

**EXAMINATION BEFORE TRIAL OF NON-PARTY WITNESS, STUART B.
KAHN, M.D.; 2010 Depo. Trans. LEXIS 7898**

United States District Court for the Southern District of New York

ECF Case DOCKET NO. 08 CIV 01702

January 22, 2010

Reporter

2010 Depo. Trans. LEXIS 7898 *

TIMOTHY RINALDI AND CLAUDIA RINALDI, Plaintiffs, -against- SCAG POWER EQUIPMENT, A DIVISION OF METALCRAFT OF MAYVILLE, INC., Defendants.

Expert Name: Dr. BRIAN KAHN, M.D.

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Counsel

[*1] CLARK, GAGLIARDI & MILLER, P.C., Attorneys for Plaintiffs, White Plains, New York, BY: LAWRENCE T. D'ALOISE, JR., ESQ.

LEWIS BRISBOIS BISGAARD & SMITH LLP, Attorneys for Defendants, New York, New York, BY: GEORGIA S. ALIKAKOS, ESQ.

Proceedings

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[2]IT IS HEREBY STIPULATED AND AGREED, by

[3]and between the attorneys for the respective

[4]parties hereto, that this examination may be

[5]sworn to before any Notary Public.

Jasen Abrahamsen

[6]

[7]IT IS FURTHER STIPULATED AND AGREED that

[8]the sealing and filing of the said examination

[9] [*2] shall be waived.

[10]

[11]IT IS FURTHER STIPULATED AND AGREED that

[12]all objections to questions except as to form

[13]shall be reserved for trial.

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[2]S T U A R T B. K A H N, M. D., a

[3]Non-Party Witness, having been first duly sworn by

[4]Susie Cabanas-Diaz, a Notary Public of the State of

[5]New York, and stating his address as 10 Union Square

[6]East, 5P, New York, New York, 10003, was examined

[7]and testified as follows:

[8]EXAMINATION BY

[9]MS. ALIKAKOS

[10]Q Good morning, sir.

[11]A Good morning.

[12]Q My name is Georgia Alikakos. I'm an

[13]attorney with the firm Lewis Brisbois Bisgaard &

[14]Smith. We represent the defendant, Scag, in this

[15]action.

[16]I'm going to ask you a series of

[17]questions. I'd ask that you keep your responses

[18]verbal so the court reporter can take them down.

[19]If at any time you need to take a

[20]break, please let me know and we'll be happy to

[21]accommodate. But I ask that if there is an open

[22]question, you just answer my question and then we'll

[23]take the break.

[24]If at any time my question is

[25]confusing [***3**] or you need me to rephrase, please ask me.

[5]

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[2]I'll be happy to do so.

[3]A Fair enough.

[4]Q If my question calls for a yes-or-no

[5]answer, I would appreciate that your answer be yes

[6]or no. And if you have any questions, just let me

[7]know.

[8]A Fair enough.

[9]Q Could you state your name and address for

[10]the record.

[11]A Sure. Stuart Brian Kahn, 10 Union Square

[12]East, Suite 5B, New York, New York 10003.

[13]Q Do you maintain any other offices other

[14]than the --

[15]A No, I do not.

[16]Q I forgot one instruction. Sometimes we

[17]have a tendency to talk over each other. Just a

[18]normal course of habit. Even if you know the answer

[19]to the question, wait until I finish the question so

[20]that the court reporter can take it down.

[21]A You got it.

[22]Q The address that you listed, 10 Union

[23]Square, is that a professional address?

[24]A Yes, it is.

[25]Q What profession?

[6]

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[2]A I am a physician.

[3]Q What kind of physician?

[4]A I am a physiatrist, a rehab specialist and

[5]board certified, and also board certified in pain

[6]management.

[7] **[*4]** Q The address, 10 Union Square, are you part

[8]of a practice group or are you a solo practitioner?

[9]A Part of Beth Israel faculty practice. And

[10]in particular, the spine institute at Beth Israel.

[11]Q The Beth Israel faculty practice, is that

[12]a group of doctors or --

[13]A Yes.

[14]Q something else?

[15]A About a thousand physicians.

[16]Q Do you have your own patients?

[17]A Of course I have my own patients. It's my

[18]own practice for the most part. Just affiliated and
[19]employed by Beth Israel Medical Center.

[20]Q In connection with your practice, do you
[21]employ any other medical providers to assist you?

[22]A The hospital does, but they are officially
[23]my assistants.

[24]Q They're paid by the hospital?

[25]A They are, as am I.

[7]

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[2]Q Is all your income derived from working
[3]for Beth Israel?

[4]A Other than interests on investments, yes.

[5]My sole professional income is from Beth Israel.

[6]MS. ALIKAKOS: Do you want to mark this.

[7](Curriculum vitae was marked as Kahn 1 for
[8]identification, as of this date.)

[9]Q I'm going to show you what's been marked

[10] **[*5]** as Kahn 1. Is this a current CV?

[11]A Yes, this is.

[12]Q Just briefly, can you tell me about your
[13]educational background? Where did you go to
[14]undergraduate school?

[15]A State University of Binghamton.

[16]Q Did you receive a bachelor's degree?

[17]A Yes.

[18]Q In what?

[19]A In mathematics.

[20]Q After that where did you go?

[21]A State University of New York at Stony

[22]Brook for medical school.

[23]Q And did you receive your degree?

[24]A Yes, medical degree.

[25]Q In what year?

[8]

[1]

[2]A 1988.

[3]Q Post your time at Stony Brook, did you

[4]have any other schooling?

[5]A Training. Overlook Hospital in Summit,

[6]New Jersey for internship year.

[7]Q Where did you do your internship?

[8]A The internship year was at Overlook

[9]Hospital.

[10]Q Overlook was the name of the hospital?

[11]A Yeah, and then that was one year. And

[12]then I did a three year residency at Columbia

[13]Presbyterian in physical medicine and

[14]rehabilitation.

[15]Q Did you have any fellowships?

[16]A I did not have a fellowship, but I

[17]grandfathered into the pain management [***6**] boards in

[18]2000 because of my specialty background and

[19]practice.

[20]Q In physical medicine, rehabilitation or

[21]something else?

[22]A In the year 2000, physical medicine

[23]doctors were for the first time able to sit for the

[24]pain management boards. It used to be limited to

[25]anesthesia. Since fellowships were not available

[9]

[1]

[2]when I graduated for rehab doctors in pain

[3]management, they grandfathered you in based on your

[4]clinical experience.

[5]Q Is there a difference between physical

[6]medicine rehabilitation and pain management?

[7]A Yes.

[8]Q What is -- tell me briefly what is the

[9]difference.

[10]A When you are a physical medicine

[11]rehabilitation physician, and you're trained in that

[12]realm, your overall scope has anything to do in the

[13]rehabilitation realm. So it can be pain-related

[14]issues. It can be anything from neurologic

[15]disabilities, managing those disabilities, such as

[16]in this case, spinal cord injury case, brain

[17]injuries, neurologic diseases, both in the diagnosis

[18]and management. Treating and evaluation of patients

[19]in inpatient rehabilitation units.

[20]At [*7] one point in my career, for about

[21]three years I ran an inpatient rehab unit at Beth

[22]Israel, north division.

[23]And then pain management, your scope

[24]kind of comes into managing diseases and illnesses

[25]that create painful syndromes.

[10]

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[2]Q Could you give me an example of what you

[3]would deal with under pain management.

[4]A Sure. In my practice, primarily it's -- I
[5]work at Beth Israel Spine Institute as one of the
[6]two directors. I'm director of the nonsurgical
[7]treatment. We deal with patients with spinal
[8]disorders primarily. Cervical and lumbar arthritis,
[9]cervical lumbar thoracic injuries, spinal injuries,
[10]neurological pain from those injuries. Treating
[11]patients for rehabilitating from both -- for pain
[12]purposes as well as functional purposes.

[13]Q Is your -- do you currently perform
[14]services as a pain -- I'm sorry. As a pain
[15]management specialist?

[16]A Yes, I do.

[17]Q What percentage of your practice is
[18]devoted strictly to pain management services?

[19]A At this point, when you say services,
[20]treating all patients for pain? Probably
[21]90 percent.

[22]Q And would [*8] the remaining 10 percent be in
[23]the capacity of physical medical and rehabilitation?

[24]A Physical medicine, disability management.
[25]Also with pain management there's always rehab

[11]

[1]

[2]issues, disability issues, function issues.

[3]Q In connection with your practice, what
[4]percentage of your patients have suffered spinal
[5]cord injuries?

[6]MR. D'ALOISE: Presently?

[7]MS. ALIKAKOS: Yes.

[8]A Presently. Two percent. One to 2 percent

[9]of varying degrees.

[10]Q In the last five years, what percentage

[11]would you say have suffered spinal cord injuries?

[12]A One to 2 percent.

[13]Q Same, okay.

[14]Primarily what would make up the

[15]bigger percentage? What kind of injuries? Brain

[16]injuries or something else?

[17]A Of the rest of the rehab? Stroke

[18]patients, neuropathy, neurologic dysfunction such as

[19]in some patients with post stroke. Post neuropathy,

[20]debilitating diseases, myopathies, muscle disorder.

[21]Q Do you have any --

[22]A Balance disorders.

[23]Q Do you have any experience with treating

[24]patients with traumatic brain injuries?

[25]A Yes, I have.

[12]

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[2] [*9] Q What percentage of your practice?

[3]A At present, not many. I would usually

[4]send those patients out to a brain injury specialist

[5]or a stroke specialist.

[6]Q In connection with your work, you said

[7]2 percent, about one to 2 percent of your practice

[8]focuses on spinal cord injuries. Are there other

[9]specialists that you would send those spinal cord

[10]injuries patients out to?

[11]A I would probably co-treat. I would take

[12]care of the pain-related issues, and have those
[13]patients see a spinal cord injury specialist, a
[14]physiatrist who specializes in rehab in spinal cord
[15]patients.

[16]Q With respect to the spinal cord injuries
[17]that you've handled, have they been varying in
[18]severity or have they been all one specific kind of
[19]injury?

[20]A No, they vary in severity from
[21]quadraplegia to paraplegic to hemiplegic.

[22]Q And the results that you've had from
[23]treating, do they vary -- the people with spinal
[24]cord injuries, do they vary based on the
[25]individual's injuries or something else?

[13]

[1]

[2]A Can you rephrase that?

[3]Q Sure.

[4]In your experience in dealing with
[5] **[*10]** people with spinal cord injuries, does the treatment
[6]that you give and the results that you see, do they
[7]vary depending on an individual's specific injury,
[8]or is it one treatment and one general --

[9]A No, they vary depending on the
[10]individual's illnesses, depending on the
[11]individual's injury.

[12]It's not, sometimes, an injury. It's
[13]sometimes an illness, tumor, mass, spinal cord
[14]bleed, an infarct, post-surgical complications.
[15]Things like that. It varies dramatically on where

[16]the injury is, cervical, thoracic or upper lumbar.

[17]Q Aside from the injury itself, would an

[18]individual's personal characteristics in terms of

[19]how they -- withdrawn.

[20]Aside from the individual physical

[21]injury, is an individual's personal habits part of

[22]your diagnosis and considered by you in connection

[23]with your treatment?

[24]A Absolutely. I think a good rehab doctor

[25]looks at each individual and looks at not only what

[14]

[1]

[2]the injuries and impairments are but how those

[3]impairments lead to disability and how those

[4]impairments handicap an individual.

[5]Those are pretty much technical

[6]terms. [*11] A handicap is how an individual disability

[7]affects someone with their specific background.

[8]Whereas a disability is what someone can't do

[9]because of their physical impairment, the impairment

[10]being the actual injury.

[11]And personality and, I guess what I

[12]assume you're referring to is habits, have a huge

[13]impact on someone's outcome.

[14]Q In terms of habits, can you just explain a

[15]little bit that statement.

[16]A I guess I would ask you to clarify what

[17]you mean by habits.

[18]Q Well, you tell me what you mean. You said

[19]an individual's habits. Give me an example, let's

[20]say, in your experience.

[21]A Sure. Someone who might have a habit of

[22]not being particularly clean or particularly mobile

[23]is going to have problems as a paraplegic or a

[24]quadraplegic. Substantially greater problems with

[25]skin breakdown and infection. Substantially greater

[15]

[1]

[2]problems with potential fractures, heterotopic

[3]ossification, complications of their disease.

[4]Someone who might be more active

[5]might be able to perform better, be more physically

[6]fit, might be able to put off some of those

[7]complications **[*12]** for until a later time in their life.

[8]Someone who is extremely motivated to

[9]achieve might rise to the occasion of a higher level

[10]of function than someone who is not.

[11]Q Actually, that was my next question.

[12]Motivation. How important would you say motivation

[13]is in an individual's rehabilitation in terms of --

[14]A Can't give a specific percentage because

[15]motivation always interacts with the specific

[16]impairment. You might have two patients with the

[17]same -- for example, in my opinion, you could have

[18]two patients with the same spinal cord injury, the

[19]same impairment, but because one is more motivated

[20]they would be able to do more and achieve more.

[21]They might be willing to push themselves to achieve

[22]more independence.

[23]But on the other hand, even a person

[24]with the motivation might be stymied by pain

[25]conditions or complications. And each person's

[16]

[1]

[2]condition, even if they have the same exact physical

[3]damage to their spinal cord or spine or any body

[4]part, is going to be different based on how they

[5]experience that pain, what level of pain it causes,

[6]what level of abilities [*13] they have in other body

[7]parts to compensate.

[8]So even a motivated person, although

[9]I think it's important, a motivated person could be

[10]held back by other factors.

[11]Q Sure. I understand that.

[12]But is it fair for me to say that a

[13]motivated person could be expected to see more

[14]results, all other things being equal, than someone

[15]who is not motivated in the context of actually

[16]doing physical rehabilitation?

[17]A I think so, yes.

[18]Q Is it also fair for me to say that an

[19]individual who has family support and -- well, let's

[20]say family support, could expect to have better

[21]results than someone, let's say, who wouldn't have,

[22]in the context of rehabilitation?

[23]A Yeah, in my opinion that is the case.

[24]Q Let's go back. So after your -- you said

[25]you did three years at Columbia Presbyterian?

[17]

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[2]A Correct.

[3]Q In what capacity did you serve there?

[4]A Resident.

[5]Q While you were doing your residency, did

[6]you have a primary focus?

[7]A General rehabilitation. Several month

[8]periods that add up to several years on the

[9]inpatient rehabilitation [*14] unit.

[10]Columbia in particular has the

[11]neurologic institute affiliated with it, so there's

[12]a large number of neurological diseases. So there's

[13]actually a very large spinal cord clinic there. So

[14]spinal cord inpatient unit. So that would be one of

[15]the specialty areas.

[16]A lot of post-stroke rehabilitation,

[17]a lot of amputee rehabilitation, a fair amount of

[18]musculoskeletal training, and that's where the pain

[19]management comes into the rehab side.

[20]Q In dealing -- you said you do a lot of

[21]amputee rehabilitation?

[22]A Not any longer.

[23]Q No, when you were at Columbia.

[24]A Yes.

[25]Q And did you have -- would you say you had

[18]

[1]

[2]success in that, in rehabilitation service for

[3]amputees, or was that something that was --

[4]A Me personally?

[5]Q While you were there.

[6]A Or patients achieving success?

[7]Q Patients achieving success.

[8]A Depends on the patient. Depends on their

[9]underlying illness and cause of the amputation,

[10]whether it was for general malaise and vascular

[11]conditions and their bodies starting to deteriorate

[12]and shut down, or whether [*15] it was a healthy person

[13]with traumatic amputation.

[14]Q While working at Columbia Presbyterian,

[15]what percentage of your work involved individuals

[16]with spinal cord injuries, would you say?

[17]A While I was on the rehabilitation

[18]inpatient services, which, as I said, was a several

[19]month period several times during the residency,

[20]probably a good 25 or 30 percent.

[21]Q And after you completed your residency,

[22]what was the next step?

[23]A I went to work for Beth Israel. My whole

[24]career has been with Beth Israel, but at that time I

[25]was in a division called Beth Israel North and I had

[19]

[1]

[2]two main roles. The first role was running the

[3]inpatient rehabilitation unit. And the second role

[4]was building an outpatient musculoskeletal practice.

[5]Q What were the duties involved in running

[6]the inpatient rehabilitation unit?

[7]A There were some administrative duties to

[8]the unit, as well as medical director. It was a

[9]small rehab unit with eight beds. It was -- a large

[10]part of that hospital was an orthopedic hospital, so
[11]there were a lot of joint replacement patients.
[12]There was a big [*16] neurosurgical component, there were
[13]a fair number of spinal cord injured patients.
[14]It was basically to oversee the --
[15]when you're the rehab attending on a rehab unit,
[16]you're basically overseeing the entire patient's
[17]care. So you would be in charge of their medical
[18]care, and nowadays, with health care being what it
[19]is, that often involves bringing in specialists who
[20]help manage and evaluate the conditions that arise
[21]because of the impairment and disability. It
[22]involves instructing the physical therapist and the
[23]occupational therapist, the speech therapist on
[24]what's appropriate therapy for a patient with not
[25]just the impairment but the individual conditions
[20]

[1]
[2]and problems they're having. Making sure that they
[3]have a safe, adequate and good rehab for functional
[4]recovery, at the same time with managing their
[5]well-being and health.

[6]Q Do you have any specialized training in,
[7]you said, occupational therapy or speech therapy?
[8]You yourself?

[9]A Well, as part of rehab you study the
[10]realms. You oversee and you evaluate and you learn
[11]from therapists.

[12]Part of the training [*17] at Columbia is
[13]not just treating the inpatient rehab patients, but

[14]learning from those therapists. You get lectures
[15]from therapists, you read in your textbooks on rehab
[16]and support questions what constitutes appropriate
[17]therapy for various diseases and illnesses. You
[18]have to be aware and guide the therapist as part of
[19]your prescriptions on medical precautions, physical
[20]precautions.

[21]So did I go to school for OT, PT or
[22]speech therapy? No, I did not, but I think that any
[23]well-trained physiatrist is extremely knowledgeable
[24]on the subject.

[25]Q Do you have any specific certifications in
[21]

[1]
[2]physical therapy or occupational therapy?

[3]A Other than being a physiatrist, I'm not a
[4]PT, I'm not an OT or a speech therapist.

[5]Q Okay. Now, you said you were a board
[6]certified physiatrist?

[7]A Yes.

[8]Q Do you have any other board
[9]certifications?

[10]A Pain management.

[11]Q Aside from that, any other certifications?

[12]A No.

[13]Q Do you belong to any associations or
[14]groups specifically with respect to physical
[15]medicine and rehabilitation?

[16]A Yes, [*18] I do.

[17]Q What groups do you belong to?

[18]A American Academy of Physical Medicine and

[19]Rehabilitation. Passor, P-A-S-S-O-R, Physiatric

[20]Association of Spine and Sport Rehabilitation.

[21]Isis, I-S-I-S, International Spinal Intervention

[22]Society. And those are the main three. American

[23]Academy of Pain Medicine, which is more

[24]pain-oriented than rehab-oriented.

[25]MR. D'ALOISE: Do you want to look at your

[22]

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[2]resume?

[3]Q Society for Pain Management. Is that the

[4]same as ISIS?

[5]A No. Society for Pain Practice Management

[6]is an additional group, as is American Academy of

[7]Pain Management. American College of Occupational

[8]and Environmental Medicine. And New York Society of

[9]PM&R as well. Physical medicine and rehabilitation.

[10]Q In connection with your membership at the

[11]American Academy of Physical Medicine and

[12]Rehabilitation, do you hold any position?

[13]A No.

[14]Q What is your role there, if any?

[15]A Just a member and contributor to the

[16]organization. I get the journals about rehab issues

[17]that come with all of the different organizations.

[18]Q What about the [*19] Physiatric Association of

[19]Spine Sport and Orthopedist Rehabilitation, do you

[20]hold any positions there?

[21]A I'm one of the fellowship directors of one

[22]of their approved fellowship programs. So I have to
[23]submit updates about our fellowship program.

[24]Q Is that in connection with Beth Israel or
[25]is that separate?

[23]

[1]

[2]A Yes. It's through the graduate medical
[3]education program.

[4]Q The American Academy of Pain Management,
[5]do you hold any positions there?

[6]A No, I do not.

[7]Q What about the Society for Pain Management
[8]Practice?

[9]A No, I do not.

[10]Q American College of Occupational and
[11]Environmental Medicine?

[12]A No, I do not.

[13]Q New York Society of Physical Medicine and
[14]Rehabilitation?

[15]A No, I do not. I had in the past.

[16]Q Have you authored any articles with
[17]respect to pain management?

[18]A Yes, I have.

[19]Q What articles have you authored?

[20]A An article on integrity of discography and
[21]disc replacement surgery.

[22]Q Did that article focus specifically on
[23]spinal cord injuries?

[24]A No. You asked me about [*20] pain management
[25]articles.

[24]

[1]

[2]Q Right. Oh, I'm sorry.

[3]Did any of the articles that you've

[4]published focus specifically on spinal cord

[5]injuries?

[6]A No, they did not.

[7]Q Aside from the integrity of discography,

[8]any other ones?

[9]A Other articles on discography was a double

[10]blind controlled study. I don't remember the name

[11]of the study. I can get that to you.

[12]I have published chapters in

[13]textbooks on sports medicine in the elderly. A book

[14]by Gil Sudari, a chapter on sports injuries in the

[15]elderly. A sports medicine book for -- Robert

[16]Godlin is the author. I did spinal injuries in

[17]adolescents. A chapter.

[18]Q Is there something that you have at home

[19]or in your practice that --

[20]A Yes, it's on the same list with the

[21]testimonies. It hasn't been updated.

[22]I also have a textbook in my name

[23]that came out just a few weeks ago on acupuncture

[24]for the medical practitioner. That's -- I'm one of

[25]the primary -- there's three primary authors. I'm

[25]

[1]

[2]one of them.

[3]MS. ALIKAKOS: I'll leave a space in the

[4]transcript if you could just [*21] supply us with

[5]list of the testimony, as well as the list of

[6]articles.

[7]

[8]**INFORMATION TO BE PROVIDED**

[9]Insert: _____

[10]

[11]A Okay.

[12]MR. D'ALOISE: We'll just give you the

[13]list instead of just putting it in the

[14]transcript.

[15]THE WITNESS: Okay. Can I just borrow a

[16]pen so I can make myself a note.

[17]MS. ALIKAKOS: Off the record.

[18](Off the Record)

[19]A I'm not a hundred percent sure I'm still a

[20]member of the American College of Occupational and

[21]Environmental Medicine. I think that might have

[22]lapsed.

[23]Q Okay.

[24]Going back, I think you said, and

[25]correct me if I'm wrong, that you authored an

[26]

[1]

[2]article on spinal injuries in adolescents?

[3]A Yes. Spine conditions, spine sports

[4]injuries.

[5]Q Do you remember when that was?

[6]A Probably about three, four years ago.

[7]Q Now, earlier we talked about giving

[8]testimony. Have you ever given testimony in any
[9]matter prior to today?

[10]A Yes.

[11]Q In connection with your testimony, was
[12]that for litigation or was it in any other capacity? **[*22]**

[13]A I guess I don't understand the question.

[14]What other capacities are there?

[15]Q Well, have you ever given testimony --

[16]let's go through. How many times have you given
[17]testimony?

[18]A Including depositions?

[19]Q Yes.

[20]A Twenty-five maybe.

[21]Q And in those 25 instances, were they all
[22]regarding court matters, or was it for some other
[23]body, an agency or --

[24]A Oh, I understand what you're saying.

[25]When I used to be part of the
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[1]

[2]Worker's Compensation system, sometimes there would
[3]be depositions for patients. I don't think that was
[4]in court, as that would be in my office. I have
[5]given testimony for patients who have been injured
[6]and their case might come up, their liability case
[7]might come up. I have given testimony for the
[8]defense of the New York Law Department for
[9]evaluating whether or not their officers might have
[10]used excessive force or not. I have given -- I'm
[11]trying to think. Most of them have been litigation

[12]in nature.

[13]Q Of those about 25 cases, how many of those

[14]cases did you testify at a trial?

[15]A On my list there's about [*23] 11. I just did

[16]another one, so maybe 12. But there's probably

[17]three or four that before I started to compile a

[18]list I don't remember. It's an average of one or

[19]two a year, and that's been in the last five to

[20]eight years.

[21]Q Of those --

[22]A My list does not include depositions, by

[23]the way.

[24]Q Okay.

[25]A Just to let you know.

28

[1]

[2]Q Do you have a separate list for

[3]depositions?

[4]A No, I have never kept a list of

[5]depositions.

[6]Q In connection with those cases, what

[7]percentage of those cases were you retained by

[8]plaintiffs?

[9]A Probably 80. Probably most of them.

[10]Q Now, in connection with those cases, were

[11]you a treating provider who gave testimony, or were

[12]you hired as an expert consultant?

[13]MR. D'ALOISE: When you say those cases.

[14]MS. ALIKAKOS: Those 80 percent.

[15]MR. D'ALOISE: Okay.

[16]A For the majority, the treating physician.

[17]Probably if there's 15, we're saying, and 80 are

[18]plaintiffs, that means that's 12. Probably three or

[19]four I have been specifically as expert witness.

[20]Q In your career since graduating [*24] medical

[21]school, how many times have you served as an expert

[22]witness?

[23]A On-the-stand type of thing?

[24]Q In any capacity.

[25]A Writing reports or generating reports?

29

[1]

[2]Q Both. We'll go big first.

[3]A Okay. Well, a lot of times the attorney

[4]for your patient asks you to become the expert

[5]witness, so, and putting together narrative reports,

[6]I probably do that about six times a year. So let's

[7]say probably not so much in the first few years,

[8]because I did a lot of inpatient work. So if I do

[9]six, seven of those a year times fifteen years,

[10]that's probably about a hundred narrative reports.

[11]I work for -- I don't work for, I do

[12]some consulting work for a company called

[13]Independent Medical Consultants. Those are almost

[14]all defense for evaluating disabled people for the

[15]insurance companies. Doing independent medical

[16]evaluations and functional capacity evaluations.

[17]That's all defense work, and that's about probably

[18]three a year for the last three or four years.

[19]Probably four years. So maybe there's about a dozen

[20]of those.

[21]And I do these life care plans an

[22] [*25] average of four or five a year, and I've been doing

[23]that for about seven years.

[24]Q Okay. Let's go back.

[25]A So maybe 30.

30

[1]

[2]Q In your role as an expert consultant, how

[3]many of -- in the last five years, how many -- what

[4]percentage of that time would be on behalf of

[5]plaintiffs?

[6]A Sixty. Are you including the narrative

[7]reports?

[8]Q Yes.

[9]A And time or number of cases?

[10]Q Both.

[11]A A narrative report takes an hour, whereas

[12]an evaluation -- okay, so number of cases, we can do

[13]the arithmetic. Most of the life care plans and the

[14]narratives are almost always plaintiff. A few of

[15]them for the law department have been defense.

[16]Q Law department?

[17]A New York City Law Department.

[18]And all of the disability evaluations

[19]except for one have been defense. So I don't know

[20]if you want to add up the number.

[21]As far as time, a narrative report

[22]takes about an hour. So we can figure if I did --

[23]if we said about a hundred, so that would be a

[24]hundred hours.

[25]The disability evaluations take about

[31]

[1]

[2]six to eight hours because [*26] I'm with the patient for

[3]about four hours and it takes a couple hours to do a

[4]report. And the life care plans take about six to

[5]eight hours as well 'cause I'm with a patient about

[6]three hours and then three hours or so to generate a

[7]report.

[8]Q You said you do some consulting work for

[9]Independent Medical Consultants?

[10]A Yes.

[11]Q When did you start doing that?

[12]A About three to four years ago.

[13]Q What percentage of your income would you

[14]say is attributed to work, consulting work for

[15]Independent Medical Consultants?

[16]A Gosh. Tiny. Each report is about \$ 4, 000.

[17]So if \$ 16, 000 of my collections for my practice are

[18]about a million, four, so 1. 1 percent. 1. 2 percent,

[19]whatever that comes to.

[20]Q And could you estimate for me what percent

[21]of your practice is devoted or attributed --

[22]withdrawn.

[23]Could you estimate for me what

[24]percent of your income is attributed to services you

[25]provide on behalf of plaintiffs?

[32]

[1]

[2]A Okay. I charge \$ 750 per narrative report.

[3]So if I do about, what did we say, about six a year,

[4]that would be about \$ 4, 500.

[5] [*27] Then I do these life care plans,

[6]which estimated are about -- the person I work with,

[7]he runs the company and they charge, I think,

[8]somewhere in the \$ 5, 000 range. I usually get about

[9]\$ 3, 000. If I do four or five a year, that's

[10]\$ 15, 000. And testimonies average one to two a year.

[11]Probably two a year in the last few years.

[12]Some of the narratives for the life

[13]care plans go to trial, probably more than the

[14]patients' cases. So maybe an average of ten to

[15]\$ 15, 000. Let's say \$ 12, 000 a year from testimony.

[16]Let's make it fifteen. Let's say there's one

[17]deposition a year. And what does that add up to?

[18]\$ 4, 500 and \$ 15, 000 would be 19, 5, and that would be

[19]\$ 36, 000 out of 1. 4 million. So two and a half

[20]percent.

[21]I'm much more of a doctor that takes

[22]care of doctors' patients, and patients who are

[23]referred to me through the medical realm than the

[24]legal realm. I don't seek out legal. Other than

[25]the two consulting things I do for the Independent
33

[1]

[2]Medical Consultants, which is the life care plan and

[3]the IMC, I don't really seek out any other work

[4]through lawyers.

[5] [*28] Q Can we just clarify. The other

[6]consulting -- the life care plan --

[7]A For me --

[8]Q Is the life care plan you work with,

[9]that's part of a company or consulting company?

[10]A Yes.

[11]Q What is the name of that company?

[12]A Independent Medical -- Disability

[13]Consulting, owned by Al Dana.

[14]Q In connection with your work at

[15]Independent Consulting --

[16]A Disability Consulting. Not independent.

[17]Just Disability Consulting.

[18]Q That was where I was confused. So the

[19]life care plans are in connection with the work for

[20]Disability Consultants?

[21]A Yes.

[22]Q In connection with that work, what

[23]percentage of your income is derived just from

[24]working for Disability Consultants?

[25]A That would be the lowest number, the

[34]

[1]

[2]\$ 15, 000 a year. So 1 percent. 1. 2 percent.

[3]Q Okay. And in connection with that work

[4]for life care plans, is it fair for me to say that

[5]primarily all of your life care plans are on behalf

[6]of plaintiffs?

[7]MR. D'ALOISE: Could you repeat that. I'm

[8]sorry. I just didn't hear you.

[9]Q Sure.

[10]In connection with [*29] that work for
[11]Disability Consultants, would it be fair for me to
[12]say that the majority of your work there, if not all
[13]of it, is on behalf of plaintiffs?

[14]A I would say a great majority. I don't
[15]want to state I've never done one for a defendant,
[16]but I don't recall.

[17]Q In connection with your consulting work,
[18]how do you get referrals? You said they're referred
[19]to you.

[20]A By Independent Medical Consultant
[21]Corporation. They'll call me if there's a
[22]disability evaluation for an insurance company that
[23]they want me to perform, or a chart review that they
[24]might want me to perform. And also Al Dana, the
[25]person who owns Disability Consulting, will usually
35

[1]
[2]call me and ask me if I'm interested in working on a
[3]case for a life care plan.

[4]Q To your knowledge, do either -- does
[5]Disability Consultants have a group of doctors that
[6]they work with, or are you the only one?

[7]A I don't know how many. I know there are
[8]others.

[9]Q In connection with preparing these life
[10]care plans, do you work on the plan yourself or do
[11]you have someone who assists you?

[12]A I work [*30] on the plan myself. I devise the
[13]plan solely.

[14]Q Does Mr. Dana do anything in connection
[15]with the--
[16]A He helps. He has all the templates of the
[17]tables so he'll help put my information into the
[18]tables. If I write it out, I'm not a very good
[19]typist and my dictation service doesn't do the
[20]tables, he will often -- he's also a vocational
[21]therapist himself. A vocational counselor. So
[22]sometimes he'll do the -- I don't think he did in
[23]this case. He'll do the vocational evaluation. And
[24]he'll usually help schedule it.
[25]If special accommodations need to be
36

[1]
[2]made for transportation, he'll help arrange a
[3]patient to get in my office.
[4]With life care plans, more than
[5]anything else I like to see the patient in their
[6]home environment or work environment, wherever their
[7]functioning most of their time. Because I really
[8]think it gives you a much greater insight into their
[9]existence. Rather than in your office where you
[10]just get to examine them. I almost always do a life
[11]care plan with family members around or whoever the
[12]support system is. He arranges all of that.
[13] **[*31]** Q I know you have a list of prior trial
[14]testimony. Of those 11 that you said, about 11 to
[15]12 cases, what percentage of those cases did you
[16]testify on behalf of plaintiffs?
[17]A I think we went over that. I think it was

[18]about 80 to 90.

[19]Q Did we? Sorry if we did.

[20]A That's okay.

[21]Q And of those cases where you've testified

[22]at trial, how many of those cases involved spinal

[23]cord injuries?

[24]A Probably three or four.

[25]Q Do you remember the names of those cases

37

[1]

[2]as you sit here?

[3]A One was Louis Coque.

[4]Q And in that case you represented

[5]plaintiffs?

[6]A Yes.

[7]Q Okay. Any other names?

[8]A I have to go over the list and try to

[9]remember.

[10]Q If I leave a space in the transcript with

[11]respect to the name, could you identify which name

[12]involved spinal cord injuries?

[13]A Yes.

[14]

[15]**INFORMATION TO BE PROVIDED**

[16]Insert: _____

[17]

[18]Q To your knowledge, of those three or four

[19]cases which specifically involved spinal cord

[20]injuries, did all those cases -- in those cases, did

[21]you represent [*32] plaintiffs or did you represent --

[22]A Plaintiffs.

[23]Q Have any of your certifications ever been

[24]suspended or revoked for any reason?

[25]A Never.

38

[1]

[2]Q To your knowledge, in those -- in your

[3]prior experience with spinal cord injuries, how many

[4]of those spinal cord injuries -- withdrawn.

[5]In connection with your experience

[6]involved in cases involving spinal cord injuries, in

[7]how many of those cases, other than the case of

[8]Mr. Rinaldi, did the injuries involve accidents with

[9]lawn mowers specifically?

[10]A None.

[11]Q In the Coque case, was that individual a

[12]paraplegic, quadraplegic or something else?

[13]A Paraplegic.

[14]Q Did you perform a -- withdrawn.

[15]What was your role in connection with

[16]that litigation?

[17]A To evaluate him for a life care plan, and

[18]that was my whole role until they asked me to

[19]testify.

[20]Q Did you provide any treatment to Plaintiff

[21]Coque?

[22]A No. Usually when you're an expert witness

[23]your ethics would prohibit treatment.

[24]Q In any capacity as serving as an expert

[25]witness, did you provide treatment to **[*33]** the particular

39

[1]

[2]patient that you were assessing?

[3]A Only the ones that were already my

[4]patients.

[5]Q You said you perform life care plans?

[6]A Yes.

[7]Q Do you hold any certification as a --

[8]certifications as a life care planner?

[9]A No, but other than being trained in

[10]physical medicine and rehabilitation, you are

[11]trained to put together plans, life care plans, as

[12]part of your rehab duties as the attending physician

[13]in a rehab unit. That's part of your training.

[14]Q In connection with putting together life

[15]care plans, did you receive any formal training in

[16]how to put together a life care plan?

[17]A During residency, yes.

[18]Q Was that a course?

[19]A Instruction given by other board Certified

[20]attendings who are part of the teaching program. So

[21]I guess as part of your didactics, treatment plans,

[22]you know, studying patients for issues and

[23]complications, helping them chart out their medical

[24]care and trying -- putting together formal written

[25]reports. But documents like this, no.

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[1]

[2]Q Aside from during your residency,

[3]post-residency [***34**] have you had any academic training in

[4]any sort of setting as to -- specifically as to life

[5]care planning?

[6]A More specific to disability evaluations,

[7]disability management, which certainly goes along

[8]with life care planning.

[9]Q Specifically what training did you do?

[10]A Several courses on evaluating levels of

[11]disability. Correlating it to American With

[12]Disabilities Acts. I don't remember the names of

[13]the courses, though.

[14]Q Do you remember when you took those

[15]courses?

[16]A Several years ago.

[17]Q More than ten years?

[18]A Probably within ten years, or close to

[19]ten.

[20]Q Specifically in connection with life care

[21]planning, have you obtained any -- I know we talked

[22]about certifications. Any other degrees or

[23]completion of studies in life care planning?

[24]A Just reading articles in the medical

[25]literature about life care plans and appropriate

[41]

[1]

[2]levels of care for patients.

[3]Q Have you authored any peer review articles

[4]specifically on the issue of life care planning?

[5]A No, I have not.

[6]Q Do you belong to any organizations

[7] [***35**] specifically with regard to life care planning?

[8]A In the American Academy of Physical

[9]Medicine and Rehabilitation, as a rehab doctor you
[10]often do life care plans for your patients. Not a
[11]specific organization for life care plans.

[12]Q In connection with your role in preparing
[13]life care plans, do you have any nurses or life care
[14]plan consultants that you consult with?

[15]A Not really, no.

[16]Q Have you ever had any continuing medical
[17]education specifically with respect to life care
[18]plans?

[19]A Specifically on the preparation of a life
[20]care plan, no, but with regard to long term care and
[21]long term disability, which is basically the issue
[22]at hand, yes.

[23]Q Are there, to your knowledge, any specific
[24]certifications with respect to life care planning?

[25]A I believe there are, yes. I think those

[42]

[1]

[2]are for people who need additional criteria to be
[3]able to perform them. But as a physiatrist, it's
[4]certainly something that would fall under the
[5]responsibilities of a physiatric physician, in my
[6]opinion.

[7]Q To your knowledge, does Beth Israel employ
[8]separate, [*36] aside from physiatrist, separate life care
[9]plan consultants?

[10]A No, they do not.

[11]Q Have you sponsored any lectures
[12]specifically with respect to life care planning?

[13]MR. D'ALOISE: Sponsored any?

[14]Q Spoken at any. Specifically as a life

[15]care planner, if you recall.

[16]A Specifically for life care planning, no.

[17]For long term patient treatment, yes.

[18]Q Forgive me if I asked you, but the

[19]professional organizations that you belong --

[20]withdrawn.

[21]Do you belong to any professional

[22]organizations specifically with respect to life care

[23]planning?

[24]A No, I do not.

[25]Q Have you ever performed a life care plan

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[1]

[2]assessment on behalf of a defendant in a civil

[3]litigation?

[4]A I would say yes, I have.

[5]Q When?

[6]A A couple of years ago for the New York Law

[7]Department. I'm trying to remember the patient's

[8]name. I can't.

[9]Q Is that -- was that in a personal injury

[10]setting or was it for workers' comp or a civil

[11]rights --

[12]A It was a criminal who was injured during

[13]an arrest.

[14]Q Is that the case that you talked about

[15] **[*37]** earlier with, I think you said something about there

[16]was an issue of excessive force?

[17]A A question of excessive force. I guess

[18]that's where the litigation came from.

[19]MR. D'ALOISE: We'll take two minutes?

[20]MS. ALIKAKOS: Sure.

[21](Brief Recess Taken)

[22]Q Were you retained by plaintiff's counsel

[23]in connection with the case brought by Mr. Rinaldi?

[24]A Yes, I was.

[25]Q When were you retained by plaintiff's

44

[1]

[2]counsel?

[3]A The exact day I can't tell you, but I can

[4]tell you --

[5]Q You can estimate for me if you don't know

[6]the exact date.

[7]A Somewhere in May of 2009 would be my

[8]estimate.

[9]Q Have you had any other cases where you've

[10]been retained by counsel?

[11]A This counsel?

[12]Q This counsel or his law firm.

[13]A No. I never heard of him or know him

[14]prior to this case. Or the firm.

[15]Q And in May of 2000 -- about May of 2009,

[16]did you have a discussion with counsel about this

[17]case?

[18]A No, I did not.

[19]Q How were you retained?

[20]A I was retained through Disability

[21]Consulting firm.

[22]Q When they [*38] retained you, what did

[23]Disability Consultants tell you, if anything?

[24]A Basically Mr. Dana always asks me if it's

[25]a case, A, I have time to commit to it, because we

[45]

[1]

[2]did talk about the time commitment. B, if it's a

[3]case I would be willing to do. Then he told me a

[4]little bit about Mr. Rinaldi, just a quick synopsis,

[5]and asked me if I would be willing to do the

[6]evaluation at his home. As I said, it's my belief

[7]that it's a better way to evaluate a patient.

[8]That's about it. Then I was sent a

[9]substantial number of medical records.

[10]Q To your knowledge, did counsel or

[11]counsel's firm retain Disability Consultants who

[12]contacted you?

[13]A I believe that's how it works. When you

[14]say retain, I believe that implies a fee is paid in

[15]advance. I don't believe Mr. Dana ever takes fees

[16]in advance, to my knowledge. I certainly don't get

[17]paid in advance.

[18]Q In connection with this case, have you

[19]received payment from counsel in this case, or does

[20]it go through Mr. Dana?

[21]A It goes through Disability Consulting.

[22]Q What is your rate involved in this case?

[23] [*39] A For life care plans, anywhere between

[24]\$ 2, 000 and \$ 3, 000. Sometimes a little less.

[25]Sometimes it's just a simple knee injury and they're
46

[1]

[2]looking for what's called future medical and it's

[3]not really a full life care plan. But for something

[4]as comprehensive as this I receive \$ 3, 000.

[5]Disability Consulting, I do not know what was paid.

[6]Q Is that \$ 3, 000 from your beginning to

[7]today or something else?

[8]A That was \$ 3, 000 from beginning through

[9]today, and including the update I wrote to respond

[10]to another IME that was performed. Another life

[11]care plan that was performed.

[12]Q In connection with testimony, do you have

[13]a separate rate for testimony?

[14]A Yes.

[15]Q What's your rate for testimony?

[16]A In court, if I'm -- basically the hospital

[17]sets my rates, based on what my collections are for

[18]a day's work and what it costs to run my office. So

[19]on Fridays my fee for testimony is between \$ 7, 500

[20]and \$ 10, 000. On Mondays and Wednesdays it's

[21]\$ 10, 000. And on Tuesdays and Thursdays it's usually

[22]\$ 12, 000. I do procedures on Tuesdays and Thursdays

[23]and the loss **[*40]** of income to my practice would be

[24]substantially greater.

[25]Q Do you have a separate fee for testifying

47

[1]

[2]at trial, or is that the same?

[3]A Yeah.

[4]Q For depositions, is that the same?

[5]A Yeah, I think we charged \$ 5, 000 for this

[6]one because I think we thought it was not going to

[7]be a full day.

[8]Q I'll try my best.

[9]A With the court, however, I have learned

[10]over the number of times, at least 12 or so times

[11]I've done it, that there is no such thing as half a

[12]day unless you start in the afternoon.

[13]MS. ALIKAKOS: Off the record.

[14](Off the Record)

[15]Q In connection with this case, have you

[16]given any other testimony in any capacity?

[17]A None whatsoever.

[18]Q Did you prepare a life care plan report in

[19]this case?

[20]A Yes.

[21]Q Prior to preparing the report --

[22]withdrawn.

[23]Did you perform an assessment of

[24]Plaintiff Rinaldi's life care plan needs?

[25]A Yes.

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[1]

[2]Q In connection with your assessment and

[3]preparation of the report, what materials, if any,

[4]did you review?

[5]A Well, the materials I use **[*41]** are past medical

[6]records, previous preexisting medical conditions,

[7]medical records of the treatment for the specific

[8]problem, whether it's a medical disease or medical
[9]injury. In this case, injury.
[10]His hospital course, rehabilitation
[11]course. Evaluation from other professionals such as
[12]a therapist, other rehabilitation doctors, what the
[13]issues are for his level of function. Whether or
[14]not a patient in my opinion has reached their
[15]maximum medical improvement with regard to their
[16]primary disability. What they've achieved in their
[17]abilities and function since an injury. How they're
[18]getting by in, quote, life events and living their
[19]life. Social.
[20]And then I do a comprehensive history
[21]and physical of the patient, which, as I pointed out
[22]earlier, takes about three hours.

[23]Q In this case, did you meet with

[24]Mr. Rinaldi in his home?

[25]A Yes, I did.

49

[1]

[2]Q When did you meet with him in his home?

[3]A June 19, 2009.

[4]Q You gave me a list of things that you

[5]reviewed in this case. Did you review plaintiff's

[6]deposition testimony?

[7]A No, I did not.

[8] **[*42]** Q Did you review any interrogatories or

[9]discovery responses?

[10]A No, I did not.

[11]Q In connection with your assessment of

[12]Mr. Rinaldi, did you have any discussions with

[13]plaintiff's treating physicians?

[14]A No, I did not. I had access to the

[15]medical records, though.

[16]Q In connection with your assessment of the

[17]plaintiff's life care plan needs, did you have any

[18]discussion with any of the medical providers at the

[19]rehabilitation center that Plaintiff went to?

[20]A No, I did not.

[21]Q In connection with your assessment, did

[22]you --

[23]A Again, I had their records.

[24]I'm sorry to interrupt you.

[25]Q Okay. In connection with your assessment

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[1]

[2]of Plaintiff, did you have any discussions with any

[3]of Plaintiff's other experts?

[4]A No, I did not.

[5]Q Did you review any materials by

[6]Plaintiff's vocational rehabilitation expert?

[7]A Yes, I did.

[8]Q What materials did you review?

[9]A I believe their vocational report. I

[10]don't have it with me, but I reviewed that.

[11]Q Was that report submitted by Mr. Gastel?

[12]A I don't remember [*43] specifically.

[13]Q When did you review that report?

[14]A I don't remember the specific date.

[15]Q Was it before you prepared this report?

[16]A I believe it was. I believe it was, yes.

[17]I don't recall specifically.

[18]Q In case I didn't tell you earlier,

[19]obviously I don't want you to guess. But if you can

[20]give me an estimate, please do so going forward.

[21]A Okay.

[22]Q Did you review -- aside from the medical

[23]records, did you review Plaintiff's tax returns or

[24]economic information?

[25]A No, I did not. I asked questions about

[51]

[1]

[2]their economic situation.

[3]Q So in terms of just reviewing information,

[4]the tax returns, you did not, correct?

[5]MR. D'ALOISE: He answered he did not.

[6]A I don't think I did, no. I did not.

[7]Q I promise I'll get to every question I

[8]can, but if I'm asking you a yes-or-no question, try

[9]and give me a yes-or-no answer.

[10]A Okay.

[11]Q In connection with your assessment of

[12]Plaintiff, did you review any information submitted

[13]to VESID by or on behalf of Plaintiff?

[14]A I don't believe I did.

[15]Q In connection [*44] with your assessment of

[16]Plaintiff, did you have any discussions with him

[17]specifically with respect to VESID?

[18]A VESID? No, I did not.

[19]Q I know you said that you had about a three

[20]hour meeting with Plaintiff's counsel. Did you have

[21]more than one --

[22]MR. D'ALOISE: Plaintiff.

[23]A Plaintiff, not counsel.

[24]Q Sorry.

[25]In connection with your interview

[52]

[1]

[2]with or -- withdrawn.

[3]Did you have more than one interview

[4]with Plaintiff, or was it just that one time?

[5]A Just a phone conversation before I had

[6]come up there, and three hours that we spent

[7]together.

[8]Q The phone conversation, what kind of

[9]things did you talk about?

[10]A Mostly just directions to his house.

[11]Explaining what I would be doing when I got there.

[12]Q When you performed -- when you went up

[13]there, were you accompanied by anyone? Did you go

[14]by yourself or were you accompanied by anyone?

[15]A Just by myself.

[16]Q Was anyone on behalf of Plaintiff's

[17]counsel's office there?

[18]A No, there was not.

[19]Q During your in-person meeting with

[20]Mr. Rinaldi, was anyone [*45] else present?

[21]A His wife.

[22]Q Did you have any discussion with Plaintiff

[23]outside the presence of his wife?

[24]A Yes.

[25]Q Was there a specific purpose that you had
53

[1]

[2]outside conversations or --

[3]A No.

[4]Q -- is that a practice?

[5]A Pretty much after doing everything in the

[6]upstairs of their house, I accompanied him down to

[7]his shop. Wanted to observe how he functioned in

[8]his shop. She did not go.

[9]Q Did you have any discussions with

[10]Mrs. Rinaldi?

[11]A Yes.

[12]Q Anyone else at the home?

[13]A No.

[14]Q What kind of -- when you met with

[15]Plaintiff upstairs, what did you discuss?

[16]A We took a formal medical history, a

[17]functional history, social history. Evaluation on

[18]outlook on life. Complaints. Talked about his

[19]rehabilitation. Talked about how his pain issues

[20]interfere with his function. Talked about what he's

[21]able to do, how he goes about doing it, describing

[22]in fairly substantial detail how he does his

[23]transfers, his daily care, his self-care. How much

[24]self-care he can do himself versus needing some

[25]assistance for certain [*46] activities. All the way down

54

[1]

[2]to skin intake -- to questions on skin integrity for

[3]full review of every system that would be involved
[4]in a spinal cord injury, from bowel and bladder
[5]issues to skin to weakness to wheelchair transfers
[6]to problems with transfers to problems with
[7]locomotions.
[8]Talked about outlook on life, what
[9]plans he has for life. Everything from a sexual
[10]history to a psychosocial history. Whether he was
[11]depressed, felt depressed. Took an emotional
[12]history, if you want to call it. Because I don't
[13]want to say I qualify as a psychiatrist, but
[14]certainly in rehab emotion and depression is a big
[15]issue.

[16]Q Did you --

[17]MR. D'ALOISE: Are you done?

[18]A More or less. Then I did a very
[19]comprehensive physical evaluation.

[20]Q Okay. Did you take any notes?

[21]A Yes.

[22]Q Do you have those notes with you today?

[23]A No, I don't. It's mostly incorporated
[24]into --

[25]Q Do you maintain a file with respect to
55

[1]

[2]Mr. Rinaldi at your offices?

[3]A I do, yes.

[4]MS. ALIKAKOS: We'll just call for
[5]production of that file.

[6] [*47] A I'm having trouble locating it right now,

[7]but I will try to find it. I apologize about that.

[8]Mr. D'Aloise actually asked me to bring it. I think

[9]it might be in my weekend house. I actually can't

[10]find that specific one.

[11](Off the Record)

[12]

[13]**REQUEST FOR INFORMATION**

[14]

[15]Q Would your file contain the notes that you

[16]took during your meeting with Plaintiff?

[17]A Yes, it would.

[18]Q What other things would be contained in

[19]your file?

[20]A That and the medical records that were

[21]sent to me. That would be pretty much it.

[22]Q Did you take any notes when you were

[23]speaking with Mrs. Rinaldi?

[24]A Yes.

[25]Q Would that also be contained in your file?

[56]

[1]

[2]A Yes.

[3]Q Did you take any pictures?

[4]A No, I did not.

[5]Q Did you perform any objective testing on

[6]Plaintiff while you were at the residence?

[7]A Yes.

[8]Q What kind of objective testing did you

[9]perform?

[10]A A physical evaluation. So measurements of

[11]limbs, ranges of motion, reflexes are considered
[12]objective. Listening to heart and lungs is
[13]objective. Evaluating [*48] facial neuro cranial nerves
[14]is reasonably objective, other than the hearing.
[15]For the most part there's always subjectivity in a
[16]physical examination, but in a spinal cord injury
[17]it's fairly objective.
[18]So sensory evaluation, motor
[19]evaluation, ranges of motion I think I mentioned. I
[20]won't include -- because I think it's more
[21]objective. I won't include, I guess, more
[22]subjective. I won't include evaluations for pain in
[23]objective findings.

[24]Q Just specifically with respect to

[25]objective findings, did you use --
57

[1]

[2]A I wasn't done.

[3]I evaluated -- visually evaluated his

[4]physical plant, and that's pretty objective. It is

[5]what it is. Physical setting that he lives in.

[6]That's not on him physically. I don't know if you

[7]want me to limit to his examination.

[8]Q I'm going to go through everything that

[9]you said.

[10]So just specifically, though, with

[11]testing, objective testing, did you use any

[12]apparatus or devices during your evaluation of

[13]Plaintiff?

[14]A Yeah. Stethoscope, vibration hammer, a

[15]reflex hammer, pin, a needle for pinprick sensation.

[16]My hands and [*49] my observation with my eyes. I believe

[17]a tape measure.

[18]Q Anything else?

[19]A No.

[20]Q You didn't take any portable x-rays or

[21]anything like that?

[22]A No.

[23]Q Going back to -- you said a couple of

[24]different things in terms of your interview with

[25]Plaintiff, and I just want to break them down again.

58

[1]

[2]A Sure.

[3]Q You said you examined him and spoke to him

[4]regarding issues or possible issues with his skin.

[5]A Correct.

[6]Q What did you do?

[7]A I asked him about problems with skin

[8]breakdown, redness.

[9]Q Did he -- we'll go one by one, just

[10]because then I'll just keep on having to go back.

[11]With respect to skin breakdown and

[12]redness, did Plaintiff make any complaints to you

[13]with respect to that?

[14]A He told me in the hospital there had been

[15]some skin breakdown, which had healed, and that he

[16]takes meticulous care of his skin and evaluates it.

[17]He and his wife both look at it and evaluate it.

[18]And they have not had any major breakdown. There's

[19]been redness of the heel at times, and it's been
[20]sore, but they haven't had any specific **[*50]** skin
[21]breakdown.

[22]Q Did you, during your examination of
[23]Plaintiff, observe any breakdown with Plaintiff's
[24]skin?

[25]A No, I did not.
59

[1]

[2]Q To your knowledge, during your examination
[3]was Plaintiff on any medication for the treatment of
[4]any breakdowns or redness in the skin?

[5]A I believe just skin creams. Lotion. But
[6]nothing prescribed.

[7]Q Did Plaintiff have any or complain of any
[8]bedsores or anything like that?

[9]A No. Just the soreness of the heel
[10]sometimes and the skin around feet. But no specific
[11]bedsores.

[12]Q Did you, during your examination or
[13]interview with Plaintiff, observe any bedsores or
[14]any lesions?

[15]A No, I did not.

[16]Q Did Plaintiff make any complaints
[17]regarding the medication that he was on during your
[18]interview, or side effects regarding that
[19]medication?

[20]A When we talked about the Paxil, I think he
[21]stated he didn't like the idea of being on an
[22]antidepressant but had difficulties when he stopped

[23]using and had gone back on it. We did talk about it
[24]with regard to libido, but that's also an extremely
[25]complicated [*51] issue with someone with penile
60

[1]
[2]dysfunction or erectile dysfunction. It's a little
[3]more complex.

[4]Q To your knowledge, has Plaintiff treated
[5]with or is treating with a specialist regarding
[6]sexual dysfunction?

[7]A To my knowledge, not a specialist other
[8]than a urologist.

[9]Q You also said -- and forgive me. I was
[10]writing down furiously as you were talking.
[11]You discussed with him certain things
[12]that he can do independently?

[13]A Yes.

[14]Q What kinds of things did Plaintiff tell
[15]you he can do independently?

[16]A Pretty much almost all of his self-care.
[17]Sometimes he has difficulty getting his socks on,
[18]but he can almost always do that by himself as well
[19]by bringing his legs up on his lap. Same with
[20]shoes. He can pretty much function at this stage
[21]independently within the home environment.

[22]Q Just expanding on that, did Plaintiff tell
[23]you whether he drives?

[24]A He does drive. He has hand controls.

[25]Q Did you ask Plaintiff to do any -- to
[61]

[1]

[2]demonstrate any of the things that he can do during

[3]your interview?

[4]A Yes.

[5] **[*52]** Q What kind of stuff?

[6]A I asked him to propel in the wheelchair

[7]around the house and observed. I asked him to

[8]transfer in and out of the wheelchair to another

[9]chair, to the bed.

[10]Q In connection with propelling around the

[11]house, did you observe him being able to do that?

[12]A Yes, I did.

[13]Q Did you observe him being able to transfer

[14]in and out of the wheelchair?

[15]A Yes.

[16](Off the Record)

[17]Q What other observations did you make in

[18]terms of his daily living?

[19]A Putting on and off his clothes

[20]independently. Transferring to his -- as I said,

[21]back to the wheelchair. Transferring from his

[22]wheelchair to the electric lift to go down to his

[23]shop. We did not have him put on his braces and I

[24]did not observe him standing and his dragging type

[25]of walk, but he described, he informed me he can put

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[1]

[2]his braces on independently, and that he can do his

[3]standing exercises, which are very important, but

[4]with pretty much great effort, great difficulty.

[5]That he can walk very, very short distances in the
[6]braces with a walker.

[7]He has, I believe, substantial **[*53]** issues
[8]with balance and standing.

[9]Not I believe. He told me. He
[10]primarily uses the braces just to do his
[11]weight-bearing exercises, which is a certain number
[12]of hours per week that he was told would be helpful
[13]to him.

[14]Q In terms of standing or, I'm sorry,
[15]balance, did Plaintiff make specific complaints
[16]about balance to you?

[17]A Yeah.

[18]Q Were they vestibular complaints? Was he
[19]dizzy or --

[20]A No.

[21]Q Physically?

[22]A Physically unable to due to weakness.

[23]Q You said he does exercises with respect to
[24]standing. Did you discuss with Plaintiff the type
[25]of home exercises that he's doing?

63

[1]

[2]A Yes. I'll just take a look.

[3](Witness Perusing)

[4]A I don't think I have it in here, but I
[5]pretty much remember the number of hours is in here.
[6]So I'm just trying to find that.

[7]How many hours a week he -- one thing
[8]he talks about, with regard to the standing again

[9]and the exercise standing, is the fear, and clearly
[10]documented that, the severe sense of fatigue he gets
[11]after using his upper extremities to support his
[12]weight when he's [*54] walking.
[13]I read it last night. I know it was
[14]in here. I think it's about six to eight hours a
[15]week that he wears the braces to stand. He also
[16]does work out with some light weights, and he views
[17]his wheelchair propelling as a substantial fitness
[18]and exercise, and it is.
[19]To protect his skin, he does several
[20]push-ups with his arms in the chair to move and
[21]reposition.

[22]The other thing, I did read it as I
[23]was looking through. That going back to the
[24]questions about the skin, to protect his heels he
[25]wears an ankle brace every night and uses it during
64

[1]
[2]the day if he's sitting for a long period of time in
[3]one position. I did find that. I apologize I
[4]didn't remember that.

[5]Q Okay. I don't think I even asked you
[6]about the skin brace, but -- okay, so just going
[7]back.

[8]Did you, aside from the getting
[9]dressed and the other activities that you talked
[10]about earlier, did you during your interview have
[11]Plaintiff perform any other activities?

[12]A Yes. I asked him to go to the kitchen and

[13]observed him grabbing things from the refrigerator.

[14]Q Was Plaintiff [*55] able to do that?

[15]A Yes. Trying to get a drink from the sink,

[16]for example, he needed assistance getting a glass,

[17]but he was able to bend forwards and reach the

[18]faucet once he had the glass, and certainly able to

[19]hold it. Observed him transfer to and from the

[20]toilet, which he was independent on. We observed

[21]him in his shop for about 30 minutes.

[22]Q I'll get to that in one second. Okay.

[23]Now Plaintiff's shop, was that in his

[24]home?

[25]A He has a garage that he previously had

65

[1]

[2]converted to a workshop.

[3]Q In connection with the general living

[4]area, how did Plaintiff get from the general living

[5]area to the shop?

[6]A It's a flight of stairs down and it's

[7]through the garage. So he has it set up where he

[8]takes an electric stair lift down the stairs, gets

[9]on a separate wheelchair and then can get around

[10]through a small ramp. Because I believe it's one

[11]step down to the garage, there is a ramp from the

[12]hallway where the landing is to the garage. And

[13]then he gets around in his garage in the wheelchair,

[14]which is a major limiting factor to his ability to

[15]do this [*56] avocation and perform this hobby and work

[16]that he likes to do. But he's been working on

[17]trying to find ways to accommodate for that. That's
[18]also how he enters and leaves to his car, through
[19]the same method. There's no other exit that's safe
[20]for him from his house.

[21]Q Okay. Specifically with respect to the
[22]wheelchair, you said -- withdrawn.

[23]With respect to the wheelchair, once
[24]he's in the shop did you observe Plaintiff being
[25]able to transfer from the shop to his car?

66

[1]

[2]A No, I did not, but he informed me that he
[3]does that independently.

[4]Q In connection with the shop, what kind of
[5]shop is it?

[6]A I would call it a -- I'm not a mechanical
[7]expert, but I would say for a home garage it's one
[8]side of the garage. I believe he has a lift that he
[9]has trouble maneuvering under to work on cars from
[10]below, because he can't really stand for more than a
[11]few -- maybe a minute or so at a time. He can try
[12]to access the underneath of cars. He has some metal
[13]working equipment, some welding equipment.

[14]Q Did you observe Plaintiff maneuvering in
[15]the garage? In the shop? **[*57]**

[16]A Not under the car, because he would have
[17]needed to have put his braces on to try to, through
[18]dragging his legs on the walker, get to the area
[19]where he could show me that. I did observe him
[20]getting around the open area of the shop, being able

[21]to show me some things on a motorcycle he was
[22]working on and a car that he was slowly working on
[23]for a friend.

[24]Q With respect to the lift, did Plaintiff
[25]tell you that he wasn't able -- withdrawn.

[67]

[1]

[2]Specifically with respect to the
[3]lift, did you personally observe Plaintiff having
[4]difficulty getting out under the lift, or is that
[5]something Plaintiff told you?

[6]A That's something Plaintiff told me.

[7]Q So -- but in terms of things you actually
[8]did observe him doing in terms of in the shop, what
[9]actual things did you observe Plaintiff doing?

[10]A Basically we were just down there spending
[11]time. He had substantial difficulty getting to
[12]where his welding equipment is because it's in a
[13]corner of the shop. But he was able to maneuver the
[14]wheelchair there.

[15]MS. ALIKAKOS: Move to Strike as

[16]non-responsive.

[17] **[*58]** Q Sir, my question to you was what things
[18]did you actually observe him doing?

[19]A I observed him maneuvering the wheelchair
[20]in the shop. I observed him pointing out to me
[21]things that he was working on in the shop. I
[22]observed him take his wheelchair, and with
[23]difficulty get to his welding machine, which he
[24]showed me. Lifted items from the welding machine to

[25]show me how he can work while sitting but can't work
68

[1]

[2]on larger items because it would require standing

[3]and leaning over the machine. He showed me some of

[4]his tools and then he showed me some of the

[5]motorcycles he was working on by manipulating his

[6]wheelchair around the shop.

[7]Q You said that he had difficulty getting to

[8]the welding machine. Is that something that you

[9]actually observed?

[10]A That's something I actually observed.

[11]Q What actually did you observe with respect

[12]to that?

[13]A The wheelchair got stuck on a ramp in a

[14]corner turning. And he had trouble, then, turning

[15]it to face the welding machine.

[16]Q Did he ultimately -- was he ultimately

[17]able to maneuver the wheelchair to face the welding

[18] **[*59]** machine?

[19]A Yes, he was.

[20]Q Did Plaintiff make any -- withdrawn.

[21]Did Plaintiff tell you that he made

[22]any accommodations to help facilitate his work

[23]around the garage?

[24]A Yes.

[25]Q What accommodations did Plaintiff tell you

69

[1]

[2]he actually made?

[3]A Plaintiff informed me that he added that

[4]ramp to go from the landing to the garage.

[5]Q To your knowledge, did the ramp help

[6]facilitate him going from the landing to the garage?

[7]A Yes, it did.

[8]Q What other accommodations did Plaintiff

[9]tell you that he made to the garage?

[10]A He lowered his tools to a level that he

[11]could reach them.

[12]Q Did Plaintiff tell you that by lowering

[13]his tools he actually was able to reach them in the

[14]garage?

[15]A Yes.

[16]Q What other accommodations did Plaintiff

[17]tell you that he actually made?

[18]A Those, I believe, are the majority of

[19]them. He doesn't really have the resources to do

[20]so.

[21]MS. ALIKAKOS: Move to strike as

[22]non-responsive.

[23]Q Were there any other accommodations that

[24]Plaintiff made?

[25]MR. D'ALOISE: To the garage? **[*60]**

70

[1]

[2]Q To the garage. To your knowledge. If you

[3]remember.

[4]A I don't remember.

[5]Q With respect to you said he was working on

[6]motorcycles, what other kinds of things, if any, did

[7]Plaintiff tell you he was working on during your

[8]exam?

[9]A He was attempting to work on a friend's
[10]car. He had voiced to me specifically that it was a
[11]project that would normally take him a few hours or
[12]a day, and he had already been working on it for
[13]several weeks. He was trying to work -- to continue
[14]to advance a custom made bracket so he could attach
[15]them to a motorcycle that he would slowly, hopefully
[16]be able to get on and ride.

[17]Q Was the friend's car that he was working
[18]on in the shop?

[19]A Yes, it was.

[20]Q So he was working on the friend's car, you
[21]said the brackets. He also said he was working
[22]on -- was that the same motorcycle that you said
[23]before?

[24]A Two motorcycles. I don't remember if he
[25]was working on both.

[71]

[1]

[2]Q Did Plaintiff specifically tell you any
[3]other projects that he was working on, if you
[4]recall?

[5]A In the shop?

[6] **[*61]** Q Yes.

[7]A No. We talked about his desires to have a
[8]shop that was more wheelchair accessible, and
[9]possibly have a lift. And that was a project to try
[10]to work towards that.

[11]MS. ALIKAKOS: Move to Strike as

[12]non-responsive.

[13]Q Sir, I want you to -- I know you want to

[14]tell me a lot of information, but I want you to

[15]listen to the question that I'm asking you. I'll

[16]get to everything, but if my question asks for a

[17]yes-or-no answer, please give me a yes-or-no

[18]response. If you can't, tell me you can't give me a

[19]yes-or-no response, but I do want you to focus on

[20]the question so we don't have to keep going back.

[21]MR. D'ALOISE: You asked him about what

[22]projects he was doing.

[23]MS. ALIKAKOS: No, I asked him if he had

[24]any other projects. That was a yes or no. The

[25]last question was if there was any other

72

[1]

[2]projects.

[3]MR. D'ALOISE: His answer stands as it is.

[4]MS. ALIKAKOS: Okay. My objection still

[5]stands.

[6]Q Were there any other projects that

[7]Plaintiff told you he was working on outside of the

[8]shop?

[9]A With regard to mechanics?

[10]Q Yes. **[*62]**

[11]A No, not to my knowledge.

[12]Q When you interviewed Plaintiff, aside from

[13]the home exercises, was Plaintiff undergoing any

[14]sort of outpatient physical therapy or occupational

[15]therapy?

[16]A According to him, he was still seeing a
[17]therapist on occasion to try to, I'll quote in my
[18]note. "He's attempting to train with occasional
[19]rehab to eventually become safe and independent in
[20]his workshop." So he was still going on occasion to
[21]therapists, but not on a regular basis.

[22]Q Do you know which therapist that was?

[23]A I do not.

[24]Q Was Plaintiff working on any -- I know
[25]before we talked about mechanical projects.

73

[1]

[2]Just to go back, was Plaintiff
[3]working on any other projects in the house, not the
[4]garage?

[5]A I understand what you're saying. They had
[6]done some accommodating and changes prior, but I
[7]don't believe at that time he was working on
[8]anything specific.

[9]Q What changes did Plaintiff, or
[10]accommodations did he make inside the house prior to
[11]the --

[12]A They had put in that lift in the
[13]staircase. The ramp. I believe they had to make
[14] **[*63]** the bedroom door wider to accommodate the
[15]wheelchair.

[16]Q Did Plaintiff actually make any
[17]accommodations himself?

[18]A No, he did not do the installation or the
[19]changes.

[20]Q Did Plaintiff have a separate wheelchair

[21]in the shop and a separate wheelchair for upstairs?

[22]A There are two wheelchairs, yes.

[23]Q Were they both mechanical?

[24]A Both mechanical.

[25]Q Did you observe Plaintiff driving the

74

[1]

[2]vehicle?

[3]A No, I did not.

[4]Q Did Plaintiff tell you how often he drove,

[5]typically?

[6]A Yes.

[7]Q How often?

[8]A Most days.

[9]Q Did Plaintiff tell you whether he was --

[10]aside from the -- you said that during -- withdrawn.

[11]You said that Plaintiff was receiving

[12]some sort of therapy or -- you weren't sure how

[13]often. Did Plaintiff tell you whether he was

[14]treating with any other medical provider?

[15]A Yes, his physician.

[16]Q In terms of therapy, did Plaintiff tell

[17]you whether he was receiving, aside from the

[18]physical therapy, any sort of other therapy?

[19]A I believe he was not.

[20]Q Did Plaintiff tell you whether **[*64]** he was

[21]undergoing any sort of vocational therapy?

[22]A I believe he was not.

[23]Q Did you have any discussions with

[24]Plaintiff regarding the benefit of vocational

[25]therapy?

75

[1]

[2]A We talked about potential career goals and

[3]options.

[4]Q Did Plaintiff tell you whether he sought

[5]assistance from any governmental agencies or private

[6]agencies specifically with respect to vocational

[7]rehabilitation?

[8]A No, he did not.

[9]Q Did Plaintiff make any specific complaints

[10]to you during your interview regarding his

[11]mechanical wheelchair?

[12]A No.

[13]Q Did Plaintiff make any complaints to you

[14]specifically with respect to the hand controls that

[15]he used to assist him to drive?

[16]A No.

[17]I'm going to amend my previous

[18]answer. He did complain of fatiguing from using his

[19]upper extremity for propelling. Other than fatigue,

[20]nothing like that. And that the shoulder hurt at

[21]the end of the day with a lot of wheelchair use, but

[22]also with other activities.

[23]Q To your knowledge, was Plaintiff treating

[24]with any providers specifically with respect to the

[25]shoulder [*65] pain?

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[1]

[2]A I believe he had seen an orthopedic

[3]surgeon.

[4]Q Do you recall the name of that surgeon?

[5]A I do not.

[6]Q Is there something in your file that could

[7]refresh your recollection?

[8]A I believe in the medical records there are

[9]some notes about the shoulder. Again, I might have

[10]to get a new set of medical records.

[11]Q I'll leave a space in the transcript, and

[12]if and when you find your file, if you can put the

[13]name of that orthopedic surgeon that he told you he

[14]was treating with.

[15]

[16]**INFORMATION TO BE PROVIDED**

[17]Insert: _____

[18]

[19]Q Was this during the time of your

[20]examination he told -- I'm sorry. That was a bad

[21]question.

[22]Did he tell you that he was treating

[23]with his orthopedic surgeon at the time you were

[24]performing your evaluation?

[25]A I don't think it came up specifically

77

[1]

[2]about the name of an orthopedic surgeon. I

[3]specifically remember asking him about his pain. I

[4]don't remember if he was actively treating or had

[5]seen an orthopedic surgeon to evaluate his shoulder

[6]pain [*66] with relation to the trauma and the fracture.

[7]Q Sir, you were retained by --

[8]A Disability Consultants.

[9]Q Who was retained by Plaintiff's counsel.

[10]Did you perform any medical treatment to Plaintiff?

[11]A No.

[12]Q At any time?

[13]A You had asked me that previously.

[14]Q I did? I don't think I did.

[15]Aside from the phone meeting to get

[16]directions and to the actual interview of Plaintiff

[17]in June of 2009, did you have any subsequent or

[18]previous examinations of Plaintiff?

[19]A Neither previous nor subsequent.

[20]Q At any time, did you discuss with

[21]Plaintiff things that he could do to help alleviate

[22]the pain that he was feeling in his shoulders?

[23]A Yeah, we discussed that at great length.

[24]Not just shoulder pain, he has other pain issues.

[25]Q Specifically my question was with respect

[78]

[1]

[2]to shoulder. I'll get to everything. I promise.

[3]A He felt that he -- well, he and I had a

[4]lengthy discussion in general about his abilities

[5]for his injury level and how much he does on a daily

[6]basis, and he's aware and we talked about his fairly

[7]high level [*67] of activity and how doing more with a

[8]shoulder that's been previously fractured and

[9]painful is going to aggravate it. He expressed

[10]frustration in that. He chose not to take pain

[11]medication other than occasional over-the-counter
[12]antiinflammatory, because already if your spinal
[13]cord is injured you can have bowel and bladder
[14]problems. But the gastrointestinal complications of
[15]the pain medications and the sedating effect he did
[16]not like.

[17]He was on some fairly heavy pain
[18]medication when he was released from the hospital,
[19]and including opioids, and slowly came off of those
[20]because he didn't like the effects.

[21]He was fully aware and we conversed
[22]about, to answer your question, the balance between
[23]taking pain meds and having less pain and not taking
[24]pain meds and having more pain. So he was fully
[25]aware that his activity level, his motivation to do
79

[1]
[2]more, his pushing himself, in particular standing on
[3]the walker and dragging his legs and trying to stand
[4]up and do some things around the house or some
[5]things in the shop, how that aggravated his pain.

[6]MS. ALIKAKOS: Move to strike [*68] as
[7]non-responsive.

[8]Q Sir, my question to you was whether you
[9]had any discussions with Plaintiff specifically
[10]about ways he could alleviate his shoulder pain.

[11]MR. D'ALOISE: That wasn't the question.

[12]MS. ALIKAKOS: I believe that was. Do you
[13]want to read back my question?

[14]MR. D'ALOISE: You can ask that question

[15]now, but your question was did you have
[16]discussions with him about shoulder pain.

[17]MS. ALIKAKOS: That was a yes-or-no
[18]question, though.

[19]Q Did you have any discussions -- I
[20]understand you want to tell me everything, but I
[21]really want you to focus on the question that I'm
[22]asking you. It's hard for everyone to do.

[23]MR. D'ALOISE: You have to answer the
[24]questions the way you answer the questions.

[25]MS. ALIKAKOS: Well, I want him to listen
80

[1]
[2]to the question. If it calls for a yes-or-no
[3]answer, to give me a yes or no. And if he
[4]can't, to tell me that there -- that he can't.
[5]I will get to follow-up questions, but
[6]it's just taking longer to go back through
[7]everything in doing that. So if you can just
[8]listen to my question.

[9] **[*69]** Q Did you have a discussion with Plaintiff
[10]with respect to specific things that he can do to
[11]alleviate his shoulder pain?

[12]A Yes.

[13]Q What specific things did you tell
[14]Plaintiff he could do to alleviate shoulder pain?

[15]A I'm not his treating physician. I didn't
[16]tell him anything. I discussed with him and
[17]listened to him about his ideas with shoulder pain.

[18]Q Right, but with respect to alleviating his

[19]shoulder pain, did you have any discussion with him?

[20]A The same discussion I described moments

[21]ago. I could do that again if you like.

[22]Q No, I'm asking you --

[23]A We discussed it, and he is aware that his

[24]activity level and his doing these things and work

[25]and being overly physically active aggravates his

[81]

[1]

[2]shoulder pain. He's aware if he's less active he

[3]has less shoulder pain. It's the best way I can

[4]answer the question.

[5]Q Is there anything that -- well --

[6]A He was aware that --

[7]Q Did you discuss with him whether physical

[8]therapy could increase -- or home exercises could

[9]alleviate his shoulder pain?

[10]A We did discuss that. He **[*70]** does home

[11]exercises. He specifically works with light weights

[12]for his shoulders. He specifically has had therapy

[13]in the inpatient realm, and I believe -- again, I

[14]have to check my records, but I believe subsequent

[15]therapy for his shoulder, and it's one of the areas

[16]of pain that have never improved.

[17]He's fully aware that if he takes

[18]strong pain medication he could subdue or alleviate

[19]some of his pain. But I'll repeat, he chose not to,

[20]because for him those side effects are worse -- side

[21]effects from those medications are worse than living

[22]with the pain.

[23]Q Did you discuss whether Plaintiff wearing
[24]a brace or other apparatus such as a brace could
[25]help alleviate shoulder pain?

82

[1]

[2]A I never discussed that because there is
[3]not an appropriate brace for a shoulder injury such
[4]that he has, in my knowledge.

[5]Q Other than physical rehabilitation, were
[6]any other rehabilitation -- was any other type of
[7]rehabilitation discussed specifically with respect
[8]to shoulder pain?

[9]A Main rehabilitation for a shoulder is
[10]physical.

[11]Q Was anything else?

[12]A For [*71] treatment of the shoulder? Yes, we
[13]discussed that he could go back to his orthopedic
[14]surgeon and pursue that if he chooses to.

[15]Q To your knowledge, did Plaintiff have any
[16]plans to pursue other avenues of treatment
[17]specifically with respect to shoulder pain, if you
[18]know?

[19]A I believe he was interested in pursuing
[20]some things, but I don't know any specifics of what
[21]he pursued.

[22]Q What do you base that belief on? Is it
[23]something that Plaintiff told you or just a general
[24]impression?

[25]A That he told me he'd like to eventually
83

[1]

[2]get rid of the shoulder pain. I guess that would be
[3]more of a general impression.

[4]Q With respect to -- you said Plaintiff --

[5]did you have any discussion with respect to how

[6]Plaintiff can alleviate the fatigue he was feeling

[7]from the wheelchair use? I think you said he had

[8]wheelchair fatigue. Did you have any discussion

[9]specifically with how he could alleviate that

[10]fatigue?

[11]A To my knowledge, there is no such thing as

[12]wheelchair fatigue, but I can clarify what I said.

[13]I believe what I said is when he has a day where he

[14]has [*72] a lot of wheelchair locomotion, he gets fatigue

[15]and feels a sense of extreme tiredness towards the

[16]end of the day. We certainly discussed his activity

[17]level in general.

[18]Q Did you -- I'm sorry.

[19]A We discussed just staying fit and

[20]cross-training, as he's doing, as options, but it's

[21]a reality.

[22]Q Would staying fit be something that would

[23]help with fatigue generally?

[24]A In general. Conditioning exercises.

[25]Q What kind of conditioning exercises?

84

[1]

[2]A Things such as that he does. Continuing

[3]not to give up his locomotion. To take breaks and

[4]then continue. To do the light weight training that

[5]he's doing. To do the standing exercises that he's

[6]doing so his general body tone and muscle tone, as
[7]well as vascular tone, stays up. And so there's
[8]less pooling of blood, for example, in the lower
[9]limbs during the day. So doing those leg exercises
[10]become very important.

[11]But the reality is that, and this is
[12]medical fact, upper extremity use takes twice as
[13]much work, electrical energy, ATP energy,
[14]biochemical energy, than lower extremity work.

[15]Q Did you [*73] discuss the use of a motorized
[16]wheelchair with Plaintiff?

[17]A I did.

[18]Q Did Plaintiff indicate to you that he
[19]wanted to use a motorized wheelchair?

[20]A No, he did not.

[21]Q Did you have any discussions with
[22]Plaintiff -- withdrawn.

[23]Did you have any discussions with
[24]Mrs. Rinaldi during your assessment?

[25]A Yes, I did.

85

[1]

[2]Q Was Plaintiff present during those
[3]discussions?

[4]A Yes, he was.

[5]Q What kind of -- did you ask Mrs. Rinaldi
[6]certain questions?

[7]A Yes, I did.

[8]Q Was that part of the intake?

[9]A Part of a history, yes.

[10]Q History.

[11]Did Mrs. Rinaldi tell you whether she

[12]assists Plaintiff in any capacity in terms of their

[13]daily living?

[14]A Yes.

[15]Q What kind of activities did Mrs. Rinaldi

[16]tell you that she assists Plaintiff with?

[17]A Just a more general overview of having to

[18]do much more around the house. Having to do much

[19]more with regard to things like preparation of

[20]meals, cleaning up, putting away. Nothing specific

[21]to his actual body.

[22]Q Okay, that's --

[23]A I think I mentioned [***74**] earlier he stated that

[24]he's independent in self-care with -- sometimes with

[25]the exception of trouble with socks and shoes.

86

[1]

[2]Q When you interviewed Mrs. Rinaldi, did she

[3]tell you whether she was employed?

[4]A She did tell me.

[5]Q Was she employed at that time?

[6]A She did tell me she was employed.

[7]Q Do you know what she did?

[8]A She stated that she does hair salon work

[9]as a hair designer, dresser. I don't know what it's

[10]called today. Beautician I guess is the politically

[11]correct word.

[12]Q During your interview of Plaintiff, did

[13]Plaintiff tell you whether he had intended to seek

[14]other therapy that he wasn't currently treating?

[15]Undergoing.

[16]I'm sorry. That was a bad question.

[17]During your discussion with

[18]Plaintiff, did Plaintiff tell you that he was

[19]interested in seeking other therapy other than the

[20]types of therapy that he was undergoing at the time

[21]of your interview?

[22]A No, he did not.

[23]Q Aside from -- was Plaintiff treating with

[24]a psychiatrist at the time of your interview, if you

[25]know?

87

[1]

[2]A I'm trying to recall. **[*75]** I'm not sure. I

[3]think he might have been following up still with the

[4]rehab doctor at Helen Hayes.

[5]Q At the time of your interview, was

[6]Plaintiff treating with a gastroenterologist, if you

[7]know?

[8]A I believe he was not.

[9]Q At the time of your interview, did

[10]Plaintiff make any complaints to you with respect to

[11]digestion or processing?

[12]A Yes.

[13]Q What complaints did he make to you

[14]specifically?

[15]A Severe constipation, bowel incontinence.

[16]Those were the main ones. Sensitive digestion,

[17]bloating, fullness.

[18]Q Did Plaintiff tell you that he had any

[19]immediate plans to seek a gastroenterologist?

[20]A No, he did not.

[21]Q To your knowledge, did any of Plaintiff's

[22]treating physicians recommend that he treat with a

[23]gastroenterologist?

[24]A I do not recall.

[25]Q At the time of your interview, was

88

[1]

[2]Plaintiff treating with a cardiologist?

[3]A No, he was not.

[4]Q To your knowledge, did any of Plaintiff's

[5]treating physicians recommend that Plaintiff treat

[6]with a cardiologist?

[7]A To my knowledge, no.

[8]Q At the [*76] time of your interview, was

[9]Plaintiff treating with a dermatologist?

[10]A At the time of my interview, no, he was

[11]not.

[12]Q At the time of your interview, was he

[13]treating with a plastic surgeon?

[14]A No, he was not.

[15]Q To your knowledge, did any of Plaintiff's

[16]treating physicians recommend that he treat with

[17]either a dermatologist or a plastic surgeon, if you

[18]recall?

[19]A I believe there was some note of a

[20]plastics eval. I could be wrong. I have to go back

[21]to the records, but I think there was -- it was just

[22]during the hospital stay when he had the decubitus,

[23]but not since.

[24]Q Do you know whether Plaintiff ever treated

[25]with a plastic surgeon?

[89]

[1]

[2]A I don't remember. I think there was a

[3]note alluding to plastics eval, but I don't remember

[4]if I saw a plastics eval.

[5]Q Was that note in the -- if you recall, in

[6]the Westchester --

[7]A I don't remember.

[8]Q Hospital records?

[9]A I don't remember.

[10]Q During your interview, did you discuss

[11]with Plaintiff the need for a plastic surgeon?

[12]A It came up, yes.

[13]Q Is that **[*77]** something that -- during your

[14]interview, was that something that Plaintiff

[15]requested or was that something that you asked him?

[16]A Something in the explanation of what a

[17]life care plan is. That I discussed all these. Not

[18]just a plastic surgeon, but all the other physicians

[19]you asked me about, and why they might be necessary

[20]at times in his life.

[21]Q Did any of Plaintiff's treating physicians

[22]request that you prepare a life care plan with

[23]respect to treatment of a gastroenterologist,

[24]cardiologist, dermatologist or plastic surgeon?

[25]A I think I had mentioned earlier I had not

90

[1]

[2]discussed this case with his treating physicians.

[3]Q To your knowledge, did any of Plaintiff's

[4]treating physicians recommend that Plaintiff have a

[5]life care plan prepared for him?

[6]A I do not know.

[7]Q In the medical records that you reviewed,

[8]did you see any documents from any treating

[9]physicians that requested that a life care plan be

[10]performed, if you know?

[11]A I don't remember.

[12]Q To your knowledge, at the time of your

[13]interview was Plaintiff treating with a

[14]psychiatrist? **[*78]**

[15]A I don't remember who prescribed the

[16]Lexapro, to be honest, if it was the psychiatrist or

[17]his primary care physician.

[18]Q The Lexapro?

[19]A Yeah.

[20]Q Was Plaintiff taking Lexapro at the time

[21]of your interview?

[22]A Yes.

[23]Q Did you -- I'm sorry. I didn't ask you

[24]earlier.

[25]When you did an interview of

[91]

[1]

[2]Plaintiff, did you get a history of the medication

[3]that he was currently undergoing?

[4]A Yes, I did.

[5]Q What medications did Plaintiff tell you he

[6]was currently taking?

[7]A Give me a minute.

[8](Witness Perusing)

[9]MR. D'ALOISE: Page Three.

[10]A Thank you.

[11]Paxil for depression. Some skin

[12]cream, and I think that was the majority of it.

[13]Colase, Senakot for a bowel program. An Enemease,

[14]an enema once a day.

[15]Q The Lexapro, is that the same as Paxil?

[16]A I'm sorry. It's Paxil, not Lexapro. They

[17]are actually inverse chemicals. They are inverse

[18]isomers.

[19]Q Okay.

[20]MS. ALIKAKOS: Off the record.

[21](Off the Record)

[22]A On page two we talk about what he was on.

[23]Q In the hospital?

[24] [*79] A In the hospital. I believe he's off of

[25]all of the narcotics. I believe he still takes the

[92]

[1]

[2]Reglan for digestion, Colace, Senakot and Protonix

[3]and the Enemease.

[4]Q Do you know who prescribed those

[5]medications currently? Not the -- after his

[6]discharge.

[7]A I believe he gets them from his primary

[8]care doctor, with the exception of what I was

[9]calling Paxil but it was Lexapro.

[10]Q Lexapro. But was Paxil.

[11]A Right.

[12]Q What is Colace?

[13]A Colace is a natural stool softener. A

[14]high fiber liquid.

[15]Q What about Protonix?

[16]A Protonix is what's called an H-2 pump

[17]inhibiter. It's for gastrointestinal upset, reflux,

[18]gastritis. Basically stomach acid and intestinal

[19]acid, to decrease it.

[20]Q And the Reglan?

[21]A Is a product that actually increases bowel

[22]motility. Tries to make the intestines' muscles

[23]work.

[24]Q To your knowledge, did Plaintiff have any

[25]discussions with his physicians regarding removing

93

[1]

[2]the hardware from his shoulder?

[3]A I believe he did.

[4]Q Do you know, was that recommended by

[5]Plaintiff's physician **[*80]** to help alleviate some of the

[6]pain?

[7]A I think it was discussed, but I don't

[8]remember which physician.

[9]Q Okay.

[10]A I believe he was told that that might be

[11]one thing that could help.

[12]Q To your knowledge, during your interview

[13]did Plaintiff have any plans to actually have the

[14]hardware removed?

[15]A He was contemplating it.

[16]Q But did he have actual plans?

[17]A To my knowledge, he did not have that

[18]scheduled.

[19]Q At the time of your evaluation, was

[20]Plaintiff undergoing treatment with a spine surgeon?

[21]A Treatment, no.

[22]Q At the time of your evaluation, did

[23]Plaintiff tell you that he had actual plans to treat

[24]with a spinal surgeon?

[25]A We talked about him seeking help for his

94

[1]

[2]back pain.

[3]Q But did Plaintiff tell you that he had

[4]actual plans to treat with a spine surgeon?

[5]A No, he did not.

[6]Q During your interview with Plaintiff, did

[7]Plaintiff tell you whether any of his treating

[8]providers recommended that he specifically treat

[9]with a spine surgeon?

[10]A I believe he did not.

[11]Q Was Plaintiff **[*81]** -- off the record.

[12](Off the Record)

[13]Q At the time of your interview, was

[14]Plaintiff treating with a urologist?

[15]A Treating with, probably not. I think he

[16]had been to an evaluation for his urinary
[17]incontinence.

[18]Q Was that at Helen Hayes?

[19]A Not sure if it was Helen Hayes or after.

[20]If there was follow-up, it's been a long time since

[21]Helen Hayes. I believe there was follow-up, but I

[22]don't remember very specifically.

[23]Q Do you know the name of Plaintiff's

[24]urologist?

[25]A If there is one, I don't know the name.

95

[1]

[2]Q Would it be contained in your file?

[3]A It probably was.

[4]Q I'll leave a space in the transcript. If

[5]you do have the name of that urologist, if you could

[6]fill it in if you find your file or remember.

[7]

[8]**INFORMATION TO BE PROVIDED**

[9]Insert: _____

[10]

[11]Q At the time of your interview, was

[12]Plaintiff treating with an infectious disease

[13]specialist?

[14]A No.

[15]Q To your knowledge, did Plaintiff tell you

[16]that any of his treating providers recommended that

[17]he treat with [*82] an infectious disease specialist?

[18]A No, he did not.

[19]Q At the time of your interview, was

[20]Plaintiff treating with any pain management

[21]specialist?

[22]A No, he was not.

[23]Q At any time after his discharge from Helen

[24]Hayes, did Plaintiff treat with a pain management

[25]specialist?

96

[1]

[2]A No, he did not.

[3]Q To your knowledge, did any of Plaintiff's

[4]treating physicians recommend that he treat with a

[5]pain management specialist?

[6]A I don't know if they did or not. To my

[7]knowledge, no.

[8]Q To your knowledge, did Plaintiff make any

[9]complaints of pain to his primary doctor or the

[10]doctors that he was treating with regarding --

[11]withdrawn.

[12]To your knowledge, did Plaintiff make

[13]any requests of his treating physicians for

[14]referrals to a pain management specialist?

[15]A I don't know.

[16](Brief Recess Taken)

[17]Q Aside from the intake questions that you

[18]talked about earlier for Mrs. Rinaldi, did you have

[19]any other discussions with her?

[20]A No, I did not.

[21]Q Prior to or subsequent to that initial

[22]meeting, did you have any discussions **[*83]** with

[23]Mrs. Rinaldi?

[24]A No, I did not.

[25]Q Did Plaintiff or his wife tell you whether
97

[1]

[2]Plaintiff's father and -- whether his parents live
[3]at the family home?

[4]A Yes.

[5]Q Okay, and do they?

[6]A Yes.

[7]Q Did you have any discussions with them?

[8]A No, I did not.

[9]Q Did you prepare a report in connection

[10]with your assessment of Plaintiff on behalf of

[11]Plaintiff's counsel?

[12]A Yes, I did.

[13]Q I'm going to show you what's been marked

[14]as Kahn 2, and ask you to take a look at that.

[15](Life Care Plan was marked as Kahn 2 for

[16]identification, as of this date.)

[17](Witness Perusing)

[18]A Okay.

[19]Q Is that a copy of the report that you

[20]prepared?

[21]A Yes, it is.

[22]Q Great.

[23]MS. ALIKAKOS: Off the record.

[24](Off the Record)

[25]Q In connection with your preparation of the
98

[1]

[2]report, did anyone assist you in preparing,

[3]reviewing or finalizing this report?

[4]A No, they did not.

[5]Q Did Mr. -- at Disability --

[6]A Al Dana.

[7]Q assist you in any way in preparing the

[8]report? **[*84]**

[9]A He helps me with formatting of the tables.

[10]Q The actual information in the tables and

[11]the amounts --

[12]A Is from me.

[13]Q -- is from you. Okay.

[14]Let's just go through it.

[15]I'm a little confused. In the first

[16]page of your report, in the first line you refer to

[17]the report as an independent medical evaluation as

[18]well as life care plan. Is that -- well,

[19]Plaintiff's counsel retained you, however, in this

[20]case, correct?

[21]A Correct.

[22]Q Okay. So the term independent medical

[23]evaluation, what do you base the independent part

[24]on?

[25]A Independent medical evaluations are

99

[1]

[2]evaluations when you're hired to evaluate someone

[3]when you're not the treating physician, and I

[4]believe that's a well-known term in health care and

[5]in the disability realm.

[6]Q So in terms of when you refer to it as an

[7]independent exam, is that --

[8]A I'm independent of being his treating

[9]physician.

[10]Q Okay. But you're not referring it -- is

[11]it fair for me to say you're not referring it as

[12]independent from being retained by Plaintiff's

[13]counsel?

[14] **[*85]** A No, I think I answered that. I was

[15]retained through Mr. Dana by counsel.

[16]Q Okay. Other than your review of the

[17]medical records and your discussion with the

[18]plaintiff and his wife, did you have any other

[19]discussions with anyone in preparation of the

[20]report?

[21]A I'm sure Mr. Dana at some point.

[22]Q Is that -- those discussions, were they

[23]discussions as to the content of the report or more

[24]of the timing?

[25]A More of the timing and mechanics of the

100

[1]

[2]report, and the printing of the report.

[3]Sometimes if I can't find a specific

[4]price, he'll go into an online catalog for me to

[5]save some time and then he'll e-mail me what the

[6]catalog shows for equipment, for example. If I

[7]don't have a simple answer for a DRG cost for a

[8]procedure, he might look up what the annual rates

[9]are, things like that. But more mechanics and not

[10]content of the report. Certainly not directing

[11]content of the report.

[12]Q So is it fair for me to say that the

[13]conclusions that you reached in the report and the

[14]recommendations are based on your analysis?

[15]A Yes.

[16]Q Not Mr. Dana's? [*86]

[17]A Yes. Independent analysis.

[18]Q And again with respect to your assessment

[19]and preparation of the report, this is not based on

[20]any treatment that you actually gave the plaintiff?

[21]A Correct. I stated that I did not

[22]recommend or give any treatment to the patient.

[23]Q And at no time prior to today did you

[24]serve as a treating physician to Mr. Rinaldi?

[25]A That's correct.

101

[1]

[2]Q Okay. Referring to Page 4 of your report,

[3]in your impressions section towards the bottom, you

[4]say, "The patient has successfully reached his

[5]maximum medical improvement and maximum functional

[6]improvement with the exception of vocational goal. "

[7]Do you see that?

[8]A I do see that, yes.

[9]Q With respect to the medical improvement,

[10]what do you base that conclusion on?

[11]A That he had been discharged from the

[12]hospital for approximately two years and without

[13]doing -- his condition has been fairly stable. His

[14]functional level has been fairly stable. He has

[15]medical issues that have not been addressed, but
[16]with regard to the neurologic deficit and recovery
[17]from the actual physical [*87] impairment, his body had
[18]healed, in my opinion, to the degree that it would.
[19]That's more or less what maximum medical improvement
[20]means.

[21]Q Okay. Let's just break that down for me.

[22]A Okay.

[23]Q With respect to his neurological deficit,

[24]you're referring to his paralysis?

[25]A Correct.

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[1]

[2]Q Aside from the paralysis, is there any

[3]other neurological deficit that you're referring to?

[4]A No.

[5]Q Okay. Just want to make sure I'm

[6]understanding you.

[7]MS. ALIKAKOS: Can you read me back the

[8]answer.

[9](Record Read Back)

[10]Q With respect to your prior statement, what

[11]medical issues specifically do you refer to as not

[12]addressed by his -- prior to today?

[13]A His bowel regimen, his bladder regimen in

[14]my opinion should be supervised. His pain

[15]conditions I feel interfere with his activity.

[16]Things of that nature. I think we talked about --

[17]you asked about medical.

[18]Q I'm going to break down everything.

[19]With respect to his bowel and bladder
[20]regimen, did Plaintiff make any specific complaints
[21]to you with respect to his bowel and bladder
[22] [*88] regimen?

[23]A Yes.

[24]Q What complaints specifically did Plaintiff

[25]make to you?

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[1]

[2]A Just a dissatisfaction of being
[3]incontinent with bowel and bladder. The intestinal
[4]pain, the bloating, constipation we talked about.

[5]Q To your knowledge, did Plaintiff make any
[6]specific complaints to any of his treating providers
[7]with respect to the bowel and bladder regimen?

[8]A I don't have knowledge of whether or not
[9]he did.

[10]Q Did he tell you if he did, during your
[11]interview, if you recall?

[12]A I don't recall if he specifically said he
[13]complained -- had specific complaints about it.

[14]Q You said Plaintiff was treating -- you
[15]believe Plaintiff was treating with a urologist,
[16]correct?

[17]A I believe, but I don't remember
[18]specifically.

[19]Q To your knowledge, was Plaintiff -- other
[20]than perhaps treating with a urologist, was
[21]Plaintiff undergoing any treatment in the two years
[22]since his release from the hospital specifically

[23]with regarding bowel and bladder issues?

[24]A I believe other than just being followed

[25]by his primary care doctor for his present [*89] program,
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[1]

[2]that there was not a specific treatment.

[3]Q The next thing you talked about was pain

[4]condition interfering with his activities.

[5]A Yes.

[6]Q Did Plaintiff -- oh. Let's go back one

[7]more second.

[8]You said that these -- the issue

[9]regarding bowel and bladder regimen were medical

[10]issues which weren't addressed previously. Do you

[11]know why these issues weren't addressed by

[12]Plaintiff's treating physicians?

[13]A Maybe I did say that, but I didn't mean to

[14]imply that they were never addressed. I believe I

[15]implied that I felt that a specialist should oversee

[16]his bowel and bladder programming, follow him

[17]neurologically in particular.

[18]Q Do you know why -- tell me if you know or

[19]not, why Plaintiff was not referred to a specialist

[20]to follow these issues?

[21]A I believe he was probably referred to -- I

[22]believe, I don't remember the specific notation in

[23]the chart, to follow up with urology after the Helen

[24]Hayes discharge.

[25]Q Do you know -- well, withdrawn.

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[1]

[2]You told me before you're not sure if

[3]Plaintiff followed up?

[4] [***90**] A I don't remember. I remember having the

[5]discussion, substantial discussion about bladder

[6]management and bladder conditions, but I don't

[7]remember.

[8]Q Did Plaintiff tell you whether any of his

[9]treating providers made any recommendations that

[10]differed regarding bowel or bladder regimen during

[11]your interview?

[12]A To my knowledge, no.

[13]Q Did Plaintiff tell you during your

[14]interview whether he had any immediate plans to see

[15]a specialist regarding bowel and bladder regimen?

[16]A To my knowledge, no.

[17]Q You said, again under -- when we talked

[18]about maximum medical improvement and medical issues

[19]not addressed, you said his pain condition

[20]interfering with activities, correct?

[21]A Correct.

[22]Q Specifically what pain condition are you

[23]referring to?

[24]A His back pain and his shoulder pain.

[25]Q Did Plaintiff tell you whether any of his

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[1]

[2]treating physicians recommended that he seek

[3]additional treatment for back pain?

[4]A I don't recall.

[5]Q To your knowledge, was Plaintiff treating

[6]with any specific medical providers regarding back

[7]pain? [*91]

[8]A No, he was not.

[9]Q Did Plaintiff make any complaints to you

[10]during your interview regarding back pain?

[11]A Yes, he did.

[12]Q What complaints did he make to you?

[13]A That he made a choice not to take the pain

[14]medication because of complications, number one.

[15]Q What page are you referring to?

[16]A Page Three, middle of the big paragraph.

[17]Q We're talking about back pain?

[18]A Yeah. He found that his pain meds

[19]depressed him, slowed his bowel down worse and made

[20]him more constipated.

[21]Q But how does that relate -- specifically I

[22]asked you about his back pain.

[23]A I'm getting to that, too. It's just

[24]something on the pain itself.

[25]Q Yeah, but I'm just asking about back pain.

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[1]

[2]A Page Two in the bottom paragraph, the last

[3]two lines, "Patient reports that his complaints at

[4]present time is of his chronic low back pain. His

[5]left leg in particular. If his bowel does not

[6]evacuate, left leg pain gets particularly severe.

[7]Pain prolonged by sitting by the end of the day near

[8]his low back. Complains of left pain shoulder as

[9]well. "

[10] [*92] Q Let's stay with the lower back pain for a
[11]minute. Did Plaintiff tell you why he never -- or,
[12]withdrawn.

[13]Did Plaintiff tell you whether he
[14]told any of his treating physicians that he was
[15]having back pain?

[16]A I believe he has, yes.

[17]Q Which treating physicians did Plaintiff
[18]tell you that he --

[19]A I don't know.

[20]Q Do you have a specific recollection as to
[21]that discussion?

[22]A I'm specifically aware that his doctors
[23]know he has pain, yes, but I don't remember when he
[24]complained about it or exactly to which one.

[25]Q Okay. Did Plaintiff tell you whether he
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[1]
[2]had any immediate plans for future treatment
[3]specifically with respect to the back pain?

[4]A I believe he had planned to further
[5]evaluate the shoulder, but not back at the present
[6]time.

[7]Q With respect to the shoulder pain, earlier
[8]we talked about -- I think you told me that you
[9]don't remember the doctor's name, but that one of
[10]his doctors said that perhaps removal of the
[11]hardware would help alleviate the pain.

[12]A I did say that. I believe that to be the
[13]case.

[14]Q Did [*93] any of his -- withdrawn.

[15]Did Plaintiff have any immediate

[16]plans to the removal of the hardware, do you know?

[17]A I believe you asked me that already, and

[18]the answer was no.

[19]Q Did Plaintiff have any immediate plans to

[20]have the shoulder examined by any other specialists

[21]to your knowledge?

[22]A To my knowledge, I don't recall.

[23]Q Do you recall whether -- well, withdrawn.

[24]Going back to Page Four, you talked

[25]about maximal medical improvement. So with respect

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[1]

[2]to the shoulder pain, when you say maximum medical

[3]improvement, would that be absence possible removal

[4]of the hardware to alleviate the pain?

[5]A I think with regard to the shoulder, yes,

[6]but also with regard to other things. About further

[7]different types of treatment, yes.

[8]Q Did you discuss with Plaintiff whether

[9]increasing exercise and physical therapy would help

[10]his issues with his back and his shoulder?

[11]A I had stated that it's my belief, without

[12]making a specific recommendation, that therapy might

[13]be able to help his shoulder, and changing around

[14]his activity level might be able [*94] to change the level

[15]of back pain.

[16]Q Do you know whether any of Plaintiff's

[17]treating physicians recommended that changing his

[18]activity level and therapy might facilitate his or

[19]alleviate his back and shoulder pain?

[20]A I do not remember.

[21]Q With respect to maximum functional

[22]improvement in that sentence, what do you mean by

[23]that statement, "only with respect to the maximum

[24]functional improvement?"

[25]A Okay. Maximum functional improvement is

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[1]

[2]not as official or quotable a term as maximum

[3]medical improvement. That would be more of a

[4]judgment call.

[5]Maximum medical improvement in the

[6]rehab realm is when you really feel a patient

[7]just -- the healing has occurred. Function and

[8]maximum functional improvement, in my opinion, what

[9]I'm implying by that statement is with his present

[10]impairments, with his present pain level and his

[11]present abilities, he is doing the most he can do to

[12]function. Function being everything from wheelchair

[13]mobility to transfer training, transfer abilities

[14]rather, to self-care. Doing the most he can around

[15]his house, with the assistance [***95**] of his wife when he

[16]can't reach something or set something up, for

[17]example, meal preparation.

[18]He's certainly independent to eat and

[19]take care of himself if the meals are available. He

[20]is doing as much as he can with regard to getting in

[21]and out of his house. He's trying to be social and

[22]participate with friends and family. He tries very
[23]hard to work in his shop. If anything, he is, in my
[24]opinion, again, opinion, a superstar as far as
[25]paraplegics go.
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[1]

[2]Q Would the normal ADL, acts of daily

[3]living --

[4]A Activities.

[5]Q Activities of daily living, would that be

[6]included in the maximum -- his ability to do that be

[7]included in maximum functional improvement?

[8]A Yes.

[9]Q Would certain accommodations assist

[10]Plaintiff in increasing his functional abilities?

[11]Let me withdraw that. That's a bad

[12]question.

[13]Would you say that accommodations

[14]made by Plaintiff, the ones that we talked about

[15]earlier, helped him reach his maximum functional

[16]improvement?

[17]A Yes.

[18]Q Would you say that motivation is a key

[19]factor in reaching maximum functional [*96] improvement?

[20]A Absolutely.

[21]Q Same for support. Would it be fair to say

[22]that family support and --

[23]A Helps.

[24]Q Then in the same sentence you say, you

[25]note, "with the exception of vocational goals. "

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[1]

[2]Earlier we talked about VESID and vocational
[3]rehabilitation. I believe you told me that you
[4]didn't have a specific discussion with Plaintiff on
[5]that, is that correct?

[6]A About VESID, no.

[7]Q Right. Did you have any discussion with
[8]him about any other governmental or not-for-profit
[9]or other agencies that would perform -- specifically
[10]that would help perform vocational rehabilitation?

[11]MR. D'ALOISE: I'll object 'cause you
[12]asked that already. But he can answer.

[13]MS. ALIKAKOS: Did I? Sorry. I don't
[14]remember.

[15]A No, I did not.

[16]Q In preparation of your report, did you
[17]consider the benefit of vocational and
[18]rehabilitation therapy and training in preparing the
[19]life care plan?

[20]A Yes, I did.

[21]Q Is it fair for me to say that if Plaintiff
[22]underwent a vocational rehabilitation training, that
[23]it would assist in improving his **[*97]** overall life? Yes
[24]or no?

[25]A I can't make that judgment.

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[1]

[2]Q Okay. Why can't you make that judgment?

[3]Is that based on your expertise or is that --

[4](Telephone Interruption)

[5]THE WITNESS: Sorry.

[6](Off the Record)

[7]A The reason I can't answer that question is

[8]because, depending on what he achieves and what

[9]goals the governmental organizations put forth to

[10]him and what their resources allow for, might lead

[11]to things that he doesn't enjoy and that will not be

[12]an overall benefit for him.

[13]You asked me if it's an overall

[14]benefit, I believe was your question. And if it

[15]would benefit his life. Someone, in order to have,

[16]in my opinion, a good life, someone has to have

[17]satisfaction, enjoyment out of their vocation, if

[18]that's ever available. Some people just hate work,

[19]but he's certainly not someone who hated work.

[20]So we did discuss vocation and we

[21]discussed his vocational goals, rather than specific

[22]recommendations made by other agencies or other

[23]outside people. And I felt, in my opinion, judging

[24]him, that some of his vocational goals were actually

[25] **[*98]** achievable with the right accommodations.

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[1]

[2]So I didn't go into other goals

[3]because I think if someone has an ability to achieve

[4]something important to them, again, this is my

[5]opinion, achieve something important to them that

[6]will bring them joy in their work, that's a much

[7]better goal to work towards than just going through

[8]a program that might push you towards things that

[9]fit a standard for paraplegia.

[10]This is not a standard individual.

[11]This is someone who was a world-class athlete before

[12]his injury.

[13]Q I understand that.

[14]Do you yourself in making that

[15]conclusion, do you base that on any specific

[16]training as to vocational rehabilitation that you

[17]have?

[18]A That is very clearly stated in most of the

[19]vocational therapy texts, and chapters in textbooks

[20]that I read, that is certainly taught to you. I

[21]think it's also just good human understanding that

[22]people who like their work and are satisfied with

[23]their work are going to pursue it with greater

[24]vigor.

[25]So part of that is an understanding

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[1]

[2]of human behavior that I have observed for over **[*99]**

[3]years of practice in my patients who are disabled

[4]who return to work versus the ones who are disabled

[5]with perhaps the same impairment who choose not to

[6]work. And some of that is well-documented in both

[7]vocational literature and rehab literature.

[8]MS. ALIKAKOS: Okay, I'm going to move to

[9]strike as non-responsive.

[10]Q Sir, my question to you is, do you base

[11]that conclusion on specific training you've received

[12]specifically in the area of vocational

[13]rehabilitation, yes or no?

[14]A Yes.

[15]Q And what specific training in the area of

[16]vocational rehabilitation have you received?

[17]A Just that which is available to me in my

[18]practice. In my physical medicine rehabilitation

[19]residency. Those which were available to me in

[20]those disability courses I took about ten years ago.

[21]And reading through various studies of literature

[22]and people's functional levels and return to work

[23]studies. Satisfaction of work in return to work

[24]studies for injured workers and for the disabled

[25]population.

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[1]

[2]Q Do you have any specific certifications in

[3]vocational rehabilitation?

[4] [***100**] A No, I do not.

[5]Q Did you have specific experience in

[6]helping place -- withdrawn.

[7]Do you have any experience in dealing

[8]with vocational rehabilitation specialists?

[9]A Yes, I do.

[10]Q In preparing this report, did you consult

[11]with, speak with, any vocational rehabilitation

[12]experts?

[13]A Speak with, no.

[14]Q In preparing this report and making those

[15]conclusions, did you perform any vocational

[16]rehabilitation testing that would be performed by a

[17]vocational rehabilitation expert?

[18]A No, just my physical examination and

[19]observations.

[20]Q Is it your testimony, sir, that there is a

[21]possibility that Plaintiff may not benefit from

[22]vocational rehabilitation retraining, yes or no?

[23]A That's not my testimony.

[24]Q Okay. In your experience, have you had

[25]any experience in dealing with VESID or other
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[1]

[2]non-for-profit groups which specifically deal with

[3]retraining and placement of individuals with

[4]disabilities in the work force?

[5]A Yes, I have.

[6]Q Have you recommended in your training --

[7]withdrawn.

[8]Have you recommended in your

[9] **[*101]** experience in serving as a life care plan expert or

[10]as a physiatrist individuals who undergo vocational

[11]rehabilitation training through VESID or other

[12]non-for-profit agency?

[13]A Yes, I have.

[14](Telephone Interruption)

[15]Q To your knowledge, what does VESID do?

[16]A VESID is a New York City organization that

[17]works with people who are unable to gain employment

[18]due to disabilities, and they work to help evaluate

[19]and retrain people for the employment force.

[20]Q To your knowledge, are there other

[21]agencies beside VESID which assist in retraining
[22]individuals with disabilities and helping them gain
[23]employment?

[24]A There are other organizations, yes.

[25]Q And in connection with these agencies,
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[1]

[2]including VESID, do you know whether individuals who
[3]are paraplegic or quadraplegic have been retrained
[4]and have rejoined the work force?

[5]A To my knowledge they have, yes.

[6]Q To your knowledge, does VESID or other
[7]agencies work with employers in connection with
[8]making accommodations to assist people who have
[9]disabilities with rejoining the work force?

[10] **[*102]** A To my knowledge they do.

[11]Q With respect to the vocational
[12]rehabilitation expert, have you taken any continuing
[13]education classes with respect to specifically
[14]vocational rehabilitation?

[15]A No, I have not.

[16]Q Have you conducted -- withdrawn.
[17]Have you published any articles, peer
[18]review articles or given any lectures specifically
[19]with respect to the use of vocational rehabilitation
[20]services?

[21]A In a lecture I usually give on chronic
[22]pain, I certainly talk about return-to-work issues
[23]and -- but with regard to mentioning VESID
[24]specifically with vocational rehabilitation and

[25]accommodation to employment, I don't know if -- I
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[1]

[2]don't think I actually mentioned that specific

[3]organization.

[4]Q Okay. Have you specifically mentioned

[5]other organizations?

[6]A I've talked about vocational

[7]rehabilitation as a term in some of my lectures.

[8]Q With respect to retraining and vocational

[9]rehabilitation, did you perform any testing on

[10]Plaintiff -- withdrawn.

[11]During your evaluation in preparation

[12]of your report, did you perform any testing on

[13]Plaintiff **[*103]** specifically with respect to vocational

[14]rehabilitation?

[15]A No specific formal tests that exist in the

[16]vocational realm.

[17]Q Are you aware that specific tests

[18]regarding vocational assessment exists --

[19]A Yes.

[20]Q -- and are used by vocational

[21]rehabilitation specialists?

[22]A Yes, I'm aware of that.

[23]Q In preparation of your report, did you

[24]rely on any studies regarding the retraining and the

[25]placement of individuals with paraplegia in the work

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[1]

[2]force?

[3]A Specific studies, no. Studies from just

[4]over time and my knowledge base, yes.

[5]Q Specific studies in preparation of this

[6]report?

[7]A No specific studies that I quoted in this

[8]report.

[9]Q In connection with your assessment and

[10]preparation of this report, did you consider any

[11]studies regarding -- withdrawn.

[12]In connection with your preparation

[13]of this report, did you consider or rely on any

[14]studies regarding the use of vocational

[15]rehabilitation therapy for individuals with

[16]paraplegia?

[17]A Again, my knowledge base of those studies

[18]and their existence and having learned [*104] about those

[19]studies and studied the outcomes of those studies in

[20]the past. So my knowledge base, yes, but a specific

[21]study I did not refer to. I said that already.

[22]Q Going back to your -- withdrawn.

[23]Forgive me if I asked you this.

[24]With respect to that reference to

[25]vocational goals, did Plaintiff specifically tell

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[1]

[2]you if he had any vocational goals during your

[3]interview?

[4]A Yes, he did.

[5]Q What vocational goals did Plaintiff

[6]specifically tell you?

[7]A We spoke in general about what he would

[8]like to eventually do. I think his long-term goal
[9]is to obtain the means, both through rehabilitation
[10]efforts, specialists who could customize equipment,
[11]and financial means, to eventually open a auto
[12]modifications/repair shop and motorcycle
[13]modification and repair shop, which, as I mentioned
[14]earlier, had been his avocation and is the majority
[15]of his hobby work and time-fulfilling activities
[16]that he does now, with substantial limitations.

[17]Q Specifically -- I'm sorry. Was there

[18]another goal? Vocation goal?

[19]A Yeah. He is aware that in order to

[20] **[*105]** achieve that he would need substantial assistance,

[21]as well as a physical human assistant working with

[22]him.

[23]Q With respect to -- specifically with

[24]respect to those vocational goals, did Plaintiff

[25]tell you whether he was undergoing or had immediate

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[1]

[2]plans to undergo any retraining?

[3]A He had stated that he felt he had the

[4]mechanical knowledge to work as a mechanic in the

[5]realm that I described, and he would seek out, when

[6]he had the means to do so, that training and that

[7]equipment that he would need and the modifications

[8]that he would need. He was very specific about

[9]that.

[10]Q Okay. I'm not understanding you. My

[11]question was whether during your interview with

[12]Plaintiff, did Plaintiff tell you that he was

[13]undergoing or --

[14]A Seeking?

[15]Q seeking or immediately seeking

[16]retraining to help accomplish these goals?

[17]A No, because he has the training for these

[18]goals.

[19]Q Okay.

[20]A In my opinion.

[21]Q So in terms of -- I know we talked about

[22]this before and I don't want to keep going back to

[23]VESID and have you repeat your testimony, but

[24] **[*106]** specifically with organizations like that, did you

[25]have a discussion with Plaintiff as to vocational

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[1]

[2]goals and the use of those organizations?

[3]A No, I did not.

[4]MR. D'ALOISE: I'll just object to that as

[5]it was asked and answered at least two or three

[6]times already with respect to VESID and other

[7]organizations.

[8]MS. ALIKAKOS: All right. I don't think I

[9]asked exactly that, but I believe you.

[10]MR. D'ALOISE: He answered it anyway.

[11]MS. ALIKAKOS: Right.

[12]Q Let's go back to Page 40 of your report,

[13]second paragraph under the physical examination.

[14]You refer to the -- "There is no evidence of

[15]Babinski or withdrawal reflex and no evidence of

[16]clonus. He has no skin breakdown and no voluntary

[17]rectal tone. "

[18]What is -- first, when you refer to

[19]Babinski or withdrawal reflex, can you explain that

[20]to me?

[21]A Those are what we consider, what we call

[22]increased or evidence of increased tone or

[23]spasticity.

[24]Q And what would that be related to?

[25]A A Babinski or a withdrawal -- Babinski

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[1]

[2]implies, as does Clonus implies, upper motor neuron

[3] **[*107]** damage to a still connected spinal cord.

[4]Q So is that -- you're referring to his

[5]upper body?

[6]A Upper motor neuron, which means brain and

[7]spinal cord. As opposed to the peripheral nerves

[8]which are nerves that exit the spinal cord.

[9]Q You said he has no skin breakdown?

[10]A That I saw.

[11]Q Was that based on your examination of him?

[12]A Correct.

[13]Q Also based on discussions you had with

[14]him?

[15]A No, I inspected his -- I inspected his

[16]skin.

[17]Q You asked him if he had a breakdown?

[18]A If you look at the history, the prior

[19]pages, he complains about skin irritation

[20]frequently.

[21]Q But in terms of skin breakdown, you said

[22]there was no skin breakdown. During your

[23]examination you didn't observe any?

[24]A He had no skin breakdown on my

[25]examination. I examined his entire body.

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[1]

[2]Q Next you talk, in the same paragraph, "He

[3]can transfer from wheelchair to bed by doing a

[4]triceps lift type transfer without the use of a

[5]sliding board. He can position his legs with his

[6]upper extremities. He can do a similar transfer

[7]from his **[*108]** wheelchair to the electric stair lift to

[8]get to the basement where there is another

[9]wheelchair positioned at the end of the stair lift. "

[10]Were these observations based on actually watching

[11]Plaintiff do it?

[12]A Yes, this is a physical exam.

[13]Q Then just lower in the paragraph you talk

[14]about, "He has just started to work on doing some

[15]substantial volunteer jobs for friends and family as

[16]an experiment to see if it is possible to expand

[17]that work. "

[18]What volunteer jobs did Plaintiff

[19]specifically tell you he did? Is that the car?

[20]A Yeah, working on a friend's car. Working

[21]on a motorcycle, I believe, for his dad.

[22]Q To your knowledge, was Plaintiff working

[23]with his dad on that?

[24]A To my knowledge, no.

[25]Q Was anyone assisting Plaintiff in
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[1]

[2]working --

[3]A Yes.

[4]Q Who was assisting?

[5]A He tells me he has a friend who comes to

[6]his shop and helps him. I don't know the name, but

[7]he was very clear that he couldn't do it all.

[8]Q Let's go back to the report, Page Five.

[9]You talk about -- the fourth paragraph, "As he has

[10]bladder incontinence **[*109]** and is at high risk for urinary

[11]tract infection and kidney injury, it is recommended

[12]that he see a urologist twice a year, undergo

[13]neurological testing once every two years, and most

[14]likely will require laboratory testing several times

[15]a year for life. "

[16]Couple of questions. First, did you

[17]perform any testing on Plaintiff with respect to

[18]your conclusion as to the risks that we talked about

[19]in this paragraph? You specifically?

[20]A Did I specifically do any kind of

[21]neurologic testing? No, I did not.

[22]Q To your knowledge, has Plaintiff, since

[23]his discharge -- well, let's say in the two years

[24]after his discharge from Helen Hayes, has he

[25]undergone any urological testing specifically with
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[1]

[2]respect to this issue?

[3]A As I said, that's one that I don't
[4]remember. I believe he has seen the urologist and
[5]followed up, but I could be wrong. I don't
[6]specifically remember.

[7]Q In terms of you say it's a high risk for a
[8]urinary tract infection, what do you base that on?

[9]A All spinal cord literature, especially for
[10]someone catheterizing, has an extremely high risk
[11] **[*110]** for urinary tract infections, problem with complete
[12]elimination or emptying. Spinal cord injuries are
[13]historically known to have risks, not just urinary
[14]tract infections in the bladder but for kidney
[15]infections that track upwards. They are known all
[16]over the spinal cord literature, very well known to
[17]have high risks for kidney failure from back-up and
[18]hydronephrosis. And these are things, there is a
[19]standard of care that is given to quadraplegics,
[20]paraplegic, or even patients who are lumbar spinal
[21]cord injury, there's just a standard of care that
[22]should be followed.

[23]Q To your knowledge, at the time of your
[24]interview was Plaintiff undergoing this standard of
[25]care?

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[1]

[2]A As I said, that's the one thing I don't
[3]remember if he followed up with a urologist.

[4]Q Did Plaintiff tell you that he was having
[5]a problem with urinary tract infections specifically
[6]during your interview?

[7]A I believe he had had one infection since
[8]the discharge.

[9]Q When was that? When in the two years was
[10]that?

[11]A I don't specifically remember.

[12]Q Did Plaintiff specifically [*111] tell that he
[13]was diagnosed as having any injury to his kidneys?

[14]A No, he did not.

[15]Q Did Plaintiff tell you, whether as part of
[16]any treatment with the urologist that he may have
[17]had, whether he was undergoing laboratory testing
[18]several times a year since his discharge from Helen
[19]Hayes?

[20]A No, you'd usually undergo laboratory
[21]testing when you have symptoms.

[22]Q Did Plaintiff tell you that he was having
[23]any symptoms?

[24]A One time, and occasional burning, which
[25]he's not sure if it's from the catheterization. No.
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[1]

[2]Q Did Plaintiff tell you that -- whether he
[3]ever sought treatment from a podiatrist during your
[4]evaluation? Specifically.

[5](Witness Perusing)

[6]A I remember it came up in discussion,
[7]because his wife helps him with nail care and he's
[8]not thrilled with that. We talked about ingrown
[9]toenails, things of that nature, which is very
[10]common in spinal cord injury patients in particular

[11]because they don't feel, but I don't remember if he

[12]specifically saw somebody or not.

[13]Q You don't remember?

[14]A I don't remember.

[15]Q What [*112] is decubitus ulcer?

[16]A Decubitus. Those are skin ulcers, which

[17]he had already suffered from.

[18]Q When did he have --

[19]A One after discharge and a bad one in the

[20]hospital.

[21]Q At any time after his discharge, did

[22]Plaintiff complain of decubitus?

[23]A Yes.

[24]Q When was that, other than those two

[25]instances?

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[1]

[2]A No others.

[3]Q Upon examination, did you observe any skin

[4]ulcers?

[5]A No, I did not.

[6]Q During your interview, did Plaintiff

[7]complain of having any skin ulcers?

[8]A At that time, no.

[9]Q Next paragraph, you talk about high risk

[10]for impaction. What is impaction?

[11]A Impaction is when you're constipated and

[12]stool becomes so hard it can't pass without

[13]assistance of -- usually digital breaking up the

[14]stool that's hardened digitally and having it

[15]removed.

[16]Q During your interview, did Plaintiff

[17]specifically complain to you regarding any

[18]complaints of impaction?

[19]A Only in the hospital.

[20]Q So after the hospital were there any

[21]instances?

[22]A As of yet, no.

[23]Q Next, Page Six talks about [*113] -- first full

[24]paragraph, occupational therapist is recommended?

[25]A Um-hmm.

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[1]

[2]Q To your knowledge, did any of Plaintiff's

[3]treating physicians recommend that he undergo

[4]occupational therapy?

[5]A I don't recall. I don't know.

[6]Q To your knowledge, since his discharge in

[7]2007 from Helen Hayes has Plaintiff undergone any

[8]actual occupational therapy?

[9]A As I said, in the history he did refer to

[10]doing some occasional therapy that was geared

[11]towards helping him achieve some of his work goals.

[12]Q What kind of -- was that physical therapy?

[13]A I'm not sure if it was a physical

[14]therapist or an occupational therapist.

[15]Q I'm sorry. I thought you said it was

[16]physical therapy.

[17]A It might have been a physical therapist.

[18]Q Do you remember specifically with respect

[19]to that therapist what he told you the therapist did

[20]for him?

[21]A No, I don't.

[22]Q Next, you indicate on Page Six that

[23]Plaintiff will require psychological counseling in

[24]addition to sexual counseling. Do you see that? To

[25]your knowledge, has Plaintiff undergone any

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[1]

[2] **[*114]** psychological or sexual counseling since his

[3]discharge from Helen Hayes in 2007?

[4]A To my knowledge, no.

[5]Q To your knowledge, has any of Plaintiff's

[6]treating providers recommended that he undergo

[7]psychological as well as sexual counseling?

[8]A I believe, if I recall correctly, he did

[9]tell me that it had been discussed with his

[10]providers, and whether or not if specifics were

[11]recommended or just discussed doing some counseling

[12]for his issues, I don't recall specifically.

[13]Q Do you recall which providers?

[14]A I do not.

[15]Q Do you recall whether any of his

[16]providers, treating providers, recommended the use

[17]of an erectile aid device?

[18]A I believe it was discussed during his

[19]rehab stay.

[20]Q In 2007 at Helen Hayes?

[21]A I believe so, yes.

[22]Q To your knowledge, since 2007 has

[23]Plaintiff actually used an erectile aid device?

[24]A I believe -- and again, I'm not a hundred

[25]percent sure. I believe we discussed it. He had
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[1]

[2]tried some of these various injections and

[3]medications to see if that would help. I'm pretty

[4]sure I remember having that [*115] conversation.

[5]Q Do you know when he would have had those

[6]injections, if he did?

[7]A I would assume at times when he wanted to

[8]be intimate.

[9]Q Perhaps my question wasn't clear. In what

[10]year? Was it following his discharge?

[11]A Yes, following his discharge. I'm pretty

[12]sure I remember both him and his wife tried

[13]different things to try to achieve better intimacy.

[14]Q Do you know which of Plaintiff's treating

[15]providers would have prescribed that erectile

[16]device?

[17]A I do not.

[18]Q Going a little further down in the page,

[19]you state that, "The following medical complications

[20]are likely to occur within a reasonable degree of

[21]certainty." Let's just go down the list.

[22]First you say, "Should his pain in

[23]left upper extremity and left lower extremity not be

[24]manageable by medication or with therapy or should

[25]they get worse as he gets older due to arthritis, a

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[1]

[2]spinal stimulator implant..."

[3]A Yes.

[4]Q I'm not going to keep on reading --

[5]A I'm right there with you.

[6]Q Okay. To your knowledge, does Plaintiff

[7]currently have arthritis? **[*116]**

[8]A In his spine around the area of the fusion

[9]there is degeneration, which is another way of

[10]describing arthritis, yes.

[11]Q But would that be degeneration -- well,

[12]withdrawn.

[13]Degeneration in the lower spine?

[14]A Yes. Around the site of his injury.

[15]Q Would that be due to the injury?

[16]A Yes.

[17]Q In terms of his upper extremities, does he

[18]have arthritis?

[19]A To my knowledge, not at this point.

[20]Q So is it fair for me to say, based on that

[21]statement, that if his pain does become manageable

[22]either by medication or therapy, then a neuro

[23]stimulator may not be required?

[24]A Correct, or even further surgeries if and

[25]when he needs those. Yeah. That's just a kind of a

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[1]

[2]last resort. Pain -- he's very hellbent on

[3]nonpharmacologic treatment, and it's a very simple

[4]device that can work very nicely for pain

[5]management, especially for the limbs.

[6]Q To your knowledge, have any of Plaintiff's
[7]treating providers recommended a spinal stimulator
[8]implant?

[9]A Not at this point, no.

[10]Q Further down, you talk about, "It's a less
[11]likely [*117] but frequent complication of spinal cord
[12]injury with trauma is a syrinx." What is that?

[13]A A syrinx doesn't have to be post-trauma.

[14]A Syrinx is basically just a fluid-filled sac that
[15]occurs in the center of your spinal cord. And it
[16]can grow and expand. It can be cancerous. They're
[17]usually benign. They're not benign in what they do
[18]to you, but they're not cancerous.

[19]Q You associate that with severe pain or
[20]increased dysfunction?

[21]A Yes. What a syrinx is, especially in the
[22]post-spinal cord injured population, because of the
[23]excessive trauma that occurred to the spinal cord
[24]the incidence of a syrinx is about 10 percent, and
[25]basically what happens, a spinal cord, because of
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[1]
[2]all the trauma to it, no one knows the exact
[3]inciting mechanism, will develop fluid in the
[4]center, and that fluid cavity will increase and it
[5]will literally be as though it is a new spinal cord
[6]injury. It'll kill off the nerves in the spinal
[7]cord as it takes up more space.

[8]Q To your knowledge, presently is there any
[9]evidence that Plaintiff does have a syrinx?

[10]A No. I have no evidence [*118] of that.

[11]Q To your knowledge, have any of Plaintiff's

[12]treating medical providers determined that Plaintiff

[13]will require drainage of the syrx as a definite

[14]thing in the future?

[15]A As a definite thing, no. Neither do I say

[16]it's a definite thing.

[17]Q Right. Okay.

[18]With respect to lower in the

[19]paragraph, you talk about, "It is extremely likely

[20]that Plaintiff will require multiple surgeries and

[21]orthoscopy to keep his left shoulder and upper

[22]extremities functional throughout his life. "

[23]Do you see that last paragraph all

[24]the way on the bottom?

[25]A Yes, I do.

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[1]

[2]Q Have any of Plaintiff's treating

[3]providers, to your knowledge, diagnosed Plaintiff as

[4]requiring multiple surgeries?

[5]A At the present time, no, and we don't know

[6]throughout his life what that will bring.

[7]Q You talk about, "His wrists will likely

[8]require carpal tunnel release. "

[9]A Correct.

[10]Q What do you base that claim on? You say

[11]likely.

[12]A The fact that in the medical literature in

[13]the spinal cord population, or any wheelchair-based

[14]population, carpal [*119] tunnel syndrome is extremely high

[15]incidence. Greater than 50 percent.

[16]Q Are there -- to your knowledge, have any

[17]of Plaintiff's treating providers discussed with him

[18]the possible need for surgical intervention for

[19]carpal tunnel?

[20]A Not to my knowledge, no.

[21]Q But to your knowledge, has Plaintiff made

[22]any complaints to his treating providers regarding

[23]pain with carpal tunnel?

[24]MR. D'ALOISE: Just read that back. I

[25]didn't get it. I'm sorry.

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[1]

[2](Record Read Back)

[3]A No.

[4]Q To your knowledge, does Plaintiff have

[5]advanced arthritis in his wrists at this time?

[6]A No.

[7]Q Is Plaintiff currently using wrist braces,

[8]if you know?

[9]A I don't think so, no.

[10]Q With respect to the hospital bed, you

[11]recommend an electric hospital bed?

[12]A Show me where. I'm sorry.

[13]Q Page Seven. Last paragraph.

[14]A It's a specific recommendation during

[15]times when he is recovering from any upper extremity

[16]surgical intervention.

[17]Q Okay. So is it fair for me to say that if

[18]he has these multiple surgical interventions that

[19]you would [*120] recommend that he have an electric bed?

[20]A That's correct.

[21]Q Hospital bed.

[22]A As he gets older.

[23]Q To your knowledge, have any of Plaintiff's

[24]treating physicians recommended that he use an

[25]electronic hospital bed?

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[1]

[2]A To my knowledge, he is not age 55 or had

[3]had upper extremity surgery in the present

[4]condition.

[5]MS. ALIKAKOS: Move to Strike as

[6]non-responsive.

[7]Q Sir, I asked you specifically with respect

[8]to -- my question to you specifically was, to your

[9]knowledge, have any of Plaintiff's treating

[10]providers recommended that he use or -- now or in

[11]the future use an electronic bed?

[12]A I don't know what they have recommended

[13]should he have surgery.

[14]MS. ALIKAKOS: Move to strike as

[15]non-responsive.

[16]Q Sir, my question to you is whether you

[17]know --

[18]A I don't know.

[19]Q Okay. Based on your review of the medical

[20]records, are there any reports in the medical

[21]records that you reviewed to confirm that

[22]Plaintiff's treating providers ever recommended his

[23]using an electric bed either now or in the future?

[24]A To my [*121] knowledge, nothing specific.

[25]Q With respect to leg braces, Page Eight.

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[1]

[2]Let's go a little further up.

[3]You said that Plaintiff is able to do

[4]the activities of daily living?

[5]A Correct.

[6]Q Does that include showering?

[7]A That includes, at present, showering.

[8]Q How does Plaintiff presently --

[9]A They have a fairly high curb at the shower

[10]and he has to lift himself over. I don't view that

[11]as safe.

[12]Q Has Plaintiff, to your knowledge, have had

[13]any accidents as a result of using the shower that

[14]way?

[15]A No.

[16]Q Has any of -- to your knowledge, has

[17]Plaintiff made any complaints to any of his treating

[18]providers regarding the way he's using the shower,

[19]with a need for modification?

[20]A I don't know.

[21]Q During your interview, did Plaintiff make

[22]any complaints to you regarding the use of the

[23]shower or a need for modifications?

[24]A We talked about a roll-in shower, and he

[25]thought that would be easier.

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[1]

[2]MS. ALIKAKOS: Move to strike as

[3]non-responsive.

[4]MR. D'ALOISE: You asked the question, he

[5] [*122] answered it.

[6]MS. ALIKAKOS: That's not my question.

[7]Q My question was, did Plaintiff make any

[8]complaints to you, not what you may have told him.

[9]A I can't answer that yes or no.

[10]Q You can't answer whether he made any

[11]complaints to you?

[12]A Not without explaining what we discussed,

[13]no. It was more of a discussion than a specific

[14]question or answer.

[15]Q Okay. Next you say, "Home care and

[16]community-based services that are needed include a

[17]handyman to help with household chores that he used

[18]to do, approximately 12 hours per month during the

[19]spring, summer, early fall, dropping to five hours

[20]per month for the winter. "

[21]To your knowledge, since the accident

[22]has Plaintiff used any home care or community-based

[23]services with respect to the above?

[24]A Yes, I believe they have.

[25]Q What home care services has --

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[1]

[2]A I don't remember specifically, but I know

[3]someone maintains the outdoors.

[4]Q The gardening?

[5]A I believe so, yes.

[6]Q Aside from the gardening, are there any
[7]other home care or community-based services?

[8] [*123] A I believe snow clean-up.

[9]Q Still outside?

[10]A Outdoor work.

[11]Q Aside from the outdoor, inside the home

[12]are there any home care and community-based services

[13]that Plaintiff specifically told you he uses?

[14]A Not specifically, no.

[15]Q Has Plaintiff, aside from the gardening

[16]and the snow work outside, has Plaintiff told you

[17]that he's used a handyman to help him?

[18]A He has an assistant in his shop. I don't

[19]know what their arrangement is.

[20]Q Did he have this assistant in the shop

[21]prior to his accident, do you know?

[22]A I believe not.

[23]Q Did he specifically tell you that?

[24]A I'm pretty sure, yes.

[25]Q Do you remember the name of the assistant?

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[1]

[2]A I said earlier that I don't.

[3]Q It's the same assistant that we talked

[4]about ?

[5]A In his shop, yes.

[6]Q The shop in the home?

[7]A Yes.

[8]Q Forgive me if I asked you. To your

[9]knowledge, have any of Plaintiff's treating
[10]physicians recommended that he undergo home care or
[11]community-based services?

[12]A That I don't know.

[13]Q Have any of Plaintiff's treating
[14] [*124] physicians recommended that he have a home care
[15]attendant either now or in the future?

[16]A I don't know what his treating physicians
[17]have discussed with him about his future.

[18]Q During your interview with Plaintiff, or
[19]at any time in connection with your assessment of
[20]this case, did you ask Plaintiff or -- well, did you
[21]ask Plaintiff whether any of his treating physicians
[22]recommended that he have a home care attendant
[23]either now or in the future?

[24]A I didn't ask.

[25]Q Same question. I'll shorten it. Did you
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[1]
[2]ask -- did you review any medical records that would
[3]confirm that any of his treating physicians
[4]recommended that a home care attendant would be
[5]required in the future?

[6]A No, I didn't.

[7]Q With respect to Plaintiff's automobile, I
[8]believe earlier you testified that Plaintiff told
[9]you he was driving?

[10]A Yes.

[11]Q I think you said that he was driving
[12]frequently, but did he tell you the rate, how many

[13]times a week that he drives?

[14]MR. D'ALOISE: You asked that already.

[15]A I think he goes out daily, or tries to get

[16]out many times [***125**] a week.

[17]MS. ALIKAKOS: I may have.

[18]Q In your assessment and life care plan, you

[19]talk about the need of a vehicle?

[20]A Yes.

[21]Q Do you know what kind of vehicle Plaintiff

[22]currently has?

[23]A I believe it's a Subaru wagon.

[24]Q And what do you anticipate the cost of

[25]future transportation needs to be?

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[1]

[2](Witness Perusing)

[3]A On table ten, page 19, they're listed

[4]there. Do you want me to state them?

[5]Q Well, let's go through them. The first

[6]you talk about, "purchase of modified van with

[7]wheelchair lift, hand controls, manual tie-downs,

[8]dash-mounted lift control." You said \$ 40, 000 every

[9]eight years for each van and then \$ 5, 000 --

[10]A Yes.

[11]Q "Presuming \$ 10, 000 trade in value

[12]applied. "

[13]A That's divided by 8. \$ 5, 000 is an annual

[14]cost.

[15]Q Oh, okay. With respect to the vans, can

[16]you point to any outside reference to support the

[17]need that Plaintiff would need a van every eight

[18]years?

[19]A I think the life of a van is approximately

[20]eight years. That's the standard that I used, as

[21]opposed to six or five. I think [*126] it depends on wear

[22]and tear and how much it's used, how frequently it

[23]breaks down.

[24]But I think part of that is how often

[25]the average American buys a car and how often that

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[1]

[2]becomes a car that no longer is reliable, versus how

[3]much he drives and how much he uses it.

[4]So I think you have to at some point

[5]use good judgment. There's no specific medical

[6]reference or literature reference on how often a

[7]paraplegic needs a new van.

[8]Q Is there any specific reference that you

[9]rely on in connection, and when I say specific

[10]reference, I mean reference materials, in connection

[11]with any of the calculations in your chart?

[12]A Yes.

[13]Q Well, let's go back first. Specifically

[14]with respect to Table 10 and his transportation

[15]needs.

[16]A Yes.

[17]Q Specifically with respect to

[18]transportation needs, what outside reference do you

[19]rely on?

[20]A The cost of a new van and various

[21]companies that modify these vans and what they
[22]charge, and you add the two together and you come up
[23]with a number which is approximately \$ 40, 000.

[24]Q Is there any specific study [***127**] that says that
[25]an individual who is paraplegic would require the
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[1]

[2]use of a new van or a new vehicle for every eight
[3]years that you relied on?

[4]A I think I answered that. There is no
[5]specific study. It's a general conclusion. And I
[6]said, also stated that that can vary based on how
[7]much it's used, how often it's used, how reliable it
[8]becomes. It becomes an issue of, as I said, the
[9]average lastbility of an automobile in the United
[10]States. There are definitely statistics on that.

[11]Q Did you consider specifically those
[12]statistics in preparing your assessment?

[13]A Yes. I can't say I went back and reviewed
[14]specific statistics on vans and paraplegics, but
[15]yes, I reviewed in the past and my knowledge base
[16]allows me to have that knowledge, that cars in the
[17]United States are usually replaced when they're
[18]owned between five and eight years or five and ten
[19]years. Eight is somewhere in the middle and it's --
[20]some of this, as I said, has common sense built into
[21]it.

[22]Q Let's talk about the next one. Do you
[23]consider the transferability of Plaintiff's hand
[24]controls, should [***128**] he have switched his vehicle, from

[25]age 50 to --
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[1]

[2]A That's addressed in the addendum.

[3]Q I'm just asking you now.

[4]A Yes, I have considered it. And I think if

[5]you look under the first column, "cost of subsequent

[6]vans reflect potential trade in value," hand

[7]controls that are adequate for one car might not fit

[8]or work in another automobile, number one, because

[9]there are some type-specific. Lengths of cables,

[10]things of that nature.

[11]Q Did you do -- just specific as to that, so

[12]we'll break it down, did you do any studies or rely

[13]on any literature regarding the transferability of

[14]controls from one vehicle to another?

[15]A Just through past discussions with the

[16]companies that modify these vans. Sometimes they're

[17]transferable, sometimes they're not.

[18]Q What discussions have you had with

[19]companies?

[20]A I can't remember a specific discussion or

[21]a specific date. That might have occurred years

[22]ago.

[23]Q Did you rely on any literature in

[24]connection --

[25]A Not that I can specifically quote.

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[1]

[2]MR. D'ALOISE: Let her finish the

[3]question. **[*129]**

[4]MS. ALIKAKOS: I know you know the answer
[5]to my questions. Just so the court reporter
[6]gets it down.

[7]A Sorry.

[8]Q Next you talk about the use of private car
[9]service. Did you rely on any studies specifically
[10]to come up with that figure, that Plaintiff would
[11]require car services at the rate of four to six
[12]times a year, \$ 120 to \$ 180 annually, or \$ 150 on
[13]average annually? Did you rely on any statistics on
[14]that?

[15]A No, I relied on my specific experience
[16]with patients who have automobile problems.

[17]Q To your knowledge, does Mrs. Rinaldi
[18]drive? Yes or no?

[19]A Mrs. Rinaldi drives, but works full-time.

[20]MS. ALIKAKOS: Move to strike as
[21]non-responsive.

[22]Q Sir, my question to you was, to your
[23]knowledge, whether you're aware that Mrs. Rinaldi
[24]drives or not.

[25]A Yes, I'm aware that she drives.
150

[1]

[2]Q When you interviewed Mrs. Rinaldi, did she
[3]tell you whether she assists in driving around
[4]Plaintiff in doing the regular household chores, if
[5]you recall?

[6]MR. D'ALOISE: That's a compound question.

[7]Q Okay, I can break it down. **[*130]**

[8]When you interviewed Mrs. Rinaldi,
[9]did she tell you, yes or no, whether she assisted in
[10]driving Plaintiff around?

[11]A I believe she does not.

[12]Q When you interviewed Mrs. Rinaldi or

[13]Mr. Rinaldi, did he or she tell you that

[14]Mrs. Rinaldi helps with the household chores?

[15]A Yes, she performs a large amount of them.

[16]Q Did any of those household chores

[17]specifically include driving to either the

[18]supermarket and doing errands or anything like that?

[19]A I think she does her fair share, yes.

[20]Q Next you talk about ambulette services.

[21]Do you see that?

[22]A Correct.

[23]Q Does Plaintiff require the need of any

[24]ambulette services, to your knowledge, since the

[25]time of his discharge from Helen Hayes Hospital to

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[1]

[2]the present?

[3]A To my knowledge, he has not.

[4]Q And did you ask Plaintiff, yes or no, how

[5]he gets to his medical appointments and doctors?

[6]A He drives himself.

[7]Q Have any of Plaintiff's treating providers

[8]told him that he shouldn't drive for any reason?

[9]A To my knowledge, no.

[10]Q Have any of Plaintiff's [*131] treating providers

[11]told Plaintiff that he should use ambulette

[12]services?

[13]A To my knowledge, no.

[14]Q Did you consider any -- I'm sorry.

[15]In preparation of your life care

[16]plan, did you consider any not-for-profit or free

[17]governmental services that are available to

[18]individuals with disabilities?

[19]A Have you been to Armonk?

[20]MS. ALIKAKOS: I'll move to strike as

[21]non-responsive.

[22]A I have considered. They are not readily

[23]available where he lives, in my opinion.

[24]Q What do you base that opinion on? Are

[25]there specific studies that you base that on?

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[1]

[2]A No, just a knowledge of Westchester County

[3]and general transportation in Westchester County.

[4]There is no public transportation in his

[5]neighborhood.

[6]Q In preparation of your life care plan, did

[7]you call any administrative agencies which

[8]provide -- in New York state which provide

[9]assistance to individuals with disabilities in terms

[10]of transportation or other services?

[11]A No, it was not an option for him.

[12]MS. ALIKAKOS: Move to Strike as

[13]non-responsive.

[14]Q Sir, my question [*132] to you is whether you

[15]made contact with any agencies that provide services

[16]to individuals, either ambulette services,
[17]transportation or other services, in connection with
[18]your life care plan assessment?

[19]A No, I did not.

[20](Brief Recess Taken)

[21]Q Next, if you go to page 10 of your report,
[22]you talk about wheelchair, accessories and
[23]maintenance?

[24]A Page 10, the chart?

[25]Q I'm sorry, the chart. I don't know what
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[1]

[2]page it is of your report.

[3]A Okay.

[4]Q Did you look at -- just generally, did you
[5]look at any outside source for the amounts?

[6]A Yeah.

[7]Q What source did you refer to?

[8]A I had several durable medical equipment
[9]catalogs in my office that I referred to.

[10]Q I know you note that there's a use of a
[11]motorized wheelchair. One chair at \$ 7, 000 every
[12]seven years from age 42 to 55.

[13]A Yes.

[14]Q Do you recall Plaintiff expressing an
[15]interest in not having a motorized wheelchair?

[16]A Very specifically.

[17]Q So if he didn't want a motorized
[18]wheelchair, then -- well, why do you include it in
[19]your anticipated [*133] expenses?

[20]A Okay. That's very easy to answer.

[21]At present, his main source, form of

[22]locomotion is propelling himself in his wheelchair,

[23]his two manual wheelchairs. If you noted on the

[24]last entry on Page Ten of the chart and the first

[25]entry of Page 11 of the charts, I put one motorized
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[1]

[2]wheelchair only for 13 years, from age 42 to age 55.

[3]'Cause I think while he's still fit and able-bodied,

[4]before his shoulders completely deteriorate, before

[5]he gets to a point where he doesn't have the

[6]physical strength as he ages to propel that

[7]wheelchair, those wheelchairs, I should say, I think

[8]he only will need one.

[9]The reason I think he'll need only

[10]one is because, should he injure any part of his

[11]upper extremity, he is completely immobile and

[12]chairbound and would have no source of locomotion

[13]except for someone else to push and propel his

[14]wheelchair, and although he's been fortunate that

[15]that hasn't occurred yet, he does have substantial

[16]shoulder pain. He does do work in his shop which

[17]can put a strain or a sprain on him. He stands, he

[18]could fall.

[19]So any kind of, quote, **[*134]** break in the

[20]system, anything that might go wrong to not allow

[21]him to propel his chairs, which are many, many

[22]things that can go wrong, would leave him completely

[23]immobilized and housebound.

[24]Q So is it fair for me to say that this is a
[25]possibility that this would happen, or are you
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[1]

[2]saying it's a guarantee that this will happen?

[3]A I think it's almost a guarantee, with a

[4]95 percent certainty, that at some point during the

[5]13 years between the ages of 42 and 55 he will have

[6]need for a motorized wheelchair, and the reason it's

[7]more frequent at 55, it's pretty well-documented or

[8]it's very well-documented in paraplegics, that they

[9]just don't have the physicality, the energy, the

[10]cardiac capacity to propel themselves.

[11]Can I state with great certainty that

[12]it's going to happen exactly at age 55, I cannot,

[13]but again, this is where common sense and experience

[14]comes into play.

[15]Q Did you do any studies to confirm what

[16]percentage of individuals with paraplegia at around

[17]age 55 would require the use of a motorized

[18]wheelchair as opposed to a standard manual

[19]wheelchair, **[*135]** yes or no?

[20]A Did I do any studies, meaning did I do

[21]research in my practice or did I look it up?

[22]Q Both with respect to this case.

[23]Specifically did you do?

[24]A Yes, I have knowledge of this from written

[25]and reading materials.

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[1]

[2]Q What reading materials do you rely on for

[3]the proposition that an individual with paraplegia
[4]at age 55 would have a 95 percent, I think you said,
[5]guarantee that they would require a motorized
[6]wheelchair?

[7]MR. D'ALOISE: Object to the form of the
[8]question, but you can answer it.

[9]A You're confusing two statements. I stated
[10]within -- it's my opinion within a 95-degree of
[11]certainty that between age 42 and 55 he will need a
[12]motorized wheelchair.

[13]Q Let's take that statement so I don't have
[14]to repeat what you said.

[15]Specifically do you rely on any
[16]research or literature to base that 95 percent
[17]guarantee on, and if so, what?

[18]A There is nothing in the literature that
[19]states a 95 percent, specific quote, that patients
[20]who are using manual wheelchairs will switch to a
[21]motorized wheelchair when they can't propel [*136] their
[22]wheelchair. But it is very clear, by studying and
[23]having knowledge of medical illnesses and physical
[24]injuries that occur to paraplegics, that if you add
[25]up all the different things that can happen over a
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[1]
[2]13 year period, it becomes my educated opinion.
[3]But there is no -- I did not read a
[4]specific book that says Mr. Rinaldi will have a
[5]95 percent chance of needing a motorized wheelchair
[6]between age 42 and 55 for brief periods of time.

[7]Q Did you conduct any interviews or research

[8]yourself that would say that specifically?

[9]A When you say did I look it up or did I

[10]study it or did I do a study.

[11]Q Did you do a study yourself?

[12]A A controlled study on what age patients --

[13]no, I did not do research on wheelchair, at what

[14]point patients with paraplegia go from manual chairs

[15]to motorized chairs.

[16]Q Same question. Did you rely on a specific

[17]study with respect to what percentage of paraplegics

[18]would require a motorized chair rather than a manual

[19]chair, should they live above the age of 55?

[20]A Not a specific study. Just my knowledge

[21]and expertise, [*137] my experience in practice, reading

[22]through the various medical rehab sources from

[23]spinal cord injured journals to chapters on spinal

[24]cord injury in textbooks.

[25]Q In those journals and entries in

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[1]

[2]textbooks, is it your testimony that those journals

[3]and textbooks support the position that there is a

[4]95 percent chance? Is that something that you read

[5]specifically?

[6]A Again, 95 percent that I mentioned was for

[7]ages 42 to 55.

[8]Q Is there a percentage that you've

[9]calculated with respect to should Plaintiff live

[10]above the age of 55?

[11]A I don't know if the specific percentage of
[12]those who use motorized wheelchairs after age 55
[13]versus manual wheelchairs is specifically listed in
[14]the literature, versus just a general transforming
[15]from manual to motorized over time.

[16]Q But did you specifically rely on any
[17]literature that specifically said that?

[18]A Just to create a general knowledge base
[19]for myself and my practice and through my clinical
[20]experience, but a specifically written document, no.

[21]Q To your knowledge, did any of Plaintiff's
[22]treating physicians [*138] express to him that he will
[23]likely require the use of a motorized wheelchair at
[24]any time from, I guess from age 42 through the
[25]remainder of his life?
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[1]

[2]A I do not know.

[3]Q Did Plaintiff ever tell you that any
[4]treating physician actually recommended that to him?

[5]A No, he did not.

[6]Q You next talk about special housing needs.

[7]If you find it before I do, just tell me.

[8]MR. D'ALOISE: Page 18.

[9]THE WITNESS: It is page 18.

[10]MR. D'ALOISE: Table nine.

[11]Q Okay. With respect to purchase of a
[12]single story home, did you conduct any research
[13]regarding the cost of a single family home?

[14]A No, that's why that one is left without a

[15]cost factor, and it's listed as a differential
[16]between the current home and a new home.
[17]Q With respect to modifications, interior
[18]home modifications, you list the cost as between
[19]\$ 35, 000 and \$ 50, 000?

[20]A Correct.

[21]Q As well as construction costs, additional
[22]costs for at least \$ 75, 000. What do you base
[23]that -- withdrawn.

[24]Do you base that conclusion and those

[25]figures on a specific reference? **[*139]**

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[1]

[2]A A contractor in Westchester County. RAF,

[3]that's the name of the company.

[4]Q Did you consult with RAF regarding

[5]interior home modifications?

[6]A Yes.

[7]Q Did RAF do an inspection of Plaintiff's

[8]home?

[9]A No, they did not. It's my proposing what

[10]would be indicated in my opinion. Few of these

[11]things actually had -- one or two of the things had

[12]been done already so that wasn't included.

[13]Q To your knowledge, did RAF meet with

[14]Plaintiff Rinaldi to discuss --

[15]A No. It was just my information to them

[16]and them with a verbal estimate.

[17]Q In connection with the -- let's say, for

[18]example, the external ramp, do you know whether that

[19]was actually installed in Plaintiff's home already?

[20]A It is not.

[21]Q Is that something that Plaintiff told you

[22]he specifically intends to do?

[23]A We did talk about it. It's something he

[24]would like, yes.

[25]Q To your knowledge, has Plaintiff taken any
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[1]

[2]steps to install the ramp or have the ramp

[3]installed?

[4]A I don't know.

[5]MS. ALIKAKOS: Let's mark this as Kahn 3.

[6]It's [*140] the addendum report.

[7](Addendum Report was marked as Kahn 3 for

[8]identification, as of this date.)

[9]Q Just keep on going through your first

[10]report.

[11]Page Five of the chart, table 3, you

[12]talk about -- let's go down to the -- physical

[13]therapy of the shoulder. You estimate the cost per

[14]year is \$ 8, 970?

[15]A Correct, but that's not per year. That's

[16]a one year cost. I mean it's under cost per year

[17]because it's recommended for twice a week for about

[18]six months, and then once a week, but that wouldn't

[19]be an ongoing annual cost.

[20]That's a -- if you look, per year,

[21]but it's from age 42 to age 43. So that's at

[22]present if he had the resources to do so.

[23]Q To your knowledge, has any -- if I asked

[24]you this, I apologize. Now that we're going through

[25]the chart, give me a little leeway in terms of
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[1]

[2]asking you.

[3]A No problem.

[4]Q To your knowledge, has any of Plaintiff's

[5]treating physicians recommended he undergo physical

[6]therapy during this time period?

[7]A I believe therapy has been recommended as

[8]one option to try to treat his shoulder.

[9] **[*141]** Q Do you recall which?

[10]A I don't.

[11]Q Your next note, "physical therapy to

[12]periodically monitor and modify home therapy program

[13]from 2010 to the remainder of Plaintiff's life. "

[14]What do you base that -- withdrawn.

[15]Have any of Plaintiff's treating

[16]physicians, to your knowledge, recommended that

[17]Plaintiff undergo therapy for the remainder of his

[18]life specifically?

[19]A I don't know if any of his physicians have

[20]recommended this specific intervention.

[21]Q Okay. The next one is, "physical therapy

[22]following surgical interventions and to address

[23]exacerbations in medical condition. "

[24]With respect to the surgical

[25]intervention, are you referring to the possible

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[1]

[2]shoulder surgery or are you referring to something
[3]else?

[4]A I'm referring to throughout his entire
[5]life as he has any kind of intervention to his upper
[6]body medically. Whether it be something related to
[7]the spinal cord injury or something not related to
[8]the spinal cord injury, he specifically will need
[9]physical therapy to relearn and strengthen and get
[10]back to a functional level.

[11]Q If [*142] he has the surgeries?

[12]A If he has any medical problems that
[13]involve his general condition and being
[14]deconditioned. For example, if he got very ill and
[15]was in bed for a week, it's harder for someone who
[16]is a paraplegic to recover than it is for someone
[17]else.

[18]If he fell and injured a joint or a
[19]muscle, he would need physical therapy because his
[20]whole world would change. I mean, if you fall or
[21]sprain a wrist or I fall and sprain a wrist, we just
[22]don't use our wrist for a few days or a few weeks
[23]and it recovers. When a paraplegic falls and has an
[24]injury, their whole world changes. Their only
[25]source of function is using both upper extremities
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[1]

[2]at maximum capacity.

[3]So it's a long answer but it's the

[4]only way I can answer it.

[5]MS. ALIKAKOS: I'm going to move to strike

[6]as non-responsive.

[7]Q Sir, with respect to this line here, have

[8]any of Plaintiff's treating physicians confirmed

[9]that he will definitely need future surgical

[10]interventions, other than the possible surgery to

[11]alleviate the -- to remove the hardware in his

[12]shoulder?

[13]A To my knowledge, [*143] no one could predict

[14]future surgical interventions for conditions that

[15]are likely to occur.

[16]Q So is it fair for me to say that there's

[17]no way at this point to know for sure that this will

[18]likely occur, yes or no?

[19]A That was a double negative question so I

[20]won't answer it.

[21]Q Is it fair for me to say that you, sitting

[22]here, cannot predict whether or not Plaintiff will

[23]undergo future surgical interventions?

[24]A I don't think that's fair to say.

[25]Q Okay. Did Plaintiff tell you that any of

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[1]

[2]his treating providers told him that he will indeed

[3]require future surgical intervention, other than the

[4]possible removal of hardware?

[5]A I don't know if --

[6]MR. D'ALOISE: Asked and answered. You

[7]can answer again.

[8]A I don't know if it's ever come up in

[9]conversation about what his future deterioration and

[10]demise would be like.

[11]Q When you say that his future

[12]deterioration, you mean the possibility, or do you

[13]mean his guaranteed future deterioration?

[14]A It's my opinion within a very high degree

[15]of medical certainty that he as a paraplegic will

[16] **[*144]** deteriorate at a higher and faster rate than an

[17]able-bodied individual, an age match cohort.

[18]MS. ALIKAKOS: Move to Strike as

[19]non-responsive.

[20]MR. D'ALOISE: It's absolutely responsive

[21]to what you asked.

[22]MS. ALIKAKOS: That's not what I asked,

[23]first off.

[24]MR. D'ALOISE: Absolutely responsive.

[25]MS. ALIKAKOS: I asked if any --

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[1]

[2]MR. D'ALOISE: Look, we don't have to go

[3]through it. You move to strike. I say it's

[4]responsive, and actually any questions or any

[5]answers that you said move to strike, in my

[6]opinion are responsive.

[7]So you can move to strike if you want, but

[8]we would object to any motions on any of these.

[9]MS. ALIKAKOS: Well, okay. That's for

[10]trial.

[11]Q Did Plaintiff tell you whether his

[12]treating physicians --

[13]MS. ALIKAKOS: Well, you're going to say

[14]asked and answered, but I'm going to say that

[15]he didn't answer my question. So that's the

[16]basis of it. Just so you know.

[17]Q Did Plaintiff -- during your interview

[18]with Plaintiff, either the phone conversation you

[19]had or the three hour discussion with Plaintiff,

[20]meeting [*145] with Plaintiff, did he tell you that his

[21]treating physicians told him that he will in fact

[22]need surgical intervention in the future?

[23]MR. D'ALOISE: Asked and answered. You

[24]may answer it again.

[25]A He did not specifically tell me in those

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[1]

[2]words.

[3]Q In your review of the medical records, did

[4]you note that any of his treating physicians

[5]recommended that he undergo surgical intervention in

[6]the future, aside from the possible shoulder removal

[7]of the hardware, if you recall?

[8]A Again, I answered that, that no physician

[9]can predict what is going to come up and when he'll

[10]need future medical intervention or what of the

[11]many, many things that can occur, and do with a

[12]great degree of certainty occur in paraplegics from

[13]overuse syndromes, no one can predict which one and

[14]when.

[15]So no, no treating physician has

[16]specifically told him what surgery he will need in

[17]the future for a yet unknown condition.

[18]Q If any?

[19]A I won't say if any.

[20]Q Okay. You also said, "and to address

[21]exacerbations in his medical condition." To your

[22]knowledge, has any treating [*146] provider who has seen

[23]Plaintiff in the last two years told Plaintiff that

[24]he will indeed have an exacerbation of any medical

[25]condition?

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[1]

[2]A I don't know every conversation that

[3]occurred with his treating physicians, so the answer

[4]is I don't know.

[5]Q During your meeting with Plaintiff, your

[6]phone conversation and interview with him, did

[7]Plaintiff tell you that any of his treating

[8]physicians actually told him that he will have an

[9]exacerbation of any medical condition, yes or no?

[10]A I don't know.

[11]Q Next you say occupational therapy.

[12]A Yes, I do.

[13]Q I think we talked about occupational

[14]therapy earlier. The earlier discussion we had on

[15]occupational therapy, that's what you're referring

[16]to? Because I can skip it if that's what we're

[17]talking about.

[18]A Yes, it is.

[19]Q Okay. The next one says, "occupational

[20]therapists, ergonomic evaluation of patient's home

[21]and workshop. "

[22]To your knowledge, has Plaintiff --
[23]has any treating physician told Plaintiff that he
[24]should have an occupational therapist perform an
[25]ergonomic evaluation of his [*147] home, yes or no?
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[1]

[2]A To my knowledge, I do not know.

[3]Q Next page.

[4]A Am I allowed to ask a question?

[5]Q No.

[6](Off the Record)

[7]Q Let's go to the second one, because the
[8]first one deals with occupational therapists.
[9]Second one says, "complementary and
[10]alternative medicine modalities for management of
[11]the cycle of chronic pain and stress." As well as
[12]the one after that that deals with the same CAM
[13]modalities. Do you see those entries?

[14]A Yep.

[15]Q Try to deal with it at the same time
[16]unless it becomes confusing.

[17]Has any of Plaintiff's treating
[18]physicians told you or documented that he will
[19]require complementary and alternative medicine
[20]modalities for management of the cycle of chronic
[21]pain and stress? Yes or no?

[22]MR. D'ALOISE: I object to it to the
[23]extent that he cannot say what treating
[24]physicians documented, other than what he --

[25]Q Based on your review of the medical
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[1]

[2]records.

[3]A No, they have not.

[4]Q Next we talk about accessible gym, health

[5]club membership. To your knowledge, does Plaintiff

[6] [*148] belong to any gyms or health clubs?

[7]A To my knowledge at present, no.

[8]Q Prior to the accident did he belong to any

[9]gyms?

[10]A I believe he did.

[11]Q When did he stop going to the gym?

[12]A I think when he was injured.

[13]Q Okay. And that study, \$ 50 a month, what

[14]do you base that?

[15]A Calling several gyms in his area, finding

[16]out that's about the average. They range from

[17]anywhere from, I think it was somewhere in the

[18]hundreds and something range, down to as cheap as

[19]\$ 10 a month, as you see on TV these days. But those

[20]super deals didn't exist back then.

[21]Q And you actually called these gyms?

[22]A I called a few gyms around, and there

[23]aren't too many that are wheelchair-accessible.

[24]Q Nutritional counseling. Did any of

[25]Plaintiff's treating providers recommend that he

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[1]

[2]undergo nutritional counseling, if you know?

[3]A Other than at Helen Hayes where he had

[4]some, I don't think so.

[5]Q Okay. Next, psycho social evaluation.

[6]Same question. Have any of Plaintiff's treating

[7]providers recommended that he undergo psycho social

[8]evaluations, [*149] or one evaluation? If you know.

[9]A I don't know.

[10]Q I think we talked about psychological

[11]counseling, but same question, did any of

[12]Plaintiff's treating providers recommend following

[13]his discharge from Helen Hayes that he undergo

[14]psychological counseling individually?

[15]A I believe -- again, I'm going by my memory

[16]when we discussed the antidepressant medication

[17]Paxil.

[18]Q When we discussed?

[19]A No, when Mr. Rinaldi and I discussed it,

[20]and he spoke about the time when he came off the

[21]meds and had this bad reaction, being frustrated to

[22]more depressed, more despondent, angry, sometimes

[23]having a sense of rage, that he had discussed going

[24]to counseling but at the time felt that he had

[25]overwhelmingly a lot to deal with and didn't want to

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[1]

[2]do that at the time.

[3]I don't know if it came up with his

[4]physicians, but I know he had discussed it with

[5]people. Whether it was a physician, I don't know.

[6]I know he discussed it with his wife.

[7]Q Was that based on your interview with him?

[8]A Yes.

[9]Q The incident with the Paxil -- I don't

[10]know if I asked [*150] you, but do you recall when that

[11]was?

[12]A Somewhere after his discharge.

[13]Q In 2007?

[14]A I don't know the year, if it was 2007 or

[15]eight.

[16]Q We already talked about -- going to Page

[17]Three of the life care plan, of table two I think we

[18]talked about --

[19]MR. D'ALOISE: Where are you now?

[20]MS. ALIKAKOS: Page Three of the table

[21]part.

[22]Q I think we talked about the neuro

[23]stimulator. Is that the same thing, the device that

[24]we talked about earlier?

[25]A Yes, it is.

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[1]

[2]Q All right. Move on.

[3]Going now to Page Eight, "Anticipated

[4]and potential medical complications and medical

[5]intervention." To your knowledge, and I'll try to

[6]do them as a group because I think we've talked

[7]about it, but not in the context of the chart.

[8]Have any of Plaintiff's treating

[9]providers said for certainty that he will require

[10]the surgical interventions that are laid out in

[11]table four on this page? Yes or no?

[12]A Other than the shoulder, potential

[13]shoulder surgery, no.

[14]Q With respect to the surgery, is

[15]arthrosomy, that's different than -- that's [*151] a bad

[16]question.

[17]With respect to the shoulder surgery,

[18]didn't you testify earlier that the surgery

[19]involved -- would be the removal of hardware?

[20]A That would be one possibility of what he

[21]might need, but these are other potentials that I

[22]think he will need.

[23]Q In terms of what his treating physicians

[24]told him, I believe your testimony earlier was that

[25]you think that a physician talked about removal of
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[1]

[2]hardware, is that right?

[3]A Yes, that was one thing the physician

[4]spoke about.

[5]Q Do you know whether his treating

[6]physicians ever recommended that he undergo

[7]arthrosomy?

[8]A I do not know.

[9]Q Or manipulation under anesthesia?

[10]A I do not know.

[11]Q Is that the same thing?

[12]A You would do a manipulation under

[13]anesthesia during an arthroscopic procedure.

[14]Q Have any of Plaintiff's treating providers

[15]told him that he suffers from deep vein thrombosis?

[16]A No, they have not, to my knowledge.

[17]Q To your knowledge, has Plaintiff undergone

[18]any Doppler studies or other tests in connection

[19]with circulation?

[20] **[*152]** A Not to my knowledge since the discharge.

[21]Q Next, on Page 16, we talk -- you talk

[22]about a home care attendant.

[23]A Yes.

[24]Q Does Plaintiff -- forgive me. I may have

[25]asked you this.

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[2]Does plaintiff currently have a home

[3]care attendant?

[4]MR. D'ALOISE: You did. But he can

[5]answer.

[6]Q Can you tell me?

[7]A He does not, other than his wife who

[8]attends to him quite greatly.

[9]Q In what percentage of spinal cord cases

[10]that you've handled has the patient actually

[11]required a home attendant? Could you quantify that?

[12]A I'd certainly say greater than 50 percent.

[13]Q And why wouldn't a home care attendant be

[14]required in, let's say, 50 percent of those times?

[15]A Okay. For example, if we look at the

[16]chart, Page 16, table eight, we don't start a home

[17]care attendant on Mr. Rinaldi until age 55, although

[18]it's my experience that several patients at much

[19]younger ages require home care attendants.

[20]Again, I stated earlier that I think

[21]Mr. Rinaldi is highly motivated, has good support,
[22]for right now has reasonably good physicality of his
[23]upper [*153] body and is independent. I'm not claiming
[24]that he needs a home care attendant now, and that
[25]might be the reason I answered he does not have one.
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[2]I think at age 55, again, between the
[3]things that can go wrong with his upper extremities,
[4]the general aging process, his lack of general
[5]cardiac function and abilities, his condition and
[6]his function will change and it's my prediction with
[7]a very good degree of medical certainty that this is
[8]necessary.
[9]I have patients who are paraplegics
[10]who are teenagers and require assistance because
[11]some of them don't have the capability to clean
[12]themselves after a bowel movement. They don't have
[13]the dexterity or they have too much pain or too many
[14]other conditions where they can't get the enema in
[15]themselves or transfer themselves. They don't have
[16]the upper body strength to transfer.
[17]I talked about earlier with regard to
[18]the sliding board, I'm sorry about the typo, that I
[19]specifically made comment that he transfers without
[20]a sliding board. He just lifts his upper body and
[21]moves over.

[22]Again, I also made a comment earlier
[23] [*154] that even though it was motocross, and some people
[24]might not consider that a sport, he's a world-class

[25]athlete. He was a national champion at some degree.

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[2]So his ability to function at a level

[3]presently is why, in my opinion, he doesn't need an

[4]assistant now. Again, my prediction, based on my

[5]medical experience, my medical training, my

[6]rehabilitation residency, lectures, textbooks, is

[7]that he will succumb to needing assistance in the

[8]future.

[9]Q Okay. Couple of things you said there.

[10]First off, you said you've had experience that

[11]teenagers have had the need for home care, right?

[12]A Correct.

[13]Q Have you also had the experience that

[14]individuals don't need home care?

[15]A Yes.

[16]Q Mr. Rinaldi presently doesn't need home

[17]care?

[18]A Correct.

[19]Q So do you have a study that you've done or

[20]have relied upon which says that Mr. Rinaldi will

[21]indeed require home care, or is that based on all

[22]the information that you said before?

[23]A I'll state it again. It's based on all

[24]those things I said.

[25]Q Do you have patients that have exceeded

178

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[2] [***155**] age 55 that don't require home care attendants but

[3]are nonetheless paraplegics?

[4]A I would say -- have I ever? It would be a

[5]rarity, but yes, I probably have one or two.

[6]Q Do you know if there are studies that show

[7]that there are paraplegics that don't require the

[8]use of home care attendants past the age of 55?

[9]A As I said earlier, most of the studies

[10]don't list a specific time. Boom, you turn 55 and

[11]you need an assistant. It's a general observation

[12]over time as the demise -- and the studies are very

[13]clear that patients who are paraplegic, their upper

[14]body isn't as strong, their cardiac capacity isn't

[15]as strong, their range of motion isn't as good, and

[16]they lose their abilities as they age, and that's

[17]very well-documented not just in paraplegics but in

[18]levels lower down in the lumbar spine and in

[19]quadraplegics.

[20]Q Wouldn't that -- in that context, wouldn't

[21]other factors such as lifestyle, nutrition,

[22]motivation, general well-being and assistance, the

[23]factors that you testified about to earlier,

[24]wouldn't those factor into a time line of someone's

[25]demise, as you say, yes **[*156]** or no?

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[1]

[2]A That's why I listed it at 55 instead of at

[3]42.

[4]Q So the answer is yes?

[5]A The answer is yes.

[6]Q And specifically the number 55 that you're

[7]referring to, do you find that source -- do you have

[8]a source, an article or a study or any governmental
[9]statistics as to when an individual who has a
[10]healthy living, family support, motivation,
[11]generally good condition, upper body strength, would
[12]have that demise? Can you point to a study, I'm
[13]saying?

[14]A Not a specific study for a specific date,
[15]no.

[16]Q Case manager/social worker. Have any of
[17]the Plaintiff's treating physicians told him that he
[18]will require a case manager/social worker, to your
[19]knowledge? Yes or no?

[20]A Not to my knowledge, no.

[21]Q Let's talk about -- in connection with
[22]your assessment on behalf of Plaintiff, did you come
[23]to a determination as to Plaintiff's life
[24]expectancy?

[25]A Yes, I did.

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[2]Q And what did you estimate Plaintiff's life
[3]expectancy to be?

[4]A I believe 78 years.

[5](Brief Recess Taken)

[6]Q And the 35. 8 years or **[*157]** to age 78, what do
[7]you base that figure on? Is there a specific study
[8]or treatise, something else?

[9]A The life care expectancy of someone who is
[10]presently 42 in the United States is 78, based on
[11]U. S. statistics. Various studies, various charts.

[12]And it's my opinion, within, again, based on studies
[13]and education and materials, rehab materials, that
[14]patients with meticulous care, even those who are
[15]paraplegic, will live a normal life expectancy.

[16]Q Are you aware whether there are any
[17]studies which yield that individuals who have
[18]suffered a spinal cord injury and resulting
[19]paralysis have a shorter life expectancy than, let's
[20]say, an individual in his early 40's who has not
[21]suffered a spinal cord injury?

[22]A I am aware, but I believe they're flawed,
[23]and when you look at the detail of those studies you
[24]see the broader picture.

[25]Q So you are aware?
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[2]A Yes.

[3]Q In connection with your experience
[4]involved in dealing with patients with paraplegia,
[5]have there been instances where those patients have
[6]not exceeded a full life expectancy of age 78?

[7]A [***158**] Exceeded it or met?

[8]Q Met or exceeded.

[9]A I have had patients who are paraplegic die
[10]at very young ages.

[11]Q You said that the studies are flawed.

[12]A I don't know. I don't know if that was
[13]the right word. I did say flaw. I meant more
[14]complex than flawed. They're not necessarily
[15]flawed. You have to go beyond just the first

[16]sentence and the number and look at the details of

[17]how they calculated that.

[18]Q Are you aware of the assessment of Arlene

[19]Loeser?

[20]A Yes, Ms. Loeser.

[21]Q Do you know Ms. Loeser?

[22]A No.

[23]Q Have you ever had any other experience

[24]with her?

[25]A No, I have not.

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[2]Q Are you aware of the national vital

[3]statistics report in U. S. life tables, April 2009

[4]spinal -- I'm sorry.

[5]A The one she quotes in her report.

[6]Q I'm sorry. The April 2009 Spinal Cord

[7]Injury Facts and Figures at a Glance, published by

[8]the National Spinal Cord Injury Statistic Center of

[9]Birmingham. Are you familiar with that specific

[10]study?

[11]A I was made aware of it with Ms. Loeser's

[12]report.

[13]Q Aside from reading [*159] -- withdrawn.

[14]Are you aware that that particular

[15]study cites that an individual between the ages of

[16]40 and 60 surviving spinal cord injury at the

[17]paraplegic level has a life expectancy of 27. 9

[18]years, projecting Plaintiff's life expectancy to

[19]between 69 and 70?

[20]A I am aware, and I address that in my

[21]addendum dated November 9, 2009.

[22]Q Is that Exhibit 3?

[23]A I think you marked it Exhibit 3. I have

[24]it.

[25]Q Okay. Now, after -- did Plaintiff's

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[2]counsel send you Ms. Loeser's report?

[3]A Yes, he did.

[4]Q Did counsel ask you to evaluate her

[5]report?

[6]A Yes, he did.

[7]Q In connection with -- and is Kahn 3 a

[8]letter responding and preparing the addendum to your

[9]report?

[10]A Yes, it is.

[11]Q The addendum to your report, not

[12]Ms. Loeser's report. Did you review the actual

[13]statistic that is identified by Ms. Loeser?

[14]A In her report I did, but I also went back

[15]to textbooks that talk about good care being a

[16]factor and involved in life expectancy.

[17]Q Sure. So you did review the actual --

[18]A I didn't open up the report, **[*160]** no.

[19]Q That's what I was asking you.

[20]Did you review any other materials

[21]which cite that report in their conclusion as to

[22]life care expectancy --

[23]A No, I did not.

[24]Q --of individuals with paraplegia?

[25]A No, I did not.

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[2]Q Are you aware whether there are other

[3]similar studies which show that an individual with

[4]paraplegia as a result of a spinal cord injury has a

[5]reduced life capacity, as opposed to the individual

[6]who has not suffered paraplegia?

[7]MR. D'ALOISE: Objection to the form. You

[8]can answer.

[9]A It is my opinion that many of the

[10]statistical analyses on patients with paraplegia

[11]show a lessened life expectancy.

[12]Again, the same caveat. When you

[13]look at the statistics and the analyses, you realize

[14]that it's for all comers, and it's very

[15]well-documented that if you follow a study, they

[16]will show you how they came to their statistic and

[17]their conclusion. If you take subsets of the

[18]population, then the statistics are quite varying.

[19]If you take someone who, like

[20]Mr. Rinaldi, as you've pointed out so many times,

[21]his motivation, [*161] his general well-being, his physical

[22]fitness, as you pointed out to me, are all in his

[23]benefit. And so will that be in his benefit for his

[24]life expectancy. His, quote, healthy living, his

[25]motivation, the assistance he gets from home. The

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[2]fact that he is a spinal cord injury from an

[3]accident and not a violent crime, which is a huge
[4]number of the spinal cord population, the fact that
[5]that segment of the population, if you took it as a
[6]separate segment of the population, even
[7]non-paraplegic has a lower life expectancy than the
[8]rest of the American population. If you just took
[9]patients who are involved in violent crimes or
[10]patients who live in very poor ghetto environments
[11]where they're involved with gunshot wounds, which is
[12]a huge percentage of the spinal cord population,
[13]that population would bring down the average.

[14]Q Let's go through a couple of the things

[15]that you said. Just going back.

[16]I think my question to you was

[17]whether you have read similar studies which say that

[18]there is a lessened life expectancy for those with

[19]paraplegia.

[20]A I have read similar things, [*162] yes.

[21]Q Okay. Now, you said couple of things. In

[22]connection with the preparation of your report or in

[23]connection with the addendum, did you -- I know you

[24]said you didn't read Ms. Loeser's, the study that

[25]she relied upon, that Alabama study.

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[2]In connection with the preparation of

[3]your report or the addendum, did you read any of

[4]those other similar studies?

[5]A What I did was I went back to some of the

[6]rehab textbooks and read the chapters, reread the

[7]epidemiology part of spinal cord injury in a couple

[8]of textbooks. I contacted a colleague of mine at

[9]Mount Sinai who is director of spinal cord injury.

[10]Q Who is that? What's his name?

[11]A Who did I speak to? I spoke to Joe -- not

[12]at Columbia, I'm sorry. Cornell. I spoke to Joe

[13]Rothenberg, who was a resident, and then I spoke to

[14]Dr. Steve Flanigan, chairman of Mount Sinai rehab

[15]department.

[16]Q Dr. Rothenberg is at Columbia?

[17]A Yes.

[18]Q But earlier you said that there's studies

[19]and there's sub texts of studies and other

[20]information. With respect to the similar studies to

[21]the one that's quoted by [*163] Ms. Loeser with respect to

[22]diminished life expectancy, did you actually read

[23]any of those studies, or did you read any of the

[24]sub text materials in connection with those studies

[25]in preparation of your report?

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[2]A I don't know which studies you're talking

[3]about now.

[4]MR. D'ALOISE: Object to form.

[5]Q Let's go back one second. I may have to

[6]ask you something you answered already.

[7]You said that you didn't read the

[8]specific study that's cited by Ms. Loeser, the

[9]Birmingham study, correct?

[10]A Correct. I didn't go to specific studies.

[11]I relied on texts and collegial information.

[12]Q Then you also told me earlier that it's

[13]not only the study, but there's other subjects in a

[14]study that show different demographics and other

[15]contributing factors, correct?

[16]A Correct.

[17]Q Did you read any of the subtexts that

[18]would have demographic factors or other factors that

[19]was assigned to Ms. Loeser's Birmingham study?

[20]A No, not to the Birmingham study.

[21]Q We also talked about that there exists

[22]similar studies that also show diminished capacity

[23]similar [*164] to the Birmingham study?

[24]A Correct.

[25]Q Did you -- my question was, did you read
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[2]those actual studies?

[3]A During my training and my education --

[4]Q No, during your assessment of this case.

[5]A No, because I didn't need to go back to

[6]reread them for knowledge that I already had.

[7]Q In connection with your preparation of the

[8]addendum after it was noted that there was this

[9]study, did you go back to read those similar

[10]studies? The actual text?

[11]A No, because I didn't feel I needed to.

[12]Q In connection with your assessment and

[13]preparation of the addendum, did you read any of the

[14]subtexts, the materials --

[15]A Yes.

[16]Q -- of those studies?

[17]A I don't know if those specific studies

[18]were quoted in the textbook or referred to, but as I

[19]said, I went back to textbooks of rehabilitation and

[20]reviewed the epidemiology of spinal cord injuries.

[21]Q I'm not asking you generally what you did.

[22]I'm asking you specifically with respect to those

[23]studies that we talked about that have similar

[24]diminished capacity, life expectancy. With respect

[25] **[*165]** to those similar studies, did you go back to read

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[1]

[2]the data on those studies or how they were

[3]comprised?

[4]A No, I did not.

[5]Q Now, then you talked about, and you talk

[6]about in your addendum report, you also testified

[7]that individuals who are victims of violent crime as

[8]opposed to an accident have a higher likelihood of

[9]having a diminished life expectancy?

[10]A That's correct.

[11]Q With respect to those statistics is the

[12]actual -- are the actual injuries that were involved

[13]with the individual that's -- withdrawn.

[14]Did you rely on any specific study to

[15]back up the claim that victims of violent crime have

[16]much more of a diminished -- life expectancy than

[17]those who are paraplegic as a result of an accident?

[18]A First I want to clarify. What I meant by

[19]victims of a violent crime, I was implying
[20]populations where there are high levels of crime,
[21]such as in gang-related areas. I didn't mean an
[22]innocent victim of a violent crime at random.
[23]Because I want to clarify that. 'Cause I think part
[24]of that is based on a patient's individual need to
[25]achieve maximal health [*166] care, maximal benefits.
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[1]
[2]But in a population, all takers of
[3]spinal cord injuries, a huge number are from gunshot
[4]wounds. In the young population, the greatest
[5]number of spinal cord injuries are from automobile
[6]accidents and gunshot wounds, and those are
[7]well-known statistics. I can't tell you exactly
[8]what article I'm getting it from, but that's pretty
[9]well-documented --

[10]Q So --

[11]A -- in spinal cord statistics.

[12]It is my testimony, and what I'm
[13]stating is the sub population of paraplegics who are
[14]involved in communities such as gangs and
[15]poverty-ridden communities where there's a higher
[16]crime incidence, people who are injured drunk
[17]driving, because there's pathology to begin with and
[18]there's issues. Drug users who have injuries, those
[19]people have a very high or much greater incidence of
[20]having a lower life expectancy.

[21]Q Well, is the study -- I mean, I guess my
[22]confusion -- maybe you can clarify.

[23]You said that paraplegics who have

[24]been involved -- withdrawn.

[25]Is it fair for me to say that your

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[2]testimony is paraplegics who have **[*167]** been involved in a

[3]violent crime have a much more diminished life

[4]expectancy than paraplegics who are either victims

[5]of a violent crime or are paraplegic as a result of

[6]an accident?

[7]A Okay. That is what I think I said

[8]earlier, but then I just made that whole big

[9]statement to clarify that. Because, no, that is not

[10]my testimony. I don't want you to think that I feel

[11]or believe or have learned that just because someone

[12]is involved in a violent crime, that automatically

[13]makes them more likely to have a lower life

[14]expectancy than if they were involved in an

[15]accident.

[16]When I said violent crime, I was

[17]referring to basically a subset of the population

[18]that I just described in the previous question.

[19]Q And I'll get to that.

[20]But would the injury or the --

[21]resulting in the paraplegia have any impact on the

[22]lower life expectancy?

[23]A No, not in my opinion.

[24]Q So all paraplegics have the same injury

[25]and risk of complications?

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[2]A No, I didn't say that either.

[3]Q So --

[4]A But the mechanism of the injury to the

[5]spinal cord itself does [*168] not impact on life

[6]expectancy. Unless of course there was a tumor or

[7]cancer and someone had metastatic disease. Short

[8]being a medical --

[9]Q Well, an individual who was a paraplegic

[10]in a poor area or as a result of a gunshot wound,

[11]would he expect a shorter life expectancy than the

[12]same individual who would be a paraplegic as a

[13]result of a car accident?

[14]A It depends on the individual. If the car

[15]accident victim was a drug addict and was drinking

[16]while on drugs or alcohol and is known to partake in

[17]dangerous behaviors and is involved in those things,

[18]possibly those two would have a much closer life

[19]expectancy.

[20]Again, when you do life expectancy

[21]studies, you don't study individuals, you study

[22]large groups of people. But you can certainly make

[23]predictions based on subgroups within a population.

[24]Just like white Americans have a much longer life

[25]expectancy than African Americans than do Indian

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[2]Americans. It's a similar concept.

[3]I'm just giving you a concept. I'm

[4]not quoting a specific study, but the concepts are

[5]very clear and very well-documented even in those

[6] [*169] studies.

[7]Q Is there a list of the studies that you've

[8]relied on in connection with your addendum report?

[9]A If you'd like to pay me for my time, I'll

[10]try to put one together for you.

[11]Q Did you look at specifically any studies?

[12]A As I stated, I went back to a couple of

[13]the rehab textbooks and I reached out to some

[14]colleagues.

[15]Q Do you have the names of those rehab

[16]textbooks?

[17]A I can get the names of the rehab

[18]textbooks.

[19]Q I'll leave a space in the transcript.

[20]A Okay.

[21]

[22]**INFORMATION TO BE PROVIDED**

[23]Insert: _____

[24]

[25]Q Is it your testimony that an individual --

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[2]no.

[3]Is it your testimony that an

[4]individual who is poor, I think earlier you said

[5]living in the ghetto or some environment, who has

[6]paraplegia has a less life -- has the same life

[7]expectancy as an individual who is poor and living

[8]in the ghetto without paraplegia?

[9]A No.

[10]Q Is it your testimony that an individual
[11]who is white, early 40s, has the same life -- and
[12]living in a middle class to upper middle [*170] class
[13]neighborhood, has the same life expectancy as that
[14]same individual who doesn't have paraplegia?

[15]MR. D'ALOISE: Read the question back,
[16]please.

[17]A The question didn't make sense to me.

[18]MS. ALIKAKOS: I'll withdraw and rephrase,
[19]'cause I think I left out a word.

[20]Q Is it your testimony -- withdrawn.

[21]Is it fair for me to say that a white
[22]male, early 40s who's suffered from paraplegia who
[23]lives in a middle income household, aside from the
[24]drugs and --

[25]A I understand. Presuming they're living a
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[1]
[2]healthy lifestyle.

[3]Q Has the same life expectancy as a white
[4]male individual, early 40s, living in middle income,
[5]not addicted to drugs would have if he didn't have
[6]paraplegia?

[7]A I'll answer the question if you let me
[8]state that I object to you using it white. I don't
[9]think it matters necessarily if they're white or
[10]black or Hispanic. I think it matters on social
[11]environment, and you're asking does one individual
[12]compared to another individual have a different life
[13]expectancy.

[14]Life expectancy is based on hundreds
[15]of thousands [*171] of people. It's my opinion, based on
[16]my knowledge base, that a paraplegic who is a
[17]paraplegic from a traumatic injury, who otherwise
[18]had -- otherwise had a normal life expectancy, if
[19]they have meticulous health care, if they have the
[20]means to support their wellness and their health
[21]care, that they will live a normal life expectancy.

[22]Q Do you think that the risk of the medical
[23]complications that you cite in your report and the
[24]numerous surgeries that he'll need -- that
[25]Mr. Rinaldi would need and the inability to drive
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[1]
[2]and the need for a hospital bed and the need for a
[3]home attendant and the need to move his house and
[4]the other things that you listed, do you consider
[5]any of those factors in diminishing his life
[6]expectancy?

[7]MR. D'ALOISE: Objection to form.

[8]Q Yes or no? You can answer.

[9]A To the contrary. I put the life care plan
[10]together with the express purpose of optimizing
[11]Mr. Rinaldi's life condition, and that encompasses
[12]health, sense of well-being, emotional well-being,
[13]physical well-being, his ability to have comfort and
[14]be taken care of when he needs [*172] it, his abilities to
[15]enter a social environment and have access to the
[16]community, not by sitting around and waiting for
[17]Access-A-Ride buses, if they even exist in

[18]Westchester, for four hours to get to one
[19]appointment, but to have access to the community by
[20]himself in an independent manner.
[21]It includes having those things like
[22]a hospital bed when needed so he can recover in a
[23]fairly quick way and still move himself around in a
[24]bed so he doesn't lie in a bed and get bedsores
[25]because he can't move or rotate.

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[1]
[2]It includes almost the comprehensive
[3]package. It's the comprehensive package of a life
[4]care plan that, quote, best mimics the existence of
[5]the patient prior to their trauma.

[6]MS. ALIKAKOS: I'm going to move to strike
[7]as non-responsive.

[8]A That's as clear as can be. That was so
[9]answering your question.

[10]Q It wasn't. But I appreciate your thinking
[11]that you answered my question.

[12]MR. D'ALOISE: I agree with the witness.

[13]MS. ALIKAKOS: I'm sure you do.

[14]Q However, we will go back to what we said
[15]earlier. You said that race isn't a factor? **[*173]**

[16]A In an individual.

[17]Q In an individual. Did you do --

[18]withdrawn.

[19]Is it your testimony that, barring
[20]race, that an individual of the same
[21]socioeconomic -- two individuals of the same

[22]socioeconomic background who have healthy lifestyles
[23]otherwise would have the same life expectancy,
[24]irregardless of whether one of those two individuals
[25]sustained paraplegia?
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[1]

[2]A Irregardless is not a word. My mother
[3]would spank you.

[4]Q Thank goodness she's not here.

[5]A But I'll answer the question.

[6]Q If you can answer it yes or no, that's

[7]fine. I'll rephrase.

[8]MR. D'ALOISE: You've already asked that
[9]question, but answer it again.

[10]A Statistically speaking, yes. Individuals
[11]you cannot answer for.

[12]Q Tell me the statistics that you rely on
[13]for that specific proposition.

[14]A I can't.

[15]Q Are there any published statistics
[16]specifically that support that proposition?

[17]A To my knowledge, there is not a specific
[18]statistic that compares an individual who is a
[19]paraplegic to an individual who is not a paraplegic,
[20]should they have [*174] the same social and medical
[21]environment. You can't do a study like that.

[22]Q In terms of life expectancy --

[23]A Unless they were identical twins.

[24]Q In terms of life expectancy?

[25]A Correct.
199

[1]

[2]Q So the study -- oh. You said that the

[3]Birmingham study and that similar studies don't

[4]consider certain things, including you talked about

[5]gunshot wounds and violent crimes?

[6]A Many of the studies actually do discuss

[7]that in the discussion part of the study, or in the

[8]methodology or in the conclusions.

[9]Q And is it your testimony that those

[10]studies say that the fact that an individual

[11]suffered a gunshot wound or a violent crime is a

[12]contributing factor into life expectancy, as opposed

[13]to an individual who did not suffer those

[14]circumstances?

[15]MR. D'ALOISE: Object to the form.

[16]A I can't answer. It's too confusing.

[17]Q Let me -- if you can't answer it, then

[18]that's your answer and I'll rephrase.

[19]Is it your testimony that the studies

[20]that Ms. Loeser and the other studies which talk

[21]about diminished life expectancy for paraplegic, as

[22]compared **[*175]** to the non-paraplegic, explain that the

[23]difference is attributed to the fact that an

[24]individual had been a victim of a violent crime or

[25]of lower social economic value?

200

[1]

[2]MR. D'ALOISE: Object to the form.

[3]A I won't answer that question because I

[4]don't think someone is of less value because they're

[5]poor.

[6]Q I didn't say that, and if I said that then

[7]you misunderstood my question. Because I certainly

[8]don't believe that.

[9]A Okay.

[10]Q Is it your testimony that the Birmingham

[11]study and the other studies that are out there that

[12]stand for the proposition that an individual who

[13]suffers paraplegia has a lower life expectancy than

[14]an individual who doesn't suffer from paraplegia are

[15]based on the fact that the individuals who did

[16]suffer a lower life expectancy were either victims

[17]of a violent crime, had a gunshot wound or had some

[18]other socioeconomic issue which caused the

[19]diminished life capacity?

[20]MR. D'ALOISE: Objection to the form.

[21]Q Is that your testimony?

[22]A That is my belief, and I believe most of

[23]the studies on life expectancy in their discussions

[24] **[*176]** and methodology point to those factors. As I said

[25]earlier, it's not just because they were a victim of

201

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[2]a violent crime. It's if they were a victim of a

[3]violent crime involved in that whole overall, I

[4]don't want to call it a community, but social

[5]setting. That then intermixes with the national

[6]statistics as well.

[7]But my testimony is there are

[8]definite differences.

[9]Q Would it be fair for me to say that if
[10]Mr. Rinaldi were to have a shorter life expectancy
[11]than age 78, then that your life care plan figures,
[12]the ones that go to age 78, would be lower, is that
[13]fair?

[14]MR. D'ALOISE: Read it back again.

[15](Record Read Back)

[16]MR. D'ALOISE: Object to the form. Do you
[17]understand the question?

[18]A I do understand the question, and I will
[19]clarify my answer with a per year. It's not correct
[20]with regard to the per year cost of my estimated
[21]care for him. It's correct with the overall
[22]compilation of cost for the time of his life.

[23]Q So the total, if I understand you, the
[24]total amount of anticipated life care costs over his
[25]lifetime would be less if he were [*177] --
202

[1]

[2]MR. D'ALOISE: If he died earlier.

[3]Q not to live a life expectancy to
[4]age 78?

[5]A Yes, if he was denied the excellent care
[6]life care plan as formatted in my life care plan and
[7]if he were to die earlier because of that, his
[8]expenses would be less.

[9]MS. ALIKAKOS: Move to strike as
[10]non-responsive.

[11]MR. D'ALOISE: That's what you asked him.

[12]MS. ALIKAKOS: That's not what I asked

[13]him. That's a qualified answer that does not

[14]respond to my question.

[15]MR. D'ALOISE: Just because you don't like

[16]the answer doesn't mean that you can just say

[17]move to strike.

[18]MS. ALIKAKOS: I'll rephrase the question.

[19]Since you objected to form anyway.

[20]Q If Mr. Rinaldi were to live less than

[21]age 78, would the total life care costs that you

[22]estimate be lower than -- do you have a total in

[23]here?

[24]A Yes, I do. That's page, I believe, 23.

[25]Q Then the \$ 2, 418, 519 to \$ 2, 526, 219?

203

[1]

[2]A The answer to that question is yes.

[3]Q In preparing your addendum report, did you

[4]review any published articles or materials regarding

[5]an [*178] individual who has suffered paraplegia

[6]specifically as a result of a lawn mower accident?

[7]A No, I did not.

[8]Q In preparing your report, did you review

[9]any materials with respect to the life expectancy of

[10]individuals who have been involved in accidents

[11]which have not involved paraplegia?

[12]MR. D'ALOISE: Just read it back.

[13](Record Read Back)

[14]A I find the question vague. It could be a

[15]car accident where they're in the ICU or run over by

[16]a car. It could be falling and breaking your wrist.

[17]So it's too vague a question to answer. I

[18]apologize.

[19]Q Let me specify.

[20]A Please.

[21]Q Did you review any studies of life

[22]expectancies of individuals who were involved in

[23]accidents which required extensive hospitalizations?

[24]A Not specifically, no.

[25]Q Did you review any studies regarding life

204

[1]

[2]expectancy for individuals who suffer -- who

[3]required surgical intervention?

[4]A Due to trauma?

[5]Q Yes.

[6]A Not specifically, no.

[7]Q Did you review life care studies with

[8]individuals who required surgical intervention other

[9]than **[*179]** for trauma? Not specifically with respect to.

[10]A Specifically review at this time, no, but

[11]that's part of my education and knowledge base.

[12]Q So no?

[13]A No.

[14]Q The National Spinal Cord Injury

[15]Statistical Center, are you familiar with them?

[16]A I'm aware that it exists.

[17]Q Have you ever considered their studies in

[18]connection with your performing an analysis as to a

[19]spinal cord injury victim?

[20]A I can't say if I considered that specific

[21]center's studies versus medical texts and general

[22]published literature.

[23]Q So is the answer no?

[24]A I just said I can't remember if I

[25]considered that specific center.

205

[1]

[2]Q In connection with your employment at Beth

[3]Israel, does Beth Israel have a specific unit with

[4]respect to spinal cord injuries?

[5]A There is a rehabilitation unit, yes.

[6]Q And are you part of that rehabilitation

[7]unit?

[8]A Not any longer, no.

[9]Q When did you stop?

[10]A I stopped running the inpatient

[11]rehabilitation unit in '96.

[12]Q Are you currently treating any individuals

[13]who have suffered spinal cord **[*180]** injuries?

[14]A Yes.

[15]Q How many individuals?

[16]A I have no idea. It's a small percent of

[17]my practice. Probably --

[18]Q Was that the one to 2 percent?

[19]A No, the one to 2 percent was the

[20]percentage of my income that comes from legal work.

[21]Probably about seven to 10 percent.

[22]Q And do those individuals vary in age?

[23]A Varies in age and severity.

[24]Q Do they vary in socioeconomic backgrounds?

[25]A Yes, they do.

206

[1]

[2]Q In those other instances, have you been

[3]asked to project a life care plan expectancy as to

[4]those individuals?

[5]A Life care plan expectancy?

[6]Q Withdrawn. I'm sorry.

[7]In those seven to 10 percent, have

[8]you been asked to perform a life care plan for those

[9]individuals?

[10]A No.

[11]Q In those 7 to 10 percent, have you

[12]performed an analysis as to their life expectancy?

[13]A I have answered questions with regard to

[14]people asking me about their specific fate, and I

[15]talk to them about what is my understanding of the

[16]medical literature.

[17]Q Right, but have you performed an

[18]assessment, reviewed materials [*181] and --

[19]A To my knowledge, there is no way to

[20]predict someone's life expectancy. You asked an

[21]individual. There is no way unless someone has

[22]terminal cancer and they're due to die tomorrow.

[23]That's not the case we're dealing here.

[24]MS. ALIKAKOS: I'm going to just look at

[25]my notes, but I think I'm done.

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[1]

[2](Brief Recess Taken)

[3]MS. ALIKAKOS: I have no further questions

[4]at this time. Thank you very much.

[5]THE WITNESS: Thank you very much for your
[6]time.

[7]MR. D'ALOISE: Can you read the last
[8]answer back to the last question.

[9](Record Read Back)

[10]MR. D'ALOISE: I just have a couple of
[11]questions.

[12]EXAMINATION BY

[13]MR. D'ALOISE

[14]Q The answer that was just read back, your
[15]answer was that there's no way to predict a person's
[16]life expectancy. Yet in your report regarding
[17]Timothy Rinaldi, you predicted his life expectancy.
[18]Can you explain to me how those two things jive?

[19]A I will clarify. In my life care plan it's
[20]my estimation of his life expectancy, not an exact
[21]prediction, and I guess there's some semantics
[22]there.

[23] **[*182]** To me, I think I was answering a
[24]specific question about whether or not I could
[25]predict the exact life expectancy of an individual,
208

[1]
[2]and you can't because they could cross the street in
[3]their wheelchair and be run over by a truck. They
[4]could have any number of events that can change
[5]their life expectancy instantly. But in general,
[6]you can estimate an individual's life expectancy
[7]based on their past medical history, any past

[8]medical illnesses.

[9]In this case, someone who is

[10]paraplegic, but in my opinion, because he will have

[11]access and hopefully follow what I consider healthy

[12]living, not necessarily what he terms as healthy

[13]living, you can predict that statistically his life

[14]expectancy aligns with those of able-bodied people

[15]in his age group.

[16]Again, if I were -- and that normal

[17]life expectancy actually might be substantially less

[18]than he might have experienced then if he wasn't

[19]injured, because of his nature, of his excellent

[20]health, his sports activities, his fitness plan, the

[21]fact that he had the wherewithal to become a

[22]world-class athlete.

[23]These things -- again, ***183** I'm not

[24]predicting, but I'm saying these things might have

[25]made his life expectancy much greater than the

209

[1]

[2]average. There are people today, all the time we

[3]hear about people living well beyond.

[4]So in my estimation, based on his

[5]injury and the fact that he falls into a subset of

[6]paraplegics who have access to good care, who have a

[7]good support environment, who have a personality

[8]that makes him drive and strive for improving his

[9]life and lifestyle, I think with implementing

[10]excellent health care and the appropriate preventive

[11]measures and the appropriate treatment when

[12]indicated, doesn't mean he'll have rosy times all

[13]the time, but I do think he will live to a full 78

[14]years, give or take a minor amount.

[15]MR. D'ALOISE: Thank you.

[16]EXAMINATION BY

[17]MS. ALIKAKOS

[18]Q Your counsel just asked you, to follow up

[19]on that, and you listed a whole myriad of things and

[20]said that Plaintiff could even have a greater life

[21]expectancy than 78. Two parter. Is it your

[22]testimony that Plaintiff has a greater life

[23]expectancy of 78, now knowing all we know about

[24]Mr. Rinaldi?

[25] **[*184]** A No, or I would have stated that in the
210

[1]

[2]report.

[3]Q Is it your testimony that an individual

[4]who's suffered paraplegia, who is otherwise of

[5]healthy living and active and doing -- a world-class

[6]athlete such as Mr. Rinaldi, would expect to have a

[7]life expectancy of at least 78?

[8]A If he takes meticulous care of himself and

[9]addresses his health issues, yes, that's my

[10]testimony.

[11]Q Would an individual who is quadraplegic

[12]have the same expectancy, barring everything being

[13]equal?

[14]A No.

[15]Q Why?

[16]A Quadraplegia is a whole different ball
[17]game. You have loss of nerve below your cervical or
[18]in the cervical. If it was below the cervical you'd
[19]still have arm use.

[20]So quadraplegia involves spinal cord
[21]injury in the neck. You have substantially more
[22]risk for just respiratory problems, respiratory
[23]failure. Substantially greater loss of activity and
[24]mobility so you have a higher risk for vascular
[25]complications. You have a much higher risk for
211

[1]
[2]cardiovascular illness. The skin conditions of a
[3]quadraplegic are disastrous, and often that alone
[4] **[*185]** would lead to great infection.
[5]Different set of emotional issues.
[6]Different inabilities to -- they usually cannot
[7]self-catheterize, so much higher risk of kidney
[8]infection. They can certainly not take care of
[9]their own bowel or bladder programs. So often have
[10]indwelling catheters which lead to infections.

[11]I'm not done. I can go on for 20
[12]minutes if you want a lecture.
[13]Q I don't need a lecture. I just need an
[14]answer to my question.

[15]A There are hundreds of conditions that can
[16]occur to a quadraplegic that aren't likely to occur
[17]to a paraplegic.

[18]Q If an individual were to have medical
[19]complications such as skin irritations, ulcers,

[20]cardiac issues, kidney dysfunction, neurological
[21]impairment, sexual dysfunction, psychological
[22]impairment, would you consider those factors as
[23]contributing to a shorter life expectancy than an
[24]individual who didn't have all these complications
[25]happen to him, yes or no?
212

[1]

[2]A Can't answer that.

[3]Q My question to you, sir, was -- you said

[4]you can't answer it. I'm not going to go back.

[5]So if Mr. Rinaldi did not **[*186]** suffer

[6]paraplegia, would you still anticipate that he would

[7]need the life care plan and treatment that you set

[8]forth in his life care plan?

[9]MR. D'ALOISE: I'd object on this grounds:

[10]Are you saying he's suffered no injury or just

[11]not paraplegia? I mean, I don't think it's a

[12]fair question.

[13]Q If Mr. Rinaldi were not to have suffered

[14]paraplegia, would he still have the likelihood of

[15]developing complications from ulcers?

[16]MR. D'ALOISE: If he just injured the

[17]other parts of his body?

[18]A Gastrointestinal ulcers or skin ulcers?

[19]Q Skin ulcers, right.

[20]A It would depend on what injury he did

[21]have. Are you assuming if we just take him and

[22]erase the paraplegia?

[23]Q Yes.

[24]A No, he would not. There's a tiny percent

[25]of the population, especially diabetics, for
213

[1]

[2]example, that get decubiti. But in his present

[3]condition and erasing the paraplegia as a

[4]hypothetical, it's my opinion he would not.

[5]Q With respect to -- would he be at greater

[6]risk to have any of the bowel or bladder infections

[7]or complications had he not had the paraplegia?

[8] [*187] A Rephrase it, if you would.

[9]Q Would Mr. Rinaldi be at greater risk of

[10]having urinary tract infections, skin ulcers, deep

[11]vein thrombosis, bowel obstruction, had he not been

[12]paraplegic?

[13]MR. D'ALOISE: Object to the form.

[14]A I'm not being mean, it's just not clearly

[15]stated. I can still answer it.

[16]Q If Mr. Rinaldi did not have paraplegia,

[17]would you calculate the need for -- well, withdrawn.

[18]Had Mr. Rinaldi not been paraplegic,

[19]would you still, in your life care plan, include the

[20]possibility of medical complications resulting from

[21]a urinary tract infection, deep vein thrombosis?

[22]A Those complications, no.

[23]Q Would an individual who suffered from

[24]bowel or bladder dysfunction, deep vein thrombosis,

[25]kidney disease, have a shorter life span,

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[1]

[2]anticipated life span than an individual who didn't

[3]suffer from those injuries?

[4]A In my opinion, if they were extremely

[5]well-managed they would have a change in their

[6]general well-being, but not necessarily an increase

[7]in their life -- decrease in their life expectancy,

[8]unless it went on to kidney failure. **[*188]** But if it was

[9]well-managed and treated, it shouldn't come to that.

[10]Q Your statement that Mr. Rinaldi was a

[11]world-class athlete and certain other things when

[12]counsel asked you to explain your statement

[13]before -- I'm going to misstate it.

[14]You said that your statement was

[15]based on -- his life care plan was based on an

[16]estimation, and that he may have had a greater life

[17]expectancy due to the fact that he was an athlete

[18]and of good general well-being. Is there a specific

[19]study that you can point to to support that

[20]conclusion?

[21]A No, there is not.

[22]MR. D'ALOISE: I didn't get a chance to

[23]object to the form, so just throw it in there.

[24]MS. ALIKAKOS: I think I have no more

[25]questions, unless you do.

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[2]MR. D'ALOISE: I don't.

[3]MS. ALIKAKOS: Thank you.

[4]THE WITNESS: Thank you.

[5](Time Noted 3:53 PM)

[6]_____

[7]STUART B. KAHN, M. D.

[8]

[9]

[10]Subscribed and sworn to before me this _____ day

[11]of _____ 2010.

[12]_____, Notary Public.

[13]

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[1] [*189] I N D E X

WITNESS

STUART B. KAHN, M. D.

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[22]

[22]

[23]Counsel has retained all exhibits.

[24]

[25]

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[1]C E R T I F I C A T I O N

[2]

[3]I, SUSIE CABANAS-DIAZ, a Court Reporter

[4]and Notary Public within and for the State

[5]of New York, do hereby certify:

[6]That the witness whose deposition

[7]is herein before set forth, was duly sworn

[8]by me, and that the within transcript is a
90 true record of the testimony given by such

[10]11 witness.

[11]12 I further certify that I am not

[12]13 related to any of the parties to this action

[13]14 by blood or marriage, and that I am in no way

[14]15 interested in the outcome of this matter.

[15]16 IN WITNESS WHEREOF, I have hereunto

[16]17 set [*190] my hand this day of , 2010.

[17]

[18]

[19]_____

[20]SUSIE CABANAS-DIAZ

[21]

[22]

[23]

[24]

[25]

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[SEE ERRATA SHEET IN ORIGINAL]

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