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1 Dr. Schuster - Plaintiff - Direct
 2 brain dysfunction would be someone with a chronic history of
 3 alcoholism and now they developed a organic brain syndrome
 4 from that. People with learning disabilities. So all these
 5 issues come up in terms of getting people back to work and
 6 providing appropriate training for them. Doing evaluations
 7 for kids that are planning to go to college. They have to
 8 have accommodations that will be necessary. Those
 9 situations.
 10 Q. Have you been qualified as an expert in vocational
 11 rehabilitation in the past?
 12 A. I have.
 13 Q. In the State of New York?
 14 A. I have.
 15 Q. Approximately how many times?
 16 A. Hundreds of times.
 17 Q. And have you been qualified as an expert in the
 18 field of neuropsychology?
 19 A. Same thing. Hundreds of times. You didn't
 20 mention, I have twenty-five chapters in articles and
 21 journals and books relating to these types of issues.
 22 Q. Have you ever held any academic positions?
 23 A. I have. I was --
 24 Q. Can you tell us about that?
 25 A. I was an Associate at Adelphi University, the Ph.D.
 26 program, clinical psychology, dealing with

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 2 neuropsychological supervision for their Ph.D. candidates.
 3 Q. And --
 4 MR. MORGAN: Your Honor, at this time I would
 5 offer Dr. Schuster as an expert in the field of
 6 neuropsychology and vocational rehabilitation.
 7 THE COURT: Any objection?
 8 MR. JOSEPH: I have no objection to qualifying
 9 him as a vocational rehabilitation expert. He was not
 10 disclosed as a neuropsychological expert. And that
 11 doesn't seem to be fleshed out in the C.V. so I would
 12 object.
 13 THE COURT: Okay. Over objection the witness
 14 is deemed an expert in the field of neuropsychology and
 15 vocational rehabilitation.
 16 MR. MORGAN: Thank you, your Honor.
 17 Q. Doctor, were you asked at some point in time to
 18 conduct a full vocational and neuropsychological and
 19 psychological assessment of --
 20 A. And rehabilitation assessment too.
 21 Q. And when were you asked to do that?
 22 A. In -- initially in 2012.
 23 Q. And that was the first time you saw him?
 24 A. I saw him initially on June 8th and July 18th,
 25 2012, for approximately ten hours.
 26 Q. And did you have a follow-up where you checked on

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 2 his progress?
 3 A. I saw him again on September 10th, 2015. For
 4 approximately an additional three hour update.
 5 Q. Did you receive a fee for those professional
 6 services?
 7 A. Did I receive a fee?
 8 Q. Yes.
 9 A. Yes.
 10 Q. What is your fee for preparing cases and
 11 testifying?
 12 A. It was --
 13 Q. For doing your assessment.
 14 A. Probably -- I think 2012 it's 350 an hour.
 15 Q. Okay. And you also charged a fee for when you --
 16 when you did the follow-up and for being here today; is that
 17 correct?
 18 A. Yes, that's correct.
 19 Q. Do you receive the same fee no matter the outcome
 20 of this case?
 21 A. It's irrelevant.
 22 Q. And are those usual and customary charges for a
 23 doctor with your specialties and qualifications?
 24 MR. JOSEPH: Objection. No foundation.
 25 THE COURT: Overruled. You may answer.
 26 A. I may answer?

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1 Dr. Schuster - Plaintiff - Direct
 2 Q. You may answer.
 3 A. It's probably on the lower side, frankly.
 4 Q. And, Doctor, have you ever been retained by
 5 Mr. Joseph's law firm to do a similar evaluation as you did
 6 to Mr. Barra?
 7 A. We checked on that and I believe I have.
 8 Q. And that was in the Williams case, right, Doctor?
 9 A. It was.
 10 Q. And you are here in part to testify about a life
 11 scare plan?
 12 A. I am.
 13 Q. And can you tell the jury what is a life care plan?
 14 A. A life care plan is an understanding of the future,
 15 probable future rehabilitation needs of a person from now
 16 until the day of their death.
 17 Q. And can you tell the jury what is involved and what
 18 you did as far as preparing to perform that assessment?
 19 A. I went through voluminous records. I had two
 20 evaluations with Mr. Barra. We then took all the
 21 information from these sources and -- plus my own experience
 22 in the field, developed a future care needs analysis based
 23 upon this, including his current treatment plan, and did the
 24 research and came up with an understanding of how much these
 25 services will cost.
 26 Q. And can you tell us what your findings were from

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1 Dr. Schuster - Plaintiff - Direct
 2 the interview process with Mr. Barra?
 3 A. Okay. Very, very, very succinctly. What is
 4 relevant is that he was a high school graduate in the Bronx.
 5 Went to work very rapidly as a heavy equipment operator and
 6 became a crane operator. That was basically his work
 7 history. He was injured in 2010 and did not return to work
 8 since that point. There were no indications prior that I
 9 could find prior to his accident of any significant
 10 functional or medical problems impeding his ability to
 11 perform his job. After his injury he had multiple medical
 12 issues, as well as multiple psychiatric and
 13 neuropsychological problems as well.
 14 He had difficulties with memory, concentration,
 15 anxiety, depression on top of pain issues and functional
 16 limitations. He was involved in a very intensive
 17 rehabilitation program for many years. Eventually moved to
 18 Florida. And when I saw him that is where he was residing,
 19 in Florida by himself with his dog. I integrated the two
 20 interviews together, bringing it up to the -- he tried to
 21 reestablish in Florida at the time I saw him. Some type of
 22 rehabilitation plan, but a lot of the services he was getting
 23 before had been terminated and not been reinstated. These
 24 are mostly psychological and psychiatric services. Lots of
 25 the doctors. He was no longer being followed for the same
 26 reason. He was still active in pain management on a monthly

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 2 basis and he started to purchase for himself additional
 3 palliative treatment for exercise and massage. He was paying
 4 for that privately. He as on some medications for pain and
 5 depression at the time as well. And fundamentally he
 6 described a very isolated lifestyle at the point I saw him.
 7 Just trying to get through each day as best he could but
 8 mostly by himself.
 9 MR. JOSEPH: Your Honor, I have an objection --
 10 I didn't want to cut him off -- that we need to address.
 11 THE COURT: Can you approach?
 12 (Whereupon, an off-the-record side-bar
 13 conference was held.)
 14 - Proceedings continue next page -
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1 Dr. Schuster - by Plaintiff - Direct
 2 DIRECT EXAMINATION (CONTINUING)
 3 BY MR. MORGAN:
 4 THE COURT: The objection is overruled. Your
 5 exception is noted for the record.
 6 MR. JOSEPH: Thank you.
 7 THE COURT: I will allow you to make a record
 8 later.
 9 MR. JOSEPH: Thank you, your Honor.
 10 THE COURT: You may continue.
 11 MR. MORGAN: Thank you, your Honor.
 12 Q Did you do any independent tests, neuropsychological
 13 testing on Mr. Barra?
 14 A I did.
 15 Q Could you tell the jury what those tests results
 16 showed?
 17 A It was -- the reason he was there for ten hours, this
 18 included IQ tests memory tests academic tests, tests involving
 19 more complex neuropsychological processes like multi-tasking and
 20 shifting between different ideas rapidly.
 21 Also, throughout the battery and the history
 22 there were indications of the Mr. Barra having very significant
 23 problems in terms of his performance. And even when I saw him,
 24 just talking to him he would -- I was giving him the test
 25 battery, at times he was with it and other moments he was just
 26 not there. He just lost it. He wasn't able to focus or provide

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 2 appropriate effort. So the major finding of everything was
 3 certainly his overall levels of cognitive performance which was
 4 significantly below what you would expect. I estimated through
 5 a variety of different demographic means and other tests that
 6 his intelligence would have been essentially average and his
 7 performance now overall was significantly below that, his
 8 performance ranging from very defective to above average at
 9 times. But the major thing was, and a bunch of assignments were
 10 given to assess his ability to apply appropriate effort and
 11 concentrate and focus, and what came out was he couldn't do it.
 12 Sometimes he is able to just the way he impressed, sometimes he
 13 couldn't.
 14 So there was this marked unpredictability in his
 15 performance that made it, from my perspective, impossible for
 16 him to even return to work that was physically within his
 17 repertoire to do because literally even if he got hired, from
 18 one second to the next he couldn't be expected necessarily to
 19 negotiate an assignment that he had successfully done two hours
 20 ago and now all of a sudden he failed. That's the way he did
 21 the test material. He would fail one time on an assignment that
 22 required a certain type of skill and then do very well on
 23 another assignment that required the same skill. He would fail
 24 a very simple simple test and do better on a more complex one,
 25 so there is marked unreliability.
 26 These difficulties appear to reflect problems

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1 Dr. Schuster - by Plaintiff - Direct
 2 with executive functioning, meaning being able to translate his
 3 abilities effectively into life, likely compounded by
 4 psychiatric difficulties, pain problems, and other types of
 5 problems. It is all commingled at the time I saw him several
 6 years post-accident, but this was the major picture that emerged
 7 from the testing.
 8 Q Did you have an opportunity to review the findings of
 9 Dr. Buchsbaum and Dr. Busichio?
 10 A I did.
 11 Q How did your findings correlate with their findings?
 12 A My testing is most incongruent with the last testing
 13 done by Dr. Busichio. The first testing he was more impaired so
 14 there was some slight recovery. That was incongruent with my
 15 findings. And Dr. Buchsbaum's findings of an underlying
 16 traumatic brain injury would, of course, make sense as well.
 17 That's the way his history displays itself. His functioning is
 18 fine, there is an accident, his functioning drops, his
 19 functioning gradually recovers, he plateaus at a lower level.
 20 This would be the expected sequela or progression from a head
 21 injury as well.
 22 Q When you do these assessments, doctor, do you check
 23 for effort in the patient or in the plaintiff?
 24 A I gave him six tests of effort. Some he passed and
 25 some he failed. Some he passed were in the same area than some
 26 that he failed. It happens just again and again.

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1 Dr. Schuster - by Plaintiff - Direct
 2 But one of the assignments I chose to give him --
 3 well, maybe I should explain the tests a little more?
 4 Q Sure.
 5 A These tests are both administered individually and are
 6 embedded within the test material. Basically, these are
 7 assignments that often on the surface appear difficult but in
 8 actuality are typically performed adequately by people who have
 9 a brain injury. And there are also various levels. You know,
 10 the more impaired you get on it, the more likely it is that the
 11 person is having difficulty applying appropriate effort. And if
 12 it reaches a certain level and it looks like the person is
 13 purposely suppressing, malingering.
 14 So with a lot of these tests you can see if the
 15 person is able to apply appropriate effort or not, but it
 16 doesn't distinguish between someone who may be purposely
 17 malingering or not. It is clear he should be able to pass
 18 another test with a similar ability. He doesn't, so something
 19 is happening at that moment.
 20 One of the tests that I gave breaks it down --
 21 it's the paper and pencil assignment of verbal and nonverbal
 22 skills. But it breaks it down to a different compliant
 23 approach, a valid compliant approach. And it is invalid because
 24 the person is either careless, can't keep consistent effort,
 25 irrelevant, he is just almost is not focusing at all; or
 26 malingering.

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1 Dr. Schuster - by Plaintiff - Direct
 2 It is a sophisticated test. It has to be
 3 computer scored, you can't even score by hand. And, basically,
 4 the results came out invalid but inconsistent and irrelevant,
 5 not suppressed, not malingering, which is the way he appears
 6 when you talk to him and start giving these assignments.
 7 Clearly he has difficulty applying appropriate
 8 effort. It is very inconsistent, but it is not a pattern that
 9 you would see with someone who was actively malingering. The
 10 active malingerer, they fail everything, whatever. It doesn't
 11 make sense for someone who is trying to fake that they are
 12 impaired to fail a memory test one second and then do adequately
 13 on the next. This is obviously not going to be, you know,
 14 indicative of someone saying, Gee, I am so screwed up I can't
 15 remember everything.
 16 So the results were congruent with someone who
 17 has difficulty applying appropriate effort but is not
 18 malingering.
 19 Q Someone who is trying to increase the value of the
 20 lawsuit, would you expect to see their scores in the --
 21 MR. JOSEPH: Objection. Leading his witness.
 22 THE COURT: Sustained. Rephrase.
 23 MR. MORGAN: No problem, your Honor.
 24 Q With regard to the fact that he improved in the
 25 testing post-therapy, how would you describe that with regard to
 26 the idea of malingering or taking the symptoms?

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1 Dr. Schuster - by Plaintiff - Direct
 2 A Again, that would not be congruent as well. I should
 3 also add that I gave him a lot of personality assignments about
 4 how you are getting along. He described himself, of course, as
 5 being very depressed, anxious, and overwhelmed.
 6 Inside these scales as well are validity indices.
 7 So if you are going to ask someone to give an opinion about
 8 themselves and their lives you want to know, you know, are they
 9 minimizing, are they exaggerating; and he produced a valid
 10 profile as well. There are trick questions in there. And I can
 11 explain additionally, but, regardless, it was valid as well. So
 12 the picture is of someone who is presenting a valid indication
 13 of his functioning.
 14 Q And can you tell me what a rehab investigation is?
 15 A I'm not exactly sure what --
 16 Q You said you did a rehab assessment on Joseph Barra
 17 and the job market.
 18 A Okay.
 19 Q Could you tell us what investigation you did there?
 20 A Okay. He was approaching age 60. Obviously
 21 intellectual functioning as we mentioned was very, very, very
 22 erratic, unreliable. It was clear to me that even if he was --
 23 I should add if he was able to function predictably and
 24 reliably, okay, he probably would then be able to do some very
 25 basic type of work, okay, at age 60. He wasn't going to be
 26 retrained for anything, so \$12 an hour, \$15 an hour. It would

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1 Dr. Schuster - by Plaintiff - Direct
 2 be more to keep him busy, part-time work. But the point is he
 3 is so unpredictable that obviously even if he gets hired he is
 4 going to get canned in a couple of weeks because one second to
 5 the next he is going to be making mistakes. There will have to
 6 be oversight, he is not going to produce effectively on a test
 7 he did the day before.
 8 So my conclusion was that unless he was able to
 9 develop some more predictive consistent abilities, certainly at
 10 age approximately 60 he's not going back to work.
 11 Q Did you perform a life care plan in this case, doctor?
 12 A I did.
 13 MR. MORGAN: Your Honor, may I have it marked for
 14 identification?
 15 THE COURT: Sure.
 16 (Exhibit marked for identification
 17 as Plaintiff's Exhibit 23.)
 18 Q Doctor, would that assist you in explaining your
 19 opinion?
 20 A Sure, I think it would make it very clear.
 21 MR. MORGAN: Your Honor, I also enlarged the life
 22 care plan. May I have that marked as 23A?
 23 THE COURT: Mark it as 23A.
 24 MR. JOSEPH: Your Honor, he is going to display
 25 something that is not in evidence?
 26 THE COURT: It is not in evidence yet. Let's

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1 Dr. Schuster - by Plaintiff - Voir Dire
 2 have it marked for ID.
 3 (Exhibit marked for identification
 4 as Plaintiff's Exhibit 23A.)
 5 MR. MORGAN: Your Honor, may I allow the doctor
 6 to show the jury this as demonstrative only until he
 7 completes his testimony?
 8 MR. JOSEPH: Objection. It is not in evidence.
 9 THE COURT: You have to put the document in
 10 evidence first. Then he can do that.
 11 MR. MORGAN: Your Honor, I offer the life care
 12 plan into evidence.
 13 THE COURT: Any objection?
 14 MR. JOSEPH: Yes. I would like do voir dire.
 15 THE COURT: Voir dire.
 16 VOIR DIRE EXAMINATION
 17 BY MR. JOSEPH:
 18 Q Good morning, doctor. I am Ron Joseph. We've never
 19 bet before, correct?
 20 A I don't believe so.
 21 Q We never dealt with each other?
 22 A Not that I recollect.
 23 Q I never retained you?
 24 A Not you personally.
 25 Q Doctor, this life care plan you have is how many
 26 pages?

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1 Dr. Schuster - by Plaintiff - Voir Dire
 2 A Eight pages.
 3 Q Okay.
 4 And you list a bunch of medical providers and
 5 medical type providers on the first two pages?
 6 A I do.
 7 Q And what is the difference between the two pages?
 8 A Between the medical therapy evaluations and care? One
 9 is an evaluation, one is a follow-up visit. There are generally
 10 two different prices on those.
 11 Q This is for going forward?
 12 A Going forward.
 13 Q Doctor, without getting into amounts of care and how
 14 much things cost, have you reviewed Mr. Barra's medical records
 15 for the past two or three years?
 16 A I believe in general I have.
 17 Q And when is the last time he saw a physiatrist or pain
 18 management specialist?
 19 A Pain management doctor, once a month now.
 20 Q When is the last time he saw an orthopedist?
 21 A That's the point. He hasn't been doing that, true.
 22 It has been lost. It needs to be reestablished.
 23 Q When was the last time he saw a neurologist?
 24 A The same thing. And an ENT specialist also.
 25 Q When is the last time he saw a neurosurgeon or spinal
 26 surgeon?

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1 Dr. Schuster - by Plaintiff - Voir Dire
 2 A I think he had an update with Dr. Radner recently.
 3 Q Is there a record of that?
 4 A Yeah. I have a report from Dr. Radner, 10/15/15.
 5 Q When is the last time he saw an otolaryngologist? And
 6 just for the members of the jury, that's an ear nose and throat
 7 specialist, correct?
 8 A Yes.
 9 Q When is the last time he saw an otolaryngologist?
 10 A Several years ago. All that stopped when he went to
 11 Florida. It wasn't approved anymore by Worker's Comp.
 12 MR. JOSEPH: Objection.
 13 THE COURT: Sustained. Strike it. The jury will
 14 disregard it and dismiss it from your minds.
 15 THE WITNESS: Sorry, your Honor.
 16 Q Did an otolaryngologist say he needed continued care;
 17 yes or no?
 18 A Did I ever note that?
 19 Q No. Did an otolaryngologist ever state that he needed
 20 continued care; yes or no?
 21 A I would have to go back through the records. I can't
 22 recollect.
 23 Q Well, it is in your report, isn't it?
 24 A Yeah. I put it in the report as a case manager given
 25 his complaints that he should continue to be monitored by an
 26 otolaryngologist, that's correct.