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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS : CIVIL TERM : PART 28  
-----X

CARLOS PAIBA,

Plaintiff,

-against-

Index No. 704365/2019

56-11 94TH STREET COMPANY LLC AND  
GINSBERG HOLDINGS L.P.,

**JURY TRIAL**

Defendants.  
-----X

Supreme Courthouse  
88-11 Sutphin Boulevard  
Jamaica, New York 11435  
March 9, 2026

B E F O R E:

THE HONORABLE LAURENTINA MCKETNEY-BUTLER,  
J U S T I C E of the Supreme Court

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

WILLIAM SCHWITZER ASSOCIATES  
Attorneys for the Plaintiff  
820 2nd Avenue - 10th Floor  
New York, New York 10017  
BY: RORY M. SCHECTMAN, ESQ.  
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PERRY, VAN ETTEN, ROZANSKI & KUTNER, LLP  
Attorneys for the Defendants  
225 Broadhallow Road - Suite 430  
Melville, New York 11747  
BY: THOMAS F. MAHER, ESQ.

VALERIE MCNALLY  
VICKY ZUBIRIA  
Senior Court Reporters

1 (Whereupon, at this time, the CD of Kolb Radiology  
2 was marked as Plaintiff's Exhibit 1 in evidence, by the  
3 Reporter.)

4 (Whereupon, at this time, illustrations were  
5 marked as Plaintiff's Exhibits 2, 3, 4 and 5, inclusive,  
6 for identification, by the Reporter.)

7 (Whereupon, at this time, an envelope containing  
8 documents was marked as Defendant's Exhibit A for  
9 identification, by the Reporter.)

10 (Whereupon, at this time, the records of Elmhurst  
11 Hospital were marked as Defendant's Exhibit B in evidence,  
12 by the Reporter.)

13 THE COURT CLERK: All rise. Queens Supreme Court  
14 Part 28 now in session. Honorable Laurentina  
15 McKetney-Butler presiding. Case on trial, Index  
16 704365/2019, in the matter of Carlos Paiba versus 56-11  
17 94th Street Company LLC and Ginsberg Holdings LP.

18 Please note your appearance for the record.

19 MR. OWaid: Oliver Owaid, William Schwitzer  
20 Associates for the plaintiff, Your Honor.

21 THE COURT CLERK: All other appearances remain the  
22 same.

23 THE COURT: Oliver?

24 MR. OWaid: Owaid, O-W-A-I-D.

25 THE COURT: So with respect to plaintiff's table,

1 only one attorney is to speak to present the case.

2 MR. OWAID: Understood, Your Honor.

3 MR. SHECTMAN: Good morning, Your Honor.

4 THE COURT: We'll take appearances when the jury  
5 comes in.

6 MR. SHECTMAN: Before we begin --

7 THE COURT: Okay, just your name for the record.

8 MR. SHECTMAN: Rory Sheckman of William Schwitzer  
9 Associates PC, 820 2nd Avenue, 10th Floor, New York, New  
10 York 10017.

11 Good morning, again.

12 THE COURT: Good morning.

13 MR. SHECTMAN: Your Honor, there were a few  
14 motions we wanted to address which actually we need  
15 addressed, especially one of them which relates to the  
16 doctor that's going to be testifying. He is outside in the  
17 hallway, so we wanted to address these motions.

18 Like I said, it would affect what is said in  
19 openings and certainly my questioning of the doctor.

20 THE COURT: Everyone could have a seat. I am  
21 sorry. Except those who are speaking.

22 MR. SHECTMAN: So there's three issues. The  
23 first, Your Honor, I guess, if you remember, I mentioned to  
24 the Court about providing a memorandum of law regarding the  
25 issue of special employee or alterego, which Mr. Maher

1 brought up, but they are still maintaining from a defense  
2 again, as you recall, concededly said it's a related  
3 question for the Court.

4 It might be premature at this point to address  
5 that because we haven't had testimony, but I do have Mr.  
6 Owaid with me who did the research and he handled the  
7 motion that was on appeal and reversed the findings so I  
8 think he is better versed in it than I am. I just didn't  
9 know at this particular point if you would like us to  
10 address it. I actually think we should because we believe  
11 there is a waiver here of that defense, so that might  
12 eradicate the need of any questioning at all of my witness  
13 or any other witness on this issue, so it's probably better  
14 off addressed at this stage.

15 THE COURT: You said on this issue. What issue?  
16 I got them. I didn't look at them. I looked at them  
17 cursory, so just tell me what you are talking about when  
18 you say "this issue."

19 MR. SHECTMAN: We brought to your attention that  
20 initially the summary judgment motion on liability was  
21 denied, but it was reversed on appeal in an order dated  
22 June 20, 2024, so this is a damages only trial, damages  
23 only.

24 Mr. Maher said that -- in the underlying papers,  
25 they had brought up special employee, alterego, basically a

1 Worker's Comp defense. On appeal, they didn't specifically  
2 address that, but we believe the reasons that we would  
3 argue is, it's actually been waived. So we would like the  
4 issue decided, because otherwise during the trial, we might  
5 have unnecessary testimony regarding a defense that we  
6 believe was actually waived and it would waste the Court's  
7 time.

8 MR. OWAID: If I may, Your Honor.

9 THE COURT: Yes.

10 MR. OWAID: Your Honor, the motion in limine was  
11 e-mailed to the Court last night and there's two cases on  
12 point that specifically address this issue and I just want  
13 to draw the Court's attention --

14 THE COURT: Defendant, did you see copies of  
15 these?

16 MR. MAHER: I received it late yesterday afternoon  
17 and I hadn't really had time to properly address that  
18 caselaw. I think this is an issue that we can probably  
19 defer to another time. I don't have any intention of  
20 bringing up special employee status or alterego issues in  
21 my opening statement, certainly not with Dr. Merola, so I  
22 don't know that there's any real need to address it now.

23 I just literally got these papers yesterday, so I  
24 would ask for a little time.

25 THE COURT: You got them a couple of hours sooner

1 than I did, because I got them before I came out this  
2 morning.

3 So I would ask you, if this issue is not going to  
4 affect the testimony of this witness that's coming on this  
5 morning, then we can put this off at least until maybe  
6 early afternoon or tomorrow.

7 MR. OWAID: All right, Your Honor.

8 MR. MAHER: Thank you, Your Honor.

9 THE COURT: I will note that I don't have any  
10 formal motion. I know we had discussions, but I don't have  
11 any papers or any argument really with respect to this  
12 alterego issue. I know it was discussed but I don't have  
13 anything certainly from defense on this issue, so I have  
14 plaintiff's papers that were e-mailed and I don't have  
15 anything from defendant that this is in opposition to.

16 So if this does not affect the witness that's  
17 going to testify today, I would like start the doctor and I  
18 think you would too and let's start the trial with the  
19 jury.

20 Anything else?

21 MR. OWAID: The last issue, Your Honor, is the  
22 scope of questioning with respect to the allegations  
23 brought against these doctors in the unrelated Federal  
24 actions, that there was a motion in limine filed by defense  
25 counsel and I filed -- the Court was e-mailed opposition on

1 Friday.

2 THE COURT: Okay. If you would put that  
3 opposition briefly on the record, because I think we had a  
4 brief argument from defendant -- or defendant, would you  
5 like to restate your argument on the record?

6 MR. MAHER: Yes, I would like to be heard on this  
7 issue.

8 THE COURT: Okay. Plaintiff, we're going to have  
9 defendant speak first.

10 MR. MAHER: Thank you, Your Honor. So in this  
11 instance, Your Honor, the plaintiff intends to call at  
12 least three medical experts who have been named as  
13 defendants in Federal lawsuits under the civil RICO  
14 statute, which contain allegations that the doctors,  
15 including Dr. Merola who is going to be called today, has  
16 been performing unnecessary surgeries, has been billing for  
17 procedures that he didn't actually perform and that he has  
18 been working together with plaintiffs' attorneys and others  
19 for financial gain to those ends.

20 And I understand that it would be prejudicial for  
21 me to say, Doctor, were you sued in the Tradesman lawsuit?  
22 I have no intention of asking that question. However, any  
23 witness who comes to the Court, I believe, can be asked  
24 about prior bad acts, so if I ask the doctor a question  
25 about something that relates to a prior bad act or

1 something, he can admit it, he can deny it, but the jury  
2 should be able to hear things that are based upon facts and  
3 the doctor should have to be, you know, compelled to answer  
4 those questions.

5 So like I said, I don't intend to mention the  
6 specific lawsuits, but I do feel based upon the caselaw  
7 that has been cited that we should be permitted to inquire  
8 of Dr. Merola, Dr. Kaplan and Dr. Touliopolous regarding  
9 underlying facts which form the basis for the RICO  
10 lawsuits.

11 THE COURT: And plaintiff?

12 MR. OWAID: Your Honor, the request is because  
13 everything contained in the RICO lawsuits, even the  
14 underlying allegations, are just that, allegations. And I  
15 cited Court of Appeals cases in my motion in limine that  
16 say that allegations alone without any factual basis are  
17 not the subject of cross-examination.

18 What we're concerned about is the extent of the  
19 scope of the specific questions that defense counsel wants  
20 to ask of the doctor, that there is actually no evidence  
21 except these allegations made by insurance companies  
22 against these doctors. So certainly anything with the word  
23 RICO or fraud or lawsuit is so prejudicial and  
24 inflammatory, we're just trying to prevent the jury from  
25 hearing anything like that and we would ask the question,

1 without getting into specific questions, but in order to  
2 avoid a mistrial or being unable to unring the bell, that  
3 we're get a list of questions that are going to be asked  
4 now.

5 If defense has a separate good faith basis to ask  
6 about the prior bad act, that's a different story, but  
7 everything contained in the RICO complaints, again it's  
8 just allegations so we're trying to avoid a potential  
9 problem.

10 THE COURT: What I heard so far, I heard defendant  
11 say he wasn't going to ask any questions with respect to  
12 the lawsuits and the allegations; is that correct,  
13 Defendant?

14 MR. MAHER: I will not use the term RICO and I'll  
15 not reference specific lawsuits that Dr. Merola, Dr. Kaplan  
16 and Dr. Touliopolous are presenting defenses in.

17 THE COURT: I also heard that disclaimer. You  
18 also said you were going to ask about prior bad acts, which  
19 is very broad. I am directing that any questions asked of  
20 any of these doctors who have been named in any lawsuits  
21 where there are simply allegations against them be specific  
22 to this action. You can't ask them an open-ended question  
23 about any prior bad acts to have them -- to allow or expect  
24 them to speak about being named in an action so that it's  
25 not you bringing out, but asking a question that's going to

1 cause them to bring it out.

2 What I am saying is, limit your questions and  
3 objections as the questions come, but the questions should  
4 be directed to this case and not to other cases.

5 MR. OWAID: Thank you, Your Honor.

6 MR. MAHER: Okay, Your Honor.

7 MR. SHECTMAN: Just one more. The last thing,  
8 Your Honor, is Carlos was a musician prior to the accident;  
9 he played drums. And I mentioned to Mr. Maher last week  
10 that on YouTube, so publicly accessible, just like you go  
11 on Facebook and defendants routinely go to Facebook and  
12 look up my clients and use those things at trial or  
13 depositions, his videos prior to the accident are all on  
14 Facebook -- YouTube, excuse me.

15 If you go on YouTube, you can see his videos,  
16 which I know Your Honor is looking right now. But he has  
17 all these videos he did before the accident. So I said to  
18 Mr. Maher the other day, by the way, I was thinking about  
19 wanting to put into evidence one of his videos, which is  
20 one of the tons of videos on YouTube, just showing what he  
21 was before and obviously I will make my arguments now to  
22 the jury.

23 So I understand there's an objection, but I just  
24 wanted to get a ruling on that because I might reference in  
25 opening, you'll see a video or certainly tomorrow if the

1 video is going to come in, I want to show it when Carlos is  
2 testifying.

3 So my thoughts are, Your Honor, was this exchanged  
4 years ago? No. These are videos which have been sitting  
5 on YouTube for years. It's public. You can go on YouTube  
6 and see it, just like they can go on YouTube and scour  
7 Facebook of any of my clients, which they do.

8 So it's no prejudice, it's publicly accessible and  
9 he'll say that's me, you can see the video, it hasn't been  
10 altered and it simply shows the man as he existed before  
11 the accident, that's the only reason for doing it, Your  
12 Honor.

13 MR. MAHER: Yes, I object to the introduction of  
14 this film. First of all, I will note for the record that  
15 at no point during the case was this video exchanged.  
16 Counsel pulled me aside, I think we may have been done with  
17 selecting the jury and said, hey, I want to put in this  
18 video.

19 Now, to this date I have no idea when this video  
20 was taken. It could have been taken ten years before the  
21 accident. I don't know even sitting here right now. And  
22 in normal discovery, if a video had been exchanged, I would  
23 have been given an opportunity at plaintiff's deposition to  
24 ask him questions about the video and inquire about what it  
25 shows and perhaps see if there were other videos that might

1 be different to that.

2 And this is sort of an ambush video in the sense  
3 that he is giving it to me at the last minute, I haven't  
4 been able to check the metadata, I don't know when it was  
5 taken.

6 Let's just say this was surveillance video. If I  
7 wanted to put in surveillance video after the plaintiff had  
8 been deposed, they would have been citing all of the  
9 caselaw that says, oh, if you had this video and you didn't  
10 exchange it before the plaintiff's deposition, you can't  
11 use it because you are ambushing him and it's unfairly  
12 prejudicial.

13 So the same rules that would benefit plaintiff in  
14 those circumstances where there is a late exchange of a  
15 surveillance video should protect the defense in this  
16 instance where we can't verify, there's no metadata, we  
17 don't know when it was taken and it's just given to us at  
18 the last second.

19 MR. SHECTMAN: Just in response, first of all I  
20 gave it last week and I am pretty confident that since I  
21 gave it to them last week, they have done nothing with it.  
22 They could have easily gotten it last week, shown it to  
23 their experts and the experts could say, in my opinion --  
24 in other words, how would the preparation of the case be  
25 different if they got it a year ago?

1 I gave it to them last week. It's a video of him,  
2 I believe, it's ten years ago of him playing the drums.  
3 What is the prejudice of the jury to see what this  
4 gentleman looked like beforehand? Especially, Your Honor,  
5 he talked about having a band in his deposition. It's in  
6 his deposition. They didn't say, do you have any videos on  
7 YouTube. He said I have a band, Carlos Paiba and the  
8 singers. It's identified in his deposition.

9 Again, this is public. If they would have easily  
10 put his name on Facebook, YouTube, this is there and  
11 whether or not they say, how do we know it's authentic, the  
12 client is going to tell you, it's on YouTube, it hasn't  
13 been touched, I uploaded the video. They could  
14 cross-examine him on it.

15 It's simply a video not showing the way he is now,  
16 which is what surveillance is, it's showing what he was,  
17 which existed for years and years sitting on YouTube.

18 MR. MAHER: Judge, if I may, briefly. Counsel  
19 makes it sound like it's so easy to find videos of other  
20 people. Now, if you do a search on Facebook, how many  
21 different people come up with the same name? I am sure  
22 that this gentleman is not the only person in the tri-state  
23 area with the name Carlos Paiba. So how am I to know which  
24 Carlos Paiba it is and wouldn't I look foolish if I tried  
25 to cross-examine the witness regarding a video of someone

1 named Carlos Paiba and it wasn't actually him?

2 So there is a question of fundamental fairness  
3 with respect to the exchange. They didn't exchange it  
4 during discovery and I'm objecting.

5 THE COURT: I am going to reserve decision on  
6 this. This doesn't affect this witness that's coming on  
7 today. I will make the ruling certainly before Mr. Paiba  
8 testifies, but I heard the arguments, the argument is on  
9 the record. We can address it before -- Counsel, we want  
10 to get going. If this is on this issue, we'll talk about  
11 it tomorrow before plaintiff testifies.

12 Other than that, is there anything that's going to  
13 impact the expert testimony that's about to occur now?

14 MR. SHECTMAN: No, Your Honor. We're ready to  
15 proceed.

16 MR. MAHER: No, Your Honor.

17 THE COURT: Very good.

18 MR. OWAID: May I be excused? I am upstairs. Are  
19 we doing other motions?

20 THE COURT: Only one person is going to speak, so  
21 if you need to leave, then you should.

22 MR. OWAID: Thank you, Your Honor.

23 (Whereupon, at this time Mr. Owaid exited the  
24 courtroom.

25 (Whereupon, there was a pause in the proceedings.)

1 THE COURT OFFICER: All rise. Jury entering.

2 (Whereupon, at this time, the jury entered the  
3 courtroom.)

4 THE COURT: Good morning, jurors. How are you?

5 THE COURT CLERK: Do all counsel stipulate to the  
6 presence and seating of the jury?

7 MR. SHECTMAN: Yes.

8 MR. MAHER: Yes.

9 THE COURT CLERK: Your Honor, once again you want  
10 the attorneys to note their appearance for the record.

11 Counsel, please note your appearance for the  
12 record in Index 704365 of 2019 in the matter of Carlos  
13 Paiba versus 56-11 94th Street Company LLC and Greenberg  
14 Holdings LP.

15 MR. SHECTMAN: Good morning, everyone. Rory  
16 Sheckman of the Law Office of William Schwitzer Associates,  
17 820 2nd Avenue, 10th Floor, New York, New York,  
18 representing the plaintiff, Carlos Paiba.

19 Good morning, everyone.

20 MR. MAHER: Thomas Maher from law firm of Perry,  
21 Van Etten, Rozanski & Kutner, LLP. I am here today for the  
22 defendants.

23 THE COURT: Very good. Everyone could have a  
24 seat. I hope everyone had a good short weekend, since you  
25 lost an hour. When we left on Wednesday, I believe it

1 was -- Tuesday was our last day when you were selected,  
2 after jury selection you were told we would begin today and  
3 get your instructions from me and you will get opening  
4 remarks from both plaintiff and defendant and then we'll  
5 start with witnesses.

6 If at any time you need a break, just raise your  
7 hand or somehow let the court officer know and we'll  
8 proceed as follows.

9 If you can't hear, also indicate that somehow so  
10 we can make adjustments.

11 Again, I am Judge McKetney-Butler and I will be  
12 presiding over this matter. Again, I want to thank you.  
13 Without your participation, we would not be able to proceed  
14 and get these matters heard and decided fairly and  
15 impartially. Jurors and citizens like yourself make the  
16 system work.

17 So we're about to start the trial of this case and  
18 you've heard some details about the action during jury  
19 selection. Before the trial begins, there are certain  
20 instructions that you should have in order to understand  
21 what you will hear and see and how you should conduct  
22 yourself during the trial.

23 The party who brings a lawsuit is called the  
24 plaintiff. In this action, the plaintiff is Carlos Paiba  
25 and he is suing to recover for damages.

1           The party against whom the lawsuit is brought is  
2 called the defendant. In this action, there are two  
3 defendants, 56-11 94th Street Company LLC and Ginsberg  
4 Holdings LLP.

5           You are being called to decide this case on  
6 whether the plaintiff should or should not recover money  
7 and if so, what amount of money will fairly and justly  
8 compensate the plaintiff for all loss resulting from the  
9 injuries sustained.

10          Since the question of liability or fault has  
11 already been decided, there should be no mention of how the  
12 accident happened. You will consider such evidence, should  
13 it be mentioned, only with respect to deciding the amount  
14 of money, if any, that would fairly and justly compensate  
15 the plaintiff.

16          When I am finished, the attorneys will make  
17 openings statements to you. Each will outline for you what  
18 they expect to prove. The purpose of the opening statement  
19 is to tell you about each party's claims so that you have a  
20 better understanding of the evidence as it's submitted.  
21 However, what is said during the opening statements is not  
22 evidence. The evidence on which you will base your  
23 decision will come from the testimony of the witnesses here  
24 in court, from examinations of witnesses before trial or in  
25 the form of photographs, documents or other exhibits

1 introduced into evidence.

2 The plaintiff makes an opening statement first and  
3 then is followed by the defendants. After the opening  
4 statements, the plaintiff will introduce evidence in  
5 support of their claim. Normally, a plaintiff must produce  
6 all of their witnesses and complete their entire case  
7 before the defendant introduces any evidence. However,  
8 there are sometimes exceptions to that rule in order to  
9 accommodate a witness.

10 After the witness -- I am sorry -- after the  
11 plaintiff has completed the introduction of all of their  
12 evidence, the defendant may present witnesses and exhibits.  
13 If they do so, the plaintiff may then be permitted to offer  
14 additional evidence for the purpose of rebutting the  
15 defendants' evidence.

16 Each witness is examined by the party who calls  
17 that witness to testify and then the opposing party is  
18 permitted to question the witness. Additional examination  
19 or questioning of the witness may occur thereafter.

20 At times during the trial, an attorney may object  
21 to a question or to the introduction of evidence or an  
22 exhibit or make a motion concerning legal questions that  
23 apply in the case. Arguments made in connection with the  
24 objections or motions are sometimes made outside the  
25 presence of the jury. Any ruling upon these objections or

1 motions will be based solely upon the law and, therefore,  
2 you must not conclude from any such ruling or anything I  
3 say during the course of trial that I favor either party to  
4 this lawsuit.

5 After a ruling has been made, you may hear one of  
6 the attorneys taking what we call an exception. Exceptions  
7 have nothing to do with your role in this case and I  
8 mention it to you only so that you will not be confused if  
9 you hear an attorney use that word during the course of the  
10 trial.

11 After the completion of the introduction of  
12 evidence, the attorneys will speak to you in what is called  
13 a closing statement or a summation. In closing, the  
14 lawyers will point out what they believe the evidence has  
15 shown, what inferences or conclusions they believe you  
16 should draw from the evidence and what conclusions they  
17 believe you should reach in your verdict.

18 What is said by the attorneys in the closing  
19 statement, just like opening statements or the making of an  
20 objection or motion during trial, is not evidence. Closing  
21 statements are intended to present the arguments of the  
22 parties based on the evidence.

23 Under our system, the defendant will close first  
24 followed by the plaintiff.

25 After summations, I will instruct you on the rules

1 of law applicable to the case and then you will deliberate.  
2 Your function as jurors is to decide what has or has not  
3 been proven and apply the rules of law that I give to you  
4 to the facts as you believe them to be. The decision you  
5 reach will be your verdict. Your decision will be based on  
6 the testimony that you hear and the exhibits that will be  
7 received in evidence during the course of trial.

8 You, the jurors, are the sole and exclusive judges  
9 of the facts and nothing I say or do should be taken by you  
10 as any indication of my opinion as to the facts. Neither I  
11 nor anyone else may invade your province as to the facts.

12 I will preside impartially and not express any  
13 opinion concerning the facts. Any opinions of mine on the  
14 facts would, in any event, be totally irrelevant because  
15 the facts are for you, the jurors, alone to decide.

16 Now, on the other hand and with equal emphasis, I  
17 instruct you that in accordance with the oath you've taken  
18 as jurors, are you are required to accept the laws that I  
19 give you, whether you agree with them or not. You are not  
20 permitted to ask anyone else about the law. As the sole  
21 judges of the facts, you must decide which of the witnesses  
22 you believe, what portion of their testimony you accept and  
23 the weight that you give to it.

24 At times during the trial, I may sustain an  
25 objection to questions and you may hear no answer or where

1 an answer has been made, I may instruct that it be stricken  
2 or removed from the record and that you disregard it and  
3 dismiss it from your mind. You may not draw an inference  
4 or conclusion from an unanswered question, nor may you  
5 consider testimony which has been stricken or removed from  
6 the record in reaching your decision. This is because a  
7 question with an answer is evidence, but if there is a  
8 question with no answer, that question alone cannot be  
9 evidence. As such, you must dismiss it from your mind.

10 The law requires that your decision be made solely  
11 upon the evidence before you. Any evidence that I exclude  
12 from your consideration will be excluded because it is not  
13 legally admissible evidence.

14 Now, a lawsuit is a civilized method of  
15 determining disputes. It is basic to the administration of  
16 any system of justice that the decisions on both the law  
17 and the facts be made fairly and impartially and honestly.

18 As the jurors, you and I have the responsibility  
19 to act impartially and to ensure a just result is reached  
20 in deciding this matter between the parties.

21 It's fair to say we all harbor either implicit or  
22 unconscious biases. As a fair and impartial juror, you  
23 must guard against the application of any stereotypes or  
24 attitudes about people or groups that might lead you to  
25 render a decision based on those feelings. Bias is not

1 always obvious or conscious. In assessing the testimony  
2 and other evidence in this case, you must not be swayed by  
3 any stereotype, attitude or biases you may harbor.

4 Now, the law does not require you to accept all of  
5 the evidence that will be admitted. In deciding the  
6 evidence you accept, you must make your own evaluations of  
7 the testimony given by each of the witnesses and decide how  
8 much weight, if any, you choose to give their testimony.

9 The testimony of a witness may not conform to the  
10 facts as they occurred because the witness is intentionally  
11 lying, because the witness did not accurately see or hear  
12 what he or she is testifying about, because the witness's  
13 recollection is faulty or because the witness has not  
14 expressed himself or herself clearly.

15 Now, there's no magical formula by which you  
16 evaluate testimony. You bring with you to the courtroom  
17 the experience of your every day lives and the background  
18 that you have. You decide for yourselves the reliability  
19 and unreliability of things people will tell you. The same  
20 experience you use in your every day dealings should apply  
21 in your deliberations.

22 In deciding how much weight, if any, you will give  
23 to a witness's testimony, you may consider the interest or  
24 lack of interest that that witness has in the outcome of  
25 the case; the bias or prejudice of the witness, if there be

1 any; the age, appearance and manner in which the witness  
2 gives testimony on the stand; the opportunity and ability  
3 the witness had to observe the facts about which they are  
4 testifying and the probability or improbability of the  
5 witness's testimony when considered in light of all of the  
6 other evidence.

7           If it appears that there is a conflict in the  
8 evidence, you should decide whether and to what extent the  
9 apparent conflict can be reconciled by fitting the  
10 different versions together. If you cannot do so, you will  
11 have to decide which of the conflicting versions you will  
12 accept, if any.

13           To help make sure a just result is reached when  
14 you decide this case, consistent with the oath you took as  
15 a juror, there are several rules that must govern your  
16 conduct during the time you serve as a juror. Since this  
17 case involves something that happened at a particular  
18 location, you may be tempted to visit the location  
19 yourself. During the course of this trial, you must not do  
20 so. Even if you happen to live near the location, please  
21 avoid going to it or passed it until the case is over.

22           In addition, you should not attempt to view the  
23 scene by using computer programs or any other electronic  
24 devices. Viewing the scene, either in person or through a  
25 computer program or other electronic devices, would be

1 unfair to the parties since the location as it looked at  
2 the time of the accident and as it looks now may be very  
3 different. In making an unauthorized visit or viewing, you  
4 might get a mistaken impression leading to unfairness to  
5 the parties.

6 You need to decide the case solely on the evidence  
7 I admit. This case involves a location as it existed at  
8 the time of the accident, not as it existed today. You  
9 should rely on the evidence that is presented here in court  
10 to determine the circumstances and condition under which  
11 the accident occurred.

12 In fairness to the parties, it's very important  
13 that you keep an open mind throughout the trial. After you  
14 have heard the full presentation of all the parties,  
15 including the closing statements of the parties and my  
16 instructions to you, you will have an opportunity exchange  
17 your views with your fellow jurors during deliberations to  
18 reach your verdict.

19 Do not do any independent research on any topic  
20 that you might hear about during the course of the trial or  
21 during testimony or see in the exhibits, whether by  
22 consulting others, reading a book or magazine or conducting  
23 an internet search.

24 I instruct you all that all personal devices,  
25 including cell phones, air pods, smart phones, smart

1 watches and the like, must be turned off while you are in  
2 the courtroom and while you are deliberating. Again, it is  
3 important to remember that you may not use the internet  
4 individually or collectively to get information about this  
5 case or to research topics concerning the trial.

6 For example, you are not allowed to research or  
7 discuss the law that I may give you, information about the  
8 issues in this case, the lawyers or the Court. After you  
9 have rendered your decision and have been discharged, you  
10 are free to do any research you choose or share your  
11 experiences either directly or through your favorite  
12 electronic means. This instruction is very important and  
13 it's vital that you follow it.

14 The reason is the law requires that you consider  
15 only the testimony you hear and see in this courtroom. Not  
16 only does our law mandate it, but the parties depend on you  
17 to consider only the admitted evidence. Allowing outside  
18 information to affect your judgment would be unfair and  
19 prejudicial to the parties and could lead to this case  
20 having to be tried again. Therefore, I expect that you  
21 seriously and faithfully abide by this instruction.

22 Also, do not discuss this case with anyone in your  
23 presence and if anyone does so, despite your telling them  
24 not to, report that to me as soon as you are able by  
25 speaking with the court officer. However, you should not

1 discuss anything you wish to bring to my attention with  
2 your fellow jurors.

3 Now, it may be normal tendency to talk to people  
4 that you come in contact with during the time you serve on  
5 this jury. Please do not talk, whether in or out of the  
6 courtroom, with any of the parties or their attorneys or  
7 any witnesses. By this I mean do not talk to them at all,  
8 not a nod, not even to pass the time of day. In no other  
9 way can all parties be assured the absolute impartiality  
10 they are entitled to expect from the jurors.

11 If a lawyer, party or witness does not acknowledge  
12 you, that person is not being rude but is merely following  
13 my instructions not to speak to you.

14 You should note that the parties and attorneys  
15 involved in this case or the people working with them on  
16 this case may properly look at a juror's public website,  
17 public social media post or blogs or social media profiles  
18 that are publicly admissible. This may have occurred  
19 during jury selection and also may occur during the course  
20 of this trial, during deliberations and after the trial has  
21 ended.

22 While the parties and attorneys may look at your  
23 public media, they may not communicate with you through  
24 public media or any other way during the trial and  
25 deliberations. In fact, nobody may communicate with you

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

8           During the trial, circumstances may arise when a  
9 juror has the need to bring a matter to my attention.  
10 Should any one of you find yourself in that situation,  
11 please notify our court officer, either orally or through a  
12 note, that you need to speak with me and I will then  
13 instruct you further. Do not tell any other juror or  
14 anyone else about the matter you seek to bring to my  
15 attention.

16           Now, under the law only six jurors will deliberate  
17 on this case when it is submitted for consideration.  
18 Additional jurors have been selected as alternate jurors.  
19 Alternate jurors are selected to serve because a regular  
20 juror may be prevented from continuing to serve by some  
21 emergency. Although this seldom happens during a trial,  
22 there are cases where we do call on the services of the  
23 alternates.

24           Alternates are required to pay the same careful  
25 attention to the trial as the regular jurors so that if

1 needed, they'll be fully familiar with the case. The fact  
2 that there are alternate jurors does not mean that any  
3 regular juror is free to excuse him or herself from the  
4 case. As a duly chosen juror, it is your obligation to be  
5 available throughout the trial.

6 Now, I hope that this description of the trial  
7 procedure, the rules governing your conduct and legal  
8 principles I have just outlined for you will make it easier  
9 for you to understand the trial as it proceeds and to reach  
10 a just result at its conclusion.

11 At this time we're going to take a short break. I  
12 am going excuse the jury for the a moment, then we'll have  
13 the plaintiff to begin with their opening statement.

14 THE COURT OFFICER: All rise. Jury exiting.

15 (Whereupon, at this time, the jury exited the  
16 courtroom.)

17 THE COURT: Let's go off the record.

18 (Whereupon, at this time, an off-the-record  
19 discussion was held.)

20 (Whereupon, the following was recorded and  
21 transcribed by Official Court Reporter Vicky Zubiria.)

22 (Continued on following page.)

23 \* \* \* \* \*

24

25

1 THE COURT OFFICER: All rise. Jury entering.  
2 (Whereupon, at this time, the jury entered the  
3 courtroom.)

4 THE COURT: Good morning again, Jurors.

5 THE CLERK: Do all counsel stipulate to the  
6 presence and proper seating of the jury?

7 MR. MAHER: Yes.

8 MR. SHECTMAN: Yes.

9 THE COURT: You may have a seat.

10 So, Jurors, you may notice that there's one juror  
11 that's been -- that we're one juror short. And that juror  
12 has been excused from service. You should make no  
13 inferences and it has no bearing on you or on this trial.  
14 So it has no bearing at all, okay. We are going to proceed  
15 as regular.

16 And now it is the plaintiff's opportunity to get  
17 up and make his opening statement, okay.

18 Plaintiff Counsel, are you ready?

19 MR. SHECTMAN: I am, your Honor.

20 THE COURT: Thank you.

21 MR. SHECTMAN: May it please the Court. Good  
22 morning, your Honor.

23 THE COURT: Good morning.

24 MR. SHECTMAN: Mr. Maher and Members of the Jury,  
25 good morning everybody.

1 THE JURORS: Good morning.

2 MR. SHECTMAN: It's been a long time. I have been  
3 waiting for this moment, as I'm sure Mr. Paiba has.

4 THE COURT: I'm sorry, Counsel. Before you  
5 begin...

6 You will notice that we have a new court reporter  
7 here. Court reporters are one of the most important people  
8 in the courtroom. They have to take down everything that  
9 is said by all of the parties. So sometimes you might hear  
10 me ask an attorney to slow down or to clarify what they  
11 say. That's for the purpose of the court reporter getting  
12 the testimony and/or the conversation that's being had on  
13 the record. And then you will see from time to time that  
14 the court reporters are changing. Again, make no inference  
15 from that. That's just the way that the court works, okay.

16 Thank you. I'm sorry.

17 MR. SHECTMAN: Thank you, your Honor.

18 THE COURT: Go ahead.

19 MR. SHECTMAN: Good morning again everyone.

20 I have to tell you, as long as I -- I might not  
21 look like it but I'm doing this a long time now, and I  
22 always get a knot in my stomach before I speak to a jury.  
23 And it's not just nerves. You're in a room full of  
24 strangers that don't know you, you don't want to say the  
25 wrong thing. But once in a while there's comes across a

1 person that you meet and you get to know over the years  
2 when you're working on their case that actually inspires  
3 you. And that's how I feel right now. So if I have one  
4 thing that I hope for, I do the kind of job on this case  
5 for Carlos that he deserves, and you are about to see why.

6 On March 6th of 2019, Carlos Paiba was standing on  
7 a ladder while working for Algin Management. The ladder  
8 was a 12-foot ladder. He was standing on the ninth step,  
9 so he's at least nine feet off the ground. And he's 5'5.  
10 Now, the ladder fell. Carlos fell. You are going to hear  
11 his entire world fell with that ladder.

12 Carlos crashed onto the concrete. Nothing to  
13 break his fall. He suffered a torn labrum in his hip,  
14 torn. The ligaments in his knee, torn. Most importantly,  
15 in his back, there are discs that give you support, the  
16 disc, torn, okay. The disc was torn and collapsed. You  
17 are going to hear that that disc collapsed like his entire  
18 world did.

19 Operation number one: On August 28, 2019, there's  
20 a procedure called arthroscopy with meniscectomy. Now, I'm  
21 not going to get into the specifics because I'm not a  
22 doctor. I'm a lawyer who's trying to do the best job he  
23 deserves. But basically what happened, they went into his  
24 knee, did an operation, tried to fix the damage of those  
25 torn ligaments.

1                   Operation number 2: October 16, 2019, because  
2                   that disc, you have bones in your back and a disc in  
3                   between, which is a shock absorber, it lets you move. The  
4                   disc ripped and collapsed. So that operation on 10/16/19  
5                   was a laminectomy. They had to saw off bone out of his  
6                   back of his spine to get to that disc that collapsed. Then  
7                   they then had to cut part of the disc out.

8                   Operation number 3: January 28, 2021, he tore the  
9                   labrum in his hip. You are going to hear how that was  
10                  repaired.

11                  Operation number four: On April 20, 2022, that  
12                  disc that had collapsed still needed further treatment to  
13                  it. So this operation now, whereas before a part of the  
14                  disc was taken out that collapsed, now the entire disc was  
15                  cut out of his back. They have to put something in its  
16                  place so the bones wouldn't come down and collapse. They  
17                  put a prosthetic in there. They drilled four screws into  
18                  his spine and they put two metal rods down his back.  
19                  That's operation number four.

20                  This was a vibrant, energetic 51-year-old man, a  
21                  professional drummer, reduced to a man who is in constant  
22                  pain with a cane for as long as he lives.

23                  Before I tell you more about who Carlos is now, I  
24                  want to tell you a little bit, which I think is even more  
25                  important, of who he was. Carlos Paiba was born in Lima,

1 Peru. He started working at eight years old. I didn't  
2 make a mistake, eight years old. He started washing cars  
3 to help him family out that was having money problems.

4 He would come home and see his father play music.  
5 His father used to play the trumpet. And sometimes when  
6 music is involved, you just fall in love. And it's a way  
7 that he would bond with his father. So he started drumming  
8 at eight. They got him a professional teacher, many  
9 different teachers, at ten. So he would come home and wait  
10 for his father, they would play music together, trumpet and  
11 drums. And this was Carlos' escape from the world. If he  
12 was tired, having a bad day, it was a way that he can  
13 escape, and together play music and have bonding time as  
14 father and son.

15 You are going to hear that he lived his dream as a  
16 musician, which I am going to get into in a moment. And  
17 even living his dream as a musician, worked as a carpenter  
18 to help make extra money for his family.

19 He worked from eight years old until 1999 in Peru,  
20 and then came to the United States and started working  
21 right away in 1999. He worked different construction jobs  
22 all the way up until 2018, which is when he started with  
23 Algin Management, and that's the company he was working for  
24 when he had this accident. So this is someone from when he  
25 was eight years old, had the work ethic to do those kinds

1 of things.

2 Now, he never gave up on his dream of music before  
3 this accident. He's played in 15 to 20 different bands.  
4 He started a band Carlos Paiba and the Singers. He has  
5 videos on YouTube. He played for five years as a drummer  
6 on a TV show. He's played across the world drumming. And  
7 you are going to hear all the different countries he's  
8 drummed in.

9 In 2010, there was an organization that was  
10 started and it's to promote the music of Peru throughout  
11 the country, throughout the world. And it's an association  
12 of musicians, and who do you think was one of the people  
13 that started that company, that association? Carlos.

14 In 2010 he started this musician association just  
15 to promote music. It's a non-profit. It's not to make  
16 money. It's to bring music to the world. It now has --  
17 you ready -- now there's over 25,000 members because of  
18 him.

19 He's played in front of 50,000 people drumming.  
20 This was the one time, you are going to see for yourself,  
21 I'm certain of it, it's when he feels alive, when he plays  
22 in front of crowds, 50,000 people, knowing that he started  
23 this organization that promotes the music throughout the  
24 world.

25 And you are going to hear that all of that has

1           been taken away from him. You know, what used to bring him  
2           happiness, playing music -- and if you're a musician, you  
3           may understand that -- but this is what brought him joy.  
4           And a happy day for him now is waking up and his pain is  
5           maybe a 4 out of 10 in his hip, his back, his knee.

6                        What I'm going to do when the case is finished is  
7           I'm going to ask you, as the jury, and trust for you to  
8           arrive at what you believe is fair and just compensation  
9           for the past. You are going to hear about his past pain  
10          from 3/6/19 until now. In fact, 3/6 was just the other  
11          day. It's almost seven years to the day that this  
12          happened.

13                      So what is fair and reasonable for seven years of  
14          pain every day. Some days you have a better day, maybe  
15          it's a 4 or a 5. Some days maybe it's an 8 or a 9 or a 10.  
16          But to have pain every single day, whether it's your back,  
17          your hip, your knee -- you are going to hear about that --  
18          the therapy, the four injections in the knee, the seven in  
19          the back and, as I said, the four operations, that all of  
20          these doctors are going to come in and explain what they  
21          did.

22                      But also, not only is there pain that I am going  
23          to ask you to consider. I am going to ask you to consider  
24          suffering, which you will hear about under the law for you  
25          to consider. That it's not just the physical part. Maybe

1 you go to sleep at night, and maybe for a couple of hours  
2 you are not in pain. But you are going to hear, he rarely  
3 gets a good night sleep because of the back, the knee or  
4 the hip. Something is hurting him. But assuming he  
5 somehow gets to sleep, here's the problem, the nightmares.  
6 Carlos has had recurring nightmares about falling, seeing  
7 himself falling. And while the physical pain, I guess  
8 maybe can be a little less in one day, how do you treat the  
9 nightmares?

10 I'm also going to ask you to compensate him for  
11 the future. That the doctors are going to tell you what  
12 they expect to happen in the future. It's not getting  
13 better. He's 58. As you might imagine, when he turns 60  
14 and 70, he's not going to suddenly stop, oh, I don't need  
15 the cane anymore. That's not the way it works.

16 So he's 58, and I am going to ask you to  
17 compensate him for the pain that he's going to have in the  
18 future. And you are going to hear, he's going to have pain  
19 the rest of his life. He's not coming to you today with  
20 pain and then tomorrow it's suddenly going to go away.

21 I am also going to ask you to compensate him for  
22 future suffering; getting nightmares, inability to do  
23 normal things. Just waking up in the morning, he has to  
24 wake up in the morning out of his bed, grab on to a walker,  
25 go to the bathroom with his wife's help. Have her undress

1 him, get him into the shower, bathe him in the shower like  
2 a little boy. Get him out of the shower, dress him. To do  
3 nothing all day, basically, except sit there in pain and  
4 think about what his life was before this.

5 So I am going to ask you all, so the suffering  
6 aspect, the loss of enjoyment of life, that there are  
7 certain things that Carlos used to like to do that maybe  
8 it's not important to all people but it's important to him  
9 and nobody has the right to take away what you like.  
10 Whether it's music, hiking, biking, whatever it is in life  
11 that somebody enjoys after a long day and you look forward  
12 to it, well, what happens when whatever you look forward to  
13 at the end of the day is not there anymore? Then what?

14 So what I'm going to do is, I'm going to ask this  
15 jury to arrive at what they think is fair and reasonable.  
16 I can suggest a number to you. Mr. Maher can suggest a  
17 number. But at the end of the day, I am going to trust  
18 this jury that you come up with a number that you think is  
19 fair for what happened here.

20 Now, you are going to hear testimony, the evidence  
21 will show you, from the defense that there were certain  
22 doctors that the defense picked to examine my client,  
23 right. They were picked by them, the people who we're  
24 suing picked them. So you might imagine these doctors are  
25 not going to say he has all these additional problems, even

1           though he fell over nine feet onto correct. Basically that  
2           he's totally fine.

3                       All I ask you is the reason you are on this jury  
4           is for a reason, because you understood what Mr. Maher and  
5           I were asking you to do. Give me the opportunity today --  
6           you are going to hear from Dr. Merola who is outside in the  
7           hallway who did the back operations, both of them. Let him  
8           explain what happened and why he did it and why it was  
9           necessary. Then you are going to hear, I believe, from  
10          Carlos tomorrow. You are going to hear from  
11          Dr. Touliopolous Thursday morning. Dr. Kaplan Friday  
12          morning, I believe. Give me the opportunity to  
13          cross-examine the doctors that they picked to show you that  
14          he is as badly hurt as I'm telling you he is. And I will  
15          leave that up to you to make your decision as to what is  
16          fair.

17                      Thank you everybody. I really appreciate it, on  
18          behalf of Carlos.

19                      THE COURT: Thank you, Counsel.

20                      Defense, are you ready?

21                      MR. MAHER: Yes, your Honor.

22                      THE COURT: Thank you, Mr. Maher.

23                      MR. MAHER: Good morning, everyone.

24                      I'm happy to see everyone back here today ready  
25          for the start of the trial. And you may recall that when

1 we were in jury selection, I told you that, you know, there  
2 was no dispute that Mr. Paiba was involved in an accident  
3 but that there's a significant dispute as to what injuries  
4 can fairly be attributed to that happening of the accident.

5 Now, I wasn't able to elaborate on those issues  
6 during jury selection, but I want to give you a little bit  
7 preview now of what I think the evidence in this case is  
8 going to show, okay.

9 Has anybody ever heard the saying, Father Time is  
10 undefeated? You know, if you guys watch sports and there's  
11 an athlete, famous athlete, whose approaching 40 years old  
12 and they don't know, is he going to be able to come back  
13 for another season or not? Some announcer will invariably  
14 say, Father Time is undefeated.

15 Now, why do they say that? What do they -- what  
16 do they mean by that, you know? Whether they're talking  
17 about Nolan Ryan years ago or Aaron Rogers or LeBron James  
18 trying to make it a go at 40, why do these people always  
19 say that? Well, it's because as we get older, there are  
20 certain things that maybe we can't do anymore or we can do  
21 them but we can't do them as well. And why is that, okay?  
22 That's because as we age, our body, it starts to breakdown,  
23 right. It starts to breakdown and that can cause pain and  
24 can cause limitations.

25 And what's more, there are certain types of people

1 who would be more at risk for developing what I'm going to  
2 refer to as degenerative conditions. Conditions of the  
3 body that occur over time.

4 Now, one of the factors would be age. Another  
5 factor would be your weight. If people are overweight or  
6 clinically obese, they're more likely to develop  
7 degenerative conditions in their body.

8 Occupation, this is another thing that can affect  
9 whether or not someone develops degenerative conditions.  
10 So if you have a job like mine where you come into court  
11 and you sit down at a desk, not so much. But if you've got  
12 a job where you're working construction eight hours a day  
13 for ten, twenty, thirty years, guess what? You're more  
14 likely to develop degeneration without any sort of accident  
15 happening at all. Just natural wear and tear.

16 And why do I bring this up? Well, because I think  
17 you are going to hear evidence in this case that Mr. Paiba  
18 fits a lot of those characteristics. How old was he on the  
19 day of this accident? He was 51 years old, okay. His  
20 weight? I mean, I think there will be evidence that he was  
21 approximately 5'5 and he weighed at least 200 pounds at the  
22 date of the accident. Which, according to BMI which  
23 doctors would go by, BMI, is clinically obese at that  
24 point.

25 Also, he's going to tell you himself -- Counsel

1 just told you -- he was working since he was eight years  
2 old and a lot of that was doing heavy lifting,  
3 construction, carpentry, masonry work, painting, jobs that  
4 required a lot of bending, lifting, all of those things.  
5 Which is great, except that, you know, by the time you get  
6 to be 51 years old and you have all those factors, your age  
7 and the weight and the work you are doing, it's not that  
8 surprising that you are going to have degenerative  
9 conditions.

10 And the thing about these degenerative conditions,  
11 is that, you know, there's tests that doctors do.  
12 Sometimes they take x-rays, you may hear about CT scans or  
13 MRIs, and you can look at those films and you can see  
14 whether something is degenerative. And I expect that you  
15 may hear some evidence like that with respect to some of  
16 the testing that was done in this case.

17 So, what happened here, Mr. Paiba, unfortunately  
18 has a fall from a ladder. He's taken by ambulance right  
19 away to Elmhurst Hospital. When he gets to Elmhurst  
20 Hospital, they do a full work-up. They examine him. They  
21 take diagnostic studies of lots of parts of his body. Some  
22 we are not even going to talk about here. But they  
23 definitely took a CT scan of his lumbar spine, which is the  
24 lower back, okay. And you are gonna see evidence in this  
25 case that the radiologist who read that film, probably

1 hours after the accident, right, they showed degenerative  
2 conditions in the lumbar spine. And more specifically --  
3 now you are going to hear this probably this afternoon when  
4 Dr. Merola takes the stand -- the spine -- there's a model  
5 over here they are probably going to show you -- it's  
6 broken down into different segments, they assign it  
7 different numbers. And the number we are going to be  
8 talking about here is L5-S1. That's a very specific  
9 portion of the lumbar spine.

10 And what did this CT scan that was taken on the  
11 day of the accident show, right? It showed specific  
12 degenerative changes, formations of bone growth  
13 essentially, which are the byproduct of degeneration, was  
14 on the film the day he was seen in the accident, okay.

15 So I submit to you there is going to be testimony  
16 that that type of bony growth that you are seeing there,  
17 that doesn't happen overnight. It happens over years and  
18 years. In other words, your spine wouldn't be fine if you  
19 come into the emergency room and now you've got that. No.  
20 That has been there. It was there before the accident,  
21 okay. And that can cause problems, okay. That doesn't  
22 mean that, you know, there wasn't pain. It just means that  
23 when we're trying to look at cause and effect, we're  
24 looking at something that is degenerative.

25 Now, also, they also took a CT scan of the knee.

1 The left knee we're talking about here. And I believe you  
2 are going to see when you read the reports -- I mean,  
3 eventually you will see the reports, they are going to come  
4 into evidence, you can read them with your fellow jurors --  
5 you are going to see there was tricompartmental  
6 degenerative changes in the left knee that was shown in  
7 Elmhurst Hospital on the day of the accident. That's not  
8 something that was caused by the accident. That's  
9 something that was there before the accident even happened.

10 Now, we heard something about a left knee injury  
11 -- rather, a left hip injury and you may be asking, well,  
12 why am I not talking about the left hip, okay? The  
13 doctors, they did their examinations of Mr. Paiba. Even  
14 though they did, you know, lots and lots of tests, they  
15 didn't test his left hip, okay. They didn't -- apparently,  
16 they didn't think that that was an area of concern. So  
17 they didn't take any films of his hip, and they didn't  
18 provide any treatment for his hip in the emergency room. I  
19 mean, they saw him right away. They examined him. You  
20 know, he doesn't need treatment for his hip, okay.

21 So now what happens? They did all these tests,  
22 they work him out. You know, they are going to check him  
23 out, see if he's okay. Do they keep him in the hospital?  
24 Do they admit him into the hospital? No, they do not.  
25 They send him home.

1           Do they tell him that he's going to need surgery  
2           on his back? No. Do they tell him he's going to need  
3           surgery on his left knee? No. Do they tell him that he's  
4           going to need surgery on his left hip? No. They don't  
5           make recommendations for any surgery, okay. Those  
6           recommendations regarding surgeries, they only came about  
7           after a personal injury lawsuit was commenced.

8           MR. SHECTMAN: Judge, I'm just going to make an  
9           objection. How can you start a lawsuit the same day?

10          THE COURT: What was that?

11          MR. SHECTMAN: The way he's characterizing or  
12          suggesting something, that's absolutely ridiculous and I  
13          take objection with that.

14          THE COURT: Overruled.

15          This is an opening statement and, like I said,  
16          there's nothing in the opening statements that is evidence.  
17          This is what Counsel expects to prove or have proven during  
18          the course of the trial.

19          MR. MAHER: Okay.

20          Now, I heard Counsel in his opening just a few  
21          moments ago trying to, I don't know, essentially disparage  
22          the doctors that I may call next week. You know, they were  
23          hired by the defendant. You know, they are going to say  
24          that it wasn't caused by this, you know. But the doctors  
25          that the plaintiff treated with, okay, you may conclude

1 that a law firm sent the plaintiff to those doctors. He  
2 didn't -- he lived in New Jersey. These doctors are mostly  
3 in Manhattan, okay. How did he end up in these doctor's  
4 offices?

5 You may conclude by listening to the evidence that  
6 perhaps, you know, this wasn't an accident, that the  
7 plaintiff ended up with particular doctors who then decided  
8 he needed surgery for something that the doctors at  
9 Elmhurst Hospital didn't recommend surgery.

10 So what does all of this mean, okay? I have no  
11 doubt that this event, this accident that happened caused  
12 Mr. Paiba pain. I mean, he fell off a ladder, and I'm sure  
13 that that would be painful. But the issue is, what  
14 injuries can fairly be attributed to that accident? That's  
15 what we need you to decide, and I submit to you that when  
16 you have heard all the evidence in this case, you will  
17 conclude that many of these operations did not need to be  
18 performed and may have been performed for reasons other  
19 than his health.

20 Thank you.

21 THE COURT: Thank you, Counsel.

22 Mr. Sheckman?

23 MR. SHECTMAN: Sure.

24 Your Honor, at this time, may it please the Court,  
25 I would like to call Andrew Merola, M.D.

1 THE COURT: Before we do that, Counsel, I just  
2 remind you of the time for you to finish and whether you  
3 would like to start this witness now. We certainly can.

4 MR. SHECTMAN: I would like to do as much as we  
5 could, just so we could make sure we finish.

6 THE COURT: Okay.

7 MR. SHECTMAN: Can I just speak to my colleague  
8 for one moment?

9 THE COURT: Sure, before the witness comes in.  
10 Your Honor, is it okay if he sits at the counsel  
11 table with me? There's only one of us speaking.

12 THE COURT: He's got to make his appearance for  
13 the jury.

14 MR. SHECTMAN: Sure.

15 THE COURT: Counsel for plaintiff is being joined  
16 by a second attorney.

17 Can you please make your appearance, Counsel.

18 MR. OWAID: May it please the jury, my name is  
19 Oliver Owaid, I'm co-counsel for Mr. Sheckman.

20 Hopefully, you won't hear that much from me but  
21 it's my pleasure.

22 Thank you.

23 THE COURT: Very good.

24 THE COURT OFFICER: The witness entering.

25 (Whereupon, the witness takes the stand.)

1 THE COURT OFFICER: Remain standing to be sworn  
2 in.

3 THE CLERK: Please raise your right hand.

4 Do you swear or affirm that the testimony you are  
5 about to give shall be the truth, the whole truth and  
6 nothing but the truth?

7 THE WITNESS: Yes, I do.

8 THE CLERK: You can be seated. Adjust the mic, if  
9 you need to.

10 In a loud, clear voice, please state your first  
11 and last name and then spell your first and last name for  
12 the record.

13 THE WITNESS: Andrew Merola, A-N-D-R-E-W  
14 M-E-R-O-L-A.

15 THE CLERK: Please state your complete mailing  
16 address.

17 THE WITNESS: 567 1st Street, Brooklyn, New York  
18 11215.

19 THE CLERK: Thank you.

20 THE COURT: Good morning. I should say, good  
21 afternoon.

22 MR. SHECTMAN: May I inquire?

23 THE COURT: You can begin, please.

24 A N D R E W M E R O L A, called as a witness by and on behalf  
25 of the Plaintiff, after having been first duly sworn, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SHECTMAN:

4 Q Dr. Merola, good afternoon.

5 A Good afternoon.

6 Q Dr. Merola, I guess by virtue of me calling you  
7 Dr. Merola, are you a physician?

8 A Yes.

9 THE COURT: Counsel, I am going to ask you to get  
10 that microphone next to you.

11 MR. SHECTMAN: Sure.

12 Q Doctor, what is your current specialty?

13 A I'm an orthopedic surgeon.

14 Q Can you tell the jury specifically what's involved in  
15 the area of orthopedics.

16 A So orthopedics is everything that has to do with your  
17 ability to be up and about, walking around; your bones, your  
18 joint, your tendons, your ligaments, your nerves, all those  
19 things.

20 Q Doctor, are you licensed to practice medicine in the  
21 State of New York?

22 A Yes, I am.

23 Q Could you tell the jury when you were first so  
24 licensed?

25 A 1992.

1 Q Doctor, if you can just walk us through your  
2 educational background, college, medical school, any other  
3 schooling that you have gone through up until today?

4 A Sure.

5 So I went to NYU for college. I then went to Howard  
6 University College of Medicine for medical school. I then did  
7 my orthopedic surgery training at SUNY Downstate Kings County  
8 Hospital in Brooklyn. And I then did a spinal fellowship at the  
9 University of Colorado in Denver.

10 Q Doctor, are you board certified in any particular  
11 specialty?

12 A Yes, I am. In orthopedic surgery.

13 Q Would you explain to the jury what the difference is,  
14 if any, between a doctor who is board certified like yourself  
15 and an orthopedist who is not board certified.

16 A Board certification is basically an educational process  
17 where you take an examination. It's a two-part exam. The first  
18 part is a written part after you complete your training. And  
19 then the second part is an oral presentation of your cases after  
20 you have been in practice for two years. When you pass both  
21 parts of that examine, then you're board certified.

22 Q Now, is board certification in a specialty somewhat,  
23 for lack of a better term, the highest credential you can get in  
24 the field?

25 A It's really the culmination of your entire training

1 process and it's part of the academic process that you take in  
2 order to also stay current with your practice.

3 Q Now, Doctor, do you currently or have you ever had any  
4 affiliations with any hospitals?

5 A Yes.

6 Q Can you tell us which ones.

7 A Sure.

8 Downstate in Brooklyn and also New York Presbyterian.

9 Q Doctor, have you ever held or do you currently have any  
10 teaching positions?

11 A Yes, both of those places.

12 Q Can you tell the jury the different types of subjects  
13 you will teach and who exactly are you teaching?

14 A So I teach orthopedic surgery and spinal surgery  
15 typically to medical students, residents and fellows. So the  
16 folks that are in the medical field and that are particularly  
17 doing their training in orthopedic surgery.

18 Q Have you been involved in and personally given any  
19 lectures?

20 A Yes.

21 Q Can you tell us about those.

22 A Sure.

23 So, you know, as part of your teaching responsibilities  
24 we do either if we're on rounds or lectures, typically every --  
25 it's on a rotating basis, so typically it's every several months

1 or so. And then we also speak on specific topics on rotation  
2 with either our medical students or our residents during  
3 surgery.

4 Q Are you currently or have you been a member of any  
5 medical associations?

6 A Sure.

7 So I'm a member of the Academy of Orthopaedic Surgeons,  
8 and as well as the Scoliosis Research Society.

9 Q Doctor, do you currently maintain an office, meaning a  
10 private practice where you practice your specialty of  
11 orthopaedics?

12 A Yes.

13 Q Can you tell us where that office is, or if you have  
14 multiple, where those offices are.

15 A Sure.

16 So one of the offices in Brooklyn, New York and the  
17 other office is at 141 West 28th Street in Manhattan.

18 Q And Doctor, have you treated -- before Mr. Carlos  
19 Paiba -- have you treated on occasion a condition, an injury  
20 known as a herniated disc?

21 A Sure.

22 Q Can you tell us in your entire career as a orthopaedic  
23 surgeon, on how many different occasions you believe you have  
24 seen a patient with a condition known as a herniated disc?

25 A A lot. You might imagine that being an orthopaedic

1 surgeon who deals with spinal surgery, I basically see people  
2 who have some type of disc problem every week.

3 Q Any approximation to the nearest hundred or thousand or  
4 hundred thousand?

5 A So I have been in practice for 30 years, I typically  
6 see about 40 to 50 patients a week, some of those are new, some  
7 of those are follow-ups, so it's got to be thousands.

8 Q And Doctor -- now, Doctor, did I ask you to bring your  
9 chart reflecting your care and treatment of the plaintiff,  
10 Carlos Paiba?

11 A Yes, I did. I bought my office notes.

12 Q I would ask with the Court's permission, Doctor, should  
13 your memory of an event or a fact fail, you can look at your  
14 records to refresh your memory.

15 A Yes.

16 MR. MAHER: Your Honor, can I just ask that we  
17 mark the chart for identification.

18 THE COURT: Certainly. At the time that he's  
19 referring to it, we will do it.

20 Q Now, Doctor, if you could, can you tell us, when was  
21 the very first date that Carlos Paiba came into your office;  
22 what was the date?

23 A July 22nd of 2019.

24 Q Now, can you tell the jury, was Carlos referred to your  
25 office by a lawyer or by a doctor?

1           A     In my notes, I had indicated that he had been sent in  
2 by one of his treating doctors.

3           Q     So can you tell the jury, not the attorney, but what  
4 doctor referred Carlos to you?

5           A     I indicated it was Dr. Grimm.

6           Q     And he's a doctor that works with who?

7           A     He's a pain management physician and who I have shared  
8 patients with.

9           Q     And Dr. Merola, can you tell us on the very first  
10 date when he came into your office -- actually, give us the date  
11 first; what was the initial evaluation with Carlos?

12          A     July 22, 2019.

13                   THE COURT: Counsel, have we moved this witness in  
14 as an exhibit?

15                   MR. SHECTMAN: Sure.

16                   Your Honor, I would formally ask at this time that  
17 he be deemed an expert in the field of orthopaedic surgery.

18                   I don't think there's an objection.

19                   MR. MAHER: No objection, your Honor.

20                   THE COURT: Okay, Dr. Merola is deemed an expert  
21 witness.

22                   MR. SHECTMAN: Thank you, your Honor.

23          Q     By the way, Dr. Merola, this is not the first time that  
24 a court has deemed you an expert, is it?

25          A     No.

1 Q Okay. So having gotten that out of the way, can you  
2 tell the jury, when Carlos came to you on July 22, 2019 what, if  
3 any, complaints did he make to you at that time?

4 A He was indicated that he had rather significant pain in  
5 his lower back with pain traveling down into his legs and feet.

6 THE COURT: Doctor, I'm going to ask you not to  
7 read from your records. And if you do have to refer to  
8 them, just let us know. So testify from your memory and,  
9 to the extent that you need to rely on the record, let us  
10 know.

11 THE WITNESS: Will do.

12 Q Doctor, can you tell us what is the significant, if  
13 any, of not only the patient having pain in their back but the  
14 fact the pain goes down into their feet and legs, can you please  
15 tell us.

16 A Typically that indicates a problem with the lower back  
17 and as well as the nerves that travel into your legs and feet.

18 Q Doctor, can you explain how back pain would travel to  
19 your legs and feet?

20 A You have some very large nerves that exit your lower  
21 back and then travel down into your legs. One of those large  
22 nerves is called the sciatic nerve and those are the nerves that  
23 are responsible for your ability to feel in your legs and as  
24 well as your ability to walk.

25 Q So Doctor, if somebody were to have some kind of injury

1 in their back based on the --

2 MR. SHECTMAN: Withdrawn.

3 Q Doctor, in your over 30 years of practicing, does every  
4 patient that has back pain have pain travelling to the legs and  
5 feet?

6 A No, not necessarily.

7 Q And can you tell me, Doctor, in addition to pain which  
8 was radiating into his legs and feet, can you tell me what else  
9 he was complaining to you?

10 A Also some numbness and tingling and some weakness.

11 Q Can you tell the jury, Doctor, what is the  
12 significance, if any, not just if someone has back pain, the  
13 pain is going into their legs and feet and additionally with the  
14 numbness, the tingling and the weakness, putting that all  
15 together, what's the significance?

16 A So those are typically things that are involved with a  
17 neurological problem to the lower extremities or the lower legs.

18 Q And what would cause the neurological problem, Doctor?  
19 Why not just have back pain?

20 A So when you have pain that's travelling down into your  
21 legs, you have to think about nerve problems that can be causing  
22 those symptoms, and oftentimes what we see is nerve compression  
23 or nerve irritation that comes from the lower back.

24 THE COURT: Okay, Counsel, I am going to ask that  
25 we take a break now.

1 MR. SHECTMAN: Oh, sure.

2 THE COURT: Okay?

3 MR. SHECTMAN: Yeah, of course.

4 THE COURT: Then we will reconvene.

5 Before I let the jury go, I just want to remind  
6 you not to discuss anything that you have heard thus far  
7 either amongst yourselves or with anyone. And you are  
8 going to hear me repeat that each time you leave the  
9 courtroom.

10 I am going to ask you to return back here at 2:00  
11 so that we can be ready to begin. This morning we were  
12 held up discussing legal issues, and that may happen from  
13 time to time, that you're sitting back there longer. But I  
14 do need you to report back on time.

15 And I just will address this briefly because you  
16 will hear me read the charge at the end of the evidence  
17 being put in, that, to the extent that you need any  
18 information read back to you while you are deliberating,  
19 you can always ask the Court a question and to the extent  
20 it was brought up, you will be able to raise issues. So  
21 that's why we don't allow any note-taking during the course  
22 of the trial, okay.

23 So I will excuse the jury now until 2:00. I ask  
24 everyone to return to wherever the Court Officer has you  
25 return and we will continue with Dr. Merola at that time.

Dr. A. Merola - Plaintiff - Direct

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Dr. Merola, you are excused from the stand.

Thank you.

THE COURT OFFICER: All rise. Jury exiting.

(Whereupon, at this time, the jury exited the courtroom.)

THE COURT: So we are adjourned until 2:00.

MR. SHECTMAN: Thank you.

MR. MAHER: Thank you, your Honor.

(Whereupon, at this time, a luncheon recess was taken.)

\* \* \* \* \*

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

\* \* \* \* \*

1 THE COURT CLERK: All rise.

2 THE COURT: Good afternoon all.

3 MR. SHECTMAN: Good afternoon.

4 MR. MAHER: Good afternoon.

5 THE COURT: Dr. Merola, if you would take the  
6 stand again, we'll leave off where we left the jury.

7 (Whereupon, at this time, the witness resumed the  
8 stand.)

9 THE COURT: I am sorry, counsels. Any issues we  
10 need to address?

11 MR. SHECTMAN: No, Judge. Thank you.

12 THE COURT: Thank you.

13 THE COURT: Counsel, before you do your  
14 questioning, just mark the doctor's notes as ID.

15 THE COURT OFFICER: All rise. Jury entering.

16 (Whereupon, at this time, the jury entered the  
17 courtroom.)

18 THE COURT CLERK: Do all counsel stipulate to the  
19 presence and seating of the jury?

20 MR. SHECTMAN: Yes.

21 MR. MAHER: Yes.

22 THE COURT: Good afternoon, jurors. Welcome back.  
23 I hope you enjoyed your lunch. Is it as beautiful outside  
24 as they said it's going to be?

25 THE JURY PANEL: Yes.

1 THE COURT: Thank you. Have a seat. We left off,  
2 we were in the middle of plaintiff's direct examination of  
3 his first witness and we'll continue there.

4 Counsel.

5 MR. SHECTMAN: Your Honor, before we continue, may  
6 I mark the doctor's medical records for identification.

7 THE COURT: Certainly.

8 (Whereupon, at this time, the medical records were  
9 marked as Plaintiff's Exhibit 6 for identification, by the  
10 Reporter.)

11 THE COURT OFFICER: Plaintiff's Exhibit 6 has been  
12 marked for ID.

13 MR. MAHER: Would it be possible for me to take a  
14 look at that for a second?

15 THE COURT: Sure.

16 (Whereupon, there was a brief pause in the  
17 proceedings.)

18 MR. SHECTMAN: May I inquire, Your Honor?

19 THE COURT: Yes.

20 DIRECT EXAMINATION (Continued)

21 BY MR. SHECTMAN:

22 Q Now, Doctor, before we took our lunch break, you  
23 mentioned Carlos had severe pain in the back radiating into the  
24 legs and feet producing pain, pins, needles, numbness,  
25 continuing general weakness, correct?

1           A     Yes.

2           Q     Could you tell me, if you could continue, what else did  
3 he report on that first evaluation?

4           A     I mean, that was the essential issue, low back pain  
5 with radiating symptoms into the lower extremities.

6           Q     Could you tell me what, if anything, he reported that  
7 activities had on his condition, what effect, if any, on  
8 activities?

9           A     Let's see. Anything that would be increasing his  
10 activity level increased his symptoms.

11          Q     Now, could you tell me at this point, Doctor, is it  
12 your understanding that he had been under the care of Dr. Grimm?

13          A     Yes.

14          Q     Now, did you conduct a physical examination on that  
15 first evaluation?

16          A     Yes.

17          Q     Could you tell the jury what you did during your  
18 physical examination, what you were looking for and most  
19 importantly what you found?

20          A     Sure. So the examination was an examination to focus  
21 on the lower back and the nerves that go down into the legs, so  
22 it's essentially testing of the patient's body by feeling and  
23 doing certain things that we call provocative tests, which are  
24 to see how the lower back is operating and how the nerves going  
25 into the legs are working.

1 Q Did you take note as to his ability or inability to get  
2 on and off the examination table?

3 A Yes. He had difficulty getting on and off the exam  
4 table.

5 Q Doctor, what is spinal Phalen's maneuver?

6 A It's putting the lower back into a position of  
7 extension, which is bending backwards, reproducing spasm in the  
8 lower back with symptoms traveling down the legs.

9 Q Now, what is the point of doing that on a patient?

10 A You're trying to see whether or not there are any  
11 positions that the spine could be placed into that increase  
12 nerve root compression and nerve root irritation.

13 Q When you performed that test on Carlos, what did you  
14 find?

15 A That it was positive.

16 Q What does it mean by positive?

17 A That it reproduced symptoms going down into the legs.

18 Q And the fact there is a positive examination, what is  
19 the significance of that?

20 A It tells us there is a problem with the nerves.

21 Q Could you tell me whether or not when you did this test  
22 if there was back spasm?

23 A Correct, there was back spasm.

24 Q Is this spasm that he told you he had or that you felt  
25 yourself?

1 A It's palpable. That means you can feel it spasm.

2 Q Can we agree, Doctor, if you actually felt it, that  
3 would be something that's objective?

4 A Yes.

5 Q Is there anything Carlos could have done when you are  
6 doing that examination that could create a fake spasm if it  
7 didn't really exist?

8 A No.

9 Q Now, the fact that the maneuver was positive with spasm  
10 and pain radiating down the legs, what is the significance of  
11 that finding?

12 A That there is a problem with the nerves going down into  
13 the legs.

14 Q Could you tell me, Doctor, did you perform what is  
15 known as a straight leg raise?

16 A Yes.

17 Q Would you explain to the jury what is that test, how  
18 you do it and again what you found?

19 A That's a test where you extend the leg, in other words  
20 you stick the legs straight out into the air, and then you  
21 elicit a response from the patient to see whether or not that  
22 extension of the leg reproduces pain.

23 Q In Carlos' situation, what did you find?

24 A That it did reproduce pain.

25 Q Doctor, what is dermatomal distribution? Could you

1 explain that?

2 A It means the area that the nerves that go into your  
3 legs occupy.

4 Q Could you explain where the nerves start from?

5 A The nerves start in your brain, they travel down your  
6 spinal canal, they then travel into your arms and legs in very  
7 specific places and those places are called dermatomes and  
8 myotomes. Dermatome means the skin area and a myotome means the  
9 muscle area.

10 Q Doctor, are you able to check -- withdrawn.

11 Can you tell us what you actually found as far as  
12 dermatomal distribution?

13 A Sure. There was some loss of sensation in what is  
14 known as the L5 nerve roots and S1 nerve roots.

15 Q When you say L5-S1, could you explain what that means?

16 A That's the lowest portion of your back where it  
17 attaches to your pelvis.

18 Q Now, the fact there's loss of the L5-S1 dermatomal  
19 distribution, what is the significance of that?

20 A It helps to localize the area where the nerves are  
21 being irritated.

22 Q Are you able, Doctor, if there is a decrease in  
23 sensation at L5-S1, are you able to go up to the spine to figure  
24 out which level of the back has been effected?

25 A Yes.

1 Q Based on his presentation, the fact that you noted  
2 bilateral loss of L5-S1 dermatomal distribution, what level did  
3 that indicate, meaning what level disc had an issue?

4 A The lowest level, which is between L5 and S1.

5 Q When Carlos came in complaining of severe pain in the  
6 back going down the legs with the pain, pins and needles,  
7 numbness, tingling, weakness, is all of that consistent with the  
8 dermatomal distribution that you noted was decreased?

9 A Yes.

10 Q Had you seen the MRIs performed of his back on 3/14/19?

11 A Yes.

12 Q Before I ask you about the MRI, based on his  
13 presentation, the pain down the legs, the pins and needles,  
14 numbness, weakness, the positive maneuver you mentioned,  
15 straight leg being positive and the loss of sensation, based on  
16 that presentation, meaning your physical examination, what did  
17 you believe the condition was that was causing his problem?

18 A Nerve root impingement.

19 Q What level?

20 A L5-S1.

21 Q Did you then review the MRIs?

22 A Yes.

23 Q When you reviewed the MRIs, was it different or  
24 confirmed what you thought before reviewing the MRIs?

25 A Confirmed.

1 Q Doctor, what I would like to do, with the Court's  
2 permission -- by the way, before we get to it, what is an MRI?

3 A An MRI is a way of looking inside the body. It's  
4 magnetic and it's very good at looking at things that are soft,  
5 for example discs, which are made of cartilage, nerves and  
6 things like that.

7 Q Could you tell the jury what MRI stands for?

8 A Magnetic resonance imaging.

9 Q Is this a way to kind of create a picture of the inside  
10 of the body?

11 A Yes.

12 Q What I would like to do, with the Court's permission, I  
13 have queued up the MRI of the lumbar spine of 3/14/19 that you  
14 reviewed.

15 MR. SHECTMAN: Your Honor, is there a way I can  
16 move it as close as possible? I would like the jury to see  
17 it. Is there a way we can move it? I would like for them  
18 to be able to see it.

19 May I approach?

20 THE COURT: Yes, please. I want you to make sure  
21 that your equipment is secure.

22 Off the record.

23 (Whereupon, at this time, an off-the-record  
24 discussion was held.)

25 THE COURT: Let's go back on the record.

1 MR. SHECTMAN: With the Court's permission, could  
2 I have the doctor step down so he can walk us through this?

3 THE COURT: Yes.

4 BY MR. SHECTMAN:

5 Q Doctor, could you tell us -- first, what are we looking  
6 at?

7 A This is a side-view image of the lower back of  
8 Mr. Carlos Paiba.

9 Q What was the date that this imaging was taken of Mr.  
10 Paiba?

11 A March 14, 2019.

12 Q That would be about eight days after the accident,  
13 correct?

14 A Yes.

15 Q Could you tell us, if you wouldn't mind going up to the  
16 screen, if you put your fingers on the different structures and  
17 tell us what it is?

18 A Sure. The squares are the bones and in between the  
19 bones are the discs, and to the right of the bones and the discs  
20 are the spinal canal where the nerves are.

21 Q When you said before that just based on his  
22 presentation what you found objectively, the spasm, the loss of  
23 sensation, the nerve root involvement, you indicated there's an  
24 issue in L5-S1. Could you show us the L5-S1 disc on this film?

25 A Sure. So each click of the computer shows you a

1 different slice in the lower back and those slices go from one  
2 side to the other side. The slice you see here is the middle  
3 and if you are looking in the middle right between L5-S1, you  
4 could see there's some -- what is consistent with the disc  
5 poking out of the area where the nerves are, which is this white  
6 stripe, and if you continue down across all those slices to look  
7 at the outside areas, the outside areas being the areas where  
8 the nerves actually exit.

9 THE COURT: I will stop you for a moment, Doctor.  
10 I think that the question was to identify the L5-S1 disc  
11 and I think that was the answer.

12 Now, is there another question?

13 Q Doctor, could you tell us what else do you see, if you  
14 could explain the other surrounding structures?

15 A Sure. So that's the area where the disc is and then if  
16 you look through all of the other images that are there, you can  
17 see the areas where the nerves exit the spine and if you look  
18 between L5-S1, you could see that that area where the nerves,  
19 the L5 nerves and S1 nerves come out are being pinched, if you  
20 will. There's an area there that's impinging on those two  
21 nerves, the L5 nerves and S1 nerves.

22 Q The fact that you see a pinch on the nerves on this  
23 film, is that consistent with the pins, needles, numbness, the  
24 weakness and everything else you mentioned?

25 A Yes.

1 Q Doctor, did you also review EMGs of this case?

2 A Yes.

3 Q What is an EMG?

4 A It's a test of the way the nerve is working when it's  
5 inside the muscle that it is working for.

6 Q Now, this MRI that shows us a picture of the inside of  
7 Mr. Paiba's body, for lack of a better phrase, is there anything  
8 that Carlos could have done to create pinching if it didn't  
9 exist?

10 A No.

11 Q He can't somehow alter these images, can he?

12 A No.

13 Q Is an MRI objective or subjective?

14 A Objective.

15 Q The EMG, objective or subjective?

16 A Objective.

17 Q Could you explain to the jury what the difference is  
18 between the two?

19 A Subjective is a symptom, I have pain in my back, goes  
20 down my legs. It's subjective, it's what the patient tells you.

21 Objective is a test that is outside the control of the  
22 patient that is objectively identifiable to whomever happens to  
23 be looking at it.

24 Q Now, is the EMG in this case consistent or inconsistent  
25 with what we see here?

1 A Consistent.

2 Q What is radiculopathy?

3 A That means problem with the nerves.

4 Q Is that what you found here?

5 A Yes.

6 Q Again, EMG confirmed that?

7 A Yes.

8 Q Now, Doctor, after -- withdrawn.

9 When patients come to you, do you always perform  
10 surgery when there is a damaged disc?

11 A No.

12 Q What are the circumstance under which -- we'll get to  
13 Carlos -- what are the circumstance under which or what kind of  
14 conditions would need to be present for you to believe surgery  
15 would be done to help the patient?

16 A So, symptoms -- you have to have three things. You  
17 have to have symptoms, you have to have a positive physical  
18 exam, then you have to have diagnostics that relate to the  
19 symptoms and physical exam.

20 Symptoms for a patient with leg pain are pain that has  
21 been persistent for greater than six weeks that has not gotten  
22 better with nonsurgical methods, so those are positive symptoms  
23 to make the patient a candidate for surgical procedure. A  
24 physical exam that correlates or adds up with the patient's  
25 symptoms and then MRI findings of something structural that you

1 could do through a surgery that can benefit the patient.

2 Q Now, Doctor, you indicated earlier that based on your  
3 physical examination, you believe that the nerves were being, I  
4 guess, pinched?

5 A Yes.

6 Q You showed us on the MRIs where they are being pinched,  
7 correct?

8 A Yes.

9 Q I want to ask you a hypothetical. If you were to allow  
10 the nerves to stay pinched, as we see on these films, causing  
11 symptoms that he had, could you tell the jury if you do not  
12 surgically take pressure off the nerves, what could happen?

13 A Well, the most obvious thing is persistent pain, so if  
14 you had pain in excess of six weeks that has not gotten better  
15 with conservative care, the longer that pain is there the more  
16 likely it is for that pain to persist because nerves may have  
17 difficulty improving over time if the course of pinching is more  
18 than six weeks or at least several months. That's one thing.

19 The other thing is those nerves can also get worse over  
20 time if the symptoms have been present and not relieved with  
21 conservative care.

22 Q What, if anything, could happen to a patient's ability  
23 to walk if the nerves are left pinched as we see in this MRI?

24 A Well, it could interfere with your ability to walk.

25 Q Once those nerves are damaged, interfering with the

1 person's ability to walk, could you somehow reverse the damage  
2 to the nerves?

3 A It depends on how long the nerves have been pinched for  
4 and depends upon the amount of, let's say, damage that's  
5 occurred to the nerves. So there are varying groups of the  
6 ability to recover after you've had nerve pinching depending  
7 upon how badly pinched those nerves have been.

8 Q Doctor, based on Carlos' presentation to you, which  
9 would be about four months after the accident, did you formulate  
10 an opinion as to whether or not you believed Carlos needed  
11 surgery?

12 A Yes.

13 Q And could you tell us what was your opinion and what do  
14 you base it on?

15 A The opinion was he did require what I indicated was a  
16 decompressive surgery, a surgery to take pressure off the  
17 nerves, because he had been symptomatic for three months,  
18 because he had physical findings that show nerve root problems  
19 and that those lined up with, correlated with, the EMG and MRI.

20 Q So did you, in fact, actually -- Doctor, what I am  
21 going to do is, I am going to ask you to return to the stand for  
22 a moment.

23 MR. SHECTMAN: If we can leave this up, Your  
24 Honor, I might have further questions, if it's okay to  
25 leave it up for now.

1 THE COURT: If it's not going to block the view of  
2 the defendant.

3 MR. MAHER: That is a little bit of an issue.

4 MR. SHECTMAN: He could sit here if he likes for a  
5 couple of moments. That's fine. I'll share my table.

6 THE COURT: True cooperation.

7 MR. SHECTMAN: We all get along.

8 Q Doctor, you can sit down for a moment. I have  
9 questions about your note and then actually I will have you come  
10 up again.

11 Doctor, after the initial evaluation in July, you  
12 actually saw him again, correct?

13 A Yes.

14 Q September 23rd of 2019?

15 A Yes.

16 Q Could you tell me on that particular day what, if  
17 anything, were his complaints?

18 A The complaints were pretty much the same.

19 Q As far as the back pain, any change?

20 A No.

21 Q Could you tell me, Doctor, on a scale from 1 to 10,  
22 what did Carlos report to you was his pain level in the back?

23 A Eight out of ten.

24 Q Did you conduct a physical examination on that visit?

25 A Yes.

1 Q Could you tell us what, if anything, you found?

2 A It was consistent with the previous exams, which was a  
3 positive spinal Phalen's test, positive straight leg raise and  
4 L5-S1 sensory deficits.

5 Q At this point, by the visit 9/23/19, you had already  
6 reviewed the films showing the pinching of the nerves, correct?

7 A Yes.

8 Q You already reviewed the positive EMG, correct?

9 A Yes.

10 Q Now, at that point was surgery indicated?

11 A Yes.

12 Q And what was the proposed surgery you were going to do  
13 based on the presentation?

14 A A decompression surgery, which is basically known as a  
15 laminectomy, to take some pressure off the nerves and remove any  
16 pieces of disc material or bone that was resulting in a pinching  
17 of the nerves.

18 MR. SHECTMAN: Your Honor, I do have some blow-ups  
19 depicting the procedure. Before I begin, they are marked  
20 for ID, I just want to know if we have an easel in the  
21 courtroom.

22 THE COURT CLERK: Yes.

23 THE COURT: Defendant, you have seen these?

24 MR. MAHER: Yes, I have seen them.

25 THE COURT: No objection?

1 MR. MAHER: I don't object to them being used for  
2 identification. We object to them being produced into  
3 evidence.

4 MR. SHECTMAN: It will be demonstrative to help us  
5 all understand what is going on.

6 THE COURT OFFICER: Your Honor, we can show it to  
7 everybody?

8 THE COURT: No, just to the doctor for the moment.  
9 It's for ID.

10 This is just ID?

11 MR. SHECTMAN: I think there's no objection to  
12 showing it to the jury. He is saying he doesn't want it to  
13 go back to the jury room.

14 THE COURT: So demonstrative?

15 MR. MAHER: Right. What I am saying is, I  
16 consented to counsel marking it for identification so that  
17 he could use it during his testimony of the witness, but I  
18 am objecting to it being produced for evidence for  
19 consideration of the jury. It's not evidence.

20 MR. SHECTMAN: Agreed, Your Honor, just as a  
21 demonstrative aid.

22 THE COURT: Okay.

23 MR. SHECTMAN: Your Honor, with your permission,  
24 may I have the Doctor step down off the stand?

25 THE COURT: Okay.

1 MR. SHECTMAN: For the record, this is Plaintiff's  
2 Exhibit Number 2 for identification.

3 THE COURT OFFICER: Showing Plaintiff's Exhibit 2  
4 to the witness.

5 MR. SHECTMAN: Because we don't have an extension  
6 cord issue, could we move the easel close to the jury? I  
7 want everyone to see it. May I move closer?

8 THE COURT: Yes, you can move closer.

9 MR. SHECTMAN: Your Honor, could you ask if all  
10 the jurors are able to see from their vantage point?

11 THE COURT: I want to make sure I can see it.

12 MR. SHECTMAN: And Your Honor.

13 THE COURT: Can the jury see it?

14 THE JURY PANEL: Yes.

15 THE COURT: Yes, good.

16 BY MR. SHECTMAN:

17 Q Doctor, if you don't mind, could you tell us, first,  
18 does this illustration we see in front of you, is this an  
19 accurate rendering of the procedure you did?

20 A Yes.

21 Q Would it help you if when you are talking to the jury  
22 and explaining what you did to use this as an aid during your  
23 testimony?

24 A Yes.

25 Q Could you tell us first, we see Carlos Paiba 10/16/19.

1 Was that the date of the surgery?

2 A Yes.

3 Q What was your -- I guess first, what is the surgery you  
4 performed?

5 A The surgery is surgery to take pressure off the nerves  
6 and it's typically known as a laminectomy.

7 Q What was your postoperative diagnosis?

8 A Postoperative -- preoperative diagnosis and  
9 postoperative diagnosis were the same, which means we found what  
10 we thought we were going to find during the procedure.

11 THE COURT: Doctor, I just ask you to keep your  
12 voice up since you are not using the microphone.

13 Q Where it says letter A, which is the upper left, could  
14 you put your hand on those structures and tell us what we're  
15 looking at there?

16 A This is a side-view similar to the MRI we saw and it's  
17 showing the area where there's disc material and pinching of the  
18 nerves.

19 Q I see the letters L4, L5, S1. Could you point to those  
20 on the board?

21 A Yes, those are the bones 4, 5 and S1.

22 Q Between the bones, could you show us where the disc is?

23 A At the red arrow in between the two bones.

24 Q It looks like a sort of purplish or white structure?

25 A Yes.

1 Q What exactly is a disc? Could you explain that?

2 A It's a piece of cartilage that sits in between the  
3 bones.

4 Q What is the function of a disc?

5 A It maintains the bones in their normal alignment and  
6 prevents them from sliding around and prevents them from  
7 slipping out of place when you are doing your normal activities.

8 Q In this, I guess, depiction, does it show the -- does  
9 it illustrate the compression of the nerves due to the discs?

10 A Yes.

11 Q Could you show where that is?

12 A So this is kind of a slide --

13 Q Sorry. Start on A, the top one first.

14 A A is showing you the nerves, like the MRI and it  
15 shows -- you can see the disc is touching those nerves that are  
16 directly adjacent to the discs.

17 Q What do we see to the left of B? That's just a closer  
18 view?

19 A Correct.

20 Q If you can point to the bones in the back and spine.

21 A L5-S1.

22 Q If you could do it for the next illustration on the  
23 right, B?

24 A So this is the approach that you use, which is incision  
25 in the lower part of the back and if you look at the middle of

1 that picture, that's the area where the bones of L5-S1 are.

2 Q What do we see in C, letter C, if you could explain  
3 what's going on?

4 A This is kind of a side three-dimensional view of the  
5 L5-S1 disc with the nerves and the red material is disc and the  
6 golden and yellow material are nerves.

7 Q Could you explain what we're looking at in D?

8 A This is removal of whatever disc material was up  
9 against the area where the nerves are.

10 Q Why do you actually remove the disc material?

11 A It's part of taking pressure off the nerve. Basically  
12 you are doing Roto-Rooter to the back. Anything that's in there  
13 causing the blockage, you are basically removing that stuff so  
14 the nerves have free and clear exits.

15 Q Once you cut discs out of the spine, like which we see  
16 in D, does it ever grow back?

17 A Discs can typically heal. When they do heal, they heal  
18 with scar tissue.

19 Q The disc matter you actually removed, does that  
20 actually regrow?

21 A It's gone. It goes to pathology. It's no longer part  
22 of the body.

23 THE COURT: Doctor, you are going to need to use  
24 the microphone. If you can use that microphone, the court  
25 reporter is having a hard time.

1 Q Actually, Doctor, could you face the jury too so they  
2 can see you.

3 Could you tell us in E, what are we looking at in E?

4 A E is an illustration of the tiny openings that we make  
5 in order to expose the nerves.

6 Q And F?

7 A And F is a further illustration of how those openings  
8 are made.

9 Q Looking at the bottom, do you see where it says  
10 herniated L5-S1 disc removed?

11 A Yes.

12 Q What does that mean when you say it's herniated?

13 A Herniate means it's out the confines of the vertebral  
14 bodies. It's in a place where it doesn't necessarily belong.  
15 Herniation means that it's asymmetrically protruding so there's  
16 an asymmetrical protrusion of disc material.

17 Q How does the material inside the disc get outside?

18 A There's typically the disc has to have a tear within  
19 the substance of the disc that causes the material to protrude.

20 Q Doctor, if you could go back on the witness stand for a  
21 moment, I want to ask you some questions about your operation.

22 Now, Doctor, could you turn to your operative report of  
23 10/16/19.

24 A Yes.

25 Q Could you tell me what were the indications for this

1 operation?

2 A Back pain with radiating pain and weakness.

3 Q Could you tell me what did you note regarding  
4 radiculopathy?

5 A The patient had a positive radiculopathy.

6 Q Could you tell me whether you noted it was mild or  
7 something else?

8 A It was severe.

9 Q Again, the radiating pain as noted in your report was  
10 where?

11 A In the lower back traveling down the legs.

12 Q Now, when you note that we undertake surgery to prevent  
13 the condition from getting worse, from a neurological  
14 perspective could you explain what that means?

15 A We don't want the patient to get any worse, so nerves  
16 control the way you walk, the way you feel and the way your legs  
17 move and so we're doing this procedure to prevent the patient  
18 from continuing to get any worse.

19 Q Now, in your operative report you noted your surgical  
20 findings, correct?

21 A Yes.

22 Q Doctor, what is degeneration?

23 A Degeneration is the normal process of aging.

24 Q For lack of a better word, when you opened up Mr.  
25 Paiba's back, you are now able to see inside of his back,

1 correct?

2 A Well, yes. We're looking at the area we're operating  
3 on.

4 Q Could you tell me, Doctor, did you find signs of aging?

5 A Yes.

6 Q Could you tell the jury if this was -- whether or not  
7 it was the degeneration to be expected of someone his age?

8 A It was pretty typical for a patient in their middle to  
9 late fifties.

10 Q Briefly, you noted it's normal age-appropriate,  
11 age-related changes, correct?

12 A Yes.

13 Q In your findings, Doctor, tell me -- are you at the  
14 section where it says finding?

15 A Yes.

16 Q Could you refresh your memory, in addition to normal  
17 age-appropriate and age-related changes, if you could tell us  
18 what you found regarding the annulus?

19 A There was a tear in the annulus where -- which is very  
20 typical when you have disc material that herniate, so that was  
21 present.

22 Q Could you tell me, Doctor, what is disc space collapse?

23 A That means the normal space that's typically in between  
24 the bones was decreased.

25 Q Is that what you found?

1 A Yes.

2 Q As a consequence of what?

3 A As a consequence of this disc protruding or sticking  
4 out.

5 Q When you say that the disc space that is collapsed,  
6 what happens to the disc if that space collapsed?

7 A Well, it's really -- it's more than just the disc. The  
8 disc flattens out, but the area where the nerves are gets  
9 smaller because the bones are spread apart, there's more room  
10 for the nerves. If the bones are not spread apart, there's less  
11 room for the nerves.

12 Q Did you see Carlos postoperatively?

13 A Yes.

14 Q Could you tell me when was the first time you'd seen  
15 him after the 10/16 operation?

16 A November 11, 2019.

17 Q Could you tell me, had you conducted a physical  
18 examination at that time?

19 A Yes.

20 Q What, if anything, did you find?

21 A I found he was healing normally after the operation.

22 Q Any complications?

23 A No.

24 Q Was he stable?

25 A Yes.

1 Q So at this point was the operation a success?

2 A Yes.

3 Q Now, had you given Carlos any restrictions as to things  
4 he could and couldn't do following this procedure?

5 A Yes.

6 Q What were those restrictions?

7 A No bending, no lifting and no twisting.

8 Q He was then to return to your office, correct?

9 A Yes.

10 Q Could you tell us when was the next visit when he  
11 returned postoperatively?

12 A I saw him on July 6th of 2020.

13 Q What were his complaints at that time?

14 A Let's see. He was having some progressive pain in his  
15 left hip, which he had begun noticing more as we decreased his  
16 radiating nerve pain.

17 Q So as the back pain lessened, he is now feeling --

18 A As his nerve pain lessened, he began to experience more  
19 symptoms in his hip.

20 Q Doctor, when Carlos came to you on 7/6/20, which would  
21 be about nine months after the surgery, what did he relate to  
22 you as far as whether or not this operation had been helping  
23 him?

24 A That it had been helpful.

25 Q Did you conduct a physical examination?

1           A     I did.

2           Q     Could you tell us what you noted and what, if any,  
3           significance that was?

4           A     Some of what I saw on his physical exam related to the  
5           hip, so there was a bit of an abnormal gait pattern relating to  
6           his left hip.  Additionally, his low back examination  
7           demonstrated that his incisional site, that's the area where the  
8           surgery was, was healing normally and that his nerves were  
9           essentially stable; that is, there's no progressive nerve root  
10          problem.

11          Q     Could you tell me, Doctor, at that point -- did you  
12          review at that point the MRI of his hip that he was complaining  
13          of?

14          A     Yes.

15          Q     Had you made a referral to a hip specialist?

16          A     Yes.

17          Q     Who did you refer him to to examine his hip?  What  
18          specialist?

19          A     Dr. Touliopolous.

20          Q     Could you tell me, Doctor, based on that visit, had you  
21          rendered an opinion or came to an opinion based upon a  
22          reasonable degree of medical certainty as to whether or not  
23          there were permanent deficits?

24          A     Well, at that time, July 6th of 2020, he definitely had  
25          some permanent issues, but of course was still in the healing

1 process.

2 Q Doctor, did you reach an opinion at that point whether  
3 or not he was disabled from work?

4 A I indicated he remained disabled from his duties.

5 Q Doctor, I would like you to turn to your next visit,  
6 which I believe is July 12, 2021.

7 A Yes.

8 Q By the way, Doctor, after an orthopedist such as  
9 yourself performs a surgery, is there any particular protocol as  
10 far as how much you should see them, such as once a month after  
11 surgery, twice a year, some protocol?

12 A Typically I tell patients if everything is stable and  
13 they are doing well and there have been no issues with respect  
14 to the surgery, I can certainly see them every several years  
15 depending upon how they are feeling or if they have problems, to  
16 come back sooner.

17 Q And you did see him sooner, I believe July 12, 2001?

18 A Yes. '21.

19 Q July 12, 2021?

20 A Yes.

21 Q Could you tell me, Doctor, by that point had Carlos had  
22 an updated MRI?

23 A Yes.

24 Q Could you -- with the Court's permission, I would like  
25 to show the jury the second MRI of the back, if we can have you

1 step down, Doctor, and I believe the updated MRI was 6/23/21.

2 A Yes.

3 Q Would you be able to -- if not, I can click back to the  
4 original screen, but would you be able to show the jury now the  
5 second MRI taken of his back?

6 A Sure.

7 Q Feel free to use my mouse.

8 A I am not sure where you had it loaded.

9 MR. SHECTMAN: For the record, Your Honor, there's  
10 a June 23, 2021, MRI of the spine which is on the same DVD  
11 as the last images.

12 THE COURT: Which is exhibit what?

13 THE COURT OFFICER: It's Exhibit 1 in evidence.

14 THE COURT: Thank you.

15 Q Doctor, this is a June 23, 2021, MRI, correct?

16 A Yes.

17 Q What is the reason for doing an updated MRI, let's say,  
18 two years after the first one that was done, March of '19?

19 A So I believe he was having increasing low back pain  
20 with recurrent leg pain.

21 Q And now this would be the updated MRI, correct?

22 A Yes.

23 Q Could you tell us what we're looking at here.

24 A So this is the same side, just lower back. This is the  
25 same side just lower back and what we're looking at is the space

1 between L5-S1 and we can see there's some recurrent disc  
2 material here as well as some slippage of the bones relative to  
3 each other.

4 Q When you say recurrent material, what do you mean?

5 A That means portions of the disc that were left behind  
6 have also started to come back out again.

7 Q When you say slippage, what is that?

8 A That means that there has been some -- there is a  
9 little bit of displacement of those two bones with what looks  
10 like a little bit more collapse of the space behind the bones.

11 MR. SHECTMAN: By the way, Your Honor, could I  
12 have this marked? I have a model of the back. May I have  
13 it marked for identification?

14 THE COURT: Yes. Without objection?

15 MR. MAHER: No objection to it being marked for  
16 identification.

17 (Whereupon, at this time, a model of the spine was  
18 marked as Plaintiff's Exhibit 7 for identification, by the  
19 Reporter.)

20 THE COURT OFFICER: Plaintiff's Exhibit 7 has been  
21 marked for ID.

22 Q Doctor, we do have a model of the lumbar spine and --

23 MR. SHECTMAN: With the Court's permission, may I  
24 have the Doctor approach the model on my desk?

25 THE COURT: Certainly.

1 Q If you could come to the model on counsel's table now,  
2 it's a 3D model. Could you tell us what we're looking at here?

3 A This is the model of the lower back as it attaches to  
4 the pelvis, so all the white objects are the bones and clear  
5 objects are the discs.

6 Q Doctor, the first operation laminectomy, what does that  
7 mean?

8 A Taking pressure off.

9 Q Now, laminectomy, could you show us the laminae on this  
10 model?

11 A The laminae is the backside of the bones, so you are  
12 removing portions of that.

13 Q To get to the disc, do you have to remove part of the  
14 bone?

15 A Yes.

16 Q How do you actually take off bone from the spine?

17 A There are little bone tools that remove bone.

18 Q Once you remove bone, are you able to access the disc  
19 behind the bone?

20 A Yes.

21 Q Now Doctor, other than the slippage, the recurring disc  
22 material, anything else of significance you want to mention  
23 before we get away from this?

24 A Yes. The only other thing I would say, if you look at  
25 the side-views once again where the nerves are, you can see the

1 nerve hole or opening where the nerve exits is pretty much  
2 blocked off. You can tell that because there's no white within  
3 that area. The other openings have fair amount of whiteness in  
4 them and the lowest one has really lost all of that whiteness,  
5 which is basically the area that's available for the nerves.

6 Q What is the significance of the fact that on this  
7 updated MRI that shows now different conditions than the first?

8 A It's a rationale for why he has recurrent pain and  
9 symptoms, because, for lack of a better term, the lower back  
10 L5-S1 bones and disc are not functioning properly.

11 Q Does this June 2021 MRI indicate his condition was  
12 staying the same, getting better or getting worse?

13 A This indicates some progression of his condition.

14 Q Now Doctor, when we talked about degeneration, can  
15 someone have degeneration of the spine and no herniation in  
16 their back?

17 A Yes.

18 Q Could someone have degeneration and they do have  
19 herniation in their back?

20 A Yes.

21 Q Can someone have degeneration, herniation and nerve  
22 root impingement?

23 A Yes.

24 Q Not everyone with degeneration has what we saw here, do  
25 they?

1 A Yes.

2 Q Meaning they do not have it, correct?

3 A Correct.

4 (Whereupon, the following was recorded and  
5 transcribed by Official Court Reporter Vicky Zubiria.)

6 (Continued on following page.)

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1 DIRECT EXAMINATION

2 BY MR. SHECTMAN:

3 Q Now, when Carlos came to you July 12th of '21, he had  
4 already had this updated MRI, correct?

5 A Yes.

6 Q And you had reviewed that before seeing him that day?

7 A Yes.

8 Q Can you tell us, when he came in, what, if anything, he  
9 had been reporting to you since his last visit?

10 A He said that he -- he had indicated that he felt as  
11 though he was getting worse with recurrent nerve pain.

12 Q And the fact that he felt he was getting worse, is that  
13 consistent with what you just showed us, the slippage?

14 A Yes.

15 Q Now, at this point, Doctor, had Carlos already had  
16 surgery on the left hip?

17 A Yes.

18 Q Did you conduct a physical examination?

19 A Yes.

20 Q And what did you find when you conducted a physical  
21 examination on that day?

22 A That he had a positive spinal Phalen's test and he also  
23 had a positive posterior straight leg raise, which was  
24 consistent with, at that point in time, an active radiculopathy.

25 Q Was there still spasm in his back?

1 A Yes.

2 Q And, again, is there anything Carlos could have done to  
3 create spasm if it really didn't exist?

4 A No.

5 Q How did he get on and off the examination table?

6 A He needed assistance.

7 Q And the dermatomal distribution, that loss of sensation  
8 that you noted previously, was there any change at this visit?

9 A It was still at the L5 and S1.

10 Q So that had not changed?

11 A Yes.

12 Q Okay.

13 And now, Doctor, did you see him again January 20, '22?

14 A Yes.

15 Q And can you tell me, when Carlos came in, whether or  
16 not -- whether he noted if the first operation you did was  
17 helpful?

18 A Yes.

19 Q And how did he indicate to you that it had helped him?

20 A It had decreased pain going down his legs.

21 Q Was he wearing a brace when he came in?

22 A Let's see. Yes.

23 Q Was he using a cane?

24 A Yes.

25 Q And can you tell me, Doctor, what, if anything, did he

1 note as far as his ability to bend, lift and twist?

2 A Those were impaired.

3 Q How about putting on shoes and socks?

4 A Correct, that was impaired.

5 Q What was his pain noted out of ten on that visit?

6 A Nine.

7 Q So almost the highest that you can report?

8 A Yes.

9 Q Now, Doctor, did you perform a physical examination on  
10 that date?

11 A Yes.

12 Q And can you tell me, what, if any, differences there  
13 were between that visit and the last time you examined him.

14 A He showed -- it still showed that he had a positive  
15 spinal Phalen's test. And he also had what we call a facet  
16 joint load test, which is similar to a Phalen's test but it  
17 reproduces significant spasm in the back.

18 Q Now, Doctor, based on his presentation now, this would  
19 be about almost three years after the accident -- actually, it  
20 was be almost three years --

21 THE COURT: Counsel, can you just give us a time  
22 frame that we are talking about.

23 MR. SHECTMAN: Sure.

24 Q Now on this visit of -- this is January 10th of 2022,  
25 correct?

1 A Yes.

2 Q So we are just short of three years since the initial  
3 accident, correct?

4 A Yes.

5 Q Now, based on having treated him now for over two  
6 years, did you have an opinion at that time as to whether or not  
7 he needed a second operation?

8 A Because he had progressively gotten worse and continued  
9 to have positive findings from when I saw him in July of '21 up  
10 until January of '22, with those MRI findings, I did recommend a  
11 second surgery.

12 Q And did he, in fact, have that?

13 A Yes.

14 Q Would you tell the jury, what was the date now of the  
15 second operation you performed on his back?

16 A April 20th of 2022.

17 MR. SHECTMAN: Your Honor, may I once again,  
18 please, with the Officer's permission if he doesn't mind,  
19 I'd like to bring the easel closer and show a depiction of  
20 the second operation. And if I can have the Doctor step  
21 down, if that's all right with you.

22 THE COURT: The same one?

23 MR. SHECTMAN: No, this is a different one.

24 THE COURT: And this is agreed to, same  
25 stipulation as before?

1 MR. MAHER: Same stipulation regarding the  
2 demonstrative evidence.

3 MR. SHECTMAN: For the record, this is Plaintiff's  
4 Exhibit 3 marked for identification.

5 THE COURT: Dr. Merola can step down again.

6 THE COURT OFFICER: Showing Plaintiff's Exhibit 3  
7 marked as ID to the witness.

8 MR. SHECTMAN: Your Honor, would you mind just  
9 asking the jury if everyone can see it.

10 THE COURT: Can everyone see the exhibit for ID?

11 THE JURORS: Yes.

12 THE COURT: Yes.

13 Q So, Doctor, this shows the operation of 4/20/22,  
14 correct?

15 A Yes.

16 Q Would you walk us through -- I know it's a pretty long  
17 description -- but if you can just tell us in general terms --  
18 we will get into specifics -- what was the operation now the  
19 second time?

20 A So the second operation involves, once again, taking  
21 pressure off the nerves, but this time taking -- removing more  
22 bone because the bone openings had gotten smaller. And in so  
23 doing, when you start to remove more bone, you interfere with  
24 the joints of the lower back which cause an unstable condition.  
25 So you need to stabilize in addition to removing pressure. And

1 stabilizing the back is called fusion, which means locking the  
2 bones together with screws and rods. So it's a removal of bone  
3 to take pressure off the nerves with a stabilization of the  
4 bones.

5 Q Can you walk us through, what do we see depicted in  
6 letter A?

7 A So letter A and B are identical to the first slides  
8 that we saw, which are the bone removal process in order to make  
9 sure that there's no significant pressure on the nerves.

10 Q Now, how do you have a surgical field? What do you  
11 need to do to get a surgical field?

12 A You need to open up the area. So, once again, you make  
13 an incision and you move the muscles out of the way so you can  
14 see the bones.

15 Q And Doctor, what is the approximate size of that  
16 incision that you have to make to be able to visualize the  
17 structures as we see them?

18 A It's about three to four inches.

19 Q Can you tell us what do we see in B, depicted in B?

20 A B is where we are basically shaving down the bones so  
21 that we get those bones to stick themselves together to  
22 stabilize themselves.

23 Q Can you tell me, what is going on in C? It says  
24 pedicle screws inserted; what is that?

25 A Those are screws that are inserted into the bones in

1 order to help hold them together.

2 Q And how do you get the screws into the bone?

3 A You screw them into the bone as you would screw a screw  
4 into a piece of wood.

5 Q So no special device?

6 A It's like putting a screw in a piece of wood.

7 Q Okay.

8 And then what do we see in D?

9 A That's a side view of a screw being inserted into a  
10 bone.

11 Q In this particular case, how many different screws were  
12 inserted to Carlos' bones of his spine?

13 A Four.

14 Q And after putting screws in, what do you then use with  
15 those screws, in conjunction with them?

16 A You hold them together with rods. So one rod on the  
17 left side, one rod on the right side.

18 Q What do we see depicted in F?

19 A That's a side view.

20 Q So when you were finished at least getting to stage, or  
21 F, there's now four screws in his back with two rods?

22 A Yes.

23 Q And if done correctly and it holds, this should provide  
24 the stability he needs so there's no slippage?

25 A Correct.

1 MR. SHECTMAN: Okay. I have another board.

2 Your Honor, this is now Plaintiff's Exhibit 4 for  
3 identification.

4 We can put this board on the easel. I'll switch  
5 you.

6 THE COURT OFFICER: Showing the witness  
7 Plaintiff's Exhibit 4 marked as ID.

8 Q Now, Doctor, can you tell us what we see in G.

9 A That's a intraoperative depiction of the back side view  
10 of the lower back.

11 Q What do we see in H, Doctor?

12 A That's an x-ray of the illustration.

13 Q Now is H an actual x-ray showing the hardware in his  
14 back?

15 A Yes.

16 Q What is seen in J -- I. Excuse me.

17 A I is the side view.

18 Q Now J, what are we looking at?

19 A J is the side view x-ray.

20 Q So this is the actual x-ray showing the hardware in  
21 place?

22 A Yes.

23 MR. SHECTMAN: Okay, we can take that one down.

24 Then, Your Honor, I would like to put Plaintiff's  
25 Exhibit 5 for identification on the easel.

1 THE COURT OFFICER: Showing the witness  
2 Plaintiff's Exhibit 5 marked as ID.

3 Q What are we looking at here, Doctor?

4 A These are a front to back view of the lower back and a  
5 side view of the lower back of Mr. Paiba post-op.

6 Q And, again these are his actual x-rays showing the  
7 hardware?

8 A Yes.

9 Q And can you show us the four screws and the two rods?

10 A One, two, three, four. One, two, three, four. And the  
11 rods connecting the screws.

12 Q Okay. You can return to the witness stand.

13 Doctor, do you have your operative report in front of  
14 you?

15 A Yes.

16 Q Can you tell us, as you noted, what were the  
17 indications as far as this gentleman?

18 A So the indications were recurrent radiculopathy with  
19 low back L-5 and S-1 symptoms which included some weakness and  
20 reflex and sensory changes.

21 Q Now, Doctor, can you tell us, what were your operative  
22 findings as you noted?

23 A There was some collapse of the disc space with what we  
24 appreciated to be some gross instability at L5-S1.

25 Q And how about the annulus, was it noted to be torn?

1 A Yes.

2 Q Okay. So then moving along, Doctor, I believe you saw  
3 him for the first time after this operation on May 9, 2022?

4 A That's correct, yes.

5 Q And can you tell me, Doctor, did you perform a physical  
6 examination at that time?

7 A Yes.

8 Q Anything of significance to note?

9 A This showed a normal postoperative first visit.

10 Q So everything was stable at this point?

11 A Yes.

12 Q I believe the next visit, Doctor, 2/6/23?

13 A I have September 12, '22 and then I have 2/6/23.

14 Q Oh, I must have -- oh, you're right. Excuse me.  
15 9/12/22, correct?

16 A Yes.

17 Q What was your opinion as to his disability at that  
18 time?

19 A He remained disabled from his occupation.

20 Q And can you tell me, Doctor, was he using a brace and  
21 cane on that visit?

22 A Yes.

23 Q Can you tell me, Doctor, as far as your physical  
24 examination, did you check the motion of his back?

25 A Yes.

1 Q And can you tell me, Doctor, what are the different  
2 motions; extension, flexion? If you wouldn't mind standing up  
3 and demonstrating what that is to the jury with your body.

4 A Yeah, sure.

5 So flexion is bending forward. Extension is bending  
6 backwards. Bending to the side is side bending, and rotation is  
7 turning from side to side.

8 Q Now, when Carlos' lumbar extension -- show us again  
9 what that is, lumbar extension?

10 A So it's 15 degrees.

11 Q What's the normal?

12 A 60.

13 Q So can you demonstrate, again, on your body, what would  
14 extension be, if you can show us?

15 A Bending backwards.

16 Q As I'm doing this, right?

17 A Right.

18 Q So normal is 60 and he can only do 15?

19 A Yes.

20 Q Can you tell me, what percent loss would that be that  
21 he can only do 15 out of a normal of 60?

22 A So that's just about a two-thirds loss.

23 Q Sorry to make you do math.

24 A 66 percent.

25 Q So a 66 percent loss?

1 A Yes.

2 Q Flexion, what is the motion of flexion; bending  
3 forward?

4 A Correct.

5 Q What is normal flexion in someone who is uninjured?

6 A 60.

7 Q 60? 6-0, you said?

8 A Yes.

9 Q And what did he have?

10 A 40.

11 Q So what percent loss would that be?

12 A About a sixth.

13 Q So what would that be percentage-wise?

14 A One-point-something percentage.

15 Q Well, if you could do 40 out of 60, that's -- then you  
16 could do two-thirds, right?

17 A Two-thirds, right. It's about a third loss out of  
18 30 percent.

19 Q 30 percent, okay.

20 And left -- bending, what's normal bending?

21 A 45.

22 Q That was pretty good?

23 A Yes.

24 Q We hit 40 out of 45?

25 A Correct.

1 Q What about rotation?

2 A 40.

3 Q Is normal?

4 A 80.

5 Q Oh, is 80.

6 So when he tried to rotate to the left, what was he  
7 able to do?

8 A Let's see. Left is 40.

9 Q So he had a 50 percent restriction?

10 A Yes.

11 Q So, correct me if I'm wrong, Doctor, based on your  
12 numbers, the only thing that was somewhat normal was the  
13 bending?

14 A Yes.

15 Q Lateral bending?

16 A Lateral bending, yes.

17 Q Doctor, did you check for pinprick and tactile  
18 sensation?

19 A Yes.

20 Q How do you check for that?

21 A You use a blunt pin, in which I typically use a  
22 paperclip.

23 Q And what did you find?

24 A There was losses in L5-S1 with some losses in L-4.

25 Q Okay. Now turning to 2/6/23, if you wouldn't mind.

1 A Yes.

2 Q Any change now since that last visit we just went  
3 through?

4 A A little bit better extension, it went up to  
5 20 degrees. A little worse flexion, down to 30. A little worse  
6 lateral bending, down to 30. And rotation was 35 and 30.

7 Q Now, Doctor, I just want to go for a moment to your  
8 last visit, I believe was 9/9/24, correct?

9 A Yes.

10 Q And what was your opinion at that time as to the extent  
11 of Carlos' disability?

12 A So, at that time, I had opined that he was still  
13 disabled from his work.

14 Q And can you tell me, Doctor, what were his complaints  
15 at that time?

16 A Let's see. The majority of his complaints were what we  
17 call axial back pain, which is pain localizing to the back.

18 Q And as far as those activities, the bending, the  
19 lifting, the twisting, any change in those restrictions?

20 A He was trying to restrict those motions in order to  
21 decrease symptoms.

22 Q Did you conduct a physical examination?

23 A Yes.

24 Q What did you do and what did you find, Doctor?

25 A So on that exam, his nerve roots were stable. So no

1 progressive issues. His lower back extension was 35. Flexion  
2 was back to 40 --

3 Q Let me stop you there, Doctor.

4 At that visit, his extension was 35 degrees out of  
5 what?

6 A Out of 60.

7 Q So what would be the percent loss then in 2024,  
8 September?

9 A A little bit less than 50 percent.

10 Q And what about flexion, what's normal?

11 A 60.

12 Q So, again, still a 30-percent restriction?

13 A Yes.

14 Q And what about the right and left lateral bending?

15 A Lateral bending was still rather good at both  
16 40 degrees.

17 Q Okay. How about rotation?

18 A Right side 40 degrees, so 50 percent. Left side 35  
19 degrees, a little bit less than 50 percent.

20 Q Did you note spasm on that visit?

21 A Yes.

22 Q Was there any loss of pinprick and tactile sensation on  
23 that visit?

24 A Yes, L5-S1.

25 Q Now, did you counsel Carlos that you believe there was

1 a potential for future surgery?

2 A Well, he had already had to have the one revision, so  
3 that is part of the counselling process with Mr. Paiba and  
4 patients that you are doing surgeries on, to advise them that  
5 they should return to the office should they develop any  
6 problems so we can check to see whether any of those problems  
7 might require further treatment.

8 Q Now, Doctor, as of that last visit, 9/9/24, had you  
9 reached an opinion as to whether or not Carlos had reached  
10 what's known as maximum medical improvement?

11 A Yes.

12 Q And can you tell me, first of all, what is maximum  
13 medical improvement?

14 A Maximum basically means that's where patients are going  
15 to be at their best after the procedure.

16 Q So, Doctor, what is the reason then for not seeing  
17 Carlos since 9/9/24 until today?

18 A There haven't been any issues between then and now.

19 Q And, Doctor, do you have an opinion based upon a  
20 reasonable degree of medical certainty as to what, if any, other  
21 future surgeries would be required in the future?

22 A Well, it's something that requires monitoring. So we  
23 basically are just going to continue to monitor him.

24 Q And what type of surgery might someone like him need  
25 based on his presentation?

1 MR. MAHER: Objection.

2 THE COURT: Rephrase. Sustained.

3 Rephrase it.

4 MR. SHECTMAN: Sure.

5 Q Doctor, when we say future surgery, what type of a  
6 future surgery are we talking about?

7 MR. MAHER: Objection.

8 Your Honor, maybe we should approach?

9 THE COURT: Okay.

10 Dr. Merola, would you step down for a moment.

11 THE WITNESS: Sure.

12 THE COURT: Counsels, if you would step up.

13 MR. SHECTMAN: Sure.

14 (At this time, the witness leaves the stand.)

15 (Whereupon, at this time, an off-the-record  
16 conference was held between both counsel and the Court at  
17 the side-bar.)

18 THE COURT: Are we finished with these exhibits?

19 MR. SHECTMAN: Yeah, yeah. We are done with  
20 these, your Honor, yes.

21 THE COURT: Can we take them down so that I can  
22 see better?

23 MR. MAHER: It's possible that I might need them  
24 at some point. It should be moved out of the way, but I  
25 just want to -- it's possible I might want to refer to it.

1 MR. SHECTMAN: May I continue?

2 THE COURT: Yes.

3 Q Doctor, I would like you to look at your note of  
4 2/6/23.

5 A Yes.

6 Q Okay. I should have started here.

7 2/6/23, if you could tell us, what was your impression  
8 and plan at that point?

9 THE COURT: Look at it and then just testify.  
10 Don't read it.

11 MR. SHECTMAN: Your Honor, I am going to do it,  
12 just so he can read from, I would like the jury to see it,  
13 I'm going to move Dr. Merola's chart into evidence, so that  
14 the jury can look at it in the jury room. I'll move it in  
15 as a business record.

16 THE COURT: Defendant?

17 MR. MAHER: I don't have that one. I don't have  
18 the 2/6/23. I have November 20th of '23.

19 MR. SHECTMAN: 2/6.

20 MR. MAHER: I think that was the last one.

21 MR. SHECTMAN: Whichever.

22 I'm moving in the Doctor's chart while he looks  
23 for it.

24 THE COURT: He needs to be able to look at it.

25 MR. MAHER: We had what Dr. Merola brought with

1 him marked for identification.

2 THE COURT: Correct.

3 MR. MAHER: Oh, it's up with him?

4 THE COURT: Yes.

5 Do you have an extra copy?

6 MR. SHECTMAN: You could use mine, if you want.

7 Go ahead and take it.

8 You want to look on with me? You can look on with  
9 me, if you want.

10 MR. MAHER: Okay, that's fine.

11 Q So, Doctor, looking at 2/6/23, what was your impression  
12 and plan?

13 A I had indicated that we should update diagnostic  
14 imaging studies to include x-rays.

15 Q Now, let me ask you: Why did you believe at that point  
16 that your plan was to update diagnostic studies to include  
17 x-rays?

18 A Well, he had already had two procedures and we did a  
19 fusion, so x-rays are something you can use over time to follow  
20 the patient.

21 MR. SHECTMAN: Okay. Your Honor, so I'm clear, I  
22 do want to move his records into evidence so the jury can  
23 see these records at the appropriate timing.

24 MR. MAHER: No objection, your Honor.

25 THE COURT: Very good then.

1 They are Plaintiff's ID number?

2 THE COURT OFFICER: Number 6.

3 THE COURT: Plaintiff's number 6 is moved into  
4 evidence.

5 (Whereupon, at this time, the documents was marked  
6 as Plaintiff's Exhibit 6 in evidence, by the Reporter.)

7 THE COURT OFFICER: Plaintiff's Exhibit 6 has been  
8 marked into evidence.

9 Q Okay. Now, Doctor, now that the records are in  
10 evidence, you actually can now read from them.

11 Can you read from where it says, We are updating, those  
12 three lines.

13 THE COURT: And we are still on the February?

14 MR. SHECTMAN: Yeah, February 6, 2023 office  
15 visit, your Honor.

16 A I'm sorry, what did you want me to read?

17 Q February 6, 2023, under Impression and Plan where you  
18 start, We are updating.

19 A "We are updating diagnostics primarily to monitor  
20 adjacent segment issues over the course of time which are  
21 generally known to develop within 7-10 years of the index  
22 procedure and will herald the need for revision surgery more  
23 likely than not in this gentleman's case."

24 Q So I just want to back up. When you said, we are  
25 updating diagnostics primarily to monitor adjacent segment

1 issues, what does that mean?

2 A It means there's --

3 MR. MAHER: Objection, your Honor.

4 Again, going back to the issues we discussed  
5 before. This counsel is trying to elicit speculative  
6 testimony, things that may happen and, you know, have not  
7 happened yet and it's not appropriate for this forum.

8 MR. SHECTMAN: And I will say, your Honor, it says  
9 the --

10 THE COURT: Overruled, Counsel. Overruled.

11 MR. SHECTMAN: -- it says the seven years.

12 THE COURT: Overruled is what I said.

13 And so, Dr. Merola, you can answer the question.

14 Q What does that mean?

15 THE COURT: What did he mean when he wrote that?

16 MR. SHECTMAN: Right.

17 Q When you wrote, we are updating diagnostics primarily  
18 to monitor adjacent segment issues, what did you mean by that?

19 A It's a way to monitor the condition of the patient's  
20 spine to see if there's any wear and tear to the area that we've  
21 operated on or any other areas.

22 Q Now, what does that mean, adjacent segment? What is  
23 that?

24 A It's the other portions of the spine.

25 Q Well, how do those portions get effected when you do a

1 procedure such as the one you have done?

2 A Well, in general, anytime you are doing anything  
3 mechanical, anything that you do that's mechanical will have  
4 mechanical effects over time. So fusions are mechanical and the  
5 spine itself is mechanical, so looking at x-rays or MRIs is a  
6 way to monitor spinal health over the course of time.

7 Q You mention in your report you're monitoring adjacent  
8 segment issues over the course of time which are generally known  
9 to develop within 7-10 years of the index procedure.

10 What does that mean?

11 A It means that's typically when you start to worry about  
12 problems in patient's backs that have required previous surgery  
13 or have had disc issues.

14 Q And what does, when you say within 7-10 years of the  
15 index procedure, what does that mean?

16 A That means from the time you did your surgery.

17 Q That what might be anticipated in the 7-10 years?

18 A That there may be --

19 MR. MAHER: Objection.

20 Calling for speculative testimony as to what might  
21 happen in the future, your Honor.

22 THE COURT: Let him answer the question, we  
23 haven't gotten it yet.

24 I heard your objection. Sustained.

25 Q Doctor, do you believe more likely than not, as I'm

1 reading, he will need another surgery?

2 MR. MAHER: Objection.

3 THE COURT: Sustained.

4 Q Doctor, can you read that sentence to the jury,  
5 word-for-word, so that --

6 MR. MAHER: Objection.

7 THE COURT: Sustained.

8 Q Doctor, did you put an opinion in your report as to  
9 whether or not revision surgery more likely than not would be  
10 needed in this gentleman's case?

11 MR. MAHER: Objection.

12 THE COURT: Overruled.

13 What's in the report, Doctor?

14 THE WITNESS: That we're looking for adjacent  
15 segment issues over the course of time.

16 THE COURT: Okay.

17 Q And the last sentence, Doctor, where it starts and will  
18 herald?

19 A And will herald the need for revision surgery.

20 Q And then what's the rest of the sentence?

21 A More likely than not in this gentleman's case.

22 Q Thank you, Doctor.

23 Then now, turning to the next visit, March 20, 2023.

24 Doctor, did you, in your plan March 20, 2023, did you  
25 then again mention about updating diagnostics under your

1 Impression and Plan?

2 A Yes.

3 Q Again, to monitor adjacent segment issues over the  
4 course of time?

5 A Yes.

6 Q Generally known to develop within 7-10 years?

7 A Yes.

8 Q Of the index procedure?

9 A Yes.

10 Q And it will herald the need for revision surgery?

11 A Yes.

12 Q More likely than not in this gentleman's case?

13 A Yes.

14 Q Turning to 11/20/23 --

15 THE COURT: I'm sorry, the date again.

16 MR. SHECTMAN: I'm sorry, your Honor, 11/20/23.

17 Q November 20, 2023 where it says, Postoperative X-Rays.

18 Can you read to us where it says, I have counselled the patient.

19 A I have counselled the patient regarding the current  
20 condition understanding that given the patient's age more likely  
21 than not over the course of time future surgery to involve  
22 adjacent segments would be necessary and required.

23 Q And you don't think he needs the surgery right now,  
24 correct?

25 A Correct.

1 Q And then I believe the most recent visit, Doctor, we  
2 said was 9/9 of '24, correct?

3 A Yes.

4 Q So, Doctor, now you treated this patient, I believe  
5 it's from 7/22/19 until most recently, 9/9/24, correct?

6 A Yes.

7 Q Based on your treatment of Carlos over the last five  
8 years, what we saw on the MRIs, your physical findings, bringing  
9 the entire picture together, what is your diagnosis as to  
10 Carlos' condition?

11 A He's someone who had a radiculopathy who's had a low  
12 back -- two low back procedures.

13 Q And what about the herniation L5-S1?

14 A That was one of the issues regarding his radiculopathy.

15 Q Okay, part of his diagnosis?

16 A Yes.

17 Q Okay.

18 And, Doctor, do you have an opinion as to the cause --

19 MR. SHECTMAN: Withdrawn.

20 Q Doctor, do you have an opinion as to whether or not the  
21 accident of 3/6/19 was the cause of these conditions?

22 A Yes.

23 Q And your opinion?

24 A Based on the information I have available to me, the  
25 accident of 3/6/19 was the cause of the low back condition.

1 Q Now, Doctor, do you have an opinion based upon a  
2 reasonable degree of medical certainty as to whether or not the  
3 pain that he still had five years later when he last saw you,  
4 whether that pain is permanent?

5 THE COURT: Counsel, you are going to have to slow  
6 down.

7 MR. SHECTMAN: Oh, I'm sorry.

8 THE COURT: I understand where you're going but  
9 you're going to have to slow down.

10 Q Do you have an opinion, Doctor, based upon a reasonable  
11 degree of medical certainty as to whether or not his pain, which  
12 you still noted in September of '24, is permanent?

13 A Yes.

14 Q And what is your opinion?

15 A More likely than not that it's permanent.

16 Q Now, Doctor, the restrictions in motion that you found,  
17 50 percent in lumbar extension, 30 percent in flexion,  
18 50 percent rotation, do you have an opinion as to some degree of  
19 loss will always remain, meaning be permanent in the range of  
20 motion of his spine?

21 A Yes.

22 Q And your opinion?

23 A That there will always be some degree of range of  
24 motion loss.

25 Q Doctor, do you have an opinion based upon a reasonable

1 degree of medical certainty as to whether or not Carlos can  
2 return to construction work?

3 A Yes.

4 Q And what's your opinion?

5 A I would have him avoid heavy labor.

6 Q And if his job in construction required heavy labor, do  
7 you think he would be able to perform it?

8 A No.

9 Q Doctor, do you have an opinion if there's some job  
10 somewhere, let's say just sitting down, that he can do  
11 something?

12 A Yes.

13 Q What's your opinion?

14 A That he can return to the workforce as long as it's not  
15 heavy labor.

16 Q Something, I guess sedentary is the word, sitting?

17 A That's possible, yes.

18 Q Now, Doctor, I would like you to assume that --

19 MR. SHECTMAN: Actually, withdrawn.

20 Q Doctor, do you have an opinion based upon a reasonable  
21 degree of medical certainty as to whether or not based upon what  
22 you found during your physical examinations over the years, the  
23 EMGs, the MRIs, your findings during two operations, all of the  
24 symptomology that Carlos presented with, do you have an opinion  
25 whether or not Carlos could have had these conditions before

1 this accident and done construction work?

2 MR. MAHER: Objection.

3 THE COURT: Sustained.

4 Q Well, Doctor, do you have an opinion whether or not the  
5 symptomology that he presented to you with, Carlos could have  
6 had that and perform his work in the construction industry?

7 MR. MAHER: Objection.

8 THE COURT: Sustained.

9 MR. SHECTMAN: May I ask the basis, your Honor?

10 THE COURT: I'm sorry?

11 MR. SHECTMAN: May I ask the basis?

12 THE COURT: We can have a sidebar. It's sustained  
13 right now.

14 MR. SHECTMAN: Sure.

15 THE COURT: Counsel, you can stay there for one  
16 moment.

17 Do you want to state what your basis is, if it  
18 doesn't go too far.

19 MR. MAHER: I mean, your Honor, you know, this  
20 doctor --

21 THE COURT: Sounds like we need a sidebar.

22 I'm sorry, Doctor.

23 THE WITNESS: No problem.

24 THE COURT: Okay, just step down.

25 THE WITNESS: Sure.

1 (At this time, the witness leaves the stand.)

2 (Whereupon, at this time, an off-the-record  
3 conference was held between both counsel and the Court at  
4 the side-bar.)

5 THE COURT: So, Counsel, based on the side  
6 conference that we just had, the objection remains  
7 sustained.

8 The jury needs a break for a moment.

9 MR. SHECTMAN: The what?

10 THE COURT: The jury needs a break.

11 MR. SHECTMAN: Oh. Sure, of course.

12 THE COURT: So the jury is excused for the moment.  
13 Remember, you are not to discuss anything that you have  
14 heard.

15 Go ahead.

16 THE COURT OFFICER: All rise. Jury exiting.

17 (Whereupon, at this time, the jury exited the  
18 courtroom.)

19 MR. SHECTMAN: I want to put something on the  
20 record, your Honor.

21 THE COURT: Counsel, whenever you are ready.

22 MR. SHECTMAN: Sure.

23 Your Honor, I wanted to make an offer of proof as  
24 to what I was intending on asking the Doctor. I was going  
25 to ask the Doctor, do you believe with the symptomology --

1 THE COURT: Excuse me, in the back. We are back  
2 on the record.

3 MR. SHECTMAN: -- I was going to ask the doctor  
4 that, based on the symptomology of what Carlos presented  
5 with, based on that symptomology as you noted on your first  
6 visit, do you have an opinion based upon a reasonable  
7 degree of orthopedic certainty as to whether or not he  
8 could have been working in construction up until that time?  
9 Which is, I believe would have elicited the answer no.  
10 Which goes to causation, that he could not have had these  
11 issues before.

12 The Court didn't allow it and I maintain a  
13 strenuous objection that that would support my claim of  
14 causation, that he could not have had these injuries and  
15 yet worked construction with the way he presented himself  
16 on the first visit, and the Court didn't allow it.

17 THE COURT: Defendant, anything?

18 MR. MAHER: Nothing to add to Counsel just  
19 confirming that the Court instructed him not to ask the  
20 witness that question.

21 THE COURT: Okay, and the Court maintains its  
22 ruling.

23 Are we then ready for the jury to return?

24 MR. SHECTMAN: Yes.

25 THE COURT: Okay, thank you.

1 THE COURT OFFICER: All rise. Jury entering.  
2 (Whereupon, at this time, the jury entered the  
3 courtroom.)

4 THE CLERK: Do all Counsel stipulate to the  
5 presence and proper seating of the jury?

6 MR. SHECTMAN: Yes.

7 MR. MAHER: Yes.

8 THE COURT: Very good.

9 You can have a seat, Jurors. We will continue  
10 with the plaintiff's questioning.

11 You may continue, Counsel.

12 MR. SHECTMAN: Thank you, your Honor.

13 BY MR. SHECTMAN:

14 Q Doctor, I would like you to assume that on May 17th,  
15 Carlos slipped and fell --

16 THE COURT: Of what year, Counsel?

17 MR. SHECTMAN: May 17, 2017.

18 Q -- that Carlos had a slip and fall at a restaurant, hit  
19 his head and fell onto his buttocks, on his tailbone. I would  
20 like you to assume that he didn't even present to the hospital  
21 until about ten days after it happened. After that one visit to  
22 the hospital, there was no further treatment for anything  
23 related to that slip and fall, no surgery, no injections, and  
24 that Carlos continued to work construction 40 hours a week up  
25 until the date of this accident on 3/6/19.

1           Based on that hypothetical, Doctor, do you have an  
2 opinion based upon a reasonable degree of medical certainty as  
3 to whether or not that fact in any way changes the opinions you  
4 have given today?

5           MR. MAHER: Objection.

6           THE COURT: He could answer that.

7           A     Yes, I have an opinion.

8           Q     What is your opinion?

9           A     That it does not impact the 3/6/2019 accident.

10          MR. SHECTMAN: Nothing further.

11          Thank you, everybody.

12          (Whereupon, the following was recorded and  
13 transcribed by Official Court Reporter Valerie McNally.)

14          (Continued on next page.)

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1 THE COURT: Thank you, Counsel. We're ready for  
2 defense cross-examination.

3 MR. MAHER: Thank you, Your Honor. I am ready. I  
4 would like the easel once Mr. Sheckman is done.

5 THE COURT: You are saying the easel. You mean  
6 the podium?

7 MR. MAHER: The podium.

8 THE COURT: Okay. That's why I was asking.

9 MR. MAHER: Judge, may I inquire of the witness?

10 THE COURT: Yes.

11 CROSS-EXAMINATION

12 BY MR. MAHER:

13 Q Good afternoon, Dr. Merola.

14 A Good afternoon.

15 Q How are you today?

16 A Good. Thank you.

17 Q Now, is this the first time in your career that you've  
18 come to court to testify?

19 A No.

20 Q And, in fact, is it fair to say, Dr. Merola, that you  
21 have a lot of experience testifying in court?

22 A Yes. Over the last 30 years or so of my practice I  
23 have been to court a number of times, yes.

24 Q Hundred and hundreds of times?

25 A Probably a hundred or so times, yes.

1 Q You've testified in court at a minimum of 200 times in  
2 the past?

3 A I don't know the exact number, but it's somewhere like  
4 six -- I guess six or seven per year for maybe the last 25 years  
5 or so.

6 Q Do you recall testifying recently in a court proceeding  
7 where you acknowledged that you have testified in court at least  
8 200 times?

9 A I don't know if I said 200, but I did recently appear  
10 in court.

11 Q On a case called A. Torres versus Ryder Construction?

12 A Torres, yes.

13 Q In that case you testified under oath that you  
14 testified at least 200 times in court?

15 A I would -- yes, fine.

16 Q This is not the first time you have been here?

17 A No, it's not.

18 Q All right. Now, during these 200 or so more times that  
19 you came to court to testify, have you ever come to testify on  
20 behalf of the party that was being sued, meaning the defendant?

21 A Yes, I have, early on in my career, yes.

22 Q How about in the last ten years, have you ever done  
23 that?

24 A No.

25 Q Every single time you've come to court in the last ten

1 years it's been on behalf of somebody suing, like Mr. Paiba,  
2 correct?

3 A On behalf of the plaintiff, yes.

4 Q And are you being compensated for your appearance here  
5 today?

6 A No, I am not.

7 Q In the past when we talked about these other times you  
8 came to court, were you compensated?

9 A Yes.

10 Q How were you compensated for your time?

11 A It's typically billed at an hourly rate being away from  
12 the practice.

13 Q What was the hourly rate that you were charging?

14 A The last hourly rate I believe was 750 per hour.

15 Q You say that's for time away from the practice. Now,  
16 what does that include exactly when you're called by a  
17 plaintiff's personal injury attorney to testify in a case?

18 A The time that I have to spend on the case that's aside  
19 from the time taking care of patients.

20 Q Meaning that would include time reviewing your records?

21 A Sure.

22 Q Time meeting with the attorney?

23 A Yes.

24 Q And other types of preparation that you might do?

25 A Yes.

1 Q Then your travel here?

2 A Yes.

3 Q And your travel back?

4 A Yes.

5 Q And time that you are here?

6 A Yes.

7 Q On average, what would you say -- how many hours do you  
8 have to dedicate doing all of those things before coming here to  
9 testify?

10 A I mean on average, it could be anywhere between 6 to  
11 10 hours in some cases, some cases less, depending on how much  
12 time you have to spend in court or how many records you have to  
13 review.

14 Q Coming to court, getting here, getting back, that never  
15 takes less than 4 or 5 hours?

16 A Actually, I got here pretty quickly because I could  
17 take the LIRR right to Jamaica station, which is really a  
18 straight shot. It depends on where the court is, sure.

19 Q It would be fair to say you bill at least ten hours for  
20 your time here and your preparation, all of the 200 or so times  
21 you came to court in the past?

22 A I would say somewhere in the neighborhood of about ten  
23 hours is reasonable on average, if you would average up all the  
24 cases over time.

25 Q It would be around \$7500 for appearance?

1 A Reasonable estimate, yes.

2 Q If you appeared 200 times at \$7500 over the last  
3 30 years, it would be fair to say you earned over a million  
4 dollars just coming to court testifying?

5 A Yeah, those rates have changed over the last several  
6 years. I think 750 is the one I just started using this year.  
7 Prior to that it was 650, then prior to that 450.

8 Q Now, isn't it also true that most cases where your  
9 patient has a claim for personal injury pending, they don't go  
10 to trial, right?

11 A I don't know what the amount of folks that settle or  
12 have other legal issues is, but I do know that I go to court  
13 about 6 or 7 times per year.

14 Q A lot of your patients are individuals who have claims  
15 for personal injury pending, are they not?

16 A Cases that involve some type of accident or trauma can  
17 have personal injury pending, yes.

18 Q What I am saying is, a lot of your patients have  
19 personal injury lawsuits pending, right?

20 A I take care of everybody, from kids to adults,  
21 degenerative through congenital through trauma, so --

22 Q It's not really an answer to the question, is it,  
23 Doctor?

24 A You said a lot of my patients can have cases that are  
25 pending, but I don't know that's a correct characterization.

1 Q All right. Well, in the cases that you have where the  
2 patient has a personal injury lawsuit pending, are you sometimes  
3 asked by their attorney to prepare a report?

4 A Yes.

5 Q And that would be regardless of whether the case is  
6 going to trial or not, right?

7 A I mean yes, if you are asked to provide what is called  
8 a narrative report, I typically would do that.

9 Q Do you charge a fee for that?

10 A Yes.

11 Q How much do you charge every time you prepare a  
12 narrative report?

13 A It's the same rate, same hourly rate.

14 Q What goes into preparing your report?

15 A Typically it's a review of my notes and medical  
16 records.

17 Q Right. And so how long does it take you to prepare  
18 these reports?

19 A It depends on how many medical records are needed to be  
20 reviewed.

21 Q On average, what do you charge for preparing these  
22 reports?

23 A Average is anywhere between 750 to \$1100 or so per  
24 report.

25 Q On average, how many of these reports have you been

1 preparing over the last ten years?

2 A I don't even know. I couldn't tell you.

3 Q Could you give me a range?

4 A No, I cannot.

5 Q 500?

6 A I would be completely and entirely guessing.

7 Q A thousand?

8 A Once against, that would be a complete guess.

9 Q Two thousand? You have no idea how many of these  
10 reports you prepared?

11 A No, because I dictate cases all day long, either seeing  
12 patients or doing surgeries and writing reports and I haven't  
13 parsed them out so I couldn't give you a number.

14 Q Okay. So I am just curious. Were you served with a  
15 subpoena to appear here today?

16 A Yes.

17 Q Any particular reason?

18 A I really would rather not be here.

19 Q Okay, but you didn't have a problem coming to court the  
20 other 200 or so times?

21 A My practice is changing and I am trying to avoid coming  
22 to court and taking care of patients more.

23 Q Now, even though you are here pursuant to a subpoena,  
24 before coming here today did you meet with the plaintiff's  
25 attorney, Mr. Sheckman, or anyone from his office, either in

1 person or over the phone?

2 A I spoke to Mr. Sheckman over the phone last week about  
3 coming to court today.

4 Q And did you have a meeting with him though to prepare?

5 A I did not, no.

6 Q Did you charge him for your interaction with him or  
7 anyone from his office?

8 A No, I did not.

9 Q Now Doctor, I believe that you were also served with a  
10 subpoena from my office for all of your medical records; is that  
11 correct?

12 A I would think that I was, yes.

13 Q But the only records you brought in were the notes; is  
14 that right?

15 A Yes.

16 Q So all the records didn't make it here; is that right?

17 A Yes.

18 Q Okay. Now, you first saw the plaintiff, Mr. Paiba, on  
19 July 22nd of 2019?

20 A Yes.

21 Q And where were your offices located on July 22nd of  
22 2019?

23 A In Brooklyn and in Manhattan.

24 Q Well, what office were you working in when you saw Mr.  
25 Paiba on July 22, 2019?

1 A I primarily see patients at 141 West 28th Street.

2 Q In Manhattan?

3 A Yes.

4 Q Do you know where Mr. Paiba was living in July of 2019?

5 A Not offhand, no.

6 Q So you don't know where your patients live?

7 A I'd have to look at their address. I don't have it  
8 memorized.

9 Q You don't have anything in your records that you  
10 brought with you here today that would refresh your recollection  
11 as to where he was living?

12 A Correct.

13 Q And so if he was living in New Jersey, you are not  
14 aware of that?

15 A Once again, I don't know where he was living.

16 Q I am just curious, Doctor, how does a patient who lives  
17 in New Jersey end up selecting you in Manhattan to be his  
18 doctor?

19 A I've been in practice for 30 years. Patients come to  
20 me for all sorts of reasons.

21 Q Fair enough. But there are other qualified orthopedic  
22 surgeons in New Jersey, right?

23 A There are orthopedic surgeons just about wherever you  
24 go, yes.

25 Q Okay. So it was just happenstance that he happened to

1 end up at your doorstep?

2 A He had been referred to me by Dr. Grimm. My  
3 understanding is he was treating with Dr. Grimm and Dr. Grimm  
4 made the referral to me.

5 Q Now Dr. Grimm, what type of doctor is Dr. Grimm?

6 A Physical medicine rehabilitation and pain management.

7 Q He is a pain management doctor?

8 A Yes.

9 Q Is Mr. Paiba the first patient that Dr. Grimm had ever  
10 referred to you?

11 A No.

12 Q Would it be fair to say that Dr. Grimm referred  
13 hundreds of patients to you over the years?

14 A I don't know how many he referred, but I have shared  
15 patients with Dr. Grimm.

16 Q A lot of patients?

17 A Once again, I don't have those numbers but I have  
18 shared patients with Dr. Grimm.

19 Q Now, what practice was Dr. Grimm associated with back  
20 in July of 2019?

21 A I believe he was doing physical medicine rehabilitation  
22 and pain management with Dr. Kaplan.

23 Q And would it be fair to say that most, if not all, of  
24 the patients that Dr. Grimm referred to you had retained an  
25 attorney and were bringing a lawsuit for personal injury?

1 A I don't know.

2 Q Is Gorayeb and Associates the name of a firm whose  
3 clients were frequently referred to you by Dr. Grimm?

4 MR. SHECTMAN: I object. What does it have to do  
5 with this case?

6 THE COURT: I need you to use the microphone and  
7 stand up.

8 MR. SHECTMAN: My objection is, what does another  
9 law firm have to do with this case with Carlos Paiba?

10 THE COURT: Sustained.

11 MR. SHECTMAN: It doesn't --

12 THE COURT: Sustained, sustained.

13 MR. SHECTMAN: Thank you.

14 Q You've gotten patients who are being represented by  
15 Gorayeb and Associates in the past?

16 MR. SHECTMAN: Objection.

17 THE COURT: Sustained.

18 MR. SHECTMAN: What does it have to with this?  
19 It's the same question.

20 THE COURT: Counsel, I've sustained it. That's  
21 it.

22 MR. SHECTMAN: Thank you.

23 Q Do you still receive patient referrals from Dr. Grimm?

24 A I believe we continue to share patients, yes.

25 Q And does Dr. Grimm still work for New York Ortho Sports

1 Medicine and Trauma PC?

2 A I would be speculating. I don't know, but I know I've  
3 seen Dr. Grimm's patients.

4 Q To your knowledge, does Dr. Grimm still treat patients  
5 who are involved in construction accidents and have filed a  
6 claim for personal injury?

7 A I don't know.

8 Q Do you recall, Doctor, that on July 28th of 2025 Dr.  
9 Grimm voluntarily resigned his authorization to treat --

10 MR. SHECTMAN: Objection. Could we approach?  
11 Could you stop?

12 THE COURT: You stop. You made an objection. The  
13 objection is sustained.

14 MR. SHECTMAN: May we approach? We have an issue.

15 THE COURT: No. Let me hear the next question.  
16 Your objection is sustained.

17 MR. SHECTMAN: Can the jury be told to strike that  
18 question?

19 THE COURT: The question is stricken and there was  
20 no answer.

21 MR. MAHER: I just need to be heard.

22 MR. SHECTMAN: May we approach for a moment?

23 THE COURT: Dr. Merola, would you step down  
24 please.

25 (Whereupon, at this time, the witness exited the

1 witness stand.)

2 THE COURT: Counsel, you may approach.

3 (Whereupon, at this time, an off-the-record  
4 conference was held between all counsel and the Court at  
5 the side-bar.)

6 THE COURT: At this point we'll go back on the  
7 record. I am going excuse the jurors so that we can take  
8 care of some legal issues.

9 THE COURT OFFICER: All rise. Jury exiting.

10 THE COURT: I'll remind you not to discuss the  
11 matter amongst yourselves or with anyone else, in case we  
12 don't get a chance to see each other before you are  
13 released.

14 (Whereupon, at this time, the jury exited the  
15 courtroom.)

16 THE COURT: Everyone could have a seat.

17 Dr. Merola, you could step out. Thank you.

18 (Whereupon, at this time, the witness exited the  
19 courtroom.)

20 THE COURT: Plaintiff.

21 MR. SHECTMAN: Your Honor, this really is terrible  
22 because the question was basically asking Dr. Merola, I am  
23 assuming, is he aware Dr. Grimm's, I guess he was going to  
24 ask, Workers Compensation authorization to treat patients  
25 was revoked. I would love to hear what that has to do with

1 this case, other than to try to backdoor a fact that would  
2 otherwise not get in.

3 You cannot ask that question in front of this  
4 jury. Whether he says yes or no, it's the assumption from  
5 asking the question that's there's got to be something  
6 wrong with Dr. Grimm. Dr. Grimm isn't even testifying so  
7 what's the point of impeaching Dr. Grimm who's not even  
8 here?

9 I'm seriously going to consider asking for a  
10 mistrial. After we have argument, I would like to step out  
11 and I have certain things I would like to maybe make a  
12 motion for. That question should not have even been asked.  
13 You are using Dr. Merola to impeach someone else. It's  
14 ridiculous and can't be done. It's going to cause a  
15 mistrial if it hasn't done so already.

16 So when we are done, I want to step out and ask if  
17 that's how they want to proceed.

18 THE COURT: Step out and -- I didn't understand  
19 the last part.

20 MR. SHECTMAN: I want to ask my office if that's  
21 how they want to proceed. There has been a lot of time and  
22 money spent and if I'm asking for a mistrial, we're  
23 certainly not paying for the expenses and I am going to ask  
24 my office how they want to proceed.

25 THE COURT: You are the counsel here with

1 authority. Have a seat.

2 Defendant.

3 MR. MAHER: Judge, this question is absolutely  
4 relevant. Dr. Grimm is the referring physician and the  
5 defendant's position in this case is that a lot of these  
6 treatments were unnecessary and Dr. Grimm is part of the  
7 chain of how plaintiff came to Dr. Merola and if he is  
8 accepting patients from Dr. Grimm over and over and over  
9 again, it's relevant to know that now Dr. Grimm has  
10 voluntarily resigned from receiving patients from the  
11 Worker's Comp Board.

12 Now, I crafted my question so as not to use the  
13 word Worker's Compensation, but to communicate the type of  
14 individuals who would have Workers Compensation claims and  
15 in that way I think that the question is entirely proper.  
16 If Dr. Merola is receiving substantial referrals from a  
17 doctor who -- and the referral in this particular case, who  
18 had to resign from the Workers Comp board because of fraud.

19 MR. SHECTMAN: Your Honor this comes back to what  
20 we're talking about with the RICO stuff. Somebody could  
21 withdraw their authorization because they don't want to  
22 deal with things like this lawyer bringing up, comp this  
23 comp that.

24 You can't ask Dr. Merola about the findings  
25 against another doctor. This is Dr. Merola. If they want

1 to attack his credibility, his skill or necessity for  
2 surgery, they can do that but you can't make --

3 THE COURT: Slow down, Counsel.

4 MR. SHECTMAN: I apologize. I am trying to.

5 THE COURT: I understand what you are trying to do  
6 but it doesn't help us with the record.

7 MR. SHECTMAN: What I was saying is, similar to  
8 your ruling this morning, if they want to ask this doctor  
9 whether he did a surgery and why, that's one thing. But  
10 you can't ask a jury to speculate if another doctor on  
11 unrelated cases did something wrong. That would be  
12 propensity proof. Oh, he must have done something wrong  
13 here. You cannot make that assumption.

14 THE COURT: Okay, I'm going to stop you for a  
15 moment.

16 Madam Court Reporter, could you read to me that  
17 last question please?

18 (Whereupon, at this time, the requested portion of  
19 the record was read back by the reporter.)

20 THE COURT: We will not proceed down that line  
21 because that goes against the ruling that was made in the  
22 beginning with respect to the RICO and the allegations. If  
23 Dr. Grimm was here --

24 MR. MAHER: Dr. Grimm is a treating doctor and he  
25 is not being called, which is why we were asking for a

1 missing witness charge. He wants to not call Dr. Grimm.  
2 He wants to insulate this while we know there's something  
3 not right here and --

4 THE COURT: We have had this conversation,  
5 counsel, at the beginning when the motion was made and/or  
6 not made, when plaintiff's submitted opposition and the  
7 Court made a ruling at that time and directed that any  
8 questions that were going to be asked of any of the expert  
9 witnesses were to be asked of the expert witness and their  
10 relation and their care and treatment to the plaintiff, not  
11 with respect to any allegations that may have been made.  
12 And certainly by other doctors.

13 MR. MAHER: This is not an allegation, this is a  
14 fact. The fact is, Dr. Grimm resigned his privileges to  
15 treat patients in the Worker's Compensation Board.

16 THE COURT: What does that have to do with this  
17 case?

18 MR. MAHER: Everything, because Dr. Merola -- Dr.  
19 Grimm was one of the treating doctors and Dr. Grimm  
20 referred plaintiff to Dr. Merola.

21 THE COURT: And so therefore?

22 MR. MAHER: Therefore it relates to issues of  
23 whether or not people are practicing sound medicine.

24 THE COURT: It leads to speculation on the part of  
25 the jury with respect to Dr. Grimm.

1 Plaintiff.

2 MR. SHECTMAN: Your Honor, just hearing it is even  
3 making me more convinced that I might have to ask for a  
4 mistrial. I don't know if you can unring the bell. I  
5 would like to step out and ask my office how they want to  
6 proceed.

7 THE COURT: The question was, first of all,  
8 stricken. It wasn't completed and is not specific enough  
9 to -- if you want to make a mistrial, you can do so.

10 MR. SHECTMAN: Just for the record, when I  
11 objected he keep continuing with the question, that's why I  
12 got louder. If there was an objection, really both  
13 attorneys should immediately stop.

14 THE COURT: Now you're going to practice the rules  
15 of court? I have dealt with that question and at this  
16 point I think it's time for us to break and Dr. Merola will  
17 be instructed to return tomorrow to continue  
18 cross-examination.

19 MR. SHECTMAN: Your Honor, just so we're on the  
20 record, I am assuming based on your ruling which was  
21 already made this morning, there shouldn't be anything of  
22 this nature asked in front of this jury. If you remember,  
23 with Mr. Owaid, we were worried about unringing a bell.  
24 The bell has been rung. I jumped up and it looks like I am  
25 trying to hide something. I have serious concerns here.

1 MR. MAHER: You are trying to hide something.

2 MR. SHECTMAN: Stop, stop.

3 THE COURT: One at a time. This goes partly when  
4 I am directing counsel particularly to slow down the  
5 conversations is because we, as officers of the court,  
6 understand some of the terms and what the implications are,  
7 things that the jury does not understand.

8 I don't think there was enough of the question put  
9 on the record to raise the issues that you are getting to,  
10 Mr. Sheckman, and so therefore I don't really see at this  
11 point a basis for -- you can certainly make the motion but  
12 I don't see any basis for it.

13 And I will direct the defendant, again,  
14 defendant's Counsel, Mr. Maher, to refrain from asking  
15 questions regarding any of the allegations, particularly  
16 about doctors that are not part of this case. You cannot  
17 go into questions with this doctor, with this witness, with  
18 respect to the questions that you -- the first question you  
19 asked, I don't know where you were going and asking this  
20 doctor to make any speculation. Any questions that you  
21 have to ask of this doctor should relate to the treatment  
22 that he provided to the plaintiff.

23 MR. MAHER: Just again for the record, Dr. Grimm  
24 is a part of this case because he was the referring  
25 physician and I maintain that the question is proper based

1 upon the involvement of the doctor and legal implications  
2 that have had with him. I never used the word RICO, never  
3 used the language in the lawsuit. I just asked about a  
4 fact that is undisputed.

5 THE COURT: I'll not allow you to make anything  
6 running around my ruling that was made this morning and the  
7 ruling I made on the question by not using particular words  
8 that really may have meaning to the jurors but don't  
9 necessarily. And so the objection remains sustained.  
10 We'll have Dr. Merola back tomorrow so that we can continue  
11 cross-examination and redirect if necessary.

12 MR. MAHER: Thank you, Your Honor.

13 MR. SHECTMAN: Could you tell Dr. Merola? It's  
14 different coming from Your Honor than from me.

15 THE COURT: I plan on doing that.

16 MR. SHECTMAN: I appreciate that. Thank you.

17 (Whereupon, at this time, the witness resumed the  
18 stand.)

19 THE COURT: You can come back up. We're back on  
20 the record. Dr. Merola, you understand that you are still  
21 under cross-examination by the defendant. Given our court  
22 directive, we don't have enough time to complete the full  
23 examination so I am directing you return tomorrow at 9:30.

24 THE WITNESS: I have some noncancelable issues  
25 this week.

1 THE COURT: You have to use the microphone.

2 THE WITNESS: I have some things that I cannot  
3 cancel.

4 THE COURT: I believe the subpoena issued  
5 indicates day-to-day.

6 MR. MAHER: I never saw the subpoena.

7 MR. SHECTMAN: I don't know if I have a copy of it  
8 with me.

9 THE COURT: That's typical language.

10 MR. SHECTMAN: Could I go on my phone to pull it  
11 up? I don't have a copy with me, Judge.

12 THE COURT: When you say you have noncancelable, I  
13 am not holding this trial up.

14 THE WITNESS: There are scheduled patients for  
15 tomorrow that I don't schedule that are due to see me in  
16 the office that are coming from multiple different  
17 locations, so I cannot not be there for those patients and  
18 then I have surgery on Wednesday and I have another  
19 nonschedulable Thursday based on patients that are coming  
20 from far away.

21 THE COURT: Then you need to be here tomorrow so  
22 we can finish this.

23 THE WITNESS: Your Honor, me being present  
24 tomorrow in office is not under my control. Honestly, if  
25 it were under my control, I can cancel. I cancelled my

1 office hours for today.

2 THE COURT: I don't understand it's not under your  
3 control. Call cancelling an appointment --

4 THE WITNESS: It's 20 appointments for 20 people  
5 that I did not schedule.

6 THE COURT: I am not -- we're in the middle of  
7 cross-examination and we need to finish the  
8 cross-examination, we need to finish with you. It sounds  
9 like a very busy schedule and we need to finish your  
10 examination. We can't put it over for 3 or 4 days.

11 THE WITNESS: I don't know what to say.

12 THE COURT: I am directing you to be here  
13 tomorrow.

14 THE WITNESS: I can try to be here tomorrow  
15 afternoon.

16 THE COURT: If he comes in tomorrow afternoon, are  
17 we going to finish with him tomorrow afternoon?

18 MR. SHECTMAN: Well, I guess you have to ask Mr.  
19 Maher on how much cross he has.

20 MR. MAHER: I mean, hopefully, Your Honor, if we  
21 start right at 2:00 o'clock.

22 THE COURT: Realistically if are we going forward  
23 with the plaintiff, I want to finish with Dr. Merola.

24 MR. SHECTMAN: Whatever you want.

25 THE COURT: So then we'll start tomorrow at

1 2:00 o'clock --

2 MR. MAHER: That's okay with me.

3 THE COURT: -- with Dr. Merola, so we can finish.

4 MR. SHECTMAN: Sure, Your Honor.

5 THE COURT: So then tomorrow at 2:00 o'clock.

6 THE WITNESS: I'll do my best, Your Honor.

7 THE COURT: Thank you. You are excused, Dr.

8 Merola.

9 (Whereupon, at this time, the witness was  
10 excused.)

11 THE COURT: If we can let the jury know that they  
12 are excused until tomorrow at 2:00 o'clock. They should be  
13 here promptly at 2:00 o'clock so we can start at  
14 2:00 o'clock.

15 Off the record.

16 (Whereupon, the trial was adjourned until March  
17 10, 2026.)

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