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

-----X
CARLOS PAIBA,

Plaintiff,

-against-

Index No. 704365/2019

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

JURY TRIAL

Defendants.
-----X

Supreme Courthouse
88-11 Sutphin Boulevard
Jamaica, New York 11435
March 10, 2026

B E F O R E:

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

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

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VALERIE MCNALLY
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Senior Court Reporters

1 THE CLERK: Queens Supreme Court, Part 28 is back
2 on the record in the matter continuing with jury trial
3 Index No. 704365 of 2019 in the matter of Carlos Paiba vs.
4 56-11 94th Street Company LLC and Ginsberg Holdings L.P.

5 Your Honor, all appearances remain the same.

6 THE COURT: Thank you.

7 Good afternoon everyone. Have a seat.

8 MR. MAHER: Thank you, your Honor.

9 THE COURT: Counsels, are there any issues we need
10 to discuss before we bring the jury in?

11 MR. SHECTMAN: Yes, your Honor.

12 Your Honor, number one, as you see, Dr. Merola has
13 complied with your request to be here today.

14 I just want to put on the record, I don't want
15 there to be any misunderstandings. You know, you already
16 made a ruling regarding the motions in limine and what may
17 or may not be asked of the witness, and I objected I think
18 somewhat strenuously yesterday regarding some questioning.

19 I just want to be clear we are all on the same
20 page. Your Honor made a ruling which I thought was very
21 clear, and I just want to make sure that we don't run afoul
22 for additional time of your Honor's ruling because when I
23 mentioned about once the bell is rung, it can't be unring.
24 I just want to be clear that there's no misunderstanding
25 here.

1 THE COURT: You are making the same argument that
2 you made yesterday afternoon.

3 Defense Counsel, there is an understanding that I
4 am directing and instructing you to abide by the rulings
5 that the Court has made at the beginning of the trial in
6 response to the motion in limine or response to the motion
7 in limine that was made by the plaintiff and yesterday's
8 last ruling with respect to limiting --

9 And Dr. Merola, if you would just step out of the
10 room for a moment.

11 (Whereupon, at this time, Dr. Merola exited the
12 courtroom.)

13 THE COURT: -- limiting the questioning of the
14 witness to the claims made by the plaintiff, and not
15 attacking or trying to bring in any litigation that he may
16 or may not be a part of to which there are only allegations
17 made.

18 MR. MAHER: Well, your Honor, with all due respect
19 and I accept your ruling, however, I do intend to ask
20 Dr. Merola about his office procedures with respect to
21 document retention and things of that nature. It has
22 nothing to do with the allegations in the RICO lawsuit.
23 But to -- you know, to the extent that I expect that his
24 records are not complete, I intend to inquire him about
25 that. I don't want to run afoul of your ruling in that

1 regard.

2 THE COURT: As it relates to this action and this
3 plaintiff and any objections that are going to be made need
4 only be made and just state the basis of the -- I don't
5 want a narrative, I don't want a paragraph. I want a one
6 word what the objection is for. I mean, if it's not
7 relevant, it's not relevant. If it's repetitive, whatever,
8 argumentive, just one word. I don't want the jury to get
9 caught up in arguments that they are not going to
10 understand.

11 MR. MAHER: Understood, your Honor.

12 THE COURT: Now, is that the only other issue?

13 MR. SHECTMAN: No.

14 Your Honor, so I had a letter sent to me last
15 night regarding Dr. Elbaz. So I am going to put that into
16 the form of an affirmation. You asked for an affirmation
17 regarding why they need to be remote. So I spoke to his
18 office manager then today --

19 THE COURT: Counsel, I'm going to stop you and
20 say, if the conversation that we're having doesn't deal
21 with Dr. Merola, then let's have that conversation after
22 we're finished with Dr. Merola.

23 MR. SHECTMAN: Well, I just bring it to your
24 attention. It's for scheduling purposes, that's why.

25 THE COURT: Again, does it deal with Dr. Merola's

1 testimony? We are limited in time.

2 MR. SHECTMAN: No, it doesn't.

3 THE COURT: Okay, so then let's hold that offer
4 until we are finished with the testimony.

5 MR. SHECTMAN: Fair enough. Understood.

6 THE COURT: Question, is the TV in the way?

7 THE COURT OFFICER: I'll move it over a little
8 bit.

9 THE COURT: Counsel, you have something that you
10 want to say?

11 MR. MAHER: No. I just want the officer to be
12 aware that this is attached to the table.

13 THE COURT: Thank you.

14 Okay, are we ready?

15 MR. MAHER: We are ready, your Honor.

16 THE COURT: Dr. Merola can come forward.

17 (At this time, the witness takes the stand.)

18 THE COURT OFFICER: All rise. Jury entering.

19 (Whereupon, at this time, the jury entered the
20 courtroom.)

21 THE COURT: Good afternoon, Jurors.

22 THE JURORS: Good afternoon.

23 THE CLERK: Do all Counsel stipulate to the
24 presence and seating of the jury?

25 MR. SHECTMAN: Yes.

1 MR. MAHER: Yes.

2 THE COURT: You may have a seat.

3 Thank you for your prompt appearance today. We
4 are ready to continue with the defendant's
5 cross-examination where we left off yesterday with
6 Dr. Merola.

7 MR. MAHER: Thank you, your Honor.

8 CROSS-EXAMINATION CONTINUED

9 BY MR. MAHER:

10 Q Good afternoon, Dr. Merola.

11 A Good afternoon.

12 THE COURT: I would like to remind you,
13 Dr. Merola, that you are still under oath.

14 THE WITNESS: Yes.

15 Q Now, Dr. Merola, when a new patient comes to your
16 office for the first time, is it your custom and practice to ask
17 the patient to fill out an intake sheet?

18 A Yeah. Sometimes the patients do fill out intake
19 sheets, yes. Sometimes they don't but sometimes they do.

20 Q But it's your custom and practice to ask the patients
21 to do that, correct?

22 A Yes.

23 Q Okay.

24 And why do you, as a medical professional, ask new
25 patients to fill out an intake sheet?

1 A It can give me a little bit of background information
2 on the patient.

3 Q Dr. Merola, is it because if you are going to treat a
4 new patient, it's important to know about their prior medical
5 history?

6 A It can be helpful, yes.

7 Q Is it because it's important to know whether the new
8 patient has any underlying medical conditions that may affect
9 your treatment?

10 A Yes. That would be one of the questions that we would
11 ask, correct.

12 Q And do you recall in this case whether Mr. Paiba had
13 any underlying medical conditions?

14 A I would have to take a look at my office record, I
15 don't have it in front of me.

16 Q Right. Okay.

17 Would it be fair to say, Dr. Merola, that as you sit
18 here now, you don't have any independent recollection of your
19 course of treatment with Mr. Paiba?

20 A I mean, I have a general sense of what my course of
21 treatment is, but if I looked at my records I could refresh my
22 recollection better for you.

23 MR. MAHER: Okay. And I believe those were marked
24 yesterday as an exhibit. They were actually entered into
25 evidence, I believe.

1 THE COURT: Yes.

2 THE COURT OFFICER: It would be Plaintiff's 6.
3 Plaintiff's 6 in evidence (handing).

4 THE WITNESS: Thank you.

5 Q Okay. So again, intake sheet, that would contain an
6 indication whether or not the new patient had any sort of
7 underlying medical condition, correct?

8 A Yes.

9 Q And that's important to know because your treatment may
10 be dictated by whether or not the person has an underlying
11 condition?

12 A Certainly that can have an influence on your care and
13 treatment, yes.

14 Q Right.

15 And in this case, do your records, your notes that have
16 been marked into evidence indicate that Mr. Paiba had an
17 underlying medical condition?

18 A Yes.

19 Q And what condition was that?

20 A Diabetes.

21 Q Okay.

22 And is that important to know if you are considering,
23 perhaps, performing injections on a patient?

24 A Sure.

25 Q And why is that?

1 A Sometimes if you -- it depends upon the dosage of the
2 steroid that you're administering during injections, it can
3 sometimes increase the blood sugar. So it's important for the
4 patient to know that if that's something that you're doing,
5 blood sugar monitoring could be helpful.

6 Q It could be dangerous to the patient if you gave a
7 diabetic an injection without knowing that, correct?

8 A Well, it depends on the injection. It can -- it can
9 have an influence on their care, yes.

10 Q All right. And so that's one of the reasons why in
11 your course of business you ask new patients to fill out an
12 intake sheet, right?

13 A Yes.

14 Q And would this intake sheet also ask questions about
15 the patient's prior medical history?

16 A Correct.

17 Q And would it also ask questions about whether or not
18 the patient had any prior accidents?

19 A Yes.

20 Q And would it ask the patient about the mechanism of
21 their accident if they were involved in an accident?

22 A Yes, those are questions that I would be asking the
23 patient, correct.

24 Q Okay.

25 And before you came to court here today, do you recall

1 being served with a subpoena by my office for your entire
2 medical record?

3 A I do not specifically recall that, no.

4 Q Okay.

5 Would it help if I showed you a copy of the two
6 subpoenas that were served on your office?

7 A Sure.

8 MR. MAHER: Could we, Officer, would it be
9 possible to mark these two subpoenas.

10 THE COURT OFFICER: Separately?

11 MR. MAHER: Separately. Sure.

12 (Whereupon, at this time, the Subpoenas were
13 marked as Defendant's Exhibits C and D for identification,
14 by the Reporter.)

15 MR. MAHER: You can give them to him.

16 THE COURT OFFICER: Showing C and D for ID.

17 Q Let me know, Dr. Merola, when you have a chance to look
18 them over.

19 A I have them, yes.

20 Q Does that refresh your recollection that subpoenas were
21 served by my office upon your practice for a complete copy of
22 the medical records maintained by your office?

23 A Sure, yes.

24 Q Okay. And those records would, of course, include the
25 intake sheet, right?

1 A I guess they would include whatever records we had
2 available, yes.

3 Q Right, okay.

4 And when you came to court here yesterday, was the
5 intake sheet a part of the records that you brought?

6 A No.

7 Q Okay. Why is that?

8 A Sometimes the patients don't fill out intake sheets.
9 Sometimes the intake sheet is filled out but not scanned into
10 the chart. So it depends on what was scanned into the chart and
11 whomever was in my office doing the scanning at that time if it
12 was or was not scanned.

13 Q Okay.

14 Is it true, Doctor, that in certain instances your
15 office shreds the intake sheets?

16 A Yeah. Any types of paperwork that are floating around,
17 as you might anticipate for privacy reasons, papers are
18 shredded, correct.

19 Q Okay. So we have an important record that would inform
20 your care regarding how you are moving forward which in the
21 ordinary course of your business gets shredded?

22 A That record is based in order to have me understand
23 what's happening with the patient but, more importantly, is my
24 conversation with the patient and then what I dictate and
25 transcribe into my written note, which is done contemporaneously

1 when I see the patient.

2 So these notes that are here in front of me from my
3 treatment record are done during each visit at the time I see
4 the patient based on all the information that I have available
5 for me at that time.

6 Q Okay, but you create a record which is no longer in the
7 records that you brought here to court, correct?

8 A That record is --

9 MR. SHECTMAN: Objection, your Honor.

10 May I state the basis?

11 THE COURT: I'm sorry?

12 MR. SHECTMAN: May I state the basis?

13 THE COURT: Yes.

14 MR. SHECTMAN: He just said there's not always an
15 intake sheet. He's assuming that there was one here.

16 THE COURT: Sustained.

17 MR. SHECTMAN: Thank you.

18 THE COURT: That wasn't one word, but sustained.

19 Q So if Mr. Paiba had filled out an intake sheet and he
20 had written on that sheet that he was involved in a prior
21 accident where he injured his back, we can't see that there,
22 correct?

23 A If -- if that were indicated in the intake sheet and I
24 had read it, I would have transcribed it into my note because
25 everything and every piece of information that I would glean

1 from the intake sheet is immediately transcribed into the note
2 when I see the patient.

3 Q Okay.

4 But so your note has no notation that Mr. Paiba was in
5 a prior accident?

6 A Correct.

7 Q You know nothing about that?

8 A That's right.

9 Q Okay. And if Mr. Paiba, you know, had a lawsuit
10 pending, is that something that would have been indicated on the
11 intake sheet?

12 A I'm not a lawyer, so I'm not indicating legal issues
13 regarding the patient. I'm just treating whatever their
14 particular problem happens to be.

15 Q Sometimes that's a question that's asked on the intake
16 sheet?

17 A No.

18 Q Never?

19 A No.

20 Q Okay.

21 Now, Doctor, do you recall yesterday that you were
22 asked by Mr. Sheckman if you had an opinion to a reasonable
23 degree of medical certainty that the accident of March 6, 2019
24 was a cause of the injury to plaintiff's lumbar spine? Do you
25 recall that?

1 A Yes.

2 Q Okay. And do you recall that when you answered that
3 question, you didn't just say yes. Your answer was a little
4 more nuanced in that you said, yes, based upon the information
5 that was available to me.

6 Is that an accurate?

7 A Yes.

8 Q Right. Okay.

9 Now, your initial note from the treatment, was it
10 July 2019?

11 A July 22nd, yes.

12 Q July 22nd of 2019.

13 Is there any reference in that note to the treatment
14 that Mr. Paiba received at Elmhurst Hospital?

15 A No.

16 Q Does your file that you brought with you here today
17 contain the records from the emergency room treatment at
18 Elmhurst Hospital?

19 A No.

20 Q Did you review the emergency room records from Elmhurst
21 Hospital?

22 A Yes.

23 Q And when did you review them?

24 A I believe I reviewed those at a point in time when I
25 was asked to write a narrative review of my treatment of the

1 patient.

2 Q Okay. And you would have been paid a fee for that,
3 correct?

4 A That's correct.

5 Q Right, as we discussed yesterday?

6 A Yes.

7 Q Okay.

8 So your note of July 22, 2019, it contains no reference
9 to what happened at Elmhurst Hospital on the day of the
10 accident, correct?

11 A Yes, correct.

12 Q All right.

13 And when you reviewed the Elmhurst Hospital records,
14 did you note that a CT scan of the lumbar spine had been
15 performed at the hospital?

16 A I believe there was a CT scan that was performed that
17 didn't show any fractures or dislocations, yes.

18 Q Okay.

19 Do you recall that the radiologist who read the film
20 and wrote a report from Elmhurst Hospital concluded that --

21 MR. SHECTMAN: Judge, I'm just going to object.

22 THE COURT: What's the basis?

23 MR. SHECTMAN: This is the interpretation of
24 another Doctor. The records -- we've stipulated into
25 evidence without the findings of another doctor that's not

1 here subject to cross-examination.

2 THE COURT: Sustained.

3 MR. SHECTMAN: Thank you, your Honor.

4 THE COURT: Please rephrase it.

5 Q Well, Doctor, did you review the films, the lumbar CT
6 film that was taken at Elmhurst Hospital on the day of the
7 accident?

8 A I don't recall if I saw the films or the report or
9 both.

10 MR. MAHER: Officer, could we mark this for
11 identification.

12 Your Honor, the Elmhurst Hospital records that I
13 am referring to here have already been admitted into
14 evidence, and this is just one page of those records. It's
15 page 75 of that record.

16 THE COURT: Let plaintiff see it, please.

17 MR. MAHER: Yes, sure.

18 And I'm just marking for identification.

19 THE COURT: Without objection, plaintiff?

20 MR. SHECTMAN: Just to mark it, no objection, of
21 course.

22 MR. MAHER: Well, it's already in evidence.

23 THE COURT: Confirming that it's the same.

24 MR. SHECTMAN: It's the same objection, right.

25 THE COURT: I'm sorry?

1 MR. SHECTMAN: Well, he said something, it's the
2 same objection. We have the record -- well, I don't want
3 to speak too much, you already told me that.

4 THE COURT: Is this part of the record then -- if
5 you agree this is part of the record, why don't you just
6 pull out the record? If it's in evidence, then why don't
7 you just pull out the record?

8 MR. SHECTMAN: I would like him to have the whole
9 record that's in, but this is the interpretation of a
10 different doctor, that was my objection. But the doctor is
11 not here to cross-examine, but otherwise the record would
12 come in as to findings of those doctors.

13 MR. MAHER: It's already in.

14 THE COURT: If this document is in evidence then
15 it's --

16 What number evidence is it?

17 MR. MAHER: I don't know the number, it's on
18 there. But the Elmhurst Hospital records are already
19 admitted into evidence by stipulation.

20 THE COURT OFFICER: Right, that's B.

21 THE COURT: Okay.

22 THE COURT OFFICER: So, here, I will give
23 (handing).

24 MR. MAHER: I'm just trying to move things along.

25 THE COURT: I understand, but the plaintiff has an

1 objection about something that's in evidence.

2 MR. MAHER: You have an objection of me just
3 showing him the page? Or do you really want me to pull it
4 out of here?

5 MR. SHECTMAN: Judge, I thought we weren't
6 supposed to have cross-communication. But if you would
7 like me to answer his question, I'd be happy to.

8 THE COURT: No.

9 I'm saying, let's take out the page that you are
10 referring to that is in evidence and we will have the
11 doctor look at the document from the package that is in
12 evidence.

13 THE COURT OFFICER: Showing page 68 of B in
14 evidence.

15 Q Okay. Doctor, have you now had an opportunity to
16 review this page of the Elmhurst Hospital emergency room record
17 which references a CT scan of plaintiff's lumbar spine that was
18 taken on the day of the accident?

19 A Yes.

20 Q Okay. And does looking at this report now refresh your
21 recollection as to what the findings were on the day of the
22 accident relating to this film?

23 A Yes.

24 Q Okay, and what were the findings?

25 A Should I read it for you?

1 Q Sure.

2 MR. SHECTMAN: Just note my objection, your Honor.

3 THE COURT: It's noted.

4 You can read it.

5 A No fracture is demonstrated. Vertebral alignment is
6 normal. There is mild multilevel degenerative disc disease and
7 facet arthropathy. At the L5-S1 level, a disc osteophyte
8 complex causes bilateral neuroforaminal stenosis. No
9 significant spinal canal stenosis is demonstrated. The
10 paraspinal soft tissues are unremarkable.

11 Q Okay, you can return that to the Officer.

12 So on the date of the accident, there was a finding of
13 osteophyte complex at L5-S1?

14 A Yes.

15 Q Okay. And can an osteophyte complex be fairly
16 described as an age-related condition where degenerative disc
17 disease occurs alongside the growth of bone spurs?

18 A Yes, in general.

19 Q Okay. And can an osteophyte complex narrow the spinal
20 canal?

21 A Yes.

22 Q And the radiologist who read the 3/6/19 lumbar CT also
23 found the presence of bilateral neuroforaminal stenosis,
24 correct?

25 A Yes.

1 Q And can that condition fairly be described as a
2 narrowing of the neuroforaminal?

3 A Yes.

4 Q Okay.

5 And the reporting radiologist, would it be fair to say
6 was of the opinion that the neuroforaminal stenosis was being
7 caused by the osteophyte complex?

8 A As I recall what I read, he did say the disc osteophyte
9 complex, yes.

10 Q It says, right, a disc osteophyte complex causes the
11 bilateral neuroforaminal stenosis?

12 A Correct.

13 Q So in other words, a bony degenerative condition is
14 causing bilateral stenosis?

15 A In addition to some disc protrusion, correct.

16 Q Does this report make any note of disc protrusion?

17 A Yes.

18 Q Where?

19 A Disc -- it says disc, I believe hyphen, disc hyphen
20 osteophyte complex.

21 Q There's no mention here of a herniated disc, correct?

22 A It doesn't say herniation, no.

23 Q All right.

24 Dr. Merola, is an osteophyte complex a condition that
25 would develop immediately following an accident?

1 A No.

2 Q Is it something that would take time to develop?

3 A Yes.

4 Q So if, hypothetically, a CT scan of Mr. Paiba's lumbar
5 spine had been taken on the day before the accident, fair to say
6 we would have seen the osteophyte complex at that time?

7 A Sure.

8 Q I want you to also think back to yesterday. Do you
9 recall when Mr. Shectman, he asked you a hypothetical question
10 about the plaintiff being involved in an accident before the one
11 that we are here to talk about today?

12 A Yes.

13 Q All right. And he asked you a hypothetical question
14 about an accident occurring on May 17, 2017?

15 A Yes.

16 Q Did Mr. Paiba ever advise you that he had been involved
17 in an accident on May 17, 2017?

18 A No.

19 Q Okay, so that never made its way into your report?

20 A Correct.

21 Q And that wasn't something you considered when
22 determining whether or not there was a causal effect between the
23 accident of March 6, 2019 and the conditions that you ultimately
24 performed surgery on?

25 A Yes.

1 Q Okay.

2 So if Mr. Paiba went to Elmhurst Hospital on May 17th
3 of 2017 and told him that he had slipped and fallen while at
4 work on May 6th of 2017 and he was still having enough back pain
5 11 days later that he wanted to come to the emergency room, you
6 didn't know anything about that when you rendered your opinion
7 regarding causation in this case?

8 A Yes.

9 Q And if x-rays were taken of Mr. Paiba's lumbar spine on
10 that date and they showed the presence of a mild to moderate
11 disc changes in the lumbar spine, you wouldn't know anything
12 about that either?

13 A May I ask, what date?

14 Q May 17, 2017.

15 A No, I haven't seen that. I haven't seen that x-ray
16 film, correct.

17 Q Well, did you see any report related to it?

18 A Do not recall.

19 Q Okay. Would you like to see it at this time?

20 A Sure.

21 MR. MAHER: If we can mark this for
22 identification.

23 THE COURT: Well, let the plaintiff see it first.
24 Is that in evidence or?

25 MR. MAHER: This is not in evidence. It's just

1 being marked for identification.

2 THE COURT: For the purpose of?

3 MR. MAHER: Well, I asked the doctor if he wanted
4 to see it, he's offering an opinion as to causation based
5 upon the information he knows, and I'm offering him an
6 opportunity to look at other information.

7 MR. SHECTMAN: We would have to put him the whole
8 thing in evidence for the jury to see in this. We can't
9 just give him one thing out of piecemeal out of a 17-page
10 chart that's not in evidence. So we would have to move the
11 entire chart in so the jury can see it.

12 MR. MAHER: No, I disagree.

13 THE COURT: No.

14 You want to ask a question and then?

15 MR. MAHER: Yeah. This is very limited. Just one
16 or two questions, that's it.

17 THE COURT: Overruled.

18 (Whereupon, at this time, the document was marked
19 as Defendant's Exhibit E for identification, by the
20 Reporter.)

21 MR. MAHER: If you could show it to the witness.

22 THE COURT OFFICER: Showing the witness E for ID.

23 Q There's two pages there, Doctor, just let me know when
24 you have had a chance to look at it.

25 A Got it.

1 Q On the day bottom of the first page -- I'm not asking
2 you to read it, but it describes an instance that was similar to
3 what I was talking about, correct?

4 A It describes it full, correct.

5 Q And that the patient in this case, Mr. Paiba, had a
6 fall on May 6th of 2017 and that he was still experiencing back
7 pain --

8 MR. SHECTMAN: Judge, I'm just going to object.
9 He can't read.

10 THE COURT: Sustained.

11 MR. SHECTMAN: Thank you, your Honor.

12 MR. MAHER: I will move on.

13 Q If we looked at the second page, does that indicate
14 that in response to Mr. Paiba's complaints of lower back pain,
15 an x-ray was taken of the lumbar spine at that time?

16 A Yes.

17 Q And does this report also indicate that approximately
18 two years before the date of the accident, mild to moderate
19 multilevel degenerative disc changes were noted?

20 MR. SHECTMAN: Objection.

21 THE COURT: Sustained.

22 MR. SHECTMAN: Objection, your Honor.

23 Can we move to strike the answer? This is totally
24 inappropriate and I think he knows that. I ask it be
25 stricken.

1 THE COURT: He hasn't gotten an answer.

2 MR. SHECTMAN: What's that?

3 THE COURT: There has not been an answer made.

4 MR. SHECTMAN: Can we move to strike the question,
5 it should've have been asked, Judge.

6 THE COURT: You are reading from a document that's
7 not in evidence.

8 MR. SHECTMAN: Right.

9 THE COURT: Sustained.

10 MR. SHECTMAN: Thank you.

11 THE COURT: And the question is stricken.

12 Q Okay. Now, ultimately, Dr. Merola, you performed
13 surgery on the L5-S1 level, right?

14 A Yes.

15 Q And I believe you testified earlier that the surgeries
16 were related to the presence of a herniated disc, correct?

17 A Yes.

18 Q And would you agree with me, Doctor, that while a disc
19 can herniate because of a traumatic event, it can also herniate
20 as a result of the natural aging process?

21 A Yes.

22 Q So there's two ways it could happen?

23 A Sometimes more than two, yes, but correct.

24 Q Well, for purposes of our discussions today --

25 A Yes.

1 Q -- we're going to acknowledge, or are you not, that you
2 have an MRI film, it shows a herniated disc, it doesn't
3 necessarily mean that it was caused by trauma, correct?

4 A Right, the MRI alone would not tell you where it came
5 from.

6 Q So just, you know, because someone has an accident and
7 then doctor says, you know, go get an MRI, and then the MRI has
8 a positive finding for a herniated disc, in all cases that
9 doesn't necessarily mean that the accident caused the presence
10 of the herniated disc, right?

11 A Yes.

12 Q And would it also be fair to say, Doctor, that there's
13 certain risk factors with developing a age-related herniated
14 disc, a degenerative disc?

15 A Sure.

16 Q Right.

17 And at what age would you say that the lumbar discs
18 start this process of degeneration?

19 A I mean, they really start after you have become
20 skeletally mature. But you can start to see changes on MRIs,
21 for example, somewhere in the neighborhood of about 30 years old
22 or so.

23 Q Right.

24 So do you recall how old Mr. Paiba was on the day of
25 his accident?

1 A So, let's see. He's a little bit younger than I am.
2 So let's see. On the day of his accident, he was in his 50s.
3 He was about 54 or so, early 50s.

4 Q Okay. So that was a risk factor for him having a
5 degenerative lumbar disc, his age?

6 A Sure.

7 Q Right.

8 And would another risk factor be the individual's body
9 mass index, meaning their weight relative to their height?

10 A It can sometimes have an influence on disc changes, of
11 course, yes.

12 Q I mean, so in other words, people that are -- well, let
13 me ask you this: BMI, right, can you tell us what that is.

14 A Yeah. BMI is -- it's a ratio of your height to your
15 weight. It's a height-to-weight ratio which gives you a rough
16 idea of what a patient's, you know, what we call obesity or not
17 obesity is. It's kind of a rough way of estimating whether or
18 not you might consider the patient in the obese or not obese
19 category.

20 Q Right.

21 And according to the U.S. government, what BMI is
22 considered to be obese?

23 A 30 and above.

24 Q 30 and above, right.

25 So in this case, was Mr. Paiba's BMI more than 30?

1 A You know, I've have to calculate it. I don't know
2 offhand. So I would have to do his height-to-weight ratio but
3 I'm not a hundred percent sure, I haven't calculated it.

4 Q Okay, fair enough.

5 Do you know how tall he was?

6 A I do not recall, no.

7 Q Okay. If I -- hypothetically, if he stood 5'5 and
8 weighed a minimum of 200 pounds, would that be over a BMI of 30?

9 A More likely than not.

10 Q Right.

11 I mean, fair to say, it's kind of like a BMI of 33.

12 A Okay.

13 Q If that's true, right, if my math is correct, then
14 Mr. Paiba would have yet another risk factor for developing a
15 degenerative disc in his lower back, correct?

16 A Yes.

17 Q Okay.

18 And is occupation another risk factor for people to
19 develop a degenerative disc?

20 A Yes.

21 Q So someone like myself who, you know, works as a
22 lawyer, sits at a desk, comes to court like today, less likely
23 to develop something because of our occupation, right?

24 A It depends on how many bags you are carrying around
25 when you are coming to court.

1 Q Maybe today, you know, I am going to start developing
2 it.

3 But Mr. Paiba, you know, are you familiar with his work
4 history?

5 A Sure, so it's heavy labor.

6 Q And he's been working heavy labor for many years, I
7 believe his attorney said he's been working since he was eight
8 years old?

9 MR. SHECTMAN: Objection. I said he was washing
10 cars at eight years old. And that's --

11 THE COURT: Excuse me.

12 Overruled.

13 MR. SHECTMAN: But Judge, it's a mischaracter --

14 THE COURT: Overruled, Counsel.

15 Q Fair to say, Doctor, not to belabor the point, that an
16 individual who had an occupation such as Mr. Paiba, that's
17 another risk factor for developing degenerative disc disease in
18 the lumbar spine?

19 A Yes.

20 Q Okay. So we have three risk factors all coming
21 together that he would be predisposed to degenerative -- perhaps
22 to degenerative herniation of his lumbar disc?

23 A Those are risk factors that can predispose you to
24 degenerative herniation, yes.

25 Q Okay.

1 And specifically someone who works as a painter, would
2 that be somebody who would be predisposed to that type of
3 condition because of all the bending?

4 A Certainly working as an industrial painter can
5 predispose you to disc problems, yes.

6 Q Okay.

7 And would you also agree with me, Doctor, that the
8 L5-S1 segment where you performed your operation is one of the
9 most active regions of the lumbar spine?

10 A Yes.

11 Q So to the extent that somebody might develop a
12 degenerative disc, that would be one of the prime areas that it
13 would develop because of the influence of all the bending,
14 right?

15 A Yes.

16 Q Now, with respect to a traumatic herniation of the --
17 of a lumbar disc, would you agree with me, Doctor, that in order
18 to sustain a traumatic herniation, a tremendous amount of force
19 would have to be imposed on the spine?

20 A Depends on the condition of the disc before the trauma
21 is incurred.

22 Q Generally speaking, would you agree with me that a disc
23 is not going to herniate traumatically unless there's a lot of
24 force being imposed?

25 A So I would say that a healthy 20-year old has less --

1 has a higher tolerance for a traumatic disc herniation than a,
2 let's say, a 50 or a 60 year-old.

3 Q Okay.

4 Now just turning back now to your initial report.

5 THE COURT OFFICER: 6 in evidence.

6 THE WITNESS: Thanks.

7 Q Does your report indicate how the plaintiff's accident
8 occurred?

9 A I had indicated a fall at work.

10 Q Right. But other than just saying that he had a fall
11 at work, there's no more details provided?

12 A Correct.

13 Q Okay.

14 It doesn't indicate the mechanism of the fall?

15 A Yes, correct.

16 Q Right. Okay.

17 And, you know, what does the medical term edema mean?

18 A Swelling.

19 Q Swelling. It's a fancy term for swelling, right?

20 A Yes.

21 Q And if someone had an accident with the application of
22 such a tremendous force to cause a traumatic disc herniation,
23 would you expect there to be some edema/swelling in the area of
24 the injury?

25 A It is possible.

1 Q And would that be a likely outcome, Doctor, if somebody
2 has forces that are so significant to cause a traumatic
3 herniation that there's going to be swelling?

4 A It depends. So force and the herniation occur in a
5 spectrum, so there isn't a level of force that causes a
6 herniation with associated edema. It depends on the health of
7 the disc, as we pointed out, and the amount of force transferred
8 to that healthy or unhealthy disc. So in cases, there are
9 marked cases where there is obvious edema and then there are
10 cases where you might not visualize edema.

11 Q Okay.

12 But if you are to visualize edema in, say, an MRI or an
13 x-ray film, that would be a strong indication that the injury
14 was caused by recent trauma, would it not?

15 A It can be indication of more recent trauma, yes.

16 Q That would be a strong indication though, wouldn't it,
17 Doctor? I mean, you see a lot of swelling, that that would have
18 been caused by the accident? In other words, that would be an
19 indicator to you that something just recently happened to cause
20 the condition?

21 A Although, you can also see edema in other kinds of disc
22 injuries and problems other than just trauma. So edema can be
23 one of those things that you can see with trauma.

24 Q And that you would likely see with a recent significant
25 traumatic injury, edema?

1 A It depends on the spectrum, the injury, the amount of
2 trauma transferred to the disc.

3 Q Okay.

4 Did an MRI -- was an MRI of Mr. Paiba's lumbar spine
5 performed a few days after his accident?

6 A Yes.

7 Q That was performed on, I believe March 14th of 2019?

8 A Yes.

9 Q And was that film read by a Dr. Thomas Kolb?

10 A Yes.

11 Q And did he prepare a report?

12 A Yes.

13 Q And did you happen to have an opportunity to review his
14 report?

15 A Yes.

16 Q Do you have a copy of it before you, the report related
17 to the 3/14/19 MRI?

18 A Yes.

19 Q In reviewing Dr. Kolb's report, is there any mention of
20 edema in his report?

21 A No.

22 Q So no swelling?

23 A Correct.

24 Q And when a lumbar disc degenerates, does it manifest
25 itself in the disc losing water and drying up?

1 A Yes.

2 Q And the loss of this disc hydration, is that something
3 that can be seen on an MRI film?

4 A Yes.

5 Q And would it also be fair to say that portions of the
6 lumbar spine that have a loss of water appear darker and gray on
7 the MRI film?

8 A Yes.

9 Q And the parts that don't have degeneration appear
10 bright and white?

11 A Yes.

12 MR. MAHER: At this time, I'm just going to take a
13 second, I want to show the Doctor the lumbar MRI film.

14 Figure if the jury wants to take a quick recess?

15 MR. SHECTMAN: No, don't do that.

16 THE COURT: No.

17 And which DVD are you looking for?

18 MR. MAHER: The one from the Kolb Radiology films
19 is what I wanted to show, Dr. Kolb.

20 I'm going to move the podium out of the way.

21 THE COURT: If we can move them before the two
22 desks there.

23 MR. MAHER: Yeah, so the jury can see.

24 Eventually we will ask the Doctor to come down.

25 THE COURT: We are off the record for the moment.

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(Whereupon, at this time, a discussion was held
off the record.)

(Whereupon, the following was recorded and
transcribed by Official Court Reporter Valerie McNally.)

(Continued on next page.)

* * * * *

1 CROSS-EXAMINATION (Continued)

2 BY MR. MAHER:

3 Q Dr. Merola, I know yesterday Mr. Shectman showed you
4 this same image which is from the MRI of the lumbar spine taken
5 I believe on March 14, '20.

6 THE COURT: Counsel, would you identify what
7 exhibit it is?

8 MR. MAHER: Plaintiff's Exhibit 1 --

9 THE COURT: Thank you.

10 MR. MAHER: -- in evidence, the Kolb Radiology
11 film. Specifically, there are several films in evidence.
12 This one specifically relates to the March 14, 2019, MRI
13 film taken a few days after the accident.

14 Q So Dr. Merola, do you have a good view from where you
15 are standing here?

16 A Yes.

17 Q You could see these films. I believe you were pointing
18 out yesterday the various parts of the spine, right?

19 A Yes.

20 Q And if I am pointing here, is this the L5-S1 level?

21 A Yes, it is.

22 MR. SHECTMAN: Could I move my position?

23 THE COURT: Yes, please.

24 Q When we were talking a few moments ago about disc
25 dehydration and how it would appear on an MRI film, that the

1 parts that were healthier would be white in color and those
2 where there was more or significant disc dehydration, they would
3 be darker?

4 A Yes.

5 Q Correct. Looking at this film here, as we're going
6 down, you can see it's somewhat bright, somewhat bright,
7 somewhat bright, somewhat bright, but when we get down here to
8 the L5-S1 level, it's not really bright at all, right?

9 A Less bright than the others, yes.

10 Q I will let the jurors be the judge of that. I don't
11 know if everyone could see that, but right here I would submit
12 to you, Doctor, there is a significant differential in the
13 brightness in the area, which is the L5-S1, which is where you
14 operated?

15 A Yes, there is a difference.

16 Q And the fact that there's this differentiation in
17 respect to the color is indicative that there has been
18 long-standing disc dehydration at the L5-S1 level, correct?

19 A There's -- yes, there is dehydration at L5-S1, correct.

20 Q That wouldn't happen overnight?

21 A Yes, correct.

22 Q So if this appeared on a film on 3/14/19, it didn't
23 happened overnight?

24 A The dehydration did not, right.

25 MR. MAHER: That's all for this exhibit. I am not

1 done with my questioning but I am done with this exhibit.

2 THE COURT: Counsel, you don't have to move it.

3 MR. MAHER: I want to move it so that --

4 THE COURT: I am just saying you should not be the
5 one doing it.

6 MR. MAHER: Oh, okay.

7 THE COURT: Thank you. I think you may need your
8 microphone, Counsel.

9 MR. MAHER: Oh, right.

10 BY MR. MAHER:

11 Q Dr. Merola, approximately how many spinal fusion
12 surgeries do you perform a year?

13 A So in any given year, I do probably -- I don't know,
14 between 175 and 200-some-odd surgeries. Maybe 25 percent of
15 them are fusions.

16 Q Do you recall recently testifying in the Torres case
17 that we were talking about that you perform approximately 250 of
18 these surgeries per year?

19 A Spinal surgeries, yes, somewhere in the neighbor of
20 200, 250 depending upon the year I think I said.

21 Q Would you agree with me that most spine surgeons on
22 average perform maybe 80 or 90 such surgeries a year?

23 A It depends on where you are geographically located.
24 There are certainly some that do more and some that do less.

25 Q Would it be fair to say you perform a lot more spinal

1 surgeries that your peers?

2 A No.

3 Q No?

4 A No.

5 Q Okay. Would you agree with me, Doctor, that just
6 because a patient has a herniated disc doesn't necessarily mean
7 that they need surgery?

8 A Yes.

9 Q And would it also be fair to say that surgery on the
10 lumbar spine should be viewed as a treatment of last resort?

11 A Sure.

12 Q So only after all other forms of conservative treatment
13 have failed?

14 A After conservative treatment has failed and there's
15 persistent pain and/or red flags that indicate surgery should be
16 done, yes.

17 Q When did you recommend that Mr. Paiba undergo the
18 lumbar laminectomy?

19 A After failed conservative treatment and was symptomatic
20 for, I believe, at least four months or so.

21 Q With respect to the date, was it at the time of your
22 first visit?

23 A That's correct.

24 Q On your very first visit you recommended that he
25 undergo this surgery?

1 A Yes.

2 Q And did you do anything to confirm what type of
3 conservative treatment he had received prior to making your
4 recommendation?

5 A Sure. I requested an authorization and had a review of
6 records pending the authorization request that has to go in
7 along with getting permission to do the surgery and he had been
8 referred to me by his pain management doctor, Dr. Grimm, who
9 performed something called a lumbar epidural steroid injection
10 as well.

11 Q Is physical therapy one of the treatments that should
12 definitely be tried before you go for a surgery?

13 A Activity modification and physical therapy are very
14 helpful within the first six weeks after injury and then that
15 kind of falls off over time, so patients that have chronic pain
16 in excess of three months, the next step is typically indicated
17 with a lumbar epidural steroid injection.

18 Q Let me ask you this, Doctor: You say in your initial
19 report that the plaintiff did some therapy. Do you see that in
20 your initial report?

21 A Correct.

22 Q Do you know where Mr. Paiba went for physical therapy?

23 A I don't have an independent recollection of it, but I
24 do recall that he did have physical therapy subsequent to the
25 injury, yes.

1 Q Are his physical therapy records part of your chart?

2 A No, I didn't bring the records for the physical
3 therapy.

4 Q Are Dr. Grimm's record part of your chart?

5 A No, I did not bring Dr. Grimm's records.

6 Q As you sit here now, you have no present recollection
7 as to whether he went to therapy, how many sessions he went or
8 anything like that?

9 A I know he failed conservative treatment, was
10 symptomatic for more than four months and did have physical
11 therapy and had a lumbar epidural steroid injection as well.

12 Q Did you do anything to investigate the nature of the
13 physical therapy?

14 A I discussed it with my patient, sure.

15 Q Okay. Well, if I were to tell you that Mr. Paiba
16 received his physical therapy at a facility known as Advanced
17 Rehabilitation of Jersey City, would that refresh your
18 recollection?

19 A I would agree with you that he did receive therapy and
20 if he was living in New Jersey, that would be a reasonable place
21 to do it, sure.

22 Q But you never looked at those records?

23 A I don't have an independent recollection of those
24 records, no.

25 Q Would you like to look at them now?

1 A I don't see how they would be helpful.

2 Q Well, as far as the number and kinds of treatment that
3 Mr. Paiba received at this facility, would it be helpful in that
4 regard?

5 A No, because once again, physical therapy is most
6 helpful for the initial six weeks after a radiculopathy or low
7 back injury occurred. Beyond that, the condition becomes
8 chronic, then you need to go to further levels of treatment if
9 the patient remains symptomatic.

10 Q So, if hypothetically the records from Advanced
11 Rehabilitation of Jersey City show that Mr. Paiba went for a
12 single physical therapy visit on his lower back on May 1st of
13 2019, would that be something that you would have wanted to take
14 into consideration?

15 A Once again, May was well beyond the six-week timeframe
16 where therapy would have been helpful to him.

17 Q Let me ask it this way: Doctor, do you think one
18 epidural steroid injection and one session of lower back
19 physical therapy consist exhausting all conservative measures?

20 A I think four months of being symptomatic with
21 neurological findings on your examination, with pain that's
22 interfering with your activities of daily living, with a
23 positive EMG finding demonstrating nerve damage in a myotome,
24 that is in the muscle, which correlates with the physical
25 finding is an indication for surgery and those would raise red

1 flags for conditions that require surgery, because without
2 surgery the condition would only get worse.

3 Q Now, you mentioned a few moments ago there was an EMG
4 test. Was that a test you did or somebody else?

5 A Somebody else did that test.

6 Q Who did that test?

7 A I would have to look at the test again to give you the
8 name. I don't recall who did it.

9 Q Did Dr. Grimm do that test?

10 A I have to look at the record. I don't have it in front
11 of me.

12 Q The EMG report is not part of the records that are
13 right in front of you?

14 A I don't have the records in front of me.

15 MR. MAHER: Okay. Officer --

16 THE COURT OFFICER: Showing 6 in evidence.

17 A I now have it. I have the EMG from May 8th.

18 Q Who performed the test?

19 A Dr. Grimm.

20 Q And you relied on Dr. Grimm's findings?

21 A The finding correlated with the complaints and physical
22 exam and MRI, so they were reliable, yes.

23 Q When you say complaints, you are talking in many
24 respects with respect to subjective complaints?

25 A Yes.

1 Q In other words, if somebody says I am in pain, I'm in
2 not position to say you are not in pain?

3 A When you are visiting with a patient and taking their
4 history, you are dealing with the patient, so of course you have
5 to take their subjective complaints into consideration, yes.

6 Q Right. But a complaint of pain is something that's
7 subjective?

8 A Of course.

9 Q So now, Doctor, the operation that you performed, the
10 first one, that was on October 16th of 2019?

11 A Yes, that's correct.

12 Q Where was that operation performed?

13 A Lower Manhattan Hospital.

14 Q It was performed in New York Presbyterian Hospital?

15 A Yes.

16 Q And so you have privileges to perform surgery at New
17 York Presbyterian Hospital?

18 A Yes.

19 Q As a doctor with privileges at New York Presbyterian
20 Hospital, do you have access to your patient's prior records?

21 A It depends on whether or not -- so there's electronic
22 medical record and it depends on whether or not that medical
23 record is linked up to their other records, so patients
24 typically have to give permission for that. It's something you
25 can see in the file in their electronic medical record, so it

1 depends.

2 MR. MAHER: I would like to -- there was a record
3 from New York Presbyterian Hospital that were marked for
4 identification.

5 THE COURT OFFICER: Defendant's A for ID.

6 MR. MAHER: Could we show this to the witness?
7 We're only talking about one page.

8 MR. SHECTMAN: Which page?

9 THE COURT: Just finish looking at the record,
10 then we'll have the question.

11 MR. MAHER: I am going to try to make it simple.
12 Would it be possible for me to pull out pages? I don't
13 want to get yours mixed up with my pages.

14 THE COURT OFFICER: Showing the witness
15 Defendant's A for ID.

16 Q Doctor, I want you to look at both sides, starting with
17 the x-ray of the --

18 THE COURT: Use the microphone, please.

19 MR. MAHER: Sorry, Your Honor. My apologies.

20 Q I want to direct -- I don't know which side you are
21 looking on, but there's an x-ray of the hip, then a description
22 of the finding on the other side.

23 A Yes.

24 Q So this portion of the record that came into court
25 under subpoena, does that indicate that Mr. Paiba was seen at

1 New York Presbyterian Hospital back on May 19th of 2010?

2 MR. SHECTMAN: I object, Your Honor.

3 THE COURT: What is the basis? He is looking at
4 evidence that both parties stipulated to.

5 MR. SHECTMAN: That's not the hospital chart that
6 we stipulated to, that's something different.

7 THE COURT: I am sorry.

8 MR. SHECTMAN: It's not certified. We didn't
9 stipulate to that.

10 MR. MAHER: It came in under subpoena.

11 THE COURT: Stop the argument between the parties.
12 What record are we looking at?

13 THE COURT OFFICER: Your Honor, this was marked
14 previously as Defendant's A for ID. It was marked
15 yesterday. It's only been marked for ID. It's the letter
16 records and some form of disc in the envelope that are
17 altogether and opened yesterday.

18 THE COURT: There can't be any reading from this
19 document.

20 MR. SHECTMAN: That's why I am objecting.

21 MR. MAHER: This is a subpoenaed record. I would
22 like to move it into evidence. Counsel wants to use the
23 films that were in the envelope but not the reports.

24 THE COURT: When you make a request, make a
25 request and wait for the Court to make a ruling on it. I

1 will ask for further information if so needed.

2 Your request was to move this document -- what is
3 it?

4 THE COURT OFFICER: Subpoenaed records from New
5 York Presbyterian Hospital.

6 MR. MAHER: As a business record.

7 THE COURT: The objection is?

8 MR. SHECTMAN: We stipulated to the report of the
9 certified hospital record of 3/16/19. It's not certified,
10 Your Honor. He is moving in something we didn't agree to.

11 MR. MAHER: He didn't agree to it but that doesn't
12 mean it's not proper.

13 MR. SHECTMAN: We shouldn't do this in front of
14 the jury.

15 THE COURT: I asked you a number of times not to
16 have colloquy before the jury and to stop when I am looking
17 at something.

18 These were documents subpoenaed by the plaintiff.
19 Were these documents subpoenaed by the plaintiff?

20 MR. SHECTMAN: They are not certified. I don't
21 know.

22 THE COURT: Counsel, the question --

23 MR. SHECTMAN: I don't know. I didn't see it. I
24 don't know.

25 THE COURT: Can we excuse the jury for a moment?

1 THE COURT OFFICER: All rise. Jury exiting.

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

4 THE COURT: Let's go off the record for a
5 moment.

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

8 THE COURT OFFICER: All rise. Jury entering.

9 (Whereupon, at this time, the jury entered the
10 courtroom.)

11 THE COURT CLERK: All counsel stipulate to the
12 presence and seating of the jury?

13 MR. SHECTMAN: Yes.

14 MR. MAHER: Yes.

15 THE COURT: Have a seat, jurors. Thank you.
16 Counsel may proceed.

17 CROSS-EXAMINATION (Continued)

18 BY MR. MAHER:

19 Q Dr. Merola, hypothetically if an x-ray had been
20 taken -- are you okay?

21 A I think you dropped something. I am sorry.

22 Q Oh, yeah. Thanks.

23 Hypothetically if Mr. Paiba had an x-ray taken in May
24 of 2010 that showed the presence of degenerative conditions in
25 his lumbar spine, would that change your opinion as to

1 causation?

2 A No.

3 Q And I believe you testified the other day that when you
4 did the initial operation, the lumbar laminectomy, that you
5 removed disc material and that the material was sent to
6 pathology?

7 A Yes.

8 Q And would a pathology report be created after that
9 material was removed and analyzed?

10 A Sure.

11 Q Do you recall what the pathology report found?

12 A No.

13 MR. MAHER: I would like to mark this. I want to
14 mark this for identification.

15 (Whereupon, at this time, the document was marked
16 as Defendant's Exhibit F for identification, by the
17 Reporter.)

18 THE COURT OFFICER: F for ID.

19 Q Dr. Merola, have you had an opportunity to review the
20 document that's in front of you?

21 A Yes.

22 Q Does that appear to be the pathology report that was
23 created following the operation that you performed on the
24 plaintiff back on October 16th of 2019?

25 A Yes.

1 Q And is there a diagnosis listed?

2 A Yes.

3 Q What is that diagnosis?

4 A Shall I read it?

5 Q Yes.

6 A Sure. It's disc, L5-S1, excision, colon, degenerative
7 fibrocartilage and bone.

8 Q So the pathology finding following your initial surgery
9 was that there was degenerative fibrocartilage at L5-S1?

10 A Yes.

11 Q Thank you. Now, just taking a look at your notes, did
12 the plaintiff return to your office back on July 6th of 2020?

13 A Yes.

14 Q And at that time, did Mr. Paiba express to you that he
15 was experiencing pain in his left hip?

16 A Yes.

17 Q Now, Doctor, is it fair to say that sometimes
18 conditions of the back can cause the patient to feel or
19 experience pain in their hip?

20 A You know, it's more common to actually have it the
21 other way around than the back causing the hip pain, so the hip
22 you can get symptoms into the hip area, but they're typically in
23 the groin area, that's typically hip related.

24 Q Are you saying that pain in the groin is related to hip
25 injuries?

1 A Correct. So hip injuries typically manifest what is
2 called a C sign, where patients localize the pain into their
3 groin area because hip pathology typically goes into the groin,
4 whereas low back pathology with radiating symptoms either goes
5 to the outside, the back or down the leg, so there can be --
6 they can be intermingled, but they're somewhat easy to
7 differentiate.

8 Q In looking at the notes that you created with respect
9 to your visit on July 6th of 2020, is there any mention that Mr.
10 Paiba is suffering from groin pain?

11 A Well, no, I didn't localize it as groin pain, but I did
12 localize it to the hip based upon the Trendelenburg gait
13 pattern.

14 Q If Mr. Paiba had complaints of groin pain, isn't that
15 something that would have been important to note in your record?

16 A No. I transcribed it as left hip pain.

17 Q Even though you just told us that left hip pain
18 manifests itself as groin pain, you didn't feel it was important
19 to mention he was experiencing groin pain?

20 A No, because I translated it over to indicate that it
21 was a hip problem.

22 Q But you have no indication from just writing your notes
23 that Mr. Paiba made any complaints of groin pain on the date of
24 your visit?

25 A No, he was complaining about left hip pain.

1 Q In other words, as you sit here right now, you have no
2 independent recollection of what happened on that date of that
3 visit, July 6, 2020, correct?

4 A No, other than that he was having hip pain.

5 Q Right. So it would be fair to say that you have no way
6 of saying he made complaints of groin pain to you because it's
7 not in your notes?

8 A Correct.

9 Q Now, did Mr. Paiba return to your office on July 12th
10 of 2021?

11 A Yes.

12 Q At that time, did you report that there had been a new
13 MRI of the lumbar spine done on July 23rd of 2021?

14 A Yes.

15 Q Do you state in your report that the MRI shows disc
16 space collapse at L5-S1?

17 A Yes.

18 Q All right. Now, was a report also prepared by Dr.
19 Thomas Kolb, the radiologist?

20 A Yes.

21 Q Do you have a copy of that report?

22 A Yes.

23 Q The report that Dr. Kolb created following the June 23,
24 2021 MRI, does he state anywhere in this report that there was a
25 disc space collapse?

1 MR. SHECTMAN: Objection. He is reading from a
2 report not in evidence. It's the finding of another
3 doctor.

4 THE COURT: Counsel, I asked you not to go on.

5 MR. SHECTMAN: I have an objection for the same
6 reason as before.

7 THE COURT: Sustained.

8 MR. MAHER: I believe the report and the film are
9 all in evidence.

10 MR. SHECTMAN: Objection, Your Honor.

11 THE COURT: If you have an exhibit that you would
12 like to show, let us have the exhibit.

13 MR. MAHER: Does the officer have the exhibit in
14 evidence Number 1, the films?

15 THE COURT OFFICER: That's the MRI. What are we
16 looking for?

17 MR. MAHER: I am pretty sure the reports are
18 also -- I thought they were in the envelope.

19 THE COURT OFFICER: It's just the disc that was on
20 the desk. Let me double-check and make sure.

21 It was just the disc.

22 Q Doctor, do you recall whether or not the report -- by
23 the way, the report is part of your file?

24 A Yes.

25 Q That's been entered into evidence?

1 A Yes.

2 Q Okay, so can we look at that?

3 A Sure.

4 MR. SHECTMAN: Judge, could we approach? I have
5 an objection.

6 THE COURT: Overruled.

7 THE COURT OFFICER: That's Plaintiff's 6, correct?

8 MR. MAHER: The Doctor's notes.

9 THE COURT OFFICER: Doctor medical records, 6 in
10 evidence.

11 Q Which also include the report from Dr. Kolb from
12 June 23rd of 2021, correct?

13 MR. SHECTMAN: Your Honor. I have an objection,
14 Your Honor.

15 THE COURT: Overruled. The question on the floor,
16 is there an answer?

17 Doctor, can you answer the question that defendant
18 counsel just asked?

19 THE WITNESS: Sure.

20 THE COURT: Would you please?

21 THE WITNESS: Could he ask it again?

22 Q At this point, I just want to know: Is Dr. Kolb's
23 narrative report regarding the 6/23/2021 lumbar MRI part of the
24 documents that are right in front of you that have been admitted
25 into evidence?

1 A Yes.

2 Q Could you take a look at that report at this time?

3 A Yes.

4 Q Anywhere in that the report that was created by Dr.
5 Kolb does he say that the MRI of 6/23/21 shows disc space
6 collapse at L5-S1?

7 A No.

8 Q Does he also make -- there's an impression section?

9 A Yes.

10 Q Can you read the impression section?

11 A Sure. Disc herniation at L5-S1 with central and
12 foraminal narrowing and impingement upon the exiting bilateral
13 L5 nerve roots with no integral change the prior examination,
14 period. Increasing L5-S1 facet and ligamentous hypertrophy.

15 Q So when Dr. Kolb read the film, he found there was no
16 integral change from the prior examination; is that fair to say?

17 A No, he actually contradicted himself a little bit
18 because he also goes on to say there's increasing L5-S1 facet
19 and ligamentous hypertrophy, so you can't have that if there's
20 no integral change.

21 Q With respect to the disc spacing, he is finding no
22 integral changes?

23 A He did not comment on the disc space, correct.

24 Q And did Dr. Paiba return to your office again -- Mr.
25 Paiba return to your office again on January 20, 2022?

1 A January 10th.

2 Q January 10th of 2022?

3 A Yes.

4 Q At that time did you recommend fusion surgery at L5-S1?

5 A Yes.

6 Q Would you agree with me, Doctor, that lumbar fusion
7 surgery should be reserved for cases where there's instability
8 or deformity or intractable symptoms?

9 A Those are some of the indications, correct.

10 Q Was Mr. Paiba suffering from any instability in his
11 lumbar spine?

12 A Yes.

13 Q Instability, is that in your notes?

14 A It's the increasing ligamentous and facet hypertrophy
15 are an indication of an abnormal L5-S1 motion segment, which is
16 related to instability. That's one condition.

17 The second condition is what is known as iatrogenic
18 instability, which is if you are going to re-decompress and
19 remove facet joint, you then create an iatrogenic that is a
20 surgical instability that requires fusion. So those were all
21 indications for fusion, particularly in revision cases with
22 intractable recurrent pain.

23 Q So you say there was instability?

24 A As I've just explained in a long-winded explanation,
25 yes.

1 Q Now, Doctor, are you familiar with the term called
2 secondary gain?

3 A Yes.

4 Q What does that mean?

5 A So it typically refers to other -- I am trying to think
6 of another word other than gain, so I don't define it with the
7 same word that's in the description.

8 It refers to acquiring other things in addition to
9 whatever your primary issue is.

10 Q Does it relate to individuals who may exaggerate their
11 symptoms, perhaps with the prospect of financial gain?

12 A Those things can happen, yes.

13 Q So the term secondary gain relates to that and that's
14 something that sometimes you might encounter in your practice?

15 A Yes, you can.

16 Q Similar, symptom magnification, what is that?

17 A Symptom magnification typically refers to patients that
18 have very overt or obvious symptoms regarding their condition.

19 Q So sometimes patients make complaints of pain and they
20 are not being completely honest; is that right?

21 A Sometimes patients can make complaints and symptoms
22 that are not completely and entirely in line with everything
23 that's going on, yes.

24 Q Right. And you know if somebody has a personal injury
25 lawsuit pending, might they have a financial incentive to be

1 less than forthcoming with respect to their symptoms of pain?

2 A I would assume so.

3 Q And when you were treating Mr. Paiba, were you aware
4 that he had a personal injury lawsuit pending?

5 A Not specifically, no.

6 Q You weren't aware of that?

7 A No, I was not tracking his litigation.

8 Q You saw Mr. Paiba again back on November 23rd of 2023?

9 A That is correct, yes.

10 Q Did you conduct an examination at that time?

11 A Yes.

12 Q And at that time did you conclude that Mr. Paiba would
13 be capable of returning to work?

14 A Yes.

15 Q Albeit not in the field of construction?

16 A Correct.

17 Q Is it fair to say, Dr. Merola, that within two years
18 after spine fusion surgery, most patients are able to return to
19 work in some capacity?

20 A Yes.

21 Q And would it also be fair to say that the majority of
22 cases of patients with spine fusion surgery, that within two
23 years they recover well enough that they can perform most, if
24 not all, of their daily household activities?

25 A Should be able to, yes.

1 MR. MAHER: I don't have any further questions for
2 the witness.

3 THE COURT: Thank you, Counsel. Any redirect?

4 MR. SHECTMAN: Yes, Your Honor. If I could have
5 one minute. I am sorry. I am just making a note.

6 REDIRECT EXAMINATION

7 BY MR. SHECTMAN:

8 Q Hello again, Doctor.

9 A Hello.

10 MR. SHECTMAN: Actually, Your Honor, is it okay if
11 I go back to my chair?

12 THE COURT: Yes. Counsel, I just remind you to
13 watch your time.

14 MR. SHECTMAN: Sure.

15 Q Doctor, I think yesterday I asked you, do you actually
16 want to be here away from your practice, Doctor?

17 A No.

18 Q Did I have to subpoena you to come to court in front of
19 this jury?

20 A Yes.

21 Q Would you tell the jury why that is?

22 A I am typically called to take care of patients and, for
23 example, today I had to cancel patients in order to be here, so
24 there's a bunch of people that depended on me and it's just not
25 always good to not be there.

1 Q Could you tell the jury -- and by the way, I apologize,
2 but by forcing you to come here by subpoena, how many patients
3 did you have to cancel, that I required you to cancel by that
4 subpoena?

5 A Between yesterday and today, about 40-some-odd
6 patients.

7 Q Are you getting any fee to be here now that I
8 subpoenaed you in front of this jury?

9 A No.

10 Q My apologies. Now, have you ever testified for the
11 defense?

12 A Early on in my career, yes.

13 Q Could you tell the jury what was your involvement with
14 testifying on behalf of defendants?

15 A I had done some work for the U.S. Department of Labor
16 regarding their patients.

17 Q Meaning the government hired you to testify?

18 A Yes.

19 Q Doctor, do you have any stake in the outcome of
20 whatever happens to Mr. Paiba here with this jury?

21 A No.

22 Q Now, this was glossed over but Mr. Maher asked you that
23 there were CAT scans done in the hospital on 3/6/19, correct?

24 A Yes.

25 Q The date of the accident?

1 A Yes.

2 Q And it showed no fractures, correct?

3 A Correct, no fracture.

4 Q Are you telling the jury there was a fracture of this
5 gentleman's back?

6 A No.

7 Q Were there MRIs done on 3/6/19?

8 A No.

9 Q Now, can we agree that that CAT scan of the back states
10 there was mild degenerative disc disease at L5-S1?

11 A Yes.

12 Q Now, during your surgery, you had an opportunity to
13 look at the disc at L5-S1, correct?

14 A Yes.

15 Q And in your operative report, didn't you in fact note
16 that there were normal age-appropriate degenerative findings?

17 A I did report there were degenerative findings, yes.

18 Q Just so we're clear, not to make this an issue, there
19 was degeneration that you saw at L5-S1, correct?

20 A Yes.

21 Q And was it typical or atypical, meaning common or
22 uncommon, what you saw for someone of his age, which was 51 at
23 the time?

24 MR. MAHER: Objection.

25 THE COURT: What is the basis?

1 MR. MAHER: The doctor already testified directly
2 regarding his opinions, regarding his findings.

3 THE COURT: Overruled.

4 MR. SHECTMAN: Thank you.

5 Q My question is: What you saw during surgery, was that
6 typical or atypical of what you would expect in someone who is
7 51?

8 A Consistent.

9 Q Doctor, does everyone who is 51 that has the normal
10 age-appropriate signs of degeneration, do all those people have
11 L5-S1 herniations with disc collapse?

12 A Do all 51-year-olds have herniations with disc space
13 collapse?

14 Q Right. Although -- all right. Does every person at 51
15 that has degeneration of the spine have an L5-S1 herniation with
16 a disc collapse with bilateral nerve root impingement?

17 THE COURT: Counsel, I have to remind you, you
18 have to slow down.

19 MR. SHECTMAN: I'm sorry.

20 A No, not necessarily.

21 Q Now, does the degeneration that you saw during surgery
22 change your opinion of causation, that the fall off the ladder
23 of nine feet was the cause of his herniation? Does the
24 degeneration you saw change your opinion?

25 A No.

1 Q Why not? Please tell the jury.

2 A You can have trauma superimposed on a degenerative
3 condition.

4 Q Meaning what? Could you explain?

5 A Meaning as we get older, all of us have some kind of
6 degeneration. It doesn't mean that part of your body can't be
7 injured because you are older. I mean, if anything, sometimes
8 it's more frequent when you get older.

9 Q Doctor, do you know the term -- are familiar with the
10 term increased susceptibility?

11 MR. MAHER: Objection, Your Honor. May we
12 approach?

13 THE COURT: I think you have to.

14 Dr. Merola, would you step down, please.

15 (Whereupon, at this time, the witness exited the
16 witness stand.)

17 (Whereupon, at this time, an off-the-record
18 conference was held between all counsel and the Court at
19 the side-bar.)

20 (Whereupon, at this time, the witness resumed the
21 stand.)

22 THE COURT: The objection is overruled.

23 MR. MAHER: Thank you, Judge.

24 BY MR. SHECTMAN:

25 Q Doctor, what I was asking is, could you tell the jury

1 what is meant by increased susceptibility?

2 A I mean, we're all susceptible to having problems occur
3 and as you get older, sometimes you are at an increased
4 susceptibility for having whatever issue may occur.

5 Q Does increased susceptibility mean it's easier or more
6 difficult to get injured?

7 A Typically easier.

8 Q Doctor, you were asked about certain risk factors like
9 age, correct?

10 A Yes.

11 Q Somebody might develop a herniation as they get older?

12 A Yes.

13 Q Might age when one is older might make them more
14 susceptible, meaning more easily injured, than a younger person?

15 A Yes, it can.

16 Q In fact, Mr. Maher asked you somebody if is overweight,
17 has over 30 percent BMI, might that make them more easily
18 injured than someone who is healthier or thinner?

19 A Yes.

20 Q In fact, someone has degeneration at L5-S1, would
21 that -- might that make someone more susceptible to injury?

22 A Yes, it can.

23 Q Could you explain why that is? If a disc is
24 degenerated, why it is easier for that disc to tear and herniate
25 than a healthy disc?

1 A So as you get older, you lose water and when water is
2 lost from your tissues, things become more brittle.

3 Q More what?

4 A Brittle.

5 Q And that is the case here. Did we just see that the
6 L5-S1 disc was darker?

7 A Yes.

8 Q Meaning it lost more water than the other discs?

9 A Yes.

10 Q And being as that was the case, would that make it more
11 easily injured than the other discs which were more hydrated?

12 A Yes, it can be.

13 Q Doctor, you were asked couldn't things such as age,
14 body mass index, cause herniations, correct?

15 A Yes.

16 Q How about falling over nine feet onto concrete?

17 A Sure.

18 MR. MAHER: Objection.

19 THE COURT: Overruled.

20 Q Now, you said during surgery that you saw an L5-S1
21 herniation with bilateral nerve root impingement, correct?

22 A Yes.

23 Q Was that consistent with the MRI that you read?

24 A Yes.

25 Q Was that consistent with the MRI that he brought up

1 that Dr. Kolb, a different doctor, found the same thing that you
2 did?

3 A Yes.

4 Q Was that consistent or inconsistent with the EMG which
5 was yet from another doctor?

6 A It went along with the EMG as well.

7 Q Now, Doctor, you heard about this accident of 5/17/17
8 where Mr. Paiba went to the hospital one time?

9 A Yes.

10 Q Now --

11 MR. MAHER: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. SHECTMAN: I want to show him the same record
14 Mr. Maher showed him from that visit. Do we have it?

15 MR. MAHER: It was objected to me even showing it
16 to him.

17 MR. SHECTMAN: He showed it to him and asked him
18 questions on it. We can read the record.

19 THE COURT: Which record?

20 MR. SHECTMAN: 5/17/17.

21 THE COURT: What is the record?

22 MR. SHECTMAN: It's from Elmhurst Hospital.

23 THE COURT: I thought Elmhurst Hospital records
24 were in evidence.

25 MR. MAHER: They are, but not the ones related to

1 5/17/17. Those came in under an authorization, they didn't
2 come in response to subpoena.

3 THE COURT: So we're talking about the one page he
4 read from?

5 MR. SHECTMAN: The one page he asked the doctor to
6 read from. I want him to read from other stuff on the same
7 page.

8 THE COURT: We're looking at the same page the
9 plaintiff previously looked at during cross-examination.

10 MR. SHECTMAN: That the doctor looked at.

11 THE COURT: That the doctor looked at. I am
12 sorry.

13 THE COURT OFFICER: That would be page 68, I
14 believe, Judge.

15 THE COURT: Correct.

16 THE COURT OFFICER: Plaintiff B in evidence,
17 page 68.

18 MR. SHECTMAN: May I see the page?

19 THE COURT OFFICER: Defendant's B, I apologize.

20 MR. SHECTMAN: If I may see it for a moment and
21 match it up to mine.

22 THE COURT OFFICER: Yes, yes.

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

25

1 MR. SHECTMAN: Judge, there's another page that he
2 asked about.

3 THE COURT: This is the page that was used,
4 Counsel.

5 MR. SHECTMAN: Then, your Honor, I'm going to ask
6 to mark my copy of a page from the exact same record that
7 that's from. I ask that we mark this for identification.

8 THE COURT: What page is that?

9 MR. SHECTMAN: This is page 1 of the hospital
10 record of 5/17/17. Same chart, it's page 1.

11 THE COURT: Defense, Mr. Maher?

12 MR. MAHER: No, I don't know what's being asked of
13 me. I mean, he showed me what he wanted to show him and
14 I'm holding it. He wants to mark it for identification.

15 MR. SHECTMAN: I'd like to mark it for
16 identification, your Honor.

17 THE COURT: I thought the whole package?

18 MR. MAHER: It's not in those records.

19 THE COURT: Let's go off the record for a moment.

20 (Whereupon, at this time, a discussion was held
21 off the record.)

22 MR. SHECTMAN: Your Honor, I would like to hand to
23 the witness E.

24 THE COURT OFFICER: Showing E for ID.

25 Q Now, Doctor, this is pages of a chart of 5/17/17,

1 correct?

2 A Yes.

3 Q And I know Mr. Maher asked you if this is regarding a
4 fall that Mr. Paiba had at a restaurant where he went to the
5 hospital one time, correct?

6 MR. MAHER: Objection.

7 THE COURT: What's the basis?

8 MR. MAHER: Well, first of all, that doesn't say
9 anything about a restaurant. It says that he fell at work.

10 MR. SHECTMAN: Fell at work, Judge.

11 MR. MAHER: Fell at work.

12 MR. SHECTMAN: Judge, fine. I'll change the
13 question, fell at work.

14 THE COURT: Sustained.

15 MR. MAHER: And then it doesn't say anything about
16 hospital one time. It just --

17 THE COURT: Sustained.

18 MR. MAHER: -- this document is a single visit --

19 THE COURT: Sustained, Counsel, sustained.

20 Thank you.

21 Rephrase your question and make it consistent with
22 the document that we are referring to.

23 MR. SHECTMAN: I will.

24 Q Doctor, so looking at Defendant's E that they asked you
25 about before, do you recall when Mr. Maher said to you that

1 Mr. Paiba went to the hospital due to his back? Do you remember
2 that question?

3 A Yes.

4 Q Well, would you tell the jury, what was actually the
5 reason why he came to the hospital that day?

6 MR. MAHER: Objection.

7 THE COURT: Sustained.

8 Q Doctor, can you please look where it says history of
9 present illness --

10 THE COURT: Just stop.

11 MR. SHECTMAN: Sure.

12 THE COURT: Ask a question --

13 MR. SHECTMAN: Okay, I'll ask a question.

14 THE COURT: -- and if he needs refreshing, then he
15 can look at the document.

16 Put the document down, Doctor, facedown.

17 Q Doctor, as you sit here today, do you remember all of
18 the complaints which Carlos made on 5/17/17, which was the
19 reason why he went to the hospital?

20 MR. MAHER: Objection.

21 THE COURT: What's the objection?

22 MR. MAHER: Well, if Dr. Merola wasn't treating
23 Mr. Paiba back at the time, he has no recollection as to
24 what his complaints were back then.

25 THE COURT: Overruled. He hasn't answered the

1 question.

2 Dr. Merola, you can answer the question.

3 A So it was multiple. It was his head, his elbow, his
4 back and his buttock.

5 Q So and that's -- now, were there any other complaints
6 that he complained of that day?

7 MR. MAHER: Objection.

8 THE COURT: Overruled.

9 Q Can you recall all of his complaints that day?

10 MR. MAHER: Objection. He has no recollection as
11 to anything.

12 MR. SHECTMAN: Well, then I would ask that the
13 Doctor use the document to refresh his memory as to what
14 the complaints were.

15 THE COURT: Counsel, you know very well how to ask
16 the questions. So ask the question --

17 MR. SHECTMAN: Sure.

18 THE COURT: -- and when we get the answer and then
19 we will move forward.

20 Q Do you recall whether or not he complained of his head,
21 a headache?

22 A Yes, he had a headache.

23 Q Do you recall if he complained of right elbow pain?

24 MR. MAHER: Objection. Again, the Doctor doesn't
25 have a recollection, he wasn't his patient.

1 THE COURT: He's asking a question based on -- you
2 will have your chance to redirect.

3 MR. MAHER: He's asking the Doctor if it refreshes
4 his recollection. He doesn't have a recollection to begin
5 with.

6 THE COURT: He's not asking him if he has a
7 recollection. Overruled.

8 Counsel, go ahead.

9 MR. SHECTMAN: Thank you.

10 Q Doctor, did he complain of his right elbow?

11 A Yes.

12 Q Did he complain of his right knee?

13 A Yes.

14 Q Did he complain of also having some back pain?

15 A Yes.

16 Q So can we agree, it wasn't just the back, there were

17 multiple complaints which precipitated him going to the

18 hospital?

19 A Yes.

20 THE COURT: Which time are we talking?

21 MR. SHECTMAN: On 5/17/17.

22 Q Agreed?

23 A Yes.

24 Q Doctor, have you seen any other record besides that one

25 that Carlos ever had back pain before he fell off the ladder?

1 A No.

2 Q And were MRIs taken on 5/17/17 as a result of falling
3 at work?

4 A No.

5 Q Was there surgery performed on his back as a result of
6 that one visit?

7 A No.

8 Q Injections?

9 A No.

10 Q Okay.

11 Now, Doctor, you were asked about the fact that
12 construction work may involve heavy lifting?

13 A Yes.

14 Q Okay.

15 And do you have an opinion if, in fact, as Mr. Maher
16 asked you, if in fact the herniations were caused by
17 construction work? Do you have an opinion whether Carlos could
18 have worked 40 hours a week in the week immediately before he
19 fell off that ladder?

20 MR. MAHER: Objection.

21 THE COURT: Sustained.

22 MR. SHECTMAN: Can I ask the basis?

23 THE COURT: Sustained, Counsel.

24 Q Well, Doctor, I would like you to assume that on

25 3/6/19 --

1 MR. MAHER: Judge, if we can approach?

2 THE COURT: That's sustained. Plaintiff was
3 asking a question.

4 MR. MAHER: Understand. I just believe we went
5 over this yesterday. He's trying to ask the same question.

6 THE COURT: When he's asked a question, if you
7 have an objection, Counsel, please make it.

8 MR. MAHER: I will.

9 Q Now, Doctor, do you believe that --

10 MR. SHECTMAN: Well, withdrawn.

11 Q I would like you to assume that Carlos was working at
12 eight years old washing cars; do you believe that caused his
13 herniated disc?

14 MR. MAHER: Objection.

15 THE COURT: The basis?

16 MR. MAHER: Again, it's not one incident. I mean,
17 it's not a proper question.

18 THE COURT: Okay, overruled.

19 Q Do you believe that Carlos sustained the herniation
20 that you saw from washing cars at eight years old?

21 A No.

22 Q Do you believe that Carlos sustained a herniation from
23 painting ceilings?

24 A No.

25 Q Doctor, whenever there is degeneration of the spine, is

1 there always a corresponding herniation at the same level of the
2 degeneration?

3 A No.

4 Q And I believe you used the term before, superimposed?

5 A I don't remember saying superimposed.

6 Q Oh. What does that mean when there's a herniation
7 superimposed on degeneration?

8 A It means a herniation and degeneration.

9 Q A what?

10 A It means a herniation and degeneration.

11 Q Doctor, if in fact somebody had a herniation of L5-S1
12 with bilateral nerve impingement, are there known symptoms?

13 A I'm sorry, could you repeat your question.

14 Q Sure.

15 If somebody has a herniation at L5-S1 with bilateral
16 nerve root impingement at that level, are there known symptoms
17 that result?

18 A Are there known symptoms?

19 A patient can be symptomatic or a patient can be
20 asymptomatic.

21 Q And if they are symptomatic, what are the known
22 symptoms?

23 A Typically lower back pain with radiating pain into the
24 legs.

25 Q Now, Doctor, I would like you to assume that prior to

1 the fall off the ladder, Carlos did not have pain radiating into
2 his legs. Do you have an opinion --

3 MR. SHECTMAN: Withdrawn.

4 Q Doctor, what is the significance, if any, of that fact
5 regarding your opinion on causation?

6 MR. MAHER: Objection.

7 THE COURT: Sustained.

8 Q Well, Doctor, when you gave an opinion on causation,
9 can you tell us, what is that based on?

10 A Based on my treatment of the patient and my
11 interactions with him that I've had over the years. And his
12 medical record, of course.

13 Q Is there anything in the records to suggest that Carlos
14 had a L5-S1 herniation, torn disc and all the symptoms, the
15 symptomology that he had when he came to your office that first
16 time?

17 THE COURT: Time period, Counsel?

18 MR. SHECTMAN: Oh, I'm sorry.

19 Q The first visit in July of 2019.

20 A I didn't see anything that indicated he was symptomatic
21 prior to the accident.

22 Q And what significance does that have?

23 MR. MAHER: Objection.

24 THE COURT: Sustained.

25 MR. SHECTMAN: Your Honor, may I look over my

1 notes?

2 THE COURT: Counsel, I'm asking you to watch the
3 time.

4 MR. SHECTMAN: Sure. I just need a moment, your
5 Honor.

6 Q Now, Doctor, you mentioned that you don't do -- the
7 surgeries you performed, you mentioned that you don't perform
8 those on every patient you see, correct?

9 A Yes.

10 Q In this particular case, can you tell the jury why was
11 the first operation necessary?

12 A He had been symptomatic for four months. He had signs
13 and symptoms consistent with radiculopathy. He had an MRI that
14 showed nerve root compression. He had an EMG that showed nerve
15 root damage. So those are all indications for surgery.

16 Q And on the second operation, why was that necessary?

17 A He had recurrent symptoms with increasing nerve root
18 compression and, in essence, he got worse. However, he had
19 initially benefitted from the decompression, he got worse, he
20 deteriorated, and then he required another surgery.

21 Q Doctor, was there anything that you saw on any of the
22 records to suggest that Carlos was engaging in symptom
23 magnification?

24 A No.

25 Q Was there anything that Carlos told you that was

1 inconsistent with what you found objectively?

2 A No.

3 Q Were his complaints consistent with what you saw on the
4 MRI?

5 A Yes.

6 Q Were they consistent with what you saw during surgery?

7 A Yes.

8 Q Were they consistent with the EMG which is objective?

9 A Yes.

10 Q Is there anything at all that he told you that in any
11 way was inconsistent with what you believed objectively?

12 A No.

13 Q Now, Doctor, I believe you said you do think he can
14 return to work in some capacity, correct?

15 A Yes.

16 Q What would that be?

17 A I had indicated that he could return to work in a light
18 duty -- light duty or sedentary capacity.

19 THE COURT: Counsel, we are going over questions
20 that were asked on direct.

21 MR. SHECTMAN: I'm done in 30 seconds, your Honor.

22 Q Now, Doctor, the fact that you actually told us there
23 was degeneration at L5-S1 seen during surgery, does that change
24 any of your opinions?

25 A No.

1 MR. SHECTMAN: Thank you.

2 THE COURT: Thank you.

3 Anything further, Counsel?

4 MR. MAHER: No, your Honor.

5 THE COURT: Very good.

6 Dr. Merola, thank you very much for being here
7 this afternoon.

8 THE WITNESS: Thank you, your Honor.

9 THE COURT: You are excused.

10 THE COURT: Plaintiff, do you have anything
11 further?

12 MR. SHECTMAN: No, Judge.

13 The plaintiff is prepared to testify tomorrow.

14 THE COURT: Okay.

15 So given the time, we are going to excuse the jury
16 for the evening. I am going to ask you, tomorrow is
17 Wednesday and we have a full day tomorrow. So if you would
18 report back here at 9:30, we will be able to start timely
19 and plaintiff will put his next witness on the stand, okay.

20 The jury is excused. Again, you are reminded not
21 to discuss the case amongst yourselves or with anybody else
22 or to look up any of the terms or parties, witnesses that
23 are part of this accident, okay.

24 Thank you. Have a good evening.

25 THE COURT OFFICER: All rise. Jury exiting.

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

3 THE COURT: Okay, so we are adjourned until
4 tomorrow morning at 10:00, is when we will actually start,
5 but you should be here at 9:30 to set up. We will have the
6 interpreter here so that the plaintiff is ready to testify.

7 MR. SHECTMAN: 9:30 you would like us here?

8 THE COURT: I need you here and set up so that we
9 are ready to go at 10:00.

10 MR. MAHER: Thank you, your Honor.

11 MR. SHECTMAN: Thank you.

12 (Whereupon, the trial was adjourned until March
13 11, 2026 at 10:00 a.m.)

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