

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

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3 CARLOS PAIBA,



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Plaintiff,

5

-against-

Index No. 704365/2019

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

JURY TRIAL

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Defendants.

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Supreme Courthouse
88-11 Sutphin Boulevard
Jamaica, New York 11435
March 16, 2026

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B E F O R E:

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

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

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VALERIE MCNALLY
VICKY ZUBIRIA
Senior Court Reporter

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1 THE COURT CLERK: All rise. The judge is
2 entering.

3 Queens Supreme Court Part 28 continues to be in
4 session with the jury trial, 704365 of 2019, in the matter
5 of Carlos Paiba versus 56-11 94th Street Company LLC and
6 Ginsberg Holdings LP.

7 All appearances remain the same.

8 THE COURT: Very good. Any issues we need to
9 discuss, exhibits to be marked, before we bring in the
10 jury?

11 MR. MAHER: No, Your Honor.

12 MR. SHECTMAN: No, Your Honor.

13 THE COURT: Can we have the witness come in and
14 take the stand? That's where we left off the last time he
15 was here.

16 (Whereupon, the witness resumed the witness
17 stand.)

18 THE COURT: Everyone could have a seat.

19 Good morning everyone. Before I proceed, I would
20 like to place a brief comment or statement on the record.
21 And as I said, it's a comment and afterward, no further
22 statements or comments on this issue will be entertained,
23 on or off the record.

24 On Friday, March 13, 2026, Dr. Jeffery Kaplan
25 appeared to testify for plaintiff at the request of

1 plaintiff's attorneys. And as you testified, you were paid
2 for your appearance in court. You were called as a witness
3 by plaintiff's attorney, presumably to support plaintiff's
4 claim, and when you appeared for the morning session on
5 Friday, March 13th, plaintiff completed direct examination;
6 however, you failed to return to the afternoon session as
7 specifically directed by me to continue your testimony.

8 Such an intentional and willful act demonstrates a
9 total disrespect for my order, the Court and all involved,
10 simply to accommodate your schedule without having provided
11 any prior notice to the Court or to plaintiff's attorneys,
12 who called you as a witness, and never let me or anyone
13 know of your limited availability, as the Court has been
14 advised.

15 On Friday, plaintiff's counsel placed a long,
16 albeit not completely accurate, statement on the record
17 regarding the happenings of that day, which included an
18 attempt to explain your disregard of my order. I informed
19 the attorneys for the parties on Friday, but again I want
20 to a make it clear, your flagrant disrespect for this
21 Court's order is not taken lightly and it is only in the
22 interest of justice for the plaintiff and with defense
23 counsel's consent that you are being allowed to continue
24 your testimony today; otherwise, your testimony would have
25 been stricken from the record.

1 That being said, Officer, please bring in the
2 jury.

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

4 THE COURT OFFICER: All rise. Jury entering.

5 (Whereupon, at this time, the jury entered the
6 courtroom.)

7 THE COURT: Good morning, jurors.

8 THE COURT CLERK: Do all counsel stipulate to the
9 presence and the seating of the jurors?

10 MR. SHECTMAN: Yes.

11 MR. MAHER: Yes.

12 THE COURT: You could have a seat. I hope you
13 enjoyed your weekend. The last time we left off when we
14 had a witness on the stand, Dr. Kaplan was finished with
15 direct examination by his attorney and we will have the
16 defendant proceed with cross-examination.

17 Defendant, are you ready?

18 MR. MAHER: Yes, I am, Your Honor.

19 THE COURT: Thank you.

20 MR. MAHER: Could I ask, I know the last time the
21 doctor's notes were marked for identification, if that
22 could be returned to Dr. Kaplan at this time.

23 (Handing.)

24 THE COURT CLERK: I remind you, you are still
25 under oath.

1 THE COURT: We can put him under oath again.

2 THE COURT CLERK: Please stand and raise your
3 right hand.

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

7 THE WITNESS: Yes.

8 THE COURT CLERK: You may be seated. In a loud,
9 clear voice, state and spell your first and last name for
10 the record.

11 THE WITNESS: Jeffrey Kaplan, J-E-F-F-R-E-Y.
12 K-A-P-L-A-N.

13 THE COURT CLERK: And your complete mailing
14 address.

15 THE WITNESS: 160 East 56th street, 11th floor,
16 New York, New York 10022.

17 THE COURT: Counsel, you may proceed.

18 MR. MAHER: Thank you, Your Honor.

19 DR. J E F F R E Y K A P L A N called as a
20 witness by and on behalf of the Plaintiff, after having
21 been first duly sworn, was examined and testified as
22 follows:

23 CROSS-EXAMINATION (continued)

24 BY MR. MAHER:

25 Q Dr. Kaplan, you may recall last time that you were here

1 the other day, we were talking about events that happened when
2 Mr. Paiba first came to your office on March 14th of 2019.

3 Do you recall that?

4 A Yes, sir.

5 Q All right. And at that time, did you refer Mr. Paiba
6 for an MRI of his left knee?

7 A Yes.

8 Q And was that MRI referral to Kolb Radiology?

9 A That's where he had it done. I believe I wrote it on a
10 Kolb prescription pad, yes.

11 Q How long after your initial examination of March 14,
12 2019, was it that Mr. Paiba was able to get an appointment to
13 have an MRI of his left knee performed?

14 A Looks like he had it done on that day.

15 Q So he was able to get not only your prescription, but
16 the test done instantaneously on the same day?

17 A Not instantaneously, but the same day, yeah.

18 Q Was a report prepared regarding the MRI of the left
19 knee that was performed on March 14th of 2019?

20 A Yes.

21 Q Who prepared that report?

22 A Looks like Dr. Kolb read that report.

23 Q Dr. Thomas Kolb, correct?

24 A Yes.

25 Q Did you review this report?

1 A I did.

2 Q Is there a copy of the report prepared by Dr. Kolb
3 contained within the file that you brought here?

4 A Yes.

5 Q Could I ask you to draw your attention to that report?

6 A Yes.

7 Q The report that was prepared by Dr. Kolb following his
8 review of his MRI of March 14, 2019, does it contain a finding
9 of a tear of the medial collateral ligament?

10 A It's a partial tear, yes.

11 Q But when you performed your operation of Mr. Paiba's
12 left knee on August 28th of 2019, no tear of the medial
13 collateral ligament was observed; is that fair to say?

14 A That's correct. It's outside of the joint so it's not
15 observed.

16 Q If there had been a tear, it's not observed, you didn't
17 observe it during your operation because it's outside of the
18 joint or you didn't look at the MCL? What are you saying?

19 A You can't see an MCL during an arthroscopy. You can
20 find from physical exam whether it was stable or not. I didn't
21 find it to be a significant finding because I didn't find
22 instability.

23 Q In your operative report, did you examine the medial
24 collateral ligament?

25 A Not during that operation, no. You don't see it during

1 an arthroscopy.

2 Q We'll get back to your operative report shortly.

3 A Okay.

4 Q In this report prepared by Dr. Kolb, is there a finding
5 of an eight millimeter nondisplaced subchondral trabecular
6 fracture versus evolving osteochondral defect?

7 A Yes, sir.

8 Q When you performed the operation on Mr. Paiba's knee on
9 August 28th of 2019, did you find an eight millimeter
10 nondisplaced subchondral trabecular fracture?

11 A I found what you can see in arthroscopy, which is the
12 chondral portion damage, not the -- you can't see into the bone
13 with an arthroscopy, which is the osteochondral portion.

14 Q Let's get this straight. You put a camera inside of
15 the patient's knee?

16 A That's correct.

17 Q And you did not observe an MCL tear and you did not
18 observe this fracture that's referred in the Kolb Radiology
19 report?

20 A So again, you're looking inside the joint with a
21 telescope. You can see the surfaces of the joint and you can
22 see what is contained within the joint. The structures that
23 this gentleman is pointing out are not visible with a camera.

24 You can see the joint surface, which is a portion of
25 this, where we performed a chondroplasty, but we're not looking

1 inside the bone, we're looking inside the joint to see the
2 remnants of the osteochondral defect.

3 Q Well, if Dr. Kolb made mention to conditions that you
4 couldn't find or didn't find during your operation, would it be
5 fair to say that Dr. Kolb's report would be an over-reading of
6 the films?

7 A No, not at all.

8 Q Your testimony is that Dr. Kolb is not making findings
9 that aren't actually there when you performed your operation?

10 A Those are findings that we couldn't see even if they
11 were there and I believe certainly the sequelae of those
12 injuries are there, but again -- could I see the model?

13 THE COURT OFFICER: Handing the witness
14 Plaintiff's 8 for identification.

15 THE COURT: Next time, you'll ask me.

16 THE WITNESS: I am sorry, I thought I was supposed
17 to -- sorry, I really am.

18 A When you have a camera, you can look inside the joint
19 but you can't look inside the bone, which is where the trabecula
20 is. The trabecula is this lacy bone inside.

21 Q Okay. But your observations during your surgery did
22 not confirm the findings that are contained in Dr. Kolb's report
23 relating to the MCL and the fracture?

24 A Those are insignificant findings.

25 Q They are insignificant, okay.

1 A Yeah, yeah, absolutely.

2 Q And I think you also may have said that with respect to
3 your findings relating to the ACL tear; is that correct?

4 A I agree with you, yes.

5 Q It's insignificant?

6 A Those are injuries that don't have a mechanical
7 component to them. He had no instability of his ACL. I don't
8 think it's a big injury. To me, it's insignificant.

9 The medial collateral ligament also, I found no
10 instability, so I am not going to fix that. And inside the bone
11 you just can't see and those usually heal on their own anyway.

12 Q In other words, if a patient came to you with a minor
13 tear of the ACL, you would not be recommending surgery, correct?

14 A I would not.

15 Q Because the function of the ACL is working just fine?

16 A Yes, sir.

17 Q If you observed a minor tear of the ACL during your
18 operative procedure, there's no way for you knowing when this
19 occurred; is that also correct?

20 A It depends what the symptoms are, but I am not sure
21 what you are asking me. The timing of it?

22 Q Well, Doctor, you know you're offering testimony not
23 only in this case regarding your medical procedures and your
24 expertise, but also about issues of causation between accident
25 and injury.

1 A Right.

2 Q What I am asking you with respect to this appointment
3 is, you go in to perform a surgery, you see a very minor
4 insignificant tear of the ACL. Would it be fair to say that as
5 you sit here now, there's no way for you to know whether or not
6 that minor, insignificant tear of the ACL was related to the
7 accident of March 6, 2019, or not?

8 A There's no 100 percent certainty to that, that's
9 correct.

10 Q You can't say with any reasonable degree of medical
11 certainty that the injury, however slight it was to the ACL, was
12 caused by the accident of March 6, 2019?

13 A With a reasonable degree of medical certainty is not a
14 hundred percent and since I have no history of him having
15 injured his left knee before, I would assume that this minor
16 injury happened at that time, that would be my medical -- with a
17 reasonable degree of medical certainty, my opinion.

18 Q And that would rely on the accuracy of the information
19 being provided to you by the patient at the time of your
20 examination, correct?

21 A That is correct.

22 Q Now, let's just go back now.

23 During the operation that you did --

24 A Yes.

25 Q -- back on August 28th of 2019, I believe you mentioned

1 that you found presence of an osteochondral defect?

2 A Let's see. He had an articular surface injury of the
3 medial tibial plateau.

4 Q Is that a condition that can occur by virtue of
5 repetitive stress on the joint?

6 A Sure.

7 Q In this case, Doctor, you recall that you were shown
8 x-rays from the date of the accident which showed presence of
9 tricompartmental degenerative changes in the knee, correct?

10 A That's correct.

11 Q And you never reviewed those films?

12 A Those films from the hospital?

13 Q The films from Elmhurst Hospital.

14 A Yeah, I only saw the report, yes, sir.

15 Q Which indicate basically throughout the knee --
16 tricompartmental, all three compartments -- there were
17 degenerative changes?

18 A I believe they call them mild degenerative changes,
19 yes.

20 Q You didn't review that film?

21 A I didn't have that film, correct. I only had the
22 report.

23 Q Right. And these degenerative changes could be causing
24 or be representative of arthritic conditions in the knee that
25 would have been existent on the date of accident, correct?

1 A Sure.

2 Q So those positive findings that were found in the
3 emergency room on the day of the accident, they weren't caused
4 by this accident, right?

5 A The degenerative changes were not, that's correct.

6 Q When I asked you about the mechanism of the injury and
7 whether that was important, it appeared to me you were being a
8 little dismissive regarding that question.

9 You know, I think you just said, well, I know you can
10 get injured by falling off a ladder.

11 Do you kind of remember saying that?

12 A Say that again. I am sorry.

13 Q Didn't you give testimony to the effect, I was asking
14 you about mechanism of the injury and I believe you told me that
15 other than the statement that he fell off a ladder, you didn't
16 know anything about how he fell regarding mechanism of the fall,
17 correct?

18 A That's correct. He fell off a ladder, that's what I
19 know.

20 Q When I asked you whether or not it would be important
21 to know that in the context of saying whether or not a
22 particular accident caused an injury, I believe your response
23 was, well, I know that you can get hurt falling off a ladder.

24 Do you remember saying that?

25 A You are paraphrasing too much, which is -- I said I

1 know you get injured falling off a ladder and his history is he
2 had no symptoms before that and from the time I saw him until
3 the time I operated on him, he had buckling, so I believe
4 something happened when he fell off the ladder. He doesn't
5 remember how he fell off the ladder as far as I know exactly, so
6 I don't put that, that's correct.

7 Q Well, are you aware Mr. Paiba was involved in a slip
8 and fall accident in May of 2017?

9 A 2017, no.

10 Q And so if he was involved in a -- just having that
11 fact, knowing he was involved in a prior accident, given your
12 logic, isn't it possible that he could have had these symptoms
13 related to that accident?

14 A He told me he did not have symptoms.

15 Q Again, you are relying on the accuracy of what the
16 patient's telling you?

17 A That's what doctors do. I would believe you if you
18 came in and told me something.

19 Q Fair enough. I can't believe that. Just kidding.

20 How about if Mr. Paiba had been involved in an assault
21 back in May of 2010 where he was struck and fell to the ground
22 and he subsequently made complaints of back pain, couldn't that
23 be an issue?

24 A Back pain is not the same as knee pain, no. He didn't
25 have buckling. He was able to work and climb ladders.

1 Q Right, but people do work and climb ladders even though
2 they are suffering from arthritic conditions, do they not?

3 A Arthritic conditions, yes. But if they are buckling on
4 a daily basis, I don't know many people that do.

5 Q Well, your initial report of March 14th of 2019 I
6 believe --

7 A Yes, sir.

8 Q -- there is a section here that's called Past Medical
9 History?

10 A Yes.

11 Q At that time did Mr. Paiba advise you that he had no
12 prior history of an injury to either his left knee or his lower
13 back?

14 A He did.

15 Q Okay. So if hypothetically Mr. Paiba had a prior
16 injury to his lower back in 2010 and testified under oath in
17 another proceeding that he went for an MRI of his lower back
18 following that accident, but when you spoke to him he didn't
19 tell you anything about that, would it be fair to say, Dr.
20 Kaplan, that the patient, Mr. Paiba, was being less than
21 truthful when you asked him about his prior medical history?

22 MR. SHECTMAN: I will make an objection, Your
23 Honor.

24 THE COURT: Overruled.

25 A I certainly think it's possible. What I would ask you

1 is, what did that MRI show? If it showed no injury, then he is
2 being accurate saying he had no injury to the lower back. He
3 may have hurt his back, he may have had pain, spasm, contusion.
4 I don't know what that MRI showed. But I agree with you it's
5 not what I was told.

6 Q You are relying on -- your opinion's based upon him
7 being truthful to you?

8 A That's correct.

9 Q Right. And if there was evidence that he had a prior
10 accident and that he had an MRI of his lower back and that he
11 was in bad pain, then he would not have been truthful when he
12 related his prior medical history to you?

13 A Regarding his back, that's correct.

14 Q You expect him to be truthful as to all parts of the
15 questioning, correct?

16 A I certainly hope so.

17 Q So now let's take a look at the operation that you
18 performed on August 28th of 2019.

19 A Okay.

20 Q During that operative procedure, you observed a complex
21 tear of the medial meniscus?

22 A Yes.

23 Q And are tears of the medial meniscus relatively common?

24 A Related to what?

25 Q In the human population.

1 A It's a vague statement. People who tear their meniscus
2 generally tear their medial meniscus, if I am understanding your
3 question.

4 Q A tear of the medial meniscus, that's something that
5 can be caused by a traumatic accident, correct?

6 A Yes.

7 Q And it's also a condition, would it be fair to say,
8 that can occur over time as a result of wear and tear on the
9 body, correct?

10 A Yes.

11 Q So you could be walking around with a tear in the
12 medial meniscus and not really know about it right away,
13 correct?

14 A You may never know about it as long as you are not
15 buckling on a daily basis.

16 Q So a tear of the medial meniscus is something that can
17 develop as a result of the aging process?

18 A Absolutely.

19 Q And as we get older, people are more susceptible,
20 Doctor, for lack of better word, to developing these
21 degenerative tears of the medial meniscus?

22 A Yes.

23 Q Would it be also fair to say, Doctor, that individuals
24 who are either clinically overweight or clinically obese would
25 be more prone to developing tears of the medial meniscus?

1 A I think that's probably generally true.

2 Q Would it also be fair to say that individuals who
3 perform manual labor are more prone to developing degenerative
4 tears of the medial meniscus?

5 A Certainly doing construction work can be associated
6 with that for sure.

7 Q Because of all of the bending and lifting and going up
8 and down, they are putting more pressure on the joint than your
9 average person who's not engaged in manual labor, correct?

10 A I believe that's the general idea, yeah.

11 Q So do you know as you sit here now, Dr. Kaplan, what
12 Mr. Paiba's age was on the date of the accident?

13 A I don't recall exactly, but let's see. I can calculate
14 it for you quickly if I --

15 Q Sure.

16 If I were to represent to you that he was 51 years old
17 on the day of the accident, would you agree with that?

18 A That sounds about right, because I know he was 56 the
19 last time I saw him. Actually, yes. I said 51 years old his
20 first visit with me.

21 Q As far as age goes, he is in the wheelhouse for
22 somebody to have a degenerative tear of the medial meniscus?

23 A I think you can have a degenerative tear at that age
24 for sure not associated with buckling and locking.

25 Q As far as his occupation, what was his occupation?

1 A He was a laborer, construction laborer.

2 Q So again, he would be somebody who would be more prone
3 to developing this type of degenerative condition?

4 A More prone than what he would be prone to because of
5 his job, more prone than --

6 Q More prone than someone like yourself.

7 A I am a marathon runner who is more prone, but someone
8 like you who is sedentary, absolutely.

9 Q Do you recall what Mr. Paiba's weight was back --

10 A I don't.

11 Q If I were to represent to you that he stood
12 approximately 5-foot 5-inches and weighed in excess of 200
13 pounds, would he meet the BMI criteria by the Government for
14 being clinically obese?

15 A I would have to calculate it, but that's a large gap,
16 yeah.

17 Q So as you sit here now, you would agree with me that
18 back on the date of the accident, on March 6, 2019, Mr. Paiba
19 had not one, not two, but three risk factors which predisposed
20 him to having a degenerative tear of the medial meniscus?

21 A Absolutely. And as I clearly testified to prior, he
22 could have had a tear. He didn't have buckling every day.

23 Q When he was seen in the emergency room on the day of
24 the accident, they actually found degenerative conditions in all
25 three compartments, tricompartamental degenerative changes,

1 correct?

2 A That's not speaking about the meniscus, but yes, that's
3 correct.

4 Q Right. But the CT scan doesn't actually visualize the
5 meniscus, correct?

6 A Not as well as an MRI, that's correct.

7 Q Okay.

8 Now, Doctor, in your practice, have you ever performed
9 a procedure known as a medial meniscus repair?

10 A Yes.

11 Q And are there patients on whom a mechanical repair can
12 be performed with respect to a tear of the posterior horn of the
13 medial meniscus?

14 A Certain patterns of tear, yes.

15 Q I recall you saying that you could not repair this
16 gentleman's meniscus because it was a complex tear?

17 A That's correct.

18 Q So is it your testimony that simply because it is a
19 complex tear, you cannot under any circumstances perform a
20 repair of the meniscus?

21 A The complex pattern this gentleman had was not
22 repairable, I will put it that way.

23 Q With respect to this patient?

24 A Yes.

25 Q What I am asking is, I believe you made a statement to

1 the jury, I can't perform a repair because it's a complex tear.

2 Do you remember saying that?

3 A I don't, but if I did, it was strictly speaking about
4 this patient.

5 Q Would you agree with me then, Doctor, yourself and
6 other surgeons do, depending on the patient, perform repair
7 surgery of patients who have a complex tear of the posterior
8 horn of the medial meniscus?

9 A Not this pattern.

10 Q Just if you could answer the question.

11 A I did.

12 Q Independently of this patient, in your practice as an
13 orthopedic surgeon, are there patients who have a complex tear
14 of the medial meniscus and you are able to perform a meniscal
15 repair?

16 A There are some, yes. It would be rare, but yes.

17 Q Would it be more accurate to say, Doctor, that a repair
18 of the medial meniscus cannot be performed when the cause of the
19 tear is degenerative in nature?

20 A No.

21 Q Can you perform a repair of a degenerative tear of -- a
22 complex tear of the medial meniscus?

23 A Again, it depends on the pattern.

24 Q Well, isn't it accurate to say, Doctor, that when a
25 tear of the meniscus is caused by degeneration, that the fibers

1 that are left of the meniscus are spaghetti-like and they are
2 incapable of being sewn back together?

3 A That can happen by trauma too. It just depends on the
4 pattern and where in the meniscus the tear is and what portion
5 of the meniscus you can debride, clean up, and then repair.

6 Q Okay, but just focusing on a patient that comes to you
7 that has a tear that's not caused by trauma, they come to you
8 and say, I wasn't involved in any accident, Doctor, I woke up
9 one day and all of a sudden the pain has gotten to the point
10 that I need to seek medical assistance, right?

11 A Yes.

12 Q And you take a look and you see something -- a meniscus
13 that's all basically shredded up because of degeneration.

14 A So not from trauma?

15 Q Not from trauma. Would it be fair to say when dealing
16 with patients like that, you would not recommend a repair
17 operation because as a surgeon, it would be impossible for you
18 to take those degenerative strands and sew them together?

19 A Well, if there were strands, it wouldn't matter if it
20 was degenerative or traumatic, you wouldn't be able to sew them
21 together, that's what I am talking about. It has to do with the
22 pattern.

23 Q You are not going to agree with me that when someone
24 has a degenerative tear, it's not the custom and practice to
25 recommend a repair surgery?

1 A I think it happens less often than -- you would not
2 repair it more often than you would repair it. But if it's an
3 athlete who wants to continue doing things, you can debride an
4 appropriate portion and still have something left to repair.
5 You would repair it.

6 Q And if someone has a traumatic tear of the meniscus, of
7 course then it would be much more -- depending on the location
8 and the blood supply to the area, much more likely that you
9 would be able to sew those pieces of the meniscus back together?

10 A You are saying exactly what I am saying. It depends on
11 the pattern.

12 Q Okay. But in this instance, you concluded based upon
13 your observations when you had this surgery that it would be
14 impossible for you to sew the meniscus back together?

15 A It would not have been impossible, but it wouldn't have
16 helped him because it wouldn't have grown back together by
17 sewing it.

18 When you cut your skin and have to put stitches in it,
19 the skin has to grow together, right? If you sew together a
20 scab, you would put the stitches in nothing. Similar situation
21 in the meniscus. You have to have viable tissue that's going to
22 grow together. All I am doing by repairing is putting it in the
23 proper position.

24 Q When you have a degenerative condition of the meniscus,
25 you don't have viable tissue to sew together?

1 A The degenerative portion is not, but you can debride
2 the degenerative portion and if there's enough left, you can sew
3 it together.

4 Q Would it be fair to say based upon your observations
5 during this operation, you concluded there was not viable tissue
6 to sew this meniscus back together?

7 A That's correct.

8 Q Now, the notes from your initial visit of March 14th of
9 2019, do those contain a recommendation for physical therapy?

10 A Yes.

11 Q Do you recommend physical therapy to your patients to
12 see if possibly they can avoid having surgery in the first
13 instance?

14 A That's correct.

15 Q When you saw the patient on March 14, 2019, how
16 frequently did you recommend that Mr. Paiba go for physical
17 therapy and for how many weeks?

18 A Generally I recommend twice a week for six weeks as an
19 initial visit, and that's exactly what I did.

20 Q You recommended two times a week for six weeks. Do you
21 know, Dr. Kaplan, where Mr. Paiba went for his physical therapy?

22 A I did not get records from the physical therapist that
23 he attended, so I don't know as we sit here.

24 Q Did you review the progress note from the physical
25 therapy center?

1 A As I said, the physical therapy center never sent me
2 records.

3 Q Did you ever speak to any of the doctors, therapists or
4 PA's who may have been working at the physical therapy center?

5 A Not that I recall.

6 Q And so then, Doctor, if hypothetically the records from
7 Advanced Rehabilitation of Jersey City show that Mr. Paiba went
8 for a total of eight therapy visits on his knee between March
9 14th of 2019 and when he ultimately had his surgery on
10 August 28th of 2019, would it be fair to say that Mr. Paiba
11 didn't follow your directives regarding physical therapy?

12 MR. SHECTMAN: Note my objection, Your Honor.

13 THE COURT: Overruled.

14 A That is not what I prescribed. I don't know what his
15 reason for doing that was.

16 Q You told him to go twice a week for a period of six
17 weeks?

18 A That's what --

19 Q What I am saying to you is, what happened, that he
20 didn't follow your recommendations?

21 A Or was unable to, that's correct.

22 Q Okay. So under those circumstances, he didn't really
23 give therapy a fair shot before moving forward with the surgery,
24 correct?

25 A I would have preferred him to have 12 session, as I

1 did, but he had eight.

2 Q Now, after the operation that you performed on
3 August 28th of 2019, did you once again recommend that Mr. Paiba
4 go for post-surgical physical therapy?

5 A Yes, I did.

6 Q Do you know where he went for his post-surgical
7 physical therapy?

8 A I do not.

9 Q What was your recommendation as to the frequency with
10 which he should be going for physical therapy following the
11 operation that you performed on August 28th of 2019?

12 A Looks like the same recommendation of twice a week for
13 six weeks.

14 Q And do you know where he went for this post-surgical
15 physical therapy?

16 A I think you just asked me that. No, I don't have the
17 notes from there, so I don't know.

18 Q Did you ever review the records of that facility?

19 A As I say, I don't have the notes from there.

20 Q And you never spoke to any doctors, PA or therapist who
21 may have been working at that center?

22 A I don't recall.

23 Q Hypothetically, Doctor, if the records from Sports Med
24 PT reveal Mr. Paiba went for a total of five physical therapy
25 visits in September of 2019 and only one visit in October of

1 2019, would it be fair to say that he failed to comply with your
2 postoperative instructions regarding physical therapy?

3 MR. SHECTMAN: Note my objection, Your Honor.

4 THE COURT: Overruled.

5 A Again that's not what I prescribed, no. It's not
6 compliant with what I had written, yeah.

7 Q Isn't it also true, Doctor, that you tell all your
8 patients it's very important following knee surgery to be
9 compliant with the physical therapy recommendations, correct?

10 A I definitely tell them to do therapy, yes, and that
11 it's important.

12 Q Because the outcome of their function of their knee is
13 going to be very dependent on whether or not they do the
14 physical therapy that's prescribed for them, right?

15 A It really depends on the patient. I personally like
16 for the patients to do as much therapy as they can, certainly
17 like them to follow my prescription. Some patients do, some
18 patients don't.

19 Q If they don't do the therapy, it's going to affect how
20 they are able to walk and how they are going to be able to
21 function based upon following the surgery; is it not?

22 A I don't think that's a fair statement. I think you
23 have to individualize for the patient. I have patients who have
24 therapy -- I mean, have surgery, do a couple visits to therapy
25 and feel great and don't do anything, yeah.

1 Q Did Mr. Paiba return to your office on October 3rd of
2 2019?

3 A Let's see. Yes, uh-huh.

4 Q And I just want to turn your attention to the portion
5 of your report of that date where it says, Objective
6 Transcription.

7 A Yes, uh-huh.

8 Q Now, at that time of Mr. Paiba's October 3rd, 2019,
9 visit, did you note the presence of quadriceps atrophy and
10 weakness?

11 A Yes.

12 Q Now, Doctor, what role does the quadriceps muscle play
13 with respect to a patient's ability to walk?

14 A The quadriceps muscle is the thigh muscle and helps
15 extend the knee. It also acts as a stabilizer of the knee when
16 it's straight.

17 Q So it's pretty critical to a properly functioning knee,
18 this muscle, right?

19 A To proper ambulation, yes, uh-huh.

20 Q And if the quadriceps muscle isn't firing and
21 functioning properly, it's going to be really difficult for the
22 patient to walk, correct?

23 A There is a huge range there, so you are making a very
24 broad, simplified statement. He has quadriceps function, so he
25 is able to walk and he is able to fire about the knee, it's just

1 weaker than the other side.

2 Q Right. Doctor, when you perform arthroscopic surgery
3 such as you did in this case, it is very common for patients to
4 experience weakness in the quadricept muscle as a result of the
5 surgical procedure?

6 A It's not a result of the surgical procedure, it's a
7 result of resting the knee after the surgery as well as not
8 using it properly prior to the procedure and it can be related
9 to other problems as well.

10 Q This is a frequent concern that doctors have following
11 an arthroscopic procedure, is that the quadricept muscle is
12 going to remain weak and atrophy, correct?

13 A Yes.

14 Q That's why you prescribe aggressive physical therapy
15 after the surgery, because as a doctor, you know that's what is
16 going to happen, right?

17 A Again, I don't agree with your characterization. It's
18 not aggressive physical therapy, it's physical therapy to
19 rehabilitate the muscle, certainly, and work on the motion of
20 the joint. It's for many reasons.

21 Q This is not an unexpected outcome, in other words, that
22 immediately following an arthroscopic knee surgery such as the
23 one you did here, there's going to be a weakness in the
24 quadricept muscle which is going to affect the patient's ability
25 to walk?

1 A It can affect the ability to walk. It doesn't
2 necessarily, but yes.

3 Q That's why going for therapy is critical in order to
4 regain proper use and function of the leg?

5 A It certainly helps.

6 Q Right. And in this instance, Mr. Paiba did not do
7 that, correct?

8 A He went to some therapy but not -- did not complete my
9 prescribed prescription, that's correct.

10 Q And this may seem like a bit of a silly question,
11 Doctor, but if the patient didn't go for many of his
12 post-surgical physical therapy visits in September and October
13 of 2019, would you agree with me that his failure to miss those
14 visits had absolutely nothing to do with the COVID pandemic?

15 A That would be before the COVID pandemic, yes.

16 Q Because COVID happened in 2020?

17 A That's correct.

18 Q And this surgery was done in 2019?

19 A That's correct.

20 Q I just want to turn now to your notes of May 13th of
21 2020.

22 A Okay.

23 Q And if you could just look to the second paragraph of
24 your report.

25 A Okay.

1 Q Did you at that time ask Mr. Paiba whether he was
2 experiencing any hip or groin pain?

3 A Yes, uh-huh.

4 Q How did he respond to that question?

5 A On questioning, he does not have any anterior hip pain
6 or groin pain.

7 Q Could you complete the sentence?

8 A And I indicated, is referring to the buttock and
9 sciatic-type pain.

10 Q In other words, when you saw him now more than a year
11 after the accident, he wasn't having any hip pain and he wasn't
12 having any groin pain and to the extent he was having pain, it
13 was in the buttocks and of a sciatic nature, correct?

14 A Do you mean -- if I could explain. I agree with you,
15 yes.

16 THE COURT: You answered the question. Next
17 question.

18 Q That's what you wrote in your notes?

19 A Yes.

20 Q You don't have an independent recollection regarding --
21 as you sit here now regarding this visit, correct?

22 A This was a phone visit because of COVID, so I didn't
23 see him on that day.

24 Q Okay. Fair to say that you don't have an independent
25 recollection of this particular Tele-medicine visit in May of

1 2020, correct?

2 A I think that's correct.

3 Q So we're relying exclusively on your notes?

4 A That's correct.

5 Q Thank you.

6 Did you see Mr. Paiba again on August 20th of 2020?

7 A Yes, uh-huh.

8 Q And at that time did he make any complaints of weakness
9 in his legs?

10 A No, sir.

11 Q And did he make any complaints of numbness or tingling
12 in his legs?

13 A Not that I recall.

14 Q Now, I believe, Dr. Kaplan, that when we left off
15 yesterday, you were saying that you were of the opinion that at
16 some point in time you believed that Mr. Paiba will need to have
17 a total left knee replacement performed, correct?

18 A I believe so yes.

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

21 (Continued on following page.)

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25

1 CROSS-EXAMINATION CONTINUED

2 BY MR. MAHER:

3 Q And Dr. Kaplan, would you agree with me that the
4 presence of aggressive degenerative conditions of the knee can
5 lead to the need for total knee replacement surgery?

6 A Yes, sir.

7 Q Okay. So just because a patient is a candidate for
8 knee replacement surgery doesn't necessarily mean that the need
9 for surgery was caused by an individual traumatic event or
10 accident?

11 A I think it was certainly -- I think those two things
12 are related. Whether there's a 100 percent causal connection, I
13 agree with you, he probably had some degenerative change
14 beforehand. Having this trauma accelerates that.

15 Q Okay.

16 Well, so once again, you never saw this patient before
17 the incident, correct?

18 A He didn't have a knee problem before the incident,
19 that's right.

20 Q Well, he reported to you that he didn't have a knee
21 problem before the accident; is that more accurate to say?

22 A No. Based on his history and I have never seen records
23 of things from before the accident, yes.

24 Q Well, we know that he had degenerative changes in his
25 knee before the accident?

1 A Without symptoms, yes.

2 Q And again, would people who are clinically obese,
3 people who work manual labor, would those individuals be more
4 likely to be individuals who eventually would need total knee
5 replacement surgery?

6 A I believe we've covered that. Absolutely.

7 Q Okay.

8 Now, do your notes anywhere indicate that you examined
9 the patient's right knee?

10 A I'm sure at some point we examined it just for motion,
11 but I don't do a complete exam on that side, as far as I recall.

12 Q So if he had degenerative conditions of his right knee,
13 that wasn't something you looked for?

14 A I wasn't treating his right knee, that's correct.

15 Q Okay, but as part of your examination, wouldn't you
16 examine the whole body?

17 A No.

18 Q No?

19 A That's not the way orthopedics works.

20 Q Okay.

21 A When you go to a doctor, do they examine your whole
22 body?

23 THE COURT: Doctor, the questions come from the
24 attorney and the witness answers the questions.

25 Q Okay. Now, Doctor, the facility that you work at, NY

1 Ortho Sports Medicine & Trauma, P.C.?

2 A Yes, sir.

3 Q Are you the owner of that facility?

4 A I am.

5 Q Okay. You're the sole owner, correct?

6 A I am.

7 Q All right. So the other day we had a little testimony
8 about your fee for coming to court?

9 A Yes.

10 Q And I believe, in response, you said that your office
11 gets paid and that you get paid a salary?

12 A That's correct.

13 Q All right, but you omitted the fact that you're the
14 owner, right?

15 A I'm not omitting that fact. That's not always
16 something that works out for me. In fact, there are times when
17 I don't pay myself a salary because the income is not what it
18 should be.

19 Q I see.

20 But in responding to the question, you know, you said
21 you are an employee. You left out the fact that you're the
22 owner, the sole owner?

23 A I wasn't asked that. I would have absolutely told you
24 that was correct. But I'm also an employee.

25 Q Well, the only thing that you were asked was whether

1 you were paid, and you deflected on that question by saying that
2 the money was going to your business and that you were an
3 employee.

4 Remember that?

5 A That is the truth, it goes to my business.

6 Q Okay.

7 A I'm an employee of that business and that's how I get
8 paid.

9 Q But you left out the part that you're the sole owner of
10 the business?

11 A It doesn't affect the way that I get paid.

12 Q And you decide how much you are going to get paid or
13 not?

14 A Or not. Or not.

15 Q Okay.

16 A As the owner, sometimes I don't get paid.

17 Q And in this case, with respect to Mr. Paiba, you
18 referred him to Dr. Grimm?

19 A I did.

20 Q Okay. And back on the date of this accident, was
21 Dr. Grimm one of your employees?

22 A Dr. Grimm is an employee of the NY Ortho Sports
23 Medicine & Trauma, P.C.

24 Q Okay.

25 Now, just -- I know that you were shown the MRI of the

1 left knee the other day?

2 A Yes.

3 Q Would it be fair to say, Doctor, that there was nothing
4 that you could see on that imaging that would definitively
5 indicate to you whether or not the tear of the posterior horn of
6 the medial meniscus was caused by trauma as opposed to
7 degenerative changes?

8 A Yeah, there's no time stamps on the findings.

9 Q You can't tell cause and effect just by looking at the
10 MRI film?

11 A That's correct.

12 Q You are relying on the patient to give accurate history
13 regarding his past medical care to reach your conclusion that
14 the accident caused the injury?

15 A I'm relying on his history and, you know, the medical
16 records that are available to me, sure.

17 Q Okay. And but you didn't have any medical records
18 available to you regarding his prior medical history?

19 A That's right because, as far as I know, no one has
20 shown me anything that said he had a prior injury, so you're
21 right.

22 Q Right.

23 So the film, you can't tell whether or not it was
24 caused by the accident, you didn't review any pre-accident
25 records and you didn't treat him before the date of the

1 accident?

2 A I didn't treat him and there are no prior medical
3 records regarding his knee that I have seen, that's correct. I
4 don't think he had an injury beforehand. And what I'm relying
5 on is his history, that he had daily buckling following the
6 accident.

7 Q And you are relying on the fact that he's going to be
8 truthful with you when he provides that information?

9 A Again, that's -- that's all I'm left with. That's what
10 doctors do.

11 MR. MAHER: I have no further questions, your
12 Honor.

13 THE COURT: Counsel, any redirect?

14 MR. SHECTMAN: I'm sorry?

15 THE COURT: Any redirect?

16 MR. SHECTMAN: Yes, your Honor.

17 REDIRECT EXAMINATION

18 BY MR. SHECTMAN:

19 Q Dr. Kaplan, good morning again.

20 A Good morning.

21 Q I just want to follow-up on some questions and issues
22 Mr. Maher brought up.

23 Now, you were asked, Doctor, that there were certain
24 prescriptions you gave, meaning you prescribed a certain amount
25 of physical therapy sessions to Mr. Paiba both before and after

1 surgery, correct?

2 A Yes.

3 Q Okay. And I believe, it seemed like he basically
4 completed about 50 percent of the PT sessions that he was
5 prescribed?

6 A 60 percent of the first one, yeah.

7 Q Oh. Let's say 60 percent.

8 Are you aware as to the reasons why Mr. Paiba testified
9 that he couldn't make all of his sessions?

10 A No.

11 Q I want you to you assume that Mr. Paiba testified that
12 because of not just the knee issue, but the back and the hip
13 issue, there were certain appointments that he couldn't make.

14 I would like you also to assume that he said he was
15 dealing with diabetes -- unrelated to this accident, of course
16 -- but that when he couldn't get to those physical therapy
17 sessions, which was only about 40 percent of the first that were
18 prescribed, he was doing stretches at home and using a TENS
19 unit.

20 Do you have an opinion whether or not if someone can't
21 get into the office, if doing stretches at home and using a TENS
22 unit, if that would provide some of the benefits of physical
23 therapy in an office?

24 MR. MAHER: Objection.

25 THE COURT: Sustained.

1 Q Well, Doctor, do you believe if Mr. Paiba had gone to
2 every single therapy session prescribed, that he would have
3 avoided the need for surgery?

4 A I don't.

5 Q Why is that?

6 A I think the tear that he had and the symptoms that were
7 associated with you it, as well as the injury to the joint
8 surface would not have been fully corrected by therapy and he
9 likely would have had surgery anyway.

10 Q If Mr. Paiba had gone for those 12 sessions instead of,
11 let's say, seven or eight of those 12, had he gone to all 12,
12 would that somehow heal a complex tear of the medial meniscus?

13 A I don't -- it certainly would not have healed the tear.
14 And I don't think it would have gotten rid of all the symptoms,
15 which is, again, my primary focus are the symptoms.

16 Q Now, we heard that after the operation that you
17 performed, that there was also a series of physical therapy
18 sessions that you prescribed, correct?

19 A Correct.

20 Q If Mr. Paiba had made all of those 12 sessions, do you
21 believe today that he would be able to run?

22 MR. MAHER: Objection.

23 THE COURT: Sustained.

24 Q Well, can you tell me, Doctor, if Mr. Paiba had made
25 all of his physical therapy sessions after surgery, what would

1 be the difference, if any, as to how his condition ended up
2 being?

3 MR. MAHER: Objection.

4 THE COURT: Sustained.

5 MR. SHECTMAN: Judge, I'm just following up on his
6 question.

7 THE COURT: Sustained, Counsel.

8 Q Doctor, what do you think is the effect, if any, of
9 Mr. Paiba not being fully compliant with physical therapy after
10 the operation?

11 MR. MAHER: Objection.

12 THE COURT: Sustained.

13 MR. SHECTMAN: Judge, may I ask the basis? I'm
14 following up on a question.

15 THE COURT: Sustained, Counsel.

16 MR. SHECTMAN: May I ask the basis?

17 THE COURT: It's sustained, Counsel.

18 Q Now, Doctor, I would like you to turn to the visit of
19 5/13/20. Tell me when you are on that visit, Doctor.

20 A Okay.

21 Q Doctor, you were asked on that visit whether or not
22 Mr. Paiba complained of any hip pain, correct?

23 A Yes.

24 Q And you were actually going to explain something but
25 you weren't given the opportunity. Would you now explain what

1 you were going to say regarding the hip.

2 MR. MAHER: Objection.

3 THE COURT: Overruled.

4 A I was simply gonna say that this was over the phone,
5 and so I was trying to drill down on where his pain was coming
6 from. A lot of times people say they have hip pain but they are
7 really having sciatica or buttock pain, as opposed to pain in
8 the hip joint, which is anterior. That's all.

9 Q In fact, can you turn to where it says Assessments and
10 tell us what your assessment was based on the 5/13/20
11 telemedicine visit.

12 A He had had low back pain, so he was status post -- I'm
13 sorry -- he had posttraumatic lumbar pain status post lumbar
14 surgery. He had postraumatic sciatica and what I felt was
15 called piriformis syndrome -- that just relates to one of the
16 muscles called the piriformis muscle -- with left buttock/quote
17 hip pain.

18 Q Let me stop you there, Doctor.

19 If he had told you that there was not any anterior hip
20 pain, why did you note that there was left buttock/hip issues?

21 A For just the reason that I was telling him. I put it
22 in quotes because it's not really hip/joint pain that he was
23 describing, in my opinion. It was buttock pain. And then that
24 he was status post the knee arthroscopy.

25 Q Doctor, when you were talking about the knee

1 replacement in the future, you mentioned about the accident
2 accelerating his condition. Would you please explain to the
3 jury now what you meant by that.

4 MR. MAHER: Objection.

5 THE COURT: Overruled.

6 A So we established that he had some degenerative change
7 in his knee prior to the accident, he is a big guy, he's done
8 labor. Can I say with a hundred percent certainty that he
9 wouldn't have had a total knee replacement in the future? I
10 can't. However, now that I have looked inside his knee, seen
11 the area of injury, taken out the meniscus so that he was no
12 longer buckling, I believe that exacerbated his condition. The
13 accident exacerbated his condition. That it's much more likely
14 that he will require a total knee replacement in the future.

15 Q Now, Doctor, talking about degeneration, what is
16 degeneration, if you could tell the jury? We can focus on if
17 you want to speak generally and then we will be speak specific
18 to the knee?

19 MR. MAHER: Objection.

20 THE COURT: Overruled.

21 A Degeneration is a change that occurs, in this case to
22 the knee, over time. So they have found degenerative changes in
23 people starting in their early 20s and going forward. Not
24 everybody degenerates at the same speed, but everybody
25 degenerates. It's just a wear-and-tear change is the way that I

1 put it with patients a lot, that occurs over time.

2 Q Now, Doctor, when you performed --

3 MR. SHECTMAN: Withdrawn.

4 Q There was degeneration in his knee, correct?

5 A Yes.

6 Q Okay. Was this something that was typical of someone
7 his age, not typical, something else?

8 MR. MAHER: Objection.

9 THE COURT: Rephrase the question, Counsel.

10 MR. SHECTMAN: Sure.

11 Q Doctor, the degeneration you saw in his knee, can you
12 tell us whether or not it was typical or atypical of someone his
13 age?

14 MR. MAHER: Objection.

15 THE COURT: Sustained.

16 Q Well, Doctor, how much degeneration did you see if you
17 had to quantify?

18 MR. MAHER: Objection. This was all gone over on
19 direct and it's beyond the scope of redirect.

20 THE COURT: Sustained.

21 Q Well, Doctor, you had brought up that there's a certain
22 risk factor his age, right?

23 A Yes.

24 Q That was brought up on cross-examination?

25 A Yes.

1 Q Okay. So following up on that, why is age a risk
2 factor in degeneration?

3 A As I say, it occurs over time. And it has been shown
4 to start as early as the 20s and continues. It degenerates over
5 time. So 50s is a time where you start seeing some
6 degeneration, as well. You can see it on x-ray at that time,
7 usually, if you're gonna see it.

8 Q Now, does everybody that has degeneration in their
9 knee, for example, does everybody have pain?

10 A No.

11 Q In fact, is it a fair statement that people in their
12 50s, most people could be walking around with some type of a
13 tear and not even know it?

14 A Yes.

15 Q And then, is it true, Doctor, that you can walk around
16 and not know you have an issue and then trauma, for example,
17 falling off nine feet onto concrete might suddenly activate
18 those symptoms, correct?

19 A That's correct.

20 MR. MAHER: Objection.

21 THE COURT: Overruled.

22 Q Doctor?

23 A That's correct.

24 Q Well, have you seen a single record, were you asked
25 about a single record, anything at all that you have seen that

1 Mr. Paiba had symptoms in his knee before falling nine feet onto
2 concrete?

3 MR. MAHER: Objection.

4 THE COURT: Sustained.

5 Q Well, Doctor, can you please direct me to any record
6 you have seen of complaints in the left knee before this
7 accident of 3/6/19?

8 MR. MAHER: Objection.

9 THE COURT: Sustained.

10 MR. SHECTMAN: Judge, I'm just following up on --

11 THE COURT: Sustained.

12 Q Doctor, why is it that you can have a tear but no
13 symptoms?

14 A It depends on the pattern of the tear and if the piece
15 of the tear is intervening in the joint as you move, which
16 causes the buckling.

17 Q Okay. Now, the buckling, do you have an opinion based
18 upon a reasonable degree of medical certainty if, in fact,
19 Mr. Paiba had these conditions as suggested on cross before this
20 accident, do you have an opinion whether or not he could go up
21 and down a ladder with buckling of the knee?

22 MR. MAHER: Objection.

23 THE COURT: Sustained.

24 Q Now, Doctor, you gave us opinions on causation, I think
25 on direct, as to why you believe these conditions were caused by

1 the fall onto the concrete, correct, off the ladder?

2 A Yes.

3 Q Okay. And you were asked by Mr. Maher just a moment
4 ago about causation, as well, correct?

5 A Correct.

6 Q Okay. Why do you believe that these conditions are
7 from the fall versus degenerative conditions as suggested by
8 defense?

9 MR. MAHER: Objection.

10 THE COURT: Sustained.

11 I need you to rephrase that and define what
12 conditions you're speaking of.

13 MR. SHECTMAN: Sure.

14 Q The buckling, the instability of the knee, those
15 specific conditions that you mentioned, why do you believe those
16 are from the fall, meaning there's a causal relationship rather
17 than as a result of degenerative conditions as mentioned by the
18 defense just a moment ago?

19 MR. MAHER: Objection again.

20 THE COURT: Overruled.

21 A It's my opinion based on what Mr. Paiba told me, as
22 well as the fact that I have not seen any indication from anyone
23 -- which I would assume I would have -- that there was a prior
24 knee problem. I don't suspect that with daily buckling he would
25 have been able to physically carry out his job duties.

1 Certainly not going up and down ladders, that would have been
2 extremely dangerous. And so from when I started seeing him till
3 the time he had surgery, he was having symptoms that are
4 associated with trauma that I believe, from what I've seen, were
5 not there prior.

6 Q Now, Doctor, were you mentioned about an incident that
7 occurred in May of 2017, correct?

8 A Yes.

9 Q Okay, and I believe you said you weren't aware of that,
10 correct?

11 A That's correct.

12 Q I would like you to assume we've had testimony
13 regarding this May 2017 incident in which Mr. Paiba hit his
14 head, his right arm, landed on his back and had some back pain.

15 Does that hypothetical or do those facts have any
16 impact on your opinions regarding the left knee?

17 MR. MAHER: Objection.

18 THE COURT: Overruled.

19 A They do not.

20 Q Why?

21 A He, as far as you've outlined, he didn't injure his
22 left knee, didn't have complaints of the left knee at that time.

23 Q Now, if that's true, all the testimony --

24 MR. SHECTMAN: Withdrawn.

25 Q If none of the testimony regarding the left knee --

1 MR. SHECTMAN: Withdrawn.

2 Q Turning to 2010 regarding an assault that happened to
3 Mr. Paiba, I would like you to assume that he sustained an
4 injury to his mouth, his back and his right knee.

5 Does that in any way impact your opinions regarding the
6 other knee, which is the left knee?

7 MR. MAHER: Objection, your Honor.

8 THE COURT: Overruled.

9 Q Doctor?

10 A Again, same -- same answer. I have heard nothing about
11 his left knee being injured prior to this accident.

12 Q Now, Doctor, if we could turn to your first visit, I
13 believe it's 3/14/19?

14 A Yes, sir.

15 Q Though he might not have said that he had an assault,
16 did he mention to you that he did have a right knee surgery in
17 2012?

18 A Yes.

19 Q And again -- fair enough. Okay.

20 Now, Doctor, if in fact, somebody had a partial ACL
21 tear and a complex tear of the medial meniscus as you described
22 seeing during your surgery, what are the symptoms that you would
23 expect somebody to have?

24 MR. MAHER: Objection. This is beyond the scope
25 of redirect.

1 THE COURT: Sustained.

2 MR. SHECTMAN: Judge, I have nothing further.

3 Thank you, Doctor.

4 THE COURT: Thank you.

5 Anything further inquiry?

6 MR. MAHER: Yes, just very briefly.

7 REDIRECT EXAMINATION

8 BY MR. MAHER:

9 Q Just going back quickly, Dr. Kaplan, to the visit of
10 5/13/2020.

11 A Yes, sir.

12 Q And I believe that on redirect you offered opinion that
13 based upon the information that you were getting from Mr. Paiba
14 during this visit, his complaints of pain, I think you just said
15 were not really hip/joint pain; did you just say that?

16 A That was my understanding on the phone call, yes.

17 Q Right.

18 And so if the patient in this case had a -- or was
19 claiming that he had a tear of the left hip labrum, that would
20 not be reflective here in your analysis of his complaints,
21 correct?

22 MR. SHECTMAN: Objection, your Honor. It's beyond
23 the scope of what I asked.

24 THE COURT: Sustained.

25 Q Okay. Well, you were of the opinion based upon this

1 examination that his complaints of pain, even though it may have
2 touched on the hip, had nothing to do with a tear of the labrum
3 or a direct injury to the left hip, correct?

4 MR. SHECTMAN: Objection, your Honor. It's beyond
5 the scope.

6 THE COURT: Sustained.

7 Q The pain that Mr. Paiba complained to you of on
8 May 13th of 2020, that was not as a result of a condition of the
9 hip; is that fair to say, that was your analysis?

10 MR. SHECTMAN: Objection, your Honor.

11 THE COURT: Overruled.

12 A On that phone visit, what he described to me sounded
13 more like buttock pain, that's correct.

14 MR. MAHER: Nothing further.

15 THE COURT: Thank you.

16 MR. SHECTMAN: Briefly?

17 MR. MAHER: I don't think plaintiff gets to go a
18 second time.

19 MR. SHECTMAN: Well, I'm asking, your Honor. Can
20 I get a follow-up?

21 THE COURT: I think we're finished with this
22 witness.

23 MR. MAHER: Nothing further for me.

24 THE COURT: The witness is excused from the stand.

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

1 THE COURT: Let's excuse the jury for a moment.

2 THE COURT OFFICER: All rise. Jury exiting.

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

5 THE COURT: Everyone may be seated.

6 So with respect to the scheduling for the rest of
7 this week, we have the -- Dr. Touliopoulous is returning
8 tomorrow morning at 11:30?

9 MR. SHECTMAN: Yes, your Honor.

10 THE COURT: Defense counsel, Mr. Maher, when were
11 you able to get your doctor?

12 MR. MAHER: Well, your Honor, Thursday is going to
13 be the earliest date that I'm going to be able to have
14 Dr. Grelsamer, who was scheduled to be here today.

15 I just wanted to inquire before nailing that down
16 what the Court's schedule was on Thursday, meaning that my
17 anticipation was to try to get two witnesses done on
18 Thursday, if possible. But if you had a short day, then I
19 would try to do that on Friday.

20 THE COURT: We have the whole day on March 19th,
21 which is Thursday.

22 What do we have on Wednesday, March 18th?

23 MR. MAHER: I don't have any witnesses that are
24 available to be called on that date.

25 THE COURT: Do we expect to be finished with the

1 doctor tomorrow, Dr. Touliopoulous?

2 MR. SHECTMAN: I would hope so, your Honor. I
3 don't have a witness either for Wednesday, but I expect to
4 finish with Dr. Touliopoulous tomorrow.

5 THE COURT: Do you have any further witnesses
6 after Dr. Touliopoulous?

7 MR. SHECTMAN: I do, your Honor.

8 I've got Dr. Elbaz. That's the gentleman who I'm
9 preparing the affidavit regarding the -- for permission,
10 respectfully, the Zoom, to testify through Zoom.

11 THE COURT: And when is that affirmation expected
12 to be delivered to the Court?

13 MR. SHECTMAN: I can have it by tomorrow or by
14 Wednesday the latest. And this is the doctor observing
15 Ramadan in Egypt. I would likely have him on Monday
16 through Zoom. He won't be available until then.

17 THE COURT: I need the affirmation before the
18 18th. I need it by the 17th.

19 MR. SHECTMAN: Okay, your Honor.

20 Well, the 17th is tomorrow, your Honor.

21 THE COURT: And we have been talking about this
22 affirmation since last week.

23 MR. SHECTMAN: Fair enough. You will have it by
24 tomorrow.

25 THE COURT: So since we have the whole day on

1 Thursday, I'm going to tell the jury to return tomorrow at
2 11:30 and we'll see how far we get with the doctor. They
3 may be here the 18th. We'll make that determination
4 tomorrow morning.

5 And then Monday, March 23rd, is when we will have
6 Dr. Elbaz.

7 Any other witnesses after Dr. Elbaz, plaintiff?

8 MR. SHECTMAN: No, your Honor, that would be all.

9 THE COURT: And then defendant, you have?

10 MR. MAHER: I was planning on calling
11 Dr. Grelsamer on Thursday morning.

12 THE COURT: Right, you said you may possibly have
13 two witnesses that day if we have the whole day.

14 MR. MAHER: Right. Dr. Grelsamer could be here in
15 the morning. Dr. Katzman, who is a radiologist, is
16 scheduled -- has been scheduled to appear Thursday
17 afternoon. And then I have another doctor scheduled for
18 Friday afternoon, which is Dr. Bendo.

19 THE COURT: And when you say Friday afternoon, we
20 are talking about 2 o'clock; is that correct?

21 MR. MAHER: Well, I'll see if the doctor can get
22 here earlier. Obviously, it would've been my preference --

23 THE COURT: Unless, I mean, if you say earlier --
24 I'm sorry, I didn't mean to cut you off.

25 MR. MAHER: What I'm trying to say, your Honor, is

1 that, in a perfect world I would tell Dr. Bendo to be here
2 at 10:00 a.m. on Friday. But his office so far has told me
3 he can't be here, you know, for an afternoon session.
4 Maybe I will try to work on him, try to get him in a little
5 bit earlier.

6 But as of right now, I'm representing that he is
7 going to be here on the afternoon, you know, this Friday,
8 and that we will do Dr. Grelsamer in the morning on
9 Thursday and Dr. Katzman, the radiologist, on Thursday
10 afternoon.

11 THE COURT: Very optimistic view for the last day.

12 MR. MAHER: I know. I know. But you know, the
13 problem is, your Honor, as Counsel has had difficulties
14 with his doctors, it's very hard, very hard to get these
15 doctors. And I'm going to do my best to move things along
16 and get this testimony in to the jury. Some things are
17 just a little bit out of my control since I'm dealing with
18 health care professionals who have a very busy schedule.

19 THE COURT: Fully understand, as long as the Court
20 is aware of what the schedule is prior to.

21 MR. MAHER: Yes.

22 THE COURT: So I am going to call the jury back in
23 and I am going to excuse them until tomorrow morning at
24 11:30.

25 As you all know, my motion calendar is tomorrow

1 morning and it is in person. So as close to 11:30 as we
2 can, that's when we will start.

3 MR. SHECTMAN: Thank you, your Honor.

4 MR. MAHER: Thank you, your Honor.

5 MR. SHECTMAN: Your Honor, may I ask a question of
6 you off the record?

7 THE COURT: We will wait until we are finished
8 with the jury.

9 THE COURT OFFICER: All rise. Jury entering.
10 (Whereupon, at this time, the jury entered the
11 courtroom.)

12 THE COURT: Everyone may be seated.

13 THE CLERK: Do all counsel stipulate to the
14 presence and seating of the jury?

15 THE COURT: Oh, sorry.

16 MR. SHECTMAN: Yes.

17 MR. MAHER: Yes.

18 THE COURT: Okay, Jurors. Good or bad news, we
19 don't have any further witnesses scheduled for today. As a
20 result, we are going to release you today at this time and
21 ask you to return tomorrow at 11:30 because the court has
22 prior business tomorrow in the morning, and we will
23 continue with the plaintiff's case, okay.

24 Again, I will ask you not to discuss the matter
25 amongst yourselves or with anybody else, and not to use the

1 computer or any technology to look up anything that you
2 have heard during the course of the trial, okay.

3 Thank you so much. Enjoy the rest of the day.

4 THE COURT OFFICER: All rise. Jury exiting.

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

7 THE COURT: So we are adjourned until tomorrow
8 morning at 11:30.

9 MR. MAHER: Thank you, your Honor.

10 MR. SHECTMAN: Thank you, your Honor.

11 THE COURT: Yes?

12 MR. SHECTMAN: The Doctor was asking, could I
13 possibly give back the knee model to him which was just
14 marked for identification, as well as his chart which was
15 only marked for identification?

16 THE COURT: Okay. As soon as the court officer is
17 back in the room, he can get it.

18 MR. SHECTMAN: Thank you, your Honor.

19 (Whereupon, the trial was adjourned until Tuesday,
20 March 17, 2026.)

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