In The Matter Of:

Juan Julca v.

ERY Tenant, LLC, ERY Retail Podium, LLC

Dr. Matthew Grimm

March 9, 2026

Supreme Court State of New York - Civil Term

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New York, New York 10007

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK : CIVIL TERM : PART 58

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JUAN JULCA, : Index: 161813/2019

Plaintiff(s). :

- against - :

ERY TENANT, LLC, ERY RETAIL PODIUM, LLC, : TRIAL

Defendant(s). :

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71 Thomas Street
New York, New York 10013
March 9, 2026

B E F O R E:

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

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

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SHAMEEKA HARRIS, CSR, RMR, CLR
Senior Court Reporter

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

COURT OFFICER: All rise, jury entering.

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

COURT OFFICER: Please be seated.

THE COURT: Members of the jury, good afternoon and welcome back. I hope and trust you had a nice weekend away from us. But now you're back, and we are going to get to some additional testimony this afternoon. Before we do that, I want to tell you that based upon the notes that I received on Friday, we've made some adjustments and I have a revised schedule of the trial dates for you. I will give that to you by the end of the day. At this time, I'll call upon Mr. Rosengarten to call your next witness.

MR. ROSENGARTEN: Thank you, Your Honor. The plaintiff calls Dr. Matthew Grimm to the stand.

M A T T H E W G R I M M, a witness called by and on behalf of the Plaintiff, upon being duly sworn, was examined and testified as follows:

THE WITNESS: Yes.

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

THE WITNESS: Matthew Grimm, M-A-T-T-H-E-W, G-R-I-M-M. 160 East 56th Street, New York, New York 10022.

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

THE COURT: Counsel, you may inquire.

MR. ROSENGARTEN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ROSENGARTEN:

Q Good afternoon, Dr. Grimm.

A Hello.

Q Can you please tell the jury about your educational background?

A I got a bachelor at Penn State. Then I went to medical school at Jefferson Medical College graduating in 2005. Then did a preliminary internship year at Graduate Hospital in Philadelphia for specializing in physical medicine rehabilitation doing residency at the University of California Irvine as well as William Beaumont Hospital in Royal Oak, Michigan. And then I specialized for one year in interventional pain illustrative program in Marietta Georgia in nonsurgical orthopedics. Before then, I studied at my current job in 2001 at New York Ortho Sports Medicine and Trauma.

Q Are you board certified?

A Yes.

Q What are you board certified in?

A I am board certified in physical medicine and rehabilitation.

Q What is physical medicine and rehabilitation?
A The way I commonly describe it is sort of a nonsurgical treatment of orthopedic conditions.
Q And what does that entail?
A It entails sort of a multidisciplinary approach medications, recommending physical therapy, occupational therapy, different modalities for pain also as well as incorporating multiple injections for pain conditions in the spine.
Q Are you licensed to practice medicine in New York State?
A Yes, since 2011.
Q What would you normally be doing on a beautiful Monday afternoon like today if you weren't testifying?
A My office cancelled my afternoon schedule.
Q So you'd normally be in your office?
A Yes.
Q And are you being compensated for your time here today?
A My office is being compensated for my time.
Q Do you know how much your office is being compensated for your time here today?
A I believe it is $8,500.
Q Now, did there come a time where you treated an individual by the name of Juan Julca, J-U-L-C-A?
A Yes.

Q When did you first treat Mr. Julca?
A I'm just referring to my office reports here. I saw him for the first time on April 3, 2018.
Q And just, Your Honor, and just -- Dr. Grimm, excuse me, you said you are referring to your office notes, correct?
A Yes, I brought a copy of just my treatment records to court here.
Q And those are records from New York Ortho?
A Yes.
Q Was the records that you brought today were those maintained by your office from the first time you treated Mr. Julca until today?
A Yes.
MR. ROSENGARTEN: Your Honor, my understanding is these are part -- these records are part of Plaintiff's Exhibit 9, which is the 180 page of New York Ortho records, and I'd ask that he be able to refer to those records during his testimony.
THE COURT: All right. The witness may refer to his office records.
Q So, when did you first see Mr. Julca?
A August 3, 2018.
Q And at that August -- was that August 3rd or April?
A I'm sorry. April 3rd, 4/3
Q And at that April 3, 2018, visit, did you take a

history of Mr. Julca?

A I took a brief history.

Q And what was the history that you took of Mr. Julca?

A He reported being involved in a work related accident on 3.3.18. He reported falling through a scaffold, grabbing on to the scaffold with both arms and was hanging During which he struck his knees on construction material after falling through. Initially, evaluated at JFK Medical Center, sustained injuries to his shoulders, knees, and lower back. And then he was being referred to me for treatment of his lower back pain. So I focused on that. I denied prior history of lower back pain. He was describing radiating pain to his lower extremities, pain rated at eight out of ten. And then pain exacerbated with sitting, standing, and ambulation.

Q Did you review anything before or immediately after meeting with Mr. Julca for that first time in April of 2018?

A He -- I -- the only available records I had to me was Dr. Kaplan's chart and then there was a discharge summary from the hospital.

Q And you reviewed those items?

A Yes.

Q On April 3, 2018, did you examine Mr. Julca?

A Yes.

Q What were your findings after that examination with Mr. Julca?

A For his lower back, he had -- he was walking with an antalgic gait meaning painful, uneven walking pattern. He had pain extension at five degrees. The normal would be 25 degrees. He had pain at flexion at 70 degrees. Normal would be 85 to 90 degrees, pain with left and right lateral flexion at 15 degrees. Normal is 25 degrees. He had intact knee reflexes with some depressed ankle jerk relaxes. That's using a hammer to tap the patella at the knee and the Achilles tendon. Sometimes it may find findings of nerve issues in the spine or some people just have degeneratively depressed reflexes.

He had normal sensation. His straight leg raise, which is the test we pull the leg out to try and ascertain if there is a nerve pulling, a nerve inflammation in the back. He did report some pain bilaterally with testing. His strength was intact in both of his legs, and he had some muscular spasm present in his lower back.

Q And based on this examination, did you make any recommendations for Mr. Julca?

A Yes. I was working him up for a lumbar radiculopathy recommending further evaluation with a MRI as well as recommending some physical therapeutic exercises as well as putting him on some antiinflammatory medication, the antispasm mediation. And then I also palpated and mapped out what are called treatment points which is the top muscular bands that form sometimes in relation to trauma or stress or pain. And you

just palpate him, map them out, and then you needle them with a needle and that helps it release and release the muscular tautness at those specific areas. He was also fit for a lumbosacral orthosis, a back brace. And I advised him not to wear that greater than five hours a day.

Q Now, I believe you used the term radiculopathy?

A Yes.

Q What is radiculopathy?

A Radiculopathy is back pain that radiates into the legs. So it is a radiating back pain usually related to nerve irritation somewhere along the line.

Q And can you tell where that nerve radiation would be from?

A That's why I was recommending the MRI.

Q Do you remember what antiinflammatories you prescribed on that April 3rd visit?

A I prescribed him Diclofenac. That's a prescription, antiinflammatory medication.

Q And you said you also prescribed, excuse me, some antispasm medication, correct?

A Yes.

Q What -- why did you prescribe him that antispasm medication?

A He was having some spasm noted in his lower back. Often times it gets worse over night when people are sleeping

and so the antispasm usually helps relax the spasm and also sedating. So it can help patients sleep without the spasm affecting their sleep as much.

Q And what is a spasm?

A It's muscular -- I always describe it as the muscle isn't getting necessary enough of the signal or there is some tension that causes him to tense up so the muscle will form taut bands and tight bands and sort of seize up I guess you could say.

Q I know you said that you prescribed an MRI for Mr. Julca. Was that for a specific part of the body?

A His lower back.

Q And do you know if Mr. Julca got an MRI?

A He did get a MRI.

Q Do you know when he got a MRI?

A He got a MRI is done on 4/13/2018.

Q So about ten days after your initial visit then, correct?

A Yes.

Q Did you recommend any other MRIs for him?

A No.

Q So is it fair to say you were specifically treating his lower back, correct?

A Yes.

Q Now, did you ever review his April 13, 2018, MRI for

his lower back?

A I reviewed the report. I don't recall if I looked at the films or not. It was a long time ago.

Q And what did you find regarding that MRI?

MR. MALECKI: Objection. Foundation.

THE COURT: Objection.

MR. MALECKI: Outside the scope of an expert if he's the witness.

THE COURT: Overruled.

A The impression of the MRI showed posterior disk bulging at L4-L5 with bilateral posterior facet hypertrophic changes to left side greater than right, encroachment on the L-4 nerve roots in the neuroforamina. And then posterior disk bulge at L3-4 and a posterior lateral disk herniation at T12-L1 superimposed upon a posterior disk bulge.

Q You used a lot of medical jargon there. Can you explain to the jury what that means?

A So, in the lower part of your spine, there are bones which are the vertebrae, in between are the disks which is sort of the shock absorbers, some jelly on the inside and then a more fibrous outside keeping it contained. In this case, there was disk bulging so what that means is these disks, sometimes as a result of trauma or age or a various number of things can cause that, sort of think about it, described it as a jelly donut but it is pressure being put on it. Think of it as a hamburger

coming out of a hamburger bun. It comes all the around using circumferentially. It can cause narrowing where the nerves comes out. And then he also has posterior facet hypertrophic changes. So that is these areas right here around the bones.

Hypertrophic changes are generally related to age as he gets older he gets some arthritis in the area. So that can also lead to narrowing where the nerves come out as well.

Q And what would that narrowing cause for a person who had those things?

A It can cause, if it pinches on the nerves, that's when you get radiating pain. If it's just there but the nerve still have enough space to get out, then you wouldn't have any symptoms. It would just be asymptomatic.

Q When was the next time you saw Mr. Julca after the 4/13/18 MRI?

A I then saw him on 5/1/2018.

Q And what did you do with Mr. Julca on May 1, 2018?

A May 1st I discussed with him his findings on the MRI. He reported continuing radiating pain. Physical therapy was only helping for the moment. So, at that point, I recommended proceeding with an EMG nerve conduction test which is a test to -- a test you take pins and put it in different muscles of the legs. And what you're doing is if the signal is not reaching the muscles, the muscles can start to become damage and deteriorate and this test picks up on that. It helps us find

out if the nerves in the back are inflamed, at which level.

I also was recommending Prednisone tapers. Since he was still having pain, we started the Diclofenac which -- I started him on Prednisone. It's just a lot stronger. So it is a step-wise process. We started just the instant continued pain and that's when we moved on to the Prednisone. And the recommendation was we'll see how he responds to further therapy and the Prednisone and then if it continues we'll consider injection treatments.

Q Did you ever do that EMG that you described?

A I can't find it in my records. I'm not sure. I don't recall, and I can't find it in my records.

Q So after May 1st when you prescribed him Prednisone, you sort of upped his medication. When was the next time you saw Mr. Julca?

A I then saw him on 7.17.2018.

Q And why did you see him on 7.17.18?

A I saw him for followup for treatment after his Prednisone taper.

Q And what, if anything, happened at his 7/17 visit with you?

A We discussed further treatment. I made a recommendation for epidural injections because he was describing only temporary relief following the Prednisone. And I also gave him -- refilled his prescription for Cyclobenzaprine. That's

for his spasm. And he was also given muscular trigger point injections that was found on the exam.

Q What is a muscular trigger point injection?

A As I described earlier, the trigger point is a top band that forms in relation to trauma, stress, anxiety, things that perform tight bands in the musculature anywhere in his muscles. It is quite painful. When you palpate it, it is painful. You can feel it and the area would turn red because of the inflammatory effect. There, the injection is just needling it with a needle to try to get it to release and then injecting a little tiny bit of Lidocaine. That just helps with comfort from the trauma of needling the muscle.

Q Is that a type of thing that you do in your office or do you have to do it in the hospital or something else?

A That's done in the office. You map them out. I usually have a marker, and I mark out each one and then just inject it. It takes a few minutes.

Q Now, you also had previously said map them out. What does that mean to map it out?

A I'm just feeling it. If I feel it, I ask the patient if it's painful, yes. And then I mark it with a body marker in each area.

Q And that would be each area of the lower back?

A Each area where there is a trigger point, yes. They can have them other places. For him, he was treating his lower

back.

Q Where were the trigger points that you did the injections for on July 17, 2018?

A It was his lower back paraspinal muscles, just the muscles that make up each side of the back beside the spine.

Q When was the next time you saw Mr. Julca after that July 17, 2018, visit?

A It looks like, I believe, we did do an epidural injection.

Q Were what was the date that epidural injection?

A It is 8/1/2018.

Q And what is an epidural steroid injection?

A So, an epidural steroid injection is utilizing a fluoroscope which is sort of an X-ray machine. It gives a lower dose of X-ray to try to help you guide the needle down to the epidural space which is the space surrounding the spine to put medicine where the nerves may be inflamed. It can be both treatment, help beneficial for treatment, but it also can help with diagnosis. As you are injecting the area, if the patient has a positive response, then you can be confident that something there is -- there is some inflamed nerves in that area. If the patient says they don't get a response, then you have to usually look for other areas that the pain could be coming from in the spine.

And then you hope that it provides -- you describe it

as trying to put out a fire. So you can generally do up to three injections over a certain time frame to try and sort knock out all the inflammation. If you don't get it out, say, three injections over a six-month time frame, then it might be something that can't be treated conservatively and it might be something that would be considered surgical.

Q Do you know what the results of the August 1, 2018, steroid epidural injection was?

A Yes. He reported to calming of his radicular symptoms calming of the lower extremity radiating complaints.

Q You said calming, correct? So in other words, it worked to an extent?

A It helped.

Q And how about the trigger point injections of July 17, 2018? How did those help or affect Mr. Julca?

A Yes, he said the trigger point injections helped. Muscular pain calmed following the treatment injections at that visit.

Q What ere the expectation for how long someone should have relief from a trigger point injection be?

A The trigger points are formed because it is some underlying cause so, I mean, everybody gets different responses. I have some people that can get trigger points, you know, multiple a month. But if their underlying issue is still there, they will return. I hope you get extended periods of relief but

you may only get weeks to months and some can form at other others as well.

Q And how about in terms of the epidural steroid injection?

A In every patient is different. Like I said, what I'm trying to do is to treat it nonsurgically with putting the antiinflammatory in and hopefully with therapy can sort of strengthen the muscles and open up the space where the nerve is coming out so it doesn't become reirritated. So, ideally, I do have patients that get better after one, two, three epidurals and then we just monitor it.

Q Are you able to do the epidural steroid injection in your office?

A I'm able to do them in my office if the patients don't wish to have sedation. I do have a fluoroscope, but I can't give -- if they want to do -- some people are pretty scared of needles so if they want to be sedated, then we do it at a surgical center or if you are working with a pain management doctor who doesn't have a fluoroscope, then you'd have to go to a surgical center.

Q Do you know for the 8/1/18 epidural steroid injection if that occurred in your office or surgical center or someplace else?

A That was -- that was done in my office.

Q And you said some people have -- want to be sedated

because of their fear of needles, right?

A If they have a -- if they are fear of needles or if they have multiple comorbidities where you want to have it in a more controlled setting, then we would do it at a surgical center. When you have someone who is otherwise healthy, it is safer and quicker -- not safer. It is quicker and easier to do it in the office.

Q And that 8.1.18 epidural steroid injection, what part of the body was that done on for Mr. Julca?

A His lower back. I did it in the L4-L5 area.

Q And can you explain to the jury what L4-L5 is?

A Yes. So, in the spine where there's the bones and then the disks so this is L5 vertebrae. This is L4 vertebrae. So the disk I was describing is the bone above and below. So the L4-5 would be this space in between the L4 and the L5 vertebrae where I entered.

Q And how did you determine that the epidural injections should be at the L4-L5 range?

A Just based on the MRI, he had the bulge there as well as the narrowing of the foramen. The foramen is this whole here where the nerve escapes the spine. So that's how I determined to go there.

Q Did you see Mr. Julca after the epidural steroid -- that first epidural steroid injection?

A Yes, I saw him on 8/22/18.

Q And why did you see him on 8/22/18?
A To followup after his epidural.
Q And what occurred at that visit with Mr. Julca?
A Like I said, before he noted calming of those injections, calming of the pain following the injections.
Q So that was about three weeks after the epidural steroid injection?
A Yes.
Q Was that the last time you saw Mr. Julca?
A No.
Q When was the next time you saw Mr. Julca?
A I think -- and then I saw him in 9/24/2019.
Q Did you see him in September of 2018?
A Oh, I believe, he was still having some residual pain so I believe we did -- we did a second epidural 9/18/2018.
Q Do you know why you did a second epidural so close to that first one?
A That's the standard of care. He had returning pain that was coming back and the way I described it as trying to put out the fire. So if you don't necessarily treat the inflammation, it can flare up. So he continued pain, so I recommended a second injection.
Q How did you know he had continued pain. When -- do you know when he reported that continued pain?
A Yes. He said that the 8/22 visit the pain was still

present but it had calmed. He was still getting exacerbations.

Q So even though the pain had calmed, based on his pain, you determined that it was appropriate to have a further steroid epidural, correct?

A Yeah. It is the standard.

Q Once again, was that steroid epidural from September 2018, was that done in your office, in the hospital or something else?

A That was done in my office.

Q And was that done at the L4-L5 level as well?

A I put some medicine in L3-4 and some medicine in L4-5 just to get a better spread.

Q Is there a reason why you went to the L3 level?

A Yeah, the bulge there is to get medicine in a greater area.

Q Did you then see Mr. Julca in September of 2019?

A Yes.

Q And why did you see Mr. Julca in September of 2019?

A For followup.

Q And what occurred at your visit with Mr. Julca in September of 2019?

A At that point, I discussed with him his epidural. He reported that he noted roughly four to five months of relief at 60 to 70 percent and then the pain started to return. And then he returned to the office because the pain now reached a level

where he wished additional epidural based on the positive response he had had the prior year.

Q Did you give Mr. Julca an epidural on September 24, 2019?

A No. His next epidural was on 10/8/2019.

Q Did you give him any type of injection on September 24, 2019?

A I gave him some additional treatment points in the muscular trigger point in his lower back.

Q And did he report feeling any relief from those trigger points in September of 2019?

A Just -- yeah, he reported return of trigger points and prior muscular trigger points had helped so we did more.

Q And then you said -- you mentioned you did another epidural steroid injection in October of 2019, correct?

A Yes.

Q And once again was that done at your office or was that done at a hospital or someplace else?

A That was done in my office.

Q Was the L4-L5 level or someplace else?

A I put it above the two levels. I put medicine in 3-4 and 4-5.

Q So similar to the second epidural and more than the first epidural, correct?

A Yes.

Q Did you see Mr. Julca after that third epidural?
A Yes.
Q And why did you see Mr. Julca after that third epidural?
A Followup treatment.
Q And what, if anything, did Mr. Julca report to you on that followup after that third epidural?
A He reported greater than the 70 percent improvement of his radiating pain. Ambulation had improved. He was requiring less medication and that his pain presently was at a tolerable level.
Q Now, during this time, initially, you had said one of his first visits he had physical -- you had recommended physical therapy, correct?
A Yes.
Q Do you know if Mr. Julca was doing physical therapy during this time?
A This date he had been doing home exercises and morning stretching.
Q When was this followup visit after the third epidural?
A November 12, 2019.
Q And I know you told us what he reported. Did you do any treatment for Mr. Julca on that date?
A That date I refilled the medication, Diclofenac and Cyclobenzaprine. And I did give him some additional muscular

trigger point injections.

Q That would be the third round of trigger point injections?

A Yes. I guess I wouldn't call it rounds. It is not like epidurals is limited to a certain number. If they have the trigger points, then you map them out and you do it.

Q When was the next time you saw Mr. Julca after the November 12, 2019, visit?

A It looks like I then saw him February 12, 2020.

Q And why did you see him on February 12, 2020?

A For a followup.

Q And what, if anything, did Mr. Julca report to you on February 12, 2020?

A He stated that he did feel that his symptoms were starting to return, that the pain was not at any level where he wished to proceed with an additional injection.

Q So this was about four months after that third steroid epidural?

A Yes. Three months -- yeah, four months, yes.

Q Do you know why he didn't want to go through a steroid epidural even though the symptoms were returning?

A Because he could tolerate the pain.

Q When was the next time you saw Mr. Julca after February of 2020?

A It looks like I saw him then on eight -- so August 17,

2020.

Q And why did you see him on August 17, 2020?

A It looks like his pain had returned to a greater extent, and he wished to see if an additional epidural would be recommended.

Q Did you examine him on that August 17, 2020, date?

A Yes.

Q And what did you find on that date?

A He -- he had decreased ranging in comparison to his prior visits. He had steroid straight leg raise positively to test the inflammation in the back. The nerves had strength that is still maintained. He had normal sensation. He had muscular spasm and trigger points present.

Q Did you recommend any course of treatment after visiting with Mr. Julca on August 17, 2020?

A Yes. Based on him getting good relief over the past year following the three epidurals, I recommended an additional epidural and some -- I did some trigger points at approximately four areas that day.

Q So you recommended a further epidural. Did he ever have that further epidural?

A Yes, we did the fourth one on 9/8/2020.

Q And going back to the other three, was this epidural done in your office, hospital or someplace else?

A It was done in my office.

Q And which levels was that 9/8/2020 epidural done at?
A Since he had sort of a greater response when we did the two levels, I did the two levels, L3-4, 4-5.
Q Did you meet with Mr. Julca after the fourth epidural injection?
A I next saw him on -- well, I spoke with him over the phone. It was during the COVID error. I saw him 10/15/2020.
Q And what, if anything, did Mr. Julca report to you in October of 2020?
A He was vastly improved following the epidural, greater than 70 percent of improvement, walking better. He was sleeping much better than he was prior to the injection. He was utilizing less medication.
Q So overall, at that point, the fourth epidural would have been deemed successful?
A Yeah. I think the epidural thus far has been controlling his pain.
Q Did you see Mr. Julca after the October 15, 2020, telephone call you had with him?
A I then saw him in the office on December 2, 2020.
Q And why did you see him in the office on December 2, 2020?
A The office was open. We give patients, during that time, options of phone or if they wanted to come in we were open and if it's something we can discuss or if they need to be

examined or want procedures, then they would come in.

Q And what, if anything, did Mr. Julca report to you in December of 2020 when you met with him?

A Still was noting improvement following the epidural. It was returning some, but he was still at a tolerable level with medication and exercises. And he was given some muscular trigger points at approximately three areas on that day.

Q During that time, was he still taking his antiinflammatories and antispasm medication?

A Yes, they are to be taken as needed.

Q When was the next time you visited with Mr. Julca, if at all?

A The next visit I think it was on 8/16/2021.

Q And why did you meet with Mr. Julca on 8/16/2021?

A He was reporting increasing pain into his lower back.

Q So at that point the fourth epidural was starting to wear off?

A Yes.

Q What, if anything, did you do in response to finding out that the epidural was starting to wear off?

A I believe on that date I referred him to Dr. Weinstein for evaluation.

Q And why did you decide to refer him to Dr. Weinstein?

A The pain was coming back. Often times, I would discuss with the patient, give them different options. So I can say you

can do safely the injections if it's controlling the pain. I can say we can continue with just palliative injections, but I also say there is an option of speaking with the surgeon to see if possibly surgery could be beneficial and then just discuss the pros and cons with the patient. Some patients would prefer to just get serial injections for as long as they can until it's not working anymore.

Some patients just prefer, they don't like getting steroids and that over time, so they will go the option of the surgery. That's generally the discussions I have with the patients or dealing with it. Some patients they don't want shots. They don't want surgery so they just deal with the pain.

Q Now, Dr. Weinstein was what type of doctor?

A Orthopedic spine surgeon.

Q Do you know if Mr. Julca ever went to Dr. Weinstein?

A Yes, he did go see him.

Q Now, after you referred Mr. Julca to Dr. Weinstein in August of 2021, did you see Mr. Julca again?

A I saw him on October 4, 2021.

Q And what, if anything, did Mr. Julca report to you on October 4, 2021?

A That date he was following up with Dr. Weinstein it looks like. He reported that he was having some muscular trigger point pain and asking for injections that day.

Q What type of injections was he asking for?

A Lumbar trigger point injections.
Q Did he get those lumbar trigger point injections on that date?
A Yes, it looks like I mapped out six trigger points and injected those.
Q Did you see Mr. Julca again after the October 4, 2021, visit with him?
A It looks like November 30, 2021.
Q And why did you see Mr. Julca on November 30, 2021?
A For followup.
Q And what, if anything, did Mr. Julca tell you on November 30th of 2021?
A He reported he was awaiting right knee surgery with Dr. Kaplan, that he was recently diagnosed with diabetes so they were working on treating that before proceeding with the surgery.
Q Does diabetes have any effect on your treatment of Mr. Julca?
A Yes.
Q And what effect does diabetes have on your treatment of Mr. Julca?
A Just we have to be much more careful with the steroids. It does temporarily raise blood sugar from, the study show, one to three days. So generally I advise patients, one, the diabetes has to be controlled. Two, they have to watch their

diet a few days following the injections and we're a little more conservative with the epidural once the patients become diagnosed with diabetes.

Q What type of treatment, if any, did you do for Mr. Julca on November 30, 2021?

A Just evaluate him and refill the medication.

Q Those were the same antispasm antiinflammatory medications that he had been constantly been on during your treatment of him?

A Yeah.

Q After that November 30, 2021, visit with Mr. Julca, when was the next time you saw Mr. Julca, if at all?

A I saw him on March 7, 2022.

Q And why did you see him on March 7th of 2022?

A Just for followup.

Q And what, if anything, happened at the March 7, 2022, visit with Mr. Julca?

A He reported again still having issues with his blood sugar so he had -- the plan was to proceed with lumbar surgery once his blood sugar was under control as well as proceed with knee surgery once his blood sugar was under control. He also had muscular trigger points on that date, they were mapped out, and he was given trigger point injections.

Q I know you mentioned that you referred Mr. Julca to Dr. Weinstein for a possible surgery. Do you know if Mr. Julca

ever had surgery with Dr. Weinstein or with any other doctor?

A He ended up having, I believe, two knee surgeries and a shoulder surgery with Dr. Kaplan, and he had lumbar surgery at L4-5 with Dr. Weinstein.

Q Do you know when that surgery with Dr. Weinstein was?

A It was on September 9, 2022 -- sorry, 9/13/2022.

Q Did you ever see Mr. Julca after his lumbar fusion surgery of September 2022?

A I saw him -- the next time I saw him was on October 13, 2023.

Q Was it October 13th or October 30th?

A Sorry, October 30th.

Q Why did you see him on October 30th of 2023?

A For followup for his back. He was reporting that he did feel that the surgery had helped, but he was complaining to me of a pressure type pain in his lower back. It gets worse when he walks.

Q And what, if anything, did you do in response to those complaints for Mr. Julca?

A On that day, we discussed, say it again, home exercise program, discussed considering an epidural if the pain got too severe. We didn't elect to proceed with that yet, but I did prescribe him some antiinflammatory pills not steroid. The Diclofenac is more antispasm pills just like Cyclobenzaprine. I also prescribed a topical antiinflammatory gel.

Q What was that topical antiinflammatory gel for?

A It is more to stop the pain with inflamed muscles. You can put it on the muscles. You can squeeze it on your knees, shoulders, back, anywhere where there is pain. It is more superficial.

Q Did you see Mr. Julca at any time after October 30, 2023?

A My next visit was then on August 4, 2025.

Q And why did you see Mr. Julca on August 4, 2025?

A Just for followup.

Q And what, if anything, did Mr. Julca complain of in August of 2025?

A I asked him who he had been treating with since his last visit. He stated he had treated with Dr. Weinstein, had X-rays taken. His hardware looked good. He was still reporting that there was some pain radiating to his right leg postsurgically but lesser extent than it was prior to the surgery. We discussed his limitations, say the walking limitation about ten minutes before he had to rest due to the increased pain. He stated that he'd been treated for his diabetes. His blood sugar was controlled. He was being treated by a doctor in his country. He said he had been doing home exercises.

Q Now, I know you mentioned that Mr. Julca had this back surgery -- lower back surgery. What would your expectations be

for someone like Mr. Julca after going through that back surgery?

A I mean, as long as he -- I mean, I always recommend a -- have a rigorous home exercise program, home stretching program. If they keep up on their exercises and strengthening the core and do well, you want to sort of prevent further deterioration as long as possible but it is a progressive issue. But I always tell patients they can prevent a faster progression if they keep on top of their health.

Q What were your expectations in terms of recovery from that lumbar surgery be?

A I'd say as far as outcome he had a good outcome. He still has pain. He still has some residual symptoms, but it was not as bad as it was prior to the surgery. But I think it is a progressive issue that needs to be monitored.

Q Are you familiar in general with that lumbar surgery?

A I don't do it, but I guess I'm familiar with a lumbar fusion, what's entailed in it.

Q And are you familiar with how long it takes to recover from the actual surgery?

A Yeah.

Q How long, approximately, does it take to recover from a lumbar fusion surgery such as the one that Mr. Julca went through?

A What they tell us in training, what I've generally seen

what I always tell patients is it is sort of a parabolic recovery. Most of the recovery is in the first six months. And then it sort of tapers out. I always tell patients pretty much that one year is that sort of the greatest improvement and then from there you want to stay at that improvement as long you can and eventually down the road you start to deteriorate.

Q Now, do you have an opinion, within a degree of medical certainty, as to treatment Mr. Julca would need in the future meaning from today onward?

A Yes.

Q And what is that treatment based on? What -- excuse me, what is that opinion based on?

A The opinion is based on my training, my history of treating patients similar to this and generally seeing the outcomes of patients after the surgery.

Q And did you come up with a specific plan for Mr. Julca?

A Yes.

Q And what type of plan did you come up with for Mr. Julca?

A I came up with sort of a list of treatments that I recommended.

Q And what are those some of those treatments that you recommended for Mr. Julca in the future?

A His medications, take both oral and topic, antiinflammatories as needed as well as muscle relaxants. The

approximate cost of what he is on is approximately $50 a month for a life time. Pain management office visits, I'd recommend he see up to four times a year pain management since he does have some comorbidities and you need to make sure you are aware of all the medications he is on. So the cost of $250 per visit for a life time. Orthopedic surgeon visits for monitoring of his joints after his surgeries to evaluate sort of the arthritis that develops they call it traumatic arthritis. It is generally those joints will age a little bit faster than the normal population. So up to four times a year for the orthopedic surgeon, $300 for a life time.

Then orthopaedic spinal surgeon visit just once a year just for monitoring to make sure the hardware is in place, take X-rays, to make sure there is no loosening seen on the X-rays. Sometimes those screws can start to loosen. That cost is $500 per visit. Then as he has the -- he still has some radiating complaint in his right leg that gets worse when he's walking, so he may benefit from lumbar epidurals down the road. Those would be up to three every two years, again, for palliative treatment and the cost of those would be 1200 for the injection for the doctor.

If he is treating with the doctor who does medical fluoroscope plus now he has been diagnosed with the diabetes, I would probably recommend to do it in the facility where you get a little close monitoring of the procedure. So the facility

cost would be approximately $2,000 for anesthesia and the hardware and everything.

Trigger point injections he's benefited from those so up to four sets per year at a cost of $300 for his life time. He initially was developing some sacroiliitis that was seen initially bilaterally after the surgery. Sometimes when you get the fusions, it causes more pressure on the joints. His last visit was bilaterally just showing some mild irritation. So when I made this list, it was a couple of years ago. I was recommending some sacroiliac joint injections. I am not quite as confident now that I'll still recommend those and that those would be part of his future care so I probably wouldn't put those in the plan at this time.

Physical therapy, I think it's important to have a maintenance program. He has the hardware in his back. It would be good to have once or twice a month professional overseeing with some exercise program. I strongly recommend that. The cost of 100 to $150 for a life time.

MRI of the lumbar spine every five years, the cost of $1,300 for a lifetime. Just he has these complaints of the radiating pain. You want to make sure that these foramina are open so the nerve has space as well as monitor adjacent level. So if you think of the physics, the spine, when you are putting hardware in there, now the level is above and below generally tends to break down a little faster. That just helps to monitor

just to make sure there is still no issues of those areas to worry about.

The left knee approximately every five years for $1,300 for monitoring postsurgically. MRI of the right knee, the same cost, 1300 every five years for monitoring for further breakdown. And then the same reason for the left shoulder following his surgery with orthopedics at $1,300 every five years. And then X-rays, like I said earlier, for the spine, to monitor for loosening once or twice yearly cost of $400. X-ray films of the left knee once or twice yearly cost of $400. Same with the right knee, once or twice yearly cost of $400 and the same reason for the left shoulder once or twice yearly cost of $400.

And then EMGs of his lower extremities could be beneficial if he's seeing further breakdown of the adjacent disks which is to see if there is any new damage that's been occurring or if it's just chronic damage which is the cost of $2,000, again, every five years monitoring would be beneficial.

Q Now, you went through a bunch of treatments and even you mentioned some costs associated with those treatments. How did you come to those numbers in terms of the price of these treatments?

A So, medications you can find the pricing on various -- it is sites, GoodRx is one that will show you the cost, the retail price, paying cash at various pharmacies in the area. So

I just take those averages and try to find the average sort of in the middle of the medication that he currently takes and then for stuff that I do that's the cost that my office will charge for cash patients, facility fees would be what the facility cost charge for cash patients. And then MRIs, X-rays, there is a site called fairconsumerhealth.org which is developed years ago at the US to sort of help provide price transparency. You can put in zip codes and whether it is cash or whatnot and they will give you the average prices for different procedures for different tests in any given area.

Q Now, we discussed that Mr. Julca is diabetic. Has that affected your treatment plan at all and if so how?

A Well, it affects it, like I said, I would want the injections, now that he is diagnosed, probably done in a more controlled environment. It doesn't effect my treatment plan as long as his diabetes is controlled. But if he were to come in and his diabetes, blood sugar was high, then the procedures would be cancelled.

Q Now, do you have an opinion, with a degree of medical certainty, as to whether injuries to Mr. Julca's lower back are causally related to the accident that he told you about the first visit of March 3, 2018?

A Yes. He reported no prior history of back pain or back injuries prior to the accident and following it that's when he developed the pain in his back so I would find it causally

related.

Q Do you have an opinion, with a degree of medical certainty, as to the future prognosis for Mr. Julca?

A Future prognosis, I mean, this is progressive condition. So, I would call it long-term his prognosis would be considered poor.

Q And do you have an opinion, with a reasonable degree of medical certainty, as to whether or not Mr. Julca's injuries specifically for his lower back are permanent?

A Yes, these are permanent injuries.

MR. ROSENGARTEN: No further questions at this time. Thank you very much.

THE COURT: Let's take a ten-minute break. Jury may exit.

COURT OFFICER: All rise, jury exiting.

(Whereupon, the sworn jurors exit the courtroom.)

THE COURT: Do you need anything?

MR. MALECKI: Could I see the records that the doctor was using?

THE COURT: All right. Ten-minute break. We're off the record.

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

(Whereupon, a recess was taken.)

(Whereupon, the witness resumes the witness stand.)

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

COURT OFFICER: All rise, jury entering.

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

THE COURT: Please be seated. Mr. Malecki, you may inquire.

MR. MALECKI: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MALECKI:

Q Good afternoon, Doctor.

A Hi.

Q MY name is Anthony Malecki. I represent the defendant in this lawsuit. Thank you for being here. We covered for your payment for your time here is about $8,500; is that correct?

A Yes.

Q Then you also prepared a report in this case, right?

A Yes.

Q How much did your office charge for that?

A I -- they raised the prices since I think two years ago. I think it was $850.

Q And I am correct you've testified a number of times for cases involving the plaintiff's firm Gorayeb?

A Yes, periodically.

Q You testified just recently in January up in the Bronx in the Perez case; am I right?

A I don't remember the patient I was testifying in.
Q You testified a couple of times last year both in May up in the Bronx and also June in Brooklyn both for the Gorayeb firm, correct?
A I testified last year. I don't remember the months or dates.
Q Would it be fair to say that a couple of times of year you testified for the Gorayeb firm in your career?
A Sure.
Q And all the times you've testified have either been on behalf of your patients who are plaintiffs in lawsuits, correct?
A Yes, they are all my patients.
Q And you're here in two capacities, right? You're testifying both as a treating physician, someone who saw Mr. Julca, correct?
A Yes.
Q And then you're also testifying about his future medical care that's sort of like an expert witness in that regard, yes?
A Okay, yes.
Q So let's start with the treatment you provided to Mr. Julca. I'm correct in saying that the first time you saw him you got him as a referral from Dr. Kaplan, correct?
A Yes.
Q And Dr. Kaplan, he works in the same office as you?

A Yes.
Q For all intents and purposes, he is your boss, right?
A Yes.
Q You share staff, correct?
A Yes.
Q Do you share records between each other?
A They are on -- they are like electronic medical records so they are on the computer.
Q So they are on computers available for you?
A Yes.
Q And it's fair to say over the years you have had hundreds of cases referred to you from Dr. Kaplan, yes?
A Yes.
Q And we also in the course of your testimony talked about radiology you performed with Dr. Kolb. Is it fair to say you referred a lot of cases to Dr. Kolb for radiology as well?
A Yes.
Q Now, Mr. Julca -- Mr. Julca additionally came to you for pain management, correct?
A Yes.
Q And --
A Treatment of the back and diagnosis.
Q And would you agree with me that lower back pain is one of the most frequent things that people go to see their doctor for?

A Yes.
Q And lower back pain has many different causes, correct?
A Yes.
Q It could be caused by accident such as this case, yes?
A Yes.
Q It can also be caused wear and tear over time, people who work and do things your back can become painful?
A Yes.
Q And sometimes even as much as you try you might not even figure out what the cause of the back pain is; fair to say?
A Yeah. Occasionally, you get a patient you can't figure it out.
Q Now, I noticed in -- you thankfully allowed me to check out the file that's in front of you. I noticed that at the very back page you had an intake sheet; is that right?
A Yes.
Q Is that something your office has the patients fill out when they come in for the first time?
A Yeah, I think so.
Q And am I correct in saying that there is nothing in that intake sheet about how the accident happened, correct?
A No.
Q Just some basic information about Mr. Julca's address and telephone number and things like that?
A Yes.

Q It would be fair to say it's important to get a history from your patient as to how their accident occurred, correct?
A Yes, that's part of it.
Q You also in those first visits asked about prior medical treatment and prior surgeries and things like that?
A Yes.
Q Now, you said your first visit with him was April 3, 2018, correct?
A Yes.
Q And you told us generally that he informed you about how the accident happened, correct?
A Yeah. I got a brief history.
Q Now, prior to or at the time of that visit, I'm correct he had a visit with Dr. Kaplan before visiting you, correct?
A Yes.
Q Did you review Dr. Kaplan's initial visit with him?
A Yes.
Q I am going to put on the screen what has been previously marked as Plaintiff's Exhibit 9 specifically page 78. I would represent to you, Doctor, this is the records signed at the bottom by Dr. Kaplan of his initial visit on March 22, 2018. Do you also have this record in your notes?
A Yes.
Q If you can't see the screen for any reason, you can refer to your notes as well because -- they should be the same.

A Yeah.

Q Hopefully. Now, I want to go to the description of the accident. Specifically, I am going to go to the second line under where it says subjective note. Do you see that. It starts the sentence "he indicates" do you see that?

A Yes.

Q It says, "It indicates he fell through scaffold platform attaching himself by his shoulder and armpits"?

A Yes.

Q Does that in any way differ from the description that he gave you on the first day you visited with him?

A Yes.

Q How does it differ with him?

A Mine says he fell through a scaffold platform and then grabbed on with both arms and was hanging.

Q Do you have any idea which of those descriptions is correct?

A Again, it's through a translator so it could just be how it was translated so...

Q Do you know if you had a different translator than Dr. Kaplan had a few weeks before?

A I don't know. We employ a few translators and it's whoever is available type of thing. So it could have been or it could have been the same, I don't know.

Q Now, in addition to reviewing Dr. Kaplan's report

during your first visit with Mr. Julca, did you have available the records from JFK Medical Center?

A I had just a discharge instruction.

Q And am I correct in those records from JFK Medical Center from the date of the accident was there any report of any kind of back pain?

A No.

Q And at your first visit with Mr. Julca, did he inform you that he went back to work after the accident?

A I don't have any -- I don't have that in my report, no.

Q And did he also tell you that he worked for a period of time doing light duty work?

A Not in my note.

Q Did he inform you during that first visit that he went to a different job site and then did heavy-duty work there?

A Not in my notes.

Q And did he tell you anything about going to that second job site and experiencing back pain for the first time at that other job site?

A Not in my note.

Q Now, would it be fair to say that in your industry the standard of care would be to go through conservative measures before recommending surgery for anyone?

A Yes.

Q And those conservative measures includes physical

therapy, medications, injections, things like that?
A Yes.
Q Now, do you typically want to see a patient go through physical therapy and see their response to that before you start doing injections or do you do both at the same time?
A It depends on the patient and their severity of pain.
Q Now, I'm correct after that first visit on April 3, 2018, Mr. Julca had his MRI at Lenox Hill Radiology, correct?
A Yes.
Q And I am correct in saying that you do not personally read the films from radiology, yes?
A I will -- I mean, I'm not a radiologist so I will often times try to go over the pictures with the patient just to show them, but I'm not diagnosing and I will rely on the radiologist report and their training. I usually try to at least look at it. I can see herniation. I can see a bulge but I didn't go through the residency training so for my purposes I rely on their expertise.
Q And you had looked at the results from Lenox Hill Radiology about that April 13, 2018, MRI, correct?
A Yes.
Q And you testified specifically at the L4-L5 level. It showed a disk bulge, correct?
A Yes.
Q And I believe you said in your testimony disk bulges

are things that can develop over time, correct?

A Yes.

Q And would I also be correct that as people get older a large amount of the population will have disk bulges in their body?

A Some population, yes.

Q And can you tell me what stenosis is?

A Stenosis is narrowing.

Q And like disk bulges can stenosis also be something you develop over time?

A Yes.

Q Can it also be caused by accidents?

A Well, the stenosis is caused by something causing it. So in this case, like the bony overgrowth as well as the disk bulge or it can be one with congenital stenosis of the spine as well.

Q Now, do you have that April 13, 2018, MRI results in front of you in your notes?

A Yes.

Q And am I correct in that -- in at least the findings of that results it doesn't specifically use the words stenosis, right?

A They use a different vernacular, encroachment, narrowing. It doesn't use the word stenosis.

Q That was my next question. There are words in there

that means stenosis to you, correct?

A Yes.

Q What about spondylodesis? What is that?

A That's some -- in the spine, you're looking for straight curvature. Spondylodesis is just some slipping of one of the vertebrae over the other.

Q And that April 13, 2018, MRI did it find any evidence of spondylodesis?

A I don't see -- I don't see the spondylodesis. I guess I don't see spondylodesis in the report.

Q I didn't either, Doctor. It wasn't a quiz. You was more confirming to me there wasn't one. Now, then we next talked about the next appointment you had after the MRI with Mr. Julca was May 1, 2018. And counsel questioned you about you had recommended an EMG, correct?

A Yes.

Q And you couldn't find it in your notes. I'll tell you I couldn't either. Whether he had an EMG, I'm correct he really didn't have one; is that right?

A I don't have it here so it must not have been done.

Q And at that point in May of 2018, Mr. Julca had also started physical therapy at your office for his back, correct?

A I'm not sure if it was at my office or -- he started physical therapy. We may have therapy at the office available, but I'd have to go back to the electronic charts to see.

Q But you have in your report from May 2018 that he was attending physical therapy, right?

A Correct.

Q And then you testified about the two epidural injections that occurred in 2018, correct?

A Yes.

Q Now, epidural injections, I'm correct, it's important to see the patient after you have the injection so you'd know what their response is to the injection; would that be fair to say?

A I'd like to but I don't always because they get better and patients will disappear sometimes.

Q And I'm correct after that second epidural in September 18, 2018, you did not have a followup appointment with Mr. Julca, correct?

A Not for some time. I'm sure there was one on the schedule that he must have missed for one reason or another because of the followup appointment is scheduled at the time of the injection.

Q And so I am correct you didn't see him for another year or so -- until exactly a year until September 2019 after that second epidural, correct?

A Yes.

Q And you mentioned but -- putting on the screen what's been previously marked as Plaintiff's Exhibit 10 specifically

page 11 of Exhibit 10, this is a copy of billing records that were received from your office. And I'm correct down at the second line to the bottom where it says October 10, 2018, missed service, patient no show. Is that the appointment you just referred to that Mr. Julca missed on that date?

A It looks like it, yes.

Q It does mention a second one, April 30, 2019. Were you aware that he also missed an appointment on that date?

A Not until -- I wouldn't be aware that they don't show but --

Q You have no reason to dispute the billing words from your office?

A No.

Q And in the records that I have from your office, the last physical therapy appointment I have for the back is July 10, 2018. Do you have anything in your records that disputes that?

A No.

Q And I'm correct he did not -- when he did come back to you in 2019 and again in 2019 he did not return to physical therapy for the back at that time?

A No.

Q And prior to when he had his surgery in September of 2022, the most recent date he had had physical therapy for his back would have been that July 2018 date, correct?

A I mean structured therapy. I would always have handouts I give to patients but without someone specifically overseeing him.

Q And you testified he returned September 2019. And you went over how his results from the epidural were, correct?

A Correct.

Q And you said 60 to 70 percent relief. He felt it for about 4 to 5 months. It's fair to say that's a good result, right?

A I would call it a positive result.

Q And that's why you scheduled another injection, correct?

A Because the pia was coming back. That's probably why he came back to the office.

Q And then a month later he comes back and tells you improvement again, correct, 77 percent improvement?

A Yes.

Q And so you have another about from November 2019 until August of 2020 before he comes back and schedules another injection, correct?

A Yes.

Q And it's fair to say that in determining someone's response to an injection, you're relying on what the patient tells you, right?

A Yes.

Q It's a subjective opinion, right?
A Yes.
Q They either tell you they pain went away or they're still feeling it; fair to say?
A Yes. I'll try sometimes to gauge things like sleeping, medications, something that's somewhat subjective but still reliant on them telling me. And if a family member is available, I'll often times ask them but they weren't available.
Q And then you testified you had a couple of more appointments in 2020. The last one being December 2, 2020?
A Yes.
Q And then the next appointment you had with him is August 16, 2021, correct?
A Let me make sure before I say yes. What did you say the last few dates?
Q August 16, 2021.
A Yes. So December then August 16th, yes.
Q I am, again, putting on the screen plaintiff's Exhibit 10 and this is specifically page 20 of Exhibit 10. And I am going back to your billing records, Doctor. I am correct down there that second line at the bottom March 3, 2021, it references another appointment that Mr. Julca missed; isn't that correct?
A Yes.
Q I now put on the screen what's been previously marked

as Plaintiff's Exhibit 9 specifically page 32. Is that correct this is your record of the visit Mr. Julca had with you on August 16, 2021?

A Yes.

Q And you have a copy of it in this front of you, right?

A Yes.

Q And this is the date, I'm correct, that you referred Mr. Julca to Dr. Weinstein, right?

A Yes.

Q And there is a reference in here. It's about four lines up from the bottom. It says, "Patient is reporting that he has had lumbar surgery authorized." Am I correct in saying that Mr. Julca had not had lumbar surgery authorized at that point?

A Right. I think he just had knee surgery authorized.

Q But this is the point you referred to Dr. Weinstein you say he needs to follow up with Dr. Weinstein after that, correct?

A Yes.

Q Now, in addition to here on the second page of this under the assessment and plan for the lumbar, underneath, again, where it says the patient is reporting he had the lumbar surgery authorized, it also says consider palliative epidurals pending when patient's surgery is scheduled. Correct, do you see that, Doctor?

A Yes.
Q And I'm correct that at this point in August of 2021 Mr. Julca hadn't seen a back doctor, right?
A Yeah, I don't believe.
Q So nobody had recommended surgery for his back at this point?
A Just for his knee.
Q And I'm correct that the last MRI that Mr. Julca had for his back, at this point it was back in April of 2018, correct?
A Yes.
Q He had not been sent yet for that additional MRI that he eventually had at Kolb, correct?
A Correct.
Q And I am correct that it's important to get an MRI more recently to the date of the surgery at least within a year of recommending surgery to get a better idea of what's going on with the back at that time?
A That is -- you would have to talk to the surgeon. Different surgeons have different time frames that they are comfortable with.
Q Your next appointment with Mr. Julca is October 4th, 2021, correct?
A Yes.
Q And now in this report, kind of in the middle, you

state that he continues to followup with Dr. Weinstein for his lumbar spine, correct?

A Yes.

Q Now, according to Dr. Weinstein and his records, his first visit with Mr. Julca was about two days after this on October 6, 2021. Would it be fair to say that he hasn't followed up with Dr. Weinstein yet as to the date of this visit?

A Yes.

Q And in the history, you've taken out that the lumbar surgery was authorized, correct?

A Yes.

Q I am correct on the second page where it says assessment still says to consider palliative epidural pending when patient's surgery is scheduled, correct?

A Yes.

Q Now, in October of 2021, specifically October 28th, Mr. Julca has the MRI for his back at Kolb Radiology, correct?

A Yes. I believe Dr. Weinstein sent him for an MRI.

Q And did you review the films yourself at that MRI?

A No.

Q And that would be something Mr. Julca went over with Dr. Weinstein?

A Yes. I mean, I would have gotten access to it, but I just sort of read the report.

Q Now, when we talk about a fusion surgery, are there's

situations where a fusion doesn't take after a surgery?
A Yes.
Q And so when you see a patient after they have a fusion surgery, is that one of the things you look into to make sure that the fusion is took?
A That would be Dr. Weinstein.
Q You eventually did see Mr. Julca after the September 2022 lumbar spine surgery, correct?
A Yes.
Q And just like Dr. Kaplan and Dr. Kolb, Dr. Weinstein is someone who you frequently refer cases to, right?
A Yes.
Q He is someone you know personally?
A Yes. I was invited to his daughters Bar Mitzvah.
Q And you also talked about Mr. Julca at some point, I have 2021, first being diagnosed with diabetes, correct?
A Yes.
Q And you said correctly that affects certainly how you decide to do injections, right?
A It's something you take into account more carefully.
Q And I am correct you said that he does not treat with you obviously for the diabetes. He treats with a doctor in his own country?
A That's what he told me his last visit.
Q Now, as I said, in addition to being a treating

physician, you also testified here about future medical needs that Mr. Julca would need, correct?

A Yes.

Q And one of the things you talked about for example was the medications, right?

A Yes.

Q Now, the medications that you are referring to and the value you are putting them on is that the medications like antiinflammatories for this accident or are you including all medications including, for example, his diabetes medication?

A Just the Diclofenac, the topical, and the muscle relaxers.

Q And you performed the examine of Mr. Julca in order to prepare this report, am I correct, that was in October of 2023?

A Yes.

Q And at that point, he was over a year after his back surgery, correct?

A Yes.

Q And in that year since his back surgery, he had not had any additional epidural injections?

A No.

Q And he had not had any additional trigger point injections?

A No.

Q So he hasn't had any that you are aware of?

A Not that I'm aware of.
Q And you mentioned during your testimony that the sacroiliac joint injections is not something you would recommend anymore, correct?
A At this point, no.
Q And now the items that you have listed in your -- for Mr. Julca's future medical needs, these are recommendations, correct?
A Yes.
Q Not a positive that Mr. Julca would even agree to have any of these things, correct?
A Correct.
Q And the ultimate choice of whether to have injections, for example, is up to the patient, right?
A Absolutely.
Q And now when we talk about some of the tests that you recommend, MRIs and X-rays, you're making opinions both as to the back as well as the knees and shoulders as well, correct?
A Yes. And I would ask Dr. Kaplan for his opinion when I make those recommendations.
Q And now it's fair to say that some of the items on here are items that, if they -- if Mr. Julca chose to have them, you would be the doctor performing them, correct?
A Yes, if he came to my office to do it. I'd be more than happy to treat him.

Q And other of these things Dr. Kaplan and Dr. Weinstein would be doing?

A Yes.

Q And now would you agree with me that a patient who is having no symptoms does not need a MRI?

A Yes. If they are having zero symptoms, then I wouldn't do a MRI.

Q And would you agree with me that a patient whose symptoms have not gotten worse in any way but stayed consistent, does that patient also need MRS on a general basis?

A In a patient with hardware in their back, if they're still having complaints of radiating pain, I'd probably recommend, you know, five years. If he had no radiating pain, then I wouldn't recommend. If he came in and said I am still having this pain, it's still bothering me to the extent I'm complaining about it, I would still recommend an MRI.

Q That's specific as to the lumbar spine MRI, correct, in this case?

A Yeah.

Q So it would be different for the MRIs of the left knee, right knee, and left shoulder, yes?

A Yes. If they came in with complaints in seeing Dr. Kaplan, I would obviously defer to him to send them. If he came in to me complaining of those, then I would tell him to schedule a sooner appointment and followup with Dr. Kaplan or

whatever orthopedics he needs to see.

Q And I'm correct at your -- after this December 2023 visit where you prepared this future medical report, your next visit wasn't with Mr. Julca until August 4, 2025, correct?

A That was the next time I saw him. I imagine we had one scheduled.

Q And at that last visit, I'm correct, you testified in your report -- do you have the report in front of you?

A Yes.

Q You mentioned in the report that since October he's been treating with Dr. Weinstein roughly every three months; is that correct?

A That's what he told me through a translator, yes.

Q And according to Dr. Weinstein and his records, the last visit to Dr. Weinstein that you had with him was February 4, 2024, were you aware of that?

A Not until now.

Q He may have also scheduled future appointments but that was the last time Mr. Julca had with him?

A Okay.

Q And I am correct he also reference in that report that the structured physical therapy had stopped some time ago?

A Yes.

MR. MALECKI: That's all the questions I have for you, Doctor.

MR. ROSENGARTEN: Briefly redirect, Your Honor.

THE COURT: Proceed, Mr. Rosengarten.

REDIRECT EXAMINATION

BY MR. ROSENGARTEN:

Q Dr. Grimm, I know you testified on cross-examination that you had no idea or it wasn't in your charts in terms of when Mr. Julca noticed back pain, correct?

A Yes.

Q Would that -- if you had known that -- would that have changed your opinion in terms of the accident being causally related to the accident that he talked to you about back on March 3, 2018?

A No. Patients present in different manners. Some patients will have pain, you know, right off the bat. Other patients takes a while sort of the inflammation progresses over time and they sort of get better and they're hoping it goes away. So they may not necessarily complain for a certain time frame after that, a month, two months, a week, but there wasn't an inciting incident then the pain developed after that.

Q And the fact that, as you mentioned on cross-examination, that you didn't know about him working light duty for a week and then working for one day, would that have changed your opinion in any way?

A No. As long as -- again, as long as there is no inciting incident during those times, it wouldn't change my

opinion.

MR. ROSENGARTEN: Nothing further, Your Honor. Thank you.

THE COURT: The witness may step down.

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

THE COURT: Members of the jury, we will take a five-minute break at this time.

(Whereupon, the sworn jurors exit the courtroom.)

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

THE COURT: We are off the record.

(Whereupon, a recess was taken.)

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

COURT OFFICER: All rise, jury entering.

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

COURT OFFICER: Please be seated.

THE COURT: Members of the jury, the officer is going to give out the revised schedule I promised you earlier today. Hopefully, we don't get any more notes. Based on that, but if there is a need, you'll let me know. Members of the jury, do not discuss this case among yourselves or with anybody else. Do not do any independent research. Do not visit the scene. Have a good evening. I

will see you tomorrow afternoon at 2 p.m. as per the schedule. The jury is excused except for one who is to remain.

COURT OFFICER: All rise, jury exiting.

(Whereupon, the sworn jurors exit the courtroom.)

COURT OFFICER: Please be seated.

(Whereupon, the item was received and marked Courts Exhibit XI, jury note number four, in Evidence.)

THE COURT: I have juror note four. It has been marked as Court Exhibit Number 11. Ma'am, you are not in any trouble. It's not detention. You are not being held over. It's about your note. I have a question or two for you about it. It says, "Hello. I -- it's juror -- you are alternate number three, right? I am requesting Wednesday, March 18, 2026, as I have appointment on this day. Thank you for your consideration in this matter Judge Cohen." It's signed by you and dated today at 10:48 a.m.

So looking at the schedule, I am -- I'm not going to be able to accommodate that because we have two witnesses on the 18th and -- I'm sorry. We have one witness on the 18th and my hope is that we do summations and charge on that day. So, I'm just not going to be able to accommodate you're not being here. I wanted to let you know that. I wanted to ask you is this an appointment that you can reschedule.

SWORN JUROR: It's not an appointment I can reschedule. It is a special week of activities. I am one of the Jehovah's Witnesses and we have a week of special activity that week. So I was hoping the Wednesday that I would be able to participate in the activity. It's previous for the week. We usually have a special week of spiritual activity.

THE COURT: So, it is something you can miss.

SWORN JUROR: I can miss it, yes.

THE COURT: I feel bad asking you to miss it. I am going to have to ask you to miss it.

SWORN JUROR: It's okay. I understand. I do understand.

THE COURT: Okay, very good. Ma'am, you are free to go. I will see you tomorrow at 2 p.m.

SWORN JUROR: No problem. Thank you.

COURT OFFICER: All rise, juror exiting.

(Whereupon, the sworn juror exit the courtroom.)

THE COURT: Counsel, tomorrow afternoon at 2 p.m. I am expecting that we will hear from defense witness Dr. Lombardo out of turn, correct?

MR. ROSENGARTEN: Correct.

THE COURT: Is there anything before we break for the day?

MR. ROSENGARTEN: No, Your Honor.

THE COURT: Have a good evening, Counsel. We are off the record.

(Whereupon, the trial is adjourned until Tuesday, March 10, 2026, at 2 p.m.)

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