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1 Dr. Schuster - by Plaintiff - Voir Dire  
 2 Q But you don't know if an otolaryngologist even said he  
 3 needed additional care or whether the care he may have required  
 4 at one point had anything to do with this accident; isn't that  
 5 correct, yes or no?  
 6 A That's not correct. His symptoms had things to do  
 7 with the accident.  
 8 Q I am not asking you what you think the symptoms had to  
 9 do with. I am asking you about the otolaryngologist.  
 10 A That I believe --  
 11 Q Have you seen a report from an otolaryngologist saying  
 12 that he needs continued care; yes or no?  
 13 MR. MORGAN: Objection, your Honor. That wasn't  
 14 the question he was answering.  
 15 MR. JOSEPH: I am breaking it down now.  
 16 A I didn't see an otolaryngologist address that one way  
 17 or the other. That's the best way I can answer that. It never  
 18 was addressed one way or the other. He certainly was in care  
 19 with this guy, symptoms certainly required him to see that  
 20 specialist after his accident; but no specialist opined one way  
 21 or the other whether he should not have ongoing care or not that  
 22 I could recollect.  
 23 Q All right.  
 24 The otolaryngologist didn't write a report saying  
 25 that he had symptoms as a result of this incident, did he; yes  
 26 or no?

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1 Dr. Schuster - by Plaintiff - Voir Dire  
 2 A I believe there are reports. If you want me to find  
 3 them, I will. Do you want me to look for them?  
 4 Q Sure.  
 5 A (Perusing) Michael Tom, 8/16/11. He was seen for  
 6 complaints, ENT complaints of tinnitus and vertigo. Complete  
 7 audiometric evaluation was abnormal, he should be seen in two  
 8 months.  
 9 In addition --  
 10 Q Doctor --  
 11 A Can I just --  
 12 Q Does that say anything there was caused by the alleged  
 13 incident; yes or no?  
 14 A He doesn't mention that specifically.  
 15 Q That's what I am asking, doctor. Did the  
 16 otolaryngologist, the ENT specialist, write a report indicating  
 17 that Mr. Barra needed treatment because of this incident? You  
 18 said yes, and then you read that. Where does the doctor say  
 19 that whatever the treatment is that Mr. Barra required back then  
 20 was required because of this alleged incident?  
 21 A The treating doctor --  
 22 Q Doctor --  
 23 A Do you want me --  
 24 Q I am asking: Does it say anywhere in his records that  
 25 it was caused by this incident, yes or no?  
 26 A I have to go back to the initial report.

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1 Dr. Schuster - by Plaintiff - Voir Dire  
 2 Q You are looking at it now.  
 3 A No. I am looking at my medical summary.  
 4 He developed the tinnitus and the vertigo after  
 5 the accident, but I can only tell you -- I mean, the doctor and  
 6 treating doctors may or may not deal with that to begin with.  
 7 He goes on to say he needs -- that he should be followed, needs  
 8 functional testing. So the doctor was certainly recommending  
 9 continued care.  
 10 Q But the doctor never said that this was causally  
 11 related by there incident; isn't that correct?  
 12 A I have to go back and look, but not that I could  
 13 recollect. Certainly his symptoms developed right after the  
 14 accident.  
 15 Q Doctor, are you familiar with what tinnitus is? I  
 16 know you are not a doctor, are you, a medical doctor?  
 17 A Of course I know what tinnitus. And no, I am not a  
 18 medical doctor.  
 19 Q It's ringing in the ears, right?  
 20 A Right.  
 21 Q Do A lot of people who have been working 25 or 30  
 22 years in construction with heavy equipment, do they develop  
 23 tinnitus?  
 24 A They could.  
 25 Q Doctor, you have a life care plan involving a  
 26 psychiatrist and psychologists as well, correct?

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1 Dr. Schuster - by Plaintiff - Voir Dire  
 2 A I do.  
 3 Q When Mr. Barra was living here in New York after the  
 4 incident, how many times did he see a psychiatrist?  
 5 THE COURT: Hold on a second, counsel. Is this  
 6 voir dire or cross-examination?  
 7 MR. JOSEPH: It's voir dire because he's got --  
 8 THE COURT: No, no, no. Voir dire goes to the  
 9 admissibility of the document.  
 10 MR. JOSEPH: I am not trying to argue, Judge,  
 11 but --  
 12 THE COURT: That's what I want to hear, because  
 13 what I heard so far is cross-examination --  
 14 MR. JOSEPH: Okay.  
 15 THE COURT: -- which is another story.  
 16 MR. JOSEPH: Okay.  
 17 THE COURT: I want voir dire.  
 18 Q So, you have a psychiatrist and a psychologist there.  
 19 Where did you get the information of -- let me back up.  
 20 Where did you get the information that he needed  
 21 a psychiatrist?  
 22 THE COURT: Counsel, go to the admissibility of  
 23 the document. He proposed a document in evidence. You are  
 24 testing that.  
 25 MR. JOSEPH: I am going to foundation.  
 26 THE COURT: That's what I want to hear.

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1 Dr. Schuster - by Plaintiff - Voir Dire  
 2 MR. JOSEPH: Yes, your Honor. I'm going to  
 3 foundation.  
 4 Q Where did you get the information that he needed to  
 5 see a psychiatrist eleven times a year?  
 6 A He is on psychiatric medication. And as a  
 7 psychologist and case manager, he is on psychiatric medication,  
 8 and given his current psychiatric psychological adjustment, he  
 9 needs to be monitored by a psychiatrist.  
 10 Q So no medical doctor said that, correct?  
 11 A He is on psychiatric medications right now.  
 12 Q No medical doctor said he needed to be seen by a  
 13 psychiatrist, which is a medical doctor, eleven times a year; is  
 14 that right?  
 15 A Do you want me to back to Dr. Zager's report? You are  
 16 asking me if a psychiatrist made these recommendations. Yes, a  
 17 psychiatrist made these recommendations. But, you know,  
 18 regardless even if the psychiatrist didn't, I would say you  
 19 don't take psychiatric medications without being adequately  
 20 monitored. Given his condition, he needs to be adequately  
 21 monitored. That would be my opinion.  
 22 I wouldn't tell you what psychiatric medication  
 23 would be appropriate for him. Let the psychiatrist decide that.  
 24 But as a psychologist and case manager, this will be the  
 25 standard of care he needs.  
 26 Q Did a psychologist other than you indicate that he

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1 Dr. Schuster - by Plaintiff - Voir Dire  
 2 needs this amount of sessions going forward?  
 3 A You want me to read --  
 4 Q I am asking you --  
 5 A Yes.  
 6 Q Who?  
 7 A The exact sessions are -- I am a psychologist, I can  
 8 make that determination myself based upon my own evaluation of  
 9 Mr. Barra, his testing, my examination.  
 10 We haven't talked about what happened when he  
 11 came to my office the last time about this gentleman really  
 12 being -- feeling inhibited to express himself, and finally when  
 13 he gets comfortable he's weeping in my office and really  
 14 feeling -- if I didn't have another client sitting out there  
 15 that I had to see, we could have sat for another two hours and  
 16 he would have discussed with me his feelings.  
 17 He needs counseling. That's my professional  
 18 assessment as a psychologist. I don't need another psychologist  
 19 to say he needs someone to go in 50 or 100 times a year. I am  
 20 telling you he needs it. That's the way he filled out the forms  
 21 and my discussion with him all corroborate that.  
 22 Q What about the cognitive remediation? Did anybody who  
 23 offers cognitive remediation indicate he needs to be followed as  
 24 you describe in your conclusion?  
 25 A Right. In Dr. Busichio's report that's a  
 26 recommendation explicitly.

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1 Dr. Schuster - by Plaintiff - Direct  
 2 MR. MORGAN: Your Honor, may I move the document  
 3 in evidence and move on with the investigation?  
 4 MR. JOSEPH: I am going to object, your Honor.  
 5 He hasn't laid the foundation. He doesn't have the  
 6 foundation for all the conclusions in that report.  
 7 THE COURT: Overruled.  
 8 MR. JOSEPH: Thank you.  
 9 THE COURT: The document is admitted in evidence  
 10 as Plaintiff's Exhibit 23 over objection.  
 11 MR. JOSEPH: Please not my exception.  
 12 THE COURT: Your exception is noted.  
 13 DIRECT EXAMINATION (CONTINUING)  
 14 BY MR. MORGAN:  
 15 Q Before we go through the life care plan, you just  
 16 mentioned about the three-hour session you had with Mr. Barra  
 17 little while ago, right?  
 18 A Yes.  
 19 Q Could you tell the jury a little about what happened  
 20 there?  
 21 A Well, he came in for an updated evaluation. We  
 22 started talking about things. And then just getting -- you  
 23 know: Do you still live in the same spot? Are you still seeing  
 24 the doctor once a month? Are these the medications you are on?  
 25 Etcetera, etcetera. Then I went over the past complaint  
 26 section, and as we started talking about it it turned out he

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1 Dr. Schuster - by Plaintiff - Direct  
 2 felt things were actually, in his mind, somewhat worse than they  
 3 were when I saw him three years before. And as we began  
 4 talking, as I stated, Mr. Barra, and I am sure he remembers,  
 5 began to weep in the session. And as I wrote in the report:  
 6 "Once the dam was broken, his feelings began to flood out."  
 7 Then I said: "Certainly if the examiner had the time to discuss  
 8 his life in greater depth" -- unfortunately there were  
 9 scheduling issues -- "Mr. Barra appeared just to be beginning to  
 10 express the depth of his emotions, despair, and concerns  
 11 regarding his predicament." That was the feeling I had.  
 12 This guy kept all this stuff inside, and once he  
 13 had an opportunity, he felt someone was open to listening to  
 14 him, it was just like, as I said, the floodgates were opened.  
 15 Unfortunately, I mean, I had another client sitting in the  
 16 waiting room.  
 17 Clearly this is a guy who needs -- he was  
 18 involved in counseling before, doing this type of stuff and felt  
 19 it was helpful, and it's the same thing with psychiatric  
 20 monitoring; but money and realistic issues prevented him from  
 21 getting that treatment.  
 22 Q Did you discuss any alternative treatment and care he  
 23 was getting other than going to the gym when you were with him?  
 24 A Massage therapy too. And everything else was kind  
 25 of -- you know, he just wasn't getting those services anymore.  
 26 He wasn't.

1 Dr. Schuster - by Plaintiff - Direct  
 2 Q Did he mention anything about a life coach?  
 3 A He did mention that. He did mention that to me. That  
 4 is certainly something he found helpful and would be congruent  
 5 with my feelings as something that he required.  
 6 MR. MORGAN: May I set up the easel?  
 7 THE COURT: You may.  
 8 Q Doctor, please explain for the jury what you have done  
 9 in preparing the life care plan.  
 10 A Okay.  
 11 Let me just speak very briefly that there are  
 12 evaluations of care. Evaluations are -- when you go to the  
 13 internist once a year, you should have a thorough evaluation.  
 14 It is going to be much more extensive and involves more expense  
 15 than, obviously, if you go to see him because you have an upper  
 16 respiratory infection. So there will be a difference between  
 17 evaluations and care.  
 18 The primary care physician, it says "no charge"  
 19 over here because it is just that you should be having a regular  
 20 evaluation by primary care physician once a year anyway.  
 21 Psychiatrist/pain management specialist once a  
 22 year is 350. This is going to be his major medical practitioner  
 23 at this point. These other people here -- the orthopedist,  
 24 neurologist, neurosurgeon, otolaryngologist -- the physical  
 25 therapist I will discuss in a second. But these are doctors.  
 26 They see him once a year for evaluation. So unless something is

1 Dr. Schuster - by Plaintiff - Direct  
 2 The others are "as needed." So a little follow-up is needed in  
 3 terms of other issues here. And that's 150 and 150.  
 4 Dr. Cushner recommended seven to twelve sessions  
 5 a year to monitor an exercise program, physical therapy, 100 to  
 6 150 a session.  
 7 Again, a psychiatrist once a month, and that's  
 8 148.  
 9 Also 150 to 200 sessions every five-year period  
 10 for the psychologist.  
 11 What I am concerned about, you know, is that he  
 12 is going to get worse and worse and worse. He needs a  
 13 supportive system. I am concerned of increasing depression. As  
 14 I said, it looked like this guy was holding everything in. If  
 15 he keeps doing there there will be more symptoms and problems.  
 16 And I think he really needs a way to express himself. And that  
 17 is a reasonable amount of sessions over a five-year period.  
 18 They tend to be more and then less, they can wax and wane  
 19 depending upon his condition.  
 20 Cognitive remediation at 496 a session, this was  
 21 recommended by Dr. Busichio, and then thereafter for the next  
 22 one to five years one time a month. Then we have a neuropsych  
 23 eval when he finishes to see where he is at.  
 24 Now we have palliative types of treatment: A  
 25 personal trainer, 50 to 100 sessions a year. He is paying \$30 a  
 26 session, so for the next five years. And then 25 to 50 sessions

1 Dr. Schuster - by Plaintiff - Direct  
 2 peculiar, that's it. You just want to make sure nothing is  
 3 happening.  
 4 This is a guy with multi-trauma. Has a lot of  
 5 difficulties of multiple body parts, head injuries. Let's  
 6 monitor him. An ounce of prevention is worth a pound of cure.  
 7 That's all we are talking about here. So these are people he  
 8 had been seeing. They're recommendations for ongoing follow-up.  
 9 This says a physical therapist once a year for  
 10 evaluation. There is a report from Dr. Cushner, I don't think  
 11 he yet, but these are recommendations from Dr. Cushner,  
 12 100 to 150.  
 13 Something on the next page -- Dr. Busichio is  
 14 recommending ongoing cognitive training. And what I am  
 15 recommending is that as it comes to the end of his cognitive  
 16 retraining in three to five years, one time for a neuropsych  
 17 evaluation. See where you are at that point and make a decision  
 18 at that point whether you should have -- whether you plateaued,  
 19 finished or whether to continue with more training.  
 20 So at the end of his cognitive retraining, one  
 21 time for a neuropsych evaluation of 3,250.  
 22 The psychiatrist evaluation once a year at 199.  
 23 We talked about that.  
 24 Primary care physician of course as needed. He  
 25 sees a pain management specialist once a month. That needs to  
 26 be continued. He needs an orthopedist once or twice a year.

1 Dr. Schuster - by Plaintiff - Direct  
 2 a year thereafter, personal trainer.  
 3 There are several reasons for it. One is that it  
 4 is much cheaper, obviously, to put in a personal trainer than a  
 5 physical therapist. If the personal trainer can keep giving him  
 6 an appropriate exercise regimen at 30 bucks a session, that's a  
 7 lot different than physical therapy sessions. It is a much more  
 8 economical way for him to continue with an exercise regimen, try  
 9 to maintain physical robustness, prevent further regression.  
 10 And exercise has been certainly shown to help reduce depression.  
 11 So there are a whole bunch of reasons to keep him going with  
 12 that, but he does require additional supervision.  
 13 Not only that, but he probably would benefit if  
 14 there is someone to help him, to motivate him to do things as  
 15 well. A massage therapist, 50 to 75 sessions every five years  
 16 on and off depending on his pain at \$90 a session.  
 17 Then cervical lumbar epidural injections, two a  
 18 year recommended by Dr. Cushner with his price of 1,759.70 for  
 19 the cervical and 1,730.50 for the epidural lumbar injections.  
 20 And then cortisone injections in the right and left shoulders,  
 21 one to two a year at 150. And one to two a year for the left  
 22 shoulder as well. These, of course, are prices and  
 23 recommendations of Dr. Cushner, they're right from his report.  
 24 Also recommendations from Dr. Cushner are right  
 25 shoulder arthroscopy and debridement the next five to fifteen  
 26 years one time, 7 to 10 grand. Right shoulder replacement only

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1 Dr. Schuster - by Plaintiff - Direct  
 2 if indicated. So if the condition got worse and he needed a  
 3 shoulder replacement, that's 20 to 30 grand. So these are not  
 4 the actual costs that would be included. This is only if  
 5 something unusual happens.  
 6 Q They are not included?  
 7 A They are not included in the plan. They are only  
 8 listed as "if indicated."  
 9 Here are the actual medications he was taking.  
 10 Vicodin, 1 to 2 a day, 74.99 for 90 tablets. Lidoderm patch,  
 11 five times a day 308.99 for 30. Ibuprofen as needed. And  
 12 Cymbalta, the antidepressant, half a tab a day, 688.99 for 90  
 13 tablets.  
 14 Then of course if you take these medications on a  
 15 regular basis you go through laboratory tests periodically to  
 16 make sure you are not having any untoward side effects. So, for  
 17 example, even Tylenol, if you take it regularly on a long-term  
 18 basis could cause liver damage. So you are going to want to  
 19 have these -- these are standard follow-ups twice a year for  
 20 basic lab tests, \$46, \$37 and \$37 for the three standard tests  
 21 twice a year.  
 22 And then these studies here would only be if  
 23 indicated or as needed by the doctor.  
 24 Q So these here aren't included in the life care plan?  
 25 A No cost.  
 26 Now, here I think the cane should be deleted.

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1 Dr. Schuster - by Plaintiff - Direct  
 2 When I saw him he was talking about using the cane, but I think  
 3 that's no longer the case. So take the cane out, forget about  
 4 it.  
 5 He is still using the TENS unit, electrical  
 6 stimulation unit for pain. One time every three to five years  
 7 he needs to have the item replaced, 148.75. Electrodes, two  
 8 boxes a year at 110.25 a box, and a battery for the TENS unit  
 9 twice a year, 8.99 for two.  
 10 Support services -- this should be deleted. It  
 11 is my error. He is not in a home, he is in a condo. So the  
 12 home maintenance should be taken out. Get rid of it. It is my  
 13 error. I noticed it. Take it out. It is taken care of, okay?  
 14 Housekeeper, 4 to 8 hours a week, 17.50 an hour.  
 15 He did have a housekeeper helping him. He told me she left and  
 16 he was in the process of trying to find another one.  
 17 He still has the water overflow sensor, once  
 18 every three to five years at 24.95. He gets confused forgets  
 19 things, the bathtub overflows. He has this already.  
 20 Q Thank you, doctor.  
 21 (Continued on next page)  
 22  
 23  
 24  
 25  
 26

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1 Dr. Schuster - Plaintiff - Direct  
 2 Q. That life care plan, Doctor, that would be the  
 3 ultimate plan of care for Mr. Barra, correct?  
 4 A. Not the ultimate. You could always do -- you know,  
 5 more things could go in there. There is a -- it's a  
 6 realistic future care analysis for him.  
 7 Q. When you did the work placement of Mr. Barra you  
 8 attempted -- what did you do with that to try and see if  
 9 there was any -- did you check to see if there was any  
 10 chance of him going back into the work force as a  
 11 construction worker?  
 12 MR. JOSEPH: Objection.  
 13 THE COURT: Rephrase it.  
 14 Q. When you were evaluating Mr. Barra's ability to  
 15 work, could you tell us what you considered?  
 16 A. I considered -- well, I don't think he was able to  
 17 work on anything, certainly not a crane operator. I felt --  
 18 he couldn't be relied upon to perform in any predictable  
 19 reliable fashion. We did mention when I had him come back I  
 20 had him fill out this form in terms of how do you get things  
 21 done in daily life. And of course he wrote, you know, some  
 22 things he could do and some things he doesn't do. He is  
 23 unpredictable and unreliable and that is the way I would  
 24 expect him to be at work. As I said, I don't think he could  
 25 stick with a job like that.  
 26 Q. And are you aware of any standards specifically for

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1 Dr. Schuster - Plaintiff - Direct  
 2 his line of work as a crane operator that would make it --  
 3 him unable to be certified as a crane operator?  
 4 A. He wouldn't be able to pass the physical  
 5 examination base upon his diagnosis and past history.  
 6 Q. Did you have an opportunity to review the  
 7 defendant's vocational rehabilitation report?  
 8 A. Yes, I did.  
 9 Q. And can you comment on Mr. Capotosto's report with  
 10 regards to Mr. Barra's employability and Mr. Barra's time  
 11 left in the work force?  
 12 A. Okay. He concludes that he could make about 25,  
 13 \$27,000 a year. Now. What he -- he didn't do any testing.  
 14 He didn't evaluate any of the types of factors -- major  
 15 factors that I felt was impairing his ability to work. It  
 16 wasn't -- as I already said this before, I think if he was  
 17 able to work in a predictable regular basis, he -- by the  
 18 way, the way I would phrase something like this with a  
 19 client like Mr. Barra, if he went back to work, would be  
 20 like, this would be like a therapeutic outlet. It's not  
 21 replacing his past six-figure earning potential as a crane  
 22 operator. But if he could get out and do something, and --  
 23 that would be helpful.  
 24 But his psychologist recommended that he do  
 25 volunteer work with animals. He already felt that was going  
 26 to be difficult for him to even do. The point being here is,