

**In The Matter Of:**

*Juan Julca v.*

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

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*Dr. Jeffrey Kaplan*

*March 11, 2026*

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*Supreme Court State of New York - Civil Term*

*60 Centre Street - Room 420*

*New York, New York 10007*

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Original File 031126 Julca.txt

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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 11, 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  
DEBORAH ROTHROCK, RPR  
Senior Court Reporters

**Proceedings**

1 (Whereupon, the item was marked Plaintiff's Exhibit  
2 20, Blowup Picture Board, for Identification.)

3 (Whereupon, the item was marked Plaintiff's Exhibit  
4 21, Blowup Picture Board, for Identification.)

5 (Whereupon, the item was marked Plaintiff's Exhibit  
6 22, Blowup Picture Board, for Identification.)

7 THE COURT: On the record. Case on trial  
8 continued. Appearances are the same. Mr. Rosengarten, you  
9 marked three blowups as Plaintiff's 20, 21 and 22 for  
10 identification?

11 MR. ROSENGARTEN: That's correct.

12 THE COURT: Mr. Malecki, do you have any objection  
13 to the use of those blowups? They are demonstrative, right?

14 MR. ROSENGARTEN: Correct.

15 MR. MALECKI: Assuming the witness needs them to  
16 help explain it to the jury, no objection.

17 THE COURT: Is the witness here?

18 MR. ROSENGARTEN: Yes.

19 THE COURT: Okay. Should we have the witness  
20 brought into the courtroom?

21 MR. ROSENGARTEN: Yeah.

22 THE COURT: Okay, let's bring in the jury.

23 COURT OFFICER: All rise, jury entering.

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

**Proceedings**

1 THE COURT: You may be seated. Members of the  
2 jury, good morning. Welcome back. Before we begin today, I  
3 just want to tell you that tomorrow, although the schedule  
4 says 9:30, we're going to start at 10:30. We have two  
5 witnesses tomorrow, one in the morning and one in the  
6 afternoon and that will be enough time to get the witness  
7 done. So, I didn't want to make you come in so early  
8 because you're going to be here all day so we'll start  
9 tomorrow at 10:30. At this time, I call upon  
10 Mr. Rosengarten call your next witness.

11 MR. ROSENGARTEN: Thank you, Your Honor. The  
12 plaintiff calls Dr. Jeffrey Kaplan to the stand.

13 J E F F R E Y K A P L A N, a witness called by and on  
14 behalf of the Plaintiff, upon being duly sworn, was examined and  
15 testified as follows:

16 THE WITNESS: Yes.

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

20 THE WITNESS: My name is Jeffrey Kaplan,  
21 J-E-F-F-R-E-Y, K-A-P-L-A-N. My office is at 160 East 56th  
22 Street in Manhattan 10022.

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

**Dr. Kaplan - by Plaintiff - Direct**

1 THE COURT: Counsel, you may inquire.

2 MR. ROSENGARTEN: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. ROSENGARTEN:

5 Q Good morning, Dr. Kaplan.

6 A Good morning.

7 Q Can you please start off by telling the jury your  
8 educational background?

9 A Education. I went to college at Yale University. When  
10 I graduated from college, I went to medical school here in the  
11 city at Columbia University. Following that, I did a training  
12 program in orthopedic surgery, five-year program. I did it in a  
13 place called the Campbell Clinic which is in Memphis Tennessee.  
14 Campbell Clinic was actually the first orthopedic training  
15 program in the United States. Following that, I moved back in  
16 to New York in 1994 where you have been in private practice ever  
17 since.

18 Q Are you board certified?

19 A Yes.

20 Q What are you board certified in?

21 A Orthopedic surgery.

22 Q What is orthopedic surgery?

23 A Orthopedic surgery is the study of bones and joints and  
24 supporting structures of the bones and joints so muscles,  
25 cartilage, ligaments, tendons. It has to do with injuries or

**Dr. Kaplan - by Plaintiff - Direct**

1 abnormalities to the structures and then the treatment of those  
2 injuries or abnormalities either with conservative measures  
3 meaning physical therapy, injections, medications. If those  
4 things don't work or are inappropriate, then surgical treatment  
5 is probable.

6 Q And do you do surgery as well?

7 A I do.

8 Q Are you licensed to practice medicine in New York?

9 A Yes, I am.

10 Q Now, did there come a time when you treated an  
11 individual by the name of Juan Julca?

12 A Yes.

13 Q When was the first time you treated Mr. Julca?

14 A I am just going to refer to my notes if that's okay.

15 Q Can you tell the Court what exactly it is that you are  
16 looking at?

17 A These are my office notes.

18 MR. ROSENGARTEN: Your Honor, those are part of  
19 Plaintiff's Exhibits 9 and 10.

20 THE COURT: Continue counsel.

21 A I first saw him on 3/22/18.

22 Q And before you saw Mr. Julca on March 22, 2018, did you  
23 review any records before examining him?

24 A I did not.

25 Q And this was the first consultation you had with

**Dr. Kaplan - by Plaintiff - Direct**

1 Mr. Julca?

2 A Yes.

3 Q And did you take a medical history of Mr. Julca at that  
4 time?

5 A I took a history of an injury that had occurred while  
6 at work on 3/3/18, so March 3, '18 and that he indicated he fell  
7 through a scaffold while working, fell through the platform. He  
8 caught himself by a shoulders and arms. He banged his knees on  
9 metal and wood as he fell. He was initially at a place called  
10 JFK Medical Center which is sort of a urgent care facility where  
11 he indicates he was examined. No X-rays were performed and he  
12 was sent out.

13 Q Did you do an examination of Mr. Julca on that date?

14 A I did.

15 Q What were your findings of that examination?

16 A So, he was complaining at that time of pain in both the  
17 right and left shoulder, pain in both the right and left knee  
18 and low back pain. And he had told me that he had been trying  
19 to take it easy but his pain was getting worse. So his exam of  
20 his shoulders showed tenderness which means pain when you touch  
21 them. He had range of motion including 160 degrees of what's  
22 called abduction which is moving your arm away from your body.  
23 When he did it and then I pushed him a little further to about  
24 170 degrees, normal is 180 degrees. He had pain on the strength  
25 testing with motions of the shoulders, external and internal

**Dr. Kaplan - by Plaintiff - Direct**

1 rotation of the shoulders. Those are functions of rotation of  
2 the rotator cuff of the shoulder.

3 He had a negative of what's called a speed sign. He  
4 had limited lumbar motion to about 70 degrees of flexion.  
5 Normal is about 85 to 90 and extension was to 15 degrees which  
6 is about somewhere around half of normal. He had tenderness in  
7 the low back as well mean, for example, when you touch his low  
8 back, he complained of pain. He had tenderness about the right  
9 and the left knee and was walking with a limp. I noted he had  
10 crepitus with motion of the knees. That's cracking and popping  
11 when you move both actively and passively. And he had, at that  
12 time, a normal range of motion of the knees.

13 Q Now, based on your examination of Mr. Julca, did you  
14 have any recommendations for his treatment going forward?

15 A Yes. At that time, I encouraged him to begin some  
16 physical therapy. I sent him for a couple of MRI's. One of the  
17 low back and one of the left shoulder which seems to be the more  
18 symptomatic shoulder at that time and started him -- I'm sorry,  
19 continued to -- encouraged him to continue using Ibuprofen.

20 Q Now, when you say you sent him for physical therapy,  
21 was that for any specific body part, all body parts or something  
22 else?

23 A That would have been both his shoulders, his low back  
24 and both his knees.

25 Q Now, you saw Mr. Julca again after that initial

**Dr. Kaplan - by Plaintiff - Direct**

1 consultation in March of 2018, correct?

2 A Yes, I did.

3 Q Now, I know you saw him sometime in April but I'm just  
4 going to direct your attention to July 3rd of 2018. And you saw  
5 Mr. Julca on that day, correct?

6 A Yes, I did.

7 Q This is about three months after his accident, correct?

8 A About four months.

9 Q Four months, excuse me. And did you examine Mr. Julca  
10 on that day?

11 A I did.

12 Q And did Mr. Julca make any complaints on that day?

13 A At that time, he was complaining of pain in the left  
14 knee but also buckling of the left knee which is a specific  
15 symptom of the knee giving way suddenly. He was indicating he  
16 was developing worsening pain and was complaining of buckling of  
17 the right knee. And he was complaining of limited overhead  
18 motion with the left shoulder which is going up.

19 Q Now, you talked about the right knee and left knee, the  
20 shoulder. You didn't talk anything about the lumbar, the back.  
21 Is there a reason why you didn't speak about the back?

22 A I don't generally treat backs. I generally send those  
23 to a lumbar specialist, someone called a pain management  
24 physician, to do most of the conservative care about that. I  
25 don't take care of that.

**Dr. Kaplan - by Plaintiff - Direct**

1 Q Did you send Mr. Julca to a lumbar specialist?

2 A I sent him to Dr. Matthew Grimm who works in my office  
3 with me who is a pain management specialist.

4 Q Did you oversee his lumbar treatment or just the knees  
5 and the shoulders?

6 A Pretty much the knees and the shoulders.

7 Q Now, I now you said you examined Mr. Julca. What were  
8 your findings on your examination of Mr. Julca on July 3rd of  
9 2018?

10 A At that time, he had what's called a positive McMurray  
11 Test in both knees which is bending the knee up and twisting it.  
12 And when you do that, if there is a torn meniscus, which is a  
13 small cartilage inside the knee, it will catch and you can make  
14 it pop. If the meniscus tear is big enough, it will catch and  
15 pop. Can I just pull out a model, is that all right, just to  
16 show the knee?

17 THE COURT: Do you have one handy?

18 THE WITNESS: I have models of all these body  
19 parts. Sometimes it's hard to talk about them without  
20 seeing them.

21 THE COURT: Go ahead. Bring out your model.

22 A So this is a model of a knee. This would be the right  
23 knee. The knee is made up primarily -- the knee joint is made  
24 up primarily of three bones. The thigh bone called the femur,  
25 the shin bone called the tibia, and the patella which is the

**Dr. Kaplan - by Plaintiff - Direct**

1 kneecap on the front. The femur sits on top of the relatively  
2 flat tibia. And so there's a structure called the meniscus  
3 inside the knee. That helps deepen a socket, forms a socket so  
4 the femur can sit formerly on top of the tibia. This is made of  
5 cartilage which is softer than bone tissue. If it tears, you  
6 can hear the click if you bend up and you go back and forth it  
7 will get stuck in there. And that's also the reason that  
8 sometimes when you take a step and a piece of the torn cartilage  
9 will get stuck in there. It can cause buckling, a reflex of  
10 giving away at the knee.

11 On both the right and the left, he had that positive  
12 McMurray which is a physical exam finding of the torn meniscus.  
13 And I reviewed his MRIs with him which correlated with that  
14 finding. He also had, on MRI I noted that an injury to the  
15 joint surface. The joint surface is the shiny white end that  
16 you see on the bone. If you look at a chicken bone, you see a  
17 pearly white end. That is a joint surface which is also made of  
18 a different type of cartilage, but that's responsible for  
19 sliding and gliding of the knee pain free and efficiently.

20 If that gets damaged, over time it will wear and become  
21 unsmooth and can also cause catching, cracking in that symptom  
22 that I talked about called crepitus which, again, I noted he had  
23 both the -- in the right and the left knee.

24 Q Now, on the March 22nd visit you had with Mr. Julca,  
25 you said you took a history. Did Mr. Julca ever tell you

**Dr. Kaplan - by Plaintiff - Direct**

1 anything about prior knee or shoulder injuries?

2 A He denied prior history of trauma and denied any  
3 significant injuries in the past.

4 Q Now, you also, on the July 3rd visit going back to  
5 that, did you do anything regarding his shoulders?

6 A I examined his shoulders. He had crepitus, again,  
7 cracking and popping on the left. And he had limited motion and  
8 abduction and internal rotation of the shoulder which are  
9 functions of the shoulder and the muscles around the shoulders  
10 called a rotator cuff of muscles.

11 Q Did you make any diagnosis regarding Mr. Julca's  
12 shoulders at that time?

13 A I did. I had had a MRI performed of the left shoulder  
14 which showed a partial rotator cuff tear. Again, I am just  
15 going to pull out a model if that's okay because I think, as  
16 we've all heard the term rotator cuff, to see it, it's a  
17 different thing. This is the right shoulder, collarbone up  
18 front. The shoulder blade is in the back and the arm hanging  
19 down. If we pop the arm out so that we can look inside the  
20 shoulder, you have a cuff of muscles and tendons. That's called  
21 a rotator cuff because you can imagine that if this is attached  
22 to the arm, depending on which muscle and what combination  
23 contracts and fires, the arm will move in different directions.

24 So this is the rotator cuff of muscles that helps hold  
25 the arm in the shoulder joint. It's also held by a series of

**Dr. Kaplan - by Plaintiff - Direct**

1 tendons and another cartilage that looks and functions like a  
2 meniscus that sits in there, it's not on this model, it's called  
3 a labrum. I had gotten that MRI which showed partial tearing of  
4 some of the rotator cuff tendon.

5 Q And as far as the knees, did you make any diagnoses  
6 regarding the knees on the July 3, 2018, visit with Mr. Julca?

7 A Yeah, I felt he had a, what's called, internal  
8 derangement of the right knee. That's sort of an overarching  
9 term that something is going on inside the knee as opposed to on  
10 the outside of the knee. And I felt he had a symptomatic tear  
11 of his meniscus that was apparent both on clinical examine and  
12 on the imaging setting.

13 Q And that would go for both knees?

14 A I did not have an MRI of the right knee at that point  
15 so I sent him for one.

16 Q So in terms of diagnosis, you were able to diagnose the  
17 left knee internal derangements from the MRI and the exam; is  
18 that correct?

19 A The left knee is with a symptomatic meniscal tear which  
20 is a type of internal derangement. An internal derangement is  
21 the overarching sort of diagnosis. I wasn't specific with the  
22 right knee. We didn't have a MRI. I suspect he had a meniscus  
23 tear because he had findings consistent with that on exam. I  
24 also felt he probably had an injury to the joint surface given  
25 the nature of his fall as he told me where he banged his knees

**Dr. Kaplan - by Plaintiff - Direct**

1 as he fell and that causes a contusion or a blunt force to the  
2 joint surface.

3 Q Now, based on your findings on July 3, 2018, did you  
4 make any recommendations to Mr. Julca? And I am going to just  
5 go one by one if you don't mind because I know you treated him  
6 for three different body parts. Let's go with the left shoulder  
7 first.

8 A Tell me the date?

9 Q July 3, 2018?

10 A To the right knee?

11 Q Left shoulder.

12 A Sorry about that. With regard to the left shoulder, he  
13 would have continued physical therapy.

14 Q And how about in terms of the right knee?

15 A With the right knee I asked him to get a MRI of his  
16 right knee.

17 Q And how about with the left knee?

18 A With the left knee, I recommended an injection of  
19 cortisone like medication called Celestone. That acts as an  
20 antiinflammatory medicine and can sometimes diminish the  
21 symptoms significantly if there is just inflammation in the knee  
22 associated with those injuries.

23 Q And then you saw Mr. Julca a number of times afterwards  
24 and throughout that time you recommended conservative care. By  
25 that I mean physical therapy, Ibuprofen, things of that nature?

**Dr. Kaplan - by Plaintiff - Direct**

1 A I did for a long period of time, yeah.

2 Q I'm just going to direct you now to -- fast forward to  
3 February 2020, specifically February 4th of 2020. Did you meet  
4 with Mr. Julca on that day?

5 A On February 4th of 2020, I did meet with him.

6 Q And did you examine Mr. Julca on that day?

7 A I did.

8 Q And did Mr. Julca make any complaints on that day?

9 A He did.

10 Q And what were Mr. Julca's complaints on that day?

11 A He was continuing to complain of pain at the left  
12 shoulder. That seemed to be his primary focus. He was having  
13 difficult sleeping. The pain in the shoulder was keeping him  
14 awake at night. That's a very common complaint with injuries  
15 and inflammation in the shoulder. You try to get in a  
16 comfortable position. He also complained of limited overhead  
17 motion really to reach overhead with his shoulder. He was  
18 complaining of persistent pain at the left knee as well.

19 Q Now, in terms of the left shoulder specifically on  
20 February 4, 2020, were Mr. Julca's complaints consistent with  
21 what you had previously seen from him?

22 A Yes. He still had complaints that were consistent with  
23 his injuries.

24 Q Did you make any recommendations to Mr. Julca on that  
25 day?

**Dr. Kaplan - by Plaintiff - Direct**

1 A Yeah.

2 Q And what were your recommendation that you made on  
3 February 4, 2020?

4 A So, after a long period of conservative treatment, I  
5 had requested authorization to perform a surgery on his left  
6 shoulder. That request was granted. We did receive  
7 authorization for a left shoulder surgery. It's called an  
8 arthroscopy. The word arthroscopy comes from arthro which means  
9 joint like arthritis and scope which is a telescope. We are  
10 looking inside the joint with a telescope and using special  
11 tools that are also the size of a small pen or a pencil and we  
12 can look inside the joint. And we can do a lot of work inside  
13 the joint through relatively small incisions or holes about the  
14 shoulder and I recommended he have that done.

15 Q And did you make any recommendations in terms of his  
16 left knee?

17 A Not at that time.

18 Q Now, you said that you recommended this left shoulder  
19 surgery. Do you know if Mr. Julca ever had a left shoulder  
20 surgery?

21 A He did.

22 Q When did Mr. Julca have a left shoulder surgery?

23 A On 6/10/2020. I recommended -- I'm sorry. I performed  
24 a left shoulder arthroscopy.

25 Q Where did you perform this left shoulder arthroscopy?

**Dr. Kaplan - by Plaintiff - Direct**

1           A     That was done in a place called Manhattan Surgery  
2 Center which is one of Mount Sinai outpatient surgery centers.

3           Q     Now --

4                     MR. ROSENGARTEN: Your Honor, may I approach?

5                     THE COURT: You may.

6           Q     Now, I am going to show you what's been previously  
7 marked as Plaintiff's 19 -- excuse me 20 for identification. I  
8 am going to put it on this easel right here. And I know you  
9 previously used some models. Is this depiction an accurate  
10 representation of the left shoulder surgery you performed on  
11 June 10, 2020?

12           A     It appears to be essentially from here, yes.

13           Q     And would this depiction help you explain the surgery  
14 that you performed on June 10, 2020, to the jury?

15           A     Sure.

16                     MR. ROSENGARTEN: Your Honor, I ask that the  
17 witness be allowed to go to the easel and explain the left  
18 shoulder surgery that he performed.

19                     THE COURT: Doctor, you can step off the witness  
20 stand and approach the easel so you can explain it to the  
21 jury.

22           A     So this is a valgus representation of the shoulder. It  
23 is the left shoulder so it is a little bit backwards but this is  
24 the arm bone hanging down. This would be the shoulder blade and  
25 the collarbone here. When we do our surgery, we make small

**Dr. Kaplan - by Plaintiff - Direct**

1 incisions about the shoulder through which we can insert a  
2 camera, telescope through which we can insert working tools from  
3 different, what we call, working portals which are incisions in  
4 the arm. Inside Mr. Julca's shoulder, there were several  
5 findings. We noted that there was overgrowth of the lining of  
6 the joint that produces joint fluid. It's called the synovium.  
7 So any inflammation we generally put itis afterwards and this is  
8 synovitis. The synovium is inflamed. That's an indication of  
9 something wrong going on in the shoulder. It's also often the  
10 source of significant pain.

11 That's also true with a structure called bursa which  
12 sits in between the tendon and the bone and it allows the tendon  
13 to move back and forward smoothly. If it becomes inflamed, it  
14 becomes bursitis and also can be a source of pain. Inside  
15 Mr. Julca's shoulder, we saw several findings. We saw a tear in  
16 that structure that I told you was like the meniscus. It is a  
17 cartilage ring. It essentially helps deepen the joint that the  
18 arm bone sits in because normally the architecture as such that  
19 it is a very flat bone so it just helps center the arm for  
20 motion.

21 And we also found a tear in the rotator cuff which was  
22 a full thickness tear but it was a tear in line with the tendons  
23 so there was a hole in the, in this case, the supraspinatus  
24 tendon. Supraspinatus means the muscle and it is named that  
25 because it is above the spine of the shoulder blade. So this

**Dr. Kaplan - by Plaintiff - Direct**

1 would be the supraspinatus. This would be infraspinatus and  
2 this muscle, which is under the scapula, is called the  
3 subscapularis.

4 So, what do we do with these problems. With the  
5 synovitis, we have a tool here which is a cautery tool. We can  
6 cauterize all of that have inflamed tissue. It's called a  
7 synovectomy. We can address this tear of the labrum both with a  
8 rotary shaver and the cautery tool to resculpt it to a more  
9 normal shape and take out the area that's offensive that's  
10 causing repetitive irritation with inside the joint. And then  
11 we can move our viewing portal out of the joint itself so no  
12 longer in the joint but above the joint where we can look down  
13 on the tendon after removing the bursa which is, again, this  
14 fluid filled sac that allows us to look down on the tendon and  
15 muscle.

16 And we can throw special instruments, stitches, in that  
17 tendon that's torn and tie that together and that allows for  
18 better function when the muscle pulls, rather than pulling  
19 apart, it will pull in line. And it will also help hold the arm  
20 bone -- the arm joint in place, the shoulder joint in place  
21 because of the integrity. Otherwise, the humerus, the arm bone,  
22 can become elevated through that hole. We also, in order to  
23 protect this repair, we shave down the undersurface of the  
24 acromion which is the end of the shoulder blade. Here -- and  
25 that just gives more room for this to heal without what's called

**Dr. Kaplan - by Plaintiff - Direct**

1 impingement and work more efficiently.

2           So, he had a tear of his rotator cuff. He had some  
3 tearing of his glenoid labrum. He had synovitis and bursitis as  
4 well as impingement and all of those things were addressed  
5 surgically.

6           Q     Thank you. You can sit back down.

7           Now, Dr. Kaplan, how long does a surgery like you just  
8 described usually take?

9           A     Shoulder arthroscopy generally takes about an hour and  
10 a half to two and a half hours depending on many factors. So  
11 there is no set time for that.

12          Q     And is the patient usually put under anesthesia for  
13 that procedure?

14          A     Yes, the patient has general anesthesia as well as  
15 receive what's called a nerve block where injection is given  
16 under the collarbone that makes the entire arm numb for a period  
17 of time.

18          Q     Now, when you were describing the surgery, you talked  
19 about, you know, putting the camera in there?

20          A     Yes.

21          Q     Did you take any photographs of that surgery?

22          A     I did.

23          Q     And why did you take those photographs?

24          A     I take them to document several reasons. One, to show  
25 the patient. That's usually the main reason and for myself to

**Dr. Kaplan - by Plaintiff - Direct**

1 just have a record of the patient's injuries if I need to look  
2 back and refresh my memory so that I know how to further direct  
3 treatment.

4 Q Before you did this surgery, you had reviewed MRI's of  
5 Mr. Julca, correct?

6 A That's correct.

7 Q And specifically of his left shoulder originally?

8 A In this case, yes.

9 Q What's the difference between reviewing a MRI and  
10 actually going in in terms of the actual shoulder in terms of  
11 what you see?

12 A Sure. One is looking in a representation of his  
13 shoulder that's generated about a computer model. And, yeah,  
14 there is actually handling, looking at, being able to manipulate  
15 the actual structures. So I'll sometimes make the analogies, it  
16 is not a very good analogy, I will say when you go to buy a car  
17 you are not just going to buy it off a picture because the other  
18 side of the car may be rusted out completely. So you want the  
19 opportunity to look at, walk around, and really poke about.

20 That's really how I think of the difference between  
21 looking at things surgically and the MRI. It's certainly  
22 helpful. I wouldn't buy a car that I couldn't see was a wreck  
23 immediately but sometimes you don't see everything.

24 Q And for surgery like you just described, what are your  
25 expectations in terms of recovery time?

**Dr. Kaplan - by Plaintiff - Direct**

1 A I'm sorry. In terms of?

2 Q Recovery time.

3 A Recovery time. So I generally see the patient back  
4 about a week later, take out the stitches. If I repaired the  
5 rotator cuff, that need some time to heal meaning grow together.  
6 It's all well and good that I sow it in the right place but then  
7 it actually has to knit together and that takes about 4 to  
8 6 weeks. So I'll see them back in about another four weeks and  
9 then begin physical therapy to strengthen the muscles back and  
10 get the motion back and try to get the joint more functional. I  
11 do ask them to do some very gentle exercises in the meantime in  
12 that forwarding period but nothing strenuous at all.

13 Generally, physical therapy for a shoulder requires 6  
14 to 12 weeks at least. Shoulders can be tricky because they tend  
15 to get scar tissue and they -- it's a painful surgery. Some  
16 people sometimes get somewhat stiff and stay stiff for a period  
17 of time before they progress.

18 Q Now, did you see Mr. Julca after the surgery you  
19 described?

20 A Many times.

21 Q Did you see him -- you said normally after a surgery  
22 like this you want to see him about a week after the surgery?

23 A Yeah.

24 Q Did you see Mr. Julca on July 18, 2020 -- excuse me  
25 June 18, 2020, I apologize.

1           A     I saw him on June 18, 2020, yes.

2           Q     So that's eight days after the surgery?

3           A     Yes.

4           Q     Did you examine Mr. Julca on June 18, 2020?

5           A     I did.

6           Q     What were your findings on the postoperative visit of  
7 the June 18, 2020?

8           A     Fairly standard. Postoperative findings, he was in  
9 shoulder immobilizer which we place people in who had a rotator  
10 cuff tear and a repair. His wounds appeared healthy and his  
11 sutures were removed.

12                           (Continued on next page)

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**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 Q Did more Mr. Julca make any complaints on the June 18,  
2 2020 visit?

3 A He was complaining of pain, which I thought was  
4 appropriate postoperative pain. And he was feeling --he told me  
5 he felt a difference following the surgery.

6 Q A difference in which way?

7 A I can't remember it was few years ago -- six years ago.  
8 He said that he was feeling definitely different.

9 Q And you said he was in the shoulder immobilizer?

10 A Correct.

11 Q Do you describe the shoulder immobilizer?

12 A The shoulder immobilizer is a sling, and it also has an  
13 belt that wraps around the back of the body so that you could  
14 not lift the arm or rotate the arm.

15 Q And why did you have him in a shoulder immobilizer?

16 A We do that in order to allow the soft tissues to come  
17 together. We don't want any strenuous motion that will  
18 interfere with the repair.

19 Q And did you make any recommendations to Mr. Julca on  
20 that date?

21 A I did. I recommended pendulum exercises, that is  
22 gentle exercises they can do before starting formal physical  
23 therapy. It is just bending over the waist and letting your  
24 hands hang down and making circles, a back and forth motions.

25 And I asked him to remain in the sling in the front

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 part of the shoulder immobilizer and we took off the back parts  
2 so that he had a little bit of motion. I noted he would begin  
3 physical therapy at the next visit.

4 Q Now, on that date you mentioned stuff about the  
5 shoulder, the left shoulder.

6 Did you examine him regarding the left knee, the right  
7 knee, things that he previously complained about?

8 A I did not.

9 Q Is there a reason why you didn't?

10 A This is a visit for his shoulder.

11 Q Now, once, again, you saw Mr. Julca a number of times  
12 after that.

13 A Yes.

14 Q I'm going to direct your attention, specifically, to  
15 about two months later on June 27th, 2021.

16 A Okay.

17 Q July 27, 2021.

18 A Yes, okay.

19 Q Did you examine Mr. Julca on that date?

20 A I did.

21 Q And on that date, did Mr. Julca make any complaints?

22 A He did. He noted that he had continued pain in the  
23 shoulder and both the right and the left knee. He noted that  
24 his knee pain was worse on the right at that time and associated  
25 with clinging and popping, as well as intermittently buckling.

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 Q Now, let's deal with the shoulder first.

2 You said that he still had pain in the right shoulder?

3 A Actually it is the left shoulder.

4 Q And Do you know why he would have had that pain even  
5 after the surgery?

6 A It is uncommon to still have pain after surgery. It  
7 can be from the repair, it can be from scar tissue formation, it  
8 can be from many reasons.

9 Q And that would make sense even though it was over a  
10 year after the surgery?

11 A Some people always have pain in their shoulder after  
12 they have injured it, even if they have surgery on it.

13 Q Now, going to the knees.

14 What did you observe about, let's start with the left  
15 knee?

16 A Let's see. I noted that the knees, he had cracking and  
17 popping, both the right and the left knee, at the medial joint  
18 line, which is this area here (indicating) along the area where  
19 the meniscus lives in the joint line. He had tenderness both on  
20 the right and the left.

21 I could not appreciate any instability, meaning no  
22 ligaments were torn that I could appreciate on physical exam.  
23 And that he had an antalgic gate, or a limp when he walked.

24 Q Now, on that date, did you do a McMurray test again?

25 A Yes, I missed that, sorry.

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 He had positive McMurray test on both the right and on  
2 the left.

3 Q And, once again, that test was to do what?

4 A That test demonstrates a tear in the meniscus if it is  
5 positive.

6 Q And based on your examination of Mr. Julca and the  
7 tests that you did, you determined that he had meniscus tears in  
8 both of his knees at that point?

9 A Based on the MRI and based on the physical exam  
10 findings he had meniscus tears both on the right and on the  
11 left, yes.

12 Q And that was consistent with his treatment as you had  
13 treated him starting back in 2018 up until 2021?

14 A When he began complaining about it, yes.

15 Q Now, did you make any recommendation in term of Mr.  
16 Julca's knees on that date?

17 A At that time I advised him to continue with the  
18 physical therapy. I gave him a prescription for the knees  
19 bilaterally. And I also requested authorization for arthroscopy  
20 of the knee, at that time the right knee was more symptomatic.

21 Q Did you make any recommendations in terms of Mr.  
22 Julca's shoulder?

23 A I didn't note any on that day.

24 Q Now, you saw Mr. Julca again about two months later?

25 A Okay. September --

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 Q September 21st, 2021.

2 A Yes, I did.

3 Q Did you examine Mr. Julca on September 21st, 2021?

4 A I did. We concentrated on his right knee, that was  
5 more symptomatic issue that day. He was complaining of pain and  
6 bucking of the right knee, despite physical therapy and  
7 conservative measures.

8 On exam he continued to show positive McMurray test,  
9 which was the meniscus test. He had tenderness in the joint  
10 line. His knee flexion 120 degrees, extension was normal,  
11 flexion between 135 and 145 degrees and does have crepitus with  
12 motion.

13 Q And I know you mentioned right knee.

14 Did Mr. Julca make any complaints regarding the right  
15 knee?

16 A As I said, he had continued pain and buckling of the  
17 right knee, despite physical therapy and conservative measures.

18 Q After examining Mr. Julca and hearing his complaints,  
19 did you make any recommendations regarding, specifically, the  
20 right knee on September 21st, 2021?

21 A I did.

22 Again, we had previously requested authorization for  
23 surgery to the knee and he had arthroscopy. We gained  
24 authorization approval to do that surgery.

25 So we did a-- I recommended that he undergo the right

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 knee arthroscopy.

2 Q Now, you previously treated him for both right and left  
3 knee, right?

4 A Yes.

5 Q Is there a reason why you recommended it right knee  
6 arthroscopy before the left knee arthroscopy?

7 A As I said several times, at that point it seemed to be  
8 the most symptomatic of the knees.

9 Q Now, did Mr. Julca ever have the right knee  
10 arthroscopy?

11 A He did.

12 Q When did Mr. Julca have the right knee arthroscopy?

13 A His right knee arthroscopy was on 6/1/22.

14 Q And who performed that right knee arthroscopy that Mr.  
15 Julca had?

16 A I did that.

17 Q Where that arthroscopy takes place?

18 A It was done at the same surgery center, Manhattan  
19 Surgery Center.

20 THE ATTORNEY: Permission to approach, your Honor.

21 THE COURT: You may approach.

22 BY MR. ROSENGARTEN:

23 Q NOW, Dr. Kaplan, I'm going to show you what has been  
24 marked as Plaintiff's 21 for identification.

25 (Displayed.)

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 A Okay.

2 Q If you don't mind taking a look at this exhibit.

3 A Yes.

4 Q Does Plaintiff's 21 fairly and accurately represent the  
5 right knee arthroscopy that you performed on Mr. Julca on  
6 June 1st, 2022?

7 A Yes.

8 Q Would this exhibit assist you in describing the surgery  
9 to the jury?

10 A Yes.

11 MR. ROSENGARTEN: Your Honor, may Dr. Kaplan step  
12 down.

13 THE COURT: Yes.

14 (Witness approaches the exhibit.)

15 A Okay.

16 Again, this is the right knee arthroscopy. It says  
17 left -- this is our left knee-- I believe that is a typo.

18 This is a right knee arthroscopy performed on 6/1/22.

19 Again, done through a small incision. A camera is  
20 placed in one on those incisions and a working tool in the  
21 other.

22 Looking inside the knee, you see the same structures  
23 that I described earlier; the end of the thigh bone, the femur.  
24 The top of the shinbone, the tibia and the patella on the front.

25 Inside the knee is the meniscus, both the medial

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 meniscus, meaning the inside part of the knee; and the lateral  
2 meniscus, meaning the outside part of the knee.

3 And a series of ligaments, these crossing ligaments,  
4 the ones that go like across and front is the anterior or front  
5 crossing ligament, the anterior cruciate ligament.

6 And the posterior or back crossing ligament called the  
7 posterior crucial ligament.

8 Also ligaments on the side, which help stabilize the  
9 knee joint.

10 In Mr. Julca's knee he had a tear in the back and side  
11 called the posterior horn and body of the medial meniscus. If  
12 you look at the meniscus just one at a time, like this, they  
13 look like horns on a cow. So we call this the anterior horn and  
14 posterior horn.

15 Mr. Julca had a tear of the posterior horn into the  
16 midportion called the body. We addressed that with a tool that  
17 sculpts this cartridge by burning it and with an electrocautery  
18 and resculpting that to take out the torn portion and try to  
19 recreate a similar C-shaped socket for this thigh bone to sit  
20 in.

21 This cartilage does not have a good blood supply on the  
22 end. So sewing this tearing together would not yield any  
23 healing and you just cause more problems so we end up taking  
24 that out and try to leave as much padding as we possibly can, as  
25 much of a socket as we possibly can with the working tools.

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1           The significant injury in this joint, in addition to  
2 the meniscus tear, is an injury to the joint surface. We talked  
3 about that sort of being a contusion type injury. That occurs  
4 when you strike something.

5           The cartilage cells that live on the top of the bone  
6 and provide the smooth sliding surface can get damned and they  
7 can die off over time. Theoretically, if I looked at someone  
8 who had been banged in the knee, initially it would look still  
9 smooth and shiny. But the injury to the cells of the joint, the  
10 living part of the cells has occurred and over time dies off.

11           Again, a decent analogy that I talk to patients about  
12 is that when you pick an apple off the tree, you can look at it  
13 for about a week and it looks great, alive, but it dies. It  
14 damned the cells. You take away their nourishment and over time  
15 it will shrivel up.

16           In Mr. Julca's knee he had an area of loss of  
17 cartilage, almost down to bone and we took this shaving tool and  
18 just tried to clean this up, as best as possible, and smooth the  
19 surface as best we could. We cannot lay down new cartridge,  
20 but there are flaps of cartilage, little pieces that get stuck,  
21 make noise and things. So we tried to trim that down.

22           In doing so, we make a recess in the parts that are not  
23 smooth and shiny so that as the joint moves, it can try to move  
24 on the better parts of the cartilage using that as a good tread.

25           MR. ROTTENSTREICH: Thank you. You may step back.

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 (Witness resumes the witness stand. )

2 Display is taken down.

3 BY MR. ROSENGARTEN:

4 Q Now, once again. This was arthroscopic surgery,  
5 correct?

6 A That's correct.

7 Q And that surgery, again, once again, you put cameras in  
8 to see what was going on inside of the knee?

9 A That's right.

10 Q Did you take photographs inside of the knee?

11 A I did.

12 Q And did you review those photographs?

13 A Yes.

14 Q And is there any surprises inside, terms of what you  
15 saw inside the knee when you did the surgery?

16 A I try not to be surprised by anything but certainly the  
17 injury to the joint surface was larger than I would have liked  
18 to have seen.

19 We did what was called an abrasion chondroplasty, which  
20 means to use that shaving tool and take off all the bad  
21 cartilage. That leaves an area where you don't have cartilage.  
22 And that cartilage does not grow back, unfortunately.

23 That is basically an area of arthritis in the joint.  
24 There are multi types of arthritis, right. There is wear and  
25 tear arthritis, there is blood-borne arthritis, like rheumatoid

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 arthritis. And this is a particular arthritis called  
2 posttraumatic arthritis, meaning the cartilage was damaged by a  
3 traumatic event, deteriorated enough, it was symptomatic.

4 To address those symptoms, we try to make it as smooth  
5 as possible. We leave an area of arthritis in the joint, you  
6 can't cure that.

7 That, while I said it is not particularly surprising,  
8 it is disappointing for the prognosis.

9 Q And were you able to see all of that MRIs or better in  
10 the actual surgery, or something else?

11 A I think you can see it, you actually see "it" when you  
12 do the surgery. But on MRI that damage to the joint surface, as  
13 well as meniscal tear were apparent and were seen on the MRIs.

14 Q Now, what are your expectations in terms of recovery  
15 time for this type of surgery to the right knee?

16 A So, generally, the patient has about 6 to 12 weeks of  
17 physical therapy, generally teach them a home exercise program  
18 after that. This is not something, again, that is cured. This  
19 is something that will, hopefully, you improve the symptoms,  
20 particularly the buckling of the knee, particularly the swelling  
21 and inflammation of the knee. The patient is always going to  
22 have some arthritis symptoms, that is permanent.

23 Q How long would that surgery have taken?

24 A Knee surgeries usually about an hour, hour and-a-half.

25 Q And Would you have wanted to see Mr. Julca after the

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 surgery?

2 A Yes.

3 Q Did you see Mr. Julca after the surgery?

4 A I did.

5 Q I'm going to direct your attention to June 9th of 2022.

6 Did you see Mr. Julca on that day?

7 (Pausing.)

8 A Yes, uh-huh.

9 Q And was that the first post-operative visit you had  
10 with Mr. Julca?

11 A That's correct.

12 Q And did you examine Mr. Julca on that day?

13 A I did.

14 Q What did you find on your examination of Mr. Julca on  
15 that day?

16 A Again, fairly standard post-operative visit. His  
17 wounds appeared healthy, the sutures were removed. He had no  
18 sign of a blood clot, which is one of the risks of lower  
19 extremities surgery. His knee flexion at that time 125 degrees  
20 and he was ambulating with a limp, walking with a limp.

21 Q Did you make any recommendations to Mr. Julca on that  
22 day?

23 A He was going to begin physical therapy. And I started  
24 him, gave him more Ibuprofen, which is an antiinflammatory  
25 medication.

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 Q Now, I didn't ask you about it for the left shoulder,  
2 but I will ask for both the left shoulder and the right knee.

3 What are the expectations and what are you trying to do  
4 when you prescribe physical therapy after the surgery?

5 A Sure. Physical therapy helps regain strength and  
6 function of the joint. So the function, meaning, like the  
7 strength and the range of motion and the comfort of a normal,  
8 more normal joint.

9 Q Now, you also talked a lot in terms of the knee. In  
10 terms of arthritis, right?

11 A Yes.

12 Q Would there be similar findings in the shoulder and if  
13 not, why not?

14 A We didn't address the joint surface in the shoulder.  
15 So he will have symptoms of arthritis, meaning inflammation in  
16 the joint, but not joint surface damage as he did in the knee.

17 Q Now, you next saw Mr. Julca about a month later after  
18 that postoperative surgery, I believe it was July 7th of 2022.

19 And that was the second postoperative visit for the  
20 right knee surgery?

21 A That's right.

22 Q Did you examine Mr. Julca on that day?

23 A I did.

24 Q Did Mr. Julca make any complaints on that day?

25 A July 7th, that was his second postoperative visit. I

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 didn't record any complaints on that day. But he did obviously  
2 have --he seem to concentrate primarily on his shoulder. And he  
3 had 170 degrees of abduction, meaning motion, of the shoulder on  
4 the left, versus 175 on the right.

5 His internal rotation was to 90 degrees, which is  
6 approaching normal findings.

7 Q So even theory this was the second postoperative visit  
8 regarding the right knee arthroscopic, you also saw him for the  
9 left shoulder at that time?

10 A I did. My only thought, he must have been complaining  
11 about shoulder discomfort. I did note his right knee flexion  
12 was 125 with full extension and crepitus present.

13 Q Now, this was two years post the shoulder surgery,  
14 correct?

15 A I don't remember the exact date. Let's see -- yes,  
16 that's correct.

17 Q Would it have been surprising to see left shoulder pain  
18 that long after the surgery?

19 A No. As I say, once you've injured a body part, it is  
20 uncommon to have some complaints of pain intermittently.

21 Q Now, what, if anything, did you recommend to Mr. Julca  
22 on the July 7, 2022 visit?

23 A So we had previously requested a visit -- we previously  
24 request authorization for a left knee arthroscopy. I, again,  
25 requested it, to try to get it authorized. It had been

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 recommended not only by myself, but by my --

2 MR. MALECKI: Objection. Side-bar.

3 THE COURT: Step up.

4 (Whereupon, a bench conference took place between  
5 counsel and the Court.)

6 THE COURT: Objection sustained. You can ask your  
7 next question.

8 BY MR. ROSENGARTEN:

9 Q So, you said you had previously recommended a left knee  
10 surgery, correct?

11 A That's correct.

12 Q And just in terms of recommendations for shoulder and  
13 the right knee, did you make any recommendations on July 7,  
14 2022?

15 A I did. I recommended physical therapy and requested  
16 authorization for that as well.

17 Q Now, I'm going to direct your attention to January 10,  
18 2023. I know you saw Mr. Julca in between July 7th, 2022 and  
19 January 10, 2023, but I want --I don't want to go through every  
20 single time you saw him.

21 Let's go to January 10th of 2023.

22 A Okay.

23 Q You saw Mr. Julca on that date, correct?

24 A I did.

25 Q Did you examine Mr. Julca on that day?

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1           A     I did.

2           Q     What did you find upon your examinations of Mr. Julca  
3 on January 10, 2023?

4           A     At that time he had complaints of left knee pain and  
5 buckling, as well as locking, which could be another symptom of  
6 meniscus tear. If the meniscus not only gets in between the  
7 joint as it moves but sticks in a place that prevents the joint  
8 from locking. That can occur with the flap of the joint surface  
9 as well.

10                   He was having difficulty bending and kneeling and long  
11 periods of walking.

12                   He indicated that the right knee was no longer  
13 buckling, that was the postoperative knee.

14                   So on the right he had 130 degrees of flexion, on the  
15 left he had 125 degrees of flexion.

16                   He had crepitus, which is the cracking and popping of  
17 the joint both on the right and the left.

18                   He had a negative McMurray on the right and positive  
19 McMurray on the left.

20                   He had medial joint line tenderness, swelling on the  
21 left.

22                   He had no appreciable ligamentous laxity and he did  
23 walked with a limp.

24           Q     Now, just to remind the jury, you did McMurray test?

25           A     Yes.

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 Q What does that McMurray test do?

2 A A McMurray test, if it is positive, it is an indication  
3 that there's a meniscus tear in the joint.

4 Q So on January 10, 2023 --

5 A Yes.

6 Q --the meniscus, the McMurray test for the right, which  
7 you already had done suggest was negative, right?

8 A Yes, it was.

9 Q On the left it was still positive?

10 A Yes.

11 Q And the McMurray test that you had done throughout, at  
12 this point we're at five or so years, almost five years of  
13 treatment, had always been positive for the left; is that  
14 correct?

15 A When it was positive, yes.

16 Q And there had been no real change in terms of the  
17 meniscus, as far as your treatment, over the course of those  
18 five years?

19 A We had done conservative treatment, yes.

20 Q What type of things have you done over the course of  
21 those five years?

22 A He had had physical therapy, he had had an injection, I  
23 believe on more than one occasion. He had some home therapy,  
24 those types of things.

25 Q On January 10, 2023, did you do any treatments on Mr.

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 Julca?

2 A I did. I gave him another injection at the left knee.  
3 That was a steroid preparation to try to get rid of any  
4 inflammation that could be causing additional symptoms.

5 Q And I know you mentioned surgery previously. Did you  
6 make any other recommendations on January 10th, 2023?

7 A I did. I sent him, because it had been quite some time  
8 for a new MRI of his knee, sort of update ourselves.

9 Q Do you know if he had that MRI?

10 A I'm pretty sure he did.

11 (Pausing.)

12 Let's see. On 1/12/23 he had MRI of the left knee,  
13 which did show a tear in the medial meniscus. It indicated  
14 that there was a partial tear of the anterior cruciate  
15 ligament. And indicated there was a one centimeter with  
16 what they call osteochondral defect of the anterior aspect  
17 of the medial femoral condyle. So just to translate that.

18 Osteochondral defect; osteo means bone, condyle  
19 means cartridge. There's an injury to the place where the  
20 cartilage in the bone meet. And the cartilage is peeling  
21 off. And they said it was the medial femoral condyle  
22 approaching the trochlea, which is this little indentation,  
23 the groove. So he had on the MRI. Osteochondral defect at  
24 the medial femoral condyle which is a finding consistent  
25 with arthritis, damage to the joint surface. It is deep in

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 the bone, it detaches that cartilage layering.

2 So that was the significant finding.

3 BY MR. ROSENGARTEN:

4 Q Now, I'm going to direct your attention to April 20th  
5 of 2023.

6 You had seen Mr. Julca between January 10th and  
7 April 20th, but I want to go to April 20th.

8 A Okay.

9 Q And you examined Mr. Julca on April 20th?

10 A I did.

11 Q And what were your findings upon your examination of  
12 Mr. Julca on April 20, 2023?

13 A So he was complaining left knee pain and buckling,  
14 having pain on his bad knee, no further buckling on the right.

15 Again, his motion included 125 degrees of the left knee  
16 flexion and crepitous with motion. He had a positive McMurray  
17 on the left. And he had joint line tenderness with some  
18 swelling and, again, no appreciable instability. Very similar  
19 exam.

20 Q To the one in January?

21 A That's right.

22 Q And you mentioned he made complaints of left knee pain  
23 and buckling as well?

24 A Yes.

25 Q And based on your examination on April 20th, 2023, and

**Dr. Kaplan - Direct - Plaintiff/by Mr. Rosengarten**

1 Mr. Julca's complaints, did you have any recommendation?

2 A I did. I recommended that he had left knee  
3 arthroscopy. I went over MRI findings. And, again, as always,  
4 the risks and benefits of the procedure, and we decided that we  
5 would proceed with that.

6 Q Now, you just mentioned risks and benefits.

7 A Yes.

8 Q What do you mean by risks and benefits of a procedure?

9 A So, I always discuss with a patient the risks of having  
10 surgery and proposed benefits of having surgery.

11 The risks include the standard things whenever you have  
12 surgery, anytime you cut the skin there is a risk to damage  
13 nerves and blood vessels. There is a risk of infection,  
14 particularly in a joint, introducing an infection into the joint  
15 and could lead to further stiffness pain in the knee for  
16 hospital admission for IV antibiotics, things like that.

17 Additionally there are risks of anesthesia. Any time  
18 you give someone medicine, they could have an allergic reaction  
19 to it and the reaction can be as benign as hives, to death. And  
20 so a patient has to hear that.

21 You're obligated to tell them risks to that.

22 The proposed benefits, particularly in a case like  
23 this, talked about the knee. To get rid of the buckling as we  
24 did in the right knee to make it more functionale.

25 In this case, also due to address that osteochondral

1 defect, that will get worse on its own. Over time it will slow  
2 down the progress of that.

3 Again, not something I can heal but slow down the  
4 progress to make it more functional with.

5 THE COURT: Members of the Jury and Mr.  
6 Rosengarten, at this time we're going to take a ten-minute  
7 break and we will come back and pick up with the testimony  
8 after the break.

9 THE COURT OFFICER: All rise. Jury exiting.  
10 (Whereupon, the jury exits the courtroom and the  
11 following is heard outside the hearing and presence of the  
12 jury.)

13 THE COURT: Ten-minute recess. We're off the  
14 record.

15 (Whereupon, an off the record discussion was held.)

16 (Whereupon, a recess was taken. )

17 (Whereupon, Shameeka Harris relieved Deborah  
18 Rothrock as the Official Court Reporter.)

19 (Continued next page.)  
20  
21  
22  
23  
24  
25

**Dr. Kaplan - by Plaintiff - Direct**

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

2 COURT OFFICER: All rise, jury entering.

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

5 THE COURT: You may be seated. Mr. Rosengarten,  
6 you may pick up where you left off.

7 MR. ROSENGARTEN: Thank you, Your Honor.

8 CONT'D DIRECT EXAMINATION

9 BY MR. ROSENGARTEN:

10 Q Dr. Kaplan, we were talking about the April 20, 2023,  
11 visit you had with computer Julca and at that point you said you  
12 had recommended left knee surgery, correct?

13 A Tell me the date again.

14 Q April 20th of 2023.

15 A Yes, left knee arthroscopy was recommended at that  
16 time.

17 Q Did Mr. Julca have that left knee arthroscopy?

18 A He did.

19 Q And what was the date of the surgery?

20 THE COURT: Doctor, keep your voice up.

21 A Left knee arthroscopy was performed on 8/9/2023.

22 Q Who did the left knee arthroscopy?

23 A I did that surgery as well.

24 Q And where did that surgery take place?

25 A Also at the outpatient facility Mount Sinai called

**Dr. Kaplan - by Plaintiff - Direct**

1 Manhattan Surgery Center.

2 MR. ROSENGARTEN: Your Honor, may I approach?

3 THE COURT: You may.

4 Q Dr. Kaplan, I'm showing you what's been marked as  
5 Plaintiff's 22 for identification. Does this board that I'm  
6 showing you fairly and accurately represent the left knee  
7 surgery that you performed on Mr. Julca on August 9, 2023?

8 A Yes.

9 Q And would this board assist you in explaining that  
10 surgery to the jury?

11 A Sure.

12 MR. ROSENGARTEN: Your Honor, may the witness come  
13 down and explain?

14 THE COURT: Yes.

15 A This is the left knee arthroscopy. Again, it is pretty  
16 much the flip side of the other knee. Mr. Julca had a tear in  
17 the medial meniscus just as he did in the right. He also had  
18 this area of joint surface injury as he did on the right and in  
19 a similar place, sort of right on the front of the knee. This  
20 was a deeper, what's called, an osteochondral defect in the  
21 other side. It did have the flaps of cartilage but also had  
22 grade four which is the highest of the wear and tear categories  
23 of the joint surface injury. So, there's bone exposed in this.

24 When there's bone exposed, we do a different type of  
25 procedure. We do the chondroplasty that we described before

**Dr. Kaplan - by Plaintiff - Direct**

1 with the shaver. Here, we smooth out the loose and flakey  
2 cartilage that's around the crater that's caused by the injury.  
3 But where the bone is exposed, we can take a small drill type  
4 device and drill small holes into the base of this injury. That  
5 freeze stem cells from the bone marrow and that can cause a plug  
6 of stem cells that can then propagate into cells that coat that  
7 joint surface and can make it a little smoother.

8           Those are cartilage cells necessarily not developed  
9 hyaline cartilage cells, the type of cartilage that's in that  
10 joint surface but it does, in theory, allow some plugging of  
11 that area of exposed bone and can help slow down the arthritic  
12 condition that's present. And then, again, in the meniscus, we  
13 trim out the bad portion to leave as much padding in the  
14 meniscal socket as possible.

15           The MRI reported at the anterior cruciate ligament tear  
16 I could not see that when I was in the knee which means it's  
17 probably an internal tear or a posterior tear but there was no  
18 significant instability so I did nothing about that.

19           Q     Thank you. Now, this surgery, would it be similar to  
20 the other knee surgery in terms of the length of the surgery?

21           A     Yes.

22           Q     Even though there was that drilling of the bone?

23           A     Yeah. I don't have a record of how long the surgery,  
24 but generally it's an hour to an hour and a half even with the  
25 drilling, yeah.

**Dr. Kaplan - by Plaintiff - Direct**

1 Q And, once again, did you take photographs of this  
2 surgery as well?

3 A I did.

4 Q And you're able to really see inside the left knee here  
5 differently than you were able to see on the MRI, correct?

6 A That's correct. You are looking at the human surfaces  
7 and the tears.

8 Q Were you surprised by anything you saw when you  
9 actually got inside the knee versus what you had previously seen  
10 on MRI's?

11 A I was not surprised. They did report the osteochondral  
12 injury which is the significant finding here as well as the  
13 meniscus tear which we were able to address.

14 Q And you mentioned the ACL tear as well?

15 A That I don't think is a significant finding, yeah. It  
16 is something -- again, that's the other reason. Some things you  
17 see on the MRI are not significant so that's where clinical  
18 judgment comes in being able to examine the patient and make  
19 those decisions.

20 Q What is the expectation for recovery time for this type  
21 of surgery? Is it the same as the other knee surgery,  
22 different, or something else?

23 A It is similar -- we generally discourage full weight  
24 bearing initially just to allow those stem cells to attach and  
25 form a layer, but we will begin physical therapy and try to

**Dr. Kaplan - by Plaintiff - Direct**

1 progress in a similar manner.

2 Q And, once again, did you want to see Mr. Julca after  
3 the surgery?

4 A Yes.

5 Q Did you see Mr. Julca after the surgery?

6 A I did.

7 Q What date did you see Mr. Julca after the left knee  
8 surgery?

9 A After the surgery, I saw him on 8/17/2023 for his first  
10 postoperative visit.

11 Q Did you examine Mr. Julca on 8/17/2023?

12 A I did.

13 Q What were your findings upon examination of Mr. Julca?

14 A Sure. At that time, again, standard postoperative  
15 visit. He has wounds pretty healthy. The sutures were removed.  
16 He had no tenderness at his calves. No sign of a deep vein  
17 thrombosis, blood clot. He was ambulating with a cane, walking  
18 with a cane and a limp.

19 Q Now, he was using a cane on this date. Did he use a  
20 cane for the first knee surgery; did you know?

21 A He did use a cane for the first knee surgery, but in  
22 this case, I asked him, at that time, to continue the use of the  
23 cane again to decrease his weight bearing movement, allow  
24 that -- those stem cells to attach where as the first time I  
25 told him to immediately discontinue using the cane which he did.

**Dr. Kaplan - by Plaintiff - Direct**

1 Q And you mentioned in your explanation a little bit  
2 about the arthritis and you mentioned it for the right knee as  
3 well. Was there a similar type of arthritis present in the left  
4 knee?

5 A There are signs and injuries consistent with arthritis  
6 in the knee. So arthritis is a syndrome. It is not just one  
7 thing. Arthritis is changes in the joint surface associated  
8 with pain, limited motion, and often times swelling of redness.  
9 So he had certainly the damage to the joint surface which is  
10 going to lead to the other findings and cause arthritis.

11 Q Now, you mentioned for the right knee various causes of  
12 arthritis, degeneration, things like that. And the right knee  
13 you mentioned trauma.

14 A Yes.

15 Q Is that consistent, again, with the left knee as well?

16 A I believe so, yes.

17 Q And what is that based on?

18 A It's based on the history of him bumping his knees as  
19 he fell. The fact that he did have crepitus, cracking, and  
20 popping of the joint, which can lead to the joint surface, which  
21 progressed and got worse from the time of the injury to the  
22 point that I did my surgery.

23 Q Now, just in general regarding the knees. I know you  
24 didn't see Mr. Julca right after the accident, right?

25 A That's correct.

**Dr. Kaplan - by Plaintiff - Direct**

1 Q But you were able to speak to him about the accident,  
2 correct?

3 A Yes.

4 Q Would it have been surprising that the knee pain that  
5 he mentioned on your first visit would not have presented itself  
6 right away?

7 A I would expect that he would have some pain. It may  
8 not have been significant. It certainly may not have caused  
9 functional symptoms so it was a real problem. And I think, you  
10 know -- I often run into the case where people are injured.  
11 They focus on one thing, other things develop over time. But in  
12 his case, about three weeks after the injury, he was telling me  
13 about his knee pain and it continued to get worse and certainly  
14 more symptomatic which is consistent with injury.

15 Q As you asked him at the first visit he had no prior  
16 history of knee pain, correct?

17 A That's correct.

18 Q Now, at that postoperative visit for the left knee --  
19 after the left knee surgery, did you make any recommendations to  
20 Mr. Julca?

21 A I did. As I said, continue to use the cane and then we  
22 began physical therapy as well.

23 Q Now, I am going to direct your attention to August 5th  
24 of 2025, six months ago.

25 A Yeah.

**Dr. Kaplan - by Plaintiff - Direct**

1 Q Did you have a chance to examine Mr. Julca about six  
2 months ago?

3 A I did.

4 Q On that date, what did you find upon your examination?

5 A He told me that his right knee pain had been increasing  
6 previously within the last several months, I believe. He had  
7 been associated with activities such as kneeling and stair  
8 climbing. It was a pain that localizes by complaint to the  
9 front of the knee because when you bend your knee and then  
10 straighten, you put a lot of pressure on your patella and  
11 femoral joint between the knee cap and the femur. That's  
12 usually the front of the knee and in the area where the joint is  
13 called upon most to work is also the area that he had the most  
14 damage in.

15 So he had pain with kneeling, stair climbing. He also  
16 noted symptoms where he increased with rainy weather that had  
17 been occurring at that time, I guess. That was a classic  
18 symptom of arthritis. Everyone knows or has heard someone  
19 complaining about, oh, I feel the weather coming. That is a  
20 real symptom associated with arthritis. I examined him. He did  
21 have crepitus with knee motion on both sides of cracking and  
22 popping that you hear in an abnormal joint consistent with  
23 arthritis.

24 He had 125 degrees of flexion of both the right and  
25 left knee and full extension. He had no instability of the knee

**Dr. Kaplan - by Plaintiff - Direct**

1 so no McMurray's, no ligament injuries that I can appreciate.

2 Q Were you surprised by these findings?

3 A I'm not surprised by those findings at all. He's got a  
4 permanent problem with the knees associated with arthritis joint  
5 surface damage so that's what I would expect would be  
6 intermittent pain especially associated with certain activities  
7 and weather changes.

8 Q So, just shifting gears a little bit. We are going to  
9 go joint by joint which we spoke about today the left shoulder,  
10 left knee, right knee. Let's start with the left shoulder. Do  
11 you have an opinion, within a reasonable degree of medical  
12 certainty, as to whether or not the accident of March 3, 2018,  
13 was the cause of Mr. Julca's left shoulder injury and the  
14 subsequent left shoulder surgery that you performed on him?

15 A Yes.

16 Q And what is that opinion?

17 A My opinion is that the accident that occurred as he  
18 described it caused the injury to the shoulder. It matches the  
19 symptoms that he was complaining about, the findings on imaging  
20 studies and physical exam. He didn't improve with conservative  
21 measures so I believe it's related to the need for surgery as  
22 well.

23 Q Now, going to the right knee, similar question, do you  
24 have an opinion, with a reasonable degree of medical certainty,  
25 as to whether or not the accident of March 3, 2018, was the

**Dr. Kaplan - by Plaintiff - Direct**

1 cause of the right knee injury and the subsequent right knee  
2 surgery?

3 A I do.

4 Q And what is that opinion?

5 A My opinion is similar, that the symptoms which brought  
6 him to me and eventually led to surgery appeared to be related  
7 to the fall where he banged his knee. I believe the primary  
8 injury is to the joint surface. He also had a finding of a  
9 meniscus tear in the knee which we addressed and those things  
10 are, I believe, are related to his accident, the symptoms that  
11 brought him to that.

12 Q Now, going to the left knee. Do you have an opinion,  
13 within a reasonable degree of medical certainty, as to whether  
14 or not the accident of March 3, 2018, was the cause of the left  
15 knee injury and the subsequent left knee surgery?

16 A Yes, it's the same answer. I do believe those things  
17 are related for the same reasons which I outlined before.

18 Q Now, let's talk about future prognosis for a moment  
19 and, once again, we are going to split it up by part of body.  
20 Let's deal with the left shoulder first.

21 A Sure.

22 Q Do you have an opinion, with a reasonable degree of  
23 medical certainty, as to Mr. Julca's future prognosis after  
24 surgery with regard to the left shoulder?

25 A I do.

**Dr. Kaplan - by Plaintiff - Direct**

1 Q And what is that opinion?

2 A So with regard to the shoulder, prognosis means looking  
3 into the medical future based on what's happened. I believe, he  
4 will still have intermittent pain in the shoulder. It's very  
5 common after an injury even with surgery. He does have improved  
6 range of motion but not normal range of motion. And so I think  
7 his prognosis is guarded to poor. He is not going to get any  
8 better, but I think he'll be like this.

9 Q Is there anything that can be done to get him to where  
10 he was previously?

11 A I don't think you can get him to where he was  
12 previously. I think the focus would be, as I would speak to  
13 him, keeping up with therapy either at home or intermittent  
14 physical therapy if it were available for him, physical therapy,  
15 to maintain what he has now and slow the process of further  
16 weakening and loss of motion.

17 Q Now, going to the right knee, do you have an opinion,  
18 within a reason degree of medical certainty, as to Mr. Julca's  
19 future prognosis for his right knee subsequent to surgery?

20 A I do.

21 Q And what is that?

22 A The right knee he has significant injury that was the  
23 particular surface damage, the joint surface damage. He no  
24 longer has the smooth joint even though we smooth the edges as  
25 best we could. We cannot make that joint smooth again. The

**Dr. Kaplan - by Plaintiff - Direct**

1 cartilage does not regrow so he has a permanent injury to the  
2 knee. It is not only permanent, but it is going to get worse  
3 over time because now he's got an unsmooth surface grinding  
4 against the smooth surface and it would further erode the knee.  
5 That happens with arthritis whether it is wear and tear  
6 arthritis, whether it is blood-borne arthritis or whether it is  
7 posttraumatic arthritis as in this case. With posttraumatic  
8 arthritis, it begins with a certain event and progresses quite  
9 quickly because it is so focused.

10 Q Now, you mentioned this previously and you mentioned  
11 cartilage. Can you just, I don't think you described, what is  
12 cartilage what does it do?

13 A Sure. There are several types of cartilage. The  
14 cartilage in the knee are two types. One is the meniscus  
15 cartilage which is a soft rubbery type material. It's often  
16 described, because doctors like to use food terms, it is like a  
17 calamari ring. I don't know if people are familiar with a  
18 calamari ring. It is very much like that. It is soft but firm.  
19 It bends, but it doesn't break easily but it can shred. It can  
20 tear.

21 The other type of cartilage is called, I referenced it  
22 before, called a hyaline cartilage which is that smooth slick  
23 surface on the top of the joint that's -- I think I mentioned  
24 where you look at the end of a chicken bone it is pearly, smooth  
25 end. That is also firm. It's softer than a bone but it -- it

**Dr. Kaplan - by Plaintiff - Direct**

1 is responsible for the smooth sliding and gliding motion of the  
2 joint which allows the joint to function pain free.

3 Q And since the cartridge has been lost, that does not  
4 allow for the joint to act pain free; is that correct?

5 A It doesn't allow it to function the way it should  
6 function and it can cause symptoms of pain and if it propagates  
7 the buckling can return, things like that, buckling we haven't  
8 seen that.

9 Q Now, going to the left knee, do you have an opinion,  
10 within a reason degree of medical certainty, as to Mr. Julca's  
11 future prognosis for the left knee subsequent to his surgery?

12 A Yes, it would be the same. He's got joint surface  
13 damage. He's got a different shaped meniscus. So, you know,  
14 the knee is not going to function exactly the way it did the way  
15 when he was born. In addition to acting as padding, those  
16 meniscus help hold the joint in place and it actually happens  
17 with sort of a suctioning type of phenomenon.

18 So, when you change that, you do try to retain as much  
19 padding as possible. You can't re-create the normal function of  
20 the knee no matter how good you are. And so, this is not only  
21 permanent but progressive and particularly the joint surface  
22 damage will progress over time just like any other arthritis.  
23 It started with a trauma and it progressively worsened. I  
24 hope -- I hope we slowed down the process, but it will -- it  
25 will get worse over time.

**Dr. Kaplan - by Plaintiff - Direct**

1 Q And when you -- just to be clear, when you say trauma,  
2 what trauma are you referring to in terms of Mr. Julca  
3 specifically?

4 A I'm talking about what he described banging his knees  
5 on metal and wood as he fell through the broken platform of the  
6 scaffolding.

7 Q Now, to shift gears a little bit, if you weren't here  
8 today this morning, what would you be doing?

9 A I'd be in my office seeing patients. Actually, today  
10 is Wednesday. Yeah, I'll be seeing patients or surgery. Also,  
11 Wednesday is surgery day.

12 Q And are you being compensated for your time being here?

13 A Yes.

14 Q How much are you being compensated?

15 A My office has paid a fee of \$8,500 for the morning and  
16 I take my salary out of that. I also pay my staff and my rent  
17 and everything.

18 MR. ROSENGARTEN: I have no further questions at  
19 this time. Thank you very much, Dr. Kaplan.

20 THE WITNESS: Sure.

21 THE COURT: Mr. Malecki.

22 MR. MALECKI: Can we just take a brief break, Your  
23 Honor?

24 THE COURT: Do you want five minutes?

25 MR. MALECKI: Sure.

**Dr. Kaplan - by Plaintiff - Cross**

1 THE COURT: Let's take a five-minute break.

2 COURT OFFICER: All rise, jury exiting.

3 (Whereupon, the sworn jurors exit the courtroom.)

4 THE COURT: Off the record.

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

7 (Whereupon, a recess was taken.)

8 (Whereupon, the witness resumes the witness stand.)

9 THE COURT: Back on the record. Bring in the jury.

10 COURT OFFICER: All rise, jury entering.

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

13 THE COURT: You may be seated.

14 Mr. Malecki, you may inquire.

15 MR. ROSENGARTEN: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. MALECKI:

18 Q Good morning, Doctor.

19 A Hi.

20 Q Now, I saw that you brought with you your file in this  
21 matter, correct?

22 A Yes.

23 Q Is that a complete copy of your file?

24 A It's a copy of everything in my medical record, yeah.

25 Q And are you aware that my office subpoenaed a copy of

**Dr. Kaplan - by Plaintiff - Cross**

1 your medical records in advance of this trial?

2 A No.

3 Q On the screen, we put as page one of Plaintiff's  
4 Exhibit 10. It is a copy of a trial subpoena?

5 A Okay.

6 Q And your office complied with this so you are aware of  
7 that?

8 A I'm not aware of it.

9 Q In the records in Plaintiff's Exhibit 10 as well as  
10 Plaintiff's Exhibit 9, would it surprise you if I were to tell  
11 you that there are no copies of any of those interoperative  
12 photos that you testified about?

13 A No.

14 Q Why is that?

15 A They generally don't copy well so there's no reason to  
16 put them in.

17 MR. MALECKI: Your Honor, I'd like to mark two  
18 documents as, for ID, as Defendant's Exhibits C and D.

19 THE COURT: For identification?

20 MR. MALECKI: Yes.

21 THE COURT: Let's have them marked, please.

22 (Whereupon, the item was marked Defendant's Exhibit  
23 C, Three-page Document, for Identification.)

24 (Whereupon, the item was marked Defendant's Exhibit  
25 D, Three-page Document, for Identification.)

**Dr. Kaplan - by Plaintiff - Cross**

1 THE COURT: Defendant's C and D marked for  
2 identification and shown to plaintiff's counsel. Would you  
3 like them shown to the witness?

4 MR. MALECKI: Yes, please.

5 THE COURT: Being shown to the witness.

6 Q Doctor, placed in front of you I will start with what's  
7 been marked as Defendant's Exhibit C. It is a three-page  
8 document?

9 A Okay.

10 Q Have you seen this specific document before?

11 A I have not.

12 Q This is a subpoena that was issued by me on January 27,  
13 2026, specifically requesting interoperative photographs for  
14 each of the three surgeries you conducted. That's what it says?

15 A I don't know what it says, but if you represent that's  
16 what it says that's fine.

17 Q And it was served on your office per the third page of  
18 Exhibit C on January 30, 2026, at 10:27 a.m.?

19 A Okay.

20 Q Did your office ever comply with this subpoena?

21 A I have no idea. I don't do the subpoena but when -- we  
22 generally do. We generally will send them out.

23 Q In the records that were brought over from the subpoena  
24 records room there is no records of any photographs?

25 A Okay.

**Dr. Kaplan - by Plaintiff - Cross**

1 Q So would that be fair to say your office did not comply  
2 with the subpoena?

3 A I have no idea. I don't know who pulled the records.

4 Q The second document I put in front of you has been  
5 marked as Defendant's Exhibit D. It's also a three-page  
6 document. It's also titled subpoena. Have you seen this  
7 before?

8 A I have not.

9 Q Manhattan Surgery Center, that's the surgery center  
10 where Mr. Julca's surgery was performed, correct?

11 A Yes.

12 Q And that's where you did the surgeries, correct?

13 A That's where I did the surgeries.

14 Q You have an ownership in that surgery center?

15 A I do. It is a Mount Sinai Hospital facility.

16 Q And I'm correct Exhibit D that's in front of you is  
17 also a subpoena requesting interoperative photographs from the  
18 three surgeries also dated January 27, 2026?

19 A Again, if you represent that's what it is, I believe  
20 you.

21 Q And to date, there has been no interoperative  
22 photographs provided to the subpoena records room of this court.  
23 Doctor, do you know why that is?

24 A I'm not even sure that's true. I don't know why that  
25 is. They haven't gotten around to it. They can call and try to

**Dr. Kaplan - by Plaintiff - Cross**

1 get them or I can provide them to you.

2 Q In your office, you have a woman named Tessa, correct?

3 A Yes.

4 Q And does she help with the providing of the records?

5 A She is on the medical records with me.

6 Q And I have a document I will mark as Defendant's  
7 Exhibit E for ID.

8 THE COURT: Please mark as Defendant's E for  
9 identification.

10 (Whereupon, the item was marked Defendant's Exhibit  
11 E, One-Page document, for Identification.)

12 THE COURT: Show it to the witness.

13 Q Now, Doctor, I'll represent to you the document that we  
14 have identified as Defendant's Exhibit E is a one-page document.  
15 The reason I grabbed my phone is because that one-page document  
16 is a screen shot of my phone.

17 A Okay.

18 Q The reason I screen shotted my phone, my work switched  
19 over to all calls going through the Zoom app on my phone now so  
20 it makes a record of all the voicemails that I receive?

21 A Perfect.

22 Q And that's a copy of a voicemail that I received from  
23 your office on January 30th?

24 A Perfect.

25 Q It references a woman named Tessa?

**Dr. Kaplan - by Plaintiff - Cross**

1 A That's correct.

2 Q And she was calling about the subpoena that was sent to  
3 your office.

4 A She asked you to define what you needed so she can get  
5 it to you.

6 Q That is correct. She specifically asked whether it was  
7 just the photographs that we needed or all of the medical  
8 records.

9 A Okay.

10 Q And, Doctor, again, the Zoom keeps records of all of my  
11 calls?

12 A Right.

13 Q It mentions that I called her back at 12:26 p.m. This  
14 call was at 12:06 p.m. I called her back the same day about  
15 20 minutes later, Doctor. And I will tell you I spoke to Tessa  
16 personally and told her that all I was asking for in the  
17 subpoenas were the photographs?

18 A Okay.

19 Q So is there any reason why we still do not get the  
20 photographs even after my phone call?

21 A How do I know you didn't?

22 Q They are not in the subpoena records?

23 A I don't know. That doesn't mean they weren't sent.

24 Q Now, Doctor, we've also talked to a number of witnesses  
25 in this case about a time period where there was not treatment

**Dr. Kaplan - by Plaintiff - Cross**

1 at your office?

2 A Okay.

3 Q I am correct that Mr. Julca did not come to your  
4 office for a time period?

5 A There were gaps in his treatment, yeah.

6 Q And specifically the time period we discussed was  
7 September of 2018 when he last received an epidural injection to  
8 August of 2019 which is the next appointment he had with you?

9 A Okay.

10 Q In the records you have in front of you, is that  
11 consistent, that time period, that Mr. Julca did not receive  
12 treatment with the records that you brought today?

13 A I'm sorry. Tell me the dates again.

14 Q The last record I think you have is August 12th of 2018  
15 and the next record should be August 19th of 2019?

16 A It looks like there is one visit in between those but  
17 it is, again, 2019. So, yeah, there is a significant gap.

18 Q I'm sorry that one visit you just referenced what's the  
19 date of that visit?

20 A That is 4/2/19. I believe that's in the period is --  
21 is that what you are looking at?

22 Q You have a record in front of you another visit of  
23 Mr. Julca on April 2, 2019?

24 A I have a office visit on that date, yeah.

25 Q I'll represent to you that that record from April 2nd

1 of 2019 is not in any of these subpoenaed records that were  
2 provided that had been marked as Plaintiff's Exhibit 9 or  
3 Plaintiff's Exhibit 10; are you aware of that?

4 A I'm not aware of that.

5 MR. MALECKI: Your Honor, can we be heard on this  
6 issue?

7 THE COURT: Do you want to step up?

8 MR. MALECKI: Sure.

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

12 (Continued on next page)

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**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 CROSS-EXAMINATION

2 BY MR. MALECKI:

3 THE COURT: Mr. Kaplan.

4 THE WITNESS: Yes.

5 THE COURT: In complies with the subpoenas that  
6 were served on your office, I'm directing that all  
7 interoperative photographs be provided to defense counsel by  
8 close of business today.

9 THE WITNESS: I can give them to him now if you  
10 would like.

11 THE COURT: You have them with you?

12 THE WITNESS: Yes.

13 THE COURT: From all three?

14 THE WITNESS: Yes.

15 THE COURT: All right. Provide them.

16 (Pausing.)

17 THE WITNESS: This are my operative reports.

18 (Handing.)

19 THE COURT: All right. They are being handed to  
20 defense counsel.

21 MR MALECKI: Thank you.

22 THE COURT: You may continue Mr Malecki.

23 BY MR. MALECKI:

24 Q Okay. Now, Doctor, I'm correct in this case you were  
25 referred Mr. Julca from the Gorayeb firm, correct?

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 A I think so, yes.

2 Q And it is fair to say, you've been referred to a number  
3 of patients from that firm?

4 A They refer patients to me, yeah.

5 Q And you also testified several times on behalf of  
6 patients for that same firm?

7 A Yes.

8 Q Most recently you testified in the Perez case in the  
9 Bronx, January of this year?

10 A I've testified in that case, yes.

11 Q And last year you testified in the Rivera case in May  
12 in the Bronx and the Polino case in Brooklyn, correct?

13 A I don't know which cases you're talking about, as far  
14 as Rivera but Mr. Polino is a patient of mine, yeah.

15 Q And would it be fair to say, you testified once or  
16 twice a month over the years?

17 A Sometimes, yeah.

18 Q And a large majority of that time you're testifying on  
19 behalf of your patients; correct?

20 A Almost exclusively, yeah.

21 Q And fair to say, a large amount of your business is  
22 patients who were referred from plaintiff's law firms?

23 A Certainly a portion of my business is referred from law  
24 firms, yeah, for sure.

25 Q Now, when you have an initial visit with a patient, it

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 is important to get their complete history; is that fair?

2 A As best I can I try, yes.

3 Q History of the accident, that would be one thing you  
4 would ask about?

5 A That is right, yes.

6 Q Your medical history, yes?

7 A That's correct.

8 Q Now, the first appointment you had with Mr. Julca was  
9 March 22nd, 2018, correct?

10 A Okay. Yeah.

11 Q And Mr. Julca gave you a history as to how the accident  
12 occurred at that time?

13 A That's right.

14 Q And did he also tell you he went back to work after he  
15 had his accident?

16 A I don't recall him telling me that. I didn't write it  
17 down.

18 Q Did he ever tell you he went to work at a different job  
19 site from the one that he had his accident on?

20 A I don't recall that.

21 Q And did he tell you that when he went to this other job  
22 site, his employer had him do more heavy duty work. Did he tell  
23 you that?

24 A I don't recall that, I don't have it in my note.

25 Q So, would it be fair to say that the information I just

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 would to you, you didn't take into account when testifying as to  
2 the cause of this accident?

3 A No, I took into account his indication that he had this  
4 accident and that he had had pain since that time, which  
5 correlated with what he told me.

6 Q When your patients arrive at your office, you have them  
7 fill out an intake form?

8 A Yes.

9 Q And that intake form is in your file, correct?

10 A It should be, yes.

11 Q And it references that you were referred from the  
12 Gorayeb firm, correct?

13 A No, it does not. It indicates that Mr. Gorayeb's firm  
14 is his attorneys, which simply means that we can supply medical  
15 information to them.

16 Q Does the intake form mention anything about how Mr.  
17 Julca's accident occurred?

18 A It does not.

19 Q And prior to treating with Mr. Julca, did you  
20 communicate with anybody from the Gorayeb firm?

21 A No.

22 Q Now, Mr. Julca, I'm correct, lives in, or at the time  
23 currently does live in Elizabeth, New Jersey, correct?

24 A Right. I don't recall -- that's where he put his  
25 address, yes.

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 Q And in the times that he came to your office, starting  
2 in 2018, do you have any records saying how he got to your  
3 office?

4 A No.

5 Q Any reason you would need to be concerned with how he  
6 got to your office?

7 A I never --I don't think I ever asked a patient how they  
8 got to my office.

9 Q And you testified you performed three surgeries on Mr.  
10 Julca?

11 A Yes.

12 Q All surgeries were at Manhattan Surgical Center?

13 A Yes.

14 Q That is located on West 54th Street, right?

15 A Yes that's right.

16 Q And I'm correct, you also refer cases to Dr. Grimm who  
17 works in your office?

18 A I do.

19 Q And you're technically his boss; is that fair?

20 A Uhm, yeah.

21 Q Would it be fair to say that you refer about half of  
22 your patients to Dr. Grimm?

23 A I never looked at it that way. I don't take care of  
24 backs. So backs will be referred to a pain management  
25 physician. Dr. Grimm is convenient and I think he's a fantastic

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 physician, I definitely refer a lot of patients to him.

2 I also refer to other pain management doctors, to be  
3 Frank.

4 Q And you testified you're being paid for the time you're  
5 spending here today, correct?

6 A Yes.

7 Q And you said your office is getting 8500?

8 A That's right.

9 Q And your office, New York Ortho Sports and Medicine?

10 A Sports Medicine and Trauma PC.

11 Q Thanks.

12 And you have an ownership interest in that?

13 A I completely own it.

14 Q And so you receive compensation as an owner of that  
15 entity?

16 A Yeah, it depends on the year, sometimes I pay back.  
17 Everybody gets paid before me, unfortunately.

18 Q All right. And at that first appointment you had with  
19 Mr. Julca, March 22nd, 2018, did you review any of the hospital  
20 records from JFK Medical Center?

21 A I noted that he had been to JFK, but I don't think I  
22 had the records at that time. Let me just check.

23 (Pausing.)

24 Yeah, I have them. I don't know if they were there at  
25 the time. I didn't specifically say that I had reviewed them.

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 Q But since that appointment, have you seen those  
2 records?

3 A They have been in the chart, yeah. And, you know what,  
4 it looks like I have a fax date of 3/15. So I guess I did see  
5 them prior to or concurrently seeing him.

6 Q All right.

7 Doctor, I put on the screen what has been previously  
8 marked as Plaintiff's Exhibit 2.

9 (Displayed.)

10 A Okay.

11 Q Specifically Page 18.

12 A Okay.

13 (Shown.)

14 BY MR. MALECKI:

15 Q Are you able to see it this way, Doctor?

16 A I'm looking to see if I have it here and then I don't  
17 need to look up there.

18 (Pausing.)

19 A I don't think I've got that page. So I can see it, I  
20 cannot read it. I will have to come closer, sorry about that.

21 Q Let me see if I could zoom in.

22 (Pausing.)

23 BY MR. MALECKI:

24 Q If at any point you can't read something, let me know.

25 Now, under the triage notes --

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 A Yes.

2 Q --it has references to the accident. At the end of  
3 that first page it says:

4 PT, patient, had HX, history of, left clavicle  
5 dislocation as a child.

6 Are you able to see that?

7 A Yes, I see that.

8 Q Did Mr. Julca ever tell you that he had this left  
9 clavicle dislocation as a child?

10 A He did not.

11 Q And it also references at the hospital that he was able  
12 to do a range of motions, specifically to his left shoulder --to  
13 his shoulders?

14 A That is correct.

15 Q And you see a couple lines down, presenting  
16 circumstances?

17 A Yes.

18 Q And next to it, it says: C/O?

19 A Yes.

20 Q Complains of?

21 A That is correct.

22 Q And it says: Pain in both arms after injury holding  
23 onto scaffold at work.

24 A Yes.

25 Q Is and also mentions at the end he presented with no

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 deformity of the shoulders, correct?

2 A That is correct.

3 Q I have now scrolled down to the next page, Page 19 of  
4 Plaintiff's Exhibit 2.

5 (Shown.)

6 A Okay.

7 Q And its got under there history of present illness?

8 A Yes.

9 Q And it references, specifically the second sentence of  
10 that where it says, he states he was on a scaffolding when his  
11 footing gave way and PT, patient, hung onto scaffolding with bar  
12 underneath his arm?

13 A Okay.

14 Q Is that description consistent with the description  
15 that Mr. Julca gave you on your first appointment March 22nd,  
16 2018?

17 A Essentially. He fell through a platform and -- let's  
18 see.

19 He fell through a scaffold platform catching himself by  
20 his shoulders and armpits, yeah.

21 Q That would indicate that the bar would be underneath  
22 his armpits, correct?

23 A With his arms up, yeah.

24 Q Now, there's been testimony in this case that at his  
25 next appointment that he had with -- the next appointment he had

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 at your office with Dr. Grim, that he described the accident as  
2 hanging with his arms out stretched; are you aware of that?

3 A Out stretched like that is from his armpits  
4 (indicating).

5 Q That is a good question.

6 A I'm not aware. I'm trying to define what you said.

7 Q All right. Are you aware at all after the accident Mr.  
8 Julca was hanging with his arms out stretched vertically?

9 A I am not aware of that.

10 Q So your understanding is that after the accident he had  
11 the bar underneath his armpits?

12 A Right.

13 Q All right.

14 Now, Doctor, I want to go to and talk about the  
15 specific body parts you treated, starting with the left  
16 shoulder?

17 A Sure.

18 Q Now, I'm correct you sent Mr. Julca for an MRI of the  
19 left shoulder after your first visit with him, correct?

20 A Yes.

21 Q And then he went and had the MRI at Lenox Hill, right?

22 A Yes.

23 Q I put on the screen what has been previously marked as  
24 Plaintiff's Exhibit 5, specifically Page 10.

25 (Shown.)

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 A Yes.

2 Q I'm correct, this is the report of that MRI that Mr.  
3 Julca had on April 13, 2018, right?

4 A That's what it looks like, right.

5 Q Now, when you saw him after he had this MRI?

6 A Yes.

7 Q I assume you reviewed the report of the MRI?

8 A I did.

9 Q Do you also independently review the films?

10 A Yes.

11 Q Is there anything in your analysis of the film that you  
12 disagreed with from the analysis of this radiologist?

13 A Not that I recall.

14 Q Now, in the findings it makes reference to the  
15 glenohumeral joint?

16 A Correct. That is the joint between the end of the  
17 shoulder blade. So this piece is called the glenoid  
18 (indicating). The arm bone is the humerus, the joint between  
19 the two is the glenohumeral joint.

20 Q And under the impression you discussed this already.  
21 But the partial tear of the supraspinatus tendon; was that  
22 consistent with the surgery you eventually performed?

23 A That was consistent with the surgery. By the time that  
24 we operated on him, which was, I believe, about two years later,  
25 it was a full tear. But this is the beginning of that.

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1           It also caused non retracted tear, which is also  
2 consistent because it was a split tear, not a tear off of the  
3 bone. So, yeah, that's quit consistent with what we found.

4           Q     Now, the tear of this tendon, at least at this point it  
5 was partial tear. Is that something that can be developed over  
6 time?

7           A     Anything can developed over time. I'm not sure what  
8 you're asking me.

9           Q     Is it possible that this tear existed before the  
10 accident?

11          A     Anything is possible, sure.

12          Q     Also mentions the mild subacromial impingement?

13          A     Yes.

14          Q     That is also can be conducive with the surgery that you  
15 performed?

16          A     Yes.

17          Q     And that impingement, is that something that could have  
18 existed possibly before the accident occurred?

19          A     It could of, but just like with a tear, it is not  
20 likely that he would not have symptoms associated with that.

21          Q     And tears of the rotator cuff, that is something you're  
22 saying can be caused by an accident, correct?

23          A     Yes, usually caused by an accident.

24          Q     But also can be caused by using the shoulder often,  
25 people who do repetitive movements; fair to say?

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 A Yes.

2 Q And now a partial tear. Is that something that could  
3 be resolved without surgery?

4 A That's what we were hoping for, which is why  
5 conservative treatment for a long time.

6 Q Now, the last mentioned in this impression references  
7 the acromioclavicular joint, the last one?

8 A Yes.

9 Q There's been testimony in this case of something called  
10 a downsloping acromion.

11 Do you know what that is?

12 A Yes.

13 Q What is that?

14 A There's a descriptive term for the shape this bone.  
15 The acromion, it could either be flat or downsloping. That is  
16 the bone there (shown.) So it can be flat as it's in this model  
17 or slope on down a bit.

18 Q And in both reviewing this MRI, as well as eventually  
19 performing the surgery, did you note that Mr. Julca had a  
20 downsloping acromion?

21 A I don't recall that. It is not mentioned here, yeah.

22 Q And the changes that are referenced in the  
23 acromioclavicular joint, is that something that could have  
24 existed prior to this case, potentially?

25 A I suspect it did. I didn't do any work on that because

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 I'm not-- it was not a problematic thing.

2 Q And the next thing I want to talking about is the left  
3 knee.

4 A Okay.

5 Q Let's start with.

6 (Shown.)

7 Now, I'm starting with a visit you had with Mr. Julca  
8 on April 24th, 2018?

9 A Okay.

10 Q This is part of the records of Plaintiff's Exhibit 9.

11 A Okay.

12 Q Specifically Page 74.

13 (Shown.)

14 BY MR. MALECKI:

15 Q So this is your second appointment you had with Mr.  
16 Julca; is that correct?

17 A That sounds about right -- yes.

18 Q And at this point you note that he's having issues with  
19 the left knee, specifically buckling?

20 A That's right.

21 Q Were there any complaints at this appointment of issues  
22 with buckling in the right knee?

23 A Not that I recorded, no.

24 Q Then you sent him for MRI of the left knee because of  
25 this buckling, correct?

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 A Yes, that's correct.

2 Q Then he has that MRI on May 1st, 2018?

3 A At Kolb, Kolb Radiology, yeah.

4 Q And I put on the screen records from your office,  
5 Page 114 of Plaintiff's Exhibit 9.

6 (Shown.)

7 A Okay.

8 Q I'm correct, this is the report of the MRI of Mr.  
9 Julca's left knee, correct?

10 A Yes.

11 Q And as you did with the shoulder, did you also review  
12 the report of this MRI?

13 A Yes.

14 Q And did you also independently review the films?

15 A Yes.

16 Q Is there anything independently reviewing the films,  
17 that you disagreed with the radiologist's report?

18 A Not that I recorded, so I don't think there's anything  
19 significant.

20 Q Now, let's talk about it references in the impression a  
21 tear of the medial meniscus, correct?

22 A Yes.

23 Q And that is consistent with the findings you eventually  
24 had when you had surgery in 2023, correct?

25 A Yes.

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 Q And in between the time of this MRI and your surgery,  
2 did that tear of the meniscus change from the description that  
3 is in the MRI?

4 A They just described it as a tear, posterior horn, that  
5 is where it was.

6 Q Now, someone experiences or has a meniscus tear, is  
7 that something that is going to cause pain?

8 A It can. It is really not the meniscus that causes  
9 pain. The meniscus doesn't have any nerve endings. It is the  
10 mechanical irritation that is caused by the meniscus.

11 Q And would you expect that someone who had an accident  
12 that resulted in meniscus tears to both knees, that they would  
13 feel pain fairly quickly after the accident?

14 A After a period of walking and developing inflammation,  
15 yeah, but often not immediately.

16 Q Be fair to say within 24 to 48 hours?

17 A No.

18 Q Someone continues walking around at their job site, for  
19 example, for a week, would you expect to see pain then?

20 A They could, but there's no playbook to that.

21 Q And I'm correct that meniscus tears, in general,  
22 sometimes they require surgery, but sometimes they can be fixed  
23 through just physical therapy and medication?

24 A They could become asymptomatic, yeah.

25 Q And I'm also correct that some meniscus tears are

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 caused by accidents, correct?

2 A Yes.

3 Q And some meniscus tears are just caused by the normal  
4 wear and tear of the body, correct?

5 A Yes, correct.

6 Q And now this also in this MRI references the partial  
7 tear of the ACL, the anterior cruciate ligament, correct?

8 A Yes.

9 Q Did you do anything in your operation in 2023 to repair  
10 any kind of tear in the ACL?

11 A No. As I said, that was not seen either clinically,  
12 meaning he had no instability from the ligament tear and I could  
13 not see it when I looked at the ligament. So it's not something  
14 that needs to be addressed. It is an internal problem.

15 Again, that is the importance of examining the patient  
16 over time.

17 Q Now, since the operation from this left knee didn't  
18 happen until five years later --

19 A Yes.

20 Q --I'm correct you ordered an updated MRI after this  
21 one?

22 A I did not feel the need to do that, but in order to get  
23 it authorized, that was required.

24 Q An MRI shows you the picture of what is going on with  
25 our body on any given date; fair to say?

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 A Correct.

2 Q Is it not important, if there's a time period lapse of  
3 year or two, to not get an updated MRI to see what is going on?

4 A Not if you have the answer already.

5 Q Now, did you review the results of the January 12th,  
6 2023, left knee MRI?

7 A Yes.

8 Q And was there anything different from that MRI from the  
9 one that happened in 2018?

10 A Let's say nothing significantly different, no.

11 Q And that MRI, I'm correct, still references this  
12 partial tear of the ACL, correct?

13 A It does.

14 Q And if I can put on the screen, but it also mentions  
15 that osteochondral defect that you talked about when you talked  
16 about your surgery, right?

17 A Yes, that's correct.

18 Q And that osteochondral defect, is that also something  
19 that could be caused by the accident?

20 A I believe it was caused by the accident.

21 Q Is it also possible it could be caused by the wear and  
22 tear of the body at the time?

23 A Not osteochondral defect. You could have wear and tear  
24 of the joint surface, for sure, but osteochondral defect is  
25 fairly specific.

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 Q And now let's go to the right knee.

2 A Okay.

3 Q I'm correct you sent Mr. Julca for a right knee MRI and  
4 that occurred July 10, 2018, right?

5 A Yes.

6 (Shown.)

7 BY MR. MALECKI:

8 Q I put on the screen what has been previously marked as  
9 Exhibit Plaintiff's Exhibit 8, specifically Page 14.

10 (Shown.)

11 A Okay.

12 Q I'm correct this is a report of the MRI of the right  
13 knee that was done by Dr. Kolb?

14 A Yes.

15 Q And you independently reviewed this MRI after it  
16 happened?

17 A Yes.

18 Q And were your findings, when you reviewed the films,  
19 conclusively the same as Dr. Kolb's findings?

20 A Essentially, yes.

21 Q And similar to the left knee. It also references a  
22 tear of the meniscus, right?

23 A It does. It references a tear of both the lateral and  
24 the medial meniscus.

25 The ladder meniscus is what is called intrasubstance.

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 Again, not one you will see on the inside the knee and not  
2 generally symptomatic. And it also -- well.

3 Q And, ultimately, these findings you performed surgery  
4 and to fix these findings, correct?

5 A The medial meniscus tear and the joint surface injury,  
6 which is the seven millimeter condyle deformity interior aspect  
7 of the medial femoral condyle.

8 Q I'm correct, similar to the left knee, the partial tear  
9 of the ACL, you didn't find that in the surgery?

10 A I did not.

11 Q Now, I want to go over some of your records you have in  
12 front of you. I will try to put them on the screen as well.

13 (Shown.)

14 BY MR. MALECKI:

15 Q We talked about a number of visits you had in 2018.

16 A Yes.

17 Q After shortly after the accident, this is a visit from  
18 July 3rd, 2018.

19 A Okay.

20 Q Just for the record, Plaintiff's Exhibit 9, Page 67.

21 (Shown.)

22 And I'm correct you're saying here that he's now having  
23 buckling in both the left knee and right knee at this point?

24 A That's correct.

25 Q I'm going to go to the next appointment, August 10,

**Dr. Kaplan - Cross - Plaintiff/by Mr. Malecki**

1 2018?

2 A Okay. Okay.

3 Q Now, on this record, specifically as to the left  
4 shoulder, it references in your transcription abduction to  
5 160 degrees, correct?

6 A Yeah.

7 Q And what is the maximum that it should be?

8 A 180 degrees.

9 Q And in some other things when we were talking about  
10 flexion, you would give a range of numbers; is it just 180 or is  
11 there a range that is considered normal?

12 A There's arrange for sure. People have different  
13 laxities of their joints, but 180 degrees is the functional  
14 normal.

15 Q So if somebody had 170 degrees, would that not be  
16 considered normal?

17 A It could be for them if they had no injuries and it was  
18 bilaterally symmetric. But generally 180 degrees is the low end  
19 of normal, yeah.

20 We're talking about 180 degrees. Some people can't get  
21 their hand behind their head.

22 Q And you also reference at the end of this that he has  
23 good rotator cuff strength, correct?

24 A Yes.

25

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(Whereupon, Shameeka Harris relieved Deborah Rothrock as the Official Court Reporter.)

(Continued next page.)

**Dr. Kaplan - by Plaintiff - Direct**

1 CROSS-EXAMINATION

2 BY MR. MALECKI:

3 Q The next one I am going to go to is August 19, 2019.  
4 Specifically, this is page 59 of plaintiff's 9.

5 A Okay.

6 Q It's now August 2019. We're about a year and a half  
7 after the accident, correct?

8 A Yes.

9 Q And you reference that now he is feeling pain in both  
10 of the knees with buckling?

11 A He continues to, yes.

12 Q And it's also referencing that he has pain in the left  
13 shoulder at this point, right?

14 A He got pain in both shoulders but left greater than  
15 right.

16 Q And then your next visit with him is on September 30,  
17 2019?

18 A Okay.

19 Q Now, on this visit, you did some tests of the left  
20 shoulder, correct?

21 A I just did a -- you are talking about a physical exam?

22 Q Yes.

23 A Yes.

24 Q And now you have the abduction at 165, correct?

25 A Correct.

**Dr. Kaplan - by Plaintiff - Direct**

1 Q Now, would that be fair to say that that's an  
2 improvement from 160?

3 A Yeah. It's not a significant improvement, but it is  
4 improvement for sure.

5 Q And this is all still prior to his June 10, 2020,  
6 surgery to the left shoulder, right?

7 A Yes.

8 Q Now, there is a couple of appointments I'll go through  
9 quickly, November 18, 2019. Now, during this visit, you  
10 mentioned that the left knee and both shoulders are bothering  
11 him, but I'm correct you don't mention any issues with the right  
12 knee going on at this point; is that correct?

13 A That's correct.

14 Q And the next appointment January 13th of 2020. Again,  
15 you mention the left knee pain and no mention of any right knee  
16 pain at this appointment, correct?

17 A That's correct.

18 Q And without putting on the screen your next appointment  
19 February 4, 2020, same thing, you mentioned pain with the left  
20 shoulder and left knee, nothing going on with the right knee,  
21 correct?

22 A It's not that nothing is going on. Every time there is  
23 a diagnosis, which you are not showing them, it says he has  
24 internal derangement of the knee. He is more symptomatic with  
25 the left which is the problem. The physical exam he's got

**Dr. Kaplan - by Plaintiff - Direct**

1 crepitus in the right and the left knee. It is not nothing  
2 going on. These are just the more symptomatic areas.

3 Q In your transcription of what Mr. Julca is telling you  
4 each day, you don't make any mention of right knee pain in that  
5 transcription, correct?

6 A That's correct. I asked him what is bothering him on  
7 that day, but his physical exam is still consistent with an  
8 internal derangement and it is still part of the diagnosis.

9 Q Now, let's go to -- we now jump ahead about five months  
10 to July 16, 2020. This is now after the left shoulder surgery,  
11 correct?

12 A Okay. Yes.

13 Q And now you mentioned you did tests on the flexion and  
14 the abduction, correct?

15 A That's correct. Abduction, forward flexion, internal  
16 and external rotation.

17 Q And you mentioned both of those. But normal would be  
18 180, correct?

19 A Yes.

20 Q This is 160?

21 A Correct.

22 Q Is that to be expected in the month or so immediately  
23 after the left shoulder surgery?

24 A Sure.

25 Q So the left shoulder surgery doesn't make it

**Dr. Kaplan - by Plaintiff - Direct**

1 100 percent a month later?

2 A That's correct.

3 Q Now, you then have another appointment a month later on  
4 August 27, 2020?

5 A Yes.

6 Q And at this appointment, I'm correct, with respect to  
7 the left shoulder, you references having some weakness, correct?

8 A Yes.

9 Q And but it says that he feels improvement in the left  
10 shoulder; fair to say?

11 A He mentioned that because he lost some motion on that  
12 day. But, yes, he indicated that he felt the surgery had made a  
13 difference and he was feeling improvement.

14 Q That is the same in your next appointment on  
15 October 13, 2020. He says left shoulder is improving but he  
16 still has a little bit of pain?

17 A Yes. He still has a little pain there.

18 Q And this is all consistent with recovery from the left  
19 shoulder surgery such as the one you did?

20 A It is.

21 Q Now, skipping ahead to July 27, 2021, this is now about  
22 a year after your surgery, correct?

23 A Yes.

24 Q Now, you had noted, I believe in your testimony  
25 earlier, this record -- at least on what it says -- references

1 pain to the right shoulder. I believe you testified earlier you  
2 thought that that was supposed to be pain to the left shoulder?

3 A Yeah, that happens. Unfortunately, I'm not perfect.

4 Q Is it fixed in records in front of you?

5 A I did that while we are sitting here. It is the first  
6 time I had noticed it.

7 Q And you do the abduction tests now it's 170 degrees on  
8 the left shoulder correct?

9 A That's correct.

10 Q So fair to say an improvement?

11 A Yes.

12 Q September 21, 2021.

13 THE COURT: You have at least two more minutes of  
14 cross-examination.

15 MR. MALECKI: Okay.

16 THE COURT: Members of the jury, are going to break  
17 for lunch at this time. Be back promptly at 2:15.

18 COURT OFFICER: All rise, jury exiting.

19 (Whereupon, the sworn jurors exit the courtroom.)

20 THE COURT: We are in recess until 2:15. We are  
21 off the record.

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

24 (Whereupon, a luncheon recess was taken.)

25 (Continued on next page)

**Proceedings**

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

2                   THE COURT: On the record. Case on trial  
3 continued. Anything before we bring in the jury?

4                   MR. MALECKI: Yes, Your Honor, two things. The  
5 defense has an application to -- I thank Your Honor for  
6 having the witness give us the copies of the photographs,  
7 but we would ask the Court to order the witness to provide  
8 us with digital copies of the photographs that he maintains  
9 in his office. I'll certainly inquire but insofar as he has  
10 digital copies if he could send them to us so we can have  
11 the metadata from that.

12                  THE COURT: Mr. Rosengarten.

13                  MR. ROSENGARTEN: Well, the whole issue he had was  
14 with the subpoena. And he asked for all interoperative  
15 photographs which have now been provided. They didn't ask  
16 for metadata. He didn't ask for digital photos. He asked  
17 for interoperative photographs which have now been provided.  
18 He hasn't subpoenaed anything further. I don't think it's  
19 necessary.

20                  MR. MALECKI: I mean, Your Honor, the witness  
21 testified these are photocopies. He even said they don't  
22 copy well. We are entitled to digital copies of the photos  
23 if they are taken digitally which I assume they are but --

24                  THE COURT: You have copies of the photos now. If  
25 you want to digitalize them so you can show them to the

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1 jury, that's fine. Let's pause for a moment. Bring in the  
2 jury.

3 COURT OFFICER: All rise, jury entering.

4 (Whereupon, the jurors enter the jury room.)

5 (Whereupon, the following discussion take place on  
6 the record, in open court.)

7 THE COURT: You may be seated. Why do you need  
8 digital copies, Mr. Malecki?

9 MR. MALECKI: The issue is not being able to show  
10 them to the jury. The issue is making sure they are  
11 correct. Right now, we just have photocopies that this  
12 witness has already recognized they did not comply with the  
13 subpoena. He is testifying that they are accurate.

14 THE COURT: If you want him to authenticate them,  
15 you can ask him. I agree with you they weren't provided  
16 pursuant to the subpoena. You have them now. The witness  
17 has them with them.

18 MR. MALECKI: We still have photocopies of them  
19 and not the actual photos that were taken originally. So  
20 Your Honor understands, I am going to send them to our  
21 witness to review. I am going to have to send them  
22 photocopies, scanned photocopies essentially.

23 THE COURT: Anything else on this, Mr. Rosengarten?

24 MR. ROSENGARTEN: No, Your Honor.

25 THE COURT: Okay. I am directing that the witness

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1 provide what would be originals and not merely photocopies  
2 of these. If those are digital, fine. If he's got  
3 originals in his file, that's fine too. But I'm not  
4 specifically directing that they be digitized but they not  
5 be copies. If that's the way they have to be provided, then  
6 they'll be digitized. What else?

7 MR. MALECKI: Our other application is there is  
8 now --

9 THE COURT: I am directing Mr. Rosengarten to so  
10 instruct the witness.

11 Anything else?

12 MR. MALECKI: There is now a difference in  
13 testimony as to what the official record is of New York  
14 Ortho sports and I would ask that the jury be instructed  
15 that the record that's official is the record that's in  
16 evidence here, do not include the additional document that  
17 was brought here today.

18 MR. ROSENGARTEN: I have no objection. That's  
19 what's in evidence. That's what's in evidence. I don't  
20 think he's authenticated --

21 THE COURT: Okay. Do you want me to give that  
22 instruction at this point in time or at the time of my  
23 instruction on the law?

24 MR. MALECKI: You can do it now, but, I mean, if  
25 you would like direct language such that it would make it

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1 easier for Your Honor, then we can do it during the  
2 instruction but --

3 THE COURT: I'm not going to ask you to make it  
4 harder for me, Counsel.

5 MR. ROSENGARTEN: Just for the record, Your Honor,  
6 I would submit there's no instruction that's needed because  
7 they have what's there. It was brought up by defense  
8 counsel.

9 THE COURT: You said you had no objection but now  
10 you are objecting.

11 MR. ROSENGARTEN: I have no objection to them  
12 saying that the record is what's in evidence. That's what  
13 is in evidence. I don't think there is an instruction that  
14 is needed to further talk about this one record that he was  
15 so nervous about in the first place. Why are we doing that  
16 to ourselves?

17 MR. MALECKI: I am solely asking --

18 THE COURT: I think maybe to prepare an  
19 instruction, share it with Mr. Rosengarten and maybe we can  
20 get something that would be agreed to and we'll move  
21 forward. If not, I will rule. I don't think it needs to be  
22 done now but shortly.

23 MR. MALECKI: No problem.

24 THE COURT: Anything else before we bring in the  
25 jury?

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1 MR. MALECKI: No, Your Honor.

2 THE COURT: Bring in the jury.

3 COURT OFFICER: All rise, jury entering.

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

6 THE COURT: You may be seated. Officer, please  
7 bring the witness into the courtroom so he can resume the  
8 witness stand.

9 (Whereupon, the witness resumes the witness stand.)

10 THE COURT: You may be seated. Welcome back,  
11 Dr. Kaplan. At this time, Mr. Malecki, you may continue  
12 your cross-examination of the witness.

13 MR. MALECKI: Thank you, Your Honor.

14 CONT'D CROSS-EXAMINATION

15 BY MR. MALECKI:

16 Q Good afternoon, Doctor. I want to start by talking  
17 about the last two appointments that you had with Mr. Julca.  
18 You had one in August of 2025, correct?

19 A Right.

20 Q And before that the last one was December 19th of 2023,  
21 right?

22 A Correct.

23 Q So that December 2023 I note in your records you make  
24 reference to certain tests that were conducted. It doesn't  
25 mention anything Mr. Julca specifically telling you that he was

**Dr. Kaplan - by Plaintiff - Cross**

1 experiencing pain on that day; is that correct?

2 A That's correct.

3 Q And then August 5th, 2025, your most recent one you  
4 note issues with the right knee, correct?

5 A That's why he came in, yeah.

6 Q And I don't see anything -- any discussion in here  
7 about any issues he is currently having at least at that  
8 appointment with respect to the left shoulder, right?

9 A No, I believe he specifically came in for the right  
10 knee.

11 Q Now, prior to recommending surgery, would it be fair to  
12 say that you would typically try to have your patients do a  
13 certain amount of physical therapy?

14 A Yes.

15 Q And in this case, in the records I have from your  
16 office, am I correct that Mr. Julca did physical therapy for the  
17 shoulder, the knees, and the back in 2018, correct?

18 A I believe so. I don't recall it specifically the date  
19 but, yeah. That would be the general course.

20 Q And I have about -- from your reviewing the records  
21 they were sent over, there is 18 dates of physical therapy  
22 treatment specifically for the shoulders between March and July  
23 of 2018; does that sound about right?

24 A It sounds reasonable, sure.

25 Q And prior to conducting the 2020 left shoulder surgery,

**Dr. Kaplan - by Plaintiff - Cross**

1 was there any additional physical therapy that Mr. Julca went  
2 to?

3 A I don't recall, yeah. Whatever was necessary to get it  
4 authorized.

5 Q And the knees, there's an additional physical therapy  
6 record for the knees. The last one I have is August 17, 2018.  
7 Is that the last time you recall, prior to Mr. Julca having  
8 surgery in 2002 and 2023, that he had physical therapy to his  
9 knees?

10 A I didn't review that specifically for the question  
11 you're asking me so I don't recall.

12 Q Now, you are talking about the left shoulder. You  
13 mentioned we showed the MRI from 2018. It talks about there is  
14 a partial tear. By the time there was surgery, there was a full  
15 tear, correct?

16 A Yes.

17 Q And is that consistent with a single event like this or  
18 is that more consistent with a chronic degenerative change going  
19 on?

20 A It can be from either, but the history seems to point  
21 to a single event that initiated it and initiated the symptoms  
22 and, you know, as I say, he remained symptomatic despite  
23 conservative measures. And, in fact, it seems like the tear  
24 extended from the time we got the initial MRI and we tried  
25 conservative measures until the time we operated on him.

**Dr. Kaplan - by Plaintiff - Cross**

1 Q And we also talked about that downsloping acromion,  
2 correct?

3 A Yes.

4 Q And at any point during the surgery or at any other  
5 time, did you actually inspect the shape of Mr. Julca's acromion  
6 to see if it was downsloping?

7 A Yeah. I shaved part of it off to make it thinner. I  
8 didn't think it was particularly downsloping.

9 Q And is that shaving of the acromion is that something  
10 that's typically done when an acromion is downsloping?

11 A It's something that's particularly down when there is a  
12 repair so it just allows more room. I think I pointed it out on  
13 the board, I think, it allows more room for the repair to heal.

14 Q Now, going to the knees, when someone has an injury to  
15 the knee that is blunt force trauma, they hit their knees on  
16 metal or wood, is that something that you would typically in a  
17 MRI see bone bruising or bone marrow edema?

18 A It depends when it done. If it was done at the time  
19 the injury occurred, you may see it, sure. But within a couple  
20 of weeks, that's gone.

21 Q So it would be fair to say that a blunt force trauma  
22 that caused meniscus tears show up in an MRI it would typically  
23 show up -- it would also have bone bruising you are saying at an  
24 earlier date?

25 A What I am going to say is going to be good for you

**Dr. Kaplan - by Plaintiff - Cross**

1 which is the confusion that this guy had is of the bone. It's  
2 not -- it has nothing to do with the meniscus tears. His major  
3 injury is to the bone surface. He did have meniscus tears that  
4 were symptomatic. The tearing of the meniscus, as you pointed  
5 out, can be degenerative. It may have been there prior but it  
6 wasn't symptomatic. So what caused the symptoms I believe to  
7 the meniscus, but specifically to the bone -- which is in my  
8 mind the bigger problem -- I believe is from the injury that  
9 we're speaking about.

10 Q And we also talked about the partial ACL tear that was  
11 in the MRI but it wasn't in the operative report, correct?

12 A Yes.

13 Q Now, without that finding in the operative report, does  
14 that point to the MRI findings being more degenerative?

15 A No. No. He certainly could have injured his ACL  
16 during the fall. He could just have some fluid around the ACL  
17 that's often read as a partial tear. But again, it has no  
18 clinical relevance, no functional relevance. So I didn't feel  
19 anything need to be done about it. And I am not pointing it out  
20 as something that I feel is necessarily causally related to the  
21 accident that we are talking about.

22 Q Now, the right knee surgery, am I correct that you  
23 testified that while you are performing the surgery you saw  
24 arthritis in there?

25 A I saw an injury to the joint surface that causes

**Dr. Kaplan - by Plaintiff - Cross**

1 arthritis, yes.

2 Q But you didn't actually see the arthritis in there.  
3 You just saw the injury that causes arthritis?

4 A You are a making statement that doesn't logically make  
5 sense. As I said, arthritis is a syndrome. It's abnormal joint  
6 surface that causes swelling, itis, inflammation, usually loss  
7 of motion, pain, response, antiinflammatory medicine. So you  
8 don't see the arthritis, you see the joint surface damage which  
9 is what causes the arthritis.

10 Q And finally the photographs that you provided today  
11 from your operative reports, are those photographs that are  
12 taken on a digital camera that produces Jpegs?

13 A I don't know what form that is. I'm not the tech guy.  
14 I just take the pictures.

15 Q Do you take the pictures?

16 A Yeah.

17 Q And is it a digital camera?

18 A It is a camera I showed you on the schematics.

19 Q And your office keep its records of the digital files  
20 of all of those pictures?

21 A No, we keep a sheet like that which is why if we were  
22 just to Xerox that it would come out as a black piece so we ask  
23 people for an additional service to copy those in high quality  
24 with the service which is what I think Tessa was trying to get  
25 for you.

**Dr. Kaplan - by Plaintiff - Cross**

1 Q The photographs that are taken with a digital camera,  
2 what do you do after they're taken?

3 A They -- I am working here. They show up over there on  
4 a computer. Then they get printed after the case and someone  
5 hands them to me.

6 Q Are they stored anyway?

7 A Yeah. They are stored in the surgery center.

8 Q Are they stored in a digital form?

9 A I assume so. I don't have those though.

10 MR. MALECKI: That's all the question I have.

11 Thank you, Doctor.

12 MR. ROSENGARTEN: Okay.

13 THE COURT: Redirect.

14 MR. ROSENGARTEN: No redirect, Your Honor.

15 THE COURT: The witness may step down.

16 THE WITNESS: All right. Thank you so much.

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

19 THE COURT: All right, Counsel, step up.

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

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

**Dr. Kaplan - by Plaintiff - Cross**

1 THE COURT: Members of the jury, do not discuss  
2 this case among yourselves or with anybody else. Do not do  
3 any independent research. Do not visit the scene. Tomorrow  
4 morning, as I told you, we will be resuming not at 9:30 but  
5 at 10:30. We will have enough time to get both of the  
6 witnesses that we have tomorrow completed so be here  
7 tomorrow at 10:30. Thank you, everyone.

8 COURT OFFICER: All rise, jury entering.

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

11 THE COURT: Jury has exited. Anything before we  
12 recess for the day?

13 MR. MALECKI: No, Your Honor.

14 MR. ROSENGARTEN: No, Your Honor.

15 THE COURT: This court stands in recess until  
16 tomorrow morning at 10:30. I got to get through both of  
17 those witnesses and we are done by four hard stop tomorrow.  
18 It's one for each of you, right?

19 MR. ROSENGARTEN: Correct.

20 THE COURT: Minkowitz in the morning out of order.  
21 Kolb -- Kolb in the morning?

22 MR. ROSENGARTEN: Kolb in the afternoon. We  
23 switched it from Minkowitz. Minkowitz is a.m. Kolb is  
24 p.m., then I will rest.

25 THE COURT: You rest. We are off Friday. We come

1 back Monday at 9:30. Great. Off the record.

2 (Whereupon, the trial is adjourned until Thursday,  
3 March 12, 2026, at 10:30 a.m.)

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