In The Matter Of:

Juan Julca v.

ERY Tenant, LLC, ERY Retail Podium, LLC

Dr. Frank Lombardo

March 10, 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 10, 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

COURT OFFICER: All rise, jury entering.

THE COURT: Good afternoon, members of the jury. Welcome back and thank you again for your jury service. At this time, we are going to take a defense witness, because the plaintiff hasn't finished their case, we call that taking a witness out of turn. We do it purely for scheduling and convenience of the witnesses. And we do it all the time. So at this time, I am going to call upon Mr. Malecki to call your first witness.

MR. MALECKI: Thank you, Your Honor. The defense calls doctor Frank Lombardo.

F R A N K L O M B A R D O, a witness called by and on behalf of the Defendant, upon being duly sworn, was examined and testified as follows:

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

THE WITNESS: Frank Thomas Lombardo, F-R-A-N-K, T-H-O-M-A-S, L-O-M-B-A-R-D-O. My home address or business address?

THE COURT: Business address.

THE WITNESS: 1910 South Road Poughkeepsie, New York.

COURT CLERK: Your Honor, the witness has been sworn and affirmed.

THE COURT: Counsel, you may inquire.

DIRECT EXAMINATION

BY MR. MALECKI:

Q Good afternoon, Dr. Lombardo. While you are testifying, please make sure you speak into the mic clearly so we can all hear you.

Doctor, can you please tell the -- tell us what your medical specialty is?

A Orthopedic surgery.

Q And can you give us a little bit of background as to your education?

A Yes. I did -- I went to college at SUNY Stony Brook on Long Island. I completed my medical school training there as well which is another four year program. Then I did five years of residency at North Shore-Long Island Jewish in orthopedic surgery and general surgery. And I completed a fellowship in advance orthopedic training at the Anderson Research Orthopedic Institute in Virginia.

Q And are you board certified?

A I am.

Q In what?

A Orthopedic surgery.

Q And you're licensed in New York?

A Yes, sir.

Q And are you currently affiliated with any hospitals?

A Yes, I am.
Q And what hospitals?
A Vassar Brothers Medical Center in Poughkeepsie, Northern Dutchess Hospital in Rhinebeck, New York and Health Alliance Hospital in Kingston, New York.
Q And are you member of any associations?
A Medical Association of Physicians in New York.
Q And have you testified in the past?
A Yes.
Q You have been qualified as an expert in the past?
A Yes.
Q And in the cases where you've testified, are you generally retained by defense firms?
A I only have two cases, one of each.
Q I am correct you are being paid for the time away from your office today?
A I am.
Q And how much are you getting paid?
A 7,500.
Q You also prepared a report in this case, correct?
A I am.
Q What did you charge for the preparation of that report?
A It was $1,500.
Q And if you weren't here in court today, what would you normally be doing at work?

A I would be seeing patients this afternoon.
Q You regularly perform orthopedic surgeries?
A I do.
Q What type of surgeries?
A I perform mostly hip and knee replacement surgery as well as arthroscopic knee surgery.
Q And when was the last time you did a surgery?
A I did four this morning and ten yesterday.
MR. MALECKI: And, Your Honor, I would ask that Dr. Lombardo be certified as an expert in orthopedic surgery.
THE COURT: The witness is so qualified.
Q And I am correct you were retained to perform an examination of Mr. Julca in this case, correct?
A Yes, sir.
Q And when did you do that examination?
A September 19, 2025.
Q And specifically what body parts were you focused on with respect to Mr. Julca?
A The left shoulder, the right knee, and the left knee.
Q And what -- what did this exam consist of?
A Typically when I meet with a patient, I review their medical history just a general medical history. Then we perform a separate history of the events that transpired that led to the accident. And then we talk about the treatment that's been

provided for each of those injured body parts and then subsequently we perform a physical examination of each of those injured body parts as well.

Q And so the records that you reviewed of his treatment, you reviewed -- did you review the records of Dr. Kaplan's office?

A Yes, I have.

Q Did you also review his initial medical records at JFK Medical Center?

A Yes, I have.

Q And the operative reports of the surgeries for both the left shoulder and the two knees?

A Yes, sir.

Q What about the MRI reports. Did you review those?

A Yes, I have.

Q Were you also able to review the films of those reports?

A Yes, sir.

Q And his physical therapy records as well?

A Yes, sir.

Q And in your review of the medical records as well as in your discussions with Mr Julca, what did you determine about how this accident occurred?

A He had indicated, as well as the medical record, that he was working on a scaffold and he fell off of the scaffold and

was caught by his arms prior and he didn't fall.

Q And did you learn at any point that -- if he returned to work after the accident?

A He did.

Q And did you learn in your review of the records as to what injuries Mr. Julca sustained in the day immediately after the accident?

A Yes.

Q And what did you learn from those?

A He injured his shoulders.

Q And in those reports as well as in your discussions with Mr. Julca, did you learn about Mr. Julca being assigned to a different job site after a couple of weeks?

A I have.

Q And how long does the examine take that you do for Mr. Julca?

A About half an hour.

Q Now, I want to go through the injuries one by one starting with the left shoulder.

A Yes.

Q During the examine you had in September of 2025, did Mr. Julca exhibit any limitations in his left shoulder?

A Yes, he did.

Q And what type of limitations did he exhibit?

A He demonstrated significant restriction in range of

motion. He was not able to flex his arm up greater than 90 degrees or abduct his arm out greater than 90 degrees and he had signs of impingement on physical exam as well meaning that he could not rotate internally to a degree that most people would be able to.

Q And these tests that you run are they subjective and that you're relying on the responses from Mr. Julca?

A Yes, sir.

Q Now, I am correct you reviewed the MRI of Mr. Julca's left shoulder that was done at Lenox Hill Radiology on April 13, 2018?

A I have.

Q And you also reviewed the films of that MRI?

A Yes, I have.

Q And in your career as an orthopedic surgeon, do you typically review films?

A I do very often, every day.

Q And what specific findings were noted in his April 13, 2018, MRI?

A Specifically noted was a partial thickness rotator cuff tendon tear as well as evidence of subacromial impingement. The acromion is the bone that goes right above the top portion of the shoulder. And when that bone edges down, it can rub on the shoulder. In some individuals, the joint, which exist between the acromion and the clavicle, it becomes thickened and it

develops a very thick capsule around the outside and that thick capsule can rub on the rotator cuff. As a result of that, you can see that that was occurring as well as a tear associated with one of the four muscles of the rotator cuff, the one on the top which is the supraspinatus muscle.

Q And you mentioned the world acromion. What is that?

A The acromion is just a portion of the scapular bone that comes and wraps around the side of the shoulder and attaches to the clavicle in the front portion of your shoulder area.

Q And it's my understanding you're saying that that was affecting the rotator cuff?

A Yes, it was.

Q And that acromion, is that something that was specifically caused by this accident?

A No, it was not.

Q And where did that come from?

A There are two problems that occur in individuals with their acromion. One is a congenital abnormality where the acromion, instead of being flat, it points down. They call that a down sloping acromion. That's found in probably 30 to 40 percent of individuals. And you wouldn't really know it unless you took an X-ray. And then the second issue that was occurring was that capsule that surrounds that joint was starting to thicken and that extra thickening capsule with the

down sloping acromion rubs on the rotator cuff, very, very common to see in individuals who perform a lot of overhead activities.

Q And you also mentioned, I believe, a partial tear of the tendon; is that correct?

A Yes, the supraspinatus tendon.

Q Is that something that was caused by the March 3, 2018, accident?

A No, I do not believe so.

Q Why do you believe that?

A The consistency on the MRI, when a rotator cuff tear occurs as a result of a trauma, what happens is that the tendon completely separates and cracks in half. You know, as a result of the extreme force all at once. When a tear develops over time as a result of an abrasion, what you end up seeing is you see tears within the tendon itself. So you see on the MRI that there's these tears that are occurring inside the tendon and they show up by just white signal on the MRI. So they are a very different discrete abnormalities that occur on an MRI that you could very clearly see on a MRI whether it was an acute tear or something that has been occurring over a prolonged period of time.

Q And looking at the MRIs, if a shoulder accident occurs, what would you typically see if it was something that came from an accident?

A Things you would expect with any injury. You know, when you injure a body part, there is typically swelling. There is swelling that occurs as a result of the soft tissues. There's swelling that occurs inside the joint itself. We call that effusion. The effusion represents extra joint fluid that forms in and around the shoulder joint and those are the things that you typically see as far as fluid. Also, if there is a lot of trauma to the bone that would have resulted in this rotator curve tear that would have been deemed acute or new, you would see bone marrow edema. Even the bone can swell as a result of an acute trauma. Neither of those findings were present.

Q Within a reasonable degree of medical certainty, were any of the findings in this April 13, 2018, MRI related to the accident back in March 3, 2018?

A No.

Q Now, the MRI findings were they consistent with the initial hospital records that you reviewed from JFK Medical Center?

A Yes.

Q And were they consistent with Dr. Kaplan's findings in his first visit with Mr. Julca on March 22d of 2018?

A Yes.

Q And after making those initial findings, do you have an opinion as to Dr. Kaplan's treatment approach and whether that was stick -- within the standard of care for work related

accidents?

A Reasonable.

Q And I'm correct that Dr. Kaplan sent him for physical therapy and medication?

A Yes, sir.

Q And eventually Mr. Julca had surgery to that left shoulder, correct?

A Yes.

Q And I have June 10, 2020; is that correct?

A That is correct.

Q And did you review the operative report from that surgery?

A I have.

Q And what type of surgery did Dr. Kaplan perform?

A Dr. Kaplan performed an arthroscopic surgery of the shoulder and a rotator cuff repair. An arthroscopic procedure is a minimally invasive procedure where they put a camera inside the shoulder, usually another type of tool or instrument in a separate incision, sometimes two additional incisions. The goal of the surgery is to reduce trauma from the operation through a minimally invasive approach and repair the problems or address those problems so that an individual could return to normal function.

Q Is there -- well, does Dr. Kaplan's surgery address the issues that were in that MRI?

A Yeah. Yes, they did. They were intended to, yes.

Q Now, within a reasonable degree of medical certainty, was the surgery as a result of the March 3, 2018?

A No, it was not.

Q And why do you say that?

A The pathologic findings on MRI, which were the indications for surgery, the abnormal findings on MRI which are the indications for the operation were chronic degenerative changes and congenital abnormalities likely related to repetitive overhead activity as a sheetrocker. I think that's what his profession was.

Q And just to make sure we understand, you keep using the term chronic degenerative changes. What do you mean by that?

A Chronic is any process that occurs over a longer period of time. It has multiple definitions but most people assume that that process it can occur over years not just a period of several days or several months. Degenerative is a process whereby the body starts to breakdown. Like we all breakdown or all of our body parts don't age -- they age over time. These parts in our muscular skeletal system do the same thing. They all breakdown especially when you use them a lot.

Q And in reviewing the medical records and speaking to Mr. Julca, did you determine how, after the accident, he was hanging from the bars?

A The medical record indicates that when he lost his

balance on the scaffold he grabbed himself under his arms, and he was hanging by his armpits, essentially.

Q Now, Doctor, there's been testimony by Mr. Julca in this case that after the accident he was actually holding his arms straight out instead of underneath his shoulders. Does that change your analysis in any way?

A No, it doesn't.

Q Now, did you review any photographs that were taken during Dr. Kaplan's June 10, 2020, shoulder surgery?

A No, I have not.

Q Do you know if he did take any photographs during that surgery?

A It is standard and customary to obtain photographs intraoperatively of the shoulder surgery you are performing. Every surgeon does it during the procedure. The images is usually kept in their office or at the surgery center.

Q And how would those photographs assist you in your analysis?

A There's a lot that can be gleaned from the photograph. You know, a picture is a thousand words rarely. So describing something in words and seeing it is -- it's different. But you could see additional findings that may have just not been described in those photos.

Q So it would assist you in interpreting the operative report?

A Yes.

Q Now, a shoulder surgery, such as the one that Dr. Kaplan did on June 10, 2020, what's typically the recovery time for that type of surgery?

A Because it is a minimally invasive surgery, most individuals do have a fairly expeditious recovery. There was rotator cuff repair performed so it would have been some restrictions placed about Dr. Kaplan to allow that rotator cuff tear to heal because what Dr. Kaplan did was reapproximated the edges of rotator cuff tear. He would have restricted his motion for -- everyone has a slightly different protocol -- but several weeks up to, you know, several months. And then he would have underwent rehabilitation and recovery from that.

Q And how long does that rehabilitation recovery would take?

A Most people are returning to some level of normal work in three to four months.

Q And now you testified earlier that when you examined Mr. Julca in September of 2025 he was still experiencing symptoms or he was reporting symptoms in his left shoulder, right?

A That is correct.

Q And in your reviewing of Dr. Kaplan's medical records postsurgery, were the complaints that Mr. Julca was having in September 2025 consistent with his records?

A No, they were not.
Q In what way were they not?
A His symptoms, when I had performed the examination, and restriction of range of motion was significantly more restricted than what was documented by Dr. Kaplan.
Q And what exactly are the differences between the two?
A The range of motion that Dr. Kaplan assessed in his notes demonstrates that the claimant had regained mostly normal function of the shoulder where during my examination that motion was significantly restricted.
Q And what did you conclude from that?
A That they were not consistent.
Q And is there any objective explanation for those inconsistencies?
A There is none.
Q And did you make a determination, based on your review of the medical records and your examine of Mr. Julca, as to whether he was able to return to work?
A The objective MRI findings that I reviewed, the arthroscopic report of the procedure and my knowledge of orthopedics he should have been able to return to work at some point regarding the shoulder.
Q And would that be the case even if he did not have the surgery?
A Most people would have been able to work even with

those problems and most people continue to work with those problems.

Q So within a reasonable degree of medical certainty, were any of the MRI reports or the surgery directly attributable to the March 3, 2018, accident?

A No.

Q Now, let's go to the right knee. You examined Mr. Julca's right knee in your examine of 2025, correct?

A Yes, sir.

Q And what followup complaints he was exhibiting at that time?

A Pain with restricted range of motion.

Q And did you review the MRI from Dr. Kolb of the right knee?

A I have.

Q And you reviewed the films?

A Yes, I have.

Q And what were the findings in that MRI back in 2018?

A The reported findings are that of a tear of the medial and lateral meniscus. Our knee has two meniscus, one on either side of our knee. The medial one is the one on the inside. The lateral one is the one on the outside. Their reported findings demonstrated tears of both medial and lateral and a partial ACL or anterior cruciate ligament tear which is the central ligament in your knee.

Q And are these findings consistent with the description of the March 3, 2018, accident?

A They are not.

Q And why do you say that?

A The medical record indicates that when the claimant sustained his injury he banged his knee on a board or a piece of metal while he was hanging. The injuries noted on that MRI are consistent with much higher level energy, some type of event where the foot is planted or becomes planted and there's a lot of twisting or shearing forces occurring. Banging your knee on a board or some other object would cause a surface level injury, a confusion, a bruise, but not internal damage to the knee.

Q And what type of things would you expect to see in a MRI if it had been this type of accident?

A I would expect to see a soft tissue bruise on the MRI because you can see swelling of the skin or muscle on the MRI. You would sigh an effusion. An effusion is fluid inside the knee itself. And due to the reported findings, you would have definitely expect to see a bone bruise which is swelling within the bone. And as a result of what they were calling a partial ACL tear, there would be what's called a hemarthrosis. That's blood within the knee itself.

Q And none of that was present in this MRI?

A No, it was not.

Q Now, let's talk about a couple of those findings. You

said the tear of the medial, lateral meniscus, what is that?

A So those structures in your knee, those meniscal structures, they essentially look like small donuts and they bumper, the femur bone which sits on top and the tibia bone below. So a tear in that structure would represent a disruption or a cut inside or through that donut structure.

Q And when someone experiences a tear such as that in an accident, how quickly are they going to experience symptoms?

A Immediately.

Q So in this case, if the symptoms to Mr. Julca knee did not appear for a couple of weeks after the accident, is that consistent with the MRI findings?

A No, it is not.

Q Now, you reviewed the initial records from JFK Medical Center, correct?

A Yes, I have.

Q And in those records, were there any findings of any injuries to the right knee?

A There was not.

Q And with those findings several months later in the MRI report, would you have expected there to be something in those initial medical records?

A If those findings were representative of an injury that occurred on the day of the injury, they would definitely have been reported on the day of the JFK visit.

Q Now, what about Dr. Kaplan's initial findings when he saw Mr. Julca in March of 22nd of 2018. Are those consistent with the MRI findings?

A Yes, generally so.

Q And I'm correct Mr. Julca eventually had surgery to the right knee June 1, 2022; is that right?

A That is correct.

Q And you reviewed the operative report for that surgery?

A I have.

Q And did you make a determination as to whether that surgery was done as a result of the accident back in March 3, 2018?

A Yes.

Q And what was your determination?

A That it was not related to the accident.

Q And how did you make that determination?

A Based upon the MRI findings demonstrating chronic level changes of the meniscus. When I had given you the analogy before of the donut being torn, the MRI that I was able to look at shows that the donut really wasn't torn discretely through its fibers. What was happening within the meniscus is there was degeneration inside that donut structure and that there wasn't really a discrete tear that went through and through. Those are very common findings to see an individual as they age. You know, individuals 40s, 50s, the meniscus starts to break down

and internal degeneration starts to occur where the fibers start to break. And could you see that on an MRI and that's why its reported.

Q You also mentioned that MRI, the partial ACL tear, correct?

A Yes.

Q What's the ACL?

A The ACL is the anterior cruciate ligament. It is one of the central stabilizing ligaments in your knee. It's involved in high energy pivoting twisting exercise. So if you're running in a direction and you twist in another direction, the ACL holds your knee in place.

Q And is that a partial ACL tear is something that could have come from this accident?

A I viewed the MRI. I did not see evidence of a partial ACL tear and nor was it identified intraoperatively.

Q Does that mean it wasn't reported in Dr. Kaplan's operative report?

A Yes, it just means it wasn't in the operative report.

Q Now, just to be clear, were any of the findings from the right knee MRI connected to the March 3, 2018 accident?

A No, they were not.

Q And you just mentioned the operative report. Was the operative report consistent with the MRI? In other words, was the surgery fixing the things that were found in the right knee

MRI?

A It's a more complicated answer than just a yes or no for that one because the ACL tear wasn't identified so, you know, there was a little bit of a conflict between what was reported as an ACL tear because there wasn't an ACL repair done. But Dr. Kaplan's operative note did address the meniscal tear issues.

Q And, again, did you review any photographs that were taken during that surgery?

A No, I have not.

Q And you mentioned also that Mr. Julca had -- was still experiencing some symptoms when he came to see you in September of 2025?

A Yes.

Q And are those symptoms consistent with the treatment that he received from Dr. Kaplan postsurgery?

A No.

Q In what way are they not?

A Significantly more pain than I would have expected given the operative report findings as well as significantly more restricted range of motion in -- I take it I have a lot of patients was knee related issues and most individuals that undergo arthroscopic surgery do fairly well after their procedure. I did four this morning. Those four people went home today. They will likely drive tomorrow. A good number of

them will go back to work next week.

Q And what is the recovery time for the type of surgery that Dr. Kaplan performed on Mr. Julca's right knee?

A Significantly different than the shoulder. This is much less invasive procedure. There is no real structural repair. If the arthroscopic procedure was a resection, you're only removing the damaged portion of the meniscus. Individuals usually return to normal function in a week or two for the most part in my experience with the patients that I have been taking care of.

Q And so what was your determination, within a reasonable degree of medical difficulty, in reviewing the records and examining Mr. Julca as to whether with respect to the right knee injuries he could return to work?

A Yes, he would be able to return to work.

Q And let's go to the left knee. I'm correct you reviewed his left knee during your September 2025 examine?

A Yes, sir.

Q And what, if any, limitations did he have at that time?

A Pain and restricted motion.

Q And did you also review the MRI reports from May 1, 2018, from Dr. Kolb?

A Yes I did.

Q And the films for that MRI?

A Yes, sir.

Q And what kind of findings were found in May 1st?
A They demonstrated evidence of -- of a meniscal tear as well, a partial ACL tear, and cartilage damage.
Q And I won't make you repeat the explanation for those since they are the same for other knee. Anything in there that's connected to the March 3, 2018, accident?
A No, sir.
Q And why is that?
A There was none of the acute findings or findings that I would expect to see in a person who recently injured their knee. There was no effusion or no swelling in the knee. There was no bone marrow edema or swelling of the bone. No hemarthrosis or blood within the knee itself. None of those findings what you see in an acute injury were present.
Q And were the findings with respect to the left knee consistent with how the accident occurred?
A No, they were not.
Q And why do you say that?
A Because we had talked about before the meniscal tears and ACL tear are usually pivoting, twisting higher in energy type injuries that occur as a result of a fall on to both of his legs or a sporting event or just chronic degenerative changes that can occur over a prolonged period of time.
Q And you reviewed the JFK Medical Center records. Was there any mention of any injury to the left knee during those

records?

A No.

Q And if based on the findings that were in the MRI from May 1, 2018, would you -- how quickly would you have expected symptoms to appear if those findings were accurate?

A Same thing.

Q And I am correct you reviewed the operative report from Dr. Kaplan's left knee surgery from August 9, 2023?

A Yes, sir.

Q What type of surgery did Dr. Kaplan do?

A He performed a meniscectomy and microfracture.

Q And what is that exactly?

A So the meniscectomy is where they just remove that section of the meniscus. A microfracture is drilling usually occurs when they remove some cartilage and they have to get the cartilage to regrow in that area.

Q And I know you mentioned some issues with differences between the MRI reports and the operative reports for the right knee. Were there any of those issues in the left knee?

A Yes, the ACL reconstruction did not occur.

Q So, again, that partial tear of the ACL was not indicated in the operative report?

A Yes, sir.

Q And I am correct that prior to the left knee surgery there was updated MRI of the left knee; is that right?

A Yes, sir.
Q Is there anything different in those MRI findings that were several years later in 2023?
A No.
Q So in that MRI nothing has become and is now attributable to the March 2018 accident?
A No, sir, there is not.
Q And is there anything in the surgery that Dr. Kaplan performed on August 9, 2023, to Mr. Julca's left knee that could be connected to how the accident happened on March 3, 2018?
A No, there is not.
Q Why do you say that?
A The changes that I was able to visualize on the MRI were clearly representative of internal degenerative changes within the knee where the fibers within the meniscus were breaking down. The cartilage irregularities did not correlate with any underlying bone marrow edema. If one were to have damage the cartilage acutely, the underlying bone that supports that cartilage layer would also be damaged and you would see bone marrow edema or swelling in the bone around that same area.
Q And so since none of this edema and this swelling existed in the MRI, then the surgery couldn't have been connected to the accident?
A I do not believe so.
Q And as you said when Mr. Julca came to see you in

September of 2005, he was still experiencing or expressing symptoms to his left knee?

A Yes, sir.

Q And were those consistent with Dr. Kaplan's examinations postsurgery?

A Not particularly, no.

Q In what ways?

A He had more restriction with my range of motion testing and reportedly more pain.

Q And did you make a determination as to whether based solely on the left knee injuries whether Mr. Julca could return to work?

A Based upon the findings of the MRI and the arthroscopic report, there would be no reason for him not to be able to return to work.

Q And I know I asked this with respect to the right knee but as to the left knee surgery that type of surgery, how long does it typically take to recover from that surgery?

A Several weeks.

Q And how did you make a determination that you just testified to that Mr. Julca could return to work?

A Based upon my standard practice with patients that I take care of, you know, typically laborers, individuals who go to work regularly and carry heavy objects, they are returning to work.

Q So with respect to the body parts that you examined, the left shoulder, the left knee, and the right knee, is there anything that you found in your examination, in your review of the medical records, that connects these injuries to the March third 2018 accident?

A No, sir.

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

THE WITNESS: Thank you.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. ROSENGARTEN:

Q Good afternoon, Dr. Lombardo.

A Good afternoon.

Q You testified today that you reviewed the MRI films?

A Yes, sir.

Q When did you do that?

A Last night.

Q And you also testified today that you reviewed medical records regarding Mr. Julca?

A Yes, sir.

Q What medical records did you review?

A The medical records that are in my chart, but they are medical records that came from Dr. Kaplan, JFK medical records, the records from Kolb radiology, Lenox Hill Radiology. I don't

remember the whole list. I have it in my report.
Q Where did you get those medical records from?
A They were forwarded to me from an IE company.
Q Do you know the dates of the records you reviewed for Dr. Kaplan?
A I don't know them off the top of my head, no.
Q The reason I ask is because in your report you said you reviewed records up until, I believe it was, 2020. And your report was in September of 2025, correct?
A Yes, sir.
Q And you reviewed any records after that report of September 2025?
A No, I have not.
Q So when in your report that you say that you reviewed records up until 2020, you didn't review records from 2021, right?
A I would have to check my table of contents. But if it's not listed in my report, then no I did not.
Q And specifically for Dr. Kaplan, right?
A Yes, sir.
Q You didn't review any records from 2022, right?
A Correct.
Q You didn't review any records from 2023, right?
A Correct.
Q And 2024?

A Correct.
Q 2025, right?
A Correct.
Q So about five years worth of records that you didn't review; is that right?
A I don't know if they existed, so I wouldn't know to review them.
Q Now, you said that you examined Mr. Julca in September of 2025, September 19th of 2025, correct?
A Correct.
Q That was about seven and a half years after the accident, right?
A Yes, sir.
Q And you said that you -- I believe you testified that you examined Mr. Julca for about a half hour, right?
A Yes.
Q With that a half hour per body part, knee -- left right knee, left knee, left shoulder or is that a half hour total?
A Total.
Q So, you only saw the plaintiff Mr. Julca one time, right?
A Yes, sir.
Q Have you ever seen him any other time medically?
A No, I have not.
Q And you said you reviewed Dr. Kaplan's records, right?

A Yes, sir.
Q Dr. Kaplan saw Mr. Julca more than once, right?
A Yes, he did.
Q It's fair to say he saw him dozens of times, right?
A It's fair to say.
Q And Dr. Kaplan's records that you reviewed obviously not the ones after 2020, but the ones that you did review, that was over a period of years, right?
A Yes, sir.
Q And you only saw Mr. Julca that one time seven and a half years after the accident?
MR. MALECKI: Objection.
THE COURT: Overruled.
A I guess I don't understand your question.
Q Just to repeat. You saw Mr. Julca that one time in September of 2025, seven and a half years after accident but Dr. Kaplan, for example, saw him over a period of years, correct?
A Yes, sir.
Q That would be different, right?
A Yes, it is different.
Q Would it be fair to say that a treating physician who examined a patient over the course of years 1, 2, 3, 4, 5, 6, 7 years would be in the best position to observe the progression of symptoms over time?

A The progression of symptoms, yes.
Q And then I know Mr. Malecki asked you about operative photos, right?
A Yes, sir.
Q And you said there were operative photos for the left shoulder surgery, right?
A I don't think I said there were left photos. There were no photos for any surgery.
Q You didn't have photos?
A No, I did not.
Q Did the operative report mention that they were taken?
A No, it did not.
Q But you said they would normally be taken?
A It is standard and customary to take photos of every surgery that's arthroscopic.
Q And that would have been for the left shoulder, correct?
A Yes.
Q And that would also be for the right knee, correct?
A Yes, sir.
Q And the left knee, correct?
A Yes, sir.
Q And you didn't review any of those type of photos, right?
A No, I have not.

Q So, is it fair so say that you rendered your opinion on the cause of the accident without seeing those surgical images?
A Yes.
Q Did you ever speak to doctor Kaplan regarding Mr. Julca's treatment?
A No, I have not.
Q Did you ever go to observe the three surgeries Dr. Kaplan did?
A No, sir.
Q Did you ever ask Dr. Kaplan why he performed the surgeries that he did?
A No, I have not.
Q Now, you also talked about the causation of the accident, right. Were you present at the accident?
A No, I was not.
Q Did you inspect the scaffolding that was part of the accident that you heard about?
A No, sir.
Q Now, I know you, at the beginning, you mentioned a lot of training that you had. Is any of that engineering?
A Engineering no.
Q You don't have any engineering training, right?
A I do. I have a biomedical engineering background.
Q So, you have a bio -- so you have an engineering background?

A It is considered a biomedical engineering background, yes.

Q How biomedical engineering different than engineering?

A It looks at the aspects of molecular genetics and things of that sort. I also have a construction background and I own a construction company.

Q You currently have a construction background?

A Yes, I do.

Q Are you familiar with the term taping?

A Taping? Yes.

Q What is taping?

MR. MALECKI: Objection. Outside the scope.

THE COURT: Sustained.

Q Now, in your reports, you talked about some of the work that may have caused, over the course of the year, Mr. Julca's injuries, right?

A Yes, sir.

Q I am just going to pull it up on your report. You mentioned something here, something about maintaining balance on elevated stilts. I am reading from page 13 of your report.

A Yes, sir.

Q And also as part of your report you reviewed some, but not all, of Mr. Julca's deposition testimony, right?

A I reviewed everything that was sent to me. Why would that be some?

Q Well, because in your report, I am reading from your report, you have a whole table of contents of the things that you looked at?

A Yes, sir.

Q And you list eight or nine continued examination before trial October 22, 2020, and a virtual examination before trial of plaintiff Juan Julca on October 31, 2023, right?

A Yes, sir.

Q Now, you don't mention any others?

A No, I do not.

Q I could represent to you that Mr. Julca has been deposed more than those two times.

A Okay.

Q So you didn't -- so that's why I say some. You didn't review all of them, correct?

A Yes, thank you.

Q Now, in the testimony that you reviewed, was there any mention of stilts that he used?

A No.

Q Is there any mention that he ever used stilts at all as a taper?

A No.

Q But you still mentioned that he would have worked on stilts. Where did you get that information from?

A It's standard practice for most tapers.

Q Now, you also called him today a sheetrocker.
A Yeah.
Q And I think you also mentioned that he would have been carrying sheetrock?
A Could.
Q Now you said you're familiar with taping?
A Yes.
Q In your report, you talked about carrying heavy sheets. That's also on page 13 of your report.
A Yes, sir.
Q So I am going to ask again what is taping?
A Taping is a process usually when you are joining boards together with compound and abridging product.
Q Now, tapers don't install the sheetrock, right?
A That's not true. Some do.
Q But not all?
A Not all.
Q And do you know if Mr. Julca's job as a taper was installing sheetrock?
A No, I don't know.
Q So you said he is carrying heavy sheets. What are you basing that on just general?
A Yes, sir.
Q You don't know specifically that he carried heavy sheets?

A No, I do not.
Q You don't know specifically from his deposition testimony that he did any of those things?
A No, I don't.
Q You just made these assumptions based on what you know about taping but not speaking to Mr. Julca?
A Yes, sir.
Q Now, you said you currently work in construction?
A I have some construction projects, yes.
Q Currently?
A Yes.
Q Where is that?
A In Rhinebeck.
Q I know you in 1991 to 1998 you did some landscaping, right?
A Yes, sir.
Q Where you do construction on the side as -- as being a side -- aside from being a doctor?
A It's my wife's business.
Q And do you do the construction yourself?
A Some of it I do.
Q And what type of construction?
A I could do electric. I could do plumbing. I could do sheetrock. I can tape, not well.
Q Now, Mr. Malecki mentioned that you were retained by

Mr. Malecki's firm, right?
A Yes, sir.
Q But once again you weren't -- you weren't Mr. Julca's treating physician, right?
A I was not.
Q And you were paid to prepare a report?
A Yes, sir.
Q And you also said that you charge for your testimony in court today?
A Yes, sir.
Q But you didn't provide any treatment for Mr. Julca, right?
A I have not.
Q You didn't provide any -- you didn't perform any surgery on Mr. Julca?
A No, I have not.
Q You didn't prescribe any medication Mr. Julca, right?
A No, I have not.
Q Now, you wrote in your report that the meniscus tear has to produce symptoms within 24 to 48 hours? That's what you said in your report.
A Yes, sir.
Q And today you said you have to do it immediately, right?
A I guess it's in the definition of what immediately is.

Within that first period of a day, I would expect a meniscal tear to have been present especially if you had two of them or three of them.

Q It's fair to say medicine in general is not the type of thing that you operate with absolute certainty, right?

A Not always, no.

Q Patients can sometimes have delayed onset symptoms, correct?

A Yes, they can.

Q And there are meniscus tears that are initially asymptomatic, correct?

A Yes.

Q And sometimes patients even continue working despite being injured, right?

A Yes, they can.

Q I also talked about the work Mr. Julca -- he went back to work. You said that you reviewed that he went back to work, right?

A Yes, sir.

Q You said he was working for a week, right?

A Yes.

Q But he was also doing light duty that week, right?

A Yes, sir.

Q Now, you also talked a lot today about degeneration, right?

A I don't understand what you mean by degeneration.
Q Degeneration, various parts of the body that you say had degenerated?
A Degenerated, yes.
Q It's fair to say degeneration and trauma can coexist, right?
A Of course, it could.
Q And trauma can aggravate a pretty existing condition, correct?
A Yes, it can.
Q That's something that you see regularly in your orthopedic practice, correct?
A Yes, sir.
Q Now, going to the rotator cuff tear, the left shoulder. So I think today you testified that Dr. Kaplan's care was reasonable, right?
A Yes, sir.
Q And you did observe, when you looked at the MRI, a tear of that rotator cuff, correct?
A Yes, sir.
Q So that was confirmed by Dr. Kaplan when he did the arthroscopic surgery, correct?
A Yes, it is.
Q And Dr. Kaplan saw that up close because in the arthroscopic surgery he actually saw the rotator cuff tear. He

actually opened up the shoulder and saw the actual tear, right?
A Yes, sir.
Q Is it fair to say that actually going into the shoulder and reviewing and looking to see what actually was there is better than reviewing an MRI?
A Not necessarily.
Q Now, you would agree that patients don't always recover perfectly from surgery, right?
A That is true.
Q You said here today that Mr. Julca, you know, had more pain than you would have thought and that was based on just the normal person, right?
A Of course.
Q But some patients are not necessarily normal, correct?
A I agree.
Q And that's fair to say that some patients have chronic pain after arthroscopic left shoulder surgery, right?
A That is rue.
Q It's fair to say that some patients have chronic pain after a left knee arthroscopic surgery, correct?
A Correct.
Q It's fair to say that some patients have chronic pain after a right knee arthroscopic surgery, right?
A Yes, it is.
Q Now, in terms of the right knee --

A Yes, sir.
Q -- you also said -- I believe you testified that Dr. Kaplan's treatment of his first visit was consistent as to what you saw on the MRI, correct?
A Yes, sir.
Q And that was the same for left knee, correct?
A Yes, sir.
Q You also said that for the right knee you say it would take a week or two to recover?
A On average, yes.
Q And the left knee you said the same?
A Similar.
Q Now, the left knee though I thought you testified that it was a different surgery?
A He had some cartilage work there as well.
Q It was a microfracture as well?
A Yes.
Q So that would extended the time of recovery?
A It could have, yes.
Q So, you testified today about the right shoulder -- the left shoulder injuries and the right knee injuries and the left knee injuries and you said that -- and you told this jury that these surgeries and these injuries could not have been caused by Mr. Julca's accident, right?
A Yes, sir.

Q But you did that even though you didn't review the surgical photographs, right?
A Yes, sir.
Q And you did that even though you only examined Mr. Julca once seven and a half years after the accident?
A Yes, sir.
Q And you did that even though you didn't review all of Dr. Kaplan's records, right?
A I was only able to review what I was provided.
Q And they were provided by someone of a separate matter?
A Right.
Q You didn't review those records from 2021, 2022, 2023, 2024, 2025?
A Yes, sir.
Q So your determination is only based on seeing my client one time seven and a half years after the accident and with an incomplete review of his medical records, right?
MR. MALECKI: Objection.
THE COURT: Sustained.
MR. ROSENGARTEN: No further questions, Your Honor. Thank you.
MR. MALECKI: No redirect, Your Honor.
THE COURT: The witness may step down.
(Whereupon, the witness was excused from the stand.)

THE COURT: Counsel, step up for a moment.

(Whereupon, the following discussion takes place at sidebar among the Court and Counsel, outside the hearing of the sworn jurors.)

(Whereupon, the following discussion take place on the record in open court, in the hearing and presence of the jury.)

THE COURT: Members of the jury, tomorrow we start at 10 a.m. Do not discuss this case among yourselves or with anybody else. Do not do any independent research. Do not visit the scene. That, as you can tell from my instruction I just gave you, that completes our witness that we have for today. Tomorrow we have another witness, but I expect his testimony will take somewhat longer so be prepared for that. Have a good evening, members of the jury. I will see you tomorrow at 10 a.m.

COURT OFFICER: All rise, jury exiting.

(Whereupon, the sworn jurors exit the courtroom.)

COURT OFFICER: Please be seated.

THE COURT: Counsel, anything we need to address before we close the record for today?

MR. ROSENGARTEN: I don't believe so, Your Honor.

THE COURT: Have a good night, Counsels. We are off the record.

(Whereupon, the trial is adjourned until Wednesday,

March 11, 2026, at 10 a.m.)

$

$1,500 (1)
198:23

A

abduct (1)
202:2
able (11)
200:16;202:1,5;
210:18,21,25;
214:19;217:15;
220:13;221:14;
237:9
abnormal (1)
207:7
abnormalities (2)
204:19;207:9
abnormality (1)
203:19
above (1)
202:22
abrasion (1)
204:15
abridging (1)
230:13
absolute (1)
233:5
accident (36)
199:25;200:23;
201:3,7;203:15;
204:8,23,25;
205:14;207:23;
208:4;211:5;212:2,
14;213:8,11;
214:11,15;215:14,
21;218:6,16;220:6,
10,23;222:5;
224:12;225:11,16;
227:2,14,14,17;
236:24;237:5,16
accidents (1)
206:1
accurate (1)
219:5
ACL (15)
211:23;212:21;
215:4,7,8,12,13,16;
216:3,5,5;218:3,
20;219:20,21
acromion (9)
202:22,25;203:6,
7,14,19,20,21;
204:1
activities (1)
204:3
activity (1)
207:10
actual (1)
235:1
actually (5)
208:4;234:25;
235:1,3,4
acute (5)
204:20;205:9,11;
218:9,14
acutely (1)
220:18
additional (2)
206:19;208:22
address (8)
196:16,19,20,21;
206:21,24;216:6;
238:20
adjourned (1)
238:25
advance (1)
197:17
affecting (1)
203:12
affiliated (1)
197:25
affirmed (1)
196:25
afternoon (5)
196:2;197:4;
199:1;222:13,14
again (5)
196:3;216:8;
219:21;230:11;
232:3
age (3)
207:19,19;
214:24
aggravate (1)
234:8
agree (2)
235:7,15
Alliance (1)
198:5
allow (1)
209:8
always (2)
233:6;235:7
among (2)
238:3,9
analogy (1)
214:18
analysis (2)
208:6,18
Anderson (1)
197:17
anterior (2)
211:24;215:8
appear (2)
213:11;219:5
approach (2)
205:24;206:21
April (3)
202:10,18;
205:13
area (3)
203:10;219:16;
220:20
arm (2)
202:1,2
armpits (1)
208:2
arms (3)
201:1;208:1,5
around (4)
203:1,8;205:6;
220:20
arthroscopic (13)
199:6;206:15,16;
210:20;216:23;
217:6;221:13;
226:15;234:22,25;
235:17,20,23
aside (1)
231:18
aspects (1)
228:4
assessed (1)
210:7
assigned (1)
201:12
assist (2)
208:17,24
associated (1)
203:3
Association (1)
198:7
associations (1)
198:6
assume (1)
207:15
assumptions (1)
231:5
asymptomatic (1)
233:11
attaches (1)
203:9
attributable (2)
211:4;220:6
August (2)
219:8;220:9
average (1)
236:10
away (1)
198:15

B

back (7)
196:3;205:14;
211:18;214:11;
217:1;233:16,17
background (6)
197:10;227:23,
25;228:1,5,7
balance (2)
208:1;228:19
banged (1)
212:6
Banging (1)
212:10
bars (1)
207:24
based (9)
210:16;214:17;
219:3;221:10,13,
22;231:5;235:11;
237:15
basing (1)
230:22
become (1)
220:5
becomes (2)
202:25;212:9
beginning (1)
227:19
behalf (1)
196:13
below (1)
213:5
best (1)
225:24
better (1)
235:5
bio (1)
227:24
biomedical (3)
227:23;228:1,3
bit (2)
197:10;216:4
blood (2)
212:22;218:13
board (3)
197:19;212:6,11
boards (1)
230:12
body (9)
199:18;200:1,3;
205:2;207:18,19;
222:1;224:17;
234:2
bone (16)
202:22,23;203:7;
205:8,10,10;
212:19,20;213:4,4;
218:12,12;220:17,
18,20,20
both (4)
196:16;200:11;
211:23;218:21
break (2)
214:25;215:2
breakdown (3)
207:18,18,21
breaking (1)
220:16
Brook (1)
197:12
Brothers (1)
198:3
bruise (3)
212:12,15,19
bumper (1)
213:4
business (3)
196:19,21;
231:19

C

call (5)
196:5,8,9;
203:20;205:4
called (3)
196:12;212:21;
230:1
calling (1)
212:20
calls (1)
196:11
came (4)
204:24;216:12;
220:25;222:24
camera (1)
206:17
can (19)
197:6,7,10;
202:23;203:2,3;
205:10;207:16;
208:19;212:16;
218:23;231:24;
233:7,9,15;234:5,8,
10;238:11
capsule (4)
203:1,2,24,25
care (4)
205:25;217:10;
221:23;234:15
career (1)
202:15
carried (1)
230:24
carry (1)
221:24
carrying (3)
230:4,8,21
cartilage (7)
218:3;219:15,16;
220:16,18,19;
236:15
case (7)
196:5;198:20;
199:14;208:4;
210:23;213:10;
238:9
cases (2)
198:12,14
caught (1)
201:1
causation (1)
227:13
cause (2)
212:11;227:2
caused (4)
203:15;204:7;
228:15;236:23
Center (6)

198:3;200:9;
205:18;208:16;
213:15;218:24
central (2)
211:24;215:9
certainty (4)
205:12;207:2;
211:3;233:5
certified (2)
197:19;199:10
change (1)
208:6
changes (6)
207:9,13;214:18;
218:22;220:13,14
charge (2)
198:22;232:8
chart (1)
222:23
check (1)
223:17
chronic (8)
207:8,13,14;
214:17;218:22;
235:16,19,22
claimant (2)
210:8;212:5
clavicle (2)
202:25;203:9
clear (2)
196:15;215:20
clearly (3)
197:5;204:20;
220:14
CLERK (2)
196:15,24
client (1)
237:15
close (2)
234:24;238:21
coexist (1)
234:5
college (1)
197:12
common (2)
204:2;214:24
company (2)
223:3;228:6
complaints (2)
209:24;211:10
completed (2)
197:13,16
completely (1)
204:13
completes (1)
238:12
complicated (1)
216:2
compound (1)
230:13
conclude (1)
210:11
condition (1)
234:8
confirmed (1)
234:21
conflict (1)
216:4
confusion (1)
212:12
congenital (2)
203:19;207:9
connected (4)
215:21;218:6;
220:10,23
connects (1)
222:4
considered (1)
228:1
consist (1)
199:21
consistency (1)
204:11
consistent (13)
205:16,20;
209:25;210:12;
212:1,8;213:12;
214:2;215:24;
216:15;218:16;
221:4;236:3
construction (8)
228:5,6,7;231:8,
9,17,20,22
contents (2)
223:17;229:2
continue (2)
211:1;233:13
continued (1)
229:5
convenience (1)
196:7
correlate (1)
220:16
Counsel (4)
197:1;238:1,3,20
Counsels (1)
238:23
couple (3)
201:13;212:25;
213:11
course (4)
225:23;228:15;
234:7;235:13
COURT (22)
196:1,2,15,21,
24;197:1;198:24;
199:12;222:10;
225:13;228:13;
232:9;237:19,23;
238:1,3,6,8,17,19,
20,23
courtroom (1)
238:18
cracks (1)
204:13
Cross (1)
222:10
CROSS-EXAMINATION (1)
222:11
cruciate (2)
211:24;215:8
cuff (13)
202:20;203:2,4,
12;204:1,11;
206:16;209:7,8,10;
234:14,19,25
currently (4)
197:25;228:7;
231:8,10
curve (1)
205:9
customary (2)
208:13;226:14
cut (1)
213:6

D

damage (3)
212:12;218:3;
220:18
damaged (2)
217:7;220:19
dates (1)
223:4
day (5)
201:6;202:17;
213:24,25;233:1
days (1)
207:17
deemed (1)
205:9
Defendant (1)
196:13
defense (3)
196:4,10;198:13
definitely (2)
212:19;213:24
definition (1)
232:25
definitions (1)
207:15
degenerated (2)
234:3,4
degeneration (6)
214:22;215:1;
233:24;234:1,2,5
degenerative (5)
207:8,13,17;
218:22;220:14
degree (5)
202:4;205:12;
207:2;211:3;
217:12
degrees (2)
202:2,2
delayed (1)
233:7
demonstrated (3)
201:25;211:23;
218:2
demonstrates (1)
210:8
demonstrating (1)
214:17
deposed (1)
229:12
deposition (2)
228:23;231:2
described (1)
208:23
describing (1)
208:20
description (1)
212:1
despite (1)
233:13
determination (8)
210:16;214:10,
14,16;217:11;
221:10,20;237:15
determine (2)
200:22;207:23
develops (2)
203:1;204:14
differences (2)
210:6;219:17
different (10)
201:13;204:19;
208:21;209:11;
217:4;220:2;
225:20,21;228:3;
236:14
difficulty (1)
217:12
DIRECT (1)
197:2
direction (2)
215:11,12
directly (1)
211:4
discrete (2)
204:19;214:23
discretely (1)
214:20
discuss (1)
238:9
discussion (2)
238:2,5
discussions (2)
200:22;201:11
disruption (1)
213:5
doctor (6)
196:11;197:7;
208:3;222:8;227:4;
231:18
documented (1)
210:5
done (3)
202:10;214:11;
216:5
donut (4)
213:6;214:19,20,
22
donuts (1)
213:3
down (7)
202:23;203:20,
21;204:1;214:25;
220:16;237:23
dozens (1)
225:4
Dr (42)
197:4;199:10;
200:5;205:20,24;
206:3,14,15,24;
208:9;209:3,8,9,
23;210:5,7;211:13;
214:1;215:17;
216:6,16;217:3,22;
219:8,10;220:8;
221:4;222:13,24;
223:5,19;224:25;
225:2,6,17;227:8,
10;234:15,21,24;
236:3;237:8
drilling (1)
219:14
drive (1)
216:25
due (1)
212:18
duly (1)
196:13
During (8)
201:21;208:9,11,
15;210:9;216:9;
217:17;218:25
Dutchess (1)
198:4
duty (1)
233:22

E

earlier (1)
209:18
edema (5)
205:10;218:12;
220:17,20,21
edges (2)
202:23;209:10
education (1)
197:11
effusion (5)
205:5,5;212:17,
17;218:11
eight (1)
229:5
either (1)
211:20
electric (1)
231:23
elevated (1)

228:20
else (1)
238:10
end (1)
204:15
energy (3)
212:8;215:10;
218:20
engineering (8)
227:20,21,22,23,
24;228:1,3,3
entering (1)
196:1
especially (2)
207:21;233:2
essentially (2)
208:2;213:3
Even (7)
205:10;210:23,
25;233:13;237:1,4,
7
evening (1)
238:15
event (2)
212:8;218:22
events (1)
199:24
eventually (2)
206:6;214:5
everyone (1)
209:11
evidence (3)
202:21;215:15;
218:2
exactly (2)
210:6;219:12
exam (2)
199:21;202:3
EXAMINATION (9)
197:2;199:14,16;
200:2;210:3,9;
222:3;229:5,6
examinations (1)
221:5
examine (5)
201:15,21;
210:17;211:8;
217:17
examined (8)
196:13;209:18;
211:7;222:1;224:8,
15;225:23;237:4
examining (1)
217:13
example (1)
225:17
excused (1)
237:24
exercise (1)
215:10
exhibit (2)
201:22,24
exhibiting (1)
211:10
exist (1)
202:24
existed (2)
220:22;224:6
existing (1)
234:8
exit (1)
238:18
exiting (1)
238:17
expect (7)
205:1;212:13,15,
19;218:10;233:1;
238:14
expected (3)
213:21;216:19;
219:4
expeditious (1)
209:6
experience (2)
213:8;217:9
experiences (1)
213:7
experiencing (3)
209:19;216:12;
221:1
expert (2)
198:10;199:10
explanation (2)
210:13;218:4
expressing (1)
221:1
extended (1)
236:18
extra (2)
203:25;205:5
extreme (1)
204:14

F

fair (10)
225:4,5,22;
227:1;233:4;234:5;
235:3,16,19,22
fairly (2)
209:6;216:23
fall (2)
201:1;218:21
familiar (2)
228:9;230:6
far (1)
205:7
fell (1)
200:25
fellowship (1)
197:16
femur (1)
213:4
fibers (3)
214:21;215:1;
220:15
films (6)
200:16;202:13,
16;211:16;217:24;
222:15
findings (35)
202:18;205:11,
13,16,20,23;207:6,
7;208:22;210:19;
211:18,19,22;
212:1,18,25;
213:12,17,20,23;
214:1,3,17,24;
215:20;216:20;
218:1,9,9,13,15;
219:3,5;220:2;
221:13
finished (1)
196:5
firm (1)
232:1
firms (1)
198:13
first (5)
196:9,17;205:21;
233:1;236:3
five (2)
197:14;224:4
fixing (1)
215:25
flat (1)
203:20
flex (1)
202:1
fluid (3)
205:5,7;212:17
focused (1)
199:18
following (2)
238:2,5
follows (1)
196:14
followup (1)
211:10
foot (1)
212:9
force (1)
204:14
forces (1)
212:10
forms (1)
205:6
forwarded (1)
223:3
found (4)
203:21;215:25;
218:1;222:3
four (6)
197:14;199:8;
203:4;209:17;
216:24,24
Frank (2)
196:11,18
F-R-A-N-K (1)
196:18
front (1)
203:9
function (3)
206:23;210:9;
217:8
further (1)
237:20

G

gave (1)
238:12
general (4)
197:16;199:23;
230:22;233:4
generally (2)
198:13;214:4
genetics (1)
228:4
given (2)
214:18;216:20
gleaned (1)
208:19
goal (1)
206:19
goes (1)
202:22
Good (7)
196:2;197:4;
216:25;222:13,14;
238:15,23
grabbed (1)
208:1
greater (2)
202:1,2
guess (2)
225:14;232:25

H

half (10)
201:17;204:13;
224:11,15,17,18;
225:11,16;237:5,
16
hanging (3)
207:24;208:2;
212:7
happened (1)
220:10
happening (1)
214:21
happens (1)
204:12
head (1)
223:6
heal (1)
209:9
Health (1)
198:4
hear (1)
197:6
heard (1)
227:17
hearing (2)
238:3,6
heavy (4)
221:24;230:8,21,
24
hemarthrosis (2)
212:21;218:12
high (1)
215:10
higher (2)
212:8;218:20
Hill (2)
202:10;222:25
himself (1)
208:1
hip (1)
199:5
history (3)
199:23,23,24
holding (1)
208:4
holds (1)
215:12
home (2)
196:19;216:25
Honor (6)
196:10,24;199:9;
237:20,22;238:22
Hospital (3)
198:4,5;205:17
hospitals (2)
197:25;198:2
hour (4)
201:17;224:15,
17,18
hours (1)
232:20

I

identified (2)
215:16;216:3
IE (1)
223:3
images (2)
208:15;227:2
immediately (4)
201:6;213:9;
232:23,25
impingement (2)
202:3,21
incision (1)
206:19
incisions (1)
206:19
incomplete (1)
237:17
inconsistencies (1)
210:14
independent (1)
238:10

indicated (2)
200:24;219:22
indicates (2)
207:25;212:5
indications (2)
207:7,8
individual (2)
206:22;214:24
individuals (9)
202:24;203:18,22;204:2;209:6;214:25;216:22;217:7;221:23
information (1)
229:24
initial (6)
200:8;205:17,23;213:14,22;214:1
initially (1)
233:10
injure (1)
205:2
injured (5)
200:1,3;201:10;218:10;233:14
injuries (13)
201:6,18;212:7;213:18;217:14;218:21;221:11;222:4;228:16;236:21,21,22,23
injury (7)
205:1;212:6,11;213:23,24;218:14,25
inquire (1)
197:1
inside (7)
204:17;205:4;206:17;211:21;212:17;213:6;214:22
inspect (1)
227:16
install (1)
230:14
installing (1)
230:19
instead (2)
203:20;208:5
Institute (1)
197:18
instruction (1)
238:12
instrument (1)
206:18
intended (1)
207:1
internal (3)
212:12;215:1;220:14
internally (1)
202:4
interpreting (1)
208:24
into (2)
197:5;235:3
intraoperatively (2)
208:14;215:16
invasive (4)
206:17,21;209:5;217:5
involved (1)
215:10
irregularities (1)
220:16
Island (2)
197:13,15
issue (1)
203:23
issues (5)
206:25;216:7,22;219:17,19

J

Jewish (1)
197:15
JFK (6)
200:8;205:17;213:14,25;218:24;222:24
job (2)
201:13;230:18
joining (1)
230:12
joint (5)
202:24;203:24;205:4,5,6
Juan (1)
229:7
Julca (40)
199:14,19;200:22;201:6,12,12,16,22;202:7;205:21;206:6;207:23;208:3;209:19,24;210:17;213:10;214:2,5;216:11;217:13;220:25;221:11,21;222:20;224:8,15,20;225:2,10,15;229:7,11;231:6;232:11,15,17;233:16;235:10;237:5
Julca's (10)
202:9;211:8;217:3;220:9;227:5;228:15,23;230:18;232:3;236:24
June (4)
206:9;208:9;209:3;214:6
jurors (2)
238:4,18
jury (8)
196:1,2,3;236:22;238:7,8,16,17

K

Kaplan (22)
206:3,14,15;209:3,8,9;210:5,7;216:16;217:3;219:10;220:8;222:24;223:5,19;225:2,17;227:4,8,10;234:21,24
Kaplan's (16)
200:5;205:20,24;206:24;208:9;209:23;214:1;215:17;216:6;219:8;221:4;224:25;225:6;234:15;236:3;237:8
keep (1)
207:12
kept (1)
208:16
kind (1)
218:1
Kingston (1)
198:5
knee (61)
199:5,6,20,20;211:7,8,14,20,21,25;212:6,10,12,18,22;213:2,10,18;214:6;215:9,12,21,25;216:22;217:3,13,16,17;218:5,10,11,13,15,25;219:8,19,19,24,25;220:9,15;221:2,11,16,17;222:2,2;224:17,18,18;226:19,21;235:20,23,25;236:6,8,11,13,21,22
knees (1)
200:12
knowledge (1)
210:20
Kolb (3)
211:13;217:22;222:25

L

laborers (1)
221:23
landscaping (1)
231:14
last (3)
196:17;199:7;222:18
later (2)
213:20;220:3
lateral (4)
211:20,22,23;213:1
layer (1)
220:19
learn (4)
201:2,5,9,12
led (1)
199:24
left (37)
199:20,20;200:12;201:19,22;202:10;206:6;209:20;217:16,17;218:15,25;219:8,19,24,25;220:9;221:2,11,17;222:2,2;224:17,18,18;226:5,7,16,21;234:14;235:17,20;236:6,11,13,21,21
legs (1)
218:22
Lenox (2)
202:10;222:25
less (1)
217:5
level (4)
209:16;212:8,11;214:17
licensed (1)
197:23
ligament (3)
211:24,24;215:8
ligaments (1)
215:9
light (1)
233:22
likely (2)
207:9;216:25
limitations (3)
201:22,24;217:19
list (2)
223:1;229:5
listed (1)
223:18
little (2)
197:10;216:4
Lombardo (5)
196:11,18;197:4;199:10;222:13
L-O-M-B-A-R-D-O (1)
196:19
Long (4)
197:13;201:15;209:14;221:17
longer (2)
207:14;238:14
look (2)
213:3;214:19
looked (2)
229:3;234:18
looking (2)
204:23;235:4
looks (1)
228:4
lost (1)
207:25
lot (8)
204:2;205:7;207:21;208:19;212:9;216:21;227:19;233:24
loud (1)
196:15

M

maintaining (1)
228:19
making (1)
205:23
Malecki (11)
196:9,10;197:3;199:9;222:7;225:12;226:2;228:12;231:25;237:18,22
Malecki's (1)
232:1
March (14)
204:7;205:14,21;207:3;211:5;212:2;214:2,11;215:21;218:6;220:6,10;222:4;239:1
marrow (4)
205:10;218:12;220:17,20
matter (1)
237:10
may (7)
197:1;208:22;217:21;218:1;219:4;228:15;237:23
mean (3)
207:13;215:17;234:1
meaning (1)
202:3
means (1)
215:19
medial (4)
211:19,21,23;213:1
medical (31)
197:8,13;198:3,7;199:23,23;200:8,9,21,24;205:12,17;

207:2,22,25; 209:23;210:17; 211:3;212:5; 213:14,22;217:12; 218:24;222:4,19, 22,23,24,24;223:2; 237:17
medically (1) 224:23
medication (2) 206:4;232:17
medicine (1) 233:4
meet (1) 199:22
member (1) 198:6
members (3) 196:2;238:8,15
meniscal (5) 213:2;216:6; 218:2,19;233:1
meniscectomy (2) 219:11,13
meniscus (11) 211:20,20;213:1; 214:18,21,25; 217:7;219:14; 220:15;232:19; 233:10
mention (5) 218:25;226:11; 229:9,18,20
mentioned (11) 203:6;204:4; 215:4,23;216:11; 219:17;227:19; 228:19;229:23; 230:3;231:25
metal (1) 212:7
mic (1) 197:5
microfracture (3) 219:11,14; 236:16
minimally (3) 206:17,21;209:5
molecular (1) 228:4
moment (1) 238:1
months (4) 207:17;209:12, 17;213:20
more (9) 210:4;216:2,19, 21;221:8,9;225:2; 229:12;235:10
morning (2) 199:8;216:24
most (9) 202:4;207:15; 209:5,16;210:25; 211:1;216:22; 217:8;229:25
mostly (2) 199:5;210:8
motion (9) 202:1;209:10; 210:4,7,9;211:12; 216:21;217:20; 221:8
MRI (48) 200:14;202:9,13, 19;204:11,16,18, 19,20;205:13,16; 206:25;207:6,7; 210:19;211:4,13, 18;212:7,14,15,16, 23;213:12,20; 214:3,17,19;215:2, 4,15,21,24;216:1; 217:21,24;219:3, 18,25;220:2,5,13, 22;221:13;222:15; 234:18;235:5; 236:4
MRIs (1) 204:23
much (3) 198:18;212:8; 217:5
multiple (1) 207:15
muscle (2) 203:5;212:16
muscles (1) 203:4
muscular (1) 207:20

N

name (2) 196:16,17
necessarily (2) 235:6,14
need (1) 238:20
Neither (1) 205:11
New (6) 196:23;197:23; 198:4,5,7;205:9
next (1) 217:1
night (2) 222:18;238:23
nine (1) 229:5
none (5) 210:15;212:23; 218:9,13;220:21
nor (1) 215:16
normal (6) 206:22;209:16; 210:8;217:8; 235:12,14
normally (2) 198:25;226:13
North (1) 197:15
Northern (1) 198:4
note (1) 216:6
noted (3) 202:18,20;212:7
notes (1) 210:8
number (1) 216:25

O

object (1) 212:11
Objection (3) 225:12;228:12; 237:18
objective (2) 210:13,19
objects (1) 221:24
observe (3) 225:24;227:7; 234:18
obtain (1) 208:13
obviously (1) 225:6
occur (7) 203:18;204:19; 207:16;215:1; 218:21,23;219:20
occurred (3) 200:23;213:24; 218:16
occurring (5) 203:3,24;204:17, 21;212:10
occurs (6) 204:12,23;205:3, 4;207:14;219:15
October (2) 229:6,7
off (3) 200:25;223:6; 238:24
office (3) 198:16;200:6; 208:16
OFFICER (3) 196:1;238:17,19
often (1) 202:17
once (4) 204:14;225:2; 232:3;237:5
one (19) 198:14;201:18, 18;203:4,4,19; 209:2;211:20,21, 21,22,22;215:8; 216:3;220:17; 224:20;225:10,15; 237:16
ones (2) 225:7,7
only (7) 198:14;217:7; 224:20;225:10; 237:4,9,15
onset (1) 233:7
open (1) 238:6
opened (1) 235:1
operate (1) 233:5
operation (2) 206:20;207:8
operative (16) 200:11;206:11; 208:24;214:8; 215:18,19,23,24; 216:6,20;219:7,18, 22;226:2,5,11
opinion (2) 205:24;227:1
Orthopedic (9) 197:9,15,17,17, 22;199:2,10; 202:15;234:12
orthopedics (1) 210:21
others (1) 229:9
out (3) 196:6;202:2; 208:5
outside (4) 203:1;211:22; 228:12;238:3
over (11) 204:14,21; 207:14,16,19; 218:23;225:8,17, 23,25;228:15
overhead (2) 204:2;207:10
Overruled (1) 225:13
own (1) 228:6

P

page (2) 228:20;230:9
paid (3) 198:15,18;232:6
Pain (8) 211:12;216:19; 217:20;221:9; 235:11,17,19,22
part (5) 205:2;217:9; 224:17;227:16; 228:22
partial (9) 202:20;204:4; 211:23;212:20; 215:4,13,15;218:3; 219:21
particularly (1) 221:6
parts (7) 199:18;200:1,3; 207:19,20;222:1; 234:2
past (2) 198:8,10
pathologic (1) 207:6
patient (2) 199:22;225:23
patients (11) 199:1;216:22; 217:9;221:22; 233:7,13;235:7,14, 16,19,22
people (6) 202:4;207:15; 209:16;210:25; 211:1;216:24
per (1) 224:17
percent (1) 203:22
perfectly (1) 235:8
perform (8) 199:2,5,13,23; 200:2;204:2; 206:14;232:14
performed (7) 206:15;209:7; 210:3;217:3; 219:11;220:9; 227:10
performing (1) 208:14
period (7) 204:21;207:14, 16;218:23;225:8, 17;233:1
person (2) 218:10;235:12
photograph (1) 208:19
photographs (6)

208:8,11,13,17; 216:8;237:2
photos (8) 208:23;226:3,5, 7,8,9,14,23
physical (4) 200:2,19;202:3; 206:3
physician (2) 225:22;232:4
Physicians (1) 198:7
picture (1) 208:20
piece (1) 212:6
pivoting (2) 215:10;218:20
place (3) 215:12;238:2,5
placed (1) 209:8
plaintiff (3) 196:5;224:20; 229:7
planted (2) 212:9,9
please (4) 196:15;197:5,7; 238:19
plumbing (1) 231:23
point (2) 201:2;210:22
points (1) 203:20
portion (4) 202:22;203:7,9; 217:7
position (1) 225:24
postsurgery (3) 209:24;216:16; 221:5
Poughkeepsie (2) 196:22;198:3
practice (3) 221:22;229:25; 234:12
preparation (1) 198:22
prepare (1) 232:6
prepared (2) 198:20;238:15
prescribe (1) 232:17
presence (1) 238:6
present (5) 205:11;212:23; 218:14;227:14; 233:2
pretty (1) 234:8
prior (2) 201:1;219:24
probably (1) 203:21
problems (5) 203:18;206:21, 22;211:1,2
procedure (7) 206:16,17; 208:15;210:20; 216:24;217:5,6
process (4) 207:14,16,17; 230:12
produce (1) 232:20
product (1) 230:13
profession (1) 207:11
program (1) 197:14
progression (2) 225:24;226:1
projects (1) 231:9
prolonged (2) 204:21;218:23
protocol (1) 209:11
provide (2) 232:11,14
provided (3) 200:1;237:9,10
pull (1) 228:18
purely (1) 196:6
put (1) 206:17

Q

qualified (2) 198:10;199:12
quickly (2) 213:8;219:4

R

Radiology (3) 202:10;222:25, 25
range (6) 201:25;210:4,7; 211:12;216:21; 221:8
rarely (1) 208:20
reading (2) 228:20;229:1
real (1) 217:5
really (3) 203:22;214:20, 23
reapproximated (1) 209:9
reason (2) 221:14;223:7
reasonable (6) 205:12;206:2; 207:2;211:3; 217:11;234:16
received (1) 216:16
recently (1) 218:10
reconstruction (1) 219:20
record (7) 196:16;200:24; 207:25;212:5; 238:6,21,24
records (38) 200:4,5,8,19,21; 201:5;205:17; 207:22;209:23,25; 210:17;213:14,17, 22;217:12;218:24; 219:1;222:4,20,22, 23,24,24,25;223:2, 4,8,11,15,15,21,23; 224:4,25;225:6; 237:8,12,17
recover (3) 221:18;235:7; 236:9
recovery (6) 209:3,6,13,14; 217:2;236:18
redirect (1) 237:22
reduce (1) 206:20
regained (1) 210:8
regarding (3) 210:22;222:20; 227:4
regrow (1) 219:16
regularly (3) 199:2;221:24; 234:11
rehabilitation (2) 209:13,14
related (5) 205:13,25;207:9; 214:15;216:22
relying (1) 202:7
remember (1) 223:1
remove (2) 219:13,15
removing (1) 217:7
rendered (1) 227:1
repair (5) 206:16,21;209:7; 216:5;217:6
repeat (2) 218:4;225:15
repetitive (1) 207:10
replacement (1) 199:5
report (32) 198:20,22; 206:11;208:25; 210:20;213:21; 214:8;215:18,19, 23,24;216:20; 219:7,22;221:14; 223:1,7,9,11,14,18; 226:11;228:18,20, 22;229:1,2;230:8, 9;232:6,19,21
reported (7) 211:19,22; 212:18;213:25; 215:3,17;216:5
reportedly (1) 221:9
reporting (1) 209:20
reports (9) 200:11,14,17; 201:11;211:4; 217:21;219:18,18; 228:14
represent (2) 213:5;229:11
representative (2) 213:23;220:14
represents (1) 205:5
Research (2) 197:17;238:10
resection (1) 217:6
residency (1) 197:15
respect (5) 199:19;217:13; 218:15;221:16; 222:1
responses (1) 202:7
restricted (6) 209:10;210:4,10; 211:12;216:21; 217:20
restriction (3) 201:25;210:4; 221:8
restrictions (1) 209:8
result (10) 203:2;204:12,13, 15;205:3,10;207:3; 212:20;214:11; 218:21
resulted (1) 205:8
retained (3) 198:13;199:13; 231:25
return (9) 206:22;210:18, 21;217:8,14,15; 221:11,15,21
returned (1) 201:2
returning (2) 209:16;221:24
review (29) 199:22;200:5,8, 14,16,21;201:5; 202:16;206:11; 208:8;210:16; 211:13;216:8; 217:21;222:3,22; 223:15,21,23; 224:5,7;225:7; 226:23;229:15; 237:1,7,9,12,17
reviewed (24) 200:4,5;202:9, 13;205:17;210:19; 211:16;213:14; 214:8;217:17; 218:24;219:7; 222:15,19;223:4,8, 11,14;224:25; 225:6;228:22,24; 229:17;233:17
reviewing (5) 207:22;209:23; 217:12;235:4,5
Rhinebeck (2) 198:4;231:13
right (71) 199:20;202:22; 209:21;211:7,8,13; 213:18;214:6,6; 215:21,25;217:3, 13;219:18,25; 221:16;222:2; 223:16,19,21,23; 224:2,5,12,15,17, 21,25;225:2,4,8,20; 226:3,6,19,24; 227:14,22;228:16, 23;229:7;230:14; 231:15;232:1,4,12, 17,24;233:5,14,18, 20,22,25;234:6,16;

235:1,8,12,17,23, 23,25;236:8,20,21, 24;237:2,8,11,17
rise (2)
196:1;238:17
Road (1)
196:22
ROSENGARTEN (3)
222:12;237:20; 238:22
rotate (1)
202:4
rotator (14)
202:20;203:2,4, 12;204:1,11;205:8; 206:16;209:7,8,10; 234:14,19,25
rub (2)
202:23;203:2
rubs (1)
204:1
rue (1)
235:18
run (1)
202:6
running (1)
215:11

S

same (6)
207:20;218:5; 219:6;220:20; 236:6,11
saw (11)
214:2;224:20; 225:2,4,10,15,17; 234:24,25;235:1; 236:4
saying (1)
203:11
scaffold (3)
200:25,25;208:1
scaffolding (1)
227:16
scapular (1)
203:7
scene (1)
238:11
scheduling (1)
196:7
school (1)
197:13
scope (1)
228:12
seated (1)
238:19
second (1)
203:23
section (1)
219:14
seeing (5)
199:1;204:15; 208:21;227:2; 237:15
sent (2)
206:3;228:24
separate (3)
199:24;206:19; 237:10
separates (1)
204:13
September (12)
199:17;201:21; 209:19,25;216:12; 217:17;221:1; 223:9,12;224:8,9; 225:16
service (1)
196:3
seven (5)
224:11;225:10, 16;237:5,16
several (7)
207:17,17; 209:11,12;213:20; 220:3;221:19
shearing (1)
212:10
sheetrock (4)
230:4,14,19; 231:24
sheetrocker (2)
207:10;230:1
sheets (3)
230:8,21,25
Shore-Long (1)
197:15
shoulder (31)
199:20;200:12; 201:19,22;202:10, 23,24;203:8,9; 204:23;205:6; 206:7,16,18;208:9, 14;209:2,20;210:9, 22;217:4;222:2; 224:18;226:6,16; 234:14;235:1,3,17; 236:20,21
shoulders (2)
201:10;208:5
show (1)
204:18
shows (1)
214:20
side (4)
203:8;211:21; 231:17,18
sidebar (1)
238:3
sigh (1)
212:17
signal (1)
204:18
significant (1)
201:25
significantly (5)
210:4,10;216:19, 20;217:4
signs (1)
202:3
Similar (1)
236:12
site (1)
201:13
sits (1)
213:4
skeletal (1)
207:20
skin (1)
212:16
slightly (1)
209:11
sloping (2)
203:21;204:1
small (1)
213:3
soft (2)
205:3;212:15
solely (1)
221:11
someone (2)
213:7;237:10
sometimes (3)
206:19;233:7,13
somewhat (1)
238:14
sort (1)
228:5
South (1)
196:22
speak (2)
197:5;227:4
speaking (2)
207:22;231:6
specialty (1)
197:8
specific (1)
202:18
specifically (6)
199:18;202:20; 203:15;223:19; 230:24;231:2
spelling (1)
196:16
sporting (1)
218:22
stabilizing (1)
215:9
stand (1)
237:25
standard (5)
205:25;208:13; 221:22;226:14; 229:25
start (2)
215:1;238:8
starting (2)
201:19;203:25
starts (3)
207:18;214:25; 215:1
state (1)
196:15
step (2)
237:23;238:1
stick (1)
205:25
still (4)
209:19;216:11; 221:1;229:23
stilts (4)
228:20;229:18, 20,24
Stony (1)
197:12
straight (1)
208:5
structural (1)
217:5
structure (3)
213:5,6;214:22
structures (2)
213:2,3
subacromial (1)
202:21
subjective (1)
202:6
subsequently (1)
200:2
SUNY (1)
197:12
supports (1)
220:18
supraspinatus (2)
203:5;204:6
sure (2)
197:5;207:12
surface (1)
212:11
surgeon (2)
202:15;208:15
surgeries (6)
199:2,4;200:11; 227:7,11;236:23
surgery (51)
197:9,16,16,22; 199:5,6,7,11;206:6, 12,14,15,20,24; 207:3,7;208:9,12, 14,16;209:2,4,5; 210:24;211:4; 214:5,8,11;215:25; 216:9,23;217:2; 219:8,10,24;220:8, 22;221:17,17,18; 226:6,8,15;232:15; 234:22,25;235:8, 17,20,23;236:14
surgical (2)
227:2;237:2
surrounds (1)
203:24
sustained (4)
201:6;212:6; 228:13;237:19
swell (1)
205:10
swelling (9)
205:2,3,4; 212:16,19;218:11, 12;220:20,21
sworn (4)
196:13,25;238:4, 18
symptoms (13)
209:20,20;210:3; 213:8,10;216:12, 15;219:5;221:2; 225:25;226:1; 232:20;233:7
system (1)
207:20

T

table (2)
223:17;229:2
talk (2)
199:25;212:25
talked (6)
218:19;227:13; 228:14;230:8; 233:16,24
tape (1)
231:24
taper (2)
229:21;230:18
tapers (2)
229:25;230:14
taping (7)
228:9,10,11; 230:6,11,12;231:6
tear (32)
202:21;203:3; 204:4,11,14,20; 205:9;209:9,10; 211:19,24;212:21; 213:1,5,7;214:23; 215:4,13,16;216:3, 5,6;218:2,3,20; 219:21;232:19; 233:2;234:14,18, 25;235:1
tears (5)
204:16,17; 211:23;218:19; 233:10
ten (1)
199:8
tendon (6)
202:21;204:5,6, 12,16,17
term (2)
207:13;228:9

terms (1)
235:25
testified (12)
196:14;198:8,12;209:18;221:21;222:15,19;224:14;234:15;236:2,13,20
testifying (1)
197:5
testimony (6)
208:3;228:23;229:17;231:3;232:8;238:14
testing (1)
221:8
tests (1)
202:6
therapy (2)
200:19;206:4
thick (2)
203:1,1
thicken (1)
203:25
thickened (1)
202:25
thickening (1)
203:25
thickness (1)
202:20
third (1)
222:5
Thomas (1)
196:18
T-H-O-M-A-S (1)
196:19
though (4)
236:13;237:1,4,7
thought (2)
235:11;236:13
thousand (1)
208:20
three (3)
209:17;227:7;233:3
tibia (1)
213:4
times (2)
225:4;229:12
tissue (1)
212:15
tissues (1)
205:3
today (14)
198:16,24;216:25;222:15,19;230:1;232:9,23;233:24;234:15;235:10;236:20;238:13,21
together (1)
230:13
told (1)
236:22
tomorrow (4)
216:25;238:8,13,16
took (1)
203:23
tool (1)
206:18
top (4)
202:22;203:5;213:4;223:6
torn (2)
214:19,20
total (2)
224:18,19
training (4)
197:13,17;227:20,22
transpired (1)
199:24
trauma (6)
204:12;205:8,11;206:20;234:5,8
treating (2)
225:22;232:4
treatment (7)
199:25;200:4;205:24;216:15;227:5;232:11;236:3
trial (3)
229:6,6;238:25
true (2)
230:15;235:9
turn (1)
196:6
twist (1)
215:11
twisting (3)
212:10;215:10;218:20
two (10)
198:14;200:12;203:18;206:19;210:6;211:20;217:8;229:12;233:2;236:9
type (15)
199:4;201:24;206:14,18;209:4;212:8,13,14;217:2;218:21;219:10;221:17;226:23;231:22;233:4
Typically (8)
199:22;202:16;204:24;205:2,7;209:3;221:18,23

U

under (1)
208:1
undergo (1)
216:23
underlying (2)
220:17,18
underneath (1)
208:5
underwent (1)
209:13
unless (1)
203:23
up (10)
202:1;204:15,18;209:12;223:8,15;228:18;234:24;235:1;238:1
updated (1)
219:25
upon (5)
196:8,13;214:17;221:13,22
use (1)
207:21
used (2)
229:18,20
using (1)
207:12
usually (6)
206:18;208:16;217:8;218:20;219:14;230:12

V

various (1)
234:2
Vassar (1)
198:3
viewed (1)
215:15
Virginia (1)
197:18
virtual (1)
229:6
visit (4)
205:21;213:25;236:3;238:11
visualize (1)
220:13
voice (1)
196:15

W

way (3)
208:6;210:2;216:18
ways (1)
221:7
Wednesday (1)
238:25
week (5)
217:1,8;233:20,22;236:9
weeks (4)
201:13;209:12;213:11;221:19
Welcome (1)
196:3
weren't (3)
198:24;232:3,3
what's (3)
209:3;212:21;215:7
whereby (1)
207:18
Whereupon (5)
237:24;238:2,5,18,25
white (1)
204:18
whole (2)
223:1;229:2
wife's (1)
231:19
within (14)
204:16;205:12,25;207:2;211:3;212:19,22;214:21;217:11;218:13;220:15,15;232:20;233:1
without (1)
227:2
witness (13)
196:4,6,9,12,18,22,24;199:12;222:9;237:23,24;238:12,13
witnesses (1)
196:7
words (3)
208:20,21;215:24
work (22)
198:25;201:3;205:25;209:16;210:18,21,25;211:1;217:1,14,15;221:12,15,21,24,25;228:14;231:8;233:16,17,17;236:15
worked (1)
229:23
working (3)
200:25;233:13,20
world (1)
203:6
worth (1)
224:4
wraps (1)
203:8
wrote (1)
232:19

X

X-ray (1)
203:23

Y

year (2)
197:14;228:15
years (13)
197:14;207:16;220:3;224:4,11;225:8,11,16,17,23,24;237:5,16
yesterday (1)
199:8
York (5)
196:23;197:23;198:4,5,7

1

1 (4)
214:6;217:21;219:4;225:23
10 (6)
206:9;208:9;209:3;238:9,16;239:1
11 (1)
239:1
13 (5)
202:10,18;205:13;228:20;230:9
19 (1)
199:17
1910 (1)
196:22
1991 (1)
231:14
1998 (1)
231:14
19th (1)
224:9
1st (1)
218:1

2

2 (1)
225:23
2005 (1)
221:1
2018 (19)
202:11,19;204:7;205:13,14,21;207:3;211:5,18;212:2;214:2,12;215:21;217:22;218:6;219:4;220:6,10;222:5

2020 (7)
206:9;208:9;
209:3;223:8,15;
225:7;229:6
2021 (2)
223:15;237:12
2022 (3)
214:6;223:21;
237:12
2023 (6)
219:8;220:3,9;
223:23;229:7;
237:12
2024 (2)
223:25;237:13
2025 (14)
199:17;201:21;
209:19,25;211:8;
216:13;217:17;
223:9,12;224:2,9,
9;225:16;237:13
2026 (1)
239:1
22 (1)
229:6
22d (1)
205:21
22nd (1)
214:2
24 (1)
232:20

3

3 (10)
204:7;205:14;
207:3;211:5;212:2;
214:11;215:21;
218:6;220:10;
225:23
30 (1)
203:21
31 (1)
229:7

4

4 (1)
225:23
40 (1)
203:22
40s (1)
214:25
48 (1)
232:20

5

5 (1)
225:23
50s (1)
214:25

6

6 (1)
225:23

7

7 (1)
225:24
7,500 (1)
198:19

9

9 (2)
219:8;220:9
90 (2)
202:1,2