

**In The Matter Of:**

*Juan Julca v.*

*ERY Tenant, LLC, ERY Retail Podium, LLC*

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*Dr. Josphe Weinstein*

*March 5, 2026*

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*Supreme Court State of New York - Civil Term*

*60 Centre Street - Room 420*

*New York, New York 10007*

*(646) 386-3012*

*SMHarris006@gmail.com*

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Min-U-Script® with Word Index

Page 1

1 SUPREME COURT OF THE STATE OF NEW YORK  
 2 COUNTY OF NEW YORK : CIVIL TERM : PART 58  
 3 -----x  
 4 JUAN JULCA, : Index:  
 5 : 161813/2019  
 6 Plaintiff(s) :  
 7 - against - :  
 8 ERY TENANT, LLC, ERY RETAIL PODIUM, LLC, : TRIAL  
 9 Defendant(s) :  
 10 -----x  
 11 71 Thomas Street  
 12 New York, New York 10013  
 13 March 5, 2026

14 B E F O R E:  
 15 HONORABLE DAVID B. COHEN,  
 16 J U S T I C E  
 17 (And a jury of Six plus Two alternates)

18 A P P E A R A N C E S:  
 19 GORAYEB & ASSOCIATES, P.C.  
 20 Attorneys for the Plaintiff  
 21 100 William Street - 19th Floor  
 22 New York, New York 10038  
 23 BY: HAROLD ROSENGARTEN, ESQ.

24 LONDON FISCHER LLP  
 25 Attorneys for the Defendants  
 59 Maiden Lane  
 New York, New York 10038  
 BY: ANTHONY MALECKI, ESQ.

SHAMEEKA HARRIS, CSR, RMR, CLR  
 Senior Court Reporter

Page 3

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.

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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

Page 4

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?

<p>Dr. Weinstein - by Plaintiff - Direct Page 5</p> <p>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?</p>	<p>Dr. Weinstein - by Plaintiff - Direct Page 7</p> <p>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 heal work 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.</p>
<p>Dr. Weinstein - by Plaintiff - Direct Page 6</p> <p>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.</p>	<p>Dr. Weinstein - by Plaintiff - Direct Page 8</p> <p>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 2021, 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</p>

Dr. Weinstein - by Plaintiff - Direct Page 9

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 Page 10

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 Page 11

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 Page 12

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 Page 13

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 Page 14

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 Page 15

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 Page 16

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 Page 17

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 Page 18

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 Page 19

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 Page 20

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 Page 21

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 Page 22

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 Page 23

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 Page 24

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.

<p>Dr. Weinstein - by Plaintiff - Direct Page 25</p> <p>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</p>	<p>Dr. Weinstein - by Plaintiff - Direct Page 27</p> <p>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.</p>
<p>Dr. Weinstein - by Plaintiff - Direct Page 26</p> <p>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</p>	<p>Dr. Weinstein - by Plaintiff - Direct Page 28</p> <p>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</p>

Dr. Weinstein - by Plaintiff - Direct Page 29

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 Page 30

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 Page 31

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 Page 32

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 Page 33

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 Page 34

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 Page 35

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 Page 36

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,

<p>Dr. Weinstein - by Plaintiff - Cross Page 37</p> <p>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.</p>	<p>Dr. Weinstein - by Plaintiff - Cross Page 39</p> <p>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</p>
<p>Dr. Weinstein - by Plaintiff - Cross Page 38</p> <p>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?</p>	<p>Dr. Weinstein - by Plaintiff - Cross Page 40</p> <p>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.</p>

Dr. Weinstein - by Plaintiff - Cross Page 41

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 Page 42

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 Page 43

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 Page 44

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 Page 45

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.

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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

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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

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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

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<p>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:</p>		<p>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.</p>	
<p>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 a 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</p>		<p>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.</p>	

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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