

**In The Matter Of:**

*Juan Julca v.*

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

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*Adam Bender & Mark Ramnauth*

*March 16, 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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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). :  
 :  
 -----x

71 Thomas Street  
New York, New York 10013  
March 16, 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 THE COURT: On the record. Case on trial  
2 continued. Appearances are the same. The jury is here. Is  
3 there anything before we bring in the jury, Counsel.

4 MR. MALECKI: No, Your Honor.

5 MR. ROSENGARTEN: No, Your Honor.

6 THE COURT: Please bring in the jury.

7 COURT OFFICER: All rise, jury entering.

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

10 COURT OFFICER: Please be seated.

11 THE COURT: Good morning, members of the jury,  
12 welcome back. There were some interesting sporting events  
13 over the weekend. It was also some award show. If you  
14 enjoy those things, I hope you had a chance to watch. And  
15 we have another jury day today for you. Trust me, I did not  
16 plan it that way but there's -- there are things that I do  
17 not control. At this time, we are on the defendant's case  
18 and we have a witness here. So at this time, I am going to  
19 call Mr. Malecki to call your next witness.

20 MR. MALECKI: Thank you, Your Honor. Defense calls  
21 Dr. Adam Bender.

22 A D A M B E N D E R, a witness called by and on behalf  
23 of the Defendant, upon being duly sworn, was examined and  
24 testified as follows:

25 THE WITNESS: Yes.

**Dr. Bender - by Defendant - Direct**

1 COURT CLERK: Please state in a loud, clear voice  
2 your name and address for the record spelling both your you  
3 first and last names.

4 THE WITNESS: Adam Bender, 1150 Park Avenue,  
5 New York, New York 10128.

6 THE COURT: And the spelling of your name.

7 THE WITNESS: B-E-N-D-E-R.

8 THE COURT: And your first name.

9 THE WITNESS: A-D-A-M.

10 THE COURT: Counsel, your witness has been sworn or  
11 affirmed you. You may inquire.

12 MR. MALECKI: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. MALECKI:

15 Q Good morning, Doctor. Thank you for being here.

16 A Good morning.

17 Q Now, Doctor, are you licensed to practice medicine in  
18 the State of New York?

19 A Yes.

20 Q When were you so licensed?

21 A 1968. I'm just getting the exact date.

22 THE COURT: Just the year is fine.

23 THE WITNESS: 1969.

24 Q And can you tell us about your education starting with  
25 medical school?

**Dr. Bender - by Defendant - Direct**

1           A     Yes, I went to -- I graduated from Columbia College  
2     in -- in Columbia University School of Medicine and after that I  
3     did an internship at -- with Columbia at Harlem Hospital. And  
4     then I did a residency in internal medicine at Columbia at  
5     Harlem Hospital. I did a residency in neurology also at  
6     Columbia at the Neurological Institute of New York.

7                     After that, I was a clinical associate at the neurology  
8     branch of The National Institute of Health where I did a  
9     fellowship in neuromuscular diseases. My specialty is that of  
10    neurology.

11           Q     And did you have any additional training after that?

12           A     After the fellowship?

13           Q     Yes.

14           A     No.

15           Q     And what did you do next professionally?

16           A     I did --

17                     THE COURT: Dr. Bender, I am going to get that  
18     microphone set up a little bit better for you.

19           A     Since then I joined the staff at the Mount Sinai Harlem  
20     as an attending neurologist. I became an associate clinical  
21     professor of neurology at Mount Sinai School of Medicine. I am  
22     also on the staff at Lenox Hill Hospital where I am an attending  
23     neurologist.

24           Q     And you said you were a professor. Is that with a  
25     school?

**Dr. Bender - by Defendant - Direct**

1           A     Associate clinical professor with the Mount Sinai  
2 School of Medicine, yes.

3           Q     And did you participate in any hospital committees?

4           A     I was -- yes, I participated in several committees. I  
5 was also an examiner for the American Board of Psychiatry of  
6 Neurology. I administered the oral examination. I was on the  
7 admissions committee at the Mount Sinai School of Medicine and  
8 various other committees.

9           Q     What does it entail to be an examiner of the American  
10 Board of Psych?

11          A     In years past, in order to be certified in neurology,  
12 you had to take both a written and an oral examination. You had  
13 to examine a patient in front of your colleagues and they had to  
14 judge whether or not you were qualified to call yourself as a  
15 specialist. This was called neuro oral examination. They don't  
16 have that anymore, of course, the limitations and such. But I  
17 was one of the examiners that administered the oral exam.

18          Q     And are you board certified?

19          A     Yes, I am.

20          Q     In what speciality?

21          A     Neurology.

22          Q     And have you published articles in your field of  
23 medicine?

24          A     Yes.

25          Q     And, approximately, how many publications have you

**Dr. Bender - by Defendant - Direct**

1 done?

2 A Approximately, 50 publications mostly in the field of  
3 neuromuscular diseases which is my subspecialty.

4 Q Have you lectured on these subjects?

5 A Yes.

6 Q And what kinds of things did you lecture about?

7 A Various aspects of neurology, mostly a special  
8 condition called myasthenia gravis which is my subspecialty and  
9 various nerve and muscle conditions. I lectured on that and I  
10 also taught medical students, residents and interns throughout  
11 the years.

12 Q And in your career, do you see he patients regularly?

13 A Yes.

14 Q And how long have you been doing that?

15 A I've been -- basically about 30 years or more been  
16 seeing private patients. Before that, I was full-time at Mount  
17 Sinai School of Medicine on the neurology staff.

18 Q And do you also receive any kind of referrals from  
19 other physicians to do examinations on their patients?

20 A Yes.

21 Q And as part of those referrals, do you typically review  
22 medical records of patients?

23 A Yes.

24 Q And when you get referrals from other patients, how  
25 many times would you see those patients?

**Dr. Bender - by Defendant - Direct**

1           A     I'm a consultant neurologist so usually I see the  
2 patient one time as a consultant to sort of get a fresh opinion,  
3 so to speak, as to what's going on. So if you -- I'm called by  
4 orthopedists, neurosurgeons, and in my specialty even other  
5 neurologists as a consultant to see patients. And I see them  
6 usually one time to make -- to give another opinion as to what's  
7 going on.

8           Q     And why would another doctor send someone -- send a  
9 patient to you, a doctor who have seen them for many visits and  
10 you are just going to see them for one?

11          A     Many times when you see a patient many times, many  
12 visits you sort of get anchored in the diagnosis. You sort of  
13 go along with that diagnosis even though others may be present  
14 that you haven't thought of at the time. Frequently  
15 neurosurgeons are not sure whether or not they need to operate  
16 or orthopedists are not sure whether they need to operate and  
17 they ask for my opinion is surgery necessary in this particular  
18 condition. I don't have to be a treating doctor at that time.  
19 I am a consulting doctor.

20          Q     At the request of my office, did you perform an  
21 examination of Mr. Julca?

22          A     Yes.

23          Q     Did he come to your office?

24          A     Yes, he did.

25          Q     Now, when you saw him, I'm correct, you were not his

**Dr. Bender - by Defendant - Direct**

1 treating physician, right?

2 A Correct.

3 Q And when did he first come to see you?

4 A He saw me on August 10, 2022.

5 Q And prior to having a visit with him, did you review  
6 any of his medical records?

7 A I did.

8 Q Did you have an interpreter present for that visit?

9 A Yes.

10 Q Was anybody else present for that examine?

11 A Yes.

12 Q Who else?

13 A It was a legal representative present as well as a  
14 member of my office staff.

15 Q And did you speak with Mr. Julca during this exam?

16 A Yes.

17 Q And what kind of history did you get from him?

18 A Mr. Julca told me that -- I asked him what his problem  
19 was, what he was complaining of. He told me he was complaining  
20 of pain in his low back, both shoulders, and both knees since a  
21 time back in 2018 when he told me he if he will off a  
22 scaffolding while he was at work.

23 Q And did you learn anything about his past medical  
24 history?

25 A Yes.

**Dr. Bender - by Defendant - Direct**

1 Q And what did you learn?

2 A I learned he told me -- actually, he didn't tell me.  
3 It was a subsequent note from JFK Medical Center that he had a  
4 left clavicle disk location and a fracture as a child. So he  
5 had injured his left clavicle which is the --

6 Q Did you learn anything about that injury from  
7 Mr. Julca?

8 A He said he injured his left shoulder while playing  
9 soccer when he was between 11 and 14 years old.

10 Q And once you got the history from him, did you perform  
11 an examine?

12 A Yes.

13 Q And how long did the examine take if you recall?

14 A I don't recall the exact number of minutes but this  
15 was -- how long the examine takes depend upon what I find.  
16 Usually, a normal examine takes about 15 is to 20 minutes. If  
17 it's abnormal, it would take longer depending upon the findings  
18 on exam.

19 Q And in terms of your examination, did you check  
20 Mr. Julca's vitals?

21 A Yes.

22 Q And what did you find out about that?

23 A I found out that he had high blood pressure. It was  
24 relatively significant, 169 over 112. I told him his blood  
25 pressure was high. His general appearance and skin was normal.

**Dr. Bender - by Defendant - Direct**

1 Q And did you check his mental status?

2 A Yes, I did.

3 Q And what does that entail?

4 A The reason we check a lot of things in neurology is  
5 everything is sort of connected, nerves and brain, spinal cord,  
6 connect everything. So an injury or abnormality in one area can  
7 reflect itself in other areas. So even though there was no  
8 history of head injury, I did examine his mental status and that  
9 was done just by taking a history, listening to him, seeing if  
10 he had any difficulty with his memory with his speech and or his  
11 orientation and all of that was normal.

12 Q And did you check anything about his gait or how he was  
13 standing?

14 A Yes. Yes, gait is also very important in neurology  
15 because it is how you walk. It is -- a lot of it is  
16 involuntary, how you move. And as a neurologist, we are trained  
17 to recognize even subtle abnormalities in gait that might  
18 indicate a problem in the nervous system. We test it by just  
19 watching the patient walk back and forth. We look at how he  
20 swings his arms. We have him walk one foot in front of the  
21 other, heel to toes, see how he's balancing, March in place with  
22 his eyes closed and his hands up to see if there is any drifting  
23 from one side to the other. These are all very subtle but  
24 significant tests to see if there is any problem in either the  
25 sensory or the motor aspect of walking. And in Mr. Julca's case

**Dr. Bender - by Defendant - Direct**

1 it was completely normal.

2 Q And did you check out any cranial nerves?

3 A Yes. Again, cranial nerves are the -- there are 12  
4 cranial nerves. Basically, these are nerves that supply all of  
5 the head regions, hearing, taste, sensation in the face,  
6 movements of the face, all of these cranial nerve functions.  
7 And they are very important because they are objective. You can  
8 look at them and see them if they are abnormal. You don't have  
9 to have the patient necessarily report them to you. Again,  
10 there was no suggestion of a head injury but in Mr. Julca's case  
11 his cranial nerves were normal.

12 Q And did you look into issues or anything with his  
13 spinal cord?

14 A His spinal cord -- his spinal cord is part of the  
15 nervous system. I examined his head, spine and neck basically  
16 just to look how he moved and most of how you move your head,  
17 spine and the neck is orthopedic not neurologic as you have pain  
18 as actually I do. You may have difficulties with the movements  
19 that aren't related to neurology but just related to pain. I  
20 watched how the patient moves to see if there is any limitation  
21 of movement. And in Mr. Julca's case, I didn't see any  
22 limitation of movement.

23 Q And did you do any tests with respect to his lumbar  
24 spine in particular?

25 A I examined his -- all of his spine, his neck, his

**Dr. Bender - by Defendant - Direct**

1 cervical spine, his chest, his thoracic spine, and his lumbar  
2 spine just by basically watching him move and seeing how he was  
3 able to manipulate himself and there was no limitation.

4 Q And did you also perform what's called a straight leg  
5 raising test?

6 A Yes.

7 Q And what is that?

8 A A lot of things can cause back pain as many of you  
9 probably know. Most people have had back pain one time or  
10 another. Most of it is not neurological. Most of it is related  
11 to joints, muscles, ligaments and tendons and things like that.  
12 What a straight leg raising test does, is you have the patient  
13 lie down and lift the leg straight or you have them sit up and  
14 lift the leg straight up and see if there is resistance to  
15 upward movement. This puts a stretch on the nerves going to the  
16 leg from the spine and, typically, if there is resistance to  
17 that, that's called a positive straight leg raising sign which  
18 would favor a neurological problem to the pain more than an  
19 orthopedic or an -- other problem for the causing the pain.

20 Q And what were the results of Mr. Julca's straight leg  
21 test?

22 A Negative.

23 Q Now, did you also check his muscle strength?

24 A Yes.

25 Q And what exactly goes into doing that?

**Dr. Bender - by Defendant - Direct**

1           A     Muscle strength it is simply just to see whether or not  
2 the functions are normally functioning at their normal strength.  
3 You also look at the muscles to see if they are the normal size.  
4 Muscles move because your brain tells them to move. And if  
5 there is a problem in the nervous system, you might have  
6 weakness in specific muscles related to that area of the nervous  
7 system. So we look to see if there is weakness. And if there  
8 is, you look to see if it is focal, if it is just one area or  
9 diffuse. And weakness sometimes is difficult to judge because  
10 if you -- if something hurts when you move it, you are not going  
11 to be able to give the effort you need to.

12                     So in testing strength, which we do by having the  
13 patient pull and push against resistance, we are looking to see  
14 if the patient is giving up because it hurts too much or because  
15 it was a lack of strength. We are trained as neurologist to be  
16 able to tell the difference between those two.

17           Q     And now this examine happened in August 10, 2022. Have  
18 you reviewed any additional materials after that date?

19           A     Yes.

20           Q     And what did you review?

21           A     I reviewed an operative -- a radiology report. On  
22 September 13, 2022, it was an MRI of the lumbar spine. I'm  
23 sorry. The patient had a laminectomy, an operation by  
24 Dr. Weinstein. And on October 28, 2021, he had a MRI of the  
25 lumbar spine.

**Dr. Bender - by Defendant - Direct**

1 Q Now, am correct you are not a radiologist, correct?

2 A That's correct.

3 Q So you -- now, you had previously, prior to your  
4 examine, reviewed an earlier MRI or at least the report of a MRI  
5 of the lumbar spine, correct?

6 A Correct.

7 Q That was from -- when was that?

8 A I'm just looking up the days, excuse me. It was on  
9 April 13, 2018.

10 Q And that MRI, I'm correct, noted a disk bulge at the L4  
11 L5 level, right?

12 A It noted facet hypertrophic changes.

13 Q Can you tell us what exactly that means?

14 A Hypertrophic changes means there is extra growth of  
15 bone which is what we call degenerative change and normally bone  
16 surfaces are smooth and straight. But if there is a  
17 hypertrophic change, you may have extra production of bone. I  
18 have a model if you want me to demonstrate that.

19 Q Would that help?

20 A It might. These are two, two plastic models of the  
21 lumbar spine. This is a normal one and this one shows  
22 degenerative changes in the herniated disk. If you notice on  
23 this normal -- this one actually has a small herniated disk as  
24 well. If you notice on this one -- the vertebrae, these are  
25 called the vertebrae and they are separated by a disk which is

**Dr. Bender - by Defendant - Direct**

1 like a cushion between the bones and then there's a -- the  
2 nerves, yellow things are nerves, they come out of a hole called  
3 the foramen. Sometimes when one of these disks pushes back, it  
4 can actually pinch the nerve. This shows a disk pushing out and  
5 actually pinching the nerve as it comes out of this hole called  
6 the foramen.

7           When that happens, you can get neurological  
8 dysfunction. But one of the things you see here is that these  
9 are -- the bones are rather smooth and straight and this model  
10 shows a degeneration. You can see the extra bone production  
11 here. These are called degenerative changes. Now, another  
12 important area here is this right here is called the facet  
13 joint. This joint is where the -- when you bend your spine and  
14 straighten up, this is where the movement happens. And this is  
15 an extremely common cause of back pain. It is actually my  
16 cause. I'm a little familiar.

17           But when you get arthritis or inflammation in this  
18 joint, it can hurt a lot but it doesn't mean that you have a  
19 neurological dysfunction because the nerve is still intact. It  
20 is only the joint that's inflamed. So, again, when we look at  
21 these reports of X-ray -- I'm not a radiologist. I don't read  
22 them -- but when I look at the reports, what I am looking for is  
23 to see if there is any evidence of compression of the nerve that  
24 would cause neurological dysfunction or if there is a problem in  
25 the facet joint which can cause pain without neurological

**Dr. Bender - by Defendant - Direct**

1 dysfunction.

2 Q And in the case of Mr. Julca's April 13, 2018, MRI did  
3 you see anything, any issues in there?

4 A What I saw is that he had degenerative disk bulges  
5 which is very, very come, almost universe. He had what they  
6 call facet hypertrophic changes which means you would call that  
7 arthritis of the facet joint.

8 Q And you referred to these issues as degenerative?

9 A Correct.

10 Q What do you mean by that?

11 A Degenerative meaning that there is ongoing just a  
12 normal wear and tear and not due to any acute process -- not to  
13 any specific injury but just to the general wear and tear.  
14 There was no mention specifically in the report of any  
15 compression of nerve which is what my speciality is to just to  
16 see if the nerves or the nervous system is involved. And in  
17 this case, the report did not indicate that there was any  
18 involvement of a nerve.

19 Q Now, the second MRI report, the one from October 28,  
20 2021.

21 A That's the one I just reviewed recently, yesterday,  
22 actually. And, again, there were -- it showed that he had  
23 evidence of a prior operation on his back which he hadn't had  
24 when I saw him. It hadn't been done yet. And it showed that  
25 there was, again, degenerative changes but it was no mention of

**Dr. Bender - by Defendant - Direct**

1 any specific neurocompression that I saw.

2 Q And you reviewed the September 13, 2022, operative  
3 report?

4 A I did.

5 Q And that operation occurred about a month or so after  
6 you had your examine of Mr. Julca, correct?

7 A That's correct by Dr. Weinstein.

8 Q And in your field of neurology, were you able to make a  
9 determination as to whether this operation treated any  
10 neurological issues?

11 A In my opinion, I was not able to find any specific  
12 indication for doing the surgery. It was -- when I saw him, it  
13 did not seem to be any condition that required surgery at the  
14 time that I saw him.

15 Q And in terms of your examine from August 10, 2022,  
16 could you tell us from a neurological perspective what were the  
17 results of that examine?

18 A The examine was normal. There was no objective  
19 evidence of any neurological problem. Mr. Julca had subjective  
20 complaints of pain but it was not reflected with any  
21 abnormalities under the neurological examine.

22 Q And in your field of neurology, did you come to an  
23 opinion as to whether Mr. Julca was able to go on with his daily  
24 activities?

25 A Yes.

**Dr. Bender - by Defendant - Direct**

1 Q And what was your determination?

2 A My opinion was that he was able to go on with his  
3 normal daily activities without any limitation. There was no  
4 disability due to any neurological problem.

5 Q And I'm correct you testified in court previously?

6 A Yes.

7 Q About how many times?

8 A Probably around a hundred times in the past 30 years.

9 Q And I'm correct that you're being compensated for the  
10 time you took in coming to court today?

11 A Yes.

12 Q And what were you charging for the time?

13 A My fee for the day of testimony is \$10,000.

14 Q And you also prepared a report with respect to your  
15 examine back in August 10, 2022?

16 A Yes.

17 Q And what do you bill for preparing that report and the  
18 examine?

19 A I billed \$800 per hour at the time and the total fee  
20 for the review of the records examination of the Mr. Julca and  
21 preparation of the report was \$4,000.

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

24 THE COURT: Cross.

25 MR. ROSENGARTEN: Yes.

**Dr. Bender - by Defendant - Cross**

1 CROSS-EXAMINATION

2 BY MR. ROSENGARTEN:

3 Q Good morning, Dr. Bender. My name is Harold  
4 Rosengarten. I am just going to ask you a few questions about  
5 your testimony here today.

6 A Okay.

7 Q You said, just going back to what we just talked about,  
8 you said you testified about a hundred times, right?

9 A Between three and five times a year.

10 Q Most of those times are from the defense side, right?

11 A Predominantly. But I also testified for the plaintiff.

12 Q Like 85 percent, 80 percent is the defense side?

13 A Yeah. In malpractice practice cases it is actually  
14 50/50.

15 Q But in a personal injury case, it's higher than 55.  
16 It's closer to 85 percent, right?

17 A Yes, that's correct.

18 Q Now, you examined my client on August 10, 2022, right?

19 A Correct.

20 Q About three and a half years after my client's injury,  
21 right?

22 A Yes.

23 Q And about three and a half years ago, right?

24 A Yes.

25 Q Did you -- you didn't examine him after his back

**Dr. Bender - by Defendant - Cross**

1 surgery, right?

2 A No.

3 Q And you talked a lot about MRI's today, right? You  
4 reviewed MRI's?

5 A I don't review MRI's. I look at the report. I am not  
6 a radiologist.

7 Q When you said you reviewed the MRI's, you meant you  
8 were reviewing the reports of the MRI's, right?

9 A Correct.

10 Q And those are reports based on interpretations of those  
11 MRI's, right?

12 A Yes.

13 Q Do you speak to the radiologist about those reports?

14 A No, I do not.

15 Q So you just read the reports and take it for what it's  
16 worth, right?

17 A Yes.

18 Q You don't find out any more information from the  
19 radiologist, right?

20 A That is not part -- I am not permitted to do that.

21 Q Now, you also said that you prepared a report, right?

22 A Yes.

23 Q And the report, I believe, was dated also August 10th  
24 or so?

25 A Correct.

**Dr. Bender - by Defendant - Cross**

1 Q So you prepared the report the same day that you met  
2 with Mr. Julca?

3 A Yes. Well, actually, the preparation of the report  
4 involved reviewing the records. I'm putting it on to my  
5 computer and then I took a history. I did an examination and  
6 supplemented that as to the report and that became the report.

7 Q So as part of the report, you have -- I have it here.  
8 I can give you a copy if you want. You mentioned a bunch of  
9 things that you reviewed before making the report, right?

10 A Correct.

11 Q And you reviewed verified Bill of Particulars and  
12 supplemented verified Bill of Particulars, right?

13 A Yes.

14 Q What is that?

15 A These are legal documents that basically list what the  
16 patient -- what the lawyers are saying the patient has wrong  
17 with him that their litigation is involved in.

18 Q And that also says that you reviewed some examinations  
19 before trial of Mr. Are Julca, right?

20 A Yes.

21 Q You reviewed specifically two, right?

22 A Yes.

23 Q Would it surprise you to know that there were more than  
24 two examinations before trial for Mr. Julca?

25 A These are the ones that I was supplied with. So if

**Dr. Bender - by Defendant - Cross**

1     thee were, I don't know.

2           Q     Who supplied those to?

3           A     The attorneys that referred the case to me.

4           Q     Mr. Malecki's firm gave you that information, right?

5           A     I'm not sure which firm. Hold on. It was London  
6     Fischer.

7           Q     And can I ask what it is that you have been referring  
8     to here today?

9           A     My independent evaluation.

10          Q     So you're also looking at the same report that I'm  
11     looking at, right?

12          A     I assume so, yes.

13          Q     So you also reviewed some records from New York Ortho  
14     Sports Medicine and Trauma, right?

15          A     Yes.

16          Q     From Dr. Matthew Grimm and Dr. Jeffrey Kaplan, right?

17          A     Yes.

18          Q     Those were not Mr. Julca's back surgeons, right?

19          A     Yes.

20          Q     Right?

21          A     They do not do the surgery, no.

22          Q     Now, I might be missing it. I see about ten things you  
23     looked at. Did you look at Dr. Weinstein's records before your  
24     August 10, 2022, report?

25          A     They were not made available to me before my

**Dr. Bender - by Defendant - Cross**

1 August 10th report.

2 Q Do you know if Mr. Julca saw Dr. Weinstein before your  
3 examination?

4 A I assumed he must have seen, but I don't know for sure  
5 when.

6 Q Now, you only saw Mr. Julca, let's say, 15 to  
7 20 minutes, right?

8 A That's how long the examine took. A total of -- it  
9 took up to maybe a half an hour.

10 Q You saw Mr. Julca for a half an hour and you reviewed  
11 some records, right?

12 A Yes.

13 Q And you testified before today, if I'm not mistaken,  
14 that a lot of times you're brought in to -- not to testify --  
15 but to testify too. But a lot of times you are brought in for  
16 sort of like, I guess, a second opinion for other neurologists  
17 sometimes and orthopedists?

18 A Yes. As I mentioned before, the decision whether or  
19 not to operate on patients -- especially in back and neck  
20 surgery -- is sometimes a very difficult one and sometimes  
21 controversial and sometimes considered done more often than  
22 necessary. So for that reason, frequently neurosurgeons and  
23 orthopedists will seek my opinion of the neurologist to justify  
24 whether surgery is really necessary.

25 Q Right. And usually when you do that, do you not look

**Dr. Bender - by Defendant - Cross**

1 at the spinal surgeon's medical records?

2 A If I'm asked to make a judgment as to whether surgery  
3 is necessary, I look at the medical records as I have done in  
4 this case.

5 Q You look at the spinal surgeon's medical records,  
6 right? If they saw a spinal surgeon before, you'd look at those  
7 records, right?

8 A I look at all records that are available to me.

9 Q If you have an opinion on spinal surgery, right, it  
10 would stand to reason you'd like to look at the medical records  
11 from the spinal surgeon, right?

12 A Yes.

13 Q But curiously before you made this report of August 10,  
14 2022, you didn't do that, right?

15 A It hadn't been done yet.

16 Q He hadn't seen Dr. Weinstein before your report?

17 A I don't know when he saw Dr. Weinstein.

18 Q Did you ask anybody?

19 A Sorry?

20 Q Did you ask anybody?

21 A Did I ask anybody if he saw Dr. Weinstein?

22 Q Yeah.

23 A His name did not come up in the medical records at all  
24 before I saw him.

25 Q Not in any of Dr. Grimm's medical records?

**Dr. Bender - by Defendant - Cross**

1 A Yes, the medical records from Dr. Grimm came up.

2 Q Dr. Weinstein's name wasn't mentioned in any of  
3 Dr. Grimm's medical records?

4 A I had not yet been supplied with any records from  
5 Dr. Weinstein at the time I saw him on August 10, 2022.

6 Q So you made this report on August 10, 2022, right?

7 A Yes.

8 Q That was the day of the examine, right?

9 A Yes.

10 Q You couldn't have waited a couple of days?

11 A The surgery was in September of '22. I saw him in  
12 August. It was no mention of any surgery at the time.

13 Q You looked at all the records, no mention of any  
14 surgery?

15 A Not when I saw him, no.

16 Q And you didn't review any records from any spinal  
17 surgeon?

18 A I'm not sure what you are asking. I only reviewed the  
19 records that I -- the only records that I could review were the  
20 ones that were given to me. None of the records that were given  
21 to me mentioned that he was going to have a spinal surgery.

22 Q So you were -- I might be mistaken. And if I am  
23 mistaken, please correct me. You were asked to opine if  
24 Mr. Julca should have a spinal surgery or not, right?

25 A No, I was not. I was asked to evaluate whether there

1 was any neurological injury as a result of the accident that he  
2 had.

3 Q You talked a lot today about having a spinal injury,  
4 right?

5 A Because eventually I found out that he had a spinal  
6 surgery. And I was asked a specific question was the spinal  
7 surgery indicated and I said in retrospect no.

8 Q And you looked at Dr. Weinstein's records for that?

9 A I don't have Dr. Weinstein's records.

10 Q So you based, I just want to make sure I have this  
11 right, you based your opinion on if Mr. Julca should have spinal  
12 surgery based on Dr. Grimm's records, right, as one thing,  
13 right?

14 A There was -- my opinion was not as -- at the time I saw  
15 Mr. Julca, there was no mention of spinal surgery. There was no  
16 question about spine surgery. And I didn't know he was going to  
17 have spinal surgery. And I did not comment on spinal surgery.  
18 What I did comment on is I didn't think there was any  
19 neurological injury as a result of the injury that he had.

20 (Continued on next page)

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25

**-Dr. Bender - Cross - Defendant - by Mr. Rosengarten-**

1 CROSS-EXAMINATION

2 BY MR. ROSENGARTEN:

3 Q Now, you also later found out that he had spinal  
4 surgery; is that correct?

5 A That's correct.

6 Q And you found that out here before you testified today,  
7 right?

8 A Found what?

9 Q You found out before today --Mr. Malecki, when he told  
10 you about than spinal surgery, that was not the first time,  
11 right?

12 A Literally Friday.

13 Q Friday. You could have asked for records at some  
14 point, right?

15 A I always ask for records.

16 Q Did you ask for Dr. Weinstein's records at any point?

17 A How would I know to ask if didn't know it existed.

18 Q So you found out about the surgery on Friday, right?

19 A Yes.

20 Q And you found out it was Dr. Weinstein on Friday,  
21 right?

22 A Yes.

23 Q On Friday you could have asked him, right?

24 A Asked what?

25 Q About Dr. Weinstein's records?

**-Dr. Bender - Cross - Defendant - by Mr. Rosengarten-**

1 A I did ask.

2 Q And did you see them?

3 A No.

4 Q Why not?

5 A I don't know.

6 Q Would it surprise you if I told you that Dr.

7 Weinstein's records had been sitting in that box for the last, I  
8 don't know, three or four weeks would it surprise you?

9 A I have Dr. Weinstein's surgical note. I was not  
10 supplied with other records. As I say, the records I reviewed  
11 are the ones I reviewed. The ones I didn't review, I could not  
12 review them because I did not see them. Why I didn't see them,  
13 you know, I always ask for records, for whatever reason I did  
14 not see the records.

15 Q And you were -- essentially, you review the records  
16 that were given to you by the defense attorney who hired you,  
17 right?

18 A I assume the records that are given to me are the  
19 relevant ones. But I'm not sure that, you know, given the  
20 timing in all involved, I'm not sure who knows, you know,  
21 whether I saw what or whenever.

22 Q Now, you talked a lot about a spinal surgery today,  
23 right?

24 A I don't know if I talked a lot but I talked about it.

25 Q Do you know if Mr. Julca had any other surgeries?

**-Dr. Bender - Cross - Defendant - by Mr. Rosengarten-**

1 A Yes.

2 Q He did, right?

3 A Yes, he did, not on his spine.

4 Q What other type of surgeries did he have?

5 A These were orthopedic procedures, would you like me to  
6 mention those?

7 Q If you know about those, yes. I am asking what other  
8 procedures did he have?

9 A Okay.

10 He had left shoulder arthroscopy in June of 2020. I  
11 believe that is the only one I have the record of because it was  
12 left shoulder arthroscopy.

13 Q So, you don't know anything about his two knee  
14 surgeries, right?

15 A I don't have-- I did not miss them in the record.

16 Again, as a neurologist, I'm usually not asked to  
17 comment on knee and shoulder surgeries, I may not have listed  
18 them.

19 Q Right. So you have no opinion whether the shoulder  
20 surgery or the knee surgeries are necessary?

21 A That's correct.

22 Q The one thing I'm interested, you have no opinion on  
23 the left shoulder, right?

24 A I don't have opinions on any shoulders. I'm not a  
25 shoulder doctor.

**-Dr. Bender - Cross - Defendant - by Mr. Rosengarten-**

1 Q Right. So could I ask why you found it necessary to  
2 note that Mr. Julca had a left shoulder injury at some point?

3 A Because every time someone has a prior injury I list it  
4 because. As I mentioned earlier in neurology, things are  
5 connected and an injury to one part can assume to be just part  
6 of an orthopedic problem and also may involve neurological  
7 aspect.

8 So, again, my job is to look and see if there's any  
9 neurological aspects to the injury and whether or not the  
10 surgery was necessary for any neurological conditions,  
11 specifically.

12 Q Now, you also talked about reviewing MRI reports,  
13 right, not the actual MRI, correct?

14 A Yes, that is correct.

15 Q In your report you say, the MRI shows degenerative  
16 changes, right?

17 A Yes.

18 Q You did not review the MRI, right?

19 A I reviewed the report of the MRI.

20 Q So you're basing your opinion about the degenerative  
21 changes about the report from someone else you never spoke to,  
22 correct?

23 A Right.

24 Q And, by the way, as part of your summary, you also  
25 mention that shoulder dislocation, right?

**-Dr. Bender - Cross - Defendant - by Mr. Rosengarten-**

1 A Yes.

2 Q But you have nothing else to say about it, right, you  
3 have nothing to say about shoulders, in general, right?

4 A If you're asking me again if I have something with the  
5 shoulder, I am going to say the same thing. I do not have much  
6 to say about joint abnormalities, it is not my specialty.

7 Q Now, you also talked today, I want to make sure I get  
8 the name of the tests right.

9 You talked about?

10 A Straight line.

11 Q You spoke today about a specific testify, I want to get  
12 the name?

13 Straight leg raising test, right?

14 A Yes.

15 Q And you said it was negative, right?

16 A Yes.

17 Q Would it surprise you --well, it probably would because  
18 you did not see Dr. Weinstein's records.

19 Would it surprise you that in Dr. Weinstein's records,  
20 he did the same test and it was positive?

21 A Many times orthopedics do the straight leg raising test  
22 and do not do it proper.

23 A proper straight leg raising test involves seeing if  
24 there's resistance to upper movement of the straight leg without  
25 pain. Pain, as I mentioned before, is very common in back,

**-Dr. Bender - Cross - Defendant - by Mr. Rosengarten-**

1 shoulder, and all sorts of injuries; but specifically what we're  
2 looking for is the resistance to upper movement due to putting  
3 stretch on the lumbar nerves.

4 As I say, frequently, orthopedists, even neurosurgeons,  
5 sometimes neurologist are not specialists in nerve conditions,  
6 do their test improperly and interpret the test improperly. I  
7 don't know what Dr. Weinstein's found that made him think it was  
8 positive, in my examination it was not positive.

9 Q And you don't know what Dr. Weinstein found because you  
10 never looked at his records, right?

11 A I'm assuming he found what you told me he found and I  
12 would disagree with it.

13 Q And you don't know how he did the test, right?

14 A However he did the test it was, when I saw the paper it  
15 was negative.

16 Q And you don't know how Dr. Weinstein's did it, right?

17 A No.

18 Q Because you didn't not look at his records, right?

19 A Uhm, I looked at his operative report, that is the only  
20 record I looked at.

21 Q And you did not look at his treating reports, right?

22 A No.

23 Q Now, I just want to make sure. So, you often times are  
24 asked, as you mentioned before, to sort of opine on other  
25 people's cases, right; you said that before, right?

**-Dr. Bender - Cross - Defendant - by Mr. Rosengarten-**

1           A     Well, when you says "other people cases." I'm calling  
2 as a second opinion frequently, yes.

3           Q     That is, essentially, what you did here, right?

4           A     Well, there are some differences during the medical  
5 legal exam and doing a second opinion exam.

6                     In one case I'm, you know, medicine legal case, a lot  
7 of times the patient is attempting to say they have more longer  
8 than so to speak than there is. And whereas in patient cases,  
9 the tendency is to try to get better at it than have worse  
10 things happen.

11          Q     So, in a medicine legal case you say, sometimes it is  
12 harder to figure out what is going on because maybe the  
13 Plaintiff is trying to say more is wrong than normal, right?

14          A     Occasionally that happens, yes.

15          Q     And it is hard to figure it out, right?

16          A     Not necessarily. There may be signs of symptom  
17 exaggeration that we would not see normally.

18          Q     And you did not see symptom exaggeration at all, right?

19          A     In this particular case I did not mention any symptom  
20 exaggeration.

21          Q     And you didn't see Mr. Julca after his spinal surgery,  
22 right?

23          A     I saw him one time before his spinal surgery.

24          Q     And you did not speak to Dr. Weinstein at about his  
25 spinal surgery?

**-Dr. Bender - Cross - Defendant - by Mr. Rosengarten-**

1           A     I think I already answered that. You want me to answer  
2 again?

3           Q     No, I mean, I know you did not look at his records.  
4                 I am asking, you didn't speak to Dr. Weinstein's  
5 himself about it, right?

6           A     I didn't even know he existed.

7           Q     Until Friday?

8           A     Sorry?

9           Q     Until Friday?

10          A     Yeah.

11          Q     So, just to make sure, you issued a report in August of  
12 2022?

13          A     Yes.

14          Q     You didn't know Dr. Weinstein's existed in August of  
15 2022, right?

16          A     I have no records of Dr. Weinstein's. So, for all  
17 practical purposes, I didn't know anything about him.

18          Q     And you made that report in August of 2022, without  
19 speaking to Dr. Weinstein, right?

20          A     Again, I think I've answered that before. Would you  
21 like me to answer it again?

22                 Yes, I read the record without speaking to Mr.  
23 Weinstein.

24          Q     Is your report any different today knowing now that Dr.  
25 Weinstein's did treat Mr. Julca?

**-Dr. Bender - Cross - Defendant - by Mr. Rosengarten-**

1           A     It is not unusual for me to come to an opinion that an  
2 operation may not have been necessary, even if it was something  
3 after I saw the patient.

4           Q     Right. It is often times you say that an operation is  
5 not necessary, right?

6           A     If it is not necessary, I often say it is not  
7 necessary.

8           Q     And as a defense witness, a lot of times you say that,  
9 right?

10          A     A lot of times operations are not necessary.

11                   In fact, as I mentioned before, operations on the neck  
12 and the back are considered perhaps the most overdone operations  
13 there are in surgery.

14          Q     And you have that opinion, specifically, with Mr.  
15 Julca, even though you did not look at all the records, right?

16          A     As I mentioned, when I saw him, I didn't have an  
17 opinion because I didn't know it existed. Since Friday if you  
18 asked me if I thought in retrospect he did need surgery, I would  
19 say probably not.

20          Q     And that is not based on anything new that you got  
21 because you did not look at anything knew?

22          A     What was new was the operative report from Dr.  
23 Weinstein, that was it, nothing else.

24                   MR. ROTTENSTREICH: No further questions. Thank  
25 you.

**-Dr. Bender - Redirect - Defendant - by Mr. Malecki-**

1 REDIRECT EXAMINATION

2 BY MR. MALECKI:

3 Q Now, Dr. Bender, not to belabor this, you looked over  
4 the operative report from September 13, 2022, correct?

5 A Yes.

6 Q And you expressed the opinion about the need for  
7 surgery, what was that opinion based on?

8 A Based upon the history. Basically, what I was looking  
9 for was a neurological reason to have the surgery. You asked  
10 me, subsequently, did I think surgery was necessary for the one  
11 that he had -- ultimately he had.

12 What I look for is the history, to see how the injury  
13 occurred; whether or not there was any neurology injury at the  
14 time of the injury, or subsequently, if there was any objective  
15 evidence of a neurological problem that would require surgery  
16 and based upon those, and my examination, which was normal,  
17 based upon all of that, I concluded that at the time I saw him,  
18 if I had been asked, did you think surgery would have been  
19 necessary of this patient, I would say no.

20 Q And to be clear, in your examination with Mr. Julca,  
21 which occurred about a month before he had the surgery, did he  
22 ever tell you that he was scheduled to have the surgery?

23 A No.

24 MR. MALECKI: Thank you, Doctor, that's all the  
25 questions I have.

**-Proceedings-**

1 THE COURT: The witness may step down.

2 THE WITNESS: Thank you.

3 (Witness exits the courtroom. )

4 THE COURT: Members of the Jury, our next witness  
5 is scheduled for 2:00 p.m.

6 Enjoy your lunch, be back at 2:00 p.m.

7 THE COURT OFFICER: All rise. Jury exiting.

8 (Whereupon, the jury exits the courtroom and the  
9 following is heard outside the hearing and presence of the  
10 jury.)

11 THE COURT: Jury has exited the courtroom.

12 Last week, I believe it was Thursday, I received  
13 Defendant's Affirmation in support of a motion for renewal  
14 and reconsideration of this Court's preclusion ruling  
15 regarding the New York State Worker's Compensation  
16 determination. I believe I took some argument on it.

17 Did the parties wish to make any additional  
18 argument or do you just want me to rule on?

19 MR. MALECKI: I think if your Honor is ready to  
20 rule, you could rule.

21 THE COURT: Okay. Let's mark this as Court Exhibit  
22 12.

23 (Whereupon, Court's Exhibit 12 is marked in  
24 evidence.)

25 THE COURT: Okay.

**-Proceedings-**

1 I've reviewed the motion and I've heard the  
2 argument from the parties last week, I did say I would get a  
3 decision to you.

4 I also note that the Decision and Order of Justice  
5 Buchanan denying Dr. Weinstein's Article 78 Proceeding was  
6 also attached to the motion, as the new information in  
7 support of it. I have considered the written motion and  
8 I've also considered the arguments taken, I am not persuaded  
9 that they change my ruling in any way.

10 I once again cite to MAZELLA V. BEALS, 27 NY3d 694,  
11 that was the Court of Appeals case that I cited on the  
12 previous motion;

13 I also make reference to the following additional  
14 cases; GOFF v. PAUL, 8 AD3d 971, (4th Dept, 2004);

15 ROE v. DOE, 160 Misc.2d 1074, that is Supreme  
16 Court, New York County, 1994, Justice Stanley L. Sklar;

17 Also supported by CASTILLO v. 62-25 30th Avenue  
18 Realty, LLC, 74 AD3d 1116, (2nd Dept, 2010);

19 And BADR v. HOGAN, 74 NY2d 629, Court of Appeals,  
20 1990;

21 And, lastly, SPANIER v. NEW YORK CITY TRANSIT  
22 AUTHORITY, 222 A.D.2d 219, (1st Dept, 1995.)

23 Okay.

24 Anything else before we break for lunch.

25 MR. ROSENGARTEN: No, your Honor.

**-Proceedings-**

1 MR. MALECKI: I mean, I will just say, I know we  
2 want to have a charge conference at some point.

3 THE COURT: Well, we can only do our formal on the  
4 record charge conference after the close of evidence; but we  
5 can have an informal conversation now, I think that is  
6 probably a good idea, I think I might have said on Thursday  
7 that is what we would do.

8 MR. MALECKI: Yes.

9 THE COURT: We can do that off the record.

10 Let's go off the record.

11 We are off the record until 2:00 p.m.)

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

13 (Whereupon, a lunch recess is taken.)

14 (Continued next page.)

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**M. Ramanuth - Direct - Defendant - by Mr. Malecki**

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

2           THE COURT: Case on trial continued anything before  
3 we bring in the jury?

4           MR. ROSENGARTEN: No, your Honor.

5           MR. MALECKI No, your Honor.

6           THE COURT: Bring in the jury.

7           (Whereupon, the jury enters the courtroom and the  
8 following is heard inside the hearing and presence of the  
9 jury.)

10          THE COURT: Good afternoon. Welcome back. Thank  
11 you for your continued jury, service.

12          As you might have figured out, our next witness  
13 will also be testifying via live videos feed. We've done  
14 this before. This may be the last time, but at this time I  
15 call upon Mr. Malecki to call your next witness.

16          MR. MALECKI: Yes, your Honor. Defense calls Mark  
17 Ramanuth.

18          THE CLERK: Please raise your right hand.

19          Do you solemnly swear or affirm the testimony you  
20 are about to give will be the truth, the whole truth, and  
21 nothing but the truth?

22          THE WITNESS: I do so swear.

23          THE CLERK: Please state in a loud and clear voice  
24 your name and address, for the record spelling both first  
25 and last names.

**M. Ramanuth - Direct - Defendant - by Mr. Malecki**

1 THE WITNESS: My name is Mark Ramanuth, I am a  
2 vocational expert, my address is 745 Fifth Avenue, Suite  
3 500, New York, New York 10151. M-A-R-K. R-A-M-N-S-U-T-H.

4 THE COURT: Your witness has been sworn. You may  
5 inquire.

6 MR. MALECKI: Thank you.

7 You could have a seat, sir.

8 DIRECT EXAMINATION

9 BY MR. MALECKI:

10 Q Good afternoon, Mr. Ramanuth.

11 What is your occupation?

12 A I'm a vocational rehabilitation counsel.

13 Q And could you tell us, generally, about what your  
14 educational background is?

15 A Yes. So, I have over like 43 years of vocational  
16 rehab. And I have a master's degree in the field of vocational  
17 rehabilitation counseling from New York University, which I got  
18 in 1991. And that degree covers the whole field of helping  
19 people with disabilities, find employment and suitable  
20 employment, and doing an analysis for jobs, and that is my  
21 educational background.

22 I also maintain a national certification as a certified  
23 rehabilitation counselor, which allows vocational experts to  
24 practice throughout the United States, that is current.

25 I'm a member of the American Board of Vocational

**M. Ramanuth - Direct - Defendant - by Mr. Malecki**

1 Experts.

2 Q And what do you do as a vocational rehabilitation  
3 counselor?

4 A Primarily we evaluate and help individuals who have  
5 injuries or disability, assess their ability for working and to  
6 develop vocational rehabilitation plans to reenter the labor  
7 market with or without accommodations with additional education.  
8 That is the general function of a vocational rehabilitation  
9 counselor.

10 We and I, myself, am familiar with all types of  
11 disabilities, including sensory disabilities, people with a lot  
12 of spinal cord and orthopedic injuries. I've worked people with  
13 low functional developmental disabilities and sensory and  
14 cognitive disabilities, mental illness and a variety of types of  
15 people with disabilities over the many years.

16 I did a lot of job placement as well.

17 Q And again, how long have you been doing this as a  
18 career?

19 A Since 1989 and I got my master's in 1991, so over many  
20 many years.

21 Q And have you testified as an expert witness in court  
22 before?

23 A Yes, I have, yes.

24 Q Approximately how many times in your career?

25 A Well, in this kind of trial-- I've testified in many

**M. Ramanuth - Direct - Defendant - by Mr. Malecki**

1 federal cases for the social security administration hundreds of  
2 times. This type of trial I've been doing sometimes five or six  
3 of these a year, in terms of testifying for personal injury  
4 cases.

5 Q And, typically, are you retained by defense firms or  
6 plaintiff's firms, or which?

7 A Currently mostly defense. I've had a long career of  
8 working for the plaintiff, defense. I used to also help  
9 individuals prepare their cases as a representative before the  
10 Social Security Administration.

11 Now I would say that there is a balance of about eight  
12 to 20. So 80 percent of my work now is for defense firms.

13 I work for agencies, so they send me directly cases. I  
14 tend not to deal directly with firms too much.

15 Q And are you being paid for the time you're spending  
16 with us today?

17 A Yes. Yes. Our hourly rate is \$300 an hour. That is  
18 how we calculate our fees.

19 Q And you also prepared a report in this case previously?

20 A I did.

21 Q And Do you know how much you charge for preparing your  
22 report and doing an exam?

23 A It was about, I think, total of \$3,000. It's been a  
24 long time, it was prepared in 2022. I'm pretty sure it was  
25 \$3,000 and that could include valuation interview, reading all

**M. Ramanuth - Direct - Defendant - by Mr. Malecki**

1 the relevant records, preparing a transferable skills analysis,  
2 and then writing a report which was submitted in March of 2022.

3 Q Did you perform an assessment of Mr. Julca in this  
4 case?

5 A I did.

6 Q And did that involve meeting with him in-person?

7 A Yes, I met with Mr. Julca in our offices and he went  
8 through the process of our evaluation, after traveling in from  
9 New Jersey to our offices on Fifth Avenue. He had used  
10 transportation and I could go through the process.

11 Generally, my assessment is four steps, a general  
12 assessment of the person's current living situation, then we  
13 reviewed their training, education, and work history to classify  
14 those occupation according to the Department of Labor standards.

15 The next part of our evaluation reveals his statements  
16 about his injuries and in the financial analysis we review his  
17 functional capacity, the things he's doing in his daily life and  
18 activities, which is a huge part of my evaluation.

19 I covered those processes during my assessment and  
20 evaluation.

21 Q And what date did this meeting occur with your Mr.  
22 Julca?

23 A I would have to look it up. You have my report there.  
24 You know, I prepared the report in March -- can I look it up?

25 Q Sure, if you have the report in your bag.

**M. Ramanuth - Direct - Defendant - by Mr. Malecki**

1           A     I'm a little slow. I meant to tell you, I'm vision  
2 impaired. I listen to things, I'm blind, so give me one second.  
3 I'm very sorry.

4                     (Pausing.)

5           A     January 27, 2022.

6           Q     Okay. And how long did this evaluation take with Mr.  
7 Julca?

8           A     It was approximately one hour, a little less I think.

9           Q     And was the evaluation conducted in English?

10          A     No, the evaluation was conducted in Spanish. There was  
11 an interpreter and there was someone that represented him,  
12 although he indicated to me that he did speak English.

13          Q     And you gave four prongs of things that you evaluate  
14 during this evaluation, correct?

15          A     Yes.

16          Q     And could you tell me, you started with the general  
17 assessment of the living situation; is that what you said?

18          A     Yes. Yes.

19                     So in that part we learned that while he came to United  
20 States from Peru initially in, I think it was 1996. So he was  
21 born in Puru. And then he was living here currently in New  
22 Jersey, in Elizabeth, New Jersey. And he was single and his son  
23 lived with him. And he used transportation to get around,  
24 including New Jersey Transit, the Path train, the regular  
25 trains. He took transit in and he came to see me and he walked

**M. Ramanuth - Direct - Defendant - by Mr. Malecki**

1 from Penn Station to our offices, which is quite a long walk.  
2 And then I'm trying to remember everything.

3 He told us about his general, his house, he lives in an  
4 apartment. He had stairs. He had to climb one flight of stairs  
5 regularly to conduct his daily activities.

6 So that was the first part about his general living  
7 situation.

8 Q And then what was the second part of the evaluation?

9 A The second part is education and work history. He had  
10 primarily worked in -- most of his work in construction all of  
11 his life. And he had studied English as a second language for a  
12 bit when he came to the United States.

13 He had worked mostly as taper. At the time of his  
14 disability he was working as a taper. He had done a variety of  
15 construction work over the years, including painting, et cetera.

16 Generally, he's only worked in the field of  
17 construction.

18 Q Then as you learned something about his injuries?

19 A Yes. So he indicated he had an accident in 2018, in  
20 March. And he indicated that he injured his shoulders, his  
21 back, and his knees --

22 Q And --

23 A --and that he had had different kinds of treatment over  
24 a period of time. At that time he had done some surgeries and  
25 he participated in therapy, et cetera.

**M. Ramanuth - Direct - Defendant - by Mr. Malecki**

1 Q And then you said you evaluated his functional  
2 capacity. What do you mean by that?

3 A Well, the large part of my interview, I try to  
4 understand how a person functions. We go through his daily  
5 activities. He's totally independent in all of his daily  
6 activities, which means he does not need anyone to care for him  
7 in any capacity at all.

8 He's also independent in cooking, doing some house  
9 cleaning, and laundry for his daily activities.

10 He uses his phone primarily for internet activities,  
11 including using Facebook and playing video games. And he, in  
12 terms of travel, he used public transportation to get around and  
13 he also is a driver, and occasionally uses his family car to  
14 drive. He said he did not have a car at the time of the  
15 interview with me.

16 He also traveled by plane to several places, even going  
17 to Indiana several times to see his sister, he's gone to  
18 Orlando, and he had gone to Puru.

19 I subsequently learned he also had some more surgeries.  
20 But after that he traveled again and he went to Columbia, he  
21 went back to Puru and has gone back to Indiana.

22 He also goes to church. And he's able to socialize  
23 normally. He spends time with his brother as well.

24 Q How do you use that functional capacity to determine a  
25 persons's ability to do work?

**M. Ramanuth - Direct - Defendant - by Mr. Malecki**

1           A     Well, the construction of occupations, which is  
2 outlined in the different companions in the dictionary of  
3 occupational title, has a bunch of physical requirements that  
4 matches up with jobs, with whether they are light, medium, or  
5 heavy.

6                     So, based on person's actual function capacity, in  
7 terms of sitting, standing, and walking, we can get a sense of  
8 how much they can do.

9                     The activities that he perform indicated that he could  
10 sit, stand, and walk for prolonged periods based on everything  
11 that I have said.

12                    At times he also indicated that he can lift a case of  
13 water, which is more than 20 pounds, generally, and so that puts  
14 him more into the medium category.

15                    So, his ability to function independently indicates  
16 that he has a light duty capacity being able to do prolonged  
17 walking.

18                    He walked even to come to see me for the interview and  
19 he, you know, in his travels, moving around, he has good  
20 mobility.

21                    And so I was able to determine and I think he was able  
22 at the time to do medium duty work based on his ability to lift  
23 over 20 pounds by himself and then that also would include  
24 sedentary and light duty work.

25                    So the function capacity is very very critical for me

**M. Ramanuth - Direct - Defendant - by Mr. Malecki**

1 to understand. If someone is able to drive and to sit for  
2 prolong period, you could then take those abilities and  
3 extrapolate them into jobs and we could do what is called a  
4 transferable skills analysis;

5 So I use that to determine his function capacity and  
6 perform the transferable skills analysis.

7 Q And where do you get these concepts of light duty and  
8 medium duty?

9 A Well, actually those concepts came out of the field of  
10 vocational rehabilitation. It was adopted by the entire Federal  
11 government, included the Department and Labor. That is why  
12 people like myself are asked to sometimes talk about these  
13 concepts, doctors use them a little loosely but we define them  
14 very strictly.

15 So there's a classification of jobs -- and there are  
16 many companions which define occupation title.

17 Generally there are five categories of physical demands  
18 starting from sedentary, which means jobs primarily sitting;

19 Light duty jobs are jobs that are performed sometimes  
20 standing, but may alternate between sitting and standing and  
21 lifting up to 20 pounds;

22 Then you have the medium category, lifting over  
23 20 pounds, his occupation was medium.

24 Then we have a heavy category and very heavy category.  
25 And, uhm, they --

1 (Whereupon, the video froze.)

2 MR. MALECKI: Hold on Mark, we lost you for just a  
3 second there.

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

6 (Continued next page.)

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**Mr. Ramnauth - by Defendant - Direct**

1 DIRECT EXAMINATION

2 BY MR. MALECKI:

3 Q After you talked about heavy-duty and very heavy-duty  
4 is where we lost you.

5 A Tell me when to continue, please.

6 Q Sure. Try to continue now. Let me see if it works.

7 A Okay. I was saying that we use the dictionary of  
8 occupational titles which has other classifications. Coming in  
9 clear?

10 Q Yes.

11 A And it also covers other aspects of physical demands  
12 and mental demands as well as educational requirements. So,  
13 reaching, handling, fingering, and the amount of lifting,  
14 pushing, carrying, all are covered by those classification of  
15 work.

16 Q And what -- once you determine which capacity, which  
17 light or medium duty that the individual fits into, then what do  
18 you do with that information?

19 A Well, we compare it to all the occupations listed in  
20 the dictionary of occupational titles and perform a transferable  
21 skills analysis. We use software and that software helps us to  
22 kind of look at all jobs across the various categories and then  
23 from that use my clinical judgment and knowledge of the labor  
24 market to extrapolate jobs that a person can do with the  
25 transferable skills, so any skills that you have had prior to

**Mr. Ramnauth - by Defendant - Direct**

1 the accident or the instability. And then we can use those  
2 skills to see if they can work in other occupations. The  
3 program looks at many, many jobs and we limit it down to the  
4 most frequently hired for occupations and then in that category  
5 we found that in the case of Mr. Julca, Juan Julca, that he can  
6 perform using transferable skills 407 of the most frequently  
7 hired for occupations in the labor market using transferable  
8 skills with the capacity that I indicated.

9 Then from there I looked at some examples that are  
10 readily available at using my clinical judgment, things that are  
11 easier to transfer given the fact that he mostly worked in  
12 construction or in lower skills occupations which do not demand  
13 extensive amount of training. So, from that, I came up with a  
14 list of occupations that he can do even in the light and  
15 sedentary in the event he couldn't perform his regular  
16 occupations as a taper.

17 Q Now, did you ultimately make a determination as to  
18 whether Mr. Julca, at the time that you examined him, was able  
19 to return to his job as a taper?

20 A Yes. I felt like he could do his job at the time  
21 because he was in a medium capacity and he did not request any  
22 kind of accommodations. For a short period of time after he  
23 actually had the accident, he did work. He indicated he did  
24 some light duty work, but it was my assessment that he could  
25 perform medium duty work and should be able to perform his

**Mr. Ramnauth - by Defendant - Direct**

1 occupation and maybe at times needed some accommodations. I  
2 believe that because he had all of those surgeries and injury,  
3 there was a period of time that he probably would have been  
4 restricted to only sedentary work. I looked at the medical  
5 records and some of his doctors said his disability was  
6 temporary. They use big terms like, you know, temporary and  
7 total disability. So, but from a vocational standpoint, it also  
8 indicated that his disability was temporary and in some cases it  
9 was partial, not total.

10 Q And did you also look at other medium duty work in case  
11 Mr. Julca was not able to return to his job as a taper?

12 A Well, I looked at other occupations that are medium or  
13 less. So, what I did was to the extent that he is not able to  
14 do a full range of medium duty work, then are there other jobs.  
15 And so I mostly focused on jobs that are lighter than medium so  
16 that if, indeed, he could only do light duty work, then I look  
17 mostly at jobs that are light. So in addition to his regular  
18 occupation, I provided some examples of jobs that are in the  
19 lighter duty category.

20 Q And what types of job examples did you provide?

21 A I like to look it up if I can. From my memory, because  
22 I pull up my report, I indicated that he could be a  
23 superintendent in a building. He could be a driver since he has  
24 a lot of experience that he was able to drive. He could do  
25 parking lot attending, toward a parking lot attendant. And he

**Mr. Ramnauth - by Defendant - Direct**

1 could be a guard such as a security guard. And he could also be  
2 an inspector, inspecting construction work given his many years  
3 of experience. I provided those examples.

4 Q And those jobs you listed, are they classified as  
5 medium duty or light duty?

6 A They are all light duty so they are less than medium.

7 Q And now I know you have it in your report, but do you  
8 have it off the top of your head what the salary for those jobs  
9 were at the time that you evaluated them?

10 A I do. If you can read the report into the record and  
11 have me -- or I can just look it up if you would like me.

12 Q If you're able to review your report and you are  
13 capable of doing that, then that would refresh your  
14 recollection?

15 A Sorry. I'm almost there. Okay. I got my report.  
16 Thanks for your patience. So a superintendent is 99,000 a year.

17 Q What about a security guard?

18 A And since my report, that average has gone up to about  
19 103,000.

20 Q And what about a security guard?

21 A By that time, it was 38,000 and now it's 42,000. And  
22 then -- and the parking lot attendant \$32,670 per year and now  
23 it is 35,300. Taxi driver 40,680 and now it's 44,600. 75  
24 and -- and inspectors 75,900 and now it's 85,960 as the medium  
25 salary for occupations that I cited in my report.

**Mr. Ramnauth - by Defendant - Direct**

1 Q And so these are all jobs that fall under the light  
2 duty classification that Mr. Julca might be able to do if he  
3 wasn't able to go back to his taper job; is that right?

4 A That's correct, yes. And he wouldn't need any extra  
5 training or education because he can use transferable skills.

6 Q Now, you said your exam took place in January of 2022;  
7 is that right?

8 A That's correct, yes.

9 Q And have you received any additional information about  
10 Mr. Julca's functional capacity after that time?

11 A Yes. I just learned that he had had some additional  
12 surgeries after that time. And I saw that there was some  
13 surgeries in '22 and one in '23 on his shoulder, back and leg --  
14 and knees so that was an update after he saw me. And then I  
15 also received some information about some depositions that he  
16 gave which indicated some of his -- his activities so that  
17 helped me get an update on some of his activities that he did  
18 after the surgery.

19 What I learned was that after the -- the surgeries he  
20 had continued to be able to travel on -- I think Dr. Weinstein  
21 said he had a temporary disability one time after the surgery  
22 and that he was able to travel to Columbia, Indiana, Peru, and  
23 so he didn't seem like he was restricted. He indicated that he  
24 got better after the surgeries. So, my -- my sense of it is  
25 that he -- he probably improved from the time when I saw him

**Mr. Ramnauth - by Defendant - Direct**

1 after a period of adjustment.

2 Q So does this information change your analysis in any  
3 way?

4 A No. I would say that temporarily just right after the  
5 surgeries he would have needed some reasonable time to recover.  
6 That's customary. Otherwise, I think he would still be able to  
7 perform all of the light duty examples I did and some medium  
8 work especially since he said he improved.

9 Q And the alternative jobs that we talked about, the  
10 security guard, the parking lot attendant, are these jobs that  
11 are readily available in the New York City area?

12 A Yeah. I specifically focus on occupations that are the  
13 most prevalent occupations that exist as some of the top jobs in  
14 New York in the United States in general and in the Metropolitan  
15 area. Security guards is actually one of the most prevalent  
16 occupations in the country, taxi drivers as well. And in  
17 New York, we know that there are lots of superintendents. Some  
18 of them have different levels of demand. So, you may not -- he  
19 may not be able to get a superintendent in a building that  
20 requires an engineer to run a 50-story building in New York  
21 City, but there's tremendous range of superintendents who manage  
22 buildings that are small and they have to make sure that the  
23 workers do what they are supposed to do, the porters, they can  
24 call people, etc.

25 So there are lots of opportunities for someone to work

**Mr. Ramnauth - by Defendant - Cross**

1 in a job as a super. And as an inspector, when you have  
2 experience, you could go and check -- check work for private  
3 companies or for government.

4 MR. MALECKI: All right. Mr. Ramnauth, that's all  
5 the questions I have for you. Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: Mr. Rosengarten.

8 MR. ROSENGARTEN: Yes, Your Honor.

9 THE COURT: You may inquire.

10 MR. ROSENGARTEN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. ROSENGARTEN:

13 Q Good afternoon, Mr. Ramnauth.

14 A Good afternoon, Counsel.

15 Q So I know you testified earlier that you've previously  
16 testified in these type of cases, right?

17 A Yes.

18 Q And not only have you testified, you also generated  
19 reports in these types of cases, right?

20 A I do, yes.

21 Q And those reports are very similar to the ones which  
22 you generated for this case, right?

23 A Yeah. In fact, my reports are very standard and they  
24 look very similar because I've tested my system so many times  
25 and it's at times to test it and check over and over again so

**Mr. Ramnauth - by Defendant - Cross**

1 they are very, very similar, yes.

2 Q Do you recall preparing a report for someone by the  
3 name of Inocencio Martinez?

4 A I've done a lot of reports, but I am going to take your  
5 word for it. I don't remember.

6 Q And you actually did that report in about 2022, March  
7 of 2022. So only a couple of months after you did the report  
8 for Mr. Julca; do you remember that?

9 A Okay. I don't remember but you -- if you tell me that,  
10 I am not going to dispute with you. Of course, I do a lot of  
11 evaluations.

12 Q And it's interesting because you, in Mr. Martinez's  
13 report, also said, and similar injuries, also said he should be  
14 a superintendent of a building; does that surprise you?

15 A Not at all. That's one of the most common occupations  
16 I use because I study it very well. I know it very well.  
17 That's why I use jobs that I know and I help people to find jobs  
18 in.

19 Q And in your reports, you have a DOT number next to the  
20 title of the job you're recommending, right?

21 A I always do that, yes.

22 Q And that DOT number is a specific number. That's the  
23 dictionary of occupational therapy. That's what DOT is, right?

24 A Correct.

25 Q And that has different numbers correlating to different

**Mr. Ramnauth - by Defendant - Cross**

1 jobs, right?

2 A Correct. Occupations as we say.

3 Q So for superintendent of a building for Mr. Julca's  
4 report, it has a DOT number of 187.167-190 and that's  
5 superintendent for building, right?

6 A Yes.

7 Q And for Mr. Martinez's reports, it has the same thing,  
8 187.167-190?

9 A Yes. I'm glad it does because it's supposed to be  
10 consistent with the standards.

11 Q It's good that it's consistent. We want your reports  
12 to be consistent, right?

13 A Yes, that's -- especially the DOT numbers. Sometimes  
14 we might make a mistake but the DOT are critical because it is  
15 an occupational definition designation.

16 Q Right. So that number is basically saying it is the  
17 same exact job, right?

18 A Occupational. I am going to make a distinction --

19 Q I apologize. I will use the word occupation. Now, two  
20 months after this report -- well, let me get back for a second.  
21 So in Mr. Julca's case you said that if he was the  
22 superintendent of a building under DOT number 187.167-190 he  
23 could expect a salary of \$99,260, right?

24 A I didn't use the word expect because the data that I  
25 use comes from the Department of Labor and it represents the

**Mr. Ramnauth - by Defendant - Cross**

1 median. So this is across the entire occupation. And if you go  
2 to the New York City Bureau of Labor Statistics, that is the  
3 average number that they would put. So, I did not use the word  
4 expect. I said this is the median salary as documented by the  
5 Bureau of Labor Statistics. That's what it means when I said  
6 these numbers.

7 Q So, if you did a similar report for Mr. Martinez, about  
8 two months later, it should stand to reason that that number,  
9 that salary number should be the same, right?

10 A Generally it should, yes.

11 Q Is there a reason why on that report it's \$41,000?

12 A I cannot recall. No, I don't know.

13 Q And you also did a report for Segundo Packard and  
14 that's from 2017, a little bit earlier than this. Do you  
15 remember that?

16 A It sounds familiar the name, yes.

17 Q You also --

18 A I don't remember the details.

19 Q And you might remember him because you testified in his  
20 case as well the same way you're testifying here?

21 A Okay.

22 Q And you also said Mr. Packard should be a building  
23 superintendent the same way with the same DOT number; do you  
24 remember that?

25 A I imagine if the -- yeah, the DOT should remain the

**Mr. Ramnauth - by Defendant - Cross**

1 same always.

2 Q And there you had the salary as \$58,000?

3 A Which year was that?

4 Q That was in 2017.

5 A Oh, okay.

6 Q So you have all of these salaries all over the place,  
7 right?

8 A Well, I probably could explain if you want me to.

9 Q You can explain why for Mr. Martinez two months after  
10 Mr. Julca you had the salary for \$41,000?

11 A Whenever I see such a big distinction, it's because we  
12 use entry level salaries instead of average. So, in that case,  
13 I'm guessing that's what I was doing is providing the -- like  
14 the entry level salary from that occupation.

15 Q But you're guessing though, right?

16 A Well, whenever I see that distinction, that would be my  
17 first inclination because I do this work a lot and I know why I  
18 change things. So I am going to say it's more than just a  
19 guess.

20 Q Now, you also said he could be a taxi driver, right?

21 A Who are we referring to, please?

22 Q Mr. Julca. You said he could be a taxi driver?

23 A Yes.

24 Q And you said that would be in the New York area, right?

25 A Yes.

**Mr. Ramnauth - by Defendant - Cross**

1 Q And in New York to be a taxi driver you need a  
2 medallion, right?

3 A Not necessarily. But in most cases, people who are  
4 Uber drivers now they are requiring some special tests but not  
5 everyone has a medallion. In fact, very few people have  
6 medallions.

7 Q Did Mr. Julca, when you met with him back in 2022, did  
8 he have his own car?

9 A No. At the time, he said he did not have a car.  
10 That's what he advised me. He said he could use family cars to  
11 drive.

12 Q Did you ask him if he would be able to use that as a  
13 full-time job to be a taxi driver?

14 A I did not.

15 Q And then you also said he could be a security guard,  
16 right?

17 A Correct, yes.

18 Q Security guards seem very different than construction,  
19 right?

20 A I agree, yes.

21 Q So where did you get that information from?

22 A Well, one of the technical things in my report you  
23 would see it has a SVP of three for security guards. When the  
24 SVP is the low, those occupations can be demonstrated on a  
25 person who does not need much experience. If you look at the

**Mr. Ramnauth - by Defendant - Cross**

1 other jobs that give there seven, you need some experience.  
2 When a job can be demonstrated and you can learn it within  
3 30 days, it doesn't require high SVP so that's the reason why.  
4 So most likely people who start as a security guard don't need  
5 the experience of a security guard to be a security guard  
6 because I have done a lot of job placement in that field.

7 So you don't have to have experience but pretty much  
8 you have the physical capacity to do the work and then you meet  
9 the general background check. So the transferable skills are  
10 not very high.

11 Q Now, you also said that you met with Mr. Julca back in  
12 2022 and the evaluation was done in Spanish, right?

13 A Yes, correct.

14 Q And for some reason you said he could speak English,  
15 right?

16 A I asked him and he told me he could speak English.

17 Q You also asked him about English as a second language  
18 classes, right?

19 A Yeah. He told me he had taken some classes many years  
20 ago.

21 Q About four months worth of the classes, right?

22 A That's what I recall, correct.

23 Q Not a lot of English as a second language classes,  
24 right?

25 A Yeah, when he was 20 years old. Now, he is 42 years.

**Mr. Ramnauth - by Defendant - Cross**

1 He is almost 50 but that was like -- he's been working in a  
2 English capacity with people for 20 plus years.

3 Q You asked him if he had been working with people  
4 speaking English for 20 plus years?

5 A No. I don't remember if I did ask him that. He has  
6 been functioning in a work environment for 20 plus years here in  
7 this work environment, right. And Spanish is an asset anyhow.  
8 Most people actually do that work, speak Spanish so it is not a  
9 vocational issue.

10 Q You just assumed that he would be able to function  
11 normally because he learned English over the last 20 years or  
12 Spanish is spoken so it's fine?

13 A I'm pretty confident about that. In fact, I know in --  
14 part of the labor market, especially in construction related  
15 buildings, Spanish is a requirement, an asset. It is not a  
16 deterrent. Even if he could only speak Spanish, 25 percent of  
17 the population in New York City speak Spanish and in some  
18 neighborhoods it's far, far high.

19 Q You also said that Mr. Julca could lift a case of  
20 water, right?

21 A He indicated to me, yeah. I am asking him one of the  
22 things he could do and sometimes I said can you lift some  
23 things. He said, yes, he could lift a case of water.

24 Q And that was in your evaluation in January of 2022,  
25 right?

**Mr. Ramnauth - by Defendant - Cross**

1 A Yes.

2 Q Now, there's a section in your report called Physical  
3 Capacity As Reported, right?

4 A Yes.

5 Q It talks about him being able to sit for a little bit,  
6 right?

7 A I don't think I said a little bit, but I said sit,  
8 prolonged sitting.

9 Q And it said that he could walk for a few blocks, right?

10 A Oh, that was a statement. Sorry, yes. I remember what  
11 you are talking about, correct.

12 Q Right. You didn't put anywhere that he said he could  
13 lift a case of water, did you?

14 A That's correct, yeah.

15 Q And any reason you didn't put that in your, report?

16 A I'm not sure if it got into the report.

17 Q Well, I can tell you I am looking at your report. It  
18 didn't get in there. Do you know if there is a reason why it  
19 wouldn't have gotten in there?

20 A No, I don't have a good reason. I think I just failed  
21 to write it down.

22 Q Do you remember that specifically him saying that he  
23 could lift a case of water?

24 A Yeah. When I reviewed the -- my evaluation, it  
25 indicated that in my notes.

**Mr. Ramnauth - by Defendant - Cross**

1 Q In your notes. But you didn't -- but that part of your  
2 notes didn't make it into the report, right?

3 A That's correct. Yeah, you're right.

4 Q In fact, in your report, you say that he is able to do  
5 medium duty but at no point in the report do you say that the  
6 reasoning -- one of the reasoning is because he is able to lift  
7 a case of water or lift any weight at all, right?

8 A Yeah, not specifically. It was my feeling that he  
9 could lift above 20 pounds.

10 Q It was your feeling?

11 A Yeah, my assessment.

12 Q Now, he told you he could lift that case of water. I  
13 mean, you didn't put it in your report or anything but he told  
14 you that evidently at some point, right?

15 A Yeah. Especially with -- he's right handed and he said  
16 with his right hand he is stronger than his left so I  
17 remember -- that is part of my assessment.

18 Q Did you test that?

19 A No, he told me. I didn't do no testing.

20 Q It wasn't part of your assessment? You just took his  
21 word for it and didn't put it in the report. You just took his  
22 word for it, right?

23 A Yeah, my assessment is based on his subjective  
24 statements. Then I extrapolate my conclusions after. I just --  
25 my assessment is a subjective statement of the person's self --

**Mr. Ramnauth - by Defendant - Cross**

1 however they perceive themselves to be so that's what my  
2 assessments were. I don't do testing.

3 Q So what do you do at your evaluation exactly? You  
4 just --

5 A I do interviews.

6 Q So your evaluation is simply an interview talking to  
7 this person. You don't assess anything; is that correct?

8 MR. MALECKI: Objection.

9 THE COURT: Overruled. You can answer.

10 A I would object to the word simply because I don't think  
11 it's simply based on 40 plus years of experience and I know what  
12 I am asking. And I have a lot of strong reasons why I do it  
13 this way because usually litigation people do not test well.  
14 And I have a lot of evidence to support that. I used to work  
15 with all kinds of people who are trying to go back to work after  
16 injury. So I have a lot of reasons why I do my evaluation the  
17 way I do it and it's very thorough but it is very much on point.  
18 And I know it would yield me the best information and I review  
19 the records. So I do not do any testing.

20 Q Do you also do assessments for people not in  
21 litigation?

22 A I used to do a lot of it. Over the years now, I am in  
23 my 60s. So I used to do -- 21 years evaluation with people with  
24 all kinds of scooter work, with mental ailments, people with  
25 physical disabilities, a lot of people who have work injuries.

**Mr. Ramnauth - by Defendant - Cross**

1 I used to run a work hiring program. I did extensive amount of  
2 assessment. I worked in the hospital with people with traumatic  
3 brain injuries. And if I go through my work history, you will  
4 see that I've worked with hundreds and hundreds of people with  
5 all kinds of disabilities. I used to do Valpar testing, all  
6 kinds of work sample testing, clerical testing. That's a huge  
7 part of vocational training. When there is an incentive to do  
8 well on a test, people in litigation do not perform well on a  
9 test.

10 MR. ROSENGARTEN: Move to strike the portion that  
11 was not responsive at the very end.

12 THE COURT: Overruled.

13 Q My question to you would be did the test that you did  
14 for people looking for jobs, would that be different than the  
15 one you did for litigation?

16 A In litigation, it is a different assessment. We do all  
17 kinds of tests in assessment. There is some tests that are just  
18 focus on people who have less than a 70 IQ and I have to use  
19 nonverbal test, yes. The test is determined on the situation  
20 and the need and sometimes the request. We get referrals from  
21 state agencies. Sometimes a person come in blind. I am not  
22 going to test them for something I test blind people for all  
23 kinds of different things. So, why would I run the same test  
24 for a blind person as I run for a person who has an orthopedic  
25 injury. It is a different test, different person.

**Mr. Ramnauth - by Defendant - Cross**

1 Q Now, you also said that you do a lot of litigation  
2 testing, right?

3 A Yeah. Not only do I -- it depends on what you mean by  
4 a lot. After COVID, it seems like I got very busy.

5 Q Did you get paid for that, right?

6 A Of course. Yes, I do.

7 Q And you said it was \$800 an hour, something like that?

8 A No \$300. I wish. I know a lot of my colleagues charge  
9 all kinds of -- I'm still -- I have been 300 an hour for I don't  
10 know how long. For everybody I know charge more than me.

11 Q That's \$300 an hour for what?

12 A For vocational consulting work, assessment, report  
13 writing, a lot of my work is billed at a rate of \$300 an hour.

14 Q Are you paid for actual testimony?

15 A Yes. Yes. So same applies but we, you know, we  
16 consider if there is any time to prepare and everything else and  
17 we get a retainer and that's what we do so but it is the same  
18 rate generally.

19 Q Now, I just want to go over your report again for a  
20 second. I know you mentioned a bunch of things that you looked  
21 over your report before making your report. In fact, you have  
22 like a whole table of contents here in terms of what you looked  
23 at, right. So you looked at verified Bill of Particulars,  
24 right?

25 A Yes. Those are the records that were sent to us,

**Mr. Ramnauth - by Defendant - Cross**

1 correct.

2 Q What is a verified Bill of Particulars?

3 A I think it is a statement about a person's alleged  
4 injuries from the lawyer who is representing them. So in this  
5 case, against the plaintiff, the plaintiff's lawyer.

6 Q So you looked at the verified Bill of Particulars. You  
7 got a sense of what the injuries were and then you were able to  
8 tailor your report based on those verified Bill of Particulars,  
9 right?

10 A I think that's a mischaracterization. It is a tiny  
11 part of what I do so it is not -- I'm not -- I don't base  
12 anything on that. In fact, I base a lot -- most on my own  
13 observation and my function capacity assessment. I read  
14 everything. I review it and it gives me a general overview.

15 Q Now, I know you mentioned a bunch of medical records  
16 you looked at in your report. I know you mentioned that you  
17 reviewed some records from Kolb Radiology, right?

18 A Correct.

19 Q And you mentioned Kolb Radiology. There was a report  
20 from April 13, 2018?

21 A Yes. That's my recollection.

22 Q Did you ever review any records from Lenox Hill  
23 Radiology from April 13, 2018?

24 A I don't recall exactly.

25 Q And I don't see any record here of any review of

1 records from Dr. Weinstein who was Mr. Julca's spine surgeon.  
2 Did you, at some point after the report, review Dr. Weinstein  
3 records?

4 A I just received a report that Dr. Weinstein did a  
5 surgery.

6 Q When, you said just, was that today or yesterday?

7 A I think -- I think Friday because we were told that I  
8 had to testify and they said that there had been some surgical  
9 reports and I should take a look at it after my report so that's  
10 when I looked at it.

11 (Continued on next page)

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**M. Ramanuth - Cross - Defendant - by Mr. Rosengarten**

1 BY MR. ROSENGARTEN:

2 Q So what did you look at from Dr. Weinstein, all of his  
3 medical records or just the surgical reports?

4 A The surgical report. And then, I know there were three  
5 surgeries referred to, the shoulder, the back, and the knees.

6 Q Three surgeries or four surgeries?

7 A Uhm, I thought there was three surgeries. Maybe  
8 there's -- I thought there were three. There were three times,  
9 maybe two was done at once, I don't remember now.

10 Q Well, I can represent there are actually four  
11 surgeries. There was shoulder surgery, two knee surgeries, and  
12 also a back surgery.

13 A Okay. Yeah, two knee surgeries, okay.

14 Q Now, you also reviewed records from New York Ortho  
15 Sports Medicine and Trauma, right?

16 A Yes, correct before.

17 Q Now, in the report you reviewed records only up to  
18 2020, right?

19 A At that time when-- I reviewed those reports I had at  
20 that time.

21 Q Have you reviewed any further reports since that time?

22 A Just the ones that I just mentioned.

23 Q So just the surgical reports, correct?

24 A Yeah, the updated surgicals and there were some  
25 depositions that referred to all the treatments.

**M. Ramanuth - Cross - Defendant - by Mr. Rosengarten**

1 Q So you didn't review the New York Ortho records, the  
2 actual treatment records after 2020, right?

3 A No, I didn't have all the treatment notes.

4 Q And you had seen in the notes that Dr. Kaplan said that  
5 Mr. Julca was incapacitated, you didn't see that, did you?

6 A Well, I did read Dr. Kaplan's report and I didn't see  
7 he said he was incapacitated but, you know, I'll take your word  
8 for it.

9 Q Now, you and I know Mr. Malecki was actually calling  
10 you Mark, you're not a doctor, right?

11 A No, I am not a doctor.

12 Q And you're not an orthopedic surgeon, right?

13 A Nope, no, I'm a vocational guy.

14 Q You're not a radiologist?

15 A Sure, no.

16 Q And you can't really diagnosis injuries or anything  
17 like that, right?

18 A No, I'm vocational guy, vocational expert.

19 Q Vocational expert. So you're, essentially, relying on  
20 medical opinions from other doctors to determine a person's work  
21 capacity, right?

22 A Not correct, no.

23 Q What are you relying upon?

24 A I rely upon functional capacity for most injuries. I  
25 do read records. I respect what the doctor says about the

**M. Ramanuth - Cross - Defendant - by Mr. Rosengarten**

1 person's restrictions and limitations because they're a medical  
2 expert, but I'm the vocational guy who determines if those  
3 translate into work. So I look at the person's functional  
4 capacity postinjury more than anything else. I had quite a bit  
5 of information on Mr. Julca about his functional capacity.

6 I do take into account all the records, but I'm the  
7 vocational expert.

8 Q And you interviewed Mr. Julca in January of 2022,  
9 right?

10 A Correct.

11 Q So, a lot of your analysis is based on the interview,  
12 right?

13 A Yeah, I can verify some of it because he told me how he  
14 traveled. So, I got some information about how he travels and  
15 what he did, and how he get there, that tells me a lot about his  
16 functional capacity.

17 Q You have not met with him after his left knee surgery,  
18 right?

19 A I have not.

20 Q You have not met with him after his right knee surgery,  
21 right?

22 A Correct.

23 Q You have not met with him after his lower back surgery  
24 right?

25 A Correct.

**M. Ramanuth - Cross - Defendant - by Mr. Rosengarten**

1 Q Do you even know what type of lower back surgery he  
2 even had?

3 A I read it, yeah, I know it was a fusion.

4 Q Do you know what that is?

5 A Generally. I've seen a lot the reports, but I'm not a  
6 doctor so I don't like to comment about it.

7 Q And I know you do a lot of interviews but you did not  
8 test range of motion, right?

9 A No.

10 Q You didn't test like any endurance, right?

11 A I did not.

12 Q You didn't test any ability to climb or kneel or  
13 anything like that, right?

14 A No. He told me he climbs steps though, so that is  
15 better than a test. When a person does something their behavior  
16 is more revealing than their statements.

17 Q Now, in your report you actually indicated that some of  
18 the doctors concluded that Plaintiff should work in light duty,  
19 right?

20 A Yeah, some of the doctors did say that, yes.

21 Q But you know better than the doctors because you met  
22 with Mr. Julca one time?

23 MR. MALECKI: Objection.

24 THE COURT: Overruled.

25 A Well, I'm the light duty guy, the doctors are not light

**M. Ramanuth - Cross - Defendant - by Mr. Rosengarten**

1 duty guy. I'm the vocational guy and that is what vocational  
2 people do; doctors do medical and we do classification of jobs.

3 So doctors don't often know exactly what light means.  
4 So we listen to what they say. And if they say they cannot lift  
5 ten pounds, that is one thing. They have never been trained on  
6 what light means.

7 Q And same way you've never have been trained in terms of  
8 surgeries or recovery from surgeries, or things like that,  
9 right?

10 A You may have noticed that I stay in my lane, that is  
11 what I do.

12 Q And you said that, in your report at least, I think you  
13 said that today, that Plaintiff can return to work as drywall  
14 taper, right?

15 A Yes.

16 Q You know what a drywall taper does?

17 A Yes.

18 Q And you know that they often time lift heavy buckets,  
19 right?

20 A Sometimes, yeah.

21 Q And you know that they have to kneel a lot and work  
22 overhead a lot?

23 A Sometimes, yes. Occasionally, yes. Depends on the  
24 work situation, that is correct though.

25 Q Did you speak to any employers about hiring Mr. Julca?

**M. Ramanuth - Cross - Defendant - by Mr. Rosengarten**

1 A No.

2 Q Did you conduct any type of individual labor market  
3 survey for him or just this generalized table that you came up  
4 with in your report?

5 A Yeah, I didn't do a specific labor market survey for  
6 the situation.

7 Q And that was based on your computer software that you  
8 testified about before?

9 A No. The software was one small part of it.

10 Q And the software in your actual analysis doesn't  
11 determine whether someone is going to be hired or not, right?

12 A No, but I assess the probability of being hired.

13 Q Where is that that you assess the probability; is that  
14 in your report?

15 A No, when I say a person can go to work, that is what I  
16 mean. If I say that he has capacity to work and I provide  
17 examples, it is implied.

18 Q So, essentially, theoretical, correct?

19 A I don't consider it theoretical. If I was his job  
20 placement counselor, which I have done, I would try to help him  
21 find a job in those categories.

22 Q Do you evaluate pain?

23 A I take it into consideration, sure.

24 Q And how do you take that into consideration?

25 A Mostly because of functional capacity. So if a person

**M. Ramanuth - Cross - Defendant - by Mr. Rosengarten**

1 is in so that pain that they are dysfunctional and not able to  
2 work, they will not be able to function consistently for most  
3 occupations. So if a person has pain really can't perform work,  
4 they should never drive because that pain could be dangerous to  
5 somebody else, et cetera.

6 He demonstrated the ability to sit, stand, and walk for  
7 long period. And his pain was not so debilitating to prevent  
8 him from doing all kinds of even sedentary work.

9 So it didn't seem to be functionally impairing him to  
10 the extent it would prevent him from being employed.

11 Q Did you ever speak to any of Mr. Julca's doctors about  
12 his recovery?

13 A No, I don't.

14 Q And I know you mentioned pain, but, once again, that  
15 pain was based on meeting with him in 2022, so I guess that is  
16 about three and-a-half years ago -- four years ago actually at  
17 this point, right?

18 A Yes. 2022, March, yes-- actually January is more than  
19 just a little over four years, you're correct. Let's see --  
20 yes.

21 Q And one thing, I know you mentioned a bunch that you  
22 got some of these records, right, that you reviewed to make your  
23 assessment, right?

24 A That's right.

25 Q Where did you get these records?

**M. Ramanuth - Cross - Defendant - by Mr. Rosengarten**

1           A     Uhm, well, somebody sent it to me. The way I work, I  
2     have a company called Apex. And when we get a referral the  
3     agency sends it to my office and then when it comes to me, just  
4     like any other doctor so I go -- somebody send to me and said  
5     here is a file, then --to be honest with you, I don't know  
6     exactly who sent it but I got it. I was reviewing and it was  
7     sent to my office. Probably by the law firm, or probably by an  
8     agency that was asked to send it to me. Most of our work is  
9     from some other agency.

10          Q     And you didn't specifically request any specific  
11     documentation, right?

12          A     I did not.

13          Q     So all your report is based on information and records  
14     that were fed to you by either his entity that you don't know,  
15     or a law firm; is that right?

16                     MR. MALECKI: Objection.

17                     THE COURT: Sustained.

18                     MR. ROSENGARTEN: So I'll rephrase it actually.

19          Q     Part of your assessment was based on the records you  
20     reviewed that were given to you either by this agency, or by a  
21     law firm, or from places you don't really even know, right?

22          A     That's correct.

23          Q     And also I guess it is also based on meeting with Mr.  
24     Julca one time for about an hour four years ago, right?

25          A     That is also correct.

**M. Ramanuth - Cross - Defendant - by Mr. Rosengarten**

1 MR. ROSENGARTEN: Thank you very much for your  
2 time, I appreciate it. No further questions.

3 THE WITNESS: Thank you.

4 MR. MALECKI: No re-direct.

5 THE COURT: The witness is excused.

6 THE WITNESS: Thank you very much.

7 THE COURT: Counsel, please step up.

8 (Whereupon, a bench conference took place between  
9 counsel and the Court.)

10 THE COURT: Members of the Jury, that concludes our  
11 work today.

12 Do not discuss this case amongst yourselves or with  
13 anybody else;

14 Do not do any independent research;

15 Do not visit the scene.

16 I know the schedule says tomorrow we will start at  
17 2:00, but we're not, we're going to start at 2:30.

18 Members of the Jury you're excused for the day.  
19 Have a good evening and I will see you tomorrow at 2:30.

20 THE COURT OFFICER: All rise. Jury exiting.

21 (Whereupon, the jury exits the courtroom and the  
22 following is heard outside the hearing and presence of the  
23 jury.)

24 THE COURT: Anything before we break for the day  
25 counsel?

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MR. MALECKI: Not on the record.

THE COURT: All right. This Court stands in recess. This trial stands in recess until 2:30 tomorrow afternoon. The Court will be open at 9:30.

(Whereupon, the trial stood in recess until 2:30 p.m. on March 17th, 2026.)

\* \* \* \*

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