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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LAURA BERTA MOLDOVAN,

PLAINTIFF,

-against-

Index No.:

19-cv-05951-RRM-RLM

KULWANT SINGH, UBER TECHNOLOGIES, INC., and

DEFENDANTS.
-----X

DATE: March 2, 2021

TIME: 10:02 A.M.

VIRTUAL DEPOSITION of an Expert
witness, JOSEPH CARFI, M.D., taken by the
Defendants, pursuant to an Order, held at
the above date and time, before Maryellen
Thompson, a Notary Public of the State of
New York.

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A P P E A R A N C E S:

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F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that the original of the deposition may be signed and sworn to by the witness before anyone authorized to administer an oath, with the same effect as if signed before a Judge of the Court; that an unsigned copy of the deposition may be used with the same force and effect as if signed by the witness, 30 days after service of the original & 1 copy of same upon counsel for the witness.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to form, are reserved to the time of trial.

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J. CARFI

J O S E P H C A R F I M D , called as a witness, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. YODOWITZ:

Q. Please state your name for the record.

A. Joseph Carfi, M.D.

Q. Where do you reside?

A 2001 Marcus Avenue, Suite 219, Lake Success, New York 11042.

Q Good morning.

A Good morning.

Q Dr. Carfi, my name is Robert Yodowitz. I'm an attorney with the law firm of Lewis Brisbois Bisgaard & Smith. I'm going to ask you a few questions this morning. If you don't understand any particular question, just please tell me and I'll rephrase it or repeat it, whatever is needed so that you understand the question; okay?

A I understand.

1 J. CARFI

2 Q I'm sure you've done this before.
3 We're all bound by the difficulties of doing
4 these things via Zoom. So, sometimes I
5 found that there is a lag between the voice
6 and you hearing things, the witness hearing
7 things. So, maybe just give it a second
8 before you answer; okay?

9 A Yes, sir.

10 Q Okay, thank you. Dr. Carfi,
11 you're licensed to practice medicine in the
12 State of New York?

13 A I am.

14 Q And when were you so licensed?

15 A I was licensed in 1982.

16 Q What are your specialties?

17 A My specialty is Physical Medicine
18 and Rehabilitation.

19 Q Are you board certified in that
20 specialty?

21 A I am.

22 Q Through which board?

23 A That would be the American Board
24 of Physical Medicine and Rehabilitation.

25 Q Do you currently have admitting

1 J. CARFI

2 privileges in any hospitals?

3 A I do not.

4 Q When did you last have admitting
5 privileges at a hospital?

6 A The last I had admitting
7 privileges would be approximately around
8 2000, would be the local hospital here.

9 Q Which hospital is that?

10 A That was called Winthrop
11 University Hospital. It's now, I believe,
12 NYU Long Island, something like that.

13 Q Are you currently, I'll call it
14 affiliated, with any hospitals in any way?

15 A Yes.

16 Q Which hospitals, and to save time,
17 tell us how you are affiliated?

18 A Sure. I'm a voluntary faculty at
19 Mount Sinai Medical Center in Manhattan.
20 I'm a clinical assistant professor of
21 rehabilitation and medicine.

22 Q For how long have you been so
23 affiliated?

24 A I was full time in 1986 to 1990,
25 and then voluntary since 1990 to date.

1 J. CARFI

2 Q When you say "voluntary," what
3 does that mean?

4 A That means I volunteer my time to
5 teach the residents, medical students, et
6 cetera. There's no compensation for that.

7 Q Over the past five years, taking
8 account for Covid, how often have you done
9 that at Mount Sinai?

10 A Sure. My responsibility was the
11 brain injury clinic, and I was there
12 generally once a month to one clinic,
13 sometimes twice. It depended on what their
14 need was.

15 Q What would you do there once per
16 month?

17 A Well, I was teaching experience
18 for the residents and medical students, we
19 would provide medical care for people with
20 various types of brain injury. Typically,
21 the resident would see the individual first,
22 present, that would be a teaching moment. I
23 would then go and examine the individual,
24 again another teaching moment for the
25 resident. That's typically how it works.

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J. CARFI

Q You're here today for a life care plan that you prepared for a lady by the name of Laura Berta Moldovan; correct?

A I don't know why you summoned me, but it is for that case, yes.

Q But you understand that we are here for a deposition; correct?

A Yes, I do.

Q A federal court case; correct?

A Yes, I understand that.

Q When did you start doing life care plans?

A I offered my first plan in 1991 or '92. I don't remember anymore, in one of those two years.

Q Currently preparing life care plans for the medical/legal community, that's a substantial part of your work?

MR. YIP SO: Objection to the form of the question. You're qualifying him as to the legal community, there may be other reasons why he creates life care plans.

MR. YODOWITZ: I understand.

1 J. CARFI

2 Q Approximately, is it true that
3 approximately 20 years ago is when you
4 started preparing life care plans in
5 particular for the medical legal community?

6 A Actually, it's approximately 30
7 years ago, but yes.

8 Q Now, we were provided with an
9 expert response regarding your work in this
10 particular case for this lady, do you have
11 that in front of you?

12 A Well, I have my work, I don't have
13 the expert response, the legal document that
14 you refer to.

15 Q Doctor, do you have a document
16 that you submitted along with this life care
17 plan, entitled legal fee schedule?

18 A I don't have a legal fee schedule,
19 no, but I have my billing information and
20 such.

21 Q We were provided with an expert
22 response pertaining to your work in this
23 case, and in one of the documents, it was a
24 single-page document entitled legal fee
25 schedule, where you list your fees for

1 J. CARFI

2 various items that you perform on a
3 particular case, is that something you're
4 familiar with?

5 A I am, yes. I have it, actually,
6 on my board next to me.

7 Q Okay. Doctor, just to run through
8 it quickly, currently you charge \$700 for a
9 clinical examination?

10 A That's correct.

11 Q And a re-examination, you charge
12 \$400; correct?

13 A Yes.

14 Q And re-examination is usually if a
15 litigation goes on for a period of time, and
16 you're asked to do an updated exam at some
17 point; correct?

18 A Yes --

19 MR. YIP SO: Objection -- doctor,
20 if I object, just wait until I finish
21 my objection, please. Objection to the
22 form of the question. Over my
23 objection, I will allow him to answer.

24 Q You can answer, doctor.

25 A Yes, that's generally correct.

1 J. CARFI

2 Q When you do a re-examination, do
3 you ordinarily do an updated report?

4 A Ordinarily, yes.

5 Q When you do a re-examination, is
6 this safe to say that additional medical
7 records are also provided?

8 A Frequently, but not always.

9 Q When do you a re-examination and
10 you review medical records, you charge by
11 the hour for reviewing those records;
12 correct?

13 A I do.

14 Q The next item on this legal fee
15 schedule actually indicates hourly rate of
16 \$430, and that encompasses record review,
17 pre-trial conference, travel, et cetera;
18 correct?

19 A Yes.

20 Q And that's your current fee for
21 those items?

22 A Yes, it is.

23 Q The \$430, I'm assuming that would
24 encompass your fee for reviewing records to
25 do an official life care plan; correct?

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J. CARFI

A That is accurate, yes.

Q And \$430 would also be your fee if you had to do a re-examination and review additional records; correct?

A Yes.

Q The \$430, did it also include any preparation time for you giving testimony today?

A Yes, there will be a bill for that.

Q Just approximately, I'm sure you haven't done the bill yet, just approximately how many hours did you spend preparing for this deposition?

A Approximately one hour.

Q The next item on this legal fee schedule indicates the life care plan itself is \$3,000; correct?

A Yes.

Q If you testify in court, whenever courts open, your half-day fee is \$4,650; is that correct?

A Yes.

Q And if you testify full day,

1 J. CARFI

2 meaning you come back after the lunch break,
3 that would be \$8,800; correct?

4 A Yes.

5 Q And deposition testimony is \$550
6 per hour; correct?

7 A That's correct, counselor.

8 Q So, your bill for today would
9 encompass approximately your one hour for
10 record review of \$430, plus whatever time we
11 spend for your deposition, correct, at a
12 rate of 550 bucks an hour; correct?

13 A That's accurate, yes.

14 Q And it seems like you're doing
15 this deposition at your office. So, I'm
16 guessing there's no travel time being
17 billed; correct?

18 A That would be correct, yes.

19 Q Are you billing for today any
20 possible preparation time with the attorney,
21 or any of the attorney's staff prior to this
22 deposition?

23 A That would be included in that one
24 hour that I told you before.

25 Q Okay. Down towards the bottom of

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J. CARFI

this legal fee schedule, it indicates that any checks that you'll have received one week prior to the date of your reserved testimony; correct?

A Yes.

Q And you also indicate on this, the testimony fee is not nonrefundable, it's nonrefundable if the case is either settled or adjudicated within one week prior to the scheduled testimony; correct?

A Yes.

Q I gather from that that you're paid about one week in advance, and for whatever reason it doesn't go forward, you formulate a bill -- no, I'm sorry. Whatever money you've been paid in order to appear for testimony, it's nonrefundable if it's not done prior to one week; correct?

A That's accurate, yes.

Q And the last thing here is that you do reports such as the life care plan and a report that goes along with it, and if somebody wants it done on an expedited basis, meaning within two weeks or less

1 J. CARFI

2 after the exam, you put a \$25 surcharge on
3 that, correct?

4 A Well, it's 25 percent, actually.

5 Q I'm sorry, I'm going a little too
6 fast, 25 percent; right?

7 A Yes.

8 Q Doctor, is it safe to say that you
9 do approximately 100 life care plans per
10 year?

11 MR. YIP SO: Objection to the form
12 of the question. I'll allow him to
13 answer.

14 Q Do you agree with that number or
15 is it more or less?

16 A It is between 100 and 150, it
17 depends on the year, obviously.

18 Q So, again, taking into account
19 whatever effects Covid might have had on
20 everybody's business, is it safe to say that
21 over the last five years, on average, you do
22 approximately 100 to 150 of these life care
23 plans; is that correct?

24 A That would be fair, yes.

25 Q And that would mean, then, in

1 J. CARFI

2 order to do the life care plan, would you do
3 an examination of the individual first?

4 A Almost always, but not
5 universally.

6 Q Is it safe to say that you would
7 also do a report, a narrative report, that
8 would go along with the life care plan?

9 A Yes, some sort of narrative will
10 accompany the life care plan.

11 Q Doctor, just to make the math
12 easy, let's go with the low number, the 100.
13 Let's say on a particular year, you do 100
14 life care plans; okay?

15 A Yes, sir.

16 Q That's at \$3,000 a plan; correct?

17 A Yes.

18 Q So, that would equate to \$300,000
19 per year doing life care plans on the basis
20 of 100 only, 100 per year; correct?

21 A Yes, that would be gross revenue,
22 correct.

23 Q And obviously, if you hit the 150
24 mark in a particular year, instead of
25 \$300,000, that would be approximately

1 J. CARFI

2 \$450,000 for that year, just for the life
3 care plan; is that correct?

4 A Yes, sir.

5 Q Doctor, in this particular case, I
6 believe you indicated that you were
7 compensated \$5,700, it says here, for your
8 report regarding this lady, am I correct in
9 assuming that that \$5,700 encompasses the
10 life care plan, too, or is that simply for
11 the report and the life care plan is an
12 additional item?

13 A No, that's the global bill that
14 includes the life care plan as well.

15 Q So, in this case, the \$5,700
16 encompasses \$3,000 for the life care plan,
17 and \$2,700 for the report; correct?

18 A Not exactly.

19 Q I'll withdraw the question.
20 Doctor, the \$5,700, is \$3,000 for the life
21 care plan, and the \$2,700 additional
22 dollars, does that encompass your review of
23 reports and your report?

24 A That, and there was an expedited
25 surcharge for expedited service. So, it was

1 J. CARFI

2 a couple of things.

3 Q Okay. Lastly, and we will move
4 on, the \$2,700 includes the record review,
5 you authoring the report, and the 25 percent
6 fee for you doing this on an expedited
7 basis; correct?

8 A Yes.

9 Q Again, going back to the 100 a
10 year just for the life care plan. Just to
11 make the math easier, and I'll go with the
12 lower number. Is it safe to say that
13 reviewing records and authoring the report
14 comes to approximately \$2,500 on an average
15 case?

16 A Yes, that sounds about right.

17 Q So, again back to a year where you
18 only do 100 per year life care plans, that
19 would be another \$250,000; correct?

20 A That would be correct, yes.

21 Q And just to show you how good I am
22 in math, if you did it on 150 a year, that
23 would be \$375,000; correct?

24 A Do I need to check your math or
25 should I take it on faith you did it

1 J. CARFI

2 correctly; if you did it correctly, that
3 sounds about right.

4 Q Okay. Just for those two items in
5 a year that you only do 100, we can both
6 agree that it comes to approximately
7 \$550,000; correct?

8 A Yes.

9 Q In a year that you do upwards of
10 150 a year, that would come to \$825,000;
11 correct?

12 A That sounds about right. Yes,
13 sir.

14 Q From what I see, those numbers --
15 withdrawn.

16 You indicated on your sheet here
17 that your clinical exam is \$700; correct?

18 A Yes.

19 Q So, in a year where you do only
20 100, that would come out to an additional
21 \$70,000 per year just for the clinical exam;
22 correct?

23 A If you're dissecting it out of the
24 global bill that we were just discussing,
25 that would be correct. It's not in addition

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J. CARFI

to the numbers that you've already given me.

Q So, you're saying that \$70,000 would be encompassed in the other numbers that we talked about?

A You had given me a global fee of \$2,500, and the way you explained it, that was for my narrative report, which includes the physical exam, as well as the record review.

Q Okay, fair enough. So, the exam itself, just the exam, is encompassed in that other number, it's not a separate number; correct?

A Correct.

Q Okay. You also provided us with some documents where you provided the attorney, who was kind enough to provide us with documents regarding your testimony in this case, both deposition and trial; correct?

A You know, I assume my office manager did that. I know this is a federal case. I do not have that in front of me, though.

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J. CARFI

Q I'll just go through a few things quickly. Doctor, I'm just randomly pulling out a sheet for 2016. Frankly, we were provided with sheets for 2016, 2017, 2018, and 2019. So, I'm just picking 2016; okay?

A Yes, sir.

Q In 2016, according to this sheet that your office provided to the attorneys, who then provided it to us, you testified, between depositions and trial, 27 times; okay?

A Okay. That was a busy year, I guess, yes.

Q Frankly, in the other years, in the next year of 2017, I believe it was 26 times, in 2018 it was also, looks like twenty-something times. So, is it safe to say that, say on average because of these life care plans that you prepare for attorneys, again, forgetting Covid, keeping Covid apart, you testified roughly 25 times a year?

A It appears so. The numbers that you've given me, I don't have it in front of

1 J. CARFI

2 me, but that sounds about right, yes, sir.

3 Q Okay. Again, 25 times a year,
4 that's a mixture of in court and in
5 deposition; correct?

6 A Yes.

7 Q Just using 2016 as kind of a guide
8 or an average, in 2016 you testified 17
9 times in court, and ten times at
10 depositions. Would that be an approximate
11 percentage for the years that you do testify
12 at a rate of roughly 25 times a year; I'll
13 average it out at around 15 times in court,
14 ten times in deposition?

15 A That seems rather heavy on the
16 court appearances, as a general rule, but
17 that was that particular year. It sounds
18 like about 50/50.

19 Q Okay. Now, just using that year
20 as a guide, again, your rates for testifying
21 were \$8,800 for a full day, \$4,650 for a
22 half day; correct?

23 A Yes.

24 Q Coming up with an easy number to
25 do math, an average, would it be somewhere

1 J. CARFI

2 around say \$6,500, \$7,000 a shot, then?

3 A Not really. Full days are
4 actually rare. So, if you want to come up
5 with a round number, I think \$5,000 would be
6 an easier number to work with. Full days do
7 not happen very often.

8 Q Okay, that's fine. I'll work with
9 the \$5,000. If, on average, your fee was
10 \$5,000 for these -- I'll knock it down to 15
11 court appearances, so I can do the math
12 easy. So, that would be \$75,000 for the
13 year 2016 for in court; correct?

14 A Yes.

15 Q And for depositions, what would
16 you say your average fee for these
17 depositions are, taking into account for
18 medical records, and taking it for granted
19 that some cases involve enormous amounts of
20 medical records, and other cases, not so
21 many?

22 A Well, depositions generally, I
23 don't prep for more than an hour. I don't
24 need to prep for more than an hour for each
25 deposition, and as far as number of hours

1 J. CARFI

2 per deposition, they generally run between
3 three and four hours. Some are two, some
4 are longer, but three or four hours.

5 Q So, an average fee for a
6 deposition would be, and you can correct me,
7 somewhere around \$3,000?

8 A No, let's see. Fifty times four
9 will make it \$2,000. Let's make it \$2,500,
10 okay.

11 Q Fair enough, doctor. So, for
12 depositions for that particular year, if we
13 just use ten for the number, and it was
14 actually ten in 2016. So, that would be
15 \$25,000; correct?

16 A Correct.

17 Q So, for 2016, rounding off
18 numbers, it was roughly \$75,000 for trial,
19 \$25,000 for depositions. So, on top of the
20 other numbers which we've already run
21 through, that would be about another
22 \$100,000 for testimony; correct?

23 A If the math supports that, yes.

24 Q According to these sheets of
25 testimony that you've given, and again, the

1 J. CARFI

2 ones that I have from the attorney is 2016,
3 2017, 2018, and 2019, it looks like all of
4 them except for two, unless I've missed
5 others, were all on behalf of plaintiffs;
6 correct?

7 A That would sound about right.
8 There may have only been two, you might have
9 missed one, but it is a very small
10 percentage of defense, yes.

11 Q The sheets also include the firm
12 names, meaning the firms of the plaintiffs'
13 attorneys, correct?

14 A Yes, and defense attorneys, yes.

15 Q When you get a request for a life
16 care plan, that would come from the
17 plaintiff's attorney's office; correct?

18 A Yes. It's unusual for a defense
19 attorney to request a plan, yes.

20 Q And the law firm would send you
21 records which you would then review and you
22 would bill; correct?

23 A Yes.

24 Q And the \$700 fee for conducting
25 that first exam, as well as whatever it was,

1 J. CARFI

2 the \$400 for the re-exam, you'd be
3 reimbursed by the law firm, I'm assuming;
4 correct?

5 A That's correct.

6 Q So, in those cases where you are
7 doing these life care plans, you're not a
8 so-called treating physician, your role in
9 this is to be an expert on behalf of the
10 plaintiff; correct?

11 A Yes.

12 Q Do you still practice medicine
13 outside of this medical legal sphere,
14 meaning do you still see private patients
15 that have nothing to do with the medical
16 legal sphere?

17 A I do not.

18 Q When did you stop doing that?

19 A October of 2016.

20 Q So, from October of 2016 to the
21 present, your professional life is 100
22 percent entirely in the medical legal
23 sphere; correct?

24 A And related, yes.

25 Q What do you mean by "related"?

1 J. CARFI

2 A Well, I do disability evaluations;
3 I do independent medical evaluations for
4 third-party payers; I have served as an
5 expert for the Department of Health, Office
6 of Professional Conduct. These are
7 non-patient/doctor relationship types of
8 roles that I do.

9 Q So, since October of 2016, am I
10 correct in saying that whoever you've seen
11 in medical consult, there was no
12 doctor-patient relationship between you and
13 that individual; correct?

14 A Yes, that's accurate.

15 Q Are you licensed to practice
16 medicine in any other states other than New
17 York?

18 A I am, that's New Jersey.

19 Q For how long have you been
20 licensed in New Jersey?

21 A I will give you a guesstimate,
22 between five and ten years. I would
23 actually have to look at my license to see.

24 Q Have you also testified in New
25 Jersey courts?

1 J. CARFI

2 A I have, yes.

3 Q And obviously, then, on New Jersey
4 cases?

5 A Yes.

6 Q Doctor, switching gears for a
7 moment. We were also provided with what is
8 specifically stated to be your life care
9 plan for Laura Berta Moldovan, and I believe
10 it's eight pages, do you have that with you?

11 A That I have, yes.

12 Q Page one has various columns that
13 run from left to right across the top. What
14 I see is medical care, purpose, frequency,
15 cost/visit, resource, and annualized costs;
16 correct?

17 A That's accurate, yes.

18 Q And I'm assuming that that's
19 something that you use or a form that you
20 use in every one of your life care plans;
21 correct?

22 A Yes.

23 Q And then going down the left side
24 under medical care, there are lines entitled
25 rehabilitation specialist, orthopedist, pain

1 J. CARFI

2 management, psychotherapy, and then you also
3 list cervical surgery and lumbar surgery;
4 correct?

5 A Yes, sir.

6 Q I'm assuming that cervical surgery
7 and lumbar surgery are particular to this
8 case; correct?

9 A This entire plan is particular to
10 this case, yes.

11 Q The other items above,
12 rehabilitation specialist, orthopedist, pain
13 management, and psychotherapy, are those
14 items that you list on every life care plan?

15 A They frequently appear, but not on
16 every plan. Pain management depends whether
17 they require that service, psychotherapy as
18 well. We bill for physical medicine,
19 specialist and orthopedist. I would say
20 that probably every plan has those two.

21 Q Am I correct in stating that if
22 it's not applicable, you would just indicate
23 "not applicable;" correct?

24 A I don't have it on there at all.
25 If it's not applicable, it's not listed.

1 J. CARFI

2 Q Okay. These life care plans that
3 you prepare, do you maintain a template for
4 these?

5 A Well, this is of my design, I
6 designed this years ago. This is basically
7 an Excel spreadsheet. So, every life care
8 plan is, in fact, a template perhaps for a
9 future plan. So, I can, for example, cut
10 and paste if I wish, copy and paste. If I
11 have, let's say a spinal cord injury, a C5
12 quadriplegia, they tend to be very similar
13 with their needs, some differences. So, I
14 might cannibalize a plan and then customize
15 it for this particular individual. So, I
16 don't have any blank templates, per se, they
17 all have data on them, but I can use
18 different plans for different purposes.

19 Q So, for want of a better term, you
20 don't have to reinvent the wheel for each
21 patient; correct?

22 A In essence, that is correct. Each
23 plan is customized for each person that I
24 see, but they could be similar in many ways,
25 depending upon the case.

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J. CARFI

Q With similar language?

A Well, similar language. You will see that the format is very similar, the wording, the language, as you say, is very similar, but the specific items will be different, depending upon the person.

Q Meaning if one person had a particular surgery on a particular date and at a particular place, that would be unique to that particular life care plan; correct?

A That's correct, although I don't list locations for surgeries and such, but the specific surgery and the type of surgery, yes.

Q So, what I gather, then, you have obviously this Excel, this spreadsheet where you have all these columns going up and down, and you would insert the information particular to the case, and also had some generalized language that you could use on almost any of these life care plans; correct?

A That's fairly accurate, yes.

Q Doctor, on page four of eight of

1 J. CARFI

2 your life care plan, just randomly picking
3 out this page for the moment. This
4 basically has to do with medical supplies
5 and equipment, yes?

6 A Yes.

7 Q And again, this sheet would be
8 part of your Excel spreadsheet that you
9 could use on all of your life care plans;
10 correct?

11 A Particular equipment sheet, yes.

12 Q Doctor, where it says "medical
13 supplies and equipment" and then it goes
14 down and it lists a variety of items, do you
15 see that?

16 A I do.

17 Q Would those items be particular to
18 back injuries or back cases?

19 A Many of these items are related to
20 people who have back problems. They are
21 specific to Ms. Moldovan's situation as
22 well. Somebody with neck problems only, she
23 has both, many of these things may not be
24 there. So, it just depends on the specific
25 case, but yes, many of these are for people

1 J. CARFI

2 who have back issues.

3 Q Such as the cane, or the TENS
4 units, the sock aid, things like that?

5 A Some of those are things that she
6 specifically uses. Not everybody with back
7 problems uses a cane. So, it may not be in
8 another plan that I do. Same thing with a
9 TENS unit. As far as the sock aid that
10 you've mentioned, that will show up in many
11 plans because bending is a very difficult
12 move for people who have a back injury or
13 chronic back pain of some kind.

14 Q Doctor, in the sheet entitled
15 "annualized cost," that's where you set
16 forth your projected medical cost on a
17 yearly basis for this lady; correct?

18 A That's the summary sheet at the
19 end?

20 Q No -- yeah. On mine, it's just
21 entitled page one of one.

22 A That's it.

23 Q On the top, it says "annualized
24 cost."

25 A Yes, and above that, "life care

1 J. CARFI

2 plan the summary." That's the summary of
3 the plan on one sheet of paper. That's what
4 that is.

5 Q With the one-time cost where you
6 indicate \$190,000 and change, that's if she
7 ends up having another lumbar surgery and a
8 surgical surgery; correct?

9 A Correct, yes.

10 Q And obviously, if she doesn't have
11 those, then that's not applicable; correct?

12 A Correct.

13 Q You saw this lady on November 20,
14 2020?

15 A Yes, I did.

16 Q That's roughly almost four months
17 ago. Were you provided with any additional
18 medical records from November 20, 2020 up
19 until today, and when I say additional
20 records, let me make myself clear. If this
21 lady has had any medical treatment from
22 November 20, 2020 up until today, are you
23 aware of what possible treatments she's had?

24 A I've not been provided with any
25 treatment records, no.

1 J. CARFI

2 Q So, you don't know, one way or the
3 other, whether she's treated or not during
4 these past four months; correct?

5 A That's correct.

6 Q Or what her condition is right
7 now; correct?

8 A That would be accurate.

9 Q As part of your work on this case,
10 you told us before that you authored a
11 report and I believe it's seven pages, do
12 you have that in front of you?

13 A I do have it, yes.

14 Q Essentially, with this report
15 includes a recitation of your review of
16 various records and your clinical
17 examination of Ms. Moldovan; correct?

18 A Yes, sir.

19 Q Doctor, in addition to all that,
20 you also spoke with the lady and you talked
21 to her about whatever activities she can or
22 can't do according to her; correct?

23 A Yes. That was part of the history
24 that I took from her, yes.

25 Q Just a couple of things under

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"activities." She told you that she enjoyed at one point going hiking?

A Yes.

Q Did she tell you, like where she went hiking or how often she did that beforehand?

A No, I don't have those details.

Q She also told you that she was able to sit for about an hour, and then stand up, not quite as long as we've been going; correct?

A That's correct.

Q And she also told you that when you saw her last November, that she could walk for about 90 minutes, an hour and a half or so, and after walking for an hour and a half, then she needs to sit down because of some increased back pain; correct?

A That's what she said, yes, sir.

Q Did she tell you to what degree she had back pain after 90 minutes or so from walking, whether it was severe, mild, moderate, or something else?

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J. CARFI

A No, but certainly sufficient to force her to sit down, but I didn't get into the degree as you require.

Q And, again, that would be after her walking 90 minutes or so, an hour and a half?

A Yes, sir.

Q Did she say whether that walking for an hour and a half involved, let's say, walking in a park for an hour and a half, or going to stores and walking for an hour and a half, did she give you any specificity of what she meant by walking for an hour and a half before she felt she had to stop?

A No specificity, no.

Q As part of your exam, you also took some measurements; correct?

A I did.

Q Now, somebody with a lower back problem, whether they had surgery or not, somebody with a lower back problem, can, at times, be reflected in muscle mass in the legs, correct?

MR. YIP SO: I didn't understand

1 J. CARFI

2 the question. Can you repeat it?

3 MR. YODOWITZ: I think the doctor
4 understands it, though.

5 MR. YIP SO: Well, I need to
6 understand it, too.

7 Q Somebody with a back condition,
8 that can be reflected in muscle mass in
9 their legs; correct?

10 A I think upon the nature of the
11 condition, that can be correct, yes.

12 Q In this case, when you did
13 measurements of the lady's calves, the left
14 calf's circumference was 32 1/2 centimeters
15 and the right was 33 centimeters; correct?

16 A That was my measurement, yes.

17 Q Would you say that that
18 differential of 32 1/2 to 33, would you say
19 that that would be a fairly slight
20 difference?

21 A It is not a significant
22 difference.

23 Q And 32 1/2 versus 33, that's not
24 indicative of atrophy; is it?

25 A No, it is not.

1 J. CARFI

2 Q And the thighs you measured, and
3 they were both 42 1/2 centimeters
4 bilaterally, meaning the left side and the
5 right side; correct?

6 A Yes, sir.

7 Q So, those were identical and
8 symmetrical; correct?

9 A Yes.

10 Q And the same as to the calves,
11 identical measurements of the thighs, that
12 would be indicative of no atrophy; correct?

13 A That is correct.

14 Q Atrophy is something, in layman's
15 terms, is wasting the muscle, ordinarily
16 from non-use, or lack of use, or difference
17 in use; correct?

18 A That can be a reason why you would
19 have wasting of muscle, yes.

20 Q But in any event, in this case,
21 you have a lady with a lumbar condition,
22 with a lumbar surgery and post-surgery, only
23 four months ago, there was no indication of
24 atrophy in any portion of her legs; correct?

25 A Correct, there was no atrophy.

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Q When you spoke to the lady, she made a number of what we would call subjective complaints; correct?

A True. All complaints are subjective by their very nature, but that's an accurate statement, yes.

Q Doctor, I believe his name is Dr. Cardialli (phonetic), he was the surgeon for Ms. Moldovan, correct?

A Yes.

Q I'm assuming you read his objective report in the chart?

A I read them, I summarized them. My memory, of course, is only, would be encapsulated within the paragraph summary that I have here.

Q Doctor, would you say that his surgery achieved his intended goal for this lady?

MR. YIP SO: Objection to the form of the question. Over my objection, you can answer the question.

A I don't know his state of mind and what his goals were. I can tell you what

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Ms. Moldovan told me the outcome of the surgery was for her personally.

Q Well, the goal for any surgery is to eliminate or greatly reduce the symptoms, otherwise, why do the surgery; correct?

MR. YIP SO: Objection to the form of the question --

MR. YODOWITZ: That's fine, I'll leave the last part off the question.

Q Doctor, the intended goal of any surgery is to reduce or eliminate whatever symptoms the patient has; correct?

A I think that's a fair characterization, yes.

Q And also for the surgeon to do the best he can to correct the underlying condition that he's operating for; correct?

A That is -- yes, that's reasonable, yes.

Q Taking the second part, doctor, isn't it true that Dr. Cardialli (phonetic) here, his surgery corrected the underlying condition that he was operating on?

MR. YIP SO: Objection to the form

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J. CARFI

of the question. Over my objection,
you can respond.

A Well, I'm not a surgeon. So, I
don't know the technical aspects of what it
was he intended to achieve, or what he, in
fact, achieved. I know that what he
performed was spinal fusion and laminectomy,
but if that's what his plan was, and that's
what he achieved, I don't know the answer to
those questions. You really have to ask
Dr. Cardialli (phonetic) those questions.

Q Would you say that her symptoms
decreased, post-surgery?

A According to Ms. Moldovan, yes.
Her symptoms improved after the surgery.

Q When you examined specifically
Laura Berta Moldovan on November, I believe
it was the 20th of 2020, and you asked her
to perform various movements, is it safe to
say that she was the one who was in control
of those movements?

A As far as the examining of her
cervical and lumbar spine, yes, she was in
control of the movement of her spine, yes.

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J. CARFI

Q Whatever degree she moved, she was in control of that; correct?

A Yes.

Q Whether she moved it a little or a lot, or somewhere in between; correct?

A She was in control of that, yes.

Q As far as the complaints that she made, whether she said she was tender in a particular area or something hurt, she was in control of that, too, and that's what medical people, and attorneys, frankly, refer to subjective complaints, correct?

A Yes. You accurately described what a subjective complaint is, yes.

Q When you prepared this life care plan for her, her projecting out what she would possibly need in the future, a significant portion of what you're relying on is what the patient is telling you; correct?

A Yes, her history is a very important portion of those opinions in the life care plan, yes.

Q And encompassed in that history

1 J. CARFI

2 are the complaints that a patient is making
3 to you regarding whether it's tenderness or
4 pain or inability to perform a particular
5 task, or move a body part, that's something
6 that you're relying upon from that person;
7 correct?

8 A Some of what you say is history,
9 and some of what you described is part of a
10 physical examination, but encompassing all
11 of that, yes, I'm depending on that, yes.

12 Q I believe, as you said before,
13 that goes a long way as far as you preparing
14 the life care plan, and preparing it in an
15 accurate manner to the best of your ability;
16 correct?

17 A Yes, that is an important part of
18 that analysis, yes.

19 Q If a patient, any patient, gives
20 you, whether it's a history or subjective
21 complaints in an inaccurate manner, that
22 could alter your life care plan through
23 absolutely no fault of your own; correct?

24 MR. YIP SO: Objection to the form
25 of the question. I'll let you answer

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the question.

A Yes. So, if the history of the physical examination is inaccurate, that does affect the accuracy of my work, of course.

Q Thank you, doctor. I have nothing else.

MS. RUSH: I don't have anything.

(Whereupon, at 11:00 A.M., the Examination of this witness was concluded.)

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J. CARFI

D E C L A R A T I O N

I hereby certify that having been first
duly sworn to testify to the truth, I gave
the above testimony.

I FURTHER CERTIFY that the foregoing
transcript is a true and correct transcript
of the testimony given by me at the time and
place specified hereinbefore.

JOSEPH CARFI, M.D.

Subscribed and sworn to before me
this _____ day of _____ 20____.

NOTARY PUBLIC

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J. CARFI
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MR. YODOWITZ	4

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EXHIBIT	EXHIBIT	
NUMBER	DESCRIPTION	PAGE
(None)		

INFORMATION AND/OR DOCUMENTS REQUESTED		
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QUESTIONS MARKED FOR RULINGS		
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J. CARFI

C E R T I F I C A T E

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

I, MARYELLEN THOMPSEN, a Notary Public
for and within the State of New York, do
hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and
that such examination is a true record of
the testimony given by that witness.

I further certify that I am not related
to any of the parties to this action by
blood or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 5th day of March 2021.



MARYELLEN THOMPSEN

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1,

2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES

OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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