

15 A Yeah. It was like chunky bits of -- I don't know what
16 material they use in old buildings like that, but it almost
17 looked -- I don't know. It's a like chunky and brown.

18 Q And almost looked like, what were you going to say?

19 A I don't know what word I would use to describe it. I'm
20 bad at that. Just ceiling stuff.

21 Q Were the pieces dry or were they wet?

22 A I don't recall that. I imagine probably both, but I
23 don't recall exactly.

24 Q Do you recall a bathtub filled with the water?

25 A I do.

1 Q Do you recall the size of the pieces?

2 A There were probably a couple of big pieces, I recall,
3 on the floor but otherwise probably just small bits of debris.

4 Q Did I pick up any of those big pieces?

5 A I don't recall touching any of the debris.

6 MR. FRANKLIN: Thank you. The other counsel may
7 have questions for you. Thank you.

8 THE COURT: Okay. Counsel.

9 MR. MARANDO: Thank you, Judge.

10 CROSS-EXAMINATION

11 BY MR. MARANDO:

12 Q Hi, Mr. Warner, how are you?

13 A How are you doing?

14 Q Thank you for your time today. I know it's a little
15 sunny in Arizona, right?

16 A Yeah.

17 Q It's a little hot in this courtroom so don't send warm
18 weather our way. We don't need it in this courtroom.

19 Sir, on Page 2 of 5 in the report, he mentioned pain
20 scale of eight out of ten, correct?

21 A That is correct.

22 Q And you mentioned that there was a cervical collar
23 placed upon the neck of this specific patient on that day,
24 correct?

25 A Correct.

1 Q And even though there can be a physical examination at
2 that time, did you perform any MRIs or imaging at that moment?

3 A No.

4 Q Is that part of reason why we, as a precautionary, put
5 a cervical spine because a physical exam doesn't necessarily
6 mean what's inside the body is not injured?

7 A A hundred percent correct.

8 Q Now, sir, we spoke about the vitals that you took and
9 you mentioned the 7:30 approximate onset time of when this
10 probably may or may not have occurred; do you remember that?

11 A Yes.

12 Q And the vitals, the first vitals, was taken 45 minutes
13 later, correct, approximately?

14 A Compared to that time of -- one second.

15 Q Take your time.

16 A What was the initial time again?

17 Q I believe you said 8:15, around that time, was the
18 first set of vitals?

19 A Yes.

20 Q Maybe 8:15. I don't have the document in front of me.
21 So, if the onset was 7:30, the first set of vitals, and we've
22 been talking less than that, was 45 minutes later, right?

23 A I guess that would be correct.

24 Q Sir, based upon the document, right, 7:30 to 8:15,
25 that's approximately 45 minutes?

1 A Yeah. Approximately, yeah.

2 Q And the second set of vitals was taken an hour later,
3 fair?

4 A Yes.

5 Q Okay. In your experience, after 45 minutes to an hour,
6 we can agree that blood pressure or pulse can come back to
7 normal ranges; is that fair, after a traumatic event?

8 A I would say that's a fair assessment. Your body can
9 kind of rebound after a little bit.

10 Q You mentioned you and your team, based on your
11 recollection, I'll use your words, we assisted him out, correct?

12 A Yeah, that's correct.

13 Q And you even said, quote, we helped him get dressed,
14 correct?

15 A Yeah.

16 Q The first few words you mentioned in the beginning was
17 I don't have any specific recollection of this encounter,
18 correct?

19 A I recall the event, but, like, when we're talking about
20 real specifics, I don't remember those, but I remember the
21 general call.

22 Q Sir, in terms of the vitals and the pulse, the same
23 would apply to the Glasgow score and after 45 minutes to an hour
24 in your experience of doing this for several years, that after
25 that time, those ranges could come back to normal range versus

1 maybe the first ten minutes of when a traumatic event occurred,
2 correct?

3 A Correct.

4 MR. MARANDO: Sir, I want to thank you for your
5 time. No further questions. Thank you, Judge.

6 THE COURT: Counselor, anything?

7 MR. FRANKLIN: Just briefly.

8 REDIRECT EXAMINATION

9 BY MR. FRANKLIN:

10 Q Mr. Warner, based on your documentation of your triage
11 of this individual, was he healthy?

12 MR. MARANDO: Objection.

13 THE COURT: Overruled.

14 Q You can answer.

15 A Okay. Sorry. Repeat the question. Sorry.

16 Q Yeah. Based on your triage of this patient, was he
17 healthy?

18 A Generally speaking, he was feel -- I feel like he was
19 vitally appropriate for his age.

20 MR. FRANKLIN: Okay. Thank you. That's all I
21 have.

22 THE COURT: Counselor?

23 MR. MARANDO: No, Judge.

24 THE COURT: All right. Thank you, sir.

25 MR. FRANKLIN: Thank you, Mr. Warner. You can sign

1 off. We appreciate it.

2 THE COURT: Okay. If we can take a ten minute
3 break.

4 COURT OFFICER: All rise. Jury exiting.

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

6 THE COURT: Be seated. Who is our next witness?

7 MR. FRANKLIN: Your Honor, we have Dr. Bendo coming
8 in at 2:00.

9 THE COURT: Okay. That will take all afternoon I
10 assume?

11 MR. FRANKLIN: Yes. Let me just check the witness
12 list, which I misplaced. Yeah. That's who I have. It's
13 just Dr. Bendo.

14 THE COURT: How about Friday?

15 MR. FRANKLIN: On Friday, we have our economist
16 coming into in the morning, Christine Kelly I believe is the
17 name. Investigator Michael Orecchio.

18 THE COURT: Okay.

19 MR. FRANKLIN: Also coming by in the morning and
20 Dr. Bazos, we're still trying to confirm what time on Friday
21 he can come back and finish his testimony. All of these are
22 Friday. Three witnesses, Christine Kelly --

23 THE COURT: Investigator Orecchio and Dr. Bazos
24 okay.

25 MR. FRANKLIN: And then on Monday is our last

1 witness, Dr. Lastig.

2 THE COURT: Okay. As you know, tomorrow at 2:30
3 we'll do the charge conference and go over the verdict sheet
4 so be prepared when you come back tomorrow afternoon to
5 discuss both of those. I gather I can let them go for lunch
6 and have them back at 2:00.

7 Let's have them back in. Thank you.

8 COURT OFFICER: All rise. Jury entering.

9 (Whereupon, the sworn jurors enter the courtroom
10 and take their respective seat.)

11 THE COURT: Okay. You can be seated. We have
12 concluded the witnesses for this morning. We have another
13 witness for today. This will take up the whole afternoon so
14 just head out to lunch and be back by 2:00. Thank you.

15 COURT OFFICER: All rise. Jury exiting.

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

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: Be seated. Welcome back, everyone.

23 Go ahead, Counselor.

24 MR. FRANKLIN: Your Honor, before I call the next
25 witness, I would like to read into the record a portion of

1 Mr. Espacia's EBT testimony from March 27th, 2023.

2 THE COURT: Any objection?

3 MR. MARANDO: No, Judge.

4 THE COURT: Okay. Go ahead.

5 MR. FRANKLIN: It's page 59, beginning at line 14,
6 to page 60 line 2.

7 "QUESTION: Did there come a point in time when you
8 saw the ceiling in the bathroom after the incident?

9 "ANSWER: Yes.

10 "QUESTION: Tell me what you observed at that time.

11 "ANSWER: The same as it is now. They never
12 painted it. They just put sheetrock and paint on it.

13 "QUESTION: Was that done while you were at the
14 hospital?

15 "ANSWER: Of course. That I know of, that was done
16 while I was at the hospital.

17 "QUESTION: Now, the sheetrock that's currently --
18 is there any water stains on that or any cracks?

19 "ANSWER: Right now, I don't think so.

20 "QUESTION: And have you continued to use that
21 shower?

22 "ANSWER: Of course."

23 THE COURT: Counsel, call your next witness.

24 MR. FRANKLIN: Defense calls Dr. John Bendo.

25 COURT OFFICER: Remain standing and raise your

1 right hand.

2 D R. J O H N B E N D O, a witness called by and
3 on behalf of the Defendant, upon being duly sworn, took the
4 witness stand, and testified as follows:

5 COURT OFFICER: Please state your name, job title,
6 and business address for the record.

7 THE WITNESS: John Bendo, orthopedic spine surgeon,
8 862 Park Avenue, New York, New York 10075.

9 THE COURT: Thank you.
10 Go ahead, Counselor.

11 MR. FRANKLIN: Thank you.

12 DIRECT EXAMINATION

13 BY MR. FRANKLIN:

14 Q Dr. Bendo, where do you currently practice?

15 A NYU Langone Hospital in New York City.

16 Q Okay. How long have you been there?

17 A Since I did a fellowship there in 1995, so about 31
18 years.

19 Q Okay. Would you just briefly, for the benefit of the
20 jury, tell us a little bit about your educational backgrounds.

21 A So I'm a New York City kid. I was raised in New York,
22 went to Columbia College undergraduate in the Upper West Side.
23 That was four years, and then I went to Mount Sinai Medical
24 School, which is on the Upper East Side. That was another four
25 years, and then I went directly into an orthopedic surgical

1 residency program, which is a five-year orthopedic training
2 program right after that, and then I did one year of specialized
3 spine surgery.

4 Spine surgery is one of the disciplines within
5 orthopedic surgery. Then I did a year specializing in that, and
6 then I've just practiced spine surgery for the past 31 years.

7 Q Do you hold any licenses?

8 A Yes.

9 Q Can you list them.

10 A Well, I'm licensed to practice medicine in the State of
11 New York, obviously, and I'm board certified in orthopedic
12 surgery.

13 Q Okay. Let me see. Can you tell us a little bit about
14 your academic appointments?

15 A So I have a full time academic appointment at NYU,
16 which basically means I have a teaching position. We're in the
17 business of not just practicing spinal surgery, but we're in the
18 business of training and educating the next generation of
19 orthopedic surgeons, specifically, spine surgeons. I train
20 spine surgeons, which is, like I said, a discipline with
21 orthopedic surgery.

22 And so we had the largest orthopedic training program
23 in the country at NYU. We train 14 residents a year. It's
24 larger than any other university program in the country. And
25 then we train five spine fellows per year also, so these are

1 doctors that have graduated orthopedic residency, and then they
2 spend one year with us. We choose them and they come and train
3 under us for one year.

4 So that's -- I spend a lot of time training and
5 teaching them, and we do research, but the vast majority of my
6 time is in clinical practice. I'm a very busy surgeon. I do
7 about 200 spine operations a year. I see about 3,000 spine
8 patients a year, so that keeps us very busy.

9 Q All right. Where do you have hospital appointments?

10 A I'm a full-time person at NYU, so I keep one
11 appointment now.

12 Q All right. Are you on any committees?

13 A Yeah. My title at NYU is direct of the spine for
14 clinical services, which basically means I oversee all of the
15 clinical work that goes on in the service, and we have about 20
16 other surgeons. So many of us have different titles, we do
17 different things, but suffice it to say, my title there is
18 direct of the spine service, which basically means that I
19 oversee a lot of clinical work that gets done in the entire
20 service.

21 Q Okay. You're also involved in the residency program?

22 A Yes.

23 Q Can you tell us some of the your professional
24 memberships that you have.

25 A I belong to many societies, North American Spine

1 Society, the Scoliosis Research Society, American Academy of
2 Orthopedic Surgeons, Hellenic Medical Society. These are just
3 professional organizations that one belongs to.

4 Q Have you testify in court before?

5 A Yes.

6 Q All right. So, Doctor, without further delay, how or
7 when were you engaged in connection with the matter of Henry
8 Espacia?

9 A I saw Mr. Espacia for an independent medical
10 examination on January 23rd, 2024.

11 Q Okay. And to be clear, 2024?

12 A 2024.

13 Q Okay. When you saw him, did he show up with an
14 interpreter?

15 A Yes.

16 Q All right. Did you have any difficulty communicating
17 with him while he was there for that independent medical
18 evaluation?

19 A No.

20 Q Can you explain to the jury, briefly, what an
21 independent medical evaluation is.

22 A An independent medical examination is -- well, you
23 know, in trials such as this, you need experts on both sides of
24 the story. And I was hired by this defense firm to give my
25 professional opinion about what I thought was going on, so what

1 that entails is they'll schedule a day that the claimant comes
2 into my office. And before that, I review all of the records of
3 the case, anything pertinent to -- I mean, my job is to really
4 evaluate the spine stuff, because I'm a spine expert, a spine
5 specialist, so I'm focused on the spine aspect of everything
6 that went on.

7 But, having said that, the spine doesn't exist in a
8 vacuum, so you really need to understand everything that's going
9 on, from the alleged injury, to all the treatments, all the
10 imaging studies, so I review everything before the person comes
11 in. And the advantage of that is I know everything about the
12 case before that person comes in, so when the person comes in, I
13 then go over all the pertinent things of the case that are
14 important to me, and I verify everything. How did you fall?
15 What happened to you? Who treated you? We go through all of
16 the treatments.

17 It's quick because, as I said, I have all of the
18 details already. I've studied all the details already, so this
19 is just confirmation. And so we go over all of the treatments
20 that the claimant had. We go over all of the studies that the
21 claimant underwent, x-rays, CAT scans, MRIs, and things like
22 that. And then we go over the treatments that the claimant had,
23 physical therapy, injections, surgery. And then I prepare a
24 report after all of this, so I review the history. I do a full
25 physical examination of the claimant when he comes to the

1 office, which we'll get into all the specifics of that.

2 And so then I have a pretty good sense of what's going
3 on, and then they want my opinion as to certain things that we
4 will he discuss today. And I put all of those things in one
5 synopsis report, and that's pretty much what an independent
6 medical exam entails.

7 Q Let me start with -- you discussed, in detail -- thank
8 you for discussing all of the records and things that you
9 reviewed.

10 When a person comes in for an independent medical
11 evaluation, they show up, and is it an office or a clinic
12 setting?

13 A Yeah. Yes, an office.

14 Q And do you first meet with them and ask them, you know,
15 where does it hurt, how did it happen, things like that?

16 A Yeah. We first go through the whole history of the
17 story.

18 Q Okay. And when you ask them for their history, do you
19 ask them, please, tell me all your medical history, if you've
20 had prior injuries, things like that?

21 A Yes.

22 Q Did you ask Mr. Espacia if he had any prior injuries?

23 A Yes.

24 Q And what did he tell you?

25 A He did not. I mean, I asked him, have you ever had --

1 my question is: Did you ever have any orthopedic injury, and
2 have you ever had any spinal injuries in the past, or
3 treatments, any time before the subject incident. I ask
4 everybody that.

5 Q Did he tell you that he had had past chiropractic
6 treatment for his neck and back?

7 MR. MARANDO: Objection.

8 THE COURT: Overruled.

9 A No, he did not. He said he did not have any treatments
10 when I asked him.

11 Q Did he mention a prior motor vehicle accident?

12 A No.

13 Q All right. So, based on the information that you did
14 receive from Mr. Espacia, you know, what was your understanding
15 of how he got injured?

16 A So, a pretty easy story to understand. He said that,
17 you know -- I had known this before he came into the office, but
18 once again, I review a lot of records, and sometimes, there may
19 be discrepancy in records, so I want to hear from the person,
20 himself, what happened. So I asked him, and he had confirmed
21 that while he was showering, portions of the ceiling had fallen
22 onto him.

23 Q Did he tell you that he fell backwards?

24 A I said he fell to the ground.

25 Q Okay. But he didn't mention about whether he fell

1 inside the tub or out of the tub?

2 A Not particularly, no.

3 Q Did he indicate that he had hit his head on anything?

4 A Well, I ask them all the time. I said, did you bang
5 your head, did you lose consciousness? And he said, no.

6 Q Okay. And no to both?

7 A Yes.

8 Q Okay. Now, did you learn that he had been treating
9 with --

10 A Actually, let me correct that. He didn't recall if he
11 lost consciousness, but he couldn't say for sure that he did.

12 Q Okay. Did you learn that he was receiving treatment at
13 Physical Medicine & Rehabilitation?

14 A Yes.

15 Q Was that his primary treatment provider?

16 A Well, that was the first doctor he had seen, a
17 physiatrist. That's a rehab doctor, which is very appropriate
18 when somebody has an issue. They'll see a rehab doctor, a
19 nonsurgical, like, orthopedic doctor that took care of him. Who
20 he continues to see is Dr. Khakbar, K-H-A-K-B-A-R, for years
21 until 2024. My exam went on in 2024, so I don't have
22 information after that.

23 Q So, the nonsurgical doctor that you see, are they sort
24 of, like, a primary point of the contact, you see them
25 regularly?

1 A Pretty much, yeah. And he saw this doctor regularly.

2 Q And then if you are going to get operated on, do you go
3 and see a specialist?

4 A Yes.

5 Q Okay. Did he indicate that he had seen a specialist by
6 the name of Doug Berkowitz?

7 A Yes.

8 Q And what did he indicate he had seen Doug Berkowitz
9 for?

10 A For his shoulders.

11 Q Okay. Did he indicate he had seen a specialist by the
12 name of Angel Macagno?

13 A Yes.

14 Q And what did he see Angel Macagno for?

15 A Dr. Macagno is an orthopedic spinal surgeon, like
16 myself.

17 Q Okay. And, specifically, what did Dr. Macagno do for
18 Mr. Espacia?

19 A So he saw him for neck and back pain.

20 Q Okay. Did he specifically perform -- have the acronym
21 ACDF?

22 A Yes.

23 Q Can you explain to the jury what that is.

24 A So ACDF is an acronym for, A stands for anterior, front
25 of the neck, C stands for cervical, which is cervical spine or

1 neck, D stands for discectomy, removing the disc in the neck and
2 taking the pressure off the nerve if there was pressure on the
3 nerve, and the last part is F, which stands for fusion, which
4 basically means when we go into the front of the neck, we kind
5 of move everything aside here, and it's really not that much of
6 a big deal.

7 We're actually down to the neck in about five or seven
8 minutes. It really doesn't take very long, believe it or not.
9 We get down there pretty quickly, even though it sounds like
10 it's a long trip down from the spine, here. The spine is not
11 very far from the skin. And once we get down to the disc, we
12 put retractors in to hold the space open. Then we bring in the
13 microscope, and we start removing the disc because the disc is
14 what's pressing on the nerves, and things like that. And we
15 remove the disc.

16 We clean out the entire disc with special instruments.
17 We take any pressure off of the spinal cord, if there is
18 pressure on the spinal cord. We take pressure off the nerve, if
19 there is pressure on the nerve, but then we have a space we have
20 to fill because disc has been removed. So we have to fill the
21 space with something, and we fill it, most typically, with a
22 small metallic titanium cage that goes in the space.

23 In this case, he had two discs that were operated on,
24 C4-5. Each disc has two numbers. It's a little confusing, but
25 C4-5 is one disc, and C5-6 is the other disc. So both those

1 discs were removed, and then you have two metal cages placed in
2 the spacers. And then on top of that, we put a small titanium
3 plate with screws that holds the whole thing together, and the
4 idea is that the bone will grow through the cage, and fuse or
5 connect the two bones that are already in there.

6 So the fusion goes from C4, which is bone, to C5, which
7 is a bone, to C6. So, basically, you get the discs removed, the
8 cages go in, and the plate goes from C4 to C6. So, after that,
9 there's no motion at that level, but the concept is, you know,
10 if there's pain or something, that, you know, hopefully, the
11 surgery will take care of the pain.

12 Q Doctor, did you learn that Mr. Espacia was continuing
13 to complain after he had that procedure?

14 A Yes.

15 Q Okay. Did he tell you anything about how, you know,
16 physical therapy helped or didn't help?

17 A It didn't really help very much, he would say.

18 Q Okay. And were his complaints neck pain?

19 A Predominantly neck pain.

20 Q All right. Now, we brought you here to discuss the
21 spinal injuries with the neck, but you also -- do you understand
22 that he had two shoulder surgeries, as well?

23 A Yes.

24 Q Okay. Can that sometimes impact the neck?

25 A 100 percent.

1 Q Okay. And when you did your physical examination, were
2 you looking for things like that?

3 A Yes.

4 Q All right. Now --

5 MR. MARANDO: Judge, can we approach?

6 THE COURT: Sure.

7 (Whereupon, a discussion took place at sidebar
8 among the Court and Counsel, outside the hearing of the
9 sworn jurors.)

10 THE COURT: All right. So we worked out a
11 resolution of that.

12 Continue.

13 Q So we are he just going to stick to the neck issues.

14 Now, why was it important for you, as a spinal surgeon,
15 to know a little bit of a history about, you know, someone's
16 neck who is claiming neck pain?

17 A You mean a history before the incident?

18 Q A history before the incident, like a preexisting or
19 prior -- any prior issues.

20 A Well, a preexisting history is very important in
21 anything orthopedic or musculoskeletal because it basically
22 means that there might have been a preexisting problem or
23 structural issue or pain that went on before this whole
24 incident, and that could be recurring.

25 Q If somebody were in a motor vehicle accident ten years

1 earlier, could that be a source of ongoing neck pain?

2 MR. MARANDO: Note my objection.

3 THE COURT: Overruled.

4 A It's certainly possible.

5 Q If somebody had arthritis, could that be a source of
6 neck pain?

7 A Yes.

8 Q Did Mr. Espacia inform you that he was taking
9 medication for his arthritis?

10 A At the time of my exam, I asked him, what medications
11 are you taking. He said an antihypertensive for blood pressure,
12 anticholesterol for his cholesterol, and a medication for
13 gastric reflux, and muscle relaxants occasionally. PRN means,
14 in Latin, occasionally, as needed.

15 Q But he never mentioned arthritis medication?

16 A No, the muscle relaxant only.

17 Q And what does one arthritis medication for?

18 A For pain, typically.

19 Q Okay. And he didn't mention prior chiropractic
20 treatment?

21 A No.

22 Q And his chiropractic treatment for the spinal cord?

23 A Yes.

24 Q Now, per the history that you did get from Mr. Espacia,
25 did he tell you that his neck pain was intermittent?

1 A Yes.

2 Q Did he also mention low back pain?

3 A Yes.

4 Q Did he say that any of his -- any pain was radiating
5 from his spinal cord?

6 A No.

7 Q All right. And he didn't say anything about pain
8 radiating down any of his legs, did he?

9 A No.

10 Q Did he say anything about numbing or tingling around
11 any of the extremities, the arms and the legs?

12 A No numbness, tingling or weakness in the arms or legs.

13 Q And why is that significant?

14 A Because, as spine doctors, it's all about pain and
15 function and complaints, and a very common complaint, if you had
16 I pinched nerve, could be pain shooting down your arm or pain
17 shooting in your leg, sciatica, and that can sometimes manifest
18 as numbness, tingling or weakness, so our function is to
19 evaluate the function of the muscles and the nerves, and those
20 are all symptoms that are associated with that.

21 Q If someone has sciatica, could that affect their gait,
22 the way they walk?

23 A It could.

24 Q How did Mr. Espacia's gait appear when you examined
25 him?

1 A He was walking with a normal gait pattern, and he
2 didn't require any walker or cane. I always watch people
3 walking into the office, and then I watch them walk out of the
4 office in the street, too, especially when they're not looking
5 at me. I like to observe people.

6 Q Did you see him limping?

7 A No.

8 Q Now, did he tell you that he was receiving physical
9 therapy for his neck and low back?

10 A Yes.

11 Q And did he indicate how often?

12 A When I saw him or before I saw him?

13 Q During your taking the history, when you were speaking
14 to him.

15 A So I asked him if he's getting any treatments
16 currently. He said he was enrolled in physical therapy for his
17 neck an lower back two times a week.

18 Q Did he tell you how long his sessions were? Like, were
19 they ten-minute sessions, 30-minute sessions?

20 A We didn't get into that.

21 Q Okay. And did he tell you whether he was doing
22 strenuous exercise versus, you know, going in and putting a hot
23 compress on a joint?

24 A Didn't discuss that.

25 Q Okay. So, tell me a little more about the physical

1 examination you performed.

2 A So the physical is -- height and weight. He's 5'10,
3 220. He walked with a normal gait pattern, with no assistance,
4 no cane, no walker. We look at the spine with the claimant
5 standing in one position. We make sure that there's no obvious
6 deformity of the spine, such as a scoliosis, where you're tilted
7 to one side, kyphosis, where you're round shouldered or leaning
8 forward, so that examination revealed that he was what we say
9 well compensated, or normal, in both coronal and sagittal
10 planes.

11 THE COURT: Slow down, please, Doctor, for the
12 court reporter.

13 A He was well compensated in both the coronal and
14 sagittal planes, which basically means that he was standing
15 straight, from all angles. I palpate the back. I pushed into
16 his cervical spine, thoracic spine, lumbar spine to see if there
17 was any point tenderness anywhere, and there was no tenderness
18 anywhere. We watched him -- we asked the claimant to
19 toe-and-heel walk in the office. If you can walk on your toes
20 and you can walk on your heels, the balls of your feet, that's a
21 quick neurologic test to really confirm. You need a lot of
22 muscle groups to be walking normal, to be able to do that, and
23 he was able to do that.

24 We look at the incision. He had a well-healed scar on
25 the right side or front of the neck. He had well healed

1 arthroscopic incisions from his two shoulder surgeries, which is
2 very appropriate. He had good pulses. I always feel for pulses
3 in the arms and in the legs because the vascular examination is
4 very important, as important as the neurological examination.

5 We then have the claimant lay down flat on his back on
6 the table, make sure he can lay comfortably. I watch people
7 getting on and off the examining table, and if somebody is
8 really in pain, you can get a good sense of how they just get on
9 the table, and off the table, and how limber, and how easily
10 they do something like that. There didn't appear to be any
11 issue with him getting off -- because my exam table is a little
12 high, so you have to be coordinated to get on and off the table.
13 He had no problem doing that.

14 Q Did he see whether he had full range of motion?

15 A Yes. So he had full -- and then we range both hips.
16 We range the joints in the lower extremities, and he has full
17 range of motion in both hips. He has full range of motion in
18 both knees, full range of motion in both ankles.

19 Q How were his muscles?

20 A The muscles seemed to be fine toned. So we range all
21 of the joints in the upper and lower extremities, the shoulders,
22 elbows, wrists, hands, and we ask the claimant to do that on his
23 own. If I can raise my arms above my head, I'm doing that,
24 quote, actively. I'm doing it. And then I have -- I do passive
25 range of motion, also. I make sure that I can put each joint

1 through full range of motion on a table to make sure that all
2 the joints and muscles are moving correctly.

3 And the other thing is if you're not using a muscle or
4 you're not using your shoulder or you're not using your arm, it
5 will atrophy. It will become half the size of what it should
6 be. And he had no evidence of atrophy. The muscle were very
7 symmetric on both sides.

8 MR. MARANDO: Objection.

9 THE COURT: Overruled.

10 Q Did you look at his ankles and his knees?

11 A Yes.

12 Q And why did you do that?

13 A Because it's part of the general orthopedic exam and --
14 the standard exam orthopedic and neurological exam.

15 Q And what did that tell you?

16 A Well, then I got to the neurological exam. We checked
17 sensation to light touch all throughout the arms and the legs,
18 and that was normal. Then we check his strength of every muscle
19 group, from the shoulder to the fingers, that was normal. Then
20 we check the strength of all the muscle groups in the lower
21 extremities, from the hips to the ankles, and that was all
22 normal on both sides. And then we do the reflexes, and the
23 standard reflexes that we check are the biceps reflex of the
24 elbow, the brachial radialis reflex, and then the triceps
25 reflex. We do that on both sides, and those reflexes were

1 normal. Then we check the reflexes in the lower extremities,
2 knee reflexes, ankle reflexes. Those were all normal.

3 Q And all these reflexes you checked, these are all to
4 determine if there's a neurologic issue?

5 A Yes.

6 Q And how does that inform you that there's no
7 neurological condition?

8 A Well, the fact that sensation is normal, strength
9 testing is all normal, reflexes are all normal.

10 Q That means he doesn't have, like, a pinched nerve or --

11 A It means that all the nerves and muscles are
12 functioning normal. That's what that means.

13 Q Okay. You said you did -- tell us, what's a
14 goniometer?

15 THE COURT: I'm sorry. Could you say that again.

16 Q A goniometer.

17 A A goniometer is an instrument that we use to quantify
18 range of motion. So then we go through the range of motion of
19 the neck. We have them flex forward. We have them extend back.
20 We have them rotate to the side. We do the same thing to the
21 lower back.

22 Q Now, as to the neck, where had already had this
23 cervical fusion, what were the results for the -- was he within
24 normal range?

25 A He had normal range of motion, which is very typical

1 for somebody like that, even after spinal fusion, because if you
2 have two levels fused that aren't working, the other levels are
3 still moving, and they make up for that loss.

4 Q So no difficulty moving side to side?

5 A No.

6 Q Up or down?

7 A No.

8 Q And you were about to say about the lumbar.

9 A In the lumbar, he had similar findings. He had range
10 of motion, which was within normal. You may say, well, how
11 would I compare a 20 year old to an 80 year old? Is an 80 year
12 old really going to move like a 20 year old? So, obviously, as
13 we get older, we could get a little stiffer, right? And that's
14 okay. So we take in that information, as well, but for a 50
15 year old person, which he was, he had very good range of motion.

16 Q All right. Part of your review, did it include ER
17 records?

18 A Yes.

19 Q Okay. Let me move on and ask you -- you performed an
20 assessment of his spine?

21 A Yes.

22 Q All right. Tell me, what was your assessment regarding
23 -- let's start with the cervical spine?

24 A So, so far we've discussed the history that we took.
25 Then we just went through the whole physical exam. And the next

1 part is looking at of all of the pictures, the images, the
2 x-rays, the CAT scans, and MRIs. So the first thing I do is
3 look at all the reports --

4 MR. MARANDO: Objection, Judge.

5 THE COURT: Yes. Sustained.

6 MR. FRANKLIN: Well --

7 THE COURT: Ask --

8 MR. FRANKLIN: I'm not asking about any specific --

9 THE COURT: Okay. Just don't articulate any
10 particular reports.

11 MR. FRANKLIN: Maybe I can rephrase my question.

12 Q Did you look at Stand-Up MRI images?

13 A Yes.

14 MR. FRANKLIN: Okay. There's no objection as to
15 that, I don't believe.

16 MR. MARANDO: No, Judge.

17 THE COURT: Okay.

18 Q Okay. So you looked at MRI images from early May and
19 early June?

20 A Yes.

21 Q Okay. And the images that you looked at from June,
22 were those of the lumbar?

23 A Yes.

24 Q Okay. And those were the actual images?

25 A Yes.

1 THE COURT: I'm sorry. Could you clarify what year
2 when you say early June.

3 MR. FRANKLIN: Of 2021.

4 THE COURT: Okay.

5 Q And, Doctor, as part of your practice, do you review a
6 lot of imaging?

7 A Yes.

8 Q And you know how to review the imaging and -- I don't
9 want to insult, but --

10 A I know. It's very important because we get reports.
11 When somebody has an MRI, there's a --

12 MR. MARANDO: Objection, Judge.

13 THE COURT: Overruled.

14 A There's a radiologist that does a formal written report
15 of the study. That's called a radiographic report. But on top
16 of that, I have to look at the images, themselves, and give my
17 interpretation. Sometimes, the reports are not, you know, 100
18 percent accurate. Sometimes, they're over read. Sometimes,
19 under read, and I -- so, you know, it's very important for
20 surgeons, who are treating patients, you don't want to rely on
21 the report.

22 It's good to see the report. You want to agree with
23 the report, but you've got to make sure it's accurate, right?
24 Especially before you operate on somebody, you don't want to do
25 the wrong thing, so it's very important for us to look at

1 reports and images. It's really important.

2 Q When you look at the early May -- the May 3rd, 2021,
3 Stand-Up MRI imaging, what conclusions did you come, as far as
4 the cervical?

5 MR. MARANDO: Judge, can we approach.

6 THE COURT: Sure.

7 (Whereupon, a discussion took place at sidebar
8 among the Court and Counsel, outside the hearing of the
9 sworn jurors.)

10 THE COURT: Since it was relied for the course of
11 treatment, it can be relied on.

12 MR. FRANKLIN: Thank you.

13 THE COURT: I'm sorry, testified.

14 Q What did the May 3rd, 2021, MRI tell you about Mr.
15 Surface's cervical?

16 A So that's the cervical spine, the neck MRI, and that
17 showed multilevel degenerative disc disease.

18 Q What is that?

19 A Which is an age-related process that occurs to
20 everybody as they age. In other words, the discs, they
21 desiccate, and they dry out a little. It's like having some
22 gray hair on your spine. It's a typical aging process that
23 happens to our spines. Just like all of our body parts age over
24 time, the spine is no different. So degenerative disc disease
25 is the first thing that starts aging or degenerating in

1 everybody's spines. I mean, that starts in your 20s.

2 Q Is that consistent with arthritis?

3 A Arthritis is more of a layman's term. I mean, the
4 correct medical term is really disc degeneration. Arthritis
5 implies to joints. The disc, theoretically, is not a joint.
6 It's a disc, so it's a little different. Arthritis implies
7 aging of the joints.

8 Q Okay. What else did you find, with regards to the
9 cervical?

10 A So the next most important thing is, when we look at an
11 MRI, is there pressure on the spinal cord? Yes or no. Is there
12 a bone spur on the spinal cord? Is there a disc herniation on
13 the spinal cord? And there was no evidence of any spinal cord
14 compression here. What there was, however, was the spinal cord
15 runs in the middle of the spine, and then on the edges of the
16 spine, there's little holes or foramen where the nerves come out
17 before they go into the arm. And those holes were a little
18 narrowed in this gentleman, particularly between C5 and C7.
19 That also is a very common, typical aging thing that happens in
20 all of our spines.

21 Q Does that have a medical term?

22 A Stenosis.

23 Q Okay. Spinal stenosis?

24 A Yes.

25 Q Is that something -- as you mentioned, is that

1 something that's age related?

2 A Yes.

3 Q All right. You had mentioned in your report facet
4 hypertrophy. What is that?

5 A Facet hypertrophy is when the joints or the bones that
6 -- when they come together, when they get arthritic, they get a
7 little larger.

8 Q Okay. So that is --

9 A So that's, essentially, you know -- when you have an
10 arthritic knee, it gets bigger. You know, it looks swollen, but
11 a lot of that is bone spur.

12 Q Okay. That's in the cervical that you found?

13 A It happens in any joint, and that's very typical for
14 people in their 50s. They get facet hypertrophy or arthritis,
15 neck, back, yes.

16 Q Okay. What's your opinion about how these conditions
17 came about?

18 A Aging.

19 Q Were they sudden and acute?

20 A No.

21 Q Okay. Could they be referred to as chronic and
22 developing over time?

23 A Chronic. What we say -- the terminology is a chronic
24 preexisting degenerative condition.

25 Q Okay. Based on your examination of the cervical, was

1 surgery warranted?

2 A You know, it's -- the problem with surgery in the spine
3 is tremendous variation on -- we call it the indication for
4 surgery. And was surgery warranted? I mean, theoretically,
5 that's a decision that the patient is going to have to make with
6 the surgeon. If the surgeon believes that he can help the
7 patient with an operation, that's a decision that the patient
8 and the surgeon has to, you know, abide by. Would I have
9 operated on this gentleman with the symptoms that he had, with
10 the MRIs that he had? The answer is no.

11 Q Okay. Now, tell us about what you found about with
12 regards to the June 10th, 2021, lumbar MRI.

13 A More of the same. You know, the report from the
14 radiologist says certain things, and then when I looked at it,
15 it looked slightly different. But, essentially, essentially,
16 what we can agree upon, these are all degenerative preexisting
17 disc related issues. There was nothing new, like, from an
18 accident or no herniated disc, no -- and no significant spinal
19 stenosis in the lower back. Nothing really pinching on the
20 nerve of significance of that kind of thing. Just preexisting,
21 physical age related stuff that you would see in most people in
22 their 50s.

23 Q Okay. Did it seem like he had something that was
24 significantly -- I mean, I imagine you've see a lot of patients.

25 A Yes.

1 Q Would you say that he had a significant, I guess, issue
2 or deficit with his lumbar spine, compared with others of his
3 age?

4 A No.

5 Q What was your opinion as to how those conditions in the
6 lower and lumbar back developed?

7 A Those are age related, you know, mild, structural
8 issues that occur with aging.

9 Q Nothing acute or sudden?

10 A Right.

11 Q In your opinion, was surgical intervention needed for
12 his lower back?

13 A No.

14 Q In your opinion, was physical therapy the appropriate
15 treatment for the lower back?

16 A I think that's reasonable, yeah.

17 Q Okay. And for anyone who has low back pain, myself
18 included, what would you recommend?

19 A I -- 99.9 percent of the time, I never recommend
20 surgery on lower back pain.

21 Q And why is that?

22 A Because it doesn't work.

23 Q Okay. Thank you for an honest answer.

24 A As an isolated symptom.

25 Q Yes.

1 A Some people have severe leg pain in addition to their
2 back pain. That's okay. But as an isolated, sole symptom, I
3 don't operate on back pain.

4 Q Okay. And you saw no indication that he had sciatica
5 going down one or the other leg?

6 A Nothing that would warrant surgery. And one thing I
7 just want to point out that the decision for surgery is not
8 merely based on a film. There's some terrible films that I've
9 seen that we don't operate on those people. The decision to
10 operate has to be a combination of what the patient is
11 complaining of, what their physical exam is showing, and what
12 the films show. It all has to match up perfectly for a surgeon
13 to confidently operate, and that unfortunately doesn't happen
14 all the time.

15 Q Now, Doctor, based on -- well, let me just put it this
16 way. Hypothetically speaking, is it possible for someone to
17 have a major spinal cord injury if a ceiling falls on them and
18 they don't have a single scratch?

19 A I can't imagine that to be the case.

20 Q Okay. Based on your evaluation of Mr. Espacia, what,
21 if anything, might you attribute to this accident?

22 A Well, listen, I take -- he seems like a nice guy. I
23 would take his word for it when he said he had some pain after,
24 you know, the incident happened to him. That's okay. But there
25 were no major findings of, you know, major trauma, and then all

1 of the pictures didn't show anything new, no herniated discs,
2 nothing that would necessarily be from an accident.

3 So, you know, something falls on you, you fall to the
4 ground, you can certainly strain your neck. A strain is a
5 muscle strain. You can strain your lower back. That's
6 certainly possible, and I think that's what happened to him. He
7 strained his neck and his lower back, but those are self-limited
8 things that just get better in a short period of time. It's not
9 something that goes on for years and you need an operation two
10 years later. It just doesn't happen.

11 If there's no structural abnormalities that you can
12 attribute to the accident, and all the pictures, and you put the
13 whole story together, you know, it's just, you know, at the end
14 of the day, you would just treat it as a strain, which is a
15 self-limited thing. Therapy, medications, even some injections
16 are okay. I'm okay with anything but an operation in that
17 scenario.

18 Q A strain, is that something that you can get over in a
19 couple of weeks?

20 A It could be two weeks. Sometimes, strains last a
21 little longer --

22 Q Okay.

23 A -- but, typically, not months to years, no. That's
24 almost unheard of.

25 Q All right. As far as evaluating him, from a

1 neurological perspective, anything out of the ordinary?

2 MR. MARANDO: Judge, can we approach?

3 THE COURT: Sure.

4 (Whereupon, a discussion took place at sidebar
5 among the Court and Counsel, outside the hearing of the
6 sworn jurors.)

7 THE COURT: We're going to take a five-minute
8 break.

9 COURT OFFICER: All rise. Jury exiting.

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

11 THE COURT: Just to clarify an issue as to the
12 prior objection, as to the testimony as to the MRI reports,
13 I allowed it, but that does not -- that is not a ruling on
14 whether the radiologist's testimony will be cumulative or
15 not. We will decide that when we hear what he has to say.

16 So now, on this issue, Counsel, I guess why don't
17 you give me the question for the record of what you want to
18 ask.

19 MR. FRANKLIN: Yeah. It's just really the
20 statements in his report that the claimant currently has a
21 normal orthopedic and neurological examination. I just want
22 to ask him about his opinions regarding -- from a
23 neurological standpoint, how Mr. Espacia is doing.

24 THE COURT: Okay. Counsel?

25 MR. MARANDO: Yes, Judge. Just once sentence from

1 the top of the 3101. It says, Dr. Bendo will testify as to
2 the contents in his report. He will offer his testimony,
3 including his opinion and conclusion, beyond the limits of
4 his reporting, including but not limited to, the general
5 field of orthopedics.

6 And, specifically, the page that Mr. Franklin is
7 referencing only says that, and based on what I'm seeing
8 here, he has a normal orthopedic and neurologic examination.
9 Nothing more than that.

10 So, based on that, I believe it is outside the
11 scope. He's not a neurologist. He's not here to testify
12 about neurology with respect to this individual. I would
13 have put my own neurologist on. This not proper notice, and
14 this is outside the four corners of the report.

15 THE COURT: Okay. I'm going to allow the
16 testimony. I think it's a natural result of the surgeon
17 coming in to testify on these issues, that he would have an
18 opinion as to the neurological condition of the patient, and
19 the report says so.

20 So you can note your exception.

21 MR. MARANDO: Note my exception.

22 COURT OFFICER: All rise. Jury entering.

23 (Whereupon, the sworn jurors enter the courtroom
24 and take their respective seat.)

25 THE COURT: Okay. You can be seated. All right.

1 Go ahead, Counselor.

2 Q Finally, Doctor, what was your evaluation of Mr.
3 Espacia from a neurological standpoint?

4 A Well, when I saw him the day of the exam, he had a
5 normal neurological evaluation, and essentially, a normal
6 orthopedic examination.

7 MR. FRANKLIN: All right. Thank you, Doctor.

8 THE COURT: Go ahead, Counselor.

9 MR. MARANDO: Yes, Judge.

10 CROSS-EXAMINATION

11 BY MR. MARANDO:

12 Q Doctor, how are you?

13 A Good, thanks.

14 Q Good afternoon, Doctor. I know you know how this goes.
15 I reviewed transcripts where you testified before on trials so
16 if I ask you a question and it calls for yes or no, kindly
17 answer with a yes or no. If you can't, simply answer with I
18 cannot answer yes or no; is that fair?

19 A Yes.

20 Q Doctor, as we sit here today, you don't have a specific
21 recollection of the exam that you did on Henry Espacia, correct?

22 A That's probably true, yeah.

23 Q I know it wasn't mentioned on direct, but I want to
24 talk about your fees. Is it true that you previously testified
25 that you generally charge about \$7,000 for the exam and

1 reviewing the reports such as this case?

2 A Yes.

3 Q Okay. In addition to \$7,000 for that, you also charge,
4 in which you testified in the past \$20,000 for a half day in
5 court, true?

6 A Yes.

7 Q And that's paid for by the defendants, correct?

8 A Yes.

9 Q Doctor, when you examined my client, Henry Espacia, you
10 were not examining him as a patient, correct?

11 A Yes.

12 Q There was no doctor/patient privilege between you and
13 Mr. Henry Espacia, correct?

14 A Correct.

15 Q In fact, you were not allowed to give any
16 recommendations for current treatment or future treatment,
17 correct?

18 A Correct.

19 Q When you conducted that exam, you were doing that exam
20 not on behalf of me asking you, but that exam was being asked on
21 behalf of the defendant's attorneys, correct?

22 A Yes.

23 Q You mentioned at length, I know we heard the phrase
24 independent medical examination, just breaking that phrase down,
25 independent medical exam, I wasn't part of the decisionmaking

1 process to designate you, correct?

2 A Well, part of the process is to have experts on both
3 sides to come forward that you guys all agree to.

4 Q Doctor, just my general instructions before, it's
5 either yes, no or if you cannot answer yes or no, please let me
6 know, okay?

7 A Sure.

8 Q Doctor, I myself or my office, we did not designate you
9 to examine the plaintiff, yes or no?

10 A I guess that's true.

11 Q Well, not guess, Doctor, it is true you've only
12 corresponded with the defense attorneys, correct?

13 A Yes.

14 Q Now, in terms of the records you received, all the
15 records you reviewed or didn't review, they were provided not by
16 my office but by the defense attorneys, correct.

17 A I assume so, yes.

18 Q Well, as you sit here today, do you have any reason to
19 believe my office sent you anything?

20 A No.

21 Q I know you're sitting next to the Honorable Judge
22 Hummel, Judge Hummel did not appoint you to examine my client,
23 correct?

24 A I should hope not.

25 Q Me too. In your report, you don't mention Mr. Espacia

1 as your patient, correct?

2 A Correct. He's a claimant.

3 THE COURT: I'm sorry, he's a?

4 THE WITNESS: Claimant.

5 Q During the exam, you were aware that there was an
6 additional person in the room when you were evaluating my client
7 that was there to observe and such as that, take time and take
8 notes accordingly, correct?

9 A Yes.

10 Q Now, it's fair to say that as you sit here today you
11 have nothing to dispute that the physical part of your exam took
12 seven minutes?

13 A I don't recall.

14 Q But you have no information to dispute that, correct,
15 as you sit here today?

16 A It generally takes longer than that.

17 Q But, specifically, do you have knowledge as you sit
18 here today to rebut the fact that your physical exam took seven
19 minutes, yes, no or I can't answer with a yes or a no?

20 A It's longer than that.

21 Q So, you have direct knowledge that it actually took
22 longer than seven minutes?

23 A Yeah. My standard practice is longer than that for
24 sure.

25 Q Doctor, when you examined my client on January 23rd,

1 2024, maybe seven minutes, maybe nine minutes, that was the only
2 time you've ever examined my client in the course of his five
3 years of treatment, correct?

4 A On this day, yes.

5 Q Well, at any stage. That was the only time, the only
6 day, correct?

7 A Yes.

8 Q Doctor, throughout the medical records, all of the
9 records that you reviewed, there were mentions of neck pain and
10 back pain, fair?

11 A Yes.

12 Q And even though you said in your conversation with the
13 defense attorney just now that your examination did not reveal,
14 based on what you're saying, radiating pain from the neck to the
15 upper extremities or radiating pain from the back to the lower
16 extremities, we can agree that in the medical records,
17 throughout the medical records, it did, in fact, mention that?

18 A Occasionally, yes.

19 Q So yes?

20 A I said yes. Yeah.

21 Q Now, Doctor, can you show me in your report --
22 withdrawn.

23 In your report, you make a list of all the medical
24 records that you reviewed, correct?

25 A Yes.

1 Q As we sit here today, we have to rely upon your report
2 as if it's not in there in a list, you probably didn't review
3 it; is that fair?

4 A It's possible that I might have reviewed something else
5 after this. I don't recall.

6 Q Well, we're not here to testify with the jury in terms
7 ever possibilities, we're just relying upon your report as we
8 sit here today, fair?

9 A That's fine.

10 Q Can you point to me in your report where it says you
11 reviewed the NYU Langone records?

12 A It doesn't. It says New York Spine Institute which is
13 the where the orthopedic spine surgeon was from.

14 Q But specifically, the operation was performed at NYU
15 Langone, did you know that?

16 A Yes.

17 Q Did you review the NYU Langone records?

18 A Yes. I reviewed the operative report.

19 Q Is it in your report?

20 A It's part of the New York Spine Institute Records.

21 Q But the surgery was conducted at NYU Langone, not at
22 the New York Spine Institute.

23 A Right. But the New York Spine Institute records, they
24 always have operative reports of what the surgeon completed.

25 Q Can you show me in your report where it says that?

1 A That's just standard. I always look at the operative
2 reports before I come here.

3 Q But it's not in your report listed, correct?

4 A It's under New York Spine Institute. There are
5 thousands of pages that get reviewed. I can't list every little
6 thing.

7 Q But it was at a different facility, Doctor, NYU --

8 A It's possible.

9 Q Can we agree that NYU Langone, the records, are not
10 specifically mentioned in your report, correct; yes or no?

11 A Yeah, but I might have reviewed a lot of things. When
12 they send the records, lots of things are mixed up in thousands
13 of pages so I reviewed everything I needed to review to come to
14 a good condition conclusion of this.

15 Q As we leave this portion, it's not in your report,
16 correct? You don't mention NYU Langone records, yes or no?

17 A Well, he had surgery there so I mentioned that and I
18 reviewed the appropriate things relative to the surgery.

19 Q Doctor, is it in your report, NYU Langone records, yes,
20 no or I don't know?

21 A It's not listed specifically in the records, but more
22 than likely, I saw things related to the operation. I saw the
23 operative report, I saw all the pertinent things I needed to
24 see.

25 MR. MARANDO: I'm going to take that as a no.

1 MR. FRANKLIN: Objection, Your Honor.

2 THE COURT: Overruled.

3 Q Now, Doctor, you would agree that Dr. Macagno actually
4 opened up the neck to remove the cervical discs and actually
5 visualized the condition of the cervical spine with his own eyes
6 intraoperatively, correct?

7 A I should hope so.

8 Q Okay. Well, my question is specific. You testified
9 before that that specific act of the surgery, that's the best
10 view possible, correct?

11 A Best view possible of what?

12 Q Of the actual disc space and the potential injuries.

13 A It's one viewpoint, yes.

14 Q Well, Doctor, you testified in the past that it's not
15 only one viewpoint, it's the best viewpoint, correct?

16 A It's one of many viewpoints.

17 Q Okay. Doctor, did you ever testify in the case of
18 Steven Owusu, and, Doctor, were you asked this question and did
19 you give this answer:

20 And would you agree that because the doctor actually
21 opened up the neck, removed the cervical disc, actually
22 visualized the condition of the cervical spine with his own eyes
23 intraoperatively, he would have the best view of the spine,
24 correct?

25 And you gave the same answer, I would hope so.

1 But that's the best view possible, right?

2 "ANSWER: Yes."

3 Were you asked those questions and did you give
4 those answers?

5 A I'm not going to -- - if it's written black and white,
6 absolutely, I agree with you.

7 Q Well, not with me, Doctor. Those were your words,
8 correct?

9 A I'll take your word for it.

10 Q Well, Doctor, I don't want you to take my word, I want
11 you to take your own word. That's what you testified to.

12 MR. FRANKLIN: Objection. Argumentative.

13 A I'm agreeing with you.

14 THE COURT: Sustained.

15 Q Now, Doctor, you previously testified on cases that you
16 can't just rely on an MRI, correct?

17 A Correct.

18 Q You have to look at the totality of the medical
19 treatment over the course of maybe even though years of the
20 medical treatment, fair?

21 A Fair.

22 Q And such as this case, you can't just rely on a report,
23 you can't just rely on an MRI, you have to look at everything
24 including, specifically, as you testified in the past, the
25 intraoperative eyes of the doctor performing the surgery,

1 correct, that's included in the totality?

2 A Yes.

3 Q Now, Doctor, a spine surgery, it can have
4 complications, correct?

5 A Correct.

6 Q It can have paralysis?

7 THE COURT: I'm sorry, it can have what?

8 MR. MARANDO: Paralysis.

9 A Unusual but yes.

10 Q So yes?

11 A Yes.

12 Q It can lead to infection?

13 A Yes.

14 Q It can even lead to death, fair?

15 A Yes.

16 Q Doctor, when you have a spine surgery, and specifically
17 a fusion, you testified in the past that there is a chance that
18 the fusion will not properly heal, fair?

19 A That's possible.

20 Q Now, Doctor we had some, maybe more than two or three
21 days of knowledge, and maybe more than the jury wants, when it
22 comes to information about the cervical spine, the anatomy of it
23 and surgeries, when it comes to a cervical fusion, I want you to
24 assume for the purpose of this question that the jury has been
25 shown an actual X-ray of the cervical spine showing the hardware

1 over two levels, which I believe you mentioned earlier in terms
2 of levels, C-4 to C-6. You testified in the past that when you
3 have a fusion just like this, an ACDF, anterior cervical
4 discectomy infusion with plates, bolts, screws and
5 intervertebral body metal titanium things you mention, that
6 those levels of the spine, it stops the motion of those levels,
7 yes or no?

8 A Yes.

9 Q Now, the spine, how many vertebral and intervertebral
10 bodies do we have, is it about seven or eight?

11 A Seven.

12 Q Okay. So, out of the seven right now, the only very
13 vertebral body levels that we have in the case of Mr. Espacia
14 from C-4 to C-6, those two levels, those are not moving at all,
15 true?

16 A True.

17 Q Now, Doctor, you testified in the past that when you
18 have this exact type of surgery, that it's completely possible
19 that it could lead for the necessity of a future surgery, fair?

20 A That's possible. Yeah.

21 Q And in addition -- withdrawn.

22 Not only to a future surgery, but it could lead to a
23 future surgery at the same exact levels where the fusion was
24 performed, fair?

25 A That can happen.

1 Q Now, in addition to the same levels, you also testified
2 in the past that there could be future surgeries, a second
3 surgery, to the levels above and below the fusion of where it
4 was performed, yes or no?

5 A Yes.

6 Q In fact, you even wrote an article about it
7 specifically something called Adjacent Segmental Disease, fair?

8 A Yes.

9 Q In that article, you spoke about, yeah, when you have a
10 fusion, the levels above and the levels below could deteriorate
11 over time because of a result of this type of surgery, fair?

12 A Yes.

13 Q Doctor, it's completely possible that, as you
14 mentioned, the degeneration or disc disease, it can start
15 happening in your 20s and late 30s, correct?

16 A Yes.

17 Q Now, because of that, we could all be walking around,
18 anyone over 20 or 30, with something similar, fair?

19 A Yes.

20 Q As a result, you can have something in the neck that's
21 completely asymptomatic for years, fair?

22 A Yes.

23 Q When something is asymptomatic, it means it's not
24 causing pain, that's generally the idea?

25 A Uh-huh. Yes.

1 Q Now, if someone were to have an asymptomatic or not
2 causing pain degeneration symptom based on film, if there was a
3 film, we can agree it can eventually start to cause pain from a
4 traumatic event, fair?

5 A It can.

6 Q Doctor, before today, you've never seen any MRI before
7 April 2021, fair?

8 A True.

9 Q Before today, you've never seen any X-ray before April
10 2021, fair?

11 A Yes.

12 Q Before today, you've never seen any CAT scan before
13 April 2021, fair?

14 A Yes.

15 Q Before today, you've never seen any testing, EMG, any
16 neurological testing relating to the cervical spine or lumbar
17 spine before April 21st, 2021, fair?

18 A Correct.

19 Q You've only heard about maybe one, maybe two physical
20 therapy visits and maybe one chiropractic visit, fair?

21 A Yes.

22 Q And before, you spoke about the importance of looking
23 at the totality of the treatment. Now, if a treatment case
24 indicates maybe an event happened over a decade ago and nothing
25 was done in terms of treatment, no mentions of pain for ten

1 years, would that indicate to you that, therefore, it was
2 asymptomatic for ten years?

3 MR. FRANKLIN: Objection. Calls for speculation.

4 Q Yes or no?

5 THE COURT: Hold on. You have to read the question
6 back.

7 (Whereupon, the requested testimony was read back
8 by the Court Reporter.)

9 THE COURT: Overruled.

10 MR. MARANDO: It was a long, compound question.

11 THE COURT: Overruled.

12 A No. I don't live with this gentleman. He could have
13 suffered from neck pain every day and not seen any doctors. I
14 can't speak to that.

15 Q Doctor, the records do not speak to that, right,
16 because there are no records, fair?

17 MR. FRANKLIN: Objection.

18 THE COURT: Sustained.

19 Q Doctor, you made opinions with respect to Mr. Henry
20 Espacia's injuries, correct?

21 A Yes.

22 Q In your report, one of your opinions with a reasonable
23 degree of medical certainty is that Henry strained his cervical
24 and his lumbar, fair?

25 A Yes.

1 Q Now, although you may disagree with Henry's treating
2 physicians in terms of the extent and the severity of the
3 injuries, based on the day you drafted this report, we can agree
4 that he did injure his neck and his back even slightly on April
5 21st, 2021, fair?

6 MR. FRANKLIN: Objection. Foundation, calls for
7 speculation.

8 THE COURT: Overruled. It's yes, no or I cannot
9 answer that.

10 A I can't answer that.

11 Q Well, Doctor, a strain is an injury, fair?

12 A Yes.

13 Q So, we can agree that as of the date of your report,
14 it's your opinion that even slightly, Mr. Espacia did injure his
15 cervical spine and his lumbar spine, yes or no?

16 A Strain, yes.

17 Q So, he was injured even slightly based on your report,
18 yes or no?

19 A Yes.

20 MR. MARANDO: Judge, no further questions.

21 THE COURT: Okay.

22 MR. FRANKLIN: A few more, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. FRANKLIN:

25 Q Doctor, we thank you for being here. If you were not

1 here today, what would you be doing?

2 A Operating.

3 Q How much of your time is devoted to teaching versus
4 clinical?

5 A Mostly clinical.

6 Q Okay. How much is devoted to things such as this?

7 A Overall, my entire week Saturdays and Sundays included
8 or just work hours?

9 Q Let's just go with work hours.

10 A I do most of this stuff on weekends when I'm not
11 working.

12 Q Okay. Now, all the testimony you've given here today
13 has been truthful?

14 A Yes.

15 Q You would agree that in your clinical practice, you
16 like to rely on more than just subjective complaints of pain?

17 A A hundred percent.

18 Q And when people come in and they say I ache here or I
19 ache here, you try to correlate it with something clinically
20 observed?

21 A Yes.

22 Q Otherwise there would be no way of really knowing
23 whether they actually had something, you would just be going
24 with their word for it, right?

25 A Exactly.

1 Q And if somebody doesn't mention something to you like
2 prior chiropractic treatment, there would be no way you would
3 know, right?

4 A That's right.

5 Q If they don't tell you that they're taking arthritis
6 medication, there would be no way you would know they had pain
7 in their life, right?

8 A Right.

9 Q And you don't know because Mr. Espacia never told you
10 that, right?

11 A Right.

12 Q Now, asymptomatic persons don't take arthritis
13 medication, do they?

14 MR. MARANDO: Objection.

15 THE COURT: I'm going to overrule.

16 Q Do asymptomatic people take arthritis medication?

17 A No.

18 Q You take arthritis medication for pain, right?

19 A Exactly.

20 Q Now, one thing that's a certainty in life is that
21 everyone declines?

22 MR. MARANDO: Objection.

23 THE COURT: Yes. Rephrase it.

24 Q Doctor, we're all going to decline physically, right?

25 A We're all merely shells of our former selves. That's

1 what I tell everybody. It's only downhill after 25,
2 unfortunately. It's true. Some of us faster than others.

3 Q Some of us more gracefully than others?

4 A Yes.

5 Q But it's a guarantee, we're all going to decline?

6 A Unfortunately.

7 Q Elective surgery is risky, right?

8 A Depends on what the surgery is but some surgery is much
9 more risky than others.

10 Q Whenever you go under the knife, you incurring a risk,
11 right?

12 A Yes.

13 Q You don't want to do it lightheartedly, right?

14 A I should hope not.

15 MR. FRANKLIN: And that's all I have. Thank you.

16 MR. MARANDO: Just one question.

17 THE COURT: Okay.

18 RECROSS EXAMINATION

19 BY MR. MARANDO:

20 Q Doctor, we can agree that even a 49 year old, whether
21 deteriorated or not, can still be injured, yes or no?

22 A That's a very general question but I guess the answer
23 is yes.

24 MR. MARANDO: Judge, nothing further.

25 THE COURT: All right. Thank you. Thank you,

1 Doctor. We'll take a ten minute break.

2 COURT OFFICER: All rise. Jury exiting.

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

4 (Whereupon, a recess was taken.)

5 COURT OFFICER: All rise. Jury entering.

6 (Whereupon, the sworn jurors enter the courtroom
7 and take their respective seat.)

8 THE COURT: Okay. Be seated. All right. So we
9 have concluded the testimony for today. It was quite a bit
10 for you to digest. As I let you know before, tomorrow I'm
11 down because I have a full calendar of other cases I have to
12 manage so we will pick up again Friday at 9:30. It will be
13 a full day Friday and we're planning on Monday and Tuesday
14 at least, okay?

15 MR. FRANKLIN: I think we're only planning on
16 Monday.

17 THE COURT: Oh, I apologize. Hopefully a full day
18 Friday and a full day Monday. Thank you.

19 COURT OFFICER: All rise. Jury exiting.

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

21 (Whereupon, the trail was adjourned to Friday,
22 March 6, 2026 at 9:30 a.m.)

23

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