

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MIDDLESEX COUNTY
DOCKET NO.: MID-L-3284-15
A.D.# _____

WASHINGTON MUNOZ,)
)
 Plaintiff,) TRANSCRIPT
) OF
 VS.) TRIAL
)
 L.P. CIMINELLI, and)
 PAINO ROOFING CO., INC.,)
)
 Defendants.)

Place: Middlesex County Courthouse
56 Paterson Street
New Brunswick, NJ 08903

Date: July 13, 2017

BEFORE:

HONORABLE ANDREA G. CARTER, J.S.C. and JURY

TRANSCRIPT ORDERED BY:

JOSEPH J. GULINO, ESQ. (Nicoletti Gonson Spinner, LLP)

APPEARANCES:

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I N D E X

<u>PROCEEDING</u>	<u>PAGE</u>
Jury Trial	3

I N D E X T O W I T N E S S E S

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Gina Oriana				
By Mr. Berenguer	25		33	
By Mr. Gulino		31		
Denise Munoz				
By Mr. Berenguer	34			
By Mr. Gulino		38		
Washington Munoz				
By Mr. Berenguer	42		140	
By Mr. Gulino		102		

I N D E X T O E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
P-1	Photograph		55
P-2	Photograph		56
P-3	Photograph		59
D-8	Photograph		107

1 MR. GULINO: When we were in your chambers
2 the other day, the first day we met you and I had
3 mentioned that the plaintiffs had a whole host of
4 witnesses that they were going to call and they first
5 time declared them in the pretrial and these witnesses
6 have no addresses nor do I know what they're going to
7 say as in our pretrial we told you exactly who the
8 witnesses were and what their expected testimony was
9 going to be.

10 I don't know who these people are. I was
11 never given their addresses. I do not know what
12 they're going to say. Now, I know you said the other
13 day that it would be a case-by-case. I believe I did,
14 that it will be case-by-case decision.

15 This is the first time we ever got notices.
16 Discovery was over in January of 2017. These people
17 are going to testify about notice, are they going to
18 testify about his economic condition? Are they going
19 to testify about his psychological or physical
20 condition?

21 I have no idea. And I see this. I mean, I
22 thought they were at least coming in live and I come
23 in this morning and I see this set up, first time
24 anyone told me.

25 THE COURT: I need someone to respond to

1 this. This is unheard of, but I'll hear from you.

2 MR. BERENGUER: Good morning, Your Honor.
3 Back on Washington Munoz's initial deposition back on
4 -- actually, let me go back to the interrogatories,
5 our Form A Interrogatories. The witnesses that are
6 going to appear today were initially named on question
7 17. The question is, "State the names and addresses
8 of all persons who have knowledge of any facts
9 relating to the case."

10 MR. GULINO: I'm sorry. What section are
11 you on now?

12 MR. BERENGUER: Question 17.

13 MR. GULINO: Seventeen.

14 MR. BERENGUER: Plaintiff's answers to form
15 interros. And they're named there, Your Honor. We
16 have his ex-wife Gina Oriana (phonetic) and it also
17 says his brother is in there, both of his brothers, a
18 friend. And additionally, back on the May 10th, 2016
19 deposition when Mr. Munoz's deposition was initially
20 taken, they were also named at the deposition.

21 The addresses were provided as well. Your
22 Honor, I'm looking at page 65 of the deposition in
23 which all of the names of the individuals that we were
24 going to name as witnesses were read through one by
25 one by defense counsel, Angela Lanehart (phonetic)

1 from the same law firm as Mr. Gulino and I'll read it,
2 Your Honor.

3 "QUESTION: And Gina Oriana, that's your ex-
4 wife?

5 "ANSWER: Correct.

6 "QUESTION: She's at 725 Egret Landing Place
7 in Orlando?

8 "ANSWER: Yes.

9 "QUESTION: Do you know why she was listed
10 as a witness?

11 "ANSWER: Because she also knew how I was
12 before and economical situations that I had after the
13 accident.

14 "QUESTION: Economical situation? What do
15 you mean by that?

16 "ANSWER: I was supporting my daughters. I
17 was not giving them money for the situation I was in
18 with my accident."

19 And so on and so forth, Your Honor, the
20 witness were reviewed, their addresses were reviewed
21 as well.

22 MR. GULINO: That's one witness. What about
23 the other ones? They're about six of them listed. We
24 have John Munoz. I don't know how many John Munoz's
25 there are. We have Franklin Munoz. I don't know how

1 many there are of those. We have Andreas Coranza, a
2 friend. We have Gustavo Gallegos. These are people
3 that I don't have the addresses. I was never supplied
4 the addresses.

5 Obviously, when they pull this out, they
6 have the addresses and they have the addresses at the
7 time of the trial.

8 THE COURT: Who are you calling, please?

9 MR. BERENGUER: Your Honor, we're going to
10 call Denise Munoz, the daughter, and that was provided
11 to defense counsel's law firm. The addresses were
12 provided.

13 THE COURT: Okay.

14 MR. BERENGUER: We're going to call Nicole
15 Munoz, another daughter who was provided by our firm
16 to defense counsel with the address.

17 We're going to call Gina Oriana, Mr. Munoz's
18 ex-wife who was also provided with her address.

19 MR. GULINO: The only address that you
20 mentioned was Gina's, unless I'm missing something,
21 not the other two. So I don't know what I'm doing
22 with this. This woman is where, from Florida or
23 Puerto Rico.

24 THE COURT: I'm hearing that you were
25 provided with the address. You're disputing that you

1 were provided the addresses of these three people?

2 MR. GULINO: Supplied with the address of
3 Gina, okay, not the other people. And I don't know
4 what they're going to say, Judge. In a pre-trial I
5 believe you're supposed to say what your witnesses are
6 going to say.

7 That's trial by ambush. I don't know what
8 they're going to say. They can't tell -- I'm sorry.

9 THE COURT: Aside from the other -- what
10 Denise -- are you -- did you provide the other side
11 with the testimony anticipated of all of the three
12 witnesses you just named?

13 MR. BERENGUER: We did, Your Honor, and not
14 just that, but the address that he did have, did he do
15 anything with it? I don't know that he did, Your
16 Honor. So -- and not just that, Your Honor, but Gina
17 is the mother of both Denise and Nicole and they all
18 live at the same address.

19 MR. GULINO: I don't know that so and if you
20 can show me the intended testimony that you say you
21 served on my firm, I would be happy to see it because
22 I really then would need it.

23 MR. BERENGUER: Your Honor, I already read
24 the intended testimony which was discussed at the
25 deposition.

1 MR. CLARK: May I add something?

2 THE COURT: Yeah, I mean the back and forth,
3 somebody is going to have to handle it, right? So the
4 back and forth I don't want so you wanted to add
5 something.

6 MR. CLARK: Just very briefly. There's no
7 requirement under the rules of court where you have to
8 give a summary of the witness' testimony. They have
9 that ruling in federal court but not for fact witness
10 testimony. There's no requirement to layout a summary
11 of the testimony.

12 That just applies to experts with the expert
13 report.

14 MR. GULINO: I still never got the addresses
15 of the other people. I still didn't know that they
16 all reside out of the same house.

17 Same thing. We can go back all the way to
18 there, but even if you gave me the addresses, I don't
19 know what they're going to say, but you never really
20 gave me the addresses so this is what we call trial by
21 ambush.

22 THE COURT: The back and forth, this is not
23 helpful to me. And let me say something, right,
24 because I keep -- it's very disheartening to sit up
25 here and having been on that side of the table and

1 tried many a case and for the life of me I cannot
2 understand why it is that lawyers are not speaking to
3 each other. This is not how this is supposed to work.

4 Adversarial or adversaries does not mean you
5 have to be adversarial towards each other. This is
6 not how this is supposed to work. Lawyers who are on
7 different sides of the table can speak to one another
8 There's no rule against that and there's nothing that
9 says you should not be doing it.

10 You should be cordial to each other because
11 at the end of the day when this case is over, you will
12 not know whether or not you will need a courtesy
13 extended to you from the very adversary that you
14 refused to cooperate with.

15 So the fact that I sit here and I have to
16 address this issue is very disheartening to me. Why
17 is it that this is coming up now and nobody has said
18 here are the witnesses that we're going to call and to
19 the extent that there is an objection, this could have
20 been worked out.

21 Why am I having to deal with this issue is
22 the question. Why? Somebody answer that.

23 MR. GULINO: I did raise it before you,
24 Judge.

25 THE COURT: You raised the fact that you

1 were given the names of several witnesses whose
2 addresses you were not provided I'm now hearing for
3 the first time that, in fact, you were provided with
4 the names and addresses of these very same witnesses
5 that you're now complaining about.

6 MR. GULINO: One witness. One witness.

7 THE COURT: I'm hearing otherwise. How
8 would you like me to resolve that?

9 MR. GULINO: I'm sorry?

10 THE COURT: How would you like for me to
11 resolve it? Yes.

12 MR. BERENGUER: Judge, we have a letter
13 dated April 20th, 2016.

14 THE COURT: Let me see what you have.

15 MR. GULINO: Can I see it?

16 MR. BERENGUER: And for the record it's
17 marked as Plaintiff's Exhibit 4, Your Honor.

18 THE COURT: Okay.

19 MR. GULINO: Where does Nicole live?

20 MR. BERENGUER: I'm going to answer Your
21 Honor's questions.

22 MR. GULINO: I never received that. I'm not
23 saying I didn't receive it from them. I have not seen
24 that before that today. I'm not saying they didn't
25 send it to me. They're officers of the Court, if they

1 said they sent it, they sent it and I will have to
2 withdraw my objection to those people on that list.
3 However, I still would like to know what they're going
4 to say.

5 Now, on this woman who looks like she's
6 going to testify right now, Nicole Munoz's daughter, I
7 do not believe she's listed on that and I was never
8 given her address.

9 THE COURT: So where is Denise and Nicole on
10 this letter? Yeah, where is Denise and Nicole?
11 There's Franklin Munoz, John Munoz, Gina Oriana,
12 Sandra Sequenza, Andre Coranza and Gustavo Gallegos.

13 MR. BERENGUER: Your Honor, if I may.

14 THE COURT: Yes.

15 MR. BERENGUER: They may not have been
16 specifically mentioned in that letter. However, they
17 were mentioned in answer number seventeen to
18 interrogatories as members of the plaintiff's family.

19 THE COURT: And the addresses are indicated
20 in there as well?

21 MR. BERENGUER: The addresses -- they live
22 at the same residence as the mother, Gina Oriana, Your
23 Honor.

24 THE COURT: Okay. And they would know that
25 how?

1 MR. BERENGUER: They actually went into that
2 at the deposition, Your Honor. They asked on page 65
3 of the deposition, they asked about Gina Oriana and it
4 was referred to as the ex-wife and her name was given.

5 Later on in the deposition, one of the
6 questions posed was the addresses -- not -- where do
7 the daughters live and it was stated they lived in
8 Florida so they had ample opportunity at the
9 deposition to look into that because in our
10 interrogatories, there was members of the plaintiff's
11 family, Your Honor.

12 THE COURT: That's a little broad. That's a
13 little broad. I mean, if they're all the same
14 addresses, why simply couldn't that have been
15 indicated in this letter that you provided and what do
16 you anticipate these folks are going to say and there
17 comes a point at which their testimony may very well
18 if they're all in the same household, it may very well
19 become cumulative.

20 So --

21 MR. BERENGUER: Your Honor, there's no
22 evidence that defense counsel did anything even with
23 the address that we gave him.

24 THE COURT: Okay.

25 MR. BERENGUER: So that's not -- that would

1 show that most likely even if the exact address was
2 provided to him from the two other witnesses, the two
3 daughters, they most likely wouldn't have done
4 anything regardless.

5 So -- and as far as the testimony it would -
6 - what testimony will they provide? It was addressed
7 here at the deposition, Your Honor, on page 65.

8 THE COURT: What testimony would he provide?

9 MR. BERENGUER: Let me be clear, Your Honor.
10 I'm sorry. As far as the testimony that Nicole and
11 Denise would provide that was addressed on page 65 of
12 the deposition in which the plaintiff -- plaintiff's
13 deposition back in May 2016 in which the plaintiff
14 stated that he was supporting his daughters and he was
15 not giving them money for his situation after his
16 accident.

17 So that was what was addressed at his
18 deposition. So defense counsel was aware of the -- and
19 had the opportunity to cross-examine further on that
20 and he was aware of what they -- the testimony would
21 be, Your Honor.

22 THE COURT: Well, there's no indication that
23 you intended necessarily to call them. The fact that
24 they come up at a deposition and you don't provide
25 addresses for them how necessarily would they be on

1 notice that you were calling them as witnesses?

2 MR. BERENGUER: Then, Your Honor, then I
3 would go back again to the answer to question 17 of
4 the interrogatories.

5 THE COURT: Okay. But you say you had no
6 obligation to provide them with an address for these
7 witnesses. Was that address requested; the names and
8 addresses of witnesses that you intended to produce?

9 MR. BERENGUER: Was that requested by
10 defense counsel?

11 THE COURT: Yes.

12 MR. BERENGUER: Not that I recall, Your
13 Honor, and it's already here mentioned in question 17
14 and there wasn't -- and a follow up --

15 THE COURT: Their names and addresses are in
16 question 17?

17 MR. BERENGUER: No, their names are, Your
18 Honor --

19 THE COURT: Yes.

20 MR. BERENGUER: -- but there wasn't a follow
21 up by the defendants to request more specific answers
22 to that either, Your Honor.

23 THE COURT: What is it -- so these two
24 witnesses are going to say the father wasn't giving
25 them money?

1 MR. BERENGUER: That will be part of their
2 testimony and how he was before and after and that's
3 all linked, Your Honor. He was limited in working so
4 on and so forth and that's all linked to economically
5 which they did address at his deposition back in May
6 2016.

7 THE COURT: And these people they were
8 living with the plaintiff?

9 MR. BERENGUER: Are you asking, Your Honor,
10 whether these witnesses were living with the
11 plaintiff?

12 THE COURT: Yes.

13 MR. BERENGUER: No, no, Your Honor. They
14 live in Florida. They reside in Florida, but the
15 plaintiff was providing some financial assistance to
16 his daughters and he also visited them, Your Honor,
17 and spoke with them on the phone through social media
18 as well, Your Honor.

19 MR. GULINO: If we were to get that far,
20 Your Honor, these children have no cause of action or
21 loss of economic, right, economic loss. They're not a
22 party to this case. They're adult children. They
23 have no cause of action on this.

24 Two, it's cumulative testimony. I'm
25 assuming, Mr. Munoz, he did testify at his deposition

1 that he can't return to work and that he has economic
2 hardship. He's going to testify to that. He's going
3 to testify to his limitations physically that he can't
4 work.

5 They see him every once in a while in
6 Florida and they're going to come in and say the same
7 things? That's cumulative testimony. So even if we
8 get passed all of the arguments about improper notice
9 let's get to the gist of what they're going to say and
10 what they're going to say is what he is going to say.

11 MR. CLARK: Judge, may I take it from here?

12 THE COURT: Yeah. You're going to have to
13 decide which one of you is going to handle what?
14 Right? Go ahead.

15 MR. CLARK: Very simply, the witnesses were
16 specifically named in response to number 17 with the
17 exception of Nicole who is a daughter. She was not
18 specifically named, that's true.

19 It's also true that question number 17 asks
20 for names and addresses and only the names were
21 provided in response to the interrogatory. That is
22 true as well. However, the addresses of the witnesses
23 were subsequently provided in a letter that is
24 attached which is now Plaintiff's Exhibit 40 for
25 identification purposes which the Court has were

1 provided in April of 2016.

2 They all live together. There is no
3 requirement under the court rules that we give a
4 summary of fact witness testimony. With regard to the
5 relevance of the testimony and foundation with regard
6 to their testimony they are non-party fact witnesses
7 who we would request be permitted to testify about the
8 changes they have seen in their father from before the
9 incident as to after the incident.

10 With regard to the objection that this
11 evidence is cumulative, the evidence is not at the
12 current time cumulative because this is the first
13 evidence that goes into this issue, number one.

14 Number two I don't -- I would respectfully
15 submit that three non-party fact witnesses whose
16 testimony should take between five to fifteen minutes
17 each I would expect, depending on objections is not
18 overly cumulative and I would also note that the
19 defendant's attack on the plaintiff throughout this
20 trial that he has not been telling the truth about the
21 nature and extent of his injuries and about his
22 ability to work makes it fair and just that these
23 witnesses be testified to refute those claims that the
24 plaintiff had not been telling the truth about those
25 things if we recall yesterday and I believe the day

1 before there was testimony about that and also I
2 watched the videotape deposition of the psychologist,
3 Dr. Sociedade and there was extensive cross-
4 examination of that doctor stating and or suggesting
5 that Mr. -- that Washington Munoz has not been telling
6 the truth about his injuries and the consequences of
7 his injuries.

8 So for all of those reasons. And finally, I
9 think I would like to note that with regard to the
10 addresses, the defense counsel was timely provided the
11 addresses well within the discovery period well over a
12 year ago for the plaintiff's family members with the
13 exception of one family member, Nicole, who apparently
14 happens to live at the same address or at some time
15 did live at the same address and there is no prejudice
16 here for the defense counsel not having one of these
17 witnesses' addresses.

18 There's no prejudice demonstrated because
19 there has been no demonstration that anything was done
20 with the addresses that defense counsel does have and
21 defense counsel with regard to the argument saying I
22 don't know what they're going to testify to, defense
23 counsel had the opportunity to delve into that at the
24 deposition of the plaintiff.

25 Defense counsel also had the opportunity to

1 subpoena these witnesses via the Florida courts to get
2 -- I forget what they call that where you go to the
3 Court to get the subpoena power for New Jersey and
4 none of that was done.

5 There's no prejudice here. There's no trial
6 by surprise. There is no trial ambush. Defense
7 counsel was aptly put on notices of these witnesses
8 who also happen to be in the pretrial exchange.

9 I don't think we need to say anything else
10 about it, Your Honor. Thank you.

11 MR. GULINO: We have not said anything about
12 the fact that the plaintiff can go back to work. We
13 haven't even started my case. I'm only on cross-
14 examination.

15 If, in fact, we were to accept everything
16 Mr. Clark said then these witnesses are rebuttal
17 witnesses on the issue of credibility of the
18 plaintiff. That's what they are. They're not to be
19 produced in his case in chief when he is going to
20 testify and that he can't work and that he has
21 economic loss and physical problems that prohibit him
22 from finding a job.

23 They're saying the same thing is cumulative.
24 I don't care if it's five minutes, fifteen minutes, or
25 two days. It is cumulative. It's a witness. And if

1 they want to put them on if I on my case and chief put
2 on evidence that he can go back to work in the same
3 field, you got rebuttal and even that is specious at
4 best because they live in Florida.

5 They're not here every day. They're
6 incompetent witnesses. They're going to see him when
7 they see him once a year, twice a year. To come
8 before this Court and this jury at this time without
9 this discovery and what they're going to say is very
10 prejudicial, Your Honor.

11 THE COURT: All right. So to the extent
12 that it appears that an address was provided for
13 Denise Munoz and Gina Oriana and the issue of their
14 potential testimony at least in part was raised during
15 the deposition.

16 The defense cannot now argue that they were
17 not on notice with respect to these witnesses. While
18 the name of Nicole Munoz is provided, there was some
19 obligation to provide at least the address. There's
20 no way of knowing that these witnesses are all
21 residing at the same address.

22 So Denise Munoz and Gina Oriana are the two
23 witnesses that you're permitted to have testify. All
24 right?

25 MR. BERENGUER: Thank you, Your Honor.

1 THE COURT: And who is supposed to be up
2 first?

3 MR. CLARK: Just as a housekeeping issue, do
4 you want to just discuss something briefly that might
5 help things?

6 MR. GULINO: Sure.

7 MR. BERENGUER: Your Honor for Denise which
8 Your Honor allowed to testify the daughter we do not
9 need an interpreter but for Gina Oriana we will need a
10 Spanish interpreter.

11 Your Honor, we're going to start with Gina
12 Oriana. She is prepared and ready to go.

13 MR. GULINO: You're going to start with
14 Gina?

15 MR. BERENGUER: Gina.

16 MR. GULINO: And she needs an interpreter,
17 right?

18 MR. BERENGUER: Yes, a Spanish interpreter.

19 MR. GULINO: Do we do that on this end or
20 they do it on that end?

21 MR. BERENGUER: On this end.

22 (Recording paused.)

23 (Recording resumes.)

24 MR. CLARK: Do the two non-party fact
25 witnesses and then I expect we'll do the plaintiff and

1 after the two non-party fact witnesses if I can just
2 perhaps request a five-minute break or ten-minute
3 break just to talk to our client and then the --

4 And then we're going to finish the read-ins.
5 I just need a little time to go through them because I
6 got the objections this morning and then we'll put on
7 the video of Sociedade and then we should be finished,
8 but I've got to go through the exhibits and things
9 like that but that's what I'm thinking.

10 THE COURT: Okay.

11 MR. CLARK: Correct?

12 MR. GULINO: The only thing that I would --
13 and that's fine. I would ask, Judge, on Gina's
14 testimony the ex-wife, who does not have a cause of
15 action, she's not married to him that she refrain from
16 saying if, in fact, Mr. Munoz owes here support or
17 alimony doesn't come in. She's not entitled to that.

18 She had no cause of action against me and
19 it's highly prejudicial.

20 THE COURT: You're not expecting to elicit
21 that type of testimony are you?

22 MR. CLARK: No. I mean the facts are going
23 to say what the facts are and not necessarily that
24 we're going to solicit the facts or elicit the facts
25 is that he was providing financial support to them and

1 not -- and it wouldn't be relevant to a claim they
2 have because they have no claim that's true.

3 It would just simply -- it would be relevant
4 sort of to the economic loss claim in terms of that
5 but, you know, I would kind of agree that when you
6 balance relevance and irrelevance that that might fall
7 on the irrelevance side.

8 So we're going to elect to not do that. So
9 it will most -- I expect the testimony will be the
10 traditional non-party fact witness testimony about how
11 the person was before and how they were after based on
12 the things that they observed and they saw, based on
13 the foundation that will be established in terms of
14 the time they spent with him, speaking with him, how
15 long they've known the plaintiff.

16 THE COURT: Okay.

17 MR. CLARK: Thank you.

18 THE COURT: All right.

19 THE CLERK: Are the interpreters here?

20 INTERPRETER: Oh, yes.

21 THE COURT: Oh, there you are. I thought I
22 saw you walk in.

23 INTERPRETER: I did.

24 THE COURT: So let's swear in the
25 interpreter.

1 INTERPRETER: Judge, is it okay if I bring a
2 chair over here?

3 THE COURT: Sure.

4 INTERPRETER: So am I going to be in the way
5 if you're using the projector?

6 MR. BERENGUER: Yes. Yes.

7 THE COURT: The person is appearing by
8 skype.

9 INTERPRETER: Oh. The witness is?

10 THE COURT: Yeah.

11 INTERPRETER: Okay. So I guess I can sit
12 here --

13 THE COURT: Maybe over here is good.

14 INTERPRETER: Okay. So this is not the
15 plaintiff right now.

16 THE COURT: This is not the plaintiff. Yes.

17 THE CLERK: Interpreter, your name?

18 INTERPRETER: Judith Brassberg, Spanish
19 Interpreter.

20 J U D I T H B R A S S B E R G, INTERPRETER, SWORN TO
21 INTERPRET ENGLISH TO SPANISH AND SPANISH TO ENGLISH

22 THE CLERK: Thank you.

23 MR. GULINO: Are you going to change the
24 name up there? We've got Nicole.

25 MR. BERENGUER: Yeah, we -- there's no way

1 to do that. It's through her account. We're just
2 going to call Gina and Denise.

3 THE CLERK: Jury entering.

4 (Jury enters courtroom.)

5 THE COURT: Thank you. Please be seated.
6 Good morning.

7 JURY: Good morning.

8 THE COURT: Counsel, your next witness.

9 MR. BERENGUER: Your Honor, we call Gina
10 Oriana.

11 THE COURT: And Gina is appearing by Skype.

12 (Gina Oriana appearing via Skype.)

13 DIRECT EXAMINATION BY MR. BERENGUER:

14 Q Good morning, Gina Oriana. Good morning,
15 Gina, do you hear me? Good morning, Gina. Do you
16 hear me?

17 A Yes.

18 Q Okay. So you hear me well?

19 A I can hear you well. Yes.

20 THE CLERK: Do you want to swear her in?

21 MR. BERENGUER: Yes.

22 THE CLERK: Lift your right hand. State
23 your full name for the record.

24 MS. ORIANA: My name is Gina Oriana.

25 G I N A O R I A N A, PLAINTIFF'S WITNESS, SWORN

1 THE CLERK: Thank you.

2 BY MR. BERENGUER:

3 Q Good morning, Gina. My name is Lazaro
4 Berenguer. Where are you at right now?

5 A Good morning, Counselor, I'm fine, thank God.

6 Q Where are you at right now physically?

7 INTERPRETER: The interpreter cannot hear
8 the witness.

9 Q Can you try to keep your voice up a little
10 bit? We can't hear you. We're having a little
11 difficulty hearing you.

12 A That's fine.

13 Q Where are you at right now, Ms. Oriana?

14 A Excuse me. I can't hear you.

15 Q Where are you at right now, Ms. Oriana?

16 Okay. Can you say that one more time?

17 A I am where I live in my apartment in Orlando,
18 Florida.

19 Q Thank you. Ms. Oriana, can you tell us a
20 little bit about yourself?

21 A As I said, my name is Gina Oriana, I'm from
22 Ecuador.

23 Q How do you know Washington Munoz? Do you
24 know Washington Munoz?

25 A I am his ex-wife. I've known him for 27 years.

1 I married him 24 years ago.

2 Q Do you -- go ahead. I'm sorry.

3 A Now, we've been divorced for ten years. And
4 we're friends. We have two daughters.

5 Q Do you communicate with him -- how often --
6 do you communicate with him at all?

7 A We're in contact through our daughters, yes. If
8 there's a family gathering they invite me because
9 we're very close because I've known him for so many
10 years.

11 Q Do you have any knowledge of Mr. Munoz's
12 accident at work? Do you know anything about that?

13 A Yes, I heard he had an accident.

14 Q Can you tell me if there was a change in Mr.
15 Munoz's life because of the accident?

16 MR. GULINO: Objection. Foundation.

17 THE COURT: So the objection is sustained.

18 Rephrase your question.

19 BY MR. BERENGUER:

20 Q How was Mr. Munoz prior to the accident?
21 Can you tell me a little bit about that?

22 MR. GULINO: Objection. Open-ended
23 physically. I don't --

24 Q Have you seen any changes in Mr. Munoz
25 before the accident and after? Ms. Oriana, can you

1 hold on one minute. I apologize. We have an
2 interpreter and she can only interpret by portions.
3 So give her a moment so that she can interpret that to
4 the jury, okay?

5 A Yes, as I was saying, I was married to him. We
6 have two daughters so I know him and he used to be
7 very active and hardworking and very happy and he's
8 not the same. He's not working like he was before.
9 In fact, I know that he is not working. He worked
10 construction. I met him -- his father was working
11 construction in Ecuador and he came here and started
12 to work in construction.

13 Q Okay. Can you continue?

14 INTERPRETER: Could the interpreter request
15 that she continue with the -- that the witness be
16 instructed to continue with pauses, please?

17 MR. BERENGUER: Yes.

18 BY MR. BERENGUER:

19 Q Yes. Ms. Oriana, please tell me about how
20 he has changed. Continue to tell me about that but
21 take pauses, okay?

22 THE COURT: Counsel, her answers to the
23 questions need to be based upon her own observations
24 or perhaps discussions with the plaintiff not what she
25 knows through other people or through the daughters.

1 BY MR. BERENGUER:

2 Q Ms. Oriana, just please tell us about your
3 personal experience with Mr. Munoz as far as how he
4 has changed, okay?

5 A Okay.

6 INTERPRETER: The interpreter cannot hear
7 the witness, Your Honor.

8 BY MR. BERENGUER:

9 Q Can you speak up a little bit, Ms. Oriana?

10 A Yes.

11 Q Ms. Oriana, I need you to take pauses for
12 the interpreter.

13 A As I was telling you, he used to be very active.
14 He used to like to play sports and one day I went to
15 talk to him about something about our daughter and I
16 said -- I don't remember the exact date, but it was
17 last year.

18 Q Please continue, Ms. Oriana and tell us
19 about Washington.

20 A Yes, if we need gas to go somewhere he was and it
21 was a place where they were playing sports.

22 THE COURT: Counsel --

23 INTERPRETER: She's not pausing for me.

24 Q Ms. Oriana, I need you to take pauses, okay?
25 Okay?

1 A It was a place where they were playing sports and
2 I thought that he would be playing sports, but he
3 wasn't. He was watching.

4 Q Please continue.

5 MR. GULINO: Objection. Lack of foundation.

6 A I asked him why wasn't he playing and he said
7 that he could not.

8 INTERPRETER: The interpreter cannot hear
9 the witness.

10 BY MR. BERENGUER:

11 Q Ms. Oriana, we couldn't hear that last part.
12 Can you repeat what you were saying about Washington?

13 THE COURT: And we -- so to the witness, do
14 not tell us anything that anyone told you including
15 the plaintiff. Your testimony must be based solely on
16 your observations or your having interacted with the
17 plaintiff. You can continue.

18 A He seemed sad to me.

19 INTERPRETER: The interpreter cannot hear
20 the witness, Your Honor.

21 BY MR. BERENGUER:

22 Q Okay. Can you -- that last portion you said
23 he seemed sad. We couldn't hear the rest of it. Can
24 you repeat that?

25 INTERPRETER: The interpreter cannot hear

1 her.

2 BY MR. BERENGUER:

3 Q Can you please speak a little louder?

4 A He looked sad to me.

5 MR. GULINO: Objection. Foundation. He
6 looked sad.

7 BY MR. BERENGUER:

8 Q Was that after the incident?

9 A Yes, sir.

10 MR. BERENGUER: Nothing further.

11 THE COURT: Cross-examine?

12 CROSS-EXAMINATION BY MR. GULINO:

13 Q Good morning. Can you see me?

14 A Yes.

15 Q When did you and Washington divorce?

16 INTERPRETER: The interpreter cannot hear
17 the witness.

18 Q You have to speak up. We can't hear you.

19 A In 2007.

20 Q In 2007. And how old are the daughters?

21 INTERPRETER: The interpreter is not certain
22 she heard the first whether it was 31 or 21, and the
23 other one is 19.

24 BY MR. GULINO:

25 Q Where were you living with -- where were you

1 living in 2007 when you got divorced?

2 A In Florida.

3 Q Why did you move to Florida?

4 A Please repeat that question, please.

5 Q When did you move to Florida?

6 INTERPRETER: The interpreter cannot hear
7 the witness.

8 BY MR. GULINO:

9 Q We can't hear you.

10 A I don't remember very well around 2011 or 2012.

11 Q In 2011, before you -- was Washington
12 employed as a truck driver?

13 A The communication was basically through my
14 daughters and when I would see him at some family
15 gathering.

16 Q Are you telling this jury that your
17 testimony is based upon texts through your daughter
18 and when you see him only occasion?

19 A I don't understand.

20 Q His accident occurred two years after you
21 moved to Florida.

22 A Yes.

23 Q How often have you seen him since the
24 accident?

25 A Not very frequently.

1 Q And when you say not very frequently --

2 INTERPRETER: I cannot hear what the witness
3 is still saying.

4 Q Would it be twice a year? We can't hear
5 you.

6 A Two or three times.

7 Q Two or three times a year. So you've only
8 seen Washington since the accident no more than eight
9 or nine times?

10 A Yes.

11 MR. GULINO: Nothing further.

12 THE COURT: Anything else from this witness?

13 MR. BERENGUER: Yes, Your Honor.

14 REDIRECT EXAMINATION BY MR. BERENGUER:

15 Q How frequently do you speak to Washington?

16 A It's not that often. It's all through my
17 daughters that I speak with him.

18 MR. BERENGUER: Nothing further, Judge.

19 THE COURT: All right. Next witness.

20 INTERPRETER: Judge, does the next witness
21 need the interpreter?

22 THE COURT: The next witness does not need
23 the interpreter, right?

24 MR. BERENGUER: Correct. The next witness
25 does not need the interpreter.

1 INTERPRETER: Thank you.

2 MR. BERENGUER: Our next witness is Denise
3 Munoz.

4 THE CLERK: Lift your right hand. State
5 your name for the record.

6 (Witness Denise Munoz appearing via Skype.)

7 MS. MUNOZ: Denise Munoz.

8 D E N I S E M U N O Z, PLAINTIFF'S WITNESS, SWORN.

9 THE CLERK: Thank you, ma'am. Please answer
10 all questions.

11 DIRECT EXAMINATION BY MR. BERENGUER:

12 Q Good morning, Denise.

13 A Good morning.

14 Q Can you tell us a little bit about yourself?

15 A I'm currently working in (indiscernible) in the
16 airport. I'm a full-time student as well and recently
17 I got out of the military, well they gave me a chance
18 to get out. I've been in basic, I did everything but
19 they just didn't give me my (indiscernible) I wanted
20 but I'm planning on going back soon after I finish my
21 bachelors as an officer.

22 Q You're planning on going back into the
23 military to do what?

24 A Finish my bachelors. I want to go into OCX
25 school to go in as an officer because you go in like

1 with a higher rank once you have like a bachelor's
2 degree.

3 Q Okay. What branch of service are you in?

4 A Army.

5 Q You're going to be in the Army. What is
6 your relationship with your dad -- sorry, Your Honor.
7 How do you know Washington Munoz?

8 A Well, he's my dad. You know, I love him a lot and
9 always maintain a good communication with him well
10 through Facebook Messenger. He's not only my dad he's
11 like my friend like, you know, I treat him like
12 another buddy as well, you know.

13 Q How often do you speak with your dad?

14 A I seem him like almost every day if not like
15 every day, you know, like in everything. And
16 everything like in Facebook posts and like I comment
17 like I tell him stuff like -- like I said, he's a lot
18 of fun.

19 Q Are you aware that your dad was involved in
20 a work accident?

21 A Yes, because of that accident, I can't see him as
22 much. He's always in physical therapy and it's like
23 hard for me to see him, you know?

24 Q Stop. Okay. Hold on.

25 THE COURT: There's an objection. What's

1 the objection?

2 MR. GULINO: Move to strike that portion,
3 non-responsive, please.

4 THE COURT: All right. The witness should
5 listen carefully and respond only to the question that
6 is being asked.

7 BY MR. BERENGUER:

8 Q Are you aware that your dad was involved in
9 an accident at work on June 25th, 2013? Are you
10 aware?

11 A Yes.

12 Q Have you seen a change in Washington's -- in
13 Washington before the accident to after the accident?

14 A Like completely in what is like (indiscernible)
15 when we used to do bonding activities and all of that.

16 Q What do you mean?

17 A On like how before we used to go fishing. We
18 used to go like volleyball like with the family like
19 competition, soccer and all of that. Like I said, we
20 don't do that as much. We can't do that as much, it's
21 not like he would want to.

22 Q Why can't you?

23 A We can't because of his injury and also because
24 he doesn't come down. And when he does come down it's
25 not the same like we might see a movie we might like

1 eat, go out to eat, but it's not the same as like
2 doing bonding activities like we used to. It's not
3 the same.

4 Q Before the accident, how much would he come
5 down before?

6 A He would come down like probably every two months
7 and stay like a weekend like a few more days like five
8 days or something like whenever you get a chance to
9 make (indiscernible) or (indiscernible).

10 Q What about after the accident? How often
11 would he come down?

12 A Well, maybe like in a big family thing when he
13 really can maybe Christmas or Thanksgiving something
14 like that but probably two times, but not that much.

15 Q Do you know why?

16 A Because he -- his physical therapy and also
17 because he doesn't have the money to do that. Like he
18 doesn't have the financial stability to do that. He
19 has to (indiscernible).

20 THE COURT: Stop. Stop. Stop. The jury
21 will disregard that. This -- any information that you
22 have about your dad's situation based upon what he
23 told you you will not share with this jury. All
24 right? You can testify only about your observations
25 of how your dad was before and how he was after the

1 accident. Anything that he's told you about his
2 situation therapy appointment, any of that none of
3 that is for this jury to consider. It's considered
4 hearsay, okay? Okay.

5 BY MR. BERENGUER:

6 Q From what you have seen, how does your dad
7 appear emotionally after the accident?

8 A Well, like I said when I see him it's not the
9 same. His face is not the same. He can't do the
10 stuff he used to do. Like that's -- before he used to
11 be happy like we used to do stuff together but not
12 like he can't do. He can't. Like he's more sad now
13 like it's not the same. I'm sorry.

14 MR. BERENGUER: Nothing further, Judge. No
15 further questions.

16 THE COURT: Cross-examine.

17 MR. GULINO: May I give her a moment to
18 compose herself?

19 THE WITNESS: I'm ready.

20 CROSS-EXAMINATION BY MR. GULINO:

21 Q Hello, Denise. Can you see me?

22 A No.

23 Q Can you see me now? No?

24 A No, I can't.

25 Q Okay. Can you hear me?

1 A Yes.

2 Q That's fine. When did you move to Florida?

3 A It was in 2012 around that time.

4 Q Is that when -- and did you move with your
5 mom and your sister?

6 A Yes.

7 Q What did your dad injure?

8 A I think it was his shoulder.

9 Q Which one?

10 A His hand. His right hand.

11 Q Okay. And is your dad right or left-handed?
12 Can you hear me?

13 A Yeah.

14 Q Is your dad right or left-handed?

15 A He's right-handed.

16 Q Okay. So before his injury when you moved
17 down there in 2000 about '12, he got hurt in 2013. So
18 he would go see you every couple of months then before
19 the accident?

20 A Yes. Like before the accident, yes.

21 Q And now it's maybe twice a year?

22 A Yes.

23 Q Okay.

24 MR. GULINO: That's all I have for you.

25 Thank you.

1 THE COURT: All right.

2 MR. BERENGUER: Nothing further, Judge.

3 THE COURT: All right. Thank you. You can

4 --

5 MR. BERENGUER: I'll just put the cover on
6 the computer.

7 THE COURT: Okay. Thank you. Your next
8 witness?

9 MR. BERENGUER: Your Honor, now we would
10 like to call Washington Munoz.

11 THE COURT: Okay. Mr. Munoz? He needs the
12 interpreter, right?

13 MR. BERENGUER: Yes. Yes, he does, Judge.

14 THE COURT: Okay. Does the blue light stay
15 on or --

16 THE CLERK: This is the court's system.

17 THE COURT: I know nothing about it. Thank
18 you.

19 W A S H I N G T O N M U N O Z, PLAINTIFF'S WITNESS,
20 SWORN

21 MR. GULINO: Judge, can we have a sidebar
22 before we begin?

23 THE COURT: Sure.

24 (THE FOLLOWING TAKES PLACE AT SIDEBAR.)

25 MR. GULINO: I know we discussed this and

1 you had overruled my objection.

2 MR. BERENGUER: Judge, should we take a few
3 minutes because -- should we take a few minutes
4 because the interpreter --

5 THE COURT: Well, I think the interpreter
6 was just down the hall.

7 MR. GULINO: I don't believe -- and I know
8 he's going to testify. I don't believe that plaintiff
9 is going to bring anybody as an economist who is going
10 to talk about present value, taxes, et cetera.

11 What I'm worried about -- what I'm worried
12 about during his testimony it's going to be all gross
13 numbers. He's not going to know how much they take
14 out in taxes, et cetera, et cetera, et cetera.

15 So that's my concern before he gets on the
16 stand.

17 THE COURT: Okay. All right.

18 MR. BERENGUER: Your Honor, the jury charge
19 addresses that and the pay stub has the tax
20 information here, Exhibit 30.

21 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

22 THE COURT: Mr. Munoz, come on up.

23 THE CLERK: Place your left hand on the
24 Bible, uplift your right. State your full name for
25 the record.

1 MR. MUNOZ: Washington Munoz.

2 W A S H I N G T O N M U N O Z, PLAINTIFF, SWORN

3 THE CLERK: Thank you, sir. Please be
4 seated. Answer all questions. Affix your seat.

5 DIRECT EXAMINATION BY MR. BERENGUER:

6 Q Good morning, Washington.

7 A Good morning to everyone.

8 Q Can you tell us a little bit about yourself?

9 A I'm from Ecuador.

10 MR. GULINO: Objection. Asks for a
11 narrative.

12 THE COURT: Let me see how much of a
13 response there is and if there is a narrative --

14 BY MR. BERENGUER:

15 Q Just briefly, can you tell us a couple of
16 things about yourself?

17 A I am from Ecuador and I'm 47 years old. And thank
18 God I came to this country with a visa around 1993. I
19 am from a family where my father loves construction
20 which is why I stayed here in this country to learn
21 something about construction because the system here
22 is different from the one there.

23 Besides construction, what I love is master
24 of ceremonies it's called, programs --

25 INTERPRETER: The interpreter could not hear

1 that response.

2 A I had the opportunity to have what they call a
3 masters in audio and recording. I love music and
4 that's my hobby.

5 Q Mr. Munoz, let's now go back to June 2013.

6 Who were you working for at the time?

7 A Cooper Construction. I was a member of the
8 union.

9 Q And what were you doing for Cooper at that
10 time in June of 2013, what kind of work?

11 A Plaster.

12 Q Can you tell us what is plaster? What is
13 that? What kind of work?

14 A Here they call it stucco. It's done outside.

15 Q And how do you do that kind of work? What
16 does it entail?

17 A That entails foam and then you cover it with a
18 base coat, then you put finishes which is paint color,
19 whatever color they want.

20 Q How long had you been doing that kind of
21 work for Cooper?

22 A For Cooper I think it was about two and a half
23 months for that company.

24 Q And how much were you getting paid for
25 working for Cooper?

1 A Thirty-nine an hour.

2 Q Were you part of a union?

3 A Yes, that's correct.

4 MR. BERENGUER: Your Honor, may I approach
5 the witness?

6 THE COURT: Sure.

7 BY MR. BERENGUER:

8 Q I'm looking here at Plaintiff's Exhibit 30.
9 Do you know what that document is?

10 A This is proof that they paid me.

11 Q That who paid you?

12 A The Cooper company, Cooper Plasterers.

13 Q On there, does it say how much you earned?

14 A Excuse me, where?

15 Q On the document that you're looking at, does
16 it say the amount that you earned?

17 A Correct.

18 Q What is that amount?

19 A The amount or the hours?

20 Q Per hour.

21 A Thirty-nine an hour.

22 Q Have you seen that document before?

23 A Yes.

24 Q Does that look -- is that document complete?

25 A Yes, this is what they used to give me, the copy

1 of my check.

2 Q Thank you.

3 MR. BERENGUER: Your Honor, we'll move this
4 into evidence later, Plaintiff's Exhibit 39 unless
5 Your Honor wants to do that now.

6 THE COURT: Has there been an agreement?

7 MR. GULINO: You want to introduce it?

8 MR. BERENGUER: Yes, we move it.

9 MR. GULINO: I object.

10 THE COURT: Well, this why I said we wait
11 till the end.

12 MR. BERENGUER: Okay. Fair enough.

13 BY MR. BERENGUER:

14 Q Now, this amount, \$39 an hour is this --

15 MR. GULINO: Objection. This is a document
16 that's not in evidence and I have objected to its
17 introduction.

18 THE COURT: There was testimony related to
19 it. The objection is overruled.

20 BY MR. BERENGUER:

21 Q Okay. Now, this amount \$39 an hour, was
22 that typically what you earned?

23 A Yes, that's what I was paid.

24 MR. BERENGUER: Your Honor, can we have a
25 sidebar?

1 (THE FOLLOWING TAKES PLACE AT SIDEBAR.)

2 MR. BERENGUER: Your Honor, I would like to
3 move this exhibit into evidence now so that we can
4 address Mr. Gulino's objection now while the witness
5 is on the stand.

6 THE COURT: I don't understand. What do you
7 mean by that?

8 MR. BERENGUER: Mr. Gulino has placed an
9 objection on the record.

10 THE COURT: Right.

11 MR. BERENGUER: I don't know what his basis
12 is, I don't know --

13 THE COURT: I want to deal with the evidence
14 going at a later point in time. You can talk about
15 this document with the witness without it being in
16 evidence.

17 MR. BERENGUER: My concern is, Your Honor,
18 that then we'll have to recall Mr. Munoz back on the
19 stand if based on Mr. Gulino's objection and publish
20 it to the jury now. So I would like to be able to
21 publish it to the jury now.

22 THE COURT: You can't just publish a
23 document. There's a lot of information in here none
24 of which has been discussed by this witness. So you
25 just want to publish it? No, there's no basis to do

1 that.

2 MR. CLARK: I know, but may I be heard?
3 This is an important document. Is it okay if I'm
4 heard on it. I know. I didn't mean to do that but is
5 it okay?

6 THE COURT: Yes.

7 MR. CLARK: All right. This is a very
8 important document we would like to -- he's identified
9 it. It's his pay stub. We would like to move it into
10 evidence at this point. I don't know what the
11 objection is so we can't address his objection, but I
12 would like to.

13 It's relevant. It's like a photograph, and
14 we would like to move it into evidence at this time
15 and publish it to the jury.

16 THE COURT: Move it into evidence without --
17 none of this has been discussed by this witness and
18 you just want to move it into evidence.

19 MR. CLARK: Well, it's his paystub, but I
20 don't think there's any objection to authenticity to
21 the document. I don't know what the objection is.
22 Are they objecting it's not authentic, we need to
23 bring someone in from Cooper to identify it?

24 THE COURT: What's the objection?

25 MR. GULINO: It's a business record by

1 somebody else. I don't even know if this -- it's not
2 the original. I don't know what it is. I don't know
3 where they got it. I don't know where these numbers
4 came from.

5 MR. BERENGUER: Okay. So then I'm going to
6 have to bring someone from Cooper Plaster in to
7 authenticate it. That's why I need to know the
8 objection. So now I need to get someone from Cooper
9 in here.

10 Are they seriously contesting? Are they
11 saying --

12 MR. GULINO: But they have to, because
13 nobody subpoenaed anybody from Cooper for this
14 document which should be somebody from the payroll
15 department to say come on in and show his payroll.

16 MR. BERENGUER: Okay. So we're going to do
17 that. But I would note that Cooper Plastering was a
18 party to this case for discovery purposes so they're
19 really still before the Court because the Court could
20 read this at the dismissal and order the person to
21 come in to authenticate this document.

22 That's why I needed to know the objection
23 now. It's authenticated.

24 THE COURT: Well, you now know the
25 objection, but it seems to me that you can certainly

1 have a discussion about this particular document, how
2 the witness testified by what's contained within it,
3 based upon his having seen it before without
4 necessarily dealing with it being in evidence at this
5 time.

6 There are many times that information is put
7 before a jury and the document itself doesn't
8 necessarily go in. So we can address it going into
9 evidence at a later point in time. You can --

10 MR. BERENGUER: In terms of scheduling all
11 of that, we need to revisit the schedule now because I
12 need to get somebody in from Cooper --

13 THE COURT: Sure.

14 MR. BERENGUER: -- and I would ask the Court
15 to order Cooper who is still before this Court to
16 bring in their payroll person to authenticate the
17 document.

18 THE COURT: No, no, no, no. You are the one
19 putting a wage claim in this case. That's your
20 obligation.

21 MR. BERENGUER: All right. So then -- okay.
22 I guess I need to revisit whether Cooper is a party to
23 the case for discovery and do a subpoena to bring in a
24 --

25 THE COURT: Do what you need to do.

1 MR. BERENGUER: Okay.

2 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

3 BY MR. BERENGUER:

4 Q Mr. Munoz, I'm handing you back again
5 Plaintiff's Exhibit 30. So looking at that document,
6 did you receive a check from Cooper Plastering that
7 reflects this?

8 A Yes.

9 Q And that check, did you go ahead and you
10 deposited in a bank account or did you cash it?

11 A Sometimes I would cash it at the bank if I needed
12 to.

13 Q Now, look at the withholding spots. So
14 let's look a little above that the earning spots.
15 It's -- what is your hourly wage there, your earnings?

16 MR. GULINO: Objection.

17 A It's 39.

18 MR. GULINO: He's reading from the document
19 again without his memory. If he can't remember it, is
20 he going to use it to refresh his recollection?

21 MR. CLARK: Judge, as an alternative we
22 would just like to move it into evidence and publish
23 it to the jury.

24 THE COURT: We've discussed that at sidebar
25 already. Go ahead. The objection is overruled.

1 BY MR. BERENGUER:

2 Q So what was your hourly earnings, looking at
3 the earnings box on top?

4 A Thirty-nine per hour.

5 Q Is that -- was that consistent with what you
6 were always earning working for Cooper as part of the
7 Union?

8 A Yes.

9 Q And how many hours were you working there
10 according to that statement?

11 A I really can't see how many hours on here, how
12 many work hours because there's a lot.

13 THE COURT: You can just ask him a question
14 and then see whether or not he knows the answer to it.
15 If he doesn't, then he can use the document.

16 BY MR. BERENGUER:

17 Q Typically, Washington, per week how many
18 hours would you work for Cooper Plastering as part of
19 the Union?

20 A Forty hours and sometimes there was overtime. Not
21 every week, but there was sometimes overtime to do.

22 Q Typically, how many hours of overtime would
23 you work for Cooper as part of the Union?

24 A Six or seven hours a week.

25 Q Now, do you remember if money was withheld,

1 if taxes were withheld from that -- from your
2 earnings?

3 A I just received this. I don't really understand
4 it, but there were deductions.

5 Q But there does seem to be some sort of
6 deductions on there, correct?

7 A That's correct.

8 Q From tax, correct?

9 A That's correct.

10 Q Now, let's look at the bottom box. It says
11 net pay. Typically, do you remember how much you
12 earned gross that means before taxes were taken out.
13 Do you remember?

14 A It shows here 1,000 -- the top part says how
15 much.

16 Q Okay. And how much is it?

17 A It comes out to 1,600 something.

18 Q What number are you looking at? Can you
19 tell us specifically what the number is if you can see
20 it?

21 A 1,606.80.

22 Q And you used to get paid how often, every
23 week, every two weeks? How often were you getting
24 paid?

25 A It was a week.

1 Q So you were paid every week.

2 A That's correct.

3 Q After taxes were taken out, on average how
4 much would you earn a week?

5 A About 1,200 or 1,300 or 1,400. It depended.

6 Q What's the amount that it says on there, on
7 your paystub, what's the amount?

8 MR. GULINO: Objection.

9 MR. CLARK: Can we just move it into
10 evidence, please? I mean it would make this --

11 THE COURT: Mr. Clark -- Mr. Clark --

12 MR. CLARK: -- go a lot quicker.

13 THE COURT: Mr. Clark. Mr. Clark.

14 MR. CLARK: I apologize, Judge.

15 BY MR. BERENGUER:

16 Q What's the amount in there that sets forth
17 your net pay?

18 A \$1,150.68.

19 Q Look at that number again, what's the
20 amount?

21 A 1,150.68.

22 Q Was that typically how much you would earn
23 per week net pay working for Cooper as part of the
24 union?

25 A That's correct. More or less that amount,

1 sometimes more but around that.

2 Q How many days per week would you work for
3 Cooper?

4 A Five days, sometimes six, including Saturday
5 sometimes up till noon when they needed it.

6 Q And what hour would you start? What time?

7 A 7 a.m.

8 Q And what hour would you leave?

9 A Usually 3:30, eight hours.

10 Q What about vacation time? Did you have any
11 vacation time?

12 A No.

13 Q Why not?

14 A I like to work.

15 Q So now let's go to the date of the incident,
16 June 25th, 2013. What kind of work were you doing on
17 that day?

18 A Plaster. I was plastering.

19 Q Where? Do you remember?

20 A In the morning we started on a part of the
21 downstairs.

22 Q I'm sorry. I meant do you know the
23 location.

24 A I don't recall the address very well, but it was
25 Coliseum or something. I didn't know that complex.

1 Q Okay. Looking at Plaintiff's Exhibit 1, do
2 you know what that is?

3 A That's where we were working.

4 Q Okay. What kind of work were you doing at
5 that place back on June 25th, 2013, what type of work?

6 A In the morning we were doing base coat
7 downstairs.

8 MR. BERENGUER: Your Honor, I would like to
9 move Plaintiff's Exhibit 1 into evidence.

10 MR. GULINO: No objection.

11 THE COURT: It's in evidence.

12 BY MR. BERENGUER:

13 Q How long had you been working on that -- at
14 that project site? Do you remember?

15 A About two, two and a half months.

16 Q Can you tell us what happened on June 25th,
17 2013, tell us what happened.

18 A We were working on the lower level on the section
19 putting on base coat and then when we finished that,
20 we were sent to do a job on the upper level on the
21 roof. So after finishing the job that they pointed out
22 to us, we took the material up to prepare for the next
23 day because it was about three something in the
24 afternoon.

25 So when we got to the roof with the

1 materials, I had two buckets of materials and my tool
2 bag so I opened the door to the roof and it was a flat
3 roof so I walked there and all of a sudden I realized
4 I put my foot in a section in a section on the roof
5 that was kind of -- it looked straight, but I didn't
6 realize that there was my foot -- it was an accident,
7 where I felt a lot of pain in my back and my arm. It
8 hurt a lot.

9 So I asked for a lot of help. I don't
10 remember really which one of the guys was there. So
11 he told me --

12 THE COURT: Don't tell us what he told you.

13 BY MR. BERENGUER:

14 Q We'll take this step by step. Let's go back
15 a little bit.

16 A Okay. All right.

17 Q Was --

18 MR. GULINO: I'm looking at Plaintiff's
19 Exhibit 2, Your Honor. Can I publish this to the
20 jury?

21 THE COURT: Any objection?

22 MR. GULINO: Fine. No objection.

23 THE COURT: P-2 is published.

24 BY MR. BERENGUER:

25 Q Mr. Munoz, do you know what this picture

1 shows?

2 A That was the entrance to the section we were
3 going to work in.

4 Q And you -- in your testimony you mentioned
5 that you were -- you walked through a door.

6 A Yes, I went through a door.

7 Q Is that the door that you're referring to?

8 A That's correct.

9 Q Was that the first time you had walked
10 through that door?

11 A That's correct.

12 Q Was that the first time that you had been in
13 that area before?

14 A That's correct.

15 MR. BERENGUER: Your Honor, I would like to
16 move that exhibit into evidence as well, Plaintiff's
17 Exhibit 2.

18 MR. GULINO: No objection, Your Honor.

19 THE COURT: Are there any other photographs
20 that you're moving in that have not been discussed
21 with counsel so that there is an agreement. We had
22 this discussion before.

23 MR. BERENGUER: They've all been discussed
24 with counsel and he hasn't stated any objections.

25 THE COURT: Okay.

1 MR. BERENGUER: So I'm specifically relating
2 to Plaintiff's Exhibit 3 and Plaintiff's Exhibit 6.
3 These are the pictures we discussed.

4 THE COURT: They can be published without
5 necessarily moving them as long as there is some
6 testimony related to them.

7 So why don't we do that first. Okay?

8 MR. BERENGUER: Yes, Judge.

9 THE COURT: Okay.

10 BY MR. BERENGUER:

11 Q On the day of the incident, June 25th, 2013,
12 I'm looking here at Plaintiff's Exhibit 3. Can that
13 be published to the --

14 MR. BERENGUER: Can I publish this to the
15 jury, Your Honor?

16 THE COURT: I'm sorry. Did you have
17 anything else you wanted him to say about the photo or
18 --

19 MR. BERENGUER: No, not before we publish
20 it, Judge.

21 THE COURT: Any objections?

22 MR. GULINO: No, I thought it was already
23 marked and admitted yesterday and I thought it was
24 number four down here, same photo, isn't it?

25 THE COURT: P-3 in evidence.

1 MR. GULINO: We were using it yesterday.

2 THE COURT: All right. So it's in evidence.

3 MR. GULINO: It's already in evidence.

4 BY MR. BERENGUER:

5 Q Do you know what that picture shows?

6 A Yes.

7 Q What does it show?

8 A That's where I put my foot.

9 Q Is -- I'm sorry. I don't understand. Is
10 that where you put your foot on the date you were
11 injured?

12 MR. GULINO: Objection. Leading.

13 THE COURT: Sustained.

14 BY MR. BERENGUER:

15 Q I'm sorry. Is that -- what do you mean by
16 that's where you put your foot?

17 A I remember that I walked there; that that part is

18 INTERPRETER: The interpreter will request
19 clarification.

20 A That's where I felt my foot go down on.

21 Q Okay. I'm going to give you a laser pointer
22 now and can you just show -- can you just show us
23 where you're talking about that you put your foot?

24 A In this area here.

25 Q Okay. I'm going to ask you to come off the

1 sand and just circle it with a pen. Actually, I'll
2 just bring it up to you. Can you just -- with this
3 marker can you just circle the area where you placed
4 your foot at. So back in June 2013 when you were --
5 when the accident happened, did the area look like
6 that?

7 A Yes, that's correct.

8 MR. GULINO: Can we have a sidebar on that,
9 please, Judge?

10 MR. BERENGUER: Sure.

11 (THE FOLLOWING TAKES PLACE AT SIDEBAR.)

12 MR. GULINO: Would you bring that up to the
13 judge? That's what I want to talk about, not the one
14 you were just going to introduce. Not that one. The
15 one that you were bringing up. Yes. That one.

16 MR. CLARK: Is it okay if I respond if Mr.
17 Berenguer is not, can I handle it at the sidebar
18 because I know you don't want the two.

19 THE COURT: I don't want the two. So do you
20 want to address it?

21 MR. CLARK: Is it okay if I do?

22 THE COURT: Yes.

23 MR. GULINO: Could I just ask before I get
24 to the argument, Your Honor. I appreciate the fact
25 there's two lawyers. I know we have a designated

1 trial attorney. I know Mr. Berenguer is very helpful,
2 but if we have a witness I would like -- if I may, one
3 attorney make the arguments on that witness, not two,
4 I just think it's only fair one at a time so I'm going
5 to ask for that.

6 MR. CLARK: And I don't have a problem with
7 that. I'll make the arguments. That's fine.

8 MR. GULINO: He put the witness on. He's
9 the attorney for this witness. He should make the
10 arguments, not two of you. It doesn't go that way.

11 THE COURT: What's your objection?

12 MR. GULINO: My -- this is a post-accident -
13 - this an inspection going on. This is Mr. Beardsley
14 and this is my partner and they're using this to say
15 that they were there when the accident happened. They
16 didn't have expert testimony and I think that's what
17 he's going to argue to the jury in summation. He's
18 going to say --

19 INTERPRETER: Can I just speak to you about
20 a correction?

21 THE COURT: Okay. Okay.

22 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

23 THE COURT: Let's take 15 minutes, all
24 right?

25 (Jury exits courtroom.)

1 THE COURT: Okay. Let's address the record.
2 You had a correction.

3 INTERPRETER: Yes. Mr. Munoz was testifying
4 and he said a word that I didn't understand at the
5 moment and after the fact my team interpreter helped
6 me with that and I wanted to bring it to your
7 attention. It was a word that I tried to clarify with
8 Mr. Munoz and was not able to. He didn't respond to
9 the attempt to clarify what was said and what was not
10 yet on the record was that area that looks patched up.

11 MR. BERENGUER: It was probably in reference
12 to Plaintiff's Exhibit 3?

13 INTERPRETER: Yes. Yes. So that's not yet
14 on the record in English that that was said and I
15 attempted to clarify that, it didn't get clarified
16 until I had the assistance of my team interpreter and
17 wanted to bring it to your attention.

18 THE COURT: All right. So --

19 INTERPRETER: Basically what I'm saying is
20 that part of the interpretation was omitted and wasn't
21 clarified on the record.

22 THE COURT: Okay. So when the jury comes
23 back I guess the only way to deal with it is just --
24 do you remember your question specifically?

25 MR. BERENGUER: I'm sure I can get to that.

1 Your Honor, I can just say -- I can go back to the
2 area where he circled where he fell and he can --

3 THE COURT: Response.

4 MR. BERENGUER: -- into that response. The
5 area was patched up, I can definitely do that.

6 THE COURT: Okay. Okay. So we'll do that
7 when the jury comes back. Okay?

8 MR. BERENGUER: Sure.

9 THE COURT: You can step down. Yeah, step
10 down. We're going to take 15 minutes.

11 THE WITNESS: Okay.

12 THE COURT: Okay. You want to address the
13 issue of the photograph.

14 MR. GULINO: Yes, Your Honor, the photograph
15 of the -- Mr. Berenguer would like to introduce if I
16 may. This is a photograph I believe taken during an
17 inspection which occurred before the lawsuit occurred.
18 I think there was a Worker's Comp case at the time,
19 and the photograph shows Mr. Beardsley, my witness,
20 who is outside and subpoenaed and my partner, Angelane
21 Hart and it shows the area where the accident
22 occurred, but it doesn't show it in the condition it
23 was as they have introduced -- there's two photographs
24 right now that have been introduced showing the exact
25 area at the time that the accident occurred.

1 I don't know what the purpose of this is to
2 show this to a jury except perhaps to say well you
3 know what on summation, if those caps had put in, we
4 wouldn't be here. That's not part of their case.

5 THE COURT: Uh-huh.

6 MR. GULINO: And they haven't brought that
7 up on this part of the case and I think it's highly
8 prejudicial to me. We don't need this. We already
9 have photographs into evidence that show the exact
10 area where he fell and he actually circled it today
11 and I did not object to that.

12 MR. CLARK: The objection that I'm hearing
13 with regard to Plaintiff's Exhibit 6 is relevance.
14 The record should reflect that Plaintiff's Exhibit 6
15 and Plaintiff's Exhibit 3 are very different
16 photographs; therefore, it's not a cumulative issue.

17 Plaintiff's Exhibit 3 is a close up of the
18 area that fell. Plaintiff's Exhibit 6 is a wireframe
19 photo of the area where the plaintiff fell and it
20 shows the pathway that he walked. It shows the wall
21 that he was heading to to work on and I believe that
22 it is important and most importantly it's relevant to
23 the jury's understanding of the walkway and the
24 pathway that the plaintiff took when he went to the
25 scene so we believe the photo is relevant.

1 We believe the photo is relevant and should
2 be permitted to be used.

3 THE COURT: Is there another photograph that
4 is from perhaps that angle that doesn't have the
5 remedial measures that were taken after this accident
6 occurred?

7 MR. CLARK: There is no a wide-angle view.
8 That does not show the drain caps on the pipes. There
9 is not a wide-angle view of that but if I may say
10 defense counsel's argument that these drain caps are
11 remedial measures should be -- I do not believe A, I
12 do not believe that is a basis to bar the use of the
13 photograph because these are drain caps that go over
14 it.

15 These are not safety subsequent remedial
16 measures that it took. This is simply the progression
17 of the work and the ultimate way the area looked
18 after. The relevance of the photo is showing the
19 pathway, showing the wide angle of the pathway he
20 walked because the big issue in the case is could he
21 have avoided it, could he have moved the other way.
22 Should he have seen it and this has a good perspective
23 of the are and it's important too because it shows he
24 had to walk through there to get through this area to
25 get there.

1 There's no dispute that caps were put on
2 after, but the caps are on subsequent remedial
3 measure, that's simply the natural progression of the
4 job and to also under the evidence rules there are
5 several exception to the subsequent remedial measures
6 rule.

7 Here the caps are not subsequent remedial
8 measures. They're simply drain caps. Even if it was
9 a subsequent remedial measure taken which it's not
10 there's several exceptions one of which is
11 feasibility, relevance. There's a whole host of
12 exceptions of subsequent remedial measures and because
13 there was only one photo taken by the defendant at the
14 scene that was turned over, the only other photos we
15 have are of the inspection that was done subsequently
16 so there are no other photos that do not show the
17 drain caps on top that no one disputes that the drain
18 caps were put on after the job started.

19 So for all of those reasons, we respectfully
20 request that we be permitted to use the photo and show
21 it to the jury and enter it into evidence.

22 MR. GULINO: It sounds like he's making a
23 best evidence argument and this isn't an issue here
24 about how far he had to walk or where he had to walk,
25 or how he was restrained. They want to get the caps

1 in. I mean, there's no other way about it. That's
2 why he wants to get it in.

3 It is after the accident, so is the other
4 one because the other one shows the condition and he's
5 testified to that and he's capable of testifying to
6 that. This isn't necessary. It is not probative. It
7 is prejudicial.

8 THE COURT: Quite frankly I think that any
9 probative value that that photograph offers is
10 outweighed by the prejudice. The fact of the matter
11 is it is a photograph of the area after the incident
12 happened.

13 Now, to the extent that the plaintiff wanted
14 to represent to this jury how the path that he took
15 unfortunately, you're in a position where you have no
16 photographs that depict that angle.

17 But to show a photograph afterwards when the
18 hole is covered up I think the prejudice to the
19 defense is more significant than any probative value
20 that the photo indicates.

21 There must be some other photographs in your
22 -- in the number of photographs that you have that
23 depict the area sufficiently so that the photograph
24 along with the testimony of the plaintiff and any
25 other witnesses that can describe the site area and

1 how the area was pitched in a certain way and how the
2 area that the plaintiff had to walk, that sufficiently
3 has to be explained through either witness testimony
4 or some other photograph that accurately depicts the
5 area at the time the accident happened, not after.

6 All right? So for those reasons, the
7 objection is sustained. All right. We're going to
8 take 15 minutes.

9 MR. CLARK: Judge, we may use the photograph
10 by showing it to the witness, obviously not showing it
11 to the jury members.

12 THE COURT: Not showing it to the jury.

13 MR. CLARK: Thank you.

14 (Recess)

15 MR. CLARK: Just two things. One, I believe
16 we have a stipulation to help expedite the process on
17 the interpretation issue and Mr. Berenguer will read
18 what we stipulate the Court would be requested to tell
19 the jury.

20 MR. BERENGUER: Your Honor, the stipulation
21 is that Washington Munoz said that he stepped in the
22 patched area as seen in Plaintiff's Exhibit 3.

23 MR. GULINO: I have no objection, Your
24 Honor.

25 THE COURT: Okay.

1 MR. CLARK: And the second thing is with
2 regard to Plaintiff's Exhibit 6. I reviewed all of
3 our photos and we do not -- the only photo we have is
4 the close up photo that was provided by the defense of
5 the incident scene.

6 We have no other photos. So -- it shows the
7 area where he walked, the pathway. So we have done is
8 with regard to Plaintiff's Exhibit 6, we have redacted
9 out the objectionable area which is the caps on the
10 drain and I believe that we are in agreement that we
11 can use the photo, show it to the jury but defendant's
12 concern was that the jury might be tempted to take
13 this off in the jury, so that it will not go in the
14 jury room, and this is Plaintiff's Exhibit 6.

15 MR. GULINO: Only for demonstrative
16 evidence. That's the only reason because otherwise I
17 think it calls attention to itself and then they would
18 be anxious to find out what is behind that.

19 THE COURT: Well, you're not objecting?

20 MR. GULINO: With that proviso.

21 THE COURT: Okay.

22 MR. GULINO: I discussed it with Mr. Clark.

23 THE COURT: Okay.

24 MR. GULINO: As long as it's only for
25 demonstrative evidence when he's testifying. But I

1 will strenuously object if he mentions anything about
2 what we've discussed on its behind that roofing
3 because if that comes out, be very careful on your
4 direct with him.

5 MR. CLARK: Yeah, no. He's not going to
6 discuss what's behind here.

7 MR. GULINO: All he's going to say is I was
8 walking towards that guy --

9 THE COURT: Okay. The second interpreter,
10 if we can have you come up and we'll swear you in
11 before the jury comes in.

12 THE CLERK: Interpreter, your name?

13 INTERPRETER: Mercedes Avalos, A-V-A-L-O-S,
14 AOUSC Federally Certified Spanish Interpreter. Good
15 morning, Your Honor.

16 THE COURT: Good morning.

17 M E R C E D E S A V A L O S, INTERPRETER, SWORN TO
18 INTERPRET ENGLISH TO SPANISH AND SPANISH TO ENGLISH.

19 THE CLERK: Thank you.

20 THE COURT: So there is a stipulation
21 between counsel as to the area that you clarified for
22 the record, so we don't have to address that; I mean,
23 other than what I read into the record and then you're
24 switching off now?

25 INTERPRETER: Yes.

1 THE COURT: Okay.

2 THE CLERK: Jury entering.

3 (Jury enters courtroom.)

4 THE COURT: All right. Thank you. Please
5 be seated. Mr. Munoz, come on up. So before we
6 continue with the testimony in your absence members of
7 the jury it came to the Court's attention that there
8 was some -- a response that was provided by the
9 plaintiff that was not accurately -- or at least was
10 not a part of the record.

11 So in response to a question asked by
12 plaintiff's lawyer, the plaintiff responded that he
13 stepped in the patched area as seen in P-3.

14 BY MR. BERENGUER:

15 Q Washington, here I'm going to show you
16 Plaintiff's Exhibit 6.

17 MR. BERENGUER: Your Honor, may I publish
18 this to the jury?

19 THE COURT: Yes.

20 BY MR. BERENGUER:

21 Q Did you have to walk through that area?

22 MR. GULINO: Objection. Leading.

23 THE COURT: Rephrase your question.

24 BY MR. BERENGUER:

25 Q After you walked through the door, did you -

1 - what did you do next? Where did you go to next?

2 A I walked through there.

3 Q I'm going to hand you a laser point. If you
4 can just use the laser pointer.

5 A I was walking through there, from here to there.

6 Q So from the bottom left of the picture you
7 were walking up to where those people are?

8 A That's right. That way.

9 Q Was that the only way that you had to walk
10 up to? Is that the only way?

11 MR. GULINO: Objection.

12 THE COURT: Overruled.

13 A You would get from here to there more directly.

14 Q And where were you going?

15 A To that construction wall that's right there.

16 Q And in that area that you've just identified
17 you were walking, in that area, did you see any cones,
18 any orange cones?

19 MR. GULINO: Objection.

20 THE COURT: What's the objection?

21 MR. GULINO: No foundation. Why would cones
22 be there?

23 THE COURT: Overruled.

24 BY MR. BERENGUER:

25 Q Did you see any orange cones in that area?

1 A No.

2 Q Did you see any flags, any warning flags or
3 anything like that?

4 A No, none of that was there.

5 Q Can you identify the people in that picture?

6 MR. GULINO: Objection.

7 THE COURT: Sustained.

8 BY MR. BERENGUER:

9 Q What happened after the accident? Can you
10 tell us what happened immediately after?

11 A Well, I don't know which one of my co-workers
12 went downstairs to call for the supervisor. So he
13 came back and he said there was --

14 THE COURT: Don't -- stop.

15 MR. GULINO: Objection.

16 THE COURT: The objection is sustained. The
17 jury will disregard. Do not tell us what anyone told
18 you.

19 MR. CLARK: Judge, may I be heard briefly on
20 that?

21 THE COURT: Sure.

22 (THE FOLLOWING TAKES PLACE AT SIDEBAR.)

23 MR. GULINO: Note of my objection of having
24 another lawyer talk.

25 THE COURT: This back and forth is not fair

1 to counsel, all right? So you're going to have to
2 pick which one. Argue the objection. You're doing
3 fine.

4 MR. BERENGUER: Okay. What was the
5 objection?

6 MR. GULINO: I objected. It's hearsay.

7 MR. BERENGUER: What are you objecting to,
8 which thing?

9 MR. GULINO: He's talking about other people
10 when nobody is around.

11 THE COURT: It's a hearsay objection.

12 MR. GULINO: It's a hearsay objection.

13 MR. BERENGUER: Okay. So, you know, I think
14 Your Honor has instructed him just to limit himself to
15 what he said, the conversation that he was in.

16 MR. GULINO: It's not what anybody else
17 said.

18 THE COURT: So the objection is a hearsay
19 one. This witness can testify that someone went
20 downstairs and based upon that person having gone
21 downstairs when he came back up after he spoke to that
22 person he then Detail Doctor what? So basically
23 whatever the person told him, what did he do? The
24 fact that there's nobody downstairs is a fact that
25 shouldn't come in because the person told him so --

1 MR. CLARK: Judge, we walked earlier that it
2 was okay. I asked Your Honor if I can do the sidebar,
3 you know, if I can address the defendant's objections
4 at sidebar, I think things will go more expeditiously
5 that way.

6 THE COURT: Well, if one person addresses
7 the issues so we don't have the back and forth.

8 MR. CLARK: I'm just going to address the
9 issue, okay?

10 MR. GULINO: Okay. Okay.

11 MR. CLARK: My response to the hearsay
12 objection is that he is about to say what the
13 supervisor said. The supervisor is Bob Beardsley who
14 is the supervisor for defendant, L.P. Ciminelli,
15 therefore, the exception to the hearsay rule is issue
16 by a party opponent.

17 MR. GULINO: Is he going to testify that he
18 spoke to Bob Beardsley that afternoon?

19 MR. CLARK: I believe when he -- I believe
20 when the witness said he said and was cut off, I
21 believe he was referring to what the supervisor said
22 which is Bob Beardsley.

23 THE COURT: That's not what came out. What
24 came out was that the person that was with him went
25 downstairs and came back and said --

1 MR. CLARK: Okay.

2 THE COURT: -- nobody was downstairs.

3 MR. CLARK: That is correct. That is
4 hearsay without an exception.

5 THE COURT: Yes. Yes.

6 MR. CLARK: But when we get to Bob
7 Beardsley, what he said the supervisor who is in a
8 photo, that is an admission by a party opponent.

9 MR. GULINO: Did he speak to Bob Beardsley
10 directly.

11 THE COURT: That's different. That's
12 different.

13 MR. GULINO: That will be fine.

14 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

15 THE COURT: All right. The objection is
16 sustained.

17 BY MR. BERENGUER:

18 Q Now, going back and looking at Plaintiff's
19 Exhibit 6, you referred to another gentleman earlier
20 in your testimony, the supervisor. Do you know who
21 the supervisor was? Do you see him in the picture?

22 A Yes.

23 MR. GULINO: Objection.

24 (THE FOLLOWING TAKES PLACE AT SIDEBAR.)

25 MR. GULINO: So now I think I see the reason

1 why the photograph wanted to get in because you want
2 to get through backdoor a hearsay statement. Now I'm
3 going to move to strike that all the testimony and I
4 want that photo out. That's why you guys did this.

5 MR. CLARK: Okay. The question is do you
6 recognize the supervisor in the photograph. That is
7 the pending question and the objection is I don't
8 understand the objection.

9 MR. GULINO: You tried to pull the wool over
10 my eyes. You said you wanted to use that photograph
11 to show where he was walking. You wanted to use the
12 photograph to get in the statement and you know it.

13 THE COURT: Keep your voice down. Keep your
14 voice down.

15 MR. GULINO: I'm sorry. I'm sorry. You
16 know it. Now I strenuously object to that photograph
17 being used at all and I would like direction to the
18 jury. I don't need a direction to the jury, I don't
19 want it used anymore and I want that statement
20 stricken.

21 THE COURT: Well, the purpose for which the
22 photo was being offered has already been addressed
23 with the witness. So now we're revisiting the very
24 same photograph which in the Court's perspective,
25 there was a legitimate basis for the objection but to

1 the extent that there was a stipulation between the
2 two of you that it could be used for a limited
3 purpose, the concern now is that the photograph is
4 going to be used for some other purpose.

5 MR. CLARK: Your Honor, the statement that
6 defense counsel said that I pulled the wool over his
7 eyes and it was for this, and now it's for that that
8 is -- I absolutely disagree with that. That's not
9 reflected in the record.

10 The stipulation was that the photograph can
11 be used shown to the jury. The concern was the jury
12 may remove --

13 THE COURT: Is that's what's up there?

14 MR. BERENGUER: Yes, Your Honor.

15 THE COURT: Take it down.

16 MR. CLARK: The concern was that the jurors
17 may remove the sticker so therefore it's not going to
18 go into the jury room. That is the only stipulation.
19 That is the only stipulation on the record. And for
20 the record, I will only put my stipulations on the
21 record in this case. Okay?

22 So the simple question that's pending is do
23 you recognize the supervisor in the photograph and I
24 would note there's really no dispute about that
25 because the supervisor will also I understand be

1 testifying later in the trial that he's going to be
2 shown. So that's all we're doing is establishing who
3 the people are in the case.

4 MR. GULINO: I entered into this agreement
5 with Mr. Clark in good faith.

6 THE COURT: Let me ask you something, what's
7 the reason the identifying of the witness? Why can't
8 he be identified assuming that he's going to be here?

9 MR. CLARK: That's fine. We can do that.
10 That's not a problem.

11 THE COURT: All right. So let's move on.
12 Counsel, you'll move on.

13 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

14 BY MR. BERENGUER:

15 Q The following day, what happened, the
16 following day after the accident what happened?

17 A That day, that next day we get there to the
18 construction site and we speak to the supervisor. I
19 cannot recall the name of my co-worker who served as
20 my interpreter. After that, we went upstairs to the
21 area where I had suffered the accident and he sent me
22 to some sort of medical facility. I don't quite
23 remember what facility and then after that I was fired
24 from work.

25 Q Do you remember what time the accident

1 happened at?

2 A I believe it was more or less 3:15, 3:20 more or
3 less. I'm not sure.

4 MR. BERENGUER: Your Honor, may I approach
5 he witness?

6 THE COURT: Yes.

7 BY MR. BERENGUER:

8 Q I have here Plaintiff's Exhibit 22. Would
9 you just take a look at it? Let me know when you're
10 done looking at it, please.

11 A Yes.

12 Q Have you seen that document before?

13 A Yes.

14 Q Do you know what that document is?

15 A I believe it's an accident report or something
16 like that.

17 Q Does that document, does it look to be
18 complete?

19 MR. GULINO: Objection.

20 THE COURT: Rephrase your question. The
21 objection is sustained.

22 BY MR. BERENGUER:

23 Q Does looking at that document, does that
24 refresh your memory about he accident?

25 MR. GULINO: Objection. He doesn't say he

1 doesn't remember.

2 THE COURT: Yeah. So you can ask a question
3 first and then if the witness needs to use the
4 document you can use it in that way.

5 BY MR. BERENGUER:

6 Q Looking at that document, does that refresh
7 your memory on the time that the accident happened?

8 A Yes.

9 Q What time did the accident happen?

10 A 3:20.

11 MR. GULINO: What time?

12 INTERPRETER: 3:20. That was a repetition
13 of the interpretation.

14 BY MR. BERENGUER:

15 Q And was that document prepared by L.P.
16 Ciminelli?

17 INTERPRETER: And the name for the
18 interpreter again?

19 MR. BERENGUER: L.P. Ciminelli.

20 A Yes.

21 MR. BERENGUER: Your Honor, at this time, I
22 would like to move the exhibits P-22 into evidence.

23 MR. GULINO: Not through him. I object.

24 THE COURT: Let's deal with the evidence at
25 the end. This is a document that was authored by

1 someone else? Counsel? This is not something that
2 plaintiff wrote.

3 MR. BERENGUER: Correct, Your Honor.

4 THE COURT: Okay. All right. We'll address
5 that evidence in the end.

6 BY MR. BERENGUER:

7 Q Now, Mr. Munoz you said the day after the
8 accident you had gone up to the place where the
9 accident happened; is that correct?

10 A Correct.

11 Q I have here Plaintiff's Exhibit 41 and
12 Plaintiff's Exhibit 42.

13 MR. BERENGUER: Your Honor, may I approach?

14 THE COURT: Yes, you may.

15 BY MR. BERENGUER:

16 Q Would you take a look at these?

17 A Yes.

18 Q What are -- what do those exhibits show?
19 What are those exhibits, do you know?

20 INTERPRETER: The interpreter needs
21 clarification of a term.

22 A Afterwards, they put plywood on this area. This.
23 This area.

24 MR. GULINO: Objection.

25 BY MR. BERENGUER:

1 Q What do you see in the picture?

2 A Here I see a piece of wood and roofing paper.

3 MR. GULINO: Objection. Can we have a
4 sidebar, please?

5 (THE FOLLOWING TAKES PLACE AT SIDEBAR.)

6 MR. GULINO: His deposition testimony was
7 that he worked the next day and he took the photograph
8 at the deposition and circled what he thought. Now
9 he's going to testify that he thinks somebody put wood
10 there to warn people, that's exactly what you're
11 doing. Speculation. Hearsay whatever you want to
12 use; speculation more than anything else. I'm hereby
13 moving to exclude it and to exclude the photograph.

14 THE COURT: Let me ask you something. Did
15 you have any photographs before now?

16 MR. GULINO: That one, yeah. I had no
17 intention to use it. We just marked it a deposition
18 to show where he fell. We don't need that. He showed
19 where he fell on --

20 THE COURT: You're not listening to me. If
21 you would stop talking and just please listen. Here
22 is the concern. The reason for the question is if you
23 have the photographs beforehand and you were concerned
24 about the manner in which they would be used, why are
25 we doing this? We're spending more time here than we

1 do out in the -- this --

2 MR. GULINO: This is the first time --

3 THE COURT: -- is something that juries
4 don't like. You should know that.

5 MR. GULINO: This was the first time I was
6 told they were using this. They never told me they
7 were using this photograph before this morning.

8 MR. CLARK: Judge, if I may, this photo was
9 used by defense counsel yesterday in his cross-
10 examination of Vincent Gallagher. Vincent Gallagher
11 held the photograph and said, "Yeah, that was from the
12 day after."

13 So the only question we have for this
14 witness on this photo right now is when was the photo
15 taken and that's it and then we would like to move on.

16 THE COURT: Ask when was the photo taken and
17 move on.

18 MR. GULINO: May I ask the witness not
19 speculate as to who put something there?

20 MR. CLARK: That's not the question.

21 MR. GULINO: He already said that.

22 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

23 THE COURT: Listen carefully to the question
24 and answer only the question.

25 THE WITNESS: Okay.

1 BY MR. BERENGUER:

2 Q When were those pictures that you have in
3 front of you right now, when were they taken?

4 A The day after the accident.

5 Q After the accident, can you tell us a little
6 bit about your -- did you sustain any injuries?

7 A Yes.

8 Q What injuries did you sustain?

9 A My back and my right arm, my right shoulder.

10 Q What treatment did you receive for your
11 right shoulder?

12 A To the present date I've undergone two surgeries
13 and constant therapy.

14 Q Between the first surgery and the second
15 surgery, did you have any other accidents or trauma to
16 the right shoulder?

17 A No.

18 Q But now please tell me about the physical
19 therapy that you received for your right shoulder.

20 A After the first surgery I was sent for therapy,
21 constant therapy with something a term so as to
22 strengthen the arm. It was with a lot of weight.

23 So I asked the therapist if that was a
24 normal thing and then she said that yes, that was
25 normal that I have a lot of pain. So then afterwards

1 since I would always see the doctor, a second surgery
2 was suggested, a little bit wider, bigger.

3 After that surgery I went to see the doctor,
4 he said that everything had -- that the results were
5 good and then he sent me again for therapy.

6 MR. GULINO: Objection. Is there a
7 question?

8 MR. BERENQUER: Your Honor, the question was
9 regarding physical therapy he received on that night.

10 THE COURT: Did you have something else to
11 say in response to the question?

12 A Yes.

13 Q Please tell us more about the physical
14 therapy.

15 A And after what do you call that, after the
16 prescription was issued by the doctor for more therapy
17 there was a waiting period of over two months to
18 approve therapy. The insurance took way too long. So
19 at that time the arm would continue in its condition
20 and then eventually the therapy was approved and up to
21 the present date I am still in therapy.

22 Q Can you tell me -- you also mentioned that
23 you had another injury, an injury to your back. Can
24 you tell me a little bit more about that?

25 A Yes. The doctor that was caring for me, Dr.

1 Helby, he was focusing more on the arm but then he
2 would also check my back and so he sent me for therapy
3 for both in both the back and the arm.

4 Q Now, how was your life before the incident?
5 How was your life before June 25th, 2013?

6 A Well, as I said before, I come from a family that
7 loves construction. My father is a builder and so I
8 love construction work. I miss doing construction
9 work and I want to go back to doing construction work.
10 My entire family works in that field so --

11 Q How has your life been after the accident?
12 Can you tell us a little bit about that?

13 A In my strength and my state of mind it's not just
14 the same because in construction you need to use a lot
15 of strength. You need to be agile. My great desire is
16 to go back to construction. I have attempted to. I
17 have tried, but it's just not the same.

18 Q You said you've tried to go back to work.
19 Tell me a little bit more about that.

20 A Well, on occasions there have been certain
21 occasions when I have felt, how can I say it,
22 helpless. I have tried to do the work in construction
23 but it's just not the same, it's not the same.

24 Q Now, how much are you learning now because
25 of construction work or the work that you tried to get

1 back to?

2 MR. GULINO: Objection.

3 THE COURT: What's the objection?

4 MR. GULINO: I'll withdraw it. I'm sorry,
5 Judge.

6 BY MR. BERENGUER:

7 Q How much are you earning now in the work
8 that you tried to go back to in construction. How
9 much have you earned since the accident?

10 MR. GULINO: Objection to form.

11 THE WITNESS: Should I respond?

12 THE COURT: Do you understand the question?

13 THE WITNESS: Yes.

14 BY MR. BERENGUER:

15 Q Since the accident, how much have you earned
16 in construction work, approximately?

17 A I believe that it's been about \$4,000 because
18 it's been this here and there. It's been perhaps two
19 days, four days but it has not been on a consistent
20 basis because I have been unable to do it.

21 Q Now, you said \$4,000. Is that per year or
22 per month? What's the frequency of it?

23 A No, that's been since -- since -- well throughout
24 all this time.

25 Q Have you tried to work as a truck driver?

1 A No.

2 Q Why not?

3 A Well, in approximately 2011 I was in an accident
4 on a truck. The breaks gave in. So I was kind of
5 traumatized behind the wheel. I can't get on a truck
6 because I get nervous.

7 MR. CLARK: Judge, can I just talk to you
8 real quick, it's procedural.

9 (THE FOLLOWING TAKES PLACE AT SIDEBAR.)

10 MR. CLARK: I was going to handle the
11 redirect. Does Your Honor mind if -- first of all is
12 it okay if I do that, that I handle the redirect with
13 Your Honor?

14 THE COURT: Why can't he do the redirect?
15 There hasn't even been cross yet. Why are we at
16 redirect?

17 MR. CLARK: No, I know we're not at
18 redirect, but my intention was to handle the redirect
19 and I just wanted to make sure that was okay with Your
20 Honor. I request permission.

21 THE COURT: He's doing (indiscernible) there
22 should be one person.

23 MR. CLARK: Okay. I just -- then can we
24 take a -- should we take a quick break or we already
25 did our morning break?

1 THE COURT: Yeah.

2 MR. CLARK: All right. Can I just briefly,
3 I've got to whisper Lazaro about it. Is that all
4 right?

5 THE COURT: Okay.

6 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

7 BY MR. BERENGUER:

8 Q Mr. Munoz, let's go back a little bit.
9 After the incident, did you try to report the
10 incident?

11 A What incident?

12 Q I withdraw the question. After you fell,
13 what did you do next?

14 A After the construction accident?

15 Q Yes.

16 A Well, I did a lot of M.C.ing at parties.

17 Q Let's just go back to the date. Okay. So -
18 -

19 A Explain yourself, please.

20 Q After -- right immediately after the
21 incident, after you were injured, what did you do
22 next?

23 A So you're saying the day of the accident or the
24 next day?

25 Q The day of the accident.

1 A Okay. Fine. Now I understand. That day I don't
2 remember what co-worker went to call the supervisor to
3 report.

4 Q Did you later come to learn that the
5 supervisor was Bob Beardsley?

6 A Yes.

7 Q And does he -- and he works for L.P.
8 Ciminelli, correct?

9 INTERPRETER: I'm sorry. The interpreter
10 didn't understand the name of the company?

11 Q And he works for L.P. Ciminelli?

12 MR. GULINO: Leading.

13 A Yes, correct.

14 Q Go ahead. What happened next?

15 A Next the guy came and said he couldn't find the -
16 -

17 MR. GULINO: Objection.

18 THE COURT: Don't tell us what someone told
19 you.

20 THE WITNESS: Okay.

21 BY MR. BERENGUER:

22 Q Did you speak to Bob Beardsley?

23 A I talked to him the next day.

24 Q Tell us now -- let's go back to the day
25 after the accident.

1 A After?

2 Q I apologize. The day of the accident, did
3 you try to continue working?

4 A Not anymore.

5 Q Immediately after the accident, did you try
6 to continue to work or did you stop?

7 MR. GULINO: Objection. Asked and answered.

8 THE COURT: Overruled.

9 A I couldn't, not anymore. After the accident, but
10 you're talking about that day.

11 Q I'm sorry. Let me be clear. June 25th,
12 2013 the day of the accident.

13 A Okay. Now I understand.

14 Q After you were injured, did you try to
15 continue to work that very day?

16 A No. I could not. I was in a lot of pain.

17 Q So then what did you do next?

18 A The next day --

19 Q I'm still referring to June 25th, 2013.

20 A Okay. I tried. We tried to report the accident,
21 but there was no one there. They had already left.
22 There was no supervisor there.

23 Q Where did you go to try to report the
24 accident?

25 A There were some offices right there outside of

1 the construction.

2 Q Was Joe Mella with you?

3 A Yes.

4 Q Did Joe Mella see you fall?

5 MR. GULINO: Objection.

6 A Yes, there were two guys.

7 MR. GULINO: Objection.

8 THE COURT: So there's an objection. How
9 would he know what the other person saw, so the
10 objection is sustained. You can rephrase your
11 question.

12 BY MR. BERENGUER:

13 Q Where was Joe Mella when you were injured?

14 A In the same area I was in.

15 Q Now, let's go to the next day, the day after
16 the accident. What happened that next day? What did
17 you do that next day?

18 A I went back to the work site and I spoke to my
19 co-worker about what had happened then. Two of them
20 saw the accident so I went to make a report.

21 Q Why did you go back to your place of work?

22 A Because I had to report the accident. Yesterday
23 I hadn't because no one was there.

24 Q So when you went back, what happened?

25 A We spoke with a supervisor.

1 Q So you saw the supervisor?

2 A Yes.

3 Q What did the supervisor say?

4 MR. GULINO: Objection.

5 THE COURT: Stop. Stop. There's an
6 objection. The objection is a hearsay objection?

7 MR. GULINO: It's a hearsay objection, who
8 is the supervisor.

9 THE COURT: Who was it that he was talking
10 to?

11 BY MR. BERENGUER:

12 Q What's the name of the supervisor, do you
13 know?

14 A Yes, the one you said before, what's his name,
15 Bob, Bob Beardsley?

16 Q It's Bob Beardsley?

17 A Yes, that's him.

18 Q What did Bob Beardsley say?

19 A Where the accident was.

20 Q Did -- and did you report it to Bob
21 Beardsley?

22 A That's correct.

23 Q And what was his reaction to you?

24 MR. GULINO: Objection.

25 THE COURT: What's the objection?

1 MR. GULINO: His opinion of what Bob
2 Beardsley felt like.

3 THE COURT: I think he said what his
4 reaction was. Was there a reaction?

5 BY MR. BERENGUER:

6 Q When you reported the incident to Bob
7 Beardsley, did Bob Beardsley have a reaction?

8 A Yes. He got very upset.

9 Q Okay. And what did Bob Beardsley say?

10 A He said you knew you had to make a report and I
11 said I tried to yesterday but no one was here.

12 Q And then what did he say after that?

13 MR. GULINO: Objection.

14 THE COURT: What's the objection?

15 MR. GULINO: He's leading him.

16 THE COURT: He said what did he say after
17 that.

18 MR. GULINO: How do we know he said
19 anything?

20 THE COURT: If he didn't say anything I
21 suppose he'll say that.

22 BY MR. BERENGUER:

23 Q What, if anything, did he say about the roof
24 and Pano Roofing?

25 THE COURT: Okay. So that objection is

1 sustained. Don't lead the witness. What did he say
2 next?

3 BY MR. BERENGUER:

4 Q What did he say next?

5 A That he wanted to see the area where the accident
6 was.

7 Q So what was his comment about that?

8 MR. GULINO: Objection.

9 THE COURT: Yeah, so lay the foundation as
10 to how we get here.

11 BY MR. BERENGUER:

12 Q Did you go with Bob Beardsley to the
13 incident scene to where the accident happened?

14 A Yes, correct.

15 Q And what did he say when you went up there?

16 THE COURT: What, if anything. What, if
17 anything, did he say, period?

18 BY MR. BERENGUER:

19 Q What, if anything, did Bob Beardsley say?

20 A Okay. He put his foot down there and he said a
21 bad word.

22 INTERPRETER: He said, "Can I say it?"

23 MR. BERENGUER: Yes.

24 A Fucking roof. Fucking roofing, or something like
25 that. Something like that.

1 Q Roofer?

2 A Roofing or something like that. What I heard was
3 roofer or something like that, fucking roofer.

4 Q What did you -- what do you understand?
5 What do you believe that he meant by that?

6 THE COURT: Yeah, that objection is
7 sustained. That objection is sustained. Don't answer
8 the question.

9 BY MR. BERENGUER:

10 Q What did he say about the roofer if
11 anything?

12 A He got angry. I didn't understand his English,
13 but he was able to make me understand that he was
14 angry.

15 Q I'm going to give you -- if I give you the
16 transcripts, would that --

17 MR. BERENGUER: Your Honor, may I approach?

18 THE COURT: Sure.

19 BY MR. BERENGUER:

20 Q I'm now going to give you the transcript of
21 your deposition and with the help of the interpreter,
22 I've highlighted here on page 106, lines 17 to 23.

23 MR. GULINO: Excuse me.

24 Q Maybe that will refresh your recollection --

25 MR. GULINO: Excuse me.

1 Q -- on what Bob Beardsley said.

2 MR. GULINO: Excuse me.

3 THE COURT: There's an objection.

4 MR. GULINO: May I ask is that the witness'
5 transcript or Beardsley's?

6 MR. CLARK: This is Mr. Munoz's transcript
7 to refresh his recollection about the conversation
8 we're focusing on.

9 MR. GULINO: He hasn't established that he
10 can't remember. This is just piling it on. He can't
11 establish that he can't remember. He can't use that.
12 I object to its use.

13 THE COURT: So first ask a question of the
14 witness. If the witness can't respond based on his
15 inability to remember, you can use that document to
16 refresh his memory.

17 BY MR. BERENGUER:

18 Q Washington, did one time you remembered if
19 Bob Beardsley say anything else while you were up
20 there about the roofer?

21 A That is something for safety had to put there or
22 something like that.

23 Q Okay. Now, I'm going to show you your
24 deposition transcript on page 106, line 17 to 23.
25 Would that -- and please just read it to yourself.

1 MR. GULINO: Objection. It's to his refresh
2 his recollection, he hasn't said he can't remember
3 anything. You're putting words in his mouth.

4 MR. BERENGUER: Just let him read it.

5 MR. CLARK: Judge, we would just like him to
6 read it to himself. I think it will make this go a
7 lot quicker.

8 THE COURT: Before he reads it, what is it
9 that he's using that to refresh? What is it that he
10 does not remember? Ask that question.

11 BY MR. BERENGUER:

12 Q Do you remember all the details of the
13 conversation with Bob Beardsley on the day after the
14 incident? Do you remember all the details?

15 MR. GULINO: Objection.

16 THE COURT: What's the objection?

17 MR. GULINO: Do you remember all the
18 details?

19 THE COURT: Right.

20 MR. GULINO: That's not strong enough I
21 don't believe, Your Honor, to usually refresh their
22 recollection.

23 THE COURT: The objection is overruled. The
24 objection is overruled. He does not remember the
25 details. Read the document and see whether or not

1 having read it it refreshes your memory as to the
2 details of your conversation.

3 INTERPRETER: So for the interpreter, it's
4 page 106, line 17 to 23?

5 MR. BERENGUER: And also page 108. It's
6 bracketed to 108.

7 MR. GULINO: Page and line again?

8 MR. BERENGUER: Page 106 --

9 MR. GULINO: 106.

10 MR. BERENGUER: -- lines 17 to 22.

11 MR. GULINO: Okay.

12 MR. BERENGUER: And page 108, lines 14 to
13 18.

14 A Yes, right. That's right.

15 Q Having that been read to you, does that
16 refresh your recollection on the more details of the
17 conversation with Bob Beardsley and what are those
18 details? What are those details?

19 A Yes, that it was the responsibility of the
20 roofers and that's why he got upset and the next day
21 there was plywood, something there.

22 MR. BERENGUER: Nothing further, Judge.

23 BY MR. BERENGUER:

24 Q When was this deposition taken?

25 THE COURT: Ask him whether or not he

1 remembers when the deposition was taken.

2 A I don't remember the date.

3 Q So do you remember the date the deposition
4 was taken more or less?

5 A No, I don't. I'm sorry. I don't remember.

6 Q Okay. I'm going to provide you with your
7 deposition transcript.

8 MR. CLARK: Can we just stipulate to the
9 date it was taken, perhaps we can just stipulate.

10 BY MR. BERENGUER:

11 Q If I provide you with your deposition
12 transcript, I'm going to hand it to the court
13 interpreter. On page two, lines nine through ten.
14 Can you read that to yourself?

15 A Right.

16 Q Having that been read to you, does that
17 remind you of the date that your deposition was taken?

18 A Yes, it's on there.

19 Q What date was your deposition taken?

20 A May 10th, the date that's on there.

21 Q What's the date?

22 A The one you just said, the same date.

23 Q Is it on May 10th, 2016?

24 A May 10th, 2016.

25 Q Okay.

1 MR. BERENGUER: Nothing further.

2 THE COURT: Cross.

3 CROSS-EXAMINATION BY MR. GULINO:

4 Q Good morning, Mr. Munoz.

5 A Good morning.

6 Q We met on Monday afternoon, right?

7 A Yes, I saw you.

8 Q And I questioned you on Monday afternoon, do
9 you remember?

10 A That's correct.

11 Q Now, how old are you?

12 A Forty-seven.

13 Q And how long have you been in this country?

14 A About 23 years.

15 Q And you got your citizenship in 2015,
16 correct?

17 A That's correct.

18 Q Now, did you hear your wife testify -- ex-
19 wife testify this morning, Gina?

20 A Yes, I was right there.

21 Q Is she your most recent ex-wife?

22 A She's my first wife.

23 Q And did you have a second wife after Gina?

24 A I lived with someone.

25 Q And does she now live in Puerto Rico?

1 A Yes, she does live in Puerto Rico.

2 Q And did you have two children with her?

3 A I have two that live in Puerto Rico, yes.

4 Q And when did she move back to Puerto Rico?

5 A I don't exactly remember.

6 Q Was it before or after your accident?

7 A It was after -- before -- I think it was before
8 the accident.

9 Q And were you married before Gina?

10 A No, no. No, I lived with her.

11 Q And do you live with someone now?

12 A No, I live alone.

13 Q At the time of your deposition did you live
14 with someone?

15 A I was living alone.

16 Q Do you have a girlfriend?

17 A Yes.

18 Q Okay. And how long have you been going out
19 with her?

20 A She lives in Ecuador but about two years and a
21 few months.

22 Q Back in 2011 you were a commercial truck
23 driver, right?

24 A Yes, I tried to change jobs.

25 Q That's not what I asked you. Were you a

1 commercial truck driver in 2011?

2 A That's right.

3 Q And were you a commercial truck driver in
4 2010?

5 A 2010, no.

6 Q When did you begin driving a truck for a
7 living?

8 A Well, it was 2011 but it wasn't all year because
9 I had just started.

10 Q When you started in 2011, you owned your own
11 truck, didn't you?

12 A Yes.

13 Q And the truck that you owned was a tractor,
14 was it not?

15 A Yes, that's right.

16 Q And when did you first buy that?

17 A I don't remember the date, but it was in 2011.

18 Q Now, you still have a valid commercial
19 driver's license, don't you?

20 A That's right.

21 Q And when you worked in 2011 as a truck
22 driver, and you owned a truck, were you hired by other
23 people?

24 A Yes, another company.

25 Q And you made enough to support yourself

1 didn't you?

2 A I had just started.

3 Q That's not what I asked you. You made
4 enough money to support yourself didn't you?

5 A Yes.

6 Q Because if the accident had not occurred
7 that you spoke about in Pennsylvania, you would have
8 continued as a commercial truck driver, correct?

9 A I think so.

10 Q Now, when you joined -- withdrawn. You
11 joined the plasterer's union in early 2012?

12 A That's right.

13 Q And how did you get in the union?

14 A Because I had been told that the union was good
15 and that I did a good job so I went to the union and I
16 applied.

17 MR. GULINO: May I approach?

18 THE COURT: Sure.

19 BY MR. GULINO:

20 Q Mr. Munoz, I'm going to show you what we
21 have marked as Defendant's Exhibit 8 for
22 identification. Do you recognize what that is?

23 A Yes.

24 Q And what is it?

25 A That's my license.

1 Q That's your commercial driver's license?

2 A Yes, sir.

3 Q Are you able to read when it was good
4 between, what time period?

5 A It's blurry, but -- you really can't see it very
6 well.

7 Q May I? If I were to tell you May 6th, 2013,
8 August 31st, 2014 would you accept that?

9 A If you can see it well that's okay.

10 Q The wonder of glasses. Now, let me ask you
11 something. Is your name on that driver's license?

12 A Right.

13 Q And what is the name on that driver's
14 license that was for that time period?

15 A Munoz Arevalo Washington.

16 Q Can we spell that for the record, please?

17 A Washington, like the capital. Munoz is M-U-N-O-
18 Z. Arevalo, A-R-E-V-A-L-O.

19 Q Would you agree with me that what is shown
20 on Exhibit Number 8 for identification, the name is
21 all one word and it's not even hyphenated?

22 A That's correct.

23 MR. GULINO: I hereby move for its
24 introduction, Your Honor.

25 MR. CLARK: Judge, we have no objection to

1 the use of that photograph. In fact we have a cleaner
2 copy that can be utilized and we were just trying to
3 dig it out to make things move quicker.

4 THE COURT: So D-8 is in evidence without
5 objection. You can continue.

6 MR. CLARK: We also have no objection to the
7 union card that can go in as well just to save time
8 here.

9 BY MR. GULINO:

10 Q I'm going to show you Exhibit D-9 for
11 identification and do you recognize what that is?

12 A Yes, that's my union card.

13 Q And is that the union card for the plaster's
14 union?

15 A That's correct.

16 Q And is that union card good for a certain
17 period of time?

18 A As long as one continues to pay, it is good.

19 MR. GULINO: May I approach?

20 BY MR. GULINO:

21 Q Oh, does the union card have an initiation
22 date or the date when you started with the union?

23 A Yes, the card starts from the date you started,
24 that's right.

25 Q Does the photocopy of the card that we're

1 talking about now Exhibit Number D-9, did that give
2 you your original starting date?

3 A It's on there. It says 11/19/2012.

4 Q And can you tell the jury the name on the
5 card?

6 A Washington Munoz.

7 Q There is no mention of Arevalo on that car
8 is there?

9 A No.

10 MR. GULINO: I hereby move for admission of
11 D-9 for identification, Your Honor.

12 THE COURT: I think there's no objection.

13 MR. CLARK: I guess we're stipulating also
14 that we can move documents in on each other's cases as
15 well.

16 BY MR. GULINO:

17 Q Let me ask you, when you joined the union at
18 or about the end of 2012, in November had they given
19 you any classes, safety classes?

20 A Yes.

21 Q And it's sort of a school isn't it?

22 A That's right.

23 Q And it's to teach you not only how to do
24 your job but how to do it safely, correct?

25 A That's right.

1 Q And would it be fair to say that as a member
2 of the plasterer's union you are generally sent to a
3 company that uses union workers?

4 A That's right.

5 Q And these companies that you worked for
6 beginning in 2012 worked on construction sites, right?

7 A That's right.

8 Q Because would it be fair to say that the
9 work that you did as a plasterer would on decently
10 large projects like the one that you had your accident
11 in, right?

12 INTERPRETER: Could the question be repeated
13 for the interpreter?

14 MR. GULINO: I'll rephrase the question.

15 BY MR. GULINO:

16 Q Would it be fair to say that many of the
17 projects that you worked on were on commercial large
18 projects?

19 A Yes, that's right.

20 Q And you would work with a crew usually
21 wouldn't you?

22 A Yes, that's right.

23 Q And as a member of a union, when you went to
24 a site, you would have a shop steward, wouldn't you?

25 A Yes, that's correct.

1 Q And a shop steward was the person that you
2 generally would go to if you had an issue at the job
3 site.

4 A That's right.

5 Q And if you found an unsafe condition or you
6 felt that you were being mistreated by anyone you or
7 some of the other union members would go to the shop
8 steward, wouldn't you?

9 A That's right.

10 Q And at the Meadowlands project, you had a
11 shop steward didn't you?

12 A Yes, that's right.

13 Q When you first got to -- oh, when you worked
14 during the year 2012 the year before the accident, did
15 you work for different contractors?

16 A Did I work -- excuse me?

17 Q Did you work for different companies in
18 2012.

19 A That's right.

20 Q And how many did you work for?

21 A I don't remember exactly, but it would have been
22 about three or four.

23 Q And what were their names?

24 A I really don't remember because the names were in
25 English so I don't remember. I'm sorry.

1 Q Now, they would all pay you by check?

2 A That's right.

3 Q And at the end of the year you would get a
4 W-2 showing you how much each of those individual
5 companies paid you, correct?

6 A That's right.

7 Q And we don't have any of those do we?

8 A I think I have them. I don't know. I would have
9 to look. Why? Because it's been a long time that I
10 might have put them away.

11 THE COURT: Would now be a time to break
12 before you move to the next question? Mr. Gulino?

13 MR. GULINO: I don't know which one I'm
14 using -- oh.

15 THE COURT: I'm asking would now be a good
16 time to break?

17 MR. GULINO: That's fine. That's great.
18 Saved by the bell.

19 THE COURT: All right. So members of the
20 jury, enjoy your lunch. Try to stay as cool as
21 possible and we'll see you back in an hour. Don't
22 talk about the case over your lunch.

23 (Jury exits courtroom.)

24 THE COURT: Mr. Munoz, you can step down
25 Watch your step.

1 THE WITNESS: Thank you.

2 THE COURT: Be back in an hour.

3 MR. GULINO: Judge, I have to put on a video
4 of Dr. Decter who testified at the de bene esse and I
5 have to bring in the people to do it because I'm
6 totally incompetent about that stuff. So I'm trying
7 to schedule them, but I don't want to have to pay for
8 them to come in if I'm not going to be able to get
9 them on so can you guys tell me is tomorrow too soon?

10 (Recess)

11 THE COURT: All right. Thank you. You may
12 be seated. All right. Counsel, you wanted to put
13 something on the record.

14 MR. CLARK: Yes, Your Honor. I've had an
15 opportunity to confer with defense counsel and I
16 understand we are in agreement with regard to
17 admitting several exhibits subject to redactions and
18 on my copies of the exhibits I have things highlighted
19 in yellow.

20 So before they go into the jury room I will
21 make sure that the yellow is not on them. So I would
22 like to just put these exhibits on the record if its'
23 okay.

24 THE COURT: Sure.

25 MR. CLARK: And counsel, obviously is free

1 to stand next to me to make sure, but going through it
2 is -- begins with P-22 which is the incident report.
3 So it's P-22 which is the incident report.

4 The next one is P-16 which is the contract
5 from Pano Roofing; again subject to redaction.
6 Defense counsel's position is he wants anything
7 dealing with the pricing of the dollar amounts
8 redacted out and as part of our agreeing, we're
9 agreeing to redact those out before they go into the
10 jury room.

11 The next one is P-35 which is the contract
12 between the race track and L.P. Ciminelli, again,
13 subject to redaction on pricing information. The next
14 one is P-15 which is the contract between Ciminelli
15 and countryside -- I'm going to withdraw that one
16 because I may not want to move that one in evidence.

17 The next one is P-20 which is the field
18 supervisor reference booklet with L.P. Ciminelli
19 again, subject to redaction. The redaction includes
20 pricing information on the contracts as well as
21 references to insurance and liability insurance
22 coverage. I want to make that clear as well so --

23 The next one is P-24 which is the L.P.
24 Ciminelli Safety Manual. The next one is P-25 which
25 is the Pano Roofing Safety Manual. The next one is

1 P-23 which is a letter from Pano Roofing to L.P.
2 Ciminelli dated January 10 of 2013. He next is P-19
3 which is several pages of site work, daily
4 construction report, that's P-19.

5 And the next is P-34 this is also subject to
6 redaction. This is a Weekly Safety Activity report
7 which references another injury incident that occurred
8 that week and we've agreed before the jury sees it or
9 goes into the jury room that that stuff would be
10 redacted out.

11 The next is P-30 which is the -- the paystub
12 which was discussed and as a result I have withdrawn -
13 - or I have not served the subpoena to bring in a
14 record's custodian from Cooper Plaster in. And the
15 final one is D-7 which defense counsel has so our --
16 my understanding of our agreement is that those are
17 all in evidence subject to the redactions we
18 discussed.

19 MR. GULINO: And number D-7?

20 MR. CLARK: Yes, that's what I just said. D-
21 7 as well.

22 MR. GULINO: D-7 is orientation form signed
23 by the plaintiff. D-7.

24 THE COURT: Okay. Okay. All right. We're
25 ready for the jury. Bring the jury in.

1 MR. CLARK: Judge, while we're here, I just
2 -- I heard that the plaintiff on direct mentioned
3 medical insurance. Okay? So I did want to bring that
4 up. Just so the Court is clear, I instructed my
5 client not to mention insurance during his direct, but
6 sometimes -- sometimes it comes out.

7 The law I have is that mention of insurance
8 can be harmless error and the rule about not
9 mentioning insurance is really that the defendant has
10 liability insurance therefore you should find him. So
11 I think it's relatively harmless because it mentioned
12 health insurance.

13 If anything, it hurts us because we are
14 trying to get the jury to award medical bills so I --
15 at the charge conference and because of the collateral
16 source rule, there can't be double-dipping and the
17 jurors may be thinking, boy, why would we award
18 medical bills if he's got medical insurance?

19 So I just want to alert the Court that I do
20 have a proposed jury charges that address that issue
21 that they're not to speculate about medical insurance
22 or anything like that. But I know the Court -- I saw
23 Your Honor look up or I believe when that was
24 mentioned --

25 THE COURT: Right.

1 MR. CLARK: -- and I want to make sure we're
2 doing things properly and cleanly so I did want to
3 address that. I wanted to let the Court know that I
4 did tell me client, you know, so that's all. Thank
5 you, Judge.

6 THE COURT: All right. Bring in the jury.

7 THE CLERK: Jury entering.

8 (Jury enters courtroom.)

9 THE COURT: Thank you. Please be seated.
10 Mr. Munoz, come on up.

11 Mr. Gulino.

12 MR. GULINO: I guess we can't get a readback
13 about the last question so I will do my best.

14 BY MR. GULINO:

15 Q Mr. Munoz, we introduced before --

16 MR. GULINO: May I approach, Judge?

17 THE COURT: Yes.

18 Q -- Exhibit D-9, your union card, right?

19 A Yes.

20 Q And would it be fair to say that the reason
21 you joined the union was that you were going to have
22 somebody may help you get a job?

23 A That's correct.

24 Q Help you get a decent job as well?

25 A Correct.

1 Q And help you with your -- withdrawn. When
2 you get sent by the union to different employers,
3 they're the ones that tell you you go to this company
4 or this company or this company, right?

5 A Yes, sir.

6 Q And they have a record of all of the places
7 that they send you to don't they?

8 A Correct.

9 Q And your pay per hour is negotiated by the
10 union, correct?

11 A Correct.

12 Q And they have big negotiations with the
13 companies that are in the plastering business and they
14 at some point come to an agreement and they're the
15 bargaining -- a bargaining agreement as to how much
16 money you've going to get an hour, vacation pay,
17 things like that, right?

18 A Correct.

19 Q When you get a check from a company while
20 you were working let's say in 2012, is the check
21 handed to you or do they mail it to your house?

22 A Yes, they would hand it to me.

23 Q And the union gets information as to how
24 much money you make every month, don't they? There's
25 a statement for Washington Munoz as to how much money

1 he makes, right?

2 A Correct.

3 Q Now, since your accident in June of 2013,
4 you have left the country, have you not on trips?

5 A That's correct.

6 Q How many times?

7 A I believe three or four times more or less.

8 Q About once a year?

9 A I would think so.

10 Q And when you go to Florida, your daughter
11 Denise testified this morning when you go to Florida
12 do you fly or you drive don't you? Withdrawn. Do you
13 drive to Florida when you go to visit your family?

14 A On certain occasions I have driven and on other
15 occasions I have taken a flight.

16 Q When you've driven, have you driven your own
17 car?

18 A That's right.

19 Q And the union is Local 29, right?

20 A Correct.

21 Q Now, I know you drove a truck for a while,
22 but did you do plastering work before you started to
23 drive a truck?

24 A You mean plaster, plaster is plastering and the
25 question was with the Spanish term.

1 Q Oh.

2 A Yes, everything that has to do with stucco.

3 Q When did you start doing that?

4 A More or less 15 years in stucco.

5 Q Now, when you say 15 years, was it 15 years
6 before you drove a truck for two years and then you
7 started to do it again?

8 A Well, before driving the truck more or less 15
9 years.

10 Q That's what I'm trying to get at. So you
11 did stucco work for about 15 years till about 2011 and
12 then you did it again from 2012 till June of 2013,
13 right?

14 A That's correct.

15 Q So you've been doing stucco work maybe 16,
16 17 years around there?

17 A That's correct.

18 Q Do you use brushes? Do you use brushes?

19 A Sometimes.

20 Q And sometimes you use rags?

21 A Yes, sometimes.

22 Q And you're right-handed aren't you?

23 A Sometimes both.

24 Q Are you right-handed?

25 A What do you mean by right-handed?

1 Q What is your dominant hand?

2 A Oh, the right.

3 Q And besides brushes and rags, how else do
4 you put the stucco on the walls?

5 INTERPRETER: Interpreter is repeating
6 phonetically with trellis. I don't know how you call
7 that, it is tools that we use?

8 Q A trowel?

9 A Yes, different types of trowels.

10 Q Now, and the stucco is put on by hand,
11 right?

12 A Correct.

13 Q Do you also take old stucco off before you
14 put new stucco on?

15 A That's right. On certain occasions.

16 Q What do you call the material that you put
17 on the wall?

18 A When it's with foam then it's foam. There was
19 some material called foam, insulation rather.

20 Q How about the stuff that's on the final
21 product on the outside that you put on with a trowel
22 or you put on with the brushes or you put on with the
23 rags?

24 A Well, the final job you do is the texture, the
25 color.

1 Q Is it called coating?

2 A Exactly.

3 Q It's like a thick paint?

4 A That's right.

5 Q Now, in the 16 and a half years that you've
6 worked as a stucco laborer, would it be fair to say
7 that you were always a laborer? I'll withdraw the
8 question. Would it be fair to say that in your 16 and
9 a half-year career working with stucco, you were a
10 laborer?

11 A Correct.

12 Q You weren't the guy sitting there having a
13 cigarette, smoking a cigar or drinking a cup of coffee
14 watching everybody else work, you did the work, right?

15 A Correct.

16 Q Now, in some of the fields -- withdrawn.
17 Some of the companies that you worked for, did you
18 ever have orientation when you got to a site?

19 A Right.

20 Q Was it in all of your jobs or some of your
21 jobs?

22 A All the jobs where the union would send me to.

23 Q And the orientation was conducted by who,
24 the general contractor, the construction manager or
25 someone else?

1 A The person that had been assigned to provide
2 these orientations, there was someone there. I am not
3 sure if it was someone from OSHA if it was an OSHA
4 member or what but it was someone that had knowledge
5 about safety.

6 Q I'm trying to find out who employs the
7 people who join your orientations generally when you
8 went to a different site.

9 A I have no idea who the assigned party may be.
10 But I did have orientation.

11 Q Would it be fair to say that the orientation
12 not only talks about what the job is to be done by you
13 guys, stucco guys, but also how to do it safely? I'll
14 repeat the question. I'll withdraw it. Would it be
15 fair to say that at the orientation stucco workers
16 would be told not only what needs to be done but how
17 to do it safely?

18 A Exactly. It was about safety.

19 Q Now, when you got the Meadowlands job, was
20 that in about March or April of 2012?

21 A I am not certain as to the date.

22 Q Was it two months before your accident,
23 three months before your accident?

24 A Yes, about two months, two months plus.

25 Q Now, when you first got there, you had an

1 orientation didn't you, at the Meadowlands?

2 A That's right.

3 Q And were there other workers in the room
4 with you at the time?

5 A Yes, the newly arrived ones would have the
6 orientation.

7 Q So when you got to the job on your first
8 day, two and a half months or whatever before the
9 accident, you had an orientation on your first day?

10 A Yes, correct.

11 Q Okay. Now, withdrawn. I see you're dealing
12 today -- we're dealing today with an interpreter. The
13 orientation, did they provide Spanish interpreters?

14 A No, but I could understand about safety and if I
15 didn't understand something, well, there were people
16 there who spoke English and Spanish so whenever I
17 wouldn't understand, they would help me.

18 Q Would it be fair to say that the end of the
19 orientation, you understood what was expected of you
20 at that project?

21 A Correct.

22 Q Before on direct examination by Mr.
23 Berenguer, you were asked about reporting your
24 accident. Do you remember that?

25 A That's right.

1 Q And would it be fair to say that the reason
2 you did that was because you were told at orientation
3 that you need to report your accident within one hour?

4 A And that's correct. It was going to be done, but
5 there was no one around.

6 Q At your orientation, did they explain to you
7 why they wanted you to report your accident within an
8 hour?

9 A Correct.

10 MR. GULINO: May I approach?

11 THE COURT: Yes.

12 BY MR. GULINO:

13 Q I'm showing you Exhibit D-7. Do you
14 recognize what that is?

15 A Yes.

16 Q Can you tell the jury what that is?

17 A This is a paper about having received the
18 orientation.

19 Q And would it be fair to say that's your
20 signature on the bottom of the page?

21 A That's correct.

22 Q Thank you. Before this project would it be
23 fair to say that you, yourself, had gone to an OSHA
24 training course?

25 A Yes, right at the moment when I became a union

1 member, right at the union they provided that course
2 to us.

3 Q Do you remember when that was?

4 A I really do not remember.

5 Q I'm going to again show you Exhibit 7 and D-
6 7 and I want you to look up here. Do you recognize
7 what that is on the top of that document?

8 A Yes.

9 Q What is it?

10 A This is the -- that is the OSHA safety card.

11 Q And does that --

12 MR. GULINO: May I approach again, I'm
13 sorry, Judge.

14 BY MR. GULINO:

15 Q And does that OSHA safety card, does that
16 help you remember when you underwent that class?

17 A That's right. Yeah, now I do.

18 Q And when was it?

19 A 02/6/2013.

20 Q February 6, of 2013.

21 A Yes.

22 Q Thank you, sir. Now, you've been working at
23 the site for two and a half months. Did you have
24 regular partners. While you were working at the site
25 project, did you have regular people or partners that

1 you worked with?

2 A Yes.

3 Q And was Joe Mella one of them?

4 A Yes, that's right.

5 Q And Mr. Rodriguez, was he the other one?

6 A That's right.

7 Q And was there a Mr. Guzman also or no?

8 A I don't quite recall.

9 Q Now, did you guys work on a team?

10 A Sometimes, but my partner, the one that I would
11 work with the most was Rodriguez.

12 Q Now, were the laborers responsible for
13 bringing up their own material?

14 A Sometimes, yes.

15 Q And on the date of the accident, did you
16 have -- at the time of the accident, did you have any
17 material with you?

18 A Yes.

19 Q And was it that coating that you use?

20 A No, I don't -- I don't quite remember the name,
21 but it was that thing to glue the joints, and I think
22 Puraproof.

23 INTERPRETER: And the interpreter has
24 repeated phonetically.

25 BY MR. GULINO:

1 Q Did this come in buckets?

2 A That's right.

3 Q And would it be fair to say that the buckets
4 weighed about 60 or 70 pounds each?

5 A More or less, yes.

6 Q Now, before your accident you were walking
7 on the roof, correct?

8 A The first day of the accident, yes.

9 Q There was only one day of the accident,
10 right?

11 A Exactly.

12 Q So you were walking about 20, 25 feet,
13 right, before your accident happens?

14 A Yes, more or less that, yes.

15 Q And you're heading towards that wall, right,
16 where you were going to do work?

17 A That's correct.

18 Q And you've got about another 50, 60 feet to
19 go before you get to the wall?

20 INTERPRETER: And for the interpreter, did
21 you say 50?

22 MR. GULINO: Fifty, 5-0. Fifty or sixty
23 feet.

24 A No, I think it was less.

25 Q How much less?

1 A I would think about 30, 35 feet more or less.

2 Q So you've been walking about almost -- you
3 would have walked about 60 feet if you had carried the
4 buckets and made it to the wall, right?

5 A I have no idea of the length, but I would think
6 so.

7 Q Now, when you came out of the door, did you
8 turn left?

9 A I came out and went straight.

10 Q Well -- and then you walked about 20, 25
11 feet, right, before the accident happened?

12 A Exactly.

13 Q And you were walking a straight line, right?

14 A Exactly.

15 Q And while you were walking straight, you
16 were looking at the floor weren't you?

17 A Correct.

18 Q Now, when you came into contact with I think
19 you called it the softer material on the floor --

20 A I put my foot there. I felt that it went
21 downward.

22 Q What foot?

23 A Right.

24 Q And what happened to you as a result of
25 stepping on that?

1 A I had two buckets and my tool belt.

2 Q And what happened to your body as a result
3 of stepping on that?

4 A I felt like everything was going downward. It
5 was my impression. I had already felt what happened
6 to my shoulder and my back.

7 Q Did you fall to the ground?

8 A I was -- I ended up sort of on my knees.

9 Q Are you aware that there's a claim in this
10 case that you have always said that you fell down and
11 landed on your right arm and shoulder?

12 A I felt the pain after what happened to me.

13 INTERPRETER: The interpreter needs a
14 question repetition.

15 MR. GULINO: Move to strike that answer.
16 It's unresponsive.

17 A Repeat it, please.

18 Q Are you aware that there has always been a
19 claim on your behalf that as a result of stepping on
20 the soft material that you fell to the ground and
21 landed on your right arm and shoulder?

22 MR. CLARK: Objection to form.

23 THE COURT: The objection as to form is
24 sustained.

25 BY MR. GULINO:

1 Q Were you here yesterday when Dr. Helbig
2 testified?

3 A Right.

4 Q And do you recall him testifying that you
5 told him on your first meeting that you fell down and
6 landed on your arm and your shoulder?

7 INTERPRETER: I'm sorry. Could the question
8 be repeated for the interpreter?

9 BY MR. GULINO:

10 Q If he were to say that, was he correct? Is
11 that what happened?

12 A That's right.

13 Q You fell down and landed on your shoulder.

14 A The way I'm trying to explain it to you is that
15 when I stepped I already felt pain in my arm and my
16 back and then -- and then I got on the floor from the
17 pain.

18 Q Did you trip and land on your shoulder?

19 A No, no, no. My foot went like this and I felt
20 the scrape here, the pain.

21 MR. GULINO: Move to strike.

22 Q Did you trip and land on your shoulder?

23 A I did not trip.

24 Q Did you land on your shoulder?

25 A How land on my shoulder, in what sense? I

1 understand falling on my shoulder, then my shoulder is
2 on the floor and that's not how it was.

3 Q So your shoulder never came in contact with
4 the floor?

5 A No.

6 Q And your hand never came in contact with the
7 floor?

8 A My hand did.

9 Q I'm sorry?

10 A My hand did.

11 Q After you dropped the buckets?

12 A Exactly after.

13 Q So it would be fair to say that you stumbled
14 when you put the buckets down?

15 MR. CLARK: Objection. Asked and answered,
16 Judge.

17 THE COURT: You can answer the last
18 question.

19 A Could you please repeat it?

20 Q Would it be fair to say that you stumbled
21 and then you put the buckets down?

22 A Everything happened at the same time.

23 Q Well, I understand that, but did you put the
24 buckets down?

25 MR. BERENGUER: Objection. Asked and

1 answered and argumentative.

2 THE COURT: I mean, at what point? I think
3 he's already answered the question.

4 MR. GULINO: Well, I'll rephrase the
5 question, Judge.

6 BY MR. GULINO:

7 Q You did at one point put the buckets on the
8 ground, correct?

9 A Exactly.

10 Q And was it after you stumbled?

11 A It all happened at the same time.

12 Q And you put the buckets down on the ground
13 after you stumbled and the accident was over, right?

14 A Yes, and my backpack, my tool bag.

15 Q I'm not asking how you felt. We'll get to
16 that later. I'm asking what happened to your body.
17 You stumbled, you put the buckets down and the
18 accident was over.

19 A I felt a lot of pain in my back, my arm, and my
20 shoulder.

21 Q Why don't we do this. I'll ask you
22 questions later about how you felt afterwards. Just
23 tell me you stumbled, and you put the buckets down and
24 the accident was over.

25 A Exactly.

1 Q Okay. So after the accident, after it
2 happened, you were with Joel, right, and Rodriguez?

3 A That's right.

4 Q And forget about trying to report the
5 accident. Let me ask you this. The shifts, what time
6 did you start?

7 A Usually 7 a.m.

8 Q 7.a.m. Okay. And you usually work till
9 three o'clock?

10 A Until 3:30.

11 Q Huh?

12 A Until 3:30.

13 Q Until 3:30. Okay. So are you telling this
14 jury that at 3:20 ten minutes before you ended the day
15 that you were still taking material out to do work on
16 a stucco wall?

17 A The boss told us to go upstairs to prepare
18 material for the following day.

19 Q Okay. And so the end of the day came. Were
20 you feeling pain?

21 A Yes.

22 Q And you went home didn't you?

23 A Right.

24 Q And you did not seek medical attention did
25 you that night?

1 A No. No. No.

2 Q The next day when you returned to the
3 project, you went to see the superintendent to tell
4 him about the accident?

5 A That's right.

6 Q And were you told then that because you
7 didn't report it within an hour that you were going to
8 have to leave the site?

9 A Explain that to me, please.

10 Q Sure. When you told the superintendent that
11 you had an accident the day before, would it be fair
12 to say that you were told, "Washington, you can't work
13 on this site anymore."

14 A No, the way he said it to me was that I had to
15 report it within an hour.

16 Q I'm sorry. I apologize. You are correct.
17 Were you told that day when you reported it that,
18 "Washington, you have to leave because you didn't
19 report the accident within one hour?

20 INTERPRETER: The interpreter needs to
21 request repetition.

22 A He told me that I had to go the doctor. He went
23 me to the doctor.

24 Q The superintendent of L.P. Ciminelli sent
25 you to a doctor.

1 A Right, but I don't recall what doctor it was that
2 was from that area.

3 Q If I were to tell you that you went to a
4 doctor in Newark would you accept that?

5 A It wasn't in Newark that same day. It was not in
6 Newark that day.

7 Q I think you're correct. I think you're
8 correct. Would it be fair to say that you went two
9 days, you went that day the 26th of June and the 28th
10 of June?

11 A Something like that; I don't really remember.

12 Q And when you got there did you tell them
13 what was hurting you?

14 A Exactly.

15 Q And when you told them what was hurting you
16 I assume you did so because you wanted treatment,
17 correct?

18 A Because I felt badly. I was in a lot of pain.

19 Q I understand all of that. What I'm saying
20 is that the parts of your body that you told them you
21 hurt, hurt you so much that you made a complaint to
22 them about that, right?

23 A Right.

24 Q Now, you told them that your elbow hurt,
25 right?

1 A My arm.

2 Q You told them your elbow hurt didn't you?

3 A Near here, near the elbow.

4 Q Your biceps?

5 A All of this.

6 Q You also told them your upper back, didn't
7 you?

8 A That's right.

9 Q They took x-rays of you didn't they?

10 A That's right.

11 Q And they x-rayed your upper back, right, and
12 neck?

13 A That's right.

14 MR. GULINO: Your Honor, can I approach?

15 (THE FOLLOWING TAKES PLACE AT SIDEBAR.)

16 THE COURT: Tell him to stop -- what are you
17 saying?

18 MR. GULINO: He's going like this. He's not
19 doing anything, he's just sitting there.

20 THE COURT: Do you want to respond to that?

21 MR. GULINO: So do you want to take a break?

22 MR. BERENGUER: I have no response to that.

23 THE COURT: I suppose if he needs a break
24 he'll let us know.

25 MR. GULINO: Thank you. All right. I'll

1 continue, Judge.

2 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

3 BY MR. GULINO:

4 Q So they took an x-ray of your upper back
5 right in your neck area?

6 A Yes.

7 Q And they took an x-ray of your elbow didn't
8 they?

9 A That's right.

10 Q They didn't take an x-ray of your shoulder.

11 A They did, all of this.

12 Q Would it be fair to say that you hired a
13 lawyer within two days of the accident?

14 MR. CLARK: Judge, objection. Can I be
15 heard at sidebar?

16 (THE FOLLOWING TAKES PLACE AT SIDEBAR.)

17 MR. CLARK: When someone retained an attorney
18 is privileged and not a proper area to go into.

19 MR. GULINO: The retention of an attorney is
20 not privileged.

21 THE COURT: I'm sorry?

22 MR. GULINO: The retention of an attorney is
23 not privileged. The communication between an attorney
24 is. I'm not asking for communication. I'm asking
25 when he hired a lawyer.

1 MR. CLARK: I believe the case law includes
2 that -- I think it's an improper question because it's
3 irrelevant and any relevance is -- it's not even
4 relevant and it starts to go into a side issue about
5 when someone retained an attorney which clearly starts
6 to traipse upon the attorney-client privilege.

7 THE COURT: Where are you going with this?

8 MR. GULINO: It is in one of the records, I
9 think that were admitted -- that will be admitted into
10 evidence.

11 MR. CLARK: I had talked about it, that's
12 all.

13 MR. GULINO: I'll leave it alone. I'll
14 withdraw the -- whatever you need me to do. Do you
15 want me to withdraw the question or whatever you want.

16 THE COURT: And the jury will disregard it.

17 MR. GULINO: Okay.

18 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

19 MR. GULINO: I'll withdraw the question?

20 THE COURT: Yes, the jury will disregard the
21 response and the question.

22 BY MR. GULINO:

23 Q Now, not much longer, okay? So you took
24 some photographs, correct?

25 A Yes.

1 Q And you took them that day did you not?

2 MR. CLARK: Objection.

3 MR. GULINO: I'm sorry. It was a bad
4 question.

5 BY MR. GULINO:

6 Q You took them on June 26th, the day after
7 the accident, didn't you?

8 A There are two; that day and after that something
9 like that.

10 Q How about -- let's talk about the first
11 photographs that you took. You took photographs on
12 June 26th the day after your accident, correct?

13 A Exactly.

14 Q And did you take any photographs from far
15 away that show where the hole is? Withdrawn. Did you
16 take any photographs from far away which show the area
17 where you had your accident?

18 A Yes. The area where it was.

19 Q Now, I'm not talking about a few feet away.
20 I'm talking about maybe from me to you. Did you take
21 any photographs that far away? For the record, it's
22 about 18 feet.

23 A I don't remember. That's really far.

24 Q I understand that, but did you take them
25 from far away?

1 A It wasn't that far. That's an approximate
2 distance.

3 Q So I guess you didn't take them from far
4 away.

5 A It could be a distance from here, seven or eight
6 feet.

7 Q Mr. Munoz, I'm almost finished. I know I
8 said that. We have one pay stub from you, correct?

9 A That's right.

10 Q And you received a pay stub from every
11 employer for 18 months before this accident didn't
12 you?

13 A That's right.

14 Q And your union for 18 months had proof of
15 every dollar you made as a union member.

16 A That's right.

17 MR. GULINO: Nothing further. Thank you,
18 Your Honor.

19 THE COURT: Redirect?

20 MR. CLARK: I just have two quick areas.

21 THE COURT: Redirect.

22 REDIRECT EXAMINATION BY MR. BERENGUER:

23 Q Mr. Munoz, did at one time did you have --
24 go by the name Munoz Arevalo?

25 A Yes.

1 Q Explain.

2 A The thing is we always use both names; two first
3 names and two last names in my country so when I got
4 here I put Munoz Arevalo down. My mother's last name
5 and my father's last name. And my first name
6 Washington.

7 Q Okay. Now, at your -- at the safety
8 orientation that you had attended, did they also talk
9 about a rule that says accidents shall be reported
10 immediately to your supervisor foreman, the supervisor
11 shall report all accidents within one hour to LPC?
12 Did they talk about that rule?

13 A That's right.

14 Q And now, did they also talk about these
15 rules, any pool cover removed from any opening, door
16 opening requires assistance to be immediately restored
17 prior to leaving the area unattended. Did they talk
18 about that rule?

19 INTERPRETER: Could the interpreter see that
20 in writing to be able to interpret it accurately?

21 A That's right.

22 Q Did they also talk about the rule that says
23 contractors, subcontractors are responsible to
24 maintain housekeeping in all of their work areas?

25 MR. GULINO: Objection.

1 MR. CLARK: He didn't finish the question.

2 MR. GULINO: It's an obligation on someone
3 else.

4 MR. CLARK: The document is in evidence.

5 MR. BERENGUER: Judge, the document is
6 already in evidence.

7 MR. CLARK: D-7.

8 THE COURT: It's a defense document? You're
9 objecting? Take a look at what's being proffered
10 before you object, please.

11 MR. GULINO: You should show him mine.

12 THE COURT: The same objection?

13 MR. GULINO: I still have the objection.
14 The objection is I questioned him on it, it was his
15 obligations. Mr. Berenguer is talking about the
16 obligations of someone else, not him. I understand it
17 comes down to the same document.

18 MR. CLARK: But those other people are the
19 defendants. It's relevant and addresses the cross-
20 examination on that document.

21 THE COURT: The objection is overruled.

22 BY MR. BERENGUER:

23 Q I'm going to ask the question again,
24 Washington. At this orientation that you were --
25 that you attended, did they also talk about the rules

1 that said contractors --

2 MR. GULINO: Objection. It's improper to
3 lead him.

4 THE COURT: That is sustained. It's a
5 leading question.

6 BY MR. BERENGUER:

7 Q Ms. Washington, do you remember some of the
8 other rules that they spoke about at the safety
9 meeting that you attended?

10 A Exactly.

11 Q At these -- at this meeting, did they talk
12 about any rules regarding the responsibility that a
13 contractor or subcontractor has? Do they talk about
14 any rules? Do you remember?

15 A That's right.

16 Q What if anything did they tell you about the
17 rule that subcontractors and contractors are
18 responsible to maintain household and other --

19 MR. GULINO: Objection.

20 THE COURT: Let me see you at sidebar.

21 (THE FOLLOWING TAKES PLACE AT SIDEBAR.)

22 THE COURT: Why are we doing this through
23 this witness?

24 MR. CLARK: Because he was just cross-
25 examined on this document on the one hour rule and

1 said he was fired as a result. It's a central defense
2 in the case.

3 THE COURT: Okay.

4 MR. CLARK: But they have several other rules
5 that --

6 THE COURT: And you can certainly bring that
7 in through another witness, but the other rules were
8 not discussed.

9 MR. CLARK: But it's important through this
10 witness because this witness attended the safety
11 meeting --

12 THE COURT: Okay.

13 MR. CLARK: -- and should be permitted to
14 say what other rules they talked about.

15 THE COURT: How would those people who are
16 discussing the rules rather than him talking about
17 what other people told him?

18 MR. CLARK: Because I don't know who was
19 discussing the rule and that's on a different case.
20 It's relevant evidence and this witness has personal
21 knowledge of what was discussed at that meeting.

22 THE COURT: How can you remember what --
23 you're basically leading and hinting to responding to
24 those questions. It's clear it's not coming from him.

25 MR. CLARK: That's relevant. If he says they

1 didn't discuss that rule, it's relevant because they
2 just entered this document into evidence to say we had
3 the right to fire him within one hour.

4 THE COURT: Guess what? Then that document
5 is in evidence. It's in evidence, right? So why is
6 it coming in through him?

7 MR. CLARK: Because it rebuts the cross-
8 examination that we properly fired you within one hour
9 because you violated that rule, another rule about
10 housekeeping and another rule about obscene language.
11 It's all relevant on this witness.

12 THE COURT: Okay.

13 MR. CLARK: It's proper addressing the cross-
14 examination.

15 THE COURT: It's not. It's not.

16 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

17 THE COURT: The objection is sustained.

18 BY MR. BERENGUER:

19 Q Washington, at this safety orientation
20 meeting that you attended, did they say anything about
21 obscene language?

22 A No.

23 MR. BERENGUER: That's it.

24 THE COURT: Thank you, sir. You may step
25 down. Your next witness?

1 MR. CLARK: Judge, do you want me just tell
2 you about scheduling?

3 THE COURT: Sure.

4 (THE FOLLOWING TAKES PLACE AT SIDEBAR.)

5 MR. CLARK: The next is the video and it
6 runs an hour and 24 minutes.

7 THE COURT: Okay. Let's take a break now.

8 MR. GULINO: May we come back --

9 THE COURT: We're not going to break until
10 the end of the day. We'll take a break now.

11 MR. GULINO: Judge, I know he wants to run a
12 video. I know what he wants to do (indiscernible) he
13 wants to call them or not call them. He's calling the
14 doctor out of turn who has already been deposed.

15 (THE FOLLOWING TAKES PLACE IN OPEN COURT.)

16 THE COURT: Okay. So we'll take a 15-minute
17 recess. Please don't talk about the case. We'll see
18 you back in 15 minutes.

19 (Recess)

20 MR. CLARK: Judge, as they're coming out,
21 just as far as scheduling. We were talking about now
22 with the exhibits I know what we're doing so I think
23 we're going to do -- we'll play the video and then I
24 was thinking maybe just a suggestion is to finish all
25 the testimony and then charge and then verdict on

1 Monday. But those are the thoughts that we had.

2 MR. GULINO: Because I'm not too sure yet,
3 Your Honor. First of all I have to put on my doctor,
4 the videotape. That's about two hours, right, Laz,
5 something like that?

6 MR. BERENGUER: Yes.

7 MR. GULINO: And I don't know which of my
8 witnesses I may call. I will definitely probably call
9 Mr. Beardsley, but I'm not too sure about Mr. Mella
10 and I'm not too sure about Mr. Pano.

11 THE COURT: Okay.

12 MR. GULINO: So I have a transcript of the
13 doctor's testimony that's going to go on, I don't know
14 if you want it.

15 THE COURT: Sure. Sure. Okay.

16 THE OFFICER: Jury entering.

17 (Jury enters courtroom.)

18 THE COURT: All right. Thank you. Please
19 be seated. Counsel, your next witness.

20 MR. BERENGUER: Your Honor, Dr. Paula
21 Sociedade who is -- I'll be showing her video.

22 MR. GULINO: How long does it run?

23 MR. BERENGUER: I think it runs about an
24 hour and a half.

25 (Video testimony of Dr. Paula Sociedade played at

1 3:14:00.)

2 (Video testimony of Dr. Paula Sociedade is concluded
3 at 4:37:57.)

4 THE COURT: All right. So members of the
5 jury, this brings us to the end of our court day.
6 Please get home safely. Try to stay cool. Enjoy the
7 evening and we'll see you back tomorrow morning at
8 8:30. Over the evening hour, please, do not talk
9 about the case. We'll see you tomorrow morning at
10 8:30.

11 (Jury exits courtroom.)

12 MR. GULINO: I want to know who sabotaged my
13 microphone. Judge, do you have like -- will we have a
14 precharge conference where we do anything? I'm
15 unfamiliar with the rules around here so I don't know
16 --

17 THE COURT: Yes, before the jury is charged,
18 we do have a charge conference.

19 MR. GULINO: Okay.

20 THE COURT: So I don't know when you're
21 anticipating you will be done, but I suppose it will
22 be some time tomorrow.

23 MR. GULINO: Yeah, I think the only ones
24 that I have are the ones that are in the pretrial
25 exchange.

1 THE COURT: Okay.

2 MR. GULINO: I don't know -- I don't think I
3 have anymore.

4 THE COURT: And Mr. Clark, you'll get yours
5 to me.

6 MR. CLARK: Yes, I wanted to see how the
7 evidence developed in the case so that we would send
8 several drafts. Judge, there is just an issue to
9 remind you. The defendant has their orthopedic
10 doctor's video and we had filed that motion about the
11 redactions.

12 THE COURT: Yes, I do have that. I'm ready
13 to address that but obviously not at this hour. So
14 before you're going to play that tape, we'll address
15 that.

16 MR. GULINO: I think -- yeah, for my guy I
17 think you guys get to keep in --

18 THE COURT: Off the record. We're done for
19 today.

20 * * * * *

21

CERTIFICATION

I, LAUREN A. VOLLMIN, the assigned transcriber, do hereby certify the foregoing transcript of proceedings recorded on July 13, 2017, Time from 9:09:01 to 9:34:04; Time from 9:38:35 to 10:54:29; Time from 11:14:35 to 12:29:08; Time from 1:45:16 to 2:49:00; Time from 3:12:13 to 4:40:14 is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded to the best of my ability.

Lauren Vollmin

LAUREN A. VOLLMIN AOC #469
G&L TRANSCRIPTION OF NJ

Date: July 27, 2017