

In The Matter Of:

Juan Julca v.

ERY Tenant, LLC, ERY Retail Podium, LLC

Dr. Jospeh Weinstein

March 5, 2026

Supreme Court State of New York - Civil Term

60 Centre Street - Room 420

New York, New York 10007

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK : CIVIL TERM : PART 58

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JUAN JULCA, : Index:
 : 161813/2019
 :
 Plaintiff(s). :
 :
 - against - :
 :
 ERY TENANT, LLC, ERY RETAIL PODIUM, LLC, : TRIAL
 :
 Defendant(s). :

-----x
 71 Thomas Street
 New York, New York 10013
 March 5, 2026

B E F O R E :

HONORABLE DAVID B. COHEN,
 J U S T I C E
(And a jury of Six plus Two alternates)

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

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SHAMEEKA HARRIS, CSR, RMR, CLR
Senior Court Reporter

Proceedings

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

2 COURT OFFICER: All rise, jury entering.

3 (Whereupon, the sworn jurors enter the courtroom
4 and take their respective seats.)

5 THE COURT: On the record. Case on trial
6 continued. Anything before we bring in the jury?

7 MR. ROSENGARTEN: The one thing I would say I have
8 a number of demonstrative exhibits. Some of them are part
9 of the films that have already been entered into the
10 discovery. It's just blown up. One is a demonstrative
11 exhibit regarding the surgery, the back surgery. And we're
12 using it for the purpose of explaining the surgery but it's
13 not going to be entered into evidence.

14 THE COURT: Do you want them marked for ID or not?

15 MR. ROSENGARTEN: Yes.

16 THE COURT: Okay. Are there any objections to the
17 use of any of these exhibits, Mr. Malecki?

18 MR. MALECKI: No, Your Honor.

19 THE COURT: Okay.

20 (Whereupon, the item was marked Plaintiff's Exhibit
21 12, Blow Up Photo, for Identification.)

22 (Whereupon, the item was marked Plaintiff's Exhibit
23 13, Blow Up Photo, for Identification.)

24 Note marked photo below up board picture marked plaintiff's
25 Exhibit 14

Proceedings

1 (Whereupon, the item was marked Plaintiff's Exhibit
2 14, Blow Up Photo, for Identification.)

3 (Whereupon, the item was marked Plaintiff's Exhibit
4 15, Blow Up Photo, for Identification.)

5 THE COURT: On the record. Bring in the jury.

6 COURT OFFICER: All rise, jury entering.

7 (Whereupon, the sworn jurors enter the courtroom
8 and take their respective seats.)

9 THE COURT: Members of the jury, I handed out a
10 schedule to you all through the officer. We'll talk a
11 little bit about it a little later. I think any concerns
12 you have, hopefully, will be allayed when we have a
13 conversation about it. The two edits, the first is
14 March 9th. I am not expecting you here at two in the
15 morning. That read 2 p.m. Also March 24th I am not
16 expecting you here at 9:30 at night but 9:30 in the morning.
17 Those are two edits. I take responsibility for those
18 mistakes. At this time, I call upon Mr. Rosengarten to call
19 your next witness.

20 MR. ROSENGARTEN: Thank you, Your Honor. The
21 plaintiff calls Dr. Joseph Weinstein to the stand.

22 J O S E P H W E I N S T E I N, a witness called by
23 and on behalf of the Plaintiff, upon being duly sworn, was
24 examined and testified as follows:

25 THE WITNESS: Yes.

Dr. Weinstein - by Plaintiff - Direct

1 COURT CLERK: In a loud, clear voice, please state
2 your name and address for the record spelling both your
3 first and last name.

4 THE WITNESS: Joseph Weinstein, J-O-S-E-P-H, last
5 name Weinstein, W-E-I-N-S-T-E-I-N. 1150 Park Avenue,
6 New York, New York 10128.

7 COURT CLERK: Thank you. You may be seated. Your
8 Honor, the witness has been sworn and affirmed.

9 THE COURT: Counsel, you may inquire.

10 MR. ROSENGARTEN: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. ROSENGARTEN:

13 Q Good afternoon, Dr. Weinstein.

14 A Good afternoon.

15 Q Could you start off by telling the jury your
16 educational background?

17 A Sure. So I'm from Queens. I'm a New Yorker, born in
18 bread. I went to Queens College. After Queens College, I went
19 to New York College of Osteopathic Medicine in Long Island,
20 four-year medical school. After medical school, I went to the
21 Northwell Health System and did a five-year orthopedic surgery
22 residency. After an orthopedic surgery residency, I did a
23 subspecialty fellowship in spine surgery at the Hospital For
24 Special Surgery. After that, I opened my own practice.

25 Q Are you board certified?

Dr. Weinstein - by Plaintiff - Direct

1 A Yes, I'm board certified in orthopedic surgery.

2 Q Are you licensed to practice medicine in New York?

3 A Yes.

4 Q Did there come a time where you treated a patient by
5 the name of Juan Julca?

6 A Yes.

7 Q When was the first time you saw Mr. Julca?

8 A The first time I saw him was 10/6/2021.

9 Q Did you review any records either before or after
10 examining Mr. Julca that first time on October 6, 2021?

11 A I believe I had Dr. Grim's records as well as MRI, I
12 believe, it was Lenox Hill Radiology.

13 MR. MALECKI: Your Honor, can we clarify what the
14 witness is looking at?

15 MR. ROSENGARTEN: He's looking at his -- I saw it
16 as well.

17 THE COURT: Ask your next question.

18 Q Dr. Weinstein, I saw you were looking at some notes.
19 Prior to your last answer. What are those notes?

20 A These are notes from my chart. They are office notes,
21 operative report and radiology from my chart.

22 Q That would be part of the medical records of Mr. Julca?

23 A Yes.

24 MR. MALECKI: Your Honor, unless they are in
25 evidence, can we see what they are?

Dr. Weinstein - by Plaintiff - Direct

1 THE COURT: Either way you can see what they are,
2 Counsel. Ordinarily, I'd wait until before
3 cross-examination but they've been handed by the doctor to
4 my officer so you'll have them.

5 THE WITNESS: Sorry, Your Honor.

6 THE COURT: It is being handed back to the witness.

7 Q Just getting back for a second, you mentioned that you
8 reviewed an MRI; is that correct?

9 A Yes.

10 Q Do you know the date of the MRI that you reviewed?

11 A Yes, 4/13/2018.

12 Q And at that first consultation you had with Mr. Julca
13 on October 6, 2021, did you take his medical history?

14 A Yes.

15 Q What was his history?

16 A He was injured while at work on 3/3/2018.

17 Q Did you do an exam of Mr. Julca?

18 A Yes.

19 Q And what were your findings on the exam of October 6,
20 2021?

21 MR. MALECKI: Objection, Your Honor.

22 THE COURT: Basis?

23 MR. MALECKI: The witness is going to read from the
24 report or does he have an independent knowledge of this
25 information? He is not testifying to independent knowledge.

Dr. Weinstein - by Plaintiff - Direct

1 THE COURT: Objection sustained.

2 You can clarify, Counsel.

3 Q What were your findings on the exam of October 6, 2021?

4 MR. MALECKI: Objection.

5 THE COURT: Do you have a recollection without
6 looking at your notes?

7 THE WITNESS: I need to look at my notes.

8 THE COURT: You can use your notes to refresh your
9 recollection then.

10 THE WITNESS: Thank you.

11 A Regarding the lumbar spine, which is what I evaluated,
12 his skin was clean, dried, and intact. There was pain to
13 palpation at the paraspinal musculature at the lumbar spine.
14 His power was intact. His motor was intact. He had deeply
15 sensation in the L3 to L5 distribution. Reflexes were brisk and
16 symmetrical. He had normal reflexes. He had a negative clone
17 clonus, C-L-O-N-U-S, and a down groin Babinski B-A-B-I-N-S-K-I.
18 These are normal tests for severe compression on the spine. He
19 was able to heel walk and toe walk. And he did have a positive
20 straight leg raise test which is a tension sign meaning that the
21 nerves are under compression both on the right and left leg. He
22 had decrease range of motion in all planes.

23 Q And on that date, did Mr. Julca have any complaints
24 that he made to you?

25 A Yes.

Dr. Weinstein - by Plaintiff - Direct

1 Q What were those complaints that he made to you?

2 A He complained that of low back pain. He stated that
3 the issue was getting worse and kept him up at night. And he
4 exercised sitting, standing, walking, repetitive motion,
5 pulling, pushing, or straining causes the pain to become worse.
6 He also stated that he never had this issue prior and he rated
7 his pain as a ten out of ten on the scale of pain.

8 Q After examining Mr. Julca and hearing from Mr. Julca,
9 did you make any recommendations on October 6, 2021?

10 A Yes.

11 Q And what were those recommendations?

12 A I recommended X-rays and MRI of the lumbar spine and
13 that he should followup after the imaging studies.

14 Q Now, you said previously that you had already reviewed
15 an MRI of Mr. Julca. Is there a reason why you requested a new
16 MRI?

17 A Yes. That reason is because this was in 2021 and the
18 last MRI that I had from him was in 2018. So it was some time
19 between the MRI of 2018 and that visit so we always want the
20 most recent data so I had to see what was going on and if things
21 he changed from 2018 to 221, three years.

22 MR. ROSENGARTEN: Permission to approach, Your
23 Honor?

24 THE COURT: You may approach.

25 Q So, Dr. Weinstein, I'm showing you what's already been

Dr. Weinstein - by Plaintiff - Direct

1 marked as Plaintiff's 12 for identification. Do you recognize
2 what's in Plaintiff's 12 for identification?

3 A It appears to be an MRI films.

4 Q Is it the MRI of April 13, 2018, that you had reviewed
5 prior to October 6, 2021?

6 A I can't see it exactly but it appears to say April 18th
7 on the top there in the yellow and on the bottom in the yellow
8 as well.

9 Q Can you describe -- permission for Dr. Weinstein to
10 come up to the MRI and describe the MRI?

11 THE COURT: Doctor, you may step down and approach
12 the blow up on the easel.

13 A So this is that MRI of 2018 for the patient. These
14 are -- these are two views of the MRI. This view is a cut
15 that's like this and this view is a cross-sectional view. This
16 is the front. This is the back. And this is not exactly
17 midline but these are the disks. This is the bone. Here is the
18 front, the front of the person, of the patient. This is the
19 back. This is the level that is highlighted here so this is the
20 level of the desk, top of the disk. This is the area where the
21 nerves are. This is area where the nerve comes out. And this
22 is where the nerve comes out.

23 This is the area -- this is one of the areas of disease
24 in his back. And I can't compare it to normal, but you could
25 see here that this area here is pinched. This area here is

Dr. Weinstein - by Plaintiff - Direct

1 pinched. These are the foramen or the holes you could see here
2 where the nerves come out. So in this level, you don't really
3 see much pinching here. In this level. You could see that
4 there is not much white here, sort of worst level, L4 and L5.

5 And this is the area of what's called the cauda equina
6 or the horses tail. That's the area where the nerves are, the
7 nerve sac is and you could also see that there's also
8 constriction in that space as well.

9 Q And what would be the symptoms of the these issues that
10 you described?

11 A So, this could be numbness, weakness, pain in the legs,
12 pain when walking, pain when standing, pain when doing any
13 activity.

14 Q You can go back. Thank you very much. Now, you
15 mentioned that you described another MRI for Mr. Julca after you
16 saw him in October of 2021, correct?

17 A Yes.

18 Q Do you know if Mr. Julca had another MRI done?

19 A Yes, he do.

20 Q And do you know when that MRI was done?

21 A Yes. He had an MRI on 10/28/2021.

22 Q And when was the next time you saw Mr. Julca after
23 October 6, 2021?

24 A I saw him on 11/3/2021.

25 Q So that was after the MRI that you had prescribed?

Dr. Weinstein - by Plaintiff - Direct

1 A Yes.

2 Q At the November 3, 2021, visit did you examine
3 Mr. Julca?

4 A Yes.

5 Q What were your findings of your examination of
6 Mr. Julca on November 3, 2021?

7 A They were very similar to my previous findings.

8 Q And before you -- before you examined Mr. Julca on
9 November 3, 2021, did you review the MRI that had been ordered
10 for 10/28/2021?

11 A I can't tell you if it was before I examined him or
12 afterwards, but I did review the MRI report and the films at
13 that visit.

14 Q And did you have any -- considering your examination of
15 Mr. Julca and your review of the MRI, did you have any
16 recommendations for Mr. Julca at the November 3, 2021, visit?

17 A Yes.

18 Q And what were your recommendations?

19 A My recommendations were -- well, based on his history
20 and based on the treatment that he had prior, so he was -- his
21 accident was in 2018 and this was 2021 so roughly three years
22 since his accident. And he underwent physical therapy, took
23 multiple medications, was seeing pain management, Dr. Grimm, had
24 multiple injections into his back and was still symptomatic and
25 complaining of ten out of ten pain with positive physical exam

Dr. Weinstein - by Plaintiff - Direct

1 findings as well as you could see a positive MRI. So I
2 recommended surgery for his back.

3 MR. ROSENGARTEN: May I approach again, Your Honor?

4 THE COURT: You may.

5 MR. ROSENGARTEN: May the witness approach the MRI?

6 THE COURT: Dr. Weinstein, you can step over.

7 Q So this has been marked as Plaintiff's 13 for
8 identification. Do you recognize what's in Plaintiff's 13 for
9 identification?

10 A Yes. This is pictures of the MRI that was done in 2021
11 for the patient.

12 Q Is this the MRI that you prescribed for him after
13 seeing him the first time?

14 A Yes, it is.

15 Q Can you describe what's in the October 28, 2021, MRI?

16 A So, you could see worsening of his spine. There is a
17 couple of things that we noticed. Number one is that he has
18 what's called a spondylodesis. It is a long word. But it is a
19 long word. But basically what it means is that there's mild
20 alignment of the spine.

21 Now, I also sent him for X-rays and the X-rays that I
22 sent him for are what's called flexion, extension and that's a
23 chose a dynamic part of the spine. On those X-rays, maybe the
24 radiologist read as it as unstable spondylodesis meaning that
25 his spine was not stable. We could also see here that if you

Dr. Weinstein - by Plaintiff - Direct

1 look at these two levels here, okay, they line up very nicely,
2 the front and the back. If you look at this level, this level
3 here with this level, in the front there is a forward or
4 anterior thesis of this vertebrae on this -- on this vertebrae,
5 the L4 vertebrae on the L5 vertebrae. And you could see it in
6 the back here as well.

7 If you take -- if you take a line and just draw it up,
8 you see that this vertebrae is in front. So that's number one.
9 You could also see that there is pinching of the nerves here.
10 You could actually see it. There is not so much room here.
11 There is more room here. There is more room here. Here, you
12 have the big herniation. Here, you have punching of the nerves.

13 You could also see here that the area where the
14 nerve -- before when we were talking about, if I could just go
15 back to this, you could see the difference there that there's
16 much more, what's called, stenosis here, much more stenosis
17 here. You cannot see where the nerves are going out where here
18 you can. So there is certainly worsening of his lumbar spine.

19 Q Now, you said at that November 3, 2021, visit you
20 recommended surgery, correct?

21 A That's correct.

22 Q Before -- well, what type of surgery did you recommend
23 at that time?

24 A I recommended a lumbar decompression and fusion.

25 Q And what does that mean?

Dr. Weinstein - by Plaintiff - Direct

1 A That means that the decompression is we take off or I
2 take off the pressure that's on the nerves, the bone and the
3 soft tissue that's pushing on the nerves and a fusion is putting
4 screws and rods to stabilize that spine.

5 Q Now, you mentioned before you had used the words L4 and
6 L5. What is L4 and what is L5?

7 A There's five lumbar vertebrae. L4 is the fourth one.
8 L5 is the fifth one.

9 Q What is a vertebrae?

10 A A vertebrae is a piece of bone and between the
11 vertebrae are the disks and the vertebrae are basically the
12 structure that holds up the body as well as encases the
13 vertebrae with the lamina, the whole bone, it encases the spinal
14 nerves in order to protect it and to provide a safe area for it
15 to traverse into the legs, the arms, so on and so forth.

16 Q Then you mentioned the term lumbar. Does that refer to
17 the lower back?

18 A That's correct.

19 Q Now, you said you recommended the surgery. Before you
20 do this type of surgery, does the patient need to go through any
21 type of clearance?

22 A Yes.

23 Q What does that clearance entail?

24 A We send them to a medical clearance. That clearance
25 entails that they take -- the medical doctor takes their bloods.

Dr. Weinstein - by Plaintiff - Direct

1 Sometimes they'll do a chest X-ray. They do an EKG or an
2 electrocardiogram in order to see how the heart beat is. And
3 they do a physical exam as well and the medical doctor let's us
4 know if everything is okay to go.

5 Q Now, did Mr. Julca have this surgery right away after
6 the recommendation?

7 A No.

8 Q Do you know why he didn't have it immediately after?

9 A I can't tell you 100 percent right now.

10 Q Did you see Mr. Julca again after your initial
11 recommendation for surgery but before the actual surgery?

12 A Yes, I saw him a couple of times.

13 Q When was the next time you saw him after that
14 November 3, 2021, visit?

15 A 12.1.21.

16 Q And what was the purpose of the December 1, 2021,
17 visit?

18 A Well, to see what's going on, how he's doing, if he is
19 getting worse, to see what the status of the surgery is, and to
20 answer any questions that he has.

21 Q Did Mr. Julca make any complaints at the December 1,
22 2021, visit with you?

23 A Yes.

24 Q What were the complaints that he made?

25 A He had the same complaints as prior.

Dr. Weinstein - by Plaintiff - Direct

1 Q Did you see Mr. Julca after the December 1, 2021, visit
2 at your office?

3 A Yes.

4 Q And when was the next time you saw Mr. Julca after
5 December 1, 2021?

6 A 7.6.22.

7 Q And what was the purpose of the July 6, 2022, visit?

8 A Same. Going for reevaluation. He had to go for --
9 reading the notes now it said that he had a high hemoglobin A1C.
10 He was a diabetic so he needed that to be lowered in order for
11 him to be safe to have surgery.

12 Q And at the July 6th visit, aside from the issue with
13 the diabetes and the hemoglobulin, did Mr. Julca make any
14 complaints to you?

15 A Yes, the same complaints.

16 Q Did you see Mr. Julca again before the surgery but
17 after the July 6th of 2022 visit?

18 A Yes, I saw him on 8/31/2022.

19 Q And what was the purpose of the August 31, 2022, visit?

20 A To again see how he was doing, to make sure that he was
21 adhering to his diabetic medications, and to see the surgery
22 status as well.

23 Q Did -- at that August 31st visit, August 31, 2022,
24 visit did Mr. Julca make any complaints on that day?

25 A Yes, he had same complaints.

Dr. Weinstein - by Plaintiff - Direct

1 Q It was consistent throughout the time that you treated
2 him before the surgery; is that correct?

3 A That's correct.

4 Q Did you eventually do the surgery you recommended to
5 Mr. Julca in November of 2021?

6 A I did surgery to him, yes.

7 Q And when did you do that surgery?

8 A He had surgery on 9.13.22.

9 MR. ROSENGARTEN: Permission to approach, Your
10 Honor?

11 THE COURT: You may approach.

12 MR. ROSENGARTEN: Thank you.

13 Q Dr. Weinstein, I am showing you what's been marked as
14 Plaintiff's 14 for identification. Do you recognize what's in
15 Plaintiff's 14?

16 A Yes.

17 Q And what is depicted in Plaintiff's 14?

18 A It's graphic pictures depicting lumbar surgery.

19 Q And would this graphic assist you in explaining the
20 surgery that you performed on Mr. Julca to the jury?

21 A Sure.

22 MR. ROSENGARTEN: Your Honor, may Dr. Weinstein
23 approach?

24 THE COURT: Yes.

25 A Okay, so as we saw before, this is the MRI. You could

Dr. Weinstein - by Plaintiff - Direct

1 actually see this is a different cut. You could see how severe
2 the stenosis was or the narrowing where the nerves were. You
3 could also see better how there was a spondylodesis where the
4 spine was actually translated forward. So, the surgery is come
5 in the morning of surgery, not supposed to eat anything the
6 night before, talk to various people, the nurses, the
7 anesthesiologist, make sure everything is, okay. Any last
8 questions that a patient has is asked. There is a consent
9 that's signed. We go over the procedure again.

10 After that, they put an IV in in order to get fluids
11 and other medications into the body. The patient is taken into
12 the operating room and the anesthesiologist puts various
13 monitors on the patient. There is a pulse oximetry that goes
14 on. That tells the oxygen level in the blood. There is the
15 EKGs that go on that tell the heart rates and the rhythm.
16 There's a blood pressure cuff that goes on in order to monitor
17 the blood pressure.

18 And then the patient is put to sleep and intubated.
19 This is the general anesthesia procedure where there is a tube
20 that goes down the trachea and there's a machine that breathes
21 for the patient for the duration of the procedure. After the
22 patient is put to sleep, the patient is turned -- we do this
23 from the back -- the patient is turned to their belly on to a
24 special table. They are put into a superman position with the
25 arms up. The area is then -- that we are going to operate on

Dr. Weinstein - by Plaintiff - Direct

1 is -- we take an X-ray, make sure that it's all we could see it
2 so we don't have to move him during surgery. The area is all
3 prepped and draped. And we put up those blue drapes like you
4 see in all the shows on TV, in the movies, and then we start --
5 we start the procedure.

6 So, the procedure is we make incisions straight down
7 the back, okay. We go through the skin and the subcutaneous
8 tissue, the fat. And we get to the back fascia. On top of the
9 muscle, there is fascia or like a thick -- a thick ligament
10 that's on the top. And for this procedure we have to remove --
11 the back is very muscular -- so we have to remove all the
12 muscle, move it to the side in order to see what we're doing.

13 So, we make an incision for one level it's probably
14 about six inches and dissect all of the muscle out. And then
15 what we do is do what's called a laminectomy. Now, the
16 vertebrae, if you could imagine, the area for the nerve is like
17 a -- like a triangle like that. So the lamina, we take off the
18 top, the roof, where you could feel in the back, the ridges in
19 the back. You take off that area in order that the nerves don't
20 have compression on them. And we -- we do this out into the
21 foreman. So we trace the nerves out and make sure from the
22 neurosac to the nerves out it's all free.

23 After that, what we do, we gather the nerves. This is
24 the cauda equina. You could see all the different nerves here
25 and you could see the nerve that's going out and the nerve

Dr. Weinstein - by Plaintiff - Direct

1 that's going out is free. What we do is we put these things
2 called pedicle screws. So the pedicle is, like we said, it is a
3 triangle per se or semicircular shape. This is area for the
4 nerves. The vertebrae is up here and there's these -- there's
5 these like tubular structures that we have to put these screws
6 through like a three dimensional thing.

7 So we put these screws into the pedicles and that
8 stabilizes the spine because number one, first of all, he had an
9 unstable spine. So we take off the pressure from the nerves.
10 There's various ligaments that go over here, right, that we are
11 destroying as well because we have to take off the pressure from
12 the nerves so it just makes the spine even more unstable. So,
13 we have to stabilize it with these screws and rods. And what
14 those screws and rods do is that it -- basically, it's like if
15 anyone broke their arm they have screws and rods put into their
16 arm as well. So it's like an internal fixator.

17 And what that does is it allows the bone to heal on the
18 side not on top of where the nerves are, obviously, but on the
19 side. We burr and we make the area of the bone around where we
20 did the surgery bleed a little bit because bleeding make healing
21 and that bone grows from here to there and that's stabilizes the
22 spine. And then after that, we put a drain inside because now
23 we have basically an empty space. We took out a bunch of stuff.
24 We put a drain inside and stitch up the patient, put a dressing
25 on, and they're turned over and awoken from anesthesia.

Dr. Weinstein - by Plaintiff - Direct

1 After they are awoken from anesthesia, they are taken
2 to the recovery room for a couple of hours to monitor to make
3 sure everything is okay and then they're taken to the floor in
4 the hospital to evaluate and watch and, you know, give them pain
5 medication and to rehab them after the surgery.

6 Q You could sit back down. Thank you. Now, I know you
7 mentioned just now that after the surgery they are taken to the
8 floor back to the hospital. This type of surgery, do you know
9 how long someone who have to stay in the hospital to recover?

10 A So every patient is different, but for my patients that
11 I do this type of surgery, usually they stay about 2 to 3 days.

12 Q And what are they normally doing in the hospital when
13 they are recovering from the surgery?

14 A So in the hospital, we're seeing them. The PA's are
15 seeing them. Physical therapy is seeing them. They are getting
16 pain medication. They're getting -- they are learning how to
17 move out of bed, how to take care of themselves basically,
18 activities of daily living and just able to hopefully take care
19 of themselves outside of the hospital after the surgery.

20 Q I know you described the surgery at length. How long
21 does a surgery like this take?

22 A Approximately, two hours, two and a half hours.

23 Q Do you know if Mr. Julca was -- how long Mr. Julca was
24 in the hospital for after the surgery?

25 A No, I don't know offhand right now.

Dr. Weinstein - by Plaintiff - Direct

1 MR. ROSENGARTEN: May I approach again, Your Honor?

2 THE COURT: You may.

3 Q Dr. Weinstein, I am showing you what has been marked as
4 Plaintiff's 15 for identification. Do you recognize what's in
5 Plaintiff's 15 for identification?

6 A Yes.

7 Q What is in Plaintiff's 15?

8 A This is a lateral or a side-view X-ray postoperatively
9 after surgery.

10 Q Can you come up and describe what you see in this
11 X-ray?

12 A Sure.

13 THE COURT: Go ahead.

14 A So just focusing on the spine, you could see -- this
15 is, like I said, an X-ray from the side and you could see --
16 well, it looks like there is two screws but there are really
17 four, four screws here with rods that are stabilizing the L4-5
18 segments.

19 Q You could sit down. Now, did you see Mr. Julca after
20 you performed the surgery in September of 2022?

21 A I saw him immediately after surgery, yes.

22 Q When was the next date you saw Mr. Julca after the
23 surgery?

24 A The next time I saw him was on 1/11/2023.

25 Q Did you ever see him on September 20, 2022?

Dr. Weinstein - by Plaintiff - Direct

1 A No. My partner did.

2 Q Is there a reason he went to your partner as opposed to
3 you on that date?

4 A I'm not sure.

5 Q Do you know what the results of the examination of
6 September 20, 2022, were?

7 A Yes, I do.

8 Q What were the results of that?

9 A His incision was cleaned, dry and intact. There was no
10 erythema exudate or effusion. There was no postoperative
11 communications immediately. We put in staples. His staples
12 were removed and sterile strips replaced and he had a normal
13 neurovascular exam.

14 Q Do you know the next time Mr. Julca saw a doctor in
15 your practice after September 20, 2022?

16 A 11/7/2022.

17 Q Was that you or a different doctor?

18 A Dr. Kashner (Phonetic).

19 Q Do you know what happened at that visit?

20 A Regular postoperative visit. He was doing better than
21 preoperatively.

22 Q Did Mr. Julca make any complaints at all at that visit?

23 A He did complain of some mild stiffness in the lumbar
24 spine and he did state that his pain was a seven out of ten.

25 Q That was better than it was -- than previous the

Dr. Weinstein - by Plaintiff - Direct

1 surgery, correct?

2 A That's correct.

3 Q When was the next time Mr. Julca saw either you or
4 someone else from your practice?

5 A He was seen by me on 1/11/2023.

6 Q What happened at the January 11, 2023, visit with
7 Mr. Julca?

8 A He returned after lumbar surgery and he stated he
9 was -- felt better than preoperatively. He rated his pain as a
10 six out of ten.

11 Q How many more visits, if at all, did you have or your
12 practice have with Mr. Julca after that January 11th visit?

13 A I saw him on 3/8/23, 5/3/23, 8/23/23, 2/7/24, and I
14 believe that was the last time.

15 Q What did you observe about Mr. Julca in those
16 postoperative visits?

17 A I observed that he did get better progressively. His
18 last time that I saw him on 2/7/24 was five out of ten, his pain
19 level as opposed to ten out of ten on the first time. I
20 observed that his neurovascular status became normal as opposed
21 to having decreased sensation, decreased power and that he was,
22 in my view, better than preoperatively.

23 Q Now, you mentioned the last time you saw him he was
24 about a five out of ten. That's not zero out of ten, right?

25 A That's correct.

Dr. Weinstein - by Plaintiff - Direct

1 Q Would you have expect the surgery like the one you did
2 to have cured Mr. Julca a hundred percent?

3 A Well, spine surgery you can't expect a hundred percent
4 usually but you get what we can get.

5 Q And for Mr. Julca that wasn't a hundred percent?

6 A It wasn't a hundred percent, no.

7 Q Do you know if Mr. Julca will ever get to that
8 hundred percent?

9 A Probably not.

10 Q Now, as a doctor, do you have an opinion with a
11 reasonable degree of medical certainty as to whether or not the
12 March 3, 2018, incident that you mentioned all the way, the
13 beginning of your testimony, was the cause of the lower back
14 injury and subsequent lower back surgery performed by you?

15 A If the history provided was correct, within a
16 reasonable degree of medical certainty, then yes.

17 Q And do you have an opinion, with a reasonable degree of
18 medical certainty, as to Mr. Julca's future prognosis?

19 A Yes, I do.

20 Q And what is that?

21 A I think that he, because he has other issues in his
22 spine, I think that his prognosis would be what's called
23 guarded.

24 Q And what does that mean?

25 A Meaning that most probably he will have future pain and

Dr. Weinstein - by Plaintiff - Direct

1 may need a future surgery in the future.

2 Q And what are those other issues in the spine that
3 you're referring to?

4 A So, originally, what I -- what I asked for, you know,
5 was for the surgery was for L3 to L5 possibly even when I showed
6 you that larger disk herniation above. That's a very big
7 surgery. So, what I did was is when I saw that there was
8 severe, severe stenosis at L4-5 with the unstable spine, I did
9 the smallest procedure that I could do to make him better as
10 opposed to cutting open his whole spine and doing multiple
11 levels. I felt that this would be better for him long-term and
12 I hope that that is better for him long-term.

13 Q So despite your explanation of a pretty significant
14 surgery, in the scheme of things, it is little bit more
15 conservative; is that correct?

16 A I think so.

17 Q Now, Dr. Weinstein, you mentioned Dr. Grimm. Dr. Grimm
18 is going to come testify later on in this trial, a few days, and
19 he is going to testify about some recommendations regarding
20 Mr. Julca future treatment. And I am going to talk to you about
21 some things that he may have recommended. I am going to ask
22 based on your medical opinion if those recommendations in your
23 medical opinion are reasonable; is that okay?

24 A Sure.

25 Q First, he's recommended lumbar steroid injections every

Dr. Weinstein - by Plaintiff - Direct

1 two years for the rest of Mr. Julca's life. Does that seem
2 reasonable to you?

3 A It's possible.

4 Q And he also recommended trigger point injections every
5 three months for the rest of Mr. Julca's life. Does that seem
6 reasonable to you?

7 A It's possible.

8 Q He's also recommended a sacroiliac joint injection up
9 to six times a year for the rest of Mr. Julca's life. Does that
10 seem reasonable to you?

11 A I don't know if he needs six times a year. I would do
12 something else. If he has sacroiliac pain due to diagnostic
13 injections, see if those work. And then if those work, then
14 that means he has sacroiliac dysfunction and you could burn the
15 nerve to the sacroiliac joint which would save a lot of
16 injections but it would be a procedure.

17 Q The doctor also recommended an MRI of lumbar spine once
18 every five years. Does that seem like a reasonable thing to do?

19 A It is very reasonable.

20 Q He's also recommended X-rays of the lower back once
21 every six months for the rest of Mr. Julca's life. Does that
22 seem reasonable to you?

23 A Yes, especially if he is presenting with pain. We want
24 to evaluate what the hardware looks like, what the spine looks
25 like.

Dr. Weinstein - by Plaintiff - Direct

1 Q Finally he's also recommended physical therapy twice
2 per month for the rest of Mr. Julca's life. Does that seem
3 reasonable to you?

4 A I think that if he does have periods where he does feel
5 worse, he could go to physical therapy so it would be
6 reasonable.

7 Q What benefit would that physical therapy have for a
8 patient post-future and surgery?

9 A There is only so much you could do to yourself.
10 Sometimes you need someone else to help you do something else.
11 So at those times, it would be reasonable for him to see
12 someone.

13 Q Shifting gears a little bit, if you weren't here today
14 testifying, what would you be doing?

15 A I could be in surgery or at the office.

16 Q And are you being compensated for your time testifying
17 here today?

18 A I'm compensated for my time here, yes.

19 Q And how much are you being compensated?

20 A \$10,000.

21 MR. ROSENGARTEN: No further questions at this
22 time. Thank you, Your Honor.

23 MR. MALECKI: Your Honor, there is one record tat's
24 in the doctor's notes that I do not have so I need to take a
25 look at that before. I did not realize in looking through

Dr. Weinstein - by Plaintiff - Direct

1 very quickly there was one record from 2024.

2 THE COURT: Members of the jury, we are going to
3 take a five-minute break at this time. I don't think this
4 needs to be done in front of the jury.

5 COURT OFFICER: All rise, jury exiting.

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

7 (Whereupon, the witness was excused from the
8 stand.)

9 THE COURT: Yes, Counsel.

10 MR. MALECKI: I wasn't accusing anybody. I meant I
11 didn't have the records.

12 THE COURT: Counsel, do you need anything from me
13 at this time. I just gave the jury a five-minute break.
14 You're just seeing that record. It seems to not be anything
15 else in evidence? Is that what you're telling me? All
16 right. Five-minute break. Off the record.

17 (Whereupon, a recess was taken.)

18 (Whereupon, the witness resumes the witness stand.)

19 COURT OFFICER: All rise, jury entering.

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

22 MR. MALECKI: If I can clarify my comment before we
23 went off I couldn't find the record. The records I had in
24 front of me, but I have located it. So it was not directed
25 to the witness that there was something missing. It is not.

Dr. Weinstein - by Plaintiff - Cross

1 It is here. I apologize for any insinuation.

2 THE COURT: You may proceed with your
3 cross-examination.

4 MR. MALECKI: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MALECKI:

7 Q Good afternoon, Dr. Weinstein.

8 A Good afternoon.

9 Q We never met before have we?

10 A I don't think so.

11 Q Now, you said you are getting paid for your time here
12 today it is \$10,000 is the fee, correct?

13 A That's correct.

14 Q And you also get paid for the work you do when you see
15 patients, correct?

16 A That's correct.

17 Q And now it's fair to say you've, in the course of your
18 career, testified some 20 times in cases with the Gorayeb firm,
19 plaintiff's counsel?

20 A Approximately.

21 Q And treated even more patients twenty for the Gorayeb
22 firm?

23 A That's correct.

24 Q In the past year, you testified several years. This
25 past January, you testified up in the Bronx, correct, for the

Dr. Weinstein - by Plaintiff - Cross

1 Perez case?

2 A I can't tell you exactly, but I'll trust what you're
3 saying.

4 Q In June of last year, you testified in the case
5 Jonathan Balino (Phonetic) for the Gorayeb firm?

6 A That's correct.

7 Q And in May you also testified in the Bronx for the
8 Gorayeb firm on the Rivera case?

9 A I believe so.

10 Q And there's also, I believe, a trial currently ongoing
11 in the Bronx. Have you testified in that one yet?

12 A I don't know. Recently, no. Not that I remember.

13 Q And in addition to receiving referrals -- you receive
14 referrals from Dr. Grim's office, correct?

15 A That's correct.

16 Q And Dr. Grimm is also a friend of yours. You socialize
17 outside of work?

18 A Not much but, yes.

19 Q And Dr. Grimm, am I correct, works in the same offices
20 as Dr. Kaplan?

21 A Yes.

22 Q And you also regularly refer patients to have MRIs done
23 as we saw with Dr. Kolb?

24 A I refer to Dr. Kolb, yes.

25 Q Now, since you've testified a number of times in cases,

Dr. Weinstein - by Plaintiff - Cross

1 I assume you know how cross-examination works. I try to ask yes
2 or no questions and to the best of your ability you try to give
3 me yes or no answers. Is that going to work for you?

4 A Sure.

5 Q If at any point I ask you a question that you can't
6 give me a yes or no answer to, just let me know.

7 A No probably.

8 Q Now, you testified about the April 13, 2018, MRI that
9 Mr. Julca had of his lumbar spine. Did you independently do a
10 review of those films?

11 A I looked at them, yes.

12 Q And I'm correct those were done at Lenox Hill
13 Radiology, correct?

14 A That is correct.

15 Q Now, you first saw him in, Mr. Julca, in October of
16 2021?

17 A Yes.

18 Q Now, do you know if you -- did you review the films
19 before you had that appointment?

20 A At the appointment I reviewed them.

21 Q Now, in addition to the films, did you also review the
22 report of the radiologist?

23 A I believe so.

24 Q I am going to put on the screen what has been
25 previously marked as Plaintiff's Exhibit 5. And what we put on

Dr. Weinstein - by Plaintiff - Cross

1 the screen is page 25 of the Exhibit 5. And I'm correct that
2 this is the report from Lenox Hill Radiology concerning that
3 April 13, 2018, MRI of Mr. Julca? Is the report you reviewed?
4 I can scroll down.

5 A It is interesting because the date of birth on this
6 report is not the same. It says 1970 here. It says 1976. So,
7 I can show it to you.

8 MR. ROSENGARTEN: Can I get that from the witness,
9 Your Honor?

10 THE COURT: You may.

11 Q Well, why don't you do me a favor. Keep that report
12 that you have in front of you, and I am going to go through and
13 you let me know if anything we talked about is different in the
14 report that you have. Does that sound good?

15 A Sure. No problem.

16 Q Now, am correct it says it states in the report that
17 the plaintiff's accident occurred March 3, 2018, correct?

18 A That's correct.

19 Q So this MRI was taken about a month -- about six weeks
20 after the accident, correct?

21 A Correct.

22 Q Now, you testified earlier that because you didn't see
23 Mr. Julca until October 2021 you need to get a new MRI because
24 things might have changed between the time you had this MRI and
25 the time you saw him in 2021, correct?

Dr. Weinstein - by Plaintiff - Cross

1 A That's correct.

2 Q Now, I want to talk about some of the findings on this
3 report. But since we have a strange date of birth issue, I am
4 going to verify those findings are in the record in front of you
5 as well. Right at the top it's got -- it references a slight
6 left convex lumbar scoliosis is that also in your report?

7 A Yes.

8 Q And did you review the films and determine that that
9 was accurate?

10 A Well, I can't tell you right now if I determined
11 everything was, you know, accurate on this report. I reviewed
12 the films and ordered a new MRI.

13 Q And I'm correct scoliosis is abnormal curvature of the
14 spine?

15 A That's correct.

16 Q That's something that could be genetic or could develop
17 over a period of time; is that fair?

18 A It could be traumatic. It could be genetic. There is
19 a lot of different reasons why it can happen.

20 Q And the next line references lumbar vertebral bodies
21 are essentially normal in size and shape. First of all, that
22 corresponds with the report in the front of you?

23 A Yes.

24 Q And that's a normal finding and nothing wrong there,
25 correct?

Dr. Weinstein - by Plaintiff - Cross

1 A That's correct.

2 Q The next line down it says there is no evidence of a,
3 and there is the word?

4 A Spondylodesis.

5 Q Spondylodesis. And that's also in the report that's in
6 front of you?

7 A That's correct.

8 Q Did you independently review the MRI to determine
9 whether there is any evidence in the 2018 MRI of spondylodesis?

10 A As I told you, I didn't document anything regarding
11 this report. I just ordered a new MRI because it was old.

12 Q In the imaging that you looked at earlier today, did
13 you identify any spondylodesis.

14 A I think on the MRI we did see the spondylodesis.
15 However, those are just two pictures in time. We have to review
16 the whole MRI, I don't mind doing that, to go over these reports
17 because what a radiologist report is what the radiologist report
18 and that's why I don't independently just go through the
19 radiologist study and trust them. That's why I always look at
20 the images myself. Just because a radiologist says it is a disk
21 herniation it doesn't mean that there is a herniation in my view
22 and just the opposite as well. If someone says that there is a
23 huge herniation or there isn't a huge herniation, I may say that
24 there is not so it goes both ways.

25 Q So sitting here today, you don't know one way or the

Dr. Weinstein - by Plaintiff - Cross

1 other whether doing an independent review of this April 2018 MRI
2 you would determine that there was spondylodesis?

3 A As I said before, I can't tell you sitting here right
4 here today. Certainly, I mean, I reviewed, as I said before, at
5 the time, those MRIs. If you would like me to review them, I
6 have no problem doing it. I think I showed everyone the
7 spondylodesis on the MRI that was in 2018. Also, another fact
8 to know is it's a great question because when a person is lying
9 down, especially if they have an unstable spondylodesis meaning
10 that there is movement in the spine, when they're lying down in
11 a static way, that movement may reduce and you may not see a
12 spondylodesis. I'm not saying that that's in this case. I am
13 just saying in order to see a spondylodesis, especially a
14 dynamic spondylodesis, you see that flexion and extension.
15 There are times you can see a spondylodesis on an MRI but it
16 depends. On each case it's different.

17 MR. MALECKI: Move to strike as nonresponsive.

18 THE COURT: Overruled. I'll allow the answer. Try
19 to confine yourself to yes or no if you can.

20 THE WITNESS: No problem.

21 Q Once again, sitting here today, you have not reviewed
22 every single one of the films to talk about with respect to
23 April 13, 2018?

24 A I can't answer that as a yes or no.

25 Q Now, this MRI report also references disk bulges,

Dr. Weinstein - by Plaintiff - Cross

1 correct, at the L3-4 and L4-5, correct? I should be clear, does
2 the report in front of you also reference the same disk bulges?

3 A There is a disk bulge, posterior disk bulge at L3-4.
4 There is posterior disk bulge at L4-5 but, yes.

5 Q And disk bulges are something that is seen in a lot of
6 people over the age of 35, correct?

7 A It can be.

8 Q And -- and I'm correct the disk bulges are something
9 that develop over time, they are degenerative condition?

10 A It can. It can be traumatic. It can also be
11 degenerative.

12 Q Do most people with disk bulges have no symptoms?

13 A I can't answer that as a yes or no.

14 Q Do you, as a spine surgeon, often perform surgery on
15 people who just have disk bulges?

16 A I can't answer that as a yes or no.

17 Q Now, also below that it references a disk herniation at
18 the T12, L1 level. Is that also referenced in your report?

19 A Yes.

20 Q And that T12 L1 level that's higher than the L3, L4,
21 correct?

22 A That's correct.

23 Q And I'm correct the disk herniations are a -- more
24 serious than disk bulges?

25 A I can't answer that with a yes or no.

Dr. Weinstein - by Plaintiff - Cross

1 Q But disk herniations also could be caused by a
2 traumatic accident, yes?

3 A Yeah.

4 Q It could also be caused by wear and tear?

5 A Sure.

6 Q And people who work jobs where they do a lot of heavy
7 lifting are those people who often have disk bulges and disk
8 herniations in their MRIs?

9 A I can't answer that as a yes or no.

10 Q And that last paragraph on the screen, the second
11 sentence references there's no significant central spinal
12 stenosis. First of all, does the report in front of you say the
13 same thing?

14 A Yes.

15 Q And you talked a little bit about stenosis but that's,
16 I'm correct, the narrowing of the space in between the spinal
17 canal; is that a fair description, mediocre?

18 A I can't answer that as a yes or no.

19 Q Stenosis is that also something that could be caused by
20 an accident?

21 A It can.

22 Q It can also be caused by wear and tear of the body?

23 A It can.

24 Q And do you often see stenosis in combination with
25 herniated disks?

Dr. Weinstein - by Plaintiff - Cross

1 A I can't answer that as a yes or no.

2 Q Now, are you aware that my office subpoenaed your
3 records to be brought in for this trial? Are you aware of that?

4 A I can't answer that in a yes or no.

5 Q Do you typically participate at your office in
6 responding to subpoenas for records?

7 A No.

8 Q In the subpoena, it was requested that you supply
9 billing records. Do you know if any billing records were
10 supplied?

11 A I previously stated I am not involved in the process.

12 Q If I told you that no billing records were responded to
13 in our subpoena, would you be surprised by that fact?

14 A Shocked.

15 Q Now, with respect to the treatment that you performed
16 on Mr. Julca, do you have any outstanding liens on that
17 treatment?

18 A I don't think so.

19 Q And are you aware of medical treatment guidelines that
20 exist with respect to work related accidents?

21 A Sure.

22 Q And these provide a basic kind of standard of care for
23 the treatment of work related accidents?

24 A Yes.

25 Q And in -- is it fair to say that one of the

Dr. Weinstein - by Plaintiff - Cross

1 requirements is before recommending surgery that people go
2 through conservative care such as physical therapy, injections,
3 things like that?

4 A Sure.

5 Q Now, is there any requirement in the medical treatment
6 guidelines that there be, for example, a disk herniation before
7 lumbar surgery is justified?

8 A I'm not sure which medical treatment guidelines are you
9 talking about.

10 Q Well, do you work with medical treatment guidelines in
11 your work?

12 A I don't understand your question.

13 Q Well, I asked about medical treatment guidelines and
14 whether they provide a mandatory standard of care, correct?

15 A Yes.

16 Q And you responded that they did, correct?

17 A Yeah, of course.

18 Q Now, your first visit with Mr. Julca was you said
19 October 6, 2021, correct?

20 A That's correct.

21 Q And at that visit did you get a history of the
22 accident, how it occurred?

23 A It just said he was injured while at work on 3/3/2018.

24 Q Just remember I am looking for a yes or no.

25 A Sorry.

Dr. Weinstein - by Plaintiff - Cross

1 Q No problem.

2 A I answered it.

3 Q And again at this appointment you recommended he go to
4 have an MRI and sent him to Dr. Kolb; is that correct?

5 A I don't know if I specifically sent him to Dr. Kolb,
6 but I sent him for an MRI, yeah.

7 Q Now, at that October 6, 2021 visit, you had not
8 recommended surgery at that point, correct?

9 A That's correct.

10 Q And that's because you needed to see a new MRI and get
11 to looking at what was more recent happening with Mr. Julca?

12 A One of the reasons, yes.

13 Q I am putting on the screen what has been previously
14 marked as Plaintiff's Exhibit 9 specifically page 32. Now, I
15 recommend to you I'll tell you doctor this is a record of
16 Dr. Grim's office. So this is not a record of your office. And
17 this record is dated August 16, 2021. I'm correct that that's
18 before the first time you saw Mr. Julca?

19 A Yes.

20 Q Now, my question is about -- a statement about several
21 lines down where it start with patient is reporting. Are you
22 able to see that?

23 A I can't really see so well.

24 Q Do you see where it says patient is reporting that he
25 has lumbar surgery authorized and he needs to followup with

Dr. Weinstein - by Plaintiff - Cross

1 Dr. Weinstein; do you see that sentence?

2 A Yes, I do.

3 Q And to your knowledge, prior to when you saw him in
4 October of 2021, Mr. Julca hadn't gone to back doctor besides
5 you, correct?

6 A As far as I know.

7 Q So, are you aware of any authorization for lumbar
8 surgery for any doctor prior to when you saw him?

9 MR. ROSENGARTEN: Objection.

10 THE COURT: Overruled.

11 A No.

12 Q And you talked about the October 28, 2021, MRI that
13 Dr. Kolb did, correct?

14 A Yes.

15 Q And you mentioned that you -- you independently did a
16 review of those films, correct?

17 A That's correct.

18 Q Did you also do a review of Dr. Kolb's report?

19 A I can't answer that yes or no.

20 Q I am putting on the screen what was previously marked
21 as Plaintiff's 8 specifically page 11, the records of Dr. Kolb
22 radiology. Now, first, Doctor, in your notes, do you have the
23 report of the 10/28/2021 MRI?

24 A Yes, I have.

25 Q And based at least on the identifying information,

Dr. Weinstein - by Plaintiff - Cross

1 anything different from yours so far?

2 A This one is the same.

3 Q Now, I noticed in your testimony about the surgery and
4 the MRI that no point you mentioned disk herniations; is that
5 correct?

6 A What do you mean?

7 Q In your testimony earlier when you were testifying
8 about the surgery and the disk MRI, you didn't mention disk
9 herniations, right?

10 A I don't think I did.

11 Q Because the surgery was not to take out any disk
12 herniations, correct?

13 A We did not take out any disk herniations.

14 Q So I'm correct that your surgery was focused on the
15 stenosis and the spondylodesis, yes?

16 A I can't answer that in a yes or no.

17 Q I am putting on the screen what was previously marked
18 as Plaintiff's 6 page 25. This is the record of your
19 appointment with Mr. Julca on November 3, 2021. I am assuming
20 you have that in your notes in front of you?

21 A Yes.

22 Q And this is your appointment you had with him after he
23 had that MRI can Dr. Kolb, correct?

24 A Yes.

25 Q This is the appointment that you reviewed the MRI with

Dr. Weinstein - by Plaintiff - Cross

1 him and you recommended surgery?

2 A That's correct.

3 Q In that report as well as in your testimony you
4 mentioned that Mr. Julca had failed all of the nonoperative
5 treatments including physical therapy, antiinflammatory and the
6 injections, correct?

7 A That's correct.

8 Q Were you aware that the last time, prior to this
9 appointment, that Mr. Julca had physical therapy for his back
10 was back in July of 2018?

11 A No, I can't tell you that. No.

12 Q Were you also aware that for about a year after that
13 Mr. Julca stopped treatment entirely, didn't go to Dr. Kaplan or
14 Dr. Grimm or any physical therapy? Were you aware of that fact?

15 A No.

16 Q And at any point prior to recommending surgery on
17 November 3, 2021, did you recommend that Mr. Julca have
18 additional physical therapy?

19 A No.

20 Q Now, I am going to go to your operative report for the
21 surgery that you performed in September of 2022. And I put on
22 the screen what's been previously marked as Plaintiff's
23 Exhibit 6 page 34. It is the first page of your operative
24 report. I'm assuming, at least this first page, matches up with
25 the notes that you have in front of you doctor.

Dr. Weinstein - by Plaintiff - Cross

1 A I can't look at the whole thing very fast. I imagine
2 it is the same.

3 Q Now, you talked about one of the portions of this
4 surgery was a laminectomy, correct?

5 A That's correct.

6 Q Now, would I be correct in saying that a laminectomy
7 performed by itself would be a relatively minimally invasive
8 surgery?

9 A I can't answer that in a yes or no.

10 Q Would the recovery time from a laminectomy be a few
11 weeks?

12 A I can't answer that in a yes or no.

13 Q Now, you also talk about performing -- one of the
14 things you talked about facetectomy and foraminotomies?

15 A Correct.

16 Q That's the procedure to relief some pressure on the
17 spine; is that fair?

18 A I can't answer that in a yes or no.

19 Q Now, is there mention, in this operative report,
20 somewhere of a finding of spinal stenosis?

21 A Yes.

22 Q And where is that?

23 A Postoperative diagnosis severe stenosis at the L4-5.

24 Q And you also referenced the spondylodesis, yes?

25 A Yes.

Dr. Weinstein - by Plaintiff - Cross

1 Q Now, I know that the stenosis is mentioned in the
2 postoperative diagnosis and not the preoperative. Is that
3 because it wasn't found in the MRI or something else?

4 A Is that a yes or no?

5 Q Fair, it's not.

6 A So, I can't tell you 100 percent because I have no
7 independent recollection of making this operative report, but I
8 could tell you that sitting here now the reason why is because
9 it must have been very impressive severe stenosis of the spinal
10 cord of the neuroelements, I should say, and that's why I put it
11 in this postoperative diagnosis specifically.

12 Q Now, I am going to go to the appointments you had with
13 Mr. Julca after the surgery starting on September 28, 2022. And
14 I am correct this is the first time you saw Mr. Julca after that
15 September 18, 2022, surgery?

16 A Which date?

17 Q September 28, 2022.

18 A The first two visits, as I said before, Dr. Kashner saw
19 him.

20 Q But as you stated postoperative pain has decreased,
21 correct?

22 A Yes.

23 Q And that's a good result from the surgery, yes?

24 A Correct.

25 Q And then you said in November 7, 2022, record there has

Dr. Weinstein - by Plaintiff - Cross

1 been no change about the same?

2 A I didn't hear you. Which date?

3 Q November 7, 2022, is the next date. I'm correct there
4 has been no change between these two dates and the condition?

5 A I don't believe so.

6 Q And then the next appointment on January 11, 2023,
7 again, stating that he feels better postoperatively but he is
8 still reporting pain 6 of 10, correct?

9 A Correct.

10 Q And then a couple of months later March 8, 2023, again,
11 Mr. Julca is feeling better postoperatively. Now, the pain is
12 down to five out of ten, correct?

13 A Correct.

14 Q So all of these are good signs going forward, yes?

15 A Correct.

16 Q Now, when you did the spine surgery back in September
17 of 2022, is it -- well, do you take any photographs during the
18 surgery?

19 A We take X-rays.

20 Q Other than the X-rays, you don't take any other
21 intraoperative photos?

22 A No.

23 Q Now, you testified earlier that the symptoms that
24 Mr. Julca had in his back were as a result of this March 3,
25 2018, accident. You said within a reasonable degree of medical

Dr. Weinstein - by Plaintiff - Cross

1 certainty, correct?

2 A That's correct.

3 Q And did Mr. Julca tell you at any of your appointments
4 that you continued working after the accident?

5 A Not specifically, no.

6 Q Did he tell you at any of his appointments that he went
7 to work at a different job site than where the March 3, 2018,
8 occurred?

9 A No.

10 Q And did he tell you at any of your appointments that he
11 didn't begin to feel his back pain until a couple of weeks after
12 the accident when he went to that other job site?

13 A Not specifically, no.

14 Q Now, your last appointment with Mr. Julca was
15 February 7, 2024, correct?

16 A Yes.

17 Q And have you or your office reached out to Mr. Julca to
18 schedule any additional appointments after that?

19 A I'm sure they spoke to him or they tried to.

20 Q And you know that?

21 A I can't tell you for sure.

22 Q Now, counsel was asking you about some opinions they
23 were going to get from Dr. Grimm later on and he gave you
24 various things about the back that he might need in the future.
25 He talked to you about lumbar spine injections and you said it

Dr. Weinstein - by Plaintiff - Cross

1 was possible that Mr. Julca might need that, correct?

2 A It's possible, yes.

3 Q Is it also possible that he might not need them?

4 A Anything is possible.

5 Q What about the trigger point injections, possible he
6 might need them, yes?

7 A Same answer.

8 Q And you also mentioned that physical therapy, having
9 that a few times, was also reasonable; is that correct?

10 A That's correct, yes.

11 Q Now, I'm correct that Mr. Julca had physical therapy
12 for the back after he had the neurosurgery, correct?

13 A As far as I know, yes.

14 Q Are you aware the last time Mr. Julca had physical
15 therapy for his back?

16 A No.

17 MR. MALECKI: That's all the questions I have.

18 Thank you, Doctor.

19 THE WITNESS: No problem.

20 MR. ROSENGARTEN: I will be very brief. I don't
21 know if you want to take a break or not.

22 THE COURT: No. If you are going to be very brief,
23 let's wrap it up so we can send the jury home for the day.

24 REDIRECT EXAMINATION

25 BY MR. ROSENGARTEN:

Dr. Weinstein - by Plaintiff - Redirect

1 Q Dr. Weinstein, Mr. Malecki just asked you about a
2 number of issues that Mr. Julca didn't bring up with you in
3 terms of working after his initial accident; do you recall that?

4 A Yes.

5 Q If you would have known of that information, would that
6 have changed your opinion in any way?

7 A I don't believe so.

8 MR. ROSENGARTEN: Nothing further.

9 THE COURT: The witness may step down.

10 (Whereupon, the witness was excused from the
11 stand.)

12 THE COURT: Members of the jury, we don't have any
13 other witnesses today so in just a few moments I am going to
14 let you go for the day. I want to talk about the schedule.
15 Putting together a schedule for the benefit of myself and
16 the lawyers and the jury is something I started doing fairly
17 recently and I do it because I want to manage your
18 expectations and all of our expectations so that we know
19 when we're expected to be here and I think it's helpful in
20 terms of scheduling going forward. It is as broad as
21 possible. You see I said you would be here today from 9:30
22 to 5. Well, I am not going to keep you here until five just
23 because it says that on the schedule if we're done with what
24 we need to accomplish.

25 Let's start with tomorrow. Tomorrow you're going

Proceedings

1 to be here at 9:30 a.m. We will be done by 3:30 as it
2 indicates on the schedule. It's possible we may be done
3 before that but those are outside dates and times. In terms
4 of moving toward the end of the schedule as well, there are
5 some dates that may be beyond when you're expected to serve.
6 In all likelihood, that's me putting those dates on in the
7 abundance of caution.

8 So, based upon my conferring with the lawyers, my
9 expectation is that we will conclude all of the testimony --
10 if everything goes well and everybody shows up and
11 everything moves on time and as expected, which I can't
12 promise is going to be the case -- but my expectation is
13 that we would wrap up the testimonial portion, the
14 evidentiary portion of this trial by Thursday, March 19th.
15 Probably at this point, summation and charge the following
16 day and then some time to deliberate on Friday.

17 I can't tell you how long your deliberations will
18 take. I can't predict how long your deliberations will take
19 and that's why you see the following Monday, Tuesday, and
20 Wednesday on the calendar as well because there is a
21 possibility that deliberations could go that long. So, and
22 because I can't predict it, that's why I've given some
23 additional padding, also because things could change on the
24 schedule unexpectedly and we may not finish the testimony of
25 all the witnesses by the 19th.

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1 So with that in mind, take a deep breath, take a
2 look at the schedule. Note the changes that I put there --
3 that I indicated on March 9th and March 24th and with
4 respect to whether you're supposed to be here in the morning
5 or evening and look it over. And if you need to write me a
6 note in the morning, you can certainly do that. And you can
7 just let the court officer know. Do not discuss this case
8 among yourselves. Do not discuss it with anybody else. Do
9 not do any independent research of any kind related to
10 anything involved in this case. Do not visit the scene.
11 Have a good evening. I will see you tomorrow morning at
12 9:30.

13 COURT OFFICER: All rise, jury exiting.

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

16 THE COURT: The jury has exited. Is there anything
17 before we recess for the day, Counsel?

18 MR. ROSENGARTEN: No, Your Honor.

19 MR. MALECKI: No.

20 THE COURT: I will see you tomorrow morning at 9:30
21 at which time we will hear from Dr. Fred Goldman.

22 MR. ROSENGARTEN: Correct. I guess -- I don't know
23 if this needs to be on the record but --

24 THE COURT: You want it off the record first.

25 MR. ROSENGARTEN: Yes.

1 THE COURT: Off the record.

2 (Whereupon, there is a discussion held off the
3 record among the Court and Counsels.)

4 THE COURT: Back on the record. With respect to
5 the concern you expressed, Mr. Rosengarten, my clerk will
6 send out a link for tomorrow morning at 9:30. It will go
7 out as we can arrange to all the parties on the case so that
8 you can forward that to the doctor, the good doctor for
9 tomorrow morning so that he can link in and appear digitally
10 in our courtroom.

11 MR. ROSENGARTEN: Thank you.

12 THE COURT: This court stands in recess until
13 tomorrow morning at 9:30 a.m.

14 (Whereupon, the trial is adjourned until Friday,
15 March 6, 2026, at 9:30 a.m.)

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